

Ratio Decidendi Judges Decide Perpetrators of Obstruction of Justice in Corruption Crimes Associated by The Implementation of Advocate Immunity Rights (Analysis of Decision No. 78/PK.Pid.Sus/2021).1

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Abstract

Corruption is one of the problems faced in Indonesia, one of its, obstruction/inhibiting the law enforcement process carried out by advocates. Many advocates in Indonesia are trapped in legal problems, especially those related to obstruction of justice when carrying out their profession, because there are no clear parameters as to the extent to which the immunity rights possessed by advocates are enforced to protect advocates when carrying out their profession. In this normative juridical research, the obstruction of justice is discussed in the provisions of Article 21 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The results of the research problem are two main things that can be concluded. First, that the application of Obstruction of justice in a broad sense can be applied to people who provided advice, ideas, advice, opinions, considerations or suggestions to perpetrators of criminal acts. Meanwhile, the act of an advocate should be suspected of committing a criminal act of obstruction of justice if the act committed is not related to his professional duties and is not based on good faith. The second, that ratio decidendi of the judicial review council overrides the juridical aspects related to legal facts that show the profession of the accused as an advocate should serve as a burdensome.

Key Words : Ratio, Decidendi, Obstruction, Law Enforcement.

Abstrak

Korupsi merupakan salah satu problematika yang dihadapi di Indonesia, salah satunya adalah adanya tindakan yang menghalang-halangi/menghambat proses penegakan hukum yang dilakukan oleh Advokat. Terdapat beberapa advokat yang terjebak dalam permasalahan hukum khususnya terkait dengan tindakan obstruction of justice pada saat menjalankan profesinya, dikarenakan belum adanya parameter yang jelas sejauh mana diberlakukan hak imunitas yang dimiliki oleh advokat untuk melindungi dirinya ketika menjalankan profesinya. Dalam penelitian yang bersifat normatif ini, dibahas mengenai obstruction of justice dalam ketentuan Pasal 21 Undang-Undang No. 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi. Hasil penelitian ini yaitu Pertama bahwa penerapan obstruction of justice dalam arti luas dapat diterapkan terhadap orang yang memberikan advice, ide, nasehat, pendapat, pertimbangan atau saran kepada pelaku tindak pidana. Sedangkan perbuatan advokat patut diduga melakukan tindak pidana obstructio of justice jika perbuatan yang dilakukan tidak berkaitan dengan tugas profesinya dan tidak didasari oleh itikad baik. Kedua bahwa ratio decidendi majlis hakim peninjauan kembali mengesampingkan aspek yuridis terkait fakta hukum menunjukkan peranan terpidana dalam terjadinya obstruction of justice dan profesi terdakwa sebagai advokat seharusnya sebagai dasar yang memberatkan.

Kata Kunci : Ratio, Decidendi, Menghambat, Penegakan Hukum.

A. Background of Research

Indonesia as a legal state that has a judicial system to protect the legal interests of the community as citizens and at the same time implement the law. The judiciary acts as a forum for the community to seek justice as a last resort. The role of the judiciary is to examine, adjudicate, and decide as well as resolve conflicts or problems presented to them.¹ In the judicial system in Indonesia, it is known that there are law enforcement professions that have their respective duties and functions that have been regulated in various laws and regulations. Law enforcers are expected to be able to expedite the judicial process, as well as to realize justice for people who seek justice and legal certainty..

In the judicial process that is carried out, especially in cases of corruption, there are some of the perpetrators of corruption or who are suspected of being perpetrators of corruption, making efforts to escape legal snares or are not subject to legal or judicial processes. The eradication of corruption in Indonesia still faces many obstacles, one of which is resistance from various parties. There are many actions that hinder the judicial process for criminal acts of corruption, but few are processed. Normatively, the act of obstructing the judicial process has been regulated in many regulations, both in the Criminal Code and in special criminal law. Corruption practices occur in almost every layer of the bureaucracy, both legislative, executive and judicial, and have spread to the business world.

