

Article Title

**The Role of Additional Proof:
A Case Study on Eradication of the Criminal Act of Corruption**

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ABSTRACT

This research aims to examine and analyze the additional proof role and the factors that influence it in eradicating the criminal act of corruption. This research uses empirical legal research methods. The primary data collection was carried out using a questionnaire, while the secondary data was collected using literature study techniques. The data obtained in this research is then quantified using a quantitative descriptive analysis model, then described using a frequency distribution table for answer research purposes. The results show that additional proof has a very large role in eradicating the criminal act of corruption. In this case, the scope of proof regulated in Law No. 8 of 1981 is still limited, while Article 26A of Law No. 20 of 2001 is quite broad. Furthermore, the factors of legal substance, legal structure, and legal culture also significantly affect the use of additional proof in eradicating the criminal act of corruption. Therefore, it is recommended that the House of Representatives amend Law No. 8 of 1981 regarding the additional proof. Furthermore, it is recommended that law enforcers pay attention to the details of the additional proof regulated in Article 26A of Law No. 20 of 2001 to maximize the eradication of the criminal act of corruption in Indonesia.

Keywords: Additional Proof; Corruption; Indication Evidence; Physical Evidence.

INTRODUCTION

The Government has enacted several legal provisions to eradicate the criminal act of corruption (Rini, 2018). The following is a historical sequence of Law formation related to the eradication of the criminal act of corruption in Indonesia, namely:

1. Government Regulation in Lieu of Law of the Republic of Indonesia Number 24 of 1960 on Investigation, Prosecution, and Examination of the Criminal Act of Corruption;
2. Law of the Republic of Indonesia Number 3 of 1971 on Eradication of the Criminal Act of Corruption;
3. Law of the Republic of Indonesia Number 31 of 1999 on Eradication of the Criminal Act of Corruption; and
4. Law of the Republic of Indonesia Number 20 of 2001 on Amendment to Law Number 31 of 1999 on Eradication of the Criminal Act of Corruption.

On the other hand, the Law of the Republic of Indonesia Number 8 of 1981 on the Code of Criminal Procedure (hereinafter referred to as Law No. 8 of 1981) relates to all matters regarding the implementation of justice against criminal acts, including the perpetrators of the criminal act of corruption. Furthermore, there are problems between Law No. 8 of 1981 with Law of the Republic of Indonesia Number 20 of 2001 on Amendment to Law Number 31 of 1999 on Eradication of the Criminal Act of Corruption (hereinafter referred to as Law No. 20 of 2001) regarding the interpretation of provisions on the proof.

Determining the category of proof stored electronically or in documents handling criminal acts of corruption is confusing and unclear (Riyaadhotunnisa et al., 2022). Several law enforcement officials are still debating the position of implementing the proof. Meanwhile, the effectiveness of law enforcement is strongly influenced by the formation and application of the law (Rahman et al., 2020). Likewise, the application of additional proof is regulated in Law No. 20 of 2001.

Another problem will arise in applying additional proof regulated in Law No. 20 of 2001, which is interpreted the same as the indication evidence regulated in Law No. 8 of 1981. In this case, additional proof has different legal consequences than physical evidence. The different understanding of these intentions will certainly affect the implementation of law enforcement. In this case, from the preliminary examination for police investigators to the examination in court.

Based on the description above, this research aims to examine and analyze the additional proof role and the factors that influence it in eradicating the criminal act of corruption.

METHOD

This research uses empirical legal research methods whose object of study includes the provisions of laws and regulations (*in abstracto*) and their application to legal events (*in concreto*) (Qamar & Rezah, 2020). Furthermore, this type of empirical legal research focuses on legal practice as a social phenomenon in terms of the reciprocal relationships caused by social phenomena, including economic, political, social, psychological, and anthropological aspects (Irwansyah, 2021). This research was carried out from August to October 2019 in Makassar Big City Resort Police, Makassar Public Attorney Office, and Makassar Public Court. The sample in this research consisted of 30 respondents, including:

1. Police Investigator with 10 respondents;
2. Accused with 5 respondents;
3. Advocate with 5 respondents;
4. Public Prosecutor with 5 respondents; and
5. Judge with 5 respondents.

