

## Legal Analysis of the Application of Criminal Sanctions Against Perpetrators of the Criminal Acts of Obstruction of Justice

Khairil Anam<sup>1)</sup> & Toni Triyanto<sup>2)</sup>

<sup>1)</sup>Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia,  
E-mail: [Khairilanam66@gmail.com](mailto:Khairilanam66@gmail.com)

<sup>2)</sup>Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia,  
E-mail: [tonitriyanto@unissula.ac.id](mailto:tonitriyanto@unissula.ac.id)

**Abstract.** *The act of obstructing the judicial process or (obstruction of justice) is an act of a person who obstructs the legal process, because this obstructing act is an unlawful act which is clearly breaking through and opposing law enforcement. The act of obstructing the legal process is a criminal act because it clearly hinders law enforcement and damages the image of law enforcement agencies. In the Criminal Code, this act is regulated in Articles 216-222 of the Criminal Code which stipulate that the actions of parties who obstruct the legal process can be punished. Specifically, Article 221 paragraph (1) number 1 of the Criminal Code states that anyone who commits an act of obstructing the legal process shall be punished and threatened with a maximum imprisonment of nine months. Regarding the author's purpose in reviewing this discussion, namely to find out, understand, and analyze the application of criminal sanctions against perpetrators of the crime of Obstruction of Justice in the DKI High Court Decision Case Number 65 / Pid.Sus / 2023 / PT DKI. And the Judge's Considerations in Imposing Criminal Sanctions Against Perpetrators of the Crime of Obstruction of Justice in the DKI High Court Decision Case Number 65/Pid.Sus/2023/PT DKI. This research method is a type of normative research. Normative legal research is studying laws conceptualized as norms or rules that apply in society, and become a reference for everyone's behavior. Or with the term normative juridical because in legal research must also examine its legal basis. Normative legal research or literature includes: Research on legal principles, Research on legal systematics, Juridical Review of the Implementation of Criminal Sanctions Against Performers of the Criminal Act of Obstruction of justice 2 Comparative law, Legal history, Research on the level of vertical and horizontal synchronization. The responsibility for criminal sanctions against perpetrators of the Criminal Act of Obstruction Of Justice in the DKI High Court Decision Case Number 65 / Pid.Sus / 2023 / PT DKI which is carried out jointly is based on elements of criminal responsibility such as the existence of a criminal act committed in*

*violation of the law, there is an element of error in the form of dolus intent or negligence culpa, the existence of a maker who is capable of being responsible, and there is no excuse. The criminal responsibility of perpetrators of the crime of obstruction of justice which is carried out jointly must take into account the role of each perpetrator, whether the perpetrator, the person who ordered the act, the person who helped to commit it, and the person who encouraged the act. The research results show that: 1.The responsibility for criminal sanctions against the perpetrators of the Crime of Obstruction of Justice in the DKI High Court Decision Case Number 65/Pid.Sus/2023/PT DKI which is carried out jointly is based on the elements of criminal responsibility such as the existence of a crime committed in violation of the law, there is an element of error in the form of dolus intent or negligence culpa, there is a maker who is capable of being responsible, and there is no reason for forgiveness. The criminal responsibility of the perpetrators of the Crime of Obstruction of Justice which is carried out jointly must pay attention to the role of each perpetrator, whether the maker, the person who ordered it to be done, the person who helped to do it, and the person who encouraged it to be done. 2.Defendant Hendra Kurniawan was named in an obstruction of justice case for allegedly diverting attention from the death of Brigadier Nofriansyah Yosua Hutabarat at the official residence of former Head of the National Police's Propam Division, Ferdy Sambo. Hendra, the former Head of the National Police's Internal Affairs Bureau, had followed Sambo's orders to handle the case internally.*

**Keywords:** Application; Criminal; Justice; Obstruction; Sanctions.

## 1. Introduction

The essence of Indonesia as a state based on law is explained in Article 1 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia, where law is the order of human behavior, and order is a system or rule. Laws are created or enacted to achieve a goal, also known as the purpose of law. The purpose of law is essentially to create an orderly, safe, peaceful, and balanced society. When it comes to social life, there are several factors that influence it, namely violations of justice, whether the act is punishable or not according to law. Therefore, in social life, this crime problem will certainly continue to grow and never recede, both qualitatively and quantitatively, and this development causes unrest in society and the government.<sup>1</sup>

