

Submission date: 1 Nov 2022

Acceptance date: 21 Dec 2022

Publication date: 12 May 2023

THE IMPACT OF WITCHCRAFT ON TALAQ: AN ANALYSIS FROM ISLAMIC PERSPECTIVE AND APPLICATION IN SYARIAH COURTS OF MALAYSIA^{i,*}Muhammad Zakir Azim Mohd Halim, ⁱMohd Nasir Abdul Majid & ⁱⁱTuan Muhamamd Faris Hamzi Tuan IbrahimⁱFaculty of Syariah and Law, Universiti Sains Islam Malaysia (USIM), 71800, Nilai, Negeri Sembilan, MalaysiaⁱⁱFaculty of Social Sciences and Humanities, 81310 Skudai, Johor, Malaysia*(Corresponding author) e-mail: muhammadzakirazim@gmail.com**ABSTRACT**

In Malaysian culture, witchcraft is not a recent phenomenon. As a result, there is a claim that witchcraft was used to ruin the marriage of husband and wife. Such cases in fact occur as grounds for divorce between husband and wife in Syariah Courts of Malaysia. It has been challenging for the judges to take into consideration and determine the veracity of the claim because there were no specific legal laws as guideline to conduct the claim of witchcraft in divorce. Until this day, the issue has become the discussion of scholars to find a solution to the issue of divorce on the grounds of witchcraft. The objective of this paper to explain witchcraft from Islamic view as well as the opinion of Islamic scholar in determining the ruling of talaq involving this witchcraft. This paper will also discuss how a claim of witchcraft can be proved in a Syariah Court of Malaysia when it's come to the divorce case. By referring to several cases, this study will analyze Syara's opinion on the ruling of divorce due to witchcraft and to what extent it can be applied as a defense in a divorce case. This study is vital to help judicial institutions in providing fairness and protection to couples who are affected by witchcraft. This study will make cases conduct more orderly and equitable as well as getting proper defense and justice to the spouses.

Keywords: *Witchcraft / Magic, talaq, defence, Syariah Court*

Cite as: Muhammad Zakir Azim bin Mohd Halim. (2023). The Impact of Witchcraft on *Talaq*: An Analysis from Islamic Perspective and Application in Syariah Courts of Malaysia. *SALAM Digest*, 1(1), 119-131. Retrieved from <https://salam.usim.edu.my/index.php/salamdigest/article/view/149>

Introduction

As mentioned in the Qur'an, the devil has sworn before Allah SWT to deceive mankind. The Almighty has said in Surah Al Hijr verse 39:

Translation: My Lord, because You have put me in error, I will surely make [disobedience] attractive to them on earth, and I will mislead them all.

(Quran. Surah Al Hijr, 15:39)

One day, the devil and demons were guaranteed a place in the hell by Allah SWT. As a result, Adam and his descendants being viewed as the enemy of the devil due to their haughty, arrogant, conceited, and disobedience of Allah's command to prostrate before Adam. Based on this enmity, the devil will try their hardest to seduce people so that they will be just as twisted as the individuals who will live in the hell. In order to cooperate side by side with ethereal beings like jinn, demons, and devil they used people in a subtle and manipulative manner which is called as magic or witchcraft. This witchcraft has caused a great deal of harm to the society, especially in family institutions (Mohd Razali et al., 2023). Some of people are using this magic to ruin the marriage between a husband and wife, which eventually results to the divorce.

The absence of specific procedures and relevant evidence relating to the claims of witchcraft in divorce cases has made it difficult for the Syariah court judges to make a decision on talaq uttered by the husband toward his wife. As a result, the parties to the issue may suffer injustice and oppression.

Therefore, to understand how a claim of witchcraft in a divorce case can be proved in Syariah court as well as relevant procedures to conduct the case that can assist the judges and the parties in making a defence in the court, it is necessary to understand the basic aspects of magic such as in terms of definition and history of its existence through the stories of the prophets.

Definition of Magic

Since this witchcraft is a supernatural study, it is challenging to obtain a precise and comprehensive interpretation about it. Therefore, in order to provide a definition that can explain the nature of witchcraft, author will provide some definitions of witchcraft that provided by Islamic scholars in order to find a confluence that can result in a suitable definition.

According to Ibn Hajar al-Asqalani, the definition of magic can be divided into three categories. Firstly, magic is an illusion, a shadow, or a fictitious vision that does not exist at all. Secondly, magic is something that a shaman creates on their own with the help of a Jinn after doing the devil's will or preparing the feast which devil needs. Thirdly, magic is something that's hidden where it's taken. This word also refers to anything that is concealed in its source and portrays a false picture of what actually does not exist (al-'Asqalani, 2000, p. 273).

