JILS (JOURNAL *of* INDONESIAN LEGAL STUDIES)
NATIONALLY ACCREDITED JOURNAL (SINTA 2)
Published by Faculty of Law, Universitas Negeri Semarang, Indonesia
Volume 5 Issue 1, May 2020 ■ ISSN (Print) 2548-1584 ISSN (Online) 2548-1592

REVIEW ARTICLE

OBSTRUCTION OF JUSTICE IN CORRUPTION CASES: HOW DOES THE INDONESIAN ANTI-CORRUPTION COMMISSION INVESTIGATE THE CASE?

Deni Setya Bagus Yuherawan
Faculty of Law, Universitas Trunojoyo Madura, Indonesia
✉ deniyuherawan@gmail.com

Submitted: January 15, 2019 **Revised**: April 11, 2020 **Accepted**: April 30, 2020

ABSTRACT

The purpose of this article is to analyze the investigation authority of the Corruption Eradication Commission (KPK) on the counteraction case of corruption justice process. The reason for the writing is the existence of different interpretation of the authority of the KPK Investigator to conduct an investigation on the counteraction case of justice process in Article 21 of Law No. 31 of 1999 concerning Eradication of Corruption Law junto Law No. 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of the Corruption (the Law of Corruption Act). The analysis method of the problem formulation applies Grammatical Interpretation, Systematic Interpretation, and Teleological Interpretation. The legislation analyzed, besides the Anti-Corruption Law, is the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XI / MPR / 1998 concerning State Administrators that are clean and free of corruption, collusion, and nepotism; also Law Number 30 of 2002 concerning the Corruption Eradication Commission junto Law Number 10 of 2015 concerning the Establishment of Government Regulations in lieu of Law Number 1 of 2015 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission. The conclusion of this article is that the KPK Investigator is not authorized to conduct an investigation on the counteraction case of corruption justice process.

Keywords: Investigation Authority; KPK Investigator; Counteraction of Corruption Justice Process; Corruption Case

TABLE OF CONTENTS

HOW TO CITE:
Yuherawan, D. S. B. (2020). Obstruction of Justice in Corruption Cases. *JILS (Journal of Indonesian Legal Studies)* 5(1), 225-256. https://doi.org/10.15294/jils.v5i1.38575.

INTRODUCTION

One of the legal practices that attracts the attention of criminal law experts is an investigation carried out by the Corruption Eradication Commission Investigator on the actions of those who obstruct or hinder the process of investigating (obstruction of justice) criminal acts of corruption.

One of the phenomenal cases is the Fredrich Yunadi case. In the case file on behalf of Fredrich Yunadi who was suspected of violating Article 21 of the Corruption Law, several acts were committed by former lawyer Setya

Novanto. Fredrich as an advocate is seeking his client (Setya Novanto) to postpone the legal process carried out by the KPK (pending judicial proceedings). This was done in various ways, first: Fredrich submitted a letter to the KPK Investigation Director. The contents say that if he as an advocate of Setya Novanto is conducting a material test to the Constitutional Court regarding the position of the former Chair of the Golkar Party as a member of the DPR, so the summons must be authorized by the president; secondly, Fredrich took the "fight" by reporting the leadership of the KPK, KPK investigators to the Criminal Investigation Unit with a report allegedly violating Article 414 jo Article 421 of the Criminal Code; third Fredrich engineered so that Setya Novanto was admitted to the Medika Permata Hijau Hospital. This was done in order to avoid investigative investigations by KPK investigators on Desti Astriani Tagor's husband. However, in the construction of the public prosecutor's indictment, only the third act, namely Fredrich's act of engineering so that Setya Novanto was hospitalized in Permata Hijau Medika Hospital in order to avoid investigations by the KPK Investigator, who were charged as materially obstructing, hindered the investigation process.[1]

Defendant Fredrich Yunadi is of the opinion that the Corruption Eradication Commission (KPK) is not authorized to handle cases hindering investigations that were charged with him. This was said by Fredrich when reading a plea or plea at the Jakarta Corruption Court, Friday (6/22/2018). "We think this case is not suitable to be brought to trial. The defendant should not be dragged into prison with charges of obstructing the investigation," Fredrich said while reading pleading.[2]

---

[1] It was also emphasized that according to the Advocate Law the meaning of Article 16 regarding advocate immunity, had been materially tested in the Constitutional Court with the issuance of the Constitutional Court Decision Number 26 / PUU-XI / 2013 and in its consideration, the judge firmly stated that the advocate in carrying out the profession's duties was not only in good faith, but also must not conflict with statutory regulations. This means that if an advocate is proven when defending the interests of the client using ways that violate the law or contrary to the laws and regulations, then of course the right to immunity does not apply or fall by itself. See Rio Riady, Perbuatan Obstruction of Justice pada Advokat dalam UU Tipikor, *JAWA POS* (January 16, 2019) https://www.jawapos.com/opini/16/01/2019/perbuatan-obstruction-of-justice-pada-advokat-dalam-uu-tipikor/

[2] Furthermore, in this case, Fredrich was charged with violating Article 21 of Law Number 31 of 1999 concerning Eradication of Corruption. The article concerns acts that obstruct the legal process carried out by law enforcement. According to Fredrich, according to the statements of legal experts and Indonesian linguists, Article 21 listed in Chapter III of the Anti-Corruption Law is another criminal act related to criminal acts of corruption. *See* Abba Gabrillin, Fredrich: Mutlak KPK Tak Berwenang Tangani Kasusnya, *KOMPAS* (June 22, 2018),

In fact, Fredrich is not the only advocate charged with Article 21 of Law No. 31 of 1999 concerning Eradication of Corruption Crimes jo Law No. 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes (Anti-Corruption Act). In a report released by Indonesia Corruption Watch (ICW) as of January 13, 2018, there were 22 advocates who had been charged with obstructing corruption investigations. From the ICW notes, there are three types of snares in the Anti-Corruption Law targeting advocates. A total of 16 advocates are entangled in the bribery article, two advocates are suspected of providing false information, while four advocates are seen as obstructing the investigation of corruption cases. The following is a list of four advocates in ICW's notes which hinder the investigation of corruption crimes:[3]

1. Manatap Ambarita is a legal attorney who is a suspect in a corruption case of the misuse of the remainder of the 2005 budget at the Mentawai Islands District Kimpraswil Office, Afner Ambarita. On April 3, 2008, Afner and Manatap headed to the West Sumatra High Prosecutors Office with the intention of responding to an investigator's call. However, Manatap barred his client from entering the High Prosecutors office and ordered Afner to wait in a car parked in the High Prosecutors

https://nasional.kompas.com/read/2018/06/22/14224431/fredrich-mutlak-kpk-tak-berwenang-tangani-kasusnya?page=all

[3] The Indonesian Legal Aid and Human Rights Association (PBHI) considers that the case involving former lawyer Setya Novanto, Friedrich Yunadi, is not a form of criminal advocacy. What does this mean, an advocate is given the right to immunity to not be convicted or prosecuted civilly if he carries out his duty in good faith because it is based on laws and regulations. If on the contrary, he has bad intentions or violates the rules and regulations he can be sentenced, and that is not criminalization. *See* Anendya Niervana, Selain Fredrich, 4 Pengacara ini Juga Halangi Penyidikan Korupsi, *LIPUTAN 6* (January 14, 2018), https://www.liputan6.com/news/read/3225824/selain-fredrich-4-pengacara-ini-juga-halangi-penyidikan-korupsi. *See* also Saldi Isra, Feri Amsari, & Hilaire Tegnan, *Obstruction of justice in the effort to eradicate corruption in Indonesia.* 51 INTERNATIONAL JOURNAL OF LAW, CRIME AND JUSTICE. 72, 75-78 (2017); Airen Priska Ramadhini, Tinjauan Yuridis terhadap Perbuatan yang Menghalangi Proses Peradilan (Obstruction of Justice) dalam Tindak Pidana Korupsi di Indonesia. *DISS*. Universitas Internasional Batam (2018); SHINTA AGUSTINA & SALDI ISRA, OBSTRUCTION OF JUSTICE: TINDAK PIDANA MENGHALANGI PROSES HUKUM DALAM UPAYA PEMBERANTASAN KORUPSI 54-57 (2015); I. Nyoman Darma Yoga, I. Gusti Agung Ayu Dike Widhiyaastuti, & AA Ngurah Oka Yudistira Darmadi, *Kewenangan Komisi Pemberantasan Korupsi Menangani Obstruction of Justice dalam Perkara Korupsi*. 7 KERTHA WICARA: JOURNAL ILMU HUKUM. 1, 9-11 (2018); Benjamin B. Wagner, & Leslie Gielow Jacobs, *Retooling Law Enforcement to Investigate and Prosecute Entrenched Corruption: Key Criminal Procedure Reforms for Indonesia and Other Nations*. 30 UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL LAw. 183, 195-209 (2008).

