

## **Examining of the Concept of Standard of Proof in the Indonesian Criminal Procedure Code**

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### **Abstract**

The pursuit of justice is a fundamental pillar of civilized society, symbolizing hope amidst the complexity of human interaction. The balance between freedom and accountability of law enforcers depends on proof that refers to the standard of proof. In Indonesia, the journey to justice passes through various thresholds of proof, which serve as checkpoints in uncovering the truth. The Criminal Procedure Code (KUHAP) aims to ensure justice through a structured legal framework, but its effectiveness is often hampered by ambiguity and inconsistency in applying these standards. This study uses a normative legal research method with a conceptual approach and a statute approach. All legal materials were collected using literature studies, then analyzed using qualitative methods. The results of the study show that the standard of proof in criminal procedure law is used to ensure that criminal decisions are based on strong and convincing evidence, thereby minimizing the risk of erroneous decisions. The Indonesian Criminal Procedure Code does not explicitly define or articulate the standard of proof commonly found in other legal systems. Even if it is not, the law implicitly requires a degree of reasonableness and factual basis for actions taken by law enforcement.

**Keywords:** Indonesia; Indonesian Criminal Procedure Code; Standard of Proof.

## Introduction

The pursuit of justice is the foundation of every civilized society, a beacon of hope and fairness amidst the complexity of human interaction. In the sacred courtroom, the drama of justice unfolds every day, a high-stakes theater where the balance of freedom and accountability hangs on the thread of evidence and reason. At the heart of this solemn process lies the concept of the standard of proof, a very basic yet very complex principle that determines the fate of the individual and the integrity of the legal system itself. In Indonesia, as in many countries, the journey to justice passes through various thresholds of proof, each of which serves as a checkpoint on the arduous journey to uncover the truth.

The concept of the standard of proof is the foundation of criminal justice systems around the world, ensuring that decisions in criminal trials are based on reliable and convincing evidence. This standard ranges from reasonable suspicion to proving a crime beyond a reasonable doubt. These standards vary widely in their application and implications in evaluating evidence (Tolochko, 2020). Criminal procedure law in Indonesia has its own challenges in implementing these standards in Law Number 8 of 1981 concerning the Criminal Procedure Code.

The Criminal Procedure Code (KUHAP) is the backbone of the state's judicial process, which aims to ensure justice through a structured legal framework. However, the effectiveness of this system is often hampered by ambiguity and inconsistency in the standards of proof applied therein. This is because the rubrication of standards of proof is not articulated and clearly defined in every procedural stage, such as in investigation, prosecution, and trial examination, so that there is a gap in fair law enforcement. This inconsistency not only impacts justice but also impacts public trust in the rule of law.

Not only that, this ambiguity can result in diverse interpretations by law enforcement officers. For example, investigators who are looking for events suspected of being criminal events in a pre-trial investigation, then the event at least touches the definition of reasonable suspicion. Investigators who will conduct investigations need standards of proof so that the evidence that has been collected includes evidence that is worthy of being used as a requirement to arrest or detain someone. The lack of clear guidelines often leads to arbitrary decisions, where some cases are processed on weak grounds while other cases with stronger evidence are dropped. This arbitrariness erodes the principle that everyone is treated equally in the eyes of the law, thus fostering perceptions of bias and injustice (Ahmed, 2020).

The public prosecutor needs to demonstrate the evidence that has been obtained so that the evidence can strengthen and show that the defendant is guilty. During the prosecution stage, the standard of proof should be used as a guideline to ensure that the indictment can be continued after the public prosecutor receives the case file if there is a strong basis to believe that there has been a crime and the suspect committed it. However, if the standard of proof is not converted into a norm

that is the authority of law enforcement, it allows for prosecutorial discretion that can be influenced by external factors, such as political pressure or public opinion, and is not based on objective legal criteria. This not only endangers the integrity of the prosecution but also undermines the defendant's right to a fair trial.

At the investigation stage, the reasonable suspicion standard should be a guideline for law enforcement in determining when is the right time to start an investigation or detain a suspect. However, the lack of clear guidelines often leads to arbitrary decisions, where some cases are processed on a weak basis while other cases with stronger evidence are dropped. This arbitrariness erodes the principle of equal treatment under the law, thus fostering a perception of bias and injustice.

