

# Politics of Law on Corruption Eradication Practices in Indonesia

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**Abstract:** The purpose of this study is to find out about the application of politics of law in corruption eradication regulations and legislation in Indonesia. The research methodology that will be used in this research is: normative juridical approach method, focused on examining the application of rules or norms in positive law and data collection methods by conducting library research. The results of this study found that the politics of law elaborated by the position of executive, legislative and judiciary was no longer sufficient or able to overcome the problem of power and legal crime in corruption in Indonesia. Therefore, it is time to add another independent power which is currently known in Indonesia, called the Corruption Eradication Commission (KPK).

**Keywords:** Constitution, Trias Politica, KPK.

## I. Introduction

Corruption is a matter of gross violations of human rights (HAM) and development (Peters, 2018: 1251). The impact of corruption has a significant negative effect on economic growth and development (Nwogu and Ijirshar, 2016). According to MacMillan (2011: 629), the impact of corruption on society is to burden the poor, threaten economic and political stability and reduce the possibility of much needed foreign investment in developing countries. Then, Indonesia has ratified the United Nations Convention Against Corruption (United Nations Convention Against) Corruption - UNCAC, GA Res. 58/4, A / RES / 58/4, Oct. 31, 2003) so that Indonesia is required to have a kind of anti-corruption agent strategy, the Corruption Eradication Commission (MacMillan, 2011: 589).

In the context of Indonesia, corruption crime peaked during President Suharto's New Order regime (1965-1998) until its fall in May 1998 was

the culmination of an oppressive state apparatus, authoritarian and highly corrupt political policies (Rock, 2003: 3; Greenless, 2008). This condition is marked by corruption, collusion and nepotism (KKN) and has become an intrinsic or ingrained part of the Indonesian government with one of the characteristics of corruption crime rather centralized and predictable (<https://www.indonesia.investments.Com/en/business/risk/corruption/item235>, accessed 19 September 2019).

The condition of corruption crimes in the reform era, the era of transformation from Suharto's authoritarian regime to a more democratic government (Dhani, Lee, and Fitch, 2015: 29) tends not to improve. Conversely, corruption crimes that occur are increasing (UNODC, 2019) both in terms of quantity and quality. The reality of corruption crimes in the reform era is in the form of total numbers, carried out massively and systematically.

Ironically, the executive, legislative and judiciary involved in corruption crimes in Indonesia are getting worse. Indications of a conspiracy of 3 (three) elements of power have occurred in the government system. This has implications for the objectives of the concept of reform farther away, and the death of the law.

According to MacMillan (2011: 588), the concept of reform is to control and reduce public corruption in Indonesia. The implementation of the Reformation in Indonesia was marked by a program of regional decentralization or regional autonomy which began in 2001 which aims to optimize the management of existing potentials and encourage economic growth in the regions which will affect the condition of the national economy (Wibowo, 2013: 1-2).

Then, the role and authority of an independent institution that was born and is well known in the reform era, the Corruption Eradication Commission (KPK) has proven positive and significant performance but continues to experience challenges from those who do not want Indonesia free from criminal acts of corruption. Therefore, efforts to weaken the institution of *rusuah* are intensively carried out in order to amputate its duties, functions and authority.

In general, the situation and conditions of criminal acts of corruption in Indonesia that fall into the category of gross violations of human rights and development at this time have entered a very critical level. According to Sondang Silitonga (2018) in 2016, Indonesia ranked 90th out of 176 countries in the Corruption Perception Index published by Transparency International each year with a score of 37 which was quite low (on a scale of 100 (very 'clean') ) and 0 (very corrupt).

In the Reformation era, marked by the regional decentralization program, the tendency for KKN was increasingly strengthened and carried out sporadically by many public officials from the executive, legislative and judicial branches. Public officials, both elected leaders and bureaucrats have misused public power for their personal gain

(Sondang Silitonga, 2018). Therefore, the existence of the KPK as an independent institution must be strengthened and included in the Grundgezets or the 1945 Constitution as a constitution and expanded its authority such as: conducting investigations, investigations, prosecutions, and deciding cases. Thus, the efficiency and effectiveness of the concept of reform, controlling and reducing public corruption in Indonesia can be achieved both quantitatively and qualitatively.

