

**MARRIAGE DISSOLUTION BASED ON ISLAMIC LAW OF EVIDENCE IN TERENGGANU STATE: ANALYSIS OF BLACK MAGIC CASES**<sup>i,\*</sup>Muhammad Asdaq Masyarie Mohd Ruzi & <sup>i</sup>Wan Abdul Fattah Wan Ismail<sup>i</sup>Faculty of Syariah and Law, Universiti Sains Islam Malaysia, Bandar Baru Nilai, 71800 Nilai, Negeri Sembilan, Malaysia\*(Corresponding author) e-mail: [asdaqruzi0909@gmail.com](mailto:asdaqruzi0909@gmail.com)**Article history:**

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**ABSTRACT**

This article examines the procedural adjudication of divorce cases involving allegations of black magic (*sihr*) through the framework of Islamic evidentiary laws. Specifically, it focuses on how the Terengganu Syariah Court Evidence Enactment 2001 can serve as a legal mechanism to prove the existence of supernatural elements in matrimonial disputes. The study outlines four primary objectives: first, to elucidate classical and contemporary scholarly opinions regarding the validity of divorce under the influence of black magic; second, to identify the specific typologies of magic that frequently precipitate marital breakdown; third, to evaluate the evidentiary methods and procedures utilized to confirm such divorces based on the Enactment; and fourth, to analyze practical case applications within the Terengganu Syariah Court. Employing a qualitative methodology, data for this study was gathered through a comprehensive literature review of legal statutes, religious texts, scholarly jurisprudence, and relevant case laws. The findings demonstrate that under the Terengganu Syariah Court Evidence Enactment 2001, methods such as confession (*iqrar*), testamentary evidence (*shahadah* or *bayyinah*), expert opinions (*ra'y al-khabir*), and decisive oaths (*yamin*) can be systematically applied to substantiate claims of black magic. By analyzing landmark cases such as Nurhisam bin Johari v. Shamliza binti Shafie, this paper illustrates how these evidentiary principles are deployed in judicial practice to ensure fairness, clarity, and reliability in complex supernatural disputes. Ultimately, this research provides the Syariah judiciary with critical insights into optimizing Islamic evidence acts when handling matrimonial cases intertwined with magical elements.

## Introduction

The utilization of black magic (*sihr*) to inflict harm is an enduring phenomenon deeply embedded in the history of human civilization (Mohd Razali et al., 2023). Since antiquity, societies have established stringent legal mechanisms to restrict and combat sorcery, as evidenced during the Roman civilization under Julius Caesar, where the Twelve Tables prescribed burning at the stake for practitioners of the occult (Ismail, 2012). In the realm of Islamic theology, magic is conceptualized as a malicious act executed through demonic intervention to oppress, deceive, or harm victims (Suleiman, 2014). Historically and textually, one of the primary motivations behind the deployment of such supernatural elements is the destabilization and dissolution of the marital bond. This reality is explicitly recognized in the Holy Qur'an:

Translation: Yet they learn from them that by which they cause separation between a man and his wife.

(Surah Al-Baqarah, 2:102)

Modern socio-legal studies similarly corroborate that marital breakdowns are occasionally exacerbated by supernatural interference, which incites irrational hostility, negative psychological states, and ultimately, involuntary divorce (Kusmin, 2017). Consequently, Islamic jurisprudence strictly prohibits the practice of magic, classifying it as a severe, capital sin (*kabirah*).

When matrimonial disputes involving allegations of black magic enter the legal arena, they present profound evidentiary dilemmas for the Shariah judiciary. As observed by Raihanah Abdullah (2000), confirming a divorce intertwined with occult variables demands an extraordinarily rigorous examination of legal testimonies and proofs. Judges are perpetually confronted with the judicial dilemma of whether to judicially admit or dismiss these metaphysical claims when determining the validity or occurrence of a divorce. In Malaysia, this issue has gained considerable judicial attention through landmark cases such as *Mustafa Batcha v. Habeeba Abd. Rahman* JH 41, *Re Wan Norsuriya* JH 211, and the contentious proceedings of *Muhammad Kamran Babar Nazir Khan v. Yani Yuhana Mohd Zambri* (Ismail, 2011). Despite the recurring nature of these disputes, the issue continues to receive limited systemic attention due to the absence of specific, codified substantive guidelines addressing the legal definition and parameters of magic (Ismail, 2012). Nevertheless, the Syariah court is bound to evaluate these claims indirectly by relying on existing statutory rules of evidence. In the state of Terengganu, the primary legislative framework governing such adjudications is the Terengganu Syariah Court Evidence Enactment 2001, which provides the procedural parameters for assessing the admissibility and reliability of evidence.

