

Reconstruction of Investigation Regulations in Absentia Criminal Corruption Cases in Indonesia Based on Justice Values



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ABSTRACT: Regulations for eradicating Corruption Crimes in Indonesia have regulated the examination of cases without the presence of the defendant in Court, however examinations at the investigation stage are not regulated, thus having an impact on the effectiveness of eradicating criminal acts of corruption. The aim of this research is to analyze the regulations for investigating cases of corruption crimes that have not been fair and to explore the weaknesses in the rules for investigating in absentia cases of criminal acts of corruption in Indonesia which are based on the value of justice. The paradigm used in this research is the Constructivism Paradigm, a type of normative juridical research and the research approach used is a statutory approach, a case approach, using primary and secondary data. The research results were analyzed using qualitative descriptive methods. The results of research into in absentia investigations into cases of criminal acts of corruption can give rise to differences in interpretation among law enforcement officials ranging from Investigators, Public Prosecutors to Judges, each of whom has inherent authority in examining cases of criminal acts of corruption, especially in examining cases involving prospective witnesses. suspects, suspects and defendants are not present even though they have been legally summoned without giving a proper and reasonable reason, the legal vacuum regulating in absentia investigations of corruption cases can be used by perpetrators of corruption crimes to evade the law enforcement process by running away and can be used as an excuse not to continue the investigation and transfer the case from the investigator to the public prosecutor and can be used as a reason to refuse prosecution by the Public Prosecutor. To realize the eradication of criminal acts of corruption based on the value of justice, it is necessary to reconstruct the regulations for investigations in absentia in the Law on the Eradication of Corruption Crimes by regulating 1) the exclusion of examining witnesses before being named as suspects with conditions; 2) waiver of examination of the suspect with conditions; 3) procedures/mechanisms for examining cases without the presence of the suspect; 4) waiver of handover of responsibility for the case from the investigator to the public prosecutor without the presence of the suspect with conditions; and 5) restrictions on case examinations that can be carried out without the presence of the suspect.

KEYWORDS: Investigation, Corruption, In Absentia, Reconstruction.

I. INTRODUCTION

Corruption is an extraordinary crime, therefore it needs to be faced and handled in extraordinary ways (extra judicial action). Legal treatment and handling must also involve firm and courageous action from law enforcement officials and a new breakthrough is needed which is likely to be able to penetrate all existing obstacles. This new breakthrough must be an extraordinary way to prevent and eradicate corruption, because the occurrence of corruption in Indonesia has hampered national development efforts and efforts to improve the Indonesian economy.

Basically, law enforcement is a deliberate effort to realize legal ideals to create justice and peace in the life of society, nation, and state. The upholding of the law in a narrow sense is identical to the upholding of the law. However, in a broad sense, upholding the law is an effort to ensure the upholding of the law and the values of justice in society. In other words, more broadly, what is enforced is the law in a system, not regarding regulations in the formal sense, but also the institutions and even the values reflected in society [1].

Law enforcement officials in carrying out efforts to eradicate corruption often face several obstacles, including those encountered during the investigation process, namely the presence of witnesses (potential suspects) and/or unknown suspects (running away). The presence of witnesses in the investigation process is very necessary to shed light on a criminal incident that occurred so that

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they can find out which parties can be held responsible to be named as suspects. The presence of the suspect in the investigation process is also very important, because the presence of the suspect can speed up handling the case so that the investigation process can continue, and the suspect can be held accountable for what he has done with the guarantee of protected rights as a suspect.

One of the handlings of corruption cases in Indonesia which until now has been hampered by the presence of suspects is the case of alleged bribery of requests for interim replacements (PAW) of members of the DPR RI for the 2019-2024 period of the PDI Perjuangan Party for the Electoral District of South Sumatra 1 from RIEZKY APRILIA to HARUN MASIKU. In this case, on January 9, 2020, the Corruption Eradication Commission has named 4 (four) suspects, namely WAHYU SETIAWAN as KPU Commissioner, AGUSTIANI TIO FRIDELINA, SAEFUL BAHRI and HARUN MASIKU, however, until now the whereabouts of the suspect HARUN MASIKU are unknown (on the run). self makes the process of handling the case against the suspect HARUN MASIKU unclear and there is no legal certainty, even though the three other suspects have undergone the trial process and have been decided by the Court and have permanent legal force [2].

As time goes by, in accordance with Article 38 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption, trials of corruption cases can be examined and decided without the presence of the defendant who has been legally summoned but is not present without a valid reason. This provision is a deviation from the Criminal Procedure Code (KUHAP) which requires defendants to be present at trial except for examinations of cases of minor criminal offenses and cases of road traffic violations as intended in Article 214 paragraph (1) of the Criminal Procedure Code. However, this provision does not apply at the stage of investigation and prosecution of corruption cases.

