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Reverse evidence in money laundering cases with corruption predicate crime

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ABSTRACT

The application of the reverse burden of proof in money laundering cases, particularly regarding the proof of predicate crimes, remains a subject of debate among legal scholars. This is due to concerns that it contradicts the presumption of innocence and may potentially violate human rights. This study aims to analyze the regulation of the reverse burden of proof in money laundering crimes under Indonesian law and to explore alternative approaches concerning predicate crimes. The research employs a normative legal method using statutory and comparative approaches, supported by primary, secondary, and tertiary legal materials. The findings reveal that Indonesia's reverse burden of proof system is adapted from Anglo-Saxon legal systems, but its implementation remains limited. In its countries of origin, the system is more balanced—both the prosecutor and the defendant bear the burden of proof, and civil proceedings are used to recover criminal assets. In contrast, Indonesia has yet to adopt the civil route, and there is no specific procedural law governing this system, reducing its effectiveness. As an alternative, the "balance of probabilities" principle is proposed to better align the protection of individual rights with asset recovery efforts, thereby enhancing the effectiveness of anti-money laundering enforcement.

Keywords: Reversal Burden of Proof System, Money Laundering, Predicate Crime, Corruptions.

INTRODUCTION

Another story of money laundering activities also occurred around the 1930s in the United States where the famous crime figure at that time, Al Capone, and other mafia groups hid the proceeds of their crimes (gambling, prostitution, extortion, and illicit liquor sales). To trick the government, the mafia set up laundromats, to mix or disguise the proceeds of their crimes so that they would not be suspected of being involved in crime. Because there were no anti-money laundering provisions at the time, they were only caught with tax evasion provisions because they received money that was considered legal, but the amount reported to the government for tax calculation purposes was less than what was actually obtained. Money laundering is a process or action that aims to hide or disguise the origin of money or assets obtained from the proceeds of a criminal offense, which is then converted into assets that appear to come from legitimate activities [1].

Money laundering is a series of activities that are a process carried out by a person or organization against illicit money, namely money intended to hide or disguise the origin of the money from the government or the authority authorized to take action against criminal acts, by, among others and especially, entering the money into the financial system (financial system) so that the money can then be removed from the financial system as halal money. Sutan Remy Sjahdeini said that there is no universal and comprehensive definition of the crime of money laundering, because various parties such as investigative institutions, business people, States and other organizations have their own definitions for it. However, he summarized the various definitions of money laundering as follows:[2]

[1] Herlina Hanum Harahap, "Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang," *Amaliah: Jurnal Pengabdian Kepada Masyarakat* 4, no. 2 (November 2020): 186–90, https://doi.org/10.32696/ajpkm.v4i2.551.
[2] Sutan Remy Sjahdeini, *Seluk Beluk Tindak Pidana Pencucian Uang Dan Pembiayaan Terorisme* (Jakarta: Grafiti, 2007).

Figure 1. Common Money Laundering Schemes

The money laundering process consists of three main stages: Placement, where the proceeds of crime are introduced into the financial system through shape-shifting to conceal their origins, such as depositing money in a bank account or purchasing monetary instruments. Layering, the next stage, involves breaking the link between the money and its source by moving the funds through various complex transactions, such as interbank transfers, the purchase of investment instruments, or the establishment of fictitious companies. Finally, the Integration stage returns the laundered money to circulation as legitimate income, often invested in real estate, luxury goods, or businesses, so that the money appears legal and becomes part of the formal economy.

Money laundering or money laundering as a series of activities which is a process carried out by a person or organization against illicit money, namely money originating from criminal acts, with the intention of hiding or disguising the origin of the money from the government or authorities authorized to take action against criminal acts, by, among others and especially, putting the money into the financial system (financial system) so that the money can then be removed from the financial system as halal money.

The low absorption of labor and the decline in per capita income of the community, in social problems such as the increase in criminal acts. Many crimes that occur are economically motivated such as corruption, illegal logging and drugs. Without economic interests, these crimes would not occur. Along with the development of increasingly sophisticated technology, the modus operandi of crime has also become more sophisticated, ranging from using cell phones to using internet facilities. It can be said that the development of technology has resulted in crime becoming more rapid.

A common form of economic crime is corruption. Based on Law No. 31 Year 1999 jo. Law No. 20 of 2001 on the Crime of Corruption, corruption is defined as a form of crime committed by a person and/or corporation by deliberately placing, transferring, diverting, spending, paying, granting, entrusting, bringing abroad, changing the form, exchanging with currency or securities or other actions on assets that he knows or should be suspected of being the proceeds of a criminal offense with the aim of hiding or disguising the origin of the assets, including those who receive and control them. The perpetrators of corruption always try to hide the proceeds of their crimes so that they cannot be found by law enforcement officials by means of money laundering. Money laundering in general can be defined as an act or action that transfers, uses or performs other actions or the proceeds of a criminal act that is often carried out by crime organizations or individuals who commit acts of corruption, narcotics trafficking, and other criminal acts. According to Darwin quoted from Rambey, money laundering aims to hide or obscure the origin of the illicit money so that it can be used as if it were legitimate money [3].

