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The Doctrine of Unequivocal Waiver: Evaluating The International Legitimacy of In Absentia Corruption Trials Amid Indonesia's E-Summons Verification Vacuum Under Law No. 20 of 2025

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Abstract: Indonesia's in absentia trial mechanism for corruption cases faces a chronic legitimacy crisis, in which domestic convictions frequently prove non-executable in foreign jurisdictions. The research gap addressed here is the absence of scholarship linking the technical verification vacuum in electronic summons (e-summons) to the doctrinal requirements of Unequivocal Waiver under international human rights law. This study aims to evaluate why the normative vacuum in Article 150 paragraph (2) of Law No. 20 of 2025 on Criminal Procedure undermines the legitimacy of in absentia corruption trials under Article 38 of the Anti-Corruption Law, and to formulate a strategy for optimizing the Mutual Legal Assistance (MLA) instrument. Using normative legal research with statutory, conceptual, comparative, and case approaches, the study tests Indonesian regulation against the Unequivocal Waiver doctrine and the *Sejdovic v. Italy* jurisprudence. The results show that treating a mere “sent” status as valid legal notice, combined with the prohibition on legal representation for absent defendants under Supreme Court Circular No. 6 of 1988, systematically defeats the actual-knowledge standard required internationally. This novelty proposes a Verified Digital Waiver protocol grounded in digital audit trails and biometric authentication to restore executorial legitimacy and support cross-border asset recovery.

Keywords: In absentia, E-Summons, Unequivocal Waiver, Mutual Legal Assistance, Asset Recovery.

INTRODUCTION

Indonesia is currently confronting a troubling structural anomaly that may be termed a “legitimacy paradox”: courtrooms that are assertive, efficient, and progressive at home, yet paralyzed the moment their in absentia corruption judgments must be executed in a foreign jurisdiction. This condition can be described, somewhat pejoratively, as a “home-turf champion” syndrome — formidable domestically, powerless abroad. In absentia adjudication is frequently treated as a merely pragmatic instrument for accelerating trials when a defendant

fails to appear (Eka et al., 2025), yet its executorial failure abroad reveals that the mechanism is, in fact, a matter of fundamental rights.

This extraterritorial failure is not simply a problem of diplomacy or of differing legal traditions; it reflects a deeper mismatch between Indonesian criminal procedure and the human-rights standards that foreign courts, particularly in jurisdictions that host the proceeds of corruption, apply when deciding whether to recognize a foreign judgment. Two procedural variables lie at the root of this mismatch. First, Law No. 20 of 2025 legalizes electronic summons (e-summons) without prescribing any technical standard for verifying receipt, allowing law enforcement to convert a mere “sent” status into a legal fiction of waiver without factual proof of reception. Second, this gap is compounded by Supreme Court Circular (SEMA) No. 6 of 1988, which categorically bars legal counsel from representing an in absentia defendant; foreign authorities routinely invoke the *ordre public* doctrine to refuse Mutual Legal Assistance (MLA) requests once they discover that an asset-forfeiture judgment originated from an *ex parte* trial that silenced the right of defence.

International standards, especially the asset-recovery regime under the United Nations Convention Against Corruption (UNCAC), attach strict weight to due process of law as a precondition for mutual assistance (Hidayah, 2023). Jurisdictions that commonly harbour the proceeds of corruption remain bound to the jurisprudence of the European Court of Human Rights, which treats an in absentia conviction with scepticism whenever the requesting state cannot demonstrate that the defendant's absence was grounded in full awareness of the proceedings against them.

Law No. 20 of 2025 on Criminal Procedure (the new KUHAP) was intended to modernize Indonesia's criminal justice system by accommodating information technology, including electronic summons through e-mail and instant-messaging applications. Behind this efficiency-driven ambition, however, lies a serious normative gap: the statute never specifies a technical standard for verifying receipt of an electronic summons, producing what may be called a vacuum of norm. Left unaddressed, law enforcement officers may treat a “sent” status recorded on a court server as sufficient proof that a summons was lawfully served, even though a delivered message may sit unread in a spam folder, be buried under other notifications, or reach an account the defendant no longer controls (Chahar & Krishnan, 2025). Adjudicating a person in absentia on the strength of an unverified notification effectively imposes a legal fiction that the citizen “is deemed to know,” irrespective of whether the information ever factually reached them.

