



Policy Analysis of Amendments to the KPK Law in the Eradication of Corruption in Indonesia

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Abstract

The amendment of Law Number 30 of 2002 concerning the Corruption Eradication Commission through Law Number 19 of 2019 became a turning point in the institutional weakening of anti-corruption institutions in Indonesia. The revision caused widespread controversy because it was considered to shift the character of the KPK from an independent state institution to part of the executive power cluster. This study aims to analyze the direction of government policies in amending the KPK Law and assess its implications on the effectiveness of eradicating corruption. The method used is normative legal research with a legislative and conceptual approach, through the examination of legal norms, doctrines, and academic views. The results of the study show that the revision of the KPK Law presents a number of strategic restrictions, including the establishment of a Supervisory Board with technical authority, restrictions on wiretapping authority, the granting of the authority to terminate cases, and the change in the status of KPK employees to state civil servants. These changes systematically narrow the KPK's space for movement, erode its functional independence, and open up space for political power intervention in the enforcement of corruption laws. The policy direction of the revision of the KPK Law does not reflect the strengthening of the corruption eradication system, but rather shows the tendency of domestication and power control over the KPK, which has the potential to weaken public trust and the effectiveness of corruption eradication in Indonesia.

Keywords: KPK, Revision of the KPK Law, Independence, Legal Politics

Introduction

In the history of the development of the eradication of corruption in Indonesia, starting from the time of the Military Ruler Regulation in 1957, the formulation of acts on corruption crimes has been carried out, then the Central War Ruler period in 1958, then Law No. 24/PRP/1960 concerning the Investigation, Prosecution and Examination of Corruption Crimes, then Law No. 3 of 1971 concerning the Eradication of Corruption Crimes, and Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes. (Trisia, 2020) Corruption has become a real threat to society, which can eat away at state finances so that the flow of funds that are supposed to be for the welfare of the people, is stolen only for the benefit of a few, and to enrich themselves. Until 2003, the Corruption Eradication Commission was formed.

Based on Law No. 30 of 2002 concerning the Corruption Eradication Commission, in 2003 the KPK (Corruption Eradication Commission) was established, which was formed to overcome, overcome, and eradicate corruption crimes in Indonesia. The establishment of these institutions is one of the results of the amendment of the 1945 Constitution. State aid institutions are formed on various legal grounds, some are formed based on the mandate of the constitution, some are formed based on laws or by presidential decrees. The KPK (Corruption Eradication Commission) is a form of state aid institution formed based on the law. (Fitria, 2012)

Formally, the existence of the KPK is established through law, in relation to the 1945 Constitution and the Constitution, the KPK is an institution formed jointly by the House of Representatives, as a legislative power, and by the President. In this case, the President is the one who approves all forms of bills (bills) so that they can become laws as mandated by Article 20 paragraph (1) and Article 20 paragraph (2) of the 1945 Constitution. (Kurnia, 2020)

In terms of law enforcement in Indonesia, especially corruption cases, independence from the KPK institution is needed, so that in carrying out its duties, no one can intervene in the KPK so that it can affect the performance of the KPK in eradicating corruption. Quoting from Zainal Arifin Mochtar, that one of the backgrounds of the formation of an independent state institution is the limitations or inability of pre-existing state institutions to carry out their duties optimally. So that it results in the function of executive, legislative, and judicial power, becoming a function of its own independent organs. Apart from that, Jimly Asshiddiqie said that the development of independent state institutions indicates that there is a need for state organs to deconcentrate power from the hands of the hierarchy and also from conventional organs of government, where previous power had been concentrated. (Mochtar, 2021)

Jimly Assiddiqie explained the meaning of the independence of an institution, where he explained about the factional independence, which is divided into him, namely first, independence which is reflected in the decision-making process *Goal Independence*, where the

institution has the freedom to determine the direction of the main purpose and purpose of the institution, William F. Funk and Seamon define the independent state institution is, an autonomy given to the institution, to determine the main policy independently. Second, *Instrument Independence*, It is a policy instrument that is determined by an institution independently. (Rivaldi et al., 2022)

