

## In Absentia Enforcement Conception in Election Criminal Cases

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**Abstract:** This study will discuss how In Absentia is the conception of a criminal offence in the general elections, the purpose of this study is to know and analyze the conception of In Absentia's enforcement in election criminal case Public. The usefulness of research provides theoretical benefits, at least it can be useful as a donation of thought to the world of education. This type of research is normative research. The data analysis used in this study is the literature data or document study. The results of the study are known that the conception of in absentia enforcement in the case of election crimes contrary to protection and respect for human rights, the equation before the law and protection for Justice seekers is Respect for human rights that must be embodied in the electoral criminal proceedings, where human rights are the main pillars in each state of law, provisions of the Law No. 12 of 2005 on Covenant endorsement International rights of civil and political rights can be a reference in the judicial proceedings in absentia in an electoral criminal offence in order for the rights of citizens to be assured to obtain legal certainty and equality before the law.

**Keywords:** Conception, In Absentia, Election

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### I. INTRODUCTION

One of the principles of the defendant's examination in front of the court, requiring the public prosecutor "present" the defendant in the examination. However, there are times when the defendant is absent or better known by the term (*in absentia*). Term *in absentia* Derived from the Latin language *in absentia* or *absentium*, Which in the term and language of the law of Latin language means in a state of no presence or absence. In French called *absentia* And in English is called *absent* or *absentee*. (hamzah, 2008)

Against the prescribed trial, then the defendant's absence (*in absentia*) By itself resulted in the examination not possible until the defendant could be presented by the public Prosecutor. (Harahap, 2009)

However, KUHP himself opened an opportunity to perform a trial at the court without the defendant's presence (*in absentia*), As in article 196 paragraph (1) KUHAP states that "the Tribunal severs the matter with the presence of the defendant except in the event that this law determines otherwise". This applies to the examination of traffic and road violations as in article 214 paragraph (1) KUHAP states that "if the defendant or his deputy is not present at the hearing, the examination of the case is resumed".

Meanwhile, law No. 7 of 2017 on the general election in section 482 clause (1) stating that "the District court shall examine, prosecute, and discontinue the election criminal offence of 7 (seven) days after the delegation of the docket and Can be done without the defendant's presence".

The electoral law allows for inspection *in absentia*, However, it should be understood that the importance of the defendant's presence in the proceeding is affirmed in article 154 paragraph (4) and (6) KUHAP, as follows:

1. Article 154 paragraph (4) KUHAP stated that if the defendant has been called lawfully but did not come to the hearing without valid reason, the examination of the case could not be held and the presiding judge ordered that the defendant be called Again.
2. Article 154 paragraph (6) KUHAP states that the presiding judge ordered that the defendant who did not attend for no legitimate reason after being legally called for the second time, was presented by force at the next first hearing.

The provisions of the above articles show how important the presence of defendants in the trial examining him, so that lawmakers assume the need to reinforce with a threat to be presented by force. (Prakoso, 1984). As the criminal liability of a defendant in the proceeding shall also acquire the rights of the defendant, the presence of the defendant which is a manifestation of the rights of the defendant, with the intention that the defendant may defend the The alleged matter to him.

The problem that is often found in the electoral criminal investigation process is that a person has been designated as a suspect that cannot be known and found to exist, even though it has been called according to the

prevailing provisions. For that situation, investigators try to find and found the suspect as optimal as possible so that it can find it. But in reality it is often the sought-after suspect cannot be found in existence so that it is not possible to be brought by forced effort through arrest or detention.

If this condition continues until the prosecution and examination stage, then in the electoral law allows the implementation of the judiciary *in absentia* Can be checked and disconnected without the presence of defendants. Judicial *in absentia* Intended to be applied to the perpetrators of the criminal whose existence is unknown, but has been called legally or appropriately in accordance with the prevailing laws and regulations are done to the fullest extent possible.

