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Juridical Review of Criminal Liability Perpetrators of the Obstruction of Justice in Office Order

[1]Pamuka Aisyah Perico Putri, [2]Basrawi, [3]La Ode Awal Sakti, [4]Irabiah

[1,2,3,4]Faculty of Law, Universitas Sembilanbelas November Kolaka, Indonesia
** Corresponding author's e-mail :* awalsakti122@gmail.com

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ABSTRACT

An official order is an order given by someone who has power and position in an institution or institution. A valid official order is an official order given by someone who has the authority and the order is still in the realm of his work. The article governing official orders is contained in Article 51 of the Criminal Code. Obstruction of justice is an act that harms many parties, therefore anyone involved in obstruction of justice deserves to be punished according to applicable law. The research method used in writing this thesis is normative, namely examining laws and examining scientific papers that are in accordance with the problems that are the topic of making a thesis. The result of this research is that a person who commits an act of obstruction of justice in an official order can be given a penalty according to the provisions if with full awareness knows that the act is an act that has elements of a criminal offense and cannot be said to be obstruction of justice if the person concerned does not know at all that the order contains elements of a criminal offense.

1. Introduction

Criminal responsibility is an important matter in criminal law, the punishment threatened to a person who commits a criminal offense must be held accountable. A person suspected of committing a criminal offense must be processed as a criminal law procedure process whether or not a person can be held accountable. If the criminal procedure process is not carried out properly and correctly, it is not known that a person who commits a criminal offense[1]

criminal proceedings properly and correctly so that it is not known that a person who commits a criminal offense whether or not they can be held accountable, this can give an unfavorable view in the eyes of the community that committing a crime is not a bad thing because it is not held accountable for all its actions. Criminal liability is based on the principle of guilt, the principle of guilt in Dutch is geen straf zonder schuld which means there is no punishment if there is no mistake. It is an injustice if someone has no fault but is sentenced to criminal punishment.

Error in committing a criminal offense is in the form of intent and negligence. Based on the principle of guilt above, a person can be punished if there is a mistake in the form of intent or negligence. Anyone who commits a criminal offense must take responsibility for his actions, unless the person has no fault. The basis for the elimination of punishment for a person who commits an adverse criminal act is a situation that results in a person who commits a criminal act prohibited under the Criminal Code not being punished because of

1. The person cannot be blamed;

[1] Andi Hamzah. *Bunga Rampai Hukum Pidana dan Acara Pidana*. Ghalia Indonesia Jakarta. 2001.

2. The act is no longer an unlawful act.

In Article 51 paragraphs 1 and 2, official orders are one of the reasons for the abolition of punishment as stated in Article 51 paragraphs 1 and 2

1) Whoever commits an act in order to carry out an official order given by the competent authority, shall not be punished.

2) An official order without authority shall not lead to the nullification of punishment, unless the person who is ordered, in good faith, thinks that the order is given with authority and its execution is included in the scope of his work2.

Based on the fact, when a person is accused of committing a criminal act, either a civil servant or a police officer, he says that the act was carried out on the orders of a superior or an official order, where a superior's order cannot be resisted and there is an obligation to obey all orders of the superior, which if violated is likely to harm the person.

which if violated is likely to harm yourself.

Obstructing the investigation process is one example of a criminal act commonly referred to as obstruction of justice which is punishable by imprisonment for a maximum of 9 months.Someone who slows down the flow of the trial is those who have a stake or involvement in the case. The act of obstruction of justice is not justified at all because this act is a crime of obstructing justice. The regulation of obstruction of justice in article 221 paragraph 2 hides the ben object which reads "Any person who, after the commission of a crime, destroys, removes, conceals, or otherwise hides the objects on which the crime has been committed or used for the commission of the crime, or who acts so that such objects or traces thereof cannot be examined by an officer of the judiciary or the police, or by any other person, who by virtue of the law is always or temporarily obliged to exercise a police office, all with intent to conceal the crime or to hinder and obstruct the examination, investigation or prosecution." An example of a case of obstruction of justice in the murder of Brigadier J committed by law enforcement officials and in handling this case the suspects involved committed obstruction of justice, namely the act of obstructing the investigation, this action resulted in the slow process of handling this case, the act of obstructing the legal process in this case such as damaging CCTV engineering the scene and several other things.

