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THE POSITION OF THE CORRUPTION ERADICATION COMMISSION AS THE STATE INSTITUTION IN THE STATE SYSTEM OF ADMINISTRATION IN INDONESIA

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Abstract: *One of the new state institutions established during the reform era in Indonesia is the Corruption Eradication Commission (KPK). This institution was formed as part of the agenda of corruption eradication which is one of the most important agenda in improving governance in Indonesia. The position of KPK has several points of vagueness (gray norm), resulting in a debate related to the current condition of the KPK. Among them is the debate over the position of KPK which theoretically does not belong to one of the groups/clusters of State institutions, whether included in the realm of the Executive, Legislative, or Judiciary. The position of the KPK in the Indonesian constitutional structure is more appropriately categorized in the position of the State institution whose source of establishment is based on the Act. This concept is also in line with the classification of independent State institutions in the study of the theory of the new separation of power, in which independent state institutions such as these are equal to the executive, legislative and judicial institutions. The position of KPK is like the existence of the Federal Reserve Board in the United States, as one of the independent State institutions in the United States.*

Keywords: *corruption eradication commission, position, institution*

I. INTRODUCTION

Indonesia is a legal state *(rechstaat)* it is expressly stipulated in the constitution in Article 1 paragraph (3) of the 1945 Constitution of the State of the Republic of Indonesia. The growing society apparently wants the State to have an organizational structure that is more responsive to their demands. The realization of effectiveness and efficiency both in the implementation of public services and in achieving the goal of governance is also a hope of the community charged to the state. These developments have an influence on the organizational structure of the state, including the form and function of state institutions. In response to the demands of these

developments, new state institutions that can be established are councils, commissions, committees, bodies, or authorities.[1]

One of the new state institutions established during the reform era in Indonesia is the Corruption Eradication Commission (KPK). This institution was formed as part of the agenda of corruption eradication which is one of the most important agenda in improving governance in Indonesia.[2] Based on the hierarchy of legislation, the juridical foundation of the formation and granting of authority is a provision of Article 43 of Law Number 31 Year 1999 concerning the Eradication of Corruption, and through Law Number 30 Year 2002 concerning the Corruption Eradication Commission, this commission legitimately established and legitimate to carry out its duties.[3]

As the concept of the establishment of the State Institution in general, the legal legislation of KPK establishment cannot be separated from the legal politics of state supporting institutions in general. The basis of the establishment of the Commission is the occurrence of delegitimize existing state institutions. This is due to the assumption that the assumption that there is corruption rooted and difficult to eradicate. Police and prosecutors have lost confidence in the eradication of corruption. Police and prosecutors are seen as failing to combat corruption. In order to restore public confidence in law enforcement, the government established KPK as a new state institution that is expected to restore the image of law enforcement in Indonesia. The high burden of existing institutions that require new institutions as a complement. For the sake of achieving optimal public services for the community, the government considers it necessary to establish a new institution, in this case the workload of police and prosecutors is considered too much so that many arrears a rise case. As a state adjustment to the development of the state administration system and the changing demands of the state administration system, Indonesia has forced the state to reform in various lines, including institutional reform. Some non-structural institutions were formed to accommodate this, including enforcement of the rule of law, the improvement of court image. The development of certain governmental authorities held by the increasingly complex governmental organization, so it is not possible to be regularly managed in the organization concerned. In order to implement good governance (good governance). The idea arises that with the establishment of additional institutions that are non-structural will be more open opportunities in an effort to apply the principles of good governance. It is important to realize that the establishment of the KPK stems from the assumption that corruption in Indonesia is considered an extraordinary crime so it needs an extraordinary institution with extraordinary powers.

