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**RECONSTRUCTION OF "OBSTRUCTION OF JUSTICE" AS A CRIMINAL ACT IN THE LAW ON ERADICATING CORRUPTION IN INDONESIA**

<sup>1</sup>Samsul HUDA, <sup>2</sup>Bambang SUGIRI, <sup>3</sup>Nurini APRILIANDA, <sup>4</sup>Heru R. HADI

<sup>1,2,3,4</sup>Doctoral Program Students, Brawijaya University, Malang, Indonesia

Corresponding author: Samsul Huda

E-mail: samsuladvokat@gmail.com

Corruption is a special criminal act, qualified as an ordinary crime but must be eradicated in extraordinary ways. In Indonesia, it is not only an extraordinary method but also an institution with extraordinary authority formed because corruption has become a systemic and systematic disease of society. Criminalizing the act of "obstructing the judicial process" is one way to eradicate corruption extraordinarily. The positive law has already regulated it, but it needs to be strengthened by ratifying UNCAC 2003 so that the norms governing the offense can be universally recognized. This study aims to synchronize and harmonize the norms that have been regulated in positive law with the new norms regulated in UNCAC 2003 to avoid misperceptions in its implementation. The normative method is used by examining philosophically and juridically through principles and theories that develop and are associated with emerging empirical problems. Several legal cases are used to analyze the philosophical and juridical problems and to find weaknesses in the "obstruction of justice" offense norm. It needs to be reconstructed to ensure legal certainty and justice better. In the end, the goal of eradicating corruption can be achieved, without violating the proper criminal procedural law and placing interested parties, both from the perspective of the perpetrators and victims.

**Keywords:** Corruption, Obstruction of Justice, Reconstruction

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**INTRODUCTION**

"Obstruction of justice" in the context of corruption is understood as resistance to efforts to eradicate corruption, both by suspects/defendants of corruption crimes and other parties with direct or indirect interests in corruption cases. Obstruction of justice is a crime related to corruption. However, it does not mean that obstruction of justice is qualified as an offense of assistance. Law enforcement officials are more comfortable qualifying parties in obstruction of justice cases in the cluster of participation offenses (*deelneming*), which are divided into the roles of actors (*pleger*), intellectual actors (*doenpleger*) and accompanying actors (*medepleger*).

The behavior of obstructing or obstructing the legal/judicial process as the equivalent of the word "obstruction of justice" is suspected to be carried out by several parties fighting against the legal apparatus, which is aggressively eradicating corruption on all fronts. This form of resistance, better known as "corruptors fight back" takes various forms, especially concerning the existence of evidence, either by influencing witnesses (keys) or the disappearance or obscuring of other evidence as quickly as possible without being able to reach them by law enforcement.

The relationship between corruption and obstruction of justice needs to be explored more deeply because law enforcement officers face obstacles accompanying the link between corruption eradication efforts. In addition, an in-depth analysis of norms that have long been known in the practice of general criminal justice is adopted in special crimes, especially criminal acts or corruption offenses. The scientific questions sought in this research are related to the limits, actors, effectiveness

and strategies for establishing norms and implementing offenses or obstruction of justice within the scope of criminal acts or corruption offenses.

A series of big names who are considered to have carried out obstruction of justice acts are Setya Novanto (former Chairman of the Indonesian House of Representatives) in the electronic single identity (E-KTP) case, Anggodo Wijoyo which gave rise to sharp conflicts between Police Headquarters and the Corruption Eradication Commission (KPK) (known as the Cicak vs. Crocodile incident) due to the criminalization of the KPK leadership, the case of Komjen Budi Gunawan (Prospective National Police Chief) which gave birth to the Cicak vs. Crocodile war Volume II, the case of Wahyu Setiyawan (member of General Election Commission (KPU) which passed Harun Masiku (PDIP politician) as a fugitive, the case of Eddy Sindoro (Entrepreneur Group Lippo) and Nurhadi (Secretary of the Supreme Court) which involved Advocate Lucas, the case of the transfer of land function at Bukit Jonggol involving entrepreneur Kwee Cahyadi Kumala (Suiteng) and the Regent of Bogor Rahmat Yasin, the case of Soemarmo HS (Mayor of Semarang) etc.

Of the many corruption cases, not all led to the stipulation of parties suspected of having committed the crime of obstruction of justice, which was then subject to Article 21 of the Anti-Corruption Law, known as the "article of obstruction of justice". Only Advocate Lucas, Entrepreneur Kwee Cahyadi Kumala and Advocate Frederich Yunadi were charged with the aquo article, while the others were not. In addition, several cases apply the obstruction of justice article in the corruption crimes imposed at the KPK and the Indonesian Attorney General's Office (Kejaksaan Agung RI). The question is how big and strong is the intensity of law enforcement officials to use the obstruction of justice article in the framework of strengthening and sharpening efforts to eradicate corruption, in addition to the application of the core articles of the corruption crime itself.

Criminalization of the act of "obstructing the judicial process (obstruction of justice)," specifically in cases of criminal acts of corruption, is not a new policy because it has been regulated in several statutory provisions prior to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (Law No. 31/1999) The Anti-Corruption Law) was promulgated, namely Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption. Likewise, during the enactment of Law Number 24/Prp/1960 concerning Anti-Corruption, the criminal justice process was characterized by efforts to back up perpetrators of corruption so that they would not be confronted in the criminal justice process.

As understood, acts of corruption are behaviors that live and develop as long as humans in every era, which are then classified as a disease that must be avoided and even fought at the level of society and the state. It must be fought because corruption is very detrimental to the state's finances and economy and hinders the growth of national development, which demands high efficiency. Corruption does not only have economic implications but has damaged the foundations of the state. Therefore, in order to realize a just and prosperous society, it is necessary to take steps to prevent and eradicate corruption systematically and sustainably.

There is no definition or understanding of corruption or criminal acts of corruption from the point of view of criminal law, both in statutory regulations that are no longer valid and current positive law. In Law No. 24/Prp/1960, which was once applicable, it was only mentioned that criminal acts were included in the criminal act of corruption (Article 1), not formulating the definition or limits of corruption or corruption. However, state finances or the state economy are certainly the main objects of corruption crimes (vide article 2 paragraph (Law of the Republic of Indonesia, 1999) and Article 3 (Law Number 31 of 1999 as amended and added to Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, from now on referred to as the Corruption Law) which lies in attacking legal interests regarding state finances (state wealth in the broadest

sense) and the country's economy. The economic crime side is the main focus to be specifically regulated in criminal acts corruption.

Corruption is no longer a local or a national issue but a transnational one, so it is essential to have international cooperation in dealing with it. In addition to the scope of issues and areas, eradicating corruption has become a national and international legal policy. It has become a reference for every macro policy-making and implementation of positive laws and regulations in each country, either in ratifying or modifying different norms.

One substantial effort to fight corruption is through international cooperation. International cooperation in preventing and eradicating criminal acts of corruption must be supported by integrity, accountability, and good governance. To realize these ideals, determinations and commitments, the Government of Indonesia has been actively involved in the efforts of the international community for the prevention and eradication of corruption by signing the United Nations Convention Against Corruption (UNCAC), 2003 or known as the (United Nations Convention Against Corruption, 2003).

As mentioned earlier, the crime of corruption has damaged the state's foundations and denied the principles of democracy, transparency, accountability, integrity, security, and economic and political stability. Corruption crime is systematic and detrimental to sustainable development, so it requires comprehensive, systematic and sustainable prevention and eradication measures. The previous positive law (existent) was considered inadequate to answer this challenge because "what is stated in the Criminal Code must not be able to keep up with the times. There are always various actions that are not called the Criminal Code, but people feel it is an act that is detrimental and against the law (Saleh, 1983). Apart from being a compliment, the new rules related to corruption can also be qualified as supporting regulations, both in the formal and material sense (Loqman, 1991). Furthermore, the spirit to criminalize several norms as a corruption offense, the Corruption Act, as inspired by the Cohen vs Lindenbaum case in interpreting acts against civil law known as Cohen - Lindenbaum Arrest (Algra & K. Van Duyvendijk, 1983), which states that even though giving (bribing) private partners is not regulated existing laws, but later declared a criminal offense (corruption).

So far, the prevention and eradication of corruption in Indonesia have been carried out based on special laws and regulations that have been in effect since 1957 and have been amended 5 (five) times. After the law was implemented, various obstacles were found, both in terms of the formulation of norms and their implementation, so they were considered inadequate. What has not been sufficiently regulated in the absence of international cooperation in the issue of returning assets resulting from criminal acts of corruption? Therefore, the Government of the Republic of Indonesia, on 18 December 2003, at the United Nations Headquarters, also signed the United Nations (UN) Convention on Anti-Corruption adopted by the 58th Session of the General Assembly through Resolution Number 58/4 on 31 October 2003 (United Nations Convention Against Corruption, 2003).

