Juridical Study on the Law of Proof of Witchcraft in Criminal Law Reform in Indonesia

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Abstract:
The community continues to develop very dynamically related to rules or laws that must always be updated or new laws are created, or the existence of a community culture that has existed for a long time but has not been legalized in the form of written law. Indonesia is a country that is famous for its diverse culture, spiritual life in Indonesia is very thick, making people in some areas have faith or even the ability to see things that are supernatural or learn magic where one of them is witchcraft. For protection and legal certainty relating to the crime of witchcraft among the public, and preventing the occurrence of vigilante actions against someone accused of being a witch, it is necessary to have a criminal law policy against the crime of witchcraft and a criminal law policy has an important role because the Criminal Code we adopted from Dutch colonialism did not regulate the problem of witchcraft. The purpose of this research is to find out about the concept of witchcraft offenses according to positive law in Indonesia and to find out the Law of Proving the crime of witchcraft in the Criminal Law Reform in Indonesia. The research method used in this study is a normative legal research method or also referred to as doctrinal legal research which is sourced from library law materials. Thus, it is undeniable that regulations governing this issue are indispensable for law enforcement in Indonesia, because so far there have been many victims. The debates that have been going on so far have mostly led to proof, while witchcraft has not been proven because it is still difficult to accept logically

Keywords:
Juridical review, witchcraft offense, criminal law reform

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INTRODUCTION

The community continues to develop very dynamically related to rules or laws that must always be updated or new laws are created, or the existence of a community culture that has existed for a long time but has not been legalized in the form of written law. Law is a collection of both written and unwritten rules that contain the requirements and prohibitions that must be obeyed in social life. According to Drs. E. Utrecht, SH that the law is a set of rules (orders and prohibitions) that manage the order of a society and therefore must be obeyed by the community (Kansil, 1989). The law was created from exploring the values that live in the community and is intended for the community, therefore the law created must be in accordance with the situation and conditions of the local community. The law functions as the protection of human interests, so that human interests are protected, the law must be implemented (Mertokusumo & Pitlo, 1993). Therefore, the law must be strictly obeyed for the sake of creating order in social life. Society and its order are two things that are very closely related, it can even be said as two sides of a coin. Life in a society that more or less runs in an orderly and orderly

manner is supported by the existence of an order. The order is supported by a norm, where the norm is a more concrete manifestation of a value. Values are related to the ideals, desires, and hopes as well as all human internal considerations.

Such values are not concrete and in practice are subjective. These abstract and subjective values, in order to be more useful in guiding human attitudes and behavior, need to be more concrete. For this reason, values must be formulated into certain symbols whose purpose is to make them easier to understand interpersonally (Satjipto Rahardjo, 2000). In relation to the values that live in society that are abstract, they are concreted in the form of norms. These norms which contain certain symbols so that they can be applied and implemented in social life, then these norms must be poured into a regulation in the form of article by article which is codified in a statutory book (written law) (Darji Darmodiharjo and Shidarta, 2004). The values that live in society logically cannot be implemented, but in reality these values are recognized by the Criminal Code (KUHP) and even in the Draft Criminal Code, these values have been clearly formulated.

An example of the values that live in the community in question is about the offense of witchcraft. Where the offense of witchcraft has become a very tough topic of discussion at the level of the formation of the National Criminal Code. Problems related to things that smell occult, where in each region the term is very different. In West Java it is known as "Teluh", in Central Java it is known as "Tenung", and in East Java it is known as "Santet". It's just that the mention of the term "Santet" is more universal. In the Criminal Code Bill itself, the mention of the term "Santet" is further expanded with the term "occult power". Such a term is used, because the application of the article is not only for witchcraft, it can be like gendam, hypnosis, witchcraft, and so on. The act of witchcraft that is not regulated in a statutory regulation results in the act cannot be categorized as a criminal act, as a result of colliding with the nullum delictum principle contained in Article 1 paragraph (1) of the Criminal Code, which requires an act to be considered a criminal act if it has been regulated in the Criminal Code. a law in advance and will be able to lead to vigilantism in society.

