JLPH: Journal of Law, Politic and Humanities
E-ISSN: 2962-2816
P-ISSN: 2747-1985
https://dinastires.org/JLPH dinasti.info@gmail.com +62 811 7404 455
DOI: https://doi.org/10.38035/jlph.

Disparity of Constitutional Court Decisions on The Position of the Corruption Eradication Commission From the Fiqh Siyasah Perspective

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Abstract: The Constitutional Court Decision No. 36/PUU-XV/2017 states that the Corruption Eradication Commission (KPK) is a state institution in the executive domain. This decision contradicts 3 (three) previous conclusions which stated otherwise that the Corruption Eradication Commission (KPK) is an independent state institution through its decision no. 012-016-019/PUU-IV/2006, No. 5/PUU-IX/2011, Number 49/PUU-XI/2013. This research aims to determine the Constitutional Court Decision Number 36/PUU-XV/2017 regarding the position of the Corruption Eradication Commission as an Independent State Institution in the Indonesian Constitutional Structure. The research method used is juridical-normative legal research with a statutory approach. The data collection technique was carried out by means of library research (library research). This research also reviews the position of the Corruption Eradication Committee (KPK) in the perspective of siyasah fiqh. The concept of the mazalim institution dates back to the Umayyad era. The mazalim institution is a judicial authority that is higher than the al-qada area and the al-hisbah area, namely resolving cases that cannot be resolved by the two judicial institutions. The results of this research explain that Constitutional Court Decision Number 36/PUU-XV/2017 which places the KPK as a state institution whose position and existence is in the executive branch of power has created problems with the KPK's institutional position and relationships. Therefore, the right to inquiry issued by the DPR against the Corruption Eradication Commission is an implementation of the function of legislative oversight of the executive branch (government).

Keyword: Constitutional Court Decision, Corruption Eradication Commission, Independent Institution, Fiqh Siyasah.

INTRODUCTION

The Indonesian state is a state of law. The state of law in question is a state of law based on the values of Pancasila which is the philosophy and foundation of the Indonesian state. A state based on law has the characteristic that all actions or actions of a person, whether an individual, group, or government, must be based on rules that already exist before the action or action is

carried out. The relationship between the state and the law is inseparable, the state creates law but government power is also limited by law, the law provides guarantees and protection of citizens' rights, such as freedom of thought and opinion, freedom of the press, freedom of association and assembly, and guarantees of legal certainty (I Dewa Gede Atmadja, 2017).

The Indonesian Constitution states that the State of Indonesia is a State of Law as clearly stated in Article 1 paragraph (3) of the 1945 Constitution. The concept of the rule of law adopted by Indonesia does not refer directly to the theory of the Rechsstaat or rule of law (Haposan Slallagan, 2016). However, the principles of the Indonesian state of law are based on the principles of the rule of law in general, namely the principle of the supremacy of law and the constitution, the principle of separation or division of powers, the protection and guarantee of human rights, the principle of free and impartial law enforcement that guarantees the equality of everyone before the law without exception and the administration of government based on applicable laws and regulations (Jimly Asshiddiqie, 2017).

The division or dissolution of power is often known as “Trias Politica”. The concept of Trias Politica was first proposed by Montesquieu (French philosopher - 1748), where the term Trias Politica itself comes from the Greek “Tri” which means three, “As” which means axis / center, and “Politica” which means power (Enda Pujiastuti). The definition of Trias Politica is a teaching that views that state power consists of 3 (three) types of power, namely Legislative, Executive, and Judicial. Legislative power is the power that makes laws, executive power is the power that implements laws, and judicial power is the power that adjudicates violations of the law (refo rivaldo, toar neman, and Feiby S. Wewengkang, 2023).

Legislative power is exercised jointly by the DPR, DPD and MPR, executive power is exercised by the President and Vice President assisted by his ministers, and judicial power is exercised by the Supreme Court and the Constitutional Court. After the amendment of the 1945 Constitution, the three branches of power are referred to as the main state institutions that control and balance each other to prevent abuse of power (Jimly Asshiddiqie, 2015).

