

# CAUSING HURT BY USING BLACK MAGIC AS AN OFFENCE: AN ANALYSIS OF VARIOUS STATUTORY PROVISIONS UNDER THE BRUNEI SYARIAH PENAL CODE

Rajali bin Haji Aji<sup>1\*</sup>  
Ahmad Masum<sup>2</sup>  
Yusuf Sani Abubakar<sup>3</sup>

<sup>1</sup>Sultan Haji Hassanal Bolkiah Faculty of Law, Universiti Islam Sultan Sharif Ali (UNISSA), Brunei Darussalam, (E-mail: [rajali.aji@unissa.edu.bn](mailto:rajali.aji@unissa.edu.bn))

<sup>2</sup>Sultan Haji Hassanal Bolkiah Faculty of Law, Universiti Islam Sultan Sharif Ali (UNISSA), Brunei Darussalam, (E-mail: [ahmad.masum@unissa.edu.bn](mailto:ahmad.masum@unissa.edu.bn))

<sup>3</sup>Sultan Haji Hassanal Bolkiah Faculty of Law, Universiti Islam Sultan Sharif Ali (UNISSA), Brunei Darussalam, (E-mail: [sani.yusuf@unissa.edu.bn](mailto:sani.yusuf@unissa.edu.bn))

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**Abstract:** *Black magic has been a phenomena on the face of earth since time immemorial. It is used to, among others, for ill-will purposes. One of which is to cause injury to a victim. The Brunei Syariah Penal Code contains several sections which basically deal with the offence of or related to using black magic. In respect of the offence of causing hurt, there are several relevant sections. This article aimed to explore and examine the content of each section. Method employed was content legal analysis method. The article concluded that the Brunei Syariah Penal Code provides tool to protect against the using of black magic in crimes especially the offence of causing hurt. It is important that every section's ingredients are fulfilled in order to bring action against any alleged black magic practitioners.*

**Keywords:** *Black magic, offence, Brunei Syariah Penal Code*

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## Introduction

Injuries occur every single day in all parts of the world. It is done in unimaginable and indefinite ways. Take a knife as an example. A person could use it to injure another by for instance, slicing the latter's arm. This incident is physical in nature in the sense that the act of slicing could be visibly seen with naked eyes and also the consequence befalling upon the victim: the injury. Likewise, when a person fires some shots at another person. The sensory capability of the eye would give out a vision that is seen in all aspects: from the act of firing and the part of the body where the bullet struck. All are seen. These cases are common in courts. For cases where a person suffers injury due to some unseen influence, it might not be particularly easy to spot the source. One of the factors might be internal bleeding or sickness or mental. But one which might also be the factor is black magic. It has been a topic spoken of by people on the face of earth since time immemorial. The world and its modern state do not leave black magic behind. It is still relevant and could be concerning. Hence, the laws play a crucial role in crippling its void function. This could evidently be seen in the Brunei Syariah Penal Code. Several laws or sections have been incorporated as to manage the existence and usage of black magic and the offences committed using it.

## Statement of Problem

Crimes are usually committed by using physical means or weapons. For example, a person uses his fist or a gun or knife in causing hurt to another person. The fist, gun or knife are tangible or in other words, it could be seen. Black magic is an art of the unseen. It could take in the form of for instance of some enchantments been done and the intended result occurs. However, the actual physical, seen or tangible infliction of hurt is nowhere to be seen to be delivered by any physical form or creature. For instance, a black magic practitioner performs some rituals or recite some enchantments for a client who desires harm befall unto a targeted victim. The outcome eventually took place i.e. the victim suffers hurt. However, there might not be any actual infliction of harm which could be seen to have been applied physically or in contact with the victim nor was there any entity which delivered such harm. In some cases, the hurt suffered by the victims are disastrous such as paralysis or even death. Hence, the laws act as an important tool of justice to not just punish the offenders who had used black magic to commit crime but also more importantly to serve as deterrent tool. The Brunei Syariah Penal Code had stipulated several sections which govern the laws to counter the use or practice of black magic. Nonetheless, no specific laws have been enacted to especially deal with offences of causing hurt by using black magic. Hence, this article examined the relevant legal provisions under the Code which could be charged against offenders who have committed the offence of hurt by using black magic.

