



## Reverse Evidence System in Corruption Crime: Critical Analysis, Obstacles and Challenges

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### ABSTRACT

This research aims to discuss the legal arrangements of reverse evidence in corruption trials and comprehensively examine the obstacles and challenges of reverse evidence in corruption cases. The type of research is normative juridical, which discusses certain legal phenomena and analyses them based on laws or norms that live in society. The results of this study show that the reverse proof system is regulated in the provisions of Article 37, Article 37A, and Article 38B of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption, which states the defendant's obligation to prove otherwise against property owned not derived from the proceeds of corruption crimes. Reverse proof of corruption crimes has obstacles and challenges such as legal substance factors, focus of proof, inconsistency, violation of rights, and resistance of law enforcement. The challenges of reverse proof are: improving the performance, professionalism, and integrity of law enforcement officials, as well as the clarity of regulations to apply reverse evidence outside of corruption crimes such as narcotics and terrorism.

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## INTRODUCTION

The crime of corruption is an extraordinary crime, because it causes enormous impacts or losses in various aspects, both to society and the state. In Indonesia, corruption occurs massively in various lines, from the legislature, and judiciary to the government at the village, district/city, provincial, and central levels, which have been hampered by corruption cases [1]. The rise of corruption makes Indonesia one of the countries with the most corruption cases in the world. Transparency International data (2023) ranks Indonesia 115th out of 180 countries in the Corruption Perception Index (CPI) with a score of 34 out of 180. Although this figure has decreased compared to 2020 (38), the trend of domestic corruption continues to increase [2].

The results of research by Indonesia Corruption Watch (ICW) in 2023 there were 791 corruption cases with 1,695 suspects. This figure has increased compared to 2022, where there were 579 corruption cases with 1,396 suspects. Based on region, in Indonesia, there are 8 out of 36 provinces with the highest corruption cases, namely: East Java (64 cases), North Sumatra (54 cases), Central Java (47 cases), South Sulawesi (46 cases), East Nusa Tenggara (37 cases), Aceh (36 cases), West Java (36 cases) and South Sumatra (31 cases). The total state financial losses in the last decade (2013-2022) reached Rp. 238.14 trillion, which was obtained from the results of monitoring corruption decisions issued by the Corruption Court nationally.

Corruption as an extraordinary crime requires extraordinary handling as well, to prevent and suppress this crime effectively, one of which is through legal instruments in Article 37 of Law Number 31 of 1999 as

amended by Law Number 20 of 2001 concerning the Eradication of the Crime of Corruption, namely reverse evidence [3]. The reverse proof system is an evidentiary mechanism in court that reverses the burden of proof from the Public Prosecutor to the Defendant. Simply put, in a corruption trial, if the Defendant cannot prove the origin of his/her assets, then it is suspected that the assets originated from a corruption offense [4].

The reverse proof system (*omkering van het bewijslast*) is adopted from Anglo-Saxon countries, such as the UK, Singapore, and Malaysia. In Indonesia, the application of the reverse proof system has comprehensive benefits, as it can be a solution to evidentiary obstacles in corruption trials [5]. Reverse evidence can be categorized as a 'deviation' from the provisions of the Criminal Procedure Code. Based on the provisions of Article 66 and Article 137 of the Criminal Procedure Code, the defendant is not charged with proving his innocence at trial, but rather the Public Prosecutor is obliged to prove the defendant's guilt at trial.

The reverse proof system requires the defendant to actively prove that he did not commit the crime 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 [6]. The concept of reverse proof also contributes to building a clean state administration free from KKN, adopted in the form of the LHKPN reporting policy, where officials must routinely report their assets within a certain period. This policy encourages the accountability of public officials.

Reverse evidence in corruption trials is a solution to improve the effectiveness of law enforcement. However, there are still various obstacles and challenges ranging from inconsistencies in legal norms, and apparatus performance, to legal culture, which require comprehensive improvement to create a just law enforcement system [7].

## METHODOLOGY

The type of legal research conducted is normative juridical research or research that analyses written law, jurisprudence, and norms that live in society. The approach is descriptive-analytical which aims to take data systematically, factually, and accurately on a problem based on applicable laws and legal norms. Data collection techniques are carried out using library research, namely to obtain data by examining library materials including primary and secondary legal materials [8].

## RESULTS AND DISCUSSION

### The Legal Regulatory Framework of Reverse Evidence in Handling Corruption Crime

Evidence in criminal law aims to seek material truth, namely the real truth about a criminal event. Criminal evidence is different from civil evidence which focuses on finding the formal truth [9]. In this context, the Judge must ensure that the facts presented are true to prove that the defendant is the perpetrator of the criminal offense charged. Proof of criminal cases in general, is regulated in Article 184 paragraph (1) of the Criminal Procedure Code, namely:

- 1) Witness testimony
- 2) Expert testimony
- 3) Letters
- 4) Clues
- 5) Defendant's statement [10].

