

## The Criminal Accountability for Obstruction of Justice Crime Perpetrators Seen from a Legal Perspective in Indonesia

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**Abstract.** *The purpose of this research is to find out, examine and analyze the qualification provisions for obstruction of justice crimes that hinder the judicial process and the implementation of law enforcement against obstruction of justice offenses. The approach method used in this paper is normative juridical. The specification of this writing is descriptive analytical. This crime has created serious problems in law enforcement practices in Indonesia. This kind of situation requires appropriate and accurate policies so that efforts to establish the implementation of a true rule of law can be created in a clean and fair manner. So that a trial is obtained that is free and impartial, and is not influenced by any power or force whatsoever. One of the things that needs to be considered with the regulation of obstruction of justice in the Criminal Code is that of the many articles that can be analogous to acts of obstruction of justice, there is only one article which clearly states the objective element "to obstruct or complicate examination and investigation or prosecution." " as contained in Article 221 paragraph 1 sub 2e. The implementation of law enforcement for obstruction of justice in several cases in Indonesia has reached a court decision, namely the case of Cirus Sinaga, a former Attorney General's Intelligence Attorney. The prosecutor stated that Cirus Sinaga was proven guilty of committing a crime in the form of obstructing the investigation and prosecution of corruption cases by eliminating the corruption article in the tax mafia money laundering case of Gaius Tambunan at the Tangerang District Court.*

**Keywords:** *Criminal; Liability; Obstruction.*

### 1. Introduction

The nature of the Indonesian state as a rule of law state as set forth in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, has been based on the concept of the theory of State Sovereignty (Soeverignty) which in principle

states that the highest authority in a country is law.<sup>1</sup> So all state equipment, whatever the name, including citizens must submit and obey and uphold the law without exception.<sup>2</sup>

A criminal act is an act which in the laws and regulations is threatened with criminal sanctions and/or action. There are three elements that make the formulation of an act a crime, namely; Deeds; Formulated in laws and regulations; and there are criminal sanctions and/or actions. A criminal act is an act that is defined in criminal legislation as a prohibited act. If the act is committed by mistake, the person who commits the said act may be subject to criminal sanctions.<sup>3</sup>

Juridically, attempts to obstruct the law enforcement process are referred to as obstruction of justice or obstruction of justice. This crime has created serious problems in law enforcement practices in Indonesia. This kind of situation requires appropriate and accurate policies so that efforts to establish the implementation of a true rule of law can be created in a clean and fair manner. So that a trial is obtained that is free and impartial, and is not influenced by any power or force whatsoever.<sup>4</sup>

The act of obstructing the judicial process (Obstruction of Justice) is an act of someone who obstructs the legal process. Because this act of obstruction is considered disgraceful, the act is categorized as unlawful, which in fact they have clearly violated and opposed law enforcement. The act of obstructing the legal process is a criminal act because it clearly impedes law enforcement and has the potential to damage the image of law enforcement agencies. Often in various corruption cases that ensnare high-ranking state officials and cause large losses of state finances that emerge in Indonesia, it can be seen that there are attempts by interested parties to obstruct the judicial process conducted by law enforcement officials.<sup>5</sup> If this is not dealt with firmly, of course the perpetrators of criminal acts will take advantage of their network or colleagues to avoid legal proceedings or weaken evidence so that they are not entangled in the law or decisions that have

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<sup>1</sup>Carolina Da Cruz, Sri Kusriyah, Widayati, and Umar Ma'ruf, The Implementation of Good Governance Principles in Admission of Prospective Civil Servants, *Journal of Daulat Hukum* Volume 5 Issue 1, (2022), p.40

<sup>2</sup>Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan, Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination, *Jurnal Daulat Hukum* Volume 3 Issue 1, (2020), p.179

<sup>3</sup>Sianturi, 2002, *Principles of Criminal Law in Indonesia and Application*. Jakarta: Stora Graphic, p.21

<sup>4</sup>Nukthoh Arfawie Kurde, 2005, *Critical Analysis of the Theory of the Rule of Law*. Yogyakarta: Student Library, p.21.

