



The Application of the Burden of Proof Concept in Indonesia: A Comparative Study

Abdullah¹, Muhammad Hatta^{2*}

¹ Faculty of Sharia Institut Agama Islam Negeri Lhokseumawe, Lhokseumawe, Indonesia.

² Faculty of Law Malikussaleh University, Lhokseumawe, Indonesia.

 : delicten@yahoo.com

Corresponding Author*

Submitted: 2022-07-25

Revised: 2022-08-30

Published: 2022-10-13



Article Info

Keywords:

Application; Draft; Burden; Proof; Reverse; Indonesia; Comparative Study.

Abstract

Introduction: One of the reasons for a reverse proof system is the difficulty of proving the offenses committed by certain perpetrators of a criminal offense, such as corruption and money laundering. Thus, the government issues the legal policy to apply a reverse burden of proof to solve this problem.

Purposes of the Research: This study aims to analyze the application of the reverse burden of proof in Indonesian and Islamic criminal law.

Methods of the Research: This research is legalistic, doctrinal, or normative, using a comparative law approach to compare the application of a reverse burden of proof in Indonesian criminal law and Islamic criminal law.

Results of the Research: The application of a reverse burden of proof in Indonesia is limited and balanced (balanced probability of principles) as regulated in Article 37 of Law no. 31 of 2019 in conjunction with Law No. 20 of 2000 concerning the Eradication of Corruption Crimes and Article 35 of Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. In Islamic criminal law, the application of a reverse burden of proof has long been carried out, as seen in Surah Al-Nisa verse 135 and the story of Prophet Yusuf's proof of Zulaikha's accusation in Surah Yusuf verses 24-29, and several hadiths of the Prophet Muhammad. These two legal systems are similar in terms of the application of a reverse burden of proof that is only applied to certain cases, such as corruption and money laundering. However, the difference is that the application of a reverse burden of proof in Indonesian criminal law is limited and balanced. In contrast, the principle of a reverse burden of proof against corruption cases in Islamic criminal law is absolute.

1. INTRODUCTION

Conventionally, the party with the obligation to prove is the Public Prosecutor. In the trial, the Public Prosecutor is in charge of proving the offense of the crime perpetrators. It is in line with the general principle of proof; that is, the plaintiff is the one who has an obligation to prove.¹ Therefore, in a court of law, the party who has the authority to sue is the public prosecutor, so they must prove the truth of what they are accused of against the perpetrators.

¹ Marwan Effendy, *Sistem Peradilan Pidana Tinjauan Terhadap Beberapa Perkembangan Hukum Pidana* (Jakarta: Referensi Jakarta, 2012), p. 23.

Abdullah, Muhammad Hatta, "The Application of the Burden of Proof Concept in Indonesia: A Comparative Study"

The suspects or defendants do not have an obligation to prove the offense they have committed because they are instead entitled to the right to deny or refute the charges they are accused of.² This system of proof is called the ordinary burden of proof system. It means that the burden of proof to prove the crime and the offense of the suspect rests entirely with the public prosecutor. In this case, the defendant or his legal advisor is only given the right to answer and deny all demands of the Public Prosecutor based on the available evidence.³

In Indonesia, the suspect or defendant is not burdened with the obligation of proof because the Indonesian legal system adheres to the principle of presumption of innocence, the obligation of proof is for the public prosecutor.⁴ Therefore, the public prosecutor plays an important role in convincing the judge to decide based on the evidence submitted before the court session. In the ordinary burden of proof system, the method of using evidence applied is based on Law Number 8 Year applies 1981 concerning the Criminal Code Procedure (KUHAP) without exception, which is to prove all elements of a criminal offense by using evidence that refers to the minimum requirements of proof.

However, this proof system is challenging for the Public Prosecutor to prove the defendant's offense, especially for certain crimes, such as corruption, money laundering, corporate crimes, banking crimes, etc. All these crimes are classified as white-collar crimes, and some are even classified as extraordinary crimes.⁵ These two crimes tend to be difficult to prove because they involve complex bureaucracy, sophisticated technology, and crimes committed by professional groups.⁶ Therefore, a new proof system has emerged to ensnare the perpetrators, namely the reverse burden of the proof system to address the development of these crimes.

In Indonesian criminal law, the reverse burden of the proof system is applied carefully and only for certain criminal offenses. The consequence of implementing this system is that it conflicts with the presumption of innocence adopted in the Indonesian procedural law system. Therefore, the application of the reverse burden of the proof system in Indonesia is not absolute but limited or the balanced reverse burden of the proof system.⁷ It is indicated in Law no. 31 of 1999, which was later revised by Law no. 20 of 2001 concerning the Eradication of Criminal Offenses of Corruption, and Law no. 8 of 2010 concerning the Prevention and Eradication of the Criminal Offense of Money Laundering.

