

Criminal law policy about KPK authorities in the perspective of criminal action in corruption in Indonesia

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Abstract

Criminal law policy of the authority of the Corruption Eradication Commission the authority associated with the Corruption Eradication Commission (KPK) is the state agency that are unconstitutional, although not spelled out in the state constitution is the 1945 Constitution. Corruption eradication commission (KPK) was formed to look at the nature of the corruption itself is an extraordinary crime, so it requires an independent institution to fight corruption in Indonesia. Background The Commission is not due to the formation of the constitutional design rigidly interpreted, but rather incidental issues in the country and the common will of the people of Indonesia to combat corruption. Position of the Commission as a state agency is independent and free from the influence of any power, it is meant for combating corruption Commission did not get the intervention of any party. The establishment of the Commission was also a response to the ineffectiveness of the law enforcement agency performance so far in combating corruption, which impressed protracted in handling even indicated there was an element of corruption in the handling of his case. The authority granted by the Act prosecution to the Commission under the authority of the legitimate .The authority of the Commission is constitutional, it is reinforced by a number of decisions of the Supreme constitution..

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1. Introduction

Law enforcement in the history of eradicating corruption in Indonesia has been going on since the 1960s, and has changed laws 4 times, and finally by Law Number 20 of 2001 concerning changes to Law Number 31 of 1999 concerning Eradication of Corruption Crimes .Even though the amendment to the Act is that much, the philosophy, purpose and mission of eradicating corruption remain the same. Philosophically, the legislation to eradicate corruption confirms that the welfare of the Indonesian people is a goal of the nation to realize the development goals that are aspired and at the same time the founding ideals of the independence of the Republic of Indonesia formulated in the Preamble of the 1945 Constitution, and adopted into the fifth principle of the Pancasila.

Therefore, every threat and obstacle to achieving this nation's welfare is a violation of the nation's ideals. However, as a rule of law, steps to prevent and eradicate criminal acts of corruption must be based on the principle of legal certainty and based on the ideal of justice as a legal ideal since Greece. The juridical foundation, is the 1945 Constitution as "grund-norm" (basic law) which should be realized in an Act that reflects the ideals and legal objectives as described above. It is necessary to examine the

extent to which the Corruption Eradication Law (UUPK) has reflected the legal principles and intended legal ideals, which will be described in this paper.

The sociological foundation of law enforcement in Eradicating Criminal Acts of corruption according to Giddens, is that, the poverty that hit approximately 35-50 million Indonesians today is caused by corruption that has been systemic and extends to all layers of the bureaucracy and cannot be separated from the reciprocal influence bureaucracy and the private sector. Syed Hussein Alatas in his book *The Sociology of Corruption* explains corruption is "The sociologist studying the phenomenon of corruption has to be fully conversant with the history, the culture. Sociology of corruption is the study of the phenomenon of corruption related to history and culture where corruption occurs. Therefore, the eradication of corruption is not just the aspirations of the wider community but is an urgent need for the Indonesian people to prevent and eliminate everything from this country because thus law enforcement in eradicating corruption is expected to reduce and broaden the elimination of poverty.

Starting from the three legal policies to eradicate corruption in Indonesia above, it is clear that the law enforcement measures to eradicate corruption are a common obligation not only for law enforcement but also for all components of the nation with the guidance and leadership of the nation's leaders. the vice president reaches the bureaucratic leadership in the region, the legislature and the judiciary. While the government's political will to eradicate corruption crimes has become a real priority program. This form of political will was proven by the ratification of Law 28 of 1999 concerning the Implementation of a Clean Country, Free of Corruption, Collusion and Nepotism, and Law No. 31/1999 (amended by Law No. 20 of 2001) on Eradicating Corruption. In addition, Law No. 30/2002 concerning the Corruption Eradication Commission (KPK) has a very strategic role. Corruption in the political dictionary is a symptom or practice in which officials of state agencies misuse their positions to enable bribery, forgery and other irregularities for personal gain.

