Justice In Absentia Corruption Crimes in Indonesia

Muhammad Alief Ramadhan
Kejaksaan Tinggi Negeri Lampung, Indonesia, alief.ok01@gmail.com

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Abstract

Indonesian criminal law adheres to the criminal conviction system in absentia, namely, the criminal conviction system in the absence of the Defendant. Justice in absentia is only allowed for traffic offenders. Then how is the judiciary in absentia applied in cases of corruption crimes? This research uses the empirical juridical method, which is an approach that examines secondary data first and then continues by conducting primary data research in the field. Implementing the judiciary using corruption cases absentia in cor has gone through the investigation stage where the summons against the Defendant is carried out three times; then, the Public Prosecutor transfers the case to the Court not accompanied by the Minutes of Examination and Detention. In the examination process before the Court, the Panel of Judges has the authority to give a verdict on the reported criminal act. The Panel of Judges in deciding corruption crimes in absentia in the judgment Number: 8 / Pid.Sus-TPK / 2022 / PN. TJK and 9/Pid.Sus-TPK/2022/PN. TJK The defendant was found guilty of committing a criminal act of corruption by considering juridical, sociological, and philosophical considerations.
A. Introduction

Criminal law is a law that establishes the way the state uses its authority to carry out criminals, also called criminal law in concerto. The criminal law is defined as a criminal law rule that regulates the criminal justice process or it can also be interpreted as a criminal law rule formed to maintain and enforce material criminal law. Indonesia's formal criminal law adheres to the criminal conviction system in absentia, namely with the criminal conviction system with the absence of the Defendant, even though he does not fully adhere to it, which can only be carried out in the judiciary of economic cases, corruption, and traffic cases.

In absentia is defined as a state of absence, so it can be said that in absentia is not a type of justice but a condition in a trial where the Defendant in this case does not exercise his right to be present in the stages of criminal justice. One of the ways that is done exceptionally is that the examination of corruption cases can be carried out without being attended by the Defendant (in absentia).

Corruption in Indonesia has spread widely in society. Its development continues to increase from year to year, both the number of cases that occur and the number of state financial losses and in terms of the quality of criminal acts committed are increasingly systematic and the scope has entered all aspects of people's lives. In the practice of criminal justice, usually those that are heavily involved are those related to public office or government positions. The basis for a person to commit corruption is usually power. Power in the context of government is not just a certain form of relationship between people, nor is it a symptom of social life that has nothing to do with nature. It is the same as all social dimensions and other natural dimensions. The existence of a real examination of corruption cases in absentia has been implemented in Indonesia.

The judiciary in absentia is an exception to the provisions of the Criminal Procedure Code. According to Manthovani and Jatna, the regulation was a breakthrough in the legal world. Justice in absentia in cases of corruption crimes as referred to in the current laws and regulations, based on the provisions of Article 38 and the explanation of Article 38 in Law Number 31 of 1999, in principle is carried out on two things, namely:

1. If the Defendant has been lawfully summoned, and is not present at the trial court.
2. To save the country's financial losses.

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The trial *in absentia* is contrary to the general trial process stipulated in Article 196 Paragraph (1) of the Criminal Procedure Code. The article provides that "the Court decides the case in the presence of the Defendant except if this statute otherwise determines.". Based on the above provisions, justice *in absentia* is allowed but only for offenders who violate or commit acts that violate the traffic rules where Article 213 of the Criminal Procedure Code provides that the Defendant may appoint a person with a letter to represent him at the hearing. Furthermore, in Article 214 Paragraph (1) and paragraph (2) of the Criminal Procedure Code, it is stipulated that:

1. If the Defendant or his deputy is not present at the hearing, the examination of the case is continued.
2. If the verdict is pronounced beyond the presence of the Defendant, a letter of judgment shall be immediately delivered to the convict.

