

Research Article**Position of Supervisory Board Organ and Its Implications for the Institutional Corruption Eradication Commission**

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ABSTRACT

The negative view that the People's Representative Council of Indonesia (DPR) has long been in a constant effort to weaken the Corruption Eradication Commission (KPK), making the revision process of the KPK law until after it is legalized, receives pro and contra. A number of provisions in the new Law of KPK are considered to potentially weaken the independence of the institution, especially concerning the establishment of the so called Supervisory Council. The purpose of this research was to analyze the position of the Supervisory Council and to explain its implications on the institutional aspects of the KPK. This normative legal research was conducted through a literature study using conceptual and statute approaches, which then analyzed qualitatively. The results show that the new Law of KPK makes the Supervisory Council as an internal supervision organ, but its position had not well formulated yet in the institutional structure. The existence of the Supervisory Council also have some impacts on the institutional aspects of KPK in terms of Institutional and functional independences.

Keywords : Supervisory Council; KPK; Institutional Implications.

ABSTRAK

Adanya persepsi negatif bahwa sudah sejak lama Dewan Perwakilan Rakyat (DPR) gencar melakukan upaya pelemahan terhadap KPK, membuat proses perubahan undang-undang Komisi Pemberantasan Korupsi (KPK) sampai setelah disahkannya menuai pro dan kontra. Sejumlah ketentuan dalam revisi undang-undang KPK yang baru dinilai berpotensi untuk melemahkan independensi KPK, utamanya menyangkut pembentukan organ Dewan Pengawas. Penelitian ini disusun untuk mengetahui dan menganalisis kedudukan organ Dewan Pengawas dan implikasinya terhadap aspek kelembagaan KPK. Penelitian hukum normatif ini dilakukan melalui studi dokumen menggunakan pendekatan undang-undang dan konseptual dengan analisis kualitatif. Hasil penelitian menunjukkan bahwa UU KPK yang baru memposisikan Dewan Pengawas sebagai organ pengawasan internal, namun belum merumuskan secara baik kedudukannya dalam struktur kelembagaan KPK. Keberadaan organ Dewan Pengawas juga berdampak pada aspek kelembagaan KPK dari segi independensi institusional dan independensi fungsional.

Kata Kunci : Dewan Pengawas; Komisi Pembarantasan Korupsi; Implikasi Kelembagaan.

A. INTRODUCTION

Law enforcement efforts to eradicate corruption in Indonesia have a long history. It was recorded that since the beginning of 1967, a Corruption Eradication Team (TPK) was formed to 1982 which was controlled by the Attorney General. Then, there was the Fourth Commission (K4) which was formed from January to May 1970, which later became the Anti-Corruption Commission (KAK). Entering 1982, a Corruption Eradication Team was formed chaired by M.A. Mudjono through Government Regulation Number 19 of 2000. There was also the Corruption Eradication Team (TGTPK) chaired by Adi Handoyo. Based on Law No. 28/1999 and Presidential Decree No. 127/1999, the Government then formed the State Officials Wealth Audit Commission (KPKPN) (Effendy, 2005).

Although these work units were established, the fact is that the government has not been able to reduce the number of corruption cases in Indonesia. Various international studies show that corruption still places Indonesia as one of the most corrupt countries in the Asia Pacific countries (Simanjuntak, 2018) and even the world (Koswara, 2019). The existing efforts to eradicate corruption are also considered to have failed (Nasution, 2018). Several factors contributed to this failure, among others: first, there was no total political support; second, the ineffective application of the law against criminals; third, the efforts to eradicate corruption have not been focused, have a lot of pressure, have no priority, and are not supported by adequate bureaucratic structures among judicial institutions; fourth, anti-corruption

institutions are still considered ineffective and inefficient organizations; and fifth, conflicts of interest among government agencies, for example regarding presidential permits for corruptors from the bureaucrats which become an obstacle to handling the coup quickly and effectively (Badjuri, 2011).

Reflecting on the massive impact of corruption, there is a consensus that corruption is an extraordinary crime (Ifrani, 2017) so that it can no longer be overcome with conventional law enforcement models. Since then, the need for an independent institution with extraordinary powers in tackling corruption has become increasingly urgent. This is what then underlies the government to draft Law Number 30 of 2002 concerning the Corruption Eradication Commission. The mystical atmosphere in the establishment of the KPK, for example, is clearly illustrated in the explanation section of the Law;

“Corruption in Indonesia has been widespread in society. Its development continues to increase from year to year, in terms of the number of cases occurred, the number of losses to the State's finances, and the quality of the criminal acts that have been committed more systematically as well as in their scope which enters all aspects of public life ...

