

**LEGAL DISPUTES IN DETERMINING THE RELIGION
OF THE CHILD WHEN ONE PARENT CONVERTS TO
ISLAM UNDER MALAYSIAN LAW**

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Child

- The Child Act 2001 and Age of Majority Act 1971- 18 years and below
- Islamic law/ Shariah law-
 - signs of maturity and varies from boys and girls
 - Generally 15 years

The Constitution 1957

- Article 12 (3) (4)
 - No person shall be required to receive instruction in or take part in any ceremony or act of worship of a religion other than his own.
 - For the purpose of cl (3) the religion of a person under the age of **eighteen years shall be decided by his parent or guardian.**

Dual Jurisdiction

- Conflicts –separate laws for both Muslim and non Muslim
 - Muslim- Administration of Islamic law and Muslim Family law
 - Non Muslim- Law Reform (Marriage and Divorce) Act 1976
- Both laws recognize conversion to Islam as a ground for divorce
 - Muslim Family Law-no time limit to petition
 - Non Muslim- only after 3 months

The Administration of Islamic law

- the person who is not a Muslim may convert to Islam if he is sound mind and has attained the age of 18 years. Otherwise, his parent or guardian must consent to his conversion

Guardianship of Infants Act 1961, section 5

- In relation to the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income of any such property, *a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of the mother and father shall be equal.*

Muslim Family Law

- The custodian parent is responsible for the child's education as well as upbringing which includes religious upbringing

Cause of the conflicts

- The convert will go to the Shariah Court to apply for divorce and at the same time or subsequent to his conversion; convert the child to Islam without the knowledge of the other spouse
- After separation or divorce, children usually will follow the convert parent (usually when the convert is the mother)

Which law

- Some cases- The Courts have applied Article 12 (4) of the Constitution-consent of one parent only is sufficient
- Others- The court refers to GIA 1961- requires consent of both parents and declares that the conversion of a child as null and void for lack of legal capacity.

Proposal

- Custody closely associated with child development and upbringing
- The best Interests of the child-should be the parameter
- The custodian parent-will decide on religious upbringing
- The other alternative is to award joint custody
- Promote mediation as the best forum to resolve the dispute

Thank You

See you all soon in Kuala Lumpur next year!