

## Legal Analysis of The Right of Advocate Immunity in The Criminal Act of Obstruction of Justice (Case Study of the Decision of the Central Jakarta District Court Number 84/Pid.sus-TPK/2023/PN.JKT.PST in conjunction with the Decision of the Jakarta High Court Number 12/PID.SUS-TPK/2024/PT.DKI)

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**Abstract.** *This study aims to determine and analyze the existence of advocate immunity rights in carrying out their duties and to determine and analyze legal protection for advocates in criminal acts of obstruction of justice and its relationship to advocate immunity rights. This study uses a normative legal approach. Based on the study, it was concluded that there was a Constitutional Court Decision Number 26/PUU-IX/2013 concerning Article 16 of Law No. 18 of 2003 concerning Advocates, namely "Advocates cannot be sued either civilly or criminally in carrying out their professional duties in good faith for the interests of defending clients inside or outside the trial". This cannot be used to provide protection for an Advocate who is carrying out his Professional Duties. Due to the decision of the Central Jakarta District Court Number 84/Pid.sus-TPK/2023/PN.JKT.PST jo. Jakarta High Court Decision NUMBER 12/PID.SUS-TPK/2024/PT.DKI imposed a sanction on Advocate Stefanus Roy Rening with a prison sentence of 4 (four) years 6 (six) months and a fine of IDR150,000,000.00 (one hundred and fifty million rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 3 (three) months, for actions as regulated in Article 21 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption. The actions taken by Advocate Stefanus Roy Rening, namely influencing witnesses not to return money related to corruption cases to the Corruption Eradication Commission (KPK), are included in the Criminal Act of Obstruction of Justice (obstructing the Investigation) as regulated in Article 21 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.*

**Keywords:** Advocate; Immunity; Investigation; Obstruction.

## **1. Introduction**

Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates in Article 1 number 1 states that an advocate is a person whose profession is providing legal services, both inside and outside the court who meets the requirements based on the provisions of this law. The advocate organization recognized by the Advocates Law is the Indonesian Advocates Association (PERADI). Before there were fundamental changes in the legal field, law was marginalized, but recently law has become a hope for resolving various social problems, this can be seen from one of the facts that almost every matter of the lives of its citizens touches on the legal side that requires the services of an advocate<sup>1</sup>.

In recent times, the National media has been abuzz with news about the handling of a Corruption case, carried out by a regional official, namely the Governor of Papua, interestingly from the news, the Legal Advisor (lawyer) of the official was also named a suspect on suspicion of the Criminal Act of Obstruction of Justice (obstructing the investigation). While it is known that the role of advocates as law enforcement officers has the right to immunity in Article 16 of the Advocates Law, it is explained that advocates cannot be sued either civilly or criminally in carrying out their professional duties in good faith for the interests of defending clients in court hearings. Lately there has been a discussion in the community, especially the immunity rights of an advocate which are the benchmark for an advocate in carrying out his duties according to the power given by the client in legal defense in the case being handled.

The right of advocate immunity has recently been often misinterpreted in terms of which it is interpreted as if all actions taken by advocates for the benefit of clients are protected by law and also cannot be held legally accountable. Understanding the right of advocate immunity is basically related to the background of the basic question regarding the reasons why advocates must be protected with immunity. The basic reason advocates are given immunity protection is because in defending their clients they may not be subject to criminal, civil, and administrative penalties as long as the defense they carry out does not violate the law.

