

Criminal Liability for People of Criminal Offenses Obstruction of Justice Viewed from a Perspective Law in Indonesia

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Abstract. *The criminal act of obstruction of justice has created serious problems in the practice of law enforcement in Indonesia. Appropriate and accurate policies are needed so that efforts to establish the correct implementation of the rule of law can be created in a clean and fair manner. The aim of this research is to analyze the qualifying provisions for the criminal act of obstruction of justice which obstructs the judicial process and to analyze the juridical evaluation of the criminal regulations for obstruction of justice to achieve criminalization that is legal and just. This research uses a normative approach. The results of this research are the act of obstructing the legal process as any form of intervention in the entire legal and justice process from the beginning until the process is completed, the need for a substantial reformulation of legal products related to obstruction of justice in which the points of the rules for acts of obstructing the justice process are as follows: formulation in the future, namely the suspect deliberately hides and/or destroys evidence before or after the investigation process begins, the suspect deliberately avoids the investigation process with the aim of stalling for time, a third party deliberately helps carry out and/or facilitates the escape process suspects of criminal acts, bribe law enforcement officers and/or government officials not to continue the legal process and close the case.*

Keywords: *Criminal; Justice; Obstruction.*

1. Introduction

Law enforcement is carried out by institutions authorized to do so, such as police, prosecutors and government officials. So in enforcing the law. Since the law contains orders and coercion, from the beginning the law needed help to realize these orders. The law is meaningless if its orders cannot implement. It takes human effort and action so that the orders and coercion that potentially exist in the regulations become manifest.¹ Law is the external manifestation of justice

¹ Satjipto Rahardjo, *Sosiologi Hukum Perkembangan Metode dan Pilihan Masalah*, Genta Publishing, Yogyakarta, 2010, p. 192.

and justice is the internal authenticity and essence of the spirit of legal manifestation.² So the supremacy of law is the supremacy of justice and vice versa.³

In the 2nd principle of Pancasila which reads "just and civilized humanity", it means that every human being must be treated fairly and civilized regarding their rights as citizens, besides that, the 5th principle of Pancasila also contains the meaning of the concept of justice which is comprehensive for all citizens in the statement "social justice for all Indonesian people". This concept is in line with the principle of equality before the law in the principles of our criminal law, as regulated as a principle in the administration of judicial power that the court in trying every citizen is carried out according to the law without looking at or differentiating between the person/citizen.⁴

Juridically, efforts to obstruct the law enforcement process are referred to as criminal acts of obstruction of justice or criminal acts of obstructing the judicial process.⁵ This criminal act has caused serious problems in law enforcement practices in Indonesia. This kind of situation requires appropriate and accurate policies so that efforts to establish the correct implementation of the rule of law can be created in a clean and fair manner. So that we obtain a judiciary that is free and impartial, and is not influenced by any power or force whatsoever.⁶

Normatively, the criminal act of obstruction of justice or the criminal act of obstructing the judicial process has been regulated in various regulations, both in the Criminal Code and in special criminal law. Based on Articles 216-222 of the Criminal Code, every person can be punished if they intentionally commit an act of obstructing the legal process. In particular, Article 221 Paragraph (1) states that: "every person who acts to obstruct the legal process must be punished and threatened with imprisonment for a maximum of nine months, or a fine of up to Rp. 4500.00 (four thousand five hundred rupiah)".⁷

In practice, the provisions in Article 221 of the Criminal Code are considered unable to cover various forms of acts that are categorized as criminal acts of obstruction of justice.⁸ For example, in cases of criminal acts of corruption which are extraordinary crimes (extra ordinary crimes) and other criminal acts such as premeditated murder and narcotics involving high-ranking police

² Sukarno Aburaera, Muhadar, Maskun, *Filsafat Hukum: Teori dan Praktik*, Edisi Pertama, Kencana Prenada Media Group, Jakarta, 2013. P. 179.

