

UNILATERAL CONVERSION OF MINORS TO ISLAM: LEGAL DISCOURSE AND MUSLIM CONVERTS' NARRATIVE ON CUSTODY AND RELIGIOUS RIGHTS IN MALAYSIA

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ABSTRACT

The unilateral conversion of minors to Islam is a controversial issue in Malaysia, particularly when it involves conflicting legal rights between Muslim converts and their non-Muslim families regarding issues of parental rights, child custody and determination of the child's religion. Even more pertinent is the fact that the issue of conversion is intertwined with legal and socio-political issues such as the rising Muslim religious conservatism, Islamisation of law and political identity. As such, this article aims to discuss the issues of parental rights, child custody and determination of the child's religion in the context of conversion to Islam in Malaysia from a legal and Muslim convert's perspective. To explore the perspective of Muslim converts on the matter, nine participants were interviewed for the purpose of this study and were recruited through the snowball method amongst activist converts and individuals who were involved in related court cases. This study found that the negotiations that have to be made by these converts demonstrate the pressure they face to prove their commitment to their new religion, all the while maintaining their family dynamic. To some converts, Islam and its terms are referenced in the negotiation process, whether through legal channels or through public discourse; further, there are more peaceful narratives that ensure

the family dynamics and its integrity, despite the ultimate goal being a da'wah (proselytisation) agenda. Beyond Malaysia, this study shows how religious laws impact the lives of multiethnic and multireligious community.

Keywords: freedom of religion, religious conversion, religious rights, conversion to Islam, children's rights

INTRODUCTION

Unilateral conversion of minors to Islam in Malaysia often raises controversy and invites criticism in both local and international academic forums (Najibah et al. 2019; Moustafa 2014), as well as polemic in the media and public discourse (Muhammad Raqib and Azman Azwan 2018). This issue has impacted the family dynamic in Malaysia's multi-ethnic community when custody rights and the child's religion become the subject of contention between a convert and his or her partner of a different faith, which later escalates into an ethnic and religious debate and tension in wider society. Being a multicultural and plural society, the social, political aspects and legal tensions will always be intertwined with the issue of unilateral conversion to Islam (Steiner 2013; Dian 2018). Even more concerning is the narrative that the best interest of Islam is prioritised in determining custody rights and the child's religion (Mohamed Azam and Rafeah 2017; Mahamad Naser 2018), which clashes with the more liberal and inclusive narrative of legal interpretation that puts the child's best interest over religion (Subramaniam 2018). All cases on this issue, as argued by Neo (2015), "highlight the persisting competing secular-religious claims for authority." The current discourse focuses more on construing legal provisions on conversion to Islam in Malaysia, compared to analysing the impact of these legal provisions on the lives of the Muslim converts, when such an analysis is necessary for the communities involved to see how far the law provides them with justice.

Malaysia is one of the few Muslim countries that regulate conversion to Islam through legal provisions. In fact, with the process of Islamisation of the law as argued by Steiner (2018), the civil laws in Malaysia have been shaped to accommodate several matters that may arise when a person converts to Islam such as marriage dissolution due to conversion to Islam under civil family law. This means that although civil law is secular in nature, it is influenced by Islamic law and the interpretation of Islam in Malaysia, a result of the significant policy to harmonise civil law and sharia over the last few decades (Maznah 2013). Arguably, although Islamic law only applies to Muslims, Islamic law also largely impacts non-Muslim

individuals and communities, especially in cases of religious conversion. This context is what makes the debate on the convert's narrative on their legal rights a relevant and pertinent matter to study.

As such, the first part of this article will discuss the views of classical and contemporary Islamic jurists on the right of child custody and the determination of the child's religion from a unilateral conversion to Islam case. The second part will evaluate the relevant provisions in Islamic Family Law that slightly differ by states, as well as relevant provisions in civil law, and previous court case decisions. The interview protocol and the background of the interview participants will be described in the methodology section and followed by an analysis of converts' narratives in the findings and discussion section.

CUSTODY RIGHTS AND THE CHILD'S RELIGION: ISLAMIC JURISTS PERSPECTIVE

The reference of Islamic jurist opinions from the four major Sunni schools is relevant in Malaysian legal discourse, as it has become a significant reference to Islamic law in sharia courts and is also recognised by civil and secular courts (Mohd. Al Adib and Muzammil 2016; Ezad Azraai et al. 2011). The authority of the four Sunni schools in Malaysian Islamic law is derived from States' Islamic Administrative Enactment, particularly in issuing *fatwa* and decision process at the sharia court. For example, Section 2 Administration of Islamic Law (Federal Territories) Act 1993 defines Islamic law as "Islamic law according to any recognized *mazhab* (school of laws)", which applies to the administration of Islam and Islamic justice. Besides, Section 39 Administration of Islamic Law (Federal Territories) Act 1993 provides a clear provision to be adhered to by the authorities:

- (1) In issuing any *fatwa* under Section 34, or certifying any opinion under Section 38, the Mufti shall ordinarily follow the accepted views (*qaul muktamad*) of the Mazhab Syafie.
- (2) If the Mufti considers that following the *qaul muktamad* of the Mazhab Syafie will lead to a situation that is repugnant to public interest, the Mufti may follow the *qaul muktamad* of the Mazhab Hanafi, Maliki, or Hanbali.

