

Position & Authority Of Corruption Eradication Commission In Indonesian Constitutional System Before & After The Second Amendment Of Corruption Law

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Abstract

The purpose of this study is to find out what is the position and authority of the Corruption Eradication Commission in the Indonesian constitutional system after the second amendment to the Corruption Eradication Commission Law. The research method used is normative juridical. The conclusion of this study is that the position of the Corruption Eradication Commission in the Indonesian constitutional system after the second amendment to the Corruption Eradication Commission Law is in the executive family and the change in the authority of the Corruption Eradication Commission in the Indonesian constitutional system after the second amendment to the Corruption Eradication Commission Law, namely the establishment and the authority of the Supervisory Board of the Corruption Eradication Commission and its powers issue an Investigation Termination Order (SP3).

Keyword: Corruption; Eradication; Commission; Position; Authority.

1. Introduction

The Corruption Eradication Commission (KPK) is a state institution specifically formed to eradicate corruption as regulated in Act No. 30 of 2002 concerning the Eradication of Corruption Crimes.

In consideration Act No. 30 of 2002 explains that: The establishment of the Corruption Eradication Commission (KPK) is due to the fact that the eradication of corruption that has occurred until now has not been carried out optimally and government institutions that handle corruption cases have not functioned effectively and efficiently. Whereas corruption in Indonesia is widespread and carried out systematically, it is a violation of the social and economic rights of the community.

The consequences of corruption not only bring disaster to the national economy, but also to the life of the nation and state so that corruption can no longer be classified as an ordinary crime but has become an extraordinary crime. Likewise, in efforts to eradicate it, it can no longer be carried out in an ordinary way, but in extraordinary ways.¹

Along with its development, since the establishment of the Corruption Eradication Commission (KPK) in 2002 until now, the problem of corruption in

¹Adib Bahari dan Khotibul Umam, 2009, *Komisi Pemberantasan Korupsi dari A sampai Z*, Pustaka Yustisia, Yogyakarta, p. 26.

Indonesia has not shown a significant reduction and has not provided social benefits. Therefore, corruption has become a culture. If so, corruption is no longer an extraordinary crime, but on the contrary it is an ordinary crime.²

In addition, Act No. 30 of 2002 concerning the Corruption Eradication Commission (KPK) has undergone two changes, namely the first amendment to Act No. 10 of 2015 concerning Stipulation of Government Regulations in Lieu of Act No. 1 of 2015 concerning Amendments to Laws - Act No. 30 of 2002 concerning the Corruption Eradication Commission and the second amendment, namely Act No. 19 of 2019 concerning the Second Amendment to Act No. 30 of 2002 concerning the Corruption Eradication Commission³.

The reasons for implementing the second amendment to Act No. 30 of 2002 concerning the Corruption Eradication Commission include:

- Norms in particular have been declared unconstitutional by the Constitutional Court (MK) so that a legislative review is needed;
- There are differences of opinion among academics regarding the position of the Corruption Eradication Commission (KPK); and
- The authority of the Corruption Eradication Commission (KPK) is too large and/or broad so that it is prone to abuse of power.⁴

In connection with this, it is necessary to reform the law so that the prevention and eradication of corruption acts in an effective and integrated manner so that it can prevent and reduce state losses that continue to increase due to corruption⁵.

Starting from the descriptions above, the author is interested in researching, "What is the Position and Authority of the Corruption Eradication Commission (KPK) in the Indonesian Constitutional System Before and After the Second Amendment to the Law on the Corruption Eradication Commission (KPK)".

2. Research Methods

The approach method used in this research is normative juridical, by conceptualizing the law as a norm which is a benchmark for human behavior, with an emphasis on secondary data sources.⁶ The secondary data used in this study were collected from primary sources in the form of legislation.⁷

² Romli Atmasasmita, 24 December 2018, *Mencari Akar Masalah Korupsi di Indonesia*, www.https://nasional.sindonews.com, accessed 30 May 2021.

³ Koesoemo, Cindy Rizka Tirzani. *Eksistensi Komisi Pemberantasan Korupsi (kpk) dalam Penanganan Penyidikan dan Penuntutan Tindak Pidana Korupsi*. (Jurnal *Lex Crimen* Vol. VI/No. 1) Jan-Feb 2017. (<https://www.neliti.com/id/publications/145840/eksistensi-komisi-pemberantasan-korupsi-kpk-dalam-penanganan-penyidikan-dan-penu#id-section-content>), 28 June 2021.

⁴ Bambang Tri Bawono, *Kedudukan dan Kewenangan KPK Pasca Perubahan Undang-Undang KPK*, delivered at the UNISSULA National Seminar on Masters of Law on January 18, 2020.

