

JURIDICAL ANALYSIS ON GROSS VIOLATION OF HUMAN RIGHTS IN THE CASE OF PREMEDITATED MURDER OF BRIGADIER JOSUA HUTABARAT

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ABSTRACT

Problems in Human Rights Court in enforcing the laws with human rights violations and gross human rights violations, the Human Rights Court has been established in the general judicial environment. Gross violations of human rights cases that recently occurred where unscrupulous members of the National Police committed acts of obstruction of justice in the case of the premeditated murder of Brigadier General Josua Hutabarat. Human rights violations by unscrupulous police officers in carrying out their duties as law enforcers may occur and must be enforced. The purpose of this study is to determine the gross violations of human rights and obstruction of justice by members of the National Police in the Hutabarat premeditated murder case. The research method used was a normative juridical approach, with the type of data used secondary data sourced from primary legal materials, such as the Criminal Code, the Corruption Eradication Law, and secondary legal materials. The result of this study shows that in the recent case of premeditated murder between members of the police, there are human rights violations by the National Human Rights Commission in the form of obstruction of justice. Related to the act of preventing, obstructing, and thwarting must be done intentionally. Analytically, the acts of "preventing" and "thwarting" can be categorized as deliberate, intending that the perpetrator wants the prohibited consequences to occur in the form of non-implementation of prosecution against the perpetrators of criminal acts.

Keywords: aggravated murder, juridical review, obstruction of justice, police, serious offenses, police.

INTRODUCTION

The development of human rights in Indonesia has been explicitly stated in the 1945 Constitution, but not transparently. After I to IV amendments of the 1945 Constitution, provisions on human rights are listed in Articles 28 A to 28 J. Actually, the 1950 Constitution, which was in force from 1949-1950, contained more complete articles on human rights than the 1945 Constitution.¹ However, the Constituent Assembly formed through the 1955 general election was dissolved based on Presidential Decree Number 150 of 1959, dated July 5, 1959, which automatically caused us to return to the 1945 Constitution.² There are several articles in the 1945 Constitution that relate to human rights and can be summarized into at least 15 human rights principles, the most important of which are: (1) Preamble: Right to self-determination, (2) Article 26: Right to citizenship, (3) Article 27: Right to equality before the law, (4) Article 27: Right to work, (5) Article 27: Right to a decent life, (6) Article 29: Right to religion, (7) Article 30: Right to defend the country, (8) Article 31: Right to education, (9) Article 33: Right

¹Grace and Bawole, 'TINJAUAN YURIDIS TERHADAP PELANGGARAN HAM YANG DILAKUKAN OLEH PENEGAK HUKUM', *Jurnal Hukum UNSRAT*, 2017, 1-18.

²Haris Budiman, 'PELANGGARAN HAK ASASI MANUSIA DALAM KEBIJAKAN DAERAH DI BIDANG TATA RUANG DI KABUPATEN KUNINGAN', *UNIFIKASI: Jurnal Ilmu Hukum*, 2017 <<https://doi.org/10.25134/unifikasi.v4i1.475>>.

to social welfare, (10) Article 34: The right to social security, (11) Articles 24 and 25: The right to freedom and independence of the judiciary, (12) Article 32: The right to maintain cultural traditions, (13) Article 31: The right to maintain local languages.³

In addition, it also regulates the issue of human rights courts to try human rights violations and serious human rights violations, therefore a human rights court was established in the general judicial environment in Article 104.⁴ Law No. 26/2000 on Human Rights Courts; The Law stipulates provisions on the types of gross human rights violations, namely the crime of genocide and crimes against humanity, in Articles 7 through 9.⁵ The procedural law of the Human Rights Court is regulated from Article 10 to Article 33, which regulates the manner of arrest, detention, investigation, prosecution, and trial.

As in the case that occurred this year, 2022, where unscrupulous members of the National Police committed acts of obstruction of justice (efforts to interfere the legal process) in the case of the premeditated murder of Brigadier Josua Hutabarat. This is explained in National Committee of Human Rights press statement Number: 030/HM.0.0/IX/2022 based on the facts found, there are actions that are suspected of constituting obstruction of justice in the shooting incident of Brigadier J. These actions include: 1) Deliberately hiding and/or eliminating evidence before or after the legal process. 2) The acts of obstruction of justice have implications for the fulfillment of access to justice and equality before the law, which are constitutional rights as guaranteed in national and international law.⁶ Police spokesperson Inspector General Dedi Prasetyo explained “*FS previously underwent examination related to the criminal offense of obstructing investigation. This is because investigators have just finished the ethical violation case of Inspector General Sambo and the premeditated murder case of Brigadier J.*”⁷ Not only FS but there are several other unscrupulous members who commit acts of obstruction of justice according to Dedi in.⁸ Info from Dir Siber there are additions, up to tonight 7 people have been determined. Inspector General FS, Brigadier General HK, Kompol ANP, AKBP AR, Kompol BW, Kompol CP and AKP IW. The six suspects are suspected of taking any action that results in disruption of the electronic system and or results in the electronic system not working as it should and or in any way changing, adding, or reducing. Obstruction of justice is also listed in Law Number 31 Year 1999 Article 21 on the Eradication of Corruption, as well as in the Criminal Code (KUHP) Article 221.⁹ *Obstruction of justice* in the view of human rights can have a broad meaning in the case of the murder of Brigadier J. This includes the destruction of the crime scene and the removal of evidence.¹⁰

The term obstruction of justice is a legal term originating from Anglo-Saxon literature, which in Indonesian criminal law is often translated as “the criminal act of obstructing

³Kunti Widayati, ‘PELAKSANAAN PEMENUHAN HAK KORBAN PELANGGARAN HAK ASASI MANUSIA GENOSIDA BERDASARKAN UNDANG-UNDANG NO.26 TAHUN 2000’, *LEGALITAS*, 2017.