Besides sharia courts, the civil courts also permit legal references to be made to other Sunni schools of law, although the majority of Muslims adhere to the Shafie school. This was clearly emphasised in civil court cases such as *Mustak Ahmed Dato' Hj. Abdul Rahim Gulam Rasool Shaik v Abdul Wahid Dato' Hj.*

Abdul Rahim Gulam Rasool Shaik & Ors [1987] CLJ 230 (Rep) [1987] 2 CLJ 412 and *Commissioner for Religious Affairs, Terengganu & Ors v Tengku Mariam Binti Tengku Sri Wa Raja & Anor* [1970] 1 LNS 21. In religious conversion cases, parties such as Muslim converts may use whatever reference from any school as an argument in sharia or civil court. Hence, the discussion in this article will elaborate the Islamic law provision beyond the Shafie School of Law, which to some extent influences the legal discourse on this issue in Malaysia.

According to Islamic law, custodial rights refer to the rights of parents to a child who has not yet reached the age of *mumayyiz* (the age at which a child can discern between right and wrong; 7 to 9 years old); guardianship rights on the other hand come into consideration after the child has attained the age of *mumayyiz*. Islamic jurists define *hadanah* or custody as the care of a person who is incapable of managing him or herself from the aspect of well-being and to provide suitable education according to the development of his or her age (Al-Sharbini 1997; Al-Khin and Al-Bugha 2007). In determining whose responsibility it is to look after these children, the child's welfare must be given utmost priority so that their lives are not devastated by the separation of their parents. Therefore, the objective of custody is to ensure that the child's best interests and education are protected in the event of the parents' divorce. The *ulama* are all in agreement that the mother is more entitled to the right of custody if the child is not *mumayyiz* because it is the mother who nurses the child and will have more care and patience in shouldering the responsibility of raising and educating very young children. The jurists are also of different opinions on the right of guardianship for children who are of the age of *mumayyiz* and above. Shafie jurists posit that when a child is *mumayyiz*, both male and female children are given the choice to stay with the mother or the father (Al-Sharbini 1997; Ibn al-'Arabiyy 2003). On the other hand, the Hanbali jurists argue that the choice can only be given to male children, and that female children should be given to the father on the basis that the father's care is a better guarantee of the child's welfare (Al-Buhuti 1983). As for the Hanafi *ulama*, they state that such choice should not be given to the child at all, regardless of male or female, as guardianship rights will be given to the father as the party whose responsibility it is to provide all necessities, on the condition that the father must be a Muslim (Damadafandi 1998).

Islamic jurists have conflicting opinions on giving the right of custody to a non-Muslim mother or father. The Shafie and Hanbali jurists are in agreement that the child's guardian must be a Muslim. If the mother is not a Muslim, the custody rights of the mother will be removed and given to a Muslim amongst her family members by judicial order. The reason for this is so that the child's status as a Muslim is not threatened by being raised in a manner opposed to Islam (Al-Buhuti

1983; Al-Sharbini 1997). This opinion is based on the Quran 4:141: “and never will Allah grant to the disbelievers a way (to triumph) over the believers.” Seeing how the mother is prioritised to receive the custody right, the jurists have discussed this right for non-Muslim mothers or apostates. However, not all jurists look to the mother’s religion in giving custody rights over children who are under the age of *mumayyiz*. For example, the Hanafi school does not dictate that the mother must be a Muslim, because a mother’s love and care does not change with religion. However, the Hanafi ulama place an exception that a mother is deemed unfit to receive custody rights if she is an apostate (Ibn ‘Abidin 2003; Al-Kasani 1987). The Maliki school is in consensus with Hanafi on the matter of non-Muslim guardians; if there is concern that the child will be given food or drink that is prohibited in Islam such as pork or alcohol, the child must be monitored by at least one Muslim without having to take the child from his or her mother (Al-Dusuki n.d.). This opinion of the Hanafi school is supported by Abd al-Karim (1993), a contemporary jurist, where he stressed that it is not a prerequisite for a mother to be Muslim in order to receive right of custody over a Muslim child if there is no concern of the child’s status as a Muslim being jeopardised. This shows that some jurists consider the best interest of the child and seek to ensure that the child’s well-being is not put at risk due to separation from the child’s mother.

The classical Islamic jurists unanimously agree that if both parents converted to Islam or only the father converted and the mother is a *al-Kitabiyah* (people of the book – Christians and Jews), then the child will become a Muslim. Nevertheless, the jurists have different opinions regarding determination of a child’s religion when only one parent has converted to Islam and the mother is not *al-Kitabiyah*. The majority of the jurists from the Hanafi, Shafie, Hanbali schools and Ibn Wahhab from the Maliki school take the stand that an underage child will follow the parent who converted to Islam, regardless of whether it is the father or the mother. The justification given by jurists is that the child must follow the best religion among the parents, and Islam is the best in comparison to others. Interestingly, the Hanafi school makes an exception if one of the parents converts to Islam in a Muslim state, and the child is not in a Muslim state. In this situation, the child will not follow the Muslim parent’s religion. However, Abd al-Karim (1993) rejects this exception as according to him, a child’s ability to follow his parents in Islam is not limited or hindered by his or her location in a non-Muslim state or otherwise. The minority view taken by the Maliki jurists state that a child’s religion follows that of the father, whether Muslim or not, because guardianship belongs to the father and paternity is also determined by the father (Abd al-Karim 1993). From this debate, it is found that some Islamic jurists closely inter-relate the custody right with the determination of a child’s religion, and that the child will follow the religion of the parent who gains that right. Despite diverse views among jurists on these issues,

Malaysian states consistently adopt the Shafie school's interpretation to their laws even though there are better alternatives and valid opinions from other jurists of different schools that might be more practical for attaining justice.

