

**ABOLITION OF ARTICLE ON THE HEAD OF THE CORRUPTION
ERADICATION COMMISSION AS INVESTIGATOR AND PUBLIC
PROSECUTOR IN THE LAW ON THE CORRUPTION ERADICATION
COMMISSION**

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Abstract

The revision of the Corruption Crime Act is part of the government's legal politics in carrying out reforms to eradicate corruption in Indonesia. The authority of the KPK leadership as an investigator and the public prosecutor has been abolished in the latest regulation. The issues raised in this journal are How the Development of Amendments to the Corruption Eradication Commission Law and How the Legal Politics of the Elimination of Articles of KPK Leaders are Investigators and Public Prosecutors in the Revision of the Law on the Corruption Eradication Commission. The research used in this journal uses normative research methods. The development of Amendments to the Corruption Eradication Commission Law in Indonesian Legal Politics was marked by several changes to the Law, including Law Number 30 of 2002, Law Number 10 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 the Year 2015, and Law Number 19 of 2019 concerning the Corruption Eradication Commission. The position of the KPK leadership must be understood wisely and completely, do not interpret it partially so that the KPK leadership remains authorized to carry out investigations and prosecutions.

Keywords: Article Abolition, KPK Leaders, Investigators, Public Prosecutors

INTRODUCTION

The problem of corruption in Indonesia is a very complex concern, almost every aspect of life has been affected by corruption. (Halimang, 2020) One of the agendas of the reform struggle carried out by the community is to eliminate the practices of corruption, collusion, nepotism by requiring that President Soeharto and his government be examined and brought to justice because of allegations of corruption.(Muhtar, 2019) The conception of the 1998 reform agenda wants a country free from corruption, collusion, and nepotism as stipulated in the Decree of the People's Consultative Assembly of the Republic of Indonesia (TAP MPR)

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Number XI / MPR / 1998 concerning State Administrators who are Clean and Free of Corruption, Collusion, and Nepotism.(Rahmat, 2018)

Eradicating corruption has become a priority, so Law Number 31 of 1999 concerning the Eradication of Corruption was established, which was later amended by Law Number 20 of 2001, as a mandate in this Law, the existence or formation of a Corruption Eradication Commission. It becomes mandatory, which in the explanation must be determined within two years from the date of promulgation.(Danil, 2021)

The Corruption Eradication Commission (KPK) was formed on December 27, 2002, based on Law Number 30 of 2002 concerning the Corruption Eradication Commission. Through this Law, the KPK is mandated to carry out the eradication of criminal acts of corruption in a professional, intensive and sustainable manner. The authority for prevention and prosecution is owned by the KPK, which has functions of investigation, investigation, and prosecution in it.(Akbar, 2020; Hartono, 2017)

More authority is given to the KPK compared to other legal institutions such as the Police and the Attorney General's Office in handling corruption cases. Among the KPK's powers is the authority to conduct wiretapping that is not owned by the Police and the Attorney General's Office. The KPK also has the authority to supervise and can take over corruption cases handled by the Police and the Attorney General's Office if case handling is deemed to have had no progress.(Badjuri, 2011; Sosiawan, 2019)

In its development, there was a vacancy of the KPK leadership because two KPK leaders were named suspects in a criminal case by the Police, so it is necessary to regulate the filling of temporary membership of the KPK leadership, Government Regulation instead of Law Number 1 of 2015 signed on February 18, 2015, by President Jokowi which was later promulgated as Law Number 10 of 2015 concerning the Corruption Eradication Commission.(Elda, 2019)

Post-reformation, the KPK has become an institution that is quite reliable in eradicating corruption; there have been various discussions regarding the authority and position of the KPK in the state administration system of the Republic of Indonesia, the KPK with its great authority and contribution in eradicating corruption. 17 September 2019 The House of

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Representatives passed Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.(Rosyidin, 2009)

The provisions of Law Number 30 of 2002 (Old Law) in Article 21 paragraph (4) state that the KPK leaders have the authority to investigate and demand that it has been removed as in Law Number 19 of 2019 (Law new), as well as paragraph (6) where the KPK leaders are no longer in charge of the institution. Without the approval of the KPK leaders, of course, the process of investigating and investigating the disclosure of a corruption case cannot be carried out, so it can delay or even stop the disclosure of a corruption case.(Widjiastuti et al., 2016)

For this reason, the author is interested in making a scientific article entitled the Elimination of Articles of the Corruption Eradication Commission Leader as an Investigator and Public Prosecutor in the Law on the Corruption Eradication Commission. With the formulation of the problem as How is the Development of the Amendment to the Corruption Eradication Commission Law and How is the Legal Politics for the Elimination of Articles of KPK Leadership for Investigators and Public Prosecutors in the Revision of the Law on the Corruption Eradication Commission.

