

# TRANSFER STATUS OF EMPLOYEES OF THE CORRUPTION ERADICATION COMMISSION INTO THE STATE CIVIL APPARATUS TO SUPPORT THE PERFORMANCE OF THE CORRUPTION ERADICATION COMMISSION IN CORRUPTION PREVENTION AND ERADICATION

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**Abstract:** After Law no. 19 of 2019 (the KPK Law) was ratified, the institutional construction of the KPK actually contradicted the philosophical aspects, the ratio legis, and the theory of independent state institutions on which the KPK was formed initially (the teleological aspect of the formation of the KPK). The theory of independent state institutions constructs that the institutional structure must be separated from other branches of state power, so that in parallel the position of its staff must also follow the construction of institutional independence. However, this paradigm is not elaborated in the KPK Law because it has placed the KPK structurally and institutionally as part of the executive family. Thus, the transfiguration of KPK employee status into ASN causes the independence of KPK employees in efforts to eradicate corruption to be structurally and functionally distorted.

**Key Words:** KPK, State Civil Apparatus, Personnel.

## 1. INTRODUCTION:

The corruption eradication team has undergone changes until the formation of the Corruption Eradication Commission (KPK) as outlined in Law Number 30 of 2002 concerning the Corruption Eradication Commission. The existence of Law Number 30 of 2002 concerning the Corruption Eradication Commission is an implementation of the mandate of the 1945 Constitution which was revealed through MPR Decree Number VIII/MPR/2001 concerning Recommendations for Policy Directions for the Eradication and Prevention of Corruption, Collusion, and Nepotism.

In the perspective of structuralism, the position of the KPK structurally and functionally will always feel inferior and can be chosen by the executive power.

Concretely, there is a contradiction in the norms of Article 1 paragraph 3 of Law Number 19 of 2019 which places the KPK as part of the executive with the principles and theories that form the norms for the position or qualifications of the KPK in the 2002 KPK Law which places the KPK as a state institution outside the conventional branch of power. The discovery of the law on the contradiction of the provisions of this norm is very important because Article 3 of the 2019 KPK Law actually negates its position as part of and/or free from the influence of any power. This means that on the one hand the KPK is categorized as an institution in the executive family, but on the other hand the KPK is "forced" to be functionally independent.

## 2. THEORITICAL FRAMEWORK:

### a. Theory of Independent State Institutions

Theoretically, independent state institutions stem from the will of the state to create new state institutions whose members are drawn from non-state elements, given state authority, and financed by the state without having to become state employees.

### b. The theory of the rule of law

The rule of law according to FR Bothing is: the power of the power holder which is limited by law, it is further said that in order to realize the limitation of the power holder, it is realized by way of making laws. [1]

### c. Structuralism Theory

Structuralism Paradigm according to Levi Strauss, the structure is divided into two types, namely the outer structure or outer structure (*surface structure*) and the inner structure or (*deep structure*).[2]

- d. Meritocracy Theory / Merit System Theory
- e. The philosophical construction and meta-norm behind the Meritocracy concept is the will to present subjects who are able to manage the country well, competently, smartest, kindest, and wisest. Only people who have competence and achievements are able to realize the goals of the state as a form of derivation of the social contract towards absolute welfare.[3]

### 3. LITERATURE REVIEW:

The term state organ or state institution can be distinguished from the words private organs or institutions, community institutions, or commonly called NGOs or which in English are called *Non-Governmental Organizations* or *Non-Government Organizations* (NGO's). State institutions can be in the realm of the legislative, executive, judicial, or mixed. [4]

The formulation of the position of the State Civil Apparatus is based on the points of view that the government does not only carry out general government functions, but also must be able to carry out development functions or in other words the government should not only organize government order, but must also be able to mobilize and facilitate development for interests of the people. [5]

### 5. METHOD:

The method used in this study is a normative juridical approach, namely an approach that uses a conception *positivist legislative*, which views law as identical with written norms made and promulgated by authorized institutions or officials.[6]

### 6. DISCUSSION:

In the development of the state administration, a concept of state institutions emerged that could not be categorized as part of one power clump. So far, the conventional constitutional doctrine has only divided this family into three branches of power, namely the executive, legislative, and judicial.

