

The Criminalisation of Santet under Indonesian Criminal Law and Islamic Law: Proof and Victim Protection

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ABSTRACT

Santet, commonly translated as witchcraft, is difficult to prove in court and has provoked vigilante violence against alleged practitioners in Indonesia. Article 252 of Law No. 1 of 2023, in force since 2 January 2026, criminalises claiming supernatural power or offering services said to cause harm, yet its proof and victim protection remain contested. This study compares how Article 252 and Islamic law regulate the proof of santet and protect its victims, and identifies implications for harmonising national and Islamic law. It employs doctrinal legal research with statute, conceptual, and comparative approaches. Legal materials were collected through document study and analysed descriptively and qualitatively through a functional comparison on five criteria: definition, elements, punishment, proof, and victim protection. Article 252 is a preventive formal offence that requires proof of the claim or offer rather than of the supernatural act. Islamic law accepts the reality of sorcery, relies on confession, testimony, and indicators, and its four Sunni schools differ on penalties. Both systems struggle to prove what cannot be verified, and neither offers a victim mechanism specific to santet; national protection depends on case-specific designation under the victim-protection law. The study recommends clarifying the notion of supernatural power, issuing evidentiary guidelines, extending victim protection, and using maqasid al-shariah as a purposive bridge rather than transplanting classical penalties.

Keywords: Article 252 Criminal Code, Islamic Criminal Law, Proof, Santet, Victim Protection

Kriminalisasi Santet dalam Kitab Undang-Undang Pidana Nasional dan Hukum Islam: Analisis Komparatif tentang Pembuktian dan Perlindungan Korban

ABSTRAK

Santet, yang umumnya diterjemahkan sebagai ilmu sihir, sulit dibuktikan di pengadilan dan telah memicu tindakan kekerasan main hakim sendiri terhadap orang-orang yang dituduh sebagai pelakunya di Indonesia. Pasal 252 Undang-Undang Nomor 1 Tahun 2023, yang mulai berlaku pada 2 Januari 2026, mengkriminalisasi pernyataan mengenai kepemilikan kekuatan gaib atau penawaran jasa yang diklaim bertujuan menimbulkan bahaya. Namun, persyaratan pembuktian dan mekanisme perlindungan korban masih menjadi persoalan yang diperdebatkan. Penelitian ini membandingkan pengaturan pembuktian terkait santet dan perlindungan korban berdasarkan Pasal 252 dan hukum Islam, serta mengidentifikasi implikasinya bagi harmonisasi hukum nasional dengan prinsip-prinsip hukum Islam. Penelitian ini menggunakan metode penelitian hukum doktrinal dengan pendekatan perundang-undangan, konseptual, dan komparatif. Bahan hukum dikumpulkan melalui studi dokumen dan dianalisis secara deskriptif-kualitatif menggunakan perbandingan fungsional berdasarkan lima kriteria, yaitu definisi, unsur-unsur, pemidanaan, pembuktian, dan perlindungan korban. Hasil penelitian menunjukkan bahwa Pasal 252 menetapkan delik formal yang bersifat preventif, dengan pembuktian yang berfokus pada pernyataan atau penawaran jasa, bukan pada pembuktian bahwa tindakan gaib benar-benar terjadi. Hukum Islam mengakui realitas sihir serta mempertimbangkan pengakuan, kesaksian, dan indikasi dalam menetapkan fakta yang relevan, sementara empat mazhab Sunni memiliki perbedaan pandangan mengenai hukuman yang dapat diterapkan. Kedua sistem hukum menghadapi tantangan pembuktian ketika tindakan yang dituduhkan tidak dapat diverifikasi secara empiris. Tidak satu pun dari kedua sistem tersebut menyediakan mekanisme perlindungan korban yang secara khusus dirancang untuk kasus santet. Dalam hukum Indonesia, perlindungan bergantung pada pemenuhan persyaratan dalam peraturan perundang-undangan mengenai perlindungan korban sesuai dengan karakteristik setiap kasus. Penelitian ini merekomendasikan penjelasan yang lebih tegas mengenai konsep kekuatan gaib, penyusunan pedoman pembuktian, penguatan perlindungan korban, serta penggunaan maqasid al-shariah sebagai kerangka harmonisasi yang berorientasi pada tujuan hukum, bukan sebagai dasar untuk mengadopsi hukuman klasik secara langsung.

Kata Kunci: *Hukum Pidana Islam, Pasal 252 KUHP, Pembuktian, Perlindungan Korban, Santet*

INTRODUCTION

Belief in supernatural harm remains embedded in many Indonesian communities, and santet, commonly translated as witchcraft or black magic, is its best-known form. Santet is understood as a practice, performed at close range or from a distance, that is believed to cause illness, mental suffering, or death which cannot be explained by medical reasoning.¹ Because its effects are attributed to invisible causes, santet resists the evidentiary standards that criminal courts apply to ordinary offences. Santet is an offence that is extremely difficult to prove, and legal scholars have therefore struggled to regulate it in legislation. Before 2026, the Criminal Code did not address santet directly. Articles 545–547 of the former Code dealt with fortune-telling, the sale of charms, and the use of charms in testimony, and they were considered unable to reach santet itself.² Article 252 of Law No. 1 of 2023 now penalises a person who claims to possess supernatural power, or who informs, gives hope, offers, or provides services to another person on the basis that his or her acts can cause illness, death, or mental or physical suffering. The penalty is imprisonment of up to one year and six months or a category IV fine, increased by one third if the conduct is performed for profit, as a livelihood, or as a habit. The Law replaced the colonial-era Criminal Code of 1946 and entered into force on 2 January 2026 after a three-year transitional period.

