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### REVERSAL EVIDENCE POLICY ON CORRUPTION AS SPECIALIZATION OF CRIMINALIZATION

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#### Article Information    Abstract

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*Corruption is an extraordinary crime, because corruption happens in all areas of life, and has been done systematically, accordingly extraordinary action is required. To overcome with the occurrence of various type of corruption that required a special strategy.*

*In this article, the authors use normative juridical approach method, that is by doing observation and then review and analyze secondary data in the form of legal materials, especially primary law materials and secondary legal materials. The collected data, both qualitatively and quantitatively, is further classified according to the data types. After that, the results of the study are arranged in a systematic and coherent manner, using problem studies that are specific to take the basics of general knowledge. The conclusion will be drawn in response to the issues that raised in this paper.*

*The legislation that has been regulated the reverse evidence of corruption is considered to be ineffective, in several regulation about corruption, only gratification acts that embrace pure inverse evidence, while others are not purely adherent, whereas the effectiveness of the system of reversal of the burden this evidence is very good if it can be implemented properly and based on strict rules, the problem that concerned in this study is, the contradiction between the presumption of innocence principle and the presumption of guilt principle underlying this evidentiary system.*

*The ideal concept offered in this study is, with the renewal in the setting of the eradication of corruption, and ultimately embraces the reversal of the burden of evidence purely in the corruption trial by considering the concept of equilibrium.*

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## INTRODUCTIONS

At first the corruption studies began to develop in the west (the beginning of the 19th century, after the French, British, and American revolutions) when the principle of separation between public or financial and personal financial began to implemented.<sup>1</sup> Corruption is derived from latin term that is *corruptio* or *corruptus*, which means rotten, bad, depraved, dishonest, corruptible, immoral, deviating from purity and insulting or slanderous words.<sup>2</sup> *Corruptio* is derived from the word *corrumpere*, an older Latin word. From the Latin it goes down to many European languages like English that is corruption, corrupt; France is *corruption*; and Dutch is *corruptie*, *korruptie*. From the Dutch language this word came down to the Indonesian language of *korupsi*.<sup>3</sup>

The Complete Indonesian Dictionary defines corruption as a misuse of capital money (companies, state, public and so on) for personal gain or others.<sup>4</sup> Corruption is an extraordinary crime, because corruption takes place in all areas of life, and is done systematically, making it difficult to eradicate it. Corruption in Indonesia is already endemic, systemic, and widespread. Corruption has even robbed the economic, social and cultural rights (*ecosob*) of many societies, so it must be eradicated. The

criminal act of corruption in Indonesia is felt to occur in a systematic and widespread way, not only harming the state's finances but also a violation of the social and economic rights of society at large scale so that corruption should be classified as a crime whose eradication must be done extraordinarily.<sup>5</sup>

The lack of integrity and ethics of state officer is the main cause of deviation and abuse of authority or power.<sup>6</sup> Abuse of power from the execution of government functions becomes part of the criminal act of corruption. Even for many, corruption is no longer a violation of the law, but it has become a habit. in its development corruption is often an obstacle factor in the development process of a government and a nation.

The criminal act of corruption is one of special criminal law. The explanation is the criminal act of corruption has certain specifications that are different from general criminal law, such as deviation of procedural law and the regulated material is intended to minimize the occurrence of leaks and deviations to the state's financial and economic. The United Nations Convention Against Corruption (UNCAC), 2003<sup>7</sup> describes the problem of corruption as a serious threat to the stability, security of national and international societies, undermining institutions, democratic values

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<sup>1</sup> Arya Maheka, **Mengenal dan Memberantas Korupsi**, (Jakarta: Komisi Pemberantasan Korupsi, 2006), hal. 13.

<sup>2</sup> Ilham Gunawan, **Postur Korupsi di Indonesia, Tinjauan Yuridis, Sosiologis, Budaya, dan Politis**, (Bandung : Angkasa, 1990), hal. 8.

<sup>3</sup> Andi Hamzah, **Pemberantasan Korupsi**, (Jakarta: PT. Raja Grafindo Persada, 2005), hal. 4.

<sup>4</sup> Pusat Bahasa Departemen Pendidikan Nasional, **Kamus Besar Bahasa Indonesia, Edisi Ketiga**, (Balai Pustaka: Jakarta, 2001), hal. 597.