Al-Baydawi defines magic as something created via interaction with the devil (Anwar , 1968, p. 73). Next, according to Imam Fakhru al-Razi, who stated that magic is any things or event that occurs for no apparent purpose and giving effect of delusions about something which is not actually happens in reality (al-Razi, 1938, p. 205). Al-Qurtubi claimed that magic was initially intended to confuse the eye's focus. It causes the possessed individual to experience delusions up until he realizes he is responsible of the actual circumstance (al-Sabuni, n.d., p. 67). This indicates that magic is generally a *khawriqul adah* which is something that happens beyond the capabilities of ordinary human beings and is like a *mukjizat*, but does not belong to some of it.

From the definitions given previously, we can conclude that magic is a practice that involves an agreement between human and jinn while producing extraordinary actions that are not possible for normal people to carry out. As part of practising magic, a shaman must prepare the devil's feast and comply to any other requirements he has set. This kind of thing is one of taqarrub practices to the jinn.

Three methods are used to create this *taqarrub*. Firstly, through words such as spells containing elements of shirk as well as praising the devil for his help. Secondly, through acts such as the preparation of a jinn feast, always commit sin and wickedness. Thirdly, through *itiqad* such as considering good practice done to approach the devil and love him (Al-Alusi, 1994, p. 534).

In conclusion, witchcraft is a practice that involves jinn and demons adopting specific methods to produce an extraordinary effect that cannot be rationally described.

The History of Witchcraft

There is no doubt that witchcraft has existed for a very long time ago. This scenario happens in real life and is not merely a myth or a fantastical idea. As a result, based on the prophets' stories as recorded in the Quran and Hadith, we will discuss the history of witchcraft from the perspective of Islam in this part.

Magic In the Age of The Prophet Moses AS.

Moses' society was well-known for its mastery of magic during the time of the Prophet Moses A.S. This myth is factual since Pharaoh rejected the message of the Prophet Moses AS by exploiting the potential of witches, as recorded in history. According to the Qur'an, the pharaoh gathered witches to help him in his conflict with the Prophet Moses AS. The Almighty has said in Surah Yunus verse 79:

Translation: And Firon said: Bring to me every skilful magician.

(Quran. Surah Yunus, 10:79)

According to Ibn Abbas, Pharaoh was able to successfully assemble a total of 70 witches (al-Zuhaili, 1991). All of them are good at magic and can turn a wand that reincarnates into a snake. As a result, Prophet Moses AS was granted *mukjizat* by Allah SWT, which was the turning of a wand into a snake. Allah SWT taught the Prophet Moses the difference between *mukjizat* and magic. The Almighty has said in Surah Taha verse 19-20:

Translation: Cast it down, O Musa". He cast it down, and behold! It was a snake, moving quickly.

(Quran. Surah Taha, 20:19-20)

This incident is meant to train Prophet Moses to not be shocked or afraid by the magic, especially when it is performed in front of Pharaoh (al-Syaukani, 1993, p. 279). The Almighty has said in Surah Taha verse 66-67:

Translation: Moses responded, "No, you go first." And suddenly their ropes and staffs appeared to him—by their magic—to be slithering. So, Moses concealed fear within himself.

(Quran. Surah Taha, 20: 66-67)

According to the above Quranic verse, Allah SWT used the word (يُخَيَّلُ) which means that Moses was fantasized with the shadow of a snake and caused him fear. Therefore, The Almighty has said in Surah Taha verse 68-69:

Translation: We reassured 'him', "Do not fear! It is certainly you who will prevail". Cast what is in your right hand, and it will swallow up what they have made, for what they have made is no more than a magic trick. And magicians can never succeed wherever they go.

(Quran. Surah Taha, 20: 68-69)

Moses was able to eliminate every witch as a result. Then, they bow down to the worship of Allah SWT. This is the basis for their faith in the *mukjizat* of Moses A.S. Based on the Quran, we can see from the Prophet Moses AS history that witchcraft has existed for a very long time ago.

Magic In the Age of the Prophet Muhammad.

The Prophet (PBUH) was once bewitched by a Jew from Bani Zuraiq named Labid bin Al-A'sam until it was revealed to the Prophet (PBUH) that he did something he did not do. This story is recorded in a hadith narrated by Aisyah RA in sahih Al-Bukhari:

Translation: A man called Labid bin al-A'sam from the tribe of Bani Zuraiq worked magic on Allah's Messenger till Allah's Messenger started imagining that he had done a thing that he had not really done. One day or one night he was with us, he invoked Allah and invoked for a long period, and then said, "O `Aisha! Do you know that Allah has instructed me concerning the matter I have asked him about? Two men came to me and one of them sat near my head and the other near my feet. One of them said to his companion, "What is the disease of this man?" The other replied, "He is under the effect of magic." The first one asked, 'Who has worked the magic on him?' The other replied, "Labid bin Al-A'sam." The first one asked, 'What material did he use?' The other replied, 'A comb and the hairs stuck to it and the skin of pollen of a male date palm.' The first one asked, 'Where is that?' The other replied, '(That is) in the well of Dharwan;' "

(Hadith Al-Bukhari (5766)) (al-Bukhari, n.d.)