The doctrine of Unequivocal Waiver becomes central to analyzing this problem. International precedents in *Sejdovic v. Italy* (2006) and *Colozza v. Italy* (1985) affirm that the right to be present at one's own trial is fundamental and cannot lapse by default; it is deemed relinquished only when the accused consciously and unambiguously waives it. The legitimacy of an in absentia trial before international scrutiny therefore hinges on the state's ability to prove the defendant's actual knowledge of the proceedings before choosing not to attend — absent such proof, non-appearance is more properly read as procedural ignorance than as waiver.

The literature that most closely informs this study's novelty converges on five points. Doctrinally, non-conviction based forfeiture scholarship in Vietnam shows that without a rigid verification protocol, an “absent” status is itself an epistemological defect that renders a judgment unenforceable abroad (Vu Cao & Cao, 2025). Technologically, comparative work on digital delivery of legal notices rejects a simple “sent” indicator as sufficient legal proof and calls for cryptographic verification standards (Chahar & Krishnan, 2025). On human-rights standards, the Unequivocal Waiver doctrine requires proof of a conscious waiver rather than a constructed presumption of knowledge. On asset recovery, UNCAC Chapter V implementation studies connect prosecutorial notice practices directly to foreign courts' refusal to execute judgments for non-compliance with international notification standards (United Nations Office

on Drugs and Crime, 2025). Finally, recent commentary on Indonesia's new KUHAP has already flagged the e-summons verification vacuum as an early warning of a coming wave of pre-trial (*praperadilan*) challenges (Agung, 2025). No existing study, however, connects these threads into a single evaluation of the executorial legitimacy of Indonesian in absentia corruption judgments abroad — the gap this research addresses.

Building on this gap, the study is organized around two research questions: first, why does the normative vacuum concerning verification standards for electronic summons in Law No. 20 of 2025 produce a failure to prove Unequivocal Waiver, and what formulation of a proper electronic-summons parameter, grounded in a digital audit trail, could remedy it? Second, does an in absentia judgment rendered without proof of Unequivocal Waiver and accompanied by a prohibition on legal assistance still carry executorial legitimacy in international jurisdictions, and how can the Mutual Legal Assistance (MLA) instrument be optimized to overcome that obstacle? Correspondingly, this research seeks to (1) critically deconstruct the procedural validity of Indonesia's e-summons regime against the Unequivocal Waiver standard required by international law, and (2) formulate a strategy for optimizing MLA and extradition instruments by aligning domestic criminal procedure — through a digital audit trail and the removal of the ban on legal representation — with the global due-process standard, so that Indonesian in absentia judgments gain executorial force abroad.

METHODS

This study employs normative (doctrinal) legal research, a discipline that Marzuki (2017) situates as *sui generis*, distinct in method, object, and scientific structure from the social sciences: its object is not empirical social fact but norms laden with the values of justice and legal certainty. The research is prescriptive in nature, aiming not merely to describe the law as it stands but to construct a legal argument that answers, in a know-how sense, how the electronic-summons vacuum in Law No. 20 of 2025 ought to be resolved. The truth sought is coherence rather than correspondence: the study tests whether the vacuum of verification norms in Law No. 20 of 2025 is consistent with the human-rights guarantees of the International Covenant on Civil and Political Rights (ICCPR) and with the Unequivocal Waiver doctrine.

Four approaches, following Marzuki's (2017) framework, are combined. The statutory approach examines Article 150 paragraph (2) of Law No. 20 of 2025 and Article 38 of the Anti-Corruption Law to identify the absence of an explicit provision on proof of receipt for electronic summons. The conceptual approach draws on the Unequivocal Waiver doctrine, Digital Due Process theory, and legal-fiction theory to critique the presumption that a delivered message equates to known information. The comparative approach places Indonesian in absentia standards against European Court of Human Rights jurisprudence, principally *Sejdovic v. Italy*, and against Swiss and common-law practice, in order to identify a more adequate standard. The case approach examines final judgments — both from the ECtHR and from foreign courts that have reviewed Indonesian corruption judgments — to extract their *ratio decidendi* on the validity of notice and waiver.

