THE EXISTENCE OF IN ABSENTIA TRIALS IN CORRUPTION CASES FROM THE PERSPECTIVE OF JUSTICE

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Abstract

Law Number 8 of 1981, also known as the Criminal Procedure Code (KUHAP), regulates the procedures for resolving cases through trials in court, either with the presence of the defendant or without his presence (In Absentia). In this regard, the author is interested in writing and conducting research on the procedure for resolving cases through the In Absentia trial mechanism. According to the provisions of criminal procedure law, the settlement of a case should involve the presence of the defendant. However, In Absentia trials, especially for extraordinary crimes such as corruption, can still be conducted in court even without the presence of the defendant.
In this research, the problem formulation includes 1) How is the existence of In Absentia trials in the Indonesian Criminal Procedure Law system? 2) How can state financial losses be recovered using the In Absentia trial instrument?
This type of research is normative legal research. Normative legal research emphasizes law as a norm (rule), so the research focuses on positive law.
Articles 196 and 214 of the Criminal Procedure Code explicitly contain limited provisions regarding the defendant's absence from trial proceedings. However, these articles allow for in-absentia trials in special or urgent circumstances.
One of the primary and most important goals in eradicating corruption is asset recovery. In absentia decisions allow judges to impose additional penalties in the form of restitution and confiscation of the convict's assets, which is the most practical objective of the mechanism.

Keywords*: Asset Recovery; Corruption; Extraordinary Crime; In Absentia.*

INTRODUCTION

In Indonesia, corruption has reached an alarming scale. Legally, it has been classified as an extraordinary crime. Corruption has massively damaged state finances, undermining the nation's economic, social, and political pillars. The scale of state losses due to corrupt practices often exceeds the state's fiscal capacity to recover. This phenomenon emphasizes that criminalizing corrupt practices cannot be solely retributive but must progressively focus on asset recovery as a form of corrective justice for the state and society (Hamzah, 2007).

The urgent need for state financial recovery still faces significant challenges in practice. Corruptors often resort to fleeing the country, ultimately making them fugitives. Not only do they avoid the legal process, but they also transfer and hide assets from their corrupt practices to other jurisdictions (overseas), making it difficult for national law enforcement to reach them. In this situation, the conventional justice system is paralyzed because the law enforcement process is hampered by the perpetrators' absence.

The Indonesian criminal justice system, as stipulated in Law Number 8 of 1981, which is contained in the Criminal Procedure Code (KUHAP), is designed on the foundation of human rights protection and the principle of due process of law. One fundamental manifestation of this principle is the right of the accused to be present at every stage of the trial (Reksodiputro, 2007). The criminal procedure law mechanism expressly stipulates that the resolution of a case "should ideally involve the presence of the accused." This presence is essential for the accused to be able to defend themselves, present evidence, and directly respond to any charges brought against them. This principle is the ideal foundation of a fair trial (Bronitt, 2017).

The paralysis of the judicial system for corruption cases stems from the fundamental principle in the Criminal Procedure Code (KUHAP) as lex generalis, which requires the absolute presence of the accused in court. In the KUHAP there is no mechanism for examining cases without the presence of the accused, thus making the legal process stagnant if the accused is a fugitive, even though the fundamental principle is to protect the accused, it has instead become a loophole exploited by corruptors to escape accountability (Harahap, 2002).

Understanding this impasse, legislators created a legal breakthrough through the Corruption Eradication Law (UU Tipikor) as lex specialis. Article 38 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 specifically permits trials to proceed and be decided without the presence of the defendant (trial in absentia), provided that the defendant has been officially summoned to the trial and remains absent without a valid reason (Ardiansyah Girsang, Muhammad Hatta, 2023). The existence of the in absentia norm illustrates a paradigm shift, from rigid procedural justice to efforts towards substantive justice.

The relevance and urgency of the in absentia mechanism become particularly significant when dealing with extraordinary crimes, specifically corruption. In many corruption cases, the perpetrator (defendant) often flees abroad or goes into hiding to avoid legal proceedings. In such situations, the standard criminal justice system, which requires the physical presence of the defendant, becomes ineffective. This is where the need for an in absentia instrument becomes urgent, as a way to ensure that the legal process continues and justice is upheld.

