

The Implication of Constitutional Court Decision Number 36/PUU-XV/2017 on the Independence of Corruption Eradication Commission

by PASCASARJANA UIR

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Eradication Commission**

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Suparto and Dedy Gusniawan
Faculty of Law, Universitas Islam Riau, Pekanbaru, 28284, Indonesia
E-mail: suparto@law.uir.ac.id

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Abstract : This study aims to find out the considerations of the Constitutional Court Judge in issuing Constitutional Court Decision No. 36/PUU-XV/2017 as well as to identify the implications of the Decision on the Independence of Corruption Eradication Commission. The method used in this study was normative juridical method. The data collected through library research were then analyzed analytically-descriptive. The formulations of the problem are; 1) What are the considerations of the Constitutional Court Judge in issuing Constitutional Court Decision No. 36/PUU-XV/2017 against judicial review of Law No. 17 of 2017 concerning MD3? and 2) What are the implications of the Constitutional Court Decision No. 36/PUU-XV/2017 against judicial review of Law No. 17 of 2017 concerning MD3 on the independence of Corruption Eradication Commission? As results, it was found that; 1) in Constitutional Court Decision No. 36/PUU-XV/2017, the Constitutional Court states that the inquiry right owned by the House of Representatives over the Corruption Eradication Commission is constitutional as long as it does not relate to the authority of investigation and prosecution owned by the Corruption Eradication Commission with the consideration that the Corruption Eradication Commission is a state institution that includes to the realm of executives; and 2) The House of Representatives will give a strong influence on the Corruption Eradication Commission even though the inquiry right owned by the House of Representatives cannot touch the authority of the Corruption Eradication Commission in conducting investigations and prosecutions. However, there is an indication that the effort to provide inquiry right is not a legal effort but rather a political effort which is widely applied in countries adhering to a parliamentary system where the parliament tends to be more dominant than the executive. Hence, it can be concluded that; 1) in this Decision, the Constitutional Court Judge did not use a stronger grammatical and systematic interpretation based on the original sense. Besides, this Decision is ambiguous and potentially contradicts with the previous Decision, namely Constitutional Court Decision No.012-016-019/PUU-IV/2006; and 2) there will be consequences for the Corruption Eradication Commission in the future, especially in terms of independence, since it can be used as an object of inquiry right by the House of Representatives.

Keywords: Decision, Constitutional Court, Independence, Corruption Eradication Commission.

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**Implikasi Putusan Mahkamah Konstitusi No. 36/PUU-XV/2017 Terhadap
Independensi Komisi Pemberantasan Korupsi**

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Abstrak : Tujuan dari penelitian ini adalah untuk mengetahui pertimbangan Hakim Konstitusi dalam memutus perkara No. 36/PUU-XV/2017 dan Implikasi dari putusan tersebut terhadap Independensi Komisi Pemberantasan Korupsi. Metode penelitian yang digunakan yaitu hukum normatif dengan cara studi kepustakaan, data yang digunakan adalah data sekunder dan analisis data dilakukan secara deskriptis analitis. Rumus masalahnya adalah (1). Bagaimanakah pertimbangan Hakim Konstitusi dalam memutus perkara No. 36/PUU-XV/2017 terhadap pengujian UU No. 17 Tahun 2017 Tentang MD3 dan (2). Bagaimanakah implikasi putusan Mahkamah Konstitusi No.36/PUU-XV/2017 terhadap pengujian UU No. 17 Tahun 2017 Tentang MD3 terhadap independensi Komisi Pemberantasan Korupsi. Berdasarkan penelitian diperoleh hasil: (1) MK dalam putusan No. 36/PUU-XV/2017 menyatakan bahwa kewenangan hak angket yang dilakukan Dewan Perwakilan Rakyat terhadap Komisi Pemberantasan Korupsi adalah konstitusional sepanjang tidak menyangkut kewenangan penyidikan, penyelidikan, dan penuntutan yang dimiliki oleh Komisi Pemberantasan Korupsi, dengan pertimbangan Komisi Pemberantasan Korupsi adalah lembaga negara yang termasuk ranah eksekutif. (2). Pengaruh tekanan yang diberikan Dewan Perwakilan Rakyat kepada Komisi Pemberantasan Korupsi akan amat kuat walaupun hak angket tersebut tidak dapat menyentuh kewenangan

