

Rationality of Witchcraft Offense in The New Paradigm of Punishment in Indonesia

**Marnija^{1*}, Raden Ferdiandra Defry Yusdaniel², Taufik Tri Prabowo³,
Ahmad Haikal⁴, KMS. Herman⁵**

marnija.crb@gmail.com^{1*}, yusdaniel@gmail.com², triprabowotaufik@gmail.com³,
a.haikal16@yahoo.com⁴, kms_herman@borobudur.ac.id⁵

Doctor of Law Program, Borobudur University

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Abstract

This research examines the rationality of criminalizing the practice of witchcraft in the framework of Indonesian criminal law after the enactment of Law Number 1 of 2023 concerning the Criminal Code. This law expressly regulates criminal acts based on the recognition of magical powers associated with witchcraft. The offence of witchcraft in the new Criminal Code raises various controversies such as the potential vagueness of the norm, difficulty of proof, and implications for freedom of expression as well as the potential for arbitrary criminalization. Many have criticized the irrationality of regulating witchcraft, which is rooted in mystical beliefs, consciously drawn by the legislators into a rational legal framework. How can a practice that is considered irrational be regulated by law based on rationality and logic? Using normative juridical research method, this study unravels the witchcraft controversy in the new Criminal Code while explaining the legal framework and punishment policy contained in Article 252 of the Criminal Code. Through philosophical deepening and comparative studies, this study critically examines the aspects of norm coherence with the principle of legality, scientific proof efforts, as well as its effectiveness in dealing with social impacts. The purpose of this study is to analyze the rationale behind the establishment of Article 252 of the Criminal Code as an instrument to criminalize the practice of witchcraft. The results of this study conclude that Article 252 of the Criminal Code is a rational legal instrument. This article also reflects a paradigm shift in punishment that is not merely repressive, but educative and preventive so that the Indonesian criminal law system is able to respond to the irrational practice of witchcraft.

I. Introduction

In recent times, the attention of Indonesian society has been drawn to the controversial issue of witchcraft offenses in the new Criminal Code (KUHP). The number of news articles on this topic reflects the importance of discussing mystical practices and beliefs that have long existed in society. Santet is not just a magical concept. It is a reflection of a complex belief system, integrated into the social fabric of society. The phenomenon of witchcraft is part of a local belief system that has existed in Indonesian society for centuries. The practice is often associated with the misuse of supernatural powers aimed at harming others, both physically and psychologically. According to a survey conducted by the Research and Community Service Institute of Gadjah Mada University in 2021, around 25% of respondents in several regions in Indonesia admitted to believing in the practice of witchcraft. This data shows that although the development of science and modernization has changed many aspects of life, the belief in witchcraft still persists in society. The main problem with this practice is not just the belief itself, but the social impact it has. Although it cannot be proven scientifically, the existence of witchcraft as a practice that is believed to harm others through supernatural means has formed a social reality that has a real impact.

Over time, in many cases, witchcraft emerged as a response to injustice, a means of social control, or even an outlet for personal conflict. The practice of witchcraft is not only a cultural issue, but also has significant implications in the legal realm. Various modus operandi are also intertwined with the practice of witchcraft which is very vulnerable to criminal acts. For example, when someone offers witchcraft services, with the lure of causing illness or even death to the target, there will be an exploitative relationship between the perpetrator and the victim (generally the service user). Often, this is accompanied by extortion, lies, and even murder in disguise. Data shows that 30% of victims who feel threatened by witchcraft choose not to report for fear of social stigma or retaliation from the perpetrator. Many individuals are trapped in strong belief loops, and often choose to resolve conflicts through alternative means rather than seeking help from the formal legal system.

