

LEGAL POLITIC OF CORRUPTION ERADICATION AFTER THE ENACTMENT OF ACT NUMBER 19 THE YEAR 2019

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ABSTRACT

Changes in the policy of eradicating corruption after the issuance of Law Number 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission experienced a great debate among legal experts and anti-corruption activists, some were pro and some were contra. The purpose of this study is to find out how the legal politics of eradicating corruption after the enactment of law number 19 of 2019 concerning the second amendment to law number 30 of 2002 concerning the commission for eradicating corruption. This research uses normative legal research or doctrinal law research. The results of this study are changes in legal policy carried out by the House of Representatives together with the President towards the anti-corruption institution of the Commission of Corruption Eradication (KPK), namely by changing the KPK institution to an executive institution and internal supervision supervised by the supervisory board and KPK employees must consist of state civil apparatus and the duties and functions of the KPK. This addition certainly has a significant impact on the internal body of the KPK itself, especially in terms of the institutional independence of the KPK.

Keywords: Politics; Corruption; KPK; Crime

INTRODUCTION

Corruption is a serious crime since negative effect of this crime impacted all plane of life. This crime may threat stability and security in society, endangered social and economic development and also the political stability.¹ Indonesia is one of the countries that have a high

¹ Titin Nurfatlah, Gina Meilinda, Fifi Rosalina, Usnadi., 2019, Legal Politics Of State Assets Recovery By In Absentia Court In Act Number 20 Year 2001 Concerning Eradication Against Corruption, *Unram Law Review*,

level of corruption. This is indicated by Indonesia's ranking which is in position 85 of the 180 most corrupt countries in the world based on research from Transparency International Indonesia in 2019. The data shows that even though Indonesia already has an anti-corruption agency, the Corruption Eradication Commission (KPK), it has not been fully able to make the country This is free from the corruption that has been carried out by government officials and others. Indonesia has been independent for 75 years, but development and prosperity have not been fully felt by the people. Education for the nation's next generation has been corrupted, the cost of hajj for Muslims has been corrupted, the food supply for the community has also been corrupted, and not a single field is free from corruption by the representatives of the people. Several corruption cases that occurred in Indonesia include the e-KTP case involving the former chairman of the Indonesian House of Representatives, namely Setya Novanto, which caused a loss to the state of up to Rp. IDR 706 billion.²

The anti-corruption non-governmental organization Indonesia Corruption Watch (ICW) released a Report on the Trends of Enforcement of Corruption Cases for Semester 1 2021. Based on data collected by ICW, the number of prosecutions for corruption cases in the first six months of 2021 reached 209 cases. This number increased compared to the same period in the previous year, which was 169 cases. ICW also said that the value of state losses due to corruption has also increased. In semester 1 2020, the value of state losses from corruption cases amounted to Rp. 18.173 trillion, then in semester 1 of 2021 the value reached Rp. 26.83 trillion. In other words, there was an increase in the value of state losses due to corruption by 47.6 percent. In the past four years, the value of state losses has always shown an increasing trend, while the number of prosecutions for corruption cases has fluctuated.³ To overcome this, it is necessary to take extraordinary actions to respond. It should be noted that the KPK was born out of public unrest and dissatisfaction with traditional institutions. The KPK is a state practice requirement that changes dynamically with the complexity of issues that require new institutions. Because the traditional division of state power assuming only three branches of power in a country can no longer answer the complexities that arise in the development of a modern state.⁴

The Corruption Eradication Commission was established based on Law Number 30 of 2002 concerning the Corruption Eradication Commission as amended by law number 10 of 2015 concerning the stipulation of government regulations in lieu of law number 1 of 2015 concerning amendments to law number 30 of 2015. 2002 concerning the corruption eradication commission into law as amended by law number 19 of 2019 concerning the second amendment to law number 30 of 2002 concerning the corruption eradication commission in article 1 paragraph 4 of this law stipulates that the eradication of corruption is a series of actions to prevent and eradicate criminal acts of corruption through coordination, supervision, monitoring, investigation, investigation, prosecution and examination in courts with public participation based on applicable laws and regulations.⁵

Regarding the changes to the KPK law, we have to give attention to the legal politics of the formation of this legislation. Whether the purpose of this law has ideal for eradicating corruption in the future or on the contrary it has a negative purpose. Therefore, the process of corruption legislation formation can attract enormous public attention.

