

Independent Agency Lost in Action: What We Learned from Corruption Eradication Commission (KPK) During the Pandemic

Muhammad Rinaldy Bima

muhrinaldy.bima@gmail.com

Faculty of Law, Universitas Muslim Indonesia, Indonesia

Abstract. This research aims to assess the performance of the Corruption Eradication Commission (KPK) during the Pandemic Period and examine the prospects of independent agencies in Indonesia as reflected in the KPK case. This normative legal research uses secondary data, including primary and secondary legal materials. Several approaches are used, such as statutory, conceptual, and case approaches. Data was collected through literature reviews and then analyzed using a descriptive-qualitative technique. The findings reveal that KPK has compiled several programs and task forces during the pandemic to oversee the COVID-19 budget. However, there was a decrease in performance compared to the previous year regarding the number of 'hand-catching operations' and the target for eradicating corruption. The number of state losses increased throughout 2020, in contrast to the previous period. This condition is due to external factors, including the COVID-19 Pandemic, which impacts limited mobility, and external policies that affect the KPK's independence, such as revising the KPK Law and the policy on the transfer of employment status. Many internal factors have also disrupted the KPK's focus on dealing with corruption. Weak organizational leadership and polemics on the national insight test were among them, leading to the dismissal of several KPK employees. Given these circumstances, Indonesia has become an unfavorable environment for state institutional reform. Especially for independent state institutions such as the KPK, power actors frequently intervene in and politicize.

Keywords: Independent Agency, KPK, Performance, Pandemic.

1. INTRODUCTION

Although the Covid-19 case has been confirmed since January, the Indonesian government's response has been slow and inconsistent (Farizi and Harmawan 2020). Until early March, two COVID-19 cases were confirmed in Indonesia and continued to increase during April. As of November 2020, Indonesia has reported 433,836 positive cases, making it the first place with the most cases in Southeast Asia. In terms of mortality, Indonesia ranks third in Asia with 14,540 deaths. (Ramadani, Hamzah, and Mangerengi 2021). To anticipate the health and social impacts, the Indonesian government allocates a budget of up to Rp. 744.75 trillion.

During the pandemic, which is still not fully under control, several government officials stole the opportunity to commit corruption. According to data from Indonesia's Corruption Watch (ICW), throughout 2020, there were 444 corruption cases with an estimated state loss of Rp. 18.6 trillion. Previously, ICW explained in a report titled "Potential for Procurement Corruption During the COVID-19 Pandemic" that the health and social sectors are among the top ten most corrupt (Ramadhana and Nicola 2020). This was later demonstrated by the arrest of former Minister of

Social Affairs Juliari Batubara in the corruption case of social fund assistance for pandemic-affected communities, which allegedly cost the state trillions of rupiah. The COVID-19 budget misappropriation occurs not only at the national level but also at the regional level. Among these is the case of Made Sudama Diana, the former Head of the Buleleng Regency Tourism Office, who was sentenced to 2 years and eight months in prison for the corruption case of economic recovery funds due to COVID-19, and the case of the Regent of Mamberamo Raya, who corrupted COVID-19 funds for the regional election dowry.

Several corruption cases mentioned above indicate that a strong management and supervision system does not match the government's large budget allocations. As an independent agency and the spearhead of eradicating corruption in Indonesia, the Corruption Eradication Commission (KPK) is the public's last hope in overseeing the use of the state budget and saving it from further losses. Unfortunately, the impact of the pandemic and rampant corruption cases must be exacerbated by several problems that hit the KPK. Some institutional issues, such as systematic weakening, violations of employee ethics, the ineffectiveness of the supervisory board organ, and the national insight test polemic, have disrupted the KPK's focus on dealing with corruption cases.