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<sup>1</sup>Arif Gosita. Problems of Crime Victims. Jakarta: Akademika Pressindo, 1983. P. 3

In state activities, the law determines everything. The law is the commander. The law is a system of rules. What guides us is that system of rules, not the individuals who happen to hold positions. People who hold public positions come and go dynamically, but the system of rules is stable and relatively permanent.<sup>2</sup>

The statement that Indonesia is a State of Law also has the consequence that the State of Indonesia applies law as an ideology to create order, security, justice and welfare for its citizens, so that the law is binding for every action taken by its citizens.<sup>3</sup>

Crime is a deviance that has always been and will always be inherent in every form of society. It is, like disease and death, which recur, and like the seasons that change from year to year. Law is necessary to protect and prevent human disorder and to provide a sense of security. Therefore, it is necessary to resolve problems regulated by law in Indonesia, including an investigative process to uncover the truth behind the problems.<sup>4</sup>

Criminals, or those who engage in any form of "deviant behavior," are referred to as criminals. Society assumes that a "criminal" is someone who commits deviant acts that are intolerable by existing societal norms. Thus, crime is not only a humanitarian issue but also a social one.<sup>5</sup>

Investigation is a process or activity carried out by law enforcement, by the police to search for and collect evidence in the first stage so that it can be punished. The investigative action regulated in Article 1 Paragraph 1 of the Criminal Procedure Code in conjunction with Article 6 Paragraph 1, and Article 1 Paragraph 2, although still temporary, is the law that defines the meaning of investigation, which states that investigators are state officials of the Republic of Indonesia, the National Police, or civil service officials who are given special authority for investigation based on certain laws.<sup>6</sup>

Article 1 paragraph (2) of the Regulation of the Head of the Republic of Indonesia National Police concerning the Management of Criminal Investigations, provides the following definition of investigation:

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<sup>2</sup>Gunarto, Law Enforcement Agenda and Its Relevance for National Development, Journal of Legal Reform Volume I No.1 January-April 2014, Page 3

<sup>3</sup>Alwan Hadiyanto, Legal Reform Towards a Clean Government, Yogyakarta: Genta Publishing, 2020, p. 1

<sup>4</sup><https://e-journal.uajy.ac.id/11171/2/1HK10887.pdf> Accessed on December 1, 2025 at 20.15 WIB

<sup>5</sup>Saparinah, Social Perceptions Regarding Deviant Behavior, Jakarta: Bulan Bintang, 1976, pp. 25-26

<sup>6</sup>Andi Hamzah, Indonesian Criminal Procedure Law, Jakarta: Sinar Grafika, 2008, p. 120

"A series of investigative actions in the manner and according to the methods regulated in this law to seek and collect evidence which will shed light on the crime that occurred and to find the suspect."<sup>7</sup>

The law must be upheld and implemented, and must not be deviated from. This is according to the adage "Fiat Justitia et pereat mundus," which means even if the world collapses, the law must be upheld. Therefore, judicial institutions, judges, and their decisions must be dignified, authoritative, respected, and obeyed by all parties. This way, the hopes of the justice-seeking public are met and the judicial process is carried out properly, safely, comfortably, and without interference from any party. So that the public is also served well, in a timely manner, and immediately obtains legal certainty. The main purpose of judicial institutions, especially criminal trials, is to decide whether a person is guilty or innocent of the crime accused of them.<sup>8</sup>

*Obstruction of Justice* Obstruction is the act of obstructing the judicial process, an act that obstructs the legal process and disrupts the proper functioning of the judicial process. This act of obstruction is an unlawful act that clearly violates and opposes law enforcement. Obstruction is a criminal act because it clearly hinders law enforcement and damages the image of law enforcement agencies.<sup>9</sup>