During the prosecution phase, the requirement of probable cause is intended to ensure that charges are filed only when there is a reasonable basis to believe that a crime has been committed and that the accused is responsible. However, the vague definition of probable cause in the Criminal Procedure Code allows for prosecutorial discretion that can be influenced by external factors, such as political pressure or public opinion, and is not based on objective legal criteria. This not only compromises the integrity of the prosecution but also undermines the accused's right to a fair trial.

In court, judges, in sentencing a defendant who is proven guilty beyond reasonable doubt, require standards of proof, resulting in consistent court decisions and a uniform application of the law. However, the lack of precise definitions and guidelines for the application of these standards in Indonesian law results in inconsistent decisions. Judges can interpret the same evidence differently, resulting in unpredictable outcomes that undermine confidence in the justice system. The lack of clear guidelines for these standards is in stark contrast to other countries such as the United States and the United Kingdom or those in the common law tradition, where the definitions are well-established, more predictable and transparent

### **Research Method**

This research uses a normative legal research method. Normative legal research is an approach in research that aims to understand, analyze, and evaluate applicable legal norms. This research was conducted using a conceptual approach and a statute approach. The conceptual approach focuses on the analysis of concepts or theories that are relevant to the standard of proof. While the statute approach focuses on laws and regulations related to the legal issues being studied. All legal materials were collected using literature studies, then analyzed using qualitative methods and presented descriptively.

### **Evaluation of the Concept of Standard of Proof**

In criminal procedure law, the standard of proof is a critical threshold that must be met to guarantee proof through certain criteria (Bespalko & Vapniarchuk,

2022). This standard serves to minimize the risk of wrongful conviction, by demanding that the evidence presented must not raise doubts in the mind of a reasonable person regarding the guilt of the accused. Another opinion states that the standard of proof can be understood as a rule that provides competence to decide whether a certain standard has been met, and not as a rule that determines the amount of evidence needed (Loeb, 2022). In addition, as a protection against failure of justice, it balances the scale between the power of the state to prosecute and the right to individual freedom. When the investigation to the court decision is taken through strict supervision and a high threshold of evidence, the results will be considered more legitimate and fair. This, in turn, strengthens the rule of law and the basic principles of justice and equality that underlie a democratic society.

Generally, there are 5 types included in the standard of evidence, namely *reasonable suspicion*, *probable cause*, *preponderance of evidence*, *clear and convincing evidence*, and *beyond a reasonable doubt* (Kolomiiets, 2021). *Reasonable suspicion* is a standard used primarily in the context of police stops and brief detentions (stop and frisk). This is the lowest threshold of evidence and allows law enforcement officers to stop and ask individuals if they have a reasonable belief that someone may be involved in criminal activity. This belief must be based on “specific and articulable facts” and not just a hunch or unfounded suspicion. The concept of reasonable suspicion arose from the landmark US Supreme Court case *Terry v. Ohio* (1968), which held that officers could conduct a brief investigative stop (commonly known as a Terry stop) if they had a reasonable suspicion of criminal activity. The importance of reasonable suspicion lies in its role in balancing the need for effective law enforcement with the protection of individual rights. It provides a mechanism for police to intervene when there is a legitimate concern about criminal activity without the stringent requirements required for an arrest or search. However, this standard is intentionally set low to allow for swift action, which also opens up the possibility of abuse.

The next standard is probable cause. *Probable cause* is a higher standard of proof than reasonable suspicion and is a fundamental concept in criminal procedure, particularly in investigations such as the legality of an arrest (Yeager, 2023). It requires a reasonable basis to believe that a crime may have been committed and that the person arrested or the place searched is connected to the crime. The Fourth Amendment to the US Constitution explicitly requires that a warrant be issued only if there is probable cause, supported by oath, and specifically describing the place to be searched and the persons or things to be seized. *Probable cause* was further articulated in the case of *Illinois v. Gates* (1983), where the US Supreme Court adopted a “totality of circumstances” approach. That is, probable cause is determined by considering all the facts and circumstances known to the officer at the time. Unlike *reasonable suspicion*, *probable cause* requires more concrete evidence and a stronger connection to criminal activity. For an arrest, this means that the facts and circumstances within the officer’s knowledge are sufficient to

warrant a reasonable person to believe that the suspect has committed or is committing a crime prohibited by criminal law (Mappaselleng and Kadir, 2020). For a search, it means that there is a substantial probability that evidence of a crime will be found in the place being searched.

