



THE ISSUES OF PUNISHMENT RELATED TO SHAMAN AND WITCHCRAFT CRIMES AND ITS RELATION TO ISLAMIC CRIMINAL LAW IN MALAYSIA

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ABSTRACT

This study investigates the intersection of shamanic practices and criminality in Malaysia, focusing on cases where individuals involved in or accused of shamanic activities find themselves entangled with the country's legal system, particularly within the context of Sharia and Hudud law. While shamanism holds deep cultural and spiritual roots in Malaysia, instances where such practices are perceived as criminal offenses raise complex questions about the boundaries between tradition, religious norms, and legal frameworks. Utilizing a multidisciplinary approach, this research analyzes selected shaman-related crime cases to understand the specific nature of the alleged offenses, legal proceedings, and outcomes. The study explores how Sharia and Hudud laws, derived from Islamic principles, are invoked or applied in addressing criminal accusations related to shamanic practices. Additionally, it examines the role of religious authorities, legal institutions, and societal attitudes in shaping the legal response to such cases. By examining the legal implications of shamanic activities, this research contributes to the ongoing discourse on the compatibility and tensions between traditional cultural practices and formal legal systems, particularly in predominantly Islamic societies like Malaysia. The study aims to unravel the complexities surrounding the classification of shamanic practices as criminal acts, the legal justifications employed, and the potential impact on cultural diversity and religious freedoms. The findings of this study offer insights into the challenges and opportunities for legal adaptation and interpretation within the Sharia and Hudud framework, as well as the broader implications for the coexistence of diverse cultural practices and religious norms in Malaysia's legal landscape. The research concludes by suggesting avenues for fostering a more nuanced and inclusive approach to addressing the intersection of shamanic practices and criminality within the framework of Sharia and Hudud law.

Introduction

The crime of shamanism or witchcraft is one that can have profound effects on its victims, impacting not only individuals but also their families and close associates. These effects may manifest in various forms, including health issues, marital problems, accidents or injuries, and, in extreme cases, death. Despite living in modern times, this form of crime continues to persist, often without public awareness. Detecting the perpetrators of such crimes proves challenging due to the nature of the practices, which involve worship and rituals invoking jinn or other supernatural beings. As such, the punishment for those involved in witchcraft should be approached with seriousness to mitigate and, ideally, eliminate this form of criminal activity.

Malaysia's cultural and religious diversity is demonstrated by the coexistence of traditional shamanic practices alongside the dominant Islamic legal system, grounded in Sharia and Hudud law. Shamanism, deeply embedded in the beliefs of various ethnic communities across the country, has historically played a significant role in healing, spiritual guidance, and cultural identity. However, the convergence of shamanic practices with criminal accusations has sparked a complex discourse, necessitating an exploration of the legal implications within the framework of Sharia and Hudud law.

This study aims to unravel the dynamics surrounding cases in which individuals engaging in shamanic activities find themselves entangled with Malaysia's criminal justice system. The unique challenge lies in reconciling the rich cultural traditions with the Islamic legal principles enshrined in Sharia and Hudud law. As Malaysia navigates the delicate balance between preserving its cultural heritage and upholding Islamic norms, it is essential to understand the legal responses, implications, and societal attitudes shaping the discourse surrounding shamanic practices within a legal context.

By examining specific cases, this research will provide insight into the nature of criminal accusations related to shamanic activities, the legal proceedings that follow, and the application of Sharia and Hudud law in addressing these cases. It will also explore the role of religious authorities, legal institutions, and societal perceptions in shaping the legal response to shamanic practices, contributing to a broader understanding of the challenges and opportunities for legal adaptation and interpretation in Malaysia's multicultural and religiously diverse society.

Problem Statement

Malaysia is a country rich in cultural and religious diversity, with each community possessing distinct customs and beliefs. This cultural diversity is one of the main factors contributing to the practice of shamanism. Initially, the knowledge and teachings of shamanism were applied for medicinal purposes; however, over time, these practices have been misused, resulting in harm and threats to the lives of others. The intersection of shamanism with criminal activity raises significant questions regarding the legal consequences for those practicing this form of knowledge.