The momentum of the collapse of the New Order government in 1998, has provided space for the implementation of the government of the Republic of Indonesia with the principle of checks and balances and the principle of the rule of law, through the reform agenda, one of which is the amendment of the 1945 Constitution. At that time, the amendment of the 1945 Constitution was believed to be able to change the structure of state government. Indonesia is increasingly democratic, one of which is the formation of new state institutions, namely the Regional Representative Council (DPD), the Judicial Commission (KY), and the Constitutional Court (MK). According to Jimly Asshiddiqie, changes to the 1945 Constitution can encourage the implementation of the principle of authority, where institutions can control each other and the idea of checks and balances can be realized.

The Constitutional Court was established to ensure that the Constitution as the highest law can be enforced, so the Constitution is referred to as the guardian of the Constitution. No matter how bad a product of legislation, it remains in effect without any institution that can make the slightest deviation, except for the awareness of its own creators who revise or revoke it, because bad legislation products affect the existence of certain interests of its formation to deviate from the constitution and even other laws.

The Constitutional Court also interprets the Constitution so that it is also called the sole interpreter of the Constitution. The existence of the Constitutional Court is interpreted as a guardian of the constitution to strengthen the foundation of constitutionalism in the 1945 Constitution. The establishment of the Constitutional Court did not go as envisioned, even 2.5 months before the end of the period of formation of the Constitutional Court determined by the transitional rules of the 1945 Constitution, the law on the Constitutional Court did not exist and had not been finalized. But in the end, all the obstacles that existed could be overcome thanks to the seriousness of the executive and legislative parties (Feri Amsari, 2013).

Apart from being known as the main state institution, Indonesia is also known as an independent state institution. There are independent state institutions whose names and authorities and functions are mentioned and explained in the 1945 Constitution of the Republic of Indonesia, while there are also those whose formation is only through Laws, Government Regulations, Presidential Decrees, or Regional Regulations. The existence of these independent state institutions is to assist or support the main state institutions (state axuliery organs) (Ni'matul Huda, 2007).

One of the most prevalent independent state institutions in Indonesia is the Corruption Eradication Commission (KPK). The birth of the KPK was one of the major reform agendas. The establishment of the Corruption Eradication Commission (KPK) was a follow-up to the demands of reform aimed at realizing state administration free from corruption, which was an emergency and plagued the country during the new regime. The birth of the KPK was a legal policy to address and implement corruption crimes. Considering Law Number 30 of 2002, the birth of the Corruption Eradication Commission was a reaction to the ineffective and inefficient function of handling corruption cases carried out by government institutions (Attorney and Police).

Although in the decision the Constitutional Court rejected the petitioners' request and stated that the Corruption Eradication Commission is part of the executive power, the votes of the nine Constitutional Court judges were not unanimous. There were four Constitutional Court judges who dissented from the use of the DPR's inquiry right against the Corruption Eradication Commission in this case. There were four judges who expressed dissenting opinions, namely judges Saldi Isra, I Dewa Gede Palguna, Suhartoyo, and Maria Farida. A similar opinion was also expressed by former Constitutional Court Chief Justice Mahfud MD who emphasized that the decision was different from the three previous Constitutional Court decisions, namely decisions No. 012-016-019/PUU-IV/2006, No.5/PUU-IX/2011, and No. 49/PUU-XI/2013. The four decisions emphasized that the KPK is an independent institution that does not exist in the executive, legislative, and judicial realms (Asrizal and Sobirin Malian, 2021).

From the description above, the Constitutional Court Decision Number 36/PUUXV/2017 has explicitly classified the position of the KPK in the Indonesian constitutional structure as part of the executive power. This has implications for the institutional independence of the KPK as an independent state institution that is ideally outside the classical trias politica institutional model. If the KPK institution is included in the executive power group, then its existence is under the authority of the president as the chief executive. In addition, the a quo decision makes Indonesia's institutional design very central. This means that all other independent state institutions such as the KPU, KY, Bawaslu, Ombudsman and others must be included in the trias politica institutional model. However, if we look historically at the beginning of the formulation of Indonesian institutions and also refer to the dynamics of modern constitutional development, then this is true. Indonesia does not rigidly adhere to a separation of powers model that is only centered on the three branches of state power. So it is very important for this research to analyze this further.

