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The Non-Shariah and Syariah Makyung in Kelantan: A Legal Critique

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Abstract

In Malaysia, Makyung is better known as a traditional Malay performance, which is believed to have originated in Kelantan over 200 years ago. This performing art is believed to have its roots in animist and Hindu-Buddhist traditions and as such the performance is being criticised as being contrary to the Islamic religion in Kelantan, an East Coast state in Peninsular Malaysia whose state government is prone to the Islamic teachings. This paper concluded that the Kelantan State government has laid serious attention to the non-Islamic nature of Makyung performance via the state legislative control which is evident in its State policy and laws. However, the strict prohibition of this traditional performance has been relaxed via the Syariah compliance approach in the Makyung performance and it is hoped that this would enable the survival of this traditional performance in Kelantan for the future generation.

Keywords: Makyung, Syariah, Non-Syariah

Introduction

UNESCO's endeavour throughout the 2003 Convention for the Safeguarding of Intangible Cultural Heritage (the 2003 ICH Convention) concerning intangible cultural heritage has seen an expansion due to the response to the vanishing of traditions resulting from disappointment in local cultural reproduction, preservation, and continuation in the globalisation age. This has incited Malaysia to get a proclamation of intangible heritage on 25 November 2005, where the UNESCO acknowledged Makyung's Performing Art as a "Masterpiece of the Oral and Intangible Heritage of Humanity" on 25 November 2005 which was then listed in the Representative List under the 2003 ICH Convention in 2008. However, the administration and management of Makyung become complicated due to the policy and laws developed by the Kelantan state government, which is seen to have set some limitations to the practices of Makyung in Kelantan. This paper discusses the features of one of the Malaysian traditional performances of the Malay communities, namely, Makyung, its evolution, development and deterioration, the legal aspects, and challenges in Kelantan.

Research Methodology

This study is a doctrinal legal research and uses the content analysis method that requires analysis of various documents. The authors make references to several provisions in the

Federal Constitution as the highest law in Malaysia and analysed the Theatres and Places of Public Amusement (Enactment No. 47 of 1936), Kelantan Control Entertainment and Places of Entertainment Enactment [Enactment No. 8 of 1998] and the Entertainment Control Guidelines of 2003. Books and articles from journals are among the secondary sources referred to. Information was also obtained from unpublished reading materials such as seminar papers, conference papers, theses and various other related materials.

Literature Review

Although there are literatures on the issue of non-Syariah Makyung in Malaysia, they are discussed in a general manner and not much discussion is made in relation to the legal aspects of this traditional performance. Kamali in 1997 and 1998 wrote about non-Islamic practices which became norms. According to him, Islam criticised the pre-Islamic practices and rituals that encouraged blind simulation of ancestral precedents as their ultimate belief as in the verse of Qur'an al-Baqarah 2: 170. According to Husin, in 1998, the Qur'an shows the importance of faith to be preserved by Muslims with struggles and in line with Islamic law. Based on the importance of preserving this faith, the rulers (*umara'*) and scholars have a duty to ensure that Muslims adhere to the Islamic religion and have a strong Islamic faith. In this regard, scholars and *umara'* are asked to do good (*al-amr bi al-ma'ruf*), prohibit people from doing evil (*wa al-nahy 'an al-munkar*) and shirk.

The establishment of the Malaysian Department of Islamic Development (JAKIM) is an approach by the Federal Government to promote the Islamic way of life of Muslims in Malaysia and to suggest that the way of life should be respected by all means. Haque and Masuan, in 2002, discussed, among others, the role of JAKIM in changing the mindset of the Muslims in Malaysia. They noted that there is literature that highlight the origins of Malays, who were originally Hindus and practised animism prior to the fourteenth century, after which they embraced Islam. According to the writers, among Malaysians, and especially the Malays, the traditional belief that spiritual forces play a great role over physical and mental health is dominant. Hence, according to them, within the Malay population, there are also cultural differences from state to state, but a strong influence of religion overshadows the overall Malay culture.

Farid Suffian in 2009 proposed that Islamic principles and ethical values should play an important role in the proposed reformation process and be given recognition as one of the sources of Malaysian common law.

