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JURIDICAL REVIEW REGARDING THE REVERSEMENT OF THE BURDEN OF PROOF TOWARDS THE CRIME OF CORRUPTION IN THE INDONESIAN CRIMINAL LAW SYSTEM

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Keywords

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corruption,
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Abstract. Corruption in Indonesia has reached its lowest point. The perpetrators are not only state administrators from the central to the regional levels. If seen from the number of cases that have entered the courts and have been decided by the courts, the perpetrators of non-criminal corruption are increasing. State losses due to corruption reach trillions of rupiah. This study aims to determine how far the regulation and application of reversing the burden of proof of corruption cases in the criminal law system in Indonesia. This study uses a descriptive analysis method with a normative juridical approach. The reverse proof system, in principle, makes it easier for the state to pursue assets that already belong to individuals. The state, through the prosecutor, does not need to prove the existence of assets that indicate corruption, it is the defendant himself who does the verification. This system of reverse proof has weaknesses, because it takes a long time to provide opportunities for the defendant and his legal advisers to prove the origin of the assets that are the subject of the matter, and cannot be implemented in all complaint offenses. Reverse proof is only on corruption offenses which are indicated to be detrimental to the country's finances or economy. Corruption crimes in Indonesia are still happening today, solving corruption crimes by reversing the burden of proof is a simpler way for prosecutors to file charges, because it is the defendants who have to prove the origin of the intended property themselves. However, its implementation has not been effective, because the burden reversal system has not become a habitual way of settling corruption cases, as well as the existence of the legality principle of Article 1 (1) of the Criminal Code, which is still debatable.

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1. INTRODUCTION

The criminal act of corruption is a criminal phenomenon that undermines and hinders the implementation of development. The consequences arising from criminal acts of corruption are that they can harm the country's finances or the economy so that it hinders national development, and is a threat to the principles of democracy, which uphold transparency, accountability and integrity, as well as the security and stability of the Indonesian nation.

Corruption in Indonesia is classified as high, and spreads to all government organs in a relatively short time and tends to experience a significant increase from year to year, both in quality and quantity, with state losses reaching trillions of rupiah.

If corruption is made into an extraordinary crime, the implication will be eradication and extraordinary ways of dealing with corruption. There is a possibility that excessive conditions may arise which could disrupt the life of the nation and state, if law enforcement is increased to extraordinary levels, then the recruitment of moral law enforcers and an appropriate system for eradicating corruption must be sought.

Efforts to overcome leakages in the country's finances and economy (corruption) have actually started since the issuance of several presidential decrees such as Presidential Decree Number 40 of 1957 concerning the state of war until the enactment of Law Number 24/Prp/1960 concerning Investigation, Prosecution and Examination of Acts Corruption, but even though the law is enacted, it

is not able to eradicate corruption optimally. The reasons for this included, among other things, because the law was no longer in accordance with the conditions on the ground, it was replaced by Law Number 3 of 1971 concerning the Eradication of Corruption Crimes, but it turned out later that this law was also deemed powerless. also eradicating criminal acts of corruption, this law was replaced with Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, then amendments and improvements were made based on Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.

Throughout 2016 the Corruption Court decided 573 cases with 632 convicts, entering 2017 the increase was very drastic, up to semester I, the total number of cases decided by courts, both the Corruption Court Level I, the Corruption Court of Appeal Level, and the Supreme Court (MA) reached 315 cases, with as many as 632 convicts. Of the 315 corruption cases that were successfully monitored in Semester I of 2017, state financial losses amounted to Rp. 1.06 trillion, and state financial losses that occurred throughout 2016 were recorded at 3.085 trillion.

Based on the type of corruption case and the court decision, it seems that it is not burdensome for the perpetrators of this crime, so that more and more state officials appear in the mass media as suspects in corruption. for 2016 and Semester 1 of 2017. Based on data, in 2016 as many as 16 cases (5.02%) were acquitted, 255 cases (81.02%) were decided with light crimes, 41 cases (13.01%) were decided with moderate punishment, and only 3 cases (0.95%) were decided with serious punishment. Whereas in 2017, during semester I, it was recorded that 55 cases (7.31%) were acquitted, 590 cases (78.34%) were decided with light crimes, 74 cases (9.83%) were decided with moderate crimes, and only 34 cases (4.52%) were decided with serious crimes. The category of light punishment is less than 4 years, moderate punishment is between 4 to 10 years, while the so-called heavy sentence category is more than 10 years.