The act of someone who intends to hinder the judicial process is one of the problems that hinders law enforcers in carrying out their duties in terms of upholding justice. This is also called obstruction of justice as part of a Contempt of Court crime but in the context of an act committed outside the court.

In criminal law laws and regulations, the act of obstructing the legal process has been expressly regulated in the provisions of Article 21 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (State Gazette Number 140 of 1999 as amended by Law Number 20 of 2001). concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (Supplement to the State Gazette Number 3874),

¹ Bambang Sutiyoso, *Metode Penemuan Hukum*, Yogyakarta, UII Press, 2019, hlm.2

which in that provision regulates the types of actions that can be subject to criminal provisions regarding actions aimed at preventing or hindering the implementation of a crime. judicial process, either for oneself or for others, either directly or indirectly.

The public as citizens, or anyone who has a position as law enforcer in Indonesia such as the Police, Prosecutors, Judges and Advocates can perform acts of obstructing the legal process, especially in the investigation process. Advocates have an important role in the criminal justice system in Indonesia to ensure the protection of the rights of their clients who are victims or perpetrators of criminal acts. In the Criminal Procedure Code, advocates play a role in assisting their clients as well as carrying out legal actions based on their professions in defending and prosecuting in court proceedings..

The Advocate profession is a noble profession because Advocates devote themselves to law enforcement based on justice and participate in upholding human rights. An advocate performs his duties based on a power of attorney from his client and acts on behalf of his client inside and outside the court for the benefit of his client's defense..

Many advocates in Indonesia are trapped in legal problems, especially those related to obstruction of justice when carrying out their profession because there are no clear parameters to what extent advocates' immunity rights are enforced to protect advocates when carrying out their profession..²

One example is the case that happened to Lucas, who works as an advocate, Lucas was arrested by the Corruption Eradication Commission (KPK) on suspicion of obstructing justice in the investigation process in corruption cases, namely the bribery case of the Central Jakarta District Court clerk and fugitive abroad since 2016. On 29 August 2018, Eddy Sindoro was deported from Malaysia to Indonesia. However, according to the KPK, Eddy Sindoro, who had landed in Jakarta, managed to escape again abroad. It was supposedly with the help of Lucas.

B. Focus of Research

Based on the identification of the problem above, the researcher provides the following problems are:

² Solehoddin, *Menakar Hak Imunitas Profesi Advokat*, *Rechtldee Jurnal Hukum*, Vol. 10 Nomor 1, Juni 2015. Fakultas Hukum Widyagama, Malang, 2015, hlm. 93

1. How is the implementation of the Obstruction of Justice in the Indonesian corruption law enforcement system related to the implementation of the Immunity of Advocates ?
2. How is the judge's ratio decidendi in deciding the Obstruction of Justice case in Decision Number 78 PK/Pid.Sus/2021 ?

C. Methodology of Research

1. Type of Research

Normative legal research is legal research conducted by collecting library materials that are studied by conducting literature. Normative legal research uses deductive reasoning (withdrawal thinking). Conclusions can be drawn from generally accepted and correct data. Conclusion drawing is based on the object of analysis in a qualitative way, that is, it refers to legal norms and regulations.³

2. Research Approach

In conducting research, it is necessary to have a research method or approach. From the definition of the concept, it can be interpreted that a data in the form of a description is needed and requires a different meaning from the legal material obtained. This type of normative legal research can use more than one approach. The approach used in this research is the conceptual approach and the statutory approach. In conducting research, it is necessary to have a research method or approach. From the definition of the concept, it can be interpreted that a data in the form of a description is needed and requires a different meaning from the legal material obtained. This type of normative legal research can use more than one approach. The approach used in this research is the conceptual approach and the statutory approach).⁴

D. Finding & Discussion

1. Based on Juridical

Article 21 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Criminal Acts of Corruption which reads::

³ Mezak, M. H. (2006). Jenis, Metode dan Pendekatan Dalam Penelitian Hukum

⁴ Parjaman, T., & Akhmad, D. (2019). Pendekatan Penelitian Kombinasi: Sebagai “Jalan Tengah” Atas Dikotomi Kuantitatif-Kualitatif. *Moderat: Jurnal Ilmiah Ilmu Pemerintahan*, 5(4), 530-548.

