

The Practice of Black Magic as A Criminal Offense According to The Perspective of Sharia and Law

BITARA

Volume 6, Issue 2, 2023: 58-65
© The Author(s) 2023
e-ISSN: 2600-9080
<http://www.bitarajournal.com>
Received: 27 February 2023
Accepted: 21 March 2023
Published: 16 April 2023

Rajali Aji,¹ Ibnor Azli Ibrahim¹ & Mohd Nur Hidayat Hasbollah Hajimin²

1 Faculty of Sharia and Law, Universiti Islam Sultan Sharif Ali, Spg 347, Jalan Pasar Gadong, BE 1310 BRUNEI Darussalam.

2 Fakulti Pengajian Islam, Universiti Malaysia Sabah (UMS), Jalan UMS, 88400 Kota Kinabalu, Sabah, MALAYSIA.
e-mail: razali.aji@unissa.edu.bn; azli.ibrahim@unissa.edu.bn; mnhidayath_h@ums.edu.my

* Corresponding Author: azli.ibrahim@unissa.edu.bn

Abstract

Muslim scholars have differed on the reality of black magic (*sihr*). Sorcery or witchcraft (*sihr*) is often equated with trickery aimed at conflating falsehood with the rational association of causes and effects. Black magic is difficult to define. Our knowledge of *sihr* and what is not within reach of our sense perception is also limited. The object of this article is to examine using black magic as a criminal offence. This qualitative study uses the data collection method. The data obtained is analysed using the descriptive method to produce the findings. As part of the findings the article submits that using black magic to cause harm to other person is considered as a crime not only in the Islamic world and civilization but also by other world civilizations as well. In Brunei Darussalam using black magic to commit a criminal offence would be covered by the Brunei Syariah Penal Order 2013. Nevertheless, it is submitted that to prove the use of black magic would be a challenging task for the prosecutors due to its intangible nature of infliction.

Keywords: Black magic, Brunei Syariah Penal Order 2013, Islamic Law, *Sihr*, Sorcery.

Cite This Article:

Rajali Aji, Ibnor Azli Ibrahim & Mohd Nur Hidayat Hasbollah Hajimin. (2023). The Practice of Black Magic as A Criminal Offense According to The Perspective of Sharia and Law. *BITARA International Journal of Civilizational Studies and Human Sciences* 6(2): 58-65.

Introduction

The knowledge of black magic and its practices is an old tradition in the world. Black magic involves using the service of the *jinn* and the devil and it is used for several purposes (Mahayuddin et. al., 2017). Among others it is used to dissolve the feeling of love between family members, to separate between a husband and his wife, causing death without having to involve any physical touch (Mahayuddin et. al., 2017), hurt people and change people to animal form (Muhammad Mustafa, 1987). Due to its abhorrent feature, it has been considered as a crime by several civilizations such as Mesopotamian civilization (Farber, 1995), Roman civilization (Kippenberg, 1995), Chinese civilization (de Groot, n. d), Persian civilization (Ahmad b. Ali Abu Bakar Al-Jassasah, n. d), Islamic civilization (Abdul Basir Mohamed, 1999) and Western civilization (Kieckhefer, 1990). The existence of black magic is once been said by William Blackstone (Morrison, 2001):

“To deny the possibility, nay, actual existence, of witchcraft and sorcery is at once flatly to contradict the revealed word of God, in various passages both of

the old and new testament: and the thing itself is a truth to which every nation in the world has in its turn borne testimony, either by examples seemingly well attested, or by prohibitory laws; which at least suppose the possibility of a commerce with evil spirits.”

The above passage indicates that black magic is a phenomenon considered to be in existence in other religion apart from Islam as well. Its existence is proved by the testimonies (‘testimony’ and ‘well attested’ in the passage above) and the laws which had been formulated to prohibit the use of it (‘prohibitory laws’ in the passage above). In the context of Brunei Darussalam, the country practices the dual legal system. This basically means that the Civil Law is applicable to the subjects of the nation alongside the Syariah Law. In Civil Law one of the extensive legislations which governs criminal acts is the Brunei Penal Code Chapter 22. As for Syariah Law the corresponding legislation applicable is the Brunei Syariah Penal Code Order 2013.