<sup>5</sup>Markhy Gareda, Acts of Obstructing the Judicial Process in Corruption Crimes, *Journal of Lex Crimen* Vol.4 No. 1, (2015), p.136.

legal force cannot be implemented.

Prosecution of actions seen as obstructing the judicial process requires clear and firm legal norms, so that law enforcement provides justice and equality for all parties who try to impede the course of the criminal law enforcement process, so as to be able to maintain the dignity of law enforcers and eliminate the impression of selective logging, because demands to get justice is part of the legal ideals of a rule of law.<sup>6</sup>From this background is formed the purpose of writing the author is to find out, study and analyze knowing, studying and analyzing the qualifying provisions for obstruction of justice crimes that hinder the judicial process and implementation of law enforcement against obstruction of justice offenses.

## **2. Research Methods**

To conduct an assessment in this writing the authors use the normative juridical method. Writing specifications are carried out using a descriptive analytical approach. The data used for this writing is secondary data. To obtain the data in this writing, secondary data collection methods were used which were obtained from library books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed with qualitative analysis.

## **3. Results and Discussion**

### **3.1. Definition of Obstruction of Justice**

In an effort to understand obstruction of justice, it is necessary to explore the literature that examines this matter etiologically first. The term obstruction of justice is a legal terminology originating from Anglo Saxon literature, which in the doctrine of criminal law in Indonesia is often translated as "the criminal act of obstructing the legal process".<sup>7</sup>In simple terms, Charles Boys said that "obstruction of justice is the frustration of governmental purposes by violence, corruption, destruction of evidence, or deceit".<sup>8</sup>

The definition of obstruction of justice as defined in Black's Dictionary is more specific, because it relates to the administration of law and justice. Black interprets the act of obstructing the legal process (obstruction of justice) as any form of intervention in the entire legal and justice process from the beginning to the end

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<sup>6</sup>Muntaka, Pretrial Arrangements in the Criminal Justice System in Indonesia, *Journal of Mimbar Hukum*, Vol.29 No. 3, (2017), p.463

<sup>7</sup>Shinta Agustina. Balance Isra. Zainul Daulay et al, 2015, *Obstruction Of Justice Crimes Obstruct the Legal Process in Efforts to Eradicate Corruption*, Themis Books, Jakarta, p.29

<sup>8</sup>Charles Boys, 2010, *Obstruction of Justice: An Overview of Some of The Federal Statutes That Prohibit Interface With Judicial Executive, or Legislative Activities*. CSR Report for Congress. Congress Research Service, p.1

of the process. These forms of intervention can take the form of giving false statements, withholding evidence from the police or prosecutors, or injuring or intimidating witnesses or jurors (the use of jurors in Anglo Saxon procedural law).<sup>9</sup>

### **3.2. Provisions for the Qualification of Obstruction of Justice Criminal Acts that Obstruct the Judicial Process**

The history of the prohibition of obstruction of justice was originally regulated in the Criminal Code as a codification of positive criminal law in Indonesia, originating from *Wetboek van Nederlandse Strafrecht (WvS)*. In the Criminal Code, obstruction of justice as a crime is regulated in the Second Book, Chapter VIII concerning Crimes Against Public Power. This chapter regulates several acts which are against the instruments of state power. In other words, the provisions of this chapter intend to protect the interests of the government, in the sense that government organs can carry out their duties, in order to create public order and security for the wider community.<sup>10</sup>

This formulation policy forms the impact of the obstruction of justice act and encourages to create a criminalization of the act. Criminalization is defined as the process of determining a person's actions as criminal acts. This criminalization process ends with the formation of a law in which the act is threatened with a sanction in the form of a crime.<sup>11</sup>

One of the things that needs to be considered with the regulation of obstruction of justice in the Criminal Code is that of the many articles that can be analogous to acts of obstruction of justice, there is only one article which clearly states the objective element "to obstruct or complicate examination and investigation or prosecution." " as contained in article 221 paragraph (1) sub 2e.