However, in principle, vigilante acts according to the legal perspective cannot be justified even for any reason. Since the existence of a community agreement (Yean Yeques Rossean theory) every act that harms the community has been handled by the state, so that the community is no longer allowed to take unilateral actions on their own. In addition, the act of vigilantism is also basically contrary to the principle of presumption of innocence as stated in Article 9 paragraph (1) of Law No. 14/1970 and the Criminal Procedure Code.

Article 293 paragraph (1) of the Draft Law on the National Criminal Code states: "Everyone who claims to have supernatural powers, informs, raises hope, offers or provides services to others that because of his actions can cause disease. , death, mental and physical suffering of a person, shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Category IV" (Anonymous, 2012).

The various terms used, in essence, are still mystical things and are far from the reach of legal logic. But through several processes at the level of drafting laws by using legal breakthroughs. At the next level, it concerns the application of article 293 of the National Criminal Code Bill on the offer of services for the use of magical powers.

The standard of success of an article in the legislation is largely determined from the "application of the law". The extent to which the application of the law can provide satisfaction for justice seekers, especially those experienced by the victims of the crime of witchcraft. Likewise with the application of the article on witchcraft to the perpetrators in the context of the success of the criminal justice process starting from the stage of investigation, investigation, prosecution to the stage of examination in court. At these stages it is necessary to have a proof

process, especially at the time of examination in court. Given that every criminal justice process is always required supporting evidence, so that the decision of the court can be legally accounted for. Evidence also has a big role in determining the effectiveness of a criminal justice process.

In a dialogue event on the Criminal Code Bill (Dialogue on the "KUHP Bill" at the Faculty of Law, Diponegoro University, Wednesday (2/10/2019), those related to witchcraft were included in the Criminal Code Bill, which was attended by the Head of the Drafting Team for the Revision of the Criminal Code, Prof. the article does not regulate the practice of witchcraft but rather on people who claim that their magic can harm or injure other people. Moreover, that person uses magic to harm other people as a livelihood. In the dialogue program, according to Prof. Muladi, witchcraft is not the one who is being punished. witchcraft because witchcraft can't be proven, it's metaphysics. People who claim to have supernatural powers to harm others, not witchcraft victims of slander receive harsh treatment to beatings that lead to death If it happens that people are ganged up on because they are accused of cheating, it happens a lot in many areas.

In matters relating to witchcraft in the investigation of criminal cases, law enforcement is mostly directed at the crime of fraud or the crime of premeditated murder. In the view of material criminal law, not everyone who claims to have supernatural powers will be punished. Moreover, if the occult is used to help others such as treatment or selling merchandise. The focus in criminal law is offering witchcraft services, as a livelihood, claiming to have supernatural powers and being able to injure people, harm people, make people crazy, make people sick and even make people die, such acts can be punished.

The article on witchcraft is listed in the Draft Criminal Code (KUHP) in Article 293 which reads: (1). Any person who declares himself to have supernatural powers, conveys hope, offers, or provides assistance services to others that because his actions can cause illness, death, mental or physical suffering to someone, shall be punished with imprisonment for a maximum of 5 (five) years or fine at most category IV. (2) If the perpetrator of the crime referred to in paragraph (1) commits the act to seek profit or make it a livelihood or habit, the penalty can be increased by 1/3 (one third).

In the dialogue, another resource person, Barda Nawawi Arief, who participated in drafting the policy, said that the article is an extension of Article 162 of the Criminal Code which regulates the prohibition of assisting criminal acts. The article reads "Anyone who publicly orally or in writing offers to provide information, opportunities, or means to commit a criminal act, is threatened with a maximum imprisonment of 9 months or a maximum fine of Rp. 400,500."

In Indonesian society, the existence of witchcraft / sorcery / witchcraft is strongly believed to exist. But for some people, this is considered just an engineering, especially since Indonesia is a developing country, where some people still have a primitive mindset. The absence of a law that regulates the problem of witchcraft encourages people who believe in witchcraft, to take vigilante action against people who are suspected of having witchcraft, and it is believed that people often practice witchcraft, resulting in frequent persecution and even murder by several people or even by the masses. under the pretext of witchcraft.

