

## An Analysis and Commentary on *Riddah* in Malaysia

ONG GUAN BOON  
ZUHAIR ROSLI

### ABSTRACT

*Riddah* originally from the Arabic language *Al-Riddah* means apostasy while in Malaysia it is commonly referred to as *murtad*. *Riddah* is part of the hudud offences whereby the punishments are clearly spelt out by *Al-Quran* and *Hadith* which cannot be added and deducted, or altered because it has been determined by Allah. For *riddah*, most of the Islamists jurists hold on to *ahad hadith* (a single hadith) which is still disputed as a basis of law but most of them agreed that only when an apostate act against Islam then he or she must be killed. In the practical aspect, application of Islamic law in Malaysia is predominantly derived from statute and even for the *riddah* punishment the *Syariah Court* can only impose a punishment not more than 3 years of imprisonment, fine not more than RM5,000 and whipping not more than 6 strokes which is in stark contrast with the punishment agreed upon by Islamists jurists. Apart from this sentencing power, other issues surrounding *riddah* will be discussed in depth in this article with the aim to find the best practise which is acceptable for the whole of Malaysia.

*Keywords:* *Riddah*; Islamic law; *Syariah Court*; punishment

### INTRODUCTION

*Al-Riddah* is the Arabic language for apostasy. Abdul Rauf Al-Manawi in his book *At-tauqif 'ala muhimmati al-ta'arif* defined *al-Riddah* linguistically as "leaving of something for something else" (Al-Manawi 1990). The agent or the doer of the action (i.e. apostasy) is called *al murtad*.<sup>1</sup> *Syeikh Ahmad Ibn Faris al-Qazwini* in his book *Mu'jam Maqayis al-Lughah* (2/386) states that the original word of *murtad* or *riddah* is a combination of letters *ra'* and *dal*, which means returning to something.<sup>2</sup> By this basis a *murtad* is defined as a person returning back to blasphemy. Literally, *murtad* or means divert from something to another hence in the Muslims context is diverting from Islam to other religions or beliefs.<sup>3</sup>

*Al-Riddah* in its terminological definition (i.e. in the Islamic sense) means "to disbelieve after embracing Islam". Theologically, *riddah* is the process of going from *iman* (faith) to *kufr* (unbelief). *Kufr* comes from the root *k-f-r*, which means "to conceal"<sup>4</sup> All the four major schools of jurisprudence and others besides them have around the same line as those definitions of what *al-Riddah* means in term of definition. *Mufti of Federal Territories* recognises that *Riddah* is part of 7 hudud offences that the punishments are clearly spelt out in the *Al-Quran* and/or *Hadith*. *Riddah* together with *zina*, *qazaf* and drinking has been codified under *Syariah Criminal Offences* by the *State Legislative Assembly*.

*Riddah* is one of the categories of hudud according to Islamists jurists whereby the sentence has been determined by *naṣṣ* (*Al-Quran* or *hadith*) which cannot be added and deducted, or altered because it has been determined by Allah.<sup>5</sup> Punishment for *riddah* and drinking alcohol are determined based on the *hadith* of the Prophet, unlike other hudud offences while the *Al-Quran* only gives sanctions in the hereafter (*ukhrawi* sanction).<sup>6</sup> In the case of *riddah*, most of the jurists hold on to *ahad hadith* (a single hadith) which is still disputed as a basis of law.<sup>7</sup>

Only when an apostate act against Islam then he or she must be killed. Hence apostate can only be killed if they commit both acts which are the first, being out of Islam, leaving Islam or no longer practiced as Muslim even after being advised and persuaded to return to Islam; and secondly, he/she has joined a conspiracy with the enemies to defile Islam.<sup>8</sup> The second limb where he/she intending to conduct a crime against Islam, is a prerequisite requirement that must be met for the death penalty. An apostate can be punished because of the fulfilment stated which make him an infidel and he did it in his full knowledge and conscience.<sup>9</sup> In short, apostasy can be categorized into two namely: (i) apostasy committed by those who was born Muslim; and (ii) apostasy committed by those who reverted to Islam but later returning back to their previous religion.<sup>10</sup> As for the punishment, no differentiation between the two.

## LEGAL PROVISION OF RIDDAH IN AL-QURAN

The main legal sources with regards to apostasy as in Surah Al-Baqarah verse 217 (2:217) as translated below:

“They ask you about the sacred month - about fighting therein. Say, fighting therein is great [sin], but averting [people] from the way of Allah and disbelief in Him and [preventing access to] al-Masjid al-Haram and the expulsion of its people therefrom are greater [evil] in the sight of Allah. And fitnah is greater than killing.” And they will continue to fight you until they turn you back from your religion if they are able. And whoever of you reverts from his religion [to disbelief] and dies while he is a disbeliever - for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire, they will abide therein eternally.”

This is supported by a verse from Surah Ali-Imran (3:12) which stated –

“Say to those who disbelieve, you will be overcome and gathered together to Hell, and wretched is the resting place.”

Along the same Surah Ali-Imran but on the different verse (3:86-89) as translated below:

“How shall Allah guide a people who disbelieved after their belief and had witnessed that the Messenger is true and clear signs had come to them? And Allah does not guide the wrongdoing people. Those - their recompense will be that upon them is the curse of Allah and the angels and the people, all together, abiding eternally therein. The punishment will not be lightened for them, nor will they be reprieved. Except for those who repent after that and correct themselves. For indeed, Allah is Forgiving and Merciful.”

In reference back to Surah Al-Baqarah, there are two points to note with verse 190-193. First is that these verses state that those who spread fitnah (strife) should be slayed and expelled. It is noted that “strife is worse than slaying.” An apostate is by nature viewed as an individual that spreads fitnah and this is supported by the quoted from Al-Quran as below:

“Fight in the way of Allah those who fight you but do not transgress. Indeed, Allah does not like transgressors. And kill them wherever you overtake them and expel them from wherever they have expelled you, and fitnah is worse than killing. And do not fight them at al-Masjid al-Haram until they fight you there. But if they fight you, then kill them. Such is the recompense of the disbelievers. And if they cease, then indeed, Allah is Forgiving and Merciful. Fight them until there is no [more] fitnah and [until] worship is [acknowledged to be] for Allah. But if they cease, then there is to be no aggression except against the oppressors.”