Vol 3, Issue 1, P. 7.

² Chandra Bayu. (2021). Transformasi Kelembagaan KPK: UU KPK Sebagai Kebijakan Pencegahan Korupsi di Indonesia. *Jurnal Dinamika Sosial Budaya*. Vol 23, No.1, Juni 2021

³ ICW: Angka Penindakan Kasus Korupsi Semester 1 2021 Naik Jika Dibandingkan Tahun Sebelumnya - Data - Tempo.co (accessed at 24 April 2022 pukul 01:36 WITA)

⁴ Chandra Bayu. (2021). *Op.Cit.*

⁵ Law Number 19 Year 2019 Concerning Second Amendment of Law Number 30 Year 2002 Concerning the Commission of Corruption Eradication, LN No. 197 Tahun 2019.

Apart from the process of changing the KPK law, there are other interesting things, namely the significant change in the substance of the new KPK law. The change in the substance includes the KPK institutionalization, the existence of a supervisory board who have an enormous role and function and the requirement for the KPK employees to become state civil servants, and other changes that will affect the performance of this commission in the future. These changes have become the subject of discussion and debate among legal experts and anti-corruption activists, some are pro and some do not accept this change.

The purpose of this study is to find out how the position of the Eradication Commission is not criminally corrupt and how the legal politics of eradicating corruption after the enactment of law number 19 of 2019 concerning the second amendment to law number 30 of 2002 concerning the commission of eradicating corruption.

RESEARCH METHOD

The research method is a characteristic of conducting legal research, by using a good method it will get maximum and precise results from the problems studied. This Study uses normative legal research or doctrinal legal research. In this type of research, the law is often conceptualized with what is written in the law (law in the book) or law is conceptualized as a rule or norm which is conceptualized as a rule or norm that becomes a benchmark for written behavior that is considered appropriate. The approaches used are the statute approach and conceptual approach. this study uses legal material collected using library research.

DISCUSSION

Legal Politic of Corruption Eradication After the Enactment of Law Number 19 the Year 2019

Legal politics is the basic policy that determines the direction, form, and substance of the law to be formed. Padmo Wahyono in his article entitled "Investigating the process of forming legislation, said that legal politics plays a role as a state administrator's policy regarding what criteria are used to make a law of something. In this case, the policy can be related to the formation of law, the application of the law, and its enforcement.⁶

According to Mahfud MD, legal politics is "legal policy or official line (policy) regarding law that will be enforced either by making new laws that will be enforced or by replacing old laws, to achieve the goals of the state". Thus, legal politics is a choice of laws that are enacted as well as choices about which laws will be repealed or not enforced, all of which are intended to achieve the goals of the State as stated in the preamble to the 1945 Constitution of the Republic of Indonesia.⁷

From the definition of legal politics above, the legal politics of eradicating corruption after the enactment of the new KPK law, namely Law Number 19 of 2019 concerning the second amendment to Law 30 of 2002 concerning the Corruption Eradication Commission, can be seen from several changes that occur in the substance of the law. Several points of major changes in law number 19 of 2019 are as follows:

The Standing of the Commission of Corruption Eradication (KPK)

⁶ Padmo wahyono. (1991). Menyelisik proses terbentuknya perundang-undangan. *Jurnal Forum Keadilan* vol. 16. No. 29. April. hlm 65.

⁷ Mahfud MD. (2006). *Membangun Politik Hukum Menegakkan Konstitusi*. Jakarta: LP3ES. hal 16.

