

IMPLICATIONS OF REVERSE PROOF AS AN EFFORT TO ERADICATE CRIMINAL ACTS OF CORRUPTION AND RETURN STATE ASSETS

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Abstract

The crime of corruption is a large and systemic problem and is also a legal issue involving a type of crime that is complicated to overcome. One of the reasons why it is difficult to eradicate corruption is the difficulty of proving it, because the perpetrators of this crime carry out their crimes very neatly. To solve the problem of the difficulty of proving criminal acts of corruption, one of the efforts that can be taken by the government through penal means is to apply reverse evidence to corruption cases. The return of state assets corrupted by the perpetrators must be the main focus, considering that the losses and damage caused are very miserable for the people. For this reason, in connection with the description of the problem above, the author is interested in studying the dynamics of the problem of evidence in cases of criminal acts of corruption which in the end can restore maximum state assets. In this research, the method used is a normative legal research method with a literature study approach with a focus on legal studies which is linked to the effectiveness of reverse evidence. The results of the research are that the evidence in the corruption trials of the four corruption cases has referred to the dimension of mutual proof or balanced evidence between the Public Prosecutor and the defendant, but has not yet maximally applied limited and balanced reverse evidence. So the evidence applied is evidence of a general nature and is based on the theory of negative evidence based on law (*negatief wettelijk bewijstheorie*), which is regulated in Article 183 of the Criminal Procedure Code.

Keywords : Corruption, Reverse Evidence, Return of State Assets

INTRODUCTION

The high rate of corruption is one of the social events that often occurs in Indonesia. This phenomenon has had a significant impact on the level of public trust in the effectiveness of the law and criminal justice system in this country. Corruption crimes involve various forms of actions, such as causing harm to state finances, bribery, embezzlement, marketing, fraud, conflicts of interest in the procurement of government goods and services, and bribery practices. To overcome the problem of corruption, law enforcement officials, especially the Prosecutor's Office and the Corruption Eradication Commission, must work with full dedication. In terms of law enforcement, especially in handling acts of corruption, strong evidence plays a very important role at the trial stage. The trial process will reveal facts that can help determine whether someone accused of corruption can be proven guilty or not.

The crime of corruption (Tipikor) which has been rampant in the country so far has not only harmed the State Finances or the State Economy, but has also constituted a violation of the social and economic rights of the community, hampering the growth and continuity of national development to create a just and prosperous society. Corruption can no longer be classified as an ordinary crime, but has become an extraordinary crime (General Explanation, 2002). Conventional methods that have been used so far have proven unable to solve the problem of corruption in society, so handling it must also use extraordinary methods (Arief, 2006).

One method to prove someone's guilt in a corruption case is to apply reverse evidence. This principle of reversing the burden of proof is a system that is different from the theoretical standard of proof in universal criminal procedural law, including the continental and Anglo-Saxon systems which generally determine the public prosecutor as the party responsible for proving the defendant's guilt. However, in certain cases, a different mechanism is applied, namely the *Reversal of Burden Proof System*. Efforts to overcome criminal acts of corruption in Indonesia have not been carried out comprehensively and are often limited to minimal actions, without causing the risk of violating the basic rights of victims, defendants, society and the country as a whole. The idea of implementing the principle or system of reverse evidence in Indonesia has actually existed since the reign of President Abdurrahman Wahid when he provided input on Memorandum I of the DPR during his term of office. Considering that criminal acts of corruption are considered "extraordinary crimes" or what are often referred to as "*Extraordinary crimes*," which are difficult to prove and controversial, some scholars and legal practitioners argue that punishment should be carried out in an unusual way. Therefore, criminal acts of corruption, apart from being controversial because of their special and serious nature, also require extraordinary law enforcement measures or what is often referred to as "*Extra ordinary enforcement*" which means unconventional handling.

In the context of the description above, the discussion focuses more on the importance of evidence in the law enforcement process related to criminal acts of corruption, as well as the role of evidence in determining whether the defendant is guilty or not. However, there is no specific discussion regarding the burden of proof of rebuttal or the application of reverse proof in cases of criminal acts of corruption. To focus more on these topics (Hukumonline, 2024).

The legal system and law enforcement that run are inseparable components, and these must collaborate well. Even though law has various legal regulations that regulate its content, without the support of the existence of law and the diversity of legal culture that continues to develop in society, all of this will be ineffective.

The effectiveness of law enforcement depends greatly on the characteristics of the law, the structure of regulatory institutions, and legal culture. Legal validity theory indicates that the success of a law is influenced by five main factors. These factors include the intrinsic nature of the law itself, the competence and integrity of the law implementers who created it or implemented it, the availability of means and facilities that support the implementation of the

law, the social conditions in which the law is applied or enforced, and cultural factors, which include the results of works, creativity, and the emotions that underlie individual intentions in the context of society. All of these factors will be interrelated and become the core of effective law enforcement. The success of the part of written law that operates by having a positive impact on both the content and content of the regulations themselves.

An alternative to proving corruption that is relatively adequate and legally available is to use the theory of balanced inverse burden of proof (*balanced probability of principles*). This theory is more in line with the evidentiary system recognized by criminal procedural law in Indonesia and prioritizes a proportional balance between protecting individual liberty on the one hand, and deprivation of individual rights on the other hand. Concretely, placing corruption perpetrators in charge of their actions or mistakes should not be based on the principle of pure inverse burden of proof but should still be based on the principle of "*beyond reasonable doubt*" because the protection of individual rights is placed highest against the deprivation of a person's freedom. Thus, for the wrongdoing of perpetrators who are suspected of having committed corruption, they still use criminal procedural law (*criminal procedure*) with negative evidence or *beyond reasonable doubt*. In practice, the application of this theory in criminal acts of corruption has been carried out by many countries in prosecuting perpetrators of corruption and effectively by paying attention to the rights of the defendants (Widodo, 2021).

