

Reversed Burden of Proof in the Procedural Law of Corruption Cases: A Normative Study of Justice and Legal Certainty in Positive and Islamic Law

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Abstract: This study examines the reversed burden of proof in the procedural law of corruption cases in Indonesia, focusing on its compatibility with the principles of justice and legal certainty from both positive and Islamic legal perspectives. The method used is normative legal research with a comparative approach between national positive law regulations and Islamic legal principles. The findings show that the reverse burden of proof in Indonesia, as regulated in positive law, is an important tool to combat corruption by shifting the burden of proof to the defendant to prove that their wealth is not derived from corruption. However, the procedural application of this mechanism within the criminal justice system still faces several challenges, including inconsistencies in its enforcement and the limited scope of existing statutory provisions, thereby failing to fully ensure legal certainty. The study of Islamic law emphasizes the importance of the principles of justice (*'adl*) and legal certainty (*yaqin*) in law enforcement, highlighting the need to align the reverse burden of proof mechanism with these values to avoid injustice toward the defendant. Therefore, this study recommends integrating Islamic legal principles with the positive law framework and adopting the "beyond a reasonable doubt" principle as a complementary approach to strengthen fair and legally certain corruption eradication efforts. The academic contribution of this research lies in advancing the discourse of *fiqh siyasah* and Islamic criminal law by situating the reversed burden of proof within a procedural structure grounded in sharia-based justice and legal certainty, while offering normative recommendations for reforming Indonesia's evidentiary system in criminal procedure to make it more responsive to Islamic values and universal principles of justice.

Keywords: Corruption Crime, Islamic Law, Positive Law, Criminal Procedure Law, Reverse Burden of Proof.

Abstrak: Penelitian ini mengkaji mekanisme pembuktian terbalik dalam hukum acara tindak pidana korupsi di Indonesia, dengan fokus pada kesesuaiannya terhadap prinsip keadilan dan kepastian hukum dalam perspektif hukum positif dan hukum Islam. Metode yang digunakan adalah penelitian yuridis normatif dengan pendekatan komparatif antara ketentuan hukum positif nasional dan prinsip-prinsip hukum Islam. Temuan penelitian menunjukkan bahwa pembuktian terbalik di Indonesia, sebagaimana diatur dalam hukum positif, merupakan instrumen penting dalam pemberantasan korupsi dengan mengalihkan beban pembuktian kepada terdakwa untuk membuktikan bahwa harta kekayaannya bukan hasil korupsi. Namun, pelaksanaan mekanisme prosedural dalam sistem hukum acara ini masih menghadapi berbagai kendala, seperti ketidakonsistenan penerapan dan keterbatasan cakupan dalam undang-undang yang berlaku, sehingga belum sepenuhnya menjamin kepastian hukum. Kajian hukum Islam menegaskan pentingnya prinsip keadilan (*'adl*) dan kepastian hukum (*yaqin*) dalam penegakan hukum, sehingga mekanisme pembuktian terbalik perlu diselaraskan dengan nilai-nilai tersebut agar tidak menimbulkan ketidakadilan bagi terdakwa. Oleh karena itu, penelitian ini merekomendasikan integrasi prinsip-prinsip hukum Islam dalam kerangka hukum positif serta penggunaan asas "*beyond reasonable doubt*" sebagai pendekatan komplementer guna memperkuat pemberantasan korupsi yang adil dan menjamin kepastian hukum. Kontribusi akademik dari penelitian ini terletak pada pengembangan kajian *fiqh siyasah* dan hukum pidana Islam dengan menempatkan pembuktian terbalik dalam struktur hukum acara berbasis keadilan syariah dan kepastian hukum, serta memberikan rekomendasi normatif terhadap reformasi sistem pembuktian dalam hukum acara pidana Indonesia agar lebih responsif terhadap nilai-nilai Islam dan prinsip keadilan universal.

Kata kunci: Hukum Islam, Hukum Positif, Pembuktian Terbalik, Hukum Acara Pidana, Tindak Pidana Korupsi.

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Introduction

Problems related to corruption in Indonesia currently continue to grow and develop as lush as mushrooms in the rainy season. Its existence will be very difficult to eradicate if there is no real action from the government and related parties. Corruption in Indonesia has spread in society.¹ The development continues to increase from year to year, both in terms of the number of cases that occur and the amount of state financial losses, as well as in terms of the quality of the criminal acts committed, which are increasingly systematic and the scope that extends to all aspects of people's lives. Corruption, as a form of crime, has characteristics that distinguish it from other types of crime. One of the main characteristics of corruption is that it is always related to money and power. Corrupt perpetrators are generally people who have power, both in political, economic, bureaucratic, and other forms of power. Because of his position in power, the perpetrator is usually a figure who is already known by the public.²

Corruption is one of the main problems that hinders development and damages the social, economic, and political order in Indonesia. The government has made various efforts to eradicate corruption, one of which is through a reverse proof mechanism. This mechanism shifts the burden of proof to the defendant to prove that his wealth does not

come from the proceeds of corruption. Normatively, the reverse proof mechanism is regulated in a number of laws and regulations such as Law No. 31 of 1999 concerning the Eradication of Corruption and its amendments. However, the implementation of reverse proof in practice is still faced with various challenges, including inconsistencies in implementation and limited scope, which have an impact on less than optimal law enforcement and legal uncertainty for defendants.³