After the enactment of Law Number 19 of 2019, the position of the KPK is as a state institution within the executive power group that in carrying out its duties and authorities is independent and free from the influence of any power.⁸ The meaning of “state institutions” as referred to in Article 3 are state institutions that act as state auxiliary agencies that are included in the executive group.⁹ The amendment and/or affirmation in Article 3 of the Corruption Eradication Commission Law was carried out as a follow-up to the Constitutional Court Decision Number 36/PUU-XV/2017.¹⁰

In addition, the position of the KPK as a state institution within the executive power group is clearly illustrated by the establishment of a Supervisory Board whose members are appointed and determined by the President,¹¹ as well as the accountability of the Supervisory Board for its duties directly to the President and the House of Representatives¹² in the form of periodical duty implementation report 1 time in each year.¹³

One thing that needs to be emphasized concerning the position of the Corruption Eradication Commission is that the formulation in Article 3 of Law No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission does not provide the possibility of other interpretations other than those formulated in the provisions of the article, namely the independence and freedom of the Corruption Eradication Commission from the influence of any power in carrying out its duties and authorities.¹⁴ Independence and freedom from the influence of any power in carrying out the duties and authorities of the Corruption Eradication Commission also need to be emphasized so that there is no doubt within the members of the Corruption Eradication Commission, as described previously, and article 20 paragraph (1) which states: “The Corruption Eradication Commission be responsible to the public for the implementation of their duties and submit reports openly and periodically to the President of the Republic of Indonesia, the House of Representatives of the Republic of Indonesia, and the State Audit Board.

The Supervisory Board

In Article 21 Paragraph (1) of Law Number 19 of 2019, it is clearly stated that the supervisory board is part of the KPK itself, namely being the internal supervisor of the KPK. This regulation is a new thing since it is not regulated in the previous law. Further rules related to this supervisory board are regulated in articles 37A, 37B, 37C, 37D, 37E, 37F, and 37G.

The task of the supervisory board itself is regulated in article 37B which reads:

- 1) The Supervisory Board is in charge of:
 - a. supervising the implementation of the duties and authorities of the Corruption Eradication Commission;
 - b. granting permission or not giving permission for wiretapping, search, and/or confiscation;
 - c. compile and stipulate a code of ethics for the Leaders and Employees of the Corruption Eradication Commission;

⁸ Law Number 19 Year 2019 Concerning Second Amendment of Law Number 30 Year 2002 Concerning the Commission of Corruption Eradication, LN No. 197 Tahun 2019, TLN No. 6409, Art. 3.

⁹ *Ibid.*, Explanation Art. 3.

¹⁰ *Ibid.*, General Explanation.

¹¹ *Ibid.*, Art. 37E Paragraph (1).

¹² *Ibid.*, Art. 37E Paragraph (1).

¹³ *Ibid.*, Art. 37B Paragraph (2).

¹⁴ Tjokorda Gde Indraputra, I Nyoman Bagiastra. (2014). Kedudukan Komisi Pemberantasan Korupsi Sebagai Lembaga Negara Bantu (State Auxiliary Institutions)., *Jurnal Kertha Negara*. 2(5).

- d. receive and follow up on reports from the public regarding alleged violations of the code of ethics by the Leaders and Employees of the Corruption Eradication Commission or violations of the provisions of this Law;
- e. holding a trial to examine the alleged violation of the code of ethics by the Leaders and Employees of the Corruption Eradication Commission; and
- f. evaluate the performance of the Corruption Eradication Commission Leaders and Employees periodically 1 (one) time in 1 (one) year.

Status of the Kpk Employee

In the revision of Law No. 19 of 2019 Article 1 Paragraph (6) explains, “Employees of the Corruption Eradication Commission are state civil servants as referred to in the legislation regarding the state civil apparatus”. Being a State Civil Apparatus (ASN) has made the KPK no longer have the authority to select its employees to fill the KPK’s organizational structure which covers various fields, one of which is the field of prosecution, which centrally includes investigators, investigators, and prosecution.

