

# Pros and Cons of the Corruption Eradication Commission in the Perspective of Law Politics

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**ABSTRACT--***The Corruption Eradication Commission (KPK) as an independent Special Commission, free from the influence of any authority, was formed on the basis of a solution step over public distrust in eradicating criminal acts of corruption handled by the Police and the Prosecutors' Office previously considered not optimal. KPK's performance is based on the Constitution of The Republic of Indonesia No. 30 of 2002 felt less effective, optimal, and professional, in order to achieve the goals of the Republic of Indonesia to realize a just, prosperous, and prosperous society based on Pancasila and the 1945 Constitution of The Republic of Indonesia, a legal reform was made through No. 19 of 2019 concerning the Second Amendment to Constitution of The Republic of Indonesia No. 30 of 2002 concerning the Corruption Eradication Commission. The Republic of Indonesia Constitution No. 19 of 2019 concerning the Second Amendment to Constitution No. 30 of 2002 concerning the KPK had a significant influence on the development of national legal politics. Because, lead to differences in judgment. The government assesses the legal reform of the KPK Law as "strengthening" in line with the Constitutional Court's decision No. 36/ PUU-XV/ 2017. Instead, observers/ legal experts assess a "weakening" of the performance of the KPK in its duties and authorities. The methods used Empirical Juridical Writing.*

**Keywords:** *corruption eradication commission, law politics, pros and cons*

## I. INTRODUCTION

The lives of people in Indonesia, not in spite of the provisions of law to establish order, peace, tranquility, happiness, and prosperity. The purpose of Indonesia is definitively set out in the fourth paragraph of the opening of The 1945 Constitution of The Republic of Indonesia.

The role of law as a means to achieve the goals of the state must also function and always be grounded in four basic principles of legal ideals (*rechtsidee*), namely: 1) Protecting all elements of the nation for integration; 2) Realizing social justice in the economic and social fields; 3) Realizing democracy and monarchy; 4) Creating tolerance on the basis of humanity and civilization in religious life.[1]

The four principles of the legal ideal will guide the realization of the ideals and objectives of the state, because the legal ideal is a normative, and constitutive, belief framework. The law is normative ideals because the

function as the base and the underlying ideal prerequisites every positive law, and is constitutive for directing the law on the objectives to be achieved by the state. In achieving the country's goals, as a whole it cannot be separated from the politics of Indonesian national law. The 1945 Constitution of The Republic of Indonesia as the foundation of Indonesia's national politics. The existence of national legal politics as a legal policy that has been or will be implemented nationally includes: First, the development of laws with the core of making and updating legal materials to be in accordance with current needs; Secondly, the implementation of existing legal provisions including the affirmation of the functions of the institution and the development of law enforcers.[2]

Emphasizing The political nature of national law in order to achieve the goals of the country aspired to refer to several opinions. According to PadmoWahjono, legal politics is a basic policy that determine the direction, form, and content of the law to be formed.[3] Furthermore, Bintan Sara Gih, explained legal politics is a policy pursued by the state (through its institutions or officials) to determine which laws need to be changed, or need to be changed, or which laws need to be maintained, or regarding what needs to be regulated or issued so that with the policy the state and government administrators can take place properly and in an orderly manner so that the objectives of the state (such as people's welfare) can be realized in stages.[4]

Furthermore, according to SatjiptoRahardjo is the choosing activity and the ways used to achieve certain social and legal goals in society. The legal politics cannot be separated from the ideals of the Welfare State in the constitution.[5] According to MochtarKusumaadmadja, legal politics is a legal policy and legislation in legal reform with legal political instruments carried out through the law. The essence of legal political thought put forward by MochtarKusumaadmadja is related to which law needs to be established (renewed, amended, or replaced) and which law needs to be maintained so that gradually the state's goals can be realized.[6]

In the process, as an effort to create a just, prosperous and good society based on *Pancasila* and the 1945 Constitution of The Republic of Indonesia No. 30 of 2002 concerning the Corruption Eradication Commission as mandated by Article 43 of Law No. 31 of 1999

concerning Eradication of Corruption Crimes as amended by Law No. 20 of 2001 has formed a special institution called the Corruption Eradication Commission. The position of this special Commission as an institution of the Central Government in the context of eradicating Corruption Crimes must be carried out optimally, intensively, effectively, professionally and continuously. On duties and authority given to coordinate and supervise, including conducting investigations, and prosecutions.

