

## NAVIGATING JURISDICTIONAL COMPLEXITIES IN CHILD CONVERSION CASES: CIVIL COURTS OR SYARIAH COURTS?

### Introduction

It is well-established that Muslims wishing to convert out of Islam or renounce the religion must obtain a certificate of apostasy from the Syariah Courts, as these matters fall squarely within the Syariah Courts' jurisdiction. However, complications arise when individuals who were converted to Islam as children claim that they were never truly Muslim due to legal non-compliance, particularly regarding their underage status at the time of conversion.

Such situations, as seen in various cases over the years, highlight the complexities surrounding these matters.

As a pivotal matter of jurisdiction, the critical question to be determined in these cases is whether the case involves renunciation or apostasy (no longer being a Muslim, i.e., converting out of Islam) or *ab initio* (never have been a Muslim). Renunciation falls under the jurisdiction of the Syariah Courts, while *ab initio* cases fall under the jurisdiction of the Civil Courts.

At first glance, a minor's conversion — especially when done without the consent of the parent or guardian in contravention of Article 12(4) of the Federal Constitution — may seem to be an *ab initio* case. This has led to numerous applications before the Civil Courts for declarations that one was never a Muslim.

However, merely asserting that a case is *ab initio* does not immediately give jurisdiction to the Civil Courts, nor does it automatically oust the jurisdiction of the Syariah Courts.

Cases such as *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and Other Appeals* [2018] 1 MLJ 545 ("**Indira Gandhi**") and *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181 ("**Rosliza**") reflect instances where the Civil Courts declared that the conversion of minors was void *ab initio*.

In *Indira Gandhi*, the father unilaterally converted his children who are respectively 12 years old, 11 years old, and 11 months old to Islam without the mother's consent. In *Rosliza*, an illegitimate child was registered as a Muslim by her Muslim father but raised as a Buddhist by her Buddhist mother. In both cases, the Civil Courts ruled that these individuals had never been Muslim.

Conversely, in cases like *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489 ("**Soon Singh**") and *Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor and Another Appeal* [2024] 5 CLJ 855 ("**Dahlia Dhaima**"), the Civil Courts held that the matters involved apostasy, thus falling under the jurisdiction of the Syariah Courts, despite the fact that both cases involved the children's conversion to Islam. In *Soon Singh*, a 17-year-old minor had converted to Islam on his own without the knowledge and consent of his widowed mother. In *Dahlia Dhaima*, a child was converted to Islam by her Muslim-convert mother.

Although all these cases involve applications for a declaration that the children's conversion to Islam was void *ab initio*, the outcomes have varied. What then accounts for the different outcomes in these cases?

The answer lies in the factual matrix of each case. As stated by the Federal Court in *Rosliza*, "*whether it is an ab initio case or a renunciation case will require a careful examination of the factual matrix of the case*".

This article will analyze the factual distinctions in the aforementioned cases to shed light on the nuanced approaches taken by the courts and the applicable principles adopted in determining the proper jurisdiction in cases involving minors' conversion to Islam.

### Indira Gandhi

In *Indira Gandhi*, the father of non-Muslim children converted his minor children to Islam without the knowledge of their mother. The mother then filed an application for judicial review challenging the validity of the certificates of conversion issued by the Registrar of Muallafs in respect of the children's conversion to Islam.

The Federal Court held the subject matter in the wife's application was not concerned with the status of her children as Muslim converts or with the questions of Islamic personal law and practice, but rather the legality and constitutionality of the administrative action taken by the Registrar in the exercise of his statutory powers.

Two crucial facts exist here: first, the children had not uttered the two clauses of the affirmation of faith and had not been present before the Registrar before the certificate of conversion was issued, contrary to the procedure set out in Sections 96 and 106(b) of the Administration of the Religion of Islam (Perak) Enactment 2004; second, the father unilaterally converted the children without the consent of the mother, contrary to Article 12(4) of the Federal Constitution and Sections 5 and 11 of the Guardianship of Infants Act 1961.

In such circumstances, the certificates of conversion were held null and void.

## Rosliza

In *Rosliza*, the Federal Court held that Rosliza, an illegitimate child of a Muslim father and a non-Muslim mother, was not a person professing the religion of Islam. Her Muslim father could not ascribe his paternity to her, and on the authority of Indira Gandhi, he had no right in law to unilaterally convert Rosliza to Islam when she was a minor without her mother's consent.

