

Reformulating the Reversal of the Burden of Proof in Corruption Cases: Integrating Positive Law and Islamic Legal Principles

Roy Riady,¹ Febrian,² Nashriana,³ M Yusuf⁴

Universitas Sriwijaya, Indonesia^{1,2,3,4}

Email: royriadyunsri@gmail.com

Keywords:

Corruption;
Burden reversal;
Legal
reformulation.

DOI:

<https://doi.org/10.19109/nurani.v25i2.30483>

Submitted:

July 28, 2025

Accepted:

October 26, 2025

Published:

October 31, 2025

Pages: 514 - 528

Abstract: Corruption, as an extraordinary crime, necessitates the application of a reversed burden of proof mechanism. However, its procedural implementation remains problematic and potentially infringes upon the rights of the accused. The urgency of this study lies in the need for a balanced legal reformulation, one that strengthens the effectiveness of anti-corruption efforts while upholding the Islamic conception of justice, particularly the principle of *hifz al-māl* (protection of wealth) as an essential element of *maqāṣid al-syarī'ah*. This research analyzes theories of criminal evidence, the presumption of innocence, and the balanced probability principle, and further compares them with legal practices in other jurisdictions. The study employs a normative-juridical method combined with statutory, case, comparative, sociological, and futuristic approaches. Primary, secondary, and tertiary legal materials are examined through deductive and inductive reasoning. The findings reveal the necessity of legal reconstruction of Article 37 of the Anti-Corruption Law and Article 77 of the Anti-Money Laundering Law to address legal gaps and to provide procedural guidelines for the application of the reversed burden of proof by prosecutors, defendants, and judges. The existing mechanism lacks standardized evidentiary parameters, resulting in an imbalance between the prosecution and the defense. Instruments such as the State Officials' Wealth Report (LHKPN) have the potential to strengthen evidentiary processes, yet remain underutilized. Therefore, a legal reformulation is required to establish clear procedural guidelines that integrate the balanced probability principle with the values of *maqāṣid al-syarī'ah*. The study recommends revising the Anti-Corruption Law, synchronizing it with the new Criminal Code, and enhancing justice- and welfare-oriented legal instruments.

Introduction

Corruption constitutes an extraordinary crime due to its systemic impact on state finances, the national economy, and the legitimacy of governmental institutions (Antariksa, 2025; Puanandini et al., 2025; Syarbaini, 2025). The criminal act of corruption is governed by a specific procedural law that regulates the prosecution and adjudication of corruption offenders, distinguishing it from the procedures applied to other categories of special crime (Nurdjana, 2009). Furthermore, corruption is understood as a crime involving the abuse of power or public office for personal gain (Atmasasmita, 2004). It is also classified as an organized and transnational crime under the *United Nations Convention against Transnational Organized Crime* (UNTOC, 2000). This classification is based on the consideration that the *modus operandi* of corruption has become deeply embedded within

bureaucratic systems in almost all countries, including those in Asia and Africa, and is often perpetrated on a large scale by high-ranking officials.

Data from Indonesia Corruption Watch (ICW) covering the period from 2013 to 2022 indicate a significant disparity between the state's financial losses and the amount recovered through fines and restitution, which represents only a small fraction of the total losses. The evidentiary mechanism based on the presumption of innocence and the standard of proof beyond reasonable doubt has often proven ineffective in addressing "grand corruption" cases. To overcome this limitation, the Anti-Corruption Law introduced the concept of a reversed burden of proof. However, the absence of clear procedural guidelines has led to inconsistencies in investigation, prosecution, and judicial decisions.

From the perspective of Islamic law, the practice of corruption can be regarded as a form of *ghulul* (misappropriation of public property), which is explicitly prohibited in *Surah Āli Īmrān* (3:161): "Whoever betrays the spoils of war will come on the Day of Resurrection carrying what he has misappropriated" (Ali et al., 2024). Furthermore, the Prophet's hadith states, "Allah curses the briber and the receiver of bribes" (Narrated by Abu Dawud). This implies that corruption is not merely a criminal act but also a grave sin that undermines social justice (Alam et al., 2022). This social reality underscores the urgency of reformulating the reversed burden of proof to ensure that anti-corruption efforts are more effective and aligned with the values of substantive justice.

Previous studies have identified several common patterns. *First*, Sumaryanto (2019) emphasized the need to harmonize the reversal of the burden of proof so that it does not conflict with human rights, although his study was limited to the legislative level. *Second*, Lasmadi dan Sudarti (2021) found ambiguity in the implementation of the reversed burden of proof under the Anti-Money Laundering Law, particularly concerning asset confiscation. *Third*, Fernandho (2020) proposed the application of the *balanced probability* principle to maintain equilibrium between the protection of individual rights and the interests of the state. In contrast, Islamic legal literature highlights the principle of *al-bayyinat 'ala al-mudda'i wal-yamin 'ala man ankara* (the burden of proof lies with the claimant, while the oath is upon the one who denies) as narrated by al-Bayhaqi. However, classical scholars also allow modifications to this principle under certain circumstances to prevent injustice (*sadd al-dzari'ah*) (Al-Qaradawi, 1997). In general, previous research has focused primarily on positive law and has not yet integrated the evidentiary principles of Islamic law, which emphasize balance between the protection of individual rights and the safeguarding of public wealth (*hifẓ al-māl*).

