

The Laws on Witchcraft in Brunei and Malaysia: An Analysis Based on Maqasid Al-Shariah

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ABSTRACT

The practice of witchcraft in society has existed for thousands of years and has been passed down through generations. The best approach to preventing acts of witchcraft is through legislation. Brunei and Malaysia are among the countries that codify witchcraft as a crime under Sharia Law through the Brunei Penal Code Order 2013, the Kelantan Syariah Penal Code Enactment (I) 2019 and the Terengganu Syariah Criminal Offenses (Takzir) (Amendment) Enactment 2022. The codified witchcraft laws in both countries represent a contemporary ijihad by leaders and legal experts who recognize the necessity of legislating such provisions. However, the concept of punishment for practitioners of witchcraft in these countries does not fully align with Islamic legal principles. This raises the question do the codified witchcraft laws in Brunei and Malaysia align with Maqasid al-Shariah? Therefore, the objective of this study is to analyze the witchcraft laws in Brunei and Malaysia from the perspective of Maqasid al- Shariah. This study adopts a qualitative approach, utilizing document and content analysis as its data collection methods. The findings reveal that the witchcraft laws in Brunei and Malaysia align with Maqasid al-Shariah as they fulfill the aspects of preserving religion, life, intellect, wealth and lineage.

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1. INTRODUCTION

The practice of witchcraft has existed within societies for thousands of years even in the earliest civilizations. The history of witchcraft in Mesopotamian, Ancient Egyptian and Persian civilizations shows that it became widespread when kings and rulers also use it as a tool to strengthen their power. In contrast, witchcraft in Greek, Roman and Chinese civilizations was limited and controlled by laws enacted by rulers to restrain such activities such as the Twelve Tables which imposed the penalty of being burned alive for witchcraft practitioner and the Yuan Dynasty's Penal Code in China that allocate severe punishments for those engaged in witchcraft (Mahyuddin Ismail, 2022a). The mass executions of witches in modern history also occurred in Europe between 1450 and 1750. According to Kerice, Steven & Yuan (2024), during this period 90,000 people were prosecuted for witchcraft and 45,000 of them were executed across Europe leading to this phenomenon being called the "witch craze."

Witchcraft is one of the oldest forms of knowledge, passed down through generations to this day regardless of civilization or ethnicity. In the history of Islamic civilization, witchcraft also occurred during the time of the Prophet Muhammad (PBUH) and afterward. The Prophet himself was once bewitched by a Jewish sorcerer named Labid bin al-A'sam using hair, a comb and date palm fronds. According to other history, these items were placed under a large stone and thrown into the Zarwan well (Al-Bukhari, 2001). The result of this witchcraft was Prophet (PBUH) experienced illusions believing he had approached his wives when he had not.

Although the Prophet (PBUH) was affected by witchcraft, it did not impair his prophetic qualities as the pain he endured was physical and occurred because of his human nature. Scholars have different opinions in defining witchcraft stemming from different understandings of its nature whether it exists in reality or it is just an illusion. The definitions of witchcraft provided by scholars are generally incomplete but complement and reinforce each other to explain its meaning (Amran Kasimin, 2009). Broadly, witchcraft is an agreement between the sorcerer and the devil where the sorcerer engages in prohibited and polytheistic acts and the devil assists to achieve the desired outcome (Baji, 2008) typically to harm the victim (Al-Tayyar, n.d.) whether physically or through illusion (Muzamil & Ramisa', 2023).

The harm intended for the victim is usually identifiable through two aspects, specifically the method of sorcery and the materials used (Mahyuddin Ismail & Ahmad Syukran, 2024). Since witchcraft is associated with evil, the best way to suppress it is through legal frameworks. However, not all Islamic countries classify witchcraft as a crime and some views it as part of cultural values. Nonetheless, some countries such as Brunei and Malaysia have codified witchcraft as a criminal offense. In Brunei, witchcraft is an offense under the Shariah Penal Code Order 2013 (Shariah Penal Code Order of Brunei Darussalam, 2013). In Malaysia, it falls under the Kelantan Shariah Criminal Code Enactment (I) 2019 and the Syariah Criminal Offenses (Takzir) (Amendment) Enactment 2022 in Terengganu (Kelantan Shariah Criminal Code Enactment (I) 2019, 2020; Norhaspida Yatim, 2022).