"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 (three) years and a maximum of 3 (three) years. 12 (two) years and/or a minimum fine of Rp. 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah)".

In another provision, it is explained how important it is for an advocate in carrying out law enforcement. An advocate is a person whose profession is to provide legal services, both inside and outside the court, who meet the requirements based on the provisions of the law. Legal services are services provided by advocates in the form of providing legal consultation, legal assistance, exercising power of attorney, representing, assisting, defending and carrying out other legal grounds for the legal interests of clients. The promulgation of Law Number 18 of 2003 concerning Advocates, then Advocates are also part (subsystem) of the criminal justice system, this is confirmed in Article 5 paragraph (1) of the Law, which states that: "Advocates have the status of law enforcers, free and independent guaranteed by law and legislation".

2. Theoretical framework

- a. Judicial power is the power of an independent state to administer the judiciary to enforce law and justice based on Pancasila and the 1945 Constitution..⁵ The definition of independent state power means that judicial power in addition to government power and statutory power has free power.⁶ Judicial power can be said to be free from the intervention of other powers. Freedom does not mean that judicial power can be exercised freely without supervision signs, because in the aspect of proceedings in court there are general principles for good litigation (general principles of proper justice), and procedural or legal regulations. events that open up the possibility of filing legal remedies.⁷ So that in its implementation,

⁵ Ketentuan Undang-Undang Nomor 48 Tahun 2009 Pasal 1 ayat (1) tentang Kekuasaan Kehakiman

⁶ K Wantjik Saleh, *Kehakiman dan Keadilan*, Jakarta, Ghalia Indonesia, 1977, hlm. 17

⁷ Imam Anshori Saleh, *Konsep Pengawasan Kehakiman*, Malang, Setara Press, 2014, hlm.131

the enforcement of the principle of freedom in the judiciary must remain in accordance with Pancasila, the 1945 Constitution and applicable laws.

- b. The criminal justice system in the Criminal Procedure Code is in the form of an integrated criminal justice system. This system is based on the principle of functional differentiation between law enforcement officers in accordance with the process of authority granted by law.⁸
- c. The criminal justice system in Indonesia is not only regulated in a book of laws and regulations, in this case the Criminal Procedure Code, but in other laws and regulations relating to the criminal justice system..⁹ Mardjono provides a limitation that what is meant by the criminal justice system is a crime control system consisting of police institutions. Prosecutors, courts and convicts¹⁰ It was also stated that the criminal justice system is a system in a society to deal with crime.¹¹ Tackling is defined as controlling crime so that it is within the tolerance limits of society. Controlling crime so that it is still within the tolerance limits of society does not mean tolerating a certain crime or allowing it to occur. Tolerance is an awareness that evil will remain as long as there are humans in society. So, where there is society, there will always be crime.
- d. The placement of the theory of justice as an umbrella theory by remembering that in the regulation of the criminal system always upholds the values of justice, on the other hand in the law enforcement process that must be subject to the principles of the rule of law (the rule of law), therefore the theory of the rule of law is used supporting theory. Justice comes from the root of the word fair, which means treating and giving as a sense of obligation something that has become their right, both to oneself, to fellow human beings and to God.

⁸ M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan*, Jakarta, Sinar grafika, 2009, hlm. 90

⁹ Tolib Effendi, *Sistem Peradilan Pidana: Perbandingan Komponen dan Proses Sistem Peradilan Pidana di Beberapa Negara*, Yogyakarta, Pustaka Yustisia, 2013, hlm. 145

¹⁰ Mardjono Reksodiputro, *Sistem Peradilan Pidana Indonesia (Melihat Kepada Kejahatan dan Penegakan Hukum Dalam Batas-Batas Toleransi)*, Fakultas Hukum Universitas Indonesia, 1993, hlm. 1

¹¹ Romli Atmasasmita, *Sistem Peradilan Pidana (Criminal Justice System) Perspektif Eksistensialisme Dan Abolisionalisme*, Jakarta, Penerbit Bina Cipta, 1996, hlm. 15.

