

The Role of the Supervisory Board of the Indonesian Corruption Eradication Commission as the Watcher of the Watchers: Encouraging or Inhibiting the KPK's Work?



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ABSTRACT: This research examines the role and complex relationship between the Corruption Eradication Commission (KPK) and its Supervisory Board, with a focus on the Supervisory Board's function as a supervisor of accountability and integrity. The KPK Supervisory Board, which is known for its vigorous anti-corruption initiatives, has institutional control over the organization. This study examines how this supervision impacts the effectiveness of the Corruption Eradication Committee and considers whether the Supervisory Board supports efforts to eradicate corruption or is actually an obstacle to efforts to eradicate corruption. The history of the development of the KPK, the formation and duties of the Supervisory Board, as well as the legislative structure that regulates its affairs, are all included in the examination. In addition, this research also evaluates specific cases where the Supervisory Board's actions influenced the direction of KPK investigations and activities. This research takes a balanced approach, respecting the value of accountability systems but also considering any weaknesses resulting from overly burdensome supervision. The role of the Supervisory Board in preventing abuse of power, harmony between autonomy and accountability, and the impact of the Supervisory Board's decisions on the effectiveness and morale of the Corruption Eradication Commission are some of the main themes raised. Through critical analysis of these elements, this research adds a deeper understanding of the complex interactions between the Corruption Eradication Commission and its Supervisory Board and sheds light on the broader discussion in Indonesia regarding institutional checks and balances and anti-corruption initiatives.

KEYWORDS: Supervisory Board, Corruption Eradication Commission, Corruption, Watcher of the watcher

I. INTRODUCTION

The Corruption Eradication Commission (KPK) is a public body entrusted to the executive branch, to carry out its functions and authority, namely preventing and eradicating corruption, independently and not influenced by other powers. The functions and authority of the Corruption Eradication Commission are clearly contained in the provisions of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. Article 6 of Law Number 19 of 2019 emphasizes that the KPK in carrying out its functions and authority must be based on legal certainty, openness, process accountability, public interest, proportionality and respect for human rights. The Corruption Eradication Commission is responsible to the general public and provides its reports in a transparent and scaled manner to the President, the House of Representatives and the Supreme Audit Agency. Article 6 of Law Number 19 of 2019 concerning the Corruption Eradication Commission clearly states that the Corruption Eradication Commission's duties include:

- a. preventive measures so that Corruption Crimes do not occur;
- b. coordination with agencies authorized to carry out the Eradication of Corruption Crimes and agencies tasked with implementing public services;
- c. monitor the administration of state government;
- d. supervision of agencies authorized to carry out the Eradication of Corruption Crimes;
- e. inquiry, investigation and prosecution of Corruption Crimes; And
- f. actions to implement the judge's determination and court decisions that have obtained a judge's determination and court decisions that have obtained permanent legal force.

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Regarding carrying out its duties and authority, the Corruption Eradication Commission is assisted by the Supervisory Board. The Supervisory Board is part of the KPK institution which was formed to ensure compliance with the principles contained in Article 5 of the law. Supervision activities carried out by the Supervisory Board include monitoring the implementation of the KPK's duties and authority, evaluating the performance of the KPK leadership, as well as examining and prosecuting witnesses for violations of the code of ethics for KPK leaders and employees. The Supervisory Board of the Corruption Eradication Commission was formed and carries out its duties in accordance with Article 37B of Law Number 19 of 2019, namely : supervise the implementation of the duties and authority of the Corruption Eradication Commission; giving permission or not giving permission for wiretapping, search and/or confiscation; prepare and establish a code of ethics for the Leaders and Employees of the Corruption Eradication Commission; receive and follow up on reports from the public regarding alleged violations of the code of ethics by the leadership and employees of the Corruption Eradication Commission or violations of the provisions of this Law; holding a hearing to examine alleged violations of the code of ethics by the leadership and employees of the Corruption Eradication Commission; and evaluate the performance of the Corruption Eradication Commission Leadership and Employees periodically 1 (one) time in 1 (one) year.

The presence of the Supervisory Board seems to clearly mean that the Corruption Eradication Committee (KPK) no longer exists as an independent state institution but rather directly receives intervention from other parties, in this case the Supervisory Board, although in this Law it is also explained in relation to the status or position of the Supervisory Board which is directly institutions are also included in one unit with the Corruption Eradication Commission. The Corruption Eradication Commission in carrying out its duties and authority to eradicate criminal acts of corruption must obtain permission from the KPK Supervisory Board. This makes it difficult for the Corruption Eradication Commission to carry out its functions and authority as an independent institution. Article 37B of Law Number 19 of 2019 clearly regulates the duties of the Supervisory Board. Furthermore, Article 37B letter b is one of the articles that stands out and brings out many advantages and disadvantages for various groups of society.

