CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 70/PUU- XVII/2019

Concerning

Formal Review and Material Review of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission

Petitioners	:	**Fathul Wahid, et al.**
Type of Case	:	Judicial Review of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (Law 19/2019) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
Subject Matter	:	Formal review and material review of Article 1 number 3, Article 3, Article 12B, Article 24, Article 37B paragraph (1) letter b, Article 40, Article 45A paragraph (3) letter a, and Article 47 paragraph (1) of Law 19/ 2019 (Position of the Corruption Eradication Commission, Authority of the Supervisory Board in Granting Wiretapping and Confiscation Permits, Changing the Status of Employees of Corruption Eradication Commission to Civil Servants, and the Authority of the Corruption Eradication Commission) against the 1945 Constitution.
Verdict	:	**In Formal Review:** To dismiss the Petitioners' petition in its entirety; **In Material Review:** 1. To grant the Petitioners' petition in part. 2. To declare that Article 1 number 3 of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to State Gazette of the Republic of Indonesia Number 6409) which originally read "The Criminal Act of Corruption Eradication Commission, hereinafter referred to as the Corruption Eradication Commission, is a state institution within the executive power group which carries out the task of preventing and eradicating the Criminal Act of Corruption in accordance with this Law", is contrary to the 1945 Constitution of the Republic of Indonesia and has conditionally binding legal force provided that it is not interpreted as, **"The Criminal Act of Corruption Eradication Commission, hereinafter referred to as the Corruption Eradication Commission, is a state institution within the executive power group which carries out the task of eradicating the Criminal Act of Corruption and it is independent and free from the influence of any power."**

3. To declare that Article 12B, Article 37B paragraph (1) letter b, and Article 47 paragraph (2) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force;
4. To declare that the phrase "accounted to the Supervisory Board" in Article 12C paragraph (2) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) is contrary to the 1945 Constitution of the Republic of Indonesia and has conditionally binding legal force provided that it is not interpreted as "notified to the Supervisory Board". Therefore, Article 12C paragraph (2) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally read "Wiretapping as referred to in Article 12 paragraph (1) which has been completed must be accounted for to the Chairman of the Corruption Eradication Commission and the Supervisory Board no later than 14 (fourteen) business days from the time the wiretapping has been completed", now reads in full **"Wiretapping as referred to in Article 12 paragraph (1) which has been completed must be accounted for to the Chairman of the Corruption Eradication Commission and notified to the Supervisory Board no later than 14 (fourteen) business days from the time the wiretapping is completed."**
5. To declare that the phrase "not completed within a maximum period of 2 (two) years" in Article 40 paragraph (1) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force provided that it is not interpreted as "not completed within a maximum period of 2 (two) years from the issuance of Notice of Commencement of Investigation (*Surat Pemberitahuan Dimulainya Penyidikan* or SPDP)". Therefore, Article 40 paragraph (1) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally read "The Corruption Eradication Commission may stop the investigation and prosecution of Criminal Act of Corruption cases whose investigation and prosecution are not completed within a maximum period of 2 (two) years," shall be read in full **"The Corruption Eradication Commission may stop the investigation and prosecution of Criminal Act of Corruption cases whose investigation and prosecution are not completed within a maximum period of 2 (two) years from the issuance of Notice of Commencement of Investigation (*Surat Pemberitahuan*

Dimulainya Penyidikan **or SPDP)."**

6. To declare that the phrase "must be reported to the Supervisory Board no later than 1 (one) week" in Article 40 paragraph (2) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force provided that it is not interpreted as "notified to the Supervisory Board no later than 14 (fourteen) business days". Therefore, Article 40 paragraph (2) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally read "The termination of the investigation and prosecution as referred to in paragraph (1) must be reported to the Supervisory Board no later than 1 (one) week from the issuance of the order to terminate the investigation and prosecution", shall be read in full **"The termination of the investigation and prosecution as referred to in paragraph (1) must be notified to the Supervisory Board no later than 14 (fourteen) business days from the issuance of the order to terminate the investigation and prosecution."**
7. To declare that the phrase "with written permit from the Supervisory Board" in Article 47 paragraph (1) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197 , Supplement to the State Gazette of the Republic of Indonesia Number 6409) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force provided that it is not interpreted as "upon notification to the Supervisory Board". Therefore, Article 47 paragraph (1) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally read, "During the investigation process, the investigators may carry out searches and confiscations with written permit from Supervisory Board", shall be read in full "**During the investigation process, the investigators may carry out searches and confiscations upon notification to the Supervisory Board**."
8. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.
9. To dismiss the remainder of the Petitioners' petition;

Date of Decision : Tuesday, 4 May 2021
Overview of Decision :

Whereas regarding the authority of the Court, because the Petitioners petition for a review of the constitutionality of statutory norms, *in casu* formal review and material review of norms of Article 1 number 3, Article 3, Article 12B, Article 24, Article 37B paragraph (1) letter b, Article 40, Article 45A paragraph (3) letter a, and Article 47 paragraph (1) of Law 19/2019, the Court has the authority to hear the *a quo* petition of the Petitioners.