The return of state assets corrupted by the perpetrators must be the main focus, considering that the losses and damage caused are very miserable for the people. For this reason, in connection with the description of the problem above, the author is interested in studying the dynamics of the problem of evidence in cases of criminal acts of corruption which in the end can restore maximum state assets.

RESEARCH METHODS

Research methods are basically a way to obtain data with specific purposes and uses, because through research it can be used to understand, solve and anticipate problems (Sugiono, 2007). In this research, the method used is a normative legal research method with a literature study approach with a focus on legal studies which is linked to the effectiveness of reverse evidence. In various study caused blurriness implementation laws and regulations so that need used approach *statutory approach*, *conceptual approach*, as well as *analytical approach* For answer existing problems. On the other hand, this research method also adheres to normative legal research with a literature study approach, namely research carried out by examining literature on documents related to the title of this research. Techniques for searching legal materials, legislation, books and international articles using document study techniques, with study analysis using qualitative analysis (Ali, 2009).

RESEARCH RESULT

Reverse Evidence in Corruption Criminal Cases

For the first time in the history of criminal justice, reverse evidence was applied. That is what happened in the case of Bahasyim Assifie, a former tax official. On February 2 2011, the South Jakarta District Court sentenced Bahasyim to 10 years in prison. Bahasyim was also sentenced to pay a fine of IDR 250 million (subsidiary of three months in prison). The court ordered that Bahasyim's assets worth IDR 61 billion and US\$ 681 153 be confiscated to the state.

According to the panel of judges chaired by Didik Setyo Handono, Bahasyim was proven to have accepted bribes. Bahasyim was declared to have violated Article 11 of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, which is an amendment to Law Number 31 of 1999. Bahasyim was also declared to have violated Article 3 paragraph 1 letter a of Law Number 15 of 2002 concerning the Crime of Money Laundering. I don't know how

Bahasyim's case will proceed in the appeals court, or even if it will eventually go to the Supreme Court. What is certain is that the decision in this case will be very meaningful for efforts to eradicate corruption, especially in realizing good governance, as demanded by reform in 1998, which was confirmed, among other things, through Law Number 28 of 1999 concerning the Administration of a State that is Clean and Free from Corruption, Collusion, and Nepotism.

The decision in the Bahasyim case will be very significant for efforts to eradicate corruption, because the process of handling the case uses "reverse evidence" (reversal of the burden of proof). This method, which is relatively new in the history of criminal justice in Indonesia, should also be applied to the case of former tax officer Gayus HP Tambunan. Moreover, Gaius is suspected of not only committing corruption, especially bribery or gratification, but also money laundering, taxation and passport forgery.

Apart from the cases of Bahasyim and Gaius Tambunan, reverse evidence should also be applied, for example, in the case of "fat accounts" of a number of police officers, which was revealed some time ago. Likewise, the case of suspicious accounts belonging to 42 tax officials was revealed last week by the Financial Transaction Reports and Analysis Center (PPATK). A total of 42 accounts are known to have had financial transactions of IDR 500 million to IDR 7 billion. There is even an account with a fantastic transaction value, namely IDR 27 billion. PPATK also reported a number of Customs and Excise employee accounts with suspicious transactions of IDR 500 million to IDR 5 billion. One of the accounts was even suspected to have total transactions of up to IDR 41 billion.

It is hoped that the handling of suspicious account cases reported by PPATK will be followed up seriously by law enforcement officials. Don't let the "bad history" of handling the Bahasyim and Gayus Tambunan account cases, which also came from the PPATK report, be repeated. In the past, the case of Bahasyim's account was only investigated by the police months later. Even the handling of the Gaius Tambunan account case has recently had the smell of "legal mafia". This was also discovered after the former Head of the Criminal Investigation Agency at the Indonesian Police Headquarters, Commissioner General of Police Susno Duadji, "singed".

In fact, the cases of Bahasyim, Gaius Tambunan, and the other cases mentioned above are only small mosaics that have been revealed to the surface. It is not impossible, there are many more cases of accounts of civil servants, BUMN/BUMD employees, as well as state administrators, both in the executive, judicial and legislative environments, which are suspected to come from the proceeds of corruption, or at least their assets are estimated to be very disproportionate to their income. or official source of income.

The various cases above point more towards the possibility of bribery offenses, which are part of a group of criminal acts of corruption. So far, bribery as the most common act of corruption has proven to be the most difficult to eradicate. This development also increasingly shows that corruption has become an extraordinary crime because it occurs systematically and is widespread. Therefore, eradicating corruption must be carried out in extraordinary ways. One way is to apply reverse proof (Mochtar, 2006).

Reverse proof is a new pattern proof system applied in Anglo Saxon countries. This theory has been successfully practiced in several countries, including Hong Kong, England, Malaysia and Singapore. It is called new, because the reverse evidence system means that the burden of proof is on the defendant. It is the defendant who must prove that he did not commit a crime. The reverse evidence system is different from the evidence system currently in effect, based on the Criminal Procedure Code (KUHAP). According to Article 137 of the Criminal Procedure Code, the public prosecutor must prove whether the defendant committed a criminal act. Meanwhile, Article 66 of the Criminal Procedure Code states that the suspect or defendant is not burdened with the burden of proof

The system of reversing the burden of proof has been adopted in Law Number 20 of 2001.