## LEGAL PROVISION OF RIDDAH ACCORDING TO HADITH

With regards to As-Sunnah, Imam al-Bukhari (3017):

“Ali Bin Abdullah told us, Sufian told us, from Ayub, from ‘Ikrimah that Ali set fire on a group of people and that news reached to the knowledge of Ibn ‘Abbas and so he said that: if it was me, I will not set fire on them because Prophet (P.B.U.H) had said: (Do not punish with punishment of Allah S.W.T). No doubt I will kill them as Prophet (P.B.U.H) said: (whoever changes his religion, kill him.) Others, Ibnu Majah, At-Tirmizi, Abu Dawud and Al-Nasa’i all mentioned the phrase “whoever changes his religion”.<sup>11</sup>

Second Hadith that most quoted by jurists to construct mandatory fixed death penalty for apostasy is narrated by Imam al-Bukhari (6878):

“Umar bin Hafs told us, my father told us, al-A’mash told us, from Abdullah bin Murrah, from Masruq, from Abdullah said: Prophet (P.B.U.H) said: (Not halal the blood of Muslim who had confessed that there is no god except Allah and I am Allah’s messenger, except for three situations: life for life, and married fornicator, and leaver of Islam and deserter from the community.) (Not halal the blood of Muslim who had confessed that there is no god except Allah, and I am Allah’s messenger, except for three situations: married fornicator, and life for life, and leaver of Islam and divider of the community.)” – Imam Muslim (1676) and Al-Nasa’i (4033).<sup>12</sup>

## CRIME AND ITS ELEMENTS

There are 3 elements to constitute Riddah which is beliefs, words and by actions.<sup>13</sup>The first nature of apostasy is to believe in his or her heart about something that will bring him or her to disbelieve. This is hard to prove because it is inside the heart of the believer and no witness is required for this first element because it’s all about his or her relationship with the Almighty. Examples given such as Islam is not the true religion; Islam has flaws; Al-Qur’an is incomplete plus instructions in verses in Al-Qur’an that are unsuitable for the current era; and/or Prophet Muhammad is not a messenger.

The second nature of apostasy is to utter the word/s of disbelieves either it is in a direct expression or it can also be the utterance of words of disbelieves in an indirect expression such as “I am not a Muslim anymore”; “Allah is not our God”; “I do not believe in what Muhammad said” or it can also be the utterance of word/s of disbelieves in an indirect expression such as “Christianity is better than Islam” and/or “Maybe heaven and hell do not exist”. On this aspects Imam Al-Zakasyi says:

“Whoever utter words lead to blasphemy casually without the intention of blasphemy, he is considered as apostate”. (al-Mansur fi al-Qawaid Fiqh Syafie, chapter 2, page 112). “If words of blasphemy are uttered casually without having any intention, some of the scholars said: He is not considered as kafir yet, for the words uttered have no relation with his intention. However, some scholars said that he is considered as kafir / murtad. The opinion which stated that the person is considered kafir is valid due to devaluing of this religion” “As a conclusion, whoever utter words of blasphemy casually or for fun, then he is considered kufur”

(al-Bahru al-RaiqSyarah Kanzi al-Daqaaiq, chapter 5, page 210).<sup>14</sup>

Lastly on the elements of Riddah is through actions. The third nature of apostasy is to act upon an action that portrays disbelief for instance worshipping a statue; kicking the Al-Qur’an; practicing black magic/voodoo/sorcery and /or wearing a ‘cross’ for good luck charm. It must be noted Muslims can fall into apostacy through one of these elements and not necessarily the existence of three to become murtad.<sup>15</sup>

#### MAQASID SYARIAH AND RIDDAH

Each and every action of a Muslims will affect the 5 pillars of Maqasid Syariah and Riddah is consider the most serious offence under Islamic criminal law that will have an incredible impact to the apostate. In brief, the five Maqasid Syariah that will be affected because of Riddah:

1. Faith – denounce Islam shows doesn’t believe in Allah, will face the wrath of Allah in the hereafter.
2. Life – put life in jeopardy because subject to the mandatory death penalty.
3. Mind – unable to appreciate the mercy of Allah as a Muslims.
4. Lineage – may influence others and may create divisiveness among the Muslims community.
5. Property – as Non-Muslims, an apostate is not entitled to inheritance.<sup>16</sup>

#### PUNISHMENT AND ITS RATIONAL

Apostasy is an offense known under the Shari’ah as a hudud offence.<sup>17</sup> Hudud means an unalterable penalty set by the Al-Quran or the Prophet’s Sunnah as Allah’s right for a crime, and Hudud cannot be increased, diminished, changed or handed down by anybody.<sup>18</sup> It is the Sunnah that unambiguously recommended death as a punishment for Riddah.<sup>19</sup>

Uthman b. ‘Affan reported a well-reported hadith, one with the highest degree of authenticity, regarding the penalty of Riddah. The Prophet said:

“No Muslim witnessing that there is no god but God and that Muhammad is His messenger is to be killed except in three cases: a self for a self [murder], the married adulterer, and the one who departs from the religion and abandons the jama’ah (bond of believer).”<sup>20</sup>

(Sahih Al Bukhari, “Kitab al Diyat”, Vol.8, p.38)

Besides, Al Hakim also reported on the authority of Ibn ‘Abbas that the Prophet said:

“The Muslim who converts his religion, kill him. If a person says: ‘there is no god but God and that Muhammad is His messenger’, then you have no right to punish him except for the crime he commits.”<sup>21</sup>

(Al Mustudrak, “Kitab al Hudud”, Vol. 4, p.366)

Abu Daud reported on the authority of Na’im b. Mas’ud al Ashga’I that when the Prophet read Musailamah’s letter to him declaring himself as a “messenger of God”, the Prophet asked the two messengers who brought the letter:

What do you say?” They replied: “We say as he [Musailamah] says.” The Prophet said: “If not for the convention that messengers are not to be killed, I would have killed both of you.” Abu Daud continued to report that one of Musailamah’s messengers, called Ibn al Nawwahah, was later found and killed when he was no longer a messenger.<sup>22</sup>

(Sunan Abi Daud, “Kitab al Jihad”, Vol.3, pp.83-84.)