To bridge this lacuna, this study establishes a structured academic inquiry driven by several critical research questions. Primarily, it seeks to explore how classical and contemporary Islamic scholars view the theological and legal validity of a divorce pronounced under the influence of black magic. Concurrently, it investigates the specific typologies of magic that are most commonly associated with marital discord. Crucially, from a procedural standpoint, this inquiry questions the exact legal methods and standards of proof required to judicially confirm a magic-induced divorce under the statutory framework of the Terengganu Syariah Court Evidence Enactment 2001, and how these provisions are applied in actual judicial practices within the state of Terengganu.

By addressing these core inquiries, this research outlines four pivotal objectives. First, it aims to provide a comprehensive exposition of scholarly Islamic jurisprudence regarding the legal status of a divorce executed under supernatural influence. Second, it intends to identify and classify the distinct types of magic that frequently precipitate domestic separation. Third, this paper evaluates the specific evidentiary methods, mechanisms, and procedures utilized to verify these complex divorces, focusing heavily on the statutory provisions of the Terengganu Syariah Court Evidence Enactment 2001. Finally, through a pragmatic judicial lens, this study analyzes specific case law applications within the Terengganu Syariah Court to illustrate the operational execution of these legal methods. Ultimately, this study anticipates providing the Syariah judiciary and legal practitioners with critical insights into optimizing Islamic evidence acts when navigating the complex intersection of metaphysical allegations and family law.

## Literature Review

The belief in occult knowledge and supernatural phenomena remains deeply entrenched within contemporary society, particularly among the Malay community, where such practices are sustained as a generational heritage. While these occult traditions possess historical significance, their continued practice often directly contravenes Islamic principles (*Syariah*) and inflicts profound harm upon individuals, necessitating decisive institutional intervention. Typically, practitioners of the occult operate clandestinely to avoid regulatory scrutiny. Nevertheless, as Nasri (2015) observes, a modern subterranean market persists where sorcerers actively offer services either to treat ailments or to maliciously harm adversaries. Under Malaysian jurisprudence, inflicting harm or causing death through occult means falls within criminal thresholds; however, the enforcement of criminal law against magic-induced offenses remains unrealized due to profound evidentiary ambiguities, systemic obstacles in establishing causation, and the absence of standardized procedural guidelines regarding supernatural elements.

Furthermore, as delineated by Sahad and Abdullah (2013), a unifying esoteric framework underlies various specific typologies of magic, such as *santau* (poisonous bewitchment). Sorcery (*sihr*) is intrinsically linked to rituals involving the invocation and intervention of jinn and demonic entities. Because the immediate operational effects of sorcery defy empirical observation, its manifestation must be inferred circumstantially through the anomalous behavior of the victim, erratic surrounding conditions, or the testimonies of third-party observers. Within Malay domestic contexts, separation magic (*sihr al-tafriq*) constitutes a prevalent form of occult malice deployed specifically to sow discord, incite mutual aversion, and destabilize the marital bond between couples. The pervasive deployment of this specific sorcery has driven a broader sociological perception that supernatural interference significantly correlates with the escalating divorce rates in Malaysia.

From a matrimonial litigation perspective, Abdullah (2000) posits that any petition for the dissolution of marriage—including judicial divorce (*fasakh*)—must strictly adhere to statutory requirements and possess valid, substantiating grounds under *Syariah* law. This principle underscores that a marriage cannot be dissolved arbitrarily or on trivial grounds, notwithstanding the husband's unilateral right to pronounce divorce (*talaq*). Crucially, in complex litigations where the confirmation of *talaq* involves allegations that the husband pronounced the formula under the compelling influence of sorcery, the court must initiate an exhaustive evidentiary inquiry before determining the validity of the pronouncement. The primary judicial consideration in these specific contexts rests on assessing the husband's capacity (*ahliyyah*), as victims of *sihr al-tafriq* typically experience compromised mental awareness, cognitive disorientation, or a temporary loss of free will at the exact moment of the pronouncement.

