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RESEARCH ARTICLE

LEGAL IMPLICATIONS THE ARRANGEMENT OF THE TRIAL IN ABSENTIA BASED ON ARTICLE 38 OF THE PTPK LAW FOR HANDLING CORRUPTION IN INDONESIA

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ABSTRACT

The arrangement of the trial in absentia is the Corruption Crime Act (PTPK Law) with the concept of examination in court cases of corruption without the presence of the accused. The press point in absentia is saving state wealth, so it needs to be balanced with a comprehensive and integrated asset grab mechanism with other arrangements both domestically and internationally. However, in reality it was used as an opportunity for perpetrators of corruption to not return the corrupted state money. The regulation in absentia in the PTPK Law is un consistent because there are differences in court settings in absentia for the defendant who was not present because of intentions and the defendant who was not present because he died. This study aims to find out what are the legal implications of the arrangement of trials in absentia based on Article 38 of the Law on the Eradication of Corruption Crimes against handling cases of corruption in Indonesia. This study is a normative legal research, using a legal approach, conceptual approach, case approach and comparative approach. Legal material collection techniques through library research techniques (library research). Legal material analysis techniques use qualitative descriptive analysis techniques with grammatical interpretation, systematic interpretation and futuristic interpretation. The results showed that the legal implications of the trial in absentia in handling corruption were still giving the defendant the opportunity to escape freely, so that the return of state assets caused by corruption was not optimal.

INTRODUCTION

Corruption in Indonesia has been widespread, not only harming state finances, but has also been a violation of the social and economic rights of the community at large. Therefore, efforts to continue guarding the eradication of corruption must be done so that the initial goal of eradicating corruption can be achieved. However, the sense of justice of the people demanding that the law be enforced against the perpetrators of corruption is faced with a different reality. So in the Corruption Act (PTPK Law) there is a concept of examination in court cases of corruption without the presence of defendants (in absentia). The arrangement of the trial in absentia is contained in Article 38 paragraph (1) of the PTPK Law. In the explanation of Article 38 paragraph (1) of the PTPK Law, it was stated that the purpose of the trial in absentia was to save state wealth, so that without the presence of the defendant the process of handling corruption could still be continued and the defendant can be examined and decided by the Judge. As such, the PTPK Law in principle has a preventive goal to protect the country's assets / economy in addition to its repressive purpose to prosecute those who commit acts of corruption[1]. In formal jurisdiction in Indonesia, in absentia has been applied but only in certain criminal acts because it is given space by certain laws. The problem is that in general in absentia it is commonly practiced in civil court examinations, which in practice are attended by representatives or attorneys from litigants, in which case litigants do not need to be present at the examination of the case. However, in criminal cases generally the presence of the defendant is required in the case examination, where the hearing is open to the public as stated in Article 1 number (15) of the Criminal Procedure Code. If further investigated, the Criminal Procedure Code does not explicitly regulate the provisions regarding trials in absentia, both in the provisions of the articles and in their explanations. The rights of the defendant who became the guideline in the Criminal Procedure Code were collided with the PTPK Law which regulated in absentia which resulted in several views which refused to be implemented in absentia. The view that refuses to be applied in absentia in cases of corruption is because it tends to violate human rights. On the other hand, the concept of the trial in absentia is based on the commitment that corruption is an extraordinary crime so that it is not considered to violate human rights. This exception is also guaranteed in Article 4 paragraph (1) of the International Covenant on Civil and Political Rights/International Convention on Civil and Political Rights. If further investigated the arrangements in the PTPK Law, it turns out that there are indeed un consistent norms. This can be seen from the formulation of regulations contained in Article 38 paragraph (1) and Article 38 paragraph (5) of the

[1] Loebby Loqman, Masalah Tindak Pidana Korupsi di Indonesia, Jakarta: National Law Development Agency Ministry of Justice and Human Rights, p. 49, 1996.