Bukhari and others reported that Abu Musa and Mu’adh b. Jabal was sent as emissaries to parts of Yemen as a precedent in which the hudud was introduced by two reputed companions of the Prophet. One day, Mu’adh visited the camp of Abu Musa and saw a man being tied up. He asked and was told that the man was an apostate. Mu’adh then insisted that until the man was killed, he would not get off his camel. His judgement has been put into effect. Mu’adh proclaimed the death penalty in other versions of the hadith as the law of God and His Messenger.<sup>23</sup>

From the major schools of Islamic jurisprudence, punishment for apostasy is a mandatory fixed death penalty.<sup>24</sup> Hadith of the Prophet is relied upon for this strict view:

“It is reported by Abbas, may Allah be pleased with him, that the Messenger of Allah (S.A.W.) said: Whosoever changes his religion (from Islam to anything else), bring an end to his life.” (Al Bukhari).<sup>25</sup>

However, the issue of death punishment for apostasy is controversial, especially in view of the several Al-Quran declarations<sup>26</sup> that:

“There shall be no compulsion in religion (in becoming a Muslim). True guidance (in Islam) is now distinct from error (unbelief). Hence, he who rejects Taghut (The evil one) and believes in Allah has indeed grasped the firmest handhold (of Allah’s religion), which is unbreakable. And remember, Allah is All-Hearing, All-Knowing.” (Al-Baqarah, 2:256)

“Those who accept the faith and then disbelieve, then accept the faith again and then disbelieve again, and then increase in their disbelief, will not be forgiven by God nor be guided by Him.”

(al-Nisa’, 4:137)

“If God had willed, everyone on the face of the earth would have been believers. Are you then compelling the people to become believers?”

(Yunus, 10:99)

“Let whoever will believe, and whosoever will disbelieve.”

(al-Kahf, 18:29)

“Unto you your religion, and unto me my religion”

(al-Kafirun, 109:6)

“And if one among the disbelievers seeks your protection, then protect him so that he may hear the word of God”

(al-Tawbah, 9:6)

Clearly, the Al-Quran maintains that belief must be through conviction and that compulsion-induced religion has no meaning. Obviously, it is impossible to follow the fundamental Quranic principle of religious freedom and, at the same time, to provide for apostasy with the death penalty. No immediate punishment for apostasy is prescribed by the Al-Quran, nor has the Prophet, peace be upon him, condemn anyone to death for it. Instances of the death penalty recorded in some cases mentioned at the beginning were cases of blasphemy and treason, not apostasy through belief and conviction. In other words, the penalty was intended not for apostasy resulting from faith and conviction, but for blasphemy and mutiny against the community and its legitimate leadership.<sup>27</sup>

#### EXECUTION OF PUNISHMENT

This punishment will only be carried out after a three-day grace period of consultation and counselling in order to confirm the doer’s intention and to be requested for repentance.<sup>28</sup> As far as the grace period is concerned, for the school of

jurisprudence of Syafi’ee, Ibrahim Bin ‘Ali al-Syirazi stated that either the apostate should be given three days for repentance or that he should ask the apostate for his repentance as soon as he was captured or confessed.<sup>29</sup> For the Hanbali school of jurisprudence, Abdullah bin Ahmad Bin Hanbal said that an apostate should be asked for repentance three times, and if he still resist, he will be punished with death.<sup>30</sup> For the Maliki school of jurisprudence, Muhammad bin Ahmad al-Dasuqi said it is the judge’s responsibility to grant an apostate three days to repent.<sup>31</sup> For Hanafi’s school of jurisprudence, Abu Bakar bin Ahmad al-Kasani said it is desirable (mustahab) for the judge to ask the apostate whether he wants to repent or not because there may be a chance he wants to repent but it is not necessary for the judge to ask for the apostate’s repentance as the calls (dakwah) have already reached him (the apostate).<sup>32</sup>

According to Imam Malik, Imam Shafi’ee and Imam Ahmad, the apostate’s punishment is death regardless of the apostate’s gender, but Imam Abu Hanifa believes that an apostate woman shall not be punished with death, but she shall be jailed until she repents her apostasy and returns to Islamic fold or dies.<sup>33</sup>

The death penalty in Hudud punishment can be executed by beheading, crucifixion or stoning.<sup>34</sup> For those convicted with Riddah will be punished by beheading as execution by decapitation.<sup>35</sup> The Hanafiyah and the Hanabilah rule that all beheadings should be by the sword. They rely on the following reported al-hadith<sup>36</sup>:

No qawad (qisas) except by the sword.

No qawad except by a hadidah (sharpened iron blade)

No qawad except by a weapon.

