



DUALISM OF AUTHORITY OF INVESTIGATION AND INVESTIGATION CORRUPTION CRIMINAL ACTS IN INDONESIA

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Abstract

Corruption in Indonesia Its development continues to increase from year to year. Corruption has become an extraordinary crime. Thus efforts to eradicate it can no longer be carried out in an ordinary way, but are demanded in an extraordinary way. Therefore, the roles of the KPK and POLRI are required to be more effective and synergize with each other. This study aims to determine the function and authority of investigating and investigating criminal acts of corruption by the KPK and POLRI as well as coordination and supervision arrangements. This article is a Normative Juridical Research. The results of this study show that in carrying out investigations and investigations of corruption crimes the KPK and POLRI have one function and authority that supports and complements each other, Law Number 30 of 2002 provides legitimacy for the function of the KPK as a mobilizing and empowering institution that already exists in the eradication of corruption crimes (*trigger mechanism*). And in law enforcement, the KPK and Polri should be conducive *counter partners* so that the eradication of corruption can be carried out efficiently and effectively. The cooperation of the KPK with the police and prosecutors as stipulated in the provisions of the regulation, shows that the KPK in exercising its special authority is different from the authority of the police and prosecutor's office. The KPK does not exercise this extraordinary special authority authoritatively in combating corruption, but it still requires cooperation with the police and prosecutors even though the authority of each agency is different. Thus, with the cooperation between the KPK and the police and prosecutors in eradicating corruption crimes, there are no more clashes or overlaps between the authority of the KPK which has this special authority and the authority of the police in enforcing corruption eradication laws in Indonesia, so that the eradication of corruption can be carried out effectively and efficiently.

Keywords: Authority, Investigation, Corruption

INTRODUCTION

Efforts to eradicate Corruption are the main agenda that must be realized immediately. To be effective, these efforts must be preventive and repressive. Both efforts must be carried out well and can be synergistic with each other or likened to both are two sides in one currency. With preventive efforts, repressive efforts will succeed in carrying out their mission. Vice versa, without repressive things, preventive efforts are just nonsense.¹

The Corruption Eradication Commission established by Law No. 30 of 2002 and the Coordination Team for the Eradication of Corruption established by Presidential Decree No. 11 of 2005 also has the authority to investigate and investigate corruption crimes. The birth of the KPK institution was not intended to handle all corruption cases, nor was it intended to monopolize the handling of corruption cases. The KPK has aspired to be a trigger mechanism institution in handling corruption cases for existing law enforcement agencies.² In carrying out its supervision duties as referred to in Article 6 letter b, the Corruption Eradication Commission conducts supervision, research, or review of agencies that carry out their duties and authorities related to eradicating Corruption Crimes and agencies that carry out public services. The presence of the Corruption Eradication Commission (KPK) in the last 15 years, which has carried out enforcement of major corruption cases, arrested more than 1,000 public officials with a success rate of more than 75%, supervised law enforcement efforts in corruption cases, and instilled a spirit of integrity in the community, (Corruption Eradication Commission, 2019) actually shows the need to follow various efforts to strengthen the performance of the KPK.³

Meanwhile, in Article 26 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, the process is carried out in accordance with the applicable procedural law. So the National Police also investigates corruption cases, considering that in the Criminal Procedure Code, the National Police is also categorized as an investigator of all criminal acts. Moreover, Article 14 letter g of Law No. 2 of 2002 concerning the National Police is tasked with "Conducting investigations and investigations into all criminal acts following the criminal procedure law and other laws and regulations." As Moh has written. Hatta⁴ that in the Code of Criminal Procedure, the police are investigators, but no article

¹ Romli Atmasasmita. *Sekitar Masalah Korupsi Aspek Nasional dan Aspek Internasional*. (Bandung Mandar Maju, 2004), 37

² Hibnu Nugroho, *Efektivitas Fungsi Koordinasi Dan Supervisi Dalam Penyidikan Tindak Pidana Korupsi Oleh Komisi Pemberantasan Korupsi*, Jurnal Dinamika Hukum Vol. 13 No. 3 September 2013, 392

³ Wawan Heru Suyatmiko dan Alvin Nicola, *Menakar Lembaga Antikorupsi: Studi Peninjauan Kinerja Komisi Pemberantasan Korupsi*, Jurnal Antikorupsi Integritas, Vol. 5, No. 2, 36.

