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# Reversed Evidence Urgency in Case Corruption in Indonesia

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**Abstract**
Reverse proof is an affirmation that the defendant has been found guilty before he can prove in court that he is innocent. Such a concept is an aberration of the presumption of innocence principle, however, such deviation is not inconsistent with the concept of "rule of law" originally "in particular cases" and "the personal guilt of the accused should be proved in each case". One of the fundamental universal elements of the concept of the rule of law is the principle of legality, in that it means that any governmental authority to enforce policy or legal action must be based on the applicable principles of applicable law. Concretely, that the principles contained in the principle of legality is any government action is based on the rules of law-Invitation, meaning to the principle of legality, in which the act of government power is solely based on the concept of the Act both in the form of formal and material.

## 1. Background

Proof of corruption plays a very urgent role considering the perpetrators of corruption are usually committed by people who have a certain social standing in the community, which of course in the process of law enforcement required a thorough proof that the perpetrators can be criminally accounted for. Moreover, the criminal act of corruption is an act that is very forbidden by any State because of its impact caused a huge loss for the economy of the State.

Many argue that the process of corruption is systemic and widespread, resulting in not only the loss of a formal State but has entered all the joints of the economic life of the people so that the criminal act of corruption can be regarded as an extraordinary crime and therefore its eradication also must be done remarkably.

The issue that arises is whether the Corruption Eradication Act can be effective to implement? Given the problem of corruption in Indonesia is still difficult to eradicate to the roots, this is because the criminal act of corruption is always done in disguise and always take refuge behind power.

In Law Number 31 year 1999, on the Eradication of Corruption. The formulation of corruption in Law Number 31 year 1999 is regulated in Article 2 paragraph 1 with the formulation:

> “Any person who unlawfully engages in the act of enriching himself or others or a corporation that may harm the State or state economy shall be liable to a lifetime of imprisonment or imprisonment of a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiahs) and at most Rp. 1,000,000,000.00 (one billion rupiah)”

In addition to the formulation of Article 2 paragraph (1) above, there is also an almost similar formula, namely Article 3 of Law Number 31 Year 1999 concerning the Eradication of Corruption, which distinguishes that in the formulation of Article 3 the element of misusing authority, opportunity or means have him because of his position or position.

From the two formulations of Article 2 Paragraph (1) and Article 3 of the Corruption Criminal Act mentioned above, in its enforcement when viewed from the aspect of proof that the element of "benefiting oneself or person or corporation", is easier to be proven by the Public Prosecutor because of the element profitable "does not require the dimension whether the suspect/defendant's corruption crime to become rich or get richer because of it". Andi Hamzah in Lilik Mulyadi argues that "self-benefit is a common element in criminal law, as evidenced in Article 378 and Article 423 of the Criminal Code." As with the aspect of enriching themselves or others or a corporation as regulated in Article 2 paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, that is relatively more difficult to prove. Concretely, "these beneficial acts make the suspect/defendant, another person/crony or a corporation obtaining both material and immaterial aspects." This beneficial nature can be done through corruption, collusion and nepotism (Law Number 28 Year 1999).

While the difficult element of proof is the element of financial losses to the State or the economy of the State. Because to determine the existence of elements of state losses or not, must be proven normatively based on the results of inspections conducted by BPK-RI, It is in accordance with the mandated by the 1945 Constitution Article 23 E, and Article 10 paragraph (1) of Law Number 15 of 2006 by definition; BPK assesses and/or determines the number of losses caused by unlawful acts either intentionally or negligently committed by the treasurer, the manager of BUMN / BUMD, and other institutions or bodies that organize state financial management.

With due observance of the difficulties in the above proof, the Public Prosecutor should be extra careful in handling every case of corruption, especially the element of the law, both formal and material. Thus it is hoped

that it will be easier to obtain a verification of punishable acts, namely the existence of an enriching element of self or another person or corporation. The difficulty of obtaining evidence can hamper the evidentiary system. As Syed Hussein Alatas has pointed out, one of the weaknesses in corruption from the legal side prevents law enforcement officers from lying in evidence.

