

LEGAL PROVISIONS AND RESTRICTIONS ON THE PROPAGATION OF NON-ISLAMIC RELIGIONS AMONG MUSLIMS IN MALAYSIA

Zuliza Mohd Kusrin^{1*}, Zaini Nasohah², Mohd al-Adib Samuri³ and Mat Noor Mat Zain⁴

^{1,2,3,4}Faculty of Islamic Studies, Universiti Kebangsaan Malaysia, 43600 UKM Bangi, Selangor, Malaysia

*Corresponding author: zulifpi@yahoo.co.uk

Article 11 of the Federal Constitution of Malaysia states that every individual has the right to profess, practice and preach his religion or belief. However, Article 11(4) of the Federal Constitution also states that the propagation of non-Islamic religions among Muslims is forbidden. This article aims to discuss both the justifications and the legal restrictions – that is, the legal provisions – that restrict and control the propagation of non-Islamic religions among Muslims in Malaysia. This discussion identifies three justifications for the prohibition of the propagation of non-Muslim religions among Muslims in Malaysia. The first justification relates to the background and history of the special status and position of Islam in Malaya; the second relates to the key role of Malay Rulers in preserving the sanctity of the Islamic religion from the pre-independence period to the present day; and the third justification relates to the nature of Islamic teachings and the maxim that apostasy is a crime. Legal provisions that control the propagation of non-Islamic religions among Muslims are found at both federal and state levels. However, the problem of legal enforcement and, in particular, the jurisdictional limitations of the Syariah Courts over non-Muslims in Malaysia result in a lack of implementation of these legal provisions.

Keywords: religion, Muslim, Islam, propagation, Syariah Court

INTRODUCTION

Provisions in the Federal Constitution of Malaysia allow a Muslim to preach the teachings of his religion among non-Muslims. A non-Muslim is permitted to preach the teachings of his religion or beliefs among people or followers of other faiths, with the exception of Muslims. State laws and Article 11(1) of the Federal Constitution contain provisions to control or restrict the spread or propagation of non-Islamic religious beliefs or faiths among followers of the Islamic religion. Thus, it is a crime to persuade, influence, force or instigate a Muslim to embrace or become a member of a religion other than Islam. Islamic affairs in the Federal Territories are subject to the jurisdiction of the federal government through the control of the Prime Minister's Department and legal provisions such as the

Administration of Islamic Law (Federal Territories) Act 1933 (Act 505) and the Syariah Criminal Offences (Federal Territories) Act 1997 (Act 559).

At a cursory glance, the restrictions imposed on non-Muslims appear to be discriminatory in terms of freedom of religion. However, Islam is the official religion of the Federation. Thus, it can be argued that this provision is appropriate for preserving the sanctity of Islam. Commenting on Article 11(4) of the Federal Constitution, Salleh Abas opined that the need for such a provision necessarily follows from the provision that Islam is the official religion of the Federation. In addition, the purpose of the article is to safeguard the Sunni schools of law practiced by the Muslim society in Malaysia from exposure to any doctrine or belief that contradicts true Islamic teachings, whether its propagation is among Muslims or non-Muslims (Mohd Salleh, 1986: 7).

This matter is closely linked to three factors that determine the special position of Islam, which was recognised even before independence, as stated in *Ramah v. Laton* [1927] 6 Federated Malay State Law Reform 128 and *Shaikh Abdul Latif dll v. Shaikh Elias Bux* [1915] 1 Federated Malay State Law Reform 204 and affirmed by Ahmad and Ahilemah (2007: 50–51). The main role of the Malay Rulers is to preserve the sanctity of Islam and Islamic teachings that declare apostasy a crime punishable by *hudud* law. These three factors form a clear justification for the legal restrictions, whether at the federal or state level, by forbidding acts that constitute the propagation of teachings of non-Islamic religions among Muslims in Malaysia. Although Article 11 of the Federal Constitution recognises freedom of religion, other matters in the Constitution clearly show that freedom of religion does not amount to equal rights. This is apparent when Article 11 is read together with Article 11(4) and Article 12(2).

To preserve the sanctity of the Islamic faith, which is regarded as having the advantage of legislation over other religions in Malaysia, almost every state in Malaysia has passed and gazetted enactments that control the propagation of non-Islamic faiths among Muslims. Several provisions state that acts in contempt of the Islamic religion and the propagation of non-Islamic religions among Muslims in Malaysia are included as crimes under syariah law. Usually, the criminal behaviour or offence of propagating non-Islamic religion among Muslims is committed by non-Muslims or former Muslims who become apostates. In terms of jurisdiction, the Syariah Court is subject to the limitation of hearing only cases of Muslims, causing the legal provisions to be inadequately implemented. This article focuses on the above issue and analyses matters related to justifications for the legal provisions restricting the propagation of non-Islamic religions among Muslims at federal and state levels as well as the problem of the implementation of these laws in Malaysia.

JUSTIFICATIONS FOR LEGAL RESTRICTIONS ON THE PROPAGATION OF NON-ISLAMIC RELIGIONS AMONG MUSLIMS

Article 11(4) of the Federal Constitution only restricts the propagation of non-Islamic religions among Muslims. This discussion identifies three factors that are used to justify these legal restrictions: (1) the history of the recognition of Islam as the official religion of the Federation; (2) the role of the Malay Rulers in preserving the special status of the Islamic religion and teachings; and (3) Islamic teachings that regard apostasy as a crime under religious law.