METHOD

The research method used is normative juridical legal research with a statutory approach. The research conducted refers to legal norms contained in laws and court decisions as well as norms prevailing in society or customs prevailing in society. Data collection techniques are carried out by means of library research (library study). Sourced from Constitutional Court Decision No. 012-016-019/PUU-IV/2006 on the Existence of the Corruption Eradication Commission (KPK) and its Authority, Constitutional Court Decision No. 5/PUU_IX/2011 on the Term of Office of the KPK leaders of the Corruption Eradication Commission (KPK), Constitutional Court Decision no. 49/PUU_XI/2013 on the Leaders of the Corruption Eradication

Commission (KPK) working collectively and Constitutional Court Decision No. 36/PUU-XV/2017 on the House of Representatives' Inquiry Rights against the Corruption Eradication Commission (KPK). And this research also reviews the position of the Corruption Eradication Commission from the perspective of siyasah fiqh.

RESULTS AND DISCUSSION

The Dynamics of the Establishment of the Corruption Eradication Commission

The Corruption Eradication Commission (KPK) is a state institution that was born in this reform era, this institution was born as one of the big agendas of reform, namely efforts to realize clean and corruption-free state and government administration (Asrizal & Sobirin Malian 2021). During the New Order era, there were business practices that favored certain groups in the administration of the state, thus fostering corruption, collusion and nepotism involving state officials and businessmen that damaged the joints of state administration in various aspects of the nation's life (Ni' Matul Huda, 2007).

The birth of the KPK began in 1998. At its fourth plenary meeting on November 13, 1998, the MPR issued Decree No.XI/MPR/1998 on Clean and KKN-free State Administration. The law then mandated the President as the head of government to establish an Audit Commission tasked with examining the assets of state officials, and this commission is directly responsible to the President (H.M. Thalhah & Sobirin Malian, 2011).

As a follow-up to the MPR Decree, Law No. 28/1999 on State Administration that is clean and free from Corruption, Collusion and Nepotism was born. This law mandates the President as the head of state to establish an audit commission that gives the president the duty and authority to conduct an audit of the wealth of state officials before, during, and after taking office, including requesting information from former state officials, their cronies, and businessmen, while taking into account the principle of presumption of innocence and human rights (Ni'matul Huda, 2007).

The wave of reform that occurred in 1998 showed that there was a national awareness to make Corruption, Collusion and Nepotism (KKN) a common enemy. There was a public demand for corruption prosecutions against “black officials” during the time the new government was in power. To listen to these demands, various bodies or commissions were established to prevent or investigate corruption. Some of these include the birth of the State Officials Wealth Supervision Commission (KPKPN) and the Joint Corruption Eradication Team (TGPTPK) (Diana Napitupulu, 2018).

Establishing a commission to audit the assets of state officials, which gives the President the opportunity to audit the assets of state officials. The commission's duties include before, during, and after the state official takes office. The scope of the commission's duties is regulated in Law No. 28/1999. After this law, Law Number 31 of 1999 was born, which then replaced Law Number 3 of 1971 concerning the Eradication of Corruption (Asrizal and Sobirin Mali, 2021). The birth of Law Number 31 of 1999 is an effort to improve and anticipate the legal needs of society to be more effective in preventing and eradicating all forms of criminal acts of corruption. As a continuation, Article 43 mandates the establishment of a Corruption Eradication Commission which will be regulated in a separate Law within a maximum period of 2 (two) years from the enactment of this Law.

As a follow-up to the mandate of Law No. 31/1999 Article 43, Law No. 30/2002 on the Corruption Eradication Commission was enacted on December 27, 2002, which was later referred to as the Corruption Eradication Commission (KPK). The establishment of this commission was intended to overcome legal obstacles in corruption cases that were previously carried out by the police and prosecutors but were ineffective in resolving corruption cases (Ni'matul Huda, 2007).

