REVERSE EVIDENCE IN CORRUPTION ERADICATION PRACTICE

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ABSTRACT

This study aims to determine; 1) law of the evidentiary machine withinside the Criminal Procedure Code and the evidentiary machine withinside the Indonesian Corruption Eradication Law, and 2) synchronization of the reverse evidentiary system regulations in the trial of corruption with human rights of the accused at the trial. This study is a normative legal research with descriptive analysis method. This research shows the results, including: 1) There is a limitation in the system of reversing the burden of proof in Law no. 20 of 2001 regarding Amendments to Law No. 31 of 1999 regarding the Eradication of Corruption Crimes, namely the criminal act of gratification related to bribery in accordance with what is contained in Article 12 B paragraph (1) letter a. The reversal was carried out on the property of the defendant who was allegedly related to the case against which he was charged (Article 37A) and the property of the defendant who was not charged with alleged corruption (Article 38B). 2) In Articles 37A and 38B regarding reversing the weight of evidence at the defendant's property, it's far deemed essential to offer operational commands in addition to unique procedural regulation as an attempt to keep away from ambiguity from regulation enforcement in imposing this system. Afterwards, concerning the reversal of the weight of evidence on items which have now no longer been indicted (Article 3B), the regulation wishes to offer limits and motives concerning the purpose of products which have now no longer been indicted. This makes it necessary to understand what is meant by property in the context found in the trial. However, there has been no indictment allegedly originating from the criminal act of corruption, so it has not yet been delegated to the Public Prosecutor.

Keywords: Reverse Proof, Corruption Eradication

1. PENDAHULUAN

Recent occurrences are growing more unsettling and troubling as corruption offenses in Indonesia continue to rise year after year. The phenomenon, realities, and signs of corruption in Indonesia have historically been extremely severe and pervasive. Its state is deteriorating, and both the quantity and quality of its development keep rising year after year. Losses to state finances from both frequency of instances and volume of those cases kept rising. Criminal activity is becoming more organized, and it has spread to all spheres of society, especially in the formal sector and corporate sector. State organizations

including the executive, legislative and judiciary has been involved in corruption and have turned into a haven for corrupt individuals.

The development of a just and wealthy society was one of the high goals of the Indonesian state, but it can be undermined by the corruption criminal issue, which is becoming harder to prevent and eradicate. In the fourth paragraph in the Preamble of the 1945 Constitution, states aspiration of the Indonesian people: A government establishment capable of providing protection for the Indonesian nation and all of Indonesia's bloodshed, advancing public welfare, educating the nation's life, and actively participating in carrying out world order.

Corruption is one of the causes that has not been fully handled based on the system and provisions of all components of the nation, the lofty objectives of the country's founders will fail. The country has suffered tremendous financial losses as a result of corruption, which has hampered national progress and contributed to the country's economic predicament. Because of this, it is imperative that the government and the community use all of their resources to prevent and eliminate corruption while respect human rights and interests of the wider community.

According to Atmasasmita's opinion, corruption crimes are already categorized as unconventional crimes through a systematic and widening a way for criminals to get something they want which includes extraordinary forms of crime, therefore they are no longer thought of as conventional kinds of crime in the context of legal science (Atmasasmita 2004). According to Nyoman Serikat Putra Jaya, corruption that occurs in Indonesia is no longer included as an ordinary crime; However, it has included extraordinary crimes. The Association of Nyoman Putra Jaya pays close attention to the current developments in corruption in terms of quality and quantity (Jaya 2008). Negative effects of corruption, according to Nyoman Serikat Putra Jaya, "are particularly detrimental to the order of national life; even the criminal act of corruption includes a violation of the social and economic rights of all Indonesian people" (Jaya 2008)

Basis for corruption offences in Indonesia qualifies as an extra-ordinary crime and is categorically acknowledged by current positive law. The broad the elaboration of Law No. 30 of 2002 regarding the Corruption Eradication Commission reflects this recognition. Corruption qualifications for Indonesia

includes both the classification of "transnational crime" and the classification of "extraordinary crimes," indicating that the problem in preventing and eradicating corruption is not just a national problem, however is now a global issue as well in terms of a way for criminals to get something they want, place of crime, and Law enforcement in matters of criminal law.

These crimes are difficult to find since their perpetrators tend to be politicians, people from upper middle class backgrounds, or those who commit acts of corruption. Adji refers to corruption as a "white-collar crime" based on repeated acts subject to the dynamics of its a way for criminals to get something they want from all angles, making it a crime that goes unpunished and requires the implementation of criminal law policies (Adji 2006).