The increase in corruption crimes can be caused by several things, including low penalties, weak law enforcement, people don't care about the law, and there is a culture of people who are relatively happy to break the law. Efforts to streamline the eradication of criminal acts of corruption through legislation have been carried out by replacing Law no. 24 Prp. 1964 with Law no. 3 of 1971, then replaced again with Law no. 31 of 1999 which was later refined by Law no. 20 of 2001, in addition to that, institutional strengthening was also carried out through legislation, including Law Number 30 of 2002 creating the Corruption Eradication Commission (KPK), Law Number 37 of 2008 creating the Ombudsman, and Government Regulation Number 71 of 2000 provide the basis for public participation in the prevention and eradication of criminal acts of corruption.

One of the human rights which is part of the right to obtain justice in Article 18 Paragraph (1) of Law no. 39 of 1999 concerning Human Rights Article 11 Paragraph (1) states "Every person who is arrested, detained, and prosecuted for being suspected of having committed a crime has the right to be considered innocent until proven guilty legally in a court session and given all the necessary legal guarantees for his defense, in accordance with the provisions of the legislation".

Law No. 4 of 2004 concerning Judicial Power in Article 8 has further regulated the principles of the presumption of innocence by stating that, every person who is suspected, arrested, detained, prosecuted and/or presented before the court, must be presumed innocent before a court decision, which declare guilt and obtain permanent legal force. In line with this, Article 66 of the Criminal Code regulates "a suspect or defendant is not burdened with the burden of proof" which is a manifestation of the principle of non-self-incrimination.

Therefore, it aims to describe the Juridical Review on Reversing the Burden of Proof of Corruption Crimes in the Indonesian Criminal Law System in relation to Law Number 20 of 2001 concerning Corruption Crimes. The research questions to guide the analysis are outlined as follows: First, the regulation of reversing the burden of proof of corruption cases in the criminal justice system in Indonesia. Second, the application of reversing the burden of proof in the practice of settling corruption cases.

2. METHOD

The approach method used is normative juridical with secondary data types consisting of primary legal materials, secondary legal materials and tertiary legal materials. The data obtained were analyzed using qualitative juridical analysis. This research is a normative legal research conducted through a study of written legal regulations or existing legal materials. The research conducted a study of this secondary data including official legal documents, previous research results, and other library materials at that stage. With regard to official legal documents, researchers conduct a study of primary legal materials that are binding and closely related to the issues under study. This research is descriptive-analytical in nature, namely by explaining in full and systematically about the legal situation that applies in a certain place, at a certain time and at a certain legal event, with the aim of obtaining a complete description.

3. RESULTS AND DISCUSSION

Arrangements for Reversing the Burden of Proving Corruption Cases in the Criminal Law System in Indonesia

Law No. 20 of 2001 contained (1) in Article 37, 37A and Article 38B; (2) in Article 12B it is aimed at gratuities and demands for confiscation of the defendant's property allegedly originating from one of the criminal acts in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15 and Article 16 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes and Articles 5 to Article 12 of Law Number 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. Article 37 of Law Number 20 of 2001, reads: (1) The accused has the right to prove that he has not committed a criminal act of corruption. (2) In the event that the accused can prove that he did not commit the criminal act of corruption, then the evidence is used by the court as a basis for declaring that the charges are not proven.

Based on this matter, it is very clear that the defendant has the right to prove that the property owned by the defendant, his family or group was obtained in a way that is not against the law. This means that if the defendant has been able to prove before the judge, and the judge decides that the evidence and witnesses submitted are valid, then the judge is obliged to acquit the defendant for all charges. The Corruption Law has stipulated the use of new evidence obtained from electronic means and information technology as Law No. 20 of 2001 contained (1) in Article 37, 37A and Article 38B; (2) in Article 12B it is aimed at gratuities and demands for confiscation of the defendant's property allegedly originating from one of the criminal acts in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15 and Article 16 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes and Articles 5 to Article 12 of Law Number 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. Article 37 of Law Number 20 of 2001, reads: (1) The accused has the right to prove that he has not committed a criminal act of corruption. (2) In the event that the accused can prove that he did not commit the criminal act of corruption, then the evidence is used by the court as a basis for declaring that the charges are not proven.

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If the prosecutor obtains evidence from the use of electronic means and information technology which proves that the defendant is guilty of ownership of property controlled on behalf of the defendant, his family or his group, then the defendant is obliged to submit an explanation

accompanied by evidence and witnesses, so as to provide confidence that the evidence Legitimate data are the data submitted by the defendant as well as the statement of a valid witness to strengthen the evidence submitted by the defendant, in order to provide confidence for the judge in deciding the case.

