

Effectiveness to the reversal of the burden proof system in handling corruption case

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Abstract

Corruption is an act that can harm State finances and cause losses to the people's economy. This study aims to determine the arrangement of the burden of proof reversals system of corruption according to the applicable provisions and the proper regulation in implementing the system of reversing the burden of proof to be done optimally. This study uses a normative juridical research methodology with a statute approach. This research's data analysis method is descriptive qualitative by describing the problems and facts in writing from the literature. The study indicates that the burden of proof reversal system concerning the Eradication of Corruption Crimes contained in Law no. 20 of 2001 is limited only to the offense of gratification regulated in Article 12 B paragraph (1) letter a. The withdrawal presumption proof can also be extended to the defendant's property, which is claimed to be connected to the accused's case (Article 37 A) and the property of the defendant (who has not been charged) which is not accused of corruption as a result of a criminal act (Article 38 B). Reversal of the burden of proof in the law of corruption is a reversal of the burden of proof impartial public prosecutor and the defendant alike must prove but / the same element proved different.

Keywords: System settings, system implementation, corruption

1. Introduction

Corruption is an act that can damage state finances and cause economic losses to citizens (Suhendar, 2017). This action is a very contemptible act, cursed and despised by some people, not only by the people and nation of Indonesia but also by the people of the world's nations.

According to Ginting and Haryati (2011), not only state leaders, but even other groups, such as family members, cronies, and merchants, are engaged in the criminal activities of corruption, conspiracy, and nepotism in order to break the relations of the life of the society, the country and the State, and to disrupt state nature.

Indonesia also has a high degree of corruption though it is still steadily eradicated. Romli Atmasasmita said that corruption has extended to the entire government in Indonesia since the 1960s. Until now, eradication is only stopped (Atmasasmita, 2016). Moreover, the explanation for the corruption that has arisen in Indonesia since several decades ago has been tolerated without sufficient legal action (Saputra, 2016) in all facets of life, both central and regional.

Either directly or indirectly, acts of corruption cannot be separated from someone who has power (Amrullah, 2019). According to Merriam-Webster (2002) defines that corruption is an invitation (from a political official) with improper considerations (eg, bribery) to commit an offense. Meanwhile, Dullah (2018) emphasized that corruption is

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a symptom of officials, state agencies misusing their authority by bribery, forgery, and other irregularities.

Of the many legal instruments and institutions that have been implemented in statutory policies to eradicate corruption in this republic, one of them is the system of reversing the burden of proof. (Wiriadinata, 2017). The implementation of the system is expected to eliminate the level of evidentiary difficulties faced so far in eradicating corruption. Corruption offenses and criminal offenses are generally carried out by various modus operandi for irregularities in state finances or the state economy, which are increasingly sophisticated and complicated. Thus, many corruption cases/offenses have escaped the "network" of proof of the Criminal Procedure Code (KUHAP) system. Therefore, the proof of the corruption crime law tries to implement a system of reversing the burden of proof, as applied in the Malaysian criminal procedure system. (Alfitra, 2011).

Positive legal provisions regarding corruption are regulated in Law Number 31 of 1999, as amended by Law Number 20 of 2001 concerning Eradication of Corruption Crimes. In-Law Number 20 of 2001 concerning amendments to Law 31 of 1999 concerning Eradication of Corruption Crimes. Provisions regarding the reversal of the burden of proof are contained in Article 12 B paragraph (1) letter a, Article 37 A, and Article 38 B. Reversal of the burden of proof or "omkering van het bewijslat" (the reversal of the burden of proof), which is often called the reversal system. In general, it can be understood as a system that places the burden of proof on the accused to prove that he is not guilty of committing the criminal offense he is accused of and the guilt of the perpetrator.

On the other hand, a reversal of the burden of proof can be carried out on the assets of the perpetrator of a criminal act of corruption so that the emphasis is on returning the state assets that were corrupted by the perpetrator (Zebua et al., 2008). Perpetrators of a criminal act of corruption are obliged to prove that their assets are charged or not charged by the public prosecutor that these assets do not originate from a criminal act of corruption. If he cannot prove it, then his testimony is used to strengthen the existing evidence that the defendant has committed a criminal act of corruption and that the defendant's assets are subject to confiscation. This is what is said to be a deviation from KUHAP. It is understood that the party obliged to prove the accused's guilt perpetrated the offense associated with it under the Criminal Procedure Code under the Facts in Criminal Cases Act. At the final stage of this verification activity by the judge must be based on the provisions of Article 183 KUHAP.

The system of reversing the burden of proof is part of the proof, which is a strategic point in the criminal justice process, but the proof itself is a process that is prone to violations of human rights (HAM), especially the rights of the suspect/defendant. Recognition and guarantee of protection of the suspect/defendant's rights recognize international character's national and universal nature. Based on the legal provisions applicable to the suspect/defendant in the criminal court process, his human rights still have a place and are guaranteed by law.

