

Issues and Challenges of Black Magic Criminal Convictions in Syariah Courts: A Review

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Abstract

Evidence in court is divided into three forms, namely direct evidence, hearsay evidence and circumstantial evidence (*al-qarinah*). The best evidence is direct evidence, provided it relates to the facts of the issue. Hearsay hearings are generally not admissible in court unless under certain circumstances. The proof of *al-qarinah* is acceptable if it is relevant and should be supported by other evidence. One of the many misunderstandings that often plays into people's thinking is that *al-qarinah* is weak compared to direct proof. This concept is incorrect. Robert *Precht*, a professor of law at the University of Michigan, states that "Circumstantial evidence can be, and often is much more powerful than direct evidence." Many cases today are proven by the evidence of *al-qarinah* rather than direct evidence. *Al-Qarinah* is a conviction by circumstantial evidence, while black magic is an evil human practice assisted by evils and demons. The hidden and secret methods of black magic are not readily known, but the effects are real and genuine. When a crime is committed using black magic, the problem arises as to how to prove it. In Islam, every problem that occurs, it will have its solution. The proposed method mentions *يحدث للناس أفضية بقدر ما أحدثوا من الفجور*. One of the featured ways is *al-qarinah*. This paper will discuss the role of *al-qarinah* in the criminal conviction of black magic. This study is qualitative, inductive, deductive, comparative and analytical methods are used as the basis of this study. The findings show that the conviction of a black magic criminal offense is not legally possible. It can be done by strengthening *al-qarinah* and some other suggestions.

Keywords: *al-Qarinah, description of circumstances, black magic convictions, black magic crimes*

1. Introduction

The phenomenon of black magic has existed for thousands of years. It has been consistently present in various cultures and peoples throughout the ages. It existed in Mesopotamia civilization, Roman civilization, Chinese civilization, Indian civilization, the civilization of Europe, even the Malay civilization and continue to happen until now.

In the Quran, this phenomenon of magic has been explained by Allah Almighty surah al-Baqarah verse 102, which says:

وَاتَّبِعُوا مَا تَتْلُوا الشَّيَاطِينُ عَلَىٰ مُلْكٍ سُلَيْمٍ ۖ وَمَا كَفَرَ سُلَيْمٌ وَلَكِنَّ الشَّيَاطِينَ كَفَرُوا يُعَلِّمُونَ النَّاسَ السِّحْرَ وَمَا أُنزِلَ عَلَى الْمَلَكَيْنِ بِبَابِلَ هَارُوتَ وَمَارُوتَ ۚ وَمَا يُعَلِّمَانِ مِنْ أَحَدٍ حَتَّىٰ يَقُولَا إِنَّمَا نَحْنُ فِتْنَةٌ فَلَا تَكْفُرْ ۗ

فَيَتَعَلَّمُونَ مِنْهُمَا مَا يُفَرِّقُونَ بَيْنَ الْمَرْءِ وَزَوْجِهِ ۚ وَمَا هُمْ بِضَارِّينَ بِهِ مِنْ أَحَدٍ إِلَّا بِإِذْنِ اللَّهِ ۚ وَيَتَعَلَّمُونَ مَا يَضُرُّهُمْ وَلَا يَنْفَعُهُمْ ۚ وَلَقَدْ عَلِمُوا لَمَنِ اشْتَرَاهُ مَا لَهُ فِي آخِرَةِ مِنْ خَلْقٍ ۚ وَلَيْسَ مَا شَرَوْا بِهِ أَنْفُسَهُمْ ۚ لَوْ كَانُوا يَعْلَمُونَ [٢:١٠٢]

Means: They (who are turning their back on the Book of Allah) and following the teachings of black magic recited by Satanic tribes during the reign of Solomon although Solomon did not practice the magic that led to the blasphemy, indeed Satan's clans were the infidels. for they were the ones who taught men black magic and what was taught to two angels: Harut and Marut, in the land of Babylon, and both of them taught no one but after they had advised him: "Truly, we are just a form of a test (to test your faith).", so do not become infidels (by learning it)." In the meantime, some also learn from them: witchcraft can divorce a husband and his wife, but they can never harm except by Allah's permission. And actually, they learn things that only harm them and do them no good. And indeed, they (the Jews) know that whoever chooses black magic will no longer face a good chance in the hereafter. So it is undoubtedly wrong about what they wish for themselves if they know it.

