Authority of the Indonesian Corruption Eradication Commission Post Amendment to Law No. 19 of 2019: Regresive or Progressive in Law Enforcement?

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Abstract

The aim of this research is to look at the transformation o the Corruption Eradication Commission Institution after the revision of the new Indonesian Corruption Eradication Commission (KPK) Law in supporting corruption prevention policies in Indonesia. This research was conducted using doctrinal legal research methods or normative legal research. In this research, the approaches used include: Statute Approach. Conceptual Approach Historical Approach, Case Approach. The research results show that: 1) The authority of the Corruption Eradication Commission (KPK) after the promulgation of Law no. 19 o 2019 concerning the Second Amendment to Law no. 30 o 2002 concerning the Corruption Eradication Commission with the addition of the Supervisory Board within the Corruption Eradication Commission (KPK) Institution which has quite large authority, namely not only supervision but also the implementation of the authority o the Corruption Eradication Committee, namely that it mus first obtain permission from the Supervisory Board before carrying out wiretapping, searches and/ or the confiscation is carried out by the Corruption Eradication Commission this can hinder law enforcement in eradicating crimina acts of corruption and can also affect the independence o

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I. Introduction

The criminal act of corruption has had extraordinary consequences in various aspects, not only harming state finances, but also violating the social and economic rights of the community at large. (Suramin, 2021) This condition is the basis for the government to make various efforts to eradicate corruption, including establishing a special institution that handles criminal acts of corruption called the Corruption Eradication Commission (KPK). Based on data from the Corruption Eradication Committee, until September 2023, the number of corruption cases reached 1,462.(Kusumawardhana et al., 2024) This condition is still quite worrying if you see that Indonesia is targeting to become a developed country with the aim of improving the welfare of its people.

Efforts have been made to develop the law to eliminate the possibility of criminal acts of corruption and to be able to handle and completely resolve problems related to collusion, corruption and nepotism. Legal development is carried out through updating legal materials while still taking into account the plurality of the prevailing legal order. (Tamanaha, 2021) The influence of globalization is an aspect that needs to be taken into account as an effort to increase legal certainty and protection, law enforcement and human rights (HAM), legal awareness, as well as legal services that have justice and truth, order and prosperity at the core in the context of increasingly efficient state administration, orderly, orderly, smooth, and globally competitive. (Wantu et al., 2024)

Such a formulation indicates that corruption is a national problem whose overcoming process continues to be pursued. One of the efforts made is through updating legal materials, in this case statutory regulations. This is important considering the impact of criminal acts of corruption which damage the life of the nation in various aspects, and the process of overcoming this has been carried out based on several laws and regulations concerning Corruption Crimes.(Omelchuk et al., 2022) Corruption has become very widespread and has penetrated systemically into all sectors at various central and regional levels, in all state institutions, both executive, legislative and judicial. Therefore, corruption is classified as an extraordinary crime. (Singh, 2019)

Until now, Indonesia itself has several legal instruments at the level of law to eradicate corruption, including Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes which is strengthened by the establishment of an independent institution through Law Number 30 of 2002 became Law Number 19 of 2019 concerning the second amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK). However, the phenomenon of criminal acts of corruption is still a disease that is quite difficult to eradicate and is still mushrooming in a country. Therefore, treatment and breakthroughs are needed to eradicate these criminal acts effectively and efficiently.

In Article I (number 2) of Law Number 19 of 2019 concerning the second amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK), there has been a change in the definition of the KPK institution which states that (Hartono, 2020):

The provisions of Article 3 were amended to read as follows: "The Corruption Eradication Commission is a state institution within the executive power group which in carrying out its duties and authority is independent and free from the influence of any other power."

One of the reasons for the issuance of Law No. 19 of 2019 is to implement Constitutional Court Decision No. 36/PUU-XV/2017. This can be read in the (general) explanation of the law in question, among other things, as follows:

Then the institutional arrangement of the Corruption Eradication Commission was carried out in line with the Constitutional Court Decision Number 36/PUU-XV/2017. Where it is stated that the Corruption Eradication Commission is part of the branch of government power. The Corruption Eradication Commission belongs to the realm of executive power which is often called a government institution (regeringsorgaan-bestuursorganen). (Bima, 2023) This is intended to make the position of the Corruption Eradication Commission in the Indonesian constitutional system clear, namely as part of the executive power.

