

Principles of Reversal Burden of Proof in the Perspective of Indonesian Criminal Law and Islamic Law

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Abstract

The principles of criminal law in Indonesia and Islamic criminal law do not burden the defendant in proving. However, there have been changes to the reverse burden of proof system, especially in cases of corruption and money laundering. This article discusses the principle of reversed burden of proof in Indonesian criminal law and Islamic criminal law. The research method is juridical-normative with statutory, conceptual, and historical approaches. Sources of data using primary and secondary legal materials. The results of the study show that there are seven principles of reverse proof in criminal law in Indonesia, namely the principle of justice, the principle of utility, the principle of wealth, the principle of evaluating evidence, the principle of legality, the principle of invisible crime, and the principle of presumption of guilt. Meanwhile, the principles of proof are reversed in Islamic criminal law, namely: intention, justice, maqāsid al-sharīah, and presumption of guilt. Reverse proof in Islamic criminal law is not only applied in cases of corruption and money laundering, but is applied to all ḥudūd, qiṣās and



ta'zīr crimes. The principle of intention only exists in the Islamic criminal law system, because it relates to the divine side.

KEYWORDS: *Indonesian Criminal Law; Islamic Criminal Law; Reversal Burden of Proof*

Abstrak

Prinsip hukum pidana di Indonesia dan hukum pidana Islam tidak membebani terdakwa melakukan pembuktian. Namun, terdapat pergeseran melalui sistem pembuktian terbalik khususnya dalam kasus-kasus korupsi dan pencucian uang. Artikel ini mendiskusikan tentang prinsip pembuktian terbalik dalam hukum pidana di Indonesia dan hukum pidana Islam. Metode penelitian adalah yuridis-normatif dengan pendekatan perundang-undangan, konseptual dan historis. Sumber data menggunakan bahan hukum primer dan sekunder. Hasil penelitian menunjukkan bahwa ada tujuh prinsip pembuktian terbalik dalam hukum pidana di Indonesia yaitu prinsip keadilan, prinsip kemanfaatan, prinsip kekayaan, prinsip menilai alat bukti, prinsip legalitas, prinsip invisible crime, dan asas praduga bersalah. Sedangkan, prinsip pembuktian terbalik dalam hukum pidana Islam, yaitu: niat, keadilan, *maqāsid al-sharīah*, dan praduga bersalah. Pembuktian terbalik dalam hukum pidana Islam tidak hanya diterapkan dalam kasus korupsi dan pencucian uang saja, namun diterapkan pada semua kejahatan *hudūd*, *qisās* dan *ta'zīr*. Prinsip niat hanya ada dalam sistem hukum pidana Islam, karena berkaitan dengan sisi ketuhanan.

KATA KUNCI: *Hukum Pidana Indonesia; Hukum Pidana Islam; Pembuktian Terbalik*

Introduction

Evidence is information from facts, actuals, tendencies, designs, testimonies, writings, objects, materials, and others.¹ Bernard Heykel

¹ Agus Purwadianto, "Perkosaan Sebagai Pelanggaran Hak Asasi Manusia; Kajian Filosofis Metodologi Pembuktian Hukum," *Universitas Indonesia*, 2003; Colin Tapper, "The Law of Evidence and the Rule of Law," *The Cambridge Law Journal* 68, no. 1 (2009): 67–89; Iqbal Kamalludin and Barda Nawawi Arief, "Kebijakan Formulasi Hukum Pidana Tentang Penanggulangan Tindak Pidana Penyebaran Ujaran Kebencian (Hate Speech) Di Dunia Maya," *Law Reform* 15, no. 1 (n.d.): 113–29.

explained that proof is a science that includes solving cases of human disputes. A good judge can be seen from his ability to apply the law of evidence and the implementation of evidentiary procedures in the courtroom.² In Indonesian criminal law, the evidence includes witnesses, experts, instructions, and others. In addition, the proof is a procedural step to claim whether the alleged allegations and facts can be processed at the stages of investigation, investigation, prosecution, and finally, can be tried. The judge will decide at the trial court whether the defendant is guilty.³

The science of proof recognizes three levels of evidence: 1. the weakest level of defense is the level at which the probability of confirmation is greater (preponderance of the evidence). 2. A relatively strong level of evidence, which is called clear and convincing evidence. 3. The level of evidence is powerful, that is, beyond a reasonable doubt.⁴ Munir Fuady explained that in the settlement of criminal cases, the evidence must be robust, namely, beyond a reasonable doubt.⁵

So far, the Attorney General's Office has needed help proving corruption and money laundering crimes committed by state officials and civil servants. It is due to the difficulty of obtaining evidence. It is the concern of criminal law experts. So far, the obligation to prove is centered on the public prosecutor. Finally, several criminal law experts adopted Malaysia's reverse burden of the proof system.⁶

In general, the reverse proof is a system that imposes a burden on the defendant using the principle of presumption of guilt.⁷ Reverse proof in the

² Bernard Haykel, "Theme Issue: Evidence in Islamic Law," *Islamic Law and Society*, 2002, 129–31.

³ Munir Fuady, "Teori Hukum Pembuktian (Pidana Dan Perdata)," *Bandung: Citra Aditya*, 2006; Iqbal Kamalludin et al., "Politik Hukum Dalam Kebijakan Hukum Pidana LGBT," *Cita Hukum* 6, no. 2 (2018): 317–42, <https://doi.org/10.15408/jch.v6i2.7805> Abstract.

⁴ Purwadianto, "Perkosaan Sebagai Pelanggaran Hak Asasi Manusia; Kajian Filosofis Metodologi Pembuktian Hukum," 103.

⁵ Catherine M A McCauliff, "Burdens of Proof: Degrees of Belief, Quanta of Evidence, or Constitutional Guarantees," *Vand. L. Rev.* 35 (1982): 10–15.