2. Method

The research method used in writing this thesis is normative, namely examining the laws that are in accordance with the problems being studied and examining scientific works that are in accordance with the problems that are the topic of making a thesis. There are two types of research in research methods, namely empirical legal research and normative legal research. Empirical legal research is research whose main data source is the results of interviews and observations. Empirical research can be used as material for legal analysis which is seen as patterned community behavior and has a relationship in the community aspect.

The type of normative legal research is research that examines documents, legislation, theories or expert opinions. Normative legal research focuses more on the scope of legal conceptions, legal principles, and legal rules.

This research uses normative legal research. Normative legal research uses normative case studies in the form of legal behavior products. The subject of study in normative legal research is the law that is conceptualized to be a norm or rule that applies by society and becomes a benchmark for society to behave in accordance with established rules and norms.

The focus in this normative legal research is the inventory of positive law, legal principles and doctrines, legal discovery in cases in concreto, legal systematics, the level of synchronization, comparative law and legal history.

The focus of research in a study is the field of study that makes the research right on target.

3. Result and Discussion

3.1 The Concept of Position Order as the Basis of Criminal Abolition in Indonesia

The reasons for the abolition of punishment are decided by the judge by stating that the unlawfulness of the act can be abolished or the fault of the perpetrator abolished, because there are statutory and legal provisions that justify the regulation or that excuse the perpetrator.

A number of reasons for general criminal abolition are presented in Book One of the Criminal Code. Criminal law itself has not yet clearly understood the meaning of the grounds for criminal expungement. In the Criminal Code, there are several provisions in Chapter 3 of the first book that provide exceptions to the sentence for the defendant. Historically, the M.v.T (Memory van Terichting) mentions the so-called grounds of irresponsibility or grounds of incapacity to punish as grounds for the abolition of criminal penalties. This is for two reasons:

1. Reasons why a person cannot be held liable
2. Reasons for the non-liability of a person which lie outside the person as set out in the Criminal Code.

The reasons for the elimination of a criminal offense can be seen in terms of the elements of the criminal offense, namely: subjective elements of criminal offense and objective elements of criminal offense. Because of the subjective element,

namely from within the perpetrator himself, the reason for the elimination of the criminal offense, namely the reason for forgiveness, is the reason for the elimination of the perpetrator's guilt. Because it concerns the individual perpetrator, the reason for expungement also contains the subjective element of the reason for expungement.

In contrast, from the perspective of objective factors, these factors that relate to actions that are outside of the perpetrator become justification. In this case, the illegality of the offender's actions is lost. Because these circumstances are outside the personality of the perpetrator, the reason for expungement is included as an objective element of the reason for expungement.[2] Division of reasons for the abolition of punishment by separating This can be seen from the dualistic view in law which is different from the monistic school. In a dualistic view, an objective proof is needed to determine the imposition of punishment against the perpetrator after that the proof of the perpetrator's guilt is carried out as an element of subjective proof, these two things are important things for judges to make the basis for imposing punishment.[3]

(Article 51 paragraph 2 of the Criminal Code)

Article 51 paragraph (1) of the Criminal Code, according to the translation of the Translation Team of the National Legal Development Agency (BPHN), stipulates that, "Whoever commits an act to carry out an official order given by the competent authority, shall not be punished."[4] In Article 51 paragraph (1) of the Criminal Code is formulated as a reason for the elimination of punishment which is based on the execution of an official order (ambtelijk bevel), in particular a valid official order or one given with authority.

