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Law Enforcement Against Obstruction of Justice in Eradication of Corruption in Indonesia

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Abstract. *Indonesia is a country based on law that is not based on mere power. The terminology of the rule of law used by Indonesia is neither rechtsstaat nor rule of law, because the two terms contain meanings that are not identical to the characteristics of Indonesia where rechtsstaat contains the meaning of a country that has a purely continental legal system, while in judicial practice it adopts dissenting opinion decisions. This research is a normative legal research that starts from a legal issue. According to its characteristics, legal issues are very different from social issues as phenomena of social research objects, so that the approaches used are also unique. Legal research is not social science research and legal research does not recognize data. The positive legal regulations in Indonesia regarding the Criminal Act of Obstructing the legal process or what is known as Obstriction of Justice are divided into two, namely: Regulations regulated in general criminal law as regulated in the Criminal Code (KUHP), and Regulations regulated in Special Criminal Law, such as the Corruption Crime Law. The crime of obstructing the judicial process or what is known as Obstruction of Justice as regulated in Article 21 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 can be qualified as a formal crime (formeel delict), meaning that it does not require that the act has indeed resulted in a legal process being obstructed/hampered by the perpetrator's actions. but only requires the existence of the perpetrator's intent or intention to obstruct the legal process.*

Keywords: *Criminal Act of Corruption; Law Enforcement; Obstruction of Justice.*

1. Introduction

The Republic of Indonesia is a republic built on five pillars, namely Pancasila as the ideological foundation of the state, the 1945 Constitution as the constitutional foundation, the territorial integrity and sovereignty of the Unitary State of the Republic of Indonesia as the continental foundation, Bhineka Tunggal Ika as the motto of unity in diversity, and the goals of the state as the direction of national development.

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Indonesia is a country based on law that is not based on mere power.[1]The terminology of the rule of law used by Indonesia is neither rechtsstaat nor rule of law, because the two terms contain meanings that are not identical to the characteristics of Indonesia where rechtsstaat contains the meaning of a country that has a purely continental legal system, while in judicial practice it adopts dissenting opinion decisions. Then if assumed as a rule of law country, now Indonesia gives the role of two chambers in the Supreme Court System, namely the Supreme Court and the Constitutional Court, although each product of the decision seems to run independently, but in reality Indonesia is not a rule of law or more moderate as a combination of the two legal systems.

Regardless of the development of the legal system and its influence on Indonesia, the role and position of Pancasila as a source of national legal order for Indonesia remains and is important, because every formation of legislation must consider the philosophical aspect. In the contents of Pancasila, there are many moral, religious and high civilization values of the country, so that it is different from the view of Hans Kelsen, his teacher Hans Nawiasky who ignores law from moral, political and social aspects, even culture.

Hans Nawiasky, an influential German-Swiss jurist in the 20th century, was a key figure in the development of legal and state theory. One of his most important contributions was the concept of Staat Fundamental Norm, which expanded and modified the idea of Grundnorm introduced by Hans Kelsen. He provided an indirect view of the position of Pancasila as Staat Fundamental Norm above the Grundnorm or the 1945 Constitution. Staat Fundamental Norm, or the basic norm of the state, serves as the basis of legitimacy not only for law, but also for the structure of the state itself. This provides a more comprehensive framework for understanding how law and the state are interrelated and influence each other.

By laying the basis for legal thinking (juridical denken) for the makers and implementers of law in every formation of criminal law through legislation, then in reality no crime in law should be free from philosophical values, including when derived from the sociological aspect by questioning whether a crime can be operational because there is a discrepancy or tension between morality not punishing or on the contrary punishing by prohibiting the act through legislation that meets the qualities of lex scripta, lex stricta, lex certa, and lex praevia.

In the past, when people did not think much that a crime could be easily reported and investigated, examined and sentenced in court, there was never a regulation that prohibits obstructing justice based on the law, because it was seen as a very abstract regulation that never materialized in concrete actions in society. However, now seeing the inner attitude of the perpetrators of crimes and the people involved in them are not sterile from the evil motives of the real perpetrators of crimes, so it is very possible that when people's morality fades legally, law enforcement will often try as hard as possible to uncover their crimes.

Corruption is one of the extraordinary crimes (extra ordinary crime) that has a broad impact on the social, economic, and political life of a country. Corruption can hamper economic growth, worsen social inequality, and weaken the democratic system of government. Therefore, efforts to eradicate corruption are one of the priority agendas in law

[1]1945 Constitution, 4th amendment, 2022.

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enforcement in various countries, including Indonesia.[2]

In the effort to eradicate corruption, law enforcement officers often face various forms of obstacles, one of which is the act of obstructing the judicial process or what is often known as Obstruction of Justice. This Obstruction of Justice action includes various actions that aim, among other things, to hinder, obstruct, or obstruct the process of investigation, prosecution, and examination in court of corruption cases.