Although the principle of the defendant's presence is recognized as ideal, the Criminal Procedure Code's in-absentia trial mechanism also opens up the procedural possibility of holding a trial without the defendant present. This arrangement creates a procedural contradiction that creates legal tension between fulfilling the defendant's rights and the interests of law enforcement.

From a legal and philosophical perspective, the existence of trials in absentia creates a sharp antinomy. From a human rights perspective, this procedure is criticized for violating the defendant's fundamental rights, namely the right to defend oneself in court (Harianja, 2013). Trials in absentia are seen as problematic because they have the potential to ignore the principle of due process of law and lead to injustice. However, from a public justice perspective, trials in absentia are considered an absolute instrument to prevent impunity and provide a sense of justice to the community (Sayyid Umar Al Masyhur, Tjokorda Istri Kumari Maharatu

Pemayun, Luh Putu Rahayu Gita Pertiwi, 2020).

In this discourse, justice is the primary focus. Justice cannot be reduced solely to adherence to procedures (procedural justice), but also encompasses reparation of losses and restoration of social balance damaged by criminal acts (substantive justice) (Rawls, 2011). Essentially, the implementation of in-absentia trials in corruption cases is designed as an instrument to achieve substantive justice, particularly in the context of asset recovery or recovery of state fiscal losses, as discussed in the second research problem formulation, namely the recovery of state financial losses (asset recovery).

However, ironically, the effectiveness of in absentia in achieving the primary goal of asset recovery has become the next complex issue (Mulyadi, 2020). Previous research has shown that this mechanism remains problematic in its implementation. A study conducted by Krisnaputra, Sanyoto, and Utami (2020) on Decision No. 54/Pid.Sus-TPK/2019/PN.Sby observed a legal vacuum regarding detailed procedural rules, from the investigation stage to the trial in absentia, which has given rise to contradictions and doubts for law enforcement officials (Ardhyansah, 2020).

This contradiction is reinforced by the findings in the review of Decision No. 28/Pid.Sus-TPK/2020/Pn.Mnk. In this decision, the panel of judges rejected the trial in absentia because the defendant had not been present since the investigation stage, thus becoming the basis for not fulfilling the formal requirements for a valid summons. This decision is considered contrary to the spirit of Article 38 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Tipikor Law), which was specifically designed to deal with conditions when the defendant is a fugitive. This situation demonstrates the disharmony and non-uniformity of interpretation among judges regarding the existence and philosophical purpose of trials in absentia.

Furthermore, the problem of asset recovery in the second problem formulation does not stop at the verdict level (Mahmud, 2018). Several studies show a paradox, even when a verdict in absentia is successfully determined and the verdict orders payment of compensation under Article 18 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes (Tipikor Law), its implementation is often ineffective. Not a few convicts in absentia or their heirs prefer to serve subsidiary imprisonment rather than return assets obtained from corruption, especially if the value of the hidden assets is much greater than the criminal burden. This situation is further complicated if the assets have been transferred abroad (Atmasasmita, 2004). This results in the execution of the verdict in absentia being hampered by international jurisdictional problems.

Based on the description above, it shows a significant research gap. Existing research focuses more on normative studies in absentia, namely the conflict between the Criminal Procedure Code (KUHAP) and the Corruption Eradication Law, or on the technical aspects of asset recovery execution. There has been no research that comprehensively analyzes the failure of asset recovery as a result of philosophical and procedural weaknesses in the implementation of in absentia, viewed from the perspective of complete justice. This research is urgently conducted to fill this gap, by analyzing how the existence of in absentia in practice fails to fulfill its substantive justice goal, namely asset recovery..

RESEARCH PROBLEM FORMULATION

Based on the above background, this research focuses on analyzing and answering two fundamental legal questions, formulated as follows:

1. How does the existence of in absentia trials exist within the Indonesian Criminal Procedure Law system?
2. How can the recovery of state financial losses (Asset Recovery) be realized through the instrument of in absentia trials?

