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The Authority of the Supervisory Board in the Supervision of the Corruption Eradication Commission in Indonesia

Imran Eka Saputra[1], Muhammad Miftah Fauzan[2]

[1]Department of Constitutional Law, Faculty of Law, Universitas Muslim Indonesia, [2]Department of English Education, Faculty of Languages and Literature, Universitas Negeri Makassar, Indonesia

Abstract

Background: The Supervisory Board of the Corruption Eradication Commission (Komisi Pemberantasan Korupsi [KPK]) plays a crucial role in overseeing corruption prevention and prosecution in Indonesia. The establishment of this board has raised legal and institutional questions regarding its authority and its relationship with KPK high officials. **Aims and Objectives:** This study aims to examine the authority of the Supervisory Board in supervising the prevention and prosecution of corruption, analyze the implementation of its supervisory functions, and explore the supervisory model applicable to the KPK. **Materials and Methods:** This research employs a normative legal approach. Data collection was conducted through a literature review, including relevant legal documents, laws, and regulations. The collected legal materials were systematically analyzed and presented as a logically interconnected unit. **Results:** The findings indicate that: (1) The Supervisory Board is an internal part of the KPK and is responsible for overseeing the execution of the KPK's duties and authorities. Based on Law No. 70/PUU-XVII/2019, the Constitutional Court delineates the legal and institutional relationship between KPK high officials and the Supervisory Board, emphasizing that the board is prohibited from interfering in the judicial or *pro justitia* authority of KPK officials. (2) The Supervisory Board exercises its supervision through three main functions: (i) overseeing the KPK's duties and authorities, (ii) drafting and enforcing a code of ethics for KPK officials, and (iii) evaluating the performance of KPK leaders and employees. (3) The Supervisory Board conducts preventive supervision by requiring KPK high officials to notify the board regarding wiretapping, confiscation, and searches. This notification process is essential for ensuring internal synergy while maintaining the integrity of corruption investigations. **Conclusion:** The Supervisory Board plays a critical role in ensuring accountability within the KPK through preventive and evaluative oversight. While its authority is limited in judicial matters, its preventive functions contribute to internal governance and procedural integrity. Further legal refinements may be necessary to enhance the balance between supervisory authority and operational autonomy.

Keywords: Authority, Corruption Eradication Commission, Komisi Pemberantasan Korupsi, supervision, supervisory board

Introduction

Corruption is very detrimental to state finances or the state economy and hampers the growth and continuity of national development, so it must be eradicated to create a just and prosperous society. In the International Public Law, the definition of corruption is included in several international acts, such as the 2003 United Nations Convention and the 1999 Council of Europe Convention.[1] Corruption is commonly understood as the abuse of public office for private gain. It involves behavior on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed. Therefore, a corruption is a form of seeking personal gain.[2] The normative definition of corruption is explained in 13 articles in the Law (Undang-Undang [UU]) of the Republic of Indonesia Number 31 of 1999 concerning the Corruption Eradication Commission (UU 31/1999) in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (UU 20/2001).

The study conducted by Jon S. T. Quah and the provisions of the United Nations Convention against Corruption

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Address for correspondence: Dr. Imran Eka Saputra, Department of Constitutional Law, Faculty of Law, Universitas Muslim Indonesia, Makassar, Indonesia. E-mail: imranekasaputra.fh@umi.ac.id

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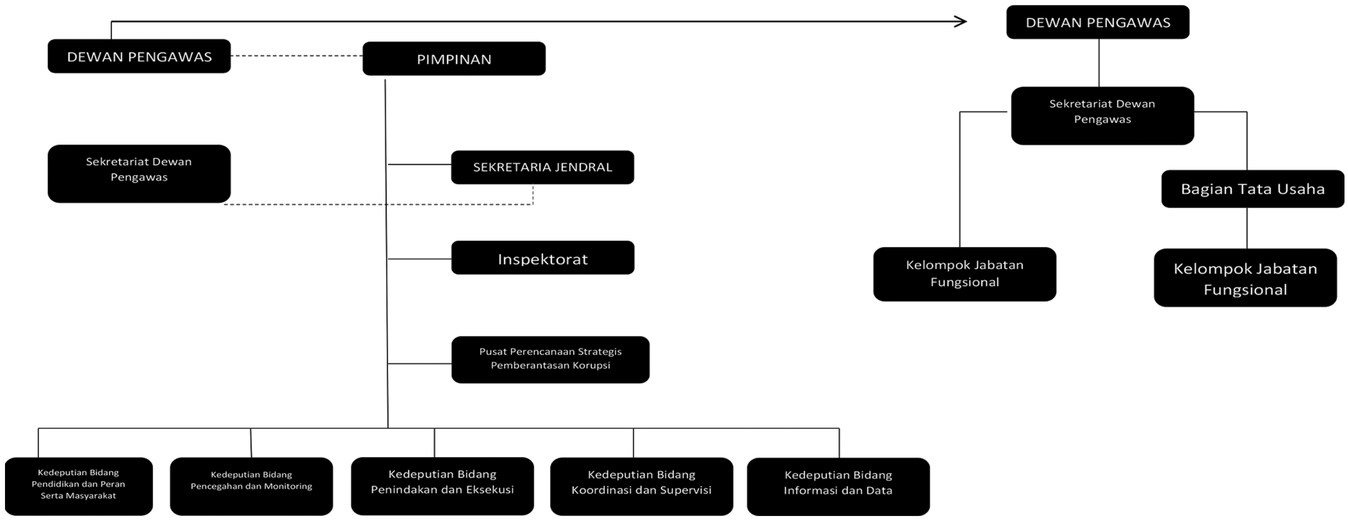