The practice of shamanism is intrinsically linked to spiritual matters, which introduces an additional layer of complexity when addressing these issues within the context of Sharia law in Malaysia. The absence of a clear legal framework specifically dealing with shamanism creates ambiguity in defining the boundary between cultural practices and criminal offenses. This lack of clarity not only presents challenges for law enforcement and the judiciary in interpreting and applying existing laws but also raises concerns about the protection of individual rights and freedoms associated with cultural practices.

Moreover, the potential conflict between shamanic practices and Islamic law, particularly Sharia and Hudud, adds further complexity. The Hudud laws do not explicitly define punishment for practitioners of black magic; however, the effects of such practices are often treated as equivalent to crimes classified under Hudud or Qisas. The diverse interpretations and applications of Islamic law across Malaysia's different states contribute to the uncertainty surrounding the legal status and consequences of shamanic activities. This legal ambiguity hinders the ability to ensure consistent and fair legal proceedings, potentially violating the cultural rights of individuals involved in shamanic practices.

Research Questions

- i. What is shaman crime and how is it considered as a crime?
- ii. How does the legal framework in Malaysia accommodate and conflict with traditional shamanic practices, particularly in cases where such practices are perceived as criminal offenses both in civil and *Sharia*.

Research Objective

- i. To study what is shaman and witchcraft crime
- ii. To analyse the court action on shaman and witchcraft crime in Malaysia.
- iii. To study the correlation between shaman crime and Islamic criminal law.

Research Methodology

The research methodology for this study is described based on the form of the study, the design and approach of the study, the data collection procedure, and the data analysis procedure.

Form of Study

Based on the research problems that have been presented, this research is in the form of a qualitative study. Qualitative research is a suitable research method to obtain accurate analysis results. This is because it requires quality and comprehensive research on the data collected and analyzed so as to produce significant research results.

Study Design and Approach

This research approach is implemented through historical research, case studies, and analysis content.

(a) Historical Studies

A historical study was carried out on the subject of shaman regarding the history of the emergence and influence of shamanism, and the development of the knowledge.

(b) Case studies

A case study was conducted related to the subject of shamanism and black magic to obtain the relevant data. its application in Malaysian legal cases. Case studies are also made to obtain information about existing issues

(c) Analysis

This method is used to gain information related to the fact about shamanism and witchcraft. There are a lot of opinion on witchcraft, so this method is used to filter out the most important ones only.

Method of collecting data

(a) Document analysis

This study gains data and information through the analysis of documents from two sources, primer and secondary source. Primer source that are used are Al-Quran, Al-Hadith and Fiqh books (*turath*).

(b) Secondary source

- i. Syariah books
- ii. Journal and article that are related to shamanism and witchcraft
- iii. News
- iv. Websites

Data Analysis Procedures

This study uses two methods of data analysis to obtain results and results research. The method used is a descriptive method that is by making a descriptive analysis to the materials and data obtained. Next is the method of data analysis the second used is the inductive method where all the data collected analysed until reaching a conclusion.

Literature Review

According to Muna Hamzan, Wan Mohd Khairul Firdaus Wan Khairuldin & Tengku Fatimah Muliana Tengku Muda (2021), Expert testimony is one of the methods of proof recognized in Islamic criminal jurisprudence. Provisions of the Act or Enactment of Evidence of the Syariah Courts of the states also specifically provide for the opinion of experts such as medical experts and forensic experts. However, the application of the opinion of Islamic medical experts in the Syariah Court is still not used for witchcraft crime cases due to no specific provisions given and even the judge's approach is not clear to use this form of evidence in deciding a witchcraft crime case in the Syariah Court. In addition, there is no clear procedure as a guide for adopting the evidence of Islamic medical experts in the Syariah Court and will subsequently cause a person who is considered an expert to be difficult to evaluate.

According to Rajali Aji, Iknor Azli Ibrahim & Mohd Nur Hidayat Hasbollah Hajimin (2023) Opinions among Muslim academics regarding the existence of black magic (*sihr*) vary. Witchcraft, or sorcery (*sihr*), is sometimes associated with deceit intended to confuse untruth with the logical relationship between causes and effects. It's hard to define black magic. We also know very little about *sihr* and what is outside the range of our senses.

