



Reposition of Legal Standing and Authority of Investigation by Corruption Eradication Commission

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Abstract: *The conflict of authority between the Police and the Corruption Eradication Commission (KPK) for investigating corruption has been familiar in Indonesia. This article analyzed the importance of repositioning the legal standing and the investigative authority of KPK. The analysis was done by grammatical, systematic, and teleological interpretation. The existence of a dispute between the Indonesian National Police and KPK is caused by a gap in the legal standing and authority of investigation. The harmonization of the rule of law is intended to reposition the legal status and authority of the KPK investigator to conduct corruption investigations. This study contributes to the harmonization of the law can be achieved by revising Article 43 of the Anti-Corruption Law, Articles 6, 7, 8, 9, 10, 11, 50, and 68 of the KPK Law, based on the principles of equality, proportionality, coordination, partnership, and integration. This study is original, and the value of this study is to discuss how is the form of overlap of legal standing and authority in the investigation of corruption between the KPK investigator and the National Police investigator and how to reposition the legal standing and the authority of the investigation by the KPK investigator in Indonesia.*

Key Words: *keywords criminal acts of corruption; investigative authority; legal standing.*

1. INTRODUCTION :

The dispute between the Indonesian National Police (POLRI) and the Corruption Eradication Commission (KPK), better known as the fight of lizards versus crocodiles, has occurred repeatedly. Various opinions of criminal law experts also took part in this quarrel. Indonesian people are very familiar with the conflict of authority between the Police and the KPK in terms of investigating corruption, ranging from the criminalization of the chief of KPK to seizing the process of examining cases of criminal acts of corruption related to the procurement of driving license simulation tools (Marbun, 2019). There are often conflicts and overlapping authorities between the National Police, Attorney General's Office, and the Corruption Eradication Commission in terms of investigating and prosecuting corrupt acts. It happens because the KPK has multiple authorities or specificity of authority with Law No. 30 of 2002, namely the special authority of the KPK in investigating and prosecuting in the Corruption Court (Aryantoro, 2013).

Problems with the legal standing of the KPK and the POLRI are mentioned in Article 38 paragraph (2) of Law no. 30 of 2002 concerning the Corruption Eradication Commission (KPK Law), which determines.¹

The problematic authority of the investigation by the KPK and the POLRI is contained in Article 8 paragraphs (1) and (2) of the KPK Law, namely:

- a) In carrying out the supervisory duties as referred to in Article 6 letter c, the Corruption Eradication Commission is authorized to conduct supervision, research, or study of agencies that carry out their duties and authorities related to eradicating criminal acts of corruption, and agencies that carry out public services.
- b) In exercising authority as referred to in paragraph (1), the Corruption Eradication Commission is also authorized to take over the investigation or prosecution of perpetrators of corrupt acts that are being carried out by the police or prosecutors.

¹ Article 38 paragraph (2) of Law no. 30 of 2002 concerning the Corruption Eradication Commission.



According to Article 6 letter b of the Corruption Eradication Commission Law, the KPK has the task of supervising agencies that are authorized to eradicate corruption. Even more, the KPK has the authority to take over the investigation of corruption conducted by the police investigator.

The legal issues of the relationship between the police investigator and the KPK investigator at the level of legislation are:

- a) Legal standing overlaps between the POLRI investigator and the KPK investigator.
- b) Authority overlaps corruption investigations by police investigators and KPK investigators.

Based on the prior explanations, this research focus to discuss how is the form of overlap of legal standing and authority of the investigation of corruption between the KPK investigator and the National Police investigator and how to reposition the legal standing and the authority of investigation by the KPK investigator.

2. METHOD :

To discuss the research problems, necessary to analyze all the legal rules related to overlap and repositioning of legal standing and authority of the investigation of corruption between the KPK investigator and the National Police investigator. The analysis uses the methods of grammatical interpretation, systematic interpretation, and teleological interpretation.

3. DISCUSSION :

a. The Legal Standing Overlaps between KPK Investigators and the National Police Investigators

Before analyzing the overlap of legal standing, it is first necessary to analyze the scopes of corruption that are the basis of the police investigator and the KPK investigator's authority. Article 13 of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia (POLRI Law) determines that the main tasks of the National Police are: (a) maintaining security and public order, (b) enforcing the law, and (c) providing protection and service to the community². Article 14 paragraph (1) letter g of the National Police Law stipulates that in carrying out the main tasks as referred to in Article 13, the National Police is tasked with conducting investigations of all criminal acts criminal procedural law, and other statutory regulations³. The scope of corruption can be described in the following table 1.

