

**EXCIENCY AND AUTHORITY CHAIRMAN OF THE CORRUPTION  
ERADICATION COMMISSION FOR BRIBERY AND  
GRATIFICATION CASES OF THE GOVERNOR OF PAPUA  
ACCORDING TO LAW NUMBER 30 OF 2002 *JUNCTO* LAW NUMBER  
19 OF 2019 CONCERNING THE CORRUPTION ERADICATION  
COMMISSION**

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**ABSTRACT**

This study aims to find out and analyze the existence of the KPK's position and authority based on law number 19 of 2019 concerning the Corruption Eradication Commission. As well as knowing and analyzing the actions of KPK Chairman Firlil Bahuri in meeting the suspect in the bribery and gratuity case, the Governor of Papua, Lukas Enembe, violated the rules. This research is a type of normative research. So that it can be seen that the existence of the KPK in law enforcement in the field of corruption can be affected by the position of the KPK which is now a "state institution that is in the executive power cluster which in carrying out its duties and authorities is independent and free from the influence of any power". In addition, the state should not lose to corruptors. The state must be present in ensuring legal enforcement of corruptors who are detrimental to the state.

**Keywords:** *kpk's, Papua, corruptors*

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**INTRODUCTION**

The development of corruption in Indonesia has been very acute and worrying for the sustainability of the life of the nation and state (Einstein & Ramzy, 2020). The criminal act of corruption harms the country's finances and economy and attacks other dimensions of life such as political, social, and cultural dimensions (Astuti, 2014).

This is none other than because the criminal act of corruption attacks the ethics and morals of the Indonesian nation, from the shift in ethics and morals have an impact on damage to the life of the nation and state in all fields (Burlian, 2022). Historically, the spirit of eradicating corruption – including collusion and nepotism – has been demand or agenda rather than reform (Correctional Guidelines for the 1945 Constitution of the Republic of Indonesia and Decrees of the People's Consultative Assembly of the Republic of Indonesia).

Based on the high spirit of eradicating corruption from the Indonesian people, the MPR then stipulated MPR Decree Number VIII / MPR / 2001 concerning Recommendations for Policy Directions for the Eradication and Prevention of Corruption, Collusion, and Nepotism. Thus encouraging the President of the Republic of Indonesia and other high state institutions to establish the Corruption Eradication Commission based on Law Number 30 of 2002 concerning the Corruption Eradication Commission (MPR Decree, 2001: 3).

In its development, during the establishment of the KPK, Law Number 30 of 2002 has been amended 2 times, namely through Law Number 10 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2015 concerning Amendments to Law

Number 30 of 2002 concerning the Corruption Eradication Commission into Law and Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Eradication Commission Criminal Acts of Corruption.

However, among the 2 changes to the KPK Law, only Law Number 19 of 2019 received opposition and criticism from the wider community. Most communities, including the KPK, consider Law Number 19 of 2019 to be formally flawed because the Law does not enter the Prolegnas, does not involve the community, and also does not meet the *Quorum* (Antoni Putra, 2020: 11).

In addition to Formil's defects, materially some people also consider that the Revision of the KPK Law is a form of weakening the KPK. In contrast to the views of most people, the Government and the House of Representatives stated that the revision of the KPK Law is a form of strengthening and perfecting the KPK (Riswandi et al., 2021).

Even the President stated that the Government wants the KPK to remain stronger in eradicating corruption (Prastowo, 2017). Based on the controversy of Law Number 19 of 2019, the author considers it necessary to conduct an in-depth study of the existence of the KPK in efforts to eradicate corruption in Indonesia.

The purpose of this study is in accordance with the formulation of the problem that has been put forward. Therefore the research objectives are:

1. Know and analyze the existence of the position and authority of the KPK based on law number 19 of 2019 concerning the Corruption Eradication Commission.
2. Knowing and analyzing the actions of KPK Chairman Firli Bahuri to meet suspects in bribery and gratification cases, Papua Governor Lukas Enembe misruled.

## **METHOD**

The research method used in this study is juridical-normative, which will refer to legal norms in several regulations (Soekanto, 2007). The object of this research is the position and authority of the KPK. This research uses a historical approach and a statutory approach; A historical approach is used to find out the origins of the formation of the KPK. Meanwhile, the legal approach is used by reviewing all laws and regulations related to the position and authority of the KPK.

## **RESULTS AND DISCUSSION**

### **The existence of the position and authority of the KPK based on Law Number 19 of 2019 concerning the Corruption Eradication Commission**

After the enactment of Law Number 19 of 2019, the position of the KPK is as a state institution within the executive power family which in carrying out its duties and authorities is independent and free from the influence of any power.

The meaning of "state institution" as referred to in Article 3 is a state institution that is a state *auxiliary agency* that is included in the executive family. Changes and/or affirmations in Article 3 of the Law on the Corruption Eradication Commission were carried out as a follow-up to Constitutional Court Decision Number 36/PUU-XV/2017.

In Law Number 19 of 2019, the position of the KPK as a state institution within the executive power cluster is clearly seen by designating KPK employees as members of the professional corps of state civil apparatus employees of the Republic of Indonesia.

