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Legal Protection For Advocates Who Are Considered Not In Good Faith For Alleged Obstruction Of Justice In Corruption Cases

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ABSTRACT

Advocates as one of the professions in the field of law in their duty to defend clients both inside and outside the trial are equipped with privileges in the form of legal protection (immunity), but often these privileges are abused by advocates by obstruction of justice especially in cases of corruption crimes that aim to prevent clients from being investigated by Police Investigators, the Prosecutor's Office or the KPK. There are differences in the parameters of the assessment of good or bad ethics by an Advocate carried out by the Investigator so that it is considered to be an obstruction of justice so that there is a conflict between the legal norms contained in Article 16 of Law Number 18 of 2003 concerning Advocates and the reality that occurs in the field. The problem that causes advocates to be considered not to be good at obstructing justice in corruption cases is due to the absence of assessment parameters of advocates who are not in good faith and the absence of legal protection for advocates who are suspected of obstruction of justice, especially in corruption cases. The method used in this study is normative - empirical legal research, using a case approach, a legislative approach (statue approach) and a conceptual approach (Conceptual Approach). This study aims to examine the assessment parameters of advocates who do not have good faith against the suspicion of obstruction of justice by investigators and to find out the analysis of legal protection (immunity rights) owned by advocates who are considered to have no good faith by committing obstruction of justice, especially in cases of corruption. The results of this study are that the criteria for Advocates who are considered not in good faith are violations of the code of ethics, laws and regulations, oath or promise of Advocates as well as the value of feasibility and propriety. In addition, in order to create legal protection and certainty, a special institution such as the Advocate Honorary Council is needed which aims to determine whether the actions of the Advocate who are considered not to be in good faith are contrary to the etic code or laws and regulations or not.'

Keywords:

legal protection, advocates who do not have good intentions, obstruction of justice.

INTRODUCTION

Indonesia is a state based on law (rechstaat and the rule of law), this is expressly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. As a state of law, of course, all actions in the life of the nation and state must be regulated by law. Law as a social institution has an important role in society to create peace, justice and security and regulate all prohibited and ordered human actions.[1]

Law functions as a tool to organize society properly and with dignity. In addition, the law also acts as an important instrument in the prevention and control of crime.[2] Based on the Indonesian Language Dictionary (KBBI) the word "law" has the meaning of "rules or customs that are officially considered binding, confirmed by the authorities or government". Therefore, the law that has been made must be obeyed and obeyed, and to ensure that the law is obeyed, law enforcement officers are needed.

In practice, to realize law enforcement, law enforcement officers are needed which consist of various professions in the field of law, including judges, prosecutors, police and advocates or lawyers.[3] Advocate is a profession whose job is to act as a companion, opinion giver, become a legal representative for and on behalf of his client, In addition, Advocates also have a function to provide legal services both inside and outside the court that meet the requirements based on the provisions of the law. given. Advocates as a legal profession have freedom based on honesty, independence, confidentiality and openness in order to prevent the birth of disgraceful attitudes and less honorable behavior.[4] Advocates have the qualifications and authority to practice in court in providing legal advice and accompanying, defending their clients in legal matters, so that the freedom of the Advocate profession is very important for the benefits of people who need legal services (Legal Service) and defense (litigation) from an Advocate. So that the Advocate profession can be interpreted as a Legal Counsel or Lawyer who has a role in helping suspects or defendants from lawsuits, arrest and detention by law enforcement.[5]

Advocates also function to provide advice and represent their clients in legal matters and have a moral responsibility to ensure that the principles in the justice system, especially the criminal justice system, can run properly and correctly, such as ensuring the implementation of the presumption of innocence and being responsible for fighting for truth and principles of justice. The existence of the Advocate profession is a reflection of increased public awareness of their legal rights and obligations,

[1] Moeljatno, 2009, *Asas-asas Hukum Pidana*, Jakarta, Rineka Cipta, Hal 1

[2] Slamet Tri Wahyudi, 2012, *Konsekuensi Yuridis Penyimpangan Kewenangan Intersepsi Oleh Penegak Hukum*, Jakarta, Sekolah Tinggi Ilmu Hukum IBLAM, Jurnal Hukum Dan Peradilan Vol 1

[3] Prasetyo, Handoyo, and Bambang Waluyo. "Implementation Of Corporate Law Norms: Analysis Of The Element Of The No Losses To The State As An Announcement Of Corporate Criminal By State-Owned Enterprises." *Journal of Namibian Studies: History Politics Culture* 34 (2023): 5138-5163.

