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ABSTRACT:

This article examines a recent Court of Appeal judgment upholding the government's prohibition of a Catholic publication from using the word 'Allah' against the backdrop of Malaysia's public discourse on Islam and its role in Malaysian state and society. I argue that one can situate and comprehend the judgment as appealing to and realizing a conception of Islam as ethnic identity, which departs from the conception of Islam as a universalist religion. I show how this conception has been gradually constructed in Malaysia's public discourse, by identifying a (until now) marginal line of judicial precedents that foreshadowed the Court of Appeal's judgment. Lastly, I highlight the ways in which the judgment affects minority rights and prospects for integration in Malaysia, even as it raises critical questions about Malaysia's proclaimed status as a moderate and modern Islamic society.

Keywords: Constitutional Law, Religion, Islam, Ethnicity, Constitutional Interpretation, Judicial Review

*Everybody in the world knows Allah is the Muslim God and belongs to Muslims. I cannot understand why the Christians want to claim Allah as their God.*¹

Until recently, Malaysian Christians have used the word 'Allah' in their Malay language bibles, publications, sermons, prayers, and hymns without much fanfare or complications. This practice has a long historical lineage; dating back to before the creation of the Malaysian nation-state. Munshi Abdullah, regarded as the father of modern Malay literature, used the term 'Allah' to refer to God in his 1852 Malay translation of the bible (*al-Kitab*).² Christians in pre-independence Straits Settlements (today's Penang, Melaka, and Singapore) commonly spoke and prayed in the Malay language, which was then the lingua franca.

This long-established practice came under siege in recent times. On January 2, 2014, the Selangor³ Islamic Religious Council forcefully raided the premises of the Bible Society of Malaysia. Even though the Religious Council, which is a department under the Selangor state government, had no jurisdiction over non-Muslims, and therefore no legal basis for their actions, they insisted on entering the premises of the Bible Society of Malaysia. The target of their incursion? Some 300 bibles in the Malay language and in a native language (Iban). The mischief of these bibles? They use the word 'Allah' to denote God.⁴ For a country that touted itself as a peaceful multiracial-multireligious state, which John Kerry recently

¹ Quoted in Baradan Kuppasamy, *Can Christians Say 'Allah'? In Malaysia, Muslims Say No*, TIME, Jan 8, 2010, available at <http://content.time.com/time/world/article/0,8599,1952497,00.html>.

² V. Anbalagan, *History and constitutional guarantee allow Christians to use 'Allah', say law experts*, MALAYSIAN INSIDER, Jan 29, 2014, available at <http://www.themalaysianinsider.com/malaysia/article/history-and-constitutional-guarantee-allow-christians-to-use-allah-say-law>. The bible started to be translated into the Malay language as early as 1612 by the Dutch. THOMAS HARTWELL HORNE, B.D., AN INTRODUCTION TO THE CRITICAL STUDY AND KNOWLEDGE OF THE HOLY SCRIPTURES: VOLUME II, 50 (1836).

³ A constituent state of the Federation of Malaysia.

⁴ Lee Choon Fai & Elly Fazaniza, *Jais Raids Bible Society of Malaysia*, THE SUN DAILY, Jan 2, 2014, available at <http://www.thesundaily.my/news/920355>.

called a multifaith model for the world,⁵ the incident was disappointing to many observers. The raid defies the vision of a religiously tolerant country and a religious majority said to practice a moderate and modern version of Islam.

The legal genesis of this current religious crisis lies with the Ministry of Home Affairs' order that the Catholic Herald, a weekly Catholic newsletter, must not use the word 'Allah' in their Malay language publication. This is a serious restriction on the religious freedom of Malaysian Christians. Not only has the word 'Allah' been used in the Malay language bible since the 19th century, it is also used in hymns and prayers conducted in the Malay language. The Catholic Church challenged the ministerial order. It argued, *inter alia*, that the order violated the Catholic Church's constitutional right to profess and practice its religion, including the right to manage its own religious affairs, and to instruct and educate its congregation in the Christian religion. Free speech violations were also raised. The High Court decided in favor of the Church in 2010,⁶ but its decision was overturned on appeal in 2013.

The case has become a focal point of religious contestation in the country. Muslim-Christian relations have deteriorated as protests, church attacks, and inflammatory public statements followed both judgments. Malay-Muslim nationalists opposed the Catholic Church's asserted right to use the word 'Allah', and condemned the High Court decision for failing to give sufficient regard to the superior status of Islam as the religion of the Federation and sanctions the alleged Christians' agenda to illegitimately appropriate their exclusive claim to God. On the other hand, Christians, human rights lawyers, and modernist Malay-Muslims criticized the Court of Appeal decision for misreading the constitution

⁵ *Kerry lauds multi-faith Malaysia for world*, MALAY MAIL ONLINE, Oct 11, 2013, available at <http://www.themalaymailonline.com/malaysia/article/kerry-lauds-multi-faith-malaysia-as-model-for-world>.

⁶ *Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & Anor* [2010] 2 MLJ 78 (hereafter "'Allah' case, High Court").

and its drafting history, and failing to protect the religious freedom of religious minorities in Malaysia.⁷

This article situates the ‘Allah’ case and the consequent events within Malaysia’s legal, social, and political landscape. Part II examines the two judgments, focusing on the two courts’ competing interpretations of the religious freedom clause in the constitution, the conceptualization of public order considerations, and the implications of the confessional clause declaring Islam the religion of the Federation while guaranteeing that other religions may be practiced in peace and harmony (article 3 of the Federal Constitution). In Part III, I argue that the case has to be understood as part of a line of case jurisprudence intertwining Malay ethnicity with Islam. Part IV examines the historical and contemporary constitutional conditions in Malaysia. Here, I contend that the judicial thinking underlying the cases respond to a fundamentalist ethno-nationalist ideology that has gained publicity and dominance in Malaysian politics and society. Under this, Islam is constructed as an integral part of ethnic identity and is used to control the boundaries between one ethnic group and others. Thus, I argue that the ‘Allah’ cases are particularly fascinating because they demonstrate the priority of ethnic exclusivity over true religious claims as supporters of this ethno-nationalist ideology abandon Islam’s universalist claims, being a monotheistic religion, in favor of a restrictive conception of Islam as part of an exclusive ethnic identity. Part V concludes by reflecting on the ways in which the judgment affects minority rights and prospects for integration in Malaysia, even as it raises critical

