**AMENDMENTS OF LAW OF THE CORRUPTION ERADICATION COMMISSION AND ITS IMPACT ON CONSITUSIONS ACCORDING TO**

**SIBERNATICS TALCOTT PARSONS**

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**ABSTRACT**

The purpose of this study is to analyze the sub-system factors that affect the amendment of the Corruption Eradication Commission law (KPK Law) and their impact on the constitution. Doctrinal legal research approaches legislation and concepts. Secondary data and qualitative descriptive analysis. The fact is that the amendment to the KPK Law is influenced by the political sub-system factor from the DPR and the government and affects the cultural sub-system, it is evident from the support of certain groups of people through the revised pattern. However, other elements of society rejected the revision because it was revised with a short period of time and minimal public participation. As a result, it is undemocratic because it does not fulfill formal and material principles and philosophical does not fulfill the function of a law. Finally, it has an impact on violations of constitutional values.

Keywords: revision, corruption, democratic, politics

**I. INTRODUCTION**

The provisions of Article 1 paragraph (3) of the 1945 NRI Constitution emphasize that Indonesia is a rule of law. As a consequence, the formation of law must be based on Pancasila and the 1945 NRI Constitution, so that it has justification for regulating aspects of social life, nationality and statehood. In addition, laws must be formed democratically, meaning openness and participation in the legal formation process. Furthermore, laws that are formed democratically are contained in 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, is a written regulation established by a State Institution or an authorized official and is generally binding. In connection with state administration, then statutory regulations are both the determinant and the limiter of the state administration authority.

Law as a form of statutory regulation is basically a legal basis that forms the basis for the implementation of all policies made by the government (Siti Sundari Rangkuti, 2005: 12). 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 new values. Koopmans stated that prioritization in relation to law:

“… De wet blijft tenslotte, ongeacht onder wiens of wier invloed hij tot stand komt, 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. "

(… A law in the end, no matter under whose influence or what kind of law it is formed, remains the legal basis on which the policy of the ruler exercised rests; this means that all implementing actions are legally tested against the law. in essence, in a juridical sense it is the constitution of policy (Siti Sundari Rangkuti, 2005: 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 mentioned in the 1945 Constitution of the Republic of Indonesia. Another legal product mentioned is the Government Regulation (PP) which was formed to implement Laws and Government Regulations in Lieu of Laws (Perppu). Second, laws are 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 on various matters to laws. Third, laws are legal products that are made democratically as an implementation of the principles of a rule of law which democratic. UU is formed by democratic institutions, namely the DPR and the President who are elected through general elections. Fourth, the substance of the law is the interpretation of the 1945 NRI Constitution which is carried out by the DPR and the President. This interpretation is active, namely forming 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 negative passive constitutional court (Muhamad Ali Safa'at, "The Formation of a Democratic Law", Kompas 10/17/2020).

As important as a law is in the legal system, in the process of its formation or amendment, there are various interests that are attractive to individuals, groups or groups in society, and the government so that their interests 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 rise to massive social delegitimation in society. This reality is evident in the amendment to the Corruption Eradication Commission Law (KPK Law) which was formed in a short and minimal time. participation. Criticism of the changes to the KPK Law seemed to be a wind for the government, because on October 17, 2019, the old KPK Law was replaced. Even though the new Corruption Eradication Commission Law leaves many problems with the urgency of revising the KPK Law, because the public disagrees 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 as regulated in 1 Law Number 12 of 2011 and Law Number 15 of 2019 concerning the Formation of Laws and Regulations, so that it is assessed undemocratic.

Based on these facts, there are several issues to be analyzed, namely sub-system factors that influence the process of amending the KPK Law from the point of view of the Cybernetics theory, as stated by Talcott Parsons. In addition, changes to the KPK law that are not democratic and philosophical have an impact on violating constitutional values.

**II. FORMULATION OF THE PROBLEM**

The problems that are 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?

**III. RESEARCH METHODS**

This research is a normative doctrinal legal research. The approach uses legislation and concepts as a basis for analyzing research problems. The data used are secondary data. The analysis was carried out in a descriptive qualitative manner.

**IV. RESEARCH RESULTS AND ANALYSIS**

**A. Sub-System Factors According to Cybernatics Theory in the Amendment of the KPK Law**

Changes to the Corruption Eradication Commission Law (KPK Law) some time ago have raised pros and cons in the community. The reasons for the DPR and the government to revise the KPK law, namely: (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 faces problems both in terms of regulations and in terms of substance and interpretation (Academic Paper on the Draft Law of the Republic of Indonesia No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the Eradication Commission Corruption Crime: 5). However, some people think that the reason for the DPR and the government to revise the law is seen as weakening the KPK.