HISTORY OF THE RECOGNITION OF ISLAM AS THE OFFICIAL RELIGION OF THE FEDERATION

Article 3 of the Federal Constitution states that Islam is the religion of the Federation. However, this recognition provides space for followers of other beliefs or religions to practice their faith in peace and harmony anywhere in the Federation, as stated in Article 11. Although legal provisions uphold the position of Islam, they are not intended to recognise Malaysia as an Islamic state because, as the first Prime Minister of Malaysia, Tunku Abdul Rahman, argued, the provision of Article 3 is closely linked to the historical status of Islam in Malaya before independence. After the arrival of Islamic influence in Malaya, the Islamic religion gained an honourable position due to a number of factors, including the impact of the Malay Rulers embracing Islam, followed by the Malay nobles and then by the masses (Haron, 1989: 26–27). However, according to Malay history (*Sulalatus Salatin*), Islam first gained a foothold in the Malay world in the early 15th century when Malacca was upheld as an Islamic state by Raja Kecik Besar, whose title was Sultan Muhammad Syah (A. Samad, 1979: 68). The local population's undivided allegiance to the Sultan led them to embrace Islam en masse. Thus, the issue of freedom of worship did not arise because subjects in the feudal age, who believed in the sovereign power of their kings, obeyed all commands and actions of the rulers to avoid their wrath. Further, to preserve the sanctity and dignity of the Islamic religion, a person was forbidden to change or abandon his religion at will. This was a direct consequence of legal provisions for the crime of apostasy, as stated in Clause 36 of the *Undang-undang Melaka* (Liaw, 1976: 148–149).

The inclination of the rulers and the local population towards Islamic teachings had an indirect influence on the state's administration of rules that were mostly, though not comprehensively, based on Islamic law (Ismail, 1991: 126). For example, the Laws of Malacca incorporated specific aspects of Islamic law encompassing criminal, *muamalat* (transactions), family and evidence laws as well as procedures and international relations. This incorporation illustrates the recognition of Islam as the official religion while at the same time demonstrating the practice of its teachings in the kingdom's administration. The status of

Malacca as an influential kingdom was a factor in the extension of the implementation of Islamic law to several other nearby states, such as Johore, Perak, Kedah, Negeri Sembilan and Pahang, albeit with some modifications according to local requirements. Consequently, *Risalah Hukum Kanun Melaka* (Laws of Malacca), a combination of *Adat Law* and Islamic laws, became a reference and a guide.

As for the non-Muslim inhabitants, it can be deduced from historical statements that they were free to profess their respective faiths even though the ruler embraced Islam. This is evidenced by the attitude of the rulers, who treated all visitors well, whether they were religious scholars, traders or even paid soldiers. The population of this multi-ethnic society, comprising Indians, Chinese, Javanese and Arabs, proves the existence of a plural society that practised various faiths and beliefs and used the Malay language as a unifying tool of communication (Haron, 1989: 67–74).

While Malaya was under British patronage, the practice of freedom of religion was perceived through the right to be tried in court according to an individual's personal law, particularly in matters of marriage, divorce and wills. This statement was reinforced by the decision in the case of *Chulas v. Kalson* [1867] Leic 462 that English common law would not be followed where the local inhabitants had their own personal laws as its general application would result in injustice and oppression. A similar obiter dictum was recorded in the case of *Karpen v. Tandil* [1895] 3 Straits Settlement Law Reform 58. The position of Islamic law, which was once the law of Malacca, was preserved, as seen in the decision of *Ramah v. Laton* [1972] 6 Federated Malay States Law Reform 128, in which the majority in the Court of Appeal decided that Islamic law was not a foreign law; rather, it was a local law in the Malay States and therefore required judicial recognition by the courts. This case became a precedent in another case, that of *Patimah v. Harris* [1939] Malayan Law Journal 134, which decided that Islamic law was part of the *Undang-undang* (Laws of) Johor.

After Malaya achieved independence, there were several provisions in the Federal Constitution that could be interpreted as confirming the special position of Islam in the Federal Constitution. The provisions of Article 3, Article 11(1)(4), Article 12(2), Article 74(2), Article 121(1A), Schedule 9 of State List, Article 150(6A) and Article 160 (definition of Malay) placed Islam in a special position in comparison to other religions in Malaysia. Hence, equal rights, as stated in Article 8 of the Federal Constitution, must be analysed and read together with the aforementioned provisions by applying the rule of harmonious construction to avoid prejudicing the provisions that give Islam its special position. The rule of harmonious construction is mentioned by Justice Faiza Thamby Chik in the case of *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan dan dua lagi* [2004] 2 Malayan Law Journal, 119 at 129:

The difference in treatment among the religions (by placing Islam in a special position) can be understood by taking into context the history of this country, whereby Islam has been the basic law (of the land) since the twelfth century. Hence, the status of Islam as state religion is not something new; rather, historically it gained a foothold in (Malaya) about 600 years before the British arrival. Therefore, the Federal Constitution 1957 does not undermine the special position of Islam in it. From the point of recognition of the special status of Islam in the history of Malaya, a specific provision in the form of Article 11(4) has been inserted in the Constitution to preserve the Islamic religion as well as protect its followers in Malaysia.

However, it must be noted that the provision regarding Islam does not make either the Federal Constitution or the country Islamic. The provision only gives an advantage and a privilege to Islam, and it does not contradict the concept of freedom of religion. From one perspective, the status of Islam in the Federal Constitution actually specifies the continuation of this status, the validity of which is rooted in history. This understanding can nevertheless be criticised due to the sheer number of provisions that give priority and preference to Islam.

