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Politico-Legal Review of the Revised-Bill of the Corruption Eradication Commission and Omnibus Law

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ABSTRACT

The paper aims to prove that political compromise may create legal antagonisms paradoxes and strengthen the influence of elite-oligarchy. The paper is based on the theory that the concept of consensus in the context of the political system is closely related to the Indonesian cultural democracy. However, in the implementation, there is an underlying principle of checks and balances as a systemic guarantee, so that democracy is not merely a tool of 'killing ground of freedom' to manipulate the essence of democracy itself, in particular, by the dominant forces of the elite and the oligarchy. Through the socio-historical method (empirical approach), this paper examined the emergence of the phenomenon of antagonism and paradox of regulatory formulation, such as the revision of the Bill for Eradicating Corruption which weakens anti-corruption institutions, Corruption Eradication Commission, to the creation of Omnibus Law, which is considered to make labors structurally marginalized. The investigation discovered that those legal products are distorted and should be originally created to achieve the benefit and interest of society at large. In contrast, they are falsified and manipulated under the banner of 'consensus' democracy steered by the limited elite-oligarchy of the Political Parties.

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1. Introduction

The idea of Indonesia as a state ruled by the law is an idea that needs to turn ideal thoughts into reality in the long run (Korslak, 2014, p. 121). The understanding of the rule of law, according to Jimly Ashiddiqie tends to be closely related to the separation of power (the concept of separation of power) and the protection of fundamental rights (protection of human rights) (Ashiddiqie, 2020). This is to achieve long-term goals in understanding social and political relations, namely by emphasizing the important role of society in the check and balance process in the corridor of social consensus. That consensus crystallized in the constitution (Hayward, 2015, p. 590). However, the role of

society in a government is very important. Without public participation in a government, the government will have concentrated power, oligarchic in nature, and all-state mechanism characters. As a result, they tend to exercise corrupt power. Hence, in the next stage, in order to balance and monitor government performance as an institution, a distribution of power concept is needed. The solution is stated in the constitution in the form of a check and balance mechanism (Chandranegara, 2016, p. 544).

As a further affirmation, Indonesia as a state ruled by law should make law the main basis for the running of the state. The rule of law in Indonesia can be realized with the main supporting pillars[1], namely, some of which is limitation of power, free and impartial judiciary, protection of human rights, and the establishment of a Constitutional Court (*MK*) as a form of law enforcement and monitoring of its constitutionality (Asshiddiqie, 2011, p. 132).

In the process of formulating and enforcing laws in Indonesia, a consensus is the main character in governance in the form of absorbing views from various groups. In particular, those who are directly related to the interests of the existence of the law and elements of society who are vulnerable.[2] This vulnerability can be due to an imbalance of access and social, economic, political proportions or because the current system is not yet fully healthy and accommodating. It is not held hostage by invisible and hidden oligarchic interests. With such a spirit, the governance in the formation and enforcement of laws does not only pay attention to those who are official and represent the power of the state and its institutions or those who are more powerful and close to the elite (oligarchic) decision-making access. Legislation should be avoided from the elitist-oligarchic mechanism. This is because the elitist-oligarchic process has the potential to produce paradoxical consensus. The consensus, which was born elitist, was enforced by means of all-state political arguments so that the aspirations of the community as the main actor in the implementation of law enforcement are no longer in harmony with the concept of a real rule of law which consists of the involvement and aspirations of the people who are not completely institutionalized. Participatory democracy reflects the strengths and aspirations of the people. They were not manipulated by the multi-state institutions expressed by the elitist powers of political actors who only yearn to establish their position and status.

Regarding state institutions, in its realization, the concept of power-sharing is a refinement of the theory *trias politica* of Montesquieu, who stated that government is

[1] Prof. Jimly Ashiddiqie gave a description of each principle of a rule of law, covering 12 main supporting pillars, namely. The rule of law, equality in law, the principle of legality, limitation of power, independent supporting organs, free and impartial courts, state administrative courts, the Constitutional Court, Protection of Human Rights. Democratic in character, functions as a means of realizing the goals of the state, transparency and social control. The development of the principles of a rule of law is influenced by the increasingly strong acceptance of the understanding of people's sovereignty and democracy in state life, replacing traditional state models.

[2] Described in the character of good governance as according to Mr. Yap Kioe Sheng about Governance which has the main characteristics of participative, consensus oriented, responsible, transparent, responsive, effective, efficient, fair and inclusive, and follows the rule of law. Quoted from the Final Report of the Legal Research Team on the Role of Law Enforcers in Increasing Public Trust in Judicial Institutions, the National Law Development Agency of the Ministry of Law and Human Rights in 2015.

based on three powers, namely the legislative, executive, and judicial powers. Where the legislative power is the power to make laws. Executive power is the power to enforce laws. Judicial power is the power to try violations of the law. From the description of the three powers, Montesquieu argues that the three powers are separate from one another, both in function and in the institution that carries them out (Sunarto, 2016, p. 158-159).

In order to create a balance between institutions of power, Indonesia is based on the 1945 Constitution of the Republic of Indonesia; legislative power institutions are a function of the MPR, DPR, and DPD. (Constitution of the Republic of Indonesia of 1945, arts. 2, 3, 20, 22), an agency of executive power (Constitution of the Republic of Indonesia of 1945, arts. 4) is a function of the President, Vice President and his ranks of Ministers (Constitution of the Republic of Indonesia of 1945, arts. 17), while the judicial power institution (Constitution of the Republic of Indonesia of 1945, arts. 24) is a function of the judiciary under the auspices of the Supreme Court, the Constitutional Court as the guardian of the constitution, and completed by the Judicial Commission.