With Law No. 30/2002, the Corruption Eradication Commission was renamed the Corruption Eradication Commission (KPK). The Commission's legal status is firmly established as a State institution that in carrying out its duties and authorities is independent and free from the influence of any power. The establishment of this commission aims to improve the effectiveness and results of efforts to eradicate corruption. In carrying out its duties and authorities, the commission works based on the principles of: (a) legal certainty, (b) openness, (c) accountability, (d) public interest, and (e) proportionality (Jimly Asshiddiqie, 2010).

However, after the revision of Law Number 30 of 2002 with Law Number 19 of 2019 on the KPK, the institutional structure of the KPK changed to become part of the government branch of power. Article 3 of Law No. 19/2019 emphasizes that the Corruption Eradication Commission is a state institution within the executive power group. This provision also confirms the Constitutional Court's interpretation in Decision Number 36/PUU-XV/2017. Thus, the existence of the independence of the KPK institution becomes very problematic. The ideal independence has been reduced, which has implications for the functions and authority of the Corruption Eradication Commission.

The motive for the birth of the Corruption Eradication Commission is because the institutions that deal with corruption have not been effective and efficient, and have not shown optimal results in reducing the number of corruption crimes that have increasingly affected the community. the economic life of the country, so in the spirit of realizing a clean state administration and free from corrupt behavior, the KPK is present as an institution of hope (Mellysa Febriani Wardojo, 2018).

The establishment of the Corruption Eradication Commission is a reform demand to prevent and eradicate corruption, which has become a scourge and common enemy. The public was fed up with the corruption that was endemic and rampant in the New Order regime's circle of power. The birth of the KPK is basically the impact of the ineffective, efficient and optimal eradication of corruption crimes carried out by the police and the prosecutor's office, which previously experienced obstacles in eradicating corruption (Asrizal and Sobirin Mali, 2021).

The Position of the KPK in the Indonesian Constitution

In implementing the Indonesian government system, the division of power is strictly based on the idea of trias politica. In this regard, we can look at the Corruption Eradication Commission (KPK), which was previously mandated as an independent, independent, and independent institution, but has now become an institution under the executive power (Aprilian Sumodiningrat, 2021).

Constitutional Court Decision No.36 / PUU-XV / 2017 This Constitutional Court Decision is related to the position of the Corruption Eradication Commission (KPK) which has become an executive family. The Constitutional Court Decision No. 36/PUU-XV/2017 is a solid foundation for the DPR to exercise the right to examine the KPK. In the verdict, the Constitutional Court argued that the KPK is part of the executive, thus making the KPK eligible for the DPR's right of inquiry.

In the consideration of the Constitutional Court Decision No. 36/PUU-XV/2017, it is interesting to observe the reasons for the use of the DPR's right of inquiry against the KPK and the existence of the right of inquiry in the realm of power. First, the opinion of Constitutional Court judges including Arief Hidayat, Anwar Usman, Manhan MP Sitompul, Aswanto, and Wahiduddin Adams who decided that the use of the DPR's right of inquiry against the KPK is a constitutional legal act. Referring to Article 79 paragraph (2) of UL MD3, the right of inquiry is shown against government policies and/or the implementation of laws. Referring to the formation of the KPK, which was established based on the KPK Law, the KPK is the executor of the law.

The object of the DPR's right of inquiry has been government policy, but the issue is whether the KPK is part of the executive power. The argument of the judges in determining the position

of the KPK in the division of powers is ambiguous. On the one hand, the Constitutional Court judges wanted to say that the KPK is included in the realm of executive power. On the other hand, the Constitutional Court judges emphasized the independence of the KPK. The Constitutional Court's statement that the KPK is part of the executive branch contradicts the Constitutional Court judges' own statement that the KPK is an independent state institution. The decision contradicts previous decisions of the Constitutional Court that ruled KPK as an independent institution.

As in Constitutional Court Decision No. 012-016-019/PUU- IV/2006 on the existence of the Corruption Eradication Commission (KPK) and its authority. According to the applicant in the decision, the Corruption Eradication Commission (KPK) is an institution whose position is unclear because it is outside the Indonesian constitutional system and the authority possessed by the Corruption Eradication Commission (KPK) is considered to overlap with the Prosecutor's Office and the Police. The Constitutional Court in this case considered that the Corruption Eradication Commission (KPK) is an independent institution and free from intervention from other parties in carrying out its duties and authorities.