Or maybe on the contrary, witchcraft is also often used as a means of labeling someone who is disliked or suspected in society. So that easily people who are labeled as "witch doctors" get violence such as those that end in bullying, exclusion, expulsion, criminalization and even informal trials or persecution. A study by the Center for Law and Policy Research (2020) showed that 15% of persecution cases handled by the police in several areas in West Java involved accusations of witchcraft. This figure indicates that the phenomenon of witchcraft still appears frequently in the legal context, creating a challenge for law enforcement officials in interpreting and handling cases involving elements of belief and culture.

In the long history of Indonesian criminal law, issues related to local beliefs, especially magical practices such as witchcraft, have often become a tug-of-war between the logic of modern law and the complexity of traditional culture. In the context of positive law, it is very difficult to bring such cases to the realm of legal proof. The challenge is how the law can bridge the gap between community beliefs and the need for justice.

Indonesian criminal law does not have explicit tools that regulate or criminalize witchcraft. Practices such as witchcraft pose a dilemma, on the one hand there are difficulties in formulating legal norms against irrational practices, but on the other hand public confidence in these practices has a social and psychological impact. So far, the criminalization policy in Indonesia does not explicitly regulate the practice of witchcraft. The construction of articles used to criminalize the practice of witchcraft is often linked to other articles relating to fraud, persecution and theft.

However, with the passing of Law Number 1 of 2023 concerning the Criminal Code, there is an article that is said to be the answer to the problem of witchcraft practice. The new Criminal Code explains that there is "Delik Santet" which can be criminalized. The existence of the offense of witchcraft in the new Criminal Code has generated various reactions among the public. One of the controversies that arose was the irrationality of regulating witchcraft, which is rooted in mystical beliefs, when drawn into a rational legal framework. On the one hand, there are those who welcome the government's move to regulate practices that are considered harmful and hurtful to others. But on the other hand, there are concerns that legal regulation of witchcraft could potentially lead to abuse and discrimination, especially against those who are considered to be involved in these practices.

On the other hand, many question the effectiveness and relevance of the law in the context of complex social life. Especially for phenomena that are often subjective and difficult to prove scientifically. Santet, which is often associated with traditional and spiritual beliefs, is considered inconsistent with the basic principles of law that prioritize clear and objective evidence. How can a practice that is considered irrational be regulated by laws that are based on rationality and logic? The next question is, what is the rationality of criminalizing the practice of witchcraft in the context of Indonesian criminal law? How then to overcome the challenges of proof and protection of victims?

This discourse reflects the tension between legal modernity and cultural traditions that are still strong in society. In the context of evolving law, it is important to understand that law cannot be separated from existing social norms. Therefore, the drafting of witchcraft offenses must be done carefully, paying attention to cultural values while upholding the principles of justice and human rights.

Considering the complexity of the witchcraft phenomenon and the challenges faced in its regulation, this research aims to explore more deeply the legal rationality behind the offense of witchcraft and its implications in the context of new criminalization in Indonesia. Using a normative juridical approach, this research builds a framework of discussion sourced from legislation, legal doctrine, current scientific journals, and legal theoretical approaches.

In addition, based on preliminary data showing the public's trust in this practice and the significant number of persecution cases involving accusations of witchcraft, this study will conduct a conceptual analysis method that will comprehensively examine the rationale regarding the background and implications of the preparation of the witchcraft offense in the new Criminal Code in accordance with the modern punishment paradigm.

It is hoped that this research will also be able to provide deeper insights into the relationship between law, culture and community beliefs. This is important to find more effective solutions in dealing with the practice of witchcraft in a fair and sustainable manner, without ignoring the cultural context behind it.

2. Research Method

This study uses the normative juridical method, which is an approach based on the analysis of legal norms written in legislation, legal doctrines, and fundamental principles in legal science. This method is employed to understand how positive law, specifically Law No. 1 of 2023 on the Criminal Code, formulates and positions the crime of sorcery as part of the national criminal justice system.

In addition, this study also applies a conceptual analysis approach to examine the philosophical, political, and criminalization rationality of claims of supernatural powers associated with santet practices. This approach is used to evaluate the coherence between legal norms and the values of justice, the principle of legality, and human rights in the Indonesian socio-cultural context.