The rule contained in the above al-hadith is further supported by a hadith reported by Ahmad b. Hanbal in which the Prophet says:

“There will be [social] eruptions followed by eruptions. So, whoever causes disunity of the ummah when it is united hit him with the sword whoever he is.”<sup>37</sup>

The Hanafiyah and the Hanabilah have also embraced other life-taking tools, as long as they are deadly, such as a spear, a parang, a knife, or other sharp instruments.<sup>38</sup>

If the penalty is capital, illness or extreme weather will not be postponed. This will only be delayed until she delivers and weans in the case of a pregnant woman. This is to be done to prevent



the unborn innocent fetus from being killed.<sup>39</sup> (Al Muhadhdhab, Vol.2, pp.270-271)

#### RATIONAL OF PUNISHMENT

One of the rational for the punishment of Riddah is for the protection of religion as stated in the Essentials (al-Daruriyyat). The essential things are the issues on which people's faith and worldly affairs depend; their neglect can lead to total disruption and disorder and may lead to an unwanted end.<sup>40</sup> Protecting this value including implementing all necessary measures to ensure that this value is realized while at the same time ensuring that all possible obstacles to its implementation are removed.<sup>41</sup> Religion is the most crucial principle that Muslims will always protect.<sup>42</sup> Religion protection at the individual level is achieved via ibadah (five prayers, fasting, paying zakah, hajj).<sup>43</sup> The success of all these rituals would increase a person's iman and thus be a protection that prevents the individual from becoming an apostate.<sup>44</sup> The Al-Quran pointed out that praying will save a person from evil:

“... and perform al-salah (Iqamat al-salah). Verily, al-salah (the prayer) prevents from al-fahsha (i.e., great sins of every kind, unlawful sexual intercourse, etc) and al-munkar (i.e. disbelief, polytheism, and every kind of evil wicked deed, etc)”<sup>45</sup>

(al-Ankabut:45)

Another rational for Riddah's punishment is linked to the Shari'ah's primary goal, which is the realisation of benefit to the people regarding their affairs in this world and the hereafter.<sup>46</sup> It is explained in the Al-Quran through:

“And We have sent you (O Muhammad SAW) not but as a rahmah for the alamin (mankind, jinns and all that exists)”<sup>47</sup>

(al-Anbiya: 107)

Ibn Qayyim al-Jawziyah states that the Shari'ah is aimed at safeguarding the interests of the people and keeping them from harming in this and the next world; it is a requirement that all people need.<sup>48</sup> The general definition of the word 'Rahmah' will include anything that promotes and avoids damage to humanity and is in accordance with human needs.<sup>49</sup> The numerous structures instituted in Islam including the injunctions relating to ibadah, mu'amalah, jinayah and others have been revealed to support and prevent human beings from harm, so it is also part of Allah's 'Rahmah' for humanity.<sup>50</sup>

The main objective to implement punishment on Riddah is for general deterrence and moral education. From the views of Malaysian scholars, the objective of the punishment on Riddah is to reform the perpetrator and restrain them from committing the crime again.<sup>51</sup> The impact of the punishment of Riddah will have a deterrence effect on the public. Riddah punishment is dissuasive and not intended to intimidate individuals and society, but also an excellent lesson for the public and to prevent the growth of an environment conducive to the nature and spread of such crime.<sup>52</sup> This conduct performs a psychological operation on the minds of those with criminal tendencies, and thus eventually transforms them.<sup>53</sup>

#### ISSUES IN RIDDAH

##### CONTRADICTION WITH THE BASIC LEGAL MAXIM OF BELIEF

It had made it clear that all four major jurisprudence schools agreed on one thing and that is when a Muslim becomes an apostate, they will first be questioned for their repentance and if they are still stubborn in turning their back on Islam then their punishment is a mandatory fixed death penalty.<sup>54</sup>

There is, however, a significant inconsistency that has been found in many verses in Al-Quran about apostate punishment and the principle that states freedom of belief. The scope of freedom is given to mankind as narrated in the Al-Quran<sup>55</sup>, in which Allah (S.W.T.) said:

“And say: the truth is from your Lord, so whoever wills - let him believe; and whoever wills - let him disbelieve”.

(Al-Kahfi, 18:29)

“There is no compulsion in religion.”

(al-Baqarah, 2:256)

“And had your Lord willed, those on earth would have believed - all of them entirely. Then, [O Muhammad], would you compel the people in order that they become believers?”

(Yunus, 10:99)

From the controversial subject for the punishment of apostasy, the Islamic scholars in Malaysia are also split on whether or not those who apostatize should undergo corporal punishment. The first party follows the traditional ulama's view that if they do not repent within the specified period, one who apostatizes should be killed. The second

group leans to the view that those who apostatize should not receive the death sentence but the lesser under takzir punishment with the aim to reform the perpetrator and deter him from committing the crime again.<sup>56</sup>

#### NON-UNIFORMITY OF APOSTASY LAWS

Federal Constitution in Malaysia has conferred the power of the State Legislative Assemblies to pass Islamic laws which are found in Article 74(2)<sup>57</sup>, which provides:

“Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List.”

However, the enactment made under the State Legislative Assemblies must consistent with the Federal Constitution as the supreme law in Malaysia as stated in Article 4(1) of the Federal Constitution<sup>58</sup>. An examination of the State laws in every States of the Federation of Malaysia as shown in the Appendix below:

State	Enactment	Provision	Punishment
Perak	Perak Crimes (Syariah) Enactment 1992	i) Section 12. Declaring to be non-Muslim.	i) A fine RM5,000 maximum or to imprisonment for a term not exceeding 3 years or to both.
		ii) Section 13. Words or action importing apostacy.	ii) A fine RM3,000 maximum or to imprisonment for a term not exceeding 2 years or to both.
Selangor	Syariah Criminal Offences (Selangor) Enactment 1995	Section 5. Declaration of being a non-Muslim to avoid action.	A fine RM5,000 maximum or to imprisonment for a term not exceeding 3 years or to both.
Pahang	The Administration of The Religion of Islam And, The Malay Custom of Pahang Enactment 1982	Section 185. Use of statement to absolve from responsibility.	A fine RM5,000 maximum or to imprisonment for a term not exceeding 3 years or to both and to whipping of not more than 6 strokes.
		i) Section 8. Claiming to be a non-Muslim	i) A fine RM5,000 maximum or to imprisonment for a term not exceeding 3
		ii) Section 9. Attempt to leave the religion of Islam	& ii) years or to whipping not exceeding 6 strokes or to any combination thereof.
Sabah	Sabah Syariah Criminal Offences Enactment 1995	iii) Section 10. Declaring to leave the religion of Islam for any purpose	
		i) Section 55(2). Contempt of religion of Islam.	i) A fine RM2,000 maximum or to imprisonment for a term not exceeding 1 year or to both.
Negeri Sembilan	Administration of The Religion of Islam (Negeri Sembilan) Enactment 2003	ii) Section 63. Attempted murtad.	ii) Order that the person be detained in the Islamic Rehabilitation Centre for a term not exceeding 36 months for rehabilitation purposes and such person be asked to repent in accordance with <i>Hukum Syarak</i> .
		Section 119. Renunciation of the Religion of Islam.	1st time: 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. 2nd time: 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 1 year. Still not repent: The Court may make a decision to declare that the person has renounced the Religion of Islam.

continue ...