Ghulam Sarwar, in 2010 revealed that assimilations of Islam in many of the traditional performances in Malaysian including Makyung, bring about conflicts among the practitioners because, despite the overwhelming acceptance of Islam, influences from the previous religious and spiritual experiences continue to be significant to this day, albeit sublimated, in, at times, uncomfortable situations of assimilation or accommodation. This, according to him, is particularly evident in traditional rites and ceremonies, as well as in the performing arts. Zainuddin in 2012, reported that Makyung performance at Istana Budaya (National Theatre) revealed numerous changes in design, personnel, and intent from traditional Makyung work, which caused debates on the suitability of the changes by various quarters, for example, ASWARA, PUSAKA, and practitioners.

Adil, & Abdullah, in 2016 commented that takzir is an Islamic punishment which is in line with the Federal Constitution. There are several judges and academics who have proposed transforming the legal system by way of harmonising common law with local religious and customary values and practices. Ibrahim and Mohamad, in 2018, discussed Shariah-oriented

policy or *siyāsah al-shar'iyah* pertaining to the control of intangible cultural heritage in Malaysia that followed up with the state government and police of the arts, as well as reforms carried out from 1990 to 2015. The focus of the research was on the application of the basic arts and entertainment through the enforcement of the Kelantan Enactment No. 8 of 1998 and the 2003 Entertainment Guidelines, which became the main purpose of the exercise of political *shar'iyah*.

Sulong in 2016 highlighted the role of Fatwa to protect the Muslim belief, which, according to Muslim scholars such as Ibn Asyur in 2006 and Munir in 2017, is one of the essential elements in *maqasid al-shari'ah*. Based on the works of literature that promoted the idea of safeguarding intangible cultural heritage and the fact that the traditional performances contain elements contrary to Islamic belief, the authors further suggested that it is time to impose obligations on the part of organisers and individual performers to modify the traditional performances by excluding ritualistic elements before such performances are allowed to be performed.

Mohd Asri and Shukeri in 2018 have specifically pointed out the Syariah oriented policy in the implementation of art policy in the state of Kelantan from 1990 to 2015, a period when Kelantan was led by Tuan Guru Nik Aziz bin Nik Mat. More specifically, their literature have highlighted the discussion on the control of traditional practices, and the reason behind the prohibition of certain rituals were based on the protection of belief in Islam.

In the absence of comprehensive discussion on the legal aspects of the non-syariah Makyung in Malaysia, this study is to fill the gap.

Findings

The History of Makyung

Makyung is actually a dance while acting. (Nasir, 1991) It compasses ritual elements, stereotyped characters, acting stylisation, movements and gestures, and an episodic plot. There are a number of historical versions of Makyung, including entertainment for the royal queen and princesses (Salleh, 2015). These versions originated from various historical facts and stories inherited from generation to generation.

In Malaysia, Makyung is better known as a traditional Malay performance, which is believed to have originated in Kelantan over 200 years ago. Although the origins of Makyung are very much debatable, with neither scholars nor traditional performers able to validate the place of its actual origin and the precise period of time in which it was established, studies have provided some possibilities through thorough analysis of the limited written accounts available as well as from traditional sources of its history and origins that have been handed down orally from generation to generation. This performing art is believed to have its roots in animist and Hindu-Buddhist traditions. Makyung incorporates elements of entertainment, shamanism, feasting the spirit, dances, acting, vocal and instrumental music, songs, and stories (Yusof, 2004). This dance drama is performed mainly by female troupes, who act in both the male and female roles. The performers are assisted by all-male musicians who play the gong, serunai, rebab, and elongated barrel drums. (Zakaria, 1990) A Makyung cast varies from the type of performances. The numbers of the cast also vary depending on whether the cast is just a ritual where in that case, there are only eight to ten. If the stories demand more performers, then the cast may involve as many as 20 to 25. The number of musicians depends on the requirements of the specific performance, and it excludes the number of Makyung performers (Zahari & Umar, 2011)

Islamic Perspective on Intangible Cultural Heritage

Although Malaysia is not an Islamic State and Islamic Law is not the written source of federal law, Islam has a higher position than any other religion pursuant to Article 3 (1), 11 (4), and 12 (2) of the Federal Constitution. The case of *Lina Joy v Majlis Agama Islam Wilayah & Anor [2004] 2 MLJ* may illustrate this fact. However, this position does not make Islamic law (the al-Qur'ān and as-Sunnah, Ijma and opinion of Muslim jurists) as the main sources of reference at the federal level. Moreover, even though Item 1, List 11 (State List) of the Ninth Schedule gives the State Legislative Assembly the jurisdiction to make law on Islam, this power is also very limited.