The data used in this study comes from library research, including legislation, court decisions, academic literature, legal journals, and other relevant sources. This study is also supported by secondary data in the form of surveys and empirical studies conducted by research institutions and academic institutions on public perceptions of santet practices and their influence on legal dynamics.

3. Results and Discussion

The ratification of Law Number 1 Year 2023 on the Criminal Code is an important milestone in the history of Indonesian criminal law. This new Criminal Code is a masterpiece of the Indonesian people in building a national criminal law that is in accordance with the philosophy and character of Pancasila. However, behind the efforts to modernize the law, there are articles that have drawn controversy, one of which is an article that regulates criminal acts based on claims of supernatural powers, which are widely associated with the practice of witchcraft.

Santet, in a broader sense, can be understood as a practice that aims to harm others through supernatural powers. Various tribes and communities in Indonesia have different views but share a common thread, namely, witchcraft is always closely related to belief in the spiritual and supernatural world. This concept has become an integral part of various cultures in Indonesia, where belief in witchcraft often reflects complex social dynamics. According to Koentjaraningrat (1990), witchcraft is a manifestation of social conflict rooted in feelings of envy and resentment in society. In many cases, belief in witchcraft can affect individual behavior and social interaction, causing tension and conflict in society. In this context, witchcraft is not just a spiritual practice, but also reflects interpersonal tensions that can lead to harmful actions, both physically and mentally. Therefore, this phenomenon cannot be underestimated, especially when it comes to law enforcement and justice.

In the context of Indonesian criminal law, the regulation of witchcraft offenses is very interesting to analyze. Research by Abdurrahman (2021) shows that although there is no specific article on witchcraft, this practice is often prosecuted through other articles. As there is no specific or explicit article on witchcraft, this practice is often wrapped in other crimes, such as fraud, persecution, or theft, depending on the context and manner of implementation. This creates challenges for law enforcement officials and the justice system.

Along with the times, legal arrangements related to witchcraft in Indonesia have now changed. Through criminal law reform, the criminalization of witchcraft offenses has a legal umbrella. As regulated in one of its articles, Law Number 1 of 2023 concerning the Criminal Code claims to have the direction of the regulatory reach of the criminal act.

However, the article on criminal offenses based on claims of supernatural powers, which is understood by the public as the practice of witchcraft, has sparked debate and concern among civil society. Even in 2019, this article became one of the triggers for a wave of demonstrations against the Criminal Code Bill. The potential vagueness of the norms, the difficulty of proof, and the

implications for freedom of expression as well as the potential for arbitrary criminalization, were the reasons and main demands in rejecting the article. At that time, academics, legal practitioners, human rights activists and civil society had deep concerns about the article's potential to cause injustice, legal uncertainty and human rights violations. Key concerns included the difficulty in juridically defining the practice of witchcraft, the challenge of proving criminal elements involving metaphysical matters, and the potential misuse of this article to criminalize certain cultural beliefs or practices.

Rationality of Santet Offense

Misleading the public has led to glaring misunderstandings behind the rejection of this law. One source of confusion is the public perception that the new Criminal Code will explicitly regulate the offense of witchcraft. In fact, the offense of witchcraft is not directly regulated in the new Criminal Code. In Law Number 1 of 2023 concerning the Criminal Code, Article 252 specifically regulates the abuse of claims of supernatural powers. The article states that "Every person who claims to have supernatural powers, informs, gives hope, offers, or provides assistance services to others that because of his actions can cause illness, death, or mental or physical suffering of a person, shall be punished with a maximum imprisonment of 1 (one) year 6 (six) months or a maximum fine of category IV."

Article 252 of the Criminal Code does not mention witchcraft as a stand-alone offense. However, this article can be linked to the practice of witchcraft through a broader perspective, namely the claim of supernatural powers that result in violence and harm experienced by the victim.