[4] Yudi Krismen, 2019, *Antisipasi Praperadilan*, Jakarta, Adhi Sarana Nusantara, 2019, hlm 14

[5] Febiana Rima, 2000, *Mafia Hukum dan Moralitas Penegak Hukum*, Jakarta, Pusat Pengembangan Etika Atma Jaya, hlm 3.

therefore the Advocate institution is honored as a noble profession (officium nobile) in its position as a law enforcer, due to its duty to help the "weak" and ensure the judicial process runs fairly.[6]

In civil and criminal cases, Advocates in Indonesia have a significant role in providing assistance to those in need, especially litigating clients. Advocates try to fight for justice for their clients by presenting the facts they have and adjusting to the provisions in positive legal regulations, so that the Advocate profession in Indonesia in carrying out its duties to defend clients has special rights (previlage) in the form of legal protection (immunity rights), namely rights that give Advocates the privilege of not being prosecuted either civilly or criminally in carrying out their duties.[7] Based on Article 16 of Law Number 18 of 2003 concerning Advocates which reads as follows: "Advocates cannot be prosecuted either civilly or criminally in carrying out their professional duties in good faith for the benefit of the client's defense in court". That with the provisions of Article 16, Advocates in carrying out their profession have been given "provisions" in the form of legal protection or immunity rights in the form of the right not to be prosecuted legally both civilly and criminally in carrying out their duties to defend their clients. The right of immunity is needed by Advocates to maintain the independence of the Advocate profession in its position as a law enforcer which functions to create a good law enforcement system and avoid criminalization of Advocates in carrying out their profession. In addition, the purpose of granting immunity rights to Advocates is so that Advocates in carrying out their duties to provide services to their clients avoid fear and carry out their duties safely. This is as stipulated in the National Union Convention on the Role of Lawyers and the International Convention on Civil and Political Rights.[8] Article 16 of the convention affirms that immunity can apply to an Advocate if he/she carries out his/her duties to assist his/her client in good faith, which is explained in the explanation of Article 16 of Law No. 18 of 2003 concerning Advocates, the purpose of good faith is to carry out professional duties for the sake of upholding justice based on the law, while the phrase court session means every level in court in all judicial environments.[9]

In its development there is an expansion of the meaning in Article 16 of Law No. 18 of 2003 concerning Advocates as a result of the decision of the Constitutional Court Number: 26 / PUU-XI / 2013 which reads "Advocates cannot be prosecuted either civilly or criminally in carrying out their profession in good faith for the benefit of client defense in and out of court". The decision of the Constitutional Court Number: 26/PUU-XI/2013 emphasizes that Advocates in carrying out their profession cannot be prosecuted either civilly or criminally, especially in the process of investigation, investigation and prosecution or trial in court.

The existence of immunity rights owned by an Advocate often makes an Advocate act arbitrarily and even tend to undermine the honor, dignity and honor of the court body. In the book Advocate and Contempt of Court: A Professional Honor Council Process (2016) Luhut M.P. Pangaribuan explains that

[6] Theodarus Yosep Parera, 2016, *Advokat dan Penegakan Hukum,* Yogyakarta, Genta Press, Hlm 118
[7] V.Harlen Sinaga, 2011, *Dasar-Dasar Profesi Advokat*, Jakarta, Erlangga, Hlm. 20
[8] Yahman dan Nurtin Tarigan, 2019, *Peran Advokat dalam Sistem Hukum Nasional*, Jakarta, Kencana, Hlm 77.
[9] Bambang Waluyo, 2022, *Penegakan hukum di Indonesia*, Jakarta: Sinar Grafika, hlm. 15.

if there are allegations of a criminal offense committed by an Advocate, the Advocate's immunity does not apply. Supreme Court Law No. 14 of 1985 defines Contempt of Court as any act, behavior, attitude and or speech that can degrade and undermine the authority, dignity and honor of the judicial body. One of the forms of contempt of court is the act of obstructing the judicial process or obstruction of justice.[10]

The act of obstructing or obstructing the judicial process or legal process or obstruction of justice is usually carried out by unscrupulous Advocates who are carrying out their profession to assist clients in the process of investigating criminal cases, especially criminal acts of corruption, as for the act of obstructing or obstructing the judicial process or legal process (obstruction of justice) in the case of criminal acts of corruption has been regulated in Article 21 and Article 22 of Law Number 31 of 1999 concerning the eradication of criminal acts of corruption which reads as follows:

> *" Any person who intentionally obstructs, hinders, or frustrates the investigation, prosecution, and examination in court of a suspect, defendant or witness is guilty of corruption and shall be punished with a maximum imprisonment of twelve years and a minimum fine of Rp.150,000,000, - (one hundred and fifty million rupiah and a maximum of Rp.600,000,000, - (six hundred million rupiah)."* [11]

According to Black's Law Dictionary, Obstruction of Justice means:

> *"Interfacewith the orderly administration of law and justice, as by giving false information to or withholding evidence from a police officer or procecutor, or by harming or intimidating a witness or juror."*[12].

The forms of intervention in question are giving false testimony, hiding evidence from the Police or the Prosecutor's Office or harming or intimidating witnesses or jurors. The alleged act of obstructing an investigation (obstruction of justice) can be declared as an act of obstructing an investigation if 3 (three) important elements are fulfilled, namely: (1) The action causes a delay in legal proceedings (pending judicial proceedings), (2) The perpetrator knows or intends his actions (knowledge of pending proceedings), (3) The perpetrator commits or attempts deviant actions with the aim of interfering with or intervening in legal proceedings or administration (acting corruptly with intent). In addition, in some courts in the United States, one more requirement is added, namely that it must be proven that the defendant had a "motive" to carry out the actions taken.[13]

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[10] Marlis Kwan, 2022, *Tentang Imunitas dan Impunitas Advokat*, Jakarta. diakses pada 10 Desember 2024 melalui https://lokadata.id/tentang-imunitas-dan impunitas-advokat

[11] Indonesia, Undang-undang Nomor 31 Tahun 1999 Jo Undang-undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi, Pasal 21.