The social cost of leaving santet unregulated is documented most clearly in the Banyuwangi killings of 1998–1999, in which many people accused of practising witchcraft were murdered. Estimates of the death toll differ by source. The Banyuwangi local government recorded 115 deaths, a fact-finding team of Nahdlatul Ulama reported 147 victims across 18 sub-districts, and a recent historical study places the toll above 194.³ That study also shows that accusations of santet were mobilised as an instrument of collective violence during a period of political and economic crisis, rather than arising from popular belief alone. Vigilante action against alleged practitioners has been reported in other regions as well, including Bima in West Nusa Tenggara and Badung in Bali. However, consolidated national statistics on the annual number of reported santet-related cases, prosecutions, or convictions do not appear to be publicly available. Because Article 252 has been in force only since 2 January 2026, a body of case law from which a conviction rate could be calculated has not yet formed. This

¹ Choirul Anam and Martoyo, “Studi Analisis Terhadap Pembuktian Tindak Pidana Santet Dalam Pasal 252,” *CLEAR: Criminal Law Review* 2, no. 1 (May 29, 2024): 52–78, doi:10.35719/clear.v2i1.45.

² Ibid.; Aisyah Zafira, “Tindak Pidana Perdukunan Tinjauan Pasal 545, 546, 547 KUHP Dengan Pasal 252 KUHP 2023,” *TARUNALAW: Journal of Law and Syariah* 2, no. 01 (January 31, 2024): 1–11, doi:10.54298/tarunalaw.v2i01.153.

³ Latif Kusairi, Dhanang Respati Puguh, and Yety Rocwulaningsih, “Shamans, Violence, and the Reconstruction of Memory: Violence Surrounding Witchcraft Accusations in Banyuwangi, 1998–1999,” *Islam Realitas: Journal of Islamic and Social Studies* 11, no. 2 (December 31, 2025): 186–202, doi:10.30983/islam_realitas.v11i2.10046.

study therefore relies on documented episodes and doctrinal analysis rather than on prevalence data.

Article 252 has been controversial since it first appeared in the draft Code. Its supporters argue that it is preventive in purpose. By criminalising the claim and the offer of supernatural harm, rather than the harm itself, the provision aims to deter fraud and to discourage vigilantism against alleged practitioners. Its critics respond that the term “supernatural power” (*kekuatan gaib*) is not defined, that the provision depends heavily on the confession of the accused, and that it may be misused against persons who merely profess traditional beliefs.⁴ Doctrinally, Article 252 is classified as a formal offence (*delik formil*), which is complete once the prohibited conduct has been performed, whether or not harm follows.⁵ This classification removes the need to prove a causal link between a spell and an injury, but it moves the evidentiary difficulty to the proof of the declaration or offer itself. Under Article 184(1) of the former Criminal Procedure Code (Law No. 8 of 1981), the statement of the accused was listed last among the means of proof and carried a risk of subjectivity and falsehood. Law No. 20 of 2025, which replaced that Code on 2 January 2026, retains the statement of the accused as a means of proof but has restructured the list of admissible evidence.

Three related legal problems arise from this context. The first is evidentiary: how to prove an offence defined by claims about invisible power to the standard required by criminal procedure without relying solely on the accused’s confession. The second concerns victims: the Criminal Code and the Criminal Procedure Code do not clearly provide direct legal protection or restitution for persons who believe they have been harmed by *santet*, or for those who are wrongly accused of practising it.⁶ The third is normative. National criminal law rests on the principle of legality and the requirement of provable conduct, whereas Islamic law acknowledges the reality of sorcery (*sihr*) in the revealed texts and, according to the majority of jurists, treats it as a discretionary (*ta’zir*) offence.⁷ The two systems therefore regulate the same conduct on different premises.

⁴ Rodrigo Priambodo and Widhi Cahyo Nugroho, “Analisis Kriminal Santet Sebagai Salah Satu Tindak Pidana Sesuai Dengan Perspektif Hukum RUU-KUHP Di Indonesia,” *Media Hukum Indonesia (MHI)* 2, no. 3 (June 15, 2024), doi:10.5281/ZENODO.11663616.

⁵ Eddy O S Hiariej, *Prinsip-Prinsip Hukum Pidana*, 2022, https://books.google.com/books/about/Prinsip_prinsip_hukum_pidana.html?id=qtSVAQAACAAJ.

⁶ Bawole Y. A Bawole, “Perlindungan Hukum Bagi Korban Dalam Sistem Peradilan Pidana,” *LEX ET SOCIETATIS* 9, no. 3 (2021), <https://garuda.kemdiktisaintek.go.id/documents/detail/2317591>; Elysa Dwi Meilina and Sri Setyadji, “Perlindungan Hukum Terhadap Korban Santet,” *Quantum Juris: Jurnal Hukum Modern* 7, no. 1 (January 1, 2025), <https://journalversa.com/s/index.php/jhm/article/view/842>.

⁷ Muna bin Hamzan, “Garis Panduan Mengenai Amalan Sihir Menurut Perspektif Islam,” *Islam Universalia: International Journal of Islamic Studies and Social Sciences* 3, no. 3 (January 29, 2022), doi:10.56613/islam-universalia.v3i3.208.

