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The Authority of the Board of Supervision of the Corruption Eradication Comision (KPK) in Helping Eradication of Criminal Action Post Revision of the KPK

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ABSTRACT

Keywords

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Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK) with Law Number 19 of 2019, had raised to many problems in the implementation of the KPK's duties and powers as an independent institution in helping accelerate corruption eradication, one of which is regarding the formation and provision of authority to the Supervisory Board in assisting the KPK to uncover the occurrence of a criminal act of corruption on public reports and complaints. The purpose of this research is to analyses the establishment and granting of authority to the Supervisory Board by Law No. 19 of 2019 be able to assist the KPK in carrying out the task of accelerating the eradication of criminal acts of corruption. This research is a descriptive study, using a normative juridical approach with a statute approach. Using legal materials as study material, namely the 2002 and 2019 KPK Law, with qualitative analysis. The research findings show that the authority possessed by the Supervisory Board is quite broad, but with the procedures for his appointment carried out by the Head of State it is feared that it will affect the objectivity of his performance such as in providing wiretapping and others, it is feared that it will slow down KPK's performance in helping accelerate the eradication of corruption.



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Introduction

The increase in corruption cases and corrupt behavior that occurs in fact can lead to the development of a fatalistic attitude which concludes that corruption is difficult to eradicate and difficult to handle, so that permissiveness to participate in corruption increases and there are various creative efforts to continue to build anti-corruption movement efforts in the social system. society by establishing anti-corruption zones. In the current situation, there needs to be a fight against corruption as early as possible from the small to the big levels, from the family to the state. Then the investigations carried out by the Police and the

Prosecutor's Office also received a lot of influence and interference from the executive, legislative and judicial branches (Mochtar, 2017).

Therefore, the formation of the Corruption Eradication Commission (KPK) as a new independent institution to accelerate the eradication of corruption crimes (TPK) in Indonesia through Law No. 30 of 2002 (KPK Law) which gives the task of coordinating, supervising, investigating and prosecuting, monitoring. To carry out this task, the KPK has extraordinary powers, namely, wiretapping, coordinating investigations, investigations, prosecutions of TPKs; reporting on TPK eradication activities; requesting information about TPK eradication activities to relevant agencies, and others. The KPK has the authority to carry out supervision, research, or review of agencies that carry out their duties and authorities related to eradicating corruption and agencies that carry out public services (Sugiarto, 2013).

The great authority in its implementation the problems, with the KPK's breakthrough in revealing major cases exceeding the success of police investigators and the prosecutor's office, causing the KPK's authority to be highlighted and considered too large to exceed the authority of other law enforcement officers, and considered dangerous for certain parties who are certainly related. with corrupt behavior itself. So there was a desire to revise the KPK Law. This was met with opposition among academic practitioners, anti-corruption activists and others, but revisions continued, culminating with the enactment of Law No. 19 of 2019 concerning Amendments to Law No. 30 of 2002 concerning the TPK Eradication Commission.

The granting of wiretapping authority to the KPK is in a dilemmatic position, on the one hand, it is necessary to expose corruption cases because the law should keep up with the times and technology that no longer relies on conventional proof, but on the other hand, there are human rights that must be protected. In law enforcement and wiretapping authority owned by other law enforcement agencies outside the KPK which have the same task in eradicating TPK (General explanation of the 2019 KPK Revision Law point c). It can be seen that some of the limited and reduced powers of the KPK are carried out on the basis of reducing the inequality of relations between law enforcement institutions in preventing and eradicating TPK, one of which is the unequal authority between the police, prosecutors and the KPK in conducting wiretapping.

One of the results of the revision of the KPK Law is the presence of the KPK Supervisory Board (The Board of Supervision KPK). The presence of the KPK Council is a problem because it is considered to be able to weaken or reduce the authority and independence of the KPK itself. Then, with the lack of clarity on the status of the KPK Board of Directors, is it supervising the KPK as a whole or overseeing several parts of the KPK body. Whereas the KPK is not intended to monopolize the handling of corruption cases. But the KPK is aspired to be a trigger mechanism in handling corruption cases for existing law enforcement agencies (Nugroho, 2013).

