

**APPLICATION OF THE PRINCIPLE OF REVERSE BURDEN OF  
PROOF IN THE CRIMINAL JUSTICE SYSTEM IN MONEY  
LAUNDERING CASES IN INDONESIA**

***PENERAPAN ASAS PEMBUKTIAN TERBALIK DALAM SISTEM  
PERADILAN PIDANA DALAM PERKARA PENCUCIAN UANG DI  
INDONESIA***

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**ABSTRACT**

Money laundering is a serious crime that has a major impact on the economic stability and integrity of the country's financial system. This crime is generally associated with predicate offenses, such as corruption, narcotics, and organized crime, to conceal the origin of illicit wealth. In law enforcement, the application of the reverse burden of proof principle is a crucial strategy for overcoming the difficulty of proof. This study examines the application of the reverse burden of proof principle in the Indonesian criminal justice system, particularly in money laundering cases, as outlined in Law Number 8 of 2010. The method used is normative juridical with a conceptual and statutory approach. The results of the study indicate that the application of the reverse burden of proof principle can strengthen efforts to eradicate money laundering, but must still uphold the principle of fair trial and protection of human rights, especially the presumption of innocence. Law Number 8 of 2010 has not comprehensively regulated the standards of proof, verification, and legal impact of this principle, thus creating a vacuum of norms and legal uncertainty. In practice, the accused is only burdened to explain the origin of the wealth, while the prosecutor proves the elements of the crime. However, this shifting burden of proof still raises concerns about violations of the presumption of innocence. Therefore, the application of the reverse burden of proof principle requires more detailed legal regulations and strict supervision so that it is not misused and continues to guarantee legal justice for the accused.

**Keywords: Reverse Proof, Money Laundering, Criminal Justice System**

### **ABSTRAK**

*Pencucian uang adalah kejahatan serius yang memiliki dampak besar pada stabilitas ekonomi dan integritas sistem keuangan negara. Kejahatan ini umumnya terkait dengan tindak pidana dasar, seperti korupsi, narkoba, dan kejahatan terorganisir, untuk menyembunyikan asal usul kekayaan yang ilegal. Dalam penegakan hukum, penerapan prinsip beban pembuktian terbalik adalah strategi penting untuk mengatasi kesulitan dalam pembuktian. Penelitian ini mengkaji penerapan prinsip beban pembuktian terbalik dalam sistem peradilan pidana Indonesia, terutama dalam kasus pencucian uang, sebagaimana diatur dalam Undang-Undang Nomor 8 Tahun 2010. Metode yang digunakan dalam naskah ini adalah yuridis normatif dengan pendekatan konseptual dan perundang-undangan. Hasil penelitian menunjukkan bahwa penerapan prinsip beban pembuktian terbalik dapat memperkuat upaya untuk memberantas pencucian uang, tetapi tetap harus menjunjung tinggi prinsip peradilan yang adil dan perlindungan hak asasi manusia, terutama praduga tidak bersalah. Undang-Undang Nomor 8 Tahun 2010 belum secara komprehensif mengatur standar pembuktian, verifikasi, dan dampak hukum dari prinsip ini, sehingga menciptakan kekosongan norma dan ketidakpastian hukum. Dalam praktiknya, terdakwa hanya dibebani untuk menjelaskan asal-usul kekayaan, sementara jaksa membuktikan unsur-unsur kejahatan. Namun, pergeseran beban pembuktian ini tetap menimbulkan kekhawatiran tentang pelanggaran asas praduga tak bersalah. Oleh karena itu, penerapan prinsip beban pembuktian terbalik memerlukan regulasi hukum yang lebih rinci dan pengawasan yang ketat agar tidak disalahgunakan dan terus menjamin keadilan hukum bagi terdakwa.*

**Kata kunci: Pembuktian Terbalik, Pencucian Uang, Sistem Peradilan Pidana**

### **A. INTRODUCTION**

The crime of money laundering is a crime that has a broad impact on the country's economic and financial system. This crime is often related to the predicate, such as corruption, narcotics, human trafficking, and other organized crimes. Money laundering crimes are a crime committed to hide or at least disguise the results or profits obtained from a crime (against the law) through a legitimate activity.<sup>1</sup>

The term money laundering is commonly used to describe efforts made by a person/legal entity to legalize dirty money, obtained from criminal acts. In the era of globalization and technological progress, economic crimes, especially Money Laundering, have undergone increasingly complex transformations in Indonesia. Money Laundering is a crime that is closely related to the crime of corruption.

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<sup>1</sup> M. I. W. Pratama, *Analisis terhadap Sanksi Pidana Tindak Pidana Pencucian Uang (Perspektif Economic Analysis of Law)*, Indonesian Journal of Criminal Law and Criminology (IJCLC), Vol.3, No.1 (2022), p.13.

One of the crimes that is a serious concern in Indonesia today is the crime of corruption, which seems to have become ingrained as a habit that is difficult to eliminate. According to Bintoro Tjokroamidjojo, among the causes of this difficulty are the difficulty of finding evidence and the existence of forces that prevent the existence of this evidence.<sup>2</sup> In this case, the crime of money laundering in Indonesia is difficult to eradicate because the evidence is complex and often hampered by certain forces. Modes such as money laundering and asset concealment further complicate law enforcement, while intervention by interested parties often hinders the investigation and prosecution.

