

The Corruption Reduction with an Administrative Law Approach: Evidence from Australia



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ABSTRACT

The reverse burden of proof mechanism shifts the responsibility to the fraudster to prove that his wealth did not come from corruption. This system raises concerns regarding justice, legal certainty, and the protection of human rights. This research aims to analyze the application of reverse evidence in criminal and criminal acts of corruption in procuring goods and services from the perspective of state administrative law. Reversal of the burden of proof in criminal acts of corruption is essential to eradicate corruption in Indonesia. From the standpoint of state administrative law, reverse evidence functions as a monitoring tool to prevent abuse of authority by public officials and ensure the implementation of the principles of good governance, namely transparency, accountability, and integrity in the procurement of goods/services. The novelty of this study lies in its proposal to explicitly clarify the balance of evidentiary obligations between the public prosecutor and the defendant in reversing the burden of proof under Law No. 20 of 2001, ensuring fair legal certainty and protection of human rights. Indonesia can adopt Australia's Proceeds of Crime Act 2002 approach, enabling asset seizure from suspected corruption without conviction, to enhance accountability and recover state losses effectively.



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1. Introduction

The formation of the Indonesian state had nothing but a noble goal, namely encouraging and creating general prosperity within the umbrella of the Unitary State of the Republic of Indonesia based on Pancasila.¹ These aims or ideals are reflected in the preamble to the 1945 Constitution of the Republic of Indonesia in the 4th (fourth) paragraph, namely: To form an Indonesian State Government that protects all Indonesian pride and all Indonesian bloodshed and to promote general welfare, to educate the nation's life and participate in implementing a world order based on freedom, eternal peace, and social justice.² Law is quite

¹ Rudi Santoso and Agus Hermanto, 'Analisis Yuridis Politik Hukum Tata Negara (Suatu Kajian Tentang Pancasila Dan Kebhinnekaan Sebagai Kekuatan Negara Kesatuan Republik Indonesia)', *Nizham Jurnal Studi Keislaman*, 8.1 (2020), 125–35 <https://doi.org/https://doi.org/10.32332/nizham.v8i01.2093>

² Khaidir, 'Analisis Yuridis Pembalikan Beban Pembuktian Pada Tindak Pidana Korupsi', *Rio Law Journal*, 1.1 (2020), 1–10 <https://doi.org/https://doi.org/10.36355/rlj.v1i1>

essential in the lives of the nation and state. The legal ideals of the Indonesian nation and state are the main ideas contained in the preamble to the 1945 Constitution to build an independent, united, just, and prosperous country. That legal ideal is Pancasila.³

Indonesia's national development strategy ⁴ is to eradicate poverty and ignorance. Efforts to tackle "poverty" and "ignorance" together are carried out seriously, both by the government, community leaders, social bodies, and so on. As a planned effort, of course efforts have been made to be as efficient and effective as possible with limited funds and capabilities. However, while development was being carried out actively, news emerged about the rise in corruption cases, which is carried out with increasingly sophisticated modus operandi. The development of technological functions such as computers, the growth of banks that carry out money laundering practices, increasingly make legal violations, especially corruption, increasingly complex. To carry out government functions, it cannot be denied that the state needs a bureaucratic identity (bureaucracy is a government system that is run based on strict rules).

Laws are trying to be created to regulate society so that if a violation occurs, certain appropriate punishments can be imposed. ⁵ However, the implementation process is not as smooth as we imagined because there are still shortcomings. Both in terms of regulations, enforcement officers, and technological developments so that the modus operandi of corruption is more sophisticated than what is stated in the regulations. But at least for the current period, we can use this rule as a reference to eradicate corrupt practices. To make it easier to identify corruption problems, understanding the existing regulations is very necessary without ignoring the strategic steps that must be taken to eradicate it. To determine whether an act is corruption, you must understand several things related to corruption.⁶

Corruption has become a culture, a stigma that is difficult to eradicate, which has long been attached to the personality of this nation. Almost everyone in

³ Sabir Alwi Randika Fitrah Darmawan, Slamet Sampurno Soewondo, 'Penggunaan Asas Beban Pembuktian Terbalik Sebagai Penyelesaian Perkara Kesalahan Yang Dilakukan Oleh Dokter', *SASI*, 27.2 (2021), 136–48 <https://doi.org/10.47268/sasi.v27i2.426>

⁴ Wayan G. Santika and others, 'Implications of the Sustainable Development Goals on National Energy Demand: The Case of Indonesia', *Energy*, 196 (2020) <https://doi.org/10.1016/j.energy.2020.117100>

⁵ M. Taufiq, 'Konsep Dan Sumber Hukum: Analisis Perbandingan Sistem Hukum Islam Dan Sistem Hukum Positif', *Istidlal: Jurnal Ekonomi Dan Hukum Islam*, 5.2 (2021), 87–98 <https://doi.org/10.35316/istidlal.v5i2.348>

⁶ & Diyan Isnaeni, Sofiatul Istiqomah, Abdul Rokhim, 'Kebijakan Hukum Pidana Dalam Pertanggung Jawaban Korporasi Yang Melakukan Tindak Pidana Korupsi.', *Al Daulah : Jurnal Hukum Pidana Dan Ketatanegaraan*, 12.2 (2023), 278–97 <https://doi.org/https://doi.org/10.24252/ad.vi.43642>

