

Obstruction of justice in Criminal Law: A Juridical Review of Obstruction of Law Enforcement by Law Enforcement Officers

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Abstrak: Criminal law enforcement in Indonesia is not only faced with technical and structural obstacles, but also with serious threats from within the system itself, especially through the practice of obstruction of justice carried out by law enforcement officials. Actions such as destruction of evidence, intimidation of witnesses, manipulation of information, and interference with the investigation process have been proven to occur in a number of major cases, one of which is in the case of the murder of Brigadier J. The purpose of this study is to juridically analyze the concept of obstruction of justice, evaluate its regulation in Indonesia's positive criminal law, and examine the criminal liability of law enforcement officials involved in act. This research uses normative legal research methods with a legislative approach, and is analyzed qualitatively descriptively through literature studies and case studies. The results of the study show that although the term obstruction of justice has not been explicitly regulated in the Criminal Code, the substance of the act has been reflected in various general and special criminal provisions such as Articles 221, 231, 233 of the Criminal Code and Article 21 of the Corruption Law. However, scattered and multi-interpreted arrangements lead to weak law enforcement effectiveness against perpetrators, especially if they come from law enforcement institutions..

Keywords: Obstruction of Justice, Criminal Law, Law Enforcement Officers.

INTRODUCTION

Criminal law enforcement in Indonesia today not only faces technical obstacles such as limited human resources, infrastructure, and inefficient bureaucracy, but also faces more serious challenges than within the system itself. This threat arises when law enforcement officials or parties who have access to power are actually involved in actions that obstruct the course of the legal process. This phenomenon poses a structural dilemma, where institutions that should be at the forefront of enforcing the law have the potential to become part of the legal problem itself. In this context, the emergence of the practice of *Obstruction of Justice* is one of the most significant forms of obstacles that disrupt the integrity of the criminal justice system in Indonesia.

Obstruction of justice, or the act of obstructing the judicial process, is often carried out by parties who have a direct interest in the outcome of a criminal case, either because of personal involvement, position of office,



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or political and economic relations.¹ This action can be in the form of intervention in the investigation process, eliminating or manipulating evidence, influencing witnesses or victims, and even obstructing other law enforcement officials in carrying out their duties. This phenomenon not only hurts the principle of substantive justice, but also creates public distrust in the integrity of law enforcement agencies such as the police, prosecutor's office, and judicial institutions.² In the long run, the practice of *obstruction of justice* that is allowed or not acted upon will weaken the rule of law and increase the space for impunity.

Conceptually, *Obstruction of justice* can be interpreted as any form of action that aims to hinder, obstruct, or interfere with the course of a legitimate legal process, both at the stage of investigation, investigation, prosecution, and trial in court.³ Although this term is not explicitly listed in the Criminal Code or other criminal regulations in Indonesia, its essence can be found in a number of criminal law provisions that regulate acts such as obstructing an investigation (e.g. Article 221 of the Criminal Code), giving false information under oath (Article 242 of the Criminal Code), or concealing suspects. Thus, an analysis of *Obstruction of Justice* needs to be carried out systematically and juridically, to examine how the Indonesian criminal law system responds to and regulates these forms of obstruction of justice, especially when the perpetrators actually come from the law enforcement apparatus itself.

Various criminal cases in Indonesia show a systematic pattern of *obstruction of justice* carried out by law enforcement officials. These actions include the destruction or disappearance of evidence, intimidation of witnesses, falsification of documents, and attempts to influence the results of investigations and court decisions. One of the most striking cases is the case of the murder of Brigadier J, where a number of police members were proven to have actively obstructed the investigation, including by damaging CCTV footage, directing witness statements, and concocting false narratives.⁴ This case opens the eyes of the public that *Obstruction of justice* is not only a potential, but a reality that can be carried out by the internal actors of the legal system itself, even by those who are supposed to be the guardians of justice.

