

# The Position of the Corruption Eradication Commission in Indonesia's Constitutional Law Perspective

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## ABSTRACT

The Corruption Eradication Commission (KPK), as in Law Number 19 of 2019, article 3 reads, "The Corruption Eradication Commission is a state institution within the executive power clump which in carrying out its duties and authorities is independent and free from the influence of any power." However, in carrying out its functions, it does not position itself as one of the "three institutions of power" as in the trias politica theory. As a state institution born from the womb of the reform era, there are many mentions of this new type of institution, including auxiliary institutions, sampiran institutions, state auxiliary institutions, or state auxiliary organs. Some call them sampiran state institutions, state aid agencies, or state commissions. But in principle, the Corruption Eradication Commission (KPK) places itself as an independent state institution related to judicial power but is not under the control of the judicial power. The birth of the KPK in a democratic country is a logical consequence of perfect governance by the principle of checks and balances free from extraordinary corruption crimes. The presence of the KPK in order to answer all public anxiety about corrupt practices in the Republic the KPK is believed to be the god of saving state money rather than other state institutions.

**Keywords:** *Constitutional Law, KPK, State Assistance.*

## 1. INTRODUCTION

After the Indonesian State became autonomous over seventy years prior, Indonesia has encountered different significant occasions in the field of statehood. The disturbances of the nearby individuals, the shift of holders of government power, to the difference in the essential Law of the State have become an indivisible piece of the historical backdrop of this country since its initiation until the most recent couple of years. Perhaps the most noticeable advancements, according to an established perspective, started when the nation experienced unrest after the money-related emergency that brought about the expelling of President Suharto from influence in 1998. After going through a progress period drove by President B.J. Habibie for around two years, the requests for a superior state organization framework started to be acknowledged by the VIP in this country.

In 1999, it turned into an achievement that made the Indonesian individuals mindful of the possibility of sacralizing the 1945 Constitution of the Republic of

Indonesia<sup>4</sup>. One of the helper state organizations framed during the change time in Indonesia is the Corruption Eradication Commission (KPK) which arose dependent on Law Number 30 of 2002 concerning the Corruption Eradication Commission, which has now been changed to Law Number 19 of 2019. This foundation was shaped like a piece of the defilement annihilation plan, which is possibly the preliminary plan for further developing Indonesia's administration. In this manner, the situation of assistant state establishments in the protected framework received by the Indonesian State is intriguing to examine.

The Corruption Eradication Commission is a State foundation that is autonomous and liberated from the impact of any force in carrying out its obligations and specialists. The KPK was framed fully intent on expanding the proficiency and adequacy of endeavors to kill defilement.

## 2. RESULT AND DISCUSSION

### 2.1 Definition of State Institution

The standard term for state organizations is now and again alluded to as government establishments, government offices, departmental hubs, or simply state foundations. Some are shaped dependent on or because the Constitution engages them, some are framed and get their force from the law, and some are even shaped dependent on a Presidential Decree. The chain of command and its situation rely upon the guidelines as per the appropriate laws and guidelines.

The situation of state foundations that are managed and framed by the Constitution are protected organs. At the same time, those shaped dependent on the Act are legitimate organs, while those shaped simply because of a Presidential Decree, obviously, the level and level of lawful treatment of authorities sitting in it. In like manner, If the foundation being referred to is shaped and given force dependent on provincial guidelines, the level is lower.

Since it is a tradition of the old framework, it should be accepted and recognized that in our general public, there is as yet a comprehensive agreement that the idea of state foundations is related to the customary parts of authoritative, chief, and legal force. State establishments are related to the thought of organizations in the domain of authoritative force called administrative foundations. Those in the leader domain are called government establishments, and those in the legal domain are called court establishments.

Accordingly, before the change to the 1945 Constitution, the terms government establishments, departmental foundations, non-departmental government organizations, state organizations, high state organizations, and the most influential state organizations were generally known. In established law, terms are additionally commonly utilized, which allude to a more restricted arrangement, specifically state gear, which is typically connected with the parts of authoritative, leader, and legal power<sup>6</sup>.

As one of the alterations to the 1945 Constitution of the Republic of Indonesia, there are different translations of the term state foundations because of the absence of lucidity of the 1945 Constitution of the Republic of Indonesia in directing state establishments. This can be seen from the shortfall of measures to decide if an establishment can be managed or not in the Constitution.