By a maximum imprisonment of nine months or a maximum fine of four thousand rupiahs shall be punished:

- (1). Whoever intentionally hides a person who has committed a crime or is being prosecuted for committing a crime, or whoever provides assistance to him to avoid investigation or detention by a judicial or police official or by another person who, according to the provisions of the law,

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<sup>9</sup>Bryn A. Garner (Ed), 2009, *Black'Law Dictionary*, Ninth Edition, St. Paul, United States of America: West, A Thomson Reuters business, p.1183

<sup>10</sup>Iskandar Muda, *Legal Interpretation Forming Legal Justice in Settlement of Sharia Banking Disputes*, Study of Constitutional Court Decision No. 93/PUU-X/2012, *Judicial Journal* Vol.9 No.1, (2016), p.40

<sup>11</sup>Dwi Johan Junianto, *Obstruction of Justice in Article 21 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes*. *Journal of Media Iuris* Vol.2 No.3, (2019), p.335

continuously or temporarily entrusted with serving as a police officer.

- (2). Any person who, after having committed a crime and with the intention of covering it up or to obstruct or make it difficult for the investigation or prosecution thereof, destroys, loses, hides the objects against which or with which the crime was committed or other traces of the crime, or withdraws it from examinations carried out by officials of the judiciary or police or by other people, who according to the provisions of the law are continuously or temporarily entrusted with carrying out police positions.

Of the special criminal law provisions that fall into the first group, there are always articles that regulate acts of obstruction of justice. Some special criminal law provisions that regulate acts of obstruction of justice are Articles 21-24 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on eradicating criminal acts of corruption, Articles 20-22 of Law Number 13 of 2003 Concerning the Implementation of Government Regulations Substitute for Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism, Articles 20-24 of Law Number 21 of 2007 concerning Eradication of Criminal Acts of Trafficking in Persons.<sup>12</sup>

From the description above, it is clear that the arrangement for the crime of obstruction of justice does not only apply to general crimes, but also applies to special crimes. Even the provisions on obstruction of justice in some of the special criminal law provisions above are threatened with heavier criminal sanctions than the articles contained in the Criminal Code.

### **3.3. Implementation of Law Enforcement against Obstruction of Justice Offenses**

The crime of obstructing the judicial process (Obstruction of Justice) is a crime related to the main crime. The word "related" indicates that this crime is included in the category of follow-up crime or "derivative" crime which is not possible to occur if it is not preceded by the main crime (core crime). The act of Obstruction of Justice describes the criminalization of certain acts or actions. The forms of acts formulated in the criteria for acts of obstructing the criminal justice process are (1) preventing the judicial process; (2) obstructing the judicial process; and (3) thwart the judicial process.<sup>13</sup>

Forms of acts of obstructing the criminal justice process are practically divided into

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<sup>12</sup>Manalu, River Yohanes, Justice Collaborator in Corruption Crime, Lex Crimen Vol. IV No. 1, (2015), p.244

<sup>13</sup>Sutri Muh and La Ode Bunga Ali Mansyah, Eliminating Evidence by Corruption Investigators as an Obstruction of Justice. Legal and Education Research Vol.18, No.2 (2019), p.97

two parts, namely:

- 1) Internal (judicial crime). This form of action is carried out by law enforcers in the criminal justice system, both the Police, the Prosecutor's Office and Judges:
  - a. The case of Cirus Sinaga, a former Attorney General's Intelligence Attorney. The prosecutor stated that Cirus Sinaga was proven guilty of committing a crime in the form of obstructing the investigation and prosecution of corruption cases by eliminating the corruption article in the tax mafia money laundering case of Gaius Tambunan at the Tangerang District Court. This demand was granted by the Panel of Judges in Decision No. 24/Pid.B/TPK/2011/PN.Jkt.Pst by imposing five years imprisonment and a fine of IDR 150,000,000, - a subsidiary of three months in prison to Cirus Sinaga for being proven legally and convincingly guilty of indirectly obstructing the investigation , prosecution and examination of trial court defendants in corruption cases.
  - b. In the indictment for the premeditated murder case with Case Register Number: PDM-242/JKTSL/10/2022 the defendant in this case is Ferdy Sambo. The defendant Ferdy Sambo in his indictment violated one of the articles of premeditated murder and Obstruction of Justice. Ferdy Sambo, who at that time served as a Senior Police Officer with the rank of Inspector General and had been in the legal world for a long time, devised a strategy and carried out the murder of the victim Brigadier General Nofriansyah Yosua Hutabarat by shooting at his official residence in the Duren Tiga Police Housing Complex. Furthermore, Ferdy Sambo, who at that time served as Head of the Professional and Security Agency for the National Police, tried to cover up the shooting incident of the victim Brigadier General Nofriansyah Yosua Hutabarat by eliminating evidence at the crime scene with the intention of covering up.<sup>14</sup>
- 2) External (personal/corporate crime).

