

## RESERVE VERIFICATION SYSTEM CORRUPTION CASE IN INDONESIA

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### ABSTRACT

*Evidence is a very important part in the process of examining criminal cases to determine and declare a person's fault so as to be sentenced by a judge. Therefore the purpose of this study was to analyze the reverse verification system of criminal corruption cases in the criminal justice system in Indonesia and the factors influencing the reversal of the burden of proof in corruption cases in Indonesia. Research method was done by conducting normative juridical method, with data source used were secondary data. Secondary data consisted of primary, secondary and tertiary legal materials obtained by conducting literature review. The data obtained were analyzed by qualitative descriptive method. The results of the Indonesian Criminal Justice System have a negative verification system (negatifwetejhkovertuiging). The evidentiary system in corruption crime cases is entirely on the public prosecutor, in Law Number 31 Year 1999 which has been amended by Law Number 20 Year 2001 on Eradication of Action Criminal Corruption, the burden of proof upside down can be done by not removing the basic rights of the defendant as one of the characteristics of the rule of law. The factors affecting the implementation of reversing the burden of proof in corruption cases in Indonesia is the validity of the principle of presumption of innocence, the integrity of law enforcement agencies is not good, the orderly administration of the recording of the wealth of officials is still far from good government.*

**Keyword:** Reversed Evidence System, Crime, Corruption, Indonesia.

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### A. INTRODUCTION

Evidence is a very important part in the process of examining criminal cases to determine and declare a person's fault so as to be sentenced by a judge. Evidence is also a provision that regulates the instruments of evidence justified by the Act and regulates the evidence that the judge may use to prove the defendant's mistakes. In other words, the court should not be as willing and arbitrary as to prove the defendant's wrongdoing.

The existence of the provisions of criminal procedural law is necessary and essential in the context of the enforcement of material criminal law. In a simple word, it can be said that the provisions of the criminal law cannot a priori without the support of criminal procedure law.

The Indonesian criminal justice system in principle refers to the Criminal Procedure Code (KUHP), namely Law No. 8 of 1981 (LNRI 1981-76, TLNRI 3206) passed and enacted on 31 December 1981, in which the presence of this Criminal Procedure Code replacing "*Het HerzienInlandsch Reglement*" (HIR) as a protection of the Indonesian criminal procedural law that regulates criminal proceedings from investigation, prosecution, court proceedings at the first instance, appeals, and filings of judicial review.

The principles of balance between human rights and human obligation rights, as well as the role of the state have been reflected in the Criminal Procedure Code, namely the legalization of the human rights of the suspect or defendant to defend his interests in the legal process (articles 50 to 68). Here, the suspect or defendant is placed in a position treated according to the noble values of humanity based on Pancasila's philosophy of Life (Nation's Life and Basis) to protect the individual's independence from the arbitrary actions of the law enforcement apparatus.

In relation to the substance of Law No. 8 of 1981 regarding the Criminal Procedure Code, the Law adopts the "due process Model" approach.

Criminal Procedure Code is a rule in the criminal justice process or criminal law enforcement process. There are still many shortcomings, especially regarding the application of the Unpredictable Predisposes Principle which is an important legal principle in the criminal justice process. In this respect the most basic principle of modern criminal justice

procedures is the presumption of innocence<sup>1</sup> prescribed by the Universal Declaration of Human Rights dated December 10, 1948 and also in international conventions, the International Covenant on Civil and Political Rights.

Criminal law as a public law of its existence aims to protect the interests of society and the state by making a harmonious balance between crimes from the authorities who act arbitrarily on the society. The provisions of general criminal law are intended to be generally applicable as set forth in the Criminal Code (KUHP), whereas the specific criminal law according to Sudarto was defined by the provisions of the criminal law that regulate the subject and the specific acts. Corruption is one part of a special crime.<sup>2</sup> If it is elaborated, the criminal act of corruption has certain specifications that are different from the general criminal, such as deviation of procedural law and the regulated material is intended to minimize the possibility of leakage and deviation to the state's financial and economy. Describing the problem of corruption is a serious threat to the stability, security of national and international society, it has undermined institutions, democratic values and justice and endangers sustainable development and law enforcement.

Judging from a juridical perspective, corruption is an extraordinary crime, so extraordinary measures are required extraordinary measures. From this dimension, one of the comprehensive steps that can be done by the Indonesian Criminal Justice System (SPPI) is how ideally it can formulate a relatively sufficient system of evidence.