According to Mohd Sabree Nasir (2015), Witchcraft is not a recent development in Malaysian society. Furthermore, the lack of specific laws that penalize those who engage in such practices has allowed them to persist for a very long time. There have been rumors of attempts to pass legislation against witchcraft since 1975. However, the results of such an attempt are still pending. Therefore, it's time to codify the legislation regarding witchcraft so that those who hire witches and those who are accused of being witches might be appropriately charged and punished. This will also defend individuals who have been subjected to such horrible crimes. However, there are undoubtedly several barriers preventing Malaysia from enforcing its criminal statute against witchcraft.

According to Mahyuddin Ismail, Mansor Sulaiman, Zulfakar Ramlee and Mohd Syahrizal Syah Zakaria (2015), witchcraft has been spread to cause harm to human since long time ago. In the 33rd Fatwa committee of the National Council for Islamic Religious Affairs of Malaysia ruled that the authorities must come with legal provision to punish witches. However, after 20 years, the law still remains unenacted. This is because several parties fail to recognise and understand the danger of witchcraft itself. Also, it is hard to proof someone that already affected by witchcraft in the court because of the lack of expert in this field. According ro Mahyuddin Ismail, Jahid Sidek, Nurkarimah Yusof (2021), witchcraft is among the ancient mystical ritual in the world. Witchcraft involves with the engagement of demon and jinn with specific purposes. Based on the cases of witchcraft, there are several cases that require human sacrifice in witchcraft ritual. This article justifies and provide suggestion and solution on fighting with the witchcraft. Therefore, this study is to aim for the concept of the witchcraft and how the court take an action when facing cases related to witchcraft and how Islamic criminal law react on crime related to witchcraft.

The concept of Shamanism and witchcraft

Shamanism in a nutshell

Shaman is an English word referring to a person who can treat diseases or using traditional methods. According to Cambridge Dictionary shaman is a person in a particular religion who is thought to have special powers to control and influence good and evil spirits, making it possible for them to discover the cause of illness, bad luck and etc. The term shamanism is a word originated by Manchu-Tungus word šaman. The noun is based on the verb ša- which means "to know". Thus, the word shaman is referring to "people who knows". Shaman is not particularly referring to a man, guy or a male. There is numerous female shaman

A shaman is a person known for his ability to cure diseases using traditional methods. In ancient times, before the development of medical science, the public depended on shamans to be treated. Shamans are said to use natural materials consisting of plants and animals. Witchcraft activities are seen to be active in Southeast Asian countries, especially in the archipelago. The activities and practices of shamanism are seen as mystical things that cannot be seen by the naked eye. Shamans are also often associated with the use of witchcraft in treating their patients. Witchcraft is said to be one of the oldest sciences practiced in the world. This is because this knowledge has been passed down from generation to generation since the beginning of human history until today. Historians believe that this magic has been widely practiced during the civilization of Mesopotamia, ancient Egypt, Ron, Persia, Islam, the West and until today. There are also those who think that this witchcraft began in the time of the prophet Idris A.S. which is related to the angels Harut and Marut who descended in the land of Babylon.

There is no specific date when the practice of shamanism began in Malaysia, but it is estimated to have started centuries ago when medical knowledge was limited and did not develop rapidly in *Tanah Melayu*. In those days, if there was any catastrophe that resulted in an outbreak of disease or a dangerous natural disaster, it threatened the safety of the public and made them fear the consequences. Therefore, among the efforts to treat and reduce the fear faced, the shamans will ask for help by invoking the spirit of the supernatural power that includes various things whether they are alive or not. This is because according to them those things can help overcome the problems they face

The concept of shamanism in Islamic perspective

Shamanism and black magic are called as *sihr* in Islam. The using of *sihr* in Islam is forbidden in any situation or in any form. Practicing *Sihr* is considered as *syirik* and it is among one of the biggest sins in Islam. According to a hadith narrated by Abu Hurairah, Rasulullah SAW said:

Translation: "The Prophet (ﷺ) said, "Keep away from the seven fatalities." It was asked: "What are they, O Messenger of Allah?" He (ﷺ) replied, "Associating anything with Allah in worship (i.e., committing an act of Shirk), sorcery, killing of one whom Allah has declared inviolable without a just cause, devouring the property of an orphan, the eating of usury (Riba), fleeing from the battlefield and accusing chaste believing women, who never even think of anything touching their chastity"".

