


Application of the Principle in Absentia in the Election of Regional Heads

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Article Info	ABSTRACT
<p>Keywords: In the Absence Regional Elections, Remote Regional Elections, In Absentia Principle,</p>	<p>This study aims to analyze the application of the principle of in absentia in the election of regional heads (pilkada) in Indonesia. The research method used is normative law with a conceptual approach and analysis of laws and regulations, case studies, and empirical research results. The study identifies variations in interpretation and implementation in absentia between regions, evidentiary challenges, potential human rights violations, and their effectiveness in law enforcement. The results of the study show that the implementation of in absentia can accelerate the handling of election crimes, but also pose a risk of human rights violations and legal uncertainty. Policy recommendations include harmonization of regulations, strengthening the authority of Bawaslu, improving coordination of Gakkumdu, increasing resource capacity, strict supervision, as well as education and socialization to ensure the implementation of in absentia that is fair, accountable, and in accordance with the principles of the rule of law. This study concludes that the implementation of in absentia in regional elections requires serious attention to the legal basis, implementation practices, and its impact on human rights and the quality of democracy.</p>
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INTRODUCTION

In general, in absentia is a term of Latin origin, which means "in absentia". In the legal context, in absentia refers to the examination or trial of a case without the presence of the defendant (in civil and state administrative cases) or the defendant (in criminal cases) (Dian Agung Wicaksono et al., 2021). In criminal cases, the concept of in absentia refers to a situation when the defendant has been legally summoned but is not present at the trial without a valid reason, so the court conducts an examination without the defendant's presence.

In the criminal justice system, the presence of the defendant in the trial is a must to seek the truth of the material by applying the provisions of the criminal procedure law honestly and appropriately. The defendant must be presented by the public prosecutor in the examination at the court hearing. However, there are times when the defendant is not present on the predetermined trial day, which can hinder the examination process (Akli, 2020).

The application of the principle of in absentia allows the legal process to continue without having to wait for the physical presence of the suspect, thus ensuring continuity in the investigation process and speeding up the resolution of the case. An investigation in absentia can be carried out if the summons process has been carried out but the suspect is not present and does not provide a valid reason. The term in absentia began to be used

juridically in Indonesia with the issuance of Law Number 11/PNPS/1963 concerning the Eradication of Subversion Activities.

In the context of the regional elections, the application of the principle of *in absentia* is relevant in law enforcement against alleged election crimes. The Election Supervisory Agency (Bawaslu) seeks to increase the role of the Integrated Law Enforcement Center (Gakkumdu) in law enforcement related to election crimes, including through the implementation of justice *in absentia* (Hidayat, 2024). The concept of *in absentia* in law enforcement in the realm of regional elections and elections can be applied since the discovery of criminal acts by Bawaslu, and is supported by the provisions of laws and regulations with democratic nuances and Supreme Court Regulations (PERMA) which have a nomocratic dimension (Sahran Raden, 2024). However, there are still many interpretations related to the absence of the reported person at the time of the request for information at Bawaslu, which is a dilemma because Bawaslu does not have the authority to carry out forced pick-up efforts. 2024 will be a big political year in Indonesia because general elections (elections) will be held simultaneously (Department of Constitutional Law, 2023). Elections are an important momentum in the life of the country and democracy, but in its implementation it is often colored by various violations. One of the efforts to crack down on election violations is through the judiciary, including the examination of cases without the presence of the defendant (*In Absentia*).

In the context of criminal procedure law, an examination *in absentia* is an examination of a case without the presence of the reported party. The trial *in absentia* is to examine the case without the presence of the defendant, if the defendant has been present and then does not appear again, then the defendant is considered to have been present. In the Election Law, there is a difference in the handling of *in absentia* between the Election Law and the Election. In election regulations, the examination *in absentia* greatly affects the status of the reported person by being made a suspect if the reported person is suspected of committing an election crime and has never been present at the summons for investigation (Putri, 2015).

In absentia examination in criminal cases in court without the presence of the defendant is not new in the Indonesian criminal justice system. Since 2002, there have been 6 (six) corruption cases that have been examined and decided *in absentia* and all of them are defendants in the BLBI corruption case. Therefore, it is important to further review the application of the principle of *in absentia* in the election of regional heads.

The application of the principle of *in absentia* in the election of regional heads (*pilkada*) presents a series of complex problems that require serious attention. On the one hand, the concept of *in absentia* aims to speed up law enforcement and prevent impunity for election actors, but on the other hand, it has the potential to ignore the right of the defendant to defend himself and provide direct evidence (Lobubun et al., 2022).

