C ANALYSIS OF THE ERADICATION OF CORRUPTION IN INDONESIA: CHALLENGES AND EFFECTIVENESS OF REVERSING THE BURDEN OF PROOF

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Abstract

Corruption in Indonesia is a serious problem that not only results in significant financial losses, but also has the potential to destroy social, economic, and democratic stability. Corruption has become a systematic crime, causing state losses of trillions of rupiah every year. This study aims to analyze various factors that affect the increase in corruption cases and the effectiveness of legal policies in eradicating them. Using a normative juridical approach, this study examines applicable regulations, including Law Number 20 of 2001 which regulates the reversal of the burden of proof in corruption cases. This study found that the implementation of a reverse evidentiary system can speed up the legal process and help uncover the material truth. However, the main challenges in eradicating corruption are low law enforcement, a permissive culture of law violations, and incompatibility of the law with the dynamics in the field. Therefore, periodic evaluation of regulations, strengthening the integrity of law enforcement officials, and strict supervision of the state budget are necessary. It is hoped that with these steps, efforts to eradicate corruption in Indonesia can be more optimal and have a positive impact on people's welfare.

Keywords: Corruption; eradication; reversal of the burden of proof; criminal law; Indonesia

I. Introduction

Corruption crimes not only cause losses to state finances, but also have a negative impact on the community's economy (Khaidir, Abdullah & Achmad, 2011). The consequences of corruption include financial losses for the state and become an obstacle to national development. In addition, corruption threatens democratic principles that emphasize the importance of transparency, accountability, and integrity, and can disrupt the stability and security of the country. In Indonesia, it is increasingly difficult to control corruption crimes, and its impact is not only felt in national life, but also affects the stability of the nation and the state as a whole (Mulkan & Aprita, 2023). Every year, the trend of corruption cases shows a significant increase, both in the number of cases and the amount of losses caused, with total state losses reaching trillions of rupiah. Corruption falls under a special category of criminal law that has different characteristics compared to general criminal law. In terms of procedural law and substance, regulations related to corruption crimes are designed to minimize the potential for leakage and irregularities that can harm the country's finances and economy (Mulyadi, 2015).

Corruption is considered an *extraordinary crime*, so efforts to eradicate it must also be done in an extraordinary way. However, this kind of approach can have an excessive impact and risk disrupting the stability of the life of the nation and state. Therefore, to improve law enforcement against corruption, an effective eradication strategy and the recruitment of law enforcement officers who have high morality and integrity are needed. One of the main challenges in the criminal justice process is finding the material truth or the real truth. In this case, the application of the reverse proof system can provide advantages in efforts to eradicate corruption, as it allows for a more effective legal process in proving the involvement of perpetrators (Sasuang, Borman & Handayati, 2024).

Efforts to overcome the country's financial and economic leakage due to corruption have begun with the issuance of various presidential decrees, including Presidential Decree No. 40 of 1957 which established the state of war. This step was then strengthened by the ratification of Law Number 24/Prp/1960 concerning the Investigation, Prosecution, and Examination of Corruption Crimes. Although the regulation has been implemented, efforts to eradicate corruption have still not yielded optimal results. Corruption that has spread systematically not only results in losses to state finances, but can also be considered a violation of the social and economic rights of the community at large (Yurvian, Union SP & Rozah, 2017).

One of the main causes of failure in the eradication of corruption is the incompatibility of the law with the conditions on the ground. Therefore, the law was replaced by Law Number 3 of 1971 concerning the Eradication of Corruption. However, this law is also considered ineffective in overcoming corruption, so it was replaced again with Law Number 31 of 1999 concerning the Eradication of Corruption. Furthermore, this law has undergone changes and improvements through Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.

Throughout 2016, the Corruption Crimes Court (Tipikor) has decided 573 cases with a total of 632 convicts. Entering 2017, the number of cases has increased significantly. Until the first semester of 2017, the total number of cases that have been decided by the Corruption Court, both at the first level, appeal, and in the Supreme Court (MA), reached 315 cases with a fixed number of convicts, namely 632 people. Of the 315 corruption cases monitored in the first semester of 2017, state financial losses were recorded at Rp1.06 trillion, while throughout 2016, state losses due to corruption reached

Rp3.085 trillion.

Based on the type of corruption case and court decisions, it can be seen that the punishment imposed is not likely to have a deterrent effect on the perpetrators of this crime. This has caused more and more state officials to appear in the media as suspects in corruption crimes. The following are the results of monitoring from Indonesia Corruption Watch (ICW) obtained from the Directory of Supreme Court Decisions regarding court decisions for 2016 and the first semester of 2017.