Figure 1: KPK Organizational Structure. KPK: Komisi Pemberantasan Korupsi

Figure 2: KPK Supervisory Board Regulation. KPK: Komisi Pemberantasan Korupsi

are complementary concepts to understand the policy of eradicating corruption in a country. The study explains that political commitment, regulations, and anti-corruption institutions are the main factors for the success of eradicating corruption in government. In accordance with the provisions of Article 43 of UU 31/1999, the Law of the Republic of Indonesia Number 30 of 2002 (UU 30/2002) concerning the Corruption Eradication Commission was issued as the legal basis for the Corruption Eradication Commission (Komisi Pemberantasan Korupsi [KPK]).[3]

The organizational structure illustrated in the Figure 1 demonstrates the governance and operational framework of Indonesia's Corruption Eradication Commission (KPK). The supervisory function is vested in the Dewan Pengawas (Supervisory Board), which operates independently from the Pimpinan (Leadership). The board is supported by its own Secretariat and functional groups. In parallel, the Leadership oversees the Secretariat General, Inspectorate, Strategic Planning Center, and five deputy divisions responsible for education, prevention, enforcement, coordination, and data management. This structure reflects a clear separation of powers, ensuring accountability, transparency, and institutional integrity in anti-corruption governance.

The Figure 2 illustrates the four main regulations established by the Supervisory Board of the Corruption Eradication Commission (KPK) of Indonesia in 2020. These regulations are: (1) the Code of Ethics Regulation, which provides ethical standards and behavioral guidelines for KPK personnel; (2) the Enforcement of the Code of Ethics Regulation, which outlines procedures for enforcing ethical conduct; (3) the Trial Procedure Regulation, which governs the examination and trial process for violations of the Code of Ethics; and (4) the Performance Evaluation Guidelines, which specify the procedures for evaluating the performance of KPK leaders and employees. Together, these regulations aim to strengthen ethical governance, ensure procedural fairness, and enhance institutional accountability within the KPK.

In the context of realizing a just, prosperous, and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the eradication of corruption that has occurred until now has not been carried out optimally. Therefore, the Eradication of Criminal Acts of Corruption needs to be improved professionally, intensively, and continuously because corruption has harmed state finances, the state economy, and hampered national development. In addition, government institutions that handle corruption cases have not functioned effectively and efficiently in eradicating corruption; therefore, an independent Corruption Eradication Commission (KPK) was formed with the task and authority to eradicate corruption.

The Corruption Eradication Commission (KPK) institution underwent a renewal after the government together with the legislature ratified the amendments to Law 30/2002, namely the Law of the Republic of Indonesia Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.

Figure 3: SOP. Recapitulation of SOPs in the Secretariat of the KPK Supervisory Board. KPK: Komisi Pemberantasan Korupsi, SOP: Standard Operational Procedure

The existence of the KPK institution in Article 3 of Law 19/2019 provides a different definition, namely the KPK as a clump of executive power which in carrying out its duties and authorities is independent and free from the influence of any power.

In the last 15 years, KPK has enforced major corruption cases including arresting more than 1000 public officials with a success rate of more than 75%, carrying out supervision of law enforcement efforts in corruption cases, and instilling a spirit of integrity in society. This shows the need to follow various efforts to strengthen the performance of the commission.[4] However, in its development, the performance of the KPK is felt to be less effective. This may include weak coordination between law enforcement lines, violations of the code of ethics by KPK leaders and staff, as well as problems in the implementation of duties and authorities including wiretapping issues, weak coordination in preliminary and full investigations, and overlapping authorities with other law enforcement agencies.