*Obstruction of Justice*In the context of eradicating corruption, this can take the form of actions such as removing or falsifying evidence, intimidating witnesses, intervening in law enforcement officers, and even abusing authority to obstruct the legal process.[3]This phenomenon not only hinders the effectiveness of law enforcement, but also has the potential to weaken public trust in the criminal justice system.

The crime of obstructing the judicial process of corruption is a crime related to the crime of corruption. The word "related" indicates that there is no crime without the crime of corruption. Therefore, it can be said to be a type of "derivative" crime which also describes the criminalization of certain actions or actions. Actions that are categorized as obstructing the judicial process of corruption are based on the forms of actions that violate the elements of the crime in Article 21 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001.[4]

Although there are regulations governing Obstruction of Justice, the implementation of law enforcement against perpetrators of Obstruction of Justice in eradicating corruption still faces various challenges in the process of investigation, inquiry, prosecution and examination in court. In the trial process, there are often multiple interpretations of criminal law experts in determining the guilt of the defendant in Article 21 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Corruption which can influence the panel of judges in making their decisions. The differences of opinion of legal experts in the trial process include determining whether the crime of Obstruction of Justice is a formal or material offense, so that the Public Prosecutor must prove the motive and purpose of the perpetrator of Obstruction of Justice. Then in the investigation process, is it required to first determine the suspect of the perpetrator of Obstruction of Justice, then determine the suspect in the main case or vice versa.

For example, in the case of Obstruction of Justice in the name of Muhamad Rasyid Ridho which was investigated by the Attorney General's Office which has been decided and has permanent legal force (Inkracht). In the decision of the a quo case there was a difference in the considerations of the panel of judges (ratio decidendi) so that in the decision of the a qua case there was a difference of opinion in the verdict (dissenting opinion) where the

[2]Satjipto Rahardjo, 2021, Law and Social Change, Jakarta: Genta Publishing, p. 45
[3]Barda Nawawi Arief, 2028, Problems of Law Enforcement and Criminal Law Policy, Bandung: Citra Aditya Bakti, p. 67.

[4]Frans MTTarek, "Criminal Act of Obstructing the Legal Process of Investigation, Prosecution, Prosecution to Trial in Corruption Crimes According to Law Number 31 of 2003 1999 Concerning Criminal Acts of Corruption", Lex Crimen Vol.VIII/No.3/March/2019.

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Chief Justice stated that the defendant had been proven legally and convincingly guilty of committing a crime as charged by the Public Prosecutor, but 2 (persons) members of the panel of judges were of the opinion that the defendant was not proven guilty (vrijspraak).[5]Based on the decision in the a qua case, the Public Prosecutor filed a cassation appeal and in the cassation decision, the Supreme Court granted the Public Prosecutor's cassation request so that the Defendant was declared to have been proven legally and convincingly guilty of committing the crime of "corruption"..

In relation to this, chronologically it is explained as follows: it began when the Investigator at the Attorney General's Office for Special Actions conducted an Investigation into the Corruption Case of Misappropriation of the Use of Financing Facilities from Several Banks by PT Waskita on behalf of the Suspect Ir. BR, MM

During the Investigation Process, the Defendant who served as Acting Claim Change Management at PT Waskita Karya obstructed the investigation by directing the witnesses being examined not to provide documents required by the investigator, including data on Vendors whose work was fictitious.

In addition, the Convict held a meeting (meeting of minds) at Sate Senayan Jakarta with the intention of directing the witnesses who would and would be examined by the Investigator to check and delete the chat history of each cellphone with the vendor, so that the investigator had difficulty in revealing the main case.

Furthermore, in the examination process at the Corruption Court at the Central Jakarta District Court, there were legal facts regarding differences between the criminal law experts presented by the Public Prosecutor and the criminal experts presented by the Legal Counsel, which in essence were whether the crime of Obstruction of Justice was a Formal Offense or a Material Offense and whether there was a requirement for a motive from the perpetrator, and whether in determining the suspect, the main case was first determined, then the suspect for Obstruction of Justice.

That in the first instance decision there was a difference of opinion of the Panel of Judges (dissenting opinion), namely the Chief Justice stated that the Defendant was proven legally and convincingly guilty as charged by the Public Prosecutor. Meanwhile, 2 (two) members of the panel of judges stated that they were acquitted (Vrisjprak). Against the decision of the Corruption Court, the Public Prosecutor filed a Cassation Legal Appeal and based on the Cassation Decision, the Supreme Court accepted the Public Prosecutor's Cassation Application so that the defendant was declared guilty as in the Public Prosecutor's Indictment.

