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The Formation of Judicial Conviction in Indonesia: Convergence of Legal Norms and Empirical Reasoning in Criminal Proof

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ABSTRACT

The Indonesian criminal procedure system adheres to the *negatief wettelijk bewijstheorie*, requiring judges to base convictions on at least two lawful pieces of evidence supported by judicial conviction. While formal legal norms set minimum evidentiary requirements, empirical judicial practices reveal that judges also consider non-formal factors in shaping their convictions. Current legal doctrines lack clarity on how such non-legal factors influence the formation of judicial conviction, and how this aligns with the principle of legality. This study investigates the convergence between normative evidentiary standards and empirical judicial reasoning in the formation of judicial conviction, including comparative insights with the "beyond a reasonable doubt" standard in common law. Empirical research involving 50 Indonesian judges shows that sentence is often shaped not only by formal evidence but also by defendant behavior, witness demeanor, background narratives, and academic literature. Although such considerations support material truth-seeking, they introduce risks of subjectivity without clear safeguards. This study integrates doctrinal, empirical, and comparative analyses to reveal the multi-layered process of judicial conviction formation in Indonesia. It proposes a conceptual framework that bridges legal rules with empirical practices. The findings call for the development of judicial guidelines, enhanced forensic psychology training for judges, and partial reform of the Indonesian Code of Criminal Procedure (KUHAP) to ensure proportional certainty without undermining legal formalism.

KEYWORDS

Judicial
Conviction;
Criminal
Evidence;
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Beyond a
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INTRODUCTION

In criminal justice systems, the process of evidence evaluation plays a central role in determining the legality and legitimacy of a defendant's conviction. Indonesia adheres to the *negatief wettelijk bewijstheorie* (negative legal evidentiary theory), which requires at least two valid items of evidence and the judge's conviction to impose a criminal sentence (Article 183 of the KUHP).¹ This doctrine attempts to reconcile objective and subjective dimensions of adjudication: on one hand, it imposes a legal threshold through the quantitative requirement of formal evidence, while on the other, it entrusts the final assessment to the judge's personal conviction. Although this model appears rigid from a normative standpoint, in practice, it leaves considerable room for judicial interpretation. Empirical observations suggest that judges' convictions are often shaped not only by the coherence among formal pieces of evidence but also by non-formal factors such as intuition, professional experience, personal values, and perceptions of the defendant's demeanor.² Thus, the formation of judicial conviction constitutes a complex process that cannot be fully captured within the confines of formalist legal frameworks. This phenomenon invites a deeper inquiry into the interplay between rationality and subjectivity in evidentiary reasoning.

Previous studies have highlighted the pivotal role of judicial conviction in criminal adjudication. For example, Jajang Cardidi asserts that judicial conviction constitutes the essential core of criminal verdicts, demanding full presence, awareness, knowledge, and integrity in legal interpretation.³ Nimerodi Gulo further emphasizes that such conviction must be grounded in valid evidence and prevailing legal norms, supported by the judge's integrity and professionalism.⁴ Auria Patria Dilaga underscores that in corruption cases, expert testimony functions merely as a supplementary and recommendatory piece of evidence—persuasive only insofar as it aligns with the judge's logic and epistemic framework.⁵ While these contributions are valuable, they predominantly rely on normative, philosophical-hermeneutical, or comparative approaches. In contrast, this study adopts a more integrative methodology. In addition to engaging with theoretical and doctrinal perspectives, it incorporates empirical data gathered through a questionnaire distributed to 50 judges across various jurisdictions. This approach offers a more grounded and contemporary understanding of how judicial convictions are actually formed within the courtroom. Accordingly, the study not only advances existing discourse but also provides new empirical insight and practical recommendations for reforming Indonesia's criminal adjudication process.

An analysis of contemporary judicial practices in Indonesia reveals a persistent gap between the rigidity of the legal framework and the practical need for

¹ H Sasangka, *Hukum Pembuktian dalam Acara Pidana* (Bandung: Mandar Maju, 2003).

² I Tajudin, R H Ramadhani & A A Zahra, "Pembentukan Keyakinan Hakim Dalam Perkara Pidana di Lingkungan Peradilan Jawa Barat" (2020) 13:2 *Arena Huk* 348–368.

³ J Cardidi, "Kajian Hermeneutis Terhadap Makna Keyakinan Hakim dan Peranannya untuk Putusan (Vonis) Pidana" (2014) 1:2 *E-Journal Grad Unpar* 14–30.

⁴ N Gulo & C D Z Gulo, "Timbulnya Keyakinan Hakim dalam Hukum Pembuktian Perkara Pidana di Peradilan Indonesia" (2024) 6:3 *UNES Law Rev* 8115–8122.

⁵ A P Dilaga, "Pengaruh Keterangan Ahli terhadap Keyakinan Hakim dalam Putusan Tindak Pidana Korupsi" (2013) 8:1 *Pandecta Res Law J* 106–116.



a more context-sensitive approach to evidentiary assessment. Qualitative findings derived from questionnaire responses collected from 50 judges indicate that considerations such as body language, gestures, psychosocial background of witnesses or defendants, and even academic literature often influence the formation of a conviction. These insights raise critical questions about the permissible extent of subjectivity in judicial reasoning and how legal systems might respond to such dynamics without compromising the principles of legality and legal certainty. Moreover, the absence of a clear interpretive benchmark for what constitutes a “convincing” belief increases the risk of inconsistency in judicial decisions, especially when contrasted with the more developed beyond a reasonable doubt standard prevalent in common law jurisdictions.

