

The Legal Position of the KPK as an Independent Anti-Corruption Agency in Indonesia: A Review in Law No. 19 of 2019 and UNCAC

Cite this article as:

Asis, A. (2024). The Legal Position of the KPK as an Independent Anti-Corruption Agency in Indonesia: A Review in Law no. 19 of 2019 and UNCAC. *Unnes Law Journal*, 6(1), 81-100.
<https://doi.org/10.15294/ulj.v6i1.8222>

TABLE OF CONTENTS

Abstract	
Introduction	
Method	
Implementation Policy on Reducing Child Labor in the Context of Supporting the Family Hope Program (PPA-PKH) as an Effort to Eliminate the Worst Forms of Child Labor (PBPTA) in Pemalang District	
a. Preparation (Pre-Shelter)	
b. Implementation at Shelter	
c. Post Shelter	
Obstacles in Implementation Policy on Reducing Child Labor in the Context of Supporting the Family Hope Program (PPA-PKH) as an Effort to Eliminate the Worst Forms of Child Labor (PBPTA) in Pemalang District	
a. Obstacles in Implementation In the implementation of PPA-PKH Policy as an Effort to Eliminate the Worst Forms of Child Labor (PBPTA) in Pemalang District	
b. Efforts to overcome Constraints in Implementation In the implementation of PPA-PKH Policy as an Effort to Eliminate the Worst Forms of Child Labor (PBPTA) in Pemalang District	
Conclusion	
References	

The Legal Position of the KPK as an Independent Anti-Corruption Agency in Indonesia: A Review in Law No. 19 of 2019 and UNCAC

Asis Asis

ABSTRACT. This study focuses on the KPK as an independent anti-corruption agency in Indonesia; the current situation is becoming more difficult due to the various types of KPK authorities that existed prior to the passage of Law No. 19 of 2019, which was later changed and exacerbated by the KPK's position under the executive clump. The purpose of this research is to analyze the position of the Corruption Eradication Commission (KPK) as an independent organization and to examine the legal aspects of the anti-corruption agency based on Law No. 19 of 2019 and the United Nations Convention Against Corruption (UNCAC). This research uses a socio-legal research method, which is an approach that combines normative legal analysis with an examination of social realities. In this context, law is not only understood as formal written norms but also viewed from how those laws are implemented in practice and their impact on society. The findings revealed that, first, the KPK is not independent because it is part of the executive clump. Second, in terms of wiretapping authority, permission from the supervisory board is required. Third, KPK personnel are classified as members of the Civil Servant (ASN). Fourth, there is a potential conflict of interest. Therefore, Law no. 19 of 2019 should be revised.

KEYWORDS. KPK, revision, UNCAC, ASN.

The Legal Position of the KPK as an Independent Anti-Corruption Agency in Indonesia: A Review in Law No. 19 of 2019 and UNCAC

Asis Asis*

Introduction

Following the revision of the KPK Law, the KPK's institutional status and authority increased significantly. This is because the revised results state in Article 3 that the KPK is no longer an independent state institution, but rather falls under the purview of the executive branch. Even though the KPK was an independent institution prior to the enactment of the new law, this became even more concerning following the Constitutional Court decision no. 36 / PUU-XV / 2017, which agreed to the KPK under executive power and made the KPK the subject of the DPR's inquiry rights. As a result, the KPK's performance as an independent anti-corruption agency will undoubtedly suffer.¹

Indonesia's Corruption Perception Index (CPI) has increased significantly in the last three years (prior to the revision of the KPK Law), as evidenced by the Transparency International Indonesia report, which states that, since 2017, Indonesia's CPI score has been 37 and ranked 96, and in 2018, Indonesia's CPI score continued to increase to 38 and was ranked 89,

* Asis Asis, Universitas Airlangga, Indonesia. Corresponding email: asis-2023@fh.unair.ac.id.

¹ ICW & TII, *Penguatan Semu Pemberantasan Korupsi PEMANTAUAN KINERJA SATU TAHUN KPK PERIODE 2019-2023* (Jakarta, 2020).

in line with the Corruption Clearing House (ACCH) recapitulation data available on the Anti Corruption Clearing House (ACCH) portal, until the end of 2018, the KPK succeeded in handling corruption crimes with the following details: investigation of 164 cases, investigation of 199 cases, prosecution of 151 cases, inkracht of 106 cases, and execution of 113 cases, saving the state money in the trillions of rupiah range is one of them.² In 2019, Indonesia's score reached 40 and it was ranked 85th, indicating that it was a brilliant achievement in eradicating corruption in Indonesia in 2019.

