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Corruption and Reversal Burden of Proof: An Insight Into Article 37 of Indonesian Law No. 31 of 1999 on Corruption Eradication

(Rasuah dan Konsep 'Reversal Burden of Proof': Tinjauan ke Atas Artikel 37 Undang-undang Indonesia No. 31 Tahun 1999 Berkaitan Pembenterasan Rasuah)

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ABSTRACT

This article touches on Corruption and Reversal Burden of Proof in accordance with Article 37 of Indonesian Law No. 31 of 1999 on Corruption Crime Eradication. It deals with questions on whether or not the implementation of the reversal burden of proof in corruption cases may prevent, reduce, or even eliminate crimes of corruption in Indonesia. This article also discusses on the extent of the effectiveness of the reversal burden of proof in Indonesia as laid down in the legislation. This research is based on a theoretical framework by Roscoe Pound, which suggests that law is a tool of social engineering. This theory has been cited by MuchtarKusumaatmadja, whomodified and adapted it to Indonesia conditions, making law as a social engineering medium. One of the changes could be seen in the area of burden of proof with theconventional systembeing replaced by a reversal one. The juridical-normative method is used in the analysis which involvesthe study of legislations related to reversal burden of proof. This research concludes that corruption is still rampant in Indonesia and that Article 37 has not been that effective in eradicating corruption crimes.

Keywords: Corruption; reversal burden of proof; limited reversal burden of proof; Indonesian Law No. 31 of 1999

ABSTRAK

Artikel ini membincangkan isu rasuah dan beban pembuktian secara terbalik atau "reversal burden of proof" menurut Artikel 37 di bawah Undang-undang Indonesia No. 31 Tahun 1999 berkaitan Penghapusan Jenayah Rasuah. Ia mengupas persoalan sama ada penggunaan prinsip "reversal burden of proof" dalam kes-kes jenayah rasuah berupaya menghalang, mengurangkan atau pun menghapuskan jenayah rasuah di Indonesia. Artikel ini turut menyentuh tentang keberkesanan prinsip "reversal burden of proof" di Indonesia sebagaimana yang diperuntukkan di bawah undang-undang. Kajian ini adalah berdasarkan kepada kaedah teori yang dibawa oleh Roscoe Pound yang menegaskan bahawa undang-undang adalah merupakan suatu alat "social engineering." Kaedah teori tersebut telah digunakan oleh Muchtar Kusumaatmadja, yang telah mengubah serta menyesuaikannya menurut keadaan di Indonesia dengan memastikan bahawa undang-undang menjadi medium "social engineering." Salah satu perubahan yang telah dilakukan dapat dilihat dalam isu beban pembuktian apabila beban pembuktian konvensional digantikan dengan beban pembuktian secara "reversal."Metod "juridical-normative" turut digunapakai dalam analisis ke atas undang-undang berkaitan "reversal burden of proof." Artikel ini menyimpulkan bahawa jenayah rasuah masih lagi berleluasa di Indonesia dan Artikel 37 belum dapat membanteras jenayah rasuah secara berkesan.

Kata kunci: Rasuah; "reversal burden of proof"; "limited reversal burden of proof"; Undang-undang Indonesia No. 31 Tahun 1999

INTRODUCTION

The school of natural law, as Aristotle (±300 BC), a disciple of Socrates, puts it, provides a direction on the goals of law. According to natural law, the main goal of law is to realize the ultimate, essential goal of community, that is, justice. However, before justice can be accomplished,order should at first be created and maintained in the community. Without an order there will be no a sense of justice in a community. Indeed, the goal of law is not only to achieve justice but also legal certainty, as suggested by the school of positive law that evolved in 19th century. The leading advocate of such view is Hans Kelsen (1881-1973). However, achieving justice remains the main, oldest goal of law and such goal is still maintained until today, provided that an order should first be created in the community.

In line with the preceding description, Muchtar Kusumaatmadja offers a definition of law as follows:[1]

> Law is the whole principles and norms that regulates the associations of human lives in community that is intended to keep order and to achieve justice, also involving institutions

and processes that realizes the implementation of the norms as a reality in community.[1]

From the definition above it is obvious that, according to Muchtar Kusumaatmadja, among essential goals of law are creating and maintaining order and the realization of justice. To achieve the latter, the former should be created in advanced.

