Truth, Bias, and Abuse of Power: How Indonesia's Evidentiary Threshold Shapes Criminal Justice

Aristo Pangaribuan

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Abstract

This article examines the role of evidentiary thresholds in shaping the reality of Indonesia's criminal justice system. Drawing on personal experience as a defense lawyer and criminal procedure expert assisting investigations and trials, as well as relevant literature, this article argues that Indonesia's low evidentiary threshold facilitates confirmation bias, investigative manipulation, and systemic abuse of power. To facilitate this discussion, the article first provides a theoretical framework for understanding the factors that influence nations to adopt high or low thresholds, along with the associated consequences. Subsequently, it examines the origins and evolution of evidentiary thresholds in Indonesia. Moreover, it discusses how low evidentiary thresholds in both the pre-trial and trial stages foster a bias-prone environment that undermines the pursuit of truth and increases susceptibility to manipulation. Lastly, the article proposes solutions to these systemic problems and highlights obstacles to their implementation.

Keywords: evidentiary threshold, standard of proof, bias, abuse of power, criminal procedure, Indonesia

Introduction

The evidentiary system, particularly the thresholds it establishes, lies at the heart of criminal justice. In theoretical terms, the evidentiary threshold serves as the procedural foundation for determining the truth, or at the very least, establishing a high degree of probability regarding whether an individual has committed a crime.[1] In practical terms, it determines how easily or rigorously state authorities can employ intrusive measures against individuals, as they must uncover sufficient truth to justify enforcement actions, from charging to securing convictions.[2] With this understanding, the evidentiary threshold can be viewed from two perspectives. First, it establishes a set of rules defining the level of proof required for state authorities to legitimately enforce criminal law against individuals. Second, for the accused, it serves as a procedural safeguard, protecting individuals from arbitrary state action. It is in how jurisdictions balance these two competing interests that we find a deeper insight into the true nature of their criminal justice systems, as opposed to the messages conveyed by superficial slogans.[3]

[1] The concept of probability, known as the probabilistic approach in evidentiary literature, has become a foundation of the modern criminal justice system. The concept of adjudication in revealing the “absolute truth” has shifted to truth as the justification of knowledge, which is, in essence, the highest degree of probability rather than absolute certainties. This concept will be further explored in this article. See (Damaska, 1998)

[2] Based on this understanding, the terms "evidentiary system" and "evidentiary threshold" are used interchangeably throughout this article, as the essence of the system lies in its threshold.

[3] An example of a superficial slogan is an abstract value of the criminal justice system, such as the “presumption of innocence.” The true meaning of this principle, however, predominantly lies in the evidentiary threshold itself, which serves as the practical implementation of that value. This issue will be examined further in this article.

With these considerations in mind, this article offers an in-depth analysis of the evidentiary threshold in Indonesia, a nation where, scholars argue, the authoritarian influences in law enforcement have resulted in low evidentiary threshold for the sake of maintaining security and order (Afandi and Bedner, 2022; Lamchek, 2019; Pangaribuan, 2025c; Strang, 2008). This low evidentiary threshold is reflected in a standard that places a heavy emphasis on the quantity of evidence (the two-evidence rule) rather than on its quality to justify enforcement measures from arrest to conviction. It examines the historical and political context behind the thresholds, explores their implications and challenges, and proposes potential solutions for reform. Indonesia presents a unique context for analysis for two primary reasons. First, it retains features of an authoritarian criminal justice system, evident in its arguably low evidentiary thresholds and the discretionary manner in which authorities apply them. The tendency to prioritize securing convictions with minimal evidentiary hurdles, often at the expense of individual procedural safeguards, makes authoritarian legal systems everywhere a compelling subject of study. Second, as a developing nation often challenged by weak institutional capacity, Indonesia's complex legal landscape allows for an analysis that transcends normative and procedural standards, revealing the intricate interplay of historical, political, and social factors that have shaped its evidentiary system.

This article examines evidentiary standards in Indonesian criminal cases that typically escape public attention, arguing that these cases offer a more authentic lens through which to understand the justice system's true nature. By shifting the focus from high-profile cases, which often deviate from standard procedures due to increased scrutiny, this analysis provides a more representative picture of the system's everyday functioning. High-profile cases deviate from typical cases because of the pressure to preserve the institutional image, which can significantly influence the application of the evidentiary threshold.[4]

Drawing on my professional experience as both a defense lawyer and a criminal procedure law expert assisting police investigations and trials in Indonesia, this study provides a comprehensive understanding of how various actors within the criminal justice system apply evidentiary standards in practice.[5] These firsthand insights into "law in action" are further triangulated with existing literature to ensure credibility and analytical rigor. To ground the discussion within the broader legal framework, the analysis incorporates laws, regulations and court decisions. Additionally, case reports from news sources are examined to illustrate how Indonesia's low evidentiary threshold operates in practice.

This article is structured into four main parts. It first provides a theoretical framework for understanding why jurisdictions adopt different evidentiary thresholds, examining the interplay of legal traditions, political ideologies, and practical considerations. This framework helps illuminate why and how Indonesia opted for lower thresholds and the resulting consequences in its application. Second, it delves into the origins and evolution of Indonesia's evidentiary system, tracing the historical tension between authoritarian values and due process reforms that have ultimately shaped the current system. Third, the article discusses how the implementation of the current evidentiary

[4] However, readers will also notice that I reference several widely publicized cases to illustrate the vulnerability of Indonesia's evidentiary standards to manipulation, particularly when these cases only garnered attention after significant public pressure mounted.

[5] I have been a defense lawyer for fifteen years and also work as an academic. In my academic capacity, I have assisted the police as a criminal law expert during investigations and have appeared as an expert witness in court. The opinion of a criminal law expert is also admissible evidence within the Indonesian evidentiary system, classified as expert opinion evidence. These experiences have provided me with firsthand insights into how the evidentiary system is applied to justify actions and the factors influencing its implementation.

threshold contributes to the systemic problem of biased decision-making and how it is susceptible to abuse of power because of its flexibility in application. Lastly, this article discusses the larger implications of the current evidentiary system for the criminal justice system and proposes potential solutions to mitigate the challenges.

Despite their centrality to criminal justice, discussions on evidentiary thresholds in the literature remain predominantly focused on more developed Western jurisdictions, particularly the American legal system.[6] Western scholarship has advanced to incorporate interdisciplinary approaches, drawing insights from fields like mathematics, economics, and psychology to enrich the understanding of evidentiary thresholds and enhance their accuracy in legal decision-making.[7] Their main focus is on introducing methods for evaluating evidence and proposing reasoning strategies to improve the accuracy of judgments by fact-finders. In contrast, analyses of evidentiary systems in Asian countries, especially those published in English, are limited, with the primary focus centered on China and Japan.[8] Within Southeast Asia, scholarly examinations of evidentiary systems are largely confined to Singapore (Chin, 2009; Ho, 2008; Lai, 2010).

Detailed English-language analyses of the Indonesian evidentiary system are similarly scarce. A recent article by Butt and Nathaniel examines the use of criminal law experts as expert witnesses in Indonesia, arguing that this practice can usurp judicial functions. Although the article focuses primarily on the role of criminal law experts as evidence in trials, it also highlights a critical issue in the pre-trial stage. Specifically, it explains that police can use a written expert statement as a second piece of evidence to justify an arrest and detention, as they are required to have at least two valid pieces of evidence to proceed. Butt and Nathaniel argue that this practice is "tantamount to evidence manufacturing"(Butt and Nathaniel, 2024: 147). This article builds on their work by providing a more detailed analysis of how the practice of evidence manufacturing is facilitated by the evidentiary threshold itself, as well as its systemic implications.

Within Indonesian legal scholarship, discussions often prioritize historical and normative perspectives or comparative doctrinal analyses between inquisitorial and adversarial models and their influence on the Indonesian evidentiary system, overlooking the crucial contextual factors that have shaped its framework and application in practice.[9] To the best of my knowledge, this article is the first to analyze the origins and evolution of Indonesia's evidentiary threshold and provide a comprehensive evaluation of its implications. This contribution is particularly significant given the notable scarcity of

[6] For instance, see Federico Picinali, "The Threshold Lies in the Method: Instructing Jurors about *Reasoning* beyond Reasonable Doubt," *The International Journal of Evidence & Proof* 19, no. 3 (July 2015): 139–53, https://doi.org/10.1177/1365712715571511; Michael S Pardo, "WHAT MAKES EVIDENCE SUFFICIENT?," *ARIZONA LAW REVIEW* 65 (2023), https://arizonalawreview.org/pdf/65-2/65arizlrev431.pdf.

[7] For instance, see this literature that compiles evidentiary scholarship, mostly from Western scholars. (Dahlman et al., 2021)

[8] Meanwhile, literature that discusses the evidentiary threshold in authoritarian justice systems is mostly confined to China. See (Le et al., 2024: 358; Liu and Halliday, 2009)

[9] Most Indonesian literature primarily explores theoretical and historical discussions on the evidentiary system in traditional inquisitorial countries superficially, without examining the origins of Indonesia's evidentiary threshold or its practical application. For instance, most (if not all) Indonesian literature discusses the historical evidentiary system in inquisitorial countries, such as the concept of *conviction intime* and *conviction raisonnee*, without discussing the historical context between the two, and the fact that the distinction between the two is now blurred in modern days. In conclusion, most literature agrees that Indonesia adopts the negative concept of proof as a middle way between the two conviction concepts, heavily influenced by the Dutch system. While recent work by Dianti briefly touch on the historical development of the evidentiary system, it stop short of analyzing its implementation in practice. See (Dianti, 2024)

literature on the subject, especially in English-language scholarship, offering an in-depth examination of Indonesia's evidentiary system.