⁴Bambang Heri Supriyanto., ‘Penegakan Mengenai HAM Menurut Hukum Positif Di Indonesia.’, *Jurnal Al Azhar Indonesia*, 2014.

⁵Ridwan Arifin and Lilis Eka Lestari, ‘PENEGAKAN DAN PERLINDUNGAN HAK ASASI MANUSIA DI INDONESIA DALAM KONTEKS IMPLEMENTASI SILA KEMANUSIAAN YANG ADIL DAN BERADAB’, *Jurnal Komunikasi Hukum (JKH)*, 2019 <<https://doi.org/10.23887/jkh.v5i2.16497>>.

⁶KOMNASHAM, ‘LAPORAN HASIL PEMANTAUAN DAN PENYELIDIKAN KOMNAS HAM ATAS PERISTIWA KEMATIAN BRIGADIR JOSHUA DI KEDIAMAN EKS KADIV PROPAM POLRI I.’, in *Keterangan Pers* (Komnas Ham Nomor: 030/HM.0.0/IX/2022, 2022), pp. 1–6.

⁷J. Mangihot, ‘Akhirnya Ferdy Sambo Ditetapkan Tersangka Obstruction of Justice, Total Ada 7 Perwira Polri.’, *Kompas TV*, 2022.

⁸Mangihot.

⁹Johan Dwi Junianto, ‘Obstruction of Justice Dalam Pasal 21 Undang-Undang No. 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi’, *Media Iuris*, 2020 <<https://doi.org/10.20473/mi.v2i3.15208>>.

¹⁰M. C. Anam, ‘Komnas HAM Temukan Indikasi Kuat Adanya “Obstruction of Justice” Di Kasus Pembunuhan Brigadir J.’, *Kompas Nasional*, 2022.

the legal process”.¹¹ According to Black’s Law Dictionary, obstruction of justice has the following meanings: “*The noncompliance with the legal system by interfering with (1) the law administration or procedures, (2) not fully disclosing information or falsifying statements, and (3) inflicting damage on an officer, juror or witness.*”.¹²

Human rights are regulated in Law No. 2 of 2002 concerning the Indonesian National Police Article 4, the Indonesian National Police aims to realize domestic security which includes maintaining security and public order, upholding the law, providing protection and services to the community, and fostering public peace by upholding human rights.¹³ Article 14 Paragraph (1) states: “In carrying out the main tasks as referred to in Article 13 letter I: “The Indonesian National Police is in charged in protecting the safety of body and soul, public property and the environment from disturbances of order and/or disasters including providing assistance and help by upholding human rights.” Article 16 Paragraph (2): “Other actions as referred to in Paragraph (1) letter I are investigative actions that are carried out if they fulfill the conditions referred to in letter E, namely: “Respect for Human Rights.” Article 19 Paragraph (1): “In carrying out their duties and authorities, Indonesian National Police Officers shall always act based on the norms of rights and heed the norms of religion, decency, morality, and uphold human rights.”¹⁴

Human rights violations by police officers in carrying out their duties as law enforcers may occur and must be enforced. As long as the implementation of enforcement duties is based on legal provisions, the nature of human rights violations disappears, for example, the duties of the Police in arresting, detaining, handcuffing, and so on.¹⁵ All of them are carried out based on their authority as law enforcers. The existence of these cases certainly makes a difference in the implementation of law enforcement in Indonesia, considering that it is rare for someone to be presented in front of a trial with suspicion or charged in violation the provisions regarding acts of obstructing the legal process, even though it is clearly a form of criminal offense that can damage law enforcement efforts.

Obstruction of justice as a criminal offense

The act of obstruction of justice can also be defined as an act intended to ‘obstruct the legal process’ or a ‘criminal act of obstructing the legal process’.¹⁶ In accordance with its term as a criminal offense or criminal act, surely the act might have met the conditions thus actions are carried out are included in a criminal offense.¹⁷ In the teaching of criminal law, a criminal offense is formulated based on the elements that exist so that it can be said to be a criminal offense, Simons in explaining the formulation of the offense, namely as: “*Een Strafbbaar gestelde onrechtmatige (wederrechtelijke), met schuld in verband staande handeling vaneen toerekeningsvatbaar person*”. The formulation, if divided based on the elements that

¹¹Difia Setyo Mayrachelia and Irma Cahyaningtyas, ‘Karakteristik Perbuatan Advokat Yang Termasuk Tindak Pidana Obstruction of Justice Berdasarkan Ketentuan Pidana’, *Ejournal2.Undip.Ac.Id*, 4.1 (2022), 121–32.