It is possible to read Law Number. 8 of 1981, which deals with Criminal Procedure Code, as adhering negatively to legal standard of proof in the criminal justice procedure (negative wettelijke bewijs theorie). According to criminal procedural legislation, The duties of the Public Prosecutor include determining the guilt of the accused during the criminal justice procedure (JPU). The JPU has the task of proving its allegations prior to the trial as part of its role as a prosecutor. The JPU has the responsibility and authority to support its allegations in order to put the formal legality concept into practice. As a public prosecutor, it is the prosecutor's duty to bring charges against anyone who is thought to have committed a crime under the rule of formal legality.

The attorneys representing the former judge Martiman Prodjohamidjojo contended that: (Adji 2006) "The elucidation in Article 66 of the Criminal Procedure Code, namely that coercion of evidence is delegated to the public prosecutor in terms of proving the defendant guilty or not. In this case, the judge allowed the defendant to open a statement regarding the unavailable evidence, in accordance with the law, evidence; however, everything can add clarity and make the case's proceedings more amusing; at the very least, the information can be utilized in his favor.

Based on several KUHAP and Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it explicitly and implicitly emphasizes that proving or the burden of proof in general crimes is the obligation, burden and responsibility of the public prosecutor in terms of proving the crime being charged. Prosecutors are state

representatives, therefore they simultaneously represent law enforcement, the private sector, and other components of the criminal justice system's framework.

The current corruption law is regulated through Article 37 paragraphs (1), (2), (3), (4), and paragraph (5) of Law no. 31 of 1999, thus:

1. The accused has the right to prove he is not corrupt
2. The evidence provided by the defendant is used as information for his benefit.
3. The defendant has the obligation to provide information regarding all property owned or owned by his wife or husband, children and any person or corporation suspected of being related to the case in question
4. If the defendant cannot prove that his assets are not in balance with his income, then this statement is used as a tool to strengthen evidence that the defendant committed a criminal act of corruption.
5. As contained in paragraphs (1), (2), (3) and (4), the public prosecutor still has an obligation to prove his charges.

Law No. 31 of 1999's article-by-article explanation states in the explanation of Article 37 that: "The Criminal Procedure Code determines that the burden of proof lies with prosecutor, not the defendant, and this provision deviates from that rule. This clause allows the defendant to establish his innocence in relation to the corruption crime. If the defendant can prove, it does not mean that he is not proven to be corrupt, because the public prosecutor still has the obligation to prove his charges".

JPU is nevertheless required to prove the accusation, the limitation of that article restrict reverse proof. There are visible deviations from the Criminal Procedure Code in the application of negative evidence, also known as proof under the law negatively, or wettelijke bewijs theorie. This means that the JPU is responsible for proving the existence of admissible evidence under Criminal Procedure Code based on Articles 31 of 1999 and 20 of 2001. Prior to the court hearing, the JPU must still provide proof of its hypotheses.

In contrast to the evidentiary arrangements by the anti-corruption law above, the reverse proof system applies. It is stated that the reversal of the burden of proof or an inverse evidentiary system when the burden of proof is partly borne by the

defendant at beginning of the evidence, which is different from the prevalence (reverse). However, after the defendant establishes by testimony that he is innocent of the prosecution's allegations, the prosecutor still needs to support those allegations, which is why it is claimed that the system of proof used to establish corruption offences is balanced. This is because the prosecutor still has an obligation to prove the defendant with the indictment, in addition to the burden of proof given to the defendant.

After going over the Criminal Procedure Code's rules for evidence, we come to Article 66, which essentially states that the JPU is responsible for burdening the proof procedure. In the meanwhile, there is a disagreement between two (two) legal standards relating to reverse proof at trial, namely pursuant to Article 37 paragraph (1), which states that burden of proof lies with defendant as well as a public prosecutor.

The reverse evidentiary system that has been planned and implemented in corruption criminal justice practices on the basis of corrupt practices in accordance with Article 37 of Law No. 31 of 1999 and Law No. 20 of 2001 has been based on the considerations of the drafting team due to difficulties in proving corruption. The concept of thinking developed after qualification of corruption crimes was classified as extra ordinary crime. So handling it also requires extraordinary effort (Marwan 2005).

In light of all the corruption-related phenomena and facts, the government's implementation of policies involving different types of criminal and non-criminal efforts to eradicate corruption crimes must adhere to and be focused on legal boundaries or legal corridors without violating general legal principles. In particular, it relates to widely accepted legal principles like the human rights of suspects/defendants or HAM in general. It does not, in particular, infringe political, social, legal and economic rights and freedoms that belong to everyone possesses by default.