METHODOLOGY

The research used in this journal uses normative research methods with a case and comparison approach. Norms in this regard are principles, norms, rules of legislation, court decisions, agreements, and doctrines (teachings). (Mukti Fajar & Achmad, 2010) In the process of finding legal rules, legal principles, and legal doctrines to answer legal issues at hand, this is what is called legal research by the prescriptive character of legal science, where legal research is carried out to produce new arguments, theories, or concepts as prescriptions in solving the problems at hand. Legal research is carried out to solve proposed legal issues.(Marzuki, 2013) The result to be achieved is a prescription of what it should be. Normative legal research with literature law research or legal research based on documented data in legal materials. This writing uses a statutory analysis approach.(Atmasasmita, 2002)

RESULT AND DISCUSSION

1. **Development of amendments to the Corruption Eradication Commission Law**

The use of the word corruption comes from the Latin word *Corruption* or *Coruptus*, which reports that corruption from corruptors also comes from the word from *Corumpere*, which is an older Latin word. From Latin, it was adopted by many languages in Europe such as the Dutch, namely *corruptive* (corruption); England, namely *corruption*, *corrupt*; and France, namely *corruption*. Indonesia uses the word “*Corruption*,” which is thought to be derived from the language of corruption.

According to Leden Marpaung, corruption is more in the form of embezzlement or embezzlement, either state or company money, etc., for personal or other people's gain.(Marpaung, 2007) Meanwhile, according to Kartini Kartono in his book *ICCE*, what is meant by corruption is the behavior of every person who uses his authority and position to take advantage of himself, detrimental to the interests of many people and the wider community for personal gain or certain groups.(Koesoemo, 2017)

Legally, the meaning of corruption can be seen in Article 2 of Law Number 31 of 1999 as amended to Law Number 20 of 2001 concerning Eradication of Criminal Acts. Corruption is an act of enriching oneself or another person or corporation that can harm state finances or the economy. Country. Furthermore, in Article 3, it is explained that corruption is an act that aims to benefit oneself or another person or a corporation, misusing the authority, opportunity, or means available to it because of the position or position that can harm the state finances or the state economy.(Danil, 2021)

Actions as extraordinary crimes that can be classified as corruption according to the KPK based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Corruption Eradication are:

- a. State Losses (Articles 2 & 3)

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- b. Bribery (Article 5 paragraph (1) letter a & b; Article 5 paragraph (2); Article 6 paragraph (1) letter a & b; Article 6 paragraph (2); Article 11; Article 12 letter a, b, c, and d; Article 13).
- c. Embezzlement in office (Article 8, Article 9, Article 10 letters a, b, and c)
- d. Extortion (Article 12 letters e, g, and f).
- e. Fraudulent acts (Article 7 paragraph (1) letters a, b, c, and d; Article 7 paragraph (2); and Article 12 letter b).
- f. Conflict of interest in procurement (Article 12 letter i)
- g. Gratuities (Article 12 B jo Article 12 C).

Corruption can be classified as an extra-ordinary crime because corruption is a violation of the economic rights of the community and social rights. So its eradication must also be carried out in an extraordinary way (extra-ordinary enforcement). Romli Atmasasmita explained that corruption in Indonesia had become an extra-ordinary crime, so it is imperative that the availability of extraordinary and sophisticated legal instruments and institutions that deal with corruption is inevitable. It is certain that the Indonesian people agree that corruption must be prevented and eradicated from the motherland because corruption has been proven to be very miserable for the people, even as a violation of the social and economic rights of the community.(Atmasasmita, 2002)

The fight against corruption eradication provides a lesson for all of us that eradicating corruption is not an easy thing; many countries in the world are fighting corruption. Corruption, law enforcement agencies, should be encouraged to form them. In addition to existing institutions such as the Police and the Attorney General's Office as law enforcement agencies for criminal acts of corruption, countries worldwide to fight corruption have also formed independent institutions that have extraordinary authority in eradicating corruption.(Pope, 2003)

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This independent institution with extraordinary powers in eradicating corruption was formed because it was realized the effects of the criminal act of corruption which later categorized it as an extra ordinary crime, must also be eradicated in an extraordinary way. These independent institutions can be seen as formed by Hong Kong called the Independent Commission Against Corruption (ICAC). This commission has the authority to collect reports of suspected corruption and conduct investigations but does not have the authority to prosecute. The ICAC also conducts campaigns to raise public awareness and conduct audits of the management systems of ministries and government agencies from an anti-corruption perspective.(Muslim & KPTPK, 2004)

The failure to eradicate corruption in Indonesia, both in the Old Order and the New Order era, is a historical fact that has inspired demands for corruption eradication in the reform era called KKN (Corruption, Collusion, and Nepotism). The existing law enforcement agencies, namely the Police and the Attorney General's Office, cannot trust and have strong legitimacy in handling corruption cases. The internal problems of the Police and the Attorney General's Office are still confronted in realizing clean institutions.

