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Reverse Proof in Law Enforcement of Money Laundering Cases Originating from Corruption Crimes

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Abstract. *This study aims to analyze the effectiveness of law enforcement of the reverse burden of proof system in money laundering crimes originating from corruption cases. The research method used by the author in conducting this research is the Normative Juridical research method. This study uses the Criminal Proof Theory Approach, the Legal System Theory in the Perspective of Lawrence M. Friedman and the Theory of Legal Objectives in the Perspective of Gustav Rad bruch. Based on the research conducted, the following results were obtained: 1) The reverse burden of proof system in the legal system in Indonesia is an extraordinary legal instrument created by the government to eradicate extraordinary crimes such as corruption and money laundering. The reverse burden of proof system in Indonesia applies a limited and balanced reverse burden of proof system, this is based on the defendant still getting legal protection for his rights related to the principle of presumption of innocence and self-blame. 2) The current system of proof for corruption cases still has shortcomings and weaknesses in the law enforcement process, proof for corruption cases still uses the concept of proof based on the Criminal Code where the burden of proof lies with the public prosecutor (JPU), law enforcement officers cannot use the reverse burden of proof system as regulated in the law on corruption because there is no mechanism or procedure for how the reverse burden of proof system is applied. 3) The application of the reverse burden of proof system in enforcing the law on money laundering cases originating from corruption crimes is expected to increase the effectiveness of evidence for enforcing the law on these cases, increase the punishment for the perpetrators so that it can provide a greater deterrent effect and be able to maximize the return of state financial losses.*

Keywords: *Corruption; Laundering; Money.*

1. Introduction

Indonesia is a country of law, this is clearly stated in Article 1 paragraph (3) of the 1945 Constitution which states that "The State of Indonesia is a State of Law". This

confirms that Indonesia is a country based on Law (Rechstaat) which truly bases all activities of national and state life on applicable legal provisions. The law is the highest commander and also a clear boundary for the government and society in exercising their rights and obligations in order to achieve the desired state goals.

The substance contained in the formulation of Article 1 paragraph (3) of the 1945 Constitution makes law enforcement one of the important components in order to achieve the goals of the state, considering that it is in line with the objectives of the law, namely to create legal certainty, justice and provide benefits to the community. One of them is in the process of law enforcement against perpetrators of money laundering crimes originating from corruption crimes.

Money laundering from corruption is a complex crime that has a wide impact on the economy and society. Money laundering is generally used by perpetrators to disguise the origin of ill-gotten gains with the intention of enjoying their "cleaned" money without interference from their rivals or law enforcement agencies. Data shows that money laundering throughout 2022 reached IDR 183.88 trillion. Furthermore, the Coordinating Minister for Political, Legal, and Human Rights Mahfud MD emphasized that money laundering is more dangerous than corruption. This is because the proceeds of money laundering will be more difficult to trace because the money can go to other people or circulate in certain businesses or companies.[1]

Corruption cases are closely related to alleged violations of the money laundering article. Money The proceeds of corruption crimes are generally not used directly and are attempted to be disguised through the financial system, especially the banking system, so that they cannot be traced by law enforcement.[2]In its development, this crime of money laundering is carried out in a more complex manner with increasingly varied methods, going beyond jurisdictional boundaries and with utilise instruments other than the financial system or even through various sectors.[3]

Money Laundering itself is defined as a series of activities carried out by a person or organization against money generated from a crime with the aim of hiding or disguising the origin of the proceeds of crime from law enforcement by inserting the money into the financial system so that it later becomes halal money. Then if you look at the formulation of the Article in the Money Laundering offense, it can

[1]Gumilang Fuadi et.al., Review of Asset Confiscation in Money Laundering Crimes from a Justice Perspective, JPHK: Journal of Law Enforcement and Justice, vol 5 no 1, 2024, p.54. url :https://journal.umy.ac.id/index.php/jphk/article/view/19163/9100accessed October 19, 2024.
[2]Mulia Agung Pradipta, Reformulation of Criminal Substitute Fines in Money Laundering Crimes in Indonesia, Pandecta: Research Law Journal, vol 13, no. 2, 2020, p.100. url :https://ejournal2.undip.ac.id/index.php/jphi/article/view/4274/2352accessed October 19, 2024
[3]KPK, 2017, Indonesia'S Money Laundering Risk Assessment on Corruption, Jakarta, p.1. url :https://cms.kpk.go.id/storage/5713/Laporan-Kajian-CRA-2023.pdfaccessed December 01, 2024.

be seen that one of the elements of error in the TPPU offense is the Element of hiding or disguising as contained in Article 3 and Article 4 of the TPPU Law.