In connection with the proof of corruption cases in the provisions of Indonesia's positive law, namely under section 37 paragraph (1) of Law no. Law No. 31/1999 on Eradication of corruption states that "the defendant has the right to prove that he/she is not committing a criminal act of corruption". This law applies a limited burden of proof of the defendant's right to prove that he has not committed a criminal act of corruption and the prosecutor is obliged to prove his indictment.

#### **B. Problem Formulation**

1. How is the reverse verification system of corruption under the criminal justice system in Indonesia?
2. What are the factors affect the implementation of the implementation of reversing the burden of proof in corruption cases in Indonesia?

#### **C. Research Objectives**

1. To analyze the corruption proofing system according to the criminal justice system in Indonesia.
2. To analyze factors that influence the implementation of the implementation of the reversal of the burden of proof in corruption cases in Indonesia

#### **D. Research Methods**

The method of research in this research was normative juridical, it was used to perform data analysis with reference to the legislation, in the field of criminal law of corruption, Criminal Procedure Code, and legislation governing role and function of institutions including in the criminal justice sub-system.

#### **Data source**

Data in this research were secondary data consist of:

- a. Primary Legal Material, namely: Law Number 24 Prp in 1960, Law Number 3 Year 1971, Law Number 11 Year 1980, Law Number 8 Year 1981, Law Number 28 Year 1999, Law Number 31 Year 1999, Law Number 20 Year 2001, Law Number 7 of 2006 and Law Number 5 Year 2009.
- b. Secondary law materials, ie materials that provide explanations of primary legal materials such as research results in the form of dissertations, as well as papers that have been seminar. Book of lawyers in Indonesia relating to corruption, Criminal Procedure Law and the Indonesian Criminal Justice System and Legal System.
- c. Tertiary legal materials, namely materials that provide guidance and explanation of the material of primary and secondary law in the form of dictionary, encyclopedia and others.

#### **Data analysis method**

The data collected were then analyzed by using the theories, concepts and rules of law as contained in the framework of thought to provide answers to the problem, and analyzed by qualitative descriptive method.

### **E. RESEARCH RESULT**

#### **1. Reverse Verification System in the Criminal Justice System in Indonesia**

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<sup>1</sup> Mien Rukmini, *Perlindungan HAM melalui asas praduga tidak bersalah dan asas persamaan kedudukan dalam hukum pada sistem peradilan pidana Indonesia*, (Bandung: Alumni, 2003), Page 4

<sup>2</sup> Sudarto, *Kapita Selekta Hukum Pidana*, (Bandung: Alumni, 1981), Page. 61.

There are two kinds of examination systems in criminal procedure law, namely: *acusatoir* system and *inquisatoir* system. The *acusatoir* system places the suspect/defendant as the subject of the examination. Thus, it contains the consequences between the examiner and the examinee for having the same position before the law, which is sought is a description.

On the other hand, understanding the inquisition system, placing the suspect/defendant in the examination occupies the position as the object of the examination, so to obtain the data contains the consequences between the examiner and the examinee have a different position before the law, sought is the recognition. It tends to use contrary ways with the dignity and human dignity of a suspect/defendant.<sup>3</sup> The Indonesian criminal justice system embraces a negative verification system (*negatfweetehjkovertuiging*), which is an evidentiary system with a proof approach based on the Act and takes into account the issue of Judge's belief. Based on this negative evidentiary system, the Judge may impose a penalty on the defendant based on the Judge's conviction with valid evidence based on the Act. And based Wisdom Values of Indonesia With Pancasila Philosophy<sup>4</sup>.

In the Criminal Procedure Code, the Judge's conviction is based on a minimum of 2 (two) evidences as contained in Article 183 of the Criminal Procedure Code as follows: "The Judge shall not impose a penalty on a person unless at least two valid evidences he obtained the conviction that a crime is true did happen and that the defendant was guilty of doing so "

In Article 184 state what is meant as evidence is:

1. Description of the witness
2. Expert description
3. Letter
4. Instructions
5. Defendant's description

Under these provisions, the evidence is restrictive and limitative, the Judge according to his conviction can determine the defendant guilty or not.

Judge observation is very important and essential because Judge mastering the trial process<sup>5</sup>. Article 188 Paragraph (3) of the Criminal Procedure Code states that the verification of a directive in any particular circumstance shall be conducted by the Judge wisely and wisely, after he has conducted an examination with careful and precision based on his conscience.

Judges' observations must be made during the trial, what has been experienced or known, by the previous Judge cannot be the basis of proof unless such acts or events are known by the public.<sup>6</sup>

Article 137 of the Criminal Procedure Code states that "the Public Prosecutor has the authority to prosecute anyone charged with a criminal offense in his jurisdiction by transferring the case to the court of competent court".<sup>7</sup>

Reversal burden of proof is a proof system used by the Anglo-Saxon States, the aim being to facilitate proof in special cases which in the proof is very difficult.

