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THE LEGALITY QUESTIONING OF THE INVESTIGATION TERMINATION THROUGH THE INVESTIGATION WARRANTY ON CORRUPTION CRIME

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Abstract

The ongoing investigation sheds light on a criminal case. The purpose of this study is to analyze the legality of the termination of the investigation of corruption cases carried out by the KPK as a result of the enactment of Article 40 of Law No. 30 of 2002. This research focuses on the authority of the KPK in stopping the investigation process of corruption crimes through the Investigation Termination Order (SP3). With the type of normative juridical-based research, the research is centered on literature research taken from the study of the election, literature studies, and other scientific works then analyzed using qualitative research methods that are oriented to the conceptual certainty approach and the case approach. The main problems found include the legality of SP3 by the KPK in corruption crimes. The results of the study show the position of the KPK as a super body institution, in the enforcement of corruption crimes, it has several special authorities because it is regulated in a specialist manner in its own provisions, including the authority to investigate based on philosophical, sociological, and juridical aspects, where the essence of the KPK's authority is a rational effort in eradicating corruption and realizing law enforcement oriented towards justice and legal certainty. The recommendation given is that investigations and investigations by the KPK must be carried out professionally, efficiently, and effectively by paying attention to the conditions that must be met before the investigation is carried out, so that synergy and coordination between law enforcement officials are needed.

Keywords: *Eradication; Commission; Corruption; Crimes; Investigation.*

A. INTRODUCTION

The success of the investigation of a criminal act will greatly affect the success or failure of the Public Prosecutor's prosecution at the stage of the court hearing examination later[1]. But what if the investigation stops in the middle of the road? The law gives the authority to terminate the investigation to the investigator, that is, the investigator is authorized to act to stop the investigation that has been started[2]. This is emphasized by Article 109 paragraph (2) of the Criminal Procedure Code which authorizes investigators to stop ongoing investigations. Article 109 paragraph (2) of the Criminal Procedure Code states: "In the event that the investigator stops the investigation because there is insufficient evidence or the event turns out not to be a criminal act or the investigation is stopped for the sake of the law, then the investigator notifies the public prosecutor, the suspect or his family"[3].

When the investigator initiates an investigation, he is obliged to notify the public prosecutor of the commencement of the investigation and the termination of the investigation, whereby every termination of the investigation carried out by the investigator must officially issue an Investigation Termination Order (SP3) [4],[5]. The provision of SP3 that will be discussed in this study is not the provision of SP3 for ordinary/general crimes, such as murder, persecution, and so on, but is only devoted to the provision of SP3 for special crimes (corruption) which have recently invited controversy and debate and created a negative perception of the performance and image of law enforcement officials[6].

The public generally wants the perpetrators of corruption crimes to be processed legally and subject to the fairest punishment, the provision of SP3 is considered an act that damages public expectations in efforts to eradicate corruption. Of the three reasons for stopping the investigation based on Article 109 paragraph (2) of the Criminal Code mentioned above, the first reason is that there is not enough evidence is the most frequently used reason by investigators of corruption crimes. The author observes from several examples of corruption cases that occurred, where investigations were stopped by investigators in several cases of major corruption crimes [7].

1 Angela J Davis., Reimagining Prosecution: A Growing Progressive Movement, *UCLA Criminal Justice Law Review*, Vol.3, No.1, 2019

2 John Kenedi., Preventing Corruption Crimes of Money Laundering through Community Participation and POLRI Investigators, *International Journal of Criminal Justice Sciences* Vol.18, No.1, 2023

3 Pemerintah Republik Indonesia, *Undang Undang No. 8 Tahun 1981 Tentang: Kitab Undang Undang Hukum Acara Pidana,* Jakarta, Sinar Grafika, 1981.

4 Lilik Mulyadi., *Hukum Acara Pidana: Normatif, Teoretis, Praktik Dan Permasalahannya*, Bandung, PT. Alumni, 2012

5 Jennifer Arlen and Samuel W Buell., The Law of Corporate Investigations and the Global Expansion of Corporate Criminal Enforcement, *S. Cal. l. Rev.* 93, 2019, page.697.

6 Simon Butt, *Corruption and Law in Indonesia* , Routledge, 2017.

7 M Yahya Harahap., *Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan Edisi Kedua*, 2002.

Investigation is a series of actions carried out by investigators in finding and collecting evidence, and with that evidence makes or sheds light on the criminal acts that occurred and at the same time finds the suspect or the perpetrator of the crime. From these two series of processes, there is a kind of graduation between the investigation stage and the investigation stage, which is why great caution is needed and clear, convincing and relevant reasons are needed when law enforcement officials escalate the investigation stage to the investigation stage. Before the investigation process is carried out, the investigator must first try to collect the existing facts and evidence as the basis for the follow-up of the investigation [8]. Thus, it can be stated that the reasons for the investigator to stop the investigation in accordance with Article 109 paragraph (2) of the Criminal Procedure Code are as follows: (1) Because there is not enough evidence; (2) Because the event turned out not to be a criminal act; (3) The investigation is stopped for the sake of the law.

There are several cases of corruption cases that are under investigation at the investigation stage and then issued SP3 by investigators who are the prosecutor's office for reasons that are considered less transparent and unclear[9]. Thus, the problem is the granting of SP3 by the prosecutor's office to corruption cases where the basis for granting SP3 is considered to be less transparent and cannot be accounted for the provisions of the applicable procedural law.