⁵ A Chuasanga, Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia Dan Thailand*, Jurnal *Daulat Hukum*, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>

⁶ Amirudin dan Zainal Asikin, 2004, *Pengantar Metode Penelitian Hukum*, PT. RajaGrafindo Persada, Jakarta, p. 118.

⁷ Ronny Hanitijo Soemitro, 1982, *Metodologi Penelitian Hukum*, Ghalia Indonesia.

The specification of this research is descriptive analytical. It is said to be descriptive, because this research is expected to be able to provide a detailed, systematic and comprehensive picture of all matters relating to the development of the Corruption Eradication Commission (KPK). Meanwhile, it is said to be analytical because the data obtained will be analyzed for solving problems in accordance with applicable legal provisions⁸.

The type of data used is secondary data. This secondary data includes legal materials, as follows: 1) Primary legal materials, 2) Secondary legal materials, and 3) Tertiary legal materials. The data processing and analysis methods are as follows, the data that has been obtained during the research by reading library books, journals, internet articles, then analyzed. The analysis used in this research is qualitative data analysis.

3. Result and Discussion

3.1. The Position of the Corruption Eradication Commission in the Indonesian Constitutional System

According to the provisions of Article 3 of Act No. 30 of 2002 concerning the Corruption Eradication Commission, it is stated that "The Corruption Eradication Commission is a state institution which in carrying out its duties and authorities is independent and free from the influence of any power"⁹.

The definition of "any power" is a power that can affect the duties and authorities of the Corruption Eradication Commission or individual members of the Commission from the executive, judicial, legislative, other parties related to cases of criminal acts of corruption, or circumstances and situations or for any reason.¹⁰

By referring to the provisions of Article 3 of Act No. 30 of 2002 concerning the Corruption Eradication Commission, the position of the Corruption Eradication Commission in the Indonesian constitutional system prior to the second amendment to the Corruption Eradication Commission (KPK) Law was independent or not included in the executive, judicial clumps, as well as the legislature¹¹.

After the enactment of Act No. 19 of 2019 concerning the Second Amendment to Act No. 30 of 2002 concerning the Corruption Eradication Commission,

⁸ Muhlizi, Arfan Faiz. *Revolusi Mental untuk Membentuk Budaya Hukum Anti Korupsi* (Jurnal *RechtsVinding*, Media Pembinaan Hukum Nasional Volume 3 Nomor 3. December 2014. (<https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/36/0>), 15 July 2021. And see too, Muhtari, Mohamad Hidayat. *Model Politik Hukum Pemberantasan Korupsi di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum*. (Jambura Law Review Vol. 1 Issue 01/). January 2019 (<https://ejurnal.ung.ac.id/index.php/jalrev/article/view/1988>), 27 June 2021.

⁹ Pane, Musa Darwin. *Peran Budaya Hukum dalam Pembaharuan Sistem Hukum Pidana Perihal Efektifitas Penegakan Hukum Tindak Pidana Korupsi di Indonesia* (Majalah Ilmiah bidang hukum Vol. 16 No. 1) (<https://jurnal.unikom.ac.id/jurnal/peran-biudaya-hukum-dalam.79>), 28 June 2021.

¹⁰ Elucidation of Act No. 30 of 2002 concerning the Corruption Eradication Commission

¹¹ Siregar, Hulman. *Rumusan Pidana Dan Pemidanaan Tindak pidana Korupsi Yang Merugikan Keuangan Negara Serta Permasalahan Dalam Penerapannya*. Jurnal *Daulat Hukum* Vol. 1. No. 1. 2018. (<http://jurnal.unissula.ac.id/index.php/RH/article/view/2626>), 20 June 2021

there was a change in the position of the Corruption Eradication Commission in the constitutional system in Indonesia.

The change in the position of the Corruption Eradication Commission is as regulated in Article 1 paragraph (3) of Act No. 19 of 2019 which states that, "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 Corruption Crimes in accordance with this Law".¹²

Furthermore, the position of the Corruption Eradication Commission is also regulated in Article 3 of Act No. 19 of 2019 which states that, "The Corruption Eradication Commission is a state institution within the executive power clump which in carrying out its duties and authorities is independent and free from the influence of any power."¹³

Based on the second amendment to the Corruption Eradication Commission Law, the position of the Corruption Eradication Commission in the Indonesian constitutional system is in the executive power clump.

3.2. The Change of Authority Corruption Eradication Commission (KPK)

The duties and authorities of the Corruption Eradication Commission (KPK) prior to the second amendment to the Corruption Eradication Commission Law were regulated in Articles 6 to 14 of Act No. 30 of 2002 concerning the Corruption Eradication Commission.