This study aims to provide a comprehensive understanding of the concept of the reversal of the burden of proof in corruption cases in Indonesia. First, it focuses on analyzing the legal foundations governing the mechanism of the reversed burden of proof, both in statutory provisions and within the framework of criminal procedural law, in order to determine the extent to which these regulations ensure legal certainty. Second, it examines various challenges arising in the implementation process, particularly during the stages of investigation, prosecution, and trial, including disparities in interpretation and practice among law enforcement authorities. Third, the

study seeks to formulate a more balanced and consistent model of the reversed burden of proof that is grounded in the principles of Islamic law. Therefore, the findings are expected to offer a conceptual framework that not only addresses the gaps within positive law but also aligns with the values of substantive justice as emphasized in the *maqāṣid al-syarī'ah*. Manfaat teoretis penelitian ini adalah memperkaya khazanah hukum pembuktian dengan perspektif integratif antara hukum positif dan hukum Islam. Manfaat praktisnya adalah memberikan pijakan bagi pembuat kebijakan dan aparat penegak hukum dalam merumuskan regulasi dan pedoman teknis, serta menjadi acuan moral bagi masyarakat dalam mencegah dan memberantas korupsi.

The main argument of this study is that the reversal of the burden of proof needs to be reformulated to achieve a more balanced framework that aligns with the principles of legal justice and the *maqāṣid al-syarī'ah*. The current model of positive law remains inadequate because it does not stipulate minimum standards for the defendant's burden of proof or establish clear limits on asset confiscation beyond the *tempus delicti* (Syarafi & Syahbandir, 2024). This situation is further exacerbated by disparities between public prosecutors and defendants, resulting in injustice and inconsistencies in judicial decisions. As a proposed solution, this study introduces the application of the *balanced probability* principle combined with the *fiqh* maxim *dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ* (preventing harm takes precedence over attaining benefit). This combination offers a means to balance the protection of individual rights with the public interest in recovering state losses. Accordingly, the study aspires to develop a reformulated model of the reversed burden of proof that reflects the demands of substantive justice and the ethical values of Islam.

Method

The object of this research is the application of the reversed burden of proof in the handling of corruption cases in Indonesia. The study focuses on the normative regulations contained in statutory law, judicial practices, and the practical challenges encountered in efforts to recover state financial losses.

This study employs a normative or doctrinal legal research method. It adopts a case approach by analyzing court decisions on corruption cases and a sociological approach by examining how law enforcement authorities implement the reversed burden of proof in practice. In addition, the study uses a comparative approach by reviewing relevant legal frameworks in other countries such as Malaysia, Singapore, Hong Kong, and India. A statute approach is also applied to analyze the Anti-Corruption Law, the Criminal Procedure Code (*KUHAP*), the Anti-Money Laundering Law, the 2023 Criminal Code, and other related regulations. Furthermore, a futuristic approach is utilized to formulate a prospective model for the reformulation of evidentiary law.

The data sources of this study consist of primary and secondary legal materials. The primary legal materials include Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption Crimes (Anti-Corruption Law), Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering (Anti-Money Laundering Law), Law No. 1 of 2023 (the new Criminal Code), the Criminal Procedure Code (*KUHAP*), and relevant

court decisions such as the *Angin Prayitno* and *Tubagus Chaeri Wardana* cases. The secondary legal materials comprise legal textbooks, journal articles, research reports, and expert opinions in the field of law. To strengthen the research findings, primary data were also obtained through interviews with legal scholars, judges, prosecutors, and legal practitioners who have extensive experience in handling corruption cases, thereby providing practical perspectives on the mechanism of the reversed burden of proof.

Data collection was carried out through a literature review of both primary and secondary legal materials. Case studies were conducted on court decisions concerning corruption offenses, and limited interviews were held with selected experts. The data processing involved the classification, systematization, and interpretation of legal materials relevant to the research questions. The data analysis employed a qualitative normative approach by interpreting primary legal materials supported by secondary sources and interview data. The analysis compared positive legal norms with judicial practices and legal theories, including the theory of justice, progressive legal theory, and integrative legal theory. The conclusions were drawn using a deductive method, moving from general legal norms to specific answers to the research problems.

Results and Discussion

Weaknesses in the Evidentiary System and the Low Recovery of State Losses

Official reports from the Corruption Eradication Commission (KPK) indicate that the amount of state losses recovered through restitution and replacement payments during the 2023–2025 period remains very small compared to the total estimated losses. For instance, in 2023 the total state loss was recorded at approximately IDR 1.8 trillion, while the recovered amount reached only IDR 90 billion (KPK, 2024). Similarly, data from the Attorney General's Office (2024) show that out of IDR 50.3 trillion in state losses recorded in 2023, only IDR 30.2 trillion was successfully recovered. Indonesia Corruption Watch (ICW) further reported that between 2013 and 2022, court-imposed fines and restitution amounted to only around IDR 33 trillion, a figure far lower than the total state losses exceeding IDR 200 trillion (ICW, 2023).

These data confirm that the current evidentiary mechanism is ineffective in optimizing the recovery of assets obtained through corruption. This ineffectiveness stems from the negative evidentiary model stipulated in Article 183 of the Criminal Procedure Code (*KUHAP*), which places the entire burden of proof solely on the public prosecutor (Ante, 2013; Hawasara et al., 2022). As a result, many assets remain untouchable due to the lack of direct evidence.