Implementation of the judiciary *in absentia* In the case of election crimes should be implemented without violating the rights of defendants. However, as in the case of trial in the Jantjo state court on the basis of the 2019 general election, it is still carried out by the Electoral Criminal Justice Tribunal until the verdict in the first level.

Implementation of the judiciary *in absentia* It has an impact on the defendant who did not have the opportunity to be able to defend against the alleged criminal offense to him during the first-level proceedings, so that the principle of presumption is innocent (*Presumption of Innocence*) and principles of equality before the law (*equality before the law*) Not applied to defendants resulting in the loss of the defendant's rights in the judicial proceedings.

Based on the background above, it can be formulated in this research as how is the conception of enforcement *In Absentia* In the election criminal case.

## **II. LITERATURE REVIEW**

The type of research in the preparation of this writing is a type of normative research, normative legal research is also called doctrinal law research, often in the research of this law in the conceptualized as what is written in the Regulation Legal in books or law in the concept of a rule or norm which is a human-behaved benchmark that is deemed appropriate. The legal materials and data collection methods are by literature study or document study. The approach used in this research is a statutory approach as well as a concept analysis approach.

### **III. JUDICIAL IN ABSENTIA ON THE GENERAL ELECTIONS CRIMINAL CASE IN HUMAN RIGHTS PERSPECTIVE**

#### **A. *In Absentia* And the basic application of equality before the law in the Indonesian criminal justice system**

In legal terms, the court *in absentia* is an attempt to examine and adjudicate and decide on a matter without being attended by the defendant. (Prakoso, 1984) Term *in absentia* Formally started to be used in Indonesia with the exit of Law No. 11/PNPS/1963 on the eradication of subversion activities is called "*in absentia*" stated in Article 11 paragraph (1) stating that the : "If the defendant after the two consecutive calls are lawfully absent at the hearing, then the court of competent judge him outside his presence (*in absentia*)".

Term *in absentia* In its development is no longer referred to in various legislation products, but it is still regulated using the term "Not present" After being legally or appropriately called. These two terms are no different and contain the meaning of a process of examination and prosecute a person or several defendants before a court session and a ruling on the verdict without being attended by the defendant. A defendant may be sentenced to criminal law by a judge in court in a court proceeding *in absentia*. (Effendy, 2010)

One of the possibilities found in the electoral criminal proceedings is that someone who has been used as a suspect or defendant cannot be known to exist, even though it has been called according to the prevailing provisions. And much effort has been made to find the person who has been made the defendant.

If a person who has been assigned as a suspect has even become a defendant is not found, then if viewed from the procedure KUHAP examination can not be done because KUHAP does not justify judicial proceedings *in absentia* Regular screening and short event inspections. Without the presence of defendants in the trial, criminal investigations were not possible.

The presence of defendants in the examination of election criminal matters at the Court of Session is a very important principle in KUHAP. This is because KUHAP adheres to an accuser examination which means that the suspect or defendant is more regarded as the subject and the right to freely submit the defence.

Without the presence of the defendant at the Court of trial, judicial investigations were not possible. Therefore, the importance of how to present the defendant at the Court of Session as stipulated in article 154 KUHAP. In principle, article 154 mainly paragraph (2), (4) and (6) is the guideline to present the defendant in the proceeding to make the light and clear a thing that was to be accused on the defendant. The defendant's presence also as an attempt to fight or object to the prosecution. (Effendy, 2010)

Law number 8 year 1981 about *Criminal events Law*, In the context of principle in front of the law (*equality before the law*), This means that any law enforcement apparatus (at all levels of examination) is as its position with the suspect or the defendant according to KUHAP, even including the treatment given to each person (citizen) examined must obtain The same treatment, there is no difference about status, wealth, position and other. (Effendy, 2010)

In the absence of differences in the status of citizens (a suspect/defendant) according to KUHAP, then all actions, deeds, even the treatment of the attitude is different from the law enforcement officers who are not allowed by KUHAP to the suspect/defendant, is an act that does not reflect the principle of equality in the face of the law (*equality before the law*) In KUHAP. The principle on the basis of the law in Indonesia is a necessity, this consequence as Indonesia state law is very high esteem equality of every person in the face of law with no the exception.