⁶ B Lopa, *Kejahatan Korupsi Dan Penegakan Hukum* (Penerbit Buku Kompas, 2001), 10, <https://books.google.co.id/books?id=DYfaAAAAMAAJ>.

⁷ Joshua Ho Fung Lym, "The Reversal of The Burden of Proof," *Academia* 58, no. 2010 (2015): 23–25.

criminal proof system in Indonesia provides an understanding that the defendant has the right and obligation to prove that he is innocent.⁸ This system is legally limited to two types of criminal acts: corruption and money laundering.⁹ Article 37 Paragraph (2) Amendments to Law No. 31 of 1999 concerning Corruption Crimes states that if a defendant can prove that he has not committed a criminal act of corruption, the court uses this evidence as a basis for declaring that the charges are not established.

Corruption Law No. 20 of 2001 Article 37 A states that:

1. The defendant is obliged to provide information about all of his assets and the assets of his wife or husband, children, and any person or corporation suspected of having a relationship with the case being charged.
2. If the defendant cannot prove that the wealth is disproportionate to his income or the source of the addition to his wealth, then the information referred to in Paragraph (1) is used to strengthen the existing evidence that the defendant has committed a criminal act of corruption.
3. The provisions referred to in Paragraph (1) and Paragraph (2) constitute a criminal act or principal case as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes and Articles 5 to 12 of this Law so that the Public Prosecutor is still obliged to prove his indictment.

The reverse verification system applies to money laundering crimes. These provisions are contained in Article 77 and Article 78 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering

⁸ Muhammad Hatta, Zulfan Sumiadi, and Dan T Yudi Afrizal, "Ratio Legis Penerapan Beban Pembuktian Terbalik Di Indonesia (Komparasi Hukum Pidana Indonesia Dan Hukum Pidana Islam)," n.d., 76–103; Abdullah Abdullah and Muhammad Hatta, "The Application of the Burden of Proof Concept in Indonesia: A Comparative Study," *Sasi* 28, no. 3 (2022): 458, <https://doi.org/10.47268/sasi.v28i3.1045>.

⁹ Andi Hamzah, "Pemberantasan Korupsi: Melalui Hukum Pidana Nasional Dan Internasional," 2005, 257–60; Wicipto Setiadi and Beniharmoni Harefa, "The Principle of Reversal Burden of Proof in Act of Money Laundering in Indonesia," *International Journal of Innovation, Creativity and Change* 9, no. 7 (2019): 12.

Crimes. Article 77 explains that the accused must prove that the assets are not the proceeds of a crime for examination at court hearings. Article 78: (1) states that during the examination session at the trial court, as referred to in Article 77, the judge orders the defendant to prove that the assets related to the case do not originate from or are related to the criminal act referred to in Article 2 Paragraph (1). (2) The defendant proves that the assets related to the case did not originate from the crime referred to in Article 2, Paragraph (1) by submitting sufficient evidence.¹⁰

Meanwhile, in Islamic law, proof is a fundamental matter. Some Muslim scientists have discussed evidence in their books. Ibn Khaldun explained that witnesses and oaths do prove in court. According to him, proving by the witness was carried out by the accuser, and the defendant carried out proof by promise.¹¹ In line with him, Ibn Rushd explained that evidence in court includes witnesses, oaths, denial of promises, and confessions. Evidence from the accuser requires witnesses while from the defendant by promise.¹² Although, in general, they agreed on the two patterns of proof, they did not rule out the existence of other forms of evidence, either presented by the accused or by the charged, based on the results of *ijtihad*.

Islamic law calls proof with *al-bayyinah*. *Al-bayyinah* narrowly means witnesses and oaths.¹³ It refers to several hadiths, the evidence for proof in Islam. As for broad, Aḥmad Fatiḥ Bahnisī defines it as follows.¹⁴

¹⁰ Tubagus Irman, "Money Laundering Hukum Pembuktian Tindak Pidana Pencucian Uang Dalam Penetapan Tersangka," *Jakarta: PT Gramedia Pustaka Utama*, 2017; Iqbal Kamalludin and B. N. Arief, "Kebijakan Reformasi Maqâshid Al-Syarīah Dan Kontribusinya Dalam Formulasi Alternatif Keringanan Pidana Penjara," *Al-'Adalah* 15, no. 1 (2019): 181–218, <https://doi.org/http://dx.doi.org/10.24042/adalah.v%vi%i.2931>.

¹¹ Ibn Khaldun and Ahmadie Thoḥa, "Muqaddimah, Jakarta: Pustaka Firdaus; Cet" (VII, 2008), 40–45.

¹² Ibn Rusyd, "Bidayah Al-Mujtahid Wa Nihayah Al-Muqtasid," *Juz II, Beirut: Dâr Al-Jiil, t. Th*, 1989, 440.

¹³ M A Analiansyah, "HUKUM PEMBUKTIAN TERBALIK DALAM PERSPEKTIF HUKUM ISLAM," *Al-Mursalah* 2, no. 1 (2018): 38–52.

¹⁴ A F Bahnasi, "Naẓariyyah Al-Ithbāt Fī Al-Fiqh Al-Jinā'ī Al-Islāmī," *Kaherah: Dar Al-Syuruq*, 1989, 14.

أَلْبَيِّنَةُ فِي كَلَامِ اللَّهِ وَرَسُولِهِ وَكَلَامِ الصَّحَابَةِ : إِسْمٌ لِكُلِّ مَا يَبِينُ الْحَقَّ فَهِيَ أَعَمُّ مِنَ الْبَيِّنَةِ فِي اصْطِلَاحِ
الْفُقَهَاءِ حُصُوصًا بِالشَّاهِدِينَ أَوْ الشَّاهِدِ وَالْيَمِينِ

It means proof is the name for everything that can explain the truth. This term is more general than the understanding given by fiqh experts who limit it to two witnesses and a confession. This definition is very relevant to the current conditions. The reason is that the form of proof does not have to be confined to witnesses or oaths alone. Mainly when associated with the breadth of the field of proof of criminal acts in Islam.