One of the various interpretations that exist is the interpretation that divides state institutions into state main organs and state auxiliary organs. The central state institutions refer to the trias politica understanding, which separates power into three axes (executive, legislative, and judicial). Using this mindset, the prominent state institutions according to the 1945 Constitution of the Republic of Indonesia are the MPR, the President and Vice President, the People's

Representative Council (DPR), the Regional Representatives Council (DPD), the Supreme Audit Agency (BPK), the Supreme Court. (MA), the Constitutional Court (MK), and the Judicial Commission (KY).

Thus, other institutions that are not included in this category are auxiliary state institutions. After understanding what state institutions are, it is continued by discussing the meaning of auxiliary state institutions and their position in the constitutional system of the Republic of Indonesia<sup>7</sup>.

### 2.2 Position of KPK as a State Institution

In the KPK law, that the position of the Corruption Eradication Commission (KPK) is that the Corruption Eradication Commission is a state institution within the executive power clump which in carrying out its duties and authorities is independent and free from the influence of any power<sup>8</sup>. In carrying out its duties and authorities, the Corruption Eradication Commission is based on:

- a. legal certainty;
- b. openness;
- c. accountability;
- d. public interest;
- e. proportionality; and
- f. respect for human rights.<sup>9</sup>

For this situation, it was likewise accentuated regarding the situation with the presence of a state establishment. The Constitutional Court expressed that in the Indonesian state organization framework, the expression "state foundation" was not generally included as a state organization that was just referenced in the 1945 Constitution of the Republic of Indonesia or shaped dependent on religious orders. Nevertheless, other state organizations are also framed based on orders from guidelines under the Constitution, like laws and surprisingly official pronouncements (Keppres).

The existence and position of the KPK in the structure of the Indonesian State began to be questioned by various parties. The duties, powers, and obligations legitimized by Law Number 19 of 2019 concerning the Corruption Eradication Commission make this commission seem like a super body. As a state organ whose name is not listed in the 1945 Constitution of the Republic of Indonesia<sup>10</sup>.

The nature of being independent and free from the influence of any power is feared to make this institution absolute power in its scope of work. In addition, the particular authority unifying the functions of investigation, investigation, and prosecution in one organ also strengthens the argument that the existence of the KPK tends to deviate from applicable legal principles and does not rule out the possibility of conflicting with the Constitution.

One of the results of the Amendment to the 1945 Constitution of the Republic of Indonesia (the 1945 Constitution of the Republic of Indonesia) was the shift

of the incomparability of Individuals' Consultative Get together (MPR) to the matchless quality of the Constitution. Subsequently, since the reconstruction time frame, Indonesia no longer places the MPR as the most elevated state establishment. All state organizations have an equivalent situation in the arrangement of balanced governance. This is a result of the incomparability of the Constitution, where the Constitution is situated as the most noteworthy law that controls and restricts the forces of state managerial institutions<sup>11</sup>.

The improvement of the idea of *trias politica* likewise impacted changes in the institutional construction in Indonesia. In numerous nations, the old-style idea of partitioning forces is considered unimportant because the three existing elements of force cannot bear the weight of the State in regulating the public authority. To answer these requests, the State shaped another state foundation, which is required to be more responsive in managing genuine state issues. Accordingly, different assistant state organizations were set up as gatherings, commissions, boards, bodies, or specialists, with their obligations and specialists. A few specialists arrange assistant state organizations inside the extent of the leader, yet there are likewise researchers who place them independently as the fourth part of government power.

In the context of Indonesia, the presence of auxiliary state institutions mushroomed after the Amendment to the 1945 Constitution of the Republic of Indonesia. The various auxiliary state institutions were not formed on a uniform legal basis. Some stand on the constitutional mandate, but some are legitimized based on laws or presidential decrees. One of the auxiliary state institutions established by law is the Corruption Eradication Commission (KPK). Even though it is independent and free from any power, the KPK still relies on executive power concerning organizational matters and has a special relationship with judicial power in the prosecution and trial of corruption cases.

In the future, auxiliary state institutions such as the KPK require firmer legal legitimacy and more significant support from the community<sup>12</sup>.

This institution was also formed as a part of the corruption eradication agenda, one of the essential agendas in improving governance in Indonesia. Thus, the position of auxiliary state institutions in the constitutional system adopted by the Indonesian State is still interesting to discuss<sup>13</sup>.

### ***2.3 Definition of Auxiliary State Institutions***

In carrying out their functions, the emergence of state institutions does not position themselves as one of the three *trias politica* institutions has developed in the last three decades of the 20th century in countries that have established democracy. The term "auxiliary state institution" is the most commonly used by experts and scholars of constitutional law. Some argue that the term "supporting state institution" or "independent state

institution" is more appropriate to refer to this type of institution.