## **B. Conception of applicability in absentia In the Election criminal act.**

In the trial to acquire the truth of material is to prove that the defendant has done the alleged deed and to then be sentenced, in principle the examination of the case of trial conducted Directly against the defendant and against the legitimate evidence filed in the hearing. The intention of the direct examination is to fulfill the purpose for the trial to actually be able to find the essential truth. Because, from the direct examination is not only the information of the defendant is heard and thorough, but also the attitude of the defendant how to give information, can determine the content and value of the description.

The principle of the defendant in this criminal matter is based on the human rights of the defendant as a human being entitled to defend themselves and defend its rights of freedom, its possessions or its honour. (Prakoso, 1984). Directly listening to the information of a defendant is an essential aspect for objectivity and the principle of impartiality. (Sujata, 2000)

The main purpose is for the defendant to understand exactly what is being accused, how the witnesses, experts and other tools of evidence, so that he is free to regulate his answers and his defense. The defendant can be faced with a direct and dialogue with the judge, so that the judge can also observe the real traits, attitudes and circumstances of the defendant. (Rukminin, 2003). However, in some criminal cases, the principle of defendants can be ruled out. The judge was made possible to present and sentenced the defendant to an absent. Such a trial is known as a trial *in absentia* (Trial without the defendant's presence).

Sociological, according to the sect *sociological jurisprudence* The trial procedures *in absentia* is justified. This validity is based on the assumption that with the policy *in absentia* Can change a desired social construction. For example cause a deterrent effect, return of state treasures or even voluntarily surrender the suspects who pursued the law enforcement officers. (Prihartono, 2003)

Policy on the implementation of judicial *in absentia* In Indonesia is in the Criminal Act Code of law. However, in the book of criminal proceedings itself is not expressly stated regarding the judicial *in absentia*, In the provisions of the relevant chapters or explanations.

However, in article 196 paragraph (1) and article 214 paragraph (1) and paragraph (2) of the criminal program code there are few arrangements *in absentia* namely article 196 paragraph (1) and article 214 paragraph (1) and paragraph (2). Despite the strict trial *in absentia* Not stated, but from these chapters it is possible to carry out the trial without the defendant's presence.

It is also evident from the words stating "except in the event that this law determines another". With these chapters, the judiciary can be applied *in absentia* In criminal justice elections, provided that the electoral law governing about the matter allowed a judicial *in absentia*.

Although it has been set up in the legislation, but in its implementation the judiciary *in absentia* Still there is a lack of incomplete arrangement of the judiciary. *in absentia* If it is in reference to Act No. 7 of 2017 on general election Article 482 subsection (1) stating that "the District court shall examine, prosecute, and discontinue the election criminal offence of 7 (seven) days after the delegation of the docket and Can be done without the defendant's presence".

Consideration of the completion of the electoral matter at least 7 (seven) days after the delegation of the case file and can be done without the defendant's presence. This resolution was strengthened by PERMA Number 1 year 2018 on the procedures of the general elections criminal settlement, in which article 3 paragraph (2) requires that the judge to attempt to make the time limit as referred to in paragraph (1) not be missed, if is deemed necessary to be able to convene at night so that the deadline for the completion of the case can run as it should.

Law No. 7 of 2017 on general elections and PERMA number 1 year 2018 on procedures of settlement of criminal acts of elections, caused the effect of law enforcement authorities to promptly resolve one case within 7 (Seven) days. The completion of the electoral criminal offence within the period of 7 (seven) days has an impact on the rights of the accused being neglected by the election LAW, where the right deprivation of the defendant in the advance of the electoral trial is not necessary to do because of the losses Defendant as the case of the number of

145/Pid.Sus/2019/PN Jth and 146/Pid.Sus/2019/PN Jth At the Jantho District Court which did not have a major impact on local democratic sustainability.

