

STUDY ON THE REVERSE BURDEN OF PROOF BASED ON ISLAMIC LAW AND INDONESIAN POSITIVE LAW

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ABSTRACT

One of the main agenda of the Indonesian government today is to eradicate corruption, which is already entrenched, in fact has become a way of life. The lawyers argue that the cause of corruption in Indonesia, among others, are as follows: First, people assess that the government slow to solve the problem of corruption. Second, the lack of real government to take steps to eradicate corruption. Thirdly, the problem of corruption eradication in Indonesia is very complex. Unbalanced between the expectations of society with legal procedures to be followed. Society requires that all cases of alleged corruption to be resolved; While necessary to complete the correct legal procedures. Fourth, according to the study, Indonesia is the most corrupt country, but when the judicial process against the corruption cases held, it appears that Indonesia became the country's most clean of corruption. So as to overcome these problems, one solution offered is to apply the principle of reversed burden of proof as an effective alternative for resolving cases of alleged corruption in Indonesia. Actually there are many causes of corruption in Indonesia, but the author of four alone suffice as a description of the "face" prosecution case in the framework of law enforcement and justice in Indonesia; how truth and justice it is now very difficult in the can. Then the question arises, why is that? Experts looking for the answer, and many of them conclude that lies the problem of which is the legal system in Indonesia. In investigating a criminal case, Indonesia applies the principle of pre-guess the innocent. The principle that treats the suspect as a clean, honest, and without fault until proven otherwise. This means that law enforcement authorities are obliged to prepare strong evidence beforehand to strengthen its claim to be "ensnare" suspects with criminal provisions. In fact, to obtain such evidence, in the case of corruption, is a job that "extra" difficult, because the perpetrators of corruption are usually those who "know" about the law.

Keywords: Reverse burden, Islamic Law and Positive Law.

A. Introduction

Corruption, Collusion and Nepotism (KKN) that occurred in Indonesia has been considered as a very severe for the life of the nation which needs to be cured. Almost all areas of life has been affected by the corruption. One of the main agenda of the Indonesian government is combating corruption. Agenda is a top priority as in Indonesia it has become a culture, even a lifestyle. Results of the study of Political and Economic Risk Consultant (PERC) Indonesia included as the most corrupt nation in Asia. Facts showed that Indonesia was ranked in 6th in the world's most corrupt of the 159 countries surveyed.²

From research conducted, Indonesia ranks 137 or sixth from the bottom with a corruption perceptions index (CPI) of 2.2. The scale of the CPI was 0 to 10 scores (a score of 10 indicates the cleanest rank). Indonesia gets the same value with the State of Azerbaijan, Cameroon, Ethiopia, Iraq, Liberia and Uzbekistan. In Southeast Asia, only Myanmar, with a score of 1.8, which ranks worse than Indonesia, making Indonesia became Runner up of the most corrupt countries in Southeast Asia.³ Ironically, corruption is committed by people who consider themselves as Muslim. Islam is not tolerate acts of corruption. Even Islamic organizations in Indonesia like Nadhatul Ulama, Muhammadiyah, and other Islamic organizations have been beating the drums for jihad against corruption. For the largest Islamic organization, corruption worse than terrorists. Corruption has thrown the pit, the destruction of this nation.⁴

Then the question arises, why that happens? Experts looking for the answer, and many of them conclude that the problem lies within the legal system in Indonesia. In investigating a criminal case, Indonesia applies the principle of presumption of innocent. With the principle that the law enforcers should treat suspects as clean, honest, and without fault until proven otherwise. This means that law enforcement authorities are obliged to prepare strong evidence beforehand to strengthen its claim to be "ensnare" suspects with criminal provisions. In fact, to obtain such evidence, is a job that "extra" is difficult, because the perpetrators are those who "know" about the law.

The principle of innocent presumption of innocent consistent with the principles of justice because it contains elements of the protection of Human Rights. Protection of the Rights of Man is already properly enforced because both Islamic law and positive law supports very concerned about the implementation of this issue. However, one thing that will be realized by any legal

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² Adnan Topo Husodo, "Tempo News Paper", 17 November 2005.

³ *Ibid.*

⁴ Mimbar Ulama, Suara Majelis Ulama Indonesia. Moslem_Anti Corruption, Trials, Warnings, and Disaster Warning and Wisdom (*Islam Anti Korupsi, Ujian, Cobaan, dan Peringatan Musibah dan Hikmah*), Jakarta: Sekretariat MUI, Masjid Istiqlal, 2005.

system is the establishment of a sense of justice in society, because only with the establishment of the joints of justice that the life of human society can be safe, serene, and peaceful .

