

INTERPRETATION OF THE POSITION OF THE CORRUPTION ERADICATION COMMISSION AS AN EXECUTIVE AGENCY

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ABSTRACT

The shift in the institutional position of the KPK (Corruption Eradication Commission) as an executive agency has brought various discourses and pros and cons in the community. This research aims to contribute to the field of thought by interpreting the institutional position of the KPK in Indonesia from the perspective of the six modalities of constitutional argument theory. This research uses normative juridical research methods with statutory, conceptual, and case approaches. Through in-depth analysis of all legal materials (primary and secondary), the research results provide an understanding that through textual, historical, structural, doctrinal, ethical, and prudential interpretations, it is concluded that the actual institutional change of the KPK to the executive is not unconstitutional. However, designing the KPK institution should not only be based on textual provisions and originality of authority, it is necessary to explore constitutional morality and ethics. Moreover, if analyzed in historical, doctrinal, moral, prudential, and ethical aspects, the KPK is more appropriately designed as an independent state commission. KPK bears tremendous responsibility and hopes to eradicate corruption, which has hindered achieving the nation's goals. Therefore, the independence of the KPK needs to be safeguarded from the intervention of other powers.

Keywords: Corruption, Corruption Eradication Commission, Constitutional Interpretation.

INTRODUCTION

Reformation at the end of the 20th century was not only based on the breath and spirit of pro-democracy but also brought the spirit of anti-corruption. Among the many responsive legal products during the political transition at that time were

Law Number 31 of 1999 (Anti-Corruption Law), a legal umbrella and a new weapon for corruption eradication efforts. This Anti-Corruption Law also sparked and mandated the birth of an anti-graft agency, later known as the KPK (Corruption Eradication Commission). This institution is also considered the birth child of reform, not only because it was born at the beginning of the reform period but also because it brings hope and is part of the efforts to accelerate the eradication of corruption in Indonesia.

The Commission was born through the instrument of Law Number 30 of 2002. It was established as a response to the ineffectiveness of the Attorney General's Office and the Police in efforts to eradicate corruption. At the beginning of its existence, the KPK was equipped with extraordinary powers, ranging from the authority to shorten bureaucratic channels, processes in prosecution, supervision, research, and taking over cases handled by the Indonesian National Police or the Attorney General's Office. This institution is even dubbed as a super institution because it has the authority that other institutions do not even have, such as in terms of wiretapping, debarring a person from leaving the country, requesting information, and ordering the blocking of banks or other financial institutions on a person's account, requesting tax data on the wealth of a person/entity, requesting Interpol assistance, to asking the aid of the National Police and other institutions in the process of arresting, searching, detaining and confiscating. (Ari Abdillah, Harahab, & Nurani, 2019)

Since its inception, the KPK has always been an institution that the public has given high trust. This also shows that the various superpowers the KPK possesses have always been well-spent in efforts to eradicate corruption. It is hard to argue that the KPK is the most successful anti-graft agency in enforcing corruption. KPK has successfully uncovered various major corruption scandals whose actors were high-ranking officials in this country. Starting from a Chairman of the House of Representatives, Chairman of DPD RI, Constitutional Judge, Chairman of Political Parties, officials at the central and regional levels, and various corruption scandals that harmed state finances. (Ramadhana, 2019)

On September 17, 2019, the government and parliament agreed to amend the KPK Law. This regulation also changed the design of the KPK quite a lot, both in terms of structural and functional aspects. This change also invited much pro-contra turmoil in the community. It even culminated in a wave of large demonstrations titled "Save KPK" in various cities across Indonesia. The pro side considered revising the law to strengthen the KPK to control the KPK's super authority. On the other hand, those who oppose the revision see it as an attempt to castrate the KPK's authority and as a policy far removed from the fight against corruption. The revision of the KPK Law, even if viewed from the politics of law, is considered not to put the ideals and goals of the nation in its spirit, but rather the interests of a handful of elites and efforts to weaken the KPK.(Yulianto, 2020)

One of the main polemics in revising the KPK Law is related to the institutional status of the KPK, which is an independent state institution or an executive agency. The discourse even surfaced when the discourse on revising the KPK Law was present in the community. In the revised 2019 KPK Law, Article 3 was changed to "The Corruption Eradication Commission is a state institution within the executive power, which in carrying out its duties and authorities is independent and free from the influence of any power." The revised article clearly states that the KPK is a state institution within the executive branch.

This institutional shift of the KPK as an executive agency is still being debated. Many parties consider KPK to be an independent state institution, as its duties are extraordinary and independent without intervention from any party. On the other hand, some think that the KPK is more appropriately considered an executive institution, because it has the authority to prosecute and investigate, which is the domain of executive power.