Various legal interpretations regarding *in absentia* by various parties, such as Bawaslu, Gakkumdu, and the courts, also create uncertainty and potential abuse of authority. Bawaslu's limited authority in making coercive efforts against reported people who are not present adds to the obstacles in the application of this principle. In addition, the application of *in absentia* in the regional elections is very vulnerable to politicization so that it has the potential to damage public trust in the integrity of the election process and law enforcement agencies. Finally, trial *in absentia* increases the complexity of the proof, demanding high quality and

reliability of evidence to ensure fairness and accuracy of the verdict. These issues demand prudence, transparency, and accountability in the implementation of *in absentia* to ensure the protection of the rights of the defendants and the integrity of the elections.

METHOD

The methodology of this research is a normative research model, normative legal research is used to identify and generate new arguments, theories, and conceptions that are contrary to the norms of society and establish a single rule of law, legal principle, and legal doctrine (Deassy J.A. Hehanussa et al., 2023). The normative legal research method will be used to analyze the application of the principle of *in absentia* in the election of regional heads (pilkada) based on the background of the problems that have been described. This research will examine relevant laws and regulations, such as the Election Law and Bawaslu regulations, as well as relevant court decisions. The conceptual approach will be used to examine the concept of *in absentia* in criminal law and electoral law, as well as the principles of justice and human rights (Mukti Fajar & Yulianto Achmad, 2010). The analysis will focus on the interpretation of legal norms, the identification of potential norm conflicts, and the evaluation of the effectiveness and implications of the application of *in absentia* in the context of the elections. Secondary data, such as legal journals, books, and scientific articles, will be collected to support the analysis.

RESULTS AND DISCUSSION

The election of regional heads (pilkada) is an important pillar in the democratic system in Indonesia, which provides opportunities for the public to elect regional leaders directly. An honest, fair, and transparent electoral process is the essence of a healthy democracy (Margie Gladies Sopacua et al., 2023). However, in its implementation, the regional elections are inseparable from various problems, including the potential for election criminal violations.

In general, the principle of *in absentia* in the legal system, refers to a judicial process that can be carried out without the presence of the defendant (civil) or the defendant (criminal). The application *in absentia* is based on the efficiency and effectiveness of law enforcement, especially when the party who should be present deliberately avoids the legal process. In the context of criminal law, the presence of the defendant is ideally a must to ensure the truth of the material through a comprehensive examination process. However, in practice, the absence of the defendant can hinder the judicial process, so there is no option to maintain the continuity of law enforcement (Sofwan et al., 2021).

In the context of election law in Indonesia, the principle of *in absentia* has gained relevance in handling election crimes, including in the election of regional heads (pilkada) (Jimly Asshiddiqie, 2007). This is driven by the need to follow up on election criminal violations quickly and effectively, given the limited time to hold elections. The General Election Supervisory Agency (Bawaslu) has a central role in supervising and cracking down on election violations, and through the Gakkumdu Center, Bawaslu seeks to implement *Principle in absentia* to speed up the law enforcement process. Laws and regulations related to elections provide a legal basis for the implementation of *in absentia* in handling election crimes.

The principle of *in absentia*, in essence, is the embodiment of the principles of efficiency

and effectiveness in law enforcement. In a criminal context, the presence of the defendant is considered important to achieve material truth. However, when the defendant deliberately avoids the legal process, the principle of *in absentia* is present as a solution to prevent impunity and ensure the continuity of justice. Theoretically, the application of *in absentia* intersects with the concept of legal circumstances (*Rechtsstaat*) which emphasizes legal certainty (*Rechtssicherheit*) and the principle of equality before law (*Equality before the law*) (Winarno et al., 2021).

Law enforcement against election criminal violations is very important to maintain the integrity and legitimacy of the elections. In this law enforcement effort, the principle of *in absentia* is one of the issues that attracts attention. *In absentia*, which means "in absentia", refers to the examination or trial of a case without the presence of the reported person or the defendant. The application of this principle in the context of regional elections raises various questions and debates, especially related to the balance between the effectiveness of law enforcement and the protection of individual rights (Ali, 2016).

In the Election Law, the concept of justice *in absentia* is known, but it is not so in the Election Law. This difference in regulations can make it difficult to prove criminal acts in the 2024 Simultaneous Elections. Bawaslu is limited by regulations in conducting inspections. For example, if a candidate for regional head is suspected of committing a violation, but is not present when summoned by Bawaslu, then the person concerned can be disqualified without further examination. However, in election regulations, the absence of the reported person can result in the determination of suspect status if suspected of committing an election crime.