The authority of KPK as regulated in UU 30/2002 is very strong and broad, perhaps even stronger than the authority of other law enforcement institutions in dealing with corruption cases, such as the police and the prosecutor's office. However, this large and broad authority also carries the risk of abuse of authority by the KPK. In line with this, Lord Acton states that power tends to corrupt, and absolute power corrupts absolutely.

Figure 3 illustrates the distribution of 39 Standard Operational Procedures (SOPs) within the Secretariat of the KPK Supervisory Board, categorized according to specific supervisory tasks. The largest proportion, comprising 14 SOPs, is related to administrative governance. This is followed by 8 SOPs concerning the formulation and enforcement of the KPK code of ethics, 7 SOPs regarding oversight of KPK's duties and authority, and 6 SOPs related to granting or rejecting wiretapping, searches, and seizures. Additionally, 4 SOPs focus on evaluating the performance of KPK leaders and employees. This categorization highlights the institutional emphasis on both ethical oversight and administrative support in the governance structure of the KPK Supervisory Board.

Several facts on the implementation of the duties and authorities of the KPK which tend to be out of power and prone to abuse of power can be traced in the following cases: decision number 469/Pdt. G/2011/South Jakarta District Court sentenced the KPK to pay compensation of Rp. 100,000,000 and return Syarifuddin's money which was confiscated by the KPK of around Rp. 2,000,000,000 because the KPK was proven to have confiscated and searched outside evidence, which is considered as acts against the law that cause harm to Syarifuddin. In another case, the pretrial application submitted by the suspect Ilham Arif Sirajuddin was granted by the South Jakarta District Court decision number 32/Pid. Prap/2015/South Jakarta District Court. The court stated that the KPK did not yet have solid evidence. In this case, the KPK submits evidence or the existence of evidence with photocopies which are considered invalid.

Based on the facts above, it appears that although corruption is seen as an extraordinary crime that requires extraordinary actions and extraordinary powers, behind it all requires strong evidence that is based on applicable legal procedures. Therefore, it is necessary to reform the law so that the prevention and eradication of corruption acts effectively.

The Corruption Eradication Commission (KPK) institution underwent a renewal after the government together with the legislature ratified the amendments to UU 30/2002, in the name of the Law of the Republic of Indonesia Number 19 of 2019 concerning the Second Amendment to the Law Number 30 of 2002 concerning the Corruption Eradication Commission (UU 19/2019).

Based on Article 30 of the KPK Law, the high officials of the KPK institution are obtained through a mechanism of checks and balances between the President and the House of Representatives, which has a lower position than the internal supervisory agency as established with the aim of carrying out its supervisory function. In addition, in *a quo* Law, the Supervisory Board is given the task of granting or not granting permission for the wiretapping, search, and/or confiscation process. The KPK high official is part of the KPK institution which consists of five members of the Corruption Eradication Commission with the status of state officials. This clearly does not describe the law enforcement process that is based on corridors or legal considerations, particularly regarding the consideration of granting search permits, confiscation permits, and/or wiretapping permits.

Therefore, the function of supervision and control is nonnegotiable, including for the KPK. However, there needs to be an appropriate supervisory model to oversee the work of the KPK. Controlling is an activity aimed at ensuring that state administration is in accordance with the plan. If it is related to government law, supervision can be interpreted as an activity aimed at ensuring the government's attitude so that it runs according to applicable law. In constitutional law, supervision means an activity aimed at ensuring the implementation of state administration by state institutions in accordance with applicable law.

The aforementioned explanation shows that there is a controversy to the presence of the Supervisory Board in conducting the duties and authorities of the KPK. For this reason, it is important to conduct a study of the KPK Supervisory Board in the authority of the Supervisory Board of KPK.

Research Method

This study implements normative legal research. Peter Mahmud Marzuki stated that legal research is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced. This research was conducted to provide a systematic explanation of the themes raised (legal categories) as well as to explain the difficult areas in the theme. This research is expected to provide predictions regarding matters related to the themes raised in future.

The approach used in this article is as follows:

Legislative approach (statute approach)

In the statutory approach method, researchers need to understand the hierarchy and principles in statutory regulations.

Conceptual approach

The conceptual approach is performed when the researcher does not move from the existing legal rules because there are no legal rules for the problems at hand. In using a conceptual approach, researchers need to refer to legal principles. These principles can be found in the views of scholars or legal doctrines.

Case approach

The case approach is an approach that is carried out by examining cases related to the issues at hand which have become court decisions that have permanent legal force.

Comparative approach

This is a type of approach that researchers try to compare both with other countries and with events that have occurred in one country.

