

Legal Implications of Conversion to Islam on Civil Marriage: Narrative of Converts in Malaysia

MOHD AL ADIB BIN SAMURI
AZLAN SHAH NABEES KHAN

ABSTRACT

Due to a complex legal system in Malaysia, Muslim converts were left with no other option but to negotiate with their spouse to convert or file a petition for divorce in court. This study intends to explore the legal discourse and narratives of Muslim converts on the legal implications of their conversion to Islam, particularly in the cases of dissolution of civil marriage. To obtain the narratives of Muslim converts whom experienced this issue, this study employed in-depth semi-structured interviews with 9 participants (7 Indians, 1 Chinese, and 1 Bumiputera) whom are high-profile Muslim converts in urban Malaysia. This research has found that some participants in this study shared their narratives on how Malaysian law, both civil and Islamic law, has significant implications that affects converts' marital lives and family dynamics. This study can become the foundation for an urgent call to revise the relevant laws, especially relating to the definition of People of the Book (Kitabiyyah), the period allocated for the non-Muslim spouse to convert to Islam, and the abolition of legal process of civil marriage dissolution in Shariah court. Beyond Malaysia, this study is important to depict how religious conversion impacts individuals, family dynamics and relations within a multi-ethnic and multi-faith society.

Keywords: Freedom of religion; religious right; Muslim converts; Islam in Malaysia; religious conversion; civil marriage

ABSTRAK

Memandangkan sistem perundangan yang kompleks di Malaysia, individu yang memeluk Islam tidak memiliki pilihan lain selain berunding dengan pasangan mereka untuk turut memeluk Islam atau mengajukan petisyen perceraian di mahkamah. Kajian ini bertujuan untuk menyelidiki wacana perundangan dan naratif mualaf tentang implikasi undang-undang akibat pemeluk Islam, terutama dalam kes pembubaran perkahwinan sivil. Untuk mendapatkan naratif mualaf yang mengalami masalah ini, kajian ini menggunakan temu bual mendalam separa berstruktur dengan 9 peserta (7 India, 1 Cina, dan 1 Bumiputera) yang merupakan individu mualaf berprofil tinggi di kawasan urban Malaysia. Kajian ini mendapati bahawa beberapa peserta dalam kajian ini berkongsi naratif mereka tentang bagaimana undang-undang Malaysia, baik undang-undang sivil dan Islam, mempunyai implikasi yang signifikan yang memberikan kesan kepada kehidupan perkahwinan dan dinamika keluarga mualaf. Kajian ini dapat menjadi landasan bagi mendesak untuk memperbaharui undang-undang yang relevan, terutama yang berkaitan dengan definisi Ahli Kitab (Kitabiyyah), tempoh yang diperuntukkan bagi pasangan bukan Islam untuk memeluk Islam, dan pemansuhan peruntukan undang-undang pembubaran perkahwinan sivil di mahkamah Syariah. Di luar Malaysia, kajian ini penting untuk menggambarkan bagaimana penukaran agama memberikan kesan kepada individu, dinamika keluarga dan hubungan dalam masyarakat berbilang etnik dan agama.

Kata kunci: Kebebasan beragama; hak beragama; mualaf; Islam di Malaysia; pertukaran agama; perkahwinan sivil

INTRODUCTION

The discourse on Islamic conversion and its impact on civil marriage in Malaysia have touched on aspects such as legal issues (Kusrin 2006, Kusrin et al. 2012;), jurisdiction to try these cases (Zin et al. 2019; Subramaniam 2018; Jha 2019); Shah 2018; Nair & Chuan 2017), and its relation to inter-ethnic relations (Yussof 2014; Guan 2005). In contrast to

other countries, some cases of Islamic conversion in Malaysia have raised controversial racial and religious issues and sparked criticism in public discourse and academic debate, beyond the court hearings. This is due to the issue of Islamic conversion is a sensitive issue that is always intertwined with identity politics in Malaysia (Moustafa 2018).

However, in the context of previous studies, there is lack of attention paid to the debate over

the narratives of Muslim converts regarding the legal implications they have experienced at the individual level after converting to Islam. This occurrence is because Malaysia is one of the few countries in the world today that legally administer religious conversion. Therefore, with the literature focusing on the Malaysian context, scholars also do not discuss how enforced laws can impact Muslim converts on a personal level. The study of narratives among converts is important to understand the issue of religious conversion, as Yamane (2000) argues, “in some religions, the reconstruction of one’s biography is a central element in the converting process.” Based on narrative theory, Yamane claims that people shape and understand their lives by telling stories. Thus, in order to understand the life and the challenges of being a Muslim convert, this theory suggests that it must begin by studying the narrative. The study of Samuri & Nabees Khan (2018) is one of the few that touches on the narratives of Muslim converts on the implications of law and policy in Malaysia, specifically on their identity and name.