(Sahih Bukhari, 2766)

All practices and activities involving *sihr* or black magic are actually already included in the category of shirk. However, God separates the sin of witchcraft from shirk to show that the practice of witchcraft is a great sin. This is because *sihr* are not only damages the practitioner but also damages and harms the people around. The reality of the practice of this knowledge is that a practitioner asks for help and protection from jinn and Satan to do something beyond human ability. However, this help and assistance is not given just like that, practitioners must side with the jinn and forget worship and servitude to Allah SWT.

The practice of witchcraft is nothing new. In the Qur'an it has been mentioned in many places. In the Qur'an, it is said that during the time of Prophet Moses there was magic that was used by Pharaoh's magicians. Surah al-A'raf verse 104-126 clearly tells about the prophet Musa AS against the Pharaoh who used magic. (Umar.M, 2016)

Islam rejects the practice of black magic because Muslims only allowed to asks for protection and help only from Allah SWT, not from other creatures. This is based on surah *al-Ghafar* verse 60:

Translation: "Your Lord has proclaimed, "Call upon Me, I will respond to you. Surely those who are too proud to worship Me will enter Hell, fully humbled"".

(Surah al-Ghafar, 40:60)

This verse in the Quran shows that Muslim can only seek help, protection and guidance through Allah SWT. And whoever asks from other than Allah (commit *syirik*) will be punished and put in hell.

Teaching, practicing and learning black magic is clearly forbidden. But what if someone met a shaman and ask them for help? Is it considered as haram itself? Based on hadith:

Translation: "Whoever goes to a soothsayer (shaman) and asks him about something, his prayer will not be accepted for forty nights".

(Sunan Abu Dawood, 3906)

This hadith explains that if someone met a shaman and ask them to do black magic to someone, their prayer will no accepted for forty days. This means that even if meeting with shaman is considered haram.

If someone met a shaman and trust them in whatever they do that does not comply to Islam, is considered as *kufur*. According to hadith:

Translation: "Whoever goes to a shaman or fortune teller, and he confirms what he said, then he has truly disbelieved in what was revealed to the Prophet Muhammad SAW".

(Sunan Abu Dawood, 3907)

According to Tafsir Surah Baqarah Ayat 102 (*Kisah Harut dan Marut ajar sihir*)(Celik tafsir, 2013), There a lot of types of black magic. It depends on how the user want to use the knowledge. However, Imam Ar-Razi divided black magic into eight categories.

- i. The liars and the Kasidani, that is, those who worship the seven moving stars. These are the people to whom Prophet Ibrahim was sent to argue with them. This tribe has certain rituals in worshiping the stars.
- ii. The second part of magic is magic that is done by people who have strong illusions and souls. It is true that the human soul was created to submit to its illusions. There are things that he sees that make an impact on him. Some cause things to happen with just the look of their eyes. This is because the look in his eyes is so strong that it affects people. Imam Al-Razi (1999: 3/621) stated, "When you know this, then we say that the soul that can do such deeds is sometimes very strong."
- iii. Imam Ibn al-Kathir (1999: 1/368), what was indicated by Imam Razi is included in the understanding of the sixth sense or *al-Tasarruf bi al-hal* (اتصرف بالحال). This type is not called magic at all according to the assessment of Sharia. It's just magic in terms of language. But it depends on which direction he uses this advantage that God has given him. If he uses it for evil, then woe betide him.
- iv. Asking for the help of spirits on earth, that is jinn. This can be done by reciting mantras, burning incense, and casting spells.
- v. Deception through illusion, turning the eye, as well as magic. This uses the cleverness of diverting the observer's gaze while he is lightning fast doing something. When told to the observers, they were very surprised because they didn't even notice the hand of the perpetrator.
- vi. Witchcraft that results from magical reactions arising from the arrangement of various tools arranged according to engineering forms. For example, a statue is made in the shape of a person riding a horse, while his hand holds a large drum. When a certain period of the day had passed, such as every hour, he beat the big drum without anyone touching it. According to Imam Ibn al-Kathir, in reality this type should not be categorized as magic, this is because its occurrence can be known through known and certain causes.
- vii. Included in the act of witchcraft is the use of aids in the form of medicines, which are in various types of food and oils. There are people who are good at using natural ingredients and with them can produce something that seems like a miracle.
- viii. Included in witchcraft is influencing the hearts of others. There are people who are good at judging other people's weak or weak minds and he can use techniques to influence that person. This is as called as hypnosis.

