



Imposing Criminal Sanctions on Perpetrators Who Obstruct the Investigation (Obstruction of Justice)

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Abstract. The implementation of justice must be fair and honest in order to run a clean system without any specific purpose. However, it is undeniable that there are those who obstruct the judicial process which is categorized as the criminal activity of Justice is being obstructed. The criminal activity of Obstruction of Justice or the criminal offense of blocking the legal process has been regulated in various both regulations in the Police Code, as well as in unique criminal laws. There are non-criminal cases whose proof is difficult to do because of the unclear testimony of witnesses and the perpetrators themselves, therefore every witness is required to swear under oath to explain the actual judicial stage, not to mention the Justice Collaborator who is a suspect but not the main perpetrator and can expose the people involved in it. The formulation of the issue with this study is How is the legal arrangement for the perpetrator who obstructs the investigation and what criminal sanctions can be given to the perpetrator who obstructs the investigation. This kind of study is normative with a legislative, historical, and conceptual strategy. The conclusion of this study is that legal arrangements for perpetrators who obstruct the investigation process are found in Article 216 (1) and Article 221 (1) of the Criminal Code. Sanctions that can be given to perpetrators who obstruct the investigation process are criminal sanctions.

Keywords: Rule of law, obstruction of Justice. criminal sanctions,

1 Introduction

According to the Unitary State of the Republic of Indonesia Constitution from 1945, the judiciary's role in the execution of judicial authority is to maintain the rule of law and the principles of justice. The judiciary plays a crucial part in achieving the ultimate goal of justice seekers, who work to ensure equitable treatment in all issues involving law enforcement.

Based on its function, the law enforcement process often experiences problems. The increase in actions or efforts to obstruct the course of justice can cause the law enforcement process to be hampered. In principle, rule of law is governed in Article 1 Number (3) of the 1945 the Unitary State of the Republic of Indonesia's Constitution (UUD NKRI 1945) which states "the Unitary State of the Republic of Indonesia is a state of law". In accordance with these

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provisions, one of the appropriate rules regarding the rule of law is that there is a guarantee of the independent exercise of judicial authority, free from the influence of other powers .

The increase in crime that arises from the presence of perpetrators or suspects who have committed crimes against the law or criminal acts, requires the role of parties who have authority or who have a role in finding perpetrators or suspects in one problem , namely police investigators and officers who have a role in enforcing the implementation. justice. Investigations are carried out by trying to find or collect evidence in order to obtain justice .

The authority of the police in carrying out the case examination process is at least consistent with the 2001 Juklak and Juknis concerning investigations. During the process can be supported by various parties by providing accurate information without hiding anything . Bearing in mind that the criminal act committed is a crime whose truth must be sought and the sanctions given may be in accordance with the severity of the criminal act committed. If during the investigation process something or a statement is found that is deemed inappropriate or suspicious during the investigation process and it is proven, then this is declared an act of Obstruction Of Justice , namely an action that obstructs the investigation process.

Judiciary enforced in a country must have fair, honest and clean principles in order to create a good justice system in every country regardless of SARA. Likewise, at every level, justice should be carried out wisely without any obstacles to cover up who is right and who is guilty. This is done to reduce unwanted things from happening in the future. In the criminal process, every person who makes a mistake is obliged to receive sanctions similar to what they have done. It is of course hoped that no one will obstruct the course of the justice process. However, as time progresses, quite a few individuals try to obstruct and stop the judicial process.

If viewed normatively, acts of justice obstruction or criminal acts that attempt to obstruct the course of the legal system has been controlled in several regulations, both in special criminal law and the Criminal Code. On the basis of Articles 216-222 of the Criminal Code, every person can be punished if they intentionally commit an action that interferes with the legal process. The law specifically stipulates in Article 221 Paragraph (1) that "everyone who acts to obstruct the legal process must be disciplined and threatening with imprisonment for no more than nine months, or a fine of up to Rp 4,500.00 (four thousand five hundred rupiah)."

In reality, the governed issues in Article 221 of the Penal Code are deemed not to be able to cover several acts which are categorized as criminal acts of justice being obstructed. Injustice obstruction can also be committed by obstructing several criminal acts. Obstruction can also be interpreted as an attempt to obstruct the course or process of a criminal act so that it does not take place. A specific kind of criminal offense known as contempt of court is obstruction of justice. A deliberate or unintentional act that obstructs the normal operation of the legal system is known as obstruction of justice. An attempt to undermine righteousness (fairness) or the effectiveness of the judicial process and the judicial institution constitutes obstruction of justice, which disrupts the judicial process (Allivia Putri Gandini, 2018: 12).