Primary legal materials consist of the 1945 Constitution; Law No. 31 of 1999 jo. Law No. 20 of 2001 on the Eradication of Corruption; Law No. 20 of 2025 on Criminal Procedure; Supreme Court Regulation (PERMA) No. 7 of 2022 on Electronic Case Administration and Trials; SEMA No. 6 of 1988; the ICCPR (ratified by Law No. 12 of 2005); UNCAC (ratified by Law No. 7 of 2006); the European Convention on Human Rights; comparative foreign instruments including the U.S. Federal Rules of Criminal Procedure, EU Directive 2016/343, and Singapore's Mutual Assistance in Criminal Matters Act (MACMA) and Reciprocal Enforcement of Foreign Judgments Act (REFJA); and jurisprudence from the ECtHR (*Colozza v. Italy*; *Sejdovic v. Italy*; *Poitrimol v. France*; *Krombach v. France*) together with the

Indonesian in absentia precedents of Hesham Talaat M. Al-Warraq, Rafat Ali Rizvi, and Adrian Kiki Ariawan. Secondary materials comprise legal treatises, national and international journal articles on digital due process and modern criminal procedure, and legal commentary on the Unequivocal Waiver doctrine.

Legal materials were collected through library research: bibliographic and digital-database searches; verification of currency and authority (ensuring the latest statutory text and only final or landmark judgments are used); classification by subject and normative hierarchy; and close reading to extract the ratio decidendi underlying each source. The materials were then analyzed through deductive legal syllogism. The major premise is the Unequivocal Waiver doctrine together with Article 14 of the ICCPR, which requires that a waiver of the right to be present rest on knowing, voluntary, and intelligent choice. The minor premise is that Law No. 20 of 2025 regulates only the “sent” status of an electronic summons, without any mechanism for verifying receipt or comprehension. The resulting legal conclusion is that an in absentia trial founded on an unverified electronic summons constitutes a deprivation of rights rather than a voluntary waiver, and therefore forfeits its juridical legitimacy.

RESULTS AND DISCUSSION

The following discussion is organized around ten interlocking findings. It first deconstructs the normative vacuum inside Indonesia’s new criminal procedure code and its dependency relationship with the Anti-Corruption Law, then examines the constructive-notice fiction this vacuum enables and the digital-verification remedy available to correct it. It subsequently evaluates the international dimension of the problem — the clash between domestic sovereignty and foreign ordre public, the collapse of the actual-knowledge standard, comparative jurisprudence, and three empirical cases in which Indonesian in absentia judgments were rejected or contested abroad — before closing with the institutional barrier posed by the ban on legal representation and a strategy for optimizing Mutual Legal Assistance.

The Normative Vacuum in Electronic-Summons Verification

Article 150 paragraph (2) of Law No. 20 of 2025 provides that “delivery of a summons to a suspect or defendant may be carried out through an officer, registered mail, or electronic means.” Read both grammatically and teleologically, this formulation authorizes the use of digital instruments but stops precisely at that authorization: it never establishes the parameters that distinguish a lawful electronic summons from an unlawful one. The provision confers power without prescribing its limits, leaving proof of receipt entirely outside the statutory text. Applying Friedman’s (1975) legal-system theory, a legal structure that is granted authority but denied a corresponding, substantive verification component is compelled to operate beyond its constitutional boundaries, since verification functions as the ontological validation mechanism that ties an administrative claim to empirical fact (Antoshchuk et al., 2026). Where that mechanism is missing, the assessment of a summons’s validity is surrendered to the subjective interpretation of field officers, and the vacuum ceases to be a legitimate policy choice (open legal policy); it becomes a structural failure to satisfy the minimal legislative-drafting standard of normative clarity. The absence of a verification clause is, in this sense, the single technical root from which the remainder of the legitimacy crisis discussed below descends.

Article 38 of the Anti-Corruption Law: A Validity Anchored in a Fragile KUHAP

The legitimacy of an in absentia corruption judgment under Article 38 of the Anti-Corruption Law hinges entirely on the phrase “having been lawfully summoned” (Suarnawan, 2021). Because the Anti-Corruption Law contains no independent, self-executing standard of what counts as a lawful summons, it necessarily borrows that standard from the general

criminal-procedure regime, now Law No. 20 of 2025 — a relationship of procedural subordination rather than mere coordination (Gosal et al., 2021). Table 1 maps this dependency.

