



Implications of Revision of Law No. 19 of 2019 Concerning the Corruption Eradication Commission for Handling Corruption

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Abstract

A constitutional system is an independent state institution that does not belong to any power family (executive, legislative and judicial). However, after the issuance of Law No. 19 of 2019, the institutional format of the KPK changed to become part of the executive family. The author uses a descriptive type of research, which aims for researchers to explain about a legal event or legal situation. By using qualitative analysis methods. In this study, the authors analyze more related to the Revision of the KPK law that has affected the authority of the KPK. KPK investigators can no longer conduct wiretapping, search and confiscation without prior permission from the KPK Supervisory Board. This is what makes the position of the KPK ambivalent in the constitutional system, on the one hand the KPK is part of the executive family on the other hand the KPK is independent. The shift in the position of the KPK to become part of the executive clump has implications for the limited space for the KPK in efforts to eradicate corruption, which has the potential to receive various interventions, especially from the executive realm.

Keywords: *Legal Independence; KPK; Executive*

Introduction

It's been 23 years since the reformation era has been running, but have the demands for reform regarding "Tumpas Corruption" been implemented? Refuse to forget, Indonesia is a country rich in natural resources and abundant in terms of tax and non-tax revenues. Unfortunately, the timeless tie mice still colonize during the pandemic. An achievement of the tie rats so that the score on the corruption perception index in Indonesia by Transparency International is only 37 out of 100, which means a country is getting more corrupt as the score gets smaller. The tug-of-war discourse on the revision of the KPK Law since 2010 met a bright spot in 2019, precisely in September 2019 the House of Representatives of the Republic of Indonesia (DPR RI) ratified the revision of Law Number 30 of 2002 concerning the KPK.

The revision of the KPK Law has generated a lot of controversy, especially among students and anti-corruption activists as well as the public who consider the ratification of the revision of the KPK Law

to be inappropriate. In fighting for the KPK institution to keep its function on the path of the Constitutional Court (MK) there were 7 lawsuits that were filed but only a few were granted by the Court along with the issue of the dismissal of 75 KPK employees who did not pass the National Insight Test (TWK) with various indications. The state that should have provided the fulfillment of the necessities of life during the pandemic has actually been deprived of people's rights. This is in stark contrast to the mandate of the Health Quarantine Act. For example, the corruption case that ensnared the former Minister of Social Affairs, Juliari Batubara, was worth 32 billion rupiah. This is a fantastic number considering that the money can be used to provide assistance to 32,000 workers affected by layoffs. This is not justified considering the condition of the people in Indonesia is still far from prosperous in terms of the economy which has fallen drastically due to the pandemic for more than a year.

Method

This study uses a qualitative research type with a descriptive approach. The data used in this study are primary data and secondary data. In this paper, the author explains about the shift in the position of the KPK to become part of the executive clump which has implications for the limited space for the KPK to eradicate corruption, which has the potential to receive various interventions, especially from the executive realm.

Qualitative research method is a research method based on the philosophy of positivism, used to examine the condition of natural objects, where the researcher is the key instrument, sampling of data sources is carried out purposively and snowball, data collection techniques are triangulation, data analysis is inductive/qualitative and research results emphasize meaning rather than generalization.

Discussion Results

Juridical Implications of the KPK Law Number 19 of 2019

Two years have passed since the ratification of the Revised KPK Law Number 19 of 2019 (KPK Law). There are several articles that have been revised in fact seem to weaken the KPK itself. As stated in Article 37A paragraph (1) of Law Number 19 of 2019 concerning the Establishment of the Supervisory Board which aims to oversee the implementation of the duties and authorities of the KPK. And in Article 12B and Article 37B paragraph (1) letter b it is written that the Supervisory Board has the task of issuing permits related to wiretapping, searches, and/or confiscation. However, through the Decision of the Constitutional Court Number 70/PUU-XVII/2019, the Constitutional Court in the end canceled the validity of the two articles above, not a form of implementing checks and balances.¹