This judicial complexity is further illustrated by Ismail (2012) through unstructured interviews with *Syariah* Court judges in Kuantan and Kuala Terengganu. The findings reveal a consensus among the judiciary that supernatural interference in domestic disputes is a verifiable reality encountered during trials. Regrettably, these claims are routinely dismissed due to two primary institutional factors: the failure of the claimant to satisfy the standard of proof regarding the existence and impact of magical elements, and the acute deficiency of structured guidelines or explicit statutory provisions addressing metaphysical evidence. To evaluate whether a victim's behavioral and physiological anomalies fall within the recognized symptomology of sorcery, judges must rely heavily on expert testimonies. This evidentiary mechanism aligns with classical Islamic jurisprudence; as noted by As-Syarbini (1978), an individual well-versed in the mechanics of sorcery—even a reformed practitioner who has sincerely repented—is juristically eligible to be called as an expert witness to elucidate the intricacies of occult practices. Consequently, contemporary experts in Islamic complementary medicine (*perubatan Islam*) can be summoned to provide expert opinions (*ra'y al-khabir*), though the ultimate judicial discretion to admit or reject such testimonies resides solely with the presiding judge.

Ultimately, the evidentiary process in matrimonial disputes involving claims of magic is inherently labyrinthine due to the metaphysical nature of the variables involved, such as unseen spiritual entities. Therefore, treating these cases with absolute judicial gravity is essential not only to uphold equity but also to safeguard the fundamental rights of vulnerable litigants. While previous scholarship has extensively examined the generalized methods of proving magic and cataloged the common symptoms manifested by victims, there remains a distinct lacuna in literature regarding the dissolution of marriage analyzed

specifically through the statutory lens of the Terengganu Syariah Court Evidence Enactment 2001. This study directly addresses this research gap by evaluating the precise procedural and evidentiary methods required to judicially confirm a magic-induced divorce under the Enactment. By doing so, this research offers a critical contribution toward refining Syariah judicial procedures, ensuring justice for victims of malicious sorcery while preserving the sanctity of Islamic family law.

## Methodology

This study employs a qualitative research design to investigate the procedural and evidentiary dimensions of marital dissolution involving allegations of black magic (*sihir*), analyzed specifically through the statutory framework of the Terengganu Syariah Court Evidence Enactment 2001. A qualitative approach is uniquely suited for this inquiry as it facilitates an in-depth, holistic exploration of complex socio-legal and metaphysical phenomena that cannot be quantified empirically. To achieve a comprehensive understanding of how supernatural allegations intersect with Islamic family law, data collection and analysis are structured across three interconnected phases.

The foundational phase of the methodology involves an extensive, systematic literature review of both primary and secondary sources. This comprehensive doctrinal analysis encompasses classical and contemporary Islamic legal jurisprudence (*fiqh*), relevant religious texts, statutory legislations, and peer-reviewed academic literature. By synthesizing these sources, the study establishes a robust theoretical baseline regarding the theological validity of divorce under supernatural influence and the traditional parameters of Islamic evidentiary law. Concurrently, the study relies on the Terengganu Syariah Court Evidence Enactment 2001 as its primary statutory benchmark. A meticulous textual analysis of this enactment is conducted to evaluate the exact legal mechanics, procedural rules, and standards of proof—such as *iqrar* (confession), *shahadah* (testimony), and *ra'y al-khabir* (expert opinion)—available to litigants and judges in the state of Terengganu.

To ground the theoretical and statutory frameworks in judicial reality, the subsequent phase utilizes a qualitative case study approach. This involves examining specific, documented Shariah court case files and judicial precedents within the Malaysian Shariah court ecosystem, with a particular focus on matrimonial disputes featuring allegations of sorcery that mirror the jurisdictional context of Terengganu. Analyzing these practical cases, such as *Nurhisam bin Johari v. Shamliza binti Shafie*, provides critical insights into the operational realities of the courtroom, illustrating how judges interpret metaphysical claims and apply statutory evidence rules in real-life adjudications.

In the final phase, the data compiled from the statutory analysis, jurisprudential literature, and judicial precedents are synthesized holistically using thematic and content analysis. By cross-referencing statutory boundaries with practical judicial trends, the study identifies recurring patterns, procedural hurdles, and systemic factors that influence the outcome of magic-induced divorce claims. Ultimately, this rigorous methodological framework allows the researcher to delve deeply into the intersection of theology, legislation, and judicial practice, providing a nuanced perspective on the administration of justice in supernatural domestic disputes within the Terengganu Syariah Court.