Corruption and Money Laundering in Indonesia are categorized as Extraordinary Crimes, so they require extraordinary handling, but the handling of Corruption cases is currently considered less than optimal. The ordinary evidentiary system used by law enforcement officers is considered incapable of eradicating corruption and money laundering cases. This can be seen from the continuing difficulties of law enforcement officers, both the Corruption Eradication Committee (KPK), the Police, and the Prosecutor's Office, in uncovering corruption cases, especially those related to assets obtained from corruption, so that this also has implications for the return of state losses that are not optimal.

This study aims to examine and analyze the effectiveness of reverse proof in enforcing the law on money laundering crimes originating from corruption cases as an extraordinary legal instrument in efforts to eradicate corruption and optimize the return of state financial losses.

2. Research methods

2.1 Approach Method

The research method used is the Normative Juridical research method with a qualitative approach method using the case approach, conceptual approach and statute approach. The case approach is used to see the reality of law enforcement, the conceptual approach is used to build a concept to be used as a reference in this study, namely the criminal law policy on law enforcement of the reverse burden of proof system in eradicating money laundering crimes originating from corruption. while the statutory approach is carried out by examining all laws and regulations related to the legal issues to be discussed. The author will use the statute approach because the statutory approach is able to study whether there is consistency between the 1945 Constitution; TPPU Law; Corruption Law. In addition, the researcher also uses a comparative approach to analyze by making comparisons with other countries such as Malaysia and Hong Kong related to the regulation of the reverse burden of proof system.

2.2 Research Specifications

This study uses analytical descriptive specifications, which aim to describe comprehensively and systematically the facts of the characteristics of law enforcement in a region. This analytical descriptive study is used to describe and answer questions related to how the law enforcement of the reverse burden of proof system in money laundering crimes originating from corruption cases, how the process of the proof system in handling corruption cases is currently and how effective the reverse burden of proof system is in enforcing the law on money laundering crimes originating from corruption cases and how the ideal legal policy is in enforcing the law against perpetrators of money laundering crimes originating from corruption cases.

2.3 Data Collection Method

The technique of collecting data in the form of primary legal materials is carried out using legal documentary techniques (documentary research). Legal documentary techniques are data collection techniques through identification and review of legislation and official legal documents, then analyzed and formulated as the main legal materials in normative legal research (legal doctrine). Meanwhile, secondary legal materials are taken using the literature study method carried out through the stages of identifying data source libraries, identifying the required legal materials, and inventorying the required legal materials (data).

2.4 Data Analysis Methods

The research data of this study includes primary, secondary and tertiary legal materials that have been collected by researchers through the legal inventory process and then classified to be analyzed in depth by exploring the principles, values and basic norms contained therein. The next step, researchers cross-check with other legislation to find synchronization or inconsistencies between the laws and regulations.[4]The data analysis was conducted qualitatively through a review of deductive thinking logic. Deductive logic can be interpreted that researchers in making conclusions from this research problem are carried out briefly starting from the general to the specific as in normative research which uses the deductive method as the main reference. In analyzing normative legal data, there are stages, namely first, secondary data and other positive legal data are formulated as legal principles, second, formulating the legal understanding related to the research problem, third, forming applicable legal standards related to the research problem and fourth, the legal constraints encountered are formulated in detail and clearly.

3. Results and Discussion

3.1. Reverse Proof System in Law Enforcement of Money Laundering Crimes Originating from Corruption Crimes

1) The reverse burden of proof system in the legal system in Indonesia

The process of proof in a case examination in court is the most important stage, this is because to prove the truth of the defendant's guilt in a criminal case in court is determined at the proof stage. The proof process is the stage of presenting legally valid evidence by both the Public Prosecutor, Legal Counsel and the defendant before the judge in a trial examining a case in order to provide certainty about the truth of the events presented so that this can be assessed as true by the Panel of Judges.

