

Implementation of Absentia Trials in Corruption Cases

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ABSTRACT

The settlement of a case should present the defendant in court, but in In Absentia trials, especially regarding corruption cases, can be carried out even without the presence of the defendant. This study aims to find out the legal regulations in absentia regarding Corruption and the judge's considerations in deciding cases in absentia against corruption cases number 71 / Pid.Sus-TPK / 2022 / PN MDN. This study uses a normative legal research method, namely legal research carried out by reviewing legal library materials and secondary data. In Absentia regulations are contained in Article 38 paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption. In absentia trials against corruption cases are not only to create a deterrent effect but also to save state assets. One of the things that plays a role as a basis for judges' considerations in deciding cases In Absentia against corruption is to review the aggravating and mitigating conditions for the perpetrator. One of the aggravating conditions in this In Absentia case is that the perpetrator is not cooperative and runs away from the legal process that ensnares him.

INTRODUCTION

In absentia is not a judicial system. According to the Great Dictionary of the Indonesian Language, "in absentia" means "a state of not being present". Referring to this matter in absentia is not defined as one of several types of trials but a state in a trial where the defendant in this case does not use his rights to be present at the criminal trial stage. One of the several methods that are carried out in an extraordinary way is being able to carry out the examination of corruption cases without the presence of the defendant (in absentia). The settlement of a case should present the defendant, but in an in absentia trial allows the settlement of cases, especially cases of Corruption, Terrorism, and Money Laundering, to be carried out even though the defendant is not present. In fact, those who are able to carry out criminal acts are humans or "naturlijk person".

The philosophical aspect of the trial in absentia raises a conflict between two fundamental interests in law. On the one hand, there is the need to uphold justice and ensure that perpetrators of crimes do not escape the law simply because they are absent. On the other hand, there is an obligation to respect the basic rights of the accused, including the right to defend themselves. This dilemma becomes more complex in corruption cases because it involves a wider public interest.

Historical Context The history of in absentia trials in Indonesia began with practical needs in handling traffic violations. However, the increasing number of corruption cases where the defendants fled abroad encouraged the expansion of its application. This development was marked by the issuance of various regulations including the Corruption Crime Law which explicitly regulates in absentia trials.

This can be concluded from the formulation of criminal acts in the law which always begins with the word "whoever" which does not mean anything other than a person (human). In general criminal justice practices, those who are often involved are those related to public office or government office. A corruption case whose whereabouts are unknown, will be requested by the Public Prosecutor to be tried in absentia or "without the presence of the defendant", namely the perpetrator commits an act or action leaving or distancing himself or not being in the place that has been determined for him to carry out his duties/duties, while what is meant by the place of duty of the Defendant in this case is the last unit of the Defendant. Corruption and its eradication in Indonesia are indeed complicated, the problem is not only in the central government, but also refers to the regions. The in absentia trial formulated in the Supreme Court Regulation does not carry out a prior summons to the violators so that they can attend the trial, Judge.

Practical Aspects of Law Enforcement "In practice, many defendants in corruption cases use various methods to avoid trial, for example:

- a. Pretending to be sick and seek treatment abroad
- b. Fleeing to a country that doesn't have an extradition treaty
- c. Hiding yourself by using a fake identity
- d. Repeatedly not answering calls for various reasons

In the Criminal Act of Corruption as referred to in the current laws and regulations. Trial in absentia is contrary to the general trial process as written in Article 196 Paragraph (1) of the Criminal Procedure Code. In this article it is written that "The court decides the case with the presence of the defendant except in cases where this law determines otherwise."

According to the contents of Decision No. 71/Pid.Sus-TPK/2022/PN.MDN, which states that the examination of the defendant CHEE YU's case was carried out without the presence of the defendant (In Absentia) who was proven legally and convincingly guilty of committing a criminal act of corruption and violating Article 2 Paragraph (1) Jo Article 18 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption Jo Article 55 Paragraph (1) Ke-1 of the Criminal Code in the primary indictment.

