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Effectiveness of The Reversed Burden of Proof By The Public Prosecutor in The Criminal Action of Money Laundering From The Proceeds of Banking Crimes (Case study of Decision Number 2113 K/Pid.Sus/2023)

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Abstract. *Banking Crimes and Money Laundering Crimes in Indonesia have been categorized as extraordinary crimes which are currently in a very alarming condition, so that the handling must also use extraordinary methods and procedures (extraordinary legal instruments). The evidentiary system currently used by law enforcement officials using the ordinary evidentiary system is considered incapable of eradicating corruption and money laundering crimes. This study aims to analyze the effectiveness of law enforcement of the reverse evidence system in money laundering crimes originating from corruption cases. Law enforcement of the reversed evidence system in the crime of money laundering (Money Laundering) raises various difficulties this is due to the absence of procedural law that specifically regulates the reversed evidence system against the crime of money laundering. This research is about the Reverse Evidence System in the Crime of Money Laundering. The results of the study explain that limited and balanced reverse evidence and pure or absolute reverse evidence both violate the rights of the defendant, the difference if pure or absolute reverse evidence directly changes the basic concept of criminal law in Indonesia as well as contrary to the principles of law and the Indonesian constitution, moreover Indonesia has also adopted Law Number 39 of 1999 concerning Human Rights and various international conventions on human rights that have been ratified by Indonesia, so it is clear that if absolute reverse evidence is applied it will conflict with other laws.*

Keywords: *Banking Crime; Money Laundering Crime; Reverse Proof.*

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1. Introduction

Reflecting on the case of Muhammad Nazaruddin, a defendant in a corruption and money laundering case, we can see how complex the reverse burden of proof is in money laundering cases. Even prosecutors from the Corruption Eradication Commission (KPK) have had difficulty seizing the defendant's assets, which are the proceeds of crime, on several occasions. The defendant, Muhammad Nazaruddin, argued that the assets to be seized were not his own but belonged to someone else. Similarly, Inspector General Djoko Susilo, the former Chief of the Indonesian National Police Traffic Corps, who was implicated in the SIM Simulator corruption case, disguised the proceeds of corruption under the names of his common-law wife and a close associate of the perpetrator.

*New crime*can be interpreted as regulating money laundering in the form of a law that has an impact on the birth of rules that regulate every act of enjoying, using, hiding, or any act of the proceeds of crime (proceeds of crime) is a criminal offense. Thus, the necessity of a predicate crime that ultimately gives rise to the proceeds (proceeds of crime) and from these results will give rise to a second act called money laundering. Second, as a new strategy combating predicate offenses, in addition to criminalizing the Crime of Money Laundering is also used to reveal the predicate offense and also for the benefit of optimal confiscation of the proceeds of crime. The implementation of investigations into the Crime of Money Laundering will also trigger the implementation of investigations into the predicate crime.[1]Peter Reuter and Edwin M. Truman emphasized that the criminalization of money laundering is not aimed at the money laundering activity itself, but rather to reduce or lower the level of crimes that generate money to be laundered, such as drug trafficking, corruption, and terrorism.[2]

It is important to understand that the crime of money laundering is a crime that is different from crimes in general (such as murder, theft, fraud, etc.) because, in essence, the crime of money laundering does not directly harm a particular person or group of people and it seems that the crime of money laundering has no victims.[3]Billy Steel stated that "it (money laundering) seems to be a victimless crime." The crime of money laundering also has very negative impacts, both nationally and internationally. The International Monetary Fund (IMF), through a working paper entitled "Money Laundering and the International Financial System" written by Vito Tanzi in 1996 (IMF working paper, WP/96/55, May 1996, p. 2), stated:

[1]Yenti Garnasih, *Tindak Pidana Pencucian Uang : Dalam Teori dan Praktik, Makalah pada Seminar dalam Rangka Musyawarah Nasional dan Seminar Mahupiki, diselenggarakan Mahupiki,* Kerjasama Mahupiki dan Universitas Sebelas Maret: Solo, 8 to 10 September 2013, p. 2

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The international laundering of money has the potential to impose significant costs on the world economy by (a) harming the effective operations of the national economy and by promoting poorer economic policies, especially in some countries; (b) slowly corrupting the financial market and reducing the public's confidence in the international financial system, thus increasing risks and the instability of that system; and (c) as a consequence (... reducing the rate of growth of the world economy.[4]

In the Crime of Money Laundering, there is a theory that says that there is no money laundering without core crime.[5](there is no crime of Money Laundering without a Predicate Offense), that there is a close relationship between the Crime of Money Laundering and the predicate offense. This means that the disclosure of the Crime of Money Laundering also means the disclosure of the predicate offense. Based on this theory, proving these two crimes is interrelated. The problem arises in the prosecution process which turns out to be not simple, regarding whether it must be proven both or whether it is sufficient to prove the Crime of Money Laundering alone without first proving the predicate offense. This is because in the regulation regarding the prosecution of money laundering cases specifically contained in Article 69 of Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering regulates matters in conducting investigations, prosecutions and examinations in court for the Crime of Money Laundering, it is not mandatory to first prove the predicate offense. This article seems inconsistent with the opinion of experts who say that the Crime of Money Laundering is a crime with the principle of double criminality.[6]

2. Research Methods

The method used in this research is empirical juridical, in this research, in addition to using the legal provisions applicable in Indonesia, it also uses the opinions of experts in certain legal fields, especially those related to this research.

