



Reversal of Burden Proof as a Reform of Criminal Law Eradicate Money Laundering

Hanifah Azizah^{*1}, Topo Santoso², Yunus Husein³, Mahmud Mulyadi⁴

^{1;4} Law Faculty Universitas Sumatera Utara, Medan, 20155, Indonesia

^{2;3} Law Faculty Universitas Indonesia, Depok, 16424, Indonesia

*Corresponding Author: hanifahazizah@students.usu.ac.id

ARTICLE INFO

Article history:

Received September 25, 2023

Revised October 23, 2023

Accepted December 04, 2023

Available online December 11, 2023

E-ISSN: 3026-0477

P-ISSN:

How to cite:

Azizah, Hanifah. et.al. (2023). Reversal of Burden Proof as a Reform of Criminal Law Eradicate Money Laundering. *Ultimate Journal of Legal Studies*, 1(2), 100-109

ABSTRACT

One of the efforts of the Indonesian government in reducing money laundering is to pay special attention in terms of proof, namely with the reverse proof system. Over time, the reversed proof system in the Corruption Law is still regulated even though the Corruption Law has undergone many changes. Although it has been included in positive law, in practice this proof is not applied thoroughly and there are still obstacles in its application. This research seeks to answer in what cases the reverse burden of proof is applied and what are the obstacles in its application. This type of research is normative juridical. The results of the study resulted in the merging of corruption cases with money laundering can be considered to provide its own advantages in handling corruption cases. More actors are ensnared including corporations. Maximum punishment, streamlining the return of state assets can impoverish corruptors. Legal culture that has not adapted to the new system, reverse evidence is not clearly regulated in the law.

Keywords: *Burden of Proof, Corruption, Criminal Law Reform, Money Laundering.*

ABSTRAK

Salah satu upaya pemerintah Indonesia dalam mengurangi money laundering adalah memberi perhatian khusus dalam hal pembuktian, yakni dengan sistem pembuktian terbalik. Seiring berjalannya waktu pengaturan sistem pembuktian terbalik pada Undang-Undang Tindak Pidana Korupsi tetap diatur walaupun dari perjalanannya Undang-Undang Tindak Pidana Korupsi mengalami banyak perubahan. Meskipun sudah dicantumkan didalam hukum positif, namun dalam praktiknya pembuktian ini tidak diterapkan secara menyeluruh serta masih ada hambatan dalam penerapannya. Penelitian ini berupaya menjawab dalam kasus apa saja beban pembuktian terbalik ini diterapkan serta apa saja hambatan dalam penerapannya. Jenis penelitian ini adalah yuridis normatif. Hasil penelitian menghasilkan penggabungan kasus korupsi dengan money laundering dapat dinilai memberikan keuntungan tersendiri dalam penanganan perkara korupsi. Lebih banyak aktor yang terjerat termasuk korporasi. Hukuman lebih maksimal, mengaktifkan pengembalian aset negara bisa memiskinkan koruptor. Budaya hukum yang belum beradaptasi dengan sistem baru, pembuktian terbalik tidak diatur secara jelas dalam undang-undang.

Kata Kunci: *Korupsi, Pembuktian Terbalik, Pembaharuan Hukum Pidana, Tindak Pidana Pencucian Uang.*



This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International.

(DOI: [10.32734/uljls.v1i2.13758](https://doi.org/10.32734/uljls.v1i2.13758))

1. Introduction

Based on Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, it is stated that the meaning of money laundering is any act that fulfills the elements of a criminal act by the provisions of this law. Regarding what is meant by the phrase “money laundering” until now there is no comprehensive definition or meaning. In the Indonesian state itself, the case of money laundering has been legally regulated in the Law of the Republic of Indonesia No. 8 of 2010 concerning the prevention and

eradication of money laundering crimes committed by corporations. Those that regulate the corporation can also be subject to criminal sanctions or penalties if it is proven that the proceeds of money laundering are used to carry out activities for seeking profit in the corporation's business. In general, money launderers do not really consider the results to be obtained and the costs involved. Because the main purpose of money laundering is to disguise or eliminate the origin of money. Then they can enjoy the results in the future. In Law No. 8 of 2010 regarding the crime of money laundering, it is determined that the corporate directorate mind is the corporate management itself, as long as the management has a functional position in the corporate organizational structure. (Ridha & Amal, 2021) To meet national interests and make adjustments to international standards is expected to serve as a legal foundation for ensuring legal certainty, the effectiveness of law enforcement, and the tracing and return of assets resulting from criminal acts. (Satrya et al., 2022)