PTPK Law. Article 38 paragraph (1) states that in the event the defendant has been legally summoned, and is not present at the court hearing without valid reason, the case can be examined and decided without his presence, whereas Article 38 paragraph (5) of the PTPK Law states that in the event the defendant dies the world before the verdict is imposed and there is sufficient evidence that the person has committed a criminal act of corruption, then the judge over the demands of the public prosecutor determines the seizure of items that have been confiscated. Based on these differences, it was found that there were differences in court arrangements in absentia for the defendant who was not present because of intentions and the defendant who was not present because he died. Arrangement of the trial in absentia for the defendant who was absent due to his death was more complete and firm because he stated "the judge of the demands of the public prosecutor stipulated the seizure of items that had been confiscated". Of course the arrangement of the trial in absentia for those who did not attend because of intentionality or escape was not in accordance with the initial purpose of the arrangement in absentia, because in absentia it was raised aimed at saving state wealth. Unclear formulation of norms can lead to ambiguity and can lead to legal uncertainty. In the development of handling criminal acts of corruption by using less than optimal in absentia, the phenomenon of corruption suspects will appear to be happy to escape and willingly set as a People Search List (DPO). The hypothesis, this is due to the existence of a rule gap that can be used by the defendant to secure his assets and himself and his family from legal entanglement. Based on this, it is necessary to investigate the legal implications of the arrangement of trials in absentia based on article 38 U PTPK on handling corruption in Indonesia.

MATERIALS AND METHODS

This research is juridical-normative research (legal research)[2], which is a library research that is in the form of legal material. The approach used is the Law approach, conceptual approach, case approach, and comparison approach[3]. The legal material used in this study consists of three legal materials, namely primary, secondary and tertiary legal materials. Primary legal material is the main legal material that is the subject of this study. Secondary legal materials obtained from doctrines, theories, opinions of existing legal experts; in the literature, both from textbooks, journals, scientific writings and information in print and electronic media. Tertiary legal materials are legal materials taken from the general Indonesian dictionary, English-Indonesian dictionary, legal dictionaries and encyclopedias that provide an understanding of the decisions of criminal judges, criminal justice systems and criminal procedural law, especially those related to the subject matter. Library research techniques that will collect, study and study legal materials that have relevance to the problems formulated in this study, both on primary legal materials, secondary legal materials and tertiary legal materials. Analysis of legal material in this study using qualitative descriptive analysis with the interpretation method used is grammatical interpretation; systematic interpretation; and futuristic interpretation. [4]

[2] Ronny Hanitijo Soemitro, Metodologi Penelitian Hukum dan Jurimetri, Third Print, ed. Revision, Jakarta: Ghalia Indonesia, p. 11, 1998.

[3] Peter Mahmud Marzuki, Penelitian Hukum, Jakarta: Prenada Media, p. 93, 2005.

[4] Soejono dan Abdurrahman, Metode Penelitian Hukum, Jakarta: Rineka Cipta, p. 23, 2003.

RESULTS AND DISCUSSION

Analysis of Cases of Trials in Absentia in Corruption Cases in Indonesia

Case I (Iman Firmanullah): In this case, it was a case where the defendant died after being investigated at the investigation level. This means that the status is the defendant who is undergoing a hearing in court. In this case, the defendant died at the hospital after obtaining permission to leave Kebonwaru Prison for treatment. Examination of the trial of the defendant's case reached the indictment stage in the Bandung District Court. After the indictment phase was read out by the Public Prosecutor, the faith in increasingly weak condition, had fallen and had to be carried by five people to lift him back to the wheelchair. In such a situation, is it then correct when the Prosecutor applies Article 77 of the Criminal Code and Article 34 of the PTPK Law. Why then do not use Article 38 paragraph (5) of the PTPK Law which regulates in absentia in the event that the defendant dies before the court verdict is read. For this reason, two situations must be distinguished by each of the provisions in the Criminal Code and the PTPK Law. Next is the sound of each of these provisions:

R Soesilo said that in Article 77 of the Criminal Code there is a principle that the prosecution of the sentence must be directed at the person himself. If the person accused of committing the criminal event dies, the demand for the incident will just disappear, meaning that the claim cannot be directed to the heirs. Indeed, what is stipulated in Article 77 of the Criminal Code is about the death of prosecution. However, seeing from the criminal case channel itself, investigations and prosecutions are parts that are not separate from each other, so if a corruption suspect dies during the investigation process, then the subsequent criminal proceedings will also be deleted. This is because even if the investigation is carried out, the statement cannot be carried out because of the arrangement in Article 77 of the Criminal Code.