If considered in Law Number 31 of 1999 in conjunction with Law Number 20 year 2001, there is a deviation from ordinary criminal procedure law, such aberrations are intended to provide easiness in the process of verifying and examining cases of corruption. According to the legislator, as it is seen in the general explanation of the Act, it is stated that the existence of deviations from the ordinary examination procedure aims to facilitate the proof and accelerate the procedure of investigation, prosecution, and corruption criminal investigation and in obtaining proof- evidence in a case of corruption that is difficult to obtain. As; The extension provisions concerning the source of the acquisition of legal evidence in the form of guidance, formulated that the "guidance" other than obtained from the statements of witnesses, letters, and statements of defendants, also obtained from evidence in the form of information that is spoken, sent, received, or stored electronically with optical or similar devices but not limited to electronic data interchange, e-mail, telegram, telex, and facsimile, and from documents, ie any recording of data or information that may be viewed, read and or heard which may be issued with or without the aid of a means, whether contained on paper, any physical objects other than paper, or electronically recorded, in the form of writing, sound, images, maps, designs, photographs, letters, signs, numbers.

Proof aims to find and establish the truths that exist in the case because the proof will determine the judge's conviction to be prosecuted someone who was charged with a criminal act of corruption. Examination of corruption as mentioned by some scholars mentioned above is the problem of proof is a problem often faced by prosecutors to obtain evidence. To that end, members of the House of Representatives (DPR) have conveyed the idea of the need for a change in Law No. 3 of 1971, especially regarding the reverse verification system (Omkering van de Bewijslast) in order to make it easier to know or track someone whether or not to be involved in corruption. Such opinion is also conveyed by Leden Marpaung. Similarly, according to Marullah Padede eradication of corruption will not be effective if not applied reversed proof system. A defendant is obliged to account for the origin of his wealth, if not able to explain its origin then the concerned proved to be corrupt or considered proven corruption.

According to Indra Ismawan in the settlement of corruption, which originally used innocent before proven guilty principle, specifically for corruption, the principle must be guilty before proven innocent (guilty before proven innocent). The reversed evidentiary system is intended to prove that its property is obtained legally) thus the burden of proof becomes the burden of the defendant.

Law Number 31 Year 1999 on Corruption Eradication jo Law Number 20 Year 2001, in lieu of Law Number 3 Year 1971, which was originally expected to embrace reversed evidentiary system, apparently embraced a limited or balanced reversed proof system, as seen in Article 37 and Article 37 A, with the formulation of Article 37 as follows:

(1) The defendant has the right to prove that he is not guilty of committing a criminal act of corruption.
(2) In the event that a defendant can prove that he or she is not guilty of a criminal act of corruption, the evidence is used by the court as a basis for stating that the defendant is not proven.

Formulation of Article 37 A

(1) The defendant shall be obliged to provide information about all of his property and property of his wife or husband, and property of any person or corporation alleged to have any connection with the alleged case.
(2) 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 referred to in paragraph (1) shall be used to substantiate the existing evidence that the defendant has committed a criminal act of corruption.
(3) The provisions as referred to in paragraph (1) and paragraph (2) shall constitute a criminal act or principal case as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law Number 31 of 1999 on the Eradication of Corruption and Articles 5 through Article 12 of this Law, so that the prosecutor remains obliged to prove it.

The general explanation of the Act, it is stated that this Act is the best proof that is limited, or equal, that the defendant has the right to prove that he does not commit a criminal act of corruption and is obliged to give information about all his property, and the property of his wife or husband, the children, and property of any person or corporation allegedly related to the case concerned, and the prosecutor shall still be obliged to prove his charge. The reverse verification system is limited or balanced, it is a deviation from the conventional provisions as set forth in KUHAP, where the proof is solely the authority of the public prosecutor.

Elucidation of Article 37 of Law Number 31 year 1999 in conjunction with Law Number 20 year 2001 stipulates that this provision is a deviation from the provisions of the Criminal Procedure Code which stipulates that the prosecutor is required to prove the criminal offense, not the defendant. Under this provision, the

defendant can prove that he did not commit a criminal act of corruption. If the defendant can prove it does not mean he is not proven to be corrupt because the prosecutor is still obliged to prove his indictment. The provision of this article is limited in reverse proof because the prosecutor is still obliged to prove the indictment.

Whether with a reversed or limited reverse verification system, will be able to provide alternative solutions, to solve the problem of proof that has been a problem in the implementation, especially in finding and collecting evidence at the investigation stage. Given the evidentiary system is a deviation from the Criminal Code which is deliberately determined to facilitate the proof of the existence of criminal acts of corruption.

## 2. Problem Formulation

Based on the above description of the background, then the issues to be discussed in this paper are:

1. Is the urgency of reversing evidence in corruption cases?
2. How is the evidentiary solution to the corruption criminal case in Indonesia's criminal justice system?