Constitutional Court Decision Number 5/PUU-IX/2011 also contains the interpretation of Article 34 of Law No. 30 of 2002 regarding the position of the leadership of the Corruption Eradication Commission (KPK) The Constitutional Court is of the opinion that the Corruption Eradication Commission (KPK) is an institution that is required to work professionally, independently and continuously, therefore the leadership of the Corruption Eradication Commission (KPK) should also apply continuity so that it is easy to carry out its extra duties and authorities.

And the Constitutional Court Decision Number 49 / PUU-X1 / 2013 is about testing the Law on Article 21 paragraph (5) of the Corruption Eradication Commission (KPK) Law regarding the leadership of the Corruption Eradication Commission (KPK) working collectively. This test is related to the decision making of the leadership of the Corruption Eradication Commission (KPK) in cases handled by the Corruption Eradication Commission (KPK). In this decision, the Constitutional Court argued that the Corruption Eradication Commission (KPK) is an agency related to judicial power based on Article 24 paragraph (3) of the 1945 Constitution and in terms of interpreting Article 21, the Constitutional Court said that Article 21 is an open legal policy.

The establishment of institutions that are expected to be able to eradicate or minimize the rise of corruption cases is one of them with the establishment of the Corruption Eradication Commission (KPK). In the preamble letters a and b of Law Number 30 of 2002 concerning the Corruption Eradication Commission, it is stated that the establishment of the commission is due to the fact that on the one hand the reality of corruption in Indonesia is considered increasingly alarming and causes huge losses to the finances and economy of the State so that it hampers national development in realizing the prosperity, welfare and justice of the community. On the other hand, the efforts to eradicate corruption that have been running so far are considered not yet optimally implemented, because the law enforcement officers in charge of handling corruption cases are considered not able to function effectively and efficiently (Artidjo Alkostar, 2008).

KPK is a state institution that in carrying out its duties and responsibilities is independent and free from the influence of any power. Its position in the executive does not mean that KPK is not independent and free from any influence. In connection with this, the inquiry committee is required to know certain limitations not to intervene in the right of inquiry of both the DPR and the KPK to avoid massive abuse of authority. Furthermore, ensuring that the KPK in carrying out its duties is free from the intervention of any power that can hinder the process of eradicating KKN (Sitinur Febby Pattimahu & et al, 2023).

The independence of the KPK was also conveyed by government representatives, who emphasized that the independence of the KPK is institutional independence and functional independence, one of the things that was intended from its formation was the necessity of institutional independence, through its institutional elements that were made independent (Zainal Arifin Mochtar, 2016).
The existence of the KPK as an independent state institution is a legal policy of the legislators in order to realize a clean and corruption-free state administration. KPK's position in the Indonesian constitutional structure is independent, free from the interference or intervention of other powers, and outside the scope of the three branches of power as classified in the trias politika theory, but outside the three branches of power which stand separately. As the minutes of the formation of the KPK Law mentioned above emphasize the nature of the KPK's independence is institutional independence, which means that it does not have institutional lines tied to any power (Asrizal and Sobirin, 2021).