## Findings and Discussion

### *Islamic Jurisprudential Views on the Validity of Divorce Under the Influence of Sorcery*

In Islamic jurisprudence (*fiqh*), the validity of a unilateral divorce (*talaq*) is intrinsically tied to the legal capacity (*ahliyyah*) and mental competence of the husband at the exact moment of pronouncement. When analyzing the legal status of a divorce pronounced under the influence of sorcery (*sihir*), classical and contemporary jurists draw a direct legal analogy (*qiyas*) between a severely bewitched individual and a person experiencing temporary insanity or cognitive impairment. According to contemporary legal edicts compiled in *Fatawa wa Ishtisharat al-Islam al-Yaum*, if an individual is bewitched to such an extent that it induces a total loss of sanity and consciousness—compelling them to utter words involuntarily—the pronounced divorce is deemed judicially ineffective. This position is firmly anchored in the prophetic tradition narrated by Aisha R.A., where the Prophet Muhammad SAW stated: "*There is no divorce and no emancipation in a state of ighlaq (coercion or loss of rationality)*". This fundamental requirement of sound mental capacity is further substantiated by the mainstream Shafi'i school of thought. As articulated in *Al-Fiqh al-Manhaji 'ala Madhhab al-Imam al-Shafi'i*, the execution of *talaq* requires the husband to

possess complete and unimpaired rational faculties. Consequently, any pronouncement of divorce articulated by a child, a mentally unstable individual, or a sleeping person is legally void. This principle is derived from the well-known tradition narrated by Ali R.A., where the Prophet SAW noted: *"The pen has been lifted from three: from the sleeping person until he wakes up, from the minor until he reaches puberty, and from the insane person until he regains his sanity"*. Within this legal paradigm, if a husband is verified to have uttered the formula of divorce while his cognitive faculties were entirely subjugated by malicious sorcery, his accountability is legally suspended, rendering the *talaq* invalid.

To further consolidate these evidentiary criteria, Usman (1995) outlines that the validity of *talaq* is dependent upon specific constituent elements (*arkan*), which include a rational husband, a valid wife, appropriate articulation (*sighah*), the explicit intention to divorce (*qasad*), and independent legal authority. In this context, authority refers to the presence of free will (*ikhtiyar*) accompanied by complete mental equilibrium. Therefore, a divorce induced by external metaphysical coercion or impaired awareness is void, aligning with alternative prophetic transmissions that invalidate legal declarations made under *ighlaq*, which jurists also interpret to include states of overwhelming, blind rage or severe psychological distress.

Nevertheless, Islamic scholars distinguish between different degrees of supernatural affliction to prevent the arbitrary abuse of these claims in Shariah courts. The judicial determination of validity depends heavily on the specific level of consciousness retained by the husband (Rosyidah, 2020). If the magic operates within a mild threshold—where the husband remains rational, retains self-control, and fully comprehends the legal consequences of his words—the pronouncement remains valid and legally binding. Conversely, if the sorcery severely impairs his consciousness to the point of cognitive disorientation—such as failing to recognize his own family members—he falls under the exempted category of an individual who has lost rational memory and capacity.

This nuanced judicial categorization aligns with the classical juristic edicts of Ibn Taymiyyah in *Mukhtasar al-Fatawa al-Misriyyah* (p. 544), which states: *"If a person is bewitched to the extent that he is completely unaware of what he is articulating, the divorce does not take effect. However, if the sorcery does not impair his rationality and consciousness, such as magic aimed strictly at preventing sexual intimacy (sihr al-rabt), then any pronounced divorce is legally valid"*. In summary, Islamic jurisprudence categorizes the validity of divorce in occult disputes into two distinct legal scenarios. First, when a husband pronounces *talaq* in a state where his cognitive and rational faculties are completely overwhelmed or negated by sorcery, the divorce is legally ineffective due to the absence of valid intent (*qasad*) and free will. Second, when the alleged magic targets external physical conditions without disrupting the husband's core mental sanity or legal awareness—such as binding spells or sexual impediments—the pronounced divorce satisfies all statutory requirements and is deemed judicially valid.

### ***Types of Magic Commonly Leading to Divorce***

In general, there are various types of magic prevalent in society, especially among the Malay community. Among these types, some are commonly associated with divorce cases, such as *"santau"* (bewitchment), magic aimed at separating spouses (divorce magic), and magic used to subdue victims (subjugation magic). Additionally, another common type of magic experienced by victims in divorce cases involves magic through the evil eye, used to deceive one's vision (hypnosis). Among these, the most considered dangerous type of magic is the one capable of causing someone to go insane, cloud their mind, induce incurable diseases through modern medical methods, and physically harm the victim to the extent of appearing powerless (Mat Hassan, 2016: 4).