There is a strong correlation between the weakness of the reversed burden of proof regulation and the low rate of state asset recovery. Without a firm reversed burden of proof mechanism, it is difficult to confiscate assets that are disproportionate to the defendant's known income (Ismawati, 2023; Simorangkir & Hasibuan, 2023). In fact, corruption crimes in Indonesia have undergone a fundamental shift in the allocation of the burden of proof, which

no longer rests exclusively with the public prosecutor but also involves the defendant through the reversed burden of proof mechanism. This is explicitly stated in Article 38B of the Anti-Corruption Law, which provides that any person charged with a corruption offense is required to prove the lawful origin of assets in their possession that are not specifically charged but are suspected to have been derived from corruption. If the defendant fails to prove that the assets were not obtained through corruption, such assets are presumed to be proceeds of corruption, and the court has the authority to order the confiscation of all or part of them for the state (Law No. 31 of 1999 in conjunction with Law No. 20 of 2001). Therefore, this legal provision should serve as an essential instrument to enhance the effectiveness of state asset recovery.

In practice, however, the effectiveness of the reversed burden of proof mechanism in facilitating asset recovery from corruption cases has not been fully achieved due to its vague and inconsistent regulatory framework. The disharmony among related legal provisions has resulted in the suboptimal implementation of this mechanism. Consequently, the application of the reversed burden of proof has not yet provided fair legal certainty and continues to leave gaps of ambiguity that hinder the optimal recovery of state losses.

Disparities in Law Enforcement Practices Due to Procedural Gaps

Interviews with investigators from the Attorney General's Office and the Corruption Eradication Commission (KPK) revealed uncertainties in applying Article 12B of the Anti-Corruption Law concerning the confiscation of assets that appear disproportionate to the defendant's legitimate income profile. Some investigators stated that there are no clear procedural guidelines on whether such assets may be immediately seized or must await judicial verification (Lasmadi & Sudarti, 2021). The absence of standardized guidelines has created inconsistencies in investigative practices, thereby reducing the overall effectiveness of law enforcement.

The procedural gap has also resulted in disparities in law enforcement practices. Some investigators have proceeded to confiscate assets beyond the *tempus delicti* based on reasonable judgment, while others have refrained in order to avoid the risk of an acquittal. This situation is further complicated by the difficulties judges face in assessing assets that are inconsistent with the defendants' *State Officials' Wealth Reports (LHKPN)*. Until now, the *LHKPN* has not been formally recognized as admissible evidence in corruption cases, which has created challenges in proving the disproportionate nature of a defendant's wealth (KPK Regulation No. 2/2020).

These observations demonstrate a close relationship between regulatory ambiguity and disparities in law enforcement practices. As a consequence, legal certainty in corruption cases remains weak, and the overall effectiveness of law enforcement has significantly declined (Tallaut & Adhari, 2022). This condition proves that, in the absence of clear procedural norms and technical guidelines, the implementation of the reversed burden of proof remains merely formalistic and fails to provide consistent direction for law enforcement authorities.

In addition, the formulation of Article 38B of the Anti-Corruption Law does not explicitly regulate the obligations of public prosecutors in proving

assets suspected to have originated from corruption offenses. The provision primarily places the burden of proof on the defendant, which may create an imbalance between the prosecutor and the accused. This lack of clarity not only results in legal uncertainty but also gives rise to a perception of injustice in the judicial process of corruption cases. Therefore, it can be concluded that the absence of procedural regulation and the weaknesses in the formulation of Article 38B contribute to the widening disparity in law enforcement practices, thereby undermining the effectiveness of the reversed burden of proof in efforts to recover state losses.

Case Studies and the Urgency of Reformulating the Reversed Burden of Proof

The case of *Angin Prayitno Aji* (Supreme Court Decision No. 6722 K/Pid.Sus/2022) illustrates that the defendant possessed assets amounting to IDR 57 billion, while his *LHKPN* (State Officials' Wealth Report) recorded only IDR 18 billion. Nevertheless, investigators hesitated to seize assets acquired beyond the *tempus delicti*. In the case of *Tubagus Chaeri Wardana* (Supreme Court Decision No. 1957 K/Pid.Sus/2021), the Supreme Court acquitted the defendant of money laundering charges because he presented only one witness as evidence, even though this did not meet the standard of "two valid pieces of evidence" required of the public prosecutor.

This case study reveals three major issues. First, there is no clear limitation on which assets may be confiscated, whether those acquired within or beyond the *tempus delicti*. Second, there is no minimum evidentiary standard required of defendants in the application of the reversed burden of proof. Third, the *LHKPN* has not yet been recognized as admissible evidence in corruption trials (Fernandho, 2020). Both cases demonstrate a disparity between public prosecutors and defendants. While prosecutors are required to meet the minimum standard of two valid pieces of evidence, defendants may be acquitted based on a single weak piece of evidence. This imbalance underscores a fundamental weakness in the current reversed burden of proof system, which lacks proportionality and ultimately diminishes the potential for recovering state losses (Stolpe, 2008).

The three forms of evidence, namely statistical data, observational findings, and case studies, reveal a consistent pattern showing that the application of the reversed burden of proof in corruption cases remains weak both normatively and in practice. The absence of standardized procedural guidelines has led to disparities in implementation, reduced the effectiveness of state asset recovery, and created opportunities for defendants to escape legal accountability. Therefore, the reformulation of procedural law governing the reversed burden of proof is urgently needed to maintain a balance between the protection of the defendant's human rights and the state's interest in recovering losses resulting from corruption.