Normatively, the act of obstructing the investigation process has been regulated in many regulations, both in the Criminal Code and special criminal laws, this criminal act is called obstruction of justice. The regulation of obstruction of justice in the Criminal Code of the many articles that can be analogized as an act of obstruction of justice, there is only one article that clearly states the element of the purpose of obstructing or complicating the examination and investigation or prosecution, as stated in Article 221 Paragraph (1) 1 and 2.4 of the Criminal Code which states that, "any person who commits an act of obstructing the legal process shall be punished and threatened with a maximum prison sentence of nine months."<sup>10</sup>In Article 221 Paragraph (1) of the Criminal Code, the penalty is a maximum prison sentence of nine months or a maximum fine of four thousand five hundred rupiah.<sup>11</sup>

There are many acts that obstruct the judicial process in corruption cases, but only a few are prosecuted. Normatively, acts of obstructing the judicial process are

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<sup>7</sup>Hartono, *Investigation & Enforcement of Criminal Law Through a Progressive Legal Approach*, Jakarta: Sinar Grafika, 2010, p. 32

<sup>8</sup>The objectives of criminal procedural law in the Decree of the Minister of Justice of the Republic of Indonesia No. M.01.PW.07.03 of 1992 concerning Guidelines for the Implementation of the Criminal Procedure Code (KUHAP).

<sup>9</sup>Wahyu Wagiman, *Contempt of Court in the Draft Criminal Code*, Jakarta: Elsam, 2005. p. 16

<sup>10</sup>Moeljatno. *Criminal Code*, Jakarta: PT. Bumi Aksara, 2016. p. 83

<sup>11</sup>Markhy S Gareda, *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*, article in the *Lex Crimen journal*, edition no. 1 Vol IV, 2015, p. 136

regulated in many regulations, both in the Criminal Code and special criminal laws. This crime can also be called obstruction of justice. In the Criminal Code, this act is regulated in Articles 216-222 of the Criminal Code, which stipulate that the actions of parties who obstruct the legal process can be punished. Specifically, Article 221 paragraph (1) number 1 of the Criminal Code states that anyone who commits an act of obstructing the legal process will be punished and threatened with a maximum prison sentence of nine months.<sup>12</sup>

Obstruction of justice is an act by someone who obstructs the legal process, as this act is against the law and clearly violates and opposes law enforcement. Obstruction of justice is a criminal act because it clearly hinders law enforcement and damages the image of law enforcement agencies.<sup>13</sup>

## 2. Research Methods

### 1) Research Method Type

This research is a normative type of research. Normative legal research examines law conceptualized as norms or rules that apply in society and serve as a guideline for individual behavior. This is also known as normative juridical research, as legal research must also examine its legal basis.<sup>14</sup> Meanwhile, normative juridicalism is an approach that uses the concept of positivist legism. This concept views law as written norms created and promulgated by authorized institutions and officials. Furthermore, this conception also views law as an independent, closed, and separate normative system from social life, and considers other norms not to be legal norms.<sup>15</sup>

Normative research, according to Soerjono Soekanto, states the following: Normative legal research (in addition to sociological or empirical legal research which primarily examines primary data) is legal research conducted by examining library materials or secondary data alone. Normative legal research or library research includes:<sup>16</sup>

- 1) Research on legal principles.
- 2) Research on legal systematics.
- 3) Comparative law.

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<sup>12</sup>Ibid

<sup>13</sup><https://www.hukumonline.com> accessed on December 1, 2025 at 19.00 WIB

<sup>14</sup>Abdul Kadir Muhammad, *Law and Legal Research*, Citra Aditya Bakti, Bandung: 2004, p. 52

<sup>15</sup>Ronny Hanitijo Soemitro, *Research Methodology and Jurimetry*, Jakarta: Ghalia Indonesia, 1990, p. 14.

<sup>16</sup>Soerjono Soekanto and Sri Mamudji, *Normative Legal Research, A Brief Review*, Jakarta: Rajawali Pers 2000, p. 13

- 4) Legal history.
- 5) Research on the level of vertical synchronization.
- 6) and horizontal.