In its current development, the KPK Law has been revised in 2019. In the revision of the KPK law, there are several changes, namely, related to wiretapping, the existence of a supervisory board, the authority to issue a warrant to terminate investigation and prosecution (SP3), and the status of personnel at the KPK institution. Which in the revision of the KPK law is considered to weaken the KPK institutionally. (Movanita & Rastika, 2019) So that regarding the revision of the KPK law, it is worth questioning again about the status of the KPK's independence in eradicating corruption crimes in Indonesia.

The draft of the KPK law has become a discussion in the legal world, both by academics, practitioners, and the public in general. Quoting from CNBC Indonesia, he explained that the revision of the KPK Law is considered to weaken the independence of the KPK, including, 1) The KPK is no longer an independent state institution, 2) The establishment of a supervisory board, 3) The excessive authority of the supervisory board, 4) The supervisory board interferes with the executive, 5) The KPK cannot open a representative office, 6) Young people cannot become the leaders of the KPK, 7) The KPK can stop handling cases, 8) Major cases with a certain level of complexity have the potential to be stopped, 9) Eroding the authority of the KPK leadership, 10) KPK employees will have the status of ASN, 11) Loss of the KPK's independence in recruiting investigators, 12) Eliminating the authority of the KPK to appoint independent investigators, 13) The KPK's wiretapping authority is disrupted, 14) The KPK prosecution must coordinate with the Attorney General's Office. (Asmara, 2019)

In these changes, of course, the question is, where is the direction of government policy in this change in the KPK law? Quoting from a study, which concluded that, by norm, the independence of the KPK is still called independence, but it is powerless (*powerless*). In this case, the KPK remains an independent institution (*independent agency*), However, the implementation of the KPK of its authority has become difficult, this is the pros and cons of the revision of the KPK Law. (Wahyuningrum et al., 2020) Based on this background, the author is interested in researching what exactly is the direction of government policies towards changes to the KPK Law in the eradication of corruption in Indonesia.

Methods

This research uses a normative legal research method that focuses on the analysis of legal norms and legislation policies. The approaches used include a statute approach and a conceptual

approach to examine changes to the KPK Law and its implications for the independence and institutional effectiveness of the KPK. Primary legal materials are in the form of laws and regulations related to the KPK, while secondary legal materials are obtained from scientific literature, legal journals, and expert opinions. The analysis was carried out in a prescriptive-analytical manner by assessing the consistency of norms, the direction of political and legal, and the impact of regulatory changes on the system of eradicating corruption in Indonesia.(Irwansyah, 2023)

Results and Discussion

Policy Direction in the Revision of the KPK Law

In Article 3 of the KPK Law, it is stated that the Corruption Eradication Commission (KPK) is an independent state institution, which in carrying out its duties, cannot be influenced and intervened by any party. The revision of the KPK Law has been revised in 2019, in 2019 there are 55 bills that will be discussed in 2019, but previously based on the list of bills to be discussed in the 2019 Priority National Legislation, the KPK Law is not included in the 55 laws to be discussed. Which prolegnas is a means to plan programs so that laws are formed that will be prepared in a planned, integrated, and systematic manner. That in the national legislative program, a bill will be carefully planned and considered so that when the law is passed, the law does not cause contradictions in the regulations.(Bhaskara & Pradnyana, 2022)

Based on the academic manuscript and considerations in the KPK Bill, which became Law No. 19 of 2019, several aspects were obtained, namely: First, the philosophical aspect, looking at the weighing part in Law No. 19 of 2019 letter a, that, based on the mandate of the 1945 Constitution and Pancasila to eradicate KKN (Corruption, Collusion, Nepotism), in the form of this Law which aims to create justice in the community, prosperity, as well as welfare. Philosophically, as stated in the academic text, the KPK was formed based on the need in the reform era related to law enforcement and the socio-economy of Indonesia, but in the efforts to eradicate corruption at this time it has not been carried out optimally, therefore it is necessary to update the regulations of the KPK Law, so that the eradication of corruption crimes can be carried out effectively and efficiently.(Bhaskara & Pradnyana, 2022)