Existing scholarship has addressed parts of this problem. Studies of the national provisions have focused on the offence's formulation and the difficulty of proof.⁸ Studies of Islamic law have examined the status of sorcery, its classification, and the positions of the schools of law.⁹ Comparative work has been more limited in scope. Alanda offered a comparative-law perspective on the santet provision at the bill stage, before Law No. 1 of 2023 was enacted, and research on victim protection has largely been conducted separately from the evidentiary debate.¹⁰ To the authors' knowledge, no study has yet compared Article 252 and Islamic criminal law on both proof and victim protection using one set of analytical criteria. The novelty of this study lies in three features: it examines the provision after its enactment, it treats proof and victim protection together, and it applies explicit and replicable comparison criteria.

The study is framed by three bodies of theory and one protective concept. First, functional comparative law holds that legal systems are best compared by asking how each resolves the same social problem.¹¹ Here, the shared problem is how law should respond to claims of supernatural harm while preventing fraud and vigilantism. Second, criminal law theory supplies the principle of legality, the distinction between formal and material offences, and the requirement of fault.¹² Third, Islamic legal theory supplies the classification of offences into hudud, qisas-diyat, and ta'zir, the instruments of proof (iqrar, shahadah, qarinah, and bayyinah), and the objectives of the Shariah (maqasid al-shariah) as a standard for assessing whether a rule serves justice. Legal protection is understood as safeguarding persons whose rights are harmed by

⁸ Anam and Martoyo, "Studi Analisis Terhadap Pembuktian Tindak Pidana Santet Dalam Pasal 252"; Lutfy Cahya Pratama and Budiarsih Budiarsih, "Kendala Proses Pembuktian Terhadap Tindak Pidana Santet Dalam KUHP Lama," *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum* 3, no. 3 (June 19, 2024): 212–18, doi:10.55681/seikat.v3i3.1351; Boby Sanjaya, Chintya Louisa, and Dena Isabel Maharani Silalahi, "Pertanggungjawaban Pidana Dan Pembuktian Pada Tindak Pidana Santet Menurut KUHP Nasional," *Jurnal Psikologi Sosial Masyarakat Indonesia Harapan* 2026, no. 2026 (2025), <https://jumas.ourhope.biz.id/ojs/index.php/JM/article/view/83>; Zafira, "Tindak Pidana Perdukunan Tinjauan Pasal 545, 546, 547 KUHP Dengan Pasal 252 KUHP 2023."

⁹ Hamzan, "Garis Panduan Mengenai Amalan Sihir Menurut Perspektif Islam."

¹⁰ Farrel Alanda Fitrah, "Perbandingan Hukum Terkait Pembentukan Pasal Penghinaan Terhadap Peradilan, Perzinahan, Dan Santet Dalam RKUHP Indonesia," *SIGn Jurnal Hukum* 2, no. 2 (February 14, 2021): 122–37, doi:10.37276/sjh.v2i2.93.

¹¹ Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, 1998, https://books.google.co.id/books/about/An_Introduction_to_Comparative_Law.html?id=3ju2QgAACAAJ&redir_esc=y.

¹² Hiariej, *Prinsip-Prinsip Hukum Pidana*; Bagyo Y Moeliodihardjo et al., "Developing Strategies for University, Industry, and Government in Indonesia Education Sector Analytical and Capacity Development Partnership(ACDP)," no. April (2013), www.acdp-indonesia.org.

others.¹³ This concept is complemented by recent work published in De Recht on victim protection and restorative justice and on proportionality in sentencing.¹⁴

Accordingly, this study addresses three research questions. (1) How does Article 252 of Law No. 1 of 2023 regulate the proof of santet, and how does Islamic law regulate the proof of sorcery? (2) What legal protection do these two systems provide to victims of santet? (3) What similarities and differences exist between the two systems on these matters, and what do they imply for the harmonisation of national and Islamic law? The study aims to answer these questions through a comparative doctrinal analysis.

The study is significant in three respects. For legal reform, it identifies where Article 252 and its procedural counterparts may need clearer elements or evidentiary guidance before courts begin to apply them. For harmonisation, it shows where principles of Islamic law can inform national law without displacing the principle of legality. For victim protection, it identifies protective gaps affecting both persons who believe they have been harmed and persons accused of practising santet, which bears directly on the prevention of vigilantism. The article proceeds as follows. The next section sets out the research methods. The discussion then examines the criminalisation of santet under Law No. 1 of 2023, the rules of Islamic law on santet, victim protection and proof under national criminal law, proof under Islamic law, and a comparison of the two systems. The final section presents the conclusions.

RESEARCH METHODOLOGY

This study used doctrinal (normative juridical) legal research. Doctrinal research examines law as a system of norms found in legislation, doctrine, and authoritative religious sources, and its purpose is to determine what the law prescribes on a given issue rather than how it operates in practice.¹⁵ Three approaches were applied. The statute approach was used to examine Article 252 of Law No. 1 of 2023 together with the evidentiary provisions of the criminal procedure codes. The conceptual approach was used to clarify the concepts of formal offence, legality, ta'zir, and legal protection.

¹³ Satjipto Raharjo, *Ilmu Hukum* (Citra Aditya Bakti, 1991), https://books.google.com/books/about/Ilmu_hukum.html?id=zcmXAAAACAAJ.