Observing the progress of the Corruption case involving the Governor of Papua Lukas Enembe, then legal proceedings were carried out against Stepanus Roy Rening, Lukas Enembe's lawyer, who was named a suspect in the case of obstructing the investigation process against Lukas Enembe. At the beginning of the investigation, the Corruption Eradication Commission had difficulty examining Lukas. Lukas argued that he was sick and could not fulfill the summons

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<sup>1</sup>Binoto Nadapdap, 2010, *General Guide for Consumers in Measuring the Amount of Advocate's Honorarium*, Jala Permata Aksara, Jakarta, p. ix.

of the Corruption Eradication Commission. Lukas also asked to be allowed to seek treatment in Singapore. As Lukas's lead attorney, Stepanus Roy Rening was the one who most often spoke out against Lukas being examined by the Corruption Eradication Commission.<sup>2</sup> In addition to the above cases, there are several previous cases related to criminal acts/offenses of obstructing the legal process/trial, including the Anggodo Widjojo case, the Manatap Ambarita case, the Miryam S. Haryani case and the OC Kaligis case, although the latter was investigated for alleged bribery, developments found attempts or efforts to obstruct the judicial process. The existence of these cases certainly makes a difference in the implementation of law enforcement in Indonesia considering that it is rare for someone to be brought before a court on suspicion or charge of violating the provisions regarding acts of obstructing the legal process, even though in reality this is a form of criminal act that can damage law enforcement efforts.

The Immunity Rights held by a person who holds the Advocate profession as stated in "Article 16 of Law No. 18 of 2003 concerning advocates which states "Advocates cannot be sued civilly or criminally in carrying out their professional duties in good faith for the interests of defending clients in court hearings" which is supplemented by the Constitutional Court Decision Number 26/PUU-IX/2013 concerning the meaning of Article 16 not only in court but also outside the court. With the existence of the Immunity Rights, Advocates as law enforcers are expected to work with high integrity without any intervention and intimidation from outside which of course can interfere with the Advocate's performance in upholding justice and truth<sup>3</sup>.

The legal immunity possessed by Advocates in the provisions of Article 16 of Law No. 18 of 2003 concerning Advocates can only be implemented when stated in an agreement by the party requiring legal services from an Advocate. This agreement is stated in a letter. Usually this letter is called a special power of attorney.

If the Advocate carries out the provisions stated in the special power of attorney, the Advocate cannot be prosecuted criminally in court. On the other hand, if the Advocate's actions are outside the responsibilities stated in the power of attorney, it can be considered a violation even if it is argued for the benefit of the client. Another thing that needs to be understood is that not all of the Advocate's duties require a power of attorney. For example, in this case when the Advocate provides consultation to the client.

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<sup>2</sup>"Lawyer Lukas Enembe Says Advocates Have Immunity Rights, KPK: That's Just an Excuse They're Looking For" quoted from <https://nasional.tempo.co/read/1723640/pengacara-lukas-enembe-sebut-advokat-punya-hak-imunitas-kpk-itu-hanya-alasan-yang-dicari-cari>

<sup>3</sup>Mansur, & Didik M Arief, *The Immunity Rights of Police Officers in Handling Criminal Acts of Terrorism*, Pensil, Jakarta, 2012, page 52.

## 2. Research Methods

The writing in this study uses a normative legal approach to legal research as a process in finding a legal rule, legal principle, and legal doctrine to solve the problem of legal source research, so this study was conducted by reviewing literature sources. This study examines the theory and regulations related to the Regulation and Application of Advocate Immunity Rights in Criminal Acts of Obstruction of Justice<sup>4</sup>.

## 3. Results and Discussion

### 3.1. The Existence of Advocates' Immunity Rights in Carrying Out Their Duties

The public prosecutor will try to prove that his charges have been proven through the testimony of witnesses and expert witnesses, the testimony of the defendant, letters, clues, and also with silent evidence such as footprints or handprints and objects that are evidence. At the end of the indictment which is usually called the public prosecutor's requisitoir, the aggravating and mitigating factors are outlined for the defendant. Aggravating and mitigating factors are not mentioned in the law. So, only based on habits, for example, the defendant does not make the examination difficult, is polite, admits guilt and is very sorry, as well as being underage is seen as a mitigating factor for the defendant. These factors should not be mixed up with factors that aggravate the crime such as recidivism, combined crimes, done with planning. This is done to make it easier for the judge to make a decision.<sup>5</sup>

Advocates in carrying out their duties and work as defenders of justice and truth of clients have legal immunity. The legal immunity in question is that Advocates have the right to immunity. The right to immunity owned by Advocates has been regulated in Law No. 18 of 2003 concerning Advocates.

