

**A STUDY ON MALAY APOSTATES IN  
MALAYSIA**

**SANTHIRA MOGAN A/L NALATHAMBY**

**UNIVERSITI SAINS MALAYSIA**

**2021**

**A STUDY ON MALAY APOSTATES IN  
MALAYSIA**

**by**

**SANTHIRA MOGAN A/L NALATHAMBY**

**Thesis Submitted in fulfilment of the requirement  
for the degree of  
Masters of Arts**

**January 2021**

## DECLARATION

### UNIVERSITI SAINS MALAYSIA ORIGINAL LITERARY WORK DECLARATION

Name of Candidate : Santhira Mogan a/l Nalathamby (590114-08-5149)

Registration /Matric No : P-MH0005/19(R)

Name of Degree : Master in Islamic Studies (Sharia Law)

Title of Project Paper : A Study of Malay Apostates and Their  
Constitutional Rights.

Field of Study : Fiqh Jinayat

- (1) I am the sole author / writer of this work;
- (2) This work is original;
- (3) Any use of any work in which copyright exists was done by way of fair dealing and for permitted purposes and any excerpt or extract from or reference to or reproduction of any copyright work has been disclosed expressly and sufficiently and the title of the work and its authorship have been acknowledged in this work;
- (4) I do not have any actual knowledge nor do I ought reasonably to know that the making of this work constitutes an infringement of any copyright work;
- (5) I hereby assign all and every rights in the copyright to this work to the Universiti Sains Malaysia (USM), who henceforth shall be owner of the copyright in this work and that any reproduction or use in any form or by and means whatsoever is prohibited without the written consent of USM having been first had and obtained;
- (6) I am fully aware that if in the course of making this work, I have infringed any copyright whether intentionally or otherwise. I may be subject to legal action or any other action as may be determined by USM.

Candidate's signature:

Date: 5 September 2020

Santhira Mogan a/l Nalathamby

Subscribed and solemnly declared before;

Name : **Assoc. Prof. Dr. Jasni Sulong**

Designation: **Supervisor**

Witness's signature

Date: 5 September 2020

## QUOTATION

“TO THOSE WHO BELIEVE, NO EVIDENCE IS NECESSARY.  
TO THOSE WHO DISBELIEVE, NO EVIDENCE IS SUFFICIENT.”

Stuart Chase

“I WENT TO THE WEST AND SAW ISLAM, BUT NO MUSLIMS  
I GOT BACK TO THE EAST AND SAW MUSLIMS, BUT NOT ISLAM.”

Muhammad Abduh

## ACKNOWLEDGEMENT

Perusing my masters has been both a painful and enjoyable experience. The many obstacles that I have to endeavour, tears and laughter that accompanied my venture in accomplishing my report will forever be engraved in my thoughts. I realized that with the hardship and frustration that I encountered during my strenuous time, there will always be an encouragement and kind help from many people. Though it may not be enough to express my heartfelt gratitude in words to all those people who have helped in so many ways, I would still want to offer my appreciation to all these individuals.

First of all, I would like to give my sincere thanks to my supervisor, Assoc. Prof. Dr. Jasni Sulong. With my little experience in research, my supervisor has guided me patiently and offered so much advice in completing and amending my report. There were hiccups along the way but without his help, I could not have finished my report successfully.

I would also like to thank all my respondents who have offered me their time when I collected my necessary data for this study, “thank you so much for being very helpful and thank you for all the patience that you guys showed”.

## TABLE OF CONTENTS

<b>ACKNOWLEDGEMENT</b> .....	<b>ii</b>
<b>TABLE OF CONTENTS</b> .....	<b>iii</b>
<b>LIST OF TABLES</b> .....	<b>vii</b>
<b>LIST OF ABBREVIATION</b> .....	<b>viii</b>
<b>LIST OF CASES</b> .....	<b>ix</b>
<b>LIST OF TRANSLITERACY</b> .....	<b>x</b>
<b>LIST OF APPENDICES</b> .....	<b>xii</b>
<b>ABSTRAK</b> .....	<b>xiii</b>
<b>ABSTRACT</b> .....	<b>xiv</b>
<b>CHAPTER 1 INTRODUCTION</b> .....	<b>1</b>
1.1 Preface.....	1
1.2 Background of the Study.....	2
1.3 Problem Statements .....	5
1.3.1 Many Malays have been found to have apostatised. ....	5
1.3.2 No Legal Way to Leave Islam.....	6
1.3.3 Once a Malay-Muslim always a Malay-Muslim.....	6
1.4 The Research Objectives.....	7
1.5 Research Questions.....	7
1.6 The Scope of the Study and Limitation .....	7
1.7 The Significance of the Study.....	8
1.7.1 Great Impact on Policy Makers .....	8
1.7.2 Help Parents and Guardians .....	8
1.7.3 Bring Back the Gay Community .....	8
1.7.4 Aligning Hadith with Context .....	9

1.8	Literature Review .....	9
1.8.1	Punishment for Apostasy .....	9
1.8.2	Freedom of Religion for Malays.....	15
1.8.3	Apostasy Cases in Shariah Courts.....	18
1.9	Methodology .....	22
1.9.1	Kinds of Research Involved .....	23
1.9.2	Methods of Data Collection .....	23
1.9.2(a)	Library Research.....	24
1.9.2(b)	Field Research .....	24
1.9.2(b)(i)	Interview.....	24
1.9.2(b)(ii)	Questionnaires .....	25
1.9.2(b)(iii)	Church Visits.....	25
1.9.3	Qualitative Data Analysis .....	25
1.9.4	Quantitative Research.....	28
1.9.4(a)	Quantitative Data Collection.....	29
1.9.4(b)	Quantitative Data Analysis .....	29
1.10	Ethical Consideration.....	30
1.11	Conclusion .....	30
	<b>CHAPTER 2 APOSTASY UNDER ISLAMIC LAW.....</b>	<b>32</b>
2.1	Preface.....	32
2.2	Apostasy .....	32
2.2.1	The Circumstances that leads to apostasy .....	36
2.2.1(a)	Words.....	37
2.2.1(b)	Actions.....	38
2.2.1(c)	Internal Disbelief .....	41
2.3	The Issue of Takfir Against Muslims As Apostates .....	43
2.3.1	Takfir in the Qur'an and Hadith.....	44

2.4	Shahadatayn in Islam and Apostasy .....	48
	2.4.1(a) ‘The Prerequisites of the Declaration of Faith.....	50
2.5	Apostasy during the Early Days of Islam prophet.....	56
	2.5.1 Apostasy during the time of our Prophet.....	56
	2.5.2 Apostasy during the Rashiddun Caliphate.....	58
	2.5.3 Apostasy during the Umayyad and Abbasid Caliphate .....	60
2.6	Punishment for Apostasy .....	65
	2.6.1 Punishment for Apostasy in the Quran.....	65
	2.6.2 Punishment for Apostasy in the Hadith.....	66
	2.6.3 Using Tarjih to reconcile opinions.....	68
2.7	Punishment for Apostasy under Takzir .....	74
	2.7.1 Different forms of Takzir Punishments.....	74
	2.7.2 Takzir and the death penalty (al-ta'zir bil-qatl ).....	75
	2.7.3 A judge's power of discretion.....	75
2.8	The Conclusion.....	76
<b>CHAPTER 3 THE MALAYSIAN LEGAL SYSTEM AND APOSTASY ....</b>		<b>79</b>
3.1	Preface.....	79
3.2	The History of the Malaysian Legal System.....	79
3.3	The Syaria Court.....	92
	3.3.1 Amendment to Article 121(1) - 1988.....	103
3.4	Malay Apostasy and their Constitutional Rights.....	110
3.5	Apostasy Cases in Sharia Courts .....	115
3.6	The legal Position of Malay Apostates.....	122
3.7	Conclusion .....	123
<b>CHAPTER 4 APOSTASY AMONG MALAYS IN MALAYSIA .....</b>		<b>126</b>
4.1	Preface.....	126
4.2	Demographic Analysis of Malay Apostates.....	128



