

Religious Indoctrination of Youth in Malaysia

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ABSTRACT

This article seeks to highlight on the issue in determining a youth's religious freedom and practice the religion that interests them. Article 11(1) of Federal Constitution of Malaysia provides for the fundamental right of a person to profess and practise his or her religion subject to certain restrictions. Nonetheless, Article 12(4) of Federal Constitution restricted the religious freedom of a person under the age of 18 whereby it shall be decided by his or her parent or guardian. Article 11(1) of the Federal Constitution is a fundamental right but with the exemption in Article 12(4), it invites the question whether a youth has a right to religious freedom. It examines several controversial cases which tackle the essential question of whether the Malaysian conception and practice of youth's religious freedom is consistent with constitutional rights in Article 11(1). This study utilized legal doctrinal research in the context of the Federal Constitution, legal issues and its application, including the implementation of the right to religious freedom for youth in another country. This paper demonstrates that while religious freedom is constitutionally guaranteed in Malaysia, but youth under the age of 18 have no rights to decide for themselves the religion they want to practice. Thus, this paper proposes that Article 12(4) should be amended in order to stop the discrimination against youth under the age of 18 in their right to freedom of religion and some other suggestions.

Keywords: Youth's right; Human rights; Religious freedom

INTRODUCTION

Malaysia prides itself in its recognition as a moderate Islamic country and Islam as the religion of the Federation.¹ Although Malaysia is a multi-religious society, where most Malays are Muslim, most Chinese are Buddhist, and most Indians are Hindus, Malaysian constitution guarantees religious freedom. According to the Department of Statistic Malaysia, the population of Malaysian youth which comprises of approximately 9.0 million in 2020² are made up of various races and religions.

In Malaysia, the constitutional grounding of Islam does not affect the right of non-Muslim to practice and profess their own religions.³ Indeed, this is the central feature of religious freedom to every individual in Malaysia as enshrined in Article 11(1) of the Constitution. This right is located in the human rights section stated in the Federal Constitution⁴ as follows: *"Every person*

has the right to profess and practice his religion and, subject to Clause (4), to propagate it".

This matter is seen as very relevant because it gives freedom to the society, especially the multi-racial Malaysian society which consists of three main races namely the Malays, Chinese and Indians to practice their respective religions. With this legislation, everyone can carry out their religious demands without obstacles and this will create a peaceful and harmonious country. This also shows that a person's fundamental rights are very important and emphasized in the Malaysian Constitution.

Nevertheless, this freedom is limited in Article 12(4) of the Federal Constitution which limits a person's change of religion in Malaysia to individuals who are eighteen years old and above. Therefore, a person under the age of eighteen must obtain permission from their parents or guardians.

Although Article 11 of the Federal Constitution explains that any individual has the right to choose, profess and practice his religion anywhere in the Federation in peace and harmony. This provision requires a deeper interpretation, especially to the word “each individual”. Literally, the word means that any individual living in the Federation can convert to another religion. In other words, children under eighteen years of age also have the right to choose their own religion.

DEFINITION OF YOUTH

In Malaysia, the Youth Societies and Youth Development Act 2007 (YSYDA 2007) is the main law that regulates youth activities and development. The Act defined youth pursuant to section 2 as a person not less than 15 years and not more than 40 years old. The first legal issue regarding youth law in Malaysia is about the definition of youth itself. As mentioned above, youth is defined as someone who is not less than 15 years and not more than 40 years old.⁵

However, according to the Age of Majority Act 1971 (AMA 1971), it stated that the minority of all males and females shall cease and determine within Malaysia at the age of 18 years and every such male and female attaining that age shall be of the age of majority.⁶ It means that all Malaysian citizens at the age of eighteen are considered as adult and they can enter into a valid contract or deal with any third party but the age limit does not apply to the following matters which are marriage, divorce, dowry, adoption, ceremony and religious usage and any provision in any written law that contains the determination of the age of majority for the specific purpose of that written law.⁷

Thus, the YSYDA 2007 is not in conflict with age limitation provided under the AMA 1971 but according to the

United Nation, youth is defined as those between the ages of 15 to 24 years old. While the Commonwealth defined youth as those between 15 to 29 years old. Only in Malaysia, the age range has been increased up to 40 years old. It seems that in Malaysia, the broad definition of youth age includes a large segment of populations with different interests, attitudes, needs, skills, education and others.

THE CONCEPT OF YOUTH’S RIGHT TO PARTICIPATE IN CHOOSING THEIR RELIGION IN MALAYSIA

As defined above, according to the Youth Societies and Youth Development Act 2007 (YSYDA 2007), the youth age is between 15 to 40 years old. According to that definition, it can be concluded that there are two categories of concepts regarding religious choice for youth in Malaysia which is applied to youth aged between 18 until 40 years old and youth aged between 15 until 17 years old. This kind of division happened because the application of the definition of age is indirectly affected by the application of laws that have been enacted in the Federal Constitution.