The Advocate's immunity rights are regulated in Article 16 of Law No. 18 of 2003 concerning Advocates which states "Advocates cannot be sued either civilly or criminally in carrying out their professional duties in good faith for the interests of defending clients in court." However, in viewing this immunity right, it is not actually only based on this article. Because basically if we examine and review it more deeply in Law No. 18 of 2003 concerning Advocates, there are two forms of immunity rights. However, to review this matter, it is necessary to pay attention to the articles before Article 16 of Law No. 18 of 2003 concerning Advocates which expressly mention immunity rights.

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<sup>4</sup>Agus Prasetya Wiranto & Jawade Hafidz. "The Implementation of International Law on Strengthening Cooperation in Combating Money Laundering Crimes of ASEAN Countries", *Jurnal Daulat Hukum* Volume 6, No 4 (2023). P. 24, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/36566/9747>, accessed on June 09, 2024.

<sup>5</sup>Andi Hamzah, *Implementation of Criminal Justice Based on Theory and Practice*, Rineka Cipta, Jakarta, 1993, p. 119.

Basically, the Advocate's immunity rights in Article 16 of Law No. 18 of 2003 concerning Advocates only apply in the realm of trial (litigation). In fact, the duties and profession of an Advocate are not limited to that. So this is what is felt to be a weakness complained about by Advocates. Or in other words, in the process of making the article, it was not thought that Advocates would have the same duties and responsibilities as other law enforcement officers.

It should be noted that the intent and purpose of granting immunity rights to Advocates is so that Advocates are free and given the freedom to defend justice and truth from a client. Because whatever mistakes are made by the client, he must still receive legal assistance and protection. So that his rights are maintained

Along with the development of the Advocate profession in Indonesia today, various improvements have been made, which so far have not been felt to provide clear certainty to Advocates. This also indicates that the concern of Advocates and other law enforcement elements is increasing. Interestingly, this is related to the guarantee and freedom of Advocates in carrying out their duties and work.

Legal materials or products can always change and be changed according to the times of development and changes in society because law does not exist in a vacuum. Thus, it can also be said that law, as a service to the needs of society, must be updated to meet the needs of society to function.<sup>6</sup>

In its development, Article 16 of Law No. 18 of 2003 concerning Advocates was tested at the Constitutional Court Number 26/PUU-IX/2013 because it was felt that the article did not provide legal certainty to Advocates. In the process, this article was to be tested because the phrase "in court" did not include protection for Advocates outside the court such as issuing a summons, conducting negotiations, giving a press statement, making an announcement either through print media or through electronic media in criminal cases or civil cases. (legal standing of the Applicants of the Constitutional Court Decision Number 26/PUU-IX/2013, page 5)

The Constitutional Court (also called the constitutional body or constitutional council) is an independent state institution constitutionally established to uphold or maintain the constitution. The authority granted to the Constitutional Court as referred to in Article 24C of the 1945 Constitution of the Republic of Indonesia includes adjudicating at the first and final level, the decisions of which are final, testing laws against the constitution, adjudicating disputes over the authority of

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<sup>6</sup>Bambang Santoso, Hartiwingsih, Muhammad Rustamaji, THE WESTERN LEGAL SYSTEM IN INDONESIAN CRIMINAL PROCEDURAL LAW REFORM: A GLOBALIZATION AND LEGAL POLITICS PERSPECTIVE, *Jurnal Pembaharuan Hukum Faculty of Law Unissula* Volume 11, Number 2, July 2024, p. 255.

state institutions granted by the constitution, adjudicating the dissolution of political parties, and resolving disputes over general election results.<sup>7</sup>

Article 16 of Law No. 18 of 2003 concerning Advocates does not provide a sense of security to Advocates when carrying out their duties outside the trial. Advocates cannot even defend, protect and defend the interests of their clients.