⁷ The Malaysian Bar devoted a substantial portion of its Oct-Dec 2013 newsletter *Praxis* to critiquing the ‘Allah’ case. See e.g. Andrew James Harding, *Language, Religion and the Law: A Brief Comment on the Court of Appeal’s Judgment in the Case of the Titular Roman Catholic Archbishop of Kuala Lumpur*, PRAXIS, Oct-Dec 2013, at 12, available at http://www.malaysianbar.org.my/index.php?option=com_docman&task=doc_download&gid=4390&Itemid=332; and Philip Koh, *Plea For A Rethink Over The Allah Case*, LOYARBUROK, Feb 21, 2014, <http://www.loyarburok.com/2014/02/21/plea-rethink-allah-case>. See also Tommy Thomas, *The “Allah” Decision is Wrong in Constitutional Law*, LOYAR BUROK, Oct 25, 2013, available at <http://www.loyarburok.com/2013/10/25/allah-decision-wrong-constitutional-law/#sthash.vHpxByFH.dpuf>; and Wei Meng Lim-Kabaa, *The Court of Appeal’s flawed approach to the “Kalimah Allah” case*, LOYARBUROK, Jan 15, 2014, available at www.loyarburok.com/2014/01/15/courtofappeal-kalimahallah/#sthash.Xs6BJ00x.dpuf.

questions about Malaysia's proclaimed status as a moderate and modern Islamic society.

I. THE 'ALLAH' CASE: A TALE OF TWO JUDGMENTS

A. Competing Ideologies: A Framework for Analysis

There are two competing ideologies embedded in Malaysia's constitutional system: one proclaims the ethnic nation based on the ideology of 'one race, one language, and one religion, and the other aspires in a pluralistic and multiethnic nation capable of accommodating 'many races, many languages, and many religions.' The former emphasizes ethnic identity as the central organizing principle of government and society. It sees ethnicity as the primary mode of engaging in law and politics such that defending this ethnic principle becomes crucial to upholding and maintaining an entrenched way of legal, political, and social life. This contrasts with a competing logic of nationhood as based on plurality and equality. According to this ideology of plural nationalism, society and government are premised on ethnic, linguistic, and religious equality. Thus, while the ethnic-based nation results in exclusivist claims, the equality-based nation aims to be inclusive.

The struggle between ethno-nationalism and plural-nationalism for dominance has been a defining influence in Malaysian law, politics, and society. This framework of competing ideologies has useful interpretive functions. The two judgments discussed above broadly respond to the respective logic of these competing ideologies. While the High Court's reasoning conforms to the plural-nationalist idea where religious minorities are to be treated equally, the Court of Appeal's judgment responds to the ethno-nationalist ideology where the interests of the dominant religious group is prioritized over other groups'.

B. Socio-Political Background to the Case

The case, now popularly referred to as the 'Kalimah Allah' case or simply the 'Allah case', came at a time of increasingly frayed relations between the Malay-Muslim majority and various minorities in Malaysia. 'Malay' (as opposed to 'Malaysian') refers to an ethnic group with origins in the Malaysian peninsular. Malays form about 63% of Malaysia's population. The remainder consist mostly of ethnically Chinese and Indian.⁸ While there is some correlation between these two ethnic groups and specific religions, this is less pronounced than for the dominant Malay ethnic group that is strongly tied to Islam. The most popular religions among the Chinese are Buddhism/Taoism and Christianity (of both Catholic and Protestant denominations). Among Indians, or more appropriately persons of South Asian origin, Hinduism is the assumed practice, although there is, in fact, a diversity of religious beliefs among this group.

The case was preceded by series of state actions, perceived as discriminatory, of the racial-religious minorities. This included the tearing down of old Hindu temples by state and federal governments,⁹ whose bureaucracies are dominated by persons of Malay origins, and tended to be Muslims. Another controversy arose when the Selangor Islamic Religious Department raided a charity dinner held at a church. The department's officials, accompanied by law enforcement officers, claimed that they were investigating into the multi-religious event for allegedly attempting to convert Muslims to Christianity. Supporters of the raid

⁸ See Department of Statistics, *Ethnic Composition, Population Distribution and Basic Demographic Characteristic Report 2010*; available at http://www.statistics.gov.my/portal/index.php?option=com_content&id=1215.

⁹ The state governments argue that the temples, many built before Malaysia won its independence in 1957, are illegal structures because they lack proper registration and are situated on government lands. Zari Bukhari, *Temple demolitions stoke Malaysian tensions*, ASIA TIMES ONLINE, Jul 11, 2006, available at http://www.atimes.com/atimes/Southeast_Asia/HG11Ae01.html; Trinna Leong, *Putrajaya defends temple demolition, says consulted Hindu priest*, THE MALAYSIAN INSIDER, Nov 11, 2013, available at <http://www.themalaysianinsider.com/malaysia/article/putrajaya-defends-temple-demolition-says-consulted-hindu-priest>.

lauded the move as necessary to defend Islam,¹⁰ while the church denied any attempted proselytization.

C. Factual Background to the Case

The applicant, the Titular Roman Catholic Archbishop of Kuala Lumpur, had published the *Herald – The Catholic Weekly* for some 15 years. In 2009, it received a ministerial order, attaching two conditions to its publication permit. The first condition states that the Catholic Herald is prohibited from using the word ‘Allah’ and the second that the publication is to be restricted to circulation within churches and to Christians only. The applicant did not challenge the ministerial order to restrict circulation only to Christians. Despite this, the government insisted on additionally banning the use of the word ‘Allah’ because there was no guarantee that the publication would not “fall into the hands of Muslims”, especially since it is available online. According to the government, and this is the central basis of their case, allowing the Catholics to use the word ‘Allah’ would cause confusion and misunderstanding among Muslims.

The ministerial order is tied to a larger statutory scheme that controls and restricts the propagation of non-Islamic doctrine or belief among Muslims. The constitutional basis for such statutes, which have been enacted in ten out of Malaysia’s 13 states, is article 11(4) of the Federal Constitution. This declares that the states “may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.” Under Malaysia’s federalist arrangement, Islam was a matter that fell within the state’s powers. Sections 9 of the various state enactments provide for an offence relating to the use of certain words and expressions commonly associated with Islam, and

¹⁰ Organizers explained that the dinner was a charity event where Malay-Muslim participants were recipients of welfare support and defended the dinner as one in support of pan-Malaysian unity. *Malaysia confronts its ethnic and religious divisions*, AL-JAZEERA, Aug 25, 2011, available at <http://stream.aljazeera.com/story/201108251926-0014465>.

which includes the word 'Allah'.¹¹ Thus, the government argued that the ministerial order merely gives effect to the restrictions as found in these statutory enactments. The High Court decided in favor of the applicants, whereas the Court of Appeal decided in favor of the government.

