

C-CRC-118: Transferring Knowledge and Expertise to Legal Officers on How to Prosecute Criminals Relating to Witchcraft

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Abstract

Witchcraft has been already known to cause harm to humans. In fact, the 33rd Fatwa Committee of the National Council for Islamic Religious Affairs of Malaysia ruled that the authorities must provide legal provisions to punish witches. Disappointingly, after 20 years, the law has not yet been enacted. This is due to the failure of the related parties to understand the nature of witchcraft itself as well as the difficulty of proof-finding in court. Thus, this transfer program aims to disclose the new findings of research on witchcraft law exclusively to government officers who involve in drafting, prosecuting and executing the law. The program applied several methods including thorough discussion, case studies, simulations and scene investigation in 5 series of workshop. In this program, four major issues, namely the legal provisions, the legal procedures, the expert recognition and the legal evidences are thoroughly discussed. As a result, a set of proposal which contains a comprehensive draft of the provisions, the S.O.P. For investigation, arrest, search and seizure process, and the types of admissible evidence is to be brought to the authorities. This program successfully convinced the participants that offenses relating to witchcraft can be overcome through legal mechanisms.

Keywords: *Witchcraft, Law of Evidence, Procedural Law, Knowledge Transfer Program*

1. Introduction

Witchcraft or black magic is among the ancient mystical ritual in the world. It involves the engagement of jinn and demons with specific purposes. It is used to

get rid of love between family members, separate husband and wife, causing insanity, disease and up to the point of killing the victim (Mahyuddin, 2014). Due to the adverse effects arising from the practice, most of the past civilizations such as the Mesopotamian, the Rome, the Ancient China, the Persian, the Islam and Western have been proclaiming it as a crime (Mahyuddin, 2015). The most famous criminal law expert, William Blackstone also pointed to the existence of witchcraft and legislation to deal with it as he stated:

"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 seemingly well attested examples, or by Prohibitory laws; which at least suppose the possibility of a commerce with evil spirits." (Morrison, 2001)

In Malaysia, the issue of witchcraft also gained attention from the authorities. The 33rd Fatwa Committee of the National Council for Islamic Religious Affairs of Malaysia, which convened on October 11, 1993 has decided that the 'relevant parties should provide legal provisions to punish witches who have been convicted for practicing black magic.' The same is echoed in a number of conferences and seminars. However, these efforts have not been successful due to lack of expertise in that field as well as difficulties in burden of proof. Thus, there is a need to transfer findings of a research related to witchcraft to the authorities to solve the issue.

2. Witchcraft at a Glance

According to Farber (1995), witchcraft has been widely practiced by the people at the time of the Mesopotamian civilization. To eradicate such practices, the Hammurabi King has introduced Code of Hammurabi which contains provisions relating to liability on the witches. The same goes to the Egyptian civilization. Witchcraft became a normal practice. In fact, the Pharaoh himself learnt and practiced magic to maintain his position (Al-'Ashqar, 2002). According to Kippenberg (1995), during the reign of Julius Caesar in Roman empire, he put in The Twelve Tables: "That it to be decided that persons who are addicted to the art of magic shall suffer extreme punishment. Magicians themselves shall be burned alive". While in China, especially during the reign of the Yuan Dynasty, whosoever plucks life out of a man or dismembers him with intent to procure a spectre to sacrifice to, shall be slowly carved to death with knives (de Groot, 1964).

Islam also banned the practice of witchcraft and has set a punishment of practitioners. The Caliph Umar ordered that the sorcerers shall beheaded (Abdul Basir, 1999). In the West, especially during the Dark Ages, the church and the King jointly applied religious and legal approach in their effort to curb the practice of black magic (Kieckhefer, 1990). The most stringent restrictions on the use of witchcraft was introduced during the reign of Elizabeth I, in the year 1563. However, the law was replaced in 1736 with the introduction of new law during the reign of George II which was later known as the Witchcraft Act 1736 (Gordon, 1993).

