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Legal Arrangements for “In Absentia” Trials in Corruption Cases

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Abstract: The aim of writing this article is to analyze the legal arrangements for in absentia conferences in corruption cases using a study of decision number 65/Pid.Sus.Tpk/2016/PN.Bgl jucto Decision Number 15/PLW/Pid.Sus/TPK/2016 /PT. Bgl. The writing method used in this paper is the nor-mative legal writing method, namely legal research that uses an approach through documents or secondary data to be able to discuss the problem formulation in this journal. Regarding the results obtained in this writing, namely trial in absentia in cases of criminal acts of corruption as referred to in the current laws and regulations, based on the provisions of Article 38 in the PTPK Law, in principle it is carried out in two cases, namely in the event that the sender has been summoned personally. legal, and not present at the court hearing and to save state financial losses. The presence of a thief/suspect in the investigation process until the examination in court is a space for detectives who have the right to defend themselves, property rights, freedom and honor. Apart from that, by the presence of the defendant during the examination and conference, the defend-ant/suspect can clearly understand the charges presented to him as well as the information or other evidence addressed to him

Keyword: In Absentia; Corruption Crime; Presence of the Defendant.

INTRODUCTION

Corruption has plagued this country for a long time and touches almost all aspects of people's lives and continues in more complicated and sophisticated forms (Pramono, 2016). The Indonesian constitution, namely the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) has mandated Indonesia as a rule of law state as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This emphasizes that Indonesia is not based on mere power. (*power state*). Therefore, the role of state leaders, law enforcement officials and the public is needed who work hard, honestly and selflessly. This also applies to the world of justice where in line with the development of crime, the professionalism of law enforcement officers must be upheld (Putra & Maharani, 2022). Systematic and organized criminal acts of corruption also have an impact on the emergence of an economic crisis, damage to the legal system and hinder clean and democratic government (Ekayanti, 2015).

Corruption is an extraordinary crime (*extraordinary crime*) So prevention must also be carried out extraordinarily. This is confirmed in the preamble to Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption which states "criminal acts of corruption which have occurred widely, not only harm state finances, but also constitute a violation of the social and economic rights of the wider community, so that criminal acts of corruption need to be classified as crimes whose eradication must be carried out in an extraordinary manner" (Harianja, 2013)

Efforts to eradicate criminal acts of corruption are indeed facing several important problems, one of which is related to suspects or defendants who are absconding. The presence of a suspect or defendant in the investigation of a criminal corruption case is very important, both in the capacity as a witness and as a suspect or defendant. The presence of a suspect in an investigation process regarding corruption matters is very necessary because the presence of a suspect in the investigation stage can expedite the process of handling the case so that the investigation can continue and the suspect can be held accountable for what he has done and guarantee the protection of his rights. Criminal Procedure Law as formal criminal law aims to enforce, defend and safeguard the provisions contained in material criminal law can be implemented (Purwoleksono, 2015). Looking for perpetrators who can be accused of having committed a criminal act, then an examination and decision will be carried out by the court to prove whether a criminal act has occurred and whether the person accused can be blamed (Ardhyansah, 2020). In general, criminal cases require the presence of the defendant in an open trial, as stated in Article 196 paragraph (1) of the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) that the court decides the case with the presence of the defendant except in cases of law. this determines otherwise. The principle of the defendant's presence in a criminal case is based on the defendant's human rights as a human being who has the right to defend himself and defend his rights to freedom, property or honor. Thus, the defendant has the right to be considered innocent as long as he has not been sentenced to permanent legal force by the court (Prakoso, 1985).

A trial without the presence of the defendant is usually called a trial *in absentia* It can also be applied in corruption cases which are solely aimed at recovering state financial losses (Wardhani, 2022). During judicial investigations into criminal acts of corruption, special rules are applied which stipulate that without the presence of a suspect who has been legally summoned at the court hearing, the trial will continue. This is confirmed in Article 38 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (hereinafter referred to as PTPK Law). This is a deviation from the Criminal Procedure Code which requires the defendant to appear in court. However, the defendant's absence from the trial of a criminal act of corruption does not apply at the prosecution stage, and the examination in court is carried out based on the applicable criminal procedural law unless otherwise provided by law.