The explanation of Article 38 paragraph (1) of the Corruption Eradication Law states that the provisions in this paragraph are intended to save state assets, so that even without the presence of the defendant, cases can be examined and decided by a judge. The explanation of this article is to provide the possibility of resolving corruption cases where the defendant does not appear before the court so that they can be decided in the interests of saving the State's finances.

The principle of the importance of the defendant's presence at the trial is regulated in Article 1 number 15 of the Criminal Procedure Code which states that: "A defendant is a suspect who is charged, examined and tried in court". And Article 189 paragraph (1) of the Criminal Procedure Code also states that "The defendant's statement is what the defendant states in court about the actions he committed or that he personally knows or has experienced." It is further confirmed in Article 196 paragraph (1) of the Criminal Procedure Code which states that: "The court decides cases in the presence of the defendant unless this Law provides otherwise" [3].

The presence of the defendant in the examination of a criminal case is essentially to provide space for the defendant as a human being who has the right to defend himself and defend his rights to freedom, property, or honor. The main aim is so that the defendant can correctly understand what is being charged, the testimony of witnesses, expert statements, and other evidence, so that the defendant can freely provide answers and present his defense. Thus, the defendant has the right to be presumed innocent if he has not been sentenced by the court to a sentence that has definite force, in foreign terms it is called "presumption of innocence". Allowing examinations without the presence of the defendant indirectly violates the principle of the defendant's presence before the court which results in the failure to fulfill the right to equal treatment before the law, the principle of presumption of innocence and the principle of receiving legal assistance. However, considering the practices carried out by defendants to avoid prosecution and court decisions, this is the basis for allowing trials in absentia.

Examination of criminal cases in court without the presence of the defendant is not something new in the criminal justice system in Indonesia, because before the existence of the Criminal Procedure Code, these provisions had been specifically regulated in the Economic Crimes Law. In practice, trials in absentia in cases of criminal acts of corruption are not something new. The procedural law in force in Indonesia has placed a suspect as a complete human being, who has honor, dignity and self-respect as well as human rights that cannot be taken away from him, including: the suspect's right to provide information freely, the right to obtain legal assistance from a legal advisor, to present favorable witnesses, to demand compensation and rehabilitation as regulated in Articles 51-68 of the Criminal Procedure Code [4].

There is a legal vacuum regarding the in-absentia investigation of corruption cases in Indonesia. This can provide benefits for perpetrators of corruption crimes because the absence of the suspect can be used as an excuse not to continue the investigation and transfer the case from the investigator to the public prosecutor, so that there is no legal certainty and justice in efforts to eradicate criminal acts of corruption and recover state financial losses. On the other hand, if the investigation is carried out without examining the suspect, whether the results of the investigation have met the requirements so that it can be declared complete (P-21) by the public prosecutor. Bearing in mind that when examining the results of an investigation, the public prosecutor examines whether the case files have met the formal and material requirements. Formal completeness is related to the administrative completeness of the case, while material completeness is related to the substance of the case evidence.

The results of the investigation which was carried out without examining the suspect are certain that in the case file there is no Minute of Investigation of the Suspect (BAP). Then what about the application of Article 56 of the Criminal Procedure Code which regulates the obligations of officials at all levels of investigation, in this case investigators, to appoint legal advisors in the event

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that the suspect is suspected of committing a criminal offense that is punishable by the death penalty or a sentence of fifteen years or more. Furthermore, if the investigation is still carried out without examining the suspect, then in accordance with the provisions of Article 8 paragraph (3) letter b of the Criminal Procedure Code, the transfer of the case from the investigator to the public prosecutor cannot be carried out because the investigator cannot hand over the suspect. From these several things, it is increasingly interesting to study the provisions regarding in absentia investigations in cases of criminal acts of corruption which are not yet regulated in Indonesian laws and regulations [5].

II. RESEARCH METHODS

In this research the author uses a post-positivism paradigm, a paradigm which views that legal science does not only deal with statutory regulations. Law is something that must be applied and is more likely to not question the value of justice and its usefulness for society.

The type of research used to complete this is a normative juridical research method, namely research that examines by conducting research sourced from literature studies which are secondary data. Secondary data sources include primary legal materials, secondary legal materials, and tertiary legal materials. The data obtained was then analyzed using qualitative descriptive methods.