Therefore, Advocates are testing Article 16 in the Constitutional Court. The testing of Article 16 is not merely to provide a privilege to Advocates. The testing of this article is only limited to the capacity to carry out the profession professionally with good faith for the justice and truth of the client.

In its considerations, the Constitutional Court emphasized that in accordance with the mandate of Article 1 number 1 of Law No. 18 of 2003 concerning Advocates, it states that an Advocate is a person who is tasked with providing legal services, which include legal services inside and outside the court that meet the criteria stipulated in the law. Other considerations, the Constitutional Court gave its view that Advocates have the capacity to provide legal services in the form of legal consultations, legal assistance, exercising power, accompanying, representing, defending and carrying out other actions for the benefit of clients that can be carried out inside or outside the court.

In carrying out their professional duties both in the field of litigation and non-litigation, what is maintained by Advocates is the justice and truth of legal subjects, both individuals (Naturlijk Person) and legal subjects in the form of legal entities (Recht Person). The author agrees with the legal standing submitted by the applicant in the Constitutional Court Decision Number 26PUU-IX/2013, that in fact the protection of Advocates outside the court is still not optimal. Such as in holding a press conference, when holding a case title in the field which is often threatened by irresponsible individuals. So with this, the relevance of Article 16 of Law No. 18 of 2003 concerning

The advocate has harmed the constitutional rights of the Advocate so that it is appropriate to conduct a Judicial Review. In the author's opinion, although Article 16 of Law No. 18 of 2003 concerning Advocates has been tested at the Constitutional Court Number 26/PUU-IX/2013 with the addition of the phrase outside the court. With the Constitutional Court's Decision regarding Article 16 of Law No. 18 of 2003 concerning Advocates, namely "Advocates cannot be sued either civilly or criminally in carrying out their professional duties in good faith for the interests of defending clients inside or outside the trial".

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<sup>7</sup>Widayati, Winanto, Mas Nooraini binti Haji Mohiddin, Denny Suwondo, Arpangi, Yudhi Taufiq Nur Hidayat, RECONSTRUCTION OF THE JUDICIAL COMMISSION'S AUTHORITY IN PROMOTING JUDGES WITH INTEGRITY, Unissula Law Journal, Volume 39 No. 2, December 2023. p 278.

Based on the description above regarding the existence of advocate immunity rights in carrying out their duties in relation to the description that the author conveyed in the background of this thesis, the author relates it to the case that occurred or was experienced by Advocate Stefanus Roy Rening, the Attorney for the Governor of Papua Lukas Enembe, where the Advocate took action to influence the witness not to return the money related to the corruption case to the Corruption Eradication Commission (KPK). Against Advocate Stefanus Roy Rening, the Panel of Judges of the Central Jakarta District Court through Decision Number 84/Pid.sus-TPK/2023/PN.JKT.PST dated February 7, 2024 applied the legal basis of Article 21 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The text of Article 21 is as follows:

*Any person who intentionally prevents, obstructs, or thwarts directly or indirectly the investigation, prosecution, and examination in court of suspects and defendants or witnesses in corruption cases, shall be punished with imprisonment of at least 3 (three) years and a maximum of 12 (twelve) years and/or a fine of at least IDR 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of IDR 600,000,000.00 (six hundred million rupiah).*

Against the decision of the Central Jakarta District Court, the defendant Advocate Stefanus Roy Rening filed an appeal to the Jakarta High Court, then the Jakarta High Court through Decision NUMBER 12/PID.SUS-TPK/2024/PT.DKI dated April 17, 2024, decided to uphold the decision of the Central Jakarta District Court Number 84/Pid.sus-TPK/2023/PN.JKT.PST. namely to sentence Advocate Stefanus Roy Rening to imprisonment for 4 (four) years 6 (six) months and a fine of IDR150,000,000.00 (one hundred and fifty million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 3 (three) months.