Second, the sociological aspect, in considerations b and c of Law No. 19 of 2019 explains that. 1) Agencies related to the task of eradicating corruption, namely the police, prosecutor's office, and the KPK, need to increase synergy in efforts to eradicate corruption, which is based on the principle of equality in authority and protection of human rights. 2) It is necessary to improve the strategy in eradicating and preventing corruption in the performance of the KPK, without ignoring human rights. Meanwhile, the sociological foundation contained in the academic manuscript is that corruption is a crime that affects the sense of justice in society. So the KPK was formed to solve the problem. But on the way, the KPK, which is beginning to gain

trust in the public, faces several problems, therefore it is considered necessary to rearrange its solution in the law, in order to be able to face these problems.

Third, the juridical aspect, based on what is stated in consideration letter d of the KPK Bill, describes the juridical basis of Law No. 19 of 2019, that previously, regarding the regulation of the KPK institution was considered no longer in accordance with developments in society, both in the field of law, or in the field of constitutional affairs. Therefore, the KPK Bill was made based on the achievement of legal certainty and a sense of justice in the midst of society, based on the concept of "*criminal justice system*". Based on the above aspects, it can be clearly seen that the legal politics of the revision of the KPK Law, due to the material contained in the KPK Law, is considered no longer able to solve the problem of corruption.(Bhaskara & Pradnyana, 2022)

Looking at the policy direction in the revision of the KPK Law, that the main purpose of every policy is, that basically to answer all problems that exist in the midst of society, because every policy made by the government, will definitely cause reactions from the public. Therefore, the government must pay close attention to providing access to maximum public space, as a forum for the community to convey their aspirations. Because every policy is not only based on the wishes of the government, but the essence of the policy is intended for the community.(Hafifurrahman & Kasim, 2023)

The policy taken by the Government and the House of Representatives on the revision of the KPK Law, is considered not to reflect the public policy used to solve existing problems, the Government and the House of Representatives in this case are considered to have made policies that are not useful and are considered to weaken the KPK in terms of eradicating corruption. This can be seen in several points of amendment to the KPK Law, namely the following:(Hafifurrahman & Kasim, 2023)

1. The revision of the KPK Law is considered to weaken the independence of the KPK, judging from the removal of the Article that explains that the highest person in charge is the KPK leader, which is replaced by that the KPK is responsible to the President. So that the KPK is under executive power. Yulianto explained that bringing the placement of the KPK in the formulation of executive power, it is considered that it will make it difficult for the KPK to carry out its duties, because KPK employees will find it difficult to be critical and act independently in carrying out their duties, especially when they have to deal with the ongoing government, the KPK institution is considered to be able to be used by the current government to criminalize the opposition.(Yulianto, 2020) The KPK, which was initially an institution that *super body*, now being an institution under the executive, this will undeniably affect the independence and performance of the KPK, so it will strengthen the political power that is in power and the oligarchs that hold power. Deny

Indrayana said that the KPK is currently vertically responsible to the President, thus making this institution no longer independent. (Falah Parama & Al-Fatih, 2021)

2. The independence of the KPK is considered to have been tarnished due to the existence of a Supervisory Board which is elected by the House of Representatives by the Pansel. After being in the formulation of executive power, with the existence of a Supervisory Board elected by the DPR, it also makes the KPK under the legislative formula. This makes the KPK completely unable to carry out its duties independently. The Supervisory Board is given the authority to enter into technical matters in handling corruption.
3. The KPK's authority in conducting wiretapping is also weakened, because it must obtain permission from the Supervisory Board. Therefore, it makes it difficult for the KPK to carry out hand capture operations (OTT).
4. The proposal of KPK employees to become ASN, so that it makes KPK employees vulnerable to be regulated and controlled.

