

# The Implications of Religious Conversion towards Muslim Inheritance under Malaysian Law

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## **Abstract**

*Islam acknowledged the individual rights either for Muslim or non-Muslim, towards their religion practice, freedom, dignity, needs as well as property ownership. The rights are established and guaranteed under the shariah law, and the similar practiced was applied in all civilized countries nowadays. Focusing on property aspects, every religion has their own law and guideline in accumulating properties as well as transferring them to heirs. In Islam, only Muslim heirs shall inherit from a Muslim successor and vice-versa. Similarly, only non Muslim heirs shall inherit from non Muslim successor and vice versa. In fact, the Islamic law forbids inheritance among heirs under different faiths, except by the method of wills or grant, whereby one successor can bequeath his wealth to non Muslim heir or others in the limit of one third of his property. Therefore, an act of religion conversion in a family would affect a barrier of inheritance rights among them. In this case, an apostate would not inherit from his Muslim relatives as well as a new convert to Islam would not inherit from his non Muslim relatives. Apart from this, there are matters pertaining to the other rights as family members as such as maintenance, custody, funeral rite and security. The questions arise on the principle of Islam towards the rights of these matters for Muslim heirs towards his non Muslim relatives?, and the continuity of one's responsibilities towards their own blood relationships under different faiths? How Islam ascertain the welfare of these matters and their heirs, either for Muslim or non Muslim? Therefore, this paper aimed to discuss the matter further under Islamic perspectives and as practice under the Malaysian law.*

## **Introduction**

Religious conversion or converts is referring to one leaving his faith and embracing another faith. Conversion to Islam or “*muallaf*”, is specially refers to whom embracing Islam and giving devotion to the teaching of Islam and its law. On opposite, apostasy or “*murtad*” is referring to an act of leaving the belief of Islam. Convert from Islam to other faiths is forbidden by the Islamic law and would be punished. In another word, apostasy as an abandoning of what one has compulsory to belief in as a faith. Thus, conversion to Islam is contradictory an act of apostasy, which the former is refer to obedient and righteousness while the latter is refer to rebellious and astray.

In this regards, this paper will try to discuss the rights and responsibilities of the new converts to his family member who are not Muslims, particularly in terms of the distribution of the estate and the responsibility towards the dependant heirs. The aim is to repudiate negative perceptions about the new

converts to Islam as they were labelled escapism from family responsibility. Therefore, this discussion will clarify the rights and duties of the new convert as well as his accountability among his family members either Muslim or non Muslim under the Islamic law.

### Converts and the Consequences

Religious conversion carried out certain religious value. As for apostate, it is not just leaving the right path and goes astray; more over apostate is considered an act of breaking the link between him and religion. It was a sin and rebellious as going to abandon his own religious teaching. In this case, apostasy is not as an exercise of personal freedom and liberated action. These propounding become an insult to Allah as Islam is not just a religion, but moreover the law of life. Therefore, no religious liberty after professing Islam as Islam is the law of God, which Muslims have to follow compulsorily. Muslims are forced to pay their obligatory and have to comply with all of the teachings which include the dos and the don'ts (Q2:256). Thus, the act of apostasy is considered leaving those undertake; therefore turn out to be a crime to Allah since one has transgressed the provision of law.

On the other side, apostasy is not meaning leaving the religion of Islam *per se*, it also indicated that one has leaving his own family and the society. Thus, an act considered breaking Muslim brotherhood and destroys the relationship between them. Even though in general, there are still bond as one family who have the respectful and respected (Al-Bukhari, tt). However in the perspectives of *wala'* (relationship of faith), there are no more connection between them. In this fact, Islamic scholars unanimously favor that the apostate has busted this affiliation which consequentially breaks up the kinship relation as well as his marital bond. In this respect, Islam gives priorities to Muslim heirs followed by Muslim brothers in the sense of assistance and support (Yusuf al-Qaradawi, 1999).

However in the case of *muallaf*, non-Muslims are allowed to convert into Islam. The acts are treated as gained conscious and have chosen the right path from misguided trail. Therefore, it was not an offense for accepting Islam as the new faith but will be rewards with heaven. In facts, embracing Islam is an act of following the accurate rule of life, which pays faithful to Allah, as well as to comply with the Divine law. In other words, acceptance of Islam launches purification from the sin of polytheism. A new convert will be connected to Muslims brotherhood where their welfare are guaranteed by this bond such as through the fund of Muslim treasury (*baitulmal*) in the matter of financial assistance, and rights to inherit the property of other Muslim heirs.

### Rights of Converts in Inheritance

Rights to inherit the property between heirs are based on to the same faith, which is Muslim will inherit from another Muslim heirs and non Muslim will inherit from another non Muslim heirs. According to Abu Hanifah, if an apostate die, his property that acquired during Islam goes to his Muslim heirs, and whatever he acquired during apostasy is turn out for the public treasury. Meanwhile the estate of who convert to Islam will inherit by his Muslim heirs as Islam considered all Muslim as brothers. These concepts are synonyms to what the prophet have said (al-Muslim, 1986):

المُسْلِمُ أَخُو الْمُسْلِمِ : لَا يَظْلِمُهُ ، وَلَا يَحْدُلُهُ ، وَلَا يَحْقِرُهُ النَّفْوَى هَاهُنَا

Meaning: A Muslim is a brother of the other Muslim. They should not ill-treatment among them, as well as not despised and insulted. Piety is here (by pointing to the Prophet's chest).

Thus, the Muslim brotherhood has a special bond (*muwalah*) between them, which hold mutual responsibility in social life (Mustafa Abdul Wahid, 1984). As portrayed through early history of Islam, the

bond between Muslims (*ukhuwwah*) is so firm and solid which appear to be as one family relationship. They not just share in the safeguard matter, but also in financial and family affair. Therefore, brotherhood binds between Muhajirin and Ansar results rights to inherit, even though among them no blood-ties (al-Sabuni, t.t.).