Since 2013 Indonesia has criminalized 234 defendants for money laundering. Of that number, 43% of the original criminal offenses were corruption and 15% were related to narcotics. The rest are taxation and forestry or environmental crimes. Meanwhile in Malaysia, up to 2013, 821 money laundering offenses were decided, of which the largest criminal offense of origin was fraud (250 cases), followed by corruption (139 cases), taxation (125 cases), and others. (Azizah et al., 2023)

Money Laundering Legal Regulations in Law Number 8 Year 2010 In Indonesia, the regulations and rules that follow regarding the crime of money laundering were recently enacted:

1. Law No. 8 of the Republic of Indonesia, Year 2010, on the Prevention and Complete Elimination of the Practice of Money Laundering.
2. Law No. 8 of the Republic of Indonesia, Year 1981, on Criminal Procedure Law.
3. Republic of Indonesia Law No. 23 of 1999 Concerning Bank Indonesia.
4. Foreign Exchange Traffic and Exchange Rate System Law No. 24 of 1999.
5. Law of the Republic of Indonesia No. 31 of 1999 on Corruption Eradication, as amended by Law of the Republic of Indonesia No. 20 of 2001.
6. Mutually Beneficial Assistance in Criminal Matters Act No. 1 of 2006.
7. Law No. 6 of 2006 on The ratification of the International Convention on the Suppression of Terrorist Financing, 1999.
8. Law No. 7 of 2006 on Ratification of UN Conventions Against Corruption, 2003.
9. Witnesses and Victims Protection Act (Law No. 13/2006).

In the aspect of criminal code procedure, the law of proof is a provision that limits court proceedings to find and defend the truth; judges, public prosecutors, defendants, or legal advisors, are all bound by the provisions of the procedure and assessment of evidence stipulated by law.

They must not use their way of assessing evidence. If they use evidence, it must not conflict with the law. The defendant cannot defend something he deems true outside the provisions outlined by law. The panel of judges, in particular, must be aware and careful in assessing and considering the strength of the evidence found during the trial examination. If the panel of judges wishes to put the truth found in the decision, that truth must be tested with evidence, in a manner and with the strength of evidence attached to each evidence. Otherwise, the suspects will likely escape and innocent people to be punished. (Satrya et al., 2022)

Indonesia regulates ML in the Law on Prevention and Combating of Money Laundering Crime in Law No.8 Year 2010. Based on Article 2 of Law No. 8/2010 on the Prevention and Eradication of Money Laundering Crimes, the Main Crimes in ML include corruption, bribery, narcotics, psychotropic drugs, labor trafficking, migrant trafficking, banking, capital markets, and others. One of the Indonesian government's efforts to reduce Anti-Money Laundering is to pay special attention to evidence. That is, the proof of whether or not the defendant has committed the act charged is the most important part of a criminal proceeding. (Azizah et al., 2021)

There are several systems or theories for proving the act charged. These systems or theories of proof vary according to time and place (country). Indonesia, like the Netherlands and other Continental European countries, considers that it is the judge who assesses the evidence presented with his conviction and not the jury like the United States and Anglo-Saxon countries. In these countries, it is the jury, which usually consists

of lay people, that determines the guilt or innocence of a defendant. While the judge only presides over the trial and imposes a punishment (sentencing). Finding the material truth is difficult, as evidence, such as testimony, is vague and highly relative. Testimony is given by people according to psychologists, the testimony of an event that has just occurred by several people will vary. An experiment was conducted in a school in Sweden. The students were gathered in a class, then a guest entered the class for a moment and then left again. The answers were different when the students were asked what the guest was wearing. Some said blue clothes, some said gray clothes, and some even mentioned brown clothes. (Wiriadinata, 2012)

The Reporting Committee is also involved in the investigation of money laundering crimes, in addition to investigators and PPATK. The Reporting Party is any individual who is required to make a report to PPATK under Law No. 8 of 2010. Financial service providers (banks, financing firms, cooperatives that conduct savings and loan operations, pawnshops, and others) and providers of goods and/or services (property businesses/property agents, motor vehicle dealers, auction houses, and others) are examples of Reporting Parties. (Sumaryanto, 2019)

The burden of proof principle is used to prevent and eradicate money laundering crimes. Under Law No. 8/2010, there are special provisions regarding evidence for money laundering crimes, which deviate from the existing law of evidence in the Criminal Procedure Code. Normally, the burden of proof lies with the Public Prosecutor, but in money laundering cases, the burden shifts to the defendant. This is due to the urgency of the case. To prove money laundering charges, the prosecutor must present data on the defendant's financial profile, including salary, taxes, and evidence of financial transactions. These records are used to highlight suspicious financial transactions that do not align with the defendant's financial profile. This approach aims to tackle money laundering effectively. (Haswandi et al., 2017)