And his appointment is no longer fully regulated by the KPK itself, but based on the provisions of laws and regulations that can be formed by the President and / or DPR. In addition, the position of the KPK as a state institution in the executive power cluster is clearly illustrated by the establishment of a Supervisory Board whose members are appointed and determined by the President (Fadli et al., 2022).

As well as the responsibility of the Supervisory Board for its duties directly to the President and the House of Representatives in the form of periodic task implementation reports 1 time in 1 year.<sup>38</sup> Through Law Number 19 of 2019, the duties of the KPK have increased.

The additional duties of the KPK based on Law Number 19 of 2019 include:

- 1) Coordinate with agencies in charge of carrying out public services; and
- 2) Take actions to carry out the determination of judges and court decisions that have acquired permanent legal force.

Regarding the task of carrying out preventive tasks, the authority of the KPK only changes to the authority, which previously the KPK was authorized to "Designing and encouraging the implementation of socialization programs to eradicate criminal acts of corruption"

As stipulated in Law Number 30 of 2002, now based on the authority of the KPK is not only "designing and encouraging". But "planning and implementing the socialization program for the Eradication of Criminal Acts of Corruption". And all authorities possessed by the KPK in carrying out preventive duties must be reported as a form of accountability to the President of the Republic of Indonesia, the House of Representatives of the Republic of Indonesia, and the Audit Board 1 (one) time in 1 (one) year.

In carrying out coordination duties, there is 1 change in the authority of the KPK, previously the KPK was authorized to "request reports from relevant agencies regarding the prevention of criminal acts of corruption" as stipulated in Article 7 letter e of Law Number 30 of 2002, now the authority of the KPK has become "request reports to the competent authorities regarding prevention efforts so that no Criminal Acts of Corruption occur" (Law Number 30 of 2002 concerning the Corruption Eradication Commission).

Regarding the authority of the KPK in carrying out its monitoring duties, the authority of the KPK has not changed at all in Law Number 19 of 2019. Likewise, in carrying out supervision duties, in principle, the authority of the KPK has not changed, it's just that the provisions regarding the implementation of KPK supervision duties will be regulated by Presidential Regulation (Kusuma, 2018).

In addition, the authority of the KPK to take over the investigation and/or prosecution of perpetrators of Corruption Crimes being carried out by the police or prosecutors in the framework of supervision duties remains unchanged (Umam et al., 2020). Major changes in the authority of the KPK lie in the authority to carry out the task of investigating, investigating, and prosecuting criminal acts of corruption.

In Article 11 paragraph (1) of Law Number 19 of 2019, the KPK is authorized to investigate, investigate, and prosecute corruption crimes that:

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- 1) Involving law enforcement officials, State Administrators, and other people related to Corruption Crimes committed by law enforcement officials or State Administrators; and/or
- 2) Regarding state losses of at least IDR 1,000,000,000.00 (one billion rupiah).

If the Corruption Crime does not meet the provisions of Article 11 paragraph (1) of Law Number 19 of 2019, the Corruption Eradication Commission must submit investigations, investigations, and prosecutions to the police and/or prosecutor's office. However, even though the case has been handed over to the police and/or the prosecutor's office, the KPK still supervises the case submitted to the police and/or prosecutor's office.

As for the authority of the KPK in carrying out investigations, investigations and prosecutions of criminal acts of corruption, the KPK is authorized to:

- 1) In carrying out its investigation and investigation duties, the KPK is authorized to:
  - a. Conduct wiretapping in carrying out investigation and investigation tasks.
- 2) In carrying out its investigative duties, the KPK is authorized to:
  - a. Order the relevant agencies to prohibit a person from traveling abroad in carrying out investigative duties;
  - b. Ask the bank or other financial institution for information about the financial condition of the suspect or defendant being examined;
  - c. Order banks or other financial institutions to block accounts suspected of proceeds from corruption belonging to suspects, defendants, or other related parties;
  - d. Order the leader or superior of the suspect to temporarily suspend the suspect from his position in carrying out investigative duties;
  - e. Request wealth data and tax data of suspects or defendants to the relevant agencies;
  - f. Suspend financial transactions, trade transactions, and other agreements or temporarily revoke licenses, licenses and concessions carried out or owned by suspects or defendants allegedly based on sufficient preliminary evidence related to the Corruption Crime under investigation;
  - g. Request the assistance of Interpol Indonesia or other law enforcement agencies to conduct searches, arrests, and seizures of evidence abroad; and
  - h. Request the assistance of the police or other relevant agencies to make arrests, detentions, searches, and seizures in the case of Corruption Eradication that is being handled.

In Law Number 19 of 2019, there is no specification regarding the authority of the KPK in carrying out the task of prosecuting criminal acts of corruption. The KPK is only ordered by Law Number 19 of 2019 to carry out coordination in accordance with the provisions of laws and regulations.