By the above regulations, trials conducted *in absentia* are justified but only for traffic violations. It becomes a question what if the judiciary in this way *in absentia* is enforced for cases outside or other than traffic violations. What is meant by not being present is that the perpetrator committed the act or act of leaving or distancing himself or not being in a place designated for him to carry out his service/ duty obligations, for what is meant by the place of duty of the Defendant in this case is the last unit of the Defendant. The trial *in absentia* which was initially only justified for traffic offenses only then changed for minor criminal offense cases as the Supreme Court through Supreme Court Circular No. 9 of 1985 on judgments pronounced outside the presence of the Defendant has also expanded the conduct of the trial *in absentia*.

In the Supreme Court Circular No. 6 of 1988 concerning Legal Advisors or Lawyers Who Receive Power of Attorney from the Defendant/Convict *in absentia* which in essence instructs the Judge to reject the Legal Counsel who gets a power of attorney from the Defendant who deliberately does not want to be present in the court examination to hinder the course of the court examination and the implementation of his judgment. The defendant's presence at trial was as an attempt to make a fight or objection to the public prosecutor's indictment. On the contrary, however, the defendant's absence at the hearing of the court without a valid reason even though a valid summons has been made is an attempt by the Defendant to deliberately avoid the examination which resulted in a stalemate in the examination process.

A Defendant facing a Court hearing must be in a state of freedom and independence, meaning not in a state of shackling either physically or spiritually. The Criminal Procedure Code does not lawfully regulate the provisions of the trial *in absentia*, either in its articles or its explanation. However, in Article 196 Paragraph (1) and Article 214 Paragraphs (1) and (2) (KUHAP) it is possible to carry out the trial without the presence of the Defendant. Although

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12 SEMA No. 9 Tahun 1985 Tentang Putusan yang Diucapkan di Luar Hadirnya Terdakwa.
13 SEMA No. 6 Tahun 1988 Tentang Penasehat Hukum atau Pengacara yang Menerima Kuasa dari Terdakwa/Terpidana “In Absentia”.
The trial expressly in absentia is not stated, from those articles it is possible to carry out the proceedings in the absence of the Defendant. Then in Article 1 sub 15 of the Criminal Procedure Code, it is formulated that the Accused is a Suspect who is prosecuted, examined and tried at the trial court.\textsuperscript{16}

The examination and verdict without the presence of the Defendant are also by the principles applicable in the criminal procedure law and Article 4 paragraph 2 of Law Number 4 of 2004 concerning Judicial Power, the trial is carried out simply, quickly, and at a low cost.\textsuperscript{17} In detail, there are 3 aspects that are contrary to the conduct of justice in absentia, namely Human Rights Violations, the Criminal Procedure Code, and the Principle of the Court examining Criminal Cases with the Presence of the Defendant.\textsuperscript{18} Some trials that can be conducted in absentia include: trials in absentia against criminal acts of terrorism, trials in absentia against economic crimes, trials in absentia against money laundering crimes, trials in absentia against fisheries crimes, and trials in absentia against corruption crimes. Different laws govern such trials according to the criminal act committed.\textsuperscript{19} The purpose of a trial in absentia, as in a corruption case, is an effort to save the country's wealth, both those that have been corrupted and those that are still suspected to be related to corruption cases, both those that are still confiscated and those that have not been confiscated to be seized for the state through a court decision.

Law Number 2 of 1986 concerning General Courts states that one of the implementations of Judicial Power for the people seeking justice in general. In achieving justice, the essence and existence of the Judiciary itself must realize legal certainty and expediency as a value contained in the applicable legal regulations. However, in addition to realizing legal certainty, to achieve justice, there is also a need for legal equality, which is also contained in the relevant legal regulations and, in this case must also be able to be realized by the Judiciary. There are several types of courts in Indonesia to run an orderly and regular judicial system. The definition of trial or sentencing in absentia is to try and sentence a defendant without the defendant's presence. In legal terms, a court in absentia is an effort to examine and try and decide a case without the defendant's presence.\textsuperscript{20}