This decision is worthy of being studied and analyzed in the concept of law enforcement for eradicating corruption, because through this decision it will affect the legal inner attitude of the judge and/or the people involved in it. From the ratio decidendi and ratio legis becoming inconsistent or at a crossroads so that it is difficult to crystallize each decision into something that can guide the legal settlement of similar events in the future.[6]

Starting from this fact, that the formulation of criminal rules obstructing the judicial process and the aspects of evidence and criminal responsibility are interesting to conduct careful

[5]Central Jakarta District Court. (2023), Number 38/Pid.Sus-TPK/2023/PN.JKT.Pst.
[6]Supreme Court Judicial Review (PK) Decision, Number 78 PK/Pid.Sus/2021 dated April 7, 2021.

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research, especially related to the law enforcement of corruption crimes entitled: LAW ENFORCEMENT AGAINST OBSTRUCTION OF JUSTICE IN ERADICATION OF CRIMINAL ACTS OF CORRUPTION IN INDONESIA.

2. Research Methods

This research is a normative legal research that starts from a legal issue. According to its characteristics, legal issues are very different from social issues as phenomena of social research objects, so that the approaches used are also unique. Legal research is not social science research and legal research does not recognize data. To solve legal issues and at the same time provide prescriptions regarding what should be needed, research sources are needed. Legal research sources can be divided into research sources in the form of primary legal materials and secondary legal materials.[7]

3. Results and Discussion

3.1. The Nature of Criminal Regulation Obstructs the Judicial Process

The Nature of the Regulation of Criminal Acts Obstructing the Judicial Process in Indonesian Criminal Law.

Law enforcers understand that a legal phenomenon can be extracted into an idea or concept of legal definition and concept. Even when the definition and concept of law are confronted with legal theory (epistemology) and legal principles, they must not only submit themselves but also be guided so that their formulation does not fail and is wrong in enactment (axiology) which can cause conflict or confusion in legal and judicial practice. The legal thinking mechanism is tried to be applied in the discussion of this sub-chapter, as an academic responsibility when in the world of practice there are anomalies, confusion and even deviations. Deviations can only be thought of when the principles and theories are mastered by law enforcers, no different from "reconstructing or reformulating" the formulation of criminal acts that hinder the judicial process, especially corruption. So there is a need for the practice of enforcing the law on corruption which is disrupted by other criminal acts related to the enforcement of corruption. It cannot be separated because it hinders the enforcement of the main law and harms the legal process.

The word structured means a pattern of corruption that is arranged, assembled, engineered, arranged, or created neatly. In the sense that a design is said to be structured when it has a clear pattern so that it can be traced or traced. The meaning is a good and neat arrangement from upstream to downstream.

As for systematic, it means good order from a combination of a number of components, patterns, or elements that support each other in forming a perfect whole. Thus half, part, or piece is not systematic.

Systematic is also defined as the use of system principles in the process of explaining, running, or other actions. Thus, an explanation is said to be systematic when the explanation is complete, integrated, or interrelated.

While massive means something that is solid, numerous/large, and solid. Where, a system

[7] Peter Mahmud Marzuki, Legal Research, Jakarta, Kencana Prenada Media Group, 2005, p. 181.

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and anything is said to be massive when all components or elements in it are not porous or hollow. For example, the term massive can be written as "If corruption in mining business permits continues, environmental damage, state losses and state economic losses will occur massively." In the sense of the process of environmental damage, state losses and state economic losses in a short period of time, large/many, and little leftover.

According to Muladi, "corruption occurs with multi-status perpetrators and is vulnerable to corruption events and tends to eliminate and hide evidence and evidence, making it difficult to examine and prove". Muladi's opinion is correct when looking at the reality in current law enforcement practices where the results enter the financial and banking system and halal businesses (placement, layering and integration). In the case of PT. Waskita Karya, a convict Muhamad Rasyid Rido who served as Claim Change Management (legal corporate) influenced Mr. Felik, a finance staff member not to provide honest information and submit data and related documents regarding the payment event to a fictitious vendor whose money was enjoyed by the Director of PT Waskita Karya.

The Formulation of Norms for Regulating Criminal Acts Hinders the Legal Process in Criminal Acts of Corruption.

Criminal Law is a "linguistic science", so it is not strange when the formulation of the meaning of a norm is approached with grammar or syntax, etymology, semantics and even semiotics. The argument is that when a lawmaker formulates a norm into a verse, then a legal expert or legislative expert cannot work independently, they must require a linguist. Therefore, the following is to understand the nature of the formulation of norms reviewed from the meaning of words and their intent will be discussed one by one below.

