

Immunity rights for officials of the Corruption Eradication Commission (KPK): A proposed model

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Abstract: Attacks against officials of the Corruption Eradication Commission (KPK) often happen. The attacks show that there is an attempt to hinder the progress of corruption cases being handled by the KPK or perhaps to take revenge. Therefore, in carrying out their duties, officials of KPK should receive legal protection, namely limited immunity rights. The limited immunity rights are not new in Indonesia; the law has granted it to several state institutions/agencies. The purpose of this paper is to offer a model for the regulation of limited immunity rights for the KPK. This paper proposes a model of limited immunity rights for KPK leaders, investigators, and public prosecutors within the scope of carrying out their duties and exercising their authorities. The proposed model stipulates that KPK officials cannot be interrogated, arrested, detained, prosecuted, or sued when occupying their positions. However, the rights to immunity is limited only to the period of occupying a position at the KPK and does not apply if KPK officials receive severe sanctions for ethical violations or commit special crimes.

Keywords: Immunity Rights; Corruption; KPK; Regulation; Model

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Introduction

The Corruption Eradication Commission (KPK) was created with the main purpose of eradicating corruption and cannot be interfered by any power. The duties and powers of the KPK include prevention, coordination, monitoring, supervision, investigation, and prosecution. Having numerous powers and roles does not mean that it is easy for the KPK to run its affairs. In practice, anti-corruption activities typically encounter many obstacles and even backlashes, which tend to weaken the institution (Indrayana, 2017). These obstacles may result in the stagnation of the fight against corruption. This is what happened to KPK leaders and employees who were prosecuted during the incessant handling of corruption.

Allegations against KPK officials are always preceded by a corruption case that is being investigated (Hatikasari & Hasibuan, 2017). The KPK leaders, Bibit and Candra, were named as suspects during the SIM simulator case involving Susno Duadji (YLBHI, 2013). The next case involved four KPK leaders from 2011-2015 who were successively reported to the police. Bambang Widjojanto was reported for allegedly presenting a false witness at the Constitutional Court. Abraham Samad followed with reports of alleged document forgery, intimate photos, graft and more. Adnan Pandu Praja was also reported for allegedly illegally acquiring PT Daisy Timber, and finally Zulkurnain was reported for alleged graft. These successive reports occurred because it was known that Budi Gunawan was previously named as a suspect (LBH Jakarta, 2015).

The KPK leaders from 2015-2019, Agus Rahardjo and Saut Situmorang, were also reported for alleged criminal offences of letter forgery and abuse of authority. This report was made due to the naming of Setyo Novanto as a suspect in the E-KTP project (UGM, 2017). Reports and counter-attacks against corruption eradication officials are not only directed at the KPK leaders, but also against other KPK employees. A KPK investigator, Novel Baswedan, was reported on suspicion of severe maltreatment. The report coincides with the handling of the case of Inspector General Djoko Susilo regarding corruption in the procurement of SIM simulators.

In 2013, KPK spokesman Johan Budi and ten other KPK investigators were reported to the National Police Headquarters. This report is associated with the confiscation of evidence for the alleged corruption of Lutfi Hasan Ishaq (Dasahasta et al., 2013). In 2017, three employees of the Supreme Audit Agency (BPK) assigned to the KPK were reported to Polda Metro Jaya on charges of abuse of authority and unpleasant actions. The three KPK employees were working on an alleged money laundering crime that ensnared BPK auditors, Ali Sadli and Rochmadi Saptogiri (Rahayu et al., 2017). Efforts to disrupt the KPK or “corruptor fight back” (Muttaqin & Susanto, 2018) has had an impact on the KPK's performance. For example, before Bibit and Chandra were named as suspects, in January-June 2009, the KPK arrested 29 corruption suspects. However, after they were named suspects, the KPK only managed to arrest 4 perpetrators in July-October 2009 (Husodo et al., 2011).

The experiences of KPK leaders and employees who were subjected to criminal proceedings while on duty were certainly not all revealed by the media. There is a pattern of reporting and counterattack against KPK officials as they attempt to dismantle corruption. Therefore, efforts to eradicate corruption are hampered or even stopped completely. This is expected considering that corruption is an extraordinary crime that cannot be handled by only using traditional methods, especially since the perpetrators are individuals who have power. Therefore, there will always be resistance, because efforts to eradicate corruption will be resisted in any possible way by corrupt actors (Kristiana, 2016).