## 2) Types of Data and Sources of Legal Materials

According to Imam Gunawan, qualitative research data is obtained from data sources using data collection techniques that can be grouped into two categories, namely interactive and non-interactive methods. The data sources used are secondary data sources, namely indirect data obtained through library studies of data sources in this case, namely official documents, archives of agreements, literature, legislation, research results in the form of reports, articles in print media and other mass media related to the problems being studied.<sup>17</sup>

The legal materials and research sources used in this writing are:

### a. Primary legal materials consist of:

- 1) Decision in Case Number 65/Pid.Sus/2023/PT DKI
- 2) The 1945 Constitution of the Republic of Indonesia
- 3) Law Number 1 of 1946 concerning Criminal Law
- 4) Law Number 8 of 1981 concerning Criminal Procedure Law
- 5) Law Number 48 of 2009 concerning Judicial Power.

### b. Secondary Legal Materials consist of:

- 1) Books;
- 2) Bill;
- 3) Research results of legal experts;
- 4) Thesis, Dissertation and Dissertation.

### c. Tertiary legal materials consist of:

- 1) Big Indonesian Dictionary;
- 2) Legal Dictionary;
- 3) Eknklopedia.

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<sup>17</sup>Imam Gunawan, *Qualitative Research Methodology*, Jakarta: Bumi Aksara, 2004, p. 124

### 3) Method of collecting data

Data collection method is carried out to obtain the information needed in order to achieve the research objectives. The procedures taken for data collection are as follows: Library research is research to obtain secondary data, carried out through document studies in the form of laws and regulations, literature books, papers, research results, articles, and other scientific works related to research problems.

### 4) Data Analysis Techniques

Data analysis is an activity in the form of a study or review of the results of data processing assisted by previously obtained theories.<sup>18</sup> After the research data materials have been collected, they will be analyzed to find a definite answer in the research results where the data analysis used in this research is descriptive in nature to provide an explanation of the legal issues regarding sanctions for the crime of Obstruction of Justice in the DKI High Court Decision Number 65/Pid.Sus/2023/PT DKI".

The approach to drawing conclusions used is a conceptual approach where problem solving starts from a case approach by explaining legal events, a statutory approach by seeking the basis for criminal punishment for perpetrators of the crime of Obstruction of Justice in the DKI High Court Decision Number 65/Pid.Sus/2023/PT DKI.

## 3. Results and Discussion

### 3.1. Implementation of criminal sanctions against perpetrators of the Crime of Obstruction of Justice in the DKI High Court Decision Case Number 65/Pid.Sus/2023/PT DKI

#### 1. Identity of the Defendant

The Jakarta High Court, which examined and tried a criminal case at the appeal level with the defendant named Hendra Kurniawan, SIK the defendant was born in Bandung and the defendant is 48 years old, the defendant was born on March 16, 1974, the defendant is male, Indonesian nationality, the defendant resides at Jalan Bangka II-G No. 3 Rt.04 Rw.03, Pela Mampang Village, Mampang Prapatan District, South Jakarta City, DKI Jakarta Province, the defendant is Christian, the defendant's occupation is a member of the Indonesian Republic Police.<sup>19</sup>

#### 2. Case Position

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<sup>18</sup>Sugiyono. Qualitative and Quantitative Research Methods and R&D, Alfabeta, Bandung: 2012, p. 10

<sup>19</sup>DKI High Court Decision Number 65/PID.SUS/2023/PT DKI



Defendant Hendra Kurniawan, S.IK., together with Witness Ferdy Sambo, SH, S.IK., MH, Witness Arif Rachman Arifin, S.IK., MH, Witness Chuck Putranto, S.IK., Witness Baiquni Wibowo, S.IK., Witness Agus Nurpatia Adi Purnama, S.IK., Witness Irfan Widyanto, SH, S.IK., on Saturday, July 9, 2022, at approximately 07.30 WIB until Thursday, July 14, 2022, at approximately 21.00 WIB or at least in July 2022, at the security post of the Duren Tiga Police Housing Complex, RT.05 RW.01, Duren Tiga Village, Pancoran District, South Jakarta or at least in another place that is still included in the jurisdiction of the South Jakarta District Court, those who did it, who ordered it to be done and who participate in carrying out acts, intentionally and without rights or unlawfully carrying out any action which results in disruption of the electronic system and/or causes the electronic system to not work as it should.