Whereas regarding the time limit for submitting petition of formal review, Law 19/2019 was promulgated on 17 October 2019 and the Petitioners submitted a petition to the Court on 7 November 2019 under the Deed of Receiving Petition File Number 149/PAN.MK/2019. Therefore, the petition for formal review of Law 19/2019 was submitted within the specified time limit. Whereas regarding the legal standing of the Petitioners, the Petitioners are individual Indonesian citizens, each of whom is a member of the UII academic community, the Court is of the opinion that they have been able to describe the direct relationship with the law being petitioned for review and describe specifically the existence of a causal relationship between the enactment of the norms of Article 1 number 3, Article 3, Article 12B, Article 24, Article 37B paragraph (1) letter b, Article 40, Article 45A paragraph (3) letter a, and Article 47 paragraph (1) of Law 19/2019 with the presumption of constitutional impairment for the Petitioners as regulated in Article 27 paragraph (1), Article 28C paragraph (2), and Article 28D paragraph (1) of the 1945 Constitution, namely that the Petitioners believe that their constitutional rights in implementing the *Tri Dharma* of Higher Education (*Catur Dharma UII*) are potentially impaired, especially in the field of community service, and in carrying out their duties and authority to protect and fight for the rights of the academic community in the law enforcement efforts that are fair, dignified, clean and free from any practices of corruption, collusion and nepotism. Moreover, the Petitioners are citizens who are directly affected by the misuse of state finances. The potential constitutional losses as referred to will no longer occur if the *a quo* petition of the Petitioners is granted. Therefore, the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Whereas the petition for formal review in relation to Law 19/2019 has been considered by the Court in the Decision of the Constitutional Court Number 79/PUU-XVII/2019, dated 4 May 2021, declared at 15.13 WIB (Western Indonesia Time) and it has been declared legally unjustifiable, so that such legal considerations shall apply *mutatis mutandis* as the legal consideration for the *a quo* Decision of the Constitutional Court Number 70/PUU-XVII/2019. In the Decision of the Constitutional Court Number 79/PUU-XVII/2019, the Constitutional Justice Wahiduddin Adams provided a dissenting opinion, such dissenting opinion also applies to the Decision of the *a quo* Constitutional Court Number 70/PUU-XVII/2019. Therefore, the Petitioners' petition regarding the formal review of the constitutionality of Law 19/2019 must be declared legally unjustifiable.

Whereas regarding the Petitioners' argument in relation to the norms of Article 1 number 3 of Law 19/2019 being linked to Article 3 of Law 19/2019, it is as if there are two formulations of the definition/interpretation of the Corruption Eradication Commission. If this is indeed what was intended by the legislator, then it is not permissible for the two formulations to create incompatible understandings, this is as stipulated in Attachment II to Law 12/2011, number 107. After careful examination of the formulation of definition of Article 1 number 3 of Law 19/2019, there is the phrase "carrying out the task of preventing and eradicating Criminal Act of Corruption". Meanwhile, if it is related to the formulation of definition of Article 1 number 4 of Law 19/2019, this shows that in the sense of "*Eradication of Criminal Act of Corruption"* it automatically includes the meaning of prevention and eradication. Even though in the provisions of Article 1 number 3 of Law 19/2019 the word "eradication" is not written in capital letters, within the limits of reasonable reasoning what is meant is as stated in Article 1 number 4 of Law 19/2019. Moreover, Article 1 number 3 of Law 19/2019 explicitly mentions the word "prevention" which may reduce the meaning of eradication of criminal acts of corruption as if it were only prevention, even though the meaning of eradication of criminal acts of corruption also includes "persecution" and other things that are related to saving the state finances. The word "prevention" as contained in Article 1 number 3 of Law 19/2019 is a formulation that actually reduces the meaning of eradication. In addition, if Article 1 number 3 of Law 19/2019 remains to be a part of Article 1 (General Provisions) then its substance should be in line with Article 3 of Law 19/2019 which confirms that the Corruption Eradication Commission is a state institution within the executive power group which must be "independent and free from the influence of any power" in carrying out its duties and authority. This means that such a formulation contains shortcomings because it is not in line with Article 3 of Law 19/2019, especially in the absence of a stated duty and authority to eradicate criminal acts of corruption and an affirmation of being independent and free from the influence of any power. The lack of substance as referred to is an essential element in eradicating criminal acts of corruption and if left unchecked has the potential to create legal uncertainty. Within the limits of reasonable reasoning, by allowing the provisions of Article 1 number 3 of Law 19/2019 without making them in line with the provisions of Article 3 of Law 19/2019, it creates legal uncertainty in fully understanding the Corruption Eradication Commission as a law enforcement institution in carrying out its functions related to judicial power as specified in Article 24

paragraph (3) of the 1945 Constitution. Therefore, the Court in its verdict will state that Article 1 number 3 of Law 19/2019 must be declared conditionally unconstitutional provided that it is not interpreted as "The Criminal Act of Corruption Eradication Commission, hereinafter referred to as the Corruption Eradication Commission, is a state institution within the executive power group which carries out the task of eradicating the Criminal Act of Corruption and it is independent and free from the influence of any power." Therefore, the Petitioners' argument that Article 1 number 3 of Law 19/2019 is contrary to the 1945 Constitution is legally justifiable in part.

