International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 8, Issue 11
November, 2021
Pages: 345-358

The Corruption Eradication Commission's (KPK) Position and Function in the Indonesian State System

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http://dx.doi.org/10.18415/ijmmu.v8i11.3097

Abstract

One of the State Auxiliary Bodies that was established after the reform era in Indonesia is The Corruption Eradication Commission (known as KPK) that has stipulated in the laws. This study aims to determine the position of the KPK in the Indonesian constitutional structure based on the 1945 Constitution of the Republic of Indonesia and Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. The research method used is normative legal research by using statute, conceptual, and comparative approaches. The outcome of this observation shows that the position of the KPK in the Indonesian constitutional structure is as a state auxiliary body in Executive Agency fields carrying out its duties and functions independently. Although the 1945 Constitution of the Republic of Indonesia does not clearly state the Corruption Eradication Commission, implicitly its formation can refer to Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia with further provisions regulated in law and KPK's position has declared as a part of Executive Agency fields.

Keywords: *The Corruption Eradication Commission's Position; The 1945 Constitution of the Republic of Indonesia; State Administration Structure*

A. Introduction

Indonesia is a state of law (rechstaat), it has been confirmed by being included in the constitution in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia year 1945 (hereinafter referred to as the NRI Constitution of 1945). In the constitutional system, the 1945 NRI Constitution is a fundamental norm so that every regulation under it must still pay attention to the provisions in the 1945 NRI Constitution, in other words, all regulations contained in the state must be hierarchical, namely referring to the regulations that are above it.

Based on the Indonesian state system, the 1945 NRI Constitution has clearly distinguished the three branches of state power, namely in the legislative, executive, and judicial fields that appear in the functions of the MPR, DPR, and DPD, the President and Vice President, as well as the Supreme Court

(MA), the Audit Board (BPK), and the Constitutional Court (MK) as the main state organs, principal state organs) whose relationships with each other are bound by the principle of mutual control and mutual balance (Triwulan, 2015).

The check and balances mechanism is considered important because, during the previous two eras, namely the old order and the new order, it can be known that there is no check and balances system. As in lawmaking, the Executive has great power in the harmony of the drafting stages, both the process of triggering ideas and their endorsement. Referring to one of these examples, the check and balances system is needed (Mahfud MD, 2010). In addition, rulers tend to be corrupt if there are no strict restrictions on power.This led to the inclusion of a system of checks and balances between the legislature, executive, and judiciary. The primary state institution consisting of the three branches of state power instrumentally reflects the institutionalization of the main functions of state power and has a relationship with each other with the principle of check and balances (Wahyudi, 2013).

Along with the development of society in various aspects of life, we want a more responsive and more targeted, and appropriate state organizational framework in performing public services to achieve the objectives of government implementation. These developments affect the organizational structure of the state, including the form and function of state institutions. Thus, the birth of state institutions as a form of experiment in institutional development (institutional experimentation) can be realized as a council, commission, committee, board, or authority (Asshiddiqie, 2006).

The 1945 NRI Constitution embraced constitutional theory related to state institutions, namely the authority of state institutions has been determined explicitly and implicitly (Atmadja, 2015). There are state institutions whose authority is clearly (explicitly) mentioned in the Constitution and there are also state institutions whose authority is not mentioned, but the arrangements are further regulated in the law.

Based on current developments, many new state institutions have sprung up, some people argue that the emergence of independent state institutions or state commissions is a form of distrust of existing supervisory institutions, it can be seen from the function of new state institutions, mostly as supervisors of the performance of existing state institutions. In addition, these institutions were born because the performance of major institutions has not worked effectively and the public's insistence on realizing good governance.

So that the KPK Eradication Commission (KPK) was born. The establishment of this Commission as a mandate of Article 43 of Law No. 31 of 1999 jo Law No. 20 of 2001 on Combating Criminal Acts of Corruption is an early indication of the government's commitment to answer public demands at the time. To follow up the mandate in the Law and felt the need for a commission to maximize the handling of corruption eradication in Indonesia, in addition, the Law alone is considered not enough to accommodate the handling of corruption, then law No. 30 of 2002 concerning the Commission on the Eradication of Corruption Crimes. This commission is also legitimately established and has the legitimacy to carry out its duties. This institution was formed because the difficulty of eradicating corruption and its handling has not been optimal, besides that the eradication of corruption carried out by government agencies has not functioned effectively and efficiently, therefore professional, intensive, and continuous improvement is needed.