However, in his journey that has not stepped on the fourth year since its establishment, the existence and position of the KPK in the structure of the Indonesian state began to be questioned by various parties. The duties, authorities and obligations legitimized by Law Number 30 Year 2002 on the Corruption Eradication Commission indeed make this commission seem to resemble a super body. As a state organ whose name is not listed in the 1945 Constitution of the Republic of Indonesia, KPK is considered by some to be an extra constitutional institution. Some people as petitioners filed a judicial review to the Constitutional Court[4] by questioning the existence of the Corruption Eradication Commission by confronting

[1] Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Sekretaris Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, Jakarta, 2006, p. vi-viii.
[2] Mahmuddin Muslim, *Jalan Panjang Menuju KPTPK*, Gerakan Rakyat Anti Korupsi (GeRAK) Indonesia, Jakarta, 2004, p. 33
[3] Tjokorda Gde Indraputra, I Nyoman Bagiastra, *Kedudukan Komisi Pemberantasan Korupsi Sebagai Lembaga Negara Bantu (State Auxiliary Institutions)*, jurnal hukum Universitas Udayana, Volume 3, Nomor 3, 2011, p. 2
[4] Indonesia, Putusan Mahkamah Konstitusi Nomor 012-016-019/PUU-IV/2006, p. 33

Article 2, Article 3, and Article 20 of the Corruption Eradication Commission Act (KPK) with Article 1 Paragraph (3) of the 1945 Constitution on State of Law. They argue that the three articles of the KPK Law are contradictory to the concept of the state in the 1945 Constitution which has established eight organs of the state having the same or equal status which directly gets the constitutional function of the 1945 Constitution namely MPR, President, DPR, DPD, BPK, MA, MK and KY. In addition, the reaction arose because the Corruption Eradication Commission, which in fact is a state auxiliary institution, was given extraordinary authority in terms of eradicating corruption. Many say that this commission is incarnate as an institution with extra constitutional authority.

At least the position of the Corruption Eradication Commission, has several points of blur (gray norm) resulting in a debate on the relevance of the KPK currently. Among them is, the debate over the position of KPK which theoretically does not belong to one of the groups/clusters of State institutions, whether included in the realm of the Executive, Legislative, or Judiciary. This later will give its own consequences to its position in the institutional system of the State in Indonesia.

II. RESULT AND DISCUSSION

2.1 Initial Idea The emergence of State Institutions Help / Support in Indonesia

The emergence of a State institution which in the performance of its function is not positioned itself as one of the three trias politica institutions has developed in the last three decades of the 20th century in established democracies, such as the United States and France. Many terms to refer to the terms of the new state institutions, such as state auxiliary institutions, or state auxiliary organs which, when translated in Indonesian means institution or organ of the State of support.[5]

The positions of these institutions are not within the realm of executive, legislative, or judicial branches of power. Nor can they be treated as private or non-governmental organizations often called NGOs (non-governmental organizations) or NGOs (non-govermental organizations).[6]

The auxiliary State Institutions at a glance do resemble NGOs because they are outside government structures. However, its existence is very public, the source of funding comes from the public, and aims for the public interest, making it cannot be called as an NGO in the true sense.[7] Some scholars still group such independent institutions within the scope of executive power, but there are also some scholars who place them independently as the fourth branch of governmental power, as Yves Meny and Andew Knapp have stated:[8]

> *"Regulatory and monitoring bodies are a new type autonomous administration which has been most widely developed in the United States (where it is sometimes referred to has the handless fourth branch of the government). It takes the form of what are generally known as independent Regulatory Commissions".*

Theoretically, auxiliary State institutions originate from the will of the State to create a new State institution whose members are filling out of non-state elements, authorized by the

[5] Jimly Asshiddiqe, *Pengantar Ilmu Hukum Tata Negara Jilid II*, Konstitusi Press, Jakarta, 2006, p. 08
[6] Naufal El Ramadhian, *Kedudukan Ombudsman sebagai Lembaga Pengawas Pelayanan Publik dalam struktur Ketatanegaraan Indonesia*, Jurnal pada Fakultas Syari'ah dan Hukum, Universitas Islam Negeri Syarif Hidayatullah, Jakarta, 2014, p. 22
[7] Jimly Asshiddiqie, Perkembangan……., *Op. Cit,* p. 08-09
[8] Yves Meny dan Andew Knapp, *Goverenment and Politics in Western Europ : Britanian, France, Italy, Germany*, Third Edition, Oxford University Press, Oxford, 198, p. 281

State, and financed by the State without having to become State employees. The idea of auxiliary State institutions actually originated from the wishes of the previously powerful State when dealing with the public, willingly giving the public the opportunity to supervise. Thus, although the State remains strong, it is overseen by society to create vertical and horizontal accountability. The emergence of auxiliary state institutions is also intended to answer the demands of the community for the creation of democratic principles in every governance through an accountable, independent and credible institution.