In 2016, there were 16 cases (5.02%) that ended in acquittals, while 255 cases (81.02%) were sentenced to light sentences, 41 cases (13.01%) received moderate sentences, and only 3 cases (0.95%) were subject to severe sentences. Meanwhile, in the first semester of 2017, 55 cases (7.31%) were acquitted, 590 cases (78.34%) ended in minor crimes, 74 cases (9.83%) received moderate sentences, and 34 cases (4.52%) were subject to severe crimes. Petty crimes include sentences of less than 4 years, medium crimes range from 4 to 10 years, while serious crimes are sentences of more than 10 years.

The increase in corruption crimes can be influenced by various factors, such as the low legal sanctions imposed, weak law enforcement, lack of public awareness of the rule of law, and a permissive culture of law violations. Efforts to increase the effectiveness of corruption eradication through regulations have been made by replacing several regulations. Perpu Number 24 of 1960 was replaced by Law Number 3 of 1971, which was later revised through Law Number 31 of 1999 and updated with Law Number 20 of 2001. In addition, institutional strengthening is also carried out through various policies, such as the establishment of the Corruption Eradication Commission (KPK) based on Law Number 30 of 2002, the establishment of the Ombudsman through Law Number 37 of 2008, and the issuance of Government Regulation Number 71 of 2000 which provides a legal basis for public participation in efforts to prevent and eradicate corruption crimes.

One of the human rights related to the right to obtain justice is regulated in Article 18 Paragraph (1) of Law Number 39 of 1999 concerning Human Rights. Article 11 Paragraph (1) of the law states that every individual who is arrested, detained, or prosecuted on suspicion of a criminal act has the right to be presumed innocent until his guilt is legally proven in trial. In addition, the individual is also entitled to all forms of legal guarantee necessary in the defense process, in accordance with applicable regulations.

The principle of presumption of innocence is also stated in Law Number 4 of 2004 concerning Judicial Power. Article 8 of this law emphasizes that a person who is suspected, arrested, detained, prosecuted, or tried must remain presumed innocent until there is a court decision with permanent legal force declaring his guilt. In line with these provisions, Article 66 of the Criminal Code (KUHP) emphasizes that the suspect or defendant has no obligation to prove his own guilt. This principle is known as the principle of non-self-incrimination, which means that a person cannot be forced to provide information that has the potential to harm him. In the judicial process, proof is carried out by presenting evidence before the court to convince the judge of the truth of an event (Kumala, 2021).

Based on this, this study aims to examine the juridical aspects related to the application of reversal of the burden of proof in corruption cases in Indonesia, as stipulated in Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. To guide the analysis, this study raises two main questions. First, what are the legal provisions regarding the reversal of the burden of proof in corruption cases in Indonesia? Second, how is the implementation of the reversal of the burden of

proof in the process of resolving corruption cases?

2. Research Method

This study uses a normative juridical approach method with secondary data types that include primary, secondary, and tertiary legal materials. The data obtained was analyzed using a qualitative juridical analysis method. This research is included in the category of normative legal research conducted through the study of written legal regulations and related legal materials. According to Soerjono Soekanto and Sri Mamudji (2001:13), normative legal research is research conducted by examining literature materials or secondary data, which includes official legal documents, previous research results, and literature related to research topics. In this study, the analysis of official legal documents includes primary legal materials that are binding and closely related to the problem being studied.

This research is descriptive-analytical, namely by systematically presenting the legal conditions that apply in a place, time period, and certain legal events. The goal is to obtain a comprehensive picture of the research object (Marzuki, 2017:35). Through this approach, the research aims to explain the application of legal provisions in the context of reversal of the burden of proof in corruption cases.

3. Results and Discussion

Legal Provisions Regarding the Reversal of the Burden of Proof in Corruption Cases in Indonesia

Law Number 20 of 2001 regulates the reversal of the burden of proof, as stated in Article 37, Article 37A, and Article 38B. In addition, Article 12B specifically discusses gratuities and confiscation of the defendant's property that is suspected of being derived from corruption crimes (Aurelius, Wijayanto & Haryanto, 2024). This provision is related to various articles in Law Number 31 of 1999 concerning the Eradication of Corruption, especially Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16, as well as Articles 5 to 12 in the amendments stipulated by Law Number 20 of 2001.

Article 37 of the law stipulates that the defendant has the right to prove that he is not involved in a corruption crime. If this proof is successful, the court can use the evidence as a basis for stating that the indictment is unproven. Therefore, the defendant has the right to prove that the ownership of his property, including that owned by his family or group, was obtained legally and not contrary to the law. If the evidence presented is proven to be valid before the judge, then the defendant must be acquitted of all charges.

According to Adji (2009), the Corruption Law also recognizes the use of electronic evidence and information technology, as stipulated in Article 26A. This article defines information as any form of communication that is spoken, sent, received, or stored electronically using optical devices or similar technologies. In addition, this article also includes documents that consist of recorded data or information in various forms, such as writing, sound, images, maps, designs, photographs, letters, signs, numbers, or perforations. The document can be recorded in physical form such as paper or electronically.

