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DECISION OF THE CONSTITUTIONAL COURT REGARDING THE TERM OF OFFICE OF THE HEAD OF THE CORRUPTION ERADICATION COMMISSION

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ABSTRACT

Purpose: The aim of this research is: To find out the term of office of the leadership of the Corruption Eradication Commission in Indonesia and the legal considerations of Constitutional Court Decision No.112/PUU-XX/2022 regarding the term of office of the leadership of the Corruption Eradication Commission.

Methode: This research was conducted using normative legal analysis, with the approach method being the statutory regulation approach. An analysis of the results of this research is carried out by criticizing, supporting, or providing comments, then making a conclusion on the research results with your thoughts and the help of a literature review.

Result: Constitutional Court Decision Number 112/PUUXX/2022, the term of office of the KPK leadership will be 5 (five) years and they can be re-elected for only one term of office.

Conclusions: The Constitutional Court granted the request for an extension of the term of office of the KPK leadership with considerations, namely: Firstly, there is discriminatory and unfair treatment towards the KPK when comparing it with other independent government institutions which have the same constitutional importance. Firstly, there is discriminatory and unfair treatment towards the KPK if it equates it with other independent government institutions which share constitutional importance, namely having a term of office of 5 years. Second, because based on the principles of benefit and efficiency, the 5-year term of office for the leadership of the Corruption Eradication Committee is much more useful and efficient so that it can correspond to one term of office for the president.

Keywords: term of office, corruption eradication commission, constitutional court decision.

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DECISÃO DO TRIBUNAL CONSTITUCIONAL RELATIVA AO MANDATO DO CHEFE DA COMISSÃO DE ERRADICAÇÃO DA CORRUPÇÃO

RESUMO

Objetivo: O objetivo desta pesquisa é: Encontrar o mandato da liderança da Comissão de Erradicação da Corrupção na Indonésia e as considerações legais da Decisão n.º 112/PUU-XX/2022 do Tribunal Constitucional sobre o mandato da liderança da Comissão de Erradicação da Corrupção.

Método: Esta pesquisa foi conduzida usando análise legal normativa, com o método de abordagem sendo a abordagem de regulamentação estatutária. Uma análise dos resultados desta pesquisa é realizada criticando, apoiando ou fornecendo comentários, em seguida, fazendo uma conclusão sobre os resultados da pesquisa com seus pensamentos e a ajuda de uma revisão de literatura.

Resultado: Decisão do Tribunal Constitucional número 112/PUUXX/2022, o mandato da liderança do KPK será de 5 (cinco) anos e eles podem ser reeleitos para apenas um mandato.

Conclusões: O Tribunal Constitucional atendeu o pedido de prorrogação do mandato da direção do KPK com considerações, nomeadamente: Em primeiro lugar, há tratamento discriminatório e injusto em relação ao KPK quando comparado com outras instituições governamentais independentes que têm a mesma importância constitucional. Em primeiro lugar, existe um tratamento discriminatório e injusto em relação ao KPK, se o equiparar a outras instituições governamentais independentes que partilham uma importância constitucional, nomeadamente, um mandato de cinco anos. Em segundo lugar, porque baseado nos princípios do benefício e da eficiência, o mandato de cinco anos para a liderança do Comitê de Erradicação da Corrupção é muito mais útil e eficiente para que possa corresponder a um mandato para o presidente.

Palavras-chave: mandato, comissão de erradicação da corrupção, decisão do tribunal constitucional.

1 INTRODUCTION

In the context of criminal law, not all types of corruption that we know of qualify as criminal acts. Therefore, for any act that is declared as corruption, we must refer to the Corruption Eradication Law.[2]

The Corruption Eradication Commission (KPK), an institution that existed after reform, was first formed in 2002 by the fifth President of Indonesia, Megawati Soekarnoputri. At that time, it was considered that the police and prosecutors were unable to resolve and overcome corruption in Indonesia. The idea of creating the KPK institution began during the time of President BJ Habibie with the enactment of Law Number 28 of 1999 concerning the Administration of a State that is Clean and Free from Corruption, Collusion and Nepotism. After this law existed, institutions such as the State Officials'

[2] Widijowati, D. (2023). Juridical Review of the Concept of Asset Forfeiture without a Judgment of Conviction in Returning State Financial Losses resulting from Corruption Crimes. *Journal of Law and Sustainable Development*, *11*(11), e1859. https://doi.org/10.55908/sdgs.v11i11.1859

Wealth Report (LHKPN), the Business Competition Supervisory Commission (KPPU), and the Ombudsman institution were formed.[3]

In Indonesia, the enactment of Law Number 30 of 2002 concerning the Corruption Eradication Committee became the juridical basis for the existence of the Corruption Eradication Commission. The Corruption Eradication Committee (KPK) was formed to carry out prevention and law enforcement in eradicating corruption. This institution is a solution to the problems of conventional law enforcement, such as the Prosecutor's Office and the Police, which are considered ineffective in eradicating corruption.[4]

The birth of the Corruption Eradication Commission (KPK) as an independent organization or institution was the result of a lack of public trust in the weaknesses of existing law enforcement institutions, both the National Police and the Attorney General's Office. It is not surprising that since its founding, the Corruption Eradication Committee (KPK) has gained extraordinary authority by providing various legal facilities and infrastructure.