The intended corruption eradication policy is first to maintain and maintain the ideals of social justice and the welfare of the nation within the Republic of Indonesia as a legal state as a philosophical foundation; maintain and protect the right of every person to the recognition, guarantee, protection and fair legal certainty and equal treatment before the law (Article 28 D paragraph (1) of the 1945 Constitution) as the basis for law enforcement. maintaining the function of criminal law, specifically the 1999 and 2001 Corruption Eradication Act now Law No. 30 of 2002 as an operational foundation that prioritizes the balance of order and security maintenance functions on the one hand, and the deterrence / punishing function on the other principles of criminal law.

The purpose of the legal eradication of corruption cases is the birth of a deterrent effect. The deterrent effect is important for controlling corruption in order not to develop into a systemic crime. The reason is, if corruption is at a systemic level, then the impact of this crime becomes more serious, because it not only causes huge state losses, but also creates poverty, poor public services, and damages the economic foundation of the country. Law enforcement without deterrent effects will create a conducive situation for perpetrators to continue corruption. Likewise, the costs or costs of combating corruption will be more expensive than the results achieved. Starting from and based on the background as stated above, the problems in this study are formulated as follows.

What is the criminal law policy regarding the authority of the Corruption Eradication Commission in Law Number 30 of 2002 in the Corruption Eradication Commission in Indonesia and What is the criminal law policy regarding the authority of the Corruption Crime Commission in eradicating corruption in Indonesia for the coming masses.

2. Method

The method is written descriptively and should describe the research methodology or steps in conducting the study. A brief justification of the method is recommended to give an idea to the reader about the appropriateness of the method, reliability and validity of the results.

3. Discussion

3.1. Criminal Law Policy Regarding KPK's Authority in Eradicating Corruption in Indonesia for Future Masses

The government's efforts in eradicating corruption in the reform era were marked by the issuance of various legislative products whose purpose was to renew both the substance and institutional aspects. The legislation includes:

- a. MPR Tap of the Republic of Indonesia Nonor. XI / MPR about Clean and Free State Organizers of Collusion, Corruption and Nepotism.
- b. Law Number 28 of 1999 concerning Clean and Free Collusion, Corruption and Nepotism
- c. Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Act Number 20 of 2001 concerning the Eradication of Corruption Crimes which supersedes the 1971 Law concerning Corruption Crime.
- d. Law Number 30 of 2002 concerning the Corruption Eradication Commission.

As the implementation of article 43 of Act Number 31 of 1999 concerning Eradication of Corruption Crimes was amended by Law Number 20 of 2001, the government together with the DPR succeeded in establishing Law Number 20 of 2002 concerning the Corruption Eradication Commission. The Corruption Eradication Commission (abbreviated as KPK) is a state institution that in carrying out its duties and authority is independent and free from the influence of any power. Marwan Effendi said the purpose of the establishment of the Corruption Eradication Commission was to increase the effectiveness of efforts to eradicate corruption

3.2. The authority of the Corruption Eradication Commission to Effectively Corruption Eradication Commission in the Eradication of Corruption in Indonesia in the future

1. Urgency of Investigators in Carrying Out the Tasks of the Corruption Eradication Commission.

As we know, the investigators possessed by the Corruption Eradication Commission today are not investigators appointed by the Corruption Eradication Commission itself, but investigators who are owned and still have the status of Police and Prosecutors. The result of this was the lack of effective performance of the Corruption Eradication Commission in combating corruption. Moreover, the cases handled by the Corruption Eradication Commission involved members of the Police and Attorney General's Office. Here comes the sectoral ego investigating the Corruption Eradication Commission to investigate members of the Police and the Prosecutor's Office with the intention of not decreasing the authority of the Police and Prosecutor's

Office which is a senior institution of the Corruption Eradication Commission in Combating Corruption Crimes.