Justice can be enforced through the conduct of trial. In Indonesia, trial process and procedure are under the realm of the criminal procedure code. It begins with an investigation by investigators (police, prosecutor, Corruption Eradication Commission). This is followed by the pre-prosecution process by public prosecutor; then prosecution which takes place in a hearing before a court by a public prosecutor and judges. Next, legal remedies (appellate, cassation, judicial review) follow the execution of verdict by a public executor and also implementation of legal procedures while the convict is serving his or her sentence at a penitentiary. A normative trial process should refer to prevailing statutory provisions. However, trial processes very often deviate from the required paradigm. Deviations in trial processes happen regularly when trials are smeared by corruption, collusion and nepotism. Wrongdoers, among them the law enforcers, often practicecorruption, augmenting the list of corruptors in Indonesia.

LEGISLATIVE ASPECT

Positive legislations or laws in Indonesia are still weak, because some of them are the products of Dutch colonial regime. Of course, such legislations or laws do not accommodate the aspirations of contemporary Indonesia people, being enacted by the Dutch government in Netherlands and having been in the state of out dated. Accordingly, they are not inspirational to the will of Indonesia people/nation. The prevailing legislations on corruption, collusion, and nepotism do not fully reflect the aspiration of the Indonesian nation. Take for an example the legislation on "reversal burden of proof". Such reversal burden of proof as laid down in Article 37 of the Law on Corruption is not a pure reversal burden of proof, but rather a limited one. It is lacking in deterrent characteristics, thus failing to prevent anyone from committing a corruption.

LAW ENFORCER ASPECT

There are three types of law enforcers in Indonesia under the Indonesian criminal justice system, namely the investigators (police/prosecutor/Corruption Eradication Commission), the public prosecutors and the judges. These three law enforcers must function fairly and efficiently in ensuring effective application of the legislation. Even if the legal provisions and materials on corruption, collusion, and nepotism laws are adequate, they will be practically meaningless if they were not properly applied by the law enforcers. A piece of legislation may be deemed to be excellent, but its objective would not be accomplished if these law enforcers fail to perform their duties efficiently and with integrity. As the enforcing instrument of the legislation, these law enforcers should uphold personal integrity, fair, and honest when implementing the law. The main problem is the presence of those law enforcers who commit deviations in implementing their duties as law enforcers. This is due to, among others, low personal integrity, insufficient human resource, and less-than-minimum standard prosperity level.

LEGAL AWARENESS AND OBEDIENCE IN THE COMMUNITY

Legal awareness and obedience in the community have been at its lowest point. This phenomenon is not conducive at all for the existence of just and qualified law enforcers neither does it help in upholding justice and eradicating corruption. A good legislation, applied by equally honest law enforcers would still be meaningless if they are not supported by legal awareness in the community. Hence, both legal obedience and awareness should be enhanced in the society as corruption culture develops due to the fading sense of shame in the community including among those public officers who shamelessly commit corruption.

Therefore, in the context of corruption eradication, the culture and sense of shame should be revived among our people as these may become powerful tools that could discourage them from committing corruption. This can be done by socialization measures, such as education and the dissemination of vital information that reaches out not only to public bureaucrats, political elites, and law enforcers but also the youths. Such education and campaign on the danger of corruption should be initiated as early as possible, possibly among kindergarten children as well as primary school students.

Besides the above-mentioned three aspects, campaigns on model behavioral aspect should also be highlighted. In other words, officers, particularly bureaucrats, should be educated through campaigns on the importance of adopting and projecting good behaviour in their daily life. Thus far, there is a stigma which associates bureaucrats with hedonistic and consumptive characteristics and behaviours. Therefore, campaigns should be held to educate bureaucrats to be modest in their daily life so as to become examples to the community at large. This may reduce or prevent corruptions.