The process of inverting the burden of proof in money laundering cases does not always ensure that a defendant accused of money laundering can prove that his funds were not earned from criminal profits. If this occurs in the case:

- a. The judge could freely convict the defendant due to the problem of not being able to prove the origin of his wealth;
- b. That the use of the reversal of the burden of proof method in dealing with criminal money laundering cases, if not done properly, may result in a lack of law enforcement and upholding human rights (HAM). This is because reversing the burden of proof may disregard the defendant's fundamental rights, particularly to due process of law.
- c. The procedure of reversing the burden of evidence in Indonesia is still relatively new in practice. Furthermore, there have not been many court decisions that apply the reverse proof strategy, particularly in money laundering situations. This certainly makes it difficult for law enforcement officials (police, public prosecutor,s and judges) to implement the rules regarding the use of reversal of the burden of proof, especially for money laundering cases;
- d. Fourth: there are no legal provisions, especially procedural laws, that specifically regulate the use of reversal of the burden of proof that can be used as a reference for law enforcers so this method is difficult to implement;
- e. Theoretically, the use of the reversal of the burden of proof method makes it easier for public prosecutors to accuse someone even though it is not certain that the person has done what he is accused of. In this case, it is possible to make a mistake in accusing someone. Thus, a violation of the legal interests of any person accused is highly likely to occur. (Anggityas Ajeng, 2015)

For corruption cases that are investigated and prosecuted by law enforcers, law enforcers should use the money laundering law as an entry point to determine criminal sanctions against perpetrators and recipients of bribes, from corruption crimes, because large amounts of money or funds, used for bribery or corruption, have fulfilled the condition that such large amounts of money are the proceeds of corruption crimes. (Purnama, 2016)

Corruption is widespread in centrally managed governments such as the New Order. Power centralism always goes hand in hand with authoritarian regimes, so authoritarianism and corruption run parallel. Parallelism occurs because, in authoritarian regimes, transparency, checks and balances, participatio,n and control are

always manipulated to say nothing. If political opportunities exceed economic opportunities, then people will use power to enrich themselves, while if economic opportunities exceed political opportunities, then people tend to use wealth to buy political power (Hunting). That means, as Jame C. Scotttt said, corruption is related to the power a person has. The correlation between the form of change and the resolution of corruption cases and the prevention of new corruption can indeed be questioned. However, in many cases of change in various countries, it has been shown that when the change relies too much on the law, control over corruption is only an illusion. The current reforms rely too much on the law.

Such changes open up enormous opportunities for corruption perpetrators of the old regime era to take refuge and look for legal loopholes that can save themselves. Conversely, these loopholes were also exploited by adventurers from the new regime .As a result, an explosion of corruption is inevitabl e.(Hafidz, 2009)

The burden of proof in ML is expressly regulated in Articles 77 and 78 of Law 8/2010. As a subsidiary crime, of course, ML has a unique character. This distinctive character makes TPPU a special offense. ML becomes an offense that is different from other offenses in general because the regulation of ML is contained in a separate law specifically made to regulate this criminal offense. The provisions on evidence in the laws governing ML in Indonesia place the burden of proof on the defendant in the case of the crime. This burden of proof is known as the reverse proof process. In the reverse proof process, the presumption of innocence does not apply, but the principle that animates the provisions of such burden of proof is the presumption of guilt. Presumption of guilt is a principle that states that a person is presumed guilty unless proven innocent, so the burden of proof is on the suspect or accused (the person accused), not the Public Prosecutor (the accuser). (Adiwijana, 2020)

Money launderers do it through several stages, including placement, distributidistribution/transferring financial transactions, and using assets. Efforts to use assets that have appeared to be legal, either being enjoyed directly or invested in various forms of wealth.(Tiwari et al., 2020) Article 77 and Article 78 state that for examination in court the defendant is obliged to prove that his assets were not the proceeds of a criminal offense. The explanation of this article is quite clear, so the legal construction of this law mandates that the defendant is no longer "given the opportunity" in reverse proof, but is "obliged" to do so. This is the advantage of the new money laundering law over the old law.(Wibowo, 2018)