Source of legal material

The sources of this writing are taken from primary and secondary legal materials. Primary legal materials consist of legislation, official records, or treatise in the making of legislation and judge's decisions. Meanwhile, secondary legal materials are all publications on law which are not official documents. In this article, the primary legal material is obtained from:

1. The 1945 Constitution of the Republic of Indonesia
2. Law of the Republic of Indonesia Number 31 of 1999 concerning the Corruption Eradication Commission
3. Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption
4. Law of the Republic of Indonesia Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission
5. Government Regulation Number 4 of 2020 concerning the Procedures for Appointing the Chairperson and Members of the Supervisory Board of the Corruption Eradication Commission
6. Regulation of the President of the Republic of Indonesia Number 91 of 2019 concerning the Implementing Organs of the Supervisory Board of the Corruption Eradication Commission
7. Presidential Decree (Keppres) of the Republic of Indonesia Number 140/P of 2019 concerning the Appointment of Membership of the Supervisory Board of the Corruption Eradication Commission for the 2019–2023 term.

Secondary legal materials in the form of texts regarding legal scholarship relevant to the discussion in this article are obtained from books, journals, papers, and electronic data sources.

Analysis of legal materials

Once a legal issue is determined, it is necessary to conduct a search to find legal materials that are relevant to the legal issues at hand. The primary legal materials and secondary legal materials that have been collected are then grouped and reviewed based on the approach used. In this study, the conceptual approach, the legislative approach, and the historical approach were used. With a conceptual approach that is carried out a search of legal books (treatises). The law books contain many legal concepts. The approach to legislation that must be taken in this research is to look for laws and regulations regarding or relating to these legal issues. Legislation in this case includes both in the form of legislation and regulations and even delegated legislation and delegated regulations. Moreover, with a historical approach, researchers can understand the changes and developments in the philosophy that underlies the rule of law.

Results and Discussion

The authority of Supervisory Board of Komisi Pemberantasan Korupsi

The position of the Supervisory Board introduced by Law 19/2019 invites polemics; some consider that the presence of the Supervisory Board actually slows the movement of the Corruption Eradication Commission because *pro Justitia* actions must first obtain permission from the Supervisory Board. However, the opposite view assumes that the Supervisory Board makes *pro Justitia* actions by the Corruption Eradication Commission more accountable and measurable.[5]

The theory of supervision and control between one branch of power and another branch of power includes the separation of powers and distribution of powers, where one of the well-known theories is the *Trias Politica* theory introduced by Montesquieu. There are several forms of supervision in constitutionalism, namely the form of separation of powers (separated), the distribution of power (distributed), and the division of power (divided).[6]

Ideally, the relationship between the supervisory function and power is cooperative, mutually controlling and balancing each other (checks and balances). To achieve a cooperative relationship between supervisors and power holders, it is necessary to have a clear elaboration of who supervises, how to conduct supervision, and when supervision is performed. For this reason, there are three models of supervisory institutions that are references and are optional, including:[6]

Internal control model

Internal supervision is supervision conducted by the organization itself by forming a supervisory unit in its institution. Usually, this supervisory model is not a special institution that is permanent but is formed when there are certain problems or are *ad hoc*, such as ethical violations that must be resolved.

Semi-internal supervision model

The semi-internal supervision model can also be called the semi-external supervision model where supervision is carried out by other institutions that are still in the same branch of power. An example is the Election Supervisory Body and the General Election Commission.

External monitoring model

The external supervision model is a supervision model that is completely separate and is outside the branch of authority of the institution being supervised. This supervisory model is closely related to the concept of checks and balances, in which the branches of power exercise control over each other, for example, the judiciary's oversight of the implementation of regulations implemented by the executive.

In addition to functioning as a KPK supervisor, a Supervisory Board was also established to create a checks and balances mechanism. The principle of checks and balances means that every branch of power can monitor and balance every other branch of power. Where the scope of checks and balances is that there is no supreme government agency.[7] This means that the system of checks and balances in the administration of power allows for control between existing branches of power and avoids hegemonic, tyrannical, and centralized power actions. This system prevents overlapping of existing authorities.[8] Likewise, with Jimly Asshidiqie's opinion, the existence of a system of checks and balances results in state power being able to be regulated, limited, and even controlled as well as possible, so that abuse of power by state officials who occupy positions in state institutions can be prevented and handled as well as possible.[9] As mandated by the 1945 Constitution of the Republic of Indonesia, in terms of carrying out state functions, Indonesia uses the principle of distribution of power with a system of checks and balances. This system of checks and balances emphasizes the importance of supervising and controlling relationships between various state institutions. It is intended to effectively limit the power of each branch of power.[10]

Prior to the establishment of the Supervisory Board, the KPK had already had an advisory team. The KPK advisory team is regulated in Article 21, paragraph 1 (b), Article 22, Article 23, and Article 24 of Law Number 30 of 2002 and is also regulated in Government Regulation (Peraturan Pemerintah [PP]) Number 63 of 2005 concerning the KPK Human Resource Management System (PP No. 63 Year 2005).[11] In the provisions of Article 23 of Law no. 30 of 2002, the function of the advisory team is to provide advice and considerations in accordance with their expertise to the KPK in carrying out the duties and authorities of the KPK. Members of the advisory team are appointed by the KPK based on their expertise to provide advice or consideration (UU Republik Indonesia Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi, 2002).

