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Obstruction of justice in the effort to eradicate corruption in Indonesia

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ABSTRACT

Corruption is a reality in Indonesia and has a significant destructive force. Not only does it harm the wealth of the state, but it also takes away the legitimacy of law enforcement by destroying the public's trust in law. This can lead to the destruction of democracy and modernization in Indonesia. Aware of the situation, or perhaps for political correctness, the post independence governments made the war on corruption a state of emergency. But it was not until the advent of the political era known to the Indonesians as *Era Reformasi* in 2000 that the fight against corruption intensified with the enactment of Law No. 30/2002 creating the Corruption Eradication Commission or *Komisi Pemberantasan Korupsi* (hereafter referred to as KPK). Since its creation, the Commission has been hunting down corruptors like never before. But going after corrupt officials is not an easy task. As KPK gets tougher due to more legal backup and public's trust, corruptors find illegal ways to bend, or impede the law in order to get away with their heinous crime. This practice is known as obstruction of justice. This paper discusses the issue of obstruction of justice in the effort to eradicate corruption in Indonesia. It sets out to answer the following questions: what does obstruction of justice in the corruption eradication effort look like in Indonesia, and how can law enforcement agencies best deal with it. Drawing on empirical data, the study reveals that an act is deemed obstructing justice if it is done intentionally to prevent the legal process from running smoothly (*mens rea*). Although anyone is susceptible of committing an act of obstruction of justice, it is usually accomplished with the support of affluent people such as government and law enforcement officials, lawyers, and law makers. The study suggests that revising laws on corruption, continuing collaboration between law enforcement agencies, making use of the existing corruption-related laws, increasing law enforcement professionalism, and raising public awareness need to be embraced as future approaches to heighten the ongoing war on corruption.

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1. Introduction

It was on a sunny morning of January 23, 2015 when police arrested Bambang Widjajanto the Vice Chairman of KPK. The arrest marks the beginning of a series of counterattacks on an anti-corruption body by many parties within the government of President Joko Widodo who was elected in 2014.¹ Shortly after Bambang's arrest, KPK Chairmen Abraham Samad, Vice Chairmen Adnan Pandu Praja, Zulkarnain, Spokesman Johan Budi, and Investigator Novel Baswedan were incriminated by the police in various cases. What astonishes most, in addition to the case of Bambang, is the police's attempt to criminalize Abraham Samad for forgery of documents along with Novel Baswedan. As a result of these alleged cases of corruption, Bambang Widjajanto and Abraham Samad were dismissed as leaders of KPK by the President. This change in leadership hurt the fight against corruption.² It crippled the Commission's efficiency as attention was given to internal problems rather than going against actual corruptors.³ It is important to note that this was not the first time an institution fighting corruption was victim of such attacks. Efforts to cripple the fight against corruption happened before.⁴ Under President Sukarno, five corruption eradication boards⁵ were created i.e., the Property Inspection Coordinating Board or *Badan Koordinasi Penilik Harta Benda* in 1957, the State Apparatus Activities Regulatory Board or *Badan Pengawas Kegiatan Aparatur Negara (Bapekan)* 1959–1962, the State Retooling Apparatus Committee or *Panitia Retooling Aparatur Negara (Paran I)* 1960–1963, the Operation Budhi 1963–1967, and the High Commando Retooling Revolution Apparatus or *Komando Tertinggi Retooling Aparat Revolusi (Kotrar)* 1964–1967.⁶ All five boards combined lasted just ten years with the average of just over two years each. They were replaced by four others during President Suharto's *Orde Baru* i.e., the Corruption Eradication Team or *Tim Pemberantasan Korupsi (TPK)* in 1967, the Committee of 4 or *Komisi 4* in 1970, the Rising Operation Sudomo or *Operasi Terbit (Opstib)* Sudomo 1977–1981, and another Corruption Eradication Team (1982).⁷ Since 1999, three corruption eradication boards were established, i.e., the Commission for the Inspection of the Wealth of State Officials or *Komisi Pemeriksa Kekayaan Penyelenggara Negara (KPKPN)* in 1999, the Corruption Eradication Combined Team or *Tim Gabungan Pemberantasan Pidana Korupsi (TGTPK)* 2000–2001, and the Corruption Eradication Commission or *Komisi Pemberantasan Korupsi (KPK)* from 2002–present.⁸ The short life of all these boards, with the exception of KPK, is due not only to inefficiency but also to the fact that every new president wanted to break away from his predecessors in the fight against corruption.⁹ Bringing change and innovation within state institutions is a noble cause and should be encouraged. But would it not save time and money to overhaul those already in place so as to make them more responsive to the needs of the community? Corruption is an elusive crime, and therefore its eradication requires consistency in the administration and politics. This paper argues that, in addition to unstable leadership in the fight against corruption, obstructing justice contributes in weakening the war on corruption in Indonesia. Obstruction of justice is a legal term that comes from the Anglo-Saxon literature. It is sometimes referred to as *obstructing public justice*.¹⁰ Simply put, Charles Boys (2010) argues that the term “obstruction of justice” is the “frustration of governmental purposes by violence, corruption, destruction of evidence, or deceit”.¹¹ With such understanding, obstruction of justice not only relates to a process (criminal) law, but also to all activities of the government in an effort to stall/obstruct the process of the law.¹² Black's Law Dictionary defines obstruction of justice as the “interference with the orderly administration of law and justice, as by giving false information¹³ to or withholding evidence from a police officer or prosecutor, or by harming or intimidating a witness or juror”.¹⁴ The term obstruction of justice in corruption cases is considered an expanding crime in Indonesia and is specified in the Indonesian criminal law.¹⁵ This paper will give an overview of the current fight against corruption in Indonesia, and then discuss how the term obstruction of justice is regulated in the Indonesian Criminal Law. Four cases of obstruction of justice are presented in this paper to prove that justice is obstructed by the very people we pay to enforce it. The paper concludes with suggestions to strengthen the ongoing effort to eradicate corruption in Indonesia.