Komisi Pemberantasan Korupsi dalam melakukan penyidikan, penyelidikan, dan penuntutan. Namun ada indikasi bahwa upaya angket pada dasarnya bukanlah upaya hukum melainkan upaya yang bersifat politis yang banyak dipraktikkan dalam negara penganut sistem parlementer yang cenderung dominan parlemen dibanding pihak eksekutif. Kesimpulan dari penelitian ini adalah (1). Dalam putusan ini Hakim Konstitusi tidak menggunakan penafsiran gramatikal dan sistematis yang lebih kuat dengan berlandaskan pada *original intents*. Selain itu Putusan Mahkamah Konstitusi ini adalah ambigu dan berpotensi bertentangan dengan putusan sebelumnya yaitu putusan Mahkamah Konstitusi No.012-016-019/PUU-IV/2006.(2) Adanya konsekuensi bagi Komisi Pemberantasan Korupsi dimasa mendatang khususnya dalam hal independensi akibat dari dapat dijadikannya objek hak angket oleh Dewan Perwakilan Rakyat

Kata Kunci: Putusan, Mahkamah Konstitusi, Independensi, Komisi Pemberantasan Korupsi.

INTRODUCTION

An important aspect in the transition process of Indonesia to democracy is reform in the state administration carried out through amendments to the Indonesian constitution, namely the 1945 Constitution of the Republic of Indonesia. The amendments to the 1945 Constitution aim to realize the Indonesian constitution which enables the implementation of a modern and democratic state.¹ The spirits of constitutional change are found in the form of the constitution supremacy, the necessity and importance of power restrictions, the strict regulations on relations and powers between branches of state power, the reinforcement of check and balance system between branches of power, the reinforcement of protection and guarantee of human rights, the implementation of regional autonomy and the regulations on basic matters in various fields of public life to create a democratic state based on the rule of law.² In addition to democracy, Plato introduced the idea of the state based on the rule of law with the term 'nomocracy'.³ Over time, the great state power gave birth to the concept of a *rechstaat* state which is considered as an ideal concept of the state at this time, even though the concept is implemented with different perceptions in the modern state system. Basically, this concept is implemented based on the teachings of Jhon Locke, Thomas Hobbes, J.J. Rosseau and Montesqieu. The countries concerned have begun to implement and develop a democratic state system by restricting state power through the system of power distribution with recognition and protection to people's rights.⁴

Basically, law cannot be separated from people lives they need legal protection to avoid conflict. The protection provided by law is one of the goals of the state based on the rule of law. Meanwhile, the best way to achieve the goals is to distribute powers.⁵ The distribution of powers gives birth to various state organs that reflect the classical thought of state administration law. As result, the structure of the state powers is divided into three branches, namely legislative, executive, and judiciary. These three branches of power subsequently become a limit for the formation of various state institutions. Simply put, all state institutions established to carry out state functions are an integral part of the legislative, executive, or judicial branches of power contained in the 1945 Constitution of the Republic of Indonesia.⁶

In addition to state institutions mentioned in the 1945 Constitution, the form of the state institutions is currently developing rapidly. These developments also took place in Indonesia amid the openness that emerge along with a wave of democratization in the reform era. At the first level,

¹ Yusri Munaf, 2014, *Konstitusi & Kelembagaan Negara*, Pekanbaru : Marpoyan Tujuh Publishing, p. 57.

² *Ibid.*, p. 23.