The Corruption Eradication Commission (KPK) is one of the new state institutions formed during the reform era in Indonesia. This institution was formed as part of the corruption eradication agenda, which is the most important agenda in reforming governance in Indonesia.

In principle, the KPK carries out an executive function (law enforcement) that has autonomous authority; that is, it is not tied to government bureaucratic chains, so that it is expected to meet the expectations of society in eradicating corruption. The legal basis for establishing and granting authority to the KPK is the provisions of Article 43 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes and through Law Number 30 of 2002 concerning the Corruption Eradication Commission.

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In carrying out its duties and authorities, the KPK is independent and free from the influence of any power, which is an auxiliary state institution. Even though in carrying out its duties and authorities, it has independence and freedom, the KPK still has a dependence on other branches of power in terms of its membership. Article 30 of Law Number 30 of 2002 concerning the Corruption Eradication Commission stipulates that the KPK leadership consisting of one chairman and four deputy chairmen, all of whom are concurrently members, are elected by the House of Representatives based on candidate members proposed by the previous President. has passed the selection by the selection committee formed by the President.(Andrisman, 2008)

The duties and powers of the KPK Article 43 of Law Number 31 of 1999 are to carry out coordination and supervision, including conducting investigations, investigations, and prosecutions by applying the applicable laws. Also, the KPK has the duties and authorities stipulated in Law Number 30 of 2002 concerning the Corruption Eradication Commission, namely the supervision of institutions that have the authority to eradicate criminal acts of corruption; Carry out investigations, investigations, and prosecutions of criminal acts of corruption; Take steps to prevent criminal acts of corruption; as well as monitoring the administration of state governance.

The theoretical existence of the Corruption Eradication Commission is an institution established based on statutory orders (Legislatively entrusted power). The formation of the KPK in the transitional period was principally due to the loss of public trust in existing law enforcement agencies such as the police, prosecutors, and courts in eradicating criminal acts of corruption. We can see in the preamble to the establishment of Law Number 30 of 2002 concerning the Corruption Eradication Commission, which states that law enforcement agencies that handle corruption cases have not functioned effectively and efficiently in eradicating criminal acts of corruption. So it can be interpreted that the existence of the Corruption Eradication Commission in the context of law enforcement on corruption is only temporary and will function as a trigger

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mechanism for law enforcement agencies to improve themselves in the face of demands for reform. When the existing law enforcement agencies have succeeded in making improvements internally and starting to gain back the trust of the community, the Corruption Eradication Commission should be dissolved, but otherwise, if the law enforcement agency is unable to improve its performance, the Corruption Eradication Commission must be maintained.

Based on the institutional design, the establishment of the Corruption Eradication Commission is included in the framework of the "proportional model," which is an institutional design that is based on the principle of dispersing power, because according to one of the considerations above, the consideration of establishing the Corruption Eradication Commission is due to the ineffectiveness of existing conventional law enforcement agencies. During the New Order government, the working mechanism of conventional law enforcement agencies could not be separated from executive control. During this transitional period, the existence of these conventional law enforcement agencies experienced a crisis of legitimacy.(Aditjondro, 2002)

Changing a legal product constitutionally is a necessity that is procedurally under the authority of the DPR as a legislative body. However, every change in the law must have legal considerations in terms of its clear ratio legislation in order to measure its urgency. Mahfud MD argued that the quality of a legal product is supported by the quality of its formation in the legislative process. DPR as a representation of a political party can be interpreted that a legal product is a political product so that the character and substance of a legal product are determined by the background of the political configuration that gave birth to it during the legislative process. The correlation between law and politics is in two dimensions. In the *das sollen* dimension, the legal position is determinant of politics because all political activities must comply with established legal procedures, while in the *das sein* dimension, politics is precisely the determinant of law because the law is born by political activity in parliament.(Fadhil, 2019)

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Based on this, there is a need for legal reform on corruption eradication with a political-law approach. Political law is basically a direction of law that will be enforced by the state to achieve state goals, which can take the form of making new laws and replacing old laws. The urgency of legal politics in making statutory regulations covers at least two things, namely as the reason why it is necessary to form a statutory regulation and to determine what is to be translated into legal sentences and into the formulation of articles. These two things are important because the existence of statutory regulations and the formulation of articles constitute a 'bridge' between the established legal politics and the implementation of these legal politics in the implementation stage of statutory regulations.(Mahfud, 2006)

In 2015, the vacant membership of the Corruption Eradication Commission (KPK) leadership disrupted the performance of the KPK because two KPK leaders were named suspects by the Police. Therefore, to maintain the continuity and continuity of efforts to eradicate corruption, the government considers it necessary to regulate the filling of the temporary membership of the KPK leadership. So the Government, in this case, President Joko Widodo, on February 18, 2015, signed a Government Regulation instead of Law (Perppu) Number 1 of 2015 concerning the Corruption Eradication Commission. In the 7 (seven) sheets of the Perppu, the government amended Law Number 30 of 2002 concerning the Corruption Eradication Commission by adding 2 (two) articles between Articles 33 and 34, namely Article 33A and Article 34B. Article 33A Perppu No. 1/2015 stated, in the event of a membership vacancy of the KPK leadership of less than 3 (three) people, the President appoints temporary members of the KPK leadership to several vacant positions. "The temporary members of the KPK leadership as referred to have the same duties, powers, obligations, and rights as the KPK leadership.

