



Dialectics Formulation Article 40 of Law Number 19 Year 2019 Concerning the Corruption Eradication Commission and the Increased Effects Regarding the Authority to Stop Investigation and Prosecution (SP3) on Corruption

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Abstract

Corruption cases always get serious handling of the legal process. The legal process of corruption cases in addition to providing serious handling must also prioritize the rights of the suspect in the corruption case. The suspect's rights include the right to equality before the law. This right is absolute because it belongs to everyone. The right to equality before the law is also a part of human rights. The process of stopping investigations and prosecutions in the latest KPK Law is a legal development where the rights of criminals will be upheld, namely equality before the law. Accordingly, the author wants to examine more deeply the formulation of the discourse and the impact on Article 40 of the KPK Law regarding the termination of investigations and prosecutions.

Keywords: *Discourse; KPK; SP3*

Introduction

Corruption occurs as a result of the weakness of the bureaucratic system of public service providers and the weakness of the control system in employment relationships that bring in financial resources, by taking advantage of certain situations and the cycle of state growth, development of social systems, and harmony of government structures. Corruption is a problem that arises starting from a small scope of community life, villages/kelurahan, state institutions to the system of government officials.¹ In 2019 the government's efforts to improve the system within the KPK have been realized by changing the KPK Law, namely Article 40 to be exact. Where in Article 40 of the previous Law the KPK was not given the authority to issue SP3 but in 2019 the Law was changed by providing KPK has the authority to issue SP3. Article 40 paragraph (1) of the Corruption Eradication Commission Law which reads that the Corruption Eradication Commission may stop the investigation and prosecution of Corruption Crime cases whose investigation and prosecution are not completed within a maximum period of 2 (two) years.

¹ Djaja Ermansjah. (2008). *Memberantas Korupsi bersama KPK*. Sinar Grafika : Jakarta. Hlm: 2

In accordance with this, the KPK has indeed been given the authority to issue SP3 letters within 2 years but in those 2 (two) years the KPK was able to resolve the cases it was handling while many cases were stalled. of 2 years. In accordance with this, there is a discourse or pros and cons to article 40 of the KPK Law. There are many contradictions with Article 40 of the KPK Law. This contradiction occurs in the community, especially academics and legal experts. Many rejected but also many supported, the reason for rejecting the amendment to Article 40 is that the KPK is no longer superbody because it has the right to issue SP3 as well as ordinary law enforcers, the Prosecutor's Office and the police. While the reason that supports the KPK being given SP3 authority is that the KPK is not an angel in carrying out legal processes it cannot be arbitrary, the facts show that there have been many cases that have been stalled for years that underlies the issuance of SP3 in the KPK.

Research Method

This study uses a normative method which in this study uses a deductive data analysis method, namely drawing conclusions on a problem with a general nature to the real problems faced..² The legal data that has been collected through the legal inventory process is then classified for further in-depth analysis by exploring the basic principles, values and norms contained therein. Then checks with other laws and regulations to find the level of synchronization, whether there are inconsistencies between the laws and regulations.

Discussion

1. Dialectics of Article 40 of the KPK Law

Discourse (derived from the Latin, *discursus*, which literally means "running back and forth") or discourse is a form of communication both orally and in writing. In philosophy, discourse is a concept developed by Michel Foucault in his works.³ There are so many figures who argue about discourse or dialectic. Hegel's dialectic The concept of thinking about Hegel's dialectic, Hegel gives an opinion about dialectic, namely that there are two things that are contradicted and then reconciled or commonly known as a thesis (assertion). Antithesis (denial) and synthesis (unity of contradictions). Karl Marx argued that dialectics comes from the Greek "dialego" meaning reversal, disputation, the term dialectic Karl Marx refers to the fundamental conditions of human existence. The old definition of dialectics means the art of achieving the truth by means of opposition in a debate from one contradiction to the next.⁴

Tan Malaka on dialectical thinking mentions a theory called Madilog (Materialistics, Dialectics, and Logic).

1. The material here is what can be seen with the senses, which then becomes an idea or idea. Materialistic thinking, ideas come from the results of sensory manifestations that are processed in the mind which gives birth to a new concept.
2. Dialectics, according to Tan Malaka, namely Dialectics is a concept that rejects final knowledge and truth and presents the fact that there are other possibilities that depend on what influences these possibilities.

