

# **Criminal Liability For Corruption Defendants Who Are Tried In Absentia (Study of Decision Number 6/Pid.Sus-TPK/2020/PN.Jkt.Pst)**

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## **Abstract**

This research departs from the phenomenon of perpetrators of corruption crimes who flee so that the trial process cannot be attended by the defendant, but the state still needs to ensure legal certainty and save state losses through the in absentia examination mechanism. The problems studied include the legal arrangement of the defendant who escaped and the application of criminal liability in Decision Number 6/Pid.Sus-TPK/2020/PN.Jkt.Pst reviewed from the legal objectives and protection of the defendant's human rights as well as the judge's legal considerations in making the decision. This research uses normative legal methods through a legislative approach and a case approach. The results of the study show that the authority to examine cases without the presence of the defendant, as stipulated in Article 38 paragraph (1) of the Corruption Law, is a juridical step to prevent the obstruction of the judicial process and still provide space for the fulfillment of the defendant's basic rights. Analysis of the decision shows that the mechanism in absentia in Decision Number 6/Pid.Sus-TPK/2020/PN.Jkt.Pst is in line with the principles of legal certainty, usefulness, and still pays attention to the principles of justice. This study recommends that law enforcement officials strengthen legal summons procedures and documentation of judicial processes as a form of human rights protection in the application in absentia.

**Keywords:** *Criminal Liability, In Absentia, Corruption*

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**2nd International Conference on Islamic Community Studies (ICICS)**

**Theme: History of Malay Civilisation and Islamic Human Capacity and Halal Hub in the Globalization Era**

## Introduction

The state of Indonesia is a state of law that upholds the principles of justice, order, and legal certainty. Our country is a country based on law, not by power [1]. Corruption is a serious threat to the development of the law and the welfare of the community because it has damaged the government system and public trust [2]. One of the criminal acts that has received wide attention in law enforcement is corruption, because "one of the criminal acts that can be said to be quite phenomenal is the problem of corruption" [3]. The phenomenon of corruption in Indonesia is not only reflected in the magnitude of state financial losses, but also in the attitude of perpetrators who are often uncooperative with the law enforcement process. In various cases, defendants of corruption crimes are known to choose to flee or avoid the judicial process after their actions are revealed. This condition has an impact on the obstruction of the case examination process, considering that the criminal procedure law in principle requires the presence of the defendant in the trial as interpreted in Article 1 number 15 of the Criminal Code [4].

Corruption in Indonesia develops systematically and widely, both in the number of cases, the value of state losses, and the perpetrators involved. The government has made various efforts to eradicate it through the establishment of special laws, KPK institutions, and corruption courts [5]. One of the important legal instruments is the examination of the case in *absentia*, which is the examination without the presence of the accused who has escaped or whose whereabouts are unknown, as stipulated in Article 38 paragraph (1) of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes [6]. The implementation of the in *absentia* mechanism is a step to maintain the effectiveness of law enforcement and prevent corrupt actors from avoiding criminal liability. One example is in the Central Jakarta District Court decision Number 6/Pd.Sus-TPK/2020, where the defendant was sentenced to death even though he was a fugitive [7]. Based on this background, the author is interested in further research with the title: "Criminal Liability for Corruption Defendants Who Are Tried in Absentia (Study of Decision Number: 6/Pid.Sus-TPK/2020/PN.Jkt.Pst)".

## Literature Review

### 2.1 In Absentia Trials in Criminal Law

The principle of *in absentia* trials refers to criminal proceedings conducted without the physical presence of the defendant in court. In general criminal procedure, the presence of the defendant is considered fundamental to ensure the protection of procedural rights, particularly the right to defense and the principle of *audi alteram partem*. However, in certain circumstances, modern legal systems allow *in absentia* trials as an exception, especially when the defendant deliberately avoids judicial proceedings.

In Indonesian criminal law, *in absentia* trials are recognized as a special mechanism in corruption cases. Article 38 paragraph (1) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 on the Eradication of Corruption Crimes explicitly permits the examination and adjudication of corruption cases without the presence of the defendant, provided that the defendant has been lawfully summoned but fails to appear without legitimate reason. This provision reflects the extraordinary nature of corruption as a crime that threatens public interest and state finances.

### 2.2 Justification for In Absentia Trials in Corruption Cases

Corruption is classified as an *extraordinary crime* due to its systemic nature and its significant impact on state finances, public welfare, and governance. Consequently, extraordinary legal measures, including *in absentia* trials, are justified to ensure the effectiveness of law enforcement and prevent perpetrators from evading justice.

