



ICLAF 2022

06 SEPTEMBER 2022

INTERNATIONAL CONFERENCE OF LAW, ACCOUNTING & FINANCE 2022

Conference Proceedings

JOINTLY ORGANISED BY

The Department of Law and
The Faculty of Accountancy,
Universiti Teknologi MARA,
Cawangan Negeri Sembilan,
Malaysia

APOSTASY: PERSONAL RIGHTS GUARANTEED?

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Abstract

Apostasy is conversion from Islam to other religion and recognised as a right under the Universal Declaration of Human Rights where the rights to alter one's faith or belief is guaranteed. However, the law relating to apostasy seems to be very strict to Muslims in Malaysia who want to alter their faith from Islam. Past studies indicated that the law in Malaysia is unfavourable for apostate to achieve their intention in renouncing from Islam although the Federal Constitution of Malaysia provides freedom for citizens to profess their preferential religion. This paper aims to explore the law relating to apostasy and its implementation against apostate who intending to renounce from Islam. This study employed a qualitative research design of a doctrinal nature using both primary and secondary data such as legislation, cases, articles and other relevant documents. It was found that despite the freedom to profess favourable religion, once a Muslim, the journey to achieve apostasy is challenging and the inconsistent rules and regulations in the States in Malaysia does not give sufficient avenue for apostate to renounce from Islam since the freedom under the Federal Constitution is not absolute.

Keywords: *apostasy, riddah, Muslim, freedom of religion, Universal Declaration of Human Rights, Federal Constitution*

Introduction

Apostasy is recognised as a right under Article 18 of the Universal Declaration of Human Rights (UDHR) 1948 which stipulates that everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. Article 18 of the UDHR indicates freedom of religion is unlimited and the international human rights law allows no restrictions on a person's religious belief where man has the right to change his religion or belief and to manifest his religion or belief in any possible means (Sulaiman et. al., 2020). The Federal Constitution of Malaysia guaranteed the rights to freedom of religion in Article 11(1). This right to freedom of religion is also guaranteed in Qur'an in verse 256 of Sura al-Baqara: "There is no compulsion in religion". However, past studies and reported cases shown that there is no total freedom of religion in Malaysia as stated in the Federal Constitution (Khareng et al., 2014; Ghani et. al., 2017; Sulaiman et al., 2020).

A person can be a Muslim either by birth or by conversion from another religion to Islam by a simple recitation of the profession of faith (shahada) in the presence of two witnesses, "There is no God but God, and Muhammad is the Prophet of God" (Hermansen, 2014). The Qur'an criticises those who renounce Islam or intend to renounce after their conversion to Islam by saying, "... and whoever of you turns back from his religion, then he dies while an unbeliever, these it is whose works shall go for nothing in this world and the hereafter, and they are the inmates of the fire; therein they shall abide" (2:217). Renunciation from Islam or known as 'apostasy' or *riddah* (in Arabic) means "turning away from Islam" or "severing the ties with Islam" which can be materialised by expression of unbelief, specified as words implying unbelief, deed implying unbelief or, according to Shafi'ite doctrine, the mere intention on unbelief (Peters

& De Vries, 1976). Renunciation from Islam is fall within the jurisdiction of the syariah courts in Malaysia by virtue of the Article 74 and List II of the Ninth Schedule to the Federal Constitution. Article 121(1A) of the Federal Constitution provides that the civil courts have no say in matters that fall within the syariah court's jurisdiction. The authority and jurisdiction of the syariah courts were limited and delineated by the state legislature.

Nasir and Ismail (2016) found that there six States such as Selangor, Wilayah Persekutuan, Kedah, Perlis, Johor and Sarawak which did not have provisions in their syariah law relating to offences for renunciation from Islam. The non-existence of law on apostasy in the syariah matters might portray that apostasy is not an offence. The same author (Nasir and Ismail, 2016) further found that the States which have a law on apostasy varies on the types of offences such as contempt of religion of Islam (Sabah Syariah Criminal Offences Enactment 1995, section 55); words or action importing apostacy (Perak Crimes (Syariah) Enactment 1992, section 13); attempt to leave the religion of Islam (Pahang Syariah Criminal Offences Enactment 2013) and similar provisions also exists in States of Kelantan, Terengganu, Melaka, Negeri Sembilan and Sabah. The loophole on the law on apostasy indirectly allow intended apostate to renounce from Islam, however, it is not true.