This study finds that the implementation of the reversed burden of proof in corruption cases in Indonesia continues to face various normative and practical challenges. On the one hand, legal provisions such as Articles 37, 37A, and 38 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption have already accommodated this mechanism. In practice, however, judges, public prosecutors, and defendants often encounter

***Reformulating the Reversal of the Burden of Proof in Corruption Cases:
Integrating Positive Law and Islamic Legal Principles***

Roy Riady et al.

uncertainty regarding the standards for its application. The decisions in the *Angin Prayitno* and *Tubagus Chaeri Wardana* cases illustrate significant disparities, particularly concerning evidentiary standards and the determination of when assets may be seized or proven to have been derived from criminal acts.

In addition, the *State Officials' Wealth Report (LHKPN)* has not yet been optimally utilized by judges as a control instrument in the application of the reversed burden of proof, even though it has the potential to enhance transparency and legal certainty. These findings confirm the existence of procedural gaps in the regulation of the reversed burden of proof, highlighting the need for a reformulation that is more adaptive and balanced between the protection of the defendant's rights and the state's interest in recovering losses.

This study aligns with the findings of Djoko Sumaryanto (2019), who emphasized the importance of harmonizing the reversed burden of proof with human rights instruments to prevent violations of the presumption of innocence principle. However, unlike Sumaryanto's research, which focused primarily on the legislative dimension, this study highlights the practical disparities that occur between public prosecutors and defendants.

The results of this study also intersect with the work of Sahuri Lasmadi and Elly Sudarti (2021), who examined the reversed burden of proof in money laundering cases and identified the lack of clarity in procedural mechanisms as a major concern. The main distinction lies in the research focus: while their study addressed money laundering offenses, this research concentrates on corruption as an extraordinary crime.

Dauglas Fernandho (2020) emphasized the importance of the *balanced probability* principle as the foundation for the reversal of the burden of proof. The findings of this dissertation reinforce that idea by revealing weaknesses in the evidentiary standards applied in corruption courts. Therefore, this study expands the scope of the discussion by positioning the reformulation of the reversed burden of proof not merely as an academic discourse but as an urgent necessity in Indonesia's legal practice.

To clarify the distinction between the current formulation and the proposed, more balanced model for future implementation, a comparative summary is presented in table 1 below.

Table 1. Reformulating the Reversal of the Burden of Proof in the Anti-Corruption Law and the Anti-Money Laundering Law

Current Formulation	Proposed Formulation
Article 37 of the Anti-Corruption Law:	Proposed Article 37 of the Anti-Corruption Law
(1) The defendant has the right to prove that he or she did not commit a criminal act of corruption.	(1) The process of proving a corruption offense may be carried out during the investigation stage or at the time of the suspect's designation.
(2) If the defendant is able to prove that he or she did not commit a criminal act of corruption, such evidence shall be used by the	(2) If the suspect can prove that he or she did not commit a corruption offense, such proof shall be used by the public prosecutor as the basis for terminating the case through a court determination.

***Reformulating the Reversal of the Burden of Proof in Corruption Cases:
Integrating Positive Law and Islamic Legal Principles***

Roy Riady et al.

court as the basis for declaring that the charges have not been proven.

- (3) If the suspect is unable to provide proof at the investigation stage and the case proceeds to prosecution or trial, the defendant retains the right to prove his or her innocence during court proceedings.
- (4) Such proof shall be used by the court as the basis for declaring that the charges have not been proven after considering the evidence submitted by the public prosecutor.
- (5) The defendant's right to present evidence does not eliminate the public prosecutor's obligation to prove the charges.
- (6) If neither the defendant nor the public prosecutor is able to prove their claims, the judge may render a decision based on the available evidence presented in court, supplemented by the judge's conviction.
- (7) In cases where the public prosecutor seizes assets suspected to be derived from a corruption offense:
 - a. The public prosecutor may confiscate assets obtained by the defendant outside the time frame of the alleged offense (*tempus delicti*).
 - b. The public prosecutor is required to indict assets suspected of being derived from corruption if such assets are deemed disproportionate to the defendant's lawful income, by charging them as gratification as regulated under Article 12B.
 - c. The confiscation of such assets shall be conducted in accordance with the provisions of the Criminal Procedure Code governing seizure.

Article 77 of the Anti-Money Laundering Law: For the purpose of examination during court proceedings, the defendant is obliged to prove that his or her assets do not constitute the proceeds of a criminal act.

Proposed Article 77 of the Anti-Money Laundering Law:

- (1) The process of proving the lawful origin of assets suspected to be the proceeds of a criminal act may be carried out during the investigation stage or at the time of the suspect's designation.
- (2) If the suspect can prove that he or she did not commit a corruption offense, such proof shall be used by the public prosecutor as the basis for terminating the case.
- (3) If the suspect is unable to provide such proof during the investigation and the case proceeds to prosecution or trial, the defendant retains the right to prove that he or she did not commit a corruption offense during court proceedings.

***Reformulating the Reversal of the Burden of Proof in Corruption Cases:
Integrating Positive Law and Islamic Legal Principles***

Roy Riady et al.

