



Constitutional Implications of KPK Leadership Term Changes: Analysis of MK Decision No. 112/PUU-XX/2022 and Ruling Inconsistencies

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ARTICLE HISTORY

Received: 15.11.2023

Accepted: 19.12.2023

Published: 29.12.2023

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ABSTRACT

Constitutional Court Decision No. 112/PUU-XX/2022, issued on May 25, 2023, underwent an amendment involving an analysis of Article 29 letter e and Article 34 in Law No. 19 of 2019 concerning the Corruption Eradication Commission (UU KPK) in conjunction with Law No. 30 of 2002. This decision is deemed inconsistent with constitutional principles and has the potential to impact anti-corruption efforts in Indonesia. The amendment provides a comprehensive analysis of the effects of the change in the term of office of the KPK leadership on the stability and performance of the institution, as well as its implications for anti-corruption efforts in Indonesia. The research methodology employed is normative juridical legal research with qualitative analysis of the Constitutional Court Decision and relevant legislation. This study aims to delve into the impact of the change in the term of office of the Chairman of the Corruption Eradication Commission (KPK) through Constitutional Court Decision No. 112/PUU-XX/2022. The research findings indicate significant changes in Article 29 letter e and Article 34 of Law No. 19 of 2019 concerning the Corruption Eradication Commission (KPK). Inconsistencies are observed in the application of the open legal policy concept by the Constitutional Court, particularly regarding the assessment of numerical values in previous rulings. Additionally, the study highlights errors in applying the non-retroactive principle concerning the changes in the term of office for KPK leaders, leading to controversy over the retroactive aspect of legal amendments..

Keywords: Constitutional Court Decision, KPK, Term Extension.

1. Introduction

Before amending the 1945 Constitution, Indonesia's dedication to the rule of law was expressed in the declaration that "Indonesia is a state founded on law (rechtsstaat), not on sheer power (machtsstaat)." This indicates that the state, encompassing the government and other entities, must conform to legal regulations in every action, be it related to responsibility, obligation, rights, or authority, underscoring the importance of legal responsibility. Muktiar's characterizes the rule of law as a state with a meticulously regulated structure in accordance with the law, ensuring that all governmental powers are law-centric, and individuals should abstain from actions conflicting with the law. (MP, 2020) (Putra et al., 2022)

Corruption is an activity that has the potential to erode a state's financial assets and result in economic setbacks for its residents. Such behavior is widely regarded as morally reprehensible, denounced, and criticized by specific individuals, extending beyond the confines of the Indonesian community and nation to draw disapproval from the international community of nations. (Mursanto et al., 2020) In the midst of Indonesia's commitment to uphold the rule of law before the amendment of the 1945 Constitution, the Corruption Eradication Commission (KPK) was established in 2003. The presence of the KPK as an integral part of the constitutional structure underscores Indonesia's dedication to combating corruption, emphasizing that this responsibility extends beyond the purview of independent institutions to integration within the broader legal system. This explanation delineates the concept of profound legal changes aimed at strengthening the legal framework in addressing corruption in Indonesia.

The Corruption Eradication Commission (KPK) is one of the entities established in Indonesia with the purpose of combating and preventing corruption crimes in the country. The presence of the KPK is seen as a breath of fresh air for Indonesia's economic security because, as an independent institution, it is deemed capable of eradicating various forms of corruption that have been evident in Indonesia in recent years. The formation of the KPK was guided by Law Number 30 of 2002 concerning the Corruption Eradication Commission (hereinafter referred to as the Corruption Eradication Commission Law). In 2019, an amendment was made to Law Number 30 of 2002 concerning the Corruption Eradication Commission through Law Number 19 of 2019, the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (hereinafter referred to as Law 19/2019). The most significant change related to the KPK in Law 19/2019 is the alteration of the KPK's status from an independent institution to part of the government's branch of power (Auxiliary State Organ). (Habibi, 2020)

