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The Role of Judges in Criminal Case Evidence : A Comparative Study between Indonesia and Thailand

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Abstract

This study aims to analyze the role of judges in the criminal evidence system based on the Indonesian Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana/KUHAP) and the Criminal Procedure Code of Thailand, as well as to identify the fundamental differences arising from the characteristics of each country's judicial system. This research employs a normative legal research method using statutory, conceptual, and comparative approaches through document analysis of relevant literature and regulations. The findings indicate that Indonesia adopts the negative statutory evidentiary system (*negatief wettelijk bewijstheorie*), as regulated in Article 183 of the KUHAP, which requires at least two valid pieces of evidence accompanied by the judge's conviction. The role of judges is active but remains within a strict procedural framework. Meanwhile, Thailand applies a mixed adversarial–inquisitorial system with a standard of proof of beyond reasonable doubt without a minimum evidentiary requirement. The Thai Criminal Procedure Code grants judges broad authority to examine facts, question witnesses, and order the collection of additional evidence, as stipulated in Sections 228, 229, and 235. A comparison of the two systems shows that Thailand positions judges as more dominant truth-finders, whereas Indonesia emphasizes a balance between formal legality and judicial conviction. These findings provide a comprehensive understanding of the structural and philosophical implications of both systems in the enforcement of criminal justice.

1. Introduction

From the introduction written by the author regarding "The Legal Imperative Of Bawaslu's Oversight In Enforcing Verdict Compliance". Examining how the urgency of this form of supervision becomes increasingly clear considering that Bawaslu's decisions regarding election violations and disputes are not properly followed up during the implementation process by the KPU. It can be seen that this situation shows that there are deficiencies in the electoral law enforcement system that must be addressed immediately and question how legal certainty is. Legal certainty can be interpreted as the certainty of the law due to the concrete strength of the law.[1] If there is no improvement, there is a risk that the number of future election violations will increase and the image of Indonesian democracy will deteriorate. From the results of this study, the author focuses more on the urgency of supervising the follow-up of Bawaslu's decision and analyzing the ideal model of Bawaslu's supervision of the follow-up to its decision. Perbawaslu 5 Year 2022 has not regulated how Bawaslu's authority in terms of enforcement or coercion against defiance in the form of delayed or not followed up by

[1] Jamaluddin, "The Settlement Of Election Disputes By Bawaslu Reviewed From The Indonesian Justice System," 2022, 521–31.

Bawaslu's decision by the KPU so that it can disrupt legal certainty. [2]This section describes research that is interrelated with the author's research in order to add references for researchers. The following are related scientific works, among others: In Madda's research[3] in his research entitled "Problematics of Supervision of Follow-up to Bawaslu and DKPP Decisions in Election Law Enforcement" using qualitative research which is descriptive-analytical with normative juridical and empirical juridical or legal sociology approach methods. The research has similarities in highlighting Bawaslu's role in overseeing the implementation of elections and the importance of clear law enforcement. Bawaslu's role in supervision and how Bawaslu's final and binding decision must be implemented by the KPU within three days. As for the differences, there are explanations related to the practical challenges faced by Bawaslu, especially related to the enforcement of decisions that are not properly implemented by the KPU, which creates a legal vacuum and uncertainty in law enforcement. Novembri Yusuf Simanjuntak's research[4] on Monitoring in the Election Implementation Process has a similar focus in this study regarding the role of supervision of the elections, but the approach is different. Where the approach in this study focuses on the empirical aspects of monitoring, this study is more directed to the normative aspects regulated in legislation, such as Law No. 7 Year 2017 and Perbawaslu. Simanjutak focuses more on monitoring in the process of organizing elections, it can be seen that he examines more deeply the monitoring mechanisms carried out by related institutions, such as Bawaslu, KPU, and DKPP, in overseeing and controlling the implementation of elections and emphasizes a thorough analysis of the monitoring process, as well as the challenges faced by supervisory institutions in carrying out their duties. In addition, Simanjuntak also explores the practical obstacles faced in carrying out election monitoring in the field, which may involve difficulties in sanctioning violations and resolving disputes that arise during or after an election. Yusrizal's research[5] "The Urgency of Bawaslu's Decision in Resolving General Election Process Disputes" also raises the same issue, namely the importance of Bawaslu's decision in ensuring the holding of elections that are fair and free from fraud. However, Syaputra's research focuses more on analyzing the direct effect of Bawaslu's decision in resolving election disputes and the application of law to administrative violations and the election process. Meanwhile, this study highlights the legal imperative and challenges faced in ensuring that each Bawaslu decision is implemented by the KPU, as well as broader supervision of the implementation of the decision in order to maintain the validity and legal certainty of the election. Both have similarities in examining the effectiveness of Bawaslu's supervision, but this study adds a perspective on the legal vacuum that arises if there is no further enforcement of the decisions