Accordingly, this article aims to analyze the formation of judicial conviction within Indonesia’s evidentiary system by emphasizing the need for integration between legal norms and empirical realities. It also engages in a comparative analysis between Indonesia’s standard of “proven legally and convincingly” and the beyond a reasonable doubt threshold, to identify potential avenues for reform in Indonesia’s evidentiary regime. By combining normative, empirical, and comparative legal approaches, this article seeks to contribute both theoretically and practically to the development of more nuanced and context-aware judicial guidelines for criminal adjudication.

METHOD

This study adopts a qualitative legal research approach that integrates doctrinal analysis with empirical examination. The doctrinal method is employed to examine the legal norms governing evidentiary standards, particularly Article 183 of KUHP and Article 6 of the Law on Judicial Power. Following Terry Hutchinson’s perspective, doctrinal research aims to interpret and systematize legal rules within their normative framework.⁶ To complement this, an empirical dimension is applied to explore how judges form their convictions in practice, in line with the socio-legal approach that situates legal interpretation within its institutional and behavioral context.⁷

Empirical data were collected through a qualitative field survey involving 50 Indonesian judges, utilizing a semi-structured questionnaire. The semi-structured format was chosen to capture patterns of responses through predetermined choices while simultaneously allowing space for respondents to articulate personal views not covered by the available options. The responses were analyzed using qualitative descriptive methods to identify recurring patterns in the formation of judicial conviction and the practical meaning of “proven legally and convincingly” (*terbukti secara sah dan meyakinkan*) in contemporary criminal adjudication. Additionally, this study employs a comparative legal analysis to examine differences and similarities between Indonesia’s evidentiary model and those applied in other legal

⁶ T Hutchinson, “The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law” (2015) 8:3 *Erasmus Law Rev* 130–138.

⁷ V I W Nalle, “The Relevance of Socio-Legal Studies in Legal Science” (2015) 27:1 *Mimb Huk* 179–182.



systems.⁸ The comparison includes the Netherlands as a representative of civil law traditions, and several common law jurisdictions—namely the United States, the United Kingdom, Canada, Australia, and New Zealand—with particular attention to the standard of beyond a reasonable doubt. This integrated methodological design enables a comprehensive understanding of evidentiary reasoning across both normative doctrine and lived judicial practice.

RESULT & DISCUSSION

I. The Convergence of Legal Norms and Empirical Realities in the Formation of Judicial Conviction

The evidentiary system in Indonesian criminal law adheres to the negative statutory evidence system (*negatief wettelijk bewijstheorie*), in which a judge may impose a criminal sentence only if there is evidence as prescribed by statute, and such evidence is supported by the judge's personal conviction.⁹ Judicial conviction in criminal law is a requisite element for the issuance of a valid verdict. A judge cannot decide a case solely based on objective facts but must instead rely on a conviction formed through a careful and reflective evaluation of facts revealed during trial proceedings.¹⁰ The requirement of a judge's conviction in rendering a criminal verdict implies a demand for the judge to be fully and personally engaged in the adjudicative process. Hence, in adjudicating a criminal case, a judge is expected to engage holistically—through knowledge, understanding, reasoning, awareness, and the exercise of judicial independence—in forming and expressing conviction in the final judgment.

Such conviction does not arise in a vacuum; it must be supported by elements that stir the judge's conscience and intuition, leading to the conviction that a criminal act indeed occurred and that the defendant is the perpetrator. Article 183 of the Indonesian Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana or KUHAP) provides:

"A judge shall not impose a criminal sentence upon a person unless, based on at least two items of lawful evidence, the judge is convinced that a criminal act has indeed occurred and that the defendant is guilty of committing it."

Likewise, Article 6 paragraph (2) of Law No. 48 of 2009 on Judicial Power states:

"No person shall be subjected to criminal punishment unless the court, based on legally admissible evidence, has established a conviction that the person, deemed legally responsible, is guilty of the act charged."

Eddy O.S. Hiariej, in his book *Theory and Law of Evidence*, asserts:

"...the negative statutory theory of evidence (*negatief wettelijk bewijstheorie*) is generally adhered to in criminal justice systems, including in Indonesia. The

⁸ E J Eberle, "The Method and Role of Comparative Law" (2009) 8:3 *Washington Univ Glob Stud Law Rev* 451–511.

⁹ H A Putri, E Sopyono & Pujiyono, "Penggunaan Sistem Pembalikan Beban Pembuktian Dalam Praktik Pemberantasan Tindak Pidana Korupsi" (2019) 8:4 *Diponegoro Law J* 2539–2545.

¹⁰ B Nugroho, "Peranan Alat Bukti dalam Perkara Pidana dalam Putusan Hakim Menurut KUHAP" (2017) 32:1 *Yuridika* 17–36.



basis of proof relies on judicial conviction that arises from the items of evidence determined by law in a negative sense. This evidentiary principle is explicitly stated in Article 184 of KUHAP..."¹¹

Based on Article 183 of KUHAP and Article 6 paragraph (2) of Law No. 48 of 2009, and in alignment with Hiariej's view, judicial conviction must derive from lawful evidence as exhaustively enumerated in statutory law. However, a critical question emerges: Is the judge's conviction truly limited to such lawful evidence alone?

Article 161 paragraphs (1) and (2) of KUHAP stipulate:

- (1) In the event a witness or expert refuses, without a legitimate reason, to take an oath or affirmation as referred to in Article 160 paragraphs (3) and (4), their examination shall nonetheless proceed, and they may, upon the order of the presiding judge, be detained in a state detention facility for no more than fourteen days.
- (2) If, after the lapse of the detention period, the witness or expert still refuses to take the oath or affirmation, their prior testimony shall serve as information that may strengthen the judge's conviction.