Subsequent developments, the Government looks at performance Eradication Commission Corruption which was formed in Act No. 30 of 2002 felt less effective in several ways, namely:

- a. The lack of coordination between the lines of law enforcement;
- b. The violation of the code of ethics by the leadership and staff of the Corruption Eradication Commission;
- c. There are problems in carrying out the duties and authorities, namely the implementation of the duties and authorities of the Corruption Eradication Commission that are different from the provisions of criminal procedure law;
- d. Lack of coordination with fellow law enforcement officials;
- e. Tapping problem;
- f. Management of investigators and the investigators were poorly coordinated, to avoid overlapping authority with different law enforcement agencies;
- g. There is no supervisory institution capable of overseeing the implementation of the duties and authority of the Corruption Eradication Commission;

On the above linked the experts' legal of the politics of law in order to realize ideals State, the House of Representatives with the President agreed to undertake legal reforms to eradicate corruption in order to run a more effective and more integrated so as to prevent and reduce the losses that continue to grow as a result of corruption.[7] The Government's policy to implement law reform by arranging the Corruption Eradication

Commission's institutional through revision of UU No. 30 of 2002 concerning the Corruption Eradication Commission into Indonesian UU No.19 of 2019 concerning the Second Amendment to UU No. 30 of 2002 concerning the Corruption Eradication Commission.

The enactment of The Constitution of The Republic of Indonesia No.19 2019 on the Second Amendment to The Constitution of The Republic of Indonesia No. 30 of 2002 concerning the Corruption Eradication Commission has become a milestone that has a very significant influence on the development of national legal politics in the field of the Corruption Eradication Commission's. Because, lead to differences in judgment. Eradication Commission considering the establishment of special commission that is independent and free from influence of power anywhere in the field of combating acts.

The government considers the renewal of the law is the framework of **"strengthening" (pros)** of the Commission for the Corruption.

Eradication Commission in the duties and authority, which is in line with the decision of the Constitutional Court Number 36/ PUU-XV/ 2017. Instead, the observer/ legal experts assessing the case **"weakening" (cons)** of the Commission for the Corruption of corruption as a solution step on public distrust in the eradication of corruption which in previously handled by the Police and the Prosecutors' Office was not considered optimal yet.

In light of the differences regarding opinion / assessment of the existence of the Law No. 19 of 2019 On Second Amendment to the Law No. 30 of 2002 About the Corruption Crime Eradication Commission as a measure that strengthens or weakens the policy of the author to further study the questions raised; How is the legal construction of the Corruption Eradication Commission in legal political perspective pros and cons to the Law ?

## II. RESEARCH METHOD

This writing is focused on reviewing the juridical rules of the enactment of RI Law No. 19 of 2019 concerning the Second Amendment to Indonesian Law No. 30 of 2002 concerning the Corruption Eradication Commission Research with the Subject of Corruption Eradication Commission in carrying out its duties and authorities. The research method is empirical juridical, with a qualitative approach. The research specification is descriptive analysis, provides an overview, studies, examines, explains and then analyzes Indonesian Law No. 19 of 2019 concerning the Second Amendment to Indonesian Law No. 30 of 2002 concerning the Corruption Eradication Commission Research Subject Corruption Eradication Commission in the perspective of legal politics and The data sources are in the form of legal materials both primary legal materials, secondary and tertiary legal materials consisting of state policy regulations in the Corruption Eradication Commission Act, the Corruption Act, books and library materials obtained through library studies. The research data analysis was carried out qualitatively, the analysis included the activities of collecting data, processing data, analyzing data and making conclusions.

### III. FINDINGS AND DISCUSSION

#### 1. Construction of The Constitution of The Republic of Indonesia No. 19 of 2019 concerning the Second Amendment to The Constitution of The Republic of Indonesia No. 30 of 2002 concerning the Corruption Eradication Commission.

##### a. Legal Reform of the Corruption Eradication Commission as a Strengthening

##### 1) Institutional Structuring of the Corruption Eradication Commission

The Draft Law on the second amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (RUU KPK) has been included in the National Legislation Program since 2011 through the Republic of Indonesia DPR Decree No.02B / DPR / II / 2010-2011. Then re-entered the Prolegnas Year 2015-2019, priority in 2016 at number 37 in which the Draft Bill and Academic Manuscript were prepared by the DPR RI.[8] Furthermore, it has been determined Articles of amendment contained in The Constitution of The Republic of Indonesia No. 19 of 2019 concerning the Second Amendment to The Constitution of The Republic of Indonesia No. 30 of 2002 concerning the Corruption Eradication Commission as an institutional strengthening described as follows in Table 1:

**Table 1 Articles of Amendment to the Constitution of the Republic of Indonesia No. 19 of 2019**

Information	Second Amendment	Before Changes
<b>Article 3</b>	The KPK (Corruption Eradication Commission), the State Institution <b>within the executive power cluster</b> , carries out its duties and authority to be independent and free from the influence of any power	KPK, state institutions are independent and free from the influence of any power
<b>Article 5</b>	KPK in carrying out its duties with the addition of 1 principle, so that it becomes 6 principles, namely in the letter (f) <b>respect for human rights</b>	In carrying out its duties and authority there are 5 principles
<b>Article 6, 7 and 8 and 9</b>	<b>Prioritizing the prevention of TPK (corruption acts) and strengthening coordination in public services</b> , supervision, enforcement, implementation of the decision, the judge's decision . Obligation to report responsibility to the President and DPR once in a year.	Coordination with agencies in combating the crime of corruption
<b>Article 10 (Article 10A)</b>	Strengthening <b>supervision tasks</b> , <b>supervision tasks are set</b>	Limited concerning Terms

	<b>by President decree</b> There are additional articles, namely: (10 A) Requirements and Procedures for taking <b>over the investigation / prosecution at the Police / District Attorney level by strengthening coordination.</b>	and Procedures for Take Over and Prolonged Handling in the Police and Prosecutors Office
<b>Article 11</b>	The addition of <b>paragraph (2) the terms imitative</b> to conduct an inquiry, investigation, and prosecution in corruption cases, involving state losses of at least 1 billion rupiah. <b>State Loss of 1 billion mandatory give to the Police and attorney</b>	Cases that get attention and unsettle the community
<b>Article 12 (12 A, 12 B, 12C, 12D)</b>	There is an <b>additional article on the authority to conduct wiretapping</b> (12 A) <b>coordinates the implementation of the prosecution task of Article 6 (e)</b> (12 B) paragraph 1 <b>intercepts written permission from the Supervisory Board</b> (12 C) <b>reporting wiretaps to the Chairperson of the Commission and the Board of Trustees</b> (12 D) The results of wiretapping are confidential and must be destroyed	The authority to conduct wiretapping does not require permission from the Chair of the District Court
<b>Article 13</b>	The authority <b>implement legal action is needed on the establishment of judges and Court Decisions</b>	Preventive measures
<b>Article 14</b>	Deleted	
<b>Article 15</b>	There is an addition in letter (f) to <b>compile the code of ethics for KPK leaders and employees</b>	Nothing
<b>Article 19</b>	Paragraph (2) is deleted	Paragraph (2) The Corruption Eradication Commission can form representatives in the Province
<b>Article 21</b>	<b>Adding element of the Supervisory Board</b> Paragraph (1) Corruption eradication commission formed by the <b>Supervisory Board , totaling at least 5 people;</b> Paragraph (3) <b>Only the KPK Commission Chairperson is a State Official.</b>	Board of Trustees does not exist. KPK Advisory Team deleted
<b>Article 22, 23</b>	Deleted	He removed it regarding the Advisory Team
<b>Article 24</b>	<b>KPK employees, ASN employee profession</b>	Not as civil servant
<b>Article 29</b>	The Chairperson of the Corruption Eradication Commission is <b>at least 50</b>	The lowest age is 40 years

	<b>years old</b>	
<b>Article 32</b>	There is the <b>addition of the letter f</b> . The KPK leadership stops/ is <b>dismissed by reason of committing a despicable act</b>	There is no
<b>Article 33</b>	The replacement of the <b>vacancy of the KPK Leaders was chosen from the KPK leadership candidates who were not elected at the DPR level selection</b>	There is no
<b>Article 37</b>	<b>Valid for KPK employees</b>	KPK Advisory and Employee Team
<b>Chapter V A ( Articles 37 A, 37B, 37C, 37D, 37E, 37F, 37G )</b>	<b>Addition to Chapter V A Board of Supervisors</b> , inserted 7 articles, namely Article <b>37 A, 37B, 37C, 37D, 37E, 37F, 37G</b> , which regulates about conditions, ordinances, and the duties of the Supervisory Board are appointed and designated <b>President of the results of the selection committee. Provide 1x 1 year periodic reports to the President and Parliament.</b>	
<b>Article 38</b>	All authorities relating to investigations, investigations and prosecutions regulated in the laws that govern, regarding Criminal Procedure Law, also apply to investigators, investigators, and Public Prosecutors at the KPK, unless otherwise stipulated under this Act.	Consists of 2 verses
<b>Article 40</b>	There are 4 paragraphs <b>regulating the procedures for the KPK to stop investigating and prosecuting criminal cases that have not been completed within a maximum period of 2 (two) years .</b>	There is only 1 paragraph that contains that the KPK is not authorized to issue a warrant to stop the investigation and prosecution.
<b>Article 43 (Article 43A)</b>	KPK investigators can come from the Police, Attorney General's Office, other government agencies and or from the internal KPK. The procedures for appointment and dismissal are regulated in KPK Regulations. There are 43A additions to the requirements to become a KPK investigator	Only regulating investigators can be appointed and dismissed by the KPK
<b>Article 45 (Article 45A)</b>	KPK investigators can come from the police, prosecutors, civil servants who are given special authority by law, and KPK investigators. Article 45A is added to the Investigative Requirements. Investigators are appointed and dismissed by the KPK leadership.	There are no rules