Law enforcement to eradicate criminal acts of corruption carried out conventionally has proven to experience various obstacles. For this reason, an extraordinary law enforcement method is needed through the formation of a special body that has broad authority, is independent and free from any power in the effort to eradicate criminal acts of corruption ... ”

According to Mochtar, the establishment of the Corruption Eradication Commission was mainly caused by corrupt practices in Indonesia coupled with

damaged law enforcement institutions ranging from the prosecutor's office, police, and the judiciary at various levels (Mochtar, 2016). In other words, the KPK was actually established as a response to pessimism and a motion of no confidence due to the ineffective performance of the police and prosecutors in eradicating rampant corruption (Arifin, 2005).

In general, the crisis of public distrust towards existing state institutions has prompted the birth of independent state institutions to take over this task with more convincing commitment and performance (Rishan, 2018). Not only in the context of the KPK, the independent institutions such as the General Election Commission (KPU), for example, were also born out of public distrust of the neutrality of the government in holding general elections (Kriswantoni, 2018). Likewise, the Judicial Commission (KY) is part of efforts to reform the judiciary (Fauzan, 2012). Thus, the presence of the KPK is expected to be a trigger mechanism for other law enforcement agencies (Nugroho, 2013).

In this study, the issue of the position of the KPK Supervisory Board Organ was examined in the perspective of supervisory theory which is conceptually divided into internal and external supervisions (Trisnawati, Banga, & Alam, 2018), (Setiawan, 2019). Meanwhile, in the context of the implications of the Supervisory Board's organs for the KPK, it analysed in the framework of the concept of Independent Regulatory Agencies (Milakovich, & Gordon, 2013) or independent state institutions (Ramadani, 2020) in addition to the theory of state institution independence (Asshiddiqie, 2008) which in

general includes institutional and functional independences.

The establishment of an independent institution such as the KPK seems to bring new hope for institutional reform in Indonesia (Ramadhana, 2019). Referring to Article 3 of Law Number 19 of 2019, the KPK is an institution, in carrying out its duties and authorities, is independent and free from the influence of any power. The Independent State Institution (LNI) model such as the KPK is commonly known as an institutional trend in the 2000s after the third wave of democratization (Asshiddiqie, 2015). Funk and Seamon state that the main characteristic of independent institutions (*Independent Regulatory Agencies*) is identical to their independence from executive power (Ramadani, & Mamonto, 2018), apart from having autonomous authority (Verhoest et al., 2010).

However, since its establishment in 2002, the KPK has continued to receive mixed sentiments from the public. Not only in the form of support, along the way the KPK was also marked by criticism and resistance from various parties. Various problems have hit the KPK starting from the practice of criminalizing the leadership of the KPK, bribery of the KPK leadership, legitimizing personnel and prosecution procedures, and sectoral conflicts among law enforcement agencies to budget delegitimization (Koesumo, 2017). Indonesia Corruption Watch (ICW) even says; there are 15 models of weakening against the Commission since its establishment in 2003 (Makitan, 2012) in which one of them is through the revision of the Law Commission agenda.

At its peak, in 2019, despite the strong criticism and protests from the public and anti-corruption activists, the Government together with the DPR still passed Law No. 19 of 2019 concerning Amendments to Law No. 30 of 2002 concerning the Corruption Eradication Commission. One of the things that has been the public spotlight is the establishment of the Internal Supervisory Board Organ of the KPK. With its strategic authority and direct line of accountability to the President, it is no doubt that this provokes pros and cons between strengthening the KPK and better supervision or even systematic efforts to weaken the KPK.

Based on these problems, this study aims to answer two main problems: First, what is the position of the Supervisory Board in the institutional structure of the KPK? Second, what are the implications of the existence of the Supervisory Board on the institutional aspects of the KPK?

Moving on from the background of these problems, it is necessary to conduct a scientific analysis to put the problem in a more objective perspective. Previously, several studies have been conducted regarding the general issues discussed. First, the articles of Kartika Sasi Wahyuningrum, Hari Sutra Disemadi, & Nyoman Serikat Putra Jaya entitled "KPK's Independence: Is It Really There?" in the Legal Reflection Journal. It is concluded that after the revision of the KPK Law into Law no. 12 of 2019, in general, there is a weakening of the independence of the KPK due to the changes in the type of the institution, staffing, and the presence of the

Supervisory Board (Wahyuningrum, Disemadi & Jaya, 2020).

