

**The Reverse Burden of Proof  
In Gratification in Corruption Crimes**

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**Abstract:** The application of the reverse burden of proof in gratification cases within corruption offenses is a pivotal legal instrument in Indonesia's anti-corruption strategy, yet its effectiveness remains subject to both theoretical debate and practical challenges. While this mechanism normatively grants defendants the opportunity to prove that the gratification received is unrelated to their official position, there is a notable research gap in examining how judicial reasoning determines the success or failure of such proof in court proceedings. This study employs a normative juridical method with a case study approach, focusing on court decisions that implement the reverse burden of proof. The analysis centers on the construction of judicial arguments in assessing the evidence and statements presented by the defendant. The findings reveal that the defendant failed to convince the panel of judges that the gratification in question was beyond the scope of their authority, highlighting the substantial evidentiary burden borne by defendants. These results underscore the necessity for a comprehensive understanding of both substantive and procedural legal aspects in reverse proof mechanisms, while contributing to the broader discourse on the development of criminal procedural law in corruption cases in Indonesia.

**Keywords:** *Reverse Burden of Proof; Gratification; Corruption Offenses;*

**A. INTRODUCTION**

Indonesia is a state based on the rule of law, based on the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). Article 33 paragraph (4) of the 1945 UUD NRI mandates that the national economy must be organized based on economic democracy that upholds the principles of togetherness, efficiency with justice, sustainability, independence, and maintaining national economic unity.[1] To achieve this goal, the integrity of state administrators is a fundamental prerequisite, so that practices that undermine governance, such as corruption, must be effectively eradicated.

Corruption is categorized as an extraordinary crime because of its multidimensional impacts, including state financial losses, disruption of political, social and economic stability, and a decline in public trust in the government.[2] One form of corruption that receives serious attention is gratification, as regulated in Article 12B paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. Gratuities are defined as gifts in the form of money, goods, discounts, commissions, interest-free loans, travel tickets, accommodation facilities, travel, or other forms received by state officials or civil servants related to their positions.[3]

Gratuities are often the initial loophole for the occurrence of bribery crimes, where receipts that are not reported within the specified time period can be classified as corruption.[4] To close this loophole, the law applies a reverse burden of proof system that requires the accused to prove that the gratuity received is not a bribe.[5] However, the effectiveness of the application of this mechanism in court is still debated, especially regarding the consistency of application by judges, the readiness of public prosecutors, and the protection of the rights of the accused.[6]

Various previous studies have addressed this issue. Hamzah (2018) emphasized that reverse burden of proof is an important instrument in eradicating corruption, but must be balanced with the principle of presumption of innocence.[7] Arief and Wicaksono (2019) found obstacles at the implementation level due to limited understanding among law enforcement officials.[8] Huda (2020) noted that reverse burden of proof is more effective in cases of direct bribery than disguised gratification.[9] Prasetyo (2021) identified a tendency for the burden of proof to shift back to the public prosecutor despite the law stating otherwise.[10] Meanwhile, Sari and Putra (2022) highlighted the need for technical guidelines from the Supreme Court to avoid disparate interpretations.[11]

This paper differs from previous research in that it focuses on the case study of Decision Number 45/Pid.Sus-TPK/2021/PN Mks and examines the effectiveness of the reverse burden of proof system from both a normative and practical perspective. This research not only assesses the suitability of this mechanism's implementation with positive legal provisions but also tests its consistency with the principles of substantive justice.

Based on this background, the problem formulation in this study is: (1) How effective is the reverse burden of proof system in proving gratification cases in corruption crimes in Indonesia?; and (2) How is the application of the reverse burden of proof to gratification in Decision Number 45/Pid.Sus-TPK/2021/PN Mks?

This research employs a normative juridical method with a statute approach and a case study approach. Data sources were obtained from primary, secondary, and tertiary legal materials through literature review. Qualitative analysis was conducted to assess the suitability of the application of the reverse burden of proof with positive legal provisions and its relevance to the principle of substantive justice.

The objectives to be achieved in this study are to determine and analyze the effectiveness of the reverse burden of proof system in proving gratification cases in corruption crimes. To determine and analyze the reverse burden of proof in gratification in corruption crimes in decision Number 45/Pid.Sus-TPK/2021/PN Mks.

The benefits of this research are, as a contribution to law faculty students in general and for the author himself for the development of legal science, the results of the research can be used as reference material, a source of information and a contribution of thought which is expected to be useful for students and as literature for readers and as input for researchers in conducting research in the same field, especially from other sides of this research.

