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# The Existence of the Corruption Eradication Commission Leadership in Investigations After the Enactment of Law Number 19 of 2019

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**Abstract:** This study aims to show how the existence of the KPK Leadership as investigators after the enactment of Law Number 19 of 2019 and what its implications are. The preparation of this research was carried out using the type of Normative Juridical research with a statute-approach, conceptual approach and case approach. Based on the research conducted, the authority of the KPK Leadership as investigators has been lost since the enactment of Law Number 19 of 2019 and has had an impact on the failure to realize legal certainty in handling corruption cases, especially in the investigation process. By understanding the concept of authority based on the principle of legality, and by comparing the regulation of authority in the KPK Law and the Prosecutor's Law, it can be seen that regulations must be written clearly in accordance with the principle of *lex scripta*. It is necessary to carry out reconceptualization and written regulations related to the authority of the KPK Leadership. This research is expected to be able to provide insight to the public and can be a reference for everyone to realize legal certainty, justice and benefits, especially in handling corruption cases.

**Keyword:** Existence, Investigation, KPK Leadership.

## INTRODUCTION

The Corruption Eradication Commission, better known as the KPK, is a state institution that plays an important role in efforts to eradicate corruption in Indonesia. In 2023, through its annual report, the KPK recorded that it had saved state finances of Rp. 114.8 trillion (Nurdiana et al., 2023). An achievement that deserves appreciation. Compared to its achievements, the implementation of the KPK's duties in this case the KPK Leadership is not supported by adequate laws and regulations. It needs to be a shared concern that the authority of the KPK Leadership in the process of investigating corruption crimes has shifted since the enactment of Law Number 19 of 2019. The position of the KPK Leadership is regulated in Article 21 of Law Number 32 of 2002 which was later amended by Law Number 19 of 2019.

Let's compare, Article 21 paragraph (4) of Law Number 32 of 2002 states that "The KPK Leadership is an investigator and public prosecutor." However, Article 21 of Law Number 19 of 2019 does not regulate the KPK Leadership as an investigator and public prosecutor but

rather as a state official. Based on these provisions, the KPK Leadership is no longer authorized to carry out investigations or prosecutions in handling corruption cases (Wahyuningrum et al., 2020). Not stopping at the KPK Law, Article 4 of the Corruption Eradication Commission Regulation Number 7 of 2020 concerning the Organization and Work Procedures of the Corruption Eradication Commission does not mention that the KPK Leadership has the task of carrying out investigations or prosecutions. The KPK Leadership is only tasked with regulating the running of state institutions both in terms of policy formulation, human resource management, implementation of coordination and monitoring, supervision and coaching as well as efforts to increase the role of the community in eradicating corruption (Rizal & Wondabio, 2023).

Due to its lack of authority in conducting investigations, there are several pre-trial submissions that make the KPK Leadership as the respondent. One of them is the pre-trial submission carried out by Ira Puspawati, President Director of PT ASDP Indonesia Ferry with the object of the pre-trial application, namely the Decree of the Leadership of the Corruption Eradication Commission of the Republic of Indonesia Number-1072 of 2024 dated August 19, 2024 concerning the Determination of Suspects.

Looking at the Decision of the South Jakarta District Court Number: 80/Pid.Pra/2024/PN.JKT.SEL, Ira is of the opinion that the KPK Leadership does not have the authority to take actions in the context of investigations, including determining someone as a suspect. Unlike the KPK Law which does not regulate the position of its leadership in handling cases, the Attorney General's Law clearly states the position of the Attorney General in handling cases. Based on Article 18 of Law Number 11 of 2021, it states that the Attorney General is the highest Public Prosecutor and state attorney in the Unitary State of the Republic of Indonesia. So the Attorney General is not only the head of the institution, but also has the authority as a public prosecutor.