Corruption is defined from several different perspectives, but from a legal point of view, it is based on the nature of being against the law or abusing one's authority, position or power. Even the abuse of its influence, even though it is not attached to attributive authority in carrying out its actions. The economic point of view is dominance because the core of the corruption offense is the loss of state finances or the state economy. Furthermore, the most common type of corruption that does not recognize caste or position is bribery, as defined by Andi Hamzah, that "corruption means being bribed" (Hamzah, 1995). More specifically, Andi Hamzah gives an exception that people who bribe civil servants do not need to be punished because it is considered permissible for people to

give gifts to civil servants as long as they do not aim to neglect their obligations (which is forbidden under Article 12B of the current Anti-Corruption Law) (Hamzah, 2012).

Etymologically the word corruption comes from Latin, namely "corruptio" or "corruptus," which later appears in many languages, especially English, namely "corruption", and in Dutch, "korruptie", which subsequently also appears in the Indonesian treasury: corruption, which can mean "like to be bribed". Corruption can also be juxtaposed with bribery (bribery) which means giving/handing over to someone so that the person acts for the giver's benefit.

To respond to the ingrained KKN behavior, laws and regulations that have the characteristics of eradicating corruption and the institutions that deal with it were born. There are 2 (two) laws and regulations in the reform era that focus on overcoming efforts to eradicate KKN, namely:

- 1) *Law Number 28 of 1999 concerning State Organizers for KKN that are Clean and Free from Corruption, Collusion and Nepotism (KKN), and*
- 2) *Law Number 31 of 1999, amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (Corruption Law).*

In addition to the legal system and rules, a Corruption Eradication Agency was also formed to carry out these regulations more independently than existing law enforcement agencies. However, these institutions disbanded because they failed to carry out their functions (Agustina et al., 2015). In 2002, the Corruption Eradication Commission (KPK) was born, an institution to eradicate corruption that is quite successful and feared today. The birth of the KPK is in line with the beginning of the reform era, which made KKN the main agenda to be resolved. Even though, in reality, after the Reformation Era has been running for so long, the behavior of corruption which was originally at the edge and peak of power (during the New Order and the Old Order), shifted into the power sub-system along with the distribution of authority to manage the budget in the era of regional autonomy. The era of regional autonomy created small kings with the authority and power of big budgets, who were then trapped in deviant moral behavior (moral hazard) and ultimately tempted and trapped in corrupt behavior.

To emphasize eradication efforts, corruption is qualified as an extraordinary crime, even though the law only states that corruption is qualified as a "crime" without the frills of "extraordinary". However, the law emphasizes that corruption must be eradicated in extraordinary ways (extraordinary treatment). As mentioned earlier, international cooperation is needed to eradicate transnational corruption. To achieve this, it is necessary to have the same legal norms that each country must regulate. Thus, The United Nations Convention Against Corruption (UNCAC) 2003 was born. The Government of the Republic of Indonesia then ratified UCAC through Law No. 7 of 2006 concerning the Ratification / Ratification of UNCAC in 2003. It is a form of the seriousness of the international community that the problems and threats posed by criminal acts of corruption undermine democratic institutions and values, ethical values and justice and undermine sustainable development and law enforcement. It is related to the era of globalization, which focuses more on the activities of governments, interstate institutions, or multinational corporations than on the discussion of individual human activities (Harding, 2007). Therefore, international cooperation is the answer.

One of the norms that are regulated and required by UNCAC 2003 to be regulated through a legislative body (legislative mandatory) is the criminalization of acts of "obstruction of justice" or "obstruction of the judicial process". Chapter III UNCAC 2003 on Crime and Law Enforcement regulates the "obstruction of justice" norm. It is further explained in Article 25 of UNCAC 2003, which regulates the criminal act of "obstruction of justice", which in whole states: Each State Party

shall adopt such legislative and other measures as may be necessary to establish as criminal offenses when committed intentionally:

- a) *The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding to the commission of offenses established by this Convention;*
- b) *The use of physical force, threats or intimidation to interfere with official duties by a justice or law enforcement official to the commission of offenses established by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of the public official.*

The Indonesian government has committed to regulating the norms of "obstruction of justice" in the anti-corruption laws and regulations. It has already been regulated in 2 (two) laws, namely Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (the Anti-Corruption Law) and previously in the Criminal Code (KUHP). The formulation of Article 21 of the Corruption Act, which regulates the offense of "obstruction of justice" is:

*"Everyone who intentionally prevents hinders, or thwarts directly or indirectly the investigation, prosecution, and examination in court against suspects and defendants or witnesses in corruption cases, shall be punished with imprisonment for a minimum of 3 years and a maximum of 12 years. And or a minimum fine of Rp. 150 million and a maximum of Rp. 600 million."*

Furthermore, almost the same norms are also regulated in Article 216 of the Criminal Code and Article 221 Paragraph (Law of the Republic of Indonesia, 1999) but what is more in line with Article 21 of the Corruption Law is Article 221 of the Criminal Code, which states:

- I. *Threatened with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiahs:*
  1. *any person who intentionally hides a person who has committed a crime or who is being prosecuted for a crime, or who assists him/her to avoid being investigated or detained by an official of the judiciary or the police, or by another person who, according to the provisions of the law, is continuously or temporarily when assigned to carry out policy positions;*
  2. *any person who, after a crime has been committed and with the intent to cover it up, or to hinder or complicate its investigation or prosecution, destroys, removes, hides the objects against which or with which the crime was committed or traces of other crimes, or withdraws them from examinations carried out by judicial or police officials or by other people, who according to the provisions of the law are continuously or temporarily entrusted with carrying out policy positions.*
- II. *The above rules do not apply to people who commit such acts to avoid or prevent the danger of prosecution against a blood relative, by marriage in a straight line, a second or third-degree deviant line, or against their husband/wife or ex-husband/wife."*

## METHOD

This research uses normative research methods (or legal research) to find philosophical values, constructions, relevant legal rules, legal principles, and legal doctrines to answer the problems the author wants to explore. In general, normative research (legal research) is a process of finding the rule of law, legal principles, and legal doctrines to answer the legal issues faced. The author uses 4 (four) approaches, including:

1. The statutory approach, by examining the laws and regulations relevant to the research theme, explores the conformity and contradictions of norms with one another.

2. The conceptual approach starts from the opinions (postulates) of legal experts that develop from time to time, both in terms of substance and point of view, to find new ideas or ideas relevant to the issues you want to apply. Extracted by the author.
3. Case approach by analyzing corruption cases relevant to the themes and legal issues the author wants to explore. There are 3 (three) relevant legal cases, as mentioned in the previous description.
4. Comparative approach, by comparing laws or other legal sources, either in the form of judges' decisions or expert opinions from abroad, which discuss the same problem, to see the similarities and differences relevant to legal issues the author is exploring.

## RESULT AND DISCUSSION

**Qualification of Obstruction of Justice as a Crime.** Obstruction of Justice is a term of legal terminology derived from Anglo-Saxon literature. In Indonesian criminal law, a doctrine is a criminal act obstructing the legal process (United Nations Convention Against Corruption, 2003). Obstruction of Justice is also an act that hinders the legal process being carried out by law enforcement officers (in this case, the police, prosecutors, judges, and advocates) against witnesses, suspects, and defendants (Agustina et al., 2015). The qualification of Obstruction of Justice as a criminal act is because the act opposes and breaks through law enforcement which has an impact on disrupting the ongoing legal process by delaying, hindering, influencing witnesses, eliminating other evidence, thwarting or even intervening in law enforcement officers who are currently under investigation. Process evidence in criminal law in the investigation, prosecution, and examination at trial.

Following the term a criminal act or criminal act, of course, the act must meet the requirements so that the act or act committed can be qualified as a criminal act. These conditions are usually referred to as the elements of a crime. So a person can be subject to a criminal if the activity meets the requirements of a criminal act (*strafbaarfeit*). There are several views on the elements of a crime. According to Sudarto, the notion of elements of a crime should be distinguished from the definition of elements of a crime as stated in the formulation of the law. The first definition (elements) is broader than the second (elements). For example, the elements (in a narrow sense) of ordinary theft are listed in Article 362 of the Criminal Code (Sudarto, 1990). According to Lamintang, every criminal act in the Criminal Code can generally be described as subjective and objective elements. What is meant by "subjective" elements? Are elements attached to or related to the perpetrator and include everything in his heart? Whereas what is meant by "objective" elements are elements that have to do with circumstances, namely the circumstances in which the perpetrator's action must be carried out (Lamintang, 1984).

The opinions of criminal law experts regarding the elements of a crime (*strafbaarfeit*) are divided into two schools, namely the monistic and dualistic schools. Monistic scholars can conclude that there is no separation between criminal acts (criminal acts) and criminal responsibility (criminal responsibility). In the monistic flow, when looking at whether a person can commit a criminal act, it is necessary to see whether that person can be held accountable or not. If you cannot be held accountable, you cannot be punished. In this case, the monistic school sees all the conditions for the existence of a crime as being the nature of the act. It provides the principles of understanding that in the sense of an act/criminal act, it includes prohibited acts (criminal acts) and criminal liability/mistake (Moeljatno, 2015). Therefore, in a monistic view, the elements of criminal responsibility concerning the perpetrator of the offense include (Muladi & Priyatno, 2010).