Thus, it is undeniable that regulations governing this issue are indispensable for law enforcement in Indonesia, because so far there have been many victims. The debates that have been going on so far have mostly led to proof, while witchcraft has not been proven because it is still difficult to accept logically. This is what is the focus of scientific writing related to supernatural powers that occur in society which sometimes becomes an act of vigilantism, so the author feels a bit to parse juridically, so the author hopes that there will be a legal

umbrella as in the proposal in the Draft Criminal Code which is already in process. long to be immediately enacted into law.

RESEARCH METHODS

Normative legal research methods are also commonly called doctrinal legal research or library research. It is called doctrinal law research because this research is only aimed at written regulations so that this research is very closely related to the library because it will require secondary data in the library. In legal research, an approach method is needed which is intended to obtain information from various aspects regarding legal issues that are being tried to find answers to (Agus Yudha Hernoko, 2010). In relation to this normative legal research, the author uses a statutory approach which is carried out by examining all laws and regulations related to the legal issues being discussed, namely the legal regulations relating to the Criminal Code and the Draft Criminal Code. Legal material is analyzed descriptively which is done by examining the status of a group of people, an object, condition, system of thought or also current events.

RESULTS AND DISCUSSION

The concept of witchcraft offenses in positive law in Indonesia

According to the Big Indonesian Dictionary, witchcraft means magic. In West Java, witchcraft is called teluh ganggaong or sogra, in Bali it is known as desti, leak, or teluh frankjana, in Maluku and Papua it is called suangi, in North Sumatra begu ganjang, in West Sumatra it is called puntianak. Witchcraft includes sorcery or witchcraft. Both are included in black magic or black magic (Baharudin, 2007). Witchcraft (formerly called magic) is a part of the practice of black magic, which is carried out by shamans with the help of jinn supernatural beings as mediators to harm their victims (Safitrf, 2013).

Santet is defined in the language of the Using Banyuwangi tribe, namely mesisan kanthet (to be sticky/intimate), and mesisan benthet (to be cracked/separated). The first understanding is positive, while the second understanding is negative. Witchcraft is known as witchcraft which is a magical act that is performed with witchcraft, incantations, amulets, and the inclusion of the devil. Witchcraft can affect the body being bewitched, or the heart, the mind, without having to touch it. Magic can also cause death, illness, a husband can't marry his wife, divorce between husband and wife, cause hatred, or love between two people. Witchcraft performed by a person usually uses an agreement between the sorcerer and the devil. As the opinion of Sheikh Wahid Abdussalam Bali regarding magic, namely the agreement between the sorcerer and the devil. The agreement is accompanied by a condition that the sorcerer must carry out some forbidden acts or forms of polytheism in return for the help of the devil to him, as well as obedience to him in fulfilling all his requests (Jamhuri, 2018).

The practice of witchcraft or what can also be known as one of the mystical endeavors called occult according to Magnis Suseno, are evil practices driven by a low desire for worldly objects and demonic powers. The occult is an attempt for inner strength, but is driven by impure motives, namely to advance his own selfish interests and must be rejected. Only a shaman comparable to his black magic master could neutralize his influence. The occult is synonymous with magic.

According to Claud Levi Strauss there are three factors of magic efficacy. First, the magician's own belief in the effectiveness of the technique used. Second, the patient's or victim's belief in the power of the sorcerer. Third, the group's beliefs and expectations that function as a kind of direct link between the sorcerer and the victim, as if as an act of gravity. The three elements are "complex and inseparable shamanism". But both are grouped into two

poles. one is shaped by the deep experience of the traditional healer and the other by group consensus (Thabrani, 2014).

Austin argues that positive law is defined as a law made by people or institutions that have sovereignty and is enforced against members of an independent political society. The member recognizes the sovereignty or supremacy of the person or law-making institutions concerned. Thus, according to him, habit is valid as law only if the law requires or expressly states (Mujib, 2012).

