

## **Analysis of Evidence of Witchcraft Crimes Based on the New Indonesian Criminal Code**

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**ABSTRACT:** The pluralistic life of beliefs about spiritual matters in Indonesia is very thick and sensitive, especially the occurrence of criminal acts that are beyond common sense or cannot be proven by scientific criminal investigations, namely criminal acts of black magic perpetrators or victims of black magic which result in violations of human rights (HAM). Belief in religion which is a source of morality and spirituality which is considered as part of a tradition that has never been abandoned by Indonesian society with situations and conditions of high spiritual values makes Indonesian people's belief in God and spirits that live around humans or those that smell mystical or black magic not uncommon in every region with their respective cultural characteristics, for example human rights violations in Banyumas Regency, namely the massacre allegedly carried out by black magic perpetrators with 250 victims. With this belief, it is not uncommon for people in some areas to have or even have the ability to see supernatural things or study black magic, for their own interests. So the question arises as a problem identification, namely 1. How are efforts to prove the crime of black magic according to Law Number 1 of 2023 concerning the Criminal Code? 2. How can the elements of black magic be called a criminal act based on Law Number 1 of 2023 concerning the Criminal Code? The research method used by the author is the normative legal approach method. The normative legal approach is a legal research conducted by examining library materials or secondary data as a basis for research by tracing laws and regulations and literature related to the problems studied by the author.

**Keywords:** Criminal, Black Magic, Evidence, Criminal Code.



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## **INTRODUCTION**

Indonesia is recognized as a country with extraordinary cultural richness, encompassing a variety of norms, beliefs, and practices typical of each region. The spiritual aspect of Indonesian society

is very deep, with religion acting as a moral and spiritual foundation that is considered a permanent element in traditions that are always maintained. The high spiritual values make the Indonesian people's belief in God and spiritual entities that are believed to be around humans still alive and varied in various regions with their own cultural characteristics. These beliefs often involve the ability to sense things that are invisible or learn mystical practices, which are done for personal gain.

All forms of magic are considered very negative, often used to harm or harm others. In Indonesia, magic is known by various terms, one of which is santet. Santet is used by a number of people to fulfill personal desires that are motivated by feelings of envy, jealousy, and jealousy. In Indonesia, people often believe that santet is an act that can cause great harm to someone through occultism. The impact caused by santet can be seen directly on the victim, but is difficult to explain medically. In many situations, victims of santet often experience various injuries caused by many foreign objects in their bodies, but there is no medical explanation regarding the origin of these objects. These foreign objects can be nails, iron, needles, hair, or various other sharp objects. In more severe cases, santet can even cause prolonged physical and mental suffering, even causing death to the victim. (Kolip & H, 2011).

However, even though there are many practitioners of black magic in Indonesia, they cannot be subject to many criminal penalties because of various regulations in the criminal law system that respect the principle of legality. Article 1 paragraph (1) of the Criminal Code explains the principle of legality, which basically states that no action can be punished or subject to criminal penalties without a law that regulates it beforehand. In Latin, this is known as *nullum delictum nulla poena sine praevia lege poenali*. With the existence of this principle of legality, we can conclude that many actions must first be realized as criminal acts based on their provisions in the applicable law, so that the imposition of sanctions must follow many written rules. The process of proving black magic cases in court is also very challenging because apart from the principle of legality, black magic is a mystical phenomenon that is abstract, so it is difficult to obtain much material truth. This is in stark contrast to the law, especially criminal law, which focuses on finding much material truth from an action, where the proof must be concrete, existing, and real.

Belief in religion as a source of morality and spirituality is considered as part of a tradition that has never been abandoned by Indonesian society with situations and conditions of high spiritual values, making Indonesian society's belief in God and spirits that live around humans or that smell mystical or black magic not uncommon in every region with its own cultural characteristics, for example human rights violations in Banyuwangi, namely the massacre suspected of being a black magic perpetrator with 250 victims. With this belief, it is not uncommon for people in some areas to have or even have the ability to see supernatural things or study supernatural knowledge, for their own interests.

Therefore, in order to reduce the frequency of black magic practices in society, and to prevent anarchic actions against individuals suspected of being black magic practitioners, there needs to be a number of criminal law policies related to black magic crimes. These criminal law policies have various significant functions, because the Criminal Code that we inherited from the Dutch colonial era does not cover many issues related to black magic.

The formulation of the problem in this study is how the author examines the problem. What is meant by a problem? A problem is something that happens (*das sein*) that is not in accordance with desires or expectations (*das solen*) as follows:

1. How to prove the crime of black magic according to Law Number 1 of 2023 concerning the Criminal Code?
2. How can the elements of black magic be called a criminal act based on Law Number 1 of 2023 concerning the Criminal Code?