Indonesia as a participating state in the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003) fulfills the mandate of the Convention which requires each Participating State to establish an independent institution to eradicate corruption. The establishment of KPK based on Law No. 30 of 2002 is very relevant as a form of Indonesia's national commitment to sit equally high with other nations in preventing violations of economic and social rights that can result in more widespread poverty in the country (Sunggu, 2012).

As an adjustment and strengthening of the 2003 United Nations Anti-Corruption Convention, Indonesia has ratified the Convention in the law of the Republic of Indonesia No. 7 of 2006 on the Ratification of the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003).

Although the presence of the KPK has succeeded in uncovering many cases of corruption, some parties are starting to question the existence and position of the KPK in the structure of the Indonesian state. As well as regarding the duties, authorities, and obligations contained in Law No. 30 of 2002 concerning the Commission on the Eradication of Criminal Acts of Corruption, in addition to being a state organ that is not listed in the 1945 NRI Constitution, the KPK is considered by some parties to be an extra-constitutional institution because of the authority of the KPK which takes over the authority of other institutions obtained from the 1945 NRI Constitution, namely the police and prosecutors. This resulted in the filing of judicial review of Law No. 30 of 2002 concerning the Commission on the Eradication of Corruption regarding the position of the KPK and the Corruption Criminal Court, which then the Constitutional Court issued a decree of Mk No. 012-016-019 / PUU-IV / 2006 which stated that it had placed the position of the KPK in the state system as an institution whose function is related to judicial power (judicial) given the existence of the provisions of Article 53 of the KPK Law. however, the Article was declared contrary to the NRI Constitution of 1945 so that the arrangement regarding the establishment of a Criminal Court of Corruption must be with its Law to maintain the independence of the judiciary, but in 2017, the Constitutional Court issued Decree No. 36/PUU-XV/2017 that has placed the KPK in the realm of executive power resulting in the DPR's right to the KPK, but it will interfere with the independence of the KPK.

If examined further, then one of the consequences of changes to the NRI Constitution in 1945 is the emergence of various interpretations of State Institutions due to the lack of clarity of the 1945 NRI Constitution in regulating state institutions.

The existence of KPK is associated with the provisions in the 1945 NRI Constitution which states that (Article 24 paragraph (3) of the 1945 NRI Constitution):

"Other bodies whose functions relate to judicial power are regulated in law."

The provisions of the Article may open the door and as a legal basis for other institutions whose functions relate to judicial power. Matters concerning such other bodies are regulated in the law. However, as a state organ whose name is not clearly stated in the 1945 NRI Constitution raises various opinions about its position in the Indonesian state.

However, Yusril Ihza Mahendra Having another opinion, he stated that, when referring to its duties and authorities, the KPK is included in the executive domain even though it is an independent institution, it is because its duties and authority are equated with the Prosecutors and Police agencies that have the function of investigation, investigation, and prosecution (Antonius, 2021). Although structurally it is not located under the President such as the position of the Prosecutor's Office and the Police. He also argued another with Mahfud MD who said the KPK is a judicial body associated with Article 24 paragraph (3) of the 1945 NRI Constitution because the KPK does not examine, prosecute, and decide the case brought against them.

In one of the Articles contained in Law No. 30 of 2002 concerning the Commission on the Eradication of Corruption (Article 3 of Law No. 30 of 2002):

> "The Corruption Eradication Commission is a state institution that in carrying out its duties and authorities is independent and free from the influence of any power. "

However, after the enactment of Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 concerning the Commission on the Eradication of Criminal Acts of Corruption (hereinafter referred to as the revision of the KPK Law), there is a change in Article 3 of the revision of the KPK Law, which reads:

> "The Corruption Eradication Commission is a state institution within the family of executive powers that in carrying out its duties and authorities is independent and free from the influence of any power."

Although the KPK Law has been revised, it does not necessarily clarify or resolve issues related to the blurring of understanding of the position of the KPK, especially because the KPK is an auxiliary state institution that should not place itself as one of the three institutions of power because it is independent to avoid the intervention of other state institutions.

Based on the above presentation, this study will be discussed about the position of the KPK in the structure of statehood based on the 1945 NRI Constitution.