[3] Guntur Rambey, “Penegakan Hukum Pidana Terhadap Tindak Pidana Pencucian Uang Di Bidang Perpajakan,” *Iuris Studia: Jurnal Kajian Hukum* 3, no. 2 (2022): 184–92, https://doi.org/10.55357/is.v3i2.247.

The impact of money laundering not only threatens the stability of the economy and the integrity of the financial system, but can also endanger the joints of the life of society, nation and state. In its development, money laundering crimes are now increasingly complex, crossing jurisdictional boundaries, and using increasingly varied modes, utilizing institutions outside the financial system, and have even penetrated into various sectors. Extraordinary efforts are needed, especially in the evidentiary system that is capable or at least effective in ensnaring the perpetrators of this crime. One such effort is the reverse proof system. Reverse evidence was first applied in the case of Bahasyim A, a former tax official and Bappenas.

According to Douglas Fernando's [4] research findings, the reverse proof system implemented in Indonesia has not functioned effectively as expected. There is an urgent need to implement an alternative method of proof proposed by thinkers in developed countries, which bases reverse proof on the principle of balanced probability. This approach emphasizes a proportional balance between the protection of individual freedoms on the one hand, and efforts to deprive individuals of their rights to property suspected of originating from corruption crimes on the other.

Risal's [5] research found that the application of the reverse burden of proof in corruption cases faces obstacles, such as the assumption that the reverse burden of proof is contrary to the 1945 Constitution and violates the principles of presumption of innocence and non-self incrimination. This system is also considered to deviate from Article 14 paragraph (3) letter g of the International Convention on Civil and Political Rights. Nevertheless, the reverse burden of proof is still possible to apply to corruption, given that it has been applied in the Consumer Protection Law and the Environmental Management Law.

Based on the explanation above, this research aims to analyze the arrangement of the reverse burden of proof in the crime of money laundering according to the applicable provisions in Indonesia and explore alternative arrangements when associated with predicate crime.

RESEARCH METHODS

The research method used in this study is normative juridical research, with a statute approach and comparative approach [6]. The research data includes primary legal materials in the form of relevant laws and regulations, secondary legal materials such as books and scientific articles, and tertiary legal materials in the form of legal dictionaries. This research aims to analyze the regulation of the reverse proof system in money laundering cases in Indonesia and explore relevant alternative arrangements, especially if it is related to the original criminal act such as corruption. This approach provides a comprehensive overview of the effectiveness and challenges of implementing the reverse proof system in Indonesia.

RESULT AND DISCUSSION

1. Theoritical Framwork

The theoretical framework of this research is based on the concept of reversal burden of proof in the crime of money laundering associated with predicate crime such as corruption. This framework refers to the basic principles of criminal law that uphold the presumption of innocence and human rights, but in certain cases allows reversal of the burden of proof to the defendant for the effectiveness of crime eradication. This research also adopts the theory of "balanced probability of principles" which offers a balanced approach between the protection of individual rights and the need to confiscate assets suspected of being derived from crime. As a comparison, this research examines the practice of the reverse proof system in more developed Anglo-Saxon countries, where asset recovery often uses civil channels, and its influence on legal arrangements in Indonesia. This theoretical framework aims to analyze the compatibility of the existing system with the principles of justice and legal effectiveness in combating money laundering crimes.

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[4] (2020)
[5] (2018)
[6] S H Oci Senjaya, “Suatu Tinjauan Yuridis Terhadap Alat Bukti Dalam Penanggulangan Tindak Pidana Pencucian Uang,” *Jurnal Ilmiah Hukum DE’JURE: Kajian Ilmiah Hukum* 1, no. 1 (2016): 79–92, https://doi.org/10.35706/dejure.v1i1.413.