This form is carried out by certain parties who are outside the criminal justice system (external actors), either direct actors or other people with an interest in thwarting the ongoing criminal justice process.

  - a. The case of Anggodo Widjojo who was proven to have committed a conspiracy to commit corruption as stipulated in Article 15 juncto Article 5 paragraph (1) of Act No. 31 of 1999 concerning the Eradication of Corruption Crimes. In addition, Anggodo was proven to have deliberately prevented, obstructed or thwarted investigations,

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<sup>14</sup>Cool Shallom Jeremiah, Karina Hasiyanni Manurung. Analysis of Obstruction of Justice Actions Carried Out by Police Officers in Cases of Premeditated Murder, Journal of Legal Essence, Vol. 4 No. 2, (2022), p.103

prosecutions and examinations at court hearings as stipulated in Article 21 of Act No. 31 of 1999 concerning the Eradication of Corruption Crimes. Decision of the Supreme Court of the Republic of Indonesia No. 168 K/Pid.Sus/2011 stated: a) The defendant Anggodo Widjojo was legally and convincingly proven guilty of committing “conspiracy to commit criminal acts of corruption and obstruct the joint investigation into corruption cases; b) therefore sentenced the Defendant to imprisonment for ten years and a fine of IDR250,000. 000,- (two hundred and fifty million Rupiah), provided that if the fine is not paid it is replaced by imprisonment for five months; c) stipulate that the period of detention that has been served by the Defendant is deducted in its entirety from the sentence imposed; and d) determine that the Defendant remains in custody.<sup>15</sup>

- b. The case related to Obstruction of Justice is the case of lawyer Fredrich Yunadi and doctor Bimanesh Sutarjo who obstructed the investigation by making it difficult to find Setya Novanto, the suspect in the E-KTP corruption case which caused state losses of up to 2.3 trillion rupiah. According to doctor Bimanesh Sutarjo's statement, on 16 November 2017 at around 11.00 WIB the defendant Fredrich Yunadi contacted dr. Bimanesh Sutarjo, who was previously known to the defendant, asked for help so that Setya Novanto could be hospitalized at Medika Permata Hijau Hospital with a diagnosis of suffering from several diseases, one of which was hypertension. Next, Dr. Bimanesh contacted dr. Alia, who at that time served as Plt. Manager of Medical Services at Medika Permata Hijau Hospital to prepare a VIP room for patient inpatient care on behalf of Setya Novanto. dr. Alia, who at that time was the Manager of Medical Services, followed up by contacting dr. Hafil Budianto Abdulgani as the Director of Medika Permata Hijau Hospital to request approval for Setya Novanto's hospitalization. However, Dr. Hafil Budianto Abdulgani said that he must comply with the existing procedures, namely going through the Emergency Room (IGD) first to be evaluated and only then can he be referred to a specialist doctor on duty in the Emergency Room. At around 17.00 WIB the defendant ordered his staff from the Yunadi & Associates advocate office named Achmad Rudiansyah to contact dr. Alia is checking the room. At around 17.30 WIB the defendant also came to Medika Permata Hijau Hospital and met Dr. Michael Chia Cahyadi to make a cover letter for hospitalization. However, dr. Michael Chia Cahyadi was rejected because in order to issue a cover letter for hospitalization from the ER, an examination must be carried out first. Fredrich Yunadi was proven to have obstructed the legal process (obstruction of justice) conducted by KPK investigators against the suspect, former chairman of the DPR,