According to Law Number 25 of 2003 as amended by Law Number 8 of 2010 concerning the Crime of Money Laundering, the definition of money laundering is provided in Article 1 number 1 which states that: "**Money laundering is the act of placing, transferring, paying, spending, donating, donating, depositing, taking abroad, exchanging, or other acts on assets that are known or reasonably suspected to be the result of a crime to hide or disguise the origin of the assets so that they appear to be legitimate assets.**"

There are three stages of money laundering. Placement is the first stage of money laundering, which involves placing (depositing) the illicit money into the financial system. Layering is the second stage. In this stage, the money launderer tries to disconnect the proceeds of crime from their source. Integration is the third stage. At this stage, the money that has been laundered is brought back into circulation in the form of clean income and is even an object of taxation.<sup>3</sup> In this context, the idea of implementing the reverse burden of proof principle was developed as a step to maximize law enforcement against perpetrators of corruption in Indonesia.

In the criminal justice system, the principle of reverse burden of proof is a concept where the accused has the right to prove that he is not guilty of committing a crime.<sup>4</sup> In the aspect of criminal procedure law, the law of evidence is a provision that limits court hearings in efforts to seek and maintain the truth;

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<sup>2</sup> G. Rahman dan L. Jamaa, *Asas Pembuktian Terbalik dalam Tindak Pidana Korupsi (Perspektif Hukum Pidana Indonesia dan Hukum Pidana Islam)*. Tahkim: Jurnal Hukum Dan Syariah, Vol.15, No.2 (2019), p.236.

<sup>3</sup> Sutan Remy Sjahdeini, *Seluk Beluk Tindak Pidana Pencucian Uang dan Pembiayaan Terorisme*, Pustaka Utama Grafiti, Jakarta, 2017, p.33.

<sup>4</sup> G. Rahman dan L. Jamaa, *Op.Cit.*, p.246.

whether judges, public prosecutors, defendants, or legal counsel, all are bound by the provisions of the procedures and assessment of evidence determined by law.<sup>5</sup> According to Yahya Harahap, proof is a provision that contains outlines and guidelines on the methods that are permitted by law to prove the guilt charged against the defendant, and is also a provision that regulates the evidence that is permitted by law and that may be used by the judge to prove the guilt charged against the defendant.<sup>6</sup>

In money laundering crimes, the application of the reverse burden of proof principle aims to close legal loopholes that are often exploited by criminals to disguise the origin of their wealth. Therefore, based on Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, the accused can be asked to provide sufficient evidence that the assets they own do not come from the proceeds of crime. The legal basis for the reverse burden of proof principle is that regulations outside the Criminal Code (KUHP) are Article 103 of the Criminal Code, which states that: **"The provisions in Chapters I to VIII of this book also apply to acts which are subject to criminal penalties under other statutory provisions, unless otherwise stipulated by law."**

This article stipulates that to prove the guilt of the accused, two main requirements must be met, namely: (1) there is a minimum of two valid pieces of evidence, and (2) from their evidence, the judge is convinced that the crime occurred and the accused is guilty of committing it. In their concept of burden of proof, their main question is which party is responsible for proving their case, whether the accuser or the court. With the principle of reverse burden of proof, the burden of proof is placed on the accused, so that they must be able to prove it before their court by their provisions of Article 183 of their Criminal Procedure Code. The principle of reverse burden of proof in corruption cases in Indonesia is regulated in Articles 12B, 37, 37A, and 38B of the Republic of Indonesia Law Number 20 of 2001, which is an amendment to the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Corruption.

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<sup>5</sup> M. Hatta, *Sistem Pembuktian Terbalik Terhadap Delik Korupsi di Indonesia*, Aceh: CV. Sefa Bumi Persada, 2020, p.51.

<sup>6</sup> B. Nugroho, *Peranan Alat Bukti dalam Perkara Pidana dalam Putusan Hakim Menurut KUHAP*, Yuridika, Vol.32, No.1 (2017), p.21–25.

One of their reasons for implementing their principle of reverse burden of proof is that prosecutors or investigators face difficulties in proving the existence of a corruption crime suspected of a suspect. In this case, many officials suspected of being involved in corruption can be freed from punishment. Corruption has caused significant losses to state finances.

Although the principle of reverse onus of proof aims to eradicate corruption, its application risks violating the defendant's human rights, especially their right not to provide evidence. In a fair justice system, the defendant has the right to remain silent without being required to provide evidence that could incriminate him. However, with a reverse burden of proof, the defendant must prove his innocence or the origin of his wealth, which can be detrimental to him if he does not have adequate access to evidence.

The evidence provided by the defendant is limited (the defendant only needs to show his origin of wealth), while the prosecutor must still prove their elements of the crime. This is to maintain their principle of fair trial (fair trial) in their criminal justice system. If not properly supervised, their application of this principle can be exploited by law enforcement officers to pressure their accused without strong evidence from their prosecutor. This can open up opportunities for abuse of authority or criminalization. Their application of this reasonable doubt is based on the fact that crimes such as corruption and money laundering are difficult to prove from the perspective of the public prosecutor, because usually the perpetrators hide or obscure their source of assets.