4.2.1	Gender of Respondents.....	129
4.2.2	Age of Respondents.....	129
4.2.3	New Beliefs of Apostates.....	130
4.2.4	Academic Educational Level of Apostates.....	131
4.2.5	Religious Background of Apostates Family .....	131
4.2.6	Islamic Knowledge of Apostate Before Apostasy .....	132
4.2.7	Current Residence of Apostates .....	133
4.2.8	Reason for Apostasy.....	134
4.2.8(a)	Sexual Abuse by those deemed Religious .....	134
4.2.8(b)	Not Accepted for Being Gay.....	142
4.2.8(c)	Marriage to Christians.....	146
4.2.8(d)	Getting Christian ‘Hidayah.’.....	150
4.2.8(e)	Atheism: Receiving ‘Atheist Hidayah’ .....	159
4.2.8(f)	Problem with Islamic Morals.....	168
4.2.8(g)	Problem with Quranic Science and Hadiths .....	170
4.2.8(h)	Because of Christian Prince and Zakir Naik .....	175
4.2.8(i)	Liberal Opinions.....	177
4.4	Conclusion .....	182
<b>CHAPTER 5 CONCLUSION.....</b>		<b>184</b>
5.1	Preface.....	184
5.2	Conclusion .....	184
5.3	Recommendations .....	197
<b>BIBLIOGRAPHY.....</b>		<b>200</b>
<b>APPENDICES</b>		
<b>PUBLICATIONS</b>		

## LIST OF TABLES

	<b>Page</b>
Table 3.1	Shariah Criminal Punishments in some states in Malaysia..... 116
Table 3.2	States that do not have Apostasy Provisions but only power to determine status of Religion..... 118
Table 4.1	Gender of Respondents..... 129
Table 4.2	Age of Respondents..... 129
Table 4.3	New Beliefs of Apostates..... 130
Table 4.4	Academic Educational Level of Apostates..... 131
Table 4.5	Religious Background of Apostates Family ..... 131
Table 4.6	Islamic Knowledge of Apostate Before Apostasy ..... 132
Table 4.7	Current Residence of Apostates..... 133
Table 4.8	Reason for Apostasy..... 134

## LIST OF ABBREVIATION

ASLI	Asian Strategy and Leadership Institute
BBC	BRITISH BROADCASTING CORPORATION
BEBAS	BEBAS SEKUALAR DAN SAKSAMA
CA	Court of Appeal
CDHRI	Cairo Declaration of Human Rights Instrument
CITU	Centre for Islamic Thought and Understanding
CJ	Cheif Judge
CLJ	Civil Law Judge
FC	Federal Constitution
FMSLR	Federated Malay States Law Report
ICCPR	International Convention of Civil and Political Rights
ISA	Internal Security Act
J	Judge
JAKIM	Jabatan Kemajuan Islam Malaysia
JMCL	Journal of Malaysian and Comaprative Law
LGBT	Lesbian, Gay, Bisexual and Transexual
LP	Lord President
MLJ	Malaysian Law Lournal
PAS	Parti Islam Se Malaysia
SCR	Supreme Court Report
UiTM	Universiti Teknology MARA
UMNO	UNITED MALAYS NATIONAL ORAGANIZATION
UNDR	Universal Declaration of Human Rights

## LIST OF CASES

Abdul Kahar bin Ahmad v Kerajaan Negeri Selangor (Kerajaan Malaysia, Intervener) & Anor [2008] 3 MLJ

Abdul Rahim Bin Haji Bahaudin v Chief Kadi, Kedah [1983] 2 MLJ

Che Omar bin Che Soh v Public Prosecutor & Wan Jalil Bin Wan Abdul Rahman & Anor v Public Prosecutor. (1988). 2 MLJ

Daud Mamat & Ors v Majlis Agama/Adat Istiadat Melayu, Kelantan & Kerajaan Negeri Kelantan [2001] 2 CLJ

Dato' Kadar Shah Tun Sulaiman v Datin Fauziah Haron [2008] 7 MLJ

Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor [1992] 1 MLJ

Hjh Halimatussadiyah v Public Service Commission, Malaysia & Anor [1994] 3 MLJ

Jamaluddin bin Othman v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1989] 1 MLJ

Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor [2006] 4 MLJ

Lina Joy v Agama Islam Wilayah Persekutuan & Anor [2004] 2 MLJ

Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dll [2007] 4 MLJ

Meor Atiqulrahman bin Ishak & Ors. v Fatimah bte Sihi & Ors [2000] 5 MLJ

Nordin bin Salleh v Kerajaan Negeri Kelantan & Anor (1993) 3 MLJ

Priyathaseny & Ors v. Pegawai Penguatkuasa Agama Jabatan Hal Ehwal Agama Islam Perak & Ors [2003] 2 CLJ 221.

Rahmah v. Laton (1927) 6FMSLR

Reference re Assisted Human Reproduction (2010) 3 SCR

Tan Tek Seng v Suruhanjaya Pendidikan Malaysia (1996) 1 MLJ

Teoh Eng Huat v Kadhi of Pasir Mas & Majlis Ugama islam dan Adat Istiadat Melayu, Kelantan [2986] 2 MLJ

Shaik Abdul Latif & Ors v Shaik Elias Bux [1915] 1 FMSLR

Zakaria Abdul Rahman v Ketua Polis Negara, Malaysia [2001] 6 CLJ

Zaina Abidin bin Hamid @ S Maniam & Ors v Kerajaan Malaysia & Ors [2009] 6 MLJ

## LIST OF TRANSLITERACY

Arabic Script and Roman Script Equivalent.

Arabic		Transcription	
أ	أَلِف	a	ʾalif
ب	بَاء	b	bāʾ
ت	تَاء	t	tāʾ
ث	ثَاء	t	ṯāʾ
ج	جِيم	ǧ	ǧīm
ح	حَاء	ḥ	ḥāʾ
خ	خَاء	ḫ	ḫāʾ
د	دَال	d	dāl
ذ	ذَال	ḏ	ḏāl
ر	رَاء	r	rāʾ
ز	زَاي	z	zāʾ
س	سِين	s	sīn
ش	شِين	š	šīn
ص	صَاد	ṣ	ṣād
ض	ضَاد	ḍ	ḍād
ط	طَاء	ṭ	ṭāʾ
ظ	ظَاء	ẓ	ẓāʾ
ع	عَيْن	ʿ	ʿayn
غ	غَيْن	ǧ	ǧayn
ف	فَاء	f	fāʾ
ق	قَاف	q	qāf
ك	كَاف	k	kāf
ل	لَام	l	lām
م	مِيم	m	mīm
ن	نُون	n	nūn
و	وَاو	w	wāw
ي	يَاء	y	yāʾ
ه	هَاء	h	hāʾ