Indonesia is recognized as a country with extraordinary cultural richness, encompassing a variety of norms, beliefs, and practices typical of each region. The spiritual aspect of Indonesian society is deeply rooted, with religion acting as a moral and spiritual foundation that shapes everyday life and is considered an inseparable element of tradition. This strong spiritual orientation fosters a societal landscape where belief in unseen forces and mystical entities continues to thrive. Many Indonesian communities still believe in supernatural practices or mystical abilities, some of which are used for personal gain, either for protection, success, or even harmful purposes. These practices, when used to harm others, are commonly categorized as black magic.

One of the most notorious forms of black magic in Indonesia is **santet**, a mystical attack believed to be driven by envy, revenge, or jealousy, with the intent to cause suffering to the victim. The effects of santet are often physically visible yet medically unexplainable, involving foreign objects such as nails, needles, or glass appearing mysteriously in the body of the victim. Victims of santet may suffer from prolonged illness, psychological disturbances, or even death, despite no clear medical diagnosis. While many members of society believe in its power, and even seek out its practitioners, the legal system in Indonesia faces difficulty addressing this phenomenon within the bounds of formal justice. (Taufid (2014)

This legal gap is primarily due to the principle of legality (*nullum delictum nulla poena sine praevia lege poenali*), as stated in Article 1 paragraph (1) of the Criminal Code, which mandates that no one may be punished unless their actions are clearly prohibited by law. Since many forms of black magic are mystical, abstract, and difficult to prove concretely, they fall outside the reach of traditional criminal law, which relies on material evidence. Furthermore, attempts to prosecute cases of black magic often clash with the evidentiary standards required in criminal trials, which demand proof that is real, measurable, and objective. The result is a tension between cultural beliefs and formal legal structures, creating a vacuum of legal protection for victims and a lack of accountability for perpetrators. (Putra, 2020 ; Zaenudin,, 2021)

Given the widespread belief in mystical practices and the potential for vigilantism, as evidenced by tragic incidents like the 1998 mass killings in Banyuwangi of individuals suspected of practicing black magic, there is an urgent need for criminal law reform (Criminal Law (RKUHP)", 2009). Law Number 1 of 2023 concerning the new Criminal Code marks a significant step toward addressing such culturally embedded phenomena. This study aims to explore two key legal questions: First, how is the crime of black magic proven under Law Number 1 of 2023? Second, what elements must be fulfilled for black magic to be considered a criminal offense under the new Criminal Code? These questions form the core of the legal analysis in this research, which seeks to balance traditional beliefs with the modern demands of legal certainty and justice.

## **METHOD**

The research method used by the author is the normative legal approach method. The normative legal approach is a legal research conducted by examining library materials or secondary data as a basis for research by tracing laws and regulations and literature related to the problems studied by the author (Sutiyoso, 2006). This research method functions as a guideline and basis for procedures in conducting research operations to write a scientific work conducted by researchers.

The author conducted this type of research by conducting normative legal research. Normative legal research is legal research that places law as a normative system building. The normative system in question is about principles, norms, rules, from laws and regulations, court decisions, agreements and doctrines (Marzuki, 2016).

The research approach used is an approach used in normative research which allows a researcher to utilize the findings of empirical legal science and other sciences for the purposes of legal analysis and explanation without changing the character of legal science as a normative science (Raharjo, 1996).

Some approaches used in normative legal research are the statutory approach, conceptual approach, historical approach, case approach and comparative legal approach (Frederich (2004).

The author uses data sources in this study in the form of secondary data. Secondary data in this legal research consists of:

- a. Primary Legal Materials, namely: Criminal Code and Criminal Procedure Code, Pancasila, 1945 Constitution, Legislation and Agreements
- b. Secondary legal materials, namely: Draft legislation, academic books, and research results.
- c. Tertiary Legal Materials in the form of bibliography and cumulative index (Ronny Hanitijo Sumitro: 1982).

Data collection techniques were carried out through library research, namely analyzing scientific books and analyzing laws and regulations in the form of analyzing the Criminal Code and the new Criminal Procedure Code.