Law enforcement against corruption in Indonesia is a major challenge that requires an effective and fair proof mechanism. One of the mechanisms used is the reverse burden of proof, where the defendant is obliged to prove that his wealth does not come from corruption.⁴ This mechanism is regulated in a number of laws and regulations, such as Law No. 31 of 1999 and Law No. 20 of 2001, but its implementation still faces various obstacles and legal uncertainties. Yusnita's (2020) research has examined the effectiveness of reverse proof in Indonesia's positive law, highlighting various obstacles in the application and enforcement of the law.⁵ Meanwhile, Ulil Abshor (2023) explained that the application of reverse proof in corruption cases in Indonesia is a strategic legal effort to strengthen the effectiveness of corruption eradication. However, this mechanism must remain within the corridor of law enforcement that upholds the principle of legal certainty.

¹ Fina Rosalina, "Daluwarsa Tindak Pidana Korupsi Melalui Sudut Pandang Teori Hukum: Optimalisasi Pengembalian Kerugian Keuangan Negara," *YUSTISIA MERDEKA: Jurnal Ilmiah Hukum* 8, no. 2 (14 November 2022): 29–36, <https://doi.org/10.33319/yume.v8i2.169>.

² Muhammad Badri, "Analisis Sanksi Dalam Tindak Pidana Korupsi," *Jurnal LEX SPECIALIS*, no. 19 (14 November 2017): 38–47.

³ Uyat Suyatna, "Evaluasi Kebijakan Tindak Pidana Korupsi di Indonesia," *Sosiohumaniora* 22, no. 3 (7 November 2020): 325–33,

<https://doi.org/10.24198/sosiohumaniora.v22i3.25047>.

⁴ Yuni Priskila Ginting dkk., "Implementasi Sistem Pembuktian Terbalik Tindak Pidana Korupsi di Indonesia (Analisis Putusan Nomor 1013/PID.B/2009/PN SBY)," *Jurnal Pengabdian West Science* 2, no. 10 (27 Oktober 2023): 880–92, <https://doi.org/10.58812/jpws.v2i10.690>.

⁵ Yusnita Yusnita, Muhammad Syarif Nuh, dan Satrih Hasyim, "Efektivitas Pelaksanaan Pembuktian Terbalik Dalam Perkara Tindak Pidana Korupsi," *Journal of Lex Generalis (JLG)* 1, no. 7 (31 Desember 2020): 1024–43, <https://doi.org/10.52103/jlg.v1i7.284>.

Legal certainty requires clarity of norms, consistency of application, and protection of the rights of defendants in the judicial process.⁶ On the other hand, Hasuri (2020) emphasizes the analysis of reverse proof of corruption cases from the perspective of human rights, but has not specifically linked it to the case of reverse proof in Islamic law.⁷

Based on the study, there is a significant gap in the literature that comprehensively combines normative analysis of positive law and Islamic law regarding the implementation of reverse proof in corruption crimes, especially within the framework of the principles of justice and legal certainty. Therefore, this study aims to fill this gap by conducting a normative analysis of the reverse proof mechanism in the eradication of corruption, examining its conformity with the principles of Islamic law and its effectiveness in the context of positive Indonesian law.

Thus, this study seeks to fill this gap by analyzing the implementation of reverse proof in the eradication of corruption from the perspective of positive law and Islamic law, so that it is expected to be able to contribute to the development of an effective, fair, and in accordance with the values of universal justice and sharia. The main question that this research focuses on is: How can the implementation of reverse proof in the eradication of corruption be optimized through the integration of positive legal principles and Islamic law to realize justice and legal certainty?

Method

The research method used in this study is the normative juridical method⁸ with a comparative approach and qualitative analysis. Normative juridical research is carried out by studying, analyzing, and interpreting laws and regulations that regulate the reverse evidentiary mechanism in corruption crimes in Indonesia, especially the Law on the Eradication of Corruption and other related regulations. In addition, this study also examines the principles of Islamic law related to justice (*'adl*) and legal certainty (*yaqin*) as a normative basis to assess the suitability and relevance of the reverse proof mechanism in the context of sharia.

A comparative approach is used to compare positive legal provisions with Islamic legal values in order to find significant common ground or differences in efforts to realize the principles of justice and legal certainty in the eradication of corruption. Research data was obtained through literature studies⁹, which include primary sources in the form of laws, fatwas, fiqh siyasah books, and Islamic legal literature, as well as secondary sources in the form of books, scientific journals, articles, and other related documents.

Data analysis is carried out qualitatively with descriptive-analytical techniques, which aim to explain and interpret legal data so as to produce comprehensive normative conclusions. With this method, the research seeks to provide conceptual and normative recommendations that can be the basis for the

⁶ Ulil Abshor Nurul Huda dan Ahmad Sholikhin Ruslie, "Pembuktian Terbalik pada Tindak Pidana Korupsi di Indonesia dalam Rangka Menjamin Asas Kepastian Hukum," *Journal Evidence Of Law* 2, no. 2 (29 Mei 2023): 63–72, <https://doi.org/10.59066/jel.v2i2.279>.

⁷ Hasuri Hasuri dan Mia Mukaromah, "Analisi Pembuktian Terbalik Kasus Tindak Pidana Korupsi Dalam Perspektif HAM," *Mizan: Journal of Islamic Law* 4, no. 2 (10

Desember 2020): 193–202, <https://doi.org/10.32507/mizan.v4i2.820>.