In formulating policies as a whole and specifically related to handling criminal acts that impact society, it is necessary to base it on the principle of legality. The principle of legality does not only apply in the Criminal Code but also applies to other laws and regulations to determine the validity of the implementation of the duties of state apparatus. The principle of legality is also related to three other principles, namely the principle of *lex scripta* (the provision must be written), *lex certa* (the provision must be clear) and *lex stricta* (the provision is not interpreted analogously, it must be interpreted narrowly). Unclear norms can be detrimental to the parties, both law enforcers, suspects and the community. Because unclear norms can lead to multiple interpretations and do not guarantee legal certainty for the parties.

Considering that the cases handled by the Corruption Eradication Committee are special crimes and are also included in extraordinary crimes (Kansil & Sundaynatha, 2023). The importance of the role of the KPK needs to be followed by a commitment stated in the laws and regulations. The KPK needs to clarify the position and authority of the KPK Leadership in investigations in order to minimize arbitrariness that can harm the institution and the community, and optimize the handling of cases and the performance of the KPK itself. Related research has been conducted by Helmi Alwi (Alwi, 2022) which discusses the legal implications of the loss of investigative and prosecution authority of the Corruption Eradication Commission leadership. The study discusses the legal implications that have an impact on the work patterns of the KPK Leadership internally in handling corruption eradication, but does not discuss the external impacts that occur.

Complementing previous research, this study will discuss the existence of the authority of the KPK Leadership in the process of investigating cases which if not improved will harm various parties, both the community, the parties in the case and the KPK itself. Through this study, it is expected to provide considerations for the KPK to determine the commitment to eradicate

corruption by considering the principle of *lex scripta*. So, in the implementation of corruption eradication, it can realize legal certainty, justice and benefits for all parties.

## **METHOD**

This journal writing uses a normative legal research type (Zainuddin & Karina, 2023) which is done by reviewing and analyzing the substance of laws and regulations on the main problem or legal issue in its consistency with the existing legal principles. Research is also carried out with a statutory approach, namely by reviewing laws and regulations, a conceptual approach, namely by reviewing and understanding concepts, and a case approach, namely conducting a review of cases related to the issues faced that have become court decisions that have permanent force (Zubi et al., 2021).

In this study, a review of laws and regulations will be conducted, including Law Number 32 of 2002 as amended by Law Number 19 of 2019, Law Number 8 of 1981, Law Number 30 of 2014, and the Attorney General's Law. Furthermore, a review will be carried out related to the concept of the principle of legality consisting of *lex scripta*, *lex certa* and *lex stricta* to obtain a concept for the proposed formulation of policies that can realize legal objectives. The formulation of good policies also needs to pay attention to the needs in the field, by conducting a case study in the field, a study can be made comprehensive. With this case approach, researchers can show inequalities or inconsistencies in policies that cause losses. The case approach will be carried out by conducting a review of the Decision of the South Jakarta District Court Number: 80/Pid.Pra/2024/PN.JKT.SEL.

## **RESULTS AND DISCUSSION**

Authority is what is called formal power granted by law (Amelia Ayu Paramitha, et al., Sir 2023). According to RJ Marbun, authority is formalized power over a certain group of people, or power over a certain area of government. In line with this, it can be understood that authority must be based on existing legal provisions (constitution) so that the authority is a legitimate authority. Thus, state institutions or officials in issuing a decision are supported by existing sources of authority. Without authority, a correct decision cannot be issued (Marbun & Hasibuan, 2023) (Arif, 2023).

The logic of governance will not be separated from the logic of law, one of which is that power in governance is derived from formal authority granted by laws and regulations to legal subjects (individuals or legal entities) in certain fields. Legal subjects who are granted authority by applicable laws and regulations are authorized to do something that is stated in that authority. An authority certainly has a nature that is intended to provide legal certainty from what has become its authority (Adnani, 2021).

Authority based on statutory regulations is the embodiment of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that Indonesia is a country of law. Everything in running the government is not based on arbitrariness, but rather based on written provisions that can provide certainty, justice and benefits. Based on the previous explanation, it can be understood that authority must be based on legality.

