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Analysis of shifts in the independence of the corruption eradication commission (KPK) after the revision of the law

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Abstract--This article discusses the shift in the Corruption Eradication Commission (KPK) position after the birth of Law No. 19 of 2019 concerning the Corruption Eradication Commission. Normative using legal research, this article is expected to find out how the position of the anti-corruption agency owned by Indonesia, namely the Corruption Eradication Commission (KPK), after the revision of Law No. 30 of 2002 concerning the Commission on Combating Corruption. Based on this research, it was obtained that various institutions have been formed to deal with corruption problems in the history of corruption crimes that occurred in Indonesia. Until the Reformation period was formed, the Corruption Eradication Commission (KPK) carried out its authority. The KPK was independent. However, the status of the KPK as an independent institution in carrying out all its duties turned into a state institution in the executive branch. The shift in the position of the KPK from independent institutions to institutions in the executive branch occurs because the government is still compartmentalizing state institutions in the Triassic paradigm of *Politica*, which is no longer relevant for its implementation in the current constitutional system.

Keywords---shifts, law, independence.

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Introduction

Modern organizations today are experiencing rapid development, especially with inevitable innovations. The development also occurred in Indonesia amid the openness that emerged along with the wave of democratization in the reform era. In response to the demands of these developments, new state institutions were established that could be councils (councils), commissions (commissions), committees (committees), bodies (bodies), or authorities (Huda, 2006). In its development, most of the institutions formed are state institutions that have the function of helping in running the wheels of government. One of the new state institutions formed during the reform era in Indonesia is the corruption eradication commission (KPK). This institution was formed as one part of the anti-corruption schedule, one of the most important agendas in revamping governance in Indonesia (Indraputra & Bagiastra, 2014). The establishment of this commission as a mandate from the provisions of article 43 of Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning The Eradication of Corruption.

The establishment of the KPK through the consideration that the eradication of corruption carried out by government agencies has not functioned effectively and efficiently. Therefore, eradicating corruption needs to be improved professionally, intensively, and sustainably because corruption has harmed the country's finances and the country's economy and hindered national development. However, with establishing the KPK, clarity is needed in terms of the division of duties, authorities, and functions with other state institutions so that there are no collisions between the state institutions in carrying out their duties. In this case, the KPK is considered to have overlapped with the police and related prosecutors regarding examinations, wiretaps, traps, etc. No less important is that the status and position of the KPK in the state decree must be clear also so as not to cause multi-interpretation among the community; it is necessary to have a clear status and position in the Indonesian constitutional system so that the Indonesian nation has a clear and orderly constitutional system (Asmoro, 2009).

In this regard, the KPK is an institution that carries out its duties and authorities independently and is free from the influence of any power. The Institution of the Corruption Eradication Commission (KPK), based on Article 3 of Law No. 30 of 2002 concerning the Corruption Eradication Commission, is positioned as an independent institution. Similarly, in the constitutional court decisions, namely Number 37-39 / PUU-VIII / 2010 and constitutional court decision Number 5 / PUU-IX / 2011. However, the law produced by the Constitutional Court itself contrary to the Constitutional Court Decision, which is further stated in Decree No. 40/PUU-XV/2017. The ruling puts the anti-corruption agency in the executive branch. It can be used as an object of voting rights by the DPR (Aris, 2018).

Moreover, it is coupled with the issuance of the Law of the Republic of Indonesia Number 19 of 2019, the second amendment to the Republic of Indonesia Number 30 of 2002. Article 1, paragraph 3 confirms that the KPK in the executive branch of power. Based on the review, it can be ascertained that the position of the KPK has shifted from an independent Institution to an executive. So it is interesting to examine the implications of Law number 19 of 2019 on the

independence of the KPK Institution in dealing with corruption problems in the Country of Indonesia.