This research evaluates if the burden of proof of corruption can be reversed in compliance with the relevant provisions, and the correct legislation for applying the reverse burden of proof framework to be carried out optimally.

2. Research methods

2.1 Types of research

This research uses normative juridical research methodology, namely legal research based on or referring to legal norms or norms in statutory regulations. The approach method used in this research is the statute approach. (Ibrahim, 2006).

2.2 Data collection technique

Literature data, which is the main research data, were collected and then analyzed the problem. The materials that will be collected include problems, principles, arguments, implementation, which are taken, alternative solutions related to reversal proof. Then regarding the literature data used is literature in the field of criminal law, especially special criminal law, law of evidence and other legal rules relating to the system of reversing the burden of proof.

2.3 Data analysis method

The method of processing and analyzing data in this research is descriptive qualitative by describing the problems and facts described in writing from the literature and will be analyzed using the statutory approach to which a conclusion will be drawn. Descriptions are made of the content and legal structure related to reversing the burden of proof in positive law in Indonesia. To support and support the literature research results, it will be linked to secondary data for analysis, which aims to provide solutions to problems.

3. Results

Changing needs and new perspectives on law are necessary for a process of change in society by expressing new values or new concepts in the political, economic, social and cultural fields. The process of changing society in all its aspects, the growth of conflicts of interest and the various crimes that accompany it, there is a real need to make regulations specifically in accordance with the growth of new values or new concepts. This condition has led to the occurrence of statutory regulations outside codification by containing special provisions as deviation laws

Corruption offenses are included in the special criminal law because the act of corruption is specific or uncommon. While the Criminal Code first regulated this corruptive act in some documents, but in changes within society, the Criminal Code laws are no longer thought to be effective. They can no longer respond to the growth of numerous modes of corrupt behavior in society, resulting in several percepts of fraud in finance and society. Currently, the illegal act of corruption is said to be an 'extraordinary offence' because it has not only destroyed the finances or the infrastructure of the world, but it has violated human rights' economic and social rights. On that basis, the government then formed a special regulation regulating corruption as a criminal law policy in eradicating corruption.

In examining corruption offenses currently in effect, there are two criminal procedural laws, namely procedural law as contained in the Criminal Procedure Code and criminal procedural law, as reflected in Law No.31 of the year jo. UU no. 20 of 2001, as a deviation from the procedural law in KUHAP. According to Martiman Prodjohamidjojo, in proving corruption offenses, two theories are adopted: the free theory, the proof by the defendant, and the negative theory according to the law, carried out by the public prosecutor. Free theory as implied in the general explanation and

manifested in Article 37 of Law no. 31 of 1999 as amended and broken down into Article 37, Article 37 A in Law no. 20 of 2001.

As with special crimes outside the Criminal Code, the criminal act of corruption recognizes the law of evidence. In certain cases and in certain criminal acts, a special proof of law applies as an exception. In the law of evidence, especially regarding the burden of proof, there are several differences between the corruption law and the Criminal Procedure Code. There are two main points of deviation from the law of evidence in the criminal law of corruption: (1) Regarding materials that can be used to form evidence and guidance. (2) Regarding the loading system of proof.

Regarding the imposition of evidence in the criminal law of corruption, there are several theories regarding the system of evidence loading. Examined from the perspective of criminal law science, it is known that there are 3 (three) theories about the burden of proof, namely: the burden of proof on the public prosecutor, the burden of proof on the accused and the burden of proof is balanced.

Regarding what must be understood is the limited and balanced system of reversal of proof is said to be limited, meaning that this system is only applied to certain crimes, namely the offense of gratification relating to bribery and confiscation of the defendant's property, while reversal of the burden of proof is balanced in terms of gratification offenses relating to bribery, the public prosecutor only proves that there is a gift received by a civil servant or state official, while the defendant proves that the gift was not a gift. Then the reversal of the burden of proof on property, the public prosecutor is obliged to prove the main criminal act other than the offense of gratification related to bribery, while the defendant proves that the property was obtained not from a criminal act of corruption.

The provisions for reversing the burden of proof contained in Article 37 of Law No.31 of 1999, are said to be "shifting" or shift in proof instead of "reversal" because in Article 37, the evidence the defendant makes to prove that he is not corrupt is only a relative right. and if the defendant exercises this right, the public prosecutor is still obliged to prove the indictment. This has come to be known as balanced proof. Then, with the formation of Law No. 20 of 2001, and the reversal of the burden of proof in Article 12 B paragraph (1) letter a, Article 37 A, and Article 38 B, in these Articles there are words it is obligatory for the defendant to prove and the public prosecutor is freed from some of the evidence, this condition is known as a "reversal" (reversal).

