



Criminalizing Claims of Magical Harm: Evidentiary Construction and Legal Policy under Article 252 of the Indonesian Criminal Code

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Article info	Abstract
Corresponding author: Vivi Ariyanti viviariyanti@uinsaizu.ac.id Keywords: Article 252 Criminal Code, Formal Offense; Criminal Evidence, Supernatural Powers, Socio-Legal Analysis Kata Kunci: <i>Pasal 252 KUHP, Delik Formil, Pembuktian Pidana, Kekuatan Gaib, Analisis Sosio-Legal</i>	Article 252 of Law Number 1 of 2023 concerning the Indonesian Criminal Code has generated considerable public debate because it is frequently perceived as a provision criminalizing witchcraft or supernatural powers. This article examines the criminal law policy, evidentiary construction, and socio-legal implications of Article 252 through normative juridical and socio-legal approaches. The study analyzes statutory provisions, legislative explanations, criminal law doctrines, evidentiary principles, and relevant socio-cultural literature. The findings demonstrate that Article 252 constitutes a formal offense that does not require proof of the existence or effectiveness of supernatural powers. Instead, criminal liability is based on objectively observable conduct, namely the declaration of possessing supernatural powers and the offering or provision of services claiming the ability to cause illness, death, or mental and physical suffering. The principal evidentiary challenge lies in proving the statutory elements through lawful evidence, including witness testimony, electronic communications, advertisements, and transactional records. From a socio-legal perspective, the provision reflects an attempt to balance legal rationality, public order, and social protection within a culturally pluralistic society where supernatural beliefs remain influential. Effective implementation therefore requires restrictive interpretation, rigorous evidentiary standards, and respect for constitutional guarantees of religious and cultural freedom. Abstrak Pasal 252 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana telah menimbulkan perdebatan publik yang cukup luas karena sering dipersepsikan sebagai ketentuan yang mengkriminalisasi

santet atau kekuatan gaib. Artikel ini mengkaji kebijakan hukum pidana, konstruksi pembuktian, dan implikasi sosio-legal Pasal 252 melalui pendekatan yuridis normatif dan sosio-legal. Penelitian ini menganalisis ketentuan peraturan perundang-undangan, penjelasan legislatif, doktrin hukum pidana, prinsip-prinsip pembuktian, serta literatur sosial-budaya yang relevan. Hasil penelitian menunjukkan bahwa Pasal 252 merupakan delik formil yang tidak mensyaratkan pembuktian mengenai keberadaan atau efektivitas kekuatan gaib. Sebaliknya, pertanggungjawaban pidana didasarkan pada perilaku yang dapat diamati secara objektif, yaitu pernyataan memiliki kekuatan gaib serta penawaran atau pemberian jasa dengan klaim kemampuan menimbulkan penyakit, kematian, atau penderitaan mental maupun fisik. Tantangan utama pembuktian terletak pada pembuktian unsur-unsur delik melalui alat bukti yang sah, termasuk keterangan saksi, komunikasi elektronik, iklan, dan catatan transaksi. Dari perspektif sosio-legal, ketentuan ini mencerminkan upaya untuk menyeimbangkan rasionalitas hukum, ketertiban umum, dan perlindungan sosial dalam masyarakat yang plural secara budaya dan masih dipengaruhi oleh kepercayaan terhadap kekuatan gaib. Oleh karena itu, implementasi yang efektif memerlukan penafsiran yang restriktif, standar pembuktian yang ketat, serta penghormatan terhadap jaminan konstitusional atas kebebasan beragama dan kebudayaan.

A. Introduction

The enactment of Law Number 1 of 2023 concerning the Criminal Code (*Kitab Undang-Undang Hukum Pidana/KUHP*) represents one of the most significant legal reforms in Indonesia since independence. The new Criminal Code is the culmination of decades of legislative efforts aimed at replacing the colonial-era *Wetboek van Strafrecht* inherited from the Dutch East Indies administration. Beyond merely consolidating criminal provisions, the new Code seeks to reflect Indonesian legal values, constitutional principles, and contemporary social realities. One of the most controversial provisions introduced during the codification process is Article 252, which regulates claims of possessing supernatural powers capable of causing illness, death, or mental and physical suffering to other persons.¹

Public discussion surrounding Article 252 was marked by widespread misunderstanding. Many media reports and public commentaries characterized the provision as a “witchcraft” or

¹ Republic of Indonesia, “Law Number 1/2023 on Criminal Code” (2023).

“santet” law, creating the impression that the state intended to criminalize supernatural practices or mystical beliefs. Such interpretations generated criticism from academics, civil society organizations, and international observers who questioned how prosecutors and judges could prove the existence of supernatural powers in a court of law.² The controversy reflects a broader tension between modern legal rationality and enduring cultural beliefs regarding supernatural phenomena in Indonesian society.

A closer examination of the legislative history and official explanation of Article 252 reveals that the provision does not criminalize supernatural powers themselves. Rather, the offense targets individuals who publicly claim to possess supernatural abilities and offer services or assistance to others by asserting that they can inflict harm through such powers. The official explanation explicitly states that the provision aims to prevent acts of vigilantism committed by members of the public against individuals accused of possessing harmful supernatural abilities.³ The legislature also recognized that claims of supernatural powers are frequently used as instruments for fraud, extortion, sexual exploitation, and other criminal activities that prey upon public fear and belief. Consequently, the offense seeks to protect both social order and vulnerable members of society from harmful forms of deception.