[2] Budi Purwanto, Dina Puji Wahyuni, and Ahmad Rafiq Jatihusodo, "Unmasking Electoral Turmoil : The General Election Supervisory Agency ' s Battle Against Disputes in Indonesia ' s Democracy Introduction," *Indonesian State Law Review* 6 (2023), https://doi.org/https://doi.org/10.15294/islrev.v6i1.68228.
[3] Madda.
[4] Novembri Yusuf Simanjuntak, "Pemantauan Dalam Proses Penyelenggaraan Pemilu" 3, No. 3 (2017): 305–458, Https://Doi.Org/Issn 2443-2539, 3(3),.
[5] Muhammad Yusrizal And Adi Syaputra, "Urgensi Putusan Bawaslu Dalam Penyelesaian Sengketa Proses Pemilihan Umum," *Hukum Tata Negara & Hukum Administrasi Negara* 1 No 1 (2022): 52, Https://Ejournal.Grondwet.Id/Index.Php/Gr/Article/View/5.

that have been issued. Criminal law as a body of legal rules cannot be separated from other branches of law. In general, law is classified into public law and private law. The distinction between public law and private law has existed since Roman times and is based on the nature of the interests regulated by the law. Public law governs interests of a public nature, including the interests of society as a whole or the interests of the state, whereas private law regulates the interests of individual citizens. Thus, the fundamental difference lies in the emphasis on the interests being protected [6]

Several terms are closely related to the criminal justice system, one of which is the "system of administration of criminal justice." The term "administration" refers to institutional activities in carrying out duties and functions through procedures based on applicable regulations. The administration of criminal justice encompasses three interrelated aspects: (1) which institutions are authorized to administer criminal justice; (2) the scope of authority of these institutions; and (3) the procedures by which such authority is exercised [7]

The concept of criminal justice administration is essentially equivalent to the notion of criminal procedural law (formal criminal law). This can be seen from the view of R. Soesilo, who defines criminal procedural law as a collection of legal rules containing various provisions concerning: (a) the appropriate actions to be taken once a criminal offense has occurred or the proper measures to uncover the truth regarding the offense committed; (b) who is responsible for, and how to conduct, the search, inquiry, and investigation of persons suspected of committing criminal offenses, including determining the procedures for arresting, detaining, and examining suspects; (c) the methods for collecting evidence, conducting examinations, searches, and seizures to prove the suspect's guilt; (d) the mechanisms of judicial examination through the adjudication process in court leading to a verdict against the defendant; and (e) the determination of who is responsible for, and how to carry out, the execution of the imposed judgment.

The criminal procedural system in Thailand is governed by the Criminal Procedure Code, which regulates the rights of the accused, the obligations of law enforcement authorities, and judicial procedures. This legal process covers the stages of pre-investigation, investigation, pretrial proceedings, and trial. Human rights protections, such as the right to legal counsel and the right to notify family members upon arrest, are guaranteed under this law. The Thai legal system is based on a mixed approach combining civil law principles with local customary legal practices, providing flexibility in adapting judicial processes to societal needs. Although Thailand, like Indonesia, adheres to the civil law system, it has developed differently due to significant influences from the common law system, particularly with regard to the position of judges in court proceedings. Judges in Thailand are more often positioned as supervisors of the judicial process, emphasizing a balance between the interests of the prosecution and the rights of the accused. This creates a different dynamic in the criminal

[6] Luthfi Arya, Ravi Pambudi, and Heri Purwanto, "Peran Bantuan Ahli Ilmu Kedokteran Forensik Dalam Pembuktian Perkara Tindak Pidana Pembunuhan Pada Tahap Penyidikan" 1 (2020): 95–105, https://doi.org/10.18196/mls.v1i2.8345.
[7] Daniel F. Aling, "Peranan Visum Et Repertum Dalam Pembuktian Tindak Pidana," no. 2 (2023).