Table 1. Acts of corruption that become the authority of POLRI and KPK investigators

| No. | POLRI investigators | KPK Investigators |
|-----|---|---|
| 1. | All corruption crimes other than those referred to in Article 6 letter c jo Article 11 of the KPK Law | Corruption crimes with 3 indicators: a. involving law enforcement officers, state administrators, and other people who are related to corruption committed by law enforcement officers or state administrators; b. get disturbing attention from the community; and/or c. concerning state losses of at least Rp. 1,000,000,000.00 (one billion rupiah). |

Source: Article 13 jo 14 paragraph (1) letter g of the POLRI Law and Article 6 letter c jo Article 11 of the KPK Law, *processed*⁴

Article 6 letter c jo Article 11 of the KPK Law determines the scope of corruption, which limits the authority of the KPK investigator. Outside these two articles, it is the POLRI investigators' authority. The scope of corruption, which becomes the limit of authority is what should be used as the foundation in establishing the legal rules relating to the authority of investigations by KPK investigators.

The purpose of establishing KPK is to increase the effectiveness of corruption eradication (Article 4 of the KPK Law), with the legal standing as a state institution carrying out its duties and authorities to be independent and free from the influence of any power (Article 3 of the KPK Law). Elucidation of Article 3 of the KPK Law states, what is meant by "any power" is a power that can influence the duties and authority of the KPK or individual commission members from the executive, judicial, legislative, other parties related to the corruption case, or circumstances and situations or for any reason. The legal provisions ratio is to position the KPK as an institution that is free and independent from anyone's influence.

² Article 13 of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia.

³ Article 14 paragraph (1) letter g of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia.

⁴ Article 13 jo 14 paragraph (1) letter g of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia; Article 6 letter c jo Article 11 Law Number 30 of 2002 concerning Corruption Eradication Commission.



The issue of legal standing overlap between the KPK investigator and the POLRI investigator begins with Article 1 number (3) of the KPK Law, that a series of actions to prevent and eradicate corruption by coordinating, supervising, monitoring, investigating, prosecuting, and examining at trial the court, with the participation of the community is based on the applicable laws and regulations.

The provisions of Article 1 number (3) of the KPK Law are reaffirmed in Article 6 of the KPK Law, that the KPK has the task including coordinating with agencies authorized to eradicate corruption, supervising agencies authorized to eradicate corruption, conducting an investigation and prosecution of corruption, taking steps to prevent corruption, and monitoring the implementation of state government.

Article 38 paragraph (2) of the KPK Law does not enforce the provisions of Article 7 paragraph (2) of the Criminal Procedure Code, meaning that it does not position KPK investigators as PNS investigators. The KPK Investigator is not positioned as a subordinate of the POLRI investigator. The idea of not being subordinate can be understood. But when analyzing the rule of law relating to the legal position of the KPK investigator, it is clear that the spirit of the formation of the KPK Law is to position the KPK investigator as the superordinate organ of the police investigator.

b. The Authority Overlaps between KPK Investigators and Police Investigators

The authority overlap of investigations by the KPK investigator and the National Police investigator rests on several legal rules in the KPK Law. Article 50 of the KPK Law stipulates: (1) If a criminal act of corruption occurs and the Corruption Eradication Commission has not conducted an investigation, while the case has been investigated by the police or the prosecutor, the agency must notify the Corruption Eradication Commission no later than 14 (fourteen) working days from the date the investigation began; (2) Investigations conducted by the police or prosecutors as referred to in paragraph (1) must be coordinated continuously with the Corruption Eradication Commission; (3) If the Corruption Eradication Commission has begun an investigation as referred to in paragraph (1), the police or the prosecutor no longer has the authority to conduct an investigation; (4) In the case where an investigation is carried out simultaneously by the police and/or prosecutors and the Corruption Eradication Commission, the investigation conducted by the police or the prosecutor shall be immediately terminated.

Article 43 of the Anti-Corruption Act determines: (1) At the latest 2 (two) years after this law comes into force, a Corruption Eradication Commission is formed; (2) The commission as referred to in paragraph (1) has the duty and authority to coordinate and supervise, including conducting investigations and prosecutions following the provisions of the applicable laws and regulations; (3) Membership of the commission as referred to in paragraph (1) consists of elements of the Government and elements of society; and (4) Provisions regarding the formation, organizational structure, work procedures, responsibilities, duties, and authorities, as well as the membership of the commission as referred to in paragraph (1), paragraph (2), and paragraph (3) are regulated by law⁵.