After that, Allah's Messenger along with some of his companions went there and came back saying, "O `Aisha, the color of its water is like the infusion of Henna leaves. The tops of the date-palm trees near it are like the heads of the devils." I asked, "O Allah's Messenger? Why did you not show it (to the people)?" He said, "Since Allah cured me, I disliked to let evil spread among the people." Then he ordered that the well be filled up with earth.

This story illustrates that the Prophet (PBUH) was influenced by a magic spell performed by Labid bin Al-Asam, a Jew from Bani Zuraiq. Therefore, this event also illustrates that the existence of witchcraft existed during the time of the Prophet Muhammad (PBUH).

Witchcraft From Islamic Perspective

The stories of the prophets told in the Qur'an and Hadith demonstrate that this witchcraft has existed since the beginning of the time, as it was covered before. We may see that witchcraft is real and that existing in reality in human life is not only a fantasy or a delusion as a result. Therefore, we will discuss the ruling of magic from the perspective of Islam in this section along with the justifications from the Quran's and the Hadith's.

The Ruling of Witchcraft in Islamic Jurisprudence

Magic is a vile practice and it is forbidden in Islam. The act of magic and its practice is strongly opposed by Islam. The Prophet Muhammad (PBUH) has mentioned in his hadith that this act of magic is one of the major sins. This is due to the fact that this kind of magic is harmful to the society and performing it would lead to the negative impact on people's life especially on spiritual and physical basis. In the hadith Prophet (PBUH):

Translation: Narrated Abu Huraira: The Prophet said, "Avoid the seven great destructive sins." The people enquire, "O Allah's Messenger! What are they?" He said, "To join others in worship along with Allah, to practice sorcery, to kill the life which Allah has forbidden except for a just cause, (according to Islamic law), to eat up Riba (usury), to eat up an orphan's wealth, to give back to the enemy and fleeing from the battlefield at the time of fighting, and to accuse, chaste women, who never even think of anything touching chastity and are good believers.

(Sahih al-Bukhari (5764)) (al-Bukhari, n.d.)

Based on the hadith, it is clear that the practice of magic is prohibited in Islam because the phrase "اجتنبوا" which indicates that is compulsory to avoid using magic because it is one of the major sins which is involved element of *shirk* to Allah SWT.

According to the opinion of Imam Malik, Hanafi and Imam Ahmad bin Hanbal, the act of magic is considered as *kufir*. The Almighty has said in Surah Al-Baqarah verse 102:

Translation: but the evil (kafr) disbelieved, teaching people Magic

(Quran. Surah Al-Baqarah, 2:102)

According to this verse, the demon taught people about the witchcraft so that they may *shirk* on their obligations to Allah. As a result of their act of learning magic and asking for the help other than Allah, the people's faith has been distorted. Furthermore, the argumentation of magic's prohibition is clear when the Prophet PBUH mentioned about the threat to those who practice this magic will not be accepted his prayers for 40 nights as a result of visiting the shaman. In the hadis Prophet (PBUH):

Translation: He who visits a diviner ('Arraf) and asks him about anything, his prayers extending to forty nights will not be accepted.

(Sahih Sahih Muslim (5821)) (Muslim, n.d.)

The prohibition in this case not only to the shaman but also applies to everyone who facilitates, abets, or supports the shaman in his use of witchcraft (Yusuf Al-Qaradhawi, 1969). In Malaysia, it has been decided that, the act of magic is a terrible sin and can lead to *shirk*. The ruling of learning witchcraft is haram and even the practitioners of magic that cause harm to other humans are a major sin and the person who commit crime involving the magic must be punished under *qisas* or *hudud* (Muzakarah Khas Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam Malaysia, 1993).

The Impact of *Sihir At-Tafreeq* in Divorce

Since the topic of this study is divorce between spouses, so we will focus our discussion on a type of magic called as *sihir at-tafreeq*, which is commonly used in divorce case. Thus, the we will go through *sihir at-tafreeq* in this section as well as how it affects the couples who engage in it.

Sihir At-Tafreeq

The main purpose of *Sihir at-tafreeq* is to separate relationship between the husband and his wife or separate the relationship between human beings and cause hatred between two individuals. Retaliation, personal issues, jealousy, and hatred of the victim themselves are among the reasons why someone practices this magic on the other party. As stated in the Quran, *Sihir at-tafreeq* has the ability to separate couples. The effects of using this magic will lead to arguments between the husband and wife, which could eventually result in a divorce.

Translation: people learn magic by which they might cause a separation between a man and his wife.