As a comparison material, there was previous research that examined the KPK, namely the Thesis from Hasnia from Gadjah Mada University in 2014 entitled Strengthening the Existence of the Corruption Eradication Commission (KPK) in Indonesia. Where this research was conducted to obtain the formulation of the policy concept of strengthening the existence of KPK and analyzing the existence of KPK in the criminal justice system in Indonesia. Furthermore, the Thesis from Ernny Apriyanti Salakay Universitas Atma Jaya Yogyakarta in 2015 entitled The Existence of The Corruption Eradication Commission as a State Auxiliary Body in the State System in Indonesia. The target to be achieved in this study is to find out the consequence factors on the position of the Corruption Eradication Commission as a state auxiliary body in the state system in Indonesia and can present various obstacles faced by the Corruption Eradication Commission and control efforts to the problems that arise. The subject of the study discussed in this article is different compared to the two studies that have been done. The aspects to be achieved from the research are different from the studies conducted in this paper, namely related to the discussion of legal issues.

B. Kpk's Position in the Structure of Indonesian Statehood Based on the 1945 NRI Constitution

Along with the development of the state with various complex problems in the state order faced, it has given birth to various new concepts in the practice of a state of a country, which affects the increasingly varied branches of the organizational structure of a country.

Such growth coloring the emergence of several independent state institutions or state institutions known as state auxiliary bodies (Mochtar, 2017). Existing state institutions formed based on or caused by the granting of power by the 1945 NRI Constitution and other Regulations under the Basic Law including presidential decrees (Kepres) (Triwulan, 2015).

The birth of these institutions is due to the understanding of the Triassic Politica which distinguishes institutional functions into legislative, executive, and judicial functions can no longer be a reference to analyze power relations between state institutions because it is considered insufficient needs of state administration that is very complex due to developments in the current state system that must be sensitive to changes so that it is expected that supporting state institutions can help support the government. yelenggaraan running effectively. In Indonesia, the direction of change in the emergence of new state institutions occurred as a consequence of the implementation of changes to the NRI Constitution of 1945. Following the statement submitted by the Constitutional Court that the birth of new state institutions in various forms is a logical consequence of a modern democracy that wants to more perfectly implement the principle of checks and balances (Harun et al., 2010).

Before the supporting institutions of the state were known, knowledge had spread about the main institutions of the state. State institutions regulated in the Constitution of the Republic of Indonesia of 1945 are also referred to as permanent state institutions. It is mentioned because changing an institution that has been mentioned in the Constitution of the Republic of Indonesia year 1945 is not easy and requires procedures that must meet the requirements in the mechanism of amendment of the Constitution of the Republic of Indonesia year 1945. If you look at who formed this state institution, it is the same as where the Constitution of the Republic of Indonesia in 1945 is located. can be formed or changed, i.e. must be through MPR.

The existence of state institutions in the Constitution of the Republic of Indonesia in 1945 because it believes that the state institution is very vital and represents three branches of power, although not all existing state institutions can be considered as representatives of the branch of power.

At first, the existence of the establishment of an independent institution aims to provide limits to the power of executive institutions that are too large (heavy executive) at the time before the reform period. This is an attempt to assert a democratic legal state as an achievement of the Republic of Indonesia. However, the pattern of organizing the implementation of this country continues to shift and develop, thus finding its pattern to escape from existing forms.

Independent institutions cannot intervene in attitudes or policies that are predicted to bring benefits to the goals that have been set for them, because the benefits to the nation and the state are one of the binders.

Broadly speaking, what is to be achieved from the nature of this independence is regardless of the insistence and impact of attachment to any politics, and free from the accountability of the role entrusted by any institution that messes with the main role or purpose it has as a supporting institution or aide to the implementation of government.

In a model of state regulation applied by Indonesia, state institutions that have been grouped as independent state commissions have all met certain prerequisites, namely having characteristics (Tahuda, 2011):

1. The legal footing of its establishment affirms the independence of a related independent state commission in terms of the implementation of its duties and functions (normative conditions);
2. Independent, in the sense of independence from interference, desire, or dominance from other branches of power;
3. In the event of the release and confirmation of commission members, a specific procedure is regulated, not only based on the president's demands;
4. Have a leadership system that engages the individuals concerned in making decisions and policies by pursuing approved methods, such as the decision of the termability;
5. The governing axis of the body forum or council is not monopolized by the largest power of a particular political party;
6. The working period of the definitive cabinet, body, or council leaders, is completed simultaneously, and can be reaffirmed at a period thereafter; and
7. The institutional position of the country is not infrequently aimed at maintaining the equality of representatives who are in an impartial position.

However, not all of these characteristics may be met, so according to the author, the characteristics should be fulfilled if a state institution is classed as an independent state commission that is the nature of its independence because the state commission can be said to be independent if it has the principle of independence or independence. Similarly, characteristics 1 and 3 are the main characteristics related to other characters.