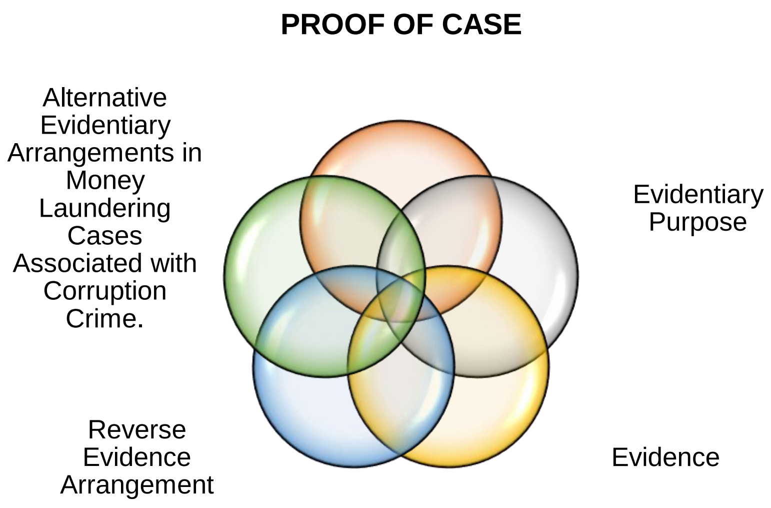

Figure 2. Theoritical Framwork

In the figure above, it can be understood that case proof is part of an important process in the justice system to ascertain the truth of the facts through valid evidence. The purpose of evidence is to reveal the truth legally, provide a basis for judges in making decisions, and maintain justice in the legal process. Evidence acts as a key element in proof, covering objects or documents directly related to the criminal offense, including tools or proceeds of crime. Reverse evidentiary arrangements, such as those applied in money laundering cases, place an obligation on the defendant to prove that their assets are not the proceeds of crime, although their implementation in Indonesia is still limited. Alternative evidentiary arrangements proposed to increase effectiveness, such as the theory of "balanced probability of principles," promote a balance between the protection of individual rights and the need to confiscate the proceeds of corruption, as well as integrate civil approaches to maximize asset recovery in corruption and money laundering crimes.

2. Proof of Case

Case proof is a legal process that aims to uncover and ascertain the truth of the facts presented in a case in court. In this process, the parties involved, such as the public prosecutor and the defendant, use evidence regulated by law to convince the judge. Proof is the core of the trial, because this is where the judge determines the verdict based on beliefs obtained through valid evidence, such as witness testimony, documents, and evidence. The validity and strength of evidence is an important basis in upholding justice in the legal system. Evidence is the most important part of the entire process of examining cases in court, both criminal and civil cases because this is where a conclusion will be drawn that can affect the judge's confidence in assessing the case submitted. The judge gives his decision based on his assessment of the evidence.

The Indonesian dictionary states that the definition of proof in general is the act (rights and so on) of proving, while proving means:[7]

a. To give (show evidence of);
b. To do something as proof of truth, to carry out (ideals and so on)
c. To indicate, declare (that something is true)
d. To convince, witness

Evidence according to Yahya Harahap quoted from Pupadewa [8] are provisions that contain outlines and guidelines on the ways that are justified by law to prove the whole that is charged to the defendant, proof can also be interpreted as provisions that regulate the evidence that is justified by law and that the judge may use to prove the guilt charged.

[7] W. J. S. Poerwadarminta, *Kamus Umum Bahasa Indonesia* (Jakarta: Balai Pustaka, 1976).
[8] (2018)

In the provisions of article 77 of Law no. 8/2010 on the Prevention and Eradication of Money Laundering Crimes states that: for the purpose of examination in court, the defendant is obliged to prove that his assets are not the proceeds of a criminal offense [9]. This provision is also considered to embrace the principle of reversal of the burden of proof, according to Pror. Dr. Indriyanto Seno Adji, SH, MH, but there are also those who use the term reverse proof. It is said to be a reversal of the burden of proof because a burden of proof is placed on one of the parties, which is universally given to the Public Prosecutor, but given the urgent nature of certain cases, the burden of proof is no longer placed on the Public Prosecutor, but on the Defendant. The process of reversing the burden of proof, which was originally universally on the public prosecutor, then turned into the burden or obligation of the defendant, which became known as "Reverse Proof" [10].

Another specialty in terms of handling efforts in the event of a money laundering crime is the provision stating that the legal process for money laundering crimes does not need to wait for a decision on the main criminal offense that has permanent legal force [11]. This is also emphasized in the explanation of Article 3 paragraph (1) of Law No. 15 of 2002 as amended by Law No. 25 of 2003 on the Crime of Money Laundering. 25 of 2003 concerning the Crime of Money Laundering which states that assets suspected of being the proceeds of a criminal offense do not need to be proven in advance of the original criminal offense in order to begin the examination of money laundering crimes [12], and also confirmed in Law No. 8 of 2010 in article 69. 8 Year 2010 in article 69 elaborated that:

> *"Untuk dapat dilakukan penyidikan, penuntutan, dan pemeriksaan di sidang pengadilan terhadap tindak pidana Pencucian Uang tidak wajib dibuktikan terlebih dahulu tindak pidana asalnya."*

In the provisions of article 35 of Law no. 15 of 2002 as amended by Law no. 25 of 2003 on the Crime of Money Laundering applies the theory of reverse proof, but these provisions do not further regulate how if the defendant conceals his wealth which is the proceeds of a criminal offense and where he obtained his wealth, and in article 30 of Law No. 15 of 2002 as amended by Law No. 15 of 2002 on Money Laundering. 15 Year 2002 as amended by Law Number. 25 of 2003 also states that the procedural law used in the application of the law continues to use the applicable criminal procedure law in this case is the provisions in the Criminal Procedure Code (Law No. 8 of 1981 concerning Criminal Procedure Law), so it can be said that the public prosecutor is still required to prove the charges, so that article 35 of Law No. 15 of 2002 mentioned above does not apply the reverse proof system in its pure form.

