Implications of Money Laundering From Corruption Proceeds on The Application of Reverse Evidence in Corruption Crimes.

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Abstract

Corruption is one of the Extra Ordinary Crimes because of the difficulty of proving the crime by law enforcement. In the enforcement and eradication of corruption crimes, there are several problems faced, one of which is in settlement of corruption crimes through juridical settlement, namely the existence of an evidentiary process that is considered complex in court and as minimal as possible does not damage the protection and honor of human rights. The United Kingdom and other European countries have used civil channels to return assets resulting from money laundering crimes, while Indonesia is still returning assets from money laundering crimes, meaning there is no return of any assets before a court decision. It takes courage from related law enforcement in the criminal act of money laundering by using the reverse burden of proof in the law of proving money laundering cases. This study aims to determine the application of reverse proof in corruption cases. This research uses normative legal research methods. The results of the study The application of reverse proof requires review because, in reverse proof, the defendant must prove that his property is not a crime of corruption. The application of the reverse proof policy is that most of the assets owned by the bribe giver are not in the name of the briber but have been suspected of money laundering to hide the original identity of the assets derived from the proceeds of corruption.

Keywords:  
Reverse proof, Corruption, Lex specialis derogate legi generalis  

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A. Introduction

According to the law, crime can be expressed as behavior detrimental to social life or not by the guidelines of community life.\(^1\) Law plays a role in producing legal certainty, and legal certainty can provide opportunities for achieving other legal objectives, namely community order. In enforcing the law, on the one hand, there needs to be legal certainty that is pursued and needs to provide benefits to the community, not only creating justice. In enforcing the law, it needs to be implemented so that there is a legal regulation to protect human interests has been violated and prevented through the presence of criminal law.\(^2\)

The crime of corruption is one part of special criminal law in addition to having certain specifications that are different from special criminal law, such as procedural law deviations. When viewed from the material regulated, the crime of corruption is directly or indirectly intended to minimize the occurrence of leaks and irregularities in the state's finances and economy. Crime is deviant behavior and causes losses not only to the victim but also to the state. Therefore, various efforts have been made to overcome crimes such as corruption crimes.\(^3\) Corruption is an act that harms the state and where state finances are regulated in the State Revenue and Expenditure, all financial budgets have been divided into all government institutions. Corruption is categorized as an extraordinary crime (extraordinary). According to Romli Atmasasmita, by paying attention to the development of corruption crimes both in terms of quality and quantity after studying it in depth, it is no exaggeration to say that corruption in Indonesia is not an ordinary crime (ordinary crimes) but a very great crime (extraordinary crimes).\(^4\)

Corruption occurs in all areas of governance, namely the executive, legislative and judicial fields. The widespread practice of corruption crimes in the field of government causes great losses to the state's wealth and the country's economy. In terms of the losses incurred, corruption crimes can be categorized as regulatory offenses or offenses that hinder and even deprive the government of the results of its efforts for the welfare of the people.\(^5\) In a corruption trial, the evidentiary stage is one of the stages that can reference whether the defendant is proven to have committed corruption or not. But it is at this stage that there needs to be more clarity about assets with their hard work and assets from corruption. Therefore, special rules are needed to prove whether the assets in question are from one's own efforts or acts of corruption. In this case, the reverse proof system is used based on the assumption that every person charged with a corruption crime is presumed to be guilty of committing a corruption crime.\(^6\)

In the criminal justice system, proof of whether or not the defendant has committed the charged act plays an important role because it is the most decisive part in imposing criminal sanctions on the guilt or innocence of a defendant. 1971 Law No. 3 of 1971 on the Eradication of the Crime of Corruption was enacted. In its deliberations, the Law was intended to use the reverse proof system. Still, it was hindered by the reason that reverse proof is contrary to the principle of presumption of innocence. By paying attention to the principle of "lex specialis derogat legi general" in 1999 Law No. 31 of 1999 on the Eradication of the Crime of Corruption was enacted, which adheres to a limited reverse proof system. This is guaranteed in Law No.