The interest in the presence of a state institution, namely the Corruption Eradication Committee, is driven by the decline in the public's sense of confidence in state institutions, which actually resolve corruption cases. Judicial institutions that are expected to obtain legal justice are considered to have contributed to corrupt activities. Judicial mafia or judicial corruption is a new threat to the world of justice in Indonesia.[5]

In the provisions of Law of the Republic of Indonesia Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission ("UU No. 19 of 2019"), in Chapter I concerning General Provisions , Article 3 is explained In essence, the Corruption Eradication Commission is a State Institution in that when carrying out its responsibilities it must act neutrally and avoid the grip of any power. The Corruption Eradication Committee Law emphasizes that it aims to position the Corruption Eradication Commission institution as a neutral institution and avoid being held in the grip of power beyond the institution's authority.[6]

[3] Kartika S. Wahyuningrum, 2020. Independence of the Corruption Eradication Commission: Does it Exist?, Journal of Legal Studies Legal Reflections, Vol. 4 , p. 240.
[4] Rony, 2016. Prosecuting Authority of the Corruption Eradication Commission (KPK) in Money Laundering Crime Cases, Respublica Law Journal, Vol. 16, no. 1 , p. 107
[5] I Nyoman Yudhi Astika, I Nyoman Putu Budiartha and I Made Minggu Widyantara , 2022. Juridical Review of the Recruitment and Selection Process for Candidates for Commissioners of the Corruption Eradication Commission , Legal Analogy Journal, Vo. 4(3) , p. 325.
[6] Atmaja, IDG, & Budiartha, INP, 2018. Legal Theories . Malang: Setara Press.

If initially, after the fourth amendment to the 1945 Constitution, Indonesia only recognized 1 state auxiliary agency, namely the Judicial Commission which is regulated in article 24 B of the 1945 Constitution, now the number has reached no less than 88 state auxiliary agencies, with the same name and legal basis for formation. it is varying from laws to Presidential decrees. One of the many existing state auxiliary agencies is the Corruption Eradication Commission, formed by Law Number 30 of 2002 concerning the Corruption Eradication Commission. The confirmation of the Corruption Eradication Committee as a state institution is regulated in Article 3 of Law Number 30 of 2002 concerning the Corruption Eradication Commission which states "The Corruption Eradication Commission is a state institution which in carrying out its duties and authority is independent and free from the influence of any power."[7]

The meaning of "any power" is free from intervention by the executive, judiciary, legislative and other parties involved in criminal cases of corruption. [8]The KPK leadership as state officials consists of five people one person is chairman and four people are deputy chairmen. All KPK leaders also serve as members and work collectively.

Giving broad authority makes the Corruption Eradication Commission a superbody institution. Behind the extraordinary authority and powerful performance of the Corruption Eradication Commission compared to other law enforcement agencies in disclosing corruption cases, the Corruption Eradication Commission faces resistance from various directions who do not like the existence of the Corruption Eradication Committee, including its legislative enemies. The Corruption Eradication Committee (KPK) is considered only an et interim (temporary) institution but has broad powers. As an independent commission, it should be free from any power and party's influence. This aims to ensure that the Corruption Eradication Committee (KPK) carries out its authority and functions as a prevention and eradication of corruption objectively and without favoritism. To realize this independence, the KPK needs people with integrity who are not affiliated with political parties to lead the KPK. Of course, to get these people, a selection process for KPK leaders is needed that is objective and free from political interests.[9]

[7]Indonesia, Corruption Eradication Commission Law, Law Number 30 of 2002, LN Number -, TLN No 4250, Ps. 3
[8] Suharyo, 2014, Optimizing Corruption Eradication in the Era of Decentralization in Indonesia , Rechtsvinding Journal, Vo. 3, no. 3, p. 368.
[9] M. Beni Kurniawan, 2018. Problems in Filling the Leadership Position of the Corruption Eradication Commission (Critical Study of the DPR's Authority in Selecting KPK Leaders). JIKH Vol. 12, no. 2. July, p. 139.

The task of the Corruption Eradication Commission is to take preventive measures so that Corruption Crimes do not occur; to Coordination with authorized agencies in eradicating criminal acts of corruption and agencies tasked with implementing public services; to monitor the administration of state government; to supervision of agencies authorized to carry out criminal acts of corruption; carry out inquiries, investigations and prosecutions of 3 criminal acts of corruption; and actions to implement the judge's determination and court decisions that have obtained permanent legal force.[10]

In carrying out its duties, the Corruption Eradication Commission is guided by five principles, namely: legal certainty, openness, accountability, public interest, proportionality and respect for human rights. 5 Apart from that, the Corruption Eradication Committee is also responsible to the public and submits its reports openly and periodically to President of the Republic of Indonesia, the People's Representative Council of the Republic of Indonesia, and the Supreme Audit Agency.