If they accuse of success in showing administrative evidence or certain reasons that are formally legitimate, but are manipulative, there is a possibility that he will be declared free. This application of ten occurs due to a lack of accuracy in tracing their flow of illicit funds, the existence of legal loopholes or weaknesses in the evidence process, and their potential for intervention of power or corruption in their justice system. In their judicial system, it plays a very important role, because in the Corruption Eradication Law, this system is applied differently compared to the system of evidence in criminal procedure law in Indonesia.

Based on their description above, their researcher is interested in conducting a legal study, especially regarding the reasonable doubt burden of proof imposed on their defendant in the Crime of Money Laundering.

## **B. RESULTS AND DISCUSSION**

### **Application of the Principle of Reverse Burden of Proof in the Criminal Justice System in Indonesian Criminal Law**

The principle of reverse burden of proof is a principle in criminal procedure law in Indonesia that imposes an obligation on the accused to prove that he is not guilty of the charges imposed. This is different from the general principle in criminal law, which emphasizes the principle of the presumption of innocence, where the public prosecutor must prove the guilt of the accused. This principle shifts the burden of proof to the accused in certain cases.<sup>7</sup> According to the Great Dictionary of the Indonesian Language, proof is the process, method, or act of proving something. In law, proof plays a role in submitting evidence to convince judges, so that decisions are taken based on valid facts and support justice and legal certainty.<sup>8</sup>

Evidence is an important aspect in law enforcement, where a person cannot be convicted without a fair trial and evidence process. The term in English is called "*prove*" and in Dutch "*proof*", which means anything that is used to ascertain the truth or falsity of a matter that is not yet certain.<sup>9</sup>

Proof is an effort to prove the truth of an event so that it can be accepted logically. Proof shows that a criminal event has indeed occurred, and the defendant is the perpetrator who must be responsible. Proof also includes provisions on the methods and means of evidence that are valid according to law to prove the defendant's guilt.<sup>10</sup>

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<sup>7</sup> M. Tilaar, *Pengaturan Pembuktian Terbalik Menurut Undang-Undang No. 20 Tahun 2001 tentang Perubahan Undang-Undang No. 31 Tahun 1999*, Lex Crimen, Vol.5, No.7 (2016), p.48.

<sup>8</sup> Kamus Besar Bahasa Indonesia (KBBI). *Bukti*, Accessed from <https://kbbi.web.id/bukti>, Accessed on March 09, 2025, 00.53 WITA.

<sup>9</sup> Dewan Bahasa dan Pustaka. *Kamus Dewan*. 3rd edn. Dewan Bahasa dan Pustaka, Kuala Lumpur, 2000, p.183.

<sup>10</sup> M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan*. Sinar Grafika, Jakarta, 2006, p.273.

In the criminal justice process, evidence plays an important role in determining justice for the accused. Judges must adhere to legal provisions that regulate valid evidence, such as witness statements, expert statements, letters, instructions, and statements from the accused. Thus, evidence is not only aimed at finding the truth material, but also to ensure that court decisions remain within the applicable legal corridor.

Conceptually, the reverse proof is the antithesis of the conventional proof method, "*proof beyond a reasonable doubt*", which is based on the principle of the presumption of innocence. In this method, there is a shift in the paradigm of proof, where the responsibility that was originally on the public prosecutor is transferred to the defendant, so that the defendant is obliged to prove his innocence to avoid the assumption of guilt. According to Mariyanawati, Y. A., stated in her research<sup>11</sup>, Basically, in the formal criminal law system in Indonesia, the burden of proving whether or not a crime has been committed lies with the Public Prosecutor. This is as implied in Article 66 of the Criminal Procedure Code, that the suspect or defendant is not burdened with the obligation of proof. In the explanation of Article 66 of the Criminal Procedure Code, it is stated that this provision is the embodiment of the principle of "*presumption of innocence*".

In criminal procedure law, the power of proof is regulated in Article 183 of the Criminal Procedure Code, which requires judges not to sentence someone without a conviction based on at least two valid pieces of evidence that the defendant did commit the crime.<sup>12</sup> The provision emphasizes that in handing down a criminal verdict, the judge must base it on at least two valid pieces of evidence. Otherwise, the defendant cannot be punished for his actions.

Andi Hamzah stated that the theories in the proof system are as follows<sup>13</sup>:

- a. System or Theory Based on Positive Law (Positive Legal Evidence Theory);
- b. System or Theory of Proof Based on Judge's Belief Only (Intimate Conviction);
- c. System or Theory of Proof Based on the Judge's Belief for Logical Reasons (Conviction Reasoned);
- d. Negative Legally Based Proof System or Theory (Negative Legal Evidence Theory).

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<sup>11</sup> Y. A. Mariyanawati, *Sistem Pembuktian Terbalik dalam Pemberantasan Tindak Pidana Korupsi*, Kajian Masalah Hukum dan Pembangunan Perspektif, Vol.28, No.3 (2023), p.179.

<sup>12</sup> Pasal 183 Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana.

<sup>13</sup> Andi Hamzah, *Hukum Acara Pidana Indonesia*, Sinar Grafika, Jakarta, 2004, p.247.