Table 1. Comparison of Valid Summons Requirements under the Anti-Corruption Law and Law No. 20 of 2025

Aspect	Anti-Corruption Law	Law No. 20 of 2025	Legal Consequence
Main requirement	“Having been lawfully summoned” (Art. 38(1))	Investigator’s authority to summon through a “lawful letter of summons” (Art. 26)	The Anti-Corruption Law has no independent standard of “lawful”; it borrows the standard from Law No. 20 of 2025.
Technical definition	Not explicitly regulated	Adopts an information-technology-based justice system (Art. 360)	Technical procedure for e-mail/digital delivery follows the parent justice-system protocol.
Means of summons	Mentions only “summoned,” without technological detail	Covers electronic delivery via e-mail or the integrated court information system	The e-summons instrument is borrowed wholesale from Law No. 20 of 2025 as the primary channel.
Validity test	A matter for the judge to examine at trial	Testable through an expanded pre-trial (praperadilan) mechanism (Art. 1(15))	A procedural defect under Law No. 20 of 2025 defeats the “lawful” requirement of the Anti-Corruption Law.

Source: processed by the author from statutory analysis, 2026.

Because Article 38 of the Anti-Corruption Law borrows its validity test wholesale from Law No. 20 of 2025, any congenital defect in the latter’s e-summons mechanism is automatically inherited by every in absentia corruption judgment built upon it. The phrase “lawfully summoned” functions as a legal gatekeeper: it can open only if the procedural key supplied by Law No. 20 of 2025 actually works. Where that key — the unverified e-summons — is bent or broken, the gate to a legitimate in absentia trial never truly opens, and forcing the trial forward regardless amounts to an *ultra vires* act that a foreign court is entitled to treat as void of due process.

From “Sent” to “Known”: Deconstructing the Constructive-Notice Fiction

The confusion at the heart of Indonesian practice stems from transplanting the constructive-notice fiction of civil procedure — where a preponderance-of-evidence standard tolerates treating transmission as notice — into a criminal-procedure setting that instead demands proof beyond reasonable doubt, precisely because a criminal sanction entails the deprivation of physical liberty. PERMA No. 7 of 2022 institutionalizes this civil-style fiction for electronic case administration; its extension, unmodified, to criminal e-summons produces a dogmatic anomaly, since technological efficiency was never meant to exclude the fair-trial principle or the immediacy of direct examination (Retnaningsih et al., 2020). A message that has left a sending server proves only that data has departed, not that it has been read, and courts have no principled basis for treating those two facts as legally equivalent.

Restoring Actual Knowledge: Digital Audit Trail and Biometric Verification

Because it is the state, not the defendant, that initiates and benefits from the deprivation of liberty that follows an in absentia conviction, the burden of proving actual receipt of a summons should rest on the state rather than being presumed against the accused. A Digital Audit Trail supplies exactly the epistemological bridge this burden requires: unlike a bare

“sent” flag on a mail server, a forensic log of user interaction can convert an administrative record into an evidentiary fact that a summons was in fact opened by a human being. Where a defendant later claims an account was hacked or never opened, such log data forecloses the defence and instead supports a finding of manifest evasion of justice.

This proposal is not utopian; it can be anchored in law already on the books. The amended Electronic Information and Transactions Law recognizes certified electronic signatures and certificates, so that an affirmative tap of “I agree” on a smartphone screen already carries legal weight equivalent to a wet-ink signature on a summons receipt. The Ministry of Home Affairs’ digital population identity (IKD) infrastructure similarly offers a ready-made biometric backbone that courts can borrow rather than duplicate at public expense (Rahmawati et al., 2022), while facial-recognition verification for opening a criminal summons finds an explicit legal basis in the exception for law-enforcement purposes under the Personal Data Protection Law. National banking practice already demonstrates the feasibility of this approach: Indonesian digital banks and e-wallets require liveness-detection e-KYC checks tied to population databases before releasing funds (Fitriyanti et al., 2024); it would be incongruous for a court about to deprive a person of liberty to demand less certainty than a bank protecting a customer’s savings. Singapore’s SingPass ecosystem, through which all official court notifications are delivered to a single verified digital identity, offers a workable international benchmark for the kind of “Verified Digital Waiver” protocol this study proposes.