III. RESULTS AND DISCUSSION

The stages in resolving a criminal corruption case start from the inquiry stage, inquiry, prosecution, examination at court, to the implementation of the decision (execution). According to R. Subekti and R. Tjitrosoedibio, justice is everything related to the State's duty to uphold law and justice. The use of the term Judiciary (*rechtspraak/judiciary*) refers to the process of providing justice to uphold the law (*het rechtspreken*), while the court is addressed to the body or institution that provides justice. In criminal cases, justice can be interpreted. As a process related to the authority of the judiciary in examining and adjudicating a criminal case based on the indictment of the public prosecutor and the defense submitted by the defendant and/or his legal advisor to seek material truth based on the facts in the trial.

According to Article 2 of Law Number 48 of 2009 concerning Judicial Power, the state judiciary implements and enforces law and justice based on Pancasila, which is carried out simply, quickly and at low cost as regulated by law. It is further explained in Article 12 that the court examines, tries, and decides criminal cases in the presence of the defendant, unless the law provides otherwise. If the defendant is unable to attend, while the examination is declared to have been completed, the decision can be pronounced without the defendant being present [6].

The principle that the defendant must be present at the examination is also regulated in Article 154 paragraph (1) to paragraph (4) of the Criminal Procedure Code which basically states that the Chief Judge of the Session orders that the defendant be summoned and presented in a free state if in detention. Then, if the defendant is not detained and the defendant does not appear at the examination, the Presiding Judge at the trial will examine whether the defendant has been legally summoned. Furthermore, if the defendant has been legally summoned, the Chief Judge of the Session will postpone the trial and order the defendant to be summoned again to appear on the next trial day. Then, if it turns out that he has been legally summoned but is not present without a valid reason, the examination cannot take place and the Chief Judge of the Session orders that the defendant be summoned again. Furthermore, paragraph (6) stipulates that the public prosecutor must forcibly present a defendant who is not present without a valid reason after being legally summoned for the second time.

The principle that the defendant must be present at the examination is emphasized in Article 196 paragraph (1) of the Criminal Procedure Code which basically states that the court decides the case with the presence of the defendant unless the law determines otherwise, as in cases of criminal acts of corruption. Where according to Article 38 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. States that "In the event that the defendant has been legally summoned and does not appear at the court hearing without a valid reason, the case can be examined and decided without his presence". This examination without the presence of the defendant (trial in absentia) was established to save and restore state assets, so that even without the presence of the defendant, the case can be examined and decided by a judge (see explanation of Article 38 paragraph (1) of the Crime Eradication Law Corruption) [7].

In judicial practice in Indonesia, there have been many cases of criminal acts of corruption in which the perpetrator of the crime was found guilty, even though the suspect was not questioned/did not attend the examination at the investigation stage, including the Jepara District Court Decision Number: 1/Pid.B/2003/PN.JPR dated 15 April 2003, Decision of the Sidoarjo District Court Number: 630/Pid.B/2010/PN.Sda dated 09 December 2010, Decision of the Corruption Crime Court at the Mamuju District Court Number: 13/Pid.Sus-TPK/2018/PN Mamuju dated 12 December 2018. However, there are also courts that reject the prosecution of the Public Prosecutor on the grounds that the suspect was not questioned/did not attend the examination at the investigation stage, namely the Decision of the Corruption Crime Court at the Manokwari District Court Number: 28/Pid.Sus-TPK/2020/PN.Mnk December 8, 2020.

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Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes has regulated case examinations without the presence of the defendant in court. However, examining cases at the investigation stage in absentia is not regulated in the Corruption Eradication Law or in the Criminal Procedure Code (KUHAP) [8].

The existence of a legal vacuum regulating the in-absentia investigation of corruption cases has a big impact on the effectiveness of eradicating corruption in Indonesia and can provide benefits for perpetrators of corruption crimes, because it can be used as an excuse not to continue the investigation and transfer the case from investigators to the public prosecutor. Moreover, since the Constitutional Court Decision Number 21/PUU-XII/2014, which in its consideration requires the examination of potential suspect witnesses before determining a witness as a suspect. Such conditions are very inconsistent with the spirit of eradicating corruption as stated in the preamble to the Law on the Eradication of Corruption Crimes which states that criminal acts of corruption need to be classified as crimes whose eradication must be carried out in an extraordinary manner [9].