Several scholars argue that *in absentia* trials are necessary when defendants intentionally abscond or become fugitives to delay or obstruct legal proceedings. Without such a mechanism,

corruption cases could stagnate indefinitely, resulting in legal uncertainty and potential loss of state assets. Therefore, *in absentia* proceedings serve as a preventive and repressive legal instrument to maintain judicial efficiency and uphold the rule of law.

Nevertheless, academic discourse also highlights that the use of *in absentia* trials must be carefully balanced against fundamental human rights principles. The exceptional nature of such trials requires strict adherence to procedural safeguards to prevent arbitrariness and abuse of power.

### **2.3 Criminal Liability and the Principle of Individual Responsibility**

Criminal liability in corruption cases is based on the principle of individual culpability, which requires proof of both *actus reus* (the unlawful act) and *mens rea* (criminal intent). The absence of the defendant during trial does not eliminate the obligation of the prosecution to establish all elements of the crime beyond reasonable doubt.

Legal scholars emphasize that *in absentia* trials do not alter the substance of criminal liability but only affect the procedural aspect of adjudication. Judges must remain cautious and objective in assessing evidence, witness testimony, and documentary proof, even in the absence of the defendant. The burden of proof remains entirely on the prosecution, and the presumption of innocence must still be upheld.

This principle is particularly relevant in corruption cases, where complex financial evidence and administrative documentation are often central to proving criminal responsibility.

### **2.4 Tension Between In Absentia Trials and the Rights of the Defendant**

One of the most debated issues in *in absentia* trials is their compatibility with the protection of defendants' rights, especially the right to be present at trial and the right to defense. The Indonesian Criminal Procedure Code (KUHAP) emphasizes the importance of the defendant's presence during trial proceedings, which creates normative tension with the provisions of the Anti-Corruption Law.

Scholars argue that this conflict can be resolved through the application of the *lex specialis derogat legi generali* principle, whereby the Anti-Corruption Law prevails over general criminal procedure rules. However, this does not eliminate concerns regarding fair trial standards, particularly when defendants are unable to present counterarguments or challenge evidence directly.

To mitigate these concerns, legal doctrine suggests that *in absentia* trials should only be conducted after repeated lawful summons, public announcements, and clear evidence that the defendant is intentionally evading justice.

### **2.5 Judicial Practice and Case Law Analysis**

Judicial practice in Indonesia demonstrates that courts tend to apply *in absentia* trials cautiously, especially in corruption cases involving fugitives. Judges generally emphasize procedural compliance, including proof of lawful summons and the defendant's status as a fugitive, before proceeding with trial and sentencing.

Decision Number 6/Pid.Sus-TPK/2020/PN.Jkt.Pst illustrates how the court assessed criminal liability despite the defendant's absence. The decision reflects judicial reliance on documentary evidence, witness testimony, and expert opinions to establish the defendant's guilt. This case reinforces the notion that *in absentia* trials do not diminish the standard of proof required to impose criminal sanctions.

Moreover, such decisions highlight the practical importance of *in absentia* trials in enabling asset recovery and the imposition of additional penalties, such as restitution and confiscation, which are crucial in corruption cases.

## 2.6 Implications for Law Enforcement and Legal Certainty

The literature indicates that *in absentia* trials play a significant role in strengthening corruption eradication efforts by ensuring that legal processes are not paralyzed by the absence of defendants. From a law enforcement perspective, this mechanism enhances legal certainty and supports the recovery of state losses.

However, scholars caution that the legitimacy of *in absentia* verdicts depends heavily on procedural fairness and transparency. Failure to uphold these principles may undermine public trust in the judiciary and raise concerns regarding human rights protection.

Based on existing literature, *in absentia* trials in corruption cases represent a legally justified yet exceptional mechanism within Indonesian criminal law. While they are essential to prevent impunity and ensure effective corruption eradication, their application must strictly adhere to due process and fair trial principles. The analysis of Decision Number 6/Pid.Sus-TPK/2020/PN.Jkt.Pst provides an important empirical foundation for understanding how courts balance criminal liability, procedural efficiency, and the protection of defendants' rights in *in absentia* corruption trials.

## Research Methodology

This study uses Normative Legal Research Methods, namely research that focuses on the study of legal principles, laws and regulations, and court decisions related to the mechanism *in absentia* in the Corruption Act. The approach used is:

1. The Statute Approach, which is to examine the provisions in Law Number 31 of 1999 jo. Law Number 20 of 2001, the Criminal Code, and other regulations relevant to the examination in the absence of the defendant.
2. Case Approach, which is to analyze Decision Number 6/Pid.Sus-TPK/2020/PN.Jkt.Pst as an object of research to see the application in *absentia* in judicial practice.
3. Conceptual Approach, which is to review the concept of criminal liability, the principle of *fair trial*, and the principle of protecting the human rights of defendants based on criminal law and human rights literature.