... continued

Kelantan	Kelantan Syariah Criminal Code (II) (1993) 2015 (En. 13/2015)	Section 23. Irtidad or riddah	Before a death sentence is passed on him, be required by the court to be imprisoned within such period deem suitable by the Court for the purpose of repentance until no hope of repentance then the court shall pronounce the hudud sentence on him and order the forfeiture of his property.
Melaka	Syariah Crimes Enactment (State of Malacca) 1991	i) Section 63(2). Insulting the religion of Islam. ii) Section 66. Attempted murtad.	i) A fine RM5,000 maximum or to imprisonment for a term not exceeding 36 months or to both. ii) Ordered the person to be detained at the Islamic Rehabilitation Centre for a period not exceeding six months for educational purposes and the person will be asked to repent according to Islamic law.
Terengganu	Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001  Shariah Criminal Offence (Hudud and Qisas) Terengganu Enactment 1423H/2002M	Section 7. Declaring to be non-Muslim.  Section 25. Irtidad or riddah. Section 26. Punishment for Irtidad or riddah offences.	A fine RM5,000 maximum or to imprisonment for a term not exceeding 3 years or both.  Before a death sentence is passed on him, be required by the Court to repent within a period of not less than 3 days. Where he is reluctant to repent, the Court shall pronounce the death sentence on him and order the forfeiture of his property. Provided that when he repents, he shall be imprisoned for a term not exceeding 5 years.

From here it can be seen that not every state enacted the provision for the conduct of leaving the religion of Islam for instance, Federal Territories, Johor, Kedah, Pulau Pinang, Perlis, and Sarawak. The heaviest punishment imposed for those convicted with apostasy in Malaysia is the death penalty which is provided in Kelantan under Section 23 of Kelantan Syariah Criminal Code (II) (1993) 2015 (EN. 13/2015)<sup>59</sup> and Terengganu under Section 26 of Syariah Criminal Offence (*Hudud* and *Qisas*) Terengganu Enactment 1423H/2002M.<sup>60</sup>

Other states like Sabah, Melaka, Perak, Selangor, and Pahang will impose a fine or imprisonment or strokes for those being convicted for apostasy. Only Negeri Sembilan appears to be a pioneer among the States of the Federation in enacting law pursuant to Section 119 of the Religion Administration of Islam (Negeri Sembilan) Enactment 2003<sup>61</sup> to provide that a Muslim will not renounce or be considered to have renounced the Religion of Islam until and unless he has obtained a declaration from the Syariah High Court to that effect.<sup>62</sup>

Since Islamic law is restricted within the respective states, various Islamic Criminal Laws are here in Malaysia. This has led to the non-uniformity of laws in some areas, especially in the area of

apostasy laws.<sup>63</sup> As explained above, the apostasy laws differ from state to state. This may seem unjust as there are different types of punishment for the same crime.

#### RESTRICTION ON THE STATE JURISDICTION

Syariah Courts (Criminal Jurisdiction) Act 1965 [Act 355]<sup>64</sup> was enacted for the purpose of granting jurisdiction power on courts established under any State law for the purposes of dealing with offenses under Islamic law. This Act has been applied to all States in the Federation. The criminal jurisdiction for Syariah Court has been stated in Section 2 of the Act:

“The Syariah Courts duly constituted under any law in a State and invested with jurisdiction over persons professing the religion of Islam and in respect of any of the matters enumerated in List II of the State List of the Ninth Schedule to the Federal Constitution are hereby conferred jurisdiction in respect of offences against precepts of the religion of Islam by persons professing that religion which may be prescribed under any written law:

Provided that such jurisdiction shall not be exercised in respect of any offence punishable with imprisonment for a term exceeding three years or with any fine exceeding five thousand ringgit or with whipping exceeding six strokes or with any combination thereof.”

Most of the state authorities has enacted the Shariah Law for the punishment of apostasy as according to the maximum punishment allowed as stated in Section 2 of Syariah Courts (Criminal Jurisdiction) Act 1965 [Act 355]. However, the enactment of punishment for apostasy was different from the hudud punishment where death punishment is the only punishment for those who cease to be Muslim. Only Kelantan and Terengganu have aligned and compliant with the hudud death punishment for apostasy, although the government authorities are unable to execute and enforce this provision as it is against the jurisdiction empowered to Syariah Court under Syariah Courts (Criminal Jurisdiction) Act 1965 [Act 355].

#### PROTECTION FROM APOSTACY IN MALAYSIA VS FREEDOM OF RELIGION

As to protect the sanctity of Islam and preserve the beliefs and aqidah of Muslims, Federal Constitution has indirectly prohibited the act of influencing Muslims to be apostate by curtailing the attempts to its effect as provided for in Article 11(4) with regards to freedom of religion. It was clearly stated that

“State law and 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 persons professing the religion of Islam.”

Be that as it may, the provision above does not hinder the Muslims to renounce Islam and application must be made by the ‘intended convert’ to Syariah Court to renounce Islam or for a declaration that one is no longer Muslim. Data by Islamic Affairs Minister in 2011 stated that Syariah Court had approved 135 out of 686 applications by Muslims seeking to change their religious status for the year 2000 – 2010<sup>65</sup>. Landmark Malaysian case with regards to apostacy is on Lina Joy (Azlina Jailani)<sup>66</sup> case application whereby she seeks to erase the words Muslim in her IC as she’s no longer a Muslim according to her up until the Federal Court but unsuccessful. To be noted she’s didn’t go to Syariah High Court to get a declaration that she renounces Islam.