The process of money laundering consists of three stages: placement, layerin,g and integration. Placement is an initial entry of illicit money into the financial system. Layering is a process of separating the funds from their sources, often using anonymous shell companies. At the integration stage money returns to the criminals from legitimate-looking sources. In the lecturer's opinion, criminals legalize profits from various predicate offenses, such as drug trafficking, smuggling, trade in counterfeit goods, human trafficking, illegal arms trafficking, procurement fraud and corruption. It is very difficult to estimate the amounts of legalized proceeds. According to the lecturer, proceeds from illegal activities are integrateinthe oin financial system to make it appethebelongit belongs to legitimate sources. Corrupt officials hide the sources of funds by moving money where it is less likely tothe attract attention of law enforcement authorities. Anti-money laundering measures can be an effective instrument to combat corruption. Systemic analysis of financial floidentificof ations to identify transactions of corrupt officials and potential targets for anti-corruption investigations. Detection of money laundethe ring schemes includes identification ofand criminal infrastructure, service providewho help corrupt ,officials to hide, disguise and transfer illegal assets. The comprehensive investigation can simplify the following confiscation of illegal proceeds. Investigation of grand money laundering cases is usually a very complicated process. Investigators shall analyze a vast amount of legal and financial documentation, and economic analysis is just as important as criminal investigation. A serious obstacle for investigators is that records of money laundering service providers are usuallyshreds of evidencete. Moreover, some evidences, money, and suspects are often abroad, and success of the investigation depends on the level of international cooperation between law enforcement and judicial authorities. Investigation of grand money laundering cases related to corruption can be very se nsitive for various political powers.(*Preventing and Combating Corruption in the Judiciary*, 2016)

Reverse burden of proof and shifting burden of proof are two different concepts in the legal system. Shifting the burden of proof occurs when the burden of proving innocence is shifted to the defendant, who must provide

evidence to prove their innocence of the crime in question, such as corruption. The credibility of the defendant's testimony can either benefit or harm their case. There are two types of reverse proof systems: limited or balanced reverse proof system, and absolute reverse proof system. In a balanced reverse-proof system, even if the defendant is proven innocent, the Public Prosecutor still has to provide evidence of the defendant's guilt under certain conditions. On the other hand, in an absolute reverse-proof system, the defendant has the right (Abdullah & Hatta, 2022)

Indonesian scholar Yahya Harahap defines "proof" as provisions that contain guidelines on the methods justified by law to prove the guilt accused against the accused. J.C.T. Simorangkir defines "proof" as an attempt to convey many things to the judge dealing with a case. (Monang, 2017) This information will be the judge's reference for making a decision. (Andi, 2013) According to Martiman Prodjohamidjojo, the proof is a whole of the legal elements of proof interrelated and connected. It influences each other as a whole or unanimity. (Monang 2017)

Based on these experts' opinions, proof can be interpreted to find a criminal case's material truth by submitting evidence valid according to law. Theoretically, criminal procedural law concerns the existence of three systems of proof, namely Positief wettelijk stelsel, Negatief wettelijk stelsel, and Vrij stelsel (free system).¹⁰ The Criminal Procedure Code, as stipulated in Article 183, uses the Negative Wettelijk system, so that the judge's conviction becomes essential in addition to legal evidence. Criminal case examination according to the Criminal Procedure Code adheres to an accusatory system, so that it is the party who accuses the state of proving it, which in this case is represented by the Public Prosecutor as stipulated in Article 13.

The system of evidence in the history of the development of criminal procedural law shows that there are several systems or theories to prove the acts charged. This system or theory of proof varies according to time and place. Broadly speaking, there are four theories of proof or *bewijstheorie*, namely:

1. The theory of proof is based on the law positively (*positief Stedelijk bewijstheorie*) in which the judge is positively bound to evidence according to the law.
2. Theory of proof based on the judge's conviction (*conviction time*) which means mere conviction.
3. Theory of proof based on the judge's belief in logical reasons (*conviction raise*).
4. The theory of evidence based on the law negatively (*negatief wettelijk bewijstheorie*), which is generally adopted in the criminal justice system in Indonesia. The basis of proof according to the judge's belief arising from the evidence in the law is negative. The basis of this proof is expressly stated in *Article 183* of the Code of Criminal Procedure.

The regulation of burden of proof is regulated in Law 24/Prp/1960, starting from Law No. 3 of 1971 concerning the Eradication of Corruption Crimes (UU 3/1971) which also regulates the burden of proof evidence system which is regulated in Article 17. The burden of proof in criminal corruption cases is experiencing a new paradigm shift. There is a "shifting" of the burden of proof or "shifting of burden proof", rather than leading to "reversal of burden proof". In Law Number 3 of 1971 there is no formulation of the offense regarding the burden of proof. Furthermore, Law 31/1999 regulate the burden of proof in Article 37. (Jawade,2009) In Law 20/2001 burden of proof is also regulated in Article 12B, Article 37, Article 37A, and Article 38B (Erwin A, 2022) article 77 of the TPPU Law states that for a court examination, the defendant must prove that his assets are not the proceeds of a criminal act.