Worshipping other than Allah is one of the sinful acts in Islam, and this important principle is included in all of State Enactments on Syariah Criminal Law in Malaysia such as in Section 4 (1) of the Syariah Criminal Offences (Selangor) Enactment 1995 (Enactment No. 9 of 1995). Intangible cultural heritage for an instance, involves a matter of belief, as will be discussed further in this chapter. Shariah-oriented policy or *siyasah syar'iyah* was adopted by the State Government of Kelantan in prohibiting Makyung before lifting the bans in 2019 (Ibrahim & Ibrahim, 2018)

Efforts to suppress the practice of khurāfāt (superstitious) and shirk (the sin of idolatry/polytheism in traditional practices are part of the role and duty of the state government in safeguarding religion and people's interest (*maslahah*) from practices that can damage the faith of the ummah (the whole community of Muslims bound together by ties of religion) and Islam because protection of belief is one of the essential elements in *maqasid al-shari'ah* (Ibn Asyur, 2006). This action was based on a hadith of the Prophet (Peace Be Upon Him). which reads:

Whoever sees any of you is evil, let him know that he should prevent it by hand if he is unable (with power) then shall prevent it with a tongue (advice) and if he cannot afford it, so he should prevent it with the heart. Such is the weakest of faith (al-Nawawi, 2005).

Even though Islam awards freedom of religion to all, it nevertheless maintains some differences between the rights of Muslims and non-Muslims. The first approach to freedom of religion is clear in verse al-Baqarah 2: 256 that Islam gives the right to all people to choose their beliefs without any force. Islam takes this libertarian attitude because religion depends upon faith, will, and commitment, not compulsion.

Within the context of preserving intangible cultural heritage having prohibited elements according to Islam, the Federal and Kelantan State government must therefore give ways to non-Muslims in exercising their rights as non-Muslim by virtue of Articles 3 (1) and 11 (1) of the Federal Constitution.

The third approach listed that Qur'an acknowledges the custom that the real faith means it does not come from the simulation and total devotion to the customs, but it comes from the confidence and belief. Therefore, once individuals declare themselves as Muslims, Islam stops them from doing what is prohibited. They need to comply because Allah SWT also Has a right from His servant in Islam. Intangible cultural heritage reflects the diversity in human culture. (Lenzerrini, 2011) In the verse of Qur'an al-Hujurat 49: 13, Allah SWT said that;

'O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Aware.'

This reminder illustrates the various differences of people in terms of for examples, colour, belief, way of life, and culture, which require respect and tolerance among the people.

Rituals in Traditional Performances against the Principles of Belief

There are two ritualistic performances in Makyung theatre. The opening and closing sections of the play are the only parts that contain these rituals. In the case of multiple performances, each troupe would need to conduct its own individual offerings. The origins of Makyung are rooted within an animistic beliefs framework. Over the course of time, these rituals witness the influence of Islam as practitioners are mostly Muslims themselves. However, the instance of this ritualistic procedure still has the elements of shirk as it would involve the presentation of yellow glutinous rice, parched rice, turmeric rice, three betel leaves and betel nuts, water, sweetened water, raw cotton thread, odd numbered monetary offering (for example 25 cents), tobacco, incense as well as 'omelette – like' offering in the opening of the performance.

The Quran exposes the error of those who made permissible (halal) what should have been prohibited and made forbidden (haram) what should have been permitted in the al-Quran in Al-An'am (6): 140. One of Islam's initial accomplishments was, therefore to establish certain legal principles and measures for rectifying this important matter; these principles were then made by determining the criteria on which the questions of what is halal and what is forbidden (haram) are to be based. This vital aspect is determined according to the correct perspective, and rules related to matters of halal and forbidden (haram) are, as highlighted by established on the basis of principles of justice pursuant to verse 110 in Surah al-Imran of the al-Quran (Al-Qaradhawi and Daud, 2016)

The following injunctions in the Qur'an and Sunnah are illustrative to the prohibition of an animistic belief. The Qur'an has confirmed that Muslims must have a strong belief in their submission to Allah in various verses in the al-Qur'an such as in al-Ahzab 33:22. There are also many hadiths, which supports the clear injunctions on firm belief to Allah alone. The above verses of the Qur'an and Hadith clearly require believers to have firm faith in Allah SWT. Having strong faith requires believers to refrain from rituals seeking assistance from supernatural beings, which traditionally existed in most traditional performances.