Research Methods

This research is library research by making several books as data source. The data sources commonly used in normative law research are divided into three, namely: primary legal materials, secondary legal materials, and tertiary legal materials. The source of legal material in this study refers to laws and regulations, constitutional court rulings, law books, journals and literature related to the object of research. The research approach used in this study is a normative juridical approach. A normative juridical approach is an approach through the study of literature (library research) by reading, quoting, and analyzing legal theories and laws and regulations, comparative approaches related to research problems.

Results and Discussion

Legality of KPK's Position in Laws and Regulations

According to Hans Kelsen, the meaning of justice is legality, where a general rule is fair when applied following the written rules governing it and equally applied in all similar cases. (Kelsen, 2007) The year 1998 witnessed the collapse of the state structure and the end of the grip and hegemony of the Suharto regime in Indonesia. The long-standing repressive government, widespread and structured human rights violations and eventually the collapse of the Indonesian economy, followed by a political crisis that became the momentum of the fall of power and action during the fall of Suharto. This event was then followed by the appointment of Bacharuddin Jusuf Habibie as president precisely on May 21, 1998 (Sirajuddin & Winardi, 2015).

The change in political configuration from authority to democracy applied in an absolute State demands a shift in power management from the original personal to impersonal. At the same time, this resulted in the division of power that was previously considered an established doctrine is undergo a correction. It is no longer enough to classify it into the power of government, the power to make laws, and the judiciary's power. It demanded the presence of independent institutions such as State Commissions. The birth of new organs of the State, with each of its duties and authorities, cannot be separated from the basic idea of restriction and division of power in implementing the duties of state power. The idea of division and restriction of power originally evolved as a manifestation of the idea of constitutional democracy. The idea of democratic constitutionalism requires an attempt to limit power so that the perpetrators of power do not behave arbitrarily and corruptly (Isra, 2020).

A country can organize a good government if stakeholders carry out the authority and authority of each state institution in the relevant state institutions. At least there must be good cooperation between each state institution in carrying out its duties and authority. The cooperation will produce a spirit of love for the homeland in carrying out its duties and authority.

In the book "Independent State Institutions..." Zainal Arifin Mochtar (2006) states that constitutional democracy is expected to lead to a much more effective government in organizing the government. The development of the state institutions, especially after the amendment of the 1945 Constitution, is an attempt to streamline the process of checks and balances, the fulfillment of individual rights, and the avoidance of authoritarian tyranny. The effectiveness of implementing checks and balances cannot be separated from the growing thought of "Triassic Politica," developed by Montesquieu, which Cindy Sketch later developed in the newest separation of power.

According to Zainal Arifin Mochtar in his book, there are at least eight characteristics of independent state institutions in Indonesia after the amendment of the 1945 Constitution as follows: First, institutions born and placed do not become part of the branch of power mentioned in the concept of Triassic Politica; Second, the process of selecting members through selection and not by political appointees; Third, the process of selection and dismissal can only be done based on a mechanism that the underlying rules have determined; Fourth, it has a strong Deliberization Process; Fifth, collective and collegial leadership; Sixth, it is not a major State institution but is indispensable for the demands of the transition period and the needs of an increasingly complex state; Seventh, having a more devolutive authority that is self-regulated in the sense that it can issue its own rules that also apply in general; Eighth, it has a basis of legitimacy, although later formed by law only for institutions in the constitution and government regulations only for institutions that exist in the law (Mochtar, 2016).

Based on the above arguments, one of the independent State institutions included in the eight characteristics of the independent State institution is the Corruption Eradication Commission (KPK). The institution was formed based on the order of Law No. 30 of 2002 concerning the Commission on Combating Corruption. The previous government has made various efforts in combating corruption, as in the Reformation era led by B.J. Habibie, who passed the anti-corruption Law and anti-corruption agencies at the beginning of his leadership. The anti-corruption agency established was named the State Organizing Wealth Audit Commission, abbreviated as KPKPN and established through Presidential Decree No. 127 of 1999 concerning the Establishment of the State Organizing Wealth Audit Commission and the General Secretariat of the State Organizing Wealth Audit Commission. The task and authority of the KPKPN are to examine the wealth owned by state organizers to prevent acts of Corruption, Collusion and Nepotism.