## **LIST OF APPENDICES**

**Appendix A: Interview Consent Form**

**Appendix B: USM Research Authorization Letter**

**Appendix C: Questionnaire**

**Appendix 1: Sexual Abuse**

**Appendix 2: Not Accepted for being a member of the LGBT Community**

**Appendix 3: Marriage**

**Appendix 3.1: Church Visits**

**Appendix 4: Receiving Christian Hidayah**

**Appendix 5: Receiving Atheist Hidayah**

**Appendix 5.1: Groups**

**Appendix 5.2: Atheist Twitters**

**Appendix 5.3: Forums**

**Appendix 6: Problems with Islamic Morals**

**Appendix 7: Problems with Hadith and Islamic Science**

**Appendix 8: Because of Christian Prince and Zakir Naik**

**Appendix 9: Liberal Opinions**

**Appendix 10: Other Reasons**

# **SATU KAJIAN KEMURTADAN ORANG MELAYU DI MALAYSIA**

## **ABSTRAK**

Umat Islam di Malaysia, dikejutkan dengan berita yang mengatakan bahawa ramai orang Melayu telah murtad dan masuk agama Kristian. Ini telah menimbulkan rasa tidak puas hati orang Islam terhadap orang Kristian dan sesiapa sahaja yang keluar dari Islam. Objektif kajian ini adalah untuk mengkaji kedudukan kemurtadan dalam Islam, meneliti kermurtadan orang Melayu di Malaysia dan menganalisa demogرافي golongan Melayu yang murtad. Pengkaji telah menggunakan kedua-dua metod kualitatif dan kuantitatif dengan '*library research*' serta '*field research.*' Oleh kerana golongan murtad Melayu menyembunyikan diri, tidak ada data rasmi tentang jumlah mereka. Pengkaji telah mencari di Internet untuk memastikan kewujudan mereka. Adalah didapati bahawa mereka memang wujud tetapi jumlah mereka adalah dalam lingkungan ratusan bukan ribuan. Ramai antara mereka meninggalkan Islam, masuk agama Kristian atau menjadi atis. Sering dilaporakn oleh pengkaji kes-kes murtad bahawa kemurtadan berlaku dalam kalangan orang Melayu kerana kurang pendidikan agama. Walaubagaimana pun, kajian ini mendapati kebanyakan orang yang murtad mempunyai tahap pendidikan dalam agama Islam yang tinggi, malah, ada diantara mereka telah mempelajari Usuluddin dan Fiqh di peringkat universiti. Kebanyakan mereka telah melalui sekurang-kurangnya 11 tahun pelajaran agama disekolah. Diantara punca utama kemurtadan adalah, mereka diperkosa oleh guru agama sewaktu kelas mengaji, mereka dimaki kerana mereka gay dan ada yang mendakwa bahawa mereka menerima 'hidayah' Kristian dan Atis. Ada juga yang tidak puas hati dengan beberapa Hadis dan fakta sains Quran. Kebanyakan murtad hidup dalam dua alam, satu sebagai murtad beli keluar dari rumah dan sebagai seorang Islam yang alim bila

berada dirumah. Sekiranya kita berjaga-jaga terhadap anak kita dan lebih perihatin terhadap golongan LGBT dan boleh cari jalan memblok portal anti-Islam, nescaya gejala keluar Islam dapat di kurangkan.



## **A STUDY ON MALAY APOSTATES IN MALAYSIA**

### **ABSTRACT**

Muslims in Malaysia were shaken about four years ago with news that so many Malays have converted to Christianity, resulting in a show of open animosity towards Christians and anyone who leaves Islam. The objectives of this research are to evaluate the position of apostasy in Islam, to examine the legal position of apostates in Malaysia and analyse their demographics. Both qualitative and quantitative research methods were used, which involved library, as well as field research. Since Malay apostates are very secretive of their apostasy, there is no official data on the number of Malay apostates. The researcher had to search through the Internet, identify and contact the Malay apostates to ascertain their existence. It was found that rumours about Malay apostasy to be true, but in terms of numbers, it was grossly exaggerated. Many Malays have left Islam to embrace Christianity and Atheism. This study has found that many of the apostates are well grounded in Islamic studies and some of them have even studied Usuluddin and Fiqh until university level. Most of the apostates have at least 10-12 years of religious studies in Malaysian school. This study found that the main cause of their apostasy has been the sexual abuse the apostates had experienced during their religious classes when they were young, not being accepted as gays, marriage to non-Muslims and having had received Christian and Atheists 'Hidayah' and dissatisfaction with some Hadiths and Quranic claims. Most of the apostates live a double life, one as Christians or Atheists while outside their home and as pious Muslims once at home. It is proposed that if we should be more vigilant about our children, change our

attitude towards, the LGBT community, and block the anti-Islamic materials on the Internet, we would be able to prevent apostasy to a great extent.

# CHAPTER 1

## INTRODUCTION

### 1.1 Preface

In April 2020, the Mufti of Perak, Tan Sri Hurusaini Zakaria expressed his views saying that the issue of apostates should not be seen as a personal conflict of beliefs among individuals but it must be seen in the perspective of national security.<sup>1</sup> Islam is the very ‘soul’ of Muslims and any attempt to get out of Islam is not only frowned upon but also met with violent opposition. Tan Sri Hurusaini Zakaria, has in the past made some exaggerated claims that 250,000 Muslims have left Islam and 100,000 among them have become Christians.<sup>2</sup> Such claims were also made by Benjamin Stephen, a Malay apostate who is a Christian pastor now. He says that 10,000 Malays have accepted Christ as their saviour in Johor.<sup>3</sup> Then, during the "Allah" And Christology Seminar on 6 May 2014 at UiTM, it was reported by yahoo.com.sg, that Pertubuhan Muafakat Sejahtera Masyarakat Malaysia (Muafakat) president Abdul Karim Omar as saying that Christians will outnumber Muslims by the year 2100.<sup>4</sup> Looking at all these claims, it does appear that Muslims in Malaysia have cause to be alarmed and the peace of the nation threatened.

In August 2017 a Malaysian group known as the ‘Atheist Republic Consulate of Kuala Lumpur,’ held its first gathering at an undisclosed location. The group

---

1 <https://www.bharian.com.my/berita/nasional/2020/04/673835/kerajaan-perlu-tangani-isu-murtad-lebih-serius-mufti-perak>. Retrieved on 14.12.20

2 <https://www.malaymail.com/news/malaysia/2014/03/24/no-muslim-tried-to-leave-religion-over-past-decade-minister-says/640889> Retrieved 3.4.29

3 [https://www.youtube.com/watch?v=brA5\\_UI4mPI](https://www.youtube.com/watch?v=brA5_UI4mPI) Kesaksian Benjamin Stephen Retrieved 4.4.19

<https://sg.news.yahoo.com/christians-continue-grow-outnumber-us-2100-says-muslim-072950638.html> Retrieved 3.4.19

uploaded a picture of their gathering with many Malay looking faces.<sup>5</sup> Once news of the Atheist gathering went viral, the deputy minister in charge of religious affairs, Asyraf Wajdi Dusuki declared, “We need to determine whether any Muslims attended the gathering and whether they are involved in spreading such views, which can jeopardize the aqidah of Muslims.” Shahidan Kassim, the UMNO parliamentarian, called for atheists to be hunted down. The event sparked an uproar leading to threats of death and violence against the group on social media.

The Mufti of Negeri Sembilan, Datuk Mohd Yusof Ahmad, created a stir that rocked the country recently when he declared that Islam prescribed the death penalty against Muslims who leave Islam.<sup>6</sup> The reality is there is no provision for the death penalty in the Negeri Sembilan state enactment, instead Section 48 of the Enactment punishes Muslims who claim to be not Muslims with a fine of not more than RM5,000 and a jail term of not more than three years’ or both.<sup>7</sup>

## **1.2 Background of the Study**

According to Jabatan Agama Islam Wilayah Persekutuan, apostasy or ‘riddah’ or ‘Irtidad’ in Islam, from the language perspective, means returning to a previous state. Ibn Faris in his book, *Mu’jam Maqayis al-Lughah* (2/386) says, “The words ‘ra’ and ‘dal’ give the meaning of returning to the previous state of ‘kufur.’<sup>8</sup>

---

<sup>5</sup><https://www.facebook.com/AtheistRepublic/posts/the-atheist-republic-consulate-of-kuala-lumpur-malaysia-held-its-annual-gatherin/1500361950050659/> Retrieved 22.5.19

<sup>6</sup> The Malay Mail Online: Malaysia can’t enforce, but penalty for leaving Islam is death, mufti reminds apostates. Retrieved 9 August 2017.