According to Kusmin (2017: 3), couples affected by divorce magic typically face a situation where the feelings of love between them fade instantly, turning into hatred. This is because divorce magic, or *"sihir al-tafriq"* is used to separate the relationships between spouses, family members, and friends. Such situations are accompanied by strange behavior by the affected spouse, such as distancing themselves without reasonable cause. Additionally, the victims of divorce magic may feel uncomfortable at home, spending more time outside than with the family. This kind of magic raises doubts, leading to frequent arguments and a reluctance to forgive, eventually pushing the parties to seek divorce in court.

In the case of *Mustafa Batcha v. Habeeba Abd. Rahman*, 13 appellants claimed to have pronounced divorce while not in control of their senses due to the influence of magic. They believed they were bewitched after successfully obtaining a canteen tender at a factory, causing mental unrest, frequent fights, and anger towards their beloved wives. In a state of unconsciousness, they applied for divorce. The court did not consider their claim to be bewitched, and the divorce was deemed effective.

Furthermore, subjugation magic, used in cases involving divorce, aims to force the victim to obey all commands and suggestions of the practitioner. Victims in this state are constantly reminded and excessively yearn for the practitioner. They willingly follow any orders without their consent, as the enchantment is designed to subdue and control the victim's feelings and rational judgment. In the case of *Re Wan Norsuriya* (1414) JH 211, the court ruled that the petitioner was under the influence of magic during the marriage with the respondent, based on evidence presented. Therefore, the marriage was declared invalid according to Islamic law and not recognized in legal terms (Kusmin, 2016: 7).

Lastly, another type of magic commonly observed in divorce cases is "*santau*". *Santau* is a branch of magical practices sent by practitioners with the intention of causing harm, injury, or even death to a specific individual. *Santau* generally falls into two categories: "*santau hakiki*" involving toxic and dangerous materials that are easily treatable, and "*santau angin*" involving the worship of jinn and demons, making it challenging to cure (Mat Hassan, 2016).

The understanding of *santau* among the Malay community involves traditional practices that cause itching, blisters, poisoning, and pain to harm specific individuals for certain purposes. This type of bewitchment can lead to the victim's body developing sores with a foul odor (Jahid Sidek, 2006), feeling sharp pain and experiencing a venomous sensation (Kasimin, 2002). If any spouse complains that the cause of physical disability or injury is believed to be due to magic through common signs, the court should give the oppressed party an opportunity to defend themselves.

### ***Verification Methods for Divorce in Cases of Magic Based on the Terengganu Shariah Court Evidence Enactment (2001)***

In a general context, there are several categories and types of evidence that can be presented in court, influencing judges' decisions in various types of cases, including those related to magic or divorce due to magic, or any case in Sharia courts. Here are some aspects that may be relevant based on the Terengganu Sharia Court Evidence Enactment (2001).

#### ***Iqrar (Confession)***

According to Section 17 of the Terengganu Sharia Court Evidence Enactment 2001:

#### **Section 17. Definition of Iqrar**

"*Iqrar*" means a confession made by a person, in writing or orally or by gesture, stating that he has an obligation or liability to any other person regarding a right.

The admissibility of *iqrar* in the context of judgment is logical because no sane person would willingly bear liability or punishment based on a confession unless it is true. The saying goes, "brave because it's true," so because it's true, a person is willing to make a false confession and accept the consequences or punishment resulting from that confession (Saad, 2015; Alias, 2023). However, for a court to accept such a confession, it must meet specific requirements. Section 18 of the Terengganu State Sharia Court Evidence Enactment (2001) mentions:

#### **Section 18. Admissibility of Iqrar (Confession)**

- (1) The following *iqrar* shall not be admissible:
  - (a) *iqrar* of someone who is not '*agil baligh* (mentally mature);
  - (b) subject to subsection (2), *iqrar* of a person who is not an adult;
  - (c) *iqrar* of a person who is insane or mentally incapacitated (*ma tuh*);

- (d) *iqrar* of a guardian or custodian made on behalf of a person under their care or responsibility,
- (e) *iqrar* not made voluntarily, or
- (f) *iqrar* of a person prohibited by any written law from administering their property (*Mahjur 'alaih*).