The distribution of power, as mentioned above, is reflected in principle *checks and balances,* that is, ideally, state institutions that balance and supervise one another. However, the principle of checks and balances is carried out solely for compromise and negotiation between state institutions. The suboptimal application of the check and balances principle has made several legal products that should philosophically benefit the community, on the contrary, become tools that lead to antagonism law.

Thus, the characteristics of its elitism-oligarchism become more complete. In turn, several legal products passed by the government and parliament did not escape from the process of *political bargaining* (bargaining), which leads to a compromise or political agreement as outlined in the norm (article), which sometimes does not even reflect the public interest, but only for the interests of groups and even personal interests of elite, oriented towards the establishment of social and economic status.

In such a context, some evidence can be referred to: there are several state regulations that cause polemics and resistance in the community, resulting in massive demonstrations from various groups in various regions in Indonesia. The laws in question are the Revised Bill on Corruption Eradication (*Komisi Pemberantasan Korupsi*) and the Bill on Job Creation (*Omnibus Law*). Those laws are in question and considered to minimize the role of society in their ratification so that many articles are not in accordance with the ideals of the Indonesian state, namely the purpose to create good governance and clean government for the shake of public prosperity, welfare and benefit.

2. Method

This paper uses an empirical legal research method. Empirical legal research focuses on legal factors and facts as a determining measure in law-making. In this case, the political configuration is reflected in the attitude of the political parties in the parliament as a determinant of the legal formulation. Within the framework of empirical legal research as well, researchers carry out a socio-legal analysis, particularly in relation to the legal formulation process in the parliament (*Dewan Perwakilan Rakyat/DPR*), which is linked to the political interests of elite functionaries reviewed through elite-oligarchy inter-relational motives in using or misusing the function of checking and balancing role. The data taken is primary data in the form of

laws and documents related to flashbacks about aspirations and events that have occurred because of the existence of legal products that are considered elitist-oligarchic.

3. Analysis and Results

3.1.Trias Politica and its Relevance to the Check and Balance System

Through a major wave of democratization, the 1945 Constitution has undergone four changes in the period between 1999-2002. The changes were so massive and comprehensive that various legal experts said that the 1945 Constitution, which is currently in effect, is an entirely new constitution. The changes include:

1. Changes in the structure of the 1945 Constitution;
2. Strengthening checks and balances;
3. Removing vague provisions (vague) in the 1945 Constitution;
4. Abolishing the explanation of the 1945 Constitution, which is not customary in a constitution. (Perwira, 2016, p. 31-32)

As one of the changes that have urgency in the running of the state based on the 1945 Constitution, the system of checks and balances can be said to be a reflection of the theory that "power tends to be corrupt, but absolute power corrupts absolutely", namely the urgency of strengthening the checks and balances system itself aims to avoid centralization, a power that can lead to arbitrariness so that the distribution of power (distribution of state power) and separation of power (separation of state power) must be realized (Bustamin, 2019, p. 222).

In order to avoid this centralization of power, the system of checks and balances on the state administration in Indonesia is related to three separate *trias politica* elements, namely the legislative, executive, and judiciary, which must be supported by law enforcement and civil society control. As it is well known, in an old democratic system such as in France and Germany, for example, the concept of *trias politica* is not always separate. But checks and balances are maintained to form a clear and institutionalized tradition of opposition. In a democracy like in Indonesia, the challenge is precisely the dysfunction of the *trias politica* so that checks and balances are not created. Coupled with the pseudo-centralistic mentality of the officials in the three institutions (executive, legislative, and judiciary) (Rahmatullah, 2013, p. 217).

At least *trias politica* comes with the birth of the concept of Separation of Power which was first applied by Aristotle, which classifies government into three categories, namely consultative, magisterial, and judicial. Then Locks classifies power into three categories, namely executive, judicial and federative. Then in 1748, French Jurist Montesquieu, in his book L. Esprit Des Lois (spirit of laws), for the first time put forward the principle of Separation of Power (separation of power). In Montesquieu's own view, the principle of Separation of Power (separation of power) basically indicates that one person or several people may not exercise all three powers at once (Singh, 1996). The powers should be distributed and separated.

As mentioned earlier, regarding the principle of Separation of Power, in the practice of state administration in Indonesia, the principle of separation of power is not fully

implemented, because based on the functions of state institutions in Indonesia, they still have certain functions that are related to one another, and also have certain functions that are purely separate from one another.

Apart from the principle of separation of power above, in Indonesia, the principle of distribution of power is also known. The division of power in Indonesia is also vertical, such as the division of power between the center and the regions. As well as the horizontal distribution of power, namely between the branches or functions of the state power itself at the central government level. Since the emergence of the modern democratic law state (*die moderne democratiche rechtstaat*), the ideal state power system has always been associated with a matter of rational, clear, and measurable division of labor between one function and another. In this way, power can be expected to be limited and avoid possible abuse by the parties in power (Asshiddiqie, 2010, p. 109).

