The Reversal of the Burden of Proof; Between Presumption of Innocence and Presumption of Guilt

Roni Efendi 1, Ade Adhari 2, Afrian Raus 3, Fajar Dian Aryani 4, Musmuliadin 5

1 Universitas Islam Negeri Mahmud Yunus Batusangkar, Indonesia
2 Universitas Tarumanagara Jakarta, Indonesia
3 Universitas Islam Negeri Mahmud Yunus Batusangkar, Indonesia
4 Universitas Pancasakti Tegal, Indonesia
5 Universitas Muhammadiyah Bima, Indonesia

Corresponding Author: Roni Efendi, E-mail: roniefendi@uinmybatusangkar.ac.id

ABSTRACT

Actory in cumbit onus probandi was a basic principle in the law of proof which teaches that whoever demands it must prove it. This basic principle is implemented in the integrated criminal justice system and becomes the authority of the Public Prosecutor and ends with the defendant, the derivative of this principle is actore non probante reus absolvitur. However, in the renewal of criminal law, especially in eradicating corruption as a predicate crime, there has been a shift in the burden of proof, which can start with the accused first. This shifting burden of proof is certainly in conflict with the general principle of criminal procedural law which emphasizes the presumption of innocence. These clashes are not intended to become obstacles in the process of enforcing criminal law, especially in cases of corruption as an extra ordinary crime, so extra ordinary measures are needed to eradicate it. So reversing the burden of proof as one of the efforts that can be accounted for its truth in theory and philosophy, especially the purpose of law is not just legal certainty, but also justice and usefulness so that reversing the burden of proof can provide benefits in accelerating the eradication of criminal acts of corruption.

Keywords: Reverse Proof, Presumption of Innocence, Presumption of Guilt


Published by: Universitas Islam Negeri Mahmud Yunus Batusangkar Press
INTRODUCTION

Law enforcement is generally understood as an effort to implement applicable legal provisions, namely law enforcement has a relationship with evidence as part of procedural law in maintaining material law. This means that evidence occupies a central position in law enforcement (Rahman AMin, 2020), with the aim of providing a bright spot on a case, so that a judge can ideally pass a judgment that is just, beneficial and certain (Roni Efendi, 2016). In addition, law enforcement efforts are carried out according to formal legal provisions which include provisions regarding evidence as an integral part (Rahman Amin, 2020).

Proof is oriented towards achieving material truth, so in a criminal case the aspect of proof plays an important role in determining the elements of guilt that cannot be separated from the perpetrators of crimes (Roni Efendi, 2022). Proof is an act of proving that is the same as giving or showing evidence, doing something as the truth, carrying out, indicating, witnessing and convincing. According to R. Soebekti, giving the notion of proof is an activity to convince the judge about the truth of the arguments put forward in a case before the court, both in criminal cases and in civil cases. In criminal cases the aim is to obtain material truth, whereas in civil cases the aim is to obtain formal truth (R. Soebekti, 2010).

While Sudikno Mertokusumo argues that proof has several meanings, in a logical sense, proof means providing absolute certainty which means that there is no possibility of opposing evidence. In the conventional sense, it is giving relative certainty, namely certainty based solely on feelings or conviction intime and certainty based on reasoning considerations which is commonly called conviction raisonée and in a juridical sense, it is giving judges sufficient grounds to provide certainty about the truth, proposed legal proceedings (Augustine Pohan, 2012).

Eddy OS. Hiarieij argued that evidence is very crucial in resolving a legal issue, where evidence is at the heart of the trial of a case in court because it is based on evidence that the judge will make a decision regarding whether a person is right or wrong in a case. Proof is impossible apart from the Public Prosecutor as the party charged with the responsibility for proof and the types of evidence, how to collect and obtain evidence up to the delivery of evidence in court as well as the strength of evidence and the burden of proof (Augustine Pohan, 2012).

In formal law, the burden of proof is the responsibility of the Prosecutor (JPU). This is a priority with the aim of convincing the judge, based on the evidence owned or obtained, that a defendant is guilty according to the indictment (Ali Imron and Muhammad Iqbal, 2019). Furthermore, Article 66 of Law Number 8 of 1981 concerning the Criminal Procedure Code (the Criminal Procedure Code) confirms that the suspect or defendant is not burdened with the obligation to prove.

The responsibility of the prosecutor to prove is also in accordance with the principle of incumbit onus probandi, namely the principle known in criminal procedural law, which means whoever sues he is the one who proves it. So the prosecutor's role is active to prove the crime as constructed in the indictment, as well as the defendant or attorney will try to do evidence to prove his innocence (Roni Efendi, 2022).