Provisions regarding granting authority and refusing to grant authority to the Corruption Eradication Commission (KPK) regarding wiretapping, searches and/or confiscations indicate that the Corruption Eradication Commission's independent and non-interventionist nature has been revoked. This can certainly hinder the work of the Corruption Eradication Commission (KPK) in every process of eradicating corruption in Indonesia. "The presence of the KPK Control Body seems to be a new opportunity for government officials to commit criminal crimes of corruption, because to carry out their functions and authority, they must first have permission from the KPK Supervisory Body".¹

The existence of the KPK Supervisory Board with its duties and authorities as regulated in Article 37B of the KPK Law is considered to be one of the controversial provisions, because the supervisory board was formed whose duties and authorities are stated in that Article. Article 37B of the Corruption Eradication Committee Law weakens and hampers the independence of the Corruption Eradication Commission. The presence of the Supervisory Board has caused many losses and attracted a lot of criticism and speculation from various groups such as academics and practitioners. These issues need to be taken into consideration by the judicial authorities in carrying out their judicial functions. The implementation and application of the existence of the Corruption Eradication Committee (KPK) is actually very useful in strengthening the function of the Corruption Eradication Commission, but if we look at it in more detail, the presence of this supervisory board seems like direct intervention in the KPK's status as an independent institution. The presence of the Supervisory Board provides an understanding that the possibility of hampering the KPK's performance could occur. Therefore, the formulation of the problem in this research is; Can the role of the Supervisory Board of the Indonesian Corruption Eradication Commission support the aim of establishing the Corruption Eradication Commission as an institution to eradicate criminal acts of corruption? And what is the legal policy for the supervisory board of the Indonesian Corruption Eradication Commission to make it effective for the Corruption Eradication Commission? This research aims to examine further matters related to the existence of the Supervisory Board, as well as to find out how the legal policy for the Indonesian Corruption Eradication Commission Supervisory Board is effective in the KPK Institution.

¹ E. Fernando M. Manullang, Misinterpretation of Gustav Radbruch's Ideas regarding the Philosophical Doctrine of Validity in the Formation of Laws, Legal Journal Vol. 5 No. 2 (2022)

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II. RESEARCH PROBLEM

Based on the background of the problem that has been discussed, the problem formulation taken in this research is:

1. Can the role of the Supervisory Board of the Indonesian Corruption Eradication Commission support the aim of establishing the Corruption Eradication Commission as an institution to eradicate criminal acts of corruption?
2. What is the legal policy for the Supervisory Board of the Indonesian Corruption Eradication Commission so that it is effective for the KPK Institution?

III. RESEARCH METHOD

This research is normative legal research, this type of research examines the existence of the Supervisory Board which refers to existing legal norms or statutory regulations. Data collection was carried out by taking primary legal materials, namely the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), Law Number 19 of 2019 concerning the Corruption Eradication Commission, as well as secondary legal materials obtained from Corruption Perception Index data. (IPK) in Indonesia before and after the existence of the KPK supervisory board, as well as various other reading references. This type of research is reform-oriented research. Terry Hutchinson stated that reform-oriented research means critically improving the appropriateness of existing legal regulations and then recommending changes to regulations that are deemed inappropriate.² This research uses a conceptual approach to find out existing conceptualizations and theories, such as the theory of the vitality and effectiveness of the KPK Supervisory Board as watcher of the watcher.

IV. LITERATURE REVIEW

A. Role and Function of the Corruption Eradication Commission in Indonesia

Corruption is classified as a special crime and of course requires efforts to eradicate it through special measures. Handling of criminal acts of corruption in Indonesia is handled by the Corruption Eradication Commission (KPK). The duties, authority and obligations of this institution are clearly regulated in Law Number 19 of 2019 concerning the Corruption Eradication Commission. The Corruption Eradication Committee (KPK) is a special law enforcement agency, meaning that all efforts to eradicate and prosecute corrupt criminal behavior in Indonesia can be maximized. Even though the Corruption Eradication Commission is not the core law enforcement institution in the integrated criminal justice system in Indonesia, its duties and authorities, as well as the responsibilities it must carry out, are part of law enforcement in Indonesia, especially the prevention and prosecution of crime. violation. corrupt behavior. The Corruption Eradication Commission is an organic commission, namely a commission that was born from Law Number 30 of 2002 concerning the Corruption Eradication Commission, which started from the public's distrust of the institution that investigated criminal corruption behavior in the past, the prosecutor's office.³ government and police, as well as general concerns regarding the widespread criminal acts of corruption that occur and are carried out by government officials or those who have power. The definition of the Corruption Eradication Commission is clearly stated in Article 3 of the Corruption Eradication Commission Law which states "The Corruption Eradication Commission is a state institution within the executive power group, which in carrying out its functions and authority, independently and without any influence from other powers. Regarding the function of the Corruption Eradication Commission, it has been clearly regulated in Article 6 of the Corruption Eradication Commission Law which clearly states "The Corruption Eradication Commission is responsible for implementation responsibilities. : a. preventive measures so that Corruption Crimes do not occur; b. coordinating with agencies authorized to carry out the Eradication of Corruption Crimes and agencies tasked with implementing public services; c. monitor the administration of state government; d. supervision of agencies authorized to carry out the Eradication of Corruption Crimes; e. inquiry, investigation and prosecution of Corruption Crimes; and f. actions to implement the judge's determination and court decisions that have obtained permanent legal force."

The KPK was established with the aim of increasing the effectiveness and efficiency of efforts to eradicate corrupt criminal practices. In carrying out its functions and authority, the Corruption Eradication Committee relies on legal certainty, openness, accountability, public interest and proportionality. Corruption prevention and prevention are interdependent concepts. If effective efforts to eradicate corruption already exist, are effective and are known to potential perpetrators of corruption, then

² Terry Hutchinson, *Researching and Writing in Law*, Thomson Reuters (Professional) Australia Limited, Pyrmont, 2018, h. 7.