Proof in Islamic law includes criminal acts of *ḥudūd*, *qiṣāṣ*, and *ta'zīr*.¹⁵ In factual historical data tracking, there has been reverse evidence in Islam. Caliph Umar Ibn al-Khaṭṭāb investigated property suspected of violating the civil service salary system at that time. Abū Hurayrah was asked to prove that his wealth while serving as Governor of Bahrain did not get through crime. These crimes are currently known as corruption and money laundering. The reverse proof carried out by 'Umar Ibn Al-Khaṭṭāb was not related to theft, but the suspicion that there was something similar to theft. Nor is it the crime of robbery, which is part of the *ḥudūd* crime. Corruption and money laundering crimes are *ta'zīr* crimes, in which, in some cases, the reverse evidence does not only apply to *ta'zīr* crimes.

Concerning reversed proof in Indonesian criminal law and Islamic law, this study is limited to specific crimes, namely corruption and money laundering. In Islamic law, unique criminal acts are part of *ta'zīr* criminal acts. The reason is that both in Islamic criminal law are different in nature from theft which is part of *ḥudūd* criminal acts. In connection with this similarity, a comparison of the systems and principles of reverse proof between Indonesian criminal and Islamic law needs to be done.¹⁶

¹⁵ Muhammad Mushtaq Ahmad, "Significant Features of the Ḥanafī Criminal Law," *AFKĀR Research Journal of Islamic Studies* 3, no. 2 (2019): 1–18.

¹⁶ Compare with Jackson Allen, "Rethinking the Relationship between Reverse Burdens and the Presumption of Innocence," *The International Journal of Evidence & Proof* 25, no. 2 (2021): 115–34.

Methods

This article is qualitative, with data sources obtained through library research, interviews, observation, and documentation. Once collected, the data was analyzed using the content analysis method, namely exploring the contents of the law on corruption and the law on preventing and eradicating money laundering.¹⁷

Discussion

Principles of Reverse Proof in Indonesian Criminal Law

Reverse proof in Indonesian criminal law has seven principles: justice, benefit, wealth, assessing evidence, legality, invisible crime, and presumption of guilt. The explanation is as follows.

First, the principle of justice

The principle of justice is attached to the judge in the trial. He must treat the public prosecutor and the accused fairly and listen to and gather information and data from both. Currently, the evidentiary system in the courts of corruption and money laundering in Indonesia uses limited, balanced inverse evidence. Judges carry out the practice of the principle of

¹⁷ Imam Gunawan, *Metode Penelitian Kualitatif: Teori Dan Praktik* (Bumi Aksara, 2022); Soekanto Soerjono, "Pengantar Penelitian Hukum," *Universitas Indonesia, Jakarta*, 1986; Abdul Wahab Abd Muhaimin, "Adopsi Hukum Islam Dalam Sistem Hukum Nasional (Studi Tentang UU. No. 1 Tahun 1974 Dan Kompilasi Hukum Islam (KHI) Buku I Tentang Perkawinan)," n.d.

justice by allowing the public prosecutor to read out the indictment and prove it with witnesses and other evidence. The public prosecutor then read out the charges. The defendant was given time to defend himself by providing evidence. The prosecutor can refute the evidence provided by the defendant. Based on the contents of the indictment, the results of examining proof at trial, and the contents of the charges and *pledoi*, the judges held deliberations. As a result, the panel of judges rendered a verdict against the accused of corruption. The form of the judge's decision is acquittal (*vrijspraak*), sentencing decision (*veroordeling*), and confiscation of property for the state.¹⁸

The principle of fairness also runs throughout the session. Makmur explained that in every trial process for corruption and money laundering crimes, the judge gave the defendant time to prove his innocence and ward off the accusations of the public prosecutor. These objections must be accompanied by complete evidence. It could even be that the evidence brought by the defendant is more substantial than the evidence obtained by the public prosecutor.

Thus, to achieve justice in reversing evidence, the judge considers all the evidence and analyzes the appropriate evidence from the public prosecutor and the evidence available to the suspect. Corruption judges must understand the meaning of Articles 37 and 37A of the Corruption Law. Judges must also understand the values of justice in Articles 77 and 78 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. The principle of justice in a trial can allow litigants to win evidence. If the evidence has been won, it can be assumed that he will win the case.

Second, the principle of benefits

The general benefits should feel opportunities to prove reversed. Jeremy Bentham emphasized that the purpose of government and law must

¹⁸ Evi Hartanti, "Tindak Pidana Korupsi Bagian Kedua," *Sinar Grafika, Jakarta*, 2016, 62.

be to provide significant benefits to society. To benefit from reverse proof, it must require facts, data, and responses from the public.¹⁹

One of the components of society in the trial is the defendant. In general, defendants in criminal cases have the right to remain silent and not to get involved. However, corruption and money laundering are part of extraordinary crimes. Therefore, by statutory regulations, both of them apply the principle of presumption of guilt.

It is understood that the suspect's right to remain silent is not recognized in the system of proving corruption and money laundering in Indonesia. Ian Walters explained that because the suspect's testimony was needed to establish a criminal act of sin, the suspect was not allowed to remain silent. It is to identify assets (assets, income, expenses, responsibilities, bank accounts, and foreign remittances), including property on behalf of third parties. This information can be obtained with the suspect's obligation to explain all aspects of his wealth and how he got these assets. Such information may extend to their relationships with others, and any financial transactions made.²⁰

The principle of benefits functions in general, namely benefits for society, although individually, it is often challenging for the defendant to prove that the assets alleged by the public prosecutor are not the result of gratuities or money laundering. The reverse proof is also beneficial for the defendant because the public prosecutor can have evidence that does not convince the judge so that the evidence provided by the defendant can reveal the truth.