Reformation Order administration has seemingly taken optimal measures against the three causes of corruption above. Despite such efforts, corruption remains on the increase and rampant. In an effort to thwart this, an independent higher institution has been established

under Law Number 30 of 2002. The institution, in the name of Corruption Eradication Commission (KPK) has been vested with an authority to eradicate corruption among existing law enforcers such as attorneys and the police. It is however sad to note that after nearly ten years of the Corruption Eradication Commission establishment, both corruptive behavioursas well as corruption are still rampant. In addition, it seems that, over the time, the measures taken by the Corruption Eradication Commission have resulted in political consequences to public officers and bureaucracy. Some of these measures taken by the Indonesian Government have given rise to a bureaucratic chaos. Many decision makers become reluctant to make any policy on public services, resulting in stagnation. The government has apparently become desperate in eradicating the already entrenched corruption.

Corruption problems are always ever-present. Thus, we should continuously search for a way out. The search on how to properly combat corruption continues. In our fight to eradicate corruption, there is another method which the Indonesia government and people have yet to pursue, that is, the implementation of reversal burden of proof. Such reversal burden of proof, which leads to absolute proof of corruption, is an interesting issue to be studied. The reversal burden concept however triggers two questions: can the implementation of reversal burden of proof in prosecution and proof of corruption cases (as stipulated in Law Number 31 of 1999) prevent or reduce or even eliminate corruption crimes in Indonesia? To what extent isthe reversal burden of proof effectiveness?

In view of this, the objective of this articleis to find out to the extent of which Law Number 31 of 1999 on Corruption Crime Eradication, particularly Article 37, has stipulated the principles of reversal burden of proof. The intended reversal burden of proof is a pure or pseudo one. The benefit of this work was theoretical in nature, that is, it is hoped that it would be a meaningful contribution to criminal and procedural law. This article uses the juridical-normative method. This method involves the study of legislative principles and provisions related to reversal burden of proof. Then, the findings, in form of both juridical and sociological aspects, are written in a descriptive-analytical form. This work also proposes a notion that the main goal of law is to uphold justice in community. In addition, it is also important to determine and realize legal certainty, as propagated by the school of positivism law school that Hans Kelsen advocates. The former is the oldest goal of law which remains until today, provided that an order should first be created in the community.

According to Muchtar Kusumaatmadja, an essential goal of law is to maintain order and realize of justice. This corresponds with Roscoe Pound's[2] thought. Roscoe Pound proposes a notion that law is a tool of social engineering. This concept was cited by MuchtarKusumaatmadja, who adapted and modified it to suit current Indonesian conditions. By engineering, it is meant that the thinking ways of people is transformed from traditional to modern. Law should be made as a means in resolving the entire problems emerging in the community, including rampant corruption crimes. One of the changes to be made to the criminal procedural code is to transform the conventional burden of proof into a reversal one. Can this be possibly applied in Indonesia?

PROOF SYSTEM OR THEORY

The most important part in a criminal procedural process is ascertaining whether or not the defendant has committed any crime as accused by the prosecution. What is the consequence if the defendant is found guilty by judges, where in fact he or she is innocent? The criminal procedural code is intended to reveal material truth.There are some systems or theories to prove an accused crime. The systems or theories of evidence vary with times and places. Indonesia, the Netherlands and other continental European countries share a practice that it is a judge, not jury as practiced in United States and Anglo-Saxon countries, who decides on the evidence presented. In the latter countries, it is a jury who decide on whether the defendant is either guilty or not guilty, whereas judges only chair the session and decide a sentence.

Seeking a material truth is not an easy task. Evidences, such as testimony, are often ambiguous and very capricious. Testimonies are sometimes presented by forgetful persons. According to psychology, different persons will convey different accounts of the same occasion. A survey was conducted in a Swedish school. The students were gathered together in a classroom, and then a guest was asked to enter into the classroom for just a moment and then went out. When asked about the color of dress the guest had worn, the children answered differently. Some said blue, another gray, still another brown.Therefore, in earlier times it was widely accepted that the most reliable evidence is the confession of the defendant because it is himself or herself who underwent the occasion in question. Thus, the confession of the defendant was sought in trial, which may satisfy the judges, considering that material truth has been found.

It is for this reason of seeking material truth that *accusatoir* principle, viewing the defendant as the defendant in civil case, was abandoned and replaced with *inquisitoir* principle, viewing the defendant as the object of trial. The latter principle is even employed to obtain the confession of the defendant. In judging the proving power of existing evidence means, there are some proof systems or theories which are discussed in the following paragraphs.