<sup>5</sup> Indriyanto Seno Aji, *Jurnal Keadilan*, Vol. 1, No. 1 Maret, 2001. h. 39.

<sup>6</sup> Bambang Waluyo, *Optimalisasi Pemberantasan Korupsi di Indonesia*, *Jurnal Yuridis* vol. 1 No. 2, Desember 2014 : 169-182

<sup>7</sup> Romli Atmasasmita, *Strategi Dan Kebijakan Pemberantasan Korupsi Pasca Konvensi PBB Menentang Korupsi*. Jakarta : 2003. Hal. 2

and justice and endangering sustainable development and law enforcement. The 2003 United Nations Convention against Anti-Corruption (hereinafter abbreviated as KAK 2003) ratified by Act No. 7 of 2006, has implications on the characteristics and substances of the combined two legal systems of "Civil Law" and "Common Law", which will affect a legal provisions to regulate corruption in Indonesia.

Corruption in Indonesia is really systemic, even corruption that happened has turned into a *vampire state* because almost all infra and supra political structure and constitutional system has been affected by the disease of corruption. The agenda for the eradication of corruption until this moment is only a political commodity for the political elite, more at the destruction of the character (character assassination) for the elite that is indicated by corruption than the fair and just legal process. Law enforcement for corruptors also became a last wind, whereas corrupt acts committed by corruptors are very harmful to the people.<sup>8</sup>

There are 7 (seven) patterns of corruption that are often done by corrupt actors of both government and private actors. The seven patterns include: (1) conventional pattern, (2) tribute pattern, (2) commission pattern, (4) pattern of order crashing, (5) pattern of partner company, (6) fictitious pattern of receipt and (7) . Various ways that corruptors do in undermining the state's

money. The usual mode of conduct is the practice of embezzlement, the practice of embezzlement of rule-making in favor of certain parties, project markup.<sup>9</sup> In order to cope with the corruption of varying species, a special strategy is required from all fields, although to completely eliminate the practice of corruption is impossible, at least there is an effort to suppress the occurrence of corruption. The established strategy should involve all the layers of society and government structure officials.<sup>10</sup>

Meanwhile, according to Fadjar<sup>11</sup> the pattern of corruption can be distinguished in three major areas namely; First, the form of abuse of authority that affects the occurrence of corruption; abuse of power, abuse of authority exercised by a person with a certain authority in co-operation with others by bribery, kickbacks, reduced standards of specification or volume and markup. The abuse of authority of this type is usually non-political and carried out by the level of officials who are not very high position. The practice of corruption has seriously detrimental to the state's finances and economies, while existing legislation is no longer effective in combating corruption that increasingly complex and massive.<sup>12</sup>

Second, Discretion of power, on this type of abuse of authority by officials who have special authority by issuing certain policies such as decisions of the Mayor or Regent or in the form of local regulations or decisions

<sup>8</sup> Klitgaard, dkk. Penuntun Pemberantasan Korupsi dalam Pemerintahan Daerah, Yayasan Obor Indonesia & Patnership for Governance in Indonesia, Jakarta:2002, hal. 18

<sup>9</sup> Suwitri, Sri, **Pemberantasan Korupsi Di Indonesia : Sebuah upaya reformasi birokrasi**, Jurnal Dialogue JIAKP, Vol. 4, No. 1, Januari 2007 : 23-41

<sup>10</sup> Baswir Revrison, 1993, *Ekonomi, Manusia dan Etika*, Kumpulan Esai-esai Terpilih, BPFE, Yogyakarta.

<sup>11</sup> Mukti Fadjar,, *Korupsi dan Penegakan Hukum* dalam pengantar Kurniawan, L, 2002, *Menyingkap Korupsi di Daerah*, Intrans Malang : 2002, hal. 3

<sup>12</sup> Ramelan, "Metode Interpretasi dan Jaminan Kepastian Hukum dalam Pemberantasan Tindak Pidana Korupsi", *Jurnal Legislasi Indonesia*, Vol. 4 No. 1 tahun 2007, hlm. 47-48

of the Mayor or Regent that usually makes them able to cooperate with friends or groups (*despotis*) as well as with his family (*nepotis*). Third, the Idiological abuse of power, this is done by officials to pursue the specific goals and interests of the group or party. There can also be group support on certain parties to occupy strategic positions in the bureaucracy or executive institutions, where they will later get compensation from his actions, this is often called a cunning reply politics. This kind of corruption is very dangerous, because with this practice all the supporting elements have been compensated.