Most public opinions saw a decline in the KPK's current performance. Anti-corruption activists have even gone as far as to declare the KPK's demise. Based on this phenomenon, this study aims to determine the performance of the KPK during

the pandemic and describe the prospects of independent state institutions in Indonesia. For this reason, this study raises two main issues: How does the Corruption Eradication Commission (KPK) perform during the pandemic? Second, how is the prospect of independent agencies in Indonesia reflected by the performance of the KPK?

2. RESEARCH METHOD

As normative legal research, this study uses secondary data consisting of primary and secondary legal materials. Primary legal materials consist of statutory regulations related to the issues studied, while secondary legal materials refer to the literature review of previous studies. Therefore, this study is categorized as doctrinal legal research. Which Duncan and Hutchinson define as "research into the law and legal concepts." (Hutchinson and Duncan 2012). Information from various aspects of the issues discussed in this research uses several approaches, such as statutory, conceptual, and case approaches. Data was collected through literature studies and then analyzed in the descriptive-qualitative method.

Corruption; (e) investigation, investigation, and prosecution of Corruption Crimes; and (f) carry out judges' decisions and court decisions with permanent legal force. In addition, the KPK, in carrying out its duties, has the authority to establish rules and examine state officials' wealth reports, determine the status of gratuities, and conduct wiretapping for investigation and investigation. These duties and management have made KPK dubbed a "super body institution." This even leads to the speculation that KPK violates the limits of law and human rights.

Since its establishment in 2002, the KPK has made several significant achievements in investigating corruption cases. During the nearly two decades since the KPK's establishment, many former ministers, high-ranking police officers, and constitutional judges have been successfully prosecuted for corruption. Furthermore, the KPK is considered to have saved hundreds of trillions of rupiah in state finances by confiscating corruptors' assets. However, as we approach 2020, which marks the beginning of COVID-19 entry in Indonesia, the KPK's performance in eradicating corruption shows a decline. It is indicated by a decrease in the so-called "hand-arrest operations" (OTT). This action attempts to eliminate corruption through a highly secretive and structured operation to capture perpetrators while committing corruption. (Hutchinson and Duncan 2012). In corruption crimes, hand-arrest operations are preceded by wiretapping procedures carried out over a specific period (Dengah et al. 2019).

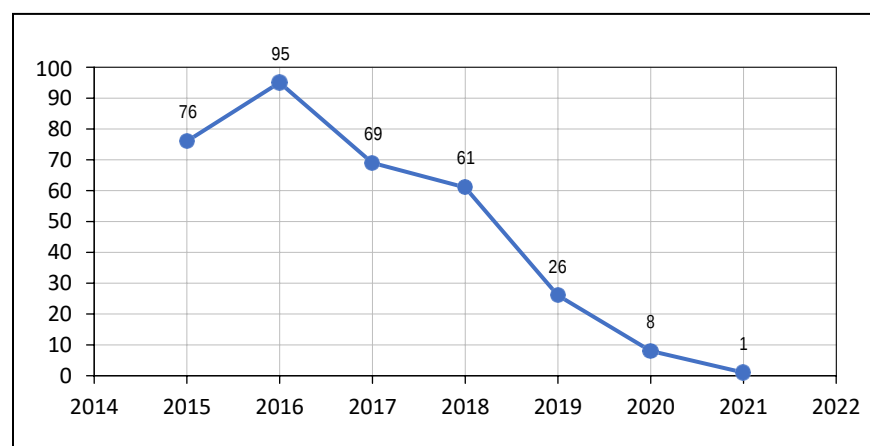


Figure 1. The Number of Hand Arrest Operations by KPK

The hand-arrest operation is one of the techniques frequently employed by the KPK to subdue corrupt perpetrators effectively and efficiently. In total, 327 people were caught by the KPK by hand arrest between 2015 to 2019. However, the KPK has only been able to carry out eight operations during 2020, or since Firly Bahuri's leadership. In 2020, eight operations were executed, with one operation carried out this year against the Nganjuk Regent, Novi Rahman Hidayat, in correlation with a job auction in Nganjuk Regency, East Java.