In addition, the factor that triggers the establishment of auxiliary State institutions is the presence of a tendency in contemporary administrative theory to divert tasks that are regulative and administrative into part of the task of independent institutions. In relation to its nature, John Alder classifies this type of institution into two, namely:[9]

a. Regulatory, which functions to create rules and conduct supervision on the activities of relationships that are private, and
b. Advisory, which serves to provide input or advice to the government.

Jennings, as quoted by Alder in "Constitutional And Administrative Law", mentions five main reasons behind the establishment of auxiliary state institutions in a government, as follows:[10]

a. There is a need to provide a personalized service culture and service that is expected to be free from the risk of political interference;
b. There is a desire to regulate the market with non-political regulation;
c. The need for regulation of independent professions, such as medical and legal professions;
d. The need for procurement of rules regarding services that are technical; and
e. The emergence of various institutions that are semi-judicial and function to resolve the dispute outside the court (alternative dispute resolution / alternative dispute resolution).

In this paper the author also uses the theory approach The New Separation of Power (Separation of New Power) that developed in the United States.

Bruce Ackerman (2000: 728) states:"..*The mericans system contains (at least) five branches: House, senate, President, Court, and independent agencies uchas the Federal Reserve Board. Complexity is compounded by the wildering institutional dynamics of the American federal system. The crucial system is not complexity, but whether we American are separating power for the right reason* (…the separation of powers in the US state system consists of at least five branches; The House of Representatives, the Senate, the President, the Supreme Court, and the Independent Institution such as the Federal Reserve Board. This complexity is deepened with the dynamics of expanding the institutional system of the State at the federal level. The crucial question is not on complexity, but does we the United States separate power for the right reasons?)".[11]

According to the author, after analyzing The Shap of New Separation in The New Separation of Power article in Harvard Law Review 633 (2000), Bruce Ackerman idealized that the latest form of modern separation of powers is no longer limited by the separation of the three function only, as desired by Montesquieu and Medison, but has manifested itself into institutions

[9] John Alder, *Constitutional and Aministrative Law*, The Macmillan Press RTD, London, 1989, p. 232-233
[10] *Ibid*. p. 225
[11] Gunawan A. Tahuda, *Kedudukan Komisi Negara Independen dalam Struktur Ketatanegaraan RI, Jurnal Pranata Hukum*, Volume 6, Nomor 2, Juli 2011, p. 175

that are on the institutional system of the State itself. Based on this understanding, Ackerman says that branches of state power should be firmly seen on the basis of its institutional model, which in the context of the United States consists of, the branch of the house of representative power, the Senate, the President, the Supreme Court, and the independent agency (independent state).

Based on these expositions, it is clear that independent state commissions in Indonesia can be equalized with independent state commissions in the United States, being outside the realm of the three original power axes, and institutionally can be reorganized into branches of power by institutional type, the power of the People's Legislative Assembly, the President, the Supreme Court, the Constitutional Court, and the independence branch of the independent state commission. So that the independent agencies referred to in the theory also take the form or can be interpreted as an independent state commission in the context of the constitutional Republic of Indonesia.

In addition, and for theoretical enrichment, in addition to the theory of the new separation of power, it is also known as the "fourth branch of the government" theory expressed by Yves Meny and Andrew Knapp (1998: 281)[12], as follows:" *"regulatory and monitoring bodies are a new type autonomous administration which has been most widely developed in the United States (where it is sometimes referred to has the handless fourth branch of the government). It takes the form of what are generally known as independent Regulatory Commissions* (regulatory and regulatory agencies are a new type of autonomous administration that has grown rapidly in the United States, sometimes referred to as the fourth headless branch of the federal government)".