Then, it is seen in more specific regulations (lex specialist), namely in the PTPK Law. There are provisions stipulated in the PTPK Law when a suspect/defendant dies. These provisions are in Article 33 and Article 34 of the PTPK Law. Whereas the two provisions broadly provide the same necessity, namely in the event that the suspect/defendant dies, the investigator/prosecutor immediately submits the results of the investigation/file to the State Attorney/Prosecutor's office or is submitted to the aggrieved agency to file a civil suit against his heirs. Then, is it appropriate to apply Article 77 of the Criminal Code and Article 34 of the PTPK Law compared to Article 38 paragraph (5) of the PTPK Law. The Prosecutor in this Case did not use Article 38 paragraph (5) because from the beginning the perpetrator/suspect had attended the examination at the level of investigation, investigation and examination at the court. Therefore, Article 38 paragraph (5) is inappropriate because from the beginning the perpetrator is present in the investigation, investigation and examination in court. Because to apply Article 38 paragraph (5) of the suspect to being a defendant is not present after being summoned legally. Therefore Article 38 paragraph (5) becomes ineffective, because after all the use of Article 38 paragraph (5) depends on Article 38 paragraph (1). Therefore the reconstruction in absentia becomes urgent to be carried out so that the trial in absentia can be in accordance with its legal politics, namely the rescue of state wealth.

Case II (Okie Dewantara): In this case, it shows that the application of in absentia is not only for cases that have large losses caused by criminal acts of corruption. But cases with a value of losses that are not too large as in the case with convicted Okie Dewantara can also be applied in absentia. From this case, it can be seen that there is seriousness from law enforcers to be able to save state financial losses from small and large amounts of corruption. The panel of judges considered the provisions in Article 38 paragraph (1) of the PTPK Law, Okie Dewantara had been properly called and was not present at the court session without a valid reason. So that the hearing was carried out without the presence of the defendant until the verdict was handed down. Meanwhile, to save state losses in this case, there is no seizure of evidence that has been confiscated by the Public Prosecutor. Because the confiscated evidence is in the form of letter proof that does not have economic value. So, even though this case has been tried, the state losses caused by criminal acts of corruption in this case cannot be saved like the purpose of the trial in Absentia itself. However, in the ruling the judge handed down an additional sentence to the convict in the form of a compensation of Rp. 49,050,000 (forty nine million fifty thousand rupiahs), provided that the convict must pay in one month. When within the stipulated time the convict did not return the replacement money, the property could be confiscated by the Prosecutor and auctioned off to cover the replacement money. And when the convict does not have property in accordance with the value of substitute money, then he is sentenced to imprisonment for 8 (eight) months.

Legal Implications for Arranging Trial In Absentia Against Handling Corruption Cases in Indonesia: The trial in absentia was considered effective in an effort to restore assets resulting from corruption that had been looted by the perpetrators of corruption due to the following matters: [5]

1. Settlement of the case is faster and prosecutors as representatives of the government can pursue the assets of the country in question if:
   a. Assets that are alleged to be assets obtained from these crimes can be legally confiscated and returned to the state.
   b. During the investigation process, the assets of the perpetrators have been properly inventoried and have been legally confiscated, so that after the court decision can be executed immediately.
2. Speed up the judicial process because the procedure is not protracted so that in the case of the crime it will minimize arrears in the case and the existence of legal certainty.
3. As long as the defendant's assets are clear, the ownership status makes it easier to carry out the seizure. If it is unclear, ownership will cause problems during the confiscation process.
4. Theoretically can streamline efforts to save state wealth, but in its implementation there are still obstacles, especially in the execution of substitute money as an effort to save state losses.