This pattern of counterattack is likely to continue as long as efforts to eradicate corruption continue. Therefore, as long as KPK officials diligently carry out their duties, they will be targeted for attacks, and corruption will continue to harm the state's finances. Extraordinary efforts are needed to fight corruption, which is an extraordinary crime. Thus, it is important to provide protection for the executor of the task of eradicating corruption to prevent the anti-corruption process from being hampered, disturbed or even stopped (Indrayana, 2017). Robinson and Cahill (2005) emphasized that in order for officers to carry out their duties properly, they need to be granted immunity rights.

The above facts are supported by a previous study conducted by Muttaqin dan Susanto (2018). The study states that the KPK will always be faced with patterns of counterattack by corrupt actors. Likewise, the research conducted by Fadli asserted that to be free from corrupt practices, it is necessary to grant immunity rights (Fadli, 2018). This research can be said to be a continuation of the above research, as it provides supporting reasons why limited immunity rights should be given to the KPK as protection in eradicating corruption process. What distinguishes this paper from previous studies is that it offers a formulation of limited immunity rights for the KPK, which includes arrangements related to the subject, form, scope time, limitation of the time the crime was committed and sanctions.

Methods

This research is a normative juridical research to investigate based on scientific thinking in the field of normative law (Ibrahim, 2006). This method is used in relation to the legal vacuum of regulating limited immunity rights for the executors of the task of eradicating corruption. A statute approach is used in this research, as well as a conceptual approach. In addition, it uses primary legal materials (laws governing limited immunity rights) and secondary materials (books and scientific articles related to limited immunity rights). As for the technique of obtaining legal materials, literature and internet studies were employed, while the analysis of legal materials was done using descriptive analysis.

Result and Discussion

There are three sub-sections in this discussion. First, the urgency of providing limited immunity rights for the KPK as a way of promoting the eradication of corruption is provided. Second, we investigate the substance of the limited immunity rights regulation for the KPK. Third, we investigate the appropriate model for the regulation of immunity rights for the KPK.

Limited Immunity Rights for the Corruption Eradication Commission

Corruption is categorised as an extra ordinary crime (Spora, 2015) because: (1) From the perspective of the perpetrator, everyone has the potential to commit corruption, whether they are poor, rich, smart, stupid, ordinary people, officials, or in the private sector; (2) Victims of corruption are random, which means that anyone can become a victim without feeling like a victim; (3) The result of corruption is massive, widespread and not static; and (4) It is committed in an organized manner.

Corruption in general does not only damage the national economy but also can have an impact on the life of the state and nation (Kristiana, 2016). In dealing with corruption, the usual methods of fighting crime will be ineffective. Therefore, to fight extraordinary crimes, it is necessary to use extraordinary measures (Mulyadi, 2013). To eradicate corruption, the government of Indonesia has enacted formal law, material law, and even has a special court

Based on its mandate, although the KPK has adequate authority to carry out investigations, take prevention and prosecution measures, and coordinate wealth reports of state officials, in practice, it has encountered many obstacles. The KPK actions in eradicating corruption are always resisted by various pressures and intimidation from individuals who feel that their interests are being harmed or threatened. The existence of several reports against KPK leaders and employees obstructs the fight against corruption and makes it less effective (Endarto, 2014). The pattern of these reports shows that the KPK is very vulnerable, and it is easy to interfere, so that the impact on corruption resolution is disrupted. Other law enforcement officials use their authority to make only the KPK leaders suspects (Muttaqin & Susanto, 2018). This is certainly detrimental. The KPK leaders and employees who are considered problematic will be targeted by corrupt elements and they may be removed from their positions, which indirectly paralyzes the task of eradicating corruption. It is important to point out that the counterattacks by corrupt actors against KPK officials have happened many times; these counterattacks tend to occur simultaneously with the anti-corruption activities of the KPK.

