

## Constructing the Political Spectacle

### *Liberal Rights versus Religion in the Court of Public Opinion*

*In polarizing public opinion, enemies paradoxically cooperate with each other, though the cooperation may be unintentional.*

– Murray Edelman (1988: 69)

This chapter shifts from the court of law to the court of public opinion, where activists, politicians, and NGOs mobilized to frame the significance of the Article 121 (1A) cases for the future of Malaysia. Each case with contested civil/shariah court jurisdiction was important in a legal sense, but their radiating effects were more important still. Each case provided fodder for the media, and new opportunities for civil society mobilization. The cases became the focal points for contestation over a great number of issues, including the appropriate place for Islam in the legal and political order, the secular versus religious foundations of the state, the rights of non-Muslim and non-Malay communities, individual rights and duties rights in Islam, and perennial questions around religious authority – that is, who has the right to speak for Islam. In addition to triggering new normative debates and exacerbating longstanding grievances, the cases galvanized collective action and spurred the formation of entirely new NGOs on both sides of an emergent rights-versus-rites binary.

It is not difficult to understand why these cases provoked grave concerns among liberal Muslims and non-Muslims. For these constituencies, each successive court decision suggested that the civil courts were beginning to cede jurisdiction to the shariah courts when cases touched on Islam, even when it meant trampling on the fundamental rights enshrined in the Federal Constitution, and even when non-Muslims were involved. Within the broad context of the *dakwah* movement over the preceding three decades, liberal rights activists understood these court decisions as a failure of this last bastion of secular law. However, the same court cases evoked fears among religious conservatives. For this constituency, each case was understood not as “creeping Islamization,” but as an attack on the autonomy of the shariah courts and, indeed, on Islam itself. For example, in the debate surrounding *Lina Joy*

v. *Majlis Agama Islam Wilayah Persekutuan*, conservatives focused less on Lina Joy's individual right to choose her faith, and more on the implications that an adverse ruling might have on the ability of the Muslim community to manage its religious affairs in multi-religious Malaysia. Conservatives reasoned that if the civil courts affirmed Joy's individual right to freedom of religion, it would constitute a breakdown in the autonomy of the shariah courts and a breach in the barrier that they understood Article 121 (1A) to guarantee.

Conservative activists were quick to contend that liberal rights instruments are premised on individual autonomy, which renders them unable to accommodate communal understandings of rights anytime they are in tension with individual rights claims. This line of reasoning came through loud and clear in meetings with prominent Muslim NGO leaders, including the President of *Jamaah Islah Malaysia* (JIM), Zaid Kamaruddin, and the President of *Angkatan Belia Islam Malaysia* (ABIM), Yusri Mohamad.<sup>1</sup> Similarly, Islamic Party of Malaysia Member of Parliament, Dzulkifli Ahmad lamented the fact that liberal rights activists only view the Article 121 (1A) cases from an individual rights perspective and that they do not acknowledge that such a framework challenges the ability of the Muslim community to govern itself free of outside interference.<sup>2</sup> For Dzulkifli and others, individual rights talk has universal aspirations that are inherently expansionist. Adverse court decisions involving Article 121 (1A) risk "abolishing and dismantling the Shariah Court" (2007: 153). Just as liberal rights discourse is laden with fear that individual rights face an imminent threat at the hands of religion, a deep anxiety set in among those who wished to protect the collective rights of the Muslim community.

Of course, an understanding of the Muslim community as a bearer of rights obfuscates the way that religious community and religious authority is constituted in Malaysia by way of state law in the first place (Chapter 2). The legal dilemmas concerning the authority and jurisdiction of the shariah courts are *not* the result of an essential tension between Islam and individual rights. Rather, they are the product of the state's specific formalization of two distinct fields of state law (Chapter 3). Nonetheless, most Malaysians understand these legal tensions as evidence of an inherent incompatibility between Islam and liberal rights in a more general sense. Political activists embraced a rights-versus-rites binary construction and fostered this (mis)understanding. These activists recognized that although legal battles are fought in the court of law, more important ideological struggles are won or lost in the court of public opinion (Moustafa 2013b). Marc Galanter suggests that "a single judicial action may radiate different messages to different audiences" (1983: 126). This is especially true when judicial actions are explained, framed, and amplified by competing groups of political actors.

<sup>1</sup> Interview with Zaid Kamaruddin (Kuala Lumpur, June 25, 2009) and Yusri Mohamad (Gombak, June 30, 2009).

<sup>2</sup> This view was summed up in the title of Dzulkifli Ahmad's book on the topic, *Blind Spot* (2007).

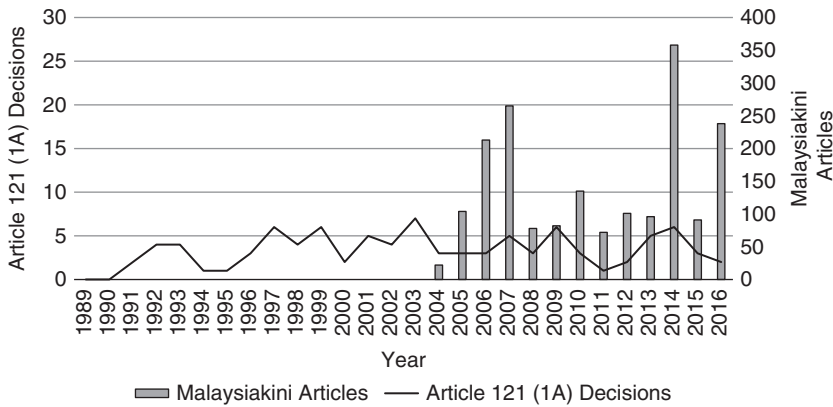


FIGURE 5.1: Reported Article 121 (1A) Decisions and *Malaysiakini* Coverage, by Year<sup>3</sup>  
 Source: Data compiled from *Malaysiakini*, the *Malayan Law Journal*, and the *Current Law Journal*.

BEFORE THE STORM

The central role of political activists in raising the political salience of these cases is apparent when one examines the timing and onset of public debate. Figure 5.1 illustrates the High Court decisions in which Article 121 (1A) claims were addressed. The long string of cases with contested civil/shariah court jurisdiction began soon after the constitutional amendment of Article 121 (1A) in 1988. However, the cases received virtually no press coverage for the first sixteen years that Article 121 (1A) was in force. For an illustrative example, consider the most important Article 121 (1A) decision of the 1990s, the Supreme Court decision in *Soon Singh v. PERKIM*. *Soon Singh v. PERKIM* was barely noted in the press, with a brief mention on page ten of the *New Straits Times*. Similarly, *Berita Harian* ran the story once. Likewise, *Utusan Malaysia* gave mention to *Soon Singh* in three stories prior to 2004. Finally, *Malaysiakini* carried no coverage of Article 121 (1A) cases until 2004. Why did it take so long for these cases to reach the media spotlight? And what precipitated such a stark change in 2004? There are several underlying contextual developments as well as key triggers that brought the cases to the forefront of public consciousness.

Certainly, one important enabling development was the swiftly changing media environment. The print media had been relatively docile through the 1990s as the result of strict government controls.<sup>4</sup> But the rapid proliferation of

<sup>3</sup> Data for Figure 5.1 was generated with the search term “121 (1A)” in the LexisNexis archive of the *Malayan Law Journal* and the *Malayan Law Journal Unreported*s [sic]. In some instances, separate disputes were merged into the same court decision. In other instances, different aspects of the same case were settled in separate court decisions and cases with appellate decisions were counted more than once. For these reasons, Figure 5.1 provides an approximate notion of the increasing volume of civil court decisions that invoke, expound upon, or respond to Article 121 (1A) claims.

<sup>4</sup> A central instrument of government control is the Printing Presses and Publications Act of 1984, which applies to all print media including newspapers, books, and pamphlets. The Act was first introduced by

digital media operating free of government regulation changed this situation.<sup>5</sup> The independent online news outfit *Malaysiakini* launched in 1999. Within two years of operation, it claimed 210,000 daily readers. By 2008, *Malaysiakini* had become the most frequently visited website in Malaysia, with 1.6 million unique visitors each month. The rapid expansion of blogs and social media provided further avenues for political discussion in increasingly strident tones. The Internet became the principle means for dozens of new, non-governmental organizations to reach the public and shape political discourse. With one of the highest Internet penetration rates globally (and the highest of any Muslim-majority country through this period) Malaysians increasingly took their political frustrations to the keyboard.<sup>6</sup>

Malaysian civil society groups had also become more numerous, organized, and active by the late 1990s (Weiss 2006). Organizations speaking for different faith traditions were the first on the scene. The Malaysian Islamic Youth Movement (*Angkatan Belia Islam Malaysia* – more commonly known by its acronym, ABIM) formed in August 1971. The Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism, and Taoism (MCCBCHST)<sup>7</sup> formed in 1982 because of rising anxieties in the non-Muslim community.<sup>8</sup> *Jamaah Islah Malaysia* (JIM) joined the scene in 1990, along with dozens of others representing different faith communities in Malaysia. Women's rights groups also formed, the most prominent among them Sisters in Islam (1988), the All Women's Action Society (1985), the Women's Aid Organization (1982), and the Women's Center for Change (1985). Human rights groups included SUARAM (1989). The heady days of the *reformasi* movement emboldened citizens to join civil society groups and to become more directly engaged in political life. In short, political consciousness was on the rise at the turn of the millennium.

the British in 1948 but was amended several times over to augment government control. Section three of the Act provides the Internal Security Minister absolute discretion to grant and revoke licenses, which are typically provided for only one year at a time and are subject to renewal. The government exercises these powers vis-à-vis newspapers on occasion, such as when it closed *The Star* and *Sin Chew Jit Poh* in 1987, in Operation Lalang. As in other countries, the most debilitating effect of the Act is that it encourages self-censorship in the media. At the opening of the millennium, before the explosion of digital media, Malaysia was ranked at a dismal 110 of 139 countries in the Press Freedom Index (Reporters without Borders 2002).

<sup>5</sup> Online media have not been subject to the Printing Presses and Publications Act, although the government periodically suggests that this may change.

<sup>6</sup> The sharp increase in online outlets also spurred more assertive reporting in the print media.

<sup>7</sup> MCCBCHST was initially the MCCBCHS. Representatives from the Taoist community formally joined the organization later, when it became the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism, and Taoism (MCCBCHST).

<sup>8</sup> An unpublished MCCBCHS document explains that the changing political context “gave rise for concern to the leaders of the non-Muslim religions and they saw that as a positive opportunity to come together to promote matters of mutual interests and defend against common threats . . .” MCCBCHS, “The First Ten Years.”