- 1) *The ability to be responsible, namely being able to understand the consequences that are contrary to public order indeed;*
- 2) *Able to realize that the act is contrary to public order and able to determine the will to act;*
- 3) *The ability is cumulative, meaning that if only one of the responsible abilities is not fulfilled, a person is considered irresponsible.*

In contrast to the monastic school, the dualistic flow in formulating the limits of criminal acts separates criminal acts (criminal act) from criminal responsibility (criminal responsibility). A criminal act must consist of outward elements (facts) by the act of behavior and the consequences caused by it. These two things will give rise to events in the natural world (the world). Because the dualistic flow is separated, the definition of a criminal act does not include criminal responsibility they are (Moeljatno, 2015):

- a. *Behavior and consequences, for a criminal act, it is usually necessary to have the following behavior and consequences:*
- b. *Certain circumstances or circumstances accompanying the action of the event;*
- c. *Because these additional conditions are called elements aggravating the crime;*
- d. *Usually, with the existence of specific actions as formulated with the elements above, the nature of abstinence from doing the act is visible and natural. The nature of the unlawful act does not need to be formulated again as a separate element or element.*
- e. *The element against the law in formulating the offense refers to the external or objective condition accompanying the act.*

Thus, in the view of dualistic criminal law experts, there is a separation between the criminal act and criminal responsibility (Sudarto, 1990). It means that the dualistic view in formulating the limits of criminal acts only includes actions that meet the formulation as criminal acts by laws and regulations. Based on the opinion of Simmons, who also holds a monistic view, he explains the formulation of the offense as: (Muladi & Priyatno, 2010). *"Een Strafbaar gestelde onrechtmatige (wederrechtelijke), met schuld in verband staande handeling vaneen toerekeningsvatbaar persoon"*. (Free translation: "An act which is punishable by law, contrary to the law, is committed by a guilty person, and that person is held responsible for his actions")

Based on this formulation, the elements of a crime, according to Simmons, are (Sudarto, 1990):

- 1) Human actions (positive or negative, doing or not doing or letting);
- 2) Actions that are punishable by a criminal offense (*strafbaar gesteld*);
- 3) Actions against the law (*onrechtmatig*);
- 4) Done by mistake (*met schuld in verband staad*);
- 5) Actions are taken by responsible people (*toerekeningsvatbaar persoon*).

Regarding the term a criminal act, Utrecht gives another opinion, in which he recommends the use of the term criminal event because the term includes an act (*handelen or positive-doen*) or neglect (*verzuim or natalen or niet-doen-negative*) as well as its consequences (the circumstances caused by the act of neglect) (E. Utrecht, 2003). Meanwhile, Wirjono Projodikoro formulated the term "criminal act" which is defined as (Projodikoro, 2003). "An act for which the perpetrator can be subject to criminal law". The perpetrator can be said to be the subject of a "criminal act". Then another term for a criminal act, according to S.R. Sianturi, is an act of a criminal act which is also defined as, which stands for "action" or "actor" meaning that there is a person who commits an action. In contrast, the person who commits it is called an "actor".

The views of criminal law experts who are dualistic regarding the formulation of the offense it is as follows (Sudarto, 1990) :

- 1) H.B. Vos, stated that strafbaarfeit only contains elements of human behavior and is punishable by law.
- 2) WPJ Pompe, stated that according to positive law, strafbaarfeit is nothing but feit, which is punishable by law in the provisions of the law. Hence, the act is an act that is against the law, is committed with error and is punishable by punishment.

In general, the formulation of the offense contains an objective element (related to the act or act) and a subjective element (related to the perpetrator or men's rea). The objective element can also be in the form of prohibited actions, prohibited consequences, or prohibited conditions. An example of a prohibited act is the formulation of the theft offense in Article 362 of the Criminal Code (the act of taking). Regarding the prohibited consequences contained in the formulation of the offense of murder in Article 338 (consequences in the form of loss of other people's lives). While examples of prohibited conditions are contained in Article 281 of the Criminal Code, namely committing acts that violate decency "in public places".

In comparison, the subjective element can be in the form of intentional negligence/omission/error (Friedman, 2001). Suppose several formulations of criminal acts are categorized as obstruction of justice in the Criminal Code. In that case, several articles in the Criminal Code use different phrases with the formulation of Article 21 of the Anti-Corruption Law. In the articles of the Criminal Code, the phrase is formulated both as an act and a goal. More details will be described as follows (Friedman, 2001) :

**1) As an act:**

- a. Article 216 of the Criminal Code formulates: "intentionally preventing, hindering or thwarting actions to carry out the law."
- b. Article 222 of the Criminal Code formulates: "intentionally obstructing, obstructing or thwarting the examination of corpses for court."

**2) As a goal:**

Article 221 of the Criminal Code formulates: "...to hinder or complicate the examination and investigation or prosecution...". From the example of the formulation of the offense above, it can be seen that "preventing, hindering or thwarting" in Article 216 and Article 222 of the Criminal Code is formulated as an act, so it is also clear what the act is aimed at, namely post-mortem examination (Article 222) and action to carry out the law (Article 216). While the phrase in Article 221 of the Criminal Code is formulated as a goal, the form of the act is also formulated, namely "to destroy, eliminate or damage goods used to commit a crime.

Based on the explanation above, it can be concluded that the Obstruction of Justice, in addition to being viewed from his actions which have included an error from the perpetrator which must be considered as intentional as a goal, and the act is contrary to the applicable laws and regulations. The act can be said to be a crime/criminal act.

**Obstruction of Justice Provisions in the Corruption Eradication Act.** Obstruction of Justice, as regulated in the Corruption Law, is another criminal act in which obstruction of justice itself does not cause direct harm to the state but causes delays in the legal process, especially in eradicating ongoing corruption. Interfere with efforts to eradicate corruption. Although it does not have a direct impact, the obstruction of the legal process in efforts to eradicate corruption has made Obstruction of Justice a barrier which, in the end, also causes losses to the law enforcement process by the state. As a result, the potential return of assets from losses to state finances is also disrupted.

The Corruption Act regulates criminal acts into two types: criminal acts of corruption that are detrimental to the state, whose regulation is contained in Chapter II and other crimes related to criminal acts of corruption in Chapter III. Obstruction of justice itself is regulated in Article 21 of the Corruption Act, which is part of Chapter III. Therefore, Chapter III is not a part that regulates

corruption but regulates other corruption-related crimes. Including Article 21 of the Anti-Corruption Law in Chapter III, the handling of cases should be the authority of the general criminal court, not the court of corruption, and the police and prosecutors are authorized to conduct investigations, investigations and prosecutions.

**Conceptual Framework "Reconstruction of "Obstruction of Justice" Delicts".** The word "Reconstruction" is a combination or combination of 2 syllables; "re" and "construction". "Re" means "to return", and "construction" means "to build". If arranged in a straightforward sentence, then reconstruction can be interpreted as "rebuilding as before or a new one or "returning to the way it was" or "rearranging (drawing) back to what it was (which currently exists). The meaning of reconstruction, according to the Big Indonesian Dictionary (KBBI, 2016):

- (1) *"restore as before" by giving an example of the sentence "reconstruction and construction of new roads will be carried out in Jakarta, Bogor, Ciawi.*
- (2) *"rearranging (depicting)" by giving example sentences; "In the preliminary examination, a reconstruction has been made regarding the events of the murder."*

It is necessary to reconstruct the norms and meanings of the "obstruction of justice" offense because of the many weaknesses, including the unclear interpretation and causing juridical and sociological problems in its application. The formulation of the norms of article 21 of the Anti-Corruption Law is also not in line with the 2003 UNCAC, which still provides additional conditions if the norm is implemented. Moreover, the formulation of this offense norm is not included in the core corruption offenses but in other types of corruption-related crimes. It gives rise to multiple interpretations, is detrimental to justice seekers, and even takes undue victims. Therefore, steps are needed to reconstruct the norm and with a solid interpretation that the "obstruction of justice" offense is more appropriately qualified as a material-cumulative offense rather than insisting that this offense be an alternative-formal offense.

A material offense is an offense whose formulation focuses on undesirable (prohibited) consequences. This offense is said to be completed when the unwanted result has occurred. If not, then at most, there are only experiments. Furthermore, formal offenses are offenses whose formulation is focused on acts prohibited by law. The embodiment of this offense is deemed to have been completed by carrying out the acts stated in the formulation of the offense.

