



The existence of public prosecutors as executors in the corruption eradication commission

Nurfan¹, Adwani², Mohd Din²

¹ Student, Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia

² Lecturer, Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia

Abstract

The authority owned by the Corruption Eradication Commission (KPK) is contained in Articles 7 to Article 14 of the KPK Law which is directly related to the implementation of court decisions by the KPK Prosecutor is not strictly regulated. The authority contained in the KPK Law is limited to the authority of the KPK in conducting investigations, investigations, and criminal prosecutions. However, in practice the KPK Prosecutor conducts the execution of the ingkrach verdict, this action is not regulated in the KPK Law. The results of this study show that, the form of legality owned by the KPK within the authority of the Corruption Eradication Commission is regulated in Article 6 to Article 14 of Law No. 30 of 2002 concerning the Commission on the Eradication of Corruption, the mandate authority to carry out court decisions in accordance with the Warrant for the Implementation of Court Decisions Number: Sprin.PPP52/24/08/2014, The order for the implementation of the court's decision is given by the head of the Corruption Eradication Commission to the Prosecutor. on the Corruption Eradication Commission, and Article 15 paragraph (2) of KPK Law No. 1 of 2015. However, this provision is not relevant to the authority of the KPK contained in Law No.30 of 2002 concerning the KPK which gives the authority of prosecution and others without the authority to carry out court decisions. Therefore, Perppu KPK No.1 of 2015 must be canceled.

Keywords: existence, public prosecutor, executor of the corruption eradication commission

Introduction

Law enforcement agencies that eradicate corruption have been proven to have various obstacles. Therefore, extraordinary law enforcement methods are needed through the establishment of a special body that is broad, independent, and effective in efforts to eradicate corruption that is functional and professional optimally carried out^[1].

The legal status of the Corruption Eradication Commission (hereinafter referred to as the KPK) is expressly designated as a state institution that in carrying out its duties and authorities is independent and free from the influence of any power. The establishment of this commission aims to improve the usefulness and results for the corruption eradication efforts that have been running since before^[2].

The authority of the KPK in conducting investigations, investigations, and prosecutions of corruption crimes including corruption crimes involving law enforcement officials, state organizers, and others related to corruption crimes committed by law enforcement officials or state organizers, received attention that disturbed the public, and / or related to state losses of at least Rp.1,000,000,000.00 (one billion rupiah). This is stated in the KPK law, as in the Explanation of Law Number 19 of 2019 concerning the Commission on Combating Corruption:

1. Can compile a strong network (networking) and treat existing institutions as conducive counterparties so that the eradication of corruption can be implemented efficiently and effectively;
2. Do not monopolize the duties and authorities of investigations, investigations, and prosecutions;
3. Serves as a trigger and empowerment of institutions that have existed in the eradication of corruption (trigger mechanism);
4. Serves to supervise and monitor existing institutions, and in certain circumstances may take over the duties and authorities of investigations, investigations, and prosecutions (superbody) that are being carried out by the police and / or the prosecutor's office.

If you look at Article 1 number 6 letter a of Law No. 8 of 1981 concerning the Criminal Procedure Law (KUHAP) states that, "The prosecutor is an official authorized by this law to act as a public prosecutor and carry out court decisions that have obtained permanent legal force". Article 1 number 6 letter b of the Kuhap states that, "The public prosecutor is the prosecutor authorized by this law to prosecute and carry out the determination of judges. Furthermore, in Article 30 paragraph (1) of Law No. 16 of 2004 concerning the Indonesian

Prosecutor's Office (hereinafter referred to as the Prosecutor's Law) states also that, the duties and authorities of the prosecutor include:

1. prosecute;
2. carrying out the determination of judges and court decisions that have obtained permanent legal force;
3. supervise the implementation of conditional criminal verdicts, supervisory criminal verdicts, and conditional release decisions;
4. conduct investigations into certain criminal acts under the law;
5. complete a certain case file and for that can conduct additional examinations before being transferred to the court which in its implementation is coordinated with the investigator.

Second, the above regulation expressly states that prosecutors who carry out court decisions that already have laws are still not other State institutions. But in cases of corruption because there are independent institutions, namely the KPK has implemented court decisions that have a permanent law by the KPK Prosecutor, this has been contrary to the KUHAP and the Prosecutor's Law.

This KPK prosecutor is under the auspices of the KPK directly who prosecutes for corruption, but this KPK Prosecutor is subject to the Tipikor Law not the Prosecutor's Law. Furthermore, the tipikor Law does not strictly regulate the authority of the KPK in executing court decisions, both vertical and horizontal legal rules.