Reversal burden of proof universally contradicts the universal principle of proof, for in principle the universal necessity of presumption of innocence is to uphold the values of the right of suspect. In this presumption of innocence, the defendant is never charged to prove his guilt even he is never obliged to blame himself (non-self-incrimination) and even the suspect has the right to remain silent.<sup>8</sup>

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<sup>3</sup>Waluyadi, *Pengetahuan Dasar Hukum Acara Pidana*, Mandar Maju, Bandung, 2012, page. 63.

<sup>4</sup>Aji Sudarmaji and Sri Endah Wahyuningsih, *Implementation of Penal Mediation In Criminal Law, The 2<sup>nd</sup> Proceeding Indonesia Clean Corruption in 2020*, Proceeding International Seminar, jurnal.unissula, file:///C:/Users/user/Downloads/Documents/1128-2128-1-SM.pdf, page.589.

<sup>5</sup>Andi Hamzah, *Hukum Acara Pidana Indonesia*, Jakarta: Arikha Media Cipta, 2005, page.326

<sup>6</sup>Indriyanto Seno Adji, *Sekilas Korupsi dan Komisi Pemberantas Korupsi*, Jakarta, Kantor Pengacara dan Konsultan, 2007, Page.327

<sup>7</sup>*Ibid*, page 23

<sup>8</sup>*Ibid*, page 50

In the reversal burden of proof, the burden of proof rests with the defendant. Thus there is a shift from the presumption of innocence to the principle of guilty presumption, and often the Reversal burden of proof has the potential to violate human rights.

However, in Law Number 31 Year 1999 which has been amended by Law Number 20 Year 2001 concerning the Eradication of Corruption, the reversal burden of proof does not eliminate the fundamental rights of the defendant as one of the characteristics of the State law. This law guarantees the absence of human rights violations since Law Number 20 Year 2001 is a "due process model" that protects the rights of suspects or individual rights.<sup>9</sup>

One of the objectives of such a special arrangement is to fill the shortcomings and legal vacuum that are not covered by the regulation in the Criminal Procedure Code, but with the understanding that it is still within the limits permitted by both Formal and Materially Criminal Laws. Even this arrangement becomes part of a criminal act of corruption, so that between the Criminal Procedure Code and Law No. 20 of 2001 are complementary to each other.

The reversal burden of proof cannot stand alone without the support of the existing criminal justice system. The Criminal Justice System is an important element in law enforcement in corruption. Criminal justice is said as a system because within the system work subsystems that support the course of criminal justice, which is a crime control consisting of the Police, Prosecutor, Court and Penal Institution of the convicted.<sup>10</sup>

The formulation of evidence in Law Number 31 of 1999 concerning the Eradication of Corruption is as contained in Article 37 which reads:

1. The defendant has the right to prove that he has not committed a criminal act of corruption;
2. Where the defendant can prove that he has not committed a criminal act of corruption, the information shall be used as a favorable matter to him;
3. The defendant shall be obliged to provide information about all of his property and the property of his wife or husband, child and property of any person or corporation alleged to have a relationship with the case concerned;
4. In the event that the defendant cannot prove that the wealth is not equal to his income or the source of his or her wealth, the information can be used to substantiate the existing evidence that the defendant has committed a criminal act of corruption;
5. Under the circumstances referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), the prosecutor shall still be obliged to prove his indictment.

From the above mentioned Article formulation, it is known that the evidentiary obligation in the case of corruption remains fully in the public prosecutor as in the previous Law. However, the provision is somewhat more advanced when compared to the same provisions in the Act of corruption, especially in terms of providing recognition of the right of the accused to prove his innocence. Such rights are not affirmed in the previous Law. Whether or not the defendant gives evidence of proof according to the 1971 Corruption Act formulas is entirely dependent on the wishes of the Judge. In case the Judge does not allow it, the defendant cannot verify that he has no problem in committing a criminal act of corruption.