The political spectacle that captured public attention like no other was the “Islamic state debate” that was heating up between the ruling party, UMNO (United Malays National Organization) and their religious-oriented rival, PAS (Islamic Party of Malaysia). As examined in Chapter 2, UMNO had gone to great lengths to formalize shariah court functions to harness the legitimating power of Islamic symbolism and discourse. But PAS worked hard to undercut the credibility of this project by constantly charging that UMNO had not done enough to advance “real” Islam. The stakes of the debate increased when PAS gained control of state legislatures in Kelantan in the 1990 election, Terengganu in the 1999 election, and a significant share of seats in the national parliament in both elections. Claiming to be the true champion of Islam, PAS raised the heat when it passed *hudud* enactments in Kelantan and Terengganu in 1993 and 2002. The enactments could not be implemented without federal government (i.e., UMNO) action and therefore served as a powerful wedge issue for PAS to claim stronger Islamic credentials than UMNO.<sup>9</sup>

Not to be outdone, Mahathir Mohammad declared that Malaysia was *already* an Islamic state on September 29, 2001. His statement precipitated a fierce round of one-upmanship between the ruling UMNO and PAS. For the next decade, political activists of all stripes debated whether Malaysia was meant to be an Islamic state. The debate often centered on Article 3 of the Federal Constitution. However, the meaning and intention of the phrase “Islam is the religion of the Federation” was anything but clear. Secularists took the position that this clause was added to the Independence Constitution only at the end of the drafting process and that it was only intended for ceremonial purposes. Secularists reminded the public that the Alliance had requested that Islam be the religion of the Federation with the important proviso that “observance of this principle . . . shall not imply that the State is not a secular State.”<sup>10</sup> Islamists, on the other hand, pushed a more expansive interpretation of Article 3. They pointed to the extensive provisions that are detailed in Schedule 9, List II of the Federal Constitution as evidence to support their claim. In 2003, PAS issued its most explicit statement on its vision of an Islamic state. The “Islamic State Document” was meant “to clarify the concept of a true Islamic state as opposed to a ‘pseudo Islamic state.’”<sup>11</sup> The “Islamic state debate” was in full bloom with activists, politicians, and laypersons debating what an Islamic state might mean in practical terms for Malaysia’s multi-religious society. Such was the political context when the Article 121 (1A) cases entered popular legal consciousness.

<sup>9</sup> According to Ninth Schedule (List 1) of the Federal Constitution, the ordinances fall within federal, not state powers.

<sup>10</sup> Alliance Memorandum to the Reid Constitutional Commission, as quoted in Fernando (2006: 253).

<sup>11</sup> For the text of the PAS Islamic State Document, see Tan and Lee (2008).

## THE TRIGGER

The immediate trigger that brought the Article 121 (1A) cases into national consciousness was *Shamala v. Jeyaganesh*. As the reader will recall from the Introduction, Shamala Sathiyaseelan and Jeyaganesh Mogarajah were plunged into crisis in 2002 when Jeyaganesh converted to Islam and subsequently changed the official religious status of their two children, ages two and four, without his wife's knowledge or consent. The civil courts had ruled on similar cases in the past – but this case suddenly captured the national headlines.

An important difference in *Shamala v. Jeyaganesh* was that Shamala's attorney, Ravi Nekoo, made a concerted effort to attract public attention – an effort that was buoyed by the rapidly changing environment of civil society activism and digital media. Ravi was an active member of the legal aid community, and he was well networked with a variety of rights organizations in Kuala Lumpur. When Ravi discovered that *Shamala v. Jeyaganesh* was not a typical custody case, he turned to the most prominent women's rights groups in Kuala Lumpur: The Women's Aid Organization, the All Women Action Movement, the Women's Center for Change, Sisters in Islam, and the Women Lawyers' Association. He also turned to religious organizations, most notably the Hindu Sangam, the Catholic Lawyers Society, and the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism, and Taoism (MCCBCHST). These groups took an immediate interest in the case, and they quickly gained formal observer status (watching brief) with the High Court.<sup>12</sup> Subsequently, they filed *amicus curiae* briefs and mobilized their resources to bring public attention to the case.

The question of whether to “go public” posed a dilemma for the groups because they were uncertain if public attention would work to their advantage. According to Ravi Nekoo, “The initial view was that if the case became too big, it would become a political issue and the courts would then succumb to political pressure.”<sup>13</sup> But after extensive deliberation, a decision was made to go public. Ravi explained that the decision was based upon the consensus view among rights activists that “... prior to Shamala there were so many other cases that just went nowhere.”<sup>14</sup>

Women's groups met with the Ministry of Women and Family Development on April 8, 2003, to discuss their concerns about women's rights when a husband

<sup>12</sup> Malik Imtiaz Sarwar also held a watching brief for the Malaysian Bar Council.

<sup>13</sup> Interview with Ravi Nekoo, February 18, 2012.

<sup>14</sup> Even though they eventually lost the case, Ravi held the view that going public was the right choice: “I still think the publicity was useful. Not in getting the desired result, but in raising public awareness ... when we go to court in small groups to argue, we get nowhere. Only when it became a little bigger – with many lawyers coming and representing their own groups with [press] coverage – it's only then that the courts take us more seriously. Otherwise, the case would have been thrown out of court a long, long time ago.” Interview with Ravi Nekoo, February 18, 2012.

converts to Islam.<sup>15</sup> Thereafter, they initiated a public awareness campaign and advocated for amendments to the Marriage and Divorce Act to protect women's rights in such circumstances. The day after the court decision in *Shamala v. Jeyaganesh*, the Malaysia Hindu Sangam and the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism, and Taoism (MCCBCHST) also went public, issuing press statements condemning the court decision.<sup>16</sup> This was the first time that *any case* concerning the contested civil/shariah court jurisdiction was covered in the leading online news outlet, *Malaysiakini*. Over the next twelve years, 1,800 stories would be published in *Malaysiakini* alone. The total number of articles published across all news outlets in Malaysia (and abroad) very likely exceeded 10,000 stories.<sup>17</sup>

The year 2004 thus marked a watershed moment when Article 121 (1A) cases became politically salient. The solid line in Figure 5.1 illustrates the number of Article 121 (1A) decisions each year, through 2015. Beginning in 1991, there were anywhere from one to seven Article 121 (1A) High Court decisions reported each year. The stacked columns in Figure 5.1 illustrate the number of news stories and op-eds that focused on these cases in *Malaysiakini*. Beginning with the first *Malaysiakini* story on *Shamala v. Jeyaganesh* in 2004, the Article 121 (1A) cases were covered more intensively than any other issue. In 2014, 360 articles and op-eds ran in *Malaysiakini* alone, or nearly one story per day. Coverage was similar among the many other English-, Chinese-, Malay-, and Tamil-language newspapers, not to mention radio and television. In short, the news was saturated with coverage of the cases. This media attention dramatically broadened the audience for the 121 (1A) cases. This audience expansion is directly attributable to the efforts of liberal rights groups to bring the cases to the public's attention, and to the media's enthusiastic coverage.<sup>18</sup>

#### LIBERAL RIGHTS GROUPS MOBILIZE

As a direct result of the High Court decision in *Shamala v. Jeyaganesh*, thirteen liberal rights groups formed a working coalition. The coalition named itself "Article 11," after the provision of the Federal Constitution that guarantees the freedom of religion. The coalition included prominent organizations, including the All Women's Action Society (AWAM), the Malaysian Bar Council, the National

<sup>15</sup> "Reform Marriage Law, Say Women's Groups," *Malaysiakini* August 26, 2003. Sisters in Islam had a separate meeting on September 29 with the Attorney General's chambers and other stakeholders. There they presented concrete suggestions to amend the Law Reform (Marriage and Divorce) Act.

<sup>16</sup> "Religious Leaders Irked by Decision on Conversion Case," *Malaysiakini*, April 14, 2004.

<sup>17</sup> The figure for *Malaysiakini* was tabulated. The extrapolation of total news coverage surpassing 10,000 stories is based on a rough estimate of the frequency of coverage in Malaysia's many other news outlets.

<sup>18</sup> As we will see, liberal coverage was soon matched by countervailing efforts of conservative groups in the Malay press.

Human Rights Society (HAKAM), the Malaysian Civil Liberties Society, Suara Rakyat Malaysia (SUARAM), the Women's Aid Organization (WAO), and Sisters in Islam. The Article 11 coalition also included the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism, and Taoism (MCCBCHST), an umbrella organization that represents the concerns of non-Muslim communities. The objective of the Article 11 coalition was to focus public attention on the erosion of individual rights and to “ensure that Malaysia does not become a theocratic state” (Malaysian Bar Council 2006). Article 11 produced a website, short documentary videos providing firsthand interviews with non-Muslims who were adversely affected by Article 121 (1A), analysis and commentary from their attorneys, and recorded roundtables on the threat posed by Islamic law.<sup>19</sup> Women's groups continued to lobby the government. Illustrative of this multi-pronged approach is the September 29, 2004, meeting hosted by the Attorney General's chambers to discuss proposed amendments to the Law Reform (Marriage and Divorce) Act 1976.<sup>20</sup>

Liberal rights activists also worked to establish an “Interfaith Commission” composed of representatives of various faith communities in Malaysia. Among other roles, the proposed commission would work to “advance, promote and protect every individual's freedom of thought, conscience and religion” by examining complaints and making formal recommendations to the government.<sup>21</sup> This explicit focus on individual rights raised the ire of conservatives, who feared that such a commission would serve as a platform to challenge the shariah courts. These concerns were compounded by the fact that the principal organizer of the two-day organizing conference was the Malaysian Bar Council, an organization that was hardly viewed as impartial in disputes over shariah versus civil court jurisdictions. Moreover, as an *Utusan Malaysia* article highlighted for its Malay readers, the main financial sponsor for the conference was the Konrad Adenauer Foundation, a German research foundation associated with the Christian Democratic Union Party of Germany.<sup>22</sup> Conservative NGOs spoke out loudly against the notion of an interfaith commission. Nonetheless, the Bar Council went ahead to organize a “National Conference on the Initiative towards the Formation of the Interfaith Commission of Malaysia” on February 24–25, 2005. Conservative NGOs boycotted the conference, condemned it in the press, and called on the government to stop the proceedings.<sup>23</sup> Media coverage only grew

<sup>19</sup> <http://www.article11.org/> [last accessed March 2, 2010]. The website has since closed.

<sup>20</sup> Representatives also attended the meeting from the Shariah Judicial Department, ABIM, the Ministry for Women and Family Development, JAIS, PERKIM, the Shariah Lawyers Association, and others.

<sup>21</sup> Draft Interfaith Commission of Malaysia Bill, Article 4 (1) (a). For the text of the Draft Bill and other primary source materials pertaining to the Interfaith Commission initiative, see S. Hadi Abdullah (2007).

<sup>22</sup> *Utusan Malaysia*, Feb 28, 2005. “*Jangan Cetuskan Isu Agama Elak Perbalahan Kaum*” [Do Not Spark Religious Issues; Avoid Racial Disputes]

<sup>23</sup> See, for example, “*Majlis Peguam Tidak Sensitif Kepada Kesucian Islam*” [The Bar Council is not Sensitive to the Sanctity of Islam] *Harakah*, January 16–31, 2005; “*Pelbagai Pihak Bantah Syor Tubuh*



more intense after the conference, with conservatives drawing attention to the prominent position of international law and individual rights in the conference platform, and the implications that this would have for Islamic law.<sup>24</sup> In response to the uproar, Prime Minister Abdullah Badawi called on the Bar Council to cease discussion of the Interfaith Commission proposal.