Attire and Behavioural Control

Since Islam is a way of life, it provides rules and regulations to be followed regarding women's attire. Islam has no fixed standard as to the style of attire or type of clothing that Muslims must wear, but some requirements must be met. However, Allah SWT says in al-Qur'an (an-Nur 24: 31):

“And tell the believing women to reduce [some] of their vision and guard their private parts and not expose their adornment except that which [necessarily] appears thereof and to wrap [a portion of] their headcovers over their chests and not expose their adornment except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons, their women, that which their right hands possess, or those male attendants having no physical desire, or children who are not yet aware of the private aspects of women. And let them not stamp their feet to make known what they conceal of their adornment. And turn to Allah in repentance, all of you, O believers, that you might succeed.”

Another condition for a woman to fulfil is that she must not display her beauty and ornaments except what appears ordinarily. This is clarified further from a Hadith of the Holy Prophet (s.a.w.)

Islam prohibits a man or a woman (who are not within the prohibited degree of marriage, such as brother and sister) from being in close proximity unless a third person within the prohibited degree is present. This is emphasised when Allah SWT says in the al-Qur'ān (al-Isra 17: 32):

“And come not near to the unlawful sexual intercourse. Verily, it is a great sin and an evil way (that leads one to Hell unless Allah forgives him).”

The objective of an Islamic State, is to accomplish the goal of man as Vicegerent of Allah (*Khalifatullah*). This must be done by taking care of the Islamic religion and managing businesses in this world in accordance with Islam as well as to accomplish the objectives of trust (*amanah*) and worship (*ibadah*).

Based on the importance of preserving the Islamic faith, the rulers (*umara'*) and scholars have a duty to ensure that Muslims adhere to the Islamic religion and have a strong Islamic faith. In this regard, scholars and *umara'* are asked to do good (*al-amr bi al-ma'ruf*), prohibit people from doing evil (*wa al-nahy 'an al-munkar*) and shirk. In that case, the responsibility held is to safeguard religion (*hifz al-din*) from wrong beliefs. The question of faith and creed not only ends after a person professes Islam, but it shall always be nurtured from time to time to ensure the sustainability of the Islamic faith in one's life Muslim. Allah s.w.t accept no other faith for practice other than Islam as clearly provided in al-Qur'ān, *Ali 'Imran* (3): 85.

Enjoining good and forbidding evil are not responsibilities of one person. The community and the ruler must be united in carrying out these responsibilities because the Prophet Has already reminded the believers to do so. Restriction on only permissible Makyung is allowed to be performed which is confined to the Syariah Makyung performance is one of the duties of the Ruler of the State in line with the Shari'ah. Once the State has ruled as such, the people have the duty to comply with the law in line with Islamic injunctions.

Makyung in Kelantan under the Control of Entertainment and Places of Entertainment Enactment of 1998 and the Entertainment Control Guidelines of 2003

Makyung is a popular performance practised commonly in Kelantan, a state in the East Coast of Peninsular Malaysia

In the early years prior to Independence, Makyung was governed under the Theatres and Places of Public Amusement (Enactment No. 47 of 1936) as Theatrical Performances where section 20 (c) and (f) (Enclosure B (Fee Schedule)) of the Theatres and Places of Public Amusement (Enactment No. 47 of 1936) which clearly specify the fee amount of any theatrical performances which being revised from a single-digit amount to a three-digit amount beginning 1936.

Under the Enactment No. 47 of 1936, traditional Makyung can be performed publicly with some revisions in their fees. Revision of fees implies the state government's support to the survival of these performances in line with the economic growth though it might be challenging for the players to pay the increased fees to organise the play. The custodians (players, performers, or the living heritage) were free to organise their play for as long as they applied for the license and paid the required fees.

After Independence, through decades of being ruled by Islamic politician party, Kelantan became of the states which focused on Islamic practices among its citizens.