## 3. Discussion

### 3.1. Reversing Evidence Urgence on corruption criminal cases

The concept of upside proof is an affirmation that the defendant has been found guilty before he can prove in court that he is innocent. Such a concept is a departure from the principle of presumption of innocence,however, the deviation according to Loekman Wiradinata is not contradictory to the concept of "rule of law" originally "in particular cases" and "the personal guilt of the accused should be proved in each case". One of the fundamental universal elements of the concept of the rule of law is the principle of legality, in that it means that any governmental authority to enforce policy or legal action must be based on the applicable principles of applicable law. Concretely that the principles contained in the principle of legality is that every action of government is based on the rules of law-Invitation, that is, by the principle of legality, where the act of governmental power is based solely on the concept of Law both in the formal and material sense.

Therefore the concept of proof is reversed, although deviating from the principle of presumption of innocence will be more effective and better than conventional (conventional) evidentiary system :

1. Reversed proof system must be expressly stated in the Act, thus the implementation of reverse verification system is not contradictory to the concept of "rule of law" which is based on the principle of legality.
2. That the non-recognition of the principle of presumption of innocence in an inverted evidentiary system is essentially a violation of the human rights of the suspect personally. However, the violation of the human rights of the suspect is intended to maintain the stability of the public interest, namely the interests of the public and the state, as said by Andi Hamzah that the criminal procedure law is concerned with two very principled interests for the community and for the parties involved in the crime. Likewise, Sudarto that the criminal law concerning the values of human life, not only about oneself, sense and psychological person, and the value of society in general.
3. The implementation of reverse verification system is more effective to prevent corruption, it is seen in some countries, where there is a regulation of Corruption Eradication Act which implements reverse verification system, it is able to suppress the occurrence of corruption crime. Evident from the survey conducted by expatriate entrepreneurs in Asia "Political and Economic Consultation Ltd. (PERC) "where the results stated that Singapore, Hong Kong, and Japan are the cleanest places to do business in Asia. While Indonesia, India, and China are the most corrupt countries.

Similarly, the results of research from Transparency International based in Berlin Germany, where the results of his research on 113 countries in the world stated that there are eight countries received the most corrupt country predicate, where Indonesia ranks first, while the least corrupt countries are Denmark, Sweden, New Zealand, Canada, Singapore, Netherlands, Switzerland, Australia, United Kingdom, and Hongkong.

The cleanest countries and fewer corruption levels such as Singapore, Hong Kong, Australia, Canada, Japan, Malaysia, are the countries where the rules of law on corruption eradication are applied in reverse verification systems, and have strict economic controls.

Based on the above description, the conventional (conventional) evidentiation of the burden of proof is solely the authority of the public prosecutor, without involving the proof of the defendant, so that with such a system of evidentiation there are many weaknesses in the proof process, because the duty and authority of the claimant is to prove that all elements of offense or crime charged to the defendant and the offense constitute a unity or whole series, which is non-negotiable and all such elements shall be proven on the basis of the instruments of evidence prescribed in the Act, as said by Leden Marpaung that all elements of the offense are a unity within a single offense, one element alone does not exist or is not supported by evidence will cause the suspect/defendant to be unpunished. The investigator, the public prosecutor should carefully examine the existence of the elements of the offense. If only one element is not supported by evidence in accordance with Article 184 of the Criminal Procedure Code, it is expected that the case will not be continued in an efficient and effective manner in order to prevent the protracted mental suffering that the defendant will suffer. For if all

elements are not supported by sufficient evidence, then if the case is brought to trial it will result in a free termination. Therefore, the burden of proof that is the responsibility of the public prosecutor is very difficult, and this is a constraint often faced by the public prosecutor in the system of proof of corruption, so often we encounter corruption crime that was cut free due to insufficient evidence. Given such facts, it is felt that conventional (conventional) evidencing systems are not effective in combating corruption.

To find a way out of difficulties in the evidentiary system as mentioned above, then as an alternative to overcome the problem, it is better in eradicating corruption crime applied reverse verification system as suggested by many law practitioners and legal experts. Because by applying the reverse verification system the burden of proof is no longer the authority of the Public Prosecutor, but the burden of proof is entirely the responsibility of the suspect. Thus expected difficulties in the evidentiary system that has been a constraint in the eradication of corruption will soon be overcome.

The problem is with the issuance of Law No. 31/1999 on the Eradication of Corruption jo Act No. 20 of 2001, it appears that the law is applied in a limited reverse verification system, the defendant can prove that he did not commit a criminal act of corruption. If the defendant can prove it does not mean he is not proven to commit a criminal act of corruption because the Prosecutor is still obliged to prove his indictment.