The meaning of the rights to immunity is related to the origins of the word "immunity". Etymologically, the word "immunity" was derived from the Latin word "immunis", which means "exemption from public service". In the context of this study, the relevant immunity rights is immunity from prosecution for KPK officials, which means that they should be exempted from prosecution. The term "immunity" was popularized by an American legal philosopher named Wesley Newcomb Hohfeld in his research titled *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (1919) (Clarke & Foweraker, 2003). Black's Law Dictionary defines immunity as "an exemption from a duty, liability, or service of process, especially an exemption granted to a public official" (Black's Law Dictionary, 2004).

Immunity according to Hohfeld is basically the inability of a person to change the legal situation of people who have immunity, which means providing protection to people from a danger (Thompson, 2018). In broad terms, immunity is a legal instrument which, temporarily or permanently, can be used to impede legal action, whether it is related to criminal or civil matters (Hardt, 2015). Immunity according to Hohfeld functions as the rights for someone to be protected against any harm, as exemplified by diplomats or members of parliament. It can be said that the rights to immunity is an authority to obtain legal protection granted by rules or laws. The history of the rights to immunity can be seen in the history of parliament in Europe. Article 9 of the 1689 English Bill of Rights states that discussions that take place in Parliament may not be sued in court or elsewhere outside Parliament. This statement from the British colonial government eventually became the forerunner to a legislative model in other countries, especially Europe; notably, the model grants a level of immunity or legal protection to parliamentarians (Wigley, 2003).

Much later, the United States also included the same statement in its constitution: that Congress, in expressing its opinion, cannot not be subject to court processes. France also did the same thing, in 1789, by introducing immunity, such that people's representatives could not be accused without the permission of the Assembly (Wigley, 2003). Based on the above background, the legislatures of various countries continue to enjoy immunity in carrying out their duties, especially in expressing opinions. This immunity is now known as the rights to immunity.

Moreover, immunity is not a deviation from the principle of equality before the law. Historically, parliamentary immunity was needed to protect parliament from the tyranny of rulers. This concept was implemented by the Dutch, even when it was still called the Republic of Batavia. The rights to immunity was affirmed in their constitution. However, there are differences between countries regarding the concept of rights to immunity; for example, in the Netherlands and France, immunity only applies when parliamentarians are still active in parliament. However, in the UK, it is different (Hardt, 2013).

Limited immunity rights have been provided for several anti-corruption institutions in many countries around the world through their different anti-corruption laws, for example, anti-corruption agencies in Malaysia and Swaziland. The granting of this limited immunity rights should come naturally, considering that many countries have implemented it earlier and considering that corruption is an extraordinary crime. Article 72 of the 2009 Anti-Corruption Commission Act in Malaysia and Section 17 of the 2006 Prevention of Corruption Act in Swaziland provide for the prohibition of prosecution or lawsuit for law enforcement officers who are carrying out their duties under the law.

In Indonesia, the rights to immunity are recognized by the DPR. In addition, several laws and regulations stipulate the rights to immunity in Indonesia, such as the Law on Foreign Relations, the Law on the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, and the Regional People's Representative Council (MD3 Law 2014), the Law on Advocates (Advocate Law 2003), the Law on the Ombudsman of the Republic of Indonesia (ORI Law 2008), the Law on the Supreme Audit Agency (BPK Law 2006), the Law on Environmental Protection and Management (PPLH Law 2009), and the Law on the Protection of Witnesses and Victims (PSK Law 2014). Almost all parliaments around the world exercise the rights to immunity (Simarmata, 2018).

The rights to immunity is certainly very helpful in dealing with corruption. Limited immunity is also one of the principles of strengthening anti-corruption in the Jakarta Principles 2017. The principle of immunity states that leaders and staff of anti-corruption agencies should be granted immunity from any judicial process while carrying out their assigned duties (*Jakarta Statement on Principles for Anti-Corruption Agencies*, 2012).