office courtyard. Manatap went to the High Prosecutors investigator without his client and requested that the examination of Afner be postponed for two weeks. The request was strongly rejected by investigators because Manatap's reason for studying the file was considered unreasonable. A lot of debate took place between the two. He also lied when investigators tried to meet Afner at the hotel where he was staying. Manatap said that his client had returned home. Even though Afner's name is still recorded in the hotel guest book. When investigators targeted Afner's house, Afner's wife actually said her husband was away with Manatap and had not returned. In 2008, the Padang District Court sentenced 1.5 years in prison and was reinforced by the West Sumatra Appeals Court while the Supreme Court sentenced him to 3 years imprisonment against Manatap. However, Manatap Ambarita was on the People's Search List and was declared a fugitive by the Mentawai District Attorney in 2012 and was finally arrested in November 2016.

2. Mohammad Hasan bin Khusi. The lawyer who is a Malaysian citizen defended the wife of former Democratic Party treasurer M. Nazaruddin, Neneng Sri Wahyuni as a suspect in a suspected corruption case of the Solar Power Plant (PLTS) development project in the Ministry of Manpower and Transmigration. Hasan was proven to hide the existence of his client who had run away and became a fugitive. For his actions Hasan was sentenced to 7 years and fined 300 million rupiah in subsidair six months in captivity. The decision was handed down by the Jakarta Corruption Court on March 5, 2013.
3. Azmi bin Muhammad Yusuf. Azmi, who is also a Malaysian citizen, defended Neneng Sri Wahyuni together with Hasan in the same case. Both are considered to prevent corruption by hiding Neneng's whereabouts and even allegedly escorting Neneng during his flight. Azmi was also sentenced to the same law as Hasan. In addition, Azmi and Hasan are also often referred to as colleagues in the business empire built by former Democratic Party treasurers and their wives. Both Hasan and Azmi were listed as business partners of PT Mahkota Negara's Director, Marisi Matondang, who was a witness in this alleged corruption case. PT Mahkota Negara is indeed known to be affiliated with Nazaruddin's Permai Group.

4. Fredrich Yunadi is indeed often the center of attention in the news. The former lawyer for Setnov often gives excessive statements about the conditions of his clients. Even Fredrich had become a trending topic due to the nickname 'Bakpao' which he had pinned to the wound on Setnov's forehead after the accident. On January 10, 2018 Fredrich was named a suspect by the KPK because he was considered to be protecting Setya Novanto who was on the run. KPK claimed to have pocketed evidence that Fredrich had ordered a floor of Medika Permata Hijau Hospital before the former Golkar Chief of Staff had a single accident. Fredrich and doctor Bimanesh were also seen as collaborating in manipulating Setnov's medical records. The legal process against Fredrich is still ongoing.[4]

The actions of the four lawyers mentioned above are qualified to violate Article 21 of Law No. 31 of 1999 concerning Eradication of Corruption Crimes jo Law No. 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes (Anti-Corruption Act).[5] Article 21 of the Anti-Corruption Law stipulates that "Anyone who intentionally prevents, impedes, or thwarts directly or indirectly the investigation, prosecution, and examination at a court hearing of suspects and defendants or witnesses in a corruption case, is convicted with a minimum of 3 (three) years in prison and at most 12 (twelve) years and or a minimum fine of Rp. 150,000,000.00 (one hundred fifty million rupiah) and a maximum of Rp 600,000,000.00 (six hundred million rupiah). "

Based on the background description, there are different interpretations of the authorities who conduct an investigation of the act of impeding the Corruption Investigation process. Thus, the formulation of the problem in this article is whether the KPK Investigator has the authority to conduct an investigation of the act of obstruction of the investigation, prosecution, and examination process in a court of criminal act of corruption.

---

4 *Id.* with all accompanying texts.

5 Law No. 31 of 1999 concerning Eradication of Corruption Crimes jo Law No. 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes [hereinafter as Anti-Corruption Act (2001)]

METHOD

This study uses of grammatical interpretation, systematic interpretation, and teleological interpretation. What is interpreted are several legal rules in the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XI/MPR/1998 concerning State Administrators that are Clean and Corruption-Free, Collusion, and Nepotism (TAP MPR Concerning KKN); Law Number 28 of 1999 concerning State Administrators who are Clean and Free of Corruption, Collusion and Nepotism; Law Number 31 of 1999 concerning Eradication of Corruption Crimes in conjunction with Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption (Anti-Corruption Act); as well as Law Number 30 of 2002 concerning the Corruption Eradication Commission in conjunction with Law Number 10 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2015 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission.

THE AUTHORITY OF THE KPK INVESTIGATORS TO INVESTIGATE THE ACTIONS ON CORRUPTION JUDICIAL PROCESS

I. REASONS FOR THE ESTABLISHMENT (*RAISON D'ETRE*) OF THE CORRUPTION ACT

Raison d'etre law can be understood by analyzing the consideration (consideration) and general explanation of the relevant law. The essence of the considerations of the Anti-Corruption Law are as follows:

a. that the criminal act of corruption is very detrimental to the country's finances or the country's economy and impedes national development, so it must be eradicated in order to create a just and prosperous society based on Pancasila and the 1945 Constitution

b. that due to the criminal acts of corruption that have occurred so far besides harming the country's finances or the country's economy, it also impedes the growth and sustainability of national development which demands high efficiency
c. that Law Number 3 of 1971 concerning Eradication of Corruption Crime is no longer in accordance with the development of legal needs in the community, because it needs to be replaced with a new Corruption Eradication Act so that it is expected to be more effective in preventing and eradicating criminal acts of corruption
d. that based on the considerations referred to in letters a, b, and c, it is necessary to establish a new law concerning the Eradication of Corruption.

The consideration can be concluded that Corruption is very detrimental to the country's finances, the country's economy, and impedes national development, so it must be eradicated in order to create a just and prosperous society. The negative impact of Corruption is to inhibit the growth and continuity of national development which demands high efficiency, which is no longer possible to be eradicated using the old law (Law Number 3 of 1971 concerning Eradication of Corruption). For this reason, a new law is needed so that the prevention and eradication of Corruption becomes more effective.

While the General Explanation of the Corruption Act emphasized that

1. To realize a just, prosperous and prosperous Indonesian society, it is necessary to continuously improve efforts to prevent and eradicate corruption, because in reality corruption has caused huge state losses which in turn could have an impact on the emergence of crises in various fields . For this reason, efforts to prevent and eradicate corruption need to be increased and intensified while upholding human rights and the interests of society.
2. This law is intended to replace Law Number 3 of 1971 concerning Eradication of Corruption, which is expected to be able to meet and anticipate the development of the legal needs of the community in order to prevent and eradicate more effectively any form of corruption that is very detrimental to the country's finances or the economy the state in particular as well as the community in general.

3. In order to be able to reach various modus operandi of irregularities in state finances or the state's economy which is increasingly sophisticated and complicated, the criminal acts regulated in this Law are formulated in such a way that includes acts of enriching oneself or another person or a corporation in an "unlawful manner" in formal and material terms. With this formulation, the understanding against the law in corruption can also include disgraceful acts which according to the sense of justice the community must be prosecuted and convicted.
4. This law also broadens the meaning of Civil Servants, who among others are people who receive salaries or wages from corporations that use capital or facilities from the State or society. What is meant by facilities are special treatment given in various forms, for example unreasonable loan interest rates, unreasonable prices, exclusive licensing, including relief of import duties or taxes that conflict with applicable laws and regulations.

Based on the considerations of the Corruption Law, acts of corruption that must be prevented and eradicated are acts that harm the country's finances, the country's economy, and hinder national development. Actions that can hinder the realization of a fair, prosperous, and prosperous Indonesian society. Another ontological basis is acts of enriching oneself or another person or a corporation in an "unlawful" manner and the legal subject of the perpetrator. The meaning of civil servants is broadened to include those who receive salaries or wages from corporations that use capital or facilities from the State or society. The ontological basis is what must be understood the *ratio legis* of the formulation of the Corruption qualification.