Long before Indonesian criminal law implemented a limited reverse burden of the proof system for certain criminal offenses, Islamic criminal law implemented an absolute reverse burden of the proof system.⁸ Although generally, Islamic criminal law places the burden of proof on the Public Prosecutor, in certain circumstances, this obligation can be transferred to the defendant. Concerning the concept and implementation, there are similarities and differences in the application of the reverse burden of the proof system in

² Kukun Abdul Syakur Munawar, "Pembuktian Terbalik Sebagai Kebijakan Kriminal Dalam Penanganan Tindak Pidana Korupsi," *Jurnal Hukum* 5, no. 2 (2017): 224–45.

³ Supriyadi Widodo Eddyono, "Verification Reversed Imposition, and It's Challenges," *Legislasi Indonesia* 8, no. 2 (2013): 267–80.

⁴ Hamilton Hart, "Anti Corruption Strategies in Indonesia," *Bulletin of Indonesia Economic Studies* 37, no. 1 (2001): 65–88.

⁵ Schaap Cees, *Fighting Money Laundering* (London: Kluwer Law International, 1998), p. 41.

⁶ Muhammad Hatta, "Kejahatan Luar Biasa: Extra Ordinary Crime," *Unimal Press*, vol. 1, (2019): 45.

⁷ E. O. S Hiarij, *Pembuktian Terbalik Dalam Pengembalian Aset Kejahatan Korupsi* (Yogyakarta: Universitas Gadjah Mada, 2012), p. 45.

⁸ Analiansyah, "Hukum Pembuktian Terbalik Dalam Perspektif Hukum Islam," *Jurnal Al-Murshalah* 2, no. 1 (2016): 38–52.

Indonesian and Islamic criminal law. Therefore, this study compares the reverse burden of proof system between Indonesian criminal law and Islamic criminal law.

2. METHOD

This research is legalistic, doctrinal, or normative. Normative research aims to find, explain, study, analyze and systematically present certain facts, principles, concepts, theories, and laws to find new knowledge and ideas recommended as a change or renewal.⁹ This study examined all documents, references, facts, theories, doctrines, and laws related to the reverse burden of proof according to Islamic and Indonesian criminal law. This study employed a comparative law approach. The comparative law approach studies the relationship between the legal systems of a country or compares the legislation between different legal systems in the world.¹⁰ It aims to compare the reverse burden of the proof system in Indonesian criminal law and Islamic criminal law.

3. RESULTS AND DISCUSSION

3.1 Definition of Proof

Proof is a paramount aspect of law enforcement. A person cannot be convicted before a fair process of proof and trial. The word proof derives from "prove" in English or is called *bewijs* in Dutch, which means "everything that serves to convince someone's thinking about the truth or falsity of an uncertain case."¹¹ The proving process attempts to find the truth rather than a legal event. Through the proof process, the actions of a suspect can be accepted by common sense if a sentence is imposed on the defendant.¹²

In the aspect of criminal code procedure, the law of proof is a provision that limits court proceedings to find and defend the truth; judges, public prosecutors, defendants, or legal advisors, are all bound by the provisions of the procedure and assessment of evidence stipulated by law. They must not use their way of assessing evidence. If they use evidence, it must not conflict with the law. The defendant cannot defend something he deems true outside the provisions outlined by law. The panel of judges, in particular, must be aware and careful in assessing and considering the strength of the evidence found during the trial examination. If the panel of judges wishes to put the truth found in the decision, that truth must be tested with evidence, in a manner and with the strength of evidence attached to each evidence. Otherwise, the suspects will likely escape and innocent people to be punished.¹³

In addition, the term "evidence" originates from the Latin, evidens, and evidere, which means to show clearly, to make clear to the sight, to discover clearly, to make plainly certain, to ascertain, to prove.¹⁴ The evidence is something stating the truth of an event, its truth, witnesses, and signs of evil deeds. Andi Hamzah defined evidence as items to ensure the truth of a proposition, stance, and indictment. Evidence is an effort to prove through items allowed to be used to prove the arguments or, in criminal cases, indictments before a

⁹ A. Yaqin, "Legal Research and Writing," *Malayan Law Journal* 1 (2018): 10.

¹⁰ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Prenanda Media Group, 2017), p. 41.

¹¹ Hamid Ibrahim, *Law of Evidence* (Kuala Lumpur: Central Law Book Corporation Sdn. Bhd, 1993), p. 95.

¹² Martiman Prodjohamidjojo, *Komentar Atas KUHAP: Kitab Undang-Undang Hukum Acara Pidana* (Jakarta: Pradnya Paramitha, 1984), p. 90.

¹³ Bastianto Nugroho, "Peranan Alat Bukti Dalam Perkara Pidana Dalam Putusan Hakim Menurut KUHAP," *Yuridika* 32, no. 1 (2017): 21-25.