The influence of anti-corruption commissions in several countries that have proven their independence has been proven to provide quite a good impact regarding eradicating corruption cases in their countries. [11]As a rule, the involvement of a state institution in the anti-corruption selection process is intended to create a process of *checks and balances* on the existing authority, with the aim of controlling the creation of the KPK leadership position.

In terms of selecting KPK leaders, based on the explanation of Law No. 19 of 2019 in the provisions of Article 30 Paragraph (1), the KPK Commissioner is appointed by the DPR based on member candidates recommended by the President of the Republic of Indonesia. There is the involvement of executive and legislative institutions. Therefore, it is necessary to pay attention to the determination of the KPK commissioner participants, the president allocates his authority by creating a Selection Committee Team for KPK leadership candidates to carry out the data collection and selection process. The Selection Committee Team consists of community components. The approval of the Selection Committee team members is a right that is completely within the authority of the President himself.[12]

[10]Article 6 Law Number 19 of 2019.
[11] Simabura, C., 2016. Filling Leadership Positions of Independent State Institutions . Jakarta: PT Raja Grafindo Persada.
[12] I Nyoman Yudhi Astika, I Nyoman Putu Budiartha and I Made Minggu Widyantara . op. cit. p. 324.

The term of office of the KPK leadership then became a polemic in itself, namely the submission of a request for review of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission to the Constitutional Court by the Deputy Chair of the Corruption Eradication Committee, Nurul Ghufron. Nurul Ghufron (Petitioner) is the Deputy Chair of the Corruption Eradication Committee appointed to meet the qualifications based on Law Number 30 of 2022 (the first Corruption Eradication Commission Law). However, the enactment of Article 29 letter (e) of the Corruption Eradication Committee Law has reduced the Petitioner's constitutional rights. The application of the provisions of the a quo article, which originally required a minimum age of 40 years and a maximum of 65 years, after the change to a minimum of 50 years and a maximum of 65 years, resulted in applicants whose age had not yet reached 50 years being unable to run for re-election as chairman of the Corruption Eradication Commission for the period which will come. This is contradictory to Article 34 of Law Number 30 of 2002, which regulates that the Chairman of the Corruption Eradication Commission holds office for 4 (four) years and can be re-elected for only one term of office.[13]

Based on this Petition, Decision Number 112/PUU-XX/2022 was issued. "Make a decision, adjudicate, grant the Petitioner's petition in its entirety." In its decision, the Court also stated that Article 29 letter e of the Corruption Eradication Committee Law, which originally read, "A minimum age of 50 (fifty) years and a maximum of 65 (sixty-five) years in the election process", is contrary to the 1945 Constitution and has no force. The law is conditionally binding as long as it is not interpreted as, "a minimum of 50 (fifty) years of age or experience as a KPK Leader, and a maximum of 65 (sixty-five) years in the election process".

Then stated that Article 34 of the Corruption Eradication Commission Law, which originally read, "The Chairman of the Corruption Eradication Commission holds office for 4 (four) years and can be re-elected for only one term of office", is contrary to the 1945 Constitution and has no legally binding conditional force as long as it is not interpreted, " The chairman of the Corruption Eradication Commission holds office for 5 (five) years and can be re-elected for only one term of office."

[13]Constitutional Court, https://www.mkri.id/index.php?page=web.Berita&id=19196 . Accessed on November 15, 2023.

Based on the description above, the researcher will analyze the term of office of the leadership of the Corruption Eradication Commission in Indonesia and the legal considerations of Constitutional Court Decision No.112/PUU-XX/2022 regarding the term of office of the leadership of the Corruption Eradication Commission.

2 THEORETICAL FRAMEWORK

In the provisions of Law no. 19 of 2019 concerning the Corruption Eradication Commission in Chapter I concerning General Provisions, Article 3 explains that the Corruption Eradication Commission is a State Institution in that when carrying out its responsibilities, it must act neutrally and avoid the grip of any power. The Corruption Eradication Committee Law aims to position the following Corruption Eradication Commission institutions as neutral institutions and avoid being held in the grip of power that is beyond the authority of the institution. [14].

Based on the mandate of Article 6 of Law No. 19 of 2019, the Corruption Eradication Committee has the freedom to carry out investigations, investigations, and prosecutions in criminal acts of corruption. Apart from that, No. 19 of 2019 provides a mandate that the Corruption Eradication Commission (KPK) in carrying out its duties has the authority to carry out investigations, investigations and prosecutions involving law enforcement officials and state administrators [15].