It should be the authority to execute the inkraht verdict (has obtained permanent legal force) carried out by the prosecutor at the Prosecutor's Office, and no other institution outside the Prosecutor's Office is authorized to carry out the execution^[3]. A number of authorities owned by the KPK listed in Articles 7 to 14 of the KPK Law that are directly related to the execution of court decisions by the KPK Prosecutor are not strictly regulated. The authority stipulated in the KPK Law is limited to the authority of the KPK in carrying out investigations, investigations, and prosecutions of criminal acts.

Regarding the prosecution, the one who prosecutes corruption is the Public Prosecutor at the Corruption Eradication Commission who is appointed and dismissed by the Corruption Eradication Commission, which is not the background of the Prosecutor as stipulated in Article 19 of the KPK Law^[4]. Indeed, the provision does not expressly mention that the KPK public prosecutor also acts as the executor. However, please note that the implementation of the court's decision that has obtained permanent legal force was carried out by the prosecutor, for which the clerk sent a copy of the verdict letter to him. Prosecutors who have Pro-justisia authority (for justice) move at three levels, namely investigation, prosecution (including the distribution of evidence authority and control over assets during the trial) and execution (execution authority)^[5].

Court decisions with legal force are still executed by the prosecutor's office including assets that have been decided by the court. As with the prosecution which is the typical authority (*dominus litis*) of the prosecutor's office, the implementation of court decisions that have had permanent legal force (*incraht*) is also the authority of the prosecutor's office. It is the justification and legitimacy for the Prosecutor's Office to act as a public prosecutor and as the executor who carries out the verdicts and/or decisions of the court.

Table 1: Corruption Cases That Have Been Executed by the KPK

No.	Name	Court Ruling	Years
1.	Abdullah Puteh	4 Years 11 Months	2005
2.	Anas Urbaningrum	8 Years	2014
3.	Surya Dharma Ali	6 years	2016
4.	Setya Novanto	15 years	2018
5.	Irwandi Yusuf	7 years	2019

Source: Supreme Court of the Republic of Indonesia

The above cases are some of the cases whose executors are from the KPK as an ad hoc institution that handles corruption cases, but on the basis of the provisions outlined above there are some inconsistencies in the process of applying the law as regulated by the laws and regulations.

Legal problems arise that the KPK Prosecutor does not have the authority to carry out executions. In accordance with Article 3 of the KPK Law, the KPK is a corruption eradication agency that in carrying out its duties and authorities is independent and free from the influence of any power. The logical consequences of this position make the claimant who becomes an employee of the KPK is not bound by the Prosecutor's Law. According to the provisions of Article 6 of Law No. 30 of 2002 concerning the Corruption Eradication Commission, the KPK has tasks, as follows:

1. Coordination with agencies authorized to combat corruption (TPK).
2. Supervision of agencies authorized to combat corruption (TPK).
3. Conducting Investigations, Investigations and Prosecutions for Corruption Crimes (TPK).
4. Take preventive measures against Corruption (TPK).
5. Monitoring the implementation of the State Government.

Prosecutors who are seconded to be kpk employees as public prosecutors, do not have executive authority or carry out decisions with permanent legal force so that the executions have been invalid and consequently

executions are null and void. KPK prosecutors have duties, authorities, obligations, and rights in a new position as the KPK Law. Kpk public prosecutors can no longer be referred to as prosecutors as intended in the Prosecutor's Law, but referred to as KPK employees who are given duties and authority as public prosecutors by law.

The existence of the KPK in practice has executive authority over the decision of the Tipikor Court. This authority is owned by the prosecutor at the KPK. However, in the Tipikor Law does not mention that the KPK has the right to execute on the court's decision, it is only contained in the KuhaP and the Prosecutor's Law with the express that the prosecutor has the right to carry out the executor of the verdict of the court that is fixed. Based on the background of the issues raised above, the author can draw on the issues that will be raised for discussion, namely, what is the legality of the Public Prosecutor as an implementer in the KPK in accordance with the laws and regulations. The purpose of the research so that what is carried out is more focused on the targets to be achieved and based on rejecting the basics of the thinking, the purpose of the author conducting this research is to find out and explain the legality of the Public Prosecutor as an executor in the KPK according to laws and regulations.

Research Method

The type of research used is juridical normative, by looking at the norms and legal realities that exist in practice that concern the existence of public prosecutors as executors in the KPK. The data used is primary data and secondary data. Data collection techniques with library research by reviewing documents and laws related to this research^[6]. Furthermore, the data is processed and analyzed with qualitative descriptive analysis techniques.