To avoid the centralization of power in the hands of government organizations, as added in the amendment to the 1945 Constitution, one of the objectives is to strengthen the system of checks and balances in governance in Indonesia. The relevance of the concept of trias politica and a system of checks and balances has been constitutionally recognized in Indonesia. For example, in the law-making process, there are three groups of related state laws, the government (bureaucracy), parliament, and courts. In the process, the people's law group community members themselves are involved in the process of making or forming legal norms so that they are in accordance with the order of the process of civilizing values and legal norms and their institutionalization into social institutions (Asshiddiqie, 2011, p. 3).

3.2.Trias Politica and Tradition of Legal Drafting Regulation in Indonesia

In all countries, every draft law is always discussed jointly by the parliament and the government because the government will later implement the law. So, it is the government that talks about it together with the parliament to get a mutual agreement. After obtaining this mutual agreement, each bill will be properly ratified by the President (Asshiddiqie, 2010, p. 3317). In general, making a law is a function of the legislative body, which is to provide the form or description of the law itself (Motiwal, 1974, p. 11). However, based on the post-amendment of the 1945 Constitution, the functions of state institutions in Indonesia are maximized by the function of power-sharing and separation of powers. As is the case in the formation of laws and regulations that have been mentioned earlier, in the context of constitutionality in Indonesia, the draft law is made by the legislative body as the representative of the people, which will be discussed together with the government and decided by the President. Then, the judiciary, in this case, is the Supreme Court and the Constitutional Court is an institution that judges based on law.

Within such a context, it can be said that statutory regulations are written regulations established by authorized state institutions or officials and are generally binding. In order to strengthen the substance of the law to be formed, according to Bagir Manan, three bases can be used in drafting a law, namely: first, a juridical basis (*juridische gelding*); second, sociological foundation (*sociologische gelding*); and third, the

philosophical foundation[3]. The importance of these three elements is the basis for the formation of law, namely that the law has a rule that is legally valid (legal validity) is able to be effective because it can be accepted by the community fairly and last a long time (Rahmasari, 2016, p. 76-77).

Based on these three bases, in the formation of laws and regulations in Indonesia, it is necessary to strengthen the system of checks and balances between state institutions, namely the legislative, executive, and judicial institutions, to avoid the domination of interest groups who control access to the formation of statutory regulations. As well as other problems such as political interference (political interest) and the improvisation of drafting legislation without being guided by normative demands and expertise in the field of design (legislative drafting) (The Draft Law, 2010).

Regarding the political interest that was previously mentioned as the influence of the domination of the formation of statutory regulation, sociologically, 2019 as the end of the plenary session of the DPR's duties for the 2014-2019 period has actually become a demonstration year for the rejection of several laws drafted by the DPR. One of the laws in question is Law Number 19 of 2019 concerning amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi/KPK*), which now tends to weaken the authority of the KPK, including the existence of the KPK Supervisory Board which stripped a number of powers, crucial for the KPK, such as investigation and prosecution (Ramadhan, 2019).

Another law that invites massive demonstrations from among the public, especially from the labor class in Indonesia, is Law Number 11 of 2020 concerning Job Creation. Various groups carry out demonstrations because the community is vulnerable, or in this case, the workforce is not fully involved in drafting the law in question, giving rise to regulations that do not reflect substantive justice. Among the points of the regulation, one of which concerns the company being able to lay off workers without full severance pay, then the term of *Perjanjian Kerja Waktu Tertentu* (PKWT/The Fixed Time Work Agreement) is not more than five years. The overtime is added from 3 hours to 4 hours a day. From this point, it can be interpreted that there is an influence that makes workers have to be bound and follow regulations that tend to have benefited only for certain parties, particularly for the limited dominant elite (Akbar, 2021).

Regarding the law that has invited a lot of criticism from the community mentioned above, it is necessary to return again ideally to the process of forming the legislation. It

[3] The juridical basis referred to here is the legal provisions which form the basis for the formation of statutory regulations. The juridical foundation is divided into three aspects, first, the legal basis in terms of formal, which means the juridical basis that gives authority to institutions to make certain regulations, second, the juridical foundation in terms of material, namely the juridical basis in terms of content or material as the legal basis for regulating matters. this particular thing. Third, the juridical basis from a technical point of view, the juridical basis that gives the institution the authority to make certain regulations regarding the procedures for the formation of laws. Furthermore, what is meant by the sociological basis here is the social foundation (community factor) in the formation of laws and regulations which essentially involve public participation in the process of their formation. Finally, the philosophical basis is a foundation that refers to the foundation and ideology of the Indonesian State, Pancasila which must be used as a framework of thought, a source of values and a direction orientation in legal development, including all efforts to reform it. (See Putera Astomo.(2018). *Legislasi, Teori and Praktek di Indonesia*. Depok: Raja Grafindo Persada,p. 74-79).

did not involve the parties concerned. Hence, demonstrations happened that caused material and immaterial harm to society. They had to defend their rights. Furthermore, no way they found it. They are trapped and blocked by a silent consensus in the parliament.