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\(^2\) Hari Soeskindi, Setia Sekarwati. “Pembuktian Terbalik dalam Tindak Pidana Korupsi”

\(^3\) Sudiman S et.al “Analisis Penerapan Sistem Pembuktian Terbalik Terhadap Tindak Pidana Korupsi” *Indonesian Journal of Legality of Law* 3 (1) 2020 Doi: https://doi.org/10.35965/ijlf.v3i1

\(^4\) Lilik Mulyadi, “Pembalikan Beban Pembuktian Tindak Pidana Korupsi” Penerbit PT Alumni 2007 hlm 7


Law No. 31 of 1999 Jo Law No. 20 of 2001 concerning the eradication of criminal acts of corruption regarding evidentiary provisions that differ from the provisions of evidence in ordinary criminal cases, namely the provisions of the law regulating the rights of an accused based on the principle of presumption in innocent or lex specialis derogate legi general.3 The principle of reverse proof stems from the system of proof is known in Anglo-Saxon countries or certain cases specifically against the crime of "gratification" or gifts that correlate with "bribery" or bribery.8 Evidence in criminal offenses is complicated in the enforcement process, such as in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning eradicating corruption.9 Evidence in criminal offenses is complicated in the enforcement process, such as in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning eradicating corruption.10 The provisions of Article 37 of Law No. 31 of 1999 concerning the eradication of corruption adhere to two systems of evidence, namely the reverse system of evidence, which is limited and balanced, namely, the defendant has the right to prove that he has not committed a corruption crime and provide information about his property and the public prosecutor is still obliged to prove his charges.11 The "limited" nature of the reversal of the burden of proof lies in the new offense, regarding the forfeiture of property suspected of being or originating from the alleged corruption crime. The placement of the question of "forfeiture" is a consequence of the placement of a new article in the form of the obligation of the defendant to mention the origin of his property, the property of his husband and wife and children or other parties who have a connection with the corruption crime.
Reverse proof has been regulated in Article 37, namely:
(1) The defendant has the right to prove that he did not commit a criminal act of corruption.
(2) If the defendant can prove that they did not commit the crime of corruption, the court shall use the proof to declare that the charges are not proven.

Article 37 A

(1) The defendant is obliged to provide information about all of their assets and the assets of his/her wife or husband, children, and the assets of every person or corporation suspected of having a relationship with the charged case.
(2) If the defendant is unable to prove that their wealth is not equal to their income or the source of the increase in wealth, the statement as referred to in paragraph (1) shall be used to strengthen the existing evidence that the defendant has committed a criminal act of corruption.
(3) The provisions as referred to in paragraphs (1) and (2) constitute criminal offenses or main cases as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law Number 31 of 1999 concerning the Eradication of the Criminal Acts of Corruption. Article 5 through 12 of this Law, so that the public prosecutor is still obliged

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7 Dahlan “Distorsi Beban Pembuktian Dalam Tindak Pidana Korupsi Menurut Sistem Pembuktian” Jurnal Hukum Samudra Keadilan 10 (1) 2015
8 Tumbur Ompu Sunggu, “keberadaan komisi pemberantasan korupsi dalam penegakan hukum di indonesia” penerbit total Yogyakarta hlm 49
9 Valentino A. Sumampow “Pembebanan Pembuktian Terbalik Dalam Meminimalisasi Tindak Pidana Korupsi Di Indonesia” Lex et Societatis 1 (2) 2013 Doi: https://doi.org/10.35796/les.v1i2.1750
10 M. Chaerul Risal, “Penerapan Beban Pembuktian Terbalik Dalam Upaya Penanggulangan Tindak Pidana Korupsi” Jurnal Jurisprudentie 5 (1) 2018
11 Lilik Mulyadi Uraikan dinamika historis dan urgensi wawasan Nusantara sebagai konsepsi dan pandangan kolektif kebangsaan Indonesia dalam konteks pergaulan dunia
to prove the charges.\textsuperscript{12}

Provisions regarding the application of the principle of reversal of the burden of proof against gratuities are listed in the provisions of Article 12B of Law number 20 of 2001, namely:

"Every gratification to a civil servant or state official is considered a bribe if it is related to the position and contrary to the obligations or duties with the following provisions:

1. With a value of 10,000,000 (ten million rupiahs) or more, proof that the gratification is not a bribe is carried out by the recipient.
2. Where the value is less than 10,000,000 (ten million rupiahs), the public prosecutor carries the proof that the gratuity is a bribe.