(Quran. Surah Al-Baqarah, 2:102)

The Sign of *Sihir At-Tafreeq* on Marriage Couple

Most of the times, those who are victims of *Sihir at-tafreeq* express certain symptoms that point to the victim having been the subject of the magic acts. It is important to know the sign of this magic because it will help party as evidence in their claim to the court. These are only a few of the symptoms of *Sihir at-tafreeq* (Suleiman, 2014):

- a) The victim has mental confusion, restless sensations, and headaches as a result. They will feel relieved if a couple leaves the house. Anger and resentment are mixed together as victim observe every action of his partner.
- b) The victim hates his partner intensely for no apparent reason. Both sides could be affected at once or just one.

- c) The desire to get a divorce always bothering the thoughts. On the husband's side, sometimes the pronouncement of divorce can occasionally appear as it cannot be controlled. When there is a conflict, the woman will frequently ask for a divorce.
- d) In his vision, the victim perceives his partner being ugly with a scary face that is different from the real face.
- e) The victim always suspicious, excessively jealous, and sceptical of their partner's sincerity. Arguments and conflicts can arise from insignificant issues or causes.

The Effect of Magic on Talaq from The View of Islamic Scholars

In determining the ruling of talaq involving this mystical element, Islamic scholars are very careful in issuing the rulings on this issue. This is because divorce is a something that can occur either with or without a serious intention. In the hadis Prophet (PBUH):

Translation: Three things which its reality is reality and its joke its reality. They are: Marriage, Divorce and Freeing of a slave

(Abu Daud (2194))

Therefore, in order to understand how Islamic scholar determine the ruling of talaq whether there is a valid divorce or not when it comes to the element of magic, it is vital to know the victim's condition when he uttered the talaq toward his wife.

In the situation of a person being influenced by a very strong magic, they are actually in the condition of unconscious of mind which cause him to pronounce the talaq without his controlled. When the talaq uttered to the wife, he has already lost his sense of rationality. One of the *Sihir at-tafreeq*'s symptoms, is that victims are frequently in a very angry condition, which is known to cause a loss of self-control.

As a result, the victim will pronounce talaq without his own desire. From this situation, it is clear that talaq uttered by husband under influenced of magic cannot fulfil the requirements for a valid talaq. The requirements to consider as a valid talaq are husband, wife, sighah, qasad talaq and the husband's power. Husband's power means the desire to divorce in his heart accompanied by a sane mind. Therefore, a talaq is invalid if uttered by a husband in a condition where his mind is not completely sane or when his desire is controlled by someone or something. Then, Islamic scholars determine the ruling for a person pronouncing talaq under the influence of magic is the same as someone pronouncing talaq without complete of mind or insane. In the hadis Prophet (PBUH):

Translation: The pen has been lifted from three: From the sleeper until he wakes up, from the minor until he grows up, and from the insane until he comes back to his senses or recovers.

In accordance with the hadith, when someone do something without his sane of mind (*ghair āqil*), then he is not liable for his conduct.

In Syeikhul Islam Ibn Taimiyyah's view, "anyone who was enchanted to the point he did not realize what he said, then the talaq pronounced does not take place. While if the magic does not cause changes on his sanity and consciousness, e.g., magic to stop him from having sex only, then the talaq is valid" (Al-Ba'li). Therefore, it can be concluded that if any husband utter talaq in a condition loss of his judgment due to bewitching, then the ruling of talaq is consider as invalid.

Application of Islamic Legal Maxims in Determining Divorce Involving Witchcraft

In the previous part, it can be understood that it is consider as invalid talaq when the husband under control of magic. Thus, in this part, we will discuss how the application of Islamic legal maxims could help Islamic scholar in determining the ruling of talaq when it's involved element of magic.

Islamic legal maxims:

اليقين لا يزول بالشك

Translation: Certainty is not overruled by doubt

Based on this Islamic legal maxims, we can understand that if a person has been certain of something, and he doubts whether the thing has been lost or not, then the basis is still remains the certainty of that matter. It therefore won't change from what has been confirmed (al-Zarqa, 1989, p. 45).

In this case of magic-related to talaq, the victim will pronounce talaq while mad and lose all sense of his judgement. They will be doubtful of the talaq that pronounced earlier once they become aware of and lose the effects of magic on the victim itself.

Thus, in applying this Islamic legal maxim if a person in doubt whether he has divorced his wife or not, then it is considered that there is no talaq take the place in this situation. This is due to the marriage contract was originally formed with certainty. Therefore, the feeling of doubt does not affect the existing belief that they are still a married couple.

As a result, marriage does not dissolve only because of suspicions of magic-related to divorce. Only by the certainty that can be sure of something, whether or not it happens.

Islamic legal maxims:

الضرر يزال

Translation: Harm should be eliminated

This Islamic legal maxim is one of the famous methods in solving problems related to fiqh. Based on this method, we can understand that if there is any harm or damage in a matter, then the harm or damage should be eliminated. There will be harm in a family institution itself if it is considered as valid talaq involving this magic.