Referring to Article 16 of Law No. 18 of 2003 concerning Advocates and the Constitutional Court Decision Number 26/PUU-IX/2013 related to the Theory of Legal Protection as stated by Philipus M. Hadjon, namely the Republic of Indonesia as a state of law based on Pancasila must provide legal protection to citizens in accordance with Pancasila. Therefore, legal protection based on Pancasila means recognition and legal protection of human dignity and honor based on the values of the Almighty God, humanity, unity, deliberation, and social justice. These values give rise to the recognition and protection of human rights in the framework of a unitary state that upholds the spirit of family in achieving shared prosperity.

The Theory of Legal Protection as stated by Philipus M. Hadjon as described is very relevant in relation to Article 16 of Law No. 18 of 2003 concerning Advocates and the Decision of the Constitutional Court Number 26/PUU-IX/2013, but in fact the decision of the Central Jakarta District Court Number 84/Pid.sus-TPK/2023/PN.JKT.PST in conjunction with the Decision of the Jakarta High Court NUMBER 12/PID.SUS-TPK/2024/PT.DKI, does not provide any protection at all for Advocates who commit Criminal Acts based on Article 21 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

Although the Constitutional Court Decision Number 26/PUU-IX/2013 concerning Article 16 of Law No. 18 of 2003 concerning Advocates states that "Advocates cannot be sued either civilly or criminally in carrying out their professional duties in good faith for the interests of defending clients inside or outside the trial". This cannot be used to provide protection for an Advocate who is carrying out his/her Professional Duties.

### **3.2. Legal Protection for Advocates in Criminal Acts of Obstruction of Justice Linked to the Advocate's Right to Immunity**

The definition of ratio decidendi or the judge's consideration is the judge's argument/reason used by the judge as a legal consideration that becomes the basis before deciding a case. Ratio decidendi is also often translated literally as "the reason for the decision", "the reason" or "the rationale for the decision". Black Law Dictionary states ratio decidendi as "[t]he point in a case which determines the judgment or according to Barron's Law Dictionary is "the principle which the case establishes"

Criminal liability is applied to the perpetrator of a criminal act (dader) whether a criminal act or a violation of a crime. According to Moeljatno, it is stated as follows:

Crimes or "rechtsdeliten" are acts which, although not specified in the Law as criminal acts, are perceived as onrect, as acts which are contrary to the legal order, while violations or "wetsdeliktern" are acts whose unlawful nature can only be known after there is a wet which determines so.<sup>8</sup>

The perpetrator of a crime can be subject to criminal sanctions if he meets all the elements of the crime charged and can be held criminally responsible. Meanwhile, if the perpetrator does not meet one of the elements regarding criminal responsibility, then he cannot be punished, the elements of criminal responsibility are:

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<sup>8</sup>Moeljatno, Principles of Criminal Law, Bina Aksara, Jakarta, 2007, p. 7.



- 1) Committing an unlawful act or criminal act;
- 2) For there to be a crime, one must be able to take responsibility;
- 3) Having some form of error;
- 4) There is no excuse for it.<sup>9</sup>

The element of criminal responsibility in the form of committing an unlawful act "wederrechtelijkheid" as an absolute requirement of each criminal act. The unlawful nature of the crime contained in the Criminal Code formulates the crime in writing and also unwritten. If the formulation of the crime does not include the unlawful nature of a criminal act, then the element of the crime is considered to have existed tacitly, unless the perpetrator of the act can prove that there is no unlawful nature.<sup>10</sup> Regarding the unlawful nature, it is distinguished between formal unlawful nature and material unlawful nature. Formal unlawful nature means "all parts written in the formulation of the crime have been fulfilled (so all written requirements for being punishable)". While material unlawful nature means "violating or endangering the public interest that the legislators want to protect in the formulation of a particular crime."<sup>11</sup>

Criminal liability can be imposed on Advocates if they commit acts that harm clients and degrade the dignity of the Advocate profession as a noble profession (Officium Nobile). Advocates' actions that can be subject to criminal liability include, for example, committing acts that obstruct the course of the law enforcement process. This act is often referred to as obstruction of justice.