The above provision states that the person making the confession of a crime must be sane and of sufficient age. Based on this requirement, the confession of a minor, an insane person, and a mentally incapacitated person (*al-ma'tuh*) is not valid, meaning it cannot be accepted by the court. Additionally, the confession must be in the form of words, not in writing or gestures. However, scholars differ in the acceptance of the confession of a mute person through understandable gestures. According to the Shafi'i school, it is acceptable, but according to the Hanafi school, it is not. The confession must be made willingly and not under compulsion. In other words, it should not be influenced by anything that impairs the freedom to choose, such as coercion, intoxication, insanity, and the like (Ismail, 2008).

In the context of divorce with allegations of magic, all the above provisions indicate that *iqrar* can be used to assist the judge in deciding whether to confirm, accept, deny, or reject allegations of magic in a divorce case. The court can decide the existence of magical elements in the divorce based on the confession of the magician. If the magician makes a confession in court, and the confession meets the *iqrar* requirements as stated in Section 18 of the Terengganu State Sharia Court Evidence Enactment 2001, the court can decide that the confession is valid. These requirements include the magician being mentally mature, sane, not forced, and not someone prohibited by any written law from administering their property. Additionally, if a husband pronounces *talak* (divorce) to his wife, the court can decide that the divorce is valid and not influenced by magic if the husband confesses, in accordance with Section 18, that he pronounced *talak* in a conscious state and not influenced by magic.

### **Witness**

Another form of evidence used in Sharia courts is testimony given in the form of *shahadah*. The terms "*shahadah*" and "witness" are interpreted by Section 3 of the Terengganu Sharia Court Evidence Enactment (2001) as follows:

### **Section 3. Interpretation**

"*Shahadah*" means any testimony given in court using the phrase "*asyhadu*" to prove a right or interest. "Witness" does not include the plaintiff, defendant, or the accused.

Based on the above provision, *al-shahadah* is a type of oral testimony preceded by the phrase "*asyhadu*" given in court by a witness who qualifies as a competent witness to provide testimony (Ramlee, 2015; Wan Ismail et al., 2023). The Terengganu Sharia Court Evidence Enactment (2001) has specified the conditions for giving *shahadah*. Section 83 states:

### **Section 83. Who can provide testimony as a witness.**

- (1) Subject to the provisions of this section, all Muslims are competent to give testimony or evidence as witnesses, provided that they are '*aqil* (sane), '*baligh* (mature), '*adil* (just), have a good memory, and are not prejudiced.
- (2) A non-Muslim is competent to provide evidence for a Muslim if their testimony is acceptable according to Islamic law.
- (3) An unjust person is competent to provide evidence but not competent to give testimony.
- (4) A person who is not mature or a person of incomplete mental capacity is competent to provide evidence but not competent to give testimony.
- (5) A person with a weak memory, forgetful, or suffering from memory loss is competent to provide evidence but not competent to give testimony.

(6) A person whose credibility is doubted due to a close relationship with and having an interest in the opposing party is competent to provide evidence but not competent to give testimony.

(7) A person whose credibility is doubted due to a bad relationship with the opposing party is competent to provide evidence but not competent to give testimony.

According to the above section, for an individual claiming to be bewitched while pronouncing divorce (talaq) to his wife, he can bring witnesses to support the claim. The testimony provided by a witness can be considered as testimony if the witness meets specific criteria, namely being male, sane, mature, just, having a strong memory, and being unbiased. Meanwhile, if someone does not meet these criteria, the requirements for giving testimony, they can still provide evidence based on *bayyinah* but not testimony (Al Shibili et al., 2019). Additionally, the testimony given must have a sufficient number of witnesses. Section 86 of the Terengganu Sharia Court Evidence Enactment (2001) specifies this.

### **Section 86. Number of Witnesses**

(1) The claim by someone known to be wealthy that he has become poor is not sufficient to prove his claim unless it is supported by the testimony of three male witnesses.

(2) In the case of sighting the new moon, the testimony of a just man is sufficient to prove the fact.

(3) The testimony of a man shall be sufficient evidence in the following circumstances:

- (a) the testimony of a teacher in matters involving a school student;
- (b) the testimony of an expert in assessing damaged goods;
- (c) testimony about the acceptance and rejection of witnesses;
- (d) notification of the dismissal of a representative;
- (e) testimony about defects in any goods for sale.

(4) The testimony of a woman is sufficient to prove any facts that are commonly seen or known by a woman.

