

## **Criminal Aspects of Obstruction of Justice Against Police Investigations**

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**Abstract:** *The purpose of this research is to know and analyze criminalization of acts of obstruction of justice against police investigations. In this writing, the author uses a normative legal method with a research specification in the form of descriptive analysis. The crime of Obstruction of Justice is a serious thing that can be done by someone who intentionally prevents, obstructs, or directly or indirectly thwarts a police investigation or criminal law process. The problem of overcoming the crime of Obstruction of Justice, of course, cannot be separated from the context of the discussion regarding criminalization policy. Criminalization policy is a policy in determining an act that was originally not a criminal act (not punishable) to become a criminal act (an act that can be punished). so in essence, the criminalization policy is part of the criminal policy (criminal policy) by using criminal law (penal) means so that it is part of the criminal law policy (penal policy). Although Obstruction of Justice has the potential to be dangerous in the law enforcement process, its implementation is rarely applied and implemented in law enforcement. This may be due to differences in perception by law enforcement officers.*

**Keywords:** *Criminal; Dangerous; Investigations.*

### **1. Introduction**

Laws are made or enacted to achieve a goal or are also known as legal objectives.<sup>1</sup>The purpose of law is essentially to create an orderly, safe, peaceful, and balanced society in community life. When it comes to community life, there are several things that influence it, namely violations of justice, whether the act is punishable or not according to law. Therefore, in community life, this crime problem will certainly continue to develop and never recede either qualitatively

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<sup>1</sup>Sri Praptini, Sri Kusriyah, and Aryani Witasari, (2019), Constitution and Constitutionalism of Indonesia, International Journal of Legal Sovereignty, 2 (1), March, p 7

or quantitatively, and this development causes unrest in society and the government.<sup>2</sup>

Law enforcement is carried out by institutions that are authorized to do so, such as the police, prosecutors and government officials. So in enforcing the law. Since the law contains orders and coercion, then from the beginning the law needs help to realize the order. The law becomes meaningless if its orders cannot (be) implemented. Human effort and action are needed so that the orders and coercion that are potentially in the regulations become manifest.<sup>3</sup>Law is the external manifestation of justice and justice is the authentic internal and essence of the spirit of the law. So the supremacy of law is the supremacy of justice and vice versa.<sup>4</sup>

Early 2023 on social media and on Indonesian television was filled with the term Obstruction of Justice or commonly referred to as obstacles to ongoing investigations and legal processes. Obstruction of Justice began to be clearly revealed after a case occurred that killed one of the police officers allegedly carried out by his superior, as an effort to eliminate evidence, evidence and also to engineer the case, Obstruction of Justice was carried out by involving several other police officers.

The crime of Obstruction of Justice is a serious matter that can be committed by someone who intentionally prevents, hinders, or directly or indirectly thwarts a police investigation or criminal law process. Investigation is a process or activity carried out by law enforcement, by the police to find people suspected of committing a crime. In this investigation process, investigators determine the status of suspects to people suspected of committing a crime based on the evidence found. Normatively, the act of obstructing the investigation process has been regulated in many regulations, both in the Criminal Code and special criminal laws, the crime is referred to as obstruction of justice.

The crime of obstruction of Justice which does not have a definite benchmark for someone suspected of violating this crime, causes legal uncertainty and will certainly harm various parties. As well as the lack of unity in the perception of law enforcement officers regarding the limits of this crime. Then because of the lack of understanding of law enforcement officers regarding the limits of this crime, the fear is that later certain parties will also abuse this crime because there are no definite limits.

Criminal provisions against Obstruction of Justice in the future must be strengthened, otherwise Obstruction of Justice will be able to damage the criminal

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<sup>2</sup>Arif Gosita. (1983). *Problems of Crime Victims*. Jakarta: Akademika Pressindo, p 3.