Sovereign Illusion: Domestic Legality versus International Ordre Public

A judgment that carries perfect res judicata authority in Jakarta may be treated abroad as nothing more than a unilateral administrative document. This condition reflects a broader shift away from an absolute, Westphalian conception of sovereignty toward a “responsible sovereignty” in which state authority is no longer immune from external, moral-legal scrutiny (Avramović, 2021). Advanced destination jurisdictions for stolen assets consistently invoke Article 14 of the ICCPR and Article 6 of the ECHR as the normative basis for activating the ordre public shield against in absentia judgments emanating from proceedings that lack adequate procedural guarantees (White, 2024). International law does not prohibit in absentia trials outright, but it does impose a demanding cumulative threshold: effective and documented notification, clear and unambiguous evidence of waiver, and a genuine right to retrial — absent which a foreign court may brand the underlying procedure as falling outside the bounds of modern legal civilization.

UNCAC itself is frequently misread as an automatic channel for transnational asset recovery, yet its Article 57 differentiates between mandatory and discretionary return and grants the requested state considerable latitude to weigh the requesting state’s compliance with fair-trial standards (Borlini & Rose, 2024). Where an in absentia judgment cannot demonstrate a genuine right to retrial, or where its underlying e-summons cannot be independently verified, a foreign authority may treat the notice itself as a “failure of service” and decline assistance on human-rights grounds (Helfer et al., 2023). The success of Indonesia’s asset-recovery agenda is therefore measured not only by the sums returned but by the procedural integrity of the judgments that ground each request.

The Collapse of “Actual Knowledge” under the Unequivocal Waiver Doctrine

Article 14 of the ICCPR situates the right to be present not merely as a procedural courtesy but as the precondition for contradictory examination of witnesses and for a meaningful defence; a waiver of that right is valid only where it results from a conscious and voluntary choice (Klip, 2024). In *Sejdovic v. Italy*, the European Court of Human Rights’ Grand Chamber articulated a two-part test that any state invoking in absentia jurisdiction must satisfy: first, proof of official, personal notification sufficient to establish that the defendant

was in fact aware of the proceedings; and second, proof of unequivocal intent, meaning that non-appearance resulted from a clear wish to evade justice rather than from a technical failure of delivery. The burden of proving actual knowledge rests squarely on the state, and where that burden is not discharged the defendant retains an unconditional right to retrial (Szijártó, 2025). Measured against this standard, an unverified “sent” status can never, by itself, satisfy the Sejdivic test.

This does not mean the actual-knowledge requirement is absolute in every direction. Where digital forensic evidence from an internet service provider shows that a defendant deliberately deactivated their registered electronic address after being named a suspect, that conduct itself supplies the unequivocal intent the doctrine requires: deliberate sabotage of one’s own contactability converts constructive notice into a valid waiver under the doctrine of manifest evasion of justice, without the court needing to presume that the message was read.

Comparative Jurisprudence: Europe, Switzerland, and the Common Law

A comparative reading of three legal traditions confirms the convergence of this standard while illustrating different evidentiary emphases. Within the European human-rights regime, the ECtHR’s judgment in *Colozza v. Italy* already rejected the assumption that a defendant’s absence from a last-known address proves an intent to evade, insisting instead on a genuine state effort to establish knowledge; *Sejdivic v. Italy* later confirmed that fugitive status pronounced unilaterally by law enforcement cannot itself substitute for proof of waiver (Hall, 2026). Swiss practice, exemplified by *Medenica v. Switzerland*, permits in absentia trial only upon proof of manifest evasion of justice, applying a standard that approaches proof beyond reasonable doubt and carefully distinguishing deliberate absence from involuntary ignorance (Vaško & Ivor, 2022). Common-law jurisdictions such as England and Singapore instead foreground procedural fairness as a freestanding ground for refusing recognition of a foreign judgment: English courts have declined enforcement where the underlying process denied a party an adequate opportunity to be heard, while Singapore’s MACMA framework allows refusal of assistance wherever the underlying proceeding violated natural justice (Carter, 2023; Yilmaz, 2024). Across all three traditions, the common denominator is that formal compliance with a domestic summons statute is never sufficient on its own; what matters is whether the defendant’s absence can be shown to reflect a genuine, informed choice.