Based on the previous provisions, in fact, an in absentia trial is obtained but only for perpetrators who violate or carry out actions that violate traffic regulations where Article 213 of the Criminal Procedure Code states that "the defendant can appoint a person with a letter to represent him in court". After that, Article 214 Paragraph (1) and paragraph (2) of the Criminal Procedure Code stipulates that:

- a. If the defendant or his representative is not present at the hearing, the case examination will continue.
- b. In the event that the verdict is pronounced without the defendant being present, the verdict letter will be immediately delivered to the convict;

In absentia trials, which were initially only permitted for traffic violations, have subsequently undergone changes so that for minor criminal cases such as the Supreme Court through the Supreme Court Circular Letter No. 9 of 1985 concerning Decisions Pronounced Outside the Presence of the Defendant, have also expanded the implementation of trials in absentia. This expansion aims to accelerate the implementation of Quick Examination Procedures by making decisions on a case, especially minor criminal offenses and traffic violations without the presence of the defendant. Examination and decisions in absentia are also in accordance with Article 12 paragraphs 1 and 2 of the Republic of Indonesia Law Number 48 of 2009 concerning judicial power, where the Article stipulates that the Court decides or conducts examinations of Criminal cases with the presence of the perpetrator unless the Law states otherwise.

The settlement of a case should involve the presence of the defendant, but in the In Absentia Trial, the settlement of cases, especially cases of Corruption, Terrorism, and Money Laundering, can be carried out even though the defendant is not present. These three things greatly deprive a defendant of the right to carry out a defense in a trial. Furthermore, this matter is very contrary to one of the principles of the Court, namely the principle of the Court.

Examining Criminal Cases with the Presence of the Defendant, furthermore Law No. 8 of 1981 Article 154 paragraph (4) also does not approve of the presence of the In Absentia Trial with its statement as follows "If the defendant is legally summoned but does not appear at the trial without a valid reason, the

examination cannot be carried out and the presiding judge orders that the defendant be summoned once again", even though a trial requires the trial to be continued without the presence of a defendant, this is sufficient in traffic cases because a defendant does not have to carry out a defense as regulated in Law No. 8 of 1981 H 214 paragraph (1) "If the defendant or his representative is not present".

In more detail, there are 3 aspects that are contrary to the implementation of In Absentia Trials in cases, especially cases of Economic Crimes, Terrorism Crimes, and Money Laundering Crimes, namely:

- a. Human Rights Violations (especially the deprivation of the accused's rights to carry out his defense).
- b. Criminal Procedure Code (Law No. 8 of 1981).
- c. The Principle of the Court Examining Criminal Cases in the Presence of the Defendant.

In reality, all of this is weakened by Law No. 8 of 2010 on Prevention and Eradication of Money Laundering Article 79 Paragraph (1) which states that "In the event that the defendant has been legally summoned and is properly present at the court hearing without a valid reason, the case can be examined and decided without the presence of the defendant. In Absentia Trials are also not completely contrary to other regulations, In Absentia Trials are carried out because they anticipate things that hinder the process of resolving a case or an action carried out by perpetrators of criminal acts who intend to try to escape criminal charges because the perpetrators pretend to be sick or want to seek treatment abroad, especially to countries that do not have extradition agreements with Indonesia, these things have become part of the culture in our country, after reflecting on this experience, in order to handle these crimes, an In Absentia Trial is very necessary.

LITERATURE REVIEW

This research refers to various relevant legal literature in discussing the concept of In Absentia trials in corruption cases. One of the main references is Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 on the Eradication of Corruption, which explicitly regulates In Absentia trials in Article 38 paragraph (1). This law provides the legal basis for conducting trials without the presence of the defendant if he/she is absconding or evading the legal process.

Another literature reference is the Criminal Procedure Code (KUHAP), which in Article 196 paragraph (1) confirms that the court decides cases in the presence of the defendant, except in certain cases regulated by law. This regulation shows that In Absentia is a form of exception that must still pay attention to the principles of justice and the defendant's right to defense.

In addition, this research also refers to various views of legal experts such as Djoko Prakoso (2004) in "In Absentia Justice in Indonesia", which examines the legality aspects and challenges in the application of In Absentia. Meanwhile, Loebby Loqman (2003) in "The Dilemma of In Absentia Trials and Human

Rights”, highlights the potential violation of the defendant's human rights in a justice system that does not provide an opportunity for a direct defense.

Several other sources, including the book “Criminal Law” by Moeljatno, emphasize the importance of the principle of *nullum crimen sine lege, nulla poena sine lege*, which means that a person can only be punished based on previously established legal provisions. This principle is the basis for the judge's consideration in handing down a verdict against a defendant who is tried in *absentia*.

By referring to these various literatures, this research aims to evaluate the validity of *In Absentia* decisions in corruption cases and their impact on the effectiveness of the criminal justice system in Indonesia.