Definition of Black Magic

Quoting the view of Imam Ibn Hajar al-Haithami in his book *Kitab as-Sihr* he defines black magic as to mean anything which is done with the help of the devil by doing something else commanded by the devil as a sign of union with the devil (Jahid Sidek, 2008). This definition indicates that black magic involves in the formulation of an agreement between the one who practices it and the devil (Mahayuddin, et. al., 2017). It could thus be understood that there must have been an association or relationship between the one who practices the black magic and the unseen creatures such as the *Iblis*, satan, jinn, evil spirits, spirits, ghosts et cetera. According to research done by Jim Hamzah, psychological treatment by using hypnosis is prohibited by the Saudi Arabia fatwa as it involves the seeking for assistance from the jinn (Hamzah, 2019). Whereas, according to section 151 (1) and 208 (4) of the Brunei Syariah Penal Code 2013 black magic is defined as follows:

- “(1) For the purposes of sections 152, 153, 154, “black magic” means knot, spells, chants, words, or specific expression or special names spoken or written or doing any act with evil purposes which has the implication and the effect, in the ordinary course of nature, to cause harm to the body, heart or mind of the person; usually the person who practices black magic befriends, or asks for or seeks help from, *Iblis*, satan, jinn, evil spirits, spirits, ghosts, and the like.
- (2) In this section, “knot” means an art or method to tie any matter used to practice black magic such as by using rope, thread, cloth etc.”

From the above provision it could thus be understood that a person is considered to have used or practiced black magic in two ways. Firstly, is whereby the person uttering or writes some knot, spells, chants, words or specific expression or special names. Secondly is doing any act. These two ways are done with the purposes which has the implication which in the ordinary course of nature would cause harm to the body, heart, or mind of the victim. In the researcher’s

view, the word ‘usually’ from the phrase ‘usually the person who practices black magic befriends...’ inserted in section 151 (1) and 208 (4) of the Order above is important to be noted. The insertion of the word ‘usually’ thus implies that it is not necessary that a person who practices black magic would necessarily befriends, or asks for or seeks help from, *Iblis*, satan, jinn, evil spirits, spirits, ghosts, and the like. It might not be easy to prove in a court of law that there had in fact been an actual association or relationship with the aforesaid unseen creatures. Therefore, the researcher is of the view that the word ‘usually’ in the above-mentioned provision would facilitate the court and the two opposing counsels in a criminal trial involving the use of black magic where it could not be proved as a matter of fact that there were any such association or relationship. The actual association or relationship with the unseen is not therefore be needed to be proven.

Where the result of the practice of black magic is the causing of death of the victim a specific provision has been incorporated under the Order which are sections 152, 153 and 154. This is discussed in a separate sub-heading further below. There is no specific provision which deals with the offence of using black magic in the commission of other criminal offences under the Order. However, the researcher of the view that section 208 (1) and (2) of the Order could be invoked as a general legal provision to cover acts which constitute any practice of black magic. For instance, sections 208 (1) and (2) could be invoked alongside the provisions governing the offences of hurt such as sections 169 (1), (2), 179, 180, 182 and 183 (1) and (2) in the event where a person is alleged to have committed hurt by the use or practice of black magic.

Black Magic from The Sharia Perspective

Our knowledge of *sihr* and what is not within reach of our sense perception is also limited, So, Sorcery or *Sihr* is difficult to define. The available information in the scriptural sources of Islam also falls short of elaboration on detail. *Sihr* may aim at inflicting harm on its object or at realising a benefit, and the sorcerer often resorts to irrational and impermissible means. Muslim scholars have differed on the reality of *sihr* (Mohammad Hashim Kamali, 2011).

Most Muslim scholars have, however, concurred on the reality of *sihr*, its actual occurrence and its effects, as is also evident from the numerous references to it in the Qur’ān. Some have deemed *sihr* a branch of knowledge that subscribes to a methodology and set of rules. While the ‘ulamā’ of all persuasions confirm the reality of *sihr* and the existence of invisible beings, the *jinn*s and Satan. The Qur’ān views *sihr* as a pollutant of true belief (113:4) and speaks of it in reference to Pharaoh versus the Prophet Moses (7:116), the narratives of prophets David and Salomon, and in denunciation generally of those who teach and practise it (2:102, 21:3), yet provides the assurance also that no harm will come to anyone unless God wills it (2:102). (Mohammad Hashim Kamali, 2011).

