



LEGAL ANALYSIS OF THE REVERSE BURDEN OF PROOF IN CORRUPTION CASES

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Article Info	Abstract
Article History Received : 2024-12-03 Revised: 2024-12-10 Published: 2025-01-01	Corruption is an extraordinary crime that has a systemic impact on state finances and the social order of society. In an effort to eradicate corruption, Indonesia has implemented a limited and balanced reverse burden of proof system as stipulated in Articles 37 and 37A of Law Number 20 of 2001. This system shifts part of the burden of proof from the public prosecutor to the defendant, who is required to prove the origin of wealth that is not balanced with his income. Although this system is effective in accelerating the judicial process, recovering state losses, and providing a deterrent effect, its implementation faces challenges such as limited competence of law enforcers, potential human rights violations, and limited supporting infrastructure.
Keywords: <i>Corruption, Reverse Evidence, Eradication of Law</i>	This study uses normative legal methods with a statutory and conceptual approach to analyze the effectiveness of the implementation of the reverse burden of proof system in corruption crimes. The results of the study indicate that this system requires regulatory harmonization, strengthening the capacity of law enforcement, and developing supporting technology to ensure its implementation runs optimally. Recommendations submitted include intensive training for law enforcers, the preparation of clear technical guidelines, and increasing international cooperation to track and recover hidden assets. With these steps, the reverse burden of proof system can be an effective instrument in eradicating corruption without neglecting the principles of justice and protection of human rights.

I. INTRODUCTION

Corruption is an extraordinary crime that has a systemic impact on state finances and the socio-economic rights of the community. As a form of organized crime that is transnational in nature, its eradication requires legal instruments that are not only comprehensive but also innovative. One of the legal approaches applied in Indonesia is the limited and balanced reverse burden of proof system as regulated in Article 37 and Article 37A of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption.(Huda 2012)

Article 37 paragraph (1) of Law No. 20 of 2001 states: The accused has the right to prove that he did not commit a criminal act of corruption.

On the other hand, Article 37A paragraph (1) stipulates that the accused is required to provide information about his assets, including the assets of his wife, husband, children, or other parties related to the case. If the accused cannot prove the origin of the assets that are not in balance with his income, then this information can

be used to strengthen the alleged corruption crime charged.(2018 Report)

The application of this system has the nature of "lex specialis" in criminal law, which provides an exception to the principle of presumption of innocence. Usually, the burden of proof in criminal law lies with the public prosecutor according to the principles of *actus reus* and *mens rea*. However, for corruption crimes, part of the responsibility for proof is transferred to the defendant. This aims to speed up the trial process, considering the complexity and difficulty of proving corruption which often involves hiding assets.

However, the application of reversed burden of proof is often controversial, especially in relation to the protection of the defendant's human rights. Article 37 of Law No. 20 of 2001 emphasizes that evidence submitted by the defendant cannot be used as a basis for punishment. This ensures that the defendant's rights are respected, in line with the principles of justice stipulated in Article 28D paragraph (1) of the 1945 Constitution.(Soeskandi and Sekarwati 2021)

On the other hand, the burden of proof on the prosecutor is not completely removed. The prosecutor is still required to provide sufficient preliminary evidence as stipulated in Article 26A of Law No. 20 of 2001, which states that evidence can be in the form of electronic information or other relevant documents.(Setyawan 2014)Thus, this reverse burden of proof system must be applied carefully to maintain a balance between efforts to eradicate corruption and respect for the constitutional rights of the accused.

The history of the regulation of reverse burden of proof in Indonesia began with the implementation of the Central War Regulation (P4AD) No. Prt/Perpu/031/1958 and then Law No. 3 of 1971. Over time, this approach has continued to be refined until the ratification of Law No. 31 of 1999 and its revision through Law No. 20 of 2001.(Supusepa 2019)This system is designed to eliminate obstacles in the evidence process, especially in cases involving high-ranking officials and assets hidden abroad.