This study aims to normatively analyze both problem formulations. The analysis is conducted by examining the theoretical framework of justice. There has been a paradigm shift in justice in this context, from retributive justice (which focuses on punishing the perpetrator) to restitutive justice (which focuses on reparating the losses of the victim, in this case the state). This article argues that the existence of justice in absentia in corruption cases is a manifestation of the emphasis on pragmatic restitutive justice, where the primary goal is asset recovery.

RESEARCH METHOD

The type of research used is normative legal research. The nature of this research is consistent with the definition found in the reference materials, where normative legal research emphasizes law as a norm (rule). Therefore, this study is an analysis focused on positive law, namely examining the norms contained in the laws and regulations governing trials in absentia.

To analyze the formulated problems, this study uses several Statutory Approaches, this approach is used to systematically examine and analyze various statutory regulations that form the legal basis for the implementation of trials in absentia, with the main focus on the Criminal Procedure Code (Law No. 8 of 1981), especially Article 196 and Article 214, as well as relevant lex specialis regulations.

The Conceptual Approach is an approach used to understand and analyze the meaning of the central legal concepts in this research, such as justice (both procedural and restitutive) and asset recovery in the context of in absentia.

The legal materials used in this study include primary legal materials consisting of binding laws and regulations, namely Law Number 8 of 1981 (KUHAP) and the Law on the Eradication of Criminal Acts of Corruption as lex specialis. Secondary legal materials include legal doctrines, articles in scientific journals, literature, and seminar materials relevant to the research topic, which provide explanations regarding the primary legal materials.

The analysis of the legal materials was conducted qualitatively and juridically. This means the research did not focus on empirical data, such as the number of in-absentia trials held or the amount of assets recovered. Instead, the analysis focused on systematic and teleological interpretation (seeking legal objectives) to assess the coherence of norms and the logical structure of in-absentia regulations in Indonesian positive law, in order to answer the two stated research questions.

RESEARCH RESULTS AND DISCUSSION

A. Legal Analysis of Articles 196 and 214 of the Criminal Procedure Code

The first research problem focuses on how the existence of in absentia trials fits within the structure of the Indonesian criminal procedural law system. This question is crucial because the Criminal Procedure Code, as lex generalis, is the primary basis for determining whether an examination can be conducted without the presence of the defendant (Utomo, 2016). In this context, a normative analysis of Articles 196 and 214 of the Criminal Procedure Code is fundamental to assessing the extent to which Indonesian positive law actually recognizes or limits the in absentia trial model.

Normatively, the Criminal Procedure Code (KUHAP) does contain several norms that can serve as a limited basis for hearings or pronouncements of verdicts in the absence of the defendant (Miu, 2013). Article 196 of the KUHAP regulates the possibility of pronouncing a verdict when the defendant is not present after being duly summoned. However, this norm is not designed to accommodate the entire trial process without the defendant's presence (Gosal, 2021). The norm focuses more on the final aspect of the trial process, namely the pronouncement of the verdict (verdict announcement), rather than on the main stages of the examination such as the examination of witnesses, evidence, or the defense. Therefore, Article 196 of the KUHAP cannot be interpreted as fully legitimizing the holding of trials in absentia in its entirety.

Article 214 of the Criminal Procedure Code is often cited as a reference to support arguments for the existence of a trial without the presence of the accused. However, conventional interpretations, both in doctrine and judicial practice, suggest that this norm is understood to be more relevant to cases of minor offenses, particularly traffic misdemeanors. While the article allows for a trial without the accused if the accused has been legally summoned but is not present, its historical context and purpose are not intended for serious cases such as corruption, money laundering, or other serious crimes (Qurniawan, 2025).

These two articles essentially demonstrate that the Criminal Procedure Code (KUHAP) does acknowledge the possibility of the defendant's absence in certain situations, but its scope is very limited. The KUHAP has never formulated a complete trial mechanism without a defendant, encompassing the entire series of examination of evidence, the system of proof, the submission of defense (pleidoi), and the verdict. This absence of procedural norms gives rise to what are known as limited provisions, namely provisions that only provide minimal space but do not provide an operational mechanism. In other words, the KUHAP does not provide a comprehensive procedural legal construction for in absentia, so these articles are more appropriately understood as limited exceptions, rather than general legitimacy.