Indonesia has committed corruption.⁷ Statements like this can easily be found when discussing corruption with every Indonesian citizen. This expression, which seems simple but is full of heavy and sad content, requires a collective consensus to change this stigma. Many aspects cause the formation of this stigma, including society being too apathetic to initiate steps to eradicate corruption. Another possibility is that the stigma is deliberately built continuously, in a pattern, and propagated by parties who have interests or are partial to the status quo. From a different point of view, regarding the assumption that corruption is not a cultural problem of the Indonesian nation because not everyone has the opportunity to commit corruption. Corruption is a matter of power or a culture of power.⁸

Development of State Administrative Law and Criminal Law⁹ has entered the "Gray Area" or gray area whose boundaries are blurred by all the technical difficulties of the criminal process, and even today it still raises debate among criminal law experts, legal practitioners and academics. The decisions of government officials, whether in the context of belief or *vrijbsbestuur* or in the context of discretion (*freies ermessen*), have become an arena for academic study to be used as reasons for rejection or justification for punishment in criminal law jurisdictions. The debate also cannot be separated from government officials who are deemed to be breaking the law or abusing their authority, which will be used as a touchstone for assessing the actions in question, State Administrative Law or Criminal Law, especially in cases of criminal acts of corruption. Understanding related to determining jurisdiction is still very limited in judicial practice.¹⁰

The debate over jurisdiction between State Administrative Law and Criminal Law directly involves the provisions governing corruption offenses, particularly Article 2 paragraph (1) and Article 3 of Law No. 31 of 1999 on the Eradication of Corruption Crimes, as amended by Law No. 20 of 2001 (the PTPK Law). Article 2 paragraph (1) defines corruption as an unlawful act, while Article 3 addresses the abuse of authority by officials, especially if government officials and academics commit these two offenses, is still being debated whether they should fall under the jurisdiction of State Administrative Law or Criminal Law.

Specifically, according to Tatiek Sri Djatmiati, in the context of State Administrative Law, criminal acts of corruption constitute the personal

⁷ Afdhal Fadhila Fajri Kurniawan, Muhammad Syammakh Daffa Alghazali, 'Determinasi Upaya Pemulihan Kerugian Keuangan Negara Melalui Peran Kejaksaan Terhadap Perampasan Aset Tindak Pidana Korupsi', *Jurnal Hukum Lex Generalis*, 3.7 (2022), 565–88 <https://doi.org/https://doi.org/10.56370/jhlg.v3i7.279>

⁸ Pratama, 'Penegakan Hukum Terhadap Korupsi Di Era Modernisasi Digital.', *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum*, 3.1 (2024), 91–104 <https://doi.org/https://doi.org/10.55681/seikat.v3i1.1227>

⁹ Yuslim Hendri Joni, Elwi Danil, 'Studi Tentang Divergensi Hukum Pidana Dengan Hukum Administrasi Dalam Tindak Pidana Korupsi', *UNES Law Review*, 6.1 (2023), 2287–2301 <https://doi.org/https://doi.org/10.31933/unesrev.v6i1.1011>

¹⁰ Muhammad Fazry, 'Persinggungan Hukum Administrasi Negara Dengan Hukum Pidana Dalam Penyelesaian Perkara Korupsi.', *SCIENTIA: Journal of Multi Disciplinary Science*, 2.1 (2023), 28–42 <https://doi.org/https://doi.org/10.62394/scientia.v2i1.47>

responsibility of officials, primarily characterized by abuse of power and arbitrariness (unreasonableness). She explains that when elements of abuse of power and unreasonableness are present, they indicate maladministration and, consequently, unlawful acts for which the responsible official is personally accountable. Similarly, Indriyanto Seno Adji notes that criminal acts of corruption generally involve the deviant and reprehensible use of authority inherent in the positions of civil servants or government officials. Adami Chazawi further elaborates that corrupt practices have become increasingly sophisticated, often disguised through seemingly legitimate public policies, thereby obscuring their unlawful nature from public scrutiny.

A good understanding of the position of Criminal Law and State Administrative Law is necessary because this is important for law enforcement officials, especially Judges, in examining and adjudicating Corruption Crime cases in order to hand down fair decisions.¹¹ Bearing in mind that corruption is an extraordinary crime committed by white collar crimes, so to eradicate it requires extraordinary legal instruments. The reverse verification system is a form of extraordinary legal instrument that was formed to deal with the problem of rampant corruption in Indonesia. In the explanation of Law no. 31 of 1999 explains that the reverse evidence system used is limited and balanced, namely, the defendant has the right to prove that he has not committed a criminal act of corruption and is obliged to provide information regarding all his assets, his wife's or husband's assets, children and property. any person or corporation suspected of having a connection with the case in question.

Reverse evidence in the context of corruption ¹² is an important issue related to law enforcement in both state administrative law and criminal law. Reverse evidence is a mechanism where the defendant is required to prove that his assets were obtained legally, in contrast to the general principle where the prosecutor must prove the defendant's guilt. In corruption criminal law, reverse evidence is regulated in several statutory regulations, such as in Article 37A of Law no. 20 of 2001 concerning Eradication of Corruption Crimes. In state administrative law, reverse evidence can also be applied, especially in relation to proof of gratification and abuse of authority.

