

Judicial Analysis of the Burden of Proof on the Perpetrator of Corruption Criminal Act

Authors : Rahmayanti, Theresia Simatupang, Ronald H. Sianturi

Abstract : Corruption criminal act develops rapidly since in the transition era there is weakness in law. Consequently, there is an opportunity for a few people to do fraud and illegal acts and to misuse their positions and formal functions in order to make them rich, and the criminal acts are done systematically and sophisticatedly. Some people believe that legal provisions which specifically regulate the corruption criminal act; namely, Law No. 31/1999 in conjunction with Law No. 20/2001 on the Eradication of Corruption Criminal Act are not effective any more, especially in onus probandi (the burden of proof) on corruptors. The research was a descriptive analysis, a research method which is used to obtain description on a certain situation or condition by explaining the data, and the conclusion is drawn through some analyses. The research used judicial normative approach since it used secondary data as the main data by conducting library research. The system of the burden of proof, which follows the principles of reversal of the burden of proof stipulated in Article 12B, paragraph 1 a and b, Article 37A, and Article 38B of Law No. 20/2001 on the Amendment of Law No. 31/1999, is used only as supporting evidence when the principal case is proved. Meanwhile, how to maximize the implementation of the burden of proof on the perpetrators of corruption criminal act in which the public prosecutor brings a corruption case to Court, depends upon the nature of the case and the type of indictment. The system of burden of proof can be used to eradicate corruption in the Court if some policies and general principles of justice such as independency, impartiality, and legal certainty, are applied.

Keywords : burden of proof, perpetrator, corruption criminal act

Conference Title : ICSRD 2020 : International Conference on Scientific Research and Development

Conference Location : Chicago, United States

Conference Dates : December 12-13, 2020