According to Article 6 of Act No. 30 of 2002 concerning the Corruption Eradication Commission, the Corruption Eradication Commission has the following duties:

3.2.1. Coordination with agencies authorized to commit criminal acts of corruption.

Authorized agencies in eradicating corruption include the Supreme Audit Agency (BPK), the Financial and Development Supervisory Agency (BPKP), the State Administration of Wealth Inspection Commission (KPKPN), inspectors at departments or non-departmental government agencies.¹⁴ Thus, there are several agencies that have the scope of duties and authorities in relation to efforts to criminalize corruption in Indonesia. For this reason, synergy and coordination between these institutions is needed.¹⁵

In carrying out the said coordination task, based on Article 7 of Act No. 30 of 2002 concerning the Corruption Eradication Commission, it is authorized to:

- coordinate investigations, investigations, and prosecutions of corruption crimes;
- establish a reporting system in corruption eradication activities;

¹² Article 1 paragraph (3) of Act No. 19 of 2019 concerning the Second Amendment to the Corruption Eradication Commission Law.

¹³ Article 3 of Act No. 19 of 2019 concerning the Second Amendment to the Corruption Eradication Commission Law.

¹⁴ Elucidation of Article 6 of the Corruption Eradication Commission Law.

¹⁵ Adib Bahari and Khotibul Umam, Op. cit. p. 31.

- requesting information on activities to eradicate corruption from the relevant agencies;
- conduct hearings or meetings with institutions authorized to commit criminal acts of corruption; and
- request reports from relevant agencies regarding the prevention of corruption.

3.2.2. Supervision of institutions authorized to commit corruption crimes.

In carrying out the supervisory duties as referred to in Article 6 letter (b), based on Article 8 of Act No. 30 of 2002, the Corruption Eradication Commission has the authority to conduct supervision, research, or review of agencies carrying out their duties and authorities related to eradicating corruption. , and agencies that perform public services.

This shows that the Corruption Eradication Commission is a super body institution, moreover it also has the authority to take over investigations or prosecutions that are being carried out by the police or prosecutors.¹⁶

As a legal action, the takeover of this investigation and prosecution must be based on clear reasons, these reasons are regulated in Article 9 of Act No. 30 of 2002, namely:

- public reports regarding corruption crimes are not followed up;
- the process of handling corruption crimes is protracted or delayed without justifiable reasons;
- handling of corruption is aimed at protecting the real perpetrators of corruption;
- handling corruption contains elements of corruption;
- obstacles to handling corruption crimes due to interference from the executive, judiciary, or legislative;
- other circumstances which according to the consideration of the police or the prosecutor's office, the handling of criminal acts of corruption is difficult to carry out properly and can be justified.

3.2.3. Conducting investigations, investigations, and prosecutions of criminal acts of corruption.

To avoid overlapping authorities with other agencies in conducting investigations, investigations and prosecutions of corruption crimes, Article 11 of Act No. 30 of 2002 confirms that the Corruption Eradication Commission has the authority to conduct investigations, investigations and prosecutions of corruption crimes that:

- involving law enforcement officers, state administrators, and other people who are related to criminal acts of corruption committed by law enforcement officers or state administrators;
- receive attention that disturbs the public; and/or
- concerning state losses of at least IDR 1.000.000.000,00 (one billion rupiah).

¹⁶Ibid. p. 32.

In carrying out the duties of investigation, investigation and prosecution as referred to in Article 6 letter (c), then according to Article 12 of Act No. 30 of 2002, the Corruption Eradication Commission has the authority to:

- conduct wiretapping and record conversations;
- instruct the relevant agencies to prohibit a person from traveling abroad;
- requesting information from a bank or other financial institution regarding the financial condition of the suspect or defendant being investigated;
- instruct banks or other financial institutions to block accounts suspected of being the result of corruption belonging to the suspect, defendant, or other related parties;
- instruct the leader or superior of the suspect to temporarily dismiss him from his position;
- requesting data on wealth and taxation data of a suspect or defendant from the relevant agency;
- temporarily suspend a financial transaction, trade transaction, and other agreement or temporary revocation of permits, licenses, and concessions carried out or owned by a suspect or defendant who is suspected based on sufficient preliminary evidence to be related to the corruption crime being investigated;
- request assistance from Interpol Indonesia or other state law enforcement agencies to conduct searches, arrests, and confiscate evidence abroad;
- request assistance from the police or related agencies to make arrests, detentions, searches, and confiscations in cases of criminal acts of corruption that are being handled.