- e. Fair contained in the fifth precept of Pancasila which is formulated in the Preamble to the fourth paragraph of the 1945 Constitution, reads: "... based on: and by realizing a Social Justice for all Indonesian people". The meaning of being fair to fellow human beings is based on and inspired by being fair to oneself and fair to God. The implementation of justice is always related to living together, relating to other parties in social life. There are three kinds of justice, namely commutative justice, distributive justice, and legalist justice.

3. Philosophical Foundation

In connection with the above opinion, it appears that in addition to order and security, the other task of the law is to create justice. John Rawls says that justice is a major social institutional virtue, as is truth in systems of thought.¹² This opinion is in accordance with the opinion of Soediman who said that in every provision in the legal field there is an element of justice. The law aims to create an orderly and just society. In this case, John Rawls and Soediman suggest that justice is an essential element in law.¹³ This opinion is also in accordance with the opinion of Satjipto Rahardjo¹⁴ who said that the law must provide justice. It can be said that the main task of the law is to create order, security, and justice. Through order, security, and justice, legal certainty will be achieved.

Thus, order, security, and justice are the three pillars that support the law and are the spirit of the law. This is very important to understand not only for an orderly social life, but is an absolute requirement for an organization that transcends the boundaries of present-day time. Without order, security, and justice, humans will not be able to carry out their activities properly. Based on this understanding, order, security, and justice are the three pillars that sustain human life in the state. With the creation of order, security, and justice, humans can freely act and work. These three pillars must be applied in carrying out activities in order to create prosperity in the country.

¹² Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban*, Jakarta, UKI Press, 2006, hlm. 97-98. Lihat pula Satjipto Rahardjo, *Lapisan-lapisan Dalam Studi Hukum*, Malang, Bayumedia Publishing, 2009, hlm. 131

¹³ Arief Sidharta, *Revitasi Pemikiran Prof. Soediman Kartohadiprodjo tentang Pancasila Berkaitan dengan Pengembangan Sistem Hukum Nasional*, Bandung, (Orasi Ilmiah disampaikan pada Dies Natalis ke-51), FH. UNPAR, 2009, hlm. 14

¹⁴ Satjipto Rahardjo, *Biarkan Hukum Mengalir*, Jakarta, Penerbit Buku Kompas, 2007, hlm. 152

Notohamidjojo further said that in all tasks, the law aims to provide protection to all those who seek social order and who seek justice. It is further said that: ¹⁵

- a. Law brings balance and peace.
- b. The law gives freedom.
- c. The law gives rights and responsibilities.
- d. The law imposes a criminal.

On the other hand, the law punishes the bullies. Bernard Arief Sidhartha,¹⁶ quoting Nonet-Selznick's opinion, stated that:

Considering legal stability is the main guarantee for a free society;

- a. Law is a vital element of public order and guarantees the liberation of society from arbitrariness, irrationality and intimidation;
- b. The demands of citizens' compliance with the law must be balanced with the enforcement and careful loyalty of officials to positive laws;
- c. Claims must be channeled through predetermined channels;
- d. Legal changes must be carried out through a political process, and not using discretion by legal institutions;
- e. Sharp separation of law and politics;
- f. Violation of the law must be dealt with firmly.

In connection with the objectives and functions of law as described above, the law presents itself or is displayed in various legal rules and decisions formulated in legal rules and legal decisions.

4. Empirical Foundation

On November 21st , 2016 the leadership of the Corruption Eradication Commission (KPK) issued an Investigation Order Number Sprin.Dik-84/01/11/2016 to investigate corruption cases by giving gifts or promises to civil servants or state

¹⁵ Notohamidjojo, *Demi Keadilan dan Kemanusiaan*, Jakarta, BPK Gunung Mulia, 1975, hlm. 62

¹⁶ Bernard Arief Sidharta, *Refleksi Tentang Struktur Ilmu Hukum*, Bandung, Mandar Maju, 1999, hlm. 208-209. Lihat pula Mahfud M.D, Moh., *Politik Hukum Untuk Independensi Lembaga Peradilan*, Yogyakarta, (*Jurnal Hukum*), Nomor 9 Vol.6, UII, 997, hlm. 20-21. Lihat pula Philip Nonet & Philip Selznik, *Law and Society in Transtition Toward Responsive Law*, Harper and Row, New York, 1978, hlm. 16

officials related to case management in court. Central Jakarta, which is suspected to have been carried out by the suspect, EDDY SINDORO.