² Setiono. (2010). *Pemahaman Terhadap Metodologi Penelitian Hukum*. Pascasarjana UNS : Surakarta , Hlm : 45

³ KBBI, 2022. *Kamus Besar Bahasa Indonesia (KBBI)*. [Online] Available at: <http://kbbi.web.id/pusat>, (diakses pada 23 Juli 2022)

⁴ Franz Magnis Suseno, 2003, *Enam Pemikir Marxisme dari Lenin Sampai Tan Malaka*, Penerbit : Gramedia Pustaka Utama, Jakarta, Hlm : 20-23

3. Logic, is a science that places laws on the search for new knowledge, so that new knowledge will be difficult to obtain if without the laws of logic. Tan Malaka sees that logic can connect the world of reels with the world of ideas through.

these theories when it is collided with the change in Article 40 of the KPK Law, namely that of Tan Malaka who stated that: A concept that rejects final knowledge and truth and presents reality that there are other possibilities that depend on what influences those probabilities. The author here analyzes that the amendments to Article 40 regarding SP3 have not produced the final truth, meaning that departing from these events such as the Judicial Review up to 2 (two) times against the KPK Law Article 40 did not produce results where the reasons put forward by the Petitioners remained rejected by the Constitutional Court, the Constitutional Court has another opinion regarding Article 40 which the author has described above. Based on the theory of Tan Malaka that in the sentence "that there are other possibilities that depend on what affects these possibilities". According to this theory, it can be formulated that the events that have stalled in corruption cases that have caused legal uncertainty for the suspect are possible for the approval of SP3 by the Indonesian House of Representatives. Karl Marx argued that dialectics means the art of achieving truth through contradictions in debate from one contradiction to the next. According to Karl Marx's theory, there can be clashes regarding the debates that occur in Article 40. On the other hand, the fact that the KPK has SP3 authority may cause the KPK to handle corruption eradication efforts that are not in line with the ideals of the Indonesian people. Many cases that are absent for more than 2 (two) years can be in SP3. On the other hand, there are many corruption cases that have been stalled and even dragged on for years, the suspect does not get legal certainty in his case.

2. The Adverse Effects of the Emergence of Article 40 of the KPK Law

Mahfud MD stated that the phenomenon of Corruptors Fight Back could happen again, as in around November 2006 a fairly hot polemic emerged regarding efforts to eradicate corruption in Indonesia which turned out to be opposed in various ways by certain parties. petition for Judicial Review of Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPTPK), which was then better known as the KPK under another name given the above law, until November 2006 no less than seven times the KPK Law was requested for a judicial review to the Constitutional Court.⁵ The author will analyze the adverse effects that occurred regarding the emergence of Article 40 of the latest KPK Law.

a. The Corruption Eradication Commission (KPK) is Considered not an Independent Institution.

The KPK was formed based on Law Number 30 of 2002 which was amended by Law Number 19 of 2019 concerning the Corruption Eradication Commission. sustainable. The KPK is an independent state institution, which in carrying out its duties and authorities is free from any power. The KPK is led by the KPK leadership consisting of 5 (five) people, a Chairperson who is concurrently a member and 4 (four) deputy chairmen who are concurrently members. Seeing from the very heavy task of the KPK, the KPK should be given the right of immunity against the agency.

According to Denny Indrayana, "Immunity rights have been recognized internationally, especially for independent anti-corruption institutions such as the KPK".⁶ The right to immunity is an internationally recognized right. This right is mainly given to people or bodies/institutions who are vulnerable to interference in the implementation of their duties and functions to eradicate corruption. According to this theory, the KPK should have special immunity rights because there are many enemies who will destroy the KPK. If observed in Law 19 of 2019 concerning the KPK in Article 40, it is an effort

⁵ Moh. Mahfud MD, 2011, *Perdebatan Hukum Tata Negara (Pasca Amandemen Konstitusi)*, Rajawali Pers, Jakarta, hlm. 197.

⁶ IGM Nurdjana, Vol. 21, No. 4 Tahun 2012 *Sistem Hukum Pidana dan Bahaya Laten Korupsi (Perpektif Tegaknya Keadilan Melawan Mafia Hukum)*, Jurnal UGM : Yogyakarta, hlm. 5

to weaken the KPK where the authority of one of the KPK's powers is cut, namely that the KPK is given the authority to issue SP3, this SP3 should not be given to the KPK because this institution is in handling corruption cases involving corruption cases. It took quite a long time and even though the KPK was not given SP3 the KPK in carrying out its duties and authorities still paid attention to prudence.

The Corruption Eradication Commission (KPK) is an institution devoted to the Eradication of Corruption, this is stated in Article 1 paragraph (3) of Law number 19 of 2019 concerning the Corruption Eradication Commission (KPK).

Article 1 Paragraph (3)

of the Corruption Eradication Commission which hereinafter referred to as the Corruption Eradication Commission is a state institution within the executive power clump that carries out the task of preventing and eradicating Corruption Crimes in accordance with this Law.