Often criminal acts are difficult to prove because there is no clear evidence and the chronology is difficult to know. A witness in a criminal act must include all evidence in the form of what he heard, what he saw and what he experienced during the chronology of the crime. Of course, this must be accompanied by relevant evidence to support the witness's statement in the process of following up the criminal case. Therefore, every witness is required to take an oath that what he will say is the truth and is as honest as possible about what he experienced (River Yohanes Manalu, 2015: 152)

In law, it is expected that a witness can provide true testimony and honesty regarding the incident that took place. However, it does not rule out the possibility that the witness will give a statement that is not in accordance with the actual incident because of the motivation of several parties which requires him to say so. In addition, a witness has personal interests that require

him to provide statements that are false or inconsistent with what he experienced in order to obstruct the criminal process. However, quite a few of the processes of blocking the hearing were carried out by certain individuals starting from law enforcement and the government because they were involved in the case. This can happen because every human being has the instinct to benefit himself. Therefore, coercive measures are very necessary so that the fulfillment of one's own benefits does not occur in this case. Any action that is against the law and is declared guilty of committing a criminal act or crime can be called a perpetrator of a criminal act. In the judicial process, they will be re-examined and sanctions will be imposed according to the severity of the legal action they have taken. Criminal sanctions will be levied on those who commit crimes who in the judicial process are proven guilty of committing acts against the law. Based on this context, the author is considering reading a study titled "Imposing Criminal Sanctions for Perpetrators Who Obstruct Investigations (Obstruction of Justice)"

Considering the aforementioned context of the issue, the problem concerns: What are the legal regulations for perpetrators who obstruct investigations and what criminal sanctions can be given to perpetrators who obstruct investigations?

2 Research Method

In this research, the researcher chose to use normative research. This type of normative legal research is identical to library research in which all words and data become legal documents, namely as elementary, secondary, and tertiary legal resources (Supratman & Philip Dillah, 2015 :5). The object of study in this research is the issue of the absence of norms regarding criminal sanctions for perpetrators who obstruct investigations (Obstruction of justice). The approach used in this research is using normative legal analysis, there are 3 (three) types of approaches consisting of: The three approaches are: the statute approach, the historical approach, and the conceptual approach.

3 Discussion

3.1 1. Legal arrangements for perpetrators who obstruct the investigation process

Quoted from Umar Said's opinion in a book entitled "Introduction to Indonesian Law, History and Basics of Indonesian Legal Order and Political Law, it states: "Formal law or (*formeelrecht/procesrecht/ejectivelaw*) or procedural law, namely all legal regulations or norms that regulates how to implement and maintain material law, for example: Criminal Procedure Law, Civil Procedure Law, Administrative Court Procedure Law, Religious Court Procedure Law, Constitutional Court Procedure Law. In reality, criminal procedural law (Formal Criminal Law) is the entirety of regulations relating to criminal acts. In other words, in this case it is a procedure for enforcing criminal law if someone violates this criminal act.

In Simons' opinion, a criminal act is an action or deed that is punishable by a crime in accordance with applicable provisions, is contrary to legal provisions and is accompanied by a mistake by someone who is capable of responsibility. Apart from that, according to Moeljatno, criminal acts are prohibited acts and are threatened with

fines, against goods. who breaks the rules. This action must also be realized by the community as an obstacle to the implementation of the implementation that the community aspires to.

In contrast to what Pompe mentioned, according to Pompe, the term criminal act can theoretically be formulated as a violation of the norms of a legally conscious code of conduct that has been perpetrated by a culprit, whether purposefully or accidentally, where imposing punishment on the offender is regarded necessary for upholding the rule of law and protecting the public interest. Pompe has also stated that according to positive law, a criminal act is actually nothing other than an act that can be punished (Sofyan, Andi. 2016.; 99)

And according to Moeljatno, regarding the elements of criminal acts as follows:

1. Boating must be a human act,
2. Boating must be prohibited and punishable by crime.
3. Boating is against the law,
4. Must be done by someone who can be responsible,
5. The boat builder is to blame.

Therefore, defendants and suspects in material criminal cases have been regulated by law (Material Criminal Law). Material law (material recht or substantive law), is a regulation that regulates one legal subject with another legal subject by prioritizing legal norms or actions that are prohibited and permitted in that case , whoever dares to violate a rule in it will subject to sanctions in accordance with criminal offense regulations in the Police Code, civil law in BW, commercial law in WvK.