Another thing that needs to be understood, the establishment of the Anti-Corruption Law is based on the mandate of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XI / MPR / 1998 concerning State Administrators that are Clean and Corruption-Free, Collusion and Nepotism (TAP MPR Concerning KKN), because the TAP is made one of the legal basis for its formation, as contained in the "Remembering" Corruption Act, namely: (1) Article 5 paragraph (1) and Article 20 paragraph (1) of the 1945 Constitution; and (2) Decree of the People's Consultative Assembly of the Republic of Indonesia Number XI / MPR / 1998 concerning State Administrators that are Clean and Corruption-

Free, Collusion and Nepotism. Some main points in the TAP MPR's consideration of KKN are:

a. that in running the country there have been business practices that have benefited certain groups which foster corruption, collusion and nepotism, which involve state officials with businessmen so as to damage the joints of state administration in various aspects of national life;
b. that in the framework of rehabilitating all aspects of national life with justice, it is necessary to hold trustworthy state administrators through the examination of the assets of state officials and former state officials and their families suspected of originating from corrupt, collusion and nepotism practices, and being able to free themselves from corrupt practices , collusion and nepotism.

The main point for the TAP MPR on KKN is the administration of the state and state administrators who are still carrying out practices of collusion, corruption and nepotism, in collaboration with employers. This practice damages the joints of state administration in various aspects of life. This practice is contrary to the demands of the people's conscience that requires state administrators to carry out their functions and duties seriously and responsibly to create efficacy and results for the implementation of development reforms.

Article 2 of the TAP MPR concerning KKN determines: (1). The state administrators in the executive, legislative and judicial institutions must carry out their functions and duties properly and be accountable to the community, nation and state; and (2) To carry out its functions and duties, state administrators must be honest, fair, open, and trustworthy and be able to free themselves from the practices of corruption, collusion, and nepotism.

Article 2 of the TAP MPR concerning KKN requires that state administrators carry out their duties properly and responsibly. Besides that, also must not only be honest, fair, open, and trusted, but also avoid the practices of corruption, collusion, and nepotism. Article 3 TAP MPR concerning KKN, determine:

1) To avoid the practices of corruption, collusion and nepotism, someone who is believed to hold a position in the administration of the state must swear in accordance with his religion, must announce and be willing to inspect his wealth before and after taking office.

2) The examination of wealth as referred to in paragraph (1) above is carried out by an institution formed by the Head of State whose membership consists of the government and the community.
3) Efforts to eradicate corruption are carried out expressly by consistently implementing the criminal act of corruption.

Article 3 paragraph (3) of the TAP MPR on KKN confirms that the eradication of Corruption is explicitly and consistently aimed at state administrators, who often cooperate with businessmen.

Article 4 of the TAP MPR regarding KKN, determines: "Efforts to eradicate corruption, collusion and nepotism must be carried out firmly against anyone, both state officials, former state officials, families, and cronies as well as private parties / conglomerates including former President Soeharto with due regard to the principle of presumption of innocence and human rights". The provisions of the article emphasize that the spirit of eradicating Corruption is focused on state administrators and entrepreneurs (cronies).[6]

In Article 5 the TAP MPR concerning KKN is determined, that the provisions referred to in this provision are further regulated by law. Based on that mandate, Law No. 28 of 1999 was issued concerning the Organization of a State that is Clean and Free of Corruption, Collusion and Nepotism.

---

[6] In the reform era, the spirit of reform was poured into TAP MPR XI / 1998 concerning the implementation of a clean state free of corruption, collusion and nepotism (KKN). This was reinforced by TAP MPR VIII / 2001 concerning the policy direction of eradicating and preventing corruption, collusion and nepotism (KKN). In the era of President BJ Habibie, Law no. 28 of 1999 concerning the Organization of a State that is Clean and Free of Corruption, Collusion and Nepotism together with the establishment of an anti-corruption institution for the Officials' Wealth Supervisory Commission (KPKPN), the Business Competition Supervisory Commission (KPPU), and the Ombudsman. But in general these institutions have not demonstrated the ability to eradicate corruption in Indonesia, with the view that these institutions are still newly formed so that they are still struggling with administrative problems and institutional order. For comprehensive comparison, please also *see* Muhammad Aqil Irham, *Neo-KKKN dan Tantangan Demokratisasi Indonesia*. 16 ANALISIS: JURNAL STUDI KEISLAMAN. 245, 255-257 (2016); Edi Maszudi, *Manajemen Pencegahan KKN di Indonesia*. 6 PRIMA EKONOMIKA. 15, 20-25 (2015); Mudiyati Rahmatunnisa, *Menyoal Kembali Reformasi Birokrasi di Indonesia*. 1 GOVERNANCE. 1, 7-9 (2010); Fiona Robertson-Snape, *Corruption, Collusion and Nepotism in Indonesia*. 20 THIRD WORLD QUARTERLY. 589, 593-597 (1999); Stephen Sherlock, *Combating corruption in Indonesia? The ombudsman and the assets auditing commission*. 38 BULLETIN OF INDONESIAN ECONOMIC STUDIES. 367, 370-376 (2002); HEINZPETER ZNOJ, DEEP CORRUPTION IN INDONESIA. DISCOURSES, PRACTICES, HISTORIES." CORRUPTION AND THE SECRET OF LAW. A LEGAL ANTHROPOLOGICAL PERSPECTIVE 117-125 (2007); Sofie Arjon Schütte, *The fight against corruption in Indonesia*. 26 SÜDOSTASIEN AKTUELL: JOURNAL OF CURRENT SOUTHEAST ASIAN AFFAIRS. 57, 60-63 (2007).

The main points of consideration in the consideration of the establishment of the Act (Law No. 28 of 1999) are:

a. that the Administration of the State has a very decisive role in the administration of the state to achieve the ideals of the nation's struggle to realize a just and prosperous society as stated in the 1945 Constitution
b. that the practice of corruption, collusion and nepotism is not only carried out between State Administrators but also between State Administrators and other parties which can damage the joints of social, national and state life and endanger the existence of the state, so that a legal basis is needed to prevent it.

As with the Law No. 28 of 1999 Regarding KKN, the Law No. 28 of 1999 is fully aware that national, state and community issues are centered on the administration and administration of the state. The administration of the state is a vehicle for achieving the ideals of the nation's struggle to bring about a just and prosperous society. However, the destruction of the joints of social, national and state life occurs, due to the practices of corruption, collusion and nepotism. The practice is carried out by state administrators, between state administrators, and between state administrators and their cronies.

Raison d'etre the formation of the Law No. 28 of 1999 can be observed in several main points in the General Explanation, as follows:

a. The criminal acts of corruption, collusion and nepotism are not only committed by State Administrators, inter-State Administrators, but also State Administrators with other parties such as crony families, and business people, thus damaging the joints of community, nation and state life, as well as endanger the existence of the state.
b. In the framework of saving and normalizing national life in accordance with the demands of reform, a common vision, perception and mission of all State Organizers and the public is needed. The common vision, perception, and mission must be in line with the demands of people's conscience that want the realization of a State Operator capable of carrying out their duties and functions seriously, full of responsibility, carried out effectively, efficiently, free from corruption, collusion, and nepotism

c. This law contains provisions relating directly or indirectly to law enforcement against criminal acts of corruption, collusion and nepotism specifically aimed at State Administrators and other officials who have strategic functions in relation to the administration of the state in accordance with the provisions of the laws and regulations. valid invitation.
d. This law is a part or subsystem of the legislation relating to law enforcement against acts of corruption, collusion, and nepotism. The main targets of this Law are State Administrators which include State Officials in the State's Highest Institution, State Officials in the State's Highest Institution, Ministers, Governors, Judges, State Officials and / or Other Officials who have a strategic function in relation to the administration of the state in accordance with the provisions of applicable laws and regulations.

Like the preamble, the General Explanation of the Law No. 28 of 1999 emphasized that the problem of corrupt, collusion and nepotism practices centered on state administrators who work together with fellow state administrators, or with other parties as their cronies. Law enforcement against corruption, collusion and nepotism is specifically aimed at State Administrators and other officials who have strategic functions in relation to the administration of the state.