For this reason, the legal basis of the fight against corruption should be strengthened by formulating legal instruments that provide temporary immunity (limited immunity rights) to KPK officials. The granting of limited immunity rights will prevent counterattacks by corrupt actors, which come in the form of reports of illegality against KPK officials, such reports that always coincide with the anti-corruption activities of the KPK. Immunity, therefore, serves as a shield for officers of public institutions, such as KPK, against the “distraction and expense of defending themselves in the courtroom”, thereby ensuring better service to the public (Vermont League of Cities & Town, 2020). Of course, measures should be put in place to ensure that these rights are not misused as protection for personal matters (Indrayana, 2017).

The rights to immunity clearly has limitations; it does not mean that the leaders and employees of the KPK cannot be touched by the law at all. The limitations are inherent in the name of the rights itself: the rights to “limited” or “temporary” immunity (Muttaqin & Susanto, 2018). The general limitations that are usually set are as follows: (1) protection only applies when carrying out duties and exercising power as officials; (US Department of Justice, 2022); (2) protection only applies during an official's term of office; and (3) when caught red-handed committing a serious crime, immunity is lost. If the KPK officials violate the law, they will be punished according to the proper rules. However, this process can only be applied if the KPK officials are no longer in their positions.

The granting of limited immunity rights to KPK officials does not mean that the KPK is a special institution or a “golden child” compared to other institutions. Rather, it should be seen as a necessity to protect the state's goal of running a country free from corruption, which leads to the realization of general welfare (Fadli, 2018). The granting of limited immunity rights does not violate the principle of equality before the law. For an action to be considered as a violation of the principle, it has to amount to impunity that covers every aspect of a citizen's life. This would be true if the immunity rights were absolute and without any limitations, but that is not the case (Arief, 2019).

Even though there is a need for the rights to immunity, it should be applied with limitations, because immunity can lead to impunity if given without limitation (Chêne, 2013). Even if there is independence, there must be supervision. Unsupervised immunity will potentially lead to manipulation, which will become an “immunity jacket” from the law (Komisi Yudisial Republik Indonesia, 2012). The granting of limited immunity rights needs to be given considering the task of eradicating extraordinary crimes and their broad impact. There is a proposition that states “*salus populi supreme lex*”, meaning that any action can be taken to maintain the safety of the nation (Mahfud, 2007).

Apart from officials of the KPK who deserve immunity rights, the rights to limited immunity is granted by law to legislature, diplomats, advocates, ombudsman members, BPK members, environmental activists, as well as witnesses and victims. The granting of the rights to limited immunity to certain individuals is entirely meant to promote the implementation of their tasks and functions. Thus, it has nothing to do with the individuals themselves, but is only related to their duties, functions, and authorities (Blok, 2013).

The granting of the rights of limited immunity does not mean that KPK officials would exercise their authority arbitrarily. Rather, they still have to carry out the processes of inquiry, investigation, and prosecution based on applicable regulations, which means that they still have to respect human rights (Panjaitan, 2018). The existence of limited immunity rights will enable KPK officials to carry out their duties and exercise their authorities without fear of reports against them by corrupt actors who may have been affected by their investigative activities. With this additional protection, it is expected that the fight against corruption would be effective to the extent of minimizing acts of corruption (Sosiawan, 2019).

Substance of the Limited Immunity Rights Regulation for the KPK

If the KPK is given protection in the form of the rights to immunity, what form should it take? In formulating immunity rights for the KPK, there is a need to examine the form and implementation of legislation governing other immunity rights. Furthermore, by paying attention to how the implementation of the task along with the immunity rights may run well. Secondly, in addition to legal immunity, of course, it is necessary to stipulate limits to ensure that the implementation is not carried out arbitrarily and to maintain the concept of equality before the law (Fadli, 2018). Uniquely, all laws and regulations in Indonesia that regulate the rights to immunity have their respective limitations. More discussions are presented below.

Subject of Immunity Rights: Leaders, Investigators and Prosecutors

Subjects who are entitled to be granted immunity rights are people who occupy strategic positions, especially with regards to their duties and authorities. In Indonesia, not all officials in an agency or institution qualify to be granted the immunity rights. In the case of the MD3 Law, only MD3 members are entitled to receive it, namely DPR members, MPR members, DPD members, and other legislative members (MD3 Law). The reason for choosing only these members is because of their position as people’s representatives. Just like other legislators in the world, they enjoy immunity rights due to their functions of creating laws and regulations as well as carrying out budgetary and supervisory functions (Aulawi, 2003).