More clearly the provisions regarding the status of KPK employees are explained in Article 24 of Law Number 19 of 2019 which reads:

- 1) Employees of the Corruption Eradication Commission as referred to in Article 21 paragraph (1) letter c are Indonesian citizens who because of their expertise are appointed as employees of the Corruption Eradication Commission.
- 2) Employees of the Corruption Eradication Commission are members of the professional corps of civil servants of the Republic of Indonesia under the provisions of laws and regulations.
- 3) Provisions regarding the procedures for the appointment of Corruption Eradication Commission Employees are carried out under the provisions of the laws and regulations.

So it is very clear that the KPK is no longer able to appoint and dismiss its employees, it must follow the rules for the appointment of state civil servants according to the applicable law, this is different from the law before the amendment where the KPK regulates the process of appointing its employees. The change in this provision itself has a very sensitive role because this can backfire for the KPK itself, it can interfere with the independence of KPK employees but also as a binder for these employees themselves so they don’t act arbitrarily.

The Duty and Authority of the KPK

The duties and authorities of the KPK base on law number 19 of 2019 concerning the second amendment to law number 30 of 2002 concerning the corruption eradication commission, namely:

- a. The duties of the KPK in the provisions of article 6, which in essence:
 1. Preventive measures so that corruption does not occur;
 2. Coordination with authorized agencies
 3. Implementing the Eradication of Corruption Crimes and agencies in charge of carrying out public services;
 4. Monitor the implementation of state government;
 5. supervision against agencies authorized to carry out the Corruption Eradication;
 6. Investigation, and prosecution of Corruption Crimes; and
 7. The actions to execute judges’ decisions and court decisions that have permanent legal force.
- b. The authority of the KPK in carrying out its duties as stated in article 6 is regulated in the provisions of articles 7, article 8, article 9, article 10, article 10a, article 11, article 12A,

article 12B, article 12C, law number 19 of 2019 regarding amendments the second is the law number 30 of 2002 on the corruption eradication commission.¹⁵

The interesting part is the duties and authorities of the KPK in this latest revised law, namely the position of the KPK in the state administration system which is included in the executive power, which means that the KPK should have the same authority as the Police and the Prosecutor's Office. The results of this revision regarding coordination and supervision as the main tasks of the KPK are not abolished so that the KPK can still take over cases of criminal acts of corruption that are being handled by the Police and the Prosecutor's Office.¹⁶ This rule become the specialty of the KPK in carrying out its task of eradicating corruption.

Regarding the authority of the KPK in carrying out this supervision, it is stated further in Article 10A of Law Number 30 of 2002 concerning the Commission for the Eradication of Corruption.

Since the enactment of Law Number 19 of 2019, the KPK has experienced several changes in the policy-making process to eradicate corruption. Through Law Number 19 of 2019, the task of the KPK has been increased. The additional duties of the KPK based on Law Number 19 of 2019, include:

1. Coordinate with agencies in charge of carrying out public services; and
2. Take action to execute judges' decisions and court decisions that have permanent legal force.¹⁷

Regarding the preventive tasks, the KPK's authority has changed. Previously the KPK was authorized to "design and encourage the implementation of a socialization program to eradicate corruption" as regulated in Law Number 30 of 2002, now based on the KPK's authority it is not only "designing and encourage", but "plans and implements a socialization program for the Eradication of Corruption Crimes". And all the authorities of the KPK in carrying out preventive duties must be reported as a form of accountability to the President of the Republic of Indonesia, the House of Representatives of the Republic of Indonesia, and the Supreme Audit Agency one time in a year.

In carrying out the coordination task, the KPK previously had the authority to "request reports from relevant agencies regarding the prevention of corruption crimes" as regulated in Article 7 letter e of Law Number 30 of 2002, now the authority of the KPK is to "request reports to the competent agencies regarding prevention efforts so that corruption does not occur".