The law of procedure in the investigation of corruption cases with the trial process in absentia is not regulated in the Criminal Code. The basis for allowing the examination of matters at the hearing in absentia is Pasak 38 paragraph (1) of the PTPK Law (Nadiyah, 2019). Based on the formulation of Article 38 paragraph (1) of the PTPK Law, the meaning of his absence is when he has status as a defendant or has entered the trial stage. These provisions do not formulate and regulate if he is still a suspect or while he is still in the process of being investigated, then investigators will carry out the investigation process *in absentia* The absence of the suspect during the investigation is an interesting thing to study, where the presence of the suspect at the investigation stage is very important in order to be held accountable for his actions. Apart from that, the suspect's personal statement is an important piece of evidence, and is one of the suspect's rights to defend himself.

This research is the result of the author's thoughts or ideas and to support the originality of the writing, therefore the author includes similar written works but the context of discussing the problem is different. These include articles from:

1. A.A. Made Yuda Dwi Hendrata, A.A. Sagung Laksmi Dewi and I Nengah Laba, Faculty of Law Universitas Warmadewa with the title "Conference *In Absence* Against Corruption Crimes (Decision Study Number 13/Pid-Sus-Tpk/2017/Pn Mtr)" with the focus of the article examining how legal regulations *in absence* regarding criminal acts of corruption and how judges consider in deciding cases *in absence* against the criminal act of corruption Number 13/Pid-Sus-Tpk/2017/Pn Mtr.
2. Shinfani Kartika Wardhani, Faculty of Law, East Java "Veteran" National Development University with the title "Judicial Review of Corruption Case Trials Overall *In Absence* against the Defendant on the People Wanted List (DPO)" with the focus of the article examining the procedural law at trial *in absence* with the defendant committing a criminal act of corruption in the DPO and what the impact of the trial would be *in absence* in corruption cases the defendant has DPO status based on procedural legal regulations.

This writing aims to understand the provisions for trials in absentia in cases of criminal acts of corruption and to understand the process of investigating suspects in absentia in Decision Number 65/Pid.Sus.Tpk/2016/PN.Bgl *fair* Decision Number 15/PLW/Pid.Sus/TPK/2016/PT.Bgl

METHOD

The type of method used in this research is the normative legal research method, namely legal research that uses an approach through documents or secondary data so that it is mandatory to pay attention to related legal products that have a relationship and relevance to what is being studied. Sources of legal documents used include primary legal documents, secondary legal documents and tertiary legal documents.

The main legal document used is Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. Secondary legal literature includes research results from the doctrines of legal experts. Tertiary legal sources include dictionaries, encyclopedias, etc. The technique used to collect legal documents is document and case research. The material legal analysis method used is qualitative analysis.

RESULT AND DISCUSSION

Conditions of Trial *in absence* In Corruption Crime Cases

In absentia is a translation from Latin which means "absence". Say *in absence* in the sense of criminal law, it is used for perpetrators of criminal acts in their status as suspects or defendants while they are in the trial process until the court decision. This is in accordance with the terms commonly used in criminal law, namely judicial terms *in absence*. Justice *in absence* is an effort to examine, try and decide a case without the presence of the defendant, but only applies to certain criminal acts as determined in special laws and regulations. Handling criminal acts of corruption effectively *in absence* regulated in the provisions of Article 38 paragraph (1) of the PTPK Law which regulates that without the presence of a defendant who has been legally summoned at a court hearing, the trial can still take place.

The process of administering criminal justice is essentially based on the provisions of criminal procedural law. Criminal procedural law exists as formal criminal law which aims to find material truth in order to provide justice for the parties, including in this case the defendant (Al Masyhur et al., 2021). The Criminal Procedure Code does not regulate justice *in absence* except for traffic violations. Provisions regarding examination procedures and decisions in the presence of the defendant are regulated in Article 196 paragraph (1), Article 214 paragraph (1) and paragraph (2) of the Criminal Procedure Code and only apply to

examination proceedings in traffic violation cases. The implementation of justice *in absente* for criminal cases other than traffic violation cases, this is possible under the provisions of Article 284 paragraph (2) of the Criminal Procedure Code. The provisions of Article 284 paragraph (2) of the KUHAP expressly stipulate that all criminal cases must be carried out based on the KUHAP with the exception of certain cases which are regulated in special provisions. The criminal justice system in Indonesia goes through several stages starting with investigation, investigation which then continues with the prosecution and prosecution stages by the Public Prosecutor (hereinafter referred to as the Public Prosecutor), and ends with the examination stage, both at the District Court, High Court and examination by the Supreme Court (Girsang & Hatta, 2023).

