Criticism of the Effectiveness of Law Enforcement by the Corruption Eradication Commission: A Review from a Law and Policy Perspective

Thomy Faisal[1], Azis Budianto[2]
{Thomy.fsp@gmail.com[1], azis_budianto@borobudur.ac.id[2]}

Universitas Borobudur, Indonesia [1,2]

Abstract. Corruption Eradication Commission of Indonesia (KPK) tasked with eradicating corruption, has made various changes over time to legal instruments and institutional policies. However, these efforts have often been ineffective and have even weakened the institution, exacerbated by poor law enforcement officials. This study, using a normative juridical approach and sociological analysis, examines the effectiveness of corruption eradication laws in Indonesia. It concludes that while the law-making process itself is not flawed, the implementation is problematic. Effective anti-corruption efforts require law enforcement officials who are not only honest and clean but also committed to their duties. Additionally, some KPK policies need revision, as they currently hinder rather than help the institution's performance.

Keywords: Developer, Bankruptcy, PKPU

1 Introduction

As one of the oldest crimes, corruption has become an enemy in almost every country. This crime that is so detrimental to the wider community is hated because the perpetrators enrich themselves by using state money that is the right of many people. Corruption occurs not only in developed countries but also in developing countries and poor countries are not spared the crime of corruption committed by officials and private parties affiliated with the government.

In Indonesia itself, corruption has occurred since the formation of the state but only on a small scale and only involves a few people,[1] because at that time the state did not have money. Meanwhile, during the New Order era, corruption occurred in almost all institutions, which was deliberately allowed by the government so that no one was able to make demands on each other because all officials did the same thing.

Responding to the rampant acts of Corruption, Collusion and Nepotism in Indonesia, then under the atmosphere of reform in 1999 President BJ Habibie issued Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion, and Nepotism (KKN) but in practice this Law is like facing a thick wall so that it cannot be implemented properly, even though in line with the birth of Law No.28 of 1999, Non-Ministerial Government Institutions

ICLSSEE 2024, May 25, Jakarta, Indonesia
Copyright © 2024 EAI
DOI 10.4108/eai.25-5-2024.2349437

have also been formed to deal with corruption such as the State Officials Wealth Supervisory Commission (KPKPN), the Business Competition Supervisory Commission (KPPU), and the Ombudsman institution.[2]

Even during the leadership of President Abdurrahman Wahid, who tried to uphold the spirit of reform that was anti-corruption, collusion and nepotism, a Joint Corruption Eradication Team (TGPTK) was formed based on Government Regulation No. 19 of 2000. The team, which was expected to work optimally because it had great legal authority and was directly led by a Supreme Court Judge, turned out to be an empty hope. The Supreme Court surprisingly issued a Supreme Court *judicial review* decision that dissolved TGPTK on the grounds that it was slow in handling corruption cases. [3] Because how can it proceed quickly when state institutions are still filled with remnants of corrupt officials during the new order.

President Megawati established the Corruption Eradication Commission (KPK), through Law Number 30 of 2002 concerning the Corruption Eradication Commission, which was later amended based on needs and developments with Law Number 19 of 2019 with duties and authorities:

a. KPK duties
    1) Coordinate with authorized institutions in the fight against corruption.
    2) Supervise agencies authorized to fight corruption.
    3) Investigate, investigate and prosecute corruption offenses.
    4) Take action to prevent corruption.
    5) Monitoring the implementation of the state government.
b. KPK's Authority
    1) Coordinate the investigation, investigation, and prosecution of corruption crimes.
    2) Establish a reporting system in corruption eradication activities.
    3) Request information on corruption eradication activities to relevant agencies.
    4) Conduct meetings or hearings with agencies authorized in the fight against corruption.
    5) Request reports from relevant agencies on the prevention of corruption.

With this task and authority, the Indonesian people have high hopes for law enforcement regarding corruption cases in Indonesia. The heavy burden carried by the KPK in revealing corruption cases still persists, this is because those who become suspects in corruption cases are political elites, state officials, and businessmen who have a lot of money. So then the efforts to disclose cases with large state losses encounter many obstacles, while cases of theft committed by the public are easier to reveal.

