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### Amendment of the Corruption Eradication Commission Act and Its Impact on the Constitution

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#### ABSTRACT

This study analyzed the sub-system factors influencing the amendment of the Corruption Eradication Commission Act (KPK Law) from the Cybernetics theory and the impacts on the Constitution. According to this theory, there are various kinds of sub-systems, where one sub-system is interrelated with other sub-systems. Each of the sub-systems referred to will influence each other based on the primary function of each of these subsystems, such as the cultural sub-system, which has the primary function of maintaining patterns, the social sub-system as a function of integrity, the political function as a function of achieving goals, and the economic sub-system as an adaptive function. This doctrinal legal research employed statutory approaches and concepts and found that changes in the KPK Law are influenced by the political sub-system factor, particularly the strong political interests of the House of Representatives and the Government. As a result, the amendment to the KPK Law is undemocratic because it does not fulfill the formal and material principles. In addition, it does not philosophically fulfill the function of law, leading to constitutional values violation.

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#### 1. Introduction

The provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia emphasize that Indonesia is a state of law. As a consequence, the formation of law must be based on Pancasila and the 1945 Constitution of the Republic of Indonesia, so that it has justification on theregulation of social life, nationality and statehood aspects. In addition, laws must be formed democratically, meaning that there should be openness and participation in the legal formation process. Furthermore, laws that are formed democratically are stated in the statutory regulations. The definition of statutory regulations as stated in Article 1 of Law Number 12 of 2011 as amended by Law Number 15 of 2019 concerning the Formation of Laws and Regulations (UU P3), is

a written regulation established by a State Institution or an authorized official and is generally binding. In relation to the administration of the state, laws and regulations are both the determinant and the limiter of the state administration authority.

Law as one of the forms of statutory regulation is basically a legal basis which forms the basis for the implementation of all policies made by the government (Rangkuti, 2005, p.12). The legal policy as outlined in law, becomes a means of social engineering, which contains policies that the government is trying to achieve, to direct the public to accept the new values. The priority setting in relation to law was proposed by Koopmans as follows:

"... De wet blijft tenslotte, ongeacht onder wiens of wier invloed hij tot standkomt, het juridische fundament waarop het gevoerde overheidsbeleid rust; dat wil zeggen de geldigheid van alle handelingen wordt aan de wet afgemeten. De wet is als het ware in juridische zin de constitutie van het beleid.

(... In the end, no matter under whose influence or what they are formed for, laws remain to be the legal basis on which the rulers' policies rest; this means that all implementation actions are legally tested against the law. Essentially, Law in the juridical sense is the constitution of policy) (Rangkuti, 2005, p. 12).

In this regard, law has a central position and can even be the main legal product in the national legal system. This is based on four arguments, namely: first, law is one of the three legal products stated in the 1945 Constitution of the Republic of Indonesia. Another legal product stated is the Government Regulation (PP) which was formed to implement Laws and Government Regulations in Lieu of Laws (Perppu). Second, the law is directly under the 1945 Constitution of the Republic of Indonesia as the supreme law. The 1945 Constitution of the Republic of Indonesia provides delegates with further regulation of various matters to the law. Third, the law is a legal product that is made democratically as an implementation of the principles of a democratic rule of a state of law. Laws are formed by democratic institutions, namely the House of Representatives and the President who are elected through general elections. Fourth, the substance of the law is the interpretation of the 1945 Constitution of the Republic of Indonesia by the House of Representatives and the President. This interpretation is active, which means it forms legal norms in laws. The interpretation of the 1945 Constitution in the form of a law is more dominant if compared to the interpretation made by the passive negative constitutional court (Safa'at, 2020).

Since law has a very important role in the legal system, there are various interests that can clash from individuals or groups that exist in society as well as the government in the process of its formation and amendment so that theirinterests can be accommodated in the law. As a result of these various interests, a law that is formed or amended may cause problems that give birth to massive social delegitimization in society. This reality is evident in the amendment to the Corruption Eradication Commission Law (KPK Law) which was formed within a short time and with minimal participation. Criticism on the amendment to theKPK Law seemed to be ignored by the government, because on October 17, 2019, the previous KPK Law was replaced, even though the new Corruption EradicationCommission Law stirs many issues that cause the urgency of revising the KPK Law, because the public does not agree with the revision. Another issue is whether the procedure for the formation of the revision of the KPK Law is appropriate or not in accordance with the procedures regulated in Article 1 of Law Number 12 of 2011 and

Law Number 15 of 2019 concerning the Formation of Laws and Regulations (UU P3), so that it is seen as undemocratic. Based on these facts, there are several issues to be analyzed, namely the sub-system factors that influence the process of amending the KPK Law from the Cybernetics theory point of view as stated by Talcott Parsons. In addition, changes to the KPK law that are not democratic and philosophical have an impact on violating the constitutional values.