Adami Chazawi, stated: “It is called formal because the formulation explicitly states the prohibition of committing certain acts. The main prohibition in the formulation is committing certain acts. In relation to the completion of the crime, if the act that is prohibited is completed, the crime is also completed without depending on the consequences arising from the act.”[8]

Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001.

Article 21

Any person who intentionally prevents, obstructs, or thwarts directly or indirectly the investigation, prosecution, and examination in court of suspects and defendants or witnesses in corruption cases, shall be punished with imprisonment of at least 3 (three) years and a maximum of 12 (twelve) years and/or a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).[9]

a) Subjective Elements

The subjective element of Article 21 uses the word "every person" which is different from the formulation of Article 29 and 20 of Law Number 3 of 1971 which uses the phrase

[8]Adami Chazawi, 2010, Criminal System, Criminal Acts, Theories of Punishment & Limits of the Applicability of Criminal Law, East Java, Bayu Media, p. 119.
[9]*Ibid*, p. 280.

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"whoever" (hij de). Almost all legislative products born after 1990 use the phrase "every person" for natural humans (natuurlijke persoon) or a body or corporation to catch legal entity perpetrators (legal body). The term "every person" is a term used in criminal provisions regulated by law in the field of certain criminal acts.

b) Objective Elements

The core part of the crime in Article 21 is “preventing, obstructing or thwarting”. The word “preventing” means trying not to happen, holding something back from happening, and not obeying. However, from the meaning of preventing, it turns out that there is a homonym with the word “obstructing” which is a separate element from the core part of the crime.

The conclusion is that according to the Big Indonesian Dictionary (KBBI), the meaning of the word to prevent is to try so that it does not happen. While the equivalent of the word "to prevent" is also "to prohibit". Now the meaning of the word "to hinder" in the lexical sense is "to hinder", to obstruct, to disturb, to disturb. The conclusion is that according to KBBI the meaning of the word to hinder is to hinder. Another meaning of to hinder is to hinder.

According to PAF Lamintang and Franciscus Theojunior Lamintang, a material crime is a crime that is considered to have been completed by causing prohibited consequences and is threatened with punishment by law.[10]Meanwhile, according to Mahrus Ali, a material crime is a criminal act whose formulation focuses on the prohibited consequences.[11]

Although the combination of the use of different words in the qualification of the offense in a formulation of an article as in Article 21, law enforcement officers are still given space to ascertain what material acts have occurred and can be charged, likewise the judge must examine and decide based on the category of acts committed, so that the ambiguity in the a quo article cannot be interpreted as a certain group of offenses, namely formal and material ansich.

Multiple interpretations of Article 21 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, including formal or material crimes.

In the application of Article 21 of Law Number 31 of 1999, there are multiple interpretations of whether Obstruction of Justice is a formal or material crime. This can result in if Obstruction of Justice is a material crime, then it is required that the suspect of Obstruction of Justice must have succeeded in preventing or thwarting the investigation of the main case (the case being investigated). If the investigator has named a suspect in the main case and the Public Prosecutor still refers the case to the Court, then the verdict of the case is likely to be an acquittal (vrisjpraak), with the consideration that the defendant was not proven to have committed the Criminal Act of Obstruction of Justice as charged by the Public Prosecutor. Therefore, the defendant did not succeed in preventing or thwarting the investigation in the main case. This can be interpreted as the defendant not being proven to have committed the act of Obstruction of Justice.

In CHAPTER III Other Criminal Acts Related to Criminal Acts of Corruption, namely in Article 21 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, it states:

[10]PAF Lamintang and Franciscus Theojunior Lamintang Op.cit, p. 212
[11]Mahrus Ali, Op.cit, p. 209.

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Any person who intentionally prevents, obstructs or thwarts directly or indirectly the investigation, prosecution and examination in court of suspects or defendants or witnesses in corruption cases shall be punished with imprisonment of at least 3 (three) years and a maximum of 12 (twelve) years and/or a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).

It seems that the criminal act of Article 21 is also a material crime. For that reason, the criminal act of Article 21 can be called a semi-formal or semi-material crime. To make a purely formal crime, the act should be formulated as "committing an act that can prevent, hinder, and thwart".[12]

Ellen Podgor said that the act of obstructing the legal process does not require that the act has indeed caused a legal process to be obstructed/hampered by the perpetrator's actions. but only requires the perpetrator's intent to obstruct the legal process.[13]

In criminal law doctrine, the formulation of a criminal act like this makes the criminal act a formal delict, namely an act that is deemed to have occurred by fulfilling the elements of the act formulated in the article, without the need for any consequences from the act in question.[14]

Based on this definition, it can be concluded that Obstruction of Justice is a criminal act that can be categorized as a takzir crime, because it does not meet the requirements as a Hudud crime based on the Qur'an and Hadith. This means that lawmakers in the perspective of Islamic law have the opportunity to formulate norms and sanctions for Obstruction of Justice while still referring to the sources of Islamic law, namely the Qur'an and Hadith as well as the Ijtihad of scholars.