However, the implementation of reverse burden of proof still faces major challenges. One of them is the diverse interpretations among law enforcers. The absence of uniform technical guidelines often leads to differences in implementation, both at the investigation, prosecution, and court levels. In practice, prosecutors and judges are often faced with technical and political obstacles that can hinder the effectiveness of eradicating corruption.

Furthermore, this system has also drawn criticism because it is considered to deviate from universal standards of criminal law evidence, both in the continental and Anglo-Saxon legal traditions.(Abqa et al. 2023)This criticism arises because the reverse burden of proof mechanism can be considered to violate the right to non-self-incrimination, which is a universal principle in criminal law.(Simorangkir and Hasibuan 2023)

Thus, this study aims to analyze the legal arrangements and implementation of the reverse burden of proof system in corruption crimes in Indonesia. This study will also explore how the principle of "limited and balanced" in reverse burden of proof can be optimally applied without neglecting the principles of justice and protection of human rights.

With two main issues, namely How is the Law Enforcement Regulation Against the Concept of Reversed Burden of Proof in Corruption Crimes in Indonesia? And How is the Proof System in the Criminal Procedure Code and the Corruption Eradication Law?

II. RESEARCH METHODS

The research methodology used in the study of Legal Analysis of Reversed Burden of Proof in Corruption Cases is the normative legal research method.(Indra Utama Tanjung 2024)This method focuses on the study of relevant laws and regulations, legal doctrines, and legal theories. This research is descriptive-analytical, namely describing the legal rules related to the reverse burden of proof system in corruption crimes and analyzing the effectiveness of the application of these rules. The main sources in this study are Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999, especially Articles 37 and 37A which regulate reverse burden of proof, as well as other legal literature as supporting sources.(Yam 2022)

The research approach uses a statute approach, which aims to understand and interpret the applicable provisions. In addition, this study also uses a conceptual approach to analyze the concept of reversed burden of proof in the perspective of legal theory and the principles of criminal law, including the principle of presumption of innocence. The results of the analysis aim to provide a critical view of the implementation of reversed burden of proof and offer recommendations for improving legal regulations and practices.

III. RESULTS AND DISCUSSION

A. Law enforcement regulations regarding the concept of reverse burden of proof in corruption crimes in Indonesia

Reversed proof in corruption cases in Indonesia has been clearly regulated in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption. This concept is one of the extraordinary measures to overcome corruption crimes that are considered to damage the foundations of national life.(Prasetyo 2015)

Article 37 paragraph (1) of Law No. 20 of 2001 stipulates: The accused has the right to prove that he did not commit a criminal act of corruption.

The existence of this article shows that the Indonesian legal system provides space for the accused to prove his innocence. However, this system still applies the principle of "limited and balanced reversal", which means that the evidence by the accused only serves as a

complement and cannot be used as the sole basis for punishment.(Lasmadi and Sudarti 2021)This is emphasized in Article 37 paragraph (2) which reads:

If the accused can prove that he did not commit a crime of corruption, then the court will use this evidence as a basis for declaring that the charges are not proven.

In addition, Article 37A paragraph (1) expands the scope of evidence by requiring the accused to provide information regarding all of his/her assets, including assets of husband/wife, children, and other parties related to the case. This provision strengthens efforts to eradicate corruption by focusing on assets resulting from crime.(Wiriadinata 2012)

Traditionally, the burden of proof in criminal law lies with the public prosecutor (burden of evidence), who must prove the guilt of the accused according to the principles of *actus reus* and *mens rea*. This principle is also known as the principle of *in dubio pro reo*, which means that in the event of doubt, the accused must be acquitted.

However, the implementation of the reverse burden of proof system in corruption cases deviates from this universal standard. This system is considered a form of justified deviation based on the principle of *lex specialis derogat legi generalis*.(Samosir 2017)In the Indonesian context, the application of reverse burden of proof aims to accelerate the process of proof in corruption cases which are often difficult to reveal, considering that corruption involves sophisticated *modus operandi*, conspiracy between perpetrators, and hiding assets abroad.