That based on the provisions of Article 183 of the Criminal Procedure Code which stipulates that: "A judge may not impose a sentence on a person, unless with at least two valid pieces of evidence he obtains the conviction that a crime has actually occurred and that the defendant is guilty of committing it." This provision

[4]Suteki, & Taufani, Galang. (2018). Legal Research Methodology. Depok: PT. Raja Grafindo Persada, p. 267

confirms that the criminal evidence system in Indonesia adheres to a negative system of evidence according to the law.

Based on this, thencriteria for determining whether a defendant is guilty or not, the judge must pay attention to the following aspects:[5]

a. The defendant's guilt must be proven with at least two valid pieces of evidence. This, in the view of doctrine and practitioners, is commonly referred to as the terminology of the minimum principle of proof. This minimum principle of proof is born from the reference to the sentence at least two valid pieces of evidence must be oriented to 2 (two) pieces of evidence as determined by Article 184 paragraph (1) of the Criminal Procedure Code, namely, witness statements, expert statements, letters, instructions, and the defendant's statement. If there is only 1 (one) piece of evidence, then the minimum principle of proof is not achieved so that the defendant cannot be sentenced.

b. That based on the two valid pieces of evidence, the judge obtained the conviction that the crime had indeed occurred and the defendant was the perpetrator. From this aspect, it can be concluded that the existence of the two valid pieces of evidence is not enough for the judge to impose a sentence.

That in the current legal system in Indonesia, a reverse burden of proof system or reversal burden of proof system is known, the reverse burden of proof system in the legal system in Indonesia is basically not something new, however, law enforcement officers, both Public Prosecutors and Panels of Judges still very rarely use this legal system in the process of providing evidence in court.

That the reverse burden of proof system emphasizes the Defendant to prove that the Defendant did not commit the alleged act and the assets owned are not the result of a crime. The reverse burden of proof system in Indonesia is currently regulated in several laws and regulations, including: Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption and Law Number 8 of 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering.

That in the Corruption Crime Law, the provisions regarding the reverse burden of proof system in enforcing the law on Corruption Crime cases are as regulated in Article 12 B Jo. Article 38 A of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

That based on the explanation of Article 37 of Law Number 31 of 1999 concerning Corruption Crimes, it states “This provision is a deviation from the provisions of the Criminal Procedure Code which stipulates that the prosecutor is obliged to prove that a crime has been committed, not the defendant. According to this provision, the defendant can prove that he did not commit a crime of corruption. If the defendant can prove this, it does not mean that he is not proven to have

[5]Lilik Mulyadi, 2007, Criminal Procedure Law: Normative, Theoretical, Practice and Problems, alumni, Bandung, p. 198.

committed corruption, because the public prosecutor is still obliged to prove his charges. The provisions of this article are limited reverse proof, because the prosecutor is still obliged to prove his charges". This reverse proof system is known as a limited and balanced reverse proof system.

The application of a limited and balanced reverse burden of proof system based on the explanation of Article 37 paragraph (1) of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. This article is a balanced consequence of the application of reverse burden of proof against the accused. The accused still requires balanced legal protection for violations of fundamental rights related to the principle of presumption of innocence and self-blame (non-self-incrimination).

That the reverse burden of proof system in Law Number 8 of 2010 concerning the prevention and eradication of the Crime of Money Laundering is stated in the formulation of Article 77 and Article 78 which reads as follows:

Article 77

"For the purposes of examination in court, the defendant is obliged to prove that his assets are not the result of a criminal act."

Article 78

(1) In the examination at the court hearing as referred to in Article 77, the judge orders the defendant to prove that the assets related to the case do not originate from or are related to the criminal act as referred to in Article 2 paragraph (1).

(2) The defendant proves that the assets related to the case do not originate from or are related to the criminal act as referred to in Article 2 paragraph (1) by submitting sufficient evidence.