[12] Bryn A. Garner (Ed), 2009, *Black' Law Dictionary*, St Paul, United States of America; West, A Thompson Reuters busiess, Ninth Edition, Hal 1183.

[13] Shinta Agustina Dkk, 2015, *Obstruction Of Justice : Tindak Pidana Menghalangi Proses Hukum dalam Upaya Pemberantasan Korupsi,* Jakarta, Themis Book, Hal 83.

That the cause of Advocates being caught in the obstruction of justice article when assisting clients in corruption cases is because Article 16 of Law Number 18 of 2003 concerning Advocates is still multi-interpreted, causing the absence of definite benchmarks or clear parameters for the immunity rights attached to Advocates in assisting clients. That the absence of parameters for the right to immunity owned by an Advocate, causes differences in providing an assessment of whether an Advocate is in good faith or bad faith in assisting clients. That in reality there are different paradigms for assessing good faith or bad faith taken from the perspective of law enforcers, both investigators and Advocates.[14]

From this description, a special institution is needed to be able to determine whether the Advocate's actions are considered as an act of obstructing the investigation or not (good faith or not), and whether the actions taken by the Advocate are contrary to the Advocate's code of ethics or not. Investigators should not be in a hurry to determine an Advocate to be a suspect in the case of obstructing an investigation in a corruption case just because of the actions of an Advocate who prohibits witnesses from providing testimony in the investigation process or prohibits witnesses from providing evidence. This is because Advocates are law enforcers and an important element in the judicial process. If there is an Advocate who is suspected of obstructing the investigation, the handling can be submitted to the Advocate code of ethics institution in order to create legal certainty.[15]

As a comparison to professions that both have ethical code institutions such as doctors called the Medical Ethics Honor Council (MKEK). Like the code of ethics institution, the Medical Ethics Honor Council (MKEK) is tasked with guiding, supervising, assessing the implementation of the medical code of ethics whether it is in accordance with the noble ideals of medicine or not. In practice, MKEK's task is very effective in determining errors or malpractices committed by doctors under its auspices.[16] Every case of a doctor's misdiagnosis that harms his patient that occurs in Indonesia is always brought to MKEK under the auspices of the IDI at both the central and branch levels,[17] From the recommendation of MKEK's decision, it will be known that the behavior of the doctor suspected of committing malpractice is contrary to the code of ethics or the medical profession or not, and MKEK's role is to impose administrative sanctions and forward the findings or analysis to law enforcement.

With the explanation above, the author intends to illustrate or show that the role of medical ethics institutions is very effective in determining the behavior of doctors whether they commit ethical violations or not. The same should also apply to the ethical institution of advocates, so that the role and function of Advocates in carrying out their duties and profession has legal certainty as well as legal protection, and on the one hand if the investigator brings the issue of alleged obstruction of investigation

[14] Bambang Waluyo, 2022, *Pemberantasan tindak pidana korupsi: Strategi dan optimalisasi*, Jakarta: Sinar Grafika, hlm. 2.

[15]Handar Subhandi Bakhtiar, "Legal Regulation of Forensic Autopsies in the Criminal Investigation Process: A Study of Concepts and Legal Reform," *Journal of Law, Politic and Humanities*, Vol. 4 No. 5 (2024), hlm. 1763-1769.

[16]Handar Subhandi Bakhtiar, "The Evolution of Scientific Evidence Theory in Criminal Law: A Transformative Insight," *Media Iuris*, Vol. 7 No. 2 (2024).

[17] Tri Jata Ayu Pramesti, 2014, *Tugas Majelis Kehormatan Etik Kedokteran dan Majelis Kehormatan Disiplin Kedokteran Indoneisa*, hukum online..com, 19 November 2014, diakses 7 Februari 2024.

carried out by unscrupulous Advocates to the Advocate's ethical institution, then the investigator has worked professionally.

Based on records from Indonesia Corruption Watch (ICW) from 2005 to 2019 there were at least 22 (twenty-two) Advocates who were prosecuted for committing corruption crimes, one of which was involved in obstructing investigations.[18] There are several examples of Advocates in Indonesia who have been charged with obstructing an investigation, such as the case of Advocate FY. FY was named as a suspect by the KPK for allegedly obstructing the investigation in the corruption case of e-KTP case with Setya Novanto as the suspect on January 10, 2018 because he did not fulfill the summons for examination. FY's case has been legally binding with a sentence of 7 (seven) years imprisonment.

Furthermore, HH in 2011 was charged with violating the article of obstructing investigation because he was involved in the Gayus Tambunan case by providing false information about the origin of Gayus Tambunan's assets to Police investigators and was sentenced to 12 (twelve) years in prison plus a fine of Rp.500,000,000, - (five hundred million rupiah).

The last example was advocate DWW in 2022. DWW was charged by investigators at the Deputy Attorney General for Special Crimes at the Attorney General's Office with Article 21 and Article 22 of Law No. 31 of 1999 Jo 20 of 2001 Jo Article 55 paragraph 1 to 2 of the Criminal Code for encouraging false testimony to witnesses in the LPEI (Indonesian Export Financing Institution) investigation case. As a result of his actions based on decision No. 01/Pid.Sus-TPK/2022 DWW was sentenced to 3 (three) years imprisonment and a fine of Rp.150,000,000, - (one hundred and fifty million rupiah).