As previously explained, Indonesia is a country that is rich in culture that lives in its community. With a variety of Indonesian cultural diversity that gave birth to various traditions with beliefs that are still strong with the existence of things that are magical. People's beliefs related to mystical things are still rooted quite firmly into a separate myth in the midst of society. The public's view of witchcraft makes witchcraft as entrenched in society. It would seem difficult to explain that in the realm of modern thought where the configuration of social life of society is being directed as a society that is able to think and act logically, concretely, rationally, and objectively, and based on factual concepts, but on the other hand at the same time, both secretly or openly, both individually and in groups, accommodate an attitude of belief and use irrational, abstract, illogical thinking and carry out practices that can be traced as mystical practices as phenomena that are often present in traditional societies.

In a legal perspective, reviewing the problem of witchcraft means reviewing as one of the legal issues that needs a deeper study of how the criminal law policy towards the crime of witchcraft is because witchcraft is an occult act that is difficult to prove legally. A formal and rational legal system only seeks to capture outward actions that can be empirically identified and proven causal relationships. Therefore, actions that are mystical, occult/metaphysical are difficult to accept in a formal and rational legal system. However, this does not mean that all actions related to occult issues cannot be regulated in a formal and rational legal system. As long as the act (related to the occult) can be identified, the act can also be regulated in formal law or statutory regulations.

In the provisions of criminal law in Indonesia, the criminalization of mystical acts can be seen in Article 545 of the Criminal Code to Article 547 of the Criminal Code. Where in Article 545 which in essence explains that anyone who declares someone's luck, predicts or interprets dreams and makes it their livelihood, is subject to imprisonment for a maximum of six days or a fine with a maximum nominal of three hundred rupiahs and if the violation is committed returned before one year has passed, the penalty can be doubled.

The sale of amulets or objects that contain supernatural powers and teach about science or magic to commit criminal acts is also an act that is prohibited in accordance with the rules of Article 546 of the Criminal Code which can be punished with imprisonment for three months or a maximum fine of four thousand and five hundred rupiah. Furthermore, a witness who uses an amulet or a magical object when giving testimony in a trial may also be subject to a sanction in the form of imprisonment for ten days or a maximum fine of seven hundred and fifty rupiahs as stated in Article 547 of the Criminal Code.

In another regulation regarding the act of witchcraft carried out by the perpetrator of witchcraft itself, it is also studied in the form of the formulation of Article 13 of the Majapahit legislation where those who do so will be subject to the death penalty by the ruling king and someone who can be said to be practicing very dangerous magic. is when: writing someone else's name on a dead person's cloth or on a coffin, or on a dodot in the form of a doll, or planting a flour doll with the name of the grave, placing it on a tree, in a frightening place, or at an intersection. write other people's names on bones, on skulls with other people, blood and trikatuka and then soak them in water, or drown them in places of torture.

Law of Evidence relating to witchcraft offenses in the renewal of Criminal Law in Indonesia

In the past, the Netherlands imposed the Criminal Code on its colonies, including Indonesia or what was formerly known as the Dutch East Indies. As a legacy of colonialism which was enforced in Indonesia, the current Criminal Code is felt to be incompatible with the spirit of the Indonesian nation and needs to be reformed. To have a criminal law that is in accordance with the characteristics of the Indonesian nation,

Muladi is of the opinion that the renewal of material criminal law 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 the human condition, nature, and Indonesian traditions, can adapt to universal trends that grow in civilized society, think about preventive aspects, and must be responsive to the development of science and technology in order to increase the effectiveness of its functions in society (Leonard, 2016).

In the development of criminal law reform, the criminalization of witchcraft offenses has become a tug-of-war agenda in the Draft Criminal Code. Criminal provisions regarding witchcraft are regulated in the Draft Criminal Code from year to year reviewed as follows:

1) The concept of the 1993 RKUHP The offense of witchcraft in the 1993 RKUHP concept is regulated in Article 223 which prohibits a person from admitting he has magical powers and notifying or giving hope to others that he can cause death or mental and physical suffering to someone, and the act can shall be sentenced to a maximum imprisonment of five years or a fine classified as a category IV fine. Draft RKUHP 1999 to. 2012 In the draft RKUHP 1999 to. The 2012 offense of witchcraft is regulated in Article 292 which states that a person who admits that he has magical powers and informs, raises hope, offers or provides services to others that he can cause death or mental and physical suffering to someone, can be punished with imprisonment of at most for five years or a fine that is classified as a category IV fine. When compared with the concept of RKUHP 201, in the concept of RKUHP 1999 to d. 2012 has clarified and expanded the rules by adding people who offer witchcraft services, then they can be punished.
2) The concept of the 2013 RKUHP In the 2013 RKUHP concept, the offense of witchcraft as regulated in Article 293 of the 2013 RKUHP is divided into 2 (two) paragraphs, where in paragraph (1) Article 293 of the 2013 RKUHP prohibits a person from admitting he has magical powers and notifying, raising hopes, offer or provide assistance services to other people, that he can cause death or mental and physical suffering to a person, which can be punished with imprisonment for a maximum of five years or a fine classified as a category IV fine. For someone who commits witchcraft that is used to seek profit and makes it a livelihood or habit, it is regulated in Article 293 paragraph (2) of the 2013 RKUHP and will be subject to a penalty that can be increased by 1/3 (one third) as stated in paragraph (1).
3) The 2015-2019 RKUHP concept In the 2015 RKUHP concept, witchcraft offenses have decreased the prison term, from the previous 5 (five) years, changed to 3 (three) years and is regulated in Article 295 paragraph (1) and (2) RKUHP 2015, which is stated in paragraph (1) that a person who admits himself to have magical powers and informs, gives hope, offers or provides services to others that he can cause death or mental and physical suffering to someone, can be punished with imprisonment for a maximum of 3 (three) years or a fine classified as a category IV fine. And if someone who commits witchcraft that is used to seek profit and makes it a livelihood or habit is regulated in Article 295

paragraph (2) of the 2013 RKUHP and will be subject to a penalty that can be increased by 1/3 (one third) as stated in paragraph (1).

Efforts to include witchcraft offenses in criminal law in Indonesia is not an easy thing. Although witchcraft is seen as an evil act, it is difficult to prove it. While evidence in criminal law aims to find material truth and in court trials it is also impossible if the panel of judges listens to expert testimony from psychics (Arthani, 2015). In dealing with issues concerning supernatural powers, black magic, and witchcraft, and others, the Criminal Code is less able to criminalize these actions because of the incompatibility of the Criminal Code with reality. Changes and reforms in the field of criminal law, especially regarding material (substantive) criminal law, are important and fundamental, because the current law, especially the colonial material criminal law, is no longer able to meet the legal needs of the Indonesian people (Abdulah, 2015).

a. The law of evidence in the Criminal Procedure Code

Evidence in criminal law is based on Article 184 of Law no. 8 of 1981 concerning the Criminal Procedure Code ("KUHAP"), uses five types of evidence, namely: witness statements, expert statements, letters, instructions. And the defendant's letter. In the development of criminal procedural law in Indonesia, the problem of provision of evidence differs from one another. For example, the Procedural Law of the Constitutional Court (MK) states that: The evidence in the trial of the Constitutional Court is: Letters or writings, certificates, expert statements, names of parties, instructions and other evidence in the form of: information spoken, sent, received or stored electronically with an optical device or something similar. In this case, the author will explain in simple terms the evidence as stated in the Criminal Procedure Code, which is as follows (https://konsultan Hukum.web.id/pahami-alat-unjuk-dalam-law-pidana-according to the kuhap-ketangan-saksi) :