evidentiary system compared to Indonesia, which places greater emphasis on the active role of judges [8]

Recent comparative studies on criminal evidentiary systems in Southeast Asia have primarily focused on doctrinal differences without deeply examining the functional dominance of judges in the fact-finding process. For instance, Thanyanuch (2023) [9]analyzes Thailand's order-centric legal culture and its impact on lower court practices but does not specifically compare judicial authority in evidentiary assessment with other civil law jurisdictions. Similarly, Rustamaji, Muhammad Sitompul[10], examine judicial considerations in Indonesian narcotics cases, emphasizing judicial conviction under the negative statutory evidentiary system, yet their study is limited to domestic judicial reasoning without comparative insight.

This study differs fundamentally from previous research by conducting a systematic comparative analysis of judicial authority in criminal evidentiary systems between Indonesia and Thailand, emphasizing how different evidentiary philosophie negatief wettelijk bewijstheorie in Indonesia and beyond reasonable doubt without formal evidentiary thresholds in Thailand shape the position of judges as truth-finders. Unlike earlier studies that analyze evidentiary rules normatively or domestically, this research highlights structural implications of judicial dominance, evidentiary flexibility, and human rights protection within two distinct mixed legal systems. The significance of this study lies in its contribution to identifying normative gaps and functional challenges in criminal evidence law, thereby clarifying the legal problem of judicial authority limits and supporting the formulation of reforms aligned with the objective of strengthening fairness and material truth in criminal proceedings.

These differences in the characteristics of criminal procedural law between Indonesia and Thailand present an interesting subject for analysis. Both countries are located in Southeast Asia but possess distinct legal cultural backgrounds. Indonesia has been influenced by Dutch civil law, which is characterized by strict formalism, whereas Thailand has adopted a hybrid legal system combining elements of civil law and common law. Consequently, a comparative analysis of the role of judges in criminal evidence in both countries can provide a more comprehensive understanding of how justice is administered within different historical, philosophical, and normative contexts.[11]

The role of judges in criminal evidence is also closely related to the protection of human rights. Under the Indonesian Criminal Procedure Code (KUHAP), the presumption of innocence serves as a fundamental principle that must be upheld. Judges in Indonesia are

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[8] keovalin Torpanyacharn, "Development of Legal Measures to Regulate Online Advertising of High Fat, Sugar or Sodium Foods and Beverages for Protecting Children and Youth" 8, no. 2 (2021): 21–31.
[9] Thanyanuch Tantikul, "Cultural Differences in Control : How Thailand ' s Order-Centric Legal Mentality Shapes Its Constraining Lower-Court Practices," 2023, https://doi.org/10.1177/14624745221148662.
[10] Muhammad Rustamaji et al., *The Reduction of Criminal Justice Policy in Indonesia: Justice versus Virality*, *Journal of Human Rights, Culture and Legal System*, vol. 5, 2025, https://doi.org/10.53955/jhcls.v5i2.637.
[11] Antonius Sudirman, Konstantinus Bahang, and Joel Casimiro Pinto, "The Role of A Judge's Conscience in Deciding Criminal Cases: Practice of Criminal Justice in Indonesia," *Journal of Law and Legal Reform* 6, no. 4 (2025): 2259–92, https://doi.org/10.15294/jllr.v6i4.34799.

required to ensure that defendants are treated fairly and are not convicted without lawful and convincing evidence. Similarly, in Thailand, the Criminal Procedure Code contains provisions aimed at protecting the rights of the accused, although the approaches and practices differ. This comparison is important as it demonstrates how regulatory differences may have implications for the level of human rights protection in criminal proceedings.

2. Methods

This study is a legal research employing a normative legal approach conducted through document analysis, based on relevant literature and regulations related to the author's discussion, as well as comparative views of existing legal scholars. Normative legal research examines law as it is conceptualized as norms or rules that apply within society and serve as guidelines for human behavior. In normative legal research using a document-based approach, researchers are not required to conduct fieldwork; instead, the study relies on the collection of secondary data, which are then processed, analyzed, and systematically constructed into the research findings.