¹⁴ Benyamin Steven Napitupulu et al., "Pertimbangan Aspek Filosofis, Sosiologis, Serta Normatif Dalam Penjatuhan Pidana Dengan Mengedepankan Asas Obyektifitas Dan Proporsionalitas Kesalahan Terdakwa: Analisa Putusan Nomor: 813 K/Pid/2023 Tentang Kasus Ferdy Sambo," *DE RECHT (Journal of Police and Law Enforcement)*, February 7, 2025, 34–49, doi:10.55499/derecht.v3i1.272.

¹⁵ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, 1986, https://books.google.co.id/books/about/Penelitian_hukum_normatif.html?hl=id&id=_Y1GPAAACAAJ&redir_esc=y; Mahmud Marzuki, *Penelitian Hukum* (Kencana, 2017), <https://books.google.co.id/books?id=CKZADwAAQBAJ&printsec=copyright#v=onepage&q&f=false>.

The comparative approach was used to compare national criminal law with Islamic criminal law.

The legal materials were of three kinds. Primary legal materials comprised Law No. 1 of 2023 concerning the Criminal Code, in particular Article 252; the former Criminal Code (Law No. 1 of 1946), in particular Articles 545–547; the Criminal Procedure Code (Law No. 8 of 1981) and its replacement, Law No. 20 of 2025; and the Qur'an and Hadith as the primary sources of Islamic law (for example, Q.S. Al-Baqarah [2]:102, which refers to sorcery). Secondary legal materials comprised textbooks on criminal law, Islamic criminal law (*fiqh jinayah*), and legal research methodology, together with journal articles, with priority given to those published between 2021 and 2025. Tertiary legal materials comprised legal dictionaries and encyclopaedias.¹⁶ The materials were collected through document study: relevant sources were identified, read, and recorded in notes, and the recorded content was classified by theme, namely proof, victim protection, and sanctions.

The materials were analysed using descriptive-qualitative analysis. The norms in each system were described, interpreted grammatically and systematically, and, for Islamic law, assessed against the objectives of the Shariah. The comparison followed the functional method, in which the problem common to both systems serves as the point of reference. That common problem was the legal response to claims of supernatural harm. Five criteria structured the comparison: (1) the legal basis and classification of the offence; (2) the elements of the offence and the standard of fault; (3) the means of proof and the standard required; (4) the sanctions and their purpose; and (5) the legal protection of victims, including restitution and restorative mechanisms. For each criterion, the rules of the two systems were set side by side. Similarities and differences were identified by examining whether the rules pursue the same function through the same or through different means, and the differences were then assessed for their implications for harmonisation. Conclusions were drawn deductively from this analysis.

RESULT AND DISCUSSION

The analysis produced four main results. First, Article 252 of Law No. 1 of 2023 criminalises the claim and the offer of supernatural harm rather than the harm itself, so it operates as a preventive formal offence. Second, Islamic law treats sorcery (*sihr*) as a prohibited and grave act, but the four Sunni schools differ on whether it amounts to disbelief and on the penalty, and they treat charlatanry (*sha'wadha*) as a lesser,

¹⁶ Galang Taufani, *Kamus Pintar Hukum: Kamus Lengkap Dengan Asas-Asas Hukum Dan Pengantar*, 2023, <https://books.google.co.id/books?id=hk33EAAQBAJ&printsec=frontcover&hl=id#v=onepage&q&f=false>.

discretionary matter. Third, national victim protection is available mainly through general victim-protection statutes that depend on case-specific designation by the Witness and Victim Protection Agency (LPSK), and Article 252 itself contains no victim-oriented mechanism. Fourth, both systems struggle to prove the supernatural element and therefore direct attention to the declaration, the offer, or the confession. The sections below present these results, beginning with the analytical framework.

Analytical Framework

Four bodies of theory guide the analysis. In comparative law, functionalism treats legal rules as answers to shared social problems and therefore compares what rules do rather than how they are worded.¹⁷ Contextualism cautions that rules cannot be separated from the culture and history that give them meaning and the literature on legal transplants asks whether a rule can be moved between systems without losing its function.¹⁸ The three positions are used together: functionalism identifies what is comparable, contextualism limits how far the comparison can be pressed, and the transplant debate informs the reform implications. In criminal law theory, the analysis relies on the distinction between the physical act (*actus reus*) and the mental element (*mens rea*), and on the distinction between formal offences, which are complete once the prohibited conduct is performed, and material offences, which require a prohibited consequence.¹⁹ In Islamic legal theory, the analysis uses the classification of offences into *hudud*, *qisas-diyat*, and *ta'zir*, the evidentiary categories of *iqrar*, *shahadah*, *qarinah*, and *bayyinah*, and *maqasid al-shariah* as a purposive standard.²⁰ In victimology, a victim-centred approach asks what the legal process offers the person who was harmed, and restorative justice shifts the aim from punishing the offender to repairing harm and restoring relationships.

Criminalisation of Santet under Law No. 1 of 2023

The criminalisation of santet in Article 252 of Law No. 1 of 2023, which replaced Law No. 1 of 1946 concerning the Criminal Code, forms part of the renewal of national criminal law and aims to protect society from irresponsible individuals.²¹ The measure is regarded as important because some members of the public still believe in shamans and paranormals who claim mystical knowledge, and such beliefs can lead to suffering, including sexual abuse and other material losses. Criminalising conduct associated with the supernatural is therefore considered necessary, since the conduct is regarded as

¹⁷ Zweigert and Kötz, *An Introduction to Comparative Law*.