2. Method

This research uses normative legal research methods, namely scientific research procedures to find the truth based on scientific logic from the normative side. (Fitriah,dkk Normative legal research is a process for finding legal rules, legal principles, and legal doctrines to answer the problems faced. ⁴ Normative legal research is legal research that places law as a building system of norms regarding legal principles. Normative juridical method is used to examine positive TPPU law regulated in both countries namely Law no. 8 of 2010 and AMLAFTA 2001. Other sources on this topic are books, journals, opinions of legal experts and legal practitioners regarding money laundering crimes, seminar results, research results, and magazines. Tertiary legal materials, namely materials that are complementary to primary legal materials and secondary legal materials, such as Indonesian dictionaries, banking dictionaries various legal terms, and others. To address the research problem, three strands of legal materials were used including primary legal materials as the main

materials, secondary legal materials, and tertiary legal materials as complementary materials to both primary and secondary legal materials. Data obtained from research results, both primary data (field data) and secondary data (library data) are processed by using a qualitative juridical method that takes into account the hierarchy of legislation, legal certainty, and both horizontal and vertical legal harmonization. All these methods are relevant to the research topic as they allow for the inventory of applicable laws and regulations. They also allow for the discovery of legal principles and the efficient use and functioning of legal institutions. Finally, these methods also allow for the implementation of the appropriate level of synchronization of laws and judicial actions in the fight against corruption in Indonesia.

3. Result and Discussion

Reversed Proof in Order to Optimize the Asset Recovery in Corruption.

Associated with efforts to optimize the recovery of assets resulting from corruption. Corruption Law has an inverted evidentiary instrument. Basically, Corruption Law has regulated provisions on reversing the burden of proof of the acquisition of assets. In the event that the defendant can't prove that the wealth is not equal to his income or the source of his wealth, the information can be used to strengthen existing evidence that the defendant has committed a criminal act of corruption (Article 37 (4)). The provision of implicit proof of imposition in this Corruption Act is done in criminal proceedings and is linked to the criminal process itself. If the defendant is acquitted or declared free from any lawsuit from the principal case, the claim of appropriation of property must be rejected by the judge (Art.37B)

As for his property which has not been charged but allegedly derived from corruption crime then also must be proven otherwise. In the event that the defendant can't prove that the property was acquired not because of a criminal act of corruption, the property is deemed to be obtained from a criminal act of corruption and the judge has the authority to decide all or part of the property is seized for the state (Article 38 B Paragraph (1) 2) Corruption Law). If the defendant is acquitted or declared independent of any lawsuit from the principal case, the claim of confiscation of the property must be rejected by the judge (Article 38 B paragraph (6) of the Corruption Act).

Basically reverse proof is a form of deviation from the evidence in the Criminal Procedure Code. Nevertheless, the reverse proof still has a limited nature in which the Public Prosecutor is still required to prove the charges he submitted (vide Article 37 A paragraph (3) of the Corruption Act). So the law does not merely give the Defendant a chance to prove his innocence. The formulation of the reversed proof of corruption proof itself has undergone a refinement of the original formula, thereby showing a balanced character between the proofs and the legal consequences of the evidence for the Defendant himself. In principle, the philosophical dimension of the legislation policy applies existence of reversal of burden of proof in corruption is caused system by difficulties in Indonesia's criminal law system to prove the seizure of offender property when done by using the theory of negative proof. Consequently, there is a need for extraordinary biasa juridical and extraordinary legal instruments to be a system of burden reversal of proof so as to uphold the principle of presumption of innocence with regard to human rights.

In Indonesia, the suspect or defendant is not burdened with the obligation of proof because the Indonesian legal system adheres to the principle of presumption of innocence, the obligation of proof is for the public prosecutor. Therefore, the public prosecutor plays an important role in convincing the judge to decide based on the evidence submitted before the court session. In the ordinary burden of proof system, the method of using evidence applied is based on Law Number 8 Year applies 1981 concerning the Criminal Code Procedure (KUHAP) without exception, which is to prove all elements of a criminal offense by using evidence that refers to the minimum requirements of proof.