Second, the research by Delinama Telaumbanua in his article entitled "Restrictive Status of the KPK Supervisory Board" in the Journal of Education and Development, concludes that the KPK supervisory board only oversees leaders and employees, and not KPK institutions (Telaumbanua, 2020). Third, it is the scientific article of Nehru Asyikin and Adam Setiawan regarding "The Position of the Corruption Eradication Commission in the Administration System after the revision of the KPK Law" in Justisia Journal (Asyikin, & Setiawan, 2020). This study explains the position of the KPK after the revision of the KPK Law as an institution in the executive family. Fourth, it is the research of Suparto and Dedy Gusniawan entitled "*The Implication Of Constitutional Court Decision Number 36 / PUU-XV / 2017 On The Independence Of the Corruption Eradication Commission*" in the journal UNIFICATION: *Jurnal Ilmu Hukum* (Suparto, & Gusniawan, 2020). Fifth, it is the research of Rizki Ramadani, entitled "Independent State Institutions in Indonesia in the Perspective of the Concept of Independent Regulatory Agencies" in the IUS QUIA IUSTUM Legal Journal (Ramadan, 2020). In general, it examined the independence of independent state institutions in Indonesia, including the KPK.

Furthermore, Bambang Hartono's scientific article entitled "*Corruption Eradication Policy Judging from the Politics of Criminal Law (Law Number 19 of 2019 Concerning the Second Amendment to Law Number 30 of 2002 Concerning the Corruption*

Eradication Commission"), published in the *International Conference on Law, Economics and Health* (ICLEH 2020), Atlantis Press (Hartono, 2020).

In general, highlights the urgency of revising the KPK Law with a major focus on reducing the KPK's authority in eradicating corruption. Then, the research of Afif Syah Putra, Ismansyah, and Aria Zurnetti entitled "*Authority of the Corruption Eradication Commission in the Prosecution of Money Laundering*" in the *International Journal of Multicultural and Multireligious Understanding* (Putra, Ismansyah, & Zurnetti, 2019). In addition to examining the legitimacy of the KPK's authority in money laundering cases, this research also addressed the issue of the revision of the KPK Law which has the potential to diminish the independence of the KPK in law enforcement. Furthermore, the research of Ovie Febri Ana Dita, Siwach Sripokangkul, and Awan Setia Dharmawan entitled "*Corruption Investigation Commission (KPK) in Strengthening Movement with the Civil Society Perspective*", in the *Journal of Research and Development Institute*, which discusses the KPK from the aspect of support and social movements (Dita, Sripokangkul, & Dharmawan, 2020).

In contrast to some of the studies above, this study intends to answer two main issues that have not been specifically addressed by previous researchers: first, regarding the position of the Supervisory Board organ within the KPK institutional structure; second, regarding the implications of the existence of the Supervisory Board on the

institutional aspects of the KPK, especially in the aspect of its independence.

B. RESEARCH METHOD

As legal research, this research was a study of state institutions in Indonesia. This study used secondary data from literature studies, so it is included in the type of normative legal research. In terms of its nature, this research was descriptive-prescriptive by combining statutory and conceptual approaches. The results of the research were then described in a descriptive analysis.

C. RESULTS AND DISCUSSION

1. Position of the Supervisory Board in the institutional structure of the Corruption Eradication Commission (KPK)

In governance, supervisory element plays a strategic role in realizing *good governance* (Ranna, 2019). In the general principles of good governance, the principle of accountability is required that every activity and the final result of the activities of state administrators must be accountable to the public in accordance with the provisions of the applicable laws and regulations (Muhajir, 2019).

In general, supervision can be interpreted as an overall activity ensuring that the task/ work has been carried out in accordance with predetermined plan (Antari, 2020). Basically, the concept of supervision is based on the dictum that as long as an institution/ work is still managed by humans, during that time, there is always the potential for neglect, inaccuracy and *abuse of power*. In the rule of law

principle, one of the important elements is the limitation of power and the enforcement of human rights (Djafar, 2016). This includes the protection of citizens from government arbitrariness. On this basis, there is no single institution that can be free from supervision, with no exception, including an independent institution such as the KPK.

From the point of view of the supervisory theory, as an institution with super body authority and great independence, it is common that the KPK be accompanied by a strong supervisory system. Presumably, this is what prompted the government to revise the initial KPK Law (Law No. 30 of 2002), which one of its substances was to add a supervisory organ which is later called the "Supervisory Board".