Reviewed from a historical perspective, E.Y. Kanter and S.R. Sianturi<sup>13</sup> mentioned that the public-legal criminal law as it is known today has gone through a long development. The evidence of corruption cases both in Indonesia and some foreign countries is felt very complicated. Especially for Indonesia, the severity is in addition to the enforcement process is also due to the legislation policy of making the Act that its products can become multi interpretation, so relatively found some weaknesses in it. One example can be mentioned here is Act No. 31 of 1999 jo Act No. 20 of 2001 on Eradication of Corruption. In the provisions of the law, the criminal act of corruption is an extraordinary crime, so extraordinary action is needed (extraordinary measures).

One of the reasons for the failure to eradicate corruption is considered because the Corruption Eradication Act does not embrace the evident inverting (*omkering van de bewijslast*). Simply put, the reverse

verification system can be defined, the evidentiary system in the criminal proceedings that imposes the defendant proves that he is innocent of the charge against him. In other words, the defendant is guilty unless he can prove himself innocent.

The reverse verification is actually nothing new in this country Act No. 23 of 1997 on Environmental Management and Act No. 8 of 1999 on Consumer Protection, explicitly regulates the application of the reverse verification principle despite the different underlying reasons and its application to the proceedings. For example, the application of the reverse verification principle in Act No. 8 of 1999, is because consumers do not know the material for the production process and the distribution provisions made by the producers. Consumers need to be protected, if harmed by the manufacturer. In court producers who must prove that the material production and distribution process it does will not harm consumers. If a producer can prove that he or she is not "cheating" the customer, he or she can be free of the compensation claims.<sup>14</sup>

Act No. 31 of 1999 on Corruption Eradication (Anti-Corruption Law) which is now in effect has embraced the principle of reverse evidence. However, its application is still limited. The limitation is because the prosecutor is also still obliged to prove the crime committed by the defendant, even though he (the defendant) has failed to explain the origin of his wealth.<sup>15</sup>

The reverse verification system is an exception to the Criminal Procedure Act as

<sup>13</sup> E.Y. Kanter & S.R. Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya*, Penerbit Alumni AHM-PTHM, Jakarta, 1996, P. 38

<sup>14</sup> Tri Agung Kristanto. Pembuktian Terbalik: Perpu atau Amandemen UU 31/1999 Dalam

<http://www.kompas.com/kompas-cetak/0104/14/nasional/pemb08.htm> accessed on February 6th 2012

<sup>15</sup> *Ibid.* hal. 4

stipulated in Article 66 of Act No.8 of 1981 concerning the Criminal Procedure Code which holds the presumption of innocence,<sup>16</sup> ie the suspect or defendant is not burdened with evidentiary obligation. The Anti-Corruption Eradication Act No.3 of 1971 provides for subjective judgment if deemed necessary, may impose a defendant on proving non-corruption.<sup>17</sup>

Furthermore, the Corruption Eradication Act No. 31 of 1999 which substituted it embraces an 'ostensible' inverted evidence. Article 37 Verse (1) states, "The defendant has the right to prove that he is not committing a criminal act of corruption." This provision is a deviation from the provisions of the Criminal Procedure Code which stipulates that the prosecutor is required to prove the criminal offense, not the defendant. Under this provision the defendant can prove that he is not committing a criminal act of corruption.<sup>18</sup>

In fact, the reverse verification actually punishes the defendant by obliging him to prove he is not doing corruption. Whereas, the article establishes the right of the accused to prove it is not corrupt. In fact, in the conventional criminal law system is also given the right for defendants to defend himself which is part of the human rights of the court must provide the right (opportunity) for the defendant to defend himself.<sup>19</sup>

## RESEARCH METHODS

Based on the formulation of the problem and research objectives, it can be identified that the main issues in this study include one of the criminal law policy, especially the legislation policy in formulating and reversing verification principles. Therefore the approach used is a policy-oriented approach.