3. Results and Discussion

3.1. The Role of Judges in the Criminal Evidence System under the Indonesian Criminal Procedure Code

The role of judges in the evidentiary system can be understood through the theory of separation of powers as proposed by Montesquieu, which emphasizes that judicial power must be independent from executive and legislative powers. In the context of the Indonesian criminal justice system, this independence is manifested through the freedom of judges to examine and adjudicate cases based on the law and their judicial conviction. This principle is affirmed in Article 1 of Law Number 48 of 2009 on Judicial Power, which states that "Judicial power is an independent state authority to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia" [12].

The normative construction of the role of judges in the criminal evidentiary system in Indonesia is comprehensively regulated under the Criminal Procedure Code (KUHAP), particularly in Articles 183 to 189. Article 183 of the KUHAP stipulates that: "A judge shall not impose a criminal sentence upon a person unless, based on at least two valid pieces of evidence, the judge has obtained the conviction that a criminal offense has indeed occurred and that the defendant is guilty of committing it."

This provision demonstrates that Indonesia adopts a negative statutory evidentiary system (*negatief wettelijk bewijstheorie*). This system represents a combination of the positive statutory evidentiary system (*positief wettelijk bewijstheorie*) and the system of proof based on judicial conviction (*conviction intime*). Under the negative statutory evidentiary system, a judge may only impose a criminal sanction when two cumulative requirements are fulfilled: first, the existence of at least two legally recognized pieces of evidence; and second, the judge's conviction that the criminal act truly occurred and that the defendant committed it [13].

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[12] Stiklif John Ridel Loway, "Kedudukan Hakim Dalam Proses Pembuktian Peradilan Pidana Indonesia," 2021.

[13] Sri Dewi Rahayu and Yulia Monita, "Pertimbangan Hakim Dalam Putusan Perkara Tindak Pidana Narkotika" 1 (2020): 125–37.

Martiman Prodjohamidjojo, in his book System of Evidence and Types of Evidence, explains that the negative statutory evidentiary system creates a balance between legal certainty and justice. On the one hand, the law determines the types of admissible evidence and the minimum quantity required to impose a criminal sanction. On the other hand, judges retain the discretion to assess the probative value of such evidence and to form their own conviction.[14]

Article 184 paragraph (1) of the KUHAP recognizes the following types of admissible evidence: (a) witness testimony; (b) expert testimony; (c) documents; (d) indications; and (e) statements of the defendant. The limitation of admissible evidence reflects the principle of legality in criminal procedural law, whereby judges may only consider evidence expressly and exhaustively stipulated by law. This limitation also serves as a safeguard against arbitrariness in judicial evaluation of evidence [15]

The active role of judges in the criminal evidentiary system constitutes a manifestation of the principles of audi et alteram partem (hearing both sides) and the pursuit of material truth (materiële waarheid). Unlike civil procedural law, which adheres to formal truth, criminal procedural law obliges judges to actively seek and uncover the actual truth underlying a criminal event.[16]

Article 155 paragraph (1) of the KUHAP grants judges the authority to question defendants or witnesses regarding matters related to the case under examination. This provision indicates that judges do not adopt a passive stance during trials but instead actively explore testimony to uncover material truth. In judicial practice, judges frequently pose crucial questions that may not be raised by either the public prosecutor or defense counsel but are essential for revealing legally relevant facts.

In performing their functions within the evidentiary system, judges bear the responsibility of ensuring the realization of fair evidentiary principles. Several fundamental principles that must be upheld by judges during the evidentiary process include the following [17]:

a. The Presumption of Innocence

Article 8 paragraph (1) of Law Number 48 of 2009 on Judicial Power affirms that: "Every person who is suspected, arrested, detained, prosecuted, or brought before a court must be presumed innocent until a court decision declaring guilt has obtained permanent legal force." This principle constitutes a fundamental pillar of a democratic criminal justice system. Judges are responsible for implementing this principle by placing the burden of proof upon the public prosecutor. Judges must ensure that the prosecutor proves the defendant's guilt beyond