However, it is difficult to say precisely on what the conceptual or legal spirit underlies the formation of this Supervisory Board organ, given the process of revising the KPK Law which is considered to be running very fast and not transparent (Movanita, 2019). The academic manuscripts from the new Corruption Eradication Commission Law are also difficult to access, even including the academic manuscripts of Law no. 19 of 2019 which was presented at the trial hearing at the constitutional court which was considered confusing and generated debate on its validity (Astuti, 2020).

In the academic manuscript document of the Draft Law (without number) concerning Amendments to Law no. 30 of 2002 concerning the Corruption Eradication Commission downloaded by the author from the dpr.go.id page, it includes a sub-discussion

regarding the KPK Supervisory Board. In it, it states that:

"It is necessary to establish a KPK Supervisory Board because every institution must be supervised to prevent arbitrariness. Every State institution is supervised by other institutions, only the KPK does not have a supervisory agency."

From this statement, it can be understood that the main reason for the formation of the supervisory board's organs is to prevent arbitrariness by the KPK and to fill the vacancies in the supervisory institution which are not owned by the KPK. The justification regarding this supervision is also restated in the general explanation section of Law no. 19 of 2019 which states:

"... as well as the weaknesses on the absence of a supervisory agency capable of supervising the implementation of the duties and powers of the Corruption Eradication Commission so that there may be flaws and a lack of accountability in the implementation of duties and authorities to eradicate corruption crimes by the Corruption Eradication Commission."

Logically, the above justification raises the question; is it true that all this time there has been arbitrariness by the KPK? And is there no monitoring system in the KPK institution at all, which requires the formation of a new supervisory institution?

According to Newman, "*control is assurance that the performance conforms to plan*" (Muchsan, 2000). Thus, supervision alone is a guarantee that an implementation is in accordance with the plan. Conceptually, this supervision can be carried out in the form of internal and external supervisions. Internal supervision is a supervision carried out by supervisory officers who are still an integral part of

the organization supervised or in other words supervising its own organization (Trisnawati, Banga, & Alam, 2018) In other hand, External Supervision is a form of supervision carried out by a supervisory unit come from out of the executive circle at all. Thus, there is no official relationship between supervisors and supervised parties (Setiawan, 2019).

Government Regulation Number 60 of 2008 also definea Internal Control as an entire process of auditing, reviewing, evaluating, monitoring and other supervisory activities on the implementation of organizational duties and functions in order to provide adequate assurance that the activities have been carried out effectively and efficiently for the sake of leadership in order to realizing good governance (Novitasari, & Prabowo, 2020)

The existence of this internal and external supervision systems can refer to the concept of supervision of state finances carried out by two institutions at once, namely the Financial and Development Audit Agency (BPKP) and the Supreme Audit Agency (BPK) . Referring to Prof. Arifin Soeriatmadja, the BPKP is an internal auditor institution that was formed based on a Presidential Regulation and is in a government structure, while the BPK is an external auditor formed based on the Constitution and laws (Setiawan, 2019).

When we correlate the concept of supervision with the provisions in the initial Corruption Eradication Commission Law (Law No. 30 of 2002), actually, as an institution, the KPK has already been an institutionalized supervision system, both internally and externally. In terms of internal supervision, the

KPK organizational structure has a Directorate of Internal Supervision, an Ethics Committee, and an Employee Advisory Board as further stipulated in the Corruption Eradication Commission Regulation Number 7 of 2013 concerning Personal Basic Values, Code of Ethics, and Code of Conduct of the Corruption Eradication Commission. In general, the Internal Supervisory Directorate can submit recommendations to the Ethics Committee when there is a suspected violation by the KPK Leadership and to the Employee Advisory Board when the alleged violation is committed by KPK Employees or Advisors.

The external supervision pattern is also designed in such a way that the KPK does not escape the supervision of other branches of government such as the President and the House of Representatives (DPR). Article 7 paragraph (2) of Law no. 30 of 2002 explicitly obliges the KPK to prepare periodic accountability reports to the President and DPR, which are then published to the public. Moreover, based on the decision of the Constitutional Court, the DPR can apply for the right to inquiry against the implementation of the KPK's authority when it is deemed contrary to the provisions of the applicable laws and regulations (Bima, Kamal, & Djanggih, 2019).

The use of the KPK budget is also the object of BPK's supervision as well as government agencies in general. In preventing and eradicating corruption, the KPK also often involves the public and anti-corruption non-governmental organizations. Thus, transparency and information are more easily accessible to the

public. Thus, apart from institutional oversight, basically the KPK is also the object of public supervision.