In some states in Australia also have its own provisions. Among them is Section 432, Part XI of the Criminal Code of Queensland, section 40 of the Summary Offences Act (South Australia), and section 13 of Victorian Vagrancy Act 1958. However, these provisions were repealed in 2000 on the grounds of religious discrimination. In African countries, among other laws came into force until now is that Tanzanian Witchcraft Ordinance 1928, South Rhodesian Witchcraft Suppression Ordinance, 1899, South African Witchcraft Suppression Act 1957, Zimbabwean Witchcraft Suppression Act 1890 and section 251 of the Penal Code Cameroon. While in India, Chhattisgarh state government has approved the Witchcraft Atrocities (Prevention) Act 2005 for the protection of women who are often accused of practicing witchcraft. (Mahyuddin, 2010)

Article 165, Part II: Specific Provisions, Chapter VI: Acts against the social order, The Criminal Law of the People's Republic of China provides that those who practice witchcraft for the purpose of spreading rumors or swindling people out of money and property shall be sentenced to imprisonment for not more than two

years, to detention, or to surveillance. In a serious matter, the offender shall be sentenced to imprisonment for not less than two and not more than seven years. In Saudi Arabia, the government has declared that witchcraft is a crime and prescribed the death penalty for its practitioners. The most significant legal development on this issue was section 124, 125, 126 and 208 of the Sharia Penal Code of Brunei Darussalam, which also include the offense of murder using witchcraft.

In Malaysia, there are some court cases which were related to witchcraft. Among the known cases are:

- a) *P.P v. Mat Saad Mat Isa and 2 Ors* [2005] 1 AMR 29 and *Sabarudin Bin Non & Ors v. PP* [2005] 4 MLJ 37. It was mentioned in the court that *santau* was used as a means to kill the deceased.
- b) *Juraimi Bin Husin v. PP and Mohd Affandi b. Abdul Rahman & Anor v. PP* [1998] 1 MLJ 537. The most popular witch case, Mona Fandey and her disciple Juraimi, who was charged with the murder of the late Dato' Mazlan.
- c) *Tan Mui Choo & Anor v. PP* [1987] 1 MLJ 267. The accused was charged with offence of murdering two children. The murder involved ritual of black magic.
- d) *Case Dato Mokhtar Bin Hashim & Anor v. PP* [1983] 2 MLJ 232. The accused sought assistance from *bomoh* to weaken the deceased before killing him.
- e) *Francis A / L Anthony samy v. PP* [2003] 2 MLJ 49. The accused, acting on advise of a *bomoh*, killed a man for the purpose of getting his head as a condition for *puja nombor ekor* ritual.
- f) *PP v. Vasavan Sathiadew & Ors* [1990] 1 MLJ 151. The wife of the deceased sought service of a witch when she learnt that her husband had affair with other woman.
- g) *Muniandy & Ors v. PP* [1966] 1 MLJ 257 and *B v. P* [1998] 5 MLJ 787. The parties alleged the other of using black magic, causing their families split and quarrel among themselves.
- h) *Mustafa Batcha vs Habeeba Abd Rahman* [1410] JH 41. The husband claimed that he pronounced talaq in a state of unconsciousness due to the influence of black magic.
- i) *Re Wan Norsuriya* [1418] JH 211. The respondent claimed that her consent to the marriage was obtained while she was under magic spell.

The cases above show that witchcraft is used by people in society. However, due to the absence of legal provisions, the witches and individuals who seek their services escape from any legal action.

3. Transferring the Knowledge

A Ph.D research entitled “*The Use Of Witchcraft In Committing Crimes In Malaysia: A Need For Prevention Through Legal Mechanism*” by Mahyuddin Ismail was completed in 2010. Accordingly, the results of this study have been proposed to be shared and transferred to the authorities so that it would help the authorities to deal with this issue. Since this knowledge transfer program involves senior officers from various background and expertise, therefore an interactive approach through cluster groups to apply. This group is divided into 4 clusters based on the objectives and areas of expertise.