One of the key legal instruments to combat corruption is the reversal of the burden of proof mechanism, as regulated under Article 37A of Law No. 20 of 2001. This mechanism shifts the responsibility to the defendant to prove that their wealth does not originate from corruption. While this system is described as "limited and balanced," it raises concerns regarding fairness, legal certainty, and

¹¹ Kartono Suhendar, 'Kerugian Keuangan Negara Telaah Dalam Perspektif Hukum Administrasi Negara Dan Hukum Pidana', *Jurnal Surya Kencana Satu : Dinamika Masalah Hukum Dan Keadilan*, 11.2 (2020), 233–46 <https://doi.org/https://doi.org/10.32493/jdmhkdmmhk.v11i2.8048>

¹² Rashedul Hasan and Muhammad Ashfaq, 'Corruption and Its Diverse Effect on Credit Risk: Global Evidence', *Future Business Journal* 2021 7:1, 7.1 (2021), 1–13 <https://doi.org/10.1186/S43093-021-00060-1>

human rights protection, particularly when the public prosecutor's obligation to provide evidence is not explicitly addressed. Additionally, the distinction between "providing information" and "proving" remains ambiguous in Article 37A, further complicating its implementation.¹³

Research conducted by Dian Adriawan Daeng Tawang and Rini Purwaningsih with the title *Burden of Proof Reverse as A Solution to Eradicate Bribery in Criminal Acts of Corruption*. The reverse system, on the one hand, makes it easier to prove if someone is accused of bribery or receiving gratuities. Facilitating means being more in favor of and in favor of the Prosecutor. On the other hand, the reverse system can be very beneficial for the defendant and detrimental to the prosecutor. This can happen because in the reverse system the prosecutor is passive in proving. The reverse system must be used in major cases with the following conditions: (1) civil servants or state officials are suspected of having received bribes, especially from many parties, for a long time and many times, (2) acceptance of such bribes is difficult to prove, for example when receiving a bribe, from whom the bribe is and how much of each, (3) which causes or makes his wealth abundant, (4) which is not balanced with salary or other legal sources of income.¹⁴

Aulia Rahman Hakim and Indra Utama Tanjung conducted research titled "The Principle of the Reverse Burden of Proof in Corruption Crimes within the Indonesian Legal System." Their study highlights that the reversal of the burden of proof creates a significant dilemma, particularly concerning property rights, which fundamentally require protection and respect. The research also evaluates the effectiveness of this evidentiary mechanism in reducing corruption crimes and its deterrent impact on potential offenders. Apart from that, a comparison of approaches between preventing corruption and imposing heavier sanctions to recover state losses was also discussed. The findings show that, although the system of reversal of the burden of proof has been implemented, challenges in its implementation are still relevant, especially in ensuring that this approach does not conflict with human rights principles. emphasizes that reversal of the burden of proof can be an effective tool in eradicating corruption, as long as it is carried out by taking into account the balance between the need to repair state losses and protecting the human rights of the accused. Recommendations are aimed at improving the legal framework that supports the effective implementation of reversal of the burden of proof, which integrates legal, social and human rights aspects more harmoniously. The aim of this research is to analyze the application of reverse evidence in cases of criminal acts of corruption and to analyze reverse

¹³ Soeleman Djaiz Baranyanan, Nilam Firmandayu, and Ravi Danendra, 'The Compliance of Regional Autonomy with State Administrative Court Decisions', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 2.1 (2024), 35–52 <https://doi.org/10.53955/jsderi.v2i1.25>

¹⁴ Rini Purwaningsih Dian Adriawan Daeng Tawang, 'Burden of Proof Reverse as A Solution to Eradicate Bribery in Criminal Acts of Corruption', *International Journal of Social Service and Research (IJSSR)*, 2.9 (2022), 832–40 <https://doi.org/https://doi.org/10.46799/ijssr.v2i9.160>

evidence in criminal acts of corruption in the procurement of goods and services from the perspective of state administrative law.

2. Research Method

This research is normative in the form of a literature study on regulations, research journals, literature related to corruption, procedural law on corruption, and research results on bribery in assumptions that have been made previously.¹⁵ In the data analysis, a review of statutory regulations governing criminal law policies and state administrative law will be carried out in reversing evidence of criminal acts of corruption. The data in the form of research will be analyzed deductively in order to arrive at a final conclusion that will answer all the main problems in this research.¹⁶

3. Results and Discussion

The Application of Reverse Evidence in Corruption Crime Cases

Indonesia's failure to develop the principles of good and clean government, as regulated in Law Number 28 of 1999 concerning the Administration of a State that is Clean and Free from Corruption, Collusion and Nepotism, is largely due to the lack of optimal implementation of reversal. burden of proof. Even though the reversal of the burden of proof is very relevant to preventing criminal acts of corruption, through the State Officials' Wealth Report (*LHKPN*), as regulated in Article 5 paragraph (2) of Law Number 28 of the Year states that: "Every state administrator is obliged to be willing to have his assets examined before, during and after taking office". Judging from the consequences and negative impacts it causes, corruption is very detrimental to the fabric of national life. Corruption is a deprivation of the economic and social rights of the Indonesian people, even perpetrators of corruption can be said to be enemies of the nation and at the same time traitors to the Indonesian nation.

Considering that corruption in Indonesia occurs systematically and so widely that it not only harms state finances but also violates society's social and economic rights, eradicating corruption needs to be carried out in extraordinary ways. Thus, criminal acts of corruption must be eradicated uniquely, including applying a reverse proof system, namely proof that is charged to the defendant. However, in the Criminal Code (*KUHP*), the obligation to prove is borne entirely by the Public Prosecutor; this is by the evidentiary provisions regulated in the Criminal Code (*KUHP*) Chapter XVI, part four (Articles 183-232) so that the principle of reverse evidence in the criminal procedural law system in Indonesia is not regulated.