If the prosecutor obtains evidence through the use of electronic means and information technology that shows the defendant's involvement in property ownership—whether on behalf of his or her individual, family, or group—then the defendant must provide clarification supported by evidence and valid witness statements. This clarification aims to convince the judge that the evidence submitted by the defendant, including witness statements, has more convincing legal force than the evidence submitted by the prosecutor. Thus, the judge can assess the case objectively before making a decision.

However, in practice, resolving corruption cases often takes a long time. The judicial process cannot be completed quickly because there are many witnesses that need to be examined, which can reach more than 20 people, even up to 40 people. In addition, the large number of documents confiscated and must be examined in the trial also lengthened the examination process. The length of time it takes to settle a case is also affected by the time it takes to wait for criminal charges from the High Prosecutor's Office or the Attorney General's Office, which generally takes two months or more.

The slow resolution of corruption cases in Indonesia is partly due to the lack of optimal rule of

law in realizing justice, even though the law is used as the main instrument in achieving this goal. Various factors can reduce the firmness of the law, so that even if there is strong evidence that should ensnare the defendant to be convicted, often the evidence is defeated by the alibi submitted by the defendant. Not infrequently, the alibi is actually more convincing to the judge than the facts on the ground.

In the Indonesian criminal law system, the Criminal Code regulates a fairly simple evidentiary system. If one witness statement supports the public prosecutor's indictment and is strengthened by one of the other evidence, then the requirement of at least two pieces of evidence required to sentence the defendant has been met. This principle was affirmed by the Supreme Court, which stated that "the testimony of two witnesses has met the definition of two valid pieces of evidence." However, in practice, various human rights considerations are often a challenge in passing judgments in corruption cases.

One alternative to resolving corruption cases is to apply the principle of reversal of the burden of proof. In this approach, the defendant is required to present evidence that can refute the prosecutor's entire charges. Thus, the defendant must present evidence and witnesses who are valid according to the law to prove his innocence. This approach also aims to establish a culture of transparency among state administrators, so that they are encouraged to document the origins of their possessions clearly. With this obligation, state administrators can prove that their wealth was obtained legally through personal efforts and not from acts of corruption or abuse of office. This principle is in line with the provisions of Article 38B of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption.

Implementation of Reversal of the Burden of Proof in the Process of Solving Corruption Cases

The implementation of the Reverse Proof System in corruption cases in Indonesia is limited (limitative) and special (exceptional). Based on doctrinal studies and comparisons of the criminal law system, the concept of limitations and specificity in this system refers to the existence of certain limitations in the law.

In principle, the Reverse Proof System is applied only to the offense of "giving" or gratuity related to the crime of bribery, as well as other criminal acts regulated in Articles 2, 3, 4, 5, 12, 13, 14, 15, and 16 of Law Number 31 of 1999 concerning the Eradication of Corruption. However, in the judicial process, the obligation to prove the indictment remains the responsibility of the Public Prosecutor. In addition, the application of the Reverse Proof System only applies in the context of asset confiscation related to the previously mentioned articles, with the burden of proof remaining on the Public Prosecutor.

Furthermore, the application of this system is limited by the *principle of Lex Temporis*, which means that it cannot be applied retroactively. These restrictions aim to avoid violations of Human Rights (HAM), the principle of legality, as well as the possibility of the emergence of *the principle of Lex Talionis* or retaliation in the judicial system. In addition, the Reverse Proof System must also

adhere to the principle *of Daad-daderstrafrecht*, which emphasizes that criminal responsibility must be directly linked to the perpetrator's actions and individuals. Therefore, this system must not violate the fundamental rights of suspects or defendants in legal proceedings (Adji, 2009).

In an effort to eradicate corruption, Indonesia implements two evidentiary systems. One of them is the Reverse Proof System, which is limited and balanced, providing an opportunity for the defendant to prove that he is not involved in corruption crimes. In addition, the defendant is also required to provide an explanation related to all his assets, including assets owned by his spouse, children, or other parties—both individuals and corporations—who are suspected of being related to the case being examined. Nevertheless, although the defendant is given the right to prove his or her involvement, the primary responsibility for proving the indictment remains with the Public Prosecutor. This principle is affirmed in the explanation of Law Number 31 of 1999 concerning the Eradication of Corruption.

According to Chazawi (2008), there are three main aspects that must be proven by the defendant in a case of corruption related to the receipt of bribes or gratuities. First, the defendant must show that he did not receive anything or, if there is an object charged, prove that the acceptance was made by another party, not himself. Second, if the defendant receives a sum of money of Rp 10 million or more, then he must be able to show that the receipt is not included in the category of gratuities. In other words, this proof is also the basis for showing that the defendant was not involved in corruption crimes related to gratuities. Third, if the defendant does receive gratuities, he must be able to prove that the receipt is not related to his position and does not contradict his duties and obligations as a public official or state administrator.