The offense of "obstruction of justice" has two passions: the spirit of eradicating criminal acts of corruption represented by investigators and public prosecutors by providing extensive interpretations. Extensive interpretation in the sense that other acts which, although the act is not a type (genus) of a criminal act of corruption, because it is closely related to the success or failure of the legal apparatus in carrying out the investigation, prosecution and trial process (pro justitia). Because it is related to the disruption or smooth running of the investigation, prosecution and trial process, the act is considered very relevant to the success or failure of the judicial process.

On the other hand and vice versa, there is a spirit to defend and even fight accusations/accusations of committing a criminal act of corruption. It is represented by a suspect, even by someone who is still a witness (potentially a suspect) with his legal advisor. Of course, a person accused of being corrupt has the right to try to avoid or escape the suspicion or accusation in a way that, according to the parties who want to escape the suspicion or accusation, is true.

A fair attitude is needed in providing a proportionate/balanced portion, that the spirit of eradicating corruption must be in line with the norms, rights and interests of people accused or suspected of being perpetrators of corruption. That the law not only talks about rights and obligations but also can determine someone or something capable of having balanced rights and obligations. If one of them is more dominant, then the law will be lame, as emphasized by Hans

Kelsen, who said that "there must be something related to duties/authorities and rights (human rights)/"there must exist something that has the duty or the right (Kelsen, 2003).

A major case that has attracted public attention related to the "obstruction of justice" offense is the electronic identity (E-KTP) case, which involved several people being suspects. The suspects in this case, among others, Dr. Bimanesh Sutarjo (Doctor at Permata Hijau Hospital, Jakarta, EKTP Case) , Miryam Yani (Indonesian House of Representative member (DPR) RI Nasdem Faction, were charged with violating Article 22 (False Statements, which are still related to the offense of "obstruction of justice"). Then the suspect Markus Nari (DPR RI Golkar faction, was charged with violating Article 21 of the Cumulative Corruption Law with the offense of corruption in Article 2 paragraph (Law of the Republic of Indonesia, 1999) in conjunction with Article 3 of the Anti-Corruption Law).

Furthermore, the suspect is Frederich Yunadi, Lawyer Setya Novanto (Chairman of the Indonesian House of Representatives/Chief of the Golkar Party) in the E-KTP case. In addition to the E-KTP case as the core case, which was assessed by Laode Syarif, one of the Corruption Eradication Commission (KPK) leaders for the 2014-2019 period, as the most complex case because it involved six countries, the case involving Advocate Frederich Yunandi also attracted public attention, due to several collisions with the pole. Electricity by the suspect Setya Novanto. In addition, there is an "obstruction of justice" case involving Advocate Lucas related to the escape of Suspect Eddy Sindoro abroad. In addition, Article 21 of the Anti-Corruption Law also targets several businessmen who are suspected of having committed an "obstruction of justice" crime, including Businessman Kwee Cahyadi Kumala in the case of Transfer of Forest Land Functions in Bukit Jonggol (Sentul) and Anggodo Widjojo in the Case of the Procurement of an Integrated Radio Communication System at the Ministry of Forestry.

In the panel of judges' consideration, Doctor Bimanesh Sutardjo and Advocate Frederich Yunadi conspired to release Suspect Setya Novanto from arrest by issuing a fake medical record. It causes the KPK Investigating Team to feel that their work has been hindered and has hampered the investigation process. Meanwhile, entrepreneur Kwee Cahyadi Kumala (Suiteng) is considered to have committed an act of "obstruction of justice" by influencing witnesses not to say the actual events or facts and eliminating evidence in the form of documents related to the alleged case. With the influence of witnesses and the transfer/disappearance of documents to another place, the KPK Investigating Team felt that its work was hindered. Furthermore, Advocate Lucas was judged to have committed an act of "obstruction of justice" because he advised Suspect Eddy Sindoro to stay abroad. After all, if the person concerned returned to Indonesia, it would be troublesome for his superiors. Advocate Lucas's suggestion made the KPK Investigative Team feel their work was hindered.

However, the KPK Investigation Team and Public Prosecutor completed their work at the investigation and prosecution levels of the three cases. Likewise, at the trial level, the Panel of Judges still succeeded in completing the trial and giving a guilty verdict until the case had permanent legal force. The formulation of Article 21 of the Anti-Corruption Law needs to be reconstructed towards a material offense by considering the consequences compared to a formal offense, which only requires the fulfillment of the elements of the article, which are subjective and immeasurable. Many legal practitioners engaged in criminal corruption law, especially advocates or internal lawyers, feel there is a dilemma and uncertainty in carrying out their profession when they must accompany and represent clients in corruption cases. On the one hand, it must provide maximum assistance and defense. However, on the other hand, it is faced with limitations that are still multi-interpreted, what an advocate can and cannot do to defend clients' interests.

The pros and cons of several parties indicate that this "obstruction of justice" offense must be reconstructed. Apart from losing their independence, advocates feel threatened in their profession. The offense of "obstruction of justice" also targets and threatens other parties, including witnesses who have the potential to become suspects. Witnesses who, because they feel threatened, or pressured during the investigation, investigation or trial, intentionally or unintentionally commit acts considered or concluded to hinder or hinder. Spontaneous reactions of witnesses who feel threatened include trying to eliminate evidence (letters, communication tools, CCTV, etc.), running away, skipping calls, etc. These things are often done unconsciously by many of these parties. It could be because of their initiative because of fear. It could also be due to the superior's order to intentionally remove certain items indicated to be difficult for his position in the future.

With several opinions and points of view on the offense, it is necessary to interpret certain types of offenses. The interpretation of the type of offense is one of the research tools for the author because, as described above, in the norm of the offense of "obstruction of justice," there are problems with quite significant juridical implications. Suppose the interpretation of this offense only places it as a formal-alternative offense, where the action is only seen from the fulfillment of the article elements. In that case, it will cause injustice and human rights violations for witnesses, suspects, or parties suspected of providing assistance or participation. Parties who do not know anything about the problem, by inadvertently helping the suspect, can get into trouble.

On the other hand, if the norm in this article is qualified as a material-cumulative offense, even though the act fulfills the elements of the article, it cannot immediately be qualified as an "obstruction of justice" if it does not have a significant effect. Significant consequences, in the sense that all actions that hinder the judicial process fail the investigation, prosecution and judicial process. To determine the failure or failure of the judicial process, of course, can vary. It could be that there are small obstacles to the investigation and prosecution process or also during the trial. However, because a criminal case involves a person being held hostage physically and mentally, disturbances should be considered flavoring and interest. Law enforcement officials have been equipped with privileges in the form of great power to coerce other legal actions, so it is too trivial to get a minor disturbance to directly use the Palugada article "obstruction of justice" to suppress it.

**"Obstruction of Justice" Arrangements in Some Countries.** To find out more about the regulation and sound norms for obstruction of justice offenses, the author researched by taking the example of 4 countries that regulate the aquo offense. The four are the United States, the Netherlands, South Korea and Poland. The choice of the United States of America represents a country with an Anglo-Saxon legal system or common law, while the Netherlands is because that country is a country that has much influence on the value of laws and regulations in Indonesia. The Netherlands also represents the Continental European legal system or civil law. Furthermore, to complete the repertoire and comparison of norms, the author also conveys the norms of obstruction of justice regulated in Poland and South Korea, which the author believes to have progressivity in substance, structure, and culture or legal culture quite advanced.

**The Obstruction of Justice Norms in the United States.** In the United States, a particular chapter regulates actions to obstruct legal proceedings. This Obstruction Of Justice is regulated in the United States' Criminal Code (KUHP), namely the United State Model Penal Code/18 USC Chapter 73 Article 1501. This article clearly describes the patterns of obstruction of justice. Legal process (obstruction of justice) can be subject to criminal. The form of obstruction of justice is regulated in the United State Model Penal Code/ 18 USC Chapter 73 starting from Articles 1501 to 1521, which regulates explicitly obstruction of justice, namely (Agustina et al., 2015):

- a. *Disclaim, reject, or oppose law enforcement officials;*
- b. *Threatening and using violence directly or indirectly or through letters to law enforcement officers;*

- c. Commit violence and injure law enforcement officials in the relevant cases;
- d. Attempting to influence the actions or decisions of a jury;
- e. Eliminate, hide, destroy, alter or falsify recorded evidence;
- f. Influence, deny or hinder or hinder the investigation process;
- g. Stealing, deleting or altering court records, written records related to court proceedings and others;
- h. Stealing or altering records of court proceedings or providing false guarantees;
- i. Disrupt, hinder, or hinder the administration of justice, or influence any judge, jury, witness or judicial officer in carrying out their duties;
- j. Demonstrating both in court and court as well as at the residence of judges, jurors and other law enforcers;
- k. Recording, listening to, or observing the voting process by the judges;
- l. Obstructing a court order by threatening or using violence and intentionally preventing, denying, obstructing or disturbing;
- m. Bribery or obstruct, delay or prevent law enforcement officials from violating criminal laws;
- n. Conspiring to hinder the enforcement of criminal law against illegal gambling businesses;
- o. Threatening the safety of witnesses, victims and informants by killing or attempting to kill or using physical force to prevent testimony or attendance at the trial;
- p. Influence witnesses, victims and informants to delay or not give testimony and not to submit evidence to officers or courts;
- q. Prevent communication between witnesses, victims or informants with law enforcement;
- r. Taking revenge against witnesses, victims or informants by killing or attempting to kill or disturbing the lives of witnesses, victims and informants;
- s. harass the victim or witness;
- t. Make efforts to influence, hinder or impede federal auditors in the performance of official duties for persons, entities or programs receiving more than \$100,000;
- u. Obstructing the examination of financial institutions;
- v. Take efforts to prevent, obstruct, mislead or delay the communication of information or records relating to federal health care offenses or criminal investigators;
- w. Damaging, altering, or falsifying records in the investigation and bankruptcy;
- x. Destroy or damage the company's audit files;
- y. Making false or defamatory claims against federal judges."