Based on the cases mentioned above, the author is interested in discussing the parameters of assessing an advocate who does not have good faith and the implementation of legal protection for an advocate who does not have good faith in facing the suspicion of Obstruction Of Justice by investigators (Attorney, KPK, and Police) in corruption cases.

Based on this, it encourages researchers to examine criminal law policy issues. Therefore, the researcher formulates the problem, namely how are the parameters for assessing advocates who do not have good faith in the suspicion of obstruction of justice in corruption cases?

RESEARCH METHODS

Research is a planned activity carried out with scientific methods aimed at obtaining new data to prove the truth or untruth of an existing symptom or hypothesis. The scientific method can be interpreted as a way of how research is carried out, by following certain justified methods. This can be regarding the procedures for data collection, data management and data analysis as well as writing research reports.[19]

[18] https://antikorupsi.orgIndonesia Corruption Watch, Advokat dalam Jeratan Hukum, Monday 22 Januari 2018. Diakses pada 7 Februari 2024.Emerson Yuntho, Anggota Badan Pekerja ICW.

[19] Bambang Waluyo, 1991, "Penelitian Hukum Dalam Praktek" Jakarta, Sinar Grafika, hlm 2

The type or research method used in this research is normative - empirical. Normative - empirical research is research that examines the implementation of positive legal provisions and written documents on every legal event that occurs. This research method aims to be able to ascertain if the application of the law to legal events in concreto is in accordance or not in accordance with the applicable provisions or whether these provisions have been implemented properly.[20]

The legal research approach in this research is:

1. Case approach, namely the approach taken by using Ratio Decidendi, namely the legal reasons used by the judge to arrive at his decision.[21] The case approach in this study uses the case of obstruction of justice / obstruction of investigation in the handling of corruption cases involving Advocates carried out by investigators from the Police, Prosecutors' Office and KPK.
2. Statute approach or juridical approach, namely research on legal products.[22] This statutory approach is carried out to examine all laws and regulations related to the research to be studied. This statutory approach will open up opportunities for researchers to study whether there is consistency and compatibility between one law and another.[23]
3. Conceptual Approach is research conducted when the researcher does not depart from existing legal rules. This is done because there is no legal rule for the problem at hand. In building concepts, researchers must rely on the views and doctrines that develop in legal science.[24]

RESEARCH RESULTS AND DISCUSSION

Parameters for Assessing Advocates Considered Not in Good Faith Against Suspicion of Obstruction of Justice in Corruption Cases.

The discussion on the assessment of Advocates who do not act in good faith cannot be separated from the term "good faith" itself. The general definition of good faith can be seen in Black's Law Dictionary (sixth edition) which provides the following definition:[25]

> *"Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses among other things an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage and on individual's personal good faith in concept of his own mind in inner spirit and therefore, may not conclusively be determined by his protestations alone. Honest of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. An honest intentions to abstain from*

[20] Hukumonline.com, 2004, *" Tiga Jenis Metodolagi Untuk Penelitian Hukum"* tanggal 8 Mei 2023, diakses pada tanggal 18 Februari 2024.
[21] Peter Mahmud Marzuki, 2005, *Penelitian Hukum* , Edisi Revisi, Jakarta, Kencana, hlm. 158.
[22] Bahder Johan Nasution, 2008, "*Metode Penelitian Ilmu Hukum*", Bandung : Mandar Maju, hlm. 92.
[23] Peter Mahmud Marzuki, Op Cit, hlm. 136
[24] Peter Mahmud Marzuki, *Op.Cit*., hlm. 177
[25] Henry Cambell Black, 1990, *Black Law Dictionary (sixth edition)*, West Publising Co, St Paul Min, hlm 693

> *taking any unconscientions advantage of another, even through tecnicalities of law, together with absence of all information, notice or benefit or belief of fact which render transaction unconscientions. In common usage this term is ordinarly used to describe that state of mind denoting honesty of purpose, freedom intention of defraud, and generally speaking means being faithfull to one's duty or obligation"*

Based on the above understanding, good faith literally contains an abstract and intangible meaning and without technical meaning or definition by statutory regulations. In this sense, the meaning of good faith is as follows:

> *"an honset belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage, and individual's personal good faith in concept of his own mind in inner spirit and therefore, may not conclusively be determined by his protestations alone"*

which means honesty that exists in a person's mind and mind in carrying out an action that aims to avoid deceptive intentions and seek profit in the event of inaccuracy that results in harm to other parties in the future. Based on this understanding, the meaning of "good faith" lies in the inner attitude (intention) of a person.[26]

The definition of good faith is explained in the elucidation of Article 16 of Law Number 18 Year 2003 on Advocates. What is meant by good faith in the article is that the advocate in carrying out his profession for the sake of upholding justice based on the law to defend the interests of his client.[27] With this explanation, the definition of good faith given in the explanation of Article 16 of Law Number 18 of 2003 concerning Advocates already requires that in defending the interests of clients an Advocate must remain "based on the rule of law".