The latter institution is widely known as the Independent State Commission), based on this theory Yves Meny and Andrew Knapp, then in a State there is a fourth power which is called as an independent state commission. In the context of the Indonesian state administration there is a tendency in administrative theory to divert tasks of a regulatory and administrative nature into part of the duties of an independent State commission. For example, the powers of prosecution (investigation, investigation, prosecution and seizure) and the prevention of corruption are also carried out by the KPK, whose institutions are independent. In addition, the authority to hold elections that were under the control of the Minister of Home Affairs is now fully implemented by the General Election Commission (KPU), which is institutionally independent as well.[13]

The establishment of the auxiliary state institutions must also have a strong footing ground and a clear paradigm. Thus, its existence can bring benefits to the public interest in general as well as for structuring the state system in particular.[14] Ni'matul Huda, quotes Firmansyah Arifin, et al. in his State Institution and the Inter-Authority Dispute of State Institutions, said that the quantity aspect of such institutions is not a problem as long as its existence and formation reflect the following principles:

a. Principles of constitutionalism. Constitutionalism is the idea that the power of existing leaders and government bodies can
b. Restricted. Such restrictions can be strengthened to become a fixed mechanism.
c. The principle of checks and balances. The absence of checks and balances mechanisms in the state system is one of the causes of many distortions in the past. The supremacy of the MPR and the dominance of executive power in the practice of government during the pre-

[12] Gunawan A. Tahuda, *Op. Cit*, p. 177
[13] *Ibid*.
[14] Fariz Pradipta, *Kedudukan Lembaga Negara Bantu dalam Sistem Hukum Ketatanegaraan Indonesia*, http://farizpradiptalaw.blogspot.com/2009/12/kedudukan-lembaga-negara-bantu-di dalam.html, accessed on March 15, 2018

reformation period have hampered the democratic process in a healthy way. The absence of a mechanism of mutual control between branches of power leads to totalitarian government and the emergence of abuse of power.

d. The principle of integration. In addition must have a clear function and authority, the institutional concept of the state must also form a unity that processed in carrying out its functions. The establishment of a state institution cannot be done partially, but must be linked to its existence with other institutions that have existed.
e. Principles of benefit for the community. Basically, the establishment of state institutions is aimed at fulfilling the welfare of its citizens as well as guaranteeing the basic rights of citizens arranged in the constitution. Therefore, the administration of government and the establishment of political and legal institutions must refer to the principle of government, which must be run for the public good and the good of society as a whole and keep the rights of individual citizens.[15]

2.2 *The position of the Corruption Eradication Commission (KPK) in the State Administration System in Indonesia*

The Corruption Eradication Commission (KPK) was established based on Law Number 30 Year 2002 on the Corruption Eradication Commission (Komisi Pemberantasan Korupsi). Article 1 of this Law determines that the eradication of corruption is a series of actions to prevent and combat corruption through coordination, supervision, monitoring, investigation, investigation, prosecution and examination in court, with community participation based on laws and regulations applicable. The criminal act of corruption itself is a crime as referred to in Law Number 31 Year 1999 concerning the Eradication of Corruption as amended by Law Number 20 Year 2001 regarding the amendment to Law Number 31 Year 1999 concerning the Eradication of Corruption. Any administration of a State that is clean and free from Corruption, Collusion and Nepotism, is expected to be freed from all forms of this commendable act, thereby establishing the apparatus and apparatus of the state administration which is completely clean and free from Corruption, Collusion and Nepotism. By Law Number 30 Year 2002, the name of the Corruption Eradication Commission is hereinafter referred to as the Corruption Eradication Commission (KPK). The legal status of this commission is expressly defined as a state institution which in carrying out its duties and authorities is independent and free from any influence of power. The formation of this commission aims to improve the efficiency and results of efforts to eradicate corruption crimes that have been running since before. In carrying out these duties and authorities, the commission works on the basis of (a) legal certainty, (b) openness, (c) accountability, (d) public interest, (e) proportionality.[16]