UU 19/2019 is considered confusing by some legal experts. Achmad Ali stated that if what you want to study is the effectiveness of certain legal rules, it will appear that different factors affect the effectiveness of each of these different legal rules. If what we are going to examine is the effectiveness of legislation, we can say that the effectiveness of a legislation depends on several factors, including:[12]

a. Knowledge of the substance (content) of the law
b. Ways to acquire such knowledge
c. Institutions related to the scope of legislation in the community
d. The process of the birth of a legislation, which should not be born in a hurry for instant (momentary) interests, which is termed by Gunnar Myrdall as sweep legislation, which has poor quality and is not in accordance with the needs of the people.

According to Zainal Arifin Muchtar, this law has given very confusing implications and it is natural that a law should not be confusing; formally, it should have clarity and a clear concept that can be implemented. In this case, how the law then imposes an independent state institution is made with the concept of dualism internally. While several independent state institutions have not found a Supervisory Board, even if there is a supervisory board that is not an equal part, for example, the Financial Services Authority (Otoritas Jasa Keuangan [OJK]) has an audit board but in principle and implementation is not equal where the institution only audits the performance of the OJK.

The Supervisory Board in carrying out its functions in the area gives permission for wiretapping, searches, and confiscations. According to Zainal Arifin Muchtar, the concept of supervision is not regulated by law, in this case the provisions will only state that the Supervisory Board has the authority to fire or dismiss. Sending one letter, then the letter in 1 month later issued a decree of termination, but with that, there is no other mechanism. If an objection arises to the dismissal, it can be submitted to the State Administrative Court (Pengadilan Tata Usaha Negara [PTUN]), but in the PTUN provisions regulated by Law Number 30 of 2014 concerning Government Administration, it requires to go through an administrative appeal process before being submitted to the PTUN, but the position of appeal administration is in question. This causes confusion due to unclear concepts.

In essence, based on Article 1 paragraph (3) of the 1945 Constitution, it is stated that Indonesia is a state of law. The concept of the rule of law is understood in philosophy or political theory which determines several basic reasons for the law, or as a procedural means needed by those who govern under the law. The concept of the rule of law is both prescriptive and protective. Prescriptive because it stipulates the actions required by law. Protective because it dictates that the government must act according to the law.

According to Jennings, the rule of law doctrine contains several components[13] including:
a. The country is governed by law
b. It includes the principle of separation of powers to prevent dictatorship or absolutism
c. It includes the principle of equality
d. It contains the idea of independence.

The characteristics of the separation of powers in a rule of law can be distinguished into several aspects by G. Marshall in his book Constitutional Theory, including differentiation, legal incompatibility of office holding, isolation or immunity or independence, checks and balances, and coordinate status and lack of accountability.[14]

Aspects of checks and balances are often used as words that adorn the course of the rule of law doctrine, where in this aspect each branch balances the strengths of the other branches. With the balance of power, it is hoped that there will be no abuse of power in each of the organs of power.[14]

The KPK as a state institution within the executive power family that is independent and free from any power in carrying out its duties is affirmed in Article 3 of Law 19/2019. According to the theory of independence proposed by Artidjo Alkostar, the concept of independence consists of two key dimensions: Institutional independence, which refers to the autonomy of an institution from external interference, and Functional independence, which concerns the ability of individuals within the institution to carry out their duties freely and without undue influence. Institutional independence (institutional) means as an independent institution and must be free from intervention by other parties outside the system. While functional independence is independence in carrying out its duties and functions.[15] Based on their function, state institutions can be divided into primary state institutions and secondary or auxiliary state institutions. Among these institutions, sometimes there are also so-called self-regulatory agencies, independent supervisory bodies, or institutions that carry out a mixed function of regulatory, administrative, and sentencing functions which are usually separated but are carried out simultaneously by the government. These newly established institutions include some that are even classified as quasi-nongovernmental organizations.[9]