<sup>7</sup> Section 48, Enactment Section 48 Enactment No. 4 of 1992 Syariah Criminal (Negeri Sembilan) Enactment 1992, Part IV – Offences Relating to Aqidah,

<sup>8</sup> <https://muftiwp.gov.my/ms/artikel/irsyad-fatwa/irsyad-fatwa-umum/2064-25> Pengertian Murtad Retrieved 4.4.19

Seen from an Islamic perspective, apostasy is leaving the religion of Islam to the embracement of another religion. One becomes an apostate either through his words, actions or intentions. It can happen as an act of a joke, rebellion or conviction of the heart.

The vast majority of Sunni and Shia jurists held that for adult men, apostasy from Islam was a crime as well as a sin, an act of treason punishable with the death penalty, typically after a waiting period to allow the apostate time to repent and to return to Islam<sup>9</sup>. Wael Hallaq states that "a culture whose lynchpin is religion, religious principles and religious morality, apostasy is in some way equivalent to high treason in the modern nation-state".<sup>10</sup> According to Abdul Rashied Omar, the majority of modern Islamic jurists continue to regard apostasy as a crime deserving the death penalty.<sup>11</sup>

BBC carried two opposing views of modern Islamic scholars on apostasy in March 2006.<sup>12</sup> Abdelsabour Shahin, an Islamist writer and academic at Cairo University, told the BBC that although Islam in principle enshrined freedom of belief, there were severe restrictions on that freedom. "If someone changes from Islam to kufr (unbelief), that has to remain a personal matter, and he should not make it public,"<sup>13</sup> he said. In other words, an apostate in a Muslim society, according to this view, forfeits his freedom of expression. If he goes public he should be executed, says Dr Shahin.

---

<sup>9</sup> Wael, B. H. (2009). *Sharia, Theory, Practice and Transformation*. Cambridge University Press.

<sup>10</sup> Ibid.

<sup>11</sup> Omar, A. R. (2009). *The Right to Religious Conversion: Between apostasy and Proselytizing*. In M. Abu-Nimer, & D. Augsberger (Eds.), *Peace-Building by, between and beyond Muslim and Evangelical Christians*. Lexington Books. Pg 179 - 194

<sup>12</sup> [http://news.bbc.co.uk/2/hi/south\\_asia/4850080.stm](http://news.bbc.co.uk/2/hi/south_asia/4850080.stm) What Islam says about Religious Freedom. Retrieved 4.4.19

<sup>13</sup> Ibid.

He says there is an authoritative and unambiguous hadith which calls for the killing of the apostate - "He who changes his religion should be killed", says Shahin, quoting from the sayings of the prophet.<sup>14</sup>

Abdelmouti Bayoumi of the Islamic Research Academy in Cairo, disagrees and told the BBC that the generality of the aforementioned hadith has been restricted by another hadith from the prophet.<sup>15</sup> Bayoumi says that according to that hadith changing one's religion alone is not enough for applying capital punishment. He says the apostate has also to be found working against the interests of the Muslim society or nation - only then should he be executed. An apostate in this perspective is a traitor. He is punished, not for what he believes in, but for what he does and which could be harmful to the interests of the state.<sup>16</sup>

The Malaysian way of dealing with apostasy has been less harsh. Although it has provisions in the various State Enactments on leaving Islam, such as imprisonment, fines and lashes none of them have death penalty in their Enactments although the PAS led government of Kelantan and Terengganu are planning to introduce the death penalty for apostasy in their Hudud Bill.<sup>17</sup> The Malaysian way of handling apostasy has been through counselling sessions and a call for repentance. For instance, in Melaka apostates go through 6 months of counselling, and if during this time they repent, they are let go. Similarly, the state of Negeri Sembilan is determined to safe apostates by counselling the offenders by giving them three counselling sessions. In fact,

---

<sup>14</sup> Ibid.

<sup>15</sup> [http://news.bbc.co.uk/2/hi/south\\_asia/4850080.stm](http://news.bbc.co.uk/2/hi/south_asia/4850080.stm) What Islam says about Religious Freedom. Retrieved 4.4.19

<sup>16</sup> Ibid.

<sup>17</sup> Syariah Courts (Criminal Jurisdiction) Act 1965 ("Act 355")

all states require apostates to undergo counselling sessions, instead of punishment. Punishment is only meted out if the apostates insult Islam or spread false doctrine.

### **1.3 Problem Statements**

This study was initiated based on three problem statements as mentioned below:

#### **1.3.1 Many Malays have been found to have apostatised.**

A Malaysian group known as the ‘Atheist Republic Consulate of Kuala Lumpur,’ held its meeting in August 2018 at an undisclosed location. The group had many Malays in it and yet it uploaded a picture of their meeting.<sup>18</sup> Once news of the meeting went viral, Shahidan Kassim, the UMNO parliamentarian, called for group members, especially those who looked Malay, to be hunted down. The event sparked an uproar leading to threats of death and violence against the group by their own Facebook friends.<sup>19</sup> Today, their Facebook is frozen. It appears like the Malays in the group had relied on Article 11 of the Malaysian Constitution which guaranteed Religious Freedom does not apply to them.

Christianity is another threat to the ‘*akidah*’ of Muslims. The number of reports of Muslims converting to Christianity is alarming.<sup>20</sup> Some of these apostates become Christian priests and convert other Malays to Christianity, notable among them are

---

<sup>18</sup> <https://www.facebook.com/AtheistRepublic/posts/the-atheist-republic-consulate-of-kuala-lumpur-malaysia-held-its-annual-gatherin/1500361950050659/> Retrieved 22.5.19

<sup>19</sup> <https://says.com/my/news/malaysia-launches-investigation-on-atheist-group-over-alleged-malay-members> Retrieved 22.5.19

<sup>20</sup> <https://www.malaymail.com/news/malaysia/2014/03/24/no-muslim-tried-to-leave-religion-over-past-decade-minister-says/640889> Retrieved 3.4.29

Pastor Joshua Helmi, Benjamin Stephen and Jamaluddin. News like this create a lot of fear among Muslims.

### **1.3.2 No Legal Way to Leave Islam**

Non-Malay Muslims, when they want to leave Islam, they go to the Sharia courts to have a declaration that they have left Islam and have the word, 'Islam' removed from their MyKad. Malays apostates, on the other hand, do not go to the courts by they go 'underground' and pretend to be Muslims among us. There are hundreds of Malay apostates in Malaysia today. Some of them are quiet while some are openly provocative about Islam on the social media.

Early in the 1980s some Malay individuals have attempted to leave Islam but all their attempts backfired as the Malay community threatened the lives of those who wanted to apostate, notable among them are Lina Joy and Aishah Bukhari. They fled the country and now reside overseas.

### **1.3.3 Once a Malay-Muslim always a Malay-Muslim**

The Hadith is very clear, 'If somebody (a Muslim) discards his religion, kill him.' The Quran is also very clear, no one is forced into Islam and no one is allowed to leave Islam unless the act of becoming a Muslim was at fault. Muslims are extremely faithful to Islam and any deviation is frowned upon and leaving Islam is considered not only a sin but also an act of treason and as such Malay apostates are negatively perceived by other Muslims. It is the duty of one Muslim to safeguard the ummah. The problem is, there is no standard punishment for Muslims who leave Islam in Malaysia and apostates find ways to overcome the law.

Apostates, finding themselves unable to leave Islam, disguise themselves as pious Muslims and live among us. They men put on a show by wearing the 'kopiah'



and the women put on a show by wearing the hijab. They go to the mosque, fast, celebrate Hari Raya to blend in the society.

#### **1.4 The Research Objectives**

The aims of this study are

1. To evaluate the position of apostasy in Islam.
2. To examine the legal position of Malay apostates in Malaysia.
3. To analyze the real position of Malay apostates in Malaysia.

#### **1.5 Research Questions**

1. Do Muslims have a right to apostate under the Shariah?
2. Does the Civil Law recognize Malay apostates in Malaysian.
3. How serious is Malay apostasy cases in Malaysia?