The Corruption Eradication Commission (KPK) is an independent state institution that deals with judicial power but is not under the jurisdiction of the judiciary. The existence of an independent Corruption Eradication Commission (KPK) in Indonesia is still often debated because of the lack of clarity on the existence of the institution. This is very worrying many circles related to the less than perfect institutional arrangement in the constitutional system. In addition, the meaning of the constitutional system is the management of a country. With the existence of such problems, the management of a country is still very less and has not reached a

[15] *Ibid*.
[16] Yugo Asmoro, *Analisis Status Dan Kedudukan Komisi Pemberantasan Korupsi Dalam Sistem Ketatanegaraan Indonesia*, (Skripsi pada Fakultas Hukum Universitas Sebelas Maret, Surakarta, 2009), p. 54

good governance system. So that the arrangement of the state system should be optimized in the presence of many new state institutions such as the Corruption Eradication Commission.[17]

In this case was ever interpreted by the Constitutional Court in considering the law of Constitutional Court Decision No.005 / PUUI / 2003 on the case of petition for judicial review of Law no. 32 of 2002 on the Indonesian Broadcasting Commission (UU KPI) against the 1945 Constitution of the State of the Republic of Indonesia has mentioned that there are two significant differences of meaning from the mention of state institutions by using capital letters and capital letters to L and N. "Institution State "is not the same as" state institution ". The mention of an institution as a "state institution (in lowercase)" does not provide the status of "State Institution" to the institution concerned.[18] In the subsequent explanation the Constitutional Court explained about the birth of democratic institutions and "state institutions" in various forms of which the most in Indonesia is in the form of commissions. In the explanation of the Constitutional Court stated that:

> "This independent Commission is indeed a logical consequence of a modern democratic country that wants to more fully implement the principle of checks and balances for the greater good".[19]

As in the Constitutional Court ruling on this case, the Constitutional Court states that in the Indonesian state system, the term "state institution" is not always included as a state institution only mentioned in the 1945 Constitution of the Republic of Indonesia alone, or which is formed by order constitution, but there are also other state institutions established on the basis of the order of the rules under the constitution, such as the Law and even the Presidential Decree (Keppres).

Thus, some argue that the existence of the Corruption Eradication Commission is extra constitutional is wrong. Because, the existence of the Corruption Eradication Commission (KPK) is explicitly regulated in Law No. 30 of 2002 on Corruption Eradication Commission (KPK) as a form of political law to eradicate corruption in the country. In line with the Constitutional Court's decision to examine the Indonesian Broadcasting Commission Law, the existence of state institutions is legal as long as it has been regulated in legislation, including when stipulated in the Law.

A concept which states that the existence of the Corruption Eradication Commission (KPK), which is regulated by law to disrupt the state administration system is not appropriate. Because theoretically, when formulating how a state institution is outside the executive, judicative, and legislative, there are 3 theories offered. First, the characterized separation of power does not accept the presence of such auxiliary institutions, so it can be concluded as an extra constitutional. Second, the characterized separation of function can still accept its presence as long as it relates to executive, legislative, and judicial functions. Third, checks and balances are characterized by full acceptance of the presence of other supporting institutions as part of the 4th or 5th power principle of the legislative, judicial, and executive branch of power.[20]

The opinion that the existence of KPK in the Indonesian state administration system is extra constitutional because this institution is not mentioned and regulated in the 1945 Constitution as the constitution of Indonesia, is wrong. The existence or establishment of the

[17] *Ibid*.
[18] Roy Saphely, *Keberadaan Komisi Pemberantasan Korupsi Dalam Sistem Ketatanegaraan Dan Implikasinya Terhadap Kewenangan Kejaksaan Dan Kepolisian Republik Indonesia*, Jurnal Mimbar Hukum, Volume 12, Nomor 3, 2013, p. 12
[19] *Ibid*.
[20] Yugo Asmoro, *Op. Cit*, p. 57

KPK, although not mentioned in the 1945 Constitution, but the existence of the KPK is explicitly regulated in Law no. 30 Year 2002 on KPK.

