



## **Juridical Analysis of the Amendment of Law of the Corruption Eradication Commission in Eradicating Corruption from Legal and Economic Perspective**

**Hulman Siregar**

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia.

---

### **ARTICLE INFO**

#### **Keywords:**

Revitalization;  
Corruption;  
Efficient;

**P-ISSN: 2746-4555**

**E-ISSN: 2746-4563**

#### **Article history**

*Submitted: 2020-12-01*

*Accepted: 2020-12-01*

#### **\* Corresponding Author**

##### **Email address:**

[hstregar@gmail.com](mailto:hstregar@gmail.com)

How to Cite: Siregar, H. (2020). Juridical Analysis of the Amendment of Law of the Corruption Eradication Commission in Eradicating Corruption from Legal and Economic Perspective, 1(2): 86-92 (doi: 10.20961/jmail.17i1.41087)

---

### **ABSTRACT**

In this case, the efforts to eradicate corruption by law enforcement officials, prosecutors of the Republic of Indonesia, and Indonesian police, have not been significant. To make the eradication of corruption useful corresponding to the mandate of law, then the Corruption Eradication Commission (KPK) was formed; this institution is known as the super body institution. The method used in this research is combining normative juridical methods with empirical facts to analyze the effectiveness of corruption eradication in legislation. Over time, the role of the KPK in eradicating corruption received intense attention from the public, both pro, and contra. The legislature wants to revitalize the implementation of the KPK's duties with several considerations, to prioritize prevention efforts through the revision of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission

## **1. INTRODUCTION**

Base on the facts and reality currently happening, corruption has penetrated all aspects of the lines of power and bureaucracy at the central and regional levels. The impact and consequences are detrimental to state finances. It is ordinary and reasonable that corruption in Indonesia is categorized as an extraordinary crime.(Suriani et al. 2020) To cope with these extraordinary crime, the right strategy is needed based on the conditions of corruption incidents. The strategy for eradicating corruption must be well planned so that its implementation through the law enforcement system can achieve efficient and effective goals.(Eviningrum, Hartiwiningsih, and Jamin 2020)

Corruption occurs in all countries worldwide; the only difference is how prevalent it is in one country, compared to other countries. Adolfo Beria views corruption as a world phenomenon, its existence follows human history itself. Adolfo Beria further stated "There is no primordial indigenous culture without its phenomena of corruption; there is no system (from that USA to that of Japan) (Eviningrum, Hartiwiningsih, and Jamin 2019) which is free from vast areas of corruption; there is no centre of government (from the prairies of America to the communist collectivizations) which has not been vitiated or distorted by corruption; there is no religion (Jatmiko, Hartiwiningsih, and Handayani 2019) (Eastern, Judaic, Christian or Islamic) which has not had to confront evils

connected to corruption; there is no Empire (be it Persian, Roman, British or Soviet) which has no experienced and has not been damaged by corruption".(Triwanto and Aryani 2020)

Corrupt behavior can occur everywhere, among relatives, in democratic and communist government systems, religious institutions, and law enforcement institutions. In almost every country, especially during the early days of a state, state administrators' corrupt behavior and cronies were rampant. Mutual monitoring function among state institutions (check and balance) has not been running as it should. (Triwanto and Aryani 2020)

This can be seen from countries' history and development with a low level of corruption perception, which is classified as developed countries. Corruption continues to thrive in the darkness of totalitarianism and dictatorship of regimes that divide their power to a handful of irresponsible people. The forms of corruption are increasingly developing under the progress and developments of the times, both in quality and quantity. (Triwanto and Aryani 2020)

During the Dutch colonial era, corruption was still straightforward, as well as during the early days of Indonesian rule, as seen from the formulation of articles on the Criminal Procedure Code (KUHAP). It is not an exaggeration if the understanding and mode of corruption are always evolving and changing according to current development. This condition is of concern to member countries of the United Nations which was followed up by Resolution Number 58/4 dated October 31, 2003 and has also been ratified by Law of the Republic of Indonesia Number 7 of 2006 concerning the ratification of the United Nations Against Corruption, 2003. (Eviningrum, Hartiwiningsih, and Jamin 2020)

