

Criminal Liability of an Accused Who Commit Obstruction of Justice

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Abstrak

Sistem peradilan pidana dijalankan oleh aparat penegak hukum yang telah memiliki kewenangan berdasarkan undang-undang. Segala macam tindakan yang dilakukan oleh aparat penegak hukum adalah bersifat legal selama tidak bertentangan dengan peraturan perundang-undangan. Sehingga segala bentuk perintangan terhadap proses peradilan merupakan sebuah pelanggaran hukum. Artikel ini akan membahas permasalahan terkait dengan tindak pidana perintangan proses peradilan yang tidak secara normatif limitatif ditentukan dalam rumusan pasal undang-undang. Artikel ini ditulis dengan metode penelitian hukum normatif dengan pendekatan konseptual. Hasil dari penelitian ini menunjukkan bahwa perintangan terhadap proses peradilan merupakan tindak pidana yang memiliki unsur sangat luas, akan tetapi yang perlu diperhatikan adalah parameter dari perintangan peradilan adalah tercemarnya harkat dan martabat lembaga peradilan.

Kata kunci: pertanggungjawaban pidana, perintangan peradilan, terdakwa

Abstract

The criminal justice system is run by law enforcement officers who have authority based on law. All kinds of actions carried out by law enforcement officers are legal as long as they do not conflict with statutory regulations. So any form of obstruction of the judicial process is a violation of the law. This article will discuss problems related to criminal acts of obstruction of justice processes which are not normatively limitatively determined in the formulation of articles of law. This article was written using normative legal research methods with a conceptual approach. The results of this research show that obstruction of the judicial process is a criminal act that has very broad elements, however what needs to be taken into account is that the parameter of obstruction of justice is the contamination of the dignity and worth of the judicial institution.

Keywords: criminal liability, obstruction of justice, accused

INTRODUCTION

Implementation of judicial power, the judiciary has an internal function upholding law and basic justice in the Constitution of the Unitary State Republic of Indonesia in 1945 (Suherman, 2019) Because, The judiciary has an important role as the ultimate goal by fighters for justice, which strives for fair treatment in everyone issues related to enforcement law.

Based on its function, the enforcement process The law often experiences problems. Increased actions or efforts in obstructing the course of justice pursue legal enforcement processes become obstructed. In principle, the country The law is regulated in Article 1 Number (3) of the Constitution of the Unitary State of the Republic Indonesia in 1945 (1945 Constitution of the Republic of Indonesia) which referred to as the Unitary State of the Republic Indonesia is a rule of law country. In accordance these provisions, then one of the rules is appropriate regarding the rule of law, namely that there are guarantees exercise of judicial authority independent, free from the influence of other powers (Yarni et al., 2022).

The increase in crime that appears with the presence of a perpetrator or suspect who has commit a crime against the law or criminal act, requires the role of the parties who has authority or who has role in finding the perpetrator or suspect in one problem, namely like an investigator the police and officers who have a role in upholding the implementation of justice. The investigation was carried out with effort steal or collect evidence in order to get justice.

Internal police powers implementation of the case examination process at least correct for the year's operational and technical guidelines 2001 regarding investigations. During the process implementation can be supported by various parties by providing accurate information with nothing to cover. Remembering action The crime committed is a crime that must be sought the truth and the sanctions given can be according to the severity of the crime done. If in the

investigation process found something or a statement deemed inappropriate or suspicious in the process of investigation and proven then it is expressed as an action obstruction of justice is 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 ethnicity, race, religion and inter-group. 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.

In reality, the matters regulated in Article 221 of the Criminal Code are deemed not to be able to cover several acts which are categorized as criminal acts of obstruction of justice. Obstruction of justice 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. Obstruction of justice is a type of criminal act of contempt of court. Obstruction of justice is an act that is intended or has a distorting effect, disrupting the proper function of a judicial process. Obstruction of justice is a disruption of the judicial process where there is an attempt to reduce the goodness (fairness) or efficiency of the judicial process or the judicial institution (Arfiani et al., 2023).

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 its witness statements 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 honest about what he experienced (Boyoh, 2011).

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 imposed on perpetrators of criminal acts who in the judicial process are proven guilty of committing unlawful acts. The aim of this research is to find out what the legal regulations are for perpetrators who obstruct investigations and what criminal sanctions can be given to perpetrators who obstruct investigations.

METHOD

In this research, the researcher chose to use normative research. Normative legal research is a process of finding legal rules, legal principles, in order to answer problems law, normative legal research is carried out to produce arguments, theories or new concepts as prescriptions (judgments) in the problems faced (Marzuki, 2010). This type of normative legal research is identical to library research in which all words and data become legal materials, namely in the form of primary, secondary and tertiary legal materials (Supratman & Dillah, 2015). 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 normative legal research, there are 3 (three) types of approaches consisting of: The Statute Approach, the Historical Approach, and the Conceptual Approach.