With the establishment of the Constitutional Court, the Indonesian judicial system is categorized as a bifurcation system. In this context, the Constitutional Court is vested with the authority to conduct a substantive review of legislation deemed to be in conflict with the constitution. (Syarif, 2023) On the other hand, in the early 21st century, there has been a trend of dependence on the judicial system to address issues involving moral questions, public policy, and controversial political issues. This is facilitated through the utilization of a tool known as judicial review. Courts continue to serve as a forum for addressing various multidimensional social issues, including freedom of expression, freedom of religion, privacy rights, reproductive rights, as well as issues related to public policy such as criminal justice, trade, education, immigration, labor, environment, campaign finance regulation, and affirmative action. (Hirschl, 2006) Empowering the judiciary to adjudicate political issues has transformed the courts into an institution with political dimensions. This phenomenon occurs because, according to Hirschl, Constitutional Law is essentially another form of politics. Legal scholars refer to this phenomenon as "political judicialization" or "judicialization of politics." Neal Tate defines "judicialization of politics" as the "infiltration of decision-making by courts and court-like procedures into political arenas where they were previously absent". (Neal & Vallinder, 1995)

In 2022, the Constitutional Court of the Republic of Indonesia issued Decision No. 112/PUU-XX/2022, which altered the regulations concerning the extension of the term of office for the Chairman of the Corruption Eradication Commission (KPK). This decision has given rise to various political and legal issues in Indonesia. One important aspect is how to foster public trust. Because today many people are of the opinion that the current government is a foolish government. This means that leaders who do not want to hear the various aspirations of interests expressed by their citizens (Ismail, 2020). The matter has become a focal point of attention for the public, the government, and stakeholders in the country due to its potential impact on anti-corruption efforts in Indonesia.

The Constitutional Court has granted the petition submitted by the petitioners, declaring that Article 34 of Law Number 30 of 2002 concerning the Corruption Eradication Commission is in conflict with the 1945 Constitution. The court finds that the provision, which extended the term of the leaders of the Corruption Eradication Commission from 4 to 5 years and allowed for one re-election, lacks legally binding force. The decision, prompted by dissatisfaction with the term extension regulations, emphasizes the non-retroactivity principle and directs the publication of the ruling in the State Gazette. Experts contend that the extension of the term falls within legislative authority and may lead to temporally irrational leadership selection for the Corruption Eradication Commission in the subsequent period.

The sovereignty of law must be sought through justice, whereby legal authority resides within humanity to be manifested in the form of positive legal provisions. This implies that the law inherent in human beings is articulated in the regulations of the respective state's legal system. (FAHARUDIN, 2017) The existence of law should serve as the foundation for the realization of peace within a society. The fundamental objective of law is not solely confined to achieving certainty, utility, or justice. On the contrary, the primary essence of the legal purpose is to create a state of peace and harmony within the social structure. (Salam, 2019)

The Constitutional Court's decision initially stemmed from a petition filed by several parties dissatisfied with the regulations governing the extension of the term of the Chairman of the Corruption Eradication Commission (KPK). Prior to this decision, the Chairman of the KPK could only serve for a single term of 4 years and could hold office only once in a lifetime. However, the decision altered this to a 5-year term, and it began to be applied before/at the time the decision was officially enacted, invoking the principle of Non-Retroactivity. This decision is considered inconsistent with constitutional principles because the term of office for the KPK should be within the legislative authority, not that of the Constitutional Court. Moreover, extending this term would result in the selection process

for the leadership of the KPK for the 2024-2029 term being conducted by the president and the DPR in the subsequent period, which is deemed temporally irrational.

2. Method Research

The research methodology employed is normative juridical legal research. This study applies a legal approach to legislation and cases. The legal materials utilized encompass both primary and secondary legal sources. The data analysis method applied in this research is qualitative analysis. (Waluyo, 2008)

Utilizing primary legal materials from Constitutional Court Decision Number 112/PUU-XX/2022 and analyzing Law No. 19 of 2019 concerning the eradication of corruption, particularly Articles 29 and 34, while secondary legal materials in the form of legal and non-legal opinions are obtained from various sources, such as books, the Indonesian Dictionary, legal dictionaries, research findings, and all related to the issue of extending the term of the KPK chairman post the Constitutional Court decision.