High vs. Low: The Choice of Evidentiary Thresholds in Criminal Justice

As previously argued, examining evidentiary thresholds reveals how easily or hardly state authorities, including police, prosecutors, and judges, can deprive individuals of their liberty through actions ranging from arrest to conviction, as these actions require meeting specific evidentiary thresholds for justification. In this context, higher thresholds can be understood as prioritizing individual rights by erecting barriers against the enforcement of criminal law, potentially at the risk of over-burdening the justice system and hindering efficient prosecution.[10] This is because the procedural complexities arising from higher thresholds could potentially hinder the search for the truth by prolonging and complicating the criminal justice process.[11]

Conversely, lower evidentiary thresholds may offer convenience for state authorities in uncovering the truth, potentially enhancing security and public order. However, they also carry the risk of facilitating abuses of power and increasing the likelihood of wrongful convictions because it provides significant leeway for the authorities.[12] This makes a lower evidentiary threshold, while convenient for state authorities in uncovering the truth, also increases the risk of error due to the absence of rigorous standards that would ensure a higher probability of guilt.[13]

Facing these two opposing views, the choice between a high or low evidentiary threshold represents a fundamental policy decision for every nation, reflecting the interplay of political ideology, priorities, and legal traditions. As previously mentioned, nations grapple with the challenge of balancing competing considerations when establishing their evidentiary systems, given that the choice of approach carries distinct consequences for the operation of their criminal justice systems.

[10] For instance, the complexities of the American criminal justice process and increasing crime rates have led to the widespread use of plea bargaining, a mechanism that allows for the resolution of cases without a trial. See (Alkon, 2014; Bibas, 2004)

[11] For instance, procedural complexities that influence evidentiary thresholds include rules on admissibility of evidence and exclusionary rules, motions to suppress evidence, and specific qualitative standards that must be met before enforcing intrusive measures. In comparative criminal justice literature, this type of structure is often referred to as the due process model or the coordinate model because its emphasis on individual rights and procedural fairness. Two renowned comparative criminal justice scholars, Herbert Packer and Mirjan Damaška, provide models for such systems. Packer refers to this logic, where procedural safeguards are prioritized over state power, as the "due process model." Meanwhile, Damaška refers to a similar concept as the "coordinate model," characterized by a party-driven process and an emphasis on individual rights. This core logic of the system is naturally reflected in its evidentiary system. See (Damaska, 1991; Packer, 1964)

[12] Consider, for instance, the Chinese legal system, which adopts a low evidentiary threshold and prioritizes state power in criminal justice to maintain social order. This approach has led to significant consequences, such as an imbalance of power between the state and individuals, evident in various aspects of its legal processes. See (Liu and Halliday, 2016; Lu, 2003; Weidong, 2013)

[13] In the literature, this model of criminal justice process is also known as the crime control model or the hierarchical model. In contrast to the due process and coordinate models, Packer and Damaška also offer the crime control and hierarchical models, respectively, which significantly influence evidentiary systems. In the crime control model, state power is prioritized, and complexities like high evidentiary thresholds are seen as barriers to efficient law enforcement. Similarly, the hierarchical model emphasizes state power and efficiency, viewing higher thresholds as obstacles to swift justice. See (Damaska, 1991; Packer, 1964)

For instance, countries with liberal political ideologies, such as the United States, prioritize individual rights and due process, which leads them to adopt higher evidentiary thresholds in their criminal justice systems—at least in principle. This approach is rooted in the belief that the authority to enforce criminal laws, especially through intrusive measures like arrests, searches, and seizures, is prone to abuse and poses a significant threat to individual liberties (McConville, 2017). As a result, these systems incorporate more intricate evidentiary frameworks, including stringent admissibility rules and elevated thresholds, requiring law enforcement to meet specific burdens of proof at every stage of the criminal process.[14] Additionally, individuals accused of crimes are granted robust procedural safeguards, such as motions to suppress evidence and the exclusionary rule, which bars the use of illegally obtained evidence, allowing them to challenge the legality and reliability of evidence. Moreover, the American system (and its adversarial counterparts) employs a dual-adjudicator structure, with juries serving as triers of fact and judges as triers of law, ensuring the rigorous "beyond a reasonable doubt" standard is upheld for convictions.

This layered framework underscores a strong commitment to safeguarding individual rights with the expectation to reduce the risk of wrongful convictions and abuse of power. However, as previously explained, the decision to adopt a high evidentiary threshold also comes at a cost. Criminal procedures become increasingly complex due to the proliferation of rules, ultimately leading to trial avoidance phenomena such as plea bargaining, which, echoing practices from the past, elevates confessions as primary evidence and bypasses those complicated rules and thresholds.[15]

On the other end of the spectrum, countries leaning toward authoritarian systems tend to prioritize state power in enforcing the law, emphasizing law and order over individual rights. Within this framework, complexities in the evidentiary system are viewed as unnecessary obstacles that hinder the mission of protecting society from crime. This logic creates a tendency to simplify the process for authorities to incarcerate individuals suspected of crimes.

For example, China, often regarded as embodying authoritarian values in its criminal justice system, arguably adopts a lower evidentiary threshold. The focus is placed on empowering the state to investigate and prosecute crimes, often at the expense of procedural safeguards.[16] Unlike the well-established evidentiary thresholds in countries like the United States, China's standards of proof are highly subjective and lack detailed benchmarks, leaving significant room for interpretation by state legal authorities. As a consequence, adopting a low evidentiary threshold creates significant risks, including fostering a bias-prone environment that compromises the accuracy of legal decisions. Ultimately, this can contribute to wrongful convictions and the abuse of power.[17]

Another key factor influencing the choice between high and low evidentiary thresholds is a country's legal tradition.[18] Nations rooted in the adversarial legal tradition, such as the United States, tend to favor higher evidentiary thresholds, as this system views the criminal justice process as a contest

[14] For instance, in the U.S., it follows a tiered approach to evidentiary thresholds, such as reasonable suspicion for stop and frisk, probable cause for arrest and searches, and beyond a reasonable doubt for criminal convictions.

[15] For this phenomenon of dissapearing trial, see for instance report from NGO (Fair Trials, 2017)

[16] For the discussion of how Chinese criminal justice system prioritize state power and its implications, see (Liu and Halliday, 2016; McConville, 2011; Zhang and Zheng, 2014)

[17] See for instance, (Le et al., 2024; Liu and Halliday, 2016; Lu, 2003) The implementation of the Chinese evidentiary system can be illustrated by examining the work of Liu and Halliday, which provides several case examples.

[18] For detailed theoretical perspective on how legal tradition affect the evidentiary threshold see (Damaska, 1973, 2008)

between two opposing parties: the state as the prosecutor and the accused as the defendant. Within this framework, establishing evidentiary rules that ensure fair "rules of the game" for both sides is a natural outcome. The system operates on the belief that the truth must emerge through a fair and balanced adversarial process, where competing arguments and evidence shape the pursuit of truth (Ho, 2021).

In contrast, countries rooted in the inquisitorial tradition, such as China and Indonesia, are more likely to adopt lower evidentiary thresholds due to their emphasis on state authority in uncovering the truth. This approach reflects the belief that ensuring social order and controlling crime is a fundamental duty of the state rather than facilitating a contest between parties. With this way of thinking, higher evidentiary thresholds are often perceived as obstacles to the state's duty of controlling crime and the truth-seeking process (Brants and Field, 2016; Damaska, 1998). Consequently, legal systems with inquisitorial traditions traditionally adopt a more flexible approach to evidentiary thresholds, granting greater discretionary power to the state's legal authorities. This reflects the belief that the work of these authorities embodies and advances the search for truth (Brants and Field, 2016).

Although the traditional distinction between adversarial and inquisitorial systems has become increasingly blurred, with many modern legal systems incorporating elements of both, tracing their historical foundations remains essential for understanding the underlying logic behind a jurisdiction's choice of an evidentiary system. For instance, the adversarial principle of a contest between two opposing parties remains central to the U.S. legal system and other adversarial countries, at least in theory.[19] Meanwhile, traditionally, judges in inquisitorial systems still retain greater freedom in evaluating evidence compared to their adversarial counterparts, since their rules of evidence are less complex.

However, political ideology plays a crucial role in modifying, replacing, or reinforcing the traditional logic of legal traditions. It directly influences how evidentiary frameworks evolve in different nations. The traditional principles of a legal system are not static; they shift as countries prioritize certain values. As previously argued, some nations emphasize liberal principles, strengthening individual rights in criminal justice. Others focus on maintaining social control, shaping evidentiary rules to support state authority and law enforcement efficiency.[20] For example, while the Netherlands and France have traditionally followed inquisitorial models, their legal frameworks have increasingly integrated adversarial principles that emphasize liberal values, such as exclusionary rules, restrictions on judicial discretion, and even the use of juries in certain cases.[21] In contrast, nations with inquisitorial leanings—particularly those prioritizing state authority over individual rights—tend to maintain or even strengthen these values. China, despite formal democratization efforts, still grants

[19] I say "in theory" because, as mentioned earlier, the fact that complicated adversarial procedure has led to the phenomenon of the vanishing trial, replaced by plea bargaining in the U.S. Some scholars say that plea bargaining reflects the authoritarian system of criminal trial, because it exerts pressure on the defendant. See (Kagan, 2019; Pizzi, 2016)

[20] For instance, traditional inquisitorial systems that historically prioritized state power, such as France, Germany, and the Netherlands, underwent reforms that incorporated adversarial principles. These shifts were influenced by natural law and social contract theories, which emphasized individual rights and the limitation of state authority. See (Bloemberg, 2019: 390)

[21] Some European inquisitorial countries, such as France, the Netherlands, and Italy, have experienced a wave of adversarial reforms, largely driven by human rights developments, including conventions, European Court of Human Rights rulings, and domestic legal reforms. Moreover, the introduction of the jury system in France was driven by the idea of popular sovereignty and distrust of professional judges. See (Munday, 1993; Cardwell, 1997; Hans, 2017; Bloemberg, 2019: 395)

significant leeway to state authorities, often lacking the infrastructure to fully implement legal protections like exclusionary rules.[22] Similarly, Indonesia, inheriting its inquisitorial framework from the Dutch, reflects a fusion of its colonial legal tradition with an authoritarian design. This results in an evidentiary system that reinforces state power rather than serving as an adversarial mechanism in its criminal justice process, a topic explored further in the next section. Ideally, the primary purpose of any evidentiary system, regardless of its ideological or traditional influences, is to ensure that only those truly deserving of punishment are charged and convicted.