*Preponderance of evidence* is a more practical standard used in civil cases. In civil cases, the *preponderance of evidence* standard requires that the evidence be more likely than not true, requiring that the existence of the disputed fact be more likely than its absence (Orloff & Stedinger, 1983). This standard is based on a pragmatic approach, which recognizes that absolute certainty or material truth is often unattainable and focuses on resolving disputes in a fair and efficient manner. Philosophically, it is consistent with probabilistic justice (Cheng, 2012), which reflects the idea that justice can be served by evaluating which party's evidence is more convincing, even if the evidence does not achieve absolute certainty.

*Clear and convincing evidence* is a standard that requires a high degree of certainty but is less stringent than *beyond a reasonable doubt*. This standard is supported by a balance between the need for a strong evidentiary basis and the practicalities of trying serious cases. Philosophically, it reflects a utilitarian approach, which aims to ensure that decisions have significant impact. This standard is designed to prevent unjust outcomes by requiring the evidence to be far more persuasive than simply determining the balance of probabilities.

*Beyond a reasonable doubt* is the highest threshold or standard used in criminal trials (Smith, 2022), and embodies a deep philosophical commitment to protecting individual liberty. This standard reflects a deontological perspective, which emphasizes that the justice system should avoid wrongful convictions even at the expense of allowing the guilty to escape. It is based on the principle that the consequences of wrongful convictions, such as imprisonment or even execution, require a high degree of certainty before someone can be deprived of their liberty. This principle is rooted in Sir William Blackstone's statement, which it is better that ten guilty persons escape than that one innocent suffer, emphasizing the ethical importance of preventing harm to the innocent.

From a comparative perspective, the standard of proof in legal systems varies widely between the common law and civil law traditions. Reasonable suspicion in the United States is the standard used primarily in the context of police stops and brief detentions. While probable cause is used to make arrests or seizures. In the UK, a similar concept is used in the context of investigative powers under the Police and Criminal Evidence Act 1984 (PACE). Both jurisdictions recognise the need to strike a balance between effective law enforcement and individual rights, although the specifics of how this is applied vary. The US criminal justice system applies a "beyond a reasonable doubt" standard to criminal cases, reflecting a high threshold to protect against wrongful conviction. Civil cases are run on a "preponderance of evidence" standard, which requires that a claim is more likely to be true than to be false. In the UK, civil cases also use a "balance of probabilities"

standard similar to the US, while retaining the “beyond a reasonable doubt” standard for criminal cases

Civil law jurisdictions, such as Germany, adopt an inquisitorial approach, focusing more on judicial investigation. The standard of proof in these systems reflects a different balance between judicial oversight and procedural efficiency. In Germany, the concept of *reasonable suspicion* is not as widely used as in common law jurisdictions. Instead, the German legal system relies on judicial investigation or inquiry to determine whether there is sufficient evidence to proceed with a case. The standard for initiating an investigation is not suspicion, but rather the need for a comprehensive legal examination of the evidence. While the German criminal justice system does not explicitly use the term “*probable cause*” it has a similar concept embedded in its procedural law. The requirement to initiate an arrest or seizure is based on the principle that there must be reasonable grounds to believe that a crime has been committed and that evidence will be found. This is integrated into the judicial process rather than treated as a separate standard. In German criminal law, the highest standard of proof is “*intime conviction*” which is similar to the “*beyond a reasonable doubt*” standard (Ambos, 2023).