Based on the above analysis, there are several state institutions regulated outside the 1945 NRI Constitution that can be classified as independent commissions or state institutions, because they meet the characteristics described earlier, one of which is the KPK.

Before the birth of the KPK, in Indonesia there have been several anti-corruption institutions, among others (Suyanto, 2018): 1)" Corruption Eradication Team (TPK); 2) Commission Four; 3) Operation Control; 4) Corruption Eradication Team; 5) State Organizer's Wealth Checking Commission (KPKPN); 6) Joint Team to Combat Corruption."

KPK becomes very important to be formed because it sees cases of corruption that are increasingly rampant in the country, occur in executive, legislative, and judicial institutions, not only at the central level but also penetrate at the lowest levels of government. Corrupt practices can undermine the democratic process so that there needs to be significant and integrated efforts to fight corruption cases. The community raises the hope that the KPK as an independent institution can eradicate corruption in Indonesia.

The crime of corruption is equated with an attack on the essence of democracy, namely the high esteem of openness, responsibility, and credibility, as well as the peace and stability of Indonesian citizens. It is because of this reason that corruption reflects criminal acts that have the most advanced nature and burden optimal sustainable development so that it takes avoidance and crackdown movements of global character, organized, and consistent both at the domestic level and cross-domestic levels. To prevent and quell corruption crimes implemented efficiently and effectively, factors are needed to support the regulation of good governance management and cross-border cooperation, including the recovery of assets derived from corruption.

The realization of corruption is a crime that not only occurs within the state but can be concerning other countries so that other arrangements are needed to accommodate the legal needs of a country, one of which is through an international Convention.

To strengthen the,instrument of combating corruption in Indonesia, in addition to the establishment of Law No. 30 of 2002, the Indonesian government has also enacted the United Nations Convention Against Corruption (UNCAC) or the PPB Anti-Corruption Convention by Law No. 7 of 2006. It is also because Indonesia has participated actively in the efforts of the international community to prevent and eradicate the crime of corruption and become a participating state so that it is required to establish a special body to eradicate corruption because the problem of corruption is a cross-national crime, no longer just a national dilemma of each country.

Of the various conventions that have been ratified by Indonesia, one of them is the United Nations Convention Against Corruption (UNCAC), 2003 which has been ratified through Law No. 7 of 2006 concerning the ratification of United Nations Convention Against Corruption, 2003 (United Nations Convention against Corruption, 2003) as a way to find the right steps in trying to control corruption crimes in Indonesia, because Indonesia focuses on the problem of corruption.

With the enactment of the United Nations convention UNCAC, 2003 in Article 36 can be concluded that Indonesia as a member state should establish a special body established to overcome the problem of corruption through law enforcement following the law imposed in Indonesia. Bodies and persons related to this are given freedom or education to carry out functions effectively and independently

from interference from other parties. In addition, another important thing that encourages Indonesia's participation in the Vienna Convention is that each Member State of the Convention to make demands for assets derived from corruption has a solid international legal foundation concerning bilateral and multilateral cooperation, which strengthens the progress of combating corruption in the country.

An important thing for the success of a country's anti-corruption strategy is the existence of anti-corruption institutions formed to implement laws to comply with conventions. The importance of this institution is recognized by UNCAC, which is contained in Articles 6 and Article 36, determined by the obligation of the States Parties to ensure the existence of a body or several bodies that exercise the discretions and measures of the Convention.

> "Each State Party shall, following the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption."

Then continue on another provision that states that:

> "Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, following the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their function, shall be provided."

The Provisions make it clear that each State Party to the Convention shall establish a special independent body so as not to be interrupted by any other party. As also stated in Article 36 reads “Each State Party shall… ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence,…”

In Indonesia, corruption is rife in various lines of life that have an impact on the survival of the country's economy. Preventive efforts to overcome the problem of corruption crimes have been passed in various ways through existing institutions such as the Police and Prosecutor's Office, but still experience obstacles so that the handling is not optimal. Therefore, the Commission on the Eradication of Corruption or KPK is formed as one of the supporting state institutions (state auxiliary body).

The principle of the state of the law as a reference explained that every activity carried out within the state must be based on the legal norms imposed, covered in the establishment of an independent state commission that has a level and function equivalent to other state institutions as a form of embodiment of state objectives as mandated by the 1945 NRI Constitution.

Based on the hierarchy of laws and regulations contained in Law No. 12 of 2011, the legal basis for the establishment and legitimacy of the authority of independent state commissions both conceptually and normatively can be classified into three categorizations, namely (Tauda, 2012):

1. An independent state commission was formed based on the constitution (constitutional organ/constitutionally entrusted power).