In contrast to the Prosecutor's Office and the National Police as investigators of a criminal act, the Corruption Eradication Commission (KPK) which is an institution or state institution formed from Law No. 30 of 2002 concerning the Corruption Eradication Commission is not authorized to issue SP3 in every investigation it conducts. This is affirmed in Article 40 of Law No. 30 of 2002 concerning the Corruption Eradication Commission which reads "The Corruption Eradication Commission is not authorized to issue a warrant to stop investigation and prosecution in corruption cases"[10].

The statement in the article can be seen from two different perspectives, the first is reviewed from the perspective of the rights possessed by a suspect in the crime of corruption. At first glance, the provisions in the article are of course considered to castrate the human rights of suspects who have been declared as suspects by the KPK as if they no longer have the possibility of restoring their honor and dignity, Even though the philosophy of SP3 is as a correction mechanism and an instrument to restore the dignity of the suspect if the investigator does not have enough evidence to forward the case to the prosecution level. So without the SP3 mechanism, the KPK will force every case it handles to be forwarded to a higher level, namely prosecution and court.

8 *Ibid*.

9 Hery Firmansyah, Eriyantouw Wahid, and Amad Sudiro., Pretrial on SP3 Corruption Case in the Perspective of Victim Justice, *Journal of Environmental Treatment Techniques*, Vol.8, No.4, 2020, page.1439-1446.

10 Pemerintah Republik Indonesia., Undang-Undang Republik Indonesia Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi, 2002.

Various efforts have been made by many parties who feel aggrieved by the implementation of Law No. 30 of 2002 concerning the KPK, including filing a judicial review at the Constitutional Court (MK) regarding the clause whether the law is contrary to the 1945 Constitution or not. The parties include the convicts in the corruption case Prof. Nazaruddin Syamsudin for case No. 016/PUU-IV/2006, as well as Mulyana W. Kusumah and Captain Tarcisius Walla for cases No. 012 and 019/PUU-IV/2006. The parties include the convicts in the corruption case Prof. Nazaruddin Syamsudin for case No. 016/PUU-IV/2006, as well as Mulyana W. Kusumah and Captain Tarcisius Walla for cases No. 012 and 019/PUU-IV/2006. The parties who filed the judicial review argued that with the existence of several authority arrangements owned by the KPK, such as Article 40 and Article 12 of Law No. 30 of 2002 concerning the KPK, there has been a violation of human rightsThe parties who submitted the judicial review argued that with the existence of several regulations on the authority owned by the KPK, such as Article 40 and Article 12 of Law No. 30 of 2002 concerning the KPK, there had been a violation of Human Rights.

Research conducted by Mohammad Syaiful Aris entitled "The KPK'S Investigation Termination Warrant (SP3) Authority: Endeavours To Prevent Abuse Of Power" states that SP3 derives from the legal principles of human rights defense and serves as a tool for examination and assessment, but can also be vulnerable to abuse.

Based on the background of the problems described above, the problems to be discussed are prepared, namely: the background and consideration of article 40 of Law No. 30 of 2002 concerning the Corruption Eradication Commission and what are the consequences of the enactment of article 40 of Law No. 30 of 2002 concerning the Corruption Eradication Commission on the handling of corruption cases by the KPK.

B. RESEARCH METHODS

This research used normative legal research or library research, which is a research that examines the study of documents using various secondary data. With a normative and qualitative legal data analysis approach, this study identifies and analyzes legal norms and principles relevant to legal certainty in relation to the eradication of corruption.

C. RESULTS AND DISCUSSION

1. The Position of the Corruption Eradication Commission (KPK) Based on Law No. 30 of 2002

Corruption today affects people around the world [11][12] Indonesia is no exception. This effect is shown, for example by Transparency International (IT). Annual Corruption Perception Index that corruption

11 Radha Ivory., Beyond Transnational Criminal Law: Anti-Corruption as Global New Governance, *London Review of International Law*, Vol.6, No.3, 2018, page.413–42.

12 Mikkel J Christensen., Legal Mobilization and the Internationalization of Anticorruption Enforcement, *Laws*, Vol.10, No.4, 20212021,

seems to be endemic [13] [14] in the society that puts Indonesia in 96 out of 180 with the label of a corrupt country [15].

The corruption crimes are included in special crimes because they are sourced from laws and regulations outside the Criminal Code [16]. In Indonesia, corruption crimes are covered by Law No. 31 of 1999 concerning the Eradication of Corruption Crimes which was amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999. In addition to special crimes, corruption crimes are also classified as extraordinary crimes or extraordinary crimes that also require extraordinary handling.

The classification of corruption as an extraordinary crime is not just approved by all parties, one of the parties who disagrees is Prof. Indriyanto Seno Adji. According to him, corruption crimes cannot be classified as extraordinary crimes but only serious crimes[17]. Because the so-called extraordinary crime is systemic in nature, damaging the constitutional system and the political system, the consequences are widespread, while what has happened in Indonesia the corruption has not paralyzed the constitutional system, meaning that it is still normal, the legislative, executive, and judicial power centers are not paralyzed [18]. In this case, the author disagrees with Prof. Indriyanto, in the author's opinion that corruption should indeed be classified as one of the extraordinary crimes so that it requires extraordinary handlers to eradicate it because it has deprived the people of their social, political, and humanitarian rights who should have had the opportunity to enjoy public services if these parts were not taken away by corruptors [19].