The analysis of this problem when linked to the legal system theory of Lawrence M. Friedman is very appropriate, which sees the legal system as consisting of three components of the legal system which are very important for the efficiency and success of law enforcement. Law enforcement officers pay attention to legal structures, statutory documents as legal substance and community compliance with the law is reflected in their legal culture. These three components also support the running of the legal system in a country. If the current regulations for in absentia examination of corruption cases are linked to Lawrence M. Friedman's theory of the legal system, then the weaknesses of the current regulations for in absentia examination of corruption cases can be described as follows:

A. Weaknesses of Legal Structure

The stages in resolving a criminal case start from the investigation, investigation, prosecution, court hearing (trial) to the implementation of the decision (execution). whether or not it is suspected that a criminal offense has occurred. Therefore, the existence of the investigation stage cannot be separated from the existence of statutory provisions that regulate criminal acts. In handling corruption cases, the Police Agency is not the sole investigator, there are other institutions that have the authority to investigate corruption cases, namely the Prosecutor's Office and the Corruption Eradication Commission.

The more investigators/investigators of criminal acts of corruption, the better they will be in the task of eradicating corruption, because one institution alone is not capable of carrying out investigations/corruption investigations considering that the area is very broad and can even be said to be unlimited. This is different from the authority for prosecution and execution which is only owned by The Public Prosecutor (Jaksa), although there is a dualism in controlling prosecution, namely prosecution by the Public Prosecutor who is controlled by the KPK and prosecution by the Public Prosecutor who is under the control of the Prosecutor's Office [10].

Likewise, the only person who has the authority to examine, try and decide cases of criminal acts of corruption is the Corruption Crimes Court. The existence of a legal vacuum regarding the regulation of in absentia investigations into cases of criminal acts of corruption, if related to this, clearly has a big impact on the effectiveness of eradicating corruption in Indonesia, because the absence of witnesses as potential suspects and/or suspects can be used as a reason for investigators not to continue the investigation and hand over the case from the investigator to the prosecutor. general because there is no legal basis. On the other hand, if the investigation is carried out without examining the suspect, whether the results of the investigation have met the requirements so that it can be declared complete (P-21) by the Public Prosecutor. Bearing in mind that in conducting research on the results of investigations, the Public Prosecutor examines whether the case files have met the requirements for formal and material completeness. Furthermore, if the investigation is still carried out without examining the suspect, then in accordance with the provisions of Article 8 paragraph (3) letter b of the Criminal Procedure Code, the transfer of the case from the Investigator to the Public Prosecutor cannot be carried out because the Investigator cannot hand over the suspect [11].

Furthermore, if the investigation is still carried out without examining the suspect and the transfer of the case from the Investigator to the Public Prosecutor is carried out without the presence of a suspect, can such an investigation and prosecution process be immediately accepted by the Court, because in practice there are panels of judges who take issue with the absence of suspects at the investigation stage and prosecution. The existence of a legal vacuum regarding the regulation of in absentia investigations into cases of criminal acts of corruption, in principle, can give rise to differences in interpretation between law enforcement officials ranging from Investigators, Public Prosecutors to Judges, each of whom has inherent authority in examining cases of criminal acts of corruption, especially in examining cases. witnesses who are potential suspects, suspects and defendants are not present even though they have been legally summoned without giving a proper and reasonable reason [12].

B. Weaknesses of Legal Substance

The Corruption Eradication Law is a type of Legislation. According to Bagir Manan, Legislative Regulations are every written decision made, stipulated, and issued by state institutions and/or officials who have (carry out) legislative functions in accordance with the procedures prescribed Article 26 of the Law on the Eradication of Corruption Crimes stipulates provisions regarding

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investigation, prosecution, and examination in Court in cases of criminal acts of corruption that if it is not otherwise stipulated in the Law on the Eradication of Crimes of Corruption, the provisions regarding investigation, prosecution and examination in Court apply. as regulated in the Criminal Procedure Code [13].

As previously explained, the examination of cases at the investigation stage in absentia is not regulated in the Corruption Eradication Law, whereas in the Criminal Procedure Code it is determined in principle that the examination of defendants at the investigation stage is carried out in the presence of the suspect. However, the Criminal Procedure Code does not regulate when witnesses (potential suspects) and/or suspects who have been properly summoned do not appear to be questioned to hear their statements. In the preamble to the Law on the Eradication of Corruption Crimes, it is stated that criminal acts of corruption which have occurred so far have not only been detrimental to state finances but have also constituted a violation of the social and economic rights of society at large [14].