Then born Law No. 31 of 1999 concerning the Eradication of Corruption. This law was made under the pretext of an order to establish a Corruption Eradication Commission, but before the commission was formed during the time of Abdulrahman Wahid formed a Joint Team to Combat Corruption (TGTPK) through Government Regulation No. 9 of 2000 chaired by the Attorney General consisting of prosecutors, police and members of the public which was later dissolved based on the Supreme Court of Indonesia's Decision on judicial review of the establishment of TGTPK and Pretrial Verdict No. 11/Pid/Prap/2000/PN. JAKSEL (Susilowati, 2012). After the dissolution of the TGTPK in 2003,

President Megawati Soekarnoputri formed the Corruption Eradication Commission (KPK) (Syuraida, 2015). The establishment of the KPK cannot be separated from the inability of previously established institutions to deal with corruption cases. So on December 27, 2002, Law No. 30 of 2002 concerning the Commission on Combating Corruption was made. This is what then became the basis for establishing the Corruption Eradication Commission (KPK).

Until the formation of the KPK in 2003, it turned out to have a big influence on the existence of KPKPN institutions made before. Although it has the same mission, namely handling corruption cases, in the end, KPKPN is considered less able to handle corruption cases. Finally, KPKPN was merged with the KPK on June 29, 2004 (Syuraida, 2015), as mandated by MPR decree Number VIII / MPR / 2001 to make KPKPN part of the KPK. KPK is an institution that is considered constitutionally important (constitutionally important) and includes institutions whose functions are related to judicial power as referred to by Article 24 Paragraph 3 of the 1945 Constitution, which is carrying out its duties and authorities; the KPK is independent and free from the influence of any power. For approximately 17 years, the KPK showed its ability to handle corruption cases that occurred in Indonesia. However, the KPK's authority was weakened by the issuance of Law No. 19 of 2019, which placed the KPK as an institution under the executive branch of power. This is certainly not in line with the contents of article 3 of Law No. 30 of 2002 concerning the Commission on Combating Corruption which places the KPK as an independent institution.

Legal Implications arising when the Corruption Eradication Commission exercises its position as an Independent or Executive state institution

The Corruption Eradication Commission by law is granted the status of an independent state institution in carrying out the duties authority and free from the influence of any power. This is as clearly stated in Article 3 of Law No. 30 of 2002 which reads "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".

Furthermore, the duties of the KPK are explained in Article 6 of Law No. 30 of 2002, which reads (a) coordinate with agencies authorized to carry out the eradication of corruption crimes, (b) supervision of agencies authorized to combat corruption, (c) conduct investigations, investigations and prosecutions of corruption crimes, (d) take preventive measures against corruption, (e) monitor the administration of the state government. As an independent institution, the KPK is responsible to the public for implementing its authority duties by submitting reports openly and periodically to the President, DPR, and CPC.

The establishment of the KPK as an Independent Institution whose authority is extraordinary in combating Corruption is because corruption cases are categorized as extraordinary crimes (extraordinary crime), then in carrying out eradication must be in an extraordinary way as well. Because the problem of Corruption is very widespread and planned, the KPK is present. This can be seen in the section weighing Law No. 30 of 2002 concerning the Commission on Combating Corruption that :

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- a. That to realize a just, prosperous, and prosperous society based on Pancasila and the Constitution³² of the Republic of Indonesia in 1945, eradicating the criminal acts of corruption that have occurred until now has not been able¹¹ to be implemented optimally. Therefore, the eradication of typhoid needs to be improved professionally, intensively, and continuously because corruption has harmed the country's finances and the economy and hindered national development. 10
 - b. That government agencies that handle criminal acts of corruption cases have not functioned effectively and efficiently in eradicating criminal acts of corruption.

In general, state support institutions in the form of state auxiliary agencies or independent bodies such as the KPK arise because of 1) the existence of increasingly complex state duties and authorities, which is an independent institution sufficient to be able to carry out these duties and authorities; 2) Empowerment efforts to the duties of existing state institutions by forming new state institutions that are more specific and organized. (Ayu, 2009) Another reason is that it sees the increasing number of corruption crimes in Indonesia.⁴ It is enlivened by the breakdown of law enforcement institutions ranging from the prosecutor's office and the police to the judiciary (Mochtar, 2016).