³ Muhammad Syahrudin, *Keberadaan Dewan Pengawas Komisi Pemberantasan Korupsi Pasca Revisi UU KPK*, Kajian Pembaruan Hukum, 31 Januari 2022. h. 87

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these efforts to eradicate corruption can have a strong deterrent effect for those who try to commit acts of corruption. The fear of being caught is a powerful deterrent.⁴

Based on this interpretation, it can be concluded that the Corruption Eradication Commission exists as a body whose function is to monitor and take action against all forms of criminal acts of corruption which are the common enemy of state managers in running the government so that it can run well, creating a government free from corruption, apart from that the Commission Corruption Eradication also plays an active role in supervising the government and its public institutions with the aim of preventing criminal acts of corruption, by carrying out investigations and investigating cases involving criminal acts of corruption, as well as carrying out wiretapping, searches and inspections, as well as collecting evidence. Apart from that, the Corruption Eradication Commission also plays a role in prosecuting perpetrators of corruption in court, plays a role in the trial process, provides legal support to victims of criminal acts of corruption, and plays a role in supervising decision making and implementing sanctions as well as returning assets resulting from criminal acts of corruption. The important role of the Corruption Eradication Commission is expected to help overcome and reduce corruption systematically and wisely.

B. Role and Function of the Corruption Eradication Commission (KPK) Supervisory Board

Based on Law Number 19 of 2019 concerning the Second Amendment to Law Number 19 of 2002, the role of the KPK supervisory board is needed because there are legal updates or improvements so that the prevention and eradication of corruption in Indonesia runs well and in detail. The role of the KPK Supervisory Board is to supervise the implementation of the functions and authority of the Corruption Eradication Commission. The supervision carried out by the Supervisory Board over the Corruption Eradication Commission (KPK) is fundamentally easy to understand, but to implement and have correct and real limits regarding the supervision carried out by the supervisory board is very difficult to understand. The role of the supervisory board as in Article 37B of Law number 19 of 2019 is:

1. supervise the implementation of the duties and authority of the Corruption Eradication Commission; give permission or not give permission for wiretapping, search and/or confiscation;
2. prepare and establish a code of ethics for the Leaders and Employees of the Corruption Eradication Commission;
3. receive and follow up on reports from the public regarding alleged violations of the code of ethics by the leadership and employees of the Corruption Eradication Commission or violations of the provisions of this Law;
4. holding a hearing to examine alleged violations of the code of ethics by the leadership and employees of the Corruption Eradication Commission; And
5. evaluate the performance of the Corruption Eradication Commission Leadership and Employees periodically 1 (one) time in 1 (one) year.

Apart from the role of the KPK supervisory board in Article 37B of Law Number 19 of 2019, there is a role for the KPK supervisory board according to Constitutional Court Decision No. 70/PUU-XVII/2019, namely supervising the implementation of the duties and authority of the Corruption Eradication Commission; prepare and establish a code of ethics for the Leaders and Employees of the Corruption Eradication Commission; receive and follow up on reports from the public regarding alleged violations of the code of ethics by the leadership and employees of the Corruption Eradication Commission or violations of the provisions of this Law; holding a hearing to examine alleged violations of the code of ethics by the leadership and employees of the Corruption Eradication Commission; evaluate the performance of the Corruption Eradication Commission Leadership and Employees periodically 1 (one) time in 1 (one) year.

Constitutional Court Decision No. 70/PUU-XVII/2019, namely a request for a wiretapping permit from the KPK Supervisory Board, in this case a wiretapping permit is not necessary, because the Supervisory Board is not a law enforcement officer. There is no need to carry out search permits and seizure permits from the KPK Supervisory Board because they are not elements of law enforcement. The KPK Supervisory Board is related to the role and function of the Supervisory Board. The existence of the Supervisory Board in the Eradication of Corruption (KPK) is to promote the supervisory function of the implementation of the functions and authority of the Corruption Eradication Commission itself which is not yet available in the Commission's organs. The function of the KPK Supervisory Board includes checks and balances which function to prevent arbitrariness or abuse of power by the KPK and must balance organizational power that is too high/strong⁵.

⁴ Ulang Mangun Sosiawan, Peran Komisi Pemberantasan Korupsi (KPK) Dalam Pencegahan Dan Pemberantasan Korupsi, Pendidikan Hukum De Jure Vol.19 No.4 (Desember 2019) h. 522-524

⁵ Iqbal Maulanan, Mas Anienda Tiem Fitriyah, Peran Dewan Pengawas KPK Dalam Sistem Ketatanegaraan Di Indonesia, Law and Social Political Governance Vol. 3 No.1 (Januari-April 2023), h. 965

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C. Supervisory Board as Watcher Of The Watcher

The KPK institutional organ consists of three core parts in accordance with Article 21 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission, which confirms that the Corruption Eradication Commission (KPK) consists of a "Council Supervisors totaling five people; Leadership of the Corruption Eradication Commission which consists of 5 five members from the Corruption Eradication Commission; Supervisor of the Corruption Eradication Commission." The supervisory board is part of the KPK institution. The formation of the supervisory board aims to monitor the implementation of the KPK's duties and authority in accordance with those mandated in Article 37a paragraph (1) of the KPK Law.