In this regard, this article aims to expand on the discussion regarding Muslim converts’ narratives on the legal implications of conversion to Islam in the context of civil marriage. The discussion will revolve around the provisions of civil and Shariah law applicable to individual Muslim converts and their spouses and analyse their narratives on the issue. This study is important to understand how the provisions of Islamic law impact converted individuals and their non-Muslim families in a multi-ethnic and multi-religious society.

POST CONVERSION TO ISLAM: THE STATUS OF CIVIL MARRIAGE

In the context of marriage, Malaysia practices legal pluralism, which is a combination of civil law, Islamic law and customary law. The civil law pertaining to family, the Law Reform (Marriage and Divorce) 1976 (Act 164), was enacted according to English common law and applies to all non-Muslim individuals in Malaysia. Muslims on the other hand have their personal laws, such as marriage, specifically overseen by each state’s Islamic law, as expressly stated in Table 9 List II of the State List in the Federal Constitution. As for some communities in Malaysia such as the Orang Asli, the Sabah dan Sarawak Bumiputera, and the Hindu community, they may get married according to their customary laws, but must later register the marriage under Act 164 for marriage validity and legal recognition.

With this considerable variety of legal provisions serving as the backdrop, this issue becomes even more complex when an individual who was married under Act 164 converts to Islam by him or herself. This individual has two choices; either to invite his or her spouse to convert to Islam as well so as to enable the continuation of their civil marriage, or to dissolve the marriage if his or her spouse refuses to convert to Islam within three months from the date of the individual’s conversion. The reason for this is that Malaysian law does not recognise the inter-faith marriage, especially between a Muslim and a non-Muslim. If the non-Muslim spouse chooses not to convert to Islam and wishes to dissolve the marriage, the individual must file a petition for dissolution according to Section 51(1) of Act 164 (prior to the 2017 amendment), which states “Where one party to a marriage has converted to Islam, the other party who has not so converted may petition for divorce.” The primary intention behind Section 51 is to protect the welfare of the child and wife who does not convert to Islam. Some converts believed that they were not subject to Act 164 as mentioned in Section 3(3) of Act 164, which provides that this Act does not apply to a Muslim or a person who is married according to Islamic law. Several decades of application of this provision has now culminated in the courts in Malaysia witnessing confusion among many Muslim converts who are looking for a platform to dissolve their civil marriage and simultaneously fulfil their rights and obtain ancillary reliefs.

For example, in the case of *Pedley v Majlis Agama Islam Pulau Pinang & Anor* ([1990] 2 MLJ 307), both parties were Christian who married in 1966 according to the civil law in Penang. On 12 January 1987, the wife converted to Islam at the Department of Islamic Affairs Pulau Pinang without the knowledge of her husband. Following her conversion to Islam, the chief *qadhi* of the State of Penang notified the husband of his wife’s conversion to Islam and advised him to convert to Islam within 90 days of the date of his wife’s conversion, or their marriage will be dissolved according to Islamic law. The plaintiff applied for a declaration from the Penang High Court stating that their civil marriage was still valid, despite the wife’s conversion to Islam. The court decided that the civil marriage continued because the non-Muslim party had not applied for dissolution of their marriage due to the spouse’s conversion to Islam according to Section 51(1) Act 164.

This means that prior to 2017, a Muslim convert could not petition for dissolution of marriage at the civil court, because Section 51 only gives that option to the non-Muslim partner, provided that the petition is submitted within three months from the date of the conversion to Islam (Shamsuddin Sukor 2011:123). Act 164 does not provide a legal avenue for the party who converted to Islam to petition for divorce in the civil court. If the non-Muslim party does not file a petition for divorce, the civil marriage will continue, and the law will presume that the couple has never divorced, as decided in *Pedley's* case above.

There are several legal implications if a civil marriage continues when one party has converted to Islam. Firstly, the individual that converted to Islam cannot get married to another person under Islamic law, unless they petition to dissolve their civil marriage in the Shariah court according to the provisions of the respective state's Islamic family law, where such provision often generates jurisdictional conflict between the civil and Shariah courts. Secondly, if the Muslim convert persists in marrying another Muslim, he or she may be charged with the offence of bigamy under Section 494 of the Penal Code as decided in *PP v White* [1940] MLJ 214. Thirdly, the responsibilities of the civil marriage must continue to be fulfilled such as providing maintenance for the wife and children, and if the Muslim convert dies, the non-Muslim spouse may claim for any matrimonial properties, pension and inheritance as in the case of *Eeswari Visuvalingam v Government of Malaysia* [1990] 1 MLJ 86. (Husin, Samuri, & Muda 2016).