Results and Discussions

Corruption Eradication Commission

So far the responsibility imposed by the law to eradicate corruption that has been applied conventionally encountered several obstacles. Increasingly uncontrolled corruption will wreak havoc not only in the life of the national economy, but also in the life of the nation and state in general. The increasing number of uncontrolled corruption crimes will cause disaster not only to the life of the national economy but also to the life of the nation in general^[7].

Widespread and systematic corruption is also a violation of people's social and economic rights in the field of human rights. Therefore, corruption is no longer classed as an ordinary crime, but has become an extraordinary crime, an extraordinary crime that requires extraordinary efforts to solve it.

To achieve the rule of law, the government laid a solid political foundation to fight corruption by establishing a special body. Based on the provisions of Article 43 of Law No. 31 of 1999 concerning the Eradication of Corruption as Amended by Law No. 20 of 2001, the special body is called the Corruption Eradication Commission.

The Corruption Eradication Commission is a state institution that is independent in carrying out its duties and authorities and free from the influence of any power. The KPK was formed with the aim of improving the efficiency and effectiveness of the efforts of the corruption apparatus. Officially, the KPK was formed by the government in December 2003, based on Law No. 30 of 2002 concerning the Commission on Combating Corruption^[8]. The KPK has a coordinating and supervisory role, including in dealing with anger, anger, and criminal acts. The establishment of organizational structures, working modalities and competition responsibilities and rules for its members are regulated by law^[9].

According to Article 2 of the Tipikor Law, "corruption can be interpreted as any person who unlawfully commits acts of enriching himself or others or a corporation that can harm the country's finances or the country's economy, punishable by life imprisonment or imprisonment of at least 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)".

Furthermore, Article 3 of the Tipikor Law states, "any person who with the aim of benefiting himself or others or a corporation, or abusing the authority, opportunity or means that exist there for position or position that can harm the country's finances or the economy of the country, is sentenced to life imprisonment or imprisonment of at least 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty) million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)".

The definition of corruption is considered from several aspek, depending on the discipline used, corruption is defined into 4 (four) types, namely as follows:

1. Discretionary corruption, is corruption committed because of the freedom to determine wisdom, even if it seems legitimate, is not a practice acceptable to the members of the organization.
2. Illegal corruption is a type of action that intends to disrupt the language or intent of certain laws, regulations and regulations.
3. Mercenary corruption, is a type of corruption crime intended to obtain personal benefits, through abuse of authority and power.
4. Ideological corruption is a type of illegal and discretionary corruption intended to pursue group goals.

At this time the eradication of corruption has been carried out by various institutions such as the prosecutor's office and the police and other bodies whose duties, functions and roles are related to the implementation of

prevention and eradication of corruption crimes, therefore the regulation of the role of the Corruption Eradication Commission (KPK) in this law is carried out carefully (prudential) so that there is no overlap of roles with various existing agencies ^[10].

The role of the Corruption Eradication Commission (KPK) in conducting investigations, investigations, and prosecutions of real corruption crimes includes:

1. Involving law enforcement officials, state organizers and others related to corruption committed by law enforcement officials or state organizers.
2. Getting attention that disturbs the community: and/or.
3. Regarding state losses of at least Rp. 1,000,000,000.00 (one billion rupiah)."

In accordance with the duties, functions and roles of the Corruption Eradication Commission (KPK) as stipulated in this law, the Corruption Eradication Commission (KPK) can do the following:

1. Can compile a strong network (networking) and treat institutions that have a conducive counterparty so that the eradication of corruption can be carried out efficiently and effectively.
2. Do not monopolize the duties and roles of investigations, investigations, and prosecutions.
3. Serves as a trigger and empowerment of isntitusi that has existed in the eradication of tragger mechanism corruption.
4. Serves to supervise and assist existing institutions, and in certain circumstances may take on the duties and authorities of investigations, investigations, and prosecutions conducted by the police or the prosecutor's office.

Prosecutor as Executor of Court Decision

Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia states that, The Prosecutor's Office of the Republic of Indonesia is a government agency that exercises state power in the field of prosecution, where in the implementation of the prosecution task must be carried out independently regardless of the influence of government power and the influence of any political power ^[11].

In addition, it is stated that the prosecutor is a functional official authorized by law to act as a public prosecutor and carry out court decisions that already have permanent legal force in other laws and regulations. The following is an explanation of what is meant by the prosecutor's office. It is said that what is meant by the public prosecutor is the public prosecutor who is authorized by this law to hear and carry out the judge's ruling.