⁸ Matthew B Miles dan A. Michael Huberman, *Analisis data kualitatif: buku sumber tentang metode-metode baru* (Jakarta: Universitas Indonesia Press, 2014).

⁹ Burhan Bungin, *Analisis Data Penelitian Kualitatif* (Jakarta: PT Raja Grafindo Persada, 2003).

development of an evidentiary system in Indonesian positive law to be more responsive to the principles of justice and legal certainty from the perspective of Islamic law.

Results and Discussion

Procedure for the Implementation of Reverse Proof in Corruption Cases

Provisions regarding proof in corruption crimes are regulated in several articles, such as Article 12B paragraph (1) letters a and b, Article 38, Article 37, Article 37A, and Article 38 B. This provision shows that the evidentiary mechanism in the formal criminal law of corruption is different from the general formal criminal law. First, the formal law on corruption in certain criminal acts adopts a reverse evidentiary system, where the burden of proof is transferred to the defendant to prove that his wealth does not come from corruption.¹⁰ Second, there is a system called conditional balancing as stipulated in Article 12B, paragraph (1), letters a and b. Third, in certain cases related to the property that has been indicted, a semi-reverse proof system is applied in accordance with Article 37A and Article 12 letter b. Fourth, regarding property that has not been indicted in the case under examination, a semi-reverse evidentiary system also applies according to Article 38 B.¹¹

Article 37, paragraph (1) of Law Number 10 of 2001 emphasizes that the defendant has the right to prove that he did not commit a criminal

act of corruption, while paragraph (2) states that if the defendant succeeds in proving his innocence, the court is obliged to declare the indictment unproven. This reverse evidentiary system puts the defendant in an active position to prove their innocence, especially in situations that require additional scrutiny. Even though the court decision has permanent legal force, the state can still follow up if the defendant has assets that are suspected to be the result of corruption.¹²

The Corruption Law Number 31 of 1999 introduces criminal norms that are different from the previous law, such as the threat of a special minimum sentence, higher fines, and the possibility of the death penalty for criminal charges. In practice, reverse proof is applied specifically to two main situations: first, in the case of gratuities with a minimum value of Rp 10,000,000.00, where the defendant must prove his innocence related to the gratuity; Second, on the defendant's property that cannot be directly used as the object of the prosecution, so the defendant is obliged to prove that the goods are not related to the elements of the indictment.¹³

The renewal of Law No. 31 of 1999 and Law No. 20 of 2001 replaced Law No. 3 of 1971 with the aim of adjusting to the complexity of community development and increasing the effectiveness of corruption eradication. The procedural law for corruption crimes is regulated in Article 26 of Law No. 31 of 1999,

¹⁰ Marfuatul Latifah, "Kendala Penerapan Pembuktian Terbalik dalam Penyelesaian Tindak Pidana Korupsi di Indonesia," *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 1, no. 1 (4 Agustus 2016): 1–22, <https://doi.org/10.22212/jnh.vii1.272>.

¹¹ Wahyu Wiriadinata, "Korupsi Dan Pembalikan Beban Pembuktian," *Jurnal Konstitusi* 9, no. 2 (2012): 313–32, <https://doi.org/10.31078/jkh924>.

¹² Sandya Pawestri Pandhanarum, "Penerapan Pembuktian Terbalik Dalam Pemeriksaan Perkara

Gratifikasi (Studi Di Pengadilan Tindak Pidana Korupsi Surabaya)," *Brawijaya Law Student Journal*, 12 Desember 2013, <https://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/167>.

¹³ Cut Nurita, "Asas Beban Pembuktian Terbalik Terhadap Tindak Pidana Korupsi Dalam Sistem Hukum Di Indonesia," *Jurnal Hukum Kaidah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 23, no. 1 (7 Desember 2023): 76–83, <https://doi.org/10.30743/jhk.v23i1.8457>.

which states that the process of investigation, prosecution, and trial must follow the criminal procedure law unless otherwise specified in a special law. Article 37 affirms the right of the defendant to prove his innocence, the obligation to disclose all wealth, and the use of unproven wealth as evidence to strengthen the indictment. Even though the defendant has an active burden of proof, the Public Prosecutor is still obliged to prove his charges.¹⁴

This reverse evidentiary system must not violate the rights of the accused, especially the principle of presumption of innocence and the prohibition of incriminating oneself. However, this system does reduce some of the rights of the defendant by shifting the burden of proof to him, which has the potential to cause controversy related to human rights. Reverse proof can be an advantage or a disadvantage for the defendant, depending on his ability to prove his innocence.¹⁵ In the case of corruption, this system is very important, especially for assets worth at least Rp 10 million, although the existence of the principle of presumption of innocence can make it difficult for investigators to uncover suspects because it requires strong evidence from the initial stage. This condition has the potential to hamper the law enforcement process, so that skepticism arises regarding the excessive interpretation of the principle of presumption of innocence, which actually slows down the eradication of corruption.¹⁶ Thus, reverse proof

in the criminal law of corruption in Indonesia is a crucial and complex mechanism, which must be managed carefully in order to respect the principles of justice and legal certainty without sacrificing the rights of the accused.