Corruption crimes do not only contain an economic dimension in the form of harming state finances/state economy and enriching oneself/others/a corporation, but also political corruption, position, power corruption, reducing democratic values, moral corruption, and so on. Given such a broad dimension, it is often stated that corruption includes/is also related to "white collar crime", "money laundering", "economic crime", "organized crime", and even called "top hat crime" (or "crime of politician in office") which can be interpreted as political crimes

13 Novitasari Novitasari., Upaya Menciptakan Budaya Anti Korupsi Melalui Tradisi Banjar, *Sospol: Jurnal Sosial Politik*, Vol.5, No.1, 2019, page.1–20.

14 Rudini Hasyim Rado and Restu Monika Nia Betaubun., Anti-Corruption Culture: Maren and Yelim's Perspective on Kei Society, *SASI*, Vol.29, No.1, 2023, page.124–33.

15 Wawan Heru Suyatmiko., Memaknai Turunnya Skor Indeks Persepsi Korupsi Indonesia Tahun 2020, *Integritas: Jurnal Antikorupsi*, Vol.7, No.1, 2021, page.161–78.

16 Adami Chazawi, *Hukum Pembuktian Tindak Pidana Korupsi: Edisi Revisi*, Malang, Media Nusa Creative (MNC Publishing), 2021.

17 Indriyanto Seno Adji., *Adu Pakar Dalam Sidang Pengujian UU KPK*, 2006.

18 Elwi Danil., *Korupsi: Konsep, Tindak Pidana Dan Pemberantasannya*, Jakarta, PT. Raja Grafindo Persada, 2021

19 Mahmud Mulyadi., Penanggulangan Tindak Pidana Korupsi Dalam Perspektif Criminal Policy Corruption Reduction In Criminal Policy Perspective, *Jurnal Legislasi Indonesia*, Vol.8, No.2, 2018, page.217–38.

or crimes related to/committed by public officials [20][21][22].

In the reform era, the government in power tried to eradicate corruption with various efforts, including issuing various laws and regulations that were expected to be effective:

Table 1
Corruption Laws and Regulations After the Reform Era in Indonesia

No.	Legislation	Explanation
1.	TAP MPR No. XI/MPR/1998	Concerning the Organization of a State that is Clean and Free from Corruption, Collusion and Nepotism
2.	Law No. 28 of 1999	Concerning the Implementation of a State that is Clean and Free from Corruption, Collusion and Nepotism
3.	Law No. 31 of 1999	Concerning the Eradication of Criminal Acts of Corruption
4.	Government Regulation no. 65 of 1999	Concerning Procedures for Checking the Wealth of State Officials
5.	Presidential Decree No. 127 of 1999	Concerning the Establishment of the Commission for Examining the Wealth of State Administrators and the Secretary General of the Commission for Examining the Wealth of State Administrators
6.	Government Regulation no. 19 of 2000	Concerning the Establishment of a Joint Team for Eradicating Corruption Crimes
7.	Presidential Decree No. 44 of 2000	Concerning the Establishment of the National Ombudsman Commission
8.	Law No. 20 of 2001	Concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption Crimes
9.	Law No. 30 of 2002	About the Corruption Eradication Commission (KPK)

With the sociological reality that corruption as an extraordinary crime has become very rampant and the level of public trust in the

20 Gregory, Robert, and Daniel Zirker., Clean and Green with Deepening Shadows? A Non-Complacent View of Corruption in New Zealand. *In Different Paths to Curbing Corruption*, Vol. 23, Research in Public Policy Analysis and Management. Emerald Group Publishing Limited, 2013;

21 Emanuela Ceva and Michele Bocchiola., Theories of Whistleblowing, *Philosophy Compass*, Vol.15, No.1, 2020

22 Marie J dela Rama, Michael E Lester, and Warren Staples., The Challenges of Political Corruption in Australia, the Proposed Commonwealth Integrity Commission Bill (2020) and the Application of the APUNCAC, *Laws*, Vol.11, No.1, 2022

administration of judicial power in Indonesia is getting lower, the KPK and the Corruption Court were formed based on Law No. 30 of 2002 concerning the Corruption Eradication Commission. The initial idea of the establishment of the KPK was intended to answer the weaknesses of conventional courts in various aspects, such as weaknesses in the quality and integrity of judges, the absence of court accountability which led to the rampant practice of the judicial mafia by involving corrupt law enforcement officials in every process of handling corruption cases [23] [24] [25].

In addition, the establishment of the KPK was also motivated by the reason that government agencies (prosecutors and police) that handle corruption cases have not functioned efficiently and effectively in eradicating corruption. The number of corruption cases involving law enforcement officials has caused public trust in law enforcement officials to be low. That is why the KPK, as a state institution with its duties and authorities that are independent and free from the influence of any power, has extraordinary authority, based on the classification of corruption crimes as extraordinary crimes [26].

The independent position of the KPK in this case is the answer to the problem of law enforcement of corruption cases in Indonesia, where corruption cases often involve high-ranking officials, political elites, economic elites or big businessmen [27]. In addition, corruption cases handled by the KPK will be tried by a special anti-corruption court, which is different from conventional courts, for example, corruption courts are led by a panel of five judges.

2. The KPK's Authority in the Investigation Process of Corruption Crimes

The criteria for corruption crimes in which the KPK is authorized to conduct investigations, investigations, and prosecutions are corruption crimes that [28]:

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23 Muhammad Afif., Eksistensi Pengadilan Tindak Pidana Korupsi Di Indonesia Dalam Penegakan Hukum Tindak Pidana Korupsi Di Indonesia, *Ensiklopedia of Journal*, Vol.1, No.1, 2018, page.97–106.

24 Muhammad Yusni., *Keadilan Dan Pemberantasan Tindak Pidana Korupsi Perspektif Kejaksaan*, Surabaya, Airlangga University Press, 2020.