Ultimately, the choice of evidentiary thresholds—whether a jurisdiction leans towards high or low standards—is a political one with significant implications for the entire criminal justice system. That is why this article argues that examining the historical and political context of such choices, along with their consequences, can reveal the true nature of a system and identify potential areas for improvement. This is particularly true for Indonesia, where, as argued in this article, the political choice underlying its evidentiary system has significantly contributed to systemic problems of bias and abuse of power, as will be demonstrated throughout the article. Therefore, analyzing Indonesia's evidentiary system requires a holistic approach that considers the law in context, enabling a deeper understanding of its underlying logic and pinpointing its problems.[23] By tracing the historical origins and evolution of Indonesia's evidentiary system, this article demonstrates not just why Indonesia adopted the current evidentiary threshold but also how the issues arising from its implementation can at least be mitigated, since we have a deeper understanding of the underlying logic behind the political choice of adopting the current threshold.

The Origins and Evolution of Indonesia's Evidentiary Threshold: The Two-Evidence Rule in Pre-Trial and Trial

As previously noted, the Indonesian Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana* or KUHAP), which underpins the logic of the Indonesian criminal justice system, is widely regarded as a remnant of its authoritarian past (Lamchek, 2019; Pangaribuan, 2025c). The code was first deliberated in parliament in 1979 and ultimately enacted in 1981 during the authoritarian regime of President Soeharto. At the time, procedural safeguards were largely perceived as embodiments of liberal values of individual rights, which were considered misaligned with Indonesian societal values.[24] As a result, safeguards such as high evidentiary thresholds and the rights of the accused were often viewed as obstacles to the state's ability to enforce criminal laws

[22] According to Liu and Halliday, this phenomenon is referred to as a recursivity period of legal reform, where, despite the introduction of reforms, the same underlying problems persist because the changes remain superficial and fail to produce substantive institutional transformation. See Liu and Halliday, *Criminal Defense in China*; See also Zhang and Zheng, “Reforming the Criminal Evidence System in China.”

[23] Superficial pronouncements often obscure the realities of how the evidentiary system functions in practice when the law is studied solely from a normative perspective. By "superficial pronouncements," I refer to the tendency of authoritarian countries to mask their evidentiary systems with claims of adherence to human rights principles, creating a façade of compliance for external observers. For instance, China introduced exclusionary rules in 2010 and later integrated them into the 2012 revision of its Criminal Procedure Law. However, these rules remain largely ineffective due to a lack of a supportive environment for their enforcement. Similarly, Indonesia claims alignment with the human rights principles set forth in the ICCPR, but the design of its criminal procedure code consistently provides leeway for authorities to circumvent these protections. See (Mou, 2021; Pangaribuan, 2025c)

[24] At the time, the rights of the accused were perceived as features of liberalism and individualism, which clashed with the principles of "Demokrasi Pancasila" (Pancasila Democracy), a system that emphasized collectivism over individual rights. Moreover, Fitzpatrick argues that the concept of individual rights lacks cultural foundation in Indonesian society. See (Fitzpatrick, 2008; Pangaribuan, 2025c)

effectively.[25] This rationale led to the adoption of a low evidentiary threshold and wide discretionary power in applying them, reflecting a policy choice that prioritizes law and order and the protection of society at large, albeit at the expense of certain individual rights.[26]

Given this rationale, it is unsurprising that KUHAP adopts two relatively lenient standards of proof, as a higher threshold could be perceived as hindering the state's ability to control crime. Firstly, the pre-trial phase requires police to meet the "sufficient evidence" *(bukti yang cukup)* standard to justify actions such as designating a suspect, followed by arrest, search, and seizure.[27] Second, the standard of proof required during trial to convict a person is a combination of the minimum evidentiary requirement—namely, two pieces of evidence—and the subjective belief of the judges, known as inner conviction (*keyakinan hakim*), before rendering a verdict. The KUHAP itself limits admissible evidence to five types: witness testimony, expert testimony, documents, indications[28], and the accused's testimony—a concept adopted from the Dutch system intended to constrain judicial discretion in evaluating evidence.[29]

It is also to be expected that the original text of KUHAP provided no clear guidance on what constitutes sufficient evidence during the pre-trial phase. As a result, investigators are granted substantial discretion to determine the threshold for sufficiency, leaving the standard highly flexible and open to subjective interpretation. Unlike countries with a more liberal system, Indonesia lacks

[25] During the parliamentary discussions, the Democratic Party of Indonesia (PDI), through its spokesperson Da Costa, criticized the first draft of KUHAP for expanding the recognized types of evidence from four under the colonial HIR code to seven. Although the final draft ultimately reduced this number to five, Da Costa argued that this expansion undermined claims that the code respects human rights, dismissing them as mere lip service. The increase in recognized evidence types, he contended, grants authorities greater flexibility to incarcerate individuals, raising concerns about potential abuse of power. See the history of KUHAP in (Pangaribuan, 2025c)

[26] During the KUHAP discussions in parliament, two factions with differing values clashed. The first faction, led by the PDI, prioritized a rights-based criminal justice system that emphasized individual rights and procedural safeguards. The second faction, led by the military (ABRI), championed a more authoritarian approach that prioritized state power and the maintenance of social order. Individual rights affected by this design include the presumption of innocence, the right to legal representation, and the wide discretion afforded to state legal apparatus without any significant avenue to challenge it. See (Pangaribuan, 2025c)

[27] Indonesia's pre-trial investigation is bifurcated: preliminary (fact-driven) and investigation (suspect-driven). Enforcement actions occur only during investigation, but escalation from preliminary requires no clear threshold, relying solely on police discretion via internal case review *(gelar perkara)*.

[28] Since the KUHAP is heavily influenced by the Dutch Criminal Procedure Code, it also included "indications" (*petunjuk*) or "indicia" as one type of evidence. Indications are essentially circumstantial evidence, requiring a step of reasoning from the judge to infer the crime, making them different from direct evidence like eyewitness testimony or a confession. Initially, indications were not treated the same as direct evidence, but after the evolution of criminal law of evidence in Dutch, they are treated as equal to direct evidence. See (Bloemberg, 2019: 377)

[29] As explained earlier, the KUHAP is heavily influenced by the Dutch Code of Criminal Procedure, albeit with modifications. It retains key principles, including limitations on admissible types of evidence, which largely mirror those in the Dutch system. In both Dutch and Indonesian legal literature, this concept is often referred to as the "negative legal proof system" (Negatief Wettelijk Bewijstheorie), as judges are restricted to evaluating only the types of evidence explicitly sanctioned by law, ensuring that convictions are based on legally prescribed forms of proof. Additionally, the Dutch system includes a "negative list" of rules governing convictions, such as prohibiting convictions based solely on the testimony of a single witness or uncorroborated confessions by the accused. This negative concept was seen as a compromise between the free valuation of evidence and ridig evidentiary rules. However, the Dutch legal system has gradually moved away from these rigid evidentiary rules, with Supreme Court rulings reinforcing judicial autonomy and emphasizing a more flexible approach to evidence evaluation rather than strict adherence to formalistic requirements. For the negative legal proof system in Dutch see (Bloemberg, 2018: 296–306)

both judicial and prosecutorial oversight in this stage.[30] This lack of clarity not only grants police significant discretionary power but also creates inconsistencies and misunderstandings on what constitutes sufficient evidence among police, prosecutors, and judges, hindering effective collaboration between them. In 1984, seeking to address this ambiguity, the forum for Indonesian criminal justice actors (comprising police, prosecutors, and the Court known as *Mahkejapol*) issued an operational regulation defining sufficient evidence as one police report combined with one type of evidence recognized by the KUHAP. This definition, however, remains criticized for its low threshold and emphasis on quantity over quality (Afandi, 2021: 135; Lubis, 1993).

This definition still provides convenience and flexibility in interpreting what constitutes sufficient evidence, as it essentially mandates that the police only satisfy the requirement of one type of evidence to meet the standard. This is because the other requirement, the police report, can be made by the police themselves to initiate the investigation.[31] Furthermore, it suggests that such a definition is not designed to serve as a procedural safeguard for the accused but rather is created for the sake of uniformity and ease for the authorities, giving them guidelines on what constitutes sufficient evidence without adding complexities. This situation is also worsened by the fact that there is no meaningful instrument to challenge and scrutinize critical pre-trial decisions, as the KUHAP mandates that Indonesia's defense lawyers play only a submissive role in the pre-trial stage (Pangaribuan, 2025b).[32]

In 1998, Indonesia entered the Reformasi period, ushering in a democratic transition across all sectors, including the criminal justice system.[33] The KUHAP and its evidentiary system, seen as relics of the authoritarian regime, became targets for reform.[34] The first reform occurred in 2011 through a Constitutional Court ruling that redefined witness testimony as evidence.[35] Previously, a witness's testimony was defined as requiring direct observation and experience of the crime.[36] In this decision,

[30] This is because the Indonesian criminal justice system adopts the principle of *diferensiasi fungsional* (functional differentiation) which separates the roles of the police, prosecutor, and judges. With this concept, their roles are distinct, and they cannot oversee each other, especially during the pre-trial investigation. This concept was seen at the time as a political compromise, since the Indonesian police and prosecutors, since the 1950s, shortly after gaining independence from the Dutch, were involved in a power struggle over who should lead the pre-trial investigation phase. See (Afandi, 2021; Lev, 1965; Pangaribuan, 2025c)

[31] Indonesia recognizes two types of police reports: Model A, which police officers can file when they personally witness a crime, and Model B, which is based on reports from individuals. (See Police Regulation 6/2019 on investigation management.)