فَكَانَ إِذَا مَاتَ الْمُهَاجِرَ وَرَثَتُهُ الْأَنْصَارِيُّ، وَإِذَا مَاتَ الْأَنْصَارِيُّ وَرَثَتُهُ أَخُوهُ الْمُهَاجِرَ

Meaning: If the migrants die, his property will be inherited by his brother from Ansar, and if the Ansar dies, his property will be inherited by his brother who migrants.

In other saying, it was recorded that (al-Bukhari, t.t.):

كَانَ الْمُهَاجِرُونَ لَمَّا قَدَّمُوا الْمَدِيْنَةَ، يَرِثُ الْمُهَاجِرُ الْأَنْصَارِيَّ، دُونَ دَوِي رَحْمَتِهِ، لِأَخُوَّةِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، بَيْنَهُمْ، فَلَمَّا نَزَلَتْ الْآيَةُ (وَلِكُلِّ جَعَلْنَا مَوَالِي... نَسِخَتْ.

Meaning: For migrants during their arrival to Madinah, their property will be inherited by their brother of Ansar, and not his blood-ties (non Muslims at Mecca), as they inherit through their bond as brotherhood in Islam, therefore, when the verse was revealed (everyone we make them as a guardian...) then the practice was repealed.

Obviously, Islam becomes a string of the new bond of brotherhood. The legal bind detracts other responsibilities under old beliefs and traditional adherence. Upon this connection, Islamic jurists have several opinions regarding inheritance rights between new convert to Islam and their relatives who are not Muslim. In this case, there are three views that can be analyzed in the context of religious conversion; (i) inheritance under similar faith, (ii) only Muslim heirs inherit, and (iii) Muslim heirs inherit during the apostate was Muslim.

### Inheritance for Similar Faith

Inheritance is distributed between heirs under similar faith, where different faiths are resulting of non inheritance. This view was held by many scholars, as well as recorded in Arabic poem (Abu Abdullah, t.t.):

وَيَمْنَعُ الشَّخْصَ مِنَ الْمِيرَاثِ \*\*\* واحدةٌ من عِلَلِ ثَلَاثِ  
رِقٌّ وَقَتْلٌ وَاخْتِلَافُ دِيْنٍ \*\*\* فافهم ، فليس الشُّكُّ كَالْيَقِيْنِ

Meaning: Individual are obstruct from inheritance by one of three reasons; slaves, murderers and different faiths. Let's understand and no doubt works as confident.

Thus, property of a Muslim successor cannot be inherited by his non-Muslim heirs and so do property of a non-Muslim successor cannot be inherited by his Muslim heirs. In this regards, the majority of scholars agreed with respect to what Usama ibn Zayd have said (al-Syawkani, t.t.):

لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ ، وَلَا الْكَافِرُ الْمُسْلِمَ

Meaning: A Muslim does not inherit from the estate of a non-Muslim and a non-Muslim as well do not inherit from the estate of a Muslim.

However, according to Imam Ahmad, if non Muslim heirs embraced Islam after the death of his successor, but before the distribution of inheritance, the new convert is still entitled to inheritance as a *targhib* (encouragement) for converting to Islam. However majority views are on the other hand, that the new convert does not entitled to inheritance as at the time of successor's death, he was still as a non Muslim. Qualification for inheritance is counted at the time of the successor's death (al-Mardawi, 1956). Therefore, he was not qualified for the estate.

Likewise among non Muslims, different religions between them also resulting of no inheritance ( لَا وَالتَّيْنِ كَفَرُوا ) (Abu Dawud, n.d.): However, the requirement of same faith mostly applicable to Muslim and non Muslim as Allah have said that non Muslims were guardians of the other non Muslims (بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ) (Q8:73), in which qualifies them to inherit each other even though among them have many different faith.

Based on the two hadith above and the verse of al-Quran, it is clear that Islam have its own regulations of transferring wealth and rejects practices according to Jahilliyah tradition (Abu Dawud, n.d.; Ibn. Qudamah, 1999). The principle of shariah was obviously followed in the case of Abu Talib's inheritance, Uncle of the Prophet (Ibn al-Athir, 1972). Abu Talib has three sons who are Aqil, Ja'far and Ali. Aqil does not convert to Islam and had inherited the estate of his father in Mecca. While Ja'far and Ali, who were also son of Abu Talib and have migrant to Medina, did not inherit anything from his father as both of them were Muslim, while the successor was not Muslim.

The estate of non-Muslim such as *al-musta'man* (unbeliever who enter the Islamic country with peaceful), the estate will be inherited by his non-Muslim heirs. If the heirs are not in the country, the leaders of Muslim countries hold responsibility to ensure the distribution to his heirs. If there is no heir, the estate becomes *fay* which will be deposited in the treasury for the benefit of Muslims (Kafrawi Ridhwan 2004). This point of view was adopted by Egypt inheritance law in Article 6, Law No. 77 Egypt 1943 which underlines:

لَا تَوَارَثَ بَيْنَ مُسْلِمٍ وَغَيْرِ مُسْلِمٍ . وَيَتَوَارَثُ غَيْرَ الْمُسْلِمِينَ بَعْضُهُمْ مِنْ بَعْضٍ  
وَإِخْتِلَافُ الدَّارَيْنِ لَا يُمْنَعُ مِنَ الْإِرْثِ بَيْنَ الْمُسْلِمِينَ . وَلَا يُمْنَعُ بَيْنَ غَيْرِ الْمُسْلِمِينَ  
إِلَّا إِذَا كَانَتْ شَرِيعَةُ الدَّارِ الْأَجْنَبِيَّةِ تَمْنَعُ مِنْ تَوَارِثِ الْأَجْنَبِيِّ مِنْهَا

Meaning: No inheritance between Muslims and non Muslims heirs. Non Muslim will inherit among them, and differences between countries do not prevent inheritance between Muslims and between non-Muslims, unless the laws of a foreign country do not allow inheritance for who are not his citizens.