Meanwhile, following the enactment of Law No. 19 of 2019, Indonesia's 2020 Corruption Perception Index (CPI) has a score of 37 points and ranks 102 out of 180 countries worldwide. This score has dropped by three points since last year, when it stood at 40. Despite the fact that this was the highest achievement in the acquisition of Indonesia's CPI score in the last few years in 2019.³ This means that, prior to the new KPK Law, the score of corruption prosecution by the KPK continued to rise significantly; however, following the issuance of Law No. 19 of 2019, the score has dropped dramatically; this is relevant to the statements of Jeremy Mulholland and Zainal Arifin Mochtar in,⁴ who stated that in 2020, there were only seven Capture Operations (OTT) in Indonesia,⁵ whereas, from 2016 until the enactment of Law No. 19 of 2019, the number of OTTs carried out by the KPK ranged between 18 and 30 per year. There are at least three major reasons why Indonesia's CPI score has plummeted. The inclusion of the KPK into the executive power clump is the first step. Second, eradicating corruption necessitates the approval of the supervisory board. Third, the issuance of SP3 in the revision of the KPK Law⁶ burdens the KPK's performance, whereas there was no mention of the clause on the existence of an Warrant of Termination of Investigation (SP3) in the previous KPK Law.

Although several judicial tests were granted, the Constitutional Court Decision No. 62 / PUU-XVII / 2019, which rejected the judicial and formal

² Anti-Corruption Clearing House, *Rekapitulasi Tindak Pidana Korupsi*, 2018, <https://acch.kpk.go.id>.

³ ICW & TII, *Penguatan Semu Pemberantasan Korupsi PEMANTAUAN KINERJA SATU TAHUN KPK PERIODE 2019-2023*.

⁴ ICW, *Tren Penindakan Korupsi Semester 1-2021*, 2021.

⁵ Afif Naufal Faris and Rehnalemken Ginting, "Legalitas Dan Efektivitas Operasi Tangkap Tangan Pasca Berlakunya Undang-Undang Nomor 19 Tahun 2019," *Jurnal Hukum Pidana dan penanggulangan Kejahatan* 9, no. 1 (2020).

⁶ Nanci Yosepin Simbolon, "Politik Hukum Penanganan Korupsi Oleh Komisi Pemberantasan Korupsi Pasca Disahkannya Undang-Undang No. 19 Tahun 2019," *JURNAL MERCATORIA* 13, no. 2 (2020).

THE LEGAL POSITION OF THE KPK

review of the revision of the KPK Law, also added new burdens for the KPK as an independent anti-corruption agency. In a similar vein, Bivitri Susanti stated in a Jentera webinar that the Supreme Court's decision to reject the overall formal review submitted by several parties is very unfortunate, even though there were several mistakes in the process of revising the KPK Law if examined carefully. (Indonesia Jentera School of Law, 2021)

The change in state of KPK employees to the State Civil Apparatur (ASN) following the issuance of Law No. 19 of 2019 adds to the KPK's heavy burden in eradicating corruption in Indonesia, as stated in Article 1 number 6, Article 24 paragraph (2) of Law No. 19 of 2019: Employees of the Corruption Eradication Commission are state civil Employees of the Corruption Eradication Commission are classified as state civil servants under the provisions of state civil apparatus laws and regulations. Despite the fact that not all KPK employees are currently included in the State Civil Apparatus. Because there are both permanent and temporary KPK employees. Of course, this condition necessitates a lengthy adaptation to the conditions,⁷ Despite the fact that, at this time, PP No. 41 of 2020 governs the mechanism for changing the status of KPK employees to ASN.

Furthermore, the process of changing the status of KPK employees is not carried out immediately, where the National Insight Test (TWK-Tes Wawasan Kebangsaan in Indonesian) is required in the transition process, the status change of KPK employees to ASN and the TWK actually violates the basic principles of establishing the KPK. This is due to the fact that changing the status of KPK employees to ASN will, of course, greatly disrupt the KPK's independence principle. As a result, the transfer of KPK employees' status as ASN or TWK is at least in conflict with many existing legal regulations, particularly UNCAC, which should serve as basic guidelines, the establishment of an independent anti-corruption agency within a country, and so on.⁸ If KPK employees eventually become ASN, the system will be bureaucratic, making it easy to be co-opted by political interests.

Furthermore, the passage of the new Corruption Eradication Commission Law revealed numerous conflicts of interest (Conflict of Interest). To begin, nearly 60% of the cases handled by the KPK between 2003 and 2018 came from the political elite. Second, the involvement of many DPR members in corruption cases from 2014 to 2019, including the

⁷ Ibid.

⁸ ICW, *Tren Penindakan Korupsi Semester I-2021*.

chairman of the DPR, Setya Novanto, and his deputies, did not escape the KPK's legal trap. Third, the KPK has captured the majority of political parties that were in the DPR between 2014 and 2019.⁹ This fact indicates that the issuance of the new KPK Law is very thick with conflict of interest conditions.

Not only that, but the KPK's challenges will become even more important in the future with the passage of Law No. 19 of 2019, which requires a permit from the supervisory board before conducting an investigation or wiretapping. This is consistent with JF's opinion, who stated that the existence of a Supervisory Board whose members are all elected by the President could violate the KPK's independence principle and limit the control system. When conducting wiretapping, the KPK must obtain permission from the Supervisory Board, which clearly will impede, if not prevent, the KPK from working effectively and professionally.¹⁰ In fact, such excessive authority should not be granted to a special organ that should work at the level of administrative supervision.¹¹ Even though the Supervisory Board is not currently required by the KPK, it appears that legislators do not understand that in the KUHAP regulations, only court institutions are authorized to issue permits. Meanwhile, the Supervisory Board is not involved in law enforcement. This is an important reason why, as mandated by UNCAC, a country must establish an independent anti-corruption agency.