The Elements of Crimes in Using Black Magic

Most crimes require two elements which are the mental state of the defendant at the time he commits the offence and the act which constitute the offence. For example, where a person

stabs another person on the chest. This would indicate that he had intention to kill as the part of the body affected was vital; the chest and the weapon used is deadly. These two facts if well established by the prosecutor would fulfil the element of mental state of the defendant at the time, he commits the offence: murder. Whereas the act which constitute the offence is the act of stabbing. Similarly, when it comes to using black magic as an offence the researcher is of the view that both elements must be present and fulfilled.

According to Mahayuddin, the mental state of the defendant at the time he commits the offence of black magic could be deduced from several ways (Mahayuddin, et. al., 2017). Among others, it could be inferred that there was an intention to commit murder depending on the tools, items/substances and as well as the manner of these two are used. For example, where the black magic practitioner uses a doll having the photo of another person (the victim) and using a knife along with some chants which is stabbed at the heart of the doll. In this regard, it would strongly suggest an act to kill the victim. Whilst, where for instance the stab is made on the leg this would imply that intention is only to cause hurt or causing paralysis to the victim but not killing him. According to C.K Thakker:

“If a person stabs another in the abdomen with sufficient force to penetrate the abdominal wall and the internal viscera, he must undoubtedly be held to have intended to cause injury sufficient in the ordinary course of nature to cause death. It is not necessary that the accused must have the intention to inflict those injuries which he knew were sufficient in the ordinary course of nature to cause death. It would suffice if he intended to cause those injuries which were caused by him.”

The above passage explains the situation whereby a stab is being inflicted in the abdomen of the victim which causes penetration into the abdominal wall and the internal viscera he is considered to have intended to cause injury sufficient in the ordinary course of nature to cause death and therefore could be held guilty for the offence of either murder or culpable homicide not amounting to murder under the Brunei Penal Code Chapter 22. In other words, the mental state of mind of the criminal could thus be inferred from his acts.

The Legal Provisions of Black Magic Under the Brunei Syariah Penal Code Order 2013

An apparent indication of legal provisions of using black magic could be seen under the Brunei Syariah Penal Code Order 2013. There are several legal provisions which encompass the criminal sanctions against the practice of black magic under the Order. They are sections 152, 153 and 154 and 208. First is section 152 of the Order. It states therein under section 152 (1):

“Any person who commits qatl by black magic which in the ordinary course of nature may cause death and it is proved by ikrar of the accused is guilty of committing the offence of qatlul-‘amd and shall be liable on conviction to death punishment as qisas.”

The above provision explains that where a person commits *qatl* by using black magic and which in the ordinary course of nature may cause death proven by the *ikrar* or confession of the accused is held guilty for committing an offence of *qatlul-‘amd*. The punishment for the offence is *qisas* or retaliation. In the researcher’s view, an example of this is where a black magician uses items/materials/substances which are used to take the life of the victim, used them all in the manner consistent with the intention of causing death and death ensued. Where, the black magician confessed that he did it, he would be subjected to the punishment of *qisas* or retaliation by virtue of this section.

The second provision is provided under section 153 which goes as:

“Any person who attempts to commit or attempts to cause the commission of the offence of *qatlul-‘amd* or *qatlu syibhil-‘amd* by black magic is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years or both.”

The above provision explains two limbs. The first limb it explains that where a person attempts to commit the offence of *qatlul-‘amd* or *qatlu syibhil-‘amd* by the use of black magic is held guilty for an offence. In the researcher’s view, an example of this is where the black magician has already done the full ritual to achieve his intention but nevertheless the victim survived. The second limb explains that where a person attempts to cause the commission of the offence of *qatlul-‘amd* or *qatlu syibhil-‘amd* by the use of black magic will be held guilty for an offence. In the researcher’s view, an example of this is where the black magician has done preparing for the full ritual, but he was arrested before performing the full ritual.

Another provision pertains to the offence of abetment. This is provided under section 154 (1), (2), (3) and (4):

“(1) Any person who abets the commission of the offence under section 152 (1) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 25 years or both.

(2) Any person who abets the commission of the offence under section 152 (2) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$60,000, imprisonment for a term not exceeding 15 years or both.

(3) Any person who abets the commission of the offence under section 152 (3) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$60,000, imprisonment for a term not exceeding 15 years or both.

(4) Any person who abets the commission of the offence under section 152 (4) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$28,000, imprisonment for a term not exceeding 7 years or both.”