Observing the formulation of the obstruction of justice offense in the United States, it can be said that it is very detailed and varied. Suppose it is related to the type of offense. In that case, the formulation of the offense above is a material offense because it has explained what actions are qualified and what objects are targeted related to the formulation of obstruction of justice acts. Several formulations have fulfilled what was required in UNCAC 2003, for example, the formulations of "threatening witnesses and victims" and "giving promises of money prizes to law enforcement officers" in smoothing out the obstruction of justice. As a very developed country, the United States is very brave to formulate an obstruction of justice act or offense, even though it has the potential to get resistance from the obstruction of justice perpetrator from the side of evidence later. It is different from countries that are not yet relatively developed, both in terms of rules and legal awareness. Therefore, the formulation of offenses is often general and only qualifies norms instead of providing detailed and objective formulations.

**Holland.** As a country with the same civil law system as Indonesia, it regulates obstruction of justice in the Dutch Penal Code Art 184 (Article 184 of the Dutch Criminal Code). Similar to Indonesia, the Netherlands also does not place the act of obstructing the legal process in a special section in the country's criminal regulations, which only relates to articles that elementally enter into obstruction of justice. The crime of obstruction of justice in the Netherlands as regulated in the Dutch Penal Code Art 184 or the Dutch Criminal Code in article 184 in the form:

1. *Disobeying orders made by public officials of criminal law enforcement;*
2. *Prevent or deny actions by public officials who enforce criminal law."*

If we look closely, the formulation of the obstruction of justice offense in the Netherlands is even more general than the formulation in Indonesia. What is meant by the formulation of the sentence "disobeying official orders" is certainly very abstract. Is the order of a public official a right or wrong rule that must be followed without being refuted (without reserve). Likewise, the sentence "prevent and deny law enforcement actions" is even more abstract. Is it possible that actions that only qualify for prevention and deny the actions of the apparatus cause the perpetrator to deserve to be punished for obstruction of justice? From the two formulations, the author concludes that the offense of obstruction of justice in the Netherlands is formal because there is no causality in the manifestation of the aquo act. As the United States has developed, both in terms of rules and legal awareness, the Netherlands is also in the same position. The crime rate in the Netherlands is relatively very low. Many prisons are empty, which shows a high level of legal awareness. Therefore, it could be that the formulation of the obstruction of justice offense has gone up a grade because there is no need for a detailed crime formulation. General formulas are considered much more effective and applicable.

**South Korea.** Several articles regulating obstruction of justice in the Penal Code of Korea or the 'KUHP' of the South Korean state are placed and regulated in a special chapter. The Penal Code of Korea describes several patterns of obstruction of justice that can be criminalized. The obstruction of justice in Korea's national criminal law is regulated in Chapter VII of the Penal Code, starting from article 136 to article 144 (Agustina et al., 2015). Regulations regarding the criminal act of obstruction of justice are not only contained in one chapter but are also regulated sporadically in other chapters and articles.

In contrast to Indonesia, of all the arrangements for obstruction of justice in South Korean criminal law, no article specifically regulates obstruction of justice in corruption cases. Obstruction of justice in criminal law in South Korea is only generally regulated. However, South Korea's "obstruction of justice offense" is also formulated in detail, unlike in Indonesia. The forms of obstruction of justice are regulated in Article 128 of the Korean Criminal Code and CHAPTER VII Articles 136-144, namely (Agustina et al., 2015) :

- a) *Intimidating voters, candidates or people seeking to be candidates in elections*
- b) *Using violence or intimidation against public officials involved in carrying out their duties*
- c) *Interfering with the execution of duties by public officials through fraud*
- d) *Creating interference or insulting the judiciary*
- e) *Interfering with the performance of the duties of a public prosecutor*
- f) *Damaging seals, attachments or executable files*
- g) *Law enforcement public officials who take action to open confidential documents*
- h) *Hide documents*
- i) *Destroying public office facilities*
- j) *Hiding evidence*
- k) *Threatening with dangerous weapons*
- l) *Injuring public officials, both prosecutors, police judges and others.*

If we look closely at the formulation of the obstruction of justice offense in Korea, it looks simple and detailed. It has been explained that the actions and objects related to the formulation of the offense have been explained. Interestingly, there are similarities in the sound of the offense norms in Indonesia, including those related to the destruction and disappearance of evidence in criminal cases. In addition, it also regulates the formulation of conditional acts, where the obstruction of justice must be accompanied by intimidation or threats, both physical and psychological. The author observes that the formulation of obstruction offense in Korea is of a

material type, meaning that all actions must have a consequence dimension to fulfill the perfection of the perpetrator's actions. As a relatively developed country, both in terms of rules and legal awareness, South Korea is brave enough to formulate simple, detailed and objective offenses because the crime rate in Korea is minimal, so legislators do not need to take cover behind the formulation of general offenses.

**Poland.** The state of Poland regulates obstruction of justice as part of the violation of justice. In the Polish Criminal Code, the chapter that regulates judicial violations, namely Chapter 33, Offenses Against the Administration of Justice (Articles 247-259). The Polish state regulates the norms of "obstruction of justice" in detail compared to Indonesia. Included as offenses regarding the administration of justice is (House of Representatives of the Republic of Indonesia) :

- a) *False oath or witness giving false testimony (Article 247);*
- b) *false reports (Article 248);*
- c) *Creation of false evidence;*
- d) *Concealing evidence regarding the innocence of the suspect (Article 250);*
- e) *Provide information to the competent authority regarding an offense which he knows that the offense does not exist;*
- f) *Obstructing the judiciary by assisting the accused in releasing criminal responsibility, for example, replacing the suspect or the perpetrator with a crime (Article 252).*
- g) *Perform violence or threats against witnesses (Article 253);*
- h) *Does not provide information about an offense, for example, where the perpetrator is (Article 254);*
- i) *Announce the results of the preliminary examination before the trial (Article 255);*
- j) *Escape from deprivation of liberty, places of social readjustment, etc. (Article 256);*
- k) *Freeing or facilitating persons deprived of their liberty to escape (Article 257);*
- l) *To interfere with the court's decision to dispose of, damage, hide etc., objects that have been confiscated or will be confiscated (Article 258);*
- m) *Failure to comply with court decisions regarding the prohibition of occupying a position, carrying out activities, operating a motorized vehicle (Article 259)."*

If we look closely at the formulation of the obstruction of justice offense in Poland, it is also very detailed. It has been explained that the formulation of the act and the objects associated with the formulation of the offense have been explained. Interestingly, there are similarities between the norms of offenses in Indonesia, including those related to perjury, false statements, creation of false evidence, and concealment of evidence. Like UNCAC 2003, Poland also stipulates conditions for obstruction of justice offenses, for example committing violence or threats against witnesses (Article 253). The author observes that the formulation of the obstruction offense in Poland is also of a material type, meaning that all actions must have a consequence dimension to fulfill the perfection of the perpetrator's actions. Also interesting is Article 252, which has similarities with Indonesia, namely "Obstructing the judiciary by helping the defendant release criminal responsibility, for example, replacing the suspect or the perpetrator serving a sentence (Article 252)". As a country that is also relatively developed, both in terms of regulations and legal awareness, Poland is certainly brave enough to formulate simple, detailed and objective offenses because the crime rate in Poland is very minimal, so legislators do not need to take cover behind the formulation of general offenses.

**Analysis of "Obstruction of Justice" Offenses Based on UNCAC 2003.** As mentioned several times in the discussion, international cooperation is needed to eradicate transnational corruption. To achieve this, it is necessary to have the same legal norms that each country must regulate. Thus, The United Nations Convention Against Corruption (UNCAC) 2003 was born. The Government of the Republic of Indonesia then ratified UNCAC through Law No. 7/2006 concerning the Ratification / Ratification of UNCAC in 2003. With the 2003 UNCAC ratification step, the Government of Indonesia must consistently synchronize and harmonize obstruction of justice norms in its national

law. As it is known that the UNCAC obstruction of justice norm was born in 2003, and its ratification was carried out in 2006.