However, since the main targets of this study on legislation issues in defining and reversing burden of evidence, the approach is primarily pursued through a normative juridical approach based on secondary data and supported by a comparative historical and juridical approach.

The normative juridical approach is used to find out the extent to which legal principles, horizontal vertical synchronization, and systemic law are applied, which is based on secondary data. Secondary data in the field of law can be divided into three, namely primary legal materials, secondary legal materials, and tertiary legal materials.

The historical approach and the comparative approach function more as a supporting element. Historical approaches are used to look at how the history until the emergence of reversed evidence in the corruption criminal justice as discussed in this study. While the comparative approach is used to compare reverse evidence in Indonesia with reversed evidence in other legal systems.

<sup>16</sup> The provisions of Article 8 (1) of Act no. 48 of 2009 on Judicial Power, which said ".....Anyone who suspected, arrested, detained, prosecuted in court, shall be presumed innocent before his or her guilt is expressed in a court decision that have a final legitimation .....".

<sup>17</sup> Sulistiono Kertawacana. Pemberantasan Mafia Peradilan. Dalam <http://www.mail-archive.com/filsafat@yahoogroups.com/msg00863.html> yang direkam pada 10 Mar 2012

<sup>18</sup> *Ibid.* hal. 3

<sup>19</sup> *Ibid.* hal. 6

## FINDINGS AND DISCUSSIONS

### Reversed Evidence Policy on Corruption in the Criminal Procedure

Criminal law policy, criminal law politics or criminal law reform, as well as formulative policies and legislation, are synonymous terms that are one of the problems faced by Indonesians today, because most of the laws in Indonesia are forwarding from the previous legal system with a reason to prevent the legal void, the colonial law's torture remains in force until the new law is enacted in accordance with the Indonesian state administration and philosophy, on the other hand the renewal of the criminal law continues to take account of the development of the world in addition to maintaining the laws that live in society as the Indonesian nation's perspective on punishment.<sup>20</sup>

Reviewed from a historical perspective, E.Y. Kanter and S.R. Sianturi<sup>21</sup> mentioned that the public-legal criminal law as it is known today has gone through a long development. Gradually, criminal law as part of public law of its existence aims to protect the interests of society and the state by making a harmonious and harmonious balance between crime on the one hand from the actions of the rulers who act arbitrarily on the other. Furthermore, the provisions of criminal law in the above context can be

classified into general criminal law (*ius commune*) and special criminal law (*ius singulare*, *ius speciale* or *bijzonder strafrecht*). The provisions of general criminal law are intended to apply generally as set forth in the Criminal Code (Penal Code), while special criminal law according to W.P.J. Pompe, H.J.A. Nolte, Sudarto and E.Y. Kanter means criminal law that regulates the subject and special deeds (*bijzonder lijkeiten*).<sup>22</sup>

The criminal act of corruption is one part of a special criminal law. If elaborated, the criminal act of corruption has certain specifications that are different from general criminal law, such as deviation of procedural law and the regulated material is intended to minimize the occurrence of leaks and deviations to the state's financial and economic. United Nations Convention Against Corruption (UNCAC), 2003<sup>23</sup> Corruption or corruption eradication is more accurately said to be a social phenomenon, because it is considered a national culture and its eradication on the law enforcement path should be able to have complete understanding.<sup>24</sup> describing the problem of corruption is a serious threat to the stability, security of national and international society, has weakened institutions, democratic values and justice and endangers sustainable development and law enforcement. The inability to understand corruption will result in stagnancy, or worse, the decadence of

<sup>20</sup> Munawar, Kukun Abdul Syakur, "Pembuktian Terbalik Sebagai Kebijakan Kriminal Dalam Penanganan Tindak Pidana Korupsi", *Jurnal Ilmiah Galuh Justisi* Volume 5 No.2 - September 2017, hlm 24-28

<sup>21</sup> E.Y. Kanter & S.R. Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya*, Penerbit Alumni AHM-PTHM, Jakarta, 1996, hlm. 38

<sup>22</sup> W.P.J. Pompe, *Handboek van het Nederlandsche Strafrecht*, NV Uitgevermaatschappij W.E.J. Tjeenk-Willink, Zwollo, 1959, Hlm. 32-33