<sup>3</sup>Markhy S. Gareda. (2015), *Acts of Obstructing the Judicial Process of Corruption Crimes Based on Article 21 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001*. *Lex Crimen*, IV (1), January-March, p 135

<sup>4</sup>Sukarno Aburaera, Muhadar, Maskun, (2013). *Philosophy of Law: Theory and Practice*, First Edition, Kencana Prenada Media Group, Jakarta, p 179.

justice system and will weaken public trust in the law. The actions of the perpetrators in committing Obstruction of Justice need to be strengthened by sanctions against parties who carry out actions that obstruct justice, especially those carried out by law enforcement.<sup>5</sup>

Researchers determine a theme and form a title to be continued in conducting a scientific study in the form of systematic and basic research. the purpose of the research is knowing and analyzing the criminalization of acts of obstruction of justice against police investigations.

## **2. Research Methods**

To conduct a study in this study, the author uses a normative legal method or written legal approach. The normative legal research method is a legal research which is carried out by examining literature or commonly called secondary data periodically. Normative legal research is research on the principles of positive law contained in legislation where this research has the concept that law is a rule. This research is conducted by examining literature or what is called secondary data.

## **3. Results and Discussion**

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

The definition of obstruction of justice as defined in Black's Dictionary is more specific, because it is related to the administration of law and justice. Black defines the act of obstructing the legal process (obstruction of justice) as any form of intervention into the entire legal and justice process from the beginning until the process is completed. These forms of intervention can be in the form of providing false information, hiding evidence from the police or prosecutor's office, or harming or intimidating witnesses or jurors (the use of juries in Anglo Saxon procedural law).<sup>6</sup>

In the context of criminal law, obstructing an officer is an act that obstructs the legal process being carried out by law enforcement officers (in this case the police, prosecutors, judges, and advocates), whether against witnesses, suspects, or defendants. Obstruction of Justice is a disruption to the judicial process where there is an attempt to reduce the goodness (fairness), or efficiency of the judicial process or the judicial institution.

The explanation of OJ's criminal act was also conveyed by Eddy OS Hiariej stating that the crime of obstructing the legal process is an act, either doing or not doing something with the intention of delaying, disrupting, or intervening in the legal process in a case. The crime of obstructing the legal process in this way means that the action taken from the beginning has a motive to obstruct the legal process. If

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<sup>5</sup>Keren Shallom Jeremia, Karina Hasiyanni Manurung. (2022), Analysis of Obstruction of Justice Acts Committed by Police Officers in Premeditated Murder Cases. Jakarta. Scientific Journal of Legal Essence. 4 (2), p 99-111

<sup>6</sup>Bryn A. Garner (Ed), (2009), Black'Law Dictionary, Ninth Edition, St. Paul, United States of America: West, A Thomson Reuters business, p 1183

simplified, obstruction of justice is an action taken by someone, either a law enforcement officer or the public, to obstruct and hinder the legal process. In this case, the legal process is not only related to criminal law enforcement but also related to all government activities.

Several judicial bodies in the United States add one requirement to impose an obstruction of justice sentence, namely that the perpetrator must be proven to have a motive, such as a motive to be free from charges or a motive to reduce the sentence. This act of obstruction can be done by anyone in various ways. For example, the perpetrator's lawyer who bribes witnesses and victims or threatens either physically or mentally to the witness so that the witness does not want to give testimony or falsifies the information given. The perpetrator's family who hides the victim's whereabouts, law enforcement officers who destroy Closed Circuit Television (CCTV) as evidence of a criminal case or the community who do not want to cooperate with law enforcement officers to enforce the law. The consequences of obstruction of justice are not trivial because they can hinder the law enforcement process, damage the image of law enforcement officers and injure the law itself.

### **3.2. Criminalization of Obstruction of Justice Acts against Police Investigations**

Formally Obstruction of Justice is a prohibited act which carries criminal sanctions in it. This action is usually carried out during the trial process which includes investigation, inquiry, prosecution, and trial examination. The crime of Obstruction of Justice is a serious matter and can only be recognized if someone intentionally prevents, obstructs, or directly or indirectly thwarts a criminal decision.