On December 4th , 2016, along with the Investigator's efforts to conduct an examination of EDDY SINDORO, EDDY SINDORO contacted the Defendant saying that he would return to Indonesia to face the legal process at the KPK, but the Defendant suggested that EDDY SINDORO not return to Indonesia, in addition the Defendant suggested that EDDY SINDORO release Indonesian citizen status and make passports of other countries in order to escape the legal process at the KPK, for which the Defendant will assist him. EDDY SINDORO assisted by CHUA CHWEE CHYEE alias JIMMY alias LIE made a fake Dominican Republic passport Number RD 4936460 in the name of EDDY HANDOYO SINDORO..

On August 5th , 2018, EDDY SINDORO using the fake passport, departed from Bangkok to Malaysia via Kuala Lumpur International Airport and returned to Bangkok on August 7th 2018 at 19:20 Malaysian time using Thai Airlines. When EDDY SINDORO was about to leave Malaysia, he was arrested by the Immigration Officer at Kuala Lumpur International Airport for using a fake passport. Then on August 12th , 2018, the Defendant contacted CHUA CHWEE CHYEE alias JIMMY alias LIE to find out the progress of the legal process in Malaysia. On August 16, 2018, EDDY SINDORO was found guilty and sentenced to a fine of RM 3000.00 (three thousand Malaysian ringgit) or imprisonment for 3 (three) months. For this decision, EDDY SINDORO paid a fine and had to be expelled from Malaysia to Indonesia because he is a citizen.

On August 17th 2018, the Defendant contacted MICHAEL SINDORO asking for the results of EDDY SINDORO's trial in the Malaysian Court and received an answer that EDDY SINDORO was found guilty, therefore he will be sent back to Indonesia after the process at the Malaysian Prosecutor's Office is complete. The defendant then planned that when EDDY SINDORO was returned to Indonesia, he could be flown back to Bangkok without being noticed by Immigration so as to avoid legal action by KPK investigators. The defendant requested DINA SORAYA's assistance to coordinate with airport officials and prepare plane tickets for the Jakarta-Bangkok route so that when EDDY SINDORO, CHUA CHWEE CHYEE alias

JIMMY alias LIE, and MICHAEL SINDORO landed at Soekarno Hatta Airport, they could immediately continue their flights abroad without the inspection process knowing. immigration.

On August 18th 2018, at Restaurant & Café Lot 9 Tangerang, DINA SORAYA asked DWI HENDRO WIBOWO alias BOWO to pick up airplane passengers from Malaysia on behalf of EDDY SINDORO, CHUA CHWEE CHYEE alias JIMMY alias LIE CHUA CHWEE CHYEE alias JIMMY alias LIE, and MICHAEL SINDORO and directly continue the flight abroad without the immigration check process. For this reason, DINA SORAYA will provide a monetary reward of Rp. 250,000,000.00 (two hundred and fifty million rupiah) because EDDY SINDORO is a passenger who was deported by the Malaysian authorities where DWI HENDRO WIBOWO alias BOWO agreed.

On August 20th , 2018 at Jl. Cipaku IV No. 16 Kebayoran Baru, DINA SORAYA, DWI HENDRO WIBOWO alias BOWO and YULIA SHINTAWATI held a meeting to discuss the technical pick-up for EDDY SINDORO, CHUA CHWEE CHYEE alias JIMMY alias LIE, and MICHAEL SINDORO from Malaysia using an AirAsia plane and flying to Bangkok with a Garuda Indonesia plane. Furthermore, DINA SORAYA reported to the Defendant that the airport officer was able to help realize his request. The Defendant then ordered DINA SORAYA to take some money from STEPHEN SINARTO as the Defendant's staff as operational costs, including compensation for the parties who helped him. The defendant handed over an amount of SGD 46,000.00 (forty six thousand Singapore dollars) and Rp. 50,000.00 (fifty thousand) to STEPHEN SINARTO, then on 24 August 2018 the money was taken by DINA SORAYA through NUR ROHMAN at the Defendant's office in Sahid Sudirman Center 55th floor Jl. Jendral Sudirman No. 86 Central Jakarta.