The Problem of Reversed Burden of Proof in Corruption Crimes from a Procedural Law Perspective as an Effort to Ensure Legal Certainty

Corruption is known as one of the crimes that is very difficult to eradicate, especially because of the complex nature of evidence compared to other crimes. Corruption often involves professionals who have an adequate minimum level of education, so the process of proving it requires a special approach. In addition, the inconsistency between the content of the law and its implementation is one of the factors causing rampant corruption. Sahetapy said that one of the root problems is the inconsistent application of the law and the behavior of law enforcement officials that are not in line with expectations. When there is a significant mismatch between the social conditions experienced by the suspect or defendant and the process in the criminal justice mechanism, this can actually trigger the occurrence of crime.¹⁷

In this context, the principle of fair trial is very important to be applied, not only limited to criminal procedures against defendants, but

¹⁴ Arhjayati Rahim dan Madinah Mokobombang, "Analisis Penerapan Pembuktian Terbalik Dalam Kasus Tindak Pidana Korupsi: (Studi Perkara Nomor: 22/Pid.Sus-TPK/2018/PN.Gto)," *Al-Mizan (e-Journal)* 16, no. 2 (31 Desember 2020): 225–48, <https://doi.org/10.30603/am.v16i2.1897>.

¹⁵ Made Mahadwiva Surya Krishna, I. Nyoman Gede Sugiartha, dan Ni Made Sukaryati Karma, "Sistem Pembuktian Terbalik dalam Pemberantasan Tindak Pidana Korupsi," *Jurnal Interpretasi Hukum* 2, no. 2 (17

Juni 2021): 229–33, <https://doi.org/10.22225/juinhum.2.2.3409.229-233>.

¹⁶ Hasuri dan Mukaromah, "Analisi Pembuktian Terbalik Kasus Tindak Pidana Korupsi Dalam Perspektif HAM."

¹⁷ Roni Saputra, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi (Bentuk Tindak Pidana Korupsi Yang Merugikan Keuangan Negara Terutama Terkait Dengan Pasal 2 Ayat (1) UU PTPK)," *Jurnal Cita Hukum* 3, no. 2 (2015): 269–88, <https://doi.org/10.15408/jch.v2i2.2318>.

also includes respect for the rights of every individual, including the perpetrator of a crime. The concept of "due process of law" means the formal and fair implementation of the law.¹⁸ According to Nasution, although proof is mandatory in the criminal process, the proof mechanism also has the potential to violate human rights. He added that the criminal procedure law serves as a filter that balances the power of the state and the protection of individual rights, so that proof becomes a crucial stage in determining whether a defendant can be acquitted of prosecution or punishment.¹⁹

However, the application of the reverse burden of proof in corruption crimes is still a polemic. Some parties view it as a violation of human rights, while Kamilia considers that it must be understood as a legal policy that needs to be accepted, including the retroactive principle in corruption cases.²⁰ Rahim highlighted an important dilemma in Indonesian law regarding the reversal of the burden of proof, which is regulated in Article 12B, Article 37, and Article 38B of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. From a theoretical and practical point of view, there are still inaccuracies and ambiguities related to the standard of reversal of the burden of proof, especially in the formulation of Article 12B, which gives rise to

biased interpretations.²¹

Fundamental errors in the legislation were also found in the wording of these articles. For example, in Article 12B paragraph (1) letter a, the reversal of the burden of proof is applied to the recipient of gratuities with a nominal limit of Rp 10,000,000, even though this provision is not entirely appropriate because it concerns the concept of "remuneration" which should be the object of proof by the prosecutor, not the defendant. Furthermore, in the 2001 revision, there was a mistake in the use of the term "considered bribery," which caused ambiguity in practice. This context has the potential to contradict the principle of presumption of innocence and trigger legal uncertainty and social injustice.²²

Practically, the implementation of corruption provisions, especially related to gratuities, is difficult to implement effectively because the wording of the law is still ambiguous and vulnerable to interpretation. For example, Article 12B paragraph (1) states that gratuities to state officials are "considered bribes," so the burden of proof is transferred to the defendant. However, this has the potential to contradict the principle of presumption of innocence and give rise to biased interpretations. This ambiguity also affects the rights of the defendant as stipulated in Article 37, paragraph (1), which is

¹⁸ Ahmad Forkas Rinaldi Nasution and Agnes Ruth Tasya Bangun, "Juridical Analysis of Reverse Evidence Regarding the Return of State Financial Losses Committed by Perpetrators of Corruption Crimes," *Binamulia Hukum* 9, no. 1 (2020): 13–20, <https://doi.org/10.37893/jbh.v9i1.357>.

¹⁹ Slamet Haryadi, "Rekonstruksi Tujuan Pemidanaan Dalam Pemberantasan Tindak Pidana Korupsi," *PRANATA HUKUM* 7, no. 2 (31 Juli 2012), <http://jurnal.ubl.ac.id/index.php/PH/article/view/174>.

²⁰ Kamila Febriyana, Niswatin Alayyal Maghfiroh, dan Agung Dwi Nugroho, "Analisis Sistem Pembuktian

Terbalik dalam Tindak Pidana Korupsi: Studi Kasus Putusan Nomor 1/PID.SUS-TPK/2025/PT DKI," *Causa: Jurnal Hukum Dan Kewarganegaraan* 11, no. 9 (23 April 2025): 31–40.

²¹ Rahim dan Mokobombang, "Analisis Penerapan Pembuktian Terbalik Dalam Kasus Tindak Pidana Korupsi."