MALAYSIAN LEGAL CONTEXT

Basically, Islamic law in Malaysia states that the mother is the most qualified person to look after a young child, whether during marriage or after the marriage is dissolved, as mentioned in Section 81 of the Islamic Family Law Act (Federal Territories) 1984 (Act 303). This provision covers parental rights and custody rights at every age. However, Section 82 of Act 303 explains that the condition for qualification to these rights is that the mother must be a Muslim, of sound mind, is of good behaviour and lives in a safe place. The religious status of Islam is the main condition in assigning custody rights under Malaysian Islamic law, where Section 83 of Act 303 expressly states that the mother shall lose the right to custody if she apostatises. This means that a mother who initially had the right to custody but is neither a Muslim nor does she convert to Islam, will have to concede the right of custody to another party including the father, if that party is Muslim, as provided by the law in Malaysia. In a divorce case, the right to custody applies only to children under the age of seven for boys and nine for girls. This provision is clearly stated in all states in Malaysia, such as in Section 84(1) of the Islamic Family Law Act, Federal Territories. If the child has attained the age of *mumayyiz*, they will be given the choice of whom they wish to live with. This means that the mother or father in question will have the right of custody according to the child's choice.

Regarding custody rights of children who are not Muslim in Malaysia, non-Muslim individuals are subject to Act 164 and the Guardianship of Infants Act 1961 (Act 351). Section 88 of Act 164 states that the court can, at any time, order the placement of a child in the care of the father or mother or any relative of the child or any children's welfare organisation or any other suitable party. Section 88(2) of Act 164 determines that the court's main consideration is the child's best interest; the court must also consider the child's parents' wishes for the child, and the child's wishes, should the child be able to form his or her opinion. Section 3 of Act 351 on the other hand provides that the guardian of the child must be responsible for the care, health and education of the child. Both of these statutes stress the interest and well-being of the child as the most important conditions in determining custody rights, with no mention of any condition pertaining to religion.

Regarding the right to religion of the child, Article 12(4) of the Federal Constitution gives a clear guideline: “For the purposes of Clause (3) the religion of a person under the age of 18 years shall be decided by his parent or guardian.” The debate arises due to the Constitution’s use of the singular word “parent”, which could possibly refer to either one parent or require the consent of both parents. If the word being used is “parents”, it would clearly refer to both the mother and father. This provision is further detailed in Section 1(3)(b) of the Guardianship of Infants Act 1961 (Act 351), where both these legal provisions provide that the religion of a person under the age of 18 years can only be determined by the guardian. A child who has not yet reached 18 years old does not have the right to convert or practice a religion other than that practised by his parents without the guardian’s prior consent.

Since the provisions in the Federal Constitution and Act 351 mention that conversion to Islam is allowed with the parent’s or guardian’s consent, all of the state Islamic law administrative statutes provide three forms of parental consent to acknowledge a child’s conversion to Islam if he or she is under 18 years old. Some states use the term regarding consent as “mother or father or guardian”, “mother and father or guardian,” and “parents or guardian”. The Federal Territories, Melaka, Negeri Sembilan, Perak, Kedah and Sarawak use the term consent of the mother or father or guardian. This can be referred to in Section 95 of Act 505, Section 80 of the Islamic Law Administration Enactment (Kedah Darul Aman) 2008, Section 106 of the Islamic Religious Administration Enactment (Perak) 2004, Section 117 of the Islamic Religious Administration Enactment (Negeri Sembilan) 2003, Section 105 of the Islamic Religious Administration Enactment (Melaka) 2002 and Section 69 of the Islamic Council Ordinance Sarawak 2001 that provides for parental or the guardian’s consent for a child’s conversion to Islam when he or she is not yet 18 years old. Selangor, Pulau Pinang, Perlis and Terengganu all use the term “mother and father or guardian” for consent. For example, Section 117 of the Islamic Religious Administration Enactment (Selangor) 2003, the Islamic Religious Administration Enactment (Pulau Pinang) 2004, the Islamic Religious Administration Enactment Perlis 2006 [Amended 2008] and Section 101 of the Islamic Religious Affairs Administration Enactment (Terengganu) 2001 provide: “If he has not reached eighteen years of age, his mother and father or his guardian consents to his conversion to Islam.”

Johor and Sabah are states that use the phrase “parents or guardian” for consent. For example, Section 117 of the Islamic Religious Administration Enactment (Johor) 2003 provides: “If he has not reached eighteen years of age, his parents or his guardian consents to his conversion to Islam.”

Aside from the aforementioned provisions, there is a special provision regarding the status of religion of children of converts to Islam under Section 103 of the Islamic Religious Administration Enactment (Pahang) 1991, which states that if a convert receives custody rights from the civil court, the convert can register his or her child's conversion to Islam. The provision however is silent on the matter of agreement of a non-Muslim or non-converting spouse.

