

Application of Reverse Evidence in Corruption Criminal Acts (Study of Makassar District Court Decision Number 89/Pid.Sus-Tpk/2021/Pn Mks)

Jaya Francisco Kristian¹⁾ & Bambang Tri Bawono²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: jayafranciscokristian.std@unissula.ac.id

²⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: bambangtribawono@unissula.ac.id

Abstract. *Reversed burden of proof is a legal mechanism that places the burden on the defendant to prove that the wealth he owns is not the result of corruption. This mechanism differs from the general principle in criminal law, where the burden of proof usually lies with the public prosecutor. In the context of reversed burden of proof, the defendant is required to explain the origin of his wealth with valid evidence that is acceptable in court. The purpose of the study is to determine and analyze the construction of the regulation of reversed burden of proof in corruption crimes associated with the principle of presumption of innocence. to determine and analyze the application of reversed burden of proof in corruption crimes (Study of Makassar District Court Decision Number 89/PID.SUS-TPK/2021/PN Mks). The approach method used in this research is the method normative juridical means research that emphasizes the juridical aspects that are focused on library research (legal science), which regulates substantially the application of the principle of reverse burden of proof which is then compiled, explained and analyzed by providing conclusions. Reversed proof and the presumption of innocence are interrelated, this is as a balance in the enforcement of corruption law, the balance that the author means here is, so that law enforcers also provide the opportunity for the defendant to prove the origin of the defendant's property which if sued is confiscated for the state, so that legal justice is created which is the impact of the presumption of innocence.*

Keywords: *Criminal; Corruption; Reverse.*

1. Introduction

The philosophical provisions of the rule of law in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia state, which states that the State of Indonesia is a state based on law based on Pancasila.

Humans living in society, whether in social, legal, state or religious society, will often clash with different interests, some of which are even contradictory, so that this can give rise to conflicts that disrupt the security and harmony of community life.¹Consciously or not, humans in social life are influenced by positive law and Islamic law.

The law and regulations themselves provide a view of what humans can do and what can be avoided. It is realized that technological progress cannot always bring positive impacts to humans, sometimes it brings negative impacts, namely increasing crime rates and other criminal acts including corruption.²

The law has given strict sanctions in responding to a criminal act, but in its implementation there are always obstacles and barriers, both from the community and from law enforcement itself. One of these obstacles is the lack of awareness to understand the law. As is known, the purpose of law is to regulate the survival of society in all areas, both in relation to humans or to the society in which they live, as well as regulating between society and its government.

According to LJ Van Apeldorn, the purpose of law is to protect and regulate the interests of each human being, so that those interests are not disturbed. In the Criminal Code (KUHP), punishment or legal sanctions are given to someone who commits a crime, aiming to educate someone so that he is deterred / deterred, with the hope that the perpetrator will no longer repeat his prohibited actions. In addition, the main thing is to prevent from committing unlawful acts.³

Indonesia as a country of law, adheres to one of the important legal principles, namely the principle of presumption of innocence. This is regulated in the Criminal Procedure Code (KUHAP) and Law Number 48 of 2009 concerning Judicial Power.⁴In Article 10 paragraph 1 of the Republic of Indonesia Law Number 48 of 2009 concerning judicial power, which states "The court is prohibited from refusing to examine, try, and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it." Based on this provision, judges are required to decide on cases even though the case does not have or is unclear in the legal basis or laws that regulate it.

¹Wirjono Prodjodikoro, *Certain Criminal Acts in Indonesia*, Bandung: PT. Refika Aditama, 2002, p. 15.

²CST Kansil, *Introduction to Indonesian Law and Legal System*, Jakarta: Balai Pustaka, 1989, p. 33

³Ibid, p. 33

⁴ <http://m.hukumonline.com>, "principle of presumption of innocence" accessed on February 25, 2025

Although considered an effective instrument in eradicating corruption, the application of reverse burden of proof has also drawn criticism, especially regarding the potential violation of the presumption of innocence. In the criminal law system, the presumption of innocence is a basic principle that states that every individual accused of committing a crime must be considered innocent until proven otherwise in court. This principle is universally recognized in various international legal instruments, such as Article 11 of the Universal Declaration of Human Rights (UDHR) and Article 14 paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR).⁵

The application of reversed burden of proof in corruption crimes is often considered to violate this principle, because the defendant is required to prove his innocence. In fact, in conventional criminal law, the burden of proof should be on the public prosecutor.⁶ Defendants who do not have access to complete financial documents or administrative evidence may have difficulty proving the origins of their wealth, which may ultimately lead to unfair criminalization.⁷ Another criticism of the reverse burden of proof is the potential for abuse of power by law enforcement. Without strict oversight, this mechanism can be used arbitrarily to pressure or criminalize certain individuals, especially in the context of politics or business competition.⁸ Therefore, there needs to be clear limitations in the application of reverse burden of proof to remain in accordance with the principles of justice and human rights.

This issue becomes increasingly relevant given the importance of balancing effective anti-corruption efforts with the protection of human rights. On the one hand, corruption is an extraordinary crime that requires an extraordinary approach. However, on the other hand, the implementation of policies that lead to reversed proof must be carried out very carefully so as not to sacrifice the fundamental principles of criminal law.⁹ In this context, the fundamental question that arises is to what extent the regulation of reverse burden of proof in

⁵ Zainudin Hasan et al., "Legal Analysis of the Implementation of the Principle of Presumption of Innocence in Criminal Investigation," *Integrated Multidisciplinary Scientific Journal* 8, no. 6 (2024).