⁴ Moh. Hatta. *KPK Dan Sistem Peradilan Pidana*, (Yogyakarta: Liberty, 2014), 38.

mentions the National Police or the police as the sole investigator. However, the National Police had a robust implicit desire to participate in investigations and investigations in corruption cases that later gave birth to the Tipikor Division.

The article stipulates that by two years after the corruption law is passed, a special institution must be formed that is given the authority to eradicate Corruption. The National Police still needs to be considered more potent in eradicating Corruption, in addition to the regulations owned by the National Police do not support the regulations owned by the KPK. In addition, the National Police, under executive coordination (Article 8 of the National Police Law), is often harassed by political and government interference, which causes action against corruption cases to be not optimal.

The investigation is one of the main duties of the National Police in order to carry out law enforcement based on the provisions of Article 13 letter (b) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia. Meanwhile, in relation to the National Police as investigators, it is based on the provisions of Article 14 paragraph (1) letter (g) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, which states that the National Police of the Republic of Indonesia is tasked with "conducting investigations and investigations into all criminal acts in accordance with the criminal procedure law and other laws and regulations". The birth of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia made strict restrictions on the duties and authorities of the Police.⁵

Even though there is already a KPK, it does not mean that police investigators are no longer entitled to investigate corruption cases; In Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, article 14 paragraph (1) points g it is stated that the police are tasked with conducting investigations and investigations into all criminal acts in accordance with the criminal procedure law and other laws and regulations.

M. Yahya Harahap stated that the criminal justice system outlined by the Criminal Procedure Code is an integrated criminal justice system that is placed based on the principle of functional differentiation among law enforcement officials in accordance with the stage of the authority process given by law to each.⁶

According to Ruslan Renggong in his book, coordination is an important mechanism that must be well developed in an integrated criminal justice system, namely coordination

⁵ Bambang Dwi Baskoro, *Perseteraan KPK Dengan Polri Dalam Upaya Pemberantasan Korupsi*, Jurnal Masalah-Masalah Hukum, Vol. 34, No. 3 (2013), 338.

⁶ Muchamad Iksan. *Hukum Perlindungan Saksi Dalam Sistem Peradilan Pidana Indonesia*. (Surakarta: Penerbit Muhammadiyah University Prees, 2012), 45

between all law enforcement officials. Although law enforcement officials have functions and authorities that differ strictly from other law enforcement officials, in carrying out their functions and authorities, law enforcement officials must be able to realize functional relationships.⁷

Departing from the above problems, the author raises the formulation of the problem: How is the coordination and supervision arrangement of the KPK and Polri in the Investigation and Investigation of Corruption Crimes in Indonesia?

RESULTS AND DISCUSSION

Etymology and Terminology of Corruption

The understanding or origin of the word Corruption according to Fockema Andreae in Andi Hamzah.⁸ The meaning of the word Corruption comes from the Latin Corruption or corrupt us, which further states that Corruption is also derived from the original word corrupter, an older Latin word. From Latin came many European languages, such as English, namely Corruption, corrupt; French, that is, d Dutch corruption, namely corruptie in Dutch, contains the meaning of corrupt acts, brilliance.

Corruption has become a transnational crime whose eradication requires cooperation from various countries. This condition is affirmed in the United Convention Against Corruption, which reads:

also convinced that the globalization of the world economy has led to a situation where Corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control essential.⁹

Many poor and developing countries in Asia and Africa, as the victim states, are very negative due to corrupt practices in their countries. Even then, Corruption is considered as one of the causes of slow economic growth, which leads to low levels of public welfare. A study conducted by IMF donors in 1996 stated that Corruption can have the consequence of slowing economic growth through various broad sector dimensions such as:

- a. Corruption lowers investment and retards economic growth to a significant extent.
- b. talent will be misallocated.
- c. Corruption might reduce the effectiveness of aid flows through the diversion of funds.
- d. Corruption may bring about a loss of tax revenue.

⁷ Ruslan Renggong, *Hukum Acara Pidana 'Memahami Perlindungan HAM dalam Proses Penabanan di Indonesia*. (Jakarta: Prenadamedia Group, 2014), 169

⁸ Andi Hamzah. *Pemberantasan Korupsi Melalui Hukum Pidana Nasional Dan Internasional*. (Jakarta: Raja Grafindo Persada, 2006), 4-6

⁹ United Nations Convention Against Corruption 2003.