¹²Asrullah Dimas, Muhammad Hasrul, and Hijrah Adhyanti Mirzana, ‘PERLINDUNGAN HUKUM TERHADAP ADVOKAT ATAS INTERPRETASI OBSTRUCTION OF JUSTICE’, *Jurnal Hukum Dan Kenotariatan*, 2021 <<https://doi.org/10.33474/hukeno.v5i2.10901>>.

¹³Ni Ketut Sari Adnyani, ‘Kewenangan Diskresi Kepolisian Republik Indonesia Dalam Penegakan Hukum Pidana’, *Jurnal Ilmiah Ilmu Sosial*, 2021 <<https://doi.org/10.23887/jiis.v7i2.37389>>.

¹⁴Arief Ryzki Wicaksana, ‘Kewenangan Tembak Di Tempat Oleh Aparat Kepolisian Terhadap Pelaku Kejahatan’, *Jurnal Sosiologi Dialektika*, 2020 <<https://doi.org/10.20473/jsd.v13i2.2018.114-121>>.

¹⁵Muhammad Nasir Said, Faissal Malik, and Rusdin Alauddin, ‘Efektivitas Kinerja Penyidik Profesi Dan Pengamanan (Propam) Dalam Upaya Penegakan Disiplin Polri Di Polda Maluku Utara’, *Syntax Literate ; Jurnal Ilmiah Indonesia*, 2022 <<https://doi.org/10.36418/syntax-literate.v7i2.6288>>.

¹⁶Junianto.

¹⁷Marsudi Utoyo and Kinaria Afriani, ‘SENGAJA Dan TIDAK SENGAJA Dalam Hukum Pidana Indonesia’, *Lex Librum : Jurnal Ilmu Hukum*, 2020 <<https://doi.org/10.46839/ljih.v0i0.298>>. lazim disebut sebagai kemampuan bertanggung jawab, sedangkan hubungan batin antara si pembuat dan perbuatannya itu merupakan kesengajaan, kealpaan, serta alasan pemaa. Dengan demikian, untuk menentukan adanya kesalahan, dalam pidana subjek hukum harus memenuhi beberapa unsur, antara lain: Adanya kemampuan bertanggung jawab pada si pelaku, Perbuatannya tersebut berupa kesengajaan (dolus

exist in a criminal offense, Simons' opinion according to Satochid Kertanegara can be divided based on the following elements:¹⁸

1. Punishable acts;
2. Acts committed contrary to law;
3. Actions with fault related to;
4. Acts committed by a person whom can responsible (*toerekeningsvatbaar*).

Based on this opinion, the act of obstruction of justice formulated in Article 21 of Law No. 31 of 1999 Concerning Corruption Eradication, based on the nature of the act, it has fulfilled all the elements of the offense in the formulation of the elements of Article 21 of Law No. 31 of 1999 Concerning the Eradication of the Crime of Corruption. It regulates the acts categorized as obstruction of justice, which formally is a prohibited act and contains criminal sanctions in it.¹⁹ Based on the nature of the act of obstruction of justice, which is intended to hamper or stop the legal process against a perpetrator of a criminal offense, it is certain that the act committed is an act during the judicial process which includes investigation, inquiry, prosecution and trial examination, which is carried out by authorized officials.

In this case, the perpetrator knew that the official whom carried out the process is an official who has the authority, or maybe if the perpetrator did not know correctly about the official who exercised the authority, the perpetrator was responsible for the non-fulfillment of the request or order, this is as in the Hoge Raad Arrest dated May 23, 1932, N.J. 1932 page 1209 W. 12503 which states:²⁰

"Voldoende is dat dader moet begrijpen, dat hij die de vordering doet, een ambteenaar is, bevoegd tot het doen der vordering. Bij een naat de uiterlijke omstandigheden bevoegd optreden, komt het risico, of de vorderende persoon interdaad bevoegd is, voor rekening van dengene, die de vordering trotseert."

It means:

"It is sufficient if the offender must understand that the person making the request is a public servant authorized to make such a request. If on the basis of external circumstances, there is any doubt as to whether or not the person making the request is in fact a person authorized to make such a request, the consequences shall be borne by the person who does not comply with the request."

(H.R. March 11, 1895, W. 6637; October 28, 1895, W. 6734).

Based on this jurisprudence, the existence of deliberation or intention of the actor or perpetrator in the offense of obstruction of justice is realized from the knowledge of the perpetrator that the act committed has a causal relationship between the act and the official order of the authorized official to conduct an examination, confiscation or detention in relation to the investigation or prosecution of the main case at hand.²¹ Based on its nature as a formal offense, the manifestation of this intention is the act of preparation to commit an act of obstructing legal proceedings, or an act that actually obstructs an official order being carried out by an authorized official, so that a person with an official order is ordered to do something is considered to have known that it is part of the legal process that is being carried out.

Citing the opinion of Ellen Podgor, in Shinta Agustina, who in her opinion states as follows:

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¹⁸Putri and Ida Fitria Suryani, 'Tanggung Jawab Pidana Anak Pelaku Kekerasan Seksual Di Program Studi Ilmu Hukum Universitas 17 Agustus 1945 Surabaya.' (Diss. Untag Surabaya, 2017).

¹⁹Junianto.