The controversy surrounding Article 252 raises important questions concerning the relationship between criminal law and cultural belief systems. Indonesia is characterized by a high degree of legal pluralism in which state law coexists with religious norms, customary law, and local traditions. Belief in supernatural powers, mystical practices, and traditional healing remains deeply embedded in many communities. Anthropological studies have long demonstrated that supernatural beliefs constitute an important dimension of social reality rather than merely irrational remnants of pre-modern thought.⁴ As a result, criminal regulation of conduct associated with supernatural claims inevitably intersects with cultural values and collective perceptions of justice. The challenge for lawmakers is therefore not only to formulate clear criminal prohibitions but also to ensure that such prohibitions do not infringe upon constitutionally protected freedoms of religion, belief, and cultural expression.

From a criminal law perspective, Article 252 presents a particularly interesting doctrinal problem because it is structured as a formal offense (*formeel delict*) rather than a material offense (*materieel delict*). The offense does not require proof that illness, death, or suffering actually occurred as a consequence of the defendant’s conduct. Nor does it require proof that the defendant genuinely possessed supernatural powers. Instead, the offense focuses on the communicative act of claiming such powers and offering services based upon those claims. This legislative design reflects an important principle of modern criminal law: criminal liability

² Barda Nawawi Arief, *Pembaharuan Hukum Pidana Dalam Perspektif Kajian Perbandingan* (Bandung: Citra Aditya Bakti, 2005), 115-118.

³ Edward O.S. Hiariej and Topo Santoso, *Anotasi KUHP Nasional: Diperbaharui Dengan UU Penyesuaian Pidana*, 2nd ed. (Jakarta: Rajawali Press, 2026), 262-263.

⁴ Clifford Geertz, *The Religion of Java*, *Anthropology : Comparative Religions* (Glencoe, Illinois: University of Chicago Press, 1976), 86-110; Koentjaraningrat, *Pengantar Ilmu Antropologi* (Jakarta: Rineka Cipta, 2009), 201-205.

may be based on objectively observable conduct without requiring courts to determine the truth of metaphysical or supernatural assertions.⁵

Nevertheless, the practical implementation of Article 252 raises significant evidentiary questions. Indonesian criminal procedure adheres to the negative statutory system of proof (*negatief wettelijk bewijsstelsel*), under which a conviction requires both legally recognized evidence and the judge's personal conviction regarding the defendant's guilt.⁶ In the context of Article 252, prosecutors must establish the existence of specific statutory elements, including the defendant's declaration of possessing supernatural powers and the communication of an offer, promise, or service intended to cause harm through such powers. Determining how these elements can be proven through witness testimony, documentary evidence, electronic communications, or expert testimony constitutes a critical issue for law enforcement authorities and courts.

Despite extensive public debate concerning Article 252, existing scholarship has largely focused on legal policy, criminalization theory, human rights concerns, or the sociological implications of regulating supernatural practices. Relatively little attention has been devoted to the evidentiary structure of the offense and its implications for criminal procedure. Most discussions continue to be framed around the question of whether supernatural powers can be proven, rather than the more legally relevant question of what exactly must be proven under the statutory formulation of the offense. This distinction is crucial because the success or failure of Article 252 ultimately depends not on the existence of supernatural powers but on the ability of criminal justice institutions to identify and prove legally relevant conduct.

This article seeks to address that gap by examining Article 252 through the combined perspectives of criminal law doctrine, evidentiary law, and socio-legal analysis. Specifically, the study addresses three research questions. First, how is Article 252 conceptually constructed as a formal offense within Indonesian criminal law? Second, what evidentiary standards and forms of proof are required to establish the offense under Indonesian criminal procedure law? Third, what socio-legal implications arise from the enforcement of Article 252 in a society where supernatural beliefs remain culturally significant? By answering these questions, the article contributes to ongoing debates concerning criminal law reform in Indonesia and offers a clearer understanding of how Article 252 should be interpreted and applied.

The central argument advanced in this study is that Article 252 does not require courts to prove the existence of supernatural powers. Rather, the offense criminalizes specific communicative conduct involving claims of harmful supernatural abilities. Accordingly, the principal legal challenge lies not in resolving metaphysical questions but in developing a coherent evidentiary framework capable of distinguishing protected cultural or religious

⁵ Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Bina Aksara, 1987), 71-75; Andi Hamzah, *Asas-Asas Hukum Pidana Indonesia* (Jakarta: Sinar Grafika, 2019), 143-148.

⁶ Edward O.S. Hiariej, *Teori Dan Hukum Pembuktian* (Jakarta: Erlangga, 2012), 15-20; M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Dan Peninjauan Kembali* (Jakarta: Sinar Grafika, 2016), 273-280.

expressions from conduct that falls within the scope of criminal liability.⁷ Through this approach, the article demonstrates that the provision can be reconciled with principles of legal certainty and due process while simultaneously serving broader objectives of social protection and criminal law reform.

This study employs a qualitative legal research design combining normative juridical and socio-legal approaches to examine the evidentiary construction and practical implications of Article 252 of Law Number 1 of 2023 concerning the Indonesian Criminal Code. The normative juridical approach is utilized to analyze the legal formulation of the offense, its constituent elements, and its position within the broader framework of Indonesian criminal law and criminal procedure. Meanwhile, the socio-legal approach is applied to explore the interaction between legal norms and the social realities surrounding beliefs in supernatural powers within Indonesian society.