The inclusion of the Corruption Eradication Commission (KPK) in the realm of executive power or as part of implementing government power (executive power), while on the other hand the Corruption Eradication Commission (KPK) in carrying out its duties and authority is also independent and free from the influence of any power, also giving rise to pros and cons from various groups. The enactment of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission provides potential opportunities for conflicts of interest with executive powers, especially those who have direct interest relations with political parties, this is very possible. It is very urgent to review the KPK institution in Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.

2. Research Method

The method used in this research is a normative and conceptual juridical approach to comprehensively analyze legal norms in the legal and regulatory system, especially related to the provisions on the authority of the Corruption Eradication Commission, the authority of the Supervisory Board in the New Law and. (Majeed et al., 2023) This research confirms that "the appropriate approach to use in legal research is the statutory approach and the conceptual approach." The legal and regulatory instruments analyzed in particular are Law Number 30 of 2002 concerning the Corruption Eradication Commission and Law of the Republic of Indonesia Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. The methods used include legal doctrine, study of various literature.

3. Results and Discussion

Definition of the Indonesian Corruption Eradication Commission

That the statistics of the Indonesian government handling cases of criminal acts of corruption have not yet functioned effectively and efficiently in eradicating criminal acts of corruption. The development of criminal acts of corruption in Indonesia continues to increase from year to year, both in terms of the number of cases that occur and the amount of state financial losses as well as in terms of the quality of the crimes committed which are increasingly systematic and their scope penetrates all aspects of life. (Putra & Linda, 2022) Law enforcement to eradicate criminal acts of corruption carried out conventionally has so far proven to experience various obstacles. For this reason, extraordinary law enforcement methods are needed through the establishment of a special agency that has broad authority, and is free from any power in eradicating criminal acts of corruption, whose implementation is carried out optimally, intensively, effectively and continuously. (Hutabarat et al., 2022)

Based on the provisions of Article 43 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001, the special agency is called the Corruption Eradication Commission which has the authority to coordinate, including carrying out inquiries, investigations and prosecutions. (Silalahi, 2023) Regarding the formation, organizational structure, work procedures and responsibilities, duties and authority of its members are regulated by law. The Corruption Eradication Commission was formed based on the order of Law No. 31 of 1999 concerning the eradication of criminal acts of corruption as mentioned in Article 43 paragraph (1) to paragraph (3). The Corruption Eradication Commission (KPK) is an institution that was formed based on law, not based on the 1945 Constitution of the Republic of Indonesia, so that the KPK institution as a government institution is not a state institution, because neither its institution nor its authority is regulated in the Indonesian Constitution, we all understand that the Corruption Eradication Committee (KPK) was formed as an institution focused on enforcing specific laws regarding criminal acts of corruption in Indonesia on the grounds that the Police and Prosecutor's institutions were unable to handle criminal acts of corruption which had greatly increased during the New Order government. (Agustino et al., 2021) This institution was formed on the legal basis of Law No. 30 of 2002 concerning the commission for the eradication of criminal acts of corruption.

The Corruption Eradication Commission (KPK) to achieve the objectives of its formation must be given the necessary authority to enforce the law, in particular to eradicate criminal acts of corruption that can harm state finances. With this authority given by law, the Corruption Eradication Committee has the authority to carry out legal proceedings. perpetrators of criminal acts of corruption in Indonesia. The KPK is given a position as a state institution which in carrying out its authority is free from interference or influence from any power, and the KPK is of course also given a set of functions and duties, but the goals and functions of the KPK will not be possible to achieve and be carried out if it is not given an authority by law. (Zaini & Ridho, 2023)

Therefore, the Corruption Eradication Committee (KPK) was given authority in the law which was first regulated in Law no. 30 of 2002 which gives authority to the Corruption Eradication Committee (KPK) including authority in Coordination duties, authority for Supervision Duties, authority for Investigation, investigation and also of course prosecution, because with the authority mentioned above the Corruption Eradication Commission has the authority to carry out an action to enforce the law specifically in corruption crimes in Indonesia. (Ariani & Prasetyoningsih, 2022)

The authority of the Corruption Eradication Commission in conducting inquiries, investigations and prosecution of criminal acts of corruption includes criminal acts of corruption, which (Abbas, 2021):

a. Involving law enforcement statistics, state officials, and other people who are related to criminal acts of corruption committed by law enforcement statistics or state officials.
b. Receiving disturbing attention, and/or,
c. Concerning state losses of at least IDR 1,000,000,000 (one billion rupiah) in accordance with Article 11 of Law Number 30 of 2002).