²⁰Junianto.

²¹N Nawir, 'Analisis Hukum Acara Pidana Islam Terhadap Fungsi Dewan Pengawas Kpk Dalam Pemberantasan Tindak Pidana Korupsi: Analisis Pasal 21 Undang-Undang Nomor ...' (Universitas Islam Negeri Sunan Ampel, 2021).

²²Junianto.

“For prosecutors, the crime of obstruction of justice is an offense that is relatively easy to prove. This is in part because the statute does not require an actual obstruction. Under the omnibus clause of §1503, obstruction of justice merely requires an “endeavor” to obstruct justice”.

Based on the description above, it is clear that in the criminal act of obstructing the legal process, apart from being reviewed from the actions that have contained the wrongdoing of the perpetrator which must be considered as intentional, and the actions have clearly contradicted the applicable laws and regulations, then the act can be said to be a criminal act / criminal offense.

Based on the introduction above, the problem formulations to be discussed are: How is the juridical review of gross human rights violations of obstruction of justice by members of the police in the case of the premeditated murder of Brigadier Josua?

METHOD

The research method in this writing uses a normative juridical approach, normative juridical legal research includes research on rules, principles, theories, history, comparisons, and legal systematics.²³ The type of data uses secondary data sourced from primary legal materials, such as the Criminal Code, and the Corruption Eradication Law, and examines secondary legal materials that can provide an explanation of primary legal materials, such as books, journals, papers, and other scientific works.

The author conducts an inventory of data that is in accordance with the research needs, then the data was verified and validated to be used as an empirical justification for the legal problem being studied. In addition, it examined tertiary legal materials that can provide guidance and explanation of primary and secondary legal materials such as legal dictionaries and magazines. The method of analysis used is qualitative which produces analytical descriptive data because it does not use formulas and numbers using the deductive thinking method.

ANALYSIS AND DISCUSSION

Obstruction of Justice in the Brigadier J Case in National Committee of Human Rights Press Release Number: 030/HM.0.0/IX/2022

In the death of Brigadier J, Obstruction of Justice has occurred, including the following:

1. Creating a scenario
 - a. Consolidating witnesses
 - 1) Uniformize witness testimonies, both regarding the background of the incident, the scene of the crime, and the FS alibi at the crime scene;
 - 2) Instructing witness ADC to learn about the use of force in police actions, and the use of weapons;
 - 3) Deleting/removing something detrimental.
 - b. Consolidating the crime scene (TKP)
 - 1) Changing the location of the crime scene of the alleged sexual assault;

²³Suharyo Suharyo, ‘Penegakan Keamanan Maritim Dalam NKRI Dan Problematikanya’, *Jurnal Penelitian Hukum De Jure*, 2019 <<https://doi.org/10.30641/dejure.2019.v19.285-302>>.

- 2) Any acts of destruction, taking, and/or removal of CCTV and/or decoders at the crime scene and around the crime scene;
- 3) Actions in handling crime scenes that are not in accordance with procedures.
- 4) The omission of parties who do not have the authority to enter the crime scene;
- 5) An attempt to sterilize the area of the official residence of the Head of Division Profession and Security of the Police from the presence of journalists.
- c. Creating a narrative
 - 1) That the incident occurred in Duren Tiga and was motivated by the actions of Brigadier J who allegedly committed sexual harassment while pointing a firearm
 - 2) towards Mrs. PC, and shot Second Bhayangkara RE;
 - 3) That two reports were made to the South Jakarta Metro Police regarding the alleged attempted murder of Second Bhayangkara RE, and the alleged criminal act of sexual harassment against Mrs. PC;
 - 4) A video was made to match the scenario.
- d. Using the position influence
 - 1) Police officers are instructed to follow the scenario;
 - 2) Preparation of two reports at South Jakarta Metro Police Station;
 - 3) The Police Investigation Report process for the two reports was not carried out according to procedure, it was only a formality and only needed to be signed;
 - 4) The initial examination of Second Bhayangkara RE, Chief Police Brigadier RR, and Mr. KM was not conducted according to procedure;
 - 5) Unauthorized members of the Police entered the crime scene;
 - 6) Request to the Chief of Bhayangkara S. Sukanto Hospital to prepare an autopsy.
2. Eliminating/Damaging evidence
 - a. There was an attempt to eliminate and/or replace the Mobile Phone evidence by the owner before being handed over to the Investigator;
 - b. The act of deleting communication traces in the form of messages, phone calls, and contact data;
 - c. Deletion of crime scene photos;
 - d. Any act of destruction, taking, and/or removal of CCTV and/or decoders at the crime scene and its surroundings;
 - e. The cutting/removal of CCTV videos that depict the complete sequence of events before, during, and after the incident;
 - f. An order to clean up the crime scene.