According to this law, reverse proof is applied to new criminal acts regarding gratuities (giving), which are related to bribery (Article 12B paragraph 1) and to claims for confiscation of the defendant's property, allegedly stemming from one of the criminal acts in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law Number 31 of 1999, as well as Articles 5 to Article 12 of Law Number 20 of 2001. Law This also details the broad meaning of gratification. So, gifts such as commissions, gratuities, rewards, gifts, "tribute", even illegal levies, can fall within this definition. Even if there are different forms or interpretations regarding gratuities, the explanation of Article 12B paragraph 1 already accommodates them with the words "and other facilities" (Mochtar, 2006).

Based on the reverse evidentiary system, the defendant has the right to prove at trial that the gratification worth Rp. 10 million or more he received was not a bribe. The defendant also has the right to prove that his assets, including the assets of his wife or husband, children and the assets of any person or corporation suspected of having a connection with the case, do not originate from corruption. This protection for the defendant's rights can be said to be a guarantee of balance because, according to reverse evidence, the defendant has been deemed to have committed corruption.

What needs to be underlined is that the reversal of the burden of proof is applied in the court process, not at the investigation or prosecution stages. Therefore, investigators or public prosecutors must be professional in processing and deciding on "sufficient preliminary evidence" that the suspect or accused is suspected of committing corruption, including in the process of confiscating the suspect's assets. For this reason, the application of reverse evidence will be effective if law enforcement officials, whether police, prosecutors, Corruption Eradication Commission (KPK) or judges, are truly clean, authoritative and professional.

This is all from the aspect of eradicating corruption through legal action. In fact, reverse proof contains more of a preventive aspect so that all state officials do not commit corruption, and implement good governance, which from the beginning of reform until now has apparently still been far from expectations. Thus, civil servants, BUMN/BUMD employees, as well as state administrators, if based on sufficient preliminary evidence it turns out they have wealth that is disproportionate to their income or source of income, are obliged to prove that the wealth they obtained was legitimate or not the result of corruption (antikoburu.org).

The problem of proof in criminal acts of corruption is indeed a complicated problem, because the perpetrators of these criminal acts of corruption carry out their crimes neatly. The difficulty of proving this corruption case is a challenge for law enforcement officials. Seeing the difficulties faced in handling cases. Corruption criminal acts, various legal breakthroughs have been carried out, especially in terms of establishing statutory regulations considering that the regulations regarding criminal acts of corruption have not been regulated in the Criminal Code, so it is time for the principles contained in the Criminal Procedure Code to be studied and thought about more deeply, especially in anticipating developments in the times and society. Future (Akub, dkk, 2012).

The issue of corruption is not yet regulated in the Criminal Procedure Code, so it is regulated separately in statutory regulations so that it is also known as a special criminal act. Due to its unique nature, the issue of corruption regarding the application of its principles also has special characteristics relating to material and formal criminal law. Regarding this issue of corruption, the Indonesian government has enacted laws, namely RI Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with RI Law Number 20 of 2001 concerning Amendments to the Law for Eradicating Corruption Crimes which is the basis for criminal punishment of perpetrators of criminal acts (Yamin, 2012). Corruption, contains various criminal threats for perpetrators of criminal acts of corruption. Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Law Number 20 of 2001 is an answer to the demand for the need for a juridical basis for eradicating criminal acts of

corruption today. This law is an anti-corruption legal product that was born in the reform era, as a form of confidence in implementing the main reform agenda, namely the implementation of the rule of law, including fighting the practices of corruption, collusion and nepotism that plagued this country in the previous regime. The presence of Law Number 20 of 2001 is an amendment to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes so that the two are one unit. In the General explanation of this Law, the formal and material unlawful nature of criminal acts of corruption are:

" That an act is said to be against the law, in a formal and material sense, if the criminal act of corruption includes acts that are outrageous, according to the sense of justice of the community, they must be prosecuted and punished."

The considerations for the legislators to include elements of unlawfulness in formal and material terms in this Law are: First, considering that corruption occurs systematically and widely, not only harming the state's finances and economy, but also a violation of the social and economic rights of society at large. , so that it is classified as *an extra ordinary crime* , its eradication must be carried out in an extraordinary way. Second, the impact of acts of corruption has been detrimental to the country's finances and economy, also hindering the growth and continuity of national development which demands high efficiency, and Third, in an effort to respond to developments in legal needs in society so that data makes it easier to prove, so that it can cover various modes of financial irregularities or the country's economy is increasingly sophisticated (*sophisticated*) and complicated (Chaerudin).

One of the things that is specific in this law is regarding the burden of proof, where as part of formal criminal law there has been a paradigm shift regarding this matter which has started since the enactment of Law no. 3 of 1971 and Law No. 31 of 1999, namely the existence of reverse evidence. Reviewed from perspective policy formulative, burden proof backwards This done Because follow criminal corruption as containing provisions preference special. Therefore That with he determined proof backwards Here, shift burden proof from prosecutor prosecutor general to defendant (Chazawi, 2002).

Proof backwards arranged in Article 37 of Law Number 31 of 1999 concerning Eradication Criminal act Corruption. In the General Explanation Section, it is stated that proof backwards nature limited or balanced, that is defendant have right for prove that He No do follow criminal corruption and compulsion give information about all over treasure objects and possessions object wife or husband, children and property object everyone or alleged corporation have connection with the case in question, and the prosecutor general still obliged prove the indictment.