### Muslims Inherit from Non Muslim

The second view states that the new converts will inherit from his heirs who are not Muslims but not vice versa. This view was based on the position of Islam which is supreme and paramount than other beliefs based on the hadith which says that, "الإسلام يعطو ولا يُعطى عليه" (Islam is supreme and there is no other religion superior than it) (al-Bukhari, n.d.). The supremacy of Islam gives a special authority for Muslim heirs to inherit from non Muslim successors. The stand of Islam was put in similarity as Muslim men in the case of marrying women of the Book (*ahl al-kitab*), in which only Muslim men are permitted to marry women of the Book and not for Muslim women to marry non Muslim men (Mahmud Syaltut, n.d.). Therefore based on these advantages and priorities for Islam and Muslim men, Muslim heirs can inherit from his non Muslim heirs (Ibn Qudamah, 1999).

Holding on this view and in comparing to the earlier hadith that narrated by Usamah ibn Zayd which forbid to inherit from non Muslim's estate, the latter was understood from the estate of non Muslim who

embattle Islam (*harbi*). Meanwhile, the estate left by non Muslim who in peace with Islam (*dhimmi*), can be inherited by their Muslim heirs'. This opinion was established from the concept of will, that a father who are non Muslim may bequeath the entire property to his Muslim's son and so instead. Therefore in the case of Muslim heirs, more priority should be given as a guaranteed on their welfare as well as believing in the supreme faith. Hence, the Muslim heirs entitled to inherit the estate of his non Muslim heirs. However Imam Ahmad bin Hanbal declined the above view, who argued that hadith which permit Muslim to inherit from a non-Muslim, was only refer to slaves who were freed by the former. This view is based on the Prophet's saying that said (Ibn Hazm, 1993):

لا يَرِثُ الْمُسْلِمُ النَّصْرَانِيَّ إِلَّا أَنْ يَكُونَ عَبْدَهُ أَوْ أُمَّتَهُ

Meaning: Muslim was not inherited from the Christian, except the Christian are his former servant (who was then put to liberty).

This view was followed and expanded by Ibn Taymiyyah and Ibn Qayyim al-Jauziyyah in their teaching and preaching.

Nevertheless on what we are discussing above, for parties who accept an inheritance from non Muslim, part of their estate could not inherit by Muslim heirs. Only estates that were valued by Islam as clean and purified were accepted as worth property (*mutaqawwim*). Other assets which have elements of feces, carcass and matters which forbid by Islam such as wines, pork and gambling materials were not considered worthy. This point of view could be referred to a hadith, which obstruct from getting benefit from what has been banned in religion, as the Prophet's saying (al-Tabrani, 1995; Ibn Jawzi, 1998)

مَنْ حَبَسَ الْعِنَبَ أَيَّامَ الْقَطَافِ حَتَّى يَبِيعَهُ مِمَّنْ يَتَّخِذُهُ خَمْرًا فَقَدْ تَقَحَّمَ النَّارَ عَلَى بَصِيرَةٍ

Meaning: Anyone who keeps the grapes from harvesting day until he sold it to the people who then make wine, indeed, he has put himself in a conscious hell.

This means that a Muslim could not received wine as his assets, which including forbidden to Muslim from inheritance, selling, buying or granting which related to the making of wine.

### ***Inheritance from the Converts***

Ibn Mas'ud, Zayd ibn Thabit, Ali and Abu Yusuf have an opinion that a Muslim heir should inherit from the estate of apostasy, and not *vice versa*. The view is in line with the narration of Musa bin Abi Kathir which refers to the supremacy of Islam and rejects the other faiths (Ibn Hazm, 1993):

سَأَلْتُ سَعِيدَ بْنَ الْمُسَيَّبِ عَنِ الْمُرْتَدِّ هَلْ يَرِثُ الْمُرْتَدُّ بَنُوهُ؟ فَقَالَ: نَرِثُهُمْ وَلَا يَرِثُونَنَا

Meaning: I asked Sa'id ibn al-Musayyib about (estate) of apostasy, whether his son could inherit from apostasy's estate? Sa'id said that we inherit from them but they do not inherit from us.

Allah clearly said (Q33:27), “وَأُورَثَكُمْ أَرْضَهُمْ وَدِيَارَهُمْ وَأَمْوَالَهُمْ” which means, “and you inherit their lands (apostates), their homes and their property”. Except for the estate of *dhimmi*, Muslim heirs should not inherit from them, as Islam safeguards their life and prohibit any violation on their estate without legal reason.

Shafi'i and Ahmad put a limitation in inheriting from apostate that the rights are only to the estate that acquired while they are Muslim. Whilst property acquired after leaving the faith turn into *fay* (confiscated by country) (Kafrawi Ridwan, 2004). The legal concept by making possession to the treasury as apostasy is a crime for rebelling as well as goes against the God command. Imam Abu Hanifah went

contrary under this argument, by distinguishing between estates that were left by apostate male or female. Estates that were left by female apostate will be inherited by his Muslim heirs regardless the property was acquired before or after the apostasy. While estates that were left by male apostate, his Muslim heirs will only inherit which were acquired before leaving the faith. This view was established under the perspective that women are weaker than men; therefore permit his Muslim heirs to inherit from all of her property.

### Conversion and Rights of Impediments

A personal act or attribute from one heirs will disqualified other heirs from inheritance. As we have discussed, a difference of religion between the heir and successor will disqualified inheritance between them. In addition, majority of Muslim jurists on view that, who was disqualified from inheritance as a result of different faith, could no longer disadvantaged the other heir (impediment). Even though general principle has underlined that the closer heir would deprive the farer in degree, the principle cannot be applicable anymore as no more ties (*muwalah*) among them as a legitimate heir under Islamic law. Their rights to inherit are forfeited and adversely, not affect the position of other surviving heirs in any way, neither excluding them nor restricting their shares.