## II. RESEARCH METHODS

This research was prepared using a normative juridical approach to see, examine the law and theoretical matters relating to the principles of law, legal history, legal comparison, the level of synchronization regarding the problem to be discussed. According to Ibrahim (2006: 295), normative juridical research is research focused on examining the application of rules or norms in positive law. Thus, this study uses a statutory approach that aims to find out the entire legal regulations specifically related to the laws and regulations concerning the distribution of power, and a case approach that aims to study the application of legal norms or rules carried out in legal practice (Ibrahim, 2006 : 321). To get objective data, the type of data needed is secondary data, this data is taken by means of library research consisting of: primary legal materials and secondary legal materials. The primary legal materials used in this study are the 1945 Constitution (after amendment), and secondary legal materials are legal materials consisting of text books, legal journals, opinions of scholars, cases law, and others related to the research title.

## III. RESULTS AND DISCUSSION

The essence of understanding the rule of law is a state governed by law (Krygier, 2014) in which public authorities must respect 'Recht' (Zamboni, 2001). A state governed by law or *rechstaat* has logical consequences, meaning that all aspects of

life in society, nation and state must be based on legal norms, and the law must treat all people equally (Stein, 2009: 298). Hence, the law must be used as access to justice (Okogbule, 2005), and the rule of law is intended to introduce clarity and certainty (Rose-Ackerman, 2008) in solving problems or as solutions relating to individuals or groups, both community and state and are not familiar with selective logging in the application of law. According to Hayek (2007) in Nedzel (2010), the government in all its actions is bound by rules set and announced beforehand - rules that make it possible to predict with certainty how the authority will use its coercive force in certain situations and conditions. In other words, the government is bound to the constitution so that it can be regulated properly.

According to Ackerman (2008), the rule of law is intended to introduce clarity and certainty into economic, social and political relations. If the law has been ignored and is no longer the commander in a country then what happens is power based power. Under these conditions, what happens is the death of law in a country. Therefore, the concept of separation of powers is very important to be implemented as Lord Acton (1907) states that power tends to be corrupt, and absolute power is truly corrupt. This opinion is something that is very popular with regard to the concept of separation of powers within a country's government and becomes the essence of the underlying policy.

To enforce the rule of law, John Locke and Montesquieu have divided and separated the functions of state power. In the case of separation of powers, Montesquieu asserted that the principle of freedom can be interpreted as the right to do anything based on permitted by law so that all citizens will have the same power and rights before the law (House of Lords, House of Commons, Joint Committee on Human Rights , 2008). The view to limit power absolutely aims to prevent arbitrariness carried out by one of the three branches of power (executive, legislative and judiciary). Thus, the separation of powers can be understood as a

political principle for evaluating the legal and constitutional arrangements of the modern state (Waldron, 2013: 433). Each unit of the three branches of government has the same power and position in the government hierarchy for the purpose of inspection and balance (Mahfud, 2000). In recent decades, the Corruption Eradication Commission was established only based on the Law of the Republic of Indonesia Number 30 of 2002 concerning the Corruption Eradication Commission. KPK as a state institution formed with the aim to eradicate corruption professionally, intensively, and continuously & is independent, which in carrying out its duties and authorities is free from any power and as a trigger mechanism, which means to encourage or as a stimulus for efforts to eradicate corruption by institutions preexisting institutions have become more effective and efficient.

The concept of separation of power divided the country's political authority into executive, legislative power , and the judiciary as well as the three forces operating separately and independently are the keys to freedom (Longley, 2019). The purpose of these guidelines is to regulate the needs and interests of all parties so that they can be fulfilled and served as an embodiment of the principle of "rule of law", closely related to the rule of law (Waldron, 2013). The separation of powers can be understood as a political principle for evaluating the legal and constitutional arrangements of the modern state (Waldron, 2013).