The opinion should be taken into consideration that Indonesia as a state law acknowledges the existence of the KPK as one of the constitutional state institutions. The above explanation gives the meaning that KPK as one of the state institutions in the constitutional system is constitutional and formed because of the reality that happened now corruption problem in Indonesia is a very important problem to be eradicated and prioritized its handling so that needed an auxiliary institution like KPK for handle and combat corruption issues.

KPK in carrying out its duties have clarity that is the prosecutor is a functional prosecutor of the Attorney General, the judge is appointed by the Supreme Court, even his appeal also to the Supreme Court. KPK and other institutions in the judicial process are woven into a general and special relationship.[21] There are three principles that can be used to explain the existence of KPK. That is:

First, the proposition which reads the *salus populi supreme lex*, which means the salvation of the people (nation and state), is the supreme law. If the safety of the people, the nation, and the state is threatened by exceptional circumstances then any emergency or special action can be done to save it. In this case, the presence of the KPK is seen as an emergency to solve the extraordinary corruption.[22]

Secondly, the law is known as a general law *(lex generalis)* and a special (*lex spescialis)*.[23] The law is known as *lex specialis derogate legi generali principle*, which means special law takes precedence over general law.13 Such publicity and specificity may be determined by the legislator in accordance with the needs, unless the Constitution clearly determines which ones public and what is special. In this context, the KPK is a special law whose authorities are granted by law other than the general authorities granted to the Prosecutor and the Police.

Thirdly, the legislative body (legislative body) can regulate further the state administration system which is not or has not been contained in the Constitution insofar as it does not violate the principles and restrictions clearly contained in the Constitution itself. In this regard, it is seen that the presence of the KPK is a manifestation of the legislative rights of the DPR and the government after seeing the reality demanding the necessity.

It is difficult to accept the argument that the existence of KPK outside the judicial authority is considered to disrupt the state administration system, since all this time the Attorney and Police are outside the judiciary. Because the law has regulated the things that are not prohibited or ordered, the existence of KPK did not cause problems in the constitutional system. On the issue of causing abuse of power, it is not relevant if it is linked to the existence of the KPK, because the abuse of power can happen anywhere. KPK actually presented to fight abuse of power that has been chronic.

Whereas the existence of the KPK is constitutional, it can also be based on a written constitution which according to the theory includes the Constitution (as a scattered document) concerning the organization of the state. From the scope of this understanding, the presence of

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[21] Moh. Mahfud MD, *Demokrasi dan Konstitusi Di Indonesia: Studi Tentang Interaksi Poitik dan Anggaran Kehidupan Ketatanegaraan*, Jakarta: Rineka Cipta, 2003, p. 197.
[22] *Ibid*.
[23] *Ibid*.

the KPK is constitutional because it originates from one of the scattered documents as part of the constitution which is not at all contrary to the specific document.[24]

The KPK was formed as a state aid agency because of the incidental content of corruption in Indonesia after the New Order era. KPK is an application of legal political form that is given authority by the 1945 Constitution to the legislature as the legislator.[25]

It is simpler to refer to the institutional concept of the State according to Jimly Asshidiqqie by following the development of the Indonesian state administration structure, grouping each State institution into four groups. This grouping is based on the source of the formation and authority of each State institution, namely:[26]

1) Institutions established under the Constitution which are regulated and determined further in or with the Laws, Government Regulations, Presidential Regulations, and Presidential Decrees.
2) Institutions established under laws regulated and determined further in or by Government Regulations, Presidential Regulations, and Presidential Decrees.
3) Institutions established under a Government Regulation or a Presidential Regulation which is regulated and determined further in or by a Presidential Decree.
4) Institutions established under a Ministerial Regulation governed and further determined in or by a Ministerial Decree or a Decision of an official under the Minister.