The types and sources of data used in this research are as follows:

1. Primary Data is data obtained from respondents based on sample determination;
2. Secondary Data is data obtained from searching legal literature, including laws and regulations, references, legal scientific journals, legal encyclopedias, and texts or official publications.

The primary data collection was carried out using a questionnaire with 30 respondents. While the secondary data was collected using literature study techniques on primary, secondary, and tertiary legal materials. The data obtained in this research is then quantified using a quantitative descriptive analysis model, then described using a frequency distribution table for answer research purposes (Sampara & Husen, 2016).

RESULTS AND DISCUSSION

A. The Additional Proof Role in the Eradication of the Criminal Act of Corruption

According to the law, evidence as an activity to prove an object is proven through proof. Evidence is a stage that plays a role in the court examination process (Rivanie et al., 2022). Through the evidence, the fate of the accused is determined. If the evidence with the proof specified by law is insufficient to prove the guilt of the accused, then the accused is released from all punishments (Kartika, 2019). Conversely, if the accused's guilt can be proven by the proof contained in Article 184 of Law No. 8 of 1981, then the accused can be found guilty, and he/she will be sentenced to punishment. Article 184 section (1) of Law No. 8 of 1981 regulates that the legal means of proof are:

- a. the testimony of a witness;
- b. the testimony of an expert;
- c. a document;
- d. an indication;
- e. the testimony of the accused.

From the provisions above, there are differences in the problem of evidence of the criminal act of corruption. In this case, the proof is regulated in Law No. 8 of 1981 and Law No. 20 of 2001. Article 26 of Law No. 20 of 2001 regulates that:

"The investigation, prosecution, and examination in court of criminal acts of corruption are carried out based on the applicable code of criminal procedure unless otherwise regulated in this law."

From the provisions above, it can be understood that the evidence of the criminal act of corruption also regulates the specific provisions in Article 184 of Law No. 8 of 1981. In this case, Article 26A of Law No. 20 of 2001 regulates that legal means of proof in the form of an indication, as referred to in Article 188 section (2) of Law No. 8 of 1981 on the code of criminal procedure, specifically for criminal acts of corruption, can also be obtained from:

- a. other proofs in the form of information that is spoken, sent, received, or stored electronically with optical devices or something similar to that; and
- b. document, namely any record of data or information that can be seen, read, and/or heard that can be issued with or without the help of some means, whether stated on paper, any physical object other than paper, or recorded electronically, in the form of writing, sounds, pictures, maps, designs, photographs, letters, signs, numbers, or perforations that have meaning.

As referred to in the provisions above, other proofs can be interpreted or included in the additional proof section. Apart from that, because of a formal offense, additional proof is needed in the evidence of the criminal act of corruption (Wyatt et al., 2017). Thus, it can be understood that according to the law of evidence in criminal cases, the public prosecutor must prove the guilt of being accused (Husen et al., 2020). The public prosecutor must prove the accused's guilt before the judge in a court session. This obligation is imperative as based on Article 183 of Law No. 8 of 1981, which regulates that:

"Judges may not punish a person unless, with at least two legal means of proof, they gain confidence that a criminal act really happened and that it was the accused who made a mistake."

Based on Article 188 section (2) of Law No. 8 of 1981, which regulates that an indication referred to in section (1) can only be obtained from:

- a. the testimony of a witness;
- b. a document;
- c. the testimony of the accused.

In the evidence law of the criminal act of corruption, the burden of evidence is not absolute on the public prosecutor. In this case, the evidence must be charged to the accused or the two parties who do the opposite in carrying out the evidence (Harefa et al., 2020). This kind of model is referred to as a reverse evidence system which also applies to the usual burden system for public prosecutors.