Indonesia, as one of the state parties that signed the international anti-corruption convention (UNCAC), the implication is that it must comply with and comply with the provisions contained in UNCAC itself, plus Indonesia has ratified UNCAC into the (Law No, 7/2006), meaning that from the ratification, Indonesia is obliged to apply and be bound as a legal provision in Indonesia.¹² Furthermore, the legal provisions of Indonesia's anti-corruption institutions must adopt the existing UNCAC provisions. In article

⁹ ICW, "Korupsi Bencana, Bencana Korupsi," *ICW*, last modified 2019, accessed December 13, 2022, <https://antikorupsi.org/id/article/korupsi-bencana-bencana-korupsi>.

¹⁰ Jovial Falah Parama and Sholahuddin Al-Fatih, "Kajian Yuridis Ambivalensi Pergeseran Independensi Komisi Pemberantasan Korupsi (Kpk) Ke Dalam Rumpun Lembaga Eksekutif," *Jurnal Komunitas Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum* 4, no. 1 (2021).

¹¹ Ayu Putriyana and Nur Rochaeti, "The Impact of Enforcement of Corruption Law by the Corruption Eradication Commission after the Ratification of the Latest KPK Law," *Jurnal Penelitian Hukum De Jure* 21, no. 3 (2021).

¹² Damos Dumoli Agusman, *Hukum Perjanjian Internasional: Kajian Teori Dan Praktik Indonesia* (Bandung: Refika Aditama, 2017).

THE LEGAL POSITION OF THE KPK

6 and 25, it has also been stated that anyone who opposes UNCAC is considered a party who obstructs the process of eradicating corruption.¹³

This study is intended to analyze and examine how (1) The KPK's Role as an Independent Anti-Corruption Agency in Indonesia and (2) Legal Analysis of Anti-Corruption Institutions Based on Law No. 19 of 2019 and the UN Convention Against Corruption

Method

The socio-legal research method will be used in this study, which is a type of research method that presents a way of looking at the law in context rather than text. According to Brian Z. Tamanaha's book *Socio-legal Theory: Pragmatism and a Social Theory of Law* (1997), there are at least three objectives in socio-legal research. First and foremost, Brian Z. Tamanaha wishes to present a comprehensive and realistic approach to the research. Legal and social. Second, we want to delve into the depths of legal theory by beginning with a social science perspective. Third, we want to respond to the growing influence of socio-legal critics' unilateral recognition.¹⁴ The use of a normative approach alone is insufficient to identify the legal issues that will be raised in this research because, in a historical context, in a historical context, and in a political context of law, there is a need for a scientific approach outside of legal science that makes the socio-legal approach present to reveal the importance of KPK's position as an established independent anti-corruption organization in Indonesia. When looking at legal institutions at work, the socio-legal approach becomes interesting because it considers not only the regulated powers, but also the institutional impact on these powers.¹⁵

¹³ Satria Unggul Wicaksana Prakasa, "Social Control Movement as a Corruption Eradication Instrument in Indonesia," *Wacana Hukum* 26, no. 1 (2020).

¹⁴ Brian Z. Tamanaha, *Realistic Socio-Legal Theory: Pragmatism and a Social Theory of Law*, *Oxford Socio-Legal Studies*, 1997.

¹⁵ W. D. Wiratraman, H. P., & Putro, "Tantangan Metode Penelitian Interdisipliner Dalam Pendidikan Hukum Indonesia," *Jurnal Mimbar Hukum*, 31, no. 3 (2019): 403–415.

Theoretical Review of KPK as an Independent Anti-Corruption Agency

Following the Soeharto government (1998), anti-corruption has become one of Indonesia's top priorities, with democratization, market liberalization, and institutional anti-corruption frameworks pursued as a means of increasing transparency and accountability in public governance. The establishment of a strong anti-corruption agency is a critical component of this effort. As a result, the Corruption Eradication Commission (KPK – Komisi Pemberantasan Korupsi in Indonesian) was formed.¹⁶

Ahmad Khoirul Umam also stated that the foundation for the establishment of the KPK is nothing less than an important tool for combating systematic corruption and improving public integrity. Corruption forces in post-Soeharto Indonesia, on the other hand, have found opportunities to form strong coalitions based on the legacy of pre-reform power relations. In fact, the greatest impact occurs when power holders' efforts to exploit KPK's institutional weaknesses occur in a permissive environment characterized by political stakeholders' uncertainty or indecision. The fragmentation of civil society and independent media also severely limits anti-corruption activists' ability to hold corrupt officials in Indonesia accountable.¹⁷

The reform period was a period in which the eradication of corruption was enthusiastically voiced, both by law enforcement authorities and the public, who staged demonstrations in 1998 determined to require state authority, both the President and state authorities (legislators and other state officials), not to commit corruption and those who have been caught corrupt to be brought to justice as soon as possible.¹⁸

The establishment of an independent state institution, such as the KPK, in 2002 was the result of the transfer of authority inherent in state institutions (legislative, executive, and judicial) to the function of an independent institution. As a result, these independent state institutions

¹⁶ Ahmad Khoirul Umam et al., "Addressing Corruption in Post-Soeharto Indonesia: The Role of the Corruption Eradication Commission," *Journal of Contemporary Asia* 50, no. 1 (2020): 125–143, <https://doi.org/10.1080/00472336.2018.1552983>.