The elucidation of Article 161 paragraph (2) KUHAP clarifies that the statement of a witness or expert who has not taken an oath cannot be regarded as lawful evidence. Nevertheless, such statements may strengthen the judge's conviction. Hence, in addition to the statutory forms of evidence, there exist other elements—such as unsworn testimony—that may strengthen judicial conviction. According to the study by Triantono and Marizal, judicial conviction is shaped by two parameters: formal and material. The formal parameter pertains to legally recognized evidence, as governed by statutory law and jurisprudence. The material parameter encompasses broader considerations—including juridical, sociological, and philosophical aspects—that go beyond mere procedural facts.¹²

To examine this further, the author distributed a questionnaire to 50 judges. The findings indicate that 46 judges (92% of respondents) acknowledged that conviction is not solely influenced by the statutory forms of evidence, but also by other factors emerging during trial. The following are examples of such trial-related circumstances that may influence judicial conviction:

1. Physical evidence

Thirty-nine judges (78%) stated that, aside from admissible evidence, physical evidence can influence the formation of a conviction.

2. Demeanor, gestures, and facial expressions of witnesses or defendants

Thirty-four judges (68%) recognized that the behavior, gestures, and facial expressions of witnesses or defendants may also impact judicial conviction.

3. Motive or background of witness testimony

Thirty judges (60%) acknowledged that the motive or background underlying a witness's testimony can be a significant factor influencing conviction.

¹¹ Eddy OS Hiariej, *Teori dan Hukum Pembuktian* (Jakarta: Erlangga, 2021).

¹² Triantono & M Marizal, "Parameter Keyakinan Hakim dalam Memutus Perkara Pidana" (2021) 37:2 *Justitia Pax* 267–286.



In principle, Article 183 of KUHAP affirms that judicial conviction must derive from lawful evidence, with such evidence types explicitly listed in Article 184 of KUHAP and supplementary legislation, such as Law No. 11 of 2008 on Electronic Information and Transactions, as amended by Law No. 19 of 2016. However, judicial practice reveals that judges assess the probative value of evidence not only by examining the internal consistency among various pieces of evidence but also by comparing the evidence with other facts and impressions revealed throughout the trial. Such contextual elements may either reinforce or diminish the judge's conviction. Accordingly, several interrelated factors can be identified in the formation of judicial conviction, namely:

1. Judicial conviction as formed by statutory evidence

The factors that may form a judge's conviction are the legally admissible items of evidence, the types of which are exhaustively enumerated under Article 184 of the Indonesian Criminal Procedure Code (*KUHAP*), as well as in specific legislation such as Law No. 11 of 2008 on Electronic Information and Transactions, as amended by Law No. 19 of 2016. These types of evidence include: witness testimony, expert testimony, documentary evidence, circumstantial evidence (*petunjuk*), the defendant's statement, and electronic evidence. For a judge to validly reach a conviction, a minimum requirement of two admissible items of evidence (*bewijs minimum*) must be satisfied.

2. Other factors influencing judicial conviction

a. Physical evidence (*barang bukti*)

The KUHAP does not define "physical evidence," but it may be understood as any object or material item closely related to the commission of a crime. Examples include:¹³

- 1) Objects used in the commission of the crime (e.g., firearms or sharp weapons used to kill or injure victims),
- 2) Objects resulting from the criminal act (e.g., forged documents),
- 3) Objects that are the subject matter of the crime (e.g., narcotics or psychotropic substances involved in trafficking offenses).

Although statutory law, particularly the KUHAP, does not explicitly define the role of physical evidence in the evidentiary process, such evidence can significantly strengthen or weaken a judge's conviction. This principle is reflected in the Decision of the Balikpapan District Court No. 34/Pid.Sus/2019/PN Bpp, where the panel of judges acquitted the defendant due to the failure to prove the element of Schedule I narcotics as charged by the public prosecutor. The court held that the narcotic substance submitted as physical evidence—a small plastic package weighing 0.87 grams—was already opened and damaged before being presented in court. A retest conducted on the substance revealed that it contained neither methamphetamine nor amphetamine. This created reasonable doubt regarding the presence of narcotics, leading to the defendant's acquittal. Although this decision was later overturned on appeal, it illustrates how, in judicial practice, physical evidence can critically influence a judge's conviction.

¹³ R Lokas, "Barang Bukti dan Alat Bukti Dalam Kitab Undang-undang Hukum Acara Pidana" (2015) 3:9 *Lex Soc* 124–129.



b. Demeanor, gestures, and facial expressions of witnesses or defendants

The evaluation of a party's demeanor, gestures, and facial expressions can be found in the Decision of the Central Jakarta District Court No. 777/Pid.B/2016/PN.JKT.PST in the murder case involving the defendant Jessica Kumala. In this case, the panel of judges, in its reasoning, explicitly considered the defendant's behavior, body language, and facial expressions, which contributed to their conviction that the accused had committed the offense.

c. Motives or background of witness testimony

Article 185 paragraph (6) points (c) and (d) of the KUHAP require judges, when evaluating the truthfulness of witness testimony, to carefully consider the reasons the witness may have for offering specific testimony, as well as the witness's lifestyle, morality, and other relevant factors that might influence the credibility of their statement. This approach was employed in the Decision of the Denpasar District Court No. 863/Pid.B/2015/PN Dps in the murder case against Margriet Christina Megawe. The court considered the witness's motives and background in assessing the reliability and probative value of their testimony.