In addition to legal statutes, the questions of custody rights and determination of the child's religion in the case of unilateral conversion has also been discussed in national and state level *fatwa*. When the discourse on determination of a child's religion in cases of unilateral conversion became increasingly heated in Malaysia, the 87th National Fatwa Muzakarah Committee for Islamic Religious Affairs Malaysia (Muzakarah Committee MKI) which took place from 23 to 25 June 2009 decided the following:

1. When one parent converts to Islam, the underage child's religion is also Islam, and custody of the child must be given to the Muslim parent.
2. Hence, when one of the parents converts to Islam, the status of the couple's underage child's religion is automatically Islam.
3. Article 12(4) of the Federal Constitution that provides that the religion of a person under 18 years of age will be decided by his mother or father or guardian does not require amendment.

This national *fatwa* does not bind any individual Muslim to it unless it is adopted and gazetted across the states in Malaysia (Mohd Kamel, Mohd Al Adib and Mohd Izhar Ariff 2018). In relation to this *fatwa*, several states such as Pahang (2009), Sabah (2009), Selangor (2009), Sarawak (2010) and Negeri Sembilan (2017) have adopted and gazetted the abovementioned *fatwa*. However, Selangor made an exception by including a special provision stating that the right to custody of the child must be decided by the civil court, with priority given to the status of the child's religion.

In consequence to the aforementioned *fatwa*, only one state went against the current by issuing different *fatwa* which are inconsistent with other state *fatwa*. The 18th State of Perlis Fatwa Committee conferred from 22 to 23 April 2015 made a decision that shook the Muslim traditionalists in Malaysia, presented as follows:

1. The custody right is not evaluated based on the religion of the mother or father but is instead given to the person who is better suited to caring

for the child's best interests and welfare from a moral, emotional and upbringing point of view.

2. A Muslim mother/father is responsible for introducing Islam to the child.
3. The right of *hadanah* is given to the mother if the child is still nursed by the mother. If not, the right of *hadanah* can be given to whoever is better suited to managing the child's upbringing. This includes children who are no longer being nursed but have not yet reached the age of *mumayyiz*.
4. When a child is *mumayyiz*, he has the right to choose unless it can be proven that his choice will cause detriment to his life.

In explaining this *fatwa*, Mohd Asri (2015) stated that it involved the right of custody over a child who was born at a time when the parents had not yet embraced Islam, but one of them later converted to Islam. Hence, there are a variety of possible outcomes in these situations, such as the couple divorced after a few years and have been living apart. While the child is being raised by the mother and following the mother's religion, the father converts to Islam and claims custody rights over the child. There also has been a situation where the child is only one year old and still being nursed by the mother, when the father converts to Islam and claims rights over the child.

Furthermore, the trend in decisions by Malaysian courts on this issue has evolved from "parent's consent" to "parents' consent". In the cases of *Shamala Sathiyaseelan v Dr Jayaganesh & Anor* [2004] 2 CLJ 416, *Subashini a/p Rajasingam v Saravanan a/l Thangathoray & Anor* [2008] 2 CLJ 1 and *Nedunchelian V. Uthiradam v Nur Shafiqah Mah Singai Annal & Ors* [2005] 2 CLJ 309, the civil courts decided that the consent of one parent is sufficient to enable a child to convert to Islam and registered officially as a Muslim. These court decisions provide either spouse who converts to Islam the opportunity to register their children as soon as they convert, with the hope that they will be awarded custody by the sharia court. This trend in decisions by the civil court continued in the following case of *Indira Gandhi*, at both the high court and court of appeal. However, when the case of *Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 3 CLJ 145 was heard before the federal court in Putrajaya on 29 January 2018, the court unanimously decided that the agreement of both parents was necessary for conversion to Islam if the child is underage. Regardless of the court's civil capacity that, given the circumstances, would lean towards secular values, the court stressed among other things that Islam upholds two main values

which are *al-Adl* (fairness) and *al-Shura* (consultation), and neither of these values will be fulfilled if either the mother or father who converted to Islam can register their children's conversion without the consent of the non-Muslim spouse. The court subsequently argued that fairness is only achieved if both the mother and the father are given the right to be heard by an authoritative body. The court also explained that religion and the religious ecosystem for raising a child is important, and the court's priority is the child's welfare, notwithstanding religious issues and the parents' respective beliefs. The court subsequently stated that if the mother and father could not come to an agreement regarding their underage children's religion, the children shall continue to practice their original religion until the child is old enough to decide, which is at 18 years of age. The court concluded that the religious conversion of an underage child with the knowledge and consent of only one parent is unconstitutional. The court then advised the party that converted to Islam to display the true values of Islam and embrace Islam with pure intentions so that the children and the non-Muslim spouse may be attracted to the religion of Islam without threat or coercion.

The decision of the federal court in *Indira Gandhi* is the case of the highest authority at present and binds all following cases on the matter of determination of a child's religion. In consequence, starting from 2018, a Muslim convert may only register their child's conversion to Islam with the consent of the non-Muslim spouse. However, at the time this article was written, not all of the Islamic administration laws' provisions are in line with the decision in *Indira Gandhi*, thus necessitating updated amendments of the laws in the concerned states. As such, it would be wise and also necessary to analyse the convert's perspective on this issue.