Abdul Aziz Bari notes that even though there is no specific provision in the Federal Constitution that clearly states that Islamic Law can be implemented comprehensively in Malaysia, the numerous provisions that relate to Islamic law should be interpreted in the spirit of Islam to preserve the position of Islam as the religion of the Federation (Abdul Aziz, 2010: 1–10).

THE ROLE OF MALAY RULERS IN PRESERVING THE PRIVILEGES OF ISLAM

The Malay Rulers have an intimate relationship with the position of Islam in Malaya. As clearly stated in the treaties between the Malay Rulers and the British, the privileges and sanctity of the Islamic religion are in the custodianship of the Malay Rulers. For instance, on 20 January 1874, Raja Muda Abdullah, the Sultan of Perak at that time, had signed and agreed to accept through the Pangkor Treaty a British resident "whose advice must be asked and acted upon on all questions other than those touching Malay religion and custom" (Winstedt, Wilkinson and Maxwell, 1974: 99). However, in strengthening their authority in terms of the administration of Malaya, the British could not avoid interfering with Malay customs and Islamic religion because the local laws were a combination of Customary Laws influenced by Islam. This was apparent in the stipulated legal provisions of the laws of Malacca (*Hukum Kanun Melaka*) and the Malay States of that time (Ahmad and Ahilemah, 2007: 48–50). After Malaya achieved independence, the position of the Malay Rulers in terms of religion in

the Constitution remained unchanged, just as before independence. As stated by Raja Nazrin in the Congress of State Islamic Councils of the whole of Malaysia,

All that is embedded in the Constitution upholds the spirit of the Seven Wills of the Malay Rulers, which firmly decrees, among others, that, Islam is the religion of the Federation, the Malay Language is the National Language, Malay Reserved Land is allocated and preserved, the special position of the Malays and the legitimate interests of other communities are protected, the sovereignty of the Malay Rulers to rule is permanently secured (*Agendadaily*, 2011).

The statement by the Prince, which reiterates Islam as one of the Seven Wills of the Malay Rulers, clearly shows the advantage of Islam over other religions in terms of status—a status that should be hereditarily preserved by the administrative helm of the Malay Rulers. Hence, all affairs involving Islam require the consent of the Malay Rulers as hereditary trustees charged with preserving the sanctity of Islam.

This requirement is clearly stated by the learned judge Mohd. Noor Abdullah in the case of *Meor Atiqulrahman Ishak dan yang lain v. Fatimah Sihi & others* [2000] 5 Malayan Law Journal, 375, in which he provided the following interpretation:

[...] The provision "Islam is a Federal religion but other religions may be practised in peace and harmony" means that Islam is the foremost religion among other religions embraced in this country. Islam is not equal to, neither sits together, nor stands at par with other religions. However, Islam sits above, walks ahead, is located in the field and its voice is heard loud. This means that the Government is responsible for preserving, illuminating and developing Islam as the Government is able to do at present, and other religions are to be appropriately lined up and positioned in a direction that guarantees that they may be practiced in peace and harmony without threatening the leading position of Islam.

Hence, the Malay Rulers play an important role in preserving and strengthening the position of Islam, which is evident in the oath of the Yang di-Pertuan Agong (The Constitutional Monarch) in the Federal Constitution, Fourth Schedule, Part 1, Pledge of the Yang di-Pertuan Agong:

[...] and We further pledge that We will solemnly and sincerely preserve at all times the Islamic religion and stand firm on a fair

and peaceful government in the State [...] (Federal Constitution, 2006).

The Conference of Malay Rulers is the highest authority in matters of Islamic affairs, as stated in Article 38 of the Federal Constitution. Article 38(1) (c) discusses the authority that is vested in the Conference of Rulers to consent or withhold consent to any law that addresses Islam. The Malay Rulers must also be consulted and are responsible for giving advice on any matters dealing with Islam in Malaysia. Hence, the Malay Rulers have the right to disagree with any motion or bill of law concerning Islam in the State Legislature.

The Malay Rulers are state religious leaders who are regarded as sovereign rulers and legally hold a high position. At the federal level, the Yang di-Pertuan Agong is the Head of the Federation, and the Sultans are the leaders in their respective states. The Federal Constitution recognises the Yang di-Pertuan Agong as Head of the Islamic Religion for his own state and those states that do not have a Sultan, such as Malacca, Penang, Sabah and Sarawak. The Constitution specifies that in the performance of their duties as Heads of Religion, Malay Rulers may appoint a council to advise them. In addition to an Islamic Religious Council, other religious institutions, such as religious departments, officials such as the Mufti and Syariah court judges are under their authority.

APOSTASY IS DEEMED A CRIME IN SYARIAH LAW

According to Syariah Law, the act of changing religion or leaving Islam is a grave offence and is included in the category of a *hudud* crime; if, after conviction, the accused refuses to repent, it is punishable by death (al-Qur'an, al-Baqarah, 2: 217). In Malaysia, legal provisions regarding the offence of attempting to abandon Islam or apostasy are included in state enactments. Only two states in Malaysia, Kelantan and Terengganu, have a provision for the death penalty for apostasy. These two states use the words apostasy or *irtidad* for the act of leaving Islam, whereas other states use the phrase "conversion out of Islam." However, legal limitations on the state's jurisdiction, which limit the maximum sentence to three years' imprisonment, whipping not more than six times and a fine of not more than RM5,000, have resulted in the *hudud* sentence enshrined in Islamic *hudud* to be reduced to *takzir*. For example, in the case of *Kamariah Ali & Yang Lain lwn. Kerajaan Negeri Kelantan & Satu Lagi* [2004] 3 Current Law Journal, 409, which occurred in the state of Kelantan, the sentence for the appellants, who had declared themselves apostates, was a prison term of two years. On appeal to the Kelantan Syariah Appeal Court, the court affirmed the conviction but reduced the sentence to one year, requiring them to be bonded for good behaviour for a period between three and five years.