<b>Article 46</b>	In the event a person is <b>declared a suspect by the KPK, as of the date of stipulation, the examination of the suspect is carried out based on the provisions of the Criminal Procedure Code</b>	
<b>Article 47 (Article 47A)</b>	Changed to 4 section. <b>Search and Confiscation, permission from the Supervisory Board.</b> 47 (A) additions to the search and seizure results were added	Without requiring permission from the Chair of the District Court
<b>Article 69 (Articles 69A, 69B, 69C, 69D)</b>	Changed into <b>4 Article, namely Article 69A, 69B, 69C, 69D .</b> <b>69A Chairman and Member of the Supervisory Board for the first time appointed and appointed by the President of the Republic of Indonesia;</b> <b>69B</b> When the law comes into force, <b>KPK investigators / investigators who have not been ASN employees for a maximum period of 2 years can be appointed as ASN employees.</b> <b>69C</b> <b>KPK employees who have not had ASN status no later than 2 (two) years can be appointed .</b>	
<b>Article 70 (Articles 70A, 70B, 70C)</b>	Article 70A, 70B, 70C are added. <b>70A</b> The appointment of coaching and dismissal of KPK employees is carried out in accordance with the provisions of the financial regulations <b>70B</b> All of the regulations that contradict this Law are revoked and declared invalid <b>70C</b> At the time this law comes into force, all acts of investigation, investigation and prosecution whose legal processes have not yet been completed, are based on the provisions in this law.	

**Invited on October 17, 2019**

From the Amendments to the Articles above, there are 5 (five) substantial matters in terms of, namely:

- (a) KPK is a State Institution within the group of executive powers, carrying out its duties and authorities to be independent and free from the influence of any power. With regard to this matter, the implications for employees of the KPK are with the status of the State Civil Apparatus;
- (b) Establishing a Board of Trustees in order to oversee the performance of the KPK. The Supervisory Board for the first time is determined and appointed by the President (checks and balances);
- (c) Setting authority to permit wiretapping through written authorization to the Supervisory Board held after his case;
- (d) Arrangements to stop investigations and prosecutions of criminal cases that have not been completed within a period of no more than 2 years in the context of respecting human rights;
- (e) Eradication of Corruption Crimes refers to the prevention aspect. Applying a culture of awareness of the law against the law. The higher legal awareness created against corruption, it will reduce/ save the state budget that has been implemented through action (repressive measures);

2) *Platform Guidelines Concerned No. 19 of 2019 concerning the Second Amendment to The Constitution of The Republic of Indonesia No. 30 of 2002 concerning the Corruption Eradication Commission*

Refer to in consideration of The Constitution of The Republic of Indonesia No. 19 of 2019 concerning the Second Amendment to the 1945 Constitution of The Republic of Indonesia No. 30 of 2002 concerning the Corruption Eradication Commission stated, namely: Consider:

- a) That, In order to create a just, prosperous and prosperous society based on *Pancasila* and the 1945 Constitution of the Republic of Indonesia, it is necessary to organize a state that is clean from collusion, corruption and nepotism
- b) That, the Police, Prosecutors' Office and the Corruption Eradication Commission as institutions that handle corruption criminal cases need to be improved in synergy so that each of them can be effective and effective in efforts to eradicate corruption based on the principle of equality of authority and protection of human rights human
- c) That the implementation of the duties of the Corruption Eradication Commission should continue to be improved through a comprehensive and synergic strategy to prevent and eradicate corruption without ignoring respect for human rights in accordance with statutory provisions.