³ Imam Subechi, *Jurnal Hukum dan Peradilan volume 3*, Sekretariat Mahkamah Agung RI, Jakarta, 2013, p. 340.

⁴ Munir Fidi, 2010, *Teori Negara Hukum Modern (rechstaat)*, Bandung : Refika Aditama, p. 31.

⁵ Teguh Prasetyo, "Membangun Hukum Nasional Berdasarkan Pancasila", *Jurnal Hukum Dan Peradilan*, Volume 14 No. 3, 2014, p.213.

⁶ Zainal Arifin Mochtar, 2016, *Lembaga Negara Independen : Dinamika Perkembangan dan Urgensi Penataannya Kembali Pasca Amandemen Konstitusi*, Jakarta : Raja Grafindo Persada, p. 1.

4 there is a growing awareness that certain state agencies, such as Military Organization, Police Office, Prosecutors General Office, and Central Bank, must be developed independently. This independence is needed in order to guarantee the distribution and limitation of power and to create more effective democratization. Three of the four aforementioned state agencies that have an independent position are Indonesian National Armed Force, Indonesian National Police and Bank of Indonesia.⁷ 4

At the second level, there are also developments relating to specialized institutions, such as National Human Rights Commission (Komnas HAM), General Election Commission (KPU), Ombudsman Commission, Corruption Eradication Commission (KPK), etc. Ideally, these commissions or institutions are independent or often have mixed functions, namely semi-legislative, semi-executive, semi-administrative, and semi-judicial. 29 fact, the term “independent and self-regulatory bodies” has also emerged in many countries.⁸ Corruption Eradication Commission as one of the institutions born from constitutional reform was established based on Law. Corruption Eradication Commission was established based on Law No. 30 of 2002 concerning Commission for the Eradication of Criminal Acts of Corruption. Article 1 of Law No. 30 of 2002 states: “the eradication of criminal acts of corruptions is a series of actions with the purpose to prevent and eradicate criminal acts of corruption through coordinated efforts, supervision, monitoring, investigations, indictments, prosecutions, all to be done with as much participation on the part of the general public as the Law allows”.⁹

The establishment of Corruption Eradication Commission and other commissions is a result of various economic difficulties and instability due to social and economic changes. Hence, the state carries out institutional experimentation through various forms of government organs that are considered effective and efficient, both at the national or central level and at the regional or local level. In developed countries, such as the United States of America and France, there are also various new state institutions, which were commonly referred to as state auxiliary institutions established in the last three decades of the 20th century. Among these institutions, there are also self-regulatory agencies, independent supervisory bodies, or institutions that carry out mixed functions between regulative, administrative, and punishment functions which are usually separated, but are carried out simultaneously by these new institutions.¹⁰ Corruption Eradication Commission was established with the aim of suppressing the number of corruption that has not been able to be controlled by the National Police and the Prosecutors’ Office. In this case, Corruption Eradication Commission has the authority to conduct wiretapping against someone suspected to conduct criminal act of corruption. As stated in general explanation of Law No. 30 of 2002 concerning Commission for the Eradication of Criminal Acts of Corruption that corruption has been widespread in Indonesia.¹¹

In carrying out its duties and functions, the Corruption Eradication Commission (KPK) experienced friction with the House of Representative (DPR) due to the fact that many DPR members were examined and arrested by KPK. The dispute between DPR and KPK culminated when DPR requested the recording of conversations in the investigation process of a DPR member, Miryam S. Haryani. However, the request was rejected by KPK as it was considered to interfere with

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⁷Ni'matul Huda, 2005, *Hukum Tata Negara*, Jakarta : Rajawali Pers, p. 218.