<sup>23</sup> Romli Atmasasmita, *Strategi Dan Kebijakan Pemberantasan Korupsi Pasca Konvensi PBB Menentang Korupsi Tahun 2003: Melawan Kejahatan Korporasi*, Paper, Jakarta, 2006, hlm. 1

<sup>24</sup> Said, Sahlan, "Penegakan Hukum Anti Korupsi", *Jurnal Demokrasi*, vol. II No. 7 Januari 2005, hlm. 64.

ideas and acts of corruption eradication because there is also an opinion that corruption has entered widely in the realm of mentality and spirit of the community.<sup>25</sup>

Currently, in the criminal justice system in Indonesia, prosecutors prosecute a criminal offense and the defendant may choose a lawyer or defense lawyer to defend him. The police handle investigations in reported or reported cases. They do not take sides in the process and act as objectively as possible. During the investigation, the police must find the truth. The police must investigate the facts, find evidence of the offense, and if there is a violation, should try to find the perpetrator, indict the offender, and arrest if necessary. The criminal justice in Indonesia embraces the accusator system. The suspect or defendant is considered a subject in court, meaning the position of a suspect or defendant is deemed to be equal to that of the public prosecutor and the judge. Therefore, he has the same right in court process, both in the process of preliminary examination and examination before the court.<sup>26</sup>

In addition, in all cases, the claimant must also prove that the offense has occurred and that the asset is the result of an act unlawful or intended to be used in a criminal activity or as a result of a crime. As based on the Negative Theory of Evidence (*Negatief Wettelijk*), which states that in the case of proving the defendant's accused, the judge does not rely solely on the means of evidence and in the ways prescribed by law. It is not

enough, but it must be accompanied by the belief that the defendant is guilty of a crime. This established belief must be based on the facts obtained from the evidence that have been mentioned in regulation. Evidence is based on two things, namely the tools of evidence and beliefs that are unity, not separated, which is not independent.<sup>27</sup> According to this system to declare the person guilty and punished there must be a belief in the judge and that belief must be based on valid evidence, that a prohibited act has been committed and that the accused has committed the act. This theory suggests that judges may only impose criminal sanctions if there are at least two valid evidences. The evidence in this system is regulated in a limitative manner in law. In this system there are two components that mutually support each other namely legal evidence according to law and judge conviction.<sup>28</sup> KUHAP embraces this system, it can be seen from the contents of Article 183 KUHAP namely:

“A judge shall not impose a penalty on a person except, with at least two valid evidences, the judge obtains the conviction that a crime is actually committed and that the defendant is guilty for committing it.”<sup>29</sup>

From the sentence state that the evidence must be based on the Criminal Procedure Code (KUHAP), namely the legal evidence in Article 184 KUHAP, accompanied by the judge's confidence obtained from the evidence. In fact, prior to the Criminal Procedure Code, the same provision has been stipulated in Act Number

<sup>25</sup> R, Toto Sugiharto, “Mengebor Sumur Tanpa Dasar”, *Jurnal Demokrasi*, Vol. II No. 7 Januari 2005, hlm. 6-8

<sup>26</sup> Yusuf, “Penerapan Sistem Pembuktian Terbalik Untuk kasus korupsi Kajian Antara Hukum Positif dan Hukum Islam”, *Jurnal Epistemé*, Vol. 8, No. 1, Juni 2013, P. 215

<sup>27</sup> Wantjik Saleh, *Tindak Pidana Korupsi dan Suap*, (Jakarta: Ghalia Indonesia, 1983), P. 70

<sup>28</sup> Darwan Prinst, *Hukum Acara Pidana dalam Praktek*, cet. 3, (Jakarta: Djembatan, 2002), P.137.

<sup>29</sup> Indonesia (B), *Op.Cit.*, Article 183

4 of 2004 concerning Judicial Authority Article 6 Verse (2) which reads as follows:

"No one shall be criminally liable unless a court of lawful evidence of law proves that a person deemed responsible for the act that alleged to him."<sup>30</sup>

This evidentiary system stems from the rules of evidence set limits by law, but it must be followed by the judge's conviction. Corruption prosecution business using the method of verification actually felt less to meet the sense of justice for the defendant of corruption, and prosecutors as the party burdened with proving difficulty in proving the defendant error due to the vast evidence and objects of corruption are vague or unclear, therefore required a device extraordinary measures in the form of reversed evidence to resolve cases of corruption that effectively and satisfy the sense of justice. This thinking arises because it is caused by the perspective of legislation policy which, during the view of corruption act as ordinary offense, so that the prevention of corruption is quite conventional and does not require extraordinary measures.