Through the reference of exposure in juridical-sociologic phenomena and the facts on that background, that corruption crimes in Indonesia it is still difficult to eradicate and become theoretical and practical problems to uphold the law, researchers feel interested in conducting research and studying related Use of a System of Reversal of Evidentiary Burdens in the Practice of Eradicating Corruption Crimes.

2. TINJAUAN PUSTAKA

As stated in Law No. 20 of 2001's Articles 12B and 37, reversing the burden of proof is equivalent to being held accountable for errors of those suspected of corruption. Based on Article 37A and 38B paragraph (2) of Law Number 20 of 2001 then govern ownership of the perpetrator's assets that are strongly suspected of having been acquired through an act of corruption. actually, both wrongdoing of perpetrators and perpetrator's assets that are thought to have come from corruption are the targets of political law policy legislation eradication of criminal acts of corruption.

In order prevent and eradicate corruption, availability reverse burden of proof is crucial. That point is highlighted in editorial in the General Explanation of Law No. 20 of 2001, which reads: "Provisions regarding "reverse proof" needs to be supported by Law No. 31 of 1999 related to the Eradication of Corruption Crimes with the nature of "premium remidium" and the nature of special prevention against civil servants according to Article 1 point 2 or state administrators according to Article 2 of Law Number 28 of 1999. In this case, Law Number 31 1999 and Articles 5-12 implemented reverse proof in new forms of crime related to gratuities and demands for confiscation of the defendant's assets with allegations of being correlated with the crime referred to in Articles 2, 3, 4, 13, 14, 15 and 16 of the Law.

This law also aims to prohibit money laundering offenses because corruption is a component of such crimes that can harm state finances. In his explanation, it was stated Criminal acts based on this Law are formulated in such a way as to include acts to enrich oneself, other people, or companies that are contrary to the law, in order to obtain both formal and material benefits, in order so that it can reach various a way for criminals to get something they want of state financial irregularities, which are becoming more sophisticated and complicated. With this definition, dishonorable activities that should be investigated and punished in accordance with the rules of justice are included in the concept of unlawful in context of corruption.

Efforts that need to be done by a country in preventing and eradicating money laundering practices, namely, through the enactment of laws related to the prohibition of money laundering and subject to severe penalties for these perpetrators. Law No. 15 of 2002 stipulates that prevention or eradication of money laundering can be done through the criminalization of all acts of money laundering (Adrian Sutedi, 2018).

3. METODE PENELITIAN

a. Research Type

This research is of the normative juridical type, namely a legal research related to the study of statutory regulations, literature studies and those carried out on secondary data.

b. Research Specifications

The specification used in this research is analytical descriptive (Soemitro 1990), namely a description of laws and regulations associated with various legal theories and practices of positive law implementation. In addition to describing the object of the problem, data analysis was also carried out. Descriptively, this describes in detail, systemically and holistically the various uses of the reverse evidentiary system in the practice of eradicating corruption at the Semarang District Court. The intended analysis is collection, grouping, correlation, comparison, and giving meaning.

4. HASIL dan PEMBAHASAN

1. Regulation between the Evidentiary System withinside the Criminal Procedure Code and the Evidentiary System in indonesia's present day Anti-Corruption Law

Evidence to the contrary is governed by Section 35 of the Money Laundering Act which reads: "For examination purposes at a court hearing, the defendant must prove that his or her property is not the result of a crime." (Republic of Indonesia 2003)

The defendant bears the burden of proof. For the crime of money laundering, it is necessary to prove the source of assets that did not originate from a criminal offense, such as corruption, drug addiction and other illegal activities. Article 35 contains material provisions that allow the accused to prove that his assets were not obtained from material crimes. This definition is known as the principle of inverse proof.

The limited burden-of-proof reversal mechanism contained in Law No. 20 of 2001 amending Law No. 31 of 1999 on the Suppression of Corruption Crimes may apply to bribery offenses as set forth in Section 12 of Article 12B. (1) The letter a. After that, there can also be the return of the property of the accused accused of the charge (Article 37 A) and the property of the now innocent accused, which is said to arise from the crime of corruption (Article 38 B). If the use of the same old machine as

within the Criminal Procedure Code, within the case of proving a crook act, the weight of evidence is absolutely on the JPU. Meanwhile, the defendant isn't obligatory, in a passive sense. Nevertheless withinside the accusatory machine, for the sake of regulation the defendant has the proper to disclaim the costs and show otherwise. In the crook regulation of corruption, the TPK evidence machine of bribery accepts gratuities whose item price is much less than Rp. 10 million (Article 12B paragraph b) the use of the same old burden of evidence, specifically at the prosecutor.