The Perppu was later stipulated as Law Number 10 of 2015; in its general provisions, it explains that the Corruption Eradication Commission is currently headed by less than 3 (three) Commissioners. Meanwhile, Law Number 30 of 2002 concerning

the Corruption Eradication Commission regulates that the Head of the Corruption Eradication Commission works collectively. In order to maintain the continuity of the leadership of the Corruption Eradication Commission, it is necessary to fill in the vacant membership of the Corruption Eradication Commission leadership quickly so as not to hinder the corruption eradication process. In addition, filling out the temporary membership of the Corruption Eradication Commission is very necessary to ensure the performance of the Corruption Eradication Commission as a state institution.

Article 33A of Law Number 10 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2015 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission into Law, as follows:

- 1) In the event of a vacant membership in the Chairman of the Corruption Eradication Commission, which causes the Chairman of the Corruption Eradication Commission to number less than 3 (three) people, the President shall appoint temporary members of the Chairman of the Corruption Eradication Commission to several vacant positions.
- 2) Temporary members of the Chairman of the Corruption Eradication Commission as referred to in paragraph (1) have the same duties, powers, obligations, and rights as the Head of the Corruption Eradication Commission.
- 3) Candidates for interim members of the Corruption Eradication Commission must meet the requirements referred to in Article 29 except letter e, which relates to the age requirement of not more than 65 (sixty-five) years.
- 4) The appointment and dismissal of temporary members of the Chairman of the Corruption Eradication Commission shall be stipulated by the President.
- 5) If the membership of the Chairman of the Corruption Eradication Commission is vacant concerning the Chair, the interim Chair is elected and appointed by the President.

- 6) Before taking office, the interim Chairperson and interim Deputy Chairperson of the Corruption Eradication Commission must take an oath / promise referred to in Article 35.

Article 33B of Law Number 10 of 2015 concerning Stipulation of Government Regulations instead of Law Number 1 of 2015 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission into Law, Term of office of temporary members of the Chairman of the Corruption Eradication Commission as referred to in Article 33A paragraph (1) ends when:

- a. members of the Chairman of the Corruption Eradication Commission who were replaced due to temporary suspension as referred to in Article 32 paragraph (2) are reactivated; or
- b. taking the oath / pledge of the new Corruption Eradication Commission Chairman after being elected through the process as referred to in Article 33 paragraph (2).

The view of the ineffectiveness of the KPK's performance was built as a basis for deconstructing the KPK institution. This basis, according to Foucault, is transformed into a power of knowledge that is instrumental in the interests of domination and political hegemony. KPK, which is too super body must be subjected to disciplinary construction so that it is not resistant to power. This condition was built in order to answer the urgency of reformulation of the KPK Law so that the KPK can move effectively in eradicating corruption. This view is actually wrong and tends to be trapped in the illusion of political law that has been contaminated by the interests of political cartels.

The birth of the new KPK Law is one part of the delegitimation drama at legal reformulation. Changing the law is indeed a necessity because the law moves according to the dynamics of society and the nation. However, in the context of institutional product formulation, legal change requires legal considerations and institutional aspirations as a basis for legitimizing the urgency of its formation (*raison d'etre*). The reformulation

process is indeed in the domain of legislative power jointly with the executive. However, this authority must remain on the legal rails within the framework of the rule of law.

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, in its general provisions it is explained that it arises because the performance of the Corruption Eradication Commission is felt to be ineffective, weak coordination between law enforcement lines, the occurrence of violation of the code of ethics by the leadership and staff of the Corruption Eradication Commission, as well as problems in the implementation of duties and authorities, namely the implementation of the duties and authorities of the Corruption Eradication Commission which are different from the provisions of the criminal procedure law, weaknesses in coordination with fellow law enforcement officers, wiretapping problems, investigator management and uncoordinated investigators, overlapping authority with various law enforcement agencies, as well as weaknesses in the absence of a supervisory agency capable of overseeing the implementation of the duties and powers of the Corruption Eradication Commission so that there may be flaws and lack of accountability. Yes, the implementation of duties and authorities to eradicate criminal acts of corruption by the Corruption Eradication Commission.