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The above argument explicitly explains that the existence of these independent state institutions is present because previously established institutions such as the police, prosecutors or the judiciary cannot maximize their performance, especially on the issue of combating corruption in general. In a discussion of independence then, there are several criteria of a supporting institution said to be independent, namely: 1) expressly stated by the congress in the legislation that the institution is independent; 2) the president does not freely decide on the dismissal of the leader of an institution; 3) Collective leadership is not leadership; 4) leadership is not controlled by any particular pertain; 5) the term of office of the chairman of the commission runs out not simultaneously but alternately (Wahyuningrum et al., 2020).

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The position of the Corruption Eradication Commission (KPK) as an independent organ (an independent state institution) has relevance to the decision ratio in the constitutional court decision No. 5/PUU-IX/2011, which seats the KPK as an independent organ institution, as in its legal considerations, as follows:

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"According to the Court, the KPK is an independent state institution that is given special duties and authorities, among others, carrying out some functions related¹⁸ the judicial power to conduct investigations, investigations, and prosecutions and supervise the handling of corruption cases carried out by other state institutions. To achieve the purpose and purpose of establishing the KPK as a state institution that specifically eradicates corruption,¹ the KPK is required to work professionally, independently, and continuously in carrying out its duties and authorities effectively".

According to the Court, the KPK will not maximally carry out its duties and authorities professionally and continuously without continuity of the KPK leadership. To ensure the continuity of the duties of the KPK Leadership, so that

the leadership does not jointly start from the beginning again, then the replacement of the KPK Leadership should not be replaced simultaneously. Therefore, it will become more proportional and ensure fair legal certainty and equal treatment before the law if there is an inter-time replacement between KPK leaders appointed for one four-year term, vide Article 28D paragraph (1) of the 1945 Constitution."

The above decision is also relevant to the legal construction in the Constitutional Court Decision No. 37-39/PUU-VIII/2010, which also seats the KPK as an independent institution. As for the legal considerations of the Constitutional Court by, considering the following:

"That the Corruption Eradication Commission is an independent state institution that in carrying out its duties and authorities is free from any power, whose leadership consists of 5 (five) people who double as members consisting of elements of government and elements of society with the aim that the supervision system carried out by the community on the performance of the Corruption Eradication Commission in conducting investigations, investigations, and prosecutions of corruption crimes remain attached to the Corruption Eradication Commission."

Corruption Eradication Commission as an Institution Located in the Executive Branch

This shift in the position of the Corruption Eradication Commission occurred after the enactment of Law No. 19 of 2019. In Law No. 19 of 2019, the position of the KPK as a State institution in the executive branch is visible by establishing KPK Employees as members of the professional scope of civil servants of the Republic of Indonesia, and the suspension is no longer regulated by the KPK's internal affairs, but based on the provisions of laws and regulations that the President and or DPR can establish. Then the basis of the amendment to article 3 of the Corruption Eradication Commission Law is a follow-up to the Constitutional Court Decision Number 36 / PUU-XV / 2017.

It can be seen from the explanation of the revision of the KPK Law, which contains why the revision of the KPK Law: first such as the lack of smooth coordination between the KPK institution and the Police and Prosecutor's Office. Second, the KPK is considered less than optimal and maximal in eradicating criminal acts of corruption. These reasons are refuted by the many brilliant achievements possessed by the KPK as a state institution. Third, the KPK is ambiguous. There is no clear certainty that the KPK is an institution in which field; because, as we know, there are three institutions of power in Indonesia, namely the executive, legislative and judicial. Fourth, the KPK is included in the executive branch of the executive institution. The fifth is establishing a supervisory board to supervise the KPK, which is considered too impeccably closed in solving the criminal acts of corruption (Wahyuningrum et al., 2020).