The government in carrying out its authority must have legality so that the actions or actions of the government do not violate human rights and/or do not cause a person or group of people to not receive legal protection. The importance of legality in the implementation of government authority is in line with Indonesia's position as a country of law as conveyed by Bagir Manan (Manan et al., 2021).

Through the previous explanation, it is clear that authority must be based on the principle of legality. Authority need to be regulated firmly and in writing to realize legal certainty for all parties. In addition, authority that is carried out based on the principle of legality can reduce the gap pf public doubt regarding law enforcement. With legal certainty, the executor of

authority can carry out tasks without hesitation and the public feels safe because it is guaranteed by legal certainty. Furthermore, regarding the authority of the KPK Leadership in investigating corruption cases, it is regulated in Law Number 32 of 2002 which was later amended by Law Number 19 of 2019. One of the main changes that needs attention from the government, academics and the public is the regulation regarding the position and role of the KPK Leadership which is regulated in Article 21.

Article 21 of Law 30/2002	Article 21 of Law 19/2020
<p>(1) The Corruption Eradication Commission as referred to in Article 3 consists of:</p> <ul style="list-style-type: none"> <li>a. The leadership of the Corruption Eradication Commission consists of 5 (five) members of the Corruption Eradication Commission;</li> <li>b. Advisory Team consisting of 4 (four) Members; and</li> <li>c. Corruption Eradication Commission employees as acting officers.</li> </ul> <p>(2) The leadership of the Corruption Eradication Commission as referred to in paragraph (1) letter a is composed as follows:</p> <ul style="list-style-type: none"> <li>a. Chairman of the Corruption Eradication Commission and Member; and</li> <li>b. The Deputy Chairperson of the Corruption Eradication Commission consists of 4 (four) people, each of whom also serves as a Member.</li> </ul> <p><b>(3) The leadership of the Corruption Eradication Commission as referred to in paragraph (1) letter a is a state official.</b></p> <p><b>(4) The leadership of the Corruption Eradication Commission as referred to in paragraph (1) letter a are investigators and public prosecutors.</b></p> <p>(5) The leadership of the Corruption Eradication Commission as referred to in paragraph (2) works collectively.</p> <p>(6) The Head of the Corruption Eradication Commission as referred to in paragraph (1) letter a is the person highest responsible for the Corruption Eradication Commission.</p>	<p>(1) The Corruption Eradication Commission consists of:</p> <ul style="list-style-type: none"> <li>a. Supervisory Board consisting of 5 (five) people;</li> <li>b. The leadership of the Corruption Eradication Commission consisting of 5 (five) members of the Corruption Eradication Commission; and</li> <li>c. Corruption Eradication Commission employees.</li> </ul> <p>(2) The composition of the leadership of the Corruption Eradication Commission as referred to in paragraph (1) letter b consists of:</p> <ul style="list-style-type: none"> <li>a. chairman and member; and</li> <li>b. The deputy chair consists of 4 (four) people, each of whom also serves as a member.</li> </ul> <p><b>(3) The leadership of the Corruption Eradication Commission as referred to in paragraph (1) letter b is a state official.</b></p> <p>(4) The leadership of the Corruption Eradication Commission as referred to in paragraph (2) is of a collective collegial nature.</p>

**Table 1. Comparison of KPK Law**  
*Source: Primary Legal Materials, Author, 2024*

In the era of Law Number 32 of 2002, the provisions of Article 21 paragraph (3) and paragraph (4) state that the KPK leadership is a state official, investigator and public prosecutor. (Telaumbanua, 2020) According to Romli Atmasasmita, the purpose of appointing the KPK leadership as state officials is so that the KPK leadership has an equal position with other state officials, so that the investigation process does not drag on just because of obstacles in obtaining permission to examine a state official who is a suspect, which often occurs in investigative practices (Atmasasmita, 2020). Then in Article 21 of Law Number 19 of 2019 only regulates that the KPK Leadership as state officials and eliminates the position of the KPK Leadership as investigators and public prosecutors.