3. Results and Discussion

3.1 Results

a. The Considerations of Judges in Constitutional Court Decision Number 112/PUU-XX/2022

In May 25, 2023, the Constitutional Court (MK) issued a decision recorded as number 112/PUU-XX/2022, which resulted from a constitutional review of Article 29 letter e in Law No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 regarding the Corruption Eradication Commission (UU KPK), as well as Article 34 of Law No. 30 of 2002 concerning the Corruption Eradication Commission.

The Court considers the constitutionality of Article 29 letter e of Law 19/2019, which, according to the Petitioner, creates legal uncertainty and unequal treatment before the law. The Court declares that although the provision is not explicitly in conflict with the Constitution, it implicitly results in unfairness and discrimination, especially concerning substantive requirements such as experience and integrity.

The Constitutional Court has previously declared that the term of office for the leadership of the Corruption Eradication Commission (KPK) for 4 years, as stipulated in Article 34 of the KPK Law, was constitutionally examined in Constitutional Court Decision Number 5/PUU-IX/2011. In that decision, the Court declared that the replacement leadership of the KPK has the same term of office as other KPK leaders, not continuing the remaining term of the replaced leadership. The Court emphasized that the regulation of the KPK leadership term for 4 years is discriminatory and unfair compared to other independent institutions with a 5-year term.

The regulation governing the term of office for the leadership of the Corruption Eradication Commission (KPK), especially when compared to other independent institutions with constitutional significance, is considered to violate the principles of justice, rationality, and reasonable logic. According to the Court, the term of office for the leadership of the KPK should be aligned with the term of office of other constitutional commissions and independent institutions, namely 5 years, to uphold the principles of justice, equality, and equity as stipulated in Article 28D paragraph (1) of the 1945 Constitution. Considering that the term of office for the current leadership of the KPK has only about 6 months remaining before it expires on December 20, 2023, the Court deems it important to promptly decide this case without assessing it specifically, in order to provide legal certainty and fair benefits.

The Court needs to affirm that the Corruption Eradication Commission (KPK), established to enhance effectiveness in combating corruption, must enjoy guaranteed independence without interference from any power. Therefore, protection of the independence of the KPK, particularly concerning the term of office for the leadership of the KPK as stipulated in Article 34 of Law 30/2002, becomes a necessity.

The term of office for the leadership of the Corruption Eradication Commission (KPK) for 4 years, with the possibility of being re-elected once as stipulated in Article 34 of Law 30/2002, has led to a dual evaluation of the KPK's performance by the President and the DPR twice within a single term of 5 years. This system, compared to other independent institutions with a 5-year term, is deemed unfair and potentially threatens the independence of the KPK. The Court contends that, to uphold justice and equality, the term of office for the leadership of the KPK should be aligned with other independent institutions, i.e., 5 years, in accordance with Article 28D paragraph (1) of the 1945 Constitution. Therefore, the Court declares that the Petitioner's arguments regarding Article 34 of Law

30/2002, which regulates the term of office for the leadership of the KPK, are legally justified and in accordance with the constitution.

Article 21 paragraph (1) of Law 19/2019 establishes the structure of the Corruption Eradication Commission (KPK), consisting of the Supervisory Board, KPK Leadership, and KPK Employees. While the Supervisory Board and KPK Leadership are regulated by the said law, the status of KPK employees is governed by regulations related to the State Civil Apparatus. With the reformulation of the term of office for the KPK leadership from 4 years to 5 years, the Court needs to affirm that this change also affects the term of office for the Supervisory Board. According to Article 37A of Law 19/2019, which states that "Members of the Supervisory Board hold office for 4 years and may be re-elected only for one term," the Court deems it important to maintain consistency and harmonization in the regulation of the term of office, thus adjusting the initial 4-year term for the Supervisory Board to 5 years in line with the reformulation of the KPK leadership.

Based on the previous legal considerations, it can be concluded that Article 29 letter e of Law 19/2019 and Article 34 of Law 30/2002 create legal uncertainty, unfairness, and discrimination, consistent with the arguments put forward by the Petitioner. Therefore, other points that are not further elaborated are considered irrelevant and not further considered.