Empirical Evidence: Foreign Rejection of Indonesian In Absentia Judgments

Three Indonesian corruption cases illustrate, in concrete terms, how the absence of Unequivocal Waiver has repeatedly defeated Indonesia’s extraterritorial enforcement efforts. In the *Bank Century* case, Hesham Talaat M. Al-Warraq was sentenced in absentia to fifteen years’ imprisonment by the Central Jakarta District Court (Pengadilan Negeri Jakarta Pusat, 2022); he subsequently brought a claim against the Government of Indonesia before a UNCITRAL tribunal alleging denial of justice, and the tribunal’s final award expressly found that Indonesia had failed to prove an unequivocal waiver of the right to be present, treating the accompanying prohibition on legal representation as an excessive breach of fair and equitable treatment (UNCITRAL, 2014). In the related *Rizvi* matter, Indonesia’s attempts to pursue cross-border asset recovery and an Interpol Red Notice against Rafat Ali Rizvi collapsed when the Commission for the Control of Interpol’s Files formally revoked the notice, again for want of authentic proof that the defendant had unequivocally waived his defence rights (*Rafat Ali Rizvi v. Republic of Indonesia*, 2013). Finally, in the BLBI-related case of Adrian Kiki Ariawan, sentenced in absentia to life imprisonment by the Central Jakarta District Court and upheld by the Jakarta High Court, Indonesia’s extradition request following his 2008 arrest in Perth triggered years of litigation in the Perth Magistrates Court, where defence counsel centred their argument precisely on the absence of a documented waiver; although Australia ultimately

approved extradition in 2014, the protracted friction demonstrates empirically how rigorously a common-law jurisdiction scrutinizes every element of due process before recognizing an Indonesian in absentia judgment (“Australia to Extradite Indonesian Graft Convict,” 2013).

SEMA No. 6 of 1988 as a Catalyst of International Illegitimacy

A separate, institutional barrier compounds the technical vacuum described above. SEMA No. 6 of 1988 categorically instructs Indonesian judges to refuse the appearance of any lawyer retained by a fugitive defendant standing trial in absentia (Mahkamah Agung Republik Indonesia, 1988). Originally designed to prevent contempt of court by defendants who flee yet still attempt to steer proceedings through paid counsel, the circular instead converts an adversarial trial into an ex parte, inquisitorial process in which the prosecution’s evidence, witnesses, and legal arguments face no cross-examination or rebuttal whatsoever. Common-law destination jurisdictions treat the right to legal representation, even for an absent defendant, as a non-negotiable element of natural justice and due process (Kulesza, 2021); the systematic denial of that right is accordingly read as a substantial denial of justice under Article 14 of the ICCPR and Article 6 of the ECHR (Lubis, 2023). SEMA No. 6 of 1988 therefore does not merely fail to help Indonesia’s asset-recovery agenda — it actively defeats it, by supplying foreign courts with an independent, additional ground for invoking *ordre public* quite apart from any defect in the underlying e-summons.

Toward Tactical Sovereignty: Optimizing MLA and Extradition

Overcoming this compounded legitimacy deficit requires abandoning what may be called “absolute sovereignty” in favour of a “tactical sovereignty” that prioritizes procedural rationality, diplomatic flexibility, and adaptability to a requested state’s evidentiary standards. MLA and extradition are not automated conduits; every request must pass through a requested state’s own filters of dual criminality and *ordre public*, so that a request will only be honoured once the requesting state has convinced a foreign court that its underlying process is credible (Mwita, 2025). Indonesia already possesses the domestic legal architecture this strategy requires: Law No. 1 of 2006 on Mutual Legal Assistance in Criminal Matters provides the operational anchor for tracing, freezing, and confiscating assets abroad; Law No. 5 of 2023 ratifying the Indonesia–Singapore Extradition Treaty has opened formal bilateral diplomacy with the region’s principal financial haven (Amanda & Hidayatullah, 2023); and Law No. 7 of 2006 ratifying UNCAC binds Indonesia to the reciprocal, rights-respecting cooperation regime under Chapter V (Maulana, 2025).

What remains is a matter of evidentiary quality rather than political will. Where an Indonesian in absentia judgment can show that its e-summons was biometrically verified and that the defendant was permitted legal representation throughout, jurisdictions such as Singapore — under MACMA and REFJA — lose their principal legal ground for refusing an asset-freezing request (Mayora Pranata et al., 2025). The protracted Adrian Kiki Ariawan extradition proceeding in Australia illustrates the same lesson in reverse: the delay stemmed not from Australian bad faith but from the weak construction of Indonesia’s own case file; had the underlying investigation dossier been built from the outset to satisfy an explicit, documented waiver standard, the extradition process could plausibly have been resolved far more quickly (Setiyono & Pratomo, 2023).