The source of legal materials consists of:

1. Primary legal materials: laws, court rulings, and official state documents.
2. Secondary legal materials: books, legal journals, expert opinions, and relevant doctrines.
3. Tertiary legal materials: legal dictionaries and encyclopedias.

All legal materials are analyzed qualitatively through the process of norm interpretation, systematization, and juridical reasoning to answer the formulation of the problem and draw research conclusions.

## 3.1 Problem Formulation

Based on the background that has been described, the formulation of the problem in this study is as follows:

1. How is the legal arrangement for the accused of corruption crimes who escaped (DPO) through an *In Absentia* examination in Court?
2. How is the application of criminal liability against the defendant who was tried in absentia in Decision No.6/Pid.Sus-TPK/2020/PN.Jkt.Pst reviewed from the purpose of the Law and Human Rights of the Defendant?
3. What are the judge's legal considerations in imposing a verdict against the defendant who was tried *in absentia* in Decision Number 6/Pid.Sus-TPK/2020/PN.Jkt.Pst?

## Results

### 4.1 Position Case

This case involves Honggo Wendaratno, as the President Director of PT Trans-Pacific Petrochemical Indotama (PT TPPI) in Tuban, East Java, together with BPMIGAS officials, namely Ir. Raden Priyono and Ir. Djoko Harsono, charged with abusing authority in the management of state condensate. From 2009 to 2011, PT TPPI received 33 million barrels of condensate worth more than USD 2.7 billion without going through a contract mechanism and a legal payment guarantee. The condensate is not processed into fuel needed by Pertamina, but is converted into other products that are sold to the private sector. As a result, the state suffered financial losses of USD 128,574,004.46 (*one hundred and twenty-eight million five hundred and seventy-four thousand four US dollars forty-six cents*) as the results of the audit of BPK RI Number 08/AUDITAMA/VII/PDTT/01/2016. Because Honggo Wendaratno fled and did not appear at the trial after being legally summoned, the case was continued in absentia based on Article 38 paragraph (1) of the Corruption Law. Through the Central Jakarta District Court Decision Number 6/Pid.Sus-TPK/2020/PN.Jkt.Pst, the defendant was sentenced to 16 years in prison, a fine of Rp. 1 billion, and compensation of USD 128,574,004.46 (*one hundred and twenty-eight million five hundred and seventy-four thousand four US dollars forty-six cents*), as well as the confiscation of assets for the state.

### 4.2 Facts and Juridical Analysis

#### 1. Legal Arrangements for Fugitive Corruption Defendants (DPOs) Through *In Absentia* Examination in Court

The legal arrangement for the accused of corruption crimes who escaped is regulated in Article 38 paragraph (1) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, which states: "*In the event that the defendant has been lawfully summoned and is absent from the court hearing without a valid reason, then the case can be examined and decided without his presence*". This provision emphasizes that if the defendant has been legally summoned but is absent without a valid reason, then the case can still be examined and decided without his presence (*in absentia*). This arrangement is an exception to the general principle of criminal procedure law, which basically requires the presence of the defendant in the trial as stipulated in Article 1 number 15 of the Criminal Code, which states that: "*The defendant is a suspect who is prosecuted, examined, and tried in a court hearing*" [8]. The existence of this exception is motivated by the nature of corruption crimes which are classified as extraordinary crimes, so extraordinary legal steps are needed to enforce it. Without a mechanism *in absentia*, law enforcement against escaped corrupt perpetrators will be delayed, and potentially result in a loss of public trust in the judiciary [9].

The purpose of the arrangement is to ensure legal certainty and the effectiveness of law enforcement, so that the judicial process is not hampered by the escape of the defendant. In addition, the *in absentia examination* is also an effort to protect the state's financial interests, because the postponement of the trial will only magnify the potential for state losses [10]. Nevertheless, the implementation of the *in absentia examination* must still pay attention to the principle of the defendant's human rights, namely the right to defend himself. Therefore, the summons of the defendant must be carried out legally, including through an announcement in the mass media or diplomatic representatives if the defendant is abroad [11].

