

Legitimation of the Authority of Legal Actions of the Corruption Eradication Commission (KPK) Against Criminal Acts of Corruption

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Abstract

The crime of corruption has become a very complicated and complicated problem related to many problems that are interconnected with each other, including the relationship with the impact on the administration of the state. For this reason, the activity of eradicating corruption, as a form of reform in eradicating corruption in Indonesia based on Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK), is given to the Corruption Eradication Commission (KPK). The problems are: What is the authority of the Corruption Eradication Commission (KPK) in taking legal action against perpetrators of criminal acts of corruption? The research method in this research framework uses a normative or doctrinal legal research approach or legal research. It means that the object of study in this research focuses on discussing the legitimacy of the legal action authority of the Corruption Eradication Commission (KPK) against perpetrators of corruption. This research is descriptive analytical and in the form of a descriptive study. The data sources used are secondary data sources and primary data sources. Data collection is done through literature study. Data analysis in this study was carried out qualitatively. The results of the research and discussion of this problem in essence, that philosophically the legal remedy strategy as a form of reform in eradicating corruption in Indonesia, that the Corruption Eradication Commission (KPK), is an alternative to a law enforcement institution considering that existing institutions are not considered effective enough in take legal action and efforts in eradicating corruption. The authority of the Corruption Eradication Commission (KPK) in taking legal action against perpetrators of criminal acts of corruption, is given several privileges, among others; take over a case of criminal acts of corruption committed by police investigators and prosecutors investigators because they are considered sluggish, supervise the police and prosecutors' institutions that carry out legal actions and remedies related to corruption crimes, and the Corruption Eradication Commission may not issue a Letter of Termination of Case Investigation (SP3) related corruption crimes are handled.

Keywords

legal actions; corruption; eradication commission (KPK)



I. Introduction

Since Indonesia's independence, state administrators and government officials from the beginning seem to have observed to eradicate corruption. It requires legal instruments and law enforcement in law enforcement who have an understanding that extra hard and firm tools are needed.

The crime of corruption is a disease in society that has existed for a long time and is growing in various other forms, so the crime of corruption needs to be eradicated as early

as possible to its roots, even though in reality it is not an easy job and even hard to carry out. Corruption itself undeniably has strong implications for the sustainability of a country. This is supported in the statement of the Preamble of the United Nations Convention Against Corruption (UNCAC), that “Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish”. So, handling corruption cases is not only through conventional ways, but also requires an extra and specific approach. Communication is the process of delivering messages by someone to other people to tell, change attitudes, opinions or behavior either directly orally or indirectly through the media. In this communication requires a reciprocal relationship between the delivery of messages and recipients namely communicators and communicants. (Hasbullah, et al. 2018)

Since the reform era, the state has responded with the enactment of Law Number 31 of 1999, which is intended to replace Law No. 3 of 1971, concerning the Law on the Eradication of Criminal Acts of Corruption, to anticipate the development of an increasingly complex society and is expected to eradicate more effectively all kinds of corruption offense modes that are detrimental to state finances and the state economy as well as the interests of the community.

The state losses due to this act of corruption have been plenty. The number is no longer around hundreds of billions of rupiah, but the number has reached trillions of rupiah. Although the losses suffered by the state have been so many, in reality, the perpetrators of corruption have not been successful in being arrested and prosecuted, and processed through the criminal justice system.

Meanwhile, Law Number 31 of 1999 concerning the Eradication of Criminal Acts led to the birth of an institution as a tool for eradicating corruption, namely the Corruption Eradication Commission based on Law Number 30 of 2002 concerning the Corruption Eradication Commission (abbreviated as KPK), providing a prospective state's seriousness in efforts to eradicate corruption. Based on Article 3, the Corruption Eradication Commission is a state institution that carries out its duties, and authorities are independent and free from the influence of any power. Given that efforts to eradicate criminal acts of corruption are indeed highly complex, serious handling is needed from government/state officials to eradicate them. The existence of the KPK institution was formed to increase the effectiveness of the results of efforts to eradicate corruption.

Based on the description above, the problem in this paper is: What is the authority of the Corruption Eradication Commission (KPK) in taking legal action against perpetrators of corruption?

II. Research Method

This research method uses a normative or doctrinal legal research approach or legal research. It means that the object of study in this research focuses on discussing the legitimacy of the legal action authority of the Corruption Eradication Commission (KPK) against perpetrators of corruption. This research is descriptive-analytical and in the form of a descriptive study. The data sources used are secondary data sources and primary data sources. Data collection is done through a literature study. Data analysis in this study is qualitative.

III. Result and Discussion

The foundation of the rule of law in Indonesia is confirmed in the provisions of Article 1 paragraph (3) of the 1945 Constitution which reads: The State of Indonesia is the State of Law.[3] Furthermore, in the explanation of the Preamble to the 1945 Constitution, it is stated that Indonesia is a state based on the law (*rechtstaat*) not based on plain power (*machtsstaat*). It means a nation based on the law (*rechtsstaat*) and not based on mere power (*machtsstaat*).[4] Indonesia as a state of the law was founded on the idea of the rule of law as the highest power.