- e. Corruption may lead to adverse budgetary consequences.
- f. corrupt system may lead to lower quality of infrastructure and public services.
- g. Corruption may distort the composition of government expenditure

In subsequent developments, often, the consequences of Corruption will also trigger money laundering. Money laundering is carried out to hide the origin of money from Corruption so that it cannot be traced by law enforcement officials. So that after the money laundering process is complete, the money resulting from Corruption is formally juridical is money that comes from legitimate sources. Efforts made by corruptors by laundering money (money laundering) against the results of Corruption will further make the road that investigators and investigators must pass to uncover a corruption case. As the third most corrupt country in the world, Indonesia is one of the countries that feel the most adverse effects of Corruption. The history of Corruption in Indonesia seems to have taken root and involved all lines of life, not only in the public environment but has penetrated into the private sector. Even worse, the legislature, which is notably a representative of the people and is tasked with overseeing the running of the government, has also been infected with the virus of Corruption.

KPK Coordination with the POLRI in Investigations and Investigations

The formulation of articles that refer to the concept of independent state institutions includes the position of institutions. The firmness of the current situation of the KPK institution is included as a state institution in the executive branch but not an executive institution. This means that in carrying out its duties, the KPK is the same as other executive institutions that exercise the authority of law enforcement of corruption crimes (Police and Prosecutors), but the KPK is not under the control (power) of the President.¹⁰

In carrying out coordination, as referred to in Article 6 letter a, the KPK has several authorities as stated in Article 7 of Law No. 30 of 2002: (a) Coordinate the investigation, investigation, and prosecution of criminal acts of Corruption; (b) Establish a reporting system in anti-corruption activities; (c) Request information on corruption eradication activities to relevant agencies; (d) Conduct hearings or meetings with agencies authorized to eradicate criminal acts of Corruption; and (e) Request reports from relevant agencies on the prevention of Corruption

From the article above, the KPK is in the position of coordinator. Therefore, the National Police has an obligation to coordinate and report cases to the KPK. This is different

¹⁰ Hendra Nurtjahjo, *Lembaga, Badan, Dan Komisi Negara Independen (State Auxiliary Agencies) Di Indonesia: Tinjauan Hukum Tata Negara*, Jurnal Hukum & Pembangunan Vol.35, No. 3 (2017), 277.

from the provisions in Article 7, paragraph (2) of the Criminal Procedure Code, which states that PPNS is under the coordination and supervision of the National Police. That the KPK should be categorized as PPNS. Then the KPK Law made a separate exception to reiterate that the KPK is not under the coordination of the National Police and stated that the provisions of Article 7 paragraph (2) of the Criminal Procedure Code do not apply.

As a corruption eradication agency, the KPK has a very powerful task and authority because it has special authority in combating Corruption. This authority is not possessed (or only partially owned) by other law enforcement agencies. For example, the KPK can conduct investigations, investigations, and prosecutions. This authority is very powerful because it exceeds the authority possessed by the Prosecutor's Office and the National Police. In addition, the KPK is often referred to as a super body because it is the only institution that has the authority to lead other law enforcement agencies in handling corruption cases.¹¹

According to Ajarn Bentham, a healthy legal relationship is a legal relationship that has legitimacy or logical, ethical, and aesthetic validity in the juridical legal field. In the sense that the legal relationship begins with the existence of cause and effect, to the existence of an institution that has carried out various correct legal procedures. The task and coordinated relationship between the Police and the KPK can be clearly seen in the elaboration of Article 6 of Law Number 30 of 2002 concerning the Corruption Eradication Commission, as mentioned above . In this article , it can be seen how great the role, duties, and authorities of the KPK are in eradicating Corruption.

KPK Supervision of the POLRI in Investigations and Investigations

Cooperation and mutual supervision involve investigators, public prosecutors, judges, suspects or defendants, or their legal advisors and prison or prison officials.⁶ Article 8 paragraph (1) of the KPK Law: "In carrying out supervision duties as referred to in Article 6 point b, the Corruption Eradication Commission is authorized to supervise, research, or review agencies that carry out their duties and authorities related to the eradication of criminal acts corruption, and agencies that carry out public services".¹²

In addition, in the context of supervision, the KPK is also authorized to take over investigations or prosecutions, in paragraph (2): "In exercising the authority referred to in paragraph (1), the Corruption Eradication Commission is also authorized to take over the

¹¹ Zainal Abidin dan A Gimmy Prathama siswadi, *Psikologi Korupsi*, (Bandung: PT Remaja Rosdakarya, 2015), 51.