### 3. Indictment

The public prosecutor (JPU) charged Hendra Kurniawan with the Electronic Information and Transactions Law (ITE) in the case of the premeditated murder of Brigadier Nofriansyah Yosua Hutabarat or Brigadier J. Brigadier General Pol Hendra Kurniawan is one of seven suspects in the crime of obstruction of justice who was tried at the South Jakarta District Court, Wednesday.

In the first primary charge, Hendra Kurniawan was charged with Article 49 in conjunction with Article 32 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning ITE in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code. Furthermore, the second primary charge, Article 233 of the Criminal Code in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, subsidiary Article 221 paragraph (1) point 2 in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code. The threat of punishment if the elements of Article 32 paragraph (1) are met is a maximum prison sentence of eight years and/or a maximum fine of IDR 2 billion.

In the indictment, read aloud by the prosecutors, the defendant was involved in replacing the CCTV DVR that recorded all events around Ferdy Sambo's residential complex in Duren Tiga, South Jakarta. The defendant also knew that one of the CCTV cameras showed footage of Brigadier J, still alive, after Ferdy Sambo arrived at his official residence. This CCTV footage differed from the chronology of events that Ferdy Sambo had scripted.

### 4. Prosecutor's Demands

For these actions, the defendant has been charged by the public prosecutor and sentenced to prison by the judge at the South Jakarta District Court. The Public Prosecutor's Criminal Demands at the South Jakarta District Attorney's Office are as follows:



1) Declaring that the Defendant Hendra Kurniawan, SIK has been legally and convincingly proven guilty of participating in an act intentionally and without rights or unlawfully carrying out any action that results in the disruption of the electronic system and/or causes the electronic system to not work as it should as regulated and threatened with criminal penalties in Article 49 in conjunction with Article 33 of Law No. 19 of 2016 concerning amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code as in the First Primary Charge.

2) Sentencing the defendant Hendra Kurniawan, SIK to 3 (three) years imprisonment minus the time the defendant has been in detention, with an order that the defendant remain in detention.

3) Imposing a fine on the Defendant Hendra Kurniawan, SIK of Rp. 20,000,000.00 (twenty million rupiah) subsidiary to 3 (three) months imprisonment.

#### 5. Decision

Based on the indictment, examination of evidence and witnesses, and the demands of the public prosecutor, the panel of judges at the South Jakarta District Court sentenced the defendant to prison for the crime committed, and the defendant must also be held accountable for his actions. The South Jakarta District Court Decision Number 802/Pid.Sus/2022/PN Jkt.Sel dated February 27, 2023, states the following:<sup>20</sup>

a. Declaring that the Defendant Hendra Kurniawan, SIK was not legally and convincingly proven guilty of committing the crime in the First Primary Charge.

b. Therefore, acquit the Defendant of the First Primary Charge.

c. Declaring that the Defendant Hendra Kurniawan, SIK was proven legally and convincingly guilty of committing a criminal act of intentionally and without the right to transfer electronic information belonging to the public which was carried out jointly.

d. Therefore, the Defendant is sentenced to 3 (three) years imprisonment and a fine of IDR 20,000,000.00 (twenty million rupiah) with the provision that if the fine is not paid, it must be replaced with 3 (three) months imprisonment.

e. Determining that the period of arrest and detention that the Defendant has served is deducted in full from the sentence imposed.

f. Determine that the Defendant remains in detention.

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<sup>20</sup>South Jakarta District Court Decision Number 802/Pid.Sus/2022/PN Jkt.Sel

## 6. Author's Analysis

According to the author's research, to maintain justice, judges must also consider legal, philosophical, and sociological truth. Based on factual analysis and the application of the law, judges assess whether there is an error that meets the elements of a crime, as stipulated in Article 183 of the Criminal Procedure Code. Judges collect and analyze material facts from all available evidence. These considerations are then formulated into a *ratio decidendi*, which forms the basis for the binding force of the decision.

