

Reverse Evidentiary Analysis in Article 12 B Paragraph (1) A and B of Law Number 20 of 2001 Amendments to Law Number 31 of 1999 Concerning The Eradication of Corruption

Delvin Akbar¹, Ariawan Gunadi²

^{1,2} Universitas Tarumanagara, Indonesia

Email: delvinpg98@gmail.com , ariawangun@gmail.com

* Correspondence: delvinpg98@gmail.com

KEYWORDS

Corruption, Reverse Evidence, Gratification

ABSTRACT

The purpose of this study is to analyze the philosophical basis of the reverse proof system for future Gratification corruption crimes and the formulation of norms for the reverse proof system for future Gratification corruption crimes. The research method used in this study is normative juridical with qualitative descriptive data analysis techniques. The results of the study are the philosophical basis of the reverse proof system for the crime of graft corruption related to bribery Article 12 B, namely that both the public prosecutor and the defendant are obliged to prove but the public prosecutor alone proves the gift received by the recipient of the gratuity while the defendant proves that the gratuity is not a bribe, has nothing to do with position and does not conflict with their duties or obligations. The construction of legal substance, which directs the formulation of reverse evidentiary norms with an emphasis on legislative policies according to the 2003 CAC as a characteristic of the combination of the hukum umum and hukum sipil legal systems as a legal system.

Attribution-ShareAlike 4.0 International (CC BY-SA 4.0)



Introduction

The State of Indonesia as stipulated in the Constitution of the Republic of Indonesia 1945 in Article 1 paragraph (3) states that the State of Indonesia is a State of law (rechtstaat). Indonesia as a state of law is certainly closely related to the noble values of Pancasila. The noble values of Pancasila are values that are formed based on the values of truth and justice. The combination of law enforcement based on the values of truth and justice should be able to make the State of Indonesia develop into a just and prosperous country. The principle of social justice for all Indonesian people has been stated in the fifth precept in Pancasila as the basis of the state, with hopes and ideals to make the Indonesian people towards a just and prosperous people. But in fact, until now the results achieved are still far from ideality. Poverty and unemployment as well as social inequality are problems that until now have not been resolved (Mahfud, 2012).

This factual condition shows that there are still many people who still live in poverty. One of the reasons is the proliferation of Corruption Criminal Acts which

continue to run rampant day by day, resulting in the community getting worse, miserable, poorer, and farther from achieving the goals of the State of Indonesia as contained in the Preamble of the 1945 Constitution Paragraph IV (4) which clearly states "Then instead of that to be able to form an Indonesian state government that protects the entire Indonesian nation and all Indonesian bloodshed and to promote general welfare, educating the life of the nation, and participating in implementing world order based on independence, lasting peace and social justice, the Indonesian national independence was drafted in the form of a Constitution of the State of Indonesia which is shaped in a structure of the Republic of Indonesia that is sovereign of the people based on the One and Only God, just and civilized humanity, Indonesian Unity, and Peoplehood led by wisdom in consultation / representation, and by realizing a social justice for all Indonesian people.

Corruption in Indonesia has spread in various walks of life. Its development continues to increase from year to year, both from the number of cases that occur, the number of state financial losses and in terms of the quality of criminal acts. The increase in uncontrolled corruption will bring disaster not only to the life of the national economy, but also to the life of the nation and state in general. Widespread corruption and system atis are also violations of social rights and economic rights of the community, therefore corruption can no longer be classified as ordinary crimes but has become extraordinary crimes. Likewise, its eradication can no longer be carried out normally, but extraordinary methods are also required. The phenomenon of corruption in Indonesia as an extraordinary category crime is a serious threat, because various countermeasures have been implemented, but have not shown significant success, instead growing more fertile as if the state has lost a way to stop it.