#### **1.6 The Scope of the Study and Limitation**

This study focuses particularly on Malay apostasy, specifically of those born as Malaysian Malay Muslims. The study does not concern those born Muslims from Mualaf parents. The reason is that the circumstances of Mualaf parents becoming Muslims are varied and unique. Furthermore, there has been so many publications about Mualaf apostates but not a single publication that focused *purely* on Malay apostates without lumping them together with *Mualaf* apostates in Malaysia. The fact is the Malay apostates found in previous research are those who were adopted by non-Malays while they were young and grew up as non-Muslims.<sup>21</sup> Cases like Juli Jalaluddin, Adlin and Aishah Bukhari (chapter four) are isolated cases which received

---

<sup>21</sup> Written data provided by Pn Maimun Chief Researcher, Mahkamah Wilayah Persekutuan on 8 December 2020

a lot of media attention. All of them fled the country. Lina Joy's case went to the civil court but when she was told to go to the sharia court to get a declaration of her religious status, she too fled the country. This study also does not look at cases of apostasy outside Malaysia because the Researcher wants to focus on Malay apostasy within the legal framework of Malaysia.

## **1.7 The Significance of the Study**

### **1.7.1 Great Impact on Policy Makers**

This study can have a great impact on policy makers on how they can be more apostasy friendly to bring Malay apostates back to Islam. Thus far, no Malay Muslim has ever tried seeking the courts help to declare himself as an apostate. Malay apostates fear the authorities and they are convinced that they do not stand a chance in the Sharia courts. Only Mualafs who experienced failed marriages and those raised in a non-Muslim environment, turn to the sharia courts for a re-affirmation of their non-Muslim status.

### **1.7.2 Help Parents and Guardians**

This study can help parents and guardians to be extra careful in choosing religious teachers to teach their children. It will also help them understand the need to monitor the religious classes as this study shows that many children go through traumatic moments when they are molested by their religious teacher.

### **1.7.3 Bring Back the LGBT Community**

This study can help Muslims in general in helping the LGBT community overcome their feelings for the same sex without condemning them. The harsh treatment gays get from religious people seems to be a major cause of why the gays

community leave Islam. The approach taken by Ustaz Ebit Lew<sup>22</sup> would be effective in bringing many LGBTs back into Islam's fold.

#### **1.7.4 Aligning Hadith with Context**

There are some Hadiths, for instance, the hadiths of Sahih Bukhari, among them, the drinking of camel urine as a cure for diseases, the Prophet (saw) prohibition of urinating while standing, if one is too lustful, one can release the lust with a goat etc. There is a movement for reformation in the study of Hadith by people like Shabir Ally<sup>23</sup> and Shaykh Atabek Shukurov.<sup>24</sup> their efforts most likely would bear fruits

### **1.8 Literature Review**

This study will explore the literature review on apostasy under three themes, namely, Punishment for Apostasy, Freedom of Religion and Apostasy Cases in Malaysian Sharia Courts. The following literature review is based on Ph.D dissertations, Masters Degree Thesis, and published articles in Journals.

#### **1.8.1 Punishment for Apostasy**

There was a PhD dissertation entitled, *Punishing Apostasy: the case of Islam and Shariah law re-considered* by Declan Patrick O'Sullivan, of Institute of Middle Eastern and Islamic Studies, Durham University for his dissertation, 2003 where he talks about what makes a person a Muslim and he goes on to explore how punishment is meted out to apostates. He outlines that Punishment for Shariah crimes as being three. 1. hudud, (fixed punishments stated within the Qur'an), 2. qisas (retaliatory

---

<sup>22</sup> <https://kisahdunia.com/video-hangat-mengenai-isu-lgbt-ustaz-ebit-lew-nekad-jumpa-kaklong-kawasan/> Retrieved 7.12.19

<sup>23</sup> <https://www.youtube.com/watch?v=k2940LBhO7k> Taking Balanced Approach to Hadith | Dr. Shabir Ally Retrieved 7.12.19

<sup>24</sup> <https://www.youtube.com/watch?v=Mb2MOSjzetQ> Ending Over-Reliance on Hadith | Shaykh Atabek Shukurov. Retrieved 7.12.19

punishment) which comes together with diyat (blood-money) and, 3. ta'zir (discretionary punishment).<sup>25</sup> After his analysis of the punishments he concludes that there is a misunderstanding among Islamic theologians and Islamic jurists to equate the concept of apostasy to treason. He says that it is a misguided belief to think that both acts as being the same. He argues that the ambiguity can be identified in the definitions of the words, 'apostasy' and 'treason' that are used to relate to acts of disbelief in Islam. The vague boundaries between the definitions provide no precise separation from one act to another, which can cause particular problems when dealing with punishing blasphemy and apostasy, especially with the death penalty.

The Research Gap: This PhD dissertations looks at the apostasy situation in a general sense and it stands to reason that to equate apostasy to treason is a little odd nowadays. If one were to apply his logic to the situation in Malaysia, in the context of the 21<sup>st</sup> century, equating apostasy to treason is a little far-fetched for one leaves Islam because he is insulted for being a gay. He leaves Islam not because he has committed treason but he is not accepted for what he is despite the fact that he wants to be a Muslim. In fact, the LGBT community do not leave Islam but rather they are pushed out of Islam.

While O'Sullivan argues about Muslims scholars being confused about apostasy and treason, Mohamad Azam makes a distinction between blasphemy and apostasy in his book, *Islamic Law in Malaysia: Issues, Development and Challenges*.<sup>26</sup>

---

<sup>25</sup> O'Sullivan, D.P. (2004) *Punishing Apostasy: The case of Islam and Sharia'a law Re-Considered*. Phd Thesis. Institute of Middle Eastern and Islamic Studies. Durham University. p. 18

<sup>26</sup> Mohamed Azam Mohamed Adil (2018). *Punishment for Apostasy: The Contemporary Views*. As found in Islamic Mohamed Azam & Hashim Kamali (Ed) (2018) *Islamic Law in Malaysia: Issues, Development and Challenges*. CLJ Publications, IAIS Malaysia. Pg. 45-68.

According to him, the majority of the classical jurists have subsumed the discussion of blasphemy under apostasy and this is the reason why both apostasy and blasphemy carry the same punishment, i.e. the death penalty.<sup>27</sup>

Blasphemy in Islam is a very broad concept which comprises, “all utterance expressive of contempt for God, for His Names, attributes, laws, commands and prohibitions...such is the case for instance, if a Muslim declares that it is impossible for Allah to see and hear anything, or that Allah cannot endure to all eternity. Or that he is not one (*walid*)...All scoffing at Nabi Mohammad or any other Prophets of Allah is also to be regarded in Islam as blasphemy.”<sup>28</sup> According to Kamali,<sup>29</sup> there is no clear distinction made between blasphemy and its allied concepts such as apostasy (*riddah*), heresy (*zandaqah*) and disbelief. Mohamed Azam argues that it is crucial to determine the principal act of blasphemy in Islam, so that it could be separated from apostasy. Blasphemy in its principal offence includes the reviling of God and the prophet (saw), and a contemptuous rejection of His injunctions. These could lead the blasphemer into being an apostate. But a mere renunciation from Islam, however, does not usually constitute blasphemy<sup>30</sup> Apostasy could take place without any contemptuous or hostile attack on Islam.

---

<sup>27</sup> Al-Mawsu'a al-Faqhiyya, vol. 22 (Kuwait, Wizara al-Auqaf wa Shu'un al-Islamiyyah, 1992AD/1412AH) pg 92-110; As found in Mohamed Azam Mohamed Adil (2018). *Punishment for Apostasy: The Contemporary Views*. As found in Islamic Mohamed Azam & Hashim Kamali (Ed) (2018) *Islamic Law in Malaysia: Issues, Development and Challenges*. CLJ Publications, IAIS Malaysia. Pg. 45-68.