¹⁸ Pierre Legrand, "The Impossibility of 'Legal Transplants,'" *Maastricht Journal of European and Comparative Law* 4, no. 2 (June 1, 1997): 111–24, doi:10.1177/1023263X9700400202.

¹⁹ Hiariej, *Prinsip-Prinsip Hukum Pidana*.

²⁰ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*. (International Institute of Islamic Thought., 2008).

²¹ Meilina and Setyadji, "Perlindungan Hukum Terhadap Korban Santet."

reprehensible and harmful to the surrounding community. Before the new Code, such conduct was addressed only indirectly through Articles 545–547 of the former Code, which concerned fortune-telling, the sale of charms, and the use of charms in giving testimony. Those provisions could not accommodate santet because the concept was unknown in Dutch law.²²

Article 252 provides as follows. Paragraph (1): any person who claims to possess supernatural power, informs, gives hope, offers, or provides assistance or services to another person on the basis that his or her acts can cause illness, death, or mental or physical suffering to a person is punishable by imprisonment of up to one year and six months or a fine of up to category IV. Paragraph (2): if the person acts for profit, as a livelihood, or as a habit, the penalty may be increased by one third. Four elements can be distinguished. The first is the subject, “any person”, which covers natural persons and, under the Code, corporations. The second is the conduct (*actus reus*), which is defined by alternatives: claiming supernatural power, informing, giving hope, offering, or providing assistance or services to another person. The offence therefore concerns a communication addressed to someone else, and a private belief that is never expressed does not satisfy it. The third is the content of the communication, namely that the acts of the person “can” cause illness, death, or mental or physical suffering. The word “can” indicate potential rather than realised harm, so neither the existence of the power nor the occurrence of the harm needs to be shown. The fourth is fault (*mens rea*). The conduct must be performed knowingly and willingly by a person capable of bearing criminal responsibility. The aggravation in paragraph (2) applies when the conduct is commercial or habitual, which reflects the view that the practice is more dangerous when it becomes a source of income.

On the rationale for criminalisation, the provision is preventive rather than repressive. It is not intended to eliminate santet as a belief system but to prevent people from suffering because of it, and it therefore does not authorise a campaign against individual practitioners. Anam and Martoyo identify four aims: preventing fraud by persons who falsely claim supernatural power, discouraging people from seeking such services, preventing vigilantism against persons believed to possess such power, and encouraging rational and scientific thinking.²³ This reasoning follows a social defence policy and the relative theory of punishment, under which punishment serves to prevent crime rather than to take retribution. It also explains why the penalty is modest. The maximum of one year and six months is considerably lower than the penalties Islamic jurists attach to sorcery, and Eliana observes that the Criminal Code Bill concentrated on prevention rather than eradication.

²² Anam and Martoyo, “Studi Analisis Terhadap Pembuktian Tindak Pidana Santet Dalam Pasal 252.”

²³ Ibid.

The provision has nevertheless attracted sustained criticism. Three objections are prominent. The first concerns legal certainty: “supernatural power” is not defined, which invites inconsistent interpretation and conflicts with the requirement that criminal norms be clear. The second concerns proof, discussed below. The third concerns misuse, since a broad formulation could be used against persons who profess traditional beliefs or against personal adversaries, and Anam and Martoyo report scholarly concern that criminalising a norm with unclear boundaries may conflict with human dignity.²⁴ Supporters respond that the provision gives legal certainty where none existed, that it prevents vigilantism of the kind seen in Banyuwangi. Kusairi said the focus on the declaration avoids any need for the court to rule on the reality of the supernatural. Both positions have merit.²⁵ The provision is defensible as a means of channelling public fear into a legal process, but its wording leaves open the risk that the process itself becomes a vehicle for accusation.

The formal nature of the offence has direct consequences. Santet is a formal offence (*delik formil*): the conduct is punishable even though the consequence has not occurred. In a material offence the prosecution would have to prove that a particular act of sorcery caused a particular illness or death, which is practically impossible. The formal construction avoids that difficulty, but it relocates the burden. What must now be proved is that the accused made the claim or offer and that the statement was communicated to another person. As Anam and Martoyo explain, the evidentiary focus is the relationship between the practitioner and the person who sought the service rather than the supernatural act. This choice explains both the strength and the weakness of Article 252. It makes prosecution possible, but it also means that the law does not address the situation of the person who believes he or she has been harmed.

Legal Provisions on Santet under Islamic Law

Islamic law recognises sorcery as a reality in the revealed sources. The Qur’an refers to sorcery in Q.S. Al-Baqarah [2]:102, which describes people who learn sorcery and the harm it can cause, and in Q.S. Al-Falaq [113]:4, which instructs believers to seek refuge from those who blow on knots. The Prophetic traditions list sorcery among the seven destructive sins (Sahih al-Bukhari no. 2766; Sahih Muslim no. 89) and report that sorcery was practised against the Prophet himself. The Qur’an prescribes no worldly punishment for sorcery, and the report that fixes the penalty at the sword, attributed to Jundub, is of disputed authenticity.²⁶ In other words, Islamic law does not

²⁴ Ibid.

²⁵ Kusairi, Respati Puguh, and Rocwulaningsih, “Shamans, Violence, and the Reconstruction of Memory: Violence Surrounding Witchcraft Accusations in Banyuwangi, 1998–1999.”