Burden of Proof System Special case Corruption, as is known refers to the system burden deep (general) proof case follow criminal placed on the burden of the Public Prosecutor. Act Criminal Corruption (TPK) is exception and have characteristic specifically related with Criminal Law Material nor Formal (Crime, 2019). Alternative proof proposed and initiated by thinkers in developed countries according to Oliver is, the theory of " balance. "possibility proof" (*balanced probability of principles*), that is put forward proportional balance between protection independence individual in one side, and usurpation right the individual concerned on treasure his alleged wealth strong originate from corruption.

New model principle proof backwards This addressed to disclosure in a way complete origin suggested suspected assets from results corruption That alone, with put right on riches personal someone at a very low level, would but in a way simultaneously put right independence of the person concerned at a very high and equal level very No can violated. Concretization from principle This is Good Public Prosecutor and defendant or advisor the law each other prove it up front hearing court. Prosecutor general will prove error defendant,

meanwhile on the contrary defendant along with advisor the law will prove on the contrary that himself No proven in a way valid and convincing guilty do follow the crime charged.

Addition provision regarding "proof upside down " nature ' *premium remidium* " and at the same time contain characteristic prevention special to civil servants and state administrators, so that they are clean and free from corruption, collusion nepotism. So you can concluded that system reversal burden proof of course No applied in a way pure to all type follow criminal corruption, however only limited and balanced applied to follow related crimes with gratification. Application in a way pure or absolute reversal burden proof only applied special in matter gratuities received by civil servants or state administrators. If given the No relate with position and opposite with obligation or his task as well as report treasure riches state administrators, where state administrators must prove that his wealth That obtained in a way valid.

Reversal burden proof is deviation principle general (*reserve burden of proof or omkering van het bewijslast*) law stated crime that goods whoever demands, he is the one who must prove truth his demands. In case of ' reversal burden proof ', it is the defendant who must prove that himself No guilty, if No can prove it so He considered guilty. As deviation so principle This only applied to things certain (*cartein cases*) which are related with offense corruption specifically to offense new about giving (*gratification*) and related matters with bribery (*bribery*).

Regulation legislation Already OK, then its implementation must improved and made effective its use, esp reversal burden proof This in handle things corruption. So that the judge may be in determine defendant guilty based on reversal burden proof attempted so There is tools sufficient evidence conditions determined by law in order to be able to become base.

Reverse evidence based on a doctrinal and comparative approach to criminal law systems is limited to confiscation. Proof of alleged violations in Articles 2 to Article 16 of Law Number 31 of 1999 is still provided to the Prosecutor. Based on the indictment, the prosecutor was found guilty of committing an offense and his property would be confiscated. The status of the assets must be proven by the defendant to be of provenance and not to be the result of a criminal act of corruption. The application of limited reverse evidence cannot be carried out under the provisions of the *Lex Temporis principle* (retroactively) because it is possible that it will cause violations of human rights, the principle of legality, and give rise to the principle of *Lex Talionis* (revenge) (Wiriadinata, 2013).

MODEL FOR EFFECTIVE AND EFFICIENT RETURN OF STATE ASSETS

Furthermore, what is meant by Recovering State Financial Losses is a step taken by law enforcement officials in their efforts to act as guardians of laws and regulations as well as hunters for state financial losses as a result of criminal acts of corruption. Understanding state financial losses must begin by first understanding the meaning of state finances. There are quite a lot of variations in the definition of state finance, depending on the emphasis on a particular issue in the definition given by experts in the field of state finance. Below are some definitions of state finances (Tjandra, 2006).

According to M. Ichwan, state finance is a quantitative activity plan (with figures expressed in currency amounts), which will be carried out for the future, usually one year from now. According to Geodhart, state finances are all laws that are established periodically which give the government the power to carry out expenditures regarding the period and indicate the financing tools needed to cover these expenditures. Elements state finances are in decline Geodhart includes:

- a. Periodic;
- b. Government as perpetrator budget;

- c. budget includes two authorities, namely authority expenditure and authority For dig sources financing For close related expenses, and
- d. Form the state budget is form something Constitution.

According to Glenn A Welshch, *Budget* is something form *Statement* from plans and wisdom management used in something period certain as instruction or deep *blue print* period That. According to John F Due, *Budget* is something plan finance For something period time certain. *Government Budget* (budget shopping government) is status statement about expenditure or proposed spending and receipts for the future together with actual expenditure and receipt data For period future and past periods past .

This definition contains the following elements:

- a. expenditure budget containing financial data regarding expenditure and receipts from previous years;
- b. the proposed amount for the coming year;
- c. estimated amount for the current year;
- d. plan finance the For something period certain .

According to Otto Ekstein, Budget shopping is something statement detailed about expenditure and receipt government For time One year . According to van der Kemp, state finances are all available rights assessed with money so does everything something (good in the form of money or goods) that can be made related state property with rights the .

In connection with understanding state finances according to John F Due above , arise impression equalize understanding state finances with budget (*Budget*). Reviewed from position state budget in state administration p That can understandable, but if linked with Budget State Revenue and Expenditure (APBN), Muschan more clarify connection between both of them. Muschan state that the state budget is the core of state finances because the state budget is tool mover For carry out use state finances. Almost opinion The same put forward by Handayaningrat that budget shopping is something plan, is estimation about What will done in the future come (Soewarno, 1982).