Conversion from one religion to another does not seem to be much of a problem for non-Muslim, but a Muslim will be having difficulty to renounce his faith from Islam (Sulaiman et al., 2020). The famous case of *Lina Joy v. Majlis Agama Islam Wilayah & Anor* (2007) is one of the examples of a Muslim who renounce her religion from Islam to Christian. In this case, Lina Joy, a born ethnic Malay Muslim married a Christian. The Law Reform (Marriage and Divorce) Act 1976 prohibit Muslims from solemnizing or registering marriage under the civil law. Her application for civil marriage registration was denied since her identity card designated her as Muslim, which labelling of faith cannot be removed unless she obtained an order from the syariah court stating that she had become an apostate. Lina Joy referred her case to civil courts but failed. The Federal Court of Malaysia refused to recognised Lina Joy's conversion from Islam to Christianity. In another case of *Wong Chun Chiak @ Kenny Abdullah v. Majlis Agama Islam Wilayah Persekutuan*, the plaintiff, Kenny, is a converted Muslim who applied to renounce from Islam to Christian because he wanted to marry a non-Muslim. The Syariah Court of Wilayah Persekutuan reject his application and decided that Kenny's notice of application to renounce Islam was in contravention of the court's procedure. The proper procedure is via summons and statement of claim as stipulated by section 7 of the Syariah Court Civil Procedure (Federal Territories) Act 1998 (Shiddeq, 2015). Hence, an apostate who intends to renounce from Islam must refer to the respective syariah law. Past cases referred to syariah courts shown that apostates have difficulty in renouncing from Islam. This paper aims to explore the law relating to apostasy and its implementation against apostate who intends to renounce from Islam.

Methods

This paper adopted a qualitative research design of a doctrinal nature where it involved the study of a specified issue or problem. The study is based on analysing both primary and secondary data such as legislation, cases including existing literature to enable the researchers to critically analyse the meanings of the legislation and decided cases by the courts. Primary sources include, but not limited to the Law Reform (Marriage and Divorce) Act 1976, Syariah Court Civil Procedure (Federal Territories) Act 1998 and other secondary legislation pertaining syariah laws. Secondary sources for this study include reference to books, articles, online journal, newspapers and other relevant documents.

Results and Discussion

In Malaysia, apostasy is considered as a criminal offence. The *actus reus* is the act of leaving Islam by doing something which is against Islam such as embrace other religion. The element of *mens rea* is the intention which is hard to be seen but the act done such as applying to court to renounce Islam is the illustration of the mind. Since it is a criminal offence, those who wanted to leave Islam will be reluctant to follow the procedures laid down by the enactment of the States. Apostasy is a criminal offence in Pahang by virtue of section 185 of The Administration of the Religion of Islam and, The Malay Custom of Pahang Enactment 1982 which provides sanction of fine and imprisonment for apostasy unlike some States such as Kelantan, Malacca and Perlis which provides sanction for attempted apostasy. The inconsistency of punishment was due to the Article 74 and List II of the Ninth Schedule to the Federal Constitution which

give the authority to the States on matters regarding religion.

This study only referred to two categories of apostate, firstly a born Muslim by ethnicity and the other is a converted Muslim who wanted to renounce Islam. For the first category, this study analysed the case of *Lina Joy v. Majlis Agama Islam Wilayah & Anor* (2007) and found that the decision by the court has led Lina Joy to run away and forced into hiding. Her application to change the status of religion in her identity card failed because of her failure to submit an order from the Syariah Court showing that she is an apostate. One issue arisen as to why she did not obtain the declaration of apostasy from the Syariah Court. Nelson & Shah (2018) argued that there exists policy-based lacuna on the law where the legal view that Lina Joy should complete forms is administratively reasonable. The authors also stressed that the court did not reject the possibility of a Muslim's renunciation of Islam but suggested that any person seeking to leave the religion must follow the relevant procedures.

For the second category regarding a converted Muslim who wanted to renounce Islam, the problems to renounce is more prevalent. In a study done by Yaakub (2000) on the issue of apostasy, the problem of apostasy comes from the person himself (intrinsic) and sometimes from external sources (extrinsic). Such situation if ever arise in the state of Sabah, for example, an apostate can be detained at an Islamic Education Centre (*Pusat Bimbingan Islam*) for a period of not more than thirty-six months for the purpose of educating that person and he will be asked to repent according to the Syariah laws (Nasri & Shiddeq, 2016). This proven that it is not easy to renounce from Islam since there are certain procedures that have to be adhered to by an intended apostate.