In Article 16 of the Foreign Relations Law, the right of immunity is also granted to diplomats. Why? This is because diplomats have a big duty to represent their country of origin in their stationed country, where they are obliged to improve and develop cooperative relations for the national interest and common interests (Anggraini et al., 2016). Therefore, the rights of immunity is not for the personal interest of diplomats, but for the sake of ensuring the efficient implementation of the diplomatic representation function. Likewise, environmental activists are given the rights to immunity in Article 66 of the PPLH Law when there is a report or counter-prosecution as a result of their fight for the rights to a healthy environment (Sembiring, 2017). It is not for personal reasons or specific interests but due to the duties being carried out. The granting of immunity rights becomes important when the duties and authorities of officials lead to counterattacks by unscrupulous actors.

KPK officials as the front line in the process of fighting corruption should be given the rights to immunity to shield them from counterattacks. The duties and authorities of the KPK as stipulated by Law of the Republic of Indonesia Number 19 of 2019 are clearly not easy to carry out. Due to the importance of realizing a clean and corruption-free state administration, it is appropriate to provide legal protection in the form of immunity rights to KPK leaders, investigators, and public prosecutors who deal directly with corrupt actors.

According to Denny Indrayana (2017), there is international recognition that in carrying out the duties and exercising the authorities of an independent institution tasked with eradicating corruption, such as the KPK, immunity rights must be granted (Fadli, 2018). Also, it is noteworthy that the granting of the rights to immunity should not be limited to the KPK leaders; however, other employees of the KPK should also obtain the rights to immunity to protect them from disturbance in the form of criminal or civil proceedings that are intentionally intended to hinder their duties of eradicating corruption (Fadli, 2018).

Form of Immunity Rights: Cannot be interrogated, arrested, detained, or sued

Without the rights to immunity, the fight against corruption can be easily obstructed (Indrayana, 2017). However, even when the rights exists, it needs to be formulated in an appropriate manner to ensure efficient protection of officials. In general, the form of immunity that is usually stipulated is immunity against prosecution, either civil or criminal. For example, Article 16 of the Law on Advocates provides the rights to immunity against prosecution (both civil and criminal). Moreover, the article was strengthened by Constitutional Court Decision No. 26/PUU-XI/2013, which states that immunity is not only in court, but also outside of court. Likewise, members of the BPK who have the rights to immunity cannot be prosecuted in court (BPK Laws 2006).

It is vital to understand how this form of immunity would support the officials in carrying out their duties in practice (Fawbush, 2023). Apart from the KPK officials, other categories of people also need protection. For example, if a person knows about a crime, then they may be asked to serve as a witness in court. Most people will be afraid of becoming witnesses on the grounds of threats from other parties directed at themselves or their families, fear of being involved in a criminal case, having to spend time and money, or if related to corporate crimes, it may have an impact on them personally (Ojaruddin, 2018).

Therefore, a witness who wants to assist in the settlement of a criminal act needs to be given protection to make him feel safe while giving testimony (UNCAC). Witnesses and victims are given protection in the form of immunity against civil and criminal prosecution in exchange for their testimony (PSK Law). This form is effective for people who want to give testimonies, since they are needed to solve a crime. For example, in New South Wales, Australia, the law provides for comprehensive protection, not only for all staff of the commission against corruption, but also for legal practitioners assisting the commission and witnesses (UNODC, 2020).

Another example is the form of immunity or legal protection stipulated in the PPLH Law. In Article 66 of the PPLH Law, anyone who fights for a good and healthy environment is given protection and cannot be prosecuted or sued. This protection is given based on the consideration that in the past, companies have brought criminal allegations, vilification and civil lawsuits against environmental activists who had previously reported allegations of environmental pollution and destruction by these companies (Satyahaprabu, 2016). However, the form of immunity granted by the above article is considered inefficient because environmental activists can only get protection after going through a legal process (Sembiring, 2017). This means that they have to apply for legal protection based on Article 66 of the PPLH Law.