To realize the independence of the KPK, it requires people with integrity who are not affiliated with political parties to lead the KPK. Of course, to get these people, a selection process for KPK leaders is needed that is objective and free from political interests.[16]

The success of an anti-corruption agency can be influenced by various factors, namely good national political, social and public commitment from all state holders without exception, an adequate budget, professional human resources, a juridical foundation that gives comprehensive authority to the anti-corruption agency . [17]Regarding selecting KPK leaders, based on the explanation from No. 19 of 2019 in the provisions of Article 30 Paragraph (1), the KPK leadership is appointed by the DPR based on member

[14]Atmaja, IDG, & Budiartha, INP loc.cit.
[15] CSA Teddy Lesmana, Lisna, 2021 . The Urgency of Immunity Rights for KPK Leaders in Eradicating Corruption Crimes, Rechten Journal: Legal and Human Rights Research, Vol. 3, no. 1 , p. 42.
[16] M. Beni Kurniawan, op. cit. p. 139.
[17] Badjuri, A. 2011 , The Role of the Corruption Eradication Commission (KPK) as an Anti-Corruption Institution in Indonesia , Journal of Business and Economics (JBE), 18 (1).

candidates recommended by the President of the Republic of Indonesia. There is the involvement of executive and legislative institutions. Therefore, it is necessary to pay attention to the determination of the KPK commissioner participants; the president allocates his authority by creating a Selection Committee Team for KPK leadership candidates to carry out the data collection and selection process. The Selection Committee Team consists of community components. The approval of the Selection Committee team members is a right that is completely within the authority of the President himself. [18]Recruitment System for Members of the Corruption Eradication Commission. In the Corruption Eradication Commission Law, the appointment of Corruption Eradication Commission commissioners goes through several stages of the recruitment process, which is carried out using a technical selection approach. The level of technical selection in the Corruption Eradication Committee Law only regulates it in a general way. The President is responsible for creating a Pansel team, which is divided into officials and the general public.[19]

To become a KPK leader, you must meet the requirements in statutory regulations. Article 29 Law no. 19 of 2019 regulates that to be appointed as leader of the Corruption Eradication Committee, you must meet the requirements, namely:

a) citizen ;
b) Fear of God Almighty ;
c) Physically and spiritually healthy ;
d) Hold a law degree or other degree with expertise and experience of at least 15 (fifteen) years in the fields of law, economics, finance or banking;
e) Minimum age of 50 (fifty) years and maximum of 65 (sixty-five) years during the selection process;
f) Never commit a disgraceful act;
g) Competent, honest, has high moral integrity, and has a good reputation ;
h) Not being an administrator of a political party

The term of office of the KPK leadership is as regulated in Article 34 of Law no. 19 of 2019, that the Chairman of the Corruption Eradication Commission holds office for 4 (four) years and can be re-elected for only one term of office. However, on May 25 2023, the Constitutional Court (MK) through Decision No.112/PUU-XX/2022, decided

[18] I Nyoman Yudhi Astika, op. cit. p. 323
[19] Ibid. p. 326

to change The term of office for the leadership of the Corruption Eradication Commission (KPK) has become 5 years , from the previous 4 years.[20]

3 RESULTS AND DISCUSSION

The Petitioner, in Constitutional Court Decision No.112/PUU-XX/2022, submitted a request for material review of the norms of Article 29 letter (e) of Article 34 of Law no. 19 of 2019. The reason for the request is related to the term of office as regulated in Article 34 of Law No. 19 of 2019, namely:[21]

> (1)Request for norm review Article 34 No. 19 of 2019, the Petitioner is an individual citizen of the Republic of Indonesia who, in this case, serves as Deputy Chair of the Corruption Eradication Commission for the 2019-2023 period. The applicant, as a state official/non-ministerial state organ in an independent executive group, has a term of office of 4 (four) years as stated in Article 34 No. 19 of 2019, as follows: "The chairman of the Corruption Eradication Commission holds office for 4 (four) years and can be re-elected for only one term of office."
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> (2)Indonesia is a rule-of-law country, which aims to provide justice and equal treatment for all its citizens. According to Van Vollenhoven, one form of guarantee of justice and legal certainty that needs to be regulated is justice and certainty of public tenure. And that the term of public office must be characterized by justice and legal certainty so that public officials carry out their duties in justice (equality) and are not dependent on the uncertainty of the term of office and age in carrying out their duties.
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> (3)To achieve its goals, Indonesia, since the reform era, has created and has many non-ministerial state institutions. The applicant has searched, and there are at least 12 commissions or non-ministerial state institutions other than the Corruption Eradication Commission (KPK) with a term of office of 5 (five) years. The periodization of these state institutions' positions of commissioners/officials/heads is the same (ADIL), namely 5 (five) years. This is very different from the periodization of the KPK leadership positions, even though

[20] The Conversation, https://theconversation.com/mengkritisi-pertimbangan-mk-tangan-perpanjangan-masa-kerjatan-pimpinan-kpk-207209 . accessed on November 15, 2023.

[21] Constitutional Court Decision Number 112/PUU-XX/2022

the role in the constitutional structure and the nature of independence are the same as the KPK.