Third, the principle of wealth

Corruption is closely related to property. The public prosecutor charged the occurrence of errors in the implementation of the provision of

¹⁹ Jeremy Bentham, "Teori Perundang-Undangan Prinsip-Prinsip Legislasi, Hukum Perdata Dan Hukum Pidana," *Bandung: Penerbit Nusamedia & Penerbit Nuansa*, 2006, 2.

²⁰ S C Ian McWalters, "Memerangi Korupsi Sebuah Peta Jalan Untuk Indonesia," *JPBooks, Surabaya*, 2006, 161.

public goods and services. The event of direct appointment contracts by the government can indicate corruption with bribes. Everyone generally understands that the procurement of goods and services has several principles, such as fairness and impartiality, transparency, efficiency, and responsibility. The statement understands that reverse evidence is limited to cases relating to property/wealth. The principle of wealth is practiced by rejecting the suspect for corruption in procuring goods and services.²¹

Defendants for bribery can refuse when the proof process is reversed at trial. Likewise, with money laundering crimes, the evidence provided by the defendant in property cases must be presented at trial. These provisions are per Articles 77 and 78. In the opportunity to prove, the defendant can prove that the property he owns is not the result of a crime.

Fourth, the principle of evaluating evidence

Belief in evidence is the primary capital for the judge to accept it as fact at trial. The rationality of judges in assessing proof needs to be done. Therefore, judges must be able to sharpen evidence according to evidentiary standards and ward off lies. Thus, the burden of proof is significant to meet the proof level. There are three levels of evidence as follows.²²

1. The weakest level of proof, the level of preponderance of the evidence, is usually applied in civil law.
2. A relatively strong level of evidence, called clear and convincing evidence. Usually applied, both in civil cases and criminal cases.
3. A robust level of evidence, that is, beyond a reasonable doubt, is usually applied in criminal cases.

The burden of proof is placed on the facts at issue in court. The judge must be able to evaluate the evidence and provide assurance that the facts

²¹ Jeremy Pope, *Strategi Memberantas Korupsi: Elemen Sistem Integritas Nasional* (Yayasan Obor Indonesia, 2003), 380.

²² Fuady, "Teori Hukum Pembuktian (Pidana Dan Perdata)"; Iqbal Kamalludin, "Restoration of Pancasila Values Against Criminal Law Reform Strategy in Indonesia Political Perspective of Islamic Law," *Syariah: Jurnal Hukum Dan Pemikiran* 22, no. 1 (2022): 31–47; Iqbal Kamalludin et al., "Criminal Law Treats for Online Gambling Performers: Investment Fraud Modes," *Dialogia Iuridica* 14, no. 1 (2022): 26–51.

occurred. In civil procedural law, the level of proof that must be achieved is sufficient with the more probable evidence (preponderance of the evidence). Meanwhile, in criminal cases, the evidence indicated is clear and convincing. As for criminal law, the level of proof must be higher and more compelling. These provisions are by Article 183 of the Criminal Code (KUHP). The article states that a judge may not impose a sentence on a person unless, with at least two valid pieces of evidence, he obtains a conviction that a crime has occurred and that the defendant is the one who is guilty of committing it. On the other hand, the theory of evidentiary law teaches that not every fact in a criminal procedure must be proven at a high level of evidence. The warranty does not have to be high for specific points, such as proof of the suspect's mental health, but a proven level with a greater probability (preponderance) is considered sufficient.

Fifth, the principle of legality

The principle of legality of proof reversed in Indonesia is based on the law on the Eradication of Corruption Crimes and the Law on Money Laundering Crimes.²³ Article 37 A of the Corruption Crime Eradication Law states that;

1. The defendant is obliged to provide information about all of his assets and the assets of his wife or husband, children, and any person or corporation suspected of having a relationship with the case being charged.
2. If the defendant cannot prove that the wealth is not in balance with his income or the source of the addition to his wealth, then the information referred to in Paragraph (1) is used to strengthen the existing evidence that the defendant has committed a criminal act of corruption. (Hamzah, tt: 257-258).
3. The provisions referred to in Paragraph (1) and Paragraph (2) constitute a criminal act or principal case as referred to in Article 2,

²³ Andi Hamzah, "Perbandingan Pemberantasan Korupsi Di Berbagai Negara," 2005, 257–58.

Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law Number 31 of 1999 concerning the eradication of criminal acts of corruption and Articles 5 to 12 of this Law (UU No. 20 of 2001) so that the Public Prosecutor is still obliged to prove his indictment.

The principle of legality is also contained in Articles 77 and 78 of the Law on the Prevention and Eradication of Money Laundering Crimes. Article 77 explains that for examination at trial, the accused must prove that his assets are not the proceeds of a crime. Furthermore, Article 78 Paragraph (1) states that during the examination session at the trial court, as referred to in Article 77, the judge orders the defendant to prove that the assets related to the case do not originate from or are associated with a criminal act as referred to in Article 2 paragraph (1)). Article 78 Paragraph (2) explains that the defendant proves that the assets related to the case did not originate from the crime referred to in Article 2 Paragraph (1) by submitting sufficient evidence.²⁴

The principle of legality of proof reversed in Indonesia above does not stand alone. The rules influence it in force in several countries, such as:

1. The UK Prevention of Corruption Act 1916 governs the following:²⁵

"Where in any proceeding against a person for an offense under the Prevention of Corruption Act 1906, or the Public Bodies Corruption Practices Act 1889, it is proved that any money, gift, or other considerations has been paid or given to or received by a person in the employment of his majesty or any Government Departement or a public body by from a person, or agent or a person, holding or seeking to obtain a contract from his majesty or any Government Department or public body, the money, gift, or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as in mentioned in such ash unless the contrary is proved."

²⁴ Irman, "Money Laundering Hukum Pembuktian Tindak Pidana Pencucian Uang Dalam Penetapan Tersangka," 225.

²⁵ Bruce P Smith, "The Presumption of Guilt and the English Law of Theft, 1750–1850," *Law and History Review* 23, no. 1 (2005): 133.

In a practical setting, the law notes that new gratification occurs when a person has received money or compensation from work which is part of his daily duties and routine.

