

The Urgency of Implementing in Absentia Decisions in Corruption Crimes Based on Legal Certainty

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Abstract. *This research aims to know and analyze the weaknesses of the implementation of in absentia decisions in corruption cases, as well as to analyze the urgency of implementing in absentia decisions in corruption cases based on legal certainty. The type of normative legal research. Based on the research, it is concluded that in absentia decisions in corruption cases, examination and the decision against the defendant without his physical presence, even though a valid summons had been issued, failure to appear without reason. Examination and decision The courts continue to provide legal certainty, provide a deterrent effect, and ensure the recovery of state assets, especially in extraordinary crimes such as corruption, money laundering, and fisheries. The urgency of an in absentia decision regarding the theory of legal certainty, even though the decision is in absentia, is still implemented to realize justice and effective law enforcement against perpetrators of criminal acts who have fled, as well as recover state losses, so that even though the defendant is decided in absentia, the state is not harmed due to the inability to present the defendant in court.*

Keywords: *Absentia; Corruption; Decisions; Implementation; Legal.*

1. Introduction

A court decision is a judge's statement delivered in an open court session, which may be in the form of a conviction or acquittal or release from all legal charges in the case and according to the method regulated in this law, as stipulated in Article 1 number 11 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP). A decision or verdict is an official statement from a judge handed down at the end of a trial (criminal case examination), which contains a decision on whether the defendant is guilty or not guilty of the criminal event charged. The verdict is read after all stages of the trial are completed.¹

¹Angelia Dwi Oktavia, 2021, "Analysis of the Validity of Reading Criminal Decisions Read Virtually or Electronically", Jurist-Diction Vol. 4 (6).

The examination and decision of criminal cases, according to Article 196 paragraph (1) of the Criminal Procedure Code, states that the judge shall decide the case with the presence of the defendant unless otherwise stipulated by this law. The provisions of Article 196 paragraph (1) of the Criminal Procedure Code expressly state that the judge in examining a criminal case, when making a decision, requires the defendant to be present. However, the provisions of Article 196 paragraph (1) of the Criminal Procedure Code are not absolute, because they still provide the possibility that the defendant will not be present in the decision, as long as the law permits his absence. The absence of the suspect is justified unless the law stipulates otherwise, as long as an official summons has been issued as referred to in Article 227 paragraph (2) of the Criminal Procedure Code which requires officers to meet directly with the person summoned, the delivery of the summons to an adult child or to the wife or husband of the person summoned is considered invalid. In addition to the decision without the presence of the defendant, the judge permits the decision to be made without the presence of the defendant, especially in the case of a quick examination for minor criminal cases, and provides an opportunity for the defendant to file an objection to the default decision (a decision without the presence of the defendant).²

The judge who examines and decides the case without the presence (in absentia) of the defendant is limited to the fast examination procedure for minor criminal cases and the defendant is given the opportunity to file an objection against the default decision. The expedited examination procedure for minor criminal incidents referred to is the examination procedure for criminal incidents mentioned in the Criminal Procedure Code, with examination procedures that are simplified from the ordinary and brief examination procedures.

The decision on a criminal case without the presence of the defendant or in absentia is known as a criminal corruption incident as per Article 38 paragraph (1) of the Corruption Law, that if the defendant has been legally summoned, and does not appear at the court hearing, without a valid reason, then the case can be examined and decided without his presence. Linked to the provisions of Article 196 paragraph (1) of the Criminal Procedure Code, that the judge decides the case with the presence of the defendant unless this law determines otherwise, which means that the provisions of Article 38 of the Corruption Law which do not require that when the judge reads the verdict the defendant does not have to be present/in absentia, as a form of special rule from the general rule as per Article 196 paragraph (1) of the Criminal Procedure Code.

The decision in a criminal corruption case in absentia is one of the extraordinary ways in which the corruption case can be examined without the presence of the

²Olga A. Pangkerego and Evie Sompie, 2021, "The Strength of Expert Testimony in Proving Criminal Cases," *Lex Crimen* Vol. X/No. 5/Apr/EK 2/2021

defendant (in absentia).³The settlement of a case should involve the presence of the defendant, but in absentia trials require the settlement of the case, especially cases involving criminal corruption incidents. This decision can be implemented if the defendant has been legally summoned.. The summons for the accused is carried out by an officer, and the officer must go to the residence and meet directly and speak with the accused by making a note that the summons has been received by the accused by adding the date and signature, both by the officer and the accused.