In the explanation of Article 35 of Law No. 15 of 2002, it is stated that the reversal of the burden of proof here is still within the framework of the interests of the examination in court and is only limited to the origin of the assets so that the burden of proof regarding the money laundering activities and the examination process of the defendant's trial is regulated in accordance with the Criminal Procedure Code unless otherwise specified in the Law on Money Laundering (Article 30 of Law No. 15 of 2002 jo Law No. 15. 15 Year 2002 jo Law No. 25 Year 2003.

Law no. 15 Year 2002 as amended by Law Number. 25 Year 2003 on the Crime of Money Laundering adheres to the view that for the commencement of the examination of money laundering crime, it is not necessary to prove the crime of origin first. However, over time, the provisions of Law no. 15 Year 2002 and Law no. 25 of 2003 were felt to be no longer in accordance with the development of law enforcement needs, practices, and international standards, so that Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes was enacted. 8 Year 2010 on the Prevention and Eradication of Money Laundering Crime.

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[9] "Undang-Undang Nomor 8 Tahun 2010 Tentang Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang," Pub. L. No. 8 (2010).

[10] Anton Diary Steward Steward Surbakti, "Kajian Yuridis Tindak Pidana Pencucian Uang Terkait Dengan Pembuktian Terbalik Dalam Perkara Tindak Pidana Korupsi Di Indonesia (Studi Putusan PN Nomor. 1252/Pid. B/2010/PN. Jkt. Sel, Jo Putusan PT Nomor. 08/PID/TPK/2011/PT-DKI Jo Putusan Kasasi Mahkama," *Ilmu Hukum Prima (IHP)* 1, no. 2 (2018): 364–76.

[11] Departemen Hukum dan HAM, "Naskah Akademik RUU Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang" (Jakarta, 2006).

[12] "Undang-Undang Nomor 15 Tahun 2002 Tentang Tindak Pidana Pencucian Uang," Pub. L. No. 15 (2002).

The reverse proof system in the law is very limited, which only applies to court hearings, not in the investigation stage. In addition, it does not apply to all criminal offenses, only to serious crimes that are difficult to prove, such as corruption, smuggling, narcotics, psychotropic drugs, or tax evasion, and banking crimes, money laundering. If we compare the crime of money laundering with the application of reverse proof in the crime of corruption, the reversal of the burden of proof in Law No. 8/2010 is mandatory for the perpetrators. 8/2010 is mandatory for the defendant to prove that his assets are not derived from the proceeds of crime. Chronologically, the reverse proof system stems from the proof system known from Anglo-Saxon countries whose application is limited in certain cases, especially in the crime of gratuities or bribes, such as in the United Kingdom of Great Britain, Hong Kong, the Republic of Singapore, and Malaysia.

The reverse method of proof in Indonesia was born marked by the enactment of Law No. 3 of 1971. The reverse method of proof in Article 17 of Law No. 3 of 1971 is not regulated explicitly and absolutely, because the proof is not fully carried out by the defendant but also by the public prosecutor. Likewise in Article 18 which regulates the ownership of the perpetrator's property. Reverse proof is also clearly regulated in Law No.31 Year 1999 jo. Law No. 20 of 2001 regarding corruption crimes. This law does regulate reverse proof, but this provision is limited, meaning that the defendant has the right to prove, but the Public Prosecutor is still obliged to prove the charges.

In Law Number 15 of 2002 jo. Law Number 25 of 2003 on Money Laundering Article 35 where it is stated that for the purpose of examination in court, the defendant is obliged to prove that his assets are not the proceeds of a criminal offense. The word obliged implies that this law adopts a reverse proof system, but in the explanation of the article it is stated that the defendant is “given the opportunity” to prove that his assets are not derived from criminal acts. The words “obliged” and “given the opportunity” have different meanings. Thus, the evidentiary system in this law is still debatable, and actually makes clear things unclear [13].

Article 77 of Law No. 8/2010 states that for the purposes of court examination, the defendant is obliged to prove that his assets are not the proceeds of a criminal offense. The explanation of this article is quite clear, so the legal construction of this law mandates that the defendant is no longer “given the opportunity” in reverse proof, but is “obliged” to do so. This is the advantage of the new money laundering law over the old law [14].

The application of the reverse proof method refers to the proof of the predicate crime of money laundering. So it is clear that the proof system plays a very important role. Not proving the predicate crime first in the money laundering crime, on the one hand has deviated from the principle of presumption of innocence and the principle of non self incriminatiation. The suspect/defendant of Money Laundering Crime seems to have been considered guilty of committing money laundering with the proof of the original criminal act without prior guilt marked by a judge's decision that has permanent legal force. Then the problem is whether the crime of money laundering can be seen as a stand-alone act in addition to the original criminal act, or considered as “a material act” with the original criminal act, so that it is considered as an event of concurrence in the regulation of a criminal act. In this case, the original crime that will be discussed is the crime of corruption.

