

# PROHIBITION OF OBSTRUCTION OF JUSTICE IN THE CORRUPTION CRIME ERADICATION LAW

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**Abstract** - The qualifications for acts of obstructing the judicial process (obstruction of justice) as stipulated in Article 21 of the Corruption Crime Eradication Law do not fulfill the essence of legal certainty, giving rise to multiple interpretations which result in the absence of legal certainty and tend to create new legal issues. The type of research used in this research is juridical-sociological legal research. The essence of the prohibition of obstructing the judicial process (obstruction of justice) in the Corruption Crime Eradication Law is so that the judicial process itself can run smoothly, and this is the performance of law enforcement officials, especially judges so that they can produce decisions that satisfy a sense of justice, benefit, and certainty. law.

**Keywords:** Obstruction Of Justice; Criminal act; Corruption.

## INTRODUCTION

Law has goals and objectives to be achieved. The main objective of the law is to create an orderly social order and create order and balance in society so that human interests will be protected. In achieving this goal, the law is in charge of dividing authority and regulating how to solve legal problems and maintain legal certainty. Therefore, in upholding the law, there are three elements that must be considered, namely justice, benefit, and legal certainty.

The element of legal certainty is that the law must be implemented and enforced. Everyone expects the application of law in concrete events. Basically, the application of the law must not deviate from the provisions of the law. This is what legal certainty wants. Legal certainty is a justifiable protection against arbitrary actions, which means that someone will get something that is expected in certain circumstances. Society expects legal certainty. The law is tasked with creating legal certainty because it aims at public order. With legal certainty, society will be more orderly.

Satjipto Rahardjo is of the view that the essence of legal certainty has four meanings. First, that law is positive, meaning that it is legislation (*Gsetzliches Recht*). Second, that law is based on facts (*Tatsachen*), not a formula regarding an assessment that will later be made by a judge, such as "goodwill," or "decency." Third, the fact must be formulated in a clear way so as to avoid misunderstandings in meaning, as well as being easy to implement. Fourth, the positive law must not be changed frequently. [ 1] From the four meanings, it can be seen that the law must be formulated in a clear way to avoid misunderstandings in meaning. At the same time, the law is also easy to implement.

But the fact is that there are still many laws and regulations that apply as positive law, but the legal formulation has not fulfilled the nature of legal certainty. If the formulation of the law does not meet the nature of legal certainty, what about the issue of law enforcement? How can law enforcers enforce the law properly and correctly if the legal formulation in one of the articles in a statute does not meet the criteria as intended by the nature of legal certainty?

A concrete example of the consequences of not fulfilling the nature of legal certainty referred to is Law Number 31 of 1999, as amended by Law Number 20 of 2001 concerning the Eradication of Corruption, especially in Article 21 regarding the offense of obstructing the judicial process (obstruction of justice). , has an impact on multiple interpretations regarding the qualifications of obstructing the judicial process (*obstruction of justice*) in eradicating corruption, as stated in the

<sup>1</sup> Satjipto Rahardjo, 2006. *Law in Order*, UKI Press, Jakarta, pp. 135-136

Decision of the Central Jakarta District Court Number 90/Pid.Sus-TPK/2018/PN. Jkt. Pst. March 20, 2019, Jo. DKI Jakarta High Court Decision Number 13/Pid.Sus- TPK/2019/PT.DKI June 26 2019 Jo. The decision of the Supreme Court of the Republic of Indonesia Number 3328 K/Pid.Sus/2019, dated 16 December 2019, on behalf of the defendant Lucas. The panel of judges was of the opinion that the defendant Lucas was proven guilty of committing the crime of obstructing the judicial process (*obstruction of justice*) by giving an opinion or suggestion to the suspect Eddy Sindoro not to return to Indonesia first until Eddy Sindoro case was named a suspect for allegedly giving a bribe to a substitute court clerk the state of Central Jakarta subsidies. Eddy Sindoro is a senior Lippo Group official who became a suspect in a bribery case related to the Judicial Review (PK) at the Central Jakarta District Court clerk, namely Eddy Nasution <sup>2</sup>.