Law Number 31 of 1999 concerning the Eradication of Criminal Acts, led to the birth of an institution as a tool to eradicate corruption, namely the Corruption Eradication Commission based on Law Number 30 of 2002 concerning the Corruption Eradication Commission (abbreviated as KPK), is a form of legal legitimacy related to the strategy eradication of criminal acts of corruption and the existence of the KPK which has legitimate authority according to the will of the law.

Theoretically, the authority possessed by the KPK is an authority that only has legal aspects in the form of authority. In our legal concept, the term authority or authority should be used in the concept of public law.[5] Authority is something called formal power, the power that comes from the power granted by the law in this case, Law Number 30 of 2002 concerning the Corruption Eradication Commission.

Corruption is a white-collar crime, which is carried out systematically, hidden, and hidden behind formal rules. Corruption is not only detrimental to state finances but has also violated the socio-economic rights of the wider community. Corruption is a crime that is classified as an extraordinary crime so demands for the availability of extraordinary and sophisticated legal instruments and institutions that deal with corruption are unavoidable. The failure of efforts to eradicate corruption is also influenced by the weak commitment among the government and political elites to seriously fight it. A less comprehensive strategy to eliminate corruption, namely paying more attention to repressive measures, also has an impact. Firm and consistent repressive actions need to be accompanied by preventive measures to improve the government management system, increase supervision, improve public service standards, transparency and openness of government administration, and public accountability as part of developing good governance. [6]

The legal politics of establishing anti-corruption institution in Indonesia began with a constitutional mandate as stated in the MPR Decree No. XI/MPR/1998 concerning State Officials that are Clean and Free from Corruption, Collusion, and Nepotism. On the basis of this mandate, the Government followed up on the establishment of Law Number 28 Year 1999 concerning State Officials that are Clean and Free from Corruption, Collusion and Nepotism and Law Number 31 Year 1999 concerning Eradication of Corruption which mandated the establishment of the KPK.¹⁷ Then, the official position of the KPK is contained in Law Number 30 Year 2002. The KPK is not a state institution, but the KPK is an independent commission whose duties are related to the Supreme Audit Agency (BPK), especially in terms of managing the country.¹⁸ In the context of institutional formation, the KPK is not meant to take over the task of eradicating corruption from existing institutions. The explanation of the law states that the KPK is a trigger mechanism which means to encourage or as a stimulus so that efforts to eradicate corruption from existing institutions become more effective and efficient.

In carrying out its duties and functions, the KPK has encountered many obstacles, such as criticism from various parties regarding indications of cherry picking in dealing with corruption cases and application for judicial review of Law Number 30 Year 2002. In

addition, there are many opinions from the public or the opinions of legal experts regarding the status of the position of the KPK, including the polemic of what state institution does the KPK belong to and whether the KPK is part of the executive or judiciary institutions. The debate about the identity of the KPK as part of the executive institutions or as a separate state institution has indeed surfaced and is often a topic of discussion. This debate took place when the KPK's Select Committee for Questionnaire appeared until the debate entered the 'legal considerations' room of the judges of the Constitutional Court. Indeed, there were two views. The first is to assume that the KPK is part of the executive institution with the assumption that based on the practice in several countries that have institutions similar to the KPK, the institution that carries out the functions of investigation and prosecution can be categorized as part of executive institution. The second is to state that the KPK is an independent state institution. The KPK identity crisis was caused by a discrepancy between what is written in the regulations and the authority given to the KPK in the existing reality.

Eradication of corruption is a series of actions to prevent and eradicate corruption through coordination, supervision, monitoring, preliminary investigation, full investigation, prosecution, and examination in court proceedings with public participation based on the applicable laws and regulations. In Indonesia, the institutions that have the right to handle corruption consist of 3 (three) institutions, namely the Police, the Prosecutor's Office and the KPK. The three institutions have their respective duties and responsibilities to investigate corruption.

The rules for enforcing the law on corruption are different among these institutions. The police refer to Law Number 8 Year 1981 concerning the Criminal Procedure Law (KUHAP), the Indonesian police officers are to act as case investigators. Therefore, the police are authorized to be investigators for every criminal act, including corruption. The authority of the Prosecutor's Office to conduct investigations is stated in Law Number 16 Year 2004 concerning the Prosecutor's Office of the Republic of Indonesia. Based on Article 30 of Prosecutor's Office Law, the Prosecutor's Office has the authority to conduct investigations into certain criminal acts based on the law. As for the KPK, its authority is given by Law Number 30 Year 2002 concerning the Corruption Eradication Commission in Article 6 of the Law.¹² In Article 6 letter a of the KPK Law, the KPK has the task of coordinating with authorized institutions such as the Police, the Prosecutor's Office, the Supreme Audit Agency (BPK), the Finance and Development Supervision Body (BPKP), and the Commission for Supervision of State Officials Wealth (KPKPN). In addition, the coordination and supervision of the KPK are also contained in Article 42 and Article 50 of the KPK Law.