Juridical Review on Obstruction of Justice by members of the National Police as Gross Violation of Human Rights

Many human rights violations that have occurred recently in Indonesia have also been committed by law enforcers. In every condition that occurs in Indonesia, law enforcers must act in accordance with applicable legal channels. In reality, as law enforcement officers, they sometimes do not respect, appreciate, and protect human rights.²⁴ These actions are always

²⁴Andreas Gregorius Pandapotan Simamora and Georgius Ivan Budihardja, 'Prinsip Penegakan Hukum Dan Hak Asasi Manusia: Studi Kasus Penembakan Militer Terhadap Masyarakat Nduga Papua', *Jurist-Diction*, 2021 <<https://doi.org/10.24054/jurist-diction.v7i2.12345>>

considered serious offenses and need to be dealt with seriously as well. The enforcement of the rule of law based on the values of truth and justice and respect for human rights has not yet been realized in real terms.²⁵ Low understanding and respect for human rights lead to legal discrimination, lack of legal transparency, and inconsistent application of the law.

The law, which is expected to play a role in overcoming various problems and as a guide to social life, has not been able to guarantee a sense of justice and truth.²⁶ This condition is partly due to the fact that many legal products are no longer in accordance with the development of needs and do not reflect the aspirations of the community. In addition, the low level of legal awareness and compliance by the community and government officials has also resulted in many violations of the law.

The siding of law enforcers with power, the low moral integrity and professionalism of law enforcers in legal practices in the judiciary, and the intervention of parties in the decision-making of judges in the judicial process reflect the low quality of human resources of law enforcers. Thus, the public has lesser confidence in the enforcement of formal legal channels and chooses the path that actually violates the law, namely taking the law into their own hands or street justice.²⁷ Legal information services to the public and legal institutions are still low, this is due to the non-optimal utilization of the legal documentation and information network (JDI) which can support the dissemination of information quickly, accurately, precisely, and transparently.

Protecting criminals and obstructing due process is a gross violation of human rights. One of the most common forms of protecting criminals and corruption is accepting bribes while pretending ignorance. Many law enforcers are involved in this illegal activity. Law enforcers are supposed to uphold the law by obeying the applicable laws.²⁸ They must also respect and protect the people's rights. It is important to realize that protecting crimes and corruption is a violation of human rights, a crime, that damages public trust, creates adverse impacts and bad examples for society, and damages the value system of society. Investigation of human rights violations by law enforcement is an action or activity to seek truth, information, or knowledge about human rights violations committed by law enforcement.

If the act of human rights violation is a personal decision of the law enforcer then the individual is responsible, but if it is proven that the supervisor was aware of the act but did not take preventive measures then the supervisor is also responsible.²⁹ If human rights violations are committed on the orders of superiors, then the person responsible is the superior of the law enforcer and the individual is also responsible after being tested whether his actions are in accordance with the principles of legality, necessity, and proportionality with the actions of law enforcers who violate human rights. The Code of Conduct for Law Enforcement Officers is one of the provisions that regulate the actions of law enforcement officers that must be in accordance with careful monitoring by the public, including direct monitoring of law enforcement agencies carried out by the Review Body, Ministries, Police, Prosecutor's Office,

org/10.20473/jd.v4i2.25750>.

²⁵Bobi Aswandi and Kholis Roisah, 'NEGARA HUKUM DAN DEMOKRASI PANCASILA DALAM KAITANNYA DENGAN HAK ASASI MANUSIA (HAM)', *Jurnal Pembangunan Hukum Indonesia*, 2019 <<https://doi.org/10.14710/jphi.v1i1.128-145>>.

²⁶D A Hakim, 'Hukum Dan Masyarakat Desa: Pasca Berlakunya Undang-Undang Nomor 6 Tahun 2014 Tentang Desa', *Nizham Journal of Islamic Studies*, 2019.

²⁷Wicpto Setiadi, 'PENEGAKAN HUKUM: KONTRIBUSINYA BAGI PENDIDIKAN HUKUM DALAM RANGKA PENGEMBANGAN SUMBER DAYA MANUSIA', *Majalah Hukum Nasional*, 2018 <<https://doi.org/10.33331/mhn.v48i2.99>>.

²⁸Laurensius Arliman. S, 'MEWUJUDKAN PENEGAKAN HUKUM YANG BAIK DI NEGARA HUKUM INDONESIA', *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi*, 2019 <<https://doi.org/10.28932/di.v1i1.1831>>.

²⁹Yenny Chandrawaty, 'PENEGAKAN HUKUM DAN TANGGUNG JAWAB NEGARA TERHADAP PEREMPUAN KORBAN HUMAN TRAFFICKING SEBAGAI WUJUD PERLINDUNGAN HAK ASASI MANUSIA', *Jurnal Legislasi Indonesia*, 2020 <<https://doi.org/10.54629/jli.v17i4.755>>.

Courts, Citizenship Committee, and a combination of elements of these agencies. Article 8 of the Code of Conduct stipulates that: “Law enforcement officers shall respect the law and prevent and oppose all forms of violations.”³⁰

In the recent case of premeditated murder between members of the police, there are findings of human rights violations by the National Human Rights Commission in the form of efforts to obstruct the legal/judicial process of Obstruction of Justice. The act of Obstruction of Justice in addition to preventing, hindering, and thwarting also contains the phrase “directly” and “indirectly”. The word “directly” needs to be interpreted that the act is carried out by the perpetrator himself in the sense of the perpetrator of the criminal offense, while the word “indirectly” means that the act is carried out through an intermediary (participation / *delneming*) by ordering others to obstruct the ongoing criminal justice process.³¹