Trial *in absentia* In the event that the defendant has been called lawfully and the defendant is not present at the trial. But this chapter does not provide further arrangement of the provisions of the Ordinance of Callings, how the calling is declared valid and how the defendant's absence at the Court of Session is valid. In addition, this chapter also does not explain the technical arrangements undertaken by law enforcement to process defendants of the general election criminal *in absentia* Either the Ordinance or procedure of it. (Saputra, 2015).

Then related to the legitimate reason in the legislation also we are still a big problem. Determination of the reason is unclear and there are no technical rules regarding implementation *in absentia* At the completion of the Electoral criminal act, so that it is entirely dependent on the judgment of the judge to determine the legitimate or unenforceable reason for which the claimant is presented.

Law No. 7 of 2017 on general elections regarding the allowed *in absentia* As mentioned above, so the findings in the implementation of law enforcement in particular related to the application of provisions of article 482 paragraph (1) shall be a element of weakness in the rules of election criminal settlement. The weakness is getting stronger with no technical rules governing *in absentia* The Regulation No. 1 of 2018 on the procedures of the general election criminal settlement.

Chapters 482 verses (1) tend to deviate from the purpose of the law itself i.e. the principle of legal benefit and the principle of legal justice on the provisions of the general elections that should ideally accommodate both principles. Due to the implementation of Act No. 7 of 2017 on the general elections i.e. Article 482 paragraph (1) has an impact on the technical implementation of the hearing from the beginning to the stage of the ruling judge.

PERMA Number 1 of 2018 on the electoral procedures of the general elections criminal offence issued by the Supreme Court in principle to be the technical guideline for the election criminal settlement, but at the stage *in absentia* Not discussed regarding the procedures of the completion so as to cause confusion for the law enforcement officers, especially the judges who are in the case of elections.

General election provisions should be drafted on the basis of values, and legal principles that are general in order to meet the needs of the people in democracy. The principles of criminal law experience growth, and development according to change, and development in society. The growth of general principles of criminal proceedings is strongly influenced by the need for specific principles of criminal events from the law of aberrations that are dynamic.

Protection and respect for human rights are the main pillars in every state of law, if in a human rights country is neglected or infringed deliberately and the suffering caused cannot be resolved justly then The country in question cannot be said to be a legal state in the real sense.

Implementation of Law No. 7 of 2017 on general elections i.e. Article 482 paragraph (1) does not govern clearly and in detail so that the electoral law is contrary to protection and respect for human rights For the defendant who was in the process of the general electoral criminal *in absentia*, The electoral law allowed the defendant to be held in court for the purpose of law enforcement, even if the defendant did not exercise his rights. These reasons are not justified as long as they conflict with the basic purposes of the legal State under the Constitution 1945.

The equation before the law and protection for Justice seekers is a tribute to human rights that must be embodied in the electoral criminal justice process, where human rights are the main pillars in each legal state, if in A human rights country is neglected or infringed deliberately and the suffering caused cannot be resolved fairly then the state in question cannot be called the state of law in the real sense.

The electoral law does not reflect the legal product of a legal state if on the implementation of the provisions of the electoral law violates the defendant's human rights, the presence of the defendant in the case of the election is based on the defendant's human rights As a human being who has the right to defend himself and defend his rights of freedom, his possessions or his honour.

In that case the defendant suspected of committing crimes in the realm of elections has the right to be considered innocent as long as he has not been sentenced to have definite strength by the court (*presumption of innocence*). In addition, in the election criminal justice related evidence of an honest judicial court where every individual in the state of law deserves the same legal treatment (*equality before the law*) As contained in article 8 paragraph (1) of Law No. 48 year 2009 on judicial authority.