As stated by Taufik Abdullah, corruption is " as old as the organization of powers ".⁵ Corruption is concepts that can only be imposed in the context of the organization, whether in the form of companies , political parties, union sports, and so on , and of course, more importantly, the country .⁶ Corruption occurs because individuals who served as " a public servant " abusing his position for personal enrichment at the expense of the state and society .

Since the founding of this Republic, Indonesia has issued many laws and regulations relating to efforts to eradicate corruption. The rules are: (1) Regulation No. Military Authorities Prt / PM-06/1957 (2) of Regulation Ruler War Army Center No. Prt / 013 / Peperpu / 013/1958 on Investigation, Prosecution and Investigation Crime of Corruption, (3) of Government Regulation in Lieu of Law No. 24 / Prp / Year 1960 on Investigation, Prosecution and Investigation of Corruption, (4) of Law No. 3 of 1971, and Law No. 31 of 1999 as amended by Law No. 20 of 2001 on Corruption Eradication. Nevertheless, the crime has happened, as if the regulations are not able to reduce the human desire to take property / profit illegally. Threatened criminal penalties to perpetrators of corruption does not make them be daunted or scared. Perhaps because not many examples of the application of appropriate penalties (in the sense of justice) against perpetrators of corruption so that people do not feel afraid of him. Or on the contrary, many examples of corruption that are not bound by the law as clever offender "manipulate" the evidence that his actions did not "smell" by law enforcement officials.

Since the founding of this Republic , According to Article 2 (1) of Law No. 31 of 1999 as amended by Act No. 20 of 2001 , that the definition of corruption is the act of enriching himself or another person or a corporation which can be detrimental to state finance or economy.⁷ In terms of the magnitude of the losses suffered by the state , corruption is actually very harmful to the state , so it can be equated with acts of terrorism , sabotage and so on .⁸

As has been the author pointed out above , that the presumption of innocence in fact it is built on the principle of the protection of Human Rights . That is, everyone is entitled to legal protection that he is righteous and innocent as long as there is no evidence to the contrary . However , whether that protection also remains to be given to someone who has " invisible people " committed an unlawful act (the detriment of society) while evidence for his actions are not detected by law enforcement officers as perpetrators smart cover imposture ? Is Human Rights that can be used as a weapon to defeat the values of truth and justice in society . Which should take precedence in the event of disagreement between the two? .

In connection with the protection of individual rights is, in Islamic jurisprudence also contained similar principles, as stated by Ali Ahmad al-Nadwi, that, "Basically, a person is free from responsibility".⁹ That is, in principle, the law provides protection to everyone to not provide proof of the rights that exist on her or on her status as an individual who is not committed an unlawful act that requires that he is responsible for his actions. In other words, property rights that exist in a person and the status of "cleanliness" one of the elements against the law protected by the law until there is evidence to show otherwise. This rule is in accordance with human nature free from birth does not have any responsibility. According to Islam that human beings are sacred unencumbered by inherited sin or liability as a result of acts of their parents. The burden of responsibility is a logical consequence of the rights owned or deeds done.

Further in connection with , with regard to the protection of the rights of every person , in the Traditions of the Prophet Muhammad .¹⁰ there is the principle governing the burden of proof if the right gets rebuttal from other parties. Hadith is as follows :

Meaning : From Ibn Abbas , that the Prophet Muhammad . He said: " Had given to man what digugatnya , surely he will demand everything of both life and property desired . Therefore , information was sought from the plaintiff and the defendant is charged oath . " (HR Baihaqy) .

This Hadith with regard to problems the burden of proof imposed on parties who claim to have the rights of others, and the burden of proof to the party accused person acted against the law , while those who deny (the defendant / accused) are only required to swear that he really as the right holder , or as clean of the element against the law .

Instructions on the above hadith line with the principle of presumption of innocence. That is, that in order to uphold the values of truth, textually, the prevailing legal system in Indonesia is in line with the system running at the time of the Prophet. But why at the time of the Prophet. the values of truth and justice that can be enforced and benefit the whole society, while at the present

⁵ Taufik Abdullah, Corruption, Colusion and Nepotism a Cultural Approach in Revealing CCN ("Korupsi, Kolusi, dan Nepotisme (KKN)) : Sebuah Pendekatan Kultural, dalam Menyingkap Korupsi, Kolusi, dan Nepotisme di Indonesia), oleh Edy Suandi Hamid dan Muhammad Sayuti, Yogyakarta : Aditya Media, 1999, p. 9

⁶ *Ibid.*

⁷ Martiman Prodjohamidjojo, Implementation of reverse Burden of Proof in Corruption Delict –act No. 31 of 1999 (Penerapan Pembuktian Terbalik dalam Delik Korupsi (UU No. 31 Tahun 1999), Bandung : Mandar Maju, 2001,p. 51.