### **Reversal Evidence Policy On Corruption In The Future Criminalization Process**

Indonesia as a law state (*rechtstaat*) as stipulated in Article 1 Verse (3) of the 1945 Constitution Code on the Third Amendment. Conceptually, the theory of the state of law upholds the legal system that

ensures legal certainty (*rechts zekerheids*) and protection of human rights (human rights).

Roescoe Pound<sup>31</sup> mentions that there are two important needs for philosophical thinking about the state of law. First, the great public need for public security. The need for peace and order to manifest security encourages human beings to seek the rules that authorities against the arbitrary acts of the ruler and the individual to establish a steady society. Secondly, there is a need to adjust to the needs in the field of public security and make new compromises on a continuous basis in society because of the change and hence the need for adjustments in order to achieve a perfect law.

Marc Ancel mentions the twenty century criminal law system still to be created. Such a system can only be conceived and perfected by the joint efforts of all well-meaning people as well as by all experts in the field of the social sciences.<sup>32</sup> The Criminal Law System of the principle has four substantive elements namely the underlying value of the legal system (philosophic), the existence of legal principles, the existence of legal norms and legal community as supporting the legal system (legal society ). This is a form of enforcement that the effectiveness of law enforcement is determined not only by law enforcement, but also by legal substance and legal culture factors.<sup>33</sup>

The Criminal Law System in addition to having dimensions of the punishment

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<sup>30</sup> Indonesia (E), *Undang-undang tentang Kekuasaan Kehakiman*, Act No. 4, LN No. 8 of 2004, TLN No. 4358, Article 6 Verse (2).

<sup>31</sup> **Roescoe Pound**, *An Introduction to the Philosophy of Law*, Yale University Press, New Haven, 1959, P. 107

<sup>32</sup> Marc Ancel, *Social Defence, A Modern Approach to Criminal Problems* (London, Routledge & Kegan Paul,

1965), hlm. 4-5, quoted from: Barda Nawawi Arief, Loc. Cit.

<sup>33</sup> Tampubolon, Samuel Mangapul, peran pemerintah dalam upaya pemberantasan korupsi kaitannya dengan undang-undang no. 32 tahun 2004, *Lex et Societatis*, Vol. II/No. 6/Juli/2014



system is functional and substantial then according to the assumptions and limitations of Marc Ancel and A. Mulder oriented also with the renewal of the criminal law. Barda Nawawi Arief sees that the penal reform effort is essentially a "penal policy" field that is part and is closely linked to "law enforcement policy", "criminal policy" and "social policy".<sup>34</sup> This aspect can mean that the renewal of the criminal law is part of the legal substance renewal, the policy part of combating crime in the framework of the protection of society as social defense and social welfare and criminal law enforcement. Thus, criminal law reform should be pursued by a policy-oriented approach and a value-oriented approach.<sup>35</sup>

Mudzakkir<sup>36</sup> said the renewal of the criminal law occurs through several possibilities. First, the renewal of the criminal law occurs because it is influenced by shifting elements of the legal community or a shift in the bottom up element. Secondly, because the shift in value underlying the law or the top element affects the element below it (top down). Third, the first and second combined shifts that occur in the element or elements of the legal community do not automatically bring about a shift in law but the applicable law is given a new perspective according to the new value or the new state.

In the eradication of corruption, commonly using the system of evidence as regulated in Act No. 8 of 1981 (Criminal

Procedure Code or Criminal Procedure Code), is ineffective because the process takes a long time, convoluted, and unpredictable level its success because in the proof of corruption criminal case has been charged to the public prosecutor whose process must be through examination in court.<sup>37</sup>

## Formulation Of Reversal Evidence In Some Countries

### 1) India

In India reversed evidence has been used in some cases, as in the Indian Supreme Court verdict between the State of Madras v A. Vaidnyanatha Iyer and the Indian Supreme Court verdict between the State of West Bengal v The Attorney General for India (AIR 1963 SC 255).<sup>38</sup> Reviewed by the Supreme Court of India between the State of Madras as the appellant of appeal with A. Vaidnyanatha Iyer appealed under the register of State of Madras v. A. Vaidnyanatha Iyer (1957) INSC 79; (1958) SCR 580; AIR 1958 SC 61 (September 26, 1957) states the reversal evidence is on the Public Prosecutor before found a legal fact which requires the defendant to prove otherwise by reversed evidence.