Reverse proof is applied with the aim of:

1. Increasing the effectiveness of corruption eradication: This system is designed to overcome the obstacles to proof that often occur, especially in proving the perpetrator's malicious intent (*mens rea*).
2. Recovering state financial losses: With this system, defendants who cannot prove the origin of their wealth are considered guilty and the wealth can be confiscated for the state.
3. Rescuing hidden state assets: Article 38B of Law No. 20 of 2001 gives judges the authority to decide to confiscate the defendant's assets whose origin cannot be proven.
4. Providing a deterrent effect: This provision is designed to make potential

perpetrators think twice before committing a criminal act of corruption.

The implementation of reverse burden of proof requires good coordination between law enforcers, including investigators, prosecutors, and judges. This process begins with the investigation, where investigators must collect sufficient preliminary evidence as stipulated in Article 26A of Law No. 20 of 2001. This preliminary evidence can be in the form of electronic documents, letters, or other relevant information.(Prasetyo 2015)

At the prosecution stage, the prosecutor is required to prove that the defendant has assets that are not balanced with his income. If proven, then the defendant must provide an explanation or evidence that the assets were obtained legally. If the defendant fails to prove this, then the assets in question are considered to come from criminal acts of corruption.

The court acts as the final arbiter in assessing whether the evidence submitted by the defendant is acceptable. The judge must ensure that this evidence process does not violate the principle of justice or create legal uncertainty.

In some major cases, the application of reverse burden of proof has yielded significant results. An example is a corruption case involving high-ranking officials, where assets of unexplained origin were successfully confiscated for the state. However, there are also cases where this system is not optimally applied due to the lack of strong initial evidence.

Evaluation of the implementation of the reverse burden of proof shows that this system requires additional regulatory support and more intensive training for law enforcement. In addition, stricter supervision is needed to ensure that this system is not abused to unfairly pressure the accused.

B. The Evidence System in the Criminal Procedure Code and the Corruption Eradication Law

The evidentiary system in criminal law is a legal mechanism to prove whether or not someone is guilty of a criminal act charged against him. This system aims to ensure justice in the legal process and protect the rights of the accused and victims. In Indonesia, the evidentiary system in criminal law is regulated in the Criminal Procedure Code (KUHP) and is applied specifically in certain crimes, such as corruption, as regulated in Law Number 20 of 2001 concerning Amendments to Law Number 31 of

1999 concerning the Eradication of Corruption.(Rizkha and Hermansyah 2022)

Proof in the Criminal Procedure Code is based on the principle of negative *wettelijk* or negative proof according to the law, as stated in Article 183 of the Criminal Procedure Code which states: A judge may not sentence a person to a penalty unless with at least two valid pieces of evidence he has obtained the conviction that a crime has actually occurred and that the defendant is guilty of committing it.(Nurita 2024)

This principle provides two cumulative conditions for a judge to issue a decision, namely:

1. There must be at least two valid pieces of evidence.
2. From this evidence, the judge was convinced that the defendant was guilty.

Meanwhile, in the Corruption Eradication Law, the evidentiary system adopted has a special nature, namely limited and balanced reverse evidence. This system is applied because of the complexity and extraordinary nature of corruption, which often involves the concealment of assets and conspiracies that are difficult to prove by conventional means.

The Criminal Procedure Code, as a guideline for criminal procedure law, regulates in detail the system of proof, starting from the means of evidence to the requirements of proof. The following are important aspects of the system of proof in the Criminal Procedure Code:

a. Valid Evidence

Article 184 of the Criminal Procedure Code regulates five valid forms of evidence, namely:

1. Witness testimony.
2. Expert testimony.
3. Letter.
4. Instruction.
5. Defendant's statement.

These five pieces of evidence must be used carefully and complement each other to form the judge's conviction. Article 188 of the Criminal Procedure Code also provides guidelines regarding indicative evidence obtained from a series of interrelated facts.(Sasuang, Borman, and Handayati 2024)

b. The Principle of Presumption of Innocence

The Criminal Procedure Code upholds the principle of the presumption of innocence, which ensures that the accused is considered innocent until there is a final and binding court decision.(Antonius, Saragih, and Zarzani 2024)In the context of proof, this principle places the burden of proof entirely on the public prosecutor. The accused is not required to prove his

innocence, but rather simply to deny the charges brought.