From a legal theory perspective, the existence of these limited provisions indicates that the Criminal Procedure Code

(KUHAP) as a lex generalis does not yet have a mature design to anticipate modern crime modes that often exploit the absence of the accused as a strategy of impunity. In the framework of extraordinary crimes such as corruption, the absence of the accused is often a systematic effort to avoid legal accountability, while protecting the proceeds of crime through concealment or transfer to foreign jurisdictions. The Criminal Procedure Code, drafted in 1981, clearly was unable to anticipate these characteristics of modern corruption, so that the normative weaknesses in Articles 196 and 214 of the KUHAP become a structural obstacle to law enforcement.

On the other hand, the limitations of the Criminal Procedure Code also create hermeneutical problems in judicial practice. Judges, prosecutors, and investigators are often in a dilemma: whether to adhere to the main principle of the Criminal Procedure Code, which requires the presence of the accused as part of a fair trial, or to develop progressive interpretations to fill the legal gap. The absence of clear regulations opens up opportunities for differences in interpretation between law enforcement agencies, ultimately contributing to legal uncertainty. As a result, the Criminal Procedure Code, which was originally designed to protect the human rights of the accused, actually creates a paradox when applied to corruption crimes: the rights of the state and the public to obtain redress for losses are not protected because the judicial process is stalled.

Furthermore, the limitations of the Criminal Procedure Code are also evident in the absence of technical procedural rules regarding how an in-person hearing should be conducted if implemented. There are no guidelines regarding the evidentiary stage, the mechanism for confronting evidence, the role of legal counsel in absentia, or the minimum standard of defense that must be provided to an absent defendant. This incompleteness renders Articles 196 and 214 of the Criminal Procedure Code unable to stand alone as a basis for conducting in-person trials for serious cases. Criminal procedure doctrine emphasizes that norms that diminish the rights of the accused must be formulated clearly, firmly, and not open to multiple interpretations, particularly as they relate to the principle of due process of law. The Criminal Procedure Code fails to meet these standards.

Thus, a legal analysis of Articles 196 and 214 of the Criminal Procedure Code (KUHAP) leads to the conclusion that these two articles offer only minimal and inadequate normative legitimacy. For serious cases, particularly corruption, pure reliance on the KUHAP as a lex generalis becomes fragile. The legal system requires more comprehensive rules that not only permit trials without the accused but also provide a comprehensive procedural framework to ensure the principle of substantive justice. This limitation then prompted legislators to formulate a breakthrough through the Corruption Eradication Law as a lex specialis that provides a stronger basis for holding trials in absentia.

B. Dualism of Justice: Between the Rights of the Defendant and the Need for Law Enforcement

The limited provisions in the Criminal Procedure Code (KUHAP) actually harbor fundamental philosophical and legal tensions within the Indonesian criminal justice system. On the one hand, the

KUHAP is built on the idea that the physical presence of the accused is a fundamental element of due process of law, so the ideal judicial mechanism should involve the direct participation of the accused in the courtroom (Harahap, 2015). This principle reflects the constitutional guarantee of human rights, which states that every person accused of a crime has the right to defend themselves, present witnesses, respond to evidence, and interact directly with the judge to ensure that the trial process is fair and balanced. The presence of the accused is seen as a normative prerequisite so that the judge can examine the accused's expression and credibility, and ensure that the verdict is not rendered in a vacuum.

However, on the other hand, the Criminal Procedure Code also implicitly acknowledges that there are factual conditions that make this principle not always absolutely applicable. In various situations, particularly cases related to corruption, practice in the field shows the existence of obstacles that make the presence of the accused impossible, difficult, or deliberately avoided. The phenomenon of perpetrators fleeing, hiding, moving jurisdictions abroad, or deliberately cutting off communication with law enforcement authorities is a reality that cannot be denied. These conditions are what the Criminal Procedure Code refers to as "special or urgent circumstances," namely situations where the law cannot be paralyzed simply because of the absence of a party who should be undergoing the judicial process (Atmasasmita, 2017).

This dualism emphasizes that Indonesian criminal procedure law fundamentally faces a structural dilemma: should procedural justice always be strictly upheld, even if it results in failures in law enforcement, or should the justice system allow for discretionary exceptions to achieve the goal of substantive justice? Both are fundamental values, and the Criminal Procedure Code (KUHAP) attempts to balance these two poles through the concept of very limited exceptions. This means that while the presence of the accused is the ideal principle, the system still provides legal ventilation to prevent the judicial process from coming to a complete halt if the accused deliberately fails to appear.

