

## Laws Related to Leaving Islam in Malaysia: Issues and Challenges in Legislation and Enforcement

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**Abstract:** Schedule Nine of the Federal Constitution allows state governments to enact laws related to Islam within the scope of the schedule, including those relating to renouncing Islam and associated matters. Currently, states like Negeri Sembilan and Sarawak have enacted laws or procedures governing the process of leaving Islam. Through doctrinal study and existing legal texts, three main approaches are identified: criminalizing apostasy under Syariah law, addressing it through a *mal* application, and combining punitive and rehabilitative elements, such as *istitabah* (repentance) through the criminal process. Agencies directly involved include the State Religious Department, the State Religious Council, the Mufti's Office, and the Syariah Court. However, some applicants file Civil court cases to avoid the lengthy Syariah Court process. Furthermore, there are almost no reported cases of Syariah prosecution resulting from applications to leave Islam, which may relate to society's varying views of apostasy, whether it is a criminal act (*riddah*) or a matter of religious freedom.

**Keywords:** *Application to Leave Islam, istitabah, Syariah Court, Article 121(1), riddah.*

### 1. Introduction

A 2008 study by SUHAKAM found that there is no specific, universally agreed-upon law among states in Malaysia regarding applications to leave Islam. According to Article 76(1)(b) of the Federal Constitution, the Federal Government can enact laws on matters in the State List (Ninth Schedule) for uniformity across states. The enforcement of such laws, as noted by Shiddeq (2015), would enable cases related to applications to leave Islam to be handled under a clear and uniform procedure.

Efforts and ideas to create such laws have existed since the late 1990s, but as of today, the draft of the Faith Rehabilitation Bill or *Rang Undang-Undang Pemulihan Akidah* at the federal level remains under review (Buang, 2007). The challenge in enacting such laws lies in the sensitivity of the issue among both Muslims and non-Muslims. Human rights advocates believe that such laws could infringe on the right to religious freedom in Malaysia and elevate the status of Shariah Courts to be on par with Civil Courts in deciding constitutional matters (Faruqi, 2008).

At the state level, the process of legislating faith rehabilitation laws has also faced resistance. In Selangor, for example, the 2000 Faith Rehabilitation Bill was opposed by representatives from the Gerakan and Malaysian Chinese Association (MCA) parties. Similarly, the Perlis Faith Protection Enactment faced opposition from three assemblymen from the *Parti Islam Se Malaysia* (PAS), who argued that the enactment did not fulfill the requirements of Shariah law, calling it merely "lip service" (Buang, 2007). This highlights the difficulty of drafting a specific and uniform law on applications to leave Islam.

Although there is no specific, uniform law to address cases of leaving Islam, several states have provisions in their various Shariah enactments. This article will analyze existing laws and provide recommendations for improving these laws or procedures to address this issue more holistically.

### 2. A Glimpse into Cases and Laws Regarding Applications to Leave Islam in Malaysia

Legal issues related to applications to leave Islam have developed alongside court cases dealing with the matter, particularly in civil courts. Beginning with the case of *Kementerian Hal Ehwal Dalam Negeri v. Jamaluddin bin Othman* [1989] 1 MLJ 418, leaving Islam was seen as a constitutional freedom. This was followed by cases like *Roslizah Ibrahim v. Kerajaan Negeri Selangor & Others* [2021] 2 MLRA 70, which ruled that leaving Islam falls under the jurisdiction of the Shariah Court if the applicant is legally considered a Muslim. In *Roslizah*, the

Federal Court allowed the appellant's declaration of being a non-Muslim because no evidence or record was proving the appellant was a Muslim.