Applying the principle of reverse proof by the defendant in the trial process is detrimental to the prosecution process if the public prosecutor cannot prove the opposite of the argument or evidence submitted by the defendant who tries to refute the prosecutor's charges. This condition can occur partly because the perpetrator can submit evidence of business transactions from sources of information that were not successfully obtained by the public prosecutor or other law enforcement or related government agencies before the prosecution process. In this case, the perpetrator is likely to manipulate financial transaction information assisted by gatekeepers.\textsuperscript{13} The money laundering crime in its regulation makes it difficult for prosecutors to prove this case. The problem begins with the complex prosecution, firstly about the fact that money laundering is a follow-up crime, so there is another problem, namely what about the core crime (predicate offense). Based on the law's mandate, the predicate offense does not need to be proven, meaning it is sufficient to use only clue evidence. Consequently, the indictment must be prepared cumulatively, not alternatively, because predicate offenses and money laundering are two crimes. Although money laundering must always be associated with the predicate offense, money laundering is a crime that stands alone (as a separate crime). Thus, in charging the crime of money laundering, for example related to the charges of Article 3, the predicate offenses and follow-up crimes are not charged simultaneously. However, it should be noted that sometimes the perpetrator of Article 3 charges can be single, namely when a person conducts a money laundering process for the proceeds of crime where the perpetrator is not directly involved in the crime but he should suspect that the money comes from crime. For this perpetrator, the predicate offense does not have to be accounted for, but only the money laundering offense. Furthermore, there is still a single charge for the crime of money laundering that does not have to be associated with the predicate offense, in this case, for example, the perpetrator is only related to the charges of Article 6, where the perpetrator is only responsible for passive money laundering actions, namely receiving and others on assets that are known or reasonably suspected that the assets originated from crime.\textsuperscript{14}

This research aims to find out the application of reverse proof in corruption cases. This research uses normative legal research methods. The novelty of this research is about implementing reverse proof in the corruption crime of money laundering. The difference in perspective, namely the reverse proof system in Anglo-Saxon countries is balanced, where the public prosecutor and the defendant are equally proven in court. At the same time, in Indonesia it is still limited.

\textsuperscript{12} PRASETYO, Wawan. Metode Pembuktian Terbalik pada Tindak Pidana Korupsi. \textit{Al-Daulah: Jurnal Hukum dan Perundangan Islam}, 2015, 5.2: 477
\textsuperscript{13} HARIS, Budi Saiful. Penguatan alat bukti tindak pidana pencucian uang dalam perkara tindak pidana korupsi di Indonesia. \textit{Integritas: Jurnal Antikorupsi}, 2016, 2.1: 100 doi: https://doi.org/10.32697/integritas.v2i1.126
B. Discussion

The reverse proof system develops the theory of proof in Criminal Procedure. In Criminal Procedure, there are several systems or theories to prove the alleged act such as a proof system based on positive law, a proof system based on negative law, a proof system based on the judge alone, and a proof system based on the judge's belief on logical reason. Proof in Criminal Procedure Law is carried out by submitting evidence. Evidence is everything that has to do with an act, where the evidence can be used as evidentiary material to give rise to the judge's confidence in the truth of the existence of a criminal offense committed by the defendant. The submission of lawful evidence in court is made by:

1. The public prosecutor to prove his/her charges;
2. if there is any mitigating evidence, the defendant or legal counsel will alleviate or acquit the defendant.\(^\text{15}\)

The difficulty of proof is always felt in handling corruption and money laundering. In corruption cases, if the prosecutor cannot prove the defendant's guilt, it causes the defendant to be acquitted, even though it is common knowledge that the systematization of gifts and corruption is very neatly wrapped, making it difficult to track. Among other things, the gift is in physical form (cash), not by transfer, because the transfer is easy to trace from the account number.