¹⁷ Ibid.

¹⁸ Sekar Anggun Gading Pinilih, "POLITIK HUKUM KEDUDUKAN KPK SEBAGAI LEMBAGA PEMBERANTASAN KORUPSI DI INDONESIA," *Jurnal Hukum Progresif* 8, no. 1 (2020).

THE LEGAL POSITION OF THE KPK

frequently perform a variety of functions, some of which are mixed in nature and some of which are independent,¹⁹ The KPK was established to supplement the performance of state institutions (prosecutors and police) in dealing with corruption cases that had not been handled properly.

The KPK has been given impressive authority by law in dealing with *Rasuah*, so it is true that the KPK is mentioned as a super body because it starts from prevention to prosecution, with a function of investigating, investigating, and prosecuting corruption cases. This strengthens the KPK's role in eradicating corruption in Indonesia.²⁰ The provision of authority does not imply that the KPK is the only superpower institution; rather, it is hoped that the provision of authority will enable the KPK to carry out its main duties in a professional manner; this is significant because the KPK, as an independent anti-corruption agency, will handle corruption cases involving state officials.

In fact, in order to learn how to establish an independent anti-corruption agency, Indonesia must examine best practices for independent anti-corruption designs. In order to strengthen institutional design and maintain the independence of the KPK, it is important for Indonesia to study and compare best practices from other countries that have successfully built strong anti-corruption agencies. One relevant example is the Independent Commission Against Corruption (ICAC) in Hong Kong, which is often cited as an international model in terms of integrity and effectiveness in combating corruption. Therefore, the following section will discuss a comparison between Indonesia's KPK and Hong Kong's ICAC as a reflection on their institutional design and respective challenges.

The following is a comparison of Indonesia's and Hong Kong's anti-corruption agencies:

Tabel 1. A comparison of the functions and authorities of Hong Kong and Indonesian anti-corruption agencies:

Indicator	No	ICAC (Hongkong)	KPK (Indonesia)
Function	1.	Chapter 204 Article 12 Ordinance : There is no provision regarding	According to Article 6 letter b of Law no. 19 of 2019, one of the

¹⁹ Indonesia and J Asshiddiqie, *Konsolidasi Naskah UUD 1945* (Yarsif Watampone, 2003), <https://books.google.co.id/books?id=R6SWAAAAMAAJ>.

²⁰ Haboddin & Ahmad Imron, Rozuli Muhtar, "Birokrasi, Korupsi, Dan Kekuasaan" (2017).

		coordination with other agencies authorized to commit criminal acts of corruption.	tasks of the KPK is to coordinate with agencies authorized to carry out the Eradication of Corruption and agencies in charge of providing public services.
	2.	The ICAC is not in charge of supervising.	According to Article 6 letter d of Law No. 19 of 2019, the KPK is in charge of supervising agencies authorized to carry out anti-corruption operations.
	3.	According to Article 12 letter an of Chapter 204, the Hong Kong ICAC is only responsible for researching and investigating.	According to Article 6 letter e of Law No. 19 of 2019. The KPK is tasked with investigating, investigating, and prosecuting Corruption Crimes.
	4.	In accordance with Chapter 204, Article 12 letter d, the Hong Kong ICAC is responsible for investigating the practices and procedures of each department of the government and legal entities in order to facilitate the disclosure of corrupt practices.	According to Article 6 letter c of Law No. 19 of 2019, the KPK is responsible for monitoring the administration of state governance.
	5.	According to Chapter 204, Article 12 letter g, the Hong Kong ICAC has the duty to educate the public in order to combat all evil aspects of corruption.	According to Article 6 letter an of Law No. 19 of 2019, the KPK is required to take preventive measures to ensure that there are no criminal acts of corruption.
	6.	According to Chapter 204, Article 12 letter h, the Hong Kong ICAC is responsible for gathering and cultivating public support in the fight against corruption.	According to Article 6 letter a of Law No. 19 of 2019, the KPK is required to take preventive measures to ensure that there are no criminal acts of corruption.
Authority	1.	The Commissioner's authority under Chapter 201 Part III of the Hong Kong ICAC does not govern the performance of coordination tasks.	According to Article 8 letter an of Law No. 19 of 2019, The KPK has the authority to coordinate investigations, investigations, and prosecutions in the Eradication of Corruption.
	2.	In Chapter 201 Part III of the ICAC, paragraph 13, the Commissioner's Authority provides for special powers for investigations by order of the Commissioner.	According to Law No. 19 of 2019, the KPK does not have any special powers.
	3.	The Commissioner's authority in Chapter 201 Part III paragraph (13) C prohibits announcing the information obtained so that	There is no regulation in Law No. 19 of 2019.