In carrying out its duties and authority, the Corruption Eradication Commission is based on:

a. Legal certainty is a principle in a rule of law state that prioritizes legal regulations, propriety and justice in every policy carrying out the duties and authority of the Corruption Eradication Commission.
b. Openness is a principle that opens up the right to obtain correct, honest and non-discriminatory information about the performance of the Corruption Eradication Commission in carrying out its duties and functions.
c. Accountability is a principle that determines that every activity and final result of the Corruption Eradication Commission's activities must be accountable to the people as the holder of the highest sovereignty of the state in accordance with applicable laws and regulations.
d. Public interest is a principle that prioritizes general welfare in an aspirational, accommodative and selective manner.
e. Proportionality is a principle that prioritizes balance between the duties, authority, responsibilities and obligations of the Corruption Eradication Commission.

Corruption crimes have several special characteristics, firstly, corruption is a form of white collar crime. Second, corruption is usually carried out in congregation, in other words it is a form of organized crime. Third, corruption is usually carried out with a sophisticated modus operandi, making it difficult to prove it. So it is felt that eradicating corruption which is already acute is not enough to simply expand actions that are defined as corruption and use conventional methods. Certain methods and methods are needed to be able to stem the spread of corruption, including by designating the crime of corruption as an extraordinary crime, so that its eradication can no longer be carried out in an ordinary way, but in an extraordinary way.

Anti-corruption institutions in various countries have varying characteristics, making it difficult to determine the best model that can be the main reference. There is an eradication of corruption that places greater emphasis on law enforcement and prevention and there are also those that use a multipurpose model which includes

preventing and prosecuting criminal acts of corruption simultaneously. (Slamkov & Filipovski, 2019) In Indonesia, the Corruption Eradication Committee (KPK) can be categorically grouped into a statistical model for eradicating corruption with multipurpose. The multipurpose model adopted by the KPK can at least be seen in the legal framework that underlies its formation. In Law Number 30 of 2002 concerning the Corruption Eradication Commission, there are five main tasks of the Corruption Eradication Committee, as regulated in Articles 6 to 14 of the Law. This explanation also details the authorities related to each of the KPK's main tasks as follows (Putriyana & Rochaeti, 2021):

First, the coordination task, with the authority to coordinate investigations, inquiries and prosecutions for corruption, determine reporting statistics in corruption eradication activities, request information about corruption eradication activities from related agencies, carry out hearings or meetings with authorized agencies and request reports from relevant agencies regarding prevention. corruption.

Second, statistical duties, with the authority to supervise, research, review agencies in carrying out their duties and authority to eradicate corruption, and in carrying out static services. Apart from that, the Corruption Eradication Commission also has the authority to take over the investigation or prosecution of perpetrators of corruption who are being handled by the police or prosecutor's office.

The three tasks are investigation, investigation and prosecution, with the authority to wiretap, record conversations, order the relevant agencies to prohibit someone from traveling abroad, ask the bank for information about the financial condition of the suspect/defendant, order banks/other financial institutions to block accounts suspected of being proceeds of corruption belonging to suspect, defendant, or other related party, ordering the suspect's leadership/superior to temporarily dismiss the suspect from his position, requesting data on the suspect/defendant's wealth and tax data from the relevant agency, temporarily suspending financial transactions, trade transactions and other agreements or temporarily revoking permits, licenses and connections carried out or owned by the suspect/defendant who are suspected based on sufficient preliminary evidence to be related to the corruption case being investigated, request assistance from Indonesian Interpol or other country's law enforcement agencies to carry out the search.

Fourth, preventive duties, with the authority to register and examine reports on state administrators' assets, receive reports and determine the status of gratuities, organize anti-corruption programs at every level, design and encourage the implementation of socialization programs to eradicate corruption, carry out anti-corruption campaigns to the public, and carry out cooperation. bilateral or multilateral in eradicating corruption.

Fifth, the task of monitoring, administering government, with this authority is to conduct a review of the administrative management statistics in all state and government statistics, provide advice to the heads of state and government statistics to make changes if based on the study, the administrative management statistics have the potential for corruption, and report to the President Republic of Indonesia, DPR RI, and the Supreme Audit Agency, if the Corruption Eradication Commission's advice regarding proposed changes is not heeded.