This description reflects some of the causes of failure of statutory regulations; however, ideally, according to Lon F. Fuller, such failure can be avoided by paying attention to certain moral requirements, which include: first, there must be rules as a guideline in making decisions so that they remain in the public interest; second, every rule that becomes a guideline for the authority must not be kept secret but must be announced (publication); third, the rules are not retroactive; fourth, laws are made to be understood by the people; fifth, the rules must not conflict with each other, either vertically or horizontally; sixth, the rules made must not require behavior or actions beyond the ability of the parties affected by the law, it means that the law must not order something that is impossible; seventh, the law must be firm, and must not be changed in a short time; in the future, the law must have consistency between the rules as announced and their implementation in reality (Redi, 2018, p. 44-45).

Based on the above-mentioned theory, the tradition of regulation of the formation of laws and regulations in Indonesia is definitely guided by the generality of the basic values of Pancasila and the 1945 Constitution, in Law Number 12 of 2011 concerning the Formation of Laws and Regulations. It is emphasized that Pancasila is the source of law (Law of the Republic of Indonesia Number 12 of 2011, art. 2) and the 1945 Constitution is the basic law in legislation (Law of the Republic of Indonesia Number 12 of 2011, art. 3). Material content is emphasized in Article 6 of Law No.12 of 2019 that it must reflect the principles of protection, humanity, nationality, kinship, nationality, diversity, justice, equality in government, order, and legal certainty, as well as balance and harmony (Law of the Republic of Indonesia Number 12 of 2011, art. 6). With regard to these principles, the mechanism for the formation of laws is divided into several stages, namely planning, drafting, discussing, ratifying or stipulating, and finally enacting (Law of the Republic of Indonesia Number 15 of 2019, art. 1).

From the mechanism for the formation of the aforementioned law, there are procedures that are important to determine regulatory norms in the context of upholding justice and the legal needs of the community. Roscoe Pound suggests that sociological studies should be undertaken when preparing for legislation. Pound also put forward the idea of a legal study that also takes into account the social effects of the operation of law. Such studies cannot be limited only to legal regulations and their application but also the legal consequences that occur in society (Rahardjo, 2006, p. 28).

Based on the description above, the legal consequences of the enactment of the law need attention. Laws that have been drafted through a democratic process become laws that do not favor the interests of a group and do not change quickly so that their enforcement will be inherent in society.

3.3.The Revision of the KPK Law, the Dynamics and Results

At the end of the membership term of the House of Representatives of the Republic of Indonesia (DPR RI) for the 2014-2019 period and at the end of the first term of office for the President of the Republic of Indonesia Joko Widodo, the public was surprised by the final progress of the DPR's legislative duties, namely by the Revision of Law Number 30 Years. 2002 concerning the Corruption Eradication Commission (KPK Law). Ideally, the

revision of the KPK law should aim to make the KPK an independent institution that eradicates criminal acts of corruption professionally, intensively, and continuously because corruption has harmed state finances and hindered national development. However, the revision of the KPK law actually raises concerns because it is not the strengthening of the KPK institution that is built from its enforcement but the weakening of the article, which is crucial to the KPK's performance.

The revision of the law as a legal norm control mechanism has been used as a tool to revise the enforcement of corruption in order to weaken the authority of the Corruption Eradication Commission (KPK), which has significantly contributed to the eradication of corruption. Jimly Ashhiddiqie stated that the legal norm control mechanism in question could be carried out through political supervision or control, administrative control, or legal control (judicial) (Asshiddiqie, 2010, p. 6). This can be done if the law that has been enacted on the community requires improvement in order to strengthen the objective of the law's enactment by means of a statutory formation mechanism.

The dynamics in the community began to fluctuate since the revision of the KPK Law was announced. The chronological substance worked as follow;

First, formally, the proposed revision of the KPK Law by the Minister of Law and Human Rights Yasonna Laoly was then responded to positively by the DPR and the President. The demonstrations and demonstrations occurred because of public dissatisfaction with the DPR regarding the procedures and material content of the revision of the KPK law. However, the pressure for rejection from the public was ignored, and the vote from the KPK itself was not taken into account. This is not in accordance with the principle of openness in the formation of laws and regulations (Law of the Republic of Indonesia Number 12 of 2011, art. 5). The government and the DPR appear not to have opened space for public aspirations and the opinion of the KPK leadership. As for based on the mechanism of control of legal norms and as a rule of law that upholds the sovereignty of the people, it means that the revised Corruption Eradication Commission Law is formally flawed because it ignores public participation and the discussion is considered closed and hasty.

Second, decreased public trust in people's representative institutions. Based on data shown during 2014-2019, there were 254 members and former members of the DPR who have been named as suspects in corruption cases, according to ICW (Indonesia Corruption Watch), of these figures, 22 of them are members of the DPR (Sihombing, 2021). From the data that has been reported, the level of public trust is considered to have decreased in the performance of the DPR. The paradox that occurs is that as a people's representative institution, the DPR has closed the door to aspirations and in fact, the opposite of ideally the spirit of the revision of the KPK Law which should be based on instilling an anti-corruption culture in the public and government officials, in fact, the DPR contributed figures in committing corruption crimes.