#### **Standards of Proof in the Indonesian Criminal Procedure Code (KUHAP)**

Criminal procedure law in Indonesia is regulated by the Criminal Procedure Code or KUHAP, which was passed in 1981. The KUHAP was designed to ensure a fair and efficient criminal justice process, with an emphasis on protecting individual rights and effective law enforcement. This is in line with the “*principle of respect for human rights*” that criminalization of criminal law must respect human rights (Mappaselleng & Kadir, 2023). The KUHAP is structured based on several main stages of investigation, prosecution, and trial. Each phase has specific procedural rules that aim to protect the rights of individuals, including suspects and defendants to ensure a fair trial.

Unlike legal traditions in other countries, especially in the common law tradition, the KUHAP does not articulate the term standard of proof and does not provide an affirmation regarding the specific standard of proof required at certain stages. For example, it is not explicitly stated what kind of standard of proof is needed in the investigation process, as well as in prosecution or examination at trial. However, every action taken by law enforcement must be based on a certain level of reasonableness, and this reasonableness can be measured from the evidence obtained. If law enforcement arrests someone without being accompanied by certain facts that show that the person deserves to be arrested, then this will actually harm justice and show arbitrary actions that are not justified in any criminal procedure law in the world.

At the investigation level, in Indonesian criminal procedure law, investigations are divided into two parts, namely inquiry and then continued to the investigation level. The author argues that this is because it is supported by the



structuring of the Police apparatus that already existed even before the 1981 Criminal Procedure Code was enacted, so it is quite reasonable if certain adjustments are made regarding what kind of authority can be carried out at certain levels of Police officials. Article 1 number 5 of the Criminal Procedure Code explains that an inquiry is a series of actions by investigators to search for and find an event suspected of being a crime in order to determine whether or not an investigation can be carried out according to the methods regulated by law. Meanwhile, an inquiry in Article 1 number 2 of the Criminal Procedure Code is a series of actions by investigators in terms of and according to the methods regulated by law, in this case the Criminal Procedure Code to search for and collect evidence that with that evidence makes clear about the crime that occurred in order to find the suspect. So, based on this definition, it can be concluded that the main purpose of an investigation is to search for and find events suspected of being a crime, while an investigation aims to search for and collect evidence of the crime and the suspect.

However, the Criminal Procedure Code does not further systematize the basic elements of an investigation. There are provisions in the Criminal Procedure Code, namely in Article 102 paragraph (1) of the Criminal Procedure Code which explains the prerequisites for inquiry that investigators who know, receive reports or complaints about the occurrence of an event that is reasonably suspected of being a crime are required to immediately carry out the necessary investigative actions. The actions taken by investigators are then explained in Article 5 paragraph (1) letter a that investigators because of their obligations have the authority, namely to receive reports or complaints from someone about a crime, seek information and evidence, order a person who is suspected to stop and ask and check their identification, and carry out other actions that are legally responsible. Unfortunately, there is no reference regarding what kind of evidentiary standards are required for investigators to measure their actions.

According to the author, in conducting an inquiry where the scope of authority does not extend to coercive measures such as arrest or detention, then in accordance with the concept of the standard of proof, the justification used does not have to be based on *probable cause*, but rather *reasonable suspicion*. By definition, *reasonable suspicion* is a standard of proof at the investigation level in the form of sufficient knowledge to induce a wise and careful person in similar circumstances to believe that criminal activity is taking place. This is done based on specific facts that can be articulated, which are taken with rational conclusions from these facts. In short, reasonable suspicion is the standard needed to provide a label that a crime is taking place (Mappaselleng and Kadir, 2020). This is certainly in line with the purpose of the investigation itself, namely to find events that are suspected of being criminal events, so that in conducting an investigation, investigators must be able to find *reasonable suspicion*, namely facts that can be articulated regarding the existence of a crime that matches the characteristics of punishable acts (Khablo, 2021). This standard allows the police to initiate an investigation if they have

sufficient reason to believe that a crime may have occurred. This allows the investigation to begin based on initial evidence or information that indicates possible criminal activity.