²² Zabidin Zabidin, "Penerapan Pembuktian Terbalik dalam Tindak Pidana Korupsi," *UNES Law Review* 5, no. 2 (15 Desember 2022): 402–9, <https://doi.org/10.31933/unesrev.v5i2.314>.

an inherent human right since a person becomes a suspect or defendant.²³

Furthermore, obstacles in the application of reverse proof also arise from the Indonesian legal system, which has not yet firmly regulated its implementation. Therefore, the revision of the Corruption Law Number 20 of 2001 is very necessary so that the cross-examination process runs more effectively and reverse proof can be applied optimally. Another obstacle stems from the fact that most of the bribery-givers' assets are not transparently recorded, but rather are disguised through money laundering practices, making it difficult to disclose corruption cases.²⁴

This condition is exacerbated by the lack of a comprehensive and transparent reporting system for officials' assets. Without the obligation to report and publish wealth on a regular basis, it is difficult to distinguish between personal wealth and wealth resulting from corruption. Luhut MP Pangathousands reminded that the application of reverse proof can have negative impacts, such as the return of legal practices such as the old regime that prioritized recognition as the main evidence, the potential for abuse by officials with minimal integrity, and the failure of efforts to improve the professionalism of law enforcement if this system is applied emotionally.

The Principle of Justice and Legal Certainty in Reverse Proof from the Perspective of Islamic Law

Proof in Islamic law is not just a legal procedure, but is an integral part of the principle of justice (*'adl*), which is the main foundation in every aspect of Islamic law.²⁵ *'adl* in Islam means to give the rights that every individual deserves without discrimination and ensures that no party is unjustly disadvantaged.²⁶ Therefore, the application of reverse proof must be in line with this principle of justice, so as not to cause injustice to the defendant who must still be considered correct until proven otherwise. In addition to *'adl*, the principle of legal certainty (*al-yaqin*) is also very important from the perspective of Islamic law. Legal certainty requires that the laws applied are clear, not multi-interpreted, and consistent so that the public can understand their rights and obligations definitively. In the context of reverse proof, legal certainty means that the standard of proof and law enforcement procedures must be firm and not confusing, so that there is no room for uncertainty that could harm any party, especially the defendant.²⁷

The burden of proof in Islamic law basically lies with the accuser (*al-mudda'i*). This principle is in line with the principle of presumption of innocence, which puts the defendant in the position of innocence until proven guilty.

²³ Yessy Artha Mariyanawati dan Moh Saleh, "Sistem Pembuktian Terbalik dalam Pemberantasan Tindak Pidana Korupsi," *Perspektif* 28, no. 3 (27 September 2023): 176–84, <https://doi.org/10.30742/perspektif.v28i3.883>.

²⁴ Achmad Syaui, Hambali Thalib, dan Kamri Ahmad, "Efektivitas Pembuktian Terbalik Dalam Tindak Pidana Korupsi: Studi Di Pengadilan Negeri Makassar," *Journal of Lex Theory (JLT)* 5, no. 2 (28 Mei 2024): 370–90.

²⁵ Hanif Azhar, "Evidence of Clues in Islamic Criminal Law," *Al-'Is: Journal of Sharia and Islamic Law* 5, no. 2 (December 15, 2020): 163–83, <https://doi.org/10.31538/adlh.v5i2.997>.

²⁶ Ahmad Rusyaid Idris, Muhammad Khusaini, dan Syaiful Anwar Al-Mansyuri, "Contemporary Islamic Law in Indonesia: The Fulfillment of Child Custody Rights in Divorce Cases Caused by Early Marriage," *MILRev: Metro Islamic Law Review* 3, no. 1 (4 April 2024): 1–21, <https://doi.org/10.32332/milrev.v3i1.8907>.

²⁷ Hidayat bin Muhammad, "Hukum Islam Dan Hukum Pembuktian Perdata Serta Isu-Isu Menarik Terhadap Perkembangannya (Sebuah Studi Komperatif)," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 15, no. 01 (2015): 74–100, <https://doi.org/10.30631/alrisalah.v15i01.380>.

However, in the context of highly complex corruption crimes that have the potential to harm the wider community, Islamic law provides room for a proportionate and contextual approach, where the burden of proof can shift in certain situations for the benefit of the ummah.²⁸

The protection of the rights of the accused is also a major concern in Islamic law. Although Islamic law demands that justice be upheld, the right to be treated fairly, to have the opportunity to defend oneself, and not to be punished without valid evidence is upheld. This indicates that reverse proof should not be a means of oppression or abuse of power by law enforcement, but must be carried out with full responsibility and integrity.²⁹ The balance between the public good and individual rights is a binding fundamental principle in Islamic law. The eradication of corruption that harms the wider community must still respect the rights of individuals so that the legal process does not violate the principles of justice. Therefore, reverse proof in Islamic law must be implemented taking into account the social context, the level of harm, and the impact of the crime, without sacrificing human rights.³⁰

In contrast to positive law, which often prioritizes procedural and administrative aspects, Islamic law places moral and spiritual dimensions as part of the justice mechanism. This means that law enforcement officials must behave honestly, fairly, and morally responsibly when applying reverse evidence, so that substantive justice and legal certainty can go hand in hand. The principles can be seen

in the table below to make it easier to understand.