Implementing and upholding the existence of substantive legal functions is the role of KUHAP in this situation. Therefore, if there is a defendant or suspect who dares to obstruct the justice process at the investigation stage, prosecution stage and trial stage, the regulations are found in the Material Criminal Law, namely:

1. Criminal Code

a. Article 216 (1) which reads;

“Whoever willfully disobeys a command or requirement, which is carried out in accordance with statutory regulations by a civil servant who is required to supervising necessary civil servants or who are authorized to analyze or look into crimes that should be punished, as well as whoever deliberately prevents; obstructing or thwarting an action carried out by a civil servant, in carrying out a statutory regulation, is punished by a fine of up to Rp. 9,000 or by up to four months and two weeks in jail (KUHP 92).”

b. Article 221 (1)

Article 221 (1) 2 states : " Anyone who commits an act of covering up a criminal act committed, by destroying, eliminating and hiding evidence and evidence is faced with a potential four-year prison sentence ."

2. Indonesian Republic Law No. 31 of 1999 on the Eradication of Corruption Crimes

a. Article 21

" Anyone who willfully obstructs, hinders, or thwarts the investigation, prosecution, or examination in court of suspects, defendants, or witnesses in a corruption case shall be punished by imprisonment for a minimum of 3 (three) years and a maximum

of 12 (twelve) years, and/or by paying fines totaling at least Rp. 150,000,000.00 (one hundred and fifty million rupiah) and at most Rp. 600,000,000.00 (six hundred million rupiah)".

Therefore, it is known that in this case the acts that hinder the legal system are not prohibited by the Criminal Procedure Code. The criminal act of obstructing the judicial process or often called A criminal offense of contempt of court is obstruction of justice. An act that intends to distort events or has the effect of doing so is considered an obstruction of justice. This prevents the legal system from operating as it should. Some examples are openly defying an out-of-court order, others are attempts to bribe a witness or threaten a witness in order to get the witness to negate or falsify the information given. One thing that needs to be noted regarding the obstruction act 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".

In contrast to the criminal law on corruption, it also regulates criminal provisions for people who commit acts that obstruct 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.

When discussing criminal law enforcement, it is important to consider not just how the legislation is created but also what law enforcement officers do to foresee and resolve issues.

Obstruction of justice as a practice as any form of intervention in the entire legal and judicial process from the outset to its conclusion, the author analyzes and compiles points of rules for acts of obstruction of justice as a formulation for the future that is :

a. Forms of Actions Obstructing the Investigation Process. In the course of the study, the following obstructions were mentioned:

1. The suspect acted irrationally hid and/or either before or after the inquiry process started, evidence was destroyed.
2. The suspect evaded the inquiry procedure on purpose with the aim of stalling for time.
3. A third party purposefully aids in the execution of and/or supports a criminal suspect's escape.
4. Bribing law enforcement personnel and/or public servants to end the legal procedure and close the case.

b. Forms of Actions for Obstructing the Prosecution Process. Obstructing actions referred to in the prosecution process are:

1. During the investigation process, the defendant lied and deliberately lost evidence, which resulted in the obstruction of the legal process because it was deemed by the police to lack evidence.

2. Committing a crime that involves deliberate attempts to obstruct the delivery of case files to the prosecutor's office.
3. Forms of Action to Obstruct the Court Trial Procedure
The acts of obstruction referred to in the trial process are:
 1. Before or after the trial, the defendant purposely injured himself
 2. When the judge raised inquiries, the defendant remained mute and lied.
 3. In this scenario, the expert witnesses and/or interpreters give false information or assertions about the concepts and theories put forth.
 4. It is illegal for attorneys to knowingly participate in fabricating misleading claims and outright lies in order to defend the defendant.

Future formulations regarding the regulation of criminal acts of justice obstruction not just be applicable to general criminal acts, but also apply to specific criminal acts. In fact, the interference with 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. Apart from that, to be able to see what actions by law enforcement officers and suspects can be classified as obstruction of justice, we can look at the obstruction of justice criteria that apply in the United States. Debora C. England in her article entitled "Obstruction of Justice" stated that there are several criteria for actions that can be classified as obstruction of justice:

1. Aiding a suspect: assisting a suspect by providing information related to the investigation process being carried out. Leaking this information can hinder the justice process because thanks to this information the suspect can lose or destroy evidence of other forms of action. Classified as aiding suspect is hiding a suspect.
2. Lying is the action of a witness or suspect who lies or provides false information to investigators (law enforcers) during the examination of the witness or suspect, either in writing or verbally.
3. Famous Obstructions: conspiring or jointly assisting criminals to deceive law enforcement officials such as taking evidence and destroying evidence.
4. Tampering With Evidence: namely the act of destroying evidence or evidence. Bribing witnesses to manipulate a criminal event is also included in this type.