25 Indonesia., Undang-Undang Republik Indonesia Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi.

26 Ariman Sitompul and Pagar Hasibuan., The Morality Of Law Enforcement Agencies (Police, Prosecutor's Office, Kpk) In Money Laundering With The Origin Of The Corruption, *European Science Review*, Vol.9, No.10, 2021, page.55–63.

27 Ahmad Khoirul Umam et al., Addressing Corruption in Post-Soeharto Indonesia: The Role of the Corruption Eradication Commission, *Journal of Contemporary Asia*, Vol.50, No.1, 2020, page.125–43.

28 Tigor Einstein and Ahmad Ramzy., Eksistensi Komisi Pemberantasan Korupsi Berdasarkan Undang-Undang Nomor 19 Tahun 2019 Tentang Perubahan Kedua Atas Undang-Undang Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi, *National Journal of Law*, Vol.3, No.2, 2020.

a. Involve law enforcement officials, state administrators, and other people who have anything to do with criminal acts of corruption committed by law enforcement officials or state administrators.
b. Gets attention that is troubling the community.
c. Concerning state losses of at least IDR 1,000,000,000.00 (one billion rupiah).

If it turns out that there is a corruption case in the process that does not meet these criteria, then the handling of the case is not by the KPK, but by other law enforcement institutions that are authorized for it, such as the police and the prosecutor's office. In carrying out the tasks of investigation, investigation, and prosecution, the KPK is authorized to [29] : conducting wiretapping and recording conversations, ordering relevant agencies to travel abroad, requesting information from banks or other financial institutions about the financial situation of the suspect or defendant being investigated, ordering banks or other financial institutions to block accounts suspected of being the result of corruption belonging to the suspect, defendant or other related parties, ordering the suspect's leader or superiors to temporarily dismiss the suspect from his position, requesting the suspect's or defendant's wealth data and tax data to the relevant agencies, temporarily suspending a financial transaction, trade transaction, and other agreements or temporarily revoking the license, licenses and concessions made or owned by suspects or defendants who are suspected based on sufficient preliminary evidence to have anything to do with the corruption crime being investigated, requesting the assistance of Interpol Indonesia or law enforcement agencies of other countries to search, arrest, and confiscate evidence abroad, and ask for the assistance of the police or other related agencies to carry out arrests, detentions, searches, and confiscations in corruption cases that are being handled.

In carrying out its functions related to the authority it has, apart from being based on Law No. 30 of 2002 concerning the KPK, the KPK is also inseparable from the arrangements as stipulated by Law No. 8 of 1981 (KUHAP). This is stated in Article 38 paragraph (1) of Law No. 30 of 2002 concerning the KPK which states that [30]:

a. All authorities relating to investigations, investigations and prosecutions regulated in Law No. 8 of 1981 concerning the Law on Criminal Procedure also applies to investigators, investigators, and public prosecutors at the Corruption Eradication Commission.
b. The provisions referred to in Article 7 paragraph (2) of Law No. 8 of 1981 concerning Criminal Procedure Code does not apply to

29 Putri Nanda Sirait and Rahayu Subekti., Analisis Undang-Undang No. 19 Tahun 2019 Tentang Perubahan Kedua Atas Undang-Undang No. 30 Tahun 2002 Tentang Komisi Pemberantasan Korupsi Berdasarkan Asas-Asas Pembentukan Peraturan Perundang-Undangan Di Indonesia, *Souvereignty* , Vol.1, No.2, 2022, page.363–72.

30 *Ibid*.

investigators of corruption as specified in this law.

From the description and authority in carrying out the functions of the KPK, it can be seen that the law gives very large and broad authority to KPK investigators when compared to police investigators and prosecutors. This is due to the magnitude of the tasks carried out by the KPK in line with the increasing severity of rampant corruption crimes in Indonesia, while the police and prosecutor's institutions are considered to lack teeth in handling corruption crimes that occur.

In addition to the Criminal Procedure Code, in carrying out its functions and authorities, the KPK also refers to the provisions in Law No. 31 of 1999 concerning the Eradication of Corruption, which is stated in Article 39 paragraph (1) of Law No. 30 of 2002 concerning the KPK:

Investigation, investigation and prosecution of criminal acts of corruption are carried out based on the applicable criminal procedure law and based on Law No. 31 of 1999 concerning the Eradication of Corruption as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption, unless otherwise stipulated in this law.

With the enactment of several laws in the implementation of the functions and authority of the investigation of the KPK, it does not indicate that there is an overlap of laws/laws and regulations, because the principle of *lex specialis derogat lex generalis* still applies, where special legal provisions will override general laws, so in carrying out its investigative function, the KPK is still based on the provisions of general regulations, namely the Criminal Procedure Code, unless there are other matters regulated by Law No. 30 of 2002 concerning the KPK.

One of the differences in authority in the investigation process in question is the regulation in Article 40 of Law No. 30 of 2002 concerning the KPK which states: "The Corruption Eradication Commission is not authorized to issue a warrant to stop the investigation and prosecution in cases of corruption". The provisions in this article are of course very controversial and raise many questions, because ordinary investigators, such as the police and prosecutors have the authority to issue an Investigation Termination Warrant (SP3).

3. Review of the Applicability of Article 40 of Law No. 30 of 2002 Concerning the Corruption Eradication Commission

There is a possibility that in every investigation of a criminal case the investigator finds a dead end so that it is no longer possible to continue the investigation, in such a situation, by law (KUHAP), the investigator is given the authority to terminate the investigation. Criminal Procedure Code noformulate clearly what is meant by stopping the investigation, but only provides a formulation regarding the investigation. In addition, arrangements regarding procedures for stopping prosecution are regulated in more detail and clearly, while regarding termination of investigations the arrangements are not complete.