Related to the verdict Number: 8/Pid.Sus-TPK/2022/PN. TJK on Behalf of Defendant Andi Jauhari Yusuf as President Director of BUMD PT. LJU and judgment Number: 9/Pid.Sus-TPK/2022/PN. TJK on Behalf of Defendant Alex Jayadi as Director of PT. Raja Kuasa Nusantara is a case of corruption in a Regionally Owned Enterprise of Lampung Province, namely PT. Lampung Jasa Utama (LJU) Fiscal year 2016, 2017, and 2018 which resulted in state losses of Rp3.1 billion where the two Defendants at the stage of investigation, prosecution, and examination before the Defendant’s Court were not present so that no detention was made against the Defendants, so in the judgment the Corruption Crimes Court at the Tanjungkarang District Court Class 1A which tried criminal cases with examinations in absentia in the first degree imposed verdicts against both Defendants. The novelty research regarding what has been described above, the author is interested in conducting a study or discussion on the


implementation of the judiciary at the stage of investigation, prosecution, and examination before the Court against Suspects in absentia in corruption cases and the consideration of the Panel of Judges who decide corruption crimes in absentia.

The research data used is data from 2022 in Decision Number 8/Pid.Sus-TPK/2022/PN. TJK and verdict Number: 9/Pid.Sus-TPK/2022/PN. TJK, uses the empirical juridical approach method, which is an approach that examines secondary data first and then continues by conducting primary data research in the field. The secondary data referred to here is a theoretical basis in the form of opinions or writings of experts or other authorized parties and other information in formal provisions such as laws and regulations, court decisions, and others. In contrast, the primary data in this study is the result of field research such as interviews.

B. Discussion

1. Justice In Absentia in Corruption Crimes

Regulations regarding in absentia in cases of Corruption Crimes are regulated in Article 38 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, Law Number 31 of 1999 as amended into Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, then Law Number 20 of 2001 was partially repealed by Law Number 46 of 2009 concerning Courts Corruption Crime Law Number 46 of 2009.

Article 38 paragraph (1) of Law Number 31 of 1999 reads "If the Defendant has been legally summoned, and is not present at the court hearing without a valid reason, then the case can be examined and decided without his presence". Furthermore, in the explanation of Article 38 paragraph (1) of Law Number 31 of 1999, it is stated that the provisions in this paragraph are intended to save the wealth of the state so that without the presence of the Defendant, the case can still be examined and decided by the Panel of Judges. Therefore, the urgency of Article 38 paragraph (1) of Law Number 31 of 1999 about implementing the criminal court for corruption to continue the trial.

Article 6 of the Criminal Procedure Code specifies that the investigator is an official of the National Police of the Republic of Indonesia and an official of the Civil Service who is given special authority by law. In addition to the investigators regulated in the Criminal Procedure Code, it is also known as investigators who are authorized to investigate the makers of corruption crimes. The authority of the Prosecutor to investigate the makers of corruption crimes is based on Article 284 of the Criminal Procedure Code. Article 30 paragraph (1) point d of Law Number 16 of 2004 and Article 17 of Government Regulation Number 27 of 1983. This study focuses on corruption cases in regionally owned enterprises of Lampung Province, namely PT. Lampung Jasa Utama (LJU) Fiscal year 2016, 2017, and 2018 which resulted in state losses of Rp3.1 billion which was heard in absentia because at the stage of investigation, prosecution and examination before the Defendant's Court was not present so no detention of the Defendant was made, so in the judgment the Corruption Crimes Court at the Tanjungkarang District Court Class 1A which tried criminal cases with an examination in absentia in the first degree handed down verdicts against both Defendants.

At the investigation stage, the case that was heard in absentia in 2022, namely the criminal act of corruption in the Regionally Owned Enterprises of Lampung Province, namely PT. Lampung Jasa Utama (LJU). When a series of legal actions, namely the summoning of witnesses, have been carried out from the testimony of the witnesses who have been presented, it can conclude who the Suspect will be responsible for the corruption crime. After the investigation, the prosecutor's office can determine who will be examined and become a suspect in the alleged corruption crimes at PT. Lampung Jasa Utama (LJU) namely Andi Jauhari Yusuf

as President Director of BUMD PT. LJU. And Alex Jayadi as Director of PT. Raja Kuasa Nusantara.