Whereas regarding the Petitioners' argument which questions the constitutionality of the phrase "within the executive power group" in the provisions of Article 3 of Law 19/2019 which the Petitioners believe would weaken the institutional independence of the Corruption Eradication Commission, the Court has considered the existence of Article 3 of Law 19/2019 in relation to conditionally constitutional nature of the provisions of Article 1 number 3 of Law 19/2019, the Court has also confirmed in the decisions of the Constitutional Court, among others, the Decision of the Constitutional Court Number 012-016-019/PUU-IV/2006 and the Decision of the Constitutional Court Number 36/PUU-XV/ 2017 which substantially declare the independence and freedom of the Corruption Eradication Commission from the influence of any power in carrying out its duties and authority which must not be based on any influence, direction or pressure from any party. The decisions of the Constitutional Court are *erga omnes* in nature which has permanent legal force since they were declared in a plenary session which is open to the public (*vide* Article 47 of the Constitutional Court Law), therefore, the validity of the decisions of the Court may not only be interpreted contextually or textually as the Petitioners' argument against the Decision of the Constitutional Court Number 36/PUU-XV/ 2017, because of the *a quo* decisions apply and are binding on anyone. In fact, in considering the matters related to the *a quo* petition, *in casu* regarding the institution of the Corruption Eradication Commission, the Court must also pay attention to its previous decisions. Therefore, regarding the application of the phrase "within the executive power group" in Article 3 of Law 19/2019, the Court is of the opinion that it does not interfere with the independence of the Corruption Eradication Commission in the implementation of its duties and authority because the Corruption Eradication Commission is not accountable to the holder of the executive power, *in casu* the President, as stated in the provisions of Article 20 of Law 30/2002, namely, "The Corruption Eradication Commission is accountable to the public for carrying out its duties and submitting its reports openly and periodically to the President, the House of Representatives and the Supreme Audit Agency". The submission of the report to the President does not mean that the Corruption Eradication Commission is accountable to the President. This is one of the characteristics of the existence of independent state institutions, in carrying out their duties and authority, they do not have any relationship with any holder of power. In fact, regarding "any holder of power" it has also been explained in the Elucidation to Article 3 of Law 19/2019, it refers to any power that may influence the duties and authority of the Corruption Eradication Commission or individual Commission members from the executive, judiciary, legislative, and any other parties related to the criminal act of corruption, or in any circumstances and situations or for any reason whatsoever. Therefore, the Petitioners' argument that Article 3 of Law 19/2019 is contrary to the 1945 Constitution is legally unjustifiable.

Whereas regarding the norms in Article 12B, Article 37B paragraph (1) letter b, and Article 47 paragraph (1) of Law 19/2019, pursuant to Article 12 of Law 19/2019, wiretapping, search and/or confiscation are the authority granted by law to the Corruption Eradication Commission in the implementation of the judicial proceeding (*pro Justitia*). Regarding the wiretapping, the Court in its previous decisions has given its consideration, including, the Decision of the Constitutional Court Number 012-016-019/PUU-IV/2006, dated 19 December 2006 and the Decision of the Constitutional Court Number 5/PUU-VIII/2010, dated 24 February 2011. Pursuant to the aforementioned consideration of the Court's decision, wiretapping is basically an unlawful act that may violate human rights (right to privacy), but this action may be legally justified when it is mandated by law and carried out in the context of law enforcement. Pursuant to the provisions of Article 12B paragraph (1) of Law 19/2019, wiretapping carried out by the Corruption Eradication Commission must obtain prior written permit from the Supervisory Board. Regard such provisions, the Court will first consider the position of the Supervisory Board in accordance with Law 19/2019. The Supervisory Board is inherently part of the internal team of the Corruption Eradication Commission whose duty is to act as a supervisor to prevent abuse of authority. As an element of the Corruption Eradication Commission, the Supervisory Board has the duty and authority to supervise the implementation of the Corruption Eradication Commission's duties and authority. In this sense, the position of the Supervisory Board is not hierarchical with that of the