A Fiqh Siyasah Perspective on the Position of the KPK

The position of the Corruption Eradication Commission (KPK) in the Constitutional Court Decision Number 36/PUU-XV/2017 from the point of view of the science of constitutional law in the concept of the Islamic State (fiqh siyasah). In the book Fiqh Siyasah by Suyuthi Pulungan, Siyasah Dusturiyyah is defined as part of fiqh siyasah which deals with the basic rules regarding the form of government and the limits of its power, the method of election (head of state), the limits of power that are common for the implementation of the affairs of the people, and the provision of rights that are mandatory for individuals and society, as well as the relationship between the ruler and the people.
It can be seen that the position of the Corruption Eradication Commission (KPK) as the object of inquiry by the House of Representatives (DPR) in Constitutional Court Decision Number 36/PUU-XV/2017 is included in the discussion of Siyasah Dusturiyyah. Because the Siyasah Dusturiyyah section deals with the basic rules regarding the form of government and the limits of its power, the method of election (head of state), and the provision of rights that are mandatory for individuals and society, as well as the relationship between the ruler and the people. the meaning of the ruler is the entire range of government from the highest official to the lowest official (Imam Amrusi Jaelani, 2011).
In Islam, there is a division of powers, namely executive power (sultah tanfidiyyah), legislative power (sultah tasyriyyah), judicial power (sultah qadaryyah). Within the judicial power (sultah qada'iyyah), there are several judicial institutions in the concept of Islamic Constitutional Law distinguished according to the type of case handled. The judicial institutions include Wilayah al-Qada, Wilayah al-Mazalim, and Wilayah al-Hisbah (Ulfa Yurannisa, 2018).
Wilayah al-Qada' is a judicial institution to decide lay cases among its citizens, both civil and criminal. According to Imam al-Mawardi Wilayah al-Hisbah is the authority to carry out amar ma'ruf when the ma'ruf began to be abandoned people, and prevent the munkar when people begin to do. So that Wilayah al-Hisbah is a judicial power that deals specifically with moral issues and its authority is broader than Wilayah al-Qada'. While Wilayah al-Mazalim is a judicial institution that specifically deals with the injustice of the rulers and their families against the rights of the people. Wilayah al-Mazalim was established with the aim of preserving the rights of the people from the unjust actions of the rulers, officials and their families. To restore the rights of the people that had been taken away by them, and to settle disputes between rulers and citizens.
The intended ruler in this definition according to al-Mawardi is the entire range of government ranging from the highest officials to the lowest officials.
So the concept of fiqh siyasah used is to use Wilayah al-Mazalim, which means one component of the judiciary that stands alone and is a court that takes care of the settlement of disputes that

occur between the people and the state. to restore the rights of the people who have been taken by them, and to resolve disputes between rulers and citizens. And Wilayah al-Mazalim was established with the aim of preserving the rights of the people from the wrongful acts of the rulers, officials and their families. To retrieve the rights of the people who have been taken by them, and to resolve disputes between the rulers of all levels of government from the highest officials to the lowest officials and citizens (Basiq Djalil, 2012).

The mazalim court is the same as the Corruption Eradication Commission (KPK) in Indonesia. Because the Corruption Eradication Commission (KPK) institution both handles cases of crimes committed by rulers or state officials. And this institution stands alone and independent, without any intervention from outside parties. The difference lies in the position of these institutions, where the mazalim court is led directly by al-Khulafa al- Rashidin or led by a qadi al-mazalim who is directly responsible to the caliph, while the Corruption Eradication Commission (KPK) which has been regulated in Law Number 30 of 2002 in Article 21 paragraph (1) letters a and b 'is led by 5 (five) and 1 (one) chairman, and there is an advisory team consisting of 4 (four) members who stand independently not under the authority of any higher institution and are directly accountable to the president and the House of Representatives (DPR) as the people's representation (Mufiana, 2018).

CONCLUSION

The position of the Corruption Eradication Commission (KPK) has been explained in Article 3 Number 30 of 2002 that the Corruption Eradication Commission is an independent institution not included in the realm of the executive or government agencies. Actually, Decision 36/PUU-XV/2017 contradicts 3 (three) previous decisions according to Prof. Mahfud MD, the Constitutional Court Decision, namely Decision No. 012-016-019/PUU/IV/2006, Decision No. 5/PUU-IX/2011, and No. 49/PUU-XI/2013. These three decisions emphasized that the KPK is an independent institution that is not within the realm of the executive, legislative, and judicial branches. It can be concluded that the Corruption Eradication Commission (KPK) is an independent institution. Which means that it must be maintained so as not to be influenced by other institutions. Review of fiqh siyasah The position of the Corruption Eradication Commission (KPK) is a judicial institution of Wilayah al-Mazalim which is reviewed from Siyasah Dusturiyyah. The Wilayah al-Mazalim is one of the components of the judiciary that stands alone and the judiciary that takes care of resolving disputes that occur between the people and the State. To restore the rights of the people who have been taken by them, and to resolve disputes between rulers or state officials who committed a crime or injustice committed against the people.

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