

**The Renewal of the Evidentiary Process for the Criminal
Act of Supernatural Practices in Article 252 of Law
Number 1 of 2023 concerning the Criminal Code**



By:

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42.2021.313.005

**DEPARTMENT OF COMPARATIVE SCHOOL OF
JURISPRUDENCE AND LAW**

FACULTY OF SHARIA

UNIVERSITY OF DARUSSALAM GONTOR

2025/1446

**The Renewal of the Evidentiary Process for the Criminal Act of
Supernatural Practices in Article 252 of Law Number 1 of 2023
concerning the Criminal Code**

THESIS

**Presented to University of Darussalam Gontor In Partial Fulfillment of
Requirement for Bachelor Degree (S1) In the Comparative School of
Jurisprudence and Law Department**

By:

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42.2021.313.005

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UNIVERSITY OF DARUSSALAM GONTOR**

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ABSTRAK

Pembaharuan Proses Pembuktian Tindak Pidana Ilmu Gaib dalam Pasal 252 Undang-Undang Nomor 1 Tahun 2023 tentang KUHP

Aisyah Habibah Rahman

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Praktik ilmu gaib di Indonesia terus berlangsung meskipun kemajuan ilmu pengetahuan dan teknologi, dengan berbagai kasus penipuan dan penyalahgunaan yang merugikan masyarakat, seperti yang terjadi pada kasus dukun di Sukabumi dan Yono. Untuk mengatasi masalah ini, pemerintah mengatur dalam Pasal 252 KUHP 2023, yang mulai berlaku pada 2026, dengan tujuan menanggulangi praktik merugikan dan mencegah tindakan main hakim sendiri, meskipun tantangan dalam pembuktian tetap menjadi kendala utama. Penelitian ini menelaah 1) Bagaimana pengaturan tindak pidana praktik ilmu gaib 2) Bagaimana pembuktian tindak pidana praktik ilmu gaib dalam pasal 252 KUHP Nomor 1 Tahun 2023. Penelitian ini menggunakan pendekatan yuridis normatif dengan metode analisis peraturan perundang-undangan dan kajian literatur terkait hukum pembuktian dalam tindak pidana.

Hasil penelitian menunjukkan bahwa Tindak pidana perdukunan telah diatur dalam Pasal 545 hingga 547 KUHP yang berlaku saat ini, namun setelah dianalisis, pasal-pasal tersebut tidak memadai dalam menangani praktik ilmu gaib yang merugikan masyarakat dan tidak memberikan efek jera karena sanksi yang ringan. Oleh karena itu, Pasal 252 KUHP baru tahun 2023 disusun sebagai delik formil. Meskipun ada tantangan dan implikasi dalam penerapannya, pasal ini dianggap penting untuk mencegah maraknya penawaran jasa praktik ilmu gaib. Dalam penelitian ini, diusulkan pembaruan proses pembuktian tindak pidana praktik ilmu gaib sesuai Pasal 252 UU No 1 Tahun 2023, yang memerlukan alat bukti yang sah berdasarkan ketentuan Pasal 183 dan 184 KUHP serta UU ITE, di samping barang bukti yang relevan untuk meyakinkan hakim. Unsur subjektif dan objektif, seperti kesengajaan, niat, dan sifat pelanggaran hukum, memainkan peran penting dalam menentukan apakah praktik ilmu gaib tersebut melanggar hukum dan dapat dikenakan sanksi pidana.

Penelitian ini menyarankan perlunya pedoman teknis bagi aparat penegak hukum dalam menangani kasus praktik ilmu gaib, perumusan aturan yang lebih jelas untuk menghindari kriminalisasi tanpa bukti yang kuat, serta edukasi hukum bagi masyarakat agar tidak mudah tertipu oleh praktik dukun palsu. Selain itu, sinergi antara pendekatan hukum dan edukasi sosial diperlukan agar masyarakat lebih rasional dalam menyikapi fenomena ini. Dengan pendekatan hukum yang lebih terstruktur, diharapkan pasal ini dapat diterapkan secara efektif untuk memberikan keadilan bagi masyarakat serta menjaga ketertiban hukum.