Chairman of the Corruption Eradication Commission so that in the grand design of eradicating corruption, the two do not supervise each other, instead they synergize with each other in carrying out their respective functions. In carrying out its judicial duties and authority, the Corruption Eradication Commission is independent and free from the influence of any power, including when the Corruption Eradication Commission carries out wiretapping as a form of deprivation of people's freedom (right to privacy), which is part of *pro Justitia*. The existence of provisions that require the Corruption Eradication Commission to obtain prior permit from the Supervisory Board before the wiretapping is conducted cannot be justified as an implementation of checks and balances principle because substantially the Supervisory Board is not a law enforcement officer as per the authority of the Chairman of the Corruption Eradication Commission and therefore the board has no authority related to *pro Justitia*. The Supervisory Board supervises the implementation of the duties and authority of the Corruption Eradication Commission so that the possibility of irregularities in the implementation of its duties and authority can be avoided. In that context, the integrity factor alone cannot be implemented without control from other parties. Within the limits of reasonable reasoning, this control is a device to prevent the occurrence of various possible abuse of power to the extent that it is not related to judicial authority (*pro Justitia*). The Court needs to emphasize that the requirement of the Chairman of the Corruption Eradication Commission to obtain permit from the Supervisory Board to conduct wiretapping is not only a form of interference with law enforcement officers by an institution that carries out functions outside of law enforcement, but also, it is a real form of overlapping authority in law enforcement, especially in the *pro Justitia* authority which should only be assumed by the law enforcement agencies or officers. This is because law enforcement actions which contain coercive measures which often involve confiscation of freedom of people/goods are actions that should only be carried out by the law enforcement agencies which are institutionally organized in the criminal justice system. In an institutional perspective of criminal justice system, it is important for the Court to emphasize that as one of the requirements to be a rule of law state, the law enforcement process shall only has an institutional criminal justice system, and such system shall be under *pro Justitia* order which adheres to the concept of functional differentiation among the law enforcement components that carry out law enforcement functions, namely: inquiry and investigation, prosecution, decision and implementation of court decisions, and providing legal assistance/services. Universally, criminal justice system is applied in any country and not a single country that declares itself a rule of law opens up the possibility of the existence of extra-judicial institutions of an *ad hoc nature even if it is given a judicial authority/pro Justitia.* Indeed, there are countries that adopt a different model of criminal justice system*,* however, in principle, there is no difference in the context of granting the *pro Justitia* authority to institutions that are not institutions with judicial authority, let alone letting such institutions to intervene directly or indirectly against the law enforcement agencies. For example, in Indonesia the *pro Justitia* authority is solely assumed by the police, prosecutor's office, court and Corruption Eradication Commission (which carries out a law enforcement function). In other words, in a true rule of law state it is not possible to intervene in any form whatsoever against the legal institutions, including that there must be no institution that is *extra-legal/extra-judicial in nature which is granted the judiciary/pro Justitia authority*, because of the existence of such extra-legal institution which has such authority is a threat to the independence of law enforcement agencies, and in the end it may weaken the existence of the principle of the rule of law. Because the act of wiretapping is closely related to a person's right to privacy, its implementation must be subject to fairly strict supervision. This means that wiretapping carried out by the Corruption Eradication Commission cannot be used without control or supervision, even if it is not in the form of a permit which may mean an intervention in law enforcement by the Supervisory Board towards the Chairman of the Corruption Eradication Commission or as if the Chairman of the Corruption Eradication Commission is a sub-ordinate of the Supervisory Board. Therefore, the Court declared that the act of wiretapping carried out by the Chairman of the Corruption Eradication Commission does not require any permit from the Supervisory Board, instead it is sufficient to notify the Supervisory Board, the mechanism of which will be considered together with legal considerations relating to permit for act of search and/or confiscation by the Corruption Eradication Commission on further legal considerations.

Pursuant to the description of the legal considerations above, there is no longer any need for the Corruption Eradication Commission to apply for any wiretapping permit to the Supervisory Board, as stipulated in the norms of Article 12B paragraph (1) of Law 19/2019 then this provision must be declared unconstitutional and then as a juridical consequence the norms of Article 12B paragraph (2), paragraph (3), and paragraph (4) of Law 19/2019 are no longer relevant to be maintained and must also be declared unconstitutional. Therefore, the Court is of the opinion that the Petitioners' argument regarding

the unconstitutionality of the norms of Article 12B of Law 19/2019 is legally justifiable. As a juridical consequence, the Supervisory Board may not interfere with the judicial/*pro Justitia* authority, and if Article 12B of Law 19/2019 has been declared unconstitutional, the phrase "accounted to the Supervisory Board" in Article 12C paragraph (2) of Law 19/2019 must also be declared unconstitutional to the extent that it is not interpreted as "notified to the Supervisory Board".