However, it can be formulated that the termination of the investigation is the act of the investigator stopping the investigation of an incident that is suspected of being a crime because to make light of the incident and determine the perpetrator as the suspect there is not enough evidence or from the results of the investigation it is known that the incident is not a crime or the investigation is stopped by law [31].

Since the enactment of Law No. 30 of 2002 concerning the KPK, the existence of the Corruption Eradication Committee has become increasingly visible and has made this institution have "teeth" in efforts to eradicate corruption in Indonesia. Until now, with the various kinds of extraordinary powers that it has based on the provisions in the law, the KPK can be said to be the front guard in efforts to eradicate corruption in Indonesia [32] [33].

However, it turns out that many parties feel that their rights have been violated by the regulation of one of the articles in the law, namely Article 40 which states that the KPK is not authorized to issue SP3. One of these parties was Mulyana Wira Kusuma who was convicted of a bribery case against Khairiansyah Salman, an auditor for the Supreme Audit Agency (BPK) who was auditing the General Elections Commission (KPU). Mulyana submitted a request for a judicial review or judicial review to the Constitutional Court against several articles in Law No. 30 of 2002 concerning the KPK. The articles disputed by Mulyana are Article 6 letter c, Article 12 paragraph (1) letter a, Article 40, Article 70 and 72.

Mulyana's application was based on the reason that with the entry into force of Article 40 of Law No. 30 of 2002 concerning the KPK has violated its constitutional rights protected by the 1945 Constitution (1945 Constitution). Mulyana also felt that he had been harmed and treated discriminatively by the KPK. According to him, this article has castrated citizens human rights because without SP3, someone who has already been declared a suspect by the KPK no longer has the possibility of having his honor and dignity restored. Even though the philosophy of the existence of SP3 is a correction mechanism and an instrument to restore his honor and dignity if the investigator does not have enough evidence to forward this case to the prosecution level. So, without the SP3 mechanism, the KPK will force every case it handles to be forwarded to the prosecution and court level. The panel of judges at the Constitutional Court rejected Mulyana's application for judicial review on the juridical basis that previously an application for judicial review had been filed against Article 40, whose decision was rejected. The basis given by the

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31 Harun M Husein, *Penyidikan Dan Penuntutan Dalam Proses Pidana*, Rineka Cipta, Jakarta, 1991.

32 Oly Viana Agustine and Anna Triningsih., Criminal Policy In Countermeasures Corruption In Indonesia, n.d. Proceedings of SOCIOINT *5th International Conference on Education, Social Sciences and* Humanities, Dubai, U.A.E, 2018

33 Mochamad Ali Asgar et al., Legal Protection Justice Collaborators in Corruption Justice System, *International Journal of Research in Business and Social Science (2147-4478)*, Vol.10, No.6, 2021, page.306–16.

Constitutional Court is that the provisions of Article 40 do not violate anyone's constitutional rights but are only one form of law enforcement efforts aimed at creating legal certainty.

Viewed from the sociological aspect, that the provisions of Article 40 of Law No. 30 of 2002 concerning KPK is a form of the maximum effort made by the government in the context of eradicating criminal acts of corruption. The goal is nothing but law enforcement. That law enforcement is the obligation of the government, in this case law enforcement officials. The applicability of Article 40 of the KPK Law on the process of investigating a criminal act of corruption is a weapon that can be used by KPK investigators in every investigative process so that they can work and carry out their duties efficiently and professionally.

However, it turns out that many parties feel that their rights have been violated by the regulation of one of the articles in the law, namely Article 40 which states that the KPK is not authorized to issue SP3. One of these parties was Mulyana Wira Kusuma who was convicted of a bribery case against Khairiansyah Salman, an auditor for the Supreme Audit Agency (BPK) who was auditing the General Elections Commission (KPU). Mulyana submitted a request for a judicial review or judicial review to the Constitutional Court against several articles in Law No. 30 of 2002 concerning the KPK. The articles disputed by Mulyana are Article 6 letter c, Article 12 paragraph (1) letter a, Article 40, Article 70 and 72.

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Viewed from the sociological aspect, that the provisions of Article 40 of Law No. 30 of 2002 concerning KPK is a form of the maximum effort made by the government in the context of eradicating criminal acts of corruption. The goal is nothing but law enforcement. That law enforcement is the obligation of the government, in this case law enforcement officials. The applicability of Article 40 of the KPK Law on

the process of investigating a criminal act of corruption is a weapon that can be used by KPK investigators in every investigative process so that they can work and carry out their duties efficiently and professionally.

Judging from the juridical aspect, that basically Law No. 30 of 2002 concerning the KPK is the implementation of Law No. 31 of 1999 concerning the Eradication of Corruption as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. In carrying out its duties, apart from being guided by the law on the KPK and eradicating criminal acts of corruption, the KPK is also based on laws and regulations regarding criminal procedural law in force in Indonesia, including the Criminal Procedure Code. Article 40 cannot be said to be contrary to the Criminal Procedure Code because our law adheres to the principle of *lex specialist derogat lex generalis*, where the Criminal Procedure Code is *lex generalis* (general provisions) and Law No. 30 of 2002 concerning the KPK is lex specialis (more specific provisions).