Some scholars consider the murtad laws to be contradictory to the United Nation Universal Declaration of Human Rights (UDHR) but did not consider the true importation of such a declaration under Malaysia’s Federal Constitution.<sup>67</sup> In this

regard, it is important to look at section 4(4) of the Human Rights Commission of Malaysia Act 1999 [Act597]<sup>68</sup> which states that, for the purposes of this law, the Universal Declaration of Human Rights of 1948 shall be taken into account to the degree that it does not contradict the Federal Constitution.<sup>69</sup> Section 4(4) of the Human Rights Commission of Malaysia Act 1999 [Act597] has the effect that the latter prevails in the event of a conflict between the 1948 UDHR and the Federal Constitution. Secondly, it is a fundamental principle of international law that the Member States are entitled to reserve treaties.

#### CONCLUSION AND RECOMMENDATIONS

For the punishment of apostasy, there is a controversial issue for the mandatory death penalty because as discussed above its source is from hadith and there is an argument it is an hadith ahad which is on the lowest rank category of hadith and it is not from al-Qur’an. In the Malaysia context, although Kelantan and Terengganu have provision for the death penalty for apostasy it is unable to be enforced due to the limit set out under Act 355.

Looking at our neighbouring country Singapore, early this year their Office of the Mufti, Islamic Religious Council of Singapore has issued an edict stating that the sin of leaving the religion is purely between the individual and God, hence worldly punishments do not apply in a situation where treason does not exist.<sup>70</sup>

Be that as it may, it is hoped that proper procedure should be legislated among states to follow what has been practised in Negeri Sembilan. Mandatory detention at a rehabilitation centre for Muslims who intended to convert out of Islam should be repealed and should be substituted with a series of counselling to persuade back the non-believer towards Islam.

#### NOTES

- <sup>1</sup> Wajis, N. R. N. 2018. *Revisiting Law of Apostasy In Islamic Law*. Malaysian Journal of Syariah and Law, 6(2), 25-39, at pg 26. Retrieved December 3, 2019 from: <http://mjsl.usim.edu.my/index.php/jurnalmjssl/article/view/141/76>
- <sup>2</sup> Zulkifli Mohamad Al-Bakri. 2015. *Irsyad Al-Fatwa Ke-25: Pengertian Murtad*, Mufti Office of Federal Territory. Retrieved December 3, 2019 from: <https://muftiwp.gov.my/en/artikel/irsyad-fatwa/irsyad-fatwa-umum-cat/2064-25>.
- <sup>3</sup> Muhammad Muslehuddin.1992. *Jenayah dan Doktrin Islam dalam tindakan pencegahan*, Dewan Bahasa dan Pustaka, Kuala Lumpur. Pg 36.