Meanwhile, to fulfill the purpose of the investigation, namely to collect evidence with which the suspect can be found, it is not enough to rely solely on articulated reasons, but requires higher rationalization, in this case *probable cause*. *Probable cause* is evidence consisting of a series of facts, information, circumstances, or conditions that according to the police's knowledge will guarantee a reasonable person to believe that a crime has been committed and that an individual has committed the crime. The evidence obtained must exceed mere suspicion but be below the evidence needed to impose a sentence (Lee, 2020). The scope of probable cause can vary depending on the specific context (Crespo, 2020), for example on how the information can be used as a basis for the officer's articulation to believe that an individual has committed a crime and that certain objects are in a certain place. Thus, *probable cause* requires "*evidence*" that the coercive efforts made by the investigator are based on reliable facts. The phrase "*sufficient evidence*" in the Indonesian Criminal Procedure Code in carrying out coercive efforts is sufficient to represent actions based on *probable cause*.

Furthermore, the concept of probable cause in the Indonesian Criminal Procedure Code is quite relevant, especially to the justification or requirements for carrying out coercive measures such as arrest, detention, search, or seizure. Article 1 number 20 articulates that arrest is an action by investigators in the form of temporary restraint of the freedom of a suspect or defendant if there is sufficient evidence. This means that there is a standard that in order to arrest someone, investigators must first be equipped with sufficient evidence, or in doctrine known as "*sufficient evidence*," but the difference is that probable cause does not only refer to a numerical value (Goldberg, 2012). This is re-emphasized in Article 17 of the Criminal Procedure Code that an arrest order is made against a person who is strongly suspected of committing a crime based on sufficient initial evidence.

In the context of detention, the standard of *probable cause* is similar. The definition of detention in the corridor of Article 1 number 21 of the Criminal Procedure Code is the placement of a suspect or defendant in a certain place by an investigator or public prosecutor or judge with his/her placement, in the case and according to the method regulated in the Criminal Procedure Code. Detention carried out by investigators in Article 21 of the Criminal Procedure Code must be accompanied by a detention order. A detention order or further detention is made against a suspect who is strongly suspected of committing a crime based on sufficient evidence, in the case of concern that the suspect or defendant will flee, damage or remove evidence and/or repeat the crime. Detention or further detention is carried out against a suspect by providing a detention order stating the suspect's identity and stating the reasons for detention and a brief description of the suspected or charged crime and the place where he/she is being held. In other words, sufficient



evidence, or “*probable cause*” is needed to detain someone, such evidence can be related to reasons that according to the investigator's knowledge can trigger concerns, which are stated in the warrant before detaining someone.

Searches within the scope of the Indonesian Criminal Procedure Code are divided into two, namely house searches and body searches. In Article 1 number 17, a house search is an investigator's action to enter a residence and other closed places to conduct an inspection and/or seizure and/or arrest in the case and according to the method regulated in the Criminal Procedure Code. While Article 1 number 18 emphasizes that a body search is an investigator's action to conduct an inspection of the suspect's body and/or clothing to search for objects that are strongly suspected of being on his/her body or being carried and to be confiscated. *Probable cause* in Indonesian law requires a factual basis that justifies the issuance of a warrant, which aims to prevent arbitrary or unreasonable arrests or seizures. This standard ensures that judicial oversight is carried out before law enforcement action is taken, thus providing protection against potential violations..

Compared to the common law system, the standard of proof in criminal procedures in Indonesia reflects a different approach influenced by the civil law tradition. Although *reasonable suspicion* in Indonesian criminal procedure law is in line with the broader basic concept of investigation as found in other jurisdictions, it is carried out within a framework that includes judicial oversight to prevent abuse. The *probable cause* standard in Indonesia is similar to the common law standard but is integrated into the procedural requirements for warrants, emphasizing the need for review before intrusive action is taken.