THE FIRST CATEGORY OF YOUTH: AGE BETWEEN 18 UNTIL 40 YEARS OLD

The youth around this age had attained the age of majority as stated in the Age of Majority Act 1971.⁸ Article 11 (1) of the Federal Constitution is applied to this kind of youth where they have the right to profess and practice their religion by following the rules provided in the Constitution. This right is stated in Part II under the Fundamental Liberties section.⁹ In the matter of religious freedom, it can be explained that Article 11(1) is giving the choice to any individual to profess any religion they want. This principle

preserves a person's religious rights and as long as the appreciation of the way of life is still subject to the laws of the country that do not threaten peace in society. It should be emphasized that this right to freedom of religion is guaranteed for everyone regardless of their religion, race, descent or place of birth.¹⁰

Although the Federal Constitution guarantees the right to freedom of religion for every individual, the right granted is not something absolute. These are the principles outlined in the Islamic religion, especially in matters related to conversion or leaving Islam. The intended principle is that the blessing of freedom to change religion is not given to followers of Islam. Such a thing does not violate the principle of freedom because a country is allowed to limit certain rights with policies or limitation clauses.¹¹ The clause was enacted specifically for Muslims because Islam is the official religion of Malaysia as stated in Article 3(1) Federal Constitution. These restrictions are subject to laws governed by state law according to Article 11(4) and State List through 9th Schedule List II Item 1 of the Federal Constitution.

We can see that scenario happened in the case of *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan dan lain-lain*¹² where the appellant was a Malay woman born on 8 January 1964. She was brought up as Muslim by her family and her given name was Azlina bte Jailani. She was also raised in the Islamic way of life since childhood. On 21 February 1997, she applied to the National Registration Department ('NRD') ('the first application') to change her name to Lina Lelani when she was 33 years old. Then, she made a second application for the name change on 15 March 1999 but this time to Lina Joy. The reason she gave in her statutory declaration to support the application was that she had renounced Islam for Christianity and that she intended to marry a Christian.¹³

However, the Federal Court dismissed her appeal based on the opinion from the majority of the judges. In the paragraph 74, the judge stated that one of the reasons that her application has been dismissed is the non-production of an order or a certificate of apostasy from the Federal Territory Syariah Court or Islamic authorities.¹⁴ As stated, the Federal Constitution gives the power to Federal Territory Syariah Court or Islamic authorities to decide any Muslim act which is contrary to Islamic law such as conversion out of Islam (apostasy).

In addition, the opinion from the two judges in this case who are Ahmad Fairuz as a Chief Justice and Alauddin as a Federal Court Judge automatically answered firmly about this controversial case where they stated:

*There was no final decision that the appellant had no longer professed Islam. Thus, the statement that the appellant could no longer be under the jurisdiction of the Syariah Court because the Syariah Court had only jurisdiction on persons professing Islam should not be emphasised accordingly. The way a person renounced from a religion should be in accordance of the regulation or law or practice determined or stipulated by the religion itself. The appellant was not prevented from marrying. The freedom of religion under art 11 of the Federal Constitution required that the appellant complied with the rituals or law of the Islamic religion specifically regarding renunciation of the religion. Once the decision of the religion of Islam had been complied and the religious Islamic authority admit her apostasy then only could the appellant profess Christianity.*¹⁵

The court took a different approach in the *Majlis Agama Islam Pulau Pinang v. Siti Fatimah Tan* case. Fatimah Tan Abdullah or her Chinese name, Tan Ean

Huang was born as a Buddhist and converted to Islam to marry an Iranian citizen. After the marriage, her husband disappeared. Then, she made an application at the Penang Syariah High Court to declare that he is no longer a Muslim on 10 July 2006 and she was 37 years old at that time. Fatimah Tan stated that she was not confident in Islam and had never practiced it. In fact, she continues to practice Buddhism even though she is a Muslim at that time.

The Pulau Pinang Islamic Religious Council (MAIPP) has failed to present reasons to reconsider the decision made by the Syariah High Court. With that, the Syariah Court of Appeal unanimously stated that MAIPP's appeal was rejected. Therefore, the Penang Syariah High Court has allowed her application and Fatimah Tan is no longer a Muslim based on the evidence or facts that have been presented in accordance with section 61(3)(b)(x) Administration of the Religion of Islam (State of Penang) Enactment 2004. The MAIPP was also blamed by the trial Judge for failing to provide religious education to Fatimah Tan and decided the MAIPP needed to revoke the Certificate of Acceptance of Islam. In order to delete the word 'Islam', the Syariah High Court rejected the application and the respondent was asked to deal with the National Registration Department (NRD).¹⁶

The Second Category of Youth: Age between 15 until 17 Years Old

For this category, the age between 15 until 17 years old is considered under the age of majority. A person who is under the age of 18 like this kind of youth is still considered as a child. This definition is stated in the Child Act 2001.¹⁷ Freedom of religion provided in Article 11 of the Federal Constitution is limited in Article 12 (4) of the same Constitution. Regarding the limitation, Article 12(4)

stated that a person under the age of eighteen must obtain permission from their parents or guardians if they want to change religion in Malaysia.