The two courts diverged starkly in their treatment of three legal issues. The first is whether the use of the word 'Allah' fell within the protected scope of religious freedom under the constitution. The second is whether the restriction could be justified under public order grounds. The third issue concerns the meaning and implication of article 3(1), which declares Islam to be the religion of the Federation, but also guarantees that other religions can be practiced in peace and harmony.

D. High Court: In Defense of Religious Freedom

1. Article 11(1): Constitutionally Protected Religious Practice

According to the High Court, prohibiting the use of the word 'Allah' violates the Federal Constitution's guarantee of religious freedom under articles 11(1) and 11(3). Article 11(1) guarantees that,

[e]very person has the right to profess and practise his religion and, subject to Clause (4), to propagate it." Clause (4) authorizes laws that "control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam." In addition, article 11(3) grants and protects the right of every religious group to, inter alia, "manage its own religious affairs.

¹¹ See e.g. the Non-Islamic Religions (Control of Propagation Amongst Muslims) Enactment 1988 (Selangor Enactment No 1/1988).

The High Court determined that the use of the word 'Allah' was protected under the constitution. It accepted what it calls "uncontroverted historical evidence" that the use of the word 'Allah' has been part of the practice of Christianity in Arabic-speaking countries and in Malaysia and Indonesia.¹² Since the Malay language has been the lingua franca of many Catholic believers living in Melaka and Penang, as well as their descendants in Peninsular Malaysia, for many centuries, they have practiced a culture of speaking and praying in the Malay language. Earliest translations of the Bible to Malay also used the word 'Allah' to denote God. Adopting the essential practice test,¹³ the High Court concluded that the use of the word is an essential part of Catholic worship and instruction in the faith among its Malay-speaking community, and thus is integral to the practice and propagation of their faith.¹⁴

In addition, although article 11(4) allows the government to restrict propagation among Muslims, it does not extend to authorizing the government to restrict the right to profess and practice one's religion. The state enactments must therefore be read restrictively in light of articles 11(1) and 11(4). As long as a religious group, and in this case the Catholic Herald, is not using the word 'Allah' to propagate Christianity to Muslims, there is no constitutional basis for restricting use of the word.

¹² See *'Allah' case, High Court*, ¶¶ 21, and 35.

¹³ This test was adopted by the Court of Appeal in *Meor Atiqulrahman bin Ishak & Ors v Fatimah bte Sihi & Ors* [2006] 4 MLJ 605. Notably, the Federal Court rejected this test and opted instead for a more contextualized balancing test.

¹⁴ *'Allah' case, High Court*, ¶¶ 30 and 35. The court also determined that the ministerial order constituted an unreasonable restriction on the freedom of speech and expression under article 10(1)(c) of the Federal Constitution and is an unreasonable administrative act which impinges on article 8(1)'s guarantee of equal protection before the law.

2. Threat to Public Order: No Material Evidence

The High Court also reviewed and rejected the government's justification that allowing the Catholic Herald to use the word 'Allah' would cause confusion and threaten public order and national security. Under article 11(5), the constitutionally protected right to religious freedom is subject to general laws relating to public order, public health or morality. In other words, religious freedom could be restricted if a religious practice violates public order. However, the High Court held that there was no material evidence this was the case. Instead, there was a historically well-established practice for the use of 'Allah' amongst the Malay-speaking community of the Catholic faith in the geographic region that now makes up Malaysia, presumably without any public disorder or security concerns. In addition, the Court took judicial notice that Muslims and Christian communities in other Muslim countries, including those in the Middle East, use the word 'Allah' without any confusion. Furthermore, the Court noted there is a need to cautiously circumscribe the "avoidance of confusion" as a valid ground for restricting religious freedom lest "a mere confusion of certain persons within a religious group can strip the constitutional right of another religious group to practice and propagate their religion under article 11(1) and to render such guaranteed right as illusory."¹⁵

3. Article 3(1): Other Religions May Be Practiced in Peace and Harmony

Lastly, the High Court buttressed its judgment with reference to article 3(1) of the Federal Constitution, which guarantees that all religions may be practiced in "peace and harmony". The article declares:

"Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation."

¹⁵ 'Allah' case, High Court, ¶65.

While the reference to Islam as the religion of the Federation has been used on numerous occasions to expand the state's control over Islam and to restrict the right of Muslims to convert out of Islam,¹⁶ the High Court rejected the government counsels' attempt to use this provision to restrict the religious freedom of non-Muslims. It held that the right to practice in peace and harmony supports its conclusion that the use of the word 'Allah' is part of the constitutional protection of religious freedom. This interpretation conceives of article 3(1) as a rights-protective provision for non-Muslims.

E. The Court of Appeal: Public Order Over Religious Freedom

While the High Court gave robust protection to the Catholic Herald's religious freedom, the Court of Appeal judgment leaned in favor of public order considerations. It disagreed with the High Court on all three issues implicating religious freedom. While all three Court of Appeal judges issued individual grounds of decision, the ratio was broadly contained in an official media statement that the Court issued.¹⁷

1. Article 11(1): Not Essential Practice

Firstly, the Court of Appeal unanimously found that there was no infringement of the Catholic Church's constitutional rights because the use of the word 'Allah' is not an integral part of the faith and practice of Christianity. Constitutional protection of religious freedom extends only to practices and rituals that are essential and integral to the religion,¹⁸ and it is the court that assesses the

¹⁶ See e.g. *Kamariah bte Ali dan lain-lain lwn Kerajaan Negeri Kelantan, Malaysia dan satu lagi* [2002] 3 MLJ 657, *Daud bin Mamat & Ors v Majlis Agama Islam & anor* [2001] 2 MLJ 390.

¹⁷ *Summary of Decision*, reproduced at LOYARBUROK: http://www.loyarburok.com/wp-content/uploads/2013/10/Allah-W-01-1-2010_SUMMARY.pdf (hereafter "*Summary of CA Decision*").