(4)That Article 34 no. 19 of 2019 regulates the period of office of the KPK leadership for 4 (four) years and can be re-elected for another period. This is different from the term of office of 12 (twelve) leaders of other Independent State Institutions in Indonesia.

(5)Determining the term of office and determining the age of public office according to state administration law is the realization or concretization of the rights a person has to occupy that position in a form or format of state administration which is intended for every person in an objective and definite manner, which does not contain other interpretations, let alone conflicting/ is not the same as the term of office with other terms of office in the same constitutional structure, the determination of the term of government office in the constitutional system can have an impact on the meaning of strata/levels in the constitutional system, so that differences in the terms of office of the leadership of the Corruption Eradication Commission (KPK) and the administration of other independent state institutions in the constitutional structure can raises questions and legal uncertainty, whether the meaning of a shorter term of office can be interpreted as the KPK being inferior to the position of other independent non-ministerial state institutions. Therefore, the difference between the term of office of the leadership of the Corruption Eradication Commission and the term of office of the leadership of other state institutions must be declared discriminatory and creates unconstitutional legal uncertainty ;

(6)That institutionally, for the Corruption Eradication Committee as a law enforcement agency, legal certainty regarding its position within the state administration structure is one of the determinants of its authority and coercive power in enforcing the law. In other words, a term of office that is shorter/shorter than the term of office of the heads of other non-ministerial state institutions, could give rise to the opinion that the Corruption Eradication Committee (KPK) has a lower legal position than these other state institutions, which in implementation could create obstacles to law enforcement. Therefore, inequality in terms of office will have implications for the independence and effectiveness of law enforcement,

which is the task and authority of the Corruption Eradication Committee in eradicating corruption;

(7)That Indonesia as a legal state provides the Right to Recognition, Guarantees, Protection and Fair Legal Certainty as well as equal treatment before the law, and the right to be free from discriminatory treatment on any basis to all Indonesian Citizens, based on the 1945 Constitution, by therefore Article 34 no. 19 of 2019 has properly been declared to violate the Petitioner's constitutional rights as regulated in Article 28D paragraphs (1), (2) and (3) and Article 28I paragraph (2) of the 1945 Constitution.

(8)Therefore, according to the arguments outlined by the applicant above, the provisions regarding the term of office of the KPK leadership are 4 (four) years as regulated in Article 34 No. 19 of 2019, as follows: "The Chairman of the Corruption Eradication Commission holds office for 4 (four) years and can be re-elected for only one term of office"; Even though it is an open legal policy forming the law, factually and specifically it has given rise to constitutionality problems as confirmed in Constitutional Court case Number 7/PUU-XI/2013, considering that the changes to the age provisions have: a. Causing institutional problems, (cannot be implemented and causing a legal deadlock), b. Inhibiting the implementation of the performance of the state institution; and/or c. Causing harm to the constitutionality of citizens;

(9)That the Constitutional Court as the guardian of the Indonesian Constitution needs to declare Article 34 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission which regulates the term of office of the KPK leadership for 4 (four) years and can be elected Returning for another period, which is different/discriminatory to the terms of office of 12 (twelve) heads of other independent state institutions in Indonesia, is unconstitutional because it violates, harms and injures the Petitioner's constitutional rights, including the right to recognition, guarantees, protection and legal certainty. Justice before the law and the right to obtain protection against discriminatory treatment;

(10) In order to stop the unconstitutionality of the provisions of Article 34 no. 19 of 2019, the Constitutional Court needs to interpret the provisions of Article

34 above as: "The Chairman of the Corruption Eradication Commission holds office for 5 (five) years and can be re-elected for only one term of office" ;

The considerations of the Panel of Judges in the Constitutional Court Decision Number 112/PUU-XX/2022 include :[22]

There are 12 (twelve) state institutions and independent commissions with terms of office of 5 (five) years. However, from the perspective of constitutional law, not all of the twelve state institutions that are independent and have a term of office for their leaders/members of 5 (five) years are state institutions that have a position or degree that is equal to the state institutions in the Constitution—1945, or what is known as an institution of constitutional importance. Several state institutions or independent commissions, although not mentioned in the 1945 Constitution, have constitutional importance and are therefore considered important, such as the Prosecutor's Office, Corruption Eradication Committee, Financial Services Authority, and National Human Rights Commission (vide Constitutional Court Decision Number 30/PUU-XX/2022; Constitutional Court Decision Number 92/PUU-XIV/2016; Constitutional Court Decision Number 25/PUU-XII/2014). According to the Court, the Corruption Eradication Commission is an independent commission, as an institution of constitutional importance which, in carrying out its duties to enforce the law, is free from interference from any branch of power. However, the leadership's term of office is only 4 (four) years, in contrast to commissions and other independent state institutions which are also included in institutions of constitutional importance but have a term of office of 5 (five) years. Therefore , according to the Court, the provision of a term of office for the KPK leadership of 4 (four) years is not only discriminatory but also unfair when compared with commissions and other independent institutions which both have constitutional importance values. Apart from that, based on the principles of benefit and efficiency, the term of office of the KPK leadership of 5 (five) years is much more useful and efficient if adjusted to other independent commissions, so that the time cycle for changing the KPK leadership should be once every 5 (five) years, which of course will much more useful than once every 4 (four) years.