- ix. Perform *namimah* and sheep fighting by using an easy and soft way, invisible. This is because the person who does this is good at talking and manipulating others until the two sides can fight because he is good at words in sowing discord.

These are the eight types of magic listed according to Imam Ar-Razi. However, the type of magic is not limited to these eight types only, there are many more types of magic in this world. Words that are too good and can influence others can also be classified as magic. The words of the prophet Muhammad SAW in the hadith:

Translation: "On the authority of Abdullah bin Umar, may God be pleased with him, that two people from the people of *Masyriq* came to him, and both of them preached until the people were amazed by his explanation, then the Messenger of God, peace be upon him, said, "Indeed, the explanation (*bayan*) contains magic, or indeed a part of the *bayan* (explanation) it contains magic."

(Sahih Bukhari no. 5325)

So, in conclusion it is clear that Muslims cannot practice, learn black magic use or even met with shaman to ask them for help. Islam prohibits a person because help and assistance can only be asked from Allah SWT and not from other creatures. by asking for help other than Allah, it is considered a major sin and is considered shirk.

Shamanism and crime

The practice of witchcraft is clearly prohibited from an Islamic perspective as well as a civil one. This is because witchcraft is a science that uses jinn and demons for purposes that can harm others. Witchcraft is a science that is often associated with harming others. The use of black magic can cause a variety of problems for the magician according to what is desired by the practitioner. Black magic is considered a flexible weapon because it can be used in many ways. Among the examples of black magic synonymous with Malaysian society is *Santau*. *Santau* is used to poison enemies because of envy, jealousy and so on. This behaviour is illegal because it causes harm to others.

Black magic can also cause victims to fight between spouses, suffer from diseases, cause loss of sanity and some can even take lives. Therefore, the practice of black magic that causes harm to others is considered a crime and should be severely punished. There are many cases involving the crime of witchcraft in Malaysia which is an example that this witchcraft can clearly be classified as a criminal act.

Crime related to shamanism

There are many cases related to witchcraft crimes that are tried in court. There are also many cases that cannot be tried because the perpetrators are not clear. This is not strange because this witchcraft is performed occultly and its effects may not be visible to the naked eye even after careful examination. The other reason why this case was not tried in court is because the victim did not know how to report this crime because there was no clear evidence that he was bewitched. Witchcraft is also difficult to detect, causing it to be one of the factors of this crime not being reported.

Among the cases of witchcraft crimes tried in Malaysian courts are:

- a) P.P v. Mat Saad Mat Isa and 2 Ors [2005] 1 AMR 29 and Sabarudin Bin Non & Ors v. PP [2005] 4 MLJ 37.

It was mentioned in the court that *santau* was used as a means to kill the deceased.

- b) Juraimi Bin Husin v. PP and Mohd Affandi b. Abdul Rahman & Anor v. PP [1998] 1 MLJ 537.

The most popular witch case, Mona Fandey and her disciple Juraimi, who was charged with the murder of the late Dato' Mazlan.

- c) Mustafa Batcha vs Habeeba Abd Rahman [1410] JH 41.

In this case, the husband claimed to have pronounced divorce on his wife without realizing it because he claimed to be under the influence of witchcraft. This magic interference has often disturbed him. Among other things he did under the influence of magic was scolding his wife for no reason, beating her, making her mind restless. The things he did were all unconscious.

d) Re Wan Norsuriya [1418] JH 211.

In this case, the wife made an application to the court to dissolve her marriage because there was an element of involuntary. The applicant was eloped and married by the respondent in an unconscious state

Many of these cases did not judge fairly. Many of the victims claims that they did not get their right as they are unaware of their actions during, they commit the crime. For example, in case Mustafa Batcha vs Habeeba Abd Rahman [1410] the court decided that the talaq is valid even though the husband claimed that he did not aware that he divorce his wife since he is under the influence of witchcraft.

