



DISCLOSURE OF AUTHORITY OF THE CORRUPTION ERADICATION COMMISSION (KPK) IN THE POST LAW CHANGE CORRUPTION ERADICATION COMMISSION

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ABSTRACT

After the passing of the Corruption Eradication Commission (KPK) Law, the position of the KPK, which was originally a non-governmental institution, is now included in the branch of government power (Auxiliary State Organ). The only corruption eradication institution (excluding the Police and Prosecutor's Office) that still survives to this day is the Corruption Eradication Commission, namely the independent commission which is given pro justitia authority in carrying out criminal acts of corruption. So far this has not been without criticism. In carrying out its duties and functions (before the revision of the Law), many experts criticized the institution for its "independent" status. The purpose of writing this journal is to find out whether changes to the Corruption Eradication Commission Law have given birth to the concept of an independent state institution for the Corruption Eradication Commission. This research uses normative legal research methods. Meanwhile, the approach taken uses a statutory approach and a conceptual approach. The results of this research explain that overall the changes to the Corruption Eradication Commission Law have not yet given rise to the concept of an independent state institution because there are still provisions in articles interfering with the independence of the Corruption Eradication Authority by the Corruption Eradication Commission.

Keywords: Authority, Corruption, Change.

INTRODUCTION

After the amendment of Law Number 30 of 2002 concerning the Corruption Eradication Commission to Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission,¹ the position of the Corruption Eradication Commission (KPK) is included in the branch of government power. (Auxiliary State Organ). The change in the position of the Corruption Eradication Commission is not without reason, based on the decision of the Constitutional Court Number 36/PUU- function of eradicating and preventing criminal acts of corruption in Indonesia. ³ The United Nations Convention Against Corruption as an international anti-corruption convention has mandated that the state can eradicate and prevent corruption effectively and efficiently through corruption eradication institutions. ⁴ Indonesia has also ratified the anti-corruption convention with a Law -Law Number 7 of 2006 concerning Ratification of the 2003 United Nations Convention Against Corruption in order to establish international cooperation in the context of eradicating and preventing criminal acts of corruption locally and internationally. ⁵ Previously, the Corruption Eradication

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Commission was formed based on the mandate of article 43 of the Law -Law Number 31 of 1999 concerning the Eradication of Corruption Crimes and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. This article stipulates that no later than two years after the law on criminal acts of corruption is passed, a special institution must be formed which is given the authority to eradicate criminal acts of corruption. This has been widely criticized by legal experts regarding institutions with "independent" status, such as Romli Atmasasmita. Romli Atmasasmita is of the opinion that the KPK institution is ad hoc so that in carrying out its duties and functions it must encourage the Police and Prosecutor's Office to eradicate criminal acts of corruption as regulated in Law Number 30 of 2002 concerning the Corruption Eradication Commission. 8 In the explanation of Law Number 19 of 2019 concerning Amendments Secondly, Law Number 30 of 2002 concerning the Corruption Eradication Commission states that the many deficiencies in the performance of the Corruption Eradication Commission (KPK) so far are related to weak coordination between law enforcers (Police and the Prosecutor's Office), allegations of overlapping authority with other law enforcement agencies, There is no supervisory institution and so on, so that the Corruption Eradication Commission (KPK) is regulated as a unified government agency apparatus together with the police and prosecutors to make integrated efforts to prevent and eradicate criminal acts of corruption and reduce the imbalance in relations between law enforcement agencies by not monopolizing and conflicting with each other's duties. 9 Based on With this background, the author will determine the formulation of the problem that will be discussed, namely first, what is the concept of independent state institutions based on the theory of independent state institutions and whether changes to the KPK law have strengthened the authority of the KPK as an independent state institution in the field of corruption law enforcement. This research uses normative legal research methods, namely according to Soerjono Soekanto and Sri Mamuji, normative legal research is carried out by examining library materials or secondary data. 10 The object of study for this research is the institution of the Corruption Eradication Commission which is regulated by law. This research was conducted using secondary legal materials originating from library data, while the legal materials in this writing are the 1945 Constitution, Legislation relating to the Corruption Eradication Commission. Meanwhile, the approach that will be taken is to use a statutory approach and a conceptual approach. The first approach is used to find the legal principles governing the corruption eradication commission as an independent state institution and the second approach is used to find relevant doctrines. related to the concept of an independent state institution. The approach that will be taken is using a statutory approach and a conceptual approach. The first approach is used to find the legal principles for regulating the corruption eradication commission as an independent state institution and the second approach is used to find doctrines related to the concept. an independent state institution. The approach that will be taken is to use a statutory approach and a conceptual approach. The first approach is used to find the legal principles for regulating the

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corruption eradication commission as an independent state institution and the second approach is used to find doctrines related to the concept. an independent state institution.