¹⁴ Augustine Paul, "Evidence-Practice and Procedure," *Malayan Law Journal* 5 (2003): 540.

court, for example, the defendant's testimony, testimony, expert testimony, letters, instructions, and also including allegations and oaths.¹⁵

Proof of guilt or innocence of a defendant must be through examination in a court. Darwan Prinst stated, "Concerning the evidence, the judge needs to consider the interests of the community and the interests of the defendant. The public interest means that a person violating the law must be punished according to his offense. The defendant interest means that he must be treated fairly in such a way that the innocent one should not be punished, or if he is proved to be guilty, he should not be sentenced with too severe punishment, but it must be equal to his offense."¹⁶

The measuring tool in the theory of proof consists of six main points, as follows:¹⁷

- a) The basis of evidence that is concluded in consideration of the court's decision to obtain the correct facts (*bewijsgonden*);
- b) Items of evidence used by judges to get an overview of past criminal offenses (*bewijsmiddelen*);
- c) Description of how to present items of evidence to the judge in court (*bewijsvoering*);
- d) The strength of evidence in each item of evidence in the assessments of the proof of an indictment (*bewijskracht*);
- e) The burden of proof required by law to prove the indictment before a court hearing (*bewijslast*);
- f) The minimum evidence required to prove to bind the judge's freedom (*bewijsminimum*).

Based on the opinions of the above legal experts, it can be concluded that proof is a process of how items of evidence can be used in a trial following the applicable procedural law. So, proof serves to confirm the criminal offense committed by the defendant, free the defendant from unproven charges and punish him/her based on proven criminal charges. On the other hand, the items of evidence serve to assist the course of proof in a trial. The function of the items also depends on the strength of each evidence. If items of evidence do not accompany the proof, the proving procedure is null and void by law.

3.2 Burden of Proof.

In the aspect of law enforcement, who or which institution has the burden or obligation to prove the defendant's guilt. The burden of proof is to burden someone to prove someone's guilt by presenting evidence, documents, and arguments before the court. Siti Zalikhah argued that the burden of proof is the responsibility that lies with the party accusing someone of committing an offense harming him.¹⁸ If someone postulates a fact, she/he must prove it to convince the court of the existence of the fact.¹⁹ Gabbo David Byrne interpreted the burden of proof as a responsibility to present evidence to the court related to the case following the stage of evidence required.²⁰

¹⁵ Nugroho, "Peranan Alat Bukti Dalam Perkara Pidana Dalam Putusan Hakim Menurut KUHAP." *Yuridika* 1, no. 32 (2017): 21-25.

¹⁶ Darwan Prints, *Hukum Acara Pidana Dalam Praktik* (Jakarta: Djambatan, 1998), p. 45.

¹⁷ Bambang Purnomo, *Pokok-Pokok Tata Cara Peradilan Indonesia* (Jogjakarta: Liberti, 2004), p. 17.

¹⁸ Siti Zalikhah Haji Md Nor, *Beberapa Aspek Dalam Undang-Undang Keterangan Islam*, 3rd ed. (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2006), p. 67.

¹⁹ Zulfakar Ramlee Saad, *Pembuktian Dalam Kes Jenayah Syariah Malaysia: Isu Dan Penyelesaian (Proving Cases in Syariah Courts: Issues and Resolutions)* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2008), p. 102.

²⁰ J. A Gabbo David Byrne, *Cross on Evidence* (Singapore: Tien Wah Press, 1980), p. 102.

From the criminal code procedure point of view, the burden of proof lies with the Public Prosecutor. The burden of proof in a criminal case will be the responsibility of the public prosecutor and will not be transferred to the defendant during the trial in court. However, the defendant also must prove his case to refute or deny any facts that the Public Prosecutor has indicted against him.²¹ In a criminal trial, the judge provides an opportunity for both parties to submit various items of evidence and examine them before the court.²²

The above principle of proof is adopted by Indonesia through Law no. 8 of 1981 concerning the Criminal Code Procedure, stating that "whoever makes an accusation is the one who is burdened with proving that what is being accused is true". This principle arises from presumption of innocence as an important principle in the Criminal Code Procedure. This principle is stipulated in Article 8 of Law no. 4 of 2004 concerning Judicial Power, stating that everyone is considered innocent until a court decision proves his guilt with permanent legal force.

Ashaf bin Md. Hashim mentioned that, in principle, the burden of proof in criminal cases is always on the public prosecutor. Hayt and Groeschel also shared a similar view that in almost all criminal cases, the burden of proof lies with the public prosecutor.²³ However, Ruzman Noor and Mohd Istajib had a contrasting view that under certain circumstances, the burden of proof can be transferred to the defendant.²⁴ In the case of *Adetunji Adeleye Suli v Raya* as the plaintiff (1993, 3 CLJ 113), the judge ruled that a person is accused of carrying a bag containing narcotics or the like must prove that the bag owner is not his.²⁵

This principle has developed into a reverse burden of proof system, where the burden of proving the guilt lies on the shoulders of the defendant, not the public prosecutor. This transfer of the burden of proof must follow various criteria and not apply to all crimes. Therefore, the reverse burden of proof is only applied to certain crimes, such as white-collar and extraordinary crimes.

