

## Judicial Authority and Term Extension: A *Sulṭah al-Qaḍā'iyyah* Perspective on Constitutional Court Decision No. 112/PUU-XX/2022

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### Abstract

Constitutional Court Decision No. 112/PUU-XX/2022, which extended the term of office of the Head of the Corruption Eradication Commission (KPK) from four to five years, has sparked public debate. On the one hand, the longer term is viewed as a means to ensure the effectiveness and continuity of anti-corruption efforts. On the other hand, many parties argue that this change opens the door to political interference, potentially compromising the independence of the institution and raising concerns regarding the principle of checks and balances. This research aims to analyze the decision from the perspective of *Sulṭah al-Qaḍā'iyyah*, the concept of judicial authority in Islamic law, which is grounded in the principles of justice (*al-'adālah*), deliberation (*shūrā*), and public interest (*al-maṣlahah al-'āmmah*). The study employs a normative juridical approach and qualitative methodology based on a literature review. The findings suggest that Constitutional Court Decision No. 112/PUU-XX/2022 has exceeded the Court's role as a negative legislator, as it is seen to have created a new legal norm without following the formal legislative process. Although the decision is justified by the argument that a five-year term is needed to strengthen the independence, effectiveness, and stability of KPK leadership, from the perspective of Islamic law, such action may be ethically and substantively flawed if it disregards public participation and leads to social unrest. Therefore, this decision should be reconsidered not only from a constitutional standpoint but also in light of the substantive values of justice within the framework of *maqāṣid al-shari'ah*.

**Keywords:** Judicial Authority; Corruption Eradication Commission; Constitutional Court; *Sulṭah al-Qaḍā'iyyah*.

### Introduction

The Corruption Eradication Commission (KPK) is an independent institution established to eradicate corruption in Indonesia effectively and efficiently (BPK, 2019). As a law enforcement institution that has a strategic position, the existence of the KPK is a symbol of public expectations for the eradication of corruption. However, the KPK's institutional journey is not spared from legal and political dynamics, including regulatory changes that have an impact on the structure and tenure of KPK leaders (Asshiddiqie, 2006).

One of the controversies that emerged was the extension of the term of office of the KPK leadership from 4 years to 5 years through the Constitutional Court Decision No.112/PUU-XX/2022 (Constitution, 2022). This decision has reaped polemics because it is considered not only to change constitutional norms, but also to impress an intervention on the principle of term of office that has been determined by law. In the ruling, the Constitutional Court considered that the term of office of the KPK leadership for 5 years is constitutional in order to ensure the effectiveness of work and the continuity of leadership in the eradication of corruption.

The extension of the term of office of the KPK leadership from 4 years to 5 years, as decided in the Constitutional Court Decision No.112/PUU-XX/2022, has caused quite a sharp public debate (Madan, 2023). On the one hand, those who support this decision argue that a longer term of office can provide space for KPK leaders to work more effectively, develop medium-term strategies, and complete priority programs to eradicate corruption sustainably. The 5-year term of office is considered more proportionate to the workload and complex challenges faced by the anti-corruption agency.

However, on the other hand, some criticize this decision because it is considered to open up space for power intervention against the independence of the KPK. They argue that changes in terms of terms made through judicial mechanisms rather than through formal legislation can injure the principle of separation of powers and create problematic legal precedents. This concern is further strengthened by the political context that has accompanied regulatory changes against the KPK in recent years, including the revision of the KPK Law, which previously also drew rejection from various elements of civil society.