³ Yanto Sufriadi, Penerapan Hukum Progresif Dalam Penegakan Hukum Di Tengah Krisis Demokrasi, *Jurnal Hukum*, No.2, Vol. 17, 2010, p. 233-248

⁴ Pasal 4 Ayat (1) Undang-Undang No. 48 Tahun 2009 Tentang Kekuasaan Kehakiman

⁵ Pasal 18 Undang-Undang No.48 Tahun 2009 tentang Kekuasaan Kehakiman.

⁶ Nukthoh Arfawie Kurde, *Telaah Kritis Teori Negara Hukum*. Pustaka Pelajar, Yogyakarta, 2005, p. 21.

⁷ Pasal 221 Ayat (1) Angka (1) Kitab Undang-Undang Hukum Pidana.

⁸ Johan Dwi Junianto, Obstruction of Justice dalam Pasal 21 Undang-Undang No. 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi, *Media Juris*, Vol. 2 No. 3, 2019, p. 335-352

officers, obstacles are often encountered which cause disruption to the justice process for criminal acts of corruption. One of the obstacles that often occurs is the amount of resistance from law enforcement officers, as well as interested parties who take actions that obstruct the judicial process, including by not implementing, obstructing or thwarting existing legal provisions.

Previous research conducted by Difia Setyo in a journal entitled Characteristics of Advocate Actions which Include the Criminal Act of Obstruction of Justice Based on Criminal Provisions, found that criminal provisions for obstruction of justice have been regulated in the main Indonesian criminal law, namely in Article 221 of the Criminal Code. The Criminal Code as a general provision of criminal law is a guideline for special laws and regulations including the criminal act of obstruction of justice which is also regulated in several special laws and regulations. Special laws and regulations that have provisions relevant to the criminal act of obstruction of justice.⁹

Another research from Nyoman Yogandiranjaya in a journal entitled Imposing Criminal Sanctions for Perpetrators Who Obstruct Investigations, found that the Criminal Procedure Code only regulates formal criminal law or the entire law that regulates the procedures for law enforcement officers' actions when there is a criminal act or suspected violation of criminal law. However, in the future, regulations regarding acts of obstruction of justice ... must be added to the legislation. This needs to be done by adding details of the forms of action taken, such as suspects who deliberately hide or destroy evidence, commit criminal acts that thwart the transfer of case files to the Prosecutor's Office, defendants who harm themselves before or after the trial process, and advocates who deliberately make statements. false to protect the accused.¹⁰

Based on the background description above, the aim of this research is to analyze the qualifying provisions for the criminal act of obstruction of justice which obstructs the judicial process and to analyze the juridical evaluation of the criminal regulations for obstruction of justice to achieve criminalization that is legal and just.

2. Research methods

The approach used in this research is normative juridical.¹¹ The normative juridical approach is an approach based on the main legal material by examining theories, concepts, legal principles and statutory regulations related to this research. This research uses research specifications with

⁹ Difia Setyo Mayrachelia dan Irma Cahyaningtyas, Karakteristik Perbuatan Advokat yang Termasuk Tindak Pidana Obstruction of Justice Berdasarkan Ketentuan Pidana, *Jurnal Pembangunan Hukum Indonesia*, Vol. 4, No. 1, 2022, p. 121-132

¹⁰ Nyoman Yogandiranjaya dan A.A. Ngurah Oka Yudistira Darmadi, Penjatuhan Sanksi Pidana Bagi Pelaku Yang Menghalangi Penyidikan, *Jurnal Hukum Saraswati*, Vol. 5, No. 1, 2023, p. 393-407

¹¹ Johny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Malang, 2006, p. 295

descriptive methods. The descriptive method can be interpreted as the process of solving a problem being investigated by describing or depicting the current state of the subject or object of research based on visible facts or as they really are.¹²