However, in reality, corruption cases are not cases that can be resolved quickly, on the contrary, they are very long and tiring. Usually in corruption cases there are not a few witnesses who must be examined, on average it is above 20 people, it can even reach 40 people. More and more documents were confiscated and had to be examined in court. Added to this is the time wasted waiting for criminal charges to come from the High Court (Agung), which is quite long, usually up to two months or more.

One reason is that Indonesia is a country that adheres to law as a source of justice, but law has not become the supremacy of justice enforcers. There are many problems that can penetrate the solidity of the law, so that strong facts that can execute the accused to become a convict can be countered because the alibi put forward by the defendant is more convincing to the judge than the actual facts on the ground.

The Criminal Procedure Code provides an uncomplicated proof system, in the form of one witness statement justifying the public prosecutor's charges, coupled with one piece of evidence, so that 2 (two) pieces of evidence are sufficient to convict the defendant. This is reinforced by the statement of the Supreme Court, that "The testimony of two witnesses fulfills the meaning of two valid pieces of evidence". However, consideration of the elements of human rights becomes a barrier to decisions in corruption cases.

One alternative to resolving corruption cases is to apply reversal of the burden of proof against criminal acts of corruption to the defendant, so that it is the defendant who is obliged to collect evidence that can explain all the prosecutor's charges can be countered by the presence of lawful evidence and witnesses. This is a form of guidance that influences the mindset of state administrators so that they are able to document clearly which assets they own are the result of their business and not the result of corruption or abuse of their position as state administrators. This is in accordance with Article 38B of Law Number 31 of 1999 in conjunction with Law No 20 of 2001.

Application of Reversing the Burden of Proof in the Practice of Settlement of Corruption Crime Cases

The application of the Reverse Proof System requires a limitative (limited) and exceptional (special) nature. From the doctrinal approach and the comparison of the criminal law system, the meaning or meaning of "Limited" or "Special" from the implementation of the Reverse Evidence System in Indonesia.

The essence of the Reverse Proof System: only limited to the offense of "gratification" related to "bribery", and criminal acts or main cases as referred to in Articles 2, 3, 4, 5, 12, 13, 14 , 15 and 16 Law No. 31 of 1999; However, the Public Prosecutor is still obliged to prove his indictment. In addition, the Reverse Evidence System is only limited to "confiscation" of offenses charged against anyone as set out in Article 2 to Article 16 of Law no. 31 of 1999, and the proof remains to be borne by the Public Prosecutor. The Reverse Evidence System is limited to the application of the Lex Temporis principle, namely it does not apply retroactively because of the potential for violations of human rights, violations of the principle of legality, and giving rise to what is called the principle of Lex Talionis (revenge). The Reverse Evidence System is limited and is not allowed to deviate from the principle of "Daad-daderstrafrecht". From this approach, the Reverse Evidence System is strictly prohibited from violating the interests and principle rights of the perpetrator (suspect/defendant).

In eradicating criminal acts of corruption, Indonesia is currently implementing 2 (two) evidentiary systems. The reverse evidentiary system which is "limited" and "balanced" means that although the accused has the right to prove that he has not committed a criminal act of corruption and is obliged to provide information about all of his assets and the assets of his wife or husband, children and the assets of any person or corporation suspected of having a relationship with the case in

question but the public prosecutor still has the obligation to prove his indictment. This is as stated in the elucidation of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

The process of proving at trial court adheres to the principle of presumption of innocence. This principle is contained in the general explanation of the Criminal Procedure Code Article 3 letter (c). The principle of presumption of innocence is a principle which requires that everyone involved in a criminal case must be presumed innocent before a court decision states that guilt. This is different in examining corruption cases where basically the principle used is the principle of presumption of guilt, which means that every person is found guilty until he can provide a satisfactory statement that he is innocent, if he cannot provide a statement If he does not commit corruption, then he is considered guilty of committing the crime.

As an embodiment of the principle of the presumption of innocence is that a suspect or defendant cannot be burdened with the obligation to prove as stated in Article 66 of the Criminal Procedure Code, therefore it is the investigator or public prosecutor who is obliged to prove guilt. The reverse evidentiary system itself places the accused as the burden of proof as stated in Article 37A of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. The reverse evidentiary system places more emphasis on the defendant in providing information about his property, wife or husband, children, persons or corporations related to his case.