THE LEGAL POSITION OF THE KPK

		investigations can be carried out as thoroughly as possible to minimize information leaking to the public.	
	4.	The ICAC's authority to obtain information is regulated by the Commissioner's authority in Chapter 201 Part III paragraph (14) of the Act. False information, on the other hand, could result in a \$20,000 Hong Kong fine and a year in prison.	The KPK, under Law No. 19 of 2019, does not regulate the authority if providing false information can result in fines and imprisonment.
	5.	The repeal of laws is governed by the Commissioner's authority in Chapter 201 Part III paragraphs (14) A-B.	There is no regulation in Law No. 19 of 2019.
	6.	ICAC has the authority to obtain assistance and issue instructions to government employees under the authority of the Commissioner as stated in Article Chapter 201 Part III paragraph (16). If a government employee is asked for assistance and does not provide it, he may be fined \$ 20,000 Hong Kong and imprisoned for one year.	There is no regulation in Law No. 19 of 2019.
	7.	The ICAC has special powers for investigations ordered by the Commissioner under Chapter 201, Part III, paragraph 13.	According to Law No. 19 of 2019, the KPK does not have any special powers in conducting investigations.

The table shows that there are many differences that should be corrected in the Indonesian KPK,²¹ particularly in terms of authority, especially given the fact that corruption cases are increasing year after year. Of course, legal regulations on corruption eradication must also be improved, not vice versa. The presence of an independent state institution indicates a level of oversight and balance. As a result, independent anti-corruption institutions must be separated from any power in order for their performance to be unaffected.²² Furthermore, the need for special authority for anti-corruption institutions is critical because the cases handled involve state finances. Aside from that, it is critical to redesign an independent anti-

²¹ Nehru dan Adam Setiawan Asyikin, "Kedudukan KPK Dalam Sistem Ketatanegaraan Pasca Diterbitkannya Revisi Undang-Undang KPK," *Justitia Jurnal Hukum* Volume 4, no. 1 (2020).

²² Muhtadi Muhtadi, "Lembaga Negara : Makna, Kedudukan Dan Relasi," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 7, no. 3 (2015).

corruption agency so that the deficiencies in Law No. 19 of 2019 can be addressed immediately.²³

The Concept of The Position of the KPK in the executive family

Previously, Article 3 of the old KPK Law (Law Number 30 of 2002) stated that "the Corruption Eradication Commission is a state institution that is independent and free from the influence of any power in carrying out its duties and powers." which was later amended by Law No. 19 of 2019 to state that "the Corruption Eradication Commission is a state institution in the executive power clump." Changes to the phrase "executive power" explicitly allowed the KPK to enter the executive branch. As a result, the KPK is no longer an independent institution as it was prior to the enactment of Law No. 19 of 2019, but instead has vertical responsibilities to the executive institutions above it, namely the president and vice president.²⁴

The issuance of Law No. 19 of 2019 is also a sign that Indonesia's commitment to eradicating corruption is no longer independent. This is reflected in Article 3 of the new Corruption Eradication Commission Law, which states that "the KPK is a state institution in the executive power clump exercising its authority independently and free from the influence of any power," which is consistent with the Constitutional Court decision no. 36 / PUU-XV / 2017. The statement in the article is ambiguous, implying that if law enforcers such as the KPK are placed under the executive clump, the ineffectiveness of the powers of the Police and the Prosecutor's Office, which have been under the executive power clump, will be repeated.²⁵ When carefully examined, the sound of Article 3 of the revised KPK Law actually has multiple interpretations between the meaning of an independent

²³ Satria Unggul Wicaksana Prakasa et al., "Social Aid of Covid-19 Corruption: Strategy and Mitigation Policy of Muhammadiyah East Java," *Legality: Jurnal Ilmiah Hukum* 29, no. 1 (2021): 27–45.

²⁴ Muhammad Habibi, "INDEPENDENSI KEWENANGAN KOMISI PEMBERANTASAN KORUPSI PASCA PERUBAHAN UNDANG-UNDANG KOMISI PEMBERANTASAN KORUPSI," *Cepalo* 4, no. 1 (2020).

²⁵ Kamaluddin Abbas, "Corruption Crime Eradication by Corruption Eradication Commission Through Red-Handed Catch Operation on Bribery Action," *Jurnal Bina Praja* 13, no. 2 (August 31, 2021): 319–329, <http://jurnal.kemendagri.go.id/index.php/jbp/article/view/925>.

THE LEGAL POSITION OF THE KPK

institution and also an executive institution. This independent phrase, too, requires a clear interpretation to avoid ambiguity.²⁶

The amendment of several articles in the old Corruption Eradication Commission Law, including Article 46 paragraph (2), which has been the main regulation specifically (*lex specialis*) regarding the invalidity of provisions on special procedures that have made it difficult for law enforcers to process state officials, which has then been exacerbated by the requirement for permits to inspect certain officials. Article 46 of the new KPK Law appears contradictory because it removes the special nature (*lex specialis*) of the KPK Law, despite the fact that corruption is an extraordinary crime that requires extraordinary methods and authority to deal with.²⁷

The KPK, which was originally a super body institution, has now evolved into an executive clump institution, which cannot be denied will have an impact on the KPK's independence due to factors of intervention and political interests from other institutions. This means that the KPK, which is now part of the executive, could be used as a political tool by certain groups, plus the public's trust in the KPK will begin to wane, and they will become skeptical.