1) Witness testimony,

Witness testimony is information or information obtained from one or more (witnesses) about a criminal event which he heard himself, saw for himself, and experienced himself. Witness testimony will only serve as evidence if it is presented before the trial (Article 185 Paragraph 1 of the Criminal Procedure Code). The testimony of a witness is not sufficient to prove that the defendant is guilty of committing the act he is accused of (Article 185 Paragraph 2). This principle is called unus testis nulus testis which means one witness, not a witness. So that the testimony of a witness must be supported by other evidence, such as expert testimony, instructions or testimony from the defendant. The testimony given by the witness before the trial must be based on what he saw, heard and experienced himself, not based on the opinions, thoughts, allegations, or assumptions of the witness. If a witness gives information based on his own opinion or suspicion, then the information cannot be accepted as a judge's consideration or in other words, such information is not included as evidence. Furthermore, Article 185 Paragraph 6 of the Criminal Procedure Code states, in assessing the truth of witness statements, the judge must seriously pay attention to: The correspondence between the testimony of one witness to another; Conformity of witness testimony with other evidence; The reason for the witness to give certain information; The way of life and morality and other things in general can affect whether the information can be trusted or not. Before giving his testimony before the trial, witnesses must first take an oath according to their respective religions and beliefs (Article 160 Paragraph 3 of the Criminal Procedure Code). That is, so that witnesses give their statements honestly/truly and dare to account for their statements not only to the Judge (Law) but also to God. If the witness is dishonest or in

other words gives false information before the trial, he can be prosecuted under Article 242 of the Criminal Code, the penalty is 7 (seven) to 9 (nine) years in prison.

2) Expert statement,
   Expert testimony is information given by someone who has special expertise on things needed to make a case clear (see Article 1 number 28, Article 120, Article 132, Article 133 and Article 179 of the Criminal Procedure Code). A person's expertise is certainly measured by the level of education and experience in certain fields so that the person can be said to be an expert. Information given by an expert is information based on his knowledge or expertise in certain fields and not based on what he has seen, heard or experienced. In general, if during the examination of a case there are technical problems outside the law, then an expert is brought before the court to hear his statement. For example, if a criminal case involves banking, insurance, building, oil drilling, etc., the expert proposed is not a legal expert but an expert in the technical field. Judges, prosecutors and legal advisors are considered to have good knowledge of the law, but from a technical point of view, information or opinions from experts in the field are required to make this clear and clear. Syaiful Bakhri (2009: 62-63) provides the difference between witness testimony and expert testimony as follows; In terms of the subject, witness testimony is given to everyone, while for experts it is given for expert testimony to be given to experts related to the problems that occur. In terms of content. The witness conveyed events related to the crime that occurred while the expert gave his "opinion" which was asked of him. From a basic point of view. Witness testimony is based on sight, hearing and what the witness experienced himself, while expert testimony is based on his knowledge or expertise. In terms of oath. The witness swears to give the true information and nothing but the truth, while the expert witness swears to give the best information according to his knowledge or expertise.
3) Letters,
   According to Sudikno Mertukusumo, a letter is anything that contains reading signs intended to pour out the heart or to equate one's thoughts and be used as evidence. The KUHAP itself does not provide a clear definition related to letter evidence. Rather it only provides an explanation that the letter as evidence must be made on an oath of office or confirmed by oath (Article 187 of the Criminal Procedure Code). This means that what can be categorized as evidence of a letter is only a letter made on an oath of office or strengthened by an oath. Apart from these two conditions, it cannot be categorized as documentary evidence. Broadly speaking, the types of documentary evidence referred to in Article 187 of the Criminal Procedure Code are: Ordinary letters, namely letters originally intended to prove something. Letter under the hand, which is made for proof. Authentic letters, namely official reports and other letters made by or before public officials (investigators, notaries, judges) which can be broken down into two groups; Acta ambteljk, which is an authentic deed made according to the will of the public official. Partij deed, which is an authentic deed made by the parties before a public official. Examples of documentary evidence as written above, for example, notarial deed, Visum et Repertum letter (a letter of examination of the victim from a doctor), and so on.
4) Hint
   Instructions are actions, events or circumstances which due to their conformity, either with one another, or with the crime itself, indicate that a crime has occurred and who the perpetrator is (Article 188 Paragraph 1 of the Criminal Procedure Code). Instructions can only be obtained from witness statements, letters and/or statements from the defendant (Article 188 Paragraph 2). The actual clue is the conclusion drawn by the judge based

on the information and facts revealed at the trial. It is the judge who has the authority to conduct an examination and assessment of the strength of a directive with great care, thoroughness, wisdom, wisdom and based on his conscience. (Article 188 Paragraph 3 KUHAP).