In Malaysia, all the cases relating to the conversion of the youth around this age to another religion are not permitted unless they got permission from their parents or guardians. This is proven by several past cases presented after this. For instance, in the case of *Re Chee Peng Kueck*, the change of religion by a minor was declared invalid. The girl converted to Islam without her parents' knowledge and on her will. When she converted to Islam, she even changed her name to Zahara binti Abdullah. This court said the reason for her conversion became void because at that time the girl was 16 years and 6 months old. In this case, the child was ordered by the court to be transferred from the Islamic Women's Welfare Center to the Buddhist Women's Welfare Center based on the father's request.¹⁸

In Re Susie Teoh; Teoh Eng Huat v. Kadhi of Pasir Mas Kelantan & Majlis Ugama Islam Dan Adat Istiadat Melayu, Kelantan is another case that touches on the right of youth under eighteen to choose their religion. In this case, Susie Teoh is a non-Muslims girl under age who is 17 years old and embraced Islam of her own free will. However, it was not allowed by her father. Her act to embrace Islam without his permission caused the father to file the case to the court and argued about the limitation of his daughter regarding freedom of religion as stated in Article 12(4) of the Federal Constitution.

In the High Court, the judge rejected this argument and ruled that since the girl had reached the age of puberty according to Islamic law so she had freedom and her decision to convert to Islam could not be declared invalid. Her father then appealed to the Supreme Court. The Supreme Court allowed the appeal and said that the right to choose a

religion for anyone who is still a minor should be decided by her parents or guardians.¹⁹

The judge of the Supreme Court further held as follows:

*As the law applicable to the infant at the time of conversion is the civil law, the right of religious practice of the infant shall therefore be exercised by the guardian on her behalf until she becomes major. In short, we hold that a person under 18 does not have that right and in the case of non-Muslims, the parent or guardian normally has the choice of the minor's religion.*²⁰

The youth in this category do not have the legal capacity to make their own decision according to the law applicable to them, especially the things relating to the choice of religion. The parents are considered to have right over them as stated in the provisions of Article 12(3) and (4) of the Federal Constitution read together with provisions of the Guardianship of Infants Act 1961. This is stated by the judge in the case *Hj Raimi bin Abdullah v. Siti Hasnah Vangarama bt Abdullah and another appeal*²¹ and *Teoh Eng Huat v. Kadhi of Pasir Mas Kelantan & Majlis Ugama Islam Dan Adat Istiadat Melayu, Kelantan*.²² In addition, the procedure set by the National Registration Department (NRD) which has established that the details of the child's religion on the birth certificate is the same as the religion of the parents is also closely related to the choice of the child's religion as in the facts of the case *Satiah bt Simbunar v. Director National Registration Department, Sabah*.²³

Furthermore, it is manifest in our cultures and traditions that children are taught their filial duties regardless of their race and religion. A child's experience of religion at early adolescence is very much prescribed by the wishes and decisions of the parents or guardians. This is observed

in the case of *S Thaiyalnayagam v GM Kodaguda*.²⁴ It can be seen where the child would go to any place if taken there by the elders and the child would participate in any ceremony if asked to do so by the elders. The above proposition is very much preserved in Article 12(4) of the Federal Constitution.

On the other hand, there is a unique case where the mother decides the religion of her daughter but allows her daughter to practice other religious practices. This happened in the case of *Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor & Anor*.²⁵ Plaintiff was born on 17 November 1986 to a non-Muslim couple. While awaiting the divorce proceedings, the Plaintiff's mother decided to convert to Islam as her religion of choice as she intended to marry a Muslim man after the divorce proceedings were over. Plaintiff was converted to Islam at the request of her mother at the age of five.

In her affidavits, Plaintiff admitted that she has embraced and practiced Hindu since she was young such as often visiting Hindu Temples with relatives from her father's side and celebrating Hindu festivals. Plaintiff further asserted that she did not celebrate any Muslim festival or practice any Islamic faith. Plaintiff also never went to any mosque or prayed according to Islam. Further, Plaintiff admitted that her mother and stepfather had allowed her to adopt and practice her chosen religion, which is Hindu.

THE IMPLICATION OF RELIGIOUS INDOCTRINATION TOWARDS YOUTH IN MALAYSIA

Even though this article discusses more about the conversion from Islam to other religions and conversion from other religions to Islam, the context of

conversion in Malaysia also can be applied to conversion to other religions as well, for example conversion from Christianity to Buddhism or Hinduism to Christianity. The judicial discussion about other religions is hard to find since the authors did not find that this issue arose regarding non-Muslims in any conversion to religions other than Islam in the precedent court cases.