Furthermore, the general provisions also explain, for this purpose, legal reform is carried out so that the prevention and eradication of corruption can be carried out effectively and in an integrated manner so as to prevent and reduce the increasing state losses due to corruption. Strengthening the Corruption Eradication Commission in prevention activities does not mean that corruption eradication activities are neglected. In fact, this strengthening is intended so that the activities of the Corruption Eradication Commission in carrying out its duties and powers will be better and more comprehensive. Legal reform is also carried out by restructuring the Corruption Eradication Commission institution and strengthening preventive measures so that state officials and the public

will raise awareness not to commit criminal acts of corruption that can harm state finances.

Several articles in the amendments to 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 are as follows:

- a) The provisions of Article 1 relating to the operational definition have been changed to six points.
- b) The provisions of Article 3 relate to the meaning of the KPK in addition to being an executive family.
- c) Article 5 is related to the KPK principle; there is an additional principle of respect for human rights.
- d) Article 6 relates to the duties of the KPK and adds coordination with agencies authorized to eradicate corruption and implement court decisions.
- e) Article 7 concerning the authority of the KPK is added to the registration and examination of the state administration assets report, and in paragraph (2), it is obligatory to make a report to the President, DPR, and BPK once a year.
- f) Amendments to Article 8 regarding the authority of the KPK in carrying out coordination tasks.
- g) Article 9 was amended regarding the authority of the KPK in carrying out monitoring duties.
- h) Article 10 is amended regarding the authority of the KPK in terms of supervision and the addition of Article 10A relating to taking over investigations and prosecutions.
- i) Article 11 was amended by eliminating the paragraph on corruption which has received the public's troubling attention.
- j) Article 12 related to the authority of the KPK in investigations, investigations and added to Articles 12A, 12B, 12C, 12D related to wiretapping conducted by the KPK.

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- k) Article 13 is amended in relation to the implementation of judge orders and court decisions.
- l) Article 14 is deleted
- m) Article 15 adds to the KPK's obligations. To compile a code of ethics for KPK leaders and employees.
- n) Article 19 paragraph (2) is deleted regarding the establishment of the KPK in the regions.
- o) Article 21 contains the deletion of two paragraphs relating to the leadership of the KPK as an investigator and public prosecutor as well as the highest person in charge of the KPK.
- p) Articles 22 and 23 are deleted regarding the KPK advisory team.
- q) Article 24 relates to changes in the status of KPK employees to ASN.
- r) Article 29 relates to the requirements of the KPK leadership, including a change in the minimum age to 50 years.
- s) Article 33 relates to the vacancy of the KPK leadership.
- t) Article 37 was amended, and Articles 37A - 37G were added in relation to the KPK supervisory board.
- u) Article 38, Article 40, Article 43 shall be amended. However, Article 43A has been added regarding the requirements to become a KPK investigator.
- v) Article 45 is amended, and Article 45A is added regarding the requirements for KPK investigators.
- w) Article 46 and Article 47 were amended, and Article 47A was added regarding confiscation and searches.
- x) Between Article 69 and Article 70, Article 69A - Article 69D is inserted regarding the appointment of Dewas and KPK employees.
- y) Between Article 70 and Article 71, Article 70A, 70B, 70C are inserted in relation to the enforcement of this new law.

2. The Law Politics on the Elimination of Articles of KPK Leadership are Investigators and Public Prosecutors in the Revision of the Law on the Corruption Eradication Commission

In an effort to eradicate corruption, extra hard efforts are needed from law enforcement officials, especially the Corruption Eradication Commission (KPK) as a professional independent institution and without deliberation in eradicating criminal acts of corruption. Corruption is no longer a local problem but a transnational problem that affects the entire community and economy so that international cooperation is needed for prevention and eradication, including the recovery or return of assets resulting from criminal acts of corruption.

Perpetrators of corruption are divided into two types, namely corruption committed by corruptors who hold high positions or are known as white collars. Corruptors who occupy a low level or position are known as the term blue-collar. Corruption is usually carried out jointly between one public employee and another. This is because they cooperate in an effort to manipulate the system and / or to hide the behavior and results of its corruption. The weakness of a system and low transparency creates ample opportunities for corruption. In a cost-benefit analysis, a broad opportunity to commit corruption causes the cost of corruption to be lower so that corruption is feasible. Several things that can motivate corruption include inequality in income or salaries between the public and private sectors, inequality in income or salaries between the public sector, excessive lifestyle or consumption patterns, insufficient government spending standards, and factors systemic or structural.

Based on this, there is a need for legal reform on corruption eradication with a political-law approach. Political law is basically a direction of law that will be enforced by the state to achieve state goals, which can take the form of making new laws and replacing old laws. The urgency of legal politics in making statutory regulations covers at least two things, namely as the reason why it is necessary to form a statutory regulation and to determine what is to be translated into legal sentences and into the

formulation of articles. These two things are important because the existence of statutory regulations and the formulation of articles constitute a 'bridge' between the established legal politics and the implementation of these legal politics in the implementation stage of statutory regulations.