Article 43 Paragraph (2) of the Anti-Corruption Act is a factor that is causing the problem, which is an institutional overlap and investigation authority between the KPK investigator and the police investigator. The use of the phrase "coordination and supervision" is inappropriate because there is a conceptual contradiction, which results in an overlap of authority. The term "coordination" means equality between the parties, while the term "supervision" means that there is one party that has a higher position as superordinate. While in terms of institutional structure, the police have absolutely no hierarchical relationship with the KPK. Also, giving authority to the KPK to coordinate let alone supervise in handling corruption cases with other law enforcers (POLRI) can create non-cooperative constraints (Hutahaean & Indarti, 2016). A concept inaccuracy, because on the one hand, it wants a position of equality between the KPK and other institutions, but on the other hand, wants KPK in a higher position. A legal notion contains conflicting concepts.

c. Reposition of Legal Standing and Authority of KPK Investigators

From the perspective of the integrated criminal justice system, in essence, the Criminal Procedure Code, the National Police Law, the Anti-Corruption Law, and the Corruption Eradication Commission Law must be a series of systemic legal bases (in this case aspects of institutional relations and authority), as an integrated whole for the successful process of preventing and eradicating corruption. In other words, these laws should not result in the institutional and authority aspects of the corruption investigation being fragmented and not integrative. Simply put, the system is an integrated whole, consisting of parts (sub-systems) that are related to each other, where the parts work together functionally to achieve the goals of unity. The system is interpreted as a type of unit, which has a certain order, and shows a structure composed of parts (Rahardjo, 1999). The system is also interpreted as a plan, method, or procedure for doing something. The system is a complete sequence, which includes elements, parts, consistency, completeness, and conception or basic understanding (Soekanto, 1983).

⁵ Article 43 paragraph (1,2,3) Law no. 31 of 1999 on the Anti-Corruption Act.



The normative approach to the criminal justice system, according to Atmasasmita (Atmasasmita, 1996) views the four apparatuses (police, prosecutors, courts, and correctional institutions) as implementing institutions of the applicable laws and regulations so that the four apparatuses are an inseparable part of the law enforcement system solely. This opinion emphasizes that the position and authority of law enforcers are highly dependent on the legislation on which the law is based. If the legal designs regarding the legal position and authority overlap, the performance among law enforcement officials will also overlap. Therefore, efforts to reform the disharmony in the legislation need to be carried out, particularly the existing regulations (Anggono, 2010). In this case, the laws and regulations in the criminal justice system.

In its development, to emphasize the integrated aspects of the criminal justice system, the concept of an integrated criminal justice system emerged. This concept emphasizes the integrative principle of the criminal justice system. The meaning of integration is integration to become a unified whole (Widodo, 2012).

Regarding the term “integrated”, Muladi explained that the word “integrated” attracts attention when it is associated with the term “system” in the criminal justice system (Muladi, 1999). This is because the term "system" should already contain integration and coordination), in addition to other characteristics such as the existence of clear objectives of the system, processes: input-throughput-output and feedback, effective control systems, negative entropy, etc. The less harmony with legislation, the less integrated the criminal justice system. In this context, there is no doubt that the Anti-Corruption Law and the KPK Law have created a criminal justice system that is not integrative, with fragmented institutional aspects and the authority of the investigation. The lack of integration and harmonization between one another can result in the absence of legal certainty which is one of the aims of the law (Pratiwi, 2018).

The concept used to analyze the corruption process of the Corruption Court, in the form of overlapping legal positions and investigative authority, is the harmonization of the rule of law. According to Goesniadhie, harmonization in law includes adjusting laws and regulations, government decisions, judges' decisions, legal systems, and legal principles to increase legal unity, legal certainty, justice and comparability, usefulness, and legal clarity (Goesniadhie, 2006; Triputra, 2016).

As known, the harmonization of the criminal justice system is related to three aspects, namely: (a) Harmonization of the legal structure, (b) Harmony of legal substances, and (c) Harmonization of legal culture. In fact, according to Arief to achieve an integrated criminal justice system, it is necessary to have harmonization and synchronization as a whole related to more than just the substance of the law, legal structure, legal culture, and even ethical or moral law, and legal education (Arief, 2003).

As a logical consequence, the repositioning of the legal position and the investigative authority of the KPK Investigator is a necessity. The repositioning can be described in Figure 1.



Figure 1. Corrupt acts, legal position, and authority of investigation. Source: Article 6 letter c jo Article 11 of the KPK Law and Article 14 paragraph (1) letter g of the POLRI Law, processed

Based on Article 6 letter c jo Article 11 of the KPK Law, the KPK Investigator only has the authority to investigate corruption with 3 Indicators, namely: (a) involving law enforcement officials, state administrators, and other people who are related to corrupt acts committed by official law enforcement or state administrators; (b) getting disturbing attention from the public; and/or (c) involving state losses of at least Rp. 1,000,000,000.00 (one billion rupiah). This means that all corrupt acts, besides corruption with three indicators under the authority of the KPK investigator, are under the authority of the police investigator, as regulated in Article 14 paragraph (1) letter g of the National Police Law.