Third, materially, the KPK's authority has been weakened due to the misinterpretation of supervision, namely the formation of the Supervisory Board (Law of the Republic of Indonesia Number 19 of 2019, art. 69) as an effort to make the KPK not into a super body institution and not to abuse its authority because there is no institution that supervises it. President Joko Widodo emphasized that the revision of the KPK Law was an initiative of the DPR, not from the Government, but according to him, the KPK needed to be monitored (Presiden Joko Widodo - BBC, 2020). This contradictory thinking at least

proves that the government maintains bad democratic principles and practices (Bland, 2020, p. 45). Due to the recognition that the President will fix a broken system, precisely by stating that the KPK needs to have a supervisory board is a way to keep the KPK away from an effective and efficient performance process. Prof. Zainal Arifin Mochtar emphasized that the regulation of the supervisory board in the law gave birth to confusing implications, because of the dualism within the KPK. In fact, in several independent state institutions, there is no supervisory board that is equivalent to the state institution *(Pendapat ahli , 2020,* Nomor 160:23).

Fourth, norms that deprive the KPK of its powers. In the end, this hampered the performance of the KPK, which was originally on the fast track, but due to changes in the KPK Law, now the KPK's performance must return to a slow path (Ramadhana & Oktriyal, 2020). This is partly due to the licensing obligations for wiretapping, searches and / or confiscation (Law of the Republic of Indonesia Number 19 of 2019, arts. 12, para 1, 12B, 12C, 12D, 37 para. 1(b), 47) to the Supervisory Board, taking into account its relation to the approach to human rights aspects (Suntoro, 2020, p. 26).

Fifth, change of status of KPK employees to State Civil Servants (ASN) (Law of the Republic of Indonesia Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002, art. 24, para. 3) As a result, the independence of employees is lost because they have to comply with the provisions made by the Ministry in charge of the affairs of the state civil apparatus (Ramadhana & Oktriyal. 2020, P. 15).

In principle, the concern that the KPK will become a super body institution without monitoring of its performance is inversely proportional to the inter-agency check and balance mechanism that is in accordance with its authority and function to become an institution that oversees the performance of the KPK. Because in the performance process, administratively the institutions that supervise the KPK are the President and the DPR in the form of an annual performance report (Law of the Republic of Indonesia Number 30 of 2002 , art. 7), the financial supervision of the KPK is directly responsible and supervised by the BPK (Law of the Republic of Indonesia Number 30 of 2002, art. 15) Internally, the KPK has a Code of Ethics for Employees and is supervised by the Deputy for Internal Supervision and Public Complaints (Law of the Republic of Indonesia Number 30 of 2002, art. 26).

As for tapping, in the perspective of protecting human rights, it can be interpreted as an activity or practice that violates human rights, namely the right to privacy in communicating (Yulianto, 2020, p. 117). However, it is emphasized in Article 32 of Law No.39 of 1999 concerning Human Rights (*Hak Asasi Manusia*/HAM), that everyone has the right to freedom and confidentiality in correspondence, including relationships in communication via electronic means that must not be disturbed, except on orders. the judge or other legitimate power in accordance with the provisions of statutory regulations (Law of the Republic of Indonesia Number 39 of 1999, art. 32). Then it was emphasized in the Decision of the Constitutional Court Number 012-016-019 / PUU-IV / 2006, which stated that restrictions on human rights through wiretapping must be regulated by law in order to avoid abuse of authority that violates human rights.[4] The

[4] Decision of the Constitutional Court of the Republic of Indonesia Number 012-016-019 / PUU-IV / 2006 concerning the Review of Law of the Republic of Indonesia Number 30 of 2002 concerning the Corruption Eradication Commission (State Gazette of the Republic of Indonesia

enforcement of decisions for laws other than those being tested (erga omnes) is a form that the decisions are obeyed by various parties (KRHN, 2008, p. 89). This means that the Constitutional Court decision does not only apply to the Corruption Eradication Commission (KPK) but also applies to all state institutions and the entire community to pay attention to how the wiretapping procedure should be carried out so that there is no arbitrariness.

The dynamics that occur, demonstrations, and actions as a realm of aspiration are not used as the basis for the DPR as the people's representatives who have been elected on the basis that the members of the DPR fulfill the representation factor and represent the interests of the people (Fahmi, 2011, p. 278). In fact, the revision of the Corruption Eradication Commission Law was passed on September 17, 2019, and came into effect in October 2019. This was voiced when the KPK's achievements had reached a fairly good Corruption Perception Index (CPI) in 2019. Because of the revised funds, the achievements this doesn't last. Based on data reported by the CPI, in 2020, Indonesia will drop from 85th to 102nd out of 180 countries. This means that by revising the Corruption Eradication Commission Law, which originally provided room for effectiveness for KPK performance, it is now slowing down several procedures for handling corruption crimes. With the achievements and indicators of the CPI data, Indonesia is back in the category of a corrupt country (Dharmastuti, 2021).

From a comparative perspective, Indonesia should have absorbed the values upheld in Hong Kong's success story in eradicating corruption in 1974. This happened because Hong Kong had formed an Independent Commission Against Corruption (ICAC). Based on his achievements, the ICAC has convicted 247 government officials, including 143 police officers. Then institutionally, the ICAC is an independent institution and free from political intervention, there is strong financial support to support ICAC's performance, the expansion of ICAC's authority does not only include investigations of corruption in state and private institutions but also against all forms of corruption by enforcing the system. good checks and balances, making the ICAC not abuse its broad powers (Collaboration to Combat, 2020). From the results of the institutional comparisons, regulations and independence are still inversely proportional to its application in Indonesia, the KPK as a trigger mechanism which means encouraging or as a stimulus so that efforts to eradicate corruption by existing institutions become more effective and efficient (KPK Overview, 2021) in fact, it tends to experience weakness in several crucial aspects that should be strengthened in order to support the spirit of corruption eradication performance.