Whereas regarding Article 47 paragraph (1) of Law 19/2019, the act of search and/or confiscation by the Corruption Eradication Commission is also part of the *pro Justitia* action, therefore permit from the Supervisory Board which is not an element of the law enforcement officials is inappropriate because the authority to grant such permit is part of a judicial/pro Justitia action. Because such permit is no longer needed, the Court considers the authority of the Supervisory Board in granting the wiretapping permit *mutatis mutandis* also applies as a legal consideration to consider the Petitioners' arguments regarding the unconstitutionality of the norms of Article 47 paragraph (1) of Law 19/2019. Furthermore, because the act of search and/or confiscation no longer requires a permit from the Supervisory Board and instead only requires a notification, the juridical consequence in connection with the phrase "with written permit from the Supervisory Board" in Article 47 paragraph (1) of Law 19/2019 must be interpreted as "upon notification to the Supervisory Board". Likewise, the provisions of the norms of Article 47 paragraph (2) of Law 19/2019, although they are not being petitioned by the Petitioners, since they no longer have any relevance to be maintained, they must be declared unconstitutional. Therefore, the Petitioners' argument regarding the unconstitutionality of Article 47 paragraph (1) of Law 19/2019 is legally justifiable in part.

Whereas because the Supervisory Board does not have the authority to grant permit for wiretapping, search and/or confiscation carried out by the Corruption Eradication Commission, the juridical consequences for the provisions of the norms of Article 37B paragraph (1) letter b of Law 19/2019 which also regulate the authority of the Supervisory Board to give permit for wiretapping, search and/or confiscation carried out by the Corruption Eradication Commission are declared unconstitutional. Therefore, the Petitioners' argument regarding the unconstitutionality of Article 37B paragraph (1) letter b of Law 19/2019 is legally justifiable.

Whereas to avoid any abuse of authority related to wiretapping, search and/or confiscation by the Corruption Eradication Commission in connection with the supervisory function of the Supervisory Board, the Court is of the opinion that the Corruption Eradication Commission is solely required to notify the Supervisory board no later than 14 (fourteen) business days after the wiretapping is carried out, while for the search and/or confiscation must be notified to the Supervisory Board no later than 14 (fourteen) business days after the search and/or confiscation is completed. Furthermore, pursuant to the provisions of Article 38 of Law 19/2019, regarding the search, the provisions stipulated in the Criminal Procedure Code shall apply, namely a permit is required from the chairman of the local district court and in urgent circumstances a search may be carried out first and then immediately reported in order to obtain such permit from the chairman of the local district court as regulated in the provisions of Article 33 and Article 34 of the Criminal Procedure Code. Therefore, the search and/or confiscation by the Corruption Eradication Commission no longer require permit from the Supervisory Board. Meanwhile, regarding the confiscation, based on a strong suspicion that there is sufficient preliminary evidence, the Corruption Eradication Commission may carry out such confiscation without first obtaining a permit from the chairman of the local district court.

Whereas regarding the norms of Article 24 and Article 45A paragraph (3) letter a of Law 19/2019, it is important for the Court to first examine all the articles related to the employment status of the Corruption Eradication Commission members which are not only limited to Article 24 and Article 45A paragraph (3) letter a of Law 19/2019 which are argued by the Petitioners to be unconstitutional. In the General Provisions of Article 1 number 6 of Law 19/2019, the nomenclature of the employees of the Corruption Eradication Commission is determined as state civil servants as intended in the laws and regulations regarding state civil servants. Pursuant to this provision, the employment status of the Corruption Eradication Commission employees as state civil servant is further regulated in the norms of Article 24, upon careful examination, the substance of Article 24 of Law 19/2019 does not contain aspects of limiting equal opportunities for the employees of the Corruption Eradication Commission to become state civil servants. Furthermore, in implementing the process of transitioning the employees of the Corruption Eradication Commission to become state civil servants, the Transitional Provisions of Law 19/2019 apply, the contents of which related to the adjustment of the existing legal action arrangements or legal relations which previously based on the old law to be based on the new law. The goal of such

Transitional Provisions is to avoid any legal vacuum, to guarantee legal certainty, to provide legal protection for any parties affected by any changes in the legal provisions, to regulate any matters of transitional or temporary nature (*vide* number 127 of Appendix II to Law 12/2011) .

Therefore, the Transitional Provisions in Article 69B and Article 69C of Law 19/2019 have determined how to design the transition so that no problems shall arise for those affected, let alone creating any vacancies in the Corruption Eradication Commission as argued by the Petitioners. Because, for the investigators of the Corruption Eradication Commission and for the employees of the Corruption Eradication Commission who do not yet have the status of state civil servants, they may be appointed as state civil servants within a maximum period of 2 (two) years since Law 19/2019 comes into force, provided that the investigators of the Corruption Eradication Commission have received and completed the education in the field of investigations in accordance with the laws and regulations and for the employees of the Corruption Eradication Commission the appointment is carried out in accordance with the laws and regulations. Such laws and regulations are subject to Law 5/2014 and its implementing regulations.

These provisions regarding state civil servants actually do not only apply to the employees of the Corruption Eradication Commission but have also been applied for a long time to the employees of other state institutions that also carry out law enforcement functions, such as the Supreme Court and the Constitutional Court. The employees of the two state institutions are state civil servants and such status does not affect the independence of the two institutions in carrying out their functions as law enforcement institutions. Furthermore, the status of state civil servants for the employees of the Corruption Eradication Commission does not eliminate the opportunity for them to associate and assemble provided that it is carried out in accordance with the laws and regulations and it is intended solely to achieve the goals of the Corruption Eradication Commission in eradicating corruption.