⁶ Khaidir Khaidir, "Legal Analysis of the Reversal of the Burden of Proof in Corruption Crimes," *Rio Law Journal* 1, no. 1 (February 29, 2020), <https://doi.org/10.36355/v1i1.327>

⁷ Wawan Prasetyo, "Reverse Proof Method in Corruption Crimes," *Al-Daulah: Journal of Islamic Law and Legislation* 5, no. 2 (October 1, 2015): 472–520, <https://doi.org/10.15642/ad.2015.5.2.472-520>

⁸ Angelica Clara Anasztasia Simanjuntak et al., "Analysis of the Influence of the Reversed Burden of Proof System in Civil Dispute Settlement in Courts in Indonesia," *Causa: Journal of Law and Citizenship* 4, no. 10 (2024), <https://doi.org/10.3783/causa.v4i10.3831>

⁹ Ewaprilyandi Fahmi Saputra and Hery Firmansyah, "Legal Politics in Efforts to Eradicate Corruption Through Renewal of Corruption Regulations as Extraordinary Crimes in the National Criminal Code," *Unes Law Review* 6, no. 2 (2023), <https://doi.org/10.31933/unesrev.v6i2>

corruption crimes affects or even conflicts with the principle of the presumption of innocence.

Theoretically, reversed proof does not necessarily violate the presumption of innocence if applied with certain limitations. For example, the burden of proof given to the defendant is only "reasonable proof" and not absolute proof. In addition, the judge still has an obligation to objectively assess all evidence presented by both parties, so that the defendant does not completely lose legal protection.¹⁰ However, in practice, the application of reverse burden of proof often causes debate. One reason is the lack of a uniform understanding among law enforcers, including judges, prosecutors, and lawyers, regarding the limits of the application of this principle.

2. Research Methods

Legal research is basically a scientific activity based on certain methods, systematics and thinking which aims to study one or several specific legal phenomena by analyzing them, apart from that, an in-depth examination of the legal facts is also carried out to then attempt a solution to the problems that arise in the relevant phenomena.¹¹ Research is a (scientific) suggestion for the development of science and technology, so the research methodology applied must always be adjusted to the science that is its parent.¹²

3. Results And Discussion

3.1. Construction of the Reverse Burden of Proof Arrangement in Corruption Crimes Linked to the Principle of Presumption of Innocence

Construction can be defined as the arrangement and relationship of words in a sentence or group of words. The meaning of a word is determined by the construction in a sentence or group of words.¹³ According to Sarwiji, what is meant by construction meaning is the meaning contained in linguistic construction.¹⁴ So, the meaning of construction can be interpreted as the meaning related to sentences or groups of words in a word in linguistic studies. Construction can also be defined as the arrangement (model, layout) of a building (bridge, house, and so on).

¹⁰ Mathieu Joseph Caspar Heckman, "The Strategic Use of Patents in Standardization in Relation to US, European and Chinese Competition Law" (Maastricht University, 2016), <https://doi.org/10.26481/dis.20160422mh>

¹¹ Bambang Sunggono, 2010, Legal Research Methodology, Jakarta, Rajawali Press, p.38.

¹² Soerjono Soekanto, 2007, Normative Legal Research, Jakarta, PT. Raja Grafindo Persada, p.1.

¹³ Hasan Alwi, 2007. The Great Dictionary of the Indonesian Language, Fourth Edition. PT. Balai Pustaka, Jakarta, p. 17

¹⁴ Suwandi, Sarwiji. 2008. Semantics Introduction to the Study of Meaning. Media Perkasa, Yogyakarta, 33

Starting from the understanding of the construction above, the principle of reversed proof, the problem of the burden of proof for criminal acts of corruption as part of Formal Criminal Law, has experienced a paradigm shift since the enactment of Law Number 3 of 1971 and Law Number 31 of 1999 as amended by Law Number 20 of 2001. All of them are legal products that regulate the Eradication of Criminal Acts of Corruption.

Likewise in Law of the Republic of Indonesia No. 39 of 1999, the contents of which are as follows: "every person who is arrested, detained, and charged because he is suspected of committing a crime has the right to be considered innocent, until proven guilty legally in a court hearing and given all legal guarantees necessary for his defense, in accordance with the provisions of statutory regulations."

In addition, the principle of the presumption of innocence is also regulated in Chapter III of the Decree of the Minister of Justice of the Republic of Indonesia Number M.01.PW.07.03 of 1982 concerning Guidelines for the Implementation of the Criminal Procedure Code, the contents of which include:

"Some people who have not been declared guilty have rights such as: the right to receive an immediate examination during the investigation phase, the right to receive an immediate examination by the court and receive the fairest possible verdict, the right to be informed of what he is suspected of/accused of in a language he understands, the right to prepare his defense, the right to receive legal assistance and the right to receive family visits."