There are three elements of an act that are subject to criminal penalties for Obstruction of Justice, namely:

- 1) Such action results in pending judicial proceedings;
- 2) The perpetrator knows his actions or is aware of his actions (knowledge of pending proceedings);
- 3) The perpetrator commits or attempts a deviant act with the aim of disrupting or intervening in a legal process or administration (acting corruptly with intent).<sup>7</sup>

*Obstruction of justice* in the provisions of general criminal law (KUHP), Obstruction of Justice as a criminal act is regulated in the second book, Chapter VIII on crimes against public power. In this chapter, several acts that are against the state's power apparatus are regulated, in other words, the provisions in this chapter are intended to protect the interests of the government, in the sense that government organs can carry out their duties, for the sake of public order and public security.

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<sup>7</sup>Deswita Fitri, et al. (2023), Obstruction Of Justice in the Indra Kenz Binomo Case, JIH: Equality Before the Law, 02 (01), February, p 50

In Indonesia, the regulation on obstruction of justice or obstructing the legal process has been regulated in the Criminal Code (KUHP) and also more specific regulations, namely: in Article 221 of the Criminal Code; Article 21 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption; Article 22 of Law Number 15 of 2003 concerning the Implementation of Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism; and Article 22 of Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking.<sup>8</sup>

In fact, we will not find the term obstruction of justice in the Criminal Code. However, several criteria that refer to this problem can be found in several articles in the Criminal Code, Chapter VIII starting from Article 207 to Article 412, one thing that needs to be considered regarding the regulation of obstruction of justice in the Criminal Code is that of the many articles that can be analogized as acts of obstruction of justice, there is only one article that clearly states the element of the purpose "to obstruct or hinder the examination of the investigation or prosecution" as contained in Article 221 paragraph (1) sub 2e. While Article 222 mentions the element of "obstructing the examination of a corpse for the court" as part of obstruction of justice. However, by conducting a comparative legal study, both against special criminal law provisions and against several criminal law provisions of other countries that regulate obstruction of justice, it can be concluded that several crimes formulated in this chapter are criminal acts (that can) obstruct a legal process.

*Obstruction of Justice* a form of legal violation that is rooted so that it can damage the order of society and the state. For example, a perpetrator if we examine it from the side of obstructing the administration of justice, by refusing his consent to the law to establish judicial power. In obstructing the administration of justice corruptly in the abstract is not enough for criminal responsibility. Obstruction must affect some kind of process. One of the obstruction processes is Actus Reus, namely for a defendant who is guilty of obstructing government law, someone must or must try to influence, obstruct, or obstruct a process. In the case of run-of-the-mill obstruction, the defendant is charged with changing, hiding, or destroying documents that are called, or by encouraging or giving false testimony.<sup>9</sup>

Obstruction of Justice often involves attempts to prevent the police from gathering evidence relevant to an investigation. This can include blocking access to important documents, destroying or altering evidence, or other actions that hinder the lawful gathering of evidence.<sup>10</sup> The tactics often used by perpetrators

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<sup>8</sup>Markhy S. Gareda. (2015), Op.Cit, January-March, p 137

<sup>9</sup>Fauziah Lubis, and Juliana PC.Sinaga. (2023), Analysis of Obstruction of Justice in Criminal Law Perspective, Unes Law Review, 6 (2), December, p 6596

<sup>10</sup>Afifah Diva Aramitha Suprayoga, (2024), Analysis of the Impact of Obstruction of Justice on the Judicial Process. Recidive, 13 (2), p 123

of Obstruction of Justice to disrupt the course of investigation by the Police is the manipulation of the legal process. In this context, manipulation refers to deliberate and illegitimate attempts to manipulate legal steps, investigative procedures, or investigative actions by the Police for the benefit of a particular person or group. These manipulation tactics can take various forms, from submitting false evidence to attempts to influence the actions of investigators through pressure or bribery.

In 2022, a phenomenal case occurred in the body of the National Police institution with the involvement of various ranks in one chain case carried out by the institution's top brass. In the course of revealing the case, the term obstruction of justice emerged in the case of premeditated murder. However, if associated with several criteria found in the articles in the Criminal Code, including several articles related to premeditated murder cases and the occurrence of obstruction of justice acts suspected by the perpetrators of premeditated murder, the articles suspected are Article 221 Paragraph 1, Article 231 and Article 233 of the Criminal Code.