- d) Whereas several provisions concerning the Corruption Eradication Commission as stipulated in UU Number 30 of 2002 concerning Corruption Eradication Commission as amended by UU Number 10 of 2015 concerning Establishment of Government Regulations in UU Law Number 1 of 2015 concerning Amendment to UU Number 30 of 2002 concerning the Corruption Eradication Commission is no longer in accordance with the life of the state administration, legal development, and the needs of the community so that the Act needs to be changed.

3) *Based on Constitutional Court Number 36 / PUU-XV / 2019*

Institutional arrangement in Amending the Corruption Eradication Commission in line with the decision of the Constitutional Court Number 36/ PUU-XV/ 2019 which in principle states:

*..... Considering that in the perspective of modern state administration law, there is an opinion that states that many state institutions are formed but are not included in one branch of power, legislative, executive and judicial (rule making functions, rule application functions, and rules adjudication function). There are supporting institutions that carry out their duties and authority in the executive domain but are declared as independent institutions and are not under executive control (President). So, how do you see the position of the KPK in the Indonesian constitutional system? If we look closely, in the Consideration Considering letter (b) of Law Number 30 Year 2002 concerning the Corruption Eradication Commission (hereinafter referred to as the KPK) it is stated: that the government institutions that handle corruption cases have not functioned effectively and efficiently in eradicating criminal acts of corruption .Based on the Considerations, what is meant as a government agency in this case dealing with corruption cases is the Police and Attorney General's Office.*

*With this, the basic formation of the Commission because It is not optimal state institutions in case of Police and Prosecutors who have public distrust in the eradication of corruption. In order to restore public confidence in law enforcement, the KPK was formed. In such construction, in terms of duties and functions, the Police, Attorney General's Office, and KPK are institutions that are in the executive domain. Even further, the main task of the KPK as stated in Article 6 is to coordinate and supervise agencies authorized to eradicate corruption, in this case becoming a*

trigger mechanism for the Police and Prosecutors' Office. Referring to the opinion of Saskia Lavrijssen, 2008, the KPK is a supporting institution that is separate or even independent, from the executive department, but is actually "executive". In the Court's view, the KPK is actually an institution in the executive realm, which carries out functions in the executive domain, namely investigation, investigation and prosecution. The KPK is clearly not in the realm of the judiciary, because it is not a judicial body authorized to hear and decide cases. The KPK is also not a legislative institution, because it is not a legislative institution.

*It is true that the KPK is a state institution that in carrying out its duties and authorities is independent and free from the influence of any power. Its position in the executive sphere does not mean to make the KPK not independent and free from any influence. In the Constitutional Court Decision Number 012-016-019 / PUU-IV / 2006 on page 269 it was stated, the independence and freedom of the KPK from the influence of any power is in carrying out its duties and authorities [9]*

..... Considering that based on the KPK Law, the Corruption Eradication Commission has the scope of duties, authority, and obligations, namely: Article 6 of the UU a quo, the KPK has the task: (a) Coordination with the authorities authorized to conduct eradication of corruption; (b) supervision of agencies authorized to eradicate corruption; (c) Investigate, investigate and prosecute corruption. (d) Take steps to prevent corruption; and (e) Monitoring the implementation of state government.

*Thus in the context of law enforcement, the Police, Attorney General's Office and the Corruption Eradication Commission are institutions that are given the task and authority to implement laws, one of which is the eradication of corruption. Although the KPK is an independent commission as regulated in the KPK Law, it is clear that in carrying out its duties and authorities as the police and prosecutors' institutions carry out the duties and authorities of the government that are included in the executive sphere.*

..... Considering whereas the decisions taken by the KPK in carrying out its duties and authorities must not be based on influence, direction or pressure from any party, including those entitled to hold them accountable. In practice, every year the KPK provides an open report regarding the performance, use of the budget and others to the public that can be accessed openly and also to the relevant

*institutions. This is done based on the principle of accountability [vide Article 5 letter c of the KPK Law]. The concept of accountability does not cover the principle of checks and balances which is the basis of relations between existing state institutions.*

#### 4) *The Foundation of the Eradication of Corruption Crime in the State Administrative Law System of Indonesian*

The purpose and objective of establishing the Constitution of The Republic of Indonesia No. 19 of 2019 concerning the Second Amendment to the Constitution of The Republic of Indonesia No. 30 of 2002 concerning the Corruption Eradication Commission carried out in accordance with the Constitutional Court Decree No. 36/ PUU-XV/ 2017 that the KPK is an executive family, realm of executive power which is often called a government agency (*regeeringsorgaan-bestuursorganen*). This is intended so that the position of the Corruption Eradication Commission in the Indonesian constitutional system becomes clear, namely as part of the executing of executive power.