The burden of proof method in TPPU has currently been implemented by several countries, including Hong Kong, England, Malaysia and Singapore. The problem of the reverse burden of proof in its development has created a condition where certain cases, namely corruption, are permitted with different mechanisms by implementing a reverse proof system. (Aurasu & Rahman, 2016)

The reverse evidence method is an alternative to the law of evidence which is now seen as a powerful "legal means" to pursue assets resulting from crime and return them to the state. (Latief, Abdul 2012) It is seen that

the reverse proof method is often not applied in trials of corruption cases, so many corruptors' assets escape confiscation even though their assets are reasonably suspected to have come from the proceeds of criminal acts. (Suhartoyo,2019)

The significant difference between the evidentiary procedure of money laundering and general crime, in general, has a severe impact on the efforts to eradicate money laundering crimes. This impact is potentially beneficial and can also continue to affect the law's effectiveness and even the state's economic condition. Given that proof is the most critical stage in criminal law, law enforcement can maintain the reverse burden of proof properly, impacting the national economy. Its careful and appropriate application can protect the country's finances and the public economy. It also ensures legal certainty for the perpetrator in the case of the lifting of criminal sanctions.

If the burden of proof is accommodated in several laws and regulations but is still considered to be contrary to human rights aspects, especially regarding the principle of presumption of innocence, then can the burden of proof be applied to our legal system? If the burden of proof is applied to cases of misuse of State money (embezzlement, corruption, money laundering), then there is no reason to reject the application of this burden of proof. This can be confirmed for several reasons, among others (Firman Hermawan,2019)

In a comprehensive look through the historical approach of reverse evidence is actually not known in countries that adhere to the legal system of Civil Law or Common Law (Anglo Saxon). But in the end there are exceptions to the rules of the two systems, namely the regulation of the burden of proof burden of proof in cases of bribery or gratuity.(Fernandho, 2018)

First, state administrators have the obligation and responsibility to prove the assets they own before, while, and after taking office. This is regulated in the provisions of Law Number 28 of 2009 concerning the Administration of a State that is Clean and Free from Corruption, Collusion, and Nepotism, article 5 paragraph (3), which states that "every State administrator is obliged to report and declare assets before and after taking office."Thus, the burden of proof can be applied as an effort to prevent criminal acts of corruption and other misuse of state money. It should be remembered that this reverse burden of proof is required for someone who is attached to his obligations as a State administrator, not himself as a person.

Second, if we interpretaion act of misuse of State money as an extraordinary crime, then the principle of reverse burden of proof should be applied as an extraordinary method, even though it is contrary to the principles of the presumption of innocence. Legal logic (logic of law), is an important principle to strengthen this position. Where we can learn from efforts to eradicate corruption by establishing a State commission (read: KPK), with several authorities that are outside the rules of law in general. For example, prosecutorial authority, which previously was only the burden of prosecutors, but through Law Number 30 of 2010 concerning the Corruption Eradication Commission, the Corruption Eradication Committee (KPK) was given the authority to investigate, investigate and prosecute, as an extraordinary legal effort to cover the weaknesses of our prosecutorial institutions which tend to be infertile in resolve corruption cases (Article 6 letter c). Thus, we must also interpret efforts to impose a reverse burden of proof as an extraordinary legal effort in building a State administration system that is free from Collusion, Corruption, and Nepotism.

Third, the philosophy and basic nature of law is that it does not exist for itself, but the law exists to provide a sense of comfort and justice for humans. The issues of corruption, embezzlement, and laundering of state money committed by state administrators are criminal acts that have attacked the public's sense of justice. For this reason, legal rules that are status quo in nature need to be reviewed without relying on text rules alone. If the system of legal rules has obstructed the process of seeking justice in society, then we must find a way out by implementing the principle of reverse evidence as a form of legal compliance in our country. We must view legal progressiveness as a process of development and development of law which is not just a form of implementing rules, but as an embodiment of the basic essence of law as a means for humans to obtain complete happiness and justice.

There are three pillars of law enforcement apparatus in Indonesia in the context of the integrated criminal justice system, namely investigators (Police/ Prosecutors/ KPK), Public Prosecutors (Jaksa/KPK) and examiners and judges (Judges). These three law enforcement apparatuses are the state's tools for implementing the law. Good legislation has no meaning if it is not implemented by law enforcement officials, meaning that

if the law enforcement officials do not implement it well, then the intent of the legislation will not be achieved.(Adiguna, 2021)

The substance and law enforcement apparatus are not sufficient to run a legal system. The substance is the product produced while the apparatus is the machine that produces the product. Therefore, there is a need for a legal culture. A legal system that is not supported by a legal culture will mean that the law will not operate effectively. People's obedience and indifference to applicable rules or laws is always influenced by the indecisiveness of the applicable laws.(Suprijanto, 2017) However, this reversal of the burden of proof must be kept limited and it must be realized that there has indeed been a principle deviation in the law, so that, the application of a reversal of the burden of proof is not interpreted as a deliberate violation of human rights, but merely the eye is only an exception which is forced to be done with consideration of the existence of fundamental reasons so that the interests of the defendant are in the interest.(Soemarto, 2018)