2) Law enforcement of money laundering crimes originating from corruption crimes in Indonesia

Money laundering is any act that fulfills the elements of a criminal act in accordance with the provisions of the TPPU Law. Basically, the money laundering process of money consists of three stages, namely placement, separation (layering), and integration (integration). These three stages can occur simultaneously in a single transaction or through a series of different transactions. These steps aim to insert illegal funds into the financial system with the intention of not arousing suspicion from the authorities.

a) *Placement* is a stage carried out in a simple process to change the resulting money crime into a less suspicious form so that it can be entered into the financial system without attracting attention. For example, placing the proceeds of crime in the form of cash deposits in banks, insurance policies, or to buy property such as houses, boats, or jewelry. This stage is relatively easy to detect because the money is still directly connected to criminal activities, therefore many countries including Indonesia focus on money laundering prevention efforts at this stage. In

fact, anti-money laundering regulations require reporting and steps to detect the origin of suspicious funds, such as in the banking, insurance, and property sectors.[6]

b) *Layering* which is also known as the layering stage. This second stage *done* by the perpetrator with a series of transactions using illegal funds from corruption, which are then arranged into a complex series and protected by various levels of anonymity. This is done with the aim of hiding the source of money originating from the illegal activity. At this stage, it often involves the use of wire transfers using various accounts in several countries, with the intention of confusing the trail of the funds. In addition, the purpose of layering is to avoid the formation of an audit trail. For example, the use of wire transfers to banks abroad at this stage makes tracking more difficult because of the involvement of international banking mechanisms.

c) Integration is the third or final stage where at this stage the perpetrator re-enters the funds whose origins are no longer visible into legitimate transactions, as if they no longer have anything to do with the origins of the corruption crime. This integration is a trick to be able to provide legitimacy to the proceeds of corruption crimes which include the sale of shares, houses, ships and jewelry. There are many ways to do integration, but the one that is often used is a method that originated in 1930, namely the loan-back method or loan default method. The loan-back method includes large deposits that are usually stored in foreign banks. Then the bank makes a loan from the amount of money deposited. The money obtained from this loan can be used freely since the money can be traced as money that comes from legitimate transactions.

That in the crime of money laundering, there are at least 2 (two) components of the crime variant, namely the predicate crime and the crime of money laundering itself. That the predicate crime is the source of the crime of money laundering. Meanwhile, follow up crime is an understanding of the crime of money laundering which requires that the crime of money laundering can occur after the predicate crime. Predicate crime here refers to all crimes that are the core of the crime of money laundering which are follow up crimes.

Law enforcement against money laundering crimes in Indonesia began with the enactment of Law Number 15 of 2002 concerning the Crime of Money Laundering, which was later amended by Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

That based on the provisions as stipulated in Article 2 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering which has been amended by Article 607 of Law Number 1 of 2023 concerning the

[6]Ikram Mahtika Albar, Analysis of Money Laundering Crimes Originating from Proceeds of Corruption (Case Study of Decision Number 2223 K/Pid.Sus/2012), Das Sollen: Journal of Contemporary Law and Society Studies 1, no. 2, 2023, p. 7. url :https://journal.forikami.com/index.php/dassollen/article/view/298/177accessed December 01, 2024.

Criminal Code which was ratified on January 2, 2023, it regulates various predicate crimes which are the source of the crime of money laundering, which states that the proceeds of crime are assets obtained from criminal acts, one of which is the crime of corruption.

The existence of the Money Laundering Law is a form of government awareness of how dangerous the crime of money laundering is, this can be seen from how difficult it is to prove a case of money laundering and the impacts caused by the occurrence of the crime. Moreover, the original crime of the crime of money laundering comes from the crime of corruption which is categorized as an extraordinary crime.

Observing the provisions as stipulated in Article 2 of the Money Laundering Law, corruption is one of the predicate crimes of money laundering in Indonesia. Corruption itself is actually an extraordinary crime, so it requires extraordinary handling. The perpetrators of corruption are currently getting smarter in storing and hiding their corrupt assets with various modes of operation.

That the crime of money laundering is a chain of a form of criminal act and crime, the crime of money laundering is a form of inclusion and participation, especially the continuation of a crime, namely the form of inclusion after the crime has occurred, which in German is Nachtaterschaft or begunstiging in Dutch, which in English is called Cooperation after the fact. Because the crime of money laundering is made a separate crime and the criminal and punishment system is not separate or integrated with the previous main crime.[7]

Law enforcement against money laundering crimes originating from corruption crimes in Indonesia is still not optimal, looking at data from the Indonesian Corruption Watch (ICW). Law enforcement against money laundering crimes in Indonesia is still very minimal, ICW researcher Diky Anandya said, based on ICW monitoring, only 6 out of 791 corruption cases in Indonesia throughout 2023 were investigated for money laundering.[8]