¹⁵ Said Nurhayati, Ifrani, 'Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum', *Jurnal Penegakan Hukum Indonesia*, 2.1 (2021), 1-20
<https://doi.org/https://doi.org/10.51749/jphi.v2i1.14>

¹⁶ Bas Schotel, 'Administrative Law as a Dual State. Authoritarian Elements of Administrative Law', *Hague Journal on the Rule of Law*, 13 (2021), 195-222
<https://doi.org/https://doi.org/10.1007/s40803-021-00156-4>

In 1971, Law No. 3 of 1971 on the Eradication of Corruption was enacted, followed by Law No. 31 of 1999 on the Eradication of Corruption Crimes, which introduced a limited reverse burden of proof system. This mechanism is provided for in Article 37, which permits the application of reverse proof with respect to certain assets and the confiscation of assets suspected to be derived from corruption. Both Law No. 3 of 1971 and Law No. 31 of 1999, in principle, continue to adhere to the negative evidence theory, which requires proof beyond a reasonable doubt. Subsequently, Law No. 20 of 2001, which amends Law No. 31 of 1999, introduced a more comprehensive evidentiary framework through the implementation of a balanced and reverse burden of proof system. The reverse burden of proof is more clearly regulated in Articles 12B, 12C, 37, 37A, 38A, and 38B, particularly in relation to illicit enrichment and asset recovery.

Based on the provisions of article 26 of law no. 20 of 2001 concerning the eradication of criminal acts of corruption,¹⁷ most evidentiary provisions in criminal corruption cases remain governed by the general evidentiary rules stipulated in the Indonesian Criminal Procedure Code. However, specific evidentiary provisions—particularly those concerning corruption—are regulated separately under Law No. 31 of 1999, as amended by Law No. 20 of 2001 on the Eradication of Criminal Acts of Corruption. These provisions introduce unique aspects of evidentiary law not addressed in the general code, especially regarding the types of materials judges may consider as indicative evidence and the implementation of a reverse burden of proof system. Legal scholars, practitioners, and observers have widely discussed the government's efforts to combat corruption. One recurring issue concerns the manipulation of provisions related to state losses as an element of proof in corruption cases, which has allowed many defendants to evade prosecution by returning the embezzled funds to the state. Another major challenge is the difficulty faced by prosecutors in proving that the defendant caused financial losses to the state and that their assets are the proceeds of corruption.¹⁸

In a limited and balanced system of reverse evidence, the information given by the defendant to prove his innocence cannot be used as evidence of the defendant's statement. In contrast, in pure reverse evidence in article 37 of Law no. 21 of 2001, the defendant's statement can be used as a basis for decision-making by the judge. However, considering the provisions of Article 189, paragraph (1) of the Criminal Procedure Code, the information given before the trial is used as evidence for the defendant's statement. Even though the provisions of Article 189 paragraph (4) state that the defendant's statement alone is not enough.

In general, criminal procedural law provisions stipulate that the burden of proof in general criminal cases is handed over to the prosecutor, while criminal

¹⁷ Ade Paranata, 'The Miracle of Anti-Corruption Efforts and Regional Fiscal Independence in Plugging Budget Leakage: Evidence from Western and Eastern Indonesia', *Heliyon*, 8.10 (2022), e11153 <https://doi.org/10.1016/j.heliyon.2022.e11153>

¹⁸ Romli Atmasasmita.

acts of corruption as special criminal acts have an exceptional nature and also have a special nature, both in relation to material and formal criminal judges. This is based on the provisions of Article 63 Paragraph (2) of the Criminal Code: "if an act which has been regulated in a general criminal provision is also regulated by a special criminal provision, then this special criminal provision must be applied." The principle is *lex specialis derogate legi generali*. Andi Hamzah recommends that the terms used are general criminal legislation and special criminal legislation.¹⁹ What is meant by general criminal legislation is the Criminal Code and all legislation that amends and supplements the Criminal Code. Special criminal legislation is all legislation outside the Criminal Code and its complementary legislation, both criminal legislation and non-criminal legislation but which carries criminal sanctions.

The application of reverse evidence in corruption cases is one of the strategies used to strengthen the eradication of corruption,²⁰ especially in the case of proving that wealth is unreasonable or disproportionate to the defendant's legitimate income. This principle aims to impose part of the responsibility on the defendant to prove that the wealth or assets owned do not come from the proceeds of criminal acts of corruption. In criminal law, the party who accuses (the prosecutor) must prove that the defendant is guilty. However, in corruption cases, after the prosecutor provides sufficient initial evidence, the defendant must prove that the wealth owned was obtained legally. The defendant must show the origin of the assets owned and confirm that the assets were lawfully obtained, for example, through income from work, inheritance, or other legitimate sources. Even though there is a reverse evidentiary principle, the prosecutor must still provide sufficient preliminary evidence to show that the defendant is involved in a criminal act of corruption or has improper wealth.²¹

The corruption often assets obtained illegally, reverse evidence is an effective tool to unearth the origins of the wealth owned by the defendant. The application of reverse evidence helps reduce the difficulty of prosecutors in proving in detail the entire flow of funds or assets obtained from criminal acts of corruption,²² especially if the criminal acts were committed behind closed doors or in a complicated manner.