## Research Problems

Based on the statement of problem above, several problems are thus produced which are as follow. First, what is black magic? Secondly, what are the legal provisions or sections which could be charged against offenders who have committed an offence of hurt by using black magic under the Code?

## Research Objectives

Based on the research problems above, it is thus apparent that the objectives of this research are thus as follow. First is to define black magic. Secondly is to examine the legal provisions or sections which could be charged against offenders who have committed an offence of hurt by using black magic under the Code. Additionally, it is pertinent to note that the researcher has

used the literal rule of statutory interpretation in interpreting the statutory provisions in this article.

### **Black Magic**

According to Al-Baly (2004), witchcraft is “an agreement between a sorcerer and an evil jinn or devil which stipulates that the sorcerer commit certain legal or polytheistic actions in return for the satan’s assistance and obedience in fulfilling the sorcerer’s request”. While Gordon (1993) defined witchcraft as “magic undertaken for destructive or selfish purpose; to dominate or harm others; to gain power, wealth or knowledge by necromancy or sorcery, traditionally by calling up demons or by blood-sacrifice”.

Under the Code, section 151 provides a definition of black magic as follows:

“...“black magic” means knot, spell, chants, words, or specific expression or special names spoken or written or doing any act with evil purposes which has the implication and the effect, in the ordinary course of nature, to cause harm to the body, heart or mind of the person; usually the person who practices black magic befriends, or asks for or seeks help from, Iblis, satan, jinn, evil spirits, spirits, ghosts and the like.”

From the above definitions, it could thus be understood that in doing black magic there must be an act whether spoken, written or done which is to seek assistance from the Iblis, satan, jinn, evil spirits, spirits, ghosts and the like for the purpose of causing harm to the body, heart or mind of the person. Hence, in practicing black magic among the objectives and outcomes is harm or hurt to the body, heart or mind of the victim: causing hurt.

### **The Definition of Causing Hurt under the Brunei Syariah Penal Code, 2013**

The definition of causing hurt is defined under section 167 of the Code as follows:

“Any person who causes hurt to a person as provided under section 168, without causing his death, is said to have caused hurt.”

The above section explains that under the Code, any person who causes hurt to a person in manners stated under section 168 is considered to have caused hurt to such person, provided that no death has been caused to such person. Hence, where death is caused to the victim it is not considered to be causing hurt under the Code but a different offence. Additionally, to properly define whether a person has caused hurt to another person, the hurt inflicted or caused to that other must be at least one of the kinds stated under section 168. The said section provides five kinds of hurt which are as follows:

“For the purposes of prescribing the punishments, hurt shall be classified as follows –

- (a) *itlaf-al-udhw* that is the dismemberment or hurt of any part of the body;
- (b) *itlaf-salahiyyat-al-udhw* that is the destruction or permanent impairment of the function or use of any part of the body, or permanently disfiguring such part;
- (c) *syajjah* that is hurt on the head or face which does not amount to *itlaf-al-udhw* or *itlaf-salahiyyat-al-udhw*;
- (d) *jurh* that is wound on any part of the body other than the head and face which leaves a mark or scar whether temporary or permanent; or
- (e) other hurts.”

The first kind of hurt is called *itlaf-al-udhw*. This is basically where the accused had caused any part of the victim's body to be dismembered. The second kind of hurt is *itlaf-salahiyyat-al-udhw*. An example of this is whereby a person causing another to be losing the ability to hear or see. Third is *syajjah*. This is specifically for injuries on the head or face or the victim, only. The injury must not amount to *itlaf-al-udhw* or *salahiyyat-al-udhw*. Where a person caused another to suffer bruises on the cheeks for instance, he has committed *syajjah* injury. Whilst *jurh* is basically a form of injury on the body of the victim which caused permanent scar. Other than the hurts aforementioned, such hurt or injury falls under "other hurts".

### **The Offences of Causing Hurt under the Brunei Syariah Penal Code**

The offence of causing hurt by using black magic under the Brunei Syariah Penal Code is not provided under any particular or direct section. In the researcher's view, there are several sections which are relevant to cover the offence. The first section is section 169 (1) of the Code provides for the offence of causing hurt which is liable to *qisas*. The section provides:

"Any person who causes hurt to a person and it is proved in such manner as provided under section 170 is guilty of an offence and shall be liable on conviction to *qisas* punishment."