Furthermore, regarding the issue of the age of the employees of the Corruption Eradication Commission who have reached the age of 35 years so that there is a concern that the Petitioners may lose their opportunity if the employees of the Corruption Eradication Commission become state civil servant due to the provisions of Article 23 paragraph (1) letter a of Government Regulation 11/2017. The provisions referred to by the Petitioners are indeed correct but they apply to any Indonesian citizens who wish to apply as state civil servants. Meanwhile, the employees of the Corruption Eradication Commission are legally state civil servants due to the enactment of Law 19/2019. Therefore, Law 19/2019 stipulates that the time for adjustments to the transition of the employment status of the employees of the Corruption Eradication Commission is no later than 2 (two) years after the Law comes into force. the Government Regulation 41/2020 has been issued to address this adjustment mechanism, substantially the design of the transfer has been determined starting from: mapping of the scope of the employees of the Corruption Eradication Commission (whether they have the status of permanent employees or non-permanent employees); stages of transfer by adjusting the position at the current system of the Corruption Eradication Commission; identification of the type and number of employees of Corruption Eradication Commission; mapping of the suitability between the employees' qualifications, competencies as well as experience and the state civil servant positions to be occupied; implementation of the transfer of employees whether they will become civil servants or government employees under employment agreement (*Pegawai Pemerintah dengan Perjanjian Kerja* or PPPK); and also determining the class of position (*vide* Article 4 of Government Regulation 41/2020). Therefore, even if the employees of the Corruption Eradication Commission are 35 years old or more, this does not mean they will lose the opportunity to be included in the adjustments, whether they become state civil servants or PPPK. To further regulate the working mechanism for this transfer so that it can be implemented more quickly in accordance with factual conditions, Government Regulation 41/2020 submits the regulations in the Corruption Eradication Commission Regulation. In this Corruption Eradication Commission Regulation, the calculation of the term of office in each rank levels before the employees of the Corruption Eradication Commission become state civil servants has been determined (*vide* Article 7 of Corruption Eradication Commission Regulation Number 1 of 2021 concerning Procedures for Transferring Corruption Eradication Commission Employees to State Civil Servants). Such provision of mechanism for transferring the status of the employees of the Corruption Eradication Commission to state civil servants is intended to provide guarantees of legal certainty in accordance with the factual conditions of the employees of the Corruption Eradication Commission. Therefore, the Court needs to emphasize that the transferring of the status of the employees of the Corruption Eradication Commission

to state civil servants, as has been determined in accordance with the intent of the Transitional Provisions of Law 19/2019, must not harm the rights of the employees of the Corruption Eradication Commission to be appointed as state civil servants for any reason other than the design that has been determined. This is because the employees of the Corruption Eradication Commission have been serving the Corruption Eradication Commission and their dedication to eradicating criminal acts of corruption is beyond doubt.

Furthermore, in relation to the transfer of the status of the employees of the Corruption Eradication Commission to become state civil servants, the Petitioners did not provide arguments regarding the constitutionality issue of the norms but they were concerned about the dualism of supervision, namely the supervision by the State Civil Apparatus Commission (*Komisi Aparatur Sipil Negara* or KASN) and by the Supervisory Board of the Corruption Eradication Commission which could lead to legal and justice uncertainty. With regard to what the Petitioners are concerned about, it is also important for the Court to first explain about KASN. Whereas KASN is a non-structural institution that is independent and free from political intervention to provide professional and high performing state civil servants, who are able to provide services fairly and neutrally, and are able to integrate and unite the nation (*vide* Article 27 of Law 5/2014). The formation of KASN is to monitor and evaluate the implementation of state civil servant policies and management so that the merit system can be guaranteed and to supervise the implementation of state civil servant principles, codes of ethics and codes of conduct. This merit system is one of the "spirits" of changing the old civil service law so that the operation of this system is able to realize state civil servant policies and management that are based on qualifications, competencies and performance in a fair and reasonable manner without any discrimination against political background, race, skin color, religion, origin, gender, marital status, age, or disability (*vide* Article 1 number 22 and General Elucidation of Law 5/2014). Moreover, the supervision by KASN applies to all state civil servants in any agency/institution without exception, including the state institutions that carry out law enforcement functions. Therefore, there is no relevance in questioning the status of state civil servants, the supervision of state civil servants by KASN and the supervision by the Supervisory Board because the two institutions are able to complement each other.