METHODOLOGY

This study uses empirical legal and library research methods by conducting interviews and collecting truth data, summarizing and describing the results obtained from the literature by combining applicable laws and regulations and several literatures in the form of books, scientific works, the internet and legal journals that are related to the problems of this study in solving a problem so that a conclusion can be drawn. Data analysis in this study uses normative legal research methods by examining various materials in the literature related to the implementation of *in absentia* trials in corruption cases (study of Decision no. 71 / Pid.sus-TPK / 2022 / PN.MDN).

RESEARCH RESULT AND DISCUSSION

Relevance of In Absentia Trials in the Case Examination Process to the Defendant's Right to Provide Defense

In Absentia Trial becomes a unique problem to discuss both in terms of its legal legitimacy, things can be categorized as *in absentia* trial, existence to the stage of implementing the trial with the relationship of the defendant's rights as a solution in overcoming corruption. Because Law No. 31 of 1999 which was updated by Law No. 20 of 2001 concerning corruption with article 38 paragraph 1 (one), allows for trials in *absentia* or without the presence of the defendant.

Based on the legal principles adopted by this country, the legal principles of *Lex specialis derogate legi generali* (Special Laws override General Laws), *Lex posteriori derogate legi priori* (Newly enacted laws will eliminate previously applicable laws, in this case the Criminal Procedure Code, if there is a conflict between the two) and systematic interpretation (can refer to other higher-ranking statutory provisions that can be used as a legal basis) regarding trials in *absentia*. In the analysis of Decision No. 71/Pid.Sus-TPK/2022/PN MDN Implementation of Trials in *absentia* in the Corruption Crime Law, in advance, it is possible that trials in *absentia* will be implemented if the defendant is not present at the trial, but in the process, the defendant must still be summoned to the trial as stipulated in Article 154 of the Criminal Procedure Code." Furthermore, this trial needs to fulfill a number of elements based on Law No. 31 of 1999 which was updated by Law No. 20 of 2001 in Article 38 paragraph (1), which includes

- a. because the defendant lives or goes abroad; there is an attempt by the defendant to rebel (for example running away); or the defendant does not

- b. appearing at a court hearing without a clear reason even though he has been legally summoned.

The problem of administering justice in absentia requires the presence of special attention and a very detailed review in order to obtain truth and certainty both from the aspect of legal legitimacy. Regarding this, it is explained that:

"The editorial regarding the trial in absentia should be in accordance with the provisions of the Corruption Crime Law and the Criminal Procedure Law revised where the process does not start and only applies to the examination process in the Court trial, by regulating that when talking about the trial it means the entire process, then the examination in absentia also considers the start of the process from the time of the investigation, investigation, prosecution until the verdict is handed down by the court"

"The implementation of the In absentia Trial is still carried out by the Panel of Judges even though the Defendant is not present because the Minutes of the Session already exist so it is considered valid and appropriate to impose a sentence. Regarding the rights of the defendant in relation to the verdict, the Panel of Judges has considered that the defendant himself lost his own rights because he had been properly summoned for 3 summonses but never fulfilled the summons, starting from the preliminary examination stage to the trial stage, so to fulfill the principle of speed the trial process is still carried out even without the presence of the defendant.

Furthermore, if we look again at the decision of the Corruption Crime Court No. 71/Pid.Sus-TPK/2022/PN MDN, the panel's considerations confirm that Considering that in criminal procedural law at the examination stage in court, basically the general explanation and provisions of Articles 164 and 196 of the Criminal Procedure Code state that the presence of the accused in the trial and the reading of the Judge's Decision is a must, however, specifically for cases of Corruption Crimes, Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes has provided for the in absentia Trial process (without the presence of the accused) as stated in Article 38 paragraph (1) of the Corruption Crime Law. If a person has been legally summoned but is unable to attend court without a valid reason, then the case can be examined and decided without their presence, this provision is an exception to the Criminal Procedure Law that applies as regulated in the Criminal Procedure Code.