¹⁸ See ¶10 of Justice Mohd Zawari's judgment, in LOYARBUROK: http://www.loyarburok.com/wp-content/uploads/2013/10/Allah-W-01-1-2010_YA_DATO_MOHD_ZAWAWI_BIN_SALLEH.pdf (hereafter "*Justice Mohd Zawari's Judgment*").

sufficiency of evidence to determine the existence of a religious practice, as well as its essentialness to the religion. This rejects the subjective approach, or what it calls the “assertion test”, which protects the right of religious groups to assert and judge for themselves the practices that are part of the religion. In support of this conclusion, Justice Mohamed Apandi reasoned that the word ‘Allah’ does not appear in the Hebrew scriptures or in the Greek New Testament, and that to insist otherwise is “to refuse to acknowledge the essential differences between religions”, which “will be an affront to the uniqueness of world religions.”¹⁹ There was therefore “no reason why the respondent is so adamant to use the name ‘Allah’ in their weekly publication.”²⁰

2. Threat to Public Order: Post-Judgment Incidents

Secondly, the Court of Appeal agreed with the Minister’s determination that the prohibition of the use of the word ‘Allah’ by the Catholic Herald posed a public order and security issue. The court agreed with the government that such usage “will inevitably cause confusion within the community.”²¹ All three judges accepted that the usage of the word ‘Allah’ has the “potential to disrupt the even tempo of the life of the Malaysian community”.²² Justice Abdul Aziz adopted the government’s view that Muslims in Malaysia are “very sensitive on religious issues” and that the word ‘Allah’ refers to ‘oneness’ and cannot be part of the concept of Trinity of Father, Son, and the Holy Ghost of the Christian faith.²³

¹⁹ Justice Mohamed Apandi’s judgment. ¶51-2, at LOYARBUROK: http://www.loyarburok.com/wp-content/uploads/2013/10/Allah-W-01-1-2010_YA_DATO_SRI_HAJI_MOHAMED_APANDI_BIN_HAJI_ALI.pdf (hereafter “*Justice Mohamed Apandi’s Judgment*”).

²⁰ *Summary of CA Decision*, ¶5.

²¹ *Id.*, at ¶ 5.

²² *Justice Mohamed Apandi’s Judgment*, at ¶42.

²³ See ¶36 of the judgment of Justice Abdul Aziz, reproduced at LOYARBUROK: http://www.loyarburok.com/wp-content/uploads/2013/10/Allah-W-01-1-2010_YA_DATO_ABDUL_AZIZ_BIN_ABDUL_RAHIM.pdf (hereafter “*Justice Abdul Aziz’s Judgment*”).

Invoking the Latin maxims *salus populi suprema lax* and *salus reipublicae suprema lax*, the Court took an even more statist position than the government had initially taken, holding that “the welfare of an individual or group must yield to that of the community.”²⁴

3. Article 3(1): Other Religions May Be Practiced in Peace and Harmony Subject to Islamic Supremacy

Thirdly, the Court of Appeal departed from the High Court’s minority rights-protective reading of article 3(1), holding instead that the reference to peace and harmony should be read to subject “the welfare of an individual or group ... to that of the community.”²⁵ While the court’s media summary is opaque, the individual judgments are more illustrative in explaining what this means. Justice Mohamed Apandi, for instance, asserts in his judgment that article 3(1) is aimed at protecting the “sanctity of Islam as the religion of the country and also to insulate [it] against any threat faced or any possible and probable threat to the religion of Islam.” He added, that in his opinion, “the most possible and probable threat to Islam, in the context of [Malaysia], is the propagation of other religion to the followers of Islam.”²⁶ This reading turns article 3(1) on its head; the injunction to practice in peace and harmony is now directed at the non-Muslims, rather than at the government and the Muslims to ensure that religious minorities may practice their religion in peace and harmony. According to this reading article 3(1), it is the non-Muslims who have the responsibility of ensuring that the practice of their religion does not affect the peace and harmony of the country.

²⁴ *Summary of CA Decision*, at ¶6.

²⁵ *Id.*

²⁶ *Justice Mohamed Apandi’s Judgment*, at ¶33.

II. LEGAL ANTECEDENTS: TRACING THE JURISPRUDENTIAL THREAD

The High Court's rights-protective approach appeals to liberal-constitutionalists since it gives due regard to the rights of religious minorities and does not accept as conclusive the government's claimed justification on public order or national security grounds. The Court of Appeal decision, on the hand, is perplexing from the perspective of constitutional history and principles. I argue however that it can be understood in the context of a line of judicial reasoning which endorsed two problematic legal positions posited by the ethno-nationalist ideology: first, the judicial intertwining of Malay ethnicity with religion, and secondly, the alleged superiority of Islam over other religions.

A. *Islam as an Indispensable Marker of Ethnic Identity*

Judicial intertwining of Islam with Malay ethnicity can be identified in the 2000 High Court of Seremban case of *Meor Atiqulrahman bin Ishak vs. Fatimah bte Sihi*.²⁷ Here, the court referenced provisions in the constitution relating to the preservation of Malay reservations,²⁸ designating Malay as the official language²⁹, and recognizing the "special position of Malays" and their indigenous status as *bumiputeras* as giving special status to Malays³⁰ to justify interpreting article 3(1) as giving Islam a special status in the constitution. This conflates Malay ethnicity with Islam, thus intertwining ethno-nationalism with Islam. Nonetheless, nowhere is this more pronounced than in the 2004 High Court judgment in *Lina Joy v Majlis Agama Islam Wilayah*³¹ where it held that Malay ethnicity and Islam were simply inseparable. One could not be a Malay and not Muslim.

²⁷ *Meor Atiqulrahman bin Ishak vs. Fatimah bte Sihi* [2000] 5 MLJ 375 (High Court, Seremban) (hereafter "*Meor, HC*").

²⁸ Art 89, Federal Constitution.

²⁹ Art 152, Federal Constitution.

³⁰ *Meor High Court*, at 384F-G.

³¹ *Lina Joy v. Majlis Agama Islam Wilayah* [2004] 2 MLJ 119.

Lina Joy was a highly publicized case of a woman of Malay descent who was raised a Muslim but later converted to Catholicism. She applied for her change of religion to be recognized in her official records in order to marry a non-Muslim. The National Registration Department refused her application on the basis that she had to obtain a certificate of conversion from the Syariah courts, which had jurisdiction over the matter. This was not practicable since the Syariah courts are empowered to detain her for religious rehabilitation instead of granting her the certification.³² She therefore filed an application for judicial review against the government, claiming a violation of her religious freedom.

The High Court rejected her application, and the Court of Appeal and the Federal Court affirmed, albeit on different grounds.³³ The High Court reasoning however is most relevant and has influenced subsequent cases restricting religious freedom of Muslims. The Court held that since the plaintiff “is a Malay”, by definition, “she cannot renounce her Islamic religion” but must remain in the Islamic faith “until her dying days”. This judicial reasoning relies on an interpretation clause in the Federal Constitution, which defines a Malay person as one “who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom”. However, a competing and probably a more judicially accepted definition (at least until *Lina Joy*) was that a person who converts out of Islam is no longer regarded as a Malay person for purposes of the constitutional provisions. The definition of a Malay person was included in the constitution to facilitate the preferential allocation of resources to Malays as *bumiputera* or ‘sons of the soil’.³⁴ The High Court’s reading in *Lina Joy* turned this

³² The Administration of Islamic Law (Federal Territories) Act 1993, other related State Enactments and all other state or federal legislation forbade or imposed restrictions on conversion out of Islam. Joy also sought to invalidate these in her application.