Prior to the court decision on behalf of the defendant Lucas, the judge, as a law enforcement officer in several court decisions, in trying *obstruction of justice* offenses as contained in Article 21 of the Law on the Eradication of Corruption, qualified the crime of obstructing the judicial process (*obstruction of justice*). as a real action (physical/ *actus reus* ) carried out by the perpetrator accompanied by intentional intentions from the perpetrator's mind or evil intentions (*mens rea*) from the perpetrator to achieve a certain goal from the perpetrator. As in the decision of the Central Jakarta District Court Number 24/Pid.B/TPK/2011/PN.Jkt.Pst on behalf of the defendant Cirus Sinaga. Cirus Sinaga as the prosecutor in the case of the defendant Gaius Tambunan was found guilty of committing the crime of obstructing the justice process *against* the defendant Gaius Tambunan by eliminating the corruption article in the money laundering case of Gaius Tambunan as a tax official; Decision of the Supreme Court of the Republic of Indonesia Number 684K/Pid.Sus/2009 dated 10 July 2010 on behalf of the defendant Manatap Ambarita; Decision of the Supreme Court of the Republic of Indonesia Number 168K/Pid.Sus/2011 dated March 3, 2011, on behalf of the defendant Anggodo Widjojo; and DKI Jakarta High Court Decision Number 23/Pid.Sus-TPK/2018/PT.DKI dated 5 October 2018 on behalf of the defendant Fredrich Yunadi as Setyo Novanto's lawyer in the E-KTP corruption case.

From the four decisions mentioned above, it can be concluded that the qualification for the crime of obstructing the judicial process ( *obstruction of justice*) is that the perpetrator with evil intentions (*mens rea*) takes concrete actions in the form of physical acts (*actus reus*). However, with the court decision on behalf of the defendant Lucas, it has had an impact on the dynamics of the legal formulation of Article 21 of the Law on the Eradication of Corruption Crimes Number 31/1999, which was amended by Law Number 20/2001, which replaced Law Number 3/1971, namely that the qualification of the act of obstructing the judicial process (*obstruction of justice*) is not limited to physical acts (*actus reus*) accompanied by malicious intent (*mens rea*) but also non-physical acts (*non actus reus*) in the form of giving opinions or suggestions. When the modus operandi of corruption involves many parties, it is not uncommon for law enforcers to come under pressure in the form of resistance from certain parties whose interests are disturbed by the disclosure of corruption cases. This resistance aims to hinder the judicial process so that the term Obstruction of Justice appears. <sup>3</sup>. The act of obstructing the judicial process or *obstruction of justice* is an act that includes a criminal act because such an act is prohibited and punishable by criminal penalties for legal subjects who violate it. <sup>4</sup>.

In the opinion of the researcher, the qualifications for the act of obstructing the judicial process (*obstruction of justice*) as stipulated in Article 21 of the Corruption Crime Eradication Law do not fulfill the essence of legal certainty, giving rise to multiple interpretations which result in the absence of legal certainty and tend to create new legal issues, among In other words, there is the potential for

<sup>2</sup>Reza Khaeru Umammi, Sanyoto, and Rani Hendriana, "Application of Proof of Obstruction of Justice by Advocate Lucas in the Corruption Case of the Lippo Group (Juridical Review of Decision Number 90/Pid.Sus/TPK/2018/PN. Jkt.Pst and Decision Number 13/ Pid.Sus/TPK/2019/PT.DKI)," *Sudirman Law Review* 2, no. 2 (2020): 376.

<sup>3</sup> Ade Mahmud. (2021). "Qualifications and Implications of Obstructing the Judicial Process for Corruption Crimes." *Law Reviews* Vol. XXI No. 1:1-22.

<sup>4</sup>Difia Setyo Mayrachellia, and Irma Cahyaningtyas. (2022). "Characteristics of an Advocate's Actions Including Obstruction of Justice Crimes Based on Criminal Provisions." *Indonesian Journal of Legal Developments*, Vol 4 No. 1: 121-132.

the criminalization of everyone, law enforcement officers are not optimal in carrying out their duties as law enforcers in an effort to eradicate corruption, and the most crucial thing is not achieving justice, benefit and legal certainty as the goal of the law itself through court decisions as a pillar, finally, for justice seekers.

Based on the description above, the researcher is interested in conducting research on the problem of whether the nature of the prohibition obstructs the judicial process (*Obstruction of Justice*) in the Corruption Eradication Law?

## RESEARCH METHODS

The type of research used in this research is juridical-sociological legal research. Sociological juridical research is legal research that seeks to study law as a system of normative values, that is, to see the law as what is written in laws and regulations ( *law in the book* ) or law is conceptualized as rules or norms and also examines it in a real sense or analyzes its work. the law in society (sociological), which then uses a qualitative research approach. A qualitative approach is used to produce descriptive data in the form of arguments built on the basis of observations of research results, which are strengthened by primary and secondary data sources.

## DISCUSSION

Pancasila is the source of all sources of law. Therefore, the values contained in Pancasila should be the basis for law enforcement in eradicating criminal acts of corruption, especially the values of justice, legal certainty, and equal legal treatment for everyone, as contained in Article 27 paragraph (1) of the 1945 Constitution. Meanwhile, the human values contained in the second precept of Pancasila are closely related to the purpose of punishment. The imposition of criminal law on the perpetrators of criminal acts is retaliation for their actions imposed by the judge on them .