[32] See also the explanation of article 115 of KUHAP. It explicitly says that, during the pre-trial interrogation, the defense lawyer must be passive, with their function limited to merely seeing and hearing the proceedings. This restriction is intended to maintain the smoothness of the investigation process without interference that could harm the interests of the state.

[33] Reformasi is a period that began in 1998, when the authoritarian military regime of Soeharto was ousted due to a massive democratic movement, triggered by the Asian Financial Crisis of 1997. See (Lamchek, 2019)

[34] From 1998 to 2013, several attempts to reform the KUHAP and its evidentiary thresholds failed due to police resistance. The police benefited from the flexibility afforded by the existing KUHAP design. Proposed reforms included introducing investigating judges to oversee investigations and assess the probative value of evidence, but the minimum two-evidence requirement for conviction remained.

[35] The Indonesian Constitutional Court, established in 2003 as one of the demands of the Reformasi movement, holds the power to test whether laws violate constitutional rights, including the power to redefine legal principles. The motion in question was filed by former Minister of Law and Human Rights, Yusril Ihza Mahendra (who, as of 2025, serves as the Coordinating Minister for Law, Immigration, and Correctional Facilities), after he was named a corruption suspect. At the time, the prosecutor denied his request to summon witnesses for his defense, arguing that the proposed witnesses were not relevant to the case. As a result, he petitioned the Constitutional Court to redefine the legal concept of witness testimony.

[36] See article 1 para 26 and 27 of KUHAP.

the Court argues that the existing definition of a witness imposes an undue restriction on the accused, as it limits them to presenting only those witnesses who fall strictly within that definition.[37] Meanwhile, the state is obliged to provide broad avenues for the accused to defend themselves against criminal allegations. Following this reasoning, the Court redefined the concept of witness testimony, holding that any witness requested by the accused must be examined by the authorities—whether police, prosecutor, or judge—regardless of whether the witness possesses direct knowledge of the alleged crime. It is then for the judge to assess the probative value of such testimony.[38] This decision signals a shift towards a free evaluation of evidence, moving away from rigid principles governing witness testimony.

In 2015, the Indonesian Constitutional Court made a more significant decision regarding the threshold of sufficient evidence. The motion was brought by Bachtiar Abdul Fatah, a Chevron employee who challenged the definition of "sufficient evidence," arguing that it no longer aligned with democratic principles and human rights. Fatah claimed to be a victim of abuse of power, having been designated as a corruption suspect based on what he deemed insufficient evidence. Together with his legal team, Fatah petitioned the Court to redefine the standard of sufficient evidence, arguing that it should require at least two types of evidence, mirroring both the threshold for conviction at trial and the standard established earlier by the 2002 Anti-Corruption Law.[39]

In addition, they also requested an expansion of pre-trial judicial oversight to include scrutiny of this evidentiary threshold and the introduction of admissibility rules of evidence as procedural safeguards. In the end, the Court partially granted the motion by redefining the sufficient evidence standard for designating a suspect, requiring two types of evidence as argued by Fatah.[40] Moreover, the Court agreed to expand the scope of pre-trial motions to include the formal review of authorities' decisions to designate individuals as suspects.[41] However, the Court did not grant Fatah's petition to introduce exclusionary rules of evidence, which limits the effectiveness of judicial oversight in overseeing enforcement actions from the authorities.

Although this development marks progress in the Indonesian criminal justice system, readers will later see throughout this article that it falls short of addressing the systemic issues stemming from

[37] See Constitutional Court Decision No. 65/2010. The previous definition of a witness, requiring direct knowledge, may have been influenced by Roman-Canon Law through the Dutch criminal procedure code, which generally mistrusted circumstantial evidence and considered it inferior to direct evidence.
[38] Under this definition, hearsay witnesses, circumstantial witnesses, and character witnesses are permissible, so long as they are requested by the defense. However, in practice, such requests are still occasionally rejected, with authorities arguing that the burden of proof lies with them, not the accused.
[39] See Anti-Corruption Law (Law 30/2002), article 44.
[40] See Constitutional Court Decision No. 21/2014. However, this decision may not reflect a genuine recognition of procedural safeguards but rather a response to prior judicial inconsistencies. In 2013, the South Jakarta Pre-Trial Court dismissed Fatah's suspect status, causing controversy as pre-trial courts at the time lacked the authority to review suspect status or the evidence supporting it. The decision was not implemented, and the judge was sanctioned. In contrast, in February 2015, two months before the Constitutional Court ruling, the South Jakarta District Court dismissed Budi Gunawan's suspect status. At the time, Budi Gunawan was a police general nominated for the position of National Police Chief. As of 2025, he serves as the Coordinating Minister for Political, Legal, and Security Affairs. Despite being identical in principle to Fatah's case, this judgment was upheld, and the judge was promoted, highlighting inconsistencies in judicial treatment.
[41] In this context, "formal review" means that while the Court introduces more judicial oversight on critical decisions such as naming a suspect, it does not grant the power to assess the credibility and probative value of the evidence. Instead, it only checks formalities or paperwork, such as whether warrants have been signed by competent authorities, or whether a suspect has been informed of their rights. Previously, pre-trial procedure in Indonesia did not recognize such power, rendering it a toothless instrument for overseeing enforcement power from the authorities.

the low evidentiary thresholds. This is because the expansion of pre-trial motions was limited to assessing whether the quantity of evidence met the newly defined standard, without the power to examine the quality and probative value of the evidence, as well as its admissibility. Moreover, when the defense seeks to summon witnesses, unlike the prosecution, there are still no enforcement mechanisms available to ensure compliance with the summons.[42] These shortcomings form the central theme of the discussion in the next section.

Meanwhile, the evidentiary threshold at the trial stage remained unchanged. To secure a conviction at trial, the KUHAP establishes a second evidentiary threshold, requiring judges to base their subjective "inner conviction" (*keyakinan hakim*) on at least two types of evidence. This quantitative requirement mirrors the pre-trial standard, mandating that judges form their inner convictions before reaching a guilty verdict. While the law stipulates that this conviction must be briefly explained in the court's decision, it does not require a detailed justification, let alone an explanation of the reasoning behind the judges' inner conviction, specifically why one version of events is deemed more probable than competing narratives.[43] As will be demonstrated later, this structural design of the evidentiary system creates a significant risk of reinforcing pre-existing biases during the trial, rather than mitigating them.

In Indonesia's evidentiary system, the number two appears to function as a "magic number" for determining evidentiary sufficiency, serving as the minimum threshold required at both the pre-trial and trial stages to justify enforcement actions and convictions. While the rationale for this two-evidence rule is not entirely clear, several interrelated explanations may exist.[44] Firstly, this principle may have its roots in the historical "two-witness rule," a concept prevalent in the Roman-Canon system of legal proofs, which subsequently influenced the Dutch Criminal Procedure Code and was eventually incorporated by Indonesia. This ancient rule established a minimum evidentiary requirement for conviction, stipulating that a court cannot convict based solely on the testimony of a single witness or an uncorroborated confession by the accused.[45]

This emphasis on the quantum of evidence in reaching a verdict can also be understood as an extension of the Dutch negative system of proof, which seeks to limit judicial subjectivity by requiring

[42] This stands in contrast to the concept of subpoena in liberal criminal justice systems such as those in the U.S. or the U.K. When the defense requests the court to issue a subpoena, it constitutes a binding order, backed by enforcement mechanisms to ensure compliance. Although the court may deny the request, it can do so only under specific circumstances. More importantly, it is an independent, external authority (the Court) that determines whether the request is valid. In Indonesia, by contrast, the decision regarding a witness's relevance is made by the police or the prosecutor themselves, highlighting a significant imbalance between the defense and the authorities in criminal case processing.

[43] See KUHAP article 197(d). This article requires judges to provide only brief reasoning on the facts and evidence leading to conviction. Moreover, the article merely states that the court's decision must reference the indictment, but it imposes no obligation to mention the defense statement (*nota pembelaan*) submitted by the defense lawyer. This reinforces the tendency to assign greater weight to the prosecutor's indictment than to the defense's arguments. Unsurprisingly, Indonesian criminal judgments often overlook the defense's position entirely.

[44] In this context, "not entirely clear" means that I could not find a specific discussion in the parliamentary archives on the formation of KUHAP that directly led to the establishment of the minimum amount of evidence. However, based on available data, I can draw an inference.