Authority of the Corruption Eradication Commission (KPK) as an Institution for Eradicating Corruption Crimes

The authority of the Corruption Eradication Commission is quite fundamental in terms of prosecuting criminal acts of corruption, because this authority is very influential in determining law enforcement, especially in law enforcement of criminal acts of corruption. (Trinchera, 2020) Minimal and complicated authority can lead to ineffective law enforcement, whereas authority that is neat and does not require much approval other than from the leadership is considered quite effective in law enforcement for criminal acts of corruption. The authority of the Corruption Eradication Committee granted in Law no. 30 of 2002 to the new amendment, namely Law no. 19 of 2019 concerning the Second Amendment to the Law. N. 30 of 2002 concerning the Corruption Eradication Commission is the basis for the Corruption Eradication Committee's authority to act in law enforcement, especially in eradicating criminal acts of corruption in Indonesia.

The authority of the Corruption Eradication Commission (KPK) was first regulated in Law no. 30 of 2002 concerning the Corruption Eradication Commission as in article 7 and article 8 of Law no. 30 of 2002. As time went by, the legislators considered that the previously regulated authority of the Corruption Eradication Commission needed to be improved with the promulgation of Law no. 19 of 2019 concerning the second amendment to Law no. 30 of 2002 concerning the Corruption Eradication Commission with its amendments regulated in article 7 paragraph (1). The added authority is the task of prevention by registering and examining state officials' wealth reports, organizing anti-corruption education programs, planning and implementing socialization programs to eradicate criminal acts of corruption and conducting anti-corruption campaigns among the public. (Wibowo et al., 2022) Some of these new authorities later became one of the changes to Law no. 30 of 2002 concerning the Corruption Eradication Commission.

Law no. 19 of 2019 concerning the second amendment to Law no. 30 of 2002 concerning the Corruption Eradication Commission in article 8 states that the Corruption Eradication Commission has the authority to coordinate inquiries, inquiries and prosecutions in the eradication of criminal acts of corruption. (Wdiodo et al., 2022) It is further regulated in article 12 paragraph (1) that authority is given which states that "in carrying out investigative and inquiry duties as intended in article 6 letter e, the corruption eradication commission has the authority to conduct wiretapping". Then further in carrying out the investigation, the Corruption Eradication Commission (KPK) is given the authority to carry out legal action in the form of arrest, detention, search and confiscation as regulated in article 12 paragraph (2) letter h which states that: "request assistance from the police or other related agencies to carry out arrests, detentions, searches and confiscations in cases of eradicating criminal acts of corruption that are being handled."

The authority given by the Corruption Eradication Commission as described above is a form of legitimacy for the Corruption Eradication Committee in carrying out actions to enforce the law, especially in eradicating criminal acts of corruption. However, the problem that arises is that this authority is not simply given perfectly by the KPK

leadership as the person responsible for eradicating criminal acts of corruption, but must obtain approval from outside the KPK leadership, namely the KPK Supervisory Board. (Nashrullah, 2023) In terms of implementing the KPK's authority in wiretapping those suspected of committing Corruption crimes must obtain permission from the KPK Supervisory Board. This is regulated in article 12 A paragraph (1) which states that "wiretapping as intended in article 12 paragraph (1), is carried out after obtaining written permission from the Supervisory Board".

The authority of the Supervisory Board is to determine whether or not an investigation is progressing, which has a big influence on the effectiveness of the investigation because there is a chance of information leakage before the wiretapping is carried out. It should be emphasized that the supervisory board is an official appointed by the President. Basically, the perpetrators of criminal acts of corruption are the majority of public officials who come from the executive power group, so that the existence of this authority can influence the independence of law enforcement in eradicating criminal acts of corruption (Esoimeme, 2019).

Requesting permission from the KPK leadership for the supervisory board to conduct an investigation regarding wiretapping, the supervisory board has the authority to grant permission or not to the KPK leadership to conduct wiretapping, as regulated in article 12 B paragraph (2) and Article 12B paragraph (3) of Law no. 19 of 2019 which states that "(1) to obtain permission as intended in paragraph (1) is carried out based on a written request from the head of the corruption eradication commission; (2) The Supervisory Board can give written permission for the request as intended in paragraph (2) no later than 1x24 hours (one x twenty-four) hours from the time the request is submitted." Referring to these provisions, the special investigative authority in conducting wiretapping of KPK leadership must first obtain permission from the Supervisory Board, then the request for permission from the KPK leadership to the Supervisory Board can be granted or not. The word "Can" then gave rise to a lot of debate where, through this clause, the Supervisory Board has the right not to grant wiretapping permits to the Corruption Eradication Commission leadership, so that this authority has a big influence in hindering the eradication of criminal acts of corruption. Looking at the institutional structure of the KPK which has leadership above the KPK leadership, namely the supervisory board, then this supervisory board is a KPK official appointed by the President (Executive) as regulated in article 37E paragraph (1) which states that "Chairman and Members of the Supervisory Board as intended in article 37A was appointed and stipulated by the President of the Republic of Indonesia," so that the provisions mentioned above will of course result in the KPK's institutional independence not being able to eradicate criminal acts of corruption.