Based on the fact in Lina Joy and Siti Fatimah's case, it can be concluded that Muslim youth of the first category in Malaysia can enjoy their rights of religious freedom like other youth who profess other religion than Islam.²⁶ Youth under this category can choose any religion they want as long as it does not violate God's law and followed certain guidelines set by the current religion that the person professes before a person wants to convert to another religion.

Meanwhile, the freedom of religion does not apply to the youth in the second category. The liberty of youth under this category is restricted under Article 12(4) of the Federal Constitution where permission from the parents or guardians is needed to change their religion. The implication for this kind of youth is they cannot make their own decision to choose their religion such as *Chee Peng Kueck* and *Susie Teoh* case. Most of the youths only follow the religion inherited by their parents and have no exposure to other religions directly from their parents. Since childhood, they probably will do whatever religious practices are taught by their parents without knowing why that religion is professed by them as stated in the *S Thaiyalnayagam v GM Kodaguda's* grounds of judgement.

Some parents allow their children to practice religious teachings other than the one they profess, like *Dahlia Dhaima bt Abdullah* case. It depends on how strong the parents' religious beliefs are. Some people are considered to have religion only on their identity card (IC).

The concept of a lack of religious choice among youth who are minors in Malaysia is contrary to the right that has been stated in the Convention on the Rights of the Child (CRC). It is because that convention stated that children also have the right to choose their religion and their opinions to be respected.²⁷

Religious indoctrination for the youth between the ages of 15 and 17 years old should not exist according to Prof. Dr. Shamrahayu A. Aziz and Prof. Tan Sri Ahmad Mohamed Ibrahim. They believe that every person has the right to choose his or her religion even if they are under eighteen years old. For the sake of children's welfare, the court should consider the question of an individual's age of maturity, where a sixteen-year-old child who converts to Islam should be considered legal. This is because children at this age can manage themselves. To illustrate, youth at this age has been revealed to be managing his own finances such as buying stationery, school fees and so on. Therefore, due to the high desire factor, voluntary action and sane condition, the age consideration needs to be changed from time to time.²⁸

According to H. LaFollete, if the parents have a right of religious freedom, then no one should force the children who have matured thought to hold any particular religious belief. No one should compel them to espouse a belief. More relevant to the present point, no one should brainwash them so that they are "compelled" to adopt a particular belief. Their children have the same right because they will become adults one day. However, if the parents have requested and been granted court permission to indoctrinate their children, thereby undermining the child's ability to freely choose, and thus, abrogating their right of free religious expression. That makes the parents' right more important than the children.²⁹

Certainly, there are ways in which indoctrination can harm the child, most notably by effectively closing off the alternatives for the child. An individual can choose only among the options of which they are both aware and can consider seriously. If parents limit the child's exposure to religious and moral views identical to their own, then the child will see only one option and choose it; they will likely hold the same beliefs when they become an adult.³⁰

THE CONCEPT AND IMPLICATION OF RELIGIOUS INDOCTRINATION TOWARDS YOUTH'S RIGHTS IN OTHER COUNTRIES

For this concept and impact of religious indoctrination towards youth's rights, reference has been made to three separate countries namely New Zealand, Italy and United States.

NEW ZEALAND

In 2019, there are around 1.6 million New Zealanders under the age of 25, representing about 33% of the population. This population is increasingly diverse, with more and more children and young people identifying with multiple ethnicities and identities.³¹

The rights of children living in New Zealand are secured through various pieces of legislation. These include the Children's Commissioner Act 2003, the Education Act 1989, the New Zealand Bill of Rights Act 1990 and more. The laws and policies comply with the United Nations Convention on the Rights of the Child (CRC), which New Zealand ratified on 6 April 1993.³²

In New Zealand, when a person is reaching this "age of majority", then the person is no longer a child in the eyes of the law and has all the rights and obligations of an adult. There are laws to protect young people from harm that they

may be subject to due to their lack of maturity. Some legal age restrictions are lifted below the age of majority, trusting that a child of a certain age is equipped to deal with the potential harm. For example, 16-year-olds may leave school and 18-year-olds may buy alcohol.³³

However, according to the Children's Commissioner Act 2003 through article 4,³⁴ child means a person under the age of 18 years. One of the visions of New Zealand is to make New Zealand the best place in the world for children and young people.³⁵ Because of that, New Zealand ratified the CRC in protecting the rights of children and youth, including their religious rights.