[45] (Bloemberg, 2018: 296–306; Langbein, 2006: 63) Moreover, see article 342 para 2 of the Dutch Criminal Procedure Code. This article suggests the two-witness rule in convicting. However, the Dutch Criminal Procedure Code also requires judges to provide a detailed justification for their conviction, explicitly addressing the arguments presented by both the defendant and the public prosecutor (see Article 359 of the Dutch Criminal Procedure Code).

judges to adhere to legally prescribed evidentiary standards. Rather than relying solely on personal conviction, judges must ensure that the highest degree of probability is met through evidence that conforms to established legal criteria.[46] This emphasis on the quantum of evidence aligns with the push for procedural safeguards by limiting judicial subjectivity in verdicts. It was designed to address the shortcomings of the preceding colonial code, which lacked explicit evidentiary standards, leaving greater discretion to judges without clear legal constraints.[47] Lastly, parliamentary discussions during the establishment of KUHAP from 1979 to 1981 reveal that lawmakers expressed dissatisfaction with the colonial code, criticizing its absence of clear thresholds for justifying arbitrary actions or convicting individuals. Consequently, several lawmakers called for the new code to incorporate explicit evidentiary thresholds as a measure to curb potential abuse of power. It is very likely that this demand, influenced by the historical tradition of the two-witness rule, led to the inclusion of the two-evidence rule in the final version of KUHAP.[48]

Regardless of the underlying rationale, the two-evidence rule currently serves as the foundation of Indonesia's evidentiary threshold at both the pre-trial and trial stages. In essence, the standard for both arresting and convicting an individual is effectively the same, implying that the degree of certainty regarding a person's guilt is presumed to be met as early as the pre-trial stage. This stands in contrast to the tiered evidentiary thresholds in common law systems, where the standard for arrest (probable cause) is significantly lower than the standard for conviction (beyond a reasonable doubt). This distinction reflects a graduated approach to certainty, acknowledging that the level of proof required to justify an arrest differs from that needed to secure a conviction. Moreover, the emphasis on the amount of evidence opens the door for another problem, as it reduces the evidentiary process to a mere numerical requirement, making its application highly flexible. The next section will discuss how these issues, exacerbated by systemic corruption within Indonesia's criminal justice system, allow the current evidentiary framework to be easily manipulated. As the following section will demonstrate, this design not only fosters bias but also creates opportunities for abuse of power.

The Implementation of Evidentiary Threshold in Indonesia

With the current evidentiary system emphasizing the quantity of evidence, identical thresholds for both pre-trial and trial stages, and a lack of meaningful oversight mechanisms, this article identifies at least two fundamental issues in its implementation. First, it fosters a bias-prone environment

[46] The negative concept of proof was a distinctive feature of Dutch legal tradition starting in the 1800s, historically seen as a middle ground between free evaluation of evidence and strict legal proof systems. Rather than prescribing what constitutes sufficient proof in every case, Dutch criminal procedure traditionally focused on what does not qualify as sufficient proof. Indonesia later adopted and expanded upon this concept, incorporating a fixed evidentiary threshold by explicitly defining the minimum quantum of evidence required—set at two types of evidence. This approach was inspired by the Dutch negative proof system, though the Dutch Criminal Procedure Code itself does not explicitly quantify the required amount of evidence, aside from suggesting the two-witness rule. For a historical overview of the negative concept of proof in Dutch Law see (Bloemberg, 2018: 306)

[47] The colonial code leaned toward a free evaluation of evidence, where the judge's subjective belief played a dominant role in determining the outcome of a case. This made incarceration excessively easy, leading to pressure to restrict such subjective beliefs and establish a more objective evidentiary standard.

[48] This is evident in the 17th parliamentary discussion of KUHAP on February 1, 1980. In this meeting, parliament members discussed and questioned the probative value of witness statements, ultimately agreeing on a two-witness rule and emphasizing the principle of "unus testis nullus testis" (one witness is not a witness). The discussion can be seen in https://acrobat.adobe.com/id/urn:aaid:sc:AP:fcc4679e-7f8a-467b-8d25-2d57bcb871ba?comment_id=2a63fc35-9cdc-49f2-a639-7ad4f8e50431 (File is obtained privately by the author, and uploaded into cloud).

throughout the process of gathering, interpreting, and weighing evidence. Since the focus is on meeting the numerical threshold rather than assessing quality, even well-intentioned fact finders can fall into cognitive biases when engaging with the evidence. Second, this environment is highly susceptible to exploitation by corrupt officials. Without proper oversight to scrutinize the credibility of evidence or mitigate investigative biases, the system becomes highly susceptible to manipulation, particularly within a criminal justice framework already plagued by systemic corruption. These two arguments form the foundation of the following discussion, which explores their impact on investigations and judicial decision-making. These two arguments are also examined in the context of both the pre-trial investigation and trial stages.

Bias in the Pre-Trial Investigation Stage: Origins and Implications

With the emphasis on the quantum of evidence, the system creates a significant risk for anchoring bias—a cognitive bias in which decision-makers become overly reliant on the earliest information they receive during the evidentiary process. Since Indonesia's evidentiary threshold requires only two types of evidence, these are often secured early in the investigation. What worsens the situation is that this initial evidence typically comes from the reporting party, who naturally provides information that supports their own narrative. As a result, this early evidence acts as an anchor, shaping authorities' perceptions of the case and reinforcing a preconceived notion from the outset.[49] Once this threshold is formally met, authorities may feel they have already "revealed the truth", reinforcing their initial conclusion and leading to a satisficing phenomenon—where the focus shifts from seeking the most accurate outcome to merely fulfilling the numerical requirement. Since the police's primary objective is to meet the two-evidence rule rather than assess the quality of the evidence, this can create a cognitive closure effect, making it increasingly difficult for them to revise their understanding even when new, contradictory evidence emerges.

In this setting, subsequent information could be given less weight or dismissed entirely due to the cognitive anchoring effect, reinforcing confirmation bias and narrowing investigative reasoning. This article argues that even non-corrupt law enforcement officials can fall into this cognitive trap, as they are pressured to make quick decisions under the evidentiary threshold, leading to the oversimplification of complex cases. In other words, the evidentiary threshold becomes internalized as an institutional mindset. This is particularly concerning because engaging with evidence is not merely a mechanical process of meeting a numerical standard—it is a cognitive activity that requires critical thinking, continuous evaluation, and reasoning. When the system forces fact-finders to prioritize quantity over quality, it fundamentally undermines the investigative process.

The focus on the quantity of evidence, rather than its quality, creates a serious risk of misrepresenting the truth. Without strong oversight mechanisms requiring the police to critically evaluate evidence and assess its probative value, partial or misleading evidence can easily be mistaken for complete proof. This lack of scrutiny allows fragmented or selective evidence to appear more conclusive than it actually is. Moreover, the absence of meaningful oversight provides too much convenience for law enforcement. Knowing that their investigative decisions will not be rigorously reviewed, police officers face little pressure to reevaluate their assumptions or correct investigative errors. As a result, authorities may develop a false sense of truth, which can ultimately justify arbitrary enforcement actions against individuals. This systemic vulnerability is consistent with

[49] As explained earlier, this leads to satisficing and can ultimately result in tunnel vision, where fact-finders develop preconceived notions about the case, leading them to selectively interpret evidence in a way that confirms their initial assumptions. This is argued to be a natural human tendency, and the evidentiary system emphasizes this tendency. See (Findley and Scott, 2006: 292)

Butt and Nathaniel's argument that the focus on the quantity of evidence can be exploited to manufacture evidence, allowing a false sense of truth to become the foundation of enforcement actions by the authorities (Butt and Nathaniel, 2024: 147).

Let me illustrate how this bias can arise in the investigative process within Indonesia's criminal justice system. Those familiar with investigations—whether through direct experience or academic study—will recognize how these biases take shape. When an individual files a police report, they are required to present evidence based on the five types recognized by law. Typically, complainants provide witness names or documentary evidence that support their version of events. Naturally, this creates an opportunity for selection bias, as complainants are likely to cherry-pick evidence that strengthens their narrative while omitting challenging information. This presents the first opportunity for anchoring bias, where the initial evidence sets a fixed perspective that influences the direction of the investigation.

Moreover, an informal but pervasive practice further amplifies this bias: it is not uncommon for complainants to fund police investigations. While this is not legally sanctioned, the reality is that police investigations often lack sufficient budgetary resources (Baker, 2012, 2015). As a result, it has become an informal rule that complainants are expected to cover certain investigative costs to ensure the process moves forward smoothly. In such cases, the police may feel compelled to prioritize evidence that aligns with the complainant's claims, such as summoning only those witnesses who support their version of events. In other words, the Indonesian police often function as de facto private investigators for the complainant, leading to a tendency to prioritize the complainant's interests rather than maintaining objective neutrality.

This issue is exacerbated by the widespread use of criminal law experts as evidence.[50] In Indonesia, expert testimony is considered one of the five types of evidence, and it is not uncommon for these experts to make direct judgments about the accused's guilt or innocence in their statements. Since these experts are often selected and funded by the complainant, there is an inherent risk of selection bias, where only experts favorable to the complainant's argument are chosen.[51] As a result, the two-evidence requirement is easily satisfied at the early stage of an investigation. The complainant's statement, combined with the testimony of their selected witnesses, qualifies as witness evidence. Additionally, expert testimony, often favoring the complainant's version of events, constitutes another form of evidence. Beyond these, subjective police opinions about the case can also reinforce the existing narrative, as they can be considered indications, which constitute another type of evidence.[52]

My experience as a criminal law expert assisting investigations has reinforced this observation. On numerous occasions, police investigators have approached me not to seek an objective assessment of the evidence but rather to validate their pre-formed hypotheses. When I decline to provide a

[50] This issue has been highlighted previously by Butt and Nathaniel, who argued that the use of criminal law expert opinions as evidence in Indonesia has the potential to usurp judicial function. Although both authors argue that judges rarely consider it, they overlook its influence on constructing case files during pre-trial investigation. It can be used to complement the evidence, fulfilling the numerical requirement of the evidentiary threshold. See (Butt and Nathaniel, 2024)

[51] This also leads to the phenomenon where accused individuals report experts who testified against them to the police for perjury. See (Butt and Nathaniel, 2024)

[52] As previously explained, this subjective opinion is classified as "indications" or circumstantial evidence, which suggests police observations from direct evidence. Although the KUHAP suggests that indications are the result of reasoning by judges, the law does not explicitly forbid the police from forming their own reasoning as indications.

favorable opinion, they often attempt to persuade me to align with their conclusions, further illustrating how investigative bias can shape case outcomes.[53]

When this occurs, it becomes exceedingly difficult for the accused to challenge the allegations or prove their innocence, as pre-existing assumptions about their guilt have likely already taken hold. In this environment, although the KUHAP ostensibly acknowledges the presumption of innocence, in practice it is no more than a formality (Pangaribuan, 2025a: 9).[54] This is because the real meaning of such principle predominantly lies in the evidentiary threshold itself, which serves as a fundamental procedural safeguard for the accused against bias and abuse of power from the authorities. When that threshold is easily satisfied, the principle itself becomes no more than a "paper tiger."