[2]Peter Reuter & Edwin M. Truman, (2004), *Chasing Dirty Money: The Fight Against Money Laundering,* Washington DC: Institute for International Economics, p. 6

[3]Sutan Remy Sjahdeini, (2004), Seluk Beluk Tindak Pidana Pencucian Uang dan Pembiayaan Terorisme, Jakarta: Pustaka Utama Grafiti, Cetakan ke-1, p. 15

[4]Billy Steel, "Money Laundering-What is Money Laundering", Billy's Money Laundering Information Website, http://www.laundryman.u-net.com , searched October 16, 2024

[5]Abdulahanaa, Penerapan asas pembuktian terbalik terhadap kasus pidana korupsi dalam perspektif hukum islam. *Jurnal Kajian Hukum Islam Al manahij*, VII, 02, (July 2013), p. 300

[6]Hanafi Amrani, (2015), Hukum Pidana Pencurian Uang: Perkembangan Rezim Anti- Pencucian Uang dan Implikasinya terhadap Prinsip Dasar Kedaulatan Negara, Yurisdiksi Pidana, dan Penegakan Hukum, Cetakan Pertama, Yogyakarta: UII Press, p. 3.

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3. Results and Discussion

3.1. Implementation Of The Reverse Burden Of Proof In The Criminal Acts Of Money Laundering From The Proceeds Of Banking Criminal Acts

The crime of money laundering is the act of processing large amounts of illegal money resulting from criminal acts into funds that appear clean or legitimate according to law, using sophisticated, creative and complex methods, with the aim of hiding or disguising the origin of money or assets, obtained from the proceeds of crime which are then changed into assets that appear to originate from legitimate activities. So in this case what is hidden by the perpetrator is the origin of the money in the rules of evidence in Indonesia as follows:

3.1.1. Criminal Code and Criminal Procedure Code

Articles in the Criminal Code and Criminal Procedure Code that relate to the research object and are used as material for this discussion:

a) Article 137 of the Criminal Procedure Code states that "the public prosecutor has the authority to prosecute anyone accused of committing a crime within his jurisdiction by transferring the case to a court authorized to try it." The burden of proof regarding whether or not a crime has been committed by the Defendant lies with the Public Prosecutor." The system of proof in criminal cases (general) is placed on the burden of the Public Prosecutor. In the context of criminal cases universally applicable in the world, the obligation to prove the charges brought against the suspect is the obligation of the public prosecutor. This is a consequence of the principle of functional differentiation in the criminal process which delegates the functions of investigation, inquiry, prosecution, and trial to authorized institutions, namely the police, prosecutors, courts, and correctional institutions.

b) Article 66 of the Criminal Procedure Code states: “The suspect or defendant is not burdened with the obligation to provide proof.” Although the defendant is not actually burdened with proving his guilt, the defendant may remain silent or defend himself by stating his innocence.

c) Article 183 of the Criminal Procedure Code states, "A judge may not sentence a person 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." Thus, Article 183 of the Criminal Procedure Code regulates that to determine whether a defendant is guilty or not and to sentence the defendant, the following must be done:

1) the error is proven with at least "two valid pieces of evidence",

2) and based on the evidence of at least two valid pieces of evidence, the judge "has the conviction" that the crime actually occurred and that the Defendant is guilty of committing it.

If we look at the meaning of Article 78 paragraph (1) above, then in the examination at the trial here the Judge is obliged to order 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). What if in the trial of the Money Laundering Crime case the Judge does not order the Defendant to prove that his/her assets related to the case do not originate from or are related to the criminal act as referred to in Article 2 paragraph (1).

R. Wiyono is of the opinion that by paying attention to Article 77 and the provisions contained in Article 78, for the judge it is mandatory (imperative), so that if in a court hearing in a Money Laundering crime case, the judge does not order the Defendant to prove that the assets related to the case do not originate from or are related to the crime as referred to in Article 2 paragraph (1), then this constitutes an error in the method of adjudication which is a reason to submit a cassation application (Article 253 paragraph (1) letter b of the Criminal Procedure Code).