The return of state finance is one of the most strategic aspects in the effort to eradicate corruption. This is because the criminal acts of corruption in corruption also create destruction in the political, social and economic fields.

In various instances of corruption cases where the perpetrators fled abroad by bringing with them money from the criminal acts of corruption, they have provided benefits to the state that holds the money from the corruption. Easiness in the form of tax relief, permanent residence even to the granting of citizenship is an attraction for perpetrators of corruption to flee abroad because it makes them untouchable. In the trial in absentia of criminal acts of corruption in Article 38 paragraph (4) the PTPK Law does not explicitly determine who has the right to file legal remedies. The provisions of Article 38 paragraph (4) of the PTPK Law provide a gap for the defendant to appeal the decision which was not attended by the defendant. So, this becomes a weakness of the trial in absentia. Considering the ratio of the legislative proceedings in absentia is a deviation from the existing provisions, but with the provisions of Article 38 paragraph (4) giving implications that indirectly relieve the defendant. Because he had intentionally escaped, but could still appeal.

Asset deprivation is important in eradicating corruption in absentia. Deprivation of assets as part of an effort to return state financial losses expressly stated in Article 18 paragraph (1) letter a of the PTPK Law which basically regulates about: Deprivation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including convicted companies where criminal acts of corruption are committed, as well as goods that replace those items; Two situations must be distinguished from each of the provisions in the Criminal Code and the PTPK Law, in the event that the circumstances of the perpetrators of corruption are dead. Next is the sound of each of these provisions: Article 77 of the Criminal Code. Authority requires criminal deletion, if the accused dies.

Article 33 of the PTPK Law; In the event that a suspect dies while being investigated, while in reality there has been a loss of state finances, the investigator immediately submits the case file of the investigation to the State Attorney or is handed over to the aggrieved agency for civil claims against his heirs.

Article 34 of the PTPK Law;

In the event that the defendant dies at the time of the examination at the court, while there is a real loss of state finances, the public prosecutor immediately submits a copy of the minutes of the proceeding to the State Attorney or is handed over to the aggrieved agency for a civil suit against his heir.

Article 38 paragraph (5) PTPK Law;

In the event that the defendant dies before the verdict is handed down and there is sufficient evidence that the person concerned has committed acts of corruption, the judge over the demands of the public prosecutor determines the seizure of items confiscated.

The implication of Article 77 of the Criminal Code and Article 34 of the PTPK Law compared to Article 38 paragraph (5) of the PTPK Law, which can be seen in Case I, the prosecutor did not use Article 38 paragraph (5) because the perpetrator/suspect had attended the investigation at the investigation, investigation until the examination in court. Therefore, Article 38 paragraph (5) is inappropriate because from the beginning the perpetrator is present in the

[5] Marwan Effendy, Peradilan In absentia dan Koneksitas, Jakarta: PT. Timpani Publishing, p. 65-68, 2010.

investigation, investigation and examination in court. Because to apply Article 38 paragraph (5) of the suspect to being a defendant is not present after being summoned legally. Therefore Article 38 paragraph (5) becomes ineffective, because after all the use of Article 38 paragraph (5) depends on Article 38 paragraph (1). Therefore the reconstruction in absentia is urgent to be carried out so that the trial in absentia can be in accordance with its legal politics, namely the rescue of state wealth. Because, with the construction of the formula in absentia which is currently, legal politics in absentia to save the country's wealth becomes dependent on the willingness of the law enforcement officials themselves. Thus, the formulation of the provisions in Article 38 paragraph (1) and paragraph (5) of the PTPK Law needs to be reconstructed so that legal politics can be realized. The regulation in absentia in the PTPK Law in addition to having implications for the law enforcement process, also has implications for the guarantee of human rights (perpetrators of corruption). The arrangement in absentia is a violation of human rights, but the deviation is cultivated in such a way. So that it does not constitute the abolition of all the rights of suspects/defendants but merely a forced reduction in order to save the country's finances and economy with the aim of implementing a maximum development program.