Political law is a part of legal science that discusses, understands, and studies the change of an *ius constitutum* to an *ius contituendum* in an effort to meet the needs of a society that is always experiencing development. These developments include:

- a. Changes in the legislative field;
- b. Changes in the executive sector; and
- c. Changes in the judiciary

In a book entitled "Political Law Towards a National Legal System," Sunaryati Hartono defines legal politics as a tool (tool) and steps that are the government's choice to create the desired national legal system so that the aspirations of the Indonesian nation can be realized.

According to Sudarto, legal politics are:

- 1) Efforts to create good regulations in accordance with the circumstances and situations at a time.
- 2) The policy of a country through the authorized bodies to establish the desired regulations which are thought to be used to express what is contained in society with the aim of achieving what is aspired.

Satjipto Rahardjo defines legal politics as the activity of choosing and the means to be used to achieve certain social and legal objectives in society.²¹ From some understanding of the definition of legal politics and referring to Mahfud MD's opinion that legal politics contains two inseparable sides, namely:

- a) Political law as a direction or "legal policy" for state institutions in making laws;

- b) Political law as a tool to assess and criticize whether a law is made in accordance with the legal policy framework to achieve the goals of the state.

Eradicating corruption is a reform mandate that calls for a government free from corruption, collusion, and nepotism. To carry out this mandate, the KPK was formed as a body with authority to investigate, investigate and prosecute corruption crimes. The KPK was formed based on the Corruption Eradication Commission Law, which has changed several times in its journey.

On September 17, 2019, instead of strengthening the function of the KPK, in fact, the DPR and the Government agreed to make changes to the KPK Law, which actually weakened the KPK institution. Several articles show that the legal politics to revise the Corruption Eradication Commission Law are not legal politics that place the ideals and goals of the nation but lead to policies that weaken the eradication of corruption itself, even further than that, which is taking sides with the perpetrators of corruption. There are at least a number of notes in the revision of the law that it is suspected of severely weakening the corruption eradication agenda.

The revised KPK Law no longer places the KPK leadership as investigators and public prosecutors. The enactment of this revision places the KPK leadership as an administrative figure only. The leadership of the Corruption Eradication Commission can be interpreted legally as no longer able to sign an investigation warrant and / or prosecution plan letter, which is the domain of the investigator and public prosecutor. Furthermore, investigators and public prosecutors can refuse the KPK leadership to participate in the exposure of the case because it involves the confidentiality and authority of the leadership who is not an investigator or public prosecutor.

Article 21 of Law Number 30 of 2002 concerning the Corruption Eradication Commission reads:

- (1) The Corruption Eradication Commission, as referred to in Article 3, consists of:
 - a. Chairman of the Corruption Eradication Commission, which consists of 5 (five) members of the Corruption Eradication Commission;
 - b. Advisory Team consisting of 4 (four) Members; and
 - c. Corruption Eradication Commission employees as executors.
- (2) The leadership of the Corruption Eradication Commission, as referred to in paragraph (1) letter a is structured as follows:
 - a. Chairman of the Corruption Eradication Commission concurrently Member; and
 - b. The Deputy Chairperson of the Corruption Eradication Commission consists of 4 (four) people, each concurrently a Member.
- (3) The head of the Corruption Eradication Commission as referred to in paragraph (1) letter a, is a state official.
- (4) The leadership of the Corruption Eradication Commission, as referred to in paragraph (1) letter a, is the investigator and public prosecutor.
- (5) The leadership of the Corruption Eradication Commission, as referred to in paragraph (2) works collectively.
- (6) The head of the Corruption Eradication Commission as referred to in paragraph (1) letter a, is the highest person in charge of the Corruption Eradication Commission.

The provisions of Article 21 are amended so that they read as 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, as follows:

1. The Corruption Eradication Commission consists of:
 - a. Supervisory Board, amounting to 5 (five) people;

- b. Chairman of the Corruption Eradication Commission, which consists of 5 (five) members of the Corruption Eradication Commission; and
 - c. Corruption Eradication Commission employees.
2. The Leadership Composition of the Corruption Eradication Commission as referred to in paragraph (1) letter b consists of:
 - a. Chairman concurrently member; and
 - b. The vice-chairman consists of 4 (four) people, each of whom is also a member.
 3. The head of the Corruption Eradication Commission as referred to in paragraph (1) letter b, is a state official.
 4. The leadership of the Corruption Eradication Commission, as referred to in paragraph (2), is collective collegial.

The birth of 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 is in line with the direction of legal politics that the goal of legal politics is to seek or create and formulate a legal product or law. a good criminal invitation imposed by overcoming crimes to achieve the goals of the state.