Regulation of the term of office of KPK leaders that is different from the term of office of leaders/members of commissions or independent institutions, especially those that are of *constitutional importance* , violates the principles of justice, rationality,

[22] Constitutional Court Decision Number 112/PUU-XX/2022

reasonable reasoning and is discriminatory in nature, thereby contradicting the provisions of Article 28D paragraph (1) of the 1945 Constitution. Therefore, according to the Court, the term of office of the KPK leadership should be equal to the term of office of commissions and independent institutions which are included in the group of commissions and institutions which have *constitutional importance* , namely 5 (five) years so as to fulfill the principles of justice, equity and equality.

That the Corruption Eradication Committee (KPK), which was formed with the aim of increasing the efficiency and effectiveness of efforts to eradicate criminal acts of corruption, needs to guarantee its independence, free from the influence of any power in carrying out its duties and authority. Therefore, as an effort to protect the independence of the Corruption Eradication Committee as an institution that has the authority to eradicate criminal acts that are extra ordinary crimes, it is necessary to guarantee fair treatment of the Corruption Eradication Committee, one of which is related to the term of office of the Corruption Eradication Commission leadership as regulated in Article 34 of Law 30/2002.

That the term of office of the KPK leadership given by Article 34 of Law 30/2002 is 4 years and can be re-elected for one term of office has apparently resulted in one term of office for the President and the DPR, namely for 5 (five) years in casu Period 2019-2024, can carry out assessments of the KPK institution 2 (two) times, namely in terms of selecting or recruiting KPK leaders. In this case, institutionally, the Corruption Eradication Commission (KPK) is treated differently from other supporting state institutions but is classified as an institution of *constitutional importance* which is both independent and formed based on law because it is an institution *of constitutional importance* which is independent, which has a term of office of its leadership for 5 (five) years, assessed once during 1 (one) term of office of the President and DPR.

That the KPK leadership recruitment system with a 4-year scheme based on Article 34 of Law 30/2002 has resulted in the performance of the KPK leadership being assessed, which is a manifestation of the performance of the KPK institution, twice by the President and the DPR during the same term of office. This double assessment of the Corruption Eradication Commission could threaten the independence of the Corruption Eradication Committee because the authority of the President and the DPR to be able to select or recruit KPK leaders twice within the period or tenure of their leadership has the potential to not only affect the independence of the Corruption Eradication Committee

leadership, but also the psychological burden and conflict of interest on the leadership. The KPK wants to re-register for the selection of candidates for the next KPK leadership. The difference in the term of office of the Corruption Eradication Commission and other independent institutions has resulted in differences in treatment which have apparently violated the sense of justice (unfairness) because they have treated differently things that should apply the same. This actually contradicts the provisions of Article 28D paragraph (1) of the 1945 Constitution. Therefore, according to the Court, in order to uphold law and justice, in accordance with Article 24 paragraph (1) of the 1945 Constitution and according to reasonable reasoning, the provisions governing term of office The leadership of the Corruption Eradication Commission (KPK) should be equated with the provisions governing the same matters in state institutions *of constitutional importance* which are independent, namely for 5 (five) years.

Based on the entire description of the legal considerations above, according to the Court, the Petitioner's argument regarding the provisions of the norms of Article 34 of the Corruption Eradication Commission Law is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted to mean that the leadership of the Corruption Eradication Commission, either the leadership appointed simultaneously or the replacement leadership who is appointed to replace a leader who has resigned during his term of office and holds office for 5 (five) years, and afterward can be re-elected for only one term of office is reasonable according to law.

In the legal considerations read out by Constitutional Justice Suhartoyo, the Panel of Constitutional Justices was of the opinion that regarding the review of the four-year term of office for KPK leaders as stated in Article 34 of the KPK Law, MK Decision Number 112/PUU-XX/2022 had been decided. In considering the legal considerations of this decision, the Court provided a simulation of the current KPK leadership tenure scheme so as not to cause the President and DPR to have one term of office, then selected the KPK leadership twice and this assessment will not be repeated for at least the next 20 years. . If you use the current KPK leadership term of office scheme which is extended to five years, then the selection of KPK leaders will only be carried out once by the President and DPR for the 2019-2024 period, namely last December 2019. Meanwhile, the selection

to fill the next KPK leadership position (2024-2029 period) will be carried out by the President and DPR for the next period as well.[23]

Constitutional Justice Manahan MP Sitompul stated the Court's view regarding the Petitioners' concerns that if the Presidential Decree regarding the extension of the term of office of the KPK leadership to end on December 20 2024 could be cancelled, it would create legal uncertainty and chaos regarding all law enforcement actions for criminal acts of corruption carried out by the KPK. According to the Court, this is unreasonable because the President as the addressee of the Court's decision has followed up on the Constitutional Court Decision Number 112/PUU-XX/2022. This means that the President has correctly and thoroughly understood the Constitutional Court's decision, not only in the form of a decision, but consisting of the identity of the decision, the case, legal considerations, and the decision, even the minutes of the trial which are an inseparable unit as a decision .[24]