Efforts to shift the position of the KPK institutionally to the executive realm are a deviation, both in the teleological and philosophical realms. Thus, tracking *the legis ratio* is also very important to see and find out why the KPK was not qualified from the start as an institution under executive power, so that its staffing aspects follow the *lex specialis of Civil Servants*.

### 7. ANALYSIS:

#### a. **Transfer of Corruption Eradication Commission Employees to State Civil Apparatus**

Law enforcement officials have become part of the kleptocracy of the culture of corruption. As a result, the community has lost public trust in law enforcement in Indonesia. The public is already very pessimistic about the various efforts made by the legal apparatus.

The presence of the KPK is very necessary so that the eradication of corruption can be improved more professionally, intensively, transparently, and continuously as well as integrated and complete in terms of law enforcement and implementation and the commission's membership must be filled with people who have integrity, dedication, loyalty, idealism, attitude morals that have been tested in society. To get truly qualified commission members, it is necessary to have a public examination mechanism for prospective members in a transparent and objective manner and listen to the aspirations that develop in the midst of society.

#### b. **The Corruption Eradication Commission's Staffing Design in the State Government Structure**

Desaian ideal KPK by author should combine the concept of anti-corruption institutions Hongkong ICAC (Hong Kong's Independent Commission Against Corruption) and the Convention against corruption (United Nations Convention against Corruption (UNCAC)).

In order to procure, ICAC also send energy resource manuisanya to various seminars and other training both at home and abroad. From the organizational aspect, ICAC has 3 (three) departments namely Investigation, Prevention, and Public Relations. The Investigation (Operations) Department is the largest department in ICAC.

*Turnover* ICAC employee can In addition to the fact that the income earned is quite adequate, it is also due to regulations that require ICAC staff who come from a bureaucratic environment not to be allowed to work again in government agencies or institutions where there are indications of corruption cases for 2 (two) years after leaving ICAC.

## 8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) All employees of the Corruption Eradication Commission were transferred to the State Civil Apparatus (ASN), except for employees who were seconded to the KPK, such as investigators and prosecutors from the police and prosecutors. The transferred KPK employees consisted of non-PNS KPK Permanent Employees, Government Employees with Work Agreements with the provisions of structural positions (PTJS) to become JPT and Administrators, Permanent Employees of Specialist and Administrative Positions (PTJSA) to PNS, Non-Permanent Employees to Implementing Positions, so that to support performance, even though the status of ASN is functionally still subject to the institutional principles of the KPK as an *independent state institution* for prevention and eradication of corruption.
- 2) The managerial design of the KPK staffing must be adapted to the concept of an independent state institution that is free from three chains of power, such as the structural design of the Corruption Eradication Commission organization based on Law Number 30 of 2002 concerning the Corruption Eradication Commission by prioritizing the management of the institution in the form of employment status as an employee of a non-ASN KPK institution. , the internal staffing structure follows the internal regulations of the non-ministerial KPK, and the functions, duties, and responsibilities are part of the internal arrangements of the KPK as an independent state institution.

## 9. SUGGESTIONS:

The suggestions given by researchers are as follows:

- 1) Transferring the status of the Corruption Eradication Commission employees to State Civil Apparatus, the Head of the Corruption Eradication Commission must first look at the formation of the background of this institution in Law Number 30 of 2002 not based on the Constitutional Court Decision Number 36/37/40/PUU-XV/ 2017 due to the placement of the Corruption Eradication Commission in the executive family. Without holding the status of a State Civil Apparatus, employees of the Corruption Eradication Commission continue to work in accordance with applicable regulations and do not lose Indonesia's best sons and daughters in eradicating corruption.
- 2) The design of the staffing management of the Corruption Eradication Commission employees should go back to the early history of the establishment of this institution based on Law Number 30 of 2002 concerning the Corruption Eradication Commission where the Corruption Eradication Commission is not included in the executive realm. By looking at the current conditions on the ground, the Corruption Eradication Commission has been disbanded and replaced by a ministry.

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