Indonesian Criminal Law essentially upholds the principle of equal rights before the law or better known as the principle of Equality before the law. This principle emphasizes that anyone who is faced with the law and is guilty before the law has the same rights. No party is privileged, neither officials nor other ordinary people. This shows that Indonesian criminal law does not recognize immunity rights. Although Article 50 of the Criminal Code states "Anyone who commits an act to implement the provisions of the law, shall not be punished" but this article is not immediately concluded as immunity rights.

A few special features that advocates have that perhaps differentiate them from other parties are regarding the MOU (Memory of Understanding) between Peradi and the Chief of Police No. B/7/II/2012 No.002/PERADI-DPN/MoU/II/2012. The contents of the MoU regulate that if an advocate is questioned by a police investigator, they must first request permission from the

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<sup>9</sup>Ibid., p.164.

<sup>10</sup>Ibid., p. 134.

<sup>11</sup>Ibid.

advocate organization they are under. The police are required to attach an official summons and case summary. Based on this, Peradi will conduct an investigation into the problem. Within a maximum of 14 days, the Advocate organization will submit the results to the investigator, including presenting the summoned Advocate. This aims to further improve the realization of the principle of the rule of law in enforcing the law maximally, professionally and proportionally<sup>12</sup>.

Although Article 16 of Law No. 18 of 2003 concerning Advocates regulates the immunity rights of advocates which states that "Advocates cannot be sued either civilly or criminally in carrying out their professional duties in good faith for the benefit of clients in court hearings". Then it was strengthened again in the Constitutional Court decision Number 26/PUU-IX/2013 concerning the addition of the phrase Advocate's duties which are not only limited to the court but also include professional duties outside the Court.

The limiting factor of the immunity rights is "Good Faith". Good Faith means carrying out professional duties for the sake of upholding justice based on the law to defend his clients. In addition, the limitations on the Advocate's immunity rights are also regulated in the Advocate's code of ethics.

An example of a case that can be used as a lesson for Advocates as a result of actions that degrade the dignity of Advocates and are contrary to the law is Advocate Stefanus Roy Rening, the Attorney for the Governor of Papua Lukas Enembe, where the Advocate took action to influence witnesses not to return money related to a corruption case to the Corruption Eradication Commission (KPK). As a result of his actions that obstructed the investigation (obstruction of justice) of corruption committed by his Client Lukas Enembe, Advocate Stefanus Roy Rening was sentenced to a prison sentence of 4 (four) years 6 (six) months and a fine of IDR150,000,000.00 (one hundred and fifty million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 3 (three) months, through the decision of the Central Jakarta District Court Number 84 / Pid.sus-TPK / 2023 / PN.JKT.PST which was strengthened by the Decision of the Jakarta High Court NUMBER 12 / PID.SUS-TPK / 2024 / PT.DKI.

From the description of the case above, it is clear that the Advocates committed acts that were contrary to the law which degraded the dignity and honor of the Advocates profession. And their actions have fulfilled the elements of error. Because the actions carried out have deviated from the provisions of the special power of attorney and even involved in committing a criminal act by obstructing justice or often referred to as obstruction of justice. So it is clear that criminal responsibility can be imposed on them.