According to the law, proof is a process to determine the substance or essence of the existence of facts obtained through a proper measure with a logical mind against facts in the past that are not clear into clear facts in criminal cases. Proving a criminal case is essentially research and correction in dealing with problems from various facts to get a conclusion with the method of logic. That the truth is usually only about particular circumstances that have passed, the longer the time has passed the more difficult it is for the judge to declare the truth of the situation. Therefore, one hundred percent certainty that what the judge believes about a situation is by the truth seems impossible to achieve. Criminal procedural law can only show how to achieve the compatibility between the judge's belief and the truth of the evidence. Criminal procedure law is a system and the law of evidence is part of the system. System comes from the term system which means something organized, a complex whole [15].

[13] Undang-undang Nomor 15 Tahun 2002 tentang Tindak Pidana Pencucian Uang.
[14] Undang-undang Nomor 15 Tahun 2002 tentang Tindak Pidana Pencucian Uang.
[15] Adnan Adnan, “Pendekatan Sistem Dalam Pendidikan,” *Edupedia* 3, no. 1 (July 2018): 99–108, https://doi.org/10.35316/edupedia.v3i1.324.

Based on this, the evidentiary system can be interpreted as a whole system of criminal procedure law in order to reveal the truth related to criminal acts examined in court. Evidence that is related and related to one another and influences each other in a whole or roundness. The Criminal Procedure Code (KUHAP) and Herziene Indonesisch Reglement (HIR) adhere to the same theory, namely the negative theory according to the law (negatief wettelijk). This can be concluded from Article 183 of the Criminal Procedure Code and Article 294 of the HIR.

Article 183 of the Criminal Procedure Code states that the judge may not impose a sentence on a person, unless at least two valid means of evidence he is convinced that a criminal offense really occurred and that the defendant is guilty of committing it. Based on the formulation of Article 183 of the Criminal Procedure Code, it can be known that proof must be based on the law, namely the legal evidence referred to in Article 184 of the Criminal Procedure Code accompanied by the judge's belief obtained from these evidence.

The essence contained in Article 183 of the Criminal Procedure Code is that there are at least two valid pieces of evidence and the defendant is guilty of committing it. The word at least two pieces of evidence provides a limitation or limitation on the minimum evidence that must be presented at the evidentiary hearing, while the words valid evidence indicate an understanding that only evidence that is regulated and recognized by law can be applied as valid evidence in the process of proving a criminal case.

Legal science recognizes 4 (four) systems of evidence, which are as follows:

a. Evidence based on the judge's mere belief *(conviction in time)*

A system of evidence to determine the guilt or innocence of the defendant based solely on conviction alone, it does not matter where the conviction comes from. The judge only follows his conscience and all depends on the discretion of the judge. The judge's impression is very subjective to determine whether a defendant is guilty or not. So, the judge's decision is possible without being based on the evidence regulated by law. Whereas the judge himself is only an ordinary human being. Of course it can be wrong in determining the conviction.

b. Proof system based on positive law *(possitief wetteliejke bewijstheorie)*

A system of proof that is intended to determine the guilt or innocence of the defendant must be guided by the principle of proof with evidence determined by law. This system is the opposite of the conviction in time system. Conviction is ruled out in this system. According to this system, the law determines the limitation of evidence which can be used by the judge on how the judge uses evidence and the evidentiary power of such evidence. If the evidence has been used legally as stipulated by the law, then the judge must determine the validity of the circumstances proven, even though he may believe that what must be proven is not true.

c. Evidence System Based on the Judge's Conviction on Logical Reasons *(La conviction Raissonnee)*

According to the theory of this evidentiary system, the role of the judge's belief is very important. However, the judge can only punish a defendant if he is convinced that the act in question is proven to be true. This belief must be accompanied by reasons based on a series of thoughts (logic). The judge is obliged to describe and explain what reasons underlie his or her belief in the defendant's guilt. The reason must be completely acceptable to reason. This system of evidence recognizes certain things that are not stipulated by law. The amount of evidence used to determine the guilt or innocence of the defendant is at the sole discretion of the judge. Of course, the judge must be able to explain the reasons for the decision he makes.

d. System of Proof According to the Law Negatively *(Negatief Wettelijk Bewijstheorie)*

This system can be said to be a combination of a positive statutory proof system with a proof system based on the judge's mere belief. The negative statutory proof system is a system of balance between extreme opposing systems. This system accommodates the positive statutory proof system and the proof system based on the judge's mere belief. So that the formulation of the results of this merger reads that the guilt or innocence of an accused is determined by the judge's belief based on the methods and evidence that are valid according to law.[16]

[16] Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2010).

3. Tools of Evidence

Article 184 of the Criminal Procedure Code states that the judge may not impose a sentence on a person, unless at least two valid means of evidence he is convinced that a criminal offense really occurred and that the defendant is guilty of committing it. Based on the formulation of Article 183 of the Criminal Procedure Code, it can be known that proof must be based on the law, namely the legal evidence referred to in Article 184 of the Criminal Procedure Code accompanied by the judge's belief obtained from these evidence.