d. Academic research or literature

The use of research findings or scholarly literature (e.g., books, scientific journals) in judicial reasoning is not uncommon. In addition to expert testimony, judges may rely on credible academic sources to inform or reinforce their factual analysis. Although literature is not recognized as a formal item of evidence, it may provide valuable insights that assist the judge in determining the veracity of a fact. An example of this appears in the same Jessica Kumala case, where the panel of judges referred to Sax's *Dangerous Properties of Industrial Materials* by Richard J. Lewis. The literature stated that the lethal dose of cyanide for a 60 kg human is 171.42 mg/l. This supported the judges' conviction that the 298 mg/l of cyanide found in the body of victim Mirna Salihin was a lethal quantity and likely the cause of death.

e. Other trial-revealed factors

During criminal proceedings, it is not uncommon for facts to emerge that do not fall within the aforementioned four categories, yet still influence the formation of a judge's conviction. An illustrative example can be found in the explanation of Article 161 paragraph (2) of the KUHAP, which states that unsworn testimony of a witness or expert may not constitute lawful evidence but may nonetheless serve to reinforce judicial conviction. In other words, although such unsworn statements are not deemed admissible evidence, their coherence with other lawful evidence presented at trial may render them a valid consideration in supporting the judge's conviction. This was applied in the Decision of the Sumber District Court No. 148/Pid.Sus/2019/PN Sbr, a child molestation case in which the presiding judges relied on the victim's unsworn testimony—considering its consistency with other witnesses' statements—to reinforce their conviction of the defendant's guilt.

It is important to note that judges' tendency to consider non-formal factors—such as those previously discussed—raises significant challenges for legal certainty and the objectivity of judicial proceedings. For instance, the reliance on a



defendant's gestures or facial expressions may create space for cognitive biases, especially if such assessments are not supported by scientifically grounded methods such as forensic psychology. One criminological theory historically associated with assessing a criminal's disposition based on physical characteristics is Cesare Lombroso's theory of the *born criminal*.¹⁴ However, classical criminological theories such as Lombroso's, which linked physical traits to criminal behavior, have been widely discredited and largely abandoned in contemporary legal and criminological thought.¹⁵ Within the framework of *due process of law*, all judicial assessments must be rationally verifiable and conducted within the boundaries of lawful procedural norms. Accordingly, non-formal factors must be treated with caution and should be considered only as complementary elements—not as primary grounds for criminal conviction.

When compared with evidentiary systems in other jurisdictions, Indonesia adopts an approach that closely resembles that of the Netherlands. The Dutch criminal evidence system is rooted in the principle of establishing material truth, as stipulated in the *Wetboek van Strafvordering (Sv)*, which mandates that a judge may only find a defendant guilty if the judge is truly "convinced."¹⁶ This conviction must be based on a high degree of certainty that the defendant actually committed the offense charged, and it must be formed from legally admissible evidence—namely, the judge's own observations, the defendant's statement, witness testimony, expert opinions, and documentary evidence (§ 339 Sv). Virtually all forms of evidence are considered admissible unless expressly excluded by law. The Dutch Sv also recognizes minimum evidence rules, which impose restrictions on the judge's freedom of evidentiary assessment to safeguard the pursuit of material truth.¹⁷ For instance, a single piece of evidence—whether it originates from a sole witness or from the defendant—cannot suffice to establish guilt; it must be corroborated by at least one additional item of evidence, thereby minimizing the risk of dishonesty or error.

This comparison highlights that both Indonesia and the Netherlands maintain a normative foundation in the formation of judicial conviction. Nevertheless, as revealed in the empirical findings discussed above, the flexibility in Indonesian judicial practice that allows the incorporation of non-formal factors into the formation of conviction necessitates the development of clearer judicial guidelines. Such guidelines should aim to prevent judges from relying on subjective or potentially biased reasoning. Accordingly, a judicial protocol should be developed to provide clear boundaries and methodologies for evaluating non-evidentiary factors. Furthermore, specialized training in forensic psychology and objective assessment methods should be offered to judges to preserve the integrity of the criminal justice process. Within this context, a limited revision of the KUHAP may be

¹⁴ T Santoso & E A Zulfa, *Kriminologi* (Jakarta: Rajawali Pers, 2009).

¹⁵ U Gatti & A Verde, "Cesare Lombroso: Methodological Ambiguities and Brilliant Intuitions" (2012) 35:1 Int J Law Psychiatry 19–26.

¹⁶ S C Thaman, ed, *Exclusionary Rules in Comparative Law Vol. 20* (New York: Springer Science and Business Media, 2012).

¹⁷ B D Wilde, *Bewijsminimumregels als Waarborgen voor de Waarheidsvinding in Strafzaken? in De waarde van waarheid. Opstellen over waarheid en waarheidsvinding in het strafrecht* (Den Haag: Boom Juridische uitgevers, 2008).



warranted—particularly to accommodate evolving evidentiary practices on the ground—without compromising the principles of legality and legal certainty.

II. Stages in the Formation of Judicial Conviction within the Criminal Evidence System

The formation of judicial conviction in rendering a criminal verdict is not a matter of exact science, nor is it the result of mathematical calculation. Evidentiary reasoning in criminal cases cannot be equated with that in civil proceedings. While civil litigation seeks formal truth, criminal adjudication aims to uncover the material truth.¹⁸ The process of discovering truth in law involves connecting facts with rational reasoning, culminating in judicial conviction.¹⁹ The concept of truth herein includes not only the substance of facts but also the procedural dimension by which truth is established. The truth of a criminal act must be revealed through a process of proof, as the existence of a fact cannot be affirmed without evidence. Simply put, one cannot ascertain the truth of an event in the absence of proof.