Based on this, the big question is; during the drafting of the revision of the KPK Law, there is still an opinion that the KPK has acted arbitrarily because, when this happens, the Government and the DPR should be able to immediately take investigative and corrective action. The assessment that the KPK does not have a supervisory agency also sounds vague as the provisions of the KPK Law have designed internal oversight organs and established a clear pattern of supervisory relations between the KPK and other government agencies. Here, it is difficult to accept objectively the government's reason for establishing the Supervisory Board organ as stated in the academic text and the general explanation of the new KPK Law that has been previously stated.

Based on the provisions in Article 21 of Law Number 19 of 2019 as the new KPK Law, the current organizational structure of the Corruption Eradication Commission (KPK) consists of three main organs: a) Supervisory Board of 5 (five) members; b) Chairman of the Corruption Eradication Commission, which consists of 5 (five) members of the Corruption Eradication Commission; and c) Corruption Eradication Commission staffs.

Furthermore, Article 37B (1) states the details of the duties of the Supervisory Board organs which include: a) supervising the implementation of the duties and powers of the Corruption Eradication Commission; b) giving permission or not on

wiretapping, search, and / or confiscation; c) compiling and stipulating a code of ethics for the leadership and employees of the Corruption Eradication Commission; d) receiving and following up reports from the public regarding suspected violations of the code of ethics by the Head and Employees of the Corruption Eradication Commission or the violations of provisions in the Law; e) holding a hearing to examine any suspected violation of the code of ethics by the Head and Employees of the Corruption Eradication Commission; and f) evaluating the performance of the Head and Employees of the Corruption Eradication Commission periodically 1 (one) time in 1 (one) year.

Referring to this provision, the KPK Law positions the Supervisory Board as an integral part of the KPK institutional structure together with the commissioner's organs and KPK employees. With the position and characteristics of the duties it has, it can be said that the Supervisory Board has the position of the KPK's internal supervisory body/ institution. At first glance, there is no problem with the arrangement and position. However, when investigated further, the position of this organ contains ambiguity and several problems that require further elaboration but are not precisely explained in the KPK Law.

The first problem, for example, was raised by Telaumbanua, which concluded that there has been redundancy by the KPK Law in formulating the position and object of supervision of the KPK Supervisory Board. This is based on the provisions of Article 37A paragraph (1) and Article 37B paragraph (1) letter a, which stipulate that the duties of the

supervisory board are to supervise “the implementation of the KPK's duties and authorities”. When correlated with Article 21, the Supervisory Board is an inseparable part of the KPK's organizational structure, so in essence the Supervisory Board has the task of supervising itself (Telaumbanua, 2020).

The second problem concerns the unclear position of the Supervisory Board Organ over other KPK organs. For example, what is the institutional relationship between the organs of the Supervisory Board and the organs of the Commissioner? Is there any subordination or coordination relationship? This is not clearly explained in the provisions of the KPK Law. When only interpreting the position of the Supervisory Board based on the organizational order according to Article 21 of the Corruption Eradication Commission Law, an assumption may arise that the Supervisory Board is higher than the organs of the Commissioner. However, if this view is accepted, it will certainly have implications for other institutional aspects.

The unclear relationship between these organs was also acknowledged by KPK deputy chairman, Alexander Marwata. He revealed that the new KPK Law gives greater powers to the Supervisory Board compared to the commissioners. However, Marwata also admits that he does not know the pattern of work relations between the commissioner's organs and the Supervisory Board, including where the KPK's highest responsibility lies (Risalah, 2019).

The inter-organ relational problem eventually leads to a polemic regarding who is the highest

leadership organ in the KPK institution, whether in the hands of the Commissioner or the Supervisory Board or not. If the highest organ is the Commissioner, the implementation of functions and powers such as wiretapping, searches and / or confiscation should not require the permission of the lower organs. If the commissioner and the supervisory board are considered equal and work collaboratively, the KPK Law indirectly causes the phenomenon of *bicepalus* (two heads) in one institutional body.

When compared with other independent State institutions, the Financial Services Authority (OJK) also has an internal oversight organ called the Ethics Committee in which the design of this organ is similar to the design of the KPK Ethics Committee in the previous version.