The duties and authorities of the KPK are vital in state administration. Therefore, to achieve efficient implementation of these duties, the form of immunity rights that should be granted is as follows. It should be stated categorically that KPK leaders, investigators and public prosecutors cannot be interrogated, arrested, detained, prosecuted or sued, which is similar to the provisions of the ORI Law. Interrogation, arrest, detention and prosecution are powers granted by the state to law enforcement institutions, but if imposed on leaders, investigators and public prosecutors of the

KPK, it may interfere with the performance of their duties. Lawsuits can also interfere with the performance of their duties, because they will be preoccupied with resolving claims against them.

Period of Immunity Rights: When occupying the position in KPK

In addition to formulating the subjects and form of the rights to immunity, it is also necessary to formulate the period when this rights of immunity applies to KPK officials. In general, immunity is only granted when a person occupies a position in an institution or agency. So, it is clear that legal protection is not just given to someone arbitrarily. Based on the various laws that regulate the rights to immunity, a person can only be granted immunity after he has officially or legally accepted a position that enjoys immunity.

The immunity rights of MD3 members only apply to those that can legally be referred to as MD3 members. This means that they have to go through various processes, such as taking an oath or promise before the rights to immunity takes effect (MD3 Laws). Likewise, an advocate must meet several requirements as stipulated in the Law on Advocates and must be appointed by taking an oath in the High Court before benefitting from the rights to immunity. Similarly, diplomats, BPK members, and ORI members only have the rights to immunity when they have met several legal requirements.

In other words, the rights to immunity is attached to the positions of KPK officials. The rights ceases to apply once someone leaves any of the above positions after previously occupying them. Also, as to the immunity rights of an advocate, immunity will be attached to those who serve according to the authority given or according to the profession they practise (Tampi et al., 2018). The duration of immunity is also limited to the duration of time the advocate occupies that office; similarly, it ceases to apply once they leave the office. This regulation is meant to ensure that the KPK officials are not given more privileges and rights than they need to avoid abuse of power..

Scope of the Rights to Immunity: Implementation of Duties and Authorities

The next thing, which is no less important, is to formulate the scope of immunity rights, that is, to what extent should immunity protect the KPK officials? The scope is meant to ensure that officials carry out their duties and authorities without fear of being victimized through prosecution (Muttaqin & Susanto, 2018). A person who is adequately protected by law will be more courageous and will not be easily swayed while performing their duties.

As stated earlier, the scope of immunity rights is related to the duties and authorities of the recipient of the rights. For example, the rights of immunity attached to advocates considers the consequences associated with the implementation of their professional duties. Such consequences have the potential to interfere with their duty of defending clients; they include pressure, threats, obstacles, fears or things that can degrade their dignity (Arif, 2018). Therefore, the scope of the rights to immunity for an advocate extends to all privileges that would protect him from the consequences mentioned above and encourage the performance of his duties.

Similarly, the scope of the rights to immunity for diplomats, who are representatives of their respective states, is also related to their duties and authorities. The scope of protection for diplomats extends to all privileges that would protect them from issues that could affect the effective performance of their duties (Suryokusumo, 1995). The situation is the same with respect to the rights to immunity for MD3 members. The immunity covers privileges that would ensure effective performance of their duties. For example, legislators cannot be sued for expressing their opinions in parliament. Without fear of being prosecuted, they will concentrate on their duties (Massie, 2019). Further, for environmental activists, the scope of the rights to immunity from prosecution, as stipulated in Article 66 of the PPLH Law, covers privileges that would protect them from the dangers associated with their duties. Immunity from prosecution means that environmental activist, as weak parties, are not afraid to report pollution and environmental damage (Al Amruzi, 2011).

A clear example showing that the rights to immunity can protect someone in carrying out their duties is the case of a BPK representative of the Province of East Kalimantan who was sued in the Samarinda District Court by the deputy regent of East Kutai (Noor, 2013). The case began due to a report on the results of an investigation by the BPK of East Kalimantan Province. The investigation

covered social assistance spending, allocation of village funds, and unexpected expenditures. The deputy regent of East Kutai was indicted by the report. In reaction, the deputy regent took the case to court, claiming that BPK had committed an unlawful act.