Constitutionally, changing a legal product is a necessity that is procedurally under the authority of the legislature. However, every change in the law must have legal considerations regarding clear ratio legislation to measure its urgency. Mahfud MD argued that the quality of a legal product is supported by its formation in the legislative process. DPR as a representation of a political party can be interpreted that a legal product is a political product. The character and substance of a legal product are determined by the background of the political configuration that gave birth to it during the legislative process.

The revision of the Corruption Eradication Commission Law, which by some activists driving corruption, does not show legal politics that strengthens the state's determination to fight corruption. The revision of the Corruption Eradication

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Commission law shows that it takes sides with suspects or suspects in criminal acts of corruption with human rights arguments. The weakening of the KPK is evident from its status and position that has shifted from independent to executive clusters, the existence of a supervisory board with broad projustitia powers, the limited appointment of investigators, as well as a reduction in the number of KPK prosecution powers. This revision is far from a reflection of the political law that has made the KPK strong, but it is likely that it will no longer be possible for the KPK to aggressively eradicate corruption crimes.

Abolition of Article 21 Paragraph (4) of Law Number 30 of 2002 on amendments to 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 which states that the KPK leadership is an investigator and public prosecutor. This raises the assumption that legislators no longer give authority to the KPK leadership as investigators and prosecutors.

Criminal law expert Indriyanto Seno Adji said the polemic about the existence of the head of the Corruption Eradication Commission (KPK) as an investigator and the public prosecutor or not should be stopped. The position of the KPK leadership must be understood wisely and completely, not to be interpreted partially so that. According to Indriyanto, the new KPK Law must be understood as a facet (special law) between criminal law, state administrative law, and constitutional law. The new KPK Law cannot be read artificially and partially but must be fully interpreted and understood. This is because the articles in the new Corruption Eradication Commission Law are related to their interdisciplinary scientific meaning.

Indriyanto emphasized that the new KPK Law, especially those related to leadership positions, must be understood as an interdisciplinary issue as a facet between criminal law and state administrative law. Thus, the leadership of the Corruption Eradication Commission (KPK) is the highest controller and person in charge of law enforcement policies within the scope of the main duties and functions (tupoksi) in the

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field of prosecuting corruption eradication. This means that the deputy for prosecution, including those at lower levels, must be interpreted as a technical implementer of law enforcement policy controllers within the scope of his main duties and functions in the field of prosecuting corruption eradication.

We can see in Article 21 of the New Corruption Eradication Commission Law, which states that the composition of the KPK is the Supervisory Board, KPK Leadership, and KPK Employees. Indeed, there is no article that states that the KPK leadership is an investigator and general guide. However, Article 6 letters e and f of the Corruption Eradication Commission Law states that the KPK is in charge of conducting investigations, investigations, prosecutions, and executions. Meanwhile, leadership is one of the elements in the KPK. In terms of competence, it is impossible for KPK leaders who are not from the National Police / Prosecutor's Office to be in the position of investigators. If the leadership is an investigator, the KPK leadership must follow the requirements to attend and pass education in the field of investigation organized by the KPK in collaboration with the National Police and / or the Attorney General's Office. This is in accordance with Article 45A of the revised KPK Law.

The author agrees with what Indriyanto said, that the KPK leadership remains as an investigator and public prosecutor, even though it is not listed explicitly because if we look from the side of state administrative law, *ex officio*, the status of the KPK leadership remains as an investigator and public prosecutor. Because the leadership of the KPK is the controller and the highest person in charge of law enforcement policies to eradicate corruption, it can also be interpreted that the leadership is the investigator and public prosecutor.

Based on Article 6 Paragraph (5) of Law Number 30 of 2002 on the amendment to 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 KPK's duties are investigations, investigations, and prosecutions against corruption. It can be interpreted in terms of legal politics, the state, through its legislators, assigns to

the Corruption Eradication Commission one of them, textually, the KPK is attributed by the state to carry out investigations, investigations, and prosecutions of corruption. The KPK as an institution consists of a supervisory board that has the authority to grant wiretapping, search, and seizure permits, as well as KPK leaders and KPK employees. Thus, the KPK leadership has the attributable authority to investigate, investigate, prosecute, and even implement the judge's decision so that it is legal as an investigator and public prosecutor.

CONCLUSION

1. The development of Amendments to the Law on the Corruption Eradication Commission in Indonesian Legal Politics was marked by several changes to the Law, including Law Number 30 of 2002 concerning the Corruption Eradication Commission. The first amendment was made, namely Law Number 10 of 2015 concerning Stipulation of Government Regulations instead of Law Number 1 of 2015 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission. And the second amendment is the 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.
2. The Legal Politics of the Elimination of Articles of KPK Leadership are Investigators and Public Prosecutors in the Revision of the Law on Corruption Eradication Commission, the position of the KPK leadership must be understood wisely and completely, not to be interpreted partially so that the KPK leadership remains authorized to carry out investigations and prosecution. The new KPK Law must be understood as a facet (special law) between criminal law, state administrative law, and constitutional law. The new KPK Law cannot be read artificially and partially but must be fully interpreted and understood.