FORMULATION OF THE PROBLEM

1. What is the concept of independent state institutions based on the theory of independent state institutions?
2. Becomes the legal basis for the Corruption Eradication Committee's authority to carry out investigations and prosecutions

METHOD

This research is normative research. The type of research used is normative juridical, namely a research method that examines the authority of the Corruption Eradication Commission (KPK) in efforts to eradicate criminal acts of corruption in Indonesia. The research approaches used include the statutory approach and the case approach. The type of data used is secondary data. Secondary data sources used include primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials consist of legislation, treatises on making legislation and judges' decisions. The law studied is Law no. 30 of 2002 concerning the Commission for the Eradication of Election Corruption Crimes Article 50 which relates to the authority of the Corruption Eradication Commission and other law enforcement institutions in carrying out investigations. The data collection techniques used are library materials through literature books, statutory regulations, as well as data collection through electronic media related to the problem being studied. The analysis used is qualitative. namely analyzing research data to then be studied in depth and interpreted by researchers to obtain the expected conclusions. The legal materials that have been systematized are then analyzed qualitatively.

RESULTS AND DISCUSSION

1. The Concept of Independent State Institutions is Based on the Theory of Independent State Institutions

This second amendment to the Corruption Eradication Commission Law certainly started from Constitutional Court Decision Number 36/PUU-XV/2017 which stated that the Corruption Eradication Commission "ideally" is an executive organ (government) even though its position is outside the government (independent). The decision states that no matter how independent an independent state institution (including the Corruption Eradication Commission) is, it is still categorized as a state institution that carries out government functions. This is because in carrying out its institutional duties and functions, the KPK continues to use the state budget and submits performance reports to the House of Representatives (DPR) and the President regarding institutional accountability. ²⁰ The KPK itself was formed based on law and is not explicitly regulated in the 1945 Constitution.

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Of course, if the Corruption Eradication Commission (KPK) must truly carry out its duties and functions in accordance with the provisions of the law on its formation, if it is not in accordance then the DPR can conduct an investigation and express an opinion if an institution in carrying out its duties is in conflict with the law so that it can carry out the right of inquiry to carry out its functions. supervision they have.²¹ In practice, there is often overlapping authority between the Corruption Eradication Committee, the Police and the Prosecutor's Office in handling corruption cases. Quoting the opinion of constitutional law expert Yusril Ihza Mahendra in his expert statement at the KPK special committee inquiry session in 2017, there were concerns that the formation of Law Number 30 of 2002 concerning the Corruption Eradication Commission had the potential for overlapping authority between the Corruption Eradication Committee and the Prosecutor's Office and the Police so that the law makers would regulate limiting the authority of the Corruption Eradication Commission by carrying out coordination and supervision related to first, the corruption case is suspected of causing state losses of one billion or more (under one billion is not the authority of the Corruption Eradication Committee), second, it involves state officials and the case is disturbing the public at large. ²² Another opinion from Yusril Ihza Mahendra regarding the current condition of the KPK is that society still has the old legal paradigm when looking at the current legal conditions.

At the beginning of reform, the state really needed a state institution that could be free from government political intervention, so the legislators included various extra powers in the Corruption Eradication Committee (KPK) with the aim of a "trigger mechanism" or providing a stimulus for the Prosecutor's Office and Police in uncovering cases of criminal acts of corruption. However, state institutions that are given extraordinary authority cannot be permanently established. This opinion is in line with the fact that there were many disbandments of special institutions authorized to carry out the task of eradicating corruption before the KPK was formed. Yusril Ihza Mahendra's view suggests that related to KPK institutional issues that are addressed in changes to the law, they must look at the current legal conditions that occur in people's lives. ²⁴ The problem is whether Law Number 30 of 2002 is changed to Law 19 of 2019 concerning the Eradication Commission. Corruption has strengthened the independent authority to take action against corruption carried out by the Corruption Eradication Commission (KPK). When looking at the formation of a law, the basis for the reasons behind the law being formed through the legal politics of law formation must be seen. Legal politics is a legal policy or official state policy regarding the replacement of old laws or the creation of new laws in order to achieve state goals. ²⁵ Seeing this, it is necessary to know the reasons for the formation of laws in the considerations. Below we will explain the differences in the reasons for establishing Law Number 30 of 2002 and Law Number 19 of 2019.