As for the ruling of MK Decision No.112/PUU-XX/2022, namely

1. Granted the Petitioner's request in its entirety.
2. Stating Article 29 letter e of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally read , "A minimum age of 50 (fifty) years and a maximum of 65 (sixty five) years during the election process", is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it is not interpreted," must be at least 50 (fifty) years old or have experience as a KPK Leader, and a maximum of 65 (sixty five) years old during the election process."
3. Stating Article 34 of Law Number 30 of 2002 concerning the Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2002 Number 137, Supplement to the State Gazette of the Republic of Indonesia Number 4250) which originally read, "The Chairman of the Corruption Eradication Commission holds office for 4 (four) years and can be re-elected for

[23] Constitutional Court, https://www.mkri.id/index.php?page=web.Berita&id=19443 . Accessed November 15, 2023.

[24] Ibid.

only one term of office", is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it is not interpreted, "The Chairman of the Corruption Eradication Commission holds office for 5 (five) years and can re-elected for one term only."

4. Order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.

In this decision, Deputy Chief Justice of the Constitutional Court Saldi Isra had a different reason (*concurring opinion*). For Saldi, if you read the Petitioners' petition carefully, specifically the part of the Petitum which states, "The Chairman of the Corruption Eradication Commission holds office for 5 (five) years and can be re-elected for only one term of office" as interpreted in Constitutional Court Decision Number 112/PUU -XX/2022, interpreted as, "The provision that the Chairman of the Corruption Eradication Commission holds office for 5 (five) years applies to the next period of leadership" is a Petitum which cannot resolve the constitutional problem requested by the Petitioners, namely when the actual "next period of leadership" will be. intended by the Petitioners in their petition.[25]

The unclear time contained in the phrase "next period of leadership" in the Petitum also means that the Petitioners are unable to provide confirmation of the Constitutional Court Decision Number 112/PUU-XX/2022. Within the limits of reasonable reasoning, continued Saldi, the Petitioners are trying to find a way out of the ambiguity of Constitutional Court Decision Number 112/PUUXX/2022. However, the Petitum with the proposed Petitum formulation pattern, whether we realize it or not, has fallen into the trap of being unclear. The main question is that it is unclear when to actually calculate the time for the "next period of leadership" referred to by the Petitioners. Quoted in the decision, Saldi considered that based on these reasons, in accordance with the provisions of Article 74 PMK 2/2021, in declaring the Petitioners' petition vague, the Court did not need to discuss or go into the main points of the petition.

According to its decision, there are two reasons why the Constitutional Court granted the request for an extension of the term of office of the KPK leadership, namely: [26]First, there is discriminatory and unfair treatment towards the KPK when comparing it

[25] Ibid.

[26] The Conversation, https://theconversation.com/mengkritisi-pertimbangan-mk-tangan-perpanjangan-masa-kerjatan-pimpinan-kpk-207209 . accessed on November 15, 2023.

with other independent government institutions which share constitutional importance, namely having a term of office of 5 years. Second, based on the principles of benefit and efficiency, a 5-year term of office for the leadership of the Corruption Eradication Committee is much more useful and efficient so that it can correspond to one term of office for the president.

Responding to the extension of the term of office for the head of the KPK institution from the original four years to five years. reminded that the longer the term of office, the greater the potential for abuse of power. So, it is natural that the term of office of the KPK leadership is different from other institutions . Moreover, his authority is equipped with coercive measures, the longer he holds office, the potential for *abuse of* his power is also high . There are specificities attached to the KPK commissioner, such as the authority to arrest, detain, search and confiscate. Because of this, his term of office was shorter.

Regarding the Constitutional Court's decision, which has sparked polemics from various circles, this is because extending the term of office of this independent state institution is considered to be able to perpetuate the current bureaucratic politics in the form of efforts to weaken the Corruption Eradication Commission.

The rationale for the principle of equal terms of office for the Corruption Eradication Commission is the regulation of terms of office for commissions or state institutions whose historical background is in the same context. Even though the authority varies according to the purpose of its formation, ideally it also fulfills the principles of equality and equality. You need to know about the latest revision of the Corruption Eradication Commission Law, there have been significant changes, especially human resources at the Corruption Eradication Commission. At the Corruption Eradication Commission (KPK) now all of them are ASN from the police and prosecutor's offices who are assigned for certain periods of time. Overall, the KPK's human resources are all ASN. Thus, if we relate the KPK institution to independence, it tends to place it in functional independence .

The KPK institution uses state finances, so this institution must be equalized with the use of finances of other state institutions. With this rationale in mind, there needs to be a link between the term of office and the concept that has existed since the reformation, so that it becomes the basis for regulations regarding the state financial system and concept called the five-year medium-term perspective.