The existence of the supervisory board has become a hot topic of discussion, the articles explaining the existence, function, duties and authority of the KPK supervisory board have also become one of the articles that has attracted quite a lot of public attention and is considered a controversial article. Some parties argue that the KPK's independent status has been stripped away by the existence of this supervisory board. However, not all parties think that the existence of this supervisory board will disrupt or hinder the work of the Corruption Eradication Commission. Mahfud M.D, one of the constitutional law experts who currently serves as the coordinating minister for political, legal and security affairs, supports the existence of the KPK Supervisory Board on the grounds that the KPK needs to be supervised because some KPK commissioners are sometimes unaware of the existence of sting operations (OTT). Kurnia Ramadhana, a researcher at Indonesian Corruption Watch (ICW), believes that the formation of the KPK management is prone to conflicts of interest. The directors' duties also pose a risk of danger as they determine wiretapping and eavesdropping orders, where information can be leaked to members of the DPR and the Indonesian government. In this case, the reason is that the members of the KPK Supervisory Board are appointed by the President and in the following period these members are selected by the DPR, especially those selected through the political party process to elect the Board Supervisor.

At the end of 2019, President Jokowi officially appointed five members of the KPK Supervisory Board for the period 2019 to 2023, where the five members of the Supervisory Board consisted of Artidjo Alkostar, Harjono, Albertina Ho, Tumpak Hatorangan Panggabean and Syamsudin Haris.⁶ The Supervisory Board, which carries out its supervisory function over the work of the Corruption Eradication Committee, is expected to guarantee equality of rights before the law and also prevent arbitrary actions. In Lotulung's opinion, "supervision is needed by all state institutions to avoid irregularities, and is aimed at maximizing performance. "Therefore, the formation of this Supervisory Board is a check and balance so that the KPK is guaranteed to carry out its authority in accordance with the rules". Indonesia Corruption Watch (ICW) believes that the existence of this supervisory board will slow down the KPK's performance in eradicating corruption because the problem lies in the existence of the Control Board, an institution that has a big influence in decision making, especially on the issue of licensing investigations and allowing wiretapping, which is called -says it will slow down the decision-making process. Therefore, even though there are quite a lot of people who are qualified in the legal field, the problems that arise with the existence of this supervisory board cannot still be eliminated.

The Corruption Eradication Commission's efforts have actually developed into various efforts, such as preventive and enforcement efforts; Examples include efforts to monitor, synchronize, investigate, prosecute and inspect.⁷ In fact, the Corruption Eradication Commission (KPK) is expected to lead institutions in eradicating corruption quickly. Investigation, inquiry and prosecution or also known as a trigger mechanism are the authorities of the Corruption Eradication Commission in the context of prevention and action. Approaching the reform era, the Corruption Eradication Committee (KPK) has developed into a reliable state institution tasked with eradicating corrupt practices. The Corruption Eradication Commission (KPK) is considered to have had a positive impact in its formation by saving state finances in both preventive and repressive forms.⁸

The Corruption Eradication Committee (KPK) strategy in eradicating corruption is still considered aggressive, the Corruption Eradication Commission (KPK) prioritizes prosecution over preventing criminal acts of corruption. In reality, aggressive action efforts such as those made by the Corruption Eradication Commission have not resulted in significant effectiveness in reducing

⁶ Kedudukan Dewan Pengawas KPK Terhadap Eksistensi KPK Dalam Pemberantasan Korupsi di Indonesia, Jurnal Simbur cahaya, Vol. XXIX No.2, Desember 2022, h. 311.

⁷ Bambang Widjojanto & Abdul Fickar Hadjar, Reformasi Dikorupsi, KPK Dihabisi: Sebuah Catatan Kritis, Malang, Intrans Publishing, 2020, h. 59.

⁸ Ridwan Azali, Efektivitas Peran Komisi Pemberantasan Korupsi Dalam Langkah Pencegahan Tindak Pidana Korupsi Pada Pejabat di Indonesia Periode 2015-2020, Das Sollen Kajian Kontemporer Hukum dan Masyarakat, ISSN 1111-1111, Oktober 2022

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corrupt practices. Apart from that, these changes are also related to the corrupt behavior of government officials. The Corruption Eradication Committee (KPK) strategy has so far prioritized enforcement rather than prevention. This has resulted in fundamental weaknesses in the Corruption Eradication Commission (KPK) Law, the absence of an independent, external oversight agency for the Corruption Eradication Commission (KPK) to ensure that the Corruption Eradication Committee (KPK) does not abuse its authority and carry out irresponsible actions and makes the Corruption Eradication Commission a political tool that violates the law, law and ethics and can maintain its independence and integrity. The presence of the KPK supervisory board also acts as a watcher of the watcher (supervisor rather than supervisor) of independent state institutions that monitor criminal acts of corruption, in this case the Corruption Eradication Commission (KPK).