3.3 Reverse Burden of Proof in Indonesian Criminal Law

In simple terms, the reverse burden of proof system or theory is that the entire burden of proof (preparing witnesses, experts, letters, and instructions) is the defendant's obligation. However, this proof system is only applied to certain offenses. In Indonesia, it applies to the offense of corruption and money laundering. However, corruption offenses do not apply a complete reverse burden of proof system but a balanced probability of principles.

Transferring the responsibility for the burden of proof to the defendant is often referred to as the reverse burden of proof (*omkering van het bewijslast*). The reverse proof system is used for Anglo Saxon countries and aims to facilitate proof for "certain cases" or certain cases that are specific in nature. Thus, the burden of proof is limited to specific and

²¹ Ahmad 'Azam Mohd Shariff, "Syariah Prosecution Procedure: Analysis on Legal Provisions under Syariah Criminal Procedure (Federal Territories) Act 1997 and Syariah Criminal Courts (Federal Territories) Act 1997," *Jurnal Undang-Undang & Masyarakat* 15 (2011): 1–18.

²² TR. Hidma, *Pitlo Het Nederlands Burgerlijk Recht Deel 7 Bewijs Achtste Druk* (Kluwer: Deventer, 2004), p. 18.

²³ Ashraf Bin Md. Hashim, "Tahap Pembuktian Di Dalam Kes-Kes Jenayah: Kajian Perbandingan Antara Undang-Undang Islam Dan Sivil," *Jurnal Syariah* 9, no. 2 (2001): 19.

²⁴ Ruzman Noor and Istajib Mokhtar, "Ulasan Kes Dari Aspek Pembuktian: Rosmah Binti Suly & Seorang Yang Lain Lwn. Ismail Bin Mohamad & Seorang Yang Lain [JH 32/2, JUN 2011, 223]," *Jurnal Kanun* 26, no. 1 (2015).

²⁵ Hayt Groeschel, *Law of Hospital, Physician and Patient* (Physician's Record Company: Berwyn, 1972), p. 67.

difficult to prove cases. Due to the difficulty if the case, this system is adopted contrary to universal principles regarding the proof.²⁶

Some scholars equate the term reverse burden of proof and the shifting burden of proof. However, the two terms are different. The shifting burden of proof is defined as "shifting the burden of proof," and the reverse burden of proof is defined as "reversal of the burden of proof." This proof system provides an opportunity for the defendant to prove that he is not guilty of committing a criminal offense of corruption. If the statement of a person or defendant is true, the judge can consider the information to benefit the defendant or can harm the defendant if the information is not true.

From the theoretical aspect, there is the limited or balanced reverse burden of proof and absolute reverse burden of proof. The balance reverse proof system means that even though the defendant has proven himself innocent, the Public Prosecutor is obliged to prove the defendant's guilt under certain conditions before the court. In a pure reverse burden of proof, the defendant has the right to prove that he is innocent, but if the defendant fails to prove it, the judge can impose a sentence on him. Seno Adji believed that a pure or absolute reverse burden of proof in the Indonesian legal system only exists in corruption offenses, specifically for the gratification and reporting of state administrators' assets.²⁷

Shopian Kasim stated that reverse proof is when the public prosecutor only proves the defendant's assets and the assets of other people or institutions resulting from the defendant's unlawful acts. The defendant must prove whether the property belongs to the defendant and whether the property (if it belongs to him) is not from a crime or unlawful act or does not damage the country's economy.²⁸ So, the most important job of the prosecutor is to register the wealth of the defendant, who by law is declared to be the corrupted property. In contrast, the defendant must prove that the property is not from corruption.

In addition, Luhut MP Pangaribuan argued that reverse proof means that the entire burden of proof (preparing witnesses, letters, and experts) is the responsibility of the defendant. It means that the Public Prosecutor just charges someone who, for example, based on the prosecutor's judgment, is too rich considering his monthly salary. He will be found guilty of corruption and punished if he cannot prove otherwise.²⁹ The reverse proof principle is almost similar to the procedure applied in the UK and Malaysia since 1961, called the prevention of corruption act, following the principle of presumption of corruption, meaning that the person accused of corruption is considered that he had been proven guilty of committing a crime.

Based on the previous description, in the reverse proof system, the most important task of the public prosecutor is to register the defendant's assets that, by law, are declared corrupt assets or proceeds from money laundering. The defendant must prove that the assets are the property of a crime; if the defendant fails to prove, it can be considered that there is strong evidence that the defendant has committed a corruption offense.³⁰ Thus, if the reverse proof system is implemented, investigators, without legal evidence, can bring

²⁶ Indriyanto Seno Adji, *Korupsi Dan Permasalahannya* (Jakarta: Diadit Media Press, 2012), p. 11.

²⁷ Indriyanto Seno Adji, "Perspektif Perbuatan Melawan Hukum Terhadap Tindak Pidana Korupsi," *Jurnal Hukum Pro Justitia* 25, no. 4 (2007): 283–304.