Article 40 paragraph (1) of Law no. 19 of 2019 the article that is in the spotlight is the authority of the KPK to issue an Order for Termination of Investigation (SP3). In this provision it is written that if within a maximum period of 2 (two) years the investigation and prosecution of a Corruption Crime case is not completed, then the KPK can stop it. This article was later assessed by ICW as the impact of changes to the KPK Law when SP3 was issued for the alleged BLBI corruption case carried out by Sjamsul Nursalim and his wife after causing a loss to the state of Rp 4.58 trillion in April 2021 ago.²In fact, this

¹ Nano Tresna A, *Dewan Pengawas Tidak Dapat Campuri Kewenangan Yudisial KPK*, diakses dari <https://www.mkri.id/index.php?page=web.Berita&id=17271>, pada 14 November 2021

² Irfan Kamil, *ICW: SP3 KPK Bertentangan dengan Putusan MK*, diakses dari <https://nasional.kompas.com/read/2021/04/07/06105481/icw-sp3-kpk-bertentangan-dengan-putusan-mk?page=all> pada 14 November 2021.

point is considered contrary to the Constitutional Court's Decision Number 006/PUU-1/2003 which prohibits the KPK from issuing SP3. But then through the Constitutional Court Decision Number 70/PUU-XVII/2019, the phrase in Article 40 paragraph (1) of Law No. 19 of 2019 was changed to "KPK can stop the investigation and prosecution of cases of Corruption Crimes whose investigations and prosecutions are not completed within a maximum period of two years from the issuance of the SPDP". This change in phrase still does not rule out the possibility that in the future, major cases being investigated may be stopped by the KPK themselves.

Article 3 of Law no. 19 of 2019 Articles that are highly highlighted by many parties are related to the institutional status of the KPK. In the article there is the addition of the phrase "in the executive power clump" from which previously only included the word independent and free from the influence of any power as written in Article 3 of Law no. 30 of 2002. This then raises the question because on the one hand, the KPK is set to be included in the executive scope, but on the other hand, the KPK can still carry out its duties and authorities as an independent institution that is free from the influence of other powers.³

In addition, the independence of the KPK itself is also questioned because if an anti-corruption institution such as the KPK is placed in one of the branches of power, the anti-corruption agency will tend to become independent and then result in easy intervention against the anti-corruption institution.⁴

1. Institutional Independence

In the institutional order of a country, known as the Independent State Institution (LNI) or Independent Regulatory Agencies/Bodies. The term refers to various types of institutions, organizations or institutions that are autonomous or independent.⁵ There are at least some fundamental characteristics of independent state institutions⁶ that is:

1. In carrying out their duties, the independence of these state institutions is expressly stated by the legal basis for their preparation.
2. Independent is meant to be free from power, ambition, and domination from executive power.
3. The discharge of responsibilities and the appointment of members of an independent institution using a specially prepared system are not based on the wishes of the President.

Based on Law no. 30 of 2002, the KPK as an independent state institution has fulfilled the three requirements mentioned above, where one of the meanings of the independence of the KPK is institutional or institutional independence.⁷

2. Employee Independence

Changes in employment status After the revision of the KPK Law in accordance with Article 1 paragraph (6) of the KPK Law, KPK employees are now part of the state civil apparatus (ASN). By

³ N Asyikin, A Setiawan, *Kedudukan KPK dalam Sistem Ketatanegaraan Pasca Diterbitkannya Revisi UU KPK*, *Justitia Jurnal Hukum*, Vol. 4 No. 1, 2020, hlm. 13,

⁴ Denny Indrayana, (2016), *Jangan Bunuh KPK Kajian Hukum Tata Negara Penguatan Komisi Pemberantasan Korupsi*, Malang: Intrans Publishing, hlm. 79.

⁵ Koen Verhoest, et. all, *Autonomy and Control of State Agencies, Comparing State Agencies*, Palgrave Macmillan, United Kingdom, 2010, hlm. 3

⁶ Gunawan A. Tauda, *Kedudukan Komisi Negara Independen dalam Struktur Ketatanegaraan Republik Indonesia*, *Pranata Hukum*, Vol. 6, No. 2, 2011, hlm. 174

⁷ Kartika S. Wahyuningrum, Hari S. Disemadi, Nyoman S. Putra Jaya, *Independensi Komisi Pemberantasan Korupsi: Benarkah Ada?*, *Refleksi Hukum*, Vol. 4, No. 2, 2020, hlm. 247.