The existence of black magic in human life is beyond dispute. It becomes something that is accepted and exists clearly and distinctly. This practice is also very close to some of the Malay community. There is an opinion that this practice of black magic is prevalent in less religious or rural communities. This finding is inaccurate since black magic is not only practiced in the village community but also extends to all categories of society, whether urban or village, educated or not.

Those who execute this practice do so for a variety of purposes. As such, the practice of shaman, witchcraft, sorcery and the like has never vanished, but it has evolved in different ways and various forms and names. Therefore, if anyone denies the existence of black magic, the denial is based solely on arrogance and stubbornness and does not want to acknowledge its existence while its presence is so widespread and prominent that it does not need to be proven.

But, the question is how to empirically prove the existence of black magic so that it can be brought to justice or court. It is an issue that has been difficult to resolve from time to time. Therefore, we see an imbalance in this aspect of civil and Islamic law. This paper will, therefore, discuss this topic and provide some solutions.

2. Definition of Black Magic

According to the *Kamus Dewan*, the black magic (*sihir*) word is the enchantment or extraordinary act of a man in secret that involves the unseen creature [1]. According to al-Azhary, the black magic of language is derived from the Arabic word سحر يسحر which means to transfer something from its true essence to another [2]. In explaining this, the Prophet (may peace be upon him) in the hadith narrated by Zaid bin Aslam said:

عَنْ زَيْدِ بْنِ أَسْلَمَ، سَمِعْتُ ابْنَ عُمَرَ قَالَ: قَدِمَ رَجُلَانِ مِنَ الْمَشْرِقِ حَاطِبَانِ عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَامَا فَتَكَلَّمَا، ثُمَّ قَعَدَا، وَقَامَ ثَابِتُ بْنُ قَيْسٍ خَطِيبُ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَتَكَلَّمَ، ثُمَّ قَعَدَ فَعَجِبَ النَّاسُ مِنْ كَلَامِهِمْ، فَقَامَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: " يَا أَيُّهَا النَّاسُ قُولُوا بِقَوْلِكُمْ، فَإِنَّمَا تَشْفِقُونَ الْكَلَامَ مِنَ الشَّيْطَانِ " قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: " إِنَّ مِنَ النَّبِيِّانِ سِحْرًا

Means: From Zaid bin Aslam, I heard Ibn Umar say: 'In the lifetime of the Messenger of Allah came two men from the east. They both stood up and gave a

speech. When they are done, they sit down. Then Zaid bin Qais stood up to, who is the Prophet's orator and delivered a speech, after which he sat down. The audience was very impressed with their words. Then the prophet S.A.W. gets up and says, 'O man, say what you want to say, for the very nature of the delusion of his speech is from the devil. Indeed, some of those words are part of black magic [3].

Imam al-Khattaby [4] states that the speech has two forms. First, speech that is intended solely to explain the meaning. It's not from the definition of black magic. Secondly, speeches adorned with *balaghah* and high art, accompanied with beautiful language and pompous words that captivate the listener's interest, fascinate and enchant them. Such utterances are regarded as black magic when s/he transforms one fact into another in comparison to that the speaker wants to convey. Some scholars call black magic an act that brings them closer to the devil or needs their help [2].

From the standpoint of Islamic law, there are various definitions among scholars. But these definitions have similarities and differences between one another. According to Imam Muhammad al-Razy [5], magic is specific to every conceivable cause and effect so that one may think that 'something' is right when it is a mere delusion, and it is a deception.

Wahid Abdul Salam Bali [2] defines black magic as cooperation between black magic practitioners and demons to practice it on condition that he perform any act in obedience as a return for the demons' and help.