<sup>28</sup> Clark, T & T (1908) *The Encyclopedia of Religion and Ethics*. James Hastings (ed) pg 672 As found in Ibid.

<sup>29</sup> Kamali, M.H. (1997) *Freedom of Expression in Islam*. Cambridge, Islamic Texts Society. Pg 214

<sup>30</sup> Al-Mawsu'a al-Faqhiyya, vol. 22 (Kuwait, Wizara al-Auqaf wa Shu'un al-Islamiyyah, 1992AD/1412AH) pg 92-110; As found in Mohamed Azam Ibid.

The Research Gap: While this distinction is valid and stands to reason, it doesn't have much of an impact in Malaysian courts as Hudud punishment is not enforced on Apostates but Ta'zir. Furthermore, the Malaysian Shariah Courts take a amiable approach towards reforming the apostate via counselling sessions.

In another publication, Hashim Kamali argues in his book, *Islamic Law in Malaysia: Issue and Development*<sup>31</sup> that the Quran does not prescribe temporal punishment for apostasy but only in the hereafter. Those killed for apostasy during his lifetime, was because of blasphemy and treason and not because of one's conviction of his faith in Islam as being lost or faded. According to Kamali, the position of Islam has always been the same, i.e., the apostates lose all their good points they had gained while being Muslims and they will be punished by God in the hereafter. He further says that some Muslim jurist have made apostasy punishable by death while some have advocated a *tazir* punishment. In Malaysia, only the Civil High Court can pass a death penalty, shariah courts do not have the jurisdiction to impose the death penalty for apostasy. Shariah courts impose the *tazir* punishment which involves imprisonment, flogging, public disclosure, admonitions and fines. However, he goes on to say that "there is a total legislative vacuum concerning apostasy in Malaysia as there is no written law, statute, State Enactment or Federal Territory Act that would apply to a Muslim who renounces Islam. Nor is there any law to determine whether such a person can be arrested or detained for any purpose, whether punitive or solicitation of repentance, let alone a specific procedure for adjudication and sentencing of persons who do not repent."<sup>32</sup>

---

<sup>31</sup> Kamali, M. H. (2000). *Islamic Law in Malaysia, Issues and Developments*. Kuala Lumpur: Ilmiah Publishers Sdn Bhd. pg 209

<sup>32</sup> Kamali, M. H. (2000). *Islamic Law in Malaysia, Issues and Developments*. Kuala Lumpur: Ilmiah Publishers Sdn Bhd. pg 212-213

The Research Gap: While the Researcher agrees with Kamali on state of affair as far as the Islamic ruling on apostasy, he however feels that to say that there is a total legislative vacuum concerning apostasy in Malaysia with no written laws whether in the states or at the Federal level, is erroneous. This thesis will outline some of the statutes that exist.

In her publication by PhD candidate, Nor Ashikin Md Nasir, from Academy of Islamic Studies, University of Malaya.<sup>33</sup> highlights that there is a lack of a standard legal framework relating to the renunciation of Islam among the Malaysian states and as such a standard punishment for apostate is almost impossible to carry out. She has identified two main Malaysian sharia categories, one with laws against it and the other with no provisions for apostasy.

In first category, apostasy is considered a crime in the state of Perak, Kelantan, Terengganu, Pahang, Melaka and Sabah. The crime of apostasy is known with various labels, such as, attempted apostasy, insulting Islam, apostasy to avoid action by the religious authorities. Action could also be taken if anyone had said words or have done actions that could be taken to mean as apostasy.

The second category is employed by some states by not labelling apostasy as a crime, but as misguided and apostasy seekers are sent to akidah rehabilitation centre or they are sent for religious counselling until a repentance is gained from them. This is the approach taken by Pulau Pinang, Negeri Sembilan, Selangor, Federal Territory, Kedah, Perlis, Johor, and Sarawak.

---

<sup>33</sup> Md Nasir, N., & Ismail, S. (2017). Keluar Agama Islam di Malaysia: Permasalahan dari sudut Undang-Undang. *Journal Of Shariah Law Research*, 1(1). doi:10.22452/http://doi.org/10.22452/JSLR.vol1no1.8

However, the states of Kelantan, Melaka, Sabah despite categorizing apostasy as a crime, have chosen counselling session instead of punishment.

The Research Gap: Nor Ashikin has listed about the non-uniformity of state sharia laws which deal with apostates but she is silent about Malay Muslims leaving Islam. This thesis however, will argue that the various state laws are of no significance when Malay apostates bypass the court system through migration out of the country or through the leading of a double life: being a 'Muslim' on the outside but a Non-Muslim on the inside.

A similar view is expressed by Mohamed Azam Mohamed Adil in a paper presented at the 3rd. ASLI Conference.<sup>34</sup> While the right to freedom of religion is guaranteed to all religions, classical Muslim jurists argue for a restrictive scope of the right to freedom of religion in Islam. According to these classical Muslim jurists, Muslims who intend to leave the Islamic faith are subject to the death penalty. These classical Muslim jurists argue that the right to the freedom of religion only applies to those who wish to convert to Islam. Once an individual becomes a Muslim, he is prohibited from converting out of Islam. In Malaysia, although the Federal Constitution guarantees the right to freedom of religion, Muslims who intend to renounce Islam or who have apostatised, in reality, face considerable obstacles, among others, various punishments for apostasy.

Although Article 11(1) of the Federal Constitution guarantees the right to freedom of religion, it seems that some states have penalized Muslims who renounced

---

<sup>34</sup> Mohamed Azam Mohamed Adil (2006). *Law of Apostasy and Freedom of Religion in Malaysia*. This article is based on a paper presented at the 3rd. ASLI Conference, Organized by the East China University of Politics and Law, Shanghai, 25-26 May 2006.



Islam. This can be seen in the states of Pahang, Perak, Terengganu, Melaka and Sabah. In the states of Sabah, Kelantan and Malacca, Muslims who intend to renounce Islam are detained at the Islamic rehabilitation centre for counselling purposes to keep their Islamic faith. Other states are silent on the provision of apostasy.

Given the provisions of Articles 11(1) and 3(1) of the Federal Constitution, the writer is of the view that the law of apostasy must be standardized and uniformed. Provisions on punishment and mandatory detention at the Islamic rehabilitation centre for apostasy should be reviewed. He surmises that the Negeri Sembilan's law on apostasy will be a good model for adoption, whereby Muslims who intend to leave the Islamic faith undergo a counselling process for reversion back to Islam through repentance. If the counselling fails, apostates are given the liberty to leave Islam.

The Research Gap: While the writer laments that the sharia laws are not uniform in all states in Malaysia when by right, they should be. He proposes the Negeri Sembilan's model for all states to follow. However, it was found through this research that the non-uniformity of Sharia laws or even a uniform sharia law throughout Malaysia is not an issue to apostates, for they beat the Sharia court system by remaining 'underground.'

### **1.8.2 Freedom of Religion for Malays**

This part of the literature review would look into whether Muslims are given the right to leave the Islamic faith and to choose and profess any religion they wish as guaranteed under Article 11(1) of the Federal Constitution.

Mohamed Azan Mohamed Adil, in his PhD dissertation, *The Malaysian State and Freedom of Religion: A Conceptual Analysis with Reference to the law of Apostasy*<sup>35</sup> suggests that any law introduced to restrict the right to freedom of religion is contrary to the Malaysian Constitution, the supreme law of the country, and can be seen as an infringement of human rights in the eyes of the International law particularly under Articles 18 of the Universal Declaration of Human Rights of 1948 (UDHR of 1948) and the International Covenant of Civil and Political Rights of 1966 (ICCPR of 1966) respectively. Though Malaysia is not a signatory of the UNDR, 1948 and the ICCPR. 1966 but by virtue of the 1972 Charter of the Organization of the Islamic Countries (OIC) in which Malaysia is a part of, declared that the provisions of human rights as promulgated by the international law were in accordance with Islamic values. Furthermore, the establishment of the Commission of Human Rights of Malaysia (SUHAKAM) in 1999 shows the Malaysian government commitment to honour International laws.