There are quite a lot of facts that can be shown, as the assessment carried out by Political and Economic Risk Consultancy Ltd (PERC)⁷ in its survey results in 2010 ranked Indonesia as the most corrupt country in Asia Pacific. This condition is certainly a heavy homework, not only for law enforcement but rather, the Government (Executive), Legeslative, Judiciary and the Community must also play an active role to participate in eradicating corruption in Indonesia. Meanwhile, Transparency International's Bribe Payers Index (BPI), an index that describes bribery practices carried out by the business world against state administrators or public officials in a country) has revealed quite embarrassing facts.⁸ In 2011, BPI conducted a survey of 3,000 business actors conducting international business in 28 countries and placed Indonesia in 25th place out of 28 countries with a BPI of 7.1 out of an average of 7.8.

Based on the results of the annual report (Manual Report 2016) of Indonesian Corruption Watch (ICW), on the settlement of corruption cases in 2016, there were 482 Corruption Cases with a total of 1,101 suspects in Corruption Cases and raised the value of State losses of Rp. 1.47 Trillion.¹¹ As for bribery cases, there were 33 cases with a state loss value of Rp. 32.4 billion. There were 3 cases of embezzlement in office that resulted in a state loss value of Rp. 2.3 billion and for extortion there were 7 cases with a total loss of Rp. 20.5 billion.

These facts above have given an understanding that corruption is a symptom of society that can be found everywhere, research proves that almost every country is faced with the problem of corruption. It is no exaggeration if this corruption crime is always developing and continues to change according to the times, as well as how to overcome it also develops. The corruption of a country with another country of intensity and modus operandi depends largely on the quality of society, culture, and law enforcement system that applies in a country.

Reverse Evidentiary Analysis in Article 12 B Paragraph (1) A and B of Law Number 20 of 2001 Amendments to Law Number 31 of 1999 Concerning The Eradication of Corruption

Corruption is a legal matter, so law enforcement mechanisms must work. The spirit of law enforcement towards corruption cases today is in the right direction, no longer are high officials who are above the law. Former ministers, Chief Justice of the Supreme Court, Judges of the Constitutional Court, Directors of State-Owned Enterprises, Chairmen of Audit Boards, and many more cases involving high-ranking officials are examined by legal mechanisms equally. Law enforcement that is carried out fairly and equitably will certainly provide *shock therapy* (Zainuri, 2007).

Given that the current statutory policy regarding the eradication of corruption in relation to the evidentiary process has been enforced by the reverse proof (*omkering van bewijslast / the reversal of the burden of proof*), the provisions regarding reverse proof are contained in Law Number 20 of 2001 Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption as stated in Article 12 B paragraph (1) letter a and b, paragraph (2). The formulation of norms in the provisions of Article 12 B reflects an unfair feeling, because although there is a clear separation of the provisions for the nominal value amount in Paragraph (1) letter a and b, the sanctions provisions stipulated in Paragraph (2) are the same or in other words the essence of the separation of the amount of value has no urgency, other than that, The norm in the provisions of Article 12 B Paragraph (1) also contradicts the provisions of Article 27 paragraph (1) of the 1945 Constitution, which contains, "All citizens have equal standing in law and government and are obliged to uphold that law and government with no exception." Likewise, the formulation of Article 12 B Paragraph (1) is contrary to the provisions of Article 37 of the Corruption Law, which reads, "The defendant has the right to prove that he has not committed a criminal act of corruption"

However, why in the formulation of Article 12 B paragraph (1) a Norm, which basically regulates for recipients of Gratuities whose value is Rp. 10,000,000.00 (ten million rupiah) and above has the right to prove that the gratuity is not a bribe. Meanwhile, the recipient of Gratuity whose value is less than Rp. 10,000,000.00 (ten million rupiah) does not have the right to prove that the Gratuity is not a bribe. In addition, criminal sanctions and fines imposed on Gratification perpetrators in Article 12 B Paragraph (1) a and b do not reflect a sense of justice. Meanwhile, the recipient of Gratuity whose value is less than Rp. 10,000,000.00 (ten million rupiah) does not have the right to prove that the Gratuity is not a bribe. In addition, the criminal sanctions and fines imposed on the perpetrators of Gratification in Article 12 B Paragraph (1) a and b do not reflect a sense of justice because although there is a clear separation of the provisions for the nominal value amount in Paragraph (1) letter a and b, the sanctions provisions stipulated in Paragraph (2) are the same or in other words the essence of the separation of the amount of value has no urgency.