Exploring this article brings us to the fundamental question of the relationship between law and morality. Hans Kelsen in "Pure Theory of Law" emphasized that law should be separated from morality, politics and religion. In Kelsen's thinking, we are reminded that law operates in a normative realm that aims to create justice and social order. Law is a logical and hierarchical system of norms. In the context of Article 252 of the Criminal Code, Kelsen's approach allows the law not to question the metaphysical truth of witchcraft, but to focus on harmful social actions.

Criminalization in the context of modern criminal law must also be based on the principle of legality. The offense must be *lex certa*, have clear boundaries, can be tested objectively, and have legal certainty. The formulation of the offense in Article 252 of the Criminal Code does not lie in supernatural effects, but in real actions such as statements, offers, hopes, and services that claim to cause metaphysical suffering.

The formulation of this article is important because it shifts the focus of the law from proving the existence of witchcraft itself to proving fraudulent acts

accompanied by claims of supernatural powers. In other words, what is criminalized is not the existence of witchcraft, but false and exploitative claims in the name of metaphysical power used to harm others.

In this paradigm, the new Criminal Code has the potential to bridge the rationality of the practice of witchcraft within the framework of punishment. The state does not punish belief in the supernatural, but punishes fraud and actions that abuse this belief to harm others. This shows a form of legal rationalization of irrational phenomena. It is a rational leap in legal approach. Thus, it is important for us to set the narrative straight and encourage critical thinking among the public.

Law enforcement and evidentiary challenges

One of the biggest challenges and most fundamental issues with the practice of witchcraft is how to legally prove in court the event and the causal link between the practice and the harm suffered by the victim. Witchcraft practices are often rooted in beliefs that are difficult to quantify with ordinary evidence. When we try to interpret witchcraft through a legal lens, we are faced with the question: how can we prove something that is subjective and influenced by mystical beliefs?

Modern criminal law generally requires rational proof based on valid evidence. Claims of supernatural powers are difficult to verify through scientific methods commonly used in judicial proceedings. This raises questions about the standard of proof to be applied and the potential for the use of evidence that is subjective or based on mere belief.

Doctrinally, criminal liability requires the existence of fault (*mens rea*) and unlawful acts (*actus reus*). Therefore, Article 252 of the Criminal Code does not require proof that the perpetrator actually has supernatural powers, but it is sufficient to prove that the perpetrator consciously "claims" to have supernatural powers and offers his services to cause suffering, thus fulfilling the criminal element. This approach avoids the trap of metaphysical proof and sticks to the logic of modern criminal law.

In this context, Michel Foucault's thoughts on the relationship between knowledge and power are relevant. The challenge of proof in witchcraft offenses cannot be separated from how knowledge about this practice is constructed and managed by various power actors. Foucault reveals that what is considered "evidence" and how an event is interpreted in the legal process cannot be separated from the dynamics of existing power.

What is considered "true" or "legitimate" knowledge is not neutral. Groups or institutions that have greater power (for example, the state, certain groups, scientific societies) tend to define and legitimize certain types of knowledge. In the case of witchcraft, power-backed knowledge, in this case "scientific-

rational", will become the dominant framework for understanding the reality of events. Consequently, this perspective will also tend to reject its antithesis, which is unscientific or irrational.

In time, this dominant knowledge will also perpetuate existing power structures. When the law only recognizes the type of evidence and explanations that fit into a scientific-rational framework, then other perspectives (e.g., traditional knowledge, local community beliefs about witchcraft) become marginalized or considered invalid. As a result, the way the law (which represents state power) defines and attempts to prove the offense of witchcraft will be heavily influenced by this dominant knowledge framework. It is important, then, to build more consolidated knowledge about these practices, so that the law can function properly in the context of social protection of the community.