Lilik Mulyadi stated that: The principle of Reversal of the Burden of Proof is a system of proof outside the theoretical prevalence of proof in universal Criminal Law (Procedure). In (Formal) Criminal Law, continental and Anglo-Saxon systems recognize proof by continuing to impose obligations on the Public Prosecutor.\(^\text{16}\)

However, in certain cases it is allowed to apply with a differential mechanism, namely the Reversal of the Burden of Proof System (Omkering van Bewijslast). This is not done in its entirety but has limits that are as minimal as possible so as not to destroy the protection and respect of human rights, especially the rights of suspects/defendants.\(^\text{17}\)

The reverse proof is a special criminal offense.

The conclusion of this evidence is carried out through the judicial process so that it will determine whether the defendant can be sentenced (veroordeling) because the results of the trial are legally and convincingly proven to have committed a criminal offense, they can also be acquitted of the charges (vrijspraak) because it is not proven to have committed a criminal offense, or released from all legal charges (onslag van alle rechtsvervolging) because what is charged is proven but the act does not constitute a criminal offense.\(^\text{18}\)

Establishing corruption as an extraordinary crime in Indonesia's criminal law policy means that in an effort to tackle corruption, a special criminal law is needed that deviates from the general rules of criminal law regulated in the Criminal Code and the procedural law regulated in the Criminal Procedure Code.

The specificities that are regulated include

a. The commencement of a formal offense formulation in the sense that even though the proceeds of corruption have been returned to the state, the perpetrators of corruption crimes who are brought to court are still punished.


\(^{18}\) SUPUSEPA, Reimon. Problematika Pembuktian Terbalik Dalam Perkara Tindak Pidana Korupsi. JURNAL BELO, 2019, 4.2: 139-144. Doi: https://doi.org/10.30598/belovol4issue2page134-144
b. The nature of unlawful acts in the formal sense as well as in the material sense, that is, even though the act is not regulated in the legislation, if the act is considered reprehensible because it is not in accordance with the sense of justice or the norms of social life in society, then the act can be punished.

c. Expansion of the subject of the offense which is not only individuals but also includes corporations, thus corporations as subjects of corruption crimes can be subject to sanctions in the form of fines.

d. Establishment of a reverse proof system, namely in the case of gratification crimes and demands for confiscation of the defendant's property suspected of originating from corruption crimes, the defendant bears the proof.

e. Expansion of the sources of obtaining valid evidence in the form of clues, in addition to being obtained from witness testimony letters and proselytizing testimony can also be obtained from other evidence in the form of information that is spoken sent received or stored electronically with optical devices similar to that.

f. The establishment of a separate independent social institution, namely the corruption eradication commission based on law number 30 of 2002 concerning the corruption eradication commission which has the task, among others, of investigating and enforcing corruption crimes.

Law No. 31 of 1999 JO Law No. 20 of 2001 replacing Law No. 3 of 1971 on the Eradication of Corruption is considered unresponsive to the interests of society. It aims to anticipate the development of an increasingly complex society and to more effectively eliminate all forms of increasingly sophisticated corruption that damage state finances, the economy and the country's economic and social interests. The reverse proof system applied by the defendant can benefit or harm the defendant because the defendant can falsely prove that the defendant is not guilty of the crime of bribery in the crime of corruption and the evidence is false or has no real obligation to prove the defendant's innocence. The crime of bribery and the crime of corruption will benefit the prosecutor in the indictment.19

The reverse proof system in the disclosure and settlement of corruption cases in Indonesia is contained in Law Number 20 of 2001 concerning applying the reverse proof system in corruption cases starting from the value of IDR 10,000,000 (ten million rupiahs). However, the existence of the presumption of innocence will provide difficulties to investigators in disclosing suspects, with the requirement to collect evidence first. This will hamper the case settlement process at the investigation level, which impacts the difficulty of bringing the suspect to trial. Reverse proof in property ownership rights is contrary to human rights, namely everyone has the right to obtain their wealth and privacy rights that must be protected. However, based on the idea that corruption is a source of poverty and a serious crime that is difficult to prove in the practice of the legal system of all countries, the individual's human right to property is not considered an absolute right, but a relative right, and is different from the protection of one's freedom and the right to a fair and reliable trial.20