Based on the background stated above, which is related to the conditions of corruption in Indonesia, especially for Gratification cases, encourages the author to carry out research on the reverse proof system for gratification corruption crimes. The purpose of this study is to analyze the philosophical basis of the reverse proof system for Gratification corruption in the future and the formulation of norms for the reverse proof system for Gratification corruption in the future. Theoretically, the results of this research are expected to be useful for the development of legal science, namely Criminal Law and Criminal Procedure Law, especially Special Criminal Law and Corruption Crimes, so that at the same time it can be used as an additional understanding related to the philosophical basis of the reverse proof system for Gratification corruption crimes in the future, and in terms of refining or improving the formulation of norms for the reverse proof system for

Gratification corruption crimes in the future. While the practical benefits can be useful to provide understanding and be used as guidelines for law enforcement officials (Corruption Investigators, Corruption Eradication Commission and / or Public Prosecutors and Judges) in the implementation of the Corruption Criminal Procedure Law or in the Administration of Corruption Criminal Trials that apply Reverse Proof against suspects / defendants suspected of carrying out corruption crimes (priority), and is an explanation for the public about policies in solving and eradicating criminal acts of corruption, so as to motivate the community to increase participation or carrying capacity in the eradication of criminal acts of corruption.

Research methods

The method in this study is juridical-normative research (legal research) (Ronny, 1998) which is literature research, namely research on secondary data, in the form of legal materials. The author uses the statute approach, *conceptual approach*, *document study approach* and *comparative approach*. *The statute approach* (statutory approach) (Ibrahim, 2011) in this case uses laws and regulations in the Criminal Justice System in Indonesia which regulate the application of reverse evidence, namely Law Number 31 of 1999 which was later amended and supplemented by Law Number 20 of 2001 concerning the Eradication of Corruption with the intention of seeking and finding material truth in the Criminal Act of Corruption.

First, the *Conceptual approach* is carried out to find the right concepts including the concept of reverse proof, the concept of corruption, and the concept of gratification to be used as a reference in reconstructing reverse evidence in the criminal act of gratification corruption. Second, *this Document Study approach* is carried out by studying cases of corruption crimes that have obtained legal decisions that have permanent legal force that apply reverse evidence both to cases whose nominal value is above Rp. 10,000,000 (ten million rupiah) and cases whose nominal value is below Rp. 10,000,000 (ten million rupiah), and these cases have received court decisions and have has the nature of permanent legal force.

Third, *Comparative approach* is to obtain information and legal comparisons on the application of reverse evidence to Gratification in several other countries such as Malaysia, Hong Kong, and Thailand with the aim that the application of reverse evidence can run effectively to eradicate corruption crimes that occur in Indonesia. The reason the author chose these countries is because these countries in implementing the reverse proof system can run effectively, guaranteeing with legal certainty the right of the accused to apply the reverse proof system, and there is no nominal provision to apply the reverse proof system.

Results and Discussion

1. Reverse Evidentiary Practices in Corruption Cases in Indonesia, Malaysia, Hong Kong and Thailand

The practice of proving corruption cases with the reversal of the proof system in Indonesia has never been implemented. However, the practice of proving corruption cases in several countries has been carried out such as in Malaysia, Hong Kong and Thailand. The concept of reverse proof between Indonesia and Malaysia uses different concepts. Indonesia and Malaysia as one of the countries that apply the reverse proof system in

corruption offenses. As explained in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, it is stated that Indonesia applies the concept of limited and balanced reverse evidence, while Malaysia uses the concept of pure reverse evidence. Reverse evidence is limited and balanced, namely that the defendant is given the right to prove that he did not commit a criminal act of corruption, and is obliged to provide information related to assets allegedly related to him, and the public prosecutor is still required to prove his charges.