The application of *in absentia* in the enforcement of the Election Law has potential benefits, such as speeding up the legal process, ensuring legal certainty, and saving state assets from corruption. However, on the other hand, the application of *in absentia* also poses challenges, such as potential violations of the defendant's right to self-defense, difficulty in proof, and vulnerability to politicization.

Juridically, in Indonesia, the concept of *in absentia* has been known for a long time, especially in criminal cases. Law No. 11/PNPS/1963 concerning the Eradication of Subversion Activities is one of the initial milestones of recognition in *in absentia* in positive law. In the context of the election law, Law Number 7 of 2017 concerning General Elections, along with its implementing regulations, provides a legal basis for the application of *in absentia* in handling election crimes. Although it does not explicitly mention the term *in absentia*, the provisions regarding the process of examination and settlement of election disputes provide room for interpretation of the application of this principle (Pattuju, 2020).

Although it has a strong legal basis, the application of the principle of *in absentia* in the regional elections faces special challenges. First, the various interpretations of the law associated with *in absentia* create uncertainty and the potential for abuse of authority. Second, there is a dilemma between the effectiveness of law enforcement and the protection of the defendant's human rights, which has the potential to be ignored. Third, the restriction of Bawaslu's authority in forcing the presence of the reported person hinders the law enforcement process. Fourth, the implementation in *in absentia* is prone to politicization, thus damaging public trust in the integrity of the elections. Fifth, the evidence in the trial in *in absentia* becomes more complex and depends on the quality of the available evidence. To overcome

these challenges, it is necessary to harmonize regulations, clear implementation guidelines, strengthen cooperation between institutions, increase the capacity of law enforcement officials, and strict supervision and accountability to ensure effective, fair, and accountable implementation of in absentia, thereby improving the integrity and quality of regional elections in Indonesia.

The results of the research on the application of the principle of in absentia in the Regional Head Election (Pilkada) reveal a complex picture that highlights the effectiveness and challenges faced. Empirical studies show that the application of in absentia results in significant variation in interpretation and implementation between regions, influenced by the understanding of different law enforcement officials, limited resources, and unique local contexts. This has an impact on the inconsistency of law enforcement related to Pilkada violations. Furthermore, the study identified that the evidentiary process in absentia trials often experienced difficulties. Limited access to the defendant makes it difficult to collect relevant evidence and information, demanding an improvement in the quality of investigations and evidence collection by the Election Supervisory Agency (Bawaslu) and the police to ensure fairness in the judicial process. The application of the principle of in absentia in the election of regional heads is still low. Despite the provisions in Law No. 7 of 2017, many regions have not fully understood or applied this principle effectively. Only about 30% of the cases studied applied in absentia correctly, while the rest experienced obstacles in implementation.

Not only that, several studies highlight the potential for human rights violations in the application of in absentia. Certain cases in the elections were found to not meet the principles of fair trial and due process, which indicates the need for stricter monitoring mechanisms to prevent abuse of authority and protect the rights of defendants. However, several studies have also found that the implementation of in absentia can increase the effectiveness of law enforcement in the Pilkada. The process of handling election crimes can be accelerated, providing a deterrent effect for violators. However, the balance between the effectiveness of law enforcement and the protection of human rights remains a major concern. In short, the results of the study confirm that the application of in absentia in the Regional Elections is a multidimensional issue that requires serious attention to the legal foundation, implementation practices, and its impact on human rights and the quality of democracy.

CONCLUSION

The application of the principle of in absentia in the regional elections is a complex and multidimensional issue. Although it has the potential to increase the effectiveness of law enforcement, the implementation of in absentia also faces various challenges and problems, especially related to the protection of human rights and the potential for abuse of authority. For this reason, clear regulations, careful implementation, and strict supervision are needed to ensure that the implementation of in absentia in the regional elections runs fairly, accountably, and in accordance with the principles of the rule of law. Further research is also needed to examine the long-term impact of the implementation of in absentia on the quality of democracy and public trust in the electoral process. As a corrective measure, it is recommended that the government and legislative institutions immediately develop clear

technical guidelines regarding the application of the principle of in absentia. These guidelines should include transparent and fair procedures for all parties involved. In addition, training for law enforcement officials on human rights and procedures in absentia is needed so that they can better carry out their duties. Socialization to the public is also an important key in increasing awareness of their rights in the general election process. By providing sufficient information about the principle of in absentia and related rights, it is hoped that the public can actively participate and understand the legal process that is taking place. Overall, improvements in the application of the principle of in absentia will contribute to the creation of a more fair, transparent, and respectful regional head election system. This will not only increase public trust in the legal system, but also strengthen the foundation of democracy in Indonesia.

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