The legal discussion around leaving Islam began after the Federal Constitution's Article 121 was amended with the inclusion of clause (1A) on June 10, 1988 (Act A704). The purpose of this amendment was to ensure that matters under the Shariah Court's jurisdiction could not be decided by the Civil Court, as affirmed in *Mohamed Habibullah bin Mahmood v. Faridah binti Dato Talib* [1992] 2 MLJ 793. This case determined that the Married Women Act 1957 did not apply to Muslims. Similarly, in *Ng Wan Chan v. MAIWP & Others* [1991] 3 MLJ 487, the court ruled that the Civil Court had no jurisdiction over matters under the Shariah Court's purview. This approach was reinforced in *Abdul Shaik bin Md Ibrahim & Anor v. Hussein bin Ibrahim & Ors* (1999) 5 MLJ 618.

Despite this, the Federal Court's decision in *Indira Gandhi a/p Mutho v. Director of the Islamic Religious Department of Perak & Others* [2018] 1 must also be considered. The court clarified that the authority to review actions by public authorities and interpret state or federal laws, including the Constitution, lies with the Civil Court, and this power cannot be transferred to the Shariah Court under Article 121(1A). This ruling shows a shift in the interpretation of Article 121(1A) compared to earlier cases, where the Civil Court's jurisdiction was limited in matters under Shariah Court authority, as in *Subashini a/p Rajasingam v. Saravanan a/l Thangathoray and Other Appeals* [2008] 2 MLJ 147.

In the Syariah Court, developments occurred following the case of *Majlis Agama Islam Pulau Pinang v. Siti Fatimah Tan binti Abdullah* [1404H] JH 27/2, which was decided by the Syariah High Court of Penang. In this case, the Syariah Court appeared to show a tendency to approve the application when it was found that the process of conversion to Islam did not meet the legal requirements that had been established. This is particularly interesting, as the decision demonstrates that the Syariah Court can approve such an application based on the premise that the applicant is not, in fact, a Muslim.

### 3. Legislative Considerations in Drafting Laws Related to Applications to Leave

Based on the research conducted, several important aspects need to be considered before drafting any law or regulation to handle cases related to applications to leave Islam in Malaysia. This is crucial because it involves various issues, particularly regarding *aqidah* (faith) within the framework of Islamic law.

**Islamic Law (Shariah):** The debate surrounding leaving Islam as a right to religious freedom is not only viewed through the lens of international law but also from the perspective of religious freedom within Islam itself. Religious freedom in Islam is often referred to in Surah Al-Baqarah, verse 256, and Surah Al-Kafirun, verse 6. The meaning of these verses has been used by scholars who argue that leaving Islam is part of religious freedom. This argument is further supported by the fact that there is no direct Quranic verse prescribing punishment in this world for those who leave Islam (apostasy). The Quran mentions severe reprimands and promises of harsh punishment from Allah for apostates in the afterlife, but no worldly penalties are explicitly detailed. Similarly, in the Quran, there are condemnations of those who engage in *riba* (usury), but no worldly punishment is prescribed for those who practice usury. Faruqi (2008) interpreted the Malaysian government's efforts to criminalize the right to religious freedom as *Talibanism* because these actions lack justification in Shariah law.

However, this literal interpretation is not supported by Bari (2008), Mohd Kamal and Aziz (2009), and Yaakob (2012). They argue that verse 256 of Surah Al-Baqarah refers to non-Muslims, and specifically to the method of preaching (dakwah) to them. It does not allow Muslims to leave Islam. This interpretation is strengthened by the *asbabun nuzul* (context of revelation) of the verse, which refers to non-Muslims being forced to convert to Islam, rather than addressing apostasy among Muslims.

For instance, in the *Tafsir Al-Misbah* by Shihab (2010), the phrase "there is no compulsion in religion" is explained as a prohibition against forcing non-Muslims to embrace Islam. For those who have already embraced Islam, they are bound by Islamic law and must follow it. Similarly, in *Tafsir Al-Aisar* by Abu Bakar Jabir Al Jazairi, the verse's context relates to the Ansar tribe in Madinah, who were forcing their Christian and Jewish children to convert to Islam. Al Jazairi also explains that this verse applies only to *ahlul kitab* (People of the Book), not

to those with no religious affiliation (pagans). Al-Qarni (2008) in *Tafsir Muyassar* similarly states that the verse prohibits coercion in converting non-Muslims to Islam but does not permit Muslims to leave the faith.