²⁸ Shopian Kasim, *Money Laundering Dan Pembuktian Terbalik* (Jakarta: Republika, 1998). p. 65.

²⁹ M. P. Luhut Pangaribuan, "Sistem Pembuktian Terbalik," *Kompas*, April (2001): 1-2.

³⁰ T. Gayus Lumbun, *Menerobos Goa Hantu Peradilan Indonesia* (Jakarta: Busines Information Service (BIS), 2004), p. 8.

the suspect of corruption to court. In court, the defendant must prove that his wealth does not originate from corruption. Thus, the task of the prosecutor as a public prosecutor is easier.

The reverse proof system is also applied to money laundering crimes, as regulated in Law number 25 of 2003, concerning Money Laundering offense. Article 35 stipulates that for a court hearing, the defendant must prove that his assets are not the result of a criminal offense. Article 35 also stated that the defendant is allowed to prove that his assets do not originate from a criminal offense. This provision is known as the principle of reverse proof.

Furthermore, Law Number 31 of 1999, in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal offense of corruption, also explicitly regulates the implementation of a limited or balanced reverse proof system, which, if applied seriously, is good enough to eradicate corruption. The application of the proof system is strengthened by the existence of a wealth reporting system regulated in Government Regulation number 65 of 1999 concerning Procedures for Examination of State Administration Assets as the implementation of Law number 28 of 1999 concerning the Implementation of a Clean and Free State from Corruption, Collusion and Nepotism.

Article 37 of Law Number 31 of 1999, in conjunction with Law Number 20 of 2001, stipulates that:

- (1) The defendant has the right to prove that he has not committed a criminal offense of corruption;
- (2) If the defendant can prove that he has not committed a criminal offense of corruption, then the information is used to his advantage;
- (3) The defendant must provide information regarding all his assets and the assets of the spouse, children, and the property of any person or corporation suspected of related to the case;
- (4) If the defendant cannot prove that the wealth is not balanced with his income or the source of his additional wealth, the information can be used to expand the items of evidence that the defendant has committed a criminal offense of corruption;
- (5) In the circumstances as referred to in paragraphs (1), (2), (3), and (4), the public prosecutor is obliged to prove his indictment.

The above provisions were further strengthened in the amendment to the corruption law in 37A of Law no. 20 of 2001 concerning the Eradication of Corruption offense, which stipulates that:

- (1) The defendant must provide a statement of all his assets and the property of the spouse, children, and the property of any person or corporation suspected of having a relationship with the case;
- (2) If the defendant cannot prove that the wealth is not balanced with his income or the source of additional wealth, the information referred to in paragraph (1) is used to strengthen the items of evidence that the defendant has committed a criminal offense of corruption;
- (3) The provisions as referred to in paragraphs (1) and (1) constitute a criminal offense or the main case as referred to in Articles 2, 3, 4, 13, 14, 15, and 16 of Law Number 31 1999 concerning the Eradication of Criminal offense of Corruption and Articles 5 to 12 of this law means that the Public Prosecutor is still obliged to prove the charges.

The legal politics of the legislation policy concerning the reverse burden of proof is also regulated in Article 38B paragraph (1) of Law Number 20 of 2001, stipulating that "everyone accused of committing one of the criminal offenses of corruption as referred to in Article 2, 3, 4, 13, 14, 15 and 16 of Law Number 31 of 1999 concerning the Eradication of Criminal offenses of Corruption and Article 5 to 12 of this Law, are required to prove otherwise against his property which has not been charged but is also suspected of originating from corruption".

The provisions of this Article are a reverse burden of proof that is specifically focused on the confiscation of property strongly suspected of originating from corruption. However, this confiscation of assets does not apply to the provisions of Article 12B paragraph (1) letter a of Law Number 20 of 2001, but to perpetrators charged with a principal crime. As stipulated in Law Number 20 of 2001, the reverse burden of proof can be described as the guilt of people strongly suspected of committing a criminal offense of corruption as stipulated in Article 12B and Article 37 of Law Number 20 of 2001.

The ownership of the assets of the perpetrators strongly suspected of the corruption result is regulated in the provisions of Articles 37A and 38B, paragraph (2) of Law Number 20 of 2001. In short, the legal politics of legislation policy against corruption offenses is aimed at the offenses of the perpetrators and the property of perpetrators suspected of corruption. If analyzed carefully, the Indonesian legal politics regarding the legislative policy on the reverse burden of proof, especially the provisions of Article 12B of Law Number 20 of 2001, is controversial or can even be said to be a legislative policy error in formulating norms for the reverse burden of proof in the offense of bribery or gratification studied from the perspective of criminal law.

3.4 Reverse Proof in Islamic Law

In Islamic law, a person will be responsible for proving an indictment (*Mudda'i*) he has made. In a hadith of Prophet Muhammad PBUH, it is stated, "Proof is an obligation for the Plaintiff, Oath is an obligation for the defendant (Narrated by al-Turmuzi). Based on this hadith, it is obligatory for the person accusing another person to prove the truth of his claim. However, it does not mean that the defendant cannot prove his innocence. It is done to avoid doubt because the proof system in Islam is based on the principle of clarity and avoiding ambiguity.