Self-regulatory agencies are organizations or institutions that carry out a certain level of regulatory authority over a profession. Regulatory authority can be applied as a complement to existing government regulations, or it can also function to fill the void of existing government regulations and supervision. Meanwhile, independent supervisory bodies are independent institutions that have the task of supervising another body based on the relevant legal provisions. Then, institutions that carry out mixed functions are institutions that carry out regulatory, administrative, and punitive functions simultaneously.[16] Understanding the specific nature of the KPK in wiretapping to ensure accountability, a Supervisory Board can be formed which is responsible to the House of Representatives (Dewan Perwakilan Rakyat) which is specifically regulated in law.[17]

These criteria at least require that state institutions which in carrying out their functions and duties limit human rights, including wiretapping by the KPK, must obtain supervision that can be carried out by 3 elements, namely (a) parliament, (b) judicial bodies, or (c) an independent body. Although conceptually and ideally the regime for monitoring and licensing wiretapping through judges/chairmen of courts has legal legitimacy and human rights, in Indonesia, this thinking is not completely linear with public perception of the judiciary.[17]

The institutional structure of the Supervisory Board is included in the KPK as stated in Article 21 of Law 19/2019, namely the KPK consists of:
a. The Supervisory Board of five people
b. High officials of the KPK consisting of five KPK members
c. KPK staff.

Based on KPK Regulation Number 6 of 2020, which governs the organization and work procedures of the Secretariat of the KPK Supervisory Board. Description: The KPK Supervisory Board compiles the duties, functions, organizational structure, and working procedures of the secretariat of the Supervisory Board as mandated by Article 4 and Article 6 of Presidential Regulation Number 91 of 2019 concerning the Implementing Organs of the KPK Supervisory Board. The secretariat of the KPK Supervisory Board consists of:
a. The Administrative Section is responsible for preparing and managing general administrative affairs while also providing support for activities within the Secretariat of the KPK Supervisory Board.
b. The Functional Position Group is responsible for delivering specialized services to support the duties and functions of the KPK Supervisory Board Secretariat, in accordance with their respective fields of expertise and skills.

Some long-standing anti-corruption activists have expressed their determination to persist despite the legal uncertainties that emerged following the enactment of Law Number 19 of 2019. One of the members of the Supervisory Board who was a speaker at the launch of the International Transparency Survey said that “I want to stay because otherwise the eradication of corruption will be very uncertain.”

Tumpak Hatorangan Panggabean as chairman of the KPK Supervisory Board in the follow-up session of Law 19/2019 for Cases 59, 77, 79, 70, 62, 71, 73/PUU-XVII/2019 said that the KPK Supervisory Board was appointed by the President who in his position was not hierarchical but is positioned on a par with the KPK high officials. This nonhierarchical position makes the KPK Supervisory Board more independent. However, in Law 19/2019, there are no provisions governing the authority of the Supervisory Board and the status of its position other than its duties.[18]

The regulation on the existence of the Supervisory Board is in Article 37B paragraph (1) letter b which states, to grant permission or not to give permission for wiretapping, search and or confiscation. Wiretapping or interception can be defined as an activity to listen, record, divert, alter, inhibit, and or record the transmission of electronic information and or electronic documents of a public nature, using either wired or wireless communication networks, such as electromagnetism or radio.[19]

Regarding the position of the Supervisory Board within the KPK's organizational structure, its role is crucial in overseeing the commission's functions. Additionally, there are assessment-related concerns regarding its effectiveness, authority, and impact on KPK's overall performance. In the KPK, the high officials are in charge of evaluating the performance of KPK employees, but if the high officials are for Echelon II and Echelon I, then the performance appraisal is assessed by the KPK Leader which, in relation to providing incentives, members of the Supervisory Board in status are equal to Echelon I. Meanwhile in the structure the KPK organization, if the Echelon I level means the leader assessing the performance of the Supervisory Board, this is not appropriate. The high officials assess the Supervisory Board, while the members of the Supervisory Board oversee the performance of the KPK high officials or organization.

According to Alexander Marwata, the position of the Supervisory Board should be equated with that of a commissioner within the company, so that it is outside the management structure whose job is to oversee organizational performance, in this case the KPK. As for wiretapping, the existence of the Supervisory Board is not an obstacle because all wiretapping applications submitted are always approved by the Supervisory Board. The high official's role is to forward the permit application submitted by the Deputy of Enforcement to the Supervisory Board. Quality assurance on wiretapping is on the Supervisory Board because the investigator will be asked to expose it on the Supervisory Board. The high officials only pass through a letter of application submitted by the deputy of enforcement to the Supervisory Board that there are wiretapping activities that need to be approved by the Supervisory Board.

