

**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.

Within the framework of a rule of law state, the principle of the supremacy of law positions law as the highest authority in all aspects of governance. This implies that every action taken by state officials must be grounded in applicable legal provisions and must be accountable in juridical, moral, and administrative terms. In this context, corruption is not merely a legal violation but also a betrayal of the principles of justice, transparency, and accountability that form the foundation of good governance.

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Furthermore, corruption has systemic impacts that extend beyond state financial losses. It hampers national development, exacerbates social inequality, and erodes public trust in state institutions. When corrupt practices are allowed to persist, the legitimacy of the government is significantly weakened, which may ultimately disrupt political and social stability. Therefore, the eradication of corruption must be viewed as an integral part of efforts to sustain development and promote public welfare.

In the pursuit of clean governance, synergy is required between robust legal instruments, professional law enforcement agencies, and active public participation. Law enforcement against corruption is not solely aimed at creating a deterrent effect but also at fostering a legal culture that upholds integrity and public ethics. Accordingly, anti-corruption efforts must be both repressive and preventive, as well as educational in nature.

Moreover, strengthening both internal and external oversight systems constitutes a strategic measure to prevent the abuse of authority. Transparency in the management of public finances, openness of public information, and the strict application of accountability principles are essential elements in minimizing opportunities for corruption. In this regard, bureaucratic reform also plays a crucial role in establishing a system of governance that is efficient, responsive, and free from corrupt practices.

From a normative perspective, the prohibition of corrupt practices, including gratification, is in line with the principles of justice and honesty in Islamic law. This is affirmed in the Word of Allah SWT: “And do not consume one another’s wealth unjustly or send it [in bribery] to the judges in order that you may [sinfully] consume a portion of the wealth of others while you know [it is unlawful].” (Qur’an, Surah Al-Baqarah: 188)

This verse emphasizes the prohibition of acquiring wealth through unlawful means, including bribery and abuse of authority, which is substantively relevant to the concept of gratification in corruption offenses.

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 understood that the initial stage of proof remains with the public prosecutor (*prima facie case*), namely to establish that the defendant received gratuities related to their official position. This position demonstrates that the evidentiary system in Indonesian criminal law fundamentally adheres to the general principle that the burden of proof lies with the prosecutor. However, once these preliminary elements have been sufficiently established, the burden of proof shifts to the defendant to explain and

demonstrate that the gratuities received are not connected to their authority and do not conflict with their obligations as a public official. Thus, this system adopts a *shifting burden of proof* scheme, which does not eliminate the prosecutor's obligation but rather expands the evidentiary framework by involving the active participation of the defendant.

From a theoretical perspective, this reverse burden of proof mechanism can be understood as a form of *lex specialis* in criminal evidentiary law, specifically designed to address the difficulties of proof in corruption cases. Corruption offenses, particularly in the form of gratification, are often committed covertly, involve power relations, and leave minimal traceable evidence under conventional methods. Therefore, reverse proof functions as a progressive legal instrument aimed at closing loopholes of impunity and strengthening the effectiveness of law enforcement.

The implementation of this reverse burden of proof system is expected to enhance the effectiveness of corruption eradication while simultaneously reinforcing transparency among public officials. Through this mechanism, defendants are not merely passive parties awaiting proof from the public prosecutor but are actively encouraged to provide rational, logical explanations supported by valid evidence. This condition creates a balance in the evidentiary process and promotes a culture of accountability in the exercise of public power.

Furthermore, this system also carries normative implications for the development of ethical standards among public officials. The obligation to justify the lawful origin of assets encourages greater caution in accepting any form of benefit that may give rise to conflicts of interest. In this sense, reverse proof serves not only as a repressive instrument in judicial proceedings but also as a preventive mechanism in fostering clean and integrity-based governance.

With regard to evidence, proof in gratification cases continues to refer to Article 184 of the Indonesian Criminal Procedure Code (KUHAP), which recognizes five types of admissible evidence: witness testimony, expert testimony, documentary evidence, indications, and the defendant's statement. These five forms of evidence constitute the foundation of the Indonesian criminal evidentiary system, which adheres to the *negative statutory proof system* (*negatief wettelijk bewijsstelsel*), combining legally valid evidence with the judge's conviction. In this context, reverse burden of proof does not alter the existing evidentiary system but rather expands its dynamics by providing space for the defendant to substantiate their claims.

In addition, Article 26A of Law Number 20 of 2001 broadens the scope of indicative evidence by including information that is spoken, transmitted, received, or stored electronically, whether through optical or similar media. This expansion represents a response to the advancement of information technology, which has significantly transformed the patterns of criminal activity, including corruption offenses that increasingly utilize digital means. Consequently, electronic evidence such as recorded conversations, emails, text

messages, and other digital documents possesses valid evidentiary value, provided it complies with applicable legal requirements.

The existence of electronic evidence is particularly crucial in gratification cases, as many transactions or communications between the giver and recipient are conducted indirectly. Therefore, this expansion of evidentiary tools not only strengthens the position of the public prosecutor but also provides broader opportunities for the defendant to present objective and transparent arguments.