2. The existence of Independent Investigators in an Effort to Increase the Eradication of Corruption in Indonesia.

But the momentum is that the law should be enforced from the general public. There are many benefits to the Corruption Eradication Commission, the independent investigators from the internal Corruption Eradication Commission. One of the reduced public concerns about the independence of the corruption eradication Commission in investigating corruption cases. The recruitment of independent investigators can certainly add to the composition of investigators in the Corruption Eradication Commission, which currently only number around 100 people. Even though the workload of the Corruption Eradication Commission is very complex and the existence of the existence of the KPK is very heavy. Another improvement is the recruitment regulations for 7 investigators of the Corruption Eradication Commission. As soon as possible, the hinder as possible regulations of the recruitment of independent investigators must be marginalized immediately. It remains now that the government wishes to react as stakeholders and the House of Representatives as the KPK legislator, if later the opportunity is opened for independent investigators to be present at the Corruption Eradication Commission.

3.2.1. Implementation and Strategy of the Corruption Eradication Commission (KPK) in Combating Corruption in Indonesia.

The Corruption Eradication Commission in the task of eradicating corruption carries out two ways, namely acting (repressive) and preventing (preventive). Both are carried out simultaneously at balanced speeds. This is the way to deal with the crime of corruption will be in vain.

This method was carried out after examining the conditions and situations of eradicating corruption in Indonesia. History has proven that the efforts to eradicate corruption in a repressive manner without any results will not be effective. A number of Teams, Commissions or Agencies have been tasked with eradicating corruption since the 1950s such as OPSTIB, (oppression operation) in 1977, which only focused on prosecution without touching prevention efforts. The result lights up at the beginning, then slowly dims without a trace even the team / body is not sterile with the virus of corruption.

Learning from that history, the KPK put prevention efforts in the same position with prosecution. One of the preventive measures is to improve the bureaucratic system that is effective, transparent and accountable. Because corruption occurs not only because of bad people (dilapidated state organizers) but also because of bad systems (bad government systems).

Law Number 30 of 2002 gave a mandate to the Corruption Eradication Commission to take part in creating this condition among the duties and authorities of the Corruption Eradication Commission to conduct a study of the bureaucratic system, advise on improvements and supervise bureaucratic institutions and law enforcement officers. The ultimate goal is to create clean and effective bureaucrats and law enforcement officers.

Another strategy as the executor of the duties and authorities of the Corruption Eradication Commission in accordance with Law Number 30 of 2002 is to carry out

coordination and supervision. These two tasks aim to be more empowering law enforcement agencies or others. The coordination activity was carried out in the form of a coordination meeting with the prosecutor's office and the police to discuss the handling of cases of corruption. While supervision activities are carried out in the form of research and review, and the title of the case of the investigation or prosecution of corruption cases being carried out by the prosecutor's office and the police based on the notification of the start of investigation (SPDP) reported to the Corruption Eradication Commission.

Coordination and supervision was carried out by the Corruption Eradication Commission, including the High Prosecutor's Office and the police. One of the prominent things in the effort of supervision and coordination carried out by the corruption eradication commission was the emergence of obstacles both the police and the prosecutor's office against the decline of the President's permission to examine state officials. In connection with these obstacles / obstacles the Corruption Eradication Commission helped monitor the process of requesting permits.

The various efforts that have been made in the fight against corruption do not necessarily immediately eliminate corruption in Indonesia. However, through continuous efforts and with the support of various parties, surely the vision of creating Indonesia that is free from corruption is not impossible.

One of the concepts of law enforcement on eradicating corruption is the effort and strategy of law enforcement against the eradication of corruption should make the following requirements, namely: the existence of a national political commitment to eradicate corruption with responsive law enforcement. Indeed, all stages of national development regulated by various laws have included political commitments concretely proven in discussion activities, analysis opinions and suggestions made by various elements of the community stating that the KKN practices (Corruption, Collusion and Nepotism) should be abolished immediately.

In the authority of the Corruption Eradication Commission the need for preventive strategic measures must be made and carried out directed at matters that cause corrupt practices, each of the causes of corruption that are identified must be preventive, so as to minimize the causes of corruption. Besides that, efforts need to be made to minimize the opportunities for corruption. Detective strategies must be made and implemented especially by being directed so that if an act of corruption already occurs then the action will be known in a short and accurate time, so that it can be followed up appropriately.