Having said that, he discusses five freedom of religion cases of Malays. The first is that of Jamaluddin Othman,<sup>36</sup> who was detained under ISA for spreading Christianity. The court held that his action cannot be considered as a threat to public security and the case was dismissed. Next, the case of Meor Atiqulrahman<sup>37</sup> who was expelled from school for wearing the turban. The court held that the dismissal was unlawful as it curtailed his religious freedom and in the case of Hjh Halimatussaadiah<sup>38</sup>

---

<sup>35</sup> Mohamed Adil, Mohamed Azam (2006) , *The Malaysian State and Freedom of Religion: A Conceptual Analysis with Reference to the law of Apostasy*, SOAS, University of London.

<sup>36</sup> Jamaluddin bin Othman v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1989] 1 MLJ 368.

<sup>37</sup> Meor Atiqulrahman bin Ishak & Ors. v Fatimah bte Sihi & Ors [2000] 5 MLJ 375

<sup>38</sup> Hjh Halimatussaadiah v Public Service Commission, Malaysia & Anor [1994] 3 MLJ 61; see also [1992] 1 MLJ 513.

who was dismissed from public service for wearing a purdah against a government circular which forbade wearing it. The mufti department advised the court that the purdah was not obligatory and the court upheld its decision. Then, in the case of a Chief Inspector, Zakaria Abdul Rahman,<sup>39</sup> who was advised by the Police force to end his relationship with a lady for he was already married otherwise he would face disciplinary action. He did not end it and disciplinary action was taken against him. After the disciplinary action, he married his girlfriend. The Police Department dismissed him. He sued his department. The court held that he cannot be punished for the same crime twice and they also held that it infringed his religious freedom of marrying more than one wife. Finally, the case of Lina Joy:<sup>40</sup> Lina Joy became a Christian and relied on Article 11 of the Malaysian Constitution but the courts held that she was still a Muslim until a declaration is made by the Sharia Courts.

The Research Gap: Of the six cases mentioned above, we notice that Susie's case was a case of conversion to Islam not out of Islam. Meor, Halimatussaadiah and Zakaria concerned cases of freedom within Islam not outside Islam. Jamaluddin was charged under ISA in civil high court before 1988. If he had been charged in the Sharia court, the outcome would have been different. Lina Joy's case did not go to the Sharia Court, she fled the country. This study aims to look at Malays who want to go out of Islam within Malaysia while relying on Article 11, Freedom of Religion.

In another paper by Samuri and Quraishi,<sup>41</sup> the authors argue that particularly in Malaysia, freedom of religion has clear limitations, especially when it comes to

---

<sup>39</sup> Zakaria Abdul Rahman v Ketua Polis Negara, Malaysia [2001] 6 CLJ 273; [2001] 3 MLJ 385; [2001] 4 AMR 4111.

<sup>40</sup> Lina Joy v Agama Islam Wilayah Persekutuan & Anor [2004] 2 MLJ 119.

<sup>41</sup> Samuri and Quraishi (2014) *Negotiating apostasy: Applying to "Leave Islam" in Malaysia*. Published at <http://usir.salford.ac.uk/34740/> in 2014 Retrieved 3.4.19

Muslims wishing to leave Islam. They critically review the process of application to leave Islam in the state of Negeri Sembilan and provide clear cut decisions and their legal rationale for accepting some applications and refusing others. They are however very critical of the role of the Mufti department plays in the court process. In their own words,

*“The paper is critical of the disproportionate discretion afforded to Muslim bureaucrats in the Mufti’s Department with regard to determining an individual’s religious rights”* They argue that in Malaysia, the power to legally determine one’s religion should be confined to the Sharia Court not the Mufti Department. They welcome, the state of Negeri Sembilan’s government decision to introduce legal provisions that may allow some Muslims to leave Islam without committing the offence of apostasy.

The Research Gap. While the researchers have provided ample examples of who was allowed to leave Islam and who was denied to leave Islam, there is a wide research gap between the work of the above paper and this thesis. All the cases mentioned are cases of Mualafs, wanting to leave Islam. This study focuses purely on Malay Muslim apostates. However, it has to be acknowledged that the fate that befall apostates in the sharia courts and the ratio decidendi of the cases in the Sharia courts affects the attitude of Malay apostates towards the sharia courts.

### 1.8.3 Apostasy Cases in Sharia Courts

Aston Paiva,<sup>42</sup> on the other hand, mentions Malay apostates are able to enjoy Freedom of Religion, in his online article, *Religious Cases in the Malaysian Courts*<sup>43</sup> Way back in 1983, the conflict between Sharia courts and Civil court was not a big issue. This can be seen in the case of *Abdul Rahim Bin Haji Bahaudin v Chief Kadi, Kedah*<sup>44</sup> which was decided by the High Court in Alor Setar, Kedah.

Abdul Rahim was a member of the *Ahmadiyya Muslim Jema'at* movement and he was caught distributing religious pamphlets and documents relating to the *Ahmadiyya Muslim Jema'at*, an offence under the now repealed section 163(1) of the Administration of Muslim Law Enactment 1962 of Kedah.

In 1981, a *fatwa* issued by the *Majlis Ugama Islam* of Kedah was gazetted. The said *fatwa* says that whosoever believes in the teachings of the Ahmadiyya sect is an apostate. Abdul Rahim's only ground for the judicial review was that: as he is a follower of the Ahmadiyya sect and the Majlis says that he is not a Muslim, therefore the *Majlis Ugama Islam* and the Syariah courts have no jurisdiction to try him.

Justice Mustapha Hussain held: The Kedah State Administration of Muslim Law Enactment 9, 1962, section 41(3)(a) and (b) conferred a jurisdiction to the Kadi's or the Syariah Court only to Muslims. This means that non-Muslims, (and the

---

<sup>42</sup> Aston Paiva is a Barrister-at-Law (Grays), Advocate & Solicitor of the High Court in Malaya (Malaysia) practising at Messrs Bon. The author is on the legal team of Muhamad Juzaili [2015] 1 CLJ 954 (CA), Indira Gandhi [2015] 6 CLJ 35 (HC) and Maqsood Ahmad & 38 Ors v Majlis Agama Islam Selangor & 4 ors, High Court Kuala Lumpur, Application for Judicial Review No. 25-129-07/2014 (HC).

<sup>43</sup> <http://www.themalaymailonline.com/malaysia/article/after-years-of-persecution-ahmadiyyafollowers-seek-redress-at-civil-court>; See also: 'Syariah' in Malaysia; <http://www.loyarburok.com/2015/09/23/syariah-malaysia/>

<sup>44</sup> [1983] 2 MLJ 370

Applicant is a non-Muslim as declared by the Majlis itself,) are outside the jurisdiction of the Majlis and its Syariah Courts.

One could at this juncture argue that this is a pre-1988 case, established prior to the Article 121(1A), Amendment Act 1988. But in 1998, the state of Selangor issued another fatwa, under the Administration of Islamic Law Enactment 1989, declaring the *Ahamadiyyah* group to be ‘*kafirs*’ and banning four books concerning the *Ahmadiyah* faith.