The provision of a limited reversed proofing system is an alternative to solving a problem that has often been encountered in conventional (conventional) evidentiary systems, the concept of a reversed upside verification system as described above, is expected to be better than conventional (conventional) evidentiary systems. Because the reverse verification system is limited in the opinion of the author as mentioned in the preceding description is a combination of conventional (conventional) and reversed evidentiary systems. According to this concept, the Public Prosecutor will continue to seek and collect evidence to strengthen its indictment in accordance with the authority granted by the Act, although such a method has been a problem often faced by the Public Prosecutor so that the reverse verification system is limited juridical determined in Law Number 31 of 1999 in conjunction with Law Number 20 year 2001, is expected to be more effective in combating corruption.

**3.2. Proofs Solution in Case of Corruption in the Indonesian Criminal Justice System**

In relation to the system of proof of corruption is the involvement of the parties involved in the process of settling the criminal act of corruption. Where in the process of settlement of corruption crime will involve several institutions that directly play an active role in criminal law enforcement, as described in the previous section, that in the process of law enforcement of corruption there are several institutions involved in it are:

1. As an investigator; Police, Prosecutors and KPK;
2. As the Public Prosecutor; Prosecutors and KPK;
3. The judge of Corruption which is authorized to examine the case in court;
4. The suspect / defendant or his legal counsel.

The whole set of criminal enforcement processes that have involved some of the above institutions each have duties and powers and responsibilities under applicable laws and regulations.

The authority of the police is to conduct an investigation as specified in Article 1 point 2 of the Criminal Procedure Code is a series of investigative actions in respect of the manner specified in the Act to seek and collect the evidence, which with such evidence makes the light of the criminal acts and find the suspect.

The investigation as meant in Article 1 number 2 KUHAP, is the duty and authority of the investigator. Where the investigator under the provisions of Article 6 paragraph (1) of the Criminal Procedure Code is a police officer of the Republic of Indonesia and a certain Civil Service Officer who is given special authority by the Act.

Based on the above provisions, it appears that the investigation action is intended to seek and collect evidence to make light of the criminal acts that occur and find the suspect. Thus investigative action is one of a series of very basic law enforcement processes to determine the action on the subsequent action at the level of prosecution. It is said to be fundamental because the prosecution action cannot be carried out without the defendant being supported by valid evidence and sufficient according to the provisions of the Act, or in other words that the outcome of the investigation is the basis for prosecution. Investigators, therefore have implications for the authority given by the Act to conduct investigations as a basis for prosecution.

Under the provisions of article 1 point 7 of the Criminal Procedure Code, the Prosecutor shall mean the act of the Public Prosecutor to delegate criminal cases to the competent District Court in respect of and according to the manner stipulated in the Act with a request to be examined and decided by a judge in a court hearing. This prosecution action is a series of follow up actions of the investigative. Thus, the role of the investigator to carry out the action as an effort to seek and collect evidence is a direct implication in the crime proofing system.

Judge as one of the institutions in the process of criminal law enforcement under Article 10 paragraph (1) of Law Number 48 Year 2009 on Judicial Power, that; The court is prohibited from refusing to examine, hear, and decide upon a case filed under the pretext that the law is absent or less clear, but obligatory to examine and

prosecute it.

From the description above, it is clear that in the process of examination of criminal cases between Investigators, Prosecutors and Judges in accordance with their respective authorities is a system in the process of proof, and the three institutions are links of interconnectedness.

One thing to keep in mind that in the process of criminal law enforcement there is a party that is not less important than the above three institutions, the party is a suspect/defendant. The role of the defendant is very important if it is associated with the problem of the evidentiary system. Because the defendant's description is in addition to being one of the evidences set out in Article 184 of the Criminal Procedure Code, the role of the defendant will become more important when associated with a reversed evidentiary system. In the reverse verification system as described in the preceding discussion, the defendant has a burdensome burden and responsibility in the corruption proofing system.

In Law No. 31/1999, substantially, in particular with regard to the system of proof, there is indeed a very principled progress, since the statement of the defendant in the reverse verification system is the right of the defendant, meaning that the defendant may provide evidence contrary to the Prosecutor's claim or in other words the defendant can prove that he did not commit a criminal act of corruption. Nevertheless, although the defendant can prove that he/she is not committing a criminal act of corruption, the Public Prosecutor is still obliged to prove his indictment, as seen in the elucidation of Article 37 of Law Number 31 of 1999. Such a proof system, according to Muladi, is called a Limited or Balanced Reversing Proof System.

With the adoption of an inverted reversal system limited or balanced, meaning each party, in this case, the Public Prosecutor and the defendant have responsibility for the burden of proof. Therefore, based on Law No. 31 of 1999 Jo Law Number 20 year 2001, each party has direct involvement in the corruption proofing system.

