



The urgency of forming a revision on law number 30 of 2002 concerning the corruption eradication commission (KPK)

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Abstract

The purpose of this study is to identify and explain the urgency of the revision of the Corruption Eradication Commission Law. The introduction of this research, namely the Revision of the Corruption Eradication Commission Law, hereinafter abbreviated as the revision of the KPK Law, which is the proposal of the DPR's initiative, raises pros and cons in the community, because most people think that the current KPK law does not need to be revised, some say that the process of forming the revision of the KPK law was not followed through the procedures and stages as stipulated in the law. This study will discuss issues regarding the urgency of revising the KPK law, and the procedures for establishing a good and correct law, as well as its application in the formation of a revision of the KPK law. The method used in this study is a normative juridical method using legislation in analyzing the problems that are the focus of research. The results of the study conclude that the urgency of revising the KPK Law is because Law no. 30 of 2002 is no longer in accordance with the times of the dynamics of the law and the constitutional system of the Republic of Indonesia, and the process of revising the KPK Law did not go through the procedures as regulated in "Law no. 12 of 2011 concerning the Establishment of Legislations" resulting in defects in terms of procedures for establishing good and correct laws and regulations.

Keywords: extra ordinary crime, corruption

Introduction

Law in a broad sense includes all normative rules that regulate and guide behavior in social and state life, supported by a certain system of sanctions against any deviation in it. The law itself exists in a society that functions to create security, peace and order in life and the law itself has a mechanism to monitor each other (Jimly Asshiddiqie, 2011) ^[10]. Plato (348-427 B.C.) says that the state is an ever-evolving, evolving body made up of people. Meanwhile, according to Grotius or Hugo De Groot (1438-1645) that the state is like a tool made by humans to give birth to luck and general welfare. In contrast to these two opinions, Karl Marx (1818-1883) had another opinion, saying that the state is a tool of power for humans (rulers) to oppress other human classes (Muchsini, 2006) ^[25].

The Republic of Indonesia is a state of law, this is clearly stated and mandated in Article 1 point 3 of the 1945 Constitution of the Republic of Indonesia, namely that the State of Indonesia is a state of law. The rule of law means that the state's instruments use their power only insofar as it is based on applicable law and in the manner prescribed in that law. Indonesia also adheres to the concept of a formal legal state, namely a legal state that is approved by the people, all actions of the authorities require a certain legal form, must be based on law.

One of the results of constitutional reform is the establishment of a new state institution in the legislative branch of power, namely the House of Representatives of the Republic of Indonesia (DPR). The DPR consists of members of political parties participating in the general election who are elected through general elections.

The Indonesian House of Representatives (DPR) in a plenary session on September 17, 2019 has approved the revision of the Corruption Eradication Commission Law. The revision of the law has generated a lot of polemics in the community, the current polemic in the context of the procedure for the formation of laws and regulations means that within the political power of the DPR it is not complete to make laws, it no longer pays attention to the signs of how a law is formed or changed.

The process of forming laws is broadly regulated in the 1945 Constitution, namely Article 20 paragraph (1) DPR has the power to form laws (UU), Article 5 Paragraph 1 reads "The President has the right to submit Draft Laws to the DPR", furthermore Article 20 paragraph (2) of the 1945 Constitution stipulates that each draft law (RUU) is discussed by the DPR and the President for mutual approval. Meanwhile, in Law Number 11 of 2012 concerning the Formation of Legislation, it is very clear that the process of forming a law must follow the mechanism regulated in Articles 16 to 23, Articles 43 to 51 and Articles 65 to 74 of Law Number 11 of 2012. 2012 concerning the Formation of Legislation which states that 1. A bill can come from the President, DPR or DPD. 2. The bill proposed by the President is prepared by the minister or the head of the relevant institution. 3.