Court Action on shaman and witchcraft cases

In Malaysia there is no specific enactment on black magic except in the state of Terengganu which is *Enakmen Kesalahan Syariah Jenayah (Takzir)* Terengganu 2001 that specifically mention about the crime of witchcraft. There is no other state in Malaysia that focus on this crime. The crime related to witchcraft is still in debate whether it is to be judge in civil court or in sharia court. This is because witchcraft can be committed by anyone not just Muslims. This can be a loophole for non-Muslims to commit this crime since sharia court does not have a punishment towards non-Muslim. So, it is hard to determine which court should take the case. Furthermore, the lack of expert in black magic and witchcraft knowledge makes this crime prevalent.

In certain cases, the judge cannot determine whether the defendant is actually affected by witchcraft or not. It is because the judge cannot see with the naked eye what is affected the defendant. This proves that the judge is not an expert to handle this type of cases Therefore, the court need some sort of expert and ways to actually prove if someone is under the influence of black magic or not.

Method of proving shamanism in court

Expert Evidence (Ra'yu al khabir)

There are methods to prove that a person is really affected by magic or not. It is known as *Ra'yu al-Khabir* and *al-qarinah* who use expert energy in the field of magic. *Ra'yu al khabir* is one of the methods used to prove witchcraft in court (Muhammad Darwisy Mohd Razali et al., 2021). This method uses expert energy in a certain field to help the judge to make a decision. The evidence presented by this expert indirectly helps the court to judge the case fairly (Syinyur, 2006). The use of expert is allowed in Islam. This is based on the evidence of the Quran:

Translation: "And We did not send before you (Muhammad), but men to whom We gave revelation; then ask someone who has knowledge if you do not know".

(Surah An-Nahl, 43)

This verse clearly stated that if someone is not an expert in certain field, they must seek for an expert to help and guide them. The court use this verse to allow the use of expert in helping to decide court cases.

In the use of expert in this method, expertise can be divided into two parts, one is expert in the field of forensic and the other one is in the field of witchcraft and black magic. According to (Ismail, 2011) an expert in forensic field is needed because it can help by examine evidence that is left or found. Evidence like thumbprint, blood, DNA, cloth pieces, footprint and other things can be examined to find the mastermind of the cases. With the help of the forensic the court can judge the defendant more accurate and fairer.

Secondly, the need of opinion from experts who know about witchcraft. According to Suleiman (2014), any individuals who have extensive experience and are recognized by the community as Islamic medical experts can be considered as a reliable person to give an opinion. It depends on the judge whether to maintain or reject the statement. The need for expert opinion on matters

This was stated by the Judge of the Court of Appeal in the case of *Mustafa Batcha v. Habeeba Abd. Rahman* [1410] JH 41:

"The learned judge did not record any of the facts from the case and he also did not summon the healer who treated the appellant to get statements in order to ensure that the appellant was really sick due to witchcraft which caused the divorce." The use of expert is allowed in syariah court. Moreover, it is a must to help the judge to decide whether someone is under the influence of witchcraft or not.

This is clearly mentioned in Section 33 of the Syariah Court Evidence (Federal Territories) Act 1997:

Section 33.

(1) When the Court needs to do something

opinion on a matter concerning the law of a foreign country or about science or art, or about the identity or authenticity of the handwriting or fingerprints or relating to determination *nasab*, then the opinion on the matter from people with special skills in the law of that foreign country, science or art, or in matters of identity or authenticity handwriting or fingerprints or related with the determination of *nasab*, is *qarinah*.

(2) Such a person is called an expert.

(3) Two or more experts should be called to provide evidence if possible but if There are no two experts, then the evidence an expert is sufficient. If two people experts give different opinions, then he third expert should be called for provide information.

Therefore, in any case involving the crime of witchcraft, the court can use expert energy to assist the judge in judging fairly and accurately

Al-Qarinah

The other technique used in court to assess whether or not a person is impacted by witchcraft is called *al-Qarinah*. *Al-qarinah* is defined as any indicator that unmistakably reveals something hidden (al-Zuhaily, 1989). In *Majallah al-Ahkam al-'Adliyyah* in matter 1741, *Al-Qarinah* denotes any indicator or signs that reach a confidence level (Ali Haidar, etc.). In other words, *al-Qarinah* means proof or evidence that is found related to the cases. For example, a man left from bank looking nervous with pocket full of money while the ATM machine in the bank is broken. So, this situation can act as evidence and proof of stealing because how come that the man withdraw his money while the ATM machine is broken even though nobody sees the man steal the money.