Meanwhile, what is meant by "sufficient evidence" in Article 78 paragraph (2), as discussed above, is "at least two pieces of evidence" as referred to in Article 183 of the Criminal Procedure Code. If the Defendant succeeds in proving by presenting two valid pieces of evidence before the trial that his assets do not originate from a criminal act, then the Judge will return the assets to the Defendant, conversely, if the Defendant fails to prove that his assets do not originate from the criminal act charged, then the assets can be confiscated for the state. Therefore, it is the Judge who can prove whether the evidence presented by the Defendant to prove the origin of his assets is valid or not.

Article 74: "Investigations into money laundering are carried out by investigators of predicate crimes in accordance with the provisions of procedural law and the provisions of statutory regulations, unless otherwise stipulated in this Law."

In the operation of criminal law through the criminal justice system, investigators, public prosecutors, and judges, among others, are bound by a system of evidence. In general, this system of evidence can be identified into four models, namely:

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First, the conviction-in-time model, a system of proof based solely on the judge's conviction. This means that whether someone is found guilty or not depends entirely on the judge's conviction.

Second, the conviction in raisone model, which is a system of proof based on the judge's conviction, however, the judge's conviction must be based on logical or rational reasons. This means that proving someone guilty or not depends on the judge's conviction, however, the judge's conviction must be based on logical or rational reasons so that it can be justified.

Third, the positive legal model (positive system), a system of proof based on evidence determined by law. This means that proving someone guilty or not guilty is based on evidence stipulated by law.

Fourth, the negative system of proof (stelsel negatief wetelijk) or negative system of proof according to law, namely a system of proof based on evidence stipulated by law and the judge's conviction. This means determining whether someone is guilty or not is based on the evidence stipulated by law and the judge's conviction.

The system of proof in Indonesia, based on the Criminal Procedure Code (KUHAP), is a negative system of proof, as mandated by law. However, the enactment of Law No. 8 of 2010 concerning Money Laundering (TPPU) appears to have introduced a new dimension to the evidentiary system, as it places an obligation on the defendant to provide evidence.

The most important legal issue in demonstrating the effectiveness of law enforcement is the issue of evidence, as is the case with the Money Laundering Law. Evidence in criminal proceedings differs from civil proceedings, in that what is sought is formal truth based on the available evidence, usually evidence in civil cases. In criminal cases seeking material truth, a negative system of proof is adopted. This means that to render a verdict in a criminal case, evidence alone is not sufficient but also requires a judge's conviction as to whether the defendant is guilty or not, and the proof is carried out by the prosecutor.

The crime of money laundering is like a crime in general, which is carried out with a modus operandi of turning dirty money into clean money, which is increasingly sophisticated and complicated so that many cases of money laundering escape the evidentiary network of the Criminal Procedure Code system, therefore the Law tries to apply a reversal of the burden of proof/best evidence, in connection with the reversed proof in the case of money laundering at the West Jakarta District Court based on Decision Number 2113 K/Pid.Sus/2023 with the following case positions:

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That the Defendant HENRY SURYA as Chairman of Kospin Indosurya Inti/Cipta for the period of September 27, 2012 to September 29, 2016 and as Controller of Kospin Indosurya Cipta for the period of September 30, 2016 until the default in February 2020, because in fact, although in terms of the management structure of the Indosurya Cipta Savings and Loans Cooperative since September 30, 2016, the defendant is no longer the Chairman or part of the management, but all important movements and activities of the management and administrators are determined by the will of the defendant who is outside the structure of the Kospin Indosurya Cipta Management, especially regarding the financial management decisions of Kospin and the shell companies affiliated with the Indosurya Group so that they cannot return customer deposits totaling Rp. 16,017,770,712,843 (sixteen trillion seventeen billion seven hundred seventy million seven hundred twelve thousand eight hundred thirteen rupiah) consisting of the C/CN code of Rp.10,034,379,576,031 (ten trillion thirty-four billion three hundred seventy-nine million five hundred seventy-six thousand thirty-one rupiah) and the ISP code of Rp. 5,983,391,136,812 (five trillion nine hundred eighty-three billion three hundred ninety-one million one hundred thirty-six thousand eight hundred and twelve rupiah) where the savings previously came from approximately 8576 customers who were part of 23,362 customers from 2012 to 2020 with a total of money entering 26 Kospin Indosurya Inti/Cipta accounts amounting to Rp. 106,525,178,144,492 (one hundred six trillion five hundred twenty five billion one hundred seventy eight million one hundred forty four thousand four hundred ninety two rupiah) and USD 27,853,670.45 (in dollars) collected from the public in the form of savings without a business permit from the Head of Bank Indonesia/Financial Services Authority.

That the Defendant HENRY SURYA together with witnesses JUNE INDRIA and SUWITO AYUB in terms of placing, transferring, diverting and spending public funds collected in the form of savings under the guise of the Indosurya Inti/Cipta Savings and Loan Cooperative by using the form of medium-term debt securities (MTN), loans, full payments/installments for the purchase of movable/immovable assets only with the aim of disguising the results of the crime as if it were a normal financing activity but in fact it was not carried out properly because it did not fulfill the requirements of securities, debt agreements or credit agreements.