³³ See *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Ors* 6 MLJ 193 (Court of Appeal, 2005); *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan* 4 MLJ 585 (Federal Court, 2007).

³⁴ Under article 153 of the Federal Constitution, Malays and natives of Sabah and Sarawak are considered indigenous to Malaysia.

definitional clause into a rights-restrictive clause. According to this (re-)interpretation, the clause constitutionally entrenches Islam as part of a group's ethnic identity, thus making religion immutable, rather than a consequence of individual choice.

B. Superordination? Islam as the Religion of the Federation

The judicial endorsement of Islam as having a superordinate status was asserted in the case of *Meor Atiqulrahman* referred to above. Three schoolboys applied for judicial review challenging their expulsion from a public school for wearing *serbans* (a type of Islamic headgear). The school claimed that they had breached school uniform regulations, which permitted (*inter alia*) the *tudung* (headscarf) and *songkok* (a headgear commonly worn by Malay-Muslims in Malaysia). The High Court held in the applicants' favor on the basis that the school and the Ministry of Education (which had set the clothing policy) had violated their religious freedom. The crucial part of the case however, while *obiter*, was the High Court's exposition on the meaning and implication of article 3(1) of the Federal Constitution.

In its judgment, which was written in the Malay language, the High Court read article 3(1) as establishing the primacy of Islam in the following terms:

In my opinion, Article 3 of the Federal Constitution means that Islam is the dominant religion amidst other religions which are practised in the country like Christianity, Buddhism, Hindu and others. Islam is not of the same status as the other religions; it does not sit side by side nor stand side by side. Rather, Islam sits at the top, it walks first, and is placed on a mantle with its voice loud and clear. ... Otherwise, Islam will not be the religion of the Federation but just one of the many religions embraced in the country and

everybody would be equally free to practice any religion he/she embraces, with none better than the other.³⁵

This is not merely a symbolic primacy, but one that imposes state obligations. The High Court thus asserted that its reading of article 3(1) requires the government to maintain, encourage, and spread Islamic faith and practices.³⁶

For the High Court, it is a necessary and required consequence that the rights of other religious groups would have to be subordinated to Islam and the rights of its adherents. It explains that a consequence of its reading of article 3(1) is also for the government to ensure that religious places of worship for other religions “do not surpass or compare with National/State Mosques in terms of location and prominence, size and architecture”.³⁷ It also means that the government has to ensure that “there be too many such religious places located everywhere without control.”³⁸ Thus:

Other religions must be arranged and directed to ensure that they are practiced peacefully and do not threaten the dominant position of Islam, not just presently but more importantly in the future and beyond.³⁹

The High Court’s decision was overturned on appeal. Both the Court of Appeal and the Federal Court held in the school and government’s favor, but without

³⁵ Author’s translation with the assistance of [anonymised]. *Meor HC*, at 382B-D. The High Court decision, written in *Bahasa Malaysia*, was not fully reported in English; its skeletal English headnote does not sufficiently detail the extensive treatment and discussion of article 3, including precedents and drafting history.

³⁶ *Meor HC*, at 386A-D.

³⁷ *Id.*

³⁸ *Id.* For a more extensive treatment of this case, see Thio Li-ann & Jaclyn Ling-Chien Neo, *Religious Dress in Schools: The Serban Controversy in Malaysia*, 55 INT’L & COMP. LAW Q 671 (Jul 2006).

³⁹ *Id.*

directly rejecting the High Court's interpretation of article 3(1).⁴⁰ Problematic judicial doctrine should be expressly and affirmatively overruled, especially since the High Court's reading of article 3(1) contradicts an earlier higher court decision in *Che Omar bin Che Soh v PP*.⁴¹ There, the Supreme Court (then Malaysia's highest court) affirmed that the original intent and thereby the proper interpretation of article 3(1) is that it merely authorizes the use of Islamic rites and rituals in official events. It is not meant to provide any normative content to constitutional law. However, both the Court of Appeal and the Federal Court in *Meor* only addressed the question obliquely. In the Court of Appeal, Justice Gopal Sri Ram observed that the courts "have to interpret the constitution sensibly and in the context of a multi-racial society."⁴² The Federal Court reasoned, that colonialism was a substantive intervention that transformed the Malay states from any theocratic monarchies into a "multiracial, multi-cultural, multi-lingual, and multireligious" state.⁴³ The Court further lauded Malaysia's success in ensuring "unity, peace, and prosperity" despite such a difficult social context.⁴⁴ Thus, the Federal Court held that the Ministry of Education's school uniform regulations were justifiable on the basis that creating a common educational system that permits diversity without promoting extremism and polarization was a sufficiently important state interest.

The two higher courts' decision may be criticized for not giving protection to the religious freedom of the schoolboys, and favoring instead state interests. However, the fact that the school regulations did not entirely prohibit the wearing of all religious headgears but permitted some indicates the state's accommodative stance towards religious dress. The government's refusal to

⁴⁰ *Fatimah binti Siti v Meor Atiqularahman* [2005] 2 MLJ 25, (Court of Appeal).

⁴¹ *Che Omar bin Che Soh v PP* (1988) 2 MLJ 55.

⁴² V. Anbalagan, *Serban issue: Court allows appeal*, 23 Nov 2004, NEW STRAITS TIMES, NOV 23, 2004, 1.

⁴³ *Meor Atiqulrahman bin Ishak v Fatimah bte Sihi & Ors* [2006] 4 MLJ 605, (Federal Court), at ¶45.

⁴⁴ *Id.*

extend this to the *serban* however may be due to the perception that the *serban* is associated with a more conservative vision of Islam. Thus, in endorsing the restrictions as necessary in the interest of ensuring inter-racial and inter-religious peace, the Federal Court implicitly affirmed the need to prioritize a pluralist nation over a radical vision of an ethno-nationalist one. However, the higher courts' failure to rebut the High Court's reading of article 3(1) has led to the mistaken assumption that the High Court's ethno-nationalist interpretation stands as acceptable judicial doctrine. This interpretation continues to influence later cases and the Court of Appeal's reading of article 3(1) in the 'Allah' case reflects this judicial doctrine, despite its questionable basis in legal history and legal precedent.