The decline in KPK performance during the pandemic can also be seen in the investigation of corruption cases. According to KPK reports from May 2021, the number of investigations into corruption cases has decreased over the last four years. For example, the number of studies conducted by the KPK in 2018 reached 164 points.

This is also the highest figure since the KPK was founded in 2004. However, in 2019, the number of reported cases dropped to 142. The number of investigations into corruption cases conducted by the KPK continued to fall in 2020, with only 111 cases. The KPK handled only 41 points until the first quarter of 2021.

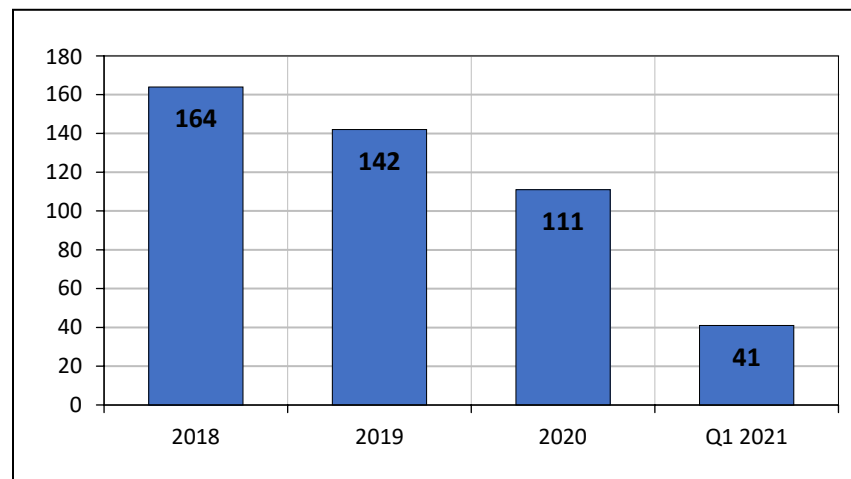


Figure 1. The Number of Case Investigations by KPK

Aside from decreased statistics on hand-arrest operations and case investigations, the number of state losses saved by the KPK in the pandemic year (2020) was also significantly reduced from the previous year (2019). According to Indonesia Corruption Watch (ICW), the value of state losses handled by the Corruption Eradication Commission (KPK) in 2020 was only IDR 805 billion. It was 87 percent lower than the previous year, which stood at IDR 6.2 trillion. ICW researchers in the "2020 Corruption Trial Monitoring Results Report" mentioned that state losses due to corruption crimes increased four times in 2020.

The public has reacted negatively to all of the facts listed above. It has been proven that throughout 2020, at least five survey institutions, namely the Alvara Research Center, Indo Barometer, Charta Politica, Lembaga Survei Indonesia, and Litbang Kompas, showed a decline in public trust and satisfaction towards the KPK. The causes of the phenomena above can be explained at least from two points of view: external and internal. From the exterior side, the decline in KPK's performance can be analyzed from two factors, namely the COVID-19 factor and external policy factors.

Regarding the COVID-19 factor, several studies have projected that most state agencies will experience a decline in performance due to the impact of COVID-19 (Putra 2020). Since early March 2020, the government has issued some restrictive policies, ranging from limiting social relations (social distancing) to work-from-home procedures for most State Civil Apparatus, including diverting educational activities and limiting economic activities outside the home. The WFH policy's enactment for employees in public institutions causes performance and public services to be hampered [9]. The unusually fast spread of the virus has more or less affected the KPK's movement in carrying out its duties. Several health protocols for travel requirements, vaccination programs, and work-from-home policies have become

obstacles for investigators and KPK employees in carrying out their duties, even having to postpone several case-handling targets.