The research method used by the author is the normative legal research method, which emphasizes the study of legal norms through secondary data sources, particularly library materials. Normative legal research is a type of legal research that positions law as a system of norms, consisting of principles, doctrines, rules, and legal interpretations found in legislation, court decisions, scholarly works, and legal conventions (Marzuki, 2016). This method allows researchers to trace and analyze the development and application of laws relevant to the issues being studied. According to R. Soeroso (2004), normative legal research serves as both a guide and an operational framework in producing scientific legal writing. Furthermore, this method remains rooted in the normative nature of legal science, while still being open to insights from empirical findings and other disciplines, as noted by Johni Ibrahim (2017). The approaches typically applied in normative research include the statutory approach, conceptual approach, historical approach, case approach, and comparative legal approach (Ruhiatudin, 2009).

In this study, the data sources are secondary legal materials, which include three categories. First, primary legal materials such as the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), the 1945 Constitution, Pancasila, and related statutory regulations. Second, secondary legal materials including academic books, legal commentaries, journal articles, and research reports related to criminal law and black magic offenses. Third, tertiary legal materials such as legal dictionaries, encyclopedias, and bibliographies (Ronny Hanitijo Soemitro, 1982). The data collection technique applied is library research, involving a comprehensive review and analysis of written sources, particularly focusing on the contents and interpretation of the new Criminal Code and Criminal Procedure Code. (Nasution, 2017) This method provides a doctrinal foundation for assessing the legal framework governing mystical crimes, such as black magic, in light of contemporary Indonesian criminal law reforms.

## **RESULTS AND DISCUSSION**

### **Definition of Criminal Act**

According to Prof. Dr. Van Kan, Law is a whole set of mandatory life regulations to protect human interests in society. Criminal law also has several definitions according to experts. According to Professor Van Hamel, criminal law or straf is a special suffering, which has been imposed by the authorized power to impose criminal penalties on behalf of the state as a responsibility for general legal order for an offender, namely solely because the person has violated a legal regulation that must be enforced by the state (Lamintang & Lamintang, 2009).

According to Prof. Simons, criminal or straf is a suffering that by criminal law has been associated with a violation of a norm which is imposed by a judge's decision on the guilty person.<sup>123</sup> To impose a criminal penalty on the perpetrator, it is necessary to first determine what actions are included in the category of criminal acts according to the principle or Principle of Legality, namely that no act can be punished except because of the power of criminal rules that existed before the act was committed (Article 1 Paragraph 1 of the Criminal Code). Criminal acts are a term that contains a basic meaning in criminal law which is formed because of the awareness in giving certain characteristics to criminal law events (Nugroho, 2017.; Satriadi, 2020) .

In legislation, there are terms such as criminal acts, criminal incidents, and criminal acts which are also often referred to as offenses. According to Wirjono Prodjodikoro, a criminal act means an act whose perpetrator can be subject to criminal penalties and the perpetrator can be said to be the subject of a criminal act. In WVS it is known as *Strafbaar feit*, while in the literature it is known as offense. Lawmakers use the terms criminal incident, criminal act, and criminal act. The term received a response from Prof. Moeljatno, namely that a criminal act is an act that is prohibited by a legal rule accompanied by a threat (sanction) in the form of a certain punishment for those who violate the rule. According to Simons, a criminal act is an act or act that is threatened with punishment by law, is contrary to the law, and is carried out with error by someone who is able to be responsible. Meanwhile, Moeljatno stated that a criminal act is an act that is prohibited and threatened with punishment, against anyone who violates the rule. The act must also be felt by society as an obstacle to the social order aspired to by society. (Astawa, 2008)

In contrast to what Pompe put forward, according to Pompe the word criminal act can theoretically be formulated as a violation of norms (disruption of legal order) that has been done intentionally or unintentionally by a perpetrator, where the imposition of a criminal penalty on the perpetrator is necessary for the sake of maintaining legal order and ensuring public interest. Pompe further stated that according to positive law, a criminal act is actually nothing other than an act that can be punished (Dedi Soemardi, 1986)

Library research in normative legal studies involves a detailed examination of authoritative texts, legislation, and academic commentary to construct legal arguments and interpretations. In the context of this study, library research is conducted by collecting, identifying, and reviewing various legal documents and scholarly sources related to the crime of black magic as regulated under Law Number 1 of 2023 concerning the Criminal Code. The use of literature enables the researcher to understand the development of legal norms, legislative intent, and doctrinal debates surrounding the criminalization of mystical acts. It also helps to reveal how the new Criminal Code seeks to bridge the gap between legal positivism and the social realities experienced by communities affected by supernatural-related offenses.

Through the use of a statutory and conceptual approach, this research analyzes the formulation of legal norms on black magic from both textual and theoretical perspectives. The statutory approach involves an in-depth interpretation of the legal text—particularly the relevant provisions within the new Criminal Code—while the conceptual approach explores the fundamental ideas and legal principles underpinning the legislation (Santoso, 2016). This dual approach provides a robust analytical framework to assess the extent to which black magic, as a criminal offense, meets the requirements of legality, clarity, and enforceability under Indonesian criminal law. By relying on these legal methodologies, the research aims to produce normative conclusions that are both doctrinally sound and contextually relevant.