### **B. METHOD**

This research is a normative legal study, focusing on the study of secondary data through library research. Within this research framework, law is understood as written norms contained in laws and regulations (law in books) or as rules that guide behavior in society. The approaches used in this research include: a statute approach, which examines the provisions of laws and regulations relevant to the research issue. A conceptual approach, which examines the views, doctrines, and theories developing in legal science to strengthen the analysis.

The research data sources consist of primary legal materials: laws and regulations, court decisions, and related legal documents. Secondary legal materials: relevant literature, books, articles, and scientific journals. Tertiary legal materials: legal dictionaries, encyclopedias, and indexes. Data collection was conducted through a literature search to obtain relevant and in-depth information on the subject matter. Data analysis used a deductive method, namely drawing conclusions from general principles or provisions to answer the research problem.

### **C. DISCUSSION**

#### **1. Effectiveness of the Reverse Burden of Proof System in Gratification Cases in Corruption Crimes**

The reverse burden of proof system is a legal instrument adopted within the framework of eradicating criminal acts of corruption in Indonesia, particularly to handle cases of gratification.[12] From a criminal law perspective, the application of the reverse burden of proof is not intended to shift the fundamental principle of the presumption of innocence, which places the burden of proof on the public prosecutor. Instead, this mechanism provides the defendant with the opportunity to prove that the gratification he received was not a bribe and was not related to his position or authority.[13]

In general, the evidentiary system in Indonesian criminal law follows the principle that the public prosecutor bears the full burden of proof for the elements of the crime. [14] However, Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption provides a limited exception to this principle. This exception applies in cases of gratification through the provision of reversal of burden of proof or reversed proof which is explicitly regulated in Article 12B.

Article 12B paragraph (1) of Law No. 20 of 2001 states that any gratuity to a civil servant or state administrator is considered a bribe if it is related to his/her position and is contrary

to his/her duties or position. Furthermore, paragraph (2) requires the recipient of the gratuity to report it to the Corruption Eradication Commission (KPK) within a certain time period. If this reporting obligation is not fulfilled, then the gratuity is legally considered a bribe.[15]

From these provisions, it can be seen that the initial stage of proof remains with the public prosecutor (*prima facie* case), namely proving that the defendant received gratuities related to their position. Once these initial elements are met, the burden of proof shifts to the defendant to show that the gratuity is legally valid, unrelated to their authority, and does not conflict with their official obligations. Thus, this system applies a shifting burden of proof scheme, where the public prosecutor continues to prove the elements of the crime, while the defendant is given the opportunity to prove the legality of the assets or gratuities they received.

The implementation of the reverse burden of proof system is expected to increase the effectiveness of corruption eradication and strengthen transparency among state officials. Through this mechanism, defendants are not merely passively awaiting proof from the public prosecutor, but are actively encouraged to provide explanations supported by valid evidence.

Regarding evidence, proof in gratification cases still refers to Article 184 of the Criminal Procedure Code which includes five types of evidence, namely: 1. Witness testimony; 2. Expert testimony; 3. Letters; 4. Instructions; and 5. Defendant's testimony.

In addition, Article 26A of Law No. 20 of 2001 expands the definition of indicative evidence to include information spoken, sent, received, or stored electronically, whether by optical means or similar media. This includes documents in the form of recorded data or information that can be seen, read, or heard, which can be produced with or without the aid of certain means. The form of this document can be in the form of writing, sound, images, maps, designs, photographs, letters, signs, numbers, or perforations that have meaning, whether written on paper media, non-paper physical media, or electronic media.

With this framework, the reverse burden of proof system in gratification cases not only becomes a repressive instrument in enforcing corruption laws, but also functions preventively by encouraging openness and accountability of public officials in managing receipts that have the potential to contain conflicts of interest.

## **2. Reversed Proof in Gratification Cases in Corruption Crimes (Analysis of Decision Number 45/Pid.Sus-TPK/2021/PN Mks)**

In Decision Number 45/Pid.Sus-TPK/2021/PN Mks, the Panel of Judges found the defendant guilty of accepting several gratuities directly related to his position as a public official. The defendant failed to prove that these receipts were in conflict with his obligations or duties as a state official. Although the defendant attempted to convince the panel of judges that the gifts were personal in nature and unrelated to his position, this defense was not supported by convincing evidence.