The procedure for application to declaration renunciation from Islam in provided under the Syariah Civil Procedure Enactment and the States' Islamic Administration Enactment. Again, the rules and regulations differ from one state to another. This study referred to the procedure to declare apostasy in Negeri Sembilan particularly section 119 of the Administration of the Religion of Islam (Negeri Sembilan) Enactment 2003 which provides as follows:

- (1) A Muslim shall not renounce the Religion of Islam or be deemed to have renounce the Religion of Islam until and unless he has obtained a declaration to that effect from the Syariah High Court.
- (2) An application for a declaration under subsection (1) shall be made *ex parte* to the Syariah High Court Judge in open court by the person intending to renounce the Religion of Islam.
- (3) An application under subsection (2) shall specify the grounds on which the applicant intends to renounce the Religion of Islam and shall be supported by an affidavit specifying all facts supporting the grounds for the application.
- (4) After receiving an application under subsection (2), the Syariah High Court Judge hearing the application shall –
 - (a) advise the person to repent, and if the Judge is satisfied that the person has repented in accordance with *Hukum Syarak*, shall record the repentance of the person; or
 - (b) if the person refuses to repent, before making any order against the person, adjourn the hearing of the application for a period of 90 days and at the same time require the applicant to undergo a counselling session for the purpose of advising him to reconsider the Religion of Islam as his religion.
- (5) If at any time the person required to undergo counselling has repented, the officer who is responsible for him shall prepare a report as soon as possible and bring him before the Syariah High Court.
- (6) If the Judge is satisfied that the person brought before him in accordance with subsection (5) has repented according to *Hukum Syarak*, the Judge shall record the person's repentance.
- (7) If after the expiry of the period of 90 days specified in paragraph (4)(b), the person still refuses to repent, the officer who is responsible for him shall prepare a report as soon as possible and bring him before the Syariah High Court.
- (8) If, after receiving a report under subsection (7), the Court is of the opinion that there is still hope that the person may repent, the Court may adjourn the hearing of the application under subsection (2) and at the same time order the person to undergo further counselling session for a period not exceeding one year.

(9) If after an order under subsection (8) has been made the person repents, subsections (5) and (6) shall apply.

(10) If after the expiry of the period ordered under subsection (8) the person still refuses to repent, the person who is responsible for him shall prepare a report as soon as possible and bring him before the Syariah High Court and the Court may make a decision to declare that the person has renounced the Religion of Islam.

(11) Before the Court declares that the person has renounced the Religion of Islam, the Court shall make an order relating to the following matters:

- (a) the dissolution of marriage;
- (b) the division of *harta sepencarian* (joint property);
- (c) right of *perwalian* (next-of-kin);
- (d) right to property; and
- (e) *hadhanah* (custodian of children).

As can be summarised from above, the aforesaid section 119 requires a potential apostate to submit an *ex parte* application to the Syariah High Court specifying the reasons for his intended renunciation supported by an affidavit. The Syariah High Court will only make an order for the application for renunciation from Islam after the applicant fulfill certain requirements including to repent and undergo a counselling session. Thus, the above example of section 119 on the procedure to renounce from Islam is tedious and takes a longer time, thus, individuals take the issue of apostasy in their own hand and apostate without going through the proper procedure.

Despite the rights to freedom of religion under the UDHR and Federal Constitution, the law relating to apostasy in Malaysia in within the ambit of religion, hence, any matters concerning religion and in particular relating to 'faith' in Islam should be referred to Syariah Courts and States' Islamic administration authority. Apostasy or renunciation from Islam should not be within the purview of basic rights but it should be dealt with under the doctrine of religion (Zainal & Jamal, 2013). The Federal Constitution guaranteed the freedom of religion in Malaysia but such right is not absolute since there are other provisions in the constitution which restrict the freedom. Article 11(1) of the Federal Constitution provides that every person has the right to profess and practice his religion, and subject to Clause (4), to propagate it. Article 11(4) further provides that the state law in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among person professing the religion of Islam. Thus, regardless of the rights to freedom of religion is guaranteed, it is not true for the Muslim. Article 11(4) of the Federal Constitution clearly mention the restriction for those professing the religion of Islam. Nonetheless, there are States as discussed above which give avenues for Muslim to renounce from Islam but through a proper procedure.

Conclusion

It was found that despite the freedom to profess favourable religion, once a Muslim, the journey to achieve apostasy is challenging and the inconsistent rules and regulation in the States in Malaysia does not give sufficient avenue for apostate to renounce from Islam since the freedom under the Federal Constitution is not absolute.

Acknowledgement/Funding

The authors received no financial support for the research.

Author Contribution

N Shariffuddin – conceptualization, data curation; HM Padil – supervision, writing; SA Samad – review, editing.

Conflict of Interest

Authors declare no conflict of interest.

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