By detailing the facts and legal aspects as previously explained, the Constitutional Court reaches a conclusion. The Court declares itself competent to adjudicate the petition submitted by the Petitioner, considering the legal standing held by the Petitioner to submit the petition. Furthermore, after evaluating the essence of the petition, the Court states that the arguments and legal foundations that constitute the substance of the Petitioner's petition are justified comprehensively. Therefore, the entirety of the Petitioner's petition is declared legally justified.

b. Concurring Opinion

Constitutional Justice Saldi Isra provides a concurring opinion regarding the petition to examine Article 29 letter e of Law 19/2019 concerning the Second Amendment to Law 30/2002 concerning the Corruption Eradication Commission.

In the constitutional petition, the petitioner compares the changes in age requirements in Law Number 7 of 2020 concerning the Constitutional Court (UU 7/2020) with Law Number 19 of 2019 concerning the Corruption Eradication Commission (UU 19/2019). The petitioner refers to previous Constitutional Court decisions that affirm the determination of the minimum and maximum age for public officials is within the legislative authority, in this case, the DPR (People's Consultative Assembly) and the President. The petitioner also discusses the comparison of age requirements between Constitutional Judges and the Leadership of the Corruption Eradication Commission (KPK). UU 7/2020 regulates the term of office for serving Constitutional Judges, while in this petition, the petitioner highlights the hindrance, or at least the delay, in the opportunity to run for re-election as the leader of the KPK in the second term. Therefore, the comparison between the provisions of UU 7/2020 and UU 19/2019 is deemed irrelevant.

Saldi Isra stated that initially, he was inclined to reject the petitioner's request regarding the age limit in Article 29 letter e of Law 19/2019. However, after referring to recent empirical facts, he noted a tendency among legislators to frequently change age requirements for public officials without a strong philosophical or sociological basis. According to him, this has the potential to create legal uncertainty for public officials, both regarding their terms of office and the opportunity for re-election. Saldi Isra proposed a constitutional solution by adding an alternative criterion, namely "experience," to the current position to prevent fair legal uncertainty. Otherwise, legislators might lean towards a policy of "age adjustment" for incumbent officials, which could result in the loss of the right to run for a second term. The Justice argued that this solution should be considered when making changes to age requirement provisions for public officials in the law.

c. Dissenting Opinion

Constitutional Justices Suhartoyo, Wahiduddin Adams, Saldi Isra, and Enny Nurbaningsih expressed a dissenting opinion regarding the Constitutional Court's decision to grant the petitioner's request concerning the provision of Article 34 of Law 30/2002. They maintained the phrase "4 (four) years" in the provision and rejected the change to "5 (five) years." Despite the majority of Constitutional Justices altering the term of office for the Leadership of the Corruption Eradication Commission (KPK) to 5 years, these Justices adhered to the original wording, differing from the majority decision of the Court.

The Constitutional Court's considerations regarding the Corruption Eradication Commission (KPK) as an independent institution with constitutional interests are closely tied to its role in combating corruption. Although the 1945 Constitution does not explicitly regulate the existence of the KPK, the Court has affirmed the importance of this institution in realizing a just, prosperous, and prosperous society in accordance with Pancasila and the legal foundation of the state. In several of its decisions, such as Numbers 012-016-019/PUU-IV/2006, Number 31/PUU-X/2012, and Number 73/PUU-XVII/2019, the Court declared that the KPK was established to enhance the effectiveness of anti-corruption efforts that could not be optimally carried out by other institutions. Therefore, the existence of the KPK is considered constitutionally important and closely related to the judicial power according to Article 24 paragraph (3) of the 1945 Constitution.

Although the Corruption Eradication Commission (KPK) is considered constitutionally important, it was established as a state institution to support anti-corruption efforts. Previously, the primary law enforcement agencies (the Police and the Prosecutor's Office) were not optimal, creating distrust among the public. Constitutional Court Decision Number 36/PUU-XV/2017 stated that the establishment of the KPK was motivated by the ineffectiveness of the Police and the Prosecutor's Office in combating corruption, leading to public distrust in law enforcement. Therefore, the KPK was formed to enhance the effectiveness of the main institutions in executing their powers and restore public trust in the fight against corruption.