Legal Analysis of Anti-corruption institutions based on Law no. 19 of 2019 and UNCAC

There are at least nine indicators that can be used to measure Indonesia's level of compliance in establishing an independent anti-corruption agency to measure the extent to which Indonesia is implementing an independent anti-corruption agency, including: (1) KPK Corruption Eradication Comprehensive Authority (Investigation / investigation, Prosecution, and International Cooperation Authority), the KPK's authority is limited and not maximal in eradicating corruption; further analysis is required to determine whether there is a weakening authority to the KPK's authority; (2) the KPK can collaborate with CSOs and civil society entities in eradicating corruption; however, the negative stigma indicates that

²⁶ Moh Fadhil, "KOMISI PEMBERANTASAN KORUPSI, POLITIK HUKUM ANTIKORUPSI DAN DELEGITIMASI PEMBERANTASAN KORUPSI," *Al-Ahkam* 15, no. 2 (2019).

²⁷ Kartika Sasi Wahyuningrum, Hari Sutra Disemadi, and Nyoman Serikat Putra Jaya, "INDEPENDENSI KOMISI PEMBERANTASAN KORUPSI: BENARKAH ADA?," *Refleksi Hukum: Jurnal Ilmu Hukum* 4, no. 2 (2020).

cooperation with CSOs is strengthening in the KPK²⁸ at the time of the #reformasidikorupsi action, this also necessitates a thorough examination of the collaboration between KPK and other CSOs.

Furthermore, (3) The basis for the establishment of Anti-Corruption institutions must be independent and free of political interests, where Law No. 19 of 2019 is actually inversely proportional to this can be seen in the case of the Cicak vs Buaya 1-4, the Harun Masiku case, and other corruption cases with a strong political element; in this case, it is necessary to make a further indicator regarding the independence of the KPK after the issuance of Law No. 19 of 2019, (4) The model of appointment and selection of KPK Leaders and KPK staff / employees, there is a clause in the new KPK Law on the change of status of KPK employees to ASN so that this also makes KPK employees submit to the ASN Law, this also needs to make indicators regarding appointment, recruitment, mutation & rotation of KPK employees to show the independence of the KPK because the mechanism for KPK employee transfer and rotation is not regulated in the new KPK Law, (5) KPK employees are safe from physical and psychological attacks, and their security is protected; however, the criminalization cases of Cicak vs Buaya, Abraham Samad, the bomb attack at Agus Rahardjo & Laode Syarif, and the Novel Baswedan case are real examples of a lack of security protection for KPK employees, given the importance of security. Employees of the KPK require a mechanism and protection from criminalization and physical attacks, protection against criminalization and physical attacks on employees of anti-corruption institutions that are carried out deliberately and systematically is also a major concern, because KPK employees are extremely vulnerable to intervention and intimidation.²⁹

(6) Building a system and code of ethics for KPK Leaders and Employees that are absolute and impartial and must be obeyed by all KPK leaders and employees, implying that the code of ethics with the principles of compliance and apolitics is critical to create, particularly over-authority Dewas's authority. (7) KPK employees are free of criminalization and misguided judicial efforts; this needs to be emphasized because several cases, including Abraham Samad, Novel criminalization cases, non-job Commissioner Rosa Purbo Bakti in the Harun Masiku Case, criminalization cases and deviant justice for KPK leaders and employees, and identifying patterns of attacks on the KPK's independence, require further investigation.

²⁸ Donal Fariz, "Pemerintahan Joko Widodo Dan Serangan Politik Terhadap KPK," *Jurnal Antikorupsi INTEGRITAS* 5, no. 2 (2022).

²⁹ Satria Unggul Wicaksana Prakasa, "Garuda Indonesia-Rolls Royce Corruption, Transnational Crime, and Eradication Measures," *Lentera Hukum* (2019): 407 424.

THE LEGAL POSITION OF THE KPK

(8) There must be a strong external and internal code of ethics standard for KPK to follow in order to identify and make clear indicators for internal and external ethical standards, ensuring KPK's independence. (9) Strengthening KPK institutions for Executive, Legislative, and Judicial powers, as well as strengthening international cooperation with the United Nations (UNDP and UNDOC), which can be another alternative way to make cooperation to repatriate corruptors (MLA) who run abroad easier, and building multilateral cooperation between countries, particularly neighboring countries.

The issuance of Law no. 19 of 2019 and the nine indicators described above resulted in an institutional weakening of the KPK. Even though, in carrying out the mandate of Articles 6 and 36 of the UN Convention on the Rights of the Child and The Jakarta Statement 9, these indicators should be able to be resolved, this does not mean they are exacerbated, because the impact of corruption has implications not only for state finances, but also for socioeconomic rights in society.³⁰ The impact of systemic corruption should be mitigated rather than eliminated. In Law no. 19 of 2019, there are also many KPK authorities that are not independent, such as Articles 69D, 70B, and 70C, which give the KPK Supervisory Board more authority.