Maqasid al-Shariah plays an important role in the formation and development of today's legal framework serving as a guide and boundary to ensure that the laws enacted do not diverge from the principles of Islamic Shariah. Maqasid al-Shariah refers to the primary objectives in which Islamic law was revealed to people namely to bring goods and prevent harm both in this world and the hereafter (Aslati et al., 2024). In simpler terms, these objectives can be summarized into five fundamental aspects which are the preservation of religion, life, intellect, wealth and ancestry known as dharuriyyat al-khams. Shariah represents the highest form of legislation revealed by God to people and all laws enacted must align with it.

Laws enacted by humans that contradict with Maqasid al-Shariah are not only considered inconsistent with the concept of addin itself but it may also bring harm even if they appear beneficial from human perspective. This is because human intellect is inherently limited and sometimes what is perceived as good by reason may in reality be damaging. Thus, Zaidan (2006) emphasized that human intellect must be guided by Shariah and cannot works independently in determining legal rulings. Therefore, any form of governance concerning human life including legal aspects must be in accordance with Maqasid al-Shariah.

Discussions on the laws related to witchcraft in Malaysia and Brunei have predominantly focused on historical aspects, legal provisions and comparisons of punishments. However, they have not been extensively analyzed from the perspective of Maqasid al-Shariah. The codified witchcraft laws in both countries represent a contemporary ijtihaad by leaders and legal experts who recognize the necessity of legislating such provisions. However, the concept of punishment for practitioners of witchcraft in these countries does not fully align with Islamic legal principles.

In Islamic law, the punishment for a sorcerer or anyone involved in witchcraft is the death penalty that means apostates. Only Brunei's legal system includes the death penalty but only under specific condition rather than in all cases. Meanwhile, Malaysian law does not prescribe the death penalty for those convicted of practicing witchcraft. Therefore, analyzing witchcraft laws in Brunei and Malaysia from the perspective of Maqasid al-Shariah is considered essential to evaluate their alignment with

Islamic Shariah. Consequently, the primary objective of this study is to analyze the witchcraft laws in Brunei and Malaysia through the view of Maqasid al-Shariah.

Literature Review

The criminalization of witchcraft practices in Brunei was formalized in 2013 through the Syariah Penal Code Order. This legislation categorizes witchcraft-related offenses into two main areas that is murder by witchcraft and the practice of witchcraft (Mahyuddin Ismail, 2022b). The offense of murder through witchcraft is covered in sections 152 to 154 addressing intentional and unintentional killings and the methods of proof including confessions or other evidence. The penalties differ based on the type of murder and the form of evidence presented. Meanwhile, the crime of practicing witchcraft is outlined in section 208 covering offenses such as practicing, advertising and seeking assistance from sorcerers (Syariah Penal Code Order of Brunei Darussalam, 2013).

The formulation of witchcraft laws in Malaysia appear later than in Brunei. However, the efforts to establish such laws have been ongoing since 1993. During the 33rd National Fatwa Committee Conference for Islamic Affairs in Malaysia, the committee along with the Department of Islamic Development Malaysia (JAKIM) declared witchcraft to be forbidden in Islam and recommended the need for legal provisions to punish practitioners (JAKIM, 2015). In response, in 2010 the Selangor Islamic Religious Department (JAIS) in collaboration with the Professional Islamic Support and Nurture Group (PISANG) organized an expert conference to discuss witchcraft and develop witchcraft criminal act (Khadher Ahmad, 2018).

Apart from JAIS, JAKIM also played a significant role in these efforts by consulting legal and witchcraft experts, presenting proposals for witchcraft legislation to higher authorities for parliamentary debate and establishing a Witchcraft Law Study Committee to review existing legal mechanisms (Mahyuddin Ismail, 2022a). These initiatives resulted in the enactment of witchcraft laws in Kelantan through the Kelantan Shariah Criminal Code Enactment (I) 2019 and in Terengganu via the Syariah Criminal Offenses (Takzir) (Amendment) Enactment 2022. Both enactments outline offenses and penalties for those involved in witchcraft practices (Kelantan Shariah Criminal Code Enactment (I) 2019, 2020; Norhaspida Yatim, 2022).