3.2 Weaknesses in the evidentiary system in handling corruption crimes in Indonesia today

Corruption in Indonesia is in a very worrying condition corruption is currently not only carried out individually but has been carried out in groups very systematically and organized. So that it has widespread consequences not only resulting in state financial losses in fantastic amounts but also affecting the socio-economic conditions of society at large. Corruption in Indonesia today, does not only occur

[7]Sri Endah Wahyuningsih and Rismanto, Criminal Law Enforcement Policy on Combating Money Laundering in the Framework of Criminal Law Reform in Indonesia, Journal of Legal Reform, No. 1 Vol. 2, January-April 2015, p. 48.

[8] Tatang Gurito et.al, ICW Data: Only 6 of 791 Corruption Cases in 2023 Were Investigated for Money Laundering,https://nasional.kompas.com/read/2024/05/19/18122111/accessed on September 1, 2024.

at the elite level in the central government, but also occurs at the regional level and even at the village government level.

In addition, the domestic index that can also be used as a reference to assess the level of vulnerability to corruption is the Anti-Corruption Behavior Index (IPAK) issued by the Central Statistics Agency (BPS). The results of the BPS survey in 2023 showed that Indonesia's IPAK was still low, with a score of only 3.93 on a scale of 0 to 5. This achievement decreased by 0.01 points compared to 2022. Moreover, this achievement did not reach the target stated in the 2023 National Medium-Term Development Plan (RPJMN), which was 4.09.[9]

Seeing the current condition of corruption in Indonesia, corruption eradication must be carried out by optimizing all resources to resolve it, in relation to this, basically the government has made great efforts to prevent and eradicate corruption by regulating and enforcing various regulations on the prevention and eradication of corruption, the establishment and strengthening of the function of law enforcement officers such as the Corruption Eradication Committee (KPK), the Police and the Prosecutor's Office, to the implementation of a reverse burden of proof system or reversal of the burden of proof in enforcing the law on corruption. However, all of these efforts have not been able to eradicate corruption, in fact corruption is considered to be growing.

That there are several classifications of obstacles in eradicating corruption which can be classified as follows:[10]

a) Structural Barriers, namely barriers originating from state and governmental practices that prevent the handling of corruption from running as it should. Included in this group are: sectoral and institutional egoism that leads to the submission of as many funds as possible for sectors and agencies without considering overall national needs and trying to cover up deviations in the relevant sectors and agencies; the supervisory function has not functioned effectively; weak coordination between supervisory officers and law enforcement officers; and a weak internal control system that has a positive correlation with various deviations and inefficiencies in the management of state assets and the low quality of public services.

b) Cultural Barriers, namely barriers that originate from negative habits that develop in society. Included in this group are: the existence of "reluctant attitudes" and tolerance among government officials that can hinder the handling of

[9]Devy Setiyawati, et.al, Anti-Corruption Behavior Index 2023, (Central Bureau of Statistics) Vol Year 2023, p. 23. url :https://www.bps.go.id/id/publication/2023/12/20/0f9d5ec7203f63ff45c99a07/index-perilaku-anti-corruption-2023.htmlaccessed December 03, 2024.

[10]Salma Napisa and Hafizh Yustio, Corruption in Indonesia (Causes, Dangers, Obstacles and Eradication Efforts, and Regulations) Literature Review of Educational Management and Social Sciences, Journal of Educational Management and Social Sciences, volume 2 issue 2, July 2021, p. 566–567. url :https://dinastirev.org/JMPIS/article/view/595/366accessed December 01, 2024.

corruption; the lack of openness of agency leaders so that they often appear to be tolerant and protect perpetrators of corruption, interference by the executive, legislative and judiciary in handling corruption, low commitment to handling corruption firmly and thoroughly, and the permissive attitude (indifference) of the majority of society towards efforts to eradicate corruption.

c) Instrumental Barriers, namely barriers that originate from the lack of supporting instruments in the form of laws and regulations that prevent the handling of corruption from running as it should. Included in this group are: there are still overlapping laws and regulations that give rise to corrupt acts in the form of fund inflation in government agencies; the absence of a "single identification number" or an identification that applies to all community needs (driving license, tax, bank, etc.) that can reduce the opportunity for misuse by every member of the community; weak law enforcement in handling corruption; and the difficulty of proving corruption.

