Criminalization Of Santet In The Reform Of The Criminal Law

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Abstract

The crime of santet is a new crime in Law Number 1 of 2023 concerning the Criminal Code. Before this article was finally included in the new Criminal Code, there was debate related to the criminalization of santet in the Criminal Code, which is related to the proof of the crime of santet related to the workings of santet and the consequences of santet in the form of non-medical illnesses. This article was written using a normative legal research method with a conceptual and statutory approach. The results of this study are that the offense of santet is a formal offense, the act that is criminalized as santet is related to someone who offers santet services and is not related to proving the workings of santet and the consequences suffered by the victim of santet.

Keywords: Criminalization, Santet, Criminal Law Reform.

I. Introduction

In recent decades, human civilization has entered a period of modern civilization which is marked by massive developments in the field of technology which have changed almost all aspects of human life. Not only in the field of technology, it turns out that modernization has also spread to the world of law. The law must continue to follow the development of society towards an increasingly modern direction.\(^1\) Laws created with the aim of achieving social order need to be adapted to the needs of society in this digital era.

This massive technological progress has not completely changed people's belief in metaphysical matters. The reality shows that there are still many people who believe in and use santet and there are increasingly widespread mass media impressions, both print and

1 Dino Febriansyah Sitorus and Ayu Trisna Dewi, “EKSISTENSI FILSAFAT HUKUM DI ERA DIGITALIASI HUKUM MODERN,” Warta Dharma\(\)wangsa 17, no. 1 (2023), https://doi.org/10.46576/\(w\)dw.v17\(i\)1.2949.
electronic, related to santet. This is because materialistic culture has distanced some human beings from religious values and norms. This phenomenon shows that the existence of santet in society is still recognized and needed.\(^2\)

According to the grammatical meaning, in Indonesian, santet is defined as a sorcerer or an act of harming people with the help of demonic forces.\(^3\) Furthermore, the act of santet by the Indonesian people is understood as an act to injure or hurt other people so that they fall sick, die, or go crazy. Whereas in English, santet is known as black magic which is understood as "any of the branches of magic that invoke the aid of demons or spirits, as santet or diabolism". According to local languages in Indonesia\(^4\), black magic (santet) is termed in different languages, for example teluh (West Java), santet (Central Java), santet (East Java), pulung (West Kalimantan), doti (South Sulawesi) and there are many others. However, of all the terms circulating in Indonesia, santet is more commonly referred to as replacing black magic, black magic and so on.

According to the beliefs of most Indonesian people, santet is generally believed to be one of the actions that can cause harm to someone through the occult. Losses arising from acts of santet can be seen directly and clearly on the victims of santet, but it is difficult to explain medically. In various cases, usually what happens to someone who is a victim of santet, sore wounds usually appear due to a foreign object that is inside the victim of santet but cannot be explained medically about the origin of the foreign body. The intended foreign object can be nails, iron, needles, hair or other sharp objects. In fact, in more extreme cases, the act of santet besides being able to make people suffer for a long time both physically and mentally, can also cause the victim to die.\(^5\) According to Indonesian criminal law before the enactment of Law Number 1 of 2023 concerning the Criminal Code, acts of santet were not yet categorized as a crime.

The principle of legality as stated in the Criminal Code Article 1 Paragraph 1 of Law Number 1 of 1946 concerning Criminal Law Regulations explains that "There is no act may be punished, but on the power of criminal provisions in the law, which existed earlier than on that deed" or in Latin it is known as nullum delictum nulla poena sine praevie lege poenali. As for the meaning of the principle of legality as stated in the Criminal Code Article 1 Paragraph 1 of Law Number 1 of 1946 concerning Criminal Law Regulations, we can classified into two things, namely first, an act can be punished if the act is classified as a criminal act according to provisions of the law (principle of formal legality). Therefore, then punishment based on the law that lives in the midst of society the unwritten is not possible. Second, criminal provisions regarding the act must first exist (positivize) than his deeds. For this reason, these provisions may not apply retroactively, both regarding the verdict regarding the act can be punished, or related to sanctions.


The renewal of Indonesian criminal law with the promulgation of Law Number 1 of 2023 concerning the Criminal Code has included santet as a crime. Article 252 of Law Number 1 of 2023 states:

Paragraph (1): “Everyone who claims to have magical power, informing, giving hope, offer, or provide assistance services to others that because of his actions can cause illness, death or suffering mental or physical person, shall be punished with a criminal imprisonment for a maximum of 1 (one) year 6 (six) months or maximum fine of category IV.

Paragraph (2): “If Everyone as referred to in paragraph (1) do the deed to find profit or make it as a job or habit, the penalty can be plus 1/3 (one third).