2. Deed of Prevention of Rasuah 1997 Malaysia Article 42 as follows:

"Where any proceeding against any person for an offense under section 10,11, 13, 14 or 15 it is proved that any gratification has been accepted or agreed to be accepted, obtained, or attempted to be obtained, solicited, given or agreed to be given, promised or offered by or the accused or agreed to be accepted, obtained or promised, or offered as an inducement or a reward for or on account or the masters set out in the particulars of the offense unless the contrary is proved."

In a practical setting, this law only considers gratification to occur when a person has received some money or reward or a promise to receive some cash or prize.

In addition, the new Singapore Corruption Eradication Law considers gratuity to have occurred when someone has received something in money or return from another person. The existence of abuse of authority is the evil of gratification. Meanwhile, in Indonesia, gratuity cases are more stringent, and giving or receiving a promise can be used as a corruption suspect. The perpetrator is considered to have committed a criminal offense.²⁶

Sixth, the principle of invisible crime

Invisible crime is complicated to prove because professional people commit the crime. People who are called professionals are notaries, journalists, lawyers, judges, and so on. This crime approach is only sometimes due to a country's poor economy but also occurs in countries with rapidly growing economies. Apart from the professional perpetrators, corruption, bribery, and money laundering offenses, the offenders are difficult to reach beyond the reach of the law, such as cases of credit abuse. Invisible crime is also called hidden crime. The many meanings for invisible

²⁶ Genoveva Puspitasari Larasati, "Comparison of Law in Indonesia and Singapore Concerning the Eradication of Criminal Acts of Corruption," *International Journal of Business, Economics and Law* 25 (n.d.): 95–102.

crime indicate extraordinary difficulties. Even though there is a law that regulates it, it is difficult to prove the existence of a violation. Thus complex cases, as mentioned, require reverse proof.

Seventh, the principle of presumption of guilt

The presumption in evidentiary law is an allegation based on a possibility that occurs because there are main legal facts in a particular case. Allegation of a specific legal fact, accompanied by practical procedures in court. To maintain public order, the other party must prove the allegation by the law of evidence.²⁷ The principle of presumption of guilt is a differentiator for several extraordinary crimes, such as corruption, money laundering, narcotics, and genocide. Allegation of responsibility as one of the principles of reverse proof is a development of Articles 1-4 of the 2003 United Nations Convention against Corruption.

The principle of presumption of guilt is a form of implementing the contents of the United Nations Convention against Corruption Article 31 point 8. This article states that states parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.²⁸

A person suspected of being guilty must have a basis. The indications existed before the evidence at trial. The general view of the rich is very logical. The expression of this principle in corruption cases is when civil servants or state officials in their daily lives live in luxuries that do not match their income. Other indications are when a person does not report wealth or gifts received, which according to law, must be reported periodically, or someone is caught in a red-handed operation. In the money laundering crime case, Tubagus Irman explained that "...the presumption of guilt applies to money laundering cases. Certain people may be suspected of

²⁷ Fuady, "Teori Hukum Pembuktian (Pidana Dan Perdata)," 51.

²⁸ Hamzah, "Perbandingan Pemberantasan Korupsi Di Berbagai Negara," 359–60.

being guilty of money laundering when proven guilty of committing a crime. In the case of money lending, "acquisition" or assets from the proceeds of a crime is a crime. Initial evidence, in the form of clues, can be used as evidence. However, clues do not stand alone when a Suspicious Financial Transaction Report (LTKM) is received by the Financial Transaction Audit Recording Officer (PPATK). PPATK is obliged to analyze, then issue an Audit Results Report (LHA) and then issue Evidence Results (HP) to be forwarded by investigators."²⁹

The presumption of guilt applies to many professions. Party leaders, civil servants, and business people are generally vulnerable to becoming presumptive of guilty. They get a monthly salary, but their income is often greater than their monthly salary. The red-handed operations that often occur in Indonesia signal that the suspicion of guilt is getting stronger. The Kompas revealed cases of red-handed arrest, for example, against Lily Martiani, wife of the inactive Bengkulu Governor Ridwan Mukti, at Ridwan Mukti's private house in Sidomulyo Bengkulu city in June 2017. Lily was caught receiving a cardboard box containing 1 billion rupiah money from Rico Dian Sari, a boss of PT. Rico Putra Southern. On the same day, Ridwan turned himself in and avoided being involved in bribery.³⁰

Principles of Reverse Proof in Islam

The principles of reverse proof in Islam are the principle of intention, fairness, *maqāṣid al-sharī'ah*, and presumption of guilt with the following explanation.

First, the principle of intention

²⁹ Irman, "Money Laundering Hukum Pembuktian Tindak Pidana Pencucian Uang Dalam Penetapan Tersangka," 29–31.

³⁰ Firmansyah, "Mantan Gubernur Ridwan Mukti Dan Istrinya Divonis 8 Tahun Penjara," Kompas.com, accessed July 4, 2023, <https://regional.kompas.com/read/2018/01/11/19332111/mantan-gubernur-ridwan-mukti-dan-istrinya-divonis-8-tahun-penjara>.

Reverse proof in Islam is based on the intention to exercise both Allah's rights and fellow human beings' rights. In Islamic courts, crimes related to *ḥudūd*, *qiṣās*, and *ta'zīr* require proof in court. As for intention, it is the principle of reverse proof in Islam so that a person does not harm himself by submitting to accusations. The indicator of surrender can be seen when the defendant is silent, so he does not defend himself by presenting rebuttal evidence. It was exemplified by the Prophet when he defended himself against accusations of money laundering when the Hunayn War was over.

