

**DALAM MAHKAMAH PERSEKUTUAN MALAYSIA**  
**BIDANGKUASA ASAL GUAMAN NO. 2/2011**

**ANTARA**

**ZAINA ABIDIN BIN HAMID @ S. MANIAM**

**dan tiga lagi**

**... PERAYU-PERAYU**

**DAN**

**KERAJAAN MALAYSIA**

**dan tiga lagi**

**... RESPONDEN-RESPONDEN**

**SUBMISSIONS OF SURUHANJAYA HAK ASASI MANUSIA MALAYSIA**  
**(SUHAKAM)**

May it please the Court,

1. Article 4(1) states that, "This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.
2. Article 3(1) states that, "Islam is the religion of the Federation."
3. Notwithstanding this provision, Article 3(4) states that, "Nothing in this Article derogates from any other provision of this Constitution."
4. Thus when Article 11(1) provides that, "Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it," this provision is not to be derogated from in any way by the fact that "Islam is the religion of the Federation". Laws that are made, whether by the Federal Parliament or by any state legislative assembly that take cognizance of or stem from the fact that "Islam is the religion of

the Federation” cannot in any way diminish, limit or take away any right granted by Article 11(1) of the Federal Constitution.

5. The right granted in Article 11(1) is a right granted to an individual. It is the personal right of an individual to decide what religion he (or she) professes. The natural and ordinary meaning of its words do not allow for the provision to be read as, “Every person has the right to profess and practice the religion he is deemed by the State to profess.” Those are not the words of the provision.
6. The role and function of the State in terms of the religion of Islam only comes into play if the individual professes the religion of Islam. Paragraph 1 of List II of the Ninth Schedule (referred to as the State List) provides for “....Islamic law and personal and family law of persons professing the religion of Islam....” Again, the words contained in Paragraph 1 of List II must be read together with the provision of Article 11(1). The choice of religion must be a voluntary one. It cannot be imposed by the State.
7. It follows that the personal law of a person must accord with that person’s choice of what religion he voluntarily professes.
8. Not only is this, it is respectfully submitted, a true and proper construction of the provisions of the Federal Constitution, but this is also consistent with the provisions of Article 18 of the Universal Declaration of Human Rights. This reads:

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”
9. We respectfully submit that Article 18 of the Universal Declaration of Human Rights is not inconsistent with the Federal Constitution.
10. It follows on from our submissions that a person’s choice not to profess a particular religion and to profess another religion instead or no religion at all should not be made

subject to the prior approval/consent of a regulatory authority whether civil or religious.

11. The Federal Constitution does not employ the term “Muslim”. Instead, the phrase that is utilised is “person professing the religion of Islam”. It is respectfully submitted that for all intents and purposes of the Federal Constitution, the definition of “Muslim” is a “person professing the religion of Islam”.
12. It is our submission that any definition of “Muslim” in any law, whether federal or state, that expands the meaning of “Muslim” and takes it further than the definition “person professing the religion of Islam” is, with respect to the Federal Constitution, and in particular, for the subject-matter of this appeal, the fundamental liberties set out in Part II of the Federal Constitution, ultra vires the Federal Constitution.
13. State legislation, in seeking to exercise its jurisdiction over persons professing the religion of Islam, cannot utilise a definition of a “Muslim” that is broader than that encapsulated in the Federal Constitution. This is because the right of a state to have such jurisdiction is by virtue of and set out in the Ninth Schedule to the Federal Constitution itself, and the phrase “persons professing the religion of Islam” is employed in granting that jurisdiction. To do otherwise would be to bring within the jurisdiction of state legislation person or persons whom the Federal Constitution had sought not to include within such jurisdiction.
14. In relation to the choice of religion of a minor child, we would point out that Article 14 of the Convention on the Rights of the Child states as follows:
  - “1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
  2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
  3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to

protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

15. While Malaysia has acceded to the Convention on the Rights of the Child, it has taken a reservation in respect of Article 14. As such, the position in Malaysian law does not accord with the provisions of Article 14 of the Convention on the Rights of the Child, in that no account is taken of a child's evolving capacities.
16. Finally, we would further respectfully submit that the regulations of a federal agency cannot seek to limit or restrict the exercise of fundamental liberties set out in the Federal Constitution if no specific provision for such limitation or restriction is provided for within the Federal Constitution. In respect of Article 11(1) of the Federal Constitution, apart from the provision of Article 11(4), no other limitation or restriction is permitted.
17. In the premises, we would respectfully submit that the five questions posed to this Honourable Court should be answered as follows:
  - 17.1 Yes (to both parts).
  - 17.2 Yes (but subject to the evolving capacities of the child).
  - 17.3 Yes.
  - 17.4 Yes.
  - 17.5 Yes.

We are obliged.

Dated the 2<sup>nd</sup> Day of February 2012



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