However al-Hasan has a contrary opinion from above that non-Muslim heirs as well as slaves still may affects the position of the other heirs. The only exemption was for those who were convicted as murderer and were sentenced to death penalty. Meanwhile Ibn Mas'ud, Abu Thawr and Daud were more liberal in their opinion, that all heirs who were disqualified by impediment still have ability to affect the other heirs. For them, lawful impediment from inheritance does not deny their position as children or relatives to the deceased (Ibn Qudamah, 1999). Thus, they will deprived other heirs as their normal function as son, daughter, parents or siblings, either partially or totally.

However, when referring to the application of the current law, it was found that the majority view that "disqualified heirs are totally ignored" was chosen and adopted. In Article 24, Egypt Inheritance Law (Qanun No. 77 of 1943) provides that non-Muslim heirs cannot deprive Muslim heirs from inheritance.

المَحْرُومُ مِنَ الْإِرْثِ لِمَنْعٍ مِنْ مَوَانِعِهِ لَا يَحْجُبُ أَحَدًا مِنَ الْوَرَثَةِ

Meaning: Heirs, who are banned from inheritance because of impediments (in Islamic law), cannot exclude the other heirs from inheritance.

Thus, a non-Muslim heir is prevented from inheriting his Muslim heirs as well cannot deprive the rights of other Muslim heirs. In this case, disqualification by impediment differs from exclusion under the principle of priorities. The principle that distant heirs will not inherit when there is a close heir ( لا يرث الأبعد مع وجود الأقرب ) is not applicable to non Muslim heirs (al-Syawkani, n.d.).

### Religion Conversion under Recent Malaysian's Law

In Malaysia, apostasy is known as *murtad*, while new convert to Islam known as *muallaf*. For *murtad*, it was generally accepted as well provided that apostasy is an offence under shariah criminal offences. In fact, apostate would accelerate anger and sensitive issue among Muslims in this country. However not every states have provided directly pertaining to *murtad* except Pahang (1982), Perak (1992), and Terengganu (2002). Despite *apostasy*, an attempt for apostate also considered as an offence in Malacca (1991) and Sabah (1995), as well as an abetment to apostate. Apart from this, an act to deceit other Muslim that he was not a Muslim also an offence in Negeri Sembilan (1992), Perak (1992), Selangor (1995) and Terengganu (2001). Other states such as Penang (1996), Federal Territories (1997), Johor (1997) and Sarawak (2001) not provide the offence of *murtad* except indirect provision pertaining to wrongful worship, false doctrine and

false claim. While in Kelantan (1985), Kedah (1988), and Perlis (1993) there is no provision was provided for *apostasy* either directly or indirectly.

While for *muallaf*, another term for *muallaf* in Malaysia is known as “my new brother or sister” (*saudara baru*) (Anuar Puteh, 2005). However the term does not apply forever. In Selangor (2007) and Melaka (2010), the acknowledgment of someone as “my new brother/sister” only last for a period of 5 years. In general, the acknowledgment should not have a timeline because it is not something that is under Islamic teaching, but more to the practice of local customs (*urf*). The essential fact for “my new brother/sister” is they are stand at the same foot as the other Muslim after reciting the creed as *mukallaf* (hold responsibility). The stand as the other Muslim was provided in the Enactment of Administration of the Religion of Islam (Federal Territories) 1993 as follows:

91. (1) A person who has converted to Islam and has been registered in the Register of *Muallafs* shall, for the purposes of any Federal or State law, and for all time, be treated as a Muslim.
- (2) Person whose conversion to Islam has been registered under any law of any State shall, for all purposes in the Federal Territories and for the purposes of implementing in the Federal Territories the provisions of any law, be treated as a Muslim.

Meanwhile Section 92 provided that if any question arises within the Federal Territories as to whether a person is a *muallaf*, and the person is not registered in the Register of *Muallafs* or under any law of any State as a *muallaf*, that question shall be decided on the merits of the case in accordance with the requirements for conversion. In this case, the person must utter in reasonably intelligible Arabic the two clauses of the Affirmation of Faith; at the time of uttering the two clauses of the Affirmation of Faith the person must be aware that they mean “*I bear witness that there is no god but Allah and I bear witness that the Prophet Muhammad S.A.W. is the Messenger of Allah*”; and the utterance must be made of the person’s own free will.

In the distribution of inheritance involving Muslim and non-Muslim heirs in Malaysia, references generally based on classical Islamic law. There is neither statute nor by-law that provides the matter, except court cases. It was decided in *Re Timah binti Abdullah (1941)*, that non Muslim heirs were excluded from inheriting a Muslim successor. If there is no Muslim heir, then the treasury will escheat the entire property. In *Re Zaiton binti Abdullah (1989)*, all of the estate was inherited by treasury due to no Muslim heirs with her. Similar decision reached in *Re Emily binti Abdullah @ Yeo Leng Neo (1996)*, that the remaining of estates was submitted to treasury (1/4) as the deceased have no other Muslim heirs except a husband who received a quarter (1/4) as his share of inheritance and half (1/2) as matrimonial property. Likewise in *Re Zarina binti Abdullah @ Ooi Po Tsuan (2002)*, her estate was inherited by her husband (1/4), daughter (1/2) and treasury (1/4) after no more Muslims heirs were qualified.

### **Rights and Responsibility of the New Converts**

Even though Islam has stress out that faith is a qualification for inheritance, at the other hand Islam does not obstruct alternative way to facilitate non Muslim heirs. Biological link between siblings cannot be denied, as well as mutual responsibilities among them. In this case, roles and responsibilities among family member as parents, children and close relatives, are continuing even though after religion conversion. Moreover, if the new converts was the breadwinner of the family. Islam always reminds that each member of Muslim community has to be responsible towards others, and even more, if they are his own flesh and blood. Allah has made a command as follow (Q2:233):

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ

Meaning: It was the responsibility of father to feed and wear (his family) in a good manner.