The 4th amendment of the 1945 Constitution emphasized that "Indonesia is a state based on the law (rechtsstaat). " With this affirmation, the mechanism of individual, community, and state life is governed by law (written or unwritten). This means that both members of the public and the government are obliged to comply with the law. In the theory of legal certainty and the concept of the rule of law, the basis is the principle of legality contained in Article 1 paragraph (1) of the Criminal Code (the Criminal Code).

Obstruction of justice has long been known in terms of the law in Indonesia. In fact, this term already exists and is contained in the Wetboek Van Strafrecht voor Nederlandsch Indie or the Indonesian Criminal Code (KUHP) . Based on this principle of legality, the perpetrators of obstruction of justice in the Corruption Crime Eradication Law are charged with Article 21, which is a lex specialist of Article 221 of the Criminal Code. The two criminal instruments in the Criminal Code and the Corruption Crime Eradication Law, which specifically regulate, have differences. Namely, if we look back at Article 221 of the Criminal Code, it has a tendency towards goals which can be interpreted that a person taking actions such as avoiding legal proceedings or destroying evidence is the goal of obstructing the investigative process. Unlike the case with Article 21 of the Corruption Crime Eradication Law, which has a tendency to act, so apart from the aim of causing obstruction of the legal process when it has been proven that there was an act that prevented, hindered, and thwarted the legal process either directly or indirectly, there is a great opportunity to be charged with Article 21 of the Law on the Eradication of Corruption Crimes. . If examined one by one, the general points of the entire article on obstruction of justice contain several things, such as:

1. Whoever. The diction "whoever" is meaningful and related to the subject can be done by anyone without exception.
2. On purpose. The word "intentionally" relates to the background of the occurrence of the crime. This refers to intentional offenses, which are further classified into three types of intentional offenses, namely, intentional offenses as an intention, intentional offenses as a necessity, and intentional offenses with an awareness of the possibility.
3. Concealing the person who committed the crime or who is being prosecuted for a crime. The meaning of the word "hiding" can be interpreted as an action that is real and can be proven true. In this case, if someone knows that someone is hiding other people, but he does not take active actions, then that person cannot be sentenced to a criminal sentence. Another case is if someone knows there

are people who are hidden by other people. Then he takes cooperative actions, which are included in active actions and can be proven, then that person can be subject to criminal sanctions for his actions.

4. Provide assistance to avoid investigation and detention by the police or the judiciary, which according to the law, is temporary or continuous while carrying out police positions. The meaning of the word "providing assistance" can be interpreted as an active action in the form of assistance with the intention of avoiding legal proceedings. Applicable. Assistance or assistance is also related to Article 56 of the Criminal Code, which contains criminal threats for those who provide assistance or assistance when a crime is committed and those who provide assistance or assistance in the form of means or information with the intention of committing a crime.

Obstruction of justice is regulated because, in essence, this action has the potential to hinder and impede the legal process for eradicating corruption. . Corruption is considered a disease that greatly interferes with the survival of an independent nation, so a serious effort is needed to eradicate this virus at its roots. Corruption in Indonesia has mushroomed in various sectors as well as in the executive, legislative, and judiciary, even in the private sector. In the study of crime, corruption is one of the oldest crimes in the world. It is estimated that the crime of corruption will continue as long as there is life in the world. Efforts to enforce the criminal law on corruption must be carried out comprehensively and in collaboration between law enforcement agencies, the government, and the community. . When talking about obstruction of justice or actions that aim to "obstruct the judicial process" or "criminal acts that obstruct the judicial process," of course, the conditions must be met so that the act committed is considered a crime .

of obstruction of justice offenses is not only limited to providing legal certainty but, most importantly, is that a judge's decision can give justice seekers a sense of justice. The judge's considerations in making a decision must reflect a sense of justice for all parties, including victims of crime, perpetrators of crimes, or between perpetrators of crimes . By its nature, obstruction of justice is aimed at stopping or impeding a legal process against the perpetrators of a crime. Of course, the crime of obstruction of justice is an act that is carried out in the judicial process, starting from investigation, investigation, prosecution, to trial examination . Obstruction of justice is a type of criminal activity in the context of court. Obstruction of justice is an act that is intended or has the effect of distorting, disrupting the proper function of a judicial process.

According to Soerjono Soekamto [ ], Law enforcement is an activity of harmonizing the relationship of values that are described in the principles, solid views and manifesting them in attitudes, acts as a series of final stage value translations to create peaceful social life ". Because the upholding of the law can be characterized by several factors that are very closely related, namely: First, the law and its own rules, so that harmony can be needed between existing laws and regulations. Second, the facilities for implementing the law are adequate because often the law is difficult to enforce and even cannot be handled because the facilities to enforce it are inadequate or not available. Third, awareness and legal certainty, as well as the behavior of the community itself. Fourth, the mentality of law enforcement officers. In this case, direct law actors such as police, prosecutors, lawyers, judges, correctional officers, because basically, law enforcement is very dependent on the mentality of law enforcement officials. Studies related to criminal law enforcement can be seen from the law enforcement system, which in this case is part of the crime prevention policy ( criminal policy ) .