New Zealand is a host of distinct cultures. The Maori tribe was the first to discover and inhabit the region. Hence, Maori religion was dominant until the arrival of the Europeans in the eighteenth century. The Europeans took some effort to introduce and popularize Christianity, which is currently the most common religion in New Zealand.³⁶

Children's religion has not aroused a great deal of interest among historians. Geoffrey Troughton said that but during these years (2006), New Zealand religion was mostly for children. It was encountered in more ways and with greater intensity during the childhood years than at any other time. Adults introduced children to a range of religious ideas and practices, and children responded to these in various ways. Children's engagement with institutional forms of religion reached its highest level early in the twentieth century, and continued to exceed adult participation for many years.³⁷

Regarding religious issues for youth, New Zealand has provisions through section 13 of New Zealand Bill of Rights Act 1990³⁸ regarding freedom of thought, conscience and religion where it states that '*Everyone has the right to freedom of thought, conscience, religion,*

and belief, including the right to adopt and to hold opinions without interference' and section 15³⁹ of the New Zealand Bill of Rights Act preserves people's right to manifest their religion and belief in the following terms '*Every person has the right to manifest that person's religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private*'. This provision is also the same as found in the CRC through article 14.⁴⁰

Article 13 and 15 above applies to all age groups for New Zealanders. As of today, there is no provision that places limitations on the right to religious freedom. In other words, it also applies to children and youth even if they have not yet reached the age of 18 years old. Their right to freedom of religion is the same as that of adults. No one can restrict their right to decide what religion they want to practice.

If the parents want their kids to learn about religion, just teach them about religion but do not indoctrinate them in a religion⁴¹ because it is the youth's right to decide. This matter is as explained by the Judge in his judgment through the case *L v M*.⁴² This case is about guardianship of two daughter at the age of six and eight. In this case, there is also a mention about the child's religion as the father wanted the child to remain an atheist but the mother has introduced and exposed the child to the religion that the mother practices.

Therefore, the judge has referred to article 13 and 15 of New Zealand Bill of Rights Act 1990 and said that these provisions provided the following rights where the first is children's rights to be exposed to the religions and beliefs of their parents. Second, parents' rights to take their children to church or to involve them in any reasonable way in manifesting their religion or belief; and the third is children's rights at a certain

age to express their own religious identity and beliefs if those are different to their parents' religions and beliefs.

The judge of that case also said that the mother having a good awareness about exposure to the girls about her religious beliefs without forcing her religious beliefs down their throats and without any expectation that her daughters will have to form or hold the same beliefs that she does. She also impressed as being objective and accepting of other religions and other persons' rights and abilities to hold different or no religious beliefs.

Children under 18 years old need to be exposed to their mother's and father's belief systems whether it is different or not, particularly as there is no evidence of any harm to the children from these belief systems which might impact negatively on their welfare and best interests in a significant way but in the end, the children have the right to express their own religious identity and beliefs.

In another case that can be referred to regarding the right of children to freely determine their own religion in New Zealand is through the *Moore v Moore*⁴³ case. This case also about guardianship but the parent also argued about the children's religion. In making his judgment, the judge also referred to the opinion from Professor Mark Henaghan of the Faculty of Law at the University of Otago addressing various aspects of a child's right to manifest religious freedom.

By way of introduction the opinion noted that Sections 13 and 15 of New Zealand Bill of Right Act (NZBORA) do not contain any limitation in terms of a person's age. Consequently, children aged six and eight have the same rights as anybody else and if the rights in Section 13 and 15 are to be given their full force, then a Court order that impacted on those rights would be in breach of NZBORA.

Then, in responding to the question, whether it is demonstrably justifiable in a free and democratic society to place limits on the rights of children aged six and eight to manifest and express their religious beliefs, the fundamental proposition which emerged from the Professor's analysis as follows:

Unless there is clear evidence that the children in this case do not have sufficient intelligence and understanding about their religious faith and unless there is clear evidence their choice of this faith will engender harm to these children, the courts should not restrict the right of these children to practise their choice of religion.

Based on the provisions of the law applicable in New Zealand regarding the rights of children under the age of 18 in religion and the cases that have been decided above, it can be concluded here that New Zealand recognizes the rights of children and youth in determining their religion and their rights are also the same as adults. They are free to practice any belief they want without any restriction unless it can be proven that the belief harms them, then parents or the court can prevent them. Parents in New Zealand are also allowed to expose their children to their religion but cannot force the children to follow and practice that religion.

ITALY

Italy is a predominantly Roman Catholic country with minorities of Muslims, Sikhs, and Jews.⁴⁴ The Catholic Church was the State church until it was de facto disestablished with the 1948 Constitution, then definitely with the 1984 revision of the Lateran Treaty and now Italy is a secular state.⁴⁵ The concept of the freedom of religion in Italy is

guaranteed under the 1947 constitution of the Italian Republic.