IDENTITY OF THE DEFENDANT

Full name	:	**HENRY SURYA**
Place of birth	:	Jakarta

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Age / Date of Birth	:	46 Years / November 14, 1975
Gender	:	Man
Nationality	:	Indonesia
Residence	:	Address according to ID card: Jl. Opal II Block K.1/1, RT 007/001, Grogol Utara Village, Kebayoran Lama District, South Jakarta City, Residential address: Rafles Apartment, 35th Floor, Jl. Dr. Satrio No. 5, Ciputra World I, Kuningan, South Jakarta City
Religion	:	Catholic
Work	:	Self-employed

That with the decision at the West Jakarta District Court level as follows:

West Jakarta District Court in its Decision Number:779/Pid.B/2022/PN.Jkt.Brt dated January 24, 2023 states:

1) The defendant HENRY SURYA was proven to have committed the act charged, but it was not a criminal act but a civil case (Onslag Van Recht Vervoging)

2) Therefore, to release the defendant HENRY SURYA from all legal charges as charged in the First Alternative Charge and the First Second Charge.

3) Ordering that the defendant HENRY SURYA be immediately released from the Salemba State Detention Center (RUTAN) Branch of the Attorney General's Office of the Republic of Indonesia, after the verdict is pronounced

4) Ordering the evidence to be returned in its entirety to the person from whom it was confiscated.

5) Charge court costs to the state

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That the Public Prosecutor has declared an appeal with the following decision at the cassation level:

The decision of the Supreme Court of the Republic of Indonesia in its decision Number: 2113 K/Pid.Sus/2023 dated May 16, 2023 decided:

1. Declaring that the Defendant HENRY SURYA has been legally and convincingly proven guilty of committing the act of carrying out, ordering and participating in the act of collecting funds from the public in the form of savings without a business permit from the Head of Bank Indonesia as regulated and threatened with criminal penalties in Article 46 paragraph (1) of Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Article 55 paragraph (1) point 1 as in the FIRST Indictment.

2. Declaring that the defendant HENRY SURYA has been legally and convincingly proven guilty of participating in an attempt, assisting, or conspiracy to place, transfer, divert, spend, pay, grant, deposit, take abroad, change the form, exchange with currency or securities or other actions regarding Assets which he knows or should suspect are the result of a crime as regulated and threatened with criminal penalties in Article 3 Jo Article 10 of the Republic of Indonesia Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes as in the SECOND First Charge.

3. Sentencing the defendant HENRY SURYA to 18 (eighteen) years in prison, minus the time the defendant has been in detention.

4. Imposing a fine on the defendant HENRY SURYA of Rp. 15,000,000,000,- (fifteen billion rupiah) subsidiary to 8 (eight) months imprisonment.

5. Ordering Evidence in the form of: (List of Evidence Attached)

6. Charges the defendant to pay court costs of Rp. 2,500 (two thousand five hundred rupiah).

That in the Principle of Reversed Proof in the Prevention and Eradication of Money Laundering Crimes. Special provisions regarding proof in formal criminal law for money laundering crimes formulated in Law No. 8 of 2010 are an exception (Lex Specialist) from the law of proof contained in the Criminal Procedure Code, because in the Criminal Procedure Code the burden of proof is entirely borne by the Public Prosecutor. Based on this, there is a burden of proof placed on one of the parties, which universally lies with the public prosecutor. However, considering the very urgent nature of the specificity, the burden of proof is no longer placed on the public prosecutor but on the defendant. This process of

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reversing the burden of proof is then known as the term limited reversed proof, which means the defendant is also burdened with the obligation to prove, but the role of the public prosecutor remains active in proving his charges. In this burden of proof, if the defendant has an alibi and he can prove the truth of his alibi, the burden of proof will shift to the public prosecutor to prove otherwise.

That based on the facts at the West Jakarta District Court level 1) That in its decision, the Judex Factie of the West Jakarta District Court considers that the issue in the a quo case is the Indosurya Cipta Savings and Loans Cooperative institution, which is subject to and complies with the Cooperative Law (lex specialis) and banking institutions (lex generali), then the point of contact between cooperatives and banking must be proven. Then the Panel of Judges of the West Jakarta District Court also stated that the point of contact in question is if the Cooperative has the term "from members to members".

However, in its first-instance decision, the West Jakarta District Court Judges' Panel ignored the contradictory evidence of witness testimony in the trial, namely the testimony of witnesses whose names were used by the defendant to be used as founders of the Indosurya Cooperative, which was then notarized by a notary. Even more strangely, the West Jakarta District Court Judges actually considered the notarial deed as valid evidence related to the Indosurya Cooperative's business permit, which clearly violated statutory regulations in its formation.