Table 1. The principle of justice and legal certainty in reverse proof from the perspective of Islamic law

Principle	Description	Implications for Reverse Proof
' <i>adl</i> (justice)	To provide due rights without discrimination, avoiding injustice to the defendant	The burden of proof must not create injustice.
Al-yaqin (Legal Certainty)	The law must be clear, firm, and consistent to avoid legal uncertainty	Evidentiary standards must be clear and consistent
Al-Mudda'i (The Burden of Proof on the Accuser)	The accusing party is obliged to prove the accusation according to the principle of presumption of innocence.	The burden of proof must be proportionate and contextual.
Protection of Defendants' Rights	The defendant has the right to fair treatment and to defend himself with valid evidence.	Reverse proof must be balanced with the protection of rights.
Public Benefit and Individual Rights	Balancing the interests of society and the protection of individual rights	The implementation of reverse proof must consider the social and legal context

Source: author's interpretation

The principles of justice ('*adl*) and legal certainty (al-yaqin) in reverse proof from the perspective of Islamic law, as described in the table, emphasize the balance between rights and obligations, especially the burden of proof which ideally falls on the prosecutor to maintain the principle of presumption of innocence and the protection of the rights of the accused. Legal certainty requires clear and consistent evidentiary standards so that the legal process runs transparently and

²⁸ Asep Saepullah, "Memutuskan Perkara Berdasarkan Qarānah Menurut Hukum Islam," *Mahkamah: Jurnal Kajian Hukum Islam* 1, no. 1 (13 Juni 2016), <https://doi.org/10.24235/mahkamah.v1i1.353>.

²⁹ Muhlisina Muhlisina, "Tracing the Application of Evidence in Court in Islamic Justice," *Dahzain Nur* 13, no.

2 (2023): 91–106, <https://doi.org/10.69834/dn.v13i2.175>.

³⁰ M. A. Dr. Analiensyah, "Hukum Pembuktian Terbalik dalam Perspektif Hukum Islam," *Al-Mursalat* 2, no. 1 (13 Agustus 2018), <https://jurnal.staitapaktuan.ac.id/index.php/Al-Mursalat/article/view/75>.

professionally, while avoiding uncertainty that harms any party. In addition, the principles of the public interest and individual rights must be proportionately maintained in the context of the eradication of corruption, ensuring that reverse proof does not become a tool of abuse of power. The table also emphasizes the importance of the integrity of law enforcement officials in carrying out this mechanism so that it does not become a means of extortion. Overall, these principles serve not only as legal norms but also as moral guidance to create a fair, balanced, and transparent legal process, so that reverse proof can be applied effectively without sacrificing substantive justice and human rights.

Integration of Positive Law and Islamic Law in Realizing Fair and Effective Reverse Proof in Criminal Procedural Law

Reverse proof as a legal mechanism in eradicating corruption often raises debates, especially related to the principles of justice and legal certainty. In the context of positive Indonesian law, reverse proof is considered one of the innovations that facilitates the resolution of corruption cases, but it often raises concerns about potential violations of the defendant's human rights.³¹ Therefore, integration with the principles of Islamic law that strongly emphasize justice (*'adl*) and legal certainty (*al-yaqin*) can be a solution to improve and harmonize the implementation of

reverse proof to be more fair and effective.

Islamic law emphasizes that the burden of proof must be placed on the party who has the authority and capacity to prove, so as not to burden the defendant excessively.³² In this case, the principle of justice demands that there be no excessive pressure that can harm individuals, while maintaining the rights of the defendant in line with the *Maqashid al-sharia* in maintaining the benefits and human rights. The integration of these values into positive law can strengthen legal protection while providing moral legitimacy to reverse evidentiary mechanisms.³³

Furthermore, the legal certainty affirmed in Islamic law can clarify the standard of proof in positive legal practice. This certainty avoids broad and biased interpretations, which are often a source of injustice and uncertainty in legal proceedings. Therefore, in an integrated system, reverse proof regulations need to be formulated firmly and clearly, in accordance with the principle of legal certainty, so that their implementation does not cause legal doubts for all parties involved.³⁴

The harmonization of these two legal systems is also important in regulating aspects of implementation and supervision so that the integrity and professionalism of law enforcement officials are maintained. Islamic law pays special attention to the morality and social responsibility of law enforcement officials, so the combination of these values

³¹ Rivo Ezra Wiliam Mait, "Reverse Evidentiary System Carried Out by Defendants in Corruption Crimes Based on Law No. 20 Of 2001 Concerning the Eradication of Corruption," *LEX CRIMEN* 9, no. 2 (May 18, 2020), <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/28556>.

³² Hidayat Hidayat, "Comparison of Evidence Between Positive Law and Islamic Law," *Proceeding Justicia Conference* 2, no. 0 (June 23, 2023): 86–95.

³³ Muhammad Taufan Djafri, Asri Asri, and Ihsan Muhammad, "A Review of Islamic Law on Voice

Recordings as Evidence of Criminal Acts in the Judiciary," *AL-QIBLAH: Journal of Islamic Studies and Arabic Language* 3, no. 3 (May 17, 2024): 325–50, <https://doi.org/10.36701/qiblah.v3i3.1451>.