The problems that become the focus of the research are: (1) What are the sub-system factors that affect the amendment of the KPK Law?, and (2) What is the impact of the amendment to the KPK Law on the constitution?

#### 2. Method

This research was a normative doctrinal legal research which employed thegovernment regulations in lieu of laws. The approach used concepts as the basis for analyzing research problems. The data used were secondary data. The analysiswas carried out in a descriptive qualitative manner (Marzuki, P.M, 2008).

#### 3. Analysis and Results

## 3.1. Sub-System Factors According to Cybernatics Theory in the KPK Law Amendment

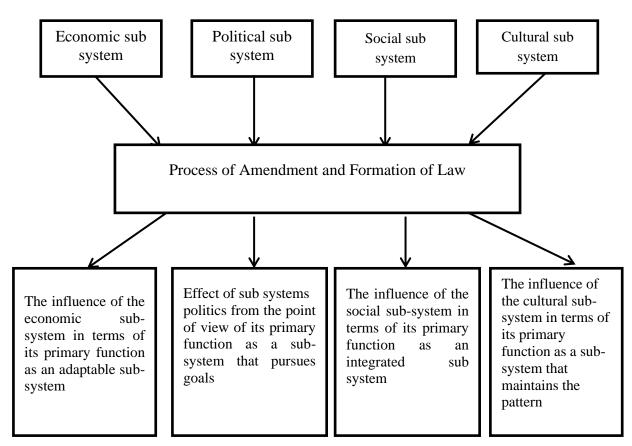
Changes to the Corruption Eradication Commission Law (KPK Law) have raised pros and cons in the community. The House of Representatives and the government revised the KPK law because of the following reasons: (1) it is not in accordance with the times, the dynamics of the law and the state administration system of the Republic of Indonesia; and (2) the practice of criminal law enforcement often encounters problems both in terms of regulations and in terms of substance and interpretation (DPR RI, 2019, p. 5). However, some people regard that the House of Representatives and the government'sreasons to revise the law are weakening KPK.

This public assessment was put forward, among others, by Febridiansyah, who emphasized that KPK as an anti-corruption agency in Indonesia did not function properly. According to the records of Indonesia Corruption Watch (ICW), various attempts to undermine KPK have been carried out. Some of them are the ideas of dissolving the KPK, dismantling the KPK authority by making a legislative review of KPK law, conducting a judicial review to the Constitutional Court, criminalizing and manipulating KPK leadership, sieging the KPK office, seizing cases handled by KPK, blocking the budget for KPK building development up to intervening the work meeting between the House of Representatives and KPK. Instead of strengthening KPK function, on September 17, 2019, the House of Representatives and the Government actually agreed to make changes to KPK Law that weakened KPK institution (Yulianto, 2020).

In connection with these facts, the process of amending KPK Law is basically influenced by the sub-system factors in the society as stated by Talcott Parsons in the Cybernetics theory. In his theory, Parsons considers that society is asystem consisting of parts (subs) which are interrelated and mutually influence each other. Parson views that society is a functionally integrated system in the form of equilibrium. Although social integration can never be achieved perfectly, essentially the social system always tends to move towards a dynamic harmony. More specifically, this theory states that there are various kinds of sub-systems ina society, in which the sub-systems are interrelated and influence one another. Thesub-systems include, among others, the cultural sub-system, social sub-system, political sub-system and economic sub-system, or what is popularly known as AGIL (Satria, 2020).

The sub-systems mentioned in this theory will be related to one another. Therelationship between such sub-systems is then referred to by Satjipto Rahardjo as cybernetic relationship, where the relationship between one sub-system and another sub-system can be seen when the systems that have high information but low energy (cultural subsystems and social sub-systems) regulate the systemsthat have lower information but higher energy (political sub-system and economicsub-system). Each sub-system will influence each other based on the primary function of each of the sub-systems. For example, the cultural sub-system has the primary function of maintaining the patterns, the social sub-system as the integrityfunction, the political sub-system functions to achieve goals, and the economic sub-system as an adaptive function.