As a manifestation of the principle of the presumption of innocence, a suspect or defendant cannot be burdened with the obligation to provide proof, because the public prosecutor is the one who brings the accusation against the defendant, so it is the public prosecutor who is burdened with the task of proving the defendant's guilt with the efforts of proof permitted by law.¹⁵

In line with this, Jeremy Bentham, focused on the principle that law should provide the greatest benefit to society. In this context, law does not only aim to enforce rules, but also to create welfare and justice that can be felt widely. The principle of utilitarianism sees justice as something that must support collective benefit, so that legal actions or policies are assessed by how much impact they have in creating good or preventing harm to society as a whole.¹⁶

So if viewed the principle of utilitarianism between reversed burden of proof and the principle of presumption of innocence have a mutually related relationship,

¹⁵See in Hery Tahir, *Fair Legal Process in the Criminal Justice System in Indonesia*, Yogyakarta: Laksbang, 2010, p. 62

¹⁶Yandi Ugang, "Utilitarianism Analysis in the Assessment of Justice and Legal Effectiveness," *Journal of Legal Transparency*, 2022.

this is as a balance in the enforcement of corruption criminal law, the balance that the author means here is, so that law enforcers also provide an opportunity for the accused to prove the origin of the accused's property which if prosecuted will be confiscated for the state, so that legal justice is created which is the impact of the principle of presumption of innocence.

3.2. Application of Reversed Proof in Corruption Crimes (Study of Makassar District Court Decision Number 89/PID.SUS-TPK/2021/PN Mks)

The application of law is very important because it is to ensure the creation of justice, certainty, and legal benefits for the rules that have been established either through laws, regulations, or court decisions. This is in line with the opinion of Gustav Radbruch, who said that there are three objectives of law, namely benefit, certainty, and justice. In implementing these three objectives of law, the principle of priority must be used.¹⁷

Reversed burden of proof is one of the principles adopted in the criminal justice system in Indonesia, the reversed burden of proof has been previously applied in Law No. 8 of 1999 concerning Consumer Protection and Law No. 32 of 2009 concerning Environmental Management so it is possible that the reversed burden of proof can also be applied to corruption. The reversed burden of proof is very necessary in our law enforcement system along with the emergence of various criminal cases involving state officials in corruption. The problem of the application of reversed burden of proof cannot be used as a reason for not regulating the reversed burden of proof in a law.

The burden of proof is placed on both the accused and the public prosecutor in a balanced manner regarding matters (objects of proof) that are different and contradictory (Article 37A).¹⁸The reverse burden of proof system in criminal procedure law is contained in Article 37 in conjunction with 12B paragraph (1) in conjunction with 38A and 38B, including:

- a. Article 37 is the legal basis for the reverse burden of proof system; and
- b. Article 12B paragraph (1) letter a and Article 38B are provisions regarding criminal acts of corruption (the object) for which the burden of proof is to use a reverse burden of proof system.¹⁹

¹⁷ Sonny Pungus, Theory of the Purpose of Law, <http://sonny-tobelo.com/2010/10/teori-wenanghukum-gustav-radbruch-dan.html>, accessed on 27 April 2017

¹⁸ Lilik Mulyadi. 2007. Corruption in Indonesia Normative, Theory, Practice and Problems. Bandung: Alumni. p 11.

¹⁹ Martiman Prodjohamidjojo. 2001. Application of Reversed Burden of Proof in Corruption Crimes. Bandung: Mandar Maju. p.8.

The author will describe how to apply the reverse burden of proof in the case of Decision No.89/PID.SUS-TPK/2021/PN MKS by the judge, in this sub-chapter the researcher divides it into several sub-chapters, namely:

a) Case Position

That the Defendant N as the Head of Kindang Village, Kindang District, Bulukumba Regency, South Sulawesi Province, for the period 2016 to 2022 based on the Decree of the Bulukumba Regent Number: Kpts.325/V/2016 dated May 20, 2016 concerning the Dismissal of Village Head Officials and the Confirmation and Appointment of Village Heads for the Period 2016-2022 in 27 (Twenty Seven) Villages in Bulukumba Regency on a day and date that is no longer remembered, at a certain time between January 2017 to December 2018 or at least at a certain time between 2017 to 2018, located in Kindang Village, Kindang District, Bulukumba Regency, South Sulawesi or at least at a certain place that is still included in the jurisdiction of the Corruption Crime Court at the Makassar District Court, South Sulawesi which has the authority to try this case, based on Article 35 paragraph (2) Law Number 46 of 2009 concerning the Corruption Court, committing several acts that are related in such a way that they can be viewed as one continuous act, unlawfully committing acts of enriching oneself or another person or a corporation that harms state finances or the state economy in the amount of IDR 765,571,963,- (seven hundred sixty-five million five hundred seventy-one thousand nine hundred and sixty-three rupiah) or at least around the amount as stated in the State Financial Loss Calculation Results Report (LHPKKN) of the South Sulawesi Provincial BPKP Representative Number: SR 085/PW21/5/2021 dated March 23, 2021 concerning the audit report on the calculation of state financial losses. The defendant committed these acts in the following ways:

That furthermore, witness I as the treasurer of Kindang Village, Kindang District, Bulukumba Regency prepared the disbursement documents such as Village NPWP, Bank Statement, Treasurer's Decree, Account Determination Decree, RPD, SPP containing the activity RAB which was then signed by the defendant N as the head of Kindang Village, Kindang District, Bulukumba Regency, so that the disbursement for the 2018 Village Fund (DD) budget was in three stages based on the BNI Bank Bulukumba branch bank statement with Account Number: 0442786931, as follows:

First Stage 20% of the Village Fund (DD) budget value that entered the Kindang Village account in 2018 at Bank BNI Bulukumba with Account Number: 0442786931, amounting to IDR 219,201,800,- (two hundred and nineteen million two hundred and one thousand eight hundred rupiah).