Kata Kunci: Pembuktian, gaib, delik, hukum, peraturan

ABSTRACT

The Renewal of the Evidentiary Process for the Criminal Act of Supernatural Practices in Article 252 of Law Number 1 of 2023 concerning the Criminal Code

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The practice of supernatural rituals in Indonesia continues despite advancements in science and technology, with various cases of fraud and abuse harming society, such as the cases involving shamans in Sukabumi and Yono. To address this issue, the government has regulated it under Article 252 of the 2023 Criminal Code (KUHP), which will take effect in 2026, aiming to curb harmful practices and prevent vigilante actions, although challenges in proving such offenses remain a major obstacle. This study employs a normative juridical approach, utilizing legal analysis and literature review methods related to evidentiary law in criminal offenses. Additionally, it examines the legal framework surrounding supernatural practices as a criminal act and how evidence is established under Article 252 of Law Number 1 of 2023 concerning the Criminal Code.

The findings reveal that shamanic offenses were previously regulated under Articles 545 to 547 of the existing Criminal Code, but these provisions have been found inadequate in addressing harmful supernatural practices and fail to provide a deterrent effect due to lenient penalties. Therefore, Article 252 of the 2023 Criminal Code was formulated as a formal offense (*delik formil*). Despite challenges and legal implications in its enforcement, this article is considered crucial in preventing the widespread offering of supernatural services. This study proposes reforms in the evidentiary process for supernatural criminal acts under Article 252 of Law Number 1 of 2023, requiring valid evidence based on Articles 183 and 184 of the Criminal Procedure Code (KUHP) and the Electronic Information and Transactions Law (UU ITE), along with relevant material evidence to convince the court. Subjective and objective elements, such as intent, purpose, and unlawful nature, play a crucial role in determining whether a supernatural practice violates the law and is subject to criminal sanctions.

This study recommends establishing technical guidelines for law enforcement in handling cases of occult practices, clearer regulations to prevent wrongful criminalization of supernatural practices without strong evidence, and legal education for the public to avoid falling victim to fraudulent magicians. Additionally, synergy between legal approaches and social education is essential to encourage a more rational societal perspective on this phenomenon. With a more structured legal framework, it is hoped that this article can be effectively implemented to ensure justice for society and maintain legal order.

Keywords: Evidence, supernatural, offense, law, regulation

THE DECISION OF SUPERVISOR

Honorable to

Dean of Sharia Faculty

University of Darussalam Gontor

Bismillahirramanirrahim

Assalamua'alaikum Warahmatullah Wabaraktuh

I present this thesis written by

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It has been processed and corrected to meet the practical requirement to obtain the Bachelor's Degree (S1) in the Comparative School of Jurisprudence and Law Department, Sharia Faculty University of Darussalam Gontor. Therefore, we hope this thesis could be examined.

Hopefully, this thesis will be useful for religion, nation, and the development of an educational institution

Wassalamu'alaikum Warahmatullahi Wabaraktuh

Unida, 17th of Sya'ban 1446 H
16th of February 2025 M

Supervisor,


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THESIS ACCEPTANCE LETTER

Bismillāhirrahmānirrahīm

Assalāmu'alaikum Wr. Wb.

The Faculty of Sharia, University of Darussalam Gontor Ponorogo, Indonesia has received a thesis written by:

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Reg. Number : 422021313005
The Title : The Renewal of the Evidentiary Process for the Criminal Act of Supernatural Practices in Article 252 of Law Number 1 of 2023 concerning the Criminal Code

In partial fulfillment of the requirement for the degree of Licentiate in Comparative School of Jurisprudence and Law Department in the Faculty of Sharia, academic year 1445-1446/2024-2025.

Wassalāmu'alaikum Wr. Wb.

Ponorogo, 17th of Sya'ban 1446 H

16th of February 2025 M

Dean of Sharia Faculty



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DECISION OF THE TEAM

The committee of the thesis examination in partial fulfilment of the requirements for the degree of Licentiate in Comparative School of Jurisprudence And Law in the Faculty of Sharia, University of Darussalam Gontor, Indonesia, declared that the thesis written by:

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Has been examined by the board of examiners of the Bachelor's Degree (S1) on Department of Comparative School of Jurisprudence And Law Faculty of Sharia University of Darussalam Gontor on 2nd of March, 2025

The board of examiners has decided to grant her pass in the thesis examination. Hence, she is eligible to be awarded the degree of Licentiate in Comparative School of Jurisprudence And Law in the Faculty of Sharia.