The proving process mentioned above is a medium provided by law in order to protect the rights of the accused which cannot be taken away by law. However, in some special crimes such as corruption, a reverse evidentiary system is applied, this system is a deviation from procedural law provisions, namely actory incumbit onus probandi, actore non probante, reus absolvitur. This means that whoever sues him is obliged to
prove, if it cannot be proven, the accused must be acquitted. Strictly speaking, if the public prosecutor in a criminal case cannot prove the elements of the offense that must be charged against the defendant (actore non probante), then the defendant must be acquitted (reus absolutur) (Adhari, 2018).

For the first time in the history of criminal justice, the deviation from the above evidentiary system was applied in a corruption case, South Jakarta District Court Register Number 1252/Pid.B/2010/PN.Jkt.Seljuncto, Jakarta High Court Decision Number 08/PID/TPK/2011/PT.DKIjuncto Decision of the Supreme Court of the Republic of Indonesia Number 1454K/Pid.Sus/2011 on behalf of the convict Bahasyim Assifie, a former tax official. Furthermore, reverse proof was also applied in the corruption case Number 1198 K/PID.SUS/2011 and at the registered PK level number 38 PK/Pid.Sus/2013 an Gayus Halomoan Tambunan (Happy Sulistyadi, 2011).

Adhering to reverse proof in the legal system in Indonesia, there is a legal opinion which states that the system denies universal principles, namely the presumption of innocence (Roni Efendi, 2021), while the general principle of criminal procedural law teaches that the accused must be presumed innocent until a court decision is inkracht van gewijsde. Then the problem is how far the reverse evidentiary system is permitted and is actually not in line with the politics of criminal procedural law which upholds the rights of the accused in court.

RESEARCH METHODOLOGY

Writing this article the author uses a type of normative juridical research that seeks to carry out an inventory of positive law, namely procedural law norms, especially those governing evidence. Both of these norms are codified in Law Number 8 of 1981 concerning Criminal Procedure Code and Norms which are spread outside formal law such as Law Number 20 of 2001 concerning Corruption Crimes (UU PTPK). In addition, this normative research seeks to discover legal principles and philosophies as legitimacy for the application of reverse proof in the criminal procedural law system in Indonesia, such as the principles of presumption of innocence, presumption of guilt and the principle of preference lex specialis derogate legi generally (Wignjosoebroto, 2002).

RESULT AND DISCUSSION

A. The Reversal The Burden Of Proof Debate Between Presumption Of Innocence and Presumption of Guilt

Of the many legal instruments and institutions implemented in statutory policies to apply criminal law, one of them is the system of reversing the burden of proof. The application of this system is expected to eliminate the difficulty level of proof that has been faced so far, especially in eradicating corruption (Elwi Danil, 2014).

Although proving is a strategic point in the criminal justice process, proving itself is a process that is prone to violations of human rights (HAM). If in the criminal procedural law as a whole it is referred to as a filter that will maintain a balance between state power and the protection of the rights of suspects or defendants, then the evidentiary system is a core filter. Because it is through the process of proving that the strength of proof (bewijskracht) of each piece of evidence will determine whether the accused is acquitted (vrijpraak), released from all charges (onstlag van alle rechtsvervolging) or will be sentenced (Elwi Danil, 2014).
Seeing how urgent the position of proof is in criminal procedural law, it is also important to discuss the existence of a system of reversing the burden of proof in the context of the principles of presumption of innocence and presumption of guilt. *Presumption of innocence* as a universal principle that applies to all systems in every legal state or rechstaat. Guarantees for the protection of human rights cannot only be provided through the inclusion of this principle, because the presumption of innocence is "abstract" in nature, requiring further implementation in the administration of criminal justice (Abdullah, 2017).

This principle is accepted as a fundamental principle in the integrated criminal justice system which is translated as a condition which obliges the suspect or defendant to be presumed innocent until there is a judge's decision that has permanent legal force. In the SPP, before establishing someone's status as a suspect, police investigators and civil servant investigators carry out a series of activities in an investigative and investigative effort to collect evidence and information that will be used as the basis for the sentencing process (Aristo Pangaribuan, 2016). Implementation of the principle of presumption of innocence is based on:

1. Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states "everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law" although it does not explicitly mention the principle of presumption of innocence however, from the formulation of the article it can be interpreted that the Constitution guarantees protection and legal certainty that is just equality before the law, including the right to be presumed innocent before a court decision is made which has permanent legal force (Teenagers, 2019).