A further explanation of their four theories in the criminal procedural law evidence system, as explained by criminal law experts, is as follows:

a) Legally Based Evidence Positive (Positive Legal Evidence theory).

According to Simons<sup>14</sup>, that their system or theory of proof is based on positive law (Positive Legal Evidence Theory), to remove all subjective considerations from the judge and to bind the judge strictly according to strict rules of evidence.

b) Proof Based on Judge's Belief Only (Intimate Conviction).

According to M. Yahya Harahap<sup>15</sup>, The defendant's confession as evidence cannot always prove the truth. The confession sometimes does not guarantee that the defendant committed the act. Therefore, the judge's conviction is still needed. The system of proof Intimate Conviction requires that the determination of a defendant's guilt or innocence be based entirely on the judge's conviction.

c) Proof Based on the Judge's Belief for Logical Reasons (Conviction Reasoned).

According to Wahyu Wiriadinata<sup>16</sup>, that is based on the judge's logical belief (Reasoned Conviction) and based on legal rules (Negative Legal). The main difference lies in the basis of evidence, but both still emphasize the importance of the judge's conviction in making a decision.

d) Negative Theory of Proof Based on Law (Negative Legal Evidence Theory).

According to P.A.F. Lamintang, this system is called "*legal*" because the type and amount of evidence is determined by law, and "*negative*" because the existence of this evidence is not sufficient to impose a sentence without a conviction by the judge<sup>17</sup>.

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<sup>14</sup> Andi Hamzah, *Ibid.*

<sup>15</sup> M. Yahya Harahap, *Op.Cit.*, p.278.

<sup>16</sup> W. Wiriadinata, *Korupsi dan Pembalikan Beban Pembuktian*, Jurnal Konstitusi, Vol.9, No.2 (2012), p.323.

<sup>17</sup> Rusli Muhammad, *Hukum Acara Pidana Kontemporer*, Citra Aditya Bakti, Bandung, 2007, p.192.

In the criminal procedure law system of proof, there are four main theories. First, the theory of proof based on positive law (Positive Legal Evidence Theory), where the judge can only decide a case if the evidence meets the legal requirements explicitly, without considering personal beliefs. Second, the theory of the judge's conviction alone (Conviction Intime), which gives the judge full freedom to decide based on his/her conviction, without being tied to the amount or type of evidence. Third, the theory of the judge's conviction based on logical reasons (Reasoned Conviction), which combines the judge's beliefs with logical and rational legal considerations. Fourth, the theory of negative evidence according to law (Negative Legal Evidence theory), which emphasizes that judges must consider both the rule of law and rational assessment of facts and evidence, and must be able to explain the basis for their decisions.

### **1. Principles of Application of Evidence in Indonesian Criminal Law**

The principle of proof applied in Indonesia is a negative system according to law (Negative Legal Evidence System), which requires at least two valid pieces of evidence and is accompanied by the judge's conviction to sentence the defendant to a penalty<sup>18</sup>. In this system, punishment can only be carried out if there are at least two valid pieces of evidence, and from the evidence, the judge is convinced that the defendant is truly guilty. This is emphasized in Article 183 of the Criminal Procedure Code, which is an important basis for the application of the principle of proof in the Indonesian criminal justice system. In criminal evidence law in Indonesia, several main principles form the basis, namely:<sup>19</sup>

- a. The principle of legality means that a person cannot be punished for an act without a previously established legal basis (no crime without law, no punishment without law).
- b. The principle of presumption of innocence, which is a guarantee for those accused not to be declared guilty before a court decision has permanent legal force. This principle is closely related to the protection of human rights and principles of justice in their legal process.

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<sup>18</sup> R. Rohman, M. Muliadi, F. Pratama, I. Saputra, A. Firmansyah, T. Marwan dan I. Irfandi, *Sistem Pembuktian dalam Hukum Pidana Indonesia dan Tantangan dalam Proses Peradilan*, Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin, Vol.1, No.3 (2024), p.279-292.

<sup>19</sup> Eddy O.S. Hiariej, *Asas-Asas Hukum Pidana*, PT. Rajagrafindo Persada, Depok, 2024, p.68.

- c. Their principle of minimum proof requires at least two valid pieces of evidence following their provisions of Article 184 of their Criminal Procedure Code, such as witness statements, expert statements, letters, clues, or statements from the accused.
- d. Principal one witness, no witness, which states that one witness alone is not enough to prove the defendant's guilt.

Along with the advancement of technology and the rise of digital crime, electronic evidence has become very important in the criminal proof process. Initially, the Criminal Procedure Code had not accommodated electronic evidence as valid evidence. However, this development was responded to by the presence of Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE), which was later amended by Law Number 19 of 2016<sup>20</sup>. The ITE Law explicitly recognizes electronic information and electronic documents and their printouts as valid legal evidence, expanding the scope of evidence regulated in Article 184 of the Criminal Procedure Code. In addition, the presence of the principle of material truth also strengthens the idea that the evidentiary process does not only seek formal truth but must also reach the reality of the actual criminal event<sup>21</sup>.