The organization of state institutions, especially those serving as auxiliary agencies, is not static but dynamic and requires continuous evaluation by the state and society. In facing the complexity of national issues, the traditional approach based on the separation of powers is no longer sufficient. Current challenges involve not only the control of power and democratic legitimacy but also the ability of state institutions to formulate relevant policies for governing society. The conception of the state's role significantly influences the structure and design of state institutions, and the strategic importance of an institution is determined by its position in the context of other state institutions. Therefore, it is crucial to understand and evaluate the position of state institutions, including those categorized as state auxiliary agencies in the Indonesian constitutional system.

In the context of the establishment and design of the Corruption Eradication Commission (KPK), institutional regulation falls under the authority of lawmakers, who need to consider the dynamics of issues and societal needs. Although the KPK is part of the executive branch, Article 3 of Law 19/2019 emphasizes its independence from the influence of other powers. The petitioner requested the Constitutional Court to change the term of office for the KPK leadership from 4 years to 5 years, without specifying the connection between the term of office and the institution's independence. The argument regarding the difference in terms compared to other institutions is not supported by adequate evidence. Furthermore, there is inconsistency in the terms of office for various institutions, such as the KPK (4 years), the Information Commission (4 years), the Business Competition Supervisory Commission (KPPU) (5 years), the National Human Rights Commission (Komnas HAM) (5 years), the Judicial Commission (5 years), and the Broadcasting Commission (KPI) (3 years).

The Court assesses that the diversity in the terms of office for state institutions does not create inequality, injustice, legal uncertainty, or discrimination against the Corruption Eradication Commission (KPK). The petitioner associates the argument for changing the term of office for the KPK leadership with institutional design but focuses on constitutional rights violations. The regulation of the KPK's term of office provides guarantees for rights, including the clarity of a 4-year term and the right to be re-elected for one term. The petitioner argues that the 4-year period is unfair compared to other non-ministerial institutions with a 5-year term. However, the Court emphasizes that efforts to change the term of office should be related to institutional design rather than injustice among state institutions. Additionally, the Court rejects the petitioner's petition to change the term of office for the KPK leadership to 5 years, as it is legally unfounded.

3.2 Discussion

Critical Issues Regarding Constitutional Court Decision Number 112/PUU-XX/2022. Firstly, the Constitutional Court (MK) is not entirely democratic as it is not directly elected by the people. Additionally, its term is closely linked to the domain of open legal policy formulation.

Article 29 letter e has undergone a revision, initially specifying an age limit of 50-65 years in the selection process, but it has now been amended to set a minimum age limit of 50 years or having experience as the leader of the Corruption Eradication Commission (KPK), with a maximum age limit of 65 years in the selection process. Additionally, Article 34, which originally stipulated a term of office for the leaders of the KPK for 4 years with the

possibility of one reappointment, has been changed to a term of office lasting 5 years with only one possible reappointment.

The legal considerations of the Constitutional Court open the door for academic debate. The Court's argumentation regarding the term of office for the leaders of the KPK is deemed non-constitutional. The assessment of "numbers" is considered beyond the scope of the Court and falls within the domain of legislative legal policy. If the Court were to engage in issues related to "numbers," it could potentially pave the way for further substantive examinations concerning statutory provisions regulating numerical criteria, such as age requirements for presidential and vice-presidential candidates.