According to the article, it is clear that the task and authority of the KPK is to handle corruption cases. The emergence of Article 40 of the KPK Law is indicated to weaken the KPK as an independent institution. Because the authority is limited by its own rules. The KPK's authority should be in all directions in eradicating Corruption Cases, the emergence of Article 40 of the KPK Law resulted in the KPK being limited in eradicating corruption cases and the KPK only as an ordinary law enforcement agency.

b.Cases Whose Handling Is More Than 2 Years May Be Issued SP3 (Should Still Be Eligible to Continue)

Investigators after finding a bright spot about a criminal act and finding the perpetrator and evidence, then the investigator must then submit the report file in the form of an Examination Report (BAP) to the public prosecutor to further draw up a claim and submit the case file to the court. If the investigator does not find a bright spot about a criminal act, the investigator will stop the investigation based on his authority, namely by issuing a Letter of Determination for Termination of Investigation (SP3).⁷

The author's analysis of this should be that the KPK Law, especially Article 40, is not based on the 2-year period of issuance of SP3. The handling of corruption cases should be based on the discovery of evidence and evidence found by investigators in this case based on Article 44, namely:

Article 44

"If the investigator in conducting an investigation finds sufficient preliminary evidence of an alleged criminal act of corruption, within 7 days at the latest work as of the date on which sufficient evidence was found. Investigators report to the KPK"

Article 44 paragraph (2)

"Sufficient preliminary evidence is deemed to have existed if at least two pieces of evidence have been found, including but not limited to information or data that is spoken, sent, received, or stored either normally or electronically or optically. "

⁷ Pudi Rahardi. 2007, Hukum Kepolisian (profesionalisme dan Reformasi POLRI),Hal : 34 LakBang Mediatama

If you look closely, it is clear that the Corruption Eradication Commission operates in accordance with the discovery of evidence, not based on time. The suspect can file a pre-trial regarding the evidence submitted by the KPK whether or not the evidence is valid.

c. The Prestige of the KPK in the Eyes of the Public May Decrease

The author will explain or analyze the negative impact of changes to the Law on the KPK when viewed from the community's point of view. Since the beginning of the emergence of the KPK, this institution has always received high trust from the public. This is evident from a survey conducted by the Indonesian Survey Institute (LSI) in mid-2019, which determined that the KPK was ranked first by winning 84% of the public's trust level. Then followed by the president and the police who got a score of 79%.⁸ It can be said that the KPK is still trusted by the public as a leading sector in an effort to create Indonesia free from corrupt practices.

The author analyzes this matter that if the law is important in a country, for example in this case the KPK Law. Laws that are considered quite important in efforts to eradicate corruption in their formation are less open and lack of community involvement will result in a decrease in public trust in a state institution, whether it is the institution forming the Law on the Indonesian House of Representatives (Legislators) and the KPK itself, because the KPK has been reduced in its authority. as an independent law enforcement agency. Articles that become the fangs of the KPK will be removed only for the benefit of the group.

d. The Emergence of Article 40 concerning SP3 Resulted in the KPK Being Only an Ordinary Law Enforcement Agency

The KPK was given the right to determine the direction of action in law enforcement, one of which was the appointment of investigators. When an investigator begins an investigative action, he is burdened with the obligation to notify the public prosecutor of the commencement of the investigation. However, the issue of notification obligation is not only at the beginning of the investigation, but also at the termination of the investigation. For this reason, every cessation of an investigation carried out by the investigator must officially issue an Order for Termination of Investigation (SP 3).⁹ Looking back, the purpose of the establishment of the KPK is to control state institutions in order to create a good government that is free from corruption. Previously, the KPK had special authority rights compared to other law enforcers.

The KPK can determine the course of handling corruption cases in court. Starting from determining investigators in the investigation process to trial for corruption cases, a special institution is given to decide the trial, namely the Corruption Court is the fangs of the KPK as a special law enforcement agency, the KPK which was previously not given the authority to issue SP3 is a special special authority compared to other institutions. other law enforcers, this is the spirit of the Indonesian people to eradicate corruption. Most of the cases handled by the Corruption Eradication Commission (KPK) have been completed. In 2019 there has been a revision to the KPK Law where legislators or lawmakers have included the authority of the KPK SP3 in the amended KPK Law, this raises the pros and cons of many people judging this as a weakening of the independent institution. The inability of the KPK to issue SP3 is one of the fangs for the KPK to resolve cases to completion, this was also commented by Hamdan Zoelva that if the KPK was given the authority to issue SP3 it was feared that other law enforcement agencies besides the KPK could handle corruption cases this could lead to conflicts with law

⁸ "LSI: KPK Lembaga Paling Dipercaya, Disusul Presiden dan Polisi" (<https://nasional.tempo.co/read/1241754/lsi-kpk-lembaga-paling-dipercaya-disusulpresiden-dan-polisi/full&view=ok>)