The explanation of the criteria for the definition of "bad faith" is not clearly found in various literatures, with the unregulated term in various literatures has led to various different interpretations between investigators and advocates themselves, resulting in acts of obstruction of justice, especially in the handling of corruption cases.[28]

Referring to the definition of good faith, the definition of bad faith is the opposite of the definition of good faith. As with the notion of good faith contained in Article 16 of Law Number 18 of 2003 concerning Advocates which explains that what is meant by good faith in the article is an advocate in carrying out his profession for the sake of upholding justice based on law to defend the interests of his clients. Thus what is meant by the "bad faith" of an advocate is carrying out his profession in defending the interests of his clients not based on the law.[29] If the advocate's actions are contrary to the code of

[26] https://repository.uksw.edu/bitsteram, Pendaftar nama domain beikhtikad baik harus dilindungi, diakses pada tanggal 3 Maret 2024

[27] Penjelasan Pasal 16 Undang-undang Nomor 18 tahun 2003 tentang Advokat.

[28] Handoyo Prasetyo, 2023, *Keadilan Restoratif dan Sistem Peradilan Pidana*, Jakarta: Deepublish, hlm. 121-141.

[29] Wicipto Setiadi, Beniharmoni Harefa, "Regulatory Reform: An Idea to Arrange Regulations in Indonesia," *1st International Conference on Law and Human Rights 2020 (ICLHR 2020)*, Atlantis Press, 2021.

ethics, laws and regulations, the advocate's oath or promise as well as the values of decency and propriety, the advocate has not acted in good faith.[30]

The following is an example of the actions of an Advocate who is suspected of obstruction of justice in a corruption case.

1. Analysis of the decisions of the defendants DWW, FY and HH.

   a. Decision Number: 01/Pid.Sus-TPK/2022/PN Jkt.Pst dated May 30, 2022 on behalf of the defendant DWW

   That the defendant DWW was investigated by the Attorney General's Office of the Republic of Indonesia. The defendant DWW is an advocate who is tasked with providing advocacy to witnesses in the investigation of the corruption case of the implementation of National Export Financing by the Indonesian Export Financing Agency (LPEI). The position of the case is as follows:

   That the defendant DWW provided assistance to the witnesses summoned by the investigator to provide testimony in the LPEI case, namely the witnesses Indra Wijaya Supriadi, Amri Alamsyah, Cresia Ryan Gara Savada, Eko Madiasto, Mugi Lastiadi, Novlies Henrawan and Rizki Armando Riskomar, as well as the following acts committed by the defendant DWW:

      i. The defendant DWW gave directions and agreed with the witnesses who were examined as witnesses in the LPEI case to request a postponement of the examination of the witnesses and in the examination of witnesses by the special criminal investigator of the Attorney General's Office of the Republic of Indonesia so that the witnesses did not provide information related to the subject matter of the case on the grounds of asking the investigator to include the name of the suspect, Including the article suspected in the witness BAP, and requesting a definite calculation of state financial losses, so that when the investigators conducted the examination they did not get any information from the witnesses Indra Wijaya Supriadi, Amri Alamsyah, Cresia Ryan Gara Savada, Eko Madiasto, Mugi Lastiadi, Novlies Henrawan and Rizki Armando Riskomar.

      ii. The defendant DWW together with witnesses Indra Wijaya Supriadi, Amri Alamsyah, Cresia Ryan Gara Savada, Eko Madiasto, Mugi Lastiadi, Novlies Henrawan and Rizki Armando Riskomar, each of whom was examined as a witness in the case of corruption in the implementation of National Export Financing by the Indonesian Export Financing Agency (LPEI), held a meeting through zoom metting to discuss the scenario made by the Defendant DWW which was then written into the witnesses' own

[30] Boris Tampubolon, 2018, *Siapa Berwenang Menilai "Ikhtikad Baik" Advokat*, Jakarta, Diakses melalui https://www.hukumonline.com, tanggal 3 Maret 2024 pukul 10.38 Wib.

handwriting to be read later and become the witnesses' answers during the examination before the investigator, which in essence was a scenario directed by the Defendant DWW which was then carried out by the witnesses, among others, as follows: The defendant DWW told the witnesses when questioned by investigators that "they were not cooperative at the beginning but they might survive, in court it was harder because it was a typikor case".

1) The defendant DWW told the witnesses during the examination not to go into the material, just the formalities, because it will be more difficult to make a defense if it goes into the subject matter.

2) The defendant DWW made a scenario of the examination process at the 2nd KJA by IDCC with the aim that when being questioned but there was no content of the BAP material, where the scenario was bolted in writing and then the witness poured / copied it into the witness's own writing, so that all the investigator's questions were answered in accordance with the scenario of the examination process at the 2nd KJA made by the defendant and then the witness copied it by hand.

3) The defendant DWW said that if he answered the questions needed by the investigator / in accordance with the wishes of the investigator and signed the Investigator's BAP, then later he could be drawn to be named a suspect even though he was not wrong.