a. The machine of reversal of the constrained burden of evidence which is contained in Law No. 20 of 2001 amending Law No. 31 of 1999 "On the Suppression of Corruption Offenses", effectively with respect to the crimes related to the satisfaction of bribes as set out in Article 12B(1)(a) configured is used. After that, restitution can be made over the property of the accused, which is allegedly related to the charge (Article 37 A) and the property of the accused who is now another accused, to whom an additional claim is presented. arises from the crime of corruption (Article 38B). If the use of a standard vehicle under the Code of Criminal Procedure in the case of fraud is proved, the burden of proof rests entirely on the JPU. Whereas the defendant isn't always obligatory, in a passive sense. Nevertheless withinside the accusatoir machine, for the sake of regulation the defendant has the proper to disclaim the fees and show otherwise. In the crook regulation of corruption, the TPK evidence machine of bribery accepts gratifcations whose item cost is much less than Rp. 10 million (Article 12B paragraph b) the use of the standard burden of evidence, particularly at the prosecutor

b. The law of reversal of the weight of evidence in Article 12B paragraph (1) letter a of the Uuptpk must now no longer encompass the element, "... which pertains to his workplace and that's opposite to his responsibilities or duties." Then additionally the nominal quantity of gratuity of Rp. 10,000,000, - to be eliminated withinside the factors of the object in order that the act of gratification in a huge experience that can not be assessed with cash

also can be imposed on this provision. In relation to Articles 37 A and 38 B which offer for the reversal of the weight of evidence at the assets of the accused, it must take delivery of technical/ operational commands or the procedural regulation specially to keep away from the hesitant nature of the regulation enforcement withinside the software of this system. Furthermore, concerning the reversal of the weight of evidence on assets that has now no longer been charged (Article 38 B), the regulation ought to offer regulations and factors concerning the motive of the assets that has now no longer been charged, in order that it ought to be understood that the aim of the assets is withinside the context of assets determined withinside the trial however has now no longer been charged through the general public prosecutor which is likewise suspected to be derived from the crime of corruption.

On the other hand, the flip side of the burden of proof can be placed on the assets of corrupt offenders so that the focus is on reparation of corrupt state assets. Strictly speaking, from the point of view of the above context, the accusation of a suspected perpetrator of corruption always takes place in a criminal way (criminal proceedings) with negative evidence or by evidence beyond all affordable doubt, even as the go back of property of a corrupt culprit may be used as a reversal of the weight of evidence considering the fact that this thing is extraordinarily non-interdisciplinary with human rights aspects, does now no longer violate crook manner regulation, great crook regulation or global felony instruments.

In this context, use is a more suitable alternative to the argument of corruption the equilibrium probability theory of Oliver Stolpe's principles. Basically, this idea gives a proportional stability among the safety of individual liberties on the one hand and the disenfranchisement of the individual in question over his property which is strongly suspected of being due to corruption elsewhere. In particular, placing the author of a corrupt act against his acts or errors ought to now no longer be used at the precept of inversion of the weight of proof, however at the precept of "passing all affordable doubt" due to the fact the safety of man or woman rights is paramount in opposition to the deprivation of one's liberty.

In this context, the placement of human rights of perpetrators of corruption is positioned withinside the maximum position (level) with the aid of using the use of the "Highest Balanced Probability Principles" Theory which nevertheless makes use of the machine of evidence consistent with the regulation negatively or primarily based totally at the precept of "past affordable doubt". Then concurrently on the only hand mainly to the load of opposite evidence may be achieved at the property of corruption perpetrators the use of the Theory of "Lower Probability of Principles."

2. Synchronization of Reverse Evidentiary System Arrangements in The Trial of Corruption Crimes with the Human Rights of Defendants in Trials

There is a crucial seize 22 state of affairs in Indonesian guidelines on the burden of contrary proof. In the provisions of Article 12B, Article 37, Article 38B Law No. 31 of 1999 and Law No. 20 of 2001 all provide for the weight of contradictory evidence. The formula of the standards relating to the burden of proof to the contrary specified in Article 12B of Law No. 31 of 1999 and Law of No. 20 of 2001 specified in Article 12B, paragraph (1) is clearly flawed and inaccurate, or false. read: "Any bonus to a public official or manager of the country shall be into consideration to be a bribe if it pertains to his workplace and that is opposite to his responsibilities or duties, with the subsequent conditions: (a) whose cost is Rp. 10,000,000.00 (ten million rupiah) or more, evidence that the gratuity isn't a bribe made with the aid of using the gratuity recipient; (b) whose cost is much less than Rp. 10,000,000.00 (ten million rupiah), evidence that the gratuity turned into bribes made with the aid of using the general public prosecutor."