In Italy, every individual has equal social dignity without distinction of religion and has the right to profess his own religion freely. This right is provided in the Italian Constitution as follows:

*All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.*⁴⁶

Then, another article in the same Constitution states that:

*Anyone is entitled to freely profess their religious belief in any form, individually or with others, and to promote them and celebrate rites in public or in private, provided they are not offensive to public morality.*⁴⁷

However, the relevant provisions of the Italian Constitution regarding religious issues for youth is in line with Article 30 that can be seen in the case of *T.C. v Italy*⁴⁸ which provides, "It is the duty and right of parents to support, raise and educate their children, even if born out of wedlock". The judge also has referred to Article 316 of The Italian Civil Code (CC) and said in its relevant parts where:

Both parents have parental responsibility that is exercised by mutual agreement, taking into account the abilities, natural inclinations and aspirations of the child. In the event of conflict on matters of particular importance each of the parents can turn to the judge without any formality, indicating the measures he considers most appropriate. The judge, having heard the parents and arranged to hear the minor ... suggests the decisions that he considers most useful in the interests of the child and the family unit.

In this case, where the conflict between her parents created confusion and tension for the child. The child voiced discomfort about her father bringing her to the Kingdom Hall and wished to spend more time playing with him. However, at the same time, the child was aware that her mother did not agree with the applicant taking her to Kingdom Hall and she felt irritated and disturbed by her mother's comments about the applicant's religious activities. In her report, the expert stated that these conflicts between the two parents resulted in child's tension and discomfort, so that it would have been appropriate for both parents to refrain from involving her in their religious activities. The court held that the interests of the child are of paramount importance and must be the primary consideration and may depending on their nature and seriousness, override those of the parents.

Indeed the child's age during the beginning of the trial was eight years old, however the child has reached the age of youth which is 16 years when the whole case is settled. Thus in this case, it clarified that the father of the child must refrain from actively involving his child in his religious activities but not from communicating his beliefs to her. It can conclude that the youth have the right to choose a religion pursuant to the Italian Constitution and the Italian Civil Code which in child's best interests and aimed solely at preserving its freedom of religion.

UNITED STATES

The concept of the freedom of religion is contained in the First Amendment to the U.S. Constitution.⁴⁹ In the Constitution, it protects citizen's right to practice their religion as they please as long as the practice does not contradict with "public morals" or "compelling" governmental

interest.⁵⁰ From that, it is shown that all citizens in the United States including the youth as defined by United Nations have the right to profess any religions that they want. In addition, there is no provision stated that anyone will decide the religion of their children in the U.S. Constitution.

Concerning to the role of parents, in General Comment No. 20, the Committee urges States Parties to withdraw any reservations to Article 14 of the Convention and clarifies that 'it is the child who exercises the right to freedom of religion, not the parent, and the parental role necessarily diminishes as the child acquires an increasingly active role in exercising choice throughout adolescence'. The States Parties also have the responsibility to ensure that the child is not compelled to receive religious or moral instruction inconsistent with their convictions.⁵¹

Although there is no specific provision that sets the responsibility of parents to determine the child's religion, most U.S. teens share the religious affiliation of their parents or legal guardians. Protestant parents are likely to have teens who identify as Protestants, while Catholic parents mostly have teens who consider themselves Catholics, and the vast majority of religiously unaffiliated parents have teens who describe themselves as atheists, agnostics or "nothing in particular."⁵² Based on the survey in the United States, the disclosure of religious conversion is very common among youth there. They change their religion without their parent's knowledge or permission. This situation is influenced by friends and on their desire to choose another religion as a way of life.⁵³

Some parents think that their children are still young even though they are already entered the youth stage because youth from the age of 15 to 17 is still considered as a minor. In reality, today's youth are smart, can make their

own decisions and are aware of the consequences of their choices. It can be seen in the *In re E.G.*⁵⁴ case where the judge clearly stressed about the capacity of youth to make their own decision. The appellant in this case is 17 years old. Nevertheless, the court found that the appellant was mature enough to make independent decisions to follow her religious beliefs.

The best part when parents are not indoctrinating their children, especially the youth, to choose their belief or religion is they will be better off making their own mistakes than in mimicking other people's "correct" views. Indirectly, they have a better chance of discovering what really is best for them. Furthermore, if their life is self-directed, they can see and learn from their mistakes; something they cannot do if they merely follow someone else's life plan. The freedom to exercise one's religion, to engage in experiments in living, is as essential as freedom of belief. Freedom of religion, then, is legitimate since it increases the chance of finding the truth and because it gives each individual the means to a self-directed and satisfying life. It does not guarantee these worthy goals, but it is a vital social mechanism supporting them.⁵⁵

It can be concluded that the youth have the right to choose a religion (or no religion) under the First Amendment of the United States Constitution. There is no bright-line rule that explains when a child is old enough, and overall, it is a very subjective decision. Youth under 18 years old do not need permission from their parents to change or choose their own religion or beliefs.