Sudikno Mertokusumo delineates three stages in judicial decision-making in criminal cases: *konstatir* (establishing the facts), *kualifisir* (qualifying the legal relevance), and *konstituir* (constituting the judgment).²⁰ The first stage, *konstatir*, is where the judge determines whether the alleged events actually occurred. This determination is grounded in the indictment submitted by the public prosecutor. The judge assesses the factual veracity of the events described in the indictment by evaluating the evidence presented during trial. At this stage, the judge must adhere to the statutory requirement of a minimum of two admissible items of evidence (*bewijs minimum*), and must be convinced that the criminal act in question actually took place.

The second stage, *kualifisir*, concerns the legal classification of the facts. In other words, the judge must determine whether the established acts fall within the scope of prohibited conduct and, if so, under which specific criminal offense. This stage entails identifying the applicable legal norms in relation to the proven facts. The judge qualifies the incident—now considered factually established through trial examination—and links it to its corresponding legal provisions.

The final stage, *konstituir*, involves the application of law to the proven facts. At this point, the judge formulates and applies the relevant legal rule to the facts, resulting in a final judicial decision. In criminal cases, the outcome of the *konstituir* stage may take the form of a conviction, an acquittal, or a declaration of exemption from all legal charges (*ontslag van alle rechtsvervolging*).

In practical terms, the author proposes that the evidentiary process before the issuance of a criminal verdict can be analytically broken down into the following series of judicial inquiries:

¹⁸ Tata Wijayanta et al, “Penerapan Prinsip Hakim Pasif dan Aktif serta Relevansinya Terhadap Konsep Kebenaran Formal” (2010) 22:3 Mimb Huk 572–587.

¹⁹ A Takariawan, *Hukum Pembuktian* (Bandung: Pustaka Reka Cipta, 2021).

²⁰ A Ali, *Menguak Tabir Hukum* (Bogor: Ghalia Indonesia, 2011).



1. Did a criminal act actually occur?

The judge must assess whether the sequence of events alleged in the indictment truly took place by examining the evidentiary items presented in court.

2. Does the act constitute a criminal offense?

The judge must relate the established acts to existing legal norms and determine the specific criminal offense under which the acts are classified.

3. Is the defendant the perpetrator of the act?

Based on all available evidence, the judge must determine whether they are convinced that the defendant committed the criminal act in question.

4. Has the defendant been proven to have committed the offense?

The judge must establish, element by element, that the offense charged—according to the specific article of the penal code—has been fully proven. If even one element of the offense is not established, the defendant must be acquitted.

5. Can the defendant be held criminally responsible?

The judge must determine whether the defendant is legally accountable for the act. This includes assessing whether any grounds for justification (*rechtvaardigingsgronden*) or excuse (*schulduitsluitingsgronden*) apply. If the defendant is deemed not criminally responsible, a verdict of dismissal of all charges must be rendered.

In the process of answering the five aforementioned questions, judges must form their conviction based on no fewer than two legally valid items of evidence. The process of assessing the evidentiary value of such materials to arrive at a judicial conviction unfolds in the following stages:

1. Meeting the minimum evidentiary threshold

Pursuant to Article 183 of the KUHAP, the minimum evidentiary threshold requires at least two items of evidence, unless otherwise stipulated by law. For example, in expedited trial procedures (*acara pemeriksaan cepat*), only one item of evidence is necessary, while in cases of domestic violence, the victim's testimony alone—if corroborated by at least one other lawful item of evidence—is deemed sufficient to establish the defendant's guilt.

This evidentiary threshold is among the first aspects a judge must examine during the evidentiary process. If the evidence presented does not meet this minimum standard, the judge has no grounds to proceed to an assessment of personal conviction. The minimum threshold of two items of evidence constitutes a non-negotiable legal prerequisite. It is important to note that the types of admissible evidence are exhaustively enumerated by statute. Thus, any purported evidence that falls outside these legally recognized categories cannot be considered valid evidence.

2. Legally valid and admissible evidence

Once the minimum evidentiary threshold has been satisfied, the judge must then assess whether the evidence submitted is legally valid and admissible. The validity of a particular item of evidence depends on its type, and the specific legal criteria governing each type are discussed in the subsection on *lawful and convincing evidence*. On this point, Satjipto Rahardjo, in his article *The Lesser-Known Police Officers*, recounts an illustrative case from the United States. In this case, a police officer apprehended a drug dealer in the act of conducting a



transaction. The dealer swallowed the narcotics to eliminate the evidence. The police rushed the suspect to a hospital where his stomach was pumped, and the recovered drugs were later submitted as evidence. However, the court ultimately acquitted the defendant on the ground that the method used to obtain the evidence violated procedural legality (*unlawful legal evidence*).

The requirement that evidence be legally valid is expressly mandated under Article 183 of KUHAP. Herbert L. Packer has also emphasized that illegally acquired evidence ought not to be admissible in court.²¹ Accordingly, even if the two-item minimum is formally met, should the items be invalid or inadmissible under the law, and the remaining admissible evidence is either insufficient or nonexistent, the defendant must be acquitted. Conversely, if the submitted evidence is both valid and admissible, the judge must proceed to evaluate whether it is relevant and probative.

3. Relevant and probative evidence

William R. Bell argues that, beyond legal validity and procedural propriety in the collection of evidence, several additional principles govern evidentiary reliability in criminal trials:²²

- a. **Relevance:** The evidence must be directly related to the facts in dispute in the case. In criminal investigations, law enforcement officers routinely ask foundational questions such as: What are the elements of the alleged offense? What wrongdoing must be established? What specific facts must be proven?
- b. **Reliability:** The evidence must be credible and trustworthy. To ensure reliability, individual items of evidence should ideally be corroborated by other supporting evidence.
- c. **Objectivity:** Evidence must not be based on mere conjecture or speculation. Rather, it should contain concrete information or factual data that objectively supports a particular assertion.