The position of the KPK initially as an independent institution is now under the auspices of an executive institution that can narrow the KPK's space for movement, especially with the establishment of the KPK Supervisory Board which will supervise the performance of the KPK, thereby limiting the KPK's self-control authority in handling corruption cases. The potential for the KPK's imfreedom after shifting to become part of the executive institution in coordinating with other institutions such as the legislative institution with the DPR, the judicial institution (judicial) in investigations, and the BPK in coordination with financial matters because it is under the supervision of the executive institution. (Falah Parama & Al-Fatih, 2021) From the points above, it can be seen that the policy direction in the revision of the KPK Law is to try to weaken the KPK in terms of institutions, and it is considered that there is an effort by the power that is in power, to control and control the KPK, so that it can act in accordance with the wishes of the power that is in power.

The Effectiveness of the KPK in Eradicating Corruption After the Amendment of the KPK Law

The existence of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission has the implication that currently the independence of the KPK is not what it used to be. Based on Article 1 number 3 which explains that, "The Corruption Eradication Commission, hereinafter referred to as the Corruption Eradication Commission, is a state institution within the executive power cluster that carries out the task of preventing and eradicating corruption in accordance with this law". Then it was reaffirmed in Article 3 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission which reads, "The Corruption Eradication Commission is a state institution in the executive power cluster that

carries out its duties and authorities independently and free from the influence of any power" So that with the birth of the new Article it places the KPK in the executive cluster so that it has the potential to make the KPK no longer an institution which is independent because currently the KPK has become part of the executive, in this case the Government.(Nurisman & Fitriano, 2021)

Teguh Kurniawan explained that one of the keys to the KPK's success in terms of uncovering major cases and enforcing the law in corruption crimes, which has thereby saved the state's finances from losses that are even worth hundreds of billions, is inseparable from the spirit and support of KPK employees who are selected based on criteria and standards determined by the KPK itself. Law Number 30 of 2002 concerning the Corruption Eradication Commission explains that the recruitment of KPK employees is carried out by the KPK independently. So that by independently recruiting employees whose standards are adjusted to the interests of the KPK, it can make the KPK's duties run to the maximum.(Nurisman & Fitriano, 2021) So that in the status of transferring KPK employees to ASN, KPK employees are no longer the standards determined by the KPK itself, which will cause the KPK to be personally weakened by officers, because the criteria are determined by the government.

Furthermore, related to the Supervisory Board which has a fairly central authority in handling corruption crimes, based on Article 37B of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission, the Supervisory Board has the authority to grant permits for wiretapping, searching, and confiscation so that the work of the KPK leadership will depend entirely on the wishes of DEWAS and not as good as the previous KPK Leader's performance. It is really unfortunate that the presence of DEWAS actually slows down the enforcement of corruption laws in Indonesia.(Nurisman & Fitriano, 2021) So that it makes the KPK's performance ineffective and efficient.

Conclusion

In several amendments to the KPK law, it can be seen that the policy direction in the revision of the KPK Law is to try to weaken the KPK in terms of institutions, and it is considered that there is an effort by the power that is in power, to control and control the KPK, so that it can act in accordance with the wishes of the power that is currently in power. Regarding the effectiveness of the KPK's performance after the amendment of the KPK Law, of course, it will have a great effect on the performance of the KPK in eradicating corruption, why not, the KPK which was once independent, is not under any power, at this time the KPK is in the formulation of executive power, which must report directly to the President, and the Supervisory Board elected by the DPR, as if it were putting the fangs of the DPR into the KPK institution, so that it

can also regulate and control the performance of the KPK. This is considered to make the KPK's performance ineffective in handling corruption crimes in Indonesia, thus making corruption rampant, and society increasingly difficult.

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