Limited reverse proof (pure) imposed in Malaysia is regulated in the Anti-Corruption Act which explains that pure reverse proof is a reverse proof that is not only applied to corruption defendants, but applied to all state officials. So that if state officials can prove that the property they own is not the result of a criminal act. Thus, property that cannot be proven by state officials is included in corruption. This has not been implemented in Indonesia. As explained earlier, Indonesia only applies to corruption and money laundering defendants.

Malaysia imposed the principle of reverse proof starting in 1961 by following the principle of presumption of corruption, meaning that a person accused of corruption has been considered guilty of committing a criminal act of corruption from the beginning. Thus, on that principle, the defendant/defendant bears the evidentiary system and must prove to what he is accused of that the charges are not true. In Malaysia, if a person is charged with corruption, and he cannot prove his innocence, then the judge finds him guilty without the public prosecutor carrying out any more proof for the truth of the accused (Sadiah, 2021).

The reverse proof of Indonesia and Malaysia cannot be equated. Indonesia cannot apply a pure reverse proof system like in Malaysia because it violates human rights. Indonesia has a Human Rights Law stipulated in Law Number 39 of 1999. Similarly, Malaysia has a Human Rights Law stipulated in the Malaysian Constitution (Federal Constitution), but the two concepts of Human Rights Law between Indonesia and Malaysia are different. In addition, the understanding and application of human rights are adapted to the cultural and community conditions of the country.

Unlike the Hong Kong model (in reverse proof) that can be used in corruption cases through criminal procedural law procedures, the reverse evidentiary model in the 2003 Anti-Corruption Convention (Article 31 paragraph 8), and has received much recognition from developed countries that use both the common law legal system and "civil law", which supports the use of civil procedures in applying the reverse theory of proof with that balance of possibilities, That is, as long as the reverse evidentiary procedure is aimed at challenging a person's ownership rights to his property derived from corruption. Law Number 31 of 1999 (Article 31) and Law Number 15 of 2002 (Article 37) already contain provisions regarding reversal burden of proof. The provisions in both laws are still not based on theoretical justification as outlined above, but only place the reverse evidentiary provision solely as a means to facilitate the evidentiary process without considering the human rights aspects of suspects/defendants based on the 1945 Constitution. Now with the emergence of two models of reverse proof with that balance of possibilities, there are already theoretical and practical references in the problem of reverse proof.

Furthermore, Thailand has various laws and regulations to prevent and eradicate corruption. These laws and regulations are divided into 2 categories: substantive law and procedural law. The substantive laws consist of: Thai Penal Code and Organic Act on Counter Corruption (OACC) B.E. 2542 (1999). The Thai Penal Code details the penalties

for corrupt government employees, which are between 5 and life imprisonment. In addition, corruption perpetrators are also subject to fines and must return their corrupt assets. The OACC discusses in detail the existence of the NCCC. Separate from the Thai Penal Act, the OACC addresses several matters related to conflicts of interest and bribery cases. While procedural law consists of 5 main laws, namely: Thai Criminal Procedure Code; Organic Act on Counter Corruption (OACC) B.E. 2542 (1999); Anti-Money Laundering Act B.E. 2542 (1999); Act of Mutual Legal Assistance in Criminal Matters B.E.2535 (1992;) and Extradition Act B.E. 2551 (2008). The Thai Criminal Procedure Code applies to all criminal cases; The OACC not only discusses the establishment of the NCCC but also emphasizes the authority or power to investigate corruption cases; Anti-Money Laundering Act B.E. 2542 (1999) deals in more detail with corrupt assets transferred through money laundering; Act of Mutual Legal Assistance in Criminal Matters B.E.2535 (1992;) provide a conceptual framework for international cooperation in criminal litigation proceedings from the beginning of the investigation to the end of the trial; and Extradition Act B.E. 2551 (2008) which authorizes Thailand to extradite a person to a requesting country, and also to make requests to foreign countries to extradite fugitives to Thailand.