Looking back, the legal politics of Article 3 of Law Number 20/2019 (the revised KPK Law) is closely related to the follow-up of the Constitutional Court Decision Number 36/PUU-XV/2017. In its ruling, the panel of judges rejected the request to declare that the KPK is not the object of the DPR's inquiry right, or understood that the KPK is the object of the DPR's inquiry right. This decision also

provides an interpretation of the meaning of the position of the KPK as an executive agency. The five judges, in their reasoning explained that the KPK can be classified as an executive institution. (Susanto, 2018)

Regarding the polemics, the independence of the KPK has been reviewed and discussed in several past Constitutional Court decisions. For example, Constitutional Court Decision 012-016-019/PUU-IV/2006. Harjono, a former Justice of the Constitutional Court, stated that previous Constitutional Court decisions have explained that the KPK is an independent state institution that cannot be included in the clump of powers in the trias politica. (Nada, 2022) In its history, several decisions interpreting the position and independence of the KPK can also be found in Constitutional Court Decision Number 37-39/PUU-VIII/2010, Constitutional Court Decision Number 5/PUU-IX/2011, and Constitutional Court Decision Number 49/PUU-XI/2013. The previous Constitutional Court decisions (before Constitutional Court Decision Number 36/PUU-XV/2017) actually have the same breath, which views the KPK as an independent state institution. (Rishan, 2019)

Departing from the description above, this paper will try to interpret the position of the KPK institution as an executive or independent institution. The interpretation will specifically use a constitutional perspective through six methods of interpretation introduced by Philip Bobbit, namely the theory of six modalities of constitutional argument, which include: “**(1) Historical** (relying on the intentions of the framers and ratifiers of the Constitution); **(2) Textual** (looking to the meaning of the words of the Constitution alone, as they would be interpreted by the average contemporary “man on the street”); **(3) Structural** (inferring rules from the relationships that the Constitution mandates among the structures it sets up); **(4) Doctrinal** (applying rules generated by precedent); **(5) Ethical** (deriving rules from those moral commitments of ethos that are reflected in the Constitution); and **(6) Prudential** (seeking to balance the costs and benefits of a particular rule).” (Bobbit, 1982)

RESEARCH METHOD

This research is a type of normative juridical research. The approaches used in this research are statutory, conceptual, and case approaches. This research is enriched by primary and secondary legal materials, primary legal materials include laws and regulations relevant to this research (1945 Constitution, KPK Law, etc.). Secondary legal materials include books, journals, articles, newspapers, the internet, and other secondary materials that can support this research. All legal materials were collected through literature studies. All legal materials were then analyzed in depth using descriptive-analytical techniques, and prescriptive analysis was also used to deepen the study. This study aims to interpret the position of the KPK as an executive agency through the six modalities of constitutional argument theory.

RESEARCH OUTCOME AND DISCUSSION

KPK as an Executive Institution in Review of Six Modalities of Constitutional Argument Theory

Corruption is generally understood as an “abuse of public power for private benefit.” (Tanzi, 1998) Massive and systematic corruption can tear apart the fabric of the state such as social, legal, bureaucratic, political, economic, and individual aspects. Some people even consider corruption as a virus that continues to transform. This virus even continues to eat away at every part of human life. Indonesia has a long history of struggle with corruption; the country has gone through many twists and turns in dealing with corruption, even since the nation was just born.

History records that efforts to eradicate corruption in Indonesia have long been made. During the Old Order era, Law Number 24/Prp/1960 was born, even the sanctions contained in this law were very severe for perpetrators of corruption, its implementation was only a paper tiger. The perpetrators of suspected corruption tended to take refuge under the President at that time. When the reins of power changed to the New Order, there was no significant change, and corruption became even more rampant. Although during this period, several anti-corruption institutions

or commissions were formed, such as Commission IV, which analyzed corruption problems in the bureaucratic sector, and Commission Four Kopkamtib. However, since the 1980s, anti-corruption attitudes have weakened, resulting in massive corruption practices, especially by the Soeharto dynasty. (Syuraida, 2015)

When the New Order regime collapsed, efforts to eradicate corruption were taken more seriously. One of the demands of reform was to create a government that was free from corruption. Learning from historical experience, the early reform government was urged to take the fight against corruption more seriously. This spirit began with TAP MPR Number XI/MPR/1998 issuance. This was followed by issuing a responsive law, Law Number 31/1999, on the Crime of Corruption. Law Number 31/1999 then underwent its first amendment with the enactment of Law Number 20/2001.