3.2 Criminal sanctions that can be given to perpetrators who obstruct the investigation process

In criminal law, there are two forms of sanctions or threats that can be given to perpetrators of criminal acts, namely criminal sanctions (straf) and action sanctions (maatregel). The existence of these two forms of sanctions can be seen from the development of the implementation of the criminal system in Indonesia which adheres to a two-track criminal system or what is known as the double track system. In the double track system of punishment, the criminal sanctions and action sanctions are applied simultaneously to perpetrators of criminal acts. The action departs from the basic idea of "what the punishment is for" (Sholehuddin, 2004: 32).

The special nature of sanctions for an action can be seen from its aim to improve the person concerned and contains educational elements and focuses on efforts to provide assistance for the benefit of the perpetrator, victim and society. Mahrus Ali believes that the aim of criminal sanctions is more towards suffering or retaliation in the form of censure, while action sanctions are more aimed at educational elements. The difference in thinking between the two forms of sanctions will influence the severity of the punishment imposed on perpetrators of criminal acts. Thus, in formulating sanctions that use criminal law in a statutory regulation, a clear focus is needed regarding the objectives to be achieved from the application of sanctions in the use of criminal law.

The existence of punishments or sanctions in criminal law does not necessarily function as retaliation for perpetrators of criminal acts, because in connection with the development of criminal law the function or use of criminal sanctions has also experienced paradigm developments. The functions of criminal sanctions currently used are:

1. As a means of enforcing legal rules both in criminal law and enforcement in other legal disciplines;
2. As a means of providing punishment and deterrent effect for perpetrators of criminal acts;
3. As a tool to improve the behavior of perpetrators of criminal acts, criminal sanctions must contain educational elements;
4. As a means to prevent and overcome the occurrence of criminal acts;
5. As a means of social protection (social defense) by protecting the sense of security and tranquility both individually and in general, so as to create a just and prosperous social environment (social welfare policy). (Mahrus Ali, 2013: 254)

Criminal acts cannot be separated from the relationship between the values, structure and environment of society itself. So that all human efforts to eliminate criminal acts cannot possibly be completed because criminal acts cannot be erased but can only be reduced or minimized in intensity. Not all human needs can be fulfilled perfectly. However , humans tend to have different interests from one another, so that at least from differences in interests various principal conflicts can emerge. However, criminal acts cannot be allowed to grow and develop in society because they can cause problems with social order.

Apart from the use of criminal sanctions as a means of overcoming criminal acts and maintaining public order, the purpose of punishment is also something that is no less important in exploring the justification for the use of punishment by trying to ensure that punishment can be more functional . Starting from just punishment intended to impose punishment on law violators. However, the development of punishment can be related to the goal of achieving punishment .

Act of obstruction of justice or it can also be interpreted as the act of 'obstructing the legal process' or 'criminal act of obstructing the legal process'. In accordance with the name or term, in this case they must fulfill several conditions so that they can be said to have violated criminal law and receive sanctions in accordance with applicable law.

In the teachings of criminal law, an action is formulated by several existing elements so that the action can be said to be a criminal act, Simons explains the formulation of the offense as follows: "Een Strafbbaar gestelde onrechtmatige (wederrechtelijke), met sculd in verband staande handeling vaneen toerekeningsvatbaar person".

The formulation that has been mentioned, if divided into several elements of proven criminal acts, according to Satochid Kertanegara, Simons' opinion can be divided based on the following elements

1. Punishable acts;
2. The actions taken are contrary to the law;
3. Actions with errors related to;
4. Actions carried out by people who can be punished (toerekeningsvatbaar).

Based on this opinion, it can be seen in the act of obstruction of justice which is formulated in Article 21 of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes, based on the nature of the act, it fulfills all the elements of the offense in this opinion because, in the formulation of the elements of Article 21 of Law no. 31 of 1999 concerning the Eradication of Corruption, regulates acts that are categorized as obstruction of justice, which formally are prohibited acts and contain criminal sanctions. Judging from several characteristics of acts of obstruction of justice, they are intended for criminal proceedings or criminal perpetrators can be prosecuted according to their actions, therefore, of course the actions carried out are included in investigations, investigations, prosecutions or trial examinations, which are carried out or carried out by officials who have authority.