Among the policies in the Kelantan Cultural Policy of 1998 which are inclined to the Islamic injunctions are as follows: i) The art must be based on Islam practices, beginning with the intention, the type of expression, and the purpose towards the pursuit of Allah's damnation; ii) The art, either from within or outside the country, can be adopted as long as it is parallel

and in accordance with the principles of Islam; iii) Other arts that are not based on the principles of Islam can be practiced by people on the condition that they are not accompanied by non-Muslims; iv) All planning and project execution must be based on local artistic characteristics parallel to Islam; v) Women and men should be separated in any art activities. Male cannot be the audience of women performers. According to the policy, practices that are contrary to Islamic law must be eradicated and replaced in accordance with the requirements of religion.

The laws governing Makyung are from various sources, including Enactment No. 8 of 1998 and its 'guidelines' (2003 Entertainment Guidelines). In Kelantan, the main law (Enactment No. 8 of 1998) is worded as 'Control of Entertainment and Places of Entertainment', which is different from other state laws and national laws of other countries. Laws outside Kelantan use the term 'preservation,' 'protection,' and 'conservation' that expressly give priority to the survival of intangible cultural heritage rather than restricting the practice of intangible cultural heritage among the people. The essence of control in the Kelantan Enactment No. 8 of 1998 is based on the State Government's intention to uphold fundamental principles of Islamic law with the intention to uphold belief among the Muslims.

However, Guideline 3.1 of the State General Circular No. 4, Year 2003 – Guidelines on Entertainment Control of 2003 enacted by the enabling Enactment No. 8 of 1998 restricted some old traditional performances after the Kelantan State Government was of the opinion that Guideline 3.2 of the State General Circular No. 4, the Year 2003 – Guidelines on Entertainment Control of 2003 clearly provides that Makyung was a prohibited performance as there are many elements which are contrary to Islam. Makyung was strictly prohibited compared to the category of controlled entertainment. This means that the licensing authority appointed by the State Authority is not authorised to issue the license for Makyung which is strictly prohibited entertainment pursuant to Guideline 4.2 of the State General Circular No. 4, Year 2003 – Guidelines on Entertainment Control of 2003. Consequently, this traditional performance had slowly diminished within the local community and no longer be seen performed in rural areas.

The Kelantan Enactment No. 8 of 1998 initially prohibited Makyung. The creation of the 2003 Entertainment Control Guidelines under the law has prohibited the play of a number of traditional performances on the grounds that they fall under the category of entertainment, which is not in line with the Islamic principles.

However, there are conditions which are clearly mentioned in the Entertainment Control Guidelines of 2003 in order for Makyung performances to be allowed. These conditions are specified in General Circular No. 4 of 2003, which is based on the Entertainment Control Guidelines of 2003, where the people who wish to be involved in traditional performance activities in Makyung must ensure that they follow the prescribed rules. The first rule is that women of 'maturity age' should not be involved, and any man is not allowed to resemble a woman or otherwise. The second rule is that a mixture of a man and a woman is restricted by the principles of Islam or involves a woman exposing her '*aurah*' (a certain part of the body). The third rule is that a license may only be issued for entertainment under the licensee's supervision.

Although this law is meant for the Kelantan community in general, the State Authority allows practices from non-Muslims. Kelantanese Muslims have been banned from performing traditional wayang by the government of Kelantan State by the 1998 law but they are allowed to practice the modified Syariah-compliance Makyung version. This means the Malays can always preserve the modified (Syariah compliance) version of Wayang Kulit. In practice, the

Kelantan State Government gives some flexibility to the non-Muslim Kelantanese to perform depending on who the audiences are, although this is clearly prohibited under the 1998 Enactment (Lim, 2011). Eventhough the allowance is indirectly given by the authority to non-Muslims to perform their intangible cultural heritage in Kelantan, this appears to be contrary to the legal provisions of Enactment No. 8 of 1998. (Mustafa, N.A. & Abdullah, N.C. 2021) Interestingly, a Buddhist-Chinese-Kelantanese dalang, Dalang Eyo Hock Seng, a well-known dalang performing traditional Wayang Kulit Kelantan, retains some of the opening rituals prohibited in his performance under the 1998 Enactment. Its should be noted that non-Muslims may be allowed to practice in line with the concept of freedom of belief (religion) – a fundamental right protected under Articles 3 and 11(1) of the Federal Constitution.