The defendant, who committed the crime of obstruction of justice in the DKI High Court Decision Number 65/Pid.Sus/2023/PT DKI, can use the Sentencing Theory. In essence, the judge, when considering the sentence, must consider all aspects related to conscience. Sentencing is imposed on defendants who have committed criminal acts. Criminal acts are:

"An act which is prohibited by a legal rule and is punishable by a criminal offence, provided that it is remembered that the prohibition is directed at the act, namely a condition or incident caused by a person's behavior, while the criminal threat is directed at the person who caused the incident."<sup>21</sup>

The state has the authority to impose criminal sanctions. The state, as an organization within a region, possesses the highest, legitimate authority and is obeyed by the people. As a supreme organization, the state, through law, appoints certain officials to impose criminal sanctions on perpetrators of crimes. The official authorized to impose criminal sanctions on perpetrators of crimes is the judge.

Imposing a criminal penalty means enforcing a punishment on a perpetrator. The subject of criminal punishment theory is the person subject to punishment based on a court decision. The state imposes criminal penalties due to:

- 1) Revenge;
- 2) Scare the people;
- 3) Protecting society, or fostering society.

According to Binsar M. Gultom, the imposition of sanctions or punishment on the defendant depends on the judge. The judge is not bound by the severity of the prosecutor's demands; the judge may sentence the defendant more severely or less severely than the prosecutor's requisitioner based on consideration of aggravating and mitigating factors for the defendant's actions. Furthermore, there is no rule stating that judges must be bound by the minimum threat of punishment

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<sup>21</sup>Moeljatno, Principles of Criminal Law, Jakarta: Rineka Cipta, 2000, p. 54.

in a law. Therefore, it can be understood that there is no standardization of sanctions imposed by judges on defendants.<sup>22</sup>

### **3.2. Judge's Considerations in Imposing Criminal Sanctions on Perpetrators of Obstruction of Justice in DKI High Court Decision Number 65/Pid.Sus/2023/PT DKI**

In accordance with what was researched by the author in the DKI High Court Decision Case Number 65/Pid.Sus/2023/PT DKI, there were considerations from the judge who took into account the objections and reasons of the Defendant as stated in his appeal memorandum in which the defendant stated that the defendant's actions were not a criminal act and also did not fulfill the elements of a criminal act.

Regarding the defendant's statement that the defendant's actions were not criminal acts and also did not fulfill the elements of a criminal act, regarding the definition of the element intentionally without rights or against the law, the Panel of Judges at the Appellate Level agreed with the explanation of the definition from the Panel of Judges at the First Level in its decision, namely intentionally without rights or against the law is interpreted as wanting or knowing (*willen en wetens*) or an intentional action must also be aware of his actions and/or consequences. Thus, it can be said that someone who does an act intentionally, he wants the act and also knows or is aware of what he does and the consequences that arise from it.

The Panel of Judges considered that to answer the problem, it must be proven through legal facts revealed in the trial obtained from witness statements, expert statements, documentary evidence, and indicative evidence. That when viewed from the function of Paminal, the act is beyond its authority because Paminal's duties/functions are limited to recording audiovisuals, while when it comes to taking CCTV DVRs which are evidence in criminal events, it should be the task and authority of the Criminal Investigation Unit of the Indonesian National Police.

The Panel of Judges considered that the defendant as Karo Paminal had also issued a Warrant before taking the CCTV DVR from the Duren Tiga Police Complex, namely Warrant No.Sprin/2055/VII/HUK.66/2022 which was signed by the Defendant Hendra Kurniawan himself, the contents of which were to carry out investigations, pulbaket and clarification of the truth of the information and those assigned according to the Warrant. when the Defendant made the Warrant it was without prior coordination with the Criminal Investigation Unit of the Indonesian National Police so that the Warrant did not meet the formal requirements because the purpose of making/issuing the Warrant included an investigation into the criminal

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<sup>22</sup>Ibid

incident of the shooting of the victim Joshua Hutabarat to death at the house of witness Ferdy Sambo.