In cases related to witchcraft, *Al-Qarinah* is acceptable as a method to prove and convict the punishment towards the offender. Evidence can be in a lot of form, items that found related to the case, story told by other, camera footage can be used in the court. The discovery of materials commonly used in the practice of witchcraft owned by an individual can proved by the owner to be a witch practitioner. For example, the human skull, a special space that contains worship tools, dolls, charms, amulets and many more that have elements shirk to Allah S.W.T. This shows that, *Al-Qarinah* has an important role in the process of proving the crime of witchcraft by looking at the signs that occur.

Criminal acts involving witchcraft are heard and tried in court. There are also cases that cannot be judged due to the lack of expert energy in this field. Only certain cases are judged and heard. This is to avoid injustice in the court process. Strong evidence must be presented in making a decision so that the decision made is fair. So, the method of *ru'ya khabir* and *al-Qarinah* is used by the court in determining the punishment and guilt of the perpetrator.

Shamanism in the context of Islamic criminal law

As we know, Islam strongly rejects the use of black magic, the practice and usage of black magic is prohibited and considered as haram in Islam. It considered as one of the biggest sins since black magic have correlation on polytheism (*syirk*). Based on a verse in the Quran:

Translation: "And they followed [instead] what the devils had recited during the reign of Solomon. It was not Solomon who disbelieved, but the devils disbelieved, teaching people magic and that which was revealed to the two angels at Babylon, Harut and Marut. But the two angels do not teach anyone unless they say, "We are a trial, so do not disbelieve [by practicing magic]." And [yet] they learn from them that by which they cause separation between a man and his wife. But they do not harm anyone through it except by permission of Allah. And the people learn what harms them and does not benefit them. But the Children of Israel certainly knew that whoever purchased the magic would not have in the Hereafter any share. And wretched is that for which they sold themselves, if they only knew".

(Surah Al-Baqarah, 2:102)

According to (Dr Zul, 2022) Many Islamic scholars translate this verse as evidence from the Qur'an that shows the prohibition of witchcraft. Ibn Kathir interpreted the words of Allah SWT: 'وَيَتَعَلَّمُونَ مَا يَضُرُّهُمْ وَلَا يَنْفَعُهُمْ' (And in fact they learn things that only harm them and do not benefit them), [Surah al-Baqarah: 102], he said: "It causes harm in religion them (Islam) and there is no benefit in it.". Ibnu Hajar in the book Fath al-Bari took the verse in Surah al-Baqarah verse 102 as proof of the prohibition of magic because Allah SWT disbelieves the devil because of his teaching of magic. Therefore, anyone who learns it is damaging the Aqidah and is considered a blasphemer.

Punishment against witches has changed over time. Scholars also have different opinions in sentencing witches. According to Islam, punishment for criminal offenders can be categorized into three. Hudud, *qisas* and also *ta'zir*. The question is, is this witchcraft crime classified as a hudud, *qisas* or *ta'zir* crime?

Witchcraft crime with Hudud

Some scholars state that this magic is included in the hudud category because its effects include all crimes classified as hudud crimes. This is because, through magic, a person can commit the crime of stealing, robbery, rape and other hudud crimes (Sabree, 2015). Doing magic can also be said to be apostasy because with magic one depends on something other than God. Apostasy is a crime classified under hudud punishment. This further strengthens the evidence that this witchcraft crime can be classified as a hudud crime.

Crime of witchcraft and qisas

As for *qisas* punishment, sorcery can also be classified under a crime that needs to be punished with *qisas* (Na'mah 2014). *Qisas* punishment is one of the punishments under Islamic law. This crime involves punishment for crimes related to murder. In Islam, murder can be classified into three parts. The first is intentional killing, killing appears to be intentional and accidental killing.

Killing with Intentions of Killing

A person can be convicted of intentional homicide when he has the intent to kill and uses a deadly weapon. For example, witches use spells that usually cause death. Therefore, the penalty of *qisas* is hereby imposed on him because he committed intentional murder.

Killing appears to be intentional

Premeditated murder is when a sorceress confesses that she has bewitched her victim but the effect does not always lead to death. Therefore, based on the information received, this offense belongs to the offense of intentional homicide and is required to be punished with *mughallazah*, which is severe.