Soon thereafter, the Court of Appeal rejected Lina Joy's second petition. It did not go unnoticed that the 2–1 split decision mirrored the emerging divide in Malaysian society. Two Muslim justices, Abdul Aziz Mohamad and Arifin Zakaria, wrote the majority opinion while Gopal Sri Ram, a non-Muslim, wrote the dissenting opinion. Given that the Lina Joy case would soon become the most well-known apostasy case, it is striking that there had been virtually no media coverage until the Court of Appeal decision. *Malaysiakini* ran its first article on Lina Joy on September 19, 2005, but the case was subsequently discussed in over 400 articles and letters to the editor. The Article 121 (1A) cases had become *the* salient political issue of the decade.

Having failed with the initiative to forge an Interfaith Commission, the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism, and Taoism (MCCBCHST) made a bold move, but this time it was away from the media spotlight. The MCCBCHST submitted a detailed memorandum to the government “to highlight the real societal problems faced by a significant minority of persons professing religions other than Islam in Malaysia.”<sup>25</sup> The style and substance of the memo suggest that it was written by the same attorneys who were litigating the cases. The detailed memo outlined some of the major Article 121 (1A) cases and illustrated how the heavy regulation of the religious sphere produced legal conundrums and miscarriages of justice. The MCCBCHST memo called for political intervention: “We urgently need legislative redress for these very severe social problems.”<sup>26</sup>

As if to underline the legal problems detailed in the MCCBCHST memo, another “body snatching” case captured national attention in late 2005. This time, the public spectacle turned around the burial of Moorthy Maniam, a national hero who was the first Malaysian to have successfully climbed Mount Everest. Moorthy was injured in a training accident and later fell into a coma, dying six weeks later. Although Moorthy was known by his family and the public as a practicing Hindu, his wife was informed by the religious authorities that Moorthy had converted to Islam

*Suruhanjaya Antara Agama* [Various Parties Oppose the Recommendation for the Establishment of an Inter-Religious Commission] *Utusan Malaysia*, February 24, 2005; “*Kerajaan Perlu Bertegas Tolak Penubuhan IRC*” [Government Needs to be Firm in Rejecting the Establishment of the IRC] *Harakah*, February 16–28, 2005.

<sup>24</sup> See, for example, “The IFC Bill: An Anti-Islam Wish List” Baharuddeen Abu Bakar, *Harakah Daily*, March 27, 2005.

<sup>25</sup> “Respect the Right to Profess and Practice One’s Religion,” submitted to the government on October 20, 2005.

<sup>26</sup> Two years and several major court decisions later, the MCCBCHT went public with the text of the 2005 memorandum, under the title “Unity Threatened by Continuing Infringements of Religious Freedom.”

and that he must, therefore, be buried in accordance with Muslim rites by the religious authorities. If Moorthy had converted to Islam, it was news to everyone. Moorthy had carried out Hindu rituals on television just weeks before he fell into his coma.

Upon his death on December 20, 2005, Moorthy's widow, Kaliasammal Sinnasamy, filed a lawsuit to prevent the Islamic Religious Affairs Council from taking her husband's body for burial. A hearing was scheduled for December 29, 2005, but in the meantime, the Islamic Religious Affairs Council raised a petition in the Kuala Lumpur Shariah High Court for the release of the body for a Muslim burial.<sup>27</sup> After examining the facts of the case and citing relevant civil court case law, the Shariah High Court declared that Moorthy was a Muslim at the time of his death. The shariah court decision ordered the hospital to surrender Moorthy's body to the Islamic Religious Affairs Council for burial in accordance with Muslim rites. The decision also directed the police to provide the necessary assistance to ensure proper execution of the court order. The order was served on the hospital, but the hospital director refused to release the body on the advice of the legal advisor for the Ministry of Health. Television, radio, and newspaper outlets all covered the unfolding drama.

The High Court of Kuala Lumpur heard Kaliasammal's petition the following week, but the judge dismissed the case on the grounds that the federal civil courts did not have the competence or jurisdiction to decide on Moorthy's religious status as a result of Article 121 (1A).<sup>28</sup> For all practical purposes, Kaliasammal was denied recourse to *any legal forum* since, as a non-Muslim, she did not have standing with the Shariah High Court. Moorthy's body was released to the religious authorities under a heavy security presence and buried on the same day, enraging the non-Muslim community.<sup>29</sup> The Malaysian Consultative Council for Buddhism, Christianity, Hinduism, Sikhism, and Taoism (MCCBCHST) held an emergency session on the same day. The MCCBCHST called on the government to amend the Constitution and to vest the federal courts with authority to determine the validity of conversions into and out of Islam. The MCCBCHST organized a candlelight vigil for the same evening in front of the Kuala Lumpur High Court to publicly mourn the High Court decision. More direct political action followed.

With the Lina Joy and Moorthy decisions generating extensive news coverage, civil society groups continued with their urgent calls for the repeal of Article 121 (1A). On January 5, 2006, the DAP organized a "Parliamentary Roundtable on

<sup>27</sup> *Dalam Perkara Permohonan Perisytiharan Status Agama Si Mati Mohammad Abdullah@Moorthy a/l Maniam* [2006] *Jurnal Hukum* v 21 (2) 210.

<sup>28</sup> *Kaliasammal a/p Sinnasamy lwn Pengarah Jabatan Agama Islam Wilayah Persekutuan (JAWI) dan lain-lain* [2006] 1 MLJ 685. It should be noted that this was another case where the High Court judge issued a ruling in Bahasa Malaysia rather than English, a symbolic move that marks this as a "Malay" issue.

<sup>29</sup> Moorthy's widow appealed the case, only to have the Court of Appeal affirm the earlier High Court decision on August 20, 2010.



FIGURE 5.2: Kaliammal Sinnasamy, the wife of the late Moorthy Maniam, holds his picture as she leaves the courtroom with her daughter in Putrajaya. The Court of Appeal affirmed that the High Court had no jurisdiction to determine the religious status of her deceased husband.

REUTERS/Alamy/Bazuki Muhammad.

Article 121 (1A)” that included prominent opposition politicians and civil society activists. The roundtable passed a resolution calling for the repeal of Article 121 (1A) of the Federal Constitution. Two weeks later, nine of Prime Minister Badawi’s non-Muslim cabinet ministers submitted a formal memorandum requesting the review and repeal of Article 121 (1A).<sup>30</sup> The move was unprecedented. It stirred immediate protest from Muslim NGOs and the Malay-language press. Prime Minister Badawi responded to the pressure by publicly rejecting the memorandum two days later. Badawi’s refusal to consider the problems generated by Article 121 (1A) did nothing to resolve the underlying legal conundrum. Lina Joy was granted permission to approach the Federal Court, the highest appellate court in Malaysia, in April 2006. The following month, the *Subashini v. Saravanan* child conversion/custody case hit the headlines. And in July 2006, Siti Fatimah Tan Abdullah applied to convert out of Islam. It had become painfully clear that each case would create enormous controversy. The judicial system was hardwired to reproduce the same legal tensions. Worse still, the pressure from civil society groups began to make it more difficult for the courts to solve the legal conundrums. NGOs were now regularly submitting amicus curia briefs, requesting formal observer status in the cases, or requesting to

<sup>30</sup> *New Straits Times*, January 20, 2006.

intervene as formal participants in the lawsuits.<sup>31</sup> They were, in other words, mobilizing both inside and outside the courts.

The Article 11 coalition and the Malaysian Bar Council went on to organize a series of public forums across Malaysia. The first in Kuala Lumpur was titled “The Federal Constitution: Protection for All.” The discussion addressed the cases of Lina Joy, Moorthy Maniam, and Shamala Sathiyaseelan among others. It drew over 600 participants, with speakers including prominent human rights lawyer Malik Imtiaz Sarwar, Ivy Josiah (president of the Women’s Aid Organization), and prominent lawyer and soon-to-be Malaysia Bar Council President, Ambiga Sreenevasan. The Article 11 coalition continued with a nationwide road show, hitting Malacca in April, Penang in May, and Johor Bahru in July of 2006. The road show campaign was coupled with a petition to the Prime Minister, signed by 20,000 concerned Malaysians, calling on the government to affirm that “Malaysia shall not become a theocratic state” (Malaysian Bar Council 2006).

#### MUSLIM NGOs MOBILIZE

But others saw it differently. Politicians and conservative NGOs also framed the Article 121 (1A) cases as presenting challenges to rights, but not individual rights. Rather, the message from conservatives was that the rights of the Muslim community, and Islam itself, were under attack.<sup>32</sup> PAS president, Abdul Hadi Awang, used the Article 11 forums to his advantage at the PAS annual party convention in 2006. Opening the conference, he told 1,000 party delegates that “Never before in the history of this country has the position of Islam been as strongly challenged as it is today.”<sup>33</sup> Abdul Hadi Awang urged the government, conservative NGOs, and all Muslims to defend Islam in the face of Article 11 challenges. Similarly, delegates at the 2006 UMNO General Assembly used the issue to burnish their religious credentials. An UMNO Penang delegate, Shabudin Yahaya, railed the crowd with his declaration that, “there are NGOs like Interfaith Commission, Article 11 Coalition, Sisters in Islam and Komas who are supported and funded by this foreign body called Konrad Adenauer Foundation.”<sup>34</sup>

Although the Article 11 forums had been tremendously successful in generating media attention, coverage in the Malay language press was not favorable.

<sup>31</sup> For instance, in *Subashini v. Saravanan* the Women’s Aid Organization, Women’s Development Collective, Women’s Center for Change, Sisters in Islam, and the Malaysian Bar Council all held watching briefs. As noted in Chapter 6, Islamic religious authorities similarly intervened in many Article 121 (1A) cases.

<sup>32</sup> Moreover, Islam and Malay ethnic identity were virtually one and the same. A perceived challenge to Islam was framed as a challenge to Malays. This view is summed up in the PAS press release of May 5, 2008, “Only Islam Can Defend Malay Honor – PAS President” [*Hanya Islam yang dapat angkat martabat Melayu – Presiden PAS*].

<sup>33</sup> “PAS to Muslims: Close Ranks, Defend Islam,” *Malaysiakini*, June 7, 2006.

<sup>34</sup> “Muslims Face Threats from Within and Without,” *Malaysiakini*, November 17, 2006.



FIGURE 5.3: Protesters hold signs that read “Bar Council, Don’t Threaten Islam” and “Don’t Challenge Islam” during a demonstration against a public forum on legal issues related to religious conversion held by the Malaysian Bar Council in Kuala Lumpur, August 9, 2008.

REUTERS/Alamy/Bazuki Muhammad.