³⁴ Nailul Ilmiyah, "Relevansi Pemikiran Ibnu Qayyim Al-Jauziyah Tentang Peranan Keyakinan Hakim Dengan Sistem Pembuktian Dalam Hukum Acara Pidana Di Indonesia," *Al-Jinayah : Jurnal Hukum Pidana Islam* 6, no. 2 (14 Desember 2020): 420–49, <https://doi.org/10.15642/aj.2020.6.2.420-449>.

can help minimize the potential for abuse of reverse evidentiary mechanisms such as extortion or discrimination. In addition, this integration can strengthen the social legitimacy and legal culture, considering that the majority of Indonesians have an Islamic religious background. By adapting positive law to Islamic values, the reverse evidentiary process not only gets formal legal support but also broader social support so that it can run effectively and be generally accepted. This integrative approach also allows the adjustment of the proof mechanism to the social and cultural context of Indonesian society. Flexible and contextual Islamic law provides room for adaptation that takes into account social realities, which will help encourage the application of more responsive and equitable positive law in the eradication of corruption.³⁵

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Table 2: Integration of Positive Law Principles and Islamic Law in Reverse Proof

Aspects	Positive Law	Islamic Law	Integration and Synergy
Burden of Proof	Reverse proof to accelerate corruption cases	Burden of proof on the prosecutor, safeguarding the rights of the defendant	The burden of proof remains on the prosecutor, with a supporting mechanism so that the process is effective but does not harm the defendant.
The Principle of Justice	Protection of the human rights of the accused, but sometimes overlapping	Justice ('adl) is a legal basis that balances rights and obligations	Maintaining a balance of rights and obligations in providing, so that there is no abuse of power
Legal Certainty	The standard of proof is sometimes unclear and creates uncertainty	Legal certainty (al-yaqin) demands clear and consistent rules	Formulate strict and clear evidentiary standards according to the value of Islamic law certainty
Integrity of the Apparatus	Professionalism and accountability still need to be improved	Emphasis on the morality and social responsibility of the apparatus	Encourage the improvement of the integrity and morality of the apparatus through education and continuous supervision

³⁵ Gazali Rahman dan La Jamaa, "Asas Pembuktian Terbalik dalam Tindak Pidana Korupsi (Perspektif Hukum Pidana Indonesia dan Hukum Pidana Islam)," *TAHKIM* 15,

no. 2 (2019): 235–54,
<https://doi.org/10.33477/thk.v15i2.2702>.

Aspects	Positive Law	Islamic Law	Integration and Synergy
Socio-Cultural Context	Formal legal systems that tend to be secular	Legal values rooted in Islamic socio-culture	Building stronger legal legitimacy by accommodating people's cultural and religious values
Flexibility	Tends to be rigid and normative	Flexible and contextual according to maqasid sharia	Adaptation of positive legal rules with contextual Islamic values according to the needs of society
Protection of Rights	The rights of the defendant are sometimes less secure	Individual rights are strongly protected in Islamic law	Ensure that the protection of human rights in the evidentiary process is balanced and fair
Monitoring Mechanism	Less than optimal in monitoring abuse	Supervision based on moral principles and social responsibility	Strengthening oversight mechanisms to prevent misuse of reverse evidence

Source: author's interpretation

The table above illustrates the integration between the principles of positive law and Islamic law in the reverse evidentiary mechanism, particularly in the context of corruption eradication. In terms of the burden of proof, positive law tends to apply reverse proof to speed up the process, while Islamic law places the burden of proof on the prosecutor in order to protect the rights of the accused; The integration of the two requires that the evidence remains with the prosecution with an effective mechanism but not detrimental to the defendant. The principle of justice becomes a common point, where both systems emphasize the balance of rights and obligations, while in terms of legal certainty, Islamic law encourages clear and consistent standards, which can remedy uncertainty in positive law. The integrity aspect of law

enforcement officials is also a common focus, with an emphasis on morality and accountability to prevent abuse. Socio-cultural context and flexibility are important cornerstones in this integration, as contextual Islamic law is able to accommodate societal values and norms more effectively than more rigid formal legal systems. The protection of individual rights is also emphasized so that the evidentiary process runs fairly and not oppressively, supported by optimal supervision mechanisms to maintain the integrity of the legal process and prevent the abuse of reverse evidence. Thus, this table shows how the two legal systems can complement each other in order to realize fair and effective reverse proof in accordance with the values of justice and legal certainty.

The Reversed Burden of Proof in Criminal Procedural Law: Between Normative Provisions, Judicial Practice, and Islamic Legal Principles

Evidence in Indonesian criminal procedure serves as a fundamental pillar in ensuring the administration of justice and legal certainty, particularly in corruption-related offences. The general principle adopted is the *presumption of innocence*, wherein the burden of proof lies with the public prosecutor. However, in the context of corruption, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 introduces a special procedural mechanism—namely, the reversed burden of proof. Article 26 of the Anti-Corruption Law affirms that all investigative, prosecutorial, and trial processes are subject to the Criminal Procedure Code (KUHP). Nevertheless, Article 37 paragraph (1)(a) mandates that defendants disclose the totality of their assets, and any assets whose origins cannot be proven may be considered corroborative evidence in support of the

indictment. Still, Article 37 paragraph (4) underscores the principle that the public prosecutor remains legally obliged to establish all elements of the criminal offence charged.