According to Article 1 paragraph (1) of Law no. 17 of 2003 concerning State finances, that All the rights and obligations of the state that can assessed with money too all something, okay in the form of money or form things you can made related state property with implementation rights and obligations the. The approach used to formulate a stipulative definition of state finance is in terms of objects, processes and objectives.

In terms of objects, state finances include all rights and obligations that can be valued in money, including policies and activities in the fiscal, monetary and management of separated state assets, as well as everything, whether in the form of money or goods that can be made into state property in relation to with the implementation of these rights and obligations

From the subject side, state finances include all objects as mentioned above that are owned by the state and/or controlled by the central government, regional governments, state/regional companies, and other bodies that are related to state finances. From a process perspective, state finances cover the entire series of activities related to the management of objects as mentioned above, starting from policy formulation and decision making to accountability. In terms of objectives, state finances include all policies, activities and legal relations related to the ownership and/or control of objects as mentioned above in the context of administering state government. The very broad field of state financial management is grouped into several sub-sectors, namely the fiscal management sub-sector, the monetary management sub-sector, and the separate state wealth management sub-sector.

The definition of state finance adopted by the State Finance Law uses a broad approach, with the aim of:

- a. there is a careful and thorough formulation of the definition of state finances to prevent multiple interpretations in terms of budget implementation;

- b. in order not to happen state losses as consequence weakness in formulation Laws , and
- c. clarify the law enforcement process if maladministration occurs in the management of state finances.

According to Article 2 of the State Finance Law, the scope of state finance includes:

- a. the state's right to collect taxes, issue and circulate money, and make loans;
- b. the state's obligation to carry out public service duties of the state government and pay third party bills;
- c. recipient ;
- d. state expenditure ;
- e. reception area ;
- f. expenditure area ;
- g. managed state / regional assets Alone or by other parties in the form of money, letters valuables , receivables , goods , as well as other possible rights assessed with money, incl assets separated from state / regional companies ;
- h. riches the other party is controlled government in frame maintenance task government and/ or interest general ;
- i. wealth of other parties obtained by using facilities provided by the government.

Of the nine objectives mentioned above, there are two things that are very essential to this writing, namely state/regional revenues and state/regional expenditure. why revenue and expenditure are so essential to the discussion in this chapter is because when state revenues (through Tax, Fiscal and Monetary, Fines, etc.) violations or crimes can occur so that state revenues are not optimal, and when state expenditures (through program implementation work, etc.) there could be violations or crimes (budget inflation/ *Mark Up*).

These nine groups of definitions of state assets have caused the definition of state assets that must be examined by the Supreme Audit Agency (BPK) to become very broad, including the wealth of other parties obtained by the parties concerned using facilities provided by the government. In fact, the assets of other parties controlled by the government in the context of carrying out government duties and/or public interests are also categorized as government assets which must be examined by the BPK (Asshiddiqie, 2004).

After knowing about state finances, we will then explain state financial losses, which originate from reduced state finances as a result of criminal acts and/or maladministration. State financial losses are basically losses related to state assets, whether separated or not, (APBN/APBD, ABUMN/ABUMD, etc.) including the finances of an entity or legal entity that uses capital or concessions from the state or society. for social, humanitarian and other interests. In Law 3 of 1971 concerning the Eradication of Corruption the word "State Finance" is contained in Article 1 paragraph (1) letters a and b.

The explanation of Article 1 paragraph 1 letter a determines that "State Finance as intended by this Law also includes the finances of a region or a body/legal entity that uses capital or concessions from the State or the community with funds obtained from the community for humanitarian purposes. Social and others. Excluded from state finances in this law are finances from legal entities whose entire capital is obtained from the private sector, for example limited liability companies (PT), firms, CVs, etc.

State financial losses can occur at 2 stages, namely at the stage that funds will enter the State Treasury and at the stage that funds will leave the State Treasury. At the stage where funds will enter the state treasury, losses can occur through: Tax Conspiracies, fines conspiracies, conspiracies to return state losses and Smuggling, while at the stage where funds will leave the state treasury, losses occur due to: *Mark Up*, Corruption, implementation of activities that are not appropriate with programs etc. What is meant by acts that can harm the State's economy are criminal violations of regulations issued by the government within its area of authority.

Article 23 paragraph (4) of the 1945 Constitution states that "State financial matters shall be further regulated by law". This means that what is the material of the Law in question is not matters of state finances which are regulated in paragraphs (1), (2), (3), and (5) of Article 23 of the 1945 Constitution. Because what is meant by paragraph (4) above is the management and responsibility of state finances only, then the definition of state finances according to paragraph (4) is the same as the provisions or sound of paragraph (1) of Article 23 of the 1945 Constitution, namely the State Revenue and Expenditure Budget (APBN).

If we refer to the description above, then state finances outside the APBN are not included in the scope of the definition of state finances, meaning they are not in accordance with the realities of state life. In fact, according to paragraph (4) of Article 23 of the 1945 Constitution, what is meant by state finances covers a wider scope than just the management and responsibility of state finances. In this case, it also covers all matters relating to state finances that are outside the APBN, taxes, types and prices of currency as well as audits of financial responsibilities by the Financial Audit Agency (BPK), as intended and regulated in paragraph (1), (2), (3), and (5) Article 23 of the 1945 Constitution.