Among the harms that will occur is on the part of the husband himself. An emotionally damaged may happened to the husband who has been bewitched would definitely suffer badly. If it is decided that magic element in divorce case as valid talaq, the condition will worsen and cause stress on the husband's life. It is due to the divorce that is caused by witchcraft does not come from the husband's desire.

The second harm will happen to the children. When their parents and families are separated, this will threaten their future and expose them to unnecessary matter without being monitored by both of their own parents.

In conclusion, the *Shari'a* was come in our life to protect society and prevent from any harm to the rest of humanity. Therefore, divorce caused by this magic is invalid in accordance with this Islamic legal maxim approach, which stated that harm should be eliminated, in order to reject all harm as mentioned before.

Islamic legal maxims:

لا طلاق في إغلاق

Translation: There is no divorce in case of ighlaq

There are various of interpretations regarding the word "*ighlaq*" in that Islamic legal maxim. Some of al-gharib scholars who are knowledgeable in terminology concept interpret the word "*ighlaq*" as coercion. According to Ibn Qutaibah, he interpreted the word "*ighlaq*" used in Islamic legal maxims to mean as continuous insanity (al-Syaukani, 1993, p. 279). Next, based on interpretation that given by ibn Qayyim, he interprets the word "*ighlaq*" as anger (Qayyim, 1991, p. 47).

Through the above interpretations, we can conclude that the word “*ighlaq*” is a person who has no completely sane of mind and has lost any sense of judgement or self-control. Therefore, based on that Islamic legal maxim it seems that the talaq ruling is void if the husband uttered talaq when he no completely sane of mind and has lost any sense of judgement or self-control.

This situation is consistent with the talaq ruling, which is under influenced by magic using this Islamic legal maxim due to a bewitching man is unconscious of the conduct he took, as shown by the symptoms of *Sihr at-tafreeq* in the previous part. Therefore, when it comes to magic, pronouncing talaq is consider as invalid.

Claims of Witchcraft in Syariah Court

It might be challenging to prove a case when there is a magic element to the divorce cases. This is due to the fact that the principle of proof in court depends on the facts and the evidence that is outward. This is not how magic is practiced, which is more metaphysical. There is no specific provision that conduct divorce cases involving this magic. However, we will try to explain how a claim of talaq involving witchcraft can be proved in Syariah court based on the Syariah Court Evidence (Federal Territories) Act 1997.

Burden of Proof on The Party Claiming to Be Bewitched.

In general, there are many types of proofing methods that can be applied in court, including *iqrar*, *syahadah*, *qarinah*, expert opinion, and others. In order to demonstrate a fact that cannot be observed clearly, *qarinah* and expert opinions are commonly used. These two methods are suitable to be used in this study due to the majority of these magic elements are not clearly visible. To help the parties in claim of talaq contains a magical component, both types of proof will be highlighted.

Qarinah as Evidence.

Section 3 of Syariah Court Evidence (Federal Territories) Act 1997, “*qarinah*” means fact connected with the other fact in any of the ways. This means that a definition called as *qarinah* can be described as the existence of an indicator through sequence event or specific materials related to the incident (Mahyuddin bin Ismail).

In order to make *qarinah* as the basis of claim for proof of witchcraft in talaq, then the claimant is bewitched must present as possible as many relevant facts that are included in the form of *qarinah*. Among the relevant facts that can be presented by the parties are:

First and foremost, by the means of symptoms and magical signs. It is typical for the victim to show some symptoms and some changes in term of habits and conduct before claiming to be bewitched. These symptoms can be seen in a number of ways, including how they affect individual's thoughts and feelings, how they affect the household, and how they affect interactions with family members. In the area of *Sihr at-tafreeq*, these magical symptoms have already been covered. Therefore, the relevant fact that the victim is bewitched can be seen through the signs and symptoms of this magic. Indirectly, this kind of fact can be considered as a part of *qarinah* and can be used as the proof for a witchcraft claim in a divorce case. Section 14 of Syariah Court Evidence (Federal Territories) Act 1997, The facts showing existence of state of mind or of body or bodily feeling are *qarinah*.

Additionally, this fact will be proved by testimony of the witnesses, such as from the victim's relatives and close friends who can personally testify to the signs and consequences of witchcraft on the victim. This testimony will make this relevant fact become more strengthen to be brought to the Syariah court. Evidence of husband, wife, parent and child can be considered as *bayyinah*. This relevant fact also will be proved through expert opinions that will be covered later.