From the external policy perspective, the decline in KPK's performance indirectly impacts the influence of power outside the KPK. The main factor is the policy of the government and the DPR to revise the KPK Law, which has implications for establishing a 'supervisory board organ' and the transition of the employment status of KPK members to state civil apparatus. Even several article arrangements interfere with the KPK's authority to combat corruption (Habibi 2020). This change at least impacts its functional and institutional independence (Bima and Ramadani 2019). According to the ICW report cited by *antikorupsi.org*, the KPK Law was revised based on assuming problems rather than facts. (Ramadhana and Nicola 2020). Instead of strengthening the Corruption Eradication Commission's independence, the amendment to the KPK Law has resulted in a systematic weakening, as demonstrated by its shift from an independent agency to a mere executive agency, the existence of a supervisory board with excessive *pro justitia* authority, limitations in recruiting independent investigators, and the reduction of several KPK's enforcement authority (Yulianto 2020).

In terms of internal factors, the current lack of performance of the KPK is more or less influenced by the internal problems of the KPK, mostly caused by organizational management with low commitment and integrity. This is shown by many ethical violations against Article 4 paragraph (1) letter o of the Regulations of the KPK Supervisory Board Number 2 of 2020, which members of the KPK leadership itself carried out.

Table 1. Cases of Ethical Violations at the KPK (2020-2021).

Subject	Form of Violation	Punishment
Chairperson/commissioner	Generating public distrust	Written Reprimand II
Head of the Employee's Forum	Spreading misinformation in the mass media	Warning Letter I
Director of Public Complaints	Violations related to enforcement activities in the field of Hand Catching Operations	Verbal warning
Deputy Chairperson of KPK	Trading influence for personal interests and dealing directly with parties whose cases are being handled by the KPK	40% deduction to basic salary for 12 months.

During the COVID-19 pandemic, at least four cases of alleged violations of the code of ethics were handled by the KPK Supervisory Board. Two cases of alleged ethical violations were charged to employees, namely the Head of the KPK Employee Forum, Yudi Purnomo, and the Director of Public Complaints of the KPK, Aprizal. One other case is charged to the Chairperson of the KPK, Firli Bahuri. Although the three were found guilty by the Supervisory Board, the sanctions given were only up to a written

warning. In mid-2021, the Supervisory Board also processed reports of alleged ethical violations by KPK Deputy Chair Lili Pintauli Siregar, who allegedly used his position to pressure the inactive Tanjungbalai Mayor, M Syahril, who is a suspect in the alleged bribery case of accepting gifts. Even though it was decided as a serious violation, the sanction given was still a 40% reduction in basic salary for 12 months. Several decisions have made the existence of the Supervisory Board questioned by the public because they tend not to want to give serious penalties even though the violations committed have violated ethics, even the KPK Law itself.

In addition, the controversy over the national insight test, which had implications for the dismissal of several employees who did not pass, also weakened the spirit of eradicating corruption within the KPK. The policy of carrying out tests by parties outside the KPK until the determination of its graduation proves that the KPK has lost its independence from the perspective of personnel and organizational management. Whereas the freedom of personnel is a form of institutional autonomy, as stated by Jimly Ashiddiqie. (Wahab and Ramadani 2021). During this pandemic, these polemics have disrupted the KPK's focus on overseeing budget abuse. During the COVID-19 pandemic, at least four cases of alleged violations of the code of ethics were handled by the KPK Supervisory Board. Two cases of alleged ethical violations were charged to employees: the Chairman of the KPK Employee Forum, Yudi Purnomo, and the Director of Public Complaints of the KPK, Aprizal. One other case is suspected by the Chairperson of the KPK, Firli Bahuri. Although the three were found guilty by the Supervisory Board, the sanctions given were only up to a written warning. In mid-2021, the Supervisory Board also processed reports of alleged ethical violations by KPK Deputy Chair Lili Pintauli Siregar, who allegedly used his position to pressure the inactive Tanjungbalai Mayor, M Syahril, who is a suspect in the alleged bribery case of accepting gifts. Even though it was decided as a serious violation, the sanction given was still a 40% reduction in basic salary for 12 months. Several weak decisions have made the existence of the Supervisory Board questioned by the public, especially in the case of Firly Bahuri's alleged gratification and abuse of influence by Lili Pintauli. The Supervisory Board tend to avoid giving serious sanction even though the violations have violated ethics, even the KPK Law.