Based on the conceptual understanding of the system of reversing the burden of proof, then the provisions of Article 37 of Law number 31 of 1999 on the Eradication of Corruption has not been said to have introduced the system of reversing the burden of proof. There are at least two things that can be said:

- a. The provision has not put the evident duty to the defendant in all; and the prosecutor is not exempt from the obligation to prove the defendant's mistake;<sup>11</sup>

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<sup>9</sup>Romli Atmasasmita, *Sekitar Masalah Korupsi Aspek Nasional dan Aspek Internasional*, Bandung: Penerbit Mandar Maju, 2004, page. 42

<sup>10</sup>Marjono Reksodiputro, *Sistem Peradilan Pidana Indonesia (Peran Penegak Hukum Melawan Kejahatan) dalam Hak Asasi Manusia dalam Sistem Peradilan Pidana*, Jakarta : Lembaga Kriminologi Universitas Indonesia, 1994. page.1

<sup>11</sup>According to Oemar Seno Adji, in "Omkering Van Bewijslast" the original pure form, no longer required prosecutors to prove the defendant's fault. For that see Oemar seno Adji in Albert Hasibuan (ed.), Loc. Cit. The same thing was expressed Andy Hamzah. For that check Andy Hamzah, *perlindungan Hak Asasi Manusia dalam Kitab undang-Undang Hukum Acara Pidana*,(Bandung:Bina Cipta, 1986), page. 16.

- b. In case the defendant can prove that he is innocent, it cannot be used fully to relieve him of the charges. Or vice versa, in case he cannot prove it, it cannot be used to say that he has been proven to commit a criminal act of corruption.<sup>12</sup>

When noted in isolation, nothing is special about the provisions of the provisions contained in Article 37 of Law Number 31 Year 1999 concerning the Eradication of Corruption, particularly with respect to the provisions of paragraphs (1) and (2). Normally, in the event that the defendant can prove that he is innocent, he should be released. Nevertheless, the provisions of paragraphs (3) and (4) of the Article are interesting enough to be discussed further, namely in relation to the obligation of the accused to provide information about family property and so on.

Such an obligation of proof is not something that is commonplace in a criminal justice process. As an illustration, it can be put forward as a simple example in the case of theft. One is charged by the prosecutor for theft, so in that case, there is no rule requiring him to provide information about his family's property. So such evidentiary obligations can be regarded as something special in the Eradication of Corruption.

The burden of proofing system is a new criminal law policy in the evidentiary system that is adjusted to global developments. The Convention against Corruption (KAK 2003) of the United Nations Convention Against Corruption (UNCAC 2003 in article 31, paragraph 8) supports the principle of reversal proof with the following formula<sup>13</sup>: (States Parties may consider the possibility of obliging a person to infringe to explain the legitimate source of the alleged outcomes derived from criminal offenses or other property which may be subject to foreclosure as long as such conditions are consistent with the fundamental principles of independent National law, and consistent with the nature of other judicial processes).

## 2. Factors Affecting Implementation Reversal Burden of Proof in Case of Corruption in Indonesia.

Indeed, the system of reversal of the burden of proof in the science of law is not something new, but the system cannot necessarily be executed in accordance with the wishes of the law itself at least there are several factors that greatly affect the implementation or implementation of the system include:

### a. Community and/or Defendant Know More about Presumption of Innocence

Any person accused of a criminal offense has the right to be presumed innocent until proven guilty according to law. This right is not only recognized by the Human Rights Instrument.

In the Indonesian Criminal Code System, the Principle of "Presumption of Innocence" is expressly stated in Law Number 8 Year 1981 regarding the Criminal Procedure Code (KUHP) and Law Number 48 Year 2009 regarding Judicial Power in Article 8 which reads "Everyone suspected, arrested, detained, prosecuted, and faced before the Court shall be presumed innocent before any Court decision which declares his guilt and has obtained permanent legal force".

### b. Administratively Order of Assets Ownership

The absence of a wealth report is the cause of someone freely going to be against the law of increasing wealth by corruption, because it is difficult to monitor how much a person's initial wealth or State Officials. Particularly directed against the property of a corruption suspect is aimed at suing a person's right of ownership over assets that a person should not own than a legally acceptable income. This reversed theory of proof puts a person in a position before he or she obtains a wealth of alleged corruption. Indeed, with this theory of proof is aimed to facilitate the process of proof of the origin of wealth (assets) resulting from corruption, so that if the concerned cannot prove the validity of ownership, then the assets or assets owned returned to State's asset (asset recovery).

The administrative order in Indonesia is still suspected far from good governance system, even it tends to be somewhat chaotic. Therefore, the space for corruption is more liberal. Verdict of the judge can still be traded. It is undeniable that the judge holding the decision can still be purchased. No agency/body specifically receives the initial report of the emergence of a person's wealth. The absence of such institutions cause people to freely commit a criminal act of corruption, do the accumulation of property, even with a person free or legal entity conduct a criminal act of corruption, because there is no institution or body monitor their assets at any time. There is no obligation of someone to report a person's property. In Indonesia a person or legal entity has no

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<sup>12</sup>According to Andy Hamzah, *perkembangan hukum pidana khusus*, (Jakarta: Reneka Cipta, 1991), page. 11. there is no reverse verification if the defendant's inability to provide information about unbalanced sources of income with his income is only necessary to strengthen witness statements. See Andy Hamzah,

<sup>13</sup>Forum 2004, *United Nations Konvention Againsts corruption (UNCAC 2003*, terjemahan tidak resmi, Perum Percetakan Negara R.I, first printed May 2005, page 46.

obligation to report the property owned. The obligation should be legally embedded, so that everyone feels obliged to report their possessions. There is no institution or entity that calculates property after a person has served as officials. The absence of such institutions makes it difficult for the State to suppress let alone calculate one's assets after he takes office. And it becomes clear to Officials and non-Officials to accumulate wealth through corruption.