When the leadership of the Corruption Eradication Committee is only 4 years old, then in the budget analysis when audited there can be *a gap analysis.* Performance achievements can be achieved more optimally when the time is adjusted to MTEF or the preparation of the medium-term state budget, Based on the MTEF principle, all medium-term planning systems for ministries or institutions at any center in regional apparatus organizations in regional government also use a medium-term planning system which is valid for 5 years.

Therefore, the logic of regulation regarding the term of office for the highest leaders in all public sectors should also be set for 5 years so that their performance can be assessed effectively and objectively regarding the implementation of the budget to finance programs and activities in DIPA. Each public sector adjusts to the 5-year term of office.

All state institutions and commissions use a leadership term of office of 5 years, because all use the state budget, including the Corruption Eradication Commission (KPK) using the state budget. While using the state budget, follow the SOP in managing state finances.

4 CONCLUSION

With the stipulation of Constitutional Court Decision Number 112/PUUXX/2022, the term of office of the KPK leadership is to hold office for 4 (four) years and can be re-elected for only one term of office" was declared contrary to the 1945 Constitution and does not have conditionally binding legal force as long as it is not interpreted as "The chairman of the Corruption Eradication Commission holds office for 5 (five) years and can be re-elected for only one term of office . " The Constitutional Court granted the request for an extension of the term of office of the KPK leadership with the following considerations: Firstly, there is discriminatory and unfair treatment towards the KPK if it equates it with other independent government institutions which share constitutional importance, namely having a term of office of 5 years. Second, because based on the principles of benefit and efficiency, the 5-year term of office for the leadership of the Corruption Eradication Committee is much more useful and efficient so that it can correspond to one term of office for the president .

REFERENCES

Abdulkadir Muhammad, 2004. Law and Legal Research . Cet. 1. Bandung: PT. Aditya Bakti's image.

Astika, I Nyoman Yudhi, I Nyoman Putu Budiartha and I Made Minggu Widyantara, 2022. Juridical Review of the Recruitment and Selection Process for Candidates for Commissioners of the Corruption Eradication Commission , Legal Analogy Journal, Vo. 4 (3).

Atmaja, IDG, & Budiartha, INP, 2018. Legal Theories , Malang: Setara Press.

Badjuri, A. 2011, The Role of the Corruption Eradication Commission (KPK) as an Anti-Corruption Institution in Indonesia , Journal of Business and Economics (JBE), 18 (1).

Corruption Eradication Commission, 2006. Understanding to Eradicate, Jakarta: KPK Press.

Kurniawan, M. Beni, 2018. Problems in Filling the Corruption Eradication Commission Leadership Position (Critical Study of the DPR's Authority in Selecting KPK Leaders). JIKH Vol. 12, no. 2. July.

Lesmana, CSA Teddy, and Lisna, 2021. The Urgency of Immunity Rights for KPK Leaders in Eradicating Corruption Crimes, Rechten Journal: Legal and Human Rights Research, Vol. 3, no. 1

Liman, P. D., & Rifai, A. (2023). Legal Status of Children Out of Wedlock According to the Decision of the Constitutional Court in Inheritance of the Burgerlijk Wetboek (BW) System. Journal of Law and Sustainable Development, 11(3), e577. https://doi.org/10.55908/sdgs.v11i3.577

Rony, 2016 . Prosecuting Authority of the Corruption Eradication Commission (KPK) in Money Laundering Crime Cases , Respublica Law Journal, Vol. 16, no. 1.

Salim HS and Erlies Septiana Nurbani, 2013. Application of Legal Theory in Thesis and Dissertation Research, Jakarta: Rajagrafindo Persada.

Simabura, C., 2016. Filling Leadership Positions of Independent State Institutions . Jakarta: PT Raja Grafindo Persada.

Sri Mamudji, et.al, 2005. Legal Research Methods , First Edition, Jakarta: UI Faculty of Law.

Suharyo, 2014 , Optimizing Corruption Eradication in the Era of Decentralization in Indonesia, Rechtsvinding Journal, Vo. 3, no. 3.

Wahyuningrum, Kartika S., 2020. Independence of the Corruption Eradication Commission: Does it Really Exist? , Journal of Legal Studies Legal Reflections, Vol. 4.

Widijowati, D. (2023). Juridical Review of the Concept of Asset Forfeiture without a Judgment of Conviction in Returning State Financial Losses resulting from Corruption

Crimes. Journal of Law and Sustainable Development, 11(11), e1859. https://doi.org/10.55908/sdgs.v11i11.1859

Constitutional Court, https://www.mkri.id/index.php?page=web.Berita&id=19196 .

Constitutional Court, https://www.mkri.id/index.php?page=web.Berita&id=19443 .

The Conversation, https://theconversation.com/mengkritisi-pertimbangan-mk-tangan-perpanjangan-masa-kerjatan-pimpinan-kpk-207209