3.2. Prospects for Independent Agencies: Reflections on the KPK's Downfall

The change and formation of new institutions in the constitutional structure is a correction to the ways and systems of state power due to demands for reform and aspirations that develop in society (Moynihan 2004). Zainal A. Mochtar stated that the tendency to form institutions such as Independent Agencies becomes inevitable because state institutions whose performance is unsatisfactory are involved in corruption, collusion, and nepotism, and the inability to be independent of the influence of other powers (Mochtar and Satriawan 2009). Thus, the formation of new institutions, such as an independent agency, can be interpreted as an effort to encourage the realization of the ideals of a democratic state (*demokratische rechtsidee*), upholding human rights, as well as a clean and responsible government (Ackerman 2009).

However, even after a long time since the formation of several independent agencies, Indonesia has not shown clear intention in positioning these independent

institutions, for example, in the case involved The Corruption Eradication Commission (KPK). It must be acknowledged that the institutional design of KPK, which is stated in its regulation (Law No. 30 year 2002 Jo. Law No. 19 the year 2019), almost entirely follows the concept of a modern independent Agency. (Ramadani and Mamonto 2018). Despite this, its existence in Indonesia is the most often reaping conflict and being exposed to various issues. Competitions vary from criminalization to the authority dispute between institutions (Ramadani 2020). Furthermore, in 2019, despite public and anti-corruption activists' criticism and strong protests, the government and the DPR still passed Law No. 19 of 2019 concerning Amendments to Law No. 30 of 2002 Concerning the Corruption Eradication Commission, which brought many changes to the KPK's institutional aspects and authority.

Reflecting on the KPK case, it can be said that the prospect of an independent agency in Indonesia does not show a good sign. Although theoretically, the independent agencies are often referred to as a new branch of power (Ackerman 2000), the independent agencies in Indonesia are very much vulnerable to political influence and government intervention. The oligarchic political culture seems to be an unfavorable environment for reforming state institutions, especially Independent Agencies, which were formed to be free from political influence (Funk and Seamon 2009). Furthermore, to this day, there is no common vision and legal politics regarding the position and function of independent agencies, which often leads to attacks and institutional conflicts (Foote 1988). Another important issue is formulating an appropriate and proportionate supervision system for independent agencies. (Christensen and Lægrend 2007). In Indonesia, the independent agencies' supervision system is often carried out excessively, even distorting and reducing the independence of the agencies. (Ramadani and Buana 2020). This clearly cannot be left unchecked because it would contradict the goals of state institutional reform and the vision to create clean and good governance.

3. Conclusion

Statistical data shows that the KPK's performance during the pandemic is not as good as in previous years. The implementation of its current authority does not reflect the aspects of the independence and management of a super body. This is not only caused by external factors such as limitations in the COVID-19 pandemic but also by external interference in the form of policy that affects the institutional independence of the KPK. In addition, internal polemics within the institution have also reduced the KPK's enthusiasm and focus on combating corruption during the pandemic. Such cases indicate a bad prospect for developing independent agencies in Indonesia. If this situation continues, the goals of state institutional reform will fall short. As a result, having a shared vision and legal politics is crucial when considering the role and function of independent state institutions in the Indonesian constitutional system.

References

- Ackerman, Bruce. 2000. "The New Separation of Powers." *Harvard Law Review* 633–729.
- Ackerman, John. 2009. "Independent Accountability Agencies and Democracy: A New Separation of Powers?" in *Twenty-Eighth International Congress of the Latin American Studies Association, Rio de Janeiro, Brazil*.