3.4.The Bith of the Omnibus Law (*Undang-undang Ciptakerja*): Dynamics and Results

Individual freedom to choose the best for his life must be respected by the state. When the state intervenes in individual moral choices, it means that the state has taken sides with certain morals (Saraswati & Basari, 2006, 125). Referring to Ronald Dworkin's thoughts on the role of the state in providing equality and respect for the community in fighting for their rights raises questions about the birth of the *Ciptaker* Law or the Job

of 2002 Number 137, Supplement to the State Gazette of the Republic of Indonesia Number 4250, hereinafter referred to as the KPK Law)

Creation Law (it is called also Omnibus Law), which was initiated by the model of Omnibus Law drafting technique. As for the implementation of the Omnibus Law, these laws and regulations are more towards the Anglo-Saxon tradition which is characterized by the Common Law system. Several countries such as America, Canada, and Ireland have used the Omnibus Law or Omnibus Bill approach. This concept is often used by the United States in making regulations. Regulation in this concept is to make a new law to amend several laws at once (Sodikin, 2020, p. 148).

Historically, the technique of drafting laws with the Omnibus Law is not something completely new. We have applied the same concept when the People's Consultative Assembly issued MPR RI Decree Number I / MPR / 2003 concerning Review of the Material and Legal Status of Provisional MPR Decrees and the MPR RI Decrees 1960 to 2002. Apart from that, this concept is also applied in The Election Law, although the Omnibus Law does not intensively mention it as the Job Creation Law, the concept used is similar. Law Number 7 of 2017 concerning Elections basically unites and revises 6 (six) laws (Putra, 2020, p. 5).

Based on this, the formation of Law No.11 of 2020 concerning Job Creation is a form of unification or simplification of laws related to certain fields such as improving the investment ecosystem and business activities, the field of employment, the field of empowering cooperatives and Multi Small Medium Enterprises (MSMEs), ease of doing business, support for research and innovation, land regulation, implementation of government administration, and imposition of sanctions (criminal sanctions). However, the aim of the Omnibus Law drafting technique, which was originally to solve the problem of overlapping regulations, actually gave birth to the Job Creation Law which removed several regulations from the previous law that had regulated the rights of workers and society in general.

Apart from that, the mechanism for the formation of the Job Creation Law is considered to have closed indications because it does not involve the community at the drafting stage by the government which causes dynamics in the formation of the Job Creation Bill, both formally and materially (Kartika, 2020, p. 2).

Formally, based on Law No.12 of 2011 concerning the Formation of Legislative Regulations, the technique for drafting the Omnibus Law is not against the law. However, as previously mentioned, the formation of a law must be based on the principle of openness. Prof. Maria Farida Indrati explained that the Omnibus Law is different from codification which is the systematic preparation and application of legal regulations in the book of laws regarding broad areas of law such as criminal law and civil law. Therefore, it is necessary to pay attention to 5 things, namely (Harjono, 2011, 203):

a. The fulfillment of the principles of openness, prudence, and community participation;
b. Requires broader outreach, especially for officials and parties related to the substance of the bill;
c. Discussions in the DPR must be transparent and pay attention to input from parties related to the Bill and not be rushed;
d. Taking into account the effective time period for the law to come into effect;
e. Taking into account the validity of the law that is affected.

Of the five things that must be of concern in the formation of the *Ciptaker* Law, the process of its formation tends to ignore these aspects, because it tends to be passed hastily.

It can be said that by taking into account the concept of the Omnibus Law, the *Ciptaker* Law deals with approximately 78 laws. However, in a short time, the *Ciptaker* Law was enacted. In terms of the process, the receipt of the text of the *Ciptaker* Law from the government to the DPR starting from February 2020, then passed the *Ciptaker* Law by the DPR in October 2020, and signed by the President in November 2020. So that the neglect of the community participation process is inevitable.

Materially, based on statutory theory according to IC van der Viles, laws must materially fulfill the following principles (Moonti, 2017, p. 33):

1. The principles of correct terminology and systematics;
2. Principles can be recognized;
3. The principle of equal treatment in law;
4. The principle of legal certainty;
5. The principle of law enforcement in accordance with the circumstances;

As for the *Ciptaker* Law, from a material perspective, it actually creates a lot of controversy, because its material content is considered contrary to the values in society and the material principles of legislation as mentioned above, both in terms of labor arrangements and aspects of environmental sustainability. There are several areas that have become controversial as intended, namely covering several areas as below (Riyanto & Sumardjono, 2020, p. 5-7):

a. Field increasing the investment ecosystem and business activities,

   In this field, there are two crucial matters that have become controversial, first, the Job Creation Law provides extensive investment convenience, it's just that the guarantee and certainty in attracting investment both from within and outside the country is still a question. The implication is that the facilities provided are not accompanied by a guarantee of investment sustainability. Second, the Job Creation Law changes the basic character of the Forestry Law, namely leaving behind the spirit of conflict resolution and efforts to conserve forest resources. This is due to the emergence of provisions regarding "strategic areas" that will be prioritized in accelerating the establishment of forest areas with the aim of opening up as much investment space as possible.

