

## RECONSTRUCTION OF EVIDENCE IN CRIMINAL ACTS OF CORRUPTION AS A MEANS OF FULFILLING THE PRINCIPLE OF LEGAL CERTAINTY

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**Abstract:** *Corruption crimes in Indonesia still face various serious obstacles in the aspect of proof, particularly in fulfilling the elements of the crime as formulated in Article 2 paragraph (1) and Article 3 paragraph (1) of Law Number 20 of 2001 concerning the Eradication of Corruption. The difficulty of public prosecutors in proving the elements of state financial loss and abuse of authority has resulted in many acquittals or releases from all legal charges, which ultimately weakens the effectiveness of corruption eradication and reduces public trust in law enforcement. This study aims to analyze the provisions of evidence in corruption crimes, assess the extent to which Article 37 of Law Number 20 of 2001 has fulfilled the principle of legal certainty, and formulate a reconstruction of evidence to strengthen the process of proof in corruption cases. The research method used is normative legal research with a statutory, conceptual, and comparative legal approach. The results of the study indicate that the limitations of evidence regulated in conventional criminal procedural law have not been fully able to answer the complexity of proving corruption crimes. Therefore, this study recommends a reconstruction of Article 37 of Law Number 20 of 2001 by adding provisions for the oath for the accused as additional evidence that strengthens the judge's conviction, without neglecting the principle of non-self-incrimination and the public prosecutor's obligation to provide proof. This reconstruction is expected to increase legal certainty, the effectiveness of law enforcement, and support efforts to eradicate corruption in a just manner.*

**Keywords:** *Corruption Crime, Evidence, Defendant's Oath, Legal Reconstruction, Legal Certainty.*

### Introduction

The term "corruption" comes from the Latin word "*corruptio*" or "*corruptus*," which means damage or corruption, or dishonest acts related to finances. Some argue that the term "corruption," derived from the Latin word "*corrupteia*," meaning "*bribery*" or "*seduction*," means "*corrupter*" or "*seducer*." "*Bribery*" can be defined as giving something to someone in order to get them to do something for the giver's benefit. Meanwhile, "*seduction*" means something that attracts someone to deviate.

*Black's Law Dictionary*, corruption is an act committed with the intention of giving an unofficial advantage to the rights of another party by wrongfully using one's position or character to obtain an advantage for oneself or another person, contrary to one's obligations and the rights of the other party.

According to *Transparency International*, corruption is the behavior of public officials, whether politicians or civil servants, who improperly and illegally enrich themselves or enrich those who are in power. close to themselves, by abusing the public power entrusted to them .

Corruption is a crime that consistently attracts attention in Indonesia. Corruption is no longer a new phenomenon in this country. In fact, corruption in Indonesia has even been classified as *extraordinary crime* or extraordinary crime because it has damaged not only the state's finances and economic potential, but has also destroyed the socio-cultural, moral, political and legal pillars of national security.

Law does not contain a definition of corruption. However, Article 1 number 1 of the General Provisions Chapter of Law Number 30 of 2002 concerning the Corruption Eradication Commission states the Definition of Corruption . Corruption is a crime as regulated in Law Number 31 of 1999 concerning the Eradication of Corruption, which has been amended by Law Number 20 of 2001. The definition of corruption includes all material legal provisions in the law, as stated in Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 12A, 12B, 13, 14, 15, 16, 21, 22, 23, and 24.

Article 2 paragraph (1) of Law Number 20 of 2001 states that anyone who unlawfully enriches themselves, another person, or a corporation in a manner that is detrimental to the state's finances or economy can be prosecuted. Meanwhile, Article 3 of the same law regulates criminal acts of corruption committed through abuse of authority.

Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption is a hope for the Indonesian nation in eradicating corruption, however, the eradication of corruption cases continues to experience difficulties, the eradication steps are still faltering until now. Corruption has become a chronic disease that has infected and cannot be cured until now, which has spread to all government sectors and even to state-owned companies.