5) Defendant's statement.
The defendant's statement is a statement given by the defendant in front of the trial about the actions that he did or which he knew or experienced himself (Article 189 Paragraph 1 of the Criminal Procedure Code). The testimony of the accused is in principle almost the same as the testimony of witnesses. The difference is, if the witness's testimony is sworn in while the defendant is not sworn in. Based on Article 52 of the Criminal Procedure Code, the defendant is given the right to give information freely. Which means that when giving a statement the defendant may not be forced or pressured by anyone, but the defendant is free to provide information according to his wishes. The existence of freedom in providing this information certainly gives the defendant the right, whether he will provide information in accordance with what is described in the Examination Report (BAP) or vice versa, or in other words it all depends on the defendant whether at trial he will admit his actions or not. not. In the event that the defendant does not want to answer or refuses to answer the questions put to him, the judge recommends answering and after that the trial is continued (Article 175 of the Criminal Procedure Code). The defendant's testimony can only be used against himself. If in the trial the defendant immediately admits that he is guilty of committing a criminal act as he is charged with, then the information cannot be used as a basis by the judge to determine and then impose a sentence on the defendant. others, such as witness statements, letters, etc. (Article 189 Paragraph 4 of the Criminal Procedure Code). Previously, it should be noted that in criminal procedural law, witnesses and experts are two different pieces of evidence. Meanwhile, according to our assumption, what you mean by expert witness is expert testimony.

b. The law of proof in the Criminal Code Bill
This rule is regulated in Chapter V concerning Crimes Against Public Order which is specifically included in Article 293. The Draft Criminal Code includes provisions relating to the crime of witchcraft. Article 293 paragraph (1) and paragraph (2) of the Draft Criminal Code, which reads more or less:

1) Everyone who declares himself to have supernatural powers, informs, gives hope, offers or provides assistance services to others that because his actions can cause mental or physical suffering to a person, shall be punished with imprisonment for a maximum of 5 years or a fine of a maximum of Category IV. ;
2) If the perpetrator of the crime as referred to in paragraph 1 commits the act to seek profit or make it a livelihood or habit, the penalty is increased by one third."

The purpose of proof is to seek and obtain material truth and not to find fault with someone. Van Bemmelen said that the purpose of proof is as follows: So proof is an attempt to obtain proper certainty by examining and reasoning from the judge: a). Regarding the question of whether certain events or actions have actually occurred; b). Regarding the question of why this event has occurred.

From that the evidence consists of: a). Shows events that can be received by the senses; b). Provide information about the events that have been received; c). Using logical thinking (Ansorie Sabuan, 1990).

This evidence is carried out in the interest of the judge who must decide the case. In this case, what must be proven is a concrete event, not something abstract. With this

evidence, the judge, even though he did not see the actual incident with his own eyes, can describe in his mind what really happened, thus gaining confidence about it.

In the theory of proof, there are 4 systems of proof, which are as follows:

a) A mere belief system According to this system, judges are considered sufficient to base the proof of a situation on mere belief, without being bound by any legal regulations, so that with this system the judge can seek the basis of his decision based solely on feelings, thus on the basis of feelings. it can be used to determine whether a condition is considered to have been proven or not.
b) A positive statutory system In this system the law determines the evidence that can be used by the judge, the way in which the judge can use it, as long as the evidence has been used in a manner determined by law, the judge must and has the authority to determine whether or not a case is being examined, although perhaps the judge himself is not so sure of the truth of his decision.
c) A negative statutory proof system According to this system a judge may only impose a sentence if there is at least some evidence that has been determined by law (Article 183 of the Criminal Procedure Code), plus the judge's conviction obtained from the existence of the evidence that evidence.
d) Free evidentiary system According to this system, it is determined that the judge in using and mentioning the reasons for making a decision is not at all bound by the mention of the evidence contained in the law, but the judge is freely allowed to use the evidence. otherwise, as long as they are based on logical reasons.