The Constitutional Court Decision No. 112/PUU-XX/2022, which was read on May 25, 2023, basically states:

1. Grant the Applicant's application in part;
2. Declaring Article 34 of Law Number 30 of 2002 concerning the Corruption Eradication Commission as amended several times, most recently by Law Number 19 of 2019, contrary to the Constitution of the Republic of Indonesia of 1945 and does not have conditionally binding legal force as long as it is not interpreted that the term of office of the head of the Corruption Eradication Commission is five years;
3. Ordering the publication of this decision in the State Gazette of the Republic of Indonesia. (House of Representatives of the Republic of Indonesia, 2023)

In its consideration, the Constitutional Court stated that the 4-year term of office is not enough to ensure the continuity and effectiveness of the work of the KPK leadership in carrying out strategic programs to eradicate corruption. The Constitutional Court considers that the 5-year term of office is more in line with the spirit of institutional strengthening and leadership effectiveness in eradicating

corruption. However, as previously described, the normative interpretation carried out by the Constitutional Court is considered to have added new norms, not just interpreting or testing constitutionality, thus reaping criticism from various parties.

From the perspective of Islamic law, the concept of *Sultah al-Qadā'iyyah* as a judicial authority based on the principles of justice, independence, and the benefit of the people (Az-zuhaili, 1989). This concept provides a philosophical and normative framework for evaluating judges' decisions, including decisions of judicial institutions such as the Constitutional Court. It is interesting to examine how the Verdict Constitutional Court No.112/PUU-XX/2022 was viewed through a lens of *Sultah al-Qadā'iyyah*, and whether the verdict reflects the principles of justice as taught in Islamic law (Zaidan, 1998).

The Constitutional Court, in its consideration, stated that the change in terms of office was intended to ensure stability and continuity in the implementation of the KPK's strategic tasks. The court argued that the 4-year period was too short for the KPK leadership to implement the corruption eradication agenda comprehensively and sustainably. These considerations still give rise to a critical discourse on the extent to which the change in norms reflects constitutional values and the principle of accountability of state institutions in a democratic system. With an in-depth study, not only from a positive legal perspective, but also from an ethical and philosophical approach, including within the framework of Islamic law.

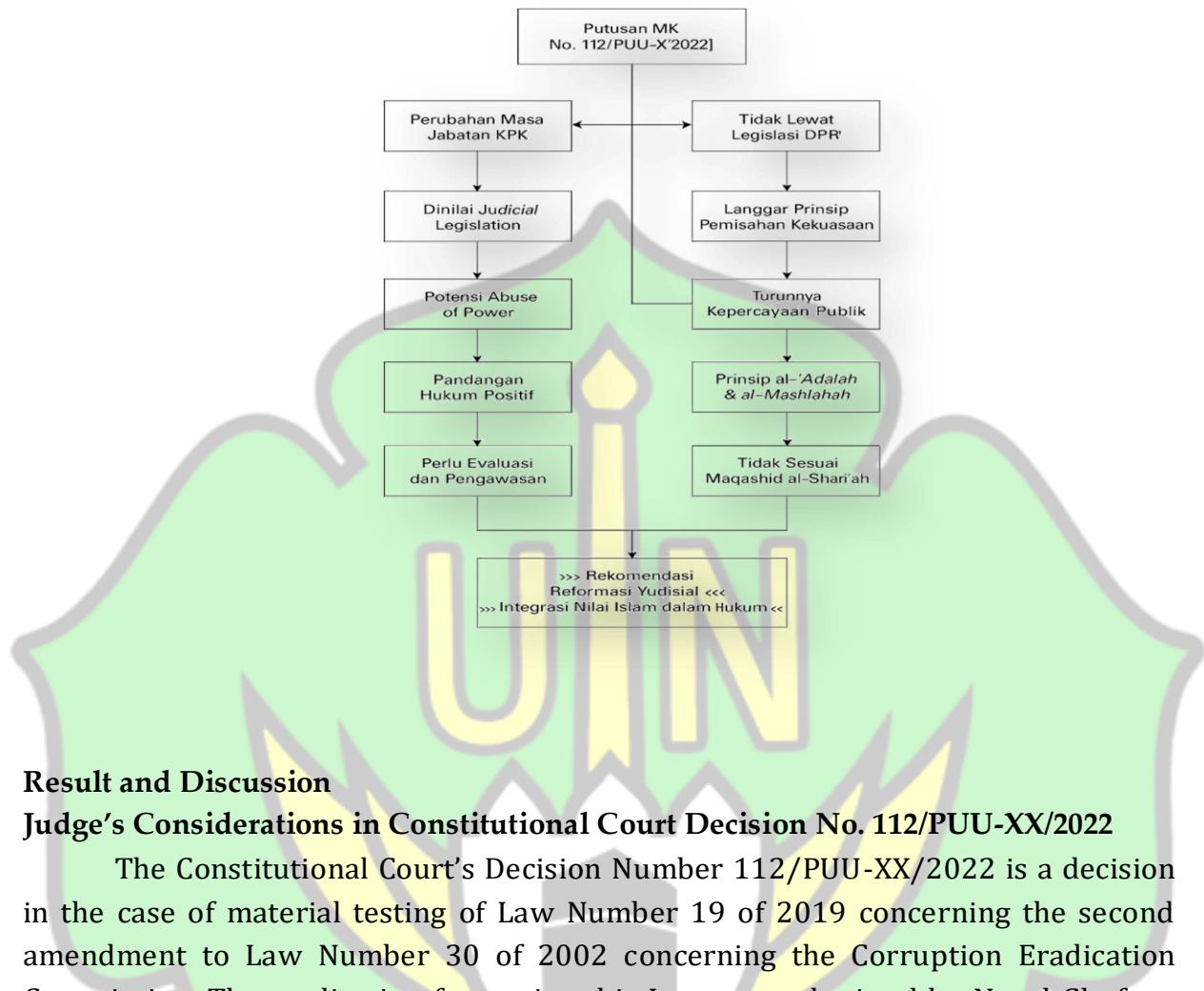
This study aims to analyze the Constitutional Court Decision from the perspective of *Sultah al-Qadā'iyyah*, by prioritizing the juridical-normative approach and ethical values contained in Islamic law. This study is expected to contribute to the discourse of legal reform and strengthen the integrity of the judiciary in Indonesia.