The absence of an oversight mechanism to counteract these biases and control the quality of the evidence further exacerbates the situation. As previously discussed, KUHAP positions the Indonesian prosecutor as little more than a "postman" for the police, lacking the authority to critically engage with the evidence.[55] As a result, prosecutors are often left with no choice but to transform the investigation case files constructed by the police into formal indictments, without independently verifying the strength or reliability of the evidence. Additionally, the pra-peradilan (pre-trial review) offers little protection against investigative bias. Its authority is limited to assessing the formal and administrative aspects of the investigation rather than critically evaluating the probative value and the admissibility of the evidence. This procedural limitation means that the accused remains entirely at the mercy of the police during the investigation stage, with few avenues for recourse or meaningful legal challenge. In such circumstances, the defense lawyer is effectively powerless, as the law explicitly assigns them a passive role during the pre-trial investigation. Put simply, they are spectators to the process, albeit with a front-row seat.

The tendency for investigative bias to emerge during criminal investigations is well-documented in the broader criminal justice literature. Scholars argue that it arises naturally from human cognitive biases, leading criminal justice actors to prematurely focus on a particular suspect, selectively gathering and interpreting evidence that supports their initial assumptions while disregarding evidence pointing toward alternative explanations. This phenomenon, commonly referred to in the literature as "tunnel vision," can be exacerbated rather than mitigated by certain evidentiary rules and institutional pressures inherent in the criminal justice system.[56] For instance, Leo and Drizin found that, in the U.S., once an investigator or prosecutor commits to a theory, they often disregard

[53] Consequently, I developed a template response beforehand for when the police approached me: "Are you seeking endorsements, or are you truly interested in my objective opinion?"

[54] See Article 66 of the KUHAP. It states that the operational application of the presumption of innocence principle is grounded in the rule that the burden of proof lies with the investigative authorities. During the legislative process of the KUHAP, the presumption of innocence was also a topic of heated debate among legislators, due to the broad discretionary powers granted to the police and the prosecutor. Da Costa, a spokesperson from the Indonesian Democratic Party (PDI), voiced his objection, stating that in practice, the KUHAP prioritized the presumption in favor of the authorities rather than the presumption of innocence. See the article above for a more detailed discussion of the KUHAP legislative process.

[55] In this context, "postman" means that the prosecutor's main job is to forward case files constructed by the police to the court and defend them before the Court. They have little influence on such case files, as their authority is limited. That is why former Deputy Attorney General Marwan Effendy likened his job to a postman for the police. See (Afandi, 2019)

[56] For instance, in the U.S, legal rules and institutional pressures, including doctrines like direct connection and review standards, alongside caseloads and performance reviews, reinforce cognitive biases in criminal investigations. See (Findley and Scott, 2006: 348–356)

exculpatory evidence.[57] Similarly, Powell and others, in their empirical studies in Australia, suggest that prior knowledge can unconsciously shape the direction of questioning, reinforcing preconceived narratives rather than eliciting neutral accounts.[58] Fortunately, more developed legal systems have specific rules and procedural safeguards designed to mitigate such biases. The presence of evidence admissibility rules and mechanisms to challenge collected evidence is a key feature in systems like those in the United States and Australia.

The Trial Stage: Reinforcing Bias Instead of Mitigating It

Building on the earlier arguments about bias in the investigative process, it becomes evident that once a case reaches trial, it may be too late for judges to rectify any investigative biases. Worse still, the trial itself may unintentionally serve to reinforce rather than mitigate those biases. This happens due to two interconnected factors. First, the evidentiary standard at trial is virtually the same as during the pre-trial investigation, with the same two-evidence rule often met before the trial even begins. This means that the evidentiary threshold for conviction may already be met by the time the case reaches the court, further entrenching any biases formed during the investigation.

Second, this situation encourages a tendency for judges to treat the trial as a mere confirmation of the case files constructed during the investigation.[59] As previously discussed, case files are often created by the police and the prosecutor to narrate the story of the crime in a way that aligns with their investigative conclusions, frequently cherry-picking evidence that supports their hypothesis. Once the case reaches the judge, the narrative in these files can have a significant influence on their approach to the trial, predisposing them toward conviction without fully engaging with the quality or probative value of the evidence. This is because judges will receive the case files at least a week before the trial, giving them an opportunity to be influenced by the case files, which consist of one-sided narratives both from the police and the prosecutor. Empirical findings from Assegaf confirm this tendency, arguing that Indonesian judges tend to favor information conveyed to them by the prosecutor, since they receive case files beforehand and also avoid extra work because informal rules dictate that they agree with the case files.[60]

Moreover, judges' questioning during hearings reflects this tendency. They often focus on confirming the accuracy of witness statements recorded in the case files rather than independently examining

[57] (Leo and Drizin, 2010: 25) They supported these findings by referencing various studies and documented cases.
[58] Martine B. Powell, Carolyn H. Hughes-Scholes, and Stefanie J. Sharman, “Skill in Interviewing Reduces Confirmation Bias,” accessed February 4, 2025, https://doi.org/10.1002/jip.1357; Cited in Moa Lidén, *Confirmation Bias in Criminal Cases*, 1st ed. (Oxford University PressOxford, 2023), https://doi.org/10.1093/oso/9780192867643.001.0001.
[59] In the Indonesian system, the results of investigation are compiled in casefiles (berkas perkara), which consist of administrative paperwork, minutes of interrogation, and lists of evidence, leading to potentially massive documentation; this reflects an inquisitorial legacy where trials rely heavily on written documents, contrasting with the orality principle of adversarial trials. That is why the inquisitorial trial is often seen as a confirmation ritual of these massive paperwork files. See (Hodgson, 2006)
[60] In this context, "informal rules" means that there is an existing pattern that judges are expected to follow prosecutors' sentencing recommendations (at least granting two-thirds of the prosecutor's recommended sentence; for example, if the prosecutor proposes nine years, then judges are expected to grant at least six years). Departing from this convention would create extra pressure for the judges, because it would attract attention both from the public and their superiors. Assegaf argues that this is a form of anchor bias, where the narratives from the prosecutor serve as an anchor, influencing the judge's subsequent evaluations. See (Assegaf, 2020)

the evidence or considering the context in which it was gathered.[61] When witnesses attempt to amend their statements or provide new information, they often face resistance, as the court is more inclined to validate the earlier testimony. As I have observed on multiple occasions, when judges ask confirmation questions, the witness may be pressured to affirm the accuracy of previous statements, despite indications that the information was obtained under duress. Often, when witnesses try to revise their testimony, they face the threat of perjury charges if they deviate from the case files. In some instances, judges even defended coercive investigative methods, suggesting that they were necessary for uncovering the truth. Moreover, this situation is further worsened by the common practice of the prosecutor only reading witness statements taken under oath without the presence of the incriminating witnesses, depriving the accused of the right to cross-examine witnesses. This reinforces the reliance on case files and underscores the bias-prone nature of the trial process (Pangaribuan, 2025b).

The phenomenon of treating the trial as a mere confirmation of case files is not unique to Indonesia. Scholars in inquisitorial systems—such as in Italy—have similarly noted how extensive case files, created during pre-trial investigations, can disproportionately influence judges and diminish their role in critically evaluating evidence. In Italy, this problem led to adversarial reforms in the 1990s, which emphasized the principle of orality, giving priority to evidence presented during the hearing rather than the case files (Grande, 2000; Pizzi and Montagna, 2004). Similarly, in Indonesia, the 2013 KUHAP reform attempt sought to minimize the role of case files in shaping trials, but this effort ultimately failed. These examples illustrate how overreliance on case files can deprive judges of the opportunity to critically evaluate evidence, diminishing their role in counteracting investigative bias.

This overreliance on case files could also explain why many Indonesian court decisions lack detailed legal reasoning to justify judicial conclusions. Often, court rulings merely reiterate the prosecutor's indictment and sentencing proposal, with minimal engagement with the defense's arguments or the judge's own reasoning. Such overreliance weakens judicial critical engagement with evidence, as it allows the prosecutor's narrative to prevail without explicitly addressing why the defense's version of events is improbable. This process is crucial in evidentiary assessment since both the prosecution and the defense present competing versions of the truth. Judges, therefore, have a fundamental obligation to articulate in their decisions the reasoning behind their preference for one version of the truth over another, ensuring that their conclusions are based on a thorough and reasoned evaluation of the evidence. After all, the obligation to provide a detailed explanation in judicial reasoning is at the core of the inquisitorial principle of *conviction raisonnée*, which requires judges to explicitly justify why they find one version of the truth more credible than the other, rather than merely stating the final decision.[62]

Moreover, the absence of detailed legal reasoning in conviction rulings serves as a critical indication that the evidentiary standard may not have been properly met. When judges fail to clearly articulate the basis of their inner conviction, it directly undermines the defendant's fundamental right to understand why they were convicted and why the prosecutor's narrative was deemed more probable than the defense's. Ideally, it is the fundamental duty of judges to justify their decisions with

[61] For instance, typical judge questioning when examining witnesses includes: "Have you been interrogated by the police?" and "Is the minutes of interrogation true?" Often, when the answer is positive, judges refrain from further questioning, suggesting they are merely confirming the existing record. See (Pangaribuan, 2025b).
[62] For instance, the Dutch Criminal Procedure Code requires judges to provide a detailed explanation of the basis for their conviction. This includes addressing the arguments presented by both the defendant and the public prosecutor. Moreover, if judges deviate from the positions taken by either party, they are required to justify their reasoning for such a departure (see Article 359 of the Dutch Criminal Procedure Code).

reasoning that demonstrates a high degree of moral certainty, especially given the profound impact their rulings have on the defendant's life.