Despite the differences, the absolute requirement that must be possessed by Indonesia before adopting the success of Malaysia, Hong Kong and the efforts carried out by Thailand is the existence of a political leader who has the will or political commitment to eradicate corruption, is honest, firm, and pays attention to the interests of the people.

2. Philosophical Basis of the Reverse Proof System for Corruption in the Future Gratification

Politics, law, Indonesian legislative policy regarding corruption as stipulated in Law No.31 of 1999 Jo Law No.20 of 2001 is relatively incomplete regulation in the KAK of 2003. There is a lack of clarity and synchronization in the formulation of reverse proof of the norms of the verification system. In legislative policy Law No.20 of 2001. The vagueness and dissynchronization is that the normalized inverse system already "exists", but in practice it is "non-existent" because it cannot be implemented at the application level. The uncertainty and lack of synchronization in the formulation of the reverse proof system is also shown by the guilt of people as stipulated in Article 37 of Law No.31 of 1999 Jo Law No.20 of 2001 which, if analyzed more deeply, has implications for Human Rights (HAM), which in judicial practice in Indonesia prioritizes the principle of presumption of innocence, and also contradicts the criminal procedure law that the accused is not charged by showing evidence or evidence (Lilik, 2005).

This provision needs to be refined in the formulation of reverse proof which will be in accordance with the eradication of corruption after the 2003 KAK which Indonesia has ratified in Law No. 7 of 2006. So that the formulation of norms can be in line with the perspective of Human Rights (HAM), and not contradict the provisions of criminal procedural law both at the theoretical and practical levels (Lilik, 2005). If examined further, the Law on Eradication and Corruption currently in force in Indonesia if synergized with the provisions of the 2003 KAK essentially provides matters oriented to the following dimensions:

1. Political Law Legislative policy in Criminal Law in Indonesia, especially those regulating the reverse proof of the verification system with reference to the KAK of 2003, in accordance with the international provisions of legal instruments

regarding the eradication of corruption. In essence, from theoretical and practical studies, the eradication of corruption must involve all potentials and elements, institutions and communities participation. The approach in TOR 2003 is preventive, repressive and restorative with a substantial benchmark shift in perspective from law enforcement that only focuses on the criminal regime, namely the punishment of perpetrators through a shift in the retributive philosophy of the civil regime approach with an emphasis on the return of restorative assets. As a result, the formulation of the norm of the reverse proof system in this case Legislation policy is one of the adequate solutions or alternatives in the context of overcoming corruption cases which have recently become more prevalent in society.

2. Legal politics is the formulation of the burden of proving reverse norms with emphasis on legislative policies in accordance with the 2003 KAK characteristics of the combination of the legal system "General law" with the legal system "Civil Law", so that it will enrich the substance of the law and legislation in Indonesia if we examine it from the perspective of political law and legislation in Indonesia. Therefore, with the combination of the two law systems, it is expected that there will be a mixture of positive aspects of each legal system in question minimizing the negative aspects of the law system.
3. Legislation policy in accordance with the 2003 KAK has shifted the dimension of law enforcement to eradicate corruption, initially through the Traditional Criminal Law Regime which emphasizes retribution, traps, and benefits to the wider community, shifting to the dimension of the civil law regime. In essence, the philosophy of eradicating corruption in KAK 2003 emphasizes more on the flow dimension of utilitarian philosophy which focuses on a combination of distributive justice and cumulative justice.

Furthermore, what must be understood in reverse evidentiary systems is the meaning of finite and balanced reversal of the burden of proof. The means are limited that the reverse examination system can only be applied to corruption related to bribery (Article 12 B paragraph (1) letter a) and confiscation of property of defendants (including spouses, children, or corporations) both those who have been charged and those who have not been charged (Article 37A and Article 38 B). Reversing the proof system is prohibited from use. It is balanced that in the offense of gratification relating to bribery (Article 12 B), both the public prosecutor and the accused are obliged to prove, but the public prosecutor proves that the gift received by the recipient of the gratuity is a bribe while the defendant proves that the gratuity is not a bribe, has nothing to do with his position and does not conflict with his duties or obligations. Then, in the provisions of Article 37 A and Article 38 B, the public prosecutor continues to prove the main case negatively (in accordance with the evidence regulated by the Criminal Procedure Code) while the Defendant proves that the property in the indictment and that has not been indicted by the public prosecutor does not originate from the criminal act of corruption (Soemarto, 2018).