As Rosliza was raised by her non-Muslim mother and there was no proof she was a Muslim by original faith, the court held that she was not subject to the jurisdiction of the Syariah Courts. The legal presumption as to her Muslim status cannot apply because she was never identified as a Muslim to begin with.

*Rosliza* is declaratory of the position that *ab initio* cases, where the applicant claims to never have been a Muslim, fall under the jurisdiction of the Civil Courts; while apostasy cases, where someone is already a Muslim but wants to renounce the religion, fall under the jurisdiction of the Syariah Courts.

## Soon Singh

In *Soon Singh*, the appellant, who was brought up as a Sikh, converted to Islam at 17 years 4 months old without his widowed mother's knowledge. At 21, he renounced Islam, returned to the Sikh faith through baptism, and sought a declaration from the High Court that he was no longer a Muslim. However, the High Court dismissed his application, ruling that the matter falls under the jurisdiction of the Syariah Court.

The Federal Court upheld this decision, noting that there was no evidence that Soon Singh ever challenged his conversion to Islam after reaching 18 years of age. In fact, he remained a Muslim and practised Islam for nearly four years after converting.

Thus, his application for a declaration that he was no longer a Muslim came within the jurisdiction of the Syariah Court, and not the Civil Court.

## Dahlia Dhaima

This recent Federal Court decision is particularly notable, as both the Syariah Courts and the Civil Courts deliberated on Dahlia's religious status.

Dahlia was born to non-Muslim married parents. When her mother converted to Islam, she unilaterally converted Dahlia, who was five years old.

Dahlia then lived with her Muslim-convert mother and stepfather until she was 17. Dahlia first started to challenge her status as a Muslim in 2013 when she was 27.

She filed a summons at the Kuala Lumpur Syariah High Court, seeking a declaration that she was no longer a Muslim. The Syariah High Court refused, stating that whether or not she practiced the Islamic way of life is not determinative of one's Islamic status. Not practicing the same does not nullify one's faith for the religion of Islam. The Syariah Court of Appeal upheld this decision.

Having failed at the Syariah Courts, Dahlia turned to the Civil Courts. In 2021, Dahlia sought a declaration from the civil High Court that she had never been a Muslim and that her case was an *ab initio* case. The High Court granted her application, but the Court of Appeal overturned the decision.

In deliberating the validity of Dahlia's conversion, the Federal Court by a 2:1 majority held that the certificate of conversion and her conversion to Islam before puberty were not matters that should be taken in isolation, devoid of appreciation of her life in general and her upbringing. The Federal Court acknowledged the findings of the Syariah High Court that, while raised by her mother and stepfather, Dahlia had practised Islamic rituals, attended Islamic classes, and understood the religion's teachings.

The Federal Court upheld the Court of Appeal's decision, confirming that Dahlia's case was one of renunciation and that the Syariah Court's decision remains valid.

### **Comparative Analysis**

These cases illustrate that an invalid legal status of conversion of a minor does not necessarily mean that the minor was never factually a Muslim. The courts assess factors such as parental consent, the child's upbringing, and the individual's actions after reaching adulthood.

*Indira Gandhi* and *Rosliza* highlight instances where conversions were deemed invalid or void *ab initio* due to non-compliance with legal requirements, e.g., unilateral conversion by the parent and non-utterance of the affirmation of faith, besides the lack of affirming, professing, and practice of Islam at all material times.

Such cases show that the Civil Courts have jurisdiction when the children have never been Muslim in reality.

On the other hand, *Soon Singh* and *Dahlia Dhaima* demonstrate that even if the process of conversion is flawed, it does not automatically mean that the person is not a Muslim if evidence show that they have practised the religion. In such cases, only the Syariah Courts have the exclusive jurisdiction to grant a declaration that one is no longer a Muslim.

### **Conclusion**

The jurisdictional complexities in cases involving the conversion of minors require a careful examination of the facts. Civil Courts may have jurisdiction when there are procedural flaws in the conversion process that render it void *ab initio*, particularly where the conversion was unilateral and lacked proper consent.

However, if the evidence shows that the individual was raised as a Muslim and had practised the faith, the Syariah Courts retain jurisdiction in matters of renunciation. The

courts' approach underscores the importance of examining the specific details of each case to determine the appropriate jurisdiction.

**Written by:**



**Dayang Roziakah Ussin**  
*Partner*  
dayang.roziakah@azmilaw.com



**Nik Amalia Suraya**  
**Nik Muhammad Saifuddin**  
*Associate*  
nikamalia@azmilaw.com

**Corporate Communications**  
**Azmi & Associates**  
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