METHODOLOGY

In this study, participants were interviewed face-to-face in a semi-structured, in-depth interview. Through this method, the researcher considered the participants to be experts on their experience and qualified to present their perspective on the issue or phenomenon being researched (Darlington and Scott 2002). For the purpose of this study, in-depth, semi-structured interviews was conducted with nine participants of Chinese, Indian and bumiputera Sabah ethnicities, as listed in Table 1. The group of participants was divided into two categories; the first category was participants who were active in managing the welfare of Muslim converts, and the second category of participants was those who had only recently converted to Islam. Many participants from the first category also had personal experiences in facing the legal implications of conversion to Islam. The research participants were selected via the snowball method, where they came from a

variety of backgrounds in order to gain a broad and varied perspective on the legal implications of conversion to Islam.

Table 1: Participant's profiles

Participant	Ethnicity	Year of conversion to Islam
Participant 1	Indian	1991
Participant 2	Indian	1991
Participant 3	Indian	1975
Participant 4	Chinese	2005
Participant 5	Indian	2000
Participant 6	Indian	1986
Participant 7	Bumiputera	1985
Participant 8	Indian	2012
Participant 9	Indian	2015

To protect the participants' identities, the names of the participants are not stated in this research. Participants in this study consisted of Muslim converts from three ethnic groups, namely Indians, Chinese and bumiputera. Seven out of nine interview participants were people who had first-hand experiences of facing legal conflicts as a result of converting to Islam and the rest were also effectively assisting other Muslim converts who were facing their own legal issues, such as custody rights and determination of children's religion. The first participant is a manager in a non-governmental organisation (NGO) sponsored by the state religious council, that is dedicated to educating and providing for the welfare of converts. Despite himself not having the experience of personally facing a legal issue, he has assisted countless Muslim converts who face legal issues in civil or sharia courts. The second participant is a convert who is currently active as a religious speaker and is a member of the national council in a government-linked Muslim converts organisation. He frequently delivers lectures at mosques and gets heavily involved in issues revolving around converts at the national level. Besides that, he is also responsible for conducting religious training modules at his institution of which must be attended by all registered Muslim converts.

The third participant is a Muslim convert who has been active for more than 20 years and works as a welfare manager and counsellor for a government-owned Muslim convert organisation. The long years of actively managing converts has made him heavily experienced in legal issues related to converts, such as reverting to their former faith and family conflicts. The fourth participant is a young Chinese Muslim preacher who has a strong social media presence and is

actively spreading Islamic contents through his online engagement. He also leads a multi-ethnic religious organisation that focuses on aspects of education and *da'wah* (proselytisation) around Klang Valley, including his outreach projects such as street *da'wah*. The fifth participant is a young Indian Muslim convert who mobilises an Islamic group that focuses on Islamic education and rehabilitation in two states. Like the fourth participant, he is also active on social media and online preaching. Whereas, the sixth participant takes a hands-on approach in Pulau Pinang, directing a group devoted to *da'wah* efforts, and looking after the welfare of converts. The organisation receives hundreds of visitors every year since its establishment, many of whom embrace Islam.

The seventh participant, a bumiputera from Sabah, is one of the prominent Islamic preachers from a *da'wah* movement with decades of experiences in engaging with Muslim converts. The eighth participant is a Muslim convert involved in a high-profile court case to obtain custody of his children and determine their religion. He unilaterally converted his underaged children to Islam and registered them as Muslims. His daughter now lives with her mother, who has not converted to Islam, while his son lives with him. The case has attracted media interest from both local and international organisations. The last participant is a Muslim convert with three children who had separated from his wife after embracing Islam. Yet, the court had ruled he could see the children who remained with their mother's faith.

To fulfil the "golden standard" purported by Hansen (2006) in producing interview transcripts, the researcher conducted data transcripts on all the audio recordings of the interviews. For the purpose of data analysis, a coding process using NVIVO software was applied. Using thematic method, several themes were formed during the coding process, and nodes of the same category were collected to depict the findings of the entire interview. Given how this research project covers a considerably large topic on the legal implications of conversion to Islam, this article will only include findings specific to the participants' narratives on custody rights and the child's right to religion only.

FINDINGS: MUSLIM CONVERTS' NARRATIVES ON CUSTODIAL RIGHTS AND RELIGIOUS RIGHTS

In the context of religious conversion in Malaysia, the issue of claiming custodial rights arises when one spouse converts to Islam by him or herself without their spouse's knowledge. According to Participant 2 who has experience in being involved with high-profile cases regarding custodial rights claims over children of converts:

The cause of it all, before converting to Islam, both agree to convert to Islam. Then when it's time to convert to Islam, one of them backs out. Then the wife or the husband goes and files in court, claims rights over the children and all. Then the case drags on and on.

The conflict over custodial rights between a convert and his or her non-Muslim spouse is continuous, and receives the attention of the media and society, where numerous negative implications have to be endured by the party who converted to Islam, the non-Muslim spouse and their children, such as emotional pressure and interference from outsiders in family decisions. In the same process, there is a possibility of ill perception towards Islam when conversion to Islam is seen as the reason for the conflict. The emotional pressure on the children as a result of the conflict and battle for custodial rights are among the negative impacts that are regretted by several of the participants. This situation was depicted by Participant 4 who said, "The emotional pressure is on their children because in the end they have to face the community. Your parents are fighting over you!"