D. Legal Policy for the Corruption Eradication Commission Supervisory Board to Be Effective at the KPK Institution

The endless and unresolved corrupt practices in Indonesia are the basis for changes to the Corruption Crime Law. The government is responding to this problem by strengthening the KPK institution through changes to the KPK Law. The uncontrolled increase in criminal acts of corruption will bring disaster not only to the life of the national economy but also to the life of the nation and state in general. Widespread and systematic criminal acts of corruption are also violations of the social and economic rights of the community, and therefore all criminal acts of corruption can no longer be classified as ordinary crimes but have become extraordinary crimes. Likewise, efforts to eradicate it can no longer be carried out normally, but require extraordinary methods.⁹

Theoretically, the purpose of supervision by the supervisory board of the corruption eradication commission is to prevent potential deviations in authority by the Corruption Eradication Committee (KPK) from undesirable actions. In addition, it can identify the extent to which institutional policies are adhered to and the extent to which work is carried out well, according to procedures, and as expected. According to Saiful Anwar, supervision or control over the actions of government officials is necessary so that the implementation of assigned tasks can achieve goals and avoid deviations.¹⁰ UU no. 19 of 2019 concerning the Corruption Eradication Commission clearly regulates the duties and authorities of the KPK supervisory board. The implementation of duties by the supervisory board is further regulated in Presidential Regulation of the Republic of Indonesia No. 91 of 2019 concerning the Implementing Organ for Supervision of the Corruption Eradication Commission. This supervisory implementing organ is called the Secretariat of the Corruption Eradication Commission Supervisory Board. The task of this implementing organ is to provide operational administrative and technical support to the KPK Supervisory Board. Transparency International Indonesia (a global corruption observer), stated that the Corruption Perception Index (CPI) score in 2019 was 40 out of 100. This result shows that the best efforts to eradicate corruption completely in all components of the country are being carried out well and optimally. It cannot be denied how difficult it is to resolve the problem of corruption in Indonesia, even law enforcement officials are still unable to stop the increasing number of corrupt practices. Thus, corruption is ingrained in almost all government institutions in Indonesia.

From a substantive perspective, one of the disturbing contents of the a quo Corruption Eradication Commission Law is the presence of a Supervisory Board within the KPK. The existence of the Supervisory Board is disorienting because it has authority that it should not have.¹¹ In this case, the Supervisory Board is considered not only to supervise the performance of the Corruption Eradication Commission but is considered to be able to weaken the institution. Article 21 paragraph (1) letter a. In accordance with the provisions of Article 37A paragraph (1) of Law Number 19 of 2019 which states that in order to supervise the implementation of the duties and authority of the Corruption Eradication Commission, a Supervisory Board is formed, as well as Article 37B paragraph (1) letter a which states that one of the duties of the Commission's Supervisory Board Corruption Eradication is to supervise the implementation of the duties and authority of the Corruption Eradication Commission, so it can be said that the position of the KPK supervisory board is as supervisor of the KPK. Based on Article 21, it can be interpreted that the Supervisory Board is also the KPK. If Article 37A paragraph (1) which states that in order to supervise the implementation of the duties and authority of the Corruption Eradication Commission, a Supervisory Board is formed, is based on Article 21, then it can be interpreted that the Supervisory Board supervises the Corruption Eradication Commission which includes the Supervisory

⁹ Arman Tjoneng, Christin Septina Basani, Novalina Sidabutar, Menguji Kewenangan Dewan Pengawas Komisi Pemberantasan Korupsi Dalam Pemberian Izin Pengegedahan Sebagai Tindakan Merintang Proses Penyidikan (Obstruction- Of Justice), *Esensi Hukum*, Vol. 2 No. 2 Desember 2020. H. 58-61

¹⁰ Saiful Anwar, *Sendi-Sendi Hukum Administrasi Negara*, (Jakarta: Glora Madani Press, 2004), h.127.

¹¹ Muhammad Helmi Fahrozi, "Telaah Dewan Pengawas Komisi Pemberantasan Korupsi dalam Perspektif Aliran Sociological Jurisprudence", *Lex Jurnalica* vol. 17, No. 3 (Desember 2020): h. 307.

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Board. In other words, it could be said that the Supervisory Board supervises the supervisory board or the KPK supervises the KPK. This means that if Article 37A paragraph (1) is based on Article 21, it will produce a vague meaning; The Supervisory Board supervises the Supervisory Board. The urgency of forming a policy for the Corruption Eradication Commission Supervisory Board as stated in article 37 B of Law Number 19 of 2019, is deemed inappropriate, in fact it actually weakens or limits the KPK's room for movement in implementing the Corruption Eradication, which should strengthen and encourage the KPK in eradicating corruption. in Indonesia.

V. RESULT AND DISCUSSION

A. Legal Certainty Value Theory

According to Gustav Radbruch, the value of legal certainty is the condition that the law can function as the regulations must be obeyed and implemented. This understanding of the value of legal certainty provides an illustration that the law must be in accordance with human behavior and humans must carry out the laws that have been made. "Gustav Radbruch, an expert, put forward 3 basic ideas or objectives of law, namely justice, expediency, legal certainty." The three ideas or objectives of law cannot be separated in order to create welfare and prosperity for society. The value of legal certainty can be interpreted as clarity of norms, so that they become a way of life for society in accordance with regulations. Legal certainty is also interpreted as the clarity and firmness of the laws that apply in society. An explanation regarding the value of legal certainty must be that there is certainty between legal substance and law enforcement that is in line and does not depend on legal certainty, but rather that legal certainty is carried out in accordance with legal principles and norms to uphold legal justice.¹²

Gustav Radbruch's theory is that the values of benefit, justice and legal certainty cannot be separated from each other. These three values are interconnected with each other. This legal certainty is a completely different requirement and requires validity. The value of legal certainty must be in accordance with the facts and normative law. Gustav Radbruch's value of legal certainty has an important meaning in that not all reject legal certainty, but awareness of legal certainty is an important value in the legal system. The value of legal certainty needs to place higher moral values such as the value of justice. The fairness of the value of legal certainty is also relative and is understandable in conditions of maintaining the success of unfair consequences.