Based on the Qur'an, Surah An-Nisa' verse 135 which means:[15]

"O you who believe, be true upholders of justice, witnesses for Allah, even against yourselves or your parents and relatives."

"This verse emphasizes the importance of upholding justice and being an honest witness, even if it means testifying against oneself or one's family."[16]

"The interpretation of the Qur'an explains that this verse also emphasizes the importance of being fair and honest in all aspects of life."

One of the Hadiths of the Prophet Muhammad SAW which approaches the prohibition of Obstruction of Justice, namely:

"Whoever helps in an in justice, then indeed he has become part of that injustice." (HR. Bukhari and Muslim).

This hadith explains that a person who guides or facilitates bad deeds, including obstructing the process of justice, will bear the sin of his own actions and the sins of others who follow

[12]Op.cit,284.
[13]Ellen S Podgor et.al, 2005, Should Materiality be an Element of Obstruction of Justice? Washburn Law Journal, Vol 44, p. 307.
[14]See De Hullu, 1, 2009, Materieel Strafrecht. Over Algemene Leerstukken van Strafrechtelijke Aansprakelijkheid naar Nederlands Recht, Vierde Druk, Deventer, Kluwer, p. 74.
[15]Al-Quran and its Translation, 2002, Ministry of Religion of the Republic of Indonesia, Jakarta, p. 123.
[16]See: Tafsir Al-Qur'an, Sayyid Qutb, Publisher Pustaka Al-Kautsar, 2000, Jakarta, p. 456

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him."[17]

3.2. Law Enforcement against Criminal Acts of Obstructing the Judicial

Process in Eradicating Criminal Acts of Corruption.

The results of the study show that court decisions in cases of criminal acts obstructing the judicial process in eradicating corruption vary. Some court decisions indicate that the court has applied the law correctly, while others indicate that the court has not applied the law correctly.

The case of Muhammad Rasyid Ridha

a. Position Case

The Obstruction of Justice case in this case began with an investigation by the Investigator of the Director of Investigation of the Deputy Attorney General for Special Crimes at the Attorney General's Office in a corruption case of misappropriation of the use of financing facilities from banks carried out by PT. Waskita Karya (Persero) Tbk and PT. Waskita Beton Precast TBK on behalf of the suspect Bambang Rianto as Operational Director II of PT Waskita Karya in 2022. On October 4, 2022, the Attorney General's Office Investigator conducted an examination of Witness Felik Risto Ardianto Nugrahanto who works as a finance staff at PT Waskita Karya. From the results of the examination of witness Felik Risto Ardianto Nugrahanto, information was obtained that in the PT Waskita Karya and PT Waskita Beton projects financed by banks there was incorrect work, including additional work volume (mark-up) and fictitious work. Based on the statement of Witness Felik Risto Ardianto Nugrahanto, then the Attorney General's Office Investigator asked Witness Felik Risto Ardianto Nugrahanto to provide data on Vendors whose work was not correct and paid for by PT Waskita Karya. At that time, Witness Felik Risto Ardianto Nugrahanto promised to submit the data requested by the Attorney General's Office Investigator in the next examination. After the examination was completed, Witness Felik Risto Ardianto Nugrahanto met his superior, namely Suspect Bambang Rianto to report the results of his examination. Then witness Felik Risto Ardianto Nugrahanto was directed by Suspect Bambang Rianto (in the main case/corruption) to consult with the legal department of PT Waskita Karya. Furthermore, Witness Felik Risto Ardianto Nugrahanto met with Muhammad Rasyid Ridha. However, in the meeting, Muhammad Rasyid Ridha directed Witness Felik Risto Ardianto Nugrahanto not to submit data on vendors whose work was incorrect or fictitious to the Attorney General's Office Investigators. On November 17, 2022, Muhammad Rasyid Ridha, who actively accompanied the examination of the witnesses, then gathered the witnesses (project leaders) at Sate Khas Senayan, Mall City Senayan with the aim of preparing and directing the witnesses who would and had been examined by the Attorney General's Office Investigators to delete conversations (chats) via WhatsApp with vendors whose work was fictitious. So that in the examination of the witnesses, the Attorney General's Office Investigators did not get the real facts and resulted in the investigation of the corruption case of misappropriation of the use of financing facilities from banks carried out by PT. Waskita Karya (Persero) Tbk and PT. Waskita Beton Precast TBK on behalf of the suspect Bambang Rianto being hampered.

[17]See: Sahih Muslim, Imam Muslim, Dar Ihya' al-Turath al-Arabi, Beirut, p. 234.