However, by looking at some of the cases described in this discussion, it is certainly still known that the implications of enforcing corruption in accordance with the arrangements in absentia are still not maximal in realizing their goals despite reducing the rights of suspects/defendants. Thus, the ultimate goal of absentia to restore state assets that have been harmed due to corruption cannot yet be maximally realized. According to Marc (1965)[6], criminal policy is the rational organization of the control of crime by society. A similar understanding is also given by Sudarto (1986)[7] who defines criminal policy as a rational effort from the community in tackling crime. With the construction of previous criminal law policies, in this case the arrangements in absentia in the PTPK Law that adapt and change the arrangements in absentia in Law No. 3 of 1971 need to be adjusted and reconstructed in such a way. Thus, ratio legislation in absentia can be realized or at least can be improved for the better. The basis for the reconstruction of arrangements in absentia is an urgent matter (important and urgent), because the construction of the current absentia regulation has implications for the still weak enforcement of law against the perpetrators of corruption. Weak in this case means that arrangements in absentia are used as loopholes to escape and hide the assets of the perpetrators from the results of corruption. Construction in absentia in the PTPK Law needs to be patched with leakages (weakness). The theory of asset returns is a legal theory that explains the legal system of returning assets resulting from criminal acts of corruption based on the principles of social justice that provide capabilities, duties and responsibilities to state institutions and legal institutions to provide protection and opportunities for individuals to prosper. Corruption is an act that seizes assets, which are the rights of the state so that the state loses the ability to carry out its obligations and responsibilities to improve the welfare of society. Thus, the community loses its basic rights to prosperous life. [8]

In this case if it is associated with the application of in absentia in the eradication of criminal acts of corruption by allowing the perpetrators to flee, so they still master the results and instruments of criminal acts of corruption. Providing opportunities to other actors or people related to the perpetrators of corruption in order to enjoy the proceeds of criminal acts of corruption and reuse instruments of criminal acts or even to develop criminal acts of corruption that have been committed. [9] The high level of corruption in Indonesia should be used as a study material for the authorities to change the orientation of handling criminal acts of corruption, namely from the approach of following the suspect (seeking, arresting, and imprisoning the perpetrators) to follow the money. The merging of the two concept approaches will make effective prevention and eradication of criminal acts of corruption. Efforts to adjust to the prevailing global legal system, the Indonesian government has ratified the United Nations Convention Against Corruption (UNCAC) with Law Number 7 of 2006 concerning Ratification of the Anti-Corruption United Nations Convention on April 18, 2006. In addition, Indonesia through Law Number 1 of 2006 concerning Reciprocal Legal Assistance in Criminal Law, has regulated "mutual legal assistance" (MLA) where one of its basic principles is reciprocal principle (reciprocity),[10] It means that if Indonesia wants its stolen assets to be returned, then Indonesia must have clear arrangements regarding returns and also guarantee the return of assets from other countries that are stored in Indonesia.

The laws and regulations in Indonesia have not included provisions regarding the requirements of several countries, namely that there must be written orders for the return of assets resulting from corruption in the judge's decision because the PTPK Law is less structured and systematic in every Article in it. As Articles 26 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes determines that investigations, prosecutions, hearings in court hearings are carried out based on the applicable procedural law, unless otherwise stipulated in this law. This means that the procedural law regulated by corruption law is only about specific or certain matters, whereas in general or matters relating to procedural law which are not regulated in the corruption law still apply according to the Criminal Procedure Code. Corruption is one part of special criminal law. When described, corruption has certain specifications that are different from general criminal law, such as procedural law deviation and regulated material with the aim of minimizing the occurrence of leaks and deviations from the financial and economic balance of the country. The deviations from the formal law contained in the law on corruption are among others: [11]

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[6] Marc Ancel, Social Defence: A Modern Approach to Criminal Problems, London: Routledge & Kegan Paul, p. 209, 1965.

[7] Sudarto, Hukum dan Hukum Pidana, Bandung: Alumni, p.38, 1986.

[8] Karen Leback, Teori-Teori Keadilan, Six Theories of Justice, Transleted by Yudi Santoso, (Bandung: , Nusa Media, p.14, 2012.