[14] Handar Subhandi Bakhtiar, "The Evolution of Scientific Evidence Theory in Criminal Law: Transformative Insight," *Media Iuris* 7, no. 2 (2024): 221–40, https://doi.org/10.20473/mi.v7i2.51095.
[15] Rumelda Silalahi Onan Purba, "Peran Ilmu Kedoteran Forensik Dalam Pembuktian Tindak Pidana Penganiayaan Onan Purba 1) Rumelda Silalahi 2)," *Jurnal Retenrum* 1, no. 02 (2023).
[16] Matius Evan Anggara and Prija Djatmika, "The Authority Of Judges In Governing The Exclusionary Rule In Indonesia ' S Criminal Justice System" 5, no. 5 (2025): 3942–47.
[17] Nimerodi Gulo, Cornelius Dikae, and Zolohefona Gulo, "Timbulnya Keyakinan Hakim Dalam Hukum Pembuktian Perkara Pidana Di Peradilan Indonesia" 6, no. 3 (2024): 8115–22.

reasonable doubt. If doubt remains, such doubt must be resolved in favor of the defendant (in dubio pro reo) [18]

b. The Principle of Minimum Evidence

As previously explained, Article 183 of the KUHAP requires the presence of at least two valid pieces of evidence to impose a criminal sanction. This principle guarantees that criminal punishment is not imposed arbitrarily or based on weak evidence. Judges must ensure that this minimum evidentiary threshold is met prior to rendering a conviction.[19]

c. The Principle of Direct Examination of Evidence[20]

This principle requires judges to directly examine the evidence presented during trial proceedings. Judges are prohibited from basing their decisions on information or evidence that has not been formally presented and examined in court. This principle is closely linked to audi et alteram partem, which ensures the defendant's right to be informed of and to challenge any evidence submitted against them.

d. d. The Principle of Open Court Proceedings

Article 153 paragraph (3) of the KUHAP stipulates that court hearings shall be open to the public, except as otherwise provided by law. Public access to court proceedings functions as a form of social control over the judicial process and ensures judicial accountability in the evaluation of evidence.

Despite the clear normative framework provided by the KUHAP regarding the role of judges in the evidentiary system, various practical challenges persist. First, issues arise concerning judicial objectivity and independence in evaluating evidence. In certain cases, there are concerns that judges may be influenced by external factors such as political pressure, public opinion, or interference from interested parties.

Second, challenges relate to judicial competence in assessing technically complex evidence, particularly in cases involving information technology, complex financial transactions, or other specialized fields. In such circumstances, judges rely heavily on expert testimony; however, judges must also possess sufficient foundational knowledge to critically evaluate such expert opinions.

Third, developments in new forms of evidence not explicitly regulated by the KUHAPsuch as electronic evidence, CCTV recordings, and social media communicationspose additional challenges. Although the Electronic Information and Transactions Law recognizes the admissibility of electronic evidence, debates persist in practice regarding the proper assessment and evidentiary weight of such materials.

In the era of contemporary legal development, the role of judges in the evidentiary system faces new challenges that require continuous adaptation and reform. Judges are expected to possess adequate competence, strong independence, and high integrity in carrying

[18] Hasanal, "Peranan Hakim Dalam Persidangan Perkara Pidana Sebagai Pengubah Dan Pembaharu Hukum Pidana" 16, no. 2021 (2021): 305–19.
[19] Tuti Gusmawati Simanjuntak, Lili Rahmayana Harahap, and Ahmad Mulia Sembiring, "The Role of Visum Et Repertum in Proving Criminal Matters in Indonesia," *International Journal of Law, Social Science, and Humanities* 1, no. 2 (2024): 83–90, https://doi.org/10.70193/ijlsh.v1i2.164.
[20] Eka Wulandari and Arrie Budhiartie, "Veteran Law Review Veteran Law Review," no. 1 (2023): 1–12.

out their duties. Only under these conditions can the criminal evidentiary system function optimally to realize justice, legal certainty, and the protection of human rights.

3.2. The Role of Judges in the Criminal Evidence System under the Criminal Procedure Code of Thailand

According to Suyamto, as quoted by Angger Sigit[21], supervision is an effort or act to find out and assess the actual reality of responsibility in the implementation of duties whether it is in accordance with what it should be. The purpose of supervision itself in a narrow sense is the suitability of whether the tasks carried out are appropriate with the predetermined benchmarks. The purpose of supervision is to ensure that the implementation of tasks is in accordance with the standards or benchmarks that have been determined. Supervision is also a tool to compare "*Das Sollen*" (what should happen according to plan) and "*Das Sein*" (reality or implementation that occurs), so that it can be known whether there are irregularities or inconsistencies that need to be corrected.