The above is not in line with Article 3 of the KPK Law, where the KPK is mandated to eradicate corruption in a professional, intensive, and sustainable manner and is an independent state institution, which in carrying out its duties and authorities is free from

any power. Even explicitly related to the authority of the KPK itself, Article 6 letter c of the KPK Law states that the KPK has the authority to conduct investigations, investigations, and prosecutions of TPKs.

The formation of the Council by Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the TPK Eradication Commission. By attribution, it is not only to oversee the duties and authorities of the KPK but has the authority to permit wiretapping, confiscation and searches carried out by the KPK (Wahid, 2018). This gave rise to pros and cons during the discussion until the stipulation of the 2019 KPK Law Revision. Therefore, it is necessary to conduct research on the extent of the authority of the KPK Council since the stipulation of the 2019 KPK Law Revision until the issuance of the Constitutional Court Decision Number 70/PUU-XVII/2019 in assisting the acceleration of eradication. TPK in Indonesia.

Methodology

This research is normative juridical research using a law approach and a concept approach. The primary legal materials used are the 2002 KPK Law and the 2019 KPK Law Revision. Then, they are supported by secondary legal materials in the form of scientific journal publications and other expert opinions. The collection of legal materials is carried out through literature studies as well as legal issues which are carried out by connecting them with theories and expert opinions related to the problems being studied. The analysis was carried out qualitatively by linking the data obtained with regulations related to the problems studied.

Results and Discussion

The Authority of the KPK Council in Law No. 19 of 2019

Talking about legal changes is closely connected to legal politics. The interests of elites and those outside the authorities are inextricably linked in legal politics. Many huge issues are linked to the interests of tiny people in the hands of bureaucrats. When bureaucrats disregard the interests of little people, such practices can be classified as dehumanization by bureaucrats, resulting in numerous layers of agony for small people.

According to Article 21 of the 2019 Revised KPK Law, the the Board of Supervision consists of 3 organs, namely the Council, the KPK leadership, and KPK employees. Then in Article 37A paragraph (1) it is reaffirmed in Article 37B paragraph (1) letter a which stipulates that one of the tasks of the Council is to supervise the implementation of the duties and authorities of the Corruption Eradication Commission. Wiretapping is the practice of listening to, recording, and/or recording the transfer of nonpublic electronic information and/or documents across wired or wireless networks, such as electromagnetic radiation or radio frequency, or other electronic equipment (Article 1 point 5 KPK Law revision).

Article 26 a and Article 12 paragraph (1) letter a of the KPK Law, wiretapping carried out by the KPK does not require permission from the Chairperson of the Court, the KPK in carrying out its investigation, investigation and prosecution duties as referred to in Article

6 letter c of the KPK Law, the KPK is authorized: a) wiretapping and recording conversations, especially in catching TPK perpetrators, because in several cases wiretapping was carried out on someone after the KPK received a report of alleged abuse of state finances and the state economy from the public.

The regulation on wiretapping in Article 6 letter c of the new KPK Law states whether there is wiretapping authority, but has not regulated the limits of the authority itself. It has not been regulated in detail regarding the technical aspects of wiretapping, both the definition of wiretapping, its implementation, procedures, period of time, object, accountability and supervision. the tapping process

¹ In Article 21 of the 2019 KPK Law revision, ³ it is explained that the Corruption Eradication Commission consists of:

- a. The Board of Supervision consists of 5 (five) people;
- b. The leadership of the Corruption Eradication Commission consisting of 5 (five) members of the Corruption Eradication Commission; and
- c. Corruption Eradication Commission employee.

The Board of Supervision is explicitly regulated in Chapter VA, an additional chapter of the 2002 KPK Law, beginning with Article 37 A, which states that in order to oversee the implementation of the Corruption Eradication Commission's duties and authorities, a The Board of Supervision is established ⁴ referred to in Article 21 paragraph (1) letter a. consisting of 5 (five) people, holding office for 4 (four) years and can be re-elected in the same manner.