Second Stage 40% of the Village Fund (DD) Budget Value that entered the Kindang Village account in 2018 at Bank BNI Bulukumba with Account Number:

0442786931, worth, worth IDR 438,403,600,- (four hundred thirty eight thousand four hundred three thousand six hundred rupiah)

The Third Stage 40% of the Village Fund (DD) Budget Value that entered the Kindang Village account in 2018 at Bank BNI Bulukumba with Account Number: 0442786931, worth, worth IDR 438,403,500,- (four hundred thirty eight thousand four hundred three thousand five hundred rupiah)

That after witness I disbursed the Village Fund budget and Village Fund Allocation for the 2018 budget year, the funds related to salary payments, fixed income, honorariums and allowances, then witness I as Treasurer of Kindang Village managed the funds while the funds related to physical work/infrastructure were handed over by witness I to the defendant on the defendant's orders and

Furthermore, the defendant as the Head of Kindang Village who managed the 2018 Village Fund budget himself, so that in the implementation of the management of work activities in Kindang Village, Kindang District, Bulukumba Regency, the 2018 Budget Year did not run in accordance with the mechanisms or regulations that have been regulated in the implementation of village fund management, but the defendant as the Head of Kindang Village, Kindang District, Bulukumba Regency took over all work activities without involving the functions of the related village apparatus where the management of work activities which should have been carried out by the TPK (Activity Management Team) formed by the defendant as the Head of Kindang Village, so that the duties and functions of the TEAM were not functioned properly, even the TPK (Activity Management Team) did not know that their names had been included in the TPK (Activity Management Team) formed by the Head of Kindang Village and were never involved in physical work activities in Kindang Village and the defendant as the Head of Kindang Village did not involve the function of the village secretary as PTPKD (Village Financial Management Technical Implementer)

That the defendant's method as the Head of Kindang Village, Kindang District, Bulukumba Regency, carried out physical development work using Kindang village funds in 2018 without involving the Village Activity Management Team (TPK), namely as follows:

For the implementation of the construction work of the embankment of Mattirodeceng Hamlet, the defendant as the Head of Kindang Village after receiving the Village Fund budget mentioned above, the defendant managed the village funds himself without involving the TPK (Activity Management Team), namely for the purchase of natural materials and building materials and paying

2. Claims

- 1) Declaring that the defendant N. has been proven legally and convincingly guilty of committing the crime of "corruption" as regulated and threatened with criminal penalties in Article 3 paragraph (1) Jo Article 18 of the Republic of Indonesia Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in the Public Prosecutor's Subsidiary indictment;
- 2) Sentencing the defendant N. to 3 (three) years in prison minus the time the defendant has been in detention with the order that the defendant remain in detention and a fine of IDR 50,000,000,- (fifty million rupiah) subsidiary to 2 (two) months in prison.
- 3) Sentenced Defendant N to pay compensation of IDR 765,571,963,- (seven hundred sixty five million five hundred seventy one thousand nine hundred sixty three rupiah), with the provision that if the defendant does not pay the compensation, no later than 1 (one) month after the judge's decision has permanent legal force, then his assets will be confiscated by the Prosecutor and auctioned to cover the compensation, in the event that the defendant does not have sufficient assets to pay the compensation, then it will be replaced with imprisonment for 1 (one) year.
- 4) Establishing evidence in the form of:
 - 5) 1 Village Regulation Number 03 of 2017 concerning the Village Government Work Plan (RKPDDes) of Kindang Village, Kindang District, Bulukumba Regency for the 2017 Fiscal Year.
 - 6) Kindang Village Budget 2017 Fiscal Year Request for disbursement of village funds for 2017 Phase II (40%)
 - 7) Disbursement of Kindang Village Funds for Fiscal Year 2017 Phase I (60%)
 - 8) Receipt for payment of Tax Sharing dated December 27, 2017.
 - 9) Accountability Report (LPJ) for Kindang Village Funds Phase I (60%) 2017 Fiscal Year.
 - 10) Disbursement of Kindang Village Funds for Fiscal Year 2017 Phase II (40%)
 - 11) Accountability Report (LPJ) for Kindang Village Funds Phase II (40%) 2017 Fiscal Year.
 - 12) Village Regulation Number: 01 of 2018 concerning the Accountability Report for the Realization of the Village Revenue and Expenditure Budget (APBDDesa) for the 2017 Fiscal Year