The evidentiary system under the Thai Criminal Procedure Code is based on the principle that the burden of proof rests entirely with the public prosecutor, while the accused is protected by the presumption of innocence. The Constitution of the Kingdom of Thailand and the Criminal Procedure Code contain provisions that guarantee fundamental rights and individual freedoms within criminal proceedings. The presumption of innocence until proven guilty is expressly guaranteed under Section 39 of the Constitution, which states that when a person is accused of committing an offense, they shall be presumed innocent from the outset. Accordingly, the responsibility to prove the guilt of the accused lies with the prosecution [22]

The public prosecutor bears the responsibility of proving the case against the accused. The prosecutor's duty is to present facts, evidence, and testimony sufficient to establish the defendant's guilt beyond reasonable doubt. Prosecutors must comply with procedural rules, including disclosure obligations to the defense, and must respect the rights of the accused. If the evidence fails to meet this high burden of proof, the prosecution risks acquittal. These provisions demonstrate that although judges play an active role, the Thai system continues to place the burden of proof on the prosecution rather than on the defendant to prove their innocence.

The standard of proof of beyond reasonable doubt in the Thai system carries the same meaning as in other modern criminal justice systems. This standard requires that judges reach a very high level of confidence in the defendant's guilt, such that any remaining doubt must be irrational or merely speculative. In evidentiary doctrine, beyond reasonable doubt does not demand absolute certainty, but rather moral certainty based on strong evidence and logical reasoning. Where reasonable doubt exists, such doubt must benefit the accused in accordance with the principle of in dubio pro reo [23].

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[21] S.H Angger Sigit Pramukti, S.H. Dan Meylani Chahyaningsih, "Pengawasan Hukum Terhadap Aparatur Negara" (Yogyakarta: Pustaka Yustisia, 2016), Https://Books.Google.Co.Id/Books?Id=Mrvieaaaqbaj&Pg=Pa1&Source=Gbs_Toc_R&Cad=1#V=Onepage&Q&F=False.

[22] Tantikul, "Cultural Differences in Control : How Thailand ' s Order-Centric Legal Mentality Shapes Its Constraining Lower-Court Practices."

[23] Yada Dejchai Tianprasit, "Safeguarding Vulnerable Victims Under the Criminal Procedure Code : Has Thailand Done Enough ?" 5, no. 1 (2025): 49–74.

One of the most distinctive characteristics of the Thai criminal justice system is the active role of judges in the examination and evaluation of evidence. Thailand applies a hybrid adversarial–inquisitorial system. The rules of evidence set out in the Criminal Procedure Code B.E. 2477 (1934) empower judges to actively participate in fact-finding during trial proceedings, similar to judges in inquisitorial systems. This is particularly evident in Sections 228, 229, and 235, which authorize judges to question witnesses and examine additional evidence to ensure that sufficient proof exists to render an accurate judgment.

Section 42 of the Thai Criminal Procedure Code further affirms judicial authority in evidentiary matters by providing: "In civil proceedings, if the court is not satisfied with the evidence adduced in the criminal proceedings, it may order further evidence to be taken." This provision illustrates that judges are not merely evaluators of evidence presented by the parties, but also possess the authority to order the collection of additional evidence when necessary to uncover material truth. This authority reflects the judge's function as a truth-finder within an inquisitorial framework [24].

In Thai criminal courts, judges serve as arbiters of both law and fact, as the system does not employ juries. Cases are generally heard by a panel of one or two judges at the trial level and by a larger panel at the appellate level. Judges are responsible for ensuring fair and lawful proceedings, weighing evidence presented by both parties, and ultimately issuing verdicts and, where applicable, imposing sentences. Because there is no jury, judges must record their reasoning in written judgments, and their factual and legal findings are subject to appellate review. Judges are also responsible for ruling on procedural motions such as bail applications, evidentiary objections, and procedural petitions throughout the course of the proceedings.

In practice, Thai judges possess the authority to directly question witnesses, defendants, and expert witnesses. This authority is not discretionary but constitutes a judicial duty aimed at discovering material truth. Unlike purely adversarial systems, where judges primarily evaluate arguments and evidence presented by the parties, the Thai system allows judges to actively clarify ambiguous or contradictory facts. This demonstrates that judges function not merely as passive "umpires," but as active "inquisitors" in the pursuit of truth.