In the obstruction of justice case, in the indictment with Case Register Number PDM-124/JKTSL/10/2022, the defendant Hendra Kurniawan acted as the party who gave orders to his subordinates to replace the Digital Video Recorder Close Circuit Television (CCTV) surveillance camera that recorded all the events around Ferdy Sambo's residential complex at the Duren Tiga Police complex, South Jakarta. It was revealed that the defendant Hendra Kurniawan already knew through his staff's statement that one of the CCTV cameras showed Brigadier Nofriansyah Yosua Hutabarat was still alive after Ferdy Sambo arrived at his official residence which was different from the events previously told by Ferdy Sambo. The defendant Hendra Kurniawan already knew the story from witness Arif Rachman Arifin who at that time had seen the CCTV footage that at that time Brigadier J had not died. When he learned about it, in a meeting between the three of them, Ferdy Sambo ordered witness Arif Rahman Arifin to delete and destroy the CCTV DVR file and asked defendant Hendra Kurniawan to check and ensure that witness Arif Rachman Arifin's work was complete in deleting the file. The case of Brigadier J carried out by a police officer has been considered to meet the criteria as obstruction of justice.<sup>11</sup>

Although there are many regulations that serve as guidelines and options for enforcing justice, however, in the crime of premeditated murder, especially the perpetrators of Obstruction of Justice, it has not been optimal. This can happen possibly because of the many elements of obstruction of justice that have not been further examined by law enforcement officers, especially since the defendants certainly admit that they committed the crime of premeditated murder without intent, only following the orders of their superiors so that it is rather difficult to immediately convict the defendant of obstruction of justice.

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<sup>11</sup>Amelia Mardhatilla, (2023), Op.Cit, 01 (01), p 346

*Obstruction of justice* is a crime where the intended action or has the opposite effect which damages the functioning of the judicial process.<sup>12</sup> So far there are no provisions on obstruction of the criminal justice process. Especially in the Criminal Procedure Code, but in Indonesian norms, obstruction of the judicial process has been regulated in many laws, both in criminal law and in special crimes. It should be noted that in criminal law there are many articles related to obstruction of justice that can be equated with acts of obstruction. In the Criminal Code, of the many articles that can be analogous to acts of obstruction of the judicial process, there is only one article that clearly states the elements and objectives of the act of obstructing or complicating the examination and investigation or prosecution. Meanwhile, the Corruption Law also regulates people who commit acts of obstructing the handling of corruption cases in Articles 21, 22, 23, and 24. Violations of the provisions of these articles can be subject to relatively severe criminal sanctions accompanied by special minimum criminal threats, except for violations of the provisions of Article 24 which are different from the criminal threats of the same articles in criminal law.<sup>13</sup>

In practice, the provisions of Article 221 of the Criminal Code are considered inapplicable to various forms of acts classified as obstruction of justice. One of the obstacles that often arises is the level of resistance from law enforcement officers and stakeholders who carry out actions that hinder the judicial process, including not implementing, obstructing, or thwarting existing legal provisions. There needs to be a separation of sanctions between civil society and law enforcement officers such as investigators, advocates, or public prosecutors.

Still fresh in the memory, the failure of the implementation of the obstruction of justice offense was seen in the case of the acid attack on the former KPK investigator, Novel Baswedan in 2017. As a result of the attack, Novel Baswedan suffered permanent disability resulting in blindness in his left eye. The perpetrators of the attack were active police officers, namely convicts Rahmat Kadir and Ronny Bugis. At the time of the attack, Novel Baswedan was an active investigator at the KPK and was in the middle of solving major corruption cases, including the SIM Simulator project case in 2012 including the red book case containing alleged bribery related to meat import permits by businessman Basuki Hariman which involved several names of officials who allegedly received bribes. The National Human Rights Commission (KOMNAS HAM) also voiced that the case should use the Obstruction of Justice offense because it had disrupted and obstructed the KPK's work in eradicating corruption cases. In fact, the acid attack case ended with the suspects being charged with general crimes. The two police officers were convicted with subsidiary charges, Article 353 paragraph (2) of the

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<sup>12</sup>Oemar Seno Adji and Insriyanto Seno Adji. Op.Cit, 2007. Page 285

<sup>13</sup>Mahrus Ali, Azas. Theory and Practice of Criminal Law in Corruption. Yogyakarta: UII Press, 2013. Page 65.