The situation worsens when outside parties interfere in the family's decisions, to the extent where the children are hidden from the party that converted to Islam. As a result, there are converts who are prevented from seeing their children for several years because they were taken away from them by their non-Muslim spouse with the help of outside parties. Two participants in this research narrated their own experience of being faced with the situation of their children being hidden from them. Participant 8, who wanted to take his daughter after being awarded custodial rights from the sharia court, narrated the following:

At the time, my ex-wife had taken my daughter away. I could only look after my boy. She took her, hid her away...I didn't know she kept her for almost 4 years, I didn't see her.

Participant 9 also expressed his disappointment at not knowing the status of all three of his children for a month because they were hidden by his spouse with the help of a non-Muslim NGO. He narrated:

I went to many places, made a police report, all of it, couldn't find them. I only saw them after a month. They got protection from Hindu organisation. Hindu organisation hid them with the help of my ex.

Based on an analysis of the interviews with the participants, there are three factors that cause the participants to react by claiming custodial rights, which are the spouse is immoral, denial of access to see the child by the spouse and encouragement from Muslim friends. In narrating his experience to obtain custodial rights,

Participant 8 insisted that in the early stages, he had given his children who had all been registered as Muslims to be looked after by his non-Muslim ex-wife. However, when he found out that his ex-wife was involving the children in immoral activities based on information supplied by his neighbour, he took action by applying for custodial rights in court in order to protect their best interests and welfare. Denial of the right of access to converts to see their own children is also a factor why these converts react by filing a claim for custody rights. Participant 8 narrated, “When I tried to see the children, she would scold all sorts, I was a womaniser, I liked men, whatever, and I was a junkie. In front of the children, she would yell at me.” He was denied access to his children by his ex-wife, despite living nearby; he then filed for custody rights of his children in the sharia court. Encouragement from Muslim friends also puts pressure on Muslim converts to claim custodial rights from their non-Muslim spouses. Participant 8 said that his neighbours and friends who knew of his conversion to Islam never tired of advising him, “don’t just let your children go just like that...you’ve brought them to Islam,” to the extent that he felt guilty if he did not claim custodial rights in sharia court as advised.

The research also discovered three factors why converts do not claim custodial rights, which are that the child is almost of adult age, lack of legal advice and advice from NGOs. According to Participant 4 who actively manages the welfare of converts to Islam, a number of converts choose not to claim custodial rights over their children. For example, if the child is in secondary school, the convert may decide to “allow the ex-husband to look after the child, and she will communicate with her children as normal.” Further, Participant 9 shared his similar experience of receiving legal advice that drove them to decide against claiming custodial rights over their children. However, after he signed his agreement to surrender custodial rights to his non-Muslim partner, he was informed by other sources that there was a way according to the law for the father to obtain custodial rights. The participant said regretfully, “I regret what I did and tried to fight back, but I didn’t get them back.”

Some converts decide not to claim custodial rights after receiving advice from NGOs to prioritise the aspect of the child’s welfare and opportunity for long-term *da’wah*. This is due to the conflict of custodial rights claims in court having a negative impact on the child. Although converts are advised not to claim for custodial rights in order to avoid family conflict, Participants 3 and 5 stated that converts are also advised to be responsible for delivering the message of Islam to their children. For example, Participant 5 confidently said, “you can’t run from the angle of the child’s Islamic faith; a convert should be closer to his child so he can give input relating to Islam.”

The participants spoke of implications of surrendering custodial rights to the non-Muslim spouse. Among the implications are continuation of rituals and traditions of the original religion, maintenance of original identity, maintenance of non-halal diet, children not learning about Islam and children not interested in Islam. In the interview with Participant 8, he mentioned that his efforts to bring an Islamic teacher to the house to teach the basics of Islam to the children were blocked by his ex-wife. Even his efforts to ask the school for his child to be enrolled in the Islamic studies class also failed. The recommendation was not approved by the headmaster as his ex-wife had warned the school not to give the child any education on Islam. Although some Muslim converts have given their children a new Islamic-Arabic name, when custody is handed over to the non-Muslim spouse, the child will often continue to use his or her original name and identity. There were cases when the child's Islamic identity was unknown to the school, as experienced by Participant 9, who found his child's original name was still registered in the school despite the child's conversion. Providing a non-halal diet to the children is also a challenge when child custody is handed over to the non-Muslim party. Participant 9 recounted his experience reminding his ex-wife in a polite manner of the halal diet for their children. However, his advice ended in a fight that involved police intervention. His ex-wife did not want to cooperate on the legal aspects of maintaining a halal diet for her child who had been registered as Muslim. Some participants described non-Muslim spouses who received custody of their children as distancing the children from the process of Islamic education. For example, Participant 9, who receives weekly visitation rights, said his efforts to talk about religion to his children were difficult because "the children were 'poisoned' by certain parties. Any communication on religious topics was not welcomed by his children".