#### 2. The Application of Criminal Liability to the Defendant who was tried *in Absentia* in Decision Number 6/Pid.sus-TPK/2020/PN.Jkt.Pst Reviewed from the Legal and Human Rights objectives of the Defendant

In the Central Jakarta District Court decision Number 6/Pid.Sus-TPK/2020/PN.Jkt.Pst, the defendant Honggo Wendaratno as the Director of PT Trans-Pacific Petrochemical Indotama (PT TPPI) was sentenced to 16 years in prison, a fine of Rp.1 billion, and an additional penalty

in the form of compensation of USD 128,574,004.46. The verdict was handed down after the defendant was proven to have abused his authority that resulted in state losses, even though the trial was conducted in *absentia*. The application of criminal liability in this case is based on Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption. The defendant's escape does not erase his criminal responsibility because according to the principle of "no crime without fault" (geen straf zonder schuld), each perpetrator remains responsible for the criminal acts he has committed [12].

When viewed from the legal objective according to Gustav Radbruch, which includes justice, legal certainty, and utility, the in *absentia* verdict against Honggo Wendaratno has reflected all three.

- a. In terms of justice, the judge makes a verdict based on valid evidence, so that the community and the state obtain justice for the state's financial losses.
- b. In terms of legal certainty, the application of Article 38 paragraph (1) of the Corruption Law shows that the law is strictly enforced and does not provide room for corrupt perpetrators to evade responsibility.
- c. In terms of benefits, in *absentia examinations* ensure that law enforcement runs effectively without relying on the presence of the defendant, while preventing state losses from getting bigger [13]

When viewed from a human rights perspective, the examination in *absentia* does not contradict the principle of *fair trial* as guaranteed in Article 28D paragraph (1) of the 1945 Constitution and Article 14 paragraph (3) letter d of the International Covenant on Civil and Political Rights (ICCPR). Each defendant retains basic rights that cannot be revoked, including the right to self-defense, the right to legal counsel, and the right to pursue legal remedies when caught at a later date [14]. As we know, the principle of the defendant's presence in this criminal case is based on the defendant's human rights as a human being who has the right to defend himself and defend his rights to freedom, property or honor [15]. Human rights are inherent from birth and cannot be revoked by any power. The state has a constitutional obligation to protect and guarantee the fulfillment of these rights through the law and judicial institutions [16]. Furthermore, the rights of the first generation as stated by Karel Vasak include the right to life, personal liberty, freedom from arbitrary detention, and the right to a fair judicial process (*Fair Trial*) [17].

However, in the *In Absentia* examination at the Central Jakarta District Court, this right could not be exercised because the defendant Honggo Wendaratno was not present in front of the trial. Even if a person has lost his or her freedom due to legal proceedings, the state is still obliged to respect and protect the basic rights concerned.[18]. This is considered not to violate Human Rights and is justified, because the defendant Honggo Wendaratno has been given the opportunity to defend himself in front of the court, however, this right is not used properly because the defendant Honggo Wendaratno fled with DPO status. The defendant Honggo Wendaratno, who has been legally summoned according to the law, but without a valid reason, the defendant Honggo Wendaratno is still not present in front of the trial, so the trial can still be continued. Although the defendant Honggo Wendaratno cannot exercise his rights at the examination stage at the trial, in Article 38 paragraph 5 of the Corruption Law, the defendant Honggo Wendaratno is still given the right to appeal against the decision of the Central Jakarta Court, which shows that the defendant who is tried in Court through an *In Absentia* examination is still upheld by his human rights to carry out legal remedies [20].

a. Procedural Considerations : Legal Summons and Fulfillment of Conditions In Absentia

The Panel of Judges first considered whether the examination without the presence of the defendant could be carried out. From the decision document, the judge stated that: The summons against the defendant was carried out in the following manner: 1) Legal, 2) Should,

3) Repeatedly. 4) Through residential and office addresses, 5) It was even announced to the mass media, 6) However, the defendant was not present without a valid reason.

The Assembly affirms that: "The defendant's absence was not due to inevitability, but because he fled abroad."

b. Therefore, the requirements for *implementation in absentia* according to Article 38 paragraph (1) of the Corruption Law are declared to have been met. Consideration of Elements of Corruption (Analysis of Elements of Articles)

The panel then outlined the fulfillment of the elements of the corruption crime indicted.

- 1) The element of "against the law"
  - a) The defendant received state share condensate without a valid contract,
  - b) Not qualified as a seller of condensate,
  - c) Failure to submit adequate payment guarantee (SBLC),
  - d) The appointment of PT TPPI was obtained through BPMIGAS irregularities, without an auction and a team study.

- 2) The Importance of "Harming the Economy"

The Assembly is based on:

- a) BPK RI Audit Report which determined state losses of USD 2,716,859,655.37
- b) The flow of the calculation of losses is explained in detail in the judgment
- c) Sales of condensate are not paid to the state
- d) The exhaust gas processing (off gas) was transferred to another company owned by the defendant, namely PT TLI.

