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Interpretation of obstruction of justice in the crime of corruption in law number 31 year 1999

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ABSTRACT

If we look at Article 21 of Law No. 31/1999 on the Eradication of Corruption, there is no explicit definition of the act of "preventing, hindering or thwarting directly or indirectly", which raises the possibility of misinterpretation. Such errors include categorisation of the act, timing, and misinterpretation of the general legal norm. In terms of how the norm can be applied, it is necessary to understand the content of the legal norm as a whole regarding the meaning of each act in the provision. Thus, it will be clear about how the criminal act is carried out and can be categorised as a criminal act that fulfils all the elements in the provisions of Article 21 of Law No. 31 of 1999. This study is a normative study, with a statutory approach. Other approaches, namely existing conceptual and case approaches, will also be used to provide perspective in this study. The results of the study are manifested in the form of all acts that prevent, obstruct and thwart directly and indirectly, by not requiring the existence of consequences arising from these acts, namely being prevented, obstructed or thwarted an investigation, prosecution and trial examination carried out, but it is enough to prevent, obstruct and thwart according to his knowledge, the act can obstruct or thwart an investigation, prosecution and trial examination then the act is considered final.

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1. INTRODUCTION

In various cases in Indonesia, many legal incidents that reflect the reality of obstruction of justice are in fact committed by big people, state officials and senior politicians. One example in the discourse of this paper is the electronic ID card case involving Golkar party officials and Speaker of the House Setya Novanto. Irony indeed, but the dynamics of life at the national level, in the construction of national interests and politics, can all happen both in the consciousness of the perpetrators, and without the consciousness of the perpetrators. This is what makes things confusing, because consciousness is important in the element of crime, while the perpetrators of corruption are conscious people.When seen from the point of view of the community, which has shown a normative view of the wrong that has been done (Hamzah, 2001).

In enforcing corruption offences, of course, it is carried out by institutions that have the authority to enforce corruption offences. As is known, the institutions in question are the Police, the Prosecutor's Office, Corruption Eradication Commission (KPK), and the Court. Regarding the process of investigating cases of corruption cases initially starts from investigation, investigation, prosecution, trial, to deciding cases. deciding the case. Murder is the deliberate killing of another

person by a means that threatens the life of the other person until the death of that person (Lumintang, 2001).

The four institutions have limits to where they can enforce the law on corruption offences, such as the police. special law enforcement of corruption offences such as the Police can only carry out investigations and investigation, the Attorney General's Office is authorised to handle special criminal offences starting from investigations and prosecutions, the KPK is a new institution born in the era of reform that actually has the same authority as the police. reformation era that actually has the same authority as the police and the prosecutor's office but because both institutions are considered ineffective in carrying out law enforcement in the field of corruption and the public lacks trust in KPK (Mansyah, et.al,2019).

Before speaking to further discuss the Setya Novanto corruption issue, it is necessary to discuss whether obstruction of justice is a criminal act. The act of obstruction of justice is also defined as an act that intends to 'obstruct the legal process' or 'criminal offence of obstructing the legal process'. In accordance with its term as a criminal offence or criminal act, of course, the act must fulfil the conditions so that the action or act committed is included in a criminal offence. In the teachings of criminal law, a criminal offence is formulated based on the elements that exist so that it can be said to be a criminal offence (Junianto, 2019).

To determine whether it is a criminal offence, it is necessary to look at the elements of a criminal offence. These elements are (1). Actions that can be punished; (2) Actions that are carried out contrary to the law; (3) Actions with fault related to; (4) Actions carried out by a person who can be punished (Kartanegara, 1998). Based on this opinion, the act of obstruction of justice formulated in Article 21 of Law No. 31 of 1999 on the Eradication of the Crime of Corruption, based on the nature of the act, has fulfilled all the elements of the offence in this opinion because, in the formulation of the elements of Article 21 of Law No. 31 of 1999 on the Eradication of the Crime of Corruption, it regulates the acts categorised as obstruction of justice, which formally is a prohibited act and contains criminal sanctions in it (Mansyah, 2020, MaszudiIrham, M ,2016, Man,2015, Niervana, A. 2018, Theo Lamintang 2012) , .