POSITIVE LAW-BASED SYSTEM OR THEORY

A proving based on the evidence means as specified in laws is called positive law-based theory of proof.[3] It is said 'positive' because it is based *exclusively* on law. That is, if a crime has been proven according to the evidence means specified in law, then the conviction of judge would be no longer needed altogether. This system is also called as a formal theory of proof. That theory of proof is now already abandoned. It relies too much on the evidence power as specified in laws.

EXCLUSIVELY JUDGE CONVICTION-BASED SYSTEM OR THEORY

In contrary to the positive law-based theory of proof is a theory of proof according to judge conviction. This theory is also called *conviction in time*. It recognises that evidence in the form of conviction of the defendant does not always prove the truth. It occasionally does not assure that the defendant has actually committed the accused crime. Therefore, the conviction by a judge is needed.It is based on the rationale that the theory of judge conviction considers that the defendant has committed the accused crime if the judge is convinced of it. According to this system, punishment is allowed without being substantiated by statutory evidence. This system is applied in trial by jury in France. Such proof system has been applied in Indonesia, that is, in district and regency courts. The system makes it possible for judges to say at will whatever the basis of his or her conviction, including paranormal prophecy.

The system delegates a wide discretion to judges, so much so that they are difficult to supervise. In addition, the defendant or his or her attorney finds it difficult to prepare a defense. Under such condition, judges may find the defendant guilty based on their conviction that the defendant has actually committed the accused crime. The practice of this method in trial by jury in France has resulted in numerous odd, justice-offending acquitting decisions.

LOGICAL JUDGE CONVICTION-BASED SYSTEM OR THEORY

Another method is a system or theory that calls for prove that is based, up to a certain limit, on a judge's conviction. The theory conceptualises that judges may decide the bases of prove along with conclusions based on certain evidential legislation. The system or theory of proof can also be called proof free because judges are free in stating the bases of their conviction. This is a mid-way system or theory of proof or one that is based, by a limitation, on two theories. One is the logical judge conviction-based theory of proof and another is the negative law-based theory of proof. The similarity between these two theories is that they are based on a judge's conviction, meaning that the defendant would not be punished unless the judge is convinced that he or she is guilty. Meanwhile, the difference between both theories is that the former is based on judge's conviction which should be based on a logical conclusion rather than on provisions according to the judge's knowledge, depending on his or her preference on the implementation of which proof system he or she would apply. The latter is based on proving rules stipulated with limitations by law, andit should be accompanied by a judge'sconviction.Thus, it can be concluded that there are two differences, namely, the former is based on judges' belief, while the latter on legislations. Furthermore, the former is a conclusion not based on legislation, while the latter is based on limitation specified by legislation.[4]

NEGATIVE LAW-BASED THEORY OF PROOF

A negative law-based proving system or theory is where sentence is based on multiple proving, that is, according to legislation and judges' conviction, and according to law the source of the judge's conviction is legislations. According to D. Simons,[5] the recognition of a proving theory should apply for the advantage of the accused only in accordance with legislations. However, as a consequence, it occasionally acquits a culprit.

Both *Herziene Indonesisch Reglement* (HIR or Indonesian criminal code in the colonial era) and *Kitab Undang-Undang Hukum Acara Pidana Nomor 8 Tahun 1981*(KUHAP) apply a negative law-based system or theory. This can be seen from Article 183 KUHAP (formerly Article 294 HIR):

A judge cannot hand down a sentence to anyone, except that, by at least two valid evidence means, he or she is convinced that a criminal crime has actually occurred and that it is the defendant that is found guilty of committing it.

From the provision above it is evident that proving should be based on law (KUHAP), that is, the evidence means is specified in Article 184 KUHAP; substantiated by judge conviction derived from the evidence means.

The article above parallels the provisions laid down in Article 294 paragraph (1) HIR that reads as follows:

No one can be sentenced criminally, except that the judge is convinced with valid evidence means, that there has actually occurred a punishable crime and that it is the accused persons who are found guilty of committing it.

In fact, before the enactment of KUHAP, a similar provision had been contained in Basic Law on Judicative Power (UUPKK) Article 6 that reads as follows:

> No one can be sentenced criminally, except that the court, based on valid evidence means according to law, is convinced that someone who is liable has been found guilty for the crime accused on him or her.

