

## CHAPTER ONE

### INTRODUCTION

#### A. Background

Corruption is a problem that has always been in the spotlight as well as the public's attention because corruption is a social parasite that damages the joints of government structures and is the most important obstacle to development.<sup>1</sup> The rise of criminal acts of corruption has troubled the entire Indonesian nation. Moreover, corruption occurs in various sectors ranging from executive, legislative, judicial, and even private powers.

Eradicating corruption is one of the main focuses of the Indonesian government. Various efforts have been made, both to prevent and eradicate corruption simultaneously by the executive, legislative and judiciary. These efforts have actually been going well and have yielded results in the form of a growing will to eradicate corruption to all corners of Indonesia. During the reform period, a number of implementing agencies and supporters of corruption eradication were also formed, including the Corruption Eradication Commission, The Financial Transaction Report and Analysis Centre All of this is done in order to optimize efforts to eradicate corruption.<sup>2</sup>

Due to such conditions, a special institution was formed which was given special tasks and authority to solve problems of corruption. That commission is the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*), or more commonly referred to as the KPK. The

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<sup>1</sup> Kartini Kartono, 1988, *Patologi Sosial*, Jakarta, Bina Aksara, p.3.

<sup>2</sup> Bambang Waluyo, 2016, *Penegakan Hukum di Indonesia*, Jakarta, Sinar Grafika, p. 54

KPK was formed with the specific aim of eradicating corruption and becoming a new hope for eradicating corruption so that it can produce results effectively and optimally. KPK was formed on the basis of the provisions of Law Number 31 of 1999 concerning Corruption Eradication *jo.* Law Number 30 of 2002 concerning the Corruption Eradication Commission.

It seems that it is not an exaggeration if the public has high hopes for the KPK to eradicate corruption, the authority possessed by the KPK is extraordinary in carrying out its duties in eradicating corruption. This authority begins with a process of investigation, investigation and prosecution. Not only this authority, but also the KPK is authorized to carry out wiretapping, bans abroad, block accounts, even the KPK is also given a special privilege called the right to supervise.

The KPK, which was formed based on the law, has had a superpower position since its establishment in 2002. The implications of its existence raise many separate questions from both a juridical, political, and academic perspective in Indonesia. The duties, functions, and authorities of the KPK are considered to exceed state institutions that have work functions based on the mandate of the 1945 Constitution of the Republic of Indonesia.<sup>3</sup>

The KPK is also considered constitutionally important. This is because the institutions that handle corruption cases (the police and the prosecutor's office). the criminal acts of corruption are the Police of the Republic of Indonesia and the Attorney General's Office of the Republic of

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<sup>3</sup>Adri Fernando Roleh, "Kedudukan Komisi Pemberantasan Korupsi dalam Sistem Ketatanegaraan Indonesia", *Lex Privatum*, Vol 5, No 10 (2017) p. 77.

Indonesia. The position of the Police is guaranteed in Article 30 paragraph (4) of the 1945 Constitution which reads:

*“The State Police of the Republic of Indonesia as a state instrument that maintains public order and security has the duty to protect, protect, serve the community, and enforce the law.”*

The position of the prosecutor is not explicitly stated in the 1945 Constitution. Yusril Ihza Mahendra is of the opinion that the position of the Prosecutor is within the scope of Judicial Power as stipulated in Article 24 paragraph (2) and (3) of the 1945 Constitution.<sup>4</sup> The provision reads:

*“(2) Judicial power is exercised by the Supreme Court and judicial bodies under it at the general courts, religious courts, military courts, state administrative courts, and by the Constitutional Court.”*

*“(3) Other bodies whose functions are related to judicial powers are regulated in law.”*

The provisions of "other institutions" in Article 24 paragraph (3) of the 1945 Constitution above are then clarified in the Law on Judicial Powers. In Article 38 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, what is meant by "other bodies" include the Police, Attorney General's Office, Advocates, and Correctional Institutions. This provision guarantees the constitutional position of the Public Prosecutor.

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<sup>4</sup> Yusril Ihza Mahendra, 2012, *Kedudukan Kejaksaan Agung dan Posisi Jaksa Agung Dalam Sistem Presidensial di Bawah UUD 1945* sebagaimana dimuat di dalam buku Muhammad Tahir Azhary, *Beberapa Aspek Hukum Tata Negara, Hukum Pidana dan Hukum Islam*, Jakarta, Kencana Prenada Media Group, p. 15-16.

Unlike the Police and the Attorney General's Office, the position of the KPK is not explicitly or specifically stated in the 1945 Constitution. This means that the KPK is not important in its function. The KPK is considered a constitutionally important institution. This is because institutions that handle corruption, such as the Police and the Attorney General's Office, do not function effectively and efficiently in eradicating corruption. The establishment of an institution such as the KPK can be considered constitutionally important and includes institutions whose functions are related to judicial power as referred to in Article 24 paragraph (3) of the 1945 Constitution.<sup>5</sup>

In its journey, the KPK has carried out the task of eradicating criminal acts of corruption through prevention and prosecution. KPK is never devoid of problems that weaken its existence. There is an assumption that the KPK is often weakened, for example in the series of cases of Lizard vs Crocodile and the filing for judicial review of Law no. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning Eradication of Corruption Crime.