Explanation of a reverse evidence system when viewed from the theory of evidence, the judge's conviction determines whether the accused is wrong, coupled with the legal means of proof (Risal, 2018). According to this theory, determining whether an accused is wrong cannot be based solely on the judge's conviction or on legal means of proof but must be determined based on these two things (Basri, 2021). On the other hand, as regulated in Article 26A of Law No. 20 of 2001, proof can also be termed additional proof because it is an extension of the meaning of indication evidence as regulated in Law No. 8 of 1981.

Starting from the notion of additional proof as an extension of the meaning of indication evidence as regulated in Article 188 of Law No. 8 of 1981, the facts were obtained that the law enforcers at the research location also agreed with the expansion of this understanding.

The following are the data acquisition results related to law enforcers' understanding of additional proof in eradicating the criminal act of corruption, as seen in the table below.

Table 1. Law Enforcers' Understanding of Additional Proof in Eradicating the Criminal Act of Corruption

Indicator	Frequency	Percentage
Understand	25	83.33%
Not Really Understand	2	6.67%
Do Not Understand	3	10.00%
Total	30	100.00%

Source: Primary data after processing in 2019

The table above shows that 25 or 83.33% said they understood, 2 or 6.67% said they did less, and 3 or 10.00% said they did not understand. Therefore, most law enforcers understand additional proof as an extension of the meaning of indication proof as regulated in Article 188 of Law No. 8 of 1981. Jamal Fathur Rahman stated that:¹

“So far, several investigators still categorize indication evidence as physical evidence. However, investigators continue to collect proof and physical evidence or as much information as possible in uncovering criminal acts with indications of corruption.”

Physical evidence can become proof when it becomes an indication, as regulated in Article 184 section (1) of Law No. 8 of 1981. Whereas in Article 26A of Law No. 20 of 2001, it is very clear that electronic information can already be proof of the criminal act of corruption. Thus, additional proof plays a very important role in uncovering criminal acts of corruption. Therein lies the convenience for investigators of criminal acts of corruption because there is additional proof regulated in Article 26A of Law No. 20 of 2001.

Because physical evidence is used as preliminary evidence, it can make clear a criminal act of corruption. In addition, it can also be indication evidence and have the same value in the burden of evidence. Furthermore, by carrying out

¹Interview Results with the Head of Criminal Investigation Unit of Makassar Big City Resort Police. Kopol Jamal Fathur Rahman, on September 12, 2019.

other proof adjustments and adding the judge's conviction, the judge concerned can decide a criminal act of corruption case.

There is a fairly good understanding between the public prosecutor and judges regarding additional proof, so handling criminal acts of corruption cases will also go well (Rompegading, 2022). The following are the data acquisition results related to the use of additional proof by law enforcement in eradicating the criminal act of corruption, as seen in the table below.

Table 2. The Use of Additional Proof by Law Enforcement in Eradicating the Criminal Act of Corruption

Indicator	Frequency	Percentage
Used	26	86.66%
Underused	2	6.67%
Unused	2	6.67%
Total	30	100.00%

Source: Primary data after processing in 2019

The table above shows that 26 or 86.66% said they used, 2 or 6.67% said they did underused, and 2 or 6.67% said they did not use. Therefore, most law enforcers used additional proof to eradicate the criminal act of corruption. Ulfadriani stated that:²

“With regulated additional proof in Article 26A of Law No. 20 of 2001, it is very easy for prosecutors to prosecute those accused of criminal acts of corruption.”

The public prosecutor always connects every act, event, or situation revealed in court. In this case, additional proof as a finding at trial also forms the basis for the public prosecutor in making accusations against the accused. Furthermore, the assessment of the strength of the evidence is left to the judge, who examines and decides on the criminal act of corruption. Therefore, the use of additional proof technically lies in the judge's belief in reconstructing all actions, events, or circumstances obtained from the testimony of a witness, document, and the testimony of the accused to form additional proof.