**c. Integrity of Law Enforcement Apparatus**

Increased professionalism is associated with an increase in the "ability" of the authorities in performing their duties and authorities. The ability will be read from the way the authorities in carrying out their duties and authority and the resulting product.

The ability of the police as an investigator will be seen how he conducts the investigation by complying with the rules and principles governing it and the ability to account for its investigation activities contained in the "file of cases". It is seen as an inability, if the investigator—among other things—in conducting the examination applies the principle of inquisitor, viewing the suspect as an object. It can be judged that the lack of capacity if the case file produced into repeated material between the investigator and the Prosecutor's Office is limited due to the investigator's indecision in meeting the instructions of the Attorney of the researcher.

As well as judges who do not have the technical skills of the judiciary and are very low in their ability to discover the material laws that are to be poured in decisions, resulting in the rape of appropriate judicial access. Or the examination that runs from the direction of the indictment on which the examination is based, and it is strayed the examination that does not have a recurrence with the case file. How sad to read the argument of judgment consideration that it is not starting from the principal of examination. Or all decisions are taken without argumentation of consideration.<sup>14</sup>

The many instruments and legal institutions have been implemented in the legislation policy to combat corruption in this republic, one of which is the system of burden reversal of proof. Implementation of the system is expected to eliminate the level of evidentiary difficulty faced so far in eradicating corruption.

**F. CONCLUSION**

1. The verification system in corruption crime cases in Indonesia is fully in the public prosecutor, in Law Number 31 Year 1999 which has been amended by Law Number 20 Year 2001 concerning the Eradication of Corruption, the burden of reversing proof of bias is done by not eliminating the fundamental rights of the accused as one of the characteristics of the rule of law.
2. Factors Affecting Implementation Reversal of Burden of Proof in Case of Corruption in Indonesia is a society and/or defendant who is more familiar with presumption of innocent principle, orderly administration of asset ownership, and integrity of law enforcement apparatus.

**REFERENCES**

- Andi Hamzah, *Hukum Acara Pidana Indonesia*, Jakarta: Arikha Media Cipta, 2005.
- , *Perlindungan Hak Asasi Manusia dalam Kitab undang-Undang Hukum Acara Pidana*, Bandung: Bina Cipta, 1986.
- Andy Hamzah, *perkembangan hukum pidana khusus*, Jakarta: Reneka Cipta, 1991.
- Forum 2004, *United Nations Konvention Against corruption (UNCAC 2003)*, Jakarta, Perum Percetakan Negara R.I, first printed May 2005.
- Indriyanto Seno Adji, *Sekilas Korupsi dan Komisi Pemberantas Korupsi*, Jakarta, Kantor Pengacara dan Konsultan, 2007.
- Marjono Reksodiputro, *Sistem Peradilan Pidana Indonesia (Peran Penegak Hukum Melawan Kejahatan) dalam Hak Asasi Manusia dalam Sistem Peradilan Pidana*, Jakarta : Lembaga Kriminologi Universitas Indonesia, 1994.
- M. Yahya Harahap, *Pembahasan & Penerapan KUHAP, Penyidikan dan Penuntutan*, Jakarta, Pustaka Kartini, 1985.
- Mien Rukmini, *Perlindungan HAM melalui asas praduga tidak bersalah dan asas persamaan kedudukan dalam hukum pada sistem peradilan pidana Indonesia*, Bandung: Alumni, 2003,

<sup>14</sup>M. Yahya Harahap, *Pembahasan & Penerapan KUHAP, Penyidikan dan Penuntutan*, Jakarta, Pustaka Kartini, 1985, page. 83.

Romli Atmasasmita, *Sekitar Masalah Korupsi Aspek Nasional dan Aspek Internasional*, Bandung: Penerbit Mandar Maju, 2004.

Sudarto, *Kapita Selekta Hukum Pidana*, Bandung: Alumni, 1981.

Waluyadi, *Pengetahuan Dasar Hukum Acara Pidana*, Bandung, Mandar Maju., 2012.

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