Cluster 1

The main objective of the cluster 1 is to study and improve the legal provisions as proposed in the research. This cluster is also responsible to propose the path for it to be codified. The cluster comprised of:

- a) Mohd Syahrizal Syah Zakaria, Head of Legal Unit, Majlis Agama Islam Wilayah Persekutuan (MAIWP);
- b) Abbas Noordin, Director, Registration Division, Secretariat and Records, Department of Syariah Judiciary Malaysia (JKSM);
- c) Musa Awang President, Syariah Lawyers Association of Malaysia;
- d) Noor Aishah Anan, Advocates and Solicitors, Messr. Noor Anan & Co., and Abu Dzarr Ab Karim, Messr. Abu Zarr & Co.
- e) Marzuki Hassan, Assistant and Senior Assistant Director, Office of the Legal Adviser, Jabatan Kemajuan Islam Malaysia (JAKIM)
- f) Hj. Abdullah Mat, Assistant Director, Division of Law Coordination, Jabatan Kemajuan Islam Malaysia (JAKIM)

Cluster 2

The main objective of the cluster 2 is to study and improve the proposed procedures of complaint, investigation, arrest, search and seizure including the related forms. The cluster comprised of:

- a) Rahimin Bani, Head of Religious Enforcement Officer, Malacca Islamic Religious Department;
- b) Ahmad Sukarno Saini, Head of Religious Enforcement Officer, Sarawak Islamic Religious Department;
- c) Hj. Zamri Kambari, Head of Religious Enforcement Officer, Johor Islamic Religious Department

- d) Azizan Anan, Commissioner, Crime Planning, Royal Malaysian Police of Johor;
- e) Zainor Rashid Hassin, Senior Prosecutor, Federal Territory Islamic Religious Department;
- f) Dr. Ahmad Fahmi Md Sahray, Senior Assistant Director of Traditional and Complementary Medicine, Ministry of Health Malaysia

Cluster 3

The main objective of the cluster 3 is to study and improve the proposed areas of expertise, its development and recognition. The cluster comprised of:

- a) Dr. Mahyuddin Ismail, Director of the Islamic Centre and Human Development, Universiti Malaysia Pahang
- b) Prof. Dr. Abdul Jalil Borham, Dean of Modern Languages and Human Sciences, Universiti Malaysia Pahang (UMP)
- c) Mohd Hamzah Ismail, Legal Adviser, Jabatan Kemajuan Islam Malaysia (JAKIM)
- d) Amidon Anan, Former Chairman of CSI - Forensic Laboratory, Royal Malaysian Police
- e) Dr. Rushdi Ramli, Associate Professor, Department of Fiqh and Usul, Academy of Islamic Studies, University of Malaya
- f) Dr. Aidatul Azura Abdul Rani, Senior Assistant Director, the Traditional and Complementary Medicine Division, Ministry of Health Malaysia
- g) Dr. Mansor Sulaiman, Senior Lecturer, Department of Modern Languages and Human Sciences, Universiti Malaysia Pahang

Cluster 4

The main objective of the cluster 4 is to review and improve the draft of admissible evidence that can be used in the court. The cluster comprised of:

- a) Dr. Zulfakar Ramlee and Dr. Abdul Rani Kamaruddin, Associate Professors, Ahmad Ibrahim Kulliyah of Law, International Islamic University Malaysia;
- b) Dr. Mohd Naim Mokhtar, Director of the Family Support Division, Department of Syariah Judiciary Malaysia (JKSM);
- c) Hj. Abdul Rahim Sinwan, Vice President of the Muslim Lawyers Association of Malaysia;
- d) Sakaria Semela, Chief Public Prosecutor, Sabah Islamic Religious Affairs Department;
- e) Zuriyati Mohd Noor, Senior Federal Counsel, Office of the Legal Adviser, Jabatan Kemajuan Islam Malaysia (JAKIM);

- f) Hj. Zainal Abidin Kusmin, Judge of Klang Syariah Subordinate Court.

their experiences, the participants could understand their pains and grievances.