¹⁹ T Erwinsyahbana Jarot Yusviq Andito, Alpi Sahari, 'Perlindungan Hukum Korban Penyalahgunaan Narkotika Melalui Double Track System', *Legalitas: Jurnal Hukum*, 14.1 (2022), 1–10 <https://doi.org/10.33087/legalitas.v14i1.276>

²⁰ Yuni Priskila Ginting and others, 'Pembuktian Terbalik Dalam Pemeriksaan Tindak Pidana Korupsi', *Jurnal Pengabdian West Science*, 2.10 (2023), 973–94 <https://doi.org/10.58812/JPWS.V2I10.657>

²¹ Riskyanti Juniver Siburian, dan Denny Wijaya, and Info Artikel Abstrak, 'Korupsi Dan Birokrasi: Non-Conviction Based Asset Forfeiture Sebagai Upaya Penanggulangan Yang Lebih Berdayaguna', *Jurnal Penegakan Hukum Dan Keadilan*, 3.1 (2022), 1–16 <https://doi.org/10.18196/JPHK.V3I1.12233>

²² Romain Ferrali, 'Partners in Crime? Corruption as a Criminal Network', *Games and Economic Behavior*, 124 (2020), 319–53 <https://doi.org/10.1016/J.GEB.2020.08.013>

Regulations concerning reverse evidence in corruption cases involving the procurement of goods and services in Australia are supported by the common law legal system, which upholds the presumption of innocence. In practice, corruption-related evidence in Australia often involves provisions that require defendants to explain the origin of wealth or assets suspected to have been obtained unlawfully. For instance, the Australian Criminal Code Act 1995, particularly Chapter 4, governs corruption involving public officials and procurement processes. In cases where there are indications of abuse of office or violations of procurement regulations, the burden may shift to the defendant to demonstrate that their actions did not constitute corruption or legal misconduct. This evidentiary mechanism is intended to strengthen efforts to reduce corruption by enhancing the accountability of individuals holding strategic public positions.

In addition, laws such as the Proceeds of Crime Act 2002²³ provide a legal basis for confiscating assets suspected of originating from criminal acts, including corruption. In these cases, the individuals involved may be asked to prove that their assets were obtained legally. When defendants fail to provide sufficient evidence to verify the legitimacy of their assets, the state may confiscate those assets. This approach demonstrates Australia's commitment to the "follow the money" principle in combating corruption, especially within the public sector. Moreover, independent institutions such as the Australian Federal Police (AFP) and the Independent Commission Against Corruption (ICAC) actively support Australia's regulatory framework by investigating and prosecuting corruption cases.²⁴ These institutions are tasked with investigating corruption cases, including in the government goods and services procurement sector. They often use reverse verification mechanisms to strengthen efforts to eradicate corruption. Even though defendants have the right to defend themselves, the obligation to provide explanations regarding suspicious assets and wealth is one effective way to suppress corrupt practices.

In Indonesia, reverse evidence in cases of criminal acts of corruption is regulated in Article 12B and Article 37A of Law no. 20 of 2001 concerning Eradication of Corruption Crimes.²⁵ This regulation specifically requires defendants to prove that their assets do not come from criminal acts of corruption, especially in cases of gratification or improper wealth. This system is also based on the principle of presumption of innocence, but its application tends to be more

²³ Zoe Staines and others, 'Governing Poverty: Compulsory Income Management and Crime in Australia', *Critical Criminology*, 29.4 (2021), 745–61 <https://doi.org/10.1007/S10612-020-09532-2/METRICS>

²⁴ Michael King, 'Out of Obscurity: The Contemporary Private Investigator in Australia', <https://doi.org/10.1177/1461355720931887>, 22.3 (2020), 285–96 <https://doi.org/10.1177/1461355720931887>

²⁵ Hamdan Rampadio, Ana Fauzia, and Fathul Hamdani, 'The Urgency Of Arrangement Regarding Illicit Enrichment In Indonesia In Order To Eradication Of Corruption Crimes By Corporations', *Jurnal Pembaharuan Hukum*, 9.2 (2022), 225–41 <https://doi.org/10.26532/JPH.V9I2.17625>

explicit and is often used to impose responsibility on the defendant. In practice, law enforcement in Indonesia faces various challenges, including a lack of transparency, partiality, or political pressure that can affect the independence of law enforcement agencies.

Another major difference is in the institutional approach. In Australia, institutions such as ICAC²⁶ have a high level of independence and broad powers to investigate without political interference. Meanwhile in Indonesia, despite having a strong Corruption Eradication Commission (KPK), its independence is often debated, especially in the context of regulatory changes and political pressure. Apart from that, Australia places more emphasis on a proactive approach such as monitoring assets from the start of office through wealth declarations, while Indonesia still focuses on a repressive approach by disclosing cases after a crime has occurred.

The Corruption Reduction with an Administrative Law Approach

Procurement activities for goods/services that are routinely carried out by the government are one of the important activities in implementing development and community services. In implementing development and community services, all government agencies (Ministries, Institutions and Regional Governments) need goods or services. To obtain goods/services, this is done through Procurement. The final procedures for procurement of government goods/services are regulated in Presidential Regulation (*Perpres*) No. 16 of 2018 concerning Guidelines for Procurement of Government Goods/Services, which was last amended in Presidential Regulation No. 12 of 2021 concerning the First Amendment to Presidential Decree No. 16 of 2018. In office there is always a connection with the authority given.²⁷

To be able to carry out the process of procuring government goods and services well,²⁸ The government issued Presidential Decree Number 157 of 2014 concerning the Government Goods/Services Procurement Policy Institution (LKPP). The role of LKPP in relation to the national and global economy is clearly very crucial because this institution can encourage the rate of investment in Indonesia. In addition, the level of trust in state institutions will increase. LKPP as a non-ministerial government institution that is responsible to the President has a supervisory role in enforcing regulations for the procurement of goods and services. The role of legal institutions/instruments in enforcing all legal provisions