The issue of "state finance" as intended by paragraph (4) of Article 23 of the 1945 Constitution, includes:

- a. State money in cash;
- b. State money in form letter valuable ;
- c. Rights and Obligations that can be assessed with money too all something that can made state property , in connection with implementation rights and obligations the ;
- d. Payables and Receivables the ;
- e. Management and accountability as well as supervision state finances , outside scope paragraph (5) of the 1945 Constitution.

Thus, in essence, the definition of state finances in Article 23 of the 1945 Constitution includes:

All state assets, whether separated or not, include the following:

1. State Revenue and Expenditure Budget;
2. Budget of State-Owned Enterprises;
3. Regional Revenue and Expenditure Budget;
4. Regional Owned Enterprise Budget;
5. Other state finances sourced from and originating from the APBN, including foreign exchange owned by the state.

The scope of the definition of state finances as intended by Article 23 of the 1945 Constitution, has been further expanded by Article 1 sub a of Law 3/1971 concerning the Eradication of Corruption Crimes, that state finances as intended by this Law also include the finances of a Region or an agency or agency. law that uses capital or concessions from the state or society with funds obtained from that society for social, humanitarian and other purposes

According to the State Finance Law, in Article 1 paragraph (1) "State Finance is all the rights and obligations of the state that can be valued in money, as well as everything in the form of money or goods that can be made property of the state in connection with the implementation of these rights and obligations", whereas according to Article 3 paragraph (1) it is stipulated that "State Finances are managed in an orderly manner, in compliance with statutory regulations, efficiently, economically, effectively, transparently and responsibly by paying attention to a sense of justice and propriety"

According to Law 15/2004 in Article 3 paragraph (1) it is stated that "Examination of the management and responsibility of state finances carried out by the BPK covers all elements of state finance" as intended in Article 2 of the State Finance Law. Entire element finance as intended is in Article 2 of the State Finance Law .

Implications Of Implementing Legal Policies Reverse Proof Its Impact On The Return Of State Assets

One of the proof processes in Criminal Law with exists proof backwards with balance or reversal burden of proof.³The problem of burden proof in cases Act Criminal Corruption own characteristic specifically related with the Criminal Judge Material nor Formal. As part from law criminal formal experience change paradigm since enforced RI Law Number 3 of 1971 and Republic of Indonesia Law Number 31 of 1999 in conjunction with Republic of Indonesia Law Number 20 of 2001 which regulates about burden proof contained in Article 37 (Hamzah, 2021).

Doctrine law criminal law and convention international about protection right basic man No confess proof backwards for determine error suspect. However, proof backwards for set usurpation asset follow criminal, since 2000, has practiced in system law usurpation asset follow crime in the United States through means law civil law (civil based forfeiture or non-conviction-based forfeiture/NCB). Generally, it has long been recognized system law usurpation asset follow criminal through means law criminal (criminal based forfeiture/CB) carried out based on decision the court has obtain strength law still.

In the system Indonesian criminal procedural law is used CB way, and necessary wait 400 days time for until you reach a decision strength law still. As for plunder asset follow criminal via NCB no need wait time during That Because prosecutor general can quick bring defendant to court with method proof backwards on asset alleged defendant originate from follow criminal.

practice in the United States and the United Kingdom, as well as in several European Union countries, is successful return finance in a way significant from organization crime, especially originating from crime narcotics and money laundering. Deprivation model NCB assets with proof backwards No violates human rights because is based on the balanced probability principal theory, which separates between asset follow criminals and their owners. That matter based premise that protection right defendant for considered No guilty (presumption not guilty) and the principle of non- self discrimination must balance obligation defendant prove origin the assets he owns. This theory Still give guarantee protection right basic suspect For considered No guilty, on the contrary No give guarantee protection right ownership defendant on alleged assets originate from follow criminal, except those concerned can prove on the contrary.

Birth NCB concept caused development organization crime transnational post-war cold has increase asset organization crime three times the APBN of developing countries, esp obtained from crime narcotics and money laundering. Development That looked at as threat to world peace and order. That fact prove that effect deterrent punishment No enough or not succeed in a way complete combat crime transnational. In fact, inside prison even though, organization crime can control activity the crime, meanwhile threat punishment dead in system developed country law already No acknowledged.

Move on from reality that happened change drastic in policy crime, especially in developed countries, namely the strategy of plunder asset organization crime or suspected originate from crime proven more powerful so that can turn off life organization crime. DEA experience using method usurpation through means law civil (civil based forfeiture) was successful in a way significant freeze and seize asset organization crime. Legal steps proof backwards with NCB, in the United States based on the Reform Law about Confiscation of Assets through Civil Asset Forfeiture Reform Act (CAFRA) 2000 and in England with the Action Law Criminal Money Laundering (Proceed of Crime Act) 2002. In Indonesia, steps law proof through Law Number 8 of 2010 concerning Prevention and Eradication Act Criminal Money Laundering, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication Act Criminal Corruption, as well as Law Number 35 of 2009

concerning Narcotics.

Strengthen system reporting Indeed, proof backwards via CB and NCB in Indonesia will more easy held If system reporting treasure riches state administrators have held in a way consistent and systemic. System reporting treasure riches such state administrators will give support significant to apparatus enforcer law, including the Corruption Eradication Commission, in confiscate and plunder asset alleged state officials originate from follow criminal.

System reporting treasure wealth that has been arranged in Law Number 28 of 1999 concerning Organizing a Clean and Free State from KKN still need revised and strengthened with system proof backwards If found proof initial (prima facie evidence) assets state officials are suspected originate from follow criminal. If system reporting treasure wealth, system clarification, and system verification asset state administrators are running Good since Law Number 28 of 1999 applies, then Gaius Tambunan's incident happened a long time ago prevented.