The Prophet Muhammad PBUH said, "When two disputing parties sit in front of you, do not ever decide before you hear (information) from the other party (second party) as you hear (information) from the first party because it will further clarify the judicial process that you hold (Narrated by Ahmad, Abu Daud, and Turmizi). The hadith indicates that reverse proof can also be applied in Islam because there is no limit to the testimony in the process of proving. The testimony must be from both parties. It is intended to achieve clarity in a case.

In Islamic law, two approaches are proposed by *al-Madzhaib al-Tsalatsah* in discussing the application of the reverse proof system, namely the *al-qadha 'bima yazh-haru min qara'* in *al-ahwal wa al-amarat* approach. In the approach with the concept of *al-qadha 'bima yazh-haru min qara'* in *al-ahwal wa al-amarat*, legal decisions are based on conditional indications and *zahir* (clear) signs. This approach ignores the concept of *al-Madzhaib al-Tsalatsah* where a judge's decision is based on evidence submitted by the public prosecutor in court (*bayyinatu al-mudda'iy*) or an oath by the defendant (*yaminu al-mudda'a' alayhi*). Instead, this approach

is based on *qara'in al-ahwal wa al-amarat al-zhahirah*, meaning that proof is based on tradition and clear signs.

This concept originated from Imam Malik's *al-qa'idah al-ushuliyyah*, who accepted the *munasib mursal* or *al-mashalih al-mursalah*, namely benefits without the law but can be implemented. In this concept, a person can be charged with the law without having clear evidence but based on clear signs to a judge. The application of this concept can be seen in the case of Prophet Yusuf. He was declared right if his shirt was torn at the back and guilty if his shirt was torn in front, without having to have a witness or oath (Surah Yusuf, Verse: 24-29).

Based on the above concept, if an official or former official is accused of corruption or other crimes based on unbalanced wealth and income. The accusation is due to *qarinah* or *amarah zhahirah* in the form of his position enabling a transit for state finances used for personal interests in the status of corruption. Hence, the person becomes the suspected (*muttahaam*) of misappropriating the state finances or abusing his power to extract such personal gain.

In Islamic history, the caliph Umar (may Allah please with him) once confiscated the wealth of Abu Hurairah. However, it is unclear whether the confiscation was done after Abu Hurairah could not prove the origin of his wealth or without allowing Abu Hurairah a chance to prove the source of his wealth.³¹ According to history, when Abu Hurairah returned from Bahrain with 4,000 dinars. He went to the Caliph Umar bin Khattab. Umar asked one of the companions of the narrator of the hadith whether he had wronged anyone. Abu Hurairah said no. The caliph asked whether Abu Hurairah took the rights of others. He denied. Umar also asked how much money was brought by Abu Hurairah. The Prophet's companion replied that he had brought 20 thousand dinars. Umar asked; where did he get that much money from? Abu Hurairah replied he got the money from trading profits.³²

The actions of the caliph Umar were a form of reverse proof of the source of a person's funds suspected of originating from unlawful acts. In the story, Abu Hurairah proved everything that Umar questioned as not true at all. The proof was carried out directly by Abu Hurairah by mentioning the source of the acquisition of his funds or assets. Based on the history, it can be concluded that the application of the principle of reverse proof is not new in Islamic criminal law.

In Indonesia, the Indonesian Ulema Council (MUI) has issued a fatwa, created in the Decision of the VIII MUI National Deliberation. The fatwa stipulates that in certain legal cases, such as embezzlement, corruption, and money laundering, the principle of reverse proof is permissible if an indication of a criminal act is found. The Fatwa of the Indonesian Ulema Council Number 01/MUNAS-VIII/MUI/2010 dated 13 Sha'ban 1431 H or 27 July 2010 has stipulated the Application of the Principle of Reverse Proof as follows:³³

- a) A person cannot be found guilty until there is a confession (*iqrar*) or other evidence showing that a person is guilty, in line with the principle of presumption of innocence.

³¹ Abu Yazid, *Fiqh Realitas* (Yogyakarta: Pustaka Pelajar, 2015), p. 115.

³² Gazali Rahman, "Asas Pembuktian Terbalik Dalam Tindak Pidana Korupsi (Perspektif Hukum Pidana Indonesia Dan Hukum Pidana Islam)," *Tahkim: Jurnal Hukum Dan Syariah* XV, no. 2 (2019): 235–45.

³³ Majelis Ulama Indonesia, *Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975* (Jakarta: Erlangga, 2011), p. 1-5.

- b) The obligation to prove is on the investigators and prosecutors, while the oath is for those who deny it.
- c) In certain legal cases, such as embezzlement, corruption, and money laundering, it is permissible to apply the principle of reverse burden of proof if an indication (*amarat al-hukm*) is found so that proof of the untruth of the accusation is charged to the defendant.