The bill is then included in the National Legislation Program (prolegnas) by the Legislation Board of the DPR for a period of 5 years. 4. The proposed bill must be accompanied by an academic document except for the State Revenue and Expenditure Budget Bill (APBN), the Bill on the stipulation of Government Regulations in Lieu of Law (Perpu) into Laws, and the Bill on the revocation of Laws or the revocation of Perpu. 5. The leadership of the DPR announces the proposed bill that has been submitted and distributed to all members of the council in a plenary meeting. 6. At the next plenary meeting it is decided whether a bill is approved, approved with amendments or rejected for further discussion. 7. If approved for discussion, the bill will be followed up with two levels of discussion. 8. First-level discussions are held in commission meetings, joint commission meetings, Legislation Board meetings, Budget Board meetings, or special committee meetings. 9. Level II talks are held at a plenary meeting containing: submission of reports on the process, mini-faction opinions, mini-DPD opinions, and results of Level I talks; a verbal statement of approval or rejection from each faction and member requested by the chairman of the plenary meeting; and the President's final opinion submitted by the minister who represents him. If an agreement is not reached through deliberation and consensus, the decision is taken by majority vote. If the bill is approved by the DPR and government representatives, it is then submitted to the President for his signature. In the Act, a sentence of ratification is added and it is promulgated in a State institution of the Republic of Indonesia. In the event that the Bill is not signed by the President within 30 (thirty) days as of the mutual approval of the Bill, the Bill shall become law and must be promulgated.

In the revision of Law Number 30 of 2002 concerning the Corruption Eradication Commission, there are a number of formal or procedural defects carried out by the House of Representatives and the Government and are not in accordance with Law Number 11 of 2012 concerning the Establishment of Legislations including the DPR ignoring Article 5 letter a Informing good laws and regulations, what must be done is based on the principle of the establishment of regulations, there is clarity of purpose. The revision of the KPK Law does not have a clear purpose for what it is being revised. Even though the DPR and the President conveyed that the revision of the KPK Law was to strengthen the KPK. But the facts show otherwise. From the articles that will be discussed, such as the formation of a supervisory board, wiretapping permits, the authority of SP3 and the formation of personnel to become ASN, there are strong indications of disturbing the independence and weakening the institution of the KPK.

Article 5 letter g that must be carried out is based on the principle of the establishment of regulations with openness, which is transparent and open, starting from planning, preparation, discussion, ratification or determination, and promulgation. So that the public can provide input as widely as possible either orally or in writing. The non-fulfillment of the principle of openness can be seen from the revision decisions taken suddenly, the discussions being held behind closed doors and in a very limited time. So, let alone the public, the KPK who are interested are not notified and involved. Article 23 paragraph (2) of Law 12 of 2011 does allow the DPR or the President to submit a bill outside the National Legislation Program which includes: (a). to deal with extraordinary circumstances, conflict situations, or natural disasters; and (b) certain other circumstances that ensure national urgency for a bill that can be mutually agreed upon. Point a is clearly not fulfilled. As for point b, it is not clear what underlies the DPR and the President for the revision of the KPK Law as something urgent nationally. So far, the role of the KPK can be said to be very good, full of achievements and trusted by the public in eradicating corruption.

Article 96 paragraph (1) states that the public has the right to provide input orally and/or in writing in the formation of laws and regulations. Paragraph (2) Oral and/or written input as referred to in paragraph (1) may be made through: a. public hearings; b. work visit; c. socialization; and/or d. seminars, workshops, and/or discussions. The revision of the KPK Law is carried out in a very limited and closed time, it is unlikely that public participation will be fulfilled. In fact, community participation may even be ignored and not considered necessary.

Burkhardt Kreams, stated that the formation of legislation (*Staatliche Rechtssetzung*) includes two main things, namely the activity of determining the content of the regulation (*inhalt der regelung*) on the one hand, and activities involving the fulfillment of the form of the regulation (*form der regelung*). The formation of legislation is an interdisciplinary activity (A.Hamid.S.Attamimi, 1990) ^[1]. T. Koopman stated that the function of the formation of laws and regulations was increasingly felt to be needed, because in a country based on modern law (*verzorgingsstaat*), the main purpose of forming laws was no longer to create codification of values and norms of life that had already been established. settles in society but creates modifications or changes in people's lives (Mahendra Putra Kurnia, 2006).

Good legislation (*good legislation*) is very much needed in the administration of government both at the central and regional levels, because it will be able to support government and development so that it will be more likely to achieve state goals as mandated in the constitution. To be able to make good laws and regulations, it is necessary to have/have knowledge of laws and regulations, including relating to the form/type, the content of the material to be regulated and how the material is contained in the legislation in a concise, clear and easy to understand and systematic manner so that regulations are adhered to and can be implemented. In forming laws and regulations, in relation to the application of norms according to I Gede Pantja Astawa and Suprin Na'a, it must meet three foundations, namely: the basis is applicable philosophically, the basis applies sociologically and the basis applies juridically. (Made Pantja Astawa & Suprin Na'a, 2008) ^[18].