From the positive legal side, various provisions in the Indonesian criminal law system actually contain norms that can ensnare perpetrators of obstruction of justice, even though they do not use the term explicitly. Article 221 of the Criminal Code regulates the act of concealing the perpetrator of a crime, Article 231 of the Criminal Code regarding the destruction of confiscated evidence, and Article 233 of the Criminal Code regarding the disappearance or destruction of evidence. In addition, in the context of corruption crimes, Article 21 of Law No. 31 of 1999 jo. Law No. 20 of 2001 expressly refers to the act of obstructing investigation or prosecution as a separate criminal act. In addition, the Criminal Code also regulates the

¹ Suprayoga, A. D. A. (2024). Analisis Dampak *Obstruction of justice* Terhadap Proses Peradilan. *Recidive: Jurnal Hukum Pidana dan Penanggulangan Kejahatan*, 13(2), 119-133.

² Rivaldianto, M., Salman, M., Nurali, S., Maharani, Y., & Ramadiah, T. R. (2022). Moralitas Hakim di Indonesia dalam Mewujudkan Keadilan menurut Perspektif Aristoteles. *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora*, 1(01).

³ Mansyah, M. S. (2020). Menghilangkan Alat Bukti oleh Penyidik Tindak Pidana Korupsi Sebagai Upaya Obstruction of Justice. *Ekspose: Jurnal Penelitian Hukum dan Pendidikan*, 18(2), 877-884.

⁴ Suryadi, M. A., & Zainal, M. (2023). ANALISIS PERBUATAN MENGHALANGI PROSES PENYIDIKAN, PENUNTUTAN DAN PERADILAN (OBSTRUCTION OF JUSTICE) DALAM SISTEM PIDANA DI INDONESIA. *Justness: Jurnal Hukum Politik dan Agama*, 3(2).



mechanism for the protection of witnesses and victims, confiscation procedures, and the principles of fair justice, which can be used as a basis in assessing acts of obstruction of justice.⁵

The urgency of studying *Obstruction of Justice* becomes even more important when this phenomenon continues to emerge in various major cases, including those related to political power, security forces, and organized crime. If left unaddressed and unchecked, this practice has the potential to undermine the integrity of the criminal justice system and undermine the rule of law. Therefore, a juridical analysis of *the Obstruction of Justice* is needed to provide a theoretical and normative basis in formulating a more progressive criminal law policy. This study is expected not only to strengthen the position of victims and the public in the law enforcement process, but also to contribute to the formation of a legal apparatus that is able to reach and take action against perpetrators of obstruction of justice effectively, especially when they come from law enforcement institutions themselves..

METHOD

The research method used in this article is normative legal research, which focuses on the study of applicable legal norms, both those written in laws and regulations and those that live in community practice (*living law*).⁶ In this study, norms regulate the act of *Obstruction of Justice* in the context of the Indonesian criminal law system. This research aims to analyze relevant positive criminal law provisions, such as Article 221, Article 231, and Article 233 of the Criminal Code, as well as Article 21 of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption. The approach used is a statute approach by examining the relationship between various criminal regulations and criminal proceedings, including the Criminal Procedure Code (KUHP), as well as paying attention to relevant jurisprudence in *the case of Obstruction of justice* in Indonesia. The data sources in this study include primary legal materials (laws and regulations and court decisions), secondary legal materials (legal literature, scientific journals, and expert opinions), and tertiary legal materials (legal dictionaries and legal encyclopedias).⁷ The data collection technique is carried out through *library research*, and is analyzed qualitatively descriptively by classifying and interpreting the data systematically. This study also uses case studies, such as the murder case of Brigadier J, to concretely describe the practice of *Obstruction of Justice* by law enforcement officials, as well as evaluate the effectiveness of the legal system in responding to these actionst.