2. Independent state commissions formed based on legislation (legislatively entrusted power) which can be separated again into an independent state commission with the status of constitutional importance (equivalent to state institutions formed through the constitution to be realized democratische rechtstaat) And those who are not status constitutional importance.

3. Independent state commissions formed are based on other laws under the law (presidential policy).

Regarding the establishment of the KPK, if it is related to the nature of the establishment of the institution, the KPK is ad hoc, meaning it was formed for certain purposes and tasks, namely combating corruption in Indonesia without a certain period, time to complete the task at its disposal. Therefore, the KPK is independent as a permanent state institution and must be free from the influence of any power. Kpk was established in a special context to deal with corruption in Indonesia when it was still a major problem for the country (Wardojo and Purwoleksono, 2018)

State auxiliary bodies It can be born, died, and allows to be digested. The question that comes up depends on the state of a country. A question that should be considered in the formation of state auxiliary organ that is paying attention to existing institutions because the state auxiliary body in its duties and competencies is related to the main institutions of the state. Therefore, it is necessary to know institutions such as how it is desired to solve certain problems in achieving national goals (countries) (Triwulan, 2015).

Following the development of the current state structure, the KPK is included in state institutions that exercise the authority of services or state auxiliary institutions (state auxiliary organ) It is an organ that is independent under the Act but has the nature of constitutional importance. Although it has a duty of service, locally the state auxiliary body has the capacity and essential role in the realization of the national mission related to this matter is to achieve a country that is free from corruption, collusion, and nepotism.

The emergence of the KPK has a constitutional juridical basis referring to Article 24 paragraph (3) of the 1945 NRI Constitution, which can be seen in the phrase "other bodies" which indicate that it can be arranged in any law whose substance is mixed with the substance of different laws, such as the Law on the Eradication of Criminal Acts of Corruption can also arrange the creation of a new organ under the name of the Commission on the Eradication of Criminal Acts of Corruption that has functions related to the function of the law. judicial justice (Asshiddiqie. 2006).

The presence of the KPK is constitutional because it is based on one of the widest archives, namely the laws and regulations as particles of the constitution that are not contrary to the archives, namely the 1945 NRI Constitution (Mahfud MD, 2007).

Kpk as an institution that helps the state can be equated with state institutions contained in the 1945 NRI Constitution because it has equality in terms of organizational structure that has a Secretary-General and Research and Development Agency owned by other state institutions such as the Judicial Commission, it can be revealed that its royalty is structurally equal to the Supreme Court and constitutional court. However, functionally, its character is supportive (auxiliary) of the institution of judicial power (Fitri, 2014).

The KPK's position as a supporting state institution in Indonesia's state system is its free nature and the KPK's presence depends on the country's legal policies. Regarding the freedom of the KPK as a state support institution, it must be self-sufficient that is not bound by the impact of other state organs. Another organ of the state is the core organ or the core institution of the state. This good independence in institutional understanding or in the understanding of carrying out the main instructions and their role in the extermination of corruption. Handling corruption cases must be done in a real way and without tolerance also without negotiations in the eradication of corruption. The essence of independence is the ability carried by the KPK to behave objectively in the formulation of its guidelines without the pull of the relevance of different camps. Furthermore, the existence of the KPK is very dependent on the political law of the country, as far as the achievements that require the KPK. This matter is crucial to understand considering that the function of the KPK has actually been carried out by other institutions, but thus its existence has not been effective so the KPK was formed.

If observed, there is a fundamental distinction in the establishment of state auxiliary institutions as independent institutions that perform the nature of service, it is necessary to be given direction for all certain state institutions in the implementation of authority, the main state institutions and state institutions that perform service authority is to achieve the state objectives following the mandate of the 4th Mandate of the Opening of the NRI Constitution of 1945.

By combining the theory of authority with the concept of the function of serving state institutions, it is seen that the position of the main state institutions and state auxiliary agencies has a degree of position and the endpoint achieved is the achievement of the state entrusted by the constitution as clearly stated and vague in the Opening of the NRI Constitution in 1945 paragraph 4.

The problem that arises is because the primary organs are regulated in the constitution, so certainly the institutional pattern is permanent institutions, while state auxiliary organs have institutional colors that are temporary can live and develop and be possible to be removed. This depends on the environment and the main political circumstances it can be mentioned that the lighter of the presence of state auxiliary organs is the result of distrust of associations with conventional state institutions that exist. Therefore, the idea is to be clearer policy (policy) about the function and position of state auxiliary agencies as an independent institution to realize the state objectives to be achieved, should grand design be regulated in the constitution.