Therefore, when analyzed the position of the KPK in the Indonesian state administration structure based on the above concept, it is more appropriate that the KPK will be classified in the position of the second State institution, namely the State institution whose source of its formation by the Act. This concept is also in line with the classification of independent state institutions in the study of the theory of the new separation of power as the authors explain in the above chapter, in which independent state institutions such as these are equal to the executive, legislative and judicial institutions. According to the author of this KPK as the existence of the Federal Reserve Board in the United States, as one of the independent state institutions in the United States.

So come to a conclusion that in different sources, Jimly Asshiddiqie clearly placed the KPK in the cluster of Judicial Authority institutions (Judiciary). According to Jimly Asshiddiqie:[27]

State institutions and state commissions those are independent of constitutional or other constitutional importance, such as:

a. Judicial Commission (KY);
b. Bank Indonesia (BI) as the Central Bank;
c. The Indonesian National Army (TNI);
d. Police of the Republic of Indonesia (POLRI);
e. General Election Commission (KPU);
f. The Attorney General's Office which although not yet determined by its authority in the 1945 Constitution but only in the Law, but in carrying out its duties as law enforcement officer in the field of pro justice, also has the same constitutional importance with the police;

[24] Jimly Asshiddiqie, *Menuju Negara Hukum yang Demokratis,* Sektretaris Jenderal dan Kepaniteraan Mahkamah Konstitusi RI , Jakarta, Cetakan Pertama, 2008, p. 197-198
[25] Firmansyah Arifin dkk., *Lembaga Negara dan Sengketa Kewenangan Antarlembaga Negara*, Konsorsium Reformasi Hukum Nasional (KRHN), Jakarta , 2005, p. 105
[26] Jimly Asshiddiqie, *Perkembangan dan…..., Op. Cit,* p. 43-44
[27] *Ibid*. hlm. 22-23

g. The Corruption Eradication Commission (KPK) is also established under the law but has the nature of constitutional importance based on Article 24 Paragraph (3) of the 1945 Constitution, which explains that, "Other bodies whose functions relate to the judicial authority are governed by Law".
h. The National Commission on Human Rights (Komnas HAM) established under the law but also has the character of constitutional importance.

According to the author of the establishment of a State institution such as the KPK, it is obviously very important that its position or as the language of Jimly Asshiddiqie above is referred to as a constitutional importance institution whose meaning, that institutions in the class of constitutional importance are as important to their positions as institutions which are constitutionally arranged in Of the 1945 Constitution.

III. CONCLUSION

Theoretically, the emergence of auxiliary state institutions stems from the will of the State to create a new State institution whose members are filling out of non-state elements, authorized by the State, and financed by the State without having to become State employees. The idea of auxiliary State institutions actually originated from the wishes of the previously powerful State when dealing with the public, willingly giving the public the opportunity to supervise. Thus, although the State remains strong, it is overseen by society to create vertical and horizontal accountability. The emergence of auxiliary state institutions is also intended to answer the demands of the community for the creation of democratic principles in every governance through an accountable, independent and credible institution.

There are three principles that can be used to explain the existence of KPK. Namely: First, the argument that reads *salus populi supreme lex*, which means the safety of the people (nation and state), is the highest law. If the safety of the people, the nation, and the state is threatened by exceptional circumstances then any emergency or special action can be done to save it. In this case, the presence of the KPK is seen as an emergency to solve the extraordinary corruption. Secondly, the law is known as a general law *(lex generalis)* and a *special (lex spescialis)*. The law is known as *lex specialis derogate legi generali* principle, which means special law takes precedence over general law.13 Such publicity and specificity may be determined by the legislator in accordance with the needs, unless the Constitution clearly determines which ones public and what is special. In this context, the KPK is a special law whose authorities are granted by law other than the general authorities granted to the Prosecutor and the Police. Thirdly, the legislative body (legislative body) can regulate further the state administration system which is not or has not been contained in the Constitution insofar as it does not violate the principles and restrictions clearly contained in the Constitution itself. In this regard, it is seen that the presence of the KPK is a manifestation of the legislative rights of the DPR and the government after seeing the reality demanding the necessity.

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