An example of a valid official order, which is given by an authorized authority, is a police officer ordered by a Police Investigator by issuing an Arrest Warrant to arrest a person who has committed a crime. In essence, this police officer deprives another person of their liberty, but because the arrest is carried out based on a valid order, the police officer concerned cannot be convicted. Article 51 paragraph (2) of the Criminal Code, according to the BPHN Translation Team, reads as follows, "An official order without authority shall not result in the nullification of punishment, unless the person ordered, in good faith, believes that the order was given with authority and its execution falls within the scope of his employment.

In the formulation of this article, the basis is that only an official order given by an authorized official, being a valid official order, can release the person ordered from punishment. Thus, an unauthorized official order, or an unlawful official order, basically cannot release the person ordered from punishment. Jan Remmelink says that,

an order given illegally does not negate the nature of the order.

The first part of the second paragraph of Article 43 Sr. (Article 51 of the Criminal Code) reads. This is appropriate: what is unlawful does not become lawful simply because it is done on the basis of an order.[5] Article 51 paragraph 2 of the Criminal Code provides an exception to this provision.

Even though the order given does not come from an authorized official, in other words it is an invalid official order, the person who carries out the order will not be punished if he meets certain conditions. There are two conditions that must be met, namely:[6]

a. If the person who is ordered, in good faith, thinks that the order is given with authority.

b. The execution of the order falls within the sphere of work of the person ordered

As an example of the application of article 51 paragraph 2 is when a member of the police investigator orders his members to make an arrest, which turns out that there is no warrant to make an arrest, and the members see that the orders given are directions from superiors and they know their superiors are the parties authorized to issue warrants arrest. In this case there was an arrest without a warrant. Whereas when making an arrest there must be a warrant from an authorized person, warrantless arrests are only justified in the event of being caught red-handed.

Based on the provisions of Article 51 paragraph (2) of the Criminal Code, the members of the

[2] Moeljatno, *Azas-azas Hukum Pidana*, cet.2, Bina Aksara, Jakarta, 1984, Hlm 27
[3] A.Z. Abidin,1983, *Hukum pidana,* Bunga Rampai, Jakarta,hlm 48
[4] Tim Penerjemah BPHN
[5] Jan Remmelink, Hukum Pidana terjemahan Tristam Pascal Moeliono et al, Gramedia Pustaka Utama, Jakarta, 2003, hlm. 55.
[6]Yitzhak B. Dagilaha, Peran Perintah Jaabatan dan perintah jabatan tanpa wewenang menurut pasal 51 kitab undang undang hukum pidana, Lex Crimen Vol. VIII/No. 11/Nov/2019

Polri members who carry out these orders cannot be punished because:

1) In good faith, they thought that the order was given with authority, because they knew the person giving the order as a person who was authorized to make an arrest warrant; and

2) Arresting people on the orders of investigating officials is the duty of members of the National Police.

The substance of the meaning and provisions of Article 51 paragraph 1 of the Criminal Code does not punish a person who commits a criminal act because of an official order given by an authorized authority. According to Prof. Fanmabel in his book Criminal Law 1, when someone receives an official order from the ruler or authorized official, the recipient of this order is actually in a state of compulsion because the recipient of the official order faces two conflicts within himself.[7] The conflict in question is that on the one hand the recipient of the order may not commit a criminal offense that is prohibited and when doing so gets criminal sanctions, but on the other hand the order is an official order that must be obeyed or implemented by the recipient of the order, and the two conflicts experienced by the recipient of the order. the recipient of the order, and the two conflicts experienced by the recipient of the order are between avoiding a criminal offense and carrying out an official order.[8]