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<sup>15</sup>Decision of the Supreme Court of the Republic of Indonesia No. 168 K/Pid.Sus/2011

Setya Novanto. Fredrich had booked a patient room before Setya Novanto had an accident. Fredrich also asked the Permata Hijau Hospital doctor to manipulate Setya Novanto's medical data. This effort was made in order to avoid being examined by KPK investigators.<sup>16</sup>

The development of the patterns and modus operandi of Obstruction of Justice offenses in the practical realm has a direct impact on the running of the criminal justice system, because these offenses are intended to prevent, hinder and frustrate the ongoing judicial process. In other words, the realization or implementation of the Obstruction of Justice offense will have implications for the law enforcement process. Based on the existing reality, there are at least three implications of Obstruction of Justice offenses in the law enforcement process, namely:

- a. Obstruction of law enforcement efforts in the process of investigation, prosecution and examination in court of corruption against suspects, defendants and witnesses.
- b. Disclosure and development of cases against alleged new suspects will experience difficulties because they are hindered by efforts that are deliberately designed by certain parties to intervene so that the case does not develop.

Resulting in high-cost law enforcement processes both at the level of investigation, prosecution and trial in court because law enforcers must deal with these offenses before proceeding with further investigations, while the principle of the criminal justice system adheres to the principles of simplicity, speed and low cost.<sup>17</sup>

Those who carry out Obstruction of Justice should be legally charged because the Criminal Code regulates this matter. The act of obstructing the legal process is a criminal act because it clearly impedes law enforcement and damages the image of law enforcement agencies.<sup>18</sup> From the various cases that have emerged in Indonesia, it can be seen that there are attempts by interested parties to obstruct the legal process carried out by law enforcement officials. If this is not dealt with firmly, of course, the perpetrators of corruption will take advantage of their

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<sup>16</sup>Decision Number 9/Pid.Sus-TPK/2018/PN.Jkt.Pst. Jouno Decision Number 23/Pid.SusTPK/2018/PT.DKI. Regarding Trial Cases of First Instance Corruption Crimes and Appellate Level Against Defendant Dr. Fredrich Yunadi, SH, LL.M., MBA

<sup>17</sup>Charles Doyle, 2014, Obstruction of Justice: An Overview of Some of the Federal Statutes That Prohibit Interference with Judicial, Executive, or Legislative Activities. New York: Library of Congress, Congressional Research Service, p.78

<sup>18</sup>Rakinaun, Vicky Yohanes, Legal Studies Against Attorneys Who Deliberately Obstruct, Complicate the Investigation, Prosecution and Judicial Process Against Defendants in Corruption Crimes, Lex Crimen Vol. VIII No. 4, (2019), p.287



networks or colleagues to avoid legal proceedings or weaken evidence so that they are not entangled in the law or decisions that already have legal force cannot be implemented.

#### **4. Conclusion**

One of the things that needs to be considered with the regulation of obstruction of justice in the Criminal Code is that of the many articles that can be analogous to acts of obstruction of justice, there is only one article which clearly states the objective element "to obstruct or complicate examination and investigation or prosecution." " as contained in Article 221 paragraph (1) sub 2e. The implementation of law enforcement for obstruction of justice in several cases in Indonesia has reached a court decision, namely the case of Cirus Sinaga, a former Attorney General's Intelligence Attorney. The prosecutor stated that Cirus Sinaga was proven guilty of committing a crime in the form of obstructing the investigation and prosecution of corruption cases by eliminating the corruption article in the tax mafia money laundering case of Gaius Tambunan at the Tangerang District Court. This demand was granted by the Panel of Judges in Decision No. 24/Pid.B/TPK/2011/PN.Jkt.Pst by imposing five years imprisonment and a fine of IDR 150,000,000, - a subsidiary of three months in prison to Cirus Sinaga.

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