

**ANALISIS YURIDIS TERHADAP SISTEM PEMBUKTIAN
DALAM HUKUM ACARA PIDANA STUDI ALAT BUKTI
DI INDONESIA DAN THAILAND**

JURNAL

**Diajukan Untuk Memenuhi Syarat
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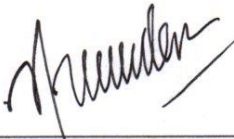
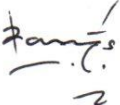

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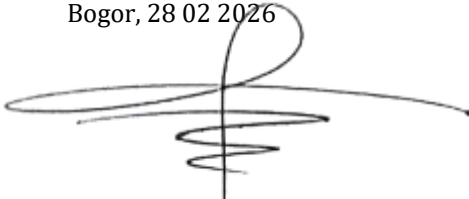
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A LEGAL ANALYSIS OF THE EVIDENCE SYSTEM IN CRIMINAL PROCEDURE: A STUDY OF EVIDENCE IN INDONESIA AND THAILAND

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Abstract. This study juridically analyzes the system of evidence in Indonesian and Thai criminal procedure law, focusing on the regulation and application of evidentiary instruments. It compares the formalistic and enumerative approach of Indonesia's Criminal Procedure Code (KUHAP), particularly Articles 183–184, which require a minimum of two lawful pieces of evidence—namely witness testimony, expert testimony, documents, indications, and defendant statements—against Thailand's more inclusive model under Sections 226–231 of the Criminal Procedure Code (CPC), which classifies evidence into material, documentary, and personal evidence and grants broader judicial discretion. Both systems share similarities, including the exclusionary rule against illegally obtained evidence and the recognition of digital evidence in response to contemporary legal developments, particularly after Indonesia's reform through Law No. 20 of 2025. However, structural differences significantly affect the effectiveness of justice: Indonesia emphasizes legal certainty to prevent judicial subjectivity, while Thailand promotes procedural flexibility and allows private prosecution to enhance efficiency and victim participation. Employing a normative-comparative method, this study concludes that ASEAN legal harmonization is necessary to develop a balanced hybrid evidentiary model capable of ensuring substantive truth while safeguarding the human rights of suspects and defendants in the era of transnational crime.

Keywords: evidentiary system, criminal procedure law, evidence.

I. INTRODUCTION

Criminal procedure law is a branch of law that possesses a specific characteristic, particularly concerning sanctions. Whenever individuals encounter the law, they are confronted with a system that regulates conduct within society. It contains provisions regarding what must be done and what must not be done, as well as the consequences thereof. The former is referred to as norms, while the latter constitutes sanctions.[1]

Indonesian criminal procedure law originates from the Dutch colonial regulation, *Reglement op de Strafvordering* (RV), which was applied during the Dutch East Indies period. At that time, evidentiary practices were more flexible and influenced by the doctrine of *vrije bewijsleer*, granting judges broad discretion to assess evidence without strict limitations.

This system, however, was vulnerable to subjectivity and potential judicial abuse. The evolution of criminal procedure law from the colonial period to modern reform underscores that evidentiary processes are not mere formalities but the fundamental foundation of criminal justice integrity, aimed at preventing judicial errors and protecting defendants' rights.[2]

Evidence constitutes an effort to prove a matter by presenting relevant elements capable of convincing others of a particular fact. In criminal proceedings, evidentiary assessment plays a decisive role in determining the guilt or innocence of

the accused. If the legally prescribed evidentiary threshold is not met, the accused must be acquitted. Conversely, if the required proof is satisfied, the defendant shall be declared guilty and sentenced accordingly.

The evidentiary process represents a crucial stage in trial proceedings, as both the public prosecutor and defense counsel present evidence that significantly influences the judge's decision. Evidence may be defined as lawful means explicitly limited by statute to establish judicial conviction that a criminal act has occurred and that the defendant is responsible. Article 184 paragraph (1) of the Indonesian Criminal Procedure Code (KUHAP) regulates such lawful evidence.

Indonesia and Thailand exhibit both similarities and differences in their evidentiary systems. In Indonesia, the evidentiary system is strictly governed by Law Number 8 of 1981 on Criminal Procedure (KUHAP), particularly Article 183, which requires at least two lawful pieces of evidence accompanied by judicial conviction. This reflects a negative evidentiary system—a combination of statutory proof and judicial belief.