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b. Public Prosecutor's Indictment[18]

The defendant was charged by the Public Prosecutor with a Single Charge, namely the Defendant's Actions as regulated and subject to criminal penalties in Article 21 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

c. Public Prosecutor's Criminal Charges[19]

In the Public Prosecutor's Letter of Demand read out on July 20, 2023, the Public Prosecutor stated that the Panel of Judges at the Corruption Crimes Court at the Central Jakarta District Court who examined and tried the a quo case should decide:

1) Declaring that the Defendant Muhammad Rasyid Ridha has been proven legally and convincingly guilty of committing an act of corruption as regulated in the Criminal Code in Article 21 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1900 concerning the Eradication of Criminal Acts of Corruption.

2) Sentencing the Defendant to a prison sentence of 3 (three) years and 6 (six) months minus the time the Defendant has been in detention with an order that the Defendant remain in detention and a fine of Rp. 200,000,000.00 (two hundred million rupiah) with the provision that if the fine is not paid it will be replaced with a prison sentence of 3 (three) months.

3) Establishing evidence in the form of:

Evidence Number …and so on, returned to the rightful party and returned to the Investigator to be used in another case (main case) in the name of Bambang Rianto.

4) Charge the Defendant with paying court costs of Rp. 10,000.00 (ten thousand rupiah).

d. Analysis of the judge's decision

Based on the Decision of the Corruption Crime Court at the Central Jakarta District Court[20]in essence, stating that the Defendant Muhammad Rasyid Riho was not proven legally and convincingly guilty of committing a criminal act of obstructing the judicial process or Obstruction of Justice as charged by the Public Prosecutor. However, in the decision of the a quo case there was a difference of opinion from the panel of judges (dissenting opinion). According to the Chairperson of the Panel, namely Rianto Adam Pontoh, in his considerations on page 240, stated that the actions of the Defendant Muhammad Rasyid Ridha had fulfilled the elements of intentionally, preventing, obstructing, or directly or indirectly thwarting the investigation, prosecution, and examination in court as charged by the Public Prosecutor in the Criminal Charges (requisitoir), so that therefore the Defendant must be declared proven legally and convincingly guilty of committing a criminal act violating the provisions of Article 21 of the Corruption Law.

[18]Public Prosecutor's Indictment Number: Reg.Perk: PDS-05/KOR/JKT.TM/03/2023, dated April 3, 2023.
[19]Demand Letter No. Reg. Case: PDS 05/KOR/JKT.TM/03/2023, July 20 2023.
[20]Decision of the Corruption Crime Court at the Central Jakarta District Court Number: 38/Pid.Sus-TPK/2023/PN Jkt Pst dated August 22, 2023.

Based on the considerations of the panel of judges (ratio decidendi) on page 238, it states that the meeting between the Defendant and the Project Manager at Sate Senayan Mall Senayan City was an initiative of each Project Manager and in the meeting there was no direction or order from the Defendant not to bring the problematic vendor documents and delete the WhatsApp chat related to the vendor, everything was left to the decision of each, because it is the personal right of each of the Witnesses.

Based on these considerations, the panel of judges should be able to explore and develop the legal facts revealed in the trial, namely evidence in the form of instructions as referred to in Article 188 of the Criminal Procedure Code which states:

(1)An indication is an act, event or situation, which due to its correspondence, either between one and another, or with the crime itself, indicates that a crime has occurred and who the perpetrator is.

(2)clues can only be obtained from witness statements, letters and statements from the accused.

Based on the provisions of Article 26 A of Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, it is explained as follows:21

Valid Evidence in the form of Instructions as referred to in Article 188 paragraph (2) of Law No. 8 of 1981 concerning the Criminal Procedure Code, specifically for Corruption Crimes, can also be obtained from:

1) Other evidence in the form of information that is spoken, sent, received or stored electronically using optical or similar devices; and

2) Documents, namely any recording of data or information that can be seen, read, and/or heard that can be produced with or without the aid of a medium, whether written on paper, any physical object other than paper, or recorded electronically, in the form of writing, sound, images, maps, photo designs, letters, signs, numbers, or perforations that have meaning.

Based on these considerations, the panel of judges only considered the legal facts revealed in the trial in the form of statements from the Project Manager, namely witnesses Mohamad Harkat, Ari Aprianto, Supriyono Viktor Anton, Reza Irawan Widiarto, Kwatantra Rili Smarahadayan and the defendant's statement, without considering the witness statements from the Attorney General's Office Investigators who conducted the investigation in the main case on behalf of the suspect Bambang Riyanto. Based on the decision of the panel of judges in the a quo case, legal facts were obtained in the form of statements from investigators' witnesses on pages 19 to 57, where the investigators who examined the project leaders, including Witnesses Kwatantra Rili Smarahadayan and Agung Priyo Laksono, who in essence stated that in November 2022 at around 18.30 WIB, at Sate Khas Senayan, South Jakarta, the Defendant gathered and held a meeting with the project

[21]Law of the Republic of Indonesia Number 10 of 2015, Corruption Eradication Commission, Bandung, Citra Umbara, p. 43.