Islamic law (Sharia) was revealed by Allah SWT solely to bring benefit to humanity and to prevent harm. Fostering goodness and preventing harm are the overarching objectives (maqasid ammah) of Islamic law. The benefits that constitute the Maqasid al-Shariah are those outlined by Sharia itself and not merely determined by intellect as it is limited in nature. Additionally, intellect is easily influenced by desires that seek immediate pleasure and convenience. Hence, sometimes what the intellect perceives as good may actually lead to harm in the long term (Zaidan, 2006).

Maqasid al-Shariah is the fundamental core of Islamic law. Essentially, Islamic scholars have not provided a specific and detailed definition of Maqasid al-Shariah. This is because they have already clear about the concept. The main essence of Maqasid al-Shariah is to bring goods and prevent harm. From this essence, further discussions have been developed leading to various classifications. Scholars categorize Maqasid al-Shariah based on human needs into three levels which dharuriyyat (necessities), hajiyyat (needs) and tahsiniyyat (enhancements) (Suhaimi et al., 2022). Through in-depth study and analysis of the texts of the Quran and Hadith, scholars have concluded that there are five foundational elements of Maqasid al-Shariah which are the preservation of religion, preservation of life, preservation of intellect, preservation of lineage and preservation of wealth.

Although the legislation of laws varies and the objectives of each address differ, their ultimate goal refers to these five principles. Therefore, Maqasid al-Shariah is definitive (qat'ie) and cannot be disputed as its evidence is derived from the entirety of the texts in divine revelation. One of the characteristics of Islamic law is its comprehensiveness (syumul) meaning it encompasses all aspects of human life including politics, economics, social affairs and legal matters. Hence, all regulations or actions applied must protect these five principles as neglecting them (mafsadah) is rejected by Sharia (Abdul Monir, 2016).

Maqasid al-Shariah plays a crucial role in governing human affairs on in this world both in administration and legal frameworks. Leaders are responsible for managing the citizens life in alignment with the objectives of Maqasid (JAKIM, 2021). As such, Mohamad Zaidi (2015) quoting Imam Izzuddin Ibn Abd Salam emphasizes that power (al-Wilayah), judiciary (al- Qadaiyyah) and testimonial laws (al-Syahadat) are legislated to fulfill the requirements of Shariah by promoting good and preventing harm. He further asserts that the objectives of Shariah are not limited to explicit textual evidence but also perform even in the absence of such texts as seen in the principles of Maslahah Mursalah (public interest) and Istihsan (juridical preference).

2. METHOD

This study includes a qualitative approach utilizing document and content analysis as the primary data collection methods. Data is obtained through the systematic examination of primary sources such as government gazettes, official documents, legal reports, and other authoritative materials that offer direct insight into the regulatory and institutional context relevant to the research focus. These primary materials are carefully reviewed to capture formal provisions, policy orientations, and institutional practices that shape the subject under investigation.

In addition, secondary sources are also analyzed, including peer-reviewed journal articles, academic books, newspaper clippings, credible websites, and other relevant publications. These secondary materials provide complementary perspectives, theoretical grounding, and critical interpretations that enrich the understanding of the primary data. The combination of primary and secondary sources enables the study to construct a comprehensive and multi-layered analysis, ensuring that the findings are firmly grounded in both empirical documentation and scholarly discourse.

3. FINDINGS AND DISCUSSION

Essentially, the laws regarding the crime of witchcraft provided in the Syariah Penal Code Order of Brunei 2013, the Syariah Penal Code Enactment of Kelantan (1) 2019 and the Syariah Criminal Offenses (Takzir) (Amendment) Enactment of Terengganu 2022 align with the Maqasid al-Shariah when the aspects of protecting religion, life, intellect, lineage and wealth are fulfilled. The preservation of religion is the first priority of Maqasid al-Shariah compared to other aspects. This is because protecting religion leads to the protection of life, intellect, lineage and wealth. In fact, if there is a conflict between preserving religion and preserving life, the preservation of religion is the priority. Hence, Islam obligates its followers to engage in jihad against non-believers (kafir harbi) even if it results in the loss of life (Pejabat Mufti Wilayah Persekutuan, 2019).