The system of reversing the burden of proof in the corruption law in Indonesia adopts a system of reversing the burden of proof that is limited and balanced, this can be seen in the general explanation of Law No.31 of 1999 which states:

In addition, this statute also provides limited or balanced reverse proof that the claimant has the right to show that he has not committed a fraudulent act of corruption and is obliged to inform his or her wife and/or husband, children, and all property. Or a firm accused of being linked to the case in question and the Public Prosecutor is also obligated to prove the allegations.

Then in the explanation of Article 37 of Law No.31 of 1999 also states:

..... According to this provision, the defendant can prove that he did not commit a criminal act of corruption. If the defendant can prove this it does not mean that he is proven to have committed corruption, because the public prosecutor is still

obliged to prove his indictment. The provisions of this article constitute limited proof, because the prosecutor is still obliged to prove the charges.

The purpose of limited and balanced inverse proof as described in the explanation of Article 37 of Law Number 31 Year 1999 above, if the further analysis is difficult to understand which results in multiple interpretations related to the definition of limited and balanced reverse evidence, due to lack of explanation further what is mentioned by the elucidation of the article regarding what is meant by that limited and balanced reverse proof.

3. Discussion

This analysis indicates that the minimal duty of proving reversal found in Law No. 20 of 2001 on amendments to Law No. 31 of 1999 on the eradication of corruption offenses can only be used to the gratuity of bribes as laid down in Article 12B(1) letter a. The duty of evidence can also be reversed to the possession of the defendant who is guilty of connected to the alleged case (Article 37a) and to the property of the defendant who is not accused and is suspected of having resulted in the illegal act of bribery (Article 38 B).

Many of the criminal laws outside the codification or special criminal law have been stated in separate legislation because in the face of changes and developments in the sense of justice and the legal needs of a fast-moving society, codification (KUHP) as a source of law cannot follow due to the nature of the law. codification is static and rigid. Special criminal law has the characteristic of regulating material and formal criminal law that is outside codification law, by containing norms, sanctions, and legal principles that are specially formulated to deviate because of the public's need for criminal law that contains rules of unconventional crime elements (Poernomo, 1984). Thus it is increasingly clear that the special criminal law which contains deviant provisions and becomes a law outside the KUHP is mentioned because of dissatisfaction with the Criminal Code which is no longer able to keep up with the times.

With regard to this particular criminal law, (Hamzah, 1991) states, two criteria indicate a special criminal law, namely, first, the people are special, meaning the subject or the perpetrators are special, and the second is the special act and deviation from the provisions of the general criminal law, not only regarding the material but also the law of procedure.

The criminal law of corruption as a criminal law rooted in the special criminal law, besides containing material criminal law also contains formal criminal law. As a special formal criminal law only contains a small part of criminal procedural law, namely special things that are considered important as exceptions to the Criminal Procedure Code, while apart from these special matters, formal criminal law as regulated in the KUHP remains as a codification of formal criminal law. (Chazawi, 2008). Article 26 of Law Number 31 Year 1999 concerning Eradication of Corruption Crimes determines that investigations, prosecutions, examinations in court proceedings are carried out based on the applicable procedural law, unless stipulated otherwise in this law. That is, the procedural law regulated by the corruption law only concerns specific or certain matters, while in general or matters related to procedural law that are not regulated in the corruption law, the codification of criminal procedural law remains in effect (KUHP).

Corruption is a part of special criminal law. If described, the criminal act of corruption has certain specifications that are different from general criminal law, such

as irregularities in procedural law and material regulations with the aim of minimizing leakage and irregularities in the country's finances and economy. As for deviations from the formal law contained in the criminal act of corruption, among others: (a) Giving priority to the handling of criminal acts of corruption from other cases. (b) It is possible to bypass bank secrets. (c) Applicable judiciary in absentia. (d) A joint team can be formed under the coordination of the Attorney General if a corruption case is difficult to prove. (e) The identity of the reporter must be kept confidential.(Danil, 2011).

Reversed proof without the word "burden" can be interpreted as the absence of the burden of proof from the defendant, so it can be interpreted literally as seeing only the shift in the order of the evidence. However, despite the polemic, the public is quite familiar with the term "reverse proof" as part of the process of legal breakthroughs in order to facilitate proof of criminal cases of corruption.(Seno, 2006).

In the context of universal criminal cases that apply in this world, the obligation to prove the indictment against the suspect is with the public prosecutor. This proof is also called ordinary or "conventional" proof in this case the public prosecutor proves the defendant's guilt (*actori incumbit onus probandi / actore non probante, reus absolvitur*)(Hiarriej, 2012).