### Elements of a Criminal Act

According to Moeljatno, the elements of a criminal act are as follows:

1. The act must be a human act,
2. Such acts must be prohibited and punishable by criminal law,
3. The act is against the law,
4. Must be done by a responsible person,
5. The act must be blamed by the perpetrator. According to EY Kanter and SR Sianturi, the elements of a crime are:
  1. Subject,
  2. Error,
  3. Against the law,
  4. An act that is prohibited or required by law, the violation of which can be punished by



criminal penalties,

5. Time, place and circumstances (other objective elements).

From the description above, it can be concluded that an act will be a criminal act if the act:

1. Against the law,
2. Harmful to society,
3. Prohibited by criminal law,
4. The perpetrator will be threatened with criminal penalties,
5. The perpetrator can be held accountable. According to Lamintang, there is an objective element related to the circumstances in which the perpetrator's actions must be carried out.

Objective elements include:

- a. Human actions are divided into positive and negative actions which lead to criminal acts.

Sometimes positive and negative acts are clearly stated in criminal law norms known as formal crimes. Where in formal crimes, acts that are subject to criminal penalties are acts as stated in Article 362 of the Criminal Code and Article 372 of the Criminal Code, while sometimes only an act is subject to criminal penalties while the method of causing the consequences is not explained further, crimes like this are called material crimes contained in Article 338 of the Criminal Code.

- b. The consequences of human actions, namely consequences that are detrimental or endanger legal interests which according to criminal law norms need to exist in order to be punished.
- c. It is illegal and punishable. An act is considered illegal if it is against the law.

Criminal nature means that the act must be threatened with punishment, by a certain criminal norm. This criminal nature can be lost even though it has been threatened with punishment by law but is carried out in circumstances that can be exempt, for example in Articles 44, 48, 49, 50 and 51 of the Criminal Code.

### **Elements of Magic Crime**

According to Law Number 1 of 2023 concerning the Criminal Code, Article 252 paragraph 1, the elements of the Criminal Act of black magic (Criminal Code and Criminal Procedure Code Law of the Republic of Indonesia Number 1 of 2023 Concerning the Criminal Code Article 252 Paragraphs 1 and 2) are:

- a. every person (black magic practitioner);
- b. who claim to have supernatural powers, give information, give hope, offer, or provide assistance to others;
- c. because his actions could cause illness, death, or mental or physical suffering to someone.

- d. Furthermore, based on the Explanation of Article 252 paragraph (1) of Law Number 1 of 2023, the provisions of Article 252 of Law Number 1 of 2023 are intended to prevent the practice of vigilante justice by members of the community against someone who claims to have supernatural powers and is capable of carrying out acts that can cause suffering to others. (Gie, 1982)
- e. Then, summarized from the article on the Black Magic Article in the New Criminal Code and its Evidence, the criminal act regulated in Article 252 of Law 1/2023 is a formal criminal act, namely a criminal act whose formulation emphasizes the act (handeling), without requiring the emergence of consequences from the act. The crime is completed by committing the act and not waiting for the consequences to arise. (Ningsih, 2017)

## CONCLUSION

Black magic, known as sorcery, is a spiritual practice that is often carried out using spells, amulets, and involving dark powers. This activity is believed to be able to affect the body and soul of the targeted individual, without the need for physical interaction. In Indonesia, mystical acts such as black magic have been regulated in criminal law, specifically in Articles 545 to 547 of the Criminal Code. Article 545 specifically prohibits the act of performing black magic, while Article 546 prohibits the trade in amulets or items that have supernatural powers, as well as teaching practices related to them. In addition, Article 547 of the Criminal Code prohibits the use of amulets or sacred objects by witnesses when giving testimony in court. On the other hand, other laws also explain black magic, such as those regulated in Article 13 of the Majapahit law which imposes the death penalty on perpetrators of black magic. However, in its implementation, criminal law has not been fully effective in handling black magic cases because the CUHP has limitations that do not always reflect the existing reality. To address issues related to supernatural powers, black magic, and witchcraft, a more assertive legal policy is needed. Law enforcement against witchcraft crimes must be strengthened to minimize such practices in society and prevent unilateral action against people accused of being witchcraft perpetrators. This can be seen in various drafts of the Criminal Code that have been submitted since 1993 to 2019, although there have been several changes. (Prananingrum, 2019; Santoso, 2017)

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