The Malay-language (and state-owned) newspaper *Berita Harian* ran articles with headlines that included “Warning: Stop Questioning the Constitution.” Its sister newspaper, *Utusan Malaysia*, published an op-ed from the Minister of Education himself under the banner “Never Question Article 121 (1A).”<sup>35</sup> As with the Interfaith Commission initiative before it, the Article 11 forums were depicted as a challenge to the shariah courts and Islam. The Article 11 forum in Penang was disrupted by several hundred protesters with posters reading, “Fight Liberal Islam,” “Don’t Seize our Rights,” and “Don’t Insult God’s Laws.”<sup>36</sup> Mohd Azmi Abdul Hamid, the leader of *Teras Pengupayaan Melayu* and organizer of the protest, explained that the real intent of liberal rights activists was to undermine the shariah courts. “Under the pretext of human rights, they condemned Islamic principles and the shariah courts. They have a hidden motive to place the shariah laws beneath the civil laws.”<sup>37</sup> When another large protest gathered outside the next Article 11 forum in Johor Bahru, the forum was stopped half way through by police seeking to preserve “public order.”

Liberal rights groups were not the only organizations to mobilize in a coordinated fashion. A more formidable counter-mobilization was already underway in the name of defending Islam. A group of lawyers calling themselves Lawyers Defending Islam (*Peguam Pembela Islam*) held a press conference to announce their formation at the Federal Territories Shariah Court building on July 13, 2006.

<sup>35</sup> *Berita Harian*, July 25, 2006; *Utusan Malaysia*, July 24, 2006.

<sup>36</sup> *Malaysiakini*, May 15, 2006.

<sup>37</sup> *Malaysiakini*, June 5, 2006.

Their explicit aim was to “take action to defend the position of Islam” in direct response to the activities of the Article 11 coalition. A few days later, a broad array of conservative NGOs united in a coalition calling itself Muslim Organizations for the Defense of Islam (*Pertubuhan-Pertubuhan Pembela Islam*), or Defender (*Pembela*) for short. *Pembela* brought together over fifty organizations including ABIM, *Jamaah Islah Malaysia* (JIM), the Shariah Lawyers’ Association of Malaysia, and the Muslim Professionals Forum.<sup>38</sup> *Pembela*’s founding statement explains that they were motivated to organize as a result of the Moorthy Maniam and Lina Joy cases, which challenge “the position of Islam in the Constitution and the legal system of this country.”<sup>39</sup> Underlining their extensive grassroots base, *Pembela* gathered a maximum-capacity crowd of 10,000 supporters at the Federal Mosque in Kuala Lumpur and issued a “Federal Mosque Resolution” outlining the threat posed by liberal rights activists.<sup>40</sup> The following day, *Pembela* released an open letter to the Prime Minister and the press, reiterating the threat they believed the recent court cases posed to Islam and the shariah courts:

Since Independence forty-nine years ago, Muslims have lived in religious harmony with other religions. Now certain groups and individuals have exploited the climate of tolerance and are interfering as to how we Muslims should practice our religion. They have used the Civil Courts to denigrate the status of Islam as guaranteed by the Constitution. There are concerted attempts to subject Islam to the Civil State with the single purpose of undermining the Shariah Courts. The interfaith groups and the current Article 11 groups are some of the unwarranted attempts to attack Islam in the name of universal human rights.<sup>41</sup>

The messages were unmistakable: The shariah courts and Islam are one in the same; universal human rights are inimical to Islam; the shariah courts and Islam are imperiled by the civil courts; and Muslims are being pushed around. In nearly all of this heated rhetoric, conservatives asserted that liberal rights pose a fundamental challenge to Islam and the shariah. Subsequent to *Pembela*’s mobilization, Prime Minister Badawi issued an executive order that all Article 11 forums should be stopped immediately.

#### THE INTERNATIONAL DIMENSION OF THE RIGHTS-VERSUS-RITES BINARY

By 2006, *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan* was receiving wide-spread coverage in the international press. Prominent news outlets such as the

<sup>38</sup> *Pembela* later grew to encompass the activities of more than seventy NGOs.

<sup>39</sup> *Pembela* Press Release, “*Pertubuhan-Pertubuhan Pembela Islam Desak Masalah Murtad Ditangani Secara Serius*” [Defenders of Islam Urge Seriousness in Handling the Apostasy Problem], July 17, 2006.

<sup>40</sup> *Pembela*, “Federal Mosque Resolution,” July 23, 2006. The gathering was also widely covered in the press. See “Muslim Community Asked to Defend the Position of Religion in the Constitution.” [*Umat Islam diminta pertahan kedudukan agama dalam perlembagaan*] *Bernama*, July 24, 2006.

<sup>41</sup> *Pembela*, “*Memorandum Mengenai Perkara Murtad Dan Memeluk Agama Islam*” [Memorandum on Apostasy and Conversion to Islam].

*New York Times*, the *Wall Street Journal*, the *Washington Post*, the *Guardian*, the BBC, the *International Herald Tribune*, *The Economist*, *Time* magazine, and dozens of others covered the case. Liberal rights activists were eager to share the story with the international press in the hope that outside pressure on the Malaysian government might spur legal change where domestic activism had failed. Hungry for such stories, the international media was happy to oblige. Thus, the rights-versus-rites binary was circulated internationally, affirming an enduring trope that liberal rights and Islam are fundamentally at odds with one another.

Liberal rights activists leveraged international pressure in other ways, too. In litigation, lawyers for Lina Joy made extensive reference to international law and the international human rights conventions signed by the Malaysian government. They also accepted legal assistance from the United States-based non-governmental organization, the Becket Fund for Religious Liberty. The Becket Fund not only submitted an amicus curiae brief to the Federal Court of Malaysia, but they also testified before the United States Congressional Human Rights Caucus about the threat to individual rights in Malaysia.<sup>42</sup> The United States Department of State also focused attention on Lina Joy and other cases in their International Religious Freedom Reports (2000–2010). Likewise, the United Nations Commission on Human Rights and the United Nations Human Rights Council made multiple inquiries at the request of Malaysian rights organizations. The UN Commission and Council repeatedly reminded the Malaysian government of their commitments under international law (2006, 2008, 2009).

This internationalization of *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan* was not without a cost. And one could reasonably argue that it was a strategic misstep. Although liberal rights advocates viewed their strategies as entirely legitimate and compelling, they fit perfectly with the opposing narrative that Western powers seek to undermine Islam in Malaysia. What better proof of Western interference could be offered than the hundreds of Western newspaper articles that covered the plight of Lina Joy? And what better evidence of Western interference could be offered than regular criticisms in the annual United States Department of State Human Rights Reports and the United States Department of State International Religious Freedom Reports? Liberal rights activists were slow to accept the fact that all three strategies – litigation, consciousness-raising public events, and appeals to international law and outside pressure – provided conservatives with more ammunition to claim that Islam was under siege.

Conservative NGOs organized dozens of public forums and flooded the Malay-language press with hundreds more articles and opinion pieces on the need to defend Islam from liberalism, particularly from “liberal Muslims” who posed an insidious threat to the *ummah* from within. For example, *Harakah Daily* explained

<sup>42</sup> Becket Fund for Religious Liberty, “Legal Opinion of the Becket Fund for Religious Liberty” [Amicus brief submitted in the case of *Lina Joy hwn Majlis Agama Islam Wilayah Persukutuan dan lain-lain*].

to its readers that “the challenge of apostasy . . . is planned, encouraged, cultivated, and funded by the enemies of Islam here and abroad, and disguised as human rights.”<sup>43</sup> The Becket Fund’s involvement was noted and criticized.<sup>44</sup> Demonstrating their grassroots support, *Pembela* submitted a 700,000-signature petition to the Prime Minister on September 29, 2006, dwarfing the 20,000 signatures that the Article 11 coalition could muster. The petition demanded that “the government must take a stand in refusing Western efforts and non-governmental organizations that plot together using the local NGOs, academics, and individuals to influence the policies and laws related to Muslims.” No doubt, the two-hour meeting that was arranged for conservative NGO leaders with the Prime Minister was a result of their ability to mobilize such broad-based support.

#### AFTER LINA JOY: DIMINISHED ROOM FOR INFORMAL ACCOMMODATION

Mobilization reached a fevered pitch in the weeks leading up to the final Federal Court decision in *Lina Joy v. Federal Territories Islamic Religious Affairs Council*. *Pembela* and PAS called on Muslims to assemble at the Palace of Justice in Putrajaya and for others to pray in mosques all across the country for a court decision that would “favor Islam.”<sup>45</sup> The Federal Court issued its highly anticipated decision on May 30, 2007. In another split decision, the Court decided 2–1 to dismiss Joy’s petition. Once again, the split decision mapped onto the religious divide. The two Muslim justices, Chief Justice Ahmad Fairuz and Justice Alauddin, authored the majority decision, while Richard Malanjum authored the dissenting opinion. Conservative NGOs were satisfied with the decision, but liberal rights groups and organizations representing non-Muslim communities were outraged.<sup>46</sup> Rather than resolving the rights-versus-rites binary, the Lina Joy decision confirmed the widespread view that Islam and liberal rights are fundamentally at odds with one another.

The political spectacle that came with *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan* exacerbated difficulties for the attorneys and shariah court judges who

<sup>43</sup> “Kes Lina Joy Usaha Terancang Hapuskan Islam” [Lina Joy’s Case is a Planned Effort to Undermine Islam] *Harakahdaily*, July 15, 2006.

<sup>44</sup> “Agensi Amerika didakwa beri sokongan sepenuhnya kepada Lina Joy” [American Agency Accused of Giving Full Support to Lina Joy] *Harakahdaily*, August 15, 2006.

<sup>45</sup> *Harakah*, “Kes Lina Joy: Umat Islam Diminta Solat Hajat” [Lina Joy Case: Muslims Asked to Pray] May 29, 2007.

<sup>46</sup> See Aliran media statement, “Lina Joy Verdict: No Freedom, No Compassion” (May 30, 2007); Women’s Aid Organization, All Women’s Action Society, and Sister’s in Islam statement, “Constitutional Right to Freedom of Belief Made Illusory” (May 31, 2007); Malaysian Bar Council press statement, “Federal Constitution Must Remain Supreme” (May 31, 2007); SUARAM press statement (May 31, 2007); Malaysia Hindu Sangam press statement (May 30, 2007); Christian Federation of Malaysia press statement (May 30, 2007); Council of Churches of Malaysia press statement (May 30, 2007); Catholic Lawyer’s Society Press statement (June 6, 2007); Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism, and Taoism press release (June 19, 2007).



had, in the past, attempted to find ways to negotiate Malaysia's increasingly bureaucratized religious sphere.<sup>47</sup> A striking example of this was a case concerning a woman named Siti Fatimah, who went by the name of Revathi Masoosai. Revathi was born to ethnic Indian converts to Islam, but she was raised by her Hindu grandmother. Thus, Revathi was raised a Hindu, while she was officially registered as a Muslim. Later in life, Revathi married a Hindu man in accordance with Hindu religious rites, but they did not register the marriage with the state, simply because there is no legal avenue to record a marriage between an officially registered Muslim and a non-Muslim in Malaysia. As a further result of this legal limbo, their child's birth was unregistered. Thus, Revathi did not enjoy the legal protections that would be afforded by way of marriage. What happened next illustrates the legal conundrums that are the product of Malaysia's hyper-regulated – and now intensely politicized – religious sphere. After giving birth, Revathi applied to have her official religious status changed. But at her hearing at a Malacca Shariah High Court, she was detained and sent to a “religious rehabilitation center” for six months against her will.<sup>48</sup> Her baby was taken from her husband (presumably because he is a non-Muslim) and put in the custody of Revathi's Muslim parents. The authorities released Revathi after six months of detention, but in the meantime, her ordeal had become the focus of national attention.<sup>49</sup>

Revathi's case is not offered simply as a shocking anecdote. Rather, I use her case to illustrate the legal conundrums that result from Malaysia's hyper-regulated religious sphere. The Malaysian federal and state governments establish rigid racial and religious categories that deny Muslims and non-Muslims the possibility of entering an official marriage. Yet situations like Revathi's are bound to emerge in a multi-religious and multiethnic society like that of Malaysia. Lawyers at the Legal Aid Center in Kuala Lumpur report that they see cases like this on a weekly basis.<sup>50</sup> In times past, individuals in Revathi's situation could secure state recognition of a different religious status by affirming a statutory declaration before a commissioner of oaths and registering a new name in the civil court registry through a deed poll. States only began restricting conversion and codifying penalties for apostasy in the 1980s. And, as noted in Chapter 4, the National Registration Department only began to require documentation from a shariah court starting in 2001. Even then, individuals like Revathi were sometimes able to secure a statement affirming that they

<sup>47</sup> Interview with lawyers Latheefa Koya and Fadiah Nadwa Fikri, June 29, 2009.