In the OJK Board of Commissioners Regulation Number 01/17 / PDK / XII / 2012, it is stated that the Ethics Committee is a supporting organ for the Board of Commissioners whose task is to oversee the compliance of the OJK Board of Commissioners, Officers and Employees with the code of ethics. The composition of this committee membership is generally filled by the OJK leadership and the professional / academic elements, which are determined based on the decision of the board of commissioners meeting.

The existence of this ethical organ does not cause an institutional polemic as happened to the KPK because basically the position of the Ethics committee has been clearly regulated as a supporting organ of the Board of Commissioners and code of

ethics enforcement agencies for OJK leaders, officials and employees.

When compared to the current KPK Supervisory Board, it is clear that the powers they have are very different. The KPK Law does not only position the KPK Supervisory Board as merely an ethical committee or supporting organ for KPK commissioners and employees, but it is also an authorizing agency for the implementation of strategic functions such as wiretapping (Article 12B paragraph (1)), confiscation, and / or search (37B paragraph (1)).

This has caused the KPK supervisory board to have an unusual position or different from other ethical institutions in general, such as the honorary council of the DPR, the Ethics Council of the Constitutional Justices, or the OJK Ethics Committee. The KPK Supervisory Board has the function of enforcing a code of ethics plus powers that are almost similar to the leadership of an institution. This assumption is based on the authorization authority possessed by the Supervisory Board. In the previous KPK Law, this authority was *beleid to* the commissioners. Thus, indirectly there has been a *shifting of power*, from the organ of commissioner to the organ of ethics which should not be common.

Based on some of the arguments above, it can be said that the Corruption Eradication Commission Law is normative juridical, wanting to position the supervisory board as the internal supervisory body / institution of the KPK. However, due to an inadequate and unusual design, this organ's position is unclear,

whether as a mere supporting organ or the highest organ in the KPK institutional structure.

2. Implications of the existence of the Supervisory Board for the KPK Institution

In expressively verbal, the affirmation of the KPK as an Independent State Institution (LNI) has actually been explicitly stated in Article 3 of Law No. 30 of 2002 concerning the KPK and its amendments in Law no. 19 of 2019, which states that the KPK is an independent state institution and free from interference by any power.

In western literature, LNI is often referred to as *Independent regulatory agencies*, *Independent Commissions* (Mény, & Knapp, 1993), or *Independent Agencies* only (Devins, & Lewis, 2008). The concept of independence in this institution is generally interpreted as structurally separate from executive power (Milakovich, & Gordon, 2013), and politically as autonomy or freedom, both institutional and personal, to carry out duties and authorities without presidential intervention or other powers (Ramadani, 2020).

In fact, the implementation of this formula is not as simple as it sounds. In *day to day politics*, the question of independence raises its own problems in the perspective of political science and constitutional law. As Gillardi once questioned, Is it possible for a State institution to obtain total independence? Even in an extreme sense, apart from the existing control and supervision system (Gillardi, 2008).

In the context of LNI, institutional independence is like a double-edged knife. On the one hand, independence is a guarantee for an

institution to carry out its duties and authorities independently. On the other hand, if it is not accompanied by a strong supervisory mechanism, this freedom will in fact create sectoral egos and are prone to abuse. This is in line with what Lord Acton said long ago, that "*Power tends to be Corrupt, absolute power corrupts absolutely*" (Venter, 2015).

However, is it right if the supervision is carried out through the establishment of the Supervisory Board Organ? There is no doubt that the element of supervision is a necessity in building a good climate and performance in an organization / institution, but how, by whom, and in what way the supervision is carried out, is another matter that requires a long debate. Here, accuracy and caution are needed in formulating an appropriate supervisory system for LNIs such as the KPK so as not to be trapped in a weakening scenario which can lead to institutional delegitimization.

Referring to the formulation of Law no. 19 of 2019, the presence of the Supervisory Board at least has an impact on the aspects of KPK independence. In general, the independence of a state institution is interpreted in various ways by experts. Fraser and Meyer distinguish this independence into the categories, as follows: (1) *goal independence* when independence is seen from the point of view of goal setting, and (2) *instrument independence*, which is an independence in how to achieve the stated goals. Meanwhile, W. Baka distinguished independence into three aspects; (1) *institutional independence*, (2) *functional independence*, and (3) *financial independence*. Meanwhile Mboweni distinguished

four aspects of independence; (1) *functional independence*, (2) *personnel independence*, (3) *instrumental independence*, and (4) *financial independence* (Asshiddiqie, 2008).