Under the 1945 Constitution, Indonesia has a presidential government system in which the executive branch is headed by a president who functions as the head of state and head of government. The 1945 Constitution regulates the separation of powers between three branches of government, namely the executive, legislative and judicial units. According to von Achenbach (2017), the separation of powers requires that each government function performs its type of work in accordance with its own rationality. Therefore, each unit of the three branches of government has the

same power and position in the government hierarchy for the purpose of inspection and balance. In the context of Indonesia, the power distribution system is based on the constitution, namely the 1945 Constitution after the amendment as follows: first, Executive, second, the Legislature, and Judiciary (Yulistyowati et al., 2017).

Therefore, the KPK in carrying out its duties and authority will be very vulnerable to be disturbed and weakened by corruptors who tend to increase in the reform era. The perpetrators of corruption (corruptors) generally come from the executive, legislative and judicial branches, and the perpetrators of corruption will continue to make efforts and will never stop to attack and weaken this anti-rusus institution. If this condition is left then what will happen is the death of law in Indonesia in the effort to eradicate corruption crimes which constitute gross violations of human rights and development in Indonesia.

The recent revision of the KPK law indicates that there is a very crucial agenda which is considered to weaken the KPK. Provisions that are considered to weaken the KPK include the formation of the Supervisory Board (article 37 of the KPK Law Revision), the authority to stop investigations (Article 40 of the KPK Law Revision), Tapping Permits, Confiscation and Search (Article 37 of the KPK Law Revision), the KPK into the executive family (Article 1 Paragraph 3 of the KPK Law Revision), KPK Employees have the status of State Civil Apparatus (Article 1 paragraph 6 of the KPK Law Revision).

The revision of the KPK Law has amputated the authority of the KPK leadership such as: limiting the authority to recruit independent and professional investigators and investigators in handling corruption cases. This is very counterproductive if it refers to the essence and impact of criminal acts of corruption. Corruption is an extraordinary crime (extra ordinary crimes) and has entered the category of gross violations of human rights (HAM) and development. Indications of the tendency of the DPR and the government to

be very allergic to the KPK further reinforce the thesis of the title of this study, Death of the Law. In terms of achieving the performance of the KPK as an organization that has been running for 15 years it has been considered successful in developing an open system with a fairly good control system (Transparency International, 2018: 30), and the KPK is the institution with the highest level of trust with 83.1 percent. Accessed 23 September 2019).

Table 1. Corruption Eradication Commission (KPK) Performance: Corruption Crime (TPK) Based on Profession / Position 2012 – 2019

| POSITION                  | 2019      | 2018       | 2017       | 2016      | 2015      | 2014      | 2013      | 2012      |
|---------------------------|-----------|------------|------------|-----------|-----------|-----------|-----------|-----------|
| DPR and DPRD members      | 8         | 103        | 20         | 23        | 19        | 9         | 8         | 16        |
| leader                    | 1         | 1          | 0          | 2         | 3         | 9         | 4         | 1         |
| Institution / Ministry    |           |            |            |           |           |           |           |           |
| Ambassador                | 0         | 0          | 0          | 0         | 0         | 0         | 0         | 0         |
| Commissioner              | 0         | 0          | 0          | 0         | 0         | 0         | 0         | 0         |
| Governor                  | 0         | 2          | 1          | 1         | 3         | 3         | 2         | 0         |
| Mayor / Regent and Deputy | 9         | 30         | 13         | 9         | 4         | 12        | 3         | 3         |
| Echelon I / II / III      | 8         | 24         | 43         | 10        | 7         | 2         | 7         | 8         |
| Judge                     | 0         | 5          | 3          | 1         | 3         | 2         | 3         | 2         |
| prosecutor                | 1         | 0          | 1          | 3         | 0         | 0         | 0         | 0         |
| Police                    | 0         | 0          | 0          | 0         | 0         | 0         | 1         | 1         |
| Lawyer                    | 1         | 4          | 0          | 1         | 2         | 0         | 0         | 0         |
| Private                   | 26        | 56         | 28         | 28        | 18        | 16        | 24        | 16        |
| Others                    | 9         | 31         | 13         | 21        | 3         | 8         | 8         | 2         |
| Corporation               | 1         | 4          | 1          | 0         | 0         | 0         | 0         | 0         |
| <b>Total number</b>       | <b>64</b> | <b>260</b> | <b>123</b> | <b>99</b> | <b>62</b> | <b>61</b> | <b>60</b> | <b>49</b> |