In addition, the position of the KPK as a state institution in the executive group is also clearly illustrated by the form of the Supervisory Board, whose membership is appointed and determined by the President. That is where the responsibility for

the duties of the Supervisory Board is directly handed over to the President and the House of Representatives periodically one time in 1 year. Based on these arguments, researchers assume that with the existence of this supervisory board, the KPK must report all its activities⁷ to the supervisory board, which will impact the permission to conduct wiretaps. The existence of the supervisory board in the KPK also clearly eliminates the nature of KPK independence. The above thought consensus is in line with the Constitutional Court Decision No. 40/PUU-XV/2017, which in this case also places¹³ the KPK as part of an executive group of organs whose position is the same as the Prosecutor's Office. This is as in the ratio of the *legis* as follows:

"Considering that because the KPK is an institution in the executive domain that carries out the duties of investigation, investigation, the prosecution in cases of corruption crimes that are the authority of the Police and/or the Prosecutor's Office, even considering the function of the KPK as a special institution to encourage the eradication of corruption⁶ can run effectively, efficiently, and optimally, it can be concluded by itself that the KPK can be the object of the DPR's voting rights in the process. Its supervisory function. Thus, in carrying out its supervisory function, the DPR can exercise its constitutional rights, including the right to vote against the KPK only limited to matters related to the implementation of KPK duties and authorities in addition to the implementation of duties and authorities related to its judicial duties and authorities (investigations, investigations, and prosecutions)".

Based on legal considerations and constitutional court decisions above, the Corruption Eradication Commission as a state institution of the executive²⁴ state institution based on legal considerations of the functions and duties of the Corruption Eradication Commission is the same as the functions, duties, authorities of the prosecutor's office and the police. This has implications for the Corruption Eradication Commission, which the House of Representatives can package.

According to researchers, based on the explanation above, it is a pity if the KPK is placed in the executive branch of power. Because seeing from the authority of the KPK that can conduct investigations, investigations, even prosecutions, it is considered inappropriate as we know that the distribution of power in Indonesia consists of executive, legislative and judicial. The executive serves to exercise the power of government. The Legislature serves to draft and form laws and regulations. As well as, the judiciary serves as an institution that prosecutes violations of the regulations that have been made. The division of power is actually no longer relevant in the constitutional system as simply Ashiddiqie opinion through criticism of Montesquieu's typical Triassic political theory with the argument that :

"This conception of Triassic Politica idealized by Montesquieu is clearly irrelevant today, given that it is no longer possible to maintain that the three organizations deal exclusively with one of the three functions of power. Adult reality shows that the relationship between the branches of power can possibly not touch each other, and even the three are equal and control each other in accordance with the principle of checks and balances." (Ashiddiqie, 2017).

The reality of the irrelevant concept of Triassic politics in developing the constitutional system can be seen in various countries that no longer use the concept, as is the case in the United States and France. In the United States, there are known independent state organ institutions such as the Federal Trade Commission (FTC) and the Federal Communication Commission (FCC). (Asshiddiqie, 2017) In France, there were similar state institutions, such as the Commission des Operations de Bourse, commission informatique et libertes, commission de la communication des documents administratifs, and haute autorite de l'audiovisuel which later became commission nationale de la communication des libertes and then in 1989 changed again to Conseil Superieur de l'Audiovisuel (Asshiddiqie, 2017).

According to Bruce Ackerman in Kartika S. Wahyuningrum et al. states that "The American system contains (at least) five branches: House, Senate, President, Court, and independent agencies such as the Feder Reserve Board (Separation of powers in the United States constitutional system consists of at least five branches; The House of Representatives, the Senate, the President, the Supreme Court, and independent institutions such as the Federal Reserve Board." (Wahyuningrum et al., 2020) In the constitutional system of the United States and in eastern European countries, Russia and even the birthplace of the Triassic-political theory (France) no longer maintains the three branches of power separately. However, there are already six branches of power, as Skach opinion: DPR, senate, President as head of state, Prime Minister as head of the executive, Judiciary, and Independent Agencies (Aris, 2018).