It's sticking out Gaius' case was a driving moment government consider in a way Serious enactment of the Criminal Asset Confiscation Bill (RUU PAK). Government has drafting the PAK Bill, however Still using a deprivation model based on criminal based conviction, and the PAK Bill is not use method usurpation CB and NCB together. Use of CB and NCB deprivation models simultaneously need support source Power adequate people and budget. If not, then Don't expected aspirations proof backwards to alleged assets originate from crime can achieved in time near. For objective usurpation asset with CB and NCB way through proof backwards a property database is required riches accurate state administrators, as well as mandatory data accurate taxes from all citizen or foreigner.

Description This only about follow crimes by state officials that have an impact significant to enhancement treasure his wealth; Not yet touch How to corporation established foreign and national legally but do activity illegal impact harm interest national. Enacting law obligation reporting treasure riches No can enforced to corporation these, except corporation that has including a list of capital market participants (companies open).

2003 United Nations Convention Against Corruption ratified with Law Number 7 of 2006 has enter provision about bribery in the sector private sector (bribery in the private sector) and bribery in the private sector public (bribery in the public sector), strengthened provision deed enrich self Alone in a way No legitimate (illicit enrichment) aimed at to official public. Three follow criminal new in legislation national will come is end spear For speed up the bureaucratic reform process, good in a way preventive nor repressive.

Instructions President Number 1 of 2011 and Number 2 of 2011, among others, include use method proof backwards in make it effective enforcement the law, it should be can realized in time short If signal in Presidential Instruction the can quick understood by its implementers with take steps truly strategic and systematic required. One of step the is quick the Act on Asset Confiscation Act is enforced A crime that contains two models of confiscation asset via CB and NCB. However, the most important thing from implementation of the law is Still required other governing provisions special system of checks and balances so that the new law the No misused For interest political or not prone to from bribery and KKN (antikoburu.org).

System proof backwards in a way civil law that has been practiced in several countries, such as America, England and several European countries other can made reference enforcement proof backwards in return asset crime corruption in Indonesia. Arrangement proof backwards For return asset crime corruption following procedure the event must loaded in Constitution as something exception procedure evidence that applies in general with remember nature and character corruption as crime outside ordinary nature international.

Return asset crime current corruption This valid in Indonesia only through means law criminal with prove moreover Formerly error suspect / accused through decision the court has

strength law fixed, except If suspect or defendant died, then can done lawsuit civil law, said Prof. Dr. Edward Omar Sharif Hiariej, SH, M. Hum . in speech inauguration of professors at the UGM (ugm.ac.id).

According to Eddy, so calling familiarly, proof backwards in return asset crime corruption until moment This of course Not yet arranged in a way clear and detailed . In context legislation in Indonesia, in matter proof backwards absolute, defendant carried obligation For prove that assets owned No originate from crime embraced in Constitution Number 8 of 2010 concerning Prevention and Eradication Act Criminal Money laundering. Article 77 of the a quo law states , For interest examination at trial court , defendant must prove that treasure riches No is results follow criminalâ. It should be , by law That firm arrange consequence from proof reversed by the defendant . Unfortunately , based on Article 77 in conjunction with Article 78 of the Law the No arranged procedure the event or at least arrange consequence from proof backwards .

Eddy confirmed proof backwards in return asset crime corruption can used through means law, fine civil nor criminal . Return asset crime corruption without through prosecution criminal in a way implicit listed in Article 51 Paragraph (1) UNCAC regarding help law of reciprocity between each participating country convention regarding with wealth acquired, through or involved in specified crime in UNCAC. Return originating assets from follow criminal through track civil with use proof backwards No as well as immediately violate principle presumption not guilty or privileged against self-incrimination, though No need proven error defendant.

Repressive measures to crime corruption No only with punish perpetrator crime , but also with effort return asset corrupt crimes . There are several prerequisites for returning criminal assets, namely the country's political will, legal system, institutional cooperation and international cooperation. Apart from the nature and character of corruption as an extraordinary crime, several impacts of corruption are behind the internationalization of corruption crimes. First, corruption is considered to damage democracy. Second, corruption is considered to undermine the rule of law. Third, corruption can disrupt sustainable development. Fourth, corruption can damage the market. Fifth, corruption can damage the quality of life. Sixth, corruption is considered to violate human rights. Therefore, evidence is very crucial in resolving a legal problem. Evidence is the heart of the trial of a case at trial.

An example of the implementation of reverse evidence related to the return of state assets was when the Jakarta Corruption Crimes Judge Panel sentenced two businessmen, Benny Tjokrosaputro and Heru Hidayat, to life imprisonment. Apart from that, both of them were also asked to return state financial losses of more than IDR 6.07 trillion and IDR 10.7 trillion respectively, bringing the total to IDR 16.8 trillion. Both were proven to have committed criminal acts of corruption which resulted in state financial losses of IDR 16.8 trillion and also money laundering.

This verdict was already expected, because four other defendants, three of whom were former Jiwasraya directors, such as Hendrisman Rahim, Hary Prasetyo, Syahmirwan and a private person who was said to be an extension of Benny Tjokrosaputro and Heru, namely Joko Hartono Tirto, were also sentenced to life imprisonment in accordance with the prosecution's demands. general. What is quite interesting is that in relation to the confiscation of assets, the panel of judges agreed to the public prosecutor's request regarding reverse evidence, namely requesting that Benny and Heru's assets obtained since this case began, namely 2008-2018, be confiscated by the state unless the defendants can prove that these assets were obtained from legitimate proceeds.