Criminal Code<sup>10</sup> in conjunction with Article 55 paragraph (1) number 1 of the Criminal Code.<sup>14</sup>

In the judge's decision in 2020, Rahmat Kadir Mahulette was sentenced to 2 (two) years in prison because it was proven legally and convincingly to have committed a crime of jointly committing assault with a premeditation that caused serious injuries, while Ronny Bugus was sentenced to 1 (one) year and 6 (six) months in prison because it was proven legally and convincingly to have committed a crime of jointly committing assault with a premeditation that caused serious injuries. Investigation of the deviation of the crime of Obstruction of Justice in this case was not used by law enforcement officers. The challenge of the crime of obstruction of justice in its application requires the capacity or ability and also the courage of the Police to resolve cases similar to this crime. Total law enforcement (total enforcement concept) demands that all values behind the legal norms be upheld without exception.

With all the weaknesses of the formulation in the Obstruction of Justice provisions, in order to be implemented effectively, one of the steps that can be taken is to align the views of law enforcers regarding these obstructive acts. An agreement is needed between law enforcers so that the Obstruction of Justice provisions can be applied integrally. The Police, Prosecutor's Office, Corruption Eradication Committee, and Supreme Court need to be encouraged to have an understanding and agreement regarding the forms of acts that are considered as one form of Obstruction of Justice practice. Obstruction of Justice can actually be processed by law if it has met 3 important elements, namely: 1) The act causes a delay in the legal process (pending judicial proceedings); 2) The perpetrator knows his actions and is aware of the effects of the actions he has committed (knowledge of pending proceedings); 3) The perpetrator commits or attempts a deviant act with the aim of disrupting or intervening in the legal process or administration (acting corruptly with intent).<sup>15</sup>In addition, in a comparative study with a comparison of the dynamics of the judicial system in the United States, several courts in the United States have added one more condition, regarding the act of obstructing the legal process, namely that the person is proven to have a motive to carry out the act accused of him, namely trying to obstruct the legal process. Obstruction of Justice as one form of elite crime involving individuals with castes and positions that are quite high in their fields, in this case of course in cases of corruption. In the process of eradicating it, serious efforts are needed, this is because this crime is usually not carried out alone, there must be individuals who try to help smooth the way for this elite crime.

Meanwhile, in Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) in Article 281 it states that anyone who obstructs, intimidates, or influences

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<sup>14</sup>Orin Gusta Andini, et al. (2023), Problems of the Crime of Obstruction of Justice in Corruption Crimes in Indonesia, *Alauddin Law Development Journal (ALDEV)*, 5 (3), p 556

<sup>15</sup>*Ibid*, p 557



an Official carrying out the duties of investigation, prosecution, examination in court, or court decisions with the intention of forcing or persuading him to do or not to do his duties shall be punished with imprisonment for a maximum of 7 (seven) years 6 (six) months or a maximum fine of category VI or based on Article 284 of the Republic of Indonesia Law Number 1 of 2023 concerning the Criminal Code, there are also acts of obstruction of justice, related to releasing or providing assistance to escape someone from detention, which reads: Anyone who assists or frees someone who is released from detention on the orders of an authorized official or who is released from prison or a correctional institution, shall be punished with imprisonment for a maximum of 3 (three) years or a maximum fine of category IV.

#### **4. Conclusion**

Several relevant articles that regulate obstruction of justice in the Criminal Code include Article 221 paragraph 1 which states that anyone who intentionally hides a person who has committed a crime or is prosecuted for a crime, or anyone who provides assistance to him to avoid investigation or detention by a judicial or police officer, or by another person who, according to the provisions of the law, is continuously or temporarily entrusted with carrying out police duties; anyone who, after committing a crime and with the intention of covering it up, or to obstruct or complicate its investigation or prosecution, destroys, removes, hides objects against or with which the crime was committed or other traces of the crime, or withdraws them from examination by a judicial or police officer or by another person who, according to the provisions of the law, is continuously or temporarily entrusted with carrying out police duties.

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