Meanwhile, Ibn Qudamah al-Maqdisy [6] mentions black magic as an *aqad* (verbal expression), spell, or word is spoken or written or done to affect the body, soul or mind of a bewitched person indirectly. The effect of this magic is the fact. Among the effects of it may be to kill, to give illness, to refuse to be with a wife, to be separated between spouses, to hate, or to love others. It is also the view of Imam al-Shafi'ie.

According to Dr. Mahyuddin Ismail [7], magic is a science that produces extraordinary effects that cannot be explained logically, generated through the involvement of spirits, demons and demons, using specialized tools and methods.

Black magic works through the mediation of demons. Satan will not serve the witch except in return. The answer is magicians should practice shirk against Allah Almighty. Every time a magician practiced shirk, the devil would obey him, and his request would be fulfilled more quickly. It is why the Messenger of Allah (may peace be upon him) combined shirk and black magic in one of the hadiths.

3. The Position of Black Magic in Islam

Black magic is a corrupt and evil practice. It is considered not only profane and wicked by the teachings of Islam, but also by other religions and civilizations such as the civilizations of Mesopotamia, Egypt, Greece and Rome, Persia, China and others. These civilizations consider black magic to be a crime and are punishable by the death penalty [7].

In Islam, black magic is a crime. It is a severe crime, which is the second after the sin of shirk to Allah Almighty. Too many Qur'anic verses and hadiths of the

Messenger of Allah (may peace be upon him) confirm this. It is because the crime of black magic itself is very close and leads to shirk in Allah Almighty.

Among the prohibitions of black magic by Allah, Almighty is through the verse from surah al-Baqarah verse 102, as mentioned before. One of the essences of the ban is that Allah Almighty explains that black magic is from the practice of Satan and leads to astray. Black magic also has a real effect on its victims that can lead to divorce.

In a long piece of hadith, the Messenger of Allah (may peace be upon him) also says:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ»، قَالُوا: يَا رَسُولَ اللَّهِ وَمَا هُنَّ؟ قَالَ: «الشِّرْكُ بِاللَّهِ، وَالسِّحْرُ....»

Means: From Abu Hurayrah r.a. The Prophet said: ‘Keep (yourself) away (from) seven things which are destructive.’ Then, the companion asked, ‘what are these seven things, O Messenger of Allah? His word, ‘shirk and black magic ... [8].

A person who practices black magic is not only considered to be guilty of a great sin but is subject to severe punishment. Scholars believe that black magic followers must repent. If they refused to repent, they were sentenced to death. Even some scholars do not accept the repent of a black magic practitioner, in other words, s/he is killed even if s/he repents.

4. Types of Black Magic

There are many types of magic. Even scholars argue on its categorization. According to Idris Musa [9], there are nine types of magic:

- i. *Tafriq*: a spell that separates a married couple.
- ii. *Al-Mahabbah*: that is the type of black magic, so that makes the husband obeys his wife or vice versa.
- iii. *Takhayyul*: it is magic that changes one’s imagination.
- iv. *Al-Junun*: magic that causes intense forgetfulness
- v. *Al-Khumul*: magic that causes its victims to be lonely, restless and slow to act.
- vi. *Al-Hawatif*: a hateful spell that causes suspicion, especially to their loved ones.
- vii. *Al-Maradh*: magic that causes pain to the limbs
- viii. *Al-Nazif*: magic to prevent menstrual blood, *nifas* and *istihadah* to stop.
- ix. *Ta’til al-Zawaj*: spell that causes one to be unwilling or afraid to get married.

5. Symptoms of Black Magic

According to the 4th edition of the *Kamus Dewan* [1], symptoms are signs or indication. A sign is an indication of something happening or the presence of something. For example, black and dark clouds, followed by strong winds and thunder, are signs of a storm and heat is a sign of someone having a fever. Signs or symptoms are not the *zat* of the intention, but they are the effects or circumstances that prove the existence of the thing.