Pertaining to this point, the Prophet p.b.u.h 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” (al-Bukhari, n.d.). These responsibilities applied generally either for Muslim family members or for non Muslim. Thus, a responsible successor should protect and give an assurance to his heirs in all matters in which, the latter lives will not be idle when the former had passed away.

Muslim and non Muslim heirs are entitled to receive maintenance or alimony, from their breadwinner heir. The dependant heirs have full rights to claimed if maintenance or alimony were delayed or in debt. The rights of wife for alimony is still available when she converts to Islam although did not join by her husband. In this case, even though the husband is barred from cohabitation with his wife, his responsibilities are continuing as the barrier is not coming from the wife’s disobedience, but because the husband does not want to embrace Islam. Similarly if the wife went apostasy, the rights of maintenance remain under the responsibility of the husband as long as she still in *iddah* period and the same rights are continuing on the children until they are adolescence (al-Zuhayli, 2001).

To ensure the rights for dependant heirs are properly carried out, the successor has to do bequeath to his unfortunate heirs. This status of heirs either fortunate or unfortunate will be examined by comprehending the law. The encouragement for doing an alternative method was analyzed from Surah al-Mumtahanah which says, “Allah does not forbid you respecting those who have not made war against you on account of (your) religion, and have not driven you forth your homes, that you show them kindness and deal with them justly; surely Allah loves the doers of justice” (Q60:8).

As far as provisions in Malaysia, there are neither statutes nor judgments that restrain a Muslim from giving testament to non-Muslims. The provision in the Muslim Wills Enactment (Selangor) 1999 does not obstruct from bequeathing to non Muslim heirs as understood from Section 7 of the Enactment that a beneficiary of a will shall be a person;

- (a) who is known;
- (b) who is competent to own the bequeathed property; and
- (c) if specified, in existence at the time of the execution of the will and if unspecified, it is not necessary for such beneficiary to be in existence at the time of the execution of the will or at the time of the testator’s death.

Thus, a non-Muslim heir can receive will from a Muslim successor, provided within the limit of one-third of the testator’s net estate after the payment of all his debts, and with consent of the heirs. Apart of wills, the alternatives way to benefit non Muslim heir is by grants (*hibah*) during lifetime or make a charitable fund (*waqf*) for them.

### **Conflict of the Status of New Converts and Inheritance**

There is no dispute that heirs within the same faith will inherit mutually. However if there is a conflict on the status of new converts, especially when a religious status of new convert was argued by another party, it will affect to another issues such as funeral and distribution of estate.

According to Muslim jurist discussion, there are several methods to determine the religious status of a new convert and its relationship to the distribution of the estate, which are (al-Mardawi, 1956):

- (a) If known the original religion of the deceased, the estate shall be distributed according to his original religion. If the Islamic authorities said that the deceased are Muslim at the time of the death and the



family of the deceased said in contrary; explanations of the latter are accepted. This situation is based on the following view:

قَالَ وَلَوْ مَاتَ رَجُلٌ ، وَخَلَفَ وَلَدَيْنِ مُسْلِمًا وَكَافِرًا ، فَادَّعَى الْمُسْلِمُ أَنْ أَبَاهُ مَاتَ مُسْلِمًا ، وَادَّعَى الْكَافِرُ أَنْ أَبَاهُ مَاتَ كَافِرًا ، فَالْقَوْلُ قَوْلُ الْكَافِرِ مَعَ يَمِينِهِ ؛ لِأَنَّ الْمُسْلِمَ بِاعْتِرَافِهِ بِأَخُوَّةِ الْكَافِرِ ، يَعْتَرِفُ بِأَنَّ أَبَاهُ كَانَ كَافِرًا ، مُدْعِيًا لِإِسْلَامِهِ

Meaning: If a man died and leaves two sons, Muslim and non-Muslim. Muslim son claimed that his father died as a Muslim and non-Muslim son claimed otherwise. In this argument, claims of non-Muslim son are accepted with an oath. This is because the Muslim (indirectly) admitted his relationship to non-Muslim brother, (which) simply portray that his father is originally non Muslim, and now claims as Muslims.

This principle seems to maintain the status quo of the deceased before embracing Islam, presuming continuation of a fact (*al-istishab*) that his father was still as non Muslim.

- (b) If we do not know the original status of the deceased, either Islam or not, in this case, the explanation of non Muslim heirs was also accepted as well as qualified for inheritance among them.

أَنَّهُ إِذَا مَاتَ رَجُلٌ لَا يُعْرَفُ دِينُهُ ، وَخَلَفَ تَرْكَةً وَابْنَيْنِ ، يَعْتَرِفَانِ أَنَّهُ أَبُوهُمَا ، أَحَدُهُمَا مُسْلِمٌ ، وَالْآخَرُ كَافِرٌ ، فَادَّعَى كُلُّ وَاحِدٍ مِنْهُمَا أَنَّهُ مَاتَ عَلَى دِينِهِ ، وَأَنَّ الْمِيرَاثَ لَهُ دُونَ أَخِيهِ ، فَالْمِيرَاثُ لِلْكَافِرِ ؛ لِأَنَّ دَعْوَى الْمُسْلِمِ لَا تَخْلُو مِنْ أَنْ يَدَّعِيَ كَوْنَ الْمَيِّتِ مُسْلِمًا أَصْلِيًّا فَيَجِبُ كَوْنُ أَوْلَادِهِ مُسْلِمِينَ ، وَيَكُونُ أَخُوهُ الْكَافِرُ مُرْتَدًّا ، وَهَذَا خِلَافُ الظَّاهِرِ

Meaning: When a man died of an unknown religion, leaving an estate, and two sons, who both recognized that the man was their father, one of them Muslim and the other non-Muslim. They claim that their father died in their religion respectively, and the estate should inherit by him and not by another brother, (the decision) for inheritance is for non-Muslim son. This is because the claim of Muslim's son reflects that their parents were originally Muslim and so is his brother. This makes the non-Muslim brothers was an apostate and this is contrary to the real situation.