Meanwhile, national law has already regulated the obstruction of justice norm in various laws, especially the Anti-Corruption Law. Law Number 3 of 1971 had already regulated the norm of obstruction of justice before Law Number 31 of 1999 was born. Therefore, synchronization and harmonization are absolute if Indonesian national law is universally recognized.

UNCAC 2003 is a concrete manifestation of the seriousness of the international community that the problems and threats posed by criminal acts of corruption damage democratic institutions and values, ethical values and justice and disrupt sustainable development and law enforcement. It is related to the era of globalization, which is more focused on the activities of governments, interstate institutions, or multinational companies rather than discussing individual human activities. Therefore, international cooperation is the answer. International cooperation is needed to consistently integrate and match norms and law enforcement against this obstruction of justice offense in each country so that a pattern and model of law enforcement for obstruction of justice norms is obtained that avoids disparities in regulation and enforcement.

One of the norms regulated and required by UNCAC 2003 to be regulated through a legislative body (legislative mandatory) is the criminalization of acts of "obstruction of justice" or "obstruction of the judicial process". Chapter III UNCAC 2003 on Crime and Law Enforcement regulates the "obstruction of justice" norm. It is further explained in Article 25 of UNCAC 2003, which regulates the criminal act of "obstruction of justice" and fully states: Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses when committed intentionally:

- a) *The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding to the commission of offenses established by this Convention;*
- b) *The use of physical force, threats or intimidation to interfere with official duties by a justice or law enforcement official to the commission of offenses established by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.*

From several formulations of Article 25 of UNCAC 2003, the author emphasizes the explanation in UNCAC 2003 Article 25, which states that: "Obstruction of justice" offense stipulates that the act must be accompanied by the influence of other parties in the form of violence, threats of violence or intimidation to witnesses. It is related to the types of corruption crimes, namely crimes committed by people in power (white-collar crimes), modes of corruption that are difficult to trace or prove, scattered evidence, both physical and optical, as well as the potential for the disappearance of evidence that flies with time.

Besides that, synchronizing the substance of norms is also a mandate of Law Number 7 of 2006 (UNCAC Ratification 2003), which states: The significance of the Convention for Indonesia is the harmonization of national laws and regulations in the prevention and eradication of corruption by this Convention. With the ratification of UNCAC 2003, it is a logical consequence to reconstruct the offense of obstruction of justice article 21 of the Anti-Corruption Law.

**Analysis of "Obstruction of Justice" Offenses Based on Criminal (Corruption) Cases.** To analyze the formulation of the second problem in this research, namely "Why is Reconstruction of Obstruction of Justice Delict Required in the Law on the Eradication of Criminal Acts of Corruption", the author will present a juridical analysis of 2 decisions on obstruction of justice cases in corruption crimes that have legal force. Permanent (*inkracht*) and 1 (one) decision of the Constitutional Court on the application for Judicial Review Article 21 of Law Number 31 of 1999 concerning Eradication

of Criminal Acts of Corruption at the Constitutional Court of the Republic of Indonesia. After that, the author will discuss the juridical reasons and the urgency of why steps are needed to reconstruct the aquo article. The cases are as follows:

- 1) Sus-TPK/2018/PN.JKT.PST, on behalf of the Convicted Advocate Lucas.
- 2) Decision Number 08/Pid.Sus/TPK/2015/PN.JKT.PST. On behalf of the convicted entrepreneur Kwee Cahyadi Kumala.

**Decision Number 90/Pid.Sus-TPK/2018/PN.JKT.PST, on behalf of the Convicted Advocate Lucas.** Defendant Lucas, together with Dina Soraya, from 14 December 2016 to 29 August 2018, in various places that are still within the jurisdiction of the Corruption Court at the Central Jakarta District Court, have committed or participated in committing, intentionally, preventing, obstructing or thwart directly or indirectly investigations of suspects or witnesses in corruption cases, namely suggesting Eddy Sindoro as a suspect in a corruption crime not to return to Indonesia, and seeking Eddy Sindoro to enter and leave Indonesian territory without an immigration check to avoid examination or other legal action. Against Eddy Sindoro by KPK investigators. The actions of Defendant Lucas violated Article 21 of the Corruption Act in conjunction with Article 55 paragraph (Law of the Republic of Indonesia, 1999) of the First Criminal Code.

The suspect, Eddy Sindoro, 4 December 2016, wanted to return to Indonesia to face the legal process at the KPK but was advised by Defendant Lucas not to return to Indonesia. Defendant Lucas also advised Eddy Sindoro to relinquish his Indonesian citizenship, which was assisted by Chua Chwee Chye alias Jimmy alias Lie to produce a fake Dominican Republic passport on behalf of Eddy Handoyo Sindoro. On 7 August 2018, Eddy Sindoro left for Bangkok from Malaysia but was arrested by Malaysian Immigration officers for using a fake passport. On 16 August 2018, Eddy Sindoro was found guilty and had to be expelled from Malaysia to Indonesia, given his original country's color status.

In the conclusion of his Charge Letter number 28/TUT.01.06/24/03/2019, the Public Prosecutor of the Corruption Eradication Commission believes that Defendant Lucas has violated the single indictment prepared and read out. The KPK Public Prosecutor demanded that Defendant Lucas be sentenced to prison for 12 (twelve) years and a fine of Rp. Six hundred million rupiahs, subsidiary to 6 months in prison. The Panel of Judges in the case of Defendant Lucas agrees with the description of the letter of demand by the Public Prosecutor of the KPK and thinks that the defense of Defendant Lucas and his legal counsel is unfounded and must be declared unacceptable. The Panel of Judges finally decided on the case of Defendant Lucas with a verdict; (1) Sentencing Defendant Lucas for 7 (seven) years and a fine of Rp.600 million subsidiary 6 (six) months in prison. Meanwhile, Defendant Eddy Sindoro was found guilty and sentenced to prison for 4 (four) years.

If we look closely, in this case, all the perpetrators of the core corruption offenses have completed the investigation, prosecution and trial process without any significant obstacles. It means that if the article is qualified as an alternative formal offense, then whatever the evidence and the strength of the evidence are difficult to measure objectively because it is only based on the assessment or subjectivity of the KPK investigators who feel hindered by the investigation process. After all, they failed to arrest and detain Eddy Sindoro when he came from Malaysia.

On the other hand, if this article offense is qualified as a cumulative material offense, the measure is whether the investigator fails or succeeds in carrying out an investigation. So, the public prosecutor continues the prosecution and examination process at trial because Eddy Sindoro can be investigated and prosecuted, even though it begins with the surrender of the person concerned voluntarily to face the legal problems that ensnared him because this is a different story if Eddy Sindoro stays in Bangkok, Thailand and does not want to fulfill the summons of the KPK investigators for a process investigation. So this is perfect evidence of Lucas' actions which

intentionally prevented, hindered and thwarted the process of investigation, prosecution and examination in court, either directly or indirectly, in the corruption case against the suspect (Eddy Sindoro).

**Decision Number 08/Pid.Sus/TPK/2015/PN.JKT.PST. On behalf of the convicted entrepreneur Kwee Cahyadi Kumala.** Regarding the implementation of Obstruction Of Justice in Article 21 in the decision Number 08/Pid.Sus/TPK/2015/PN.JKT.PST. Several considerations explain the argument that the Defendant (Convicted Kwee Cahyadi Kumala) has hindered and prevented KPK investigators from investigating corruption cases on behalf of FX. YOHAN YAP is because KPK investigators need more time to carry out investigations. In this consideration, it was explained that the defendant transferred the documents, ordered witnesses to give false information, provided a cell phone that the KPK could not tap, and ordered to make PPJB so that it seemed as if there was a business transaction.

However, the next question is whether the series of actions accused of the defendant resulted in the termination or obstruction of the investigation, prosecution and examination in court. Even getting to the stage of the judge's decision on the results of the examination in court does not impact the FX case being unproven. YOHAN YAP, which resulted in being acquitted by the panel of judges. It means the extent of the impact of the actions alleged to the defendant leads to the decision of the panel of judges that affects the FX case. YOHAN YAP, the benchmark is not clear. The decision also explains that the application of Article 21 of the Anti-Corruption Law must be cumulative, not alternative so that it is not only aimed at the investigation process. However, it must also impact the prosecution and examination process in court, even up to the decision of the panel of judges on the FX case. YOHAN the YAP. The trial proved that from the prosecution process to the examination in court on behalf of FX. YOHAN YAP went smoothly without any obstacles or obstacles until the panel of judges decided on Defendant FX. YOHAN YAP is guilty of corruption.