²⁶ AbuMukhadda Salem A and Refat Esmat Hasanen, “The Punishment of Witchcraft and Sorcery in Islamic Jurisprudence and Positive Law,” 2023, 1–23.

explicitly prescribe a punishment for sorcerers in either the Qur'an or the Hadith, but the practice is regarded as a grave sin and, in many accounts, as an act of disbelief.

Classical jurists also distinguish between kinds of sorcery. A common classification separates real sorcery, which is believed to operate through the assistance of devils, from illusory sorcery (takhyili), which deceives the senses, and metaphorical sorcery (majazi), which rests on trickery and the knowledge of natural properties. Jurists disagree on whether sorcery has any reality at all. The majority of Sunni scholars affirm that it does, whereas the Mu'tazila, Ibn Hazm, and some others hold that it is only an illusion. The distinction matters legally because it determines whether an offence involves a real harm or a deception. Charlatanry (sha'wadha), which involves no recourse to devils, is regarded as prohibited and punishable but does not amount to disbelief. This category is the closest classical analogue to the conduct that Article 252 criminalises.

The four Sunni schools agree that sorcery is a major sin but differ on its legal consequences. Table 1 summarises their positions as reported by AbuMukhadda and Hasanen.

Table 1 The Four Sunni Schools' Positions on Sorcery and Its Legal Consequences in Islamic Criminal Law

School	Is sorcery disbelief?	Penalty	Repentance
Hanafi	Yes if the sorcerer believes devils act as he wishes; not if he regards it as illusion	Death if sorcery amounts to disbelief, or if the sorcerer is known to practise harmful and corrupting sorcery	Not accepted (Abu Hanifa)
Maliki	Yes	Death, whether or not anyone was killed	Not accepted (Malik)
Shafi'i	Only if the words or acts involved imply disbelief; otherwise a grave sin	Death if disbelief is implied; otherwise discretionary punishment (ta'zir); retaliation (qisas) if death was intentionally caused and proved by confession	Accepted
Hanbali	Yes, by learning and practising it (in one narration, no)	Death as a fixed penalty (hadd) if sorcery amounts to disbelief or is regarded as permissible	Disputed: not accepted in one narration, accepted in another

The table shows that the schools do not agree on punishment. The majority position is that the sorcerer may be put to death, whereas the Shafi'i school confines death to cases of disbelief or intentional killing and otherwise leaves the matter to discretionary punishment. The position commonly found in Indonesian secondary literature, that sorcery belongs to the category of discretionary offences (jarimah ta'zir),

therefore corresponds to one classical position and to contemporary practice rather than to a consensus among the jurists.

Jarimah ta'zir is the category of offences whose penalty is not specified in the Qur'an or the Hadith, and its technical rules, forms, and enforcement are determined by the authorities of a place or state. The category is open-ended and adapts to the form of the conduct committed. Like other Islamic offences, a ta'zir offence can be analysed through a legal element (a basis in the sources or in a lawful regulation), a material element (the prohibited act), and a moral element (a responsible perpetrator) (Ali, 2022). The forms of punishment include the death penalty, flogging, imprisonment, and exile. The judge (hakim syar'i) plays a central role in this regime. Because the punishment is not fixed, the judge weighs the nature of the act, the intention of the perpetrator, the harm caused, repetition, and repentance, and selects a penalty that serves the public interest without exceeding what the offence warrants. This discretion is the main point of contact with the national system, where Article 252 also leaves the judge a range between a minimum and a maximum.

Najib reads the national and colonial provisions on santet through the exegesis of 'Alī al-Ṣabūnī, and Eliana treats the practice of santet as an alleged violation of human rights under both positive and Islamic law.²⁷ AbuMukhadda and Hasanen recommend that legislators place the penalty for sorcery between two limits and reserve the death penalty for a person who practises real sorcery and is proved to have done so by conclusive evidence.²⁸ A common thread in this literature is that the gravity of the penalty depends on proof, which leads to the question of how sorcery is proved in Islamic law.

Legal Protection of Victims and Proof under National Criminal Law

1. Proof of Santet

Article 252 places the declaration of the accused at the centre of proof, but a statement by a suspected practitioner is a weak foundation when considered under Article 184(1)(e) of the former Criminal Procedure Code (Law No. 8 of 1981). That article listed the statement of the accused as the last means of proof, and its use was widely discouraged because of the risk of subjectivity and falsehood. Law No. 20 of 2025, which replaced the former Code on 2 January 2026, adopts a wider list of admissible evidence that includes electronic evidence and the observation of the judge, while

²⁷ Muhammad Ainun Najib, "Delik Santet Pada KUHP Nasional Dan Kolonial Dalam Pandangan Tafsir 'ALĪ AL-ṢABŪNĪ," *Qonun Jurnal Hukum Islam Dan Perundang-Undangan* 8, no. 2 (2024), <https://garuda.kemdiktisaintek.go.id/documents/detail/4761480>.

²⁸ Salem A and Hasanen, "The Punishment of Witchcraft and Sorcery in Islamic Jurisprudence and Positive Law."

retaining the statement of the accused (Law No. 20 of 2025, Art. 235).²⁹ The change is significant for santet cases, because the claims and offers that Article 252 targets increasingly take place through messages, social media, and electronic transactions.