d) Management Obstacles, namely obstacles that originate from the neglect or non-implementation of good management principles (high commitment implemented fairly, transparently and accountably) which makes the handling of corruption crimes not run as it should. Included in this group are: lack of commitment of management (Government) in following up on the results of supervision; weak coordination both among supervisory officers and between supervisory officers and law enforcement officers; lack of information technology support in the implementation of government; lack of independence of supervisory organizations; lack of professionalism of most supervisory officers; lack of support for supervisory systems and procedures in handling corruption, and inadequate personnel systems including recruitment systems, low "formal salaries" of civil servants, performance appraisals and rewards and punishments.

In relation to instrumental obstacles regarding the difficulty of providing evidence in handling corruption cases, the most prominent aspect of the process is that law enforcement officers from the Corruption Eradication Committee, the police and the prosecutor's office appear to have great difficulty in providing evidence against perpetrators of corruption.

In relation to instrumental obstacles regarding the difficulty of proving in handling corruption cases in the process, it is indeed seen that the most prominent is that law enforcement officers from the Corruption Eradication Committee, the Police, and the Prosecutor's Office appear to have great difficulty in providing evidence against perpetrators of corruption. Public Prosecutors, both those assigned to the Prosecutor's Office and the Corruption Eradication Commission (KPK), in their process still use the evidentiary system as stated in the Criminal Procedure Code (KUHAP), where the burden of proof for a case is on the public prosecutor to prove it.

The ordinary evidentiary system that emphasizes the Public Prosecutor to prove a criminal act charged as in the Criminal Procedure Code (KUHAP) is considered

incapable of uncovering systematic and organized corruption, so that in its development the government has made reforms by implementing a reverse evidentiary system in the Corruption Crime Law.

The law enforcement process against the reverse burden of proof system by law enforcement officers is considered to be less than optimal, the absence of procedural law relating to how the mechanism/process of the reverse burden of proof system is applied to perpetrators of corruption, making law enforcement officers unable to use the reverse burden of proof system optimally. Whereas the reverse burden of proof system is one of the extraordinary legal instruments created to eradicate corruption which is currently categorized as an extraordinary crime.

3.3. The Effectiveness of the Reverse Burden of Proof System in Law Enforcement of Money Laundering Crimes Originating from Corruption Cases

Corruption is categorized as an extraordinary crime committed by white collar crime, so that to eradicate it, extraordinary legal instruments are also needed. Moreover, the results of the criminal act of corruption are then laundered by the perpetrators with the aim of disguising/hiding the assets from the proceeds of their crimes, so that with the usual evidentiary system, law enforcement officers have great difficulty in proving the case. So that the reverse evidentiary system is expected to be one of the extraordinary legal instruments formed as an effort to deal with the problem of corruption in Indonesia. However, law enforcement officers seem to ignore the reverse evidentiary system in every handling of money laundering cases, especially those originating from corruption.

That in the process of law enforcement against money laundering cases and corruption cases can be combined into 1 (one) indictment, based on Article 75 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes which states "In the event that investigators find sufficient preliminary evidence of the occurrence of money laundering crimes and predicate crimes, investigators combine the investigation of the predicate crime with the investigation of the money laundering crime and notify the PPATK."

Based on the results of monitoring corruption cases throughout 2023, ICW found a very significant increase compared to previous years (see Graph 2), namely 791 corruption cases with 1,695 people named as suspects by law enforcement officers. Furthermore, from the cases that were successfully monitored, the potential state loss reached IDR 28,412,786,978,089 (IDR 28.4 trillion), the potential for bribery and gratuities was IDR 422,276,648,294 (IDR 422 billion), the potential for extortion or extortion was IDR 10,156,703,000 (IDR 10 billion), and the potential for assets disguised through money laundering was IDR 256,761,818,137 (IDR 256 billion).[11]

[11]Diky Anindya, 2022 Verdict Trend Monitoring Report (decreasing Supreme Court performance), Indonesian Corruption Watch (ICW), July 2023, p. 9-10. url