During its work as an institution equipped with super authority in handling corruption crimes. KPK transformed into a competent and reliable law enforcement agency in eradicating corruption. But after a dozen years of operation and many achievements, a new chapter for the KPK occurred when Law Number 19 of 2019 was passed into law. The amendment marks a change in the institutional design of the KPK, which is now included in the executive power. This also has implications for changes in the institutional structure and staffing of this anti-graft agency. The law was also submitted to the Constitutional Court for constitutional review, including its institutional design. However, in its ruling, the Court rejected the petitioner's arguments, and the institutional design of the KPK, which is included in the executive branch, was deemed not unconstitutional.

To elaborate further, an interpretation study related to the institutional design of the KPK as an executive agency will be presented. Furthermore, Bobbit's conception is a variety of methods of constitutional interpretation, which if carefully considered this method is a combination of several kinds of methods commonly used by the originalism and non-originalism schools. The six types of methods in Bobbit's conception can be further understood as follows: 1) Historical interpretation, which is an interpretation based on the intent, purpose, or desire of

the framers of the Constitution; 2) Textual interpretation relies on the textual meaning of the provisions in the legislation. So this method aims to look directly at the sound or text of a rule; 3) Structural interpretation is based on consideration of the design of the constitution, especially the relationship between the branches of state power and the relationship with citizens; 4) Prudential interpretation emphasizes the principle of self-consciousness of the institution interpreting the constitution and avoids controversy by using certain doctrines by the practice of judicial discretion in some issues; 5) Doctrinal interpretation is an interpretation based on theory, precedents, court comments, academic views on a matter under study; 6) Ethical interpretation is an interpretation through deriving moral and ethical principles as contained in the constitution. (Haryono, 2022)

Philip Bobbit's method was chosen because it is interesting to elaborate on issues related to the institutional status of the KPK. This interpretation model combines the perspectives of constitutional importance and constitutional morality. This is very important to review because talking about the KPK, it should not only be concerned with the institutional design and juridical side, but also related to the function, urgency, and morality behind its formation.

1. Textual Interpretation

In the context of textual interpretation, it isn't easy to trace the juridical basis of the KPK institution in the constitution. The existence of the KPK in the constitution is not explicitly regulated in the body, because historically the KPK was formed as a result of an open legal policy between the President and the DPR. So it can be understood that the existence of the KPK is not explicitly regulated or attributed to the Constitution, but was formed based on legality. (Kurnia, 2020)

However, the KPK is closely related to Article 24 paragraph (3) of the 1945 Constitution if viewed functionally. This article can be used as one of the constitutional bases for the establishment of the KPK because the Judicial Power Law has detailed the meaning of the phrase "functions related to judicial power" including the functions of investigation, prosecution, execution of

decisions, provision of legal services and out-of-court dispute resolution. The KPK is one of the law enforcement agencies equipped with the authority to investigate and prosecute.

Then does the KPK belong to the judiciary? Of course not, although Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is in the chapter on judicial power, the article only clarifies the position of other bodies outside the judicial power but are closely related in function. For example, the Prosecutor's Office and the Indonesian Police, whose functions are related to the judicial power, advocates and other bodies whose duties, activities and functions are closely related to the judicial power but do not belong to the judicial power family. Therefore, it can be understood that the bodies above, including the KPK, do not belong to the judiciary.

Since the Constitution does not explicitly regulate the existence of the KPK, a textual interpretation of the KPK Law is required at its inception. We all know that the KPK was mandated by Law Number 31/1999 as an extraordinary effort to deal with corruption eradication. In addition, why is it important to look at the configuration and textual rules of the KPK Law? In the author's opinion, this is to see the atmosphere and spirit of the early establishment of the KPK. This is useful to see the legal politics underlying the birth of an anti-graft agency at the beginning of this reformation.

When examined in Law Number 30/2002 on the KPK, Article 3 explicitly states that "The Corruption Eradication Commission is a state institution that in carrying out its duties and authorities is independent and free from the influence of any power." From this article, it can be clearly understood that at its inception, the KPK was designed as a state institution independent and free from the influence of other powers.

Let's look at its function, authority, and work in law enforcement since its establishment until 2019. The KPK is more suitable to be seen as an independent agency outside the executive, legislative and judicial branches of power. This is also emphasized by the Constitutional Court Decision Number

19/PUU-V/2007 that the KPK is an independent state institution that in carrying out its duties and authorities, must be free from the intervention of any power, be it the main branches of power (legislative, executive, judicial) and other institutions. (Pinilih, 2020)

Article 3 of the revised KPK Law reads "The Corruption Eradication Commission is a state institution within the executive power, which in carrying out its duties and authorities is independent and free from the influence of any power." The main difference between Article 3 before and after the revision is the institutional status of the KPK, which is explicitly classified into the executive power family. Although still independent and free from the intervention of other powers, it can be understood that including the KPK in the executive branch has juridical implications for the KPK, which is under the authority of the President. Or its institutional status is similar to that of the Police or the Attorney General's Office.

