

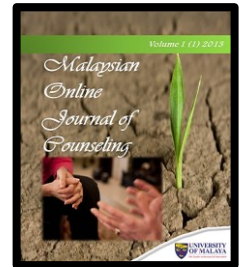
COUNSELING THE APOSTATES IN SELANGOR: AN OVERVIEW

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ABSTRACT

Islam is the religion of advice. Counseling the apostates is a form of helping them so that there is a possibility of them reverting to Islam. Apostasy is considered as one the *hudud* crimes in Islam and punishable with death penalty subject to certain requirements, according to Muslim jurists. In Malaysia, apostasy is considered as one of the syariah criminal offences in the Malaysian syariah courts but punishable with fine and imprisonment only in which these kinds of punishments are known as *ta'zir* punishments. This paper discusses the jurisdiction of syariah courts in Malaysia to hear cases on apostasy with reference particularly to the declaration that a person is no longer a Muslim or that a deceased is a Muslim or not at the time of his death for the purpose of burial and any other death rituals according to one's religion. Some decided court cases will be shared at this juncture. The author also highlights the procedures prior to a person (or an applicant) becoming *murtad* (apostate) as prescribed in the Islamic law governing all Muslims in Malaysia. One of the procedures that an applicant must undergo is counseling and education session for 90 days. Hence, this paper also discusses the appropriate mode of counseling, programs, activities and so forth to use in correcting their faith and eventually to restore the applicant to the original status of being a Muslim. The purpose of this paper is to examine the current practice of counseling the applicants on this issue. To what extent is the method used effective? The research questions for this study are: what kind of effective counseling that can be used to make a person change his mind from becoming a *murtad*? In this respect, will counseling be enough or should it be accompanied by other effective programs/activities? What are the reasons for apostates to change their faith? In the light of these discussions, the study makes a proposal for the best and the most appropriate ways to help restore the faith of an apostate to Islam.

Keywords: Counseling-Religion- Law-Module- Malaysia



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INTRODUCTION

Islam is the religion of *al-Nasihah* or advice. Advising and reminding one another is one important element in Islamic principles in social justice. One way of advising a person is through guidance and counseling. If one sees another person of committing any sins or harmful acts to himself as well as to others, it is an indeed his duty to rectify the matter based on his means. In the context of religion, Islam also emphasizes the concept of religious freedom which is prevalent in most of the countries in the world today. The right to profess and to practice religion is enshrined in most of the constitutions in the world including Malaysia. Article 11 (1) of the Malaysian Constitution states:

“Every person has the right to profess and to practice his religion and subject to clause (4) to propagate it”

Although the Federal Constitution provides the freedom of religion in Malaysia, however, this freedom is not absolute as it is subjected to several other provisions in the constitution. The limitation provided by this Article especially on the restriction to propagate other religion to persons professing the religion of Islam manifest the special position given to Islam as the religion of the Federation. Besides that, Article 11 also prescribed that the freedom shall not injure or contradicts public order, public health and public interest. In the clear case of Daud Mamat & Lain-lain v *Majlis Agama Islam & Anor* [2001] 2 MLJ 390, the court held that the right prescribed under this Article does not include the right to become an apostate.

In the latter case of *Lina Joy v Majlis Agama Islam Wilayah & Anor* [2004] 2 MLJ 119, the court decided the case by referring to several provisions which includes Art 3(1), 11 and several others which put Islam in a dominant position in Malaysia which leads that the interpretation of other provisions including Art 11 must be made in Islamic context. (Abdul Aziz Bari (2005)

It was mentioned in an article written by Shamrahayu A. Aziz that religious freedom seems to be applicable to every person in Malaysia (Shamrahayu A. Aziz, 2007), regardless whether he is a Muslim or not. However, one must remember that the civil court has the power to interpret the provisions in the federal constitution of Malaysia. One must also take note in the context of state laws or enactments where the federal constitution has conferred the jurisdiction to the Syariah Court to enact laws pertaining to Islamic laws which includes declaration that a person is no longer a Muslim.