The above section explains that any person who causes hurt to a person is guilty of an offence and shall be punished upon conviction with the punishment of *qisas* on condition that the offence is proved by manner stipulated under section 170 of the Code. Section 170 further provide

"Hurt liable to *qisas* punishment shall be proved in the following manner – (a) *ikrar* of an accused who confesses with his consent before a Court of competent jurisdiction; or (b) *syahadah* of at least two *syahid* according to *Hukum Syara'* other than the evidence of the victim, after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*."

The above section explains that an offence of hurt which is liable to *qisas* shall be proved by two methods which are firstly by using the *ikrar* of the accused who made his confession with his consent before a Court of competent jurisdiction. Whereas the second method is by testimonies of two *syahid* according to *Hukum Syara'* and this is not including the testimony of the victim. The Court must also be satisfied that the testimonies of the two *syahid* have fulfilled the requirements of *tazkiyah al syuhud*.

The third section which is relevant to cover the offence of causing hurt by using black magic is section 179. This section stipulates an offence of causing hurt due to rash or negligent act. It provides:

"Any person who commits hurt to another person by rash or negligent act is guilty of an offence and shall be liable on conviction to payment of *arsy muqaddar* or *arsy ghairu muqaddar*, as the case may be, and to imprisonment for a term not exceeding 5 years."

The above section explains that any person who commits hurt to another person by rash or negligent act is guilty of an offence and shall be liable on conviction to payment of *arsy*

*muqaddar* or *arsy ghairu muqaddar* as the case may be and to imprisonment for a term not exceeding 5 years.

The fourth section is section 180. This section stipulates for the offence of causing hurt due to mistake. It provides:

“Any person who commits hurt to another person by mistake is guilty of an offence and shall be liable on conviction to payment of *arsy muqaddar* or *arsy ghairu muqaddar*, as the case may be.”

Apart from the above other sections which are also relevant are sections 208 (1) and (2) of the Code. The section is entitled “practising etc. black magic”. It provides the following:

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

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

The above section 208 (1) explains that whoever practices or advertises black magic is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or imprisonment for not more than 5 years or both. Whereas section 208 (2) explains that whoever seeks help from a person who practices black magic for the fulfilment of any wish is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000 or imprisonment for a term not more than 2 years or both.

Section 249 of the Code governs the offence of voluntarily causing hurt to extort confession or to compel restoration of property. The section provides:

“Any person who voluntarily causes hurt for the purpose of extorting from the victim or from any person interested in the victim, any confession or information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the victim or any person interested in the victim to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, is guilty of an offence and liable on conviction to a fine not exceeding \$28,000, imprisonment for a term not exceeding 7 years or both.”

The above section explains that whoever voluntarily causes hurt for the purpose of extorting from the victim or from any person interested in the victim, any confession or information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the victim or any person interested in the victim to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, is guilty of an offence. The sentence which follows upon conviction is either a fine of not more than \$28,000 or imprisonment for not more than 7 years or both. It could be understood that this section requires



a special element apart from causing hurt which is that the hurt so caused was done in Code to extort confession or to compel restoration of property.

### Using Black Magic in Causing Hurt under the Brunei Syariah Penal Code

From the discussions above on the sections, it could thus be understood that all sections except section 208 (1) and (2) specifically deals with using black magic as an offence. The other sections are stipulating the offence of causing hurt by using black magic only in general. These have been further discussed below.

The first section which is section 169 (1) has not incorporated any particular manner of how the act which causes hurt must have been done. This is a general indication that the act includes whereby the accused had used weapons or means such as black magic in Code to inflict the hurt upon the victim. According to Dennie, section 169 (1) of the Code is based on the categories of hurt offences outlined by the Hanafi jurists. The Hanafi jurists are of the view that there are only two categories of hurt offences which are either intentional hurt or hurt by mistake. For intentional hurt, it is liable to *qisas* though depending on certain conditions. It is immaterial whether the accused had used any means or weapons and the seriousness of the injury inflicted. For instance, it does not matter whether the accused had used his fist or a sword. Where the act has been done intentionally, the injury it also hence intended. Similarly, the act is still considered to be intentional despite the injury which follows. For instance, where a person uses his knife to slice at the victim's hand and which would normally cause a very slight wound but the injury which follows is far-fetched such as the loss of function. As long as the injury is intentional, it is liable to *qisas*, no matter whether the injury incurred is usually the normal result or otherwise. This would mean that where for instance A intentionally causes hurt to B by using black magic, A shall be held liable and therefore punishable under this section. It is hence notable that the section requires intention as its *mens rea* in the commission of the offence.