- 13) Decree of the Regent of Bulukumba Number: Kpts.390/V/2015 Concerning Amendments to the Attachment to the Regent's Decree Number Kpts.782/VII/2013 concerning the Approval of Members of the BPD of Kindang Village, Kindang District, Bulukumba Regency.
- 14) Decree of the Head of Kindang Village Number: Kpts.008/DK/I/2017 Concerning the Establishment of the Kindang Village Activity Management Team (TPK) in 2017.
- 15) Decree of the Head of Kindang Village, Kindang District, Bulukumba Regency Number: 08 of 2016 concerning the appointment of the Secretary of Kindang Village, Bulukumba Regency.
- 16) Decree of the Head of Kindang Village Number: 006/DK/I/2017 concerning the Appointment of Technical Implementers for Financial Management of Kindang Village.
- 17) Decree of the Head of Kindang Village Number: Kpts.007 / DK / I 2017 concerning the formation of the implementing agency for Kindang Village activities, Kindang District, Bulukumba Regency.
- 18) Bulukumba Regent Decree Number 325/V/2016 Concerning the appointment of Village Heads for the period 2016-2022
- 19) Village Regulation Number 02 of 2018 concerning the Village Government Work Plan (RKPDs) of Kindang Village for the 2018 Fiscal Year.
- 20) Village Budget of Kindang Village, Kindang District, Bulukumba Regency, 2018 Fiscal Year.
- 21) Disbursement File for Kindang Village Funds, Kindang District, Bulukumba Regency, Phase I, 2018 Budget Year.
- 22) Kindang Village Fund Accountability Report Phase I (20%) 2018 Budget Year.
- 23) Disbursement files for Kindang Village Funds, Kindang District, Bulukumba Regency, Phase II (40%) for the 2018 Budget Year.
- 24) Kindang Village Fund Accountability Report Phase II (40%) 2018 Budget Year.
- 25) Disbursement files for Kindang Village Funds, Kindang District, Bulukumba Regency, Phase III (40%) for the 2018 Budget Year.
- 26) Kindang Village Fund Accountability Report Phase III (40%) 2018.
- 27) Statement of responsibility for receipt and expenditure of Village funds by the Head of Kindang Village dated January 30, 2018.

28) Assignment Order Number: 414.2/spt-Pd-21/P3MD-Set/2015 dated November 5, 2015 concerning the assignment of Village Companions for Kindang District, Bulukumba Regency.

29) 6 (six) sheets of Proof of Cash Withdrawal at BNI Bank, Bulukumba Branch.

30) Minutes of completion of work dated December 31, 2017

31) Returned to Kindang Village

32) Determine that the defendant is burdened with paying court costs of IDR 5,000 (five thousand rupiah).

3. Verdict

- Declaring that Defendant N has not been proven legally and convincingly guilty of committing a crime as stated in the Public Prosecutor's primary charge;
- To acquit the Defendant therefore from the primary charge;
- Declaring that Defendant N has been proven legally and convincingly guilty of committing the crime of "CONTINUOUS CORRUPTION" as stated in the subsidiary charges;
- Sentencing the Defendant to a prison sentence of 2 years and 6 months and a fine of IDR 50,000,000. (fifty million rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 2 (two) months;
- Sentencing the defendant to pay compensation of IDR 765,571,963,- (seven hundred sixty five million five hundred seventy one million nine hundred sixty three thousand rupiah), if the defendant does not pay compensation within a maximum of 1 (one) month after the Court's decision has permanent legal force, then his assets can be seized by the Prosecutor and auctioned to cover the compensation, and in the event that the Defendant does not have sufficient assets to pay the compensation, then the Defendant is sentenced to imprisonment for 2 (two) years;
- Determine that the period of arrest and detention that has been served by the defendant is deducted in full from the sentence imposed;
- Ordering the accused to remain in custody;
- Establishing evidence in the form of:
 - 1 Village Regulation Number 03 of 2017 concerning the Village Government Work Plan (RKPDes) of Kindang Village, Kindang District, Bulukumba Regency for the 2017 Fiscal Year.

- Kindang Village Budget 2017 Fiscal Year Request for disbursement of village funds for 2017 Phase II (40%)
- Disbursement of Kindang Village Funds for Fiscal Year 2017 Phase I (60%)
- Receipt for payment of Tax Sharing dated December 27, 2017.
- Accountability Report (LPJ) for Kindang Village Funds Phase I (60%) 2017 Fiscal Year.
- Disbursement of Kindang Village Funds for Fiscal Year 2017 Phase II (40%)
- Accountability Report (LPJ) for Kindang Village Funds Phase II (40%) 2017 Fiscal Year.
- Village Regulation Number: 01 of 2018 concerning the Accountability Report for the Realization of the Village Revenue and Expenditure Budget (APBDesa) for the 2017 Fiscal Year
- Decree of the Regent of Bulukumba Number: Kpts.390/V/2015 Concerning Amendments to the Attachment to the Regent's Decree Number Kpts.782/VII/2013 concerning the Approval of Members of the BPD of Kindang Village, Kindang District, Bulukumba Regency.
- Decree of the Head of Kindang Village Number: Kpts.008/DK/I/2017 Concerning the Establishment of the Kindang Village Activity Management Team (TPK) in 2017.
- Decree of the Head of Kindang Village, Kindang District, Bulukumba Regency Number: 08 of 2016 concerning the appointment of the Secretary of Kindang Village, Bulukumba Regency.
- Decree of the Head of Kindang Village Number: 006/DK/I/2017 concerning the Appointment of Technical Implementers for Financial Management of Kindang Village.
- Decree of the Head of Kindang Village Number: Kpts.007 / DK / I 2017 concerning the formation of the implementing agency for Kindang Village activities, Kindang District, Bulukumba Regency.
- Bulukumba Regent Decree Number 325/V/2016 Concerning the appointment of Village Heads for the period 2016-2022
- Village Regulation Number 02 of 2018 concerning the Village Government Work Plan (RKPDDes) of Kindang Village for the 2018 Fiscal Year.
- Village Budget of Kindang Village, Kindang District, Bulukumba Regency, 2018 Fiscal Year.