According to Bustomi (2024), Article 12B of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes stipulates that any form of gratuity received by a civil servant or state administrator can be considered a bribe if it is related to his position and contradicts his obligations and duties. In the event of receiving gratuities that reach or exceed Rp 10,000,000.00, the recipient has the obligation to prove that the gratuity is not a form of bribe. On the other hand, if the value of the gratuity received is less than Rp 10,000,000.00, then the task to prove that the gratuity is an act of bribery lies with the Public Prosecutor.

Civil servants or state administrators who are proven to have received gratuities categorized as bribes can be subject to criminal sanctions in the form of life imprisonment or imprisonment with a minimum duration of four years and a maximum of twenty years. In addition to the prison sentence, the perpetrator is also required to pay a fine with a minimum amount of IDR 200,000,000.00 and a maximum of IDR 1,000,000,000.00.

Corruption is a crime that has a destructive impact and hinders the development process, so efforts to prevent and eradicate it must be a top priority (Susanti, 2011). In this case, gratuity refers to giving in a broad sense, covering various forms such as money, goods, rebates, commissions, interest-free loans, travel tickets, accommodation facilities, tourist trips, free health services, and various other facilities. Gratuities can be accepted both at home and abroad and can be done through

electronic means or in person.

Hamzah (2001) explained that in the provisions of Article 12B paragraph (1) b the reversal of the burden of proof requires the public prosecutor only to prove the existence of gratuities. Meanwhile, two other important aspects, namely the relationship between gratuity and civil servant positions and the effect of gratuities on the employee's negligence in carrying out their duties, are the responsibility of the defendant to prove it. Thus, the defendant must be able to show that the gratuity he received was not related to his position and did not have an impact on negligence in carrying out his duties as a civil servant. If the defendant cannot prove this, then he is considered to have received bribes or fulfilled other elements of violations.

In addition, the explanation in Article 37 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes states that this provision is an exception to the principles stipulated in the Criminal Procedure Code (KUHAP), which basically places the burden of proof in the hands of the public prosecutor. In this regulation, the defendant is given the right to prove that he is not involved in a corruption crime. However, even if the defendant is able to provide evidence to support his involvement, this does not necessarily make him acquitted of charge, as the prosecutor remains obliged to prove his guilt. Therefore, this provision is known as a reverse proof system which has a limited nature.

Article 38A of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes stipulates that the evidentiary process as referred to in Article 12B paragraph (1) is carried out during the examination at the trial. Meanwhile, Article 38B in the same law stipulates that a person who is charged with committing a criminal act of corruption as stipulated in several articles in Law Number 31 of 1999 and Law Number 20 of 2001, has an obligation to prove that the assets he owns and have not been included in the indictment were not obtained from the crime of corruption. If the defendant cannot prove the legitimacy of the ownership of the asset, then the property is considered to be derived from a criminal act of corruption, and the judge is authorized to decide on the confiscation of all or part of the asset for the state. In addition, the public prosecutor is required to file a claim for asset forfeiture in the process of reading the main charges.

As a form of defense, the defendant has the right to submit evidence that the assets he owns are not the result of a corruption crime, both during the defense at the main trial and in the appeal and cassation stages. The judge is also obliged to hold a special hearing to assess the evidence submitted by the defendant. If in the final verdict the defendant is declared innocent or free from all lawsuits, then the judge must reject the claim for asset confiscation submitted by the public prosecutor.

4. Conclusion

Corruption in Indonesia is a problem that not only results in financial losses for the state, but also has the potential to disrupt social and economic stability. Although various regulations have been implemented, such as laws and presidential decrees, the effectiveness of law enforcement still needs to be strengthened. One of the measures that can support the eradication of corruption is the

implementation of the reverse evidentiary system, which requires defendants to prove that they are not involved in corruption crimes. However, the implementation of this system must be carried out carefully so as not to violate individual rights and remain based on the principle of justice. In addition, better coordination between law enforcement agencies is a crucial aspect in handling corruption cases more comprehensively.

In addition to law enforcement efforts, increasing public awareness through education and anti-corruption campaigns is also an important step so that the values of integrity can be instilled from an early age. The government needs to periodically evaluate existing regulations to ensure that policies remain relevant and effective in dealing with corruption. Strict supervision of the use of the state budget is also a must to prevent potential leakage due to corrupt practices. By implementing the right strategy, including strengthening the integrity of law enforcement officials and adopting a limited reverse proof system, it is hoped that efforts to eradicate corruption in Indonesia can be more optimal and have a positive impact on the welfare of the community.

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