Based on the nature of the act of obstruction of justice, it is intended that a legal process against a perpetrator of a criminal act be hampered or stopped, so it is certain that the act committed is an act during the judicial process which includes investigation, investigation, prosecution and trial examination, which is carried out by an authorized official (Junianto, 2019).. Dismissal without Honor (Hamidah,2022).

The beginning of the investigation of corruption cases is determined by the evidence owned by the investigator, the evidence referred to in Article 184 paragraph (1) of the Criminal Procedure Code is expert testimony, witness testimony, letters, instructions, and testimony of the defendant. Even though there are five types of evidence, there is an expansion or addition of evidence, especially in corruption crimes based on the evidence of instructions as stipulated in Article 26A of Law No. 31 of 1999 amended by Law No. 20 of 2001 concerning Eradication of Corruption Crimes, namely in the form of information that is spoken, sent, received, or stored electronically with optical devices, documents in example : recording data or information that is seen, read, and or heard (Mansyah, et.al, 2019).

Oemar Seno Adji and Indriyanto Seno Adji in Free Trial of the Rule of Law and Contempt of Court explain, obstruction of justice is an action that is shown or has the effect of distorting the legal process, as well as disrupting the proper function in a judicial process. Obstruction of Justice is considered a form of criminal action in the arena of hampering law enforcement and damaging the image of law enforcement agencies. Therefore, Obstruction of Justice is categorised as one type of criminal contempt of court (Fitri, at,al, 2023).

2. RESEARCH METHOD

As is the tradition of legal research, this research uses normative juridical research methods. The approaches used are the statute approach and the case approach. The case approach is important to present factual analyses of contemporary legal cases that support this research. The primary legal data used is primary legal material, namely Article 21 of Law Number 20 of 2001 amending Law Number 31 of 1999 concerning the Eradication of Corruption. Secondary legal data or materials are

books, legal journals, expert opinions in newspapers, Legal Dictionary, Black's Law Dictionary and other relevant documents. . In this research, the data collection technique is carried out by library research that has relevance to the laws and regulations governing the subject of this study. The analysis technique is data reduction, systematic interpretation and careful grammatical interpretation.The politics of privilege: assessing the impact of rents, corruption, and clientelism on Third World developmen (Hucrofth, 1997).

3. RESULTS AND DISCUSSIONS

In In Provisions of Article 21 of Law No. 31 of 1999 on the Eradication of the Criminal Act of Corruption Regarding Obstruction of Justice.

The provisions of Article 21 of Law No. 31 of 1999 on the Eradication of the Criminal Offence of Corruption reflect that the element of the act in the provision is deliberately preventing, obstructing, or thwarting directly or indirectly, when viewed based on the characteristics of the act of obstruction of justice, as explained by Kendall, which states that the act or attempt is declared as a criminal offence of obstructing legal proceedings, if 3 (three) important elements are fulfilled, namely is declared as a criminal offence of obstructing the legal process, if 3 (three) important elements are fulfilled, namely: (1) The action causes the delay of legal proceedings (pending judicial proceedings); (2) The perpetrator knows his actions or is aware of his actions (knowledge of pending proceedings); (3) The perpetrator commits or attempts deviant actions with the aim of interfering with or intervening in the process or administration of law (acting corruptly with intent), In addition, in some courts in the United States, one more requirement is added, namely that it must be proven that the defendant has a "motive" to commit the act committed (Agustina, 2015).