The role of the Prosecutor to carry out court decisions that already have permanent legal force is regulated, among others, regulated in Article 1 number 6 and Article 270 of the Kuhap and in Article 30 paragraph (1) b of the Prosecutor's Law. There are three types of court decisions according to the provisions of the Kuhap, namely:

1. The verdict of the defendant's release (Article 191 paragraph (1)),
2. The verdict is in the form of the release of the accused from all lawsuits (Article 191 paragraph (2)),
3. Verdicts that impose criminal/punishment on the accused (Article 193 paragraph (1)).

In enforcing the court's decision, the prosecutor's office must pay attention to the legal values that live in society and humanity based on Pancasila without reducing firmness in behaving and acting. The implementation of the court's decision, including the implementation of duties and supervisory authority on the execution of the death penalty, and the verdict on confiscated goods that have been sold at auction and will be sold.

Thus, from the above provisions it can be understood that the Prosecutor's Office is authorized to carry out the task of enforcing court decisions in connection with corruption crimes that have obtained permanent legal force, in this case also the implementation of additional criminals in the form of Compensation money.

As previously stated, the Prosecutor's Office only acts as a public prosecutor in the implementation of court decisions. However, in some criminal acts, such as corruption and economic crimes, prosecutors can also act as prosecutors.

From the above description, it can be concluded that the prosecutor's office has the authority and can maximize its role in recovering state financial losses due to corruption at all levels, from investigations, prosecutions to execution of court decisions.

Criminal sanctions are the result of corruption that harms the country's finances or the country's economy. Criminal fines are additional criminal offenses against the main criminal, whose judge's verdict on the crime is an integral part of the main criminal and its implementation. The indemnity of the country's financial losses cannot eliminate the principal delik, even if it is returned to the state, in exchange for the financial losses of the country that have previously been bribed.

The provisions regarding the payment of this replacement money are related to the provisions in Article 2 paragraph (1) and Article 3 of the Tipikor Law which regulates corruption crimes that can harm state finances, as well as Articles 5 to 14 of the Tipikor Law. This is stated in Article 17 of the Tipikor Law which states that in addition to being punishable by criminal charges as intended in Article 2, Article 3, Article 5 to Article 14, defendants can be sentenced to additional crimes as intended in Article 18 of the Tipikor Law.

Form of Legality of Public Prosecutors as Executors in the KPK According to Laws and Regulations

In terms of authority, the authority now owned by the KPK is an authority that was previously in the hands of the police and prosecutors. Police authority is authority in the sense of investigating and investigating corruption

cases. While the authority of the prosecutor who is now taken over by the KPK is the authority of the prosecutor's office in terms of corruption tools. The previous prosecutor was in the hands of the Prosecutor's Office. Now the prosecutor is the public prosecutor, except for corruption crimes that are limited by kpk laws and other laws and regulations.

Therefore, it can be said that the existence of the authority of the Corruption Eradication Authority in prosecuting corruption cases begins with the ratification of the KPK law, where the KPK has three authorities to conduct investigations, investigations, and prosecutions of corruption cases. Corruption. But in its existence, CPK continues to coordinate with law enforcement officials other than the police and prosecutors in exercising their authority.

Every government must have legitimacy, namely the authority given by the law. Thus the substance of the principle of legality is authority, namely "Het vermogen tot het verrichten van bepaalde rechtshandelingen", that is, the ability to carry out certain legal actions ^[12].

In Law No. 46 of 2009 concerning Corruption Criminal Courts regulated about the law of events which in some ways is different from the law of public events. In the law it is stated that the examination at the Corruption Criminal Court hearing is carried out based on the applicable criminal procedure law, unless otherwise specified in this law (Article 25).

Corruption cases are examined, tried, and decided by the first-level Corruption Criminal Court within a maximum of 120 working days from the date the case is submitted to the Corruption Criminal Court (Article 29). Regarding the time limit set out in Articles 30 to 32.

Outside of Law No. 46 of 2009 above, we must also look at the provisions in the KPK Law (Law No. 30 of 2002). In the upay against corruption, the Corruption Eradication Commission is supported by strategic provisions, including:

1. Expansion of valid evidence tools and provisions on the principle of reverse proof;
2. Authority for the investigation, investigation, and prosecution of state organizers, without any procedural impediments due to his status as a state official.