The sub-system influence pattern can affect the formation and amendment process of the Laws in Indonesia, as seen in the chart below:



After understanding the sub-system influence pattern in the process of Law formation and amendment, then the next question is which sub-system is the most dominant in influencing the Corruption Eradication Commission Law amendment. If seen from the revision of the substance on the KPK law, the amendment to the KPK Law is influenced by the political sub-system factor, namely the strong political interests of the House of Representatives and the government. Furthermore, according to cybernetics theory, the political sub-system with such astrong influence affects the other sub-system, namely the cultural sub-system. This is based on the fact that the KPK law revision has not been completely rejected by the public. There are attitudes and perspectives of certain groups in thesociety who agree that KPK law is corrected with a revised pattern. Support for the KPK law revision, among others, was conveyed by the Chairman of the Nahdlatul Ulama (PBNU) Executive Board, Kiai Haji Said Aqil Siroj (6/9/2019), stating that all laws must be evaluated and corrected after a long period of time. Therefore, all KPK technical work must be further regulated in the law (PBNU Dukung, 2019). The agreement to support the KPK law revision was also conveyed by the Young Islamic Generation consisting of *Jamaah Pengajian Kebangsaan* (JPK), *Barisan Pembaharuan* (BP), and the *Forum Jurnalis Pesantren* (FJP), which suggested theneed to revise KPK law so that all KPK functions can be carried out optimally. It was also stated that there is a need for a KPK Supervisory Agency to strengthen the KPK institution and main functions (Tokoh-Tokoh Generasi Muslim, 2019).

According to Yulianto, the very strong influence of the political sub-system in the KPK law revision are shown by the following points:

#### 3.1.1. Placing KPK as a part of the Executive

Placing KPK in the executive power will make it difficult to carry out its authority of prosecution and prevention. KPK employees will find it difficult to becritical and act independently in terms of their duties, especially when they haveto deal with the current government. KPK institution will be very easily used to suppress the opposition by taking actions that appear selective and political in nature. KPK will no longer have the courage to take action against state administrators who come from the ruling party and / or from the circles of power. This makes KPK similar in position to the other 2 (two) state institutions (the Police and the Attorney General's Office) which have been considered mediocrein terms of handling corruption cases. The President and the House of Representatives seem to ignore the fact that in every implementation of their duties, KPK will always be in touch with and clash against the state administrators in the executive, legislative or judicial power field (Yulianto, 2020).

#### 3.1.2. Making KPK employees as Civil Servants (ASN)

One of the characteristics of the concepts of an independent state institution is the independence in the human resources management, which seems to be something the current political policy makers do not want to represent. At present, KPK personnel management is managed professionally and independently with clear performance measurement. The revision of the Corruption Eradication Commission law results in KPK's employment status being subjected to the State Civil Apparatus Law and any policy of position transfer and rotation must be oriented to the Ministry of State Civil Apparatus. The ASN status attached to KPK employees will eliminate the independence of KPK, because it is not impossible that at one point, KPK employees will be withdrawn and transferred according to the wishes of the government in power. Corruption actors from the circle of power will easily intervene the KPK employees on the pretext of transfer and rotation (Yulianto, 2020).

#### 3.1.3. Eliminating provisions from the KPK investigation privileges

The revised KPK Law no longer places KPK leaders as investigators and public prosecutors. The enactment of this revision puts KPK leaders as administrative

figures only. In legal interpretation, KPK leaders can no longersign an investigation warrant and / or prosecution plan letter which is the domain of the investigator and public prosecutor. Furthermore, investigators and public prosecutors can refuse KPK leaders to participate in the exposure of a casebecause it involves the confidentiality and authority of the leaders who are not investigators or public prosecutors (Yulianto, 2020).

Based on the description of the strong influence of the political sub-systemin KPK Law amendment, it is not surprising that the time frame for KPK Law amendment conducted by the House of Representatives and the government seems so fast. If related to the cybernetics theory, being fast in the process of amending the KPK Law is defined as a path that is taken without taking a long time to achieve a goal. According to cybernetics theory, it is the political sub- system which has the primary function of achieving goals. Therefore, it is not surprising that in order to achieve the goal, in the process of revising the KPKlaw, the House of Representatives and the government did not fully comply with the formal and material principles.

In relation to that, Van der Vlies stated that formal principles include: "*het beginsel van duidelijke doelstelling, beginsel van het juiste orgaan, het noodzakellijkheids beginsel van uitvoerbaarheid, het beginsel van consensus*"(clear objectives, appropriate institutions, need for regulation, implementationpossibility, and consensus). Furthermore, the material principles include: "*het beginsel van duidelijke terminologie en duidelijk systematiek, het beginsel van de kenbaarheid, het rechtsgelijkheidsbeginsel, het rechtszek erheidsbeginsel van de individuuele rechtsbedeling*" (clear and recognizable terminology and systematics, equal treatment in law, legal certainty, and law enforcement which is in accordance with individual circumstances) (Yuliandri, 2011, p. 23-24).