Furthermore, in the Indonesian Criminal Procedure Code, the *preponderance of evidence* standard is not applied directly as in civil cases. This concept is indirectly reflected in the rules of civil litigation procedure where the burden of proof is on the plaintiff. For criminal cases, the Criminal Procedure Code emphasizes the need for the prosecutor to present sufficient evidence to establish the guilt of the defendant. The underlying principle of the dominant standard, where evidence must favor one party. This can be seen from the requirement that evidence presented by the prosecutor must be strong enough to support the charge. The *clear and convincing evidence* standard is the level of proof at which the evidence demonstrated has a high probability, which lies between *preponderance of evidence* and *beyond a reasonable doubt* (Chen, 2022). Although the Criminal Procedure Code does not explicitly mention this standard, it reflects a higher evidentiary requirement for certain types of evidence or claims. Article 184 of the Criminal Procedure Code only states that valid evidence is divided into witness statements, expert statements, letters, instructions, and statements from the defendant, but does not state how to measure the evidence. In practice, this standard is applied in trial processes involving serious allegations where the evidence must be more convincing and clear, although the specific term is not used. The standard requires

strong and persuasive evidence, thus making it clear that the facts in question are very likely to occur.

*Beyond a reasonable doubt* standard is the strictest and highest standard of proof in Indonesian criminal procedure law and is explicitly applied in criminal cases. This standard ensures that a defendant is only found guilty if the evidence provided is so convincing that there is no reasonable doubt about his guilt. Article 183 states that a judge may not sentence a person unless with at least two valid pieces of evidence he is convinced that a crime actually occurred and that the defendant is guilty of committing it. When associated with the theory of the evidentiary system, it is generally known that there are four systems (Hawasara et al., 2022). First, the positive evidentiary system according to the law, namely evidence that is only based on evidence alone. This means that the judge can prove that someone is guilty of committing a crime only by relying on the evidence available in the law. Second, the evidentiary system according to the judge's belief, namely evidence based on the judge's belief alone. This means that the judge to prove someone guilty, the judge only relies on his belief and is not bound by the evidence stipulated by law. Third, the evidentiary system based on the judge's belief for logical reasons, namely evidence based on the judge's belief which comes from a series of thoughts or logic. Fourth, the negative evidentiary system according to the law, namely evidence based on evidence and supported by the judge's belief. This means that the judge can use his belief but that belief refers to and is strengthened by evidence.

If the conviction based on evidence does not raise doubts, then a judge's decision that determines the defendant is guilty has reflected a decision based on *beyond a reasonable doubt*. However, in the author's opinion, the distance between *beyond a reasonable doubt* and *clear and convincing evidence* can become blurred if the judge issues a decision based on conviction in accordance with the explanation of Article 183 of the Criminal Procedure Code but there is still doubt in his decision. In such cases, the standard of proof that is touched is limited to *clear and convincing evidence*. Although certainty has never been a high standard of proof, if there is no longer any doubt regarding the crime and responsibility imposed on the defendant, then a case that is punished with the maximum sentence already reflects the standard of proof *beyond a reasonable doubt*.

## Conclusion

The concept of standards of proof is integral to the integrity and fairness of criminal justice systems around the world. Within the framework of the Indonesian Criminal Procedure Code (KUHAP), these standards are essential to ensure that criminal decisions are based on strong and convincing evidence, thereby minimizing the risk of erroneous decisions. Standards such as *reasonable suspicion*, *probable cause*, *preponderance of evidence*, *clear and convincing evidence*, and *beyond a reasonable doubt* serve different purposes at different stages of the

criminal process. However, the Criminal Procedure Code faces challenges due to ambiguity and inconsistency in these standards of proof, which impact the overall effectiveness and credibility of the legal system. Well-defined standards of proof will ensure that legal decisions are consistent, predictable, and fair, thereby strengthening legal certainty and public confidence in the criminal justice system.

KUHAP does not explicitly define or articulate the standards of proof commonly found in other legal systems. Even if they do not exist, the law implicitly requires a degree of reasonableness and factual basis for actions taken by law enforcement. This approach aims to balance the need for effective law enforcement with the protection of individual rights, ensuring that actions are not arbitrary. For example, during an investigation, law enforcement must base their actions on *reasonable suspicion* and *probable cause*, which involve a rational belief supported by specific facts that criminal activity is occurring. During the prosecution stage, the standard shifts to a higher threshold, requiring stronger evidence until the evidence is determined *beyond a reasonable doubt* by a judge.\*\*\*

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