Thailand, although also rooted in the civil law tradition, adopts a different approach under its Criminal Procedure Code of 1934 (as amended). While it recognizes formal evidentiary instruments such as witness testimony, documents, and confessions, it grants broader flexibility and allows victims to

participate in prosecution through private or joint prosecution mechanisms. In contrast, Indonesia vests prosecutorial authority exclusively in the public prosecutor under Article 137 KUHAP. Thailand's model thus enhances victim participation in criminal justice.

A significant issue in Indonesia arises from the limitation of evidentiary types under Article 184 KUHAP, particularly in addressing cybercrime and digital evidence. Although electronic evidence has been recognized under Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law) and Supreme Court regulations, uncertainties regarding its admissibility persist. Thailand has integrated modern evidence more flexibly into its procedural framework.[3]

This study contributes to the development of comparative criminal procedure law in both jurisdictions and provides insight for legal practitioners, academics, and policymakers. In a broader sense, evidentiary regulation is not merely procedural but is intrinsically linked to the realization of the rule of law and justice. As legal systems evolve, comparative analysis of evidentiary frameworks becomes essential in creating a responsive and equitable criminal justice system.

II. RESEARCH METHODS

A scientific work cannot be classified as research unless it is structured upon a clear and systematic methodology. Research methodology refers to the scientific approach employed in identifying and analyzing legal issues. This study adopts a normative legal research method, focusing on legal principles as a systematic normative framework. The research is descriptive in nature, aiming to illustrate relevant legal facts and norms. Legal materials used include primary legal sources (statutes and codes), secondary materials (legal doctrines and scholarly works), and tertiary materials (legal dictionaries and references). The research employs a statutory and comparative approach by examining relevant legislation and regulatory frameworks governing evidentiary systems in Indonesia and Thailand.[4]

III. RESULT AND DISCUSSION

Similarities and Differences Regarding the Recognition and Use of Evidence in Criminal Procedure Law in Indonesia and Thailand

Criminal procedure law in Indonesia and Thailand, as two neighboring countries within the ASEAN region whose legal systems are rooted in the civil law tradition but influenced by elements of common law, demonstrates profound similarities and differences in the recognition and use of evidence. Fundamentally, evidence constitutes the primary foundation for forming judicial conviction in determining the occurrence of a criminal offense and the material as well as formal liability of the perpetrator.[5]

The fundamental similarity between the two systems lies in their principled commitment to conventional types of evidence that are universally recognized. These include witness testimony, which must be credible and subject to cross-examination during trial; expert testimony providing technical or scientific explanations regarding forensic or medical aspects

of a case; authentic and relevant documentary evidence; physical evidence directly related to the criminal event; and the defendant's statement, which must be given voluntarily without physical or psychological coercion. Both jurisdictions consistently reject a confession as an absolute basis for conviction and instead treat it merely as supporting evidence that must be corroborated by other lawful evidence in order to prevent abuse or fabrication by law enforcement authorities.

The principle of legality in obtaining evidence also constitutes a crucial similarity. Both the Indonesian Criminal Procedure Code (KUHAP) and the Thai Criminal Procedure Code (CPC) require that all evidence be acquired through lawful procedures, free from coercion, deception, or threats. This ensures the integrity of the judicial process and protects the human rights of the accused, as reflected in regional instruments such as the ASEAN Human Rights Declaration. Open court proceedings further enable direct confrontation between parties to test the admissibility and probative value of evidence before an independent judge.[6]

Contemporary developments have strengthened these similarities through adaptation to digital and electronic evidence. Indonesia, through the latest amendment to KUHAP (Law No. 20 of 2025), explicitly recognizes electronic evidence such as CCTV recordings, digital forensic data, and cyber traces as valid forms of evidence. Similarly, Thailand has long integrated such elements into judicial practice under Section 226 of the CPC. Consequently, both systems are now capable of addressing the complexities of cybercrime and transnational crime through more modern and effective approaches, reflecting efforts toward regional legal harmonization within ASEAN.