⁸*Ibid.*, 22

⁹Indonesia, Undang-Undang No.30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi, Lembaran Negara Republik Indonesia (LNRI) Tahun 2002 Nomor 137 dan Tambahan Lembaran Negara (TLN) Nomor 4250 59

¹⁰Jimly Asshiddiqie, 2012, *Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi*, Jakarta : Sinar Grafika, p. 7. 45

¹¹Kristian & Yopi Gunawan, 2013, *Sekelumit Tentang Penyadapan Dalam Hukum Positif di Indonesia*, Bandung :Nuansa Aulia, p. 69.

the law enforcement process.¹² Hence, DPR as a legislative body seems to respond this issue by using its inquiry right as KPK is considered to have a strong authority so that there should be an institution that can supervise policies issued by KPK. This issue encourages the Forum of Law and Constitutional Studies (FKHK) to submit a material test to Constitutional Court (MK) against Article 3 paragraph (3) of Law No. 17 of 2014 concerning MPR, DPR, DPD and DPRD. Yet, through Constitutional Court Decision No. 36/PUU-XV/2017, the Constitutional Court rejected the request by interpreting that KPK includes to the realm of executives so that KPK can be an object of inquiry right by DPR.

Constitutional Court Decision No. 36/PUU-XV/2017 concerning the constitutionality test of the House of Representatives' inquiry right against Corruption Eradication Commission has cut the existing opinion that KPK is an independent state institution, not an executive state institution, so that KPK is not an object of inquiry right of DPR. For some parties, the decision is considered to be controversial as it has made KPK a part of executive organ.¹³ Making KPK as an object of inquiry right by DPR will affect its performance and independence in law enforcement process in the future and will give birth to new tyrannical instruments for DPR.¹⁴ On the other hand, there are also a few people who agree with this decision as they consider that making KPK as an object of inquiry right by DPR does not necessarily weaken KPK. Besides, this issue can also be interpreted as the control made by DPR over KPK so that KPK can carry out its duties and functions in accordance with the existing legal provisions.¹⁵ Hence, basically, this Constitutional Court Decision gave rise to pros and cons in the community.

RESEARCH METHODS

This study employed a normative legal research method. The secondary data used in this study involved Constitutional Court Decision No. 36/PUU-XV/2017 against Judicial Review of Law No. 17 of 2014 concerning MPR, DPR, DPD, and DPRD and Constitutional Court Decision No. 012-016-019/PUU-XV/2017 against Judicial Review of Law No. 30 of 2002 concerning Commission for the Eradication of Criminal Acts of Corruption as well as other related journals, books and legislation. The data collected through library research were then analyzed analytic-descriptive. The analysis phase involved data collection, data selection, data classification which was done systematically, logically and juridically to find out the specific picture of the problem under study, and finally data interpretation. Further, the data were compared to the theories and concepts collected from the secondary data which consist of scientific books, journals, legislation as well as legal opinions from legal experts.

RESULTS AND DISCUSSION

A. The Considerations of Constitutional Court Judge in Issuing Constitutional Court Decision No. 36/PUU-XV/2017 against Judicial Review of Law No. 17 of 2014 concerning MD3

Judge's consideration is the judge's opinion expressed after the trial is over. Constitutional Court Judge will hold a deliberation to take a stance whether to grant a petition or to reject/to declare

¹²May Lim Charity, "Implikasi Hak Angket Dewan Perwakilan Rakyat Republik Indonesia Terhadap Komisi Pemberantasan Korupsi", *Jurnal Legislasi Indonesia*, Vol. 14, No. 3, September 2017, p. 253

¹³Mei Susanto, "Hak Angket Sebagai Fungsi Pengawasan Dewan Perwakilan Rakyat", *Jurnal Yudisial*, Vol 11, No. 3 Desember 2018, p. 387.