The solution given in Article 37 of Law Number 31 year 1999, when examined in an intense, detailed and detailed manner, embraces the existence of two systems of proof namely: "reverse verification system which is limited and balanced" and "negative system" as the provisions of KUHAP.

In the explanation of Law Number 31 Year 1999, the definition of "reversed proof that is limited and balanced", namely the defendant has the right to prove that he did not commit a criminal act of corruption and must provide information about all his property and property of his wife or husband, and the property of any person or corporation suspected of having a relationship with the matter concerned and the public retainer shall still be obliged to prove his charge.

Apparently in its development Act Number. 31 of 1999 there is a shift in the meaning of reversing evidence with the issuance of Law Number 20 Year 2001 about Changes on Law Number 31 Year 1999, declared the adoption of reversed reverse system changes, so according to the explainers are generally explicitly mentioned:

> “... given that corruption in Indonesia occurs systematically and extensively so that it not only harms the state's finances but also violates the social and economic rights of society at large, corruption eradication needs to be done in extraordinary ways. Thus, the eradication of corruption must be done in a special way, among others the application of reverse verification system that is the proof charged to the defendant”
>
> Furthermore, in the explanation of Law Number 20 Year 2001 also explained about its dimension, that: “Provisions on reversed proofs shall be added in Law Number 31 Year 1999 concerning the Eradication of Corruption as a "Primum Iridium" provision and at the same time containing the special prevention character of the civil servants as referred to in Article 1 number 2 or to the national authorities referred to in Article 2 of Law Number 28 Year 1999 concerning the Implementation of Clean and Corrupt-Free State, Collusion and Nepotism not to commit corruption”.

Despite the adoption of reverse evidentiary system based on the general explanation of Law Number 20 Year 2001 on the Amendment of Law Number 31 Year 1999 on the Eradication of Corruption, but in its implementation will still cause difficulties, because in the judicial process against a criminal case of corruption must starting from investigation, investigation, prosecution and trial. The stages of this process should be based on applicable criminal procedural rules except for other diets in the Anti-Corruption Eradication Act. For that reason according to the author needs to be adopted the principle of strict liability.

In strict liability, there are two opinions. The first opinion says that strict liability is an absolute liability. The reason or rationale is that in the case of strict liability a person who commits a prohibited act (actus reus) as defined in the law can already be convicted without questioning whether my slave has a mistake (men’s rea) or not. So someone who has committed a criminal offense according to the formulation of the law must / absolutely can be convicted. The second opinion states that strict liability is not an absolute liability, meaning that persons who commit acts are prohibited by law are not necessarily or not necessarily convicted.

It is therefore necessary to adopt a relative strict liability principle to support a reversed verification system in the handling of corruption cases starting from the level of investigation and investigation, the intention that a person allegedly possessing an unusual property based on a position still occupied or retired may be promptly questioned about the origins of wealth at the investigation level.

So the investigator can initiate the reverse verification as stated in the explanation of Law Number 20 Year 2001 About the amendment of Law Number 31 Year 1999 on the Eradication of Corruption as a provision that is "Primum Remidium" and also contains special prevention character against civil servants.

## 4. Conclusion

### 4.1. Conclusion

Based on the description and discussion in this thesis, the authors can draw some conclusions are:

a. That the reverse verification system is an affirmation that the defendant has been found guilty before he can prove in court that he is innocent. This is a deviation from the presumption of innocence principle.

b. That the solution given in Article 37 of Law Number 31 Year 1999 when examined in an intense, detailed and detailed manner, embraces two evidentiary systems namely: "reverse verification system which is limited and balanced" and "negative system" as the provisions of KUHAP. Here the defendant has the right to prove that he is not committing a criminal act of corruption and shall be obliged to provide information about all his property and property of his wife or husband, children, and property of any person or corporation allegedly having a relationship with the matter concerned and the public retainer shall still be obligated to prove his indictment.

### 4.2. Means

Based on the above conclusions, the authors can provide some suggestions, namely:

a. In order to eradicate corruption more effectively and efficiently, the law enforcement officers have been reversed as a deviation from the conventional evidentiary system. This is to overcome the difficulties faced by law enforcement agencies in the process of law enforcement of corruption, especially in finding goods evidence and gather evidence.

b. With the solution that has been given to law enforcers by the Law on Corruption Eradication, it should be immediately followed up, since the corruption act always has a wide impact, because with the evidentiary system adopted in the Law on Corruption Eradication, it is expected the loss of the State can return.

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