### 2) Malaysia

The reversal evidence is, found only in Article 42 which provides for evidence. Although only concerning the gift (gratification). The article said:

34 Barda Nawawi Arief, *Ibid.*, P. 3

35 Barda Nawawi Arief, *Ibid.*, P. 3-4

36 Mudzakkir, *Op. Cit.*, hlm. 159

37 Hafidz, Jawade, "efektifitas pelaksanaan Sistem pembuktian terbalik terhadap Perkara korupsi dalam mewujudkan Negara hukum di indonesia" *Jurnal Sultan Agung VOL XLIV NO. 44 JUNI – AGUSTUS 2009*, P. 118

38 **World Legal Information Institute** melalui <http://72.14.235.104/search?q=cache:eNJF5hI4VcJ:sccl.ox-a&hl=id&gl=id&ct=clnk&cd=14&client=firefox-a> downloaded on February 5th 2012

*“Where in any proceedings against any person for an offence under section 10, 11, 13, 14, or 15 it is proved that any gratification has been accepted or agreed to be accepted, obtained, or attempted to be obtained, solicited, given or agreed to be given, promised or offered by or to the accused, the gratification shall be presumed to have been corruptly accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered as an inducement or a reward for or on account of the matters set out in the particulars of the offence, unless the contrary is proved.”*<sup>39</sup>

If any person accused of violating Article 10, 11, 13, 14 or 15 has proven that a gratuity has been accepted or agreed to be accepted, obtained, or attempted to obtain, or agree to be promised, or offered by or to the defendant, the gift is deemed to be corruptly accepted or agreed to be accepted, obtained or attempted to obtain, give or agree to be given, promised, or offered as an inducement or reward for a or because of what is specifically stated in the offense, unless proven otherwise.

### 3) Singapore

Singapore set up a corruption eradication commission sparked by the fact that its economy is based as an intermediary between its neighbors and foreign countries. In the PCA is contain reversal evidence but other provisions from Malaysia has included it in the legal procedure. Singapore makes it part of the formula of offense, which is contained in Article 8 of the PCA which said:

*Where in any proceedings against a person for an offence 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 there of or any*

*public body, that gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as here in before mentioned unless the contrary is proved.*<sup>40</sup>

It can be interpreted that is connected to government, which means a gift from a person to a government officials for seeking a contract with the government or a department or public body, is considered a bribe until proved otherwise.

### 4) Hongkong

Reversal evidence has also been executed in Hongkong which is stated in the Prevention of Bribery Ordinance 1970 Article 10 (1b) which said:

*Regarding sources of income or assets that are unequal to his current salary or official income in the past, will be found guilty of committing an offense unless he can provide a satisfactory explanation to the court of how he is able to obtain such a standard of living he may obtained.*<sup>41</sup>

Obviously this provision holds an inverse evidence, since a person in such a position is found guilty of corruption, unless he can prove otherwise, in condition to prove that his possessions are legally acquired. If he can not prove he is proven to be corrupt. This is different from Indonesia, where if the defendant can not prove whether he is guilty or not, the public prosecutor still has an obligation to prove his allegations.

### Formulation of Reversal Evidence of Corruption on the Future Criminal Procedure

The prevailing criminal law in Indonesia today adheres to the presumption of innocence principle in the evidentiary system in its hearing, so it is necessary to have a strong thought supported by a strong

<sup>39</sup> Andi Hamzah, *Perbandingan Pemberantasan Korupsi*, (Jakarta : Sinar Grafika, 2005), hal. 53

<sup>40</sup> Ibid, hal. 65

<sup>41</sup> www.google.com

theory when it comes to applying reverse verification in the punishment process in Indonesia. Renewal and development of national legal system especially in the field of criminal law is one of the agenda in legal politics in Indonesia.