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leaders with the intention of directing the project leaders who would and had been examined by the Attorney General's Investigators to check and recheck their respective cell phones that had a history of chats or communications with vendors whose work was marked up and fictitious, but paid for by PT Waskita. In addition, electronic evidence in the form of the defendant's cell phone which had been confiscated by investigators, there was a conversation between the defendant and Witness Felik Risto Ardiant Nugrahanto via the what's ap application. At that time the defendant said to Witness Felik Risto Nugrahanto:

"As I said earlier, you went there in a condition where you didn't know what the problem was so you don't know the data and it will be submitted after the examination because you have to look for it."

Associated with wilstheori and Voorstellings theorie in the a quo case, when the defendant had a conversation or chat with witness Felik Risto Nugrahanto who would be examined by the Attorney General's investigator, the defendant did want and was aware that the investigation carried out by the Investigator in the main case on behalf of the Suspect Bambang Rianto would be hampered or could already imagine that his investigation would be hampered. Likewise, when the defendant held a meeting with the project leaders who would and had been examined by the Attorney General's Investigator, the defendant wanted the investigation process in the corruption case not to occur.

The Panel of Judges gave considerations on page 238, namely that witness Bambang Rianto as Director of Operations II of PT. Waskita Karya (Persero), Tbk, has been named a Suspect in the Main Case of Supply Chain Financing (SCF) on December 5, 2022, while Defendant Muhammad Rasyid Ridha was only named a Suspect in the case of obstructing the judicial process or Obstruction of Justice on December 15, 2022. How is it possible that there have been obstacles to the judicial process or Obstruction of Justice if the main case has been determined as a Suspect first, namely by determining witness Bambang Rianto as a Suspect on December 5, 2022, while Defendant Muhammad Rasyid Ridha was only determined as a Suspect on December 15, 2022, doesn't the determination of witness Bambang Rianto as a Suspect have at least 2 (two) valid pieces of evidence as stipulated in Article 184 of the Criminal Procedure Code 7?

Based on the principle of Law Enforcement Priority, which is the principle used in law enforcement to determine the priority in handling legal cases. Based on this principle, law enforcement against perpetrators of corruption is carried out first, then followed by the determination of suspects for Obstruction of Justice. This shows that the priority of law enforcement is given to the main perpetrators of corruption, in casu corruption of misuse of financing facilities from banks carried out by PT. Waskita Karya (Persero) Tbk and PT. Waskita Beton Precast TBK. In addition, in the process of investigating cases of criminal acts of obstructing the judicial process, there is no provision that requires investigators before determining suspects in the main case, to first determine suspects for the crime of obstructing the judicial process. If we look at the case in the name of Ferdy Sambo in the murder case of Nofriansyah Yoshua Hutabarat, at that time Ferdy Sambo was first named a suspect in the murder case as the main case, then investigators from the Cyber Crime Directorate of the National Police Criminal Investigation Unit named suspects ARA, Suspect BW, Suspect HK, Suspect AN, Suspect IW and including Suspect Ferdy Sambo in the Obstruction of Justice case as referred to in Article 49 in conjunction with Article 33 and/or

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Article 48 paragraph (1) in conjunction with Article 32 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions in conjunction with Article 55 paragraph (1) 1 of the Criminal Code and/or Article 221 paragraph (1) 2 and/or Article 233 of the Criminal Code in conjunction with Article 55 paragraph (1) 1 of the Criminal Code.[22]

The regulation regarding the probability of a criminal event obstructing the judicial process can occur in 3 (three) stages, namely the investigation, prosecution and examination stages in court, meaning that the relationship between the trial process of the main case, namely corruption, is not affected by the determination of the status of the defendant in the crime of obstructing the judicial process in the a quo case. This is part of the characteristic of the existence of a formal crime that stands alone (zelf standig), even though the criminal event is related because of the main criminal event. When the determination of the suspect in the a quo case precedes the determination of the suspect or defendant in the corruption crime, it is still possible for investigators to carry it out and transfer it to prosecution.

However, the Panel of Judges in its considerations on page 238, opined that in the process of investigation, prosecution, and examination in court against the main case there were no obstacles to the trial process or Obstruction of Justice because in fact the main case was still ongoing and there were no obstacles in determining the suspect, even though currently the main case (witness Bambang Rianto) has been transferred to the Corruption Crime Court at the Central Jakarta District Court and has been tried with Case Register Number: 68/Pid.Sus-TPK/2023/PNJkLPs.