In the first stage of the court hierarchy, the deputy regent's claim was partially granted, but at the Appeal and Supreme Court levels, the opposite pronouncements were made. Through Decision Number 246 K/Pdt/2012, the Supreme Court upheld the Appeal Court's decision by stating that BPK has the rights to immunity guaranteed by law. The court cited Article 26 of the BPK Law itself. In other words, an official of BPK cannot be tried in court based on the report of the BPK investigation because the report, as part of the main tasks of BPK, is protected by the BPK Law. Through this decision, the Supreme Court confirmed that the rights to immunity protects officials of BPK while carrying out their duties.

Regarding the scope of the immunity rights to be formulated for those whose duty it is to fight corruption, privileges that would ensure effective implementation of their duties and authorities should be considered. The rights to immunity will apply when KPK leaders, investigators, and public prosecutors are carrying out their duties and authorities (Hasibuan, 2018). However, immunity rights does not allow them to act arbitrarily. There are appropriate values that must be maintained. KPK officials are not allowed to act outside the limits of their authority.

Limitation Based on Ethical Violation: Severe Sanctions for Ethical Violation

After formulating other elements of the rights to immunity, the next step would be to formulate its limitations, to ensure that the rights are not implemented arbitrarily. If the immunity is not limited, it would lead to impunity since the beneficiaries of such immunity cannot be touched at all by law (Indrayana, 2017). Therefore, the rights to immunity must have limits and must be based on the functions of the recipients of such rights (Balcerzak, 1985).

The code of ethics and behavioural guidelines are used as a reference to control the execution of tasks and authorities; they are also used as an instrument to comply with applicable laws and regulations. Just like other institutions or agencies, the KPK has a code of ethics and behavioral guidelines that must be followed. The Codes are guidelines on how personnel should act while carrying out their duties and functions at the commission as well as in daily life (KPK's Supervisor Council Regulation, 2020). This code of ethics stipulates that KPK leaders can be dismissed if it is proven that they have violated ethics.

If there is proof of ethics violation by a KPK official, he or she is subject to severe sanctions and the rights to immunity does not apply to that person. Similarly, the rights of the members of MD3, especially the DPR RI, are limited by the Rules of Procedure and the Institution's Code of Ethics. In effect, even though some officials hold the rights while exercising their authorities, they must respect ethics, norms and national customs while carrying out such duties (Muniri, 2019).

Limitations regarding ethics are also related to "good faith" in the application of duties and authority. For example, regarding the limitation of the immunity rights of advocates, good faith means that every action of an advocate when carrying out his duties must be based on the law and on the advocate's code of ethics. If there is a violation of legal norms, especially by committing criminal acts such as bribery, then of course this is an exception to the lawyer's immunity rights (Chairani, 2018).

Regarding the ombudsman of the Republic of Indonesia, Article 10 of the ORI Law states that the rights to immunity does not apply if ORI people violate the law. Of course, the violation of the law is related to violation of the code of ethics of ORI people and violation of criminal law. For example, there was a case involving the Deputy Chairperson of ORI (2012–2017), Azlaini Agus, who committed a violation of ethics and a criminal offense of minor mistreatment; he slapped an employee at the Angkasa Pura because he felt that the service there was not good and it was his duty to supervise. As a result, his employment was terminated and he received ethical sanctions, which were then followed with criminal proceedings (State Court of Pekanbaru Decision 15/Pid/TPR/2014/PN.PBR., 2014). From this case, it is clear that immunity does not apply to ombudsman members who violate the law while carrying out their duties. The code of ethics is useful as it can help filter out people with deviant behaviour from within the organization even

before entering the realm of law. In this way, KPK human resources can be controlled for the realization of professionalism (Nasrullah, 2020).

Limitation Based on the Type of Crime: Committing a Special Crime

Some countries prescribe an exception to the immunity provisions when the subject is caught committing a crime, especially serious crimes like corruption (Vrushy, 2018). Therefore, if the KPK officials commit a special crime, the rights of immunity will not apply. Examples of special crimes include corruption, serious human rights violations, terrorism, human trafficking, and narcotics abuse, as stipulated in the MD3 Law (Explanation of Article 245 (2) (c) Laws No.2 of 2018 on MD3 Law). These crimes are categorized as extraordinary crimes because they have a great impact on many aspects of life, including economic, social, cultural and political aspects (Muhammad, 2019). This statement is supported by the opinion of Mark A. Drumbl (2007), who stated that an extraordinary crime is a crime that is different from a general crime because it has a serious, widespread, massive nature and impact.