From the description above, it can be understood that additional proof is very helpful for law enforcers in the judicial process, starting from investigation to trial. Apart from that, there are many cases where the evidence is very difficult and becomes easy so that a case of the criminal act of corruption can be decided by giving punishment to the accused.

²Interview Results with the Public Prosecutor of Makassar Public Attorney Office. Ulfadriani, on October 1, 2019.

B. Factors Influencing the Additional Proof Role in the Eradication of the Criminal Act of Corruption

Several factors will always influence every handling of a criminal act of corruption. Soekanto (2013) argues that what influences law enforcement consists of legal, law enforcement, facilities, community, and cultural factors. Meanwhile, Friedman (1984) argued that what influences law enforcement consists of factors of legal substance, legal structure, and legal culture. Thus, Friedman's theory will be used to determine the factors that influence the role of additional proof in eradicating the criminal act of corruption.

1. Legal Substance Factor

The following are the data acquisition results related to the influence of the legal substance factor on the role of additional proof in eradicating the criminal act of corruption, as seen in the table below.

Table 3. The Influence of the Legal Substance Factor on the Role of Additional Proof in Eradicating the Criminal Act of Corruption

Indicator	Frequency	Percentage
Take Effect	23	76.67%
Less Effect	6	20.00%
No Effect	1	3.33%
Total	30	100.00%

Source: Primary data after processing in 2019

The table above shows that 23 or 76.67% said they took effect, 6 or 20.00% said they did less, and 1 or 3.33% said they did no effect. Therefore, most law enforcers consider that the factor of the legal substance affects the use of additional proof in eradicating the criminal act of corruption.

2. Legal Structure Factor

The following are the data acquisition results related to the influence of the legal structure factor on the role of additional proof in eradicating the criminal act of corruption, as seen in the table below.

Table 4. The Influence of the Legal Structure Factor on the Role of Additional Proof in Eradicating the Criminal Act of Corruption

Indicator	Frequency	Percentage
Take Effect	26	86.66%
Less Effect	2	6.67%
No Effect	2	6.67%
Total	30	100.00%

Source: Primary data after processing in 2019

The table above shows that 26 or 86.66% said they took effect, 2 or 6.67% said they did less, and 2 or 6.67% said they did no effect. Therefore, most law enforcers consider that the factor of the legal structure affects the use of additional proof in eradicating the criminal act of corruption.

3. Legal Culture Factor

The following are the data acquisition results related to the influence of the legal culture factor on the role of additional proof in eradicating the criminal act of corruption, as seen in the table below.

Table 5. The Influence of the Legal Culture Factor on the Role of Additional Proof in Eradicating the Criminal Act of Corruption

Indicator	Frequency	Percentage
Take Effect	19	63.33%
Less Effect	8	26.67%
No Effect	3	10.00%
Total	30	100.00%

Source: Primary data after processing in 2019

The table above shows that 19 or 63.33% said they took effect, 8 or 26.67% said they did less, and 3 or 10.00% said they did no effect. Therefore, most law enforcers consider that the factor of the legal culture affects the use of additional proof in eradicating the criminal act of corruption.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion above, it can be concluded that additional proof has a very large role in eradicating the criminal act of corruption. In this case, the scope of proof regulated in Law No. 8 of 1981 is still limited, while Article 26A of Law No. 20 of 2001 is quite broad. Furthermore, the factors of legal substance, legal structure, and legal culture also significantly affect the use of additional proof

in eradicating the criminal act of corruption. Based on the description of these conclusions, it is recommended that the House of Representatives amend Law No. 8 of 1981 regarding the additional proof. Furthermore, it is recommended that law enforcers pay attention to the details of the additional proof regulated in Article 26A of Law No. 20 of 2001 to maximize the eradication of the criminal act of corruption in Indonesia.

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