Reverse proof in Indonesia is currently not pure proof and a relatively suitable alternative to prove corruption is to use the theory of the principle of balanced probability. This theory offers a proportional balance between protecting individual freedom and depriving individual ownership of goods that are then strongly suspected of corruption. The presumption of innocence is a doctrine that a person cannot be declared guilty or found guilty until proven at the court level which ultimately has permanent legal force. This principle has been clearly defined by the Criminal Procedure Code and other laws, such as Article 66 of the Criminal

Procedure Code "The suspect or defendant is not burdened with the obligation of proof".  

The implementation of reverse evidence still faces many obstacles because the content of the Indonesian legal system does not regulate the implementation of reverse evidence, therefore it is mandatory to amend the Corruption Law Number 20 of 2001 so that the implementation of cross-examination can be carried out effectively. This indicates that implementing the reverse proof system has yet to be maximized, so a law related to the problem is needed. The revision is expected to make the reverse burden of proof more effective, from planning and ratification to implementation. The obstacle to implementing the reverse proof policy is that most of the assets owned by the bribe giver are outside the name of the briber but have been suspected of money laundering to hide the original identity of his assets originating from corruption. This will make corruption cases more difficult to uncover.

The theory of balanced burden of proof in positive Indonesian law governing the eradication of corruption is a condition sine qua non, considering that corruption has become an extraordinary crime that must be dealt with extraordinarily. The system of evidence in the process of corruption cases adopted by a country will also affect the success of corruption eradication in the country concerned. Suppose the system adopted still uses a system of proof with the burden of proof resting entirely with the public prosecutor based on the absolute presumption of innocence. In that case, efforts to eradicate corruption will only achieve maximum results. The theory of reversed evidence or reversal of the burden of proof adopted by Indonesia is not pure or absolute but only a shift in the burden of proof. This is because the theory of reversed proof in pure or absolute terms will intersect with human rights, especially the implementation of the provisions of criminal procedure law. It should be emphasized that the shifting of the burden of proof that occurs is a shift, not a reversal of the burden of proof, so the popular term in Law Number 31 of 1999 concerning the Eradication of Corruption is know as the Limited or Balanced Burden of Proof Reversal System. The system of evidence in the process of corruption cases adopted by a country will also affect the success of corruption eradication in the country concerned. Suppose the system adopted still uses a system of proof with the burden of proof resting entirely with the public prosecutor based on the absolute presumption of innocence. In that case, efforts to eradicate corruption will only achieve maximum results.

The procedural process of Criminal Justice in the realm of money laundering offense is oriented of them toward the return of criminal assets through the reverse burden of proof method in the UK and several other common law countries the process uses the practice of non conviction-based forfeiture which separates the aspect of asset owners on the one hand and the aspect of criminal assets on the other hand the reverse burden of proof does not violate human rights because it is based on the theory of balanced reverse burden of proof the difference that is still a conception that must be developed in the problem of reverse form in PPPU is the retrieval of criminal assets against more in corruption crimes. The United Kingdom and other European countries have used civil channels to return assets from money laundering crimes. In Indonesia, it is still in the return of assets from money laundering crimes, meaning there is no

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return of any assets before a court decision. It takes courage from related law enforcers in money laundering offenses by using the reverse burden of proof, in the law of proof of money laundering cases that should be the element of real state losses and even still expected to be real losses are out of place and no longer proportional to be used as the main element in a criminal act of corruption and therefore do not need to be proven again even the loss of the wider community, especially third parties who are harmed by money laundering should be accommodated in the law on eradicating money laundering. The alternative proof proposed and initiated by thinkers in developed countries in the theory of the balance of evidentiary possibilities is to put forward a professional balance between the protection of individual freedom on the one hand and the deprivation of the rights of the individual concerned over assets that are strongly suspected of originating from corruption. This new model of the principle of reversed proof is shown towards the complete disclosure of the origin of assets suspected of being the proceeds of corruption by placing the right to one's wealth at the level of the individual. Placing the right to one's wealth at a very low level but simultaneously placing the right to independence of the person concerned at a very high level and in no way should be violated. The balance theory of the possibility of reversed evidence in wealth puts a person who is strongly suspected of committing a crime of corruption in a condition where previously the person concerned has not obtained as much wealth rights as now obtained.