However, significant structural differences arise in the specificity and flexibility of evidentiary regulation. Indonesia adopts a closed enumerative approach under Article 184 paragraph (1) of KUHAP, which limits lawful evidence to five categories: witness testimony, expert testimony, documentary evidence, indications, and the defendant's statement. Article 183 further requires at least two lawful pieces of evidence to establish judicial conviction. This formalistic model seeks to minimize judicial subjectivity and ensure objective evidentiary standards. Although recent reforms have revised this framework by clarifying ambiguous categories, replacing "indications" with more concrete forms of evidence, introducing judicial observation as independent evidence, and expanding digital evidence recognition subject to strict chain-of-custody requirements, the system remains fundamentally structured.[7]

In contrast, Thailand's CPC, particularly Section 226, adopts a more inclusive and open classification of evidence. Evidence is broadly categorized into material evidence, documentary evidence, and personal evidence, without a numerous *clausus* limitation or minimum evidentiary requirement. Judges are granted broad discretion to assess probative value based on logical relevance, empirical reliability, and overall contribution to the search for material truth. Influenced by common law principles, certain forms of hearsay may be admissible under recognized exceptions, and modern forensic evidence such as DNA analysis or audiovisual recordings may be accepted without mandatory corroboration if inherently reliable.[8]

Differences in evidentiary use are also apparent. Indonesia emphasizes formal requirements such as oath authentication for official documents and judicial authorization for essential seizures, along with strict exclusion of unconstitutionally obtained evidence. Thailand, while excluding illegally obtained evidence such as torture-induced confessions or warrantless searches, allows limited judicial discretion where such evidence is deemed crucial to substantive justice. Moreover, Thailand uniquely recognizes private prosecution and joint prosecution, enabling victims to present evidence independently, thereby enriching the dynamics of proof compared to Indonesia's prosecutorial monopoly.[9]

Philosophically, Indonesia's rigid formalism prioritizes legal certainty and safeguards against arbitrariness but may hinder efficiency in cases involving strong single evidence such as extensive CCTV recordings. Thailand's flexibility enhances efficiency and responsiveness, particularly in organized crime or corruption cases, yet carries the potential risk of judicial subjectivity. Overall, while both systems reinforce a human rights-based foundation of criminal justice, their structural differences reflect distinct historical and socio-legal evolutions and present challenges for ASEAN legal harmonization in addressing transnational crimes.

Effectiveness of the Application of Evidence in Achieving Justice and Protecting the Rights of Suspects/Defendants.

Evidence plays a central role in achieving substantive justice while simultaneously ensuring the protection of suspects' and defendants' rights. The effectiveness of an evidentiary system is measured not only by the attainment of material truth but also by its ability to balance law enforcement with due process guarantees.[10]

In Indonesia, the effectiveness of both the former and amended KUHAP (Law No. 20 of 2025) is reflected in the strengthening of the exclusionary rule of evidence. Judges may render decisions only on the basis of lawful evidence, thereby explicitly excluding illegal evidence such as warrantless searches or coerced confessions. Judges function as gatekeepers to assess evidentiary legality from the investigative stage onward, significantly enhancing protection against torture or psychological coercion as mandated by the 1945 Constitution and the Human Rights Law. Nevertheless, practical challenges remain, including earlier regulatory gaps regarding digital evidence and reliance on judicial discretion, which sometimes hinder restorative justice outcomes.[5]

The recent reform enhances effectiveness by introducing judicial observation as independent evidence and clarifying functional distinctions between investigators and prosecutors, promoting a more integrated and human rights-oriented criminal justice process. However, concerns persist regarding potential subjectivity in judicial observation.[11]

In Thailand, the CPC guarantees defendants' rights, including access to legal counsel and notification of family upon arrest. Its inclusive evidentiary framework under Sections 226–231 allows holistic judicial assessment without strict minimum requirements, facilitating efficient handling of complex cases such as organized crime or cybercrime. The exclusion of illegally obtained evidence further protects defendants' rights, reinforced by constitutional jurisprudence.

The mechanisms of private and joint prosecution empower victims to actively participate in presenting evidence,

balancing defendants' rights with victim protection. While this enhances restorative justice, historical incidents have exposed weaknesses in accountability when human rights violations by authorities are inadequately addressed. Thus, Thailand's system excels in technological adaptation and victim participation but may be vulnerable to discretionary misuse without minimum evidentiary thresholds.