Another apostasy case is the case of *Fatimah Tan Abdullah @ Tan Abdullah v. Majlis Agama Islam Pulau Pinang* (Syariah Court of Penang, case no. 07100043-0191-2006). The Syariah High Court allowed the application of Siti Fatimah Tan Abdullah @ Tan Abdullah, 39, to obtain a declaration of apostasy. This is the first case in Malaysia that involves a convert who is still alive since the Syariah Court was given the jurisdiction to manage this type of case. The former Judge of the Penang Syariah High Court, Othman Ibrahim, who heard the case and who is now the Chief Syariah Judge of Perlis, decided to declare apostasy after finding that the plaintiff had never practiced Islamic teachings since her conversion on 25 July 1998. According to her statement of claim, she was never convinced by Islamic teachings and only converted as a condition of her marriage to an Iranian citizen, Ferdoun Ashanian, on 16 September 2004. Siti Fatimah, who once worked as a cook, filed her application after she was abandoned by her husband, who disappeared without cause. In her claim, she stated that throughout the period after her conversion to Islam, she was, in fact, still worshipping the idols Tok Pek Kong, Kuang Tin Ne and Ti Kong (demi-goddess of the sky) according to her old religion, Buddhism, and she had continued eating pork. Consequently, the judge ordered the Penang Islamic Religious Council to revoke the woman's certificate of conversion. To change her status on her identity card, Siti Fatimah was asked to address the National Registration Department because this matter was not within the jurisdiction of the Syariah Court.

The decision in the case of Fatimah Tan can be distinguished from the decision in the case of *Daliph Kaur v. Pegawai Polis Bukit Mertajam & Anor* [1991] 3 Current Law Journal, 2768. In this case, the appellant had applied for a declaration that her deceased son had apostatised. She recounted allegations that while the deceased was still alive, he had rejected Islam by deed poll and returned to practicing Sikhism, that he was re-accepted as a Sikh and always attended Sikh rituals at a Sikh temple, that he continued to eat pork and that he was never circumcised. In this case, the parties mutually agreed to refer certain issues of Syariah to the Fatwa Committee of Kedah State. In determining the issues, the Fatwa Committee decided that the deceased had embraced Islam during his lifetime and had declared the statement of faith and that he was a Muslim and continued to be one. Consequently, the decision of the Syariah Court was to reject the claim that he had apostatised.

The statement by Ahmad Ibrahim, Judge of the Syariah Appellate Court, when deciding the case of *Akbar Ali & Satu Lagi v. Majlis Ugama Islam Negeri Sembilan & Yang Lain* [2004] (Sharia) Current Law Journal, 39 may explain the different decisions in the above two cases. Justice Ahmad Ibrahim stated,

In the circumstances, the issue at hand could not be determined upon the mere perusal of the facts. Such a weighty and serious issue must have called for the deliberations of experts and those

with the necessary qualifications and knowledge of the Islamic law. Looking at the tenor of the case, the determination of the issue required the most analytical attention of these experts. In other words, the question of whether a person had renounced the religion of Islam could only be determined upon a meticulous examination of the facts and the Islamic Law and the proper forum to do that is none other than the Syariah Court.

The Syariah Court has exclusive jurisdiction to adjudicate cases of apostasy. For instance, in the case of *Daliph Kaur v. Pegawai Polis Bukit Mertajam* [1991] 3 Malayan Law Journal, 6, the Supreme Court judge Mohamed Yusof held that the only forum qualified to answer the issue of whether the deceased had renounced Islam during his lifetime was the Syariah Court. This decision was confirmed in subsequent cases, such as *Md Hakim Lee v. Majlis Agama Islam Wilayah Persekutuan Kuala Lumpur* [1997] 4 Current Law Journal, 419.

As stated previously, leaving Islam in Malaysia is considered an offence. In the state of Negeri Sembilan, section 119 of the Administration of Islamic Religion (State of Negeri Sembilan) 2003 provides a comprehensive regulation for applications to convert out of Islam. However, this does not mean that conversion out of Islam is permissible in the state of Negeri Sembilan. Such a provision is included in the enactment purely for administrative purposes and to enable the state government to monitor the number of cases of conversion out of Islam. Indeed, the provision merely proposes a comprehensive administrative procedure that assists in the registration of apostasy cases, from the ex-parte application to the Syariah High Court of Negeri Sembilan to leave Islam, to the order of repentance and attendance at counselling sessions at stipulated times. If the appellant remains adamant about maintaining his or her decision to leave Islam, the officer in charge submits a report to the Syariah High Court. Based on this report, the Syariah High Court pronounces the appellant as leaving Islam.

FEDERAL LEGAL RESTRICTIONS REGARDING THE PROPAGATION OF NON-ISLAMIC RELIGIONS AMONG MUSLIMS

Restrictions on the propagation of non-Islamic religions among Muslims are specific. The authority of the state and federal territories governments to restrict the propagation of religion are only enforceable when the said propagation relates to a group of Muslims or occurs in Muslim settlement areas. General propagation among Muslims, such as through writings or electronic media channels, are quite difficult to control under Article 11(4) (Mohammed Imam, 1994). Moreover, the Internet, which is widespread without borders of territory or time, enables the teachings of non-Islamic religions to be accessible to all, including Muslims. To date in Malaysia, the control of information dissemination via the Internet has

only been imposed in matters that interfere with public order or involve defamation. The Ministry of Home Affairs is urged to take strict action against issues of contempt of religion and race, which have become rampant in the cyber world, especially on Facebook, Twitter and YouTube. A member of the Supreme Council of United Malays National Organisation (UMNO) and of the state legislature (Tanjong Tualang), Shahidan Kassim, urged that Facebook be restricted after claims arose that Facebook account holders had used the social media site to insult Islam and Malaysian leaders. He also urged the Malaysian Commission of Communications and Multimedia, the Malaysian Department of Islamic Development or Jabatan Kemajuan Islam Malaysia (JAKIM) and the National Fatwa Council to take action against the Facebook user involved.

