

Revenue Of Opening Expenses On Criminal Action Of Corruption (Case Study in IA Jayapura District Court)

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Abstract— The implementation of the burden of proof reversal system in Indonesia has existed since the discussion of the Draft Law (RUU) on the Eradication of Corruption Crimes in 1970. At that time, there was an idea about one pattern of eradicating criminal acts of corruption, namely accepting a system of proof reversal. The burden of reversal proof system is a proof system that deals with criminal procedural law which is very differential in nature with a universal proof system that has been known through negative evidence. This study entitled "Reversing the Load of Evidence Against the Study of Corruption Cases in Class IA Jayapura District Court". The purpose of this study was to find out the application of a system of proof reversal in corruption in the Jayapura District Court and to find out the obstacles faced in implementing a verification reversal system in the Jayapura District Court. The research method in this study uses a type of empirical juridical research law. Based on the research, it is found that the verification of corruption case in the District Court of Class IA Jayapura has not yet implemented a system of reversing the burden of proof as mandated in Law No.31 of 1999 jo Law No.20 of 2001. Implementation of reversal of the burden of proof in practice is still in conflict with the principle of presumption of innocence or the principle of presumption of innocence that has been recognized internationally and is also regulated in the Criminal Procedure Code, there are several Articles contained in Law Number 20 Year 2001 which is contradictory to Law Number 12 Year 2005 on the Ratification of the International Covenant on Civil and Political Rights, by the exercise or enforcement of burden-proofing systems may result in the misuse of authority by law enforcement officers, neither the implementation nor the reversal of the burden of proof as reversal of the burden of proof is limited. Suggested implementation or implementation of reversal of burden of proof in the District Court Class IA Jayapura and in the implementation of reversal of the burden of proof is required a clear rule on the provision of reversal of the burden of proof by not ignoring the principle of presumption of innocence, the affirmation of the meaning and procedure of reversing the burden of proof.

Keywords— *Reversal of the burden of proof; Corruption.*

I. INTRODUCTION

Corruption is an extra ordinary crimes, therefore it is necessary to deal with extraordinary juridical aspects (extra ordinary enforcement) and extraordinary legal instruments (extra ordinary measures) from this aspect one of the comprehensive steps that can be done in the criminal justice system in Indonesia is through a more adequate system of proof that is required for reverse proof or reversal of proof burden, or in anglo saxon systems and case law is known as the terminology reversal of the burden of proof or in the legal system terminology european continental omkering van het bewijslat [1].

Criminal Actions Corruption in Papua is increasingly troubling the community. One of the opinions expressed by Non-Governmental Organizations, Komunitas Masyarakat Adat Papua Anti Korupsi (LSM KAMPAK), "has been heard too often in the ears of the people at the turn of the Papua High Prosecutor's Office," the law is still enforced '. However, why are there still many corruption cases that have been designated as suspects not followed up by the legal process ". Many of the perpetrators of corruption are using excuses to cover up their corruption. The word "Merdeka" is deliberately used as a guarantee of legal politics by the government in this case law enforcement officials in the land of Papua. Political actors who are always arrested and tried and decided with a sentence of 5 (five) - 15 (fifteen) years imprisonment, while the perpetrators of criminal acts of corruption actually make political conditions unsafe and deliberately depend on Papuans as objects.

Until now, a weakness that has prevented law enforcement officials from seeking and finding evidence is proof of criminal acts of corruption. The right to prove that the defendant did not commit corruption is contained in Law Number 20 Year 2001 Article 37A paragraph (1) and (2) concerning the Eradication of Corruption Crime (hereinafter written UUPTPK).

There is a burden of proof placed on one side, the universalist lies in the Public Prosecutor (JPU). However, given the very urgent nature of the decision, the burden of proof was not only placed on the prosecutor, but also on the defendant. This process of reversing the burden of proof is then known as the reverse proof term.

The implementation of the burden of proof of the reversal system in Indonesia has existed since the discussion of the Draft Bill on the Eradication of Corruption in 1970. At that time, there was an idea of a pattern of eradicating criminal acts of corruption, namely accepting a proof reversal system. The burden of proof of the system of proof is a system of proof relating to criminal procedural law which is very different from the universal proof system that has been known through negative evidence.

Article 37A paragraph (1) and paragraph (2) UUPTPK can be seen from reversed evidence if the defendant found his property, wife or husband as well as those who have a relationship with him if it is not valid. If the amount is the same as the one who was corrupted, he can be charged with punishment. So, the defendant must be able to show the validity of his property.

The simplicity of this process is actually there is considerable hope for us to uphold or restore the rule of law through resolving corruption cases. But the goodwill of making this rule was not positively welcomed by the authorities. Some of the perpetrators of criminal acts of corruption who were brought before the court simply escaped because the intervention of the parties to the process of settling the case in the court was very large. Based on this experience, UUPTPK anticipates the helplessness of law enforcement agencies and institutions even though efforts in the form of reversing the burden of proof in corruption are adhered to by the Corruption Law.

In addition to the Public Prosecutor who is obliged to prove his charges, according to Article 38B paragraph (1) UUPTPK where the defendant of corruption is also obliged to prove against his property that has not been indicted but is alleged to be the result of a criminal act of corruption. This system of reversing the burden of proof is not recognized in ordinary criminal proceedings, the obligation of proof in the ordinary criminal case process is fully borne by the Prosecutor as the Public Prosecutor.

UUPTPK is a part or subsystem of legislation relating to law enforcement against KKN actions. The main purpose of this rule is the State organizer, which includes State Officials at the State Highest Institutions, State Officials and State High Institutions, Ministers, Regional Heads, Judges and or other officials who have a strategic function in relation to the state administration in accordance with the applicable provisions of the law.

Based on this background, the problems formulated in this research are How is the implementation of the burden of proof evident in corruption in the IA Class Jayapura District Court and what are the obstacles in implementing the Reversal of the Burden of Proof of corruption in the IA Class Jayapura?

II. THEORETICAL FRAMEWORK

Some notions of corruption according to Robert Klitgaard that deal with corruption from the perspective of

state administration, define corruption as "Behavior that deviates from the official duties of the state office because of the acquisition of personal status (individual, close family, own group), or violate implementation rules regarding personal behavior [2]

Robert Klitgaard introduced a new formula to eradicate corruption, $C = M + D - A$. Corruption (C = Corruption) according to Robert Klitgaard is the result of monopoly power (M) plus the authority of officials namely Discretion by officials (D) which is then reduced accountability (A, accountability). (Harahap, 2009) Syed Hussein Alatas argues that there are three types of phenomena covered in the terms of corruption: bribery, extortion and nepotism. The three types are different but there is a red thread that connects the three types of corruption, namely the placement of public interests under personal goals with violations of duties and welfare norms, which are accompanied by secrecy, betrayal, fraud, and neglect of the public interest [3].

So corruption according to Syed Hussein Alatas has the following characteristics[4]:

- a. Corruption always involves more than one person. This is what runs away with theft or embezzlement.
- b. Corruption generally involves secrecy, closure, especially the motives behind the act of corruption itself.
- c. Corruption involves an element of mutual obligation and benefit. These obligations and benefits are not always in the form of money.
- d. Efforts to take refuge behind legal justification.
- e. Those involved in corruption are those who have the power or authority and influence those decisions.
- f. Every act of corruption contains fraud, usually in public bodies or the general public.
- g. Every form of corruption involves conflicting dual functions of those who take action.
- h. Corruption is based on the intention to place public interests under personal interests.

Punch also classifies corruption in four forms, namely 1) straight forward corruption, 2) combative corruption, 3) predatory corruption, 4) corruption as perversion of justice. The first form of corruption is that something is done or not implemented depends on what you want to receive or obtain. Corruption in the second form describes corruption actors using legal discourses to be disguised, sometimes using organizational or using social institutions, so that their behavior can be accepted including using violence. The third form of corruption shows that corrupt behavior intentionally acts omission (giving) to what should be done or secretly organizes certain behaviors because it has already been bribed to carry out certain purposes or objectives. Corruption in the fourth form explains that corrupt behavior acts lying, manipulates by relying on profession or authority and position, including utilizing oaths of office in illegal activities [5].

The most important factor in the event of corruption is the moral and intellectual condition of community leaders. Moral and intellectual conditions in the configuration of

other conditions. Several factors can reduce corruption, 1) positive interest in the government and spiritual involvement and prioritize national interests and community welfare; 2) efficient work systems, good structural organization and appropriate government regulations to prevent opportunities for corruption; 3) favorable track record and public office conditions; 4) proper functioning of corruption prevention agencies; 5) exemplary leadership that has a good influence on morality and intellectual high [6].

Judging from the juridical perspective, according to M. Yahya Harahap "proof" is: the process of proving something that contains provisions that regulate the evidence justified by the law and regulates evidence that may be used by the judge to prove the defendant's fault [7].

Proof and evidence systems are regulated in CHAPTER XVI, Fourth Section, articles 183 through Article 232 of the Criminal Procedure Code. The obligation of criminal judges to apply evidentiary laws and evidence to obtain material truths against [8]:

- 1) Which deeds are considered proven..
- 2) Which deeds are considered proven.
- 3) Has it been proven that the defendant has been guilty of the actions indicted against him.
- 4) Delik what was done by the defendant.
- 5) The kind of criminal that must be imposed on the accused.

In general, in proving criminal cases including corruption violations, procedural law is implemented in accordance with the KUHAP rules. In addition, in examining corruption violations, in addition to the KUHAP rules, special procedural rules stipulated in Law Number 20 Year 2001 are also applied. Law Number 31 of 1999. In explaining the two laws, it was explained that the corruption procedure law uses a reverse inverse proof system that is not regulated in the Criminal Procedure Code.

The evidence in the formal criminal law of corruption is not only built through three evidences in Article 188 paragraph (2) of the Criminal Procedure Code, but can be expanded beyond the three valid evidences as explained in Article 26 A of Law No. 20 of 2001 namely [9]:

- 1) Other evidence in the form of information that is said, sent, received, or stored electronically with optical instruments or similar to that; and
- 2) Documents, namely every record of data or information that can be seen, read, and / or heard that can be issued with or without the help of facilities, whether contained in paper, any physical object other than paper or recorded electronically in writing, sound, image, maps, designs, photos, letters, signs, numbers, or perforations that have meaning.

Proof of Reverse Reversal System is limited to criminal acts of "gratuity" (giving) relating to "bribery" (bribery) and not for other violations in criminal acts of corruption[10]:

- 1) Other violations in Law Number 31 of 1999 contained in Article 2 to Article 16, the burden of proof remains in the hands of the Public Prosecutor.
- 2) Verification of Load Reversal System is only limited to "confiscation" of alleged violations to anyone as stated in

Article 2 to Article 16 of Law Number 31 of 1999. It must also be stressed that the system of proof of alleged violations in Article 2 Article 16 of Law Number 31 1999 will still be given to the Public Prosecutor. If the Defendant based on the Prosecution is deemed to have committed a crime against one of the crimes and must be confiscated by him, the Defendant must prove that his property does not originate from a criminal act of corruption.

3) Verification of Load Reversal System is only limited to "confiscation" of violations alleged to anyone as stated in Article 2 to Article 16 of Law Number 31 of 1999. It should also be stressed that the system of proof of alleged violations in Article 2 to Article 16 Law Number 31 Year 1999 will still be given to the Public Prosecutor. If the Defendant based on the Prosecution is deemed to have committed a crime against one of the crimes and must be confiscated by him, the Defendant must prove that his property does not originate from a criminal act of corruption.

4) The Load Reversal System Is Limited verification of the application of the principle of *Lex Temporis*, that this system cannot be applied retroactively because of the potential for human rights violations, violations of the legality principle, and causes what is called the *Lex Talionis* principle (revenge).

5) That the Reversal Proof Proof is limited and is not permitted to deviate from the "*Daad-daderstrafrecht*" principle. From this understanding, the system of reversing the burden of proof is not permitted to violate the interests and rights of the principal from the creator / perpetrator (suspect / defendant). That the application of this proof reversal system is an unavoidable reality, in particular the minimization of "father" rights relating to the principle of "non-self-incrimination" and "presumption of innocence", but there is a minimization of these rights which are greatly avoided this right will be removed, and if this happens, it is said that the system of reversing the burden of proof is the potential for human rights violations.

Basically the law on corruption acts adheres to the system of reversing the burden of proof as in the provisions of Article 12B, Article 37, Article 37A, and Article 38B. Theoretically there are 2 reasons why the reversal of the burden of proof is applied in corruption. First, the reason for the historical approach is where the existence of bribery articles introduced from KHUP into the Act on corruption, both in Article 1 paragraph (1) sub c of Law No. 3 of 1971 and Article 5 through Article 13 of Law No. 31 of 1999, so far only as sleep articles that have no meaning. Second, a comparative approach where the method used to activate the provisions or articles of bribery is to introduce a system of reporting mechanisms. With the existence of the system of reporting on the granting of goods to civil servants or state administrators, they (state employees or organizers) will be prosecuted, as well as law enforcement officials responsible for eradicating corruption. With the existence of a reporting mechanism system it will be known whether a gift (gratification) is a bribery or not and through a system of reporting mechanisms it can be applied to a proof reversal system.