Based on Gustav Radbruch's theoretical explanation, the above application of the value of legal certainty can also be a reference tool for the Corruption Eradication Commission in dealing with corruption problems by establishing a supervisory board. The supervisory board formed by the President based on Article 37B of Law number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission must carry out its duties and authority. However, seen from another perspective, the presence of the KPK supervisory board actually does not provide legal certainty for the Corruption Eradication Commission (KPK) as an independent institution, because as in Article 37B the supervisory board's task is to hinder the KPK's performance in eradicating corruption, as evidenced by Article 37B letter b regarding give permission or not give permission for wiretapping, search and/or confiscation. Looking at the theory of legal certainty presented by Gustav Radbruch, there is a contradiction regarding the clarity of legal norms and legal firmness in the regulations that are made. Law Number 19 of 2019 hinders the function of the Corruption Eradication Commission (KPK) in carrying out its duties and authority to eradicate corruption because it must obtain permission from the supervisory board. The permission given by the supervisory board is a statement so that it can carry out the KPK's duties, but if this permission is not given by the supervisory board then the KPK will have difficulty carrying out its duties. Returning to the theory of legal certainty must be in accordance with justice, benefit and legal certainty.¹³ The supervisory board is expected to carry out its duties in accordance with the theory of legal certainty, because this will make it easier to eradicate corruption in Indonesia.

B. KPK performance 3 years before the Supervisory Board existed based on the Corruption Perception Index (CPI)

1. Performance KPK in 2016

In 2016, Indonesia consistently showed an increase in efforts to eradicate corruption in the public sector. The eradication of the public sector will not be successful if it is not accompanied by concrete steps or performance by all parties to strengthen business integrity in the business and private sector. In 2016, Indonesia's Corruption Perception Index (CPI) score was at 37

¹² Mario Julyano, Aditya Yuli Sulistyawan, Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum, Jurnal Crepido, Volume 01 No. 01 (Juli 2019) h. 14-15.

¹³ R. Tony Prayogo, Penerapan Asas Kepastian Hukum Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 Tentang Hak Uji Materiil Dan Dalam Peraturan Mahkamah Konstitusi Nomor 06/Pmk/2005 Tentang Pedoman Beracara Dalam Pengujian Undang-Undang, Legislasi Indonesia Vol. 13 No. 2 (Juni 2016), Hal 194-195

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points, up slightly by one point. The CPI score is between 0-100, 0 means the country is very corrupt, 100 means the country is free from corruption. The increase in Indonesia's CPI score proves that the positive results of eradicating corruption in Indonesia are still continuing. The increase in Indonesia's CPI score increased by 5 (five) points in five years. In 2016, Indonesia's CPI score was 37 points and was ranked 90th out of 176 countries surveyed. Indonesia's CPI score rose 1 point and decreased 2 places from last year. This small increase in the CPI score can only overtake Thailand with (score 35, down) always above Indonesia from the last 5 years. The increase in Indonesia's CPI score has not been able to surpass Malaysia with a score of 49, Brunei with a score of 58 and Singapore with a score of 85. It should be seen that Indonesia is slightly better than Thailand and the Philippines, Vietnam and Myanmar, Cambodia. Indonesia will soon be on par with other countries whose CPI index is the same or higher than the regional and/or global average. Indonesia's entry into the G20 group will be a driving force for this improvement. This is based on the main recommendations from Transparency International (TI) in the 2016 Corruption Perception Index.¹⁴

2. Performance KPK in 2017

Corruption perception index (CPI) Indonesia's 2017 Corruption Perception Index (CPI) performance was 37 and was in 96th position out of 180 countries surveyed. Indonesia's CPI score at this point is the same as last year, namely 2016.¹⁵ The CPI score is in the range 0-100, 0 means the country is very corrupt, while 100 means it is free from corruption. There are 4 data sources that provide an increase in Indonesia's CPI, namely the World Economic Forum, Global Insight Country Risk Ratings, Bertelsman Foundation Transformation Index, IMD World Competitiveness Yearbook, two of which experienced stagnation and two experienced a decline. Transfarcy International provides recommendations to the government, private sector and civil society to play an active role in efforts to combat corruption in Indonesia, namely first, the government must strengthen anti-corruption policies, in particular regional governments can improve and use survey results as a reference for determining anti-corruption policies at the local level. Public organizations such as ministries, institutions, law enforcement officials and the House of Representatives at all levels are also trying to improve their systems. Second, economic entities must have anti-corruption policies and systems within the company to maintain a good reputation and avoid the risk of corruption. Third, civil society must monitor anti-corruption programs between the government and the private sector as a basis for positive and constructive assessments of public accountability.