The performance license may be issued by each Land and District office of each district, whereby approval on the place to conduct the performance may be issued by each District Office within a stipulated time period. Section 6 (1) (a) of the Kelantan Enactment No. 8 of 1998 states that any entertainment can only be conducted after getting approval from a licensing officer. Besides that, paragraph (b) also provides that a place to conduct any entertainment performance must be approved by the relevant licensing officer before any entertainment can be conducted. Non-compliance with sub-section 1 is an offence and may be fined for an amount not more than twenty thousand ringgit, or imprisonment of not more than five years, or both. Section 19 (1) of the Kelantan Enactment No. 8 of 1998 provides that a police officer, no lesser than an inspector or any statutory authority, can search without a warrant, any entertainment premise during the performance or before the commencement of the performance, with the intention to ensure compliance of requirements and limitations of any license, or provisions of the Enactment, or related rules and regulations. The licensing officer may also act as a prosecuting officer by virtue of section 32 of the Kelantan Enactment No. 8 of 1998. Section 32 of the Kelantan Enactment No. 8 of 1998 provides that prosecution of offences committed under the Enactment, or any other related rules and regulations can be conducted by – (a) a licensing officer; (b) any police officer of no lesser than Inspector; or (c) any person who is given the power by the deputy public prosecutor.

The licensing officer, among others, may also compound any offence under the Kelantan Enactment No. 8 of 1998 pursuant to section 33 (1) where it provides that the licensing officer may compound any offence under the Enactment, or any other related rules and regulations with an agreement to receive from the suspected offender, a certain amount of money not more than fifty percent from the maximum penalty of the offence. Sub-section (2) further provides that when the amount of money under sub-section 1 is received, no further proceedings can be taken against the suspect.

With regard to Tumpat District in Kelantan, the approval for performance may only be granted to an application made pertaining to profit-based entertainment only. Fourthly, the licensee officer may consider additional administrative matters before considering and approving any application, such as obtaining information and opinions from other selected parties.

Procedures to be followed in order to obtain the Makyung approval are firstly, to fill in an application form at the District Land Office endorsed by the 'Penggawa' (Head of People in a particular District), 'Mukim' (A larger territory than the district) Police Station and District Police Station nearby. Besides the application form, the applicant must obtain an approval letter from the people or landowner where the performance shall be conducted and the surrounding landowners and the people surrounding the area. The applicant must obtain approval from the land office and pay registration fees of RM20 for a whole day's performance. This is applicable in all districts.

The restrictions imposed on Makyung by the Kelantan State Government have forced some of the performers to migrate to urban areas where the audiences are more tolerant of un-Islamic activities and where there are generally more people who appreciate various forms of aesthetic expression. However, both the performance and the stage setup need to be modified in order to meet the taste of the metropolitan audience, which goes against the grain of traditional Makyung aesthetics. This is supported by the Sultan Salahuddin Abdul Aziz Shah Arts and Cultural Centre 2021, which revealed the variances between the commercialised Makyung performances of urban dancers in comparison to those staged by rural performers. This difference has contributed to the loss of the identity and integrity of this traditional genre of dance drama, which could ultimately result in the loss of its status as one of the UNESCO-recognised masterpieces of intangible heritage (Nasuruddin, 2017; Hussin et al., 2020) The loss of the originality and authenticity of the internal value of culture has been discussed in a past research study, where it has been shown that the government's reconstruction of the country's folkloric tradition into a profitable tourism resource has contributed to changes in both cultural meaning and function. (Zhiqin, 2015) There is no doubt that the traditional Makyung and wayang Kulit have rituals that are against Islamic principles. However, the modified versions promoted by the NHD and the NDCA under the Federal Government have replaced the traditional rituals with Syariah-compliant rituals while maintaining the overall characteristics of the traditional performances. As much as revitalising the old traditions is concerned, the Federal Government tries its very best to maintain traditional elements except those clearly prohibited by Islam, such as the 'buka panggung' rituals.