Based on these interpretations, it is clear that the verse refers to the methodology of preaching Islam to non-Muslims, not as a justification for Muslims to leave the faith. Therefore, it should not be interpreted broadly to mean that apostasy is part of the religious freedom guaranteed by Islam. A SUHAKAM report by Najibah Mohd Zain on apostasy and human rights concluded that there is no Quranic verse prescribing punishment for apostasy in this world, though many verses condemn the act.

Muda (2009) categorizes apostasy into two types: *riddah mujarradah* (simple apostasy) and *riddah mughallazah* (serious apostasy), based on the views of Ibn Taymiyyah. This distinction is highly significant because the *istitabah* process is only applicable to individuals who have committed *riddah mujarradah* (simple apostasy) according to Islamic law. According to Muda (2009), *riddah mujarradah* refers to the act of leaving Islam without engaging in activities that threaten Islam or the Muslim community, while *riddah mughallazah* (serious apostasy) refers to apostasy that poses a threat to Islam and Muslims. This includes the likelihood that the apostate may engage in activities or proselytism that could harm Islam and its followers. The study further found that, according to Islamic law, Muslims are not permitted to leave Islam, even though scholars (*fuqaha*) differ in their opinions regarding worldly punishment for apostasy. In this situation, it is up to the government to enact laws to address this issue. However, as of now, only Negeri Sembilan is seen as the state with the most comprehensive laws regarding the procedures for leaving Islam in Malaysia. Therefore, the report also concludes that this legal conflict will continue if other states do not enact specific laws regarding the administration of apostasy.

**Human Rights Perspective:** Faruqi (2008) notes that Article 11 of the Federal Constitution guarantees three elements of religious freedom: the right to profess a religion, the right to practice it, and the right to propagate it. However, the right to practice and propagate religion is subject to laws on public order, health, and morality, as well as state laws controlling the propagation of non-Islamic religions among Muslims.

Tapah (2005) categorizes restrictions on religious freedom in Malaysia into two types: Federal law restrictions, such as the Penal Code, and state law restrictions, such as controls on the propagation of non-Islamic religions to Muslims and Shariah criminal laws on apostasy. He concludes that religious freedom in Malaysia is not absolute, particularly in the practice and propagation of religion.

While the right to profess religion is absolute, as it is considered a private matter between the individual and God, this right is also protected under international treaties like the Universal Declaration of Human Rights (UDHR) 1948 and the International Covenant on Civil and Political Rights (ICCPR) 1966. These treaties consider religious freedom a fundamental right, though states can adapt these principles according to their national ideologies and needs.

Based on Article 18 of the UDHR 1948, Bon (2005) and Choon (1991) stated that religious freedom has been regarded by the international community as a *jus cogens* right, and thus should be adhered to by all member states of the United Nations (UN). Although, according to the principles of International Law, these treaties can be modified in the Constitution of UN member states according to the needs and ideologies of the respective countries, Bon (2005) argued that such modifications must be kept to a minimum and must not infringe upon a person's fundamental rights necessary for living a complete life. The UDHR 1948 and ICCPR 1966 established the basic rights required by humans to sustain their lives, including religious freedom, which UN member states are expected to follow.

For this reason, scholars who hold this viewpoint believe that the right to leave Islam is an absolute right that cannot be restricted by any law or executive policy, even though the Federal Constitution does not explicitly provide the right to leave Islam. Any law or government policy that hinders or controls the right to leave Islam is considered *ultra vires*. Among the government actions seen as violating these treaties is enacting laws to control religion for Muslims and making the right to choose a religion among Muslims a criminal offense.

However, Malaysia is not a signatory to either of these treaties and according to Bari (2008), Malaysia is not obligated to adopt the UDHR. Additionally, it should be understood that these international treaties are generally not binding unless incorporated into local statutes (*AirAsia Berhad v Rafizah Shima bt Mohamed Aris* [2014] MLJU 606). Nevertheless, the Human Rights Commission Act 1999, through section 4(4), allows SUHAKAM to refer to the UDHR 1948 as long as it is consistent with the Federal Constitution. Therefore, the framework for human rights provided in the Federal Constitution serves as the appropriate reference in determining the limitations and scope of fundamental freedoms in Malaysia.