The above provisions explain the offence of abetment in the commission of the offence of practicing black magic and the punishment respectively in four circumstances. A person will be awarded \$100,000 of fine and a period of 25 years imprisonment in maximum or both where he is found guilty for abetting in the commission of *qatlul-‘amd* by using black magic which in the ordinary course of nature may cause death and the accused who actually commits the

offence has made an *ikrar* that he did it. This is what the provision of section 154 (1) above stipulates.

Section 154 (2) on the other hand provides for the punishment whereby an accused is convicted of an offence of abetting in the commission of *qatlul-'amd* under section 152 (2) which include where such offence has been proved by evidence other than the *ikrar* or confession of the accused; where the accused is not a *mukallaf*; and where the offence has been committed towards the accused's own child. Where a person is accused of abetting the accused who commits an offence under section 152 (3) he will be punishable in law with an amount of fine which not more than \$60,000, being imprisoned for not more than 15 years or the Court could award both. Section 154 (3) above encapsulates this. Next is section 154 (4) above. The provision explains the punishment of abetting in the commission of the offence under section 152 (4) where it entails the punishment of fine not exceeding \$28,000, imprisonment not exceeding 7 years or both.

Whilst the above sections specifically address the offence of causing *qatl* or death using black magic, section 208 provides for the offence of practicing et cetera black magic. In the researcher's view this section provides a general criminal penal provision which covers all practices of black magic. The said section states as follows:

“(1) Any person who practices black magic is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.

(2) Any person who seeks help from a person who practices black magic for the fulfilment of any wish is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.”

The above provisions sanction two offences. The first one is where a person practices black magic he will be, upon conviction, be subject to a fine of not more than \$20,000, imprisonment for a term not exceeding 5 years or both. Whilst the person who seeks help from a person who practices black magic will be, upon conviction, subject to a fine of not more than \$8,000, imprisonment for a term not exceeding 2 years or both.

An Analysis of Two Related Case Laws Under the Brunei Syariah Penal Code Order 2013

This sub-heading is to examine two case laws as to determine their positions under the Brunei Syariah Penal Code Order 2013. The first case is *Mustafa Batcha lawan Habeeba Abd. Rahman* (Mahayuddin Ismail, 2012). In this case, the appellant argued that he has been under the influence of black magic at the time he pronounces *talaq* and therefore he wasn't aware of it.

According to the appellant the influence of black magic started to occur after he gained the tender of business at a factory. Since then, he has not been in a good temper to his wife, hitting her and later uttered the *talaq* on her. Being suspicious of his condition he came to seek remedy from a traditional medical practitioner who told him that black magic has been used on

him for the reason him gaining the tender. After he recovered, having regained rational mind he pleads the court to revise his three *talaq* pronouncement.

From the above case an analysis could thus be made as follows. Based on the earlier analysis of the legal provisions available under the Brunei Syariah Penal Code Order 2013 the only applicable provisions would be sections 208 (1) and (2). This is because these sections are a general provision which covers any act of using black magic provided that such act comes within the requirements stipulated in the sections. As can be seen earlier above sections 208 (1) and (2) stipulate that it is an offence under the Order against the person who commits or uses black magic and the one who requests for the help of the latter.

Looking at the case of *Mustafa Batcha* the appellant would be able to bring a legal action in a criminal court if he could prove the person who is using the black magic and the one who asks for his assistance. In the researcher's view, this is the tricky part as there would not usually be direct evidence which would sufficiently prove that two/more persons are the black magic practitioner and the help-seeker.

In *Re Wan Norsuriya* (Mahayuddin Ismail, 2012) an application has been made by a woman to the court for the dissolution of marriage. It is the view of the judge who heard the case that the woman not nothing or was not aware at all the marriage. The absence of legislation in Malaysia which specifically deals with the use of black magic as an offence it was held that the marriage was held to be without the willingness of the woman.

From the above case an analysis could thus be made as follows. Similarly, only sections 208 (1) and (2) could be used to charge the offender (if he was caught) in the above case of *Re Wan Norsuriya*. In the event where the victim or the investigation officer could reveal and put into arrest the person who uses the black magic and the one who seek for his assistance, they will be chargeable under section 208 (1) and (2), respectively. For example, if the one who seek the assistance of the black magic practitioner is the husband, then he would be liable under section 208 (2).