Practically, this reversal mechanism is introduced during the investigative phase, particularly through examination of the defendant's Wealth Reports (LHKPN). A significant disparity between income and declared assets triggers the reversal provision. For instance, Article 12B of the Anti-Corruption Law stipulates that any gratification received by a state official exceeding ten million rupiahs is presumed to constitute a bribe, unless the recipient can prove otherwise. During prosecution and trial, the prosecution typically presents evidence indicating that the defendant's wealth vastly exceeds his legitimate earnings. Should the defendant fail to demonstrate the lawful origins of such wealth, this becomes substantiating evidence as provided under Article 37(3). Nevertheless, the judge must assess the entirety of evidence in accordance with due process. As highlighted by Gayus Lumbuun, this mechanism functions subsidiarily—as an evidentiary aid rather than a substitute for the prosecution's burden.

However, the normative formulation of this mechanism presents legal ambiguities. Articles 12B, 37, and 38B of the Anti-Corruption Law have been criticised for imprecise and vague language. For example, the phrase “is considered a bribe” in Article 12B(1)(a) raises concern, as it shifts the evidentiary burden to the defendant without clear procedural justification, potentially violating the presumption of innocence and leading to legal uncertainty. The absence of detailed procedural guidelines further contributes to inconsistent interpretation and application across different law enforcement agencies. In practice, the identification and tracing of illicit

assets are complicated by insufficient transparency in asset reporting and the widespread use of money laundering techniques to obscure illicit wealth. Consequently, implementation remains fragmented and legal certainty for defendants is insufficiently safeguarded.

Contrastingly, Islamic criminal procedure maintains a strict evidentiary principle whereby the burden of proof lies entirely with the accuser (*al-mudda'i*). Islamic jurisprudence does not recognise the concept of a reversed burden of proof. The principles of *al-yaqin* (certainty) and *'adl* (justice) underpin the requirement that no individual may be penalised based on suspicion or circumstantial assumptions alone. As emphasised by Analiansyah, there exists neither scriptural basis in the Qur'an nor Hadith nor in the canonical works of the four Sunni schools for the reversed burden doctrine. This evidentiary standard requires that any prosecutorial claim must be established beyond reasonable doubt before any punitive measure can be justified. In Islamic law, a judge is prohibited from rendering a guilty verdict in the absence of definitive proof, which renders the reversed burden of proof conceptually incompatible. Accordingly, the implementation of this mechanism in Indonesia's positive law must be approached with caution to avoid undermining the values of justice and legal certainty embedded in Islamic legal thought.

In light of this, the harmonisation of Indonesian positive law and Islamic procedural law becomes imperative, particularly in a society where the majority of the population adheres to Islamic values. While the reversed burden of proof may serve as a strategic tool in combating corruption, it must be applied proportionately, exceptionally, and in accordance with substantive justice.

Legislative reform is needed to eliminate normative ambiguities, accompanied by the formulation of comprehensive procedural guidelines for law enforcement officials. Furthermore, incorporating the *maqāṣid al-sharī'ah* (higher objectives of Islamic law) into procedural frameworks may enhance the legitimacy, fairness, and cultural acceptance of corruption adjudication in Indonesia.

Conclusion

Based on a normative study of the reversed burden of proof in the criminal procedural law of corruption cases in Indonesia, it can be concluded that both positive law and Islamic law offer distinct yet potentially complementary approaches to achieving justice and legal certainty. In Indonesian positive law, the reversed burden of proof is applied particularly in cases of gratification, transferring the burden to the defendant to prove the legality of their assets. While this legal mechanism aims to strengthen corruption eradication efforts, its procedural implementation in criminal law remains problematic due to inconsistencies in enforcement, vague legislative formulation, and the risk of violating the presumption of innocence.

From the perspective of Islamic criminal procedural law, the emphasis lies on protecting the accused's rights, where the burden of proof is primarily assigned to the accuser. This aligns with the objectives of sharia (*maqāṣid al-sharī'ah*), particularly justice (*'adl*) and public interest (*maṣlahah*). The Islamic approach critiques the reversed burden of proof when it threatens procedural fairness, and instead advocates for a transparent, objective, and proportionate evidentiary process grounded in ethical and divine accountability.

Therefore, integrating the principles of

Islamic criminal procedural law into Indonesia's positive legal framework can help formulate a reversed burden of proof that is more balanced—ensuring effective corruption control while safeguarding defendants' rights and reinforcing public trust in the justice system. This integration necessitates aligning the mechanism with both the principle of “beyond a reasonable doubt” and the Islamic legal requirement of certainty (*yaqīn*) in establishing criminal liability.

As a recommendation, future research should empirically examine how the reversed burden of proof is applied in Indonesian corruption courts and evaluate its real impact on justice and legal certainty. Comparative research on classical Islamic criminal evidentiary principles and their modern adaptation in pluralistic legal systems, including Indonesia, could further enrich reform efforts within the criminal procedural law framework.

Credit Authorship Contribution

Ahmad Hadi Prayitno conceptualized the study, developed the research design, and drafted the Abstract and Introduction sections. Achmad Arifulloh contributed to the legal analysis, especially the discussion on anti-corruption law provisions, and co-authored the Results and Discussion sections. Toni Triyanto examined the alignment with Islamic legal principles and contributed significantly to the comparative analysis. Setiawan Widiyoko conducted literature reviews, provided insights into procedural law, and helped revise the manuscript for legal coherence. Moh Aris Siswanto assisted in data interpretation, contributed to the Conclusion and Recommendations, and supervised the entire research and editorial process.

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The authors declare no competing financial interests or personal relationships that could have influenced the work reported in this article.

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