Considering, that according to the Panel, the provisions regarding Trial in absentia (without the presence of the accused) as regulated in Article 38 paragraph (1) of Law Number 31 of 1999 must be interpreted that trial in absentia only applies in the examination process in court hearings and cannot be applied in the investigation or prosecution process. This means that the absence of the accused in the trial process in a Corruption Crime case can only be justified at the examination stage in the Court hearing. Meanwhile, the absence of the suspects at the investigation and prosecution stages is not possible in the sense that the investigation must carry out the legal order to continue to examine the suspects by making a Minutes of Examination of the Suspects." Explaining the decision delivered before the defendant who was not present, among others:

"A verdict pronounced in the presence of a defendant who is not present is automatically binding and has permanent legal force against the defendant who is not present" as stated in the explanation of Article 196 (2), which states "after the verdict is pronounced, it applies to both the defendant who is present and absent". From the continuation of this explanation, the law makers urge the Court and the Defendant to apply the Principle of a Fast Trial and at the same time educate the public, especially the defendant to think realistically. Therefore, even without the presence of the defendant, the verdict can be pronounced binding and has binding legal force against the defendant who is not present at the verdict. Therefore, in reviewing the explanation of the case above, an outline can be conveyed where the Criminal Procedure Code and Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 have provided sufficient solutions for the sake of efficiency of criminal justice, especially the Corruption Crime Trial, in order to maintain the principle of justice quickly, and provide greater understanding to the public in general.

The next issue that arises is about the defendant's right to defend himself or a fair and just trial, where this trial is considered to have an exceptional or biased nature, because this trial eliminates the defendant's right to carry out a defense before the court, regarding this issue the Human Rights Committee of the International Covenant on Civil and Political Rights commented:

"The accused and his lawyer must be allowed to act sincerely and fearlessly in the conduct of his defense and the right to challenge the validity of the trial if they believe it has not been conducted fairly. If the trial in absentia is conducted for justifiable reasons, the rights of the accused to defend themselves must still be respected. The Commission has determined that the right to a public trial does not prohibit an in absentia accusation. The Commission has stated that an in absentia accusation is permissible in the proper administration of justice, for example when the accused has been informed of the charges in advance but then refuses to exercise his right to be present. A valid judgment in absentia requires that steps be taken to inform the accused in advance of the charges, in particular the conditions in article 14 (3).

(a): to be informed promptly and in detail in a language he understands of the reasons for the accusation against him.

The purpose of the notice is to provide the accused with an opportunity to effectively exercise his rights under Article 14. To fulfill this purpose, the notice must inform the accused of the date and place of the trial, and request his presence. "Because of this, considering the complexity of the various issues concerning this judicial system, it is very important to allow for legal standards and procedures for implementation by considering the possibility of victimization of the three dimensions of interest in the trial in absentia above. Such guidelines must be able to provide answers:

1. The nature of trials in absentia as "ex parte hearings" in the context of the criminal justice system;
2. Trial in absentia is an exceptional trial with clear conditions (reasonable cause as part of the case) minimum guarantees)

3. Is the trial in absentia only related to the court hearing or can it also include the absence of the accused in the entire criminal justice system process (from the investigation to the trial). In short, is it possible for an investigation in absentia to result in a fictitious indictment?
4. To what extent is the judge able to refuse the presence of legal counsel in an absentia trial, especially if threatened with a serious criminal penalty?
5. To what extent is it possible for a repeat trial to take place, so that the person concerned has the opportunity to carry out a defense.

Referring to the above issue, Djoko Sarwoko explained: "The verdict in absentia against the defendant who deliberately fled (bad faith), if given the right to appeal, should be present in person (cannot be represented by an attorney). In terms of eradicating corruption, which provision is not beneficial, because it will encourage the perpetrators to flee, and will still receive legal protection and the same legal remedy rights as those present at the trial."

In short, in matters of examination in court, summons always refers to the existing rules, namely Article 145 of the Criminal Procedure Code, which regulates in detail the various requirements for the validity of a summons, the essence of which is that the accused always receives notification to the accused regarding the date and place of the trial, and requests the presence of the person concerned unless the person concerned voluntarily wants to give up his right to defense.

In the Decision, the District Court Judge emphasized that: "Regarding the consequences of the defendant not being present, the right to defend himself as a defendant in a criminal case when present at the trial is deemed not to have been used and must fully follow the execution of the panel of judges' decision at the trial."

Furthermore, regarding the rights of the accused, which the chief judge must inform the court of criminal cases in line with the imposition of a criminal sentence, Yahya Harahap explained as follows:

"Article 196 paragraph (3) imposes an obligation on the chairman of the hearing to inform the court of all his rights in connection with the criminal decision that has been pronounced.

Notification of all the defendant's rights is given immediately after the presiding judge pronounces his verdict. The purpose of the notification is so that the defendant knows his rights; so that he can choose what efforts will be taken in connection with the verdict newly pronounced sentence."