III. RESEARCH METHODS

In connection with this writing the author uses the Juridical Empirical Research Approach, which is a type of legal research that serves to see the law in its true meaning and how the law works in the community by examining facts in society, legal entities or government institutions.

This research was conducted in the Class IA District Court of Jayapura. Consideration of the choice of location is because the Jayapura Class IA District Court is a State judicial institution authorized to examine, hear and decide cases of corruption in Papua Province.

IV. RESULTS AND DISCUSSION

A. *Implementation of Reversal of the Burden of Proof in Corruption in the Class IA District Court of Jayapura*

The system of proof of the wrongdoing of the perpetrators of corruption that has been adopted so far is a system of negative evidence, which proves the defendant's fault is the public prosecutor and not the defendant, so that prosecutors often find it difficult to prove the defendant's fault. Whereas from the aspect of punishment, the sentencing was so very low for the perpetrators that this did not cause a deterrent effect. Until now, the fight against corruption has not been balanced with the performance of law enforcers, but we must admit that law enforcers are faced with various obstacles including the difficulty of the process of proof.

Proof that so far has been acknowledged is that there are two valid evidences plus the confidence of the judge, and the suspect or defendant is not burdened with the obligation of proof. This process often complicates the process of proving corruption cases. Therefore it is necessary to make a legal breakthrough in order to further accelerate the process of eradicating corruption. One of the legal breakthroughs that has been discussed is the reversal of the burden of proof for the accused of corruption. Reversal of the burden of proof (Reversal Burden of Proof), namely there is an inverse burden on a proof that was originally placed on the Public Prosecutor and then also becomes the burden of the defendant [11].

The application of the reversal of the burden of proof of corruption is indeed on the one hand detrimental to the defendant, because his rights are not protected, but on the other hand this will bring happiness or benefit to many people, because it can reduce corruption that has so much harm to the state .

One of the parties who consider it necessary to implement or apply the principle of reversing the burden of proof for corruption cases of embezzlement and money laundering is the Indonesian Ulema Council (MUI), "reverse evidence is needed especially to facilitate the investigation of cases where material evidence is difficult such as corruption cases , embezzlement and money laundering.

Reversal of the burden of proof is an appropriate way to disclose criminal acts of corruption and restore State financial losses. The concept of loss of state finance in the perspective of criminal law is the concept of financial losses according to the State Finance Law, the State Treasury Law, and the law on accountability and management of state finances [12].

Whereas according to UUPTPK it is a supporting element in handling corruption that can function properly.

However, from the results of the study, it was not implemented or implemented a system of reversing the burden of proof in the Jayapura District Class IA court as mandated in Law No.31 of 1999 in conjunction with Law No. 20 of 2001 and in the application phase of handling cases of corruption still applying a negative proof system as in handling ordinary cases.

B. *Constraints in the Implementation of the Reversal of the Burden of Proof of Corruption in the Class IA District Court of Jayapura*

The results of the study indicate that the system of reversal of burden of proof was not implemented or in the District Court of Jayapura Jayapura as mandated in Law No.31 of 1999 in conjunction with Law No. 20 of 2001 due to several obstacles.

First, if we pay close attention to the First, if we pay close attention to the implementation or application of reversal of evidentiary burden, it is also a deviation from the conventional proof system stipulated in the Criminal Procedure Code. The Criminal Procedure Code determines that what must prove the defendant's fault is the Public Prosecutor is not the defendant. In addition, the application of proof of proof is also a deviation from the principle of presumption of innocence, by reversing the burden of proof of the accused who is guilty of committing a criminal act of corruption must prove that he has not committed a crime. acts of corruption.

Second, in Article 12B, Article 37, Article 37A, Article 38 of Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 also contradicts Law Number 12 Year 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights), precisely Article 14 Paragraph (3) letter g which states that in determining allegations of criminal offenses against them, everyone has the right not to be forced to testify against themselves or plead guilty.

Third, in Law No. 31 of 1999 which adheres to the reversal of the burden of proof it is impure if it is observed from the fact that: 1) The Public Prosecutor is not exempt from the obligation to prove the charges against the defendant. The public prosecutor still has the authority to provide opposing evidence, 2) the defendant is given the opportunity to prove that he did not commit a crime in accordance with what the Public Prosecutor indicted, 3) the evidentiary information submitted by the defendant is a matter of judgment for the judge who can be seen as a matter that is beneficial or detrimental to the defendant. Similar to Law Number 31 of 1999, in Law Number 20 of 2001 which also adheres to the reversal of the burden of proof in a limited way because even if the defendant is able to prove that he did not commit corruption, the public prosecutor is still obliged to prove his charges.