	(4) Such proof shall be used by the court as the basis for declaring that the charges have not been proven after considering the evidence submitted by the public prosecutor.
	(5) The defendant's right to present evidence does not eliminate the public prosecutor's obligation to prove the charges.
Article 78 of the Anti-Money Laundering Law:	Proposed Article 78 of the Anti-Money Laundering Law:
(1) In the court proceedings as referred to in Article 77, the judge shall order the defendant to prove that the assets related to the case do not originate from or are not connected with a criminal act as referred to in Article 2 paragraph (1).	(1) In the court proceedings as referred to in Article 77, the judge shall order the defendant to prove that the assets related to the case do not originate from or are not connected with a criminal act as referred to in Article 2 paragraph (1).
(2) The defendant shall prove that the assets related to the case do not originate from or are not connected with a criminal act as referred to in Article 2 paragraph (1) by submitting sufficient evidence.	(2) The defendant shall prove that the assets related to the case do not originate from or are not connected with a criminal act as referred to in Article 2 paragraph (1) by submitting sufficient evidence.
	(3) The sufficient evidence referred to in paragraph (2) shall include evidence as regulated under the Criminal Procedure Code, including documentary evidence relating to the assets and property attached to the defendant.
	(4) In cases where the assets in question were acquired before the commission of the alleged criminal act, the public prosecutor shall first indict those assets as originating from a predicate offense.
	(5) The predicate offense as referred to in paragraph (4) shall be the criminal act of gratification.

Source: Author's creation.

The comparison presented in Table 1 confirms that the proposed reformulation not only expands the scope of evidentiary processes to include the stages of investigation and prosecution but also provides procedural clarity for prosecutors, judges, and defendants. Accordingly, this design is expected to reduce disparities in practice while maintaining a balance between individual rights and the public interest.

The findings of this study reflect that Indonesia is currently in an unfinished phase of criminal law transition, positioned between upholding the principle of the presumption of innocence (Article 8 paragraph (1) of the Law on Judicial Power and Article 66 of the Criminal Procedure Code) and the need to strengthen the effectiveness of anti-corruption enforcement. The lack of clear standards regarding the reversed burden of proof signifies a legal paradox: extraordinary efforts to confront an extraordinary crime risk undermining the fundamental rights of defendants if not regulated with precision.

***Reformulating the Reversal of the Burden of Proof in Corruption Cases:
Integrating Positive Law and Islamic Legal Principles***

Roy Riady et al.

From the perspective of Islamic law, this reflection reveals a tension between the classical evidentiary maxim *al-bayyinah ‘alā al-mudda’ī wa al-yamīn ‘alā man ankara* (“the burden of proof lies with the claimant, while the oath is upon the one who denies,” narrated by al-Tirmidhi and al-Bayhaqi) and the demand of *siyāsah shar‘īyyah* to safeguard public interests (Al-Zuhayli, 1997; Kamali, 2003; Mahmor, 1994). Corruption, which in the Qur’an is viewed as a form of *ghulul* or the misappropriation of state property (Qur’an, Āl ‘Imrān [3]:161), constitutes a major sin as it usurps the rights of the community (Abdel Haleem, 2004; Fikriawan, 2019). Therefore, the reversal of the burden of proof can be understood as an effort to preserve *maṣlaḥah ‘āmmah* (the public interest), which within the framework of *maqāṣid al-sharī‘ah* forms part of *ḥifẓ al-māl* (the protection of wealth) (Auda, 2008; Ibn Taymiyyah, 1982; Zailani et al., 2022).

The main implication of this study is the urgent need for a clearer legal reformulation concerning the following aspects:

1. Evidentiary standards – including the minimum number of evidentiary instruments that must be presented by the defendant.
2. Judicial guidelines – to ensure consistency and uniformity of judgments in corruption cases.
3. Utilization of the State Officials’ Wealth Report (LHKPN) – as a supporting instrument of proof within the framework of substantive justice.
4. Human rights protection – to ensure that the mechanism does not contravene the principle of non-self-incrimination.

From the perspective of Islamic law, these implications are consistent with the objectives of *maqāṣid al-sharī‘ah*. Through the protection of public wealth (*ḥifẓ al-māl*), the state bears the obligation to close all avenues leading to corruption (*sad al-dharī‘ah*). As stated in the Qur’an, Surah al-Nisā’ [4]:58, “When you judge between people, judge with justice.” This principle of substantive justice should serve as the foundation to ensure that the reversal of the burden of proof is not misused but directed toward upholding public trust.

Several factors explain the disparities found in the implementation of the reversed burden of proof. First, procedural gaps: there are no explicit provisions on the procedure for reversed proof either in the Anti-Corruption Law or in the Criminal Procedure Code. Second, normative resistance: the strong influence of the presumption of innocence doctrine has made some judges reluctant to apply this mechanism. Third, instrumental limitations: the State Officials’ Wealth Report (LHKPN) has not been fully optimized, while investigators and prosecutors remain focused on conventional forms of evidence. Fourth, the influence of global legal systems: common law countries such as Malaysia, Singapore, and Hong Kong have long adopted the balance of probabilities model, whereas Indonesia remains confined to the *negatief-wettelijk* model.

From an Islamic legal standpoint, the weak integration of *sharī‘ah* values into positive law, including overly permissive evidentiary standards, represents a failure to apply the principle of *al-dharar yuzāl* (harm must be

***Reformulating the Reversal of the Burden of Proof in Corruption Cases:
Integrating Positive Law and Islamic Legal Principles***

Roy Riady et al.

eliminated). The state should therefore formulate legal norms and regulations that prevent public harm caused by corruption, in line with the theory of *maqāṣid al-sharī'ah* and the principle of *al-'adl* as the foundation of universal justice (Andriyani & Dewi, 2020; Asa'ari et al., 2023; Purnomo, 2020; Rohim, 2022; Sudarmanto et al., 2025).