Like many other diseases, black magic also has specific symptoms. Some of the symptoms of a person who experiences it can be traced through the physical, emotional and psychological changes of the victim [10]. Some of the physical symptoms of a person experiencing black magic include being sick, feel an ache or hot at specific body parts at certain times, hear someone whisper in the ear, smells something stinky while the others can't, have a health problem when visiting a particular place, etc.

Examples of emotional and psychological symptoms are victims feel love and longing for someone they just met, victims feel the resentment of someone they only knew, victims' swift emotions change, victims experience sudden memory loss and others.

There are several symptoms of black magic. A trusted and capable field specialist should list it and the mentioned signs are only part of it. Among these efforts were pioneered by Dr. Mahyuddin Ismail and several other researchers in building the GSP 48 scale are very accurate.

When this black magic symptom is found to exist in a person, then it is 'suspected' of black magic. Determined by the victim's complaint and the presence of black magic symptoms, the court may order the victim to conduct further examination by an Islamic medical expert. If there is evidence from the expert that the victim is suffering from sorcery, then the court may direct the investigating body to initiate the investigation of the suspect [11].

6. Legal Processes and Principles Related to Black Magic Issues

The elements or principles of crime are divided into three parts.

- i. This legal or Islamic aspect is referred to as the principle of Islamic law (الركن الشرعي). It implies that the act is illegal or against the law.
- ii. Aspects of criminal activity. That is, a crime (actus reus) or in Islam, it is called a rule of conduct (الركن الفعلي) Defendant must prove that wrongdoing has occurred and,
- iii. Aspects of intention. It should be done with the aim of crime (mens rea) which in Islam is called the rule of *adabi* (الركن الأدبي).

Therefore, to determine whether a person has committed a crime, the three elements above must be proven. This method of proofing is the main topic of discussion in this paper. In short, four key issues need to be addressed in the court process which are:

- i. That black magic act is a crime. For that purpose, the legal provision that it is a crime must exist.
- ii. Criminal behavior has taken place. It is evidenced by the presence of actus reus and mens rea to the treatment of the crime.
- iii. The parties who bear the burden of proof and
- iv. To what extent to which the quantum of evidence needs to be presented.

6.1. The Black Magic Act is a Crime

In Islam, as previously discussed, black magic is a crime. It is based on the Quran and the Prophet's hadith. According to the law, even though there is no explicit provision for such offenses, it can be prosecuted under section 4 of the Syariah Criminal Offence (Selangor) Enactment 1995 (misleading worship) [12].

6.2. The Issue to Identify the Existence of Criminal Behavior

To determine whether or not there are an *actus reus* and *mens rea* in the move of witchcraft, it is the same concept as proving a crime in ordinary crime. That is, it can be determined by *syahadah*, guilt, or circumstantial evidence.

In determining the *actus reus* of the crime of black magic, the determination of the method of black magic can be foundational. There are various methods used in magic activities, including burning or grilling particular objects. This act is usually intended to harm and even to kill the victim. Smoking or blowing is more likely to control and 'lock' victims while stabbing or slicing particular objects are usually intended to kill or injure. This situation is like killing using a specific tool such as a knife, a gun, a spear, etc. where the charge can be based on the means or methods of the crime.

In determining the existence of a black magic crime *mens rea*, one must look at the magic items used. For example, blood, shrouds, skulls, or faeces are usually intended to make the victim hated or marginalized. Whereas the centipede water, the horned frog is generally intended to harm the internal organs and kill the victim — such materials like glass, iron wire, nails and wild animals' nails. Also, the yarn, colored cloth, hair and containers are usually intended to promote restlessness, disturbed and insanity. While the victim's clothing, the victim's nails, or other victim's personal items are typically used for blind obedience and the list continues.

In determining which of these ingredients are related to the black magician practitioner or victim, DNA test, fingerprint, blood test can be done. In addition to various other forms of testing such as multiple interrogation techniques can also help in identifying the criminal and the purpose of the crime.

The al-qarinah method and expert description play a significant role in identifying the witch. Without al-qarinah and expert testimony, the magic crime conviction is challenging to locate.