The MUI fatwa refers to several references: the Qur'an, hadith, and *fiqh* (Islamic jurisprudence) rules. One of the arguments used in creating the MUI Fatwa is Surah an-Nisa: 135, meaning: "O you who have believed, be persistently standing firm in justice, witnesses for Allāh, even if it be against yourselves or parents and relatives. Whether one is rich or poor, Allah is more worthy of both. So follow not [personal] inclination, lest you not be just. And if you distort [your testimony] or refuse [to give it], then indeed Allāh is ever, of what you do, Aware."

The above verse contains legal instructions that the testimony also aims to prove the truth against oneself from the accusations of other parties. Testimony against oneself (*walaw 'ala anfusikum*) in a court trial indicates reverse proof where the defendant can testify before the judge that he did not commit the wrongdoing as alleged.³⁴ If a corruption offense case, a person who is accused of committing corruption can testify for himself that the assets acquired so far are not from the offense. Mustafa al-Zarqa argued that if a state official has assets with unclear sources, it indicates that he has committed treason and corruption.³⁵ Therefore, he may be fired, and the property may be confiscated as long as he cannot prove the source of his wealth.

4. CONCLUSION

Proof in Islamic criminal law is identical to the conventional principle adopted in Indonesian criminal law, where the Public Prosecutor must prove the defendant's guilt. In Islamic criminal law, this proof is based on the hadith of the Prophet Muhammad PBUH, meaning "If humans were allowed to sue (freely), then they would demand blood and other property, but the person who was prosecuted had to swear an oath (Narrated by Baihaqi). This hadith implies that the oath is charged to the defendant, while the evidence is the responsibility of the plaintiff. So, in the Islamic criminal code procedure, the prosecutor is responsible for proof because every matter is based on facts, and whoever denies them is obligated to prove it. Hence, the judge must grant the prosecutor and defendant equal rights to provide evidence of the case. In Indonesian criminal law, the principle of proof above is ruled out for certain cases that are difficult to prove, such as corruption and money laundering. To overcome the obstacles to eradicating corruption offenses, the government applies the principle of the reverse burden of proof, where the one with an obligation to prove the offense is not the Public Prosecutor but the defendant. The reverse burden of proof has been regulated in Article 37 of Law no. 31 of 2019 in conjunction with Law No. 20 of 2000 concerning the Eradication of Corruption Crimes and Article 35 of Law no. 8 of 2010 concerning the Prevention and Eradication of Money Laundering. On the other hand, in Islamic criminal law, the concept of the reverse burden of proof has long been applied, as indicated in Surah Al-Nisa: 135 and the story of the proof of the Prophet Yusuf on the accusation of Zulaikha in Surah Yusuf verses 24-29 and several hadiths of the Prophet

³⁴ Anshoruddin, *Hukum Pembuktian Menurut Hukum Acara Islam Dan Hukum Positif* (Yogyakarta: Pustaka Pelajar, 2014), p. 89.

³⁵ Mustafa Ahmad Al-Zarqa, *Al-Madkhal Al-Fiqhi Al-'Am*, II (Beirut: Matba'ah Tharban, 1986), p. 1053.

Muhammad PBUH. The similarity between these two legal systems is that the reverse burden of proof is only applied to certain cases.