Jimly Asshiddiqie then abstracted the types of independence into three models; 1) Institutional or structural independences which is reflected in the mechanism of external relations among State institutions. 2) Functional independence which is reflected in the decision making process which can be a. goal independence which is free to determine the main objectives or policies, and 3) instrument independence which is free to determine policy instruments that are not self-determined, 4) Administrative independence, namely an independence in determining administrative policies to support the two types of independence above (Asshiddiqie, 2008).

Referring to the independence theory put forward, the existence of the Supervisory Board organ at least has implications for the institutional and functional independences of the KPK. When compared with the initial KPK Law (Law No.30 of 2002), the implications for this aspect of independence are clearly not in a positive or strengthening sense, but in the form of reduction caused by several regulations regarding the Supervisory Board in the new KPK Law (Law No. 19 of 2019).

From an institutional point of view, the reduction in the independence of the KPK can be seen, for example, in the appointment of members of the first period of the Supervisory Board. Although

Article 37E of the Corruption Eradication Commission Law requires membership selection by the *Pansel* (Selection Committee) (which is further regulated in a Government Regulation), in the composition of this first volume of the Supervisory Board, the composition of the members is directly elected by the President. This has indirectly opened the first gap for the possible entry of political elements of executive power into the KPK.

With the image of the KPK as a superbody institution, as well as its commissioner figures who have gone through a selection process with strict, transparent and participatory standards in accordance with the provisions of the KPK Law, the inclusion of people by direct appointment of the President seems to be an irony. This has more or less reduced the KPK's morale as an independent institution, especially given the strategic position of the Supervisory Board organs, which even weaned some of the authority belonging to the Commissioner's organs.

It is also difficult to deny that in practice the election and appointment of public officials by political institutions is laden with trade-in interests. There is no guarantee that the Election Mechanism and the appointment of the members of the Supervisory Board by the President will not cause certain emotional ties between the President and the elected members of the Supervisory Board. This is due to empirical facts that always show politicization or *politicking* in the process of selecting public officials that involve political institutions (Harijanti, 2014).

Unfortunately, the provisions of the KPK Law are also deemed insufficient to ensure that the members of the Supervisory Board are always objective and do not carry the executive's interests or "agenda" in carrying out their duties. Moreover, all matters concerning the election and appointment of the Supervisory Board are fully regulated in Government Regulation, namely Government Regulation Number 4 of 2020 concerning How to Appoint the Chair and Members of the Corruption Eradication Commission's Supervisory Board. It is clear here that the monopoly of executive power over the Supervisory Board institution has the potential to become an entry point for external threats to the independence of the KPK.

The implications for institutional independence can also be seen from the design of regulations regarding the supervisory executing organ as a technical organ established by the Supervisory Board to carry out its duties. The details of Article 37C of the Corruption Eradication Commission Law states that: (1) The Supervisory Board in carrying out the tasks referred to in Article 37B establishes a supervisory implementing body; (2) The provisions regarding the supervisory executing organs as referred to in paragraph (1) shall be regulated by a Presidential Regulation.

The formulation of these provisions implies a discrepancy between the organs that form and the legal basis for their formation. The provision in paragraph (1) clearly mandates the establishment of an implementing supervisory organ by the Supervisory Board. With such formula, it should be

sufficient for the implementing supervisory organ to be established through a Supervisory Board regulation, not in the form of a presidential regulation or at least regulated in a Regulation at the institutional level as in the OJK Ethics Committee which was formed based on the Regulation of the Board of Commissioners.

This provision raises the questions regarding the rationalization behind the establishment of an implementing supervisory organ through a presidential regulation. What are the things that make the president bother to compile the regulations for the technical implementing organs of a State institution, and why are the regulations not incorporated into the KPK Law alone? Unfortunately, there is no further explanation regarding this rationalization in the KPK Law. Logically, this indicates that the President has gone too far in intervening in the KPK institution, down to technical matters.

Currently, the existence of a supervisory implementing organ has been further regulated in Presidential Regulation Number 91 of 2019 concerning the Corruption Eradication Commission's Supervisory Board Organizing Committee. In this Perpres (Presidential Regulation), the nomenclature of the supervisory executive organ changes to the secretariat of the KPK Supervisory Board (Article 1 paragraph (1)). With a secretarial concept headed by a secretariat head and coordinated by the secretariat general, this organ is under and directly responsible to the KPK Supervisory Board (Article 8).