⁸ Ramli Atmasasmita, Legal Antisipation on CCN Practice in revealing CCN in Indonesia (Antisipasi Hukum terhadap Praktik-praktik Korupsi, Kolusi, dan Nepotisme, dalam Menyingkap Korupsi, Kolusi dan Nepotisme di Indonesia). Yogyakarta: Aditya Medika, 1999,p. 89.

⁹ Ali Ahmad al-Nadwi, *Al-Qawaid al-Fiqhiyyah*, Beirut: Dar al-Qalam, 1994, p. 120.

¹⁰ TM. Hasbi Ash-Shiddiqie, *Mutiara Hadis VI*, Jakarta: Bulan Bintang, 1979,p.112.

time is not? So, the answer is related to public morality. Public morality is now far different from the time of the Prophet. Public morality at the time of the Prophet have not been polluted by materialistic life. Time society was very religious, hold fast to the teachings of religion, honestly, telling the truth, trustworthy, and more than that they are more afraid receive punishment in the hereafter than in obtaining physical agony in this world. Therefore, they do not want to do or say something that can cover up the truth. Many examples of this are found in history. Indonesian society today is not too much when people say the opposite of the Prophet's time, so it is not surprising that people are not afraid of the imposture origins lie not get caught, people do not hesitate to cheat to obtain abundant wealth. If it is so, it is still relevant on the principle of presumption of innocence is absolutely in the interest of upholding the truth in Indonesia, and how the application commands of the Prophet. in the above hadith. These are issues that require research to get the right answers so that law enforcement is not halting or even stalled.

B. Problems

In accordance with the title at the base , the subject matter to be studied in this research are :

1. Does the principle of reversed burden of proof in the law enforcement and justice can be justified by positive law and Islamic law ?
2. What are the principles developed by the positive law and Islamic law in providing protection against Human Rights ?

C. Methods

This study is a normative legal research, the first step that the author did was collect the books and writings that are relevant to the title to obtain the necessary data and theories in accordance with problems. With the collected data will be expected to be able to identify problems at once explain that the focus of discussion. Discussion is directed to the analysis of the material provisions of criminal procedural law as well as the arguments and rules of jurisprudence that became the foundation of thinking in solving legal issues. Of course, the focus of the discussion is to find an answer whether of proof provided for in Article 37 of Law No. 31 of 1999 as amended by Act No. 20 of 2001 was justified by positive law and Islamic law or not.

For data processing, the method to be used to reveal and explain the various aspects of the discussion is by using content analysis (content analysis), the literal approach-philosophical and sociological. The point is in addition to determine the existence of clauses or rules (the proposition) that explicitly regulates the issue, also pernahaman meaning contained or goals to be achieved through a rule or proposition can be revealed. In the meantime, public morality Events Indonesia now needs to be taken into consideration, however, because a good law is a law that is rooted in the community; is a reflection of the will of the people. In addition, the comparative method is also used to determine how a review of positive law and Islamic law.

D. Result And Discussion

Reversed burden of proof is a principle of thought in which everyone is seen one that proved his innocence . Thus , this principle not require the prosecution to prove the guilt of the defendant , but the defendant must prove that he is not guilty of any criminal charge against him .

This principle is usually formulated with the words "until the Contrary is proved ".¹¹ Included in this instance , the state of a person who is less healthy mind (insanity) , then this principle assumes that everyone healthy mind until there is evidence to suggest otherwise . To declare that a person is in a healthy state of mind , then the defendant must prove .

Enforcement of this principle is essential to all criminal acts clearly constitute a breach of Human Rights . But enforcement for certain cases , such as cases of corruption is something that should be justified . Therefore , in Article 37 of Law No. 31 of 1999 as amended by Act No. 20 of 2001 , the use of this principle explicitly regulated . However , the definition contained in Article 37 of the Act is different from the notion of proof as already mentioned above . Understanding of proof in Article 37 are thinking about the right of suspects to give information in advance to the judges on the rights or circumstances that exist in him before the public prosecutor filed a proof of something that is demanded before trial .