To develop an optimal and comprehensive framework for an independent anti-corruption agency in Indonesia, Article 6 and 36 of UNCAC and The Jakarta Statement must serve as a model for the country, not just by involving civil society in the open selection of employees. The KPK, as well as the KPK's independence as an independent anti-corruption agency, must be a major concern in supporting the country's anti-corruption efforts.³¹

Furthermore, the independence of the KPK has been regulated in the recommendations of the United Convention Against Corruption (UNCAC). As one of the many countries that have signed the UNCAC, Indonesia is required to follow the UNCAC's existing provisions. In Article 6, UNCAC states that each state party to UNCAC must and must create an independent body to deal with corruption issues, and that this body must be free of any power's influence. Meanwhile, A36 states that the existence of such an independent body must be accompanied by independent staff or persons with expertise in eradicating corruption through law enforcement. Looking beyond the words of the two articles, Indonesia, as a state party to UNCAC,

³⁰ Serena Verdenicci and Dan Hough, "People Power and Anti-Corruption; Demystifying Citizen-Centred Approaches," *Crime, Law and Social Change* 64, no. 1 (2015).

³¹ KPK-RI, *Identification Gap Analysis Between Laws/Regulations of The Republic of Indonesia and United Nations Convention Against Corruption* (Jakarta: KPK Publisher, 2006).

is obligated to apply these two articles, not the other way around, especially since Indonesia has also ratified UNCAC.

If the new regulation in Law No. 19 of 2019 actually negates the independence of the KPK, Indonesia has effectively denied the agreement reached before the international community.³² According to the statement from the ICW report, Indonesia, as a member of the UNCAC, violated not only the UNCAC, but also the Jakarta Statement for Anti-Corruption Agencies in 2012, which should have been the initiator of the anti-corruption forum campaign.

Conclusion

Several groups with an interest in weakening the KPK as an independent anti-corruption agency in Indonesia have made various efforts, including efforts to weaken the KPK institutionally with the issuance of Law no. 19 of 2019. Where the KPK is included in the executive clump in the law, this clearly interferes with the KPK's independence as an independent institution, because it is allied with the executive. Then there's the requirement for permission from the supervisory board (Dewas) to conduct wiretapping, combined with the clause for KPK employees who change their status to State Civil Service (ASN), which means that the transition can seriously interfere with KPK employees' performance at any time because they have to submit in the ASN Law, even though the transitional mechanism has not been clearly regulated in Law no. 19 of 2019. Although at this time there has also been PP. 41 of 2020 concerning the transition of KPK employees to become ASN. The new KPK Law also indicates a requirement for a conflict of interest, because the perpetrators in corruption cases prior to the revision of the KPK Law were, on average, from the political elite..

Indonesia, as a country that signed and ratified the United Nations Convention Against Corruption (UNCAC), also did not comply with ensuring the existence of a special independent institution to handle corruption cases, as mandated in UNCAC articles 6 and 36, but instead implemented new regulations. In fact, Law No. 19 of 2019 undermines the KPK's independence as an independent organization. However, the opposite occurred, with new regulations enacted. In fact, Law No. 19 of 2019 undermines the KPK's independence as an independent anti-corruption

³² ICW & TII, *Penguatan Semu Pemberantasan Korupsi PEMANTAUAN KINERJA SATU TAHUN KPK PERIODE 2019-2023*.

THE LEGAL POSITION OF THE KPK

agency, implying that Indonesia has denied the agreement reached before the countries of the world. Not only that, but Indonesia will be considered to have denied the Jakarta Statement for Anti-Corruption Agencies, which was held in 2012, despite the fact that Indonesia was the forum's initiator.