Meanwhile, from a philosophical point of view, the setting of Article 40 is motivated by the incompetence of the previous law enforcement institutions, namely the police and the prosecutor's office in carrying out efforts to eradicate corruption. As previously discussed, the issuance of SP3 in several major corruption cases in Indonesia has become a pattern carried out by prosecutor investigators for almost the same reasons in each case, namely that insufficient evidence has been found to elevate the case to the next stage, namely prosecution. This of course shows that the prosecutor's investigators were not careful and careful when carrying out the investigation and then raised the case to the level of investigation, because sufficient evidence should have been found to get to the investigation stage. The status of a suspect owned by a person is obtained from the results of the investigation and investigation process, meaning that according to Article 1 paragraph (1) and (5) of the Criminal Procedure Code, sufficient evidence has been found to declare an event as a crime. So, it was an irregularity when SP3 was issued on the grounds that insufficient evidence was found against a criminal case.

With the entry into force of Article 40 of Law No. 30 of 2002 concerning the KPK, resulting in the KPK in carrying out the process of examining a case of corruption must be based on the principle of caution and uphold legal certainty [34] [35], this means that in the investigation process, the investigator must have sufficient evidence and there is a strong belief for the investigator in raising a case to the level of investigation.

In the process of examining a case of corruption that has entered

34 Stephen Holmes., Lineages of the Rule of Law, *Democracy and the Rule of Law*, Vol.19, 2003, page.35–37.

35 Diadra Preludio Ramada., Prevention of Money Laundering: Various Models, Problems and Challenges, *Journal of Law and Legal Reform*, Vol.3, No.1, 2022, page.67–84.

the KPK, after an investigation has been carried out on reports of corruption that have been received [36] [37] [38]. Then a title of the results of the investigation is carried out in front of all investigators and investigators to analyze and decide whether the report on the results of the investigation is appropriate to be upgraded to the investigation stage or not. If investigators in carrying out their investigations do not find sufficient initial evidence, the KPK will stop the investigation. However, if the KPK is of the opinion that the case can be continued, then an investigation will be carried out.

Regarding the problem of the principle of presumption of innocence which is associated with the absence of the KPK's authority to issue SP3, it can be seen from two things. First, the provisions in Article 40 of the KPK law are prudential and professional principles for the KPK to designate someone as a suspect [39] [40] Because, once named as a suspect in a corruption case by the Corruption Eradication Committee, the consequences will be brought to court. This principle becomes a momentum for caution for investigators before establishing the process of investigating a corruption case. Therefore, the KPK is required to work as closely and as carefully as possible (professionally), especially with regard to matters of evidence.

Second, as a logical consequence of the criminal justice system in Indonesia which is dominated by the crime control model which uses the principle of presumption of guilt in proceedings cannot be challenged by the principle of presumption of innocence [41] . The principle of presumption of innocence is a directive for law enforcement officials on how they should act further and override the principle of presumption of guilt in their behavior towards suspects [42] [43]. In essence, the principle of the presumption of innocence is legal normative and not oriented

36 Stephen Holmes., Lineages of the Rule of Law, *Democracy and the Rule of Law*, Vol.19, 2003, page.35–37.

37 Saldi Isra, Feri Amsari, and Hilaire Tegnan., Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia, *International Journal of Law, Crime and Justice*, Vol.51, 2017, page.72–83.

38 Ahmad Khoirul Umam et al., Addressing Corruption in Post-Soeharto Indonesia: The Role of the Corruption Eradication Commission, *Journal of Contemporary Asia*, Vol.50, No.1, 2020, page.125–43

39 Tim Lindsey and Helen Pausacker., Crime and Punishment in Indonesia, in *Crime and Punishment in Indonesia*, Routledge, 2020, page.1–17

40 S H Idul Rishan., *Politik Hukum Dan Dampak Perubahan UU 19 2019 Tentang Perubahan Kedua Atas UU 32 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi*, 2020.

41 Pooja Amaravathi and Ananya Mishra., The Presumption of Innocence and Its Role in the Criminal Process, *International Jurnal Law Management & Humanities,* Vol 4. No. 3, 2021

42 Radina Stoykova., Digital Evidence: Unaddressed Threats to Fairness and the Presumption of Innocence, *Computer Law & Security Review*, Vol.42, 2021.

43 Ivar Fahsing, Asbjørn Rachlew, and Lennart May., Have You Considered the Opposite? A Debiasing Strategy for Judgment in Criminal Investigation, *The Police Journal*, Vol.96, No.1, 2023, page.45–60.

towards the end result [44]. Meanwhile, the principle of presumption of guilt is factual descriptive. That is, based on the facts that exist the suspect will eventually be found guilty. Therefore, a legal process must be carried out against him starting from the stage of investigation, investigation, prosecution to the trial stage. You can't stop halfway.

The criminal justice system in Indonesia does not adhere strictly to one particular model. Despite the tendency towards crime control mode, in reality it is combined with other models [45]. For example, the principle of presumption of innocence remains a legal normative basis for law enforcement officials when conducting investigations of suspects. This means that the suspect is treated like an innocent person. But on the other hand, formally the Criminal Procedure Code states in Article 17 that arrest and detention are carried out against someone who is strongly suspected of having committed a crime. This means that based on existing facts, investigators must be sure that the person being investigated is the real perpetrator of the crime [46] [47]. Therefore, the principle of presumption of guilt is more likely to be in the act of investigation and prosecution by respecting the rights of the suspect/defendant, while the principle of presumption of innocence is in the trial process which ends in a judge's decision [48].