- 3) Elements of "self-enrichment or corporation"

The judge affirmed:

- a) The defendant enriched PT TPPI,
- b) Enriching PT TLI,
- c) Enriching itself through profits from the sale of condensate processed products.

Total illegal profits calculated: SD 128,574,004.46.

c. Considerations Regarding the Central Role of the Defendant

The Panel considers that Honggo Wendaratno's position is very dominant as:

- 1) President Director of PT TPPI
- 2) President Commissioner of PT TLI
- 3) The main controller of the company's operational instructions
- 4) The owner of the authority determines the receipt of condensate, the processing process, and the sale

The judge stated that the act: "It would not have happened without the defendant's role and consent as the controller of the corporation." This is a strong basis for imposing criminal liability on the defendant, even though the corporation also makes a profit.

d. Consideration of Evidence (In accordance with Article 184 of the Criminal Code)

The Panel of Judges cited evidence in the form of:

Witness statements

- a) Witness BPH Migas
- b) BPMIGAS Witness
- c) Financial analyst witness
- d) Witness from Pertamina
- e) BPK auditor witness
- f) All describe the pattern of deviations and the active role of the defendant.

Letter

- a) Condensate seller appointment letter
- b) Memorandum internal BPMIGAS
- c) Audit report
- d) Contract documents created after 11 months of supply running
- e) Backdated agreement documents

Members

- a) Oil and gas expert
- b) State finance experts
- c) Criminal expert (elements against the law and state losses)

Instructions

It was obtained from the actions, documents, transaction flows, and relationships between companies owned by the defendant. The Panel emphasized that the evidence is interrelated and consistent, so that the elements of the crime are legally and convincingly proven.

e. Judge's Consideration of the Defendant's Absence (HAM & Fair Trial)

The judge stated:

- a) The defendant was still granted the right through a lawful summons,
- b) The defendant had the opportunity to defend himself but was not used,
- c) The defendant's escape cannot be used as a basis for postponing the examination.

The Assembly concluded: "This process does not violate the defendant's human rights because his basic rights have been granted in accordance with the applicable procedural law." This is the basis that *in absentia* remains in accordance with the principle of fair trial.

f. Considerations in Imposing a Crime

The Panel considers that the criminal must meet the purpose of the penalty, namely:

1. Legal certainty; Major corruption cases should not be stopped just because the defendant is on the run.
2. Benefits; The state has to recover a large amount of state losses.
3. Justice; Severe crimes are necessary considering that the act is very systematic, detrimental to the state, and carried out by people with high positions.

Therefore, the judge handed down:

- 1) Prison sentence: 16 years
- 2) Fine: IDR 1,000,000,000
- 3) Reimbursement: USD 128,574,004.46
- 4) Asset seizure of PT TLI
- 5) Deprivation of profits from LPG processed products

The judge emphasized that this punishment is proportional to the level of the state's errors, impacts, and losses.

g. Additional Considerations Regarding Systemic Corruption

The judge stated that this case is not just an administrative violation, but is: "Abuse of authority is carried out systematically through a series of policies that deviate from oil and gas regulations." This strengthens the judge's belief that the defendant had malicious intentions (mens rea) in receiving and processing state condensate for personal interests/corporate interests.

## Conclusion

Based on the results of the discussion on the legal arrangements and the application of criminal liability to defendants who are tried in absentia, it can be concluded that several things can be concluded as follows.

1. The legal arrangement for defendants of corruption crimes who escape through examination *in absentia* has been expressly regulated in Article 38 Paragraph (1) of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. This provision provides a legal basis for the court to continue to examine and decide the case in the absence of the defendant, provided that the summons has been lawfully made.
2. The application of criminal liability against the defendant who was tried in *absentia* in Decision Number 6/Pid.Sus-TPK/2020/PN.Jkt.Pst shows that the panel of judges still bases its decision on valid proof and the fulfillment of the elements of corruption. Even if the defendant is not present at the trial, the judicial process still pays attention to the principle of legal purpose, namely legal certainty, justice, and utility, and does not eliminate the defendant's human rights, considering that the absence is the result of the defendant's uncooperative attitude towards the judicial process.
3. The legal considerations of the panel of judges in imposing a verdict *in absentia* are based on the existence of a valid summons, the status of the defendant as a fugitive, and the adequacy of the evidence submitted by the public prosecutor. The judge considered that the examination without the presence of the defendant was a proportionate legal step to maintain legal authority and protect the interests of the state, especially in an effort to recover state financial losses due to corruption crimes.

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