The Hunayn War occurred between the Muslims led by the Prophet and the unbelievers. The majority of infidels are from the Hawazin and Thaqif tribes. On the 10th night of the Shawwal month in 8 Hijriyah, the Prophet arrived in the Hunayn valley with 12,000 warriors with 100 pieces of armor and equipment. The Muslims won this war. The Messenger of Allah ordered his companions to collect the spoils (*ghanīmah*) and captives. The Muslims received *ghanīmah* in the form of 24 thousand camels, 4 thousand *'uqiyyah* (ounces) of silver, and 6 thousand prisoners. All the treasures and captives are kept in Ji'ranah. He appointed Mas'ūd ibn 'Amr Al-Ghifārī as the person in charge of *ghanīmah* storage. A few days later, Rasulullah distributed it with the details of one-fifth distributed to people who had just converted to Islam (converts). He also gave loot to people who had not converted to Islam so they could respond to Islamic teachings and then convert to Islam.

While distributing *ghanīmah*, the Prophet gave Abū Sufyān 40 ounces of silver and 100 camels. He also gave the same share to Abū Sufyān's children, Yazīd Ibn Abī Sufyān and Mu'āwiyah. Next, he gave Ṣafwān Ibn Umayyah 100 camels, then another 100 camels, and then another 100 camels, so he got 300 camels. The Prophet also gave 100 camels to Ḥakīm Ibn Hishām, Al-Ḥarīth Ibn al-Ḥarīth Ibn Kaladah, 'Uyaynah Ibn Ḥiṣn, Al-Aqra' Ibn Habs, Al-'Abbās Ibn Mardas, 'Alqamah Ibn Ulathah, Mālik Ibn 'Awf, A'lā Ibn Ḥarīthah, Al-Ḥarīth Ibn Hishām, Jubayr Ibn Mut'im, Suhayl

Ibn 'Amr and Huwaytib Ibn 'Abd al-Uzza. At the same time, other *ṣaḥābah* were given 40 camels and 50 camels. So the news spread among the people that the Prophet gave gifts in large quantities so they would be well-spent.

After the victory, people flocked to follow the Prophet, asking for a share of the treasure. The Prophet was followed to a date grove until he was cornered into a tree, and his coat got stuck. He said, "*give me back my coat! By Allah who holds my soul, if you have the right to livestock as many as the trees in Tihāmah, I will share it with you, and you will not find me as a miser, a coward, and a liar.*" The Prophet then stood beside his camel, holding its hump and grain of wheat. He raised a grain of wheat and said: "*O people, by Allah! I am not entitled to your Fay' (spoils of war), nor is this a feather's worth, but one-fifth of it and one-fifth to be distributed among you. Therefore, return the thread and needle because verily ghulūl (cheating) is a disgrace, fire, and stain on the Day of Resurrection.*" Hearing that, the people immediately returned the items they had looted from the loot storage, even if it was something of little value. The Prophet asked Zayd Ibn Thabīṭ to share it after one-fifth of it was set aside first. A person gets a share of the booty worth 1.5 camels, 2.5 sheep, and 10 dirhams, and a prisoner is divided between three people (1/3 the price of a prisoner for one person).³¹

The events of the Ḥunayn War above confirm that money laundering behavior has existed in human life. After the people accused him, the Prophet then explained the source of the wealth, to whom, and for what purpose it was given. Thus, he did not commit the crime of money laundering. He has provided examples of reverse proof of money laundering crimes in his time. Initially, people thought that wealth had been transferred to certain people. The Prophet explained this because they were converts and very influential for their people. The explanation reassured the people.

Second, the principle of fairness

³¹ Shafiyurrahman Al-Mubarakfuri, "Sirah Nabi: Ringkasan Buku Sejarah Nabi Saw Yang Fenomenal, Al-Rahiq Al-Makhtum" (Bandung: Mizan, 2013), 280.

Reverse proof in Islam can show fairness in a trial. In a hadith, the Messenger of Allah asked ‘Alī Ibn Abī Ṭālib to listen to the words of the accuser and the accused before deciding on a case in court. Both were asked to show their evidence.

“Alī ibn Abī Ṭālib said: The Messenger of Allah said to me, if you try a case, then don't give a decision before you have heard the statements of both parties. So that you can understand what decision to issue.”³²

Listening to the testimony of the accuser and the accused is the main essence of the hadith. In the context of the present judiciary, justice for judges in litigation must take precedence. The judge will clarify the evidence to the defendant. He allowed the defendant to present evidence as a refutation of the public prosecutor's evidence. A judge must hear the testimony of the accuser and the accused. Thus it is understood that the judge must be fair in assessing the evidence presented by the accuser and the accused.

Third, the principle of *maqāṣid al-sharī'ah*

Maqāṣid al-sharī'ah is the primary goal of Islamic law manifested in protecting religion, soul, mind, lineage, and property.³³ This principle is one of the principles of reverse proof in Islam. In protecting the soul, a reverse guarantee for murders where the killer is unknown is applied in qasamah (oath). In protecting heredity and soul, the reverse proof was applied to the Ghamidiyah case, where a woman from the Ghamidiyah tribe proved guilty after the judge (Rasulullah) remained silent. Concerning assets, the reverse proof was once carried out by the Prophet after the Ḥunayn War and Abū Hurayrah after their property was investigated by the caliph ‘Umar Ibn Al-

³² Abū ‘Īsā Mu ḥ ammad Ibn ‘Īsā al - Tirmidhī. Al- Tirmidhī, *Al- Jāmi’ Al - Kabīr Li Abī ‘Īsā Mu ḥ Ammad Ibn ‘Īsā Al - Tirmidhī*, vol. V (Beirut: Dār al -Gharb al- Islāmī, 1996), 12.

³³ Alfa Syahriar and Zahrotun Nafisah, “Comparison of Maqasid Al-Sharī’ah Asy-Syathibi and Ibn ‘Ashur Perspective of Usul Al-Fiqh Four Mazhab,” *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 3, no. 2 (2020): 185; Saim Kayadibi, “The State As An Essential Value (Darūriyyāt) of the Maqāṣid Al-Sharī ‘Ah,” *Ahkam: Jurnal Ilmu Syariah* 19, no. 1 (2019): 1–18; Karim Sadek, “Maṣlaḥa and Rachid Al-Ghannushi’s Reformist Project,” in *Maqāṣid Al-Sharī’a and Contemporary Reformist Muslim Thought: An Examination* (Springer, 2014), 151–75.