¹⁴Idul Rishan, "Relevansi Hak Angket Terhadap Komisi Negara Independen", *Jurnal Dialogia Iuridica*, Vol. 10, No.1, November 2018, p. 61

¹⁵Dasep Muhammad Firdaus, "Hak Angket Dewan Perwakilan Rakyat Republik Indonesia (DPR RI) Terhadap Pemberantasan Korupsi (KPK)", *Jurnal Asy Syariah*, Vol.20, No.2, Desember 2018, p. 201

that a petition to test the constitutionality of a Law against the Basic Law cannot be accepted.¹⁶ In this regard, legal considerations can be interpreted as the essence of a decision. Judge's legal considerations are the legal analysis, argumentation, opinion or conclusion of a judge examining a case. In giving considerations, a clear analysis based on the law is presented. Through the analysis, the judge can explain his opinion which was proven and was not formulated in a legal conclusion as the basis of a case to be set forth in the dictum of decision.¹⁷ Based on Constitutional Court Decision No. 36/PUU-XV/2017, the applicant does have a legal standing to submit a petition. However, after examining the petition and requesting information from relevant parties, such as statement of the President, statement of DPR, and expert statement, the Constitutional Court Judge rejected the petition for judicial review against Article 79 paragraph (3) of Law No. 17 of 2014 concerning MD3 submitted by the applicant. The petition was submitted by Forum of Law and Constitutional Studies (FKHK) represented by Achmad Saifudin Firdaus S. H. (the Chair of FKHK) and Bayu Segara S. H. (the Secretary of FKHK) as Applicant I, Yudistira Rifky Darmawan as Applicant II, and Tri Susilo as Applicant III. The petition was submitted since the applicants who are active in studying Law and Constitution felt disadvantaged by the efforts to give a special inquiry right for DPR over KPK as stated in Article 79 paragraph (3) of Law No. 17 of 2014 concerning MD3.

In the applicants' point of view, the inquiry right applied to KPK will affect the investigation efforts as KPK can be forced to submit any data requested by DPR without any restrictions. Hence, the independence nature granted by the Law to KPK is disturbed so that this was considered as an intervention on the efforts to eradicate corruption that had been fought for. Broadly speaking, the consideration made by the Constitutional Court Judge in issuing Constitutional Court Decision No. 36/PUU-XV/2017 is the inquiry right applied in Indonesia have been accepted as a term of constitutional practices since the enactment of the 1949 RIS Constitution and the 1950 UUDS which adheres to parliamentary system as a reference in implementing checks and balances. Then, in a semantic and historical perspective, the inquiry right is based on the British parliament in 1376 that became the main pioneer applying inquiry right. This inquiry right was originally intended to investigate and provide penalties for fraud in government administration called *impeachment*. To find out the purpose of inquiry right, the understanding of inquiry right cannot be separated from the supervisory function of DPR. In the State Constitutional Law, supervision means an activity aiming at ensuring the implementation of state administration in accordance with the applicable law. In Article 70 paragraph (3) of Law 17 of 2014, it is stated that the supervisory function owned by DPR involves how the law is implemented and how the state budget is used.

In Constitutional Court Judge's view, the result of DPR's investigation through the use of inquiry right must not necessarily end in the use of the right to express opinions or even recommendations/proposals for the replacement of certain officials proven to violate the law. Thus, the results of inquiry right are interpreted as recommendations and references that are binding for future evaluation and improvement for 'something' that is the object of investigation. In terms of its functions, according to the 1945 Constitution, state institutions can be divided into two groups, namely 1) main state organs; and 2) auxiliary state organs. In fact, auxiliary state organs are not only at the level of constitutionally entrusted power as there are also auxiliary state organs whose authority is based on the Law or the lower regulations, such as Government Regulations, Presidential Regulations or Presidential Decrees.¹⁸

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¹⁶ Maruarar Siahaan, 2012, *Hukum Acara Mahkamah Konstitusi Republik Indonesia*, Jakarta : Sinar Grafika, p. 211. 2

¹⁷ M. Yahya Harahap, 2015, *Hukum Acara Perdata*, Jakarta : Sinar Grafika, p. 809.

¹⁸ Jimly Ashiddiqie, 2012, *Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi*, Jakarta : Sinar Grafika, p. 216.