"In absentia" is a Latin term meaning "without presence." In a legal context, particularly in the courts, "in absentia" refers to a trial or legal process that takes place without the presence of the accused.⁴

Based on the matters as outlined above, it can be explained that the examination and decision of the trial judge in a criminal case requires the defendant to be present as per Article 196 paragraph (1) of the Criminal Procedure Code, unless he has been legally summoned by an officer, but is not present (DPO) and even then only in cases of minor criminal incidents, where the examination is carried out quickly. On the other hand, in the examination of criminal corruption cases, there is an exception (regulating criminal procedural law specifically), as stated in Article 38 of the Corruption Law. If the defendant has been legally summoned and does not appear at the court hearing without a valid reason, then the case can be examined and decided without his presence.

Based on this background, this research aims to know and analyze the weaknesses in implementing in absentia decisions in corruption cases, as well as to analyze the urgency of implementing in absentia decisions in corruption cases based on legal certainty.

2. Research Methods

This type of legal research is normative. The approach used in this research is a statute approach. The data used in this research consists of secondary data, including primary, secondary, and tertiary legal materials. Data collection was conducted through literature and document studies. The analysis method used is qualitative analysis.

3. Results and Discussion

3.1. Weaknesses in the Implementation of In Absentia Decisions in Corruption Crimes

³Suriady Harianja, 2013, "Trial in Absentia in Corruption Cases from the Perspective of the Defendant's Human Rights," UNNES Law Journal. Vol. 2, no. 1. pp. 36-43

⁴Rio Ferdinand Turnip, "What is Trial In Absentia in Criminal and Civil Cases", online law, 2025.

Weaknesses in enforcing absentia decisions in corruption cases include the risk of incomplete decisions if the convict is a fugitive, difficulties in executing prison sentences, and potential violations of the right to self-defense if the absentia process is not in accordance with the law. Furthermore, there are obstacles to effective asset recovery due to a lack of international cooperation and weaknesses in legal regulations.

Despite being officially and legally summoned, the defendant failed to appear in court, meaning he did not exercise his right to defend himself during the trial. Because the defendant ignored his rights during the trial, there is at least a risk of a violation of his right to defend himself due to his failure to appear in court. Although the defendant can file objections and request a re-examination after appearing or being arrested, this remains a weakness in the process.

The verdict in absentia in a corruption case, even though the terms are excluded by the provisions of Article 196 of the Criminal Procedure Code, is based on Article 38 of the Corruption Law. Because the defendant did not use the right to defend himself, the judge's decision is only based on incomplete information, thus increasing the risk of legal error. The possible impact of the decision is not based on material truth, namely the actual truth and could result in violating the defendant's rights.

A defendant whose domicile is unknown (DO) can clearly influence the seizure of the defendant's assets. There are difficulties in recovering assets obtained from corruption, caused by the ineffectiveness of civil lawsuits and law enforcement institutions.

If the defendant is not present at the trial/the decision is entered into (DO), this does not result in the criminal penalty being erased, because even though the defendant's assets have been confiscated, it does not erase the sentence. idana, meaning even though assets can be recovered, the return of state losses does not immediately remove the criminal penalties imposed on those convicted of corruption.

Based on the description and discussion as mentioned above, namely the court's decision in absentia against corruptors, when viewed from the theory Indonesian legal system, which combines legal structure, legal substance, and legal culture. The theory of the legal system itself according to language is a legal entity composed of three elements, namely: Structure is all law enforcement agencies or institutions, along with all the apparatus that includes the police with its police, the prosecutor's office with its prosecutors, and all professions with their people. Substance is all legal principles, legal norms, and legal rules, both written and unwritten, including jurisprudence. Legal culture is the habits, opinions, of law enforcers, of citizens who live and grow into a habit.