In this case, the perpetrator knew that all the officials who carried out the court action were officials who had authority, if the perpetrator did not know about the officials who had this authority, it could be that they did not get the authority to do what they wanted at that time. This is as stated in Arrest Hoge Raad dated 23 May 1932, NJ 1932 page 1209 W. 12503 which states: (Lamintang et al, 2010: 647)

"The most important thing is that the parent understands that the child who performs the vordering is a child who was coerced into performing the vordering. The risk that the eldest person will be declared dead comes into play when the extreme circumstances are resolved for Akun of the people who the eldest trotseers.

Which mean :

"It seems sufficient if the perpetrator must understand that the person making the request is a civil servant who is authorized to make the request. If based on external circumstances there is doubt as to whether the person making the request is actually the person authorized to make such a request or not, then the consequences must be borne by the person who does not comply with the request."

It can be seen from the jurisprudential decision that there is and can be seen to be deliberate in the form of the intention of the perpetrator or perpetrator in a crime. obstruction of justice, proven by the perpetrator's admission that the act he committed had a crime the relationship between actions carried out and orders from positions that have authority in order to immediately carry out an inspection, confiscation, action related to the investigation or prosecution of a principal case occurring at that time.

This can be categorized as a crime because it can hinder the investigation process and judicial prosecution in Indonesia. In this case, it has also been stated that anyone who is willing to sacrifice themselves to lie and obstruct the course of justice will be given appropriate sanctions.

In this case, criminal sanctions can be given by someone, either a witness or an official or a person involved in the process of obstructing the process of an ongoing criminal act. As Article 221 of the Criminal Code, paragraph 1 states :

Threatened with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah:

1. Anyone who intentionally harbors a person who has committed a crime or who is charged with a crime, or anyone who provides assistance to him to avoid investigation or detention by criminal justice or the police, or by another person who according to the provisions of law continuously or temporarily when entrusted to carry out the police position;
2. Whoever, after the commission of a crime and with the intention of covering it up, or to obstruct or complicate its investigation or prosecution, destroys, disappears, conceal objects with which or with which a crime was committed or traces of other crimes, or withdraw them from inspections carried out by judicial or police officials or by other persons, who according to the provisions of law are continuously or temporarily entrusted to carry out their positions police.

Article 221 of the Criminal Code, paragraph 2, reads:

"The above rules do not apply to people who commit these acts with the intention of avoiding or averting the danger of prosecution against a family member of the same blood or blood line or in the second or third degree of deviation, or against their husband/wife or ex-husband/wife."

4 Closing

4.1 Conclusion

The legal regulation for perpetrators who obstruct the investigation process is material law (material recht or substantive law), which is a regulation that regulates one legal subject with another legal subject by prioritizing legal norms or prohibited and permitted actions in the case, whoever if you dare to violate a rule therein, you will face penalties in accordance with the Criminal Code's criminal offense restrictions, civil law in BW, commercial law in WvK. Therefore, if there is a defendant or suspect who dares to obstruct the justice process at the investigation stage, prosecution stage and trial stage, the regulations are found in the Material Criminal Law. where the regulations in the Criminal Code are regulated in Article 216 (1) and Article 221 (1) , Article 21 of Law of the Republic of Indonesia Number 31 of 1999 regulates the eradication of corruption crimes. Therefore it is known that in this case the Code Criminal procedural law does not regulate acts of obstructing the justice process.

Criminal sanctions can be given to perpetrators who obstruct the investigation process, which can be seen in accordance with the evidence carried out by authorized officials by collecting evidence or statements from witnesses or victims. This can be seen from the jurisprudential decision, there is and can be seen intentionality in the form of the intention of the perpe-

trator or perpetrator in a crime. obstruction of justice , proven by the perpetrator's admission that the act he committed had a crime the relationship between actions carried out and orders from positions that have authority in order to immediately carry out an inspection , confiscation, action related to the investigation or prosecution of a principal case occurring at that time.

4.2 Suggestion

If you see a law that obstructs the judicial process, then there are no sanctions in that case. Therefore, there needs to be an appropriate update to the law regarding this case, It is hoped that the government can be firm and appropriate to the issues and problems that have occurred recently so that good and correct legal justice can be created.

The imposition of criminal sanctions can be given to the perpetrator in accordance with the things that exist and appear to be deliberate in the form of the intention of the perpetrator or perpetrator in a crime. obstruction of justice , proven by the perpetrator's admission that the act he committed had a crime the relationship between actions carried out and orders from positions that have authority in order to immediately carry out an inspection , confiscation, action related to the investigation or prosecution of a principal case occurring at that time.

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