The weakening of the KPK is also inseparable from the KPK's efforts to handle large-scale corruption cases that have dragged big names such as officials and law enforcers. The criminalization of the KPK leadership Bibit-Chandra took place when the KPK was handling the PT Salmah Arowana Lestari corruption case which eventually resulted in the

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<sup>5</sup>Oly Viana Agustine, dkk, "Legal Politics of the Strengthening of Corruption Eradication Commission's Authority in the Constitutional System", *Jurnal Konstitusi*, Vol. 16, No. 2 (2019), p.322.

determination of the suspect to the Head of Criminal Investigation of the Indonesian Police, Susno Duadji. The same thing happened to two KPK leaders from 2011-2015, namely Abraham Samad and Bambang Widjojanto. Both of them experienced criminalization after The KPK named Komjen Budi Gunawan as a suspect on suspicion of a fat account. Not long ago, KPK investigator Novel Baswedan also experienced criminalization. Many people think that criminalization occurred because currently, the KPK is trying to uncover a mega corruption case of electronic ID cards that are suspected of involving the political elite in this country.<sup>6</sup>

The problem is, there are problems that can be found in the existence of the KPK that need to be taken seriously because the KPK as a law enforcement agency must be able to carry out law enforcement duties free from interference from the power. This is very important considering that consistent and integrated law enforcement will realize legal objectives in the form of justice and legal certainty. Justice and legal certainty are the main foundations of the democratization process. Democratization is one of the principles of good governance because democratization opens up space for people to participate in state administration.

Consistent and integrated law enforcement will also bring benefits to the community, resulting in a deterrent effect, so as to prevent someone from committing corruption. Another benefit is the growing public trust in law enforcement efforts and law enforcement officials, so that public support for

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<sup>6</sup> Labib Muttaqin dan Muhammad Edy Susanto, "Mengkaji Serangan Balik Koruptor Terhadap KPK dan Strategi Menghadapinya", *Jurnal Integritas*, Vol. 4, No.1 (2018) p. 106.

law enforcement agencies, in this case, the KPK, will strengthen. Conversely, if there is inconsistency and lack of integration in law enforcement, the community will assess that in the law enforcement process there is a tug of war, so that trust in law enforcers will be weak. The implication, this will weaken the legal culture and compliance with the law by the community.<sup>7</sup>

The problem of corruption is not only in law enforcement. At the end of 2019, Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission was passed. The revision of the Corruption Eradication Commission Law (KPK Law) has generated polemics and interesting issues to discuss. The following are some points of concern regarding the revision of the KPK Law. First, weakening the independence of the KPK. Second, the assistance section that the leader is the person in charge is removed. Third, the authority of the Supervisory Board falls on case handling techniques. Fourth, trimming investigative authority.

Previously, in Article 3 of Law Number 30 of 2002, the KPK was a state institution that in carrying out its duties and authorities was independent and free from the influence of any power.<sup>8</sup> However, after a revision of the amendments to Law Number 19 of 2019, it was stated that the KPK is a state institution in the executive power clump that runs and is authorized to be independent and free from the influence of any power. There is a phrase "executive power clump" in it.

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<sup>7</sup> Bambang Waluyo, *Op.Cit.*, page. 61

<sup>8</sup>Jeremy Pope, 2003, *Strategi Memberantas Korupsi Elemen Sistem Integritas Nasional*, Jakarta, Transparency International Indonesia dan Yayasan Obor Indonesia. p.177

The existence of amendments to the KPK Law is certainly a concern and interesting to be studied more deeply, especially when compared to a glance there are things that are interesting to analyze, namely related to the inclusion of the KPK in state institutions. in the executive power clump. So that it needs to be explored more deeply “state institutions within the executive power clump” and how it affects the role of the KPK to eradicating corruption in Indonesia.

Based on the description above, the author wants to examine the role of the Corruption Eradication Commission (KPK) in enforcing the law to eradicating corruption in Indonesia. The author will analyze the role of KPK in the KPK Law after the revision (Undang-Undang Nomor 19 Tahun 2019). The author also examines how the role of the KPK is compared to the position of the Attorney General's Office and the Police in the Undang-Undang Nomor 19 Tahun 2019. The author examine this problem from the point of view of constitutional law, namely state institutional law with the theory used is the rule of law theory, the theory of separation of powers, the theory of state institutions, the theory of auxiliary state institutions, (*auxiliary state organ*), theory of law enforcement, and theory of corruption.

## **B. Research Problem**

Based on the description in the background above, the research formulates the problem as follows:

How is the role of the Corruption Eradication Commission in enforcing corruption law in Indonesia?

## **A. Objective of Research**

1. To analyse of the role of the Corruption Eradication Commission in enforcing corruption law based in Law Number 19 of 2019.
2. To compare the role of Prosecutorial agencies, police, and the Corruption Eradication Commission in handling cases of corruption problems in law 19 of 2019

## **B. Benefits of Research**

This research was conducted with the hope that it will provide several benefits:

### **1. Theoretically**

This research give benefit to the current law in eradicating corruption by corruption eradication commission (KPK) in indonesia.

### **2. Practically**

This research is expected to provide input and recommendations for legal knowledge, especially in the field of constitutional law regarding the role of the Corruption Eradication Commission (KPK) in Enforcing Corruption Law in Indonesia.