Corruption always begins and develops in the government (public) sector and state-owned enterprises. With clear evidence and power, public officials and state-owned enterprises can pressure or extort money from those seeking services from the government or state-owned enterprises (SOEs).

Corruption in the private sector is also as bad as corruption in the public sector, if the business activities are related. or related to the public sector, for example the taxation sector, (Tamba et al., 2023) banking and public services.

One problem in legal practice is the inaccurate application of articles by prosecutors, lawyers, or judges in corruption cases. For example, even though a case meets the elements of Article 2 of Law Number 20 of 2001, Article 3 is often imposed instead. This likely occurs because Article 3 carries a lighter penalty, which is used to lessen the perpetrator's sentence.

In other cases where the perpetrator was charged with Article 2 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, even though the actions carried out by the perpetrator actually only fulfilled the elements of Article 3, namely the element of abuse of authority in his capacity as an office holder.

The difficulty faced by the public prosecutor in proving Articles 2 and 3 of the Corruption Eradication Law lies primarily in the limited availability of strong evidence and the proof of the subjective element in the form of the defendant's evil intentions, which are not easy to prove directly and require in-depth analysis of the actions and motivations.

Based on data found on the Supreme Court's official website, the verdicts for corruption crimes acquitted the defendants of all charges and charges. These verdicts are as follows:

No	Year	Number of Acquittals for Corruption Crimes		
		First	Appeal	Cassation

1	2020	114	-	-
2	2021	85	-	-
3	2022	34	-	-
4	2023	28	-	-
5	2024	19	-	-
Amount		280	-	-

Based on the 280 decisions in corruption cases, it is very necessary to improve or reconstruct Articles 2 and 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption .

In this case, the public prosecutor charged the defendant with Article 2 paragraph (1) as the primary charge and Article 3 paragraph (1) as a subsidiary charge. However, the judge considered that the elements of the crime in both articles were not fulfilled, so the defendant was acquitted of all charges. This condition shows the difficulty of the public prosecutor in applying the articles of the crime of corruption, so that a reconstruction of the formulation of the crime of Article 2 paragraph (1) and Article 3 paragraph (1) of Law Number 20 of 2001 is needed to support the eradication of corruption and just law enforcement .

Based on this background, the researcher found a novelty in the form of the need for reconstruction of the regulation of criminal acts of corruption, especially Article 37 of Law Number 20 of 2001, because the fulfillment of evidence to prove the elements of criminal acts of corruption is often difficult for public prosecutors to fulfill. Therefore, additional evidence in the form of an oath is needed as a means to increase the judge's confidence when the elements of criminal acts of corruption are not fully fulfilled in the trial. The confession through the oath is expected to be part of the evidence whose assessment is left to the judge's confidence in making a decision. Based on this thinking, the researcher raised the title of the dissertation *Reconstruction of Evidence in Criminal Acts of Corruption as Fulfillment of the Principle of Legal Certainty* .

### Literature review

Reconstruction in the Big Indonesian Dictionary comes from the word 'construction' which means development, which is then added with the prefix 're' to the word construction to become 'reconstruction' which means returning to the original state.

Failure to eradicate corruption, particularly due to difficulties in fulfilling the definition of the offense in Article 2 paragraph (1) and Article 3 paragraph (1) of Law Number 20 of 2001, can have a significant impact on legal efforts. These two articles regulate criminal acts of corruption related to the abuse of authority that can harm state finances or the national economy. The following are some of the impacts of difficulties in fulfilling the definition of the offense:

#### 1. Difficulty of Proving

Article 2 paragraph (1) of Law Number 20 of 2001 requires the presence of the elements of "enriching oneself or others" and "can cause harm to state finances" . The element of "can cause harm" is often a challenge in proving because it requires concrete calculations related to state losses. Audits from state financial institutions such as the BPK or BPKP are an important part of this process, but differences in interpretation regarding the value of losses often give rise to debate in law enforcement.