However, although the new Criminal Code attempts to formulate this offense by linking it to tangible consequences, the challenges of interpretation and proof remain crucial issues. This article will still have major problems in the implementation aspect. The diverse perspectives of law enforcement officials in parsing the elements of the criminal offense will surely color the implementation in the field.

How does one solidify the officer's belief when someone claims to have supernatural powers? Is it by investigating the existence of certain rituals, the use of magical objects, or is a declarative statement sufficient? This lack of clarity has the potential to cause legal uncertainty.

It is important to distinguish between practices that are considered witchcraft and spiritual beliefs or practices that have no malicious intent. However, proving one's subjective intent will be a significant challenge.

In addition, to what extent can law enforcement officials prove that someone is indeed "offering witchcraft services"? Doesn't such communication tend to be closed, undocumented, and only known by certain parties? Police and prosecutors must have evidence in the form of confessions, recordings, or witnesses, which in many cases is very difficult to obtain.

The offense of witchcraft, as a formal offense, shows that the law can operate without the need for real consequences to be caused. The act of stating that someone has the power to cause illness or loss is recognized as a criminal object, has the consequence of creating space for law enforcement to answer the challenges faced by society.

However, Article 252 of the Criminal Code also has a dependency on material offense. Because this criminal offense considers the existence of real consequences (pain, injury, disability, or death) as an important element of the offense. This can reduce the potential criminalization of claims or threats of

witchcraft that do not cause physical consequences, but are still psychologically or socially detrimental due to accusations or practices of witchcraft. This is a classic challenge in offenses that are immaterial or based on intent and communication. Thus, in-depth training and understanding for law enforcers of the characteristics of this offense is absolutely necessary so that this article does not become a dead norm.

A New Paradigm of Punishment

The criminalization of witchcraft in the new Criminal Code presents complex challenges for the Indonesian legal system. On the one hand, the state has an obligation to protect citizens from potential harm, on the other hand, the enforcement of this article must be done very carefully to avoid the potential for unfair criminalization. Accusations of witchcraft are often based on assumptions or social stigma, which can certainly violate the principle of presumption of innocence and the right to a fair trial.

In principle, criminal law should not be caught up in trying to prove things that are beyond the reach of scientific epistemology. When someone claims to be able to "cast a spell" and uses it as a tool to gain benefits from others, the law has the right to step in to protect the public from deception. With Article 252 of the Criminal Code, the focus is shifted to the actor who makes "witchcraft" a service product, not the victim of community slander.

From the perspective of legal protection theory (social defense), this norm serves as an umbrella to prevent two things; exploitation of psychologically vulnerable people, as well as social violence against those accused of occult practices. It provides an opportunity for victims who feel threatened or harmed to seek justice through legal channels, as well as reducing the stigma and violence that often accompany accusations of witchcraft in society. Thus, the law not only functions as a tool for justice enforcement, but also as a means to protect human rights, including individual rights from harmful practices.

This article should be understood not as a legitimization to arrest everyone who is "believed to be capable of witchcraft", but rather as a legal restriction on occult-based fraudulent practices. This is important to prevent misuse of the article, such as the criminalization of traditional leaders or adherents of local beliefs. The law must be able to distinguish between spiritual practices that are expressive and symbolic, and commercial claims to destructive power that can be manipulated for personal gain.

In the Indonesian legal panorama, we must consider legal pluralism which states that formal law interacts with customary law and social norms that exist in society. This is where the concept of law as a reflection of culture becomes relevant. Law must serve to protect society from practices that can damage social order.

The existence of Article 252 is expected not only to function as a law enforcement tool, but also as a manifestation of the moral values underlying the social life of Indonesian society. Article 252 of the Criminal Code is built not only to reflect legal norms, but more than that, the article illustrates the sensitivity and response of society to complex social phenomena.