(5) Except as otherwise provided in this section, testimony shall be given by two male witnesses or one male witness and two female witnesses.

This section establishes the requirement for different numbers of witnesses depending on the nature of the claim or fact that needs to be proven. For the claim of loss of wealth, the claim of someone known to be wealthy is not sufficient without the support of the testimony of three male witnesses. In the case of sighting the new moon, the testimony of a just man is already sufficient to prove the fact. Furthermore, the testimony of a man is considered sufficient in certain specific situations, including the testimony of a teacher in matters involving a school student, the testimony of an expert in assessing damaged goods, testimony about the acceptance and rejection of witnesses, notification of the dismissal of a representative, and testimony about defects in goods for sale. The testimony of a woman is sufficient to prove facts that are commonly known by women, such as the testimony of a midwife in matters related to menstruation. Additionally, unless otherwise specified in this section, testimony must be given by two male witnesses or one male witness and two female witnesses. Based on this, witnesses to prove bewitchment in divorce would require two male witnesses or one male witness and two female witnesses.

### **Oral Testimony**

All factual information about a claimed case can be proven through the oral testimony of witnesses (Mohd Shariff, 2011). This matter is mentioned in Section 46 of the Terengganu Sharia Court Evidence Enactment (2001) as follows:

#### **Section 46. Proof of facts by oral testimony**

All facts, except the contents of documents, can be proven by oral testimony.

Furthermore, the oral testimony to be provided by witnesses, whether as testimony (*syahadah*) or evidence (*bayyinah*), must be directly related to the following matters:

#### **Section 47. Oral testimony must be direct**

(1) In all circumstances, oral testimony must be given directly, i.e.:

- (a) If it refers to facts that can be seen, it must be the testimony of a witness who claims to have seen those facts;
- (b) If it refers to facts that can be heard, it must be the testimony of a witness who claims to have heard those facts;
- (c) If it refers to facts that can be perceived through any other sense or by any other means, it must be the testimony of a witness who claims to have perceived it with that sense or by that means;
- (d) If it refers to an opinion or the reasoning underlying that opinion, it must be the testimony of the person holding that opinion based on those reasons.

The conditions for oral testimony emphasized in this section underscore the necessity of providing testimony directly and relating to facts that can be seen, heard, or perceived through senses, as well as relating to specific opinions or reasoning. These principles emphasize clarity and reliability in presenting testimony to ensure the integrity of the legal process in the Terengganu Sharia Court.

In the context of divorce due to black magic, witnesses can provide oral testimony in court about their direct experiences related to signs of witchcraft, behavioral changes, or the influence of witchcraft that can be seen or felt in the individual who uttered divorce with the claim of being bewitched during the pronouncement of divorce. This principle ensures that the testimony given is relevant and directly related to the issues discussed in the divorce case.

#### **Expert Opinion**

In certain circumstances, the judge may require the expertise of specialists to provide advice on specific matters to dispel doubts. The authority to seek expert advice is contained in the Terengganu Sharia Court Evidence Enactment (2001). Section 33 states:

#### **Section 33. Expert Opinion**

- (1) When the Court needs to form an opinion on matters concerning the laws of a foreign country or matters related to science or art, or concerning the identity or genuineness of handwriting or fingerprints or related to determining lineage, the opinion on that matter from a person with special expertise in the laws of that foreign country, the science or art, or in matters concerning the identity or genuineness of handwriting or fingerprints or related to determining lineage, shall be regarded as evidence.
- (2) Such a person is called an expert.
- (3) Two or more experts shall be called to provide testimony if possible, but if there are not two experts available, the testimony of one expert is sufficient. If two experts provide conflicting opinions, then a third expert shall be called to provide testimony.

According to the above law, expert opinion is defined as the opinion given by an individual on a matter based on their expertise, skills, knowledge, and extensive experience in a particular field. An expert can also provide an opinion without directly observing specific facts, discussing research conducted, referring to scientific literature, and citing similar cases as authorities to support the opinion presented to the court (Sarkar, 1993).

In the context of a divorce case with allegations of witchcraft, the court may seek expert opinions to identify issues such as the experienced symptoms, the effects of witchcraft, the correlation between symptoms and magical substances, the existence of signs, the likelihood of being affected by witchcraft, and other related matters. Expert opinions on these matters are considered crucial to assist the court in understanding and assessing the complex issues related to witchcraft and supernatural interference in the context of the trial.