Again, this situation likely arises because judges often treat trials as a mere confirmation of the case files, assuming that the evidentiary threshold has already been satisfied during the investigation. It is possible that this situation makes them uncritical about their own reasoning. Furthermore, the limited involvement of judges in the investigative process further distances them from the underlying facts, leading to an implicit reliance on case files as an accurate reflection of the truth. This deference stems from the perception that, since the police conduct the fieldwork, they possess superior knowledge of what transpired. Meanwhile, Indonesian judges do not engage directly in investigative fieldwork; instead, they adjudicate cases solely based on the case files presented to them, reinforcing their dependence on police narratives.

The absence of detailed legal reasoning and the impact of such practice has also been highlighted by scholars in Indonesia. Legal scholars, such as Bedner, argue that the absence of thorough legal reasoning prevents Indonesian law from becoming a self-referential system, which is essential for its development (Bedner, 2013). Additionally, Dianti found that most Indonesian court decisions fail to address the judges' reasoning or explain how they arrived at their conclusions, though the research does not offer an explanation as to why this occurs (Dianti, 2024).

Faced with this environment, it is no wonder that acquittal is a rare sight in the Indonesian criminal justice system.[63] Acquittals can only happen in limited and exceptional circumstances, such as external pressure from intense public scrutiny that forces the legal apparatus to deviate from its usual practice, or the influence of an independent-minded judge or even bribery. These circumstances are typically not present in the system's everyday cases. This also means having an exceptionally skilled defense lawyer only does a little to help, as they are already “lost before the battle begins” because the evidentiary system is heavily weighted against them from the outset (Pangaribuan, 2025b).[64]

Systemic Implications

It has now become clear that the implementation of the current evidentiary threshold in Indonesia readily facilitates systemic problems. It not only creates an environment conducive to bias but also creates opportunities for manipulation and abuse of power, as initiating or halting investigations hinges on meeting a low evidentiary threshold with a very flexible application in practice. With this design, incarcerating individuals becomes remarkably easy, ultimately leading to abuse of power, wrongful convictions, and even prison overcrowding.

While comprehensive statistical data on the impact of low evidentiary thresholds is currently lacking, several high-profile cases illustrate how these low thresholds can contribute to fundamental

[63] Although there is no statistical data on the number of acquittals in Indonesia, a mass amnesty and abolition granted by President Prabowo Subianto in August 2025 to 1,178 individuals illustrates how easily one can be incarcerated in the country. Among the recipients was a mentally ill person who had been sentenced to 16 years for murder—an outcome that, in a more developed legal system, might have been halted through a successful insanity plea. Another case involved former minister Thomas Lembong, who was convicted of corruption despite the court acknowledging that there was no mens rea or any corrupt act resulting in personal enrichment. The case sparked public outrage, ultimately prompting the president to grant him abolition.

[64] That is why the practice of defense lawyers assuming a submissive role toward the authorities is so pervasive. It is a consequence of their severely limited power, which makes the pragmatic strategy for advocating on behalf of their clients one of cooperation, even to the extent of acting as case brokers. See the article mentioned above for a more detailed explanation of this phenomenon.

problems such as abuse of power, wrongful convictions, and even prison overcrowding. Just in the last five years, there have been several investigations and scandals that can serve as evidence that the current evidentiary standards in Indonesia readily facilitate systemic problems.

For instance, the 2016 murder of Vina and Eki, which gained public attention only in 2024 due to its film adaptation, provides a powerful illustration of the combined effects of low thresholds and abuse of power (*Jakarta Globe*, 2024). In 2016, Vina and Eki were murdered, allegedly by a mob. Initially, the police dismissed it as a traffic incident, only revising their stance to a murder investigation after protests from the victims' families. However, it was later revealed that the police obtained a witness testimony through torture, leading to the charging of eleven suspects. Despite only apprehending eight suspects, the police claimed the remaining three were "at large."

It was only after the 2024 film adaptation, which portrayed the chaotic investigation, that public pressure led to a reinvestigation. This resulted in the apprehension of one fleeing suspect, Pegi, but the pre-trial court declared that the police had not conducted a thorough investigation in naming Pegi as a suspect.[65] Furthermore, the police admitted to lacking strong evidence against the other two fleeing suspects, forcing them to revise their initial decision. This case clearly demonstrates how the current evidentiary threshold grants excessive flexibility to criminal justice actors in enforcing criminal laws, potentially leading to the abuse of power and wrongful accusations. Moreover, the lack of effective oversight from institutions like the prosecutor's office, the judiciary or defense lawyer allowed this flawed investigation to proceed unchecked. Had it not been for the film adaptation and subsequent public pressure, this case—and the injustices it revealed—may have remained hidden from public view.

Another powerful illustration of the low evidentiary threshold and the ease with which criminal cases can be manipulated in Indonesia is the high-profile murder of police official Yosua Hutabarat by his superior, General Ferdy Sambo, in 2022 (Tempo, 2022). Beyond exposing corruption within the Indonesian police bureaucracy, this case also highlights how low evidentiary standards allowed a high-ranking official like Sambo to manipulate the narrative, obstruct justice, and evade accountability in the initial stages of the investigation. By fabricating a scenario of self-defense, Sambo was able to meet the low threshold for initiating an investigation against the victim, Hutabarat, falsely portraying him as the perpetrator of a sexual assault against his wife. To further support his claims, Sambo presented a fabricated psychological examination purporting to show that his wife had experienced trauma from the alleged assault. This "evidence," combined with coerced testimony, was sufficient to charge Hutabarat with sexual assault, despited the fact that he was already deceased, providing a convenient justification for the self-defense narrative. This allowed Sambo to manipulate the system, using his influence and the low evidentiary bar to his advantage. The police, as an institution, initially supported this fabricated narrative, highlighting the vulnerability of the system to those in power. It was only due to immense public pressure and media scrutiny that the investigation was reopened, ultimately revealing Sambo's role in orchestrating the murder. This case underscores how a low evidentiary threshold, especially in the absence of robust safeguards and oversight mechanisms, can be exploited to frame individuals, obstruct justice, and shield those in power from accountability.

[65] Oversight mechanisms in Indonesia are rare, and in this case, they were triggered primarily by strong public pressure on the court to uncover the truth. However, rather than critically assessing the probative value of the evidence, the court merely identified procedural errors, such as the fact that the suspect had never been questioned before being formally designated as a suspect.

This pattern continues at the trial level. The 2023 murder case of Dini Sera by Ronald Tannur revealed how easily Indonesian judges disregarded key evidence, including CCTV footage of the murder and a forensic report implicating the accused. Worse, they provided no explanation for overlooking this evidence, concluding it was not murder. Only after public pressure surfaced did it emerge that judges were bribed by the accused's family, leading them to disregard contrary evidence. Tannur was ultimately convicted to five years by the Supreme Court after a prosecutor's appeal (Post, 2025). The list of cases demonstrating the manipulation facilitated by the low evidentiary threshold could go on. Only because these cases gained public attention were the fundamental flaws in the criminal justice process revealed. It is natural to think that other cases, without such public attention, remain hidden.

Another alarming issue arising from the implementation of the current evidentiary threshold is the diminishing role of defense lawyers. As previously explained, the current system effectively renders their role ornamental. As a result, they are forced to navigate a labyrinth of authoritarianism rather than construct a solid defense, given their extremely limited power. Scholars have highlighted this issue, noting the pervasive practice of Indonesian defense lawyers acting as case brokers (Lev, 1999; Kouwagam, 2020; Pangaribuan, 2025b). This article argues that one of the fundamental reasons behind this is that securing a conviction is far too easy for the authorities, leaving defense lawyers with little room to mount a meaningful legal challenge. That is why, acting as a case broker is often seen as an adaptive strategy to effectively advocate for the client’s interests amid the legal constraints imposed on them.

Given the significant impact of Indonesia's current evidentiary threshold, a reassessment of the political and legal choices that have shaped it is logically necessary. Although Constitutional Court decisions have attempted to address these issues, their impact is limited, failing to rectify the systemic problems.