The legal structure is related to the judicial system, meaning that the main study is the law enforcement aspect including, the police as investigators, prosecutors, as public prosecutors, judges examining and deciding cases, legal advisors, whose profession is to provide legal assistance and advice to clients, before this term was replaced by advocates after the enactment of the Advocate Law. Advocates act as legal advisors who assist clients (suspects, victims, or defendants) in the legal process, ensuring their rights are fulfilled, and representing them in court to achieve fair and transparent justice. These legal institutions are involved in the examination of corruption cases as the basis for the examination is based on the Corruption Law.

Regarding legal substance, it has a relationship with all forms of legal products formed and produced by the legal structure itself, all forms of legal products formed and used by the apparatus, both written and unwritten, are elements of legal substance. Related to the examination of corruption cases without the presence of the defendant is clearly regulated in Article 38 of the Corruption Law, as long as the judicial institution has issued a valid summons and it turns out that he is not present for an invalid reason. Related to the purpose of examining corruption cases in absentia is to guarantee legal certainty, provide a deterrent effect, maximize the return of state assets, and ensure law enforcement against corruption cases that are extraordinary crimes, even though they violate the general principle of the presence of the defendant in the Criminal Procedure Code. The examination of corruption cases is specifically regulated in the Corruption Law, which means that in substance the Corruption Law can be used to ensnare perpetrators of corruption cases.

Associated with the legal system, legal culture in the workings of law as explained above is an idea, opinion, habit pattern, and way of thinking of humans in a particular community regarding law and all issues closely related to law.⁵In legal culture, there are 2 (two) possibilities related to the formation of legal culture, namely: 1) legal culture can be produced from the mutual contact between elements of legal structure and legal substance, 2) legal culture is born in its own society which then forms certain habitual patterns so that it is able to create legal structure patterns, as well as forming the composition of legal substance.⁶

Judging from the subjects that form the legal culture, Friedman divides it into 2 (two):⁷1) an external legal culture that involves the wider community in general; and 2) an internal legal culture, namely the culture developed by law enforcement officers. 2) these types of legal culture influence each other. If the external legal

⁵Marzuki Lubis, 2014, "The Role of Legal Culture in the Perspective of National Legal Development," *Law Enforcement* 1, No. 1 pp.: 16–37.

⁶Ika Darmika, 2016. "Legal Culture and Its Influence," *Jurnal Hukum Tora* 2, No. 3 2016.

⁷Izzy Al Kautsar, et all, 2022, "Lawrence M. Friedman's Modern Legal System: Legal Culture and Social Change in Society from Industrial to Digital", *Sapientia et Virtus Journal* Volume 7 Number 2, 2022.

culture is healthy, the internal legal culture will naturally adapt, because law enforcement officers are essentially products of their own society.

A decision in absentia in a criminal case as stipulated in Article 38 of the Corruption Law permits (excludes) the provisions of Article 196 of the Criminal Procedure Code, considering that nature of *lex specialis* overrides the general principle of the defendant's presence in court. This theory is based on legal pragmatism to ensure legal certainty and maximize the recovery of state assets from absconding corruptors, as well as to create a deterrent effect for perpetrators of extraordinary crimes. This means that decisions made in absentia, in terms of legal structure, legal substance, and legal culture, do not prohibit such decisions.

3.2. The Urgency of Implementing In Absentia Decisions in Corruption Cases Based on Legal Certainty

The urgency of implementing an in absentia verdict in a corruption case is to achieve legal certainty, maximize the recovery of state assets, and provide a deterrent effect, especially because of the nature of corruption as an Extraordinary Crime that harms the wider community. Although contrary to the general principle of the defendant's presence in the Criminal Procedure Code, in absentia is regulated in a special law on corruption (Article 38 of the Corruption Law) and is a necessary exception to handle defendants who have fled or are fugitives, in order to guarantee justice and the recovery of state losses.

The urgency of a decision in a criminal case where the defendant is not present at the trial is excluded by the provisions of Article 196 of the Criminal Procedure Code which requires the defendant to be present at the trial, unless the law determines otherwise for crimes with light sanctions and evidence, for corruption crimes based on Article 38 of the Corruption Eradication Law.

Regarding the theory of legal certainty in the examination and verdict of a judge in corruption trials, the in absentia mechanism aims to provide legal certainty in the resolution of cases, particularly when the defendant evades or flees the legal process, preventing the case from protracted and unresolved. Through an in absentia trial, a court judge can decide a case without the defendant's presence, which is crucial for expediting the process of recovering state assets and losses caused by corruption.