Then, in the elucidation of the KPK Amendment Law it is stated that: With changes to several provisions in this constitution, it is hoped that:

- a) Position the Corruption Eradication Commission as a unit of the governing institution apparatus which together with the Police and/ or the Prosecutor's Office make integrated and structured efforts in preventing and eradicating corruption.
- b) Arrange strong networking and treat existing institutions as conducive "counters" so that the prevention and eradication of corruption can be carried out more effectively, efficiently coordinated, and in accordance with the general provisions stipulated in legislation.
- c) Reducing the imbalance of relations between institutions of law enforcement in the prevention and eradication of criminal acts of corruption, by not monopolizing and overstating the duties and authority of investigations and prosecutions, and
- d) Cooperate, supervise and monitor existing institutions in a joint effort to prevent and eradicate Corruption.[10]

#### 2. *Corruption Eradication Commission in Perspective of Law Political*

Etymologically, legal politics is a translation of the Dutch "*rechtspolitiek*" which means legal politics. Politics means "*beleid*" or in the Indonesian

language means policy. According to Satjipto Rahardjo explained that legal politics is choosing activities and the way that would be used to achieve a social purpose and specific law in society (more focused on the sociological approach). [11] Also referring to Mochtar Kusumaadmadja's opinion, legal politics is a legal policy and legislation in legal reform with legal political instruments carried out through the law. The essence of legal political thought put forward by Mochtar Kusumaadmadja is related to which law needs to be established (renewed, changed, or replaced) and which law needs to be maintained so that gradually the State's goals can be realized.[12] With this system requires a strict separation of powers.[13]

In Indonesia constitutional law, People's Representative Council (DPR) of Article 20 of the 1945 Constitution) and the President (Article 5 (1) 1945) are two of the institution, has authority to make policy. In the execution of the duties and authority concerning Parliament has formed an Act to be discussed with the President or approval along with related Institutions Commission for the Eradication of Criminal Acts of Corruption. Through Law No. 19 of 2019 concerning the Second Amendment to RI Law No. 30 of 2002 concerning the Corruption Eradication Commission, the Act is intended as a form of legal politics. Legal politics through legal reform is certainly aimed at "strengthening" the position of the Corruption Eradication Commission.

In fact, where the Corruption Eradication Commission in combating corruption in Indonesia is considered as "super body". Enforcement in the eradication of corruption is more dominant by means of carrying out Operation Catching Hands (OTT) by being preceded by conducting wiretapping, which permits the wiretapping to be on the leadership of the KPK. It is feared that this will lead to arbitrary actions, disturbing the public; anyone can be tapped in communicating. How an institution is justified as a "Super body" institution. State institutions that become "superbodies" can become states within the State, without anyone regulating, without anyone supervising. Order State institutions that run in Indonesia, divided into three separations of powers that is independent.

The Indonesian Constitutional System adheres to the *Montesquieu Theory*: Triassic Politics, Legislative power, Executive power and judicial power. Distribution of power as a form of supervision and control (checks and balances). Prevention as a "Super body" institution is needed institutional arrangement within the KPK as a reason for legal reform. In firm located in clumps executive order to avoid misconduct (Vide: Article 1 paragraph 3 and Article 3). The rest gives authority to the Supervisory Board to oversee the duties and authority of the KPK that was not previously

regulated. Through the Supervisory Board (Vide: Chapter VA), is expected to have a surveillance tool, the controls regarding permits wiretapping, searches and/ or foreclosure. And it has been realized through Presidential Regulation No. 91 of 2019, dated 30 December 2019 concerning Organs Implementing the Supervisory Board of the Corruption Eradication Commission. Changes as State institutions that are in clumps executive, the duties and jurisdictions Corruption Eradication Commission similar as a whole of government agencies together with the Police and/ or the Attorney to make a concerted effort and structured in the prevention and fight against corruption, in other words, strengthening democracy as part of the executive glue.