3. Results and Discussion

3.1. Qualification Provisions for the Crime of Obstruction of Justice Which Obstruct the Judicial Process

The policy formulates the impact of acts of obstruction of justice and encourages the creation of criminalization of these acts. Criminalization is defined as the process of determining a person's actions as punishable. This criminalization process ended with the formation of a law where the act was threatened with a sanction in the form of a crime.¹³ 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).¹⁴

According to Soerjono Soekanto, criminalization is an action or determination by the authorities regarding certain acts which are considered by society or groups of society as acts that can be punished as criminal acts or make an act into a criminal act and therefore can be punished by the government by working on his name.¹⁵

The limited ability of criminal law to deal with crime problems is a factor that encourages the birth of criminal policies. The problem of crime is complex, both regarding the motivation for committing the act, the goals, and the modus operandi which is always changing, making crime difficult to control. Therefore, a rational approach is needed so that crime remains within the limits of tolerance.¹⁶

The ultimate goal of criminal politics or criminal policy is the protection of society to achieve the main goal which is often referred to by various terms, such as the happiness of the citizens; a healthy and refreshing cultural life (a wholesome and cultural living), social welfare or to achieve balance (*equality*).¹⁷ In simple terms, the aim of criminal policy itself is to provide protection to the community for a sense of security, peace, justice, prosperity, and to achieve the welfare of the community itself.

There are no regulations regarding the act of obstructing the criminal justice process, especially in the Criminal Procedure Code, but normatively in Indonesia, the act of obstructing the justice

¹² Nawari Hadari, *Metode Penelitian Hukum*, Gajah Mada University Press, Yogyakarta, 1987, p. 25.

¹³ Sudarto, *Kapita Selekta Hukum Pidana*, Alumni, Bandung, 1986, page 31

¹⁴ Henny Nuraeny, *Wajah Hukum Pidana Asas dan Perkembangan*, Gratama, Bekasi, 2012, p. 117

¹⁵ Soerjono Soekanto, *Kriminologi: Suatu pengantar*, Ghalia Indonesia, Jakarta, 1981, p. 62

¹⁶ M. Ali Zaidan, *Kebijakan Kriminal*, Sinar Grafika, Jakarta, 2016, p. 338

¹⁷ Soedarto, *Hukum dan Hukum Pidana*, Alumni, Bandung, 2007, p. 158

process has been regulated in many regulations, both generally in the Criminal Code and specific criminal law. One thing that needs to be noted regarding the act of obstructing the judicial process in the Criminal Code is that of the many articles that can be analogous to acts of obstructing the judicial process, there is only one article that clearly states the element of purpose "to obstruct or complicate the examination." and investigation or prosecution" as contained in Article 221 paragraph (1) sub 2e. Article 221 paragraph (1) of the Criminal Code also regulates the act of hiding people who have committed crimes and obstructing investigations. Meanwhile, the Corruption Crime Law also regulates criminal provisions for people who commit acts of obstructing the process of handling corruption cases as regulated in the provisions of Articles 21, 22, 23 and 24. The threat of criminal sanctions for violations of the provisions of these articles is relatively severe and is accompanied by threats. a special minimum penalty that is different from the criminal threat for the same provisions in the Criminal Code except for violations of Article 24.

In the Criminal Code, obstruction of justice as a criminal offense is regulated in Book Two, Chapter VIII concerning Crimes Against Public Power. In this chapter several acts are regulated that are against the instruments of state power. In other words, the provisions of this chapter are intended 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.

Regulations on the crime of obstruction of justice do not only apply to general crimes, but also apply to specific crimes. Even the obstruction of justice provisions in several special criminal law provisions above are threatened with heavier criminal sanctions than the articles contained in the Criminal Code.