However, for a culture to be revitalised and sustained, its traditions need to be transformed and shaped according to the developments in society so that they will remain significant to that society. (Phillips & Steiner, 1999; Olalere, 2019) From this perspective, allowing Makyung to cross-fertilise with its surroundings' religious and cultural dynamics will ensure that Makyung remains economically viable and thus revitalise its existence. This requires the implementation of a combination of two methods where the first is to preserve the original value of the dance so that the recognition from UNESCO will continue, and the second is to commercialise the dance to attract younger generations of Malaysians and tourists (Hussin et al., 2020)

Techniques and measures to manage and update the control of entertainment were only discussed in 2002. Up to 2002, there were no clear rules and regulations on the ways to enforce the law (to manage and control entertainment and places of entertainment) in Kelantan. According to the minutes recorded in a meeting dated 3rd January 2002, there was only one order and decision via a circular letter from the State Secretary that prohibits the District Officers (licensing officers) from issuing performance licenses for Makyung license, *menorah*, and Wayang Kulit. However, it appears that there is an exception to the general prohibition of performances – i.e., performances which are staged or performed at the Kelantan '*Gelanggang Seni*' (Kelantan Cultural Centre) although there is the absence of express guidelines on the use of the Kelantan Cultural Centre at least up to 2002 even though it was decided in 1996 on the need of one specific guideline on its use. Currently, the use of the Cultural Centre for traditional performances includes Wayang Kulit, but Makyung is not performed on the weekly schedule. In fact, Makyung is not even on the Tourism Information Centre (TIC) list. It is found that Makyung performances are led by NDCA, and TIC becomes a member in organising the events. The TIC has organised programmes and activities involving Makyung performances with the NDCA Kelantan. Nevertheless, the show will be led by the

NDCA as they have the expertise and cultural artists (staff) dedicated to the show. Unlike TIC, under the State Government, the TIC does not have cultural artists as staff.

In 2015, the State Authority gave the authority to the Head of Assistant District Officer (Management Services) for the purpose of better monitoring and stricter terms to control the entertainment in the State of Kelantan. In other words, the District Officer plays a role in ensuring that the 1998 law and its guidelines are complied with before any license is issued. The State Authority may, from time to time, remind the officer in charge of the land office to ensure that the people, including government departments and officers, comply with the existing circulars that have yet to be amended that include the prohibition of Makyung as clearly provided in Guideline 3.1 of the State General Circular No. 4, the Year 2003 – Guidelines on Entertainment Control of 2003. More strict action must be taken against those who go against the law, and monitoring must be done from time to time. There was a loophole concerning compounded offences under the Kelantan Enactment No. 8 of 1998 law. As of 2011, there is an absence of gazetted rules and regulations under paragraph 36 (2) (f) of the law. The local government and the office of the State Secretary have the responsibility to ensure that there are gazetted rules and regulations to enforce the law to prevent misuse of power by the enforcing authority.

Makyung was prohibited under the Kelantan Enactment No. 8 of 1998 and the 2003 Entertainment Guidelines. The prohibition on Makyung was lifted in 2019. Before the prohibitions were lifted, the State Authority had a strict stand for banning Makyung. The intention to prohibit certain traditional performances is clearly defined in the Entertainment Enactment Bill's proposal at 1.1.8, where items 8 and 10 specifically mentioned Mak Yong and Wayang Kulit. The proposal and the Bill were read together with Fatwa approved by the Sultan of Kelantan on the 5th November 1992 that clearly mentioned that Mak Yong existed at that particular time is prohibited. Mak Yong and Wayang Kulit was then listed as prohibited until 2017, where Wayang Kulit was then allowed to be performed, and then in 2019, the prohibition is lifted by the State Government of Kelantan. However, it is not mentioned in any law except by the Government Order with certain modifications to their characters.

Lifting the ban of Makyung recently made in 2019 does remove it from the current category of strict prohibition to a more lenient category under Guideline 3(2) of the 2003 Entertainment Guidelines, which regulates controlled entertainment. However, under this category, the law generally gives the State Authority powers to appoint a Licensing Officer in charge of traditional performance of Makyung. The local government officer in charge of issuing a license has the authority to issue a license after getting approval from the State Authority pursuant to Section 6 of the Kelantan Enactment No. 8 of 1998.

Today, the State Authority has taken into consideration allowing the performances of Makyung with the condition that it is in line with the principles of shariah. There is, however, no detailed explanation of the principles to be followed. The state of Kelantan has yet to come out with specific guidelines on how this can be carried out.