Source: TPK Based on Profession / Position - update 30 June 2019  
<https://www.kpk.go.id/id/statistik/penindakan/tpk-berdasarkan-profesi-jabatan>. Accessed 23 September 2019

Table 1 showed that the perpetrators of criminal acts of corruption as extraordinary or extra ordinary crimes (Ifrani, 2017) have been so severe and acute in Indonesia. Corruption in the reform era is like a deadly malignant cancer where the cells of the tissue grow very fast and uncontrolled, infiltrate, and suppress the life network of the nation and state so that it hinders the goals of the Unitary Republic of Indonesia as clearly stated in the opening of the 1945 Constitution alenia four. Non-criminal crime of corruption in Indonesia has entered an acute level and has spread to the cells of

public and private organs, such as Members of the legislature (DPR and DPRD), Head of Institutions / Ministries, executives (Governors, Mayors / Regents and Representatives), state civil apparatus (ASN) from Echelon I / II / III levels, law enforcement officers (Police, Attorney, Judge, Lawyer), Private, and others. These conditions indicate that the theory of Montesquieu, Trias Politica (executive, legislative and judiciary) is no longer sufficient or able to overcome the problem of power and legal crime in corruption.

Therefore, in the constitution of a country, it is time to add another independent power which is currently known in Indonesia, called the Corruption Eradication Commission (KPK) so that for the 21st century there must be 4 (four) executive, legislative, judicial powers and KPK in the Republic of Indonesia government system. Therefore, the KPK as an independent institution must be strengthened and included in Grundgezets or the 1945 Constitution as a constitution and expanded its authority such as: conducting investigations, investigations, prosecution, and deciding cases of authority.

Thus, to strengthen the strategic position of the KPK as an anti-riot institution in Indonesia, the very extraordinary ordinary efforts that must be carried out are as follows: (1) KPK must be included in the constitution so that there are 4 powers in the government system that democratic, namely: executive, legislative, judiciary and KPK; (2) KPK must be able to sharpen its clear vision and mission; (2) KPK must have a smart work strategy between prevention and enforcement of measurable and achievable corruption crimes; (3) KPK must receive political support from the government in a consistent, continuous and sustainable manner; (4) KPK must have sufficient operational funding support from the APBN ;; (5) KPK must be able to maintain its independence and integrity in carrying out its duties, functions and responsibilities; (6) KPK must be able to manage professional human resources based on Human Capital Management (HCM) and Information Communication and

Technology (ICT); (7) KPK must be able to maintain its spirit so that it will continue to get full support from the wider community.

#### IV. CONCLUSION

In order to strengthen and support the success of the KPK in Indonesia by having a clear legal framework, the KPK as an independent institution must be strengthened and included in the Grundgezets or the 1945 Constitution as a constitution and its authority expanded such as: conducting investigations, investigations, prosecution, and decide on a case. Thus, the existence of the KPK in Indonesia as an independent institution must be strengthened and included in the constitution, Grundgezets or the 1945 Constitution. Then, its duties, functions and authorities are expanded, namely conducting investigations, investigations, prosecutions, and deciding cases. Thus, the efficiency and effectiveness of the concept of reform, controlling and reducing public corruption in Indonesia can be achieved both quantitatively and qualitatively.

Therefore, the significance of the results of this study is that in the 21st century the theory of Montesquieu, Trias Politica, namely the executive, legislative and judiciary is considered to be no longer sufficient or unable to overcome legal crimes, namely criminal acts of corruption committed by the three elements power. Thus, in a constitution of a country it is very necessary to add another independent power that is currently known in Indonesia, called the Corruption Eradication Commission (KPK). Thus, for the 21st century there must already be 4 (four) power units in the government system, namely the executive, legislative, judiciary and KPK in the Republic of Indonesia's government system.

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