In the application for a judicial review submitted by Mulyana, his party said that by not having the authority for the KPK to issue SP3, there was no longer any opportunity to defend himself from allegations of alleged corruption against him, but in fact the suspect or defendant of course still has the opportunity to prove that he is not guilty by the process of proving in court, where proving in court of corruption adheres to the burden of proof reversed, so that it is the suspect/defendant who must prove that the demands of the public prosecutor cannot be justified and he is innocent.

Regarding the statement that the existence of Article 40 makes the dignity of a suspect irreversible, it cannot be said to be true because with the existence of a mechanism of evidence, the dignity and worth of a person can be restored if according to a court decision the person is not guilty.

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44 Stoyan Panov., Pecunia Non Olet? Legal Norms and Anti-Corruption Judicial Frameworks of Preventive Confiscation, *Crime, Law and Social Change*, Vol.70, 2018, page.315–29.

45 Ramada., Prevention of Money Laundering: Various Models, Problems and Challenges.

46 Ryan Harris., Arriving at an Anti-Forensics Consensus: Examining How to Define and Control the Anti-Forensics Problem, *Digital Investigation*, Vol.3, 2006, page.44–49

47 Vernon J Geberth, *Practical Homicide Investigation: Tactics, Procedures, and Forensic Techniques* , CRC Press, 2020.

48 Stoykova, Radina., Digital Evidence: Unaddressed Threats to Fairness and the Presumption of Innocence, *Computer Law & Security Review*, Vol.42, 2021

D. CONCLUSION

The Eradication of Corruption is a special law and regulation and the Criminal Procedure Code is a general law. Therefore, the KPK in investigating a corruption case must uphold the principle of prudence so as not to violate a person's human rights. The examination of criminal cases handled by the KPK is different from the examination of ordinary criminal acts, from the process of investigation, investigation, and prosecution of cases that enter the KPK. That for a case to be raised from the investigation to the investigation stage, there must already be truly sufficient evidence, so that there is no possibility of insufficient evidence during the investigation process. The author recommends that investigations and investigations by the KPK be carried out in a professional, efficient and effective manner by paying attention to the conditions and matters that must be met for a corruption case before an investigation is carried out, so that synergy and coordination between law enforcement officials are needed in conducting criminal investigations. Every product of laws and regulations produced in Indonesia is expected to be quality and useful laws and regulations for the community. With the existence of Law No. 30 of 2002, especially with the enactment of Article 40 in it, it is hoped that it can be a useful tool in efforts to eradicate corruption. All parties should be willing to learn to accept and provide opportunities for the KPK, as one of the law enforcers in Indonesia through existing laws to participate in the process of eradicating corruption and not just criticize without providing the right solution.

BIBLIOGRAPHY

Books:

Agustine, Oly Viana, and Anna Triningsih., 2018, *Criminal Policy In Countermeasures Corruption In Indonesia,* n.d. Proceedings of SOCIOINT 5th International Conference on Education, Social Sciences and Humanities, Dubai, U.A.E;

Butt, Simon., 2017, *Corruption and Law in Indonesia*. Routledge;

Chazawi, Adami., 2021, *Hukum Pembuktian Tindak Pidana Korupsi: Edisi Revisi*, Media Nusa Creative (MNC Publishing), Malang;

Danil, Elwi., 2021, *Korupsi: Konsep, Tindak Pidana Dan Pemberantasannya*. PT. Raja Grafindo Persada, Jakarta;

Geberth, Vernon J., 2020, *Practical Homicide Investigation: Tactics, Procedures, and Forensic Techniques*, CRC press;

Harahap, M Yahya., 2002, *Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan Edisi Kedua*;

———., 1981, *Undang Undang No. 8 Tahun 1981 Tentang: Kitab Undang Undang Hukum Acara Pidana*, Sinar Grafika, Jakarta;

Husein, Harun M., 1991, *Penyidikan Dan Penuntutan Dalam Proses Pidana*, Rineka Cipta, Jakarta;

Lilik Mulyadi., 2012, *Hukum Acara Pidana: Normatif, Teoretis, Praktik Dan Permasalahannya*, PT. Alumni, Bandung;

Lindsey, Tim, and Helen Pausacker., 2020, *Crime and Punishment in Indonesia, In Crime and Punishment in Indonesia*, Routledge;

Mulyadi, Lilik., 2012, Hukum Acara Pidana: Normatif, Teoretis, Praktik Dan Permasalahannya, PT. Alumni, Bandung;

Yusni, Muhammad., *Keadilan Dan Pemberantasan Tindak Pidana Korupsi Perspektif Kejaksaan*. Airlangga University Press, Surabaya, 2020;

Journals:

Adji, Indriyanto Seno., Adu Pakar Dalam Sidang Pengujian UU KPK, 2006;

Afif, Muhammad., Eksistensi Pengadilan Tindak Pidana Korupsi Di Indonesia Dalam Penegakan Hukum Tindak Pidana Korupsi Di Indonesia, *Ensiklopedia of Journal*, Vol.1, No.1, 2018;

Amaravathi, Pooja, and Ananya Mishra., The Presumption of Innocence and Its Role in the Criminal Process, *International Jurnal Law Management & Humanities,* Vol.4, No.3, 2021;

Arlen, Jennifer, and Samuel W Buell., The Law of Corporate Investigations and the Global Expansion of Corporate Criminal Enforcement, *S. Cal. l. Rev.* 93, 2019;

Asgar, Mochamad Ali, I Nyoman Nurjaya, Bambang Sugiri, and Tunggul Anshari., Legal Protection Justice Collaborators in Corruption Justice System, *International Journal of Research in Business and Social Science (2147-4478)*, Vol.10, No.6, 2021;