4) The defendant DWW instructed the witnesses to withdraw the answers to the investigation dossier that had already been signed, so that only the Investigation dossier would be used.

b. Decision Number: 9/Pid.Sus-TPK/2018/PN.Jkt.Pst dated June 28, 2018 on behalf of the defendant FY

That the Defendant FY, is an Advocate/Lawyer of the suspect Setya Novanto who fabricated and avoided the investigation by KPK investigators against Setya Novanto. The defendant FY was investigated by the Corruption Eradication Commission (KPK) Investigators. The position of the case is as follows:

That the defendant FY together with Dr. Bimanesh Sutarjo on Thursday, November 16, 2017, at Medika Permata Hijau Hospital, Jalan Raya Kebayoran Lama Number 64, West Jakarta, deliberately prevented, obstructed, or thwarted directly or indirectly the investigation, prosecution, and examination in court by fabricating that Setya Novanto was hospitalized at Medika Permata Hijau Hospital in order to avoid the investigation by KPK Investigators against Setya Novanto as a suspect in the corruption case of the procurement of Electronic ID card (e-KTP), which the defendant FY did in the following ways:

i. On October 31, 2017, the Chairman of the Corruption Eradication Commission (KPK) issued an Investigation Order Number: Sprin.Dik113/01/10/2017 to investigate the corruption case of Procurement of National Identity Number-Based Identity Card Implementation Package (Electronic ID Card) Year 2011 to 2012 at the Ministry of Home Affairs of the Republic of Indonesia with Setya Novanto as the suspect. Based on the Investigation Warrant, on November 10, 2017 KPK Investigators sent a summons to Setya Novanto to be heard as a suspect with the examination scheduled for Wednesday, November 15, 2017 at 10:00 am;

ii. That the defendant, who works as an advocate/lawyer from the advocate office Yunadi & Associates, offered to help manage the legal issues faced by Setya Novanto and the defendant FY advised him not to come to fulfill the summons of KPK investigators on the grounds that the summoning process for members of the House of Representatives must have permission from the President, in addition to avoiding the summons, the defendant will conduct a judicial review to the Constitutional Court so that Setya Novanto agreed to the defendant FY to become Setya Novanto's attorney.

iii. That the defendant FY on November 14, 2017, on behalf of Setya Novanto's legal representative, sent a letter to the Director of KPK Investigation, in which Setya Novanto was unable to respond to the KPK Investigator's summons on the grounds that he was waiting for the decision of the Constitutional Court Judicial Review that had been filed, even though the defendant FY had just registered the Judicial Review application at the Constitutional Court on that day.

iv. In addition, the defendant FY also contacted Dr. Bimanesh Sutarjo, who had previously been known to the defendant FY, to ask for help in manipulating Setya Novanto's medical records and to request assistance so that Setya Novanto could be hospitalized at Medika Permata Hijau Hospital (RS) with a diagnosis of suffering from several diseases, one of which was hypertension. In order to confirm the request, the defendant came to fulfill Dr. Bimanesh Sutarjo's request at his residence at Botanica Tower 3/3A, Teuku Nyak Arief Street No. 8 Simprug, South Jakarta to ensure that Setya Novanto could stay at Medika Permata Hijau Hospital. In addition, the defendant FY also provided a photo of Setya Novanto's medical record at Premier Jatinegara Hospital, which was photographed by the defendant several days earlier, even though there was no referral at the hospital.

c. Decision Number: 1390 K/PID.SUS/2011 dated August 18, 2011 on behalf of the defendant HH

That the Defendant HH is an Advocate/Lawyer of Gayus Tambunan who was appointed to carry out an examination at the Police Headquarters as a suspect in the case of the crime of money

laundering The defendant HH was investigated by the Investigator of the Criminal Investigation Unit of the Police Headquarters. The position of the case is as follows:

i. That around August 2009 at the Sultan Hotel Jakarta, Defendant HH and Lambertus as Advocates at the Winarson & Partners Office were introduced by Peber Silalahi to Gayus Holomuan P Tambunan in order to assist the defendant Gayus P Holoman Tambunan in undergoing examination at the Police Headquarters as a suspect in accordance with Investigation Order No. Pol Sprin Sidik/ 70/ VII/ 2009/ Dit II Eksus dated July 27, 2009 in the case of alleged money laundering and corruption or bribery committed by Gayus Holomon P Tambunan and friends as referred to in Law No. 15 of 2002 on Money Laundering as amended by Law No. 25 of 2003 and Law No. 20 of 2001 on Eradication of Corruption. as referred to in Law No. 15 of 2002 on the Crime of Money Laundering as amended by Law No. 25 of 2003 and Law No. 20 of 2001 on the Eradication of Corruption.

ii. With the determination of the defendant Gayus Hploman P Tambunan as a suspect, the money belonging to the defendant Gayus Holomon P Tambunan placed in BCA and Panin Bank was blocked by the Investigator, namely:

   1) At BCA Bank in the total amount of Rp.4,000,000,000, - (four billion rupiah)

   2) At Bank Panin in the total amount of Rp.24,000,000,000,- (twenty-four billion rupiah),

i. That in order to investigate as if the blocked money was not used by Gayus Halomoan P Tambunan as a result of the criminal act of Corruption, the Defendant HH. made an Agreement between Gayus Halomoan P Tambunan and Andy Kosasih which contained as if the assets in Panin Bank and BCA Bank on behalf of Gayus Halomoan P Tambunan as a Civil Servant at the Directorate General of Taxes did not come from money received from taxpayers or tax consultants but the results of the Land Acquisition Business between Gayus Halomoan P Tambunan and Andy Kosasih.