### **Types of Laws Regarding Applications to Leave Islam in Malaysia**

According to Pg Musa (2015), there are three main categories of laws regarding applications to leave Islam in Malaysia:

**First Category - Provisions that Classify Leaving Islam as a Syariah Criminal Offense:** These offenses include attempted apostasy, insulting religion, apostasy intended to mock the actions of religious authorities, or committing apostate acts or uttering apostate statements. Such acts can be prosecuted in the Syariah Court. The punishment provided includes imprisonment, a fine, or both. However, apostasy in connection with a desire to dissolve a marriage is punishable by mandatory imprisonment for a period not exceeding three years.

Declaring apostasy is also considered an offense of insulting Islam and is provided for only in Sabah under Section 55(2) EKJS 1995 and in Malacca under Section 63(2) of the Malacca Syariah Criminal Offenses Enactment 1991. Section 55 of EKJS 1995 provides, among other things:

(1) Anyone who, by verbal or written means, actual conduct, or any means that leads to insulting or is deemed to insult or attempts to insult the religion of Islam, the course of any authoritative school, religious officials, religious teachers, and Imams appointed according to law, or any fatwa issued by the Majlis or Mufti under this Enactment or other laws, is guilty of an offense and, upon conviction, may be fined not more than RM2,000 or imprisoned for a period not exceeding one year, or both.

(2) A Muslim who claims to be a non-Muslim is guilty of an offense under subsection (1) and, upon conviction, is subject to the same punishment.

Or the offense of insulting Islam, as provided under Section 55(2) EKJS 1995, any act that makes a statement declaring someone is not a Muslim is considered an offense. If convicted, the person may be punished with a fine not exceeding RM2,000 imprisonment not exceeding one year, or both. Meanwhile, Section 63(2) of the Malacca Syariah Criminal Offenses Enactment provides for a fine not exceeding RM5,000 or imprisonment not exceeding three years, or both. Due to the difference in penalties, cases of insulting Islam in Sabah will be heard in the Syariah Lower Court, while in Malacca they will be heard in the Syariah High Court, even though the provisions are the same.

**Second Category - This Application is Categorized as a Mal Application Case:** The Syariah High Court is given jurisdiction, either explicitly or implicitly, to hear and decide cases involving applications to leave Islam, under the premise of confirming the religious status of individuals who are still alive. States that have this provision include Selangor, Perak, Penang, Kedah, and Johor. However, in states without this explicit authority, cases related to applications to leave Islam or the confirmation of religious status are heard in the Syariah High Court based on implied jurisdiction. States with such provisions include Sabah and the Federal Territory. Additionally, some states have regulations for handling these cases, such as Sarawak with the Syariah Court Property Law Regulations (Declaration of Religious Status) 2018. In Negeri Sembilan, Section 119 of the Islamic Law Administration Enactment 2003 provides for an application process to negotiate religious beliefs. In both Negeri Sembilan and Sarawak, these provisions include rehabilitation elements such as *istibah* (repentance) and religious counseling.

Although there is no specific law or method, Selangor has implemented an *istibah* model that incorporates elements of recovery, treatment, and post-*istibah* support. The treatment component includes both physical medical care and Islamic treatment. Physical treatment is provided by public medical officers and psychologists, while Islamic treatment is conducted using rituals and methods permitted under Islam. Notably, the module

also assists applicants who fall under the *asnaf* (eligible recipients of Zakat) category, with support from the Selangor Zakat Centre. The involvement of various agencies has made this module the best in Malaysia and it should serve as a guide for other states (Md Nasir and Ismail, 2016).