Law needs to be adaptive and responsive to social dynamics, so that it can function properly in a complex context. Therefore, the application of Article 252 of the Criminal Code needs to be carried out with sensitivity to local beliefs, so as not to cause dissatisfaction that can lead to community rejection of the law itself. The application of Article 252 must be done wisely, not only to avoid potential community rejection of the law, but also to ensure that the law can function as a tool to create justice.

We can see that legal norms are not only a product of the legal system, but must also reflect the values and beliefs of society. A deep understanding of the social norms and customs that exist in society is crucial so that the law is not only seen as a repressive instrument, but also as a means to achieve social balance.

Thus, Article 252 of the Criminal Code is not just a static legal norm, it is a window to understand broader social dynamics. And with a wise approach, we can hope that the law will not only be an instrument of enforcement, but also a means to build a more just and harmonious society.

The legal politics of drafting Article 252 of the Criminal Code as a form of criminalization against the abuse of claims of supernatural powers is a meeting point, a legal norm that explicitly does not mention the word "witchcraft", but is still able to respond to public unrest against the practice of exploitation through metaphysical practices. The analysis of this article cannot be separated from the cultural context that surrounds it, so that Article 252 of the Criminal Code is also a deep reflection of the values that live in society.

The legislators tried to provide a clear foundation and build a clearer and more structured legal framework as a form of compromise between social reality and positive legal principles in dealing with cases related to witchcraft. This reflects the law's concern for the protection of individuals from the potential threat posed by fraudulent practices or exploitation involving claims of supernatural powers.

In addition to functioning as a means of punishment, the construction of Article 252 of the Criminal Code is not merely repressive, but also carries an educative and preventive burden. From the perspective of penal policy, criminalization in Article 252 is social engineering to prevent crime and provide legal protection to victims from myth-based exploitation and fear. In the new paradigm of punishment, it is agreed that the purpose of modern punishment is corrective, rehabilitative, and restorative. Projectively, the application of Article 252 of the

Criminal Code should also not only focus on punishment, but also on restoring relationships between the parties involved.

The maximum sentence of 1 year and 6 months reflects that the state wants to provide a deterrent effect, not destroy the perpetrator, while educating the public about the dangers of occult exploitation. This is where the concept of restorative justice becomes important. Restorative justice, which emphasizes recovery and dialogue between perpetrators, victims and the community, can be a solution to handling witchcraft cases.

By applying the principles of restorative justice, we can hope that Article 252 will not only be a law enforcement tool, but also a means to build social harmony. In this approach, punishment is not the ultimate goal, but a step towards reconciliation and restoration.

This reflects the understanding that the law does not only serve to punish, but also to heal and restore. In line with the thoughts of John Braithwaite who emphasizes the importance of reintegrative shaming, where offenders are faced with the consequences of their actions, but are still given the opportunity to correct mistakes and be accepted back into society.

On the other hand, the restorative approach promoted in the new sentencing can provide an opportunity to reduce stigma and educate the public about the practice of witchcraft and its impact on individuals and society. This is an important step in addressing a long-standing problem in society, while protecting the rights and safety of individuals from potential threats caused by irresponsible practices.

4. Conclusion

Article 252 of the Criminal Code is an example of how positive law tries to address social realities full of myths and irrationality with a rational approach. Without pretending to prove the existence of witchcraft, the law chooses to focus on actors who use the myth as a tool of deception. This is a form of compromise between legal protection, respect for culture, and the principles of legality in modern criminal law. Article 252 of the Criminal Code represents a rational form of criminalization of irrational belief-based practices that harm others. With a legal approach that does not assess the existence of supernatural powers, but assesses the social actions and malicious intent of the perpetrator, this article is the right legal solution in the context of Indonesian society. The law is not only there to punish, but also to educate and protect.

However, as with any new norm, the success of this article depends largely on how law enforcement officials understand its social context and how the community is educated not to abuse or misinterpret its meaning. In the long run, Article 252 is expected to not only prevent metaphysical-based crimes, but also reduce the stigma and social violence that has been attached to the phenomenon of witchcraft:

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