DISCUSSION

Regulation of *Obstruction of Justice* in the Indonesian Criminal Law System

In the doctrine of criminal law, *Obstruction of justice* is understood as any form of action that is deliberately taken to hinder, obstruct, or interfere with the law enforcement and judicial process, both in the stages of investigation, investigation, prosecution, and trial. These actions include, among others, hiding the

⁵ Lusia Sulastri, S. H. (2023). *Pengaruh Obstruction of justice Yang Dilakukan Aparat Penegak Hukum Terhadap Kepercayaan Masyarakat Pada Sistem Peradilan Di Indonesia*. PUSTAKA AKSARA. hlm. 36

⁶ Muhammad Syahrur, S. T. (2022). *Pengantar Metodologi Penelitian Hukum: Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi dan Tesis*. CV. Dotplus Publisher. hlm. 27

⁷ Tan, D. (2021). Metode penelitian hukum: Mengupas dan mengulas metodologi dalam menyelenggarakan penelitian hukum. *Nusantara: Jurnal Ilmu Pengetahuan Sosial*, 8(8), 2463-2478.



perpetrators of crimes, damaging evidence, providing false information, and intimidating witnesses or law enforcement officials. Substantively, *Obstruction of justice* is categorized as a *crime against justice* because it damages the legal system itself and obstructs the main purpose of criminal law, which is to uphold justice through a legitimate and correct legal process.⁸ In the legal systems of other countries, such as the United States, *Obstruction of justice* has long been a separate offense that is expressly regulated in various provisions of federal law, such as Title 18 U.S. Code § 1503–1519, which includes the destruction of evidence, influence on witnesses, and interference with the judicial process.⁹ In this system, the element of "intention to obstruct the legal process" is a key element that must be proven. Compare it with Indonesia, where the concept of *Obstruction of Justice* has not been systematically regulated as a special offense, even though its substance is spread across several articles of the Criminal Code and special laws. This comparison shows that there is a need to clarify the legal concepts and categories of *Obstruction of Justice* in order to have a more effective reach.

The urgency of regulating *Obstruction of justice* explicitly in Indonesia's criminal law is even more urgent because this kind of action clearly threatens the effectiveness of the criminal justice system. When law enforcement officials themselves are involved in obstruction of justice, the principle of due process of law as a pillar of the state of law is threatened. In a state of law that upholds the rule of law, every legal process must run freely, objectively, and must not be interfered with by outside interests, especially if it comes from within the law enforcement institution itself.

In Indonesia's positive legal system, although the term "obstruction of justice" is not explicitly mentioned in the laws and regulations, the substance of its actions has been reflected in various criminal provisions. In the Criminal Code (KUHP), there are several articles that can be directly linked to acts of obstruction of justice. Article 221 of the Criminal Code regulates the act of concealing the perpetrator of a crime, Article 231 of the Criminal Code regulates the destruction or concealment of evidence that has been confiscated, and Article 233 of the Criminal Code contains a prohibition on obstructing the execution of court decisions.¹⁰ In addition, in the context of eradicating corruption, Article 21 of Law No. 31 of 1999 jo. Law No. 20 of 2001 states that anyone who deliberately obstructs or obstructs the process of investigation, prosecution, and examination in court in cases of corruption can be specifically punished. This provision is a form of explicit recognition of the criminal act of obstructing legal proceedings in the realm of special criminal acts.

In addition to the provisions in the Criminal Code and the Corruption Law, other regulations that are also relevant in the context of *Obstruction of Justice* are Law No. 11 of 2008 jo. Law No. 19 of 2016 concerning Information and Electronic Transactions (ITE). In the digital era, the disappearance, destruction, or alteration of electronic data that becomes evidence in legal proceedings can also qualify as an act of

⁸ Suryadi, M. A., & Zainal, M. (2023). ANALISIS PERBUATAN MENGHALANGI PROSES PENYIDIKAN, PENUNTUTAN DAN PERADILAN (OBSTRUCTION OF JUSTICE) DALAM SISTEM PIDANA DI INDONESIA. *Justness: Jurnal Hukum Politik dan Agama*, 3(2).

⁹ Pettanasse, I., Rani, F. H., Saputra, M. A., & Ardha, D. J. (2024). Tindak Pidana "Obstruction of Justice" dalam Pengaturan Undang-undang Nomor 1 Tahun 2023. *Journal of Sharia and Legal Science*, 2(2), 163-177.

¹⁰ Mardhatilla, A. (2023). Tindak Pidana *Obstruction of justice* Oleh Kepolisian Dalam Upaya Mengungkap Kejahatan. *UNJA Journal of Legal Studies*, 1(1), 339-354.



obstruction of justice. For example, the manipulation or deletion of CCTV footage, chats, or digital documents that are important evidence in criminal proceedings. Although it does not explicitly mention obstruction of justice, the ITE Law provides a legal basis for taking action against perpetrators who try to interfere with the integrity of electronic evidence in a criminal case.