Thus the claim that the father is originally Muslim and the sibling is apostate carried a contra explanation of the real situation of non Muslim brother. Thus, the estate was decided to be for non Muslim taking into account that the brother still in his status quo and their original religion is non Muslim.

- (c) Imam Ahmad on the opinion that each children will inherit the estate equally, which divided at par among Muslim and non Muslim brothers.

وَإِنْ لَمْ يَعْتَرَفْ بِأَخُوَّةِ الْكَافِرِ وَلَمْ تَكُنْ بَيِّنَةٌ بِأَخُوَّتِهِ ، كَانَ الْمِيرَاثُ بَيْنَهُمَا نِصْفَيْنِ؛ لِنَسَاوِي أَيْدِيهِمَا

Meaning: And if it is not known the kinship with non-Muslim heirs, and there is no evidence of the kinship, then the division of estate between them will divided into two, to equal their rights together.

- (d) Imam Abu Hanifah on opinion that the estate will inherit by Muslim heirs with condition that the conflict took place in the Muslim countries.

يُحْتَمَلُ أَنْ يَكُونَ الْمِيرَاثُ لِلْمُسْلِمِ مِنْهُمَا وَهُوَ قَوْلُ أَبِي حَنِيفَةَ لِأَنَّ الدَّارَ دَارَ الْإِسْلَامِ ، يُحْكَمُ بِإِسْلَامِ لِقِيطِهَا ، وَيَثْبُتُ لِلْمَيِّتِ فِيهَا ، إِذَا لَمْ يُعْرَفْ أَصْلُ دِينِهِ ، حُكْمُ الْإِسْلَامِ؛

Meaning: It was viewed that the inheritance belongs to the Muslim heirs and this is the opinion of Abu Hanifah, because it took place in Islamic state, (as what have reached in)

children abandoned by his parents and found by others (*al-laqit*) are also adjudged as Muslim. Similarly, the judgement on the body found in Muslim state, if not known his original religion, it was adjudged as Muslim.

These principles that are underlined by Muslim jurist have to be suit to the recent practice. Past scenario and the recent cases have to be match in order to ascertain the real status of the deceased's dispute status.

In Malaysia, a conflict between Muslim and non-Muslim heirs pertaining to corpse of new convert become a sensitive issue. Each party claims their rights in many issues such as handling funeral rites, last respects and inheritance. The issue appears when there is confusion about one's religious status upon death, as happened in the case of *Maniam Moorthy versus S. Kaliamal (2005)*. In this case, the secrecy of the deceased recent faith created a conflict between families of the new convert and the authority of Islamic Religious Council. Conflict get further complicated when a non-Muslim families claim their rights at the civil courts, while the Islamic Council authority filed the case at the Shariah Court. However, the decision from the High Court (Special Appeals) has laid down the foundation in hearing such cases as expressed by Judge Dato 'Raus Sharif that:

“Surely the court with the jurisdiction and competency to decide on any matters arising, like veracity on the conversion to Islam, is the Shariah Court and not the civil court. This is in line with Article 121 (1A) of the Federal Constitution which states that the civil court has no jurisdiction regarding matters over which the Shariah Court has been vested jurisdiction by the written law.”

Thus, Shariah Court have jurisdiction in hearing dispute on the status of religion of new convert. In reaching the decision, the Court followed guidelines in *Soon Singh versus PERKIM Orissa & Anor (1999)*, where only the Shariah Court have jurisdiction to declare the status of new convert either still as a Muslim or become apostate. Under the Enactment, the deceased are still regarded as a Muslim until confirmed by the Shariah Court that an act of apostasy was prevailed or otherwise. Similarly in dissolving one marital status, one of the spouses who converted from or to Islam does not make the marriage directly dissolved until confirmed by the Shariah Court. The Shariah Court also hold jurisdiction in the National Registration Regulations 2001, to confirm and change status of new convert in the identity card and registration records.

The most important fact to reach for the decision is evidences from family and friends of the deceased. It is wrong to say that cases heard before the Shariah Court will favor the Muslim applicant and disfavor non Muslim.. In the case of *Nyonya Tahir @ Wong Ah Kiu (2006)*, the Shariah Court had ruled that the deceased was a non Muslim at the time of her death, even though the religious status of the deceased on her identity card still displayed the word “Islam”. Decisions are made based on evidences and expalanations of family and friends even though they are non Muslim. Based on her daughter, Nyonya Tahir practiced Buddhist faith until her last breath and never practices Islam. Similarly, in *the Islamic Religious Council of Penang versus Fatimah Tan Abdullah (2009)*, the Shariah Court disfavor the plaintiff and decide that the new convert, Fatimah Tan is no longer a Muslim as she not practice Islam in her life, after hearing evidences from relatives.

However in the matter of dissolving marriage of new convert, conflict arise when civil law only recognizes the dissolution of previous marriages done in civil court, with condition that it was petitioned by couples who are non Muslim. Even though according to Islamic law, the marital status between Muslim and non-Muslim spouse is dissolved (*faraq*) when one of the parties converted to Islam (Nuraisyah Chua, 2004). Based on Section 51, the provision of Law Reform Act (Marriage and Divorce) 1976 only acknowledged petition made by non Muslim spouse. It is provided that where one party to a marriage has converted to

Islam, the other party who has not so converted may petition for a divorce: provided that no petition under this section shall be presented before the expiration of the period of three months from the date of the conversion (decree of nullity). It was clear that, the provision not authorize the Muslim couples to apply before court unless at the Shariah Court, as he/she is Muslim. However the conflict become more complicated when the declaration of Shariah Court do not bind non-Muslim couples, as well as the Civil Court, as in the case *Ng Siew Pian lawan Abd. Wahid Abu Hassan, Kadi Daerah Bukit Mertajam & Anor (1993)*. The conflicts and dual jurisdiction of courts may invite conflict and overlapping claims for the pension of the deceased if the new convert had married another woman after his conversion to Islam (Mahamad Nasir Disa, 2007).