On August 28th 2018, the Malaysian Immigration Office issued an order of removal against EDDY SINDORO. EDDY SINDORO will return to Indonesia on August 29, 2018 using AirAsia flight AK 380 at 06.55 Malaysian time accompanied by CHUA CHWEE CHYEE alias JIMMY alias LIE and MICHAEL SINDORO.

Knowing this, the Defendant immediately ordered DINA SORAYA to buy tickets for the Jakarta-Bangkok route on August 29, 2019 at 09.48 WIB.

On August 29th, 2018 At 08.00 WIB at the same time as the AirAsia AK 380 plane landed at Soekarno Hatta Airport, DWI HENDRO WIBOWO alias BOWO ordered M. RIDWAN as Garuda Customer Service Staff to print boarding passes on behalf of EDDY SINDORO, CHUA CHWEE CHYEE alias JIMMY alias LIE, and MICHAEL SINDORO in their absence for identity check. DWI HENDRO WIBOWO alias BOWO also ordered ANDI SOFYAR as the Soekarno Hatta International Airport Immigration officer to stand by in the Immigration area of Terminal 3 and check the status of prevention/banning of EDDY SINDORO. DWI HENDRO WIBOWO alias BOWO and YULIA SHINTAWATI picked up EDDY SINDORO, CHUA CHWEE CHYEE alias JIMMY alias LIE, and MICHAEL SINDORO in front of the plane using an AirAsia car directly to Gate U8 terminal 3 without conducting an immigration check, where M. RIDWAN had prepared their boarding pass. At 09.23 WIB, EDDY SINDORO and CHUA CHWEE CHYEE alias JIMMY alias LIE flew to Bangkok, but MICHAEL SINDORO canceled their flight.

During departure, EDDY SINDORO and CHUA CHWEE CHYEE alias JIMMY alias LIE, from the waiting room to the takeoff plane, were reported by DINA SORAYA to the Defendant through photos and videos, in addition the Defendant informed DEBORAH MAILOOL (EDDY SINDORO's wife), that EDDY SINDORO had abroad. DWI HENDRO WIBOWO alias BOWO gave some of the Defendant's money to those who had helped him, namely to YULIA SHINTAWATI in the amount of Rp. 20,000,000.00 (twenty million rupiah), M. RIDWAN in the amount of Rp. 500,000.00 (five hundred thousand rupiah) and 1 (one) mobile phone brand Samsung type A6, ANDI SOFYAR in the amount of IDR 30,000,000.00 (thirty million rupiah) and 1 (one) cellphone brand Samsung type A6, and DAVID YOOSUA RUDINGAN in the amount of IDR 500,000.00 (five hundred thousand rupiahs) ..

On October 1, 2018, the Defendant was arrested by KPK investigators. On October 12 2018, Eddy Sindoro surrendered to KPK investigators.

5. Prosecutor's Claim

The convict Lucas was indicted by the Public Prosecutor on a single charge as regulated and threatened with criminality in Article 21 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 Paragraph (1) 1st of the Criminal Code;

Whereas the Public Prosecutor's Criminal Prosecution at the Corruption Eradication Commission dated March 6, 2019 demanded, in essence, among other things:

- a. a. To declare that the Defendant LUCAS has been legally and convincingly proven guilty according to the law jointly committing a criminal act of corruption as regulated and punishable by a criminal offense in "Article 21 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 Paragraph (1) 1st of the Criminal Code", as stated in the indictment;
- b. Sentencing the Defendant LUCAS in the form of imprisonment for 12 (twelve) years and a fine in the amount of Rp. 600,000,000.00 (six hundred million rupiah) provided that if the fine is not paid, it is replaced with imprisonment for 6 (six) months;
- c. Determine the length of detention is deducted entirely from the prison sentence imposed;
- d. Order the Defendant to remain in custody;
- e. State the evidence in the form of:
 - 1) Evidence of Serial Number 05 to Serial Number 10, Serial Number 16, 19a, 19b, 19c, 19d, 19e, 20-26 27, 27a, 27b, 27c, 27d, 27f, 28, 40, 41, 42, 43, 50-54, 82-87; All returned from where the object was confiscated;;
 - 2) Evidence of Serial Number 55 to Serial Number 75; All confiscated for the State;
 - 3) Evidence from Serial Numbers 01 to Serial Numbers 49, 76-81;

- 4) All of them are still attached to the case file;
- 5) The complete evidence is as stated in the Public Prosecutor's Claim at the Corruption Eradication Commission; To stipulate that the Defendant pays court fees in the amount of Rp. 10,000.00 (ten thousand rupiah);

6. Judge's Consideration

Decision on Judicial Review Number 78 PK/Pid.Sus/2021 dated April 7, 2021, the full text of which is as follows :

- Granted the request for judicial review from the Petitioner for Judicial Review or The Criminal Lucas ;
- Canceled the Supreme Court Decision Number 3328 K/Pid.Sus/2019 dated December 16, 2019;

JUDGING BACK:

- 1) To declare that Lucas convict has not been legally and convincingly proven guilty of committing a crime as charged in the Single Indictment of the Public Prosecutor;
- 2) Release the convict therefore from all the charges of the Public Prosecutor (vrijspraak);
- 3) Restoring the rights of the convict in his ability, position and dignity;
- 4) Ordering the convict to be released immediately;
- 5) Ordered the KPK Public Prosecutor to unblock the account belonging to Defendant Lucas as stated below:
 - a. Panin Bank Savings Account, account number 1002939798 (rupiah);
 - b. Panin Bank Savings Account account number 1004117897 (Singapore Dollar);
 - c. Panin Bank Savings Account account number 10041178 (DollarAmerica);
 - d. Investor Fund Account (Ciptadana Securites) Bank Nobu account number 10119001678 (rupiah);
 - e. CIMB Niaga Bank Savings Account account number 700557992100 (rupiah);
 - f. Investor Fund Account (Ciptadana Securites) Bank CIMB Niaga account

number 1460166483129 (rupiah);

- g. BJB Bank Savings Account, account number 0059124455100 (rupiah) ;
- h. BCA Bank Savings Account, account number 5460318230 (rupiah)
- i. Investor Fund Account (Samuel Sekuritas) Bank BCA, account number 4583184492 (rupiah);
- j. Bank Mandiri Savings Account, account number 1020006182965 (rupiah);
- k. Investor Fund Account (Indopremier) Bank Mandiri, account number 1040004282922 (rupiah);
- l. Investor Fund Account (Anugrah Securindo) Bank Mandiri, account number 1040004301656 (rupiah);
- m. Investor Fund Account (Buana Capital) Bank Mandiri, account number 1040004318734 (rupiah);
- n. Investor Fund Account (Kresna) Bank BCA, account number 1040004348236 (rupiah);

6) Charges case fees at all levels of the judiciary and on judicial review to the State;

E. Conclusions

1. That the application of Obstruction of Justice in a broad sense can be applied to people who provide advice, ideas, advice, opinions, considerations or suggestions to perpetrators of criminal acts who are undergoing the process of investigation, prosecution or trial, so that the person concerned avoids or fails to undergo legal proceedings. This can be categorized as an act of obstruction of justice. Meanwhile, the act of an advocate should be suspected of committing a criminal act of obstruction of justice if the act committed is not related to his professional duties and is not based on good faith. Good faith as referred to in Article 16 is carrying out professional duties for the sake of upholding justice based on the law to defend the interests of his clients.
2. The judge's legal considerations in deciding the Obstruction Of Justice case at the Judicial Review Panel which acquitted the convict of all charges. This decision is considered inappropriate, because it eliminates the philosophical essence of the establishment of Article 21 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning

Amendments to Law Number 31 of 1999 and the code of ethics for advocates . Including the exclusion of juridical aspects related to legal facts that show the role of the convict in the occurrence of Obstruction Of Justice and the profession of the Defendant as an Advocate should be a burdensome basis, and the sociological aspect, namely the exclusion of the objectives and benefits of law in preventing Obstruction Of Justice.