In the future, several strategic measures can be undertaken to strengthen the effectiveness of the reversed burden of proof in corruption cases. *First*, it is necessary to reformulate both the Anti-Corruption Law and the Criminal Procedure Code by incorporating clearer provisions regarding the mechanism of the reversed burden of proof, evidentiary standards, and the limits of its application. Such a reformulation is essential because the current regulation of the reversed burden of proof remains vague and has created procedural gaps in practice (Mulyadi, 2015; Yusuf, 2013).

Second, the Supreme Court should develop comprehensive guidelines to ensure that judges have a uniform reference when rendering decisions in corruption cases. Without clear guidance, judges are prone to subjective interpretation, which leads to disparities in sentencing (Hiariej, 2012; Satria, 2017). *Third*, the State Officials' Wealth Report (LHKPN) should be optimized through the support of digital forensic technology. Such integration would enable more transparent and accountable monitoring and verification of disproportionate assets (Darwin, 2024; Nugroho & Liyana, 2024; Sulaiman et al., 2025). *Fourth*, legal education and training for law enforcement officers are essential to ensure a proper understanding of the balanced probability principle. At present, the application of this principle often depends on the subjective interpretation of officials, which creates legal uncertainty (Abdullah & Hatta, 2022; Yogaswara, 2024). *Fifth*, Indonesia must also remain open to comparative and adaptive engagement with international best practices. Case studies from various countries indicate that anti-corruption legal innovations can be selectively adopted to strengthen the national legal system, provided they are adapted to the local context and aligned with the values of substantive justice (Ceschel et al., 2022; Reheem Shaila, 2025).

From the perspective of Islamic law, these strategic measures can be reinforced by integrating the concept of *hisbah* (public accountability) as a form of community participation in the prevention of corruption. The principle of *dar' al-mafāsid muqaddam 'alā jalb al-maṣāliḥ* (preventing harm takes precedence over attaining benefit) serves to legitimize the state's extraordinary measures. Developing an anti-corruption *fiqh siyāsah* framework would justify exceptional policies as long as they remain consistent with the principles of *shar'ī* justice.

Through these measures, the reversal of the burden of proof can become a fair, effective, and balanced legal instrument, fully aligned with Islamic law that upholds justice (*'adl*), the protection of wealth (*ḥifẓ al-māl*), and the promotion of public welfare (*al-maṣlaḥah al-āmmah*).

Conclusion

This study confirms that the mechanism of the reversed burden of proof in corruption cases in Indonesia still faces fundamental problems, particularly the absence of procedural law provisions that result in inconsistent

implementation at the levels of investigation, prosecution, and trial. The findings indicate a disparity in evidentiary standards between public prosecutors and defendants, as well as a lack of clarity regarding the minimum evidentiary threshold that defendants must meet to justify their assets. This weakness is evident in the *Angin Prayitno* and *Tubagus Chaeri Wardana* cases, where the judges rendered different decisions due to the absence of explicit guidelines on the reversed burden of proof.

From the perspective of Islamic law, these findings highlight the need to harmonize the classical legal maxim *al-bayyinah ‘alā al-mudda’ī wal-yamīn ‘alā man ankara* (narrated by al-Tirmidhi and al-Bayhaqi) with the principle of *siyāsah shar‘iyyah* in addressing corruption as a form of *ghulul* (Qur’an, Āl ‘Imrān [3]:161). Accordingly, the reversal of the burden of proof can be understood as an extraordinary instrument to preserve *maṣlahah ‘āmmah* (public interest) within the framework of *maqāṣid al-sharī‘ah*, particularly the protection of wealth (*ḥifẓ al-māl*).

This study proposes a reformulated model of the reversed burden of proof based on the *balanced probability* principle, which seeks to maintain equilibrium between protecting the rights of defendants and safeguarding the state’s interest in asset recovery. The proposed concept also expands the scope of criminal law discourse by integrating Islamic legal principles such as *al-darar yuzāl* (harm must be eliminated) and *sad al-dharī‘ah* (preventing means that lead to harm). Furthermore, the study goes beyond textual legal analysis by incorporating court decisions, empirical data from Indonesia Corruption Watch (2013–2022), and practices related to the *State Officials’ Wealth Report (LHKPN)*. As such, this research contributes an interdisciplinary methodological approach that combines normative, comparative, and empirical perspectives, which remain underexplored in previous studies.

This research has two main limitations. First, the analysis primarily focuses on normative and jurisprudential aspects, leaving the practical implementation during investigation and prosecution stages less explored. Second, the scope of the study is limited to specific cases (*Angin Prayitno* and *Tubagus Chaeri Wardana*), so broader generalizations for corruption cases require further investigation.

Future research should examine the application of the reversed burden of proof following the enactment of the 2023 Criminal Code, which expands the scope of corruption offenses but has yet to comprehensively regulate the mechanism of reversed proof. Further studies should also explore the integration of digital forensic instruments and the *LHKPN* as evidentiary tools in corruption trials to enhance transparency. Moreover, developing contemporary *fiqh siyāsah* studies within the framework of anti-corruption policy is essential to identify stronger points of convergence between Indonesia’s positive law and the principles of Islamic jurisprudence.