The Thai Criminal Procedure Code grants judges broad discretion in assessing the admissibility and probative value of evidence presented at trial. Judges may determine whether evidence is admissible and whether it possesses sufficient evidentiary weight to support conclusions regarding the defendant's guilt or innocence. Such assessments must adhere to principles of fairness and applicable legal standards [25].

Evidence obtained through unlawful means such as torture, coercion, illegal searches, or unlawful surveillance may be excluded from proceedings. Confessions must be voluntary, free from coercion, made with full awareness of the accused's rights, and properly recorded and documented. Section 226 of the Thai Criminal Procedure Code affirms that evidence must

[24] Pemika Sanitphot et al., "Thai Police Officers and Prosecution of Children In" 16, no. 2 (2021): 316–31, https://doi.org/10.5281/zenodo.4756078.
[25] Suwanna Khundiloknattawasa, Chiengtawan Yoddamnoen, and Aekkalak Nakphoung, "Regulation and Guideline for Juvenile Justice in Thailand : A Case Study of Drug-Related Offenses" 17, no. 2 (2022): 252–72, https://doi.org/10.5281/zenodo.4756123.

be lawfully obtained, granting judges authority to exclude evidence acquired through violations of human rights or unlawful procedures.

Although Thailand does not apply the exclusionary rule as strictly as Anglo American legal systems, judges retain the power to exclude illegally obtained evidence, particularly in cases involving torture or coercion. Confessions made by the accused to police after arrest are generally treated as hearsay and accorded little or no weight at trial. In cases lacking eyewitness testimony, written records of arrest or confessions may also be excluded as hearsay. Nevertheless, hearsay evidence may be admitted under certain conditions demonstrating reliability, such as the nature, circumstances, or source of the evidence, or when it is impossible for the declarant to appear in court [26].

Section 226/3 of the Thai Criminal Procedure Code explicitly regulates the hearsay rule by providing that testimony concerning statements made outside court and offered to prove the truth of the matter asserted is inadmissible. This principle aligns with the accused's right to cross-examine evidence presented against them. However, exceptions exist, particularly where reliability can be ensured or where the original declarant cannot be brought before the court

3.3. Differences in the Role of Judges in the Criminal Evidence Systems of Indonesia and Thailand

Differences in the role of judges within the criminal evidentiary systems of Indonesia and Thailand stem from fundamental divergences in their judicial system constructions. Indonesia applies a mixed criminal justice system dominated by Dutch civil law traditions, as reflected in the Criminal Procedure Code (KUHAP) enacted through Law Number 8 of 1981. In contrast, Thailand's criminal justice system combines adversarial and inquisitorial elements, with the Criminal Procedure Code B.E. 2477 (1934) granting judges active authority in fact-finding during trial proceedings. [27]

These structural differences significantly affect the judicial role in evidentiary processes. In Indonesia, although judges are tasked with uncovering material truth, trial proceedings tend to follow an adversarial model in which prosecutors and defense counsel play central roles in presenting and contesting evidence. Indonesian judges primarily evaluate evidence submitted by the parties, while retaining limited authority to pose clarifying questions. Conversely, in Thailand, judges play a more dominant and proactive role by directly examining witnesses, questioning parties, and ordering the collection of additional evidence when necessary.

Andi Hamzah, in Indonesian Criminal Procedure Law, explains that Indonesia's evidentiary system is influenced by Dutch law through the negatief wettelijk bewijstheorie (negative statutory evidentiary system), under which judges must base decisions on legally recognized evidence and their judicial conviction. This system differs from pure inquisitorial models that grant judges broader discretion in evaluating evidence. Thailand's system, which leans more

[26] pathomphong, "The Problems On The Protection Of Human Rights In The Criminal Investigation Process Of The Police Officers : Case Studies In Thailand" 7, no. 2023 (2023): 12–21.

[27] Thatchapong and Tidarat Cholprasertsuk, "Prosecution in Bad Faith under the Criminal Procedure Code, Section 161/1, Paragraph Two, and the Limitation of the Right to Prosecute," no. December (2023): 295–308.

strongly toward inquisitorial principles, affords judges wider discretion in determining the relevance and probative value of evidence.