Makyung can no longer be performed freely in Kelantan, except by groups that are allowed to perform in Cultural Centre, Kota Bharu. Procedurally, applicants may get the application form from the Management Division, at the District and Land Office and pay RM10-20. The form shall be assessed by the Penggawa before the Station Chief Police endorse it. Afterwards, the Assistant Commissioner of Police (District Chief Police) shall endorse the form before the Secretary of the Local Authority approves the application. Finally, the District Land Office will approve or reject the application before delegating its power to the local authority

for enforcement. Section 6 of Kelantan Enactment No. 8 of 1998 gives wide discretionary power to the local authority

While discretionary powers are given to the licensing officer to grant or refuse to grant licenses on traditional performances pursuant to section 8(1) of the Kelantan Enactment No. 8 of 1998, this does not specifically allow the licensing officer to be more lenient at granting licenses for performances having cultural heritage significance. As far as Kelantan is concerned, heritage preservation does not extend to any form of entertainment, including Makyung. The licensing officer has the power to inquire about Makyung, which has been internationally recognised as having cultural heritage significance, to at least give merits to the performances. At the same time, there is a lacuna of a specific law to protect these Makyung. Non-compliance of performers with the guidelines shall lead to their conviction where they are liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three years or both. The legal implication of not abiding by the law causes unlicensed performers to be demotivated to perform Makyung.

Little changes were made to comply with the conditions of the Kelantan Enactment No. 8 of 1998 and the 2003 Entertainment Guidelines, such as no involvement of women. Besides, the so-called shari'ah-compliant Makyung has no ritual elements and offerings (Buka Panggung), yet retains the original structure. The main character in Makyung is also called Pak Yong. Any gender, even if it carries the character of the king will be called Pak Yong. According to Rosnan Rahman, there were criticisms by the traditionalists at the early implementation of the Shari'ah-compliant Makyung, but it is a great success as long as Makyung can be presented to the audience because Makyung, who is from Kelantan, must be conserved and preserved in Kelantan.

An example of the event involving the Shari'ah-compliant Makyung is '*Raja Panah*' (King Panah), held at Kampung Lubok Jong, Pasir Mas, Kelantan. Makyung Raja Panah tells the story of Raja Panah, the son of Raja Besar who ruled the state of Kemunggal Jate. Raja Panah wanted to seek experience by crossing the country ranges under the auspices of his father, accompanied by two nannies, the Peran Tua and the Peran Muda. Upon arrival at Bukit Berapit Gunung Berapi, they came across Gagak Sura Lang Kapa, who played an antagonistic character before a fight between the king's son and his enemy, which finally brought victory to Raja Panah when an arrow was fired on the crow's body. The performance lasted about an hour and 20 minutes, performed by Rosnan himself as Raja Besar, accompanied by five male dancers. Unlike scholars' view highlighting the history of Makyung cast by young girls, the Kelantan NDCA Director, Rosnan Rahman, suggested that Makyung has never had anything to do with gender, i.e., the dancers must be female. According to him, Makyung is just a special name for a traditional theatre performance.

Although the NDCA has innovated the so-called 'Shari'ah-compliant Makyung' with the intention to preserve Makyung in Kelantan, the innovation, among others, casting only men as performers, degraded the Makyung itself.

Conclusion

Indeed, Makyung had gone through challenging events in the struggle to survive and rejuvenate in the hybrid Kelantan legal framework – the unique legal framework within the federal framework that recognises Islam's position as the religion of the federation and the right to life of the people. Previously the ambiguous legal provisions on the status of non-shariah compliant Makyung under the existing laws have resulted in the conflict that arise in the administration and management of intangible cultural heritage in Malaysia. All parties

should make continuous efforts to strike a balance between the upholding of Syariah and the safeguarding of intangible cultural heritage for the survival and recognition of Makyung in Kelantan and as global accepted intangible cultural heritage.

This study concurs with the existing literatures that the general features of Act 645 do not provide for comprehensive provisions to safeguard Makyung in Kelantan, and this study suggests for the improvement of the existing legal framework with due consideration of human rights, right to livelihood, self-determination, good governance and compliance with the Islamic spirit of *siyasah syar'iyah* and *maqāsid al-sharī'ah*. In view of the difficulty faced in the safeguarding of Makyung in the event where there is conflict between safeguarding traditional performances of Makyung and its compliance to the religion of Islam—harmonisation, and coordination between the federal and the state government concerning the preservation of intangible cultural heritage is of utmost importance.

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