In order to work optimally, the KPK Supervisory Board sets the direction of its work by translating the tasks it carries out as mandated by the new KPK Law. The KPK Supervisory Board discussed and made an agreement with the KPK high officials regarding the supervisory work system to be carried out. In addition, this year, the KPK Supervisory Board also built a regulatory infrastructure in the form of 4 KPK Supervisory Board regulations, 7 KPK Supervisory Board decisions, and 39 standard operational procedures.

The position and authority of the Komisi Pemberantasan Korupsi after the constitutional court decision

Several parties argued that the KPK Law was not aligned with the spirit of corruption eradication and subsequently filed objections with the Constitutional Court through a judicial review of Law 19/2019. These cases included Case Number 59/PUU-XVII/2019, filed by a group of advocates and graduate students from As-Syafi'iyah Islamic University, and Case Number 62/PUU-XVII/2019, submitted by an individual applicant, Gregorius Yonathan Deowikaputra. Then, Case Number 70/PUU-XVII/2019 was submitted by academics from the Universitas Islam Indonesia (UII). Furthermore, Case Number 71/PUU-XVII/2019 was submitted by students from various universities. Likewise, Case Number 73/PUU-XVII/2019 was submitted by Ricki Martin Sidauruk and Gregorianus Agung who are students and Case Number 77/PUU-XVII/2019 was submitted by a combination of students. Finally, Case Number 79/PUU-XVII/2019 was submitted by a number of KPK leaders for the 2015–2019 period. Of the seven cases, one case was partially granted, namely Case Number 70/PUUXVII/2019 which was submitted by academics from the Islamic University of Indonesia (UII). Five other cases were rejected by the Court and one case was declared inadmissible

Based on Article 12B of UU 19/2019 stipulates that

The wiretapping as referred to in Article 12 paragraph (1) shall be carried out after obtaining written permission from the Supervisory Board

a. To obtain the permit mentioned in paragraph (1), a written request must be submitted by the Chairperson of the Corruption Eradication Commission
b. The Supervisory Board must provide a written decision on the request mentioned in paragraph (2) within 24 hours from the time the request is submitted
c. In the event that the high officials of the Corruption Eradication Commission obtains written permission from the Supervisory Board as referred to in paragraph (3), wiretapping is carried out no later than 6 months from the receipt of written permission and can be extended 1 time for the same period of time.

Article 37B paragraph (1) letter b of Law 19/2019 stipulates that "the Supervisory Board is in charge of granting permits or not granting permits for wiretapping, search and/or confiscation."

Article 47 paragraph (1) of Law 19/2019 stipulates that "in the investigation process, investigators can conduct searches and confiscations with written permission from the Supervisory Board."

The three articles above are basically related to the authority of the KPK Supervisory Board in terms of giving permission or not giving permission to the KPK to conduct wiretapping, search, and/or confiscation. According to H. D. Stout authority is an understanding that comes from the law of government organizations, which can be explained as a whole set of rules relating to the acquisition and use of government authority by public legal subjects in public relations.[20]

Based on the substance of the article mentioned above, the petitioners in their posita/fundamentum petendi then considered that the Supervisory Board hindered the performance of the KPK in eradicating corruption. Several reasons were later stated by the applicants, including:

a. Institutionally, the chairman and members of the Supervisory Board themselves are formed by the president who is an executive institution
b. The aforementioned articles conflate the Supervisory Board, which is established by the executive agency, with its authority over *pro justitia* actions—an area that falls exclusively within the jurisdiction of the courts.
c. Decisions made by the Supervisory Board may not be independent. For example, what if the person who wants to be tapped by the KPK is the chairman or member of the Supervisory Board himself, his wife/husband or even his family? If the Supervisory Board refuses to give permission, then the decision violates the principle of fair legal certainty
d. In a comparative study, although a Supervisory Board was formed at the Independent Commission Against Corruption, Hong Kong, its authority is not related to coercion. Supervision related to coercion is actually located and owned by the court. In other words, wiretapping, search, and/or confiscation by investigators must be based on written permission from the court.

Based on the arguments put forward by the petitioners above, the court then considered that against Article 12B paragraph (1) of Law 19/2019, the wiretapping carried out by the KPK must obtain written permission from the Supervisory Board. With regard to this provision, the Court will first consider the position of the Supervisory Board based on Law 19/2019. The Supervisory Board is inherently an internal part of the Corruption Eradication Commission which has the duty as a supervisor to prevent abuse of authority. As one of the elements of the KPK, the Supervisory Board has the duty and authority to oversee the implementation of the duties and authorities of the KPK. In this sense, the position of the Supervisory Board is not hierarchical with the KPK high officials so that in the grand design of eradicating corruption, the two do not supervise each other but synergize with each other in carrying out their respective functions. The KPK in carrying out its judicial duties and authorities is independent and free from the influence of any power, including when the KPK conducts wiretapping as a form of depriving people of their freedom (right to privacy), which is part of pro justitia.