The evidence that may be presented at trial has been determined by the Criminal Procedure Code in Article 184, namely:

a. Witness testimony;

Witness testimony can be considered as evidence, the testimony must be stated in court, this is in accordance with the explanation of Article 185 paragraph 1, witness testimony which contains an explanation of what he heard himself, saw himself or experienced himself regarding a criminal event, can only be valuable as evidence if the witness states the testimony in court.

b. Expert testimony;

Expert testimony is what an expert states in court. Based on Article 184 paragraph 1 of the Criminal Procedure Code stipulates, expert testimony as valid evidence, from the provisions of Article 133 in connection with the explanation of Article 186, the types and procedures for providing expert testimony as evidence or types as evidence.

c. Letter;

The value of the evidentiary power of letters as regulated in the Criminal Procedure Code does not regulate specific provisions regarding the evidentiary power of letters, the evidentiary power of letters can only be reviewed in terms of theory and connect it with several evidentiary principles regulated in the Criminal Procedure Code.

d. Clues;

A clue is an act, event or circumstance, which because of its correspondence, both with each other and with the criminal act itself, indicates that a criminal act has occurred and who the perpetrator is.

e. Statement of the accused.

The statement of the accused as evidence does not need to be the same or take the form of a confession. All of the defendant's testimony should be heard, whether in the form of denial, confession, or partial recognition of acts or circumstances, it is not necessary for the judge to use all of the testimony of a defendant or witness.

4. Evidence

According to Hamzah in Liklikwatil, the term evidence in criminal cases includes items that are the object of the offense or that are directly related to the criminal act, as well as tools used to commit the crime, such as a knife used to stab someone. In addition, evidence also includes the proceeds of a criminal offense, for example, state money misused in a corruption case to buy a private house. In this case, the private house can be considered as evidence or proceeds of crime [17].

Evidence is objects commonly called *Corpora Delicti* and *Instrumenta Delicti* [18]. *Corpora delicti* and *instrumenta delicti* as evidence are implicitly formulated in Article 39 paragraph (1) of the Criminal Procedure Code which states that confiscation can be imposed:

a. *benda atau tagihan Tersangka atau Terdakwa yang seluruh atau sebagian diduga diperoleh dan tindak pidana atau sebagai hasil dan tindak pidana;*
b. *benda yang telah dipergunakan secara Iangsung untuk melakukan tindak pidana atau untuk mempersiapkannya;*
c. *benda yang dipergunakan untuk menghalang-halangi penyidikan tindak pidana;*
d. *benda yang khusus dibuat atau diperuntukkan melakukan tindak pidana;*
e. *benda lain yang mempunyai hubungan langsung dengan tindak pidana yang dilakukan.*

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[17] Chesye Liklikwatil and Christin Sasauw, "Pinjam Pakai Barang Bukti Dalam Kasus Korupsi-Tinjauan Hukum Dan Implikasinya," *Journal Evidence Of Law* 2, no. 2 (2023): 131–43.
[18] E Soesilo Karjadi and R Soesilo, *Kitab Undang-Undang Hukum Acara Pidana Dengan Penjelasan Resmi* (Bogor: Politeia, 1997).

5. Reverse Evidence Arrangement

In the provisions of article 35 of Law No. 15 of 2002 as amended by Law No. 25 of 2003 concerning the Crime of Money Laundering (Money Laundering) applies the theory of reverse proof, but these provisions do not further regulate what if the defendant cannot prove that his assets are not the proceeds of crime and where he obtained the assets, and in article 30 of Law No. 15 of 2002 as amended by Law No. 25 of 2003 it also states that the procedural law used in the application of the law still uses the applicable criminal procedure law in this case is the provisions of the Criminal Procedure Code (Law No. 8 of 1981 concerning Criminal Law). 15 of 2002, as amended by Law No. 25 of 2003, also states that the procedural law used in the application of the law continues to use the applicable criminal procedure law in this case the provisions in the Criminal Procedure Code (Law No. 8 of 1981 concerning Criminal Procedure Law), so it can be said that the public prosecutor is still required to prove the charges, so that article 35 above does not apply the reverse proof system in its pure form.

In the explanation of Article 35, it is stated that the reversal of the burden of proof here is still within the framework of the interests of the examination at trial and is only limited to the origin of the assets so that the burden of proof regarding the money laundering activities and the examination process of the defendant's trial is regulated in accordance with the Criminal Procedure Code unless otherwise specified in the Law on Money Laundering (Article 30 of Law No. 15 of 2002 in conjunction with Law No. 25 of 2003).

Law No. 15 of 2002 as amended by Law No. 25 of 2003 on the Crime of Money Laundering adheres to the view that for the commencement of the examination of money laundering crime, it is not necessary to prove the crime of origin. However, over time, the provisions of Law No. 15 of 2002 and Law No. 25 of 2003 were felt to be no longer in accordance with the development of law enforcement needs, practices, and international standards, so that Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes was enacted. In the provisions of the reversal of the burden of proof system in Law No. 8/2010 on the Prevention and Eradication of the Crime of Money Laundering. In this burden of proof reversal system, the burden of proof is on the defendant or the defendant's legal counsel.