This is in contrast to the opinion of Yves Meny and Andrew Knapp in Ahmad Basarah, which explains that there is a fourth power, namely Independent institutions. According to Yves Meny and Andrew Knapp, this institution exists because of the tendency in administrative theory to transfer tasks that are regulative and administrative into part of the duties of independent institutions (Basarah, 2014).

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Apart from Montesquieu's typical separation paradigm, the placement of the KPK as an institution in the executive branch will greatly impact the power of the President, who is authorized to mutata officials from the KPK. This happened because of the shift in the independence of the KPK to the executive institution, which forced the KPK to submit to the release and will of the President. That shows that the revision of the KPK law cannot be separated from the hidden political intentions of politicians in the DPR as makers of legislative products and the President who will have room to intervene in the performance of the KPK itself.

Based on the facts above, it shows that applying the concept of Triassic politics in the era of contemporary constitutional development as it occurs today is no longer relevant. The government should no longer rely solely on this concept. Furthermore, when we look at the revision of the KPK law and discuss the independence of the KPK, other things become a discussion about the existence of the KPK Supervisory Board and staffing derived from the state civil apparatus (ASN). This change in the staffing status of the KPK eliminates independence in this case, not independence in the norm, but in carrying out the duties of

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employees as KPK, namely handling criminal acts of corruption cases is not the main focus anymore because there has been a supervisory system by the relevant ministries.

It is feared that if KPK members change their status to ASN, there will be an attachment to the executive government. This system is similar to the Police and Prosecutor's system, which adheres to the command system. So that the KPK's wiggle room is very limited, which results if it does not follow the command, there will be a code of ethics sanction given. The cases handled by the KPK are often high-ranking officials of the Indonesian State (Wahyuningrum et al., 2020). So when researchers look at the KPK as a whole regarding the independence of the KPK, in this case, it is still mentioned in the revision of the KPK Law, but the implementation of its authority becomes more difficult because in carrying out its duties, the KPK must first get permission from the supervisory board.

This has broadly shown the weakness of the KPK after the change in the KPK Law. So to maintain the existence of the KPK in carrying out the task of eradicating corruption, according to researchers, it is more effective if the KPK remains independent as a whole and, of course, without a supervisory board and changes in the status of KPK staffing change to ASN because it will only slow down the investigation process that the KPK will carry out. The existence of a supervisory board in the KPK will not only facilitate the performance of the KPK but will also have implications in terms of the KPK's responsibility to the President as an extension of the President's hand directly, which will fill the task is the Supervisory Board. Likewise, the transition of KPK staffing status changed to ASN, which will make it easier for the government to emphasize KPK employees. This means that KPK employees must be ready to accept the consequences to be transferred to other institutions or local governments when this happens.

Conclusion

Corruption is categorized as an extraordinary crime (extraordinary crime); handling the problem of corruption must certainly be in an extraordinary way as well. Of the several bodies or institutions that have been formed to handle the corruption problem, only the KPK is still able to show its existence in carrying out its duties in handling corruption cases in Indonesia. That can happen because the authority received by the KPK based on Law No. 30 of 2002 concerning the Corruption Eradication Commission gives power to this anti-corruption commission in conducting investigations, investigations and seizures of corruption perpetrators. This authority cannot be separated from the position of an independent KPK so that any branch of power cannot intercept the KPK.

The shift in the independence of the KPK into an institution in the executive branch occurs because the government still categorizes state institutions in the Triassic political paradigm even though the paradigm is no longer valid in various countries and has been replaced by the paradigm of the new separation of power theory. In addition, the existence of the supervisory board certainly has a great influence on the authority of the KPK in conducting investigations, investigations and seizures. This happens because the KPK must first get approval from the

supervisory board before KPK carries out the task of investigating and investigating investigations. Furthermore, the existence of article 1 paragraph 6, which explains the staffing of the KPK with the status of the State Civil Apparatus, will certainly have implications for attachment between KPK employees and the executive government so that fairly competent employees can be mutated into other institutions.

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