- Disbursement File for Kindang Village Funds, Kindang District, Bulukumba Regency, Phase I, 2018 Budget Year.
- Kindang Village Fund Accountability Report Phase I (20%) 2018 Budget Year.
- Disbursement files for Kindang Village Funds, Kindang District, Bulukumba Regency, Phase II (40%) for the 2018 Budget Year.
- Kindang Village Fund Accountability Report Phase II (40%) 2018 Budget Year.
- Disbursement files for Kindang Village Funds, Kindang District, Bulukumba Regency, Phase III (40%) for the 2018 Budget Year.
- Kindang Village Fund Accountability Report Phase III (40%) 2018.
- Statement of responsibility for receipt and expenditure of Village funds by the Head of Kindang Village dated January 30, 2018.
- Assignment Order Number: 414.2/spt-Pd-21/P3MD-Set/2015 dated November 5, 2015 concerning the assignment of Village Companions for Kindang District, Bulukumba Regency.
- 6 (six) sheets of Proof of Cash Withdrawal at BNI Bank, Bulukumba Branch.
- Minutes of completion of work dated December 31, 2017
- Returned to Kindang Village
- Ordering the defendant to pay court costs of IDR 5,000 (five thousand rupiah).

Based on the description above, the author will try to analyze the above decision, which states that defendant N was proven guilty.legally and convincingly guilty of committing the crime of Continuous Corruption. The author will also analyze the application of reverse burden of proof.

The reverse burden of proof is based on Article 38 b which reads:

1. Any person who is accused of committing one of the criminal acts of corruption as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption and Articles 5 to 12 of this Law, is obliged to prove otherwise regarding his/her assets which have not been charged, but are also suspected of originating from criminal acts of corruption.
2. If the defendant cannot prove that the assets referred to in paragraph (1) were not obtained through a criminal act of corruption, the assets are deemed to have also been obtained through a criminal act of corruption and the judge has the authority to decide that all or part of the assets be confiscated for the state.

3. The demand for confiscation of property as referred to in paragraph
4. (2) submitted by the public prosecutor when reading out his demands in the main case.
5. Proof that the assets referred to in paragraph (1) do not originate from criminal acts of corruption is submitted by the defendant when reading out his defense in the main case and can be repeated in the appeal memorandum and cassation memorandum.
6. The judge is obliged to open a special trial to examine the evidence submitted by the defendant as referred to in paragraph (4).
7. If the defendant is acquitted or declared free from all legal charges in the main case, then the demand for confiscation of property as referred to in paragraph (1) and paragraph (2) must be rejected by the judge.

According to the Author, the application of reversed proof in the above case, the defendant did not present mitigating witnesses or prove mitigating circumstances is appropriate, because it is based on Article 38b of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. This is because there is no property from the defendant that is included in the indictment or demands

This is in line with the Theory of Legal Certainty (*Rechtszekerheid*) which is one of the fundamental principles in the legal system that aims to ensure clarity, order, and justice in the application of the law. This principle ensures that the law must be understandable, applied consistently, and provide adequate protection for all parties involved.²⁰In the context of reversed burden of proof, this theory can be used to analyze the extent to which the mechanism provides legal certainty, both for law enforcers and for defendants accused of committing corruption.

The regulation of reversed burden of proof in corruption crimes presents a challenge to the principle of legal certainty. On the one hand, the application of reversed burden of proof is clearly regulated in laws and regulations, such as Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. This regulation stipulates that the accused is required to prove the origin of the wealth he owns.²¹

²⁰ Ikhbal Gusri, "Implementation of the Non-Retroactive Principle in Supreme Court Regulation Number 1 of 2011 Concerning the Right to Material Review Reviewed from the Aspects of Justice, Benefit and Legal Certainty," *Jurnal Hukum Peratun* 6, no. 1 (2023), <https://doi.org/https://doi.org/10.25216/peratun.612023.1-34>

²¹ Isdy et al., "Criminal Law Policy in Efforts to Combat Corruption in Indonesia."

4. Conclusion

Reversed proof and the principle of presumption of innocence are interrelated, this is as a balance in the enforcement of corruption criminal law. The balance that the author means here is, so that law enforcers also provide the opportunity for the accused to prove the origin of the accused's assets which if sued will be confiscated for the state, so that legal justice is created which is the impact of the principle of presumption of innocence. The application of reversed proof in the Makassar District Court Decision Number 89/Pid.Sus-Tpk/2021/Pn Mks, the defendant did not present mitigating witnesses or prove mitigating circumstances is appropriate, because it is based on Article 38b of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption. This is because there is no property from the defendant included in the indictment or charges.