**Third Category - Provisions that Combine Both Punitive and Rehabilitative Elements:** These provisions are only available in Sabah and Malacca under Syariah criminal law. The process begins with prosecution and is followed by the *istibah* process if the individual is convicted of attempting to leave Islam. Section 63 of Sabah Shariah Offences Enactment 1995 provides the following:

(1) When a Muslim, either by act or word, admits to leaving the religion of Islam or declares themselves a non-Muslim, the Court, if satisfied that the person has attempted to change their faith or belief in Islam, either by confession or by their actions, may order the individual to be detained at an Islamic Guidance Centre for a period not exceeding thirty-six months for education, and the person will be asked to repent according to Syariah Law.

(2) If the person who has been ordered to be detained under subsection (1):

- (a) Repents immediately, the Court shall, after confirming the repentance, release the person; or
- (b) If the person repents at any time during the detention period, the Custodian must report this to the Court, and the Court shall summon the individual and, after confirming the repentance, order their release.
- (3) The Custodian Officer must submit a weekly progress report on the detained person to the Court.

(4) The Islamic Guidance Centre must be gazetted as a detention center in the Gazette.

As of the time of this research, no case has been prosecuted under this offense, even though Sabah has reported many applications to leave Islam (Pg Musa, 2015). Therefore, the effectiveness of this provision in addressing apostasy among Muslims remains unknown.

#### 4. An Analysis of the Existing Laws Related to Leaving Islam in Malaysia

According to Abd Aziz Bari (2008), the action of the State Legislature to make any provision regarding leaving Islam is *intra vires* (within legal authority) because it was enacted within the framework of the Federal Constitution, as provided for in the Ninth Schedule, List Two, Item One:

"Except for the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya, Sharia Law and personal and family law for people who follow Islam, including Sharia Law ... Islamic pillars except for matters included in the Federal List; membership; organization and proceedings for the Syariah courts, which will have jurisdiction only over people who follow the religion of Islam and only over any matter included in this article, but will not have jurisdiction over offenses except to the extent provided by law -federal law; control the development of faith and belief among people who follow Islam; determine matters of Sharia Law and Malay beliefs and customs."

Although this power is under the jurisdiction of the state, the Federal Government can enact laws for standardization purposes under Article 76 of the Federal Constitution (Shiddeq, 2015). Examples of such laws include property law, criminal Syariah law, the law of evidence, and Islamic family law. The state governments that adopt these laws can make amendments according to local needs. The question is whether the laws regarding applications to leave Islam in the Syariah Court can be standardized. Based on Pg Musa's study (2015, 2020), the profile of applications to leave Islam in Sabah is unique and cannot be referred to through records alone. Therefore, it is appropriate for laws regarding applications to leave Islam to be enacted by the state government on the local case profile.

As discussed, most existing laws are more punitive. Some states, such as Negeri Sembilan and Sarawak, have adopted a rehabilitative approach in their laws, but these laws do not place sufficient emphasis on other interventions, such as treatment, advocacy, and support for individuals going through the *istibah* process. In this regard, the module provided by the state of Selangor can be used as a benchmark for other states that intend to enact laws regarding cases of Muslims applying to leave Islam. The Selangor module has also

demonstrated that many government and semi-government agencies, such as the Zakat Centre, hospitals, and the Mufti's Office, can be involved in dealing with this issue.

## 5. Conclusion and Recommendations

Based on the discussion above, it can be concluded that enacting and enforcing a law related to applications to leave Islam is not a straightforward task, as the law must take into account all the aspects described in this article. Although state governments can enact relevant laws, elements of advocacy and rehabilitation, in line with Part Two of the Federal Constitution, must also be emphasized, and the punitive elements provided in existing legal provisions should be re-evaluated. In this regard, the State Government can make laws by the local case profile because, as the study conducted by Pg Musa (2015) shows, the case profile differs from one state to another and requires appropriate interventions. The *istitabah* approach implemented in Selangor can be used as a benchmark for other states because the module covers relevant interventions in dealing with this issue such as elements of treatment, rehabilitation and support after the recovery process. The involvement of both government and non-government agencies is necessary to initiate the *istitabah* process and guide the trainees after the process is completed.

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