Furthermore, the Petitioners also questioned the norms of Article 45A paragraph (3) letter a of Law 19/2019 which may create uncertainty and injustice because they regulate the conditions for dismissing the investigators of the Corruption Eradication Commission due to being dismissed as state civil servants. As a consequence of the change in the status from the employees of the Corruption Eradication Commission to become state civil servants, the regulations regarding the dismissal of the state civil servants in Law 5/2014 and its implementing regulations shall be fully applicable to the investigators of the Corruption Eradication Commission and the employees of the Corruption Eradication Commission without any exceptions. Article 45A of Law 19/2019 substantially regulates the conditions that must be fulfilled by the investigators of the Corruption Eradication Commission to be appointed as state civil servants as regulated in Article 69B paragraph (1) of Law 19/2019. Naturally, if an investigator is dismissed as a state civil servant, he/she will also be dismissed from his/her position as an investigator of the Corruption Eradication Commission. Such dismissal may be due to being honorably dismissed or dishonorably dismissed (*vide* Article 87 of Law 5/2014). Therefore, if the cause for dismissal of a civil servant, either honorably or dishonorably, is fulfilled, then any position attached to the civil servant will also be terminated, *in casu,* his/her position as an investigator of the Corruption Eradication Commission. So the Petitioners' argument that Article 24 and Article 45A paragraph (3) letter a of Law 19/2019 is contrary to the 1945 Constitution is legally justifiable.

Whereas regarding Article 40 of Law 19/2019, after examining the essence of the reasons for submitting the petition (*posita/fundamentum petendi*), the subject matter of the Petitioners is the constitutionality of the phrase "*whose investigation and prosecution are not completed within a maximum period of 2 (two) years"* because it creates legal uncertainty. The Court is of the opinion that the provision of a 2 (two) year time limit for carrying out investigations and prosecutions as regulated in Article 40 paragraph (1) of Law 19/2019 is a special feature given to the Corruption Eradication Commission as an extraordinary institution which has the authority to handle criminal acts of corruption as one of the extraordinary crimes. The authority to terminate an investigation and/or prosecution may be used as one of the reasons for the Corruption Eradication Commission that in determining a suspect, the Corruption Eradication Commission must obtain strong evidence so that within the limits of reasonable reasoning the time limit of 2 (two) years from the issuance of the Notice of Commencement

of Investigation (*Surat Pemberitahuan Dimulainya Penyidikan* or SPDP) and the calculation of the 2 (two) years is including the investigation process, the prosecution until the case is submitted to the court. Therefore, if after a period of 2 (two) years the case has not been submitted to the court and the Corruption Eradication Commission has not issued any warrant to terminate the investigation, the suspect may file for a pretrial.

Furthermore, with regard to the warrant to terminate the investigation, the Court in its previous decisions has held the stance that the Corruption Eradication Commission does not have the authority to issue the warrant to terminate the investigation, however, by taking into account the empirical facts that have occurred at the Corruption Eradication Commission, it has turned out that there are many cases in which the suspects have been determined but the cases have not been submitted to the court, so these have caused legal uncertainty. Therefore, the Court in the *a quo* decision, is able to understand the provisions for discretion in the norms of Article 40 of Law 19/2019 which gives the Corruption Eradication Commission discretion to issue the warrant to terminate the investigation. However, the Court needs to emphasize that if sufficient evidence is found, the Corruption Eradication Commission must revoke the reasons for terminating the investigation and prosecution so that the relevant suspect must be brought to court [*vide* Article 40 paragraph (4) of Law 19/2019]. In this case, the provisions of Article 40 paragraph (1) of Law 19/2019 must be seen as an encouragement for the Corruption Eradication Commission to work optimally in obtaining evidence so that a person who has been determined as a suspect must be brought to court. Therefore, the discretion to issue the warrant to terminate the investigation is not an option that hinders the Corruption Eradication Commission in the grand design of its corruption eradication agenda.

Pursuant to the aforementioned description of the considerations, the Petitioners' concern that there is a lack of certainty regarding the calculation of time for the issuance of the warrant to terminate the investigation as stipulated in Article 40 paragraph (1) of Law 19/2019 is legally justifiable to the extent of the phrase "not completed within a maximum period of 2 (two) years" is not interpreted as "not completed within a maximum period of 2 (two) years from the issuance of Notice of Commencement of Investigation (*Surat Pemberitahuan Dimulainya Penyidikan* or SPDP)".

Whereas as a juridical consequence, the Supervisory Board may not interfere with judicial (*pro Justitia*) authority assumed by the Chairman of the Corruption Eradication Commission as considered above, then the phrase "must be reported to the Supervisory Board no later than 1 (one) week" as stated in Article 40 paragraph (2) of Law 19/2019 must also be declared unconstitutional provided that it is not interpreted as "notified to the Supervisory Board no later than 14 (fourteen) business days".

Whereas by declaring the unconstitutionality of the norms of Article 1 number 3, Article 12B, the phrase "accounted to the Supervisory Board" in Article 12C paragraph (2), Article 37B paragraph (1) letter b, the phrase "not completed within a maximum period of 2 (two) years" in Article 40 paragraph (1), the phrase "must be reported to the Supervisory Board no later than 1 (one) week" in Article 40 paragraph (2), the phrase "with written permit from the Supervisory Board" in Article 47 paragraph (1), and Article 47 paragraph (2) of Law 19/2019 above, the Court is of the opinion that as juridical consequences, any "Elucidation" to these *a quo* articles must also be declared unconstitutional provided that it is not adjusted to conform to the *a quo* decision.