In connection with the unilateral conversion of minors, the participants provided two different narratives on the laws and procedures for registering the child as a Muslim in religious institutions, subject to the legal provisions of the state concerned. Some said that the religious department allows for the registration of a Muslim child without the consent of a non-Muslim spouse, while the other participants said that the religious department will only register a child as Muslim if they have the consent of both parents. For example, Participant 1, who is a convert activist in Negeri Sembilan, stipulates that the Islamic family law enactment in Negeri Sembilan allows one of the legal parents to register the conversion to Islam of a child under 18 years of age. Participant 1 explained:

Children under this age must get permission from their mother or father or guardian. So, if either the mother or father brings the child to convert to Islam, our enactment allows us to accept the conversion, provided that either parent is the child's legitimate mother or father.

On the other hand, Participant 6, who actively manages the well-being of Muslim converts in Pulau Pinang, says the consent of both parents is required before a child under the age of 18 years old can be registered as Muslim in Penang. According to him, “the consent of one, so far, cannot be in Penang. It has to have two consents.” In a similar view, Participant 3, who actively manages charity work for Muslim converts in Kuala Lumpur stated, “before, it was enough to have one person, now it is not possible. Now, if underage, cannot register [without both parents’ consents].”

The above shows that all the participants adhered to the existing laws in their respective states, without taking any steps that could cause their child’s conversion to Islam to be challenged. However, this study detected two factors why some converts register their children’s conversion to Islam without the consent of their non-Muslim spouse. The first factor is to save the child from an immoral spouse according to the perspective of Islam. “Daddy, last night we went to the disco,” said the child of Participant 8 who at the time was six years old during a visit to drop off some breakfast for his children. Shocked and disappointed to hear what the little child had to say, he was determined to register his children’s conversion to Islam with the hope that it would enable him to seek custody of the children while saving them from being influenced by the immoral life of their mother. He also explained that the process of registering his son’s Islamic conversion took place one year after his conversion, denying the public’s perception that he had registered his children’s conversion to Islam immediately after he converted to Islam. The second factor is that some Muslims register their children’s conversion to Islam because they want their children to be raised in according to Islam. For example, Participant 1 stated, “When I converted to Islam, I wanted my children to convert to Islam. There are some who really want to raise their child in Islam.”

One of the reactions of non-Muslim spouses when they find out about the conversion of the child is that they will apply to the civil court to cancel the conversion to Islam. Participant 9 shared his experiences with ex-wife’s application to cancel the conversion, which was also aided by non-Muslim NGOs. According to him, “The Hindu organisation was the one that helped, and after six to eight months of this case in the Jalan Duta KL Court, on the 29th of that month, the judge ruled that the children were irrevocable.”

Participant 8 recounted the dramatic experience of converting his children when, coincidentally, his ex-wife also came to the religious office on the same day to obtain documents relating to Islamic conversion for divorce. According to Participant 8, his ex-wife raged at the religious office and to this day does not allow

the child under her care to practice Islam, even though the child has been legally converted to Islam.

In order to prioritise *da'wah* efforts, there are participants who feel that they should focus more on Islamic *da'wah* to their children rather than engage in prolonged conflict in order to convert them to Islam while they are under the age of 18 years old. Participant 4 argues that educating a child to know Islam without registering the conversion of their religion will benefit them more. According to him,

The issue is to educate in the spirit of Islam that is to raise them with Islam, practice Islam, show him the way of Islam. Teach him to pray, teach him to read the Quran. No, he does not need to convert to Islam in an official way to become a Muslim.

Participant 4 argued that there is no compulsion in Islam as described in the Quran 2: 256. According to him,

La ikraha fiddin means cannot be forced ... That is, if from the context of the verse, one wants to embrace another religion, while the other chooses Islam. It's okay, teach both [religions], in the end let the child make a decision.

For Participant 4, this approach is safer for all parties, especially the children, and believes the approach will encourage the children to convert to Islam after they reach adulthood because, according to him, the child will tend to wards Islam following the good conduct of their mother or father who embraced Islam.

DISCUSSION: MUSLIM CONVERTS NEGOTIATION

In the unilateral conversion of minors to Islam cases, this study found that some converts were trapped between protecting the best interests of their children and the pressure of proving their commitment to Islam, the religion they had just embraced. Muslim converts need to negotiate whether to maintain the integrity of the family by maintaining custody with the non-Muslim spouse and maintaining good relations or opting to adhere to Islamic law by registering the child's religious conversion. Choosing the second option almost guarantees that legal dispute will follow, which may affect the child's emotions and well-being and family dynamics.

To some converts, religion is a term of reference in this negotiation process. It is also the first step in the process of building a new identity as a Muslim that is maintained at all costs (Peek 2005). Following the rise of conservative values in

the grip of the Muslim community in Malaysia (Hoffstaedter 2014), some parties view this issue as a threat to Islam and advocating Muslim rights through the legal avenue as a form of defence mechanism. Thus, the discourse on child custody and religion in the classical *fiqh* framework is still being referred to and enforced, including through court submissions and public discourse. Muslim converts see the Islamic law perspective as the only way out of this family dispute, without getting any alternative views.