The act of preventing, obstructing, and thwarting must be done intentionally. Intentionality in criminal law is part of guilt, the intent of the perpetrator has a closer psychological relationship to a prohibited act than negligence. There are two theories that explain intentionality, namely: (1) the theory of will (*wilstheorie*) which explains that intent is the will to realize the elements of the offense in the formulation of the Act; and (2) the theory of knowledge/imagination (*voorstellingtheorie*), meaning that intentionally means imagining the consequences of the action, people cannot will the consequences but can only imagine. This theory focuses on what is known or imagined by the perpetrator.³²

The act of obstructing is more suitable to be categorized as intentionality with awareness of the possibility (*opzet met waarschijnlijkheidsbewuizing*), meaning that the perpetrator deliberately commits the act even though the result or effect of the obstructing act cannot be ascertained, but it is a possibility that it will occur.³³ Obviously, whether or not the perpetrator’s attempt to thwart the judicial process against the perpetrator of corruption is a problem, but there are efforts made deliberately to realize this goal. The category of the act of preventing, obstructing, or thwarting must be clearly addressed to what case with which suspect or defendant because the offense of obstruction of justice is an offense that cannot stand alone or in other words is a follow-up crime (a crime that follows the main crime), so that its appearance is highly dependent on the presence or absence of the main crime. The main criminal offense in this context was corruption. That is why, the occurrence of the offense of obstruction of justice must be clearly aimed at obstructing which corruption case and who the suspect/defendant is.

The form of acts of obstructing the judicial process of corruption is practically divided into two parts, namely: a) Internal (judicial crime). This form of action is carried out by law enforcers within the criminal justice system, including the police, prosecutors, and judges, such as the case of Cirus Sinaga, a former prosecutor in the intelligence section of the Attorney General’s Office. The prosecutor stated that Cirus Sinaga was proven to have committed a criminal offense in the form of obstructing the investigation and prosecution of corruption cases by eliminating proof. b) External (personal/corporate crime). This form is committed by certain parties outside the criminal justice system (external perpetrators), either the direct perpetrators of corruption or other persons with an interest in thwarting the ongoing corruption

³⁰Hari Budiyo, ‘PENEGAKAN HUKUM OLEH POLISI DALAM TINDAK PIDANA KEKERASAN OLEH ANAK YANG BERBASIS KEADILAN DI KABUPATEN SIAK INDRAPURA’, *Populis : Jurnal Sosial Dan Humaniora*, 2018 <<https://doi.org/10.47313/pjsh.v3i2.472>>.

³¹Ade Mahmud, ‘KUALIFIKASI DAN IMPLIKASI MENGHALANGI PROSES PERADILAN TINDAK PIDANA KORUPSI [Qualifications and Implications of the Obstruction of Justice in Corruption Judicial Process]’, *Law Review*, 2021 <<https://doi.org/10.19166/lr.v0i0.3323>>.principles relating to Obstruction of Justice offense. The qualification of the offense of Obstruction of Justice may be limited by the method of grammatical interpretation, which implies the word (a

³²MOH. IKHWAN RAYS, ‘TINJAUAN HUKUM DELIK PEMBUNUHAN, DELIK PENGANIAYAAN YANG MENYEBABKAN KEMATIAN DAN DELIK KEALPAAN MENYEBABKAN KEMATIAN’, *Jurnal Yustisiabel*, 2017.

³³Mahmud.principles relating to Obstruction of Justice offense. The qualification of the offense of Obstruction of Justice may be limited by the method of grammatical interpretation, which implies the word (a

trial process.³⁴ In the case of the murder of Brigadier J, this was a judicial crime because the acts of obstructing the judicial process include creating scenarios, obscuring evidence, using/abusing power, consolidating crime scenes, and creating narratives carried out by law enforcement/investigators on orders from superiors/suspects.

The subject of the offense of Article 21 of the Corruption Eradication Law can be anyone because the meaning of everyone does not point to specific actors such as the Police, Prosecutors, Judges, Advocates, members of the Parliament, the President, Ministers, private employees, and other parties. Prohibited acts and objects are acts of “preventing, obstructing and thwarting”, either directly or indirectly, in the investigation, prosecution, and examination in a court of a suspect, defendant, or witness in a criminal case.³⁵

In principlenormatively, the act of Obstruction of Justice or obstructing the judicial process mentioned above is regulated in Article 221 of the Criminal Code, namely: ³⁶

“ (1) Any person who with deliberate intent hides a person who commits a crime or is prosecuted for a crime or who aids him in order to evade investigation or detention by an officer of the justice or police or by another person who by virtue of statutory provision is continuously or temporarily assigned to police service. (2) Any person who after the commission of a crime and with intent to conceal it or to hinder or obstruct the investigation or prosecution thereof, destroys, removes, hides objects against which or with which the crime has been committed or other traces of the crime, or withdraws them from examination by an official of the justice or police or by another person who by virtue of statutory provision is continuously or temporarily assigned to police service.”

From an analytical perspective, the acts of “preventing” and “thwarting” can be classified as deliberate intentions. In theory, intent as intent (*opzet als oogmerk*) refers to the intention to accomplish a goal. This implies that the perpetrator’s motivation and the consequences of the act are fully realized. In other words, the perpetrator intends for the prohibited consequences to occur in the form of non-prosecution against them for a criminal offense.