Based on the discussion of the previous chapter, the crime of Obstruction of Justice can be categorized as a formal crime, meaning that the actions of the perpetrator of Obstruction of Justice do not require the investigation process to stop, it is enough for the investigator to experience interference or obstacles in the investigation process, even though in the end the investigation of the corruption case continues. Thus, to determine the completion of the act of Obstruction of Justice (voltooid delict) occurs when the investigation, prosecution and examination process in court is being carried out.

The panel of judges considered that as stated by Expert Dr. Eva Achjani Zulfa, SH, MH and Prof. Dr. Nur Basuki Minarno, SH, M.Hum, presented by the Defendant's Legal Counsel, in the trial gave the opinion that "the criminal act of corruption obstructs the judicial process or Obstruction of Justice in Article 21 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 Tatun 1999 concerning the Eradication of Criminal Acts of Corruption is a material offense, therefore the Public Prosecutor must prove the motive and purpose of the perpetrator who obstructs the judicial process or Obstruction of Justice.

According to Eva Achjani Zulfa, who was once a member of the Examination Team for the Case Decision on behalf of the Defendant Lucas at the Corruption Court, she said:[23]

[22]News Liputan6.com, Receives Letter of Determination of Ferdy Sambo as Suspect Regarding Obstruction of Justice, page 2, Attorney General's Office, accessed on May 10, 2025, at 14.38 WIB.
[23]M. Arif Setiawan et. al, Obstruction of Justice: Examination of the Lucas Case Decision at the Corruption Court, 2019, Yogyakarta, Genta Publishing, p. 117.

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"The formulation of the crime in Article 21 of the Corruption Law is a formal crime, not a material crime. The determination of a crime as a material crime actually has implications for the tempus delicti that occurs in the case in casu, and this has an impact on the authority of law enforcers (investigators, public prosecutors and judges"[24]

In relation to the a quo case, it can be said that the determination of an offense as a material offense has nothing to do with the obligation of the Public Prosecutor to prove the motive and purpose of the defendant who obstructed the judicial process. In the Indonesian judicial system, it does not adopt the Anglo Saxon system like the United States, but rather adopts the Continental European system. Therefore, in the trial process, the Public Prosecutor is not obliged to prove the "motive" and purpose of the perpetrator of Obstruction of Justice in Indonesia.

Based on the verdict of the a quo case, the Public Prosecutor filed a cassation appeal with a letter of application Number 42/Akta. Pid. Sus/TPK/2023/PN.JKT.PST. dated August 24, 2023 and on September 6, 2023 submitted a cassation memorandum.

Based on an excerpt from the decision of the Supreme Court of the Republic of Indonesia[25]The court that tried the a quo case granted the cassation request from the Applicant/Public Prosecutor at the East Jakarta District Attorney's Office and annulled the Corruption Crime Court Decision at the Jakarta District Court.

Furthermore, the Supreme Court tried itself, among other things, stating that the Defendant Muhammad Rasyid Ridha had been proven legally and convincingly guilty of committing the crime of "Corruption" and sentenced the Defendant to a prison sentence of 3 (three) years and a fine of Rp. 150,000,000.00 (one hundred and fifty million rupiah) with the provision that if the fine is not paid, it will be replaced with 1 (one) month of imprisonment.

4. Conclusion

Based on the description above, it can be concluded: The positive legal regulations in Indonesia regarding the Criminal Act of Obstructing the legal process or what is known as Obstriction of Justice are divided into two, namely: Regulations regulated in general criminal law as regulated in the Criminal Code (KUHP), and Regulations regulated in Special Criminal Law, such as the Corruption Crime Law. In essence, the regulation of criminal acts of obstructing the judicial process in criminal acts of corruption is regulated in Article 21 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by Law Number 20 of 2001. The crime of obstructing the judicial process or what is known as Obstruction of Justice as regulated in Article 21 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 can be qualified as a formal crime (formeel delict), meaning that it does not require that the act has indeed resulted in a legal process being obstructed/hampered by the perpetrator's actions. but only requires the existence of the perpetrator's intent or intention to obstruct the legal process. In other words, the act is deemed to have occurred (vooltoid) by fulfilling the elements of the act formulated in the article, without the need for any consequences

[25]Decision of the Supreme Court of the Republic of Indonesia Number 2640 K/Pid.Sus/2024 dated June 25, 2024.

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from the act in question. This is because the formulation of the crime in Article 21 is a formal crime, which prohibits an act or action. In this article it is clear that what is prohibited is "the act of preventing, obstructing, or obstructing the legal process.

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