²⁶ Marie J. Dela Rama, Michael E. Lester, and Warren Staples, 'The Challenges of Political Corruption in Australia, the Proposed Commonwealth Integrity Commission Bill (2020) and the Application of the APUNCAC', *Laws* 2022, Vol. 11, Page 7, 11.1 (2022), 7 <https://doi.org/10.3390/LAWS11010007>

²⁷ Adolop Seleky and others, 'Kewenangan Penetapan Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi', *PATTIMURA Legal Journal*, 1.1 (2022), 44–59 <https://doi.org/10.47268/PELA.V1I1.5928>

²⁸ Muhammad Iqbal, 'Pengaruh Pelaksanaan E Katalog Dalam Pengadaan Barang/Jasa Pemerintah Terhadap UMKM', *JURNAL USM LAW REVIEW*, 3.1 (2020), 77–97 <https://doi.org/10.26623/JULR.V3I1.2204>

that apply to the procurement of government goods/services must be carried out with a strong commitment, because it will be very difficult if the legal institutions/instruments that enforce these regulations do not have good moral strength and are unable to take action. risks from law enforcement.

Procurement procedures for goods/services ²⁹ regulated in Presidential Regulation (*Perpres*) no. 12 of 2021 is a government administrative regulation that regulates the procurement planning process, procurement preparation, the process of selecting goods/services providers, determining goods/services providers, and the implementation and handover of goods/services. However, in the procurement of goods/services activities, there are several abuses of authority carried out by authorized officials with an element of deliberate intent, namely cheating, usually carried out by Selected Working Groups and Commitment Making Officials (PPK) to gain more profits, such as doubling the price of goods or services without doing so. re-checking which causes a lot of losses to the country and this creates a negative view.³⁰

Procurement procedures for goods/services regulated in Presidential Regulation (*Perpres*) no. 12 of 2021 is a government administrative regulation that regulates the procurement planning process, procurement preparation, the process of selecting goods/services providers, determining goods/services providers, and the implementation and handover of goods/services. However, in goods/services procurement activities, there are several abuses of authority carried out by authorized officials with an element of deliberate intent, namely cheating, usually carried out by Selected Working Groups and Commitment Making Officials (PPK) to gain more profits, such as doubling the price of goods or services without doing so. re-checking which causes a lot of losses to the country and this creates a negative view. The close relationship between administrative actions and criminal acts of corruption cannot be separated solely by certain legal rules. This can be seen as a framework for efforts to eradicate criminal acts of corruption.

From the perspective of State Administrative Law, the use of reverse evidence in corruption cases involving the procurement of goods and services directly reflects the need to supervise the administrative actions of public officials and the bureaucratic processes they manage. In this context, state officials and institutions must carry out their actions in accordance with legal norms and the principles of good governance. These principles such as transparency, accountability, and integrity must guide officials when they plan, implement, and oversee procurement activities, to prevent the misuse of authority and acts of corruption.

²⁹ Yelena Kalyuzhnova, Dina Azhgaliyeva, and Maksim Belitski, 'Public Policy Instruments for Procurement: An Empirical Analysis', *Technological Forecasting and Social Change*, 176 (2022), 121472 <https://doi.org/10.1016/J.TECHFORE.2022.121472>

³⁰ Imam Budi Santoso Mutiara Komalasari, 'Mekanisme Penyelesaian Perselisihan Hubungan Industrial Melalui Jalur Arbitrase', *JUSTITIA : Jurnal Ilmu Hukum Dan Humaniora*, 9.5 (2022), 2340–51 <https://doi.org/www.dx.doi.org/10.31604/justitia.v9i5.2340-2351>

Procurement of goods and services by the government is an area that is prone to criminal acts of corruption,³¹ because it involves large public funds and involves many parties, including state officials, goods/service providers, and the community. Several things that are of concern from the perspective of state administrative law are: Transparent and Accountable Procedures. Procurement must be carried out openly, with clear and transparent regulations, and high accountability. Every stage, from planning, tendering, to contract implementation, must comply with applicable regulations. Abuse of Authority: One form of criminal act of corruption³² that often occurs in the procurement of goods and services is the abuse of authority by state officials to obtain personal or certain group benefits. State administrative law plays a role in regulating the limits of this authority.³³

The legal basis is Article 37 A of Law No. 20 of 2001 concerning the Eradication of Corruption Crimes³⁴ which regulates that criminals are required to prove that their wealth does not come from criminal acts of corruption. Presidential Regulation No. 12 of 2021 concerning Government Procurement of Goods/Services regulates procurement procedures which must follow the principles of transparency, accountability and free of corruption.³⁵ There are 4 articles regulating the reversal of the burden of proof in the Anti-Corruption Law (article 12B paragraph 1, article 37, article 37A and article 38B).

The regulations in article 12 B paragraph 1 of Law no. 20 of 2001 concerning the Eradication of Corruption Crimes does not expressly state that the public prosecutor is still obliged to prove whether the recipient of the gratification³⁶ actually received the gratification. Bearing in mind that evidence is in the realm of formal law or procedural law, it is appropriate that the regulations be regulated clearly and firmly to minimize the existence of multiple interpretations, and it is feared that this will have implications for incompatibility of application with the substance of the nature of the regulations related to the reversal of the burden of proof.