This tension becomes even more significant when linked to corruption cases, which in practice very often face the issue of defendants fleeing or transferring assets to other jurisdictions. The Criminal Procedure Code, in its capacity as lex generalis, was not designed to address the complexity of extraordinary crimes such as corruption. Therefore, its limitations are not merely technical and procedural in nature, but also have a philosophical dimension related to the initial design of the Criminal Procedure Code itself. The Criminal Procedure Code was drafted during a time when the problem of corruption was not as massive and complex as in the modern era, so the mechanism of trial in absentia did not have adequate normative space.

Thus, the dualism reflected in the Criminal Procedure Code (KUHAP) is not merely a procedural issue, but rather a paradigm clash between procedural justice and substantive justice. Procedural justice emphasizes adherence to formal forms, procedures, and principles as a means of safeguarding the rights of the accused. Conversely, substantive justice emphasizes resolving state losses, recovering assets, preventing impunity, and the interests of the wider community. When the KUHAP imposes strict limitations on trials in the absence of the accused, the justice system is indirectly trapped in a rigid procedural orientation, potentially hindering the primary objectives of criminal law, namely to protect society from the impacts of crime and restore disturbed social conditions.

In this context, in absentia is positioned as a legally and ethically valid exception mechanism, as long as it is carried out with the principle of judicial restraint (Rahardjo, 2014). This mechanism is not intended as a total disregard for the defendant's rights, but rather as a response to conditions where the defendant himself obstructs the justice process by fleeing. Therefore, the principle of due process of law should not be interpreted narrowly as an absolute requirement for the defendant's physical presence, but must be interpreted dynamically so as not to render the legal system powerless against more sophisticated criminal strategies.

Furthermore, this dualism raises a philosophical question: does a defendant who intentionally flees still have the right to maximum protection under the principle of presence? Or does the state have the right to reduce some of these procedural rights for the sake of the public interest and the recovery of state losses? This tension is the basis for the emergence of the lex specialis regime in the Corruption Crimes Law, which provides an explicit legal basis for trials in absentia, while also demonstrating that the Criminal Procedure Code is indeed inadequate to meet the needs of modern law.

Ultimately, this dualism of justice places the trial in absentia as an instrument at the crossroads between protecting individual rights and the public interest. Its existence can only be justified when used as an extraordinary mechanism to address extraordinary situations. Therefore, the use of the trial in absentia must be carried out not only on a legal basis, but also with ethical, philosophical considerations, and the broader interests of justice. This is where the judge's role becomes central: ensuring that this procedural exception does not become a tool of arbitrariness, while also ensuring that the law does not lose its effectiveness when dealing with perpetrators who deliberately evade the judicial process.

C. Limitations of the Criminal Procedure Code and the Lex Specialis Principle

This analysis finds a logical contradiction if we focus solely on the Criminal Procedure Code. The reference material emphasizes that in absentia is crucial for extraordinary crimes (corruption), yet at the same time states that the legal basis for the Criminal Procedure Code is limited. The question is, how can such a limited instrument be used effectively for extraordinary crimes?

The answer lies in the principle of lex specialis derogat legi generali (special law overrides general law). The true existence in absentia for corruption is not found in the Criminal Procedure Code, but rather in the specific law that regulates it, namely the Corruption Eradication Law in Article 38 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law No. 20 of 2001.

Law No. 31 of 1999, as a lex specialis, explicitly and more firmly regulates the implementation of in absentia trials for corruption defendants who have been legally summoned but are not present. Thus, the existence of in absentia in the Indonesian legal system is layered: it is recognized in a limited way in lex generalis (KUHAP) for urgent circumstances, but is regulated strongly and specifically in lex specialis (Article 38 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption) as an essential instrument for eradicating corruption.

To clarify these differences, the following table presents a normative comparison between the two legal regimes :

Table 1. Normative Comparison of Arrangements for Hearings in Absentia.