Therefore, in general, the Constitutional Court argues that auxiliary state organs are established due to the demand to achieve the increasingly complex state goals. The establishment of auxiliary state organs can be said to be a logical consequence of a modern state hoping to carry out the state functions more perfectly. Hence, the purpose of the establishment of auxiliary state organs is clear, namely to support the implementation of the powers owned by the main state organs. In the view of Constitutional Court Judge, KPK is actually included to the realm of executives which carries out functions in the executive domain, namely investigation and prosecution. KPK is not included to the realm of judiciary as it is not a judicial body authorized to hear and decide cases. KPK is not also included to the realm of legislative as it is not a legislative organ. Its position in the realm of executives does not mean that KPK is independent and is free from the influence of any power.

In terms of its duties, the Constitutional Court considers the Corruption Eradication Commission to have the following scope of duties; a) coordinating with agencies authorized to eradicate criminal acts of corruption; b) carrying out supervision against agencies authorized to eradicate criminal acts of corruption; (c) conducting investigations and prosecutions on criminal acts of corruption; (d) taking actions to prevent criminal acts of corruption; and e) monitoring the implementation of state administration. Thus, in the context of law enforcement, Police, Prosecutors' Office and Corruption Eradication Commission institutions that are given the duties and authorities to implement laws, one of which is the eradication of criminal acts of corruption. Although the Corruption Eradication Commission is an independent commission, as regulated in the Corruption Eradication Commission Law, but it is clear that these state institution is included to the realm of executives in carrying out its duties and authorities. With regard to the phrase "the implementation of a law and/or government policy" in the norms tested, the Constitutional Court argues that it cannot be used as a basis for stating that the inquiry right owned by DPR do not apply to KPK as an independent institution because, contextually, KPK is an organ or institution that is included to the realm of executives and implements the law in the field of law enforcement.

Based on the considerations made by Constitutional Court to reject the petition and to limit the inquiry right owned by DPR over KPK, the author considers that there are several variables that make the case decision ambiguous and there are conclusions that appear to be forced to justify the efforts of a high institution to extend the power of supervision. The author argues that the position of the 1945 Constitution has a different orientation compared to the 1949 RIS Constitution and the 1950 UUDS. This is due to the amendments to the 1945 Constitution which began in 1999 to 2001 in which it was agreed to maintain a presidential system by fully applying the existing values in a presidential system. This indicates that there are irregularities in legislative body in the current concept of democracy. Democracy has been considered as an important instrument in carrying out an ideal conception of the state to overcome the problem of upholding people's power as its political concept is based on the mandate that power originates from the people, by the people, and for the people represented by the agreement reached by the legislative body as the main element of the three main branches in today's democracy.¹⁹

The agreement reached by the legislative body shall be based on the presidential concept as a whole, not be based on the mechanism carried out in the parliamentary concept adopted in the parliamentary system. Presidential system is interpreted as a concept that gives a great power to a President as the head of the state to run the state administration. Therefore, the supervisory function carried out by the legislative body by using inquiry right is just a political game played by parliamentary body which contradicts with the programs run by the President and his staff. This is in

¹⁹Ellydar Chaidir & Suparto, "Implikasi Putusan Mahkamah Konstitusi Tentang Pemilu Serentak Terhadap Pencalonan Presiden dan Wakil Presiden Pada Pemilihan Umum Tahun 2019", *UIR Law Review*, Volume 1, Nomor 1, 2017, p. 1.

line with the opinion of Mahfud MD who said that the determinant politics of law in terms of the character of each legal product will be highly determined or colored by the balance of power or political configuration that gave birth to it.²⁰

In general, concerning the interpretations used by the Panel of Judges, there are several interpretations used, namely:

- a. Grammatical interpretation, which emphasizes the importance of the position of language in order to give meaning to an object.
- b. Teleological or sociological interpretation, when the meaning of law is determined based on the social conditions and goals. With this interpretation, laws, that are still valid but are outdated or out of date, apply to current events, relationships, needs and interests.
- c. Systematic or logical interpretation, when a Law is always related to other legislations; it does not stand alone.
- d. Historical interpretation, which examines the history of the formation of the law. The historical interpretation of the law intends to find out the purpose of the provisions of the law at the time of its formation.
- e. Comparative interpretation, which is done by comparing several legal rules to seek clarity regarding the meaning of a provision.
- f. Futuristic interpretation, which explains the provisions of a law that does not yet have legal force.