Islam also emphasizes that there shall be no compulsion on any non-Muslim to embrace Islam. Verse 286 of Surah *al Ma'idah*, in the Holy Quran, is categorical:

“Let there shall be no compulsion in religion.”

This can be seen in practice during the time of Prophet Muhammad SAW. Compulsion is incompatible in religion because it depends on faith and will. If one is forced to convert to Islam, the result would be meaningless in terms of practice and action. However, if one has decided to renounce Islam, there shall be some kind of punishment to be imposed according to law. In Islam, punishment is given for the purpose of retributive and restorative justice. Punishments vary in terms of the nature of the crime and the type of person whose rights are violated: rights of Allah or rights of an individual.

In Malaysia, Islam is the religion of the federation of Malaysia by virtue of article 3 of the Federal Constitution of Malaysia. This recognition has provided no space at all for followers of other religions to propagate their religions to Muslims in Malaysia (Zuliza Mohd Kusrin, Zaini Nasohah, Mohd Adib Samuri & Mat Noor Mat Zain. (2013). This recognition is actually provided in article 11(4) of the Federal Constitution which says that propagation of non-Islamic religions among Muslims is forbidden and the each state/federal territory is given the power to pass any enactments/laws that control such propagations. Since Islam is the religion of the federation, it is appropriate to have such a provision.

Imam Maliki, Hanbali, and an opinion from the *Syafi'e* are in opinion that an apostate is required to repent before the execution of the punishment, in other words, the court must require the apostate to repent. According to Ad-Darul Qutni and Al-Baihaqi, at the time of Prophet Muhammad was informed about the apostasy of Ummi Marwan, the Prophet instructed him to repent if not he shall be executed. Besides that, Saidina Umar also claim that the act of Abu Musa al-Asy'ari was wrong as he executed an apostate without instructed him to repent first. (Haji Said Haji Ibrahim (1998)

From these events, we can see that Islam put weight on requiring an apostate to repent before the execution to be made. If it to be reflected, series of structured counselling might restore the belief of an offence of this crime to prevent the crime of *murtad* and at the same time repairing the *akidah* of the people. Hopefully this paper will get some input from qualified counsellors on how to give the right counseling to the Muslims who have renounced Islam. At the same time, those who are in charge at the rehabilitation centre to send their existing so called "counsellors" to undergo some trainings so that they will do their job professionally. The counsellors, hopefully, together with Department of Mufti and any other religious institutions to collaborate on the right modules to be introduced to the clients.

Most of the apostasy cases in Malaysia are from Muslim converts. Some of them have been disowned by their respective families due to their revert to Islam. There are also cases where people convert to Islam out of love and the non Muslim party became a Muslim due to the law which requires both parties must be Muslims. However, their conversion have not been monitored from time to time so that one should know the "performance" of their Islamic faith, spiritually and practically. Another reason could be the newly converted spouse has not been guided enough by the Muslim spouse and this could lead to the renunciation of Islam. Hence, this paper is significant to the religious authorities so that they and the public at large should not only concern with the increase number of apostates in Malaysia but they must also have some kind of self-assessment of their performance on monitoring the strength of faith of the new brothers and sisters in Islam.

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

Section 2 of the Counsellors Act 1998 (Act 580) has defined "counselling" means a systematic process of helping relationship based on psychological principles performed by a registered counsellor in accordance with the counselling code of ethics to achieve a voluntary favourable holistic change, development and adjustment of the client such that the change, development and adjustment will continue throughout the lifespan of the client.

Counselling is the skilled and principled use of relationship to facilitate self- knowledge, emotional acceptance and growth and the optimal development of personal resources. The overall aim is to provide

an opportunity to work towards living more satisfyingly and resourcefully. Counselling relationships will vary according to need but may be concerned with developmental issues, addressing and resolving specific problems, making decisions, coping with crisis, developing personal insights and knowledge, working through feelings of inner conflict or improving relationships with others. The counsellor's role is to facilitate the clients work in ways that respect the client's values, personal resources and capacity for self-determination. (Cooper, 2009)