It can be concluded that after the revision of the KPK Law, textually when comparing the content material in Article 3 of the KPK Law at the beginning of its formation with the revised 2019 KPK Law, the institutional status of the KPK changed to an executive family institution. In contrast to the institutional design of the KPK at the beginning of its formation, which was more characterized as an independent state institution/commission. An institution outside the three branches of state power (executive, legislative, judicial). (Zinal Arifin Mochtar, 2016)

2. Historical Interpretation

In historical interpretation, of course, what is essential to see the historical design of the KPK as an anti-graft agency in Indonesia. In the book "Lighting a Candle amid Darkness", several historical records of the birth of the KPK as Indonesia's anti-graft agency in the early 21st century are described. Before the reform era, efforts to eradicate corruption had been intensified by the government and law enforcement officials. Several independent institutions

and commissions were established to combat corruption. For example, the Corruption Eradication Team under the Attorney General's Office (1967), Commission Four (1970), and Operation Curb (1977). The presence of several anti-graft institutions was exceptionally meritorious in handling several corruption cases in Indonesia at that time. However, these institutions had several shortcomings in their efforts to eradicate corruption, and eventually their existence withered before they developed.

The birth of a professional, new, and independent anti-graft agency was highly anticipated by all parties, especially during the political transition from the authoritarian regime of the New Order to the reform regime. The desire of many parties and the support of the public, who were passionate about eradicating corruption, finally began to become real after the idea of establishing the KPK happened.

Initially, KPK was proposed by several factions by adding a chapter on KPK in the Anti-Corruption Eradication Law of 1999. However, the proposal was rejected by many parties, because the addition of the chapter had yet to be studied juridically or semantically. Basically, all parties agreed to establish the KPK, but the majority of factions wanted the KPK to be established through its law. Finally, the KPK embryo was born after Law Number 30 of 2002 as a juridical umbrella, followed by the birth of the anti-graft institution. (Budi SP et al., 2007) The establishment of the KPK was historically motivated by the following specific issues:

- a) Alleged major corruption scandals by President Soeharto and his cronies, hence the need for a law enforcement institution that is independent and outside the circle of presidential power;
- b) Various obstacles and non-optimal institutions of the Attorney General's Office and the National Police in eradicating corruption during the New Order era. Therefore, a special institution or agency is needed that has the flexibility and effectiveness to overcome the shortcomings of the two law enforcement institutions in combating corruption. (Baskoro, 2013)

The presence of the KPK is actually a response to the demands of the times for accelerated corruption eradication. The world agrees that corruption has become an extraordinary crime. The spirit and mood of the establishment of the KPK are closely related to the core of reform, as Indonesia has long wallowed in this crime. The KPK is one of the MPR Decree Number XI/MPR/1998 mandates. Therefore, the KPK was designed as an independent institution and free from the intervention of any power. Since its inception, the KPK has been equipped with super/exclusive authority to uncover corrupt and dirty practices in various power sectors that have been difficult to reach by law enforcement agencies. (Sosiawan, 2019) The provision of this super authority is also directly proportional to the KPK's performance so far. So it is not wrong that until 2019 the KPK has become one of the brightest institutions and has won public trust. KPK is considered the most successful law enforcement institution because many major legal cases and corrupt officials have been caught.

It can be understood that the historical will and initial intention of the establishment of the KPK as an anti-graft institution in Indonesia was to be an independent, professional, and new institution. In this case, the author sees the meaning of an independent institution here as an institution outside the executive, legislative and judicial powers. Several reasons support this, the formation of the KPK as a response to the ineffectiveness of the executive agencies, in this case, the Attorney General's Office and the Police, in efforts to eradicate corruption, the spiritual spirit of the KPK designers who wanted the presence of an anti-graft agency that in carrying out its duties and authorities was free from intervention and there was no doubt in the KPK officials considering that many corrupt practices that harm state finances occur within the scope of power. In addition, if we look at the characteristics and authority of the KPK so far, it is not wrong if the KPK is more appropriately included as an independent state commission.