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BIBLIOGRAPHY

- Aditjondro, G. J. (2002). Korupsi Kepresidenan di Masa Orde Baru, dalam Mencari Uang Rakyat 16 Kajian Korupsi di Indonesia. *Buku I. Yogyakarta: Yayasan Aksara.*
- Akbar, A. M. S. (2020). Efektifitas Kewenangan Dewan Pengawas Komisi Pemberantasan Korupsi (KPK) Berdasarkan Norma Hukum Pasal 37B UU No. 19 Tahun 2019 Perspektif Masalah Mursalah. *Al-Balad: Journal of Constitutional Law*, 2(1).
- Andrisman, T. (2008). Analisis Penegakan Hukum Tindak Pidana Korupsi Oleh Komisi Pemberantasan Korupsi (KPK). *Studi Penegakan Dan Pengembangan Hukum.*
- Atmasasmita, R. (2002). *Korupsi, good governance, dan komisi anti korupsi di Indonesia.* Departemen Kehakiman dan HAM RI, Badan Pembinaan Hukum Nasional.
- Badjuri, A. (2011). Peranan Komisi Pemberantasan Korupsi (KPK) sebagai lembaga anti korupsi di indonesia. *Jurnal Bisnis Dan Ekonomi*, 18(1).
- Danil, E. (2021). *Korupsi: Konsep, tindak pidana dan pemberantasannya.* PT. RajaGrafindo Persada.
- Elda, E. (2019). Arah Kebijakan Pemberantasan Tindak Pidana Korupsi di Indonesia: Kajian Pasca Perubahan Undang-Undang Komisi Pemberantasan Korupsi. *Lex LATA*, 1(2).
- Fadhil, M. (2019). Komisi Pemberantasan Korupsi, Politik Hukum Antikorupsi Dan Delegitimasi Pemberantasan Korupsi. *Al-Ahkam*, 15, 7–36.
- Halimang, S. (2020). *Pendidikan Anti-korupsi: Pendekatan Hukum di Indonesia* [PhD Thesis]. Bildung.
- Hartono, M. R. (2017). Tinjauan Yuridis Normatif Peran KPK dalam Mencegah Tindak Pidana Korupsi. *Jurnal LEX SPECIALIS*, 21, 58–73.
- Koesoemo, C. R. T. (2017). Eksistensi Komisi Pemberantasan Korupsi (kpk) dalam penanganan Penyidikan dan penuntutan tindak Pidana korupsi. *Lex Crimen*, 6(1).
- Mahfud, M. (2006). *Mahfud. Membangun Politik Hukum, Menegakkan Konstitusi.* Jakarta: Rajawali Pers.

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- Marpaung, L. (2007). Tindak Pidana Korupsi pencegahan dan pemberantasan. *Djmbatan, Jakarta*.
- Marzuki, P. M. (2013). *Penelitian hukum*.
- Muhtar, M. H. (2019). Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum. *Jambura Law Review, 1*(1), 68–93.
- Mukti Fajar, N. D., & Achmad, Y. (2010). *Dualisme penelitian hukum: Normatif & empiris*. Pustaka pelajar.
- Muslim, M., & KPTPK, J. P. M. (2004). *Gerakan Rakyat Anti Korupsi (GeRAK) Indonesia*. Jakarta.
- Pope, J. (2003). *Strategi Memberantas Korupsi: Elemen Sistem Integritas Nasional*. Yayasan Obor Indonesia.
- Rahmat, A. (2018). *Urgensi Pengawasan terhadap Komisi Pemberantasan Korupsi Republik Indonesia dalam Struktur Ketatanegaraan Indonesia*.
- Rosyidin, M. (2009). *Kedudukan dan Peran Kpk Dalam Struktur Ketatanegaraan Indonesia (Studi Hubungan KPK dan Kejaksaan dalam Pemberantasan Korupsi)* [PhD Thesis]. Universitas Islam Indonesia.
- Sosiawan, U. M. (2019). Peran Komisi Pemberantasan Korupsi (KPK) dalam pencegahan dan pemberantasan korupsi. *Jurnal Penelitian Hukum De Jure, 19*(4), 517–538.
- Widjiastuti, A., Ritonga, R. Z., Citra, C., Wirya, I. N., & Sidharta, Y. (2016). *Pembagian Kewenangan Menyidik Tindak Pidana Korupsi Antara Kpk Dan Lembaga Penyidik Lainnya*.