Proof in santet cases is difficult for three reasons. First, the central phenomenon is invisible and cannot be verified empirically, so a causal link between an act and a harm cannot be established to the standard criminal procedure requires. Second, the means of proof available in the Code were designed for tangible events and make no provision for evidence of supernatural acts. Third, the formal construction of Article 252 shifts the proof to the declaration, and a declaration made privately or orally may leave no trace. Anam and Martoyo note that a written advertisement can itself serve as evidence, whereas a purely oral offer requires witnesses to the statement. Payment records, message histories, and the testimony of persons who heard the offer can corroborate the declaration, and they are more reliable than the confession alone.

Several scholars have suggested ways of strengthening proof. Anam and Martoyo argue that a conviction resting solely on confession would be ineffective and that additional evidence, such as witness testimony and expert opinion, should accompany it.³⁰ They also discuss the proposal that the offence be proved through a provocation test, under which conduct is criminal when the accused performs ritual acts that frighten or provoke the person targeted. This approach would link the offence to a demonstrable effect on a real person and could reduce the risk of arbitrary accusation, but it would also add a requirement that the text of Article 252 does not contain.

The difficulty of proof has consequences for victims. Because the harm cannot be proved to have been caused by santet, a person who believes he or she has been harmed cannot rely on the criminal process to establish that harm. The formal construction also means that the victim is not an element of the offence, so the victim's interests are secondary to the prosecution of the claim. At the same time, a person accused of santet is exposed to the opposite risk, because suspicion alone can trigger violence of the kind recorded in Banyuwangi.

2. Protection of Victims

Protection of victims of santet is often neglected in the criminal justice mechanism in force in Indonesia. The Criminal Code and the Criminal

²⁹ Republic of Indonesia, "Undang-Undang Nomor 20 Tahun 2025 Tentang Kitab Undang-Undang Hukum Acara Pidana" (2025).

³⁰ Anam and Martoyo, "Studi Analisis Terhadap Pembuktian Tindak Pidana Santet Dalam Pasal 252."

Procedure Code concentrate on the offender. Article 252 does not designate a victim, does not require harm, and contains no provision on recovery for the person affected.³¹ The neoclassical orientation of the Code also allows an offender who meets certain conditions, such as mental disorder, to escape punishment, and this can disregard the rights of the victim.

The general victim-protection regime is found in Law No. 13 of 2006 as amended by Law No. 31 of 2014. Article 5 of the latter grants witnesses and victims a series of rights, but paragraph (2) provides that the rights are given in certain cases in accordance with a decision of the LPSK. Article 6 grants medical assistance and psychosocial and psychological rehabilitation to victims of specified crimes, namely gross human rights violations, terrorism, human trafficking, torture, sexual violence, and serious maltreatment. Article 7A provides that victims of crimes designated by an LPSK decision are entitled to restitution for loss of property or income, for suffering directly resulting from the crime, and for medical or psychological costs. Santet is not among the categories enumerated in Article 6, so access to rehabilitation, restitution, or protection would depend on a case-specific determination. This conclusion is limited by the information available. No published LPSK decision on a santet case was found, and the position may change as enforcement develops.

The Criminal Code of 2023 adds a further possibility. Article 66(1)(d) lists payment of compensation as an additional penalty, and the elucidation of that provision equates compensation with restitution. This qualifies the claim that the Code makes no provision for restitution. In santet cases the instrument has practical limits. Compensation presupposes an identifiable loss, and Article 252 does not require one. The instrument will therefore be most useful where the offence is accompanied by fraud, extortion, or the loss of money paid for a service, rather than where the victim's complaint concerns alleged supernatural harm.

3. Restorative Justice

A change in legal philosophy from retributive justice to restorative justice offers a better prospect of protection for victims of santet. Restorative justice focuses on resolving conflict and on recovery for the victim, and it involves the victim, the state, the community, and the offender in the stages of criminal justice. The Criminal Code points in the same direction, since its objectives of punishment include resolving the conflict caused by an offence and restoring balance in the community (Law No. 1 of 2023, Art. 51). Recent

³¹ Meilina and Setyadji, "Perlindungan Hukum Terhadap Korban Santet."

studies published in De Recht show how such approaches operate in Indonesian practice, for example in the handling of assault cases and in the legal protection of child victims of sexual violence.³² Napitupulu add that a sentence should reflect the philosophical, sociological, and normative context of the offence and respect proportionality, which is relevant to an offence as low in gravity as the one in Article 252.

Applied to santet, a restorative approach has two potential uses. The first is community-level mediation to defuse accusations before they turn into violence, which responds directly to the pattern described by Kusairi.³³ The second is the use of the customary obligation in Article 66(1)(f) of the Code in communities where customary mechanisms for resolving such disputes exist. Two cautions apply. A restorative process must not coerce a person accused of santet into admitting the accusation, and it must not replace prosecution where fraud or violence has occurred. Restorative measures are a complement to, and not a substitute for, the rule of law.