CONCLUSION

The above discussion can be formulated as a conclusion that the criminal offense is a murder crime that has planned to kill someone who has been preceded by a murder plan in advance in the criminal offense there must be elements that are fulfilled in advance, namely such as the termination of a will with a time interval and the existence of a certain implementation that has been planned in advance. In the case of Obstruction of Justice this is manifested in the form of actions that eliminate items that have been used in planning the murder, criminal acts that have occurred, and destroy, and damage evidence thus it cannot be used. The obstruction of investigation has been regulated in Article 221 of the Criminal Code and Article 223 of the Criminal Code. Although there are many regulations that serve as guidelines and options for the enforcement of justice, but related to the crime of premeditated murder, especially the perpetrators of Obstruction of Justice have not run optimally. This may occurs because of many elements of obstruction of justice that are still not further examined by law enforcement officials, especially of course the defendants admit that they committed the crime of premeditated murder without intent, only following orders from superiors, so it is rather difficult to immediately convict the defendant as an Obstruction of Justice Although

³⁴Mahmud.principles relating to Obstruction of Justice offense. The qualification of the offense of Obstruction of Justice may be limited by the method of grammatical interpretation, which implies the word (a

³⁵Mahmud.principles relating to Obstruction of Justice offense. The qualification of the offense of Obstruction of Justice may be limited by the method of grammatical interpretation, which implies the word (a

³⁶Dimas, Hasrul, and Mirzana.

the limitation regulations in the Police code of ethics are not clear, it is still necessary to have firmness from the police. However, it is still necessary to have the firmness of criminal sanctions to catch the Police who commit obstruction of justice in the article of premeditated murder.

Acknowledgments

We would like to express our gratitude to several parties because of the assistance and guidance we received. Therefore, on this occasion we from the author would like to thank the author's parents who certainly motivated this writing, Mr. and Mrs. lecturers and staff of the Faculty of Law and parties who cannot be mentioned one by one who have helped in this research.

BIBLIOGRAPHY

- Adnyani, Ni Ketut Sari, 'Kewenangan Diskresi Kepolisian Republik Indonesia Dalam Penegakan Hukum Pidana', *Jurnal Ilmiah Ilmu Sosial*, 2021 <<https://doi.org/10.23887/jiis.v7i2.37389>>
- Anam, M. C., 'Komnas HAM Temukan Indikasi Kuat Adanya "Obstruction of Justice" Di Kasus Pembunuhan Brigadir J.', *Kompas Nasional*, 2022
- Arifin, Ridwan, and Lilis Eka Lestari, 'PENEGAKAN DAN PERLINDUNGAN HAK ASASI MANUSIA DI INDONESIA DALAM KONTEKS IMPLEMENTASI SILA KEMANUSIAAN YANG ADIL DAN BERADAB', *Jurnal Komunikasi Hukum (JKH)*, 2019 <<https://doi.org/10.23887/jkh.v5i2.16497>>
- Arliman. S, Laurensius, 'MEWUJUDKAN PENEGAKAN HUKUM YANG BAIK DI NEGARA HUKUM INDONESIA', *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi*, 2019 <<https://doi.org/10.28932/di.v1i1.1831>>
- Aswandi, Bobi, and Kholis Roisah, 'NEGARA HUKUM DAN DEMOKRASI PANCASILA DALAM KAITANNYA DENGAN HAK ASASI MANUSIA (HAM)', *Jurnal Pembangunan Hukum Indonesia*, 2019 <<https://doi.org/10.14710/jphi.v1i1.128-145>>
- Budiman, Haris, 'PELANGGARAN HAK ASASI MANUSIA DALAM KEBIJAKAN DAERAH DIBIDANG TATARUANG DI KABUPATEN KUNINGAN', *UNIFIKASI : Jurnal Ilmu Hukum*, 2017 <<https://doi.org/10.25134/unifikasi.v4i1.475>>
- Budiyanto, Hari, 'PENEGAKAN HUKUM OLEH POLISI DALAM TINDAK PIDANA KEKERASAN OLEH ANAK YANG BERBASIS KEADILAN DI KABUPATEN SIAK INDRAPURA', *Populis : Jurnal Sosial Dan Humaniora*, 2018 <<https://doi.org/10.47313/pjsh.v3i2.472>>
- Chandrawaty, Yenny, 'PENEGAKAN HUKUM DAN TANGGUNG JAWAB NEGARA TERHADAP PEREMPUAN KORBAN HUMAN TRAFFICKING SEBAGAI WUJUD PERLINDUNGAN HAK ASASI MANUSIA', *Jurnal Legislasi Indonesia*, 2020 <<https://doi.org/10.54629/jli.v17i4.755>>
- Dimas, Asrullah, Muhammad Hasrul, and Hijrah Adhyanti Mirzana, 'PERLINDUNGAN HUKUM TERHADAP ADVOKAT ATAS INTERPRETASI OBSTRUCTION OF JUSTICE', *Jurnal Hukum Dan Kenotariatan*, 2021 <<https://doi.org/10.33474/hukeno.v5i2.10901>>
- Grace, and Bawole, 'TINJAUAN YURIDIS TERHADAP PELANGGARAN HAM YANG