⁹ I Dewa Gede Dana Sugama, Vol. 18, No. 3 Tahun 2010 Surat Perintah Penghentian Penyidikan (SP 3) Dalam Pemberantasan Tindak Pidana Korupsi, Jurnal, Universitas Udayana, Bali, hlm. 4.

enforcement other. In addition, the emergence of SP3 authority in Law Number 19 of 2019 concerning the KPK. The KPK will only be like an ordinary law enforcement agency based on the Criminal Procedure Code.

e. The Author's Analysis of the Legal Politics of the Authority of the Corruption Eradication Commission SP3 in the Future

The KPK is a law enforcement agency that has been the spearhead of eradicating corruption in Indonesia. The existence of the KPK is based on Law Number 30 of 2002 which was later revised by Law Number 19 of 2019 with various Article changes that are possible to weaken the KPK itself. Regarding the Corruption Eradication Commission (KPK Law) it was formed in order to create a just, prosperous, and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). The eradication of corruption that has occurred so far has not been carried out optimally. Therefore, the eradication of criminal acts of corruption needs to be improved professionally, intensively, and continuously because corruption has harmed state finances, the state economy, and hindered national development.¹⁰

The emergence of the KPK's authority to issue SP3 has become a debate among the public and legal experts, this raises pros and cons. Those who oppose the issuance of SP3 reduce the fighting spirit in eradicating corruption where corruption cases handled by the KPK are expected to be completed in handling. Meanwhile, those who support the KPK's authority to issue SP3 are more focused on the human rights of suspects in corruption cases. The author's analysis of this is that Article 40 of the KPK Law does limit the performance of the KPK. Article 40 in the new KPK Law should be abolished and returned with a regulation that previously did not have the authority to issue SP3. The author examines this because the previous KPK Law was already based on the KUHAP automatically indirectly even though the KPK was not given the authority to issue SP3 the KPK remained careful in carrying out its duties as an institution to eradicate corruption. Regarding human rights, if there is no SP3 in the KPK Law, the Criminal Procedure Code has regulated Pretrial where the suspect can file a pretrial if the arrest and the evidence found by investigators is not valid. Automatically if the arrest and the evidence presented at the pretrial hearing is invalid, the case will be terminated.

In addition, the granting of immunity rights to the KPK is a necessity that is in accordance with the development of conditions and demands of the people who want the eradication of corruption to be the priority agenda of this nation. Given the impact. The negative effects caused by the criminal act of corruption hinder the state's goals in achieving prosperity. The granting of immunity rights to the KPK may differ in formal terms from other institutions. This is because the KPK is a law enforcement agency specifically tasked with eradicating corruption (extraordinary crime).¹¹ The provision of immunity rights can improve the weaknesses of the current KPK Law and adjust it according to the current conditions and needs of the community.

Conclusions

- a. that occurred on the formulation of Article 40 of Law Number 19 of 2019 concerning the KPK with regard to the authority to Terminate Investigation and Prosecution on Corruption crimes. Amendments to the KPK Law, namely Law Number 30 of 2002 as amended by Law Number 19

¹⁰ Kurnia Ramadhana, Vol. 20, No. 2 Tahun 2009 Menyoal Kinerja KPK Antara Harapan dan Pencapaian, Jurnal Anti korupsi Integritas, KPK : Jakarta, Hal : 09

¹¹ Ridwan Arifin Oemara Syarieff, Devanda Prastiyo. Jurnal Hukum Respublica, Vol. 18, No. 1 Tahun 2018 : 1 – 13 Korupsi Kolektif (Korupsi Berjamaah) di Indonesia: Antara Faktor Penyebab dan Penegakan Hukum, Fakultas Hukum, Universitas Negeri Semarang

of 2019. It has created discourse or controversy in the community. Many legal experts and academics argue on this matter there are those who agree and support and those who reject it for various reasons. Support for amendments to Article 40 especially focuses on the Human Rights of suspects and it is hoped that the performance of the KPK can be maximized because the process of prosecution of corruption cases is given a time limit of 2 (years) to issue SP3 within the KPK. It is hoped that with the emergence of the authority to issue SP3s, KPK is able to work more quickly and efficiently. In contrast to those who contra or do not support the existence of SP3 authority within the KPK. Whereas SP3 within the KPK, the KPK is no longer a special institution or a superbody whose authority is limited by the rules that govern it.

b. excesses or adverse effects caused by the formulation of Article 40 of Law Number 19 of 2019 concerning the KPK regarding the authority to Terminate Investigation and Prosecution on Corruption crimes. The emergence of Article 40, namely the authority of the KPK to issue the KPK will have a negative impact on eradicating corruption. The KPK carries out its duties in accordance with the Law, because the Law has been amended and is allegedly able to weaken the KPK. This is because important articles that should become KPK's fangs in eradicating corruption have been changed.

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