Comparison of Santet under Article 252 of the Criminal Code and Islamic Law

Table 2 Comparative Analysis of Article 252 of Law No. 1 of 2023 and Islamic Criminal Law on Sorcery

Criterion	Article 252, Law No. 1 of 2023	Islamic law
Definition	No definition of “supernatural power”; the offence is defined by the claim or offer	Varied definitions; a distinction between real, illusory, and metaphorical sorcery, and between sorcery and charlatanry
Elements	Claim or offer addressed to another person; content that the act can cause harm; fault; formal offence	Legal, material, and moral elements; real sorcery involves a practised act, often with the aid of devils; schools differ on the role of belief and harm
Punishment	Up to one year and six months or a category IV fine; one-third increase for profit, livelihood, or habit	From death (majority view, in defined conditions) to discretionary punishment (Shafi‘i; charlatanry); retaliation if death was intentionally caused
Evidentiary standard	Declaration, offer, or confession, with witnesses, documents, and electronic evidence; the supernatural element need not be proved	Confession (iqrar), testimony (shahadah), clear proof (bayyinah), and circumstantial indicators (qarinah); stricter standards for severe penalties
Victim protection	General regime under Law No. 31 of 2014 requiring LPSK designation;	Retaliation and blood money in cases of killing or injury, discretionary penalties

³² Corona Hedo Puspitasari and Jonaedi Efendi, “Implementation of Legal Protection against Child Rape Victims in the Family Environment (Study at UPTD PPA Sidoarjo District),” *DE RECHT (Journal of Police and Law Enforcement)*, January 31, 2024, 16–38, doi:10.55499/derecht.v2i1.213.

³³ Kusairi, Respati Puguh, and Rocwulaningsih, “Shamans, Violence, and the Reconstruction of Memory: Violence Surrounding Witchcraft Accusations in Banyuwangi, 1998–1999.”

Criterion	Article 252, Law No. 1 of 2023	Islamic law
	compensation as an additional penalty; no mechanism specific to santet	otherwise; the victim's position depends on the type of offence

Four points follow from the comparison. First, the two systems regulate different objects. Article 252 punishes a communication, whereas classical Islamic law is concerned with the practice of sorcery and its consequences. Functionally, however, Article 252 is closer to the Islamic treatment of charlatanry, which is also a discretionary offence directed at deception and does not involve disbelief. Second, the severity of the sanctions diverges sharply. The classical penalties for real sorcery have no counterpart in Article 252, and importing them would collide with the principle of legality and with the proportionality discussed above. Third, both systems confront the problem of proving a phenomenon that cannot be verified. National law resolves it by shifting the object of proof to the declaration, and Islamic law resolves it by confining severe penalties to cases supported by conclusive evidence, by confession, or by testimony. Fourth, neither system provides a strong victim-oriented mechanism specific to this offence. In Islamic law the victim's position is clearer in cases of killing, where retaliation or blood money applies, but this presupposes that causation can be proved, and in santet cases it usually cannot.

These findings suggest that harmonisation is best pursued through shared purposes rather than through the transfer of rules. In terms of legal transplants, the specific penalties of classical Islamic law are unlikely to function within a codified system built on legality Watson and a contextualist reading shows that they were designed for a different institutional setting. The maqasid al-shariah offer a more promising bridge. The protection of life, religion, intellect, lineage, and property provide a common standard against which national provisions can be evaluated. By that standard, Article 252 is consistent with the protection of life and property when it prevents fraud and vigilantism, but it is incomplete when it leaves victims without a remedy.

Four implications for legal reform follow. First, the legislature or the Supreme Court could clarify the term "supernatural power" and require that the statement be made to or known by another person, which would reduce the risk of overbroad application. Second, prosecutors and investigators would benefit from guidelines on proving the declaration through witnesses, documents, and electronic evidence, so that a conviction does not depend on confession alone. Third, the LPSK could be asked to treat cases in which santet allegations lead to fraud, intimidation, or violence as cases in which protection, restitution, and rehabilitation may be granted. Fourth, official recording of reported cases, prosecutions, and outcomes should begin immediately, so

that the effects of Article 252 can be assessed empirically and the data gap noted in the Introduction can be closed.

CONCLUSION

This study compared the treatment of santet under Article 252 of Law No. 1 of 2023 with the treatment of sorcery in Islamic law, focusing on proof and victim protection. Regarding proof, Article 252 is a preventive formal offence that penalises the claim or offer of supernatural harm, so the prosecution must prove the declaration and its communication rather than the supernatural act. Islamic law accepts the reality of sorcery and relies on confession, testimony, clear proof, and indicators, but its schools differ on the penalty, and severe penalties are tied to conclusive proof. Regarding victim protection, national law offers no mechanism specific to santet, and the general regime under Law No. 31 of 2014 depends on case-specific LPSK decisions. Islamic law gives the victim a clearer position only where killing or injury can be proved. Regarding the comparison, the two systems differ in their object and severity but share the difficulty of proving what cannot be verified, and both leave the person who believes he or she has been harmed with limited remedies.

These findings lead to specific recommendations. For legislators and the Supreme Court: define or clarify “supernatural power” and require communication of the claim to another person. For investigators and prosecutors: issue evidentiary guidelines that prioritise corroborating evidence, including electronic evidence under Law No. 20 of 2025, and discourage reliance on confession alone. For the LPSK: designate santet-related fraud, intimidation, and violence as cases eligible for protection, restitution under Article 7A of Law No. 31 of 2014, and psychosocial assistance, and coordinate with local governments. For courts: consider compensation as an additional penalty under Article 66(1)(d) of the Criminal Code where a loss can be identified. For communities and local authorities: support mediation that prevents accusations from escalating into violence while protecting the person accused. For harmonisation: use the maqasid al-shariah as a purposive reference for evaluating the provision rather than importing classical penalties

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