Based on the research conducted by Radita Ajie, particularly regarding the implementation of open legal policy in the decisions of the Constitutional Court, there are at least 7 constitutional court decisions listed in the study, namely: (Ajie, 2016)

- 1) Decision Number 6/PUU-III/2005
- 2) Decision Number 5/PUU-V/2007
- 3) Decision Number 26/PUU-VII/2009
- 4) Decision Number 37-39/PUU-VIII/2010
- 5) Decision Number 56/PUU-X/2012
- 6) Decision Number 7/PUU-XI/2013
- 7) Decision Number 30 and 74/PUU-XII/2014

Consistently, the Constitutional Court has proclaimed that a norm is a policy choice made by the legislator, particularly concerning two aspects, namely age determination and the establishment of institutions by law. In both types of norms, the Constitutional Court explicitly states that these are policy choices made by the legislator, referred to as open legal policy. (Ajie, 2016)

The concept of Open Legal Policy, a new innovation in legal science, was initially unfamiliar. The term "Policy" is generally associated with public policies such as Communitarian Policy, Public Policy, and Social Policy. In public policy, "Policy" already encompasses an open meaning, indicating the discretion of officials to act without clear regulations. However, the open meaning in legal formation differs from this concept. The law attains its legitimacy through maintaining consistency and conformity among its norms. Legislation has the responsibility to remain consistent and prevent conflicts that could lead to the nullification of legal norms. This is the rationale underlying the importance of the theory of the hierarchy of legal norms proposed by Kelsen. (Wibowo, 2016) In a context of open legal policy the authority in the formation of laws, in this case, legislation in Indonesia, lies with the legislative and executive powers. The People's Consultative Assembly (DPR) together with the President has the authority to create laws. (NURAINI, 2018)

The results of the Constitutional Court decision analysis, as examined by Radita Ajie, conclude that lawmakers actually have discretion in determining the rules, prohibitions, obligations, or limitations within a legislative norm being created. This discretion represents a policy choice of the lawmakers as long as the norm meets the specified requirements, as follows:

- 1) Not contrary to the 1945 Constitution.
- 2) Does not exceed the limits of legislative authority (*detournement de pouvoir*).
- 3) Not an abuse of authority (*willekeur*).

The organization of state institutions, particularly those serving as auxiliary agencies, in this case, the Corruption Eradication Commission (KPK), is a dynamic aspect that requires continuous evaluation from both the government and society. In the face of the current complexity of national issues, traditional approaches based on the separation of powers are no longer sufficiently effective. The challenges faced are not only related to controlling power and democratic legitimacy but also encompass the ability of state institutions to formulate relevant policies for governing society.

In order to avoid overlapping jurisdiction related to legal policy for society, the principle of Judicial Restraint can be applied. This concept refers to the efforts of the judicial branch to refrain from adjudicating cases that could potentially interfere with other branches of power. According to Aharon Barak, the concept of judicial restraint entails that judges should strive as much as possible not to create new legal norms when adjudicating a case, aiming to achieve a balance between conflicting social values. More specifically, judicial restraint expects judges to interpret

the law by considering the legal and political context that underlies it. (Barak, 2009) To maintain the integrity of the judiciary, the application of the principle of judicial restraint becomes crucial and needs to be formalized, for the following reasons: (Dramanda, 2016)

- 1) The institutional branch of the judiciary has lower accountability compared to the legislative branch, which represents the people directly through general elections.
- 2) Independence within the judicial institution, both institutionally and individually, including the independence of judges in employing methods of interpretation, can be easily abused.
- 3) As a form of precautionary measure by the judiciary to maintain its reputation in the eyes of the public as an institution that is not involved in politics.

One of the principles of judicial restraint that can be institutionalized in the Constitutional Court is the doctrine of "absolutely necessary," which requires a very high level of importance for a constitutional case to be adjudicated by the Court. The implementation of this principle involves providing an "absolutely necessary" interpretation to every case brought before the Constitutional Court, considered as a constitutional case with a very high level of significance. The establishment of this condition entails a change in the minimum requirements to accept a case, from the approval of five judges compared to four to six judges compared to three, reflecting a high level of caution in making decisions related to constitutional disputes. (Dramanda, 2016)

Furthermore, the Constitutional Court has declared in Decision Number 5/PUU-IX/2011 that the term of office of the leaders of the Corruption Eradication Commission (KPK) set for 4 years, as stipulated in Article 34 of the KPK Law, has been constitutionally reviewed. In its decision, the Court stated that the replacement leader of the KPK would have the same term of office as other leaders of the KPK, without continuing the remaining term of office of the replaced leader. The Court emphasized that the provision of a 4-year term for the leaders of the KPK was considered discriminatory and unfair compared to other independent institutions that set a term of office for 5 years.