Based on the above explanation, it can be understood that the classification of state institutions to be grouped into state auxiliary agencies is, first, based on the legal basis of its formation. If examined from this concept, automatically all state institutions whose capabilities are regulated outside the 1945 NRI Constitution can be classified as state auxiliary agencies, either the basis of its establishment through the Law or Presidential Regulation (Perpres). Second, in terms of independence and serving function of the organ, it can be concluded that independent state institutions regulated by law and presidential regulations can be classified as supporting state agencies (state auxiliary agencies).

However, if more examined again, the absence of regulations based on the position of independent institutions in the 1945 NRI Constitution is a theoretically normative weakness in the formulation of constitutional changes and is a limitation of the study of the designers of the constitutional change.

In some of the rulings issued, the Constitutional Court has shared an understanding that solidifies the role and authority of the KPK in the state governance system, including that the KPK is a permanent body located within the framework of an independent executive.

Related to this, several previous MK Rulings have positioned the KPK more in the act of implementing the duties of judicial power with the entrance of the KPK based on the provisions of Article 24 paragraph (3) of the 1945 NRI Constitution. This concept has indeed been following the importance of the KPK's position which is classified by Jimly Asshiddiqie as a "constitutional importance" institution, which has an equally important position with state institutions whose position is regulated in the 1945 NRI Constitution.

But after the issuance of The Constitutional Court Decision No. 012-016-019/PUU-IV/2006, Article 53 was declared "contrary to the 1945 Constitution in a limitative manner, i.e. it still has binding legal force until the change is held no later than 3 (three) years from the date the verdict is pronounced." Contained meaning, the preparation related to the establishment of the Mandatory Tipikor Court with its law, not in the KPK Law.

The ruling confirmed the KPK as a state agency in the executive region. This, among others, can be known from the statement of the House of Representatives in The Constitutional Court Decision No. 012-016-019/ PUU-IV / 2006 which states, "regarding the establishment of the Tipikor Court, which is

not with its laws, it does not automatically mean that there is a merger of executive and judicial powers in the hands of the KPK because there is indeed a clear separation of functions between the two." (Constitutional Court Decision No. 012-016-019/PUU-IV/2006).

Currently, Law No. 19 of 2019 concerning the Commission on the Eradication of Corruption. If referring to the Law there is an increase in words that were not initially seen in Law No. 30 of 2002 whose consequences relate to the change in KPK formation institutionally. According to Article 3 of Law No. 30 of 2002 which states that "The Corruption Eradication Commission is a state institution that in carrying out its duties and authorities is independent and free from the influence of any power." Meanwhile, in the addition of the sentence is "The Corruption Eradication Commission is a state institution in the family of executive power", the change of the KPK Law puts the KPK into an institution whose position is in the executive area.

Broadly speaking, there is a comparison override of the role of the KPK in the state system after the improvement of the KPK Law. Sourced in both arrangements, it is clear that the transfer of the independent KPK institutional format is free from any direction to become a shackled KPK in the executive area. It feels contradictory even if it belies the meaning of independence. On the one hand, the KPK has now been independent in the implementation of its duties and authorities and free from the demands of outside powers, on the other hand, the KPK is institutionally integrated into the executive area. Is it possible for the KPK to be able to serve effectively as it was originally if the KPK is shackled in the executive's grasp. The revision of the KPK Law will affect the existence of the KPK as a special institution with special regulations and authorities.

In the last four rulings, the Constitutional Court determined that "the KPK is the power of the state of independent character." Conceptually, the grouping of independent organs such as KPK, KPU, KY, Komnas HAM, as an independent axis of state power, can not be separated from the function of these organs that are mixed with sari. It sometimes plays the role of quasi-executive, quasi-legislative, or quasi-judicial. In a sense, the KPK also cannot be categorized as pure-executive (Rishan, 2019).

The transfer of the role of the KPK after the issuance of Law No. 19 of 2019 has shown if its location in the state system cannot be released in all three branches of power. It means that the KPK has become an executive part and is related to the branch of power, although it is estimated as an independent institution in the capacity of a state institution, in authority the KPK is independent. Because in carrying out its duties and functions the law rules it.