As for evidence, it is anything that can legally be used to prove the truth of a criminal event in court. Their provisions regarding evidence are regulated in Article 184 paragraph (1) of the Criminal Procedure Code (KUHP), which states that valid evidence consists of<sup>22</sup>:

- a. Witness testimony
- b. Expert testimony
- c. Letter
- d. Instruction
- e. Defendant's statement

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<sup>20</sup> I. Pongantung, *Kedudukan Alat Bukti Elektronik dalam Pembuktian Tindak Pidana Informasi dan Transaksi Elektronik Berdasarkan Undang-Undang Nomor 19 Tahun 2016*, Lex Crimen, Vol.10, No.7 (2021), p.151.

<sup>21</sup> N. F. Makapuas, *Pencarian Kebenaran Material dalam Perkara Pidana Melalui Alat-Alat Bukti yang Sah Menurut Hukum Acara Pidana Indonesia*, Lex Crimen, Vol.8, No.8 (2019), p.107.

<sup>22</sup> Pasal 184 ayat (1) Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana.

This evidence is used in their trial process to assess whether an act can be proven to be a criminal act committed by their defendant.

Evidence is an object related to a crime and can be used to support the investigative process in a trial. Evidence is regulated in Article 39 of the Criminal Procedure Code, which states that evidence includes<sup>23</sup>:

- a. Items obtained from criminal acts (for example, money from corruption, stolen goods).
- b. Objects used to commit a crime (for example weapons in murder cases, narcotics in drug abuse cases).
- c. Objects that have a direct connection to the crime (for example, the victim's clothes that have blood stains on them).

In criminal justice practice, judges have a central role in assessing the strength of evidence. However, such assessment must be carried out objectively and not solely based on subjectivity, but rather based on rational consideration of the evidence presented at trial.<sup>24</sup> The principles of proof in criminal law in Indonesia play an important role, because they aim to ensure that only those who are truly proven guilty can be punished.

According to LY Rahmathoni, the basic principles of a state based on law include three main pillars, namely legal certainty, justice, and benefit.<sup>25</sup> These three elements become important in the implementation of an ideal legal system. In addition, the principles of proof also serve to balance law enforcement and protection of human rights. As regulated in the Criminal Procedure Code, its implementation still encounters obstacles, such as differences of opinion among judges regarding evidence, limitations in the use of electronic evidence, and inconsistencies in applying the law.<sup>26</sup>

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<sup>23</sup> Pasal 39 Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana.

<sup>24</sup> Rohman, R., M. Muliadi, F. Pratama, I. Saputra, A. Firmansyah, T. Marwan dan I. Irfandi, *Op.Cit.*.

<sup>25</sup> L. Y. Rahmathoni, *Perbedaan Makna Restorative Justice Pasca Perma No. 1 Tahun 2024 pada Sistem Hukum Pidana di Indonesia*, Jurnal Hukum Lex Generalis, Vol.5, No.10 (2024), p.11.

<sup>26</sup> T. Chandra, A. Munawar dan M. Aini, *Tinjauan Yuridis terhadap Mekanisme Penyelidikan pada Tindak Pidana Penipuan Melalui Media Transaksi Elektronik oleh Kepolisian dalam Sistem Peradilan Pidana di Indonesia*, Jurnal Hukum Lex Generalis, Vol.5, No.7 (2024), p.12.

## **2. Legal Basis for the Application of Reversed Burden of Proof in the Indonesian Criminal Justice System**

In the Indonesian criminal law system, the principle of reverse burden of proof is not explicitly regulated in the Criminal Procedure Code (KUHAP) as a general criminal procedure law. However, this principle is applied in a special law in several sectoral laws, especially regarding criminal acts categorized as extraordinary crimes.<sup>27</sup> The application of the reverse burden of proof principle in this context is more focused on proving the origin of the defendant's wealth, and not on proving the guilt or crime itself.<sup>28</sup> Several legal provisions that form the basis for application of the reverse burden of proof principle in Indonesia include:

- a) Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption

Article 37A paragraph (1) states that the accused has the right to prove that he did not commit a criminal act of corruption. Although it is voluntary (reverse proof by the accused is not an obligation), in practice, this provision provides space for law enforcement officers to ask the accused to prove the origin of the assets. In addition, Article 38B paragraph (1) stipulates that in corruption cases, proving that the assets do not originate from a criminal act of corruption can be a burden on the accused or other related parties.<sup>29</sup>

- b) Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes

Article 77 of this Law explicitly states that the accused may be asked to prove that the assets he owns do not originate from criminal acts, especially if there are assets that are not balanced with his legitimate income. Reverse proof in this context is intended to accelerate the process of returning state assets.<sup>30</sup>

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<sup>27</sup> M. Hamr Rezawan Prasetya, Sandhi Permana, Yunita Kurnia Dewi, *Sistem Pembuktian Terbalik dalam Pembuktian Perkara Gratifikasi*, Verstek, Vol.2, No.2 (2014), p.185.

<sup>28</sup> G. Rahman dan L. Jamaa, *Asas Pembuktian Terbalik dalam Tindak Pidana Korupsi (Perspektif Hukum Pidana Indonesia dan Hukum Pidana Islam)*, Tahkim: Jurnal Hukum Dan Syariah, Vol.15, No.2 (2019) p.235-254.

<sup>29</sup> Undang-Undang Nomor 31 Tahun 1999 jo. Undang-Undang Nomor 20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi.