Implementation of the meeting *in absente* can only be carried out if there is a letter summoning the defendant. The trial system adopted is the trial system *in absente* absolute/absolute because it does not give the offender the opportunity to attend trial and ask for justice if the offender feels he is innocent. This refers to the general setting of the trial *in absente* which is contained in Article 6 paragraph (1) letter b of the Emergency Law Number 1 of 1951 which formulates "*Examining and deciding cases in absentia is permitted as long as the defendant has been legally summoned to appear*". It's different with trials *in absente* regulated in Article 214 paragraph (1) of the Criminal Procedure Code, namely "*If the defendant or his representative does not appear at the hearing, the case examination continues*".

Several trials can be carried out online *in absente*. These include trials for terrorism crimes, trials for economic crimes, money laundering crimes, fisheries crimes and corruption crimes. The trials are regulated by different laws according to the crime committed (Hendratta et al., 2019). During inspection *in absente* not all criminal acts can be investigated. In the trial process *in absente* There are several conditions that must be met, namely (Hendratta et al., 2019):

1. The state must be able to prove the reason why the state is unable to produce the perpetrator
2. The suspect's absence did not provide a clear reason, whereas the defendant had been summoned according to his known residential address
3. Has been declared a fugitive
4. The state was unable to present and arrest suspects
5. The state was unable to prove before an objective court the reasons
6. Investigators carry out an examination of the perpetrator to find out whether the examination is appropriate and can be submitted to court or not.

Justice *in absente* In cases of criminal acts of corruption as intended in the current laws and regulations, based on the provisions of Article 38 in the PTPK Law, in principle two things are carried out, namely (Akli, 2020):

- a. In the event that the defendant has been legally summoned and does not appear at the court hearing
- b. To save state financial losses.

The existence of the judiciary *in absente* cannot necessarily be applied absolutely to certain criminal acts because there are reasons why the examination and decision process can continue without the presence of the defendant, namely:

1. The summons to the defendant was invalid because the summons to the defendant was addressed to the wrong address. This resulted in the summons not being accepted by the defendant
2. The whereabouts of the defendant are unknown or the defendant is on the Wanted List (DPO) or is absconding
3. The summons to the defendant was carried out legally, but due to the defendant's legitimate reasons why he could not appear before the trial (Akli, 2020).

In the process *in absente* The defendant's attorney is also prohibited from entering the courtroom based on Circular Letter of the Supreme Court of the Republic of Indonesia Number 6 of 1988 concerning Legal Advisors or Lawyers Who Receive Power of Attorney from the Defendant/Convict *In the absente* In SEMA Number 1 of 2012, amendments to SEMA Number 6 of 1998 state, ""The court shall refuse or not serve legal advisors or lawyers who receive power of attorney from defendants/convicts who are not present without exception.""

Trial concept *in absente* includes:

1. That during the examination at the Court the presence of the defendant was absolute. The articles that serve as reference are Article 145 paragraph (5), Article 154 paragraph (5), Article 155 paragraph (1), Article 203 and Article 205. The understanding of the provisions of these articles is that it is impossible for a case to be examined and tried without the presence of the defendant. That the investigators will experience substantial difficulties in compiling the minutes of the examination, because how could the examination be carried out without the object being examined. Without the presence of the defendant at the trial, the purpose of the trial examination is to search for and discover or at least approach the material truth which cannot be realized.
2. Exceptions to inspection *in absente* because corruption is considered a crime which is categorized as a serious crime, because it is not an ordinary crime, the resolution must be carried out in an extraordinary way.
3. To minimize state losses in an effort to recover state losses by speeding up the legal process, so that there is a court decision *in absente* the restitution of state losses has a clear legal basis as a form of legal certainty.

The public's sense of justice regarding law enforcement against perpetrators of criminal acts of corruption, of course, apart from returning state losses, is also related to providing appropriate "corporal" punishment for the perpetrators themselves. The judge's consideration gives a decision which is read aloud *in absente* namely that the defendants who were legally summoned in accordance with the provisions of Article 145, Article 146 paragraph (1), Article 153 and Article 154 paragraph (1) of the Criminal Procedure Code, never appeared without information. The defendant's absence at the court hearing occurs as follows (Welang, 2020):

- a. Not just once, but by the defendant continuously or never at trial, from the time the court session was opened and declared open to the public by the judge until when the judge handed down his decision in the case;
- b. Carried out one or several times between trials, meaning that the defendant has attended the trial since the trial was opened and declared open to the public by the judge until the judge handed down his decision in the case.