The Supervisory Board has an important role that is no less important than the Corruption Eradication Commission leadership in carrying out law enforcement in eradicating criminal acts of corruption. (Wicaksono & Saputra, 2021) This can be concluded because the Supervisory Board has quite large and fundamental authority in terms of implementing the authority of the Corruption Eradication Commission which can be seen in Article 37B Paragraph (1) Letter b of Law No. 19 of 2019 which states that: "Granting permission or not giving permission for wiretapping, Search and/or Confiscation". With these provisions, it can be observed that in the implementation of

the KPK's authority, the KPK leadership still has superiors, namely the Supervisory Board, to request permission to carry out wiretapping, searches and/or confiscation. With the birth of this authority given to the Supervisory Board, it has a big influence, especially as it tends to hinder law enforcement regarding the eradication of criminal acts of corruption due to the need for further approval from the Supervisory Board.

The Supervisory Board is basically an official appointed and determined by the President (Executive) so that with the authority granted in Law no. 19 of 2019 that the Supervisory Board may or may not give permission to the KPK leadership to carry out wiretapping, arrest, search and/or confiscation. This has a big chance of the KPK not being independent in eradicating criminal acts of corruption. The authority of the Supervisory Board is reaffirmed in article 47 paragraph (1) which states that "In the investigation process, investigators can carry out searches and seizures with written permission from the Supervisory Board". This authority greatly influences law enforcement in eradicating criminal acts of corruption, because the supervisory board should only supervise the implementation of KPK authority by the KPK leadership, however the Supervisory Board has authority that is no less important than the KPK leadership because in carrying out an investigation the supervisory board has the authority in matters Law enforcement towards eradicating criminal acts of corruption. (Muhammad & Rizki, 2020)

The description above shows that the KPK Supervisory Board with its authority granted in Law no. 19 of 2019, not only as a Supervisor who supervises the implementation of the KPK's authority, but also functions as the Chair of the KPK. This is very inconsistent with the tasks and functions of supervision theoretically, namely that supervision is basically a function that guarantees that something will be carried out as specified in the law. This provision is different for the KPK Supervisory Board because on the one hand it supervises the implementation of the KPK's authority, however On the other hand, as the implementer of the Corruption Eradication Commission's authority, it requires permission from the Supervisory Board before wiretapping, arrest, search and/or confiscation is carried out in eradicating criminal acts of corruption. The emergence of the Corruption Eradication Commission's authority to take action against suspected perpetrators of corruption must obtain approval from the KPK Supervisory Board has hampered law enforcement at the Corruption Eradication Commission because it takes a relatively long time to obtain approval from the Corruption Eradication Committee, so that the suspected perpetrators have enough space and time to be able to eliminate them. evidence and can also escape so that eradicating criminal acts of corruption is ineffective.

4. Conclusion

The authority of the Corruption Eradication Commission (KPK) after the promulgation of Law no. 19 of 2019 concerning the Second Amendment to Law no. 30 of 2002 concerning the Corruption Eradication Commission is a form of limiting the freedom of the Corruption Eradication Committee's authority to carry out its duties to eradicate criminal acts of corruption. With the addition of a Supervisory Board in the Corruption Eradication Committee which has quite a large authority, namely not only supervision but also the implementation of the Corruption Eradication Commission's authority, namely that it must first obtain permission from the Supervisory Board before carrying out wiretapping, searches and/or confiscations carried out by the Corruption Eradication Committee, it can hamper law enforcement. in eradicating criminal acts of corruption and can also affect the Independence of Eradicating Corruption Crimes within the Corruption Eradication Commission (KPK) Institution which has made legal changes regressive rather than progressive regarding law enforcement against criminal acts of corruption. It doesn't stop there, the change in the institutional structure of the Corruption Eradication Committee which is included as part of the Executive body is a form of the Corruption Eradication Commission's institutional structure which was previously independent and is no longer independent.

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