6.3. The Parties Who Bear the Burden of Proof

To determine who is the bearer of proof, it is a critical factor in a trial procedure. If not, the trial will be facing a problem. Thus, the law established this position from the very beginning for justice to be maintained.

The burden of proof is defined as the duty or responsibility of any party to give evidence to express a certain level of confidence, which must be in the mind of the jury or the court [13]. It is divided into two forms [14]:

- i. The burden of proving the existence of a legal charge or in other words, the weight of producing a case. The responsibility rests on the prosecutor's shoulders.

- ii. The burden of presenting the evidential burden, which is the burden of arguing and denying the case. It can change at any time from the prosecutor to the accused.

In determining who bears the burden of proving the existence of, S. 72, Syariah Court Evidence (State of Selangor) Enactment 2003 states clearly [15].

S. 72 The burden to produce evidence in a civil case lies on the person who alleges or asserts a fact (al Mudda'ii) and the person who takes the oath to deny or disputes a fact (al Mudd'a 'alaih).

Whereas, the burden of submitting further evidence is explained through S. 73 of the same enactment:

S. 73 (1) Whoever desires any Court to give judgment as to any legal right or liability which is dependent on the existence of facts which he asserts must prove that those facts exist.

S.73 (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

In criminal cases, it has become a general policy and principle that the burden of proof on the whole element of crime rests with the prosecutor. It is because the court holds that “a person is presumed innocent until proven otherwise” unless the defendant expresses any general, special, or presumptive exception. At that time, the burden will be transferred to the accused party to prove it.

In the Islamic judiciary, this position is recognized by Islamic law, which proposes a person claiming to have a right over the property or personal property must present evidence against his or her claim. Otherwise, it fails the claim. It was explained by the Messenger of Allah (may peace be upon him) in a hadith:

لو يعطي الناس بدعواهم لأدعى رجال أموال قوم ودماءهم لكن البينة علي المدعي واليمين على من أنكر

Meaning: If everyone could be punished simply because of the allegations, then everyone would have claimed the property and relatives of others, but every prosecutor would have to testify, and those who opposed must take an oath [16].

6.4. Quantum of Proof

As we all know, the burden of proof lies with the prosecutor. So, it has to prove that the accused party is guilty, the question that arises is, what is the quantum of proof (Standard of Proof) required by the prosecutor to enable him to bring the case to court?

Quantum refers to the level of strength of evidence needed to convict an offense [17]. In this case, if the power of the evidence does not reach the desired level, then the evidence will be rejected. There is a difference between western and Islamic law regarding the quantum of proof.

In western law practice, there is two quantum evidence based on the category of criminal offenses provided:

- i. The quantum of evidence that prosecutors have to bear that is beyond a reasonable doubt.
- ii. The quantum of proof borne by the accused, at the rate of probable cause (on the balance of probabilities).

In traditional Islamic thought, criminal law offenses have been classified into three categories [18]:

- i. *Hudud* offense. It is the offense for which Allah has decreed (s.w.t). The quantum of proof for this error must reach a high level of confidence (beyond any shadow of a doubt).
- ii. *Qisas* offense. It is an offense involving death or injury. The quantum of proof must also reach a certain level of confidence (beyond reasonable doubt).
- iii. *Takzir* offense. It is a non-*hudud* and *qisas* offense. The sentence is up to the judge's discretion. For it, *zan* is enough to work as the quantum of proof.

From the author's point of view, the meaning of belief here needs to be refined. It does not mean that there is no doubt. It is because all the conviction, including the witness and the confession of guilt, are never without a doubt. If the Witnesses have passed the stipulated conditions, is it not possible for them to be mistaken, or to misrepresent one of the witnesses? Confession of guilt, no matter how sincere it is made, is it impossible to do so without the sake of achieving something? All of these possibilities deny the sense of high confidence, let alone that this phenomenon is not unfamiliar and impossible in today's society. Thus, the belief that the scholars say is referring to 'it binds the judge in the execution of a sentence.' In other words, the offense or crime that is being convicted through witnesses or guilty confession has bound the judge's decision as if it were beyond doubt.