The primary legal materials consist of Law Number 1 of 2023 concerning the Criminal Code, the Indonesian Code of Criminal Procedure (KUHP), official explanatory notes to Article 252, legislative records of the Criminal Code reform process, and relevant constitutional provisions relating to legal certainty, due process, and freedom of religion and belief. Secondary legal materials include scholarly books, peer-reviewed journal articles, conference papers, and legal commentaries discussing criminal law reform, evidentiary law, formal offenses, criminalization theory, and socio-legal studies of supernatural beliefs and witchcraft-related regulations. Comparative literature from other jurisdictions addressing similar legal issues is also incorporated to provide broader analytical perspectives.⁸

Data were collected through systematic library research and document analysis. The study applies statutory, conceptual, and comparative approaches to interpret the legal meaning of Article 252 and evaluate its evidentiary requirements. The analysis focuses on identifying the elements that must be proven in criminal proceedings and distinguishing between legally relevant conduct and metaphysical claims that fall outside the scope of judicial determination. Furthermore, socio-legal analysis is employed to assess the potential implications of enforcing Article 252 within a culturally diverse society where supernatural beliefs continue to influence social behavior. Through this integrated methodology, the study seeks to provide a comprehensive understanding of both the doctrinal and practical dimensions of the offense.

B. Criminal Law Policy Behind Article 252 of the New Criminal Code

The inclusion of Article 252 in Law Number 1 of 2023 concerning the Indonesian Criminal Code reflects a broader policy orientation underlying Indonesia's criminal law reform. Rather than merely replacing colonial legislation, the new Criminal Code seeks to

⁷ Tom R Tyler, "Citizen Discontent with Legal Procedures: A Social Science Perspective on Civil Procedure Reform," *Am. J. Comp. L.* 45 (1997): 871.

⁸ Endin Lidinillah, "Reframing Violence: A Philosophical Comparison of Physical and Non-Physical Sexual Violence in Indonesian Criminal Law," *El-Aqwal: Journal of Sharia and Comparative Law* 4, no. 2 (2025): 123–38, <https://doi.org/10.24090/el-aqwal.v4i2.14012>.

establish a criminal justice system that is responsive to social realities, constitutional values, and contemporary forms of victimization.⁹ Within this context, Article 252 represents an attempt to address social harms associated with claims of supernatural powers while simultaneously maintaining legal certainty and public order. Understanding the rationale behind this provision requires an examination of its historical background, legislative purpose, and position within the broader framework of Indonesian criminal law policy.

Historically, the Dutch colonial Criminal Code (*Wetboek van Strafrecht*) did not contain a specific offense criminalizing claims of supernatural powers. Although various acts associated with fraud, intimidation, extortion, or public deception could be prosecuted under existing provisions, the law did not directly address situations in which individuals publicly claimed to possess mystical abilities capable of causing harm to others. This omission became increasingly significant in Indonesia, where beliefs concerning supernatural powers, witchcraft, and mystical practices remain socially influential in many communities. In some cases, allegations of witchcraft or harmful magical practices have triggered acts of violence, vigilantism, social exclusion, and even murder against suspected individuals.¹⁰

The persistence of such incidents generated concerns among policymakers regarding the inability of existing criminal law to adequately address the social consequences of claims involving harmful supernatural powers. During the process of drafting the new Criminal Code, legislators sought to formulate provisions that could prevent public disorder and reduce the likelihood of extrajudicial punishment. Consequently, Article 252 was introduced as a preventive mechanism rather than a recognition of the objective existence of supernatural powers. The official explanation of the provision explicitly states that its purpose is to prevent acts of vigilantism committed by members of society against persons who claim to possess supernatural abilities capable of harming others.¹¹ This legislative explanation is crucial because it clarifies that the provision focuses on social consequences and public order rather than metaphysical truth.

The legislative rationale behind Article 252 is also closely linked to broader theories of criminalization. Modern criminal law generally recognizes that criminal sanctions should be imposed only when conduct causes or threatens legally protected interests. According to the harm principle articulated by legal theorists such as John Stuart Mill and subsequently developed in criminal law scholarship, state intervention is justified when conduct creates a significant risk of harm to individuals or society.¹² In the context of Article 252, the targeted harm is not the supernatural act itself but the social effects generated by claims of supernatural

⁹ Vivi Ariyanti, "Legal Protection for Victims of Sexual Violence in Indonesia in the Perspectives of Victimology and Fiqh Jinayah," *El-Aqwal: Journal of Sharia and Comparative Law* 2, no. 2 (August 14, 2023): 121–34, <https://doi.org/10.24090/el-aqwal.v2i2.9411>.

¹⁰ Mahmoud Cherif Bassiouni, *Introduction to International Criminal Law*, 2nd ed. (Leiden: Martinus Nijhoff Publishers, 2013), 201–215.

¹¹ Hiariej and Santoso, *Anotasi KUHP Nasional: Diperbaharui Dengan UU Penyesuaian Pidana*, 262–263.

¹² John Stuart Mill, *On Liberty* (London: John W. Parker and Son, 1859), 22–25; Andrew Ashworth, *Principles of Criminal Law*, 7th ed. (Oxford: Oxford University Press, 2013), 24–31.

powers. Such claims may induce fear, psychological distress, social conflict, exploitation, and retaliatory violence. Therefore, the legislature viewed the criminalization of such conduct as a means of preventing foreseeable social harms.

Another important policy consideration concerns the protection of vulnerable individuals from fraudulent practices. In Indonesia, self-proclaimed possessors of supernatural powers frequently offer services promising to inflict illness, death, or suffering upon designated targets. These services are often provided in exchange for money or other economic benefits. In practice, such activities may overlap with offenses such as fraud, extortion, sexual exploitation, and economic deception. The legislature recognized that individuals seeking supernatural assistance are often motivated by fear, desperation, revenge, or emotional vulnerability, making them susceptible to exploitation.¹³ Consequently, Article 252 functions as an anticipatory measure aimed at disrupting harmful transactions before more serious offenses occur.