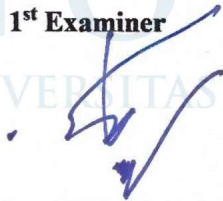
Board Examiner

Supervisor



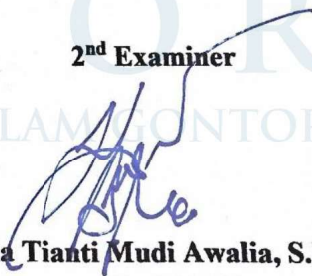
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THE DECLARATION

I, hereby,

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I sincerely declare that this thesis originally belongs to my own work and not to other researchers for a different degree. Furthermore, this thesis is never published before, except for some parts with their original references.

If it is later determined that this work is plagiarized, I accept administrative and academic penalties.

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16th of February 2024 M

Researcher,



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MOTTO

وَإِذْ قَالَ لُقْمَانُ لِابْنِهِ وَهُوَ يَعِظُهُ يَا بُنَيَّ لَا تُشْرِكْ بِاللَّهِ إِنَّ الشِّرْكَ لَظُلْمٌ عَظِيمٌ

(١٣)

"(Remember) when Luqman said to his son while advising him, 'O my son, do not associate anything with Allah! Indeed, associating partners with Allah is truly a great injustice.'"

(Surah Al-Luqman (31): 13)

عَنْ عِمْرَانَ بْنِ حُصَيْنٍ رَضِيَ اللَّهُ عَنْهُ قَالَ، قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ:

لَيْسَ مِنَّا مَنْ تَطَيَّرَ أَوْ تُطَيِّرَ لَهُ، أَوْ تَكَهَّنَ أَوْ تُكْهَّنَ لَهُ، أَوْ سَحَرَ أَوْ سُحِرَ لَهُ، وَمَنْ أَتَى

كَاهِنًا فَصَدَّقَهُ بِمَا يَقُولُ، فَقَدْ كَفَرَ بِمَا أُنْزِلَ عَلَى مُحَمَّدٍ (رواه البزار)

From Imran bin Husain (may Allah be pleased with him), he said:

The Messenger of Allah ﷺ said: "He is not from us who practices omens (superstition) or has it done for him, who practices soothsaying or has it done for him, who performs magic or has it done for him. And whoever goes to a soothsayer and believes what he says has indeed disbelieved in what was revealed to Muhammad ﷺ."

