



UNILATERAL CONVERSION: AN OVERVIEW

Article 3¹ of the Malaysian Federal Constitution provides that Islam is the formal religion of the Federation. Meanwhile, other religions are allowed to be practised in peace and harmony in the other parts of the Federation. This article generally touches on the implication of unilateral conversion in Malaysia since this continues to be a controversial agenda that always grasps the people's attention. Although the Federal Constitution provides freedom to a person who attained 18 years old and above to convert his religion but this freedom is not warmly welcomed in our society. The issue of conversion still persist and tend to create tense among family members and in the worst case scenario, this could be widely politicised. The family matters In Malaysia is governed by two different laws namely, Islamic Family Law and the Law Reform Marriage and Divorce Act 1976 (Act 164)² (LRA 1976) for the non-Muslims.

The provision on conversion under (LRA 1976) Clause (1) of Section 51 of the Act states, "Where one party to a marriage has converted to Islam, the other party who has not so converted may petition for divorce"³ which merely provides recourse to the non-converted spouse to petition for divorce. In a very famous case of *Pedley v Majlis Agama Islam Pulau Pinang* [1990] 2 CLJ 391, the High Court of Malaya opined that the dissolution granted by Syariah Court as inadmissible for the purpose of dissolution of a marriage between Muslim and non-Muslim spouses.

Since the Civil court does not recognise the Syariah Court's dissolution, the marriage prior to the conversion is deemed to be valid. The question on how far the non-converted spouse is willing to stay in the marriage is always answered in one word which is divorce. Practically, it is difficult to continue the marriage because Muslims are prohibited from marrying non-Muslims. Similarly, in *Re Application Of Aisyah Salmah Sian at Syariah High Court of Kuala Terengganu*; *Ismail Yahya J* viewed, in the circumstances where the conversion had not been

¹ Malaysian Federal Constitution As at 1 November 2010.

² Law Reform Marriage and Divorce Act 1976 (Act 164) (LRA 1976).

³ Law Reform Marriage and Divorce Act 1976 (Act 164) (LRA 1976).

followed by the other spouse, upon the dictates of Hukum Syarak and s. 43(2) of the Islamic Family Law Enactment 1985, the applicant's marriage must stand dissolved⁴.

Unilateral conversion is closely associated with several issues and among them is the maintenance of the spouse. It has been a cliché of the Societies that only the husband provides maintenance to the wife and children. Nonetheless, in law, the equality prevails whereby the maintenance can be given by both the husband and wife. Section 77 of LRA 1976, implies that a man is responsible to maintain his wife as well as his former wife. A woman is also responsible to support her husband or former husband if he is incapacitated whether wholly or partially⁵. Moreover, the fact that the husband had converted to Islam did not change the status of their civil marriage. The husband's obligation under the civil marriage could not be extinguished by his conversion to Islam⁶. the Prophet (PBUH) also said that, "a husband is a guardian (leader) of the family and hold responsibilities for them as well as his wife, who are a guardian (leader) in the household of her husband and children, and hold responsibilities for those under her obligation" In short, the maintenance of spouse and child is an obligation that needs to be performed and conversion to Islam shall not be a reason for non-performance of such obligations.

The Syariah rule says non-Muslim heirs cannot inherit from Muslim successors. Regardless of crucial qualification of inheritance, Islam never fails to consider the alternatives to facilitate non-Muslim heirs. For instance, non-Muslim heirs may receive the will from Muslim successor up to one third of the estate which is left after the debts and with consent from other Muslim heirs. Besides will, by way of hibah (grants during lifetime) non-Muslims heirs are entitled to be benefited and as well as the Muslim successor may also make charitable fund (waqf) for them.⁷

In a nutshell, the conflict between Islamic family law and civil family law still subsists regardless of the various provisions of laws. This indicates that the law is not firm enough to solve or prevent the conflict from happening again. Amendment to the law is a must to tackle the issue.

⁴ [2011] 1 CLJ (SYA) 132

⁵ Zuliza Mohd. Kusrin, Conversion to Islam in relation to divorce in Malaysian family law, Islam and Christian & Muslim Relations(2006), *Taylor & Francis Online*, (20 Nov 2020).

⁶ Shamala A/P Sathiyaseelan V Dr Jeyaganesh A/L C Mogarajah [2004] 2 Mlj 241

⁷ **Dr Jasni bin Sulong**. (2014). The Implications of Religious Conversion towards Muslim Inheritance under Malaysian Law. *International Journal of Liberal Arts and Social Science*, 2, 9th ser., 122-132.

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