2. Law Number 8 of 1981 concerning the Criminal Procedure Code. With the adoption of this principle in the Criminal Procedure Code, it gives instructions to the legal structure to use the accusatory principle at every stage of the examination (Teenagers, 2019).

3. Article 18 Paragraph (1) of Law Number 39 of 1999 concerning Human Rights that "Everyone who is suspected, arrested, detained, prosecuted or presented before a court must be considered innocent before a court decision states his guilt and has obtained legal force still" (Teenagers, 2019).

4. Article 8 Paragraph (1) of Law Number 48 of 2009 concerning the Principles of Judicial Power which outlines that "Everyone who is suspected, arrested, prosecuted, and/or presented before a court must be considered innocent before a court decision states his guilt and has obtain permanent legal force.

The principle of presumption of innocence is regulated in several laws and regulations (positive law) in Indonesia, the right to the presumption of innocence is a human right whose implementation is guaranteed by the state, therefore everyone, both law enforcers and society, is obliged to respect and implement this principle in practice. law in Indonesia (Teenagers, 2019).

The concept of human rights as above is in an ideal context as a citizen, but in understanding human rights it must be done holistically and not comprehensively. Where human rights are in effect limited and limited, the meaning is that a citizen will not lose his human rights if they do not commit acts that are prohibited as a barrier to human rights themselves (Roni Efendi, 2019). Because the meaning of the article on human rights in the constitution ends with Article 28J Paragraph (2) of the
The Reversal of the Burden of Proof; Between Presumption of Innocence and Presumption of Guilt

1945 Constitution, namely that in exercising their rights and freedoms, every person is obliged to comply with the limitations set forth in the Law with the sole purpose of guaranteeing the recognition and respect of rights and freedoms. The freedom of others in accordance with moral considerations, religious values, security and public order in a democratic society.

So related to the principle of presumption of innocence in criminal procedural law it can shift to presumption of guilt. Presumption of guilt is applied to the inquisitorial systemplace the suspect or defendant as an object and can be treated arbitrarily. The inquisitorial principle used to be used as the basis for the examination held by *Het Herziene Indonesie Reglement* (HIR). HIR directs law enforcement officials from the start to argue (M. Yahya Harahap, 2003);

1. A priori considers the suspect/defendant guilty.
2. Suspects or defendants are placed as objects of examination without regard to their rights to defend and defend their dignity and truth.

The principle of presumption of guilt mentioned above is currently being re-enforced constitutionally and limitively on certain criminal cases which in the eradication process also require special efforts, such as corruption cases. The author's analysis that re-applying this principle in criminal procedural law is "desperation of the elements of the legal system" in the context of eradicating corruption as an extraordinary crime. So that the presumption of guilt which is applied through a balanced inverted proof system is a constitutional extra ordinary instrument.

The reversal the burden of proof is part of the special criminal procedural law, so reverse proof is not regulated in the Criminal Procedure Code, but is regulated in Article 12 B paragraph (1) letters a and b, Article 37, Article 37 A, Article 38 B of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. Reverse proof as stipulated in the PTPK Law can be applied with the following provisions (Prasetyo, 2015);

1. The accused of corruption has the right to prove that he did not commit the crime of corruption, as referred to in Article 37 paragraph (1) of the PTPK Law.
2. Defendants of corruption have the obligation to provide information about all of their assets and the assets of their wife or husband, children and the assets of any person or corporation suspected of having a relationship with the case in question, as referred to in Article 37 paragraph (1) and paragraph (3) PTPK Act.
3. The public prosecutor of the Corruption Eradication Commission still has the obligation to prove his indictment, as referred to in Article 37 paragraph (5) of Law No. 31 of 1999 as amended by article 37 paragraph (3) of Law no. 20 of 2001.

So that by implementing a system of the reversal the burden of proof, it is believed that the perpetrators of corruption or corruptors will not be able or powerless to escape criminal prosecution. Reverse proof teaches that the accused will be considered guilty if he is unable to prove the origin of his wealth. Thus the public prosecutor does not need to provide evidence as has been the case in Indonesia so far (Elwi Danil, 2014).
B. Legitimacy of The Reversal Of Proof in Eradicating Corruption Crimes

The eradication of criminal acts of corruption in Indonesia is more emphasized on the aspects of the criminal justice system. The process in question starts from the stage of investigation, proof, prosecution to the judge’s verdict in court. Proof is a very essential stage for both the accused and the public prosecutor. It is said to be fundamental because when there is a difference of opinion between the defendant and the public prosecutor, the evidence will be the reference for the judge to make a decision. In proving, several theories are known, namely the positive theory, the internal conviction theory, the convictionration theory and the negative theory. This negative theory is used in Article 183 of the Criminal Procedure Code. These theories emphasize that the burden of proving a crime is on the prosecutor and in line with the principle of actori incumbit onus probandi (Satria, 2017).