That the fact in the evidence and supported by valid witness testimony evidence in accordance with Article 184 of the Criminal Procedure Code, it is clear that the Defendant HENRY SURYA's evil intention to establish the Indosurya Cooperative was only a form of trickery because of his concerns about MTN, this is very inconsistent with the Characteristics of Cooperatives as considered by the Panel of Judges of the West Jakarta District Court, namely "From Members for Members", because in the trial the Legal Counsel and the Defendant were completely unable to prove that the establishment of the Indosurya Cooperative was based on and motivated by the desire of several people who had the same intention and will to improve their standard of living so that they agreed together to form a cooperative called the Indosurya Cooperative except that the Indosurya Cooperative was only for the benefit of the defendant to continue his MTN business by forming a Savings and Loans Cooperative. In fact, no member has ever been registered as a borrower or involved in determining cooperative policies and the implementation of annual member meetings and has never been implemented at all, everything is not implemented and is solely controlled by the defendant where after marketing influences the customers then customer funds are sent to KSP Indosurya at BCA bank as a container for customer money from 191 branches formed according to the defendant's version, the money entered the Cooperative only temporarily because it was then channeled by the Defendant

HENRY SURYA to 26 shell companies as a means of obscuring the appearance that the money had been realized in fake companies then the money that stopped by the fake / shell companies was then managed and channeled back to the company owned by the Defendant, namely PT. Sun Capital International and on his orders through his right hand, namely Witness Fantoni, Lidwina Heppy, Hamonangan Siahaan, Steven Ralp Richarson, Simon Chaniago, the closest people to the defendant, were the ones who controlled where the money was allocated according to the defendant's orders, then with the key using a token, the defendant used the money to buy assets invested in several locations within the country and abroad, including movable assets.

That in its application, the reverse burden of proof as regulated in Article 77 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes is limited in nature. Limited means that what the defendant must prove is limited to the origin of the Assets suspected of originating from the crime and for other elements of the crime the burden of proof lies with the Public Prosecutor. In practice, the reverse burden of proof system that is established does not use the absolute presumption of guilt, but in a limited and balanced manner where on the one hand the defendant must prove thatThe assets are not the proceeds of crime and the Public Prosecutor must also prove his charges. Therefore, in its implementation, the reverse burden of proof system is not implemented purely by using the absolute presumption of guilt principle which requires the suspect or defendant to prove his innocence but is limited to the origin of the assets suspected of being the proceeds of crime.

The defendant is given the right to prove that the defendant's actions do not fulfill the elements of the crime charged. This is in line with the principle of the presumption of innocence, namely that a person is considered innocent until a final and binding decision is made. However, if the defendant cannot prove that he did not commit the crime of money laundering, the judge decides that the defendant is proven to have committed the crime of money laundering. The application of the reverse burden of proof to the crime of money laundering will on the one hand be detrimental to the defendant, because his rights are less protected, but on the other hand this will bring happiness or benefit to many people, because it can reduce the crime of corruption that has been so detrimental to the state.[7]However, in order to be able to apply the reverse burden of proof to the crime of money laundering, it is necessary to study it first, because there are several problems, namely:

1. How the prosecution adapts to the previous pattern;

[7]Hans C. Tangkau, (2011), Pembuktian Terbalik Dalam Penanganan Tindak Pidana Korupsi, *Jurnal Ikhtiyar,* p. 108-132

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2. Are law enforcement officials ready with reverse evidence, starting from lawyers, judges, public prosecutors; and

3. "We must not let this reverse burden of proof become a new tool of extortion, where anyone can be accused of money laundering. And the prosecutors will feel no guilt by accusing them of various methods of concealing the proceeds of crime. Those accused of money laundering are required to prove they did not launder the proceeds of crime, resulting in many people being "extorted" because they are accused of money laundering."

The application of the reverse burden of proof principle is not easy, as previously, business owners have not reported their assets. Therefore, it is difficult to distinguish between personal assets and assets acquired illegally. Entrepreneurs should be required to report their assets before establishing or starting a business, and to report their assets annually, so that they can be investigated. The most important right under the law of proof in money laundering cases is:

Based on an interview with the Public Prosecutor of the West Jakarta District Attorney's Office, it was stated that:

1. The Special Burden of Proof System in money laundering cases, as we know, refers to the general burden of proof system, which in criminal cases is placed on the Public Prosecutor. However, in the predicate crime of corruption, it is an exception and has special characteristics related to both Material and Formal Criminal Law. The issue of burden of proof, as part of formal criminal law, has undergone a paradigm shift since the enactment of Law Number 31 of 1999. Article 17 of Law Number 3 of 1971, Paragraphs 1, 2, 3, 4, and 26 show that the burden of proof in corruption cases has undergone a new paradigm shift. Here, there is a shift in the burden of proof or shifting of the burden of proof has not led to a reversal of the burden of proof (reversal of the burden of proof as previously assumed by the criminal law community). While it is true that the defendant can prove that he did not commit a crime after being permitted by the judge, this is not imperative, meaning that if the defendant does not use this opportunity, it will actually strengthen the public prosecutor's suspicion. Furthermore, in Law Number 31 of 1999, the rules regarding the burden of proof are contained in Article 37.