Furthermore, the renewal provisions of SP3, setting the termination of the investigation and prosecution of the criminal case that is not completed within a maximum period of 2 (two) years (Vide Article 40), linked with human rights, namely the right to freedom of living, are appropriate. It is not justified during life to death still facing status as a "suspect". The lack of legal certainty over the determination of the status of the suspect who did not immediately undergo the trial process brought about the violation of human rights. In addition, freedom of communication is part of basic human rights, privacy rights. If the wiretap permission, which is one of the KPK's authorities, is not subject to procedures and procedures, it is not monitored, so long as the Chairperson agrees that wiretapping can be carried out against someone.

In Roscoe Pound *"Theory of Law is a tool of social engineering"*, which provides the basis for the possibility of using the law consciously to make changes to the public or in other words the legal acts actively in reverse change in society.[14] In this case law plays an active role as a social engineering tool (*Law is a tool of Social Engineering*). In general law, the law serves to create an act and act in order to provide legal certainty, whereas in the field of legal private life should contribute to a means control in public life.[15] The law used as a means of renewal can be in the form of laws or jurisprudence or a combination of both.[16] As such, it is regulated regarding the termination of investigations and prosecutions (SP3) in a criminal act of corruption in the rules of Article 40, procedures and procedures for wiretapping of someone suspected of committing a criminal act of corruption in the provisions of Article 12B, 12C, 12D related to Roscoe Theory Pound, will bring prudence, not hasty in set status and implementation of the wiretap suspects. Humanitarian demands must be put forward through legal certainty towards someone who holds the status of a suspect but does not immediately undergo a trial process. There is a means of control in determining the status of suspects in the eradication of corruption. Determination of suspects

is not justified in the case of someone dragging on, so that ultimately it leads to SP3.

#### *B. Weakening Rate of Corruption Eradication Commission*

Legal politics through amendments as Constitution of The Republic of Indonesia No. 19 of 2019 concerning the Second Amendment to Constitution of The Republic of Indonesia No. 30 of 2002 concerning the Corruption Eradication Commission as a "strengthening". However, in the writer's opinion there are still weaknesses, namely:

##### ***1) Corruption Eradication Commission is in a clump of State Agency executive powers, duties and authority of independent and free from influence of any power. The implication of employees in the KPK is with the status of the State Civil Apparatus***

With Status Civil Servant/ PNS, whether independence and free from any influence of power can be realized. In addition, how the transition mechanism in accordance with Law No. 5 of 2014 concerning State Civil Apparatuses within a period of 2 (two) years has adjusted. What are the legal consequences if within the specified time period the adjustment is not achieved;

##### **2) Position of the Supervisory Board:**

- a) The position of the Supervisory Board can be chosen for the first time from the current law enforcement officers who have at least 15 years experience; Article 36 does not apply to the Supervisory Board, so that:
  - The Supervisory Board is not prohibited from becoming a commissioner, director, foundation, to other professional positions;
  - The Supervisory Board is not prohibited from meeting with suspects or other parties related to cases handled by the KPK.
- b) Arrangement of authority to conduct wiretapping through written permission to the Supervisory Board; This can reveal the potential, leakage of confidentiality, convoluted approval of wiretapping permits so that it can hinder the prosecution process.

##### **3) The authority of the Corruption Eradication Commission in eradicating acts of corruption takes the aspect of prevention**

The KPK's action through Capturing Operations is increasingly reduced, so it is necessary to formulate a strong networking and treat existing institutions as "counterpartner" so that the prevention and

eradication of corruption can be carried out more effectively, efficiently coordinated, and in accordance with general provisions that are regulated in statutory regulations.

##### **3. Law Politics in the Constitution of the Republic of Indonesia No. 19 concerning the Second Amendment to The Constitution of The Republic of Indonesia No. 30 of 2002 concerning the Corruption Eradication Commission establishing Orderly Legal Regulations Realizing Social Welfare**

Some assessments of the weaknesses of the Corruption Eradication Commission's Revision Act, the public, legal experts are not free from the distrust of institutions and law enforcement in resolving legal issues that have not been effective in their resolution. Law is a political product so that the character of the contents of each legal product will be very determined by the balance of power or political contingency that gave birth to it. This assumption was chosen based on the fact that each legal product is a product of political decisions so that the law can be seen as a crystallization of interacting political thought among politicians.[7]

Associated with the revision of the Corruption Eradication Commission Law, corrupt behavior is still massive, systematic. So many state administrators (regional heads, ministries, police, and prosecutors, members of the DPR, DPRD, and private sector) are caught in corruption cases; the existence of the Corruption Eradication Commission is still very much needed. Revision of Constitution of The Republic of Indonesia No. 19 of 2019 concerning the KPK as legal politics can be empowered to assist the KPK in eradicating corruption as reinforcement rather than vice versa as weakening the eradication of corruption will be more effective.