Counselling in Malaysia is regarded as its infancy stage. (Ng& Stevens, 2001) In their article entitled Creating a Caring Society: Counseling in Malaysia, the authors have explained about the development of counseling profession in Malaysia as a means to create a caring society. In one article written by Ching Mey See &Kok Mun Ng on Counseling in Malaysia: History, current status and Future Trends, (Ching & Kok, 2010) the authors have discussed about the current status of Counseling in Malaysia after the passing of Counselors Act 1998 as the first major milestone towards professionalization in Malaysia. The establishment of Malaysian Counseling Association(PERKAMA) in 1982 with more than 200 members. PERKAMA also came out with Code of Ethics which explain the responsibility of a counselor towards his client, peers and community (Noriah, Salleh& Abu Yazid. 2012).

In one article the entitled Grief Counseling for Muslim Pre-school and elementary school children, the authors have emphasised on the importance for the counselors to have some information on how to handle these students in coping with death, mourning and burial rituals (Baggerly & El Kadi, 2012).

The last article that needs to be highlighted is on the need for the counselors to have knowledge of Asian religion such as Islam, Buddhism and Hinduism prior doing counseling(Fred& Green , 2004) prior doing counseling to students and parents.

The above works on counseling in Malaysia are limited on schools, pre-schools and health cares in Malaysia. Most of the target clients are school children, drug addicts and patients. But there was no works on counseling the apostates thoroughly. It was mentioned by Ching and Kok (Ching & Kok, 2010) that counseling is rapidly developed in 1990s in religious institutions which include Syariah courts and Religious departments.

The framework of this study is to look at the existing modules of counseling given by the Mufti Department in Selangor to the apostates. The modules are not strong enough to reach out the apostates and revert them to Islam. Other than that, the facilitators who are in charge of counseling the apostates are not qualified counselors, instead they are selected from any religious teacher who have background on shariah only. As a matter of fact, counseling is not only imparting knowledge but one needs to have a skill on how to impart the knowledge to the clients or participants.

APOSTASY IN ISLAM

Apostasy is one of the *hudud* crimes in Islamic criminal law (Haji Said Haji Ibrahim,1998). This crime is considered by many jurists as the crime that violates the rights of Allah. It could as well be conceived as the violation of the rights of individuals when the wrongdoer targeted at one specific person or the rights of the public at large when this act has become rampant and the number of cases are on the rise. In the case where the apostates try to induce other Muslims to follow their footsteps (El Awa, Muhammad Salim. (2000) or when they start to challenge the justification of

their right to profess any religion of his choice in Islamic state, then the acts can be considered a violation of the rights of Allah and public at large.

Apostasy is called *irtidad* or *riddah* in Arabic. The root word from these terms which is *radd* means to retreat, to retire, and to withdraw or fall back from. It refers to an act of turning back from Islam to another religion or another religious belief or faith or even to unbelief. According to Muslim scholars, a person that can be condemned for this crime is a person who has attained the age of majority, having normal senses and should have voluntarily renounce or withdraw from Islam (Mohammad Shabir (2002).

Apostasy is an act of renouncing Islam. The act of renouncing Islam is committed either in the form or actions or words. A person who claims to be a Muslim but later went to a church, for example and prays together with other Christians and follows their rituals, is considered a criminal offence in Islam. Definitely this act is committed when the wrongdoer has the guilty mind or criminal intention of renouncing or leaving Islam (Abdul Halim Zulkifli. (2006).

Besides that, apostasy can happen when a person worship others besides Allah such as worshipping the sun, statute, or others. It also can happened when a person intentionally commits prohibited act by Allah by acknowledging the prohibited act as halal with the intention to degrade Islamic law and rulings which has been ordained by Allah. Muslim scholars also includes the act of refusing to perform obligatory acts of a Muslim is considered as apostasy with reference to the time of Saidina Abu Bakar Al-Khattab who wage war against those who refused to pay *zakah*. (Muhammad Arifin (1995).