Research Method

This research will use the type of normative juridical research, namely research that is focused on examining the application of rules or norms in positive law. (Johnny Ibrahim, 2006) [14]. Juridical normative, namely an approach that uses the concept of positivist legis. This concept views law as identical with written norms made and promulgated by authorized institutions or officials.

Result and Discussion

The Urgency of Revision of the Corruption Eradication Commission Law

Law in the sense of law is never final because it will always change in line with changes in society and the constitutional system of a nation. However, changes to a law need to be explained what things are of urgency so that changes need to be made. Urgency can be interpreted as "forced urgency". As has been interpreted by the Constitutional Court and stated in "MK Decision No. 138/PUU-VII/2009" which basically provides three indicators of compelling urgency, namely, the existence of a legal vacuum, the situation is urgent, and the making of laws through a long process that needs to be issued. Government Regulation in Lieu of Law (Perpu) (Peter Mahmud Marzuki, 2008). In essence, matters of urgency or urgency force can be seen in a scientific document called an Academic Manuscript which is the result of research that can be scientifically justified. Before discussing the urgency of the revision of the KPK Law, it should be stated that legal politics has logical consequences, namely the authority possessed by legislators who are political elites, in forming laws and regulations, it is often used as a means to obtain political interests and political parties are not in the interests of the people. Ferry Irawan, 2012). The formation of laws and regulations in a hurry will result in unsatisfactory laws, because they are generally driven by temporary interests, are not systematic, sometimes overlapping in content, and generally do not last long (Sudikno Mertokusumo, 2014) [35]. These two basic arguments regarding the legal politics of the formation of laws and regulations remind us that the formation of a rule cannot be separated from political interests, by legislators (political elites), and the sudden formation of laws indicates that political interest.

Back to the issue of urgency to revise the "KPK Law no. 30 of 2003". In the Academic Paper of the KPK Bill, it states that the old KPK Law is no longer in accordance with the times, legal dynamics and the constitutional system of the Republic of Indonesia, so it is necessary to make changes to the KPK Law. So, currently the KPK Law has been changed to Law No. 19 of 2019. In the academic manuscript of the a quo KPK Bill it is also said that the practice of enforcing the criminal law of corruption often faces problems both in terms of its rules and in terms of its substance and interpretation. This means that in this academic text it states that the KPK Law no. 30 of 2002, raises various legal problems in its implementation.

The provisions regarding the authority and use of investigative powers by the KPK in Law Number 30 of 2007, deviate and contradict the general provisions of criminal law as regulated in the Criminal Code. So the provisions regarding the authority and use of investigative powers by the KPK in Law 30 of 2002, including acts that are against the law. So because it is contradictory, it is necessary to change the rules regarding the investigation authority by the KPK. In the conclusion of the a quo Academic Paper, it is intended that vertical and horizontal synchronization occur in the context of upholding the principle of equality before the law, administering a fair criminal justice, and a non-discriminatory criminal justice process.

Based on the description of the Academic Paper above, it can be summarized several points that make the revision of "Law 30 of 2002" in an urgent sense to be carried out, while these points include the first that "Law 30 of 2002" is no longer in accordance with developments. the times, the dynamics of the law and the constitutional system of the Republic of Indonesia, secondly that law enforcement related to corruption eradication is based on "Law 30 of 2002", often raises various legal problems, and the third point is that the provisions regarding the investigation authority carried out by the KPK are based on " Law 30 of 2002", has contradicted the general provisions of criminal law, so a revision must be made to the old KPK Law.

Establishment of laws and regulations in the sense of the establishment of laws based on Law no. 15 of 2019 concerning the Establishment of Legislation, must contain philosophical, juridical, and sociological foundations (Putra Asmoto, 2018). These three foundations are contained in an academic text that can be scientifically justified. In essence, in a law there are considerations for weighing and remembering. Both of these preambles have their own meaning that the consideration contains philosophical, political and sociological meanings that explain why this law needs to be revised, while the consideration given contains a juridical meaning. Therefore, these three foundations are indispensable in the formation of a law, if the absence of one of the foundations will result in legal defects. "According to the 1945 Constitution of the Republic of Indonesia, the DPR has the power to make laws with the joint approval of the President.