At the time of the investigation, the two suspects whom the Prosecutor's Office will examine have fled first because indirectly the suspect is aware that what he did was a corruption crime. However, the process is still ongoing, as one example is asset tracking. Then Krisnandar 22 The prosecutor at the Lampung High Prosecutor's Office explained that the Investigating Prosecutor in responding to the summons, especially against suspects in absentia in corruption crimes, was as follows:

1. Summoning of Suspects (Summonses were made 3 times, namely through local and national mass media), Then the determination of the search list of persons (DPO) was issued after the summons 3 times did not come.
2. Summons for transfer phase two (Transfer of Suspect evidence and evidence).
3. Summons of defendants for the conduct of the trial.

Krisnandar 22 explained that there is little difference between the formulation of the case file resulting in absentia and the case file that has been commonly made by investigators. In the formulation of the file in absentia the file of the result of the case lies the difference only in the Minutes of The Suspect's Request for Information. In the case file the results of the investigation in absentia the suspect's information is not present. Although the suspect's information does not exist, the Minutes of Request for Suspect Information should still be attached, besides that it must contain the identity of the Suspect in full referring to the provisions of Article 143 paragraph 2 letter a of the Criminal Procedure Code.

Krisnandar 24 explained that the prosecutor at the Lampung High Prosecutor's Office explained the completeness of the formal and material files of the results of the investigation in absentia. In the process of investigating the completeness of the formal file For, the complete arrangement of the files resulting from the investigation in absentia refers to the general arrangement adjusted to the needs of the case file according to Articles 8, 12, 75, 110, 121 and 138 of the Criminal Procedure Code, in the case of corruption crimes in regionally owned enterprises of Lampung Province, namely PT. Lampung Jasa Utama (LJU) case file has been fulfilled formally because all the testimony of witnesses in the investigation has led to the direction of the suspect, namely Andi Jauhari Yusuf, as the President Director of BUMD PT. LJU and Alex Jayadi as Director of PT. King of the Power of the Archipelago. Formally, the letters on the corruption crime at PT. Lampung Jasa Utama (LJU) is like the signature of the receipt of money and Jauhari Yusuf is the President Director of BUMD PT. LJU and the one who received the money was Alex Jayadi as Director of PT. Raja Kuasa Nusantara. From these letters that the underlying that the corruption crime was committed and the case file has been fulfilled materially as well, namely the actions of the Suspect who have violated the law and when the investigation has been completed, the Investigating Prosecutor submits the case file to the Public Prosecutor.

At the stage of prosecution of Suspects in corruption crimes Yani Mayasari 25 The prosecutor at the Lampung High Prosecutor's Office explained that the process of prosecuting criminal cases is a very important part of the criminal justice system because it is a bridge that connects the investigation stage with the examination stage in the court. As stated in the Criminal Procedure Code, the prosecution's purpose is to transfer the criminal case to the competent Court with a request that the case be examined and decided by the Judge at the trial court. Yani Mayasari 26 The prosecutor at the Lampung High Prosecutor's Office explained that the

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22 Wawancara di Kantor Kejaksaan Tinggi Lampung 13 Juni 2022.
23 Wawancara di Kantor Kejaksaan Tinggi Lampung 22 Juni 2022.
24 Wawancara di Kantor Kejaksaan Tinggi Lampung 22 Juni 2022.
25 Wawancara di Kantor Kejaksaan Tinggi Lampung 29 Juni 2022.
26 Wawancara di Kantor Kejaksaan Tinggi Lampung 29 Juni 2022.
implementation of the judiciary *in absentia* at the stage of prosecution in corruption crimes is the same as adjudicating cases in general, when the Public Prosecutor receives evidence and files from the Investigating Prosecutor, the Public Prosecutor transfers the file to the Court. At the time of the implementation of the judicial trial *in absentia* at the prosecution stage, it is carried out as in general cases, namely attaching P-33 (Receipt of the case transfer letter) only it is not accompanied by the Minutes of Detention due to the absence of suspects and is also not accompanied by the Minutes of Examination of Suspects. Then the file was devolved and the Judge also issued a trial determination as in general for the determination of the trial must present the Defendant so the determination of the trial for the summons of the Defendant remains; the hearing is conducted as in general only it is not presented by the Defendant or *in absentia*.