The problem of corruption in Indonesia from the old order era to the reformation era has developed under the development of society and information technology, (Saputra and Najih 2020) which is followed by changes and adjustments to the law on corruption eradication in Indonesia under the development of the mode of incidents of corruption. The problem of

corruption in Indonesia is already a complex problem and occurs widely in all life sides. The survey results show that Indonesia is classified as a country with a high level of corruption; another fact that supports the survey results is that many public officials are involved in corruption cases.(Iswantoro et al. 2020)

According to Kompas.com on July 19 2018, 98 regional heads have been processed by the KPK in 109 cases of corruption and money laundering. Also, it is even more concerning that in the first semester of 2018, from January 2018 to July 2018, 19 (nineteen) regional heads were named suspects in corruption cases. Whether this condition generally occurs in every regional government, both at the provincial and district/city levels.(Hamzah, Hamid, and A. Tenri 2019)

One of the considerations for establishing the Corruption Eradication Commission institution is that the government institutions, namely the Attorney General's Office of the Republic of Indonesia and the Police of Republic of Indonesia that handle corruption cases have not functioned effectively and efficiently in eradicating corruption. Legal politics stipulated by the makers of Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK), as formulated in Article 4, states that the Corruption Eradication Commission was formed to increase the effectiveness and efficiency of efforts to eradicate corruption. (Hamzah, Hamid, and A. Tenri 2019)

Corruption eradication legal action through law enforcement efforts by the KPK is carried out through the Criminal Justice System. As a system, it always processes through patterned stages related to each subsystem in producing a legal product. It cannot be denied that the KPK, in carrying out its duties and powers, has experienced many obstacles and challenges. One of the obstacles that are often faced is the complexity of corruption, resulting in long handling of cases. (Hamzah, Hamid, and A. Tenri 2019)

For the criminal law enforcement system to run effectively, each related sub systems must

support each other both institutionally and in statutory regulations as a guide for implementing the system. The judicial system or law enforcement system is seen as an integral part, as a unit of various subsystems consisting of legal substance, legal structure, and legal culture. (Hamzah, Hamid, and A. Tenri 2019)

Besides, the Corruption Eradication Commission's formation in carrying out its primary duties is expected to trigger mechanism, namely encouraging the police and prosecutors to enforce corruption laws well, not take action themselves. Criminal law expert, Chairul Huda, said that the KPK must return to focus on carrying out its duties and powers as mandated by law. Eradicating corruption requires costs. (Indrastuti and Kadir Jaelani 2020)

Analysis of costs incurred to eradicate corruption can be done by analyzing the Marginal Social Benefit Curve to measure whether the costs incurred in eradicating corruption provide economic benefits. Applying the principle in economics, namely matching costs against revenue, where the costs incurred for an activity process must be compared with the benefits obtained so that the costs incurred should not be greater than the economic benefits obtained. (Tahir et al. 2020)

How was the achievement of the performance of the corruption eradication efforts carried out by the KPK before the revision of the amendments to Law Number 30 of 2002? According to a criminal law expert, Romli Atmasasmita, who participated in drafting Law No.32 of 2002 on the KPK in front of Commission III of the DPR, said that the KPK had failed to work in the last five years (CNN Indonesia, November 18, 2014). According to him, during that period, of the total state losses related to corruption cases of Rp. 512 trillion, the KPK only succeeded in returning to the state (recovery rate) of around Rp. 8 trillion or about 0.01%. (Tahir et al. 2020)

Starting from the priorities and achievements of the KPK's performance and the microeconomic principle of matching cost against revenue, the most ideal and effective

effort to eradicate corruption is prevention. Prevention is carried out by developing and applying an internal control system in every implementation of each state institution or institution's main tasks and functions, starting from the top-level and down to the village government. (Tahir et al. 2020)