Khattāb. Thus, reverse proof can be applied to issues related to religion, soul, mind, lineage, and property.

Fourth, the principle of presumption of guilt

The principle of presumption of guilt applies in the judicial mechanism. One example occurred during the time of the caliph ‘Umar Ibn Al-Khattāb. He once carried out activities to record the wealth of state employees. For example, when he is about to appoint a state official, he immediately intervenes to record the candidate's wealth for office. It is called "pre-employment supervision." The purpose of recording pre-employment for prospective officials is to facilitate monitoring of any additional wealth while in office and to facilitate tracking of the source of the increase in wealth.

The addition of an official's assets can be known through the recording of wealth. If it is added illegally and unreasonably, then the competent authority has the right to ask him for reverse evidence. ‘Umar Ibn Al-Khattāb once dismissed Abū Hurayrah, who at that time served as governor of Bahrayn, because he saw that his wealth was not growing normally. The termination was carried out without first going through a court process. Once, Abū Hurayrah visited Medina with 10,000 gold pieces (42.5 Kg of gold). Umar greeted him with a rebuke: "*O enemy of Allah and enemy of His book, did you steal Allah's treasure (state treasure)?*" Abū Hurayrah replied, "*I am not an enemy of Allah, but I am an enemy of those who are enemies of Allah and His book, and I am not a thief of Allah's treasure.*" ‘Umar asked, "*Where did you get the 10,000 dinars from?*" Abū Hurayrah replied, "*My horses have multiplied, the earnings of my slaves have increased, and my share of the spoils of war has increased.*" At that time, all of Abū Hurayrah's property was confiscated by ‘Umar to be investigated, and Abū Hurayrah was sacked. Then Abū Hurayrah prayed, "*O Allah, forgive the Amīrul Mu'minīn!*" Upon inspection, it turned out that Abū Hurayrah had obtained the assets in a lawful way (not corruption). ‘Umar

asked him to return to governorship, but Abū Hurayrah refused. Umar's action is a form of application of the principle of presumption of guilt.

Conclusion

Based on the discussion above, it can be concluded that reversed proof in Indonesian criminal law has similarities with reversed evidence in Islamic law. There are seven reverse-proof principles in positive law: justice, benefits, wealth, evaluating evidence, legality, invisible crime, and the presumption of guilt. Meanwhile, there are four principles of reverse proof in Islamic law: the principle of intention, the principle of fairness, the principle of *maqāṣid sharī'ah*, and the principle of presumption of guilt. Another similarity is that judges in positive law in Indonesia and Islamic law are active. In general, judges in this legal system do not discriminate against litigants in legal cases. The purpose of reverse verification in corruption and laundering crimes is to seek the truth so that justice can be achieved. The differences are that the principle of reverse proof in Islamic law is not solely in cases of corruption and money laundering. However, all *ḥudūd*, *qiṣāṣ* and *ta'zīr* crimes are subject to this system. Second, the principle of intention becomes part of the principle of reverse proof in Islamic law because it is related to divinity. This principle does not exist in the direction of reverse evidence in Indonesian criminal law.

References

- Abd Muhaimin, Abdul Wahab. "Adopsi Hukum Islam Dalam Sistem Hukum Nasional (Studi Tentang UU. No. 1 Tahun 1974 Dan Kompilasi Hukum Islam (KHI) Buku I Tentang Perkawinan)," n.d.
- Abdullah, Abdullah, and Muhammad Hatta. "The Application of the Burden of Proof Concept in Indonesia: A Comparative Study." *Sasi* 28, no. 3 (2022): 458. <https://doi.org/10.47268/sasi.v28i3.1045>.
- Ahmad, Muhammad Mushtaq. "Significant Features of the Ḥanafī Criminal Law." *AFKĀR Research Journal of Islamic Studies* 3, no. 2 (2019): 1–18.
- Al- Tirmidhī, Abū 'Īsā Mu ḥ ammad Ibn 'Īsā al - Tirmidhī. *Al- Jāmi' Al - Kabīr Li Abī 'Īsā Mu ḥ Ammad Ibn 'Īsā Al - Tirmidhī*. Vol. V. Beirut: Dār al -Gharb al- Islāmī, 1996.
- Al-Mubarakfuri, Shafiyurrahman. "Sirah Nabi: Ringkasan Buku Sejarah Nabi Saw Yang Fenomenal, Al-Rahiq Al-Makhtum." Bandung: Mizan, 2013.
- Allen, Jackson. "Rethinking the Relationship between Reverse Burdens and the Presumption of Innocence." *The International Journal of Evidence & Proof* 25, no. 2 (2021): 115–34.
- Analiansyah, M A. "HUKUM PEMBUKTIAN TERBALIK DALAM PERSPEKTIF HUKUM ISLAM." *Al-Mursalah* 2, no. 1 (2018).
- Bahnasi, A F. "Nazariyyah Al-Ithbāt Fī Al-Fiqh Al-Jinā'ī Al-Islāmī." *Kaherah: Dar Al-Syuruq*, 1989.
- Bentham, Jeremy. "Teori Perundang-Undangan Prinsip-Prinsip Legislasi, Hukum Perdata Dan Hukum Pidana." *Bandung: Penerbit Nusamedia & Penerbit Nuansa*, 2006.
- Firmansyah. "Mantan Gubernur Ridwan Mukti Dan Istrinya Divonis 8 Tahun Penjara." *Kompas.com*. Accessed July 4, 2023. <https://regional.kompas.com/read/2018/01/11/19332111/mantan-gubernur-ridwan-mukti-dan-istrinya-divonis-8-tahun-penjara>.
- Fuady, Munir. "Teori Hukum Pembuktian (Pidana Dan Perdata)." *Bandung: Citra Aditya*, 2006.
- Gunawan, Imam. *Metode Penelitian Kualitatif: Teori Dan Praktik*. Bumi Aksara, 2022.
- Hamzah, Andi. "Pemberantasan Korupsi: Melalui Hukum Pidana Nasional Dan Internasional," 2005.
- . "Perbandingan Pemberantasan Korupsi Di Berbagai Negara," 2005.
- Hartanti, Evi. "Tindak Pidana Korupsi Bagian Kedua." *Sinar Grafika, Jakarta*, 2016.
- Hatta, Muhammad, Zulfan Sumiadi, and Dan T Yudi Afrizal. "Ratio Legis Penerapan Beban Pembuktian Terbalik Di Indonesia (Komparasi Hukum Pidana Indonesia Dan Hukum Pidana Islam)," n.d.
- Haykel, Bernard. "Theme Issue: Evidence in Islamic Law." *Islamic Law and Society*, 2002, 129–31.
- Ian McWalters, S C. "Memerangi Korupsi Sebuah Peta Jalan Untuk