The panel also explained that one of the elements in a money laundering charge is that it is suspected or known to have come from the proceeds of corruption. According to the panel, Heru Hidayat together with Benny Tjokro and Joko Hartono Tirto made an agreement with three former Jiwasraya directors, namely Hendrisman Rahim, Hary Prasetyo and Syahmirwan in managing PT Asuransi Jiwasraya's share and mutual fund investments in a non-transparent

and accountable manner (Hukumonline.com).

Asset recovery is an effort made by a country through law enforcement to return money or goods obtained from criminal or civil actions by people (who have rights and obligations) in a country. Asset recovery becomes complex if more than one country is involved. Complexities arise if state relations between related parties are not well established. To recover assets, Hiariej stated that the political will of a country plays an important role and is the starting point for the movement needed in eradicating every country. Once the political will appears, the next step is to create laws and regulations which can start from asset tracking, asset freezing, asset confiscation, asset management, asset transfer to the utilization and monitoring of assets that have been handed over. Furthermore, Hiariej stated that if parliament and the judiciary have the political will, then the next step needed is to draft a law. This is the main guarantee for law enforcement officers to act freely in accordance with existing regulations without any pressure or psychological burden (Prakarsa, dkk, 2017).

Corruption is considered to be the most extraordinary mistake because corruption harms the country's finances and ignores the country's social and monetary rights. In Indonesian criminal law, the criminal act of defamation demonstration is regulated in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts. corruption. The Anti-Corruption Law was framed with public awareness because it could harm state finances and possibly disrupt public development. Thus, state officials are serious about forming guidelines for eradicating defamation to create a prosperous society that relies on Pancasila and the 1945 Constitution (Zaenudin et al., 2018).

Asset return regulations are still considered weak so that the law seems to only focus on punishing perpetrators rather than recovering state losses. Indonesia can see an example of the revolutionary concept of eradicating corruption in Saudi Arabia. The state has a mechanism for returning state assets resulting from corruption by confiscating an average of 70% of the total assets owned by corruption defendants, as stated in the financial agreement. Furthermore, after the signing of this financial agreement, the crown prince, as chairman of the anti-corruption committee, issued a royal order to free the corrupt accused from all charges. It is this revolutionary concept of eradicating corruption through withdrawing corruptors' wealth that needs to be used as a reference for Indonesia, namely placing the recovery of state losses through the confiscation of suspects' assets (Ginting, 2003).

Corruption is the misappropriation or misuse of public money to fulfill the personal interests of criminals. Corruption is considered an *extraordinary crime* because it is detrimental to the state and has a domino effect on the welfare of society. Therefore, handling criminal acts of corruption must also pay attention to the element of returning assets as a restoration of state wealth. Corruption is considered a global problem because it occurs in almost all countries in the world. Therefore, the United Nations (UN) in 2003 established *the United Nations Convention Against Corruption* as a guideline for handling criminal acts of corruption in member countries of the convention. Indonesia has ratified this Convention through Law No 7 Year 2006.

However, the implementation of the eradication of corruption in Indonesia is through Law 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law No. 31 of 1999 regarding Eradication of criminal acts of corruption seems to have not yet achieved optimal results; The current law still focuses on the imprisonment of perpetrators rather than the return of state assets lost due to corruption, even though in fact the main aim of eradicating corruption is the return of lost assets to be returned to the country and utilized as much as possible for the prosperity of the people.

According to data from the research and development center of the Corruption Eradication Commission in Indonesia, state losses from 2003-2015 amounted to IDR. 153.01 trillion and only Rp. 15,957,821,529,773 or 10.4% of the funds successfully returned to the

state. Therefore, the Indonesian government must immediately pass the asset confiscation law as mandated by the 2003 United Nations Convention Against Corruption (UNCAC) to avoid further state losses and as a solution so that the proceeds of criminal acts of corruption can be returned to the state (Meidiantama, 2022).

CONCLUSION

Evidence in the corruption trials of the four corruption cases has referred to the dimension of mutual proof or balanced evidence between the Public Prosecutor and the defendant, but has not yet maximally applied limited and balanced reverse evidence. So the evidence applied is evidence of a general nature and is based on the theory of negative evidence based on law (*negatief wettelijk bewijstheorie*), which is regulated in Article 183 of the Criminal Procedure Code.

In the beginning, when the reverse evidence system began to be implemented, there were many contradictions due to the many perspectives regarding its implementation and it was assumed that the implementation of the reverse evidence system would eliminate the role of prosecutors in searching for evidence in criminal acts of corruption. There were many perceptions that there was a shift in the role of prosecutors in carrying out evidence. the defendant or suspect, but in practice the suspect or accused only proves that the assets they own are not the result of a criminal act of corruption and the prosecutor remains in his role to prove the guilt of the suspect or accused.

Efforts to optimize the handling and prevention of criminal acts of corruption by implementing limited and balanced evidence and using a negative evidence system according to the law as regulated in Law no. 31 of 1999 and the Criminal Procedure Code. The reversal of the burden of proof is limited and balanced, namely having the right to prove that he has not committed a criminal act of corruption and is obliged to provide information regarding all the assets of every person or corporation suspected of having a connection with the case in question. The Public Prosecutor is still obliged to prove his charges.

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