References

- Abdel Haleem, M. A. S. (2004). *The Qur'an: A New Translation*. Oxford University Press.
- Abdullah, A., & Hatta, M. (2022). The Application of the Burden of Proof Concept in Indonesia: A Comparative Study. *SASI*, 28(3), 458–469. <https://doi.org/10.47268/sasi.v28i3.1045>
- Al-Qaradawi, Y. (1997). *Al-Ijtihad fi al-Shari'ah al-Islamiyyah: Ma'a Nazharatin Tahliliyyah fi al-Ijtihad al-Mu'asir*. Dar al-Tawzi' wa al-Nashr al-Islamiyyah.
- Al-Zuhayli, W. (1997). *Al-Fiqh al-Islami wa Adillatuh* (8th ed.). Dār al-Fikr.
- Alam, S., Fajrin, Y. A., Al-Fatih, S., & Borsa, M. O. (2022). Islamic Criminal Law Study on The Seizure of Corruptor Assets as an Indonesian's Criminal Sanction in The Future. *JURIS (Jurnal Ilmiah Syariah)*, 21(2), 143–156. <https://doi.org/10.31958/juris.v21i2.6722>
- Ali, B., Hanapi, A., Salam, A. J., Syaumi, M., & Filzah, N. (2024). The Preemptive Approach of Ulama in Aceh to Eradicating Corruption. *El-Mashlahah*, 14(2), 361–380. <https://doi.org/10.23971/el-mashlahah.v14i2.8885>
- Andriyani, A., & Dewi, R. (2020). Rehabilitation Sanctions Against The Narcotics User According To The Perspective Of Maqashid Shariah. *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, 20(2), 233–246. <https://doi.org/10.19109/nurani.v20i2.6926>
- Antariksa, F. P. (2025). Penerapan Hukuman Mati Bagi Pelaku Tindak Pidana Korupsi Dan Implikasinya Terhadap Sistem Hukum Di Indonesia. *Qanuniya: Jurnal Ilmu Hukum*, 2(1), 59–70. <https://doi.org/https://doi.org/10.15575/qanuniya.v2i1.1279>
- Ante, S. (2013). Pembuktian Dan Putusan Pengadilan Dalam Acara Pidana. *Lex Crimen*, 2(2), 98–104.
- Asa'ari, A., Ahmad, J., Zufriani, Z., Witro, D., & Kustiawan, M. T. (2023). Considering Death Penalty for Corruptors in Law on Corruption Eradication from the Perspective of Maqāsid al-Syarī'ah. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7(2), 920–936. <https://doi.org/10.22373/sjhgk.v7i2.14944>
- Atmasasmita, R. (2004). *Sekitar Masalah Korupsi Aspek Nasional dan Aspek Internasional*. Mandar Maju.
- Auda, J. (2008). *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. The International Institute of Islamic Thought (IIIT).
- Ceschel, F., Hinna, A., & Homberg, F. (2022). Public sector strategies in curbing corruption: A review of the literature. *Public Organization Review*, 22(3), 571–591.
- Darwin, K. (2024). Strengthening Public and Private Accountability through Digital Forensic Accounting. *Sinergi International Journal of Accounting and Taxation*, 2(4), 225–238. <https://doi.org/10.61194/ijat.v2i4.717>
- Fernandho, D. (2020). Reformulasi Pembuktian Terbalik dalam Memaksimalkan Pemeriksaan Perkara Money Laundering dengan Predicate Crime Tindak Pidana Korupsi. *Litigasi*, 19(2), 148–162.

***Reformulating the Reversal of the Burden of Proof in Corruption Cases:
Integrating Positive Law and Islamic Legal Principles***

Roy Riady et al.

<https://doi.org/10.23969/litigasi.v19i2.922>

- Fikriawan, M. (2019). Konsep Korupsi dalam Perspektif al-Qur'an: Analisis terhadap Istilah Ghulul dalam QS. Al 'Imrān [3]:161. *Jurnal Hukum Islam*, 17(2), 145–162.
- Hawasara, W., Sinaulan, R. L., & Candra, T. Y. (2022). Penerapan dan Kecenderungan Sistem Pembuktian Yang Dianut Dalam KUHAP. *Aksara: Jurnal Ilmu Pendidikan Nonformal*, 8(1), 587–594. <https://doi.org/10.37905/aksara.8.1.587-594.2022>
- Hiariej, E. O. S. (2012). *Teori dan Hukum Pembuktian*. Erlangga.
- Ibn Taymiyyah, T. al-D. A. (1982). *Al-Ḥisbah fī al-Islām aw Wazīfat al-Hukūmah al-Islāmiyyah*. Dār al-Rāyah.
- ICW. (2023). *Laporan Akhir Tahun ICW 2023*. Indonesia Corruption Watch.
- Ismawati, N. T. (2023). Sistem Pembuktian Terbalik Dalam Upaya Penanganan Tindak Pidana Korupsi. *Jurnal Hukum Dan Pembangunan Ekonomi*, 11(1), 90–97. <https://doi.org/10.20961/hpe.v11i1.68741>
- Kamali, M. H. (2003). *Principles of Islamic Jurisprudence*. The Islamic Texts Society.
- Lasmadi, S., & Sudarti, E. (2021). Pembuktian terbalik pada tindak pidana pencucian uang. *REFLEKSI HUKUM Jurnal Ilmu Hukum*, 5(2), 199–2018.
- Mahmor, M. A. (1994). *Siyasah Shar'īyyah: Prinsip-prinsip Pemerintahan Islam*. Dewan Bahasa dan Pustaka.
- Mulyadi, L. (2015). Asas Pembalikan Beban Pembuktian Terhadap Tindak Pidana Korupsi Dalam Sistem Hukum Pidana Indonesia Dihubungkan Dengan Konvensi Perserikatan Bangsa-Bangsa Anti Korupsi 2003. *Jurnal Hukum Dan Peradilan*, 4(1), 101–132. <https://doi.org/10.25216/jhp.4.1.2015.101-132>
- Nugroho, P. W., & Liyana, N. F. (2024). Optimalisasi Penerimaan Pajak Melalui Kegiatan Forensik Digital Untuk Tujuan Perpajakan. *JURNAL PAJAK INDONESIA (Indonesian Tax Review)*, 8(2), 224–243. <https://doi.org/10.31092/jpi.v8i2.2357>
- Nurdjana, I. G. M. (2009). *Sistem Hukum Pidana dan Bahaya Laten Korupsi (Problematisasi Sistem Hukum Pidana dan Implikasinya pada Penegakan Hukum Tindak Pidana Korupsi)*. Total Media.
- Puanandini, D. A., Maharani, V. S., & Anasela, P. (2025). Korupsi sebagai Kejahatan Luar Biasa: Analisis Dampak dan Upaya Penegakan Hukum. *Public Sphere: Jurnal Sosial Politik, Pemerintahan Dan Hukum*, 4(1).
- Purnomo, B. (2020). Maqāshid Al-Syarī'ah And Human Rights Problems. *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, 20(1), 1–12. <https://doi.org/10.19109/nurani.v20i1.5631>
- Reheem Shaila, S. (2025). A Translocal Compromise: Adoption of Anti-corruption Reforms in East Timor. *Law & Social Inquiry*, 50(2), 406–437. <https://doi.org/10.1017/lsi.2025.1>
- Rohim, A. N. (2022). Dharurah and the Realization of Maqashid Sharia: Analysis of the Implementation of Islamic Legal Maxims on Emergency. *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, 22(1), 63–80.