A weakness of the formulation of this law is that it states *evidence means* that are valid according to law of *evidence means*, or as stipulated in Article 183 KUHAP that determines *two evidence means*. In this negative law-

based system or theory of proof, a punishment is based on double proof, namely, on legislation and on judge's conviction, and according to law, the basis of conviction is legislation. The latter is in line with Article 183 KUHAP, stipulating that, from the two valid evidence means the judge conviction is derived. However, it is contended here that a conviction can only be based on the contents of valid evidence means (specified by law). This is in line withthe official explanation of Article 183 KUHAP that this provision is to ensure the triumph of truth, justice and legal certainty for everyone.

In short, the four proof systems above can be applied to all crimes, be they general and special crimes. However, in certain crimes, a different proof system beyond the four systems, that is, the reversal burden of proof can be applied.

REVERSAL BURDEN OF PROOF

Reversal burden of proof is an adoption from Anglo-Saxon countries, such as England, Singapore and Malaysia. In Indonesia, the study of reversal burden of proof produces a very comprehensive benefit because one of the constraints in eradicating the crime of corruption is the difficulty in producing proof of suchcrime. Based on an academic and practical research, it was found that the intention of applying the principle is not in a total, absolute context but a comparative approach of the country which applies the principle, as Adi Hamzah said;

> There has never existed a total, absolute reversal burden of proof, that is, it can only be applied by limitations, specifically on crimes of bribery-related gratification.[6]

The provisions on bribery-related gratification basically says that public servants who receive from, are paid for or are given by anyone some gratification shall be deemed as corrupt, without otherwise proven. This applies a reversal burden of proof but it is limited to crimes related to gratification and bribery. Thus, the reversal burden of proof in Anglo-Saxon countries, from which the system originates, is not absolute in nature, is specialized and of a limited scope.

REVERSAL BURDEN OF PROOF IN LAW NUMBER 31 OF 1999

As aforementioned, Anglo-Saxon countries, where reversal burden of proof originates, persistently requires the limited and exceptional nature of the system. Such requirement is applied in Law Number 31 of 1999.What is meantby *limited* and *specialised* reversal burden of proof in Law Number 31 of 1999? Let us inquire the meaning of reversal burden of proof according to Article 37 of Law Number 31 of 1999 on Eradication of Corruption Crime, which reads as follows:

1. The defendant has a right to prove that he or she did not commit the alleged corruption crime.
2. In case the defendant successfully prove*s* that he or she did not commit the alleged corruption crime, then the defense shall be utilised to favour him or her.
3. The defendant is required to clarif*y* his or her properties and his wife's or her husband's properties and his or her children's properties and the properties of all individuals or corporations allegedly related to the court case under trial.
4. In case the defendant unsuccessfully proves his or her properties that are not proportional to his or her income or other sources of revenues, such clarification may be utilised to strengthen the already existing evidence means that the defendant has committed a corruption crime.
5. Under a situation as intended in paragraphs (1)-(4) above, the prosecution is still required to prove his or her prosecution.

Moreover, the official explanation of Article 37 says that:

> These provisions are a deviation from the provisions of Criminal-Law Procedural Code stipulating that it is prosecutor who is required to prove the doing of crime, not the defendant. According to this provision, the defendant may prove that he or she did not commit the alleged corruption crime. If the defendant successfully proves it, it does n*o*t mean that he or she is proven as not guilty of doing the alleged corruption, because the prosecutor is still required to prove his or her prosecution. The provision of this Article is a limited reversal burden of proof because prosecutor is still required to prove his or her prosecution.