Based on the previous explanation and explanation, it is known that each defendant, whatever it is related to the presence or absence of a person who is accused of being guilty, needs to pay attention to the rights and obligations of each panel in order to review how to act and instructions on how to continue his defense. Whether through a further process or accepting and admitting the guilt of the defendant who was found guilty.

Based on this explanation, several important points can be analyzed regarding the defendant's rights in the trial process:

1. *Obligations of the Chairperson of the Meeting*

The presiding judge has the responsibility to inform all defendants of their rights immediately after the sentencing verdict is pronounced. This aims to:

- a) Ensure the accused fully understands his rights
- b) Giving the accused the opportunity to consider further legal efforts.

The purpose of the Notification of Rights The notification is intended so that the defendant can clearly know his rights after the verdict.

Choosing the legal steps to be taken, such as:

- a) Accept the decision
- b) File an appeal
- c) Take other legal action

2. *Fundamental Principles*

Every defendant, whether present or absent from the trial, has the right to receive a comprehensive explanation regarding:

- a) The verdict was handed down
- b) Rights that can still be exercised
- c) Mfurther defense mechanism

Notification Process The notification mechanism must:

- a) Done clearly
- b) It is understandable for the defendant
- c) Implemented immediately after the verdict is read.

In the Criminal Justice process, every defendant has fundamental rights that must be guaranteed and protected by the court. The chairman of the trial is obliged to comprehensively explain all the defendant's rights immediately after the criminal verdict is pronounced.

These rights include:

- a) The right to receive complete information about the charges and verdict
- b) Right to choose further legal action
- c) The right to legal aid
- d) The right to present evidence and mitigating witnesses
- e) The right to a fair and transparent hearing

The main objective is to ensure a fair trial process, protect the basic human rights of the accused, and prevent arbitrariness in the justice system.

The legal basis for protecting the rights of the accused is stated in:

- a) Criminal Procedure Code (KUHAP)
- b) Law Number 8 of 1981
- c) 1945 Constitution

Based on the verdict, the defendant Chee Yu was tried in absentia because he was on the Wanted List (DPO) and did not attend even though he had been summoned properly 3 times. Although the defendant was not present, several of his rights must still be observed:

- a. Right to be represented by legal counsel:

Although not explicitly stated in the judgment citation, in general, the accused has the right to be represented by legal counsel, even in absentia trials. Legal counsel may be appointed to defend the interests of the accused.

- b. Right to a Fair Hearing:
The court remains obliged to examine and consider all available evidence objectively, including evidence that may benefit the accused.
- c. Right to File Legal Action:
The defendant has the right to file a legal action (appeal or cassation) against a court decision, even if he/she is not present at the trial. This legal action can be filed after the decision has been announced and legally notified to the defendant (or his/her legal counsel).

3. *Implications of Defendant's Absence*

The absence of the accused from a trial in absentia has several implications:

- a. Trial Continues Without His Presence:
The court may continue the trial and render a verdict without the presence of the accused.
- b. Defendant Unable to Provide Information:
- c. The accused lost the opportunity to provide testimony, refute the evidence presented, or present a direct defense.
- d. Potential for Greater Losses:
- e. Because they cannot defend themselves directly, defendants are at greater risk of suffering greater losses in the trial process.

Validity of the Judge's Decision in Deciding the Case in Absentia Against the Crime of Corruption in the Decision of Case No. 71/Pid.sus-TPK/2022/PN.MDN

The judge's decision in an in absentia case is still declared valid if it has fulfilled the legal procedures as stipulated in the Criminal Procedure Code and the principle of justice is implemented. In the case listed in Decision No. 71/Pid.Sus-TPK/2022/PN Mdn, the judge decided the case without the presence of the defendant (Chee Yu) because the defendant was on the DPO (Wanted List) status and had been legally summoned three times but did not attend the trial.

Principles of Validity:

- a. Valid and Proper Summons
- b. The summons for the accused must be carried out officially in accordance with procedures and properly, namely delivered by authorized officials and documented. If the accused remains absent without a valid reason, the trial may be continued in absentia.

Protection of the Rights of the Defendant

The defendant's rights are maintained, including the right to defend themselves through legal counsel presented at the trial. The defendant also has the right to file a legal action after the verdict.

Collection of Adequate Evidence

In absentia cases, the collection of evidence must still meet the requirements for valid evidence as regulated in Article 183 of the Criminal Procedure Code. In this case, the judge has heard the statements of witnesses, experts, and examined relevant evidence before deciding the case.