With respect to evidentiary relevance, the Constitutional Court of Indonesia in Decision No. 65/PUU-VIII/2010, which reviewed the constitutionality of Article 1(26) jo. Article 1(27) jo. Article 184(1)(a) of KUHAP emphasized that the significance of a witness statement does not lie solely in whether the witness personally saw, heard, or experienced the criminal event. Rather, it is the relevance of the testimony to the case being adjudicated that determines its evidentiary value. Similarly, M. Yahya Harahap argues that in criminal trials, the strength of an item of evidence lies not in its quantity—as in more evidence automatically indicating greater weight—but in its quality.²³ Thus, once a judge determines that a given item of evidence is valid and admissible, the next step is to assess its relevance to the facts of the case. In this context, relevance means that the evidence must demonstrate a significant connection to the factual issues in dispute and assist in determining the defendant's guilt or innocence.

After establishing the relevance of each item of evidence, the judge must then evaluate its consistency and corroborative value in conjunction with other

²¹ L Mulyadi, *Pembalikan Beban Pembuktian Tindak Pidana Korupsi* (Bandung: Alumni, 2007).

²² W R Bell, *Practical Criminal Investigations in Correctional Facilities* (Boca Raton-New York: CRC Press, 2002).

²³ M Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi dan Peninjauan Kembali* (Jakarta: Sinar Grafika, 2002).



relevant evidence. If the evidence is both relevant and corroborates other items of evidence, it can be deemed to have probative value in establishing a fact. Conversely, evidence that lacks relevance or fails to align with other presented materials cannot be said to substantiate the defendant's culpability.

4. Consideration of factors that strengthen or weaken the judge's conviction

Once the evidentiary threshold (*bewijs minimum*) has been met—that is, the submitted pieces of evidence are lawful, admissible, relevant, and probative—the judge is, in principle, in a position to draw a conviction regarding the truth of the facts, particularly whether a criminal act has occurred and whether the defendant is the perpetrator. This process is relatively straightforward in cases that are simple in nature and where the evidentiary construction is unambiguous. In such instances, when the submitted evidence exceeds the evidentiary threshold, is lawful and admissible, and is both relevant and probative, the judge may readily arrive at a well-founded conviction.

Nevertheless, as previously discussed, under Indonesian criminal procedure, there exists no hierarchical weighting of evidentiary value based on the type of evidence. Each legal means of evidence possesses free probative value according to the judge's conviction. Accordingly, even when the quantity of submitted evidence exceeds the minimum threshold, and the quality fulfills the requirements of legality, admissibility, relevance, and probativeness, the judge is not legally compelled to form a conviction solely based on that evidence.

In this regard, the author concurs with the position of M. Yahya Harahap, who emphasizes that although judges possess discretionary authority in assessing the value of evidence and in deciding whether to be convinced or not, such free probative evaluation must not be exercised arbitrarily. Judges are required to articulate juridically and logically sound justifications for either rejecting or accepting a piece of evidence as the basis of their conviction.

Therefore, after establishing that the evidentiary threshold has been met and that the evidence is lawful, admissible, relevant, and probative, the judge must then consider additional factors that may either strengthen or weaken their conviction. In certain cases, these reinforcing or undermining factors may serve as decisive elements in the imposition of criminal liability. Thus, even where all evidentiary conditions are formally satisfied, the presence of factors that diminish judicial conviction may fail to establish a finding of guilt. In such cases, the judge must articulate a detailed and reasoned evaluation of the evidence, including an explanation of why the submitted evidence did not suffice to generate judicial conviction, just as they must do when the conviction is reached.

5. Determination of the judge's conviction

Upon the completion of all preceding stages, the judge must decide as to whether they have arrived at a conviction free from doubt, a conviction accompanied by doubt, or no conviction at all. Where the judge has arrived at a conviction based on lawful and admissible evidence, the resulting decision shall be a verdict of guilt (*conviction judgment*). Conversely, if the judge finds that the evidence—despite formal compliance with evidentiary requirements—fails to give rise to personal conviction, the appropriate judgment is one of acquittal



(*vrijspraak*).²⁴ Nonetheless, in a situation where the judge does form a conviction based on lawful and probative evidence, further reinforced by supporting factors, but finds that the proven act does not constitute a criminal offense, the judge must issue a judgment of dismissal of all charges (*onslag van alle rechtsvervolging*).²⁵

III. Degrees of Judicial Conviction in the Indonesian Criminal Evidence System: A Comparative Analysis with the Standard of Beyond a Reasonable Doubt

In Indonesian criminal procedure law, the standard of proof required to convict a defendant of a criminal offense is based on the criterion of being legally and convincingly proven (*terbukti secara sah dan meyakinkan*). This standard necessitates a degree of proof such that, once the phrase “legally and convincingly proven” is pronounced in a criminal verdict, it must be grounded in sufficiently compelling reasons to justify the finding of guilt and the imposition of punishment. When compared to the standard of proof in other jurisdictions, the judge’s conviction in Indonesian criminal cases may be analogized to the standard of beyond a reasonable doubt, which is the threshold applied in criminal trials within common law systems.