Conditions that illustrate law enforcement in Indonesia are still selective,[4] This is in line with the opinion of Vice President Mohamad Hatta, namely, the lofty ideals to make Indonesia a state of law have not been achieved because the implementation of law enforcement is still aimed down (to the community) and not aimed up (state officials), [4] or even if there is law enforcement the verdict imposed is not proportional to the corruption committed, even some of the defendants caught in corporate corruption cases are acquitted.[5]

In fact, according to data and studies by Indonesia Corruption Watch (ICW) since 2005, court decisions that have tried and decided corruption cases have slowly begun to move away from the material law of corruption itself. Almost all Supreme Court decisions on cassations filed by corruption convicts are very disappointing. The public seems to be presented with the spectacle that

the power of money is so strong that those who have been proven to steal public money freely play with the rules of law. Corruptors are no longer ashamed to come back in front of the public with all their activities without feeling guilty and sinful.

We should begin to realize that lenient verdicts against corruption convicts do not have a deterrent effect. Convicts who have harmed the state by trillions of rupiah are only sentenced to 1 or 2 years in prison with a reduced prison term and remission, or even only fined hundreds of millions of rupiah. Even after being released from prison, corruption convicts can still run for legislative positions in various regions.

The Permanent Candidate List (DCT) for the February 14, 2024 general election found 49 former corruption convicts. The data was later released by Indonesia Corruption Watch (ICW), 49 of these people ran as legislative candidates and had passed verification, namely, 22 ex-corruption convicts who became legislative candidates for DPRD at the provincial / regency / city level, and 27 ex-corruption convicts became DPR candidates at the central level. And what is an anomaly in the community is that some of them still get serial numbers 1 and 2.

The existence of former corruption convicts as legislative candidates may not be known by the public because ex-convicts may run for candidates in electoral districts where people do not know their identity, but the provision of numbers 1 and 2 by political parties shows that with the status of ex-corruption convicts still gets a 'red carpet', by political parties to come back and become state officials.

The question arises: how seriously does the state take the crime of corruption? Is corruption an honorable crime that can make a person famous and idolized. Prof. Franz Magnis Suseno once argued that the death penalty for criminals in Indonesia is not yet considered appropriate, but looking at the realities that occur and the treatment of criminals that is so polite, we sometimes have knee-jerk reactions that want to approve of hanging for criminals.[6] Furthermore, our assessment is whether the existence of the KPK is still needed considering the fact that the application of the law to corruptors has become so severe.

Assessments of law enforcement officials in charge of law enforcement against corruptors such as the KPK, Attorney General's Office, Supreme Court, Police must be able to appear to answer this challenge, because it will greatly affect the level of public trust in state institutions towards law enforcement in Indonesia.

Based on the explanation above, the author feels interested in raising this issue into a research and scientific writing with the title Criticism of the Effectiveness of Law Enforcement by the Corruption Eradication Commission: A Review of Legal and Policy Perspectives

2 Methodology

The research in this paper is conducted in a normative juridical manner. Where the author conducts theoretical research using various legal literature.[7] Normative legal research is conducted to produce new arguments, theories or concepts as prescriptions in solving the problem at hand using literature books, official documents, and laws and regulations.[8] Then the data owned by the author is analyzed to obtain a legal argument.

3 Result and Discussion

In general, people define corruption as a fraudulent act that harms state finances or is also often interpreted as an act of misappropriation or embezzlement of state money for personal gain and others.[9] By Andi Hamzah, corruption is defined as all bad deeds such as ugliness, dishonesty, bribery, and other acts.[10] It falls under the category of special criminal offenses, which are also specifically regulated in separate laws from the Criminal Code,[11] corruption has become a concern of countries who then agree to eradicate corruption both bilaterally and multilaterally. This effort is made because corruption is closely related to a follow-up crime, namely Money Laundering,[12] although in various cases of corruption that have been revealed, it is not always proven that the origin of money laundering is a criminal offense.