This the risk of causes corruption to be anticipated before it occurs through policies formulated and implemented in the internal control system and supported by implementing effective and sustainable supervision both internally and externally. Based on the background description above, the problem can be formulated, namely, How is the effect of changes to the Corruption Eradication Commission law to eradicate corruption from a legal and economic perspective. (Tahir et al. 2020)

Legal philosophy, legal theory, legal principles, and doctrines in legal science are conceptual foundations in the formulation of legislation and law application in social life. In this study, the authors refer to the main ideas of the flow of legal philosophy and legal theory to comprehend and apply juridical norms formulated in statutory regulations. The application of juridical norms in law enforcement in eradicating corruption refers to the concept of the legal philosophy of Gustaf Radbruch. Also, corruption eradication is analyzed using a microeconomic perspective known as "Law and Economics." (Jaelani et al. 2020)

## 2. RESEARCH METHODS

The method used in this study is to combine normative juridical methods with empirical facts to analyze the effectiveness of corruption eradication in legislation and its application in the framework of law enforcement. The approach in this research is statutory. (Subekti, Sulistiyono, and Handayani 2017) This paper's writing is based on secondary data that can describe and explain the current state of corruption and the efforts made in overcoming corruption by material law. Information and data supporting this paper's writing were

obtained through library research by researching and analyzing library materials. (Prasetyo et al. 2019)

### 3. RESULTS AND DISCUSSION

Strategies and policies to eradicate corruption in a normative manner can be formulated through prosecution and prevention efforts. Ideally, the implementation of prevention and action can be carried out simultaneously under the situation and conditions and the right time. Corruption eradication policies can be formulated in the form of laws and regulations and implemented in activities. (Handayani et al. 2017)

Eradicating corruption requires costs. Analysis of costs incurred to eradicate corruption can be done by analyzing the Marginal Social Benefit Curve to measure the costs incurred in eradicating corruption provides economic benefits. The ideal effort to eradicate corruption is prevention. Actions of corruption are anticipated before they occur through policies made and implemented in the internal control system and the implementation of continuous adequate supervision internally and externally. (Handayani et al. 2017)

The internal control policy is formulated in Government Regulation No.60 of 2008 concerning Government Internal Control Systems. In article 2 paragraph (1), it is clearly stated to achieve effective, efficient, transparent, and accountable management of state finances, ministers/heads of institutions, governors, and the regent/mayor is obliged to exercise control administration of government activities. (Tahir et al. 2020)

Prevention can also be done through adherence to regulations and establishing clear and transparent public service systems and procedures so that every community can know the public service processes that apply in each government agency. Also, business competition supervision, especially in the procurement of facilities and infrastructure used in public services, must be carried out consistently and continuously. (Tahir et al. 2020)

The policy for preventing corruption in public services is supervised by the Ombudsman of the Republic of Indonesia under Law No.37 of 2008 concerning the Ombudsman of the Republic of Indonesia, while the Business Competition Supervisory Commission supervises business competition under Law No.5 of 1999 concerning the Prohibition of Monopolistic Practices and Unhealthy Business Competition. (Respati et al. 2017)

Corruption is categorized as an extraordinary crime so that it is handling also requires commitment and political will. Law enforcement in eradicating criminal acts of corruption is seen from the legal system's perspective, especially the substance of the law, and the legal structure and legal institutions are adequate in carrying out law enforcement efforts to eradicate corruption. Law enforcement efforts can be seen from forming an extraordinary institution for the Corruption Eradication Commission (KPK), which has more authority than other law enforcement institutions in handling corruption cases. Also, a remarkable judicial institution examines and decides corruption cases, namely the Corruption Crime Court. (Said et al. 2014)