There are several factors that lead to apostasy. Among others, the lack of understanding and knowledge in Islam, negative influence from the media, and current culture in modern Muslim world. Knowledge of Islam if not to be appreciated may lead a person to apostasy, the Muslim values are eroding day by day due to many reasons that caused the Muslim community be easily influenced by other religion or beliefs. With the lack of knowledge and understanding about Islam, a Muslim can be easily influenced about other religion and this influence usually come from media which will lead a believer to disbelief Islam and attracted to other religion.

Although there is no clear authority from the Quran about the punishment of apostasy, there are several verses which mentioned the importance of preserving belief towards Islam. Among the verses are Surah *Al-Maidah* verse 54, Surah *Al-Ahzab* verse 57, Surah *Al-Taubah* verse 11 and several other verses.(Mohammad Shabir (2002). Haji Said Ibrahim (1998) also mentioned that in Surah *Al-Baqarah* verse 217, those who died in disbelief due to apostasy, their good deed in this world will not be regarded as the act of apostasy is a very disgraceful act in Islam. The verse is as follows;

However, the punishment has been prescribed by the traditions of the Prophet SAW which is also an authentic source of Islamic law in one of the hadith of the Prophet SAW, it is said:

“Whoever changes his religion, kill him” (narrated by Ibn Abbas)

As regards to the punishments, some Muslim jurists such as Imam al Shafi’e, claim that in imposing the death penalty to the apostates there are certain requirements that one needs to fulfill(O’ Sullivan, Declan. (2001). One of them is that the apostate must have been a practicing Muslim and the public is aware of his status. Another condition imposed is that when the apostate leaves Islam,

he must also declare this to the public and at the same time try to publicize his acts so that other Muslims would not emulate his actions. The last point mentioned by Imam al Shafi'e is on the issue of invitation to the apostates to repent and return to Islam (Forte, David F. (1994). The invitation to repent must be given to apostates by the court. If all these requirements are fulfilled then, the death penalty can be imposed on the apostate.

Apostasy does not only nullifies one's belief and erased all his or her previous good deed, it also have other consequences as discussed by scholars. According to Syafi'e, Maliki and Hambali, the property of a person who was punished with murder due to apostasy is a public property and cannot be inherited by any heir either Muslim or not. Besides that apostasy nullifies marriage as it is also a ground for the wife to claim for *fasakh*. (Mohamed Azam Mohamed Adil (1998).

APOSTASY IN MALAYSIA

An act of apostasy is a syariah criminal offence in Malaysia. But apostasy itself is not a criminal offence but rather a civil offence in the Syariah Courts in Malaysia. In the state enactments such as in section 61(3) (b) (x) and (xi) of the Administration of Islamic Religion, Selangor 2003 provides for the Syariah High Courts its civil jurisdiction to declare that a person is a Muslim or not, whether at the time of the application he is still alive or after his death. On the other hand, the types of syariah criminal offences in Malaysia are related to sexual offences, sanctity of Islamic religion, pillars of Islam, morality and faith. Crime of apostasy is nowhere to be found in the syariah criminal offences in any states in Malaysia. Rather the acts of apostasy such as wrongful worship, propagating religious doctrine, false claims and false doctrines are under the category of relating to *aqidah* or faith of a Muslim. These criminal acts are actually acts that amount to apostasy in the context of fiqh and could be liable with the death penalty. However in the Malaysian context the death penalty cannot be applied since the punishments for any syariah criminal offences are limited to what have been provided in the Syariah Court (Criminal Jurisdiction) Act 1965. The above mentioned crimes and punishments are provided in section 3, 4, 5 and 6 of the Syariah Criminal offences (Federal Territories) Act 1997. The punishments provide for the people who have been convicted in the above offences are fine not exceeding RM5000 or imprisonment not exceeding two or three years, or combination of both depending on the type of cases that they have been charged and also depending on the state's enactment. The existence of federal law such as the Syariah Courts (Criminal Jurisdiction) Act 1965 restricting the penal jurisdiction of the Syariah Courts makes the implementation of Islamic criminal law in Malaysia restrictive. (hamrahayu A.Aziz, 2007)