The article on santet which has now been criminalized as a crime in the Indonesian Criminal Code is one of the articles that was originally a crucial article or an article that invites a lot of debate. The debates that arose before the legalization of santet as a crime were related to the difficulty of proving santet before a trial hearing. As we understand santet is abstract dimension, is an area that is in a mystical space or spiritually unable or even difficult to get to the truth material for santet. While criminal procedure law have the main objection to seeks the material truth of an act, The evidence must be concrete, certain and real. So are the evidence there is no regulation used in the Criminal Procedure Code Article 184 regarding evidence of santet offenses.

Responding to the controversy regarding the regulation of santet as a crime, the government finally adopted a policy to criminalize santet as a crime in the Indonesian Criminal Code with the following considerations:

1. Minimize someone who claims to have knowledge of santet to offer santet services with the intention of minimizing santet acts that are difficult to prove;

2. Minimizing the occurrence of other crimes such as fraud or embezzlement, when someone who claims to have knowledge of santet actually promises santet services and asks for a sum of money or goods in exchange for the victim, namely someone who wants to bewitch someone;

3. Prevent the occurrence of vigilante acts (eigenrichting) against someone who is accused of being a witch sorcerer who has knowledge of santet, considering that according to phenomena that occur in society there has been persecution of someone accused of being a witch sorcerer.

Based on the description of the problems related to the criminalization of santet as described in this introductory section, this article intends to find out the meaning of the criminalization of santet in the renewal of Indonesian criminal law.

II. Problem Formulation

What is the meaning of the criminalization of santet in the renewal of Indonesian criminal law?

III. Research Method

This article was written using normative legal research methods using a conceptual approach and a statutory approach. The legal materials used in writing this article are

primary legal materials and secondary legal materials. The legal material collection technique used in writing this article is library research.

IV. Discussion

Efforts to reform the Criminal Code were motivated by the history of Dutch colonialism in Indonesia. In the past, the Netherlands enforced the Criminal Code in its colonies, including Indonesia or what was previously known as the Dutch East Indies. As a legacy of colonialism which was enforced in Indonesia, the current Criminal Code is felt to be inconsistent with the soul of the Indonesian nation and needs to be reformed. In order to have criminal law that suits the characteristics of the Indonesian nation, Muladi is of the opinion that material criminal law reform needs to pay attention to the operational characteristics of material criminal law in the future. For example, material criminal law must be structured within the framework of national ideology; pay attention to aspects related to human conditions, nature and Indonesian traditions, be able to adapt to universal tendencies that grow in civilized society, think about preventive aspects, and must be responsive to developments in science and technology in order to improve effectiveness of its function in society.7

Commitment to reform Indonesian criminal law actually started in 1963, when the National Law Seminar was held as a follow-up to the formation of the National Law Development Institute in 1958. The reform of Indonesian criminal law includes aspects of material criminal law, formal criminal law, as well as criminal law enforcement. These three aspects of criminal law must be renewed in its entirety as a consequence of adhering to the principle of legality. If only one aspect of criminal law is renewed while the others are not renewed, it will cause its own problems in its implementation so that the goal of reforming criminal law will not be achieved. This is because one of the objectives of criminal law reform is to tackle and reduce crime.8 Studying criminal law as a whole is incomprehensible as a norm in just its formulation, but must be understood in a broader context. Criminal law has values, norms, as well as criminal law which is a sub-system inseparable from society, both philosophically, politically, culture and history. Everything cannot be separated because of one unit in criminal law.

Based on the theoretical aspect, criminal law renewal is based on 3 (three) considerations. These considerations consist of:9

1. First, political considerations
   Indonesia has been independent from colonialism, so it should have a self-made Criminal Code. If using another country’s Criminal Code it is a symbol of colonialism from the country that made the Criminal Code;
2. Second, sociological considerations

The making of the Criminal Code itself is a reflection of the identity of the nation where the law is located. The nation's social and cultural values are very important in drafting the Criminal Code. The benchmark for criminalizing an act must be in accordance with the collective values and views of the relevant community which are good, correct and beneficial in making the Criminal Code;

3. Third, practical considerations

The Criminal Code currently uses Dutch, there is no official translation into Indonesian, so we have to understand Dutch if we want to know the original text, but that is impossible because Indonesia is already independent, so we made our own national criminal code.

Efforts to include the offense of witchcraft in criminal law in Indonesia are not easy. Although witchcraft is seen as an evil act, it is difficult to prove. Meanwhile, evidence in criminal law aims to find material truth and in a court trial it is also impossible if the panel of judges listens to expert testimony from paranormal experts. However, interpreting the offense of black magic in Indonesian criminal law does not refer to how acts of black magic can injure or kill the victim. Criminalizing the offense of black magic tends to refer to formal offenses involving an offer by someone who claims to have magical powers to commit black magic.