changing the status to ASN, it can have an impact on the performance of the KPK itself because in fact it is thanks to the independently managed staffing system that the KPK has been able to carry out its duties well so far. In addition, another impact caused by this status transfer is that KPK investigators have also changed to Civil Servant Investigators or PPNS. This can then make it difficult for KPK investigators to handle cases involving the police later.⁸

3. The process of transferring KPK employees

Government Regulation No. 41 of 2020 contains the stages of transferring KPK employees to ASN. Subsequently, further regulations were established for Commission Regulation (Perkom) No. 1 of 2021 to strengthen the details regarding the procedure for transferring the status of the anti-corruption commission employees. One that was added to the Perkom No. 1 of 2021 is about the National Insight Test or TWK. This National Insight Test is intended to complete the provisions of being loyal and obedient to Pancasila, the 1945 Constitution, the Unitary State of the Republic of Indonesia, and the legitimate government as stated in the Perkom. However, from the statements of a number of KPK employees, the questions that arise are questions that are too directed to the realm of privacy, such as willingness to remove the hijab, reasons for divorce and even reasons to follow the account of an ustadz who likes to criticize the government.⁹

Komnas HAM also assessed that the implementation of the National Insight Test presented at least 11 forms of violations of human rights.¹⁰ Some of the rights violated include the right to justice and legal certainty, the right to freedom of religion, the right to privacy, and the right to freedom of opinion. Of the 75 KPK employees who are considered not to have passed the TWK, most are handling major cases,¹¹

Not only that, KPK Watch Indonesia also stated that the National Insight Test was unconstitutional.¹² KPK Watch Indonesia is of the opinion that stipulating whether or not someone is inducted into an ASN based on the TWK is contrary to the contents of Article 1 paragraph (3) of the 1945 Constitution. However, after KPK Watch Indonesia submitted a judicial review on the implementation of the TWK, the Constitutional Court then decided that the process of implementing the TWK was not contradictory with the 1945 Constitution and remains constitutional.¹³

Comparison of KPK's performance before and after the revision of the KPK Law

a. The Effect of the Presence of the Supervisory Board on the Performance of the KPK

The presence of the supervisory board in the KPK is a new model of supervision of state institutions. In this revision of the KPK Law, there are privileges of authority given to the supervisory board which are allegedly going to weaken and hinder the performance of eradicating corruption.

⁸ Kurnia Ramadhana dan Agil Oktaryal, *Laporan Penelitian Proyeksi Masa Depan Pemberantasan Korupsi: Menelitik Pengesahan Revisi Undang-Undang KPK*, ICW: antikorupsi.org, 2020, hlm. 63

⁹ Mata Najwa, *Polemik Pertanyaan TWK KPK, dari Soal Pacar hingga Follow Ustadz*, diakses dari <https://www.narasi.tv/mata-najwa/polemik-pertanyaan-twk-kpk-dari-soal-pacar-hingga-follow-ustaz> pada 16 November 2021

¹⁰ Andhika Prasetyo, *Komnas HAM Sebut TWK KPK Melanggar HAM, Minta Presiden Ambil Alih*, diakses dari <https://mediaindonesia.com/politik-dan-hukum/425898/komnas-ham-sebut-twk-kpk-melanggar-ham-minta-presiden-ambil-alih> pada 16 November 2022