3.2.4. Take measures to prevent corruption

In addition to carrying out repressive law enforcement efforts, the Corruption Eradication Commission is also tasked with taking preventive actions. For the purposes referred to, Article 13 of Act No. 30 of 2002 states that the Corruption Eradication Commission has the authority to carry out the following preventive measures or efforts:

- carry out registration and examination of the wealth report of state administrators;
- receive reports and determine the status of gratification;
- organize anti-corruption education programs at every level of education;
- designing and encouraging the implementation of socialization programs to eradicate corruption;
- conduct anti-corruption campaigns to the general public;
- carry out bilateral or multilateral cooperation in eradicating corruption.

3.2.5. Carry out monitoring of the implementation of the state government.

In carrying out the monitoring duties as referred to in Article 6 letter (e), Article 14 of Act No. 30 of 2002 authorizes the Corruption Eradication Commission to;

- conduct an assessment of the administrative management system in all state and government institutions;

- provide advice to the leadership of state and government institutions to make changes if based on the results of the assessment, the administrative management system has the potential for corruption;
- report to the President of the Republic of Indonesia, the Indonesian House of Representatives, and the Supreme Audit Agency, if the recommendations of the Corruption Eradication Commission regarding the proposed changes are not heeded.

After the enactment of Act No. 19 of 2019 concerning the Second Amendment to the Law on the Corruption Eradication Commission (KPK), there were several changes to the main powers of the Corruption Eradication Commission, including:

- **Formation and Authority of the Supervisory Board**

According to Article 37A paragraph (1) of Act No. 19 of 2019 states that, "In order to supervise the implementation of the duties and authorities of the Corruption Eradication Commission, a Supervisory Board is formed as referred to in Article 21 paragraph (1) letter a.

Based on Article 37B paragraph (1) the Supervisory Board has the following duties: supervising the implementation of the duties and authorities of the Corruption Eradication Commission, granting permission or not granting permits for wiretapping, search and/or confiscation, compiling and establishing a code of ethics for the Corruption Eradication Commission's leaders and employees, receiving and following up on reports from the public regarding alleged violations of the code of ethics by the leadership and employees of the Corruption Eradication Commission or violations of the provisions of this law, holding hearings to examine alleged violations of the code of ethics by the leaders and employees of the Corruption Eradication Commission and evaluating the performance of the leaders and employees of the commission Eradication of Corruption periodically 1 (one) time in 1 (one) year.

- **Authority to Issuing Orders to Dismiss Investigation (SP3)**

Act No. 19 of 2019 concerning the Second Amendment to Act No. 30 of 2002 concerning the Corruption Eradication Commission stipulates in Article 40 paragraph (1) that the Corruption Eradication Commission may stop the investigation and prosecution of cases of criminal acts of corruption whose investigations and prosecutions have not been completed within a maximum period of 2 (two) years.

Such provisions are relatively not found in the old Corruption Eradication Commission Law (before the revision). Considering the ratio legis law, the law emphasizes the principle of prudence, so that in this case the Corruption Eradication Commission as a collective collegial must be able to measure and anticipate the length of time in the legal process, before the issuance of an investigative order (spirindik).¹⁷

¹⁷ M. Reza Baihaki, 5 April 2021, "SP3 Dalam UU KPK" <https://news.detik.com>, accessed on August 4, 2021.

However, it turns out that in its development, Romli Atmasasmita, who is one of the team formulating the Corruption Eradication Commission Law, noted that law enforcement at the Corruption Eradication Commission prioritizes the determination of suspects and ignores the precautionary principle, so that there are various cases that are considered stalled and not running. In fact, there are several suspects who have died due to the lengthy investigation process which resulted in them still holding the status of suspects, and have not yet faced the judicial process.¹⁸

4. Closing

The position of the Corruption Eradication Commission in the Indonesian constitutional system after the second amendment to the Corruption Eradication Commission Law is in the executive family. This is as stated in Article 3 of Act No. 19 of 2019 which states that, "The Corruption Eradication Commission is a state institution within the executive power clump which in carrying out its duties and authorities is independent and free from the influence of any power". Authority The Corruption Eradication Commission in the Indonesian constitutional system after the second amendment to the Corruption Eradication Commission Law, a change occurred, namely the establishment and authority of the Supervisory Board of the Corruption Eradication Commission as stated in Article 37A paragraph (1) and Article 37B paragraph (1) of Act No. 19 of 2019. In addition, another change in the authority of the Corruption Eradication Commission is to issue an Investigation Termination Order (SP3) as stipulated in Article 40 paragraph (1) which states that the Corruption Eradication Commission may stop the investigation and prosecution of cases of criminal acts of corruption whose investigation and prosecution are not completed within a maximum period of 2 (two) years.

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¹⁸ Ibid.

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