In line with the above, Lawrence M. Friedman [ ], revealed that law must be interpreted as content of the law, structure of law, and culture of law. So that law enforcement is not only carried out through legislation but also how to empower law enforcement officers and facilities. Also, what is equally important is how to create a legal culture that is conducive to law enforcement. According to Lawrence M. Friedman, the success of law enforcement is highly dependent on the synergy of all existing legal subsystems, which consist of legal substance, legal structure, and legal culture. The legal subsystem must become a serious concern for law enforcement in order to realize the effectiveness of the law enforcement process .

According to Satjipto Rahardjo[ ], legal thinking needs to return to its basic philosophy, namely law for humans. With this philosophy, humans become the determining point and legal orientation point. The law is in charge of serving humans, not the other way around. Therefore, the law is not an institution that is free from human interests. The quality of law is determined by its ability to serve human welfare.

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. Obstruction of justice is not a new

term in the world of law, even though it is not widely known by the public. Some of the things that cause obstruction of justice not to be widely known are that there are many different perceptions among law enforcers regarding the form of obstruction of justice . According to the Legal Dictionary, Obstruction Of Justice is "an attempt to interfere with the administration of the courts, the judicial system or law enforcement officers, including threatening witnesses, improper conversations with jurors, hiding evidence, or interfering with an arrest. Such activity is a crime. If interpreted freely in the Indonesian translation, Obstruction Of Justice is an attempt to interfere with the Court Administration, the justice system, or law enforcement officials, including threatening witnesses, inappropriate conversations with jurors, hiding evidence, or interfering with arrests. This activity is a crime.

From the research results, it is known that, in essence, the prohibition of obstructing the judicial process (Obstruction of Justice) in the Corruption Eradication Law is so that the judicial process itself, starting from the level of investigation, prosecution and trials in court, can be examined in accordance with applicable legal provisions without any obstacles as appears in the following table:

**Table 1**  
**Respondents' Opinions about the Nature of the Prohibition of Obstructing the Judicial Process (*Obstruction of Justice*) in the Corruption Crime Eradication Law**

No.	Judicial Legal Territory	Quantity	Percentage (%)
1.	DKI Jakarta High Court	3	16,67
2.	central Jakarta district court	7	38,88
3.	Makassar High Court	3	16,67
4.	Makassar District Court	5	27,78
	Amount	18	100

Source: Primary data after being processed in 2023

Based on table 1 above shows that the essence of the prohibition of obstructing the judicial process (obstruction of justice) is so that the judicial process itself, starting from the level of investigation and prosecution and up to the trial court, can run smoothly without any obstructions, and therefore the performance of law enforcement officials. in particular, judges can work optimally and, to the maximum extent possible, be able to provide decisions that meet the elements of justice, benefit, and legal certainty to justice seekers. There are 18 respondents, or as much as 100%, who think so.

From an interview conducted by researchers on January 20, 2023, with Mr. Hendri Tobing, SH., MH., deputy chairman of the Makassar District Court, as a representative of the Makassar District Court; interview with Dr. H. Andi Samsan Nganro, SH., MH., vice chairman of the Supreme Court of the Republic of Indonesia in the judicial field for the 2021-2023 period on January 24, 2023; and an interview with Mr. Binsar Pamopo Pakpahan, SH., MH., as Public Relations and a representative from the DKI Jakarta High Court on January 25, 2023, gave an opinion that was in line with the Respondent's opinion, namely that everyone is prohibited from carrying out acts of obstructing the judicial process (obstruction of justice) in the Law on the Eradication of Criminal Acts of Corruption is none other than aiming to smoothen the examination of the judicial process itself and so that law enforcement by law enforcement officials, especially judges, runs smoothly without any hindrances. And therefore, the conclusion of the first hypothesis the researcher proved true.

## CONCLUSION

The essence of the prohibition of obstructing the judicial process (*obstruction of justice*) in the Corruption Crime Eradication Law is so that the judicial process itself can run smoothly, and this is the performance of law enforcement officials, especially judges so that they can produce decisions that satisfy a sense of justice, benefit, and certainty. law. In order for the judicial process (from the level of investigation, prosecution, and examination/trial at court) to run smoothly without hindrance, law enforcement officials, especially judges, need to be facilitated with adequate and optimal facilities and infrastructure, both in terms of legal substance, legal structure, and legal culture.


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