The formulation of Article 252 of Law Number 1 of 2023 concerning the Criminal Code has criminalized santet as one of the criminal acts according to criminal law. Criminal law laws and regulations must adapt to the development or dynamics of society which will relate to the public's need for criminal law. So that in this case the criminal law regulations can regulate actions related to supernatural or supernatural aspects, as long as these regulations are not related to the substance of occult or supernatural sciences. The problem or legal issue that needs to be studied is regarding the need for criminal law legislation to deal with acts that are categorized as santet by means of penal (criminal)? This question will relate to the criminalization policy, namely the determination of an act that was not originally categorized as a crime to be categorized as a crime.

From a legal perspective, reviewing the problem of witchcraft means reviewing it as a legal problem that requires a deeper study of the criminal law policy regarding the crime of witchcraft because witchcraft is a magical act that is difficult to prove legally. A formal and rational legal system only tries to capture external actions whose causal relationships can be empirically identified and proven. Therefore, acts of a mystical, occult/metaphysical nature are difficult to accept in a formal and rational legal system. However, this does not mean that all actions related to supernatural matters cannot be regulated in a formal and rational system of legal regulations. As long as the act (which is related to supernatural matters) can be identified, the act can also be regulated in formal law or statutory regulations.

Discussing this issue within the scope of the study of political issues Criminal law is also part of the problem of law enforcement policies, criminal policies and crime prevention policies. The law maker must know the values that exist in society, Is it necessary to make a policy for criminalization of this problem of santet. Several considerations are appropriate

examined from various aspects/angles in determining a criminal policy. An important aspect that needs to be considered in the aspect of criminal policy is related to whether acts related to santet need to be regulated by means of criminal law? The purpose of this criminal law will be related to the welfare of society which starts from crime prevention efforts. Criminal law policies do not talk about whether santet exists, how santet works and how santet is proven, as well as the consequences of santet in the form of non-medical illnesses.

The government's efforts together with the legislature to criminalize acts of santet broadly aim to:
1. Prevent people from becoming victims of someone who claims to have supernatural powers to harm other people;
2. To prevent the public from committing criminal acts of torture or murder secretly by asking for help from a witch doctor;
3. Prevent the public from taking the law into their own hands (eigenrichting) against someone who is accused of having the supernatural ability to blackmail;
4. Educating the public so that they have reasoned, rational and scientific thoughts for the betterment of the nation and state.

Article 252 of Law Number 1 of 2023 aims as an effort to prevent the practice of santet by santet service providers. This is intended to eradicate the profession of santet shamans or the practice of fake shamans who claim to have the ability to practice santet. The article expressly explains that the elements of an act of santet are the act of offering, announcing or providing santet services to another person with the intent to harm or kill another person others with the help of magic.

According to its formulation, the act of santet in Article 252 of Law Number 1 of 2023 concerning the Criminal Code is included in the formal offense, and not a material offense. Thus, it is clear that the controversy regarding santet has been answered, that what is the focus of criminal law policy is not related to the consequences of acts of santet on victims of santet, but related to acts of santet as prohibited acts. According to Eddy O.S. Hiarie,

We can see formal offenses in the formulation of the article, if it is mentioned in the formulation it is the act. Because the act is the most important to be prohibited. In contrast to material offenses, seeing a crime is based on the consequences arising from the act. When the public prosecutor will prove Article 252 of Law Number 1 of 2023 concerning the Criminal Code as a formal offense, what will be proven is whether the person has actually committed the act as referred to in the elements of Article 252? Proving the offense of black magic is only limited to the element of offering services to carry out black magic offered by someone.

So that the evidence by the public prosecutor does not need to point to the process/method of santet being carried out by supernatural practitioners or the consequences of santet in the form of non-medical diseases which are difficult to prove.

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V. Conclusion

Renewal of criminal law with the ratification of Law Number 1 of 2023 concerning the Criminal Code is a form of criminal law policy that aims to prevent crime. In relation to the criminalization of santet, Article 252 of the Criminal Code aims to prevent the practice of santet by supernatural practitioners which can cause victims.

Based on the formulation of Article 252 of the Criminal Code, it can be seen that the crime of santet regulated in the new Indonesian Criminal Code is included in the formal offense. The evidence for the crime of santet is related to the elements of the article, namely declaring oneself to have supernatural powers, informing, giving hope, offering, or providing services to other people that their actions can cause illness, death, or mental or physical suffering somebody. So that the crime of santet does not need to be proven related to the consequences of the act of santet or the workings of the act of santet.

References