The criminal responsibility of the perpetrator here is intended to be the perpetrator as a legal subject, either an individual, or a legal entity that can be held criminally responsible, without any reason from the perpetrator so that he cannot be subject to punishment. Furthermore, Elwi Danil in his discussion of the issue of legal subjects in the criminal act of corruption stated that the subject of corruption has never been specifically regulated based on certain qualifications or always stated with the formulation of "whoever" or in Law No. 31 of 199 concerning the Eradication of criminal acts of corruption is formulated with "every person" so that it can mean anyone, but there are differences of opinion among law enforcers, that the legal subject in the criminal act of corruption is civil servants, while outside it must be excluded from the provisions of the corruption law (Danil, 2016).

That in relation to these issues, the legal subject or perpetrator of a criminal offence in the provisions of Article 21 of Law No. 31 of 1999 Concerning the Eradication of the Crime of Corruption, should be the perpetrator himself who at the time of committing the act was subject to or carried out the process of investigation, prosecution, trial examination against him or other perpetrators related to this matter. Premeditated murder is considered to exist if the perpetrator has thought about and considered in advance and finally determined the place, event, or time as well as the subsequent tasks to be used in the premeditated murder.(Adami,2001). In this provision, the perpetrator as a legal subject in this criminal offence cannot be qualified as a person who is undergoing legal proceedings or other people with an interest in the legal process being carried out, this is intended so that this provision can reach all parties in an effort to safeguard the implementation of the investigation, prosecution and examination in court can be carried out properly. Acts of destroying evidence, fabricating documents, and others which are acts that hinder the case handling process to be obscure and slow (Nelson,2022).

Grammatical Interpretation of the Text of the Article

In this case, it is necessary to do a grammatical interpretation that in the author's analysis of eliminating evidence included as a case of Obstruction Of Justice there are no restrictions so that law enforcement officials can interpret differently, so it is necessary to explain the meaning of preventing, hindering, and thwarting, namely: These actions cannot be separated from the elements of intent that precede the words or elements of preventing, hindering, and thwarting. Implementation of Article 21 of Corruption Eradication Act on Advocates Performing Their Professional Function (Hudi,2014).

These acts cannot be separated from the elements of intent that precede the words or elements of preventing, hindering, or thwarting. That is, in addition to the act being intended, there is also a purpose to be achieved from each of the acts. Points number 1 to 5 below are attempts at interpretation according to a legal thinker (Chazawi, 2016).

The act of preventing is an act in any way whose purpose is to prevent something from happening in the case of an investigation, prosecution, or examination at a court session. In short, prevention is all efforts so that something does not happen. In the act of preventing, there is a condition, namely that something in the case of investigation, investigation, prosecution, and examination of a corruption crime against a person has not yet occurred and so that it does not occur, then the act of preventing is carried out, for example telling the perpetrator or witness to flee abroad by providing facilities and facilities to him.

In contrast, the act of obstruction requires the condition that something has already happened. In order to prevent something from continuing to an unpleasant end or something that is not wanted, it is necessary to obstruct. Thus, an obstruction is any effort or action in any way that interferes with or prevents something. In this case, an investigation, or prosecution, or examination in court of a corruption case. In order for the investigation, prosecution, or examination in court to be hampered, hindered, disturbed, or have difficulty finding evidence, the act of obstruction is carried out. For example, giving money to incriminating witnesses to flee abroad, or hiding, or influencing them with anything.

The act of thwarting, on the other hand, is any act that in any way causes something to fail, which in short can be called making it fail. This is in the form of actions that correspond between the will achieved and the cause of the failure of something in the case of investigation, prosecution, and examination of corruption cases, with the result of the failure of the three legal works in the formal law of corruption. The cause is the act of thwarting and resulting in the failure of investigation, prosecution, and failure in the examination of corruption cases.

The phrase "directly or indirectly" is meant to avoid legal loopholes that can be used by the perpetrator to circumvent or exonerate himself on the grounds that his actions are not the cause of the non-occurrence, obstruction or failure of the examination of corruption cases. Directly means that the actions manifested in the non-performance, obstruction or failure of investigation, prosecution or court hearing have a direct relationship or are the direct cause, for example, key evidence or key witnesses are removed or made to disappear. This results in the inability to investigate, prosecute, or examine corruption cases in court.