The enactment of Law Number 19 of 2019 places the KPK leadership only as administrative figures. The KPK leadership can be interpreted legally as no longer being able to sign investigation orders and/or prosecution plan letters which are the domain of investigators and public prosecutors. Furthermore, investigators and public prosecutors can refuse the KPK leadership to participate in case exposure because it concerns the confidentiality and authority

of the leadership who is not an investigator or public prosecutor (Kenny, 2021). The loss of the role of the KPK leadership can be considered to weaken the authority and legitimacy of the KPK in the law enforcement process. In addition, the elimination of this status can open up opportunities for certain parties to question the legality and validity of the KPK's actions, for example, through pretrial proceedings, considering that the leadership no longer has direct legal authority in the investigation and prosecution process (Yulianto, 2020).

motions related to the determination of suspects by the KPK. One of the motions that questioned the authority of the KPK Leadership in the realm of investigation was the motion of Ira Ira Puspawati, President Director of PT ASDP Indonesia Ferry. Through the Decision of the South Jakarta District Court Number: 80/Pid.Pra/2024/PN.JKT.SEL, it is known that the reason for the pretrial motion is that the KPK leadership does not have the authority to determine the applicant as a suspect so that the determination of the suspect is limited to the applicant is invalid by referring to the definition of investigation in the provisions of Article 1 number (1) and number (2) of the Criminal Procedure Code. The reasons stated in the Decision of the South Jakarta District Court Number: 80/Pid.Pra/2024/PN.JKT.SEL are as follows:

"Based on the description above, the one who has the authority to carry out investigative actions and determine someone as a suspect is the investigator. Meanwhile, the KPK Leadership is not an investigator and is not given special authority by the Law to conduct investigations, so it does not have the authority to carry out actions that are within the scope of the investigator's authority, one of which is determining someone as a suspect."

However, in the KPK Exception contained in the Decision of the South Jakarta District Court Number: 80/Pid.Pra/2024/PN.JKT.SEL, it is stated that in essence the applicant's reasons are included in the realm of administrative law, namely included in the definition of determination (*beschikking*). So it is only right that the application be rejected because it is not in accordance with the authority of the district court. The KPK Exception states as follows: "Thus, the South Jakarta District Court does not have the authority to examine, try and decide on the test of the authority of the RESPONDENT (KPK Leadership) and the validity of the Decision of the Leadership of the Corruption Eradication Commission of the Republic of Indonesia Number 1072 of 2024 dated August 19, 2024 submitted by the APPLICANT in its application because it is the realm of authority of the State Administrative Court so that the application should be rejected or at least declared unacceptable (*niet ontvankelijke verklaard*)."

Then, through the Decision of the South Jakarta District Court Number: 80/Pid.Pra/2024/PN.JKT.SEL, the Judge stated that the pretrial motion was unacceptable and accepted the KPK's exception stating that the pretrial motion was unclear/vague.

In fact, Article 2 letter d of Law Number 9 of 2004 excludes State Administrative Decisions issued based on the provisions of the Criminal Code and the Criminal Procedure Code or other laws and regulations of a criminal nature as objects of dispute resolution at the PTUN. Article 2 letter d of Law Number 9 of 2004 reads as follows:

"Not included in the definition of State Administrative Decisions According to this Law:

- a. ...
- b. ...
- c. ...
- d. State Administrative Decisions issued based on the provisions of the Criminal Code and the Criminal Procedure Code or other laws and regulations of a criminal law nature;
- e. ...
- f. ...
- g. ..."

The KPK stated that the Decree of the Leadership of the Corruption Eradication Commission of the Republic of Indonesia Number -1072 of 2024 dated August 19, 2024 concerning the Determination of Suspects, is not the domain of the District Court to test but the domain of the

PTUN. Then in the PTUN Procedural Law Law, it states that Decisions issued based on the Criminal Code and Criminal Procedure Code or other regulations of a criminal law nature are excluded as objects of PTUN disputes.