## Research Methods

This research uses a qualitative method with a normative juridical approach, which relies on the study of law as a written norm in laws and regulations and Islamic legal principles. This method is doctrinal, with primary legal materials including laws, Constitutional Court decisions, and secondary legal materials in the form of academic literature, legal journals, and classical and contemporary jurisprudence books (Soekanto, Soerjono & Mamudji, 2015).

This research also applies a legislative approach (*statute approach*) to analyze the substance of the KPK Law and its amendments, the case approach (*case approach*) against the Constitutional Court Decision No. 112/PUU-XX/2022 as the main object of analysis, as well as a conceptual approach (*conceptual approach*) in understanding the doctrine of judicial legislation and the concept of *Sultah al-Qadā'iyyah* within the framework of Islamic statehood. Data were collected through a literature study (*library research*) and analyzed descriptive-qualitatively with an approach *maqāṣid al-shari'ah*, to assess the compatibility between constitutional principles and Islamic legal ethics in decision-making concerning the public interest (Wijaya et al., 2025).

*Scheme 1. Logical Flow of Criticism of the Constitutional Court Decision No. 112/PUU-XX/2022*



## Result and Discussion

### Judge's Considerations in Constitutional Court Decision No. 112/PUU-XX/2022

The Constitutional Court's Decision Number 112/PUU-XX/2022 is a decision in the case of material testing of Law Number 19 of 2019 concerning the second amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. The application for testing this Law was submitted by Nurul Ghulfron who serves as Deputy Chairman of the KPK for the 2019-2023 period. In his application, the applicant argued that the minimum and maximum age requirements to be appointed as the head of the KPK regulated in article 29 letter e are at least 50 (fifty) years old and at most 65 (sixty-five) years old.

The Applicant considers that Article 34 of Law Number 30 of 2002, which regulates the term of office of the KPK leadership for 4 years and can only be re-elected once, violates Article 28D paragraphs (1), (2), and (3), as well as Article 281 paragraph (2) of the 1945 Constitution. In his application, the applicant also felt constitutionally disadvantaged by Article 29 letter e of Law Number 19 of 2019 because the minimum age rule of 50 years old made him unable to participate in the selection of KPK leaders for the next period. In fact, in the previous regulation in Law Number 30 of 2002, the minimum age limit was 40 years old and he was still eligible.