There are 3 things that must be proven by the defendant in a corruption case accepting bribes/gratification, namely:

(1) prove that the defendant did not receive anything or prove that the object of the thing being charged is not the defendant who received it but another person or for another person;
(2) or if something is received (a value of IDR 10 million or more) it is not gratification. Proving that what is received is not gratification, in fact also means proving that you have not committed a criminal act of corruption in accepting gratification;
(3) or if it is true that the defendant has received a gratification, then the defendant is obliged to prove that the thing he has received has nothing to do with his position and is not contrary to his obligations and duties.

Article 12B of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes states that:

1. Any gratification to civil servants or state officials is considered bribery, if it is related to their position and is contrary to their obligations or duties, with the following conditions:
   (a) The value is IDR 10,000,000.00 (ten million rupiah) or more, proof that the gratuity is not a bribe is carried out by the recipient of the gratuity;
   (b) The value is less than Rp. 10,000,000.00 (ten million rupiah), proving that the bribe was committed by the public prosecutor.
2. Criminal punishment for civil servants or state administrators as referred to in paragraph (1) is life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years, and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

Gratification referred to in this paragraph is a gift in a broad sense, which includes giving money, goods, discounts, commissions, interest-free loans, travel tickets, lodging facilities, tours, free medical treatment, and other facilities. These gratuities are received both domestically and abroad and are carried out using electronic means or without electronic means. According to Andi Hamzah, the purpose of reversing the burden of proof in provision 12B paragraph (1) letter b namely "so, because the public prosecutor is only obliged to prove one core part, namely the existence of the gratification, the next two core parts, namely the existence of a connection with the position of civil servant then he neglected his obligations because he received bribes, then it was charged to the suspect/defendant.

So, there is a reversal of the burden of proof for the two main parts of the offense. It must be proven that the gift has nothing to do with his position, then he neglects his obligations (as a civil servant). If he cannot prove so, he is deemed to have accepted a bribe or to have committed both parts.

The elucidation of Article 37 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes states a deviation from the provisions of the Criminal Procedure Code which stipulates that it is the prosecutor who is obliged to prove the commission of a crime, not the accused. According to this provision the defendant can prove that he did not commit a criminal act of corruption. If the defendant can prove this, it does not mean that he is not proven to have committed corruption, because the public prosecutor is still obliged to prove his charges. The provisions of this article are limited reverse evidence.

Article 38A of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes states that "the evidence referred to in Article 12B paragraph (1) is carried out during an examination at a court hearing. Article 38B of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes states that:

a. Everyone charged with committing one of the criminal acts of corruption 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 concerning Eradication of Corruption Crimes and Articles 5 to 12 of this Law, are required to prove otherwise against his property that has not been charged, but is also suspected of originating from a criminal act of corruption.
b. (2) In the event that the defendant cannot prove that the assets referred to in paragraph (1) were not obtained as a result of a criminal act of corruption, the said assets are deemed to have also been obtained from a criminal act of corruption and the judge has the authority to decide that all or part of the assets will be confiscated for the state.
c. (3) The demand for confiscation of property as referred to in paragraph (2) is filed by the public prosecutor at the time of reading out his demands in the main case.
d. (4) Proof that the assets referred to in paragraph (1) did not originate from the criminal act of corruption is submitted by the accused when reading out his defense in the main case and can be repeated in the appeal and cassation memos.
e. (5) The judge is obliged to open a special trial to examine the evidence submitted by the accused as referred to in paragraph (4).
f. (6) If the defendant is acquitted or declared acquitted of all lawsuits from the main case, the claim for confiscation of property as referred to in paragraph (1) and paragraph (2) must be rejected by the judge.

4. CONCLUSION

Corruption crimes in Indonesia are still happening today; even with increasing intensity, both in terms of quality and quantity, to prevent and overcome criminal acts of corruption in Indonesia, at least reducing the quality and quantity, the method of reversing the burden of proof of corruption cases is applied in accordance with Law Number 20 of 2001 regarding Corruption, although it has not been possible to reverse the burden of proving corruption purely.

The application of reversing the burden of proof is one of the solutions in eradicating corruption as an extraordinary crime. However, the regulation must prioritize a proportional balance between the protection of individual independence and the deprivation of the rights of the individual concerned over his assets originating from corruption, so as not to cause juridical problems in law enforcement. It is necessary to do more outreach to the public regarding the reversal of the burden of proof in criminal acts of corruption, because reversing the burden of proof to the accused in corruption cases is considered a form of violation of the presumption of innocence.

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