C. Peace and Harmony: Subordinating Minority Interests to Islam's

The Court of Appeal's reading of article 3(1) in the 'Allah' case can thus be understood as responding to the same logic of ethno-nationalism that undergird the cases discussed. Its reading of "peace and harmony" as serving to protect the sanctity of Islam as the religion of the country and to insulate it against any threat⁴⁵ turns the provision from one that is historically understood as an assurance to religious minorities of their freedom to practice, to one that imposes an obligation on them. In holding that article 3(1) serves to protect the "sanctity of Islam as the religion of the country" and to "insulate" it from any threats, real or possible, the Court of Appeal has made the religious majority the beneficiaries of this provision. Textually, it also makes little sense. The article reads: "Islam is the religion of the Federation, *but* other religions may be practiced in peace and harmony in any part of the Federation." The first part of this provision presumably benefits the religious majority since it recognizes their religion as the official religion. There would have been no reason to use the word 'but' to refer to other religions practicing in peace and harmony if the rest of the provision was meant to also benefit the religious majority. It would and

⁴⁵ Justice Mohamed Apandi's Judgment, ¶33; Justice Abdul Aziz's Judgment, ¶48.

could simply have read: Islam is the religion of the Federation, *and* other religions may be practiced in peace and harmony. The use of the word ‘but’ shows instead that the latter is meant to qualify the preceding part.

III. RIVAL NATIONS: THE MALAY-MUSLIM NATION VERSUS THE MULTIETHNIC NATION

A. *Internal Criticism: Paternalism and Questionable Theological / Etymological Claims*

*The way Muslims are treated here is just condescending. It's ridiculous to think that if other religions use the word Allah, us Muslims would start converting to other religions.*⁴⁶

While the Court of Appeal's decision received much support from ethno-nationalists in Malaysia, it received condemnation both within and outside Malaysia, not only from liberal human rights supporters and Christian groups, but also from Islamic scholars and commentators. Malaysian Muslim activist, Dr Ahmad Farouk Musa, strongly criticized its paternalistic undertones. This was echoed overseas by American Islamic scholar Reza Aslan, who called absurd the “notion that Malaysian Muslims need to be protected by the court because you can't think for yourself, you can't make decisions on your own.”⁴⁷

In addition, commentators questioned its theological and etymological claims. Warning that Malaysia was becoming a laughingstock of the international

⁴⁶ Trinna Leong, *More Islamic scholars criticize Putrajaya over Allah ruling*, THE MALAYSIAN INSIDER, Oct 23, 2013, available at <http://www.themalaysianinsider.com/malaysia/article/more-islamic-scholars-criticise-putrajaya-over-allah-ruling>.

⁴⁷ Elizabeth Zachariah, *Award-winning American Muslim scholar on Allah ruling: “We are laughing at you”*, THE MALAYSIAN INSIDER, Oct 22, 2013, available at <http://www.themalaysianinsider.com/malaysia/article/award-winning-american-muslim-scholar-on-the-allah-decision-we-are-laughing>.

community, Reza Aslan points out that the word is merely an Arabic word referring to the generic concept of God:

Al-Ilah means ‘The God’. Allah is not the name of God. Frankly, anyone who thinks that Allah is the name of God, is not just incorrect, but is going against the Quran itself. It is almost a blasphemous thought to think that Allah has a name.⁴⁸

In addition, the United Arab Emirates’ English language publication *The National* criticized the “wrong” ruling, stating:

The word ‘Allah’ is never exclusive to Islam – indeed, both Christians and Jews used the word “Allah” to refer to God even before the coming of Islam. ... The Malaysian decision overlooks not merely the theology, but also the etymology of the word. The word ‘Allah’ is derived from the Arabic ‘al-ilah’, the god. It’s [*sic.*] found its way across the world and entered Malay from Arabic.⁴⁹

Even Pakistan’s Daily Times (admittedly more liberal in outlook) asked: “Who has given Muslims the liberty to copyright the name of Allah?”⁵⁰ Indeed, Islamic scholar and former Perlis Mufti Dr Asri Zainul Abidin argued that banning non-

⁴⁸ *Id.*

⁴⁹ *Word ‘Allah’ is not exclusive to Islam*, THE NATIONAL (EMIRATES), Oct 14, 2013, available at <http://www.thenational.ae/thenationalconversation/editorial/word-allah-is-not-exclusive-to-islam#ixzz2s3MR4H5J>.

⁵⁰ *The Hajj Sermon*, DAILY TIMES (PAKISTAN), Oct 16, 2013, available at http://www.dailytimes.com.pk/default.asp?page=2013\10\16\story_16-10-2013_pg3_1; see also Mohammad Ahmad, *Wielding the Religious Sword in Malaysia*, DAILY TIMES (PAKISTAN), October 21, 2013, available at <http://archives.dailytimes.com.pk/editorial/21-Oct-2013/view-wielding-the-religious-sword-in-malaysia-mohammad-ahmad>. Ironically, in Pakistan, Ahmadiyyas have been prohibited from using what the state perceives to be exclusively Islamic epithets. See Section 298B of the Pakistani Penal Code, and the Pakistan Supreme Court’s decision in *Zaheeruddin v The State* (1993) 26 SCMR 1718.

Muslims from calling God 'Allah' is tantamount to 'syirik', the unforgivable sin of practicing idolatry or polytheism.⁵¹

A. Embedded Conflict: Ethno-Nationalism versus Plural-Nationalism

If these staunch objections are correct, how then did the Court of Appeal get it so wrong? The key lies in Mohamed Apandi JCA's affirmation of Dr Shad Saleem Faruqi's arguments concerning the inseparability of Malay ethnicity with the Islamic religion:

"... Malays see an inseparable connection between their race and their religion. Any attempt to weaken a Malay's religious faith may be perceived as an indirect attempt to erode Malay power. Conversion out of Islam would automatically mean deserting the Malay community due to the legal fact that the definition of a 'Malay' in Article 160(2) of the Federal Constitution contains four ingredients [and] [p]rofessing the religion of Islam is one of them."⁵²

This reasoning, as the previous section demonstrates, has legal antecedents, and conforms to the ethno-nationalist ideology which has influenced a reading of history as favoring the ethnic-based nation rather than a plural nation based on equality of races, religions, and language.

The contestation arising from the 'Allah' case is part of a broader phenomenon in Malaysian law and politics, which is the perennial attempt to try to accommodate competing ideologies of ethno-preferentialism and plural-equality in the

⁵¹ Boo Su-Lyn, *Quran encourages non-Muslims to use 'Allah', says ex-Perlis Mufti*, MALAY MAIL ONLINE, Oct 18, 2013, available at <http://www.themalaymailonline.com/malaysia/article/quran-encourages-non-muslims-to-use-allah-says-ex-perlis-mufti#sthash.G6lq7s04.dpuf>.