References

- Abbas, Kamaluddin. "Corruption Crime Eradication by Corruption Eradication Commission Through Red-Handed Catch Operation on Bribery Action." *Jurnal Bina Praja* 13, no. 2 (August 31, 2021): 319–329. <http://jurnal.kemendagri.go.id/index.php/jbp/article/view/925>.
- Agusman, Damos Dumoli. *Hukum Perjanjian Internasional : Kajian Teori Dan Praktik Indonesia*. Bandung: Refika Aditama, 2017.
- Asyikin, Nehru dan Adam Setiawan. "Kedudukan KPK Dalam Sistem Ketatanegaraan Pasca Diterbitkannya Revisi Undang-Undang KPK." *Justitia Jurnal Hukum* Volume 4, no. 1 (2020).
- Fadhil, Moh. "KOMISI PEMBERANTASAN KORUPSI, POLITIK HUKUM ANTIKORUPSI DAN DELEGITIMASI PEMBERANTASAN KORUPSI." *Al-Ahkam* 15, no. 2 (2019).
- Falah Parama, Jovial, and Sholahuddin Al-Fatih. "Kajian Yuridis Ambivalensi Pergeseran Independensi Komisi Pemberantasan Korupsi (Kpk) Ke Dalam Rumpun Lembaga Eksekutif." *Journal Komunitas Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum* 4, no. 1 (2021).
- Faris, Afif Naufal, and Rehnalemken Ginting. "Legalitas Dan Efektivitas Operasi Tangkap Tangan Pasca Berlakunya Undang-Undang Nomor 19 Tahun 2019." *Jurnal Hukum Pidana dan penanggulangan Kejahatan* 9, no. 1 (2020).
- Fariz, Donal. "Pemerintahan Joko Widodo Dan Serangan Politik Terhadap KPK." *Jurnal Antikorupsi INTEGRITAS* 5, no. 2 (2022).
- Habibi, Muhammad. "INDEPENDENSI KEWENANGAN KOMISI PEMBERANTASAN KORUPSI PASCA PERUBAHAN UNDANG-UNDANG KOMISI PEMBERANTASAN KORUPSI." *Cepalo* 4, no. 1 (2020).
- House, Anti-Corruption Clearing. *Rekapitulasi Tindak Pidana Korupsi*, 2018. <https://acch.kpk.go.id>.
- ICW. "Korupsi Bencana, Bencana Korupsi." *ICW*. Last modified 2019. Accessed December 13, 2022. <https://antikorupsi.org/id/article/korupsi-bencana-bencana-korupsi>.
- . *Tren Penindakan Korupsi Semester 1-2021*, 2021.
- ICW & TII. *Penguatan Semu Pemberantasan Korupsi PEMANTAUAN KINERJA SATU TAHUN KPK PERIODE 2019-2023*. Jakarta, 2020.

- Indonesia, and J Asshiddiqie. *Konsolidasi Naskah UUD 1945*. Yarsif Watampone, 2003.
<https://books.google.co.id/books?id=R6SWAAAAMAAJ>.
- KPK-RI. *Identification Gap Analysist Between Laws/Regulations of The Republic of Indonesia and United Nations Convention Against Corruption*. Jakarta: KPK Publisher, 2006.
- Muhtadi, Muhtadi. "Lembaga Negara : Makna, Kedudukan Dan Relasi." *FIAT JUSTISIA: Jurnal Ilmu Hukum* 7, no. 3 (2015).
- Muhtar, Haboddin & Ahmad Imron, Rozuli. "Birokrasi, Korupsi, Dan Kekuasaan" (2017).
- Pinilih, Sekar Anggun Gading. "POLITIK HUKUM KEDUDUKAN KPK SEBAGAI LEMBAGA PEMBERANTASAN KORUPSI DI INDONESIA." *Jurnal Hukum Progresif* 8, no. 1 (2020).
- Prakasa, Satria Unggul Wicaksana. "Garuda Indonesia-Rolls Royce Corruption, Transnational Crime, and Eradication Measures." *Lentera Hukum* (2019): 407 424.
- . "Social Control Movement as a Corruption Eradication Instrument in Indonesia." *Wacana Hukum* 26, no. 1 (2020).
- Putriyana, Ayu, and Nur Rochaeti. "The Impact of Enforcement of Corruption Law by the Corruption Eradication Commission after the Ratification of the Latest KPK Law." *Jurnal Penelitian Hukum De Jure* 21, no. 3 (2021).
- Simbolon, Nanci Yosepin. "Politik Hukum Penanganan Korupsi Oleh Komisi Pemberantasan Korupsi Pasca Disahkannya Undang-Undang No. 19 Tahun 2019." *JURNAL MERCATORIA* 13, no. 2 (2020).
- Tamanaha, Brian Z. *Realistic Socio-Legal Theory : Pragmatism and a Social Theory of Law*. Oxford Socio-Legal Studies., 1997.
- Umam, Ahmad Khoirul, Gillian Whitehouse, Brian Head, and Mohammed Adil Khan. "Addressing Corruption in Post-Soeharto Indonesia: The Role of the Corruption Eradication Commission." *Journal of Contemporary Asia* 50, no. 1 (2020): 125–143.
<https://doi.org/10.1080/00472336.2018.1552983>.
- Verdenicci, Serena, and Dan Hough. "People Power and Anti-Corruption; Demystifying Citizen-Centred Approaches." *Crime, Law and Social Change* 64, no. 1 (2015).
- Wahyuningrum, Kartika Sasi, Hari Sutra Disemadi, and Nyoman Serikat Putra Jaya. "INDEPENDENSI KOMISI PEMBERANTASAN KORUPSI: BENARKAH ADA?" *Refleksi Hukum: Jurnal Ilmu Hukum* 4, no. 2 (2020).
- Wicaksana Prakasa, Satria Unggul, Achmad Hariri, Ida Nuriyah, Asis Asis, and Idrus Salam. "Social Aid of Covid-19 Corruption: Strategy and Mitigation Policy of Muhammadiyah East Java." *Legality : Jurnal Ilmiah Hukum* 29, no. 1 (2021): 27–45.

THE LEGAL POSITION OF THE KPK

Wiratraman, H. P., & Putro, W. D. “Tantangan Metode Penelitian Interdisipliner Dalam Pendidikan Hukum Indonesia.” *Jurnal Mimbar Hukum*, 31, no. 3 (2019): 403–415.

This page in intentionally left blank