Learn the wording of Article 37 of Law No. 31 of 1999 as amended by Act No. 20 of 2001 are as follows:

- (1) The defendant has the right to prove that he was not guilty of corruption.
- (2) In the event that the defendant can prove that he was not guilty of corruption, then the information is used as a profitable thing for him.
- (3) The defendant shall provide information about the entire possessions and property of the wife or husband, children, and property of any person or corporation who allegedly had ties to the case in question.
- (4) If the defendant does not prove the wealth disproportionate to his income or additional source of wealth, then the information can be used to strengthen existing evidence that the defendant has committed the crime of corruption.
- (5) In the circumstances referred to in subsection (1), paragraph (2), (3) and (4), the public prosecutor is still obliged to prove the charges.

Urgency to apply Principle of Reversed Burden of proof According Positive Law

Proof is a difficult job, because these tasks must be "present" back atmosphere of the past that is sometimes taken for granted but then it becomes of paramount importance to the interests of the law. Or maybe the events that are important for law enforcement (law enforcement), but by the offender deliberately obscured or obliterated keep herself apart from the law. Therefore, there are

¹¹ H. Oemar Seno Adji, Criminal Procedural Law in Prospecting (*Hukum (Acara) Pidana dalam Prospekti*), Jakarta: Erlangga, 1984,p. 251.

often disenfranchised by the other party, but he could not reclaim that right because he did not have sufficient evidence. Conversely, because someone clever "seek" evidence, then he subsequently won by a judge.

The tendency of people to eliminate this evidence is considered now increasing. In criminal cases of corruption, for example, people are getting better at removing traces by taking certain steps so that the law enforcement officers have difficulty if it will keep track of what they did.

Another thing that is closely related to the issue of proof is evidence or bayyinah.¹² The Jurist usually use the term "proof" as equivalent to the meaning of the term evidence. According to them, hujjah is something that can justify a lawsuit, which in this case there are seven kinds:

1. *Ikrar* (confession);
2. *Syahadah* (witnesses);
3. *Yamin* (oath);
4. *Nukul* (refuse to take an oath);
5. *Qasamah* (oath of 50 people);
6. Science (knowledge) of judge, and
7. *Karinah-karinah* (indication) that can be used.¹³

In a trial, a judge usually only use three kinds of evidence:

1. *Iqrar* (confession);
2. *Syahadah* (witnesses), and
3. *Yamin* (oath).¹⁴

From those three evidences, *iqrar* is considered to be the most powerful one. Of course, this recognition must be given by the defendant / accused in a conscious state without any pressure from any side. The strength of the evidence of this recognition only bind to themselves, excluding others. In contrast to the testimony, that its power can be on / touch with others . Therefore, the jurists draw up the rules of jurisprudence, which means:

"The testimony is proof that the other person, while admission is proof to him alone."¹⁵ Indeed, in the procedural law of Islam is said to "prove something" that is to give information or instructions to the other party so that his case be clear and can assure the parties that requested it. Something clarification or instructions can be said to be convincing if that explained it was acknowledged by the investigation. And something that is already believed to exist, then such beliefs can not just disappear. He will remain in existence before any other beliefs delete them later. Thus, the belief it can only be removed or eliminated by another belief, not with doubt, either conjecture or suspicion.¹⁶

In the discussion of jurisprudence, there are basic principles that guided by the scholars in addressing the relationship between a firm and a less certain, sure and dubious. The basic principle implies that, "Something convincing it cannot be removed by dubious".¹⁷

The basic principles learned from the above hadith of the Prophet. narrated by Imam Muslim from Abu Hurairah r.a. which means, as follows:

"From Abu Hurairah he said: the Prophet. has said: "If a person felt something in his stomach, and he wondered if there were to the outside of the stomach it or not, it should not come out of the mosque until he heard the sound or smell (fart)"¹⁸.

Understanding of the above Hadith is the existence of a state of convincing, namely that a person is sacred because he has taken ablution, but then came something that is doubtful whether there was something out of the stomach (fart) resulting the ablution void or not. Then, based on the instructions of the Prophet that quandary between the already and the not yet (fart) which caused the cancellation of ablution it cannot amend its original state, namely a state of purity because of ablution. If there is already another user such as voice or smell as a sign that something is out of the belly (farting), then the user then brings the second conviction, namely the cancellation of ablution.