Yani Mayasari The prosecutor at the Lampung High Prosecutor's Office explained that for the prosecution stage of the suspect *in absentia* in corruption crimes in the Lampung Province Owned Enterprise, namely PT. Lampung Jasa Utama Fiscal years 2016, 2017, and 2018 there were no obstacles because all processes had been passed at the time of the examination of the Suspect; the Suspect was not present and had been announced in the local and national mass media, then at the time of prosecution when the Public Prosecutor had received the determination of the day of the trial, first of all the Public Prosecutor was ordered by the Judge through a determination, through the determination of the Judge that is to summon the Defendant. The first summons made by the Public Prosecutor was to summon the Defendant through the Village Head, Village Head, and Sub-district Head, the Defendant was not at his residence, then a certificate issued by the local government was issued and the certificate was attached and presented in the next trial, the second determination was still that the Defendant was recalled through local and national mass media. Then the Judge again postponed the hearing and still ordered the Public Prosecutor to present the Defendant. However, because the Public Prosecutor knew that the Defendant was not present at the trial or *in absentia*, the Public Prosecutor called back through local and national mass media. For summons at the prosecution stage 2 times, namely:
1. Through RT or local government the residence of the Defendant, and
2. Through local and national mass media.

Yani Mayasari The prosecutor at the Lampung High Prosecutor's Office explained the transfer of the case file after the case file was completed P-21, in the case of corruption crimes in regionally owned enterprises of Lampung Province, namely PT. LJU transfer of the complete case file P-21 was transferred to the Bandar Lampung District Attorney's Office because locus delicti and tempus delicti occurred in Bandar Lampung City. Based on Article 1 number 7 jo. Article 137 of the Criminal Procedure Code, after the Public Prosecutor has completed everything related to the prosecution process, the next action is to prepare to transfer the case to the competent Court. Hendro Wicaksono The Class 1A District Court Judge explained that after the case is transferred to the District Court, the next judicial process, namely the Panel of Judges, will examine the reported criminal act. The Panel of Judges here will have the authority to render judicial decisions. The termination of the judiciary will be carried out based on the principle of honesty, freedom, and impartiality. The examination of the case in the District Court is carried out after the submission of the case by the Public Prosecutor. The examination of the case by the Panel of Judges at the trial court is based on the indictment of the Public Prosecutor. At this stage, the Public Prosecutor will provide evidence obtained from the Investigating Attorney's investigation results.

27 Wawancara di Kantor Kejaksaan Tinggi Lampung 4 Juli 2022.
28 Wawancara di Kantor Kejaksaan Tinggi Lampung 4 Juli 2022.
29 Wawancara di Pengadilan Negeri Tanjung Karang Kelas 1A 8 Juli 2022.
Hendra Wicaksono30 The Class 1A District Court Judge explained that in the examination stage before the Court, the Defendant in a corruption case at a Regionally Owned Enterprise of Lampung Province, namely PT. LJU is Andi Jauhari Yusuf as Director of BUMD. PT. LJU and Alex Jayadi as Director of PT. Raja Kuasa Nusantara was not present. Defendant's absence led to the loss of his right to plead in advance of the court, but this was due to the fault of the defendant himself who did not exercise his right by not being present at the proceedings of the trial examination, in the practice of trial of corruption cases using *in absentia*.

2. Consideration of The Panel of Judges That Decide on Corruption Crimes *In Absentia*

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty; besides that it also contains benefits for the parties concerned so that the consideration of this Judge must be addressed carefully, well, and carefully. Hendra Wicaksono31 The Class 1A District Court Judge explained that the judge's consideration in deciding corruption cases *in absentia* differed greatly from the judge's consideration in deciding other corruption crimes. This will actually incriminate the Defendant himself because at the stage of investigation he has fled and realized that the act he committed was a criminal act of corruption, if as long as the testimony of witnesses/experts is connected with the evidence and indeed the Defendant is the perpetrator, it is very detrimental to the Defendant with his absence in the trial.