The judge may not impose a sentence on a person unless there are at least two valid pieces of evidence and the judge is convinced that a criminal offense occurred and was committed by the defendant (Article 183 KUHAP). If there is only one piece of evidence, then the minimum requirement of proof has not been achieved, and the judge cannot impose a sentence on the defendant. This shows the importance of two valid pieces of evidence plus the judge's belief in the criminal proof process. Article 183 and Article 184 are the main bases for criminal evidence in Indonesia, ensuring that the legal process is carried out correctly and fairly [11]. There are theories of evidence including:

Proof Based on Positive Law (*Positief Wettelijk Bewijstheorie*)

This theory is based on a system of proof based on law only, outside the law there is no proof, including the judge's conviction.

Negative Law Proof Theory

*Negatief wettelijk bewijstheorie* means that the punishment is based on double proof (*dubbel en grondslag*), namely on the rules of the law and on the judge's conviction. Where the basis of the judge's belief is sourced from the laws and regulations.

Theory of Proof Based on Judge's Conviction (*conviction intime*)

Evidence in the form of the defendant's confession does not always prove the truth. Therefore, a judge's conviction is needed, from this thinking, this theory emerges which is based on the conscience/conviction of the judge to declare that the defendant has been legally and convincingly proven to have committed a criminal act.

Theory of Proof Based on Judges' Beliefs on Logical Reasons (*laconviction raisonnee*)

This theory of proof is also called free proof because the judge is free to mention the reasons for his beliefs (*vrije bewijstheorie*). This theory has the concept that the judge can decide based on proof accompanied by a conclusion based on certain rules of proof. So, the judge's decision was handed down with a motivation [12].

The four systems of proof mentioned above can be applied to all criminal acts, both general crimes and special crimes. For certain criminal acts, the system of proof can be applied, namely the reverse proof system. The arrangement of reverse proof is regulated in Law Number 31 of 1999 as amended into Law Number 20 of 2001 concerning the Eradication of Corruption, namely:

Article 37

The defendant has the right to prove that he did not commit a crime of corruption;

If the defendant can prove that he did not commit a corruption crime, then the evidence is used by the court as a basis to state that the indictment is not proven.

Article 37 A

The defendant is obliged to provide information about all his property and the property of his wife or husband, children, and the property of each person or corporation that is suspected of having a relationship with the case charged.

If the defendant cannot prove that the wealth is not balanced with his income or the source of his additional wealth, then the information referred to in paragraph (1) is used to strengthen the existing evidence that the defendant has committed a criminal act of corruption.

The provisions as intended in paragraphs (1) and (2) constitute criminal acts or subject matter 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 the Eradication of Corruption and Articles 5 to 12 of this Law, so that the public prosecutor remains obliged to prove his charges.

Article 38 B

Every person who is charged with committing one of the corruption crimes 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 the Eradication of Corruption Crimes and Articles 5 to 12 of this Law, must prove otherwise against their property that has not been charged, but it is also suspected to have originated from corruption crimes.

If the defendant cannot prove that the property as referred to in paragraph (1) was not obtained due to a criminal act of corruption, the property is considered to have been obtained also from a criminal act of corruption and the judge is authorized to decide that all or part of the property is confiscated for the state.

The demand for confiscation of property as referred to in paragraph (2) is submitted by the public prosecutor when reading his demands on the main case.

Proof that the property as referred to in paragraph (1) does not originate from the crime of corruption is submitted by the defendant when reading his defense in the main case and can be repeated in the appeal memory and cassation memory.

The judge is obliged to open a special trial to examine the evidence submitted by the defendant as intended in paragraph (4).

In reverse proof, the defendant has the right to prove at trial that the property or wealth he owns does not come from the results of KKN. This is very important as a protection for the defendant's right to guarantee balance because, according to the reverse proof, the defendant has been deemed to have committed corruption, while based on the principle of presumption of innocence, the criminal law states that each defendant is declared innocent before there is a legal verdict stating that he is proven guilty [13].

It should be emphasized that reverse proof is applied to the trial process in court, not at the investigation stage. Therefore, investigators or public prosecutors must be professional in determining sufficient preliminary evidence against suspects or defendants suspected of committing corruption, including in the process of confiscating assets or assets. The application of reverse proof will be effective if law enforcement officials, both the police, the prosecutor's office, the KPK, and judges, really act professionally and independently [14].