Reform Strategies

Before proposing practical policy recommendations, it is essential to identify the problems at a conceptual level. As argued throughout this article, the low evidentiary threshold readily facilitates systemic problems such as biased decision-making and abuse of power. In this context, the low threshold manifests in three fundamental areas. First, the emphasis on the quantum of evidence is inherently problematic. By reducing the evidentiary process to a mechanical exercise, it hinders the revelation of truth by discouraging critical engagement with the evidence and undermining a probabilistic approach to investigating what really happened. In this context, a probabilistic approach refers to the idea that fact finders can only reveal the truth based on degrees of probability rather than absolute truth.[66] Although one can argue that an evidentiary system must not be based solely on probabilities, but also on fairness and due process[67], I argue that such a probabilistic approach is more viable since it forces fact-finders to critically evaluate evidence and reduce bias, because they have the obligation to consider all the possibilities and competing narratives. The key is balancing fairness and a probabilistic approach, ensuring objective qualitative standards are accompanied by procedural safeguards to ensure the fairness of the criminal justice process. With this strategy, it would increase the possibility that convictions are based on a high degree of probability, since its

[66] As explained earlier, the probabilistic approach emerges because of the shift in epistemological thinking in evidentiary law, influenced by the development of the "beyond a reasonable doubt" standard in English law. The "beyond a reasonable doubt" standard, in essence, represents a probabilistic approach. See (Bloemberg, 2019; Damaska, 1998)

[67] (Ho, 2008) In this literature, Ho argues that it is not fair to base evidentiary standards on mathematical probabilities because the purpose of an evidentiary system is not only to reveal the truth but also to ensure fairness and respect towards the accused, so that it can achieve legitimation.

implementation requires not only rigorous thresholds but also a balance of power between state authorities and individuals. This focus on the quantity of evidence is based on the outdated concept that absolute truth can be quantified, a notion that has been reformed in many modern inquisitorial tradition countries.

Second, this problematic concept of the evidentiary threshold is applied at both pre-trial and trial levels. At the trial level, the difference from the pre-trial threshold lies only in the subjective element: the judges' inner belief. Worse, Indonesian law does not oblige judges to provide detailed reasoning for their inner beliefs. This leads judges to feel no need to provide detailed justification for their decisions, let alone explain why one scenario is more probable than another.

Third, the lack of quality control on how the threshold is met in both pre-trial and trial further worsens the situation. These combined factors provide excessive flexibility in application by fact-finders, fostering an environment prone to bias and manipulation. With this design, the low threshold adopted by Indonesia not only fails to achieve its primary purpose of revealing the "real truth" but also fails to ensure the fairness of the trial—the two competing values of having an evidentiary threshold. Consequently, it significantly contributes to the abuse of power and systemic corruption because the system gives too much leeway for authorities to manipulate the thresholds.

In addressing the challenges posed by Indonesia's evidentiary threshold, this article advocates for a layered and incremental approach, acknowledging the impracticality of immediate, drastic reforms. Initially, the focus on the quantum of evidence as the determinant of the evidentiary threshold must be replaced with qualitative standards to ensure the integrity of evidence. While the adoption of a tiered threshold, such as that employed in the U.S., may be overly ambitious at this juncture, given the need for practical evolution and the establishment of robust qualitative standards, the immediate priority lies in implementing a strengthened oversight mechanism during the pre-trial investigation as a tool for qualitative evidence control. This mechanism should encompass the involvement of judges, prosecutors, and defense lawyers. The active participation of pre-trial judges is essential to ensure that police enforcement actions against individuals are justified and necessary, mirroring systems in the U.S. and the Netherlands, where judges or investigative judges supervise investigations. This empowers pre-trial judges to conduct critical evaluations of evidence, replacing the current pre-trial review, which exhibits significant limitations in controlling quality and the evidentiary threshold.

Secondly, the authority to control the quality of evidence must be extended to prosecutors, who should actively review and examine evidence rather than serve as mere conduits. Concurrently, the role of defense lawyers must be enhanced. They should be granted early access to evidence, the right to challenge threshold fulfillment, the ability to propose evidence, and the authority to request witness examinations with judicial enforcement.[68] Following the establishment of these mechanisms, tiered thresholds can evolve organically, as has occurred in the common law tradition. The reliance on case files should be gradually reduced, with greater emphasis placed on arguments presented before investigative judges, allowing for challenges to one-sided narratives.

With the implementation of these pre-trial oversight mechanisms and the elimination of minimum evidence requirements, the pre-trial and trial thresholds will diverge, necessitating that judges provide detailed justifications for their inner beliefs in verdicts, particularly when choosing between

[68] In this context, Indonesia can learn from Vietnam's criminal justice system, which also has an authoritarian legacy but successfully reformed its criminal procedure law by strengthening the role of defense lawyers, notably through provisions allowing them to propose witnesses for examination with enforcement measures. See (Chi et al., 2023).

conflicting scenarios, as mandated by a probabilistic approach. While subjective elements are indispensable in adjudication, the system must compel judges to engage critically with evidence, thereby mitigating the risk of logical fallacies. Lastly, the introduction of admissibility rules is recommended to ensure evidence credibility. Initially, these rules should focus on barring evidence obtained through egregious violations, such as torture and procedural breaches, eschewing complex legal tests akin to those employed in the U.S. These changes would naturally reduce the discretionary power of law enforcement officials while simultaneously lowering the stakes of their decisions, thereby helping to mitigate abuses of power.

Conclusion: The Enduring Challenges of Criminal Justice Reform

The policy recommendations proposed by this article, although gradual and seemingly ideal, would likely not happen, at least in the near future. As argued previously, any reform that changes the distribution of power between state legal apparatuses, especially the police and prosecutors, would likely face resistance from those who have long enjoyed broad autonomy in investigations.[69] This is because the proposed changes would require them to become more accountable to both defense lawyers and the judiciary, with their investigative work subject to external oversight and intervention. Given that the police have acted as the primary gatekeepers of Indonesia's criminal justice system for over four decades, they are unlikely to readily relinquish their authority. This reluctance was evident in the failed 2013 KUHAP reform, which sought to expand prosecutorial authority and introduce judicial oversight as a check-and-balance mechanism, but ultimately faced strong opposition from the police who viewed it as an encroachment on their investigative powers (Panggabean, 2010; Lamchek, 2019; Pangaribuan, 2025c).

Moreover, the ongoing power struggle between the police and the prosecutor's office over jurisdiction in investigations further reduces the likelihood of meaningful reform. When tensions exist between these institutions, any proposed legal changes risk being perceived not as genuine efforts to improve the system, but rather as political maneuvers to shift power from one agency to another. As a result, institutional resistance—particularly from the police—remains a significant obstacle to strengthening oversight and accountability in Indonesia's evidentiary system. Meanwhile, the idea of introducing a pre-trial judge to oversee the pre-trial process remains a bridge too far for Indonesia. The Indonesian Supreme Court appears hesitant toward this proposal, primarily due to a shortage of judicial personnel.[70]

In 2025, Indonesia's criminal justice system reached a critical moment for reform, as the new Criminal Code is set to take effect in 2026. At the time of writing (August 2025), the legislative process to revise the KUHAP is still ongoing. The latest draft currently under discussion shows no change to the evidentiary threshold itself; the emphasis on the quantity of evidence, the so-called two-evidence rule, remains intact as the minimum treshold in the pre-trial process.[71] Unfortunately,

[69] The Indonesian prosecutor can also act as the primary investigator for specific crimes, such as corruption and human rights violations, without the need to share investigative powers with the police. See Indonesian prosecutorial law (Law no 11/2021) and (Afandi, 2021).

[70] This statement was officially delivered by the Indonesian Supreme Court during the legislative process for the KUHAP reform on 12 February 2025. It is recorded in the official parliamentary proceedings, available at: https://www.dpr.go.id/kegiatan-dpr/fungsi-dpr/fungsi-legislasi/prolegnas-prioritas/detail/632 (last accessed 5 August 2025).

[71] During trial, the two-evidence rule is no longer explicitly referenced as the minimum threshold for conviction. Yet, there are no structural changes to the format of judicial decisions, which still require judges to refer to the prosecutor's indictment but not to the defense statement (article 235 of the draft, March 2005

there has been no serious engagement with how this standard may contribute to bias and abuse of power, as demonstrated throughout this article. One modest improvement appears in the draft's brief recognition of admissibility rules, stating that illegally obtained evidence may not be used in court. However, in a system where it is exceedingly easy to satisfy the legal formalities for collecting and interpreting evidence, such a rule risks becoming a symbolic gesture rather than a substantive safeguard.

Another symbolic gesture in the current draft is the claim that the KUHAP reform embraces both the principle of equality of arms—which lies at the core of the adversarial system—and the active role of judges.[72] This claim is largely rhetorical: without granting meaningful power to the defense as a counterweight to the state, and in the absence of a pre-trial judge to serve as a neutral arbiter, such principles risk becoming hollow. As long as reform discussions continue to focus primarily on the balance of institutional power—particularly between the police and the prosecutor—any substantive change will be difficult to achieve. Implementing the equality of arms principle in earnest would inevitably require curbing the power of state legal apparatuses. As previously argued, when institutions like the police and the prosecution have long enjoyed a high degree of autonomy, even minor reductions in their authority are likely to be met with resistance. In such a context, the foundational issue of the evidentiary threshold—identified in this article as the core logic of the system—risks being relegated to mere academic discourse.

Given the challenges involved, the future of criminal procedure reform remains uncertain, underscoring the need for strong political commitment at the highest levels of government to drive meaningful change. As argued previously, the fate of criminal procedure reform, particularly regarding its evidentiary threshold, will reveal the true nature of the Indonesian justice system. Is Indonesia a country that cannot escape the specter of its authoritarian past, or is it genuinely democratic, beyond mere appearances?

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version). The documents of legislative process of KUHAP, including the latest draft and list of identified issues *(Daftar Inventarisasi Masakah, or DIM)* can be accessed at https://www.dpr.go.id/kegiatan-dpr/fungsi-dpr/fungsi-legislasi/prolegnas-prioritas/detail/632 (last accessed 5 August 2025).

[72]See Article 4 of the latest KUHAP reform draft (March 2025). It states: "Criminal proceedings regulated under this law are carried out through a combination of an active judge system and balanced adversarial parties during courtroom examination" (original in Indonesian; English translation by the author).

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