In April 2014, the Selangor Islamic State Department (JAIS) arrested 39 *Ahmadiyah* Muslims, including Pakistani, Indonesian and Indian nationals and three minors, for performing Friday prayers in the community’s centre in Batu Caves. They were arrested for allegedly failing to obtain written permission to use the premises.<sup>45</sup> The 39 members, who were ordered to appear before a Syariah court for their alleged offence, applied for judicial review of the arrest. In July 2018, the Shah Alam High Court, which heard their case, ruled that JAIS had no authority over *Ahmadiyah* Muslims, and they were not covered under Syariah jurisdiction, precisely because the 1975 and 1998 fatwa had ruled that *Ahmadiyah* were ‘not Muslims’ in Malaysia.<sup>46</sup>

This decision seems to have created a loophole in law which is not too obvious as yet as most of the *Ahmadiyyahs* are Pakistani and Indian nationals with some sizeable number of Malays. Malays who wish to leave Islam could actually make use

---

<sup>45</sup> In violation of Section 97 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003. V Anbalagan, ‘JAIS has no right to stop Ahmadiyah Muslims, court rules’, Free Malaysia Today, 6 July 2018, <https://www.freemalaysiatoday.com/category/nation/2018/07/06/jais-has-no-right-to-stop-ahmadiyah-muslims-court-rules/>. Retrieved on 30.9.19

<sup>46</sup> 73 V Anbalagan, ‘JAIS has no right to stop Ahmadiyah Muslims, court rules’, Free Malaysia Today, 6 July 2018, <https://www.freemalaysiatoday.com/category/nation/2018/07/06/jais-has-no-right-to-stop-ahmadiyah-muslims-court-rules/>. Retrieved on 28.9.19

of the situation by becoming *Ahmadiyyah* and later go to *Jabatan Pendaftaran Negara* to have the word 'Islam' removed from their MyKad.

In his book, '*Khayalan atau Realiti? Perlaksanaan Undang-Undang Islam di Malaysia*', Mohamed Azam,<sup>47</sup> argues that, the freedom of religion as espoused in Article 11 (1) of the Malaysian Constitution is not absolute. It is subject to Article 11 (4) which prevents non-Muslims from propagating their religious beliefs to Muslims and Article 11 (5) to maintain public harmony, public health and morality. He goes on to say that Article 11(4) of the Malaysian Constitution makes provisions that State Legislatures and Federal Territories can enact laws that controls and prevent non-Islamic doctrines and beliefs to be imparted to Muslims, as such, it becomes criminal for non-Muslims to spread their beliefs to Muslims. However, the spreading of Islam to Non-Muslims is acceptable. As a result, there are 10 states which have laws preventing the propagation of non-Islamic religions to Muslims.<sup>48</sup>

He cites the case of *PP v Krishnan a/l Muthu*<sup>49</sup> in which Maziah Jusoh, a Malay had fallen in love with a married Hindu man, Krishnan. When Maziah found herself not having a place to stay, she asked Krishnan if she could live with him and his wife. Krishnan agreed and invited her to into his house. However, fights broke out among them. Krishnan forced Maziah to stop performing her solat and wanted her to embrace Hinduism. The case came to the Temerloh magistrate court and Krishnan was found guilty and fined RM2,000 under the Penal Code and also under section 4(2)(i) of the

---

<sup>47</sup> Mohamed Adil, M.A. (2018) *Khayalan atau Realiti? Perlaksanaan undang-undang Islam di Malaysia*. Iham Books, IAIS, Kuala Lumpur. pg 67.

<sup>48</sup> Mohamed Adil, M.A. (2018) *Khayalan atau Realiti? Perlaksanaan undang-undang Islam di Malaysia*. Iham Books, IAIS, Kuala Lumpur. pg 80.

<sup>49</sup> *PP lwn Krishnan a/l Muthu* MA 83-146-2002 as found in Mohamed Adil, M.A. (2018) *Khayalan atau Realiti? Perlaksanaan undang-undang Islam di Malaysia*. Iham Books, IAIS, Kuala Lumpur. pg 81.

Control and Development of the Development of Non-Islamic Religions Enactment 1989, Pahang, with a fine of RM1,500 and imprisonment for 20 days.

The Research Gap: However, the propagation of non-Muslim ideology to Muslims can be done in a subtle way as in an informal discussion among friends who profess different religions. All it takes is an innocent question by a Muslim about the religion of his non-Muslim friend. The non-Muslim would take this opportunity to preach to the Muslim. Soon there will be a question and answer session between them. If at all caught, he would claim that he was merely answering the Muslim friend's questions not preaching about his non-Islamic beliefs.

## **1.9 Methodology**

Research methodology identifies the methods to gather data. These methods, described in the methodology, define the means or modes of data collection or, sometimes, how a specific result is to be calculated.<sup>50</sup> A methodology offers the theoretical underpinning for understanding a set of methods, or best practices can be applied to a specific case.<sup>51</sup>

This thesis makes use of both qualitative and quantitative research strategies using the Internet as the primary source to collect data. Apostates are in hiding. They do not want to be known by others however, they have a strong need to connect with others of their own kind and the Internet provides them with the anonymity and privacy they need.<sup>52</sup>

---

<sup>50</sup> Howell, K. E. (2013). *Introduction to the Philosophy of Methodology*. London: Sage Publications

<sup>51</sup> Ibid.

<sup>52</sup> Gaiser, T.J and Schreniner A.E. (2009) *A Guide to Doing Online Research*. London, SAGE. pg 14



### **1.9.1 Kinds of Research Involved**

This research will employ qualitative research technique as a method of observation to gather non-numerical data to get answers to ‘why’ and ‘how’ a certain phenomenon may occur.<sup>53</sup> Qualitative research approaches are employed across many academic disciplines, focusing particularly on the human elements of the social and natural sciences. Qualitative research is widely used by political science, social work, and education researchers.<sup>54</sup> Qualitative researches are very interpretative. Willis expresses that facts are derived mainly from secondary sources, and which are qualitative in nature<sup>55</sup> and are governed by a variety of factors which are non-tangible and difficult to measure.<sup>56</sup>

For the purposes of this research, the researcher has on the most part relied on qualitative approach because abstract, non-quantifiable variables such as, “Islam is from Allah”, Islam is for the good of Mankind,’ ‘God does not exist,’ “Jesus touched me heart,’ etc. are statements which are not easily quantifiable (measurable), and complex connections between feelings, beliefs and statements exist, therefore the qualitative approach is found to be the most applicable.

### **1.9.2 Methods of Data Collection**

The researcher applied two methods of data collection techniques, namely, ‘library research’ and ‘field research.’ This was done in order to collect adequate and relevant data to address the research objectives of this study.

---

<sup>53</sup> Given, L. M., ed. (2008). *The Sage Encyclopedia of Qualitative Research Methods*. SAGE Publications, Los Angeles.

<sup>54</sup> Given, L. M., ed. (2008). *The Sage Encyclopedia of Qualitative Research Methods*. SAGE Publications, Los Angeles.

<sup>55</sup> Willis, J. W., (2007). *Foundations of Qualitative Research: Interpretive and Critical Approaches*. London: Sage

<sup>56</sup> Ibid

### **1.9.2(a) Library Research**

Data gathered via library research is categorized as the secondary data. Secondary data means the data is readily available and is used by anyone besides researchers. This means that secondary data is not originally collected but rather obtained from published or unpublished sources.<sup>57</sup>

Library research includes data gathered from books written by Hashim Kamali, Mohamed Azam, Mohammed Selim El-Alwa, Hooker, Mohamad Husin and many others, published Phd dissertation, published Masters thesis, published academic papers, The Quran, The Sunnah, Newspaper articles, Journals, Social Media communication. It also includes information gathered from internet search.

### **1.9.2(b) Field Research**

Field research composes a number of research methods to solve the existing research problems.

#### **1.9.2(b)(i) Interview**

Primary data was obtained through the interview of ex-Malay Muslims took place via Facebook messenger. These Ex-Malays Muslims were identified via a search on Facebook and through recommendations by friends. The author sent friend requests to these Ex-Malay Muslims and the request was accepted. A rapport was built up over time and the Ex-Malay Muslim were open to talk.

Interview method and direct personal correspondence are two of the ways to obtain primary data. Primary data is understood as data which are collected during the conduction of a particular research. Therefore, in order to obtain primary information,

---

<sup>57</sup> Walliman N., (2011) *Research Methods The Basic*. New York: Routledge.