Apart from preventing, obstructing and thwarting, acts of obstruction of justice also contain the phrases "directly" or "indirectly". The word "direct" needs to be interpreted to mean that the act was carried out by the perpetrator himself in the sense of the perpetrator of a criminal act of corruption, while the word "indirect" means that the act was carried out through an intermediary (participation/delneming) by ordering another person to obstruct the criminal justice process. ongoing.¹⁸

The act of preventing, obstructing and thwarting must be carried out intentionally. Deliberation in criminal law is part of a mistake the perpetrator's intention has a closer psychological relationship to a prohibited act than negligence. There are two theories that explain intentionality, namely: (1) will theory (wilstheorie) which explains that intentionality is the will to realize the elements of an offense in the formulation of a law; and (2) the theory of knowledge/imagining (voorstellingtheorie), meaning that deliberately means imagining the

¹⁸ Sutri Muh dan La Ode Bunga Ali Mansyah, Menghilangkan Alat Bukti oleh Penyidik Tindak Pidana Korupsi Sebagai Upaya Obstruction of Justice. *Penelitian Hukum dan Pendidikan*, Vol.18, No.2, 2019, p. 97-107.

consequences of actions, people cannot will the consequences but can only imagine. This theory focuses on what the perpetrator knows or imagines.¹⁹

The theory of will (Wilstheorie) was put forward by Von Hippel in his book *Die Grenze Vorsatz und Fahrlässigkeit* in 1903, which states that intentionality is the will to create an action and the will to cause a consequence of that action. A consequence is desired if that consequence is the intention of the action. Determinism cannot be applied in criminal law because it will create difficulties in terms of accountability. So that Mldern Determinism emerged which states that humans are members of society, and as members of society if they violate public order, then they are responsible for their actions.

3.2. Juridical Evaluation of Criminal Obstruction of Justice Regulations to Achieve Legal Certainty and Fair Criminalization

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 criminalization policy is part of criminal policy using criminal law means (penal) so that it is part of criminal law policy (*penal policy*).²⁰

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). According to Soerjono Soekanto, criminalization is an action or determination by the authorities regarding certain acts which are considered by society or groups of society as acts that can be punished as criminal acts or make an act into a criminal act and therefore can be punished by the government by working on his name. The problem of criminalization and penalization is not merely a work of legislative techniques that can be carried out juridically-normatively and systemically-dogmatically. Apart from that, the juridical-normative approach, criminalization and penalization policies also require a factual juridical approach which can take the form of a sociological, historical and comparative approach. In fact, it also requires an integral approach to social policy and national development in general.²¹ The criminalization policy aims to uphold the central norms of society in order to tackle crime, contained in criminal law politics, where criminal law politics is an effort to create criminal laws and regulations that are appropriate to the circumstances and situations at one time and for a certain period of time. will come.

The Netherlands, as a country that has the same legal system as Indonesia, regulates criminal acts of obstruction of justice in Dutch Penal Code Art 184 (Article 184 of the Criminal Code). Apart from the Dutch Criminal Code, the regulation of criminal acts of obstruction of justice in

¹⁹ Andi Hamzah, *Hukum Pidana*, Sof Media, Jakarta, 2014, p. 184

²⁰ Barda Nawawi Arief, *Tindak Pidana Mayantara : Perkembangan Kajian Cyber Crime di Indonesia*, PT Rajagrafindo Persada, Jakarta, 2007, p. 20

²¹ Teguh Prasetyo, *Kriminalisasi dalam Hukum Pidana*, Nusa Media, Bandung, 2010, p. 40

the Netherlands is also regulated in the Dutch Terrorism Law in Article 94 paragraph (2). Similar to Indonesia, the Netherlands does not place the criminal act of obstruction of justice in a special section in its country's criminal regulations, which only relates to articles whose elements constitute the criminal act of obstruction of justice. In 1955 in Hong Kong, The Corrupt and Illegal Practice Ordinance (CIPO) was adopted, which in principle only regulates criminal acts of corruption related to general elections. However, as a comprehensive text, this coordination also regulates the criminal act of obstructing the legal process for bribery and so on.