Regulatory Aspects	Criminal Code (Law No. 8 of 1981) (Lex Generalis)	Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 (Lex Specialis)
Norm Status	Limited, as an exception in special/urgent circumstances	Explicit, as a standard mechanism if the accused runs away or does not appear after being legally summoned.
Scope	Often interpreted as being limited to minor violations (tickets) or the reading of verdicts (contumation)	Covers the entire process of examining a case (evidence, charges, to verdict) for corruption crimes.
Procedural Objectives	Ensuring the resolution of minor matters or the reading of decisions.	Ensuring that the judicial process for extraordinary crimes continues even if the defendant is absent.
Focus of the Decision	Punishment for violations (if ticketed).	Criminal penalties (prison, fines) and recovery of state losses (additional penalties)

The table above illustrates why the Criminal Procedure Code, as general law (lex generalis), is inadequate to handle corruption crimes, so that it requires special provisions (lex specialis) in the Corruption Eradication Law (Corruption Law).

1. Regulatory Aspects, Status of Norms

The status of the norm in absentia in the Criminal Procedure Code (Lex Generalis) is very limited. The Criminal Procedure Code is built on the principle that the accused must ideally always be present. Articles 196 and 214, which permit the accused's absence, are seen as very narrow exceptions, applicable only in special or urgent circumstances. This is not a tool designed for systematic use.

The Corruption Crimes Law (Lex Specialis), on the other hand, is explicit and strong. Corruption is viewed as an extraordinary crime. Therefore, Article 38 of Law No. 31 of 1999 concerning the Eradication of Corruption was deliberately and explicitly designed as a deviation from the Criminal Procedure Code to provide a solid legal basis for judges to continue hearing cases, particularly when the defendant absconds after being legally summoned (Maharani, 2024).

2. Regulatory Aspects, Scope

The scope of application of these articles under the Criminal Procedure Code (KUHAP) (Lex Generalis) is very narrow.
Article 214 of the KUHAP is legally included in the Expedited Examination Procedures section. In practice and legal doctrine, this article is interpreted as applying only to minor offenses, particularly traffic violations (tickets). Applying the article for ticketing to complex corruption crimes is legally disproportionate.
Article 196 of the Criminal Procedure Code is often interpreted only as the judge's authority to read out a verdict without the defendant being present (known as a contumacy verdict), not as permission to conduct the entire series of examinations of evidence without the defendant from the start.
Article 38 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Lex Specialis) provides a much broader and more comprehensive scope, allowing judges to examine and decide a case in its entirety. This encompasses all crucial stages, from the presentation of evidence, witness examination, reading of the charges, to the rendering of the final verdict, even if the defendant is not present at all (provided they have been legally summoned).

3. Regulatory Aspects, Procedural Objectives

The Criminal Procedure Code (KUHAP) aims at administrative efficiency. In the case of traffic tickets (Article 214), the goal is to resolve thousands of minor cases quickly without requiring every offender to appear. In the case of contumacy (Article 196), the goal is to prevent the judicial process from being hampered in the final stages simply because the defendant refuses to appear for the verdict.

Article 38 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Lex Specialis) aims to ensure effective law enforcement and prevent impunity. It aims to ensure that the judicial process for extraordinary crimes is not paralyzed simply because defendants, often possessing substantial resources, flee. It is a tool to ensure legal certainty.

4. Regulatory Aspects, Focus of Decisions

The Criminal Procedure Code (KUHAP) focuses on simple decisions. For traffic tickets, the focus is on imposing a fine. For contumacy, the focus is on ratifying a criminal decision (imprisonment or a fine) for which the defendant has previously attended the hearing.

Article 38 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Lex Specialis) is the most crucial difference. The focus of an in absentia verdict in a corruption case is not simply imprisonment (which cannot be executed for fugitives). The primary focus, and most pragmatic goal of this mechanism, is the recovery of state assets (Asset Recovery). An in absentia verdict is the legal basis absolutely necessary for a judge to impose additional penalties, specifically in the form of an obligation to pay restitution and an order to confiscate the convict's assets. Without this verdict, the stolen assets can never be legally seized by the state.

The second problem formulation focuses on how in absentia instruments can be used to recover state financial losses, namely that the author analyzes how Asset Recovery can be realized.

