

APOSTASY BY MUSLIMS IN MALAYSIA: A LEGAL ANALYSIS

By

Ashairi Fadli Bin Mamat (20088426516)

Nuratul Fakriah Binti Abdul Thalib (2008700899)

Shamin Binti Shahril Ridzwan Wan (2008760727)

Shazwani Binti Abd Gani (2008764117)

Submitted in Partial Fulfilment of the Requirements
for the Bachelor in Legal Studies (Hons)

Universiti Teknologi MARA
Faculty Of Law

April 2011

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

ACKNOWLEDGEMENT

This research paper has been carried out by a team which has included Ashairi Fadli Mamat, Nuratul Fakriah Abdul Thalib, Shamin Shahril Ridzwan Wan and Shazwani Abd Gani. First of all we would like to acknowledge the great favour of Allah, the almighty, for giving us strength and health in the process of completing this research. First of all, we would like to express our utmost gratitude to the respected Assoc. Professor Dr. Mohamed Azam Mohamed Adil, our supervisor for his valuable supervision and guidance for this work. Without him it could be impossible to finish this work on time. He has put a lot of effort in order to give the best for us. In addition, he has also given us a lot of materials regarding this topic and has been willing to share his knowledge which we consider them to be very valuable for us. Thank you for your support, motivation and guidance. We consider it very useful not only for this project paper but also for our own knowledge.

We also would like to thank Ustaz Mohd Daruddin bin Hj Taib@Hassan, the Religious Officer in Selangor Mufti Department. Also, Ustaz Shamsul Kamal, the Assistant Registrar at the Bentung Shariah High Court. Last but not least, Madam Nur Nazida Bt Nadzri, the law lecturer of Faculty of Law, Universiti Teknologi Mara, Shah Alam. All of them have given us a lot of necessary additional information regarding this topic during the interview session.

Other than that, we would like to express our gratitude to our parents for their constant mentally and financially support.

Lastly, we would like to accord very special thanks towards all the parties that have been directly and indirectly assisting us in completing our research.

ABSTRACT

The aim of this study is to find out the answer regarding the issue of apostasy amongst Muslims in this country. By virtue of the Federal Constitution, people are given their right to profess any religion of their own while on the other hand, some states in Malaysia have penalised Muslims who renounced Islamic faith and wish to profess other religion. This confers the meaning that Federal Constitution seems to restrict the right to religious liberty in the sense that freedom of religion in Malaysia is not absolute. Apart from that, the jurisdictional issues between Syariah Court and Civil Court also been discussed. It has been provided within the Federal Constitution that Islamic matters belong to the jurisdiction of state and most provisions in relation to apostasy are under the exclusive jurisdiction of Syariah Court. This consequently provides different approaches in each state in dealing with the issue of apostasy. This project paper makes an in-depth study of conflict of laws regarding freedom of religion and punishment for apostasy, the jurisdictional conflicts regarding apostasy between the Syariah Court and the Civil Court and also the non-uniformity of punishments for law of apostasy in Malaysia.

TABLE OF CONTENTS

Acknowledgement	ii
Abstract	iii
Table of Contents	iv
List of Cases	vi

CHAPTER ONE: INTRODUCTION

1.0	Background of Study	1
1.1	Problem Statement	2
1.2	Objective of Study	4
1.3	Literature Review	4
1.4	Methodology	8
1.5	Scope and Limitation	9
1.6	Significance of the Study	9

CHAPTER TWO: APOSTASY IN MALAYSIA

2.0	Introduction	10
2.1	Meaning of Apostasy	11
2.2	Development of Law of Apostasy in Malaysia	13

CHAPTER THREE: THE CONCEPT OF FREEDOM OF RELIGION

3.0	Introduction	16
3.1	The Meaning of Freedom of Religion	18
	3.1.1 Islamic Concept of Freedom of Religion	18
	3.1.2 Freedom of Religion in the Global Context	20
	3.1.3 Freedom of Religion in the Federal Constitution	22
3.2	Jurists Opinions on Freedom of Religion	24

CHAPTER FOUR: JURISDICTION OVER APOSTASY

4.0	Introduction	28
4.1	The Position of Islam in Malaysia	28
4.2	Civil Court vs Syariah Court	30
4.3	Jurisdiction of Courts in Apostasy Cases	32
4.4	Significance of Lina Joy's case	34

CHAPTER FIVE:	PUNISHMENT FOR APOSTASY IN MALAYSIA	
5.0	Introduction	36
5.1	Provisions by States	37
5.1.1	Terengganu	37
5.1.2	Sabah	38
5.1.3	Pahang	38
5.1.4	Kelantan	39
5.1.5	Negeri Sembilan	39
5.2	Non- Uniformity of Punishment of Apostasy	40
CHAPTER SIX:	CONCLUSION AND RECOMMENDATIONS	
6.0	Introduction	42
6.1	Conclusion and recommendations	42
	Bibliography	45
	Appendices	51
	Appendix 1: Interview Questions	51
	Appendix 2: Respondent 1	52
	Appendix 3: Respondent 2	54
	Appendix 4: Respondent 3	56