## Oath

An oath is a form of testimony or evidence accepted as support in Sharia Courts, and it is carried out in accordance with the provisions of Islamic law. The wisdom and purpose of taking an oath (*al-yamīn*) are to resolve disputes, restore rights to their owners, and protect one's dignity from false accusations. Additionally, *al-yamīn* serves to emphasize the truth or deny the claims made by the accuser against the accused (Hasan, 2007). Section 87 of the Terengganu Sharia Court Evidence Enactment (2001) provides for oaths:

### Section 87. Manner of giving evidence

- 1) In cases of oath, evidence shall be given by the plaintiff and defendant, and if the defendant denies the claim against him, he shall be required to take an oath according to Sharia Law.
- 2) a) If the defendant takes an oath under subsection (1), the plaintiff's claim shall be rejected.
- b) If the defendant refuses to take an oath, then the Court may request the plaintiff to take an oath, and with that oath, the plaintiff's claim shall be accepted.

Based on the above provisions, oaths are used as evidence when the claiming party fails to present sufficient proof. In situations where the party being sued denies the claims made against them, the oath becomes a method to support that denial. Therefore, when there is a failure in providing adequate evidence, the Court may request the party denying the claim to take an oath as a way to support or affirm the denial of the claim.

In the context of using oaths in divorce cases with allegations of witchcraft, we can observe a case like *Shazali bin Ayub v. Zuraidah binti Mat Ghani*. The plaintiff admitted to pronouncing divorce but claimed to be unaware of it at the Ameen Islamic Treatment Center in Segambut, attended by two of his family members as witnesses. The Court directed the plaintiff to bring witnesses, including the nurse who was also present, but the nurse could not be found. The testimony of witnesses could not be taken as the crucial nurse was absent from the court. The Court requested the plaintiff to take an oath to prove that he was unaware when pronouncing the divorce. The Court ruled that no divorce occurred, and the marriage between the plaintiff and the defendant was maintained. The claim of witchcraft could not be proven, and the Court utilized the method of oath as the judgment.

## The Case of Divorce with Allegations of Black Magic in the Sharia Court of Terengganu

**Case:** *Nurhisam Bin Johari v Shamliza Binti Shafie* (2017)

### The Facts of The Case:

On January 12, 2016, the Sharia Court of Terengganu heard about a divorce case between Nurhisam Bin Johari (Applicant/husband) and Shamliza Binti Shafie (Respondent/wife). The court declared that the husband had pronounced triple *talaq* (divorce) against the wife. Subsequently, on January 25, 2016, the husband filed an appeal notice, raising the issue of mystical elements and black magic during the pronouncement of the triple *talaq*. The Sharia High Court of Terengganu allowed the husband's appeal and ordered a retrial in the form of a continuation of the trial.

### Case Proceedings:

1. **Appeal Notice and the Issue of Mystical Elements:** The husband raised the issue of the presence of mystical elements and black magic during the pronouncement of divorce. The Sharia High Court allowed the appeal and ordered a retrial to prove the husband's claims regarding the influence of mystical elements and black magic.

2. **Retrial:** The retrial was conducted in the form of a continuation of the trial. The husband was directed to substantiate his claims by calling witnesses designated by the Sharia High Court.

### Judge's Decision:

After hearing the statements of the husband, wife, and witnesses, the judge made the following decisions:

1. The judge determined that the divorce between Nurhisam Bin Johari (Applicant/husband) and Shamliza Binti Shafie (Respondent/wife) took place on November 3, 2015, through the pronouncement of triple *talaq* (*Bain Kubra*). The divorce occurred outside the court and without the court's permission.
2. The judge established that the pronouncement of divorce by the husband outside the court was a form of informal divorce, known as "*soreh*" which translates to "I hereby divorce you, Shamliza, with triple *talaq*".

### Conclusion

Overall, the issue of the use of magic in households does occur and has been raised in several cases in Sharia Courts. The influence of magic can manifest in various forms, such as separation magic, subjugation magic, or *santau*. Islamic scholars unanimously agree that divorces caused by magical practices are not valid according to Shariah. Therefore, efforts to ascertain the existence of magical elements in a divorce claimed to be caused by black magic are crucial. This is not only to provide justice to the husband and wife as well as family members but also to restore peace and harmony within their household. The use of Islamic evidence law is a relevant method to substantiate claims of magic in a divorce. It is hoped that these proposed steps can prevent injustice and errors in making a ruling.

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