The Constitutional Court assessed that the criteria governing the 4-year term of office for the leaders of the Corruption Eradication Commission (KPK), as stipulated in Article 34 of the KPK Law, were constitutionally reviewed in Decision Number 5/PUU-IX/2011. The Court concluded that the establishment of this term of office was considered discriminatory and unfair. According to the Court, the replacement leader of the KPK should have the same term of office as other leaders of the KPK, without continuing the remaining term of the replaced leader. This decision was deemed inconsistent with the principles of discrimination outlined in Article 1, paragraph 5 of Law No. 40/2008 (*Undang - Undang Nomor 40 tahun 2008 tentang Penghapusan Diskriminasi Ras dan Etnis.*), which involves forms of differentiation and limitations of human rights. Thus, the discriminatory assumption in the judge's consideration differed from the principles stipulated in Law No. 40/2008.

Another impact arising from the extension of the term of office is that the President is required to issue a new Presidential Decree (*Keppres*) with the aim of extending the term of office for the current leaders of the Corruption Eradication Commission (KPK). This process also necessitates the revocation of the previous Presidential Decrees, namely Keppres Number 112/p of 2019 and 129/p of 2019, which previously regulated the Appointment of KPK Leaders for the 2019-2023 period.

Therefore, through Constitutional Court Decision Number 112/PUU-XX/2022, an extension of the term of office for the leaders of the Corruption Eradication Commission (KPK) occurred. Although the Constitutional Court decision does not explicitly mention the extension of the term of office for the leaders of the KPK, according to the rules stated in Article 47 of the Republic of Indonesia Law Number 24 of 2003 concerning the Constitutional Court, which states that "the decision of the Constitutional Court obtains legal force since it is announced in a plenary session open to the public," it can be concluded that the term of office for the leaders of the KPK will last until December 20, 2024.

According to Feri Amsari, a constitutional law expert from Andalas University, the decision of the Constitutional Court cannot be directly applied to the 2019-2023 term. Feri emphasizes that an extension of the term, if applied to that period, would imply retroactive application of the Constitutional Court's decision. In a legal context, he states that the decision does not apply to extend the term of the currently serving leaders of the KPK.

Feri argues that such application can only be implemented for future leaders of the KPK, following the principle of non-retroactivity that prohibits the retrospective application of laws. (Foekh, n.d.)

Bagir Manan, as cited by Irfan Fachruddin, explains the use of the term "*batal*" in the context of decisions that are "prospective" or *ex nunc*, meaning they apply from that point forward. (Fachruddin, 2004) The characteristic of a prospective decision by the Constitutional Court is regulated in Article 58 of the Constitutional Court Law, which states that the law examined by the Constitutional Court remains valid until a decision is made declaring that the law is in conflict with the 1945 Constitution of the Republic of Indonesia. In practice, the retroactive principle is generally undesirable as it is considered to potentially result in legal bias, undermine legal certainty, and open the door to potential abuses of power in the execution of legal and political affairs.

4. Conclusion

The decision of the Constitutional Court Number 112/PUU-XX/2022 has raised crucial issues concerning democracy, legal policy, and the interpretation of legal norms in Indonesia. Although the Constitutional Court is not directly elected by the people, its decisions have significant implications, especially regarding the amendments to Articles 29 and 34 of the Corruption Eradication Commission (KPK) Law. The revision of age limits and the term of office for KPK leaders has become a focal point, with the Constitutional Court opening up space for academic debates regarding the assessment of numerical aspects in the law. The application of the Open Legal Policy concept by the Constitutional Court has been the focus of research, demonstrating that legal norms represent policy choices made by legislators. Despite debates on constitutionality, the Constitutional Court's decision has practical implications, such as the extension of the term of office for KPK leaders, requiring presidential action. While this issue raises questions about retroactive principles, several legal experts assert that the Constitutional Court's decision is prospective. Overall, these issues reflect the complexity of the relationship between state institutions, legal policies, and democracy in Indonesia, requiring a delicate balance and continuous evaluation.

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