From the content of the official explanation of Article 37 above it can be concluded that the reversal burden of proof adhered by Article 37 of Law Number 31 of 1999 on Eradication of Corruption Crime is a limited reversal burden of proof, which is rarely practiced in daily corruption crime trial in Indonesia. It indicates that the system is still ineffective. Thus, it is contended that in the criminal law system (including Law Number 31 of 1999, Article 37 and its official explanation), the meaning of "limited" or "specialized" of the implementation of reversal burden of proof is as follows:

1. Reversal burden of proof is limited to bribery-related gratification cases only, excluding other crimes in corruption crimes.
2. The reversal burden of proof for other crimes in Law Number 31 of 1999 as contained in Articles 2 to 16 remains on prosecutor.
3. Reversal burden of proof is limited to only "confiscation" of crimes accused to anyone as contained in Articles 2-16 of Law Number 31 of 1999. It is also noteworthy that the proving system of the alleged offense in Articles 2-16 of Law Number 31 of 1999 remains on prosecutor. If the defendant is, according to prosecution, proven to have committed

any of the offences and his or her properties are confiscated, then the defendant is required to prove that his or her properties are not sourced from a corruption crime.

4. That the limited reversal burden of proof adheres to its lextemporis, that is, this system shall not be applied retroactively, being potential to violate human rights, to violate legality principle, and to induce so called *lextalionis* (retaliation).[7]

It is due to its limitations that the reversal burden of proof system as stipulated in the law has unsuccessfully prevented or reduce corruption crimes in Indonesia. This indication can be seen from the increased corruption crime in Indonesia year by year. In 2012 there were 1,842 court cases of corruption crimes involving a loss of state revenues by Rp168.19 trillion. It is a great increase from that in 2001, involving 889 suspects and a loss of state revenues by Rp15.09 trillon.[8]

It appears that reversal burden of proof violates the principal of interests and rights of the doer (the accused). Such implementation on the reversal burden of proof has an unavoidable condition, in particular the minimization of rights. In such occurrence, it is said that the reversal burden of proof has the potential to cause a violation of human rights.

REVERSAL BURDEN OF PROOF ON A CONFISTICATION OF THE DEFENDANT'S PROPERTIES

Reversal burden of proof is applied to a confiscation of defendant's properties. That is, the defendant accused of committing any of the provisions of Article 2-16 of Law Number 31 of 1999 is required to prove that his or her properties gained before the alleged corruption crime hasnot originated from the alleged corruption crime. The requirement of such property confiscation is made by the prosecutor during the presentation of prosecution on primary case.

This provision clarifies a misled public opinion which alleges reversal burden of proof is a new, potential basis of corruption for law enforcers, though such allegation is not realistic. Reversal burden of proof is only applied to newly adopted gratification-related crimes. Confiscation is applicable to all corruption crimes that are stipulated in Articles 2-16 of Law Number 31 of 1999, that is, the application of reversal burden of proof should be preceded by a legal process of someone, whereas to violations of Articles 2-16 the conventional system of proof remains to be applied (namely, it is the prosecutor who should prove). Thus, reversal burden of proof is not applied *in toto* on the crimes stipulated in Articles 2-16 of Law Number 31 of 1999, meaning that the burden of proof as to whether there has been a violation against Articles 2-16 of Law Number 31 of 1999 remains on prosecutor. However, if the prosecutor by a prosecution is convinced that the defendant had actually violated any provisions in Articles 2-16 of Law Number 31 of 1999 and the defendant's properties are confiscated, then the confiscation of the properties shall be processed by reversal burden of proof. It is only applied during thecourt process, not in the course of investigation and prosecution. It is intended to accommodate inputs from the public who are concerned with the occurrence of other corruptions (extortion and bribery), particularly if reversal burden of proof is applied in the course of closed investigationand prosecution processes.

The burden of proof on prosecutor is an absolute right of a defendant in the form of presumption of innocence, which is at the same time to be a form of actualisation of the acceptance of non-self-discrimination principle, as the soul of Article 66 of KUHAP. In addition, according to Indonesia Criminal-Law Procedural Code, a defendant has theright of silence or not to answer any questions asked by judges or prosecutors.This principle is a universal human rights protection principle, as contained in Universal Declaration of Human Rights 1948.