It is still a homework assignment that until now law enforcement, which ideally should be above political interests, has been reversed. The judicial process is not free from judicial corruption and even then it taints state institutions, the majority of which are basically run by unqualified human resources who only work on the principle of "money oriented", not only at the lowest level but also at the level of the leadership of the institution which is the cause of the deterioration of law enforcement in Indonesia.[13] In order to achieve effective performance of the Corruption Eradication Commission, we can use conceptual and practical parameters, as follows:[14]

a. *Theoretical approach*
   Without institutional independence, the capital and main requirement for the success of the anti-corruption commission is not present from the beginning, aka it will not succeed in carrying out its duties in combating corruption.
b. *Practical approach*
   representatives of the anti-corruption agency itself, who do not only discuss it at a theoretical level, but based on direct experience with real problems in the field. This second parameter is based on the practical experience of the anti-corruption commission itself,
c. *Comparative approach*
   So, the results of the study should certainly be used to the fullest to combine the good sides of anti-corruption institutionalization in various countries, and formulate how the ideal design of anti-corruption institutions should be.
d. *Judicial review approach*
   Parameters of anti-corruption institutional design can also be based on court decisions of the Constitutional Court. Since the Constitutional Court has the authority to review KPK laws, it should be used as a measure of the KPK's future institutional design.

Of course, such concepts can be used to develop because the handling of corruption crimes has complexity. Where what must be addressed is not in one part but almost in all elements of both Human Resources (HR), rules, institutions, and supervision.

In this study, researchers use the optics of legal effectiveness and policy effectiveness in looking at law enforcement by the Corruption Eradication Commission in an effort to eradicate corruption in Indonesia.

3.1 Legal Effectiveness

The discussion of legal effectiveness means that we will comprehensively look at legal activities in society by comparing legal reality (Das Sollen) with legal ideals (Das Sein). Which specifically shows the level between law *in action (law in action)* and law in theory *(law in theory)*.[15]

The assessment of Das Sein and Das Sollen, will show us the extent of the distance that exists between the two, because with the increasing distance, the law will have no meaning. In the sociology of law, we simply interpret the term *law as a tool of social engineering* introduced by Roscoe Pound.[16] Where then the existing rules will force people to live based on norms and direct them towards the desired goals, eliminating habits that are deemed no longer appropriate, so as not to interfere with the interests of others.[17]

In assessing the effectiveness of the law in the implementation of law enforcement for corruption crimes, we actually have sufficient legal rules to serve as a legal basis for the KPK in carrying out its duties and responsibilities, namely:[18]

a. Law No. 28/1999 on State Administration that is Free from Corruption, Collusion, and Nepotism.
b. Law Number 20 of 2001 on the Amendment to Law Number 31 of 1991 on the Eradication of Corruption.
c. Law No. 30/2002 on the Corruption Eradication Commission.
d. Law No. 46/2009 on the Corruption Court.
e. Law Number 1 Year 2006 on Mutual Legal Assistance in Criminal Matters.
f. Law No. 7/2006 on the Ratification of the United Nations Convention Against Corruption, 2003.
g. Law No. 13/2006 on Witness and Victim Protection.

These rules are then used by law enforcement officials (lawyers, police, prosecutors and judges) as material law, because these rules clearly explain the types of acts that can be categorized as corruption to the types of punishment that can be imposed on corruption convicts.

So then whether these rules are effective or not, our assessment is no longer on the rule of law which is an inanimate object that will not move if no one moves it. This means that the assessment of the effectiveness of the law will lead to the Law Enforcement Officials themselves.

The function of law as a means of social control can run well if there are things that support it. Where the rules that have been passed which are the hope of everyone will return to the support, desire, ability, seriousness of the legal apparatus (in this case the KPK) to implement them. The public still sees an apparatus that can still be intervened by other elements that should not be a determining factor, such as power, material and selfishness and collusion.[19]

KPK's Seriousness[20] in carrying out its duties and responsibilities was then doubted by the public, after some time ago the chairman of the KPK, who was supposed to be the person at the forefront of the fight against corruption, was involved in a case of extortion of one of the corruption suspects. [21] It cannot be blamed if the public then doubts the performance of the anti-corruption law itself because until now this case has not been resolved and even the problematic KPK chairman has not been detained by the National Police Headquarters on the grounds that "there is no need for detention".