3.2 Criminal Liability of Obstruction Of Justice Perpetrators in Official Government

The term obstruction of justice (OJ) is a legal terminology derived from Anglo Saxon literature, which in the doctrine of criminal law in Indonesia is often translated as the criminal act of obstructing the legal process55. In the context of criminal law, obstructing officers is an act that obstructs the legal process that is being carried out by law enforcement officials (in this case the police, prosecutors, judges, and advocates), both against witnesses, suspects, and defendants.[9] Obstruction of justice is the interference with the judicial process where there is an attempt to reduce the fairness, or efficiency of the judicial process or the judicial institution.[10]

According to the Legal Dictionary, OJ is “an

an attempt to interfere with the administration of the courts, the judicial system or law enforcement officers, including threatening witnesses, improper conversations with jurors, hiding evidence, or interfering with an arrest. Such activity is a crime[11]An explanation of the criminal offense of OJ was also conveyed by Eddy O.S Hiariej, stating that the criminal offense of obstructing the legal process is an act, either doing or not doing something with the intention of delaying, disrupting, or intervening in the legal process in a case. The criminal act of obstructing the legal process implies that the actions taken from the beginning have a motive to obstruct the legal process.[12] If simplified, OJ is an action taken by someone both law enforcement officials and the public to obstruct and hinder the legal process. In this case, the legal process is not only related to criminal law enforcement but also relates to all government activities. Some judicial bodies in the United States have added one condition to the OJ sentence, namely that the perpetrator must be proven to have a motive, such as a motive to be free from charges or a motive to reduce the period of detention.62 This obstruction can be carried out by anyone in various ways. For example, the perpetrator's lawyer may bribe witnesses and victims or threaten them physically or mentally.

or threatening both physically and mentally to the witness so that the witness will be acquitted unwilling to provide testimony or falsify the information provided. The family of the perpetrator who hides the whereabouts of the victim, law enforcement officials who destroy Closed Circuit Television (CCTV) as evidence of a criminal case and the public who do not want to cooperate with law enforcement officials to enforce the law. The consequences of OJ actions are not playing games because they can hamper the law enforcement process, damage the image of law enforcement officials and injure the law itself.

What is meant by accountability is a normal psychological state that leads to three kinds of abilities

1. The ability to understand the meaning and real consequences of the acts committed, especially criminal acts.
2. Ability to realize that the act is contrary to the public order of the society.

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[7]Albert aries,*” penasihat hukum Tanya ke ahli albert aries soal eliezer sebagai alat ferdy sambo”* https://www.youtube.com/watch?v=cXnhXfY146o&list=WL&index=2, diakses 10 februari 2024 pukul 10 WITA

[8] Albert aries,*” penasihat hukum Tanya ke ahli albert aries soal eliezer sebagai alat ferdy sambo”* https://www.youtube.com/watch?v=cXnhXfY146o&list=WL&index=2, diakses 10 februari 2024 pukul 10 WITA

[9] Shintia Agustina, dkk, Obstruction Of justice Tindak Pidana Menghalangi Proses Hukum Dalam Upaya Pemberantasan Korupsi, Themis Book, Jakarta, 2015

[10]Allivia Putri Gandini, Kebijakan Kriminalisasi Obstruction Of Justice Sebagai Delik Korupsi Dalam Undang-undang Nomor 31 tahun 1999 jo Undang-undang Nomor 20 tahun 2001 tentang Perubahan Atas Undang-undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi,2018

[11]Terjemahan dari *https://legal-dictionary.thefreedictionary.com/Obstruction+of+Justic*,

[12] Eddy OES Hiariej Guru Besar Fakultas Hukum UGM, *Obstruction of Justice dan Hak Angket DPR*, Kompas

3. Able to determine the will to act or a person is in free will to commit a criminal act.

Criminal responsibility includes what faults exist in the criminal in Indonesia there are two teachings, namely:65

1. Psychological fault: introduced by Simons seeks to observe the inner attitude of the perpetrator when the perpetrator commits a criminal act.
2. Descriptive normative error: juridical error by using normative assessments from outside the perpetrator to see whether this person can create criminal responsibility or not.