M. Laica Marzuki will, in general, keep up with the term state helper foundations rather than "assistant state establishments" to stay away from disarray with different organizations situated under-protected state establishments. The situation of these establishments is not inside the domain of the chief, administrative, or legal parts of the force. Be that as it may, neither can these establishments be treated as private associations or non-legislative associations, which are regularly called NGOs (non-administrative associations) or NGOs (non-legislative associations).

The birth of these supporting state institutions primarily functions as a supervisor for the performance of existing state institutions and is a form of distrust of the existing supervisory institutions. This is part of the crisis of confidence in all law enforcement institutions, from the Attorney General's Office, the Supreme Court, to the Indonesian National Police. Common symptoms faced by these state institutions are often the issue of accountability mechanisms, their position in the state administrative structure, and the pattern of their working relationship with government power, the power to make laws, and the judiciary.

One of the assisting state institutions is the Corruption Eradication Commission (KPK). This institution was formed as a part of the corruption eradication agenda, one of the essential agendas in reforming governance in Indonesia<sup>14</sup>. The formation of this commission is a mandate from the provisions of Article 43 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. Through Law Number 19 of 2019 concerning the Corruption Eradication Commission, this commission is also legally established and has the legitimacy to carry out its duties. The KPK was formed in response to the ineffectiveness of the police and the prosecutor's office in eradicating rampant corruption. The existence of the KPK is expected to encourage the implementation of good governance<sup>15</sup>.

From the outset, this state help office looks like an NGO since it is outside the chief government structure. In any case, its public presence, subsidizing sources that come from general society, and focused on the public interest, settle on it challenging to decision it a NGO in the genuine feeling of the word. A few specialists arrange this sort of free establishment inside the extent of leader power. However, a few researchers also place it independently as the fourth part of government power. Hypothetically, state help offices come from the desire of the State to make new state organizations whose individuals are drawn from non-state components, given state authority, and financed by the State without becoming state representatives.

The possibility of a state help office began from the craving of the State, which was already solid when managing the local area, willing to give freedoms to the local area to direct. Along these lines, even though the

State is solid, it is checked by the local area, so upward responsibility and level responsibility are made. The development of assistant state foundations is likewise expected to answer the requests of the local area for the making of majority rule standards in each organization of government through accountable, independent, and trustworthy institutions.

In addition, another factor that triggers the arrangement of helper state organizations is the tendency in contemporary authoritative hypotheses to move administrative and managerial assignments to be essential for the errands of autonomous establishments. Regarding its inclination, John Birch groups this sort of establishment into two, in particular:

- (1) administrative, what capacities to make governs and direct private relations exercises; and
- (2) warning, what capacities to give information or exhortation to the public authority.

As cited by Alder in Constitutional and Administrative Law, Jennings specifies five fundamental purposes for the foundation of state assistant establishments in an administration. These reasons are as per the following:

1. There is a need to offer social types of assistance and individual administrations that are relied upon to be liberated from the danger of political impedance.
2. There is a longing to direct the market with non-political guidelines.
3. The requirement for guidelines concerning autonomous callings, like the callings in the fields of medication and law.
4. The need to obtain guidelines in regards to administrations of a specialized sort.
5. The rise of different establishments that are semi-legal and the capacity to determine questions outside the court (elective debate goal).<sup>16</sup>

### 3. CONCLUSION

Based on the results regarding the Analysis of the Position of the Corruption Eradication Commission In the perspective of constitutional law in Indonesia, it can be concluded that the position of the Corruption Eradication Commission (KPK) is a state institution within the executive power clump which in carrying out its duties and authorities is independent and free from the influence of any power related to legal force however not under the ward of the legal executive. For this situation it was additionally accentuated concerning the situation with the presence of a state establishment, the Protected Court stated that in the Indonesian sacred framework, the expression "state foundation" is not constantly included as a state organization which is just referenced in the 1945 Constitution of the Republic of Indonesia, or which

shaped dependent on established requests, yet there are likewise other state organizations that are framed based on orders from guidelines under the Constitution, like laws and surprisingly official declarations (Keppres).

The Corruption Eradication Commission (KPK) is explicitly regulated in Law Number 19 of 2019 concerning the Corruption Eradication Commission (KPK) as a form of legal politics to eradicate corruption in the country. Thus, the Corruption Eradication Commission (KPK) as a vital corruption eradication institution is not outside the constitutional system but is placed in a judicial system within the state administration system whose basic framework is already in the 1945 Constitution of the Republic of Indonesia.

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