Then, does viewing KPK as an independent state commission contradict the principle of constitutionalism? No, KPK's authority is closely related to the executive branch (investigation, prosecution). However, placing KPK as an independent state commission is an effort to create the principle of checks and balances. Considering the historical traces in the original 1945 Constitution, Indonesia was not designed as a trias politica state. This can be traced historically, where according to Yamin, the drafters of the 1945 Constitution did not adhere to the doctrine of trias politica. Still, the founders realized that a good democratic government can be organized with the concept of trias politica (in the sense of separation of powers) as in America and England. (Kusuma, 2009)

So the Indonesian system of government does not adhere to the concept of trias politica in a limited way, but the doctrine of separation of powers inspired the founding fathers to create a state system with the principle of checks and balances. This can also be seen in the constitution before the change, the organization of the state is limited to not only executive, legislative, and judicial powers but also other branches of power such as examination powers, independent state commissions, and monetary regulated in the Constitution. In the 1945 Constitution, there are also several independent state institutions such as KY or KPU. Placing the KPK as an independent state commission is actually a practice that has been practiced in the constitutional system. Although previous studies have confirmed that the birth of an independent state commission needs a good blueprint, the presence of an independent state commission relatively builds power relations based on the principle of checks and balances, which was the initial design of this nation. (Rishan, 2018)

3. Structural Interpretation

The institutional design of the KPK is not explicitly or implicitly regulated in our constitution. This has often been the origin of the different

opinions of experts regarding the institutional design of the KPK, whether it is included in the main branch of power or as an independent state commission. After the enactment of Law Number 19/2019, the design of the KPK is included in the executive branch of power. KPK is like an institution under the President in law enforcement, which has special authority to eradicate corruption. The new design of the KPK has considerably altered its institutional structure and some of its authorities.

Before the revision of the KPK Law in 2019, the institutional design of the KPK was more closely referred to as an independent state commission. A state auxiliary organ independent of the main branch of power, can also be seen from the style/characteristics and authority of the KPK. KPK itself is an important institution that supports the function of judicial power as stated in Article 24 Paragraph 3 of the 194 Constitution, this is also supported by the interpretation in Constitutional Court Decision Number 012-016-019/PUU-IV/2006 which explains that KPK is an important part of the constitution because its function is related to judicial power. However, it must be understood that the position, function, and authority of the KPK are attributable to the law (legislatively based power). (Rishan, 2020)

Regarding the institutional design of the KPK, which has now turned into an executive agency. When looking at the relationship between Law Number 19/2019 and the Constitution, it must be recognized that the Constitution does not explicitly regulate the design, position, and function of the KPK. The author views that the revision of the KPK Law that has changed the design of the KPK is a political process between lawmaking institutions, and this is constitutional. The author sees that this is one of the risks when the position of independent commissions in the constitution is not regulated. For example, what happened to KY, which was repeatedly undermined in its authority.

However, one thing that needs to be considered is the formulation and formation of the revision of the KPK Law itself. It is true that the KPK was formed based on the legality of the law (an agreement between the House of

Representatives and the President), but we should recognize some of the defects found in the formation process. For example, there were large public demonstrations against the revision of the KPK Law, one of which refused to turn the KPK into an executive agency, in addition to the fast-track formation of the KPK Law, which is considered contrary to the principles of good legislation. Moreover, the phenomenon of fast-track legislation in Indonesia is considered to violate juridical and theoretical aspects.

Problems in forming legislation related to massive public rejection and the fast-paced formation process indicate the quality of regulation. This is especially related to whether or not public aspirations and participation have been appropriately accommodated. One of the problems in the formation of the revision of the KPK Law is that the process is speedy, from this reality, many academics call the KPK Law a product of fast-track legislation.

It is interesting to see Judge Wahiduddin Adam's interpretation in Constitutional Court Decision Number 79/PUU XVII/2019 which states that "it is difficult to accept based on common sense that a change that is so numerous and fundamental to an institution as important as the KPK was prepared in the form of a DIM Bill in less than 24 (twenty-four) hours, even though the period owned by the President to implement it is a maximum of 60 (sixty) days." (Bhaskara & Sudibya, 2022)

The problem is that until now, Indonesia still needs to implement this kind of legislative formation mechanism. Unfortunately, apart from the KPK Law, fast-track legislation often occurs in Indonesia. One of the negative implications of fast-track legislation in countries that have not adopted and regulated it is the emergence of legislative tyranny. In addition, the adverse impact is that public participation is not meaningful, and legislation products are not characterized as responsive and following the community's aspirations. Whereas the 1945 Constitution of the Republic of Indonesia has rigidly emphasized that forming legislation must go through at least five stages. (Chandranegara, 2021)

4. Doctrinal Interpretation

In this interpretation, it is essential to see how many Constitutional Court decisions have outlined the position of the KPK as an independent institution free from the intervention of other powers. In Constitutional Court Decision Number 012-016-019/PUU-IV/2006, the Court held that Article 3 of the KPK Law before the amendment did not indicate that the KPK was an absolute institution. Furthermore, the Court elaborated, "The independence and freedom of the KPK from the influence of any power is in carrying out its duties and authorities. There is no constitutionality issue in formulating Article 3 of the KPK Law. The affirmation of the independence and freedom of the KPK from the influence of any power in carrying out its duties and authorities is important so that there is no hesitation on the part of KPK officials".