The application of reversed proof in the PTPK Law is based on the principle of lex specialist derogate legi generally (Augustina, 2015), which means that specific legal provisions (Article 12 B and Article 37 of the PTPK Law) will override general legal provisions (KUHAP). Because the PTPK Law is a special provision in which it regulates special offenses, namely corruption offenses and the eradication process which must also be carried out in a special way such as reversing the burden of proof.

Reversing the burden of proof in corruption is known as a criminal law policy (R Efendi, 2019), as an effort to overcome and prevent corruption in Indonesia which is increasing day by day. In addition to building the integrity of law enforcement officials, reversing the burden of proof in eradicating corruption is also an approach that must be taken into account as part of criminal policy (Munawa, 2017).

Because based on data from the Corruption Eradication Commission, the growth of corruption from year to year shows very significant figures. The following are criminal statistics for corruption with inkacht status (Roni Efendi; Hebby Rahmatul Utamy; Ulya Atsani; Elsy Renie; Nurhikma, 2022):

From the statistical data above, it is described in detail in the table below:
The Reversal of the Burden of Proof; Between Presumption of Innocence and Presumption of Guilt

The corruption figures as listed in the table above are the overall corruption figures that have been recorded and have not been separated into types of cases. In the following graph, criminal statistics can be analyzed based on the types of cases that qualify for corruption (Roni Efendi; Hebby Rahmatul Utamy; Ulya Atsani; Elsy Renie; Nurhikma, 2022).

In detail, the table is translated in detail in the table below in 2004 to 2022 based on the type of corruption (Https://Www.Kpk.Go.Id/Id/Statistik/Penindakan/Tpk-Berdasarkan-Jenis-Case, nd);

From the table above it can be analyzed that in fact Indonesia's criminal acts of corruption tend to increase from year to year, even in 2022 the eradication of corruption will reach 1,310 cases. If read for a moment, the process of eradicating corruption can be said to be productive by all elements of the criminal justice system including the KPK as a special element. However, if we analyze based on Iceberg theory (Roni Efendi, 2021) that in fact the criminal acts of corruption recorded above constitute a small part of the criminal acts of corruption that have not been uncovered (hidden number of crimes).

So the author's legal opinion of reversing the burden of proof can be applied in a balanced and constitutional manner in order to accelerate the eradication of criminal acts of corruption. This reversal of the burden of proof is legitimized by the juridical provisions as described above because after all Indonesia adheres to a positivist view with the main concept that law is a command of the law giver and is clearly stated in Article 1 Paragraph (3) of the 1945 Constitution. In addition, the legitimacy of reversing the burden of proof is literally Ontology is justified by the philosophy of Law Utilitarianism, where according to Bentham the law should provide benefits. So that...
reversing the burden of proof certainly provides broad benefits in the legal system in Indonesia.

CONCLUSION
So the legitimacy of implementing reversal of the burden of proof in the legal system in Indonesia is based on the real condition of the nation which is faced with the problem of corruption that does not go away. It is hoped that reversing the burden of proof can untangle the tangled threads of corruption and can be used as an instrument to recover state financial losses or asset recovery. Another legal legitimacy that has been explained above is that the enactment of reversal of evidence is based on the constitution, both narrowly and broadly. Then it is strengthened by the general preference principle that special provisions can override general provisions. Finally, as a key point that the application of the reversal of the burden of proof in the context of the presumption of innocence and its debate with the principle of presumption of guilt is a matter of paradigm regarding the application of the principle in question. Because actually reversing the burden of proof is a form of legal benefit in order to lead to a country that is free from corruption, collusion and nepotism.

REFERENCES
The Reversal of the Burden of Proof: Between Presumption of Innocence and Presumption of Guilt


Wignjosoebroto. (2002). Hukum Paradigma, Metode & Dinamika Masalahnya. HUMA

Copyright Holder :
© Roni Efendi et al. (2023).

First Publication Right :
© El-Hekam : Jurnal Studi Keislaman

This article is under: