Reverse Evidence System in TPPU and Corruption Criminal Verdict Cases

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In the context of criminal law, the burden of proof generally lies with the prosecution. However, in cases of Money Laundering (TPPU) and Corruption, there is a unique phenomenon in the form of a 'reverse evidence system'. This system allows the burden of proof to be shifted to the defendant to prove that the assets or property he owns come from a legitimate source. This phenomenon emerged in response to the difficulty of uncovering the extensive networks and complex methods used by TPPU and corruption perpetrators. Through a literature study, this research explores the origins, legal basis, and implications of applying the reverse evidence system in these cases. The research results show that although this system has advantages in increasing the effectiveness of prosecutions, it also raises controversies related to human rights principles and principles of justice. It is important for legal practitioners to understand the balance between efforts to eradicate crime and protect individual human rights.

1. INTRODUCTION

Traditional criminal law is based on the principle that a person is presumed innocent until proven otherwise. This principle reflects a deep commitment to the protection of human rights, especially the right to receive fair treatment in the judicial process. In the midst of this principle, the world of contemporary criminal law is faced with the phenomenon of a 'reverse evidentiary system', especially in cases involving the crime of money laundering (TPPU) and corruption. In cases such as these, the traditional dynamic of the burden of evidence is shifted, with the burden falling on the shoulders of the accused to prove his innocence, especially in the context of the origin of the property or assets owned.

The application of the reverse proof system in this context is not without reason. ML and corruption, as specific crimes, often involve complex schemes and sophisticated concealment techniques, which make the process of tracking assets and proving wrongdoing a monumental challenge for law enforcement. In many cases, the defendant has exclusive access to information
relevant to proving the origin of the property or asset. Given these dynamics, some jurisdictions have chosen to reverse the burden of proof in certain cases, with the goal of strengthening prosecutorial efforts and tackling these crimes more effectively.¹

However, as with every paradigm shift, the adoption of a reverse proof system gave rise to a number of debates and controversies. Fundamental questions about justice, human rights, and the effectiveness of the justice system came to the fore. How do we maintain the integrity of our legal system while ensuring that criminals, especially in complex cases such as money laundering and corruption, can be prosecuted fairly but also effectively? What are the implications of the reverse evidentiary system for the rights of the accused? And to what extent can this system be implemented without compromising basic principles of justice?

Discussion of the reverse verification system in the context of TPPU and corruption in Indonesia requires a deep understanding of the legal background, social norms, and political dynamics that influence the adoption and implementation of this system. Therefore, this research will delve deeper into the history, justification, application, and criticism of the reverse evidence system, with a special focus on cases of TPPU criminal decisions and corruption in Indonesia.

The main aim of this research is to provide a comprehensive and balanced picture of the reverse evidentiary system, with the hope of providing useful insights for legal practitioners, policy makers, academics, and the general public. It is hoped that this study will be a valuable contribution to the ongoing discussion about how best to combine the urgent need to eradicate complex financial crimes with our commitment to fair criminal justice principles.²

2. RESEARCH METHODS

In order to explore the phenomenon of the "Reverse Evidence System" in cases of TPPU and corruption criminal decisions, this research adopts a literature study method. This method was chosen because it makes it possible to collect, analyze and synthesize information from various relevant literature sources without the need to carry out field data collection. This process begins with the identification and selection of relevant literary sources, including law books, journal articles, official publications, research reports, court decisions, as well as government documents related to TPPU, corruption, and reverse evidence systems.

After the literature sources have been collected, the next step is the extraction of important data and information that is relevant to the research focus. This is done by reading, noting, and summarizing key points from each literary source. Next, the extracted information is critically analyzed to understand the context, reasons, application, as well as the pros and cons of the reverse evidence system in the context of TPPU and corruption.

In the analysis process, emphasis is placed on conceptual understanding of the reverse evidentiary system, its legal basis, as well as its practical and theoretical implications in the context of criminal law. Through this literature study approach, the research aims to produce an in-depth and balanced understanding of this phenomenon, with the hope of making a significant contribution to academic discussions and legal practice regarding this topic.3

3. ANALYSIS AND DISCUSSION

The reverse evidentiary system in cases of criminal decisions for the crime of money laundering (tppu) and corruption is a legal approach that places the burden of proof on the defendant or certain parties to prove that the assets they own do not originate from criminal acts or corruption. This system is regulated in law number 8 of 2010 concerning prevention and eradication of money laundering (tppu) as amended by law number 1 of 2017 and also law number 31 of 1999 concerning eradication of corruption crimes.

In the context of TPPU, Article 1 point 1 of Law Number 8 of 2010 defines TPPU as all actions carried out by a person or corporation to hide or disguise the origin of assets originating from criminal acts. This reverse evidence system is regulated in Article 3 paragraph (2) and Article 18 paragraph (2) of the TPPU Law. Article 3 paragraph (2) emphasizes that the defendant is obliged to prove that the assets he owns do not originate from a criminal act, while Article 18 paragraph (2) gives the authority to the Public Prosecutor to provide evidentiary instructions regarding the origin of assets deemed to originate from a criminal act.

In its implementation, the reverse evidence system in TPPU cases becomes an effective tool in eradicating money laundering crimes. The court can decide that certain assets originate from criminal acts without having to wait for conclusive evidence from the Public Prosecutor. This creates a strong legal precedent for punishing perpetrators of money laundering crimes and confiscating related assets.

In contrast to TPPU, in corruption cases, the reverse evidence system is regulated in Article 13 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. This article stipulates that if an official or former official is declared to have enriched themselves unlawfully, it is assumed that the assets came from corruption, unless the person concerned can prove otherwise.\(^4\)

The reverse evidence approach in corruption cases is an important strategy in overcoming complex evidentiary challenges. Article 13 provides a strong legal basis for punishing perpetrators of corruption without having to rely on evidence that is difficult to obtain. This is important considering that corruption often involves complicated financial transactions and is difficult to trace.

The application of the reverse evidence system in TPPU and corruption cases has also given rise to a number of controversies and contradictions. Some parties argue that this approach could lead to potential abuse of power by law enforcement officials, especially if it is not balanced with adequate control mechanisms. Therefore, there needs to be a balance between giving prosecutors the authority to determine assets as a result of money laundering or corruption and protecting human rights, especially the right to the presumption of innocence.

Apart from that, the implementation of the reverse evidence system also requires increasing the capacity of law enforcement officers, both in terms of technical expertise and compliance with the principles of justice. A careful approach is needed to avoid injustice in determining the origin of assets suspected of originating from criminal acts. The availability of accurate data and an integrated investigation system is the main key to ensuring the successful implementation of this system.

In the international context, the reverse evidence system in TPPU and corruption cases also has relevance. Eradicating transnational criminal acts requires close cooperation between countries. Therefore, Indonesia needs to ensure that the reverse verification system implemented is in accordance with international standards and does not violate human rights principles.

It is important to note that reverse evidence in TPPU and corruption cases is not a single solution to overcome this complex problem. There is a need for a holistic approach that involves reforming the legal system, strengthening law enforcement institutions, and increasing public awareness.

awareness of the importance of eradicating criminal acts. Law must not only be a tool of enforcement, but also an instrument for creating a just and just society.

So, the reverse evidence system in cases of TPPU and corruption criminal decisions is a significant legal step in efforts to eradicate these criminal acts. The law that regulates reverse evidence in TPPU and corruption cases provides a strong legal basis for punishing perpetrators and confiscating assets suspected of originating from criminal acts. However, the implementation of this system must be closely monitored to avoid abuse of power and ensure the protection of human rights. In addition, there needs to be further efforts to strengthen the capacity of law enforcement officials, increase transparency, and support overall legal system reform. Only with a comprehensive approach can the eradication of TPPU crimes and corruption be successful and have a positive impact on society and the country. Top of Form

In the world of criminal law, the principle that a person is presumed innocent until proven otherwise has been a strong and unshakable foundation for centuries. However, with the emergence of cases involving the crime of money laundering (TPPU) and corruption, the dynamics of traditional burden of evidence are starting to be challenged.  

TPPU and corruption cases are, in many ways, unique. Compared with conventional crimes, the transnational nature, methods of concealing assets, as well as complex networks that often involve parties from various backgrounds, mean that this type of prosecution requires a different approach. In many cases, even if there are strong allegations against a person, concrete evidence regarding the origin of the assets or funds used by the accused is often difficult to obtain.

Understanding this context, some jurisdictions introduced what is known as a “reverse evidentiary system” in ML and corruption cases. Here, the burden of proof shifts from the public prosecutor to the defendant, where the defendant is expected to explain the origin of the property or assets he owns. Basically, this system was created in response to the difficulties faced by public prosecutors in proving the illegal source of assets or funds found on the defendant's behalf.

For example, in a corruption case, a government official may have assets that far exceed his or her income. While this is suspicious, without concrete evidence that the assets were obtained through acts of corruption, prosecutors may find it difficult to prove guilt. With a reverse

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evidentiary system, the official may be required to explain the origin of the asset and failure to do so may be considered evidence of guilt.

However, as might be expected, the application of the reverse proof system has generated great controversy. The main criticism of this approach is that it goes against the basic principles of criminal law and can compromise the human rights of the accused. In essence, by reversing the burden of proof, the defendant is faced with a nearly impossible task: proving his innocence by explaining the origin of every asset he owns.

In the Indonesian context, cases of corruption and money laundering have received public attention over the last few decades. Several major corruption cases involving high-level officials have shaken the country's legal and political foundations. In some cases, courts have considered implementing a reverse evidentiary system, especially when there are strong indications that the assets or funds found with the defendant came from acts of corruption, but direct evidence is difficult to find.⁶

However, the successful implementation of this system remains a question. While it can be helpful in some cases, this approach also has the potential for abuse, with defendants possibly being found guilty based on conjecture rather than concrete evidence.

As a temporary conclusion, while the reverse evidentiary system has the potential to increase the success of prosecutions in ML and corruption cases, it is important to balance this need with the human rights of the accused. As with all legal tools, judicious application and case-by-case consideration is key to ensuring justice for all parties involved.

In the Indonesian context, one of the cases that has received wide attention and can be considered to represent the controversy over the reverse evidentiary system is the case involving Basuki Tjahaja Purnama or better known as Ahok. Although not a direct TPPU or corruption case, this case highlights how difficult the burden of proof is and how public opinion can influence legal decisions.

However, to return to the context of TPPU and corruption, we can look at the case of Setya Novanto, former chairman of the DPR. He was involved in the e-KTP corruption scandal which cost the state up to IDR 2.3 trillion. During his trial, Novanto initially claimed that the money he

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received was not the result of corruption. Even though initial evidence showed that he received the money, he asked the public prosecutor to prove that the assets he owned came from criminal acts of corruption.

In this case, the evidentiary process became very complicated because it involved many parties, complicated financial transactions, and efforts to hide evidence. Although not a pure application of the reverse evidentiary system, this case highlights how difficult it can be for the public prosecutor to prove the origin of certain assets, especially when the defendant has the resources to hide his tracks.

Another relevant case is the Hartati Murdaya case. Hartati, a prominent entrepreneur and owner of the Cipta Graha business group, was charged with bribing regional officials to obtain business permits. At her trial, Hartati denied all charges and challenged the public prosecutor to prove the origin of the funds allegedly used as bribes. Even though the evidence shows suspicious transactions, it is difficult for the public prosecutor to show a direct link between these funds and criminal acts of corruption.7

The two cases above show how traditional criminal law systems can face difficulties when trying to prove the origin of funds or assets in TPPU and corruption cases. While the reverse evidentiary system may provide a solution to some of these challenges, however, its application must also be carried out carefully to ensure that the human rights of the accused remain protected.