Regarding who is referred to as the National Operator, is regulated in Article 2 of the Law No. 28 of 1999, as follows: (1) State Official at the State's Highest Institution; (2) State Officials at State Higher Institutions; (3) Minister; (4) Governor; (5) Judge; (6) Other state officials in accordance with the provisions of the legislation in force; and (7) Other officials who have strategic functions in relation to the administration of the state in accordance with the provisions of the legislation in force.

These seven categories of State Organizers are the main pumps for the TAP MPR Concerning KKN and the Law No. 28 of 1999, as the party most responsible for corrupt, collusion and nepotism practices, both individually and in collaboration with fellow State Administrators or other parties as cronies.

In connection with the practices of corruption, collusion and nepotism, the National Administration must (Article 5 of the Law No. 28 of 1999): (a) be prepared to examine his wealth before, during, and after taking

office; (b) report and declare wealth before and after taking office; and (c) not committing acts of corruption, collusion and nepotism.

With regard to the practices of corruption, collusion and nepotism, the legislators give authority to the President to form an Examining Commission, as regulated in Articles 10 and 11 of the Law No. 28 of 1999. According to Article 10 of the Law No. 28 of 1999, that in order to realize a State Administration that is clean and free of corruption, collusion and nepotism, the President as the Head of State forms an Examining Commission. While according to Article 11 of the Law No. 28 of 1999, the Examining Commission as referred to in Article 10 is an independent institution that reports directly to the President as the Head of State.

The function of the Examining Commission is regulated in Article 12 of the Law No. 28 of 1999, namely:

(1) The Examining Commission has the function to prevent the practice of corruption, collusion, and nepotism in the administration of the state.
(2) In carrying out its functions as referred to in paragraph (1), the Examining Commission may cooperate with related institutions both domestically and abroad.

With regard to the assets of a State Operator, the Examining Commission has the authority as stipulated in article 17 of the Law No. 28 of 1999, namely:

(1) The Examining Commission has the duty and authority to examine the assets of the State Administrators.
(2) The duties and authorities of the Examining Commission as referred to in paragraph (1) are:
    a. monitor and clarify the assets of the State Operator
    b. examine reports or complaints from the public, nongovernmental organizations, or government agencies regarding allegations of corruption, collusion, and nepotism from State Administrators
    c. to conduct an investigation on its own initiative regarding the assets of a State Operator based on instructions for corruption, collusion and nepotism against the relevant State Operator
    d. Seek and obtain evidence, present witnesses for the Investigation of State Officials suspected of corruption, collusion and nepotism or request documents from parties related to the Investigation of the assets of the State Operator concerned

e. If deemed necessary, in addition to requesting proof of ownership of part or all of the assets of a State Operator allegedly obtained from Corruption, collusion, or nepotism while serving as a State Operator, also requests an official authorized to prove the allegation in accordance with the provisions of applicable laws.

(3) An examination of the assets of a State Operator as referred to in paragraph (1) shall be carried out before, during and after the person in charge.

(4) Provisions regarding the procedure for inspecting the assets of a State Operator referred to in paragraphs (2) and (3) shall be regulated by a Government Regulation.

The authority of the Examining Commission rests on 2 (two) main points, namely: (a) the wealth of the State Operator; and (b) practices of corruption, collusion, and nepotism by State Administrators. Analyzing the main core of the TAP MPR Regarding KKN and Law No. 28 of 1999, there are 4 (four) ontological bases in the two laws, namely: a. wealth; b. state administrators and their cronies; c. corrupt practices; and d. state losses and state economy.

II. The Nature of Corruption in The Anti-Corruption Act

Corruption in the Anti-Corruption Act is divided into 2 (two), namely:

1. Criminal Acts of Corruption (regulated in Chapter II, Article 2 through Article 20); and
2. Other Crimes Related to Corruption (regulated in Chapter III, Article 21 to article 24).

The division of Corruption into 2 (two) types certainly has a basis for rationalization. The problem is that the rationalization is not explicitly explained (*expresis verbis*) in the Corruption Act, both in consideration, general explanation, and General Provisions. By using a systematic interpretation and teleological interpretation, it is associated with the TAP MPR Regarding KKN and the Law No. 28 of 1999 on KKN, Corruption referred to in Articles 2 to 20 of the Anti-Corruption Law is qualified based on 4 (four) concepts as the ontological basis, namely: (a) assets; (b) state

financial losses or the economy of the country; (c) enriching oneself or others; (d) state administrators and their cronies. These four concepts are the ontological basis for the preparation of the Corruption qualification.

Rationalization of the separation between Corruption and Other Crimes Related to Corruption as a logical consequence of the Corruption's focus which only relates to assets, financial losses of the state and the economy of the country, state administrators and their cronies, and corrupt practices. Crimes that are directly related (core crimes) with 4 (four) concepts are Corruption itself, while those outside of 4 (four) concepts are not core crimes (core crimes), which in the Corruption Law is categorized as Acts Other Crimes Related to Corruption

If Article 2 through Article 20 of the Anti-Corruption Law we analyze, will confirm the existence of 4 (four) concepts above as their ontological basis. Important concepts in Article 2 of the Anti-Corruption Law are: (a) enriching oneself or another person or a corporation; (b) detrimental to the country's finances or the country's economy; and (c) is against the law. The phrase "enriching oneself or another person or a corporation", relates to assets, as well as state administrators and their cronies. Which is potentially detrimental to the country's finances and the country's economy is the State Officials and its cronies.

Article 3 of the Anti-Corruption Law contains important concepts, namely: (a) benefits oneself or another person or a corporation; (b) abuse the authority, opportunity or means available to him because of his position or position; (c) detrimental to the country's finances and the country's economy. Only the State Administrators can abuse their authority, opportunity or means because of their position or position. The phrase "benefit oneself or another person or a corporation" relates to the assets of a State Operator and his cronies. This enrichment process has an impact on state losses and the country's economy.

Articles 5 and 6 of the Anti-Corruption Law adopt Articles 209 and 210 of the Criminal Code. Articles 209 and 210 of the Criminal Code are included in the Crimes Against General Authorities, namely bribery of state administrators, namely officials (Article 209 of the Criminal Code) and Judges (Article 210). The context of this article is the configuration of subjects and deeds, like other parties who bribed officials or judges to influence officials to do or not do and affect judges' decisions.

Article 7 of the Anti-Corruption Law adopts Article 387 of the Criminal Code. Article 387 of the Criminal Code is included in the Chapter on Cheating. The acts prohibited by this article area contractor or builder or seller of building materials, who when making a building or when handing over building materials, commits something fraudulent that can endanger the security of people or goods, or the safety of the state in a state of war. Prohibited acts are also those in charge of overseeing the construction or surrender of these items, deliberately allowing fraudulent acts.

Norm of Article 387 of the Criminal Code is a prohibition of cheating relating to the quality and quantity of buildings and building materials. In the context of the Anti-Corruption Act, it means prohibiting the other party from cheating if the act results in state losses.

Articles 8, 9, 10, 11 and 12 of the Anti-Corruption Act adopt Article 415, 416, 417, 418, 419, 420, 423, 425, or 435 of the Criminal Code. Article 415 to Article 419 of the Criminal Code is included in the Criminal Title Office. The perpetrators of the Article 415, 416, 417, 418 and 419 of the Criminal Code are officials or other person assigned to carry out a public office continuously or temporarily. Material deeds or m*odus operandi* which carried out various kinds, namely:

1. intentionally embezzled money or securities saved because of his position, or allowed the money or securities to be taken or embezzled by someone else, or helped as a helper in carrying out the act (Article 415 of the Criminal Code);
2. who deliberately fabricated or fabricated books specifically for administrative examination (Article 416 of the Criminal Code);
3. who deliberately embezzled, destroyed, damaging or making goods that are not intended to be used to convince or prove in front of the competent authorities, deeds, letters or lists under their authority because of their position, or allow others to eliminate, destroy, destroy or make unable to use these items, or helped as a helper in carrying out the act (Article 417 of the Criminal Code);
4. who accepts a gift or promise even though it is known or duly should be assumed, that the gift or promise is given because of the power or authority related to his position, or according to the mind of the person giving the gift or promise there is a relationship with his position (Article 418 of the Criminal Code);