<sup>48</sup> Malacca does not provide a formal legal avenue for conversion out of Islam. Instead, it criminalizes conversion with fines, jail terms, or mandatory counseling in a rehabilitation camp.

<sup>49</sup> Press reports indicate that Revathi was brought to the Malacca Shariah High Court on July 5, 2007. The court ordered that Revathi would remain “Muslim” and that she and her daughter must reside with Revathi's Muslim parents, away from her husband. Revathi's attorney launched a habeas corpus application in the Shah Alam High Court, but the case was dismissed because of Revathi's release. Mohamad Haniff Khatri Abdulla, the lawyer for the government, urged the court to dismiss the case, against the pleas of Karpal Singh, the attorney for Revathi's husband. See *Malaysiakini*, July 6, 2007, “Woman Released from Islamic Rehab Camp.”

<sup>50</sup> Interview with lawyers Latheefa Koya and Fadiah Nadwa Fikri, Kuala Lumpur, June 29, 2009.

were not – and had never been – practicing Muslims.<sup>51</sup> After the Lina Joy decision, intense political pressure made it difficult even for sympathetic shariah court judges to facilitate a change of official religious status, and even in cases that are so thoroughly nonsensical, like that of Revathi's. Her case, and many others like hers, are easily narrated as miscarriages of religious freedom. But, in fact, they are much more complicated as they are rooted in deeper legal and institutional paradoxes of the Malaysian state, with antecedents that stretch back to colonial governance. These are not easily undone, particularly because they are locked in through competing, entrenched institutions.

#### THE RISE OF THE HINDU RIGHTS ACTION FORCE (HINDRAF)

The ethnic Indian community did not take these court decisions lying down. A new organization calling itself the Hindu Rights Action Force (more commonly known as Hindraf) launched in 2006. For our purposes, it is significant to note that Hindraf was initiated as a direct response to a 2005 Article 121 (1A) court decision that had denied Kalliammal Sinnasamy the right to bury her husband, Moorthy Maniam. But Hindraf also tapped into longstanding grievances in the ethnic Indian community. Although ethnic Indian Malaysians are not homogeneous regarding socioeconomic status, much of the community has long suffered from political, social, and economic marginalization. As the reader will recall from Chapter 3, most of Malaysia's ethnic Indians are Tamils who were brought to Malaysia as bonded laborers to work in rubber plantations.<sup>52</sup> With Malaysia's rapid economic development in the 1970s and 1980s, many estates were converted to other forms of economic activity, including industry, infrastructure, shopping centers and housing, and other development projects. In this great transformation, there was little, if any, effort to integrate estate workers into the rapidly changing economy, and the bulk of ethnic Indians were further marginalized. A variety of indicators from average income, to educational attainment, to life expectancy, to incarceration rates reflect the plight of the community and the growing gap between ethnic Indians and other Malaysians.

Hindraf's founders had initially established an organization called "Police Watch" to document police abuse of ethnic Indians.<sup>53</sup> But in the wake of the Moorthy Maniam court decision, they launched Hindraf with a decidedly religious

<sup>51</sup> Interview with lawyer Latheefa Koya, Kuala Lumpur, 2011. Another attorney with experience in these types of situations explained to me that clients are advised by their lawyers to demonstrate a complete lack of knowledge of Islam when requesting a declaration that they are not Muslim. This includes purposefully orchestrating visual cues that suggest they are not Muslim, such as entering the court with an awkwardly positioned hijab, in a fashion that might suggest that she had no prior experience with covering her hair.

<sup>52</sup> A smaller group of non-labor migrants were also recruited by the British from Ceylon and South India to work for the colonial administration. Finally, a group of lawyers, doctors, and merchants came from elsewhere.

<sup>53</sup> Interview with P. Uthayakumar, 2009



FIGURE 5.4: Some of the tens of thousands of Indian Malaysians who mobilized to claim their rights on November 25, 2007, under the banner of Hindraf (Hindu Rights Action Force). The placard reads “Peaceful Assembly – Article 10 of the Federal Constitution” (which guarantees peaceful assembly). Later that day, Hindraf supporters faced teargas and water cannon. Hindraf organized to challenge a long history of oppression, but the immediate catalyst was the court decision that had denied Kaliammal Sinnasamy the right to bury her husband, Moorthy Maniam. Photo: Andrew Ong / Malaysiakini.com.

frame of reference and a more extensive array of grievances. That an ethnic Indian rights movement would mobilize because of long-term marginalization is no surprise. But Hindraf chose to organize along religious lines rather than ethnic lines. The religious frame was one further indication that Malaysian politics, long defined by its ethnic cleavages, was increasingly polarized along religious lines. The religious frame also served a more practical purpose: it facilitated political organization through a network of Hindu temples. This avenue of mobilization proved indispensable in the rural areas of the Klang Valley. As in other times and places, religious infrastructure facilitated collective action. Moreover, Hindu temples themselves became symbolic. As rural estates were plowed under to make way for development projects, Hindu temples were demolished in the process. Each temple demolition made the news headlines (especially in the Tamil-language newspapers), and each served as emotionally charged reminders of the marginalized status of ethnic Indians.

One of Hindraf’s early initiatives was to file a lawsuit against the British government, suing for the “pain, suffering, humiliation, discrimination, and continuous colonization” that resulted from British exploitation of Indians as bonded laborers.

Hindraf called on the ethnic Indian community to come in person to deliver a petition to the office of the British High Commission in Kuala Lumpur. The authorities denied a request for a protest permit in anticipation of the thousands of protesters who were expected to gather. Roads were blocked leading to the city center, and police used water cannons and tear gas to disperse protesters. Nonetheless, an estimated 30,000 protesters flooded into downtown on November 25, 2007, exceeding all expectations. The protest organizers were charged with sedition and served two years in prison, but their initiative electrified the ethnic Indian community. The mobilization catalyzed widespread anger with the government. The percentage of ethnic Indians reporting dissatisfaction with “the way things are going in the country” slid substantially from 86 percent to 44 percent between in November 2006 and December 2007.<sup>54</sup> The government’s declining legitimacy was also reflected in its poor performance in the 2008 elections.

#### FROM THE 2008 ELECTION TO “1MALAYSIA”

For the first time in fifty years, and indeed since national independence, the ruling *Barisan Nasional* (BN) lost its two-thirds parliamentary majority in the 2008 elections. The BN also lost control of state legislatures in Penang, Selangor, and Kedah. The vote tally was so close that were it not for extensive gerrymandering, the *Barisan Nasional* would have retained power only by a razor-sharp margin.<sup>55</sup> This blow was in large part due to the dwindling support from the ethnic Chinese and ethnic Indian (non-Muslim) communities, as reflected in the poor performance of the ethnic Chinese and ethnic Indian component parties in the *Barisan Nasional*. Compared with the 2004 parliamentary elections, the Malaysian Chinese Association (MCA) lost over half of its parliamentary seats. The Malaysian Indian Congress (MIC) lost a stunning two-thirds of its seats.<sup>56</sup> The election also delivered a significant shake-up within the MIC. Samy Vellu, the longest-serving president of the MIC, lost his seat after having held it for eleven consecutive terms that had stretched nearly three decades. Neither the MCA or the MIC recovered in subsequent elections, ultimately contributing to the stunning defeat of the BN coalition in the historic 2018 general elections.

<sup>54</sup> Merdeka Center for Opinion Research (2007). During the same period, satisfaction among the ethnic Chinese community had slipped from 65 percent to 54 percent, while satisfaction held steadier in the ethnic Malay community, having dropped from 75 percent to 71 percent. In a subsequent poll, ethnic Indians identified “ethnic affairs and inequality” as “the most important problem in the country today.” By way of comparison, 13 percent of ethnic Chinese and only 5 percent of ethnic Malays selected “ethnic affairs and inequality” as the leading problems. See Merdeka Center for Opinion Research (2008).

<sup>55</sup> The popular vote was 50.27 percent for *Barisan Nasional* versus 46.75 percent for the opposition coalition, *Pakatan Rakyat*. The opposition secured 88 of 222 seats in the Parliament.

<sup>56</sup> The MCA dropped from thirty-one seats in the 2004 election to fifteen in 2008. The MIC dropped from nine seats in the 2004 election to three seats in 2008. In terms of the popular vote, the MCA lost 33 percent, and the popular vote for the MIC fell 31 percent.

It is impossible to know the extent to which anger over the Article 121 (1A) cases influenced voters in the 2008 elections, but these controversies played a defining role for many Malaysians. In face-to-face interviews with “everyday Malaysians” of varying ethnicity in the summer of 2009, the overwhelming majority of non-Muslim respondents said that 121 (1A) cases influenced their vote in the 2008 elections, and many stated that government mishandling of the cases moved them to abandon the MCA and MIC. While these interviews are from a non-random sample, they are suggestive. More systematic opinion polling by the Merdeka Centre for Survey Opinion Research (2006) suggests similar conclusions. 58 percent of ethnic Chinese and 79 percent of ethnic Indian respondents indicated that non-Malay parties were ineffective in safeguarding non-Muslims vis-à-vis Islamization.<sup>57</sup> One might expect the UMNO leadership would take heed of these election results and adopt legal reforms to mitigate the tensions between the shariah and civil court jurisdictions, but the opposite outcome prevailed. The government is equally concerned with consolidating its Malay-Muslim base, and religion is one of the primary tools that the government uses to rally support. This results in an arguably duplicitous policy of relying on religious and ethnic cleavages to rally a Malay-Muslim base of support, while at the same time adopting more superficial policies that claim to advance ethnic and religious harmony.