⁵² *Mohd Apandi's Judgment*, at ¶35 (citing with approval SHAD SALEEM FARUQI, DOCUMENT OF DESTINY THE CONSTITUTION OF THE FEDERATION OF MALAYSIA, 138-9 (2008)).

construction of a viable Malaysian polity. These competing ideologies are accommodated in the Federal Constitution which included provisions that specifically favor the Malay-Muslim majority in terms of religion, language, as well as economic and educational opportunities (e.g. articles 3, 152, and 153), while also guaranteeing equal citizenship and equal protection for all (e.g. articles 3 and 8).⁵³

This conflicting logic of ethnic preferentialism versus equality is also reflected in Malaysia's somewhat contradictory position on Islam encapsulated in article 3(1). The original intent that Malaysia would remain for all intents and purposes a secular state, however was undergirded by a broad first generation consensus manifest from the canonical documents on the constitution's drafting history. These showed that the United Malay National Organization (UMNO), which then claimed to legitimately represent the Malay-Muslim position, assured the British colonial government and its non-Malay/Muslim partners that, despite article 3(1), there was "no intention of creating a Muslim theocracy and that Malaya would be a *secular* state."⁵⁴ The inclusion of article 3(1) "will in no way affect the present position of the Federation as a secular State, and every person will have the right to profess and practice his own religion and the right to propagate his religion."⁵⁵ But over time this first generation consensus clearly unraveled. That article 3 was inserted into the text of the constitution, but without a clear statement on the background consensus, testifies to the endurance of texts and correspondingly the fragility of unwritten agreements.

⁵³ On citizenship, see Part III of the Federal Constitution.

⁵⁴ JOSEPH M. FERNANDO, *THE MAKING OF THE MALAYAN CONSTITUTION*, 162-163 (2002); see also Norman Parmer, *Constitutional Change in Malaya's Plural Society*, 26(10) *FAR EASTERN SURVEY*, 149 (1957).

⁵⁵ Paragraph 57 of the White Paper (1957).

B. Constructing the Boundaries between Malay and non-Malay

The political construction of Islam as an immutable and inseparable part of Malay ethnic identity should be understood as part of the Malay nationalist claim for political dominance. As Gordon Means observed, “[t]o the Malays, the special position of Islam, recognized under British rule, symbolized that the country was [still] legitimately theirs.”⁵⁶ Intertwining Islam with Malayness obliges an ethno-nationalist government and its supporters to protect Islam from being superseded by other religions. This connects to a popular political rhetoric that tends to portray the majority Malay community as victims – first political, then as economic, and now as religious victims.

Since the Malayan Union fiasco, under which the sultans signed the MacMichael Treaties to grant sovereignty to the British, UMNO assumed the mantle of defender of the Malay community.⁵⁷ This has been challenged by the increasing political success of the opposition Islamic group, Parti Islamic Se-Malaysia or PAS,⁵⁸ and the proliferation of ethno-religious civil society organizations such as the *Angkatan Belia Islam Malaysia* (Malaysian Islamic Youth Movement or ABIM)⁵⁹ and later *Pertubuhan Pribumi Perkasa Malaysia* (Malaysian Body for the Strengthening of the Pribumi, or simply Perkasa). Such organizations have not only weakened UMNO’s monopoly on the Malay-Islamic rhetoric but also further accentuated the existing, conflicting subcultures,⁶⁰ particularly in heightening the religious divisions between Malay/Muslims, on the one hand, and non-

⁵⁶ Gordon P. Means, *Public Policy Toward Religion in Malaysia*, 51(3) PACIFIC AFFAIRS 384, 386 (1978). Jaclyn Ling-Chien Neo, *Malay Nationalism, Islamic Supremacy and the Constitutional Bargain in the Multi-ethnic Composition of Malaysia*, 13 INT’L J. OF MIN & GRP RTS 95 (2006).

⁵⁷ See ALBERT LAU, *THE MALAYAN UNION CONTROVERSY 1942 – 1948*, 125 (1991).

⁵⁸ See HUSSIN MUTALIB, *FROM REVIVALISM TO ISLAMIC STATE*, 1-16 (1993).

⁵⁹ *Id.* at 27.

⁶⁰ Azeem Fazwan Ahmad Farouk, *The Limits of Civil Society in Democratizing the State: The Malaysian Case*, 29(1) KAJIAN MALAYSIA, 91, (2011).

Malay/Muslims. Perkasa, for instance, unabashedly advocates Malay supremacist ideology.⁶¹

The intensity in which Islam is being used as basis for demarcating Malays from non-Malays may be attributed to religious revival as a result of internal and external socio-political changes.⁶² However, a related cause could be the disintegration of culture and language as unique identifiers for Malay ethnicity. Successful and sustained inter-cultural interactions have led to some linguistic and cultural syncretism, as well as cross-cultural assimilation such that the idea of a “Malay custom” is now increasingly nebulous. This is exacerbated by the onslaught of Western modern trappings. Persons of Malay origins, especially the younger generation, are as likely to don jeans and eat at McDonald’s, as their non-Malay Malaysian counterparts. With the dissolution of previously established differences, religion becomes the main and possibly only consistently strong identifier that ethnic-nationalists can rely upon to maintain the distinction between *Us* and *Them*.⁶³

In the context of Malaysia’s highly ethnicized political climate, maintaining such a distinction has become crucial to keeping the political status quo. The ruling coalition, *Barisan Nasional*, is an alliance primarily composed of three ethno-nationalist parties – UMNO, the Malayan Chinese Association (MCA), and the Malayan Indian Congress (MIC). *Barisan Nasional* has formed the federal

⁶¹ Former Prime Minister Mahathir, suggests that groups such as Perkasa that are “championing Malay issues have mushroomed of late because there is a feeling among the Malays that Umno by itself is incapable of protecting them.” *Mahathir: Umno not doing enough*, THE STAR, Jan 29, 2010, available at <http://www.thestar.com.my/story.aspx/?file=%2f2010%2f1%2f29%2fnation%2f5570462&sec=nation>; see also FREDERIK HOLST, ETHNICIZATION AND IDENTITY CONSTRUCTION IN MALAYSIA 189-190 (2012).

⁶² See generally MUTALIB, *supra* note 58.