5. accept a gift or promise when it is known that the gift or promise is given to move it to do or not do something in its position that is contrary to its obligations and accept the gift knowing that the gift was given as a result. or because the recipient has done or not done something in his office that is contrary to his obligations (Article 419 of the Criminal Code);
6. accept a gift or promise. even though it is known that the gift or promise is given to influence the decision of the case for which it is assigned, also to attend court hearings, receive gifts or promises, even though it is known that the gift or promise is given to influence the advice on cases that must be decided by the court (Article 420 of the Criminal Code);
7. benefit oneself or others unlawfully, by abusing their power, forcing someone to give something, to pay or receive payment in pieces, or to do something for themselves (Article 423 of the Criminal Code);
8. when carrying out duties, requesting, accepting, or deducting payments, as if owed to him, to other officials or to the public treasury, even though he knows that this is not the case; or when carrying out their duties, asking for or accepting people's work or delivering goods as if they were owed to them, even though they know that this is not the case; or when carrying out their duties, as if in accordance with the relevant regulations, they have used state land on which there are Indonesian usage rights at a disadvantage to the right whereas it is known that it contradicts these regulations (Article 425 of the Criminal Code); and
9. directly or indirectly deliberately participate in the chartering, surrender or leasing, which at the time of the act, for all or part of it, is assigned to administer or supervise it (Article 435 of the Criminal Code)

In Article 8 to Article 12 of the Anti-Corruption Law, by adopting Articles 415 through Article 435 of the Criminal Code, qualifications of prohibited acts are acts that are inherent in the duties and responsibilities of the Officials. These articles are also addressed to other parties (cronies) who work together with the officials concerned.

Article 13 of the Anti-Corruption Act is an act of bribery of a civil servant, which prohibits anyone from giving gifts or promises to civil servants regarding authority or authority and the position or position of the Official. This article is related to the position and authority of an official.

Article 15 of the Anti-Corruption Law stipulates: "*Every person who commits an attempted, assisted, or unanimous conspiracy to commit a criminal act of*

corruption is convicted of the same crime as referred to Article 2, Article 3, Article 5 through Article 14". This article is aimed at anyone who helps (as a crony) or engages in bad consensus (as well as cronies) on Corruption conducted by officials or directed at officials.

Analysis of Corruption in the aforementioned articles, confirms that Corruption in the articles constitutes the core crimes of the Corruption, because they are arranged based on their ontological character, namely assets, financial losses of the country or the economy of the country; enrich oneself or others; and state organizers and their cronies. In *argumentum a contrario*, actions which are not related to 4 (four) concepts cannot be qualified as Corruption.

Other Crimes Related to Corruption are regulated in Article 21 through Article 24 of the Corruption Law. In Article 21 of the Anti-Corruption Law, prohibited acts are intentionally preventing, hindering, or failing directly or indirectly the investigation, prosecution, and examination at a court hearing.

Article 21 of the Corruption Act the criteria for acts to obstruct or hinder the process of a criminal act of corruption are:[7]

a. Preventing the criminal justice process.
   The meaning of the word prevent in the Indonesian dictionary includes: "uphold; hold back, not obey ...: obstruct; forbid. " The act of preventing is when the law enforcers are or are about to carry out a judicial process in a corruption case, the perpetrators of criminal acts have committed certain acts with the aim that the judicial process cannot be carried out and the efforts of the perpetrators of the criminal offenses have indeed been successful.
b. Obstruct judicial process of criminal acts of corruption.
   Meaning obstructing: deterring ...; annoying, disturbing. Obstructing what we can define complicates an action to be taken. What is intended by the perpetrators of these criminal offenses is when the law enforcers are or are about to conduct a judicial process in a corruption

[7] Markhy S. Gareda, *Perbuatan Menghalangi Proses Peradilan Tindak Pidana Korupsi Berdasarkan Pasal 21 UU No. 31 Tahun 1999 Juncto UU No. 20 Tahun 2001.* 4 LEX CRIMEN. 134, 138-140 (2015). *See* also Seraphim Voliotis, *Abuse of ministerial authority, systemic perjury, and obstruction of justice: Corruption in the shadows of organizational practice*. 102 JOURNAL OF BUSINESS ETHICS. 537, 543-548 (2011); Nurul Hudi, Implementation of Article 21 Of Corruption Eradication Act on Advocates Performing Their Professional Function. 3 HANG TUAH LAW JOURNAL. 32, 36-38 (2019).

case, the perpetrators of the criminal offenses have committed certain acts with the aim that the ongoing judicial process is prevented from being carried out, and whether the actions can be achieved or no, it is not a condition. So here is enough to prove there are indications of efforts that lead to acts of thwarting or hindering the judicial process.

c. Thwarting the criminal justice process.[8]
The meaning of foiling including failing. What is intended by the perpetrators of these criminal offenses is when the law enforcers are or are about to conduct a judicial process in a corruption case, the perpetrators of the criminal acts have committed certain acts with the aim that the judicial process being carried out is not successful and the business of the criminal offenders is indeed successful. To frustrate is to make an action have no effect or make an action that has been done to be a failure.[9]

Article 22 of the Anti-Corruption Act prohibits acts "intentionally not giving information or giving incorrect information". Article 23 of the Anti-Corruption Law adopts Articles 220, 231, 421, 422, 429 and 430 of the Criminal Code. Prohibited acts are notifying or complaining of a criminal act, even knowing that it wasn't done (Article 220 of the Criminal Code); intentionally withdrawing goods confiscated based on the provisions of the law or that are entrusted by the judge's order, or by knowing that the goods were pulled from there, hiding them; intentionally destroying, destroying or making confiscated goods useless; The storage of goods which intentionally committed or allowed one of the crimes to be committed, or as an assistant to help the act (Article 231 of the Criminal Code); Abusing power compels a person to do, not do or allow something (Article 421 of the Criminal Code); An official who in a criminal case uses coercion, both to extort confessions, and to obtain information (422 of the Criminal Code); officials who exceed authority or without regard to the methods specified in general regulations, force entry into a house or room or enclosed yard used by another person, or if it is unlawfully there, does not immediately leave at the request of the rightful person or on behalf of that person; officials who at the time ransacked the house, beyond their control or without regard to the methods specified in the general regulations, inspected or confiscated letters, books

[8] *Id.*
[9] *Id.*

or other papers (Article 429 of the Criminal Code); as well as officials who exceed their authority, ask to show him or seize letters, postcards, goods or packages submitted to public transport agencies or cable news in the hands of telegraph officials for public purposes; an official who exceeds his authority, has a telephone official or other person assigned to a telephone job for public use, (Article 430 of the Criminal Code).[10]

Article 21, Article 22, Article 28 and Article 29 contained in Act Number 31 of 1999 jo. Law Number 21 of 2001 is not only for a corruption criminal suspect but certain persons who deliberately prevent, provide false information, hinder or frustrate directly or indirectly the investigation, prosecution and examination of court proceedings against suspects or defendants or the defendants a witness in a corruption case, with a specific purpose and purpose. If it is known that the act of obstructing a judicial process of corruption, planned by the suspect in the act of corruption itself, then the action taken by the suspect may increase the sentence received by the suspect.[11]

In all of the above legal provisions, prohibited acts are in no way related to the issue of enriching oneself or others, as well as state financial and economic losses. It is true that these actions are categorized as other criminal acts, relating to Corruption. In *argumentum a contrario*, these actions are not Corruption.

The act of obstructing the judicial process or (obstruction of justice) is an act of someone who obstructs the legal process, because the act of obstructing this is an act against the law that in fact they have clearly cut across and oppose law enforcement. "The act of obstructing the legal process is a criminal act because it clearly impedes law enforcement and damages the image of law enforcement agencies.[12] While frustrating means someone's actions or efforts in order for something corruption that has been investigated, prosecuted, or tried in court is not carried out.[13]

---

[10] *Id.* see also Anti-corruption Act (2001)

[11] Muhammad Fikri Thamrin, Analisis Sanksi Pidana Terhadap Perbuatan Mencegah dan Merintangi Proses Peradilan Tindak Pidana Korupsi. *DISS.* Universitas Lampung (2016)

[12] *Supra* note 7.

[13] HARI SASANGKA, KOMENTAR KORUPSI 34-37 (2007). In fact, it was also further emphasized that the impact of corruption could hamper the functioning of government as a supporter of state policies including hampering the role of the state in regulating allocations and preventing the state from making equal access and assets. *See* also Perseta Grabova, Corruption impact on Economic Growth: An empirical analysis. 6 JOURNAL OF ECONOMIC DEVELOPMENT, MANAGEMENT, IT, FINANCE, AND MARKETING. 57, 60-63 (2014);

THE AUTHORITY OF KPK INVESTIGATORS: HOW FARS?