Therefore, by not explicitly regulating the authority of the KPK Leadership in the law, it has an impact on the lack of legal certainty in the investigation of corruption cases. This lack of legal certainty not only harms the suspect or the person who is named a suspect, but also harms the KPK itself. Why is that? Because every handling action can be questioned about its authority, especially in the investigation process. So that with the existence of a pretrial motion for administration signed by an unauthorized party, it can hinder the eradication of corruption in Indonesia.

The existence of the Authority of the KPK Leadership in the investigation process after the enactment of Law Number 19 of 2019 can be traced from several things. First, it has been understood together that authority must be based on laws and regulations to provide legal certainty for all parties. Unfortunately, referring to table 1, it is known that in writing the KPK Leadership is no longer in the position of investigator. This can be compared to the regulation of the Attorney General as the Highest Public Prosecutor in Law Number 11 of 2021 which amended Law Number 16 of 2004.

Law 16/2004	Law 11/2021
(1)The Attorney General is the leader and highest person in charge of the prosecutor's office who leads and controls the implementation of the prosecutor's office's duties and authorities.	(1)The Attorney General is the highest public prosecutor and state attorney in the Unitary State of the Republic of Indonesia. (4)The Attorney General is the leader and highest person responsible for the Prosecutor's Office, leading and controlling the implementation of the Prosecutor's Office's duties and authorities, and other duties assigned by the state.
Explanation (1)Considering that the Attorney General is the leader and highest person responsible for controlling the implementation of the prosecutor's duties and authorities, the Attorney General is also the leader and highest person responsible in the field of prosecution.	Explanation (1)Quite clear (4)The Attorney General is the leader and highest person responsible for the Prosecutor's Office, leading and controlling the implementation of the Prosecutor's Office's duties and authorities, and other duties assigned by the state.

Source:Primary Legal Materials, Author, 2024

In the Attorney General's Law above, it can be seen that Law Number 16 of 2004 in Article 18 paragraph (1) regulates the Attorney General as the head of a state institution. However, in its explanation, it emphasizes that the position of the Attorney General is not only as the head of the institution but also as the leader and highest person responsible in the field of prosecution. The issuance of Law Number 11 of 2021 does not weaken the position of the Attorney General, on the contrary. The role of the Attorney General in prosecution is strengthened and emphasized in Article 18 paragraph (1) which states that the Attorney General is the highest Public Prosecutor. Directly, the Attorney General has the authority to carry out a series of public prosecutor actions. Regarding the position of the Attorney General as the head of the institution, it is regulated in Article 18 paragraph (4). It can be said that Law Number 11 of 2021 perfects the authority given to the Attorney General as Public Prosecutor.

Compared to the KPK Law, the position of the KPK leadership as investigators and public prosecutors was abolished by Law Number 19 of 2019 which is an amendment to Law Number 32 of 2002. This abolition actually makes the authority of the KPK leadership seem unclear. The current KPK leadership only acts as the head of the institution, not as an investigator who should not take action by issuing a Decision to determine a suspect that is not in accordance with his authority.

*Second*, referring to the provisions of Article 1 number (1) and number (2) of the Criminal Procedure Code which reads as follows:

"(1) Investigators are police officers of the Republic of Indonesia or certain civil servants who are given special authority by law to conduct investigations. (2) Investigations are a series of actions by investigators in matters and according to the methods regulated in this law to seek and collect evidence with which to shed light on the crime that occurred and to find the suspect."

Article 1 number (1) and number (2) of the Criminal Procedure Code emphasizes that investigators are officials who are given special authority by law to carry out a series of investigative actions in this case to seek and collect evidence of the crime that occurred and to find the suspect. If a suspect is found, the person authorized to determine the suspect is the investigator.