In Constitutional Court Decision Number 37-39/PUU-VIII/2010, the Constitutional Court also reaffirmed that the KPK is an independent state institution carrying out its duties and authorities is free from any power. In Constitutional Court Decision Number 5/PUU-IX/2011, the Constitutional Court also outlined considerations and explicitly stated that the KPK is an independent state institution. This also indicates that the Constitutional Court understood that KPK was an independent agency, not an executive agency.

From the various considerations of the Constitutional Court in its decision, the author concludes that the institutional status of the KPK before it was changed to become part of the executive power was an independent state institution. Seeing the institutional design of the KPK at the beginning of its establishment, which was not questioned at all, shows that the Constitutional Court did not see any unconstitutionality in the institutional design of the KPK, which has fulfilled the characteristics of an independent state commission. In addition, the KPK was also established as an extraordinary effort to eradicate corruption and in the spirit and mandate of reform. Therefore, KPK was designed as an institution that in carrying out its duties and authorities is

independent and free from the intervention of any power (executive, legislative, judicial, and other independent institutions).

However, the Constitutional Court Decision Number 36/PUU-XV/2017 is one of the main reasons for the change in the institutional design of the KPK into the executive power family. The verdict, which examined the House of Representatives right of inquiry against the KPK, in its consideration gave rise to many new concepts and considerations on the institutional design of the KPK. The decision, colored by various discourses and dissenting opinions from the Constitutional Court judges, ended with a score of 5-4. Ultimately, the verdict argued that the KPK is more appropriately considered an executive institution and can be the object of the DPR's right of inquiry. Some of the considerations in this decision that provide an understanding of the KPK as an executive institution are as follows:

- 1) *"In the Court's view, the KPK is an executive agency that performs functions in the executive domain, namely investigation, investigation, and prosecution. The KPK is not in the judicial domain... It is also not a legislative body."*;
- 2) *"... In this construction, in terms of duties and functions, the Police and the Attorney General's Office, the KPK are institutions within the executive domain."*;
- 3) *"Its position in the executive realm does not mean that the KPK is not independent and free from any influence."*;
- 4) *"... Textually it is clear that the KPK is an organ or institution that includes the executive and executor of the law in law enforcement, especially in eradicating corruption ..."*.

Although Judge Maria Farida was among the dissenting opinion judges, in the context of KPK's institutional status, she argued that KPK belongs to the executive domain, which is characterized as independent. (Iskandar, 2019)

The two poles of opinion regarding the institutional design of the KPK are indeed very interesting. Many prominent legal experts consider KPK's institutional status more appropriate to be included in the executive branch of power when viewed in terms of its functions. On the other hand, many legal experts consider it more relevant to maintain the design of the KPK as an institution outside the executive branch of power. Criticism of the

Constitutional Court's reasoning in Constitutional Court Decision Number 36/PUU-XV/2017 is mainly related to the absence of an explanation or reason for changing the KPK's institutional stance. The decision does not explicitly describe the reasons for changing the Court's stance on previous decisions. The Court's prior decisions have legitimized the institutional design of the KPK as an independent state institution. In addition, there are several reasons why the reasoning in the Constitutional Court Decision is problematic:

- 1) Including the KPK in the executive branch seems contradictory, because equating the KPK with the Police and the Attorney General's Office is wrong. The leadership of the Police and the Attorney General's Office are elected by the executive, unlike the KPK, which is independent.
- 2) If based solely on the KPK's functions in investigation, prosecution, and investigation, the Constitutional Court must understand the nature of independent state institutions.
- 3) If the KPK can be the object of the Right of Inquiry except for its judicial function, how about other independent state institutions whose functions are entirely executive. (Zainal Arifin Mochtar, 2021)

Differences of opinion are normal in state discourse. The author objectively sees that those who want the KPK to be more appropriately included in the executive branch and those who view the KPK as an independent state institution have clear bases and considerations.