However, the characteristics of the criminal law regulation regarding *Obstruction of Justice* in Indonesia show the fragmentation of norms. The term "obstruction of justice" has not been systematically accommodated as a separate type of criminal act in the Criminal Code or in sectoral laws. His actions are scattered in various articles and regulations with non-uniform formulations and criminal threats, making it difficult to process a consistent classification and application of the law. This condition shows that there is no harmonization and special codification of *Obstruction of justice* as a stand-alone offense.¹¹ Therefore, it is important for policymakers to consider the drafting of specific regulations that comprehensively regulate forms of *obstruction of justice* in the various stages of the criminal justice process, in order to ensure legal certainty and the effectiveness of the enforcement of justice.

The regulation of *Obstruction of justice* in Indonesia's positive law is currently still fragmentary and spread across various regulations, without a special article that explicitly identifies and formulates *Obstruction of justice* as a separate offense. This fragmentation causes unclear boundaries regarding the types of acts that are classified as obstructions of justice, as well as opens up a wide scope for interpretation of existing articles, such as Article 221 or Article 233 of the Criminal Code. As a result, the application of the law becomes multi-interpreted and often causes inconsistencies in law enforcement, especially in cases involving internal actors of law enforcement institutions. The challenge is even greater when *Obstruction of Justice* is carried out by parties who have power or access to the legal process, thus creating obstacles to proof and doubts in the process of handling cases.

Given the weak legal protection of the judicial process from systematic obstruction actions, it is important to include *Obstruction of justice* as a special offense in the Draft Criminal Code (RKUHP). This arrangement must be prepared with a systemic and comprehensive approach, so that it can include various forms of acts that explicitly hinder the judicial process, ranging from witness intimidation, disappearance of evidence, manipulation of legal processes, to intervention against other law enforcement officials. Strengthening this regulation can refer to the legal systems of other countries, such as the United States which has regulated *Obstruction of justice* in detail through 18 U.S. Code § 1503–1519, covering a variety of obstruction of justice scenarios with proportionate criminal threats.¹²

Criminal Liability That Can Be Imposed on Law Enforcement Officials Who Are Proven to *Obstruct of Justice* in the Criminal Justice Process

In the criminal justice system, law enforcement officials occupy a very strategic position because they are the main actors in every stage of the legal process, starting from investigations and investigations by the

¹¹ Muladi, S. H., Diah Sulistyani, R. S., & SH, C. (2021). *Kompleksitas Perkembangan Tindak Pidana dan Kebijakan Kriminal*. Penerbit Alumni. hlm. 28

¹² Tangko, L. A. A., Agung, D., & Pratiwi, A. D. (2023). Penerapan Hukum terhadap Pelaku dan Korban Tindak pidana Obstruction of Justice. *Alauddin Law Development Journal*, 5(2), 274-282.



police, prosecutions by prosecutors, examinations and dismissals by judges, to the implementation of decisions by correctional institution officers. Even advocates as legal representatives are also an integral part of this system which functions to maintain balance and protection of the rights of the accused. Therefore, the functioning of the judicial system is highly dependent on the professionalism, neutrality, and integrity of each apparatus involved in it. Law enforcement officials have ethical and juridical responsibilities in carrying out their duties. Ethically, they are required to act honestly, fairly, and uphold the principles of *due process of law*, while judicially, they are bound by the rule of law that governs the authority and procedures of legal action.¹³ Abuse of authority by the authorities, such as intimidating witnesses, concealing evidence, or fabricating false scenarios, not only harms the legal process but also threatens substantive justice. The legal consequences of such actions must be firm, because if left unchecked, it will cause a domino effect in the form of a loss of public trust in the judiciary and a weakening of the rule of law.