This is supported by the views of Imam al-Sayuti [19] when describing the hadith of Messenger of Allah *ادراء الحدود بالشبهات* that is to say, refrain from performing *hudud* penalties if there are *syabnah* cases, saying that not all *syabnah* can abolish *hudud* but only strong *syabnah* or in other words 'reasonable' *syabnah* is acceptable. Imam al-Shawkany [20] in explaining the meaning of this hadith also holds the same view. The definition of *syabnah* is not purely speculative (الشبهة المحتملة), but it must be a reasonable assumption (مطلق الشبهة).

Methods of intention are also stated *لا عبرة للتوهم* (something that is *waham* in nature/ is not being regarded as an example/guide). This method implies that a law should not be based on mere *istinbat to waham* subjects, that is on mere assumptions. Instead it must be based on a strong proposition or state of affairs, including reasonable assumptions [21].

7. Challenges

One of the biggest challenges to the conviction of black magic in its first sharia court is the acceptance of *al-Qarinah* or circumstantial evidence as stand-alone evidence and comparable to other evidence such as *syahadah* and oath. The involvement of *al-Qarinah* as a method of conviction is essential to this conviction.

There is no denying that there is a provision in the Shariah enactment of *al-Qarinah*, but its use is still minimal. Whether it is limited because *al-Qarinah* adopted in the enactment depends more on the relevant facts or because there is no courage among the judges to use it in the context of circumstantial evidence.

The philosophy of *al-Qarinah* is that a rope can carry a heavy load, if only one string is used, it would not be able to bear the pressure, but when several rope

threads merge, it becomes a strong bond. Such is *al-Qarinah*. With only one *al-Qarinah*, it does not give much meaning, but when it is combined to form facts and evidence, then it becomes a strong argument and evidence in convicting.

As long as *al-Qarinah* is not presented as circumstantial evidence, then all our law will fail to convict such complicated offenses. Finally, there will be a rebuke of the weaknesses of Islamic law in dealing with current issues.

The second challenge that needs to be refined is that of a specialist. Since one of the methods of legal conviction is the expert's opinion, then what is the expert criterion that is applied in this field of black magic. In medical science, the benchmark of expertise is relatively simple. It may be based on your current certificates and work experience. However, for experts related to the treatment of the benchmark spiritual treatment, it is still vague. It is because his/her methods of learning are still unsystematic primarily to today's science. Besides, things get more complicated in the absence of a body of authority that can recognize one's expertise in this field.

The third challenge is to create an explicit scheme for the problem of magic and its symptoms. In other words, it is a study of magic so that it can be tested empirically. To do it, it needs the energy of various parties and experts such as modern medicine, Islamic medicine, psychiatrists, forensic experts and maybe even psychologists. It creates an accurate understanding of black magic and its related problems. These efforts need to be made and developed for future legal development.

The fourth challenge is about proof quantum. It is impractical to put the level of proof beyond any shadow of doubt in cases involving crime. It has caused a great deal of unresolved justice. In such a situation, the law can only be the remedy for the victim but does not offer them the truth.

Also, a charge is not the end of a trial. It is a starting point for identifying the truth. After all the evidence and the facts and arguments of the allegations and denials are presented, only a particular conclusion is reached. The result of this decision is the focus Messenger of Allah's hadith (may peace be upon him) ادروا الحدود بالشبهات (avoid the implementation of *hudud* sentence in cases of doubt) and not executed at the beginning of the trial. The next task of Muslim scholars is to form the mind and mindset of new ways of transforming Islamic law.

8. Conclusion

The scholars mentioned تحدث للناس أفضية بقدر ما أحدثوا من الفجور (there is a judgment among humans as to the extent of crime or misconduct). This statement means that for every misconduct or crime, it must be resolved through a judicial process. Islam, as a complete religion, has unique characteristics; one of its most important features is that it is *waqi'ie* or reality. It also fits all the time. Ergo, it is unreasonable that black magic cases cannot be resolved through Islamic law. It is our responsibility to make this law consistent with the advancement of time.

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