¹ See Krisna Harahap, 2006. *Pemberantasan Korupsi: Jalan Tiada Ujung*. Bandung: Pt Grafindo, p. 75.

² See Isra, Saldi and Shinta Agustina, 2015, *Obstruction of Justice, Tindak Pidana Menghalangi Process Hukum Dalam Upaya Pemberantasan Korupsi*. Themis Book, Jakarta. p. 1-3.

³ See Isra, Saldi and Shinta Agustina, 2015.

⁴ See Isra, Saldi and Shinta Agustina, 2015.

⁵ See Indrayana, Denny, 2016, *Jangan Bunuh KPK*. Intrans Publishing, Malang. p. 10-39.

⁶ See Andi Hamzah (2007): *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*. Jakarta: Raja Grafindo Persada, p. 39–67. See also Krisna Harahap (2006): *Pemberantasan Korupsi: Jalan Tiada Ujung*. Bandung: Pt Grafindo, p.11–14.

⁷ See Indrayana, Denny, 2016, *Jangan Bunuh KPK*. Intrans Publishing, Malang. p. 10-39.

⁸ See Indrayana, Denny, 2016.

⁹ See Indrayana, Denny, 2016. p.32.

¹⁰ See Bryan A. Garner (Ed.), 2009, *Black's Law Dictionary*, Ninth Edition, St. Paul, United States of America: West, A Thomson Reuters business, p. 1183.

¹¹ See Charles Boys, 2010, *Obstruction of Justice: An Overview of Some of the Federal Statutes That Prohibit Interference With Judicial, Executive, or Legislative Activities*. CRS Report for Congress. Congress Research Service, p. 1.

¹² See Kendall, Andrea and Kimberly Cuff, 2008, *Obstruction of Justice*, *The American Criminal Law Review*. p. 766.

¹³ See R.A. Duff, 2003, *Acting, Trying, and Criminal Liability*, dalam Stephen Shute, etc (ed), *Action and Value in Criminal Law*, Oxford, New York: Clarendon Press. p. 75-76.

¹⁴ See Bryan A. Garner (Ed.), 2009, *Black's Law Dictionary*, Ninth Edition, St. Paul, United States of America: West, A Thomson Reuters business, p. 1183.

¹⁵ See Isra, Saldi and Shinta Agustina, 2015, *Obstruction of Justice, Tindak Pidana Menghalangi Process Hukum Dalam Upaya Pemberantasan Korupsi*. Themis Book, Jakarta. p. 32-45.

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