### **Obstacles and Challenges in the Reverse Proof System for Corruption Crimes**

The application of reverse proof in corruption cases aims to overcome difficulties in proving corruption crimes, considering that many corruptors have escaped legal entanglement because of evidentiary constraints. In the implementation of reverse proof at trial, the defendant must play an active role in proving his innocence as charged by the public prosecutor. The defendant must submit supporting evidence proving his innocence. This includes letters, official documents, financial statements, proof of transactions, and witness statements that can show the assets or acts charged are not related to corruption [15].

In addition, the Defendant is also required to provide information about the source of his property, such as an explanation of his income, investment, assets, or inheritance, and can prove how the property was obtained legally without violating the law [16]. This information must be clear and balanced with assets allegedly derived from KKN. Some important aspects of the application of reverse proof include:

Transfer of the burden of proof: The burden of proof is no longer entirely on the Public Prosecutor, but on the defendant to show that the wealth obtained does not come from the crime of corruption, collusion, and nepotism.

Protecting the defendant's legal rights: While reverse proof aims to speed up the process and effectiveness of law enforcement, it is important to implement the principles of justice. The defendant still has the right to defend himself and present evidence supporting his innocence [17].

The concept of reverse proof also contributes to building a clean state administration from KKN, adopted in the form of a policy of reporting the assets of state administrators (LHKPN), where officials routinely report their assets within a certain period. This requires accountability from public officials, by reporting assets in an orderly manner and proving the origin of wealth, it is hoped that it can create transparency and public trust in the government, as well as efforts to prevent KKN from occurring [18]. Reverse proof and conventional proof in criminal procedure law have fundamental differences. Here are the differences between the two systems:

**Table 1.** Difference between Conventional Proof and Reverse Proof

No	Aspects	Conventional Proof	Reverse Proof
1	Context of Implementation	General, against all kinds of things	Especially for certain criminal offenses such as corruption
2	Burden of proof	By the Public Prosecutor	By the Defendant
3	Defendant's obligations	It is not mandatory to submit evidence	The defendant must take an active role in presenting evidence to establish his or her innocence of the criminal offense charged
4	Legal basis	Criminal Procedure Code	Law Number 20 Year 2001 on the Eradication of Corruption Crime

The reverse proof system in corruption crimes in Indonesia is a concrete legal step to eradicate corruption as an extraordinary crime [19]. However, the implementation of this system still has some significant obstacles and challenges, including:

Legal Substance: the legal substance of reverse proof is still quite weak. Many defendants escaped prosecution because state losses had been returned, making it a challenge for prosecutors to prove real financial losses.

Focus of Proof to the Defendant: the principle of reverse proof is contrary to the Criminal Code which requires the public prosecutor to prove the defendant's guilt. This can cause injustice, especially for defendants who do not have access to legal resources to defend themselves.

Inconsistencies: the implementation of the reverse proof system is often inconsistent across courts which can lead to legal uncertainty and different treatment of similar cases.

Rights Violations: this system has the potential to be contrary to human rights principles. The Criminal Procedure Code, regulates the principle of presumption of innocence, namely every person who is suspected, arrested, detained, prosecuted, and/or confronted before a court session, must be considered innocent until there is a court decision with permanent legal force stating his guilt. Meanwhile, the reverse proof assumes that the assets owned by the defendant come from KKN. The defendant may experience pressure or intervention to provide evidence or information that is detrimental to him [20].

Law Enforcement Resistance: this can be due to a lack of resources and understanding of the system's mechanisms or uncertainty regarding how to implement reverse proof in the trial process [21].

In addition to the obstacles described above, there are also challenges ahead for the reverse-proof system. Improving the performance of law enforcement officials in the context of reverse proof is essential for the effectiveness of law enforcement. Officials must work professionally and have a high level of knowledge of procedural law, especially in proof. The credibility and integrity of law enforcement officials are very important to build public trust in the sustainability and enforcement of the rule of law [22]. In addition, the reverse proof system can also be applied in the disclosure of crimes outside of corruption, such as narcotics and terrorism, where there are flows of funds that must be traced. It's just that for its implementation, the relevant regulations do not have a clear regulatory basis like in the law on the eradication of corruption.

## CONCLUSION

The system of reverse proof in the crime of corruption is regulated in Article 37, Article 37A, and Article 38B of Law Number 31 of 1999 as amended into Law Number 20 of 2001 concerning the Eradication

of Corruption Crimes, which states the obligation of the defendant to prove otherwise that the property owned does not come from the crime of corruption. If the defendant can prove that he did not commit a corruption crime, then the proof is used by the court as a basis to declare the indictment unproven.

Reverse proof in corruption crimes has many obstacles and challenges such as legal substance factors, focus of proof, inconsistencies, violations of rights, and resistance of law enforcement. Challenges in reverse proof include: improving the performance, professionalism, and integrity of law enforcement officials, as well as clarity of legal regulations to implement reverse proof systems beyond corruption crimes, such as narcotics and terrorism.

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