criminal responsibility or not[13]

Professor Mulyatno, a professional at the UGM University in 1955 in his inaugural speech as a professor, indirectly let go of the teaching of psychological error and used the teaching of descriptive normative error, of course it was not the basis of Professor Mulyarto's will, but only because Professor Mulyato followed the opinion of the pump. Why is this so because in addition to being a professor, Professor Mulyanto was also a young Attorney General at that time so that to facilitate the prosecution field or requisitor in a criminal trial in an effort to find material truth, there is an obligation to present supporting expert testimony, for example, such as a psychiatrist or psychologist to clarify whether a criminal offender has a mental attitude or in the context of the teaching of psychological error and for you at that time this was felt to be quite complicated to present a psychologist in every criminal trial. A criminal offense in criminal law allows for

If we refer to book one of the Criminal Code which is currently still in effect in chapter 3 there are reasons that can exclude adding or reducing punishment starting from article 44 to 51. The reasons that can exclude increase or decrease the punishment starting from article 44 to 51 44 is a negatively formulated fast barkit account when a person cannot be held accountable because there is a disturbance in the growth of his soul or due to illness then if we move on to article 48 a person who commits a criminal act because there is force or an emergency it also cannot be held criminally responsible next in article 49 we also recognize the existence of forced defense or nutware and not being access to forced defense that exceeds the limit when a person commits self-defense to defend himself in the presence of an instant threat against the law that threatens his property or morality or even his life then people can commit forced defense so 48 forced forced and the last article 51 concerning official orders or envelope bevel is a person committing a criminal act because he is given an official order by a ruler or official. given an official order by the ruler or authorized official .

Criminal sanctions in this case can be given by someone both

witnesses and officials as well as persons involved in the process of obstructing the ongoing criminal process. As stated in Article 221 of the Criminal Code paragraph 1, it is threatened with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiahs:

1. Any person who with deliberate intent hides a person who has committed a crime or who is prosecuted for a crime, or who aids him to avoid investigation or detention by the judicial or police authorities, or by any other person who by virtue of statutory provisions is continuously or temporarily entrusted with the exercise of a police office.
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, conceals objects against which or with which the crime has been committed or traces of the crime.

or with which the crime has been committed or other traces of the crime, or withdrawn from examination by a judicial or police officer or by any other person who, in accordance with statutory provisions, is continuously or temporarily assigned to police service.[14]

4. Conclusion

The concept of an official order in Article 51 paragraphs 1 and 2 explains that a person cannot be convicted and can be exempted from punishment if he carries out a valid official order An official order without authority, or an unauthorized official order, basically cannot release the person ordered from criminal sanctions. In the concept of official orders, there is a relationship between the one who orders and the one who is ordered in public relations, having the authority to give orders must be in accordance with his position in public law and the orders given must be in accordance with the sphere of authority of his position and The criminal responsibility of the perpetrator of obstruction of justice in an official order that in an offense of obstruction of justice, it can be proven by the recognition of the perpetrator that the actions he committed have a relationship between the actions carried out with an official order that has the authority to carry out inspection actions, confiscation related to a main case. this can be categorized as a crime that obstructs the ongoing criminal process in accordance with Article 221 of the Criminal Code paragraph 1 point 2.

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[13] Albert aries*," penasihat hukum Tanya ke ahli albert aries soal eliezer sebagai alat ferdy sambo"* https://www.youtube.com/watch?v=cXnhXfY146o&list=WL&index=2, diakses 10 februari 2024 pukul 10 WITA

[14] Guru Besar Hukum Pidana FH UGM, Prof. Edward OS Hiariej, (ful rosi) vonis polisi "taat" sambo, https://www.youtube.com/watch?v= oEeyIMhcYE&list=PLE6UmMcWaZNSpU26HJ- Bw3XDsLLgFBSVJ&index=19,diakses 12 maret 2024 pukul 12.30 WITA

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