RESULT AND DISCUSSION

Formal law or (*formeelrecht/procesrecht/ejectivelaw*) or procedural law, namely all legal regulations or norms that regulate how to implement and maintain material law, for example: Criminal Procedure Law, Civil Procedure Law, Administrative Court Procedure Law, Religious Court Procedure Law, Court Procedure Law Constitution. 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 the criminal act (Ariyanti, 2019).

A criminal act is an act or deed that is punishable by a criminal offense in accordance with applicable provisions, is contrary to legal provisions and is accompanied by a mistake by someone who is capable of being responsible. Apart from that, according to Moeljatno, criminal acts are prohibited acts and threatened with fines for anyone who violates these rules. This action must also be realized by the community as an obstacle to the implementation of the implementation that the community aspires to (Tongat, 2008).

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, anyone who dares to violate a rule therein will be subject to sanctions according to criminal regulations in the Criminal Code, civil law in B.W., commercial law in WvK.

The KUHAP function here is to implement and maintain the existence of material legal functions. Therefore, if there is a defendant or suspect who dares to obstruct the justice process, whether at the investigation stage, prosecution stage, and the judicial stage, the regulations are found in the Material Criminal Law, namely:

1. Criminal Code
2. Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes.

Therefore, it is known that in this case the Criminal Procedure Code does not regulate acts of obstructing the judicial process. The criminal act of obstructing the judicial process or often called Obstruction of justice is a type of criminal act of contempt of court. Obstruction of justice is an act that is intended or has the effect of distorting events, disrupting the proper function of a judicial process. 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 intent 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.

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 author analyzes and compiles the points of rules for the act of obstructing the justice process (obstruction of justice) as a formulation for the future that is :

1. Forms of acts that obstruct the investigation process. Acts of obstruction referred to in the investigation process.
2. Forms of action to obstruct the prosecution process hinder the intended purpose in the prosecution process.

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. Even the obstruction of justice provisions in several of the 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. England (2017) stated that there are several criteria for actions that can be classified as obstruction of justice:

1. Aiding a suspect;
2. Lying;
3. Famous Obstructions;
4. Tampering With Evidence

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 be subject to sanctions in accordance with criminal offense regulations in the Criminal Code, civil law in B.W., 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), Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes is regulated in Article 21. Therefore it is known that in this case the Criminal Procedure Code does not regulate acts of obstruction -obstruct the judicial 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 appears to be deliberate intent in the form of intent on the part of the perpetrator or perpetrator in a crime of obstruction of justice, proven by the acknowledgment of the perpetrator that the action he committed had a connection between the action carried out and the order of the position which had a authority to immediately carry out an inspection, confiscation, action related to the investigation or prosecution of a principal case occurring at that time.

REFERENCES

- Arfiani, A., Syofyan, S., & Delyarahmi, S. (2023). PROBLEMATIKA PENEGAKAN HUKUM DELIK OBSTRUCTION OF JUSTICE DALAM UNDANG-UNDANG PEMBERANTASAN TINDAK PIDANA KORUPSI. *UNES Journal Of Swara Justisia*, 6(4). <https://doi.org/10.31933/Ujsj.V6i4.294>
- Ariyanti, V. (2019). KEBIJAKAN PENEGAKAN HUKUM DALAM SISTEM PERADILAN Pidana INDONESIA. *Jurnal Yuridis*, 6(2). <https://doi.org/10.35586/jjur.V6i2.789>
- Boyoh, M. (2011). INDEPENDENSI HAKIM DALAM MEMUTUS PERKARA PIDANA BERDASARKAN KEBENARAN MATERIIL. *Lex Crimen*, IV(4).
- Suherman, A. (2019). Implementasi Independensi Hakim Dalam Pelaksanaan Kekuasaan Kehakiman. *Sign Jurnal Hukum*, 1(1). <https://doi.org/10.37276/Sjh.V1i1.29>
- Tongat. (2008). Dasar - Dasar Hukum Pidana Indonesia Dalam Perspektif Pembaharuan. In *UMM Ptress*.

Yarni, M., Kosariza, K., Netty, N., Priskap, R., & Syamsir, S. (2022). ANALISIS YURIDIS BENTUK PENGATURAN PARA PIHAK DALAM SENGKETA LEMBAGA NEGARA. *Jurnal Komunikasi Hukum (JKH)*, 8(1). <https://doi.org/10.23887/jkh.v8i1.43880>