The corruption eradication in the framework of law enforcement can be carried out through 1) administration law enforcement, the policy is formulated in Law No. 30/2014 concerning Government Administration; 2) private law enforcement, the policy is formulated in Law Number 31 /1999 on Law Number 31 of 1999 concerning Eradication of Corruption Article 32 paragraph (1) If an investigator finds and stated that one or more elements of the criminal act of corruption do not have sufficient evidence, (Ichlas 2020) whereas there has been a loss in state finances, the investigator shall immediately submit the case files resulting from the investigation to the State Attorney to file a civil suit or submit it to the aggrieved agency to file a lawsuit; and 3) criminal law enforcement, especially corruption, the policies are formulated in Law Number 31/1999 Jo Law Number 20/2001 and other laws which clearly

state an act of corruption. (de Andrade and Tiba 2016)

The acts of corruption as formulated in Law no. 31/1999 as amended by Law No. 20/2001, the forms and types of corruption crimes can basically be grouped. Arranging and implementing strategies for eradicating corruption through prevention and prosecution must understand the characteristics of the criminal act of corruption. Some of the characteristics of a criminal act of corruption. (Triwanto and Aryani 2020)

The perpetrator is an educated person who always tries to cover up corrupt acts. Through the law enforcement process, the prosecution efforts in handling corruption cases become problematic because the cases are complex, and the proving process is relatively complicated. To make light of a corruption case often requires various disciplines. (Triwanto and Aryani 2020)

The Preamble United Nations Convention Against Corruption is emphasizing Convince also that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively. In the journey of the KPK for eighteen years, there have been many performance achievements in eradicating corruption. The perception built up in the public space is that the law enforcement agency that still has high trust from the public in eradicating corruption is the KPK. (Triwanto and Aryani 2020) Many corruption cases involving the Executive, Legislative, and Judiciary, which are investigated and prosecuted and decided have been proven to have committed corruption in court. Hence, changes to laws that are considered to weaken the KPK in eradicating corruption have received many rejections from the public. (Triwanto and Aryani 2020)

The KPK as an institution established under the mandate of the law, like it or not, agree or disagree with Law Number 30 of 2002 concerning the Corruption Eradication Commission has been revised by Law of the Republic of Indonesia Number 19 of 2019 concerning the Second Amendment to Law Law Number 30 of 2002 concerning the Corruption

Eradication Commission. There are pro and contra opinions regarding the revision of the amendments to Law No.30 of 2002. The opinion that is pro-amendment revision is of the view that the KPK, in carrying out its duties, must uphold human rights and prioritize prevention efforts. In contrast, those who are contra view that the revision of changes will weaken the KPK. (Erina and Yanis 2020)

The question arises before the two decades of the existence of the KPK to eradicate corruption that is more oriented towards prosecution, is it now effective and efficient? It must be understood that efforts to eradicate corruption can be carried out through prevention and law enforcement. Law enforcement can also be done through administrative law, civil law, and finally, criminal law. So that in the time that has approached two decades, the KPK has carried out its duties in eradicating corruption. Logically, an evaluation is carried out in determining the priority direction of effective and efficient efforts to eradicate corruption in carrying out the task. (Erina and Yanis 2020)

Amendment to the Law of The Corruption Eradication Commission, the substance of changes in implementing the KPK's duties and authorities in efforts to eradicate corruption are One of the considerations for the formation of the KPK is that government agencies that handle corruption cases have not functioned effectively and efficiently in eradicating corruption. (Erina and Yanis 2020)

The efforts to eradicate corruption are aimed at the root of the problem and must be beneficial for the nation's continued development and state both politically, socially, culturally, and economically. It is hoped that the eradication of corruption will bring benefits that are just and legal. Changes to the law must have a philosophical, sociological, and juridical basis. (Rosidah 2020) Former Chairperson of the Corruption Eradication Commission Law Formulator, Romli Atmasasmita, assessed that the revision of Law Number 30 of 2002 concerning the KPK had taken philosophical, juridical, sociological, and comparative considerations. Philosophical considerations, the

KPK's 17-year journey has deviated from its original goal. (Erina and Yanis 2020)