However, regarding the institutional design of the KPK, doctrinally the author is more inclined to the view that the KPK is designed as an independent state institution. KPK is considered more appropriate as an independent state commission because this institution is one of the products of political transition. Without realizing it, the political transition encouraged the birth of independent institutions. Bruce Ackerman in his work "The New Separation of Power", states that the presence of independent state commissions is a symptom of self-criticism of the conventional separation of powers. Meanwhile, Simon and Funk state that independent state organs have various roles such as quasi-legislative, quasi-executive, and quasi-judicial. Indeed, the presence of independent state commissions is an innovation in realizing demands in the public interest. (Rishan, 2020)

This is why the KPK is more suitable to be included in the group of staat auxiliary organs. This is because the presence of an independent state institution has a clear theoretical basis. The birth of the KPK was an innovation to realize the public interest, namely efforts to eradicate corruption. Moreover, one of the reasons for the birth of the KPK was the ineffectiveness of law enforcers (police and prosecutors) in eradicating corruption. Keeping KPK as an independent state institution will continue to maintain its independence and freedom in eradicating corruption. Bringing KPK into the executive branch may not guarantee its independence, and there is a greater risk of interference from other powers.

5. Prudential Interpretation

This interpretation is actually used to see the "gain and loss" aspects of placing the KPK as an executive agency. In terms of benefits, it is actually rather difficult to find, because since the KPK was established and used an independent agency institutional design, the KPK has transformed into the most trusted state institution in the community. Armed with super authority, this institution has successfully exposed many corrupt practices in this country. Regarding supervision and accountability, it is easy to say that as an executive agency, KPK's supervision is clearer and reflects the principle of checks and balances. However, this is inversely proportional to reality, as changes to the structure and design of the KPK seem to have weakened the KPK.

Therefore, it is easy to conclude that the change in KPK's institutional design to become an executive agency has more adverse implications. Here are some things after the issuance of Law Number 19/2019 that actually castrate the independence of the KPK:

- 1) The change of KPK to an executive agency may threaten KPK's independence. The implication of placing KPK as an executive agency is that KPK is accountable to the President. In addition, as argued by Zainal Arifin Mochtar, the inclusion of the KPK as a government institution not only triggers changes in terms of influence but also

institutional structure, concrete follow-ups such as the existence of a KPK Supervisory Board appointed by the President, changes in the employment status of the KPK to ASN, educational requirements for KPK investigators and investigators carried out in collaboration with the police and the prosecutor's office. (Zainal Arifin Mochtar, 2021)

- 2) Conceptually, the reason for establishing a supervisory board to prevent the risk of abuse of power in the KPK is good. However, the existence of a supervisory board, which the President elects, allows for selective cases and ineffectiveness of KPK mobility in efforts to eradicate corruption. For example, when conducting wiretapping for the benefit of a case, the need for Dewan Pengawas KPK (The Supervisory Board) permission certainly creates obstacles for the KPK in carrying out its duties. (Falah Parama & Al-Fatih, 2021)

Therefore, although in the revised KPK Law the institutional design of the KPK is still referred to as independent and free from interference from any power. However, incorporating KPK into the executive power has led to various setbacks in terms of corruption eradication. It can be concluded that, in terms of "gain and loss" as an essential instrument to eradicate corruption, placing the KPK as an independent institution is more ideal than putting it in the executive realm.

This is because one of the implications of the KPK's entry into the executive realm is that the KPK will be easily pestered by political factors, which are in fact difficult to separate from executive power. When the KPK often clashes with politics, its independence will indirectly be eroded. As John Quah stated, an anti-corruption commission in its functions, duties and authorities must be free from political influence. An anti-corruption commission must eradicate corruption indiscriminately and must not be afraid of big political or other shadowy forces. (Asyikin & Setiawan, 2020)

6. Ethical Interpretation

One of the major challenges and problems of our country in its 77 years of existence is corruption. Corruption has become a barrier for this nation to realize its goals and objectives. Corruption has even become a global common enemy, in various countries corrupt practices have been responsible for the instability of a government and the achievement of people's welfare. (Wiranti & Arifin, 2020) Therefore, efforts to eradicate corruption continue to be encouraged and intensified so that the goals and ideals of the country can be achieved.

In Indonesia, the eradication of corruption is indeed a big problem, before the reform era the practices of KKN (Corruption, Collusion and Nepotism) flourished. This led to gaps and inequality of welfare in society, and hampered development. Therefore, when the reformation period began, eradicating corruption became one of the main agendas. This is a form of moral and ethical awareness to return this nation to the track that will lead the people to the ideals and goals of this nation.