Conversely, the word "indirect" is an act in any way that does not directly cause the result of the non-occurrence or obstruction or failure of the investigation, prosecution, or examination of corruption cases in court.

Presumably we agree with Adami Chazawi's thought that with the examination of the criminal act of corruption against a person has not yet occurred and so that it does not occur, the act of prevention is carried out, and the act is directly carried out which means that the failure of the examination of the corruption case directly occurs, so that the article that can be charged is Article 21 of Law Number 31 Year 1999 jo. Law No. 20/2001 on the Eradication of the Criminal Act of Corruption. Corruption impact on Economic Growth: An empirical analysis (Grabova,2014).

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This is different from the opinion or view of the judge or panel of judges in the Decision of the Corruption Court of the DKI Jakarta High Court Number: 23/Pid.Sus-TPK/2018/PT.DKI, dated 5 October 2018, which interprets "intentionally" in the acts committed by the defendant as intentionality with certainty of awareness, this is because the Panel views that the acts committed by the defendant based on the facts of the trial were clearly shown to have malicious intent (mens rea) (Isra, S., Amsari, F., & Tegnan, H. 2017, Johan Dwi Junianto ,2019, Luna-Pla, I., & Nicolás-Carlock, J. R., 2020). This was evident in his actions (actus reus) which went to great lengths to defend his client Setya Novanto. The panel of judges looked at Fredrich's capacity as a lawyer or part of the judicial process that should uphold the law and justice. However, the legal fact is that Fredrich actually committed an unlawful act.The Act of Obstructing the Corruption Criminal Justice Process Based on Article 21 of Law No. 31 Year 1999 (Gareda,2015).

In that context, there is an empirical appearance that efforts to harm the judicial system are actually carried out by someone who understands the law itself (Johan Dwi Junianto ,2019). The lawyer in the Novanto case seems to have traded his position and the high dignity of justice by setting himself up as a person whose actions can be interpreted as an obstruction of justice perpetrator. Fredrich Yunadi was named by the KPK as a suspect on 10 January 2018. He is suspected of obstructing the investigation of the case against Setya Novanto during the investigation process (Isra,2017). Novanto admitted to investigators that the actions he took to avoid the investigation were because he followed Fredrich Yunadi's ideas and suggestions. This statement was explored by the KPK in the process of investigating the alleged obstruction of the case by examining a number of witnesses including Hilman Mattauch, the driver of the Toyota Fortuner car that was involved in the accident with Novanto and a former Metro TV contributor. The investigation was then upgraded to the investigation stage, followed by the naming of Fredrich Yunadi as a suspect along with doctor Bimanesh Sutardjo.

4. CONCLUSION

The criminal offence of Obstruction of Justice in the provisions of Article 21 of Law No. 31 of 1999 on the Eradication of the Crime of Corruption, is manifested in the form of all acts that prevent, obstruct and thwart directly and indirectly, by not requiring the existence of the consequences arising from these acts, namely the prevention, obstruction or thwarting of an investigation, prosecution and trial examination that is being carried out, but it is enough to do the act of preventing, obstructing and thwarting that based on his knowledge, the act can obstruct or thwart an investigation, prosecution and trial examination, then the act is considered complete. In the case of Obstruction of Justice this is manifested in the form of actions that eliminate evidence to hide the facts that actually happened. Obstruction of Justice is a form of elite crime that involves individuals with high caste and position. That is why, in the process of eradicating it, extraordinary efforts are needed in the law enforcement process. This is because there must always be parties who try to hinder the enforcement of this offence. In the efforts of the criminal law enforcement process against Obstruction of Justice, there must be many obstacles from various individuals who try to harm the realisation of certainty, justice and legal benefits.

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