#### 2. Slow and Lengthy Legal Process

The inability to clearly establish the elements of these crimes leads to slow legal proceedings. Prosecutors often face challenges in formulating charges that meet the elements of these two articles. Consequently, trials can take longer, even years.

### 3. Weakening Law Enforcement Efforts

When prosecutions in corruption cases fail due to the failure to meet the elements of the crime, this can create negative perceptions about the effectiveness of law enforcement. The public may perceive that anti-corruption efforts are not working optimally, thus eroding public trust in law enforcement agencies.

### 4. Corruptors Can Escape the Snares of the Law

Difficulties in meeting the elements of "state loss" or "abuse of authority" can be exploited by corruption defendants to find loopholes in the law. This can lead to acquittals or lighter sentences, thus failing to provide a strong deterrent effect for other corruptors.

### 5. Weakening of Preventive Function

Ambiguity in the application of these articles can also weaken the deterrent function. If individuals or public officials perceive the legal definition of the offense as difficult to enforce, their likelihood of engaging in corruption may increase due to the low threat of punishment.

### 6. Legal Interpretation Gaps

Failure to eradicate corruption can be caused by differences in interpretation between judges, prosecutors, and lawyers regarding the implementation of Articles 2 and 3 of Law Number 20 of 2001. This gap has the potential to lead to inconsistencies in legal decisions, ultimately creating legal uncertainty and reducing the law's effectiveness in addressing corruption cases.

Providing sufficient evidence in corruption legal proceedings is one of the main challenges faced by law enforcement officials in Indonesia. Corruption, as a crime that often involves abuse of authority and data manipulation, tends to be difficult to prove with strong and valid evidence. The following are some of the challenges in providing sufficient evidence in corruption cases:

#### 1. Difficulty in Proving State Loss Elements

In many corruption cases, law enforcement is forced to use indicative or circumstantial evidence, which suggests corruption without directly proving it. While legally valid, this indicative evidence is often contested in court, especially if there is no strong correlation between the evidence and the act of corruption. Challenges in Proving Causality : Indicative evidence is often used to build an argument that a particular act caused state losses, but without direct evidence, this can cast doubt on the judge's judgment.

#### 2. Political Partisanship and Pressure

In some corruption cases involving high-ranking state officials or politicians, political pressure often influences the evidence-gathering process. This can take the form of: Manipulation of the Evidence-Gathering Process : Pressure from powerful parties can influence law enforcement officials in gathering evidence or manipulate the results of investigations to prevent cases from reaching court.

#### 3. Witness Credibility Issues

Witnesses in corruption cases often face credibility challenges. Several influencing factors include: The Witness's Suspect Status : In many cases, the witness is also part of the corruption network itself. Witnesses with suspect status tend to provide conflicting or incomplete testimony to protect themselves.

#### 4. Gratuities That Are Difficult to Prove

Gratuity cases regulated in the corruption law are often difficult to prove because: Proving Relationship with Position : Proving that the gift of something to a public official is directly related to their position is often difficult, especially if the gift is made in an indirect manner.

#### 5. External Influences that Disturb the Proof Process

External factors such as threats, intimidation, and bribery of witnesses and law enforcement can weaken the evidentiary process and undermine law enforcement in corruption cases. In criminal law, defendants are generally not sworn in because they are protected by the right to defend themselves and not to incriminate themselves (*nemo tenetur se ipsum accusare*), with the primary goal of discovering the material truth and upholding justice. Therefore, defendants have the right to remain silent without risking statements that would be detrimental to them, in line with the principle of *ultimum remedium* in criminal law. However, in certain contexts, sworn statements may be considered, for example, if the defendant voluntarily chooses to provide testimony under oath to support their defense, or in a transparent legal system with strict oversight of the protection of the defendant's rights.