5. References

Journals:

- Abshor, Ulil, and Ahmad Sholikhin Ruslie. "Pembuktian Terbalik Pada Tindak Pidana Korupsi Di Indonesia Dalam Rangka Menjamin Asas Kepastian Hukum." *Journal Evidence Of Law* 2, no. 2 (2023).
- Anwar, Reski. "Eksistensi Asas Legalitas Formil Dan Materil Pada KUHP Nasional." *Jurnal Fakta Hukum (JFH)* 2, no. 2 (September 30, 2023): 145–59. [https://doi.org/10.58819/jurnalfaktahukum\(jfh\).v2i2.106](https://doi.org/10.58819/jurnalfaktahukum(jfh).v2i2.106)
- Aswandi. "Penegakan Hukum Tindak Pidana Korupsi Yang Berbarengan Dengan Tindak Pidana Pencucian Uang (Concursus Realis)." *Jurnal Nestor Magister Hukum* 3, no. 5 (2013).
- Baital, Bachtiar. "Asas Praduga Tidak Bersalah Dalam Dimensi Pembuktian: Telaah Teoritik Dari Optik Perlindungan Hak Asasi Manusia." *Salam: Jurnal Sosial Dan Budaya Syar-I* 2, no. 2 (December 1, 2015). <https://doi.org/10.15408/sjsbs.v2i2.2381>
- Ginting, Yuni Priskila, Aprillia Yovieta, Athena Chen Wendra, Claudia Ameilia Putri Oktyaning, Kesha Divandra Lusikooy, Nashsahaja Benaya Adhitya, Rangga Adithya Akbar, and Valerie Trifena Eugene Samosir. "Implementasi Sistem Pembuktian Terbalik Tindak Pidana Korupsi Di Indonesia (Analisis Putusan Nomor 1013/PID.B/2009/PN SBY)." *Jurnal Pengabdian West Science* 2, no. 10 (2023). <https://doi.org/https://doi.org/10.58812/jpws.v2i10.690>
- Gusri, Ikhbal. "Implementasi Prinsip Non-Retroaktif Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 Tentang Hak Uji Materil Ditinjau Dari Aspek Keadilan, Kemanfaatan Dan Kepastian Hukum." *Jurnal Hukum Peratun*

- 6, no. 1 (2023).
<https://doi.org/https://doi.org/10.25216/peratun.612023.1-34>
- Hafidz, Jawade. "Efektifitas Pelaksanaan Sistem Pembuktian Terbalik Terhadap Perkara Korupsi Dalam Mewujudkan Negara Hukum Di Indonesia." *Majalah Ilmiah Sultan Agung* 44, no. 118 (2009).
- Hasan, Zainudin, Barevo Ataulah, Fahri Indra Saputra, and Jildan Aziz. "Analisis Yuridis Terhadap Penerapan Asas Praduga Tak Bersalah Dalam Pemeriksaan Tindak Pidana." *Jurnal Ilmiah Multidisiplin Terpadu* 8, no. 6 (2024).
- Heckman, Mathieu Joseph Caspar. "The Strategic Use of Patents in Standardization in Relation to US, European and Chinese Competition Law." maastricht university, 2016.
<https://doi.org/10.26481/dis.20160422mh>
- Ifrani, Ifrani. "Tindak Pidana Korupsi Sebagai Kejahatan Luar Biasa." *Al-Adl : Jurnal Hukum* 9, no. 3 (January 30, 2018): 319.
<https://doi.org/10.31602/al-adl.v9i3.1047>
- Isdy, Zahrani Nabila, Nur Raudoh Putri HT, Sherly Liri Oktavia, and M. Farhan. "Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Tindak Pidana Korupsi Di Indonesia." *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 2, no. 8 (2024).
- Johansyah, Johansyah, and Abdul Roni. "Asas Praduga Tak Bersalah Dalam Proses Penyidikan." *Solusi* 21, no. 1 (January 1, 2023): 17–35.
<https://doi.org/10.36546/solusi.v21i1.805>
- Kamaruzzaman, Said. *Efektivitas Hukum Sistem Pembuktian Terbalik Dalam Tindak Pidana Korupsi Dengan (Studi Kasus: Putusan Nomor 363 K/PID.SUS/2017)*. Semarang: Universitas Islam Sultan Agung, 2024.
- Khaidir, Khaidir. "Analisis Yuridis Pembalikan Beban Pembuktian Pada Tindak Pidana Korupsi." *Rio Law Jurnal* 1, no. 1 (February 29, 2020).
<https://doi.org/10.36355/.v1i1.327>
- Koeswayo, Poppy Sofia, Sofik Handoyo, and Dede Abdul Hasyir. "Investigating the Relationship between Public Governance and the Corruption Perception Index." *Cogent Social Sciences* 10, no. 1 (December 31, 2024). <https://doi.org/10.1080/23311886.2024.2342513>
- Prasetyo, Wawan. "Metode Pembuktian Terbalik Pada Tindak Pidana Korupsi." *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 5, no. 2 (October 1, 2015): 472–520. <https://doi.org/10.15642/ad.2015.5.2.472-520>

Books:

- A. Dodri Azizy, *Hukum Nasional, Elektrisisme Hukum Islam dan Hukum Umum*, Bandung: Teorgu, 2004.
- Abdul Manan, *Aspek-aspek Pengubah Hukum*, Prenada Media, Jakarta, 2005
- Adami Chazawi, 2003, *Kejahatan Terhadap Harta Benda*, Malang. Bayu Media
- Adami Chazawi, 2007, *Pelajaran Hukum Pidana 1*, PT. Raja Grafindo, Jakarta
- Andi Hamzah, 1994, *Asas Asas Hukum Pidana*, Rineka Cipta, Jakarta
- Andi Hamzah, *Bunga Rampai HUKUM Pidana dan Acara Pidana*, Ghalia Indonesia, Jakarta, 2006.
- Andi Zainal Abidin, *Asas-Asas Hukum Pidana Bagian Pertama*, Alumni, Bandung, 2008.
- Artidjo Alkostar, *Korupsi Politik di Negara Moderen*, UII Press, Yogyakarta, 2015
- Awaloedi Djamin, 1995, *Administasi Kepolisian Republik Indonesia: Kenyataan dan Harapan*, POLRI, Bandung
- Bambang Poernomo, *Pokok-pokok Tata Acara Peradilan Indonesia, Dalam Undang-undang RI No. 8 Tahun 1981*, Liberty, Yogyakarta, 2013.
- Bambang Purnomo, *Asas-asas Hukum Pidana*, Ghalia Indonesia, Jakarta, 1994
- C.S.T. Kansil, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia*, Balai Pustaka, Jakarta, 1989.
- Chatrina Darul Rosikah dan Dessy Marliani Listianingsih, 2016, *Pendidikan Anti Korupsi*, Jakarta: Sinar Grafika,
- H. Pudi Rahardi, 2007, *Hukum Kepolisian [Profesionalisme dan Reformasi Polri]*, penerbit Laksbang Mediatama, Surabaya
- Hamzah Hatrik, 1996, *Asas Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia*, Raja Grafindo, Jakarta
- Hasan Alwi, 2007. *Kamus Besar Bahasa Indonesia Edisi Keempat*. PT. Balai Pustaka, Jakarta
- Hyronimus Rhiti, 2015, *Filsafat Hukum Edisi Lengkap (Dari Klasik ke Postmodernisme)*, Cetakan Kelima, Yogyakarta, Universitas Atma Jaya.
- Ismu Gunadi dan Jonaedi Efendi, 2014, *Hukum Pidana*, Kencana, Jakarta
- J. C. T. Simorangkir dkk, 2010, *Kamus Hukum*, Jakarta: Sinar Grafika

- J. Moleong, Lexy. *Metodologi Penelitian Kualitatif*. Bandung: PT Remaja Rosdakarya, 2017.
- J.B.Daliyo, 2001, *Pengantar Hukum Indonesia*, PT. Prenhallindo, Jakarta
- J.E. Sahetapy, *Victimology sebuah Bunga rampai*, Pustaka Sinar Harapan, Jakarta, 2007.
- Jawade Hafidz Arsyad, 2017, *Korupsi dalam Perspektif HAN*, Jakarta: Sinar Grafika
- Kementrian Agama RI, 2015, *Qur'an dan Terjemahan*, Jakarta, Penerbit al-Mahira
- Leden Mapaung, *Asas-Teori-Praktik Hukum Pidana*, Sinar Grafika, Jakarta, 2005.
- Leden Marpaung, 1991, *Hukum Pidana Bagian Khusus*, Sinar Grafika, Jakarta
- Lilik Mulyadi, *Tindak Pidana Korupsi di Indonesia, Normatif, Teoritis, Praktik dan Masalahnya*, PT Alumni, Bandung, 2007.
- M. Syamsudin, *Konstruksi Baru Bidaya Hukum Hakim Berbasis Hukum Progresif*, PT. Kencana Prenada Media Group, Jakarta, 2015.
- Marlina, 2011, *Hukum Penitensier*. Bandung. Refika Aditama
- Martiman Prodjohamidjojo, 1994, *Memahami Dasar-Dasar Hukum Pidana Indonesia*, PT. Pradnya Paramita, Jakarta
- Martiman Prodjohamidjojo, 1997, *Memahami Dasar-Dasar Hukum Pidana Indonesia*, Pradnya Paramita, Jakarta
- Martiman Prodjohamidjoyo, *Penerapan Pembuktian Terbalik dalam Delik Korupsi (UU No. 31 Tahun 1999)*, CV Mandar Maju, Bandung, 2001
- Marzuki, Peter Mahmud. *Penelitian Hukum: Edisi Revisi*. Jakarta: Kencana, 2021.
- Moeljatno, *Asas-asas Hukum Pidana*, Rineka Cipta, Jakarta, 1993
- Momo Kelana, 1994, *Hukum Kepolisian*, PT Gramedia Widiasarana Indonesia, Jakarta
- Muladi dan Barda Nawawi Arief, 1992, *Teori-Teori dan Kebijakan Pidana*. Bandung
- Muladi dan Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi*, Kencana Prenada Media Group, Jakarta, 2012.
- Muladi, *Lembaga Pidana Bersyarat*, Alumni, Semarang, 1992
- Munir Fuady, 2011, *Teori Negara Hukum Modern*, Reflika Aditama, Bandung

Regulation:

Criminal Code (KUHP)

Criminal Procedure Code (KUHAP)

Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999

Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption

Law Number 48 of 2009 concerning Judicial Power

Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption (UNCAC)

Makassar District Court Decision Number 89/PID.SUS-TPK/2021/PN MKS