Hendra Wicaksono32 The Class 1A District Court Judge explained about the juridical considerations (legal certainty) in deciding the crime of corruption *in absentia* that the judgment that the Panel of Judges decided was related to the Defendant *in absentia* certainly used juridical considerations (legal certainty). For the Panel of Judges if the Defendant is not present at the trial and has been duly summoned but is not present at the trial and then by examining the testimony of the witnesses at the hearing then the trial will be completed quickly and not take a long time by the principal of a quick, simple, and low-cost trial. Hendra Wicaksono33 The Class 1A District Court judge explained that sociological considerations (expediency) in deciding the crime of corruption *in absentia* are certainly related to the return of assets. With such sociological considerations (expediency) the execution will be faster and not wait long, because the average perpetrator of corruption crimes fled abroad but with trials *in absentia* such things can be resolved. Hendra Wicaksono34 The Judge of the District Court Class 1A affirmed the philosophical considerations (justice) in deciding the crime of corruption *in absentia* by the Panel of Judges of course with the Defendant not being present or fleeing at the time of the investigation, investigation, prosecution, and examination before the Court of course the Defendant cannot demand justice for himself, if the Defendant wants justice then the Defendant must be present at the trial.

C. Conclusion

In the judicial process *in absentia* in the criminal act of corruption at the investigation stage, the Investigating Prosecutor made 3 summons against the Suspect, namely through local and national mass media. The determination of the search list (DPO) was issued after the summons 3 times did not come. At the prosecution stage, the Public Prosecutor transferred the file to the Court but was not accompanied by the Minutes of Detention due to the absence of Suspects and was also not accompanied by the Minutes of Examination of Suspects. The Panel of Judges will examine the reported criminal acts at the hearing before the Court. The Panel of Judges here

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30 Wawancara di Pengadilan Negeri Tanjung Karang Kelas 1A 8 Juli 2022.
31 Wawancara di Pengadilan Negeri Tanjung Karang Kelas 1A 8 Juli 2022.
32 Wawancara di Pengadilan Negeri Tanjung Karang Kelas 1A 8 Juli 2022.
33 Wawancara di Pengadilan Negeri Tanjung Karang Kelas 1A 8 Juli 2022.
34 Wawancara di Pengadilan Negeri Tanjung Karang Kelas 1A 8 Juli 2022.
will have the authority to render judicial decisions. Defendant's absence led to the loss of his right to plead in advance of the court.

Consideration of the Panel of Judges in deciding corruption crimes in absentia in the judgment Number: 8 /Pid.Sus-TPK / 2022 / PN. TJK On Behalf Of Defendant Andi Jauhari Yusuf and verdict Number: 9/Pid.Sus-TPK/2022/PN. TJK On Behalf of Defendant Alex Jayadi. The Panel of Judges considers the Defendant in committing corruption crimes to be sufficient with at least two pieces of evidence and shows that the Defendant is proven to be lawfully proven and guilty of committing a corruption crime. The Panel of Judges in deciding the case of corruption in absentia by taking into account the juridical consideration that the Judge views the law as a complete system that includes legal principles, legal norms, and the rules of law and by using the judiciary in absentia does not cause unrest in society with legal certainty, sociological considerations reflect the expediency of the interests of the litigants and the interests of the public in particular on the return of state financial losses, philosophical considerations with the aim that by criminally imposing a penalty against the Defendant can establish the justice that should be in the stand.

References

A. Book

B. Journal


C. Regulation

SEMA No. 6 Tahun 1988 Tentang Penasehat Hukum atau Pengacara yang Menerima Kuasa dari Terdakwa/Terpidana “In Absentia”.

SEMA No. 9 Tahun 1985 Tentang Putusan yang Diucapkan di Luar Hadirnya Terdakwa.