This leads us to question the nature of law and science of law. legal positivism is the only applicable approach and used in controlling missused act. Corruption itself clings to the tight dynamics and is not sufficiently targeted as a phenomenon of lawlessness.<sup>42</sup>

This effort should be done consistently, systemically, integrally and continuously.<sup>43</sup> And the idea of implementing the reverse verification in this punishment that researchers include in the renewal as an effort to reconstruct and restructure the system of punishment. In reinforcing the idea of applying the inverse proof to the corruption crime that is contrary to the principle of presumption of innocence or more adhered to the principle of presumption of guilt, the researcher tries to quote one of Prof.'s opinion. Dr. Barda Nawawi Arif, S.H. about the idea of balance that includes<sup>44</sup>:

- Monodualistic balancing between the public interest and the interests of individuals;
- Balance of idea of protection of victim's interest and idea of criminal individualization;
- The balance between the element or factor 'objektif' (deed or physically) and 'subjektif' (person or spiritual or

inner attitude); idea '*daad-dader strafrecht*';

- The balance between formal and material criteria;
- a balance between 'legal certainty', flexibility or elasticity and fairness;
- A balance of global or international or universal values

This balancing idea is also the foundation of the researcher's thinking in applying an inverse proof formulation to the criminal act of corruption. Especially on the idea of a monodualistic balance between the public and the public interest and the interests of individuals or individuals, it is intended that reverse proof can also be applied in the evidentiary system, outside of any discussion of the effectiveness of the evidence currently prescribed in punishment, balance or sense of justice both to the defendant and the prosecutor in the trial. And of course the idea of equilibrium can also be the cornerstone of the application of the presumption of guilt principle in addition to the presumption of innocence because with it the balance will be achieved.

Based on the considerations obtained by researchers, the researchers propose the idea that should the reversal of the evidence is not only a right in the process of evidence, but indeed as a process that must be passed in a important evidence will also change the whole process of trial with the addition of one system proof.

The consideration is that corruption is an extraordinary crime or an extraordinary crime whose impact will be overwhelming to the public, requiring extraordinary measures

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<sup>42</sup> Susanti, Ino, "Refleksi Ilmu Hukum Dalam Analisis Penegakan Hukum Pemberantasan Korupsi di Indonesia", *Jurnal Dinamika Hukum*, Vol. 14 No. 1 Januari 2014, P. 124-128

<sup>43</sup> Eprints.undip.ac.id

<sup>44</sup> www.uib.edu/download/muladi.doc

(ordinary measures), the researcher assumes that it does not matter when the presumption of innocence ) adhered to by criminal law in Indonesia is ruled out, other than that during this time when the reversal evidence is only used as the right earned by the defendant, the results of the evidence will only be taken into consideration which of course has a weak position, not necessarily when it is not proven that the property is obtained from a process that is unlawful the defendant is considered innocent, the researcher assumes that the concept will make the effort of the defendant laboriously prove the origin of his wealth to be in vain and sense of justice is not achieved.

In essence, the researcher hopes that when the process of reversal evidence increases the status of the rights become obligations that must be passed in the trial, especially the proofing process will make the trial process becomes more effective and sense of justice can be achieved.

## CONCLUTIONS

From the results of the above discussion can be concluded that Indonesia has basically arranged Reversal evidence, especially on corruption, in the development of the existing rules are various formulations. In its implementation, law enforcers have difficulties in applying the reversal of the evidence in the hearing because of the lack of strictness of the regulation, besides the process of reversing the evidence which belongs to the defendant is rarely used. The difficulty of implementation The reversal evidence so far is also because Indonesia adheres to the principle of presumption of

innocence whose tendency is more burdensome to the prosecutor.

The reversal evidence of corruption that has been considered to be ineffective is caused by many things that have been described in the previous chapters, one of which is because the status as a right possessed by the defendant can be used or not, that the evidence was absolute back to the prosecutor. No use of rights Reversal evidence is greater because the defendant considers the position of the result of evidence that is not so strong as the implementation Reversal of the evidence in another country The reversal of the evidence of the defendant absolutely will be decided not guilty if the defendant can prove the origin of his property and of course if the judge believes in the truth, unlike in Indonesia which still proves again by the public prosecutor as the primary consideration even though the defendant has proved the origin of his property.

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