The preventive orientation of Article 252 is consistent with the broader philosophy of Indonesian criminal law reform. One of the primary objectives of the new Criminal Code is to balance social defense (*social defence*) and social welfare (*social welfare*) as complementary functions of criminal law. Barda Nawawi Arief argues that modern criminal law policy should not merely punish wrongdoing but should also contribute to social protection and societal well-being.¹⁴ From this perspective, Article 252 seeks to protect society from both direct and indirect harms associated with claims of harmful supernatural powers. By criminalizing certain forms of conduct before actual injury occurs, the provision embodies a preventive approach to criminal justice.

At the same time, Article 252 reflects the influence of legal pluralism within Indonesian law. Unlike many Western legal systems that tend to separate law from supernatural beliefs, Indonesian society continues to accommodate diverse religious, customary, and cultural understandings of reality. Anthropological studies have consistently shown that beliefs concerning mystical powers remain embedded within local social structures and systems of meaning.¹⁵ Legislators therefore faced the challenge of addressing socially significant phenomena without validating or invalidating the underlying beliefs themselves. The resulting provision adopts a pragmatic approach by focusing on objectively observable conduct rather than the truth of supernatural claims.

This legislative strategy is evident in the wording of Article 252. The offense criminalizes the act of declaring oneself to possess supernatural powers and offering services based on the assertion that such powers can cause illness, death, or suffering. Importantly, the provision does not require proof that the supernatural powers actually exist or that the promised harm

¹³ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru* (Jakarta: Kencana, 2017), 145-148.

¹⁴ Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan* (Jakarta: Kencana, 2010), 34-39.

¹⁵ Geertz, *The Religion of Java*, 86-110; Robert W. Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton, New Jersey: Princeton University Press, 2000), 55-60.

could genuinely occur. The law instead targets communicative acts and social interactions that are capable of generating harmful consequences. Such an approach aligns with the principle of legal certainty because courts are not required to engage in metaphysical inquiries that fall outside the scope of rational legal adjudication.¹⁶

The policy behind Article 252 also reflects concerns regarding public confidence in the criminal justice system. In many instances, accusations of witchcraft or supernatural harm emerge when communities perceive that formal legal institutions are unable to address their fears or grievances. This perception may encourage individuals to resort to vigilante actions, mob violence, or traditional mechanisms of retaliation. By providing a legal framework through which problematic conduct can be addressed through formal judicial processes, Article 252 aims to reinforce the state's monopoly over criminal justice and discourage private forms of punishment.¹⁷ In this respect, the provision serves both symbolic and practical functions within the broader legal system.

Comparative experiences from other jurisdictions further support this policy orientation. Several countries have enacted legislation addressing witchcraft-related accusations, fraudulent supernatural practices, or harmful magical claims. In many African jurisdictions, for example, lawmakers have sought to regulate witchcraft accusations because of their connection to communal violence and social instability. Similarly, certain Asian legal systems have utilized fraud and public-order provisions to address exploitation involving supernatural claims.¹⁸ While the legal formulations vary considerably, the underlying policy concern remains consistent: the prevention of social harms arising from beliefs and practices associated with supernatural powers.

Ultimately, Article 252 should be understood as part of Indonesia's broader effort to modernize criminal law while remaining responsive to local social realities. The provision does not represent state recognition of supernatural powers, nor does it criminalize religious or cultural beliefs. Rather, it constitutes a legislative response to specific forms of conduct that are perceived as generating risks to public order, individual security, and social harmony. By focusing on communicative acts rather than metaphysical claims, the provision seeks to reconcile legal rationality with the complex socio-cultural environment in which Indonesian criminal law operates. The effectiveness of this policy, however, ultimately depends upon careful interpretation and implementation by law enforcement agencies and courts, particularly in relation to evidentiary standards and constitutional safeguards.

C. Evidentiary Problems in Proving Article 252

¹⁶ Moeljatno, *Asas-Asas Hukum Pidana*, 71-75; Hamzah, *Asas-Asas Hukum Pidana Indonesia*, 143-148.

¹⁷ Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 2010), 51-58.

¹⁸ Miranda Forsyth, "The Regulation of Witchcraft and Sorcery Practices and Beliefs," *Annual Review of Law and Social Science* 12 (2016): 331-51, <https://doi.org/10.1146/annurev-lawsocsci-110615-084600>; Adam Ashforth, *Witchcraft, Violence, and Democracy in South Africa* (Chicago: University of Chicago Press, 2005), 67-92.

One of the most controversial aspects of Article 252 of the Indonesian Criminal Code concerns the issue of proof. Public debates surrounding the provision have frequently centered on a single question: how can prosecutors prove the existence of supernatural powers in a court of law? This question, however, is based on a misunderstanding of the structure of the offense. As discussed in the previous section, Article 252 is formulated as a formal offense, meaning that criminal liability is attached to specific conduct rather than to the actual occurrence of supernatural effects. Consequently, the evidentiary challenge under Article 252 does not involve proving the existence of mystical powers but rather proving the statutory elements that constitute the prohibited conduct. Nevertheless, despite this doctrinal clarification, the practical application of the provision raises significant evidentiary difficulties under Indonesian criminal procedure law.

Under Article 183 of the Indonesian Code of Criminal Procedure (KUHAP), a judge may not impose a criminal conviction unless at least two lawful means of evidence are obtained and the judge acquires a conviction that a criminal offense has actually occurred and that the defendant committed it.¹⁹ This provision reflects Indonesia's negative statutory system of proof (*negatief wettelijk bewijsstelsel*), which combines formal evidentiary requirements with judicial conviction. Article 184 KUHAP recognizes five forms of lawful evidence: witness testimony, expert testimony, documents, indications (*petunjuk*), and the defendant's statement.²⁰ Therefore, prosecutors seeking to establish liability under Article 252 must demonstrate the existence of each statutory element through legally recognized evidence.