If Indonesia, the Netherlands and Hong Kong do not include the category of acts of obstructing the legal process in a special chapter in the Criminal Code or in special legislation, this is different from the United States and South Korea. In the Korean Criminal Code or what is called the Penal Code of Korea, a number of articles regulating obstruction of justice are placed and regulated in a special chapter, which tries to describe several patterns of acts of obstruction of justice that can be criminally charged. Regulations regarding acts of obstruction of justice in Korean national criminal law are regulated in Chapter VII of the Penal Code, starting from Article 136 to Article 144. Regulations regarding criminal acts of obstruction of justice are not only contained in one chapter, but are also regulated sporadically in chapters and articles. other.

In America, the special chapter that regulates criminal acts of obstruction of justice in the Criminal Code is the United States Model Penal Code/ 18 USC Chapter 1501-1521. This article clearly describes patterns of obstruction of justice that can be subject to imprisonment or fines.

Concretely, criminal procedural law (Formal Criminal Law) is the totality of legal regulations or norms that regulate how to implement and maintain material criminal law or the entirety of regulatory law that regulates the procedures for action by law enforcement officials if a criminal act occurs or there is a suspicion that criminal law has been violated.

So the actions of the suspect or accused have been regulated in material criminal law (Material Criminal Law). Material law (material recht or substantive law), namely the totality of legal regulations or norms that regulate legal relations between one legal subject and another legal subject that prioritizes certain interests or regulations that regulate prohibited and required and permitted acts, whoever Those who violate the regulations will be subject to sanctions by the authorities such as criminal law in the Criminal Code, civil law in B.W., commercial law in WvK.

Until now, there are no regulations for acts of obstructing the criminal justice process, especially in the Criminal Procedure Code, but in Indonesia normatively, acts of obstructing the justice process have been regulated in many regulations, both generally in the Criminal Code and specific criminal laws. One thing that needs to be noted regarding the act of obstructing the judicial process in the Criminal Code is that of the many articles that can be analogous to acts of obstructing the judicial process, there is only one article that clearly states the element of purpose "to obstruct or complicate examinations and investigations." or prosecution" as

contained in Article 221 paragraph (1) sub 2e. Article 221 paragraph (1) of the Criminal Code also regulates the act of hiding people who have committed crimes and obstructing investigations.

Future formulations regarding the regulation of criminal acts of obstruction of justice will not only apply to general criminal acts, but also apply to specific criminal acts. In fact, the obstruction of justice provisions in several special criminal law provisions above are threatened with criminal sanctions that are more severe than the articles contained in the Criminal Code. A legal reconstruction and value reconstruction in studying the offense of obstruction of justice needs to be developed by academics, legislators and practitioners to provide answers with certainty and legal justice regarding the phenomenon of obstruction of justice recently which consistently repeats the same cases with the same scheme. use power of authority. This needs to be resolved immediately with a juridical reformulation of obstruction of justice with the implications of various criminal offenses with contemplation of the act of obstructing the justice process.

4. Conclusion

The act of obstructing the legal process as any form of intervention in the entire legal and justice process from the beginning until the process is completed, there is a need for substantial reformulation of legal products related to obstruction of justice in which the points of the rules for acts of obstructing the justice process as a formulation in the future future, namely the suspect deliberately hides and/or destroys evidence before or after the investigation process begins, the suspect deliberately avoids the investigation process with the aim of stalling for time, a third party deliberately helps carry out and/or facilitates the process of escaping the criminal suspect, bribe law enforcement officers and/or government officials not to continue the legal process and close the case. During the investigation process, the defendant lied and deliberately destroyed evidence, which resulted in delays in the pre-prosecution process because it was deemed by the police to lack evidence, and committed a criminal act that was fraught with attempts to disrupt the transfer of case files to the Prosecutor's Office. The defendant intentionally harms himself before or after the trial process takes place, the defendant is silent and lies when the judge asks questions, the expert witness and/or interpreter in this case provides misleading information or statements regarding the material and theory presented, the advocate in the case of deliberately participating making false statements and lies to protect the defendant, which is considered to be a violation of the law.

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