Thus, anti-corruption law with all its complexities has not been effectively implemented in Indonesia. We do not have a problem with the law-making process although law-making is not seen as a sterile and absolutely autonomous activity, [22] but the problem with the effectiveness of our anti-corruption laws lies in the implementation process.

3.2 Policy Effectiveness

Throughout the journey of government and the change of government period from Soekarno to the present, efforts to improve the effectiveness of handling corruption have always been made. Both by improving existing regulations and by implementing policies.

The policies adopted by the Corruption Eradication Commission are based on various studies or comparisons with other countries' Corruption Eradication Commissions. The author then highlights some of the policies of the last few years that have become topics of discussion among legal scholars...

a. Status and Organizational Position of KPK

1) KPK is a state institution in the executive power family that in carrying out its duties and authorities is independent and free from the influence of any power. At the beginning of its formation, the KPK was an independent institution, this was done to avoid intervention from various parties to the KPK when investigating corruption cases.

   By changing its position from an independent to an executive power institution like other Non-Ministerial Government Institutions where the KPK is directly responsible to the president and connected to ministers and other state officials in the organizational structure, this situation can result in obstruction of law enforcement against executives who are difficult to be said to be free from the practice of Corruption, Collusion and Nepotism.

   The KPK may receive pressure or orders to stop investigating various corruption cases on the grounds that it could destabilize the country because the suspect is a state figure or the KPK may be used as a political tool by the government to silence those who disagree with government policies.

2) KPK employees are state civil apparatus in accordance with the provisions of laws and regulations regarding the State Civil Apparatus (ASN).

   The transition of the KPK's position into the executive branch does not necessarily make the status of KPK employees change to ASN, because in other institutions the status of employees is not ASN, although we know that not all ASNs are Civil Servants.

   In terms of regulations equipped with various legal instruments, it is possible to transfer KPK employees who are then transferred to ASN, the problem is that when they become ASN, the KPK is no longer a check and balance for state officials. The Minister's position as a political party cadre can easily intervene with the KPK when it is investigating a state institution, as was once stated by former KPK Chairman Agus Raharjo who was asked by the President to stop the investigation into Setya Novanto for the e-KTP case.

If the KPK then becomes a political tool of the government, the KPK will lose its function where then the eradication of corruption will only be a drama to scare those who reject government policies because they are hostage to their past sins. If something like this happens, it would not be wrong for the public to start questioning the function of the KPK and even request that it be disbanded.

b. Case Handling by KPK

1) KPK is only authorized to handle corruption cases in two cases, namely corruption cases involving law enforcement officials and corruption cases that cause state losses of at least IDR 1 billion.
   The policy to only investigate corruption cases involving Law Enforcement Officials (APH) is considered to have opened opportunities for parties such as the State Civil Apparatus, politicians, and the private/corporate sector to commit corruption because they will be far from the KPK's monitoring.
   In some cases of corruption in this country, it turns out that Ministers, even some Ministers, are also involved. If the Minister's position is an executive and political position, this policy will make corruption committed by the Minister not handled by the KPK. Although the institution that can carry out investigations and investigations is not only the KPK, this policy should not exist because it will be a kind of unwritten division of tasks to other institutions to investigate corruption cases. Whereas the function and task of the KPK is to handle corruption cases.
   The condition of handling by several institutions like this will have the potential to overlap and dispute the authority of institutions which leads to unclear handling of problems. This is not a new thing because previously many institutions disputed and threw responsibility to each other when there was a problem of authority in handling something.