Looking at the various choices of interpretations that can be used by the panel of judges, it is unfortunate that the panel of judges places too much emphasis on the historical aspects of the use of inquiry right in the constitution. The judges' assumptions are too rigid to consider the inquiry right as a natural thing to do by the House of Representatives. In fact, by looking at the current national condition, inquiry right is no longer needed as all supervisory mechanisms can be coordinated by other institutions, including the judiciary and the auditing institution that has clear legal consequences. The supervisory function carried out by other institutions has been widely applied in democratic government system, such as the Supreme Court by the Judicial Commission.²²

From the reasons stated by the applicant, the history of the use of inquiry right in the amendment to the 1945 Constitution is inappropriate to be applied in presidential government system. A presidential government system is a government system where the executive position is not accountable to the House of Representative. In other words, executive power is not under the parliamentary supervision. The presidential government system has several characteristics, namely:

1. The President as the head of government leads the cabinets appointed by him and is accountable to him. At the same time, he is also the head of the state (state symbol) with a term of office determined by the Constitution;
2. The President is not elected by the legislative body, but is elected by a number of voters. Therefore, he is not a part of the legislative body as in parliamentary government system;
3. The President is not accountable to the legislative body and cannot be imposed by the legislative body;
4. As a counterpart, the President cannot dissolve the legislative body.²³

²⁰ Moh Mahfud MD, 2010, *Membangun Politik Hukum, Menegakkan Konstitusi*, Jakarta : Rajawali Pers, p. 37.

⁴³ Suparto, "Perbedaan Tafsir Mahkamah Konstitusi Dalam Memutus Perkara Pemilihan Umum Serentak", *Jurnal Yudisial*, Vol. 10, No.1, April 2017, p. 6.

²² Suparto, (2019). The Comparison Between the Judicial Commission of the Republik of Indonesia and the Netherlands Council for the Judiciary. UNIFIKASI : Jurnal Ilmu Hukum, 6(1), 40-52

²³ Titik Triwulan Tutik, 2010, *Konstruksi Hukum Tata Negara Indonesia Pasca Amandemen UUD 1945*, Jakarta : Kencana, p. 151.

In addition, there is another consideration of Constitutional Court Judge which is considered inappropriate related to the phrase “the implementation of a law and/or government policy” in the norm tested in which the Constitutional Court Judge argues that the principles of the constitution and the government system built on the basis of a *check and balance* paradigm must cover all powers. In author’s point of view, there is a mistake in interpreting the supervisory mechanism over each power holder. The political supervisory mechanism carried out by the legislative body has variables that are difficult to examine. It is different from technical supervisory mechanism. If we talk about who can feel constitutional loss due to the presence of KPK which is ineffective and tends to be detrimental, then the people is the party who has the right to judge and propose restrictions on the authority of KPK through judicial review. In other words, the law created by legislative body must not contradict with the Constitution or violate the constitutional rights.²⁴

KPK was established with the aim of carrying out duties that cannot be handled by law enforcement officials in eradicating criminal acts of corruption. Thus, KPK has the authority to carry out judicial acts, such as investigations and prosecutions. To ensure that the efforts made do not violate the applicable legislation, then supervision can be done to KPK in carrying out legal efforts for parties who feel disadvantaged due to case handling process. These efforts can be carried out through judicial process. Thus, in general, the supervision applied to KPK is complete, ranging from the use of the state budget during the service period to the errors and irregularities occurred during the case handling process. Besides, through the existing commission, DPR can also implement supervisory function through a Hearing Meeting (RDP) with KPK. Related to the inquiry right owned by DPR over KPK, expanding the explanation of the article potentially contradicts with the concept of a democratic state which basically contains the principle stated by J. B. J. M Ten Berg as the principle of legality, namely the limitation of freedom must be based on the principles regulated in the law.²⁵