PROPOSAL FOR REFORM

This proposal is intended to provide recommendations or ideas to defend and give justice to the youth regarding their

right to freedom of religion where they can decide for themselves the religion they want to practice and they are also free to manifest their religion in line with article 14 Convention on the Rights of the Child 1989 (CRC) which is State Parties shall respect the right of the child to freedom of thought, conscience and religion. Therefore, all parties need to play their respective roles so that this article can be implemented in the best possible way in Malaysia. This proposal is divided into three categories which are proposals to the government, Non-profit Organization (NGOs) and also to parents.

PROPOSAL TO THE GOVERNMENT

Firstly, the provision of Article 12 (4) of Federal Constitutions (FC) which states that. "*For the purposes of Clause (3) the religion of a person under the age of eighteen years shall be decided by his parent or guardian*" should be repealed. This is in line with Article 10 (1)(a) FC which states that every citizen has the right to freedom of speech and expression. In other words, Article 10 (1)(a) gives freedom to all citizens regardless of age to speech and express themselves.

However, Article 12(4) FC has restricted the right of youth under the age of 18 in implementing their right to speech and express, especially regarding the religion they wish to practice without being tied to the religion of their parents. Apart from that, repealing Article 12(4) FC will allow Article of 11(1) FC to prevail. This provision is about freedom of religion which that article states that every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it. The word "every person" indicates that it applies to everyone including youth under the age of 18.

Therefore, it is appropriate for Article 12(4) FC to be repealed because

that provision restricts the fundamental right of youths who are minor to freely choose their religion and practice the religion they want without interference from their parents or guardians. This matter is also because, youth who are 15 years old and above have been able to think sensibly and be able to determine what is good and bad for themselves, but when there are restrictions through Article 12(4) FC, it indirectly deprives them of their right in determining religion.

Secondly, the government should be ready to immediately lift the reservation of Article 14 of the United Nations Convention on the Rights of the Child 1989 (CRC) so that, there is no more discrimination against the youth in determining their religion. As long as Malaysia does not lift up the reservation against Article 14 of the CRC, then the rights of youth under the age of 18 will not be respected by all parties and indirectly, it may also cause difficulties for the youth after they pass the age of 18 to regain their rights in practicing their religion wanted without being tied to their parents' wishes.

Next, the third is to give awareness to all parties either by holding a campaign broadcast on television and radio or stated in local newspapers and social media regarding the right of youth especially those under the age of 18, to freely choose any religion or belief they want to practice without the intervention of parents or guardians. In addition, the opportunity should be given to the youth so they can practice a religion that attracts their attention and at the same time, without needing to get permission from their parents or guardians first in respect of choosing their religion. All parties need to be reminded that religion is indeed good for the youth but not indoctrination because it will discriminate against the rights of the youth.

Last but not least, highly recommended that Malaysia can make foreign countries such as New Zealand, Italy and the United States a reference in enacting laws involving youth so that the rights of youth, especially youth under the age of 18, are always respected by all parties.

PROPOSAL TO THE NON-PROFIT ORGANIZATION (NGOS)

There are two recommendations to NGOs which are first, organize a program where the objective is that all parties can open their minds and thoughts regarding the importance of respecting the rights of youth especially in determining their religion. This is because, as explained above, youth between the ages of 15 and 18 years old have been able to think sensibly about the religion and belief they want to practice. Therefore, it is not appropriate if their rights are waived.

Secondly, organize a dialogue session in collaboration with the government to gain a better understanding of the concept of religious freedom for youth. The dialogue session must be open and can be participated by all levels of society.

PROPOSAL TO THE PARENTS

The recommendation to the parents is first, parents need to know about the rights of the youth, especially in religious freedom and practice the religion that interests them. Parents should not force their children under the age of 18 to follow the religion they practice. Coercion according to the will of the parents has indirectly violated the youths' inherent rights.

Furthermore, parents need to respect the youths' right to choose their religion. If article 12 (4) FC still remains and is not amended or repealed by the government, then it is the responsibility

of the parents to give permission to the youth to practice the religion and belief that interests them as long as the belief does not cause harm to them.

CONCLUSION

In Malaysia, youth over the age of 18 have the freedom to choose the religion they want to follow. However, if they choose to embrace the religion of Islam, they are subject to the stipulations found in Islam where they can no longer change or leave their religion. Meanwhile, youth under the age of 18 need to get their parents' permission before they are allowed to convert. In contrast to the practice in New Zealand, Italy and the US where children are free to choose their own religion and they are also free to manifest their religion regardless of age.

In conclusion, Malaysia should allow youth under the age of 18 to choose their own religion because they already have the ability to choose a religion and they are aware of their religious choice at that age. However, currently, parents have full authority in determining the religion of youth under the age of 18. These youth should not be bound by the decision of their parents in the matter of choosing a religion. Therefore, the proposal for reform in order to give justice for them regarding their right to freedom of religion is to amend article 12(4) where they can decide for themselves the religion they want to practice. If the provision in article 12(4) has not been amended, then it will always discriminate against youth between the ages of 15 and 17.