The existence of the pros and cons of revising the KPK Law proves that sociologically the KPK no longer has substantial legitimacy in total from the entire community. The juridical aspect can be seen from the Constitutional Court's decision regarding the judicial review of the KPK Law. In the ruling, it was stated that the KPK as an independent branch of the executive power that handled corruption issues. The proposed revision of the KPK Law has met Law Number 12 of 2011 concerning the Establishment of Legislation. (Rosidah 2020)

The amendment of the Corruption Eradication Commission Law places preventive action as the priority in efforts to eradicate corruption by developing the scientific discipline. The formulation and making of laws and their application are studied using economics. The law uses the assessment of right wrong, and the economy focuses on the cost and benefit. Fletcher (1996) reinforces the shift in view by saying: "Traditional ideas of justice and morality now face a radical challenge from economist and economically trained lawyer." (Prasetyo et al. 2019)

Law and Economics offer several concepts as a model that becomes an economical approach to law, in this case, to examine legal practice. Along with this discipline's growth, legal theories have assimilated many economic concepts, such as incentive effects, opportunity costs, risk aversion, transaction costs, asymmetric information, open-access resources, median rules, regulatory capture, and so on. The process of law enforcement in the criminal justice system requires supporting (economic) means that move one subsystem to another to assist in evaluating the efficient and effective performance of law enforcement. (Prasetyo et al. 2019)

Legal practice, especially criminal law, the formulation and application of laws and regulations in the context of eradicating criminal acts of corruption can be carried out effectively and efficiently using the principle of microeconomics. Cooter and Ullen align the

objectives/ideals of law, namely legal certainty, justice, and benefit combined with microeconomics principles. Namely, maximization, balance, and efficiency. The alignment of legal goals/ideals with microeconomic principles, according to Cooter and Ullen can be described. (Prasetyo et al. 2019)

#### 4. CONCLUSION

Based on the description above, the following conclusions can be drawn as follows the duties and powers of the KPK in the revision of the amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission with Law of the Republic of Indonesia Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 have not undergone significant changes. Revisions to the KPK Law have fulfilled the elements and philosophical, sociological, and juridical foundations and elements. Microeconomics principles can be paired with law enforcement objectives to measure the implementation of corruption eradication, which is analyzed from an economic perspective so that its application is beneficial and efficient. Determination of preventive activities is the first line of duties of the Corruption Eradication Commission, indicating that the main priority in eradicating corruption is prevention efforts, which in economic principles are related to efficiency and benefit in the purpose of law enforcement.

#### REFERENCES

- de Andrade, Ricardo Cesar, and Chiguera Tiba. 2016. "Extreme Global Solar Irradiance Due to Cloud Enhancement in Northeastern Brazil." *Renewable Energy* 86: 1433–41.
- Erina, Pane, and Adam Muhammad Yanis. 2020. "Reconstruction of Mining Policies on Justice in Lampung Province." *Bestuur* 8(2): 139.
- Eviningrum, Sulistya, Hartiwiningsih Hartiwiningsih, and Mohamad Jamin. 2020. "Human Rights Based Law Protection Model for the Mental, Spiritual and the Healing Victims of Child Trafficking in Indonesia." *Indian Journal of Forensic Medicine and Toxicology* 14(3): 1098–1102.
- Eviningrum, Sulistya, Hartiwiningsih, and Moh Jamin. 2019. "Strengthening Human Rights-Based Legal