- Indonesia.” *JPBooks, Surabaya*, 2006.
- Irman, Tubagus. “Money Laundering Hukum Pembuktian Tindak Pidana Pencucian Uang Dalam Penetapan Tersangka.” *Jakarta: PT Gramedia Pustaka Utama*, 2017.
- Kamalludin, Iqbal. “Restoration of Pancasila Values Against Criminal Law Reform Strategy in Indonesia Political Perspective of Islamic Law.” *Syariah: Jurnal Hukum Dan Pemikiran* 22, no. 1 (2022): 31–47.
- Kamalludin, Iqbal, and B. N. Arief. “Kebijakan Reformasi Maqâshid Al-Syarîah Dan Kontribusinya Dalam Formulasi Alternatif Keringanan Pidana Penjara.” *Al-’Adalah* 15, no. 1 (2019): 181–218. <https://doi.org/http://dx.doi.org/10.24042/adalah.v%vi%i.2931>.
- Kamalludin, Iqbal, and Barda Nawawi Arief. “Kebijakan Formulasi Hukum Pidana Tentang Penanggulangan Tindak Pidana Penyebaran Ujaran Kebencian (Hate Speech) Di Dunia Maya.” *Law Reform* 15, no. 1 (n.d.): 113–29.
- Kamalludin, Iqbal, Hirda Rahma, Aldila Arumita Sari, and Pujiyono. “Politik Hukum Dalam Kebijakan Hukum Pidana LGBT.” *Cita Hukum* 6, no. 2 (2018): 317–42. <https://doi.org/10.15408/jch.v6i2.7805> Abstract.
- Kamalludin, Iqbal, Heris Suhendar, Bunga Desyana Pratami, Alamul Yaqin, and Nur Afifah. “Criminal Law Treats for Online Gambling Performers: Investment Fraud Modes.” *Dialogia Iuridica* 14, no. 1 (2022): 26–51.
- Kayadibi, Saim. “The State As An Essential Value (Ḍarūriyyāt) of the Maqâshid Al-Sharī ‘Ah.” *Ahkam: Jurnal Ilmu Syariah* 19, no. 1 (2019): 1–18.
- Khaldun, Ibn, and Ahmadie Thoha. “Muqaddimah, Jakarta: Pustaka Firdaus; Cet.” VII, 2008.
- Larasati, Genoveva Puspitasari. “Comparison of Law in Indonesia and Singapore Concerning the Eradication of Criminal Acts of Corruption.” *International Journal of Business, Economics and Law* 25 (n.d.): 95–102.
- Lopa, B. *Kejahatan Korupsi Dan Penegakan Hukum*. Penerbit Buku Kompas, 2001. <https://books.google.co.id/books?id=DYfaAAAAMAAJ>.
- Lym, Joshua Ho Fung. “The Reversal of The Burden of Proof.” *Academia* 58, no. 2010 (2015): 23–25.
- McCauliff, Catherine M A. “Burdens of Proof: Degrees of Belief, Quanta of Evidence, or Constitutional Guarantees.” *Vand. L. Rev.* 35 (1982): 1293.
- Pope, Jeremy. *Strategi Memberantas Korupsi: Elemen Sistem Integritas Nasional*. Yayasan Obor Indonesia, 2003.
- Purwadianto, Agus. “Perkosaan Sebagai Pelanggaran Hak Asasi Manusia; Kajian Filosofis Metodologi Pembuktian Hukum.” *Universitas Indonesia*, 2003.
- Rusyd, Ibn. “Bidayah Al-Mujtahid Wa Nihayah Al-Muqtasid.” *Juz II, Beirut: Dâr Al-Jiil, t. Th*, 1989.
- Sadek, Karim. “Maşlahā and Rachid Al-Ghannushi’s Reformist Project.” In

- Maqāṣid Al-Sharī'a and Contemporary Reformist Muslim Thought: An Examination*, 151–75. Springer, 2014.
- Setiadi, Wicipto, and Beniharmoni Harefa. "The Principle of Reversal Burden of Proof in Act of Money Laundering in Indonesia." *International Journal of Innovation, Creativity and Change* 9, no. 7 (2019): 197–209.
- Smith, Bruce P. "The Presumption of Guilt and the English Law of Theft, 1750–1850." *Law and History Review* 23, no. 1 (2005): 133–71.
- Soerjono, Soekanto. "Pengantar Penelitian Hukum." *Universitas Indonesia, Jakarta*, 1986.
- Syahriar, Alfa, and Zahrotun Nafisah. "Comparison of Maqasid Al-Shari'ah Asy-Syathibi and Ibn 'Ashur Perspective of Usul Al-Fiqh Four Mazhab." *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 3, no. 2 (2020): 185–97.
- Tapper, Colin. "The Law of Evidence and the Rule of Law." *The Cambridge Law Journal* 68, no. 1 (2009): 67–89.

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