[9] Yunus Husein, Perampasan Hasil Tindak Pidana di Indonesia, (Jakarta : Indonesian Legislation Journal Vol. 7 No. 4, December 2010, Directorate General of Laws and Regulations of the Ministry of Law and Human Rights of the Republic of Indonesia.

[10] Romli Atmasasmita, Kebijakan Hukum Kerjasama di Bidang Ekstradisi Dalam Era Globalisasi: Kemungkinan Perubahan Atas Undang-Undang Nomor 1 Tahun 1979 tentang Ekstradisi, Paper in a one-day Seminar themed: The Need for Amendment to Law No. 1 of 1979 concerning Extradition. Organized by the Indonesian Attorney General's Office on November 27, 2007 in Jakarta, p.1.

[11] Elwi Danil, Korupsi Konsep, Tindak Pidana dan Pemberantasannya, Jakarta: PT. RajaGrafindo Persada, p. 95-97, 2011.

- Giving priority to handling corruption from other cases,
- It is possible to break through bank secrets,
- Can the judiciary be applied in absentia,
- The formation of a joint team under the coordination of the Attorney General of the Republic of Indonesia, if the finding of a corruption case is difficult to prove,
- The identity of the reporter must be kept confidential,
- The defendant's obligation to prove a gift is not a bribe in the graft offense related to bribery and also the defendant is obliged to prove that his property including (wife / husband, child, corporation) is not from a criminal act of corruption.

It is clear that the handling of corruption is actually given priority by the state, but because there are many articles that overlap, it finally raises doubts in the minds of law enforcers to implement the right article. This can be evidenced by the example of the clash of PTPK articles below: Provisions for seizure of assets of corruption through civil lawsuits can be seen in Article 31 of the PTPK Law which basically states that in the case of investigators finding and arguing that one or more elements of corruption do not have enough evidence, there is a significant loss of state finances. the investigator immediately submits the case file as a result of the investigation to the attorney of the State Attorney for a civil suit to be made or submitted to the aggrieved agency to file a lawsuit. While in paragraph (2) of the same article provides a reason for the filing of a civil suit against the case of a corruption offense that is free. Furthermore Article 33 of the PTPK Law also provides a legal basis for the seizure of assets resulting from corruption through a civil lawsuit in which the suspect dies when the case is being investigated and from the investigation found a loss of state finances. The civil lawsuit will be filed against the heirs, of course the claim can be directed against the assets resulting from corruption or compensation claims against state financial losses due to the actions of the suspect. Then in Article 38 C of the PTPK Law also regulates the possibility of filing a lawsuit resulting from corruption that the criminal case can be processed and decided by the court with permanent legal force, but it turns out that there are assets or property belonging to the convict who are suspected or reasonably suspected corruption that has not been subject to seizure for the state. Then the state can make a civil suit against the convict and/or his heirs. But in accordance with its basic principle, the seizure of assets resulting from corruption is highly dependent on the ability of the public prosecutor to prove the defendant's fault before the trial while proving that the crime is the result of the crime he is charged. This concept is called Conviction Based Assets of Forfeiture, which means that the seizure of an asset resulting from corruption is highly dependent on the success of the investigation and prosecution of the criminal case.

Conclusion

The legal implications in absentia on handling corruption in Indonesia are still not optimal. The trial in absentia was carried out with the aim of saving state wealth through the return of assets resulting from criminal acts of corruption both with large losses and with losses that were not too large. However, the construction in absentia which currently applies provides a gap for the defendant to flee freely, so that the return of state assets caused by corruption which is the goal in absentia cannot be maximally realized. This is due to the provisions of each paragraph in Article 38 of the PTPK Law which is ambiguous and not systematic. Among other things, there is still a lack of clarity in the provisions of Article 38 paragraph (1) and paragraph (5) of the PTPK Law which separates the absence from being intentionally escaped and deliberately escaped and then dies.

In addition there are weaknesses in Article 38 paragraph (4) which provide an opportunity to be appealed against decisions in absentia. However, in Article 38 paragraph (6) does not give the right of appeal against the determination of seizure of confiscated goods for defendants in absentia who died.

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