These participants were gathered under one roof, in a number of workshops as follows:

- a) 1st Workshop: 30th August – 1st Sept. 2013 at Pangkor Island;
- b) 2nd Workshop: 7th – 9th of February 2014 at Port Dickson;
- c) 3rd Workshop: 11th – 13th April 2014 at Cherating;
- d) 4th Workshop: 5th – 7th August at Kuala Lumpur;
- e) 5th Workshop: 18th - 19th October 2014 at Petaling Jaya.

In these workshops, participants were exposed to the study's findings and in-depth analysis of the following items:

- a) the philosophy and concepts underlying witchcraft, its methods, types and effects on victims;
- b) global history of witchcraft with reference to earlier civilizations such as Mesopotamia, Ancient Egypt, Rome, Greece and even the later civilizations such as Islam and Western civilization;
- c) aspects of crime where black magic might be used;
- d) legal aspects involving the criminal law and the law of evidence in court;
- e) An analysis on the provisions of the existing legal provisions as well as the procedures and evidence;
- f) A comparative study on the legal provisions relating to the crime of black magic in several countries.

Through this session, various issues have been identified, studied, discussed and resolved through the following approaches:

- a) Brainstorming;
Principal researcher presented results of the study and any findings were discussed and deliberated by the participants.
- b) Sharing information and expertise from various angles;
Since the subject matter requires a holistic approach, the participants were to share information and expertise based on their respective fields.
- c) Sharing Moment with black magic's victim;
The program also invited individuals who became victim of witchcraft. By listening to

- d) Case study

There are some court cases that have relations with the use of witchcraft. These cases were used to examine critical aspects which were not addressed by the court in the trial process. Through the analysis of this case, the vacuum can be identified and measures to address them can be submitted.

Through this workshop, various technical aspects relating to the provisions, procedures, expertise, evidence and proof were improved.

Simulation and Mock Trial

Given that this issue seems difficult to prove, so the researchers took an approach to simulate case. A mock trial based on real case was held and all the participants were given their roles. All materials and equipment used in a black magic ritual were brought into moot court. The process of proving adopted steps and mechanisms that have been developed by this team. The trial was conducted in the presence of the Chief Judge of Pahang Syaria Court, the Right Honourable Dato 'Abdul Rahman Yunus. The simulation was successfully carried out and it delivered a message to the participants that witch trial is not impossible as it is thought.

Witchcraft-Ritual Site Visit

For in depth understanding, a total of seven researchers and participants took part in a visit to a house at Johor Bahru where witchcraft ritual has been reported to take place. The visit was a follow-up of raid that have been carried out by the enforcement officers of the Johor Islamic Religious Department. Through this visit, the members have shared information and procedures with the enforcement officers on how to deal with cases related to witchcraft.

4. Outcomes of KTP Project

Through the use of various instruments in this program, the team has come in with the following discoveries:

Outcome 1: Legal Provisions on the Offences of Teaching and Practicing Witchcraft

Participants have unanimously recommended that the practice of black magic is an offense. Additional provisions in the enactment of a criminal offense or act which contains the definitions, the list of offenses and penalties have been drafted as below.

a) Definition of Magic

A unanimously agreed definition of magic is as follows: "Any speech deemed spells, incantations, or any particular act of using certain materials or equipment, or any other means which violate Islamic law, either said or done or any way to cause dharar person or otherwise."

b) Legal Provisions Relating to Witchcraft

It was suggested that the following items are to be gazetted as an offense:

- i. practicing witchcraft;
- ii. using black magic upon others;
- iii. offering services of witchcraft; and
- iv. causing or propagating witchcraft to be practiced.

c) Procedures for Complaint, Investigation, arrest, search and Foreclosure

It is suggested that the investigation procedure for cases involving witchcraft is divided into several stages:

- i. Complaints to the investigating officer;
- ii. Investigation;
- iii. Further investigations;
- iv. Arrest;
- v. Search;
- vi. Seizure;
- vii. Report of Investigation papers to the prosecution division.