Secondly, one of the relevant facts that can be considered as *qarinah* is a person who has a conflict or disagreement with the victim. Some people are so envious, jealous, and unable to accept the happiness of another married couple. Some of these people portray a negative attitude can be considered as a motive for a person to have an intention or *mens rea* to perform magic on the victim. The person doing this magic to ruin the victim in term of their career and family relationship. Any fact is *qarinah* which shows or constitutes a motive or preparation for any fact in issue or relevant fact. Therefore, bad motive

that portrayed by some people to do magic on the victim can be considered as relevant fact which is a part of *qarinah* that can be proved in the syariah court that he has been bewitched while uttered talaq toward his wife.

Thirdly, the relevant fact that can be considered as *qarinah* is by discovering of odd and suspicious materials. If a victim or family member discovers any objects related to magic, such as animal carcasses, turmeric rice scattered across residential areas, white or yellow package placed in specific locations, this can be considered as *qarinah*. Section 7 of Syariah Court Evidence (Federal Territories) Act 1997, facts which are the occasion, cause or effect, immediate or otherwise, of facts in issue or relevant facts, or which constitute the state of things under which they happened or which afforded an opportunity of their occurrence or transaction, are *qarinah*. This is because, there has been a change of victim's behavior and habits upon the discovery of this odd and suspicious materials. These facts are one of the *qarinah* that can support other *qarinah* to show that victim's actual bewitching when he uttered *talaq* toward his wife.

Expert Opinion as Proof

The definition of an expert opinion is a person's opinion in the court regarding an issue based on his or her knowledge, skills, competence, and vast experience in a certain field (Nasri, 2015). In cases where the court lacks of knowledge in a certain area in this study, witchcraft. This expert opinion is required to help the court resolve the issue.

Therefore, the court or the parties may seek an expert opinion to determine the validity of the existence of magic elements in the talaq based on the *qarinah* that mentioned earlier. The purpose of expert opinion applied to this case to convince the court that the relevant fact of witchcraft which are signs and the discovery of suspicious and strange materials is a strong *qarinah* for the claim of a person being affected by magic.

When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity or genuineness of handwriting or finger impressions or relating to determination of *nasab*, the opinions upon that point of persons especially skilled in that foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions or relating to determination of *nasab*, are *qarinah*.

As a result, this clause is compatible with the talaq for proofing of magic because magic is a subject that calls for a specialist in the arts to be able to answer the magic issue. Thus, in accordance with Section 33(2) of the same Act, these organizations are referred to as experts.

Hence, if any spouse in a divorce case claims that there is the use of witchcraft to destroy the marriage, the court can seek the opinion of an expert (which is assigned by the court or the prosecutor) to identify and confirm the matter, as below (Ismail, n.d.):

- a) Is it true the symptoms experienced by the victim are due to witchcraft, or they are just symptoms of disturbance by spirit which is due to *saka* (a belief in Malay people that jinn may be inherited from the ascendants), the practice of mystical and superstitious ritual, a misleading traditional treatment or others.
- b) How far is the witchcraft used affecting the mental and physical conditions of the victims.
- c) Is there a correlation and link between the symptoms, witchcraft item (if there is any) and the effects towards the victim.
- d) Is there circumstantial evidence (*qarinah*) that can be linked to the claim made.
- e) And other related matters.

The experts' opinions were classified into three categories: forensic specialists, experts knowledgeable on witchcraft, such as Islamic medical professionals, and psychologists. As a result, we will briefly explain how these three expert opinions are used to determine whether there is element of magic or not in claims of talaq in Syariah Court.

To identify the materials that used by shaman, forensic experts must give their view on that matter. DNA tests can be conducted to determine who the owner of any suspicious or odd material is. Typically, to bewitch their victims, shaman use sample from their target, like hair. The results of this DNA test may be used in the Syariah Court as a part from the expert's opinion if the DNA test reveals that materials belong to the victim. The claim that there is magic involved in the talaq is indirectly true. The materials should be preserved as proof that can support the facts provided.

Next, those who are knowledgeable in witchcraft, particularly Islamic medical professionals, need to have their skills recognized on par with those of forensics experts. This is due to the fact that they are being able to treat witchcraft as they are expert at recognizing the victim's symptoms and determining whether they are related to witchcraft or not.

Additionally, as witchcraft is a psychological concept that is metaphysical and beyond the understanding of any medical professional, psychologists' opinions should also be considered. The psychologist can explain the connection between magic and psychology and can determine if the disease is caused on by magic or by other causes by observing the changes that take place and identifying the symptoms that the victim experiences.

In general, magical illnesses have an impact on both physical and mental of the victim. As an illustration, when a person is possessed by *Sihr at-tafreeq*, their thoughts become confused, restless, and they begin to scold their partner frequently. Therefore, depending on the outcomes of his psychologically occurring, psychologists can determine if a person is bewitched or not. In order to demonstrate the validity of magic claims in talaq, a psychologist's role is important to help judge in deciding the case.