In the doctrine of criminal law, criminal liability refers to a person's ability to be held accountable for an act that qualifies as a criminal act, which is committed unlawfully, guiltily, and can be sanctioned. This principle applies universally, not limited to civilians, but also includes state officials and law enforcement officials. Thus, a policeman, prosecutor, judge, or correctional officer who commits a criminal act both in his personal capacity and in the performance of his duties can still be held criminally liable. This reflects the principle of equality *before the law*, which is a fundamental principle in the state of law.¹⁴

Furthermore, there is no legal immunity for law enforcement officials who commit violations, including in the form of obstruction of justice. Although they have legal authority in carrying out their duties, this authority is limited and must be carried out in accordance with the law. When the authorities abuse their position to obstruct the legal process, the act must be treated as a criminal act that is as serious as similar acts committed by ordinary citizens. The enforcement of criminal liability against the apparatus is not only aimed at providing a deterrent effect, but also an important instrument in maintaining honor and trust in law enforcement institutions.

From the perspective of Indonesian criminal law, *Obstruction of justice* can be categorized as a criminal act because it fulfills the elements of delinquency that have been regulated in various general and special criminal provisions. Although the term *Obstruction of Justice* is not explicitly mentioned in the Criminal Code, various forms of its act have been criminalized. For example, Article 231 of the Criminal Code regulates the destruction or concealment of evidence that has been lawfully confiscated, Article 242 of the Criminal Code contains criminal threats against people who give false information under oath, and Article 221 of the Criminal Code prohibits concealing the perpetrator of a crime or eliminating traces of crime. In addition, in the context of corruption crimes, Article 21 of the Corruption Law expressly regulates the act of obstructing or obstructing investigation, prosecution, or examination in court as a special crime that stands alone. This means that *Obstruction of Justice* has been substantively recognized as a criminal act that can ensnare the perpetrator legally.

¹³ Yuwono, I. D. (2011). *Memahami berbagai etika profesi dan pekerjaan*. MediaPressindo. hlm. 11

¹⁴ Saraya, S., Plaikoil, M. V., Mulya, J. F., Muhni, A., Maramba, R. S. M., Saputra, E., & Layungasri, R. G. (2024). *Hukum Pidana Indonesia: Literasi & Wawasan Komprehensif Hukum Pidana di Indonesia*. Henry Bennett Nelson. hlm. 19



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Forms of criminal liability in *Obstruction of justice cases* can be classified based on the type of involvement of the perpetrator.¹⁵ *First*, direct (individual) liability is imposed if law enforcement officials actively commit obstruction actions, such as damaging evidence or forcing witnesses to change their statements. *Second*, *abuse of power* applies if obstruction is carried out by abusing the authority of the position, for example, a superior who intervenes in the investigation process to protect subordinates or certain parties. In this context, the structural position is not a justification for the violation, but rather aggravates the violation because it abuses public trust.

Third, it is also known as cumulative liability (collective liability), which is if obstruction is carried out jointly in one institution, where several parties work together to obstruct the course of the legal process, as happened in the case of the murder of Brigadier J. Fourth, liability for omission also has an important dimension, where officials or superiors who know of the existence of *obstruction of justice* But choosing to remain silent or not taking legal action can be held criminally liable for his negligence. This is important to emphasize in order to ensure that every element in law enforcement institutions has an active obligation to maintain the integrity and objectivity of the criminal justice process, as well as to prevent impunity in the law enforcement body itself

CONCLUSIONS

Obstruction of justice is a criminal act that has been substantively regulated in various provisions of positive Indonesian law, both in the Criminal Code and special laws such as the Corruption Law, although it has not been explicitly formulated as a separate offense. Actions such as damaging evidence, giving false information, or obstructing investigations clearly meet the elements of general and special criminal offenses, and can ensnare the perpetrator regardless of status, including if committed by law enforcement officials. In the context of criminal liability, law enforcement officials can be held directly accountable, for abuse of office, collectively within one institution, or for neglect of obstruction. Therefore, it is necessary to strengthen and harmonize regulations, including the recognition of *Obstruction of Justice* as a special offense in the RKUHP, in order to ensure the integrity of the criminal justice process and maintain the rule of law in a democratic state of law