In the practice of investigating corruption cases, it is very possible that a potential witness and/or suspect, even though he has been properly summoned according to law, will deliberately not attend the investigator's summons with the aim of avoiding the law enforcement process. In fact, in cases of criminal acts of corruption, normatively positivist suspects have the obligation to provide information about all their assets as regulated in Article 28 of the Law on the Eradication of Corruption Crimes. Thus, the absence of potential suspect witnesses and/or suspects who have been properly summoned according to law in order to fulfill legal obligations as regulated in Article 28 of the Corruption Eradication Law is a violation of the fair law enforcement process (due process of law), so that protection of the social and economic rights of the community from the impacts caused by criminal acts of corruption cannot be implemented properly and the concept of justice which is carried out simply, quickly and at low cost as regulated in the Basic Law on Judicial Powers and the Criminal Procedure Code also cannot run smoothly. This is completely inconsistent with the Pancasila concept of justice as stated in the fifth principle of Pancasila which reads "Social justice for all Indonesian people". What is meant by "social justice" in the fifth principle of Pancasila is that it does not look at who, but all people who have the identity as Indonesian people have the right and guarantee to obtain social justice [15].

Examination of cases without the presence of the defendant in court is regulated in Article 38 paragraph (1) of the Corruption Eradication Law which states that: "In the event that the defendant has been legally summoned and does not appear at the court hearing without a valid reason, the case can be examined and terminated without his presence. This arrangement does not have substantial requirements because it only requires that the Public Prosecutor has issued a valid summons, but the defendant is not present. These requirements seem to make it easier for Public Prosecutors and Judges to submit and determine case trials in absentia. This also ignores the human rights of the defendant, which is in accordance with the explanation of the Criminal Procedure Code as criminal procedural law which revises the old criminal procedural law regulated in the HIR which prioritizes guarantees and protection of human rights for suspects or defendants at every stage of the criminal legal process.

In the explanation of Article 38 paragraph (1) of the Corruption Eradication Law, it only explains the purpose of examining cases without the presence of the defendant to save state assets. According to the author, such an explanation can give rise to different meanings or interpretations. For example, the Panel of Judges at the Corruption Crime Court at the Manokwari District Court stated that they rejected the prosecution by the Public Prosecutor on the grounds that the suspect was not questioned/did not attend the examination at the investigation stage and that no property belonging to the defendant was confiscated to compensate for state financial losses [16].

Saving state assets should not be interpreted as having to have property belonging to the suspect confiscated at the investigation stage, because property that can be confiscated during the investigation is property that is related to a criminal act committed by the suspect or defendant as regulated in Article 39 paragraph (1) Criminal Procedure Code. Saving state assets can be carried out using the instrument Article 18 paragraph (1) letter b of the Corruption Eradication Law, which regulates the additional penalty of paying compensation in the maximum amount with assets obtained from criminal acts of corruption, after the case is decided. and has permanent legal force. With the instrument of Article 18 paragraph (1) letter b of the Corruption Eradication Law, the prosecutor as the executor can confiscate property belonging to the convict, not only property related to the criminal act of corruption committed by the convict, but also all property belonging to him. The convict may be confiscated to cover the replacement money in the amount appropriate to the criminal act of corruption committed by the convict [17].

CONCLUSIONS

The current regulations for investigating corruption cases are not fair because there is a legal vacuum regarding the regulation of investigating cases without the presence of the suspect (investigation in absentia) in corruption cases which has an impact on the effectiveness of eradicating corruption crimes and can provide benefits for perpetrators of corruption crimes, because can be used as a reason for not continuing the investigation and transferring the case from the investigator to the public prosecutor, so that there is no legal certainty and justice in efforts to eradicate criminal acts of corruption and recover state financial losses.

The Law on the Eradication of Corruption Crimes as a formal and material law which is the main reference in eradicating corruption, still contains several weaknesses, especially the regulation of in absentia examinations, namely the existence of a legal

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vacuum regulating the in-absentia investigation of cases of criminal acts of corruption which can give rise to differences in interpretation between officials. law enforcers ranging from Investigators/Investigators, Public Prosecutors to Judges, each of whom has inherent authority in examining cases of criminal acts of corruption, especially in examining cases in which potential suspects, suspects and accused witnesses are not present even though they have been legally summoned without giving a proper reason. and reasonable. The existence of a legal vacuum regulating in absentia investigations of corruption cases can be used by perpetrators of corruption crimes to evade the law enforcement process by running away.

It is necessary to amend the Corruption Eradication Law to add provisions that regulate the exclusion of examining witnesses before being named as suspects on condition that the witness (potential suspect) has been legally summoned 2 (two) times and is not present without giving a proper reason and reasonable.

Procedures/mechanisms for examining cases without the presence of the suspect, namely in the event that the suspect does not comply with the summons and has been legally summoned 2 (two) times without giving a proper and reasonable reason, the investigator will take action in the form of announcing the summons in national and/or international media. , proposed that the suspect be included in the wanted list; and request assistance from the authorities to be recorded in a red notice.

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