If the judge after scrutinising and hearing the expert's opinion about the matter has any reasons to believe that the person who claims the matter is really experiencing the symptoms of bewitchment, he can release an order to have the person be referred to any reliable treatment centres and to give the person an adequate time to get the treatment. The main purpose of the treatment is to ensure the fully recovery of the victim from the influence of witchcraft, thus then the victim can be tried in court in a perfectly sane condition. Normally, when a victim is free from witchcraft, he will be able to rationally consider the action that has been taken. In this condition, therefore, the court can have a rehearing about the appeal filed by either the victim or the spouse. This method is fairer because all parties in the appeal or application are being of sound mind (Mahyuddin bin Ismail).

Analysis of Divorce Cases Involves Magic

In this part, we will analyze some of decisions of divorce cases involving magic's elements in Syariah courts of Malaysia.

In the case of *Mustafa Batcha v Habeeba Abd. Rahman*, according to the appellant, he was under influence of magic when he uttered the talaq toward his wife while he was unconscious of mind. After obtaining a canteen tender at a factory, the appellant claimed that he thought had been bewitched. As a result, his mind started to feel restless and was always arguing with his beloved wife. Sometimes he hit his wife without being aware of what he was doing. He filed for his wife's divorce while he was unconscious.

One day, he found a package of white cloth in his canteen. After realizing that situation, the appellant sought out for traditional treatment. The person who treated him claimed that he was bewitched by someone due to his success in obtaining the canteen tender. The doer feels jealous and then manipulates him to cause his family to get divorced. The court did not take into consideration about his claims of witchcraft. A Syariah subordinate court judge decided that the talaq is still valid.

The appellant in this appeal asked for the court to reverse the decision, which is triple talaq issued by the earlier court. Due to the judge of Syariah Subordinate Court refusal to seek an expert opinion on that matter. Therefore, the judge of Syariah Court of Appeal decided that the case had not been properly heard and ordered that case to be heard again to the trial.

Secondly, in the case of *Rozila binti Mat Don v Abdul Rashidi bin Ahmad Shamsuil*. Application was made under Section 57 of Islamic Family Law (State of Selangor) Enactment 2003 which is related to the registration of divorces outside the Court. Plaintiff stated that the defendant had been taken to Islamic medical practitioner and claimed that defendant was showing signs of witchcraft as a result from his practice of magic. When the defendant was under the influence of magic, he uttered a talaq toward the plaintiff. The defendant uttered the talaq again after five minutes when the plaintiff asked for the statement to be repeated. The defendant responded with syahadah when the plaintiff asked again about the talaq that he uttered before. Then, the husband stated that he was not aware of what he had been pronounced. Due to the defendant failure to provide any proof of his insanity, the court decide that talaq as valid.

Lastly, in the case of *Shazali bin Ayub v Zuraidah binti Mat Ghani*. Application was made under Section 57 of Islamic Family Law (State of Selangor) Enactment 2003 which is related to the registration of divorces outside the Court. The plaintiff claimed in his statement of claim that he uttered talaq toward defendant in the condition of unconscious of mind. While getting treatment at Segambut Ameen Islamic treatment centre, the plaintiff uttered the talaq. The incident happened in front of two witnesses who were members of the plaintiff's relatives, the witness admitted that hearing of talaq's pronouncement made by the plaintiff was a different voice from the actual plaintiff's voice.

The plaintiffs were required by the court to bring witnesses, including Islamic medical practitioner, but that practitioner has disappeared and cannot be found. Witnesses who would have confirmed the plaintiff's claims by testifying did not show up. In order to demonstrate the plaintiff was not conscious during the talaq utterance, the court required the plaintiff to oath. Following the plaintiff's oath, the court decided their marriage and found no grounds for a divorce.

Based on the first and second cases, we can conclude that court's decision given to the parties on the claim of witchcraft in divorce cases is valid. Therefore, this judgement on the claim of witchcraft in divorce, as explained in the previous part, is contradiction with the views of Islamic scholars.

There is no uniformity in how these cases are conducted because there is no specific provision for resolving divorce related to magic issues. The difference way of conducting such a case has a significant impact on the decision that will be given to the claimant, especially involving the family institution. This is proven when a case decides as valid talaq while under influence of magic, but other cases decide otherwise.

Therefore, in order to give fairness and justice to the parties involved, the law should be amended in order to provide a formal guideline to the court related to divorce cases that cause from witchcraft. The following part will cover this matter.

Recommendation Towards Judicial Institutions in Making Divorce Decisions Involving Magic

We will make some necessary improvements in this part to ensure that the parties involved in the talaq divorce case receive justice from the court's ruling on the claimed of witchcraft. The following are a few recommendations that can be made:

Enacting Specific Provisions for Divorce Cases Involves Elements of Witchcraft.