The first evidentiary issue concerns the element requiring that a person "declare himself or herself to possess supernatural powers." This element appears straightforward in theory but may become problematic in practice. A declaration may occur in various forms, including direct oral statements, written advertisements, public speeches, social media posts, online promotional content, or private communications with prospective clients. In cases involving written or digital communications, proof is relatively easier because the statement can be documented and presented as evidence. However, difficulties arise when the declaration is made orally in private settings without independent witnesses or recordings. In such circumstances, investigators must rely heavily on witness testimony, which may be inconsistent or vulnerable to challenges regarding credibility and reliability.²¹

A second evidentiary challenge concerns the requirement that the accused "inform, give hope, offer, or provide services" to another person. This element reflects the transactional nature of the offense and distinguishes private beliefs from conduct intended to influence others. The prosecution must establish that the defendant communicated with another individual in a manner that amounted to an offer, promise, or provision of services. In many

¹⁹ Republic of Indonesia, "Law Number 8/1981 on the Code of Criminal Procedure (KUHAP)" (1981), Article 183.

²⁰ Republic of Indonesia, "Law Number 8/1981 on the Code of Criminal Procedure (KUHAP)" (1981), Article 184.

²¹ Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Dan Peninjauan Kembali*, 286–302.

situations, evidence may consist of conversations, text messages, electronic correspondence, advertisements, or financial transactions. Where money changes hands, bank records, receipts, or electronic payment histories may serve as corroborating evidence. Nevertheless, many alleged transactions involving supernatural services occur informally and without written documentation, thereby complicating evidentiary assessment.²²

The third evidentiary issue involves proving that the defendant represented his or her supernatural powers as capable of causing illness, death, or mental or physical suffering. Unlike ordinary fraud cases, the prosecution is not required to demonstrate that illness or death actually occurred. Instead, the prosecution must establish the content of the representation itself. This distinction is fundamental because Article 252 focuses on the communicative act rather than the actual effectiveness of the alleged supernatural power. Accordingly, evidence must show that the defendant claimed the ability to inflict harmful consequences upon another person through supernatural means. Such claims may be proven through witness testimony, recorded communications, advertisements, promotional materials, or electronic messages.²³

The increasing use of digital technology significantly affects the evidentiary landscape of Article 252. In contemporary Indonesia, individuals offering supernatural services frequently advertise through social media platforms, websites, messaging applications, and online marketplaces. Digital evidence may therefore become one of the most important tools for proving the offense. Electronic advertisements claiming the ability to cause illness, destroy relationships, inflict misfortune, or bring death may constitute direct evidence of the prohibited conduct. The legal admissibility of such evidence is supported by the Law on Electronic Information and Transactions (ITE Law), which recognizes electronic information and electronic documents as valid forms of evidence.²⁴ Consequently, screenshots, digital communications, online payment records, and electronic transaction histories may play a crucial role in future prosecutions under Article 252.

Despite these possibilities, the use of digital evidence presents its own challenges. Electronic records must satisfy requirements relating to authenticity, integrity, and reliability. Digital content may be altered, deleted, fabricated, or manipulated. Investigators must therefore ensure that evidence is collected in accordance with forensic standards capable of preserving its evidentiary value. Furthermore, questions may arise regarding the identity of the person responsible for creating or publishing online content. In cases where accounts are anonymous or controlled by multiple individuals, establishing authorship may require additional forensic investigation.²⁵

²² Hiariej, *Teori Dan Hukum Pembuktian*, 52–60.

²³ Andi Hamzah, *Hukum Acara Pidana Indonesia*, 2nd ed. (Jakarta: Sinar Grafika, 2017), 265–270.

²⁴ Republic of Indonesia, “Law Number 11/2008 on Electronic Information and Transactions, as Amended by Law Number 19/2016” (2016), Article 5.

²⁵ Edmon Makarim, *Pengantar Hukum Telematika: Suatu Kompilasi Kajian* (Jakarta: Raja Grafindo Persada, 2005), 214–221.

Another significant evidentiary challenge concerns the distinction between criminal conduct and constitutionally protected religious or cultural expression. Indonesia recognizes freedom of religion and belief as fundamental constitutional rights. Many religious traditions, spiritual practices, and customary healing methods involve claims regarding spiritual influence, prayer, blessings, or metaphysical intervention. Consequently, courts must carefully distinguish between protected expressions of faith and conduct falling within the scope of Article 252. The mere assertion that prayer may heal illness or that spiritual rituals can provide protection should not automatically trigger criminal liability. The offense requires a specific representation that the accused possesses supernatural powers capable of causing harm to another person and that such powers are offered or communicated as a service.²⁶

This distinction creates evidentiary difficulties because the boundaries between religious practice, traditional healing, and harmful supernatural claims may not always be clear. A traditional healer, spiritual advisor, or religious practitioner may employ language that appears mystical without intending to threaten, deceive, or exploit others. Similarly, cultural expressions that are widely accepted within local communities may be misunderstood when assessed through strictly legal categories. Courts must therefore consider social context, intent, and the specific content of the communication before concluding that the statutory elements have been satisfied. A failure to do so may result in overcriminalization and unintended restrictions on cultural or religious practices.²⁷

Expert testimony may become particularly important in addressing such contextual issues. Anthropologists, sociologists, religious scholars, and cultural experts may assist courts in understanding the meaning of specific statements or practices within particular communities. However, expert testimony cannot be used to establish whether supernatural powers actually exist. Such questions fall outside the competence of legal adjudication and are not relevant to the statutory elements of Article 252. Rather, expert evidence should be directed toward clarifying cultural context, social meaning, and patterns of communication that may assist the court in interpreting the conduct under examination.²⁸

An additional challenge relates to the evidentiary threshold required for conviction. Because Indonesian criminal procedure requires at least two lawful means of evidence combined with judicial conviction, prosecutors cannot rely solely on allegations or community rumours. Accusations involving supernatural powers often emerge in emotionally charged situations characterized by fear, suspicion, and social conflict. Such circumstances increase the risk of false accusations, mistaken perceptions, and community pressure. Therefore, courts must apply evidentiary standards rigorously to prevent convictions based merely on collective belief or moral panic. The danger is particularly acute in cases involving longstanding

²⁶ Republic of Indonesia, “Constitution of the Republic of Indonesia 1945” (2002), Articles 28E and 29; Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia*, 2nd ed. (Jakarta: Sinar Grafika, 2021), 173–178.