<sup>30</sup> Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.

c) Law Number 35 of 2009 concerning Narcotics

In cases of illicit drug trafficking, law enforcement officers can use reverse evidence against the accused to prove that the evidence is not his or hers or is not for sale. Article 75 and Article 85 stipulate that investigations can be directed to tracing the origin of the wealth of the suspect and the accused.<sup>31</sup>

In Law Number 20 of 2001 amending Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, there are provisions concerning the reversal of the burden of proof, which is absolute, as regulated in Article 12B paragraph (1) letter a and Article 38B, where the proof is carried out entirely by the defendant. In addition, there are also provisions regarding the proof, which is the responsibility of the Public Prosecutor as regulated in Article 12B paragraph (1) letter b and Article 38C. Meanwhile, in Article 37 and Article 37A, the proof is carried out equally by the defendant and the Public Prosecutor.<sup>32</sup>

The application of the reverse burden of proof in the law shows a limited deviation from the principle of the presumption of innocence, which is a universal principle in criminal law<sup>33</sup>. However, this reversed proof is not absolute and still takes into account the principles of justice and the rights of the accused in the criminal justice process.

The Constitutional Court, in its various decisions, Number 21/PUU-XII/2014, emphasized that resolving criminal cases through the criminal justice process means that the state apparatus enforcing criminal law works by exercising the authority it has. As once stated by Lord Acton, Power tends to corrupt, but absolute power corrupts, That power tends to be abused, but absolute power will certainly be abused. This is where the importance of paying attention to the need to protect citizens against possible violations of authority by state law enforcement agencies lies.<sup>34</sup>

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<sup>31</sup> Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.

<sup>32</sup> L. Mulyadi, *Asas Pembalikan Beban Pembuktian terhadap Tindak Pidana Korupsi dalam Sistem Hukum Pidana Indonesia dihubungkan dengan Konvensi Perserikatan Bangsa-Bangsa anti Korupsi 2003*, Jurnal Hukum dan Peradilan, Vol.4, No.1 (2015), p.8.

<sup>33</sup> B. Badaru, *Efektivitas Penerapan Sistem Pembuktian Terbalik dalam Tindak Pidana Korupsi Gratifikasi*, Journal of Lex Generalis (JLS), Vol.2, No.7 (2021), p.1840-1855.

<sup>34</sup> Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014.

In the application of the principle of reversed proof, it must be carried out in a limited, proportional manner and not violate the defendant's constitutional rights. For example, in the Constitutional Court Decision No. 21/PUU-XII/2014, the Court stated that reversed proof is constitutional if it is not absolute, still provides room for defense to the defendant, and is under strict supervision of the court.

### **Application of the Principle of Reverse Burden of Proof in Money Laundering Cases Based on Law Number 8 of 2010**

Money Laundering Crime is a serious crime that has a wide impact on economic stability and the integrity of the financial system. In Indonesia, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes introduces the principle of reverse burden of proof as a legal strategy to facilitate the tracing and confiscation of assets resulting from crime.<sup>35</sup> Based on the provisions of Articles 77 and 78 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, the defendant must show that his assets or wealth do not originate from a criminal act.<sup>36</sup>

Money laundering is the process of disguising the origin of money or property resulting from criminal acts so that it appears as if it came from legitimate activities.<sup>37</sup> The application of the reverse burden of proof principle is an approach in the evidentiary system where the burden of proof does not lie entirely on the public prosecutor, but can also be imposed on the defendant to prove that the assets he owns do not originate from criminal acts. In cases of money laundering, this principle is important because it concerns the state's efforts to eradicate the proceeds of crime disguised through the financial system.<sup>38</sup>

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<sup>35</sup> Wahyu, *Eksistensi dan Tantangan Pembalikan Beban Pembuktian dalam Tindak Pidana Pencucian Uang*, Wasaka Hukum, Vol.8, No.1 (2020), p.204.

<sup>36</sup> Pasal 77 dan 78 Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Orang.

<sup>37</sup> M. Mahendra, H. Yusuf, H. Kasra dan A. L. Mahfuz, *Pemberantasan Tindak Pidana Pencucian Uang Berdasarkan Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang*, Jurnal Darma Agung, Vol.30, No.3 (2023), p.1447.

<sup>38</sup> J. Emirzon, *Bentuk Praktik dan Modus Tindak Pidana Pencucian Uang*, In Makalah Seminar Nasional Hukum Bisnis/Ekonomi Fakultas Hukum Universitas Sriwijaya, Palembang (2017).

Normatively, the application of the reverse burden of proof principle is contrary to the principle of the presumption of innocence as regulated in the Criminal Procedure Code (KUHP).<sup>39</sup> This raises concerns about human rights violations, especially the right to a fair trial and the right not to prove one's innocence. In addition, the provisions in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes do not yet regulate in detail the procedures for implementing reverse burden of proof, thus potentially creating legal uncertainty in judicial practice.

