

CHAPTER ONE

INTRODUCTION

A. Background of Research

The Corruption Eradication Commission (KPK) is an independent state institution in Indonesia with a particular task and authority to eradicate corruption in Indonesia. The basic formation of KPK found in Article 2 Paragraph (6) sub-paragraph a of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number VIII/MPR/2001 of 2001 concerning Recommendations for the Policy Direction on the Eradication and Prevention of Corruption, Collusion and Nepotism stating the need to establish the Law of KPK.¹ The KPK's work, which began in 2002, is considered quite effective in combating corruption in Indonesia. As a state institution that has the task to eradicate corruption that has become extraordinary crimes committed from generation to generation, of course, the KPK has faced much resistance from corruptors whose positions feel threatened by the existence of the KPK. The opposition is proven later with various efforts to counteract the KPK, such as through Constitutional Review in the Constitutional Court (MK), which had been carried out several times by different parties, through the internal weakening of the KPK in the form of systematic criminalization of the

¹ Nehru Asyikin, Adam Setiawan, 2020, "Kedudukan KPK dalam Sistem Ketatanegaraan Pasca Diterbitkannya Revisi Undang-Undang KPK", *Justitia Jurnal Hukum*, Vol. 4, No. 1., P. 128.

KPK Commissioners, and also through legislation mechanism, namely the revision of the Law of KPK.²

The fact shows that revising the Law of KPK, which has been carried out, has violated the procedure because it contradicts the legislative process determined by the Act. The revision of the Law of KPK is not included in the list of priorities of *prolegnas*. Nevertheless, the proposed revision of the Law of KPK was quickly approved. In this case, the DPR has a different interpretation related to the meaning of *prolegnas*. According to DPR, the Law of KPK has been included in the five-year list of *prolegnas* discussed in the previous year, which was then postponed for specific reasons and eventually resumed. Meanwhile, Article 20 Paragraph (5) of the Law Number 12 of 2011 concerning the Formation of Laws and Regulations states that the preparation and stipulation of annual priority national legislation programs as the implementation of medium-term *prolegnas* is carried out every year before the stipulation of the Draft of Law on the State Budget.³ It becomes the reason why the process of revision of the Law of KPK violated the procedure.

The revision's proposal of KPK's Law does not show any step towards strengthening this institution. Instead, the revision of the Law is seen as a step to weaken the KPK. The position of the KPK as an independent state institution was questioned after the Law of KPK was passed. Article 3 states that the KPK is a state institution under the executive branch.⁴ It causes the position of the

² Adnan Topan Husodo on Denny Indrayana, 2016, *Jangan Bunuh KPK*, Intrans Publishing, P. xx.

³ Article 20 Paragraph (5) of the Law No. 12 of 2011.

⁴ Article 3 of the Law No. 19 of 2019.

KPK vulnerable to be influenced by executive power. Independent state institutions should not be part of the three branches, not as a part of the executive, legislative, or judicial branch.

The Constitutional Court Decision Number 36/PUU-XV/2017, which states that the Corruption Eradication Commission is a state institution in the executive branch, also becomes evident that there is a weakening of the function of the KPK. The Constitutional Court's decision is also considered inconsistent because it contradicts the four previous decisions, stating that the KPK is an independent state institution, which means it is not part of the executive, legislative, or judiciary branch.⁵ There are dissenting opinions from the four judges of the Constitutional Court in the Constitutional Court Decision Number 36/PUU-XV/2017. That shows that the nine (9) judges did not entirely approve of the Constitutional Court's decision.

Based on the explanation mentioned above, it can be concluded that after the emergence of the new Law of KPK, there were significant changes to this state institution. It then becomes the question of various parties how exactly the status of the KPK as an independent state institution in the Indonesian Constitutional System after the enactment of the new Law of KPK. This study aims to determine the independence of the KPK in the Indonesian Constitutional System after the enactment of Law Number 19 of 2019,

⁵ Halan Saparangga, 2019, “Kedudukan Komisi Pemberantasan Korupsi Dalam Struktur Ketatanegaraan Indonesia (Analisis Terhadap Putusan Mahkamah Konstitusi Nomor 36/PUU-XV/2017)”, Universitas Sriwijaya, P. 4.

concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.

B. Research Problems

Following the research background above, the research formulated three questions to be answered, namely:

1. How is the position of the KPK as an independent state institution in the Indonesian Constitutional System after the enactment of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission?
2. What is the implication of revising the Law of KPK to the position and the status of the KPK in the Indonesian Constitutional System?
3. What is the better concept and policy that can be used to strengthen the status of KPK in the Indonesian Constitutional System?

C. Objectives of Research

The objective of the research, namely:

1. To understand the concept of an independent state institution in the Constitutional System
2. To analyze the status and position of the KPK in the Indonesian Constitutional System after the revision of the Law of KPK
3. To propose some suggestions for a better concept and policy regarding the status of KPK in the Indonesian Constitutional System.

D. Benefits of Research

There are some benefits of this research, namely:

1. Theoretical Aspect

This research gives benefits to know deeply about the independency of the KPK in the Indonesian Constitutional System after the enactment of Law Number 19 of 2019 for the development of legal science, especially in the constitutional system sphere.

2. Practical Aspect

This research provides a better understanding about how the actual status of the KPK as an independent institution in the Indonesian Constitutional System after the enactment of Law Number 19 of 2019 for those who are engaged with the KPK, especially for the policy makers such as executive and legislative that involved in eradicating corruption so that the research can give contribution for the authorized parties in making policies related to corruption eradication.