Within this framework, the reverse burden of proof system in gratification cases functions not only as a repressive instrument in enforcing anti-corruption law but also as a preventive mechanism that promotes openness and accountability among public officials in managing any form of receipt that may involve conflicts of interest. More broadly, this system reflects the ongoing reform of Indonesian criminal law, which is increasingly adaptive to the complexities of modern crime while maintaining a balance between effective law enforcement and the protection of human rights.

Accordingly, the implementation of reverse burden of proof must be accompanied by the strengthening of law enforcement capacity, the improvement of evidentiary quality, and the formulation of clear technical guidelines to prevent potential abuses of authority. This is essential to ensure that the primary objectives of this system namely the realization of substantive justice and the effective eradication of corruption can be optimally achieved within the Indonesian judicial system.

## **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 held that the defendant was legally and convincingly proven guilty of receiving a number of gratuities directly related to his position as a public official. The defendant failed to demonstrate that such receipts were unrelated to his authority or obligations as a state administrator. Although the defendant attempted to persuade the Panel that the benefits received were personal in nature and not connected to his official capacity, this argument was not supported by sufficient evidence and was unable to rebut the evidentiary construction presented by the public prosecutor.

The evidentiary process in this case reflects a comprehensive structure of proof, consisting of: a. Governmental and administrative documents, including three bundles of proposals for water resources infrastructure assistance from the Public Works and Spatial Planning Office of Sinjai Regency for the 2021 Fiscal Year, legalized copies of the Decree of the Governor of South Sulawesi regarding the composition of the Selection Working Group within the Bureau of Development and Procurement of Goods/Services for the 2019, 2020, and 2021

Fiscal Years, as well as various administrative decisions relating to budget management and official authority.

b. Financial evidence, in the form of transactional documents such as proof of deposit or transfer through Bank Mandiri amounting to IDR 70,000,000, an invoice for the purchase of a Yamaha F200 engine valued at IDR 260,000,000, along with other supporting financial records indicating monetary flows connected to the defendant.

c. Additional supporting evidence, including media reports concerning assistance provided by contractors and state-owned enterprises to the Provincial Government of South Sulawesi during the COVID-19 pandemic, as well as documentation of the delivery of such assistance, indicating a relationship between the giver and the recipient of the gratuities.

Based on the entirety of the evidence presented, the application of the reverse burden of proof in this case functions as an instrument to place the defendant in an active position to explain the origin of the assets or gratuities received. This mechanism is not intended to eliminate the presumption of innocence; rather, it serves to clarify and balance the evidentiary position once the elements of the offense have been established *prima facie* by the public prosecutor. Accordingly, the reverse burden of proof in this context is limited in nature (limited reversal) and remains within the framework of due process of law.

The Panel of Judges explicitly emphasized that the gratuities received by the defendant were not reported to the Corruption Eradication Commission (KPK) within the statutory period of 30 working days, as stipulated in Article 12B paragraph (2) of the Anti-Corruption Law. Consequently, such gratuities are legally deemed to constitute bribery. This assessment demonstrates that both the formal and material elements of the criminal offense were fulfilled, thereby shifting the burden of proof to the defendant to demonstrate otherwise, which he failed to do.

The application of the reverse burden of proof in this decision is consistent with the provisions of Article 12B paragraphs (1) and (2) of the Anti-Corruption Law, which stipulate that any gratuity to a civil servant or state official amounting to IDR 10 million or more is presumed to be a bribe unless proven otherwise. Furthermore, Article 37A of the same law grants the defendant the right to prove that he did not commit a corruption offense, while maintaining the obligation of the public prosecutor to establish the formal and material elements of the crime.

The legitimacy of this reverse burden of proof mechanism is further reinforced by Constitutional Court Decision Number 003/PUU-IV/2006, which affirms that such a system does not contravene the principle of a fair trial, provided that it is applied proportionally and does not infringe upon the fundamental rights of the defendant. This reflects the adaptive nature of Indonesian criminal law in addressing complex and organized corruption offenses.

From a legal criminology perspective, the application of the reverse burden of proof in this case carries significant implications in generating a deterrent effect for public officials. The legal obligation to account for the origin of one's wealth promotes transparency and accountability in governance. Moreover, this mechanism serves as a form of social control that reinforces bureaucratic integrity and prevents the abuse of power that may harm public interests.

Furthermore, this decision reflects a paradigm shift in the Indonesian criminal evidentiary system, moving from a purely conventional model toward a more responsive approach to the evolving patterns of modern crime. In corruption cases, which are often conducted covertly and involve complex power relations, the reverse burden of proof emerges as an effective instrument to overcome the limitations of conventional evidentiary methods.

Thus, the decision of the Makassar District Court may be regarded as an important precedent in Indonesian criminal justice practice, particularly in handling corruption cases involving gratuities. It demonstrates that the reverse burden of proof can be applied in a balanced manner, safeguarding the defendant's human rights while simultaneously advancing the public interest in combating corruption. Accordingly, strengthening regulatory frameworks, enhancing the capacity of law enforcement officials, and formulating more comprehensive technical guidelines are essential strategic measures to ensure the consistency and effectiveness of this mechanism in the future.

#### **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.

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