The application of the principle of reverse burden of proof in Indonesian criminal law does indeed create normative tension with the principle of the presumption of innocence regulated in Article 66 of the Criminal Procedure Code<sup>40</sup>. This system reverses the burden of proof, which is on the accused to show that their wealth does not originate from criminal acts, while the Criminal Procedure Code explicitly states that the suspect/defendant is not burdened with the obligation to provide proof.<sup>41</sup>

In the trial process, one thing that must be ensured is which party has the burden or responsibility to prove the defendant's guilt. The burden of proof is to burden someone to prove someone's guilt by presenting evidence, documents, arguments, or argument in front of a court.<sup>42</sup>

As for this kind of conflict, it can influence justice and objectivity in the criminal justice process because it can lead to deviations from the rights of the accused and obscure the material truth, which should be the main objective in providing evidence.

#### 1) Conflict with the Principle of Criminal Proof

- a) The Criminal Procedure Code places the burden of proof absolutely on the public prosecutor, as in line with the principle of "everyone is presumed innocent before a final and binding court decision". However, in practice, deviations often occur, such as shifting the burden of proof to the accused, which creates a conflict with the principle of criminal proof and has the potential to disrupt the principle of justice in the trial process.

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<sup>39</sup> Wahyu, *Op.Cit.*.

<sup>40</sup> Abdulhanna, *Mengatasi Korupsi dengan Asas Pembuktian Terbalik (Mewujudkan Tuntutan Keadilan Hukum Muamalah)*, TrustMedia Publishing, Yogyakarta, 2018, p.36.

<sup>41</sup> *Ibid.*.

<sup>42</sup> M. Hatta, Z. Sumiadi dan D. T. Y. Afrizal, *Ratio Legis Penerapan Beban Pembuktian Terbalik di Indonesia (Komparasi Hukum Pidana Indonesia dan Hukum Pidana Islam)*, Istinbath: Jurnal Hukum, Vol.18, No.1 (2021), p.82.

b) Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering (UU TPPU) and Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption (UU Tipikor) regulates the reverse burden of proof mechanism, where the accused is required to prove that his assets do not originate from criminal acts. This provision is regulated in Articles 77 and 78 of the Law on Money Laundering and in the Law on Corruption.

2) Violation of Principles *Non-Self Incrimination*

Reverse evidence is considered to conflict with the constitutional right not to give testimony that incriminates oneself, Article 28G of the 1945 Constitution of the Republic of Indonesia (UUD)<sup>43</sup>. This system forces the accused to prove negative (innocence), which is logically difficult to do. Reverse proof is considered contrary to constitutional rights that have been regulated in the 1945 Constitution because it forces the accused to prove his innocence, which is logically difficult to prove and has the potential to violate the principle of justice.

The reverse burden of proof can give rise to Human Rights Implications, referring to the impacts or consequences that arise from the application, violation, or neglect of human rights principles in social, national, and state life.

a) *Presumption of Innocence*

This reflects a criticism of law enforcement practices which are often not in line with the principle of the presumption of innocence as regulated in Article 8 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which reads: "*Any person who is suspected, arrested, detained, charged, and/or brought before a court must be considered innocent until a court decision states his guilt and obtains permanent legal force.*"

b) Imbalance of the Judicial Process

There has been a shift from the system of accusing the inquisitor, where the judge tends to position the defendant as the party who must prove the sanctity of the property. According to Lilik Mulyadi, the principle of insulator (inquisitory), which views the accused as an object of examination, sometimes even using torture devices to obtain a confession from the accused<sup>44</sup>. However, in practice, there are often deviations, where the burden of proof is indirectly shifted to the accused.

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<sup>43</sup> M. C. Risal, *Penerapan Beban Pembuktian Terbalik dalam Upaya Penanggulangan Tindak Pidana Korupsi*, Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum, Vol.5, No.1 (2018), p.74-86.

<sup>44</sup> Lilik Mulyadi, *Hukum Acara Pidana Suatu Tinjauan Khusus terhadap Surat Dakwaan, Eksepsi, dan Putusan Peradilan*, Citra Aditya Bakti, Bandung, 1996, p.8.

This means that the accused is "forced" to prove his innocence, especially in certain cases (for example, narcotics, corruption, or money laundering) that adopt a reverse burden of proof approach (reversed burden of proof).

Procedural Voids in the Application of the principle of reverse burden of proof based on Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. Although it has regulated reverse burden of proof in Articles 77-78, this Law does not explain<sup>45</sup>:

- 1) The standard of evidence that must be met by the accused;
- 2) Mechanism for verifying the origin of wealth;
- 3) Legal consequences if the defendant is unable to adequately prove the origin of the assets.

This condition reflects the existence of a significant procedural vacuum in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, especially those related to the mechanisms and limitations in the application of the reverse burden of proof principle. Although this principle is intended to make it easier for law enforcement to trace and prove money laundering crimes that tend to be complex and hidden, in practice, the application of this principle is not accompanied by clear and detailed guidelines in the law. There are no provisions that specifically regulate the form, type, or standard of evidence that can be used by the accused to prove the validity and origin of his assets. In addition, there is no explanation regarding the extent to which the burden of proof must be met by the accused to be considered sufficient from a legal perspective.

The application of reverse burden of proof is limited and balanced in resolving Money Laundering Crimes to minimize violations of the defendant's rights. The absolute reverse burden of proof method is considered to violate the defendant's human rights, contrary to national criminal law and the principles of Human Rights as regulated in Law Number 39 of 1999 and international agreements. However, both forms of reverse burden of proof, both limited and absolute, basically still deviate from the principles of proof in the Criminal Procedure Code, especially Articles 66, 183, and 189 paragraph (4).