As with other rights of basic freedom, freedom of religion, which covers the right to profess, practice and propagate religious teachings as well as to administer religious affairs, is not an absolute right. All of these rights are subject to general laws relating to public order, public health and public morality, as in Article 11(5) of the Federal Constitution. General laws relating to public order are contained in Article 3(a), Ninth Schedule, Federal List and any provisions by the state and federal governments under Article 11(4). Affairs of public health are enshrined in Article 7, Ninth Schedule and Concurrent List. Matters of public morality relate to offences under Article 4(h) of the Federal Constitution. With the exception of matters stated in Article 9, State List, the State government may share jurisdiction with the federal government under Article 11(5) relating to matters of public health and public morality. The federal government has the jurisdiction to impose any reasonable restrictions on any religion or belief to secure public order, health and social morality, even though such restrictions may be seen as restricting the freedom to practice religion. In the case of *Halimatussaadiah lwn. Services Commission* [1982] 2 Malayan Law Journal, 513, Halimatussaadiah was forbidden to wear *purdah* (a face veil) while at work to maintain the public peace. In this case, the court decision to forbid the wearing of a veil while working was not considered to curtail religious practice because the reason was for the sake of public security (Zainur, 1993).

Legal restrictions on the propagation of non-Islamic religions among Muslims in Malaysia are found in both federal and state provisions. Federal legal restrictions may be enforced against both Muslims and non-Muslims, whereas state legal restrictions are only enforceable against Muslims.

LEGAL RESTRICTIONS AT THE FEDERAL LEVEL

Federal laws contain the basic rights to freedom of speech, to assemble and to form associations as guaranteed by the Federal Constitution. Article 10 of the Federal Constitution states that these freedoms are subject to national interests to avoid any intent, behaviour or action that is believed to, may or will threaten national security. The following examples are laws applicable to all citizens

regardless of race or religion: the Sedition Act 994 (Revised 1969) (Act 15), the Printing Press and Publications Act 1984 (Act 301), the Societies Act (Act 355), the Internal Security Act 1960 (Act 82), the Police Act 1967 (Act 344) (Revised 1988) and the Penal Code (N.M.B. Chapter 45).

The propagation of a doctrine or religious belief is usually backed and mobilised by an organisation or group. These groups often possess a place for their headquarters or titles to certain property assets. All of these matters are subject to a specific act that also functions to control or restrict activities in opposition to government policies, such as the Societies Act 1966, the Companies Act 1965 (act 125) (Revised 1973) and the Urban and Rural Planning Act 1976 (Act 172). Hence, any religious organisation believed to be a possible threat to public order is banned. For example, on 5 August 1994, the National Fatwa Council decided that the ideology of the Al-Arqam group, as contained in two books titled *Aurad Muhammadiyah Pegangan Darul Arqam Sekaligus Menjawab Tuduhan* (Reply to Accusations) and *Manaqib* (Biography) *Sheikh Muhammad bin Abdullah As-Suhaimi*, were deviations from true Islamic teachings. This decision by the National Fatwa Council was gazetted in State Islamic Administration Enactments in Malaysia (Ahmad Fauzi, 2005).

Religious propagation through publications or pamphlets that may adversely affect national harmony is controlled through several acts. For example, The Ministry of Home Affairs is vested with the authority to ban any publications that may threaten national security. In the case of *Menteri Dalam Negeri v. Jamaluddin bin Othman* [1989] 1 Malayan Law Journal, 418, Jamaluddin was detained under the Internal Security Act (ISA) 1960 for propagating the Christian faith among Muslims. The High Court directed his release based on the fact that a person cannot be detained under ISA for his religious beliefs and for propagating those beliefs to Muslims. The Minister of Home Affairs unsuccessfully appealed the decision in the Supreme Court. The Honourable Judge of the Supreme Court, Hashim Yeop Sani, stated,

We do not think that mere participation in meetings and seminars can make a person a threat to the security of the country. As regards the alleged conversion of six Malays, even if it was true, it cannot in my opinion by itself be regarded as a threat to the security of the country [...].

According to Pawancheek Marikan, if the decision in the case of Jamaludin bin Othman were to be assessed in detail, it could be understood that the court directed his release because the authority had misused the Internal Security Act to detain him. Further, Abdul Aziz Bari disagreed with the view that Article 11 of the Federal Constitution provides absolute freedom of religion to Muslims in Malaysia (Abdul Aziz Bari, 2005b: 263–267). This was proven in the case of *Kamariah Ali & Yg. lain v. Kerajaan Negeri Kelantan & Satu Lagi*,

[2004] CLJ, 2768, who had to accept punishment from the Syariah Court as a result of their conversion out of Islam.