Third, the loss of authority of the KPK Leadership is strengthened by the provisions of Article 4 of the Corruption Eradication Commission Regulation Number 7 of 2020 concerning the Organization and Work Procedures of the Corruption Eradication Commission, which reads:

"(1) The leadership as referred to in Article 3 letter a is the Leadership of the Corruption Eradication Commission. (2) The Corruption Eradication Commission is led collectively collegially by a chairman and 4 (four) deputy chairmen. (3) The leadership has the following duties: (a) formulating, determining policies and strategies for the eradication of corruption; (b) implementing technical guidance on the implementation of corruption eradication tasks within the Corruption Eradication Commission's structural ranks; (c) implementing coordination and monitoring of the implementation of corruption eradication tasks; (d) implementing supervision and guidance on the implementation of corruption eradication tasks within the Corruption Eradication Commission's structural ranks; and (e) increasing the role of the community, business entities and international cooperation in eradicating corruption."

The article does not mention and does not regulate the duties of the KPK Leadership as investigators. In fact, the investigative duties are carried out by the Directorate of Investigation as regulated in Article 56 paragraph (1) of the Corruption Eradication Commission Regulation Number 7 of 2020 concerning the Organization and Work Procedures of the Corruption Eradication Commission which reads:

"The Directorate of Investigation has the task of preparing policies and carrying out investigations into corruption and/or money laundering cases and cooperating in investigative activities carried out by other law enforcement officers."

Article 56 paragraph (1) of the Corruption Eradication Commission Regulation Number 7 of 2020 concerning the Organization and Work Procedures of the Corruption Eradication Commission explicitly states that the Directorate of Investigation has the task of carrying out case investigations. In this case, the Directorate of Investigation along with investigators who have been appointed by the KPK Leadership are authorized to carry out a series of investigative activities, one of which is determining suspects.

After understanding the concept of authority in general, seeing the regulation of the authority of the KPK Leadership after Law Number 19 of 2019 and knowing the impact of the failure to realize legal certainty for the parties. It has explained that the existence of the KPK Leadership as investigators in handling cases has been questioned and doubted. It has even disappeared. So on the basis of the principle of legality, the KPK Leadership is no longer authorized to carry out investigative actions, one of which is issuing a Decree on the Determination of Suspects.

In the context of criminal law, formal legal sources are the main focus, especially statutes. This is because criminal law is closely related to the principle of legality which includes the principle of *lex scripta* (criminal law must be written) (Kanal, 2020). *Lex certa* (legal certainty) (Vukušić, 2023) and *lex stricta* (criminal law must be strict) (Truu, 2022). The principle of legality is believed to be able to protect the rights of citizens from the arbitrariness of the

authorities in addition to the government's authority to impose criminal penalties. According to Faubert's opinion (beginselen van behoorlijke strafrechtbedeling) (Faubert et al., 2021). The role of the principle of legality relates to all legislation as an instrumental aspect of protection. Clarity, certainty and suitability of the criminal rules applied can only be known if the rules are set out in writing (lex scripta) (Ziemiński, 2020). Therefore, the authority of the KPK leadership in the investigation process should be regulated in writing, clearly and straightforwardly in the KPK Law. Not only to protect the human rights of the community, but also to protect the KPK body as the spearhead of handling corruption cases.

## CONCLUSION

After the enactment of Law Number 19 of 2019, it has resulted in the loss of authority of the KPK Leadership in the investigation process. The loss of authority has resulted in the blurring of the actions of the KPK Leadership related to the investigation, one of which is the issuance of the Decree on Suspect Determination. In addition to having an impact on the internal KPK, the inconsistency between the authority regulated in the law and the actions of the KPK Leadership creates legal ambiguity and the failure to realize legal certainty for the parties. By understanding that authority can be exercised by order of the law and in its regulation it is necessary to apply the principle of lex scripta, the authority of the KPK Leadership needs to be regulated in writing. Clear and written regulations can provide a breath of fresh air in handling corruption cases. First, the actions of the KPK Leadership in the investigation are legitimate, including the Decree on Suspect Determination. Second, case handling will be more effective and efficient because of the minimal gaps in pretrial proceedings that can slow down case handling, and Third, it can provide legal certainty for the community, law enforcement officers, and the KPK Leadership.

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