3. Performance KPK in 2018

The performance KPK based on the 2018 Corruption Perception Index is that Indonesia has participated as one of the countries assessed for the umpteenth time, meaning that based on the 2018 Corruption Perception Index (CPI) it is ranked 89th out of 180 countries surveyed with a score of 38.¹⁶ This score increased by 1 point from the previous year, namely 2017. This proves that anti-corruption efforts are being implemented by various parties, both the government and the Corruption Eradication Committee, as well as business and society. This increase was contributed by the birth of a number of business convenience packages and investment-friendly licensing sectors, while the decline in scores was triggered by the rise of corrupt practices in the Indonesian political system. According to the Secretary General of Transparency International Indonesia, Dadang Trisasongko, a cross-analysis of data on democratic corruption trends throughout the world revealed that corruption is an epidemic that destroys democracy, corruption actually encourages democracy to produce a vicious circle, destroying democratic institutions, so the political system and democracy must be repaired to avoid this. corruption. Felim Salim as Chair of the Management Board of Transparency International Indonesia said that all exponents of the anti-corruption movement must work together in line with how to eradicate corruption. Fragile democratic countries, where the political rights of their citizens are not respected, actually become a prosperous ground for the practice of political corruption. Building democracy so that there is more dignity in terms of people's political rights being recognized, safeguarded and protected. Corruption can be fought and strengthen parts of democracy for real progress. Corruption Perception Index (CPI) data which provides the improvement of Indonesia's CPI in 2018 is Global Insight Country Risk Ratings and Political and Economy Risk Consultancy. Global Insight Country Risk Ratings made the largest increase with a value of 12 points from last year, due to the emergence or birth of a number of business convenience packages and investment-friendly

¹⁴ Transparency International, Corruption Perception Index 2016, <https://riset.ti.or.id/corruption-perceptions-index-2016/>, 1 Desember 2023

¹⁵ Transparency International, Corruption Perceptions Index 2017, <https://riset.ti.or.id/corruption-perceptions-index-2016/>, 1 Desember 2023

¹⁶ Transparency International, Corruption Perceptio0ns Index 2018, <https://ti.or.id/corruption-perception-index-2018/>, 1 Desember 2023

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licensing sectors. Political and Economic Risk Consultancy gave the largest decrease to IMD World Competitiveness with 3 points. The decline in scores was due to widespread corrupt practices in the Indonesian political system.

Based on the explanation above, data taken from Transparency International Indonesia (TII) in 2016, 2017, and 2018 saw an increase and decrease in the performance of the Corruption Eradication Commission in the 3 years before the supervisory board existed. This increase and decrease can be seen from 2016-2018. The existence of the Corruption Eradication Commission (KPK) before the Supervisory Board existed has increased. This is proven from the last three years. Indonesia's CPI score has risen 5 points in the last five years. The eradication of corruption carried out by the Corruption Eradication Commission lies in the public sector. Eradicating corruption in the public sector cannot be separated from the real work of all parties in strengthening the integrity of the business sector in Indonesia. Increasing the eradication of corruption in 2016-2018, policies created with an anti-corruption system in the city and each region regarding the private sector with a positive and constructive assessment of public accountability. This private sector has seen very good improvement as seen from the Global Insight Country Risk Ratings and Political and Economic Risk Consultancy. Global Insight Country Risk Ratings which makes business easier and investment-friendly licensing. This increase proves that the KPK's work is one step better before the supervisory board existed. The Corruption Eradication Commission can carry out its duties and authority as an independent institution and in accordance with its functions. There was also a decline in the 3 years before the supervisory board existed. This decline occurred in 2018. Indonesia's perception index score decreased due to the Covid-19 outbreak. The Covid-19 outbreak has seriously damaged existing democracy. Damage to democracy affects the political system. This political system relates to all exponents of political rights that are not addressed. This decline does not hamper the KPK's performance in eradicating corruption. Based on this explanation, before the existence of the KPK supervisory board, it carried out its functions well despite the Covid-19 outbreak.

C. Corruption Perception Index (CPI) Corruption Perception Index (CPI) 2 Years after the Supervisory Board existed

1. Performance KPK in 2020

Corruption Eradication Committee Performance 2 Years after the Supervisory Board existed. In 2020, Indonesia's CPI score was 37/100 and was in 102nd position out of 180 countries surveyed. This score decreased by 3 points from 2019, which that year had a score of 40/100. The decline in Indonesia's CPI score in 2020 clearly proves that many policies that focus on the economic and investment sectors do not pay attention to the integrity sector, which results in corruption. In 2020, Indonesia was hit by the Covid-19 pandemic, this resulted in a large reduction which was combined by Global Insight and PRS carried out by business people for public services to streamline business processes based on the Corruption Perception Index (CPI).¹⁷ On the democracy side, there was a decrease of 2 points given by Varieties of Democracy that in politics there is still deep corruption in Indonesia. Indonesia's CPI score in 2020 is 37, ranking 102, this shows that there are similarities with the country of Gambia, which has the same score and ranking as Indonesia.

2. Performance KPK in 2021

In 2021, Transparency International Indonesia (TII) informed about Indonesia's Corruption Perception Index (CPI) in 2021. In 2021, Indonesia's CPI score increased by 1, from a score of 37 to a score of 38 and ranked 96. Indonesia's CPI score can be said to be at below average, because the Global CPI score is 43. Compared with several countries in the ASEAN region, Indonesia's Corruption Perception Index score is below Singapore (score 85), Malaysia (score 48), Timor Lester (score 41) and Vietnam (score 39). The Indonesian corruption perception index was assessed from the combined results of 9 surveys conducted, data sources, and involving expert assessors. The 9 surveys that serve as benchmarks in the CPI assessment are Political Risk Service, IMD Business School World Competitiveness, Global Insight Country Risk Ratings, World Economic Forum Executive Opinion Survey, Bertelsmann Stiftung Transformation Index, Economist Intelligence Unit Country Risk Service, Political and Economic Risk Consultancy, Varieties of Democracy Project, and World Justice Project Rule of Law Index. Based on these 9 assessment benchmarks, the themes measured and scored by the surveyors include the risks of corruption, economics, transformation, politics, democracy and law enforcement in Indonesia.