A divorce provision involving this magic should be enacted after consulting with experts, judges, legal professionals, and academics in order to make this plan become a reality. This clause should cover specific methods for conducting the case. The claim and proof of witchcraft in divorce is one of the aspects that should be taken into consideration while drafting this clause. This clause will make certain type of evidence that may be used as evidence and accepted in Syariah court.

With the guidance of this provisions on this issue, the judges will have a clear understanding on the magic element in divorce case, which will help them determine the extent to which the magic claims actually affect the case. As a result, a decision can fairly resolve the conflict between the parties without retaliation.

By enacting this specific provision governing the practice of witchcraft is viewed as a strategy that can counter the claims of those who wish to take advantage of this situation. It is undeniable that the claims in the aspect of evidence and procedures to prove a victim are bewitched are very complicated. However, a provision that prescribes how to conduct divorce cases involving elements of witchcraft at least give guidelines to the parties in how to present a defense in court by using significant proof.

The Approach by The Judge to Interpret the Current Laws

The application of *qarinah* and expert opinion in the Syariah Court can be further harmonized with the approach from the judge to make interpretations on the current laws more precisely and conclusively. The current provisions here referred to Syariah Court Evidence (Federal Territories) Act 1997. In most situations, the implementation of this provision is more focused on cases involving apparent matters. This provision cannot be used comprehensively to prove the claim of witchcraft in a divorce case due to the nature of magic is a metaphysical.

In cases where the judge misinterprets the application of *qarinah* and expert opinion under Syariah Court Evidence (Federal Territories) Act 1997, which is only applicable to cases involving apparent matters, the judges decide the claim of witchcraft in divorce in accordance with a reasonable and acceptable argument. As a result, claim and evidence of witchcraft in divorce will be dismissed. This may be seen in the analysis of the previous court's decision in the case where the *talaq* is considered valid by the court although there is element of magic when the pronouncement is made.

Thus, based on our findings, it is the responsibility from the judge to interpret and apply the current provisions in providing the procedures to conduct divorce cases involving this magic. As a result, the court can accept the evidence and claim of magic based on current laws, with the interpretation of particular laws as previously suggested.

Establishing An Organization That Specializes in Magic

Not all expertise in the field of magic can be adopted and recognized as expert opinion to help the judge in deciding the case regarding this issue. Anyone who claims to be an expert in this area with the ability by giving treatment to the witchcraft victim is free to admit their knowledge of it (Ismail, n.d.). In order to ensure the reliability of judges about the evidence given by the parties through the specialist's opinion, it is suggested to establish an independent body that specializes in this area of magic.

In order to realize this suggestion, the aspect to be aware of is related to the requirements and qualifications to recognize someone is really an expert in the field of magic. For the purpose to constantly improve the caliber of their expertise, the officers that involve in this body will also receive courses and ongoing training on the method for identifying the magic. Their abilities in this area of magic are therefore undeniable. As a result, through the development of this body, specialists who are able to identify magic and treat its victims can be produced.

When the issue of witchcraft is raised in a divorce case, then Islamic medical practitioners from this body should be consulted and called to give their opinion regarding this issue in Syariah court. Indirectly, it is able to make this body as reference panel. Authorities like the Department of Islamic Development Malaysia (JAKIM) and the Islamic Religious Department must monitor this body on a regular basis to ensure sure its operations are always compliant with Islamic medical practices. Therefore, the suggestion to establish this organization with expertise in the field of magic can surely assist the judge in making decisions regarding the claim of magic in divorce.

Conclusion

This study discovered that the issue of practicing magic in the household to separate married couples has certainly happened and has been brought up in some cases in the Syariah Court. The judge made his decision based on the fact and legality of the *talaq* that was pronounced in these circumstances because there is no specific guideline for conducting divorce cases involving the element of witchcraft. We had discovered it was challenging to prove the "magic" claims in a divorce proceeding. This is due to the nature of magic itself; metaphysical nature which is cannot be seen from the outside.

Therefore, we have also addressed how witchcraft claims in divorce can be proven through legal processes by using evidence in the form of *qarinah* and expert opinion. In order to help lawyers, gather evidence that can be presented in the court, we have highlighted some of relevant facts to be adopted in the provisions contained in the Syariah Court Evidence Act. In order to serve as a guide for the courts in deciding divorce cases involving witchcraft, this problem needs to be thoroughly investigated.

It is hoped that the recommendation and suggestions that made to the judicial institutions would be taken into consideration and implemented in order to protect the fate of those who were subjected to the use of witchcraft through legislation. we are sure that academics, lawyers, and authorities have a good opportunity and space to accomplish the goal of establishing a comprehensive magic law that can be used in the court. Research on this subject matter will not only help married couples to get justice, but also bring peace and harmony back into their home. One of the ways to prevent oppression and inaccuracy in making decision on this problem in Syariah courts is by the implementing all the recommendation that proposed in this paper.

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