b. Employment sector,

   In the manpower sector, several crucial points that have become controversial include; first, the loss of the maximum time limit provisions in the Fixed Time Work Agreement (*Perjanjian Kerja Waktu Tertentu*/PKWT). Second, the elimination of the phrase "decent life" as a reference for calculating the minimum wage which has an impact on the shift in the concept of wage protection. extensively. Third, the removal of restrictions on the types of work that can be outsourced. Fourth, the paradigm shift of termination of employment makes it easier to open up the possibility of layoffs only through notification of employers to workers preceded by negotiations. Fifth, the Job Creation Law is not friendly to workers with disabilities because of work

accidents who are then easily laid off. This is counterproductive to the provisions in Law Number 8 of 2016 concerning Persons with Disabilities. Therefore, based on the matters previously described, the Job Creation Law does not solve problems that are indeed contained in Law Number 13 of 2003 concerning Manpower such as the absence of provisions regarding informal workers such as homeworkers, domestic workers, and others. The Manpower Law which still needs improvement, the revision of the Manpower Law has a negative impact on the basic rights of workers. The passage of the Job Creation Law in October 2020 has ignored the principle of implementing the law according to circumstances, namely the condition of Indonesia which is currently at the time of the Covid-19 pandemic forcing everyone to be able to survive amid limitations. The Job Creation Law, which does not provide room for labor protection, can facilitate the way for employers to unilaterally terminate the employment relationship. On the other hand, the Job Creation Law which was passed by the President in November 2020 is aimed at none other than to immediately restore the Indonesian economy. But, unfortunately, the President is still shackled between democracy and authoritarianism (Bland, 2020, p. 38). Democracy in the form of people's participation has been sidelined and in the end the path chosen was to give priority to the interests of businessmen and government in the context of stabilizing the national economy.

c. In the field of cooperative empowerment and Multi Small Medium Enterprises/MSMEs (*Usaha Menengah, Kecil dan Mikro*/UMKM).

   In this area, the controversial points that are in the spotlight are; First, the Job Creation Law emphasizes the existence of a single database and integrated management of micro and small businesses where the authority to coordinate and evaluate the integrated management of MSMEs in cluster arrangement is the authority of the Central Government. The objective of centralizing the authority is not in accordance with the principle of decentralization in the constitutional administration in Indonesia. and impose boundaries for regions to promote MSMEs which are basically the identity of a region. Second, regarding the status of the Company, the Job Creation Law stipulates that the establishment of a Company for MSMEs can be done by 1 (one) person and its establishment is sufficient based on a statement letter made in Indonesian. This is different from the provision that the establishment of a Limited Liability Company is based on an agreement, however, said agreement must be made in a certain format and through the official competent for it. This means that to establish a Limited Liability Company, it cannot be done only based on the agreement of the parties. The establishment of a limited liability company must be made based on a Notary Deed (Law of the Republic Indonesia Number 40 of 2007, art 7 (2)).

Therefore, the revision of the manpower law or other laws related to the Manpower Act makes the revisions that do not change the norms of the rules that previously became more beneficial to the community. The previous law, which had not accommodated the people's interests, was eliminated or reduced in the Job Creation Law.

For this reason, the discussion of the Job Creation Law should be carried out in depth by involving all interested parties. Then, during the discussion in order to make laws that are more effective for the community and fulfill the principle of equality before the law (equality before the law), the community must be involved through public support from various representatives (people endorsement) in addition to prioritizing the political interests of the parties. -Parties in power prior to legal approval (Kartika, 2020, 3).

3.5. Paradox of Democracy: The Births of Silent Majority and Dim Of Critism

From the dynamics that have occurred as a result of the sidelined participation process, the paradox of the government which seems to prioritize people's sovereignty in the form of the formation of provisions based on people's welfare, in fact it actually pushes the people out of their basic rights. The political elite that was previously trusted by the people can participate as an extension of the people, in fact, is increasingly moving away from the people by refusing to listen to their aspirations.

As Helmke and Levits assume, the pattern of political interaction in the Jokowi administration runs with a complementary, accommodating, competing, and function-substitute model, where each pattern has a different approach. It has been predicted that this asymmetrical relationship model will provide a dominant color in the building of political communication and changes in legislative infrastructure. In this case, in the end, it has implications for the unclear who is the opponent and friend in the arena of playing (Heryanto,2015, p. 38). As a result, political parties, which have a role as a liaison between the people and existing state institutions, are a form of running a democratic system (Pratama, 2013, p. 2). However, the role of political parties as intermediate actors in government power is actually degraded by the reconciliation process of the opposition. After being accommodated, the opposition became competed and changed its function and entered the hegemonic carriage. By turning to support Joko Widodo-Ma'ruf Amin.

It is feared that this will trigger a fat and ineffective government. Because of the lack of loyalty and the deterioration of the system of checks and balances in the government in Indonesia. It can also be interpreted that the formation of political coalition or reconciliation in Indonesia tends to be based on an interest and not based on ideological similarities (Rekonsiliasi Politik, 2019). Pragmatic coalition and reconciliation. Consensus minus missions. It only boils down to political share in the executive chair, in particular.