As for the stipulation of a minimum value of 1 billion in case investigations contained in the KPK policy, it is not in line with several things:

a) Development projects that the private sector has a value far above 1 billion and even worth Trillion Rupiah. It is certainly not possible for the KPK to investigate corruption involving law enforcement officials, because corruption in projects of this size may not involve law enforcement officials but may involve legislators or ministers as executives.
b) In connection with the political position of the Minister and the minimum value of the investigation of 1 billion, it should be remembered that corruption cases committed or involving Ministers are corruption cases above the value of 1 billion rupiah. Thus, corruption cases of Ministers should by policy not be handled by the KPK, while on the other hand corruption crimes that occur are not committed alone but involve many people, with the potential that cases investigated by the KPK also involve Ministers.
   Thus, because the policy is to only investigate cases involving law enforcement officials, under these conditions case investigations are not only carried out by the KPK.

c) In the Regulation of the Head of the Financial Transaction Reports and Analysis Center Number: Per-12/1.02.1/PPATK/09/11 concerning Transaction Reporting Procedures for Providers of Goods and / or Other Services, it is emphasized that it will monitor transactions with a minimum of Rp.500,000,000, -. This means that PPATK still categorizes Rp.500,000,000 as state losses if it is indicated to be the proceeds of crime.
   If then the KPK policy that provides a value of 1 billion rupiah as the minimum value to be investigated, it means that if there is a transaction worth Rp. 500,000,000, - in the account of a law enforcement officer which is then reported by PPATK to the KPK, it will not be responded to because the value is less than 1 billion. Or if the value of Rp. 500,000,000 is transacted in the account of ASN staff, the KPK will not respond because it is windowed by its own policy.

What the author discusses, which is a critique of legal effectiveness and policy effectiveness, is a form of concern that must be owned by us Indonesians who desire a country free from corruption. Although we know that the crime of corruption is very unlikely to be eradicated, but with the improvement and desire of the authorities, corruption can be reduced.

We hope that many law enforcement officers are as determined as Supreme Court Justice Artidjo Alkostar, who consistently upholds the rule of law and consistently implements it in an effort to fight corruption in Indonesia. In addition, the government also provides opportunities for the public to participate in monitoring by increasing communication to the people through official government websites so that the public can be educated that the benefits of eradicating corruption are numerous, one of which can accelerate the pace of the economy through increased investment,

In fact, ICW argues that information disclosure in Indonesia is then limited by the Law on State Secrets, information to the public about efforts and achievements in eradicating corruption is hindered even though what is informed is a positive thing.[23]

4 Conclusion and Suggestion

4.1 Conclusion

Effective laws relating to the handling of corruption implemented in Indonesia do not have problems in the law-making process, although law-making is not seen as a sterile and absolutely autonomous activity, but the problem of the effectiveness of our anti-corruption law is in the implementation process, so that law enforcement officials at the KPK are needed who are not only honest and clean but also have a commitment to carry out their duties and responsibilities as their oath of office.

In improving the rules regarding the eradication of corruption, which must then be changed through the policies of the KPK institution, there are several points that must be underlined because these policies do not strengthen the institution but further weaken the institution by providing restrictions, which then affect performance results.

4.2 Suggestions

In an effort to find good law enforcement officers, a better recruitment pattern is needed to get qualified law enforcement officers at the KPK, which can provide hope for all Indonesian people, wanting good and correct law enforcement against corruption crimes not to be carried out in a selective manner but to be applied equally to everyone in order to realize equality before the law. The rule of law regarding corruption is an inanimate object that will not have its effectiveness if the legal apparatus (KPK) that implements it does not have the intention and sincerity to enforce it.

It is necessary to review the policies of the KPK institution that are contrary to the purpose of the institution itself. The desire to eradicate corruption cannot be done by using certain categories because all acts of corruption are acts of theft of public money. Therefore, policies that are considered to hinder the eradication of corruption and eliminate the spirit of the KPK should not be used because it will make the KPK an ineffective institution.