REFERENCES

- Haikal, M. F. (2023). Implikasi Obstruction of justice terhadap Perlindungan Saksi dan Korban dalam Sistem Peradilan Pidana di Indonesia. *Lex Journal: Kajian Hukum dan Keadilan*, 7(2), 265-277.
- Lusia Sulastri, S. H. (2023). Pengaruh Obstruction of justice Yang Dilakukan Aparat Penegak Hukum Terhadap Kepercayaan Masyarakat Pada Sistem Peradilan Di Indonesia. *PUSTAKA AKSARA*. hlm. 36
- Mansyah, M. S. (2020). Menghilangkan Alat Bukti oleh Penyidik Tindak Pidana Korupsi Sebagai Upaya Obstruction of Justice. *Ekspose: Jurnal Penelitian Hukum dan Pendidikan*, 18(2), 877-884.

¹⁵ Haikal, M. F. (2023). Implikasi *Obstruction of justice* terhadap Perlindungan Saksi dan Korban dalam Sistem Peradilan Pidana di Indonesia. *Lex Journal: Kajian Hukum dan Keadilan*, 7(2), 265-277.



- Mardhatilla, A. (2023). Tindak Pidana Obstruction of justice Oleh Kepolisian Dalam Upaya Mengungkap Kejahatan. *UNJA Journal of Legal Studies*, 1(1), 339-354.
- Muhammad Syahrums, S. T. (2022). Pengantar Metodologi Penelitian Hukum: Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi dan Tesis. CV. Dotplus Publisher. hlm. 27
- Muladi, S. H., Diah Sulistyani, R. S., & SH, C. (2021). Kompleksitas Perkembangan Tindak Pidana dan Kebijakan Kriminal. Penerbit Alumnus. hlm. 28
- Pettanasse, I., Rani, F. H., Saputra, M. A., & Ardha, D. J. (2024). Tindak Pidana "Obstruction of Justice" dalam Pengaturan Undang-undang Nomor 1 Tahun 2023. *Journal of Sharia and Legal Science*, 2(2), 163-177.
- Rivaldianto, M., Salman, M., Nurali, S., Maharani, Y., & Ramadiah, T. R. (2022). Moralitas Hakim di Indonesia dalam Mewujudkan Keadilan menurut Perspektif Aristoteles. *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora*, 1(01).
- Saraya, S., Plaikoil, M. V., Mulya, J. F., Muhni, A., Maramba, R. S. M., Saputra, E., & Layungasri, R. G. R. (2024). Hukum Pidana Indonesia: Literasi & Wawasan Komprehensif Hukum Pidana di Indonesia. Henry Bennett Nelson. hlm. 19
- Suprayoga, A. D. A. (2024). Analisis Dampak Obstruction of justice Terhadap Proses Peradilan. *Recidive: Jurnal Hukum Pidana dan Penanggulangan Kejahatan*, 13(2), 119-133.
- Suryadi, M. A., & Zainal, M. (2023). ANALISIS PERBUATAN MENGHALANGI PROSES PENYIDIKAN, PENUNTUTAN DAN PERADILAN (OBSTRUCTION OF JUSTICE) DALAM SISTEM PIDANA DI INDONESIA. *Justness: Jurnal Hukum Politik dan Agama*, 3(2).
- Suryadi, M. A., & Zainal, M. (2023). ANALISIS PERBUATAN MENGHALANGI PROSES PENYIDIKAN, PENUNTUTAN DAN PERADILAN (OBSTRUCTION OF JUSTICE) DALAM SISTEM PIDANA DI INDONESIA. *Justness: Jurnal Hukum Politik dan Agama*, 3(2).
- Tan, D. (2021). Metode penelitian hukum: Mengupas dan mengulas metodologi dalam menyelenggarakan penelitian hukum. *Nusantara: Jurnal Ilmu Pengetahuan Sosial*, 8(8), 2463-2478.
- Tangko, L. A. A., Agung, D., & Pratiwi, A. D. (2023). Penerapan Hukum terhadap Pelaku dan Korban Tindak pidana Obstruction of Justice. *Alauddin Law Development Journal*, 5(2), 274-282.
- Yuwono, I. D. (2011). Memahami berbagai etika profesi dan pekerjaan. MediaPressindo. hlm. 11