The Board of Supervision formed by the President after receiving input from the appointed selection team, based on the requirements stipulated in Article 37 D of the 2019 Revised KPK Law, namely Indonesian citizens; fear God Almighty; physically ¹⁴ and mentally healthy; have moral integrity and exemplary; well behaved; has never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a criminal offense punishable by a minimum imprisonment of 5 (five) years; at least 55 (fifty five) years old; have a minimum education of S1 (bachelor degree); not become a member and/or administrator of a political party; relinquishing structural positions or other positions; does not carry out his profession as long as he is a member ¹³ of The Board of Supervision; and announce their assets before and after taking office in accordance with the provisions of the applicable laws and regulations.

Meanwhile, regarding the duties of The Board of Supervision of the KPK itself, it is regulated in Article 37 B paragraph (1) of Law No. 19 of 2019, including:

- ¹ a. supervising the implementation of the duties and authorities of the KPK
- b. granting permission or not granting permission for wiretapping, search, and/or confiscation;
- c. compiling and establishing ¹⁰ a code of ethics for the leadership and the KPK
- d. receives and report from the public regarding alleged violations of the code of ethics ¹⁰ KPK Leaders and Employees or violations of the provisions of this Law;
- e. holding a hearing to examine the alleged violation of the code of ethics by the KPK Leaders and Employees; and

- f. evaluates the performance of KPK Leaders and Employees periodically 1 (one) time in I (one) year. Then Article 12 C paragraph (2) states that the wiretapping as referred to in Article 12 paragraph (1) which has been completed must be accountable to the KPK Leadership and The Board of Supervision no later than 14 (fourteen) working days as of the completion of the wiretapping.

In the description above, it can be seen how broad the duties of The Board of Supervision given by the 2019 Revision of the KPK Law are to the implementation of the duties of the KPK. Where on the implementation of the above tasks, The Board of Supervision makes a report every year and then reports it to the President (Article 37 B paragraphs (2) and (3)).

Authority of the Board of Supervision after the Constitutional Court of Indonesia Decision Number 70/PUU-XVII/2019 Tuesday May 2021

The Constitutional Court of Indonesia (MK) on Tuesday, May 4, 2021, has decided on all lawsuits against the revised KPK Law, Law 19/2019. There are 7 lawsuits both formally and materially which were decided by the Court. However, of the 7 lawsuits, only case number 70/PUU-XVII/2019 was partially granted by the Court. The case was proposed by the Chancellor of the Islamic University of Indonesia, Prof. Fathul Wahid and his friends. Several changes to the 2019 KPK Law as a result of the Constitutional Court's Decision, including:

1. *The phrase 'Prevention' regarding the explanation of the KPK is deleted*

The Constitutional Court changed the sound in Article 1 number 3 of Law 19/2019. Initially the article read: "The TPK Eradication Commission, 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 TPK in accordance with this Law".

In this decision, the Constitutional Court changed the sound of the article because the phrase 'prevention' in Article 1 point 3 previously reduced the meaning of eradicating corruption. Because it seems that eradicating corruption is only prevention. Whereas eradicating corruption includes taking action to saving state finances.

2. *Changes in the Authority of the KPK*

The Constitutional Court removed several articles that regulated the authority of The Board of Supervision of the KPK in granting wiretapping, search, and confiscation permits

The Constitutional Court's decision to revoke the authority to grant wiretapping, search and confiscation permits because The Board of Supervision is not a law enforcement officer. Article 12 B paragraph (1) is linked to Article 37 B paragraph (1) letter b, Article 47 paragraph (2) Revision of the 2019 KPK Law, concerning the proposal for a wiretapping permit from The Board of Supervision which is given 1x24 hours after the written request from the KPK leadership is submitted, carried out after obtaining written permission from The Board of Supervision, to conduct wiretapping for a maximum of 6 months from the date the permit was obtained, then it can be extended 1 x 6 months is declared non-binding

because it is contrary to Article 28 of the 1945 Constitution, because The Board of Supervision is not a law enforcement officer so the KPK only needs to notify the wiretapping to The Board Of Supervision.