The aspect of preserving religion in the witchcraft laws can be observed through the punishments provided aim to protect the sacred of the faith. Witchcraft is prohibited in Islam because it contains elements of shirk (associating partners with Allah). Shirk in the practice of witchcraft occurs in three forms, in other words through speech such as reciting incantations, amulets and charms that invoke the veneration of jinn, through actions such as stepping on the Quran, placing impurities on the Quran or writing Quranic verses in inappropriate ways and through beliefs such as perceiving witchcraft as beneficial even though it clearly contradicts Islamic teachings (Amran Kasimin, 2009).

The success of witchcraft depends on the extent of shirk committed by the practitioner. If the practice of witchcraft involving shirk is not prevented, it can lead to the weakening of religious integrity as shirk becomes normalized (Khadher Ahmad, 2018). Hence, scholars unanimously agree that a sorcerer who engages in shirk through witchcraft is to be executed by beheading similar to the punishment for apostasy. Some scholars even assert that a practitioner of witchcraft should be beheaded regardless of whether shirk is involved (Ibn Rushd, 2004). The primary purpose of this punishment is to protect the faith (aqidah) of Muslims and prevent them from involved with shirk.

The Syariah Penal Code Order of Brunei 2013 states that any person who practices witchcraft and causes harm to others shall be punished with qisas (retaliation), a fine or imprisonment. However, the practice of witchcraft that does not cause harm to the victim may still be convicted under the offense of

practicing witchcraft as stated in Section 208 (Syariah Penal Code Order of Brunei Darussalam, 2013). Similarly, the Syariah Penal Code Enactment of Kelantan (1) 2019 and the Syariah Criminal Offenses (Takzir) (Amendment) Enactment of Terengganu 2022 mention that any person who practices witchcraft is subject to a fine, imprisonment or whipping (Syariah Penal Code Enactment (I) 2019 of Kelantan, 2020; Syariah Criminal Offenses (Takzir) (Amendment) Enactment of Terengganu, 2022). These witchcraft laws align with the aspect of preserving religion by classifying any form of witchcraft practice as a crime and allocate punishments for it. This helps protect the sacred of the faith and prevents acts of shirk (associating partners with Allah) from occurring.

The second aspect of Maqasid al-Shariah is the preservation of life. This aspect is clearly highlighted in Brunei's laws by prescribing qisas (retaliation) for the act of intentional killing (Qatl 'Amd) through witchcraft proven by confession (Iqrar). For Qatl 'Amd proven by means other than confession, the punishment is diyat (financial compensation) and imprisonment not exceeding 15 years. In cases of quasi-intentional killing (Qatl Shibih 'Amd) through witchcraft, a fine and imprisonment are imposed. These punishments align with the preservation of life as outlined in Islamic law. In contrast, Malaysia's witchcraft laws do not specify such punishments or offenses. However, the aspect of preserving life is still fulfilled through laws that prevent the practice of witchcraft which can lead to death or injury. Preventing the loss of life or injury from the outset is also part of preserving life.

Additionally, witchcraft laws address the preservation of intellect as witchcraft is not only used to kill or physically harm victims but also to cause insanity or mental instability. This is mentioned in hadith and referred to as Sihir Majnun (Baji, 2008; Al-Mubarak, 2016). This type of witchcraft is used to disrupt a person's emotions and feelings, leading to stress, confusion, hatred, anger and similar effects. The resulting symptoms may ultimately drive a person to madness (Mahyuddin Ismail, 2022a). Furthermore, there are types of witchcraft that induce hallucinations, making victims see or hear things that do not exist known as Sihir Ilusi (illusionary witchcraft). Such conditions affect the victim's psychology and intellect potentially leading to the insanity if not addressed early.