In the United States, any individual accused of a crime that carries a potential sentence of more than six months of imprisonment is constitutionally entitled to a trial by jury. The jury is responsible for rendering a verdict of guilt or innocence through a concise conclusion, while the judge determines the severity of the sentence to be imposed.²⁶ In this context, judges are obliged to instruct jurors that the prosecution bears the burden of proving the defendant’s guilt beyond a reasonable doubt. However, judicial practices vary: some courts mandate such an instruction, others merely permit it, and some even prohibit judges from providing any definition beyond a reasonable doubt. The U.S. Constitution neither requires nor forbids courts from defining the phrase “reasonable doubt.”²⁷

Brian Ross Martin, in his lecture at the Annual Conference of Supreme and Federal Court Judges on January 26, 2010, elaborated on the application of the beyond a reasonable doubt standard in several common law jurisdictions, including Australia, the United Kingdom, the United States, Canada, and others. According to Martin, there remains considerable divergence of opinion regarding the precise definition of beyond a reasonable doubt, and thus, conceptual certainty remains elusive.²⁸ In the United Kingdom, since the 1950s, the term has been effectively replaced with the instruction that jurors must be “sure” of the defendant’s guilt

²⁴ R Handoko, “Tinjauan Yuridis Kasasi Terhadap Putusan Bebas dalam Sistem Pidana di Indonesia” (2018) 15:2 Spektrum Huk 208–235.

²⁵ M D Pratiwi, “Analisis Terhadap Putusan Lepas dari Segala Tuntutan Hukum (*Onslag Van Alle Rechtsvervolging*) dalam Perkara Tindak Pidana Pemalsuan Surat (Studi Putusan Mahkamah Agung Nomor 120 K/Pid/2016)” (2021) 9:1 Verstek 193–202.

²⁶ J Mazzone, “The Justice and the Jury” (2006) 72:1 Brooklyn Law Rev 35–59.

²⁷ J A Shapiro & K T Muth, “Beyond a Reasonable Doubt: Juries Don’t Get It” (2021) 52:4 Loyola Univ Chicago Law J 1029–1044.

²⁸ B R Martin, “Beyond Reasonable Doubt”, (2010), online: <https://supremecourt.nt.gov.au/_data/assets/pdf_file/0008/727064/beyond-reasonable-doubt-supreme-and-federal-court-judges-conference.pdf>.



before convicting. Similarly, in Canada and New Zealand, beyond a reasonable doubt is interpreted as being “sure.” In the United States, it is often equated with being “firmly convinced” of the defendant’s guilt.

Consequently, when comparing the notion of judicial conviction in Indonesia with the beyond a reasonable doubt standard in common law jurisdictions, it is evident that both concepts lack a codified or universally accepted definition, either in statutory law or doctrinal commentary. Beyond definitional concerns, Indonesian legislation does not explicitly articulate or specify the required degree of conviction that judges must attain to find a defendant guilty. In comparison, empirical studies have attempted to quantify the threshold of beyond a reasonable doubt. On average, respondents associated the standard with a probability value of 0.90, with observed ranges from 0.50 to 1.00,²⁹ as well as specific findings of 0.92,³⁰ and between 0.91 and 0.99 depending on the type of crime involved.³¹

One study involving 252 participants asked them to read a trial summary and then render a verdict based on varying standards of proof: a preponderance of the evidence, clear and convincing evidence, and beyond a reasonable doubt. The results indicated that variation in the standard of proof did not significantly affect jurors’ decisions.³² The quantitative definitions used were 51%, 71%, and 91%, respectively. These numerical thresholds functioned as expected—convictions in favor of the defendant decreased as the stringency of the standard increased. Although quantitative thresholds help jurors better grasp the meaning of different standards of proof, legal practitioners have generally opposed their formal adoption.³³

Nevertheless, there is a broad consensus that the strictest standard of proof, beyond a reasonable doubt, should represent a probability threshold exceeding 0.90.³⁴ Both overly lax and overly stringent interpretations of the standard can lead to undesirable outcomes: acquitting guilty defendants if the threshold is set excessively high (above 0.95), or convicting potentially innocent individuals if the threshold is set too low (below 0.90).³⁵ Thus, beyond a reasonable doubt, as the highest standard of proof within the criminal justice systems of common law countries, requires proof that surpasses reasonable doubt; however, it does not necessitate the complete absence of any doubt regarding the defendant’s guilt. The standard entails that the facts revealed during trial must point to only one logical conclusion: that the defendant is guilty of the offense charged by the prosecution.³⁶ Therefore, the existence of unreasonable doubt remains theoretically possible, but

²⁹ CMA McCauliff, “Burdens of Proof: Degrees of Belief, Quanta of Evidence, or Constitutional Guarantees?” (1982) 35:6 *Vanderbilt Law Rev* 1293–1335.

³⁰ R Hastie, *Inside the Juror: The Psychology of Juror Decision Making* (Cambridge: University Press, 1993).

³¹ A W Martin & D A Schum, “Quantifying Burdens of Proof: A Likelihood Ratio Approach” (1987) 27:4 *Jurimetrics J* 383–402.

³² D K Kagehiro & W C Stanton, “Legal vs. Quantified Definitions of Standards of Proof” (1985) 9:2 *Law Hum Behav* 159–178.

³³ E Stoffelmayr & S S Diamond, “The Conflict between Precision and Flexibility in Explaining Beyond a Reasonable Doubt” (2000) 6:3 *Psychol Public Policy, Law* 769–787.

³⁴ J O Newman, “Beyond Reasonable Doubt” (1993) 68:5 *New York Univ Law Rev* 979–1002.

³⁵ R Essex & J Goodman-Delahunty, “Judicial Directions and The Criminal Standard of Proof: Improving Juror Comprehension” (2014) 24:2 *J Judic Adm* 75–94.

³⁶ L Laudan, “Is Reasonable Doubt Reasonable?” (2003) 9:4 *Leg Theory* 295–331.



such doubt must not reasonably lead to the conclusion that the defendant is innocent or did not commit the alleged offense.