Some countries have different practices regarding oaths for defendants in criminal cases. However, the majority of countries with modern legal systems, particularly those based on *Continental European* and *common law* legal traditions , generally do not require defendants to take oaths. Here are some international comparisons regarding oaths for defendants:

1. Countries with a *Common Law Tradition* (United States, United Kingdom, Australia) In *common law* systems , such as those in the United States, United Kingdom, Canada, and Australia, defendants are not required to be sworn in . However, if the defendant chooses to testify, he or she may testify under oath.
2. Countries with Continental European Legal Traditions (France, Germany, the Netherlands) Countries with Continental European legal systems, such as France, Germany, and the Netherlands, do not require defendants to take an oath, similar to common law systems. The principle of non-self-incrimination applies, so defendants have the right to refuse to testify without coercion.
3. In countries with Islamic-based legal systems (Saudi Arabia, Iran) , oaths may play a larger role, including in criminal cases. However, the context differs from countries with *Continental European* or *common law legal systems* .
4. Other Systems (Some Asian and African Countries) In some African and Asian countries, the practice of swearing in defendants may vary, depending on the influence of traditional, colonial, or religious laws.

Although oaths are not mandatory due to the protection of the accused's rights, such as the right to remain silent and not to incriminate oneself, various legal systems allow accused persons to voluntarily swear an oath when testifying, which can strengthen the judge's conviction. Obstacles to corruption law enforcement are also influenced by weak legal instruments, overlapping regulations, the absence of a single identification system, and difficulties in providing evidence. Unsworn testimony reflects the principle of non-self-incrimination and has independent evidentiary force, is not absolute, and must still be assessed based on the judge's conviction in order to achieve material truth.

Based on this study, the researcher recommends adding a formulation of one paragraph as contained in Article 37 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

<b>Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption</b>			
<b>Applicable Articles</b>		<b>Articles in Reconstruction</b>	
Article 37		Article 37	
(1)	The accused has the right to prove that he did not commit a criminal act of corruption.	(1)	The accused has the right to prove that he did not commit a criminal act of corruption.
(2)	If the defendant can prove that he did not commit a crime of corruption, then this information will be used to his advantage.	(2)	If the defendant can prove that he did not commit a crime of corruption, then this information will be used to his advantage.
(3)	The defendant is obliged to provide information about all of his/her assets and the assets of his/her wife or husband, children, and the assets of any person or corporation suspected of having a connection with the case in question.	(3)	The defendant is obliged to provide information about all of his/her assets and the assets of his/her wife or husband, children, and the assets of any person or corporation suspected of having a connection with the case in question.
(4)	If the defendant cannot prove that his wealth is disproportionate to his income or sources of additional wealth, then this information can be used to strengthen existing evidence that the defendant has committed a criminal act of corruption.	(4)	If the defendant cannot prove that his wealth is disproportionate to his income or sources of additional wealth, then this information can be used to strengthen existing evidence that the defendant has committed a criminal act of corruption.
(5)	In the circumstances referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), the public prosecutor remains obliged to prove his charges.	(5)	In the circumstances referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), the public prosecutor remains obliged to prove his charges.
		(6)	In order to fulfill the requirements referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), the defendant must take an oath.

**Method**

This research employs a normative legal or juridical-normative approach, viewing law as a norm or rule that applies and is binding in society. This research focuses on examining the legal provisions governing evidence in corruption crimes and their relationship to the principle of legal certainty, with the goal of formulating a reconstruction of evidence that can provide legal certainty in the law enforcement process for corruption crimes.

The approaches used in this research include a legislative approach, a conceptual approach, and a case approach. The legislative approach is carried out by examining laws and regulations related to evidence in corruption crimes, specifically the Criminal Procedure Code (KUHAP) and Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. The conceptual approach is used to examine legal concepts, principles, and theories related to evidence, the evidentiary system, the principle of legal certainty, and legal reconstruction as an effort to reform the law. Meanwhile, the case approach is carried out by analyzing court decisions on corruption crimes that have permanent legal force to observe the application of evidence by judges in judicial practice.