Pursuant to all the legal considerations above, the Court is of the opinion that the Petitioners' arguments regarding Article 1 number 3, Article 40 paragraph (1), Article 40 paragraph (2), and Article 47 paragraph (1) of Law 19/2019 are conditionally legally justifiable. Meanwhile, the Petitioners' arguments regarding Article 12B and Article 37B paragraph (1) letter b of Law 19/2019 are entirely legally justifiable. Meanwhile, Article 12C paragraph (2) of Law 19/2019 must also be declared conditionally unconstitutional as a consequence of declaring Article 12B of Law 19/2019 unconstitutional. Likewise, Article 47 paragraph (2) of Law 19/2019 must also be declared conditionally unconstitutional as a consequence of declaring Article 47 paragraph (1) of Law 19/2019 unconstitutional. Furthermore, with regard to other matters and the remaining arguments of the Petitioners, they are legally unjustifiable.

Pursuant to all the aforementioned considerations, the Court passed down a decision as follows:

In Formal Review:

To dismiss the Petitioners' petition in its entirety;

In Material Review:

1. To grant the Petitioners' petition in part.

2. To declare that Article 1 number 3 of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to State Gazette of the Republic of Indonesia Number 6409) which originally read "The Criminal Act of Corruption Eradication Commission, hereinafter referred to as the Corruption Eradication Commission, is a state institution within the executive power group which carries out the task of preventing and eradicating the Criminal Act of Corruption in accordance with this Law", is contrary to the 1945 Constitution of the Republic of Indonesia and has conditionally binding legal force provided that it is not interpreted as, **"The Criminal Act of Corruption Eradication Commission, hereinafter referred to as the Corruption Eradication Commission, is a state institution within the executive power group which carries out the task of eradicating the Criminal Act of Corruption and it is independent and free from the influence of any power."**

3. To declare that Article 12B, Article 37B paragraph (1) letter b, and Article 47 paragraph (2) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force;

4. To declare that the phrase "accounted to the Supervisory Board" in Article 12C paragraph (2) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) is contrary to the 1945 Constitution of the Republic of Indonesia and has conditionally binding legal force provided that it is not interpreted as "notified to the Supervisory Board". Therefore, Article 12C paragraph (2) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally read "Wiretapping as referred to in Article 12 paragraph (1) which has been completed must be accounted for to the Chairman of the Corruption Eradication Commission and the Supervisory Board no later than 14 (fourteen) business days from the time the wiretapping has been completed", now reads in full **"Wiretapping as referred to in Article 12 paragraph (1) which has been completed must be accounted for to the Chairman of the Corruption Eradication Commission and notified to the Supervisory Board no later than 14 (fourteen) business days from the time the wiretapping is completed."**

5. To declare that the phrase "not completed within a maximum period of 2 (two) years" in Article 40 paragraph (1) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force provided that it is not interpreted as "not completed within a maximum period of 2 (two) years from the issuance of Notice of Commencement of Investigation (*Surat Pemberitahuan Dimulainya Penyidikan* or SPDP)". Therefore, Article 40 paragraph (1) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally read "The Corruption Eradication Commission may stop the investigation and prosecution of Criminal Act of Corruption cases whose investigation and prosecution are not completed within a maximum period of 2 (two) years," shall be

read in full **"The Corruption Eradication Commission may stop the investigation and prosecution of Criminal Act of Corruption cases whose investigation and prosecution are not completed within a maximum period of 2 (two) years from the issuance of Notice of Commencement of Investigation (*Surat Pemberitahuan Dimulainya Penyidikan* or SPDP)."**

6. To declare that the phrase "must be reported to the Supervisory Board no later than 1 (one) week" in Article 40 paragraph (2) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force provided that it is not interpreted as "notified to the Supervisory Board no later than 14 (fourteen) business days". Therefore, Article 40 paragraph (2) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally read "The termination of the investigation and prosecution as referred to in paragraph (1) must be reported to the Supervisory Board no later than 1 (one) week from the issuance of the order to terminate the investigation and prosecution", shall be read in full **"The termination of the investigation and prosecution as referred to in paragraph (1) must be notified to the Supervisory Board no later than 14 (fourteen) business days from the issuance of the order to terminate the investigation and prosecution."**

7. To declare that the phrase "with written permit from the Supervisory Board" in Article 47 paragraph (1) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197 , Supplement to the State Gazette of the Republic of Indonesia Number 6409) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force provided that it is not interpreted as "upon notification to the Supervisory Board". Therefore, Article 47 paragraph (1) of Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally read, "During the investigation process, the investigators may carry out searches and confiscations with written permit from Supervisory Board", shall be read in full **"During the investigation process, the investigators may carry out searches and confiscations upon notification to the Supervisory Board."**

8. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.

9. To dismiss the remainder of the Petitioners' petition.