F. Recommendation.

1. Whereas in the application of Article 21 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, careful attention must be paid to the elements that have been formulated in that article, which determines whether an offense can be categorized as an act of obstructing the investigation in a case. corruption or not. Because the article is a fairly crucial article, so that in its application, care must be taken so that the purpose of law enforcement for the criminal act of corruption continues as it should be
2. That for legislators, in drafting laws or updating laws to improve their performance by making authentic interpretations in each formulation of articles so as not to cause multiple interpretations.

Referencer / Bibliography :

Arief Sidharta, *Revitasi Pemikiran Prof. Soediman Kartohadiprodjo tentang Pancasila Berkaitan dengan Pengembangan Sistem Hukum Nasional, Bandung*, (Orasi Ilmiah disampaikan pada Dies Natalis ke-51), FH. UNPAR, 2009

Bambang Sutiyoso, *Metode Penemuan Hukum*, Yogyakarta, UII Press, 2019

Bernard Arief Sidharta, *Refleksi Tentang Struktur Ilmu Hukum, Bandung, Mandar Maju, 1999*

Imam Anshori Saleh, *Konsep Pengawasan Kehakiman, Malang*, Setara Press, 2014

K Wantjik Saleh, *Kehakiman dan Keadilan*, Jakarta, Ghalia Indonesia, 1977

M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan*, Jakarta, Sinar grafika, 2009

Mardjono Reksodiputro, *Sistem Peradilan Pidana Indonesia (Melihat Kepada Kejahatan dan Penegakan Hukum Dalam Batas-Batas Toleransi)*, Fakultas Hukum Universitas Indonesia, 1993

Mezak, M. H. (2006). Jenis, Metode dan Pendekatan Dalam Penelitian Hukum

Moh Mahfud M.D, *Politik Hukum Untuk Independensi Lembaga Peradilan, Yogyakarta, (Jurnal Hukum)*, Nomor 9 Vol.6, UII, 997

Notohamidjojo, *Demi Keadilan dan Kemanusiaan*, Jakarta, BPK Gunung Mulia, 1995

Parjaman, T., & Akhmad, D. (2019). Pendekatan Penelitian Kombinasi: Sebagai “Jalan Tengah” Atas Dikotomi Kuantitatif-Kualitatif. *Moderat: Jurnal Ilmiah Ilmu Pemerintahan*, 5(4), 530-548.

Philip Nonet & Philip Selznik, *Law and Society in Transition Toward Responsive Law*, Harper and Row, New York, 1978

Romli Atmasasmita, *Sistem Peradilan Pidana (Criminal Justice System) Perspektif Eksistensialisme Dan Abolisionalisme*, Jakarta, Penerbit Bina Cipta, 1996

Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban*, Jakarta, UKI Press, 2006,

-----, *Lapisan-lapisan Dalam Studi Hukum*, Malang, Bayumedia Publishing, 2009

-----, *Biarkan Hukum Mengalir*, Jakarta, Penerbit Buku Kompas, 2007

Solehodin, *Menakar Hak Imunitas Profesi Advokat*, *Rechtldee Jurnal Hukum*, Vol. 10 Nomor 1, Juni 2015. Fakultas Hukum Widyagama, Malang, 2015

Tolib Effendi, *Sistem Peradilan Pidana: Perbandingan Komponen dan Proses Sistem Peradilan Pidana di Beberapa Negara*, Yogyakarta, Pustaka Yustisia, 2013, hlm. 145

Undang-Undang Nomor 48 Tahun 2009 Pasal 1 ayat (1) tentang Kekuasaan Kehakiman