Taken together, these findings converge on a single, original contribution of this study: a Verified Digital Waiver protocol that integrates a mandatory digital audit trail and biometric identity verification into e-summons practice, coupled with the repeal of SEMA No. 6 of 1988, as the two coordinated reforms capable of restoring the executorial legitimacy of Indonesian in absentia corruption judgments abroad. Unlike prior scholarship, which has treated the technological, human-rights, and institutional dimensions of this problem separately, this study

demonstrates that they operate as a single causal chain — from a normative vacuum in domestic statute, through a defeated Unequivocal Waiver standard, to concrete, repeated failures of cross-border asset recovery — and that only a coordinated technical and institutional remedy, rather than either measure alone, can close that chain.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

The normative vacuum concerning technical verification standards for electronic summons in Article 150 paragraph (2) of Law No. 20 of 2025 directly undermines the legitimacy of in absentia trials envisaged by Article 38 of the Anti-Corruption Law. Absent a protocol for proving digital receipt, law enforcement officers mistakenly convert an administrative “sent” status into a legal fiction of waiver without any factual proof of the defendant’s cognition, reducing the waiver of a fundamental procedural right to a one-sided constructive notice. Because the Unequivocal Waiver doctrine cumulatively requires that a waiver of the right to be present be knowing, voluntary, and intelligent, adjudicating a defendant on the basis of a cognitively unverified digital notification is an epistemological defect that turns the pursuit of substantive truth into an act of arbitrariness incompatible with due process of law.

This technical defect is compounded by an institutional one. SEMA No. 6 of 1988, by categorically barring legal counsel from representing a defendant during an in absentia trial, damages the principle of natural justice and disables the adversarial balance that criminal procedure requires. Before international law — Article 14 of the ICCPR and Article 6 of the ECHR — this denial of legal representation is read as a substantial denial of justice, and it is this combination, rather than the underlying corruption charge itself, that consistently triggers refusals of Mutual Legal Assistance abroad on ordre public grounds. The result is the legitimacy paradox described at the outset of this study: a judgment that is formally unassailable at home yet remains non-executable wherever the assets it seeks to recover are actually held.

Limitations

This study is subject to several limitations. First, as normative legal research, it relies on doctrinal analysis of statutes and jurisprudence rather than empirical field data on how e-summons is actually implemented in Indonesian courtrooms, so its findings describe legal risk rather than measured practice. Second, the comparative and case analysis is confined to three publicly documented precedents — Al-Warraaq, Rizvi, and Adrian Kiki Ariawan — and to European, Swiss, and selected common-law jurisprudence; outcomes in other destination jurisdictions may differ. Third, because Law No. 20 of 2025 has only recently entered into force, its implementing regulations were not yet available at the time of writing, so the analysis addresses the statutory text’s foreseeable effects rather than settled implementation practice.

Recommendations

For legislators, it is recommended that the government and the House of Representatives promptly codify a safeguard clause in the implementing regulations of Law No. 20 of 2025 that adopts a “Verified Digital Waiver” protocol, integrating the electronic court case-administration system with the Digital Population Identity (IKD) infrastructure so that active biometric confirmation becomes a precondition for opening an electronic summons, thereby producing forensic proof of actual knowledge equivalent to modern banking authentication standards.

For the Supreme Court, it is recommended that SEMA No. 6 of 1988 be revoked so that legal counsel may appear, test evidence, and mount a contradictory defence on behalf of an in

absentia defendant; this should be understood not as leniency toward fugitives but as a high-level litigation tactic that strengthens the international resilience of domestic judgments against foreign rejection.

For law-enforcement authorities, particularly the Attorney General's Office and the Asset Recovery Center, it is recommended that prosecutors conduct rigorous digital-forensic examination of server activity and internet-service-provider data to establish, where applicable, a defendant's deliberate sabotage of digital contactability under the manifest-evasion-of-justice doctrine, and that case files be constructed from the investigation stage onward to satisfy an explicit, documented waiver standard capable of withstanding scrutiny in Mutual Legal Assistance and extradition proceedings abroad.

Author Contribution

The author was solely responsible for the conceptualization, legal analysis, drafting, and final approval of this article.

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