As a logical consequence of separating the scope of corruption as stipulated in Article 6 letter c jo Article 11 of the KPK Law and Article 14 paragraph (1) letter g of the POLRI Law, the legal position of the police investigator and the KPK investigator must be based on such separation. The positioning of KPK investigators and police investigators must be directly proportional to the scope of corruption that becomes the limit of their respective authority. The legal status of the police investigator and the KPK investigator can be illustrated in Figure 2.

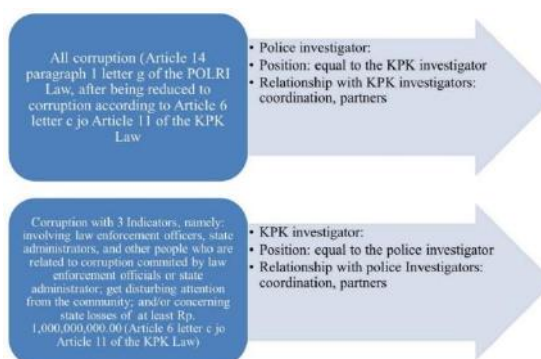


Figure 2. The legal status of KPK investigators and police investigators. Source: Article 6 letter c jo Article 11 of the KPK Law and Article 14 paragraph (1) g of the National Police Law, processed

The existing conditions of the corruption investigation authorized by the KPK investigator and the National Police investigator can be described in Figure 3.



Figure 3. Overlapping authority of the investigation by KPK investigators and POLRI investigators. Source: Article 43 of the Corruption Law, Articles 6, 7, 8, 9, 10, 11, 50, and 68 of the KPK Law, processed.

Several legal rules, such as Article 43 of the Anti-Corruption Act, and Articles 6, 7, 8, 9, 10, 11, 50, and 68 of the KPK Law are the legal basis for overlapping investigative authority between the KPK investigator and the National Police investigator. With this legal basis, the KPK investigator not only investigates corruption with three indicators, which are the scope of his authority but also can coordinate, and request information and reports from the National Police investigator. In addition, it can also supervise, research, examine, and take over investigations conducted by police investigators.

| POLRI investigators | Revision | KPK investigators |
|--|--|--|
| <ul style="list-style-type: none"> The basis: corruption cases other than those stipulated in Article 6 letter c jo Article 11 of the KPK Law Legal status Authority of Investigation | <ul style="list-style-type: none"> Article 43 of the Anti-Corruption Law, Articles 6, 7, 8, 9, 10, 11, 50 and 68 of the KPK Law Principle: equality, proportionality, coordination, partnership, integration | <ul style="list-style-type: none"> The basis: corruption cases according to Article 6 letter c jo Article 11 of the KPK Law (with 3 indicators) Legal status Authority of Investigation |

Figure 4. Harmonization of legal position and authority of investigation. Source: Article 6 letter c jo Article 11 KPK Law and other primary legal materials, processed

The revision is expected to produce a rule of law that places the KPK investigator and the National Police investigator in an equal position, as strategic partners, without mutual intervention, and always coordinates to prevent and eradicate corruption. There is no obstacle to establishing a law that is expected to fight corruption as an extraordinary crime that is systemic and endemic, thus extraordinary methods of repression are strongly needed. There is no obstacle to making a special rule of law (*lex specialis*) by not applying a general rule of law (*lex generalis*) as an embodiment of the adagium “the special rule of law wins over the general rule of law” (*lex specialis derogat lex generalis*), as long as it is in line with Article 6 letter c jo Article 11 of the KPK Law.



4. CONCLUSION:

Based on the discussion of the research problem, it can be concluded that the repositioning of the legal position and the authority of the investigation by the KPK investigator is necessary because there has been an overlapping of the legal position and authority with the police investigator. The overlap is due to inaccuracies in several legal rules in the Anti-Corruption Law and the KPK Law, namely Article 43 of the Anti-Corruption Law, also Articles 6, 7, 8, 9, 10, 11, 50, and 68 of the KPK Law. For this reason, it is necessary to harmonize the law by relying on corruption with three indicators, which are the scope of the KPK investigator's authority. Harmonization of the law can be achieved by revising Article 43 of the Anti-Corruption Law, Articles 6, 7, 8, 9, 10, 11, 50, and 68 of the KPK Law, based on the principles of equality, proportionality, coordination, partnership, and integration. However, it can be concluded that the repositioning of the legal position and the authority of the investigation by the KPK investigator is necessary because there has been an overlapping of the legal position and authority with the police investigator. The overlap is due to inaccuracies in several legal rules in the Anti-Corruption Law and the KPK Law, namely Article 43 of the Anti-Corruption Law, also Articles 6, 7, 8, 9, 10, 11, 50, and 68 of the KPK Law.

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