To support the burden of proof, law enforcement officials from the investigation, and prosecution to court examination stages have implemented methods of tracing and disclosing assets so that they can confiscate assets obtained from criminal acts. This was confirmed by a prosecutor at the attorney general's level that in carrying out reverse evidence, law enforcement officers must have the capability or readiness of quality resources to be able to trace the origin of the perpetrator's wealth. (Wangga Maria, 2012)

The lack of understanding of TPPU by the public as regulated in Law Number 8 of 2010, according to R. Otje Salman, thinks that understanding the law to the public is an understanding of the content and objectives of certain laws, written and unwritten as well as the benefits for the parties whose lives regulated by these Regulations. In this case, understanding the law does not mean that a person must know that there is a written regulation that regulates a matter. (Limbong,2020) Community participation is implemented, among other things, in the form of the right to seek, obtain, and provide information regarding allegations that a criminal act of corruption has occurred.

It would be better if the burden of proof had been carried out during the investigation process so that investigators could act efficiently and effectively in carrying out the process of developing investigations into TPPU acts, not at the trial stage when examining the defendant. Corruption and TPPU disclosures will be easier if the proof stage is carried out in an integrated manner by law enforcement agencies, both from the Prosecutor's Office and the Courts, through integrated criminal balance and equality of power, namely a balanced and equal authority among law enforcers to reach an appropriate decision fair.

The progress technology makes it increasingly difficult to detect money laundering, for example from the various facilities offered, such as internet banking, and electronic fund transfers which can enable the movement of funds in a short time across national borders. Financial service providers' non-compliance in supporting the anti-money laundering regime in terms of the know your customer principle and the obligation to provide reports to PPATK (Financial Transaction Reports and Analysis Center) has been enforced on financial service providers, but not all of them comply with these regulations.

While the burden of proof might make law enforcement simpler in some situations, it can also create a variety of difficulties and conflicts. Here are some of the challenges related with using reverse proof: Violation of the Presumption of Innocence: In a burden of proof case, the burden of proof is sometimes shifted from the prosecution to the defendant. This is a breach of the fundamental premise of criminal law that a person is deemed innocent unless proven guilty. It might be unjust to saddle defendants with the responsibility of establishing their innocence.

Human Rights Barriers: The application of the burden of proof may be deemed a breach of human rights, particularly the right to a fair trial. Defendants may feel burdened by the job of demonstrating their innocence, which in certain situations might be difficult.

Lack of Error Protection: The burden of proof raises the possibility that defendants who are truly innocent may be convicted owing to their incapacity to establish their innocence. This is especially true in money laundering instances, which are sometimes sophisticated and convoluted. Subjective Thinking of Judges: In reverse evidence instances, judges may be forced to make subjective decisions regarding whether defendants have

demonstrated their innocence. This leaves possibility for different interpretations, which might lead to contradictory conclusions.

Legal confusion: The employment of the burden of proof can lead to legal confusion since defendants may be unaware of what they need to prove to prove their innocence.

Psychological Impact on the Defendant: When confronted with reverse evidence, defendants may incur significant psychological distress since they must prove their innocence in a case that should be the prosecution's burden.

The burden of proof is frequently a source of legal and cultural contention, since it substitutes generic rules of proof in criminal law with a more proactive and tailored approach to combating specific offenses. These challenges highlight the fundamental need of striking a balance in the judicial system between combating crime and preserving individual human rights.

4. Conclusion

There are three pillars of law enforcement apparatus in Indonesia in the context of the integrated criminal justice system, namely investigators (Police/ Prosecutors/ KPK), Public Prosecutors (Jaksa/KPK) and examiners and judges (Judges). These three law enforcement apparatuses are the state's tools for implementing the law. Good legislation has no meaning if it is not implemented by law enforcement officials, meaning that if the law enforcement officials do not implement it well, then the intent of the legislation will not be achieved.