A repressive strategy must be made and implemented especially by being directed to provide appropriate and fast legal sanctions to parties involved in corrupt practices. Thus, the process of investigation, investigation and prosecution up to the judiciary needs to be reviewed to be able to be perfected in all aspects so that the handling process will be carried out quickly and precisely.

Along with the socio-economic development of the community, there will always be new corruption cases that are increasingly sophisticated. Efforts to standardize this understanding may be more useful for law enforcement purposes, so that people and law enforcement officials have more clear signs. For this reason, various efforts to criminalize criminal acts do not stop until preventive and repressive actions, but must also be innovative or become pre-emptive, preventive, repressive, curative and rehabilitative.

Various studies of corruption cases in Indonesia show that corruption trails negatively towards national development through leakage of state finances, almost economic growth, inefficiencies in economic resources, impedes investment, high cost economy, extends the distance of rich and poor, destroys society, and destroys life state.

Therefore the effort to Eradicate Corruption is an urgent matter to become a national agenda. The efforts that have been carried out so far are felt to be not optimal and must be further enhanced by involving more parties both in the government and the government. In addition, these efforts need to be complemented by various scientific studies that underlie each of these corruption eradication activities, in line with our consistency in law enforcement in Indonesia (law enforcement in Indonesia).

4. Conclusion

The authority possessed by the Corruption Eradication Commission in eradicating corruption over the authority possessed by the Police and the Attorney General's Office has resulted in a norm vacuum related to the authority of the Corruption Eradication Commission in the appointment of its own investigators. invited, has a strategic position as Constitutional Importance whose position is the same as other State institutions mentioned explicitly in the 1945 Constitution.

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References

- Giddens, Anthony. (2010). *Sociology Method for new rules*. Yogyakarta: Student Library.
- Rosidi,Ajip. (2006). *Corruption and Culture*. Jakarta : Library of Indonesia.
- Awaludin, Arif. (2011). *Summary of Desertation*. Semarang : Doctoral Program in Law in Dipenogoro University.
- Marbun, B. N. (2007). *Political Dictionary*. Jakarta : Hermetic ray library.
- Warassih, Esmi. (2011). *Legal Officer of a Sessionological Study*. Semarang : Diponegoro University.
- Ibrahim Johnny, (2005). *Theory and Methodology of Normative Legal Research*. Surabaya : Bayumedia Publisng.
- Kompas. (2005). *Jihad Against Corruption*. Jakarta : Kompas Media Nusantara.
- Kompas.(2009). *Do Not Kill KPK Resistance Against Corruption Eradication Efforts,:* Jakarta : Kompas.
- Republic of Indonesia Corruption Eradication Commission, Empowerment of Law Enforcement, KPK Annual Report
- Effendi, Marwan. (2005). *RI Prosecutor's Office and Its Function in the Legal perspective*. Jakarta : Gramedia Main Library.

- Sumarwani, Sri. (2012). *History of legislation Eradicating Corruption Crimes Before Law Number 3 of 1971 to Law Number 20 of 2001*, Semarang : Undip Press,
- Sabian Uthman, (2008). *Towards Responsive Law Enforcement*. Yogyakarta : Student Library.
- Alatas, Syed Hussein. (1968), *The sociology of Corruption*. Singapore : Donal Moore Press Ltd.
- Constitution Number 1945. Pustaka Mahardika.
- Tap MPR NO. XI/MPR/1998 dan UU No. 28 /1999 tentang penyelenggara Negara yang bersih dan bebas KKN.
- Soekanto, Soerjono. (1986). *Pengantar Penelitian Hukum*. Jakarta : UI Press.
- Atmasasmita, Romli. Memahami Undang-Undang Komisi Pemberantasan Tindak Pidana Korupsi (1), Makalah : Senin, 23 November 2009 Di unduh 5 Februari 2012, 10.00 WIB
- Jaya, Nyoman Serikat Putra. (2008). *Beberapa Pemikiran Ke Arah Perkembangan Hukum Pidana*. Bandung : PT Citra Aditya Bakti.