The design of the Supervisory Board with its secretarial organization and the Commissioner of the

Corruption Eradication Commission and its staff organizations seems to have created the existence of two levels of bureaucracy, or "twin suns" under one KPK roof. This will clearly have a negative impact on KPK performance in general. So far, the KPK and its personnel have been preoccupied with the problems and obstacles from external parties who have made various resistance and delegitimation efforts against the KPK institution. It is inconceivable that the burden of these problems must be added to by the complexity of coordination patterns and unclear organizational structures. Thus, the presence of the Supervisory Board and the organ carrying out its duties has significant implications for the institutional independence of the KPK.

In terms of functional independence, the authority of the Supervisory Board is considered to be able to hinder the work of the KPK in carrying out its functions. The current KPK Law does not only position the Supervisory Board as an ethical organ with supervisory authority over KPK leaders and employees, but it also extends to the authorization of prosecution functions such as wiretapping permits (12B paragraph (1), searches and seizures. Authorization functions out of ethical enforcement, in Ficar Hadjar's view, is something strange because the Supervisory Board is not a judicial institution or law enforcement officers. According to him, this would actually make the KPK no longer independent (Wahyuningrum, Disemadi, & Jaya, 2020).

In the previous KPK Law, namely Law No. 30 of 2002, the authority of the KPK in conducting wiretapping is regulated in article 12 paragraph (1)

point a and article 26a of Law No. 30 of 2002 concerning the Corruption Eradication Commission (Sukri, 2017). According to this provision, wiretapping by KPK investigators do not need permission from the Chairman of the Court or a Board of Supervisors so that they are more flexible and can be carried out quickly according to the needs. However, that does not mean that wiretapping can be implemented haphazardly, but the implementation of wiretapping is still subject to the Standard Operational Procedure (SOP) based on the KPK Decree (Sukmareni, Juhana, & Basri, 2020).

The implementation of wiretapping is also audited annually by a special team based on Permenkominfo 11 / PER / M.KOMINFO / 020/2006. In addition, it must be accompanied by a strong allegation obtained from the monitoring result report (indication) and sufficient preliminary evidence (Anggraeni, 2010). With a supervision system that is at the end or an audit of the results, the supervision process does not obstruct or interfere with the independence of the KPK in carrying out its functions.

When compared to the previous regulation, Law No. 19 of 2019 makes the function of wiretapping much more difficult to carry out due to a complicated, gradual, and time-consuming administrative process. The wiretapping action requires the Supervisory Board's permission (Article 12 paragraph (1)) which must be submitted based on a written request from the KPK leaders (3) and will be notified within 1x24 hours (4). The implementation of wiretapping must also be reported regularly during the activity (Article 12c paragraph (1)) and accounted

for at the end of its implementation (2). With such a supervisory concept, the current regulation is clearly more difficult for the KPK, in the sense that it requires a much longer time and process than Law No. 30 of 2002.

This kind of impact has actually been conveyed long ago in a public trial of the Draft Law of The KPK which was initiated by the *Indonesia Corruption Watch* (ICW) and has been published since the end of 2016. The design of the supervisory model through the Supervisory Board is considered to have great potential to intervene in the implementation of the KPK's functions, especially in prosecution functions such as wiretapping (ICW, 2016).

The reason why wiretapping has not been regulated yet with the approval of the judge is because there are still many judicial officers who are actually part of the judicial mafia practice. Therefore, the Examination Council in the document of the results of the public examination states that the KPK Supervisory Board does not have to be established because the formulation of its authority tends to interfere with the KPK functions. Instead of strengthening it, the current KPK Law tends to have the spirit of weakening.

D. CONCLUSION

Based on the description above, it can be concluded that the new Corruption Eradication Commission Law positions the Supervisory Board as an internal oversight organ within the KPK institutional structure. However, the improper

regulatory design causes the position of the Supervisory Board organs to be unclear in terms of the relations among organs. This ambiguity has also led to ambiguity regarding who is the top leaders of the KPK, and has even led to the assumption of two heads in one institution.

In addition, the Supervisory Board's extensive powers that include the authorization of wiretapping, confiscation and search powers also prevent the Supervisory Board from being installed as customary for an ethical organ in a state institution. This then has implications for the independence of the Corruption Eradication Commission both institutionally and functionally. From the institutional of view, the mechanism for selecting members of the KPK Supervisory Board and the composition of the organs for carrying out their duties indicates the strong monopoly of the president's power in the Supervisory Board institution. This could open up opportunities for the entry of outside interests that could potentially threaten the independence of the KPK. The design of KPK wiretapping arrangements and the function of prosecuting KPK with layered and time-consuming administrative procedures are also considered to hinder the independence of the KPK in carrying out its functions.

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