Ceva, Emanuela, and Michele Bocchiola., Theories of Whistleblowing, *Philosophy Compass*, Vol.15, No.1, 2020;

Christensen, Mikkel J., Legal Mobilization and the Internationalization of Anticorruption Enforcement, *Laws*, Vol.10, No.4, 2021;

Davis, Angela J., Reimagining Prosecution: A Growing Progressive Movement, *UCLA Criminal Justice Law Review*, Vol.3, No.1, 2019;

Einstein, Tigor, and Ahmad Ramzy., Eksistensi Komisi Pemberantasan Korupsi Berdasarkan Undang-Undang Nomor 19 Tahun 2019 Tentang Perubahan Kedua Atas Undang-Undang Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi, *National Journal of Law*, Vol.3, No.2, 2020;

Fahsing, Ivar, Asbjørn Rachlew, and Lennart May., Have You Considered the Opposite? A Debiasing Strategy for Judgment in Criminal Investigation, *The Police Journal*, Vol.96, No.1, 2023;

Firmansyah, Hery, Eriyantouw Wahid, and Amad Sudiro., Pretrial on SP3 Corruption Case in the Perspective of Victim Justice, *Journal of Environmental Treatment Techniques*, Vol.8, No.4, 2020;

Gregory, Robert, and Daniel Zirker., Clean and Green with Deepening Shadows? A Non-Complacent View of Corruption in New Zealand. In *Different Paths to Curbing Corruption*, Vol. 23, Research in Public Policy Analysis and Management. Emerald Group Publishing Limited, 2013;

Harris, Ryan., Arriving at an Anti-Forensics Consensus: Examining How to Define and Control the Anti-Forensics Problem, *Digital Investigation*, Vol.3, 2006;

Holmes, Stephen., Lineages of the Rule of Law, *Democracy and the Rule of Law*, Vol.19, 2003;

Idul Rishan, S H., Politik Hukum Dan Dampak Perubahan UU 19 2019 Tentang Perubahan Kedua Atas UU 32 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi, 2020;

Indonesia, Pemerintah Republik., Undang-Undang Republik Indonesia Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi, 2002;

Isra, Saldi, Feri Amsari, and Hilaire Tegnan., Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia, *International Journal of Law, Crime and Justice*, Vol.51, 2017;

Ivory, Radha., Beyond Transnational Criminal Law: Anti-Corruption as Global New Governance, *London Review of International Law*, Vol.6, No.3, 2018;

Kenedi, John., Preventing Corruption Crimes of Money Laundering through Community Participation and POLRI Investigators, *International Journal of Criminal Justice Sciences*, Vol.18, No.1, 2023;

Mulyadi, Mahmud., Penanggulangan Tindak Pidana Korupsi Dalam Perspektif Criminal Policy Corruption Reduction In Criminal Policy Perspective, *Jurnal Legislasi Indonesia*, Vol.8, No.2, 2018;

Novitasari, Novitasari., Upaya Menciptakan Budaya Anti Korupsi Melalui Tradisi Banjar, *Sospol: Jurnal Sosial Politik*, Vol.5, No.1, 2019;

Panov, Stoyan., Pecunia Non Olet? Legal Norms and Anti-Corruption Judicial Frameworks of Preventive Confiscation, *Crime, Law and Social Change*, Vol.70, 2018;

Rado, Rudini Hasyim, and Restu Monika Nia Betaubun., Anti-Corruption Culture: Maren and Yelim's Perspective on Kei Society, *SASI*, Vol.29, No.1, 2023;

Rama, Marie J dela, Michael E Lester, and Warren Staples., The Challenges of Political Corruption in Australia, the Proposed Commonwealth Integrity Commission Bill (2020) and the Application of the APUNCAC, *Laws*, Vol.11, No.1, 2022;

Ramada, Diadra Preludio., Prevention of Money Laundering: Various Models,

Problems and Challenges, *Journal of Law and Legal Reform*, Vol.3, No.1, 2022;

Sirait, Putri Nanda, and Rahayu Subekti., Analisis Undang-Undang No. 19 Tahun 2019 Tentang Perubahan Kedua Atas Undang-Undang No. 30 Tahun 2002 Tentang Komisi Pemberantasan Korupsi Berdasarkan Asas-Asas Pembentukan Peraturan Perundang-Undangan Di Indonesia, *Souvereignty*, Vol.1, No.2, 2022;

Sitompul, Ariman, and Pagar Hasibuan., The Morality Of Law Enforcement Agencies (Police, Prosecutor's Office, Kpk) In Money Laundering With The Origin Of The Corruption, *European Science Review*, Vol.9, No.10, 2021;

Stoykova, Radina., Digital Evidence: Unaddressed Threats to Fairness and the Presumption of Innocence, *Computer Law & Security Review*, Vol.42, 2021;

Suyatmiko, Wawan Heru., Memaknai Turunnya Skor Indeks Persepsi Korupsi Indonesia Tahun 2020, *Integritas: Jurnal Antikorupsi*, Vol.7, No.1, 2021;

Umam, Ahmad Khoirul, and Brian Head., Testing the Limits of Public Integrity: The Impact of Vested Interests and Countervailing Forces on Indonesia's KPK, *Asian Politics & Policy*, Vol.12, No.3, 2020;

Umam, Ahmad Khoirul, Gillian Whitehouse, Brian Head, and Mohammed Adil Khan., Addressing Corruption in Post-Soeharto Indonesia: The Role of the Corruption Eradication Commission, *Journal of Contemporary Asia*, Vol.50, No.1, 2020.