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<sup>12</sup>Nando Narendra, & M. Yasin. Peradi Asks Polri to Comply with Memorandum of Understanding, <http://hukumonline.com>, accessed February 23, 2024

Furthermore, according to the author's analysis and opinion related to the imposition of criminal liability on Advocates in carrying out their professional duties based on good faith, it still gives rise to multiple interpretations. This is based on the parameters of good faith. Because in Law No. 18 of 2003 concerning Advocates and also the Advocate Code of Ethics does not describe and explain and list which Advocate actions are prohibited and can be subject to criminal liability based on a special power of attorney.

Obstruction of justice normatively it has been regulated in the parent law of Indonesia, namely in Article 221 of the Criminal Code, in addition to the general provisions in the Criminal Code, there are special laws and regulations that have provisions relevant to the crime of obstruction of justice, including Article 21 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Article 22 of Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, and Article 22 of Law No. 15 of 2003 concerning the Implementation of Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism<sup>13</sup>.

Article 221 of the Criminal Code provides a criminal threat for a person who intentionally hides a person who has committed a crime or is being prosecuted for a crime, or provides assistance to escape from investigation and examination or detention by the police and justice. A person who violates this article must know that the person he is hiding or helping has indeed committed a crime or is being prosecuted for a crime; and a person who destroys and so on traces of a crime, in order to hide the crime and so on. The person must have this intention, otherwise he cannot be punished.<sup>14</sup>.

If someone helps another person to escape and does not know that the person he helped has committed a crime, then he cannot be sentenced to obstructing the judicial process and such a thing must be proven in court. There must be an intention to hide a crime is an element that must be fulfilled by someone to be sentenced to obstructing or hindering the legal process, because without such an intention, someone cannot be sentenced to criminal sanctions based on Article 221 of the Criminal Code.

Article 221 paragraph (1) of the Criminal Code threatens with criminal penalties for anyone who hides or helps someone who commits a crime so that the person can avoid investigation or detention. Meanwhile, paragraph (2) of Article 221 of

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<sup>13</sup>Tarek. (2019). Criminal Acts of Obstructing the Legal Process of Investigation, Prosecution, Prosecution to Trial in Corruption Crimes According to Law No. 31 of 1999 concerning Corruption Crimes. *Lex Crimen*, Vol. VIII, (No. 3, March), pp. 146- 147 <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/25642/25295>

<sup>14</sup>Soesilo. *The Criminal Code (KUHP) and its complete Article by Article Commentaries*, Politeia, Bogor, 1994. Page 114.

the Criminal Code threatens with criminal penalties for anyone who has the intention of covering up or obstructing or making it difficult to investigate or prosecute a crime.<sup>15</sup> The Criminal Code as a general provision of criminal law becomes a guideline for special laws and regulations including the crime of obstruction of justice which is also regulated in several special laws and regulations. The articles in special laws and regulations that regulate the crime of obstructing the legal process are inseparable from Article 221 of the Criminal Code.

The formulation of Article 21 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Article 22 of Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, and Article 22 of Law No. 15 of 2003 concerning the Implementation of Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism categorizes an act that is included as a criminal act of obstruction of justice if the act is formally a prohibited act and contains criminal sanctions in it. Based on its nature, obstruction of justice is intended to stop or hinder a legal process against the perpetrator of the crime. Of course, the crime of obstruction of justice is an act that is carried out in the judicial process starting from investigation, inquiry, prosecution, to trial examination.<sup>16</sup>

The subject of the offense in Article 21 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, Article 22 of Law No. 21 of 2007, and Article 22 of Law No. 15 of 2003 does not only refer to a particular profession such as an advocate, but the subject of these articles is every person. The prohibited acts are preventing, obstructing, or thwarting, either directly or indirectly, the legal process against the perpetrator of the crime.<sup>17</sup>

Based on the formulation of Article 21 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Article 22 of Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, and Article 22 of Law No. 15 of 2003 concerning the Implementation of Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism, acts of obstructing the