Fourth, it is not implemented or the implementation of reversal of evidentiary burden because the reversal of the burden of proof is limited, only applied to offenses relating to gratification related to bribery.

In the implementation or application of proof load reversal systems there is specificity, where proof load

reversal systems are only used to prove two objects of proof. First, the object of corruption in bribery accepts gratuity, but negatively it means that there is no crime. Second, concerning the object of property that has not been indicted about the source. In this second object the imposition of reversed evidence is not used directly to prove the occurrence of a crime, but for the defendant to be used so that the judge does not impose a criminal offense against his property that has not been indicted. For Jaks the Public Prosecutor is used to demand that the judge impose a criminal offense. And for judges it is used to reject the demands of the Public Prosecutor or accept it to impose a criminal offense for the property of the accused who has not been indicted. Such a system can cause problems if the Prosecutor's evidence of the defendant is not proven (for example Article 2) the result is contrary to the defendant's proof of the defendant's undisclosed assets, even though Article 38B paragraph (6) provides a solution. That is one of the problems of evidentiary systems in corruption [13].

According to the doctrinal approach and comparison of the criminal law system, the limited or specific meaning of the implementation of the burden of verification of evidence is: 1) that the system of reversing the burden of evidence is limited to violations of gratuity (bribery), and does not offend others in corruption. Other violations in Law Number 31 Year 1999 contained in Article 2 to Article 16, the burden of proof remains in the hands of the Public Prosecutor, 2) That the system of reversing the burden of proof is limited to the seizure of violations charged against anyone as stated in Article 2 up to Article 16 of Law Number 31 Year 1999. It should also be emphasized that the system of evidence of alleged violations in Article 2 to Article 16 of Law Number 31 Year 1999 remains borne by the Public Prosecutor. If, the defendant based on the demands of the Public Prosecutor is deemed to have committed a violation of one of the violations and is subject to confiscation of his property, the defendant must prove that the property does not originate from corruption. can be applied retroactively (retroactively) because of the potential violation of Human Rights (HAM), violation of the principle of legality, and cause what is called the *lex telionis* principle (revenge) [14].

Fifth, to implement or implement the burden of proof reversal based on the principle of presumption of guilt is indeed very vulnerable / potential for abuse of authority by investigators or Public Prosecutors. So it is not impossible that the principle of reversing the burden of proof in the implementation phase can be a new mode for law enforcement officials to extort to anyone who is suspected of being involved in a criminal act of corruption. In other words, the implementation of this reversal of the burden of proof can actually lead to or fertilize corrupt practices in a new style rather than tackling what we expect together.

V. CONCLUSION

Departing from the formulation of the problem, the results of research and discussion, the authors can draw conclusions as follows: 1. There is no implementation of reversal of evidentiary burden in the Class IA District Court of Jayapura and in the stage of its application handling cases of corruption crimes still applies a system of negative evidence such as in handling cases of ordinary crimes. 2. There are a number of obstacles so that they are not implemented or the reversal of the burden of proof is applied

to the Class IA District Court of Jayapura. 1) contrary to the principle of presumption of innocence which has been internationally recognized and regulated in KUHAP, 2) there are several Articles contained in Law Number 20 Year 2001 which are contrary to Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights, 3) with the implementation or implementation of a system of reversal of the burden of proof that abuse of authority can occur by law enforcement officers, 4) Not implemented or applied for reversal of evidentiary burden due to reversal the burden of proof is limited

VI. SUGGESTION

1. It is best to reverse the burden of proof carried out or implemented in the Jayapura Class IA District Court because the reversal of the burden of proof is one of the efforts made to uphold the law in criminal acts of corruption. With the implementation of the principle of reversal of the burden of proof, it will prove that the assets of the perpetrators of corruption are truly the result of corruption or vice versa. Then this will certainly cause a deterrent effect for the perpetrators of corruption.
2. In the implementation or application of the burden of proof reversal it is necessary to have clear rules regarding the provisions for reversing the burden of proof by not ignoring the presumption of innocence, there is an affirmation of the understanding and procedures for reversing the burden of proof. And for the sake of upholding the law in Papua which is in accordance with the legal objectives to achieve happiness for the people, then the reversal of the burden of proof can be carried out on cases of corruption.

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