- Bima, Muh Rinaldy, and Rizki Ramadani. 2019. "Position of Supervisory Board Organ and Its Implications for the Institutional Corruption Eradication Commission." *Law Reform* 16(2):179–97.
- Christensen, Tom, and Per Lægreid. 2007. "Regulatory Agencies—The Challenges of Balancing Agency Autonomy and Political Control." *Governance* 20(3):499–520.
- Dengah, Hendrik, M. Syukri Akub, Slamet Sampurno, and Syamsuddin Muchtar. 2019. "Hand Catch Operation on Corruption Crimes: The Case of the KPK in Indonesia." *JL Pol'y & Globalization* 81:122.
- Farizi, Sofia Al, and Bagus Nuari Harmawan. 2020. "Data Transparency and Information Sharing: Coronavirus Prevention Problems in Indonesia." *Jurnal Administrasi Kesehatan Indonesia* 35–50.
- Foote, Susan Bartlett. 1988. "Independent Agencies under Attack: A Skeptical View of the Importance of the Debate." *Duke LJ* 223.
- Funk, William F., and Richard H. Seamon. 2009. *Administrative Law: Examples and Explanations*. Wolters Kluwer.
- Habibi, Muhammad. 2020. "Independensi Kewenangan Komisi Pemberantasan Korupsi Pasca Perubahan Undang-Undang Komisi Pemberantasan Korupsi." *Cepalo* 4(1):41–54.
- Hutchinson, Terry, and Nigel Duncan. 2012. "Defining and Describing What We Do: Doctrinal Legal Research." *Deakin Law Review* 17(1):83–119.
- Mochtar, Zainal Arifin, and Iwan Satriawan. 2009. "Efektivitas Sistem Penyeleksian Pejabat Komisi Negara Di Indonesia." *Jurnal Konstitusi* 6(3):155.
- Moynihan, Donald P. 2004. "Why and How Do State Governments Adopt and Implement 'Managing for Results' Reforms?" *Journal of Public Administration Research and Theory* 15(2):219–43.
- Putra, Donny Maha. 2020. "Dampak Covid-19 Terhadap Kinerja Keuangan Dan Kinerja Layanan Badan Layanan Umum Di Indonesia." *Jurnal Manajemen Perbendaharaan* 1(1):51–67.
- Ramadani, Rizki. 2020. "Lembaga Negara Independen Di Indonesia Dalam Perspektif Konsep Independent Regulatory Agencies." *Jurnal Hukum Ius Quia Iustum* 27(1):169–92.
- Ramadani, Rizki, and Andika Prawira Buana. 2020. "The Needed but Unwanted Independent Regulatory Agencies: Questioning Their Legitimacy and Control in Indonesia." Pp. 674–84 in *The 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020)*. Atlantis Press.
- Ramadani, Rizki, Yuli Adha Hamzah, and Arianty Anggraeni Mangerengi. 2021. "Indonesia's Legal Policy During COVID-19 Pandemic: Between the Right to Education and Public Health." *JILS (Journal of Indonesian Legal Studies)* 6(1):125–56.
- Ramadani, Rizki, and Moch Andry W. W. Mamonto. 2018. "Independency of the Corruption Eradication Commission of the Republic of Indonesia (KPK RI) in Indicators of Independent Regulatory Agencies (IRAs)." *Substantive Justice International Journal of Law* 1(2):82–94.
- Ramadhana, Kurnia, and Alvin Nicola. 2020. "Pemantauan Kinerja Komisi Pemberantasan Korupsi Desember 2019-Juni 2020."
- Wahab, Mirnawanti, and Rizki Ramadani. 2021. "Environmental Corruption Prevention Policies Through Independent Agencies." *Fiat Justisia: Jurnal Ilmu Hukum* 15(4):327–46.
- Yulianto, Yulianto. 2020. "Politik Hukum Revisi Undang-Undang KPK Yang Melemahkan Pemberantasan Korupsi." *Jurnal Cakrawala Hukum* 11(1):111–24.