Regarding the authority of the KPK in carrying out monitoring duties, there was no change in the authority of the KPK as enumerated in Law Number 19 of 2019. Likewise, in carrying out its supervisory duties, in principle, the authority of the KPK has not changed.¹⁸ However, the provisions regarding the implementation of the KPK's supervisory duties will be regulated by a Presidential Regulation.¹⁹ In addition, the authority of the KPK to take over the investigation and/or prosecution of perpetrators of Corruption Crimes that are being carried out by the police

¹⁵ Lalu kuku kharisma dan karlina Apriani.(2020). *Kekhususan Tindak Pidana Korupsi*, Mataram University Press, Mataram, P. 85.

¹⁶ *Ibid.* P. 86

¹⁷ The duties of the KPK are as follows: 1) Coordination with agencies authorized to eradicate corruption; 2) Supervision of agencies authorized to eradicate corruption; 3) Conducting investigations, and prosecutions of corruption crimes; 4) Take measures to prevent corruption; and 5) Monitor the implementation of state government as regulated in Article 6 of Law Number 30 of 2002 which is maintained in Law Number 19 of 2019. Regarding the task of prevention, Law Number 19 of 2019 uses the phrase "Take actions prevention so that corruption does not occur" to change the phrase "Take measures to prevent corruption" as contained in Law Number 30 of 2002., Art. 6.

¹⁸ The authority of the KPK to carry out supervision, research, or review of agencies carrying out their duties and authorities related to the Eradication of Criminal Acts of Corruption in the context of supervisory duties, remains in Law Number 19 of 2019. *Ibid.*, Art. 10 paragraph (1).

¹⁹ *Ibid.*, Art. 10 paragraph (2).

or the prosecutor's office in the context of their supervisory duties remains unchanged. A major change in the authority of the KPK lies in the authority to carry out the task of investigating, and prosecuting corruption crimes. In Article 11 paragraph (1) of Law Number 19 of 2019, the KPK has the authority to conduct investigations and prosecutions of corruption crimes that:

1. Involve law enforcement officers, state administrators, and other people who are related to Corruption Crimes committed by law enforcement officers or state administrators; and/or
2. With regard to state losses of at least Rp. 1.000.000.000,00 (one billion rupiah).

If the Corruption Crime does not meet the provisions of Article 11 paragraph (1) of Law Number 19 of 2019, then the Corruption Eradication Commission is obliged to submit investigations, and prosecutions to the police and/or prosecutors. However, even though the case has been handed over to the police and/or the prosecutor's office, the KPK continues to supervise the case that has been handed over to the police and/or the prosecutor's office.²⁰

Law Number 19 of 2019 does not specifically mention the authority of the KPK in carrying out the task of prosecuting criminal acts of corruption. The KPK is only ordered by Law Number 19 of 2019 to conduct coordination following the provisions of the legislation.²¹ Nevertheless, Article 38 of Law Number 19 of 2019 stipulates that all powers relating to investigations and prosecutions are regulated in the law governing criminal procedure law (in casu Law Number 8 of 1981 concerning Criminal Procedure Code) also applies to investigators, and public prosecutors at the Corruption Eradication Commission, unless otherwise stipulated by this Law.

Specifically related to wiretapping – in addition to searches and/or confiscations –, such wiretapping activities must obtain permission from the Supervisory Board. Previously, namely in Law 30 of 2002, the KPK in exercising its authority in the task of investigating, or prosecuting did not need to seek permission from any agency.

Regarding the implementation of the task of executing judges' decisions and court decisions, the KPK is authorized to take legal actions that are necessary and can be accounted for in compliance with the judge's determination or court decision.