Accidental killing

This situation occurs when a witch casts a spell on someone who is thought to be the victim, but it is the wrong person and causes the death of that person. Due to the offense, the witch was subjected to a light penalty of *diat*, which is *diat mukhaffafah*. All types of *diat* must be performed by the criminal himself without the help of others. according to imam Syafi'e, the confession made by the murderer himself obligates him to pay for it alone.

Witchcraft crime and Ta'zir

Magic takes many forms. Some can bring death, fascinate and some are also for the purpose of hurting. The crime of witchcraft that is intended to harm the victim can only be classified under the crime of *ta'zir*. For example, a witch was caught and confessed that she had bewitched her victim only to hurt and not to kill. Through the evidence received, witches can be punished with *ta'zir*. This is based on Imam Syafie's opinion. This is because harming using magic is not included in the offense of hudud and *qisas*, so the authorities are responsible for imposing *ta'zir* punishment on the offense.

The majority of scholars think that this crime of witchcraft falls under the offense of *ta'zir* because there is no specific evidence related to this crime and the form of punishment for it. Therefore, all offenses caused by witchcraft are classified as *ta'zir* offences.

Punishment for the crime of witchcraft under Islamic law

There are not many arguments that specifically punish witches. Therefore, scholars have different opinions about the punishment for sorcerers. Imam Malik thinks that the punishment for witchcraft is the death penalty and his repentance is not accepted. This is based on the argument that people who practice magic are considered to be unbelievers.

Translation: "...while these two did not teach anyone except after they advised him by saying: "Indeed we are only a test (to test your faith), so do not become a disbeliever (by learning it)."

(Surah Al-Baqarah, 2:102)

Using witchcraft is considered as infidelity because human dependence on other beings is absolutely forbidden and punishable as infidelity. Therefore, the punishment for those who disbelieve is the death penalty. Scholars such as al-Imaam Ahmad, Imam Ibn Thaur, Imam Ishak, Imam as-Syafie also hold the same opinion and Imam Abu Hanifah (Tafsir al-Qurtubi, 2/48).

Imam an-Nawawi said that magic sometimes leads to disbelief and sometimes not, but leads to major sins. If there is an act or word that leads to disbelief, then the perpetrator is a disbeliever, if not, then it is not disbelief. As such, the law of teaching it is still considered unlawful (Sahihi Muslim syrah 14/176).

The scholars of the Maliki school agree with the opinion of the scholars of the Hanafi school about the death penalty for witches. this is because if a Muslim learns and practices magic, he has indirectly become a blasphemer and should be killed without telling him to repent.

While imam Syafie thinks that the punishment for sorcerers depends on what they do. If his magic is done only to hurt without killing his victim, he is only subject to *ta'zir* punishment only. In Tafsir Ibnu Kathir, Imam Syafie and Imam Ahmad narrated the story of 'Amru bin Bin Dinar RA had heard Bajalah bin 'Abdah who carried out Saidina Umar's order by killing three sorcerers. The matter is further strengthened by the act of Hafsah Umm al-Mu'minin that there is a person from the Jariah. (maid) who has cast a spell on herself. If it is found that he is guilty, then he is sentenced to death as stated in Tafsir Ibnu Kathir as "in fact, his servant (maid) was killed because of his magic".

However, the jurists do not agree with the scholars of the Syafie school and say that if a Muslim becomes a sorcerer, then he has left his religion and become an apostate. Therefore, he should be killed even before he is asked to repent. According to Imam Malik, he will not be asked to repent of his disbelief because a Muslim when his heart has become apostate then his repentance cannot be confirmed even if he has shown his Islamic practise.

Conclusion

Witchcraft is a practice strictly prohibited in Islam. This is evidenced by the existence of severe punishment for its practitioners. Acts of magic can make the practitioner shirk and disbelief in God and is listed among the seven major sins that will be punished with pain. As a result of the researcher's study, witchcraft is a heavy case to try in court. This is because the lack of experts in this field makes cases related to witchcraft not heard and tried in court. The need for experts in this field is very important so that this crime does not spread. Also, the lack of laws that prohibit and punish make this crime more prevalent. Malaysia needs a special enactment regarding the crime of witchcraft. Of course, the effects of magic cannot be seen with the naked eye, but that does not mean that it does not exist. The need for law enforcement is very necessary to avoid the prevalence of this crime

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