The court judge's decision in a corruption case where the defendant was not present, so it was decided in absentia, the defendant did not use his right to defend himself and even though his assets were confiscated by the state, it did not free him from the charges, creating a deterrent effect for the perpetrator of corruption and also for other potential perpetrators, because they can still be punished even if they run away.

The absence of a suspect from a court hearing does not waive the charges and does not prevent the bailiff from seizing the defendant's assets obtained through corruption. This confiscation, in line with corruption being an Extraordinary Crime, harms the wider community, both socially and economically. Trials in absentia help achieve justice by restoring the rights of the injured through the recovery of state assets. Thus, in absentia in corruption cases is an important tool to take firm action against corruptors and recover state losses, in order to uphold legal certainty and justice for the people.

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The theory of punishment in corruption cases is based on the theory of legal certainty. The theory of legal certainty is one of the theories of the purpose of law, as proposed by Gustav Radbruch, as quoted by Abdul Aziz Nasihuddin.⁸ That in realizing the objectives of the law, it is necessary to apply the principle of priority of the three basic values that constitute the objectives of the law. This is because in reality, legal justice often clashes with legal benefit and certainty, and vice versa. Among these three basic values, when a conflict occurs, one must be sacrificed. Therefore, the principle of priority used by Gustav Radbruch must be implemented in the following order: 1) Legal Justice; 2) Legal Benefit; 3) Legal Certainty.

According to Gustaf Radbruch, legal certainty emphasizes that laws must be positive (written regulations), clearly and specifically formulated, and not easily changed. Legal certainty also guarantees that laws will be obeyed, and clear positive laws will provide concrete direction for society.⁹ According to Sudikno,¹⁰ Legal certainty is the guarantee that the law is enforced, that those entitled to it can obtain their rights, and that decisions can be enforced. The principle of legal certainty, in essence, is understood as a state in which the law is certain due to the concrete force of the law in question.

The existence of the principle of legal certainty is a form of protection for the justiciable (seeker of justice) against arbitrary actions, which means that a person will and can obtain what is expected under certain circumstances. Furthermore,

⁸ Abdul Aziz Nasihuddin 2024. *Pancasila Legal Theory*, CV.E Ivarettabuana, Tasikmalaya

⁹ Ibid.

¹⁰ Sudikno Mertokusumo, 2007, *Introduction to Indonesian Law*, Raja Grafindo Persada, Jakarta, p. 160.

Sudikno¹¹He stated that legal certainty is justifiable protection against arbitrary action, meaning that a person will be able to obtain what they desire under certain circumstances. Society expects legal certainty because it will lead to a more orderly society. The law's role is to create legal certainty because it aims to maintain social order.

Legal certainty, as stated by Gustaf Radbruch, emphasizes that law must be positive (written regulations), detailed in clear formulations that do not give rise to multiple interpretations and are not easily changed. Legal certainty is essential to guarantee peace and order in society because law (regulations/statutes) is coercive and applies to everyone (the entire community). However, in practice, when legal certainty is linked to justice, they are often incompatible. This is because legal certainty often ignores the principles of justice, and conversely, justice often ignores the principles of legal certainty. According to Sudikno Mertokusumo¹²Legal certainty is the guarantee that the law is enforced, that those entitled to it can obtain their rights, and that decisions can be enforced. Although legal certainty is closely related to justice, law is not identical to justice. Law is general, binding on everyone, and equalizing, while justice is subjective, individualistic, and non-equalizing.

4. Conclusion

Based on the research, it was concluded that the decision in absentia in criminal corruption cases, the examinationand the decision against the defendant without his physical presence, even though a valid summons had been issued, failure to appear without reason. Examination and decision the courts continue to provide legal certainty, provide a deterrent effect, and ensure the recovery of state assets, especially in extraordinary crimes such as corruption, money laundering, and fisheries. The urgency of an in absentia decision regarding the theory of legal certainty, even though the decision is in absentia, is still implemented to realize justice and effective law enforcement against perpetrators of criminal acts who have fled, as well as recover state losses, so that even though the defendant is decided in absentia, the state is not harmed due to the inability to present the defendant in court.

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