More conflict will appear when non-Muslim spouse did not file a petition of dissolution of marriage, after the other spouse leaving the faith and embracing Islam. Hence, according to the Law Reform Act 1976, the marriage will be declared as still valid and legal. This scenario has happened in the case of *Eeswari Visuvalingam versus Kerajaan Malaysia (1990)*, when the wife who is in Hindu faith make a claim to inherit her husband's pension after the new converts husband pass away. The court decided that since there is no dissolution of marriage's petition ever made, the marriage was declared to be still exists and continues, which qualify for the wife to receive the pension as a legal wife as provided in Section 4, Pension Adjustment (Amendment) Act 1983 and Section 15, Pension Act 1980. The Pension Act 1980 and the 1980 Regulations are civil laws of general application and if a person is entitled under the act that the person is entitled regardless of whether he is a Muslim or a non-Muslim. For the purpose of the pension laws the appellant is certainly a widow [or one of the widows] of the deceased. Clearly, the Civil Court ruled that the plaintiff is entitled to a pension based on a right under the statute, which is civil law even though under the Islamic law, she should be not qualified.

In related to the case, a past fatwa by the Federal Territory have pronounced that a state pensions is included in the estate of the deceased and non Muslim heirs should not entitled to inherit the estate according to the inheritance law. However on the contrary, the 21<sup>st</sup> meeting of National Fatwa Committee Council on 12<sup>th</sup> September 1988 have decided that gratuity, pension and consolation money are not form the estate of the deceased as its were incurred after the death. Therefore, it's belong to the rights of dependant heirs, whether they have a blood relation to the deceased or not, such as an adopted child (Wan Muhammad Wan Mustapha, 1988). This fatwa was held as an elaboration for Section 11 (1), Re-Computation Pensions Act 1980 (Act 228) which provides that re-computation pension or dependant pension is for the right of dependant heirs such as widow, children and parents with priority to the spouse and children. As sum, dependant heirs of non Muslim also entitled to the pension for their maintenance, study or clothing as decided in the case *U. Viswalingam versus S. Viswalingam (1979)*. Similarly in the case of compensations, the 49<sup>th</sup> Discussion of Fatwa Committee on 19<sup>th</sup> September 2000 have decided that compensation earned from the death of employee, compensation through lawsuits and social security (soco) are not considered as an inheritance. Therefore, the money can be received by non Muslim heirs if they are dependant heirs of the deceased.

Amidst the conflicts, it is clear that the responsibility of a new converts towards the welfare of his non-Muslim family members continuous and guaranteed by Islamic law as well as Malaysian law. In the case of *Tang Sung Mooi versus Too Miew Kim (1994)*, the Supreme Court has held that an obligation that imposed on a person in a non Muslim marriage does not disappear after he/she professing Islam. Thus, no one can be irresponsible to his ex-wife and children simply because of the different faiths. In the case of *Ganesan A / L Lingam @ Abdul Ghani*, the Court of Appeal ruled that a husband still hold responsibility to pay alimony to his wife who is still in Hinduism, after he embracing Islam as his new religion Mahamad nasir Disa, 2010).

## Conclusions

The above discussion clearly shows that the inheritance rights are separated between faiths, where Muslim heirs will inherit from Muslim successor and so do for non-Muslim heirs. Thus, no inheritance between new convert of Islam and his heirs who are remain as non Muslim. However, blood-ties and responsibilities among them are still continuous even though they are sharing in different faiths. Islam recognized the biological relation and underlined certain responsibilities and respects. Therefore, father, mother, son, daughter or siblings are responsible towards each family member, especially pertaining to protection and maintenance. In a meantime, alternative method can be done in transferring wealth among non Muslim heirs such as by will, grant or endowment. In this case, the planning upon the estate of family member, especially for new convert, is essential to benefit his dependant heirs.

## Bibliografi

Abu Abdullah Muhammad bin Ali (t.t.). *Matan al-Rahbiyyah*. Dar al-Matbu'at al-Hadithah

Abu Dawud, Sulayman bin Ash'ath al-Sajistani al-Azdi (t.t.). *Sunan Abu Dawud*. Tahqiqi: Muhammad Nasr al-Din al-Albani. Riyadh: Maktabah al-Ma'arif.

Anuar Puteh (2005). *Keperluan Bimbingan kepada Saudara Baru*. Dalam Razaleigh Muhamat @ Kawangit, Faudzinain Badaruddin & Khairil Khuzairi Omar (peny.). *Masa Depan Saudara Baru: Harapan, Realiti dan Cabaran*. Bangi: Pusat Islam Universiti Kebangsaan Malaysia

al-'Asqalani, Ibn Hajar Ahmad bin Ali (1995). *Al-Talkhis al-Habir fi Takhrij Ahadith al-Rafi'ie al-Kabir*. Tahqiq: Abi 'Asim Hassan bin Abbas. Kaherah: Muassasah Qurtubah.

\_\_\_\_\_ (2000). *al-Fath al-Bari Syarh Sahih al-Bukhari*. Riyadh: Dar al-Salam.