This public assessment was put forward, among others, by Febridiansyah, who emphasized that the KPK as an anti-corruption agency in Indonesia was not running smoothly. According to the records of Indonesia Corruption Watch (ICW), various attempts to undermine the KPK have been carried out. Some of them are the idea to dissolve the KPK, dismantle the KPK's authority by making a legislative review of the KPK law, conducting a judicial review to the Constitutional Court, criminalizing and legal engineering against the KPK leadership, the siege of the KPK office, the seizure of cases handled by the KPK, the budget blockade for the construction of the KPK building to direct intervention during a working meeting between the DPR and the KPK. Instead of strengthening the function of the KPK, but in fact on September 17, 2019, the DPR and the Government actually agreed to make changes to the KPK Law which actually weakened the KPK institution (Yulianto, "The Political Law of the Revision of the Corruption Eradication Commission Law", http: / / journal Umner.ac.id/indeks.php/jc, accessed on January 16, 2021, at 11:17 WITENG).

In connection with these facts, the process of amending the KPK Law is basically influenced by sub-system factors in society as stated by Talcott Parsons in the Cybernetics theory. In his theory, Parsons considers that society is a system consisting of parts (sub-sub) which 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, in principle the social system always tends to move towards a dynamic harmony. More specifically, this theory states that in a society there are various kinds of sub-systems, where the sub-systems are interrelated and influence one another. The sub-system as referred to includes sub-systems including, among others, the cultural sub-system, social sub-system, political sub-system and economic sub-system, or what is popularly known as AGIL (Adhi Putra Satria, "Talcott Parsons Sibernatika: An Analysis of the Implementation of the Omnibus Law in Establishment of the Law on Employment Creation in Indonesia ", http: /journal.unnes.ac.id, accessed on 17 January 2021, at 13:15 WITENG).

The subsystems as mentioned in this theory will be related or related to one another. The relationship between such sub-systems is then referred to by Satjipto Rahardjo as a cybernetic relationship, where the relationship between one subsystem and another subsystem can be seen when systems that have high information but low energy (cultural sub-systems and social subsystems) regulate systems that have information. lower but higher energy (political subsystem and economic subsystem) each of the sub-systems as intended will influence each other based on the primary function of each of these sub-systems, such as the cultural sub-system which has the primary function of maintaining patterns, the social subsystem as a function. integrity, the political function as a function of achieving goals, and the function of the economic subsystem as an adaptive function.

The pattern of influence of the sub-system as referred to can affect the process of forming and amending Laws in Indonesia, as can be seen in the chart below:

Cultural sub system

Social sub system

Political sub system

Economic sub system

Process of Amendment and Formation of Law

The influence of the cultural sub-system in terms of its primary function as a sub-system that maintains the pattern

The influence of the social sub-system in terms of its primary function as an integrated sub system

Effect of sub systems

politics from the point of view of its primary function as a sub-system that pursues goals

The influence of the economic sub-system in terms of its primary function as an adaptable sub-system

Semaha

After understanding the pattern of influence of the sub-system in the process of forming and changing the Law, the next question is the influence of the sub-system. changes to the KPK Law? When viewed from the revision of the substance of the KPK law, the amendment to the KPK Law is influenced by the political sub-system factor, namely the strong political interests of the DPR and the government. Furthermore, according to cybernetics theory, the political sub-system has a very strong influence on other sub-systems, namely the cultural sub-system. This is based on the fact that the revision of the KPK law has not been completely rejected by the public. There are attitudes and perspectives of certain circles in society who agree that the KPK law is corrected with a revised pattern. Support for the revision of the KPK law, among others, was conveyed by the Chairman of the Nahdlatul Ulama (PBNU) Executive Board, Kiai Haji Said Aqil Siroj (6/9/2019), that all laws if they take too long must be evaluated and corrected, therefore all the technical work of the KPK must be further regulated in the law (KH. Sid Aqil Siroj, "PBNU Supports the Revision of the KPK Law", https://iNews.id, accessed January 17, 2021, 15.21 WITENG). The agreement to support the revision of the KPK law was also conveyed by the Young Islamic Generation consisting of the National Study Community (JPK), Barisan reforms (BP), and the Pesantren Journalist Forum (FJP), which suggested the need to revise the KPK law so that the KPK functions can be running optimally and optimally. It was also stated that there is a need for a KPK Supervisory Agency to strengthen the institution and the main functions of the KPK (Gus Sholeh Marzuki, "Muslim Generation Leaders Support the Revision of the KPK Law, Especially KPK Supervision", https://teropongreformasi.com, accessed January 17, 2021, at 16.50 WITENG).