Strong Legal Basis

The verdict must be based on the applicable articles. In this case, the defendant was found guilty of carrying out a criminal act of corruption that was detrimental to state finances as regulated in Article 2 paragraph (1) in conjunction with Article 18 of Law No. 31 of 1999 which has been amended by Law No. 20 of 2001.

In absentia cases, the validity of the decision is also supported by the consideration that the legal process must continue to run in order to provide legal certainty and protect the interests of the state or victims. In case Number 71/Pid.Sus-TPK/2022/PN Mdn, the defendant Chee Yu who has DPO (Wanted List) status did not attend the trial even though he had been legally and properly summoned three times. Thus, the Corruption Crime Court at the Medan District Court continued the trial process without the presence of the defendant and issued a verdict based on the legal facts revealed at the trial.

The judge stated that the defendant was proven legally and convincingly guilty of carrying out the crime of corruption as regulated in Article 2 paragraph (1) in conjunction with Article 18 of Law No. 31 of 1999 which has been amended by Law No. 20 of 2001 in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code.

In his decision, the judge imposed a prison sentence of 8 years, a fine of Rp300 million, and required the defendant to pay compensation of Rp2.8 billion. If the compensation is not paid within the specified time, the defendant's assets will be confiscated and auctioned, or replaced with an additional sentence of 4 years in prison.

The validity of this decision can also be seen from the evidentiary process carried out by the panel of judges, which involved examining witnesses, experts, and evidence presented by the public prosecutor. Even though the defendant was not present, the legal process continued to move objectively with the principle of fair trial. In absentia cases, the trial does not only focus on the physical presence of the defendant, but also on fulfilling legal procedures that ensure that the defendant is still given his legal rights, such as the opportunity to file a legal appeal after the verdict is rendered.

Thus, the judge's decision in this absentia case can be categorized as valid and has binding legal force, because it has met the formal and material requirements stipulated in the criminal law system in Indonesia. This reflects that even though the defendant is not present, the law enforcement process can continue to run to ensure justice and provide a deterrent effect on corruption.

Based on Decision Number 71/Pid.Sus-TPK/2022/PN Mdn, this case contains important aspects that support the validity of the in absentia decision, both in terms of procedure, evidence, and legal considerations by the panel of judges.

1. *Summons Procedure*

In this case, the defendant Chee Yu had been legally and properly summoned three times by the public prosecutor, but did not appear in court. This procedure is in line with Article 227 of the Criminal Procedure Code which

stipulates that the defendant must be officially summoned to ensure that his rights are protected. The defendant's absence after a valid summons opens up the legal basis for continuing the trial without his presence.

2. Proof Process

The panel of judges continued the evidentiary process by examining witnesses, experts, and evidence presented. During the trial, it was revealed that the defendant and other parties had committed irregularities in credit procedures at PT Bank Sumut, Tanjung Morawa Branch Office. This caused a state loss of Rp2.8 billion, as described in the audit report from the Financial and Development Audit Agency (BPKP).

3. Legal Considerations

The judge stated that the defendant was proven to have committed a criminal act of corruption based on Article 2 paragraph (1) in conjunction with Article 18 of Law No. 31 of 1999 which has been amended by Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. The defendant's actions were stated as an act of self-enrichment which resulted in losses for state finances. The judge also considered evidence in the form of credit approval documents, audit reports, and the fact that the credit funds were used for the defendant's personal interests.

4. Verdict

The panel of judges imposed the following criminal sentences on the defendant:

Prison sentence of 8 years; A fine of IDR 300 million, subsidiary to 6 months if the fine is not paid; Make a replacement payment of Rp2.8 billion. If unable to make the payment within 1 month after the verdict has permanent legal force, the defendant's property can be confiscated and auctioned, or replaced with an additional sentence of 4 years.

5. Significance of the Decision

This decision reflects that the trial in absentia still upholds the principle of justice, both for the defendant and the public interest. The judge ensured that even though the defendant was not present, the trial process would continue according to the law with adequate evidence and balanced considerations. This also shows the commitment of the judicial institution in eradicating corruption that is detrimental to state finances.

Thus, this decision is not only legally valid but also sends a strong message about the importance of law enforcement, transparency and accountability in corruption cases.

In Decision Number 71/Pid.Sus-TPK/2022/PN Mdn, the panel of judges also emphasized the *modus operandi* that the defendant Chee Yu carried out in this corruption case. The *modus operandi* used by the defendant was to apply for credit in the name of seven fictitious debtors who turned out to be his own family and workers.