2. **Becomes the legal basis for the Corruption Eradication Committee's authority to carry out investigations and prosecutions**

According to Leden Marpaung, corruption is the act of possessing "state finances" illegally (haram). In the Big Indonesian Dictionary of the Department of Education and Culture as quoted by Leden Marpaung, corruption is defined as: "... misappropriation or embezzlement (of state or company money and so on) for personal or other people's interests. The word "state finances" is usually inseparable from "government officials", because those who manage "state finances" are government officials. 4 Definition of Corruption Crimes according to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes contained in Article 2 paragraph (1) and Article 3. Article 2 paragraph (1) determines that "any person who unlawfully commits an act of enriching himself or another person or a corporation which can cause financial loss." state or state economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)". And in article 3 it states "any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position which can harm the State's finances or the State's economy, shall be punished by life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)".

Law enforcement against criminal acts of corruption carried out by institutions such as the Prosecutor's Office of the Republic of Indonesia and the Police of the Republic of Indonesia, in practice often faces obstacles and is seen as not independent and independent. 5 There are various approaches that can be taken to the problem of corruption, and the meaning remains appropriate no matter how we approach the problem. that, from various aspects. A sociological approach, for example, as used by Syed Hussein Alatas in his book *The Sociology of Corruption*, would have a different meaning if we took a normative approach; Likewise with politics and economics. The emergence of the Corruption Eradication Commission (KPK) whose function is to carry out inquiries, investigate and prosecute criminal acts of corruption is a response to the ineffectiveness of handling criminal acts of corruption by the Police and Prosecutor's Office. The formation of the Corruption Eradication Commission as an independent institution that has special authority in eradicating corruption is based on the need for a corruption eradication institution that is free from the influence of any power.

The Corruption Eradication Committee Law clearly gives the Corruption Eradication Commission very broad and extensive authority to systematically prevent and eradicate corruption and makes the Corruption Eradication Committee the main pillar in eradicating corruption. However, the existence of the Corruption Eradication Committee (KPK), with all its duties and authorities, provides a gap of weakness while

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still providing a large role for the Police and Prosecutor's Office in carrying out their duties and authority in eradicating criminal acts of corruption. The uncontrolled increase in criminal acts of corruption will bring disaster not only to the life of the national economy but also to the life of the nation and state in general. Widespread and systematic criminal acts of corruption which constitute a violation of the social and economic rights of the community. Therefore, criminal acts of corruption can no longer be classified as ordinary crimes but have become extraordinary crimes. Likewise, efforts to eradicate it can no longer be carried out normally, but are required in extraordinary ways. 6 Law enforcement to eradicate criminal acts of corruption carried out conventionally has so far proven to experience various obstacles. For this reason, various extraordinary methods of law enforcement are needed through the establishment of a special agency that has broad, independent authority and is free from any power in an effort to eradicate criminal acts of corruption, the implementation of which is carried out optimally, intensively, effectively and professionally.⁷ By Therefore, according to Mertokusumo, if in law enforcement, what is considered is only legal certainty, then other elements are sacrificed, likewise if what is considered is only expediency, then legal certainty and justice are sacrificed. 8 Basically, the formation of the Corruption Eradication Commission is aimed at increasing efficiency and results. in order to eradicate criminal acts of corruption. The Corruption Eradication Committee (KPK) can be categorized as a special (ad hoc) body which was formed with the main aim of handling certain corruption cases.