Again, the researcher is of the view that since direct evidence would not normally be easily available it would be hard to prove to the court that any person (even the husband) was the one who seeks any help from the black magic practitioner, and it is even more difficult to trace and prove the black magic practitioner who uses the black magic upon the victim.

Conclusion

Notably above, it could thus be understood that it would be a challenging task for the prosecutor to present to the court that black magic has been used by anybody specifically in the commission of anything against any victim. This is due to two reasons. Firstly, black magic is not something which could be perceived by the human senses. In other words, to see the actual physical infliction of harm such as the punch of a hand or the slice of a knife, having contact with the body of the victim, would not be visibly possible. Secondly, despite that any person could be accused to have use black magic it would be tough to prove that he is the one who uses it. For instance, where A is accused to have used the black magic on the victim. It would not be easy to prove that A was the correct person. All in all, the Brunei Syariah Penal Code Order 2013 essentially requires all the requirements of the legal provisions pertaining to using black magic to be fulfilled before any person could be charged with any offence.

References

- De Groot, J. J. M. (n.d.). *The Religious System of China*. Book 2. Vol. 5(3). Leiden: Brill.
- Farber, W. (1995). Witchcraft, magic and divination in Ancient Mesopotamia. In J. M. Sasson (Pnyt.), *Civilizations of the ancient near East*, 3rd edition, Part 8 (Religion & Science) (pp. 1895-1909). New York: Charles Scribner's Sons.
- Jahid Sidek. (2008). Sihir: Ciri-cirinya, kaedah rawatan dan amalan pendinding. Kertas kerja dibentangkan dalam Seminar Rawatan Islam Siri 1 anjuran IQ Insan Training & Consultancy, Kuala Lumpur, 5 Januari.
- Al-Jassāsah, Ahmad b. 'Ali Abū Bakar. (n.d.). *Ahkām Al-Qur'ān*, Jil. 1. Beirut: Dār al-Kitāb al-'Arabiyy.
- Kieckhefer, R. (1990). *Magic in the Middle Ages*. Cambridge: Cambridge University Press.
- Kippenberg, H. (1995). Magic in Roman civil discourse: Why rituals could be illegal. In M. Meyer & P. Mirecki (Pnyt.), *Acient magic and ritual power* (hlm. 137-163). Leiden: Brill. *law of crimes: A commentary on the Indian Penal Code*, 1860. New Delhi: Bharat Law House.
- Mahayuddin Ismail, Zulfakar Ramlee, Jahid Sidek, Mohd. Jim Hamzah, Zainal Abidin Kusmin, Siti Aisyah Romli. (2017). Kesalahan Jenayah Sihir: Analisa Seksyen 152 Perintah Kanun Hukuman Jenayah Syariah Brunei Darussalam. *Borneo Research Journal*, 4: 60-71.
- Mahayuddin Ismail. (2012). Keperluan Transformasi Dalam Perundangan Syariah Bagi Menangani Kes Mal dan Jenayah Melibatkan Ilmu Sihir: Satu Saranan. *Konvensyen Penguatkuasa Agama dan & Pendakwa Syari'e Malaysia* pada 20-23hb September 2012 bertempat di Hotel Regency, Kuala Lumpur.
- Mahyuddin Ismail, Mohd. Jim Hamzah, Siti Aisyah Romli, Jahid Sidek, Zainal Abidin Kusmin. (2019). Menjustifikasikan Ilmu dan Amalan Sihir sebagai Satu Jenayah Berdasarkan Peruntukan dalam Kanun Keseksaan. *Jurnal Pendidikan Serantau*, 6(1): 240-259.
- Mohd. Jim Hamzah. (2019). Hipnosis: Penyembuhan atau Pencerobohan Akal. *Buletin Penyelidikan*, 42(12-14): Mukasurat.
- Morrison, W. (2001). *Blackstone's commentaries on the laws of England, Vol IV*. London: Cavendish Publishing Ltd.
- al-Thair, Muhammad Muṣṭafa al-Hadidi (1987). *Penyuluh Arwah*. Jakarta: Pustaka Amani
- Thakker, C.K., Thakore, D. K., Iyer, V. R. K., & Ranchhoddas, R. (2002). *Ratanlal & Dhirajlal's*. Jakarta: Pustaka Amani
- Kamali, Mohammad Hashim. 2011. "Islam's Views on Sorcery and Black Magic". *ICR Journal* 2(3): 564-65. <https://doi.org/10.52282/icr.v2i3.635>.