A. Pragmatic Rationality In Absentia, A Shift Towards Asset Recovery

To answer this, we must first understand the purpose (teleology) of eradicating corruption itself. The analysis clearly states that one of the primary and most important goals in eradicating corruption is asset recovery. This is a central premise that shifts the focus from simply punishing perpetrators.

B. In Absentia as an Instrument of Restitutive (Pragmatic) Justice

The use of the term "goal," which is the most pragmatic, in the reference material, is not without significance. This term indicates a shift in the paradigm of justice in handling corruption. In the paradigm of retributive justice (retribution), the primary focus is on punishing the perpetrator. In this paradigm, a trial in absentia can be considered a failure, as the defendant is not physically present to receive punishment.

However, in the context of corruption, the paradigm shifts toward restitutive justice, or what is known as pragmatic justice. The primary goal is no longer simply to punish the individual, but rather to restore the losses suffered by the victim, the state. Within this restitutive paradigm, a trial in absentia is actually a procedural success. This is because the primary goal of asset recovery can be achieved even if the defendant is not present. The perspective of justice mentioned in the research title must be reinterpreted as this pragmatic restitutive justice.

C. Legal Mechanism for Asset Recovery through an In Absentia Decision

Concretely, how does the in absentia mechanism achieve asset recovery? The answer lies in the judge's authority to decide the case. An in absentia ruling in a corruption case provides the legal basis for the judge to impose additional penalties.

This additional penalty is a direct instrument for asset recovery. The analysis identifies two forms of additional penalties that are most relevant:

1. Payment of Compensation. The judge may require an absent convict to pay compensation in the amount of the state losses they have incurred.
2. Confiscation of the Convict's Assets. The judge may order the seizure and confiscation of the convict's assets, which are strongly suspected of originating from corruption, to be auctioned off to cover the state losses.

D. Additional Penalties as the Main Purpose in Absentia

If it is accepted that the primary objective (asset recovery) is achieved through the additional penalty mechanism, then a logical conclusion can be drawn. In the context of an in-absentee trial for a corruption case, what is legally referred to as additional penalties or replacement money and confiscation has functionally shifted to become the primary objective of the trial. The principal penalty, namely imprisonment, becomes secondary because it cannot be executed against an absent convict. This is the full realization of the most pragmatic objective of the in-absentee mechanism: a legal tool to recover stolen state assets, regardless of the perpetrator's whereabouts.

CONCLUSION

Based on the analysis and discussion of the two problem formulations, the following conclusions are drawn:

1. The existence of trials in absentia is legally recognized in the Indonesian positive legal system, but with a layered status. In lex generalis (KUHAP), its existence is recognized in a limited way and is only intended for special or urgent circumstances. However, in the context of corruption crimes, this norm is not designed to accommodate a complete examination, especially in serious cases such as corruption as an extraordinary crime. This limitation shows that the KUHAP is unable to meet the needs of modern law enforcement, especially when dealing with the modus operandi of perpetrators who flee or disappear to avoid the judicial process. Therefore, the existence of in absentia is significantly strengthened through lex specialis Article 38 of Law No. 31 of 1999 concerning the Eradication of Corruption as an essential procedural mechanism to ensure the judicial process continues even though the defendant is not present. Thus, in absentia functions as a solution to the stagnation of the legal process that arises from the defendant's avoidance strategy.
2. The in-absentia trial instrument is the most pragmatic legal tool for achieving the primary goal of eradicating corruption, namely the recovery of state financial losses (Asset Recovery). This mechanism marks a shift in focus from retributive justice, namely punishing the perpetrator, to restitutive justice, namely recovering state losses. Legally, this is realized through the judge's authority in an in-absentia decision to impose additional penalties in the form of mandatory restitution and confiscation of the convict's assets. Thus, in-absentia is not merely a procedural mechanism, but an essential legal instrument in achieving substantive justice in corruption cases. However, the effectiveness of in-absentia trials in asset recovery still faces implementation obstacles, both due to the lack of technical regulations and international jurisdictional barriers. Therefore, strengthening regulations and harmonizing procedures are urgently needed to ensure that the primary goal of in-absentia trials, namely the recovery of state financial losses, can be optimally achieved.

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