So strong was the influence of the political sub-system in the revision of the KPK law, according to Yulianto, among others:

1. Placement of the KPK as Part of the Executive

Placing the KPK in the executive power clump will make it difficult to exercise its powers of prosecution and prevention. KPK employees will find it difficult to be critical and act independently in terms of their duties, especially when they have to deal with the current government. The KPK institution will be very easily used to suppress the opposition by taking actions that appear selective and political in nature. The 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 the position of the KPK as similar to that of 2 (two) other state institutions (the Police and the Attorney General's Office) which have been considered mediocre in terms of handling corruption cases. The President and the DPR seem to have ignored the fact that in every implementation of their duties, the KPK will always touch and rub against the administration of the state in the realm of executive, legislative or judicative power.

2. KPK employees become State Civil Servants (ASN)

One of the characteristics of the concept of an independent state institution is independence in the management of its human resources and this seems to be what current political policy makers do not want to represent. So far, the KPK personnel management is managed professionally and independently with clear performance measures. The revision of the Corruption Eradication Commission law results in the KPK's employment status being subject to the State Civil Apparatus Law and any policy of transfer and rotation of positions must be oriented to the Ministry of State Civil Apparatus. The ASN status attached to KPK employees will eliminate the independence of the KPK, because it is not impossible that at one time KPK employees will be withdrawn and transferred according to the wishes of the government in power. Corruption actors from the circle of power would easily intervene in KPK employees on the pretext of transfer and rotation.

3. The missing provisions from the privileges of the KPK Investigation

The revised KPK Law no longer places the KPK leadership as investigators and public prosecutors. The enactment of this revision places the KPK leadership as only an administrative figure. The leadership of the Corruption Eradication Commission can be interpreted legally as no longer able to sign 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 the leadership of the Corruption Eradication Commission (KPK) to take part in case exposures because it involves the confidentiality and authority of leaders who are not investigators or public prosecutors (Yulianto, "The Revised Law Politics of the Corruption Eradication Commission Law That Weakens Corruption Eradication", http: // journal Umner.ac.id/indeks.php/jc, accessed January 16, 2021, at 11.17 WITENG).

Based on the description of the influence of the strong political sub-system in the amendment of the articles of the KPK Law, it is not surprising that the period of time for amending the KPK law by the DPR and the government seems so fast. The meaning of being fast in the process of amending the Corruption Eradication Commission Law when it is related to cybernetics theory, means a path taken without taking a long time to achieve a goal. Because according to cybernetics theory that the primary function of achieving goals is the political sub-system, it is not surprising that in order to achieve the goal, in the process of revising the KPK law, the DPR and the government did not fully comply with formal and material principles.

Related 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 organs or institutions, need for regulation, can be implemented, and consensus). Then, according to him, 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" (the same terminology and systematics are clear, recognizable, legal certainty, and law enforcement according to individual circumstances) (Yuliandri, 2011: 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 in shaping the law -laws, must be based on the principles of the formation of good laws and regulations, namely: clarity of objectives, appropriate institutions or organs, conformity between types and content of content, can be implemented, efficiency and efficiency, 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 not fulfilling democratic legitimacy. This is because in principle, a law must fulfill democratic legitimacy, that is, made with stages and mechanisms that involve the people.

**B. Impact of the Amendment to the KPK Law on the 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 Number 02B / DPR / II / 2010-2011. Then re-entered the 2015-2019 Prolegnas, priority for 2016 at number 37 where the draft Bill and Academic Paper was prepared by the Indonesian Parliament (Eka Martiana Wulansari, "The Political Law of the Second Amendment to the KPK Law", 2016, http: //bphn.go id , accessed January 18, 2021, at 10:05 WITENG). In the Academic Paper of the KPK Bill, it states that the old KPK Law is no longer in accordance with the times, the dynamics of the law and the constitutional system of the Republic of Indonesia, so it is necessary to make changes to the KPK Law. In addition, it was also stated that the practice of enforcing criminal law on corruption often faces problems both in terms of regulations and in terms of substance and interpretation (Academic Paper on the Draft Law of the Republic of Indonesia No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission: 5).

However, if we look at the amendments to the KPK Law since the planning stage it has been criticized by many groups who think that the amendments to the KPK Law are unclear and precise. In essence, the formation or change of statutory regulations, according to Burkhardt Krems as quoted by Attamimi, is an activity related to the content or substance of regulations, the method of formation, as well as the processes and procedures for forming regulations. Each part of the activity must meet separate requirements so that legal products can apply properly, both juridically, politically and sociologically (Wahyu Nugroho, "Developing Responsive and Participatory Laws Based on the Ideals of Pancasila Law", 2013, http: // kemenkumham .go.id, accessed January 18, 2021, at 14.11 WITENG). Furthermore, Law Number 12 of 2011 concerning the Formation of Laws and Regulations and Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 emphasizes the stages of the formation of laws, namely planning, drafting, discussing, ratifying or stipulating, and invitation.