Based on the cases studied in this study on the execution of KPK Prosecutors, including:

1. The case of the purchase of the MI-2 Rostov helicopter defendant AP, with a prison sentence of 4 years and 11 months. The Public Prosecutor's Team of the Corruption Eradication Commission has executed the verdict of the Jakarta High Court of Corruption (Tipikor) judges who sentenced the defendant to 10 years in prison and a fine of Rp 500 million. Pt Tipikor's ruling means strengthening the verdict of the first-degree court.
2. Gratification Cases and money laundering crimes by AU defendants. The KPK Execution Prosecutor Team has carried out the criminal execution of the au convict based on the PK Decision of the Supreme Court of the Republic of Indonesia Number 246 PK / Pid.Sus / 2018 dated September 30, 2020 with a prison sentence of 8 years reduced while in custody and a fine of Rp 300 million. Criminal Rp 300 million with the provision that if the fine is not paid then it is subject to a replacement criminal in the form of confinement for 3 months. In addition, the AU is also required to pay a replacement amount of IDR 57,592,330,580 and USD 5,261,070 subsider for 1 month. If within 1 month after the ruling the Court of legal force remains unpaid, then Anas's property will be confiscated and auctioned to cover the replacement money.
3. Cases of Corruption in the implementation of hajj and misappropriating ministerial operational funds (DOM) by SA defendants. The KPK Prosecutor's Team is literate in executions, both executions of convicts for prison in accordance with the court's decision, namely auctions.

From the explanation of the execution of the case above, the KPK Prosecutor has carried out the execution in accordance with the regulations of the invitees, but on the other hand we see the KPK Prosecutor In the corruption case, the KPK Prosecutor is given authority by the court to execute the accused, considering that he is a public prosecutor who has authority. However, it is necessary to affirm this authority that must be contained in the KPK Law as an additional task.

Conclusion

The form of legality owned by the KPK Prosecutor institutionally does not exist, but can be found in the Corruption Crime Law and as stipulated in Article 15 paragraph (2) of KPK Regulation No. 1 of 2015. However, this provision is not in sync with the authority of the KPK contained in Law No.30 of 2002 concerning the KPK which gives prosecution authority and others without the authority to carry out court decisions. But on the other hand, the KPK Prosecutor is reviewed from the aspect of authority basically does not have the legal authority to carry out the execution or execution of court decisions because it is no longer domiciled as a prosecutor because it is temporarily dismissed from the Prosecutor's Office. In addition, the Warrant for the Implementation of the Court Decision is not a warrant sourced from the Prosecutor's Office.

References

1. Ifrani. "Tindak Pidana Korupsi Sebagai Kejahatan Luar Biasa," J. Al'Adl,2017:9(3):323.
2. Sapheli R. "Keberadaan Komisi Pemberantasan Korupsi dalam Sistem Ketatanegaraan dan Implikasinya terhadap Kewenangan Kejaksaan dan Kepolisian Republik Indonesia," J. Syiar Huk,2017:15(1):76.

3. Daniar Rasyid Setya Wardhana EHAW, Dicky Andi Firmansyah. “Yugo Susandi, Wewenang Jaksa sebagai Pelaksana Putusan Eksekutorial Putusan Pengadilan yang Telah Mempunyai Kekuatan Hukum Tetap,” *Halu Oleo Law Rev*, 2020:4(2):253.
4. Paongan RT. “Kewenangan Penuntutan Komisi Pemberantasan Korupsi Dan Kejaksanaan Dalam Penanganan Tindak Pidana Korupsi Di Indonesia,” *Lex Crim*, 2013:2(1):30.
5. Mozart E. “Legalitas Pelaksanaan Putusan Pengadilan Tindak Pidana Korupsi oleh Jaksa Komisi Pemberantasan Korupsi,” Universitas Sriwijaya Palembang, 2021.
6. Marzuki PM. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2011.
7. Danil E. *Korupsi*. Jakarta: Raja Grafindo Persada, 2014.
8. Alkaf H. *Pendidikan anti Korupsi di Perguruan Tinggi*. Jakarta: Center for the Study of Religion and Culture, 2011.
9. Hartati E. *Tindak Pidana Korupsi*. Jakarta: Sinar Grafika, 2014.
10. Ermansjah. *Memberantasa Korupsi Bersama Komisi Pemberantasan Korupsi (KPK)*. Jakarta: Sinar Grafika, 2010.
11. Ali M. *Hukum Pidana Korupsi di Indonesia*, 1st ed. Yogyakarta: UII Press, 2011.
12. *Hukum Administrasi Negara RHR*. Yogyakarta: UII Press, 2002.