By initiating anti-corruption authority in one of the spheres of power leaning towards the anti-corruption agency becomes non-independent, which further impacts the unprofessional work of the corruption eradicator institution. If non-independent, easy to intervene, a clash of interests will be a major obstacle to the work of anti-corruption agencies (Indrayana, 2016).

Strengthening the external supervision system of KPK institutions is also a demand of the principle of checks and balances between independent state institutions/commissions with the main state power (executive, legislative, and judicial). This check and balances relationship can be carried out either directly or indirectly, so theoretically the existence of an independent institution still cannot close itself from its relationship with the main institution (triass politica). But of course, this relationship aims to achieve the maintenance of a clean state and there is no indication of abuse of authority by any of the independent institutions.

Independence also means that the anti-corruption commission does not hold the obligation to report the results of its work to any of the competent branches. If necessary, what is submitted is not a report as a more inferior institution, but sufficient information as a form of performance accountability,

for example in the form of a disseminated Annual Report, or the form of a voting meeting with parliament (Indrayana, 2016).

Looking back, then there is something important in The Constitutional Court Decision No. 36 / PUU-XV / 2017 contains an explanation:

> "positioning the KPK into state institutions that are in the realm of executive power, because it carries out the duties of investigation and prosecution in criminal acts of corruption that are the same as the authority of the Police and/or prosecutors." (Decision of the Constituent Court No. 36/PUU-XV/2017)

Furthermore, it is also stated that the location of the KPK that appears in the executive environment is not interpreted to make the KPK non-independent and regardless of any direction. Therefore, independent status must remain attached to the KPK.

If observed the phrase is in the executive domain it means that the KPK's position in the institutional structure of the state is only classified in the realm of organs that exercise authority in the executive field, not organs that are structurally entered and part of executive power. So that the classification of KPK position in the executive domain is coordinated only to executive power instead of being a sub-ordination under the executive.

In addition to the KPK, there are state institutions whose substance of authority has not been stipulated in the 1945 NRI Constitution, such as the Central Bank. Article 23D of the NRI Constitution of 1945 only stipulated "The State has a central bank whose structure, position, authority, responsibility, and independence are regulated by law." That is, what is the authority of the Central Bank will still be given arrangements in the Law and the NRI Constitution of 1945 has not given any authority to the Central Bank. In addition, the name of the Central Bank has not been determined by the 1945 NRI Constitution, although the current central bank designation is Bank Indonesia, the designation is not a designation made by the 1945 NRI Constitution, but by law based on the actual circumstances inherited from the past. The 1945 NRI Constitution only provides a wtak of the ability of the Central Bank that is only emphasized to be independent, although the nature of its independence itself should still be regulated further in the Act.

Furthermore, the Electoral Commission, although his identity has not been identified with certainty, his capacity as an organizer has been confirmed. Article 22E paragraph (5) of the 1945 NRI Constitution stipulated that "General Elections are held by a national, permanent, and independent election." Interpreted, that the Election Commission is the organizer of the election, and as an organizer, he is national, permanent, and independent (independent). The designation of the General Election Commission is not a designation made by the NRI Constitution of 1945 but by the Law.

Therefore, both the Central Bank and the Election Commission can still be viewed as constitutional aspects in terms of their capabilities. If the implementation of the application of authority or character of its authority is in deviation from the provisions of the 1945 NRI Constitution, by such a point it can be used as a topic of dispute in the court as long as it is attached to the lines of the constitutionality of its authority.

Since the enacting of Law No. 19 of 2019 further confirms the position of the KPK which is incorporated into the executive area. This is also closely related to the rights of the DPR questionnaire that has previously been discussed in The Constitutional Court Decision No. 36 / PUU-XV / 2017.

Conceptually the use of the right of questioning to independent state bodies will dredge up some conceptual arrangements in the legal and political sphere of statehood. The first part, viewed from the

theoretical point of the independent state commissions, so as not to be confined within the executive, legislative, or judicial spheres. The independent state commission is the fourth branch of power whose typology of authority carries out functions mixed with sari. It can be quasi-executive, quasi-legislative or quasi-judicial, or mix-function of some of these typologies.

Part two, if examined from the limitation of power and the relatedness of its authority, then the right of angket becomes insignificant targeted to an independent state commission. But this does not necessarily make an independent commission the axis of the branch of power that is anti constitutionalism, because there is no other authority, especially the institutional administrative relationship that is free-footed without the balance of other branches of power. Reviewed from the appointment of commissioners, authorities, to institutional administrative responsibilities, all rubbed directly against the executive, legislative, and judicial branches of power.