There are a few essential errors of the above legislative policy. First, it's miles studied from the formula of a crook act (materiele feit) that the supply offers upward push to mistakes and vagueness or misalignment of the norms of the precept of opposite burden of evidence. On the only hand, the precept of opposite burden of evidence could be carried out to the recipient of gratuities below Article 12B paragraph (1) letter a which reads, "whose fee is Rp. 10,000,000.00 (ten million rupiah) or more, evidence that the gratuity isn't always a bribe made via way of means of the gratuity recipient", however however it's miles not possible to use to the gratuity recipient due to the fact the provisions of the object expressly kingdom the editorial, "any gratuity to a civil servant or kingdom

administrator is taken into consideration to be the giving of bribes while it pertains to his workplace and that is opposite to his responsibilities or duties", as a result the formula of all of the center factors of the delik indexed in complete and virtually in a piece of writing contains the juridical implications of getting and the duty of the Public Prosecutor to show the formula of the delik withinside the article concerned.

The emphasis is that, firstly, the precept of the weight of opposite evidence is withinside the country of the provisions of the Act and now no longer in its utility coverage because of the legislative coverage of formulating the misconduct, due to the fact the entire center a part of the deliberation is cited in order that what's left to be proved in any other case does now no longer even exist. Secondly, there also are mistakes and mistakes withinside the system of norms for the provisions of Article 12B of Law Number 20 of 2001 so long as the editorial ".is taken into consideration a bribe". If a gratuity that has been obtained with the aid of using a civil servant or country administrator the gratuity isn't categorized "... is taken into consideration bribery" however consists of the act of "bribery". The lifestyles of the precept of opposite burden of evidence in step with crook regulation norms exists now no longer geared toward gratification with editorial ".. is taken into consideration a bribe" however it have to be to the 2 factors of the system as a center a part of the delik withinside the shape of formulations regarding his office (in zijn bediening) and people that do paintings opposite to obligations (in stijd met zijn plicht). Third, it's far studied from the attitude of the provisions of the unique crook regulation gadget linked with the 2003 UN Convention towards Corruption which Indonesia ratified with the aid of using Law Number 7 of 2006.

In fact, from this dimension, the weight of opposite evidence is illegitimate in opposition to people's guilt as it has the ability to violate Human Rights, opposite to the precept of presumption of innocence to be able to reason a shift in evidence to the precept of presumption of guilt or the precept of presumption of corruption.

It's far interspersed with the provisions of the crook process regulation which calls for that accused has no obligation to prove in accordance with Article 66 of the Code of Criminal Procedure, Clauses 66 (1), (2) and Clause (1) of Article 67 Clause (i) of the Rome Statute of the International Criminal Court. ICC).), clause 11 of the Universal Declaration of Human Rights, clause 40

clause (2b) clause (i) of the Convention on the Rights of the Child, principle 36 clause (1) set of security standards. all persons under any form of arrest or detention, UNITED NATIONS General Assembly Resolution No. 43/1739 of December 1988 and the International Convention and the precept of legality.

From what has been defined above, the weight of opposite evidence in Indonesian law actually "exists" at the extent of legislative coverage however is "no" and "can not" be applied in its software coverage. With context benchmarks above the weight of opposite evidence, it can not be implemented to the guilt of corruption perpetrators, as a result the usage of a terrible evidence gadget or the precept of "past affordable doubt". The logical result of any such size is this burden of opposite evidence will now no longer intersect with human rights, the provisions of crook procedural regulation, specifically concerning the precept of presumption of innocence, the precept of non-self-incrimination, the precept of the proper to stay silent, cloth crook regulation and global criminal instruments.

5. SIMPULAN

From what has been described above, it can be concluded: actually reverse the burden of proof "is" at the level of legislative policy, but "isn't" and "cannot" be carried out on implementing policies. In this case, the reverse Burden of evidence can't be carried out to the guilt of the perpetrators of corruption, so a opposite burden of evidence or the "beyondreaming" principle is used. The logical consequence in this case is that reverse proof cannot intersect with human rights, criminal procedural law provisions, associated with the precept of presumption of innocence, the precept of the proper to stay silent, principle of not incriminating oneself, international legal instruments and material criminal law.

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