2. "Reversal of proof in the right to property ownership also contradicts human rights, namely that everyone has the right to acquire their property and the right to privacy that must be protected. However, based on the idea that corruption is a source of poverty and a serious crime that is difficult to prove in the practice of legal systems in all countries, so that the individual's human right to property is not seen as an absolute right, but rather a relative right,

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and is different from the protection of a person's liberty and the right to a fair and reliable trial.

3. The system of reversing the burden of proof in these two laws is still limited because it still designates the role of the Public Prosecutor as having the obligation to prove the guilt of the accused.

3.2. Obstacles For Public Prosecutors In Reversed Burden Of Proof For The Proceeds Of Banking Crimes

As we agree and understand, the crime of money laundering is categorized as an "extraordinary crime" with a complex modus operandi and is not carried out by a single perpetrator and also, the consequences of this act can damage the foundations of the national economy and society in terms of state income and expenditure which in turn is counterproductive to one of the goals of the state, namely the welfare of its people.

The legal obstacle is the Disclosure of the occurrence of TPPU within the framework of the original Crime which is a banking crime where the loan deposits previously came from approximately 8576 customers who were part of 23,362 customers from 2012 to 2020 with a total of money entering 26 Kospin Indosurya Inti/Cipta accounts amounting to IDR 106,525,178,144,492 (one hundred six trillion five hundred twenty five billion one hundred seventy eight million one hundred forty four thousand four hundred ninety two rupiah) and USD 27,853,670.45 (in dollars) collected from the public in the form of deposits without a business license from the Head of Bank Indonesia/Financial Services Authority. So to recover the losses of the victim customers, the public prosecutor uses a reverse burden of proof system which takes a long time in the trial, causing difficulties in collecting and obtaining existing evidence, while the act was committed when the defendant was still serving as the owner of the savings and loan cooperative, while from the perspective of law enforcement officials, good legislation has no meaning if it is not implemented properly by law enforcement officials, meaning that if the law enforcement officials do not implement it properly, then the intent of the legislation will not be achieved.

In the context of the investigation and investigation process of TPPU, there is still a lack of understanding of investigators regarding TPPU, a lack of facilities, infrastructure and budget for investigators' needs in TPPU examinations, in a general study on law enforcement it is explained that without certain facilities or means, it is impossible for law enforcement to run smoothly. The means for these facilities, among others, include educated and skilled human resources, good organization, adequate equipment, sufficient finances and others. If these things are not met, it is impossible for the role of law to achieve its goals.

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The weakness in this case which is a criminal act of origin is that those who do, who order to do, and who participate in doing the act, collect funds from the public in the form of savings without a business permit from the Head of Bank Indonesia as regulated and threatened with criminal penalties in Article 46 paragraph (1) of the Republic of Indonesia Law Number 10 of 1998 concerning Amendments to the Republic of Indonesia Law Number 7 of 1992 concerning Banking in conjunction with Article 55 paragraph (1) point 1 as in the FIRST Charge (a) that in the method of reversing the burden of proof in money laundering cases does not always guarantee that a defendant accused of having committed money laundering can prove that his money did not come from the proceeds of crime. If this happens, it is possible that the judge can freely sentence the defendant guilty because of the problem of not being able to prove the origin of his assets; (b) that the use of the method of reversing the burden of proof in handling money laundering cases if not carried out properly can result in a lack of implementation of the law in upholding Human Rights (HAM). Because, the reversal of the burden of proof could ignore the basic rights of the accused, including the right to have their good name protected; (c) in daily practice, the method of reversing the burden of proof in Indonesia is still relatively new. Moreover, there are not many cases decided in court that use the reversal of the burden of proof method, especially money laundering cases. This certainly makes it difficult for law enforcement officials (police, public prosecutors and judges) to implement the rules regarding the use of the reversal of the burden of proof, especially for money laundering cases; (d) Fourth: there are no legal provisions, especially procedural laws, that specifically regulate the use of the reversal of the burden of proof that can be used as a reference by law enforcers, so this method is difficult to implement; (e) theoretically, the use of the reversal of the burden of proof method makes it easier for public prosecutors to accuse someone even though the person may not have done what they are accused of.