Comparatively, Indonesia's reformed system shifts from a strictly negative evidentiary model toward a more integrative approach emphasizing legality of acquisition, while Thailand emphasizes adversarial procedural justice and judicial discretion. Optimal justice and comprehensive rights protection require regional synergy within ASEAN, including shared best practices on digital evidence standards and human rights training. Ultimately, evidentiary effectiveness depends not merely on the substance of evidence but on a process that upholds human dignity and achieves substantive truth without sacrificing fairness.

The Evidentiary System in Criminal Procedure Law in Indonesia and Thailand from a Juridical Perspective

The evidentiary systems of Indonesia and Thailand are juridically regulated through comprehensive statutory frameworks. Indonesia relies on the Criminal Procedure Code (KUHP), most recently amended by Law No. 20 of 2025, which incorporates an explicit exclusionary rule under Article 235. Thailand relies on its Criminal Procedure Code of 1934, which regulates defendants' rights, law enforcement obligations, and procedural stages from investigation to trial.[12]

In Indonesia, Article 183 of KUHP stipulates that judges may not impose a sentence unless convinced by at least two lawful pieces of evidence that a crime has occurred and that the defendant is guilty. Article 184 enumerates lawful evidence categories, including witness testimony, expert testimony, documentary evidence, indications, and the defendant's statement. The amended KUHP explicitly codifies the exclusionary rule, rendering unlawfully obtained evidence inadmissible and empowering judges to declare such evidence null and void. Additional provisions regulate physical evidence examination and recognize electronic evidence subject to strict chain-of-custody requirements, aligning with constitutional guarantees of due process and equality before the law.[13]

Thailand's CPC adopts a more discretionary structure. Section 226 broadly defines evidence as material, documentary, or personal evidence, without a numerus clausus limitation or mandatory minimum requirement. Judges possess broad authority to admit or reject evidence based on relevance, legality, and reliability. Section 134 regulates voluntary confessions, and Sections 227–231 provide for adversarial cross-examination. The system also permits private or joint prosecution, allowing victims to participate directly alongside public prosecutors. Constitutional provisions further guarantee defendants' rights to lawful evidence and fair trial standards.[14]

Juridically, Indonesia adheres to a legal-formal evidentiary model emphasizing minimum proof and statutory limitation to prevent arbitrariness, while Thailand embraces a free evidentiary system prioritizing material truth through judicial discretion. Both share commitments to excluding illegal evidence, ensuring voluntary confessions, and adapting

to digital developments. Their structural differences reflect distinct socio-political contexts and offer opportunities for ASEAN harmonization through mutual legal exchange.[15]

In essence, the juridical regulation of evidentiary systems in both countries affirms that proof is not merely a technical procedural matter but a constitutional instrument for sustainable and human rights-oriented criminal justice.

IV. CONCLUSIONS

The juridical analysis of the evidentiary systems in Indonesian and Thai criminal procedure law reveals a complex landscape reflecting both convergence and divergence in criminal justice principles. Indonesia, through Articles 183 and 184 KUHP and its reform under Law No. 20 of 2025, adheres to a formalistic and enumerative model requiring at least two lawful pieces of evidence to establish judicial conviction. Conversely, Thailand's Criminal Procedure Code, particularly Sections 226–231, adopts an inclusive evidentiary model classifying evidence into material, documentary, and personal categories without rigid numerical limitations, thereby granting broader judicial discretion. Both systems share a firm commitment to the exclusionary rule, rejecting illegally obtained evidence such as coerced confessions or unlawful searches, thus safeguarding due process and human rights standards consistent with international norms. Both jurisdictions have also adapted to modern developments by recognizing digital and forensic evidence. However, their structural differences significantly affect the realization of justice. Indonesia's formalistic approach ensures legal certainty and prevents arbitrariness but may slow procedural efficiency. Thailand's flexible and inclusive system promotes efficiency and victim participation but carries risks of inconsistent judicial interpretation. Ultimately, the study affirms that evidentiary systems are not merely technical mechanisms but constitutional instruments reflecting the balance between legal certainty, efficiency, and human rights protection. ASEAN-level harmonization through a hybrid evidentiary model combining Indonesia's legal certainty with Thailand's procedural flexibility may provide an optimal framework for addressing transnational crime while upholding substantive justice and human dignity.

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