c. Position of Judge

Judges in the Criminal Procedure Code's evidentiary system play a central role in evaluating evidence and forming convictions. Judges are not only bound by the evidence presented, but also by their obligation to explore material truth. This is emphasized in Article 6 paragraph (2) of the Criminal Procedure Code which stipulates that judges must try to find material truth in order to guarantee justice in the trial process.

d. Criticism of the Criminal Procedure Code System

Although the Criminal Procedure Code provides a strong foundation, its evidentiary system is often considered less effective in handling complex cases such as corruption.(Antonius, Saragih, and Zarzani 2024)The process of proof is often hampered by the limited evidence available, especially in uncovering hidden assets or in cases involving international corruption networks.

Law Number 20 of 2001 regulates a more adaptive evidentiary system to address the complexity of corruption crimes. The following are the main characteristics of the evidentiary system in the law:

a. Reverse Proof

Reverse proof is regulated in Article 37 and Article 37A of Law No. 20 of 2001. Article 37 states that the accused has the right to prove that he is not guilty. Meanwhile, Article 37A paragraph (1) requires the accused to provide information about the origin of his wealth. If the accused cannot prove that his wealth was obtained legally, then this information can be used to strengthen the suspicion of corruption.

Article 37A paragraph (2) states: *"In the event that the accused cannot prove that his wealth is not in balance with his income or the source of the increase in his wealth, then the information as referred to in paragraph (1) is used to strengthen the existing evidence that the accused has committed a criminal act of corruption."*

b. Electronic Evidence Regulation

Article 26A of Law No. 20 of 2001 expands the evidence by including electronic documents and digital information as valid evidence. This includes data stored in electronic form, such as emails, voice recordings, or financial transaction data.

c. Application of *Lex Specialis*

The evidentiary system in the Corruption Eradication Law adopts the principle of *lex specialis derogat legi generalis*, which means that special provisions in this law override general rules in the Criminal Procedure Code. This allows law enforcers to apply a more progressive and flexible evidentiary mechanism.

d. Effect on the Rights of the Defendant

Although the reverse burden of proof system is effective in eradicating corruption, it is often considered to deviate from the principle of the presumption of innocence.(Mochammad and Lutfi 2021)Therefore, this law continues to emphasize that evidence by the accused cannot be used as the sole basis for sentencing.

Comparison of the Evidence System between the Criminal Procedure Code and the Corruption Eradication Law

Aspect	Criminal Procedure Code	Corruption Eradication Law
Legal basis	Article 183-189 of the Criminal Procedure Code	Article 37, 37A, and 26A of Law No. 20 of 2001
Burden of Proof	Entirely up to the public prosecutor	Partly diverted to the accused (limited and balanced)
Evidence	Five conventional means of evidence	Coupled with electronic evidence
Principles Adopted	Presumption of innocence	Lex specialis with limited application of reversed proof
The main purpose	Ensure justice in every criminal case	Effectiveness of corruption eradication and state financial recovery

The evidentiary system in the Corruption Eradication Law provides advantages in overcoming evidentiary obstacles that are often found in corruption cases.

C. Effectiveness of Implementing Reverse Burden of Proof in Law Enforcement Practices in Indonesia

As we have mentioned above, the reverse burden of proof is a system of proof that shifts part of the responsibility of proof from the public prosecutor to the accused. This system is specifically regulated in Articles 37 and 37A of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.(Mariyanawati and Saleh 2023)In this context, the accused has an obligation to explain the origin of the wealth that is not balanced with his income. If he is unable to prove that the wealth was obtained legally, then the wealth is

considered to come from a criminal act of corruption.(Siregar, Fikri, and Siliton 2024)

This concept is designed to address the major challenges in eradicating corruption in Indonesia, which often involves complex *modus operandi* and systemic corruption networks. However, the effectiveness of its implementation in practice is still debated, both from a legal perspective and technical implementation.(2011)