Article 79 paragraph (3) of Law No. 17 of 2014 states: “inquiry right as referred to in paragraph (1) letter b is the right of DPR to conduct an investigation of the implementation of a law and/or government policy relating to important and strategic matters that have a broad impact on social, nation and state life and are considered to be in conflict with the legislation”.²⁶ By looking at the provision of the Article, it is clear that the authority to conduct an inquiry is only aimed at the implementation of a law and/or government policy that contradicts with the law. Besides, by looking at the existing mechanism, it is clear that every policy carried out by state institutions has received adequate supervision both in terms of its administration and legal efforts that can be taken if KPK abuses its authority. The variable that becomes a question is the consideration of Constitutional Court Judge in classifying the inquiry to KPK as a mechanism for evaluation aimed at increasing the effectiveness of carrying out its power. In fact, as it can be seen that one of independent commissions in the field of justice, such as Judicial Commission, was established due to the weaknesses of the existing regulations so that they failed in creating an effective system to form an independent, impartial, clean, competent, and effective state institution.²⁷

Those goals shall be maintained in KPK which is expected to be able to continue carrying out its duties without supervision which tends to make KPK orbits directly against DPR as it will lead to

²⁴I Dewa Palsu, 2013, *Pengaduan Konstitusional*, Jakarta : Sinar Grafika, p. 137.

²⁵Ridwan HR, 2017, *Hukum Administrasi Negara*, Jakarta : Rajawali Pers, p. 21.

²⁶Indonesia, Undang Undang Nomor 17 Tahun 2014 Tentang MPR, DPR, DPD, dan DPRD (MD3), Lembaran Negara Republik Indonesia (LNRI) Tahun 2014 Nomor 182 dan Tambahan Lembaran Negara (TLN) Nomor 5568 Pasal 79 ayat (3)

²⁷Suparto, “Kedudukan dan Kewenangan Komisi Yudisial Republik Indonesia Dan Perbandingannya Dengan Komisi Yudisial di Beberapa Negara Eropa”, *Jurnal Hukum dan Pembangunan*, Vol. 47, No. 4, Maret 2016, p. 498.

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the assumption that the eradication of criminal acts of corruption is characterized by strong legal politics to protect the interests of lawmakers. This assumption will become a synthesis in the future when the desire to improve a more responsive law enforcement becomes a camouflage of lawmakers in diverting public distrust of parliamentary performance. Besides, it is inappropriate to say that a judge's decision is unfair because the nature of Constitutional Court Decision is final and binding. Yet, it will be more appropriate to say that Constitutional Court Decision is in conflict with the value of justice. Now, the problem is the same application for the same norm cannot be submitted even though the applicant does not feel to get justice because the decision regarding the constitutionality of inquiry right against KPK has permanent legal force.

In the context that KPK runs the executive domain, the nature of distribution of power needs to be re-examined. According to Soimin and Mashuriyanto, the distribution of power, as stated in the 1945 Constitution, allows every high state institution to be able to interact and cooperate with each other with the authority granted by the 1945 Constitution without intervening with each other.²⁸ The understanding of the nature of power distribution has provided a perspective on the subject of *checks and balances*. Supervision carried out by the legislative body, through the authority granted by the Constitution, is intended to supervise fellow high state institutions and is not an effort to make the supervision as an intervention. The inquiry right that has been conducted several times by DPR also tends to be only a formality as there is no clear result in realizing an effective supervisory mechanism. With regard to the Constitutional Court Decision, there are four Constitutional Court Judges, namely; Constitutional