In Malaysia, the right to declare a Muslim to be an apostate is given to the Syariah court. Thus, any Muslim who has the intention to leave Islam or may have left Islam already but need to get the matter to be settled legally, he must make an application to the Syariah court to declare and to acknowledge him to be a *Murtad* (Farid SufiannShuaib,2011). In other words, in Malaysia, a Muslim has been given a "right" to choose to remain as a Muslim or not even though the right to apostatise is not clearly provided for in article 11 and 12 of the Federal Constitution. (Shamrahayu A.Aziz, 2007) However, this right is not an absolute right in which their application is subject to certain investigations, procedures, evidence, reasons for changing religion and also report from any approved agencies which have been authorized by the court to give the apostates counseling and advice (Muhammad Shakir Abdul Hamid. (2011). According to one research study, application to renounce Islam may take up to 7-8 years for the Syariah court to give a decision just to make sure that the court is giving the right decision. Besides that, this issue pertaining to one's faith will affect

his legal and social obligation to the nation and community in Malaysia (Mohamed Azam Mohamed Adil. (2007).. For example, if he is a Muslim he is subject to Islamic family enactment if he wants to get married. But if he is a Non-Muslim then he is subject to Law Reform, Marriage and Divorce Act 1976. However, those who commit any crime provided in the Penal Code, regardless Muslim or Non-Muslim, they can be charged in any civil courts for the crime committed. The charge, however, depends on the prima facie case and the power of Attorney General.

Establishment of Counseling centres in apostasy cases

Syariah criminal offences are related to *aqidah*, the sanctity of Islamic religion and takfir. The power is given to the Syariah Court to place offenders, upon declared guilty by the court, at the rehabilitation centre or any approved home to undergo counseling for a period not exceeding 6 months. If the offender is found guilty and imposed with imprisonment together with counseling, the period should not exceed 3 years.

In the Federal Territory, the above provisions are provided in section 54 and section 55 of the Syariah Criminal Offences Act 1997. Section 54 provides the power to the Islamic Religious Council or *Majlis* to find a place or any approved home for the purpose of rehabilitating the offenders of such cases. The power to establish such centre is given to the respective Islamic council states in Malaysia. In the case of the Federal Territories, the power is given to the federal government to establish the rehabilitation centers.

The establishment of an institution is one thing but to maintain the institution with the right modules and qualified man power is another issue that needs to be looked at. As of now, only the state of Selangor and Wilayah Persekutuan which have established the rehabilitation centres for the apostasy cases.

Counseling for the apostates in the state of Selangor

In Selangor, the power is given to the syariah court to send any persons who have been found guilty for committing any offence in part II or under section 9, 10 and 11 of the Syariah criminal offences (Selangor) enactment to be sent to the rehabilitation centres.

Section 54 (1) of the said enactment says

“ If any court has convicted any person of an offence under part II or under section 9, 10 or 11, such Court, may in lieu of the punishment specified for such offence, order such person to undergo counseling or rehabilitation in an approved rehabilitation centre for such period not exceeding six months as may be specified in such order”

However, section 54(2) provides for the female convicts of offences relating to decency to be sent to an approved home for females only.

At the department of mufti in the state of Selangor, there is Advisory Services Division (*Bahagian Khidmat Nasihat*) which is assigned to look at the apostasy cases and give advice to the Muslim applicant to renounce Islam. This division would be in charge of those cases upon receiving court's order from the Syariah Court. There is a panel of advisors at the division to take up the cases. As of now, they have 10 advisors who are coming from religious backgrounds and have the skills to give

advice. The applicants will undergo 12 sessions and each session will last for about one hour. Sometimes, the session period will depend on the discretion of both parties, advisor and applicant. According to Ustaz Darudin Haji Taib, who is in charge of the Division, it is not easy to give advice to the applicants because this involves the mind set of an individual. Once a person has decided in his mind and heart to follow such belief, it is not possible for a person, whether a family member or an outsider to change what he believed in. It needs a lot of skill, knowledge and attitude how to convince them to revert to Islam.

There are 4 important points that one need to look in the course of advising the applicants.