- <sup>4</sup> Shah, H. *Apostasy from Islam: A Treasonous Act*. Retrieved December 3, 2019 from :[https://s3.amazonaws.com/academia.edu.documents/56990981/Apostasy\\_from\\_Islam.pdf?response-content-disposition=inline%3B%20filename%3DApostasy\\_from\\_Islam\\_A\\_Treasonous\\_Act.pdf&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIAIWOWYYGZ2Y53UL3A%2F20191212%2Fus-east-1%2Fs3%2Faws4\\_request&X-Amz-Date=20191212T043318Z&X-Amz-Expires=3600&X-Amz-SignedHeaders=host&X-Amz-Signature=6ef85b51de8e7dbe3a6b7043064657d7c97ce4f3491308e80-87f24695db2cd8f](https://s3.amazonaws.com/academia.edu.documents/56990981/Apostasy_from_Islam.pdf?response-content-disposition=inline%3B%20filename%3DApostasy_from_Islam_A_Treasonous_Act.pdf&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIAIWOWYYGZ2Y53UL3A%2F20191212%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Date=20191212T043318Z&X-Amz-Expires=3600&X-Amz-SignedHeaders=host&X-Amz-Signature=6ef85b51de8e7dbe3a6b7043064657d7c97ce4f3491308e80-87f24695db2cd8f)
- <sup>5</sup> Ocktoberriyah, O. 2015. *Apostasy in Islam: Historical and Legal Perspectives*, 49(1), pg 146. Retrieved December 3, 2019 from: <http://asy-syirah.uin-uka.com/index.php/AS/article/view/136/135>
- <sup>6</sup> Ibid.
- <sup>7</sup> Ibid.
- <sup>8</sup> Hashim Mehat, 1993. *Islamic Criminal Law and Criminal Behaviour*, Muslim Youth Movement of Malaysia, Kuala Lumpur. Pg 16.
- <sup>9</sup> Zulkifli Muda. 2010. *The Concept of Crime and Criminal Law in Islam*, Universiti Malaysia Sarawak, Sarawak.
- <sup>10</sup> Wajis, N. R. N. 2018. *Revisiting Law Of Apostasy In Islamic Law*. Malaysian Journal of Syariah and Law, 6(2), 25-39, at pg 27. Retrieved December 3, 2019 from: <http://mjsl.usim.edu.my/index.php/jurnalmjsl/article/view/141/76>
- <sup>11</sup> Ibid. pg 32.
- <sup>12</sup> Ibid. pg 33.
- <sup>13</sup> Mahfodz Mohamad. 1993. *Jinayah Dalam Islam: Satu Kajian Ilmiah Mengenai Hukum-Hukum Hudud*, Nurin Enterprise, Kuala Lumpur. Pg 135.
- <sup>14</sup> Zulkifli Mohamad Al-Bakri. 2019. Al-Afkar #41: The Ruling for A Muslim joking by saying "I Am Not A Muslim", Mufti Office of Federal Territory. Retrieved December 3, 2019 from: <https://muftiwp.gov.my/en/artikel/al-afkar/3066-al-afkar-41-the-ruling-for-a-muslim-joking-by-saying-i-am-not-a-muslim?highlight=WyJyaWRkYWgiXQ==>
- <sup>15</sup> Wajis, N. R. N. 2018. *Revisiting Law of Apostasy In Islamic Law*. Malaysian Journal of Syariah and Law, 6(2), 25-39, at pg 27. Retrieved December 3, 2019 from: <http://mjsl.usim.edu.my/index.php/jurnalmjsl/article/view/141/76>
- <sup>16</sup> Ahmad Hidayat Buang. (Ed.). 2007. *Undang-undang Islam di Malaysia: prinsip dan amalan*. Penerbit Universiti Malaya, Kuala Lumpur. Pg 300.
- <sup>17</sup> Marican, P., & Adil, M. A. M. 2004. *Apostasy and freedom of religion in Malaysia: Constitutional implications*. *YB Islamic & Middle EL*, 11, 169-203, p.189.
- <sup>18</sup> Ibid, p.189.
- <sup>19</sup> Sidahmad, M.A. 1995. *Islamic criminal law: The hudud*. Perpustakaan Negara Malaysia Cataloguing-in-Publication Data, pp.58-60.
- <sup>20</sup> Ibid, pp.58-60.
- <sup>21</sup> Ibid, pp.58-60.
- <sup>22</sup> Ibid, pp.58-60.
- <sup>23</sup> Sidahmad, M.A. 1995. *Islamic criminal law: The hudud*. Perpustakaan Negara Malaysia Cataloguing-in-Publication Data, pp.58-60.
- <sup>24</sup> Wajis, N. R. N. 2018. *Revisiting law of apostasy in Islamic law*. *Malaysian Journal of Syariah and Law*, 6(2), 25-39, p.28.
- <sup>25</sup> Marican, P., & Adil, M. A. M. 2004. *Apostasy and freedom of religion in Malaysia: Constitutional implications*. *YB Islamic & Middle EL*, 11, 169-203, p.189.
- <sup>26</sup> Kamali, M.H. 2000. *Islamic law in Malaysia: Issues and developments*. Petaling Jaya, Selangor: Ilmiah Publisher, pp.207-208.
- <sup>27</sup> Kamali, M.H. 2000. *Islamic law in Malaysia: Issues and developments*. Petaling Jaya, Selangor: Ilmiah Publisher, pp.208-209.
- <sup>28</sup> Wajis, N. R. N. 2018. *Revisiting law of apostasy in Islamic law*. *Malaysian Journal of Syariah and Law*, 6(2), 25-39, p.28.
- <sup>29</sup> Ibid, p.29
- <sup>30</sup> Ibid, p.29
- <sup>31</sup> Ibid, p.29
- <sup>32</sup> Ibid, p.29
- <sup>33</sup> Shabbir, M. 2002. *Outlines of Criminal Law and Justice in Islam*. International Law Book Services, p.255
- <sup>34</sup> Sidahmad, M.A. 1995. *Islamic criminal law: The hudud*. Perpustakaan Negara Malaysia Cataloguing-in-Publication Data, p.219
- <sup>35</sup> Ibid, p.220
- <sup>36</sup> Ibid, pp.220-221
- <sup>37</sup> Ibid, p.221
- <sup>38</sup> Ibid, p.221
- <sup>39</sup> Ibid, p.272
- <sup>40</sup> Laldin, M.A. 2006. *Islamic law: An introduction*. IUM, KL: Research Centre, p.18
- <sup>41</sup> Laldin, M.A. 2006. *Islamic law: An introduction*. IUM, KL: Research Centre, p.18
- <sup>42</sup> Ibid, p.18
- <sup>43</sup> Ibid, p.18
- <sup>44</sup> Ibid, p.18
- <sup>45</sup> Ibid, p.18
- <sup>46</sup> Ibid, p.14
- <sup>47</sup> Ibid, p.14
- <sup>48</sup> Ibid, p.14
- <sup>49</sup> Ibid, p.14
- <sup>50</sup> Ibid, p.14
- <sup>51</sup> Marican, P., & Adil, M. A. M. 2004. *Apostasy and freedom of religion in Malaysia: Constitutional implications*. *YB Islamic & Middle EL*, 11, 169-203, p.192
- <sup>52</sup> Shabbir, M. 2002. *Outlines of Criminal Law and Justice in Islam*. International Law Book Services, pp.51-52
- <sup>53</sup> Ibid, p.51
- <sup>54</sup> Wajis, N. R. N. 2018. *Revisiting law of apostasy in Islamic law*. *Malaysian Journal of Syariah and Law*, 6 (2), 25-39, p.29
- <sup>55</sup> Ibid, pp.29-31
- <sup>56</sup> Marican, P., & Adil, M. A. M. 2004. *Apostasy and freedom of religion in Malaysia: Constitutional implications*. *YB Islamic & Middle EL*, 11, 169-203, p.192.
- <sup>57</sup> Federal Constitution, Article 74(2).
- <sup>58</sup> Federal Constitution, Article 4(1).
- <sup>59</sup> Kelantan Syariah Criminal Code (II) (1993) 2015 (EN. 13/2015), Section 23
- <sup>60</sup> Shariah Criminal Offence (Hudud and Qisas) Terengganu Enactment 1423H/2002M, Section 26
- <sup>61</sup> Religion Administration of Islam (Negeri Sembilan) Enactment 2003, Section 119
- <sup>62</sup> Marican, P., & Adil, M. A. M. 2004. *Apostasy and freedom of religion in Malaysia: Constitutional implications*. *YB Islamic & Middle EL*, 11, 169-203, p.199.