Efforts to prove the fraud included:

- a. Government and administrative documents, such as three bundles of proposals for air resources infrastructure assistance from the Sinjai Regency Public Works and Spatial Planning Agency for the 2021 Fiscal Year, a legalized copy of the South Sulawesi Governor's Decree concerning the personnel composition of the Selection Working Group at the Bureau of Development and Procurement of Goods/Services for the 2019, 2020, and 2021 Fiscal Years, and various decisions related to budget permit administration.
- b. Financial evidence, including proof of deposit/transfer through Bank Mandiri for Rp70,000,000, an invoice for the purchase of a Yamaha F200 engine for Rp260,000,000, along with other attached documents.
- c. Other supporting evidence, such as media coverage of assistance from contractors and state-owned enterprises to the South Sulawesi Provincial Government during the COVID-19 pandemic, and documentation of the delivery of said assistance.

Based on the evidence presented, the reverse burden of proof in this case focuses on the defendant's obligation to explain the origin of the gratification and the relationship between the giver and recipient. This mechanism does not eliminate the presumption of innocence, but rather serves to clarify the defendant's position when the revealed facts meet the elements of gratification as defined by law.

The Panel of Judges emphasized that the gratuity received by the defendant was not reported to the Corruption Eradication Commission (KPK) within 30 working days as stipulated in Article 12B paragraph (2) of the Corruption Law, so that it was legally considered a bribe. In this case, reverse evidence was used proportionally as a means of revealing material truth, without negating the defendant's rights to defend himself.

This application is in line with Article 12B paragraph (1) and (2) of the Corruption Eradication Law, which stipulates that any gratuity to a civil servant or state administrator worth IDR 10 million or more is considered a bribe, unless proven otherwise. Furthermore, Article 37A of the Corruption Eradication Law gives the accused the right to prove that he did not commit a criminal act of corruption, while maintaining the public prosecutor's obligation to prove the formal and material elements of the crime.

The application of this reverse burden of proof also gained constitutional legitimacy through Constitutional Court Decision Number 003/PUU-IV/2006, which confirmed that this system is valid and does not conflict with the principle of fair trial, as long as it is limited to a certain scope (limited reversal) and still guarantees the defendant's right to defend himself.

From a legal criminology perspective, the application of reverse burden of proof in this case has the potential to deter public officials. Legal pressure to explain the origins of wealth encourages transparency, maintains official integrity, and strengthens bureaucratic ethics as a pillar of good governance.

Thus, the Makassar District Court's decision serves as a concrete example of how the reverse burden of proof can be implemented in a balanced manner, balancing the protection of the defendant's human rights with the public interest in eradicating corruption. This

implementation demonstrates the direction of development in Indonesian criminal law, which is responsive to the challenges of modern crime, without neglecting the principles of due process of law and substantive justice.

### **D. CONCLUSION**

The reverse burden of proof system in gratification cases is a limited exception to the presumption of innocence principle, shifting some of the burden of proof to the defendant to prove that the gratification received was not a bribe. While still upholding the principle of due process, the judge in this case is not strictly bound by the evidence as stipulated in Article 184 of the Criminal Procedure Code, but can decide based on conviction. This reflects a more substantive evidentiary approach to effective corruption eradication. Makassar District Court Decision No. 45/Pid.Sus-TPK/2021/PN Mks confirmed that the defendant was proven to have received a gratification that was not reported to the Corruption Eradication Commission (KPK), thus qualifying it as a bribe. Although the defendant presented administrative and financial evidence, his defense was not convincing enough. The reverse burden of proof applied is limited and constitutional and does not negate the defendant's rights. This mechanism reflects a balance between human rights protection and effective law enforcement in eradicating complex and covert corruption. In applying the reverse burden of proof system in gratification cases, caution is required to avoid violating the defendant's constitutional rights, particularly regarding the presumption of innocence. Therefore, law enforcement officials, especially judges, must apply the principle of caution in assessing evidence, while still considering the balance between eradicating corruption and protecting human rights. Furthermore, there is a need for broader dissemination of information regarding the obligation to report gratification to state officials to create a culture of transparency and accountability in government administration. Strengthening technical regulations and judicial guidelines related to the application of the reverse burden of proof is necessary to avoid interpretative ambiguity. Furthermore, increasing legal literacy among law enforcement officials and state officials is crucial to ensure that the rights of the accused remain protected without compromising the effectiveness of corruption eradication efforts.