According to the assessment of the Panel of Judges at the Appellate Level, by paying attention to the series of actions of the Defendant and the witnesses, it has been proven that there was knowledge and will of the Defendant to take and secure the CCTV DVR until the contents of the CCTV DVR were copied or transferred into 1 (one) flash disk by witness Baiquni Wibowo even though the action was not in accordance with the procedures as determined in the legislation, so that the element of intentionally without rights or against the law by transferring electronic information belonging to the public has been fulfilled, therefore the reasons for objection from the Defendant's Legal Counsel are irrelevant and have no basis according to law and must be declared rejected.

Based on the author's research, the defendant filed an objection regarding the elements in Article 55 paragraph (1) of the Criminal Code not being fulfilled, the Panel of Judges at the Appeal Level agreed with the legal considerations of the Panel of Judges at the First Level where the elements of Article 55 paragraph (1) of the Criminal Code had been fulfilled, however on the other hand the Panel of Judges at the Appeal Level did not agree with the objection of the Defendant's Legal Counsel in his appeal memorandum, because it turned out to have no legal grounds and therefore had to be rejected.

In the author's research, the Defendant in his appeal memorandum raised an objection which essentially stated that "The Position Order (*Het bevoegae Gezag*) is a reason for the elimination of general criminal penalties in the Law as a justification, the Legal Principle *Id damnum dat qui iubet dare; eius vero nulla culpa est, cui parrere necesse sit* which means "responsibility will not be asked for those who obey orders but will be asked for the party who gave the order. Regarding this objection, the Panel of Appeal Judges concluded that the Defendant's reasons and objections as stated in his appeal memorandum cannot change or cancel the decision of the Panel of Judges of the First Level because it is not legally based, so that the appeal memorandum is irrelevant and must be declared rejected;

The author's research, after the panel of judges at the Appellate Level read and carefully studied the official derivative of the South Jakarta District Court Decision, the Panel of Judges at the Appellate Level agreed with the legal considerations of the Panel of Judges at the First Level in its decision which was of the opinion that the Defendant Hendra Kurniawan, S.IK had been legally and convincingly proven guilty of committing a criminal act intentionally and without the right to transfer electronic information belonging to the public which was carried out jointly.

Based on the author's research, the legal considerations of the First Level Panel of Judges are appropriate and correct so that all of their considerations are taken over and used as considerations by the Appellate Panel of Judges themselves in deciding

the case, and become part of and included in the decision. The DKI High Court judge agrees with the *Judex factie* in the first level decision, so the Decision of the South Jakarta District Court by the DKI High Court judge is maintained and strengthened.

Considering the provisions of Article 48 in conjunction with Article 32 paragraph (1) of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code and Law No. 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations.

According to the author's research, the judge's consideration of criminal sanctions against perpetrators of the crime of obstruction of justice is a decision taken by the judge.

#### 4. Conclusion

The responsibility for criminal sanctions against the perpetrators of the Crime of Obstruction Of Justice in the Case of the DKI High Court Decision Number 65 / Pid.Sus / 2023 / PT DKI which was carried out jointly is based on the elements of criminal responsibility such as the existence of a crime committed in violation of the law, there is an element of error in the form of intent *dolus* or negligence *culpa*, the existence of a perpetrator who is capable of being responsible, and there is no reason for forgiveness. The criminal responsibility of the perpetrators of the Crime of Obstruction Of Justice which was carried out jointly must pay attention to the role of each perpetrator, whether the perpetrator, the person who ordered it to be done, the person who helped to do it, and the person who encouraged it to be done. And the defendant Hendra Kurniawan became a defendant in the obstruction of justice case because he was considered to have participated in diverting the case of the death of Brigadier Nofriansyah Yosua Hutabarat at the official residence of the former Head of the Propam Division of the National Police, Ferdy Sambo. Hendra, who was the former Head of the National Police's Paminal Bureau, had followed Sambo's orders that this case be handled internally only.

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- Law Number 8 of 1981 concerning Criminal Procedure Law.
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