Article 77 of Law No. 8/2010 states that for the purposes of court examination, the defendant is obliged to prove that his assets are not the proceeds of a criminal offense. The explanation of this article is quite clear, so the legal construction of this law mandates that the defendant is no longer “given the opportunity” in reverse proof, but is “obliged” to do so. This is the advantage of the new money laundering law over the old law [19].

The reverse proof system in the law is very limited, which only applies to court hearings, not in the investigation stage. In addition, it does not apply to all criminal offenses, only to serious crimes that are difficult to prove, such as corruption, smuggling, narcotics, psychotropic drugs, or tax evasion, and banking crimes. If we compare it with the application of reversal of the burden of proof in corruption crimes, the reversal of the burden of proof in Law No. 8/2010 is mandatory for the defendant to prove that his assets are not derived from the proceeds of crime.

In the case of examination of money laundering crime, it is not necessary to prove the predicate crime first, because money laundering is a stand-alone criminal offense. This is regulated in the provisions of article 69 of Law No. 8/2010. Although this money laundering crime was born from the original crime, for example corruption, the anti-money laundering regime in almost all countries places money laundering as one of the crimes that does not depend on the original crime in the event that a money laundering investigation process will be carried out [20].

Viewed comprehensively through a historical approach, reverse proof is actually not known in countries that adhere to the Civil Law and Common Law (Anglo Saxon) legal systems. However, in the end there was an exception to the rules of both systems, namely the regulation of reverse evidence in cases of bribery or gratuities. The debate between experts by comparing the use of reversed evidence with other countries actually lies in the spirit of these two legal systems. Both recognize the use of reversed evidence, but the spirit of civil law is based on the presumption of innocence, while common

[19] Philips Darwin, *Money Laundering: Cara Memahami Dengan Tepat Dan Benar Soal Pencucian Uang* (Jakarta: Sinar Ilmu, 2012).

[20] Adrian Sutedi, *Hukum Perbankan : Suatu Tinjauan Pencucian Uang, Merger, Likuidasi, Dan Kepailitan* (Jakarta: Sinar Grafika, 2008).

law (Anglo-Saxon) is the opposite by using the presumption of guilt. The reverse method of proof in ML has currently been practiced by several countries, including Hong Kong, United Kingdom Malaysia, Singapore. The issue of reverse proof in its development, makes a condition in which in "certain cases", namely corruption, is allowed with a different mechanism by applying a reverse proof system [21].

The inclusion of legal consequences in this provision has a direct impact on the decision of the court judge against the defendant, whether the defendant is guilty or not guilty of committing the crime of corruption or money laundering. Another purpose of the application of the reverse proof system is also as a basis for confiscating property related to the crime. The existence of legal consequences in this provision is at least a frightening thing for the perpetrators of crimes, especially corruption and money laundering crimes, because in terms of reverse proof the perpetrator will find it difficult to explain that he is not involved in the crime or prove that the assets he owns do not come from the proceeds of crime. This level of difficulty of proof is expected to have a deterrent effect on all people not to commit corruption or money laundering crimes.

The procedural process of criminal justice in the realm of ML is oriented, among other things, to the return of criminal assets through the reverse proof method. In the UK and several other common law countries, the process uses the practice of non-conviction based forfeiture, which separates the "asset owner" aspect on the one hand and the "criminal asset" aspect on the other [22]. As explained earlier, reverse proof does not violate human rights because it is based on the theory of balanced reverse proof. The difference that remains a conception that must be developed in the issue of reverse evidence in ML is the return of criminal assets, especially in corruption crimes. The United States, the United Kingdom and other European countries have used civil rights in returning assets resulting from money laundering crimes. Meanwhile, Indonesia is still in the return of assets from money laundering crimes, meaning that there is no return of any assets before a court decision. In my opinion, if Indonesia also adopts the return of assets resulting from criminal acts in a civil manner, the application of this method can be even more effective. It takes courage from law enforcers related to ML using reverse proof. Philosophically from the previous explanation, the reverse proof method is not a major contradiction to the concept of law in Indonesia.

Sociologically, the current situation in Indonesia, from what was stated earlier, has been in the transition of revamping the problem of ML with various crimes of origin. The current legal needs and factual conditions are the new concept of Law No. 8/2010, with the strengthening of the reverse proof system in the settlement of money laundering crimes [23]. Balanced reverse proof, which is the main content of the concept in Indonesia, is one of the best ways to erode the conflict. According to Oliver Stolpe [24], in reverse proof, the balance of probabilities (Balanced Probability of Principles). The implementation of reverse proof urgently needs to be implemented in a money laundering crime practice. It also answers the deep-rooted problems in the crime of origin of Money Laundering Crime, which has never reached the best point in the nation's history. Efforts to prevent money laundering will be more effective with the legislation on reverse proof and the obligation to report the assets of state officials openly and up to date. This is to prevent the amount of transactions owned by state administrators.