¹⁵ The provisions of Article 12C paragraph (2) regarding the report on the results of the KPK wiretapping. Previously, wiretapping reports had to be accounted for to The Board of Supervision of the KPK. But now it only needs to be notified to The Board of Supervision no later than 14 days after its completion. Previously, the Constitutional Court had canceled the KPK's authority to issue Warrant for Termination of Investigation (SP3) in the decision of the Constitutional Court (MK) Number 006/PUU-1/2003 .KPK SP3 Sufficiently Notified to The Board Of Supervision no later than 14 working days from its issuance, this changes Article 40 paragraph (2) which previously stipulates that KPK must report to The Board Of Supervision when issuing SP3.

Search and confiscation of the KPK Article 47 paragraph 1 is sufficient to inform The Board of Supervision that written permission from the Board of Supervision is not required.

Analysis of the Authority of The Board of Supervision KPK

Based on the 2019 KPK Law revision, there are several changes, one of which is the establishment of The Board of Supervision by the President after receiving input from the selection team formed to conduct the selection of candidates who meet the requirements specified in Article 37. The authority of the early Board of Supervision can be seen in the provisions of Article 37 B paragraph (1) letter b of the revision of the 2019 KPK Law above, it is clear that wiretapping can only be carried out by KPK investigators after obtaining written permission from The Board of Supervision.

A written request from the KPK leadership is required to receive a permit as indicated to in paragraph (1). No later than 1 x 24 (one time twenty-four) hours after the request is made, the Board of Supervision may provide written consent to the request referred to in paragraph (2). Written permission is submitted after the case is held before The Board of Supervision (Explanation). In the event that the KPK Leadership obtains written permission from The Board of Supervision as referred to in paragraph (3), wiretapping is carried out no later than 6 (six) months from the receipt of written permission and can be extended 1 (one) time for the same period of time. Meanwhile, according to Article 12 C paragraph (2) Wiretapping that has been completed must be accounted for to the KPK Leaders and The Board of Supervision no later than 14 (fourteen) working days from the end of the wiretapping.

The results of the wiretapping as referred to in Article 12 paragraph (1) are confidential and only for the interest of the judiciary in the Eradication of TPK. Wiretapping results that are not related to the TPK being handled by the KPK must be destroyed immediately. If it is not implemented the official and/or the person who keeps the wiretapping results will be sentenced to criminal penalties in accordance with the provisions of the legislation Article 12 D. The existence of The Board of Supervision can be accepted by all parties if the authority of The Board of Supervision to grant or not grant permission to the investigation and investigation process as stipulated in Article 37B paragraph (1) letter b of the 2019 KPK Law Revision on the KPK is abolished or eliminated so that the The Board of Supervision

does not enter into the realm of law enforcement and only focuses on supervising the institutional authority of the Corruption Eradication Commission because, as required, one of the supervision requirements must exclude important matters because not all activities can be supervised.

According to Saldi Isra, supervision is an activity aimed at ensuring that the administration of the state is in accordance with the plan. If it is related to government law, supervision can be interpreted as an activity aimed at ensuring the government's attitude to run according to applicable law. Associated with constitutional law, supervision means an activity aimed at ensuring the implementation of state administration by state institutions in accordance with applicable law (Isra, 2010). The existence of the KPK has not yet been put into a clearer constitutional conception that can guarantee the existence of new state institutions (Hadi & Brata, 2020).

Meanwhile, according to Delina, The Board of Supervision is not the Board of Supervision of the KPK but The Board of Supervision of KPK leaders and employees. Because if the diction used is The Board Of Supervision KPK, then it means that The Board of Supervision also supervises itself (its own organ). Based on this conclusion, the makers of the corruption law should make changes to the contents of the corruption law. So that the products of the corruption law do not cause multiple interpretations and can be misused by certain parties to weaken the KPK and/or hinder the eradication of TPK in Indonesia. In addition, it is also recommended that a judicial review of the provisions of The Board of Supervision in the revision of the Corruption Law be submitted

Surakhmad's research, like Delina's, showed that regulatory reforms to the current KPK supervisory board are required, despite the fact that the institution's age is still relatively young. The community's requirements, on the other hand, will be better met if the KPK Supervisory Board's notion of performance and function is adjusted to reflect current laws.