The application of reverse proof requires review because in reverse proof, the defendant must prove that the assets he owns are not corruption crimes. To eradicate corruption, it is sufficient to fulfill the elements of the crime of corruption, so there is no need to separate the assets obtained from the proceeds of corruption. The fulfillment of the elements of the corruption crime necessarily implies confiscating all assets belonging to the defendant, whether they are the proceeds of corruption. This relates to the "impoverishment of corruptors" or illicit enrichment. This is contrary to the principle of the presumption of innocence and the concept of human rights that have been recognized internationally and is also regulated in the Criminal Procedure Code, but for the sake of upholding Indonesian law and by the purpose of the law to achieve as much happiness as possible for the public. The sake of the human rights of all Indonesian people, it can be applied to corruption cases. Some consider the application of the reversal of the burden of proof to be a violation of human rights, but this is denied by JE Sahetappy which is reflected in the dangling question "Is it true that the application of the reverse burden of proof violates human rights?". According to Sahetappy, many interpretations are like beauty is in the eye of the beholder when it comes to human rights, which he compared to the application of the retroactive principle that must be accepted in corruption cases.

Various forms of crime have developed in Indonesia, ranging from conventional crimes to non-conventional crimes. One of the unconventional crimes is corruption. The crime of corruption is one of the unlawful acts. "A criminal offense that has the concept of enriching oneself or involving various other parties is a corporation that can cause losses in state finances."

Another thing that needs to be emphasized is the political will of the organizers of state power. Indicators that can be used to measure the government's political will are initiative, priority, mobilization and political support as well as law enforcement. New efforts taken by the government to eradicate corruption The government's priority is to conduct an in-depth study and determine which sectors will be prioritized is very important because corruption in

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26 MANDAGI, Rio Ray. PEMBUKTIAN TERBALIK OLEH TERDAKWA KASUS KORUPSI DITINJAU DARI HUKUM HAK ASASI MANUSIA, LEX ET SOCIETATIS, 2015, 3.9.Doi: https://doi.org/10.35796/les.v3i9.10175
Indonesia is very systemic and widespread in various sectors. Mobilization of political support, namely the presence or absence of political will also depends on the willingness and ability to mobilize support for anti-corruption programs (Anti-corruption programs run by the government must have the support of other political forces.) Without political support, corruption eradication can also be stalled because the government can compromise with other political forces. Law enforcement in the form of severe punishment for corruptors. With severe sanctions, people will be able to commit corruption. Corruption has high benefits. If the consequences are high, such as punitive sanctions, people will be afraid but if there are none or low, people will dare to commit corruption.28

C. Conclusion
Mechanisms for Implementing Reverse Proof in Corruption Crimes in Indonesia in the Law on the Eradication of Corruption Act No. 3 of 1971, Law No. 31 of 1999 Jo Law No. 20 of 2001 and Law No. 7 of 2006 in reversing the burden of proof for the prosecution of corruption cases, some of the contents are the obligations of the defendant, especially regarding the source of the defendant's wealth, while others are the rights of the defendant. The implementation of reverse proof still faces many obstacles, because the content of the Indonesian legal system does not regulate the implementation of reverse proof, therefore it is mandatory to amend the Corruption Law Number 20 of 2001 so that the implementation of cross-examination can be carried out effectively. The United States and other European countries have used civil channels to return assets from money laundering crimes. In Indonesia, it is still in the return of assets from money laundering crimes, meaning there is no return of any assets before a court decision. The element of real and even expected losses to the state is no longer in place and is no longer proportional to be used as the main element in a corruption crime and therefore does not need to be proven anymore even the loss of the wider community, especially third parties who are harmed by money laundering, should be accommodated in the law on eradicating money laundering.

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