In connection with the amendment to the KPK Law which does not follow one of the procedures or stages, namely planning, because there is no openness and does not involve public participation. Openness has a consequence of the obligation for the DPR and the government to disseminate to the public the process of forming laws since in the form of prolegnas, draft laws until the law which has been promulgated. The purpose of dissemination is to provide information and obtain input from the public and stakeholders.

Due to the absence of openness, the change process does not involve community participation. In this case, the revision of the KPK Law has never been disseminated to the public, so the public rejects the revision of the KPK Law. 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 DPR will invite parties who do not agree to socialization. In this outreach, the government and the DPR will explain that the revision of the KPK Law will not weaken the KPK, so later parties who say this revision is the same as weakening the KPK will be invited, but it must be based on intellectual, not emotional Second Amendment to the KPK Law ”, 2016, http: //bphn.go id, accessed January 18, 2021, 10.05 WITENG). Based on this fact, since the beginning of the amendment to Law Number 19 of 2019 concerning the KPK, the DPR and the government did not socialize, then after there was strong resistance from the community, only then involved the public. Therefore, the KPK Law does not fulfill democratic legitimacy. In principle, democracy does not end when a representative institution for the election results is formed. 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.

In addition, Law Number 19 of 2019 concerning the KPK if linked philosophically should fulfill the function of a law. As for the function of the law in question (a) as a regulator of society; (b) to limit power; (c) as a tool of social engineering; and (d) as a means of community renewal. As a regulator of society, laws function as a regulator of attraction for various interests of individuals, groups or groups in society by providing guarantees of justice and legal certainty regarding legal rights, privileges, functions, duties, status, or dispotition in various aspects of life (Saifuddin, 2009: 47). Because the view and sense of justice and legal awareness of the people of a country do not have to be uniform, the law must be able to accommodate all views and feelings of justice as well as legal awareness that lives, grows and develops in society so that the presence of the law can be accepted by the whole society. (A. Rosyid Al Atok, 2015: 5).

Furthermore, the function of laws to limit power is intended to divide and limit the power held by state organs with clear rules so that there is no abuse of power (Saifuddin, 2009: 47). Without a clear regulation by law, it will open up opportunities for abuse of authority by making the law a tool to maintain power alone without considering the interests and welfare of the community (A. Rosyid Al Atok, 2015: 5).

Then the law as a tool of engineering (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 to control interests based on social order) (an instrument which controls interests according to to the requirements of the social order) (Saifuddin, 2009: 47) Roscou Pound's view is based on the fact that in society there are various social interest functions in the form of demands and desires consisting of: individual interest, public interest , and interest of state.The existence of laws must be able to harmonize and resolve these various interests (A. Rosyid Al Atok, 2015: 5).

In this regard, the KPK law can be said to be philosophically not fulfilling the function of a law, due to, among other things: first, the KPK Law does not accommodate people's views and feelings of justice, so that the presence of this law is not fully accepted by the community. Second, the 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 the KPK as part of the executive power so that it is not independent and vulnerable to intervention. This provision contradicts the opinions and considerations of the decision of the Constitutional Court (MK) Number 5 / PUU-IX / 2011 which states that "the KPK is 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, investigations and prosecutions as well as supervise the handling of corruption cases committed by other state institutions ”.

Furthermore, thirdly, the KPK law is also full of tug-of-war between the interests of the executive and the DPR, thus opening opportunities for individual interests in the government and the DPR on behalf of the interest of state, so that they can intervene in the KPK. This is based on the interpretation of the DPR and the government on the Constitutional Court decision no. 36 / PUU-XV / 2017 and No.40 / PUU-XV / 2017, which state that the implementation of the KPK's duties can be categorized as part of the executive family, so that the KPK is also part of the DPR's inquiry authority. This decision was then used as an argument by the DPR and the Government to amend the 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 philosophically does not fulfill the main function of a law, it will have an impact on the constitution, namely causing violations of the constitutional value. According to Muchamad 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 will form the basis of state administration and determine the fate of citizens. 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 DPR 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 and domination of power at the expense of justice for protecting the rights of citizens (Muhamad Ali Safa'at, "Democratic Law Formation", Kompas 10/17/2020).

**IV. CONCLUSIONS AND SUGGESTIONS**

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

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

Responding to this problem, the way to improve the KPK Law can be pursued in several ways, namely legislative review although the end is a change in the law and automatically the stages of making the law must be followed, starting from planning, reintroducing into the National Legislation Program (Prolegnas), drafting academic texts and The bill, then the discussion in the DPR. All these stages will certainly drain resources. Another way is to issue a Government Regulation in Lieu of a Law (Perppu), but it will be difficult to do because the measure of urgency that is a prerequisite for the issuance of the Perppu can be judged by the President 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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