The Applicant considers that the 4-year term of office for KPK leaders is discriminatory because it is different from the term of office of leaders of other independent state institutions which is generally five years. He mentioned at least 12 state institutions such as the Judicial Commission, KPU, OJK, Bawaslu, and others

whose tenure is five years, and according to him, the KPK should receive the same treatment.

In the Constitutional Court's ruling, it granted the applicant's application in its entirety by stating that Article 29 letter e is contrary to the 1945 Constitution and has no legal force. The law is conditionally binding as long as it is not interpreted as being at least 50 (fifty) years old or experienced as the leader of the KPK, and a maximum of 65 (sixty-five) years in the election process. Article 34 is contrary to the 1945 Constitution and has no conditionally binding legal force as long as it is not interpreted. This is in line with the Constitutional Court's decision, which states that the difference in the tenure of the KPK leadership with other institutions is contrary to the principle of justice and the provisions of Article 28D paragraph (1) of the 1945 Constitution (Latuconsina, 2023) The basis for consideration of the Constitutional Court Judge in his Decision Number 112/PUUXX/2022 in extending the position and changing the age limit for KPK leadership candidates.

a. Strengthening the Independence and Effectiveness of the KPK

The Constitutional Court judge considered that the 4-year term of office was too short and could make the KPK leadership easily influenced by political pressure. By extending it to 5 years, it is hoped that leaders can work more calmly and focus without fear of being suddenly dismissed.

b. Maintaining Experience and Expertise

5 years is considered enough for the KPK leadership to understand the complexity of eradicating corruption. A term of office of 4 years is considered not enough to build strong experience.

c. Ensuring Leadership Stability

Too rapid a change of leadership can disrupt the continuity of the program. The 5-year term is expected to create more stable and sustainable leadership.

d. Viewing Capacity, Not Age

The Constitutional Court judge is of the view that age is not the only measure of leadership ability. Many KPK leaders, although no longer young, still have high enthusiasm, ability, and integrity.

Based on the above description, the researcher concluded that the Constitutional Court judge in the Constitutional Court Decision No. 112/PUU-XX/2022 which had been read in an open hearing to the public on May 8, 2023, had granted the applicant's application in its entirety in the material examination of Article 29 letter (e) of Law Number 19 of 2019 and Article 34 of Law Number 30 of 2002. The extension of the term of office of the KPK leadership from the initial term of office for 4 (four) years was then extended to 5 (five) years, having a legal impact both on the KPK institution itself and other independent state institutions. The regulation of the term of office of the head of a state institution in laws and regulations is an open legal

policy, which is the authority of the lawmakers to determine it (Rosma Bintani Gustaliza, 2023).

The extension of the term of office of the KPK leader in the decision is a mistake and has exceeded its authority. The Constitutional Court has changed the provisions that should be the authority of the lawmakers to regulate it. Meanwhile, the drafting of the law is in the hands of the DPR, DPD, and the President. The Constitutional Court acts as a negative legislator because it has made new norms related to the determination of the extension of office and the age limit of KPK leaders.

The Constitutional Court, as a negative legislator, has the authority to cancel the new norms in the Law if it is contrary to the Constitution of the Republic of Indonesia in 1945 (Sari Adena Fitri Puspita, 2022). If the application is submitted is an open legal policy. As a material test of the KPK Law submitted by Dr. Nurul Ghulfron, S.H., M.H., regarding the extension of office and age requirements for KPK leaders. Because matters related to the arrangement of the term of office extension and the age requirements of the KPK leadership are the authority of the DPR and the government as a Positive legislator, the Constitutional Court should have refused.