The existence of the KPK located in the executive area was also inaugurated as the subject and object of angket rights as the scope of the application of the use of DPR supervision sourced in the constitutional court decision No: 36 / PUU-XV / 2017 does not provide strengthening the fundamental legal foundation of institutional and distinctive patterns as an independent state institution. Furthermore, it has implications not only for the organization but also on authority, responsibility, and integrity. The need for understanding that the independence of a strong state institution, without qualified authority, will not produce a KPK that is effective in carrying out its duties. Therefore, the constitutional court decision No: 36/PUU-XV/2017 has an impact on the position of the KPK.

By positioning the KPK as an organ located in the area of executive power, the KPK can be the object of the use of DPR's voting rights as a representative of the general public who performs the role of supervision. However, the allocation of angket rights by the DPR cannot be applied if the KPK is carrying out the duties of investigation, investigation, and prosecution. In other words, that the KPK cannot be handled when the KPK is carrying out its duties. Because it is related to the independence and freedom of the KPK from the influence of any power is in the fulfillment of its duties and authorities.

Theoretically the right of supervision carried by the DPR, at least can be detailed into six points, which are summarized as follows (Bima et al., (2019): ”a) Oversight of policy determination (control of policymaking); b) Supervision of policy implementation (control of policy exciting); c) Oversight of state budgeting and spending (control of budgeting); d) Oversight of the implementation of state budgets and spending (control of budget implementation); e) Implementation of government performance (control of government performances); f) Oversight of the appointment of public officials (control of the political appointment of public officials).”

It can be seen that the supervisory authority held by the DPR above is too broad, and this right is half of the supervision held by the DPR. Because in the DPR is the KPK, where the capability and role of the KPK is the destruction of the problem of corruption, therefore if it is not limited then it can be compared to the territory of law enforced by the KPK for the crackdown on corruption crimes.

The right of the committee held by the DPR is the power for an investigation related to the government and/or the implementation of the State, not in the context of the enforcement of the law. The vacancy of restrictions on the DPR's voting rights to the KPK stemming from the constitutional court's decision Number: 36/PUU-XV/2017 can be affected by the enforcement of the law carried out by the KPK. KPK is a state organ that in carrying out its capacity and capability to stand on its own feet and be free from interference from other parties. KPK is designed the purpose is none other than intended for the use and successful use of the eradication of corruption issues.

Thus the organizational formation that puts the KPK in the territory held by the executive ends in the scope of the KPK movement to be very limited. Moreover, the KPK is most likely anchored to a fragile state to be mixed by political colleagues especially located in the executive area the result at the end of corruption cannot be effectively eradicated.

There are four aspects that can be used as a content of Pansus Angket investigation against KPK (Rishan, 2019): ”1) In terms of institutions, the investigation procedure should not separate the institutional concept of the KPK as an independent state commission. For example, the internal organization of the KPK; 2) If it is associated with the aspect of authority, the object of the questionnaire is limited to the context of the prevention function in the sense of revision of the KPK Law. But for the coordination and follow-up function of the KPK, the object of the investigation can be carried out as long as it is not processed by the KPK; 3) If this is related to the use of budget, it must first be proven by the findings of the CPC. The topic of questionnaire investigations could have penetrated budget management in the KPK environment, provided that the CPC findings revealed inappropriate financial reporting.”

If referring to the previous conceptual character, there are constitutional restrictions that clarify the use of DPR research rights against the KPK. This constitutional restriction is closely related to concluding the consequences of the Constitutional Court's decision, which expands the subject and object of the questionnaire as stipulated in the Constitution of the Republic of Indonesia of 1945.

Based on the description of the previous explanation, then its position within the executive scope makes it able to be subject to Angket Rights by the DPR but with the provision of limitations in the implementation of the Angket Rights.

Conclusion

The position of the KPK in the Indonesian State Structure was previously a separate part of its power outside the conception of trias-politica, but after the enactment of the revision of the KPK Law, there was a change related to its position, which is currently an independent state auxiliary organ that is included in the territory of executive sovereignty which in the implementation of its duties and authorities is independent. In addition, although the 1945 NRI Constitution is not clearly stated the name of the Corruption Eradication Commission, implicitly the establishment of the KPK can refer to Article 24 paragraph (3) of the 1945 NRI Constitution with further arrangements stipulated in the law. The existence of the KPK is as important as other state institutions because, in addition to its establishment based on a clear legal basis, namely the Law, the KPK has also played an important role in combating corruption in Indonesia, so that although its position as a state auxiliary body, does not make its position can be ruled out.

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