Following the above mentioned implications, criticism towards Section 51 Act 164 called for an expeditious legal reform to ensure justice for all parties, Muslim and non-Muslim alike. Section 51 did not seem to consider situations where the convert to Islam is the wife, as highlighted by Nurasiyah Chua (2004). If the wife was the party that converted to Islam, as long as the husband did not file a petition to dissolve the marriage, the wife could not marry another because she would still be bound to the civil marriage. Ahmad Ibrahim (1997) posited that Section 51 paints the party that converts to Islam as a wrongdoer who has committed a matrimonial offence, thus enabling the non-Muslim party to petition for dissolution. He proposed for the amendment of Section 51 so as to give the right to both parties to the marriage to petition for divorce, whether they had converted to Islam or not. His

proposal became the basis of discourse and many consultation sessions between parties of interest in amending and reforming the relevant laws. More than 20 years had passed since the proposal was first made before finally on 10 August 2017, Bill 164 was approved after a third reading in the House of Representatives (*Dewan Rakyat*). The latest provision thus reads as follows:

Section 51:

1. Where one party to a marriage has converted to Islam
 - a. either party may petition for divorce under this section or section 53; or
 - b. both parties may petition for divorce under section 52.

By virtue of this amendment to Act 164, any individual that converts to Islam may file a petition for dissolution of marriage in the civil court according to the provision of Section 51(1) Act 164. The provision of this amendment will also resolve the issue of determination of custody rights and division of matrimonial properties with the ex-spouse and other property owned or obtained by the Muslim convert before his conversion to Islam (Rohaniza, Ahmad & Azzman 2017). This amendment is a positive development as prior to this, the individual who converted to Islam could not seek relief at all from the civil court. However, it does not entirely resolve the problem because this amendment does not prevent the Muslim convert from filing a petition for dissolution of marriage at the Shariah court as before the amendment.

This is due to the states' Islamic law provisions also provide a legal process for Muslim converts to apply for dissolution of marriage in the Shariah court which has yet to be amended, despite Act 164 having been amended and in force. These Islamic legal provisions complicate the issue and pose a legal conundrum which is often debated on academic fora and public discourse. The problematic provision in question is Section 46 (2) of the Islamic Family Law Act (Federal Territory) 1984 (Act 303), which is also found in all of the other state enactments as follows:

2. The conversion to Islam by either party to a non-Muslim marriage shall not by itself operate to dissolve the marriage unless and until so confirmed by the Court.

The phrase ‘so confirmed by the Court’ refers to the Syariah court as defined in Section 2 of Act 303, where “Court” or “Syariah Court” means the “Syariah Lower Court or the Syariah High Court established under Section 40 of the Administration Act.” This means that, prior to the amendment of Act 164 in 2017, Muslim converts who wished to dissolve their civil marriages had to do so in the Syariah Court.

For example, in the case of *In Re Application of Aisyah Salmah Sian*, [2011] 1 CLJ (SYA) 132, the applicant was a woman who had converted to Islam, but her husband refused to convert, despite being invited to do so several times. The Terengganu Syariah High Court in deciding this case argued that the court had the jurisdiction to try the case and had the authority to dissolve the applicant’s marriage to her husband under Act 164 based on section 43(2) of the Islamic Family Law Enactment 1985 and the rules of Islamic law, while also giving the applicant the opportunity to marry another Muslim man. Sharia Judge Ismail Yahya stated that Act 164 was unfair and in contradiction with Islamic law because the Muslim party did not have the right to file a petition in the civil court. A similar narrative was found in a case from Negeri Sembilan; *Declaration of the Dissolution of Marriage on Ground of Conversion to Islam Norhairiy Cheong Abdullah @ Cheong Foo Siong (Perisytiharan Pembubaran Perkahwinan Kerana Pemelukan Islam Norhairiy Cheong Abdullah @ Cheong Foo Siong* [2010] 3 LNS 15). Sharia Judge, Mohd Nadzri Haji Abdul Rahman Ibrahim stated that the Syariah Court has jurisdiction to try the case in order to deliver justice to the applicant. Interestingly, in this case, the Syariah Court summoned the wife to give her statement on the status of her religion and whether she wanted to follow her husband and convert to Islam.