¹² P.A.F Lamintang dan Theo Lamintang, *Delik-Delik Khusus Kejahatan jabatan dan Kejahatan jabatan Tertentu Sebagai Tindak Pidana Korupsi*, (Jakarta: Sinar Grafika. 2009).

investigation or prosecution of perpetrators of corruption crimes being carried out by the police or prosecutor's office". Therefore, when there is a case takeover by the KPK, the National Police must submit the suspect and all files and evidence previously found to the KPK, paragraph (3): "In the event that the Corruption Eradication Commission takes over the investigation or prosecution, the police or prosecutor's office must hand over the suspect and all case files along with evidence and other documents needed within a maximum of 14 (fourteen) working days, as of the date of receipt of the request of the Corruption Eradication Commission"

It is explained in the explanation of Article 8 paragraph (3) that "This provision is not interpreted as physical surrender but surrender of authority so that if the suspect has been detained by the police or prosecutor's office, the suspect can still be placed in police custody or the custody of the prosecutor's office or the Corruption Eradication Commission requests assistance from the Head of the State Detention Center to place the suspect in the Detention Center. See also the explanation of Article 12 paragraph (1) letter."

The delegation of investigations and investigations, as well as the submission of suspects, files, and evidence, are delegated by making and signing the minutes of suggestion so that all duties and authorities of the police or prosecutor's office at the time of the handover are transferred to the Corruption Eradication Commission. (verse 4) there are compelling reasons, as set out in Article 9:

- a) Public reports on corruption crimes are not followed up;
- b) The process of handling corruption crimes in a protracted or delayed manner without justifiable reasons;
- c) The handling of corruption crimes is aimed at protecting the real perpetrators of corruption crimes;
- d) The handling of corruption crimes contains elements of Corruption;
- e) Obstacles to handling corruption crimes due to interference from the executive, judiciary, or legislature; or
- f) Other circumstances that, according to the consideration of the police or the prosecutor's office, the handling of corruption crimes is difficult to implement correctly and can be accounted for.

Article 10 "In the event that there is a reason, as referred to in Article 9, the Corruption Eradication Commission notifies the investigator or public prosecutor to take over the corruption crime being handled.

Legal Cooperation in the Prevention and Eradication of Corruption

In accordance with the mandate of Article 6 letter an of Law Number 30 of 2002 concerning moral integrity in eradicating and controlling Corruption, coordination with authorized agencies, investigation and prosecution, enforcement actions, and monitoring of

the implementation of state government regarding Corruption. The KPK, in its duties, coordinates with the Audit Agency, the Financial and Development Supervisory Agency, the State Administration Wealth Audit Commission, inspectorates in non-departmental government departments or agencies, of course, also with the Police, Prosecutor's Office, and judicial bodies. In Article 33 of Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia, it is affirmed that: "in the implementation of duties and authorities, the prosecutor's office maintains cooperative relations with law enforcement and justice agencies as well as State agencies or other agencies." Likewise, Article 42 paragraph (2) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia affirms that:

"Relations and cooperation in the country are carried out mainly with elements of local government, law enforcement, agencies, institutions, other agencies, and the community by developing the principle of participation and subsidiarity."

"Foreign cooperation relations are carried out mainly with other police and law enforcement agencies through bilateral or multilateral cooperation and crime prevention agencies both in the framework of operational tasks and technical cooperation and education and training."¹³

Article 12 paragraph (1) letter I state that: "In carrying out the task of investigation, investigation, and prosecution as referred to in Article 6 point c, the Corruption Eradication Commission has the authority, requesting the assistance of the police or other relevant agencies to make arrests, detentions, searches, and seizures in cases of corruption crimes being handled".