6. Alternative Evidentiary Arrangements in Money Laundering Cases Associated with Corruption Crime

The alternative evidence proposed and initiated by thinkers in developed countries is the theory of "balanced probability of proof" (balanced probability of principles), which prioritizes a proportional balance between the protection of individual freedom on the one hand, and the deprivation of the rights

[21] Harry Murti, "Beban Pembuktian Terbalik Tindak Pidana Korupsi Dalam Perspektif Juridis Sosiologis," *Jurnal Ilmiah Humaniora* 8, no. 2 (2011).
[22] Ida Ayu Setyawati, "Beban Pembuktian Terbalik Dalam Perkara Money Laundering Dengan Predicate Crime Tindak Pidana Korupsi" (Brawijaya University, 2014).
[23] Murti, "Beban Pembuktian Terbalik Tindak Pidana Korupsi Dalam Perspektif Juridis Sosiologis."
[24] Alda Satrya, Bastianto Nugroho, and Supolo Supolo, "Tindak Pidana Pencucian Uang Terhadap Perjudian Online," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 (October 2022): 287–96, https://doi.org/10.37680/almanhaj.v4i2.1863.

of individuals concerned over their assets that are strongly suspected of originating from corruption. This new model of the reverse proof principle is aimed at the complete disclosure of the origin of assets suspected of being the proceeds of corruption itself, by placing the right to one's personal wealth at a very low level, but simultaneously placing the right to independence of the person concerned at a very high level and in no way should be violated.

The theory of the balance of probabilities of reversed evidence in wealth puts a person who is strongly suspected of committing a corruption crime in a position where previously the person concerned has not acquired as much wealth as he is now getting. This theory, based on the above considerations, has been practiced by the High Court. Law No. 31/1999 (Articles 28 and 37) and Law No. 15/2002 (Article 48) contain provisions regarding reversal of burden of proof (reversal of burden of proof or onus of proof). The provisions in both laws are still not based on the theoretical justification as described above, but only place the reversal of proof provision solely as a means to facilitate the proof process without considering the aspect of the human rights of the suspect/defendant based on the 1945 Constitution. Now with the emergence of two reverse proof models with a balance of possibilities, there is a theoretical and practical reference in the issue of reverse proof.

Of course, reverse proof in terms of ownership rights of a person's property allegedly derived from corruption raises pros and cons. The opposing view is that reverse proof in property ownership rights is also contrary to human rights, namely everyone has the right to obtain their wealth and privacy rights 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 the legal system in all countries, the individual's human right to property is not considered an absolute right, but a relative right, and is different from the protection of one's freedom and the right to a fair and reliable trial.

The ratified 2003 Anti-Corruption Convention contains provisions on reverse proof in the context of freezing, seizure, and confiscation processes under the heading Criminalization and Law Enforcement (Chapter III). Post-ratification of the 2003 Anti-Corruption Convention certainly impacts the Law of evidence, which is still based on the Criminal Procedure Law Number 8 of 1981 and the provisions regarding inquiry, investigation, and prosecution as well as court hearings in Law Number 8 of 2010. The most important thing in the Law of evidence in money laundering cases is that the element of real state losses, even those that are still expected to be real losses, is no longer in place and is no longer proportional to be the main element in a corruption crime, and therefore no longer needs to be proven. Even the losses of the wider community, especially third parties harmed by money laundering, should be accommodated in the Law on eradicating money laundering. The success of laws and regulations in achieving their objectives depends a lot on their implementation. No matter how good a law is, if its implementation is inconsistent, it will not be useful. As is known in the theory of legal effectiveness, the Law will not work effectively if there is no balance between substance, structure, and culture.

CONCLUSION

Indonesia's reverse proof system was historically adapted from Anglo-Saxon countries, where its application was limited to certain cases such as gratuities or bribery. The difference lies in the balance of the system: in Anglo-Saxon countries, the prosecutor and the defendant have an equal burden of proof, while in Indonesia, this system is still limited. Anglo-Saxon countries have utilized civil remedies for the recovery of criminal assets, whereas Indonesia has yet to adopt such mechanisms. In addition, Indonesia does not yet have adequate procedural laws to support the effectiveness of the reverse proof system. As an alternative, thinkers in developed countries have proposed the “balanced probability of proof” theory, which emphasizes a proportional balance between the protection of individual freedom and the deprivation of rights to property that is strongly suspected of originating from corruption. This model aims to thoroughly uncover the origins of assets suspected of being the proceeds of corruption, placing the right to personal property at a low priority, while keeping the right to individual liberty at a high level and should not be violated.

As a corrective measure, it is recommended that Indonesia strengthen its procedural legal framework to support the effectiveness of the reverse proof system, including adopting civil mechanisms for the return of assets from criminal offenses. This will help overcome the current system's limitations and make it easier to prove serious cases such as corruption and money laundering. In addition, applying the “balance of probabilities” theory could be considered to create a balance between the protection of individual rights and the need to crack down on criminals. These reforms also need to be accompanied by training for law enforcement officials to understand and apply the system consistently and socialization to the public to create broader support for crime fighting efforts.

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