Raison d'etre the formation of the KPK Law is based on considerations:

a. that in the framework of realizing a just, prosperous, and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the eradication of corruption that has occurred so far has not been carried out optimally. Therefore, the eradication of corruption must be increased professionally, intensively, and continuously because corruption has harmed the country's finances, the country's economy, and impeded national development;
b. that government institutions that handle corruption cases have not functioned effectively and efficiently in eradicating criminal acts of corruption;
c. that in accordance with the provisions of Article 43 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption, it is necessary to establish a Commission on Eradication of Corruption Independent Corruption with the duty and authority to eradicate corruption.

Establishment of KPK with ontological basis as follows: (a) loss of state finances, state economy, and hinder national development; (b) factual corruption eradication institutions have not functioned effectively and efficiently; and (c) the need for independent institutions.

The meeting point of the TAP MPR on KKN, the Law on KKN, and the Anti-Corruption Act with the KPK Law are losses of state finances, the country's economy, as well as hampering national development. The third common thread of the rule of law is to focus on eradicating acts that cause

---

Fang Wang, & Xunwei Sun, *Absolute power leads to absolute corruption? Impact of power on corruption depending on the concepts of power one holds*. 46 EUROPEAN JOURNAL OF SOCIAL PSYCHOLOGY. 77, 80-83 (2016); Mitchell A. Seligson, *The measurement and impact of corruption victimization: Survey evidence from Latin America*. 34 WORLD DEVELOPMENT. 381, 393-398 (2006); Peter Graeff, & Guido Mehlkop, *The impact of economic freedom on corruption: different patterns for rich and poor countries*. 19 EUROPEAN JOURNAL OF POLITICAL ECONOMY. 605, 610-615 (2003); Paul D. Hutchcroft, *The politics of privilege: assessing the impact of rents, corruption, and clientelism on Third World development*. 45 POLITICAL STUDIES. 639, 643-648 (1997).

losses to the state finances, the country's economy, as well as hampering national development, which is carried out by the State Administrators.

The aforementioned red string is clearly manifested in Article 6 letter c jo Article 11 of the KPK Law. According to Article 6 letter c of the KPK Law, that the KPK is tasked with investigating, investigating and prosecuting corruption. To carry out the tasks referred to in Article 6 letter c, the KPK has the authority to conduct investigations, investigations and prosecutions of corrupt acts that: (a) involve law enforcement officials, state administrators, and other persons related to corruption committed by the authorities law enforcement or state administrators; (b) getting disturbing attention from the public; and / or (c) involving state losses of at least Rp. 1,000,000,000.00 (one billion rupiah), according to article 11 of the KPK Law.

The two articles above emphasize that the authority of the investigation by the KPK Investigator is focused only on Corruption, as this criminal act (core crimes) whose perpetrators are law enforcement officers, state administrators, and their cronies. Also related to state losses of at least one billion. Corruption which becomes the limit of the scope of the authority of the KPK Investigator is Corruption with 3 (three) indicators, as regulated by Article 11 of the Corruption Law. Accordingly, the scope of the KPK Investigator's authority is not related to Corruption which has nothing to do with the State Administrator and his cronies; enrich oneself or others; as well as state financial losses or the country's economy.

Returning to the qualifications of material acts prohibited by Article 21 of the Anti-Corruption Act are: intentionally preventing, hindering, or failing directly or indirectly the investigation, prosecution, and examination at a court hearing of suspects and defendants or witnesses in corruption cases. Prohibited material acts only prevent, hinder, or frustrate directly or indirectly the investigation, prosecution and examination of court proceedings. Thus, prohibited acts have absolutely nothing to do with enriching oneself, other people or corporations that harm the country's finances or the country's economy.

The act of obstructing the judicial process or (obstruction of justice) is an act of someone who obstructs the legal process, because the act of obstructing this is an act against the law that in fact they have clearly cut across and oppose law enforcement. "The act of obstructing the legal process is a criminal act because it clearly impedes law enforcement and damages the

image of law enforcement agencies. [14]While frustrating means someone's actions or efforts in order for something corruption that has been investigated, prosecuted, or tried in court is not carried out.[15]

Actually, the offense deliberately prevents, obstructs or frustrates directly or indirectly the investigation of the suspect or witnesses has been regulated in the Criminal Code as a general offense, namely article 216 of the Criminal Code which is copied from article 184 WvS (*KUHP Dutch Version*) which in paragraph two of the article "*likewise anyone who deliberately prevents, obstructs or frustrates a job undertaken by a civil servant to carry out the legislation is threatened with imprisonment for a maximum of four months two weeks or a maximum fine of six hundred rupiah*". The article in WvS in article 184 where the threat of criminal punishment is even lighter, namely a maximum of three-months imprisonment or fine, and second is an act charged with lighter punishment and not serious crime for standard on Indonesian Criminal Code Draft, where is the serious crime is charged with seven years imprisonment or more.[16]

Obstruction of justice actually not a new term in the world of law, but this crime is not yet well known, some of the issues that make this term less popular are there are still reluctance of law enforcers to use this legal instrument in acting against the perpetrators of obstruction of justice acts and there are differences in perception among enforcers the law concerns the form of obstruction of justice in Law Number 31 of 1999 as amended to Law Number 21 of 2000 concerning Eradication of Corruption.

Obstruction of Justice is the act of obstructing the judicial process is an act of someone who is obstructing the legal process, because the act of obstructing this is an act against the law that in fact they have clearly cut down and oppose law enforcement. The act of obstructing the legal process is a criminal act because it clearly impedes law enforcement and damages the image of law enforcement agencies.[17] *In carrying out its enforcement, it must use the law in accordance with the act and must not be equated with a criminal act of corruption because the act is not regulated in the Anti-Corruption Act, therefore law enforcement is*

---

[14] *Supra* note 7

[15] *Id.*

[16] M. ARIF SETIAWAN ET.AL, OBSTRUCTION OF JUSTICE 66-68 (2019).

[17] OEMAR SENO ADJI & INSRIYANTO SENO ADJI, PERADILAN BEBAS DAN CONTEMPT OF COURT 285-290 (2007).

wise in taking action. The act obstructs the process of investigation, investigation and prosecution having nothing to do with corruption, it is only a part of corruption.

Article 21 Anti-Corruption Act is often referred to as "obstruction of justice", or known as the core of the delicts (*delictsbestanddelen*) "intentionally prevent, hinder or frustrate directly, or indirectly the investigation, prosecution and examination in court of a suspect or defendant or the defendants or the witnesses in a corruption case ". Article 21 of the Anti-Corruption Act Law is classified as" other criminal acts relating to criminal acts of corruption "and has a minimum of 3 (three) years imprisonment and a maximum of 12 (twelve) 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).[18]

Article 21 of the Anti-Corruption Act does not contain offenses regarding acts of corruption, because the prohibited act is an act of preventing, hindering or thwarting the investigation, prosecution and examination of a court of corruption case. The act of "obstruction of justice" must be done "intentionally", meaning that the act must contain the core offense "from the beginning known and desired as an act that is contrary to criminal law". In authentic interpretations or interpretations at the time the relevant legislation is prepared in this case the Explanatory Memory (*Memorie van Toelicbting*) explains intentionally (*opzet*) meaning "*de (bewuste) richting van den wil op een bapaald mfsdrzjf*" to commit certain crimes. According to the explanation "deliberately" (*opzet*) is the same as *willens en wetens* (desired and known). The act of "obstruction of justice" must contain a core part of the offense "prevent, hinder or frustrate directly, or indirectly" the meaning of the act is physical. This can be seen from the background regarding the existence of Article 21 of the Anti-Corruption Act originating from Article 221 of the Criminal Code, the formulation of which explicitly refers to acts of a physical nature, this can be seen in the formulation in Article 221 paragraph (1) of the Criminal Code which reads "hiding the person who commits a crime or charged with a crime" or giving him help to avoid investigations or detention". must contain the core offense "prevent, hinder or frustrate directly, or indirectly" the meaning of the act is physical in nature. This can be seen from the background regarding the existence of Article 21 of the Anti-Corruption Act originating from Article 221 of the

[18] *Id.*, at 150.