- <sup>63</sup> Ibid, 190
- <sup>64</sup> Syariah Courts (Criminal Jurisdiction) Act 1965 [Act 355] (Malaysia)
- <sup>65</sup> Ida Lim. 2014 Path to leave Islam simple, but far from easy, *MalayMail*, July 12, 2014. Retrieved December 3, 2019 from: <https://www.malaymail.com/news/malaysia/2014/07/12/path-to-leave-islam-simple-but-far-from-easy/704859>
- <sup>66</sup> Lina Joy v Majlis Agama Islam Wilayah Persekutuan dan lain-lain [2007] 4 MLJ 585.
- <sup>67</sup> Marican, P., & Adil, M. A. M. 2004. Apostasy and freedom of religion in Malaysia: Constitutional implications. *YB Islamic & Middle EL*, 11, 169-203, p.202
- <sup>68</sup> Human Rights Commission of Malaysia Act 1999 [Act597], Section 4(4)
- <sup>69</sup> Ibid, p.202
- <sup>70</sup> Islamic Religious Council of Singapore. 2019 Freedom of Religion & Apostasy in Islam, Religious Advisory issued on 22 January 2019. Retrieved December 3, 2019 from: <https://www.muis.gov.sg/media/Files/OOM/Irsyad/English/Freedom-of-Religion-and-Apostasy-in-Islam.pdf>

## REFERENCES

- Administration of The Religion of Islam (Negeri Sembilan) Enactment 2003.
- Al-Bakri, Z. M. 2019. *Al-Afkar #41: The Ruling For A Muslim Joking By Saying "I Am Not A Muslim"*, Mufti Office of Federal Territory. <https://muftiwp.gov.my/en/artikel/al-afkar/3066-al-afkar-41-the-ruling-for-a-muslim-joking-by-saying-i-am-not-a-muslim?highlight=WyJyaWRkYWgiXQ==>
- Al-Bakri, Z. M. 2015. *Irsyad Al-Fatwa Ke-25: Pengertian Murtad*, Mufti Office of Federal Territory. <https://muftiwp.gov.my/en/artikel/irsyad-fatwa/irsyad-fatwa-umum-cat/2064-25>.
- Al-Quran.
- Buang, A. H., ed. 2007. *Undang-undang Islam di Malaysia: Prinsip dan Amalan*. Kuala Lumpur: Penerbit Universiti Malaya, Kuala Lumpur.
- Enakmen Kesalahan Syariah (Negeri Melaka) 1991 (En. 6/1991).
- Federal Constitution.
- Islamic Religious Council of Singapore. 2019. Freedom of Religion & Apostasy in Islam
- Religious Advisory issued on 22 January 2019. <https://www.muis.gov.sg/-/media/Files/OOM/Irsyad/English/Freedom-of-Religion-and-Apostasy-in-Islam.pdf>
- Kamali, M.H.2000. *Islamic Law in Malaysia: Issues and Developments*. Petaling Jaya: Ilmiah Publisher Petaling Jaya, Selangor.
- Kelantan Syariah Criminal Code (II) (1993) 2015 (En. 13/2015).
- Laldin, M.A. 2006. *Islamic Law: An Introduction*. Kuala Lumpur: Research Centre IIUM, Kuala Lumpur.
- Lim, I. 2014. Path to leave Islam simple, but far from easy. *Malay Mail*, July 12. <https://www.malaymail.com/news/malaysia/2014/07/12/path-to-leave-islam-simple-but-far-from-easy/704859>.
- Marican, P., & Adil, M. A. M. 2004. Apostasy and freedom of religion in Malaysia: Constitutional implications. *YB Islamic & Middle EL* 11: 169-203.
- Mehat, H. 1993. *Islamic Criminal Law and Criminal Behaviour*, Muslim Youth Movement of Malaysia, Kuala Lumpur.
- Mohamad, M. 1993. *Jinayah dalam Islam: Satu Kajian Ilmiah Mengenai Hukum-Hukum Hudud*. Kuala Lumpur: Nurin Enterprise, Kuala Lumpur.
- Muda, Z. 2010. *The Concept of Crime and Criminal Law in Islam*. Sarawak: Universiti Malaysia Sarawak, Sarawak.
- Muslehuddin, M. 1992. *Jenayah dan Doktrin Islam dalam Tindakan Pencegahan*. Kuala Lumpur: Dewan Bahasa dan Pustaka, Kuala Lumpur.
- Oektoberrinsyah, O. 2015. Apostasy in Islam: Historical and legal perspectives 49(1): 143-159. <http://asy-syirah.uin-uka.com/index.php/AS/article/view/136/135>.
- Perak Crimes (Syariah) Enactment 1992.
- Sabah Syariah Criminal Offences Enactment 1995.
- Shabbir, M. 2002. *Outlines of Criminal Law and Justice in Islam*. Petaling Jaya: International Law Book Services.
- Shah, H. *Apostasy from Islam: A Treasonous Act*. <https://oxford.academia.edu/HineshShah>
- Sidahmad, M.A. 1995. *Islamic criminal law: The Hudud*. Perpustakaan Negara Malaysia Cataloguing-in-Publication Data, pp.58-60.
- Syariah Courts (Criminal Jurisdiction) Act 1965 [Act 355].
- Syariah Criminal Offence (Hudud And Qisas) Terengganu Enactment 1423H/2002M (Enactment No. 4 of 2002).
- Syariah Criminal Offences (Pahang) Enactment 2013.
- Syariah Criminal Offences (Selangor) Enactment 1995.
- Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001.
- The Administration of The Religion of Islam and, The Malay Custom of Pahang Enactment 1982.
- Wajis, N. R. N. 2018. Revisiting law of apostasy in Islamic law. *Malaysian Journal of Syariah and Law* 6(2): 25-39. <http://mjsl.usim.edu.my/index.php/jurnalmjsl/article/view/141/76>
- Ong Guan Boon  
Pharmacy Enforcement Officer  
Pharmacy Enforcement Division  
Putrajaya  
Email: boon\_favor@hotmail.com
- Zuhair bin Rosli  
Judicial Officer  
Chief Registrar Office Federal Court of Malaysia  
Putrajaya  
Email: zuhair.rosli@gmail.com