The legal sources used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and court decisions related to corruption and the process of proof. Secondary legal materials include legal textbooks, scientific journals, research findings, and the opinions of legal experts relevant to the research topic. Tertiary legal materials, such as legal dictionaries and legal encyclopedias, are used as supporting materials.

The collection of legal materials was conducted through a literature study by inventorying, reviewing, and examining various legal materials relevant to the research problem. Furthermore, the collected legal materials were analyzed qualitatively using a descriptive-analytical method, namely by systematically outlining the arrangement of evidence in corruption crimes, assessing their conformity with the principle of legal certainty, and formulating the reconstruction of evidence as a form of *ius constituendum* in order to realize legal certainty in enforcing corruption crimes.

## Result and Discussion

Based on the results of research into the regulation of evidence in corruption crimes, it was found that the current evidentiary system does not fully reflect the principle of legal certainty. This is due to the continued dualism of regulations between the Criminal Procedure Code (KUHAP) as general criminal procedural law and the Corruption Eradication Law as *lex specialis*. The differences in these regulations are primarily evident in the recognition of expanded evidence and the application of the reverse burden of proof, which in practice often gives rise to differences in interpretation by law enforcement officials and judges.

The research also shows that the limited provisions regarding evidence in the Criminal Procedure Code (KUHAP) often do not align with the evidentiary requirements in corruption crimes, which are complex, systematic, and involve white-collar crime. Therefore, the Corruption Eradication Law introduces an expansion of evidence, including electronic evidence and limited reversal of proof. However, this expansion has not been accompanied by clear technical regulations regarding assessment standards and limitations on its use, potentially creating legal uncertainty.

In judicial practice, this study found that the application of evidence in corruption cases relies heavily on the judge's interpretation. This is evident in the differences in decisions in cases with relatively similar evidentiary characteristics, particularly regarding the assessment of expert testimony, documentary evidence, and electronic evidence. This heavy reliance on subjective judges' interpretations indicates the lack of uniform guidelines for assessing the probative strength of evidence in corruption cases.

Furthermore, research findings indicate that the application of the reverse burden of proof, as stipulated in Article 37 of the Corruption Eradication Law, does not fully provide legal certainty. Although intended to simplify the process of providing evidence and increase the effectiveness of corruption eradication, the reverse burden of proof often sparks debate regarding

its compliance with the presumption of innocence and the protection of human rights. The unclear boundaries of the reverse burden of proof have the potential to lead to arbitrariness in the evidentiary process.

Furthermore, this study found that the lack of complete harmonization between general criminal procedural law and specific corruption criminal procedural law has led to inconsistencies in the application of the law. This situation results in the failure to achieve the legal objectives of legal certainty, justice, and benefit in a balanced manner. In this context, legal certainty is the aspect most impacted by differences in evidentiary norms and practices in court.

Based on these findings, this study concludes that the reconstruction of evidence in corruption cases is an urgent need. The reconstruction aims to systematically reorganize the types, status, and probative strength of evidence through harmonization of the Criminal Procedure Code (KUHAP) and the Corruption Eradication Law. This reconstruction also needs to be accompanied by the formulation of evidence assessment guidelines for judges to ensure uniformity in decisions and ensure legal certainty without neglecting human rights protection.

### Conclusion

Based on the research results, the current regulation of evidence in corruption crimes does not fully provide legal certainty due to disharmony between the Criminal Procedure Code (KUHAP) and the Corruption Eradication Law, particularly regarding the expansion of evidence and reverse burden of proof, which gives rise to differences in interpretation and inconsistent judicial decisions. The application of evidence also still relies on subjective judgments of judges due to the lack of clear guidelines, thus potentially reducing legal certainty and the protection of the principles of justice and human rights. In addition, reverse burden of proof has not been explicitly regulated regarding its limits and mechanisms, thus potentially leading to abuse. Therefore, the reconstruction of evidence is needed through harmonization of regulations, confirmation of the types and strength of evidence, and the preparation of clear assessment guidelines to achieve legal certainty while maintaining a balance between corruption eradication and human rights protection.

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