In the case of *Ahmad Yani b. Ismail & Anor. v. Ketua Polis Negara & 3 Ors* [2004] 5 All Malayan Report, 571, the appellants challenged the validity of their detention under the Internal Security Act (ISA) and argued that the exercise of the Minister's authority under the ISA had the effect of curtailing their rights that were guaranteed under Article 11 of the Federal Constitution. The appellants argued that in light of Article 11 of the Federal Constitution, Article 149 (under which the ISA order was passed) could not legitimise actions taken under the ISA to curb their constitutional rights under Article 11. The learned judge said she found this argument fallacious because the Minister must have formed the opinion that the activities of the appellant did not fall within the limits of "professing and practising the religion." She further found that clause (4) of the Article, in permitting Federal Law to control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam, clearly evinced the intention that the right accorded under Article 11 was not absolute.

Regarding publications, sections 5, 6, 7 and 9 of the Printing Press and Publications Act 1984 (Act 301) vests authority in the Ministry to issue any licence for the printing, publishing or import of any newspaper or the authority to control any banned publication. In the case of *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Keselamatan Dalam Negeri* [2008] 9 Current Law Journal, 507, the Kuala Lumpur High Court decided on 31 December 2009 that the government ban on the use of the word "Allah" by the Catholic Herald was unconstitutional, a decision that favoured the Catholic Church. The case is still being appealed in the Appeal Court.

The Penal Code (N.M.B. Chapter 45) contains provisions that protect religions, such as the offence of endangering and polluting places of worship with the intention of humiliating a religion (Section 295 Penal Code); the offence of disturbing a religious gathering that is legally performing a religious ceremony (Section 296 Penal Code); the offence of trespassing or damaging places of burial (Section 297 Penal Code); the offence of mentioning words with the intent to hurt the religious sensitivities of a person (Section 298 Penal Code) and the offence of causing disharmony, disunity or feelings of antagonism, mutual hatred or bad intentions or endangering the preservation of harmony or unity based on religious reasons (Section 298A Penal Code).

In the case of *Mamat Bin Daud & Ors lwn Government of Malaysia* [1988] 1 Malayan Law Journal, 119, it was stated that the provision of section 298A of the Penal Code (NMB Chapter 45) covers all acts or behaviour of a Muslim, Hindu, Buddhist or Christian. Further, the acts or behaviour mentioned in section 298A must be related to a practice or the purpose of a practice for a religion.

STATE LEGAL RESTRICTIONS ON THE PROPAGATION OF NON-ISLAMIC RELIGIONS AMONG MUSLIMS

Under state law, state governments are vested with the authority to control any religious activity among Muslims by virtue of the Syariah Administration Enactment and Syariah Criminal Offences Enactment. Article 11(4) of the Federal Constitution has given the state authority through the State Legislature to enact laws to control the propagation of non-Islamic religions or beliefs to Muslims. Section 5 of the Syariah Criminal Offences (Federal Territories) Act 1997 (Act 559) is related to the prohibition of propagating religious doctrine as follows:

Any person who propagates a doctrine or religious belief other than an Islamic doctrine or religious belief among Muslims is deemed to have committed a wrongful act, which if convicted may be fined an amount not exceeding three thousand ringgit or be imprisoned for not longer than two years or both.

This means that a state government has the authority to restrict the propagation of any religion, creed, ideology or even belief that represents partially non-Islamic teaching in the form of films or video or any publication material in writing or picture/graphic form with the intent and purpose of publicising an ideology or belief other than Islam. At present, most of the states, such as Perlis, Johore, Kedah, Kelantan, Negeri Sembilan, Pahang, Perak, Selangor, Terengganu and Malacca, have exercised their powers through their state enactments to legislate laws relating to the control of non-Islamic religion among Muslims in their respective states. Kelantan was the earliest state to do so in 1981, and Johore was the last, in 1991. However, the states of Penang, Sabah and Sarawak do not have such an enactment. State legal provisions are as follows:

1. Control & Restriction of the Propagation of Non-Islamic Religion (Johore) Enactment 1991 (Enactment 12/1991);
2. Control and Restriction of the Propagation of Non-Islamic Religion (Kedah) Enactment 1988 (Enactment 11/1988);
3. Control and Restriction of the Propagation of Non-Islamic Religion (Kelantan) Enactment 1981 (Enactment 11/1981);
4. Control and Restriction of the Propagation of Non-Islamic Religion (Malacca) Enactment 1988 (Enactment 1/1988);
5. Control and Restriction of the Propagation of Non-Islamic Religion (Negeri Sembilan) Enactment 1991 (Enactment 9/1991);
6. Control and Restriction of the Propagation of Non-Islamic Religion (Pahang) Enactment 1989 (Enactment 5/1989);

7. Control and Restriction of the Propagation of Non-Islamic Religion (Perak) Enactment 1988 (Enactment 10/1988);
8. Control and Restriction of the Propagation of Non-Islamic Religion (Selangor) Enactment 1988 (Enactment 1/1988); and
9. Control and Restriction of the Propagation of Non-Islamic Religion (Terengganu) Enactment 1980 (Enactment 1/1980).
10. Control and Restriction of the Propagation of Religious Doctrine which is Contrary to the Religion of Islam (Perlis Enactment No. 6 of 2002).

The discussion in this article refers to the provision of the Control and Restriction of the Propagation of Non-Islamic Religion (Selangor) Enactment 1988. There are six types of wrongful acts identified in the Control Enactment of Non-Islamic Religion related to Islam. First, section 4(2) is the offence of persuading, influencing or instigating a Muslim to change his beliefs, for which the punishment is a fine not exceeding RM10,000, imprisonment not longer than one year or both. There was a case in Pahang of a criminal charge against a non-Muslim for an offence in violation of the control enactment. In the case of *Public Prosecutor v. Krishnan a/l Muthu* (Magistrate Case No. MA-83-146-2002), the defendant threatened the complainant to convince him to abandon Islam and embrace Hinduism. The complainant was also asked to swear in a Hindu temple and was hindered from praying as a Muslim. Two charges were made against the defendant in a Magistrates Court, and he was found guilty. The accused was fined RM2,000 under Section 325 of the Penal Code. He was also convicted under Section 4(2)(i) of the Control and Restriction (Propagation of Non-Islamic Religion) Pahang Enactment 1989, imprisoned for 20 days and fined RM1,500.