In this case, it is very possible that an error will occur in accusing someone. So, a violation of the legal interests of every person accused is very possible. Third, the legal problem of the reverse burden of proof is limited to the crime of money laundering, namely: (1) It is a deviation from Article 14 Paragraph (3) letter g of the International Covenant on Civil and Political Rights, which has been ratified by Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights; (2) It is a deviation from Article 66 paragraph (1),(2) and Article 67 paragraph (1) letter (i) of the Rome Statute of the International Criminal Court/ICC related to the presumption of innocence regulated in the covenant. The text of Article 66 Article 66 paragraph (1), (2) and Article 67 paragraph (1) letter (i) of the Rome Statute of the International Criminal Court/ICC; and (3) is a deviation from Article 11 paragraph (1) of the Universal Declaration of Human Rights. This evidentiary system is also considered to be in conflict with Article 11 paragraph (1) of the Universal Declaration of Human Rights. The limited

reverse burden of proof system in preventing and overcoming the crime of money laundering is not free from pros and cons or advantages and disadvantages. The advantages in using the reverse burden of proof system in preventing and overcoming the crime of money laundering will have an advantageous side for the JPU (Public Prosecutor) in returning money to customers who have been harmed if the money laundered by the defendant is the result of banking crimes. This occurs because in the evidence, if the defendant cannot prove the origin of the money suspected of being laundered, then the defendant's money/assets can be confiscated to be handed over to reimburse the losses of approximately 6,000 customers. In addition to having advantages and disadvantages, this evidentiary system also presents the phenomenon of several legal problems, including deviating from the International Convention that has been ratified by Indonesia, namely the International Convention on Civil and Political Rights, contradictory.contradictory.contradictory.

Law enforcement officers, as a tool for enforcing the law, must possess personal integrity, be fair, and honest. They must faithfully implement the intent of the law. However, these qualities are not fully possessed by law enforcement officers who commit irregularities in carrying out their duties. This is due to low personal integrity, inadequate human resources, and a level of welfare that does not meet minimum standards, a phenomenon unique to law enforcement officers. However, specifically in the case of reversal of proof, the law enforcement aspect can only be properly implemented by the defendant himself, who is given the obligation to prove that the source of the wealth did not originate from a criminal act of corruption contrary to his position.

The advantages of implementing a reverse burden of proof system from a legal structure perspective are:

a) Making it easier for law enforcement officers such as the police, public prosecutors and judges to implement regulations regarding the use of the reverse burden of proof system in cases of corruption, acceptance of gifts (gratification) and money laundering;

b) In criminal procedural law, the rights of the accused are protected. There are two important aspects aimed at protecting suspects/defendants: first, protection of the presumption of innocence. Second, suspects/defendants are protected from circumstances that could lead them to blame themselves or non-self-incrimination. In a reverse burden of proof system, the suspect/defendant is considered guilty and is therefore required to prove his/her innocence.

c) With the existence of evidence carried out by the defendant himself, it can expand the source of indicative evidence. In Article 26 A of Law Number 20 of

2001, it is regulated regarding the expansion of sources of indicative evidence, namely in addition to as referred to in Article 188 paragraph 2 of the Criminal Procedure Code, it can also be obtained through information that is spoken, sent, received, or stored electronically with optical devices or similar or documents in the form of data recordings that can be read, or heard with the help of other means written on paper and other physical objects or recorded electronically in the form of writing, sound, images, designs, photos, letters, signs, numbers or perforations, which have meaning.

3.3. The Effectiveness Of The Reversed Burden Of Proof By The Public Prosecutor In The Criminal Acts Of Money Laundering From The Proceeds Of Banking Crimes

That in the process of law enforcement against money laundering cases and banking predicate crime 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 monitoring of money laundering cases throughout 2023, ICW found a significant increase compared to previous years (see Chart 2), with 791 corruption cases, with 1,695 individuals named as suspects by law enforcement. Furthermore, from the monitored cases, potential state losses reached Rp 28,412,786,978,089 (Rp 28.4 trillion), potential bribery and gratuities amounted to Rp 422,276,648,294 (Rp 422 billion), potential extortion or extortion amounted to Rp 10,156,703,000 (Rp 10 billion), and potential assets disguised through money laundering amounted to Rp 256,761,818,137 (Rp 256 billion).

The application of the reverse burden of proof system is able to 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 their innocence and the assets they obtained 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 procedure for implementing the reverse burden of proof as referred to in Article 78 of the Law on the Crime of Money Laundering is carried out by the Defendant during the examination in court by submitting sufficient evidence as

referred to in Article 73 of the Law on the Crime of Money Laundering. So, if examined in depth, the procedure for enforcing the reverse burden of proof system is different from the reverse burden of proof system in the law on corruption crimes which is only carried out when submitting a defense at the main trial and appeal memorandum and cassation memorandum.

That defendants who were charged and prosecuted using combined and cumulative charges under the Money Laundering Law have shown a positive trend, where defendants were charged with moderate or severe categories. This trend can be seen at least from the length of prison sentences filed by public prosecutors for corruption cases whose charges were arranged in combination or cumulatively, both with Money Laundering and with other corruption crimes. In terms of category, the distribution of prison sentences for defendants charged and prosecuted using the Money Laundering Law is in the moderate (10 defendants) and severe (17 defendants) categories. Observing the application of cumulative charges between corruption and money laundering crimes will increase the threat of punishment for perpetrators, thereby providing a greater deterrent effect.