From this case, it can be seen that the actions of Defendant (Convict Kwee Cahyadi Kumala) were found to have hindered and obstructed the legal process against Defendant FX. YOHAN YAP did not see the impact. Applying Article 21 of the Anti-Corruption Law should be compiled cumulatively so that there is no criminalization of someone who is considered to have hindered and hindered the investigation level, even at the stage of the prosecution to examination at trial. There was no impact from 'obstructing and hindering' until the judges' decision was issued. How long is the time that is hindered at the investigation level? It must be made clearer how much investigators should usually need time to procrastinate for how long there must be benchmarks so that there is no arbitrariness among law enforcement officers, especially investigators.

Even in the decision Number 08/Pid.Sus/TPK/2015/PN.JKT.PST. Judges Members III and IV are concerned that investigators who work unprofessionally take advantage of the opportunity to find excuses by blaming certain parties for obstructing and hindering the investigation process, even though the root of the problem arises from the performance of unprofessional investigators themselves. Investigators can also confront witnesses who are considered to have given incorrect information so that factual information can be obtained, and the investigation time needed by investigators takes longer than it should. It degrades the performance of KPK investigators who worked hard and professionally until Defendant FX. YOHAN YAP has been found guilty of committing a criminal act of corruption;

What is interesting to observe in the aquo case is the dissenting opinion (DO) of two members of the panel of judges, namely Judge Alexander Marwata and Judge Ugo. Judges Members III and IV are concerned that investigators who work unprofessionally take advantage of the opportunity to find excuses by blaming certain parties for obstructing and hindering the investigation process, even though the root of the problem arises from the performance of unprofessional investigators

themselves. It proves that subjectivity in determining that law enforcement officials represented by investigators and public prosecutors are prevented, hindered and thwarted is based on feelings, not facts. Furthermore, what is even more interesting is that Kwee Cahyadi Kumala has been named a suspect in the same case, namely as a giver of gifts or promises (bribes) to the Regent of Bogor Rahmat Yasin, whose case is being processed in parallel with the aquo case. As in the case of Advocate Lucas, the core perpetrators of the corruption offense also carried out the investigation, prosecution and trial process smoothly, without any significant obstacles.

In a judicial review (PK), the Panel of Judges PK stated that Kwee Cahyadi Kumala was free from the indictment of Article 21 of the Anti-Corruption Law because he had the right to defend himself from all the legal consequences starting from the time he was named a suspect for giving gifts or promises. The Judicial Review Council also agreed with the Petitioner for PK, which in its consideration stated:

- (1) Whereas the convict took the actions, as revealed in the Judex Facti examination trial, were not actually to hinder the investigation process on behalf of FX Yohan Yap but were aimed at protecting the convict himself from being involved in the case of the arrest of FX Yohan Yap;
- (2) That the convict's concern will be involved in the case of the arrest of FX Yohan Yap is very reasonable because the convict never gave money to FX Yohan Yap;
- (3) Whereas in practice, Article 21 of Law Number 31 of 1999, as amended and supplemented by Law Number 20 of 2001, can only be imposed on witnesses or third parties who, because of the nature of their actions, cannot be charged with a principal crime, so they are only charged with Article 21 Law Number 31 of 1999 as amended and supplemented by Law Number 20 of 2001;
- (4) The opinion of Judges Member III and Member IV in the Judex Facti decision, specifically regarding the indictment of Article 21 of Law Number 31 of 1999 as amended and added to by Law Number 20 of 2001, is correct and correct. By the non-self-incrimination principle that a suspect or defendant has the right to defend himself against the law that threatens him, and the act of self-defense for the defendant, it cannot be said to be an act that hinders the process of investigation, prosecution and examination at trial as referred to in article 21 of the law. Law Number 31 of 1999 as amended and supplemented by Law 20 of 2001;
- (5) Whereas in the trial process, it turned out that the defendant's case, FX Yohan Yap, had proceeded smoothly and had been sentenced;
- (6) Therefore, the actions committed by the convict (Kwee Cahyadi Kumala alias Swie Teng) cannot be qualified as acts that hinder the Investigation, Prosecution and Examination of Defendant FX Yohan Yap. The convict must be released from the First Charge of Article 21 of Law Number 31 1999 as amended and supplemented by Law 20 of 2001.

**Yuridical Analysis of Both Cases.** Referring to the 2 (two) "obstruction of justice" cases that ensnared Advocate Lucas and Entrepreneur Kwee Cahyadi Kumala (Sentul City) above, it can be used as a reference that there are many weaknesses contained in the aquo article. Weaknesses both in terms of material law and the formal side. Materially, from the point of view of imposing the application of articles that are not in place, which is an offense for assistance, it is considered to be more than the core offense of corruption. On the formal side, subjectivity is more prominent than objectivity because there is no clear and firm measure to measure the extent to which legal officials can conclude that their efforts have been prevented, hindered and thwarted in the legal process.

In the Case of Entrepreneur Kwee Cahyadi Kumala (Suiteng), it was judged that he had committed an act of "obstruction of justice" by influencing witnesses not to say the actual events or facts and eliminating evidence in the form of documents related to the alleged case. With the influence of witnesses and the transfer/disappearance of documents to another place, the KPK Investigative Team felt its work was hindered. Furthermore, Advocate Lucas was judged to have

committed an act of "obstruction of justice" because he advised Suspect Eddy Sindoro to stay abroad. After all, if the person concerned returned to Indonesia, it would be troublesome for his superiors. Advocate Lucas's suggestion made the KPK Investigative Team feel their work was hindered.

Meanwhile, in one of the EKTP cases, which also applies the obstruction of justice article to advocates and a doctor, the suspect is Setya Novanto (Chairman of the Indonesian House of Representatives). In the panel of judges' consideration, Doctor Bimanesh Sutardjo and Advocate Frederich Yunadi conspired to release Suspect Setya Novanto from arrest by issuing a fake medical record. It caused the KPK Investigating Team to feel that their work was hindered and hampered the investigation process. However, in the three cases, the Investigative Team and the Public Prosecutor completed their work at the investigation and prosecution levels. Likewise, at the trial level, the Panel of Judges still succeeded in completing the trial and giving a guilty verdict until the case had permanent legal force. The formulation of Article 21 of the Anti-Corruption Law needs to be reconstructed towards a material offense by considering the consequences compared to a formal offense, which only requires the fulfillment of the elements of the article, which are subjective and immeasurable.

**Juridical Analysis Articles 20, 21, 22 Law No. 13 of 2003 concerning Eradication of Criminal Acts of Terrorism.** Article 22 of Law Number 13 of 2003 concerning the Implementation of Government Regulations instead of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism stated, "*Everyone who intentionally prevents, hinders or thwarts directly or indirectly the investigation, prosecution, and examination in a court trial in a case of a criminal act of terrorism, shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years. year.*" The formulation of articles 21-22 of the Terrorism Criminal Act is almost the same as the formulation of the obstruction of justice norm in article 21 of the Anti-Corruption Law, both in terms of the qualifications of the perpetrators (which do not give any restrictions on who their status and position are), as well as the presence of an element of intent. What makes a slight difference is in what object the perpetrator acts as an obstruction of justice, whether to witnesses, suspects or evidence of terrorism crimes. Meanwhile, the criminal threat for obstruction of justice offense in the Terrorism Law is minimum imprisonment of 2 (two) years and a maximum of 7 (seven) years, a lighter threat than the criminal threat in the obstruction of justice offense in the Anti-Corruption Law. Namely imprisonment for a minimum of 3 years and a maximum of 12 years.

**Juridical Analysis Articles 19-24 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.** Article 22 of Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons (TPPO) stated, "*Everyone who intentionally prevents, hinders, or thwarts directly or indirectly the investigation, prosecution and examination in a court of a suspect, defendant, or witness in a case of trafficking in persons, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a minimum fine of Rp. 40,000,000.00 (forty million rupiahs) and a maximum of Rp. 200,000,000.00 (two hundred million rupiahs).*" The formulation of the article is almost the same if it cannot be called the same as the formulation of the obstruction of justice norm in article 21 of the Anti-Corruption Law, both in terms of the qualifications of the perpetrator (which does not give any restrictions on who is in status and position), as well as the element of intent. Likewise, with what object the perpetrator carried out, the form of obstruction of justice turned out to be the same, namely to witnesses, suspects or evidence of the crime of TIP.

Meanwhile, the criminal threat of obstruction of justice offense in the TIP Law is a minimum imprisonment of 1 (one) year, a maximum of 5 (five) years, and a minimum fine of Rp. 40,000,000.00 (forty million rupiahs) and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiahs)." The criminal threat that is lighter than the criminal threat in the obstruction of justice offense in the Corruption Act is a minimum of 3 years in prison and a maximum of 12 years.