The application of the reverse burden of proof system in corruption crimes has shown several successes, including:

1. Speeding up the judicial process: By requiring defendants to explain the origins of their wealth, the evidentiary process becomes more efficient, especially in corruption cases involving large and hidden assets.
2. Recovery of state losses: This system allows for the confiscation of assets whose origin cannot be proven to be for the state, as regulated in Article 38B of Law No. 20 of 2001.
3. Deterrent effect for perpetrators of corruption: With the obligation of proof by the accused, this system puts additional pressure on perpetrators of corruption to think twice before committing a crime.

However, the effectiveness of this system is often hampered by various challenges, including:

1. Lack of law enforcement capacity: Investigators and prosecutors often lack the competence to manage reverse evidence, especially in identifying and tracing hidden assets.
2. Diverse legal interpretations: Judges and prosecutors often have different understandings of the limitations and scope of reverse evidence, leading to inconsistencies in application.
3. Human rights violations: In some cases, the system has been deemed to violate the principle of non-self-incrimination, which is a fundamental principle in criminal law.
4. Infrastructure limitations: The collection of relevant electronic evidence or financial documents is often hampered by a lack of access to data or supporting technology.(Fikri et al. 2024)

Next, there are several advantages and disadvantages of the Reverse Proof System.

a. Excess

1. Effective in eradicating corruption crimes: This system puts pressure on perpetrators to explain their wealth,

which is often a major indicator of corruption.

2. Reducing the burden on the public prosecutor: With the existence of reversed proof, the prosecutor does not need to prove every element of the crime in detail, so that the legal process becomes faster.
 3. Flexibility in handling complex cases: This system allows the court to focus on evidence of ill-gotten wealth, without having to prove the entire network of corruption.
 4. Psychological effects: The obligation to prove wealth often makes corruptors reluctant to commit crimes because they know their assets will be investigated.
- b. Lack
1. Potential violation of the rights of the accused: This system may be considered to violate the principle of the presumption of innocence and the right not to incriminate oneself.
 2. Reliance on law enforcement expertise: If prosecutors or investigators are not competent, the system can be abused or applied unfairly.
 3. Technology and data gaps: In cases involving foreign assets or electronic data, technological limitations in Indonesia are a major obstacle.
 4. Legal cultural resistance: Some traditional legal circles reject the implementation of this system because it is considered to deviate from universal norms in criminal law evidence.

IV. CONCLUSIONS AND RECOMMENDATIONS

The reverse burden of proof system in corruption crimes regulated in Law Number 20 of 2001 is a progressive step designed to overcome the major challenges in eradicating corruption in Indonesia. This system provides effectiveness in recovering state losses, accelerating the judicial process, and providing a deterrent effect on perpetrators. However, its implementation faces challenges, such as the potential for human rights violations, limited competence of law enforcers, and suboptimal supporting infrastructure. Nevertheless, with a "limited and balanced" approach, this system can still be respected within the framework of justice and the principle of presumption of innocence if applied correctly.

Suggestion

1. Strengthening Law Enforcement Competence: Providing intensive training to investigators, prosecutors, and judges to understand the principles and limitations of the reverse burden of proof system, including the ability to trace assets effectively.
2. Infrastructure and Technology Improvement: Developing supporting technology for electronic evidence collection, particularly in cases involving cross-border assets.
3. Regulatory Harmonization: Developing clearer and more uniform technical guidelines to reduce differences in legal interpretation at the investigation, prosecution, and court levels.
4. Strict Supervision: Ensure that the implementation of the reverse burden of proof system is strictly supervised to prevent abuse and ensure the protection of the rights of the accused.
5. International Collaboration: Increase cooperation between countries to track and recover assets hidden abroad, so that the effectiveness of eradicating corruption can be increased.

With these steps, the reverse burden of proof system is expected to provide a more significant contribution to eradicating criminal acts of corruption in Indonesia without neglecting the principles of justice and human rights.

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