The existence of these states’ Islamic law provisions gives rise to a persistent conflict of jurisdiction to try cases such as the ones mentioned above. This is because the Syariah court cannot try cases of dissolution of civil marriage under Act 164 as the matter falls under the jurisdiction of the civil court. In most decisions of the highest civil court, dissolution of marriage under Act 164 can only be done in the civil court as decided in *Pedley v Majlis Agama Islam Pulau Pinang & Anor* ([1990] 2 MLJ 307), *Ng Siew Pian v Abdul Wahid bin Abu Hassan, Kadi of Bukit Mertajam District & Anor* ([1992] 2 MLJ 425; [1993] CLJ 392), and the case of *Shamala*

Sathiyaseelan v Dr Jayaganesh C Mogarajah [2004] 1 CLJ ISL 520. The civil court also asserts that the Shariah court has no jurisdiction to try these cases as it cannot hear claims from non-Muslim parties or process petitions for divorce of marriages registered under Act 164. Legal conflict ensues when the Shariah court decides to dissolve a civil marriage of Muslim converts on the ground that conversion of religion cannot be enforced in the civil court. Further, there is no legal provision that expressly mentions providing for the non-Muslim spouse and children in the various states’ Islamic Family Law Enactments (Husin, Samuri, & Muda, 2016). This conflict of their civil marriages cannot be dissolved until their non-Muslim spouses apply for a petition for dissolution of the marriage in the civil court. As a result, some Muslim converts take steps to dissolve their civil marriage in the Syariah court, which the verdict merely bind the Muslim converts party and the civil marriage is still subsist. To conclude, conversion to Islam will not automatically cause the dissolution of civil marriage; the non-Muslim party must petition for dissolution of marriage at the civil court through Section 51(1) Act 164, and the Syariah court does not have jurisdiction to dissolve a civil marriage. It has been argued that a couple should not separate due to conversion to Islam as they may avail of the Shariah provision that allows a Muslim man to marry a woman who is a People of the Book.

Although this legal provision is clearly mentioned in classical *fiqh* literature, the construction of this provision is not applied in the Malaysian context, despite the existence of the relevant provision in Islamic family law enactments. State Islamic law succinctly provides for the legal rules pertaining to the marriage of Muslims, and indirectly, prohibits any marriage between a Muslim and a practitioner of another religion. For example, Section 10 Act 303 clearly prohibits a Muslim from marrying a non-Muslim woman, except women who are People of the Book or *al-Kitabiyah*, as shown below:

1. No man shall marry a non-Muslim except a *Kitabiyah*.
2. No woman shall marry a non-Muslim.

Despite the inclusion of the provision on women of the *Kitabiyyah*, the lawmakers defined *Kitabiyah* according to the Shafii School that specifically refers to the following characteristics, all of which cannot be found among Christian and Jewish women today:

“Kitabiyah” means

(a) a woman whose ancestors were from the *Bani Ya'qub*; or-(b) a Christian woman whose ancestors were Christians before the prophethood of the Prophet Muhammad; or-(c) a Jewess whose ancestors were Jews before the prophethood of the Prophet ‘Isa;”

By specifying the definition of *Kitabiyyah* means, all Muslims in Malaysia are prohibited from marrying any Christian or Jew who does not fall into any of the categories mentioned above, for example, a Christian Iban. Further, Muslims cannot marry people of religions other than People of the Book such as Hindus, Buddhists, or even atheists. Therefore, when an individual convert to Islam and the partner is a Christian who refuses to convert to Islam, the marriage must be dissolved because the status of the religion is not recognised by state Islamic law.

The definition of People of the Book according to the law in Malaysia was pointed criticised by the judges in the case of *U Viswalingam v S Viswalingam* [1980] 1 MLJ 10. In this case, the couple, who were originally from Sri Lanka, were Christians who had obtained Malaysian citizenship. Due to some family problems, the wife and child migrated to the United Kingdom in 1973; the husband converted to Islam in 1976. In 1977, the wife filed a case in an English court to dissolve her marriage based on his unreasonable behaviour. The husband, on the other hand, claimed that their marriage had ended when he converted to Islam. During the first trial, the Federal Territory Mufti presented his fatwa regarding marriage to a

Kitabiyyah woman to the court in support of the husband. Roskill L.J. criticised:

“The idea that a marriage of over twenty years’ duration can be brought to an end by the conversion of the husband to another religion in itself offends our concept of justice. ...Moreover, the Muslim law in force in the Federal Territory adopts a peculiarly narrow definition of the term *Kitabiyya* which appears to depend upon an arbitrary and historically inaccurate distinction between particular denominations of the Christian religion.”