The application of money laundering laws originating from banking crime cases, particularly those related to the reverse burden of proof system, is not only able to make it easier for law enforcement officers to provide evidence, maximize punishment for perpetrators so that it has a greater deterrent effect, but is also expected to have a positive impact on the aim of returning customer losses caused by banking crimes that are not in accordance with banking laws.[8]

The reverse burden of proof system has long been implemented by several countries, including Malaysia, Hong Kong, and Singapore. In Malaysia, Article 42 of the Anti-Corruption Act (ACA) states that all gratuities to civil servants or state officials are considered bribes unless proven otherwise by the defendant.[9]

The purpose of this provision is that the public prosecutor only proves one core part of the crime, namely the existence of a gift (gratification), the rest is considered to exist automatically unless proven otherwise by the defendant, namely firstly the gift is related to his position (in zijn bediening), secondly it is contrary to his obligations (in stryd met zijn pliecth). This is the same as Article 42, especially paragraph (2) of the Malaysian Anti-Corruption Act (ACA) which states the remaining elements in Articles 161, 162, 163 or 164 of the Penal Code (Malaysian Criminal Code):

[8] Abdul Aziz Dahlan, *Ensiklopedi Hukum* , p. 207

[9]Sobhi Mahmassari, (1976), *Falsafatu at-Tasyri' fi al-Islam, terjemah, Ahmad Sudjono, Filsafat Hukum dalam Islam,* Bandung: PT. Alma arif, p.239.

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.....it is proved that such person has accepted or agreed to accept, or obtained or accepted to obtain any clarification, such person shall be presumed to have done so as a motive or reward for the matters set out in the particulars of the offense, unless the contrary is proved." From the words..... as a motive or reward for the matters set out if? the particulars of the offense...." is the core part (bestanddelen) or element that must be proven otherwise by the recipient. This means that the recipient must be able to prove that the gift (gratification) was not a motive or reward regarding the things mentioned in the formulation.

Furthermore, the Statutes of Prevention of Corruption Act (1961) also regulates the Presumption of Corruption in Certain Cases, which reads as follows:

Where in any proceeding against a person for an offense under section 3 or 4 it is proven that any gratification has been paid or given to or received by a person in the employment of any public body, the gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned, unless otherwise proven.

The Statute of Prevention of Corruption (1961) also states that gratuities received by an individual or public body due to their position can be considered corruption until proven otherwise. Singapore's Prevention of Corruption Act (PCA) regulates the reverse burden of proof system. However, there are differences between Singapore and Malaysia. Malaysia's Anti-Corruption Act (ACA) includes the reverse burden of proof system in the procedural (evidence) section, while Singapore's Prevention of Corruption Act makes the reverse burden of proof system part of the crime formulation contained in Article 8 of the Prevention of Corruption Act (PCA), which reads:

Where in any proceeding against a person for an offense under section 5 or 6 it is proved that any gratification has been paid or given to or received by a person in the employment of the Government or any department thereof or of a public body by or from a person or agent of a person who has or seeks to 137 have any dealing with the Government or any department thereof or any public body, that gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proven.

This article states that if a person or private body gives something to a government official who makes or seeks contact and makes an agreement with the government or a department or public body, this action is considered a bribe until proven otherwise.[10]

[10] Andi Hamzah, (2009), *Hukum Acara Pidana Indonesia*, cet. ke-3, Jakarta: Sinar Grafika, p. 251.

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4. Conclusion

Indonesia implements a limited or balanced burden of proof system, meaning that both the prosecutor and the defendant each have their respective burdens of proof. However, in practice, the principle of the burden of proof system is sometimes not implemented, meaning the evidentiary system is still applied as adopted by the Criminal Procedure Code (KUHAP). However, it is important to understand that the implementation of this burden of proof system aims to trace and confiscate assets or property derived from criminal acts. Therefore, this is one effort that can be maximized to facilitate the tracing and confiscation of assets resulting from criminal acts and provide justice to the wider community. The method of reversing the burden of proof in handling money laundering cases, if not implemented properly, can result in a lack of legal implementation in upholding Human Rights (HAM). This is because the reversal of the burden of proof can ignore the basic rights of the accused, including the right to have their reputation protected. In daily practice, the method of reversing the burden of proof in Indonesia is still relatively new, this certainly makes it difficult for law enforcement officials (police, public prosecutors, and judges). The effectiveness of the application of the reverse burden of proof system in banking crimes Decision Number 2113 K / Pid.Sus / 2023 is not running effectively, because the reverse burden of proof system in its application in banking crimes still has weaknesses, namely the incompleteness of clear legal norms that regulate the reversal of the burden of proof in the law on corruption crimes, but the application of the reverse burden of proof system is able to 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 the reverse burden of proof system in a balanced and limited manner so that it does not immediately burden the Defendants to prove their innocence.

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