**Juridical Analysis Articles 284-286 Formulation of Obstruction of Justice Norms Based on Proposal (Pre) Criminal Code.** Article 284 stated: *"Criminalized with a maximum imprisonment of 5 (five) years or a maximum fine of category V, Anyone who: prevent, hinder, or thwart directly or indirectly the judicial process; submitting evidence or false evidence, false statements, or directing witnesses to give false statements in court; or damage, alter, destroy, or eliminate evidence or evidence."* Article 285 stated: *"If the crime as referred to in Article 284 is committed in a criminal justice process, the punishment is a maximum imprisonment of 7 (seven) years or a maximum fine of category V. The crime, as referred to in paragraph (Law of the Republic of Indonesia, 1999) also includes: presenting themselves as if they were perpetrators of a criminal act, therefore undergoing a criminal justice process; destroying, eliminating, or hiding objects that are the means or results of a criminal act or other traces of a crime or withdrawing it from an examination conducted by an authorized official, after the crime has occurred, with the intent to cover up or hinder or complicate the investigation or prosecution; or hinder, intimidate, or influence officials who carry out the duties of investigation, prosecution, examination in court proceedings, or court decisions to force or persuade him to do or not to perform his duties."*

The formulation of the three articles in the RKUHP is alternative in 3 (three) categories, namely (1) the category of obstruction of the judicial process, (2) the category of the process of proving and legality of evidence, and (3) the destruction of goods and or evidence. The formulation is relatively more detailed than the formulation of offenses in the Corruption, Terrorism, TIP and Business Competition laws. What makes the difference is that the element of "intentional" is not included. In terms of the qualifications of the actors (which do not give any restrictions on their status and position), they are also the same, namely everyone, anyone. Meanwhile, according to the author, the judicial process represents the process of investigation, prosecution and trial.

Meanwhile, the process of proving and destroying evidence is fascinating because it is already evident that the acts committed by the perpetrator of the obstruction of justice offense, according to the 2019 RKUHPIdana, have manifested. Furthermore, related to the criminal threat of obstruction of justice in the 2019 Draft Criminal Code, it is a maximum imprisonment of 5 (five) years or a maximum fine of Category V. This criminal threat is still lighter than the criminal threat in the obstruction of justice offense in the Corruption Act. Namely imprisonment for a minimum of 3 years and a maximum of 12 years.

**Harmonization and Reconstruction of "Obstruction of Justice" Norms.** Observing the comparison between the norms regulated in the Criminal Code, the Corruption Act, TIP, The Theorist Law and UNCAC 2003, and the terminology and qualifications adopted by several countries mentioned above, several points of view can be drawn as an effort to harmonize the "obstruction of justice" norms. The obstruction of justice norm regulated in Article 21 of the Anti-Corruption Law, which only mentions the word "prevent, hinder or thwart investigations, prosecutions and trials" without mentioning what actions and how they take their forms, is very abstract and has multiple interpretations because of its subjective nature. Subjectively according to the tastes and wishes of investigators, public prosecutors and judges who "feel" prevented, hindered and thwarted. It was confirmed when the author spoke with one of the KPK Senior Investigators, who confirmed that the investigator's subjectivity was extreme and dominant when interpreting the sentence "prevent, hinder and thwart" ongoing investigation efforts. Therefore, an objective attitude is needed by referring to how maximal efforts have been made to obtain evidence, in addition to the ability to face various obstacles that arise, because the obstacles that arise in corruption cases are not always more difficult than in other cases, for example, terrorism and psychotropic cases.

Referring to the norms regulated in the 4 (four) sample countries above, especially the United States, South Korea and Poland, and the Netherlands, which detail what actions qualify as "obstruction of justice" offenses, it looks more objective. In these countries, the offense of "obstruction

of justice" is more inclined to the consequences than the cause, reducing subjective sentiment. Corrective steps are needed to perfect and harmonize the formulation of the norms of Article 21 of the Anti-Corruption Law so that it is in line with the 2003 UNCAC, which still provides additional conditions if the norm is implemented, as well as adopting a more detailed formulation of the "obstruction of justice" offense. And objective in some sample countries.

For the author, the formulation of article 284 in the 2019 Draft Criminal Code is quite good. However, it still needs to accommodate and combine the elements contained in the current Criminal Code, other special laws, and the 2003 UNCAC to be more adequate, objective, and not multi-interpreted. So it can be applied as the parent of obstruction of justice offense. In terms of the formulation and the magnitude of the criminal threat contained in Article 21 of the Anti-Corruption Law, this formulation does not make sense. In one of his writings, Andi Hamzah once said that the demands for the perpetrators of the obstruction of justice offense were beyond reason. How is it possible for the offense of "obstructing the investigation of a corruption crime, which is not a material corruption offense, the punishment far exceeds that of materially corrupt perpetrators, who are the main culprits in the occurrence of corruption cases? Andi Hamzah compares the formulation of the criminal threat of Article 21 of the Anti-Corruption Law for a maximum of 12 years with Article 216 of the Criminal Code, which carries a penalty of only four months or a fine of a maximum of six hundred rupiahs. However, the offense being prevented is a murder offense which carries a penalty of 15 years in prison.

Likewise, Eddy OS Hiarej, in one of his writings, stated that often the demands for obstruction of justice offenses based on article 21 of the Anti-Corruption Law are only motivated by enthusiasm. The demands are not accompanied by evidence as well as solid evidence, but only with minimal evidence. Although there is no prohibition against prosecuting with strong evidence and evidence, the ratio of the prosecution's legislature must be based on the facts of the trial, not on mere assumptions. The charge can touch the maximum number of penalties threatened if the evidence is probation plena, which means that the evidence is complete, perfect and irrefutable. Even Eddy OS Hiarej emphasized the existence of a criminal law doctrine that stipulates strict conditions that are suspecting someone criminally must be accompanied or based on evidence that is brighter than light (*incriminalibus probationes, beden esse luce clariores*).

Furthermore, Laica Marzuki thinks that the material truth (*materiele waarheid*) has not yet emerged in the trials of corruption cases in Indonesia, especially consistently to place the existence of criminal acts and intentions to commit crimes (*actus reus* and *men's rea*). The element of evil consists of these two things that must exist without exception. *Actus reus* is related to the prohibited act, an evil act visible on the surface, commonly called a physical element. *Men's rea* is related to the guilty mind, the evil mind, namely the existence of evil intentions from the perpetrator, commonly referred to as the mental mind. The two elements must be integrated as a whole. To the obstruction of justice offense, Laica Mazuki thinks that if the material truth (*materiale waarheid*) is not visible, then the act is not sufficient to qualify as a criminal act.

Based on the legal logic and facts above, the author proposes that the formulation of the obstruction of justice offense in corruption crimes be reconstructed so that it reads: *Any person who intentionally hinders the judicial process by direct or indirect physical and psychological threats by submitting false information, evidence or false evidence, influencing witnesses with threats to give false statements in court, or damaging, altering, destroying, or the loss of evidence or evidence, is punishable by a maximum imprisonment of 7 (seven) years and a maximum fine of Rp. 500 million.* The elements of the article in the formulation of the article are;

- Subjective elements : (1) Everyone, (2) Purposely;

- *Objective elements* : (1) Obstructing the judicial process directly or indirectly; (2) Submitting false statements, evidence or false evidence, or influencing witnesses with threats to give false statements in court, or destroying, altering, destroying, or eliminating evidence or evidence, (3) threatened with a maximum imprisonment of 7 (seven) years and a maximum fine of Rp. 500 million.

## CONCLUSION

Corruption is a special criminal act, qualified as an ordinary crime but must be eradicated in extraordinary ways. In Indonesia, it is not only an extraordinary method but also an institution with extraordinary authority formed because corruption has become a systemic and systematic disease of society. Criminalizing the act of "obstructing the judicial process" is one way to eradicate corruption extraordinarily. The positive law has already regulated it, but it needs to be emphasized by ratifying UNCAC 2003 so that the norms governing the offense can be universally recognized.

The formulation of the norms of article 21 of the Anti-Corruption Law had already been issued. However, it was considered not in line with the 2003 UNCAC, which still provided additional conditions if the norm was implemented.

Moreover, the formulation of this offense norm is not included in the core corruption offenses but in other types of corruption-related crimes. It gives rise to multiple interpretations, is detrimental to justice seekers, and even takes undue victims. Therefore, it is necessary to reconstruct the norm and with a solid interpretation that the "obstruction of justice" offense is more appropriately qualified as a cumulative-material offense which is more objective than insisting that this offense be a formal offense-alternative which seems subjective.

From a practical point of view, this article is also problematic. As an offense regulated separately from the core offense of acts or criminal acts of corruption and is only mentioned as "acts related to acts of corruption", it should not be threatened with a higher crime than the core offense. By looking at the philosophical, juridical and sociological problems of the "obstruction of justice" offense norm, this research will lead to the importance of reconstructing Article 21 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption.

Article reconstruction is needed to be in line with the government's legal politics, in harmony with other legal rules, especially Law Number 7 of 2006 concerning UNCAC's ratification of 2003, so that the legal purpose of protecting legal certainty and public justice is achieved and universally recognized. The "obstruction of justice" norm must be regulated separately, either as procedural or material law in the Criminal Procedure Code or Criminal Code, to cover all other organic and inorganic laws and regulations.

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