ii. And for this purpose, then around August 2009 at the Sultan Hotel Jakarta, Defendant HH introduced Gayus Halomoan P Tambunan to Andy Kosasih and at that time Defendant HH asked Andy Kosasih for help in recognizing the ownership of the money in the account belonging to Gayus Halomoan P Tambunan which had been blocked as money belonging to Andy Kosasih in the context of a business cooperation in land acquisition in the North Jakarta area, and this was agreed by Andy Kosasih.

iii. Then around September 2009 Defendant HH contacted Gayus Halomoan P Tambunan to meet with Defendant HH and Andy Kosasih at Ambhara Hotel, South Jakarta where Lambertus, Peber and James were waiting, Then the draft of the Land Acquisition Cooperation Agreement between Andy Kosasih and Gayus Halomoan P Tambunan

with the date of the agreement was made backwards, namely May 26, 2008 which was made and drafted by Lambertus together with Gayus Halomoan P Tambunan and then signed by Gayus Halomoan P Tambunan and Andy Kosasih with 6 (six) sheets of Receipt of Money attached which seemed to be given by Andy Kosasih to Gayus Halomoan P Tambunan.

iv. That the defendant HH informed Gayus Halomoan P Tambunan to explain that the money in the accounts under the name of Gayus Halomoan P Tambunan at BCA Bank and Panin Bank in the amount of Rp.28,000,000,000,- (twenty eight billion rupiah) which was blocked by the Police Headquarters Criminal Investigation Unit was not obtained by Gayus Halomoan P Tambunan from the proceeds of corruption but belonged to Andy Kosasih as stated in the Cooperation Agreement Letter dated May 26, 2008 along with the receipts;

v. That subsequently Defendant HH also asked Andy Kosasih to sign a letter that had been prepared by Defendant HH regarding a Request to Unblock a Bank dated September 14, 2009 addressed to the Director II of the Criminal Investigation Unit of the National Police against accounts in the name of Gayus Halomoan P Tambunan at Panin Bank and BCA Bank.

vi. That on the basis of the testimony of the suspect Gayus Halomoan P Tambunan and the testimony of the witness Andy Kosasih as well as the Letter of Request to Unblock the accounts in the name of Gayus Halomoan P Tambunan at Bank PANIN and Bank BCA submitted by the witness Andy Kosasih mentioned above, the National Police Headquarters issued Letter No. Pol. : R / 804 / XI / 2009 / Bareskrim, dated November 26, 2009 addressed to the President Director of Bank BCA, Tbk. and Letter No. Pol. : R / 805 / XI / 2009 / Bareskrim, dated November 26, 2009 addressed to the President Director of Panin Bank, regarding the Opening of Blocking of Assets of an. Gayus Halomoan P Tambunan;

vii. With the unblocking of the bank, Gayus Halomoan P Tambunan's assets related to the criminal act of Money Laundering and/or the criminal act of Corruption are only those in the BCA Account No. 4740198250 in the amount of Rp.370,000,000,- (three hundred seventy million rupiah);

viii. That as a result of the actions of the Defendant HH above, the actions of Gayus Halomoan P Tambunan which should have been subject to the crime of Corruption were not subject to the elements stipulated in Law No.31 of 1999 as amended by Law No.20 of 2001 against the witness Gayus Halomoan P Tambunan was only prosecuted with charges of committing the crime of money laundering and embezzlement.

2. The analysis of the three cases in relation to error theory is as follows:

According to Mezger, in order to be convicted, a person or legal subject requires a condition, namely that the person who commits the act has a mistake or is guilty (subjective guilt).[31] In other words, the person must be accountable for his actions or if seen from the angle of his actions, his actions must be accountable to the person. In terms of discussing the element of guilt in criminal law, according to Mezger, guilt is the overall condition that provides the basis for personal defamation against the criminal. Error can be seen from 2 (two) angles, namely:

a. According to its consequences, it is something that can be harmed

b. By its very nature it is the avoidance of unlawful conduct.

Thus, guilt contains an element of reproach against someone who has committed a criminal offense. So the person who is guilty of committing an act means that the act can be reproached to him. Error in the sense of the form of error (schuld) is as follows:

a. Willfulness *(Dolus)*

b. Negligence *(Culpa)*

In addition, guilt in its broadest sense can be equated with the notion of criminal responsibility. It contains the meaning that the maker can be reproached for his actions. Meanwhile, other criminal law experts basically have similarities in describing the forms of willful misconduct (Dolus).

In Memorie van Toelichting (MvT), willfulness is the conscious intention to commit a certain crime. Satochid Kartannegara stated that what is meant by ozet willen en eten (willed and known) is that a person who commits an act intentionally must will the act and must realize or understand (weten) the consequences of the act.[32] The will (de wil) can be directed towards the prohibited act and the prohibited effect.

The forms of intent (Opzet) are as follows:

In general, criminal law experts have accepted the existence of 3 (three) forms of intent (opzet), namely:

a. Intentionality as intention (opzet als oomerk). This style of intent is the usual and simplest form of intent. The actor aims to cause the prohibited result. If this result did not exist, then he would not have done so.

b. Willfulness with conscious certainty (opzet met zekerheidsbewustzijn or noodzakelijkheidbewuszijn). In this case the act has two consequences:

   i. The effect that the maker intended, this may or may not undermine the separate offense.