REFERENCES

Journal Article

- Adji, Indriyanto Seno. "Perspektif Perbuatan Melawan Hukum Terhadap Tindak Pidana Korupsi." *Jurnal Hukum Pro Justitia* 25, no. 4 (2007): 283–304. <https://doi.org/10.20885/jhpj.vo25.iss4.art6>.
- Analiansyah. "Hukum Pembuktian Terbalik Dalam Perspektif Hukum Islam." *Jurnal Al-Murshalah* 2, no. 1 (2016): 38–52. <https://doi.org/10.18196/jam.vo2.i1.217>.
- Eddyono, Supriyadi Widodo. "Verification Reversed Imposition And It's Challenges." *Legislasi Indonesia* 8, no. 2 (2013): 267–80. <https://doi.org/10.54629/jli.v8i2.358>.
- Hart, Hamilton. "Anti Corruption Strategies in Indonesia." *Buletin of Indonesia Economic Studies* 37, no. 1 (2001): 65–88. <https://doi.org/10.1080/000749101300046519>.
- Hashim, Ashraf Bin Md. "Tahap Pembuktian Di Dalam Kes-Kes Jenayah: Kajian Perbandingan Antara Undang-Undang Islam Dan Sivil." *Jurnal Syariah* 9, no. 2 (2001): 13-32. <https://doi.org/10.22452>.
- Hatta, Muhammad. *Kejahatan Luar Biasa: Extra Ordinary Crime*. Unimal Press. Vol. 1, 2019. <https://doi.org/10.1017/CBO9781107415324.004>.
- Munawar, Kukun Abdul Syakur. "Pembuktian Terbalik Sebagai Kebijakan Kriminal Dalam Penanganan Tindak Pidana Korupsi." *Jurnal Hukum* 5, no. 2 (2017): 224–45. <http://dx.doi.org/10.25157/jigj.v5i2.820>.
- Noor, Ruzman, and Istajib Mokhtar. "Ulasan Kes Dari Aspek Pembuktian: Rosmah Binti Suly & Seorang Yang Lain Lwn. Ismail Bin Mohamad & Seorang Yang Lain [JH 32/2, JUN 2011, 223]." *Jurnal Kanun* 26, no. 1 (2015). <http://dx.doi.org/10.30821/kanun.v26i1.121>.
- Nugroho, Bastianto. "Peranan Alat Bukti Dalam Perkara Pidana Dalam Putusan Hakim Menurut KUHAP." *Yuridika* 32, no. 1 (2017): 21-25. <https://doi.org/10.20473/ydk.v32i1.4780>.
- Paul, Augustine. "Evidence-Practice and Procedure." *Malayan Law Journal* 5 (2003): 540.
- Rahman, Gazali. "Asas Pembuktian Terbalik Dalam Tindak Pidana Korupsi (Perspektif Hukum Pidana Indonesia Dan Hukum Pidana Islam)." *Tahkim: Jurnal Hukum Dan Syariah* XV, no. 2 (2019): 235–45. <http://dx.doi.org/10.33477/thk.v15i2.2702>.
- Shariff, Ahmad 'Azam Mohd. "Syariah Prosecution Procedure: Analysis on Legal Provisions under Syariah Criminal Procedure (Federal Territories) Act 1997 and Syariah Criminal Courts (Federal Territories) Act 1997." *Jurnal Undang-Undang & Masyarakat* 15 (2011): 1–18.
- Yaqin, A. "Legal Research and Writting." *Malayan Law Journal SDN BHD* 1 (2007): 10.

Book

- Adji, Indriyanto Seno. *Korupsi Dan Permasalahannya*. Jakarta: Diadit Media Press, 2012.
- Al-Zarqa, Mustafa Ahmad. *Al-Madkhal Al-Fiqhi Al-'Am*. II. Beirut: Matba'ah Tharban, 1986.

- Anshoruddin. *Hukum Pembuktian Menurut Hukum Acara Islam Dan Hukum Positif*. Yogyakarta: Pustaka Pelajar, 2014.
- Byrne, J. A Gabbo David. *Cross on Evidence*. Singapore: Tien Wah Press, 1980.
- Cees, Schaap. *Fighting Money Laundering*. London: Kluwer Law International, 1998.
- Diantha, I Made Pasek. *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*. Jakarta: Prenanda Media Group, 2017.
- Effendy, Marwan. *Sistem Peradilan Pidana Tinjauan Terhadap Beberapa Perkembangan Hukum Pidana*. Jakarta: Referensi Jakarta, 2012.
- Groeschel, Hayt. *Law of Hospital, Physician and Patient*. Physician`s Record Company: Berwyn, 1972.
- Hiariej, E. O. S. *Pembuktian Terbalik Dalam Pengembalian Aset Kejahatan Korupsi*. Yogyakarta: Universitas Gadjah Mada, 2012.
- Hidma, TR. *Pitlo Het Nederlands Burgerlijk Recht Deel 7 Bewijs Achtste Druk*. Kluwer: Deventer, 2004.
- Ibrahim, Hamid. *Law of Evidence*. Kuala Lumpur: Central Law Book Corporation Sdn. Bhd, 1993.
- Kasim, Shopian. *Money Laundering Dan Pembuktian Terbalik*. Jakarta: Republika, 1998.
- Lumbun, T. Gayus. *Menerobos Goa Hantu Peradilan Indonesia*. Jakarta: Busines Information Service (BIS), 2004.
- Majelis Ulama Indonesia. *Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975*. Jakarta: Erlangga, 2011.
- Nor, Siti Zalikah Haji Md. *Beberapa Aspek Dalam Undang-Undang Keterangan Islam*. 3rd ed. Kuala Lumpur: Dewan Bahasa dan Pustaka, 2006.
- Prints, Darwan. *Hukum Acara Pidana Dalam Praktik*. Jakarta: Djambatan, 1998.
- Prodjohamidjojo, Martiman. *Komentar Atas KUHAP: Kitab Undang-Undang Hukum Acara Pidana*. Jakarta: Pradnya Paramitha, 1984.
- Purnomo, Bambang. *Pokok-Pokok Tata Cara Peradilan Indonesia*. Jogjakarta: Liberti, 2004.
- Saad, Zulfakar Ramlee. *Pembuktian Dalam Kes Jenayah Syariah Malaysia: Isu Dan Penyelesaian (Proving Cases in Syariah Courts: Issues and Resolutions)*. Kuala Lumpur: Dewan Bahasa dan Pustaka, 2008.
- Yazid, Abu. *Fiqh Realitas*. Yogyakarta: Pustaka Pelajar, 2015.