Therefore, a Standard Operating Procedure (SOP) was developed for that purpose.

Outcome 2: Expertise Recognition

The expertise on this matter has to be established and recognized. This is the most crucial part since it will ensure the process of finding the truth can be carried out in a fair and professional way. It was suggested that there are two kinds of expert evidence to be applied in case involving witchcraft. The first is the evidence of an expert who has knowledge and experience in the field of witchcraft treatment. For example, the Islamic medication practitioners. Their service is required to help the law enforcers in getting information from the complainant or victim as well as giving expert opinion.

The second is the forensic scientist. Expert forensic evidence is needed to determine the equipment and material used in black magic ritual as well as to identify the biological trace on it. Through forensic report, we can identify, among other, the materials used in ritual, the owner of the material through fingerprints or DNA experiment and any other things related thereto. It was unanimously agreed by the participants that an independent committee who have authority to recognize Islamic medication practitioners should be institutionalized. The participants also recommended the development of witchcraft forensic and recognition its expert so as to help the court to reach a fair decision. It was also agreed that a report from medical doctor and psychiatrist has to be obtained to justify the physical and mental condition of the complainant or victim.

For the purpose of fulfilling the requirement of section 33 of Act 561 (expert evidence), there are two approaches which is appropriate:

- a) Inserting the word '*sihr*' into one of the areas that require expert opinion; or
- b) Categorizing witchcraft or *sihr* as a branch of the arts i.e. occult art. According to *Ensiklopedia Dewan Bahasa dan Pustaka*, the term occult refers to a variety of beliefs and practices involving the occult or forces beyond the natural world. Occult includes soothsaying, fortune-telling, witchcraft and spiritualism, the belief that spirits of the dead communicating with the living.

Outcome 3: Forms of Admissible Evidence

Through a long and thorough discussion, this program identified four (4) types of evidence that could be applied in black magic case:

- a) Oral evidence either admission of the witch, or oral evidence by victims, witnesses or expert witness;
- b) Documentary evidence in the form of physical documents such as medical reports, photograph, video or any electronic or digital recording.
- c) Physical evidence of the materials found at the scene or on the victim's body and includes a visit to the scene.
- d) Circumstantial evidence (*qarinah*) that is relevant to the facts in issue.

Besides, the participants also recommended the application of *agent provocateur* (trapping agent).

5. Impact of The Project

This project received attention from Director General of JAKIM and it was put as one of the Key Performance Index (KPI) for the JAKIM's Legal Department. The project was presented twice in the Islamic Law Technical Committee of Malaysia in April and September 2014. The Committee has agreed with the results of this program and will forward this proposal to be further discussed at the management level. The project also pulled attention of the Brunei government which on their way to implement section 124, 125, 126 and 208 of the Sharia Penal Code (offense of murder using witchcraft). Two researchers for this program have been invited to the country on 2 to 6 June 2014 to share their expertise with the judges and staff of the Brunei Islamic courts.

This development of this project has closely followed by the media. Some of the participants have been invited in a series of exclusive interview with TV Al-Hijrah, Astro Awani, Analisis Awani and TV3. The related news also published in the Berita Harian, the Star, Utusan Malaysia, Harian Metro, Sinar Harian and it became viral in social media such as blog, Facebook, WhatApps and others.

6. Conclusion

This program can be considered as a high-impact project which gives a tremendous contribution to the legal system. It will help the authorities to enact a set of transparent, logical and practical rules and procedures relating to witchcraft. This program also aims to establish a mechanism to prevent people from becoming slave and victim of the witch. This could help the authorities in order to preserve peace in the community and enrich research science itself. On the other hand, this program open an exploration to a new dimension in the legal field.

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