1. Emotional feelings
2. Harmful effects
3. Procedures
4. Lawyers

Emotional feelings here mean the applicant when he decides to renounce Islam. The reason why he dislike the religion or any other reasons that makes him decide not to be a Muslim anymore. The understanding and the human touch of the advisor in giving advice to the applicant is also must be taken into consideration. The advisor is not supposed to insist on the applicant to remain a Muslim but rather to look at the reason why he wants to leave Islam. As an advisor must look at the harmful effects when making a report to the advisor. He must look at the best interest and general well-being of the applicant of what is the best for him. At the same time, the advisor cannot ignore the procedures that have been mandated in the enactments/laws as well as the right of the applicant to hire a lawyer in representing him in a court. At this moment, there is no specific module in giving advice to these people. The division is planning to have a specific modules meant for this kind of cases. But one must remember that apostasy or faith related cases are not the same with other criminal cases in Malaysia. This issue is about the belief of one's heart and cannot be seen and measured with one's eyes. Besides that faith and guidance from Allah, in the context of Islamic law, is solely on the mercy and power of the Almighty. How much we put in the efforts but if He does not permit, no other power can do anything about it. Perhaps, there must be a specific and special mode in giving advice so that we can help them not to leave Islam. Ultimately, one must remember that everything lies on the Almighty's power and wishes.

Other than the department of Mufti, there are two more rehabilitation centres in Selangor which deal with the same nature of cases. These two centres are Baitul Iman and Baitul Ihsan. Baitul Iman was established in 1999 by the state government of Selangor by virtue of section 53 and 54 (2) of the Syariah Criminal offences Enactment. Its full name is Centre for purification of aqidah BaitulIman. It is located in Ulu Yam, Selangor. Baitullhsan is the same centre established in 2001 by virtue of the above sections but it is meant for female. However, the objectives of the establishment of Baitul Ihsan is not only for faith-related cases but also include immoral cases that involve young Muslim girls. Baitul Iman is to cater for the male participants. The cases which came into these centres fall under three categories:

1. Court's Order (Still in the process of court trial)
2. Found guilty by the court
3. Volunteers

The nature of programmes conducted in this center varies from one case to another. But the basic programmes that the participants must undergo are study circles, physical exercise and workshop skills. The nature of programmes also can be divided into daily, weekly, monthly and annual programmes. Counseling is conducted either in group or at individual level. Our main concern is about the eligibility of the so called counselors in this place whether they are qualified counselors or not. Qualified here means whether they have the license or certificate to be a counselor.

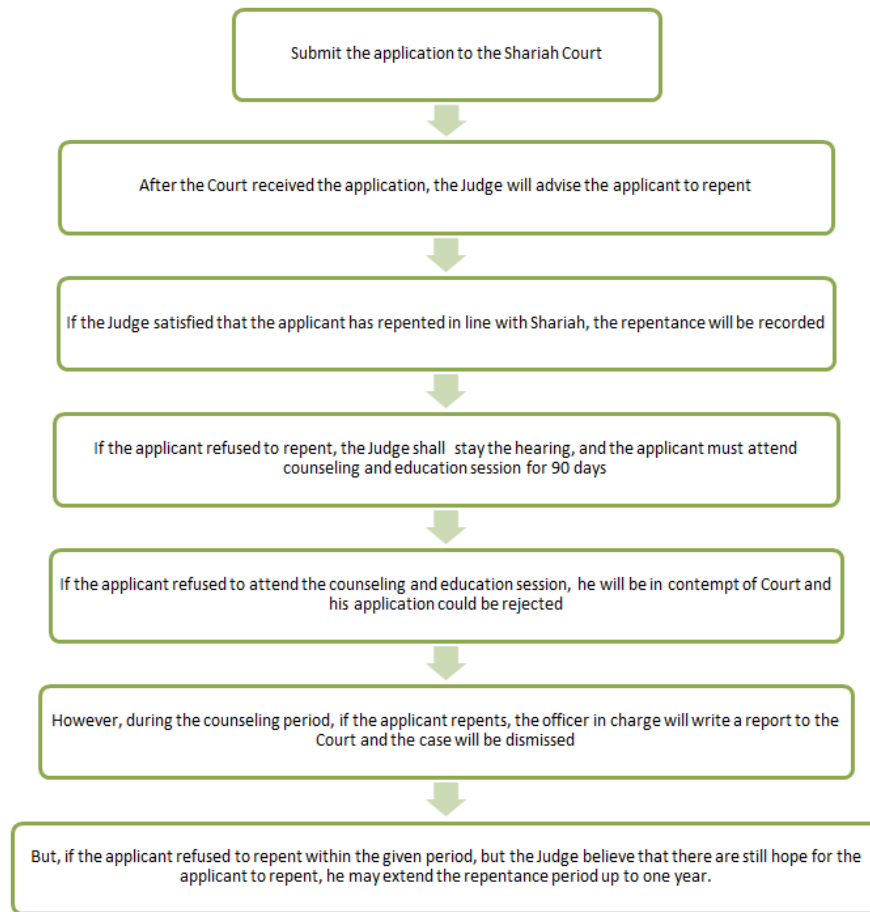
Table 1 shows the number of application to renounce Islam in 2014 which was made in the state of Selangor. There are 12 applications from those who were born Muslims. It shows that the danger is not only onto the Muslim converts but also among those who were born and brought up as Muslims from the very beginning of their lives.