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<sup>45</sup> S. Lasmadi dan E. Sudarti, *Pembuktian Terbalik pada Tindak Pidana Pencucian Uang*. Refleksi Hukum Jurnal Ilmu Hukum, Vol.5, No.2 (2021), p.204.

Provisions of Article 66 of the Criminal Procedure Code: ***“The suspect or defendant is not burdened with the obligation to provide proof.”***

Provisions of Article 183 of the Criminal Procedure Code: ***“A judge may not sentence a person to a penalty unless, with at least two valid pieces of evidence, he or she is convinced that a crime has actually occurred and that the defendant is guilty of committing it.”***

Provisions of Article 189 paragraph (4) of the Criminal Procedure Code: ***“The defendant's statement alone or the defendant's confession alone is not enough to prove that he is guilty of committing the act he is accused of, but must be accompanied by other evidence.”***

Based on these provisions, referring to a number of articles, it can be concluded that in the criminal justice system in Indonesia, the responsibility to prove a case lies entirely with the public prosecutor. The defendant is not burdened with the obligation to prove his innocence. In addition, the Criminal Procedure Code also consistently emphasizes the importance of upholding the principle of the presumption of innocence<sup>46</sup>.

The absence of clear regulations has the potential to create legal uncertainty and can cause unequal treatment in the judicial process. Judges, prosecutors, and legal counsel do not have a standard normative reference in assessing whether the evidence submitted by the defendant has met the requirements or not, so that the resulting decision can be subjective and inconsistent between one case and another<sup>47</sup>. Every regulation that is made must have utility value and justice for society<sup>48</sup>. In such conditions, the defendant becomes the most disadvantaged party because he has to prove something that is not regulated by law. This is certainly contrary to the principles of justice and the principles of due process of law, where every individual has the right to receive fair, proportional legal treatment based on legally determined procedures.

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<sup>46</sup> Sugianto, *Hukum Acara Pidana dalam Praktek Peradilan di Indonesia*, Deepublish Sleman, 2018, p.34-36.

<sup>47</sup> M. I. L. Damanik dan F. Lubis, *Arti Pentingnya Pembuktian dalam Proses Penemuan Hukum di Peradilan Perdata*, Judge: Jurnal Hukum, Vol.5, No.2 (2024), p.74-81.

<sup>48</sup> S. Herlina, *Implementasi Prinsip Restorative Justice pada Perkara Tindak Pidana Penganiayaan di Polresta Banjarmasin*, Jurnal Kolaboratif Sains, Vol.8, No.1 (2025), p.698-70.

Furthermore, the absence of this norm also has the potential to open up space for abuse of authority by law enforcement officers, for example, by demanding proof that exceeds the defendant's ability or interpreting the absence of evidence as an indication of guilt without considering the facts. Therefore, it is important for lawmakers to immediately evaluate and update regulations on Law Number 8 of 2010 by adding technical provisions that explicitly regulate the procedures, limitations, and standards of proof in the application of the reverse burden of proof principle. With a clarity procedure to avoid any discrepancies in understanding or different applications in law enforcement<sup>49</sup>, but also remains in line with the principles of justice and protection of human rights for every citizen.

### **C. CONCLUSION**

The application of the reverse burden of proof principle in the Indonesian criminal justice system is a legal step taken in order to eradicate money laundering crimes, which are difficult to prove with conventional evidentiary mechanisms. The reverse burden of proof principle is a form of exception to the general principle in Indonesian criminal law, which emphasizes the presumption of innocence. In its application, this principle shifts part of the burden of proof from the public prosecutor to the accused. Although in general, the responsibility for proof lies with the Public Prosecutor, as stated in the provisions of Article 66 of the Criminal Procedure Code. However, the application of the burden of proof to the accused risks contradicting the principle of the presumption of innocence, which is a fundamental principle in the Indonesian criminal law system. By shifting the responsibility for proof to the accused, there is a possibility that law enforcement officers will abuse this principle excessively or unconstitutionally, so that it can cause undue pressure on the accused and open up opportunities for injustice in the criminal justice process.

In order for the application of the reverse burden of proof principle not to violate the principles of justice and human rights, there needs to be more detailed the legal guidelines regarding the mechanisms and limitations of its application.

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<sup>49</sup> K. R. Pasha, A. Munawar dan L. Y. Rahmathon, *Kepastian Hukum dalam Sistem Praperadilan Pidana terhadap Saksi Pelaku Tindak Pidana Korupsi*, Jurnal Hukum Lex Generalis, Vol.5, No.7 (2024), p.5.

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In addition, law enforcement officers must be given adequate training and understanding regarding the principles of reverse burden of proof so that there are no errors in its application in the field. The government and lawmakers should also conduct periodic evaluations of the effectiveness of the application of this principle and ensure that every regulation in the law continues to uphold the principle of legal certainty and protection of the rights of the accused. Finally, there needs to be intensive socialization of law enforcement officers so that the reverse burden of proof principle is not misunderstood and remains within the corridor of proportional legal justice.

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