[31] Sudarto. 1990, "Hukum Pidana I", Semarang, Yayasan Sudarto, Hal 85
[32] Satochid Kartanegara, "Hukum Pidana, Bagian Satu". Jakarta, Balai Lektur mahasiswa, Tanoa Tahun, Hal 29.

ii. An effect that is undesirable but is a necessity to achieve the goal, this effect must arise or occur.

c. Willfulness with awareness of possibility (dolus eventualis or voorwaardelijk opzet). In this case there is a situation that was originally possible and then actually happened.

Based on the description of the three cases and connected with the error theory, the following description is obtained:

a. The three cases described by the author have similarities. The similarity is the intentional conduct of the defendants DWW, FY and HH in committing Obstruction of Justice. According to Mezger, guilt is all of the conditions that provide the basis for a personal defense against the perpetrator of a criminal offense, therefore the defendants are to blame for intentionally committing Obstruction of Justice. The intentionality of the defendants is reflected in the fact that the defendants are advocates who certainly have experience, knowledge and have (willen en witten) the ability to be able to distinguish the actions of an advocate that are prohibited and those that are permitted by law in providing assistance to clients. In addition, they also knew that the actions taken would have a real legal impact, namely obstructing the legal process.

The description of the intentional acts committed by them is as follows:

i. The defendant DWW gave directions and agreed with the witnesses Indra Wijaya Supriadi, Amri Alamsyah, Cresia Ryan Gara Savada, Eko Masdianto, Mugi Lestiadi, Novlies Henrawan and Rizki Armando Riskomar (witnesses in the LPEI case) to postpone the examination of witnesses and not provide testimony related to the subject matter of the case on the grounds that they asked the investigator to include the name of the suspect, include the article alleged in the Minutes of Examination of witnesses, and request a definite calculation of state financial losses. In addition, the defendant DWW also gave directions to the witnesses to withdraw their answers to the Investigation Report. Therefore, with the defendant DWW's direction to the witnesses, the investigators did not obtain any information from the witnesses, so the actions of the defendant DWW were categorized by the Judge as Obstruction Of Justice.

ii. The defendant FY intentionally advised the witness Setya Novanto not to attend the summons for examination by KPK investigators on the grounds that the summons process for members of the House of Representatives must be authorized by the President, and the defendant together with Dr. Bimanesh Sutarjo manipulated the medical records of the witness Setya Novanto as if the witness Setya Novanto was suffering from Hypertension, even though the medical records did not match the condition of the witness Setya Novanto. As a result of the defendant's actions, KPK investigators were unable to conduct an examination of Setya Novanto.

iii. Defendant HH intentionally manipulated the Agreement between Gayus Halomoan P. Tambunan and Andy Kosasih which contained as if the assets in Bank Panin and Bank BCA on behalf of Gayus Halomoan P. Tambunan as a Civil Servant at the Directorate General of Taxes did not originate from money received from taxpayers or tax consultants but the proceeds of the Land Acquisition Business between Gayus Halomoan P. Tambunan and Andy Kosasih which resulted in the blocking of money / funds belonging to witness Gayus Holomon P Tambunan originating from the proceeds of corruption opened by the Police Criminal Investigation Unit and made the case of witness Gayus Holomon P Tambunan which should have been a corruption case turned into a case of money laundering and embezzlement.

b. That in addition to intentionality, the next criterion or parameter for an Advocate to be said or considered "not in good faith" is a violation of the code of ethics, laws and regulations, the advocate's oath/pledge as well as the values of appropriateness and decency. Advocates in carrying out their duties in providing assistance to clients are required to comply with the code of ethics, laws and regulations, the advocate oath/promise as well as the values of appropriateness and decency. The defendants, namely DWW, FY and HH, have been proven based on court decisions to have violated the laws and regulations, namely Article 21 of Law No. 31 of 1999 Jo Law No. 20 of 2001 concerning the Eradication of Corruption.

c. Based on interviews conducted by the author with 3 (three) sources who work as Advocates and are administrators of the DKI Jakarta Peradi Honor Council. In his statement, it was found that the parameters or criteria for an Advocate to be considered not in good faith are if the actions taken by the Advocate are not in accordance with the duties of the Advocate profession. In addition, other sources argued that the parameters for assessing an advocate to be considered not in good faith are the efforts of an advocate in defending the client by violating the law and the Advocate code of ethics.

CONCLUSIONS

The parameters of the assessment of advocates who are considered not in good faith against the suspicion of obstruction of justice in corruption cases committed by the defendants are related to the theory of intentionality. First, there is a deliberate intention not to act in good faith in assisting clients with the aim of avoiding corruption cases. The willfulness of the defendants is reflected in the fact that the defendants are Advocates who certainly have the experience, knowledge and ability (willen en witten) to be able to distinguish the actions of an Advocate that are prohibited and those that are permitted by law in assisting clients. In addition, they also know that the actions taken will have a real legal impact, namely obstructing the legal process. The second criterion or parameter that an Advocate is said or considered to be "not in good faith" is a violation of the code of ethics, laws and regulations, the advocate's oath or promise and the values of decency and propriety. Advocates in carrying out their duties

in providing assistance to clients are required to comply with the code of ethics, laws and regulations, the advocate's oath or promise as well as the values of appropriateness and decency.

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