METHODOLOGY

This study uses a case study design to discuss the legal implications of conversion to Islam faced by Muslim converts in Malaysia. The study involved face-to-face, semi-structured in-depth interviews with 9 participants comprising Chinese, Indian and Sabah Bumiputera participants. This group of participants can be divided into two categories: the first category of participants who are active in managing the welfare of new Muslim converts, and the second category of participants who recently converted to Islam. Most of the participants in the first category also consist of Muslim converts who have personal experience in facing the legal implications of conversion to Islam. The research participants were selected using the snowball method from a variety of backgrounds to gain a broader and wider perspective on the legal implications of conversion to Islam. For the purpose of confidentiality, the names of each participant were not disclosed in this research, and the participants’ profiles are as follows:

TABLE 1. Participant’s Profile

No	Participant	Gender	Ethnicity	Year of Conversion to Islam
1.	Participant 1	Male	Indian	1991
2.	Participant 2	Male	Indian	1991
3.	Participant 3	Male	Indian	1975
4.	Participant 4	Male	Chinese	2005
5.	Participant 5	Male	Indian	2000
6.	Participant 6	Male	Indian	1986
7.	Participant 7	Male	Bumiputera Sabah	1985
8.	Participant 8	Male	Indian	2012
9.	Participant 9	Male	Indian	2015

All interviews had gained permission to record the interviews, and the audio was transcribed verbatim. For the purpose of data analysis, a coding process was performed using Nvivo 11 software. Several themes were developed during the coding

and grouping of nodes into the same category to reflect the overall findings of the interview. As this research project covers a wide range of topics regarding the legal implications of conversion to Islam, this article will cover only themes related to

the dissolution of civil marriage. As such, this article can only present a small portion of the theme and interview excerpts from the analysed data, as below.

RESULTS AND DISCUSSION:
MUSLIM CONVERTS NARRATIVE ON
THE DISSOLUTION OF CIVIL MARRIAGE

As a result of the interviews with the participants regarding the implications of conversion to Islam on the status of civil marriage, the analysis showed that there are two main themes, which are grounds for dissolution of civil marriage in the Shariah court and implications of the dissolution of civil marriage due to conversion to Islam.

1. Grounds for dissolution of civil marriage in the Shariah court

Since there are restrictions on Muslim converts to file a divorce case in a civil court under Section 51(1) of Act 164 prior to the 2017 amendment that only provides *locus standi* to non-Muslims, some participants choose to file their case at the Shariah Court. Participant 9, who had been married for more than a decade before converting to Islam, said, “I cannot go to civil court, I have converted to Islam” as the reason why he petitioned for the dissolution of civil marriage in the Shariah court. In fact, when a non-Muslim spouse who has *locus standi* refuses to petition for dissolution in a civil court, a Shariah court is the only platform for the Muslim convert to dissolve their civil marriage before Act 164 was amended in 2017. Participant 9 described the situation as follows:

“Before I asked my ex, let’s go for divorce. She said, at first, she didn’t agree. The second time, she asked for a house, asked for all this property, I said, ‘go take a hike.’ I told her I couldn’t afford it, I couldn’t. So, I decided to go to a Shariah court to dissolve my marriage.”

The dilemma faced by the participants in this study in dissolving marriage as a result of religious conversion is similar to previous study findings. Shatzmiller (1996) had studied court documents in Andalusia in the 11th and 12th centuries and found that women who converted to Islam had also experienced the same dilemma. The religious conversion of a spouse promptly puts the other spouse in a position where he or she is obliged to respond as their legal status has changed. Decisions must be made whether to preserve the marriage

or not, and whether to convert to their spouse’s new religion or not. This is due to the irreversible change of the other spouse’s status quo caused by their partner’s religious conversion. In addition, Shaham’s study (2010) also found that some Coptic Christians in Egypt converted to Islam or converted to other Christian denomination in order to obtain easy divorce. Whichever justice forums that are simpler and less complicated will be chosen to dissolve marriage. As depicted in this study, participants found that Syariah courts are more likely to dissolve their civil marriages. In addition, in the contemporary context, as found by Jumamil (2012), conversion to Islam has become an alternative to civil divorce in secular Philippine court where Muslim converts could dissolve their civil marriage simply by converting.

In addition, in this study, in order to expedite a new marriage with a Muslim individual, they decide to petition for dissolution of the civil marriage in a Shariah court. The Shariah court’s decision is sufficient to give a Muslim convert the right to marry a Muslim spouse. According to participant 3:

“... this man, he wants to get married quickly, if he wants to wait for the civil court to approve it first, it will be slow. So, he has converted to Islam, he can go the Shariah court, get a letter and he can marry that Malay woman. ...Go to Shariah court to dissolve his marriage, because a civil case takes a long time, two, three years, very late.”

This is most likely because the converts have already intended to divorce and leave their spouse as well as have planned to marry another person, hence, the religious conversion will expedite the marriage dissolving process. As mentioned in a study by De (2010), religious conversion at the court of appeal in India gives options to the women to leave their abusive marriage to marry to a new partner from the new religion that they have converted to.