These two principles are also regulated in the provisions of Article 5 of Law Number 12 of 2011 concerning the Formation of Prevailing Laws as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011, which provide an explanation that law formation must be based on the principles of good statutory regulations formation, namely: clarity of objectives, appropriate institutions, compatibility between types and content, implementability, usability and efficacy, clarity of formulation and openness.

One of the crucial principles that has become a public polemic in connection with the KPK law revision process is openness. The public assessed that the process of revising the KPK law starting from the planning, preparation, drafting and discussion stages was not transparent. Thus, the public does not have the opportunity to provide input in the revision of the KPK law. As a result of not involving public participation, the amendment to the KPK law is deemed as not fulfilling the democratic legitimacy. This is because in principle, a law must fulfill democratic legitimacy that is made with stages and mechanisms that involve the public.

#### 3.2. Impact of the KPK Law Amendment on Constitution

The second amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK) has basically been included in the National Legislation Program since 2011 through the DPR RI Decree Number02B / DPR / II / 2010-2011. It was then re-appeared in the 2015-2019 Prolegnas, becoming a priority in 2016 at number 37 where the draft Law and Academic Paper were prepared by the Indonesian Parliament (Wulansari, 2016). The Academic Paper of the KPK Law stated that the old KPK Law was no longer in accordance with the times, the dynamics of the law and the

constitutional system of the Republic of Indonesia. Therefore, it was necessary to make changes to the KPK Law. In addition, it was also stated that the practice of enforcing criminal law on corruption often encountered problems both in terms of regulations and in terms of substance and interpretation (DPR RI, 2019, p. 5).

Since the planning stage, the amendment to the KPK Law has been criticized by many groups who think that the KPK Law amendment is unclear andineffective. In essence, the formation or change of the statutory regulations, according to Burkhardt Krems as quoted by Attamimi, is an activity that is related to the content or substance of the regulations, methods of formation, as well as theprocess and procedures for forming regulations. Each part of the activity must fulfill separate requirements so that the legal products can be applied properly juridically, politically or sociologically (Nugroho, 2013). Furthermore, Law Number 12 of 2011 concerning the Formation of Laws and Regulations and Law Number 15 of 2019 concerning Amendment to Law Number12 of 2011 confirms the stages of the law formation, namely planning, drafting, discussing, ratifying or stipulating, and invitation.

The KPK Law amendment does not follow one of the procedures or stages, namely planning, because there is no openness and it does not involve public participation. Openness has a consequence of an obligation for the House ofRepresentatives and the government to disseminate the process of law formation to the public since it was in the form of prolegnas, draft law until the stipulated law. The purpose of dissemination is to provide information and obtain input from the public and the stakeholders.

Due to the absence of openness, the changing process does not involvepublic participation. In this case, the KPK Law revision has never been disseminated to the public, so the public rejects the KPK Law revision. This situation was acknowledged by the Minister of Law and Human Rights, Yasonna Laoly, who said "public opinion is very diverse and many parties are against the revision, the government and the House of Representatives will invite parties who do not agree to a socialization. In this outreach, the government and the House of Representatives will explain that the KPK Law revision will not weaken KPK. Therefore, the parties who feel that this revision weakens KPK will be invited. However, the objection must be based on intellectual basis, not emotional. (Badan Pembinaan Hukum Nasional - Kemenkumham RI, 2016). The House of Representatives and the government did not socialize the amendment to Law Number 19 of 2019 concerning the KPK, resulting in a strong resistance from the public, which then lead to the public involvement. Therefore, the KPK Law does not fulfill thedemocratic legitimacy. In principle, democracy does not end when a representative institution is formed from the election results. Modern democracy is not only manifested in the form of participation in electing people's representatives, but there must also be participation in the formation of decisions and legal products.

Philosophically, Law Number 19 of 2019 concerning KPK should fulfill the function of a law, namely: (a) as a ruler of the society; (b) as a tool to limit power; (c) as a social engineering tool; and (d) as a means of community renewal. As a ruler of the society, laws function as regulate various of attraction for various interests of individuals and groups in the society by providing guarantee of justice and legal certainty regarding legal rights, privileges, functions, duties, status, or disposition in various aspects of life (Saifuddin, 2009, p. 47). Since the view and sense of justice and legal awareness of the people of a country are not necessarily the same, laws must be able to accommodate all views and feelings of justice as well as legal awareness that live, grow, and develop in

the society so that the presence of the law can be accepted by all people (Al Atok, 2015, p. 5).