Based on some of these provisions, it can be understood that, basically, there is a mechanism for coordination and cooperation between law enforcement institutions, especially in this case, the Corruption Eradication Commission, the Police, and the Prosecutor's Office in eradicating Corruption in Indonesia. This opportunity must be exploited as well as possible by law enforcement to carry out corruption countermeasures. All law enforcement agencies must unite to eradicate Corruption in Indonesia. The KPK will only be effective if it works with assistance or cooperation with related institutions or institutions, such as the police and prosecutors, in combating Corruption in Indonesia.

Explanation of Law Number 30 of 2002 concerning the Corruption Eradication Commission states that: With the regulations in this law, the Corruption Eradication Commission:

- a. be able to establish a strong network and treat existing institutions as conducive "counter partners" so that the eradication of Corruption can be carried out efficiently and effectively;

¹³ Pasal 42 ayat (2) UU Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia

- b. does not monopolize the duties and authorities of investigation, investigation, and prosecution;
- c. serves as a trigger and empowerment of existing institutions in the eradication of Corruption (trigger mechanism);
- d. function to supervise and monitor existing institutions, and in certain circumstances, can take over the duties and authority of investigation, investigation, and prosecution (super body) being carried out by the police and prosecutor's office.

The Corruption Eradication Commission has a special relationship with the Prosecutor's Office in the Enforcement of Corruption Eradication Law, as stated in Law Number 30 of 2002. The special relationship is stated in the Joint Decree of the Chairman of the Corruption Eradication Commission and the Republic of Indonesia Attorney General No.Kep_11121 2005 concerning the Cooperation of the Corruption Eradication Commission with the Attorney General of the Republic of Indonesia in the Framework of Eradicating Corruption Crimes. In the joint decision of the Corruption Eradication Commission and the Attorney General of the Republic of Indonesia, cooperation is determined to assist each other in the optimal eradication of Corruption and improve the capacity and ability of the K.P.K. and the Prosecutor's Office (Article 2), cooperation in practical assistance (Article 3), cooperation regarding personal and operational assistance (Article 4).

Complementation of the relationship between the functional legal authority of KPK Investigators and Police Investigators in solving corruption crimes, law enforcement behavior of KPK Investigators in various regions in Indonesia such as; coordination of legal actions of searches, seizures, arrests, always obtaining optimal support from police investigators. Police investigators in the various areas in Indonesia optimize KPK investigators to carry out legal supervision actions to complete legal actions investigating corruption crimes.¹⁴

The cooperation between the KPK and the Police and the Prosecutor's Office, as stipulated in the provisions outlined above, shows that the KPK, in carrying out its special powers, differs from the authority of the Police and the Prosecutor's Office. The Corruption Eradication Commission does not carry out this extraordinary special authority in an authoritarian manner in eradicating Corruption, but it still requires cooperation with the police and prosecutors, even though the powers possessed by each of these agencies are different.

Thus, with the collaboration between the KPK and the Police, and the Attorney General's Office in eradicating criminal acts of Corruption, there will be no more clashes or overlapping of the KPK's authority, which has this specific authority with the authority of the

¹⁴ Azis Budianto, *Hubungan Fungsional Penyidik Komisi Pemberantasan Tindak Pidana Korupsi (KPK) Dan Penyidik Polri Dalam Penyelesaian Tindak Pidana Korupsi*, *Jurnall Lex Librum*, Vol. III No. 2, Juni 2017, 571

police and the prosecutor's authority in enforcing law enforcement against Corruption in Indonesia. So that the eradication of Corruption can be carried out effectively and efficiently.

CONCLUSION

As a corruption eradication agency, the KPK has compelling duties and authorities because it has unique authority in eradicating Corruption. This authority is not owned (or only partially owned) by other law enforcement agencies. For example, the KPK can carry out investigations, investigations, and prosecutions. This authority is very powerful because it goes beyond the authority of the National Police. In law enforcement, the KPK and Polri must become conducive counter-partners so that Corruption can be eradicated efficiently and effectively. The Corruption Eradication Commission does not carry out this extraordinary special authority in an authoritarian manner in eradicating Corruption, but it still requires cooperation with the police and prosecutors, even though the powers possessed by each of these agencies are different. Thus, with the collaboration between the Corruption Eradication Commission and the Police, and the Attorney General's Office in eradicating criminal acts of Corruption, there will be no more clashes or overlapping of the authorities of the KPK, which has this specific authority, with the head of the police in enforcing the law against Corruption in Indonesia, so that the eradication of Corruption can be carried out. Effectively and efficiently.

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