An example of immunity rights limitation is the case of the chairman of the Indonesian House of Representatives, Setya Novanto, who was involved in alleged corruption associated with the E-KTP project. The investigation was handled by the KPK. Setya Novanto felt that he was protected by law and could not be named a suspect; he tried to use his rights of immunity to evade KPK investigation. Likewise, his lawyer expressed the view that he too cannot be named a suspect because of his rights of immunity as an advocate. Legally, both of them did not pay attention to the limitations contained in the MD3 Law and the Advocates Law. It is clear in the MD3 Law that if a member of the DPR RI is suspected of committing a special crime, then the rights to immunity does not apply to him (Article 245 (2) (c) on MD3 Law). Likewise, the Advocates Law stipulates that if an advocate does not carry out his profession in good faith, the rights of immunity will not be attached to him (Advocate Law).

Appropriate Model of Limited Immunity Rights Regulation for the KPK

Based on the considerations above, we propose the following provisions as an appropriate regulatory model for the rights to immunity for KPK officials:

Article

- (1) Within the scope of carrying out their duties and authorities, the Leaders, Investigators and Public Prosecutors of the Corruption Eradication Commission cannot be interrogated, arrested, detained, prosecuted, and sued before a court.
- (2) The provisions in Paragraph (1) apply when the Leaders, Investigators and Public Prosecutors occupy their positions at the Corruption Eradication Commission.
- (3) Criminal acts that have been committed by the Leaders, Investigators or Public Prosecutors of the Corruption Eradication Commission, either before taking up the position or while occupying the position, can only be used as the basis for prosecution after they have left their positions.
- (4) The provisions in Paragraph (1) and Paragraph (3) shall not apply if the Leaders, Investigators or Public Prosecutors of the Corruption Eradication Commission receive severe sanctions for ethical violations committed or commit special crimes, including corruption, serious violations of human rights, terrorism, human trafficking, and narcotics abuse.

If the above model for regulating the rights to immunity is adopted, it would provide protection for the executors of the fight against corruption, so there will be no obstruction in the process of implementing anti-corruption activities. This full support is important considering that the task of eradicating corruption touches all aspects of government administration (Satispi & Taufiqurokhman, 2022). The proposed model regarding the rights to limited immunity for the executors of the KPK tasks should be given legal backing by amending the law governing the KPK. In addition, attention should be paid to related aspects so that the implementation does not cause new problems.

Granting limited immunity rights for the KPK can improve the performance of corruption law enforcement in Indonesia. KPK can focus on preventing and handling corruption, rather than being preoccupied with the legal process faced by law enforcement officials in KPK, especially Commissioners. Article 32 of the KPK Law states that if a KPK Commissioner is determined to be a defendant, he or she will cease or be dismissed. This dismissal will inevitably impact the decision-making process in handling corruption.

Conclusions

The concept of limited immunity rights is based on the extraordinary effort to combat corruption, which is an extraordinary crime, considering its systematic and wide impact. The rights to immunity is used to minimize the distractions and obstacles faced by KPK officials, which might weaken the fight against corruption. It is expected that the adoption of limited immunity rights will increase the effectiveness of anti-corruption activities, since officials will be able to work without fear of counterattacks by corrupt persons. Therefore, it is very important to give the rights to limited immunity to the executors of the KPK duties.

The proposed model for regulating limited immunity rights is that within the scope of its duties and authorities, the leaders, investigators and public prosecutors of KPK cannot be interrogated, arrested, detained, prosecuted or sued while serving in their positions. This means that while they occupy their positions in KPK, they would be immune from prosecution for criminal acts committed, both those allegedly committed before and during their period in office. However, they lose such immunity immediately after they leave office. Also, if they receive severe sanctions for ethical violations or commit special crimes, they will lose their immunity. Thus, everyone is considered equal before the law. The law should be amended to give legal backing to the proposed model.

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