The implications of this study show that the extension of the position of Chairman of the KPK can weaken stability and continuity in leadership institutions, thus creating the potential for too much power that can be abused. In addition, the adjustment of the age limit for the Chairman of the KPK can also affect the change of leadership and the continuity of ongoing corruption eradication programs. A stricter supervision mechanism is needed for the extension of the position of the Chairman of the KPK, as well as the need for clear regulations related to the age limit of the Chairman of the KPK, so as not to cause prolonged leadership obstacles. The existence of periodic evaluations of the performance of the KPK in order to control the KPK as an independent institution, the brainwashing of the KPK institution can be an obstacle to the KPK in carrying out its duties and authorities, and weaken its functions.

### ***Siyasah al-Qadhaiyyah's Review of the Extension of the Term of Office of the KPK Leadership in the Constitutional Court Decision No. 112/PUU-XX/2022***

Siyasah is a science that discusses how to regulate the affairs of the people and the state, including laws and policies made by the rulers, in accordance with Sharia values for the common good. One of the issues discussed in this context is the age limit for KPK leadership candidates in the Constitutional Court Decision No. 112/PUU-XX/2022. In *fiqh siyasah*, there is no definite age limit to become a leader. Islam only requires that a leader must have reached puberty or adulthood. This means that age requirements are not the main measure, but responsibility and leadership ability. Leaders in Islam must have competence, experience, insight, and charisma. Even if a person has reached puberty, which is usually characterized by wet dreams for men and menstruation for women, or the age of about 15 years old, it is not enough to carry

out the responsibilities of the government. What is more important is the ability and ability to carry out leadership duties effectively.

*Fiqh Siyasah* does not have a standard rule related to the term of office of the leader. In Islamic history, the tenure of a leader varied depending on the context and needs of the times. *Fiqh Siyasah* does not specify a maximum age limit for leaders. The Prophet PBUH appointed a young companion, such as Usamah bin Zaid, as a warlord. (Djazuli, 2003) However, some considerations need to be made. Leadership abilities should be based on abilities and capabilities, not mere age. A leader's health must be in excellent physical and mental condition to carry out their duties optimally. The removal of age restrictions can encourage leadership regeneration and open up opportunities for competent young leaders.

In the perspective of Islamic law, the concept of *Sultah al-Qadā'iyyah* emphasizes that the judiciary must be independent and uphold the principles of justice (*al-'is*) and the benefit of the ummah (*al-mashlahah al-'ammah*) (Mulia Sari et al., 2023). Every legal decision, including the Constitutional Court's decision, must be ethically and substantially accountable. In this case, decisions that do not consider the benefits or cause unrest in the community can be considered deviating from the principle of justice in Islamic law (Hatta, 2008).

Research by Ar-Raniry (2023) shows that sudden changes to tenure without public participation and democratic legitimacy can reduce public trust in law enforcement agencies. This is exacerbated by growing concerns that the extension of the term of office has the potential to weaken the independence of the KPK. In addition, in the context of the principle *ta'dil al-hukm* In Islamic law, the judge's decision must not only be legally correct, but also socially fair (Mediasas, 2022).

Many parties said that the Constitutional Court's decision No. 112/PUU-XX/2022 did not reflect the public interest because it caused horizontal conflicts, public suspicion, and alleged political interests behind the extension of the term of office (Hikmah et al., 2024). In Islamic law, when a decision causes mafsat (damage or chaos), it is mandatory to review whether the policy is worth continuing (UIN SATU, 2022).

From the conceptual and case approach, it is clear that the Constitutional Court does not just interpret laws, but also shapes new norms. As criticized in an article by UIN Datokarama (2023), this step indirectly blurs the boundaries between judicial and legislative power. In this context, the integration of Islamic values, especially the principle of shura (deliberation), is important so that any policy that has a major impact on the public involves elements of society (Proceedings WHO, 2023).

From the point of view of *Siyasah al-Qadhaiyyah*, the actions of the Constitutional Court can also create inequities in the constitutional structure, where the judiciary takes over the legislative functions without participatory and representative mechanisms, as exemplified in the shura (deliberation) in the Islamic system. The

balance of power is the main principle in preventing tyranny and abuse of authority. Therefore, within the framework of Islamic legal ethics, the Constitutional Court Decision No. 112/PUU-XX/2022 deserves further evaluation, not only from the formal constitutional side, but also from the perspective of substantive justice values that are the main spirit in Islamic law.