Criminal Code, whose formulation explicitly refers to acts that are physical in nature, this can be seen in the formulation in Article 221 paragraph (1) of the Criminal Code which reads "hiding people who commits a crime or is prosecuted for a crime "or gives him assistance to avoid investigation or detention". must contain the core offense "prevent, hinder or frustrate directly, or indirectly" the meaning of the act is physical in nature. This can be seen from the background regarding the existence of Article 21 of the Anti-Corruption Act originating from Article 221 of the Criminal Code, whose formulation explicitly refers to acts that are physical in nature, this can be seen in the formulation in Article 221 paragraph (1) of the Criminal Code which reads "hiding people who commits a crime or is prosecuted for a crime "or gives him assistance to avoid investigation or detention". [19]

As an example of the case with the defendant Lucas who was indicted by the public prosecutor in violation of article 21 of law number 31 of 1999 concerning eradication of corruption as amended by law number 20 of 2001 concerning amendment to law number 31 of 1999 concerning eradication of acts corruption in jo. article 55 paragraph 1 to 1 of the Criminal Code as a person who commits or participates in conducting, preventing, obstructing, or thwarting an investigation. Prosecution, or examination in court in a corruption case.[20]

In connection with the object of the case relating to acts that violate Article 21 of Law 31 of 1999 concerning Eradication of Corruption, as amended by Law No.20 of 2001 concerning Amendment of Law No.31 of 1999 concerning Eradication of Corruption, it will first be examined what is meant by Article 21 of the Anti-Corruption Act.

Article 21 Anti-Corruption Act is often referred to as "obstruction of justice", or known as the core of the delicts (*delictsbestanddelen*) "intentionally prevent, hinder or frustrate directly, or indirectly the investigation, prosecution and examination in court of a suspect or defendant or the defendants or the witnesses in a corruption case ". Article 21 of the Anti-Corruption Act Law is classified as" other criminal acts relating to criminal acts of corruption "and has a minimum of 3 (three) years imprisonment and a maximum of 12 (twelve) years and or a minimum fine of Rp. 150,000,000.00

[19] *Id.*
[20] *Id.*, at 153.

(one hundred and fifty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).

Article 21 of the Anti-Corruption Act does not contain offenses regarding acts of corruption, because the prohibited act is an act of preventing, hindering or thwarting the investigation, prosecution and examination of a court of corruption case. The act of "obstruction of justice" must be done "intentionally", meaning that the act must contain the core offense "from the beginning known and desired as an act that is contrary to criminal law". In authentic interpretations or interpretations at the time the relevant legislation is prepared in this case the Explanatory Memory (*Memorie van Toelicbting*) explains intentionally (*opzet*) meaning "*de (bewuste) richting van den wil op een bapaald mfsdrzjf*" to commit certain crimes). According to the explanation "deliberately" (*opzet*) is the same as *willens en wetens* (desired and known). The act of "obstruction of justice" must contain a core part of the offense "prevent, hinder or frustrate directly, or indirectly" the meaning of the act is physical. This can be seen from the background regarding the existence of Article 21 of the Anti-Corruption Act originating from Article 221 of the Criminal Code, the formulation of which explicitly refers to acts of a physical nature, this can be seen in the formulation in Article 221 paragraph (1) of the Criminal Code which reads "hiding the person who commits a crime or charged with a crime" or giving him help to avoid investigations or detention". must contain the core offense "prevent, hinder or frustrate directly, or indirectly" the meaning of the act is physical in nature. This can be seen from the background regarding the existence of Article 21 of the Anti-Corruption Act originating from Article 221 of the Criminal Code, whose formulation explicitly refers to acts that are physical in nature, this can be seen in the formulation in Article 221 paragraph (1) of the Criminal Code which reads "hiding people who commits a crime or is prosecuted for a crime "or gives him assistance to avoid investigation or detention". must contain the core offense "prevent, hinder or frustrate directly, or indirectly" the meaning of the act is physical in nature. This can be seen from the background regarding the existence of Article 21 of the Anti-Corruption Act originating from Article 221 of the Criminal Code, whose formulation explicitly refers to acts that are physical in nature, this can be seen in the formulation in Article 221 paragraph (1) of the Criminal

Code which reads "hiding people who commits a crime or is prosecuted for a crime "or gives him assistance to avoid investigation or detention".[21]

The case is an example that can be used to understand *Obstruction of justice* and is one type of contempt of court criminal act. Obstruction of justice is an act intended or that has the effect of distorting, disrupting the functions that should be in a judicial process. Obstruction of justice is a disruption to the judicial process in which there is an attempt to reduce the goodness (fairness) or efficiency of the judicial process or to the judiciary

Related to the term obstruction of justice is a legal terminology derived from Anglo Saxon literature, which in the doctrine of criminal law in Indonesia is often translated as "criminal acts obstructing the legal process."[22] Put simply, Charles Boys said that "Obstruction of justice is frustration of governmental purposes by violations, corruption, destruction of evidence, or deceit." With this understanding, obstruction of justice is actually not only related to a legal process (criminal), but also related to a government activity in an effort to realize the objectives of the government.[23]

The act of "Obstruction of Justice" must be carried out with "investigation, prosecution and examination in a court of law against a suspect or defendant or witnesses in a corruption case". The investigation began with the issuance of an investigation warrant, as well as the prosecution and inspection activities at the court hearing of suspects or defendants or witnesses in corruption cases. The formulation of a criminal offense outlined in Article 21 of the Anti-Corruption Act, therefore, must

---

[21] *Id*., at 150. For further comparison and comprehensive picture, please also *see* Yemane Desta, *Manifestations and Causes of Civil Service Corruption in the of Developing Countries*. 9 JOURNAL OF PUBLIC ADMINISTRATION AND GOVERNANCE. 23, 26-29 (2019); Chris Russell, *Friendly Governance: Assessing Sociopolitical Factors in Allegations of Corruption*. 21 PUBLIC INTEGRITY. 195, 200-205 (2019); Jay S. Albanese, Kristine Artello, & Linh Thi Nguyen, *Distinguishing corruption in law and practice: Empirically separating conviction charges from underlying behaviors*. 21 PUBLIC INTEGRITY. 22, 25-27 (2019); GRAHAM BROOKS, CRIMINAL JUSTICE AND CORRUPTION: STATE POWER, PRIVATIZATION AND LEGITIMACY 217-226 (2019); Marta Żerkowska-Balas, & Anna Sroka, *The Influence of Corruption Scandals on Government Accountability*. 24 POLITICAL PREFERENCES. 45, 48-59 (2019); Issa Luna-Pla, & José R. Nicolás-Carlock, *Corruption and complexity: a scientific framework for the analysis of corruption networks*. 5 APPLIED NETWORK SCIENCE. 1, 10-11 (2020); Muh Sutri Mansyah, *Penafsiran Keterangan Palsu dalam Persidangan Tindak Pidana Korupsi dengan Kaitannya Kasus Obstruction of Justice*. 16 JUSTICIA ISLAMICA JURNAL KAJIAN HUKUM DAN SOSIAL. 61, 65-68 (2019); Muh Sutri Mansyah, *Menghilangkan Alat Bukti oleh Penyidik Tindak Pidana Korupsi Sebagai Upaya Obstruction of Justice*. 18 EKSPOSE: JURNAL PENELITIAN HUKUM DAN PENDIDIKAN. 877, 878-881 (2020).

[22] SHINTA AGUSTINA & SALDRI ISRA, OBSTRUCTION OF JUSTICE, *supra* note 3.

[23] *Id.*

contain the core offense as described above, with consequences if the core offense of Article 21 of the Anti-Corruption Act article is not fulfilled, then the act is not a criminal offense under Article 21 of the Anti-Corruption Act.

CONCLUSION

The authority of the investigation by the KPK Investigators is focused only on Corruption, as a core crime whose perpetrators are law enforcement officers, state administrators, and their cronies. Also related to Corruption which becomes the scope of the scope of the authority of the KPK Investigator is Corruption with 3 (three) indicators, as regulated by Article 6 letter c jo Article 11 of the Anti-Corruption Law.

There is no doubt that the acts prohibited by Article 21 of the Anti-Corruption Law are not Corruption as core crimes, because they are not in the context of enriching oneself, another person or a corporation; and has nothing to do with state financial losses and the country's economy. And it is appropriate if categorized as another crime.