Reeling from the blow in the 2008 parliamentary elections, Deputy Prime Minister Najib launched a new public relations initiative in September 2008, “1Malaysia.” The campaign sought to mend rifts across racial and religious lines through a renewed emphasis on religious harmony and national unity.<sup>58</sup> When Prime Minister Najib Abdul Razak took office on April 3, 2009, he made the “1Malaysia” concept the motto of his new administration. The “1Malaysia” logo became ubiquitous – for years it was found everywhere on billboards, in government buildings, in newspapers, and on television. The initiative was criticized for being heavy on public relations, with no real substance. The real question was whether the prime minister would have the gumption and ability to push through institutional reforms to address the virtual conveyor belt of new legal controversies. To Najib’s chagrin, another conversion/custody case hit the news wires on the same day that he became Prime Minister.<sup>59</sup> *Indira Gandhi v. Muhammad Ridzuan Abdullah* (detailed in Chapter 4) concerned the unilateral change of

<sup>57</sup> The Merdeka Centre 2006 report is itself suggestive of the ways that Islam and government policy are conflated for many. When non-Muslims were asked whether they perceived Islamization as threatening, 58 percent of ethnic Chinese and 71 percent of ethnic Indians answered affirmatively. Yet, the Merdeka report summarizes the question as “Is *Islam* threatening?” [Emphasis added]. Although Islam and the project of state Islamization are two very different things, the survey conflates them.

<sup>58</sup> Another prominent Malay rights group, Perkasa, was formed in the same month. Perkasa’s founder, Ibrahim Ali, hammered on the importance of Article 121 (1A) and pledged that Perkasa would act as “the last bastion to defend the Malay-Islamic agenda.” *Utusan Malaysia*, September 22, 2008, “Another Organization Established to Defend Malay Rights” [Lagi pertubuhan pertahan hak Melayu ditubuh].

<sup>59</sup> “Anguished Mom Knocks on PM’s Door,” *Malaysiakini*, April 17, 2009.

religious status for Indira Gandhi's three children without her knowledge or consent. Gandhi's case illustrates how the status quo continued to enable individuals like Muhammad Ridzuan to claim child custody simply by changing the children's official religious status, thereby circumventing his legal obligations under a civil law marriage.<sup>60</sup>

#### CONSTRUCTING THE MEDIA FRAME

*Indira Gandhi v. Muhammad Ridzuan Abdullah* illustrates how Article 121 (1A) cases escalated to national political sensations overnight. Analysis of media coverage also provides insight into how media segmentation along ethnolinguistic lines exacerbates ethnic and religious polarization. The fact that Indira's predicament first reached the news by way of a press conference on April 3, 2009, speaks volumes. *Indira Gandhi v. Muhammad Ridzuan Abdullah* provided a brilliant opportunity for politicians to serve as champions for the rights of the ethnic Indian community. Knowing full well that media attention was the surest way to leverage pressure on the government, local DAP State Assemblyperson, A. Sivanesan, and Parliament Member from Ipoh, M. Kulasegaran, organized the press conference. And knowing the extent to which conversion/custody cases electrified the opposition, Democratic Action Party (DAP) leader Lim Kit Siang held another news conference with Indira Gandhi on April 21, 2009. We can recall that rights groups and attorneys had introduced the strategy of "going public" with considerable ambivalence in Shamala's fight for child custody back in 2004. Five years later, this media-savvy strategy was par for the course.

Indira's plight provided fodder for Tamil-language newspapers to run front-page articles for weeks on end. Two major newspapers serving the ethnic Indian community, *Makkal Osai* and *Malaysia Nanban*, provided extensive coverage with long exposés devoted to the latest twists and turns.<sup>61</sup> The story broke with front page banners reading, "Eleven-Month-Old Baby Converted to Islam" in *Makkal Osai* and "Conversion of Child: Mother's Worst Fears Come True" in *Malaysia Nanban*. Along the way, the papers gave a voice to critics of Najib's "1Malaysia" gloss, pointing to the more unpleasant realities on the ground. *Makkal Osai* carried a statement from the Malaysia Hindu Sangam President, that "at a time when Malaysians welcome the 1Malaysia concept, we still have instances where ulama have no qualms about converting an 11-month-old infant

<sup>60</sup> Another unilateral child conversion was reported the following week in *Makkal Osai* and *Tamil Nesan*. In this case, the wife, K. Nalina Devi, converted two children without the consent of her husband, T. Tharmakannoo. Unlike Indira's case, the dispute did not generate long-term media coverage, perhaps because T. Tharmakannoo was reported as having an income of only RM650 per month, making legal action more difficult.

<sup>61</sup> The other major Tamil paper, *Tamil Nesan*, generally represents the views of the Barisan Nasional's component party, the Malaysian Indian Congress. Perhaps because of this, *Tamil Nesan* carried relatively less coverage of Indira's plight.



FIGURE 5.5: Democratic Action Party (DAP) stalwart Lim Kit Siang and DAP Assemblyperson A. Sivanesan speak at a press conference at the Party Headquarters with Indira Gandhi and her two eldest children concerning litigation over custody rights. Article 121 (1A) cases were championed at the highest levels of government. Photo: The Nutgraph.

who is still being breastfed.”<sup>62</sup> The unfolding drama was also covered extensively in English-language newspapers, which cater primarily to urban-educated Malaysians. By contrast, there was not a single mention of Indira’s plight in the three most prominent Malay-language newspapers, *Utusan Malaysia*, *Berita Harian*, or *Harakah*, from April 3–22, 2009. The ethnic Indian community and urban-educated Malaysians were acutely aware of the unfolding drama. But this was not the case for the bulk of the ethnic Malay community, whose primary language for news and events is Bahasa Malaysia.<sup>63</sup> Media segmentation along ethnolinguistic lines made all the difference.

Faced with growing discontent in the ethnic Indian community and pressure from opposition parties and rights groups, Prime Minister Najib issued a surprise

<sup>62</sup> Malaysia Hindu Sangam President, Datuk A. Vaithilingam, quoted in “Rumblings in MIC” *The Nutgraph*, April 14, 2009.

<sup>63</sup> In 2009, Malaysian-language newspapers were read by 28 percent of the public, whereas Chinese-language newspapers were read by 18 percent, Tamil-language papers were read by 6 percent, and English-language newspapers were read by 9 percent of the public (Perception Media, 2009). A Merdeka Center for Opinion Research poll conducted in 2008 indicated that most Malaysians received most information concerning the 2008 elections from the newspapers. Peninsula Malaysia Voter Opinion Poll conducted March 14–21, 2008.

cabinet decision on April 23, 2009. The cabinet announced that in unilateral conversion situations like Indira's, the child's official religious status must not be changed without the consent of both parents. The Prime Minister wished to avoid the reoccurrence of politically explosive cases involving conversion and child custody, but whether the government would pass the appropriate legislative changes into law was an entirely different matter. The cabinet decision was met with rare praise from non-Muslim religious associations and rights groups, but conservative Muslim groups such as *Pembela*, *Jamaah Islah Malaysia* (JIM), ABIM, PAS, and the Malaysian Shariah Lawyers Association fiercely opposed the reform initiative.

Remarkably, Malay-language newspapers *Utusan Malaysia*, *Berita Harian*, and *Harakah* only began covering *Indira Gandhi v. Muhammad Ridzuan Abdullah* after the announcement of the cabinet decision. *Berita Harian*'s front-page article was neutral in tone, only detailing the cabinet decision and its rationale, with quotes from Minister in the Prime Minister's Office, Tan Seri Nazri Aziz.<sup>64</sup> The following day, the tone of Malay-language papers changed dramatically, as they reported on emerging opposition to the cabinet decision among conservative NGOs. *Utusan Malaysia* ran the headline "100 NGOs Protest Cabinet Decision." The article provided a platform to Malaysian Shariah Lawyers Association President Mohamad Isa Abd. Ralip and the Secretary General of the Lawyers for the Defense of Islam (*Peguan Pembela Islam*), Zainul Rijal Abu Bakar.<sup>65</sup> *Berita Harian* carried similar coverage with a bold title declaring that the "[Cabinet Reform] Clashes with Shariah."<sup>66</sup> *Harakah* ran similar articles, with titles including "Muftis Must Rise up to Object to Cabinet Decision," "Sacrificing Religion Does Not Create Unity," and "Pembela Defends Muslims from the Religious Conversion Conflict."<sup>67</sup> The Malay-language press showed little concern for the plight of non-converting spouses or the legal/institutional issues that exacerbated the legal conundrum, such as the fact that non-converting spouses had no legal recourse in the shariah courts. Rather, the dominant frame focused attention on how the proposed reforms would adversely affect the authority of the shariah courts, the rights of the converting Muslim spouse, and the position of Islam in the country. The contrast between Malay-language press and the Tamil- and English-language coverage could not have been starker. Media segmentation along ethnolinguistic lines facilitated the compartmentalization of strikingly different narratives.<sup>68</sup>

<sup>64</sup> "Child to Follow Parent's Original Religion," *Berita Harian*, April 24, 2009. *Utusan Malaysia* ran a similar article on the same day.

<sup>65</sup> *Utusan Malaysia*, April 25, 2009. <sup>66</sup> *Berita Harian*, April 25, 2009.

<sup>67</sup> "Muftis Must Rise up to Object to Cabinet Decision," *Harakah* April 28, 2009; "Sacrificing Religion Does Not Create Unity," *Harakah* April 29, 2009; "Pembela Defends Muslims from the Religious Conversion Conflict," *Harakah* April 30, 2009.

<sup>68</sup> This is partly by design. The government encourages compartmentalization by restricting reform groups from publishing in the Malay language (Bahasa Malaysia). The clearest case of this was the Minister of Home Affairs refusal to license the reform group *Aliran* to publish in Bahasa Malaysia, even though they were already publishing in English. The case went all the way to the Supreme Court in *Persatuan Aliran Kesedaran Negara v. Minister of Home Affairs*. *Aliran* lost the case, preventing them from reaching a wider, Malay-language readership.



## REFORM BLOCKED

Democratic Action Party Parliamentarian M. Kulasegaran pressed the government to make the necessary legislative changes that would give the cabinet decision the force of law, but concrete reforms did not follow. This lack of follow-through reveals much about the intractability of these legal conundrums. Criticism from conservative NGOs, the religious bureaucracy, and the Malay press suggests that legislative change can be delivered only at a political cost to the government. Moreover, it quickly became apparent that Malaysia's complicated federal structure would make legal reform all the more difficult. The bills were to be tabled in Parliament in late June 2009, but because the proposed amendments concerned issues related to Islam, the government referred the issue to the Conference of Rulers, which convened a special session on June 29, 2009.<sup>69</sup> In turn, the Conference of Rulers decided that the state religious authorities must first vet the proposed amendments due to state jurisdiction over religious matters as specified in the Federal Constitution.<sup>70</sup> Parliamentary debate on the legislative reforms was put on hold, pending approval from the state religious authorities. Months later, Mohamed Nazri from the Prime Minister's Office announced that the federal government was unable to produce results because they could not secure the cooperation of the state religious authorities.<sup>71</sup> Fending off criticism, Nazri challenged the state legislatures – particularly those that had fallen to opposition parties in the 2008 elections – to approach the state religious authorities, since religious matters fall within the mandate of state governments.