That of the 791 corruption cases successfully uncovered by law enforcement officers throughout 2023, there were 701 cases of state financial losses, 36 cases of extortion, 22 cases of bribery, 11 gratification, 6 embezzlement in office, 4 conflicts of interest in procurement, 3 obstruction of justice, and only 6 (six) cases and 7 (seven) suspects were found to be charged with money laundering. Based on these data, this is directly proportional to the high potential value of state losses that have been successfully uncovered. However, unfortunately, the enthusiasm for using the article on state or state economic losses is not followed by the enthusiasm to restore assets resulting from corruption crimes to the state treasury. This can at least be seen from the steps of law enforcement who have not yet mainstreamed the return of assets resulting from crimes through the use of money laundering articles.[12]

Regarding the implementation of the reverse burden of proof system, it is basically one of President Ir. Joko Widodo's policies as stated in presidential instruction number 7 of 2015 concerning Action to Prevent and Eradicating Corruption, point 76 states "optimizing the use of the money laundering law, reverse burden of proof and enforcement of the code of ethics of law enforcement officers". The President ordered law enforcement officers to implement the money laundering law and reverse burden of proof in the process of enforcing the law on corruption crimes.

The application of the reverse burden of proof system can make it easier for law enforcement officers to provide evidence for the cases they handle, so that it can minimize cases that are declared free, released or even NO. The reverse burden of proof system in Indonesia applies a balanced and limited reverse burden of proof system so that it does not immediately burden the Defendants to prove that they are not guilty and that the assets they obtain are not the result of crime, but the balanced and limited reverse burden of proof system still places the burden of proof on the Public Prosecutor to prove the cases they handle and does not immediately confiscate the assets of the perpetrators of corruption, so that it does not violate the rights of the accused regarding the principle of presumption of innocence and self-blame (non-self-incrimination).

The reverse burden of proof system as an (extraordinary legal instrument) in the process of enforcing the law on money laundering crimes, especially those originating from corruption crimes, is currently expected to be a priority for implementation by law enforcement officers. This is inseparable from the effectiveness of the application of the reverse burden of proof system in efforts to eradicate money laundering crimes originating from corruption crimes. This effectiveness can be seen during the law enforcement process, both in terms of facilitating the process of providing evidence in court and in terms of optimizing

:https://antikoburu.org/sites/default/files/document/Narasi_Tren%20Vonis%202022_1.pdfaccessed December 01, 2024.
[12]Ibid., p. 15.

the return of state financial losses, so that this is felt to provide a greater deterrent effect on perpetrators of criminal acts.

3.4. Comparison of reversal proof systems in various countries

The principle of reversal of the burden of proof is a system of proof that is not commonly applied, both continental and Anglo-Saxon systems, recognizing proof by still imposing its obligations on the Public Prosecutor. It's just that Anglo-Saxon countries in certain cases (certain cases) have implemented a different mechanism (differential), namely the reversal of the burden of proof system or known as "Reversal of Burden Proof" ("Omkering van Bewijlast').

Chronologically, the principle of reversing the burden of proof begins with the evidentiary system known in countries that adhere to the Anglo Saxon group or countries that adhere to "case law" which is limited to "certain cases" or certain cases, especially regarding the crime of "Gratification" or giving which is correlated with the crime of bribery.[13]

The implementation of the reverse burden of proof system in Indonesia and several Anglo-Saxon countries has several differences, the differences include Indonesia adopting a limited and balanced reverse burden of proof system, while in Anglo-Saxon countries, a pure reverse burden of proof system has been implemented. Another difference between the reverse burden of proof system in Anglo-Saxon countries and Indonesia is related to the return of assets originating from criminal acts that have used civil channels, while in Indonesia, the return of state financial losses originating from criminal acts still uses a criminal mechanism, namely by confiscation and waiting for a court decision.

The application of the reverse burden of proof system in Anglo-Saxon countries such as England, Malaysia, Hong Kong and Singapore basically raises pros and cons as does the application of the reverse burden of proof system in Indonesia. This arises with the idea that the application of the reverse burden of proof system can result in violations of Human Rights (HAM) namely in the form of violations of the presumption of innocence. However, on the other hand, the application of the reverse burden of proof system is considered effective in efforts to eradicate corruption and money laundering, as well as optimizing the return of state financial losses.