In Article 6 of Law Number 30 of 2002 concerning the Corruption Eradication Commission. The Corruption Eradication Committee (KPK) is a special agency that has broad, independent authority and is free from any power to eradicate corruption. The Corruption Eradication Committee (KPK) was formed because the Police, Prosecutor's Office, or other institutions that were supposed to prevent corruption could not work well in eradicating corruption in Indonesia. The way to deal with corruption must be in an extraordinary way. For this reason, the Corruption Eradication Commission (KPK) was formed which has extraordinary authority, so it is not surprising that the Corruption Eradication Commission (KPK) is called a super body. Furthermore, the authority of the Corruption Eradication Commission as mandated in Articles 7, 8, 9, 10, 11, 12, 13 and 14 of Law Number 30 of 2002, as supporting the implementation of the duties as intended in Article 6 of Law Number 30 of 2002, Commission Corruption Eradication. Based on the provisions of Article 43 of Law no. 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law no. 20 of 2001, a special agency was formed to handle efforts to eradicate corruption. The special agency in Law no. 30 of 2002 is the Corruption Eradication Commission, hereinafter referred to as the Corruption Eradication Commission (KPK). The formation of the Corruption Eradication Committee (KPK) was based on the need to have an independent public prosecutor (JPU) in handling corruption cases. 9 Eradicating Corruption has now become an agenda for the international community. At the same time, provisions have also been agreed on that regulate the establishment of

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an independent anti-corruption institution, a mechanism for returning assets resulting from corruption in the country. others through "mutual legal assistance"; extradition, "joint investigation; transfer of sentenced person; transfer of proceedings; and the obligation to report annually to an "international institution" called the "Conference of the Parties". 10 Law enforcement or application of the law and judicial processes or court proceedings are important elements of legal certainty. However, the two things above are not sufficient to achieve legal certainty, let alone guarantee the fulfillment of the needs and satisfaction of the legal interests of justice seekers or the wider community in general. so that it can be seen as a violation of human rights, namely the socio-economic rights of the people. Therefore, the public longs for the Corruption Eradication Commission (KPK) as an institution that is the hope of the Indonesian nation that emerged amidst existing law enforcement institutions in line with the crisis of public confidence in the law itself. Another broader authority of the Corruption Eradication Commission is to take over the authority of investigation and prosecution from the police and prosecutors with the principles of "trigger mechanism" and "take over mechanism".

This takeover of authority can be carried out if there are indications of "unwillingness" from the relevant institution in carrying out its duties and authority. Indications of "unwillingness" are based on Article 9 of the Corruption Eradication Commission Law, namely (i) the existence of public reports regarding criminal acts of corruption which are not followed up, (ii) the process of handling criminal acts of corruption which is protracted, (iii) the existence of elements of nepotism which protect the perpetrators. corruption, (iv) interference from the executive, legislative and judiciary, (v) other reasons that make handling criminal acts of corruption difficult to carry out. The impact of criminal acts of corruption can be seen from the occurrence of various natural disasters and environmental damage such as floods, even Nyoman Union Putra Jaya said that the negative consequences of criminal acts of corruption are very detrimental to the fabric of the nation's life, in fact corruption is a deprivation of the economic and social rights of the Indonesian people. 12 The victims of corruption are invisible and not individuals, but the State. It is precisely because of this invisibility that the public does not generally feel that corruption is a criminal act that endangers citizens (at least directly). Another thing is that street crimes are much higher than corruption crimes, so public perception is difficult to change because street crimes are visible. 13 Corruption crimes are extraordinary crimes so they need comprehensive handling because difficulties occur, one of which is in terms of prosecution.14 All authorities relating to investigations, investigations and prosecutions regulated in Law Number 8 of 1981 concerning Criminal Procedure Law also apply to investigators, investigators and public prosecutors at the Corruption Eradication Commission. The provisions as intended in Article 7 paragraph (2) of Law Number 8 of 1981 concerning Criminal Procedure Law do not apply to investigators of criminal acts of corruption as stipulated in this Law. (Article 38 of Law Number 30 of 2002 concerning the Corruption Eradication Commission (UU 30/2002)). The judicial justice system is

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essentially identical to the law enforcement system, because the judicial process is essentially a process of enforcing the law, so it is essentially identical to the "judicial power system" because "judicial power" is basically the "power/authority to enforce the law". If focused on the field of criminal law, it can be said that the "Criminal Justice System" (known as SPP or Criminal Justice System/CJS) is essentially a "Criminal Justice System" which is essentially identical to the "Judicial Power System in the Field of Criminal Law" (SKK-HP).