Sihir Pukau, often practiced in Malay society is another type of witchcraft that affects a person's intellect. Victims of pukau are typically under the influence of the sorcerer and follow all instructions given by them. During this time, the victim's mind cannot function properly and they are unaware of their actions. As a result, their behavior is not guided by rational thought. The preservation of intellect is highly emphasized in Islam and anything that leads to the loss of intellect is considered harmful (mafsadah) and must be rejected. Preventing harm is a benefit (maslahah) in itself (Abdul Monir, 2016).

Moreover, these laws also fulfill the aspect of preserving wealth. Widespread witchcraft can lead to destruction, damage and loss of property. Sihir Pukau or Sihir Penunduk is commonly used in Malay society as a primary tool for robbery. This can be done through eye contact, the summoning of spirits or the recitation of incantations often accompanied by touch or the blowing of cigarette smoke. In addition to pukau, some sorcerers use spirit servants (khadam jin) to steal known in local folklore as Jin Toyol. This jin is tasked with stealing money discreetly and without detected. The use of charms or amulets that make the sorcerer invincible known as sihir kebal can also lead to robbery and theft. Sorcerers believe they are invulnerable and can commit crimes without fear of the authorities (Mahyuddin Ismail, 2022a).

In addition, marital discord and conflicts between spouses caused by witchcraft cannot be taken lightly as such incidents occur in our society. This is evident in the appeal case of Mustafa Batcha v. Habeba Abd Rahman [1410] JH 41 which was heard at the Syariah Court of Appeal in Negeri Sembilan (Muhamad Darwisy et al., 2023). The preservation of lineage emphasized by Maqasid al-Shariah not only includes prohibiting adultery but also fostering harmonious and loving family life to ensure the continuation of humanity (Wan Nor et al.,

2021). Alfian Dewan et al. (2024) also agree with this perspective and further emphasize that raising and educating children to become righteous individuals (soleh and solehah) is also considered as preserving lineage.

Therefore, Muhammad Harfin Zuhdi and Mohamad Abdun Nasir (2024) argue that the preservation of lineage in the context of contemporary legal frameworks today is more focused on the

development and growth of family institutions. Divorce does not only affect the husband and wife but also has significant effect on the innocent children. Separated parents often go their own ways and may neglect their children. As a result, these children not only suffer from a lack of parental love but are also exposed to various other problems such as unemployment, emotional distress and a lack of affection (Alfian Dewan et al., 2024).

Witchcraft is sometimes used in society to commit indecent acts such as sexual harassment or rape. *Sihir Pengasih* (love spells) for example is used by sorcerers to satisfy their lust. Victims infatuated with the sorcerer due to the spell willingly submit to their desires including engaging in adultery (Amran Kasimin, 2009). Witchcraft can also lead to rape as recorded in the case of PP v. Abdul Rahman Mohamad [2005] 1 CLJ 700 (Siti Aisyah & Wardati, 2024). Such acts undoubtedly damage the victim's lineage resulting in illegitimate children born from unconscious adultery or rape. With the existence of witchcraft laws, anyone who practices witchcraft with the intent to corrupt lineage is committing a crime and can be punished under the law. Therefore, the existence of witchcraft laws in Brunei and Malaysia not only fulfills the aspects of preserving religion, life, intellect and wealth but also meets the requirements for preserving lineage.

4. CONCLUSION

Witchcraft is a form of knowledge passed down through generations and has been practiced in society since ancient times. It involves hidden acts resulting from an agreement between the sorcerer and jinn. Typically, witchcraft is practiced to harm others whether physically or mentally causing injury or even death. In Brunei, Kelantan and Terengganu, witchcraft is considered a crime due to the existence of legal provisions.

The codified witchcraft law fundamentally aligns with Islamic Shariah as it comply with the concept of *Maqasid al-Shariah* by fulfilling the aspects of preserving religion, life, intellect, wealth and lineage. The prevention of witchcraft practices within society through legal codification is a necessary in today's era. This is because perpetrators cannot be subjected to any punishment without a legitimate legal provision despite committing crime. Therefore, the researcher propose that all states across Malaysia specifically and Islamic countries in general should formally codify witchcraft practices as a criminal offense. This recommendation aligns with the principles of Shariah ensuring that the preservation of *dharuriyyat al-khams* can be upheld.

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