- DILAKUKAN OLEH PENEGAK HUKUM', *Jurnal Hukum UNSRAT*, 2017, 1–18
- Hakim, D A, 'Hukum Dan Masyarakat Desa: Pasca Berlakunya Undang-Undang Nomor 6 Tahun 2014 Tentang Desa', *Nizham Journal of Islamic Studies*, 2019
- Junianto, Johan Dwi, 'Obstruction of Justice Dalam Pasal 21 Undang-Undang No. 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi', *Media Iuris*, 2020 <<https://doi.org/10.20473/mi.v2i3.15208>>
- KOMNASHAM, 'LAPORAN HASIL PEMANTAUAN DAN PENYELIDIKAN KOMNAS HAM ATAS PERISTIWA KEMATIAN BRIGADIR JOSHUA DI KEDIAMAN EKS KADIV PROPAM POLRI I.', in *Keterangan Pers* (Komnas Ham Nomor: 030/HM.0.0/IX/2022, 2022), pp. 1–6
- Mahmud, Ade, 'KUALIFIKASI DAN IMPLIKASI MENGHALANGI PROSES PERADILAN TINDAK PIDANA KORUPSI [Qualifications and Implications of the Obstruction of Justice in Corruption Judicial Process]', *Law Review*, 2021 <<https://doi.org/10.19166/lr.v0i0.3323>>
- Mangihot, J., 'Akhirnya Ferdy Sambo Ditetapkan Tersangka Obstruction of Justice, Total Ada 7 Perwira Polri.', *Kompas TV*, 2022
- Mayrachelia, Difia Setyo, and Irma Cahyaningtyas, 'Karakteristik Perbuatan Advokat Yang Termasuk Tindak Pidana Obstruction of Justice Berdasarkan Ketentuan Pidana', *Ejournal2.Undip.Ac.Id*, 4.1 (2022), 121–32
- Nawir, N, 'Analisis Hukum Acara Pidana Islam Terhadap Fungsi Dewan Pengawas Kpk Dalam Pemberantasan Tindak Pidana Korupsi: Analisis Pasal 21 Undang-Undang Nomor ...' (Universitas Islam Negeri Sunan Ampel, 2021)
- Putri, and Ida Fitria Suryani, 'Tanggung Jawab Pidana Anak Pelaku Kekerasan Seksual Di Program Studi Ilmu Hukum Universitas 17 Agustus 1945 Surabaya.' (Diss. Untag Surabaya, 2017)
- RAYS, MOH. IKHWAN, 'TINJAUAN HUKUM DELIK PEMBUNUHAN, DELIK PENGANIAYAAN YANG MENYEBABKAN KEMATIAN DAN DELIK KEALPAAN MENYEBABKAN KEMATIAN', *Jurnal Yustisiabel*, 2017
- Said, Muhammad Nasir, Faissal Malik, and Rusdin Alauddin, 'Efektivitas Kinerja Penyidik Profesi Dan Pengamanan (Propam) Dalam Upaya Penegakan Disiplin Polri Di Polda Maluku Utara', *Syntax Literate ; Jurnal Ilmiah Indonesia*, 2022 <<https://doi.org/10.36418/syntax-literate.v7i2.6288>>
- Setiadi, Wicipto, 'PENEGAKAN HUKUM: KONTRIBUSINYA BAGI PENDIDIKAN HUKUM DALAM RANGKA PENGEMBANGAN SUMBER DAYA MANUSIA', *Majalah Hukum Nasional*, 2018 <<https://doi.org/10.33331/mhn.v48i2.99>>
- Simamora, Andrean Gregorius Pandapotan, and Georgius Ivan Budihardja, 'Prinsip Penegakan Hukum Dan Hak Asasi Manusia: Studi Kasus Penembakan Militer Terhadap Masyarakat Nduga Papua', *Jurist-Diction*, 2021 <<https://doi.org/10.20473/jd.v4i2.25750>>
- Suharyo, Suharyo, 'Penegakan Keamanan Maritim Dalam NKRI Dan Problematikanya', *Jurnal Penelitian Hukum De Jure*, 2019 <<https://doi.org/10.30641/dejure.2019.v19.285-302>>

- Supriyanto., Bambang Heri, 'Penegakan Mengenai HAM Menurut Hukum Positif Di Indonesia.', *Jurnal Al Azhar Indonesia*, 2014
- Utoyo, Marsudi, and Kinaria Afriani, 'SENGAJA Dan TIDAK SENGAJA Dalam Hukum Pidana Indonesia', *Lex Librum : Jurnal Ilmu Hukum*, 2020 <<https://doi.org/10.46839/lljih.v0i0.298>>
- Wicaksana, Arief Ryzki, 'Kewenangan Tembak Di Tempat Oleh Aparat Kepolisian Terhadap Pelaku Kejahatan', *Jurnal Sosiologi Dialektika*, 2020 <<https://doi.org/10.20473/jsd.v13i2.2018.114-121>>
- Widayati, Kunti, 'PELAKSANAAN PEMENUHAN HAK KORBAN PELANGGARAN HAK ASASI MANUSIA GENOSIDA BERDASARKAN UNDANG-UNDANG NO.26 TAHUN 2000', *LEGALITAS*, 2017