There are also situations where the Muslim convert and the non-Muslim spouse have agreed to separate, but because they are aware of the process of dissolution in civil court which will take a long and unpredictable time, the Muslim convert files a case in the Shariah court. Participant 5 narrated:

“Like X just now, he and his wife have mutual understanding, he wants to divorce, before he converted to Islam, he had wanted to divorce her and so on. So, now X wants to convert to Islam, he has gotten to know a Malay girl, he wants to marry her. ... Everybody knows, brother, the dissolution of civil marriage is not something that can settle in one day, for that period of time, what will the Muslim convert do.”

Furthermore, according to the participants, the allocation of only 90 days to non-Muslim spouses to consider embracing Islam before their civil marriage is dissolved in civil court is too short and limited. “Want to convert to Islam, this heart, 90 days can digest?” Asked participant 6. Participant 5 asked in a serious tone, “I ask you, who can ensure that in 90 days a person can understand Islam? Then how do you think you want to convince your wife which is something related to belief just within 3 months?” This, according to some participants, may result in the Muslim convert keeping his conversion to Islam a secret, or at the same time not registering the conversion to Islam to avoid conflict with loved ones and family members. The participants also argued that such a short period could lead to the Muslim convert forcing their non-Muslim partner to convert to Islam in order to save their marriage and their families from divorce. This also puts pressure on the Muslim convert to the point where some of them sought to denounce Islam to avoid separation from their beloved spouse. Participant 7 recounted one such event:

“We have experience in Negeri Sembilan wherein one of the cases, he wanted to apostatise out of Islam because of this [marriage dissolution]. So, in our phase, we wanted to counsel him to get him back to Islam. The counselling takes two to three years.”

Further, he explained that it is important to understand that the religious beliefs of the Muslim convert are still not strong, so they need to be given more time to ask their spouse to gather the strength to deal with the legal implications.

The situation experienced by the participants in this study is unlike the ones experienced by Muslim converts in other countries that do not have legal provisions like Malaysia. Referring to Köse (1994), the participants addressed in his study (i.e Muslim converts in the United Kingdom), did not separate right away after converting to Islam. In fact, only one of them stated that his marriage is affected following the conversion. Likewise, in Indonesia, Seo (2013) found that the Javanese community has a flexible perspective on religious conversion that allows the other spouse not to convert to their partner’s new religion.

In the case of Muslim converts who expect their spouse to convert to Islam someday, some of them decide not to register their conversion to Islam with the authorities to save their marriage from dissolution. For the participants, the conversion

of Islam is their promise to God and does not require confirmation through any bureaucratic and administrative process. Participant 2, who is a well-known Muslim convert activist states:

“What will happen is that many will convert to Islam but will not register their conversion to Islam. It’s happening in our country right now. Many are converted to Islam, but not registered. I know, it’s happening. More the Chinese, many converts to Islam, he prays and everything, but does not register with the religious department. He still lives with his non-Muslim wife, lives with a non-Muslim husband, in the same house. There is no issue of no proof that he converted to Islam. In terms of Shariah, if he dies, if his family burns him or something, Allah will still accept him as a Muslim as long as he doesn’t commit *shirk* or whatever, no problem. So many are doing that nowadays. Because it’s so troublesome, I got married to my wife, men, suddenly you say go leave her, dissolve the marriage, what is this? She has been serving me for the last twenty years, suddenly you come out with the law asking me to dissolve my marriage. What wrong did she do?”

2. Implications of conversion to Islam to family dynamic

Based on these interviews, the participants stated how their family relationships were affected following conversion to Islam. This has been noted in many studies on conversion to Islam as discussed by Ramahi & Suleiman (2017) and Roer-Strier, Sands & Bourjolly (2009). In addition, the interaction between Muslim converts and their families in this study is also consistent with one of the typologies of interactions between converts and their families presented by Sebastian, R., & Parameswaran (2007), namely, ‘contentious interaction’ which means:

“This is best characterised by an all-pervading sense of anger and bitterness, which is maintained over long periods of time between both convert and family members. The convert’s new religion is opposed as a whole and the convert resents this opposition.”

The culmination of this ‘contentious interaction’ is divorce, and this is a bitter choice for some Muslim converts and their spouses, even though they were married for a long time, with a stable and productive life.

As a result, some participants decided to prioritize their new religion, even though it affected their family relationships and dynamics. The choice between religion and family is inevitable for some because the relationship is not recognized by Islamic law or law in Malaysia. To the participant, the laws in Malaysia are what are ‘forcing’ them to separate. Of course, with increasing enforcement of Islamic law, the majority of married Muslim converts will

choose to divorce in order to avoid any legal action for offences such as cohabitation.