³¹ Program Studi and others, 'Korupsi Dalam Pengadaan Barang Dan Jasa Di Pemerintah Daerah', *Jurnal Transformative*, 6.2, 2020–2127 <https://doi.org/10.21776/ub.transformative.2020.006.02.1>

³² M. Yusuf and others, 'Illicit Enrichment in Corruption Eradication in Indonesia: A Future Strategy', *Jurnal Media Hukum*, 31.2 (2024), 224–43 <https://doi.org/10.18196/JMH.V31I2.22304>

³³ Reza Octavia Kusumaningtyas and James Kalimanzila, 'The Impact of Tax Incentive on Increase Foreign Direct Investment', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 1.2 (2023), 51–63 <https://doi.org/10.53955/jsderi.v1i2.7>

³⁴ Yasmirah Mandasari Saragih, 'Comparison of Eradication Concepts Corruption Criminal Acts in Indonesia and Japan', *Journal of Law and Sustainable Development*, 11.3 (2023), e712 <https://doi.org/10.55908/sdgs.v11i3.712>

³⁵ Hufron and Sultoni Fikri, 'The Urgency of Regulating Forfeiture of Assets Gained from Corruption in Indonesia', *Legality: Jurnal Ilmiah Hukum*, 32.2 (2024), 292–310 <https://doi.org/10.22219/LJIH.V32I2.35243>

³⁶ Deddy Mursanto, La Ode Muhammad Karim, and Mashendra Mashendra, 'Effectiveness to the Reversal of the Burden Proof System in Handling Corruption Case', *Jurnal Hukum Volkgeist*, 5.1 (2020), 14–20 <https://doi.org/10.35326/VOLKGEIST.V5I1.863>

The meaning of "having rights" Article 37 of Law no. 20 of 2001 concerning the Eradication of Corruption Crimes,³⁷ it is important to understand that the law does not require the defendant to present evidence. The defendant has the discretion to decide whether to challenge the accusations. When the defendant chooses to provide evidence against the public prosecutor's claims, this action still aligns with the concept of reversing the burden of proof. This approach appropriately balances legal certainty and the comprehensive protection of human rights. At the same time, the public prosecutor remains obligated to prove the charges, ensuring fairness and due process in the legal system.³⁸ Furthermore, if this explanation refers to Article 37 of the Corruption Law (as regulated in Law No. 20 of 2001), it confirms that the regulation of the reverse burden of proof is both limited and balanced in nature.

The phrase in Article 37 A of Law no. 20 of 2001 concerning the Eradication of Corruption Crimes "providing information" is different from the phrase "proving", emphasizing that if the defendant cannot prove (in this case based on the defendant's statement, not based on the entire evidentiary process) then this is used to "strengthen the evidence already exists" that the defendant has committed a criminal act of corruption.³⁹ Furthermore, regarding the obligations of the public prosecutor, it has been emphasized that the public prosecutor is still obliged to provide evidence.

Bearing in mind the formulation of article 38 B of Law no. 20 of 2001 concerning the Eradication of Corruption Crimes⁴⁰ does not strictly and clearly regulate the public prosecutor's obligation to provide evidence, so it is feared that if the interpretation is understood that the public prosecutor is not burdened with the obligation to prove and the regulation tends to impose too much of the obligation of proof on the defendant so that it appears unfair (in relation to the defendant's obligation to prove assets that have not been charged).

In the criminal act of corruption in the procurement of goods and services,⁴¹ reverse evidence can be applied particularly in cases involving the wealth of officials or parties engaged in the procurement process. This principle requires the

³⁷ Shubhan Noor Hidayat, Lego Karjoko, and Sapto Hermawan, 'Discourse on Legal Expression in Arrangements of Corruption Eradication in Indonesia', *Journal of Indonesian Legal Studies*, 5.2 (2020), 391–418 <https://doi.org/10.15294/JILS.V5I2.40670>

³⁸ Ricki Azis Dzaki, 'Legal Certainty of Measurement and Mapping of Land Basic Maps', *Jurnal Hukum*, 38.2 (2022), 155–65 <https://doi.org/10.26532/JH.V38I2.23655>

³⁹ Kamsi Kamsi and others, 'Intentionally Changing Everything: Deliberate Constructing in Corruption Case', *Lex Scientia Law Review*, 7.2 (2023), 449–88 <https://doi.org/10.15294/LESREV.V7I2.59866>

⁴⁰ Muhammad Chairul Huda and Budi Ispriyarso, 'Contribution of Islamic Law in the Discretionary Scheme That Has Implications for Corruption', *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 19.2 (2019), 147–67 <https://doi.org/10.18326/IJTIHAD.V19I2.147-167>

⁴¹ Ali Imron, 'Stolen Asset Recovery Tindak Pidana Korupsi (Pendekatan Sistem Pembalikan Beban Pembuktian Terhadap Aset Hasil Kejahatan Tindak Pidana Korupsi)', *Res Nullius Law Journal*, 6.2 (2024), 111–26 <https://doi.org/10.34010/RNLJ.V6I2.13013>

defendant to demonstrate that their assets were not acquired through abuse of office or collusion in the procurement of goods and services. When an official involved in procurement is suspected of receiving gratuities or illicitly enriching themselves from the process, and the prosecutor presents sufficient initial evidence, the official must then prove that their wealth originates from legitimate sources rather than from corrupt practices.