### **E. REFERENCES**

- [1] H. Siallagan, "Penerapan Prinsip Negara Hukum Di Indonesia," *Sosiohumaniora*, vol. 18, no. 2, pp. 131–137, 2016, doi: 10.24198/sosiohumaniora.v18i2.9947.
- [2] A. S. Noor Said, "Tindak Pidana Korupsi Sebagai Kejahatan Luar Biasa," *JUSTITIA J. Ilmu Huk. dan Hum.*, vol. 8, no. 1, p. 18, 2025, doi: 10.31604/justitia.v8i1.18-23.
- [3] G. C. Kirana, "Pembuktian Gratifikasi Dalam Tindak Pidana Korupsi," *Huk. Pidana dan Pembang. Huk.*, vol. 1, no. 1, 2018, doi: 10.25105/hpph.v1i1.3574.
- [4] H. Prihastuti, "Gratifikasi Seksual Sebagai Bentuk Tindak Pidana Korupsi Dalam Perspektif Undang-Undang Pemberantasan Tindak Pidana Korupsi," 2022.

- [5] D. T. Aripianto, “Kedudukan Asas Pembuktian Terbalik Dalam Perkara Tindak Pidana Gratifikasi,” *Negara dan Keadilan*, vol. 11, pp. 202–214, 2022, [Online]. Available: <https://riset.unisma.ac.id/index.php/negkea/article/view/18652%0Ahttps://riset.unisma.ac.id/index.php/negkea/article/download/18652/14185>
- [6] A. C. Cindrapole and S. Rosmini, “the Legal and Ethical Implications of Surveillance in Criminal Law : a Literatur Review,” vol. 4, no. 1, pp. 448–455, 2024.
- [7] D. Andika, “Andika, Djohan. "Analisis Yuridis Potensi Asset Recovery Menggunakan Undang-Undang Nomor 8 Tahun 2010 Tentang Tindak Pidana Pencucian Uang (Studi Kasus Penanganan Tppu Polresta Surakarta Tahun 2021),” 2022.
- [8] D. Haspada, “Tantangan Dan Solusi: Mengatasi Lemahnya Penegakan Hukum Di Indonesia,” vol. 5, no. 2, pp. 799–811, 2023.
- [9] A. Rahman, “Rekonstruksi Regulasi Pertanggungjawaban Pidana Komisaris Perseroan Yang Melakukan Tindak Pidana Korupsi Berbasis Nilai Keadilan,” *Accid. Anal. Prev.*, vol. 183, no. 2, pp. 153–164, 2023.
- [10] W. Prasetyo, “Rekonstruksi Regulasi Pengembalian Kerugian Negara Pada Tindak Pidana Korupsi Melalui Kebijakan Mediasi Penal Yang Berbasis Keadilan Pancasila,” 2024.
- [11] L. A. Sari, “Peringatan Hukuman Tindak Pidana Korupsi dalam Perma No. 1 Tahun 2020 Perspektif Maqāṣid Asy-syarī’ah Jasser Auda,” *UII Repos.*, no. 1, 2025, [Online]. Available: <https://dspace.uui.ac.id/handle/123456789/55471>
- [12] S. Lasmadi and E. Sudarti, “Pembuktian Terbalik Pada Tindak Pidana Pencucian Uang,” *Refleks. Huk. J. Ilmu Huk.*, vol. 5, no. 2, pp. 199–218, 2021, doi: 10.24246/jrh.2021.v5.i2.p199-218.
- [13] M. Hatta and D. T. Yudi Afrizal, “Ratio Legis Penerapan Beban Pembuktian Terbalik Di Indonesia (Komparasi Hukum Pidana Indonesia Dan Hukum Pidana Islam),” *Istinbath J. Huk.*, vol. 18, pp. 76–103, 2021, [Online]. Available: <http://e-journal.metrouniv.ac.id/index.php/istinbath/index>
- [14] M. R. Adiwijana, “Pembebanan Pembuktian dalam Tindak Pidana Pencucian Uang,” *Media Iuris*, vol. 3, no. 1, p. 75, 2020, doi: 10.20473/mi.v3i1.18416.
- [15] A. Baene, “Penerapan Hukum Pidana pada Tindak Pidana Gratifikasi yang Dilakukan dalam Jabatan,” *J. Panah Keadilan*, vol. 1, no. 2, p. 5, 2022, [Online]. Available: <https://jurnal.uniraya.ac.id/index.php/PanahKeadilan/article/view/448/374>