In addition, some participants reported on the trend of Muslim converts to not register their conversion to Islam with Islamic authorities in order to maintain their civil marriages, as was also reported in a study by Hew Wai Weng (2014). Although this is not in line with the law, it is an individual reaction to reject the State's forced action against them. This illustrates how they negotiate between Islamic law, state Islamic law, and the preservation of family relationships. Another important finding of this study is the need for flexibility in the laws and policies in Malaysia regarding conversion to Islam and marriage. There are many views in classical Islamic law regarding marital status after conversion to Islam, especially regarding the interpretation of People of the Book and the time period for non-Muslim spouses to convert to Islam (Samuri, Nabees Khan, and Kawangit, 2018) These two issues are the main reasons why some Muslim converts have to choose to break up with their families due to narrow legal provisions. When laws and policies limit the interpretation of the People of the Book and the length of time for a spouse to convert to Islam, the process of negotiation between the Muslim convert and his spouse may reach a dead-end, ruin his/her opportunity to learn about and get to know Islam. Even more so, the interaction between the Muslim convert and his family at this crucial time is still in the typology of 'contentious interaction'.

This study also shows that the implementation of Islamic law has an impact on the non-Muslim community, where it directly affects cases of marriage. This matter is not something new in the history of the implementation of Islamic law in the context of a pluralistic society, as Berger (2001) and Mahmood (2012) have argued that Islamic law negatively affects non-Muslim communities in Egypt. This further reinforces Mohamad's (2010) finding that the process of Islamisation in Malaysia through the law also has an impact on Muslim and non-Muslim families, and 'has overridden concerns for family welfare and integration.' When a family's interest is not the focus of religious and governmental authorities on this issue, it may disrupt the long-term agenda of *da'wah* in Malaysia. Furthermore, the law should also safeguard the rights and interests of both parties, Muslim and non-Muslim, and resolve the issue amicably to achieve justice (Hak 2012; Kusrin 2006).

CONCLUSION

Conversion to Islam in Malaysia, which is governed by Islamic and civil law impacts the multicultural and multi-religious community as expressed in the participants' narratives in this study. Although there are claims that Islamic law does not apply to non-Muslims in Malaysia, the fact is that it also has implications for them, especially in cases of divorce following conversion to Islam. Furthermore, this study also proves that embracing Islam has an impact on family dynamics and the Muslim convert himself. For some Muslim converts, they do not have much choice; either their spouse embraces Islam or they get a divorce. With the amendment of section 51 of Act 164 in 2017, it became easier to leave the family if the spouse did not want to convert to Islam after having to make a decision within a short period of time.

The provisions of the law relating to the dissolution of civil marriages in the Shariah court should also be abolished so that no more Muslim converts will be confused by the existence of such provisions. For the purpose of justice, the parties must file a petition for dissolution of civil marriage in a court of competent jurisdiction, which is the civil court. With revision of this law, Muslim converts will no longer have to file their case in Shariah court, which in previous cases has only escalated legal conflict. Finally, beyond Malaysia, this study is important to illustrate how Islamic law affects individual converts to Islam and their non-Muslim families in a pluralistic society.

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REFERENCE

- Berger, M. 2001. Public policy and Islamic law: The modern Dhimmī in contemporary Egyptian family law. *Islamic Law and Society* 8(1): 88–136.
- Guan, Y. S. 2005. Managing sensitivities: Religious pluralism, civil society and inter-faith relations in Malaysia. *The Round Table* 94(382): 629-640.
- Hak, N. A. 2012. Rights of a wife in the case of conversion to Islam under family law in Malaysia. *Arab Law Quarterly* 26(2): 227-239.