The Council of judges at the Jantho state court in the case of an election criminal act in 2019, namely by article number 145/Pid.Sus/2019/PN Jth On behalf of Rezky Munanda Alias Simon Alias Emon Bin Moeis Arsyad and matter the number 146/Pid.Sus/2019/PN Jth On behalf of Mawardi S Bin Gun Gun His second decision. To indicate that after the decision to be dropped without the defendant's presence, the content of the final sentence of the Tribunal shall instruct the Prosecutor to announce the ruling on the bulletin board of the Court Or the Aceh Besar district government office. The Tribunal shall refer to the provisions of the Court of Justice. *in absentia* (Without the defendant's presence) Corruption crime.

Consideration of the Tribunal as stipulated in the Law No. 31 of 1999 on corruption criminal Eradication Article 38 clause (3) states that the ruling being dropped without the defendant's presence is announced by the public Prosecutor on The court's announcement board, the local government's office, or notified to its power.

In this scope of judicial *in absentia* On the subject number 145/Pid.Sus/2019/PN Jth On behalf of Rezky Munanda alias Simon alias Emon bin Moeis Arsyad and Matter number 146/Pid.Sus/2019/PN Jth On behalf of Mawardi S Bin Gun Gun was closely related to the right to obtain *fair* trials at the stage of the conference in the Jantho District Court.

Judicial *in absentia* Against the second case above contrary to the International Convention on Civil and Political rights governing the minimum warranty of article 14 (3) (d), in which case the equation is fully mentioned, to be judged by the presence of the defendant (The judiciary may not *in absentia*) and to defend himself or through his own chosen law, to be advised of his rights, if he has no legal assistance, and to obtain the legal assistance appointed for him in which case the judiciary needs it, without Paid if he cannot afford to pay.

With respect to the substance or material governed, grouping of human rights under Law No. 39 year 1999 of human rights comprising the right to life, family rights and continuing descendants, the right to develop themselves, the right to Obtaining justice, the right to personal freedom, the right to security, the right to welfare, the right to participate in the Government, the rights of women, and the rights of children.

The right to obtain justice in the Indonesian criminal justice system cannot be violated even though law No. 7 of 2017 on the general elections governs *in absentia* where at this stage of the proceeding, the defendant has no right to Get justice by defending yourself. It is contrary to the human rights arrangement in Indonesia under the Constitution 1945, which confirms that to enforce and protect human rights in accordance with the principles of democratic law country.

Violations of human rights referred to in the implementation of the judiciary *in absentia* in the Election criminal act closely related to the provisions of the International Convention on Civil and Political Rights (*The International Covenant on Civil and Political Rights*) Which is one of the three international human rights instruments in the *International Bill of Human Rights*. The ICCPR is based on the rights set forth in the Universal Declaration of Human Rights / *Universal Declaration of Human Rights* (DUHAM) More broadly and with a more specific description.

Nevertheless, all human rights reflect restrictions on a certain level that a country deliberately made for its citizens. The rights and freedoms are scarce as absolute. So a country is allowed to restrict someone's right to absolute privacy when a country for example conducts a criminal offense investigation. (Smith, 2008)

Basically the provisions of the Law No. 12 of year 2005 on ratification of *international covenant on civil and political rights* (International Covenant on Civil and Political Rights) Can be a reference in the judicial process *in absentia* In an election criminal offence to ensure the rights of citizens are assured to obtain legal certainty and equality before the law.

#### IV. CONCLUSION

Conception of applicability *in absentia* In the case of election crimes contrary to the protection and respect of human rights the equation before the law and protection for the Seeker of justice is a respect for human rights that must be embodied in Election criminal justice process, Where human rights are the main pillars in any country of law, the provisions of the Law No. 12 of 2005 on International Covenant endorsement of civil and political rights can be a reference in judicial proceedings *in absentia* In an election criminal offence to ensure the rights of citizens are assured to obtain legal certainty and equality before the law.

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