Even in the literature of classical Islamic legal interpretation, as discussed in Tazir (Raden Fatah, 2023), explained that changes in the law concerning public rights must go through consensus and comprehensive evaluation. The extension of the term of office of the KPK without a revision of the law by the House of Representatives can be seen as procedurally and substantially flawed in the view of Islamic law.

*Table 1. Comparison of Perspectives on Positive Law and Islamic Law on the Constitutional Court Decision No. 112/PUU-XX/2022*

Aspects	Positive Legal Perspectives	Perspective of Islamic Law ( <i>Sultah al-Qadā'iyyah</i> )
Authority of the Constitutional Court	Interpreting and testing constitutional norms	Judicial authority must be fair and not overstep
Formation of New Norms	Assessed as judicial legislation	Going beyond the principle of deliberation and balance of power
Legislation Procedure	Not through the House of Representatives and the formal legislative process	Not following the principles of shura in changes in public law
Impact on KPK Institutions	Potentially strengthening work effectiveness	Potentially lowering trust and weakening independence
Public Response	Inviting widespread criticism, considered politically charged	Decisions that cause anxiety are considered unfortunate
Moral and Ethical Judgment	Less noticed in the judicial process	It is very important as part of the <i>maqāṣid al-shari'ah</i>

## Conclusion

The basis for consideration of the Constitutional Court Judge in his Decision Number 112/PUUXX/2022 in extending the position and changing the age limit for KPK leadership candidates. (1) Strengthening the Independence and Effectiveness of the KPK, the Constitutional Court judges think that the term of office of the KPK leader, which was originally 4 years, is considered too short and can make the KPK leadership vulnerable to political intervention. By extending the term of office to 5 years, it is hoped that the KPK leadership can focus more on carrying out their duties, without worrying about being removed by irresponsible parties. (2) Maintaining the

Experience and Expertise of KPK Leaders, sufficient time for KPK leaders to learn and understand the complexities of corruption eradication in Indonesia. A term of office of 4 years is considered inadequate to equip KPK leaders with the knowledge and experience needed to carry out their duties effectively. (3) Maintaining the Continuity and Stability of the KPK Leadership. Too frequent changes of KPK leadership can disrupt the stability and continuity of leadership in the institution. The 5-year term of office is expected to provide enough time for the KPK leadership. Formulate and implement a long-term corruption eradication strategy. (4) Considering Individual Abilities and Capacities, age is not always an indicator of a person's ability and capacity to lead; there are many KPK leaders, even though they are no longer young, who still have high enthusiasm, dedication, and ability in eradicating corruption.

The perspective of *fiqh siyasah* and *siyasah al-qadhaiyyah*, the determination of age limits and changes in the term of office of leaders, as occurred in the Constitutional Court Decision No. 112/PUU-XX/2022, must consider the public interest, substantive justice, and the principles of *shura* (deliberation). Islam does not specify a definite number in terms of the age limit of leadership, but rather emphasizes maturity, capability, and moral integrity as the main prerequisites for a leader.

Decisions that cause public unrest, political suspicion, or do not involve the participation of the wider community can be considered deviating from the principles of *al-'is* (justice) and *al-mashlahah al-'ammah* (public interest). Moreover, if policy changes regarding public rights are carried out without revision through formal legislative mechanisms, then these actions can be seen as procedurally and substantially flawed within the framework of Islamic law.

Within the framework of Islamic legal ethics and *siyasah al-qadhaiyyah*, every legal decision, especially those that have a major impact on the state's power structure and public trust, must go through a comprehensive evaluation, be based on the values of justice, and avoid *mafsadat* (damage) that can arise from such policies. Thus, the Constitutional Court's decision needs to be reviewed not only from the point of view of the constitution, but also from the point of view of *maqāṣid al-sharī'ah* and the basic principles in Islamic governance.

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