1. Modus Operandi

Defendant Chee Yu, together with other parties, manipulated the Home Ownership Credit (KPR) application process at PT. Bank Sumut Tanjung Morawa Branch Office. The seven fictitious debtors did not meet the requirements as legitimate credit applicants because they did not have a verifiable business or income. In fact, the property used as collateral for the credit had not been fully completed, but the disbursement of funds was still being processed. After the credit funds were disbursed to the accounts of each fictitious debtor, the defendant immediately ordered them to transfer the funds to his personal account. The total funds successfully disbursed through this mode reached Rp2.8 billion. This act clearly violates Bank Sumut's internal provisions and is detrimental to state finances.

2. State Losses

The state losses in this case were confirmed through the audit report of the Financial and Development Audit Agency (BPKP), which found that the disbursement of funds amounting to Rp2.8 billion was carried out without a valid legal basis. The funds were not used for their intended purpose, but rather for the defendant's personal interests.

3. Responsibility of Related Parties

In addition to defendant Chee Yu, the case also involved two other parties, namely Hasbunan Marsaf Harahap (branch manager) and Awaluddin Siregar (marketing section leader), who had been sentenced and completed their previous sentences. Both parties were considered to have helped the defendant in passing the unworthy credit.

4. Judge's Conclusion

The panel of judges stated that the defendant was proven legally and convincingly to have committed a criminal act of corruption that violated Article 2 paragraph (1) in conjunction with Article 18 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. The judges assessed that the defendant's actions were carried out consciously, planned, and with the aim of enriching himself. By considering all the facts and evidence revealed in court, this decision provides strict sanctions as a form of eradicating criminal acts of corruption and maintaining accountability in the state financial system.

In the verdict of the criminal case of corruption involving the defendant Chee Yu, the role of the judge is very strategic in ensuring that the enforcement of the principles of legality and criminal responsibility is in accordance with the theory of criminal law as explained in the book *Criminal Law (Theory and Practice)* by Moeljatno. The principle of legality which states "*nullum crimen sine lege, nulla poena sine lege*" mandates that a person can only be punished if his actions have been expressly regulated in the law before the action was carried out. In this case, the judge decided that the defendant violated Article 2 Paragraph (1) Jo. Article 18 of Law No. 31 of 1999 which has been amended by Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.

In an interview with Drs. T. Saryawan, Judge of the Medan District Court, dated February 11, 2025, he emphasized that: Formally, the appointment of a judge in this case is valid. The implementation of an *in absentia* trial in this case can be justified on the condition that all legal provisions have been met and the rights of the accused are still considered proportionally in the decision-making process. The resulting decision must be based on strong and convincing evidence to maintain justice and legal certainty. In the Decision as previously mentioned, the decision shows that the appointment of the Panel of Judges has a clear legal basis, namely the Determination of the Head of the Corruption Crime Court at the Medan District Court Number 71/Pid.Sus-TPK/2022/PN Mdn dated October 3, 2022. This fulfills the formal aspects of the judge's legitimacy.

Trial In Absentia

The ruling document also explains several important points regarding trials in *absentia*: Defendant Status: The defendant has been on the Wanted List (DPO) since the investigation process based on Determination Letter Number: B-1099/L.2.14.4/Fd.1/05/2022 dated May 18, 2022. Summons of the Defendant: The Court has ordered the Public Prosecutor to summon the Defendant in accordance with the law 3 (three) times to attend the trial. Absence of the Defendant: The Defendant was not present at the trial, so the trial was conducted without the Defendant's presence (*in absentia*).

Additional Analysis and Opinion

Taking into account the information from the decision document: Fulfillment of Formal Requirements for Trial in *Absentia*: The defendant's DPO status indicates an attempt to escape to avoid the legal process. A valid summons three times shows that the Court has made an effort to bring the Defendant. The absence of the Defendant without a valid reason is the basis for holding a trial in *absentia*.

Legal Basis for Trial in Absentia:

Article 38 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (which has been amended by Law Number 20 of 2001) permits a trial in *absentia* if the accused flees.

Balance with the Rights of the Defendant:

Although a trial in *absentia* reduces the Defendant's right to defend himself in person, the Court must still ensure that the verdict is based on strong and convincing evidence. The judge must consider all available evidence, including witness and expert testimony, as well as evidence presented at trial.