All bills must be discussed between the DPR and the President to get an agreement. If the bill as a result of the agreement is not ratified by the president, then within 30 (thirty) days, the bill is valid and must be promulgated. So this is a form of law in a material sense and not a law in a formal sense. Because a law in a material sense is sufficient with mutual agreement in a plenary session, a bill can be considered to have become a law, in contrast to a law in a formal sense which goes through a planning procedure up to promulgation until it is numbered, date, month and year. The constitution in the sense of the 1945 Constitution of the Republic of Indonesia in 22A stipulates that the formation of legislation will be regulated in a law (Muntoha, 2009). So that Law Number 15 of 2019 concerning the Formation of Legislation was formed, making the principle of the rule of law the basis for the formation of every statutory regulation.

The perspective of Legal Politics as described by Mahfud MD, in his book "Legal Politics in Indonesia" uses the concept or term of democratic and authoritarian political configuration, as well as the responsive character of a legal and conservative product. If the political configuration is democratic, it will produce a responsive legal product, otherwise if the political conditions are authoritarian, it will produce a conservative legal product. An example of the Basic Agrarian Law (UUPA) is a responsive legal product, because it can answer land issues up to the reformation period. On the other hand, the Election Law is a conservative legal product because it was formed based on the interests of the political elite so that changes are always made (Mahfud MD, 2012). So, the question is whether the revision of the KPK Law includes an authoritarian political condition so that it produces a conservative law or a democratic political configuration so that it produces a responsive law. The question can actually be seen from two aspects, namely the substance aspect of the KPK Law and the procedure for the formation of the KPK Law itself.

If, viewed from the procedural aspect of the formation of the KPK Law, there are procedural/judicial defects as well as the substance of the content of the KPK Law that has the potential to weaken or slow down the duties and authorities of the KPK in the future, it can be said that this is an authoritarian political configuration that creates a legal product with a conservative character. (Mahfud MD, 2006). Regarding the authority of the Constitutional Court to conduct formal examinations in relation to the review of "UU No 19 of 2019", the Constitutional Court must be able to play an active role in maintaining and upholding the constitution. In addition, the Court is also required to not only assess from the perspective of Constitutional Law, but must pay attention and comprehensively assess the political dynamics of the KPK Law legislation implemented by the DPR as well as political facts and any oddities that occur in each stage of the revision. the "KPK Law". As explained in the previous sub-chapter, the procedure for revising the KPK Law did not follow the procedures and stages set out in "Law no. 15 of 2019 concerning the Establishment of Legislation". Among other things, the planning stages that should be a law must be contained in the Prolegnas, namely the work program of the DPR for a period of five (5) years, before it will proceed to the stages of preparation, discussion, ratification or stipulation, and promulgation to the process of socialization/dissemination. However, in reality the KPK Law was not previously included in the National Legislation Program, even in the stages of discussion and decision making (plenary session) members of the DPR did not meet the quorum as stipulated in the DPR Regulation concerning the issuance.

Based on the explanation regarding the procedure for the formation of the revised "KPK Law no. 19 of 2019 and the Judicial Review process that is being proposed, it can be concluded that the procedure for the formation of the revision of the KPK Law, has a flawed procedure as regulated in Law no. 15 of 2019 concerning the Establishment of Legislations", thus also contradicting the 1945 Constitution of the Republic of Indonesia. That is why, the revision of the "KPK Law" is feared not only to have the potential to harm the KPK but all Indonesian people who are actively fighting corruption, so for the sake of the law and the interests of the people, the Law The new KPK must be annulled by the Constitutional Court and declared contrary to the constitution and has no binding legal force.

Conclusion

Based on the results of the study, it can be concluded that the urgency of the revision of "Law no. 30 of 2002, regarding the KPK, firstly that "Law 30 of 2002" is no longer in accordance with the times, the dynamics of the law and the constitutional system of the Republic of Indonesia, secondly that law enforcement related to the eradication of corruption is based on "Law 30 of 2002", often raises various legal problems, and the third point is that the provisions regarding the investigative authority carried out by the KPK, based on "Law 30 of 2002", have contradicted the general provisions of criminal law, so a revision of the old KPK Law must be carried out. The procedure for the formation of the law, in this case the revision of the Corruption Eradication Commission Law, does not go through the procedures or stages as regulated in "Law no. 15 of 2019", among others, the stages of planning, drafting, discussing, ratifying or determining, and enacting so that there are a lot of mistakes and judicial defects in the revision of the KPK Law.

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