²⁷ Hefner, *Civil Islam: Muslims and Democratization in Indonesia*, 55–63; Geertz, *The Religion of Java*, 86–110.

²⁸ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 15–21.

community disputes, personal rivalries, or social tensions that may motivate false allegations against unpopular individuals.²⁹

From a criminal law perspective, the greatest evidentiary challenge under Article 252 is not proving supernatural phenomena but maintaining a clear distinction between belief and conduct. Criminal law traditionally regulates actions rather than thoughts, beliefs, or metaphysical convictions. Accordingly, the prosecution must focus on objectively verifiable acts such as declarations, offers, advertisements, communications, and transactions. Judicial attention should remain directed toward evidence of conduct rather than speculation concerning supernatural reality. Such an approach is consistent with the principles of legal certainty, due process, and rational adjudication that characterize modern criminal justice systems.

Ultimately, the evidentiary framework of Article 252 demonstrates that the offense is legally enforceable without requiring courts to resolve metaphysical questions. The primary challenge lies in identifying reliable evidence capable of establishing the communicative and transactional elements of the offense while simultaneously safeguarding constitutional freedoms and preventing wrongful convictions. The success of the provision will therefore depend not upon proving the existence of supernatural powers but upon the ability of investigators, prosecutors, and judges to apply established evidentiary principles in a careful, objective, and rights-conscious manner.

D. Socio-Legal Analysis: Criminal Law, Cultural Beliefs, and Social Reality

The enactment of Article 252 of the Indonesian Criminal Code cannot be fully understood through doctrinal legal analysis alone. The provision addresses conduct that is deeply embedded in social beliefs, cultural practices, and collective perceptions of reality. Consequently, its interpretation and implementation require a socio-legal perspective capable of examining the interaction between legal norms and the broader social environment in which those norms operate. From this perspective, Article 252 represents not merely a criminal law provision but also a legal response to complex cultural realities concerning supernatural powers, mystical practices, and social anxieties that continue to shape contemporary Indonesian society.

Indonesia has long been characterized by the coexistence of multiple normative systems, including state law, religious law, customary law, and local cultural traditions. Within many communities, beliefs concerning supernatural powers, mystical influence, witchcraft, and spiritual intervention remain important components of social life. Anthropological studies conducted by Clifford Geertz demonstrated that religious and mystical worldviews are deeply integrated into everyday social interactions, influencing perceptions of illness, misfortune, social conflict, and personal success.³⁰ Similarly, Koentjaraningrat observed that traditional

²⁹ Mirjan Damaška, *Evidence Law Adrift* (New Haven: Yale University Press, 1997), 38–46; Hiariej, *Teori Dan Hukum Pembuktian*, 17–25.

³⁰ Geertz, *The Religion of Java*, 86–110.

cosmological beliefs continue to coexist with modern institutions and legal structures, creating a distinctive pattern of cultural pluralism within Indonesian society.³¹

From a socio-legal perspective, the persistence of supernatural beliefs presents a challenge for modern criminal law. Contemporary legal systems generally operate on principles of rationality, objectivity, and empirical verification. Criminal liability is expected to be based upon observable conduct and demonstrable facts rather than metaphysical claims. However, legal norms do not exist in isolation from society. As Friedman argues, law functions within a broader legal system composed of legal structure, legal substance, and legal culture.³² The effectiveness of any legal rule therefore depends not only upon its formal formulation but also upon the cultural beliefs and social attitudes of the communities subject to regulation. In the context of Article 252, legal enforcement inevitably intersects with cultural understandings of supernatural power that may differ significantly from the assumptions underlying modern legal rationality.

One of the most significant socio-legal issues surrounding Article 252 is the widespread public misunderstanding of its purpose. Since its introduction during the Criminal Code reform process, the provision has frequently been described in public discourse as the “santet article” or the “witchcraft provision.” Media coverage often portrayed the law as an attempt to criminalize witchcraft or punish individuals for possessing mystical abilities.³³ Such interpretations generated public concern regarding the possibility that courts would be required to determine whether supernatural powers actually exist. In reality, as discussed earlier, the offense focuses on communicative conduct rather than metaphysical truth. Nevertheless, the persistence of these misconceptions illustrates the importance of legal culture in shaping public perceptions of law.

The gap between legislative intent and public understanding reflects a broader phenomenon identified by socio-legal scholars: legal texts frequently acquire meanings that differ from those intended by lawmakers. According to legal realism, the practical impact of law depends not only on statutory language but also on how legal norms are interpreted by officials, media institutions, and ordinary citizens.³⁴ In the case of Article 252, public reactions demonstrate that criminal law may become entangled with cultural narratives that extend beyond the formal boundaries of legal doctrine. Consequently, successful implementation of the provision requires not only judicial clarity but also public education regarding its actual scope and purpose.