Referring to Prof.'s opinion HikmahantoJuwana stated that to overcome the imbalance between law and politics the following matters were given:

- 1) The need for a multi-disciplinary approach to law. The law enforcement problem faced by Indonesia must be recognized and accepted by the legal community as a problem that cannot be exclusively solved by a legal science approach; even the legal community must recognize that a solution based on a legal science approach will not be adequate. The problem of law enforcement must look for solutions in the context of law and development studies that open up opportunities for various scientific disciplines to play a role, even the legal experts involved in finding solutions to law enforcement problems must have knowledge other than law, especially social science.
- 2) The formation of law must prioritize the creation of social welfare



In fact, when the legal tendency leads to misuse in the authorities, the erosion of authority causes the legal institutions to manifest themselves to be polluted, causing the absence of social order and the working of the means of power. The tendency is to favor certain interests which lead to repressive law. The state has the power to realize social justice as implied in the legal basis of the State of Indonesia, namely to realize social welfare. The reduced crime in social welfare corruption is achieved.

- 3) The need to maintain consistency in the formation and enforcement of the law.  
Referring to the problem of law enforcement, law enforcement in Indonesia is strongly influenced by money, discriminatory treatment, selective logging from law enforcement officials, not to mention that law enforcement is used as political commodity. Law enforcement needs to put in place a strong fundamental so that implementing law enforcers can maintain the existence of the influence/ intervention of all parties, including the government. (Video of the formation of the Supervisory Board and the authority to give written permission to wiretap)
- 4) The need for internal cleaning of legal institutions is carried out and needs to be constantly supported. Policy makers must understand that the mentality of law enforcement in Indonesia is still afraid of the law, and not obeying the law. Therefore, strict law enforcement needs to be created, for legal officials who deviate positions. Before the State can provide adequate welfare, it will be difficult to carry out extensive and strict internal cleansing.
- 5) The need for a human approach and anticipatory ways to resist  
Humans who become objects of improvement are not limited to individuals who are in legal institutions, but also humans who are around these individuals, including families. Settling up human law must be done humanely. Resistance will make the reform process more complicated and long.
- 6) The need for public participation.  
In improving law enforcement it is important to be aware and intensified public participation. Public participation does not only involve community-help but also individuals in the community. All parties have a role in reforming law enforcement in Indonesia, each individual will have a major role and contribution, as each individual is subject to the law not only fears but also obedience. Parents who direct the child to obey the rules from a young age, even individuals affected by the legal process can refrain from taking actions that can weaken law enforcement.

#### IV. CONCLUSION

Political Law in legal reform has an influence as a strengthening in the legal order of the state as well as in the legal objectives themselves (Pros). Legal construction in Constitution of The Republic of Indonesia No. 19 of 2019 concerning the Second Amendment to Constitution of The Republic of Indonesia No. 30 of 2002 concerning the Corruption Eradication Commission through Amendments to Articles found 5 (five) substantial cases: *First*, Institutional Structuring, the KPK is a State Institution within the group of executive powers, carrying out its duties and authorities to be independent and free from the influence of any power. With regard to this matter, the implications for employees of the KPK are with the status of the State Civil Apparatus; *Second*, Means of supervision (*checks and balances*). The establishment of the Supervisory Board in order to oversee the duties and authority of Corruption Eradication Commission. The Supervisory Board is first established and appointed by the President. *Third*, The principle of scrutiny and the principle of prudence through the regulation of procedures and procedures for permission of wiretapping, search and seizure through written permission to the Supervisory Board carried out after the title of the case with the aim of respecting human rights, does not lead to arbitrary actions in handling criminal acts of corruption; *Fourth*, The principle of legal certainty in the regulation stops the investigation and prosecution of criminal cases which are not completed within a period of no more than 2 years in the context of respecting human rights; *Fifth*, The Corruption Eradication Commission emphasizes prevention. Applying legal culture to legal awareness. The higher awareness of anti-corruption law is created, it will reduce / save the state budget that has been implemented through action (repressive measures). *Sixth*, Forming the law must prioritize the creation of social welfare. In reality, when the legal tendency leads to misuse in the authorities, the erosion of authority causes the legal institutions to manifest themselves to be polluted, causing the absence of social order and power. His tendency is to favor certain interests which lead to repressive law. The state has the power to realize social justice as implied in the legal basis of Indonesia, namely to realize social welfare.

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