Second, Section 5 relates to the offence of exposing a Muslim minor under the age of 18 to non-Islamic influence. The punishment is a fine not exceeding RM10,000, imprisonment for a maximum of one year or both. Cases relating to this section often arise when custody is given to a non-Muslim mother or father on the condition that the non-Muslim parent will not influence the child with religious teachings other than Islam. However, cases such as these are difficult to monitor because children are easily influenced by the behaviour of persons who are closest to them.

Third, Section 7 relates to the offence of sending or delivering any publication or material concerning a non-Islamic religion to a Muslim, which is punishable by a fine not exceeding RM3,000, imprisonment for a maximum of three months or both.

Fourth, Section 8 relates to distribution in a public place of non-Islamic religious publications to Muslims. The federal and state governments have the authority to restrict the distribution of any Malay translation of pamphlets, tapes or recordings of Christian teachings, including the Bible, in Peninsular Malaysia. Any translation of the Bible in Malay is required to have printed on the cover the phrase "Not for Muslims." Hence, there are precedents of Christian religious

books translated into Malay and Iban and other indigenous languages of Sarawak and Sabah being banned. In January 2008, two-thirds of the Bibles brought in by Juliana Nicholas, a Christian missionary from the Philippines, were confiscated by the Customs Department at Kuala Lumpur International Airport (KLIA). However, Nicholas was later able to reclaim them on the grounds that the Bibles were for the use of the church (Suara Rakyat Malaysia [SUARAM], 2009: 118).

Fifth, Section 9(1) relates to the offence of using specific words listed in Part 1 of the Schedule of the enactment in publications or writings, ideas, acts or activities by linking them to a non-Islamic religion. This section explains that it is an offence for a person to use any words that should not be associated with a non-Islamic religion in any published writing, public speech or statement directed at an assembly. Among these words are *Allah*, *firman Allah*, *ulama*, *hadis*, *Kaabah*, *Ilahi*, *Rasul* and *imam*. The use of these words is seen as an intention to relate or describe a fact, belief, idea, concept, act, activity or matter concerning or related to Islam to any non-Islamic religion. If convicted under this section, a person may be fined an amount not more than RM1,000, imprisoned for a maximum of six months or both. An example of such an act is the Herald Catholic Weekly's decision to use the word Allah in an edition of their weekly paper even after the publication had been suspended for the same offence once before. The action of the Herald was clearly in violation of the Control and Restriction Enactment on the propagation of non-Islamic religion among Muslims. Sixth, Section 9(2) relates to the use of Arabic phrases that relate to Islam, and that are listed in Part II of the Schedule, in any publication or writing, idea, act or activity by associating it with a non-Islamic religion. This action is punishable by a fine not exceeding RM1,000. The phrases are *Subhanallah*, *Alhamdulillah*, *Lailahailallah*, *Walillahilhamd*, *Allahu Akbar*, *Insyallah*, *Astaghfirullahal Azim*, *Tabaraka Allah*, *Masyaallah* and *Lahaula Walaquata Ilabillahilaliyil Azim*.

CONSTRAINTS ON LEGAL IMPLEMENTATION

The implementation of laws that control the propagation of non-Islamic religions among Muslims is very difficult. Although the legal provisions seem adequate and appropriate, their enforcement is subject to jurisdictional issues involving Islam, the Syariah Court and non-Muslims. At the state level, the issue is that legal enforcement applies only to Muslims because the Syariah Court cannot prosecute non-Muslims. This is so despite the fact that in all issues related to contempt for or vilification of Islam, the crime is usually perpetrated by non-Muslims. This situation was evidenced in the case of *Abdul Rahim bin Bahaudin* [1989] 1 Malayan Law Journal, 418, in which the High Court of Kedah issued an order prohibiting the Syariah Court from trying the applicant, who was charged with distributing pamphlets of the Ahmadi group, following acknowledgment by the Kedah legal adviser that the applicant was not a Muslim. Thus, the Syariah Court had no jurisdiction over him.

However, there has been one such case tried in the Syariah Court: the case of *Public Prosecutor v. Krishnan a/l Muthu* (Magistrate Case No-83-146-2002). According to Jamil Khir Baharom, Minister in the Prime Minister's Department, the legal provisions become meaningless without enforcement. He also commented that many people in Malaysian society do not realise the existence of this legislation although it has been gazetted since 1980. Hence, Zainul Rijal, President of the Syariah Lawyers of Malaysia, urged that the issue of legal enforcement be resolved immediately. Enforcement of the enactment requires police action, not religious enforcement as is the case with other Syariah criminal offences, such as that of close proximity (*khalwat*), not fasting during Ramadan or absence from Friday prayers. This is because the issue of the propagation of non-Islamic religions among Muslims involves non-Muslims committing an act that is believed to desecrate the Islamic religion. Legal enforcement is not intended to be punitive but rather to create fear in like-minded non-Muslims and, thus, to indirectly deter the phenomenon of the propagation of non-Islamic religions among Muslims (Zainul Rijal, 2009).