Therefore, KPK investigators do not have the authority to investigate the actions of investigating, prosecuting, and examining in court cases in corruption cases. Normatively, actions to obstruct the judicial process are regulated in many regulations, both in the Criminal Code and special criminal law. Corruption practices occur in almost every layer of the bureaucracy, both legislative, executive and judicial, and have also spread to the business world. Like a disease, corruption is a chronic disease, so it is very difficult to treat it. In essence there are limitations on the authority in conducting investigations, investigations and prosecution of criminal acts. Based on the understanding of criminal acts of corruption in the Anti-Corruption Act.

The KPK is only authorized to conduct investigations, investigations and prosecutions of corruption offenses, and not other crimes related to corruption. Investigators and public prosecutors are not authorized to carry out the investigation, investigation and prosecution of Article 21 of the Anti-Corruption Act against the defendant. Article 21 of the Anti-Corruption Act is clearly and clearly qualified as a criminal offense related to criminal acts of corruption. Even though article 6 letter c of the KPK Law limits the authority

of investigators and public prosecutors to the extent of an investigation, an investigation. And prosecution of corruption and the Anti-Corruption Act.

This is reinforced in article 11 of the KPK Law and also emphasized in paragraphs four to paragraph seven of the explanation of the KPK Law. The authority limitation is needed so that there is no monopoly on the task and authority of investigation, investigation and prosecution and there is no overlapping authority over the eradication of corruption between KPK and other law enforcement agencies.

REFERENCES

Adji, O.S., & Adji, I.S. (2007). *Peradilan Bebas dan Contempt of Court*. Jakarta: Diadit Media.

Agustina, S., & Isra, S. (2015). *Obstruction of Justice: Tindak Pidana Menghalangi Proses Hukum dalam Upaya Pemberantasan Korupsi*. Jakarta: Themis Books.

Albanese, J. S., Artello, K., & Nguyen, L. T. (2019). Distinguishing corruption in law and practice: Empirically separating conviction charges from underlying behaviors. *Public Integrity 21*(1), 22-37.

Brooks, G. (2019). *Criminal Justice and Corruption: State Power, Privatization and Legitimacy*. London: Springer.

Desta, Y. (2019). Manifestations and Causes of Civil Service Corruption in the of Developing Countries. *Journal of Public Administration and Governance 9*(3), 23-35.

Gabrillin, A. (June, 2018) Fredrich: Mutlak KPK Tak Berwenang Tangani Kasusnya, *KOMPAS*, 22 June, https://nasional.kompas.com/read/2018/06/22/14224431/fredrich-mutlak-kpk-tak-berwenang-tangani-kasusnya?page=all.

Gareda, M. S. (2015). Perbuatan Menghalangi Proses Peradilan Tindak Pidana Korupsi Berdasarkan Pasal 21 UU No. 31 Tahun 1999 Juncto UU No. 20 Tahun 2001. *Lex Crimen 4*(1), 134-142. https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/7009

Grabova, P. (2014). Corruption impact on Economic Growth: An empirical analysis. *Journal of Economic Development, Management, IT, Finance, and Marketing 6*(2), 57-78.

Graeff, P., & Mehlkop, G. (2003). The impact of economic freedom on corruption: different patterns for rich and poor countries. *European Journal of Political Economy 19*(3), 605-620.

Hudi, N. (2019). Implementation of Article 21 of Corruption Eradication Act on Advocates Performing Their Professional Function. *Hang Tuah Law Journal 3*(1), 32-45.

Hutchcroft, P. D. (1997). The politics of privilege: assessing the impact of rents, corruption, and clientelism on Third World development. *Political Studies 45*(3), 639-658.

Irham, M. A. (2016). Neo-KKN dan Tantangan Demokratisasi Indonesia. *Analisis: Jurnal Studi Keislaman 16*(1), 245-278.

Isra, S., Amsari, F., & Tegnan, H. (2017). Obstruction of justice in the effort to eradicate corruption in Indonesia. *International Journal of Law, Crime and Justice 51(1)*, 72-83.

Luna-Pla, I., & Nicolás-Carlock, J. R. (2020). Corruption and complexity: a scientific framework for the analysis of corruption networks. *Applied Network Science 5*(1), 1-18.

Mansyah, M. S. (2019). Penafsiran Keterangan Palsu dalam Persidangan Tindak Pidana Korupsi Dengan Kaitannya Kasus Obstruction of Justice. *Justicia Islamica Jurnal Kajian Hukum dan Sosial 16*(1), 61-78.

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

Maszudi, E. (2015). Manajemen Pencegahan KKN di Indonesia. *Prima Ekonomika 6*(1), 15-34.

Niervana, A. (January, 2018). Selain Fredrich, 4 Pengacara ini Juga Halangi Penyidikan Korupsi, *LIPUTAN 6*, 14 January, https://www.liputan6.com/news/read/3225824/selain-fredrich-4-pengacara-ini-juga-halangi-penyidikan-korupsi

Ramadhini, A. P. (2018). Tinjauan Yuridis terhadap Perbuatan yang Menghalangi Proses Peradilan (Obstruction of Justice) dalam Tindak Pidana Korupsi di Indonesia. *Dissertation.* Batam: Universitas Internasional Batam.

Rahmatunnisa, M. (2010). Menyoal Kembali Reformasi Birokrasi di Indonesia. *Governance 1*(1), 1-12.

Riady, R. (January, 2019). Perbuatan Obstruction of Justice pada Advokat dalam UU Tipikor, *JAWA POS*, 19 January. https://www.jawapos.com/opini/16/01/2019/perbuatan-obstruction-of-justice-pada-advokat-dalam-uu-tipikor/

Robertson-Snape, F. (1999). Corruption, Collusion and Nepotism in Indonesia. *Third World Quarterly 20*(3), 589-602.

Russell, C. (2019). Friendly Governance: Assessing Sociopolitical Factors in Allegations of Corruption. *Public Integrity 21*(2), 195-213.

Sasangka, H. (2007). *Komentar Korupsi*. Bandung: Mandar Maju.
Seligson, M. A. (2006). The measurement and impact of corruption victimization: Survey evidence from Latin America. *World Development 34*(2), 381-404.
Setiawan, M.A., et al. (2019). *Obstruction of Justice.* Yogyakarta: Genta Publishing.
Schütte, S. A. (2007). The fight against corruption in Indonesia. *Südostasien Aktuell: Journal of Current Southeast Asian Affairs 26*(4), 57-66.
Sherlock, S. (2002). Combating corruption in Indonesia? The ombudsman and the assets auditing commission. *Bulletin of Indonesian Economic Studies 38*(3), 367-383.
Thamrin, M. F. (2016). Analisis Sanksi Pidana Terhadap Perbuatan Mencegah dan Merintangi Proses Peradilan Tindak Pidana Korupsi. *Dissertation.* Lampung: Universitas Lampung.
Voliotis, S. (2011). Abuse of ministerial authority, systemic perjury, and obstruction of justice: Corruption in the shadows of organizational practice. *Journal of Business Ethics 102*(4), 537-562.
Wagner, B. B., & Jacobs, L. G. (2008). Retooling Law Enforcement to Investigate and Prosecute Entrenched Corruption: Key Criminal Procedure Reforms for Indonesia and Other Nations. *University of Pennsylvania Journal of International Law 30*(1), 183-265.
Wang, F., & Sun, X. (2016). Absolute power leads to absolute corruption? Impact of power on corruption depending on the concepts of power one holds. *European Journal of Social Psychology 46*(1), 77-89.
Yoga, I. N. D., Widhiyaastuti, I. G. A. A. D., & Darmadi, A. N. O. Y. (2018). Kewenangan Komisi Pemberantasan Korupsi Menangani Obstruction of Justice dalam Perkara Korupsi. *Kertha Wicara: Journal Ilmu Hukum 7*(4), 1-14.
Żerkowska-Balas, M., & Sroka, A. (2019). The Influence of Corruption Scandals on Government Accountability. *Political Preferences 24*(1), 45-56.
Znoj, H. (2007). Deep corruption in Indonesia. Discourses, practices, histories. In *Corruption and the secret of law. A legal anthropological perspective.* Farnham: Ashgate.

ABOUT AUTHOR

Deni Setya Bagus Yuherawan is a Lecturer at Faculty of Law Universitas Trunojoyo Madura (UTM), Indonesia. His research interests are concerning Criminal Law and Philosophy of Law. Beside working as a Lecturer and Researcher in Criminal Law Studies, He has also served as Dean of the Faculty of Law (2014-2015) and Vice Rector I (2015-2018). Currently, the Author is active in various scientific meetings and conferences both national and international.