Nevertheless, Article 38 of Law Number 19 of 2019 stipulates that all authorities related to the investigation, investigation, and prosecution are regulated in the law governing criminal procedure law (*in case* of Law Number 8 of 1981 concerning Criminal Procedure Law). This shall also apply to investigators, investigators and public prosecutors at the Corruption Eradication Commission unless otherwise provided under this Law. In particular, in relation to searches and/or seizures, such wiretaps must obtain permission from the Supervisory Board.

Previously, namely in Law 30 of 2002, the KPK in using its authority in the task of investigation, investigation, or prosecution did not need to ask permission from any agency.

Regarding the implementation of the task of carrying out the determination of judges and court decisions, the KPK is authorized to take necessary and accountable legal actions in accordance with the content of the judge's determination or court decision (Telaumbanua, 2019).

Regarding other authorities, namely the termination of investigations, investigations, and/or prosecutions, Law Number 19 of 2019 requires that the KPK can stop investigating and prosecuting cases of Corruption Crimes whose investigation and prosecution are not completed within a maximum period of 2 (two) years.

However, the termination of investigation and prosecution by the KPK can be revoked by the KPK leadership if new allegations are found that can cancel the reason for stopping the investigation and prosecution, or based on pretrial decisions as referred to in laws and regulations.

Just like Law Number 30 of 2002, Law Number 19 of 2019 also orders the KPK to base its duties and authorities on principles.

The principles in question include:

1. Legal certainty;
2. Openness;
3. Accountability;
4. Public interest;
5. Proportionality; and
6. Respect for human rights.

### **KPK Chairman Firli Bahuri's Action to Meet Suspects in Bribery and Gratification Cases Papua Governor Lukas Enembe Mistook Rules**

In Article 36 of Law of the Republic of Indonesia Number 30 of 2002 concerning the Corruption Eradication Commission, it is explained that the Chairman of the Corruption Eradication Commission is prohibited:

- a. Establish direct or indirect relations with suspects or other parties related to corruption criminal cases handled by the Corruption Eradication Commission for any reason;
- b. Handling cases of criminal acts of corruption whose perpetrators have blood or blood family relations in a straight line up or down to the third degree with the members of the Corruption Eradication Commission concerned;
- c. Serving as commissioners or directors of a company, foundation organs, supervisors or administrators of cooperatives, and other professional positions or other activities related to these positions.

The Indonesian Anti-Corruption Society (MAKI) considers that there is nothing wrong with the moment of familiarity shown by KPK Chairman Firli Bahuri when accompanying investigators to examine Papua Governor Lukas Enembe, but this action has the potential to violate the rules of the KPK Law.

"The new and old KPK Law Article 36 states that KPK leaders are prohibited from meeting with people who are being investigated by the KPK and even that threatens a five-year sentence," said MAKI Coordinator Boyamin Saiman quoted by Antara on Thursday (3/12).

According to Boyamin, the reason is that the old KPK Law said KPK leaders were investigators and prosecutors. "It means that Mr. Firli can come to Lukas Enembe's place with the investigator in the context of being an investigator, that means he has to go back to the old law," Boyamin said.

For this reason, Boyamin will ask Firli Bahuri to fight for the cancellation of the revision of the KPK Law to authorize his action today (Thursday) to meet Lukas Enembe as a team of investigators. In response to MAKI, the KPK stated that Firli Bahuri's participation in the group that met the suspected Papua Governor Lukas Enembe did not violate the rules.

"The participation of the leadership in these activities is certainly in the context of carrying out the main duties of the KPK function in accordance with applicable law," said Head of KPK News Section Ali Fikri in Jakarta, Friday (3/12).

From these events, the State should not be inferior to the Corruptors. The State must be present in ensuring the enforcement of the law against the Corruptors who harm the State. Moreover, in Article 36 of Law of the Republic of Indonesia Number 30 of 2002 concerning the Corruption Eradication Commission, it is explained that the Head of the Corruption Eradication Commission is prohibited from having direct or indirect relations with suspects or other parties related to corruption criminal cases handled by the Corruption Eradication Commission for any reason.

## **CONCLUSION**

Based on the explanation above, it can be concluded that the existence of the KPK in law enforcement in the field of corruption can be affected through the position of the KPK which is now "a state institution in the executive power cluster which in carrying out its duties and authorities is independent and free from the influence of any power".

Although the phrase "is independent and free from the influence of any power" is firmly contained in Law Number 19 of 2019, the independence and freedom of the KPK does not mean free from interference at all.

The disturbance has the potential to arise with the appointment of employees of the Corruption Eradication Commission as members of the professional corps of civil apparatus employees of the Republic of Indonesia and the existence of a Supervisory Board appointed and determined by the President.

As well as the accountability of the Board of Trustees for its duties to the President and the House of Representatives, in this case the duties of the Board of Trustees are not small. But it greatly affects the dynamics and spirit of law enforcement carried out by KPK Leaders and Employees, including granting permission or not granting permission for wiretapping, searching, and/or seizure, as well as evaluating the performance of KPK Leaders and Employees periodically 1 (one) time in 1 (one) year. In addition, the State should not be inferior to the Corruptor. The State must be present in ensuring the enforcement of the law against the Corruptors who harm the State.

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