Table 1 : number of application to renounce Islam in Selangor in 2014

Applicant's status	Convert to	Number of application
Born Muslim	Other religions	12
Muslim convert	Hinduism	6
Muslim convert	Buddha	8
Muslim convert	Christianity	7
Muslim convert	Sikh	1
	TOTAL	34

Graph 1 is the flowchart on the procedures for the application to renounce Islam in Selangor.

Graph I: Procedure to Renounce Islam in the Shariah Court



CONCLUSION

Apostasy in Malaysia is becoming quite alarming according to available statistics in some departments or agencies (Mohamed Azam Mohamed Adil. (2005). Though it is beyond our control to ensure one's faith and guidance (hidayah) because it indeed is in the hands of Allah SWT but it does not mean that we simply look at this scenario with our eyes only. There must be enough efforts from the authorities and manpower in resolving the issues.

The first issue that one has to look at is the nature of counseling that they are giving to the participants. It is not enough that one has to look at the reason why they want to renounce Islam. Most of the times, one has to look at the surrounding circumstances that led him to change his mind. Sometimes, if one is determined to change his religion, no matter what counseling you gave to them, it will give no impact on them. The main objective of counseling should be to understand their problem, the reasons why they change their Islamic faith and the implications of their actions.

The second issue is about the counselors. The authorities must provide the panels, advisors or ustaz/ustazah who are qualified to be counselors. Though these ustazah are knowledgeable enough in terms of Islamic knowledge and experience but to be a counselor one needs to acquire the skills to advise the clients. It is essential that the existing “counselors” should be sent for training and courses so that they

are qualified enough to handle the cases. Another thing is that knowledge is to be acquired from time to time because the world is running fast with the new technology, equipment, gadgets which will affect the lifestyle and way of thinking of new generation.

Law alone is not enough to overcome the apostasy cases. Law alone is not enough to curb the crime and to punish the offenders so that it will deter them to commit the crimes again. Sometimes, the community is also one of the contributing factors that led a person to commit a crime. It is indeed high time for the authorities to look into restorative justice as one of the alternative punishments together with retributive punishments (Daly, Kathleen. 2000) to punish and to reform the syariah criminal offenders. The state must play its role by providing adequate budget, manpower, and resources to minimize this problem (Siti Zubaidah Ismail. (2013). It is indeed the role of the government to take part seriously in upgrading and improvising the current method and activities in the course of giving counseling to the participants of such cases. Other than that, one must not forget the duty of everyone to emphasize on God consciousness (*taqwa*) in our soul and character. The counselors in Malaysia must also try to venture into this faith related issues together with Mufti Department, *Jabatan Kemajuan Islam Malaysia* (JAKIM), *Jabatan Kehakiman Syariah Malaysia* (JKSM) and any other religious institutions either at the state or federal level so that there must be some kind of ways, methods and meeting points on how to counsel and approach clients with this kind of problems.

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