Nazri's argument was a cop-out because UMNO had the ability to push through reform of the Marriage and Divorce Act for the Federal Territories, which is under the jurisdiction of the federal government. Yet they did not. Moreover, a constitutional amendment to Article 12 (4) of the Federal Constitution could have put an end to unilateral conversions. As the reader will recall, Article 12 (4) was read literally by the civil courts as enabling a parent to convert a child, without the consent of her or his spouse, because Article 12 (4) mentions "parent or guardian" in the singular.<sup>72</sup> Regardless of whether reform was stymied due to Malaysia's complex federal structure or the simple lack of political will, the result is the same. At the time of writing, no legislative amendments have been made, leaving the legal conundrums unresolved.

<sup>69</sup> Amendments were proposed for the Law Reform (Marriage and Divorce) Act 1976, Administration of Islamic Law (Federal Territories) Act 1993, and Islamic Family Law (Federal Territories) Act 1984.

<sup>70</sup> "State Religious Authorities Sitting on Conversion Bills," *Malaysiakini*, July 14, 2010. Pushback was apparent in many venues. For example, see *Utusan Malaysia*, "Defending the Rights of the Islam is Compulsory" [*Wajib Pertahan Hak Islam*], July 28, 2009; *Utusan Malaysia*, "Don't Disturb the Syariah Courts" [*Jangan kacau Mahkamah Syariah*], December 8, 2009.

<sup>71</sup> "Muslim Conversion Law Reforms hit 'dead end'," *Malaysiakini* October 18, 2010.

<sup>72</sup> Article 12 (4) of the Constitution stipulates that "... the religion of a person under the age of eighteen years shall be decided by his parent or guardian."



FIGURE 5.6: Journalists are briefed by K. Shanmuga following a court hearing related to the child custody/conversion cases of Deepa Subramaniam and Indira Gandhi on July 24, 2014. Activist lawyers played crucial roles in litigating cases and explaining their significance to the public. Photo by Yu Ren Chung.

*Tan Cheow Hong v. Fatimah Fong Abdullah@Fong Mee Hui* underlined the fact that unilateral child conversion/custody battles would continue without legal reform. In this case, an ethnic Chinese couple, Tan Cheow Hong and Fong Mee Hui, had been separated for three years when Fong converted to Islam in 2010. Fong obtained a custody order from a shariah court. The child, Tan Yi Min, had been living with her father, but Fong Mee Hui (now Fatimah Fong Abdullah) went to Yi Min's school to collect her with the assistance of Selangor Islamic Affairs Department (JAIS) officers and police. In a public confrontation that made news headlines, Fong Mee Hui presented the shariah court custody order to school officials and left with her child after a short altercation. The next day, Fatimah Fong Abdullah changed her daughter's official religious status to Islam. Her husband attempted to challenge the shariah court custody order and the change of official religious status of the children by way of the civil courts. However, as in prior cases, the civil courts declined to intervene because they had no jurisdiction in matters related to the shariah courts. Similarly, in *Viran a/l Nagapan v. Deepa a/p Subramaniam*, the husband converted in 2012 and changed the official religious status of the two children to Islam without the wife's consent.<sup>73</sup> The High Court granted

<sup>73</sup> *Viran a/l Nagapan v. Deepa a/p Subramaniam* [2014] MLJU 1391; *Viran a/l Nagapan v. Deepa a/p Subramaniam* [2015] 3 MLJ 209; *Viran a/l Nagapan v. Deepa a/p Subramaniam* [2016] MLJU 05; *Viran a/l Nagapan v. Deepa a/p Subramaniam* [2016] 1 MLJ 585.



FIGURE 5.7: Deepa Subramaniam speaking with reporters after a Federal Court hearing concerning the custody of her children. Her case, along with other custody/conversion battles, became a national spectacle. The Sun/Sun Media Corporation, Sdn Bhd.

Deepa custody of the children in 2014. Deepa recovered the children, only to despair over the abduction of one of the children just two days later. Subsequently, the father initiated legal action to contest the custody order based on Article 121 (1A). The legal battles in *Viran a/l Nagapan v. Deepa a/p Subramaniam* continued non-stop for several years (as did the press coverage), with no end in sight at the time of writing. Cases concerning the conversion out of Islam similarly continued.<sup>74</sup>

#### SHAPING ISLAM THROUGH THE FRIDAY KHUTBAH

The religious establishment amplified the Islam-versus-liberalism trope in the Friday sermons prepared weekly by the Department of Islamic Development Malaysia (*Jabatan Kemajuan Islam Malaysia – JAKIM*) and by state-level Islamic religious departments, such as *Jabatan Agama Islam Negeri Selangor* (JAIS).<sup>75</sup> These sermons provide a direct window onto religious knowledge production and the particular

<sup>74</sup> *Mohd Syafiq Abdullah @ Tiong Choo Ting v. Director of Jabatan Agama Islam Sarawak & Ors* [2015] MLJU 1150; *Hj Raimi bin Abdullah v. Siti Hasnah Vangarama bt Abdullah and another appeal* [2014] 3 MLJ 757.

<sup>75</sup> Mosques can use the JAKIM-prepared *khutab*, or those prepared by the parallel state-level religious administration, such as *Jabatan Agama Islam Negeri Selangor* (JAIS). JAKIM *khutab* are archived at <<http://www.islam.gov.my/e-khutabah>> (last accessed August 1, 2016). Earlier, JAKIM archived *khutab*

inflection of Islam that federal and state religious administrations would like to impress upon Malaysian Muslims. Interestingly, the content of JAKIM sermons changed significantly over time, in parallel with the controversies around the Article 121 (1A) cases.

From 2003–2007, most JAKIM sermons addressed the sorts of moral and ethical issues that one would expect to find in any religious setting. They addressed the central place of charity, generosity, and compassion in Islam,<sup>76</sup> the imperative of a strong moral foundation for youth,<sup>77</sup> the importance of parenting,<sup>78</sup> the necessity for perseverance in difficult times,<sup>79</sup> the virtues of frugality and the perils of extravagant behavior,<sup>80</sup> warnings about the scourge of drugs and gambling,<sup>81</sup> and the problem of corruption.<sup>82</sup> Public service themes were also peppered into the sermons, including messages promoting awareness of HIV/Aids,<sup>83</sup> fire safety,<sup>84</sup> personal hygiene and diet,<sup>85</sup> and the need to protect the environment.<sup>86</sup> Some sermons carried political themes. For example, Palestinian rights were presented as a Muslim cause.<sup>87</sup> Nationalist tropes were invoked on the anniversaries of Malaysia's independence. And there were frequent appeals for loyalty to the monarchy and exhortations on the need to defend Malaysia from external threats.<sup>88</sup> However, beginning around 2008, the tone of many Friday sermons became more overtly political, and they focused far more on the appropriate place of Islam in the legal and political order and the threat that is posed by liberalism. Consider, for example, the *khutbah* that JAKIM prepared for delivery on Friday, December 26, 2008:

Recently, there have been attempts, whether deliberate or not, to threaten the special position of Islam as the official religion of Malaysia, as stated in Article 3 of the Federal Constitution of Malaysia. These attempts to challenge Islam are made through all kinds of methods. Among them is the organization of forums and dialogues, and the spreading of articles that insult Islam through blogs and also through meddling with Islamic ceremonies.

In Article 3 of the Federal Constitution, Islam is the religion of the Federation; but other religions may be practiced in peace and harmony in any part of the Federation. This provision recognizes that Islam's position is higher than any other religion, and the Yang di-Pertuan Agong is the head of the Federation, whereas the Malay kings are the heads of Islam in their respective states. Therefore, when Islam was made the religion of the Federation, it meant the people and the governing system must, in unity, place Islam as the main basis for the country's governance . . . .

going back to 2003 at <<http://www.islam.gov.my/khutbah-online>> (last accessed April 3, 2015). This link has since been removed.

<sup>76</sup> For examples, see February 3, 2006; February 10, 2006.

<sup>77</sup> April 7, 2006; May 19, 2006; December 1, 2006; July 6, 2007. <sup>78</sup> November 23, 2007; June 9, 2006.

<sup>79</sup> May 5, 2006. <sup>80</sup> April 21, 2006; May 26, 2006; July 28, 2006; June 13, 2008.

<sup>81</sup> February 17, 2006; June 29, 2007; June 27, 2008. <sup>82</sup> May 2, 2008; October 10, 2008.

<sup>83</sup> December 22, 2006; May 25, 2007. <sup>84</sup> May 4, 2007.

<sup>85</sup> March 10, 2006; December 12, 2008; February 13, 2009. <sup>86</sup> September 15, 2006; August 17, 2007.

<sup>87</sup> August 11, 2006; December 8, 2006; January 2, 2009. <sup>88</sup> June 1, 2007.

The JAKIM *khutbah* embraces a revisionist interpretation of Article 3 on par with the public statements made by *Pembela*. Islam is imagined as the basis of governance, superior to any other normative order. The mantra that Islam is the “ruling religion” of the country is a refrain that is regularly emphasized in JAKIM sermons.<sup>89</sup> Conventional views of Article 3 are not only pronounced unfaithful to the Federal Constitution; they are said to “challenge Islam” itself. The *khutbah* goes on to describe the intentions of anyone who does not subscribe to this vision of Article 3:

There are groups in this country that use the law to challenge the sovereignty of Islam . . . What is even more unfortunate is that there are Muslims who are not aware of this game because it hides behind the disguise of freedom and human rights. All kinds of international conventions are forced on Islamic nations, which then bind us. This is in line with the propaganda [being spread] by the international media. The most commonly used issue is women’s rights and also gender equality. Besides that, certain groups try to raise suspicion and doubt towards the truth of Islam by mixing traditions or Western values as part of Islamic teaching.<sup>90</sup>

The *khutbah* frames Muslims who embrace liberal rights as either naive or knowingly complicit in a project to undermine Islam. The possibility of being a devout Muslim *and* a committed liberal is not entertained. The *khutbah* also implicates international law in this global conspiracy. Any “mixing” of “Western” values with “Islamic teachings” – especially in women’s rights and gender equality – is to be condemned. JAKIM repeats similar tropes in other Friday sermons. Pluralism and liberalism were presented as threats to Islam and to the faith of Muslims.<sup>91</sup> Muslims are reminded that Malaysia faces an internal threat from those who stir up “sensitive issues” related to religion, and courts are singled out as the principal avenue through which Islam is challenged.<sup>92</sup>

JAKIM does not refer to the Article 121 (1A) cases by name, but the connection could not be clearer. For example, consider the JAKIM *khutbah* delivered in the immediate aftermath of the High Court decision in the Catholic Herald case.<sup>93</sup>

The pulpit reminds the congregation and all Muslims that we need to understand what motivates the use of the word Allah, which is championed by certain groups. If we look closely, this issue has strong ties to the issue of pluralism, which is the concept that all religions are the same. In fact, some Muslims support this struggle and created Liberal Islam. The supporters of Liberal Islam worked hard to loosen the

<sup>89</sup> For additional examples, see August 27, 2010; January 22, 2010; July 29, 2011; December 9, 2011; June 1, 2012; May 31, 2013.