Indeed, we have understood together that the ideals and goals of this nation have been enshrined in the Preamble of the 1945 Constitution of the Republic of Indonesia, namely protecting the entire country and homeland, advancing public welfare, educating the nation's life, implementing world order, all of which are based on the ideals of Pancasila law. However, corruption is a real challenge in realizing it all. In addition to morally and ethically hindering the nation's goals, corruption is contrary to the values stitched and framed in Pancasila and the Constitution, both transcendental and integral. Corruption is an act that violates these values, and its impact is extraordinary.

Therefore, at the beginning of the reformation, everyone realized that extraordinary efforts were needed to eradicate corruption. One of the mandates was to establish a professional, modern, and independent anti-corruption institution. That is why from the beginning the KPK was designed as an

institution that is independent and free from the intervention of any power. In addition, this institution is also equipped with great authority so that the corruption eradication agenda runs well and the nation's goals, which corrupt practices have often hampered, can be achieved.

However, the change in KPK's institutional design to an executive agency seems far from the spirit of anti-corruption. Institutional design, structural, functional, and staffing changes threaten KPK's independence and bring KPK closer to the vortex of interests. Indeed, the KPK is not explicitly regulated in the Constitution, so the institutional design is open and legal by the legislators. However, according to the author, this reflects that lawmakers (President and DPR) and judicial institutions (MK) do not consider constitutional morality and ethics. Both lawmakers and the Constitutional Court should not be confined to the paradigm of "separation of powers" or textual understanding by only prioritizing the originality of authority. However, what must be considered are aspects of legal interests, the interests of society and the interests of the nation's morality. (Lailam, 2020)

Every institution must indeed have flaws and every power must have the potential for irregularities. However, the change in the institutional design of the KPK to the executive does not seem to reform the KPK for the better. If we want to create checks and balances and prevent abuses of authority by the KPK, the new design of the KPK in the revised KPK Law should have been designed better and more precise, instead of interfering with the independence of the KPK and hampering the KPK's performance in efforts to eradicate corruption. This is why revising KPK as an executive agency is far from the will of the public interest and society. All parties agree that corruption has been classified as an extraordinary crime. Therefore, extraordinary efforts are also needed in its eradication and law enforcement. When there is an anti-graft agency that is independent and free from the intervention of any power, it is necessary.

CONCLUSION

After various methods of interpretation introduced by Philip Bobbit, the following are some of the interpretive conclusions in this paper. First, from the textual interpretation, it can be concluded that the design of the KPK is not explicitly regulated in the constitution. Indeed, Article 24 paragraph (3) of the 1945 Constitution can be used as one of the constitutional bases of the KPK, but the institutional design needs to be regulated. KPK is an open legal policy of the President and the Parliament. Second, from a historical interpretation, the KPK is actually a mandate from the spirit of reform. Some of the specific reasons for the birth of this institution were the ineffectiveness of the Police and Attorney General's Office in eradicating corruption and an extraordinary effort to eradicate corruption. The presence of KPK is expected to be a professional, new, and independent anti-graft institution. Third, in its true interpretation, the change in KPK's design to an executive institution is not unconstitutional. This is because the legal basis for the establishment of the KPK is a law that is a joint agreement between the President and the DPR. However, in the formation of the revision of the KPK Law, many things could have been improved in the formation process, such as the phenomenon of fast-track legislation and a large wave of public rejection. Fourth, from the doctrinal interpretation, previous Constitutional Court decisions have legitimized the position of KPK as an independent state institution. However, the Constitutional Court Decision Number 36/PUU-XV/2017, which its consideration raised many new norms regarding the position of the KPK as an executive agency, then sparked changes in the institutional design of the KPK in 2019. However, theoretically, KPK is more appropriate as an independent state institution, KPK was born as a form of innovation to realize public interests in eradicating corruption. Fifth, from a prudential aspect, if we look at "profit and loss", placing the KPK as an executive institution raises various setbacks in eradicating corruption. Sixth, the ethical aspect shows that corruption eradication is imbued with the morals and ethics of Pancasila and the Constitution. Placing the KPK as an independent institution is not only a mandate of reform, but also a moral obligation to eradicate corruption that has

hampered the nation in achieving its goals. It can be concluded that the change in the institutional design of the KPK to an executive agency is not unconstitutional. Still, the change in institutional design has reduced the independence and authority of the KPK. If explored and considered historically, theoretically and morally, the KPK is more ideally designed as before, attached to the function of an independent state institution. Apart from carrying the mandate and spirit of reform, the KPK has proven itself successful as an anti-bribery institution in Indonesia and is trusted by the public. Looking at the institution of KPK should be not only textual and based on constitutionality but also explore constitutional morality.

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