Based on (Sumaryanto, 2011) When carrying out verification reversal evidence, errors must be clearly correct so that there is no doubt by using evidentiary tools such as:

1. There must be evidence in such a way that if it is measured, it has greater power in its truth
2. It must be formulated as the level of evidence that the judge will give an impression of the measure of the level of truth championed by the prosecution/plaintiff.
3. The evidence must be completely in favor of the public prosecution that the

defendant's defense is beyond doubt.

Based on theoretical studies of reversal of the burden of proof, according to *common law* the system of application of reversal of the evidentiary system is only specific to certain cases related to corruption, especially to corruption crimes related to bribery. Proving this violation is considered more complicated and difficult. In addition, corruption is a crime that has a tremendous impact, so it requires countermeasures from extraordinary juridical aspects and extraordinary legal instruments (Lilik, 2005). Therefore, especially against the criminal act of corruption related to bribery reversal evidence can be applied, because gratification violations related to bribery, fall into certain categories and cases.

3. Formulation of Norms Reverse Proof System for Corruption in the Future Gratification

In fact, the shift from the burden related to proving cases of criminal acts of corruption in the country of Indonesia has been regulated in articles 12 B, 37 and 37 A, 38 B of Law Regulation No. 31 of 1999 and Law No. 20 of 2001. This regulation raises several problems, namely in terms of the formulation of criminal acts, the provisions in article 12 B raise the vagueness of the norms related to transfer to the evidence system. On the other hand, the transfer from the burden on proof is implemented on the recipient by gratification based on article 12 B paragraph 1 letter a namely ".. amounting to Rp10,000,000.00 (ten million rupiah) or more, proof that the gratuity is not a bribe executed by the recipient of the gratuity". However, on the other hand, it may not apply to the recipient of gratuities because the provisions of the article expressly state its editorial, "any gratuity to a public servant or state administrator shall be considered a bribe in respect of his position and it is contrary to his duty or obligation.

The existence of the principle of transfer of the evidence system according to criminal law norms is not directed to gratification with redactional ".. considered to accept bribes" but must be to two elements of the formulation of the offense, namely related to his position (in zijn bediening) and carrying out work contrary to obligations (in strijd met zijn plicht). The logical consequence of "feit materil" being formulated into an element of deliberation (bestanddelen) in one article carries the juridical consequence of the necessity and obligation of the prosecution to prove the total bestanddelen of the offense so that the provisions of Article 12B become misstructured and otherwise the accused is not allowed to carry out the reversal of the burden of proof.

Then, in order to formulate norms, the shift in the corruption proof system after the ratification of the 2003 KAK is characterized by a combination of the characteristics of customary law systems with civil law, the logical consequences of legislation policies must integrate two dimensions of law enforcement against corruption through the traditional criminal law regime, the purpose of retaliation, guidance and benefit to the wider community and the dimensions of the civil law regime. The dimension of law enforcement oriented towards the conventional criminal law regime focuses more on the philosophy of eradicating corruption which adheres to the Kantian philosophy by prioritizing a retributive approach and placing the interests of the State greater when compared to the interests of aggrieved third parties. The philosophical dimension of civil law, the philosophy of combating corruption is emphasized more on the utilitarian philosophy which emphasizes the combination of distributive justice and commutative justice (Mulyadi & Ismail, 2016).

Furthermore, by changing the formulation of the substance of the norms of

shifting the evidence system with an emphasis on the laws and regulations harmonized in the 2003 KIK, there are similarities *in the characteristics of the general law system with the civil law system which essentially emphasizes the philosophy of* eradicating corruption through the philosophy of Kantianism by prioritizing a retributive approach, especially directed at the guilt of perpetrators and the philosophy of combating corruption which emphasizes the flow of The utilitarian philosophy by prioritizing the combination of distributive justice and commutative justice is expected to be in harmony with the perspectives of human rights, material criminal law, criminal procedural law and international criminal law instruments.