Another important socio-legal concern involves the potential risk of overcriminalization. Because supernatural beliefs remain widespread, there is a possibility that broad or careless interpretations of Article 252 could interfere with constitutionally protected religious and cultural practices. Indonesia recognizes freedom of religion and belief as

³¹ Koentjaraningrat, *Pengantar Ilmu Antropologi*, 201–215.

³² Friedman, *The Legal System: A Social Science Perspective*, 15–18.

³³ Arief, *Pembaharuan Hukum Pidana Dalam Perspektif Kajian Perbandingan*, 115–118.

³⁴ Brian Z. Tamanaha, *A Realistic Theory of Law* (Cambridge: Cambridge University Press, 2017), 83–89.

fundamental constitutional rights, while simultaneously acknowledging the importance of preserving cultural diversity.³⁵ Traditional healers, spiritual counselors, religious leaders, and practitioners of customary rituals often employ symbolic language concerning spiritual forces, blessings, curses, or metaphysical influence. If Article 252 is interpreted expansively, such expressions could potentially become the subject of criminal investigation despite lacking the harmful communicative elements required by the statute.

This concern highlights the importance of distinguishing between cultural expression and criminal conduct. A socio-legal approach suggests that legal interpretation should be sensitive to social context and cultural meaning. Not every statement involving supernatural concepts should be treated as evidence of criminal behavior. Rather, criminal liability should be limited to situations where individuals explicitly claim harmful supernatural powers and offer or provide services based upon those claims. Such a restrictive interpretation is necessary to preserve the balance between criminal law enforcement and constitutional freedoms.³⁶

At the same time, socio-legal analysis also reveals the positive social functions that Article 252 may serve. One of the primary objectives of the provision is the prevention of vigilantism. Throughout Indonesian history, allegations of witchcraft or harmful mystical practices have occasionally resulted in mob violence, social exclusion, and even homicide against suspected individuals.³⁷ In many cases, communities have responded to perceived supernatural threats through informal mechanisms of punishment rather than formal legal processes. By criminalizing certain forms of conduct associated with harmful supernatural claims, Article 252 provides an institutional mechanism through which social concerns may be addressed within the legal system rather than through private retaliation.

The provision may also contribute to protecting vulnerable individuals from exploitation. Sociological studies have demonstrated that periods of economic hardship, personal crisis, illness, or social instability often increase reliance upon supernatural explanations and alternative forms of assistance.³⁸ Individuals experiencing emotional distress may become particularly susceptible to promises of supernatural intervention. In this context, claims of harmful supernatural powers may be used to manipulate fears, create dependency, or obtain financial benefits from vulnerable clients. Article 252 functions as a preventive measure designed to reduce opportunities for such exploitation by targeting the communicative and transactional dimensions of these practices.

The effectiveness of Article 252, however, will ultimately depend upon the manner in which legal institutions implement it. Socio-legal scholars emphasize that legal norms achieve

³⁵ Republic of Indonesia, Constitution of the Republic of Indonesia 1945, Articles 28E and 29; Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia*, 173–178.

³⁶ Satjipto Rahardjo, *Hukum Dan Perubahan Sosial: Suatu Tinjauan Teoretis Serta Pengalaman-Pengalaman Di Indonesia* (Yogyakarta: Genta Publishing, 2009), 121–126.

³⁷ Robert Cribb, “Problems in the Historiography of the Killings in Indonesia,” in *The Indonesian Killings of 1965–1966*, ed. Robert Cribb (Clayton: Monash University Centre of Southeast Asian Studies, 1990), 8–10; Ashforth, *Witchcraft, Violence, and Democracy in South Africa*, 67–92.

³⁸ Hefner, *Civil Islam: Muslims and Democratization in Indonesia*, 55–63.

legitimacy only when they are perceived as fair, reasonable, and culturally sensitive.³⁹ Excessive enforcement may generate resistance and undermine public trust, while insufficient enforcement may fail to address the social harms that motivated the provision's enactment. Consequently, investigators, prosecutors, and judges must adopt an approach that is both legally rigorous and socially informed.

A socio-legal perspective therefore suggests that Article 252 should be interpreted narrowly and applied cautiously. Courts should focus on objectively verifiable conduct rather than cultural beliefs, religious convictions, or metaphysical claims. The existence or nonexistence of supernatural powers should remain outside the scope of judicial inquiry. Instead, legal attention should be directed toward whether the defendant engaged in communicative acts capable of producing legally recognizable harms, such as deception, intimidation, exploitation, or social disorder. Such an approach preserves legal certainty while respecting the cultural diversity that characterizes Indonesian society.

Ultimately, Article 252 illustrates the continuing challenge of regulating social phenomena that exist at the intersection of law, culture, and belief. The provision reflects an effort to modernize criminal law without ignoring the social realities of a pluralistic society. Its success will depend not only on doctrinal interpretation and evidentiary standards but also on the ability of legal institutions to navigate the complex relationship between criminal law and cultural belief systems in a manner that promotes justice, social harmony, and constitutional values.

E. Future Directions for Criminal Justice Practice

The enactment of Article 252 of the Indonesian Criminal Code represents a novel development in Indonesian criminal law, but its effectiveness will largely depend upon how criminal justice institutions interpret and implement the provision in practice. Because the offense concerns conduct associated with claims of supernatural powers, law enforcement agencies face unique challenges that differ from those encountered in conventional criminal cases. To ensure consistency with constitutional principles, evidentiary standards, and the objectives of criminal law reform, several practical directions should guide future implementation.