- Protection on Victims of Child Trafficking in Indonesia.” *International Journal of Advanced Science and Technology* 28(20): 296–300.
- Hamzah, Munira, Arfin Hamid, and Famauri A. Tenri. 2019. “Optimization of Justice Institutions in Cancellation of Sharia Arbitration Decisions.” *International Journal of Multicultural and Multireligious Understanding* 6(5): 250.
- Handayani, I. Gusti Ayu Ketut Rachmi, I. Ketut Seregig, Teguh Prasetyo, and Ardi Gunardi. 2017. “The Application of Article 359 of the Criminal Code in the Investigation of the Death of Post-Operative Patients.” *Journal of Advanced Research in Law and Economics* 8(5): 1517–25.
- Ichlas, Rudy Iskandar. 2020. “Questioning the Independence of Media Coverage in the 2019 Elections.” *Jurnal Bestuur* 8(1).
- Indrastuti, Lusia, and Abdul Kadir Jaelani. 2020. “Role of Consen Information in Completion Medical Criminal Acts in the Police of the Republic of Indonesia.” *International Journal of Advanced Science and Technology* 29(4): 1767–73.
- Iswantoro, Siti Fatimah, Ach Tahir, and Abdul Kadir Jaelani. 2020. “Existence of Customary Delict in Indonesian Legislation.” *International Journal of Advanced Science and Technology* 29(4): 1571–75.
- Jaelani, Abdul Kadir, I Gusti Ayu, Ketut Rachmi, and Handayani Lego. 2020. “The Political Law of the Constitutional Court In Canceling the Concept of the Four Pillars as an Pancasila as the State Foundation.” 12(2): 1314–21.
- Jatmiko, Dwi Rianto, Hartiwiningsih, and Gusti Ayu Ketut Rachmi Handayani. 2019. “A Political Communication Regulation Model in Local Leaders Election and Legislative Election for Realizing a Just Political Education.” *International Journal of Advanced Science and Technology* 28(20): 349–52.
- Prasetyo, Budi, I. Gusti Ayu Ketut Rachmi Handayani, Adi Sulistyono, and Lego Karjoko. 2019. “Legal Framework for Social Security State Civil Apparatus.” *International Journal of Advanced Science and Technology* 28(20): 310–13.
- Respati, A, E Purwanto, S Santoso, and ... 2017. “The Reconstruction of Ecotourism Model Based on Resources and Local Wisdom.” *International Journal of ...* 13(4): 138–43. <http://ijbel.com/wp-content/uploads/2017/10/LAW-214.pdf>.
- Rosidah, Zaidah Nur. 2020. “Coherence of the Rules of Sharia Against Pancasila.” *Bestuur* 8(1): 40.
- Said, Mahiah, Faridah Hassan, Rosidah Musa, and N.A. Rahman. 2014. “Assessing Consumers’ Perception, Knowledge and Religiosity on Malaysia’s Halal Food Products.” *Procedia - Social and Behavioral Sciences* 130: 120–28. <http://dx.doi.org/10.1016/j.sbspro.2014.04.015>.
- Saputra, Rio, and Mokhammad Najih. 2020. “Bantuan Hukum Cuma-Cuma Bagi Tersangka Yang Tidak Mampu Pada Tingkat Penidikan.” *Pena Justisia: Media Komunikasi dan Kajian Hukum* 19(2): 90–106.
- Subekti, Rahayu, Adi Sulistiyono, and I. Gusti Ayu Ketut Rachmi Handayani. 2017. “Solidifying the Just Law Protection for Farmland to Anticipate Land Conversion.” *International Journal of Economic Research* 14(13): 69–79.
- Suriani, Rollys, Hartiwiningsih, Mohammad Jamin, and Waluyo. 2020. “Legal Protection of Indigenous Legal Communities and Traditional Rights Holders after the Constitutional Court Decision Number 35 / Puu-x / 2012.” *International Journal of Advanced Science and Technology* 29(3 Special Issue): 1298–1306.
- Tahir, Ach et al. 2020. “The Model of Criminal Policy to Customary Law Society after Decision of the Constitutional Court of the Republic of Indonesia Number 95/PUU-XII/2014.” *International Journal of Advanced Science and Technology* 29(4): 1581–89.
- Triwanto, Triwanto, and Esti Aryani. 2020. “The Urgency of Granting Authority to Assess Corruption Justice Collaborators.” *Bestuur* 8(1): 60.