Investigation Process Against Suspects *In Absent* in Decision Number 65/Pid.Sus.Tpk/2016/PN.Bgl *fair* Decision Number 15/PLW/Pid.Sus/TPK/2016/PT.Bgl

Based on data as described in the Bengkulu District Court Decision in Case Decision Number 65/Pid.Sus.Tpk/2016/PN.Bgl *fair* Decision Number 15/PLW/Pid.Sus/TPK/2016/PT.Bgl in this case means that the public prosecutor still states that the case file without the discovery of the suspect by the investigator is complete and the public prosecutor also accepts the case file to be handed over to court even without being accompanied by the physical handing over of the suspect from the investigator to the public prosecutor. In this case, it means that the investigator has carried out an investigation *in absente* and the public prosecutor accepts the transfer of responsibility for the suspect from the investigator but is not accompanied by a physical handover. In his considerations the judge opined:

- 1 Whereas, as stated by the public prosecutor, who did not know why the defendant was not present at the trial, this was an indication for the judge that the provisions in Article 38 paragraph (1) could not be applied because one of the conditions was not fulfilled, namely the defendant's failure to appear at the court hearing. without a valid reason
- 2 Whereas in such case circumstances the Supreme Court with Circular Letter Number: 1 of 1981 dated 22 January 1981 *because* Supreme Court Decision Number: 121.K/Kr/1980 dated 23 December 1980 has provided a solution for such cases by stating "*in a case filed by the prosecutor, the defendant was not present from the start and from the start there was no guarantee that the defendant would be able to appear in court, the case was declared inadmissible*"
- 3 If the defendant has been properly summoned and does not appear without a valid reason, then the trial can still continue without the presence of the defendant, however, after the high court examines the case file, the defendant in question has never been examined at the investigative level.
- 4 That the Supreme Court Circular Letter Number: 1 of 1981 dated January 22 1981 is a decision for ordinary case examinations, not for case examinations. *in absence* However, in corruption cases an examination must be preceded by an investigation at the investigative level and if an examination has not been carried out, even though it has been properly summoned, it cannot be examined properly. *in absence*
- 5 That is to carry out an examination of the case *in absence* must begin with the process of examining the suspect at the investigative level, if the public prosecutor does not carry out an investigation against someone and that person is immediately made a suspect/defendant and the public prosecutor brings that person to court, then this violates human rights.
- 6 That because at the investigation level the public prosecutor has not yet conducted an examination of Christopher O Dewabrata Bin Rudianto Nitiardjo as a suspect/defendant and the public prosecutor has referred the case to court, then Christopher O Dewabrata Bin Rudianto Nitiardjo cannot be examined in person *in absence*.

Basically, the presence of the defendant/suspect is an important thing related to efforts to guarantee the rights of the defendant/suspect and to facilitate the trial process in order to gather information related to the case being handled. The presence of the defendant/suspect in the investigation process until the examination in court is a space for the defendant as a human being created by God who has the right to defend himself, property rights, freedom and honor. By having the defendant present at the examination until the trial, the defendant/suspect can clearly understand the charges imposed on him as well as the information or other evidence addressed to him (Ayu Sintya Dewi, 2019). The presence of the defendant is very important because it is his right or opportunity to prove that he has not committed a crime. However, it should also be noted that not all crimes can be tried in absentia (Samud, 2017). It can be interpreted that the court has actually given the defendant the same opportunity to attend the trial as the summons was legally given, but he did not use it and chose not to attend the trial process. Thus the judge can continue the trial process in the absence of the defendant (*in absence*).

CONCLUSION

Justice in absence In cases of criminal acts of corruption as referred to in the current laws and regulations, based on the provisions of Article 38 in the PTPK Law, in principle it is carried out in two cases, namely in the event that the defendant has been legally summoned, and is not present at the court hearing and to save state financial losses. The presence of the defendant/suspect in the investigation process until the examination in court is a space for the defendant as a human being created by God who has the right to defend himself, property rights, freedom and honor. By having the defendant present during the examination and trial,

the defendant/suspect can clearly understand the charges brought against him as well as the information or other evidence addressed to him.

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