References

[1] A. Rosid, *Corruption and Culture*. Bandung: Dunia Pustaka Jaya, 2015.
[2] Y. Munaf, *State Administration Law Riau*. Riau: Marpoyan Tujuh Publishing, 2016.
[3] D. Zahuri and E. Israhadi, “Juridic Review of Legal Protection towards Teachers as Educators,” 2021. doi: 10.4108/eai.6-3-2021.2306193.
[4] B. Nurdin and D. Gunherani, “Juridical Review of Consumer Protection for People’s Credit Agency (BPR) in the Era of Digital Innovation,” 2023. doi: 10.4108/eai.28-10-2023.2341786.
[5] M. Suzuki, “Victim Recovery in Restorative Justice: A Theoretical Framework,” *Crim. Justice Behav.*, vol. 50, no. 12, pp. 1893–1908, Dec. 2023, doi: 10.1177/00938548231206828.
[6] A. Budianto and M. Halimuddin, “Juridical Review of the Criminal Act of Corruption in Procurement of Health Equipment in Hospitals,” 2023. doi: 10.4108/eai.28-10-2023.2341806.
[7] P. M. Marzuki, *Legal Research, Jakarta: Kencana Publisher*. jakarta: Kencana Publisher, 2010.
[8] S. Lativa and D. Susilastuti, “Analysis of the Impact of Economic Growth and Wages on Educated Unemployment in Indonesian Provincial Area,” 2022. doi: 10.4108/eai.30-10-2021.2315852.
[9] M. Asnawi, F. Santiago, and S. Suparno, “The Strategic Role of Judges in Legal Finding,” 2023. doi: 10.4108/eai.12-11-2022.2327266.
[10] P. L. Moore and K. L. Lawrence, “The Essential Role of Human Service Nonprofits in Restorative Justice Policy Implementation,” *Nonprofit Policy Forum*, Sep. 2023, doi: 10.1515/npf-2022-0040.
[11] A. Aziz, I. Fauzi, J. Bangsa, S. Isnawati, and A. Siswati, “Initiation of SDM Development of Creative Economy Through Development of Digital Economy-Based Clinics,” 2023. doi: 10.4108/eai.28-10-2023.2341809.
[12] T. Makayu, “Implementasi Pendidikan Kristen dalam Keluarga untuk Membangun SpiritualRemaja Masa Kini,” 2022.
[13] R. Sara and D. Kristianto, “Implementation of Reporting Obligations for Financial Service Providers in Preventing Money Laundering Crimes at PPATK Institutions,” 2023. doi: 10.4108/eai.28-10-2023.2341778.
[14] I. Ichsanullah and Z. Fakrulloh, “Adoption of Children in the Civil Law Perspective,” 2022. doi: 10.4108/eai.30-10-2021.2315816.
[15] A. Rozi, A. Redi, and A. Budianto, “Legal Review Of Simultaneous Elections From The Perspective Of The 1945 Basic Act,” 2023. doi: 10.4108/eai.6-5-2023.2334516.

[16] P. Astuty, R. Afrianti, and K. Taufik, “Export Performance Improvement Strategy Indonesia During The Pandemic,” 2023. doi: 10.4108/eai.28-10-2023.2341784.

[17] A. Aspandi, *Challenging Indonesia’s uncertain legal system*. surabaya: LeKSHI, 2002.

[18] M. Elizabeth, R. Safitri, N. Illiyyun, M. Masrohatun, and K. Atmaja, “Dynamics in Attaining Woman Quota of 30% (Study among Political Parties in Central Java Province Indonesia),” 2021. doi: 10.4108/eai.6-3-2021.2305960.

[19] I. G. Andika Jaya, F. Santiago, and Z. Fakrulloh, “Legal Studies: Law as a Deterrent Effect for Gambling Criminals,” 2023. doi: 10.4108/eai.12-11-2022.2327269.

[20] M. Ekatama, A. WA, P. Astuti, and Y. CN, “The Effect of Motivation, Education Level, And Work Experience on Employee Work Productivity,” 2022. doi: 10.4108/eai.16-4-2022.2319721.

[21] B. Nurdin and H. Heriyah, “Implementation of the Death Penalty in Efforts to Eradicate Criminal acts of Corruption,” 2023. doi: 10.4108/eai.28-10-2023.2341781.

[22] M. Surya, A. Reny, and A. Surya, “The Contribution of Empowerment of Creative Economic Leading Sub-sectors on Increasing the Quantity of Creative Human Resources and Economic Growth in Lampung Province,” 2023. doi: 10.4108/eai.12-11-2022.2327300.

[23] S. Senen, R. Bratamanggala, and P. Astuty, “The Influence of the HDI Component and the Development of MSMEs on Economic Growth and Its Implications on Poverty and Unemployment in the DIY Province,” 2022. doi: 10.4108/eai.16-4-2022.2319702.