<sup>90</sup> December 26, 2008.

<sup>91</sup> For example, see the sermons from March 9, 2012; October 11, 2013; June 7, 2014; October 24, 2014; March 20, 2015; February 5, 2016.

<sup>92</sup> March 23, 2012

<sup>93</sup> *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri & Anor* [2010] 2 CLJ 208.

hold on special names or terms that have been the strength of Islam, so that the creed of the Muslim people becomes fragile and breaks apart. (JAKIM, January 8, 2010)

This rhetoric helped to fuel church burnings across Malaysia from January 8–15, 2010. Two weeks later, in the immediate aftermath of violence on houses of worship, a JAKIM *khutbah* proved even more inflammatory. Here, the JAKIM focused on the place of non-Muslims in Malaysia, referring to them as “*Kafir Dzimmi*.”<sup>94</sup> The *khutbah*, titled “Kafir Dzimmi and Kafir Harbi,” explains that Muslims are benevolent hosts to non-Muslims, but that Muslims should not be infinitely patient or passive. JAKIM explains that non-Muslims entered a social contract with Muslims in the form of the Federal Constitution and that the “*Kafir Dzimmi*” must respect this arrangement, which requires that non-Muslims bow to Islamic supremacy. The *khutbah* explains that “one of the important agreements in the Constitution is to acknowledge that Islam is the religion of the Federation, *which opens the path for Islam to become the ruling religion in this country*” [emphasis added]. In articulating this vision of Article 3, JAKIM provides a legal rationale for *Ketuanan Melayu* (literally “Malay Dominance” or “Malay Supremacy,” the political concept that underpins Malay nationalism). Moreover, this reading of Article 3 attempts to endow the concept of *Ketuanan Melayu* with religious legitimation. JAKIM explains that those who hold a different view of Article 3 and refuse to bow to Islamic supremacy may, in fact, be “*Kafir Harbi*” agents – those non-Muslims who are at war with Muslims.<sup>95</sup> JAKIM recalls that the Prophet and Islamic law “. . . teach us not to follow wild emotions.” Yet, in the next sentence, the *khutbah* clarifies that, “the pulpit would like to remind the congregation that having good relations with non-Muslims does not mean we forget our responsibility to Islam. Islam provides for no tolerance when it comes to questions of faith and devotion.” In other words, in such circumstances, the gloves must come off.

Muslims are also warned that some among them are also willing to sacrifice the interests of their religion, their race, and their nation in pursuit of selfish interests and ideologies.<sup>96</sup> The sermon, released in advance of Heroes’ Day (*Hari Pahlawan*) in 2011, brings together core themes that are present in many of JAKIM’s more political sermons and is, therefore, worthy of extended quotation. The *khutbah*, titled “National Heroes Are the Backbone for Islam’s Protection in the Federal Constitution,” begins with Article 3 as its focal point:

<sup>94</sup> *Dzimmi* (Arabic: *Dhimmi*) is the historical term that referred to non-Muslims in an Islamic polity. The word means “protected person.” This status gave non-Muslims rights to carry on within their communities in exchange for payment of a special tax. The term assumes a relationship of dominance. Moreover, the qualifying term “*kafir*” carries a colloquial inflection that is roughly on par with English use of the term “infidel.” See the *khutbah* of January 22, 2010, titled “Kafir Dzimmi and Kafir Harbi.”

<sup>95</sup> The sermon goes on to discuss the Cabinet decisions of May 16, 1986 and January 3, 2008, in which non-Muslims were prohibited from using the word “Allah” in publication.

<sup>96</sup> For example, see the *khutbah* of April 13, 2012.

Article 3 (1) of the Federal Constitution provides that Islam is the religion of the Federation . . . The big question is, who are the national heroes who will be the backbone for Islam's protection in the Federal Constitution? . . .

Although history shows that Islam was accepted as the religion of the Federation and the Malay Kings are given the necessary acknowledgement, the position of Islam still invites all kinds of interpretations by the people of this country. The position of Islam has been questioned and debated by those who refuse or fail to understand the position of Islam. The dissenting voices of certain groups continue to echo in their false interpretation of the position of Islam in the Federal Constitution until it results in confusion among Muslims who believe that Islam is for ceremonial purposes only. The pulpit wishes to assert that if this misinterpretation is allowed to continue, Islam will be viewed as a religion that is equal in position with other religions and has no special rights.

Lately, we also hear of groups that make fun of Islam using all kinds of methods and tricks. They challenge the legitimacy of shariah law and the authority of Islamic institutions such as the Department of the Mufti and the shariah courts. Fatwas have been challenged with claims that they clash with the freedom of religion. Shariah law has been accused of being backwards because it clashes with international conventions that promote democracy and Western human rights. They also infuse liberal beliefs and pluralism . . . aiming to threaten and erode the values of the Muslim people.

Even more unfortunate is that enemies of Islam seize this opportunity to lower the position of Islam. They demand an interfaith commission that goes against the Federal Constitution; they question the implementation of shariah sentences; they support apostasy cases; they demand that homosexuals, lesbians and transgender people be given freedom to practice their activities. They also question the position of the Malay Kings, the special rights of the Malay people, and the position of Islam as the official religion of the Federation . . .

Why does this happen? . . . First, Muslims themselves are divided into different groups. Second, they are willing to sacrifice their honor and the interests of the religion for their own interests and their group's interest. Third, there are Muslims who conspire with certain groups to question Islam as the official religion of this country, using the excuse of defending the rights of others. Therefore, the pulpit wishes to remind [you] that if Muslims continue to be divided, lose their integrity, and are used by others, sooner or later the protection of Islam in the Federal Constitution will be eroded and Muslims of this country will receive an unfortunate fate similar to countries where their people are hunted and expelled from their own land. (JAKIM, July 29, 2011)

The message is unequivocal: Islam and Islamic law are enshrined in the legal system, but they face powerful threats from non-Muslims; Islam and Islamic law are put at risk by wayward, confused, and self-serving Muslims; and, finally, Islam and Islamic law are besieged by liberalism, pluralism, and "Western" human rights. JAKIM's dire warnings suggest that these dangers constitute nothing short of an

existential threat to the Muslim community. If Islam's position in the Federal Constitution is eroded, Muslims will be "hunted and expelled from their own land."

The rhetoric around the Article 121 (1A) cases also grew more intense outside of the state-monopolized religious establishment. *Ikatan Muslimin Malaysia* (Isma) president Abdullah Zaik Abd Rahman positioned liberalism as the diametric opposite of Islam and claimed that liberalism and pluralism were part of a global conspiracy to destroy Malay identity.<sup>97</sup> *Utusan Malaysia* headlines called on the government to "curb extremist liberalism,"<sup>98</sup> to "wipe out liberalism,"<sup>99</sup> and to "block liberalism, pluralism."<sup>100</sup> Liberalism, Malaysians were told, "poses a major threat to the nation, the religion of Islam, and the survival of the Malay people."<sup>101</sup> The messaging from the top of the Malaysian political establishment thus came to echo the polarized political discourse from the most hyperbolic ideologues. On more than one occasion, Prime Minister Najib called on Muslims to avoid liberalism and pluralism, going so far as to say that these values threatened national security.<sup>102</sup> High-ranking government ministers echoed these sentiments on many occasions, both to ward off conservative criticism of the government and to bolster Malay unity in the face of an increasingly fraught political order.<sup>103</sup>

These developments illustrate the radiating effects of courts on civil society activism. The decisions gave new energy and focus to variously situated civil society groups, both liberal and conservative. Court decisions catalyzed the formation of entirely new NGOs and coalitions of NGOs – most notably, the Article 11 Coalition and *Pembela*. The work of these NGOs, in turn, played a direct role in shaping a political context that increasingly constrained judges who might otherwise work to find pragmatic solutions. Without a doubt, the dynamic was one of polarization. A further impact of polarization is clearly illustrated by the fact that Sisters in Islam, a women's rights organization that works to advance women's rights (and liberal rights more generally) through the framework of Islamic law, proved unable to negotiate a "middle way." Instead, Sisters in Islam assumed a leadership position in the Article 11 Coalition. They were portrayed by conservative detractors as "Sisters against Islam." On the other side of the spectrum, conservative NGOs that had previously staked out a broad range of positions on various issues – from ABIM to the Muslim Professionals Forum – found themselves working in cooperation under *Pembela*.

It is notable that judicialization drew the involvement of actors with little or no expertise in matters of religion. Litigants, lawyers, judges, political activists, journalists, government officials, and many others fielded claims and counter-claims inside

<sup>97</sup> *Malay Mail Online*, October 15, 2014.

<sup>98</sup> "Mengekang ekstremis liberalisme," *Utusan Malaysia*, November 9, 2014.

<sup>99</sup> "Beratu banteras anaman liberalisme," *Utusan Malaysia*, October 5, 2016.

<sup>100</sup> "Bendung Liberalism, Pluralisme," *Utusan Malaysia*, May 20, 2014.

<sup>101</sup> "Beratu banteras anaman liberalisme," *Utusan Malaysia*, October 5, 2016.

<sup>102</sup> For example, see *Malaysiakini*, May 15, 2014.

<sup>103</sup> "Shi'ism, Liberalism, among threats to Muslim Faith, says Minister," *Bernama*, October 3, 2013.



and outside the courts. Most of these actors have little, if any, specialized knowledge of Islamic law or the Islamic legal tradition. Yet these competing claims are nonetheless consequential. Those with little or no training in Islamic law are the primary actors that drive the judicialization of religion, and they are central agents in the production of new religious knowledge. What is so striking in the polarized discourse in Malaysia is that Islam is increasingly defined vis-à-vis liberalism. More to the point, Islam is increasingly defined *against* liberalism. Likewise, liberalism and secularism come to be defined vis-à-vis Islam, indeed *against* Islam. As the reader will recall, these dichotomies are facilitated, even encouraged, by the legal claims that are made in the court of law and the political claims fielded in the court of public opinion. All too easily, Islam is pitted *against* liberal rights; individual rights are pitted *against* collective rights; religion *against* secularism, and so on. These binaries elevate the “legal-supremacist” conceptualization of “Islam as law” (Ahmed 2016), and they further position Anglo-Muslim law as the full and exclusive embodiment of the Islamic legal tradition. Likewise, these binaries elevate “secularism” and “liberalism” as monolithic ideological formations of their own. Secularism and liberalism are positioned as inherently inimical to religion (and vice-versa) in political discourse. Self-positioned Islamists make countless claims that liberalism, secularism, and pluralism are a threat to Islam. Liberal rights activists ironically reinforce and validate the claims of their rivals by emphasizing the incompatibility of Islamic law with liberal rights and secularism. Each side finds agreement in the zero-sum nature of the conflict. Given the ease with which these binary tropes are advanced, it is crucial to remain mindful that they are, in fact, constructed binaries. That is, binary forms emerge as a function of the institutional environment in which Islam and liberalism are represented. Islam and liberal rights are not autonomous, pure, and coherent formations. And in contexts like that of contemporary Malaysia, they are increasingly co-constitutive.