In this case, the author analyzes that the implementation of the trial in *absentia* in the case of Defendant Chee Yu was inappropriate, for the following reasons:

1. Potential Violation of the Defendant's Right to Defend Himself:

The trial in *absentia* inherently limits the Defendant's ability to defend himself directly. The Defendant cannot testify, present mitigating

evidence, or test evidence presented by the Public Prosecutor. Although the Defendant has the right to be represented by legal counsel, legal counsel cannot completely replace the Defendant's physical presence in providing information relevant to the case. In this case, the Defendant was unable to clarify or deny the allegation that he used another person's name to apply for credit, or provide an explanation regarding his relationship with the seven debtors named in the indictment.

2. Questionable Quality of Evidence:

In an absentia trial, the Judge only has one perspective, that of the Public Prosecutor. The Judge does not have the opportunity to hear the Defendant's testimony directly, making it difficult to obtain a complete and objective picture of the case.

Even though the Public Prosecutor presents witnesses and evidence, without the Defendant's ability to test the validity and truth of the evidence, the quality of the evidence becomes doubtful.

In this case, without the presence of the Defendant, it is difficult to ascertain whether the seven debtors truly do not have a business and income, or whether they are providing true information.

3. Presumption of Innocence at Risk:

One of the main principles in criminal law is the presumption of innocence, namely that everyone is considered innocent until proven guilty legally and convincingly.

In a trial in absentia, it is difficult to maintain a balance between the Defendant's right to be presumed innocent and the state's interest in upholding the law. Without the opportunity for the Defendant to defend himself, the risk of error in judgment increases, and the presumption of innocence can be ignored.

4. Suboptimal Search and Capture Efforts:

Even though the Defendant has DPO status, search and arrest efforts must continue to be optimized.

Trial in absentia should be a last resort after all efforts to bring the Accused have been exhausted. In this case, there is insufficient information regarding the extent of the search and arrest efforts.

A Better Alternative

Rather than conducting a trial in absentia, it would be better if the state focused on efforts to search for and arrest the Defendant. If the Defendant is successfully arrested, he can be tried fairly and transparently, with all his rights respected. Although a trial in absentia has a legal basis, its implementation in this case is inappropriate because it has the potential to violate the Defendant's right to defend himself, doubt the quality of the evidence, threaten the presumption of innocence, and suboptimal search and arrest efforts. True justice can only be achieved if the Defendant is tried fairly and transparently, with all his rights respected.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Trial in absentia can be relevant in ensuring the smoothness of the case examination process, but must still pay attention to the defendant's right to defend himself. In the principle of fair law, the defendant has the right to be present at the trial to defend himself. If trial in absentia is applied, then there needs to be a guarantee for the defendant to get the opportunity to defend himself, even though he is not present.

The validity of a judge's decision in absentia cases related to corruption crimes can be questioned, especially if there are no clear steps to provide the defendant with the right to defense. In corruption cases, which often involve state or community losses, the principle of justice must be maintained, and the judge must ensure that a fair examination process continues even though the defendant is not present. Therefore, it is important to ensure that the decision taken does not violate the defendant's human rights, and still reflects the principle of justice.

Recommendation

The Need to Adjust In Absentia Procedures to the Defendant's Right to Defense: While trials in absentia can be used to expedite the trial process, this procedure should be tailored to ensure that the defendant's right to defense is maintained. Authorities should provide adequate access for the defendant to carry out their defense through legal counsel or representatives, either in person or through other legitimate mechanisms, such as virtual hearings, so that the principle of justice is still achieved.

Strict Supervision of In Absentia Decisions in Corruption Cases: In complex corruption cases, strict supervision of the trial process in absentia is essential to avoid potential injustice. It is recommended that the court provide an opportunity for a retrial or provide a guarantee that the defendant can still file a legal action if there is evidence of a violation of rights. In addition, the role of prosecutors and legal counsel must be strengthened to ensure that all stages of the law run fairly even though the defendant is not present.

ADVANCED RESEARCH

In preparing this article, the author realizes that there are several limitations that may affect the depth and scope of the discussion. These limitations include the limited references used, so there is still room to enrich the analysis with more diverse and up-to-date sources. In addition, this research still focuses on normative aspects without delving deeper into the practical implications of the application of In Absentia in corruption cases.

As an effort to improve in the future, further research can expand the scope by adding empirical studies through interviews or analyzing more comprehensive decisions. In addition, the use of a comparative approach with legal systems in other countries can provide a broader perspective in understanding the effectiveness of In Absentia in the criminal justice system.

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