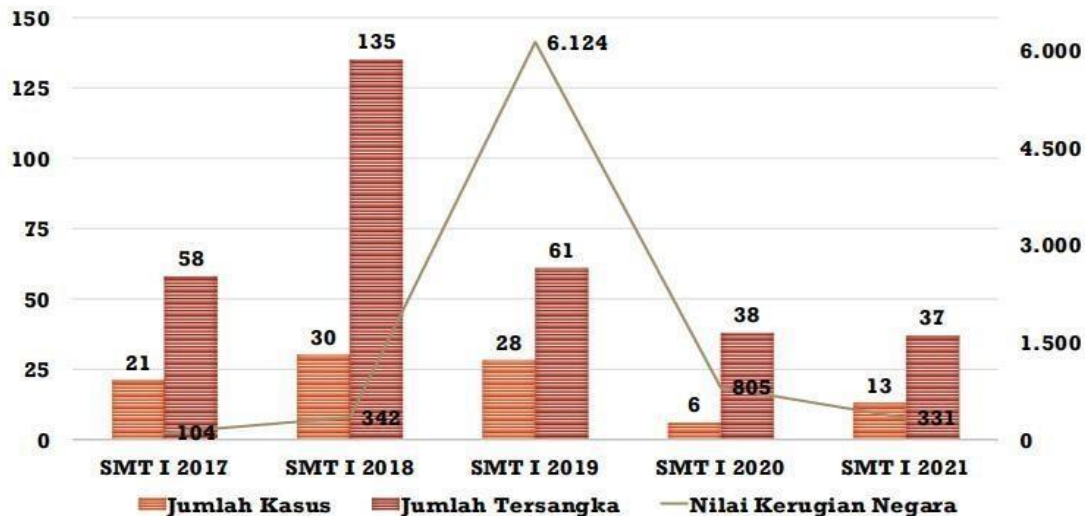
¹¹ Liza Egeham, *Direktur KPK: Sebagian dari 75 Pegawai Tak Lulus TWK Menangani Kasus Besar*, diakses dari <https://www.liputan6.com/news/read/4558212/direktur-kpk-sebagian-dari-75-pegawai-tak-lulus-twk-menangani-kasus-besar> pada 16 November 2021

¹² Andi Saputra, *KPK Watch Indonesia Minta MK Putuskan TWK Inkonstitusional*, diakses dari <https://news.detik.com/berita/d-5625963/kpk-watch-indonesia-minta-mk-putuskan-twk-inkonstitusional> pada 16 November 2021

¹³ Andhika Prasetyo, *Op.cit.*

The eradication of corruption must be carried out in a fast and quiet way, not even extending the bureaucratic chain, let alone until the supervisory board intervenes.¹⁴Evidently, from the beginning of 2021 to semester 1 of 2021, the KPK has only followed up on 13 cases, including 37 suspects and a state loss of Rp331 billion.¹⁵From the target of 60 cases, the percentage of performance in prosecuting corruption cases by the KPK was only 22 percent of the target throughout semester 1.

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This shows that the performance of the KPK is in category D or bad.¹⁶If we compare it with since semester 1 of 2018, it is clear that the number of cases and suspects has decreased in fact in 2019 there was a large increase in the value of losses suffered by the state.

If the performance of the KPK that occurred during 2019 to 2021, there was a decrease in the number of investigations, investigations, prosecutions, and executions of reports of criminal acts of corruption.¹⁷ In 2018, the number of investigations reached 164 cases, in 2019 – the year the KPK Law was passed – investigations occurred 145 times and then decreased in the following two years, namely in 2020 only 91 times and 2021 (until June 2021) occurred 22 times. investigation. Then in the execution stage in 2018 there were 113 times, in 2019 there was an increase to 136 times, in 2020 it happened to 108, and in 2021 there was a drastic decrease to 18 times.¹⁸

¹⁴ Muhammad Yusril Yusuf, *Kewenangan Dewan Pengawas Komisi Pemberantasan Tindak Pidana Korupsi (KPK) Dalam Pemberian Izin Penyadapan, Penggeledahan dan/atau Penyitaan* (Makassar: Unhas, 2020), hlm. 13

¹⁵ Divisi Hukum dan Monitoring Peradilan, *Hasil Pemantauan Tren Penindakan Kasus Korupsi Semester 1 Tahun 2021*, ICW (Jakarta: ICW, 2021), hlm. 28

¹⁶ *Ibid.*

¹⁷ Henry Hilmawan, Dimas Fahmi, Sri Husda Yani, *Pengaruh Revisi Undang-Undang Dalam Kegiatan Pemberantasan Korupsi Di Indonesia*, *Journal Sosial dan Sains*, Volume 1, Nomor 8, 2021, hlm. 947, diakses dari

¹⁸ *Ibid.*

Tahun	2018	2019	2020	2021
Penyelidikan	164	142	111	41
Penyidikan	199	145	91	22
Penuntutan	151	153	75	34
Inkracht	104	142	92	16
Eksekusi	113	136	108	18
Jumlah	736	718	477	131

Some parties consider that the decline in the performance of the KPK is due to the revision of the KPK Law which includes articles that try to weaken the performance of the KPK in eradicating corruption.