In relation to the burden of proof imposed on the plaintiff, that is in reality, the defendant is the person who holds the goods or the good standing or free of errors. The judge must stand on the fact that because of the way that is convincing. When there is a lawsuit against the other party about the situation himself or on his property, it means that there is a denial of reality or circumstances that exist filed by the plaintiff. The denial of something that has real it could not be categorized as real / true could lead to conviction and prior accompanied by valid evidence justifying the denial of it. In other words, the denial of the fact that nature is alleged or suspected, so it can not cancel the fact / beliefs that have been there. After accompanied by evidence enough,

¹² Bayyinah means anything which can explain the case.

¹³ Hasbi Ash-Shiddiqie, Judicial and Islamic Procedural Law (*Peradilan dan Hukum Acara Islam*) t.t.p.: Alma'rif, t.t., P. 116.

¹⁴ *Ibid.*

¹⁵ Ali Ahmad al-Nadwi, *Al-Qawa'id al-Fiqhyyah*, Beirut: Dar al-Qalam, 1994, P. 347.

¹⁶ There is a distinction between the allegations (Dzan) with suspicion (syak). Both are not a sure thing, but on Dzan is the mood/mind in which the tendency to justify greater than to blame. While on syak trends justify the allegation and blamed it as strong.

¹⁷ Ali Ahmad al-Nadwi, *Op.Cit.*, P. 10.

¹⁸ Jalaluddin Abd Rahman Abu Bakar al-Suyuti, *Al-Asybah wa al-Nadla'ir*, Beirut: Dar al-Fikr, 1995, P.38.

then the denial can be categorized into reality / the assurance, so that the first conviction can be removed by a second conviction. Thus the meaning contained in the hadith above.

Indeed, in deciding a case, the judge only burdened to formally seek the truth, not materially. That is, judges are only required to see the truth in reality only. Is something that is not possible for the judge to determine which case something happened in the past in its essential, especially about a person's heart. In this regard the Prophet. said narrated by Imam Muslim from Umm Salama as follows:

"Umm Salamah wife of the Prophet, that the Prophet. heard the sound of people arguing in front of his door. Prophet went outside to meet them and said: "I am only human. I found people quarreling in front of me. It could be that a person who can present/speak better than the other, so I guess he's right, then I decided intermediary (to win him). So, whoever I win when there are rights of other Muslims, indeed that it (the same as I gave him) a piece of hellfire. He may take it, or reject it".¹⁹

Hadith above implies. First; the affirmation of the Prophet Muhammad. that he is an ordinary man, the same as other human beings who cannot know what is contained in a person's heart. This statement to reject the opinion of those that he can know something unseen, to know who actually tortured. To that end, he affirmed so. Which distinguishes itself with nothing but he received revelation from Allah. If he received a revelation from Allah. about things unseen, then he knew things supernatural.

Second, the indication of the Prophet. that in the trial, in many cases people do not hesitate to lie by using his cleverness talking to influence the judge in order to win his case. The Prophet of the fact that human beings have different capacities to put forward evidence in court. There are people who know how to speak so that he could put forward various reasons to convince him that what he advances it is true, although it is essentially a lie. As a human being, the Prophet may be affected by such circumstances, so thought it was true. Meanwhile there are also people who cannot "swapping one-liners" or even not able to explain the real situation so that he cannot afford to give the impression to the Prophet that in fact he was in the right side, so he could not see the truth in it. As a result, he decided case by the winning party may submit the evidence. This means that the Prophet Muhammad. decide the case only on the evidence and the oath alone; something that can be used as guidelines in lahiriyah about the state of things (formal correctness), and it is God who deal with issues related to the mind. From this and formulated a rule fikiyah, "We judge something based on the circumstances that actually means (essentially)".

Third, the person who wins at trial as skillfully compiled true reason lies, then this is the same as he "managed" to seize a piece of hellfire. That is, that his victory will encourage him to go to hell. Thus, Imam Nawawi said, the words of the Prophet. it does not mean we can choose where we want, making decisions, or leave it as they both are allowed, but the tradition as an appropriate warning meaning to the word of Allah Surat al-Kahf paragraph (20), which means (more or less):

"And say: "Truth comes from your Lord, so whoever wants to believe, please; and anyone who wants to disbelieve, please".²⁰

There is no compulsion in choosing a way of life. But remember, that everyone in the end can not run away from the consequences of the act of doing, whether it's good or bad deeds. He will endure as a result of actions undertaken in accordance with the choice. That is the risk of choosing. Thus confirmed by Komaruddin Hidayat. Therefore, if there is anything contrary to that which is born, then it must be substantiated. Among the basic principles that govern the matters are:

"Proof (bayyinah) was to say anything against the state in reality, while the oath is used to maintain the original rule (fact)".²¹

The above principles relating to other principles that explain their origin must maintain law before any other clues that can amend the original rule. The principle is: "The most powerful, is to maintain the permanent presence of something before there is another proposition that contradict it".²²

In line with the above principles, there are other methods used by jurists is: "What has been established earlier should still be recognized before there is another proposition that contradict it".²³

As for the defendant a right or condition is not required to prove the truth of something in his hand or his situation, because the rights of every person obtain such protection. In Islam mentioned principles governing the issue of which rules of fiqh: "The most powerful, that every person regardless of liability".²⁴

This means that a person is basically not be held accountable for something that is not yet clear who was responsible. His relationship with the judicial issue is if there is a lawsuit against someone on the goods in his hands or on his situation, the judge should reject the lawsuit when the plaintiff cannot prove its claims..

F. Conclusion

From the description of the background and the discussion that has been described, we reach the conclusions as follows:

¹⁹ Imam Nawawi, *Al-Lu'lu' 'Wa al-Marjan*, Juz II, P. 223.

²⁰ Departemen Agama RI, *Op.Cit.*, P. 448.

²¹ TM. Hasbi Ash-Shiddiqie, *Justice and Procedural Law of Islam*, Bandung: Al-Ma'arif, P. 112.

²² Ali Ahmad al-Nadwi, *Op.Cit.*, P. 210.

²³ TM. Hasbi Ash-Shiddiqie, *Op.Cit.*, P.113.

²⁴ Jalaluddin Abdul Arahman Abu Bakar al-Suyuti, *Op.Cit.*, P. 40.

First, that there are weaknesses in the application of the presumption of innocence in investigating criminal matters in general. Some of them are - there is no distinction between things that have a clear criminal offenders and types of actions with the things that are still unclear who is the actors and the type of criminal act. As a result, the proceedings against things that are obviously the performer and the type of actions that should be shortened will be delayed as well as the enforcement. Meanwhile, society wants to know the result soon. The presumption of innocence cannot be applied to specific cases, such as cases of corruption, collusion and nepotism. Investigation against corruption case is governed by Article 37 of Law No. 31 of 1999 as amended by Law No. 20 of 2001, because in the case of corruption, because usually the time interval between the time of the act with the onset of allegations has happened acts of corruption is relatively long, it evidences that indicate the occurrence of such acts is usually removed by the suspect, and instead had "engineered" tool new evidence that explains the absence of an unlawful act has been done suspects.

Second, to overcome it can be pursued alternative ways, ie reversed burden of proof. The cases are very difficult to obtain evidence, such as rape should also apply this principle because the victim usually does not want to report it to the authorities because it involves the good name of himself. Consideration is not on special or particularly a criminal act, but in the presence or absence of evidence as a means to reveal the truth so that justice can be enforced. Principles developed by Indonesian law and Islamic law in order to maintain the relationship of the individual with society in order to create a sense of peace, order and security of social life is that the ultimate get priority protection is the right of society, not individual rights. It was based on the consideration that although the rights of individuals recognized its existence, but these rights are limited by the interests of the larger collective. So, when there is a conflict between two interests of individual rights with community rights, must have actions that most benefit society. In the view of Islamic law, applying the principle of reversed burden of proof to the cases difficult to prove because of the absence / difficult to obtain evidence such as corruption, is a must. Islam respects and protects the rights of individuals, but if the individual rights was contrary to the right people, then in the Islamic view of individual rights must be defeated.

G. Suggestion

Needs to be held firmly against imposing restrictions on the presumption of innocence is. The restriction is that cases-criminal cases is obvious forms and perpetrators as a criminal act the perpetrator is caught, then no longer need to apply this principle. Thus, the trial could be shortened because of the state of his case which is already not need much in need of proof, so that the "results" of drug law enforcement as his sense of justice in society can be accomplished. However, in cases like this do not need to apply the principle of reversed burden of proof. Those cases are difficult to obtain evidence such as rape, should apply the principle of reversed burden of proof impartial as required by Article 37 of Law No. 31 of 1999 as amended by Act No. 20 of 2001, but the corruption, collusion, and nepotism reversed burden of proof should be applied absolutely. That is, the burden of proof fully charged to the defendant. Prosecutors do not have evidentiary burden. Prosecutors only filed charges and lawsuits, and may assess whether the evidence submitted by the defendant was lawful or not. So, who actively seek evidence was the defendant.