Regarding other authorities, namely the termination of investigations, and/or prosecutions, Law Number 19 of 2019 requires that the KPK can suspend investigating and prosecuting cases of Corruption Crimes whose investigations and prosecutions are not completed within a maximum period of 2 (two) years.²² However, the cessation of investigation and prosecution by the Corruption Eradication Committee can be revoked by the KPK leadership if new evidence is found which can invalidate the reasons for the termination of investigation and prosecution, or based on pretrial decisions as referred to in the legislation.

The Effect of the Amendment of the KPK Law

One of the regulations that affect the independence of the KPK is contained in Article 1 number 3 of Law Number 19 of 2019 which stated:

"The Corruption Eradication Commission hereinafter referred to as the Corruption Eradication Commission is a state institution within the executive power clump that carries out the task of preventing and eradicating criminal acts of corruption under this Law."

In addition to Article 1 point 3, a similar arrangement is found in Article 3 of Law Number 19 of 2019 which mentions the KPK as a cluster of executive powers. Based on this arrangement, the legislators put the KPK in a branch of executive power, not in a separate category of power

²⁰ *Ibid.*, Art. 11 Paragraph (3).

²¹ *Ibid.*, Art. 12A.

²² *Ibid.*, Art. 40 Paragraph (1).

branch. This change is a follow-up to the Constitutional Court Decision Number 36/PUU-XV/2017. This decision was the first to include the KPK in the executive power clump.

Another rule that affects the independence of the KPK is the rule in article 37A of law number 19 of 2019 which is about the supervisory board. This board is further regulated in article 37E paragraph 1 explains that the members of the supervisory board are elected by the president. This provision is certainly problematic in terms of the independence of the KPK due to it can lead to the intervention of corruption eradication policies by the KPK in case of a corruption case that is allegedly close to the president.

Before the revision, KPK employees according to Article 24 paragraph 2 of Law Number 30 of 2002 were Indonesian citizens who were appointed as KPK employees because of their expertise. Paragraph (3) contains the terms and procedures for the appointment of KPK employees, which will be further regulated by a KPK Decree. This norm demonstrates the independence of the Corruption Eradication Commission in the field of personnel, as is the principle of independent state institutions and anti-corruption institutions. Regulation through the KPK Decree also shows the characteristics of a self-regulatory body. The revision of the KPK Law became a turning point in human resource management at the KPK. The status of KPK employees becomes ASN. KPK employees are members of the professional corps of civil servants of the Republic of Indonesia. The provisions regarding the procedure for the appointment of KPK employees are carried out under the provisions of the legislation. This means that the KPK staff has fully complied with the regulations regarding ASN. This provision certainly affects the performance of KPK employees in handling corruption cases. The status as an ASN increasingly places the KPK personnel vulnerable to government control or influence.

Turning KPK employees into ASN has serious implications. All aspects of personnel management from planning, procurement, education, promotion, transfer, and demotion will be under the control of the government. KPK personnel management will be influenced and highly dependent on government institutions. For example, in the procurement of employees, BKN will have the authority to determine. As an illustration, if the KPK wants to increase the number of investigators through recruitment, then the technical considerations of formation and procurement are the authority of BKN. The KPK can no longer have the independence to project the needs of its investigators. There is no guarantee that the government will fulfill the need for personnel in the field of Corruption Eradication. It could be that the government will fulfill the field of prevention, an area that is not dangerous for state administrators.

CONCLUSION

The legal politics of eradicating corruption can be seen in changes of the institution of the Commission for the Eradication of Corruption Crimes (KPK). Changes occurred in the position of the KPK which became the clump of executive power. Other changes, in the internal KPK there was no supervisory body, after the amendment of the KPK law, there is an internal supervisor, namely the supervisory board. The KPK employees previously did not become state civil servants. As for the duties and functions of the Corruption Eradication Commission, there is an addition to the function of coordination with agencies in charge of carrying out public services and taking action to execute judges' decisions and court decisions that have permanent legal force. Therefore the legal policy of the corruption eradication substantively seeks to improve the KPK body so that it does not become a super body institution. However, this policy may weaken the position of the KPK, especially in terms of its institutional independence.

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