The legal basis is Article 37A of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes which regulates that the defendant is obliged to prove that his wealth does not come from criminal acts of corruption. Presidential Regulation no. 12 of 2021 concerning Government Procurement of Goods/Services regulates procurement procedures that must follow the principles of transparency, accountability and free from corruption.⁴² From the perspective of state administrative law,⁴³ the application of reverse evidence functions as a tool to prevent abuse of authority. Because officials involved in the procurement process have great administrative powers, state administrative law monitors the implementation of their duties so as not to violate the law. Reversal proof strengthens scrutiny of official wealth that may have been obtained through fraudulent procurement processes. Then Enforcement of Good Governance Principles. State administrative law prioritizes the principles of good governance such as transparency, accountability and public participation. Reverse evidence in corruption cases⁴⁴ in the procurement of goods and services supports these principles, by requiring officials to prove that they did not abuse their position.⁴⁵

In criminal acts of corruption in the procurement of goods and services,⁴⁶ reverse evidence plays an important role in supporting the eradication of corruption, especially in ensuring that the officials involved do not abuse their authority or enrich themselves. From the perspective of state administrative law, reverse evidence is in line with efforts to uphold transparency,⁴⁷ accountability

⁴² Jillian Clare Kohler and Deirdre Dimancesco, 'The Risk of Corruption in Public Pharmaceutical Procurement: How Anti-Corruption, Transparency and Accountability Measures May Reduce This Risk', *Global Health Action*, 13.sup1 (2020) <https://doi.org/10.1080/16549716.2019.1694745>

⁴³ Anisah Alfada, 'The Destructive Effect of Corruption on Economic Growth in Indonesia: A Threshold Model', *Heliyon*, 5.10 (2019), e02649 <https://doi.org/https://doi.org/10.1016/j.heliyon.2019.e02649>

⁴⁴ Isabelle Adam and Mihály Fazekas, 'Are Emerging Technologies Helping Win the Fight against Corruption? A Review of the State of Evidence', *Information Economics and Policy*, 57 (2021), 100950 <https://doi.org/10.1016/j.INFOECOPOL.2021.100950>

⁴⁵ Ristania Intan Permatasari, Sapto Hermawan, and Abdul Kadir Jaelani, 'Disabilities Concessions in Indonesia: Fundamental Problems and Solutions', *Legality : Jurnal Ilmiah Hukum*, 30.2 (2022), 298–312 <https://doi.org/10.22219/ljih.v30i2.23814>

⁴⁶ Yasmirah Yasmirah and others, 'Criminal Acts of Corruption Procurement of Goods and Services of Local Governments through Electronic Procurement Services (LPSE)', *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*, 4.3 (2021), 4678–84 <https://doi.org/10.33258/BIRCI.V4I3.2250>

⁴⁷ Alina Mungiu-Pippidi, 'Transparency and Corruption: Measuring Real Transparency by a New Index', *Regulation & Governance*, 17.4 (2023), 1094–1113 <https://doi.org/10.1111/REGO.12502>

and good governance, but must be balanced by respecting the rights of the accused and the presumption of innocence. Indonesia can learn from the regulations and implementation of reverse evidence in criminal acts of corruption of government goods and services in Australia to increase the effectiveness of corruption law enforcement. One important aspect that could be adopted is an approach based on the Proceeds of Crime Act 2002 in Australia, which allows the government to seize assets suspected of originating from crime, including corruption, without having to wait for a conviction. Defendants are given the responsibility to prove that their assets were obtained legally. This mechanism can be integrated into the Indonesian legal system to ensure that corruptors cannot hide assets resulting from their crimes and make efforts to recover state losses.

Australia's independent approach through institutions such as the Independent Commission Against Corruption (ICAC)⁴⁸ can be an inspiration for our country. ICAC has broad powers to investigate corruption cases without political interference, including in the procurement of government goods and services. Indonesia can strengthen the Corruption Eradication Commission (KPK) by guaranteeing its operational independence and providing additional authority to oversee the government procurement process. In addition, the KPK can build a stronger collaboration mechanism with the Financial and Development Supervisory Agency (BPKP) and the Government Goods/Services Procurement Policy Institute (LKPP) to ensure integrity in the entire goods and services procurement chain. Indonesia can improve the State Administrators' Wealth Report (LHKPN) system by integrating independent verification and providing strict sanctions for violations or non-conformities. This system will help detect potential conflicts of interest or assets obtained from criminal acts of corruption.

4. Conclusion

The application of the reverse evidence system in cases of criminal acts of corruption in Indonesia is an important effort to strengthen the eradication of corruption, especially in proving the origin of the defendant's wealth. Although the Criminal Code stipulates that the burden of proof is on the prosecutor, specific laws on corruption such as Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 introduced reverse evidence in corruption cases. Government procurement of goods and services is an area that is vulnerable to criminal acts of corruption, because it involves large amounts of public funds. Reverse evidence is an important tool for enforcing the law, especially in ensuring that the wealth of officials involved in the procurement process was obtained legally, not the result of corruption. This principle supports supervision of abuse of authority and strengthens the enforcement of good governance, such as transparency and

⁴⁸ Siew Pyng Christine Chong, Chwee Ming Tee, and Seow Voon Cheng, 'Political Institutions and the Control of Corruption: A Cross-Country Evidence', *Journal of Financial Crime*, 28.1 (2021), 26–48 <https://doi.org/10.1108/JFC-05-2020-0094/FULL/XML>

accountability. However, its implementation must still respect the rights of the defendant and the principle of presumption of innocence.

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