From the description above, it can be seen that the implementation of the reversal burden of proof adhered in Article 37 of Law Number 31 of 1999 is ineffective and has no strong deterrent power to prevent persons from committing corruption crimes. This is because the Article has been rarely applied by public prosecutors for proving corruption crimes. Thus, it has no deterrent force to prevent corruption crimes. As aforementioned, this can be indicated by the handling of corruption cases by Indonesian Public Prosecutors in 2012, where there were 1,365 corruption cases that have received a permanent verdict, of which only in 64 cases the Public Prosecutors applied the reversal burden of proof, the remaining case applied the conventional proving system.[9]

Some suggest that the reversal burden of proof applied in Indonesia should be a pure one, so that the system would be more effective in deterring corruption crimes in Indonesia. Such suggestion is apparently understandable. However, it should be noted that the application of such system would violate legal principles that prevail universally, including in Indonesia, such as presumption of innocence principle and non-self-discrimination principle, and it is also a violation against human rights and the right of silence of the defendant as stipulated in Article 66 of KUHAP. In addition, the application of a pure reversal burden of proof would potentially result in new chances of corruption, particularly by law enforcers. Furthermore, the application of the system would be of political impact that influences the affairs of nation because such application could result in a bureaucratic chaos.[10]

One solution is to pursue a pure reversal burden of proof, whereby the burden of proof laid on the accused should not be limited to gratification and evidence items in a form of confiscated assets, but rather applied to all aspects of prosecution by the public prosecutor.

This system should be a last resort in eradicating and preventing corruption crimes in Indonesia. However, so as to avoid any incidences of infringing non-self-discrimination, presumption of innocence, basic human rights and to avoid bureaucratic chaos, the system should not be applied retroactively. That is, the reversal burden of proof to be applied should apply for only those corruption crimes that occur after the enactment of the new law.

CONCLUSION

The current implementation of reversal burden of proof in proving corruption crimes is not that effective in preventing or reducing corruption crimes in Indonesia. This is due to some limitations in the system, among others; it is limited to only bribery-related gratifications and not to other forms of corruption crime; it is limited to confiscation of evidence items in certain law cases; it is limited to the application of *lextemporis*, that is, the system cannot be applied retroactively due to its potential to infringe basic human rights, legality principle, and the so-called *lextalionis* (retaliation).

The indication of the failure of the system in preventing or reducing corruption crimes in Indonesia could be witnessed from fact that corruption crimes have been steadily increasing year by year in Indonesia. Moreover, the application of Article 37 of Law Number 31 of 1999 is not yet effective, due to inconsistency in the implementation of the reversal burden of proof concept. In reality, the public prosecutors have persistently applied the conventional burden of proof system, which means that it is the prosecutors, and not the accused, who should prove the accusation. This is indicated by the fact that of the 1,365 corruption cases in Indonesia in 2012, only 64 cases were decided based on the reversal burden of proof concept. As a solution to this problem, the pure reversal burden of proof must be consistently applied. However, in avoiding discrimination, infringement of basic human rights (which include the much celebrated maxim onpresumption of innocence) as well as bureaucratic chaos, the system should not be applied retroactively. This article proposes that it should be applied to corruption cases which take place after the enactment of the proposed law.

NOTES

1 Muchtar Kusumaatmadja in P. Sitorus, *An Introduction to Legal Science (complemented with a compilation of questions and answers)*, Pasundan University's Faculty of Law, Alumnus Press, Bandung, 1998 , p. 94.

2 Roscoe Pound, *An Introduction to Legal Philosophy*, Bharata, Jakarta, 1972, p. 37.

3 Andi Hamzah, *Hukum Acara Pidana Indonesia*, Sinar Grafika, Jakarta, 2006, p. 247.

4 Andi Hamzah, *Hukum Acara Pidana Indonesia*, Sinar Grafika, Jakarta, 2006, p. 250.

5 Andi Hamzah, *Hukum Acara Pidana Indonesia*, Sinar Grafika, Jakarta, 2006, p. 252.

6 Andi Hamzah, *Development of Special Crimes*, Jakarta: P.T. Rineka Cipta, First Edition, 1991, p. 31.

7 Barda Nawawi Arief. *A Compilation of Policien on Criminal Law*, Bandung, PT. Citra Aditya Bakti, First Edition, 1996. p. 107-108.

8 Tempo Politik, http:/www.tempo.co/read/news/2013.03/04, accessed on 23 January 2014.

9 Centre for Criminal Statistics and Technology Data, www.kejaksaan,goid, accessed on 23 January 2014.

10 The term refers to the stagnation that may occur in bureaucracy/administration levels, because a large number of decision making bureaucrats are involved in corruptions, and, as a consequence, administrative affairs (public services) become shut down.

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