With regard to enforcement, Shamrahayu comments that it should no longer be an issue as the State Legislature has passed the Syariah Criminal Procedure laws. In addition, religious law enforcement officers have been equipped with Syariah Criminal Law Enforcement Guidelines through the State Islamic Law Department Director's Permanent Order. With these two instruments, the religious enforcement officers have strong legal support for authority and the enforcement procedure. However, past arrests and prosecutions have failed due to technical problems. Religious enforcement officers have overlooked a number of procedures or guidelines stipulated by the law in the performance of their duties. Arrests and prosecutions in such cases require skill and prompt action by law enforcement officers. Thus, oversight of these important matters will result in the prosecution failing in court (Shamrahayu, 2011).

CONCLUSION

Legal provisions in Malaysia, in terms of federal and state laws, appear to justify the need for Islam to be given a higher status than other religions based on the historical factors of Islamic law in Malaya, the recognition of Islam as the Federal religion and other provisions that must be interpreted in harmony with Islamic law. Hence, Malay Rulers, with the authority and role as preservers of the status of Islam bestowed upon them as Heads of the Islamic Religion, have given their assent to passing the Control Enactment of Propagation of Non-Islamic Religion among Muslims. Existing provisions relating to control of the propagation of non-Islamic religion among Muslims in Malaysia, whether at the federal or state level, are sufficient to preserve the status and sanctity of Islam. The existence of the state's control of non-Islamic religion means that the act of

apostasy or conversion out of Islam is not an absolute right, as some people have understood it to be in reading the provision of Article 11 of the Malaysian Federal Constitution.

However, the issue of court jurisdiction limits the implementation of these laws to Muslims only, with the exception of bearing witness (*bayyinah*) by non-Muslims, as in Nyonya Tahir's case [2006] vol. xxxi Part II Jurnal Hukum, 221. The jurisdiction of the Syariah Court is limited to adjudicating matters involving Muslims only. However, this issue does not arise in relation to federal law because the federal court has jurisdiction over both Muslims and non-Muslims. To date, however, there has been only one such case tried, that of *Public Prosecutor v. Krishnan a/l Muthu* (Magistrate Case No. MA-83-146-2002), in which the prosecution succeeded in achieving a conviction for the crime of propagating a non-Islamic religion among Muslims.

REFERENCES

- Abdul Aziz Bari. 2010. Islam dalam Perlembagaan Malaysia: Cabaran dan pengukuhan. Paper presented at National Conference of Syariah and Law, Universiti Sains Islam Malaysia, Negeri Sembilan, Malaysia. 2–3 November.
- _____. 2005a. *Islam dalam Perlembagaan Malaysia*. Kuala Lumpur: Intel Multimedia Publication.
- _____. 2005b. "Freedom of religion in Malaysia: It is not complicated". *Law Reform* 263–269.
- Agendadaily (Insight News)*. 2011. Titah Raja Nazrin di Kongres Majlis Agama Islam Negeri Seluruh Malaysia. <http://agendadaily.com/Analisa/titah-raja-nazrin-di-kongres-majlis-agama-islam-negeri-seluruh-malaysia.html/> (accessed 16 January 2012).
- Ahmad Fauzi Abdul Hamid. 2005. The banning of Darul Arqam in Malaysia. *Review of Indonesian and Malaysian Affairs* 39(1): 87–128.
- Ahmad Ibrahim and Ahilemah Jones. 2007. *Sistem undang-undang di Malaysia*. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- A. Samad Ahmad. 1979. *Sulalatus Salatin (Sejarah Melayu)*. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Haron Daud. 1989. *Sejarah Melayu: Satu kajian daripada perspektif persejarahan budaya*. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Ismail Hamid. 1991. *Masyarakat dan budaya Melayu*. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Liaw, Y. F. 1976. *Undang-undang Melaka*. Singapore: The Hague-Martinus Nijhoff.
- Mohd Salleh Abas. 1986. *Constitution of Malaysia: Further perspective and development*. Singapore: Oxford University Press.

- Mohammed Imam. 1994. Freedom of religion under Federal Constitution of Malaysia – A reappraisal. *Current Law Journal* June: lxxi.
- Oxford Dictionary Online. <http://oxforddictionaries.com> (accessed 23 May 2012).
- Pawancheek Marikan. 2010. Sekatan penyebaran agama bukan Islam di kalangan orang Islam di bawah Perlembagaan Persekutuan. <http://www.onmalaysianlaw.com/> (accessed 16 January 2012).
- Shamrahayu Abdul Aziz. 2011. Akta murtad dari sudut penguatkuasaan. <http://www.bharian.com.my/bharian/articles/AktaMurtaddarisudutpenguatkuasaan/Article/> (accessed 11 February 2012).
- Suara Rakyat Malaysia (SUARAM). 2011. *Malaysia Human Rights Report 2010*. Petaling Jaya: SUARAM Komunikasi.
- _____. 2009. *Malaysia Human Rights Report 2008*. Petaling Jaya: SUARAM Komunikasi.
- Winstedt R. O., R. J. Wilkinson and W. E. Maxwell. 1974. *A history of Perak*. Malaysian Branch of the Royal Asiatic Society (MBRAS), Kuala Lumpur: Perchetakan Mas Sdn. Bhd.
- Zainul Rijal Abu Bakar. 2009. Peguam syarie menulis: Perlembagaan memartabat Islam. <http://agamaberitaharian.blogspot.com/2009/03/peguam-syarie-menulis-perlembagaan.html/> (accessed 16 January 2012).
- Zainur Zakaria. 1993. Religious freedom: Right to wear purdah. *Malayan Law Journal* 3: xxv–xxx.