In addition, the function of laws to limit power is intended to divide andlimit the power held by state institutions with clear rules so that there is no abuse of power (Saifuddin, 2009, p. 47). Without a clear regulation by law, it will openup opportunities for abuse of power by using the law to be a tool to maintain power alone without considering the interests and welfare of the community (Al Atok, 2015, p. 5).

As a social engineering tool. a tool for social change is one of the legal norms that functions to harmonize and resolve conflicts of interest. This view was conveyed by Roscou Pound, that law is an instrument which controls interests according to the requirements of the social order (Saifuddin, 2009, p. 47). Roscou Pound's view is based on the fact that there are various social interest functions in the society in the form of demands and desires consisting of: individual interest, public interest, and state interest. The existence of laws must be able to harmonize and resolve these various interests (Al Atok, 2015, p. 5).

In this regard, philosophically, KPK law does not fulfill the function of alaw because of the following reasons: first, KPK Law does not accommodate the people's views and feelings of justice, so that the presence of this law is not fully accepted by the community. Second, KPK law tends to be used as a tool to protect the interests of power. This is related to the arrangement of the placement of KPK as a part of the executive power so that it is not independent and is vulnerable to intervention. This provision contradicts the opinions and considerations of the Constitutional Court (MK) decision Number 5 / PUU-IX / 2011 stating that "KPK an independent state institution that is given special duties and powers, among others, to carry out some functions related to judicial powers to conduct investigations and prosecutions as well as to supervise the handling of corruption cases committed by other state institutions".

Finally, KPK law is also associated with the tug-of-war between the interests of the executive and the House of Representatives, and thus opening opportunities for individual interests in the government and the House of Representatives on behalf of the state interest, so that they can intervene the KPK. This is based on the interpretation of the House of Representatives and the government on the Constitutional Court decision No. 36 / PUU-XV / 2017 and No. 40 / PUU-XV / 2017, stating that the implementation of KPK's duties can be categorized as part of the executive family. Therefore, KPK is also a part of the House of Representatives' inquiry authority. This decision was then used as an argument by the House of Representatives and the Government to amend KPK law.

Therefore, as a legal norm that is under the 1945 Constitution of the Republic of Indonesia, if the formation or amendment of a law is not democratic, and does not fulfill the main function of a law philosophically, it will have an impact on the constitution in causing violations of the constitutional value. According to Muhamad Ali Safa'at, there are four violations of constitutional values, namely: first, violating the principle of people's sovereignty because it negates the role of the highest authority in the formation of legal products that willform the basis of state administration and determine the people's fate. Second, denying the position of the law as the main legal product which is established democratically. Third, denying the existence of the legislators themselves, the House of Representatives and the government, as democratic institutions that must always listen to, pay attention to, and consider the aspirations of the people they represent. Fourth, allowing the formation of laws as an arena for battle anddomination of power at the expense of justice for protecting the rights of the people (Safa'at, 2020).

#### **4.Conclusion**

The process of changing KPK law is basically influenced by the sub-system factors in the society, and these sub-systems will be inter-related or related to one another. If seen from the revision of the substance of KPK law, the KPK Law amendment is influenced by the political sub-system factor, where the political interests of the House of Representatives and the government are very strong. Thispolitical sub-system with such strong influence affects the other sub-system, namely the cultural sub-system. This is based on the fact that the revision of KPK law has not been completely rejected by the public. There are attitudes and perspectives of certain circles in the society who agree that KPK law should be corrected with a revised pattern.

The influence of the political sub-system causes the changes to KPK Law to be carried out quickly. In cybernetics theory, being fast in the process of amending the Corruption Eradication Commission Law means a path taken without taking a long time to achieve a goal. Through this fast method, KPK law amendment did not comply with the formal and material principles so that it was not democratic. In addition, it does not fulfill the main function of a law philosophically. Finally, this has an impact on violations of constitutional values.

In response to this problem, KPK Law can be improved in several ways, namely through legislative review although it will end in a change in the law which automatically leads to the obligations to follow the stages of law formation, starting from planning, including it into the National Legislation Program (Prolegnas), drafting Academic Paper and the bill, then the discussion in theHouse of Representatives. All these stages will certainly drain resources. Another way is to issue a Government Regulation in Lieu of a Law (Perppu). However, it will be difficult to do because the President can regard the urgency, that is a pre- requisite for the issuance of the Perppu, as not to be fulfilled. Therefore, the constitutional way that can be taken is the review of the Corruption Eradication Commission Law both from a formal and material perspective to the Constitutional Court.

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