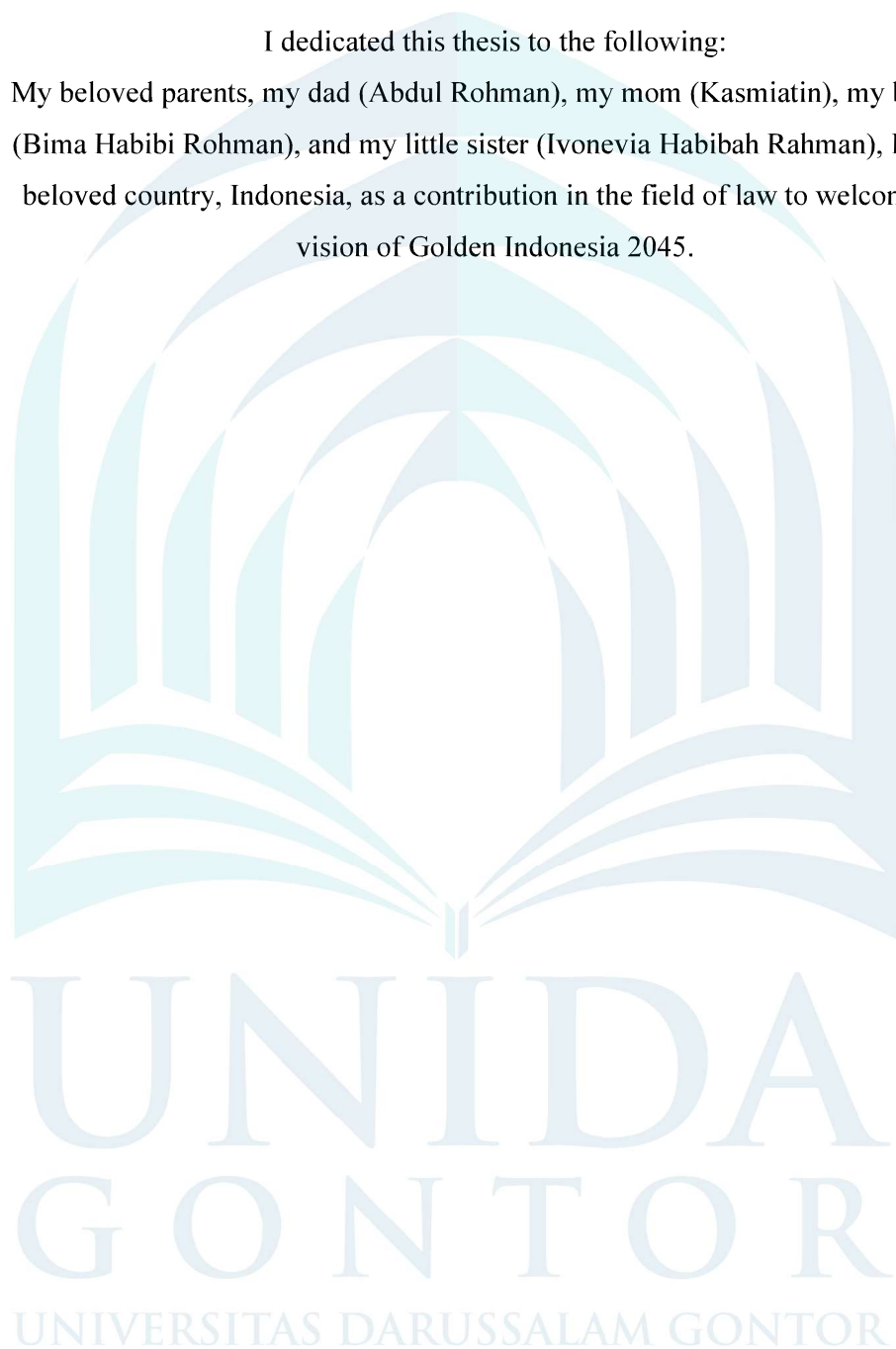
(Narrated by Al-Bazzar)

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DEDICATION

I dedicated this thesis to the following:

My beloved parents, my dad (Abdul Rohman), my mom (Kasmiatin), my brother (Bima Habibi Rohman), and my little sister (Ivonevia Habibah Rahman), For my beloved country, Indonesia, as a contribution in the field of law to welcome the vision of Golden Indonesia 2045.



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3. Dear Assoc. Prof. Dr. Imam Kamaluddin, Lc., M.Hum., the Dean of the Faculty of Sharia, University of Darussalam Gontor, for providing me with the necessary academic facilities and resources to complete this thesis.
4. Dear Mr. Saipul Nasution, S.H.I., M.A., Ph.D., the Head of the Department of Comparative School of Jurisprudence and Law, University of Darussalam Gontor Ponorogo, for providing me with the necessary academic facilities and resources to complete this thesis.
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7. My dear friends, the Virtuous Generation, thank you for your unwavering support and encouragement throughout this journey. Your presence in my

life has been a constant source of strength and inspiration. May we all continue to live our lives according to the guidance of Allah SWT and seek His protection.

8. To all my friends, the Class Comparative School of Jurisprudence and Law Department, for your unwavering support and encouragement throughout this journey. Your presence in my life has been a constant source of strength and inspiration. May we all continue to live our lives according to the guidance of Allah SWT and seek His protection.
9. Many thanks to myself for my patience, courage, and perseverance in facing every obstacle. This thesis is proof of my struggle and dedication. May this spirit continue to accompany the steps ahead.
10. May this humble thesis be valuable and useful to readers, the writer, and the researcher. *Aamiin.*

Ponorogo, 17th of Sya'ban 1446 H

16th of February 2025 M

Author,



Aisyah Habibah Rahman

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