b.KPK's Independence on the Abyss of Destruction

The election of the KPK Supervisory Board in the case of Indriyanto Seno Adji who was chosen "specially" by being directly appointed by President Joko Widodo. Indriyanto Seno Adji was elected to the KPK supervisory board to replace the deceased Artidjo Alkostar. Zaenur Rohman – Researcher at the Anti-Corruption Study Center UGM – said the values and principles of the independence of the KPK contained in the United Nations Office on Drugs and Crime (UNODC) were violated because of the appointment of the new KPK Supervisory Board.¹⁹

The existing polemic has made the level of public trust in the KPK drop drastically. The survey results from Cyrus Network show that public trust in the KPK reaches 80.7 percent, far below the National Police at 86.2 percent. In the Political Indicators survey, it was found that the level of public trust in the KPK was only 65 percent and another 26 percent said they did not believe in the KPK.²⁰ According to a survey from Indonesian Corruption Watch (ICW), the level of public trust in the KPK fell to 74.3 percent from the original 81.3 percent, even though the KPK is far below other state institutions such as the Police, TNI, President, etc. According to Kurnia Ramadhana – ICW Researcher – there are things that can reduce the level of public trust in the KPK, this is the impact of the KPK Law which has caused polemics and also the leadership of Firlu Bahuri.²¹

Hope That the State is Limited by the Shackles of Corruption.

After the revision of the KPK Law, corruption cases in Indonesia are increasing. Examples of cases in the last 2 years are the former Minister of Social Affairs, Juliari P Batubara, as a suspect in the Covid-19 social assistance corruption case, the former Minister of Maritime Affairs and Fisheries, Edhy Prabowo, as a suspect in the alleged corruption case of bribery related to the determination of the export

¹⁹ Jauh Hari Wawan, *Indriyanto Seno Adji Dewas KPK, Pukat UGM: Jokowi Pilih Sendiri Orangnya*, diakses dari <https://news.detik.com/berita-jawa-tengah/d-5550682/indriyanto-seno-aji-dewas-kpk-pukat-ugm-jokowi-pilih-sendiri-orangnya>, pada 14 September 2021

²⁰ Tsarina Maharani, *Survei Indikator: Tingkat Kepercayaan Publik Terhadap KPK Merosot, di Bawah TNI, Presiden, dan Polri*, diakses dari <https://nasional.kompas.com/read/2021/09/26/15293881/survei-indikator-tingkat-kepercayaan-publik-terhadap-kpk-merosot-di-bawah> pada 14 September 2021

²¹ Setyo Aji Harijanto, *ICW: Ungkap 2 Penyebab Merosotnya Kepercayaan Publik Terhadap KPK*, diakses dari <https://kabar24.bisnis.com/read/20200722/16/1269747/icw-ungkap-2-penyebab-merosotnya-kepercayaan-publik-terhadap-kpk> pada 14 September 2021

license for lobster seeds, the corruption case of PT Asuransi Jiwasraya which cost the state RP16,807 trillion, Pinangki Attorney Sirna Malasari is a suspect in the bribery case of US\$500,000, the corruption case of the Mayor of Cimahi, Ajay Muhammad Priatna, related to the alleged hospital licensing case, and many other corruption cases.

With so many corruption cases on top of real evidence of degradation related to corruption eradication in Indonesia. We hope that our country will be free from the shackles of corruption because corruption is one of the most serious human rights violations because the impact of criminal acts of corruption can lead to denial, abandonment, and deprivation of human dignity.

Conclusion

The approval of the revision of the KPK Law certainly left a great disappointment from the public to the government of President Joko Widodo. Moreover, the revision of the KPK Law is very tattered both from the aspect of the formation procedure, substance, including its political impact in the form of public trust in the president and the DPR. There are several ways to revoke or at least correct it, such as the Perppu, drafting a new KPK Bill with the mechanism of law formation and judicial review. However, these two mechanisms have weaknesses compared to the Perppu mechanism.

Therefore, it is necessary to take an effort to establish a Perppu which is relatively fast and is the best solution, because it is essentially the prerogative of the President. Moreover, the conditions of urgency that compelled him have been fulfilled in order to urge the president to stipulate a Perppu.

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