First, law enforcement authorities should adopt an evidence-centered approach that focuses exclusively on objectively verifiable conduct. Investigators should avoid attempting to determine whether supernatural powers actually exist or whether the defendant genuinely possesses such abilities. Such inquiries fall outside the scope of legal adjudication and are inconsistent with the principles of rational criminal justice. Instead, investigations should concentrate on proving the statutory elements of the offense, including declarations of supernatural powers, offers of services, representations of harmful capabilities, and any related

³⁹ Tom R. Tyler, *Why People Obey the Law* (Princeton, New Jersey: Princeton University Press, 2006), 161–170.

transactions or communications.⁴⁰ This approach is consistent with the formal-offense structure of Article 252 and promotes legal certainty by limiting criminal liability to observable conduct rather than metaphysical beliefs.

Second, digital evidence should become a central component of investigative and prosecutorial strategies. Contemporary claims involving supernatural services are frequently promoted through social media, messaging applications, websites, and electronic advertisements. Investigators should therefore strengthen their capacity to collect, preserve, and authenticate digital evidence in accordance with forensic standards and the requirements of Indonesian electronic evidence law.⁴¹ Specialized training in cyber-investigation techniques may be particularly important because digital communications are likely to constitute some of the most reliable forms of evidence in future prosecutions under Article 252.

Third, prosecutors should adopt a restrictive and element-based interpretation of the provision. The focus of prosecution should remain on the specific statutory elements contained in Article 252 rather than on broader cultural, religious, or philosophical questions. Prosecutorial decisions should be guided by clear evidence demonstrating that the accused explicitly claimed harmful supernatural powers and communicated those claims to another person through an offer, promise, or service. Such an approach would reduce the risk of arbitrary enforcement and ensure compliance with the principle of legality (*nullum crimen sine lege*).⁴²

Fourth, judges play a critical role in ensuring that Article 252 is interpreted consistently with constitutional guarantees of freedom of religion, belief, and cultural expression. Courts should distinguish carefully between criminal conduct and legitimate religious or cultural practices. Traditional healing, spiritual counseling, prayer-based practices, and customary rituals should not automatically be treated as evidence of criminal behavior merely because they involve references to spiritual or supernatural concepts. Judicial reasoning should emphasize the communicative and transactional dimensions of the offense while avoiding assessments concerning the truth or falsity of metaphysical claims.⁴³

A further recommendation concerns the development of judicial and prosecutorial guidelines. Given the novelty of Article 252, inconsistent interpretations may emerge during the early stages of implementation. To reduce uncertainty, the Supreme Court and the Attorney General's Office could develop interpretive guidelines clarifying the evidentiary requirements, constituent elements, and constitutional limitations associated with the offense.

⁴⁰ Moeljatno, *Asas-Asas Hukum Pidana*, 71–75; Hamzah, *Asas-Asas Hukum Pidana Indonesia*, 143–148.

⁴¹ Republic of Indonesia, Law Number 11/2008 on Electronic Information and Transactions, as amended by Law Number 19/2016, Article 5; Makarim, *Pengantar Hukum Telematika: Suatu Kompilasi Kajian*, 214–221.

⁴² Ashworth, *Principles of Criminal Law*, 67–72; Muladi and Arief, *Teori-Teori Dan Kebijakan Pidana*, 45–49.

⁴³ Republic of Indonesia, Constitution of the Republic of Indonesia 1945, Articles 28E and 29; Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia*, 173–178.

Such guidance would contribute to greater consistency in judicial decision-making and enhance public confidence in the criminal justice system.⁴⁴

Finally, future criminal justice policy should incorporate public legal education initiatives aimed at correcting widespread misconceptions concerning Article 252. Public discourse has frequently portrayed the provision as criminalizing witchcraft or supernatural powers themselves, despite the fact that the offense focuses on specific forms of conduct. Improved public understanding would not only reduce confusion but also strengthen the legitimacy of criminal law reform by ensuring that citizens understand the actual purpose and scope of the provision.

Ultimately, the future implementation of Article 252 should be guided by a commitment to legal certainty, evidentiary rigor, constitutional rights, and cultural sensitivity. By focusing on objectively provable conduct rather than metaphysical beliefs, Indonesian criminal justice institutions can ensure that the provision serves its intended function of protecting society from harmful practices while preserving the fundamental principles of a modern rule-of-law system.

F. Conclusion

Article 252 of Law Number 1 of 2023 represents one of the most distinctive innovations in Indonesia's criminal law reform. Although widely perceived as a provision criminalizing witchcraft or supernatural powers, a doctrinal analysis demonstrates that the offense is structured as a formal offense focusing on communicative conduct rather than metaphysical realities. The provision does not require proof that supernatural powers actually exist or that they have produced harmful effects. Instead, criminal liability arises from the act of declaring oneself to possess supernatural powers and offering or providing services based on claims that such powers can cause illness, death, or mental and physical suffering.

The study further demonstrates that the principal evidentiary challenge under Article 252 lies not in proving supernatural phenomena but in establishing the statutory elements of the offense through lawful evidence recognized under Indonesian criminal procedure law. Witness testimony, electronic communications, advertisements, transactional records, and other forms of documentary evidence may serve as the primary means of proof. At the same time, law enforcement authorities and courts must carefully distinguish criminal conduct from constitutionally protected religious, cultural, and spiritual practices.

From a socio-legal perspective, Article 252 reflects an effort to balance legal rationality with the social realities of a culturally pluralistic society in which beliefs concerning supernatural powers remain influential. The provision seeks to prevent vigilantism, protect vulnerable individuals from exploitation, and strengthen public order while preserving legal certainty. Its successful implementation will depend upon restrictive interpretation, rigorous evidentiary standards, constitutional safeguards, and culturally sensitive law enforcement.

⁴⁴ Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Dan Peninjauan Kembali*, 286–302; Friedman, *The Legal System: A Social Science Perspective*, 15–21.

When applied within these parameters, Article 252 can contribute to the broader objectives of Indonesian criminal law reform by promoting both social protection and the rule of law.

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