Meanwhile, in terms of government policies, according to Suparman, the formation of a new state institution such as the KPK is aimed at solving complex legal problems, which arise from one main factor, namely the individual moral factors of the community that need to be addressed with extraordinary handling of government policy itself (Suparman et al., 2020).

The presence of The Board of Supervision of the KPK will have implications for the institutional independence of the KPK, because The Board of Supervision is chosen by the President and given very broad authority to supervise the implementation of the duties and authorities of the KPK, this is feared to be an attempt by other powers to interfere with the duties and authorities of the KPK. According to the *siyasa dusturiyyah*, the concept of supervision aims to invite good and prevent evil, so it is necessary to consider that the supervisory authority must be in accordance with the purpose of supervision. The author agrees with this, the results will be different if the Board of Supervision is appointed by the people's representatives. If appointed by the President, it will affect the independence of the KPK itself. As stated by Ari Wibowo, independence means an institution that is independent and free from outside intervention (Wibowo, 2015). An independent State Institution at least on the legal basis of its formation declares its independence related to its duties and functions

The position of The Board of Supervision as a supervisory agency. placing him as a wiretapping permit is of course contrary to legal theories/concepts and also contrary to the confidentiality of wiretapping because it is very risky for leaks to occur in the implementation of their main tasks and functions will be greatly influenced by the authorities.

⁶ This is in line with the results of research by Kartika S Wahyuningrum and his colleagues, which found the weakening of the KPK institution with the establishment of The Board of Supervision, especially since KPK employees must come from the State Civil Apparatus, resulting in binding with the central command which limits the space for the KPK institution.

Disappointment with the weakening of the KPK contained in Law No. 19 of 2019 was slightly relieved by the issuance of Constitutional Court Decision No. 70/PUU-XVII/2019 dated June 4, 2021 which stated the articles governing the authority of The Board of Supervision in granting permits and receiving accountability. The implementation of wiretapping is declared non-binding because it is considered contrary to Article 28 of the 1945 Constitution, because The Board of Supervision is not a law enforcement officer, while the other duties of the Board of Supervision remain binding. However, several other lawsuits submitted to the Constitutional Court were rejected, such as issues of independence, transfer of status of KPK employees and investigators.

The wiretapping authority must be preserved in order to deter criminals and aid in the investigation of corruption cases that have gotten entrenched in our dear nation. The legislators should then make an Implementing Regulation (PP) concerning the Implementation of Wiretapping as regarded to in the Telecommunications Law and the ITE Law, which primarily regulates the mechanism, process, and legal certainty in the implementation of this wiretapping, in accordance with the Constitutional Court's decision number 012-016-019/PUU-IV/2006 and to fulfill the three components of authority as mentioned above, as well as for more legal certainty in the implementation of this wiretapping

In terms of legislative bases, a framework of a national legal system exists if there is a correlation between state aims, functions, and apparatus (Lukman Hakim :2012). To avoid human rights violations and to carry out the obligations of Article 28 F and G of the 1945 Constitution¹⁶ clear wiretapping regulations are required. Article 28 F, which protects "everyone's right to communicate and obtain information for the development of their personal and social environment, as well as the right to seek, obtain, possess, store, process, and convey information using all available means," is not meant to monopolize the handling of corruption cases. The KPK aspires to be a "trigger" institution for current law enforcement agencies in dealing with corruption issues.

Conclusion

³ The authority of The Board of Supervision in the 2019 KPK Law Revision is quite broad, not only in the scope of administration in supervising the implementation of the duties and authorities of the KPK and relating to the code of ethics, starting from the formulation,

receiving reports of violations of the code of ethics, examining and completing them, and evaluating the performance of the leadership. and KPK employees, even entering the realm of law enforcement in granting wiretapping, search and confiscation permits by KPK investigators. The authority related to law enforcement in the field of granting wiretapping, search and confiscation permits above is clearly contrary to Article 28 of the 1945 Constitution, because The Board of Supervision is not a law enforcement officer, The Board of Supervision can only supervise the KPK administratively and institutionally authorized by law, this is also the reason the Constitutional Court in its decision Number 70/PUU-XVII/2019 Tuesday May 2021 stated Authority of The Board Of Super revision relating to the granting of wiretapping, search and seizure permits are considered non-binding.

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