In analyzing criminal acts using supernatural powers, the author in adhering to the theory of the four above is more directed to the third system, namely the negative legal proof system, the reason is because it is more based on the Criminal Procedure Code and the judge's own conviction. In criminal acts using supernatural powers, we need to analyze the strength of evidence from the magical power itself. Because in the National Criminal Code Bill when it is time for it to be ratified, the Criminal Code Bill regarding criminal acts using supernatural powers needs to be seen from the proof side. However, in the version of the National Criminal Code Bill in Article 293 proof by the existence of an acknowledgment from a person who declares himself to have supernatural powers, notifies, raises hope, offers or provides services to others that because of his actions can cause illness, death, mental or physical suffering to a person. According to the author, there is still insufficient evidence.

So according to the author's analysis, evidence is still needed that makes sense (logical) in order to find a bright spot for a criminal act of witchcraft, because the evidence in court that must be proven is events that can be accepted by the five senses and make sense (logical). So according to the author, if Article 293 of the Criminal Code Bill is only based on the recognition of the perpetrators of criminal acts by using supernatural powers, its application in the criminal justice process can be predicted that it will not run effectively, this is seen from the effectiveness of the legal substance

Article 293 can only be applied properly if in the sound of the article other than the acknowledgment of a person who declares himself to have supernatural powers, informs, raises hope, offers or provides services to other people that because of his actions can cause illness, death, mental or physical suffering to a person. which according to Article 184 of the Criminal Procedure Code includes the testimony of the defendant, also includes the evidence referred to in Article 184 of the Criminal Procedure Code, which include: witness statements, expert statements, and instructions.

To support the lack of necessary evidence other than confessions, in criminal acts using supernatural powers, additional evidence is required in the form of: witness statements, expert statements and evidence as materials for uncovering criminal acts, especially those related to supernatural powers. According to Prof. Eddy OSHierij related to the evidence there is with the Dutch Criminal Procedure Code, only Indonesian evidence is evidence of guidance, while the Netherlands is Dutch evidence of Judge's Observation/knowledge.

In the application of article 293 of the National Criminal Code Bill on the Crime of Offering Services Using Magical Powers, there are shortcomings because the article only states that article 293 of the Criminal Code Bill only applies to "people who claim to have supernatural powers, inform, generate hope" in other words "confession" only. The article does not describe the clarity about those who participate and order to do it, although in the article it is vaguely stated that informing and giving rise to hope, it is not clear about participating and ordering to do so. Because according to the author, the practice of offering services using magical powers does not only involve the perpetrators who offer or do them, but those who order them to do it or those who have an interest include the perpetrators of criminal acts who must also be charged with Article 293 of the National Criminal Code Bill.

Things that often become the criminalization of the practice of magic or witchcraft that occur in the community so that vigilantism occurs, among others, is regulated in Article 545, Article 546 and Article 547 of the Criminal Code, namely: Article 545 of the Criminal Code. This article forbids someone from working as a fortune teller or interpreter of dreams. But this article is difficult to implement. The fact proves that so many people claim that advertising themselves in the mass media can predict or give implants. Article 546 prohibits the sale and offer of supernatural objects. And, Article 547 prohibits a person from influencing the course of a court hearing by using amulets or spells. The witchcraft case that goes to court is not purely a witchcraft issue, but rather more murders based on the issue of witchcraft. Court decisions concerning similar cases almost always ignore the problem of witchcraft. Prosecutors and judges mostly regard it as an offense of premeditated murder or premeditated persecution. For example, in the decision of the Supreme Court No. 2296K/Pid/1989. It is the offense of murder and persecution that sticks out, rather than the issue of witchcraft.

CONCLUSION

Conclusion Based on the discussion above, the authors can draw a conclusion, including:

a. That the proof of the crime of witchcraft or supernatural powers is, in fact, difficult to prove. But by using the guidelines of Article 184 of the Criminal Procedure Code, namely by prioritizing expert information, it is hoped that the expert testimony will be a psychic who more or less knows the ins and outs of supernatural powers, but in an effort to reform Indonesian criminal law, namely in the Draft Criminal Procedure Code relating to the crime of witchcraft, it is emphasizes service offerings by using supernatural powers
b. That is to make further contributions related to the crime of witchcraft is to use expert information, both experts on witchcraft, information from doctors relating to victims, how to use technology media, and evidence of instructions.

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