NOTES

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³ Amini Amir Abdullah, 'Islamic Revivalism, Religious Freedom and the Non-Muslims in Malaysia: A Preliminary Discussion', (2003) 11(2) *Pertanika Journal of Social Science and Humanities*, p 119.

⁴ Abdul Aziz Bari, 'Hak Asasi Dalam Perlembagaan Ruang Lingkup dan Masalahnya', (2002) 10 *Jurnal Syariah*, hlm 54.

⁵ Section 2 of Youth Societies and Youth Development Act 2007.

⁶ Section 2 of Age of Majority Act 1971.

⁷ Section 4 of Age of Majority Act 1971.

⁸ Section 2 Age of Majority Act 1971.

⁹ Federal Constitution.

¹⁰ Nur Afifah Mohd Najib & Ahmad Munawar Ismail, 'Persepsi Mengenai Hak Kebebasan Beragama dalam kalangan Penuntut Universiti Awam di Malaysia', (2018) 1(3) *BITARA International Journal of Civilizational Studies and Human Sciences*, hlm 70-71.

¹¹ Kamal Azmi Abd Rahman, Norsaleha Mohd Salleh & Nazneen Ismail, 'Kefahaman Mahasiswa Muslim Lembah Klang Tentang Konsep Hak Kebebasan Beragama Di Malaysia', (2018) 3(1) *Al-Irsyad: Journal of Islamic and Contemporary Issues*, hlm 5.

¹² [2007] 4 MLJ 585.

¹³ [2007] 4 MLJ 585, p 6.

¹⁴ *Ibid*, p 30.

¹⁵ *Ibid*, p 19.

¹⁶ Nazneen Ismail, Nurulfathonah Mohd Effendy, Kamal Azmi Abd Rahman, Norsaleha Mohd Salleh & Indriaty Ismail, Harmonization of Civil Law and Islamic Law: Isu-Isu Hak Kebebasan Beragama Di Malaysia, *Proceeding International Conference on Law and Islamic Jurisprudence (ICLIJ 2017)*, Pulau Langkawi, Kedah, Malaysia, 2017, hlm 272.

¹⁷ Section 2 of Child Act 2001.

¹⁸ Abdul Aziz Bari, 'Hak Asasi Dalam Perlembagaan Malaysia: Ruang Lingkup dan Masalahnya', (2002) 10(1) *Jurnal Syariah*, hlm 62-63.

¹⁹ [1986] 2 MLJ 228 & [1990] 2 MLJ 300.

²⁰ [1990] 2 MLJ 300, p 5.

- ²¹ [2014] 3 MLJ 757, p 2.
- ²² [1990] 2 MLJ 300, p 5.
- ²³ [2022] MLJU 2466.
- ²⁴ [1983] 1 MLJ 242 at p 244 (HC).
- ²⁵ [2022] 9 MLJ 372.
- ²⁶ Mohamed Azam Mohamed Adil, 'Hak Tukar Agama Dalam Perlembagaan Malaysia: Konflik Antara Kebebasan Beragama dan Hukum Islam', (2003) 11(1) *Jurnal Syariah*, hlm 27-28.
- ²⁷ Article 14 of the Convention on the Rights of the Child.
- ²⁸ Mohd Taufik Mohd Tasrip & Narizan Abdul Rahman, 'Pertukaran Agama Salah Seorang Ibu Bapa Bukan Islam di Malaysia Serta Implikasinya Kepada Kebajikan Kanak-Kanak', (2016) 1(1) *Journal of Shariah Law Research* (JSLR), hlm 99.
- ²⁹ H. LaFollete, 'Freedom of Religion and Children', (1989) 3(1) *Public Affairs Quarterly*, p 83.
- ³⁰ *Ibid*, p 84.
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- ³³ *Ibid*, 'Children's Right in New Zealand' [22 December 2022].
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- ³⁵ Anon, 'The Strategy Framework', *Child and Youth Wellbeing*, 2019, <https://www.childyouthwellbeing.govt.nz/our-aspirations/strategy-framework> [27 December 2022].
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- ³⁷ G. Troughton, 'Religion, Churches and Childhood in New Zealand, c.1900–1940', (2006) 40(1) *New Zealand Journal of History*, p 39.
- ³⁸ Article 13 of New Zealand Bill of Rights Act 1990.
- ³⁹ Article 15 of New Zealand Bill of Rights Act 1990.
- ⁴⁰ Article 14 of United Nations Convention on the Rights of the Child.
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- ⁴⁷ Article 19 of the Constitution of the Italian Republic 1947.
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⁵⁵ H. LaFollete, 'Freedom of Religion and Children', p 80.

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