Based on the explanation above, data taken from Transparency International Indonesia (TII) in 2020 and 2021, the KPK's performance after the existence of the KPK Supervisory Board resulted in the Corruption Eradication Commission (KPK)

¹⁷ Transparency International, Corruption Perceptio0ns Index 2020, <https://ti.or.id/indeks-persepsi-korupsi-2020-korupsi-respons-covid-19-dan-kemunduran-demokrasi/#:~:text=Indonesia%20sejak%20pertama%20kali%20CPI,dari%20180%20negara%20yang%20disurvei>, 1 Desember 2023

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experiencing serious problems, namely the loss of the KPK's independence. The loss of the KPK's independence was due to changes in Law Number 30 of 2002 concerning the Corruption Eradication Commission to Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. Based on data from the Corruption Perception Index (CPI) after the amendment to Law Number 30 of 2002 and the formation of the Supervisory Board, the Corruption Eradication Commission has not been able to handle the existing corruption problem and resulted in Indonesia experiencing a decline or decline in 2019, namely a score of 40 with a ranking of 85 out of 180 countries. . Based on a survey conducted by Transparency International which had been running for a long time before the enactment of Law Number 19 of 2019, the existence of the KPK supervisory board did not necessarily strengthen the eradication of corruption in Indonesia. This decline resulted in the KPK experiencing slow work. This occurred due to the dualism of leadership in the KPK. The duties and authority of the supervisory board are to give permission and not to give permission for wiretapping, search and/or confiscation. This decline destroyed the existence of the Corruption Eradication Committee (KPK), implemented internally, which changed the tolerance for corruption

The KPK's performance after the presence of the KPK Supervisory Board in the last 2 years, to be precise in 2022, Indonesia will be at a score of 34/100 and ranked 110th out of 180 countries. As a result, Indonesia was able to increase its CPI (Corruption Perception Index) score by 2 points from a score of 32. This condition shows that the Corruption Eradication Committee (KPK) in its practice of eradicating corruption in Indonesia is progressing slowly because the Corruption Eradication Commission (KPK) must obtain permission from the Supervisory Board to carry out investigations and investigations. According to the Secretary General of Transparency International Indonesia J. Danang Widoyoko, the decline or fall in Indonesia's CPI score after the revision of the Corruption Eradication Committee Law in 2019 was "a change in strategy to reduce law enforcement and shift to preventing corruption". This analysis received predictions from various parties, including state officials, regarding the decline in Indonesia's Corruption Perception Index (CPI) score.¹⁸

V. CONCLUSIONS

1. The KPK Supervisory Board formed by the President had the effect of hampering the performance of the Corruption Eradication Commission (KPK) and eliminating the KPK's status as an independent institution. The Corruption Eradication Commission (KPK) in carrying out its duties and authority is assisted by the KPK Supervisory Board, however, in carrying out its duties and authority there are problems regarding granting permission or not giving permission for wiretapping, search and/or confiscation or as in Article 37B letter b of the Law number 19 of 2019 which hinders the performance of the Corruption Eradication Commission (KPK) itself) to deal with Corruption problems in Indonesia, so that in the Corruption Perception Index (CPI) survey after the formation and enactment of Law Number 19 of 2019 and the Supervisory Board resulted in Handling the Eradication of Corruption in Indonesia it is progressing slowly, experiencing setbacks, as well as a fall in the Corruption Perception Index CPI score).
2. The existence of the KPK supervisory board actually does not completely hinder the performance of the KPK, on the other hand, the presence of this supervisory board is a form of prevention against various forms of abuse of power. Supervision carried out by the KPK supervisory board is quite important considering that the supervision carried out is an effort to realize the KPK institution with legal instruments and a comprehensive institutional administration system. The supervision carried out also seeks to ensure that sound institutional governance is maintained and implemented, and that decisions taken regarding its implementation are related to other compliance tools and standard operational procedures. Corruption Eradication Commission. So that the KPK Council becomes an entity that carries out supervisory duties, its presence is also able to reduce public concerns. The presence of the Corruption Eradication Commission Board allows for an accounting of the KPK's performance because they are the ones who handle the reporting which is then submitted to the President. The KPK Council was formed as an effort to supervise organizational operations and mitigate potential risks of abuse of power. The aspect of judicial spirit is also not lost on the presence of the KPK Council because the KPK cannot be separated from it. To ensure that the responsibilities, authority and functions of the Corruption Eradication Commission are carried out in accordance with the relevant legal framework and that corruption in Indonesia can be dealt with more quickly, supervision of the Commission must be carried out by the Corruption Eradication Commission Board.

¹⁸ Sustain, Increases by 1 Score on Indonesia's Corruption Perception Index (CPI) in 2021 Still Below Average, <https://sustain.id/2022/02/03/naik-1-skor-indeks-persepsi-korupsi-cpi-indonesia-tahun-2021-masih-dibawah-rata-rata/>, 1 Desember 2023

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