Azim Abadi, Abi al-Tayyib Muhammad Syams al-Haqq (2001). *Awn al-Ma'bud Syarh Sunan Abi Dawud*. Kaherah: Dar al-Hadith.

al-Baghawi, Abi Muhammad al-Husayn (1974). *Syarh al-Sunnah*. j. 8. Damsyiq: al-Maktab al-Islami.

al-Baghdadi, Abu Muhammad 'Abd al-Wahhab (1999). *al-Isyraf 'ala Nuqti Masa'il al-Khilaf*. j. 2. Beirut Lubnan: Dar Ibn Hazm.

al-Bukhari, Muhammad ibn Ismail (t.t.). *Sahih al-Bukhari*, Mesir: Dar Matabi' al-Sya'ab.

\_\_\_\_\_ (t.t.). *Tarjamah Jami' Sahih al-Bukhari*. Mesir: Idarat al-Tiba'ah al-Muniriyah.

Ibn al-Athir, al-Mubarak bin Muhammad al-Jazari (1972). *Jami' al-Usul fi Ahadith al-Rasul*. j. 9. Maktabat al-Halwani.

- Ibn Hazm, Ali bin Ahmad bin Sa'id (1993). *Al-Muhalla bil-Athar*. j. 8. Lubnan: Dar al-Kutub al-Ilmiyyah.
- Ibn Kathir, Ismail ibn Umar (1987). *Tafsir al-Quran al-Azim*. j. 1. Beirut: dar al-Ma'rifah.
- Ibn Qudamah, Abi Muhammad 'Abd Allah (1999). *al-Mughni*. j. 9. Sa'udi Arabia: Dar 'Alim al-Kutub.
- I. Mahmud (1958). *Muslim Law of Succession*. Karachi: Pakistan Law House.
- Kafrawi Ridwan, H. *et. all* (2004). *Ensiklopedia Islam*. j. 3. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- al-Kasani, Abu Bakr ibn Mas'ud (1974). *Kitab Bada'i' al-Sana'i' fi Tartib al-Syara'i'*. j. 3. Beirut: Dar al-Kutub al-'Arabi.
- Mahamad Naser Bin Disa (2007), "Penyelarasan Undang-Undang Pewarisan: Isu-Isu dan Penyelesaiannya", *Konvensyen Perwarisan Harta Islam 2007*, Kuala Lumpur: Amanah Raya Berhad.
- Mahamad Naser bin Disa (2010). *Isu-isu Perundangan yang Berbangkit daripada Pemelukan Islam: Suatu Analisis*. Dalam Mohd Nizam Sahad & Suhaila Abdullah (peny.). *Prosiding Seminar Kebangsaan Dakwah Saudara Kita: Isu dan Cabaran Semasa*. Universiti Sains Malaysia: Bahagian Pengajian Islam, Pusat Pengajian Ilmu Kemanusiaan.
- Mahrani, Muhammad Bayumi (1995). *Kitab al-Imamah wa Ahl al-Bayt*. j. 2. Beirut: Markaz al-Ghadir.
- al-Mardawi, Ali bin Sulaiman bin Ahmad (1956). *Al-Insaf fi Ma'rifat al-Rajih min al-Khilaf*. Beirut: Dar Ihya' al-Turath al-Arabi.
- al-Maridini, Muhammad bin Muhammad Sabt al-Syafi'i (2001). *Syarh al-Rahbiyyah fi al-Faraid*. Tahqiq: Ahmad Farid al-Mazidi. Kaherah: Dar al-Masyari'.
- al-Muslim, Muslim ibn al-Hajjaj al-Qushayri (1983). *Sahih Muslim bi-Syarh al-Nawawi*. j. 4. Beirut: Dar al-Fikr.
- Mustafa Abdul Wahid (1984). *Mujtama' al-Islam*. Beirut: Dar al-Bayan al-Arabi.
- Nuraisyah Chua Abdullah (2004). *Conversion to Islam – Effect on Status of Marriages and Ancillary Reliefs*. Kuala Lumpur: Law Book Services.
- al-Qardawi, Yusuf (1999). *Golongan BukanMuslim dalam Masyarakat Islam*. Dalam Arsil Ibrahim (pent.). Kuala Lumpur: Angkatan Belia Islam Malaysia.
- al-Sabuni, Muhammad 'Ali (t.t.). *al-Mawarith fi al-Syari'ah al-Islamiyyah fi Daw' al-Kitab wa-al-Sunnah*. Mesir: Dar al-Hadith.
- al-San'ani, Muhammad bin Ismail (1998). *Subul al-Salam: Sharh Bulugh al-Maram min Jam' Adillat al-Ahkam*. Beirut: Dar al-Ma'rifah.

Sayid Sabiq (1990). *Fikih Sunnah*. j.7 & 14. Kuala Lumpur: Victory Agencie.

Syaltut, Mahmud (2004). *al-Fatawa: Dirasah li-Musykilat al-Muslim al-Mu'asir fi Hayatihi al-Yawmiyah al-'Ammah*. Kaherah: Dar al-Shuruq

Syirbini, Muhammad ibn Ahmad (1958). *Mughni al-Muhtaj : ila Ma'rifat Ma'ani Alfaz al-Minhaj*. j. 3. Kaherah: Matba`at Mustafa al-Babi al-Halabi.

al-Syawkani (t.t.). *Nayl al-Awtar: Syarh Muntaqa al-Akbar min Ahadith Sayyid al-Akhyar*. j. 5. Kaherah: Maktabah Dar al-Turath.

Wahbah al-Zuhayli (2001). *Fiqh dan Perundangan Islam*. Ahmad Shahbari Salamon (et.al)(terj.). j. VII. Kuala Lumpur: Dewan Bahasa dan Pustaka.

Wan Mohammad bin Haji Wan Mustapha (1988). "Pentadbiran Harta Pusaka Orang Islam". Dalam Mohd Ridzuan Awang (ed.). *Undang-undang dan Pentadbiran Harta Pusaka Orang-orang Islam di Malaysia*. Selangor: al-Rahmaniah.

Warta Kerajaan Negeri Selangor No. 9. Jil. 58. [Mufti Sel. 500-2; PU. Sel. AGM. 0007 Jld.2].9 April 2007