The second sections are sections 169 (2) (a) – (d). Similarly, these sections have not incorporated any particular manner of how the act which causes hurt must have been done. For instance, section 169 (2) (a) explains that where a person has caused hurt to another person but the offence is not proved by the manners of confession or testimonies of two *syahid*, such offence is only punishable with the punishment of arsy (by virtue of section 169 (i) – (v)) and compensation (by virtue of section 169 (3) of the Code. There is no direct section under the Code which stipulates the manner of how hurt is to be inflicted to invoke this section. However, literal interpretation of the words in these sections indicate the way of how the hurt is caused is immaterial. Hence, where a person causes hurt by using black magic, such is considered to be covered by these sections. Another matter which is not expressly provided for under this section is the required *mens rea*. Literal interpretation of the section indicates that the offence could be committed with intention or knowledge. Hence, where it could be shown that the accused knew that his act would result in causing hurt to the victim, he is liable under one of these sections. Sections 179 and 180 of the Code clearly indicate that section 169 (2) (a) – (a) includes *mens rea* of rashness, negligence and unintentional or by mistake.

Another section is section 179. This section explains that it is an offence of causing hurt if an act causing hurt had been done in a rash or negligent manner. For example, where a person unintentionally causes hurt due to being negligent in driving vehicle by hitting a school kid in the vicinity of primary school during school hours. Here, there is no intention but rather an act done out of negligence or alternatively rashness. In respect of using black magic for this section, the researcher is of the view it would be dependent upon the facts and circumstances of the case

whether there had been an act of rashness or negligence in using black magic which resulted in hurt to the victim.

An act which is a mistaken act but resulting in causing hurt to the victim is an offence under the Code. It is provided under section 180. For instance, believing that the figure seen from distant is a deer, A shoots some bullets at it. It turns out that the figure is a man. Here, the researcher is of the view that whether an act causing hurt is mistaken it would be dependent upon the facts and circumstances of each case. For instance, due to a misunderstanding of the black magic practitioner as to the intended victim by the client, he had caused hurt to another person. According to the Hanafi jurists an act which causes hurt committed out of mistake is considered as unintentional. Hence, the act of the black magic practitioner where mistakenly committed is considered as unintentional but however punishable under this section.

Next, are sections 208 (1) and (2). For section 208 (1) it stipulates that it is an offence for any person to practice black magic. In the researcher's view, the section is general in the sense that practicing black magic is an offence for itself regardless of whether it is used to cause hurt or any other thing. The difference of this section with all the other sections above are that there is no need to prove that any hurt has been caused. The mere practice of black magic suffices to invoke the section. Hence, where a person uses black magic to cause hurt, he is thus chargeable by virtue of this section for the fact that he had used black magic regardless of objective of doing so.

Last but not least is section 249. This section could be understood to be requiring a special element of causing hurt in Code to extort confession or to compel restoration of property. This means that the person who caused hurt had done it with objective of extorting confession or compelling the victim to restore some property. In the researcher's view, an example of this section is whereby a black magic practitioner had used black magic in hurting a victim which has been instructed by a client with the objective of extorting confession or compelling the victim to restore some property.

## Conclusion

In conclusion, it could thus be seen that the offences of causing hurt by using black magic under the Code is covered by several sections. It is pertinent to note that in the Code to charge a person with any of the respective sections, the ingredients of such section must be met. The researcher is of the opinion that a more challenging task is in proving the use of black magic in causing hurt. As black magic is not something visible to the eye, more researches need to be conducted including the available sections of evidentiary rules for instance the Syariah Evidence Act in Code to cater for the needs to suffice in covering black magic as a tool or weapon in committing crimes especially the offence of causing hurt.

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