Ideally, a system of checks and balances is a system that must be built and maintained so that it creates a balance and avoids the centralization of power. (Howe, 1916, p. 154) In the viewpoint of balance of power, if the composition of the coalition and opposition political parties is not balanced, it will result in oversight of control over the government. Opposition that is unable to optimize its role in parliament has resulted in a tendency for centralized power and the distribution of power to function and authority of state institutions is only theoretical. In practice, the executive's proposals and programs will be fully approved without any evaluation. There was a consensus towards strengthening hegemony. Consensus without a mission, but only boils down to a seat. The role of political parties that have the potential to become the opposition has been competed, reduced and changed functions. Already have no teeth and spurs. Consensus that results in the demise of the essence of democracy. Then, a number of regulations have been created without any guarantee that they will contain the substance of defense of the constituents of the political party itself. This is the consensus that gives birth to the paradox.

Evidence of the birth of a paradoxical consensus can be seen in the process of revising the KPK Law and the formation of the Job Creation Law above. At the DPR RI Plenary Meeting (17/9/2019), the Indonesian Parliament approved the Draft Law on the Second

Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. The Deputy Speaker of the DPR RI at that time stated that all members at the level II discussion approved the revision of the KPK Law and that the rule could be passed into law (Rapat paripurna, 2021). The strong rejection by the majority of the public and civilian powers for several crucial articles that have been previously described, were not used as the basis for the DPR to conduct a legislative review in order to make the revision of the KPK Law become a law that upholds justice and provides benefits to the community. By ignoring the participation of the KPK itself and the loud voice of the public against it, the DPR still ratifies the Revised Bill on the Corruption Eradication Commission by emphasizing that the revision was not made to weaken the KPK but to make the KPK a professional institution in eradicating corruption. The paradox that occurs is that the weakening and increasing of professionalism are not reflected based on the material content in the revision of the KPK Law.

Apart from that, in the Job Creation Law, only 2 factions stated that they rejected the ratification of the Job Creation Bill, namely the Democratic Faction and the Prosperous Justice Party Faction on the basis that the Job Creation Bill could not be enforced because it was not in accordance with the circumstances of the Covid-19 pandemic crisis. Meanwhile, 7 other factions including Gerindra, as the previous opposition party, actually became a coalition in the deliberation of the Job Creation Bill. (Putri & Chairunnisa, 2020) The loss of criticism and dim supervision of the performance of the government and parliament has made the Trias Politica theory no longer purely absorbable in its implementation in Indonesia. It illustrates how campaigns and elections, in fact, are only interpreted by the elites and main figures of oligarchic politics as dramas and plays. A thing that is synonymous with political acrobat and hide-and-seek games (gimmicks). The hopes of the people, who initially believed in the emergence of a large party which was assumed to have brought a different vision and mission, at least were expected to represent their aspirations in parliament, vanished. In fact, after several important positions were given to opposition political parties, government policies became easily approved and popular participation and criticism were abandoned. The enactment of the KPK Law and the Job Creation Law clearly contains elements of the interests of certain groups and neglects the interests of vulnerable people, such as the loss of independence of the KPK institution and the trimming of basic labor rights.

Ideally, according to Schattseider, "Political parties created democracy" which means that the existence of democracy is very dependent on political parties (Biezen & Katz, 2015, p. 1). However, political parties have become a democratic paradox. This is because political parties are controlled by a handful of people or someone who is none other than the owner of large resources and the founder of the party (Samuel, 2016). For this reason, an oligarchic agreement is essentially a paradoxical agreement, the occurrence of a coalition in the government makes efforts to tend to a centralistic and unified system based on interests not based on ideology that does not benefit the people. The government has produced controversial legislation products that are packaged as if to uphold the interests of the people, however, in their implementation, laws are used as a tool to gain pragmatic advantages and are formed not based on whole democratic values.

4.Conclusion

The dynamics that have occurred in the legislative process, particularly in relation to the revision of the Corruption Eradication Commission Law (*Komisi Pemberantasan Korupsi*/KPK) and the Omnibus Law (*Undang-undang Ciptakerja*), are closely related to the relationship between people's sovereignty and the government's agenda which portrays the paradox of democracy as a political consensus. The voice of civil power and the people is no longer a consideration for representatives of the people in determining a national economic progress or participating in the framework of safeguarding law enforcement in the form of eradicating criminal acts of corruption. The government's agenda to enforce the law and advance the people's economy has the potential to turn around (paradox). Because, it is implemented not above the values and mission of the faithful legislation above a common goal in a concrete and measurable manner. But, more as pursuing targets in the momentum of a pragmatic consensus that should be assumed to be fulfilled and influenced dominantly by oligarchic interests. Based on the explanation, in the future, in order to achieve an Indonesia based on the sovereignty of the people, there must be openness for public participation to participate in the formation of laws and regulations and oversee law enforcement in Indonesia. Streamlining governance by balancing opposition and coalition parties is a necessity. This is aimed at restoring the spirit of the parliament as people's representatives and rebalancing the check and balance mechanism, as well as to avoid executive policies with a centralistic, oligarchic and paradoxical pattern towards the common goal of the nation and state.

Those lessons have to be learned. Otherwise, in the coming years and periods, it is hard to see Indonesia as a strong state with a strong fundamental socio-legal infrastructure. For the coming research, it is still necessary to focus on how democracy and the process of legal making deviate from the prudential and normal standard procedures. The influence and interference of dominant elite have never stopped to localize the wave of public interest and welfare to be transformed to micro consensus of their limited group for the shake of their establishment. The strong establishment of ruling elite and oligarchy.

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