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<sup>15</sup>Tulandi. Obstructing Investigation and Prosecution for the Interests of Others According to Article 221 paragraph (1) of the Criminal Code. *Lex Crimen*, Vol. IV, (No. 6, August), p. 130. (2015). <https://ejournal.unsrat.ac.id/index.php/lexcrime/article/view/9800>

<sup>16</sup>Junianto. Obstruction of Justice in Article 21 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. *Media Juris*, Vol. 2, (No. 3, October), p.340. (2019). <http://dx.doi.org/10.20473/mi.v2i3.15208>

<sup>17</sup>Ali, Mahrus. *Principles, Theory and Practice of Criminal Law on Corruption*. UII Press, Yogyakarta, (2013). Page 89.

legal process or obstruction of justice can be grouped into 3 forms of acts, namely<sup>18</sup>:

1. An act of intentionally preventing the perpetrator of a crime of prevention from carrying out certain acts so that investigations, prosecutions and examinations cannot be carried out as stipulated in the law;
2. Intentional acts of obstruction, the perpetrator of the crime has carried out certain actions so that the investigation, prosecution and examination of the trial in court which has been underway are obstructed from being carried out in accordance with statutory regulations;
3. Intentionally thwarting actions, the perpetrator has carried out certain actions so that investigations, prosecutions, and examinations in court are obstructed from being carried out as regulated by law.

Observing the Constitutional Court Decision Number 26/PUU-XI/2013 and Law No. 18 of 2003 concerning Advocates provides protection of justice for Advocates who are carrying out their professional duties, this is strengthened by the Theory of Justice put forward by John Rawls where the sovereignty of law is closely related to justice. Rawls said a legal system is a sequence of public rules that are coercive and intended for rational people with the aim of regulating their behavior and providing a framework for social cooperation.<sup>19</sup> The most fundamental principle of justice is that everyone has equal rights from their natural positions. Therefore, in order for justice to be achieved, the political, economic, and property rights constitutional structures must be the same for everyone.

#### **4. Conclusion**

The existence of advocate immunity rights in carrying out their duties refers to the Constitutional Court Decision Number 26/PUU-IX/2013 concerning Article 16 of Law No. 18 of 2003 concerning Advocates. However, this provision cannot be used to provide protection for an Advocate who carries out his Professional Duties, as stated in the Decision of the Central Jakarta District Court Number 84/Pid.sus-TPK/2023/PN.JKT.PST in conjunction with the Decision of the Jakarta High Court NUMBER 12/PID.SUS-TPK/2024/PT.DKI imposing sanctions on Advocate Stefanus Roy Rening, for actions as regulated in Article 21 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of

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<sup>18</sup>Fadli, Khairul. Criminal Responsibility by Members of the Republic of Indonesia Police Who Obstruct the Process of Investigation of Corruption Crimes. University of Riau. p,6. (2013). <http://repository.unri.ac.id:80/handle/123456789/4612>

<sup>19</sup>Yustinus Suhardi Ruman, Legal Justice and Its Implementation in Courts, Jakarta: Binus University, 2012, p. 246

Criminal Acts of Corruption. Legal protection for advocates in the crime of obstruction of justice is related to the advocate's immunity rights, namely as long as the actions carried out by the Advocate are not related to their professional duties and are not based on good faith, then legal protection for advocates based on Law No. 18 of 2003 concerning Advocates and Constitutional Court Decision Number 26 / PUU-IX / 2013 cannot be applied. As a direct example of the Action taken by Advocate Stefanus Roy Rening, namely influencing witnesses not to return money related to corruption cases to the Corruption Eradication Commission (KPK), is considered an act of Obstruction Of Justice, so that the person concerned is asked for criminal responsibility through the Decision of the Central Jakarta District Court Number 84 / Pid.sus-TPK / 2023 / PN.JKT.PST which was strengthened by the Decision of the Jakarta High Court NUMBER 12 / PID.SUS-TPK / 2024 / PT.DKI.

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