4. CONCLUSION

In the world of criminal law, the burden of evidence has always been a strong foundation, with the principle that every individual is presumed innocent until proven otherwise. However, in response to the complexities and unique challenges presented by Money Laundering (TPPU) and corruption cases, many jurisdictions, including Indonesia, have considered or even implemented what is known as a 'reverse evidence system'.

Given the characteristics of TPPU and corruption, where networks are extensive, financial transactions are complex, and often involve parties in various countries, traditionally the burden of proof on public prosecutors is often considered inadequate. The reverse evidentiary system was, therefore, introduced as a potential solution, allowing the public prosecutor to require the accused

to explain the origin of certain assets or funds, with the failure of the accused to provide a satisfactory explanation being considered as evidence of guilt.

However, as has been discussed, this approach is not without controversy. Criticism of the reverse evidentiary system highlights the potential for violations of human rights, especially the right to a fair trial. In response, proponents of this method argue that in certain situations, particularly where the defendant has exclusive access to relevant information or where there are strong indications of criminal activity, such an approach may be necessary.

Concrete cases in Indonesia, such as those involving Setya Novanto and Hartati Murdaya, show how the traditional evidentiary process can be complicated and difficult. On the one hand, reverse proof systems can help overcome some of these challenges. On the other hand, there is a real risk that the defendant's rights could be compromised.

In a global context, many countries have adopted this approach, especially in their efforts to eradicate money laundering and corruption. However, the extent to which this approach is effective and fair remains a subject of debate. In fact, although the reverse evidentiary system may provide a solution for public prosecutors in some cases, its application must always be carried out with full consideration of human rights and principles of justice.

In conclusion, while the reverse evidentiary system has the potential to be an effective tool in combating ML and corruption, its implementation requires a careful balance between the need to strengthen prosecutions and the need to protect human rights and justice. As legal cases evolve and global dynamics evolve, it is important for Indonesia and other countries to continue to assess and adapt their approaches, ensuring that they are not only effective in combating crime, but also in protecting individual rights in the justice process.

5. SUGGESTION

In implementing the reverse evidence system in cases of criminal decisions for Money Laundering (TPPU) and corruption, there are a number of suggestions that can be taken to ensure this approach is carried out in a balanced and effective manner. First, there needs to be efforts to strengthen education and training for judges, prosecutors and lawyers regarding the mechanisms and implications of the reverse evidence system. In-depth knowledge will help them understand the specific context of TPPU and corruption cases and ensure that the judicial process remains fair.

Second, regular evaluation and review of the law is necessary to assess whether the application of the reverse evidence system has provided real benefits in law enforcement. This will
ensure that the approach is not only in keeping with legal and societal developments, but also remains compliant with basic principles of criminal law.

Third, it is important to maintain the protection of the defendant's rights in the judicial process. Ensuring that defendants have full access to legal assistance, have the opportunity to defend themselves, and undergo a fair and transparent judicial process are important steps to avoid human rights violations.

Fourth, the reverse proof system must be applied selectively and carefully. This should be implemented only in cases that require this approach due to their complexity, such as in cases of TPPU and corruption involving financial transactions and complex networks.

Fifth, international collaboration must be increased. Most TPPU and corruption cases have a cross-border dimension, so investigative cooperation and information exchange between countries is key. With strong cooperation, efforts to eradicate such crimes can be enhanced.

Sixth, the use of modern technology in tracking financial transactions must also be considered. Investments in tools and systems that make it easier to track and analyze financial transactions will greatly assist prosecutors in proving the illegal origins of assets.

Seventh, transparency and community involvement in the process of implementing the reverse evidence system are important. Public involvement can increase understanding of this policy and also prevent misuse.

Finally, detailed and clear regulations regarding the application of reverse evidence systems must be developed. This regulation will provide more precise guidance in implementing this approach, so that decisions can be taken with consistency and fairness.

By paying attention to these suggestions, Indonesia can take further steps in implementing a reverse evidence system in cases of TPPU and corruption criminal decisions. With a careful, balanced approach and involving various relevant parties, the state can strengthen efforts to eradicate financial crime while maintaining the principles of human rights and justice that are the basis of a fair criminal legal system.

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