***Reformulating the Reversal of the Burden of Proof in Corruption Cases:
Integrating Positive Law and Islamic Legal Principles***

Roy Riady et al.

<https://doi.org/10.19109/nurani.v22i1.11449>

- Satria, H. (2017). Ke Arah Pergeseran Beban Pembuktian. *Integritas*, 3(1), 87–114. <https://doi.org/10.32697/integritas.v3i1.142>
- Simorangkir, I. F., & Hasibuan, S. A. (2023). Analisis Hukum Terhadap Pembuktian Terbalik Dalam Tindak Pidana Korupsi di Indonesia. *Innovative: Journal Of Social Science Research*, 3(4), 7926–7938. <https://j-innovative.org/index.php/Innovative/article/view/4294>
- Stolpe, O. (2008). *Corruption and Asset Recovery: The Role of Reverse Burden of Proof in Asset Recovery*. United Nations Office on Drugs and Crime (UNODC).
- Sudarmanto, E., Kaswoto, J., Wardo, W., Budiman, M., & Wahyono, Z. (2025). Maqashid Sharia as a Framework for Innovation in Corruption Prevention. *International Journal of Islamic Thought and Humanities*, 4(1), 38–50. <https://doi.org/10.54298/ijith.v4i1.313>
- Sulaiman, R. A., Fajriya, A. F., & Widiyana, M. Y. (2025). Automatic Assessment System: Meningkatkan Kepatuhan Laporan Harta Kekayaan Penyelenggara Negara (LHKPN) Melalui Machine Learning. *Jurnal Restorasi Hukum*, 8(1), 1–48. <https://doi.org/10.14421/adgzvf16>
- Sumaryanto, A. D. (2019). Harmonisasi Pembalikan Beban Pembuktian Tindak Pidana Korupsi. *Supremasi Hukum: Jurnal Penelitian Hukum*, 28(2), 108–122.
- Syarafi, T., & Syahbandir, M. (2024). Confiscation of Corruption Asset in The Indonesian Legal System: A Study of Criminal Law in Aceh. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 8(2), 665–686. <https://doi.org/10.22373/sjhk.v8i2.20045>
- Syarbaini, A. (2025). Jarimah Korupsi Sebagai Kejahatan Luar Biasa. *Jurnal Tahqiqat: Jurnal Pemikiran Hukum Islam*, 19(1), 1–14.
- Tallaut, L. J., & Adhari, A. (2022). Kepastian Hukum Penerapan Kriteria Kewenangan Penyidikan Perkara Tindak Pidana Korupsi oleh Komisi Pemberantasan Korupsi Republik Indonesia. *Jurnal Analisis Hukum*, 5(1), 26–39. <https://doi.org/10.38043/jah.v5i1.3426>
- Yogaswara, M. B. (2024). Penerapan Teori Kemungkinan Berimbang Terhadap Penegakan Keadilan Menggunakan Mekanisme Non-Conviction Based Asset Forfeiture (Ncbaf) Dari Hasil Tindak Pidana Ekonomi di Indonesia. *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)*, 8(1), 865–880. <https://doi.org/10.58258/jisip.v8i1.6715>
- Yusuf, Y. (2013). Penerapan Sistem Pembuktian Terbalik Untuk Kasus Korupsi: Kajian Antara Hukum Positif dan Hukum Islam. *Epistemé: Jurnal Pengembangan Ilmu Keislaman*, 8(1), 207–233.
- Zailani, S., Rahman, N. A. A., & Ismail, M. N. (2022). Revisiting the Concept of Maslahah in Islamic Law and Its Application in Modern Legal Contexts. *Journal of Islamic Law and Governance*, 4(1), 45–60.