- Hew Wai Weng. 2014. *Identiti Cina Muslim di Malaysia: Persempadanan Perundangan & Kacukan Budaya*. Bangi: Penerbit Universiti Kebangsaan Malaysia.
- Hindmarsh, B. 2014. Religious conversion as narrative and autobiography. In *The Oxford Handbook of Religious Conversion*, edited by Lewis R. Rambo and Charles E. Farhadian. Oxford University Press.
- Husin, Khairani, Samuri, Mohd Al Adib & Muda, Mohd Zamro. 2016. *Selepas Syahadah: Kewajipan Pemakluman Pemeluk Islam*. Bangi: Penerbit Universiti Kebangsaan Malaysia.
- Jha, P. K. 2009. Religious assertion in Malaysia: Constrained or conflagrated? *Strategic Analysis* 33(6): 890-902.
- Jumamil, G. J. M. 2012. Islamic conversion as alternative to civil divorce: Addressing tensions between freedom of religion and the inviolable institution of marriage. *Philippine Law Journal* 86(4): 864-911.
- Samuri, Mohd Al Adib & Nabees Khan, Azlan Shah. 2018. *Natijah Syahadah: Impak Pemeluk Islam di Sisi Undang-undang*. Bangi: Penerbit Universiti Kebangsaan Malaysia.
- Kusrin, Z. M. 2006. Conversion to Islam in relation to divorce in Malaysian family law. *Islam and Christian-Muslim Relations* 17(3): 307-315.
- Kusrin, Z. M., Muda, M. Z., Laluddin, H., & Mohammad, A. B. 2012. Comment conversion and the conflict of laws in respect of spouse rights to inheritance in Malaysia. *Religion & Human Rights*,= 7(1): 1-9.
- Köse, A. 1994. Post-conversion experiences of native British converts to Islam. *Islam and Christian-Muslim Relations* 5(2): 195-206.
- Mahmood, S. 2012. Sectarian conflict and family law in contemporary Egypt. *American Ethnologist* 39(1): 54-62.
- Mohamad, M. 2010. Making majority, undoing family: Law, religion and the Islamization of the state in Malaysia. *Economy and Society* 39(3): 360-384.
- Moustafa, T. 2018. *Constituting Religion: Islam, Liberal Rights, and the Malaysian State*. Cambridge University Press.
- Nair, H. L., & Chuan, G. C. 2017. The effects of conversion to Islam of a non-Muslim spouse on the custody of minor children-thoughts and trends from a Malaysia perspective. *Advanced Science Letters* 23(1): 688-691.
- Nurasyiah Chua Abdullah. 2004. *Conversion to Islam – Effect on Status of Marriages and Ancillary Reliefs*. Selangor: International Law Book Services.
- Ramahi, D. A., & Suleiman, Y. 2017. Intimate strangers: perspectives on female converts to Islam in Britain. *Contemporary Islam* 11(1): 21-39.
- Roer-Strier, D., Sands, R. G., & Bourjolly, J. 2009. Family reactions to religious change: The case of African American women who become Muslim. *Families in Society*, 90(2), 220-226.
- Rohaniza Idris, Ahmad Suhael Adnan and Azzman Abdul Jamal. 2017. Pindaan Akta 164 Lulus. 10 Ogos. Accessed on 15 November 2017. <https://www.bharian.com.my/berita/nasional/2017/08/310562/pindaan-akta-164-lulus>
- De, Rohit. 2010. The two husbands of Vera Tiscenko: Apostasy, conversion, and divorce in late colonial India. *Law and History Review* 28(4): 1011-1041.
- Samuri, Mohd Al Adib, Nabees Khan, Azlan Shah and Kawangit, Razaleigh. 2018. Naratif mualaf dan aktivis dakwah terhadap dasar penamaan saudara baru 1. *International Journal of Islamic Thought* 13: 52-68.
- Seo, M. 2013. Falling in Love and Changing Gods. *Indonesia and the Malay World* 41(119): 76-96.
- Shaham, R. 2010. Communal identity, political Islam and family law: Copts and the debate over the grounds for dissolution of marriage in twentieth-century Egypt. *Islam and Christian-Muslim Relations* 21(4): 409-422.
- Shatzmiller, M. 1996. Marriage, Family, and the Faith: Women's Conversion To Islam. *Journal of Family History*, 21(3), 235-266.
- Sebastian, R., & Parameswaran, A. 2007. Conversion and the family: Chinese Hare Krishnas. *Journal of Contemporary Religion* 22(3): 341-359.
- Shah, D. A. 2018. Religion, conversions, and custody: battles in the Malaysian appellate courts. In *Law and Society in Malaysia* (pp. 161-178). Routledge.
- Subramaniam, M. S. 2018. Judicial dilemma: Secular or Syariah for inter-faith family disputes in Malaysia. *CALE Discussion Paper* 15: 1-34.
- Yamane, D. 2000. Narrative and religious experience. *Sociology of Religion* 61(2): 171-189.
- Yusuf, S. A. 2014. Conversion issue in Malaysia: A challenge to religion and racial harmony. *Islam and Civilisational Renewal (ICR)* 5(3).
- Zin, N. M., Jani, H. M., Hamid, A. G. & Hak, N. A. 2019. Jurisdictional conflict in interfaith child custody disputes: A legal discourse in Malaysian courts. *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)* 24(1): 1-24.

AUTHORS

Assoc. Prof. Dr. Mohd Al Adib bin Samuri
Institut Islam Hadhari dan Fakulti Pengajian Islam,
Universiti Kebangsaan Malaysia
Bangi, Malaysia.
al_adib@ukm.edu.my

Azlan Shah Nabees Khan,
ARBA Internatioonal Waqf (L) Foundation,
Selangor.
azlanshah@arbafoundation.com