The existence of a provision that requires the KPK to seek permission from the Supervisory Board before wiretapping is carried out cannot be said to be the implementation of checks and balances because basically the Supervisory Board is not a law enforcement officer as has the authority of the KPK high officials and therefore does not have the authority related to pro justitia. The Supervisory Board supervises the implementation of the duties and authorities of the KPK so that the possibility of irregularities in the implementation of the duties and authorities can be avoided. In that context, the integrity factor alone cannot be implemented without the control of other parties. Within the limits of reasonable reasoning, the existence of such control is a tool to prevent the occurrence of various possible deviations (abuse of power) as long as it is not related to judicial authority (pro justitia).

Based on the above considerations, the constitutional court emphasized that the obligation of the KPK high officials to obtain permission from the Supervisory Board to conduct wiretapping is not only a form of interference (intervention) against law enforcement officials by institutions carrying out functions outside of law enforcement, but more than that is a form of the real form of overlapping authority in law enforcement, especially the *pro justitia* authority which should only be owned by law enforcement agencies or officials. For example, in Indonesia, the *pro justitia* authority is only owned by the police, prosecutors, courts, and the KPK (which has a law enforcement function).

Wiretapping actions conducted by the KPK must be subject to oversight and control, rather than being used arbitrarily. However, this oversight should not be in the form of a permit that implies intervention in law enforcement or suggests that KPK high officials are subordinate to the Supervisory Board. The court ruled that wiretapping by KPK high officials does not require prior approval from the Supervisory Board; instead, they are only required to notify the board. The specific mechanism for this notification will be determined alongside legal considerations related to authorization for searches and/or confiscations by the KPK in future legal deliberations.

This issue also relates to Article 37B paragraph (1) and Article 47 paragraph (1) of Law 19/2019, which classify wiretapping, search, and confiscation as *pro justitia* acts. Therefore, the authority of the Supervisory Board in this context should not be interpreted as granting or denying permission for these actions. Instead, it should be understood as a requirement for the KPK to notify the Supervisory Board, rather than seeking its approval.

In order to avoid any abuse of authority related to acts of wiretapping, searches, and/or confiscation by the KPK in connection with the supervisory function carried out by the Supervisory Board, according to the court, in relation to the wiretapping, search, and/or confiscation, the KPK only notifies the Supervisory Board at least no later than 14 working days since the wiretapping is carried out, while the search and/or confiscation is notified to the Supervisory Board no later than

14 working days after the completion of the search and/or confiscation. Furthermore, based on the provisions of Article 38 of UU 19/2019, related to searches, the provisions stipulated in Law Number 8 of 1981 concerning the Criminal Procedure Code (Kitab UU Hukum Acara Pidana) are required, which requires permission from the chairman of the local district court and in urgent circumstances. A search may be carried out first and then immediately report to obtain the approval of the chairman of the local district court, as regulated in the provisions of Article 33 and Article 34 of the Criminal Procedure Code. Therefore, the search and/or confiscation by the KPK no longer requires permission from the Supervisory Board. As for confiscation, on the basis of a strong suspicion that there is sufficient preliminary evidence, the KPK can confiscate without the permission of the head of the district court.

Necessary changes to the Supervisory Board and its potential role in supporting corruption enforcement. After the Constitutional Court's decision, the regulation of the mechanism for notification of the KPK leadership to the Supervisory Board regarding the *pro justitia* authority possessed by the KPK needs to be immediately drawn up. The supervisory function attached to the KPK Supervisory Board is expected to strengthen the implementation of the duties and authorities of the KPK in order to prevent irregularities or arbitrary behavior at the KPK.

Conclusion

The position of the KPK Supervisory Board in Law 19/2019 is part of the internal KPK tasked with overseeing the implementation of the duties and authorities of the KPK: (1) supervision of the implementation of the duties and authorities of the KPK; (2) granting/rejecting wiretapping, search, and confiscation permits; (3) preparation of the code of ethics for KPK personnel and their enforcement and trial; and (4) performance evaluation of KPK high officials and employees. After the Constitutional Court's decision Number 70/PUU-XVII/2019, there was a change in the duties of the Supervisory Board that was not authorized in the judicial or *pro justitia* authority of KPK high officials. The action of granting/rejecting wiretapping, searching, and confiscation permits was revised to be noticing of wiretapping, searching, and confiscation.

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Conflicts of interest

There are no conflicts of interest.

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