Normatively, significant differences exist between the Indonesian KUHAP and the Thai Criminal Procedure Code. Article 183 of the KUHAP stipulates that a judge may not impose a criminal sentence unless supported by at least two valid pieces of evidence and judicial conviction. This reflects Indonesia's rigid requirement of a minimum evidentiary threshold.

By contrast, Thai courts require proof beyond reasonable doubt without imposing a formal minimum number of evidentiary items. This distinction reflects differing evidentiary philosophies: Indonesia emphasizes legal certainty through formal evidentiary requirements, whereas Thailand prioritizes the substantive conviction of judges meeting the beyond reasonable doubt standard. Regarding judicial questioning authority, Article 155 paragraph (1) of the KUHAP authorizes Indonesian judges to question defendants concerning charges and related matters, though such questioning is generally clarificatory in nature. In Thailand, Sections 228, 229, and 235 of the Criminal Procedure Code empower judges to actively examine witnesses and seek additional evidence, reflecting a more expansive judicial role.

Furthermore, Section 42 of the Thai Criminal Procedure Code explicitly allows courts to order additional evidence where existing evidence is deemed insufficient a provision absent from the Indonesian KUHAP. While Indonesian judges may summon additional witnesses under Articles 159 and 160 of the KUHAP, such authority is more procedurally constrained. This highlights the greater initiative afforded to Thai judges in determining evidentiary sufficiency.

Indonesia's adherence to the negatief wettelijk bewijstheorie requires both legally recognized evidence and judicial conviction. Article 184 paragraph (1) of the KUHAP limits admissible evidence to five categories, reflecting the principle of legality but potentially creating rigidity when addressing modern forms of evidence such as digital or electronic data. Thailand, by contrast, does not impose rigid limitations on evidentiary types. Judges are granted greater flexibility in evaluating evidence so long as it is legally obtained and relevant, with admissibility and probative value assessed at judicial discretion. The beyond reasonable doubt standard allows, at least theoretically, a single highly credible piece of evidence to suffice, although corroboration is generally sought in practice

4. Conclusions

The role of judges in the system of criminal evidence under the Indonesian Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana/KUHAP) multidimensional and strategic in the realization of justice. Based on Article 183 of the KUHAP, Indonesia adopts the negative statutory system of proof (negatief wettelijk bewijstheorie), which requires the fulfillment of two cumulative conditions: the existence of at least two lawful pieces of evidence and the judge's conviction that a criminal act has indeed occurred and that the defendant is guilty of committing it.

The role of judges in the criminal evidentiary system under the Criminal Procedure Code of Thailand B.E. 2477 (1934) and its subsequent amendments reflects the characteristics of an inquisitorial system that grants very broad and active authority to judges in the search for material truth. In contrast to the Indonesian system, which is more formal and procedural, the Thai system positions judges as the primary truth-finders with expansive powers as stipulated

in Sections 228, 229, and 235 of the Criminal Procedure Code, including the authority to question witnesses, examine additional evidence, and even order the collection of new evidence when the existing evidence is deemed insufficient to render an accurate decision. The Thai judicial system, which does not employ a jury, places judges as the sole determiners of both facts and law, applying the standard of proof beyond reasonable doubt without requiring a minimum number of specific types of evidence.

A comparative analysis of the role of judges in the criminal evidentiary systems of Indonesia and Thailand reveals fundamental differences rooted in the characteristics of their respective judicial systems. Indonesia adopts a mixed system with the dominance of civil law elements and procedures that tend toward an adversarial model, whereas Thailand applies a mixed inquisitorial–adversarial system with a dominant active role of judges in fact-finding. The most significant difference lies in the evidentiary system: Indonesia applies the negatief wettelijk bewijstheorie, which requires at least two lawful pieces of evidence accompanied by the judge's conviction (Article 183 KUHAP), while Thailand applies the beyond reasonable doubt standard without a formal requirement regarding the minimum number of pieces of evidence. In terms of judicial authority, the Indonesian system grants judges a clarificatory role through Article 155 of the KUHAP, whereas Sections 228, 229, and 235 of the Thai Criminal Procedure Code confer expansive authority upon judges to question witnesses and even order the collection of additional evidence.

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