Investigations, prosecutions and examinations in court as well as the implementation of decisions that have obtained permanent legal force regarding criminal acts as intended in this Law are carried out in accordance with the provisions of statutory regulations, unless otherwise provided in this Law (Article 68 Law 8/2010). Investigations into criminal acts of corruption are carried out by predicate criminal investigators in accordance with the provisions of the procedural law and provisions of statutory regulations, unless otherwise determined according to this Law. (Article 74 Law 8/2010) The large amount of intervention aimed at the Corruption Eradication Committee is a challenge for the Corruption Eradication Commission commissioners in carrying out their duties and authority.

Regarding the Corruption Eradication Commission's authority in terms of policies to prevent and eradicate criminal acts of corruption, it will be limited to only a few things. These provisions can be seen in article 11 of Law Number 30 of 2002 concerning the Commission for the Eradication of Corruption, which states that criminal acts of corruption that fall within the authority of the Corruption Eradication Commission are: a. Involving law enforcement officials, state officials and other people who are related to criminal acts of corruption committed by law enforcement officials or state officials; b. Get attention that disturbs the public; and/or c. Concerning state losses of at least Rp. 1,000,000,000.00 (one billion rupiah). With this, the Corruption Eradication Committee is presented to only handle corruption cases that meet these criteria, so its authority is limited. Even though other articles stipulate that the Corruption Eradication Committee can take over cases handled by other law enforcement officials for several reasons, one of the reasons is that the handling of criminal acts of corruption contains elements of corruption. During the New Order regime's reign, the working mechanisms of conventional law enforcement institutions were inseparable from executive control and during this transition period the existence of conventional law enforcement institutions experienced a legitimacy crisis. 16 Restrictions like this directly narrowed and reduced the portion of the Corruption Eradication Committee's authority as a specially formed commission. eradicate corruption, although in certain cases the Corruption Eradication Commission may override some of these provisions. However, this remains an obstacle for the Corruption Eradication Committee in carrying out its duties and authority. For example, with the authority of the Prosecutor's Office and the Corruption Eradication Commission in carrying out prosecutions for criminal acts of corruption, there has been a dualism in the prosecution of criminal acts of corruption. even though according to

the provisions of the law the person who has the authority to prosecute criminal acts is a prosecutor within the Prosecutor's Office of the Republic of Indonesia.

CLOSING

Conclusion

Based on the description in the discussion chapter, conclusions can be drawn as follows:

1. After explaining the explanation of the material formulation for changes to the KPK law, whether in accordance with or not in accordance with the concept of an independent state institution, the author concludes that Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission has not yet been implemented. strengthening the independence of the Corruption Eradication Commission's enforcement authority and actually further weakening the Corruption Eradication Commission's enforcement authority compared to the independence of the Corruption Eradication Commission's authority in the previous law. This is because there are still provisions in articles that intervene in the KPK's independent authority in carrying out its duties and functions, such as the authority to wiretapping must be carried out in accordance with permission from the supervisor, the regulation of wiretapping is regulated in the article on amendments to the KPK law without prior to the formation of the law on wiretapping, regulation of obligations. issuing SP3 within a certain period of time which is not in accordance with various Constitutional Court Decisions which decided on testing related to SP3 authority by the Corruption Eradication Committee, is not in accordance with the theory of the concept of independent state institutions, both according to experts and international conventions. The author provides suggestions that in formulating changes to the Corruption Eradication Commission Law in the future (if carried out) it should refer to various Constitutional Court Decisions which have decided related to the Corruption Eradication Committee issue, and change the corruption enforcement authority that the Corruption Eradication Commission has The KPK is the heart of the Corruption Eradication Committee in carrying out criminal acts of corruption and is not owned by other institutions that have the authority to prosecute criminal acts of corruption.
2. The KPK's authority to handle corruption cases is regulated in Article 6 letter c of Law no. 30 of 2002 concerning the Corruption Eradication Commission states that the Corruption Eradication Committee (KPK) has the task of carrying out inquiries, investigations and prosecutions of criminal acts of corruption. However, the Corruption Eradication Commission has additional authority, namely that it can take over corruption cases even if they are being handled by the Police or

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Prosecutor's Office (Article 8 paragraph (2) of the Corruption Eradication Committee Law). However, the takeover of the corruption case must be for the reasons stipulated in Article 9 of the Corruption Eradication Committee Law. Apart from the authority to take over corruption cases, there are other things that fall under the authority of the Corruption Eradication Committee, namely as regulated in Article 11 of the Corruption Eradication Commission Law and Article 50 of the Corruption Eradication Commission Law.

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