The application of the reverse burden of proof system in various countries includes the following:

1) Malaysia

Malaysia is a country that has almost the same tradition and a region adjacent to Indonesia. Related to Corruption Crimes, Malaysia has problems that are also

[13]A. Djoko Sumaryanto, 2020, Anthology of Reversal of Burden of Proof, CV. Jakad Media Publishing, Surabaya, p. 39.

almost similar, including the high practice of bribery (giving tribute) which is the source of the development of corrupt practices.

Facing these chronic problems, the Malaysian state has committed to eradicating corruption. Since 1961, Malaysia has had an Anti-Corruption Law which first came into force in 1961 called the Prevention of Corruption Act. Rasuah No. 57. Then Emergency (Essential Power Ordinance) No. 22 of 1970, and the BPR (Corruption Prevention Agency) was formed based on the Anti-Corruption Agency Act of 1982. Now these three laws remain in effect.[14]

Malaysia enacted a new Corruption Prevention Act in 1997, which only became effective on January 8 1998. This law is a combination of three old laws, namely the 1961 Corruption Prevention Act, the 1982 Corruption Prevention Agency Act, and Ordinance (Ordinance).[15]

The commitment and optimization of eradicating corruption in Malaysia, one of which is by implementing a reverse burden of proof system, as regulated in Article 42 paragraph (1) of the Malaysian Law (Act 575) of the Prevention of Corruption Act 1997 which states the following:

"If in any proceedings against any person for any offense under section 10, 11, 13, 14 or 15 it is proven that any bribe has been agreed to-received or agreed to be accepted-accepted, obtained or attempted to be obtained, requested , given or agreed to be given, promised or offered by or to the accused, the bribe shall be deemed to have been agreed to-accepted or agreed to be agreed-to be accepted, obtained or attempted to obtain, requested, given or agreed to be given, promised or offered fraudulently as encouragement or reward for or because of the things stated in the points of error, unless the reason is proven"

The implementation of the reverse burden of proof system in Malaysia is considered capable of eradicating corruption and preventing criminal acts of corruption in Malaysia.

2) Hong Kong

Hong Kong is one of the countries that implements a reverse burden of proof system. The implementation of the reverse burden of proof system in Hong Kong is based on the Prevention of Bribery Ordinance, there are provisions on reverse burden of proof or reversal of the burden of proof. Those who are suspected of having personal wealth exceeding income, or who enjoy a standard of living beyond what their income allows, the burden of proof shifts to them. And thus, they must be able to prove their innocence. "In any prosecution of a person for an offence under this Act, the burden of providing a legitimate defence or acceptable excuse lies with the accused." This provision. Is a reversal of the principle of presumption of innocence that has been common in British law. And now

[14]Mansur Kartayasa, 2017, Corruption & Reverse Evidence from the Perspective of Legislation Policy and Human Rights, Kencana, Jakarta, p. 221.
[15]Ibid., p. 222.

"unexplained wealth" is a crime, not just a reason for administrative dismissal. The penalty is increased to a maximum fine of 100,000 Hong Kong dollars and 10 years imprisonment, plus paying off the amount of bribes received.[16]

4 Conclusion

Based on the results of the research and discussion, it can be concluded that the reverse burden of proof system in the legal system in Indonesia is an extraordinary legal instrument created by the government to eradicate extraordinary crimes such as corruption and money laundering. The reverse burden of proof system in Indonesia applies a limited and balanced reverse burden of proof system, this is based on the Defendant still getting legal protection for his rights related to the principle of presumption of innocence and self-blame. The current system of proof for corruption cases still has shortcomings and weaknesses in the law enforcement process, proof for corruption cases still uses the concept of proof based on the Criminal Procedure Code where the burden of proof lies with the Public Prosecutor (JPU), law enforcement officers cannot use the reverse burden of proof system as regulated in the Corruption Crime Law because there is no mechanism or procedure for how the reverse burden of proof system is applied. The application of the reverse burden of proof system in enforcing the law on money laundering cases originating from corruption crimes is expected to increase the effectiveness of evidence for enforcing the law on these cases, increase the punishment for the perpetrators so that it can provide a greater deterrent effect and be able to maximize the return of state financial losses.

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[16]Robert Klitgaard, 1998, Eradicating Corruption, Yayasan Obor Indonesia, Jakarta, p. 139, quoted from Ibid., p. 235.

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