Muslims in Malaysia are actually caught in two narratives of Islamist and religious groups seeking to gain custody and determination of their children's religion, with the secular liberal group seeking to maintain the status quo of the child's religion in the name of the best interest and welfare of the child. This clash of narratives was first voiced by Hoffstaedter (2013), who noted that such issues arise from the increasing influence of Islam over other religions in public spheres recorded in many legal cases, public discourse and private conversations. In fact, for Ahmad Fauzi (2018), in following the emphasis on sharia-based values by the government, political parties and religious institutions on laws and policies, it is this, which is otherwise known as "shariatization" that has caused this dispute. As a result, converts need to favour one of the narratives of choice which is in line with their new religion as interpreted by the Muslim majority group in Malaysia. In addition, based on the interviews, the participants clearly described the involvement of various parties, especially religious groups and institutions, Muslims and non-Muslims alike, who sought to intervene, as well as provide support, in these cases of dispute. These religious groups appear to want to expand their influence and take the opportunity to express their visibility in such sensitive issues (Lemière 2014, Mohd. Al Adib and Muzammil 2014). At the national level, this controversial issue has also triggered tensions in ethnic and religious relations, especially when there are political parties and organisations manipulating the issue to satisfy their political interests.

In between the lines of these narratives, there is a more accommodating narrative with a focus on maintaining good relations and family integrity but with the intention of *da'wah* agenda. The narrative calls for the various parties to refrain from dispute, especially converts, and instead to approach their children by introducing Islam in stages without registering them as Muslims. Such narratives, even though espoused by a minority, deserve attention in resolving such controversies in the Malaysian context. Despite being incompatible with the views of Islamic jurists and the provisions of the existing state laws, such narratives should be the starting point for more courageous contemporary Muslim scholars to declare a resolution to disputes over guardianship, custody rights and determination of a child's religion following religious conversion in the context of Malaysian pluralistic society.

However, why is this narrative not developed, and may not be well received by the majority of Muslims in Malaysia? Perhaps, it is due to an increasing number of Muslim converts' registrations is the key performance indicator (KPI) that Islamic institutions wish to achieve, and even for the growing Muslim population to assert further dominance, if not to defend the position and influence of Islam in the contentious public sphere.

Another less controversial approach in resolving Muslim converts' legal dispute is through mediation, which offers a legal conduit to justice with less conflict and less trauma to the children involved (Subramaniam 2018; Mohamed Azam 2018). As Nora (2012) suggested, mediation may be a viable option for parties dissolving their marriage due to conversion to Islam, particularly on issues related to alimony, child custody and matrimonial property. It would be more convenient for the parties involved to resolve the matter through a quicker course of action than proceeding to court, which would definitely require more time and consume more resources. Therefore, it would be preferable if the parties in dispute decide to attend a mediation session instead of going to civil court. The purpose of mediation is to reduce societal tensions in a multicultural society caused by legal disputes such as religious conversion (Saleena 2016). Furthermore, mediation also can preserve the parents' good relationship, which is important for the child's emotional well-being (Najibah et al. 2019).

Therefore, it is vital for the mediators to not have a vested interest in the outcome of the dispute. Instead, a neutral committee should be formed, consisting of lawyers and religious scholars. Although the Malaysian sharia courts provide a mediation service named *sulh*, the availability thereof to non-Muslim petitioners is quite limited. Parties can file their cases in mediation services provided by the government agency such as the Legal Aid Department and also from private services, mainly by professional lawyers or mediators registered under the Malaysian Bar Council (Nora 2007). The agreement on the children's religion should be drafted properly in order to ensure compliance. Furthermore, the decisions regarding the issues of Islamic conversion of the minors by a mediation panel can be further enforced by a civil court.

CONCLUSION

Following the process of Islamisation or shariatisation of law and politics in Malaysia, the interpretation of classical Islamic jurists has been adapted to the codified state of Islamic law, especially the view of the Shafie school. This rigid approach has made the law less flexible in resolving controversial issues such as

the unilateral conversion of minors to Islam. Even more so, the civil law that was adapted from English common law has been affected, when many legal provisions and civil court decisions have taken Islamic law into account. The reverberation, whether good or bad, have been experienced by multiple parties, Muslims and non-Muslims, particularly in this case, as described in the convert's narratives in this study.

A religious discourse based on the classical Islamic framework will continue to dominate society in Malaysia, in line with the rise of religious conservatism among Muslims. The negotiations made by the converts in custody and unilateral conversion cases reflect the pressure that the converts face in proving their commitment to the new religion and maintaining the family dynamic, while building a new religious identity. With the intervention, pressure and support of religious groups on the affairs of their case, converts and non-Muslims parties are also implicated in identity politics in Malaysia which is the backbone of this issue. Perhaps adopting an alternative narrative in resolving this issue, as expressed by the minority of the participants in this study, can help to maintain social cohesion in Malaysia.

As one of the notable findings in this research, the use of mediation to amicably settle this court dispute is imminent, through government agency or private service. This potentially diminishes societal tension as all parties are not bound to any religious court decision, and children may not be put through a psychologically damaging experience. Malaysia already has a clear and detailed legal provision on mediation, and with that, each party's rights and responsibilities may be best outlined in the agreement on the children's religion and upbringing. Children, themselves, can also be involved in the mediation process to ensure that their voices will also be heard. Moreover, Muslim converts and their families should be provided guidance and support by the religious authorities in managing the legal implications of the conversion to Islam to ensure that the best interests of all parties can be protected. In such family disputes, the best outcome from the competent court is to prioritise shared parenting for the underage children and allow them to decide their own religion at 18 years old. If Muslim converts fail to secure the custody rights from the civil court, they must continue to engage with their children, maintain a good parent-child relationship, introduce Islamic teachings and practices; as long as the court permits.

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