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Bewitchment As A Defence In Divorce Cases: An Analysis From Islamic Law Perspective

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Abstract

There are claims of the use of witchcraft in causing a rift in the relationship of husband and wife. This issue is raised in several marriage and divorce cases in Shari'ah Court in Malaysia, but there is no initiative taken to overcome it. The inexistence of such law makes the processes of consideration and evaluation of the truth of such claims difficult to be conducted. To this day, the issue is left unresolved. This paper aims to evaluate how far the claim that bewitchment can be a defense in divorce cases in Shari'ah Court in Malaysia. By referring to a few relevant cases, this study analyzes the perspective of Islamic law on the divorce cases connected to witchcraft; and how far it can be applied as a defense in a divorce case. The study is very important in helping the judiciary institution to be fair and to fight for the spouse who becomes a victim of witchcraft evilness.

Key words: Witchcraft, Divorce, Defense, Shari'ah Court

1. Introduction

Witchcraft is one of the most ancient knowledge and practices in the world. This practice involves the use of jinn and devil for a particular purpose. It is usually used to eliminate the feelings of love among family members, to cause divorce of a married couple, to make someone loses his mind, to cause disease to the extent that it could kill the victim without touching. Therefore, it is no surprise if a husband claims that he unconsciously and unintentionally divorced his wife, due to being witched. Allah SWT says:

"...And [yet] they learn from them (Harut and Marut) that by which they cause separation between a man and his wife..." (Al-Quran 2: 102)

In Malaysia, the issue of the use of witchcraft to cause a rift in marriage was raised in a few cases in Shari'ah Court, for example the case of *Mustafa Batcha v. Habeeba Abd. Rahman* [1410] JH 41, the case of *Re Wan Norsuriya* [1418] JH 211 and the case of *Muhammad Kamran Babar Nazir Khan and Yani Yuhana Mohd Zambri* (Muhamaad Razis Ismail, 2011). Unfortunately, the issue was not addressed correctly due to absence of specific guidelines and laws related to witchcraft (Mahyuddin, 2012).

2. The Use of Witchcraft in Divorce

Referring to the above verse, Islamic scholars concur with the view that witchcraft is used to cause a rift in the relationship of married couples. Divorce cases related to the use of witchcraft usually occur in strange situations and are out of norm. From the writers' experience, there were few cases where the husband claimed that his tongue felt like it was overpowered by something that made him utter talaq towards the wife. Some claimed that they were not aware of the situation and could not remember when and where they uttered the talaq. There were also claims from husbands or wives that there were tremendous changes in their feelings for example intense dislike and hatred, whereby the feelings rose to the point where they would hit their spouses without them wanting it. The writers came across some cases where the wives became the ones who seriously insisted on a divorce without any reasons. Besides, there was a case where the wives applied for fasakh