The authority of the Corruption Eradication Commission (KPK), as regulated in Law Number 30 of 2002 concerning the Corruption Eradication Commission or abbreviated as KPK, is principally intended to increase the efficiency and effectiveness of efforts to eradicate corruption to increase efficiency and effectiveness of efforts to eliminate corruption include;

- a. coordination with agencies authorized to eradicate corruption;
- b. supervision of agencies authorized to eradicate criminal acts of corruption;
- c. conduct investigations, investigations, and prosecutions of perpetrators of criminal acts of corruption;
- d. take measures to prevent corruption, and;
- e. monitor the implementation of state government.

In carrying out its duties and authorities, the Corruption Eradication Commission is based on: legal certainty; openness; accountability; public interest; and proportionality.

The Corruption Eradication Commission has the authority to coordinate and supervise, including conducting investigations, investigations, and prosecutions of perpetrators of criminal acts of corruption including corruption crimes involving law enforcement officers, state administrators, and other people related to corruption crimes committed by officials law enforcement or state administrators; receive the attention that disturbs the public; and/or concerning state losses of at least Rp. 1.000.000.000,00 (one billion rupiah). The KPK, as one of the law enforcement agencies, which is governed by law, is both a subject and an object in a bureaucratic structure of an integrated criminal justice system.

The legitimacy of the authority of the KPK is based on several socio-juridical aspects, including the following.

1. Corruption in Indonesia is widespread in society.
2. Second; To realize the rule of law, the Government of Indonesia has laid a strong policy foundation to combat corruption.

Corruption is an immoral act that violates the norms and values of goodness. Today, corruption has plagued Indonesia to the point that some say that corruption has entrenched some of its public officials. Moreover, the KPK as an anti-corruption agency which is currently operating based on the latest law, is considered to be a bit limping in handling corruption cases in this country. In fact, since its establishment, the KPK has become a trigger mechanism for an independent institution that can overcome public skepticism about the weakness of law enforcement. The KPK also has legal facilities and infrastructure with an extraordinary level of authority that is different from other institutions.

The existence of the KPK institution and its authorities is a means to achieve justice for the Indonesian people whose position is as a party that has been harmed by the existence of criminal acts of corruption. The lack of optimal law enforcement by temporary law enforcers has resulted in the disruption of welfare which should be the right of the community but cannot be fully enjoyed by the people. Thus, the community does not get their rights and is treated unfairly. This means that the KPK has the functional legal authority because the state is responsible for realizing the goals of the state, a just and prosperous society. Meanwhile, the state's goals have been harmed by the behavior of criminal acts of corruption. On the other hand, law enforcement by law enforcers that existed before the establishment of the KPK State Institution was not optimal in eradicating corruption.

To solve the legal impasse in eradicating corruption, a legal product concept is needed in the form of legislation as needed. Activities of institutions that have the authority to approach the legal system to make efforts and actions to eradicate corruption.

In carrying out the authority possessed by the state apparatus, the state apparatus must be consistent following the applicable legal provisions. Likewise, the Corruption Eradication Commission has the authority based on legality, Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK).

IV. Conclusion

The existence of the KPK institution and its authorities is a means to achieve justice for the Indonesian people whose position is as a party that has been harmed by the existence of criminal acts of corruption. In carrying out its duties and functions, the KPK has encountered many obstacles, such as criticism from various parties regarding

indications of cherry picking in dealing with corruption cases and application for judicial review of Law Number 30 Year 2002.

The KPK has the authority regulated under Law Number 30 of 2002 concerning the Corruption Eradication Commission because the state is responsible for realizing the goals of the state, a just and prosperous society. Meanwhile, the purpose of the state is to be harmed by the behavior of criminal acts of corruption that continuously undermines and harms state finances, and is carried out in a structured manner. On the other hand, law enforcement by law enforcers that existed before the establishment of the Corruption Eradication Commission (KPK) was not optimal in eradicating corruption.

Based on Law Number 30 of 2002 concerning the Corruption Eradication Commission, the authority for performance relations related to the Investigation and Prosecution of the KPK can coordinate and carry out supervision with the Polri Investigating Institution.

The authority of the KPK is based on Law Number 30 of 2002 concerning the Corruption Eradication Commission, Article 6 related to the duties of the KPK, Article 7 related to the implementation of coordination tasks in the form of, among others, the KPK's authority to coordinate investigations, investigations, and prosecutions of corruption crimes, Article 8 related to supervision, Article 9 regarding Takeovers.

It is undeniable that there are several problems that cause the KPK's performance to be less than optimal in carrying out its duties and authority. This is because in the old KPK Law there were no firm and clear regulations regarding several matters such as regulations of confiscated assets, asset recovery, management of investigators, the overlapping authority with law enforcement institutions, Investigation Termination Order (SP3) and the absence of supervisory agency capable of supervising the implementation of the duties and authority of the KPK. However, with the revision of the KPK Law, the latest KPK Law must be implemented optimally. This is to show the existence and capability of the KPK in handling corruption cases again. The KPK must continue to develop and improve its performance with democratic leadership and uphold the value of transparency.

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