The author conducted an empirical study using questionnaires completed by 50 judges from various regions in Indonesia. The results revealed that 49 out of 50 respondents stated that, to declare a defendant guilty, they must possess a full and unshakable conviction, without even the slightest doubt. This finding demonstrates that, in practice, the standard of proven legally and convincingly (*terbukti secara sah dan meyakinkan*) is interpreted by most Indonesian judges as requiring an absolute or 100% degree of certainty. This finding implies that, subjectively, Indonesian judges tend to apply a stricter evidentiary threshold than the beyond a reasonable doubt standard employed in common law systems, which still tolerates the presence of doubt so long as it is not reasonable.

A comparison between Indonesia's evidentiary standard in criminal law and the beyond a reasonable doubt standard shows that both serve a similar normative function—protecting the accused from wrongful conviction. However, the primary distinction lies in the degree of stringency and how the standard is operationalized in practice. The Indonesian standard of proven legally and convincingly is not explicitly defined in legislation, yet in practice is interpreted with high rigor by the judiciary. In contrast, while beyond a reasonable doubt is normatively acknowledged as the highest standard of proof, its practical application often exhibits greater flexibility and contextual nuance.

The absence of uniform definitions for evidentiary standards in both civil law and common law traditions underscores the difficulty in formulating objective measures for a concept that is inherently moral and psychological in nature. While the quantification of conviction thresholds may assist in public and jury comprehension, such an approach may not be suitable for professional judges who bear more complex ethical and legal responsibilities. As a policy recommendation, the Supreme Court of Indonesia or other judicial oversight bodies should consider developing technical or interpretive guidelines to clarify the degree of judicial conviction required under the proven legal and convincing standard. Furthermore, continuous training for judges on evidentiary standards, the psychology of evidence assessment, and cognitive bias mitigation techniques is essential to ensure the consistent and fair application of the principle of *in dubio pro reo*.

The principle of *in dubio pro reo* obliges judges to decide in favor of the defendant when there remains doubt regarding their guilt.³⁷ In this context, if the judge does not attain a full conviction based on legally admissible evidence, the defendant must be declared not guilty and acquitted of all charges. This principle is in line with the classical maxim in criminal law: "A thousand guilty persons should go free rather than that one innocent person be punished," affirming that accuracy in criminal adjudication must not be compromised for the sake of expediency or social pressure.³⁸ Therefore, clarity in the standard of proof and the quality of judicial reasoning are essential components in upholding the integrity of criminal justice.

³⁷ T N Akbar & Hendra, "Penerapan Asas in Dubio Pro Reo Pada Putusan Mahkamah Agung Republik Indonesia Dalam Perkara Pidana" (2021) 10:1 Repertorium 86–98.

³⁸ A Ilyas, "Praktik Penerapan Exclusionary Rules di Indonesia" (2021) 50:1 Masal Huk 49–59.



CONCLUSION

This study reveals a substantial convergence between formal legal norms and empirical judicial reasoning in the formation of judicial conviction within the Indonesian criminal justice system. Although the *negatief wettelijk bewijstheorie* prescribes that a minimum of two lawful and relevant pieces of evidence must be supported by the judge's inner conviction, in practice, such a conviction is shaped by various non-formal factors. Empirical findings from 50 judges confirm that behavioral indicators, background narratives, scientific literature, and courtroom dynamics frequently serve as reinforcing or weakening elements in the process of forming judicial conviction. These findings highlight that the adjudication process in Indonesia does not operate within a purely formalistic framework but instead reflects a complex interaction between legal standards and human judgment.

A comparative analysis with the Dutch legal system demonstrates normative similarities but also underscores the need for safeguards against unchecked subjectivity. The discussion further reveals that Indonesian judges tend to interpret the standard of "legally and convincingly proven" with a higher threshold than the common law's beyond a reasonable doubt, which tolerates minimal irrational doubt. This strict interpretation, coupled with the absence of clear interpretive guidelines on the degree of judicial conviction, heightens the potential for inconsistency and excessive reliance on personal intuition. Therefore, to enhance consistency, legal certainty, and fairness, this study recommends the development of judicial guidelines that delineate the permissible scope and weight of non-formal considerations. In parallel, forensic psychology training for judges should be institutionalized to support the objective assessment of courtroom behavior and narratives. Furthermore, it is imperative to establish technical or interpretive guidelines that clarify the required degree of judicial conviction in accordance with the applicable legal standard. Such guidelines would provide a more precise framework for the evidentiary threshold and help minimize arbitrary or overly subjective interpretations of judicial conviction.

Additionally, limited procedural reform to the KUHP is necessary to accommodate contemporary evidentiary dynamics, particularly by establishing a more explicit threshold of judicial conviction for criminal liability. Such reform must remain anchored in the principle of legality and uphold the *in dubio pro reo* doctrine as a fundamental safeguard. Finally, selective adaptation of interpretive practices from the common law tradition—without undermining the integrity of Indonesia's civil law system—could enhance judicial accountability and coherence in the application of evidentiary standards.

Although this study reveals a convergence between evidentiary legal norms and empirical judicial practice within the Indonesian criminal justice system, several limitations must be acknowledged. The respondent pool, limited to 50 judges, does not fully capture the diversity of judicial levels or areas of specialization, while the qualitative method employed may not adequately reflect the dynamics of collective deliberation within judicial panels. Future research could incorporate courtroom observation, systematic analysis of judicial decisions, or in-depth interviews with key legal actors to provide a more comprehensive understanding. Quantitative studies may also be pursued to identify patterns in the formation of judicial convictions based on case types or defendant characteristics. It



is hoped that these findings will serve as a foundation for developing technical guidelines that clarify the required degree of judicial conviction and for strengthening judges' capacity to assess evidence objectively, thereby ensuring the consistent application of the *in dubio pro reo* principle and safeguarding the integrity of the criminal justice system.

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