References

- Abdullah, A., & Hatta, M. (2022). The Application of the Burden of Proof Concept in Indonesia: A Comparative Study. *Sasi*, 28(3), 458. <https://doi.org/10.47268/sasi.v28i3.1045>
- Adiguna, L. (2021). The Prosecutor's Authority to Conduct a Criminal Investigation Based on The Government Administration Law. *Administrative and Environmental Law Review*, 2(1), 11–20. <https://doi.org/10.25041/aclr.v2i1.2214>
- Adiwijana, M. R. (2020). Pembebanan Pembuktian dalam Tindak Pidana Pencucian Uang. *Media Iuris*, 3(1), 75. <https://doi.org/10.20473/mi.v3i1.18416>
- Anggityas Ajeng. (2015). Tinjauan Yuridis Beban Pembuktian Terbalik Pada Tindak Pidana Pencucian Uang Anggityas [Universitas Muhammadiyah Surakarta]. In *Nature Reviews Genetics* (Vol. 11, Issue 1). http://eprints.ums.ac.id/39629/1/NASKAH_PUBLIKASI.pdf
- Aurasu, A., & Rahman, A. A. (2016). Money laundering and civil forfeiture regime: Malaysian experience. *Journal of Money Laundering Control*, 19(4), 337–345. <https://doi.org/10.1108/JMLC-08-2015-0033>
- Azizah, H., M. Hamdan, M. H., Mulyadi, M., & Sunarmi, S. (2021). Analisis Pembuktian Terbalik Pada Tindak Pidana Pencucian Uang (Studi Putusan MA NO. 1454 K/PID.SUS/2011; PUTUSAN MA NO. 537 K/PID.SUS/2014; PUTUSAN MA NO. 336 K/PID.SUS/2015). *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 4(1), 80–87. <https://doi.org/10.34007/jehss.v4i1.588>
- Azizah, H., Santoso, T., Husein, Y., Mulyadi, M., & Sofian, A. (2023). *Follow Up Crime dalam Tindak Pidana Pencucian Uang di Indonesia dan Malaysia Follow Up Crime in Money Laundering in Indonesia and Malaysia*. 7(1), 85–98.
- Fernandho, D. (2018). Laundering Dengan Predicate Crime Tindak Pidana Korupsi. *Jurnal Litigasi*, 19(2), 148–162.
- Hafidz, J. (2009). Efektifitas Pelaksanaan Sistem Pembuktian Terbalik Terhadap Perkara Korupsi Dalam Mewujudkan Negara Hukum Di Indonesia. *Majalah Ilmiah Sultan Agung*, 44(118), 39–64. <https://media.neliti.com/media/publications/219885-none.pdf>
- Haswandi, Mulyadi, L., & Budi Suhariyanto. (2017). *Sistem pemidanaan terhadap pelaku tindak pidana pencucian uang*.
- Preventing and combating corruption in the judiciary*. (2016). November.
- Purnama, C. (2016). Analisis Hukum Penggabungan Perkara Korupsi dan Money Laundering dalam Sistem Peradilan Pidana di Indonesia. *USU Law Journal*, 4(1), 14–25. <https://media.neliti.com/media/publications/14294-ID-analisis-hukum-penggabungan-perkara-korupsi-dan-money-laundering-dalam-sistem-pe.pdf>

- Ridha, M., & Amal, H. (2021). Contribution of Islamic Law in Tackling Money Laundering Crimes in Indonesia. *International Journal Reglement & Society (IJRS)*, 2(1), 24–34. <https://doi.org/10.55357/ijrs.v2i1.84>
- Satrya, A., Nugroho, B., & Supolo, S. (2022). Tindak Pidana Pencucian Uang Terhadap Perjudian Online. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 4(2), 287–296. <https://doi.org/10.37680/almanhaj.v4i2.1863>
- Soemarto, S. (2018). The Reconstruction of the Reversal of the Burden of Proof Verification in Corruption Delict. *International Journal of English Literature and Social Sciences*, 3(5), 732–745. <https://doi.org/10.22161/ijels.3.5.7>
- Sumaryanto, D. (2019). Harmonisasi Pembalikan Beban Pembuktian Tindak Pidana Korupsi. *Supremasi Hukum: Jurnal Penelitian Hukum*, 28(2), 108–122. <https://doi.org/10.33369/jsh.28.2.108-122>
- Suprijanto, A. (2017). *LEGAL CULTURE IN MULTICULTURALISM AND ITS ROLE IN*. 1(1).
- Tiwari, M., Gepp, A., & Kumar, K. (2020). A review of money laundering literature: the state of research in key areas. *Pacific Accounting Review*, 32(2), 271–303. <https://doi.org/10.1108/PAR-06-2019-0065>
- Wibowo, M. H. (2018). Corporate Responsibility in Money Laundering Crime (Perspective Criminal Law Policy in Crime of Corruption in Indonesia). *Journal of Indonesian Legal Studies*, 3(2), 213–236. <https://doi.org/10.15294/jils.v3i02.22740>
- Wiradinata, W. (2012). Pembalikan Beban Pembuktian Pada Tindak Pidana Korupsi (Reversal Burden Of Proof On Corruption). *Legislasi Indonesia*, 9(2), 315–332.