⁶³ Islamic revivalism served to replace the Malay/non-Malay dichotomy with the Muslim/non-Muslim distinction as the primary marker of identity and differentiation, see Graham Brown, *Legible Pluralism: The Politics of Ethnic and Religious Identification in Malaysia*, 9 ETHNOPOLITICS 31, 32 (Mar 2010).

government and the majority of state governments since independence. The ability of these parties to continue to command electoral support is inextricably tied to the continuance of the divided ethno-nationalist ideology. Since the 2008 General Elections, the Chinese and Indian communities have increasingly abandoned support for MCA and MIC in favor of political parties with a more pluralistic and inclusive platform.⁶⁴ Thus, UMNO's role in maintaining Barisan Nasional's hold on political power has become even more crucial. Many see this as dependent on its ability not only to monopolize the space as defender of Malay interests, but also perversely in preserving a distinctive Malay identity.

C. National Language or Ethnic Language?

*In any village, there would be Bidayuh, Iban, Melanau and other tribes, which all speak in their native languages, but when they go to church, the language of communication is Malay.*⁶⁵

One crucial aspect that the 'Allah' judgment did not directly consider is the implication on what it means for Malay to be the national language. The designation of Malay as the national language was surely to establish it as the main language of communication for all Malaysians. Children in public schools are required learn the Malay language. This is useful in the context of a plural society with many linguistic groups. In East Malaysia, for instance, where there are many cultural and linguistic groups, the use of the Malay language in churches has been a crucial unifying platform. But if Malay is the lingua franca in Malaysia, it defies logic that the government can reserve the use of certain Malay words to only one ethnic-religious group. Why would only some Malaysians be able to use the word 'Allah' to denote their god, and not other Malaysians and

⁶⁴ See e.g. *Political Tsunami*, The Daily Beast (United States), (March 9, 2008), <http://www.thedailybeast.com/newsweek/2008/03/09/political-tsunami.html>.

⁶⁵ Jennifer Gomez, *Sabah and Sarawak folk stick to 'Allah' in Christian prayers*, THE MALAYSIAN INSIDER, Feb 2, 2014, available at <http://www.themalaysianinsider.com/malaysia/article/sabah-and-sarawak-folk-stick-to-allah-in-christian-prayers>.

their god? It is not only discriminatory; it goes against the very idea of a *national* language.

IV. CONCLUDING REFLECTIONS: MINORITIES AND RELIGIOUS PEACE

*Why insist? They have an option. They don't really have to use 'Allah' to worship. ... This is unnecessary provocation.*⁶⁶

*Christians in Malaysia have no choice but to use the Malay-language Bibles. To say they cannot use these bibles, it means saying you are not allowed to worship in the language that you want.*⁶⁷

These contrasting reactions to the judgments demonstrate a distinct distrust between the Malay-Muslim community and the rest of the population. For Malay-Muslim nationalists, that Christians refuse to use alternative Malay words, such as 'Tuhan', to refer to God is seen as unreasonable and thereby a clear intention to assault Islam.⁶⁸ Even a former Chief Justice, Tun Abdul Hamid Mohamad, publicly said that the Christians insistence on using 'Allah' was a strategy to confuse and convince Muslims in Sabah and Sarawak to convert to Christianity.⁶⁹

⁶⁶ This statement was made by a representative of Pembela, a Malay-Muslim rights group. Pembela translates as "defender", referring to the groups' assumed platform as the defenders of Islam in Malaysia. *Allah' rings out in Malaysian churches despite ban*, HERALD MALAYSIA ONLINE, Jan 28, 2014, available at <http://www.heraldmalaysia.com/news/Allah-rings-out-in-Malaysian-churches-despite-ban-18458-0-1.html>.

⁶⁷ Quote from Rev. Hermen Shastri, general secretary of the Council of Churches of Malaysia. *No let-up in use of 'Allah'*, ASIAONE MALAYSIA, Jan 27, 2014, available at <http://news.asiaone.com/news/malaysia/no-let-use-allah>.

⁶⁸ It was reported that about 200 Muslims outside the court in the administrative capital Putrajaya, greeted the decision with shouts of "Allahu Akbar" (God is Greatest). Siva Sithraputhran, *Malaysian court rules use of 'Allah' exclusive to Muslims*, REUTERS, Oct 14, 2013, available at <http://www.reuters.com/article/2013/10/14/us-malaysia-court-allah-idUSBRE99D01J20131014..>

⁶⁹ The former chief justice was speaking at a forum on *Human Rights in Islamic Tradition* in Kuala Lumpur. V. Anbalagan, *Allah row a bid to convert Muslims in Sabah and Sarawak, says ex-chief judge*, THE MALAYSIAN INSIDER, Jan 24, 2014, available at

Malaysian Christians on the other hand saw this as an incursion into their religious freedom and as a further indication of their second-class status as non-Malay/non-Muslim citizens of Malaysia.

Furthermore, the Court of Appeal's decision raises a crucial concern that the use of or threat of violence could influence judicial decisions. In accepting the government's evidence that the prohibition was necessary to maintain public order and security, the court accepted the "street protest and inflammatory discussions and accusations on the subject, in the media and in the blogs" as well as "attacks on churches and mosques" as factors that could influence judicial reasoning. Notably, these acts and threats of violence took place after the High Court decision. This could be seen as implicit judicial endorsement of unreasonable and incendiary religious majorities. In order for religious freedom to mean something, it cannot be so easily and quickly subject to the interests of the state, or worse to the vagaries of the majority.

The 'Allah' case and the ensuing debate demonstrate the legal, social, and political implications intertwining ethnic nationalism with religious identity. It has very little to do with Islam as a religion. As leading social psychologist Gordon Allport argued in 1950, "piety may [...] be a convenient mask for prejudices which intrinsically have nothing to do with religion."⁷⁰ It is historical, socio-cultural or physical factors that motivate the hostilities against other religious groups.⁷¹ The "inner force" of such piety is not religious conviction, but

<http://www.themalaysianinsider.com/malaysia/article/allah-row-a-bid-to-convert-muslims-in-sabah-and-sarawak-says-ex-chief-judge>.

⁷⁰ Gordon Allport, *The Individual and His Religion*, 36 and 42 (1950).

⁷¹ This was also observed by Special Rapporteur on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, Elizabeth Odio Benito, in her 1986 study. Elizabeth Odio Benito, *Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, Study of the Current Dimensions of the Problems of Intolerance and of Discrimination on Grounds of Religion or Belief*, UN Doc. E/CN.4/Sub.2/1987/26, Aug. 31, 1986, ¶163.

“tribal instinct”. The Court of Appeal’s decision in the ‘Allah’ case regrettably elevates this tribal instinct into legal doctrine.