Justice on the one hand will place a balance between the interests of the state on the one hand and on the other hand will place the interests of third parties harmed by corruption. In addition, in line with the philosophy and strategy of eradicating corruption after the 2003 KIP, law enforcement in Indonesia in combating corruption is colored by a combination of dimensions of criminal pathways through criminal convictions to perpetrators of corruption and civil through confiscation, confiscation and return of assets so that Indonesia rejects the grand strategy of eradicating corruption together with preventive, repressive, international cooperation, especially restorative and determining the position and role of the private sector and Community participation must thus prioritize the eradication of corruption through a legal system of shifting evidence systems that can minimize provisions that do not conflict with the perspective of human rights, material criminal law, criminal procedural law and international legal instruments (Mulyadi & Ismail, 2016).

The logical consequence is that because the 2003 KAK is a combination of the criminal regime and the civil regime with the point of return of assets, the formulation of norms for shifting the evidence system in the legislation policy of the Corruption Law in the future must be preventive, repressive and restorative. For this reason, it is necessary to implement changes in the substance of the burden transfer norms after the 2003 KIP. Furthermore, by changing the formulation of the substance of the norms of shifting the evidence system with an emphasis on the laws and regulations harmonized in the 2003 KIK, there are similarities *in the characteristics of the general law system with the civil law system which essentially emphasizes the philosophy of* eradicating corruption through the philosophy of Kantianism by prioritizing a retributive approach, especially directed at the guilt of perpetrators and the philosophy of combating corruption which emphasizes the flow of utilitarian philosophy by prioritizing the combination of distributive justice and commutative justice so that it is expected to be in harmony with the perspectives of human rights, material criminal law, criminal procedural law and international criminal law instruments (Mulyadi & Ismail, 2016).

Conclusion

Based on the results described above, conclusions can be drawn, namely: 1. The philosophical basis of the reverse proof system for the criminal act of gratification corruption is related to bribery Article 12 B is that both the public prosecutor and the defendant are obliged to prove, but the public prosecutor only proves the gift received by the recipient of the gratuity while the defendant proves that the gratuity is not a bribe, has nothing to do with his position and does not conflict with duty or his obligations. 2. Construction of legal substance, which directs the formulation of reverse evidentiary norms with emphasis on legislation policies in accordance with the 2003 KAK as a characteristic combination of *the general law legal system* and *civil law* as a legal system.

References

- Ibrahim. (2011). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia.
- Lilik, M. (2005). *Reversing the Burden of Proof*. Sumatera Selatan: Sinar Grafika.
- Mahfud. (2012). *Pancasila dan UUD 1945 Sebagai Dasar Solusi Persoalan Bangsa*. Malang: Universitas Merdeka Malang.
- Mulyadi, L., & Ismail. (2016). The Shifting of Burden of Proof on Corruption Offences in Indonesia After The Ratification of United Nations Convention Against Corruption (UNCAC) 2003. *The Southeast Asia Law Journal*, 16-31.
- Ronny. (1998). *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta: Ghalia Indonesia.
- Sadiyah, S. S. (2021). Implementasi Pembuktian Terbalik Pada Kasus Korupsi di Negara Indonesia dan Malaysia. Jakarta: Universitas Islam Negeri Syarif Hidayatullah.
- Soemarto, S. (2018). The Reconstruction of the Reversal of the Burden of Proof Verificationin Corruption Delict. *International Journal of English Literature and Social Sciences (IJELS)*, 732-745.
- Sumaryanto, D. (2011). Reversal of the burden of proof in taxation corruption. *Journal of Justice*, 49.
- Zainuri. (2007). *Akar Kultural Korupsi di Indonesia*. Depok: Cahaya Baru Sawangan.