Proof that is outside the normality of theoretical proof in universal criminal procedure law. In criminal procedural law, both the continental and Anglo-Saxon systems, recognize proof by continuing to impose its obligations on the public prosecutor. However, it is permissible to apply with a differential mechanism in certain cases, namely the Reversal of the Burden Proof System or known as the "reversal of Burden Proof" (*Omkering Van Bewijslast*). Even then, it is not carried out as a whole, but it has the minimum limits of not destroying the protection and respect for human rights, especially suspects/defendants' rights.(Seno, 2006).

Reversal of the burden of proof or what is known as reverse proof is divided into two, namely reversal of the burden of proof which is absolute (pure / absolute) and reversal of the burden of proof which is limited and balanced (affirmative defense). According to Hiarriej (2012) Reversal of the burden of proof which is absolute (absolute) is proof by the defendant that he is innocent is an obligation. There are only two possibilities whether the defendant cannot prove his innocence or whether the defendant can prove his innocence. This is in line with the opinion. Mulyadi (2007) says that the reversal of the burden of proof that is absolute or pure is that the defendant and/or his legal advisor prove the defendant's innocence.

4. Conclusion

It can only be established that based on findings and consultations, a method of reversing the presumption of evidence is restricted as provided for under the Act no. 20 of 2001, amending Law no. 31 of 1999, relating to the eradication of crime of bribery, as governed in Article 12b paragraph (1) letter a. Reversal of the burden of evidence will also extend to a defendant's property which is claimed to be connected to the prosecution accused (Article 37 A) and to the property of the defendant not convicted which is also believed to have been induced by a criminal act of wrongdoing (Article 38 B).

References

Alfitra. (2011). *Hukuim Pembuktian Dalam Beracara Pidana, Perdata, dan Korupsi Di Indonesia*. Raih Asa Sukses.

- Amrullah, M. S. (2019). Pencabutan Hak Memilih Dan Dipilih Dalam Jabatan Publik Terhadap Narapidana Tindak Pidana Korupsi. *Jurnal Hukum Volkgeist*, 1(2), 164–176. <https://doi.org/10.35326/volkgeist.v1i2.99>
- Atmasasmita, R. (2016). Artikel Kehormatan: Analisis Hukum Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang. *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*. <https://doi.org/10.22304/pjih.v3n1.a1>
- Chazawi, A. (2008). *Hukum Pembuktian Tindak Pidana Korupsi*. Alumni.
- Danil, E. (2011). *Korupsi, Konsep, Tindak Pidana dan Pemberantasannya*. Rajagrafindo Persada.
- Dullah, C. (2018). Problematika Pengujian Penyalahgunaan Wewenang Menurut Undang-Undang Republik Indonesia Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan Dalam Pemberantasan Tindak Pidana Korupsi. *Belom Bahadat*. <https://doi.org/10.33363/bb.v8i1.232>
- Ginting, R., & Haryati, T. (2011). Reformasi birokrasi publik di Indonesia. *Jurnal Ilmiah Civis*.
- Hamzah, A. (1991). *Perkembangan Hukum Pidana Khusus*. Rineka Cipta.
- Hiarrije, E. O. . (2012). *Pembuktian Terbalik Dalam Tindak Pidana Korupsi*. Buletin Fiat Justicia Fakultas Hukum UGM.
- Ibrahim, J. (2006). Teori dan Metode Penelitian Hukum Normatif. *Bayu Media, Malang*.
- Merriam-Webster, I. (2002). Webster's Third New International Dictionary. In *Webster's Third New International Dictionary*.
- Mulyadi, L. (2007). *Pembalikan Beban Pembuktian Tindak Pidana Korupsi*. Alumni.
- Poernomo, B. (1984). *Pertumbuhan Hukum Penyimpangan Di luar Kodifikasi Hukum Pidana*. Bina Aksara.
- Saputra, R. (2016). Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi (Bentuk Tindak Pidana Korupsi yang Merugikan Keuangan Negara Terutama Terkait Dengan Pasal 2 Ayat (1) UU PTPK). *Jurnal Cita Hukum*. <https://doi.org/10.15408/jch.v2i2.2318>
- Seno, A. I. (2006). *Korupsi dan Pembalikan Beban Pembuktian*.
- Wiriadinata, W. (2017). Korupsi Dan Pembalikan Beban Pembuktian. *Jurnal Hukum & Pembangunan*. <https://doi.org/10.21143/jhp.vol43.no1.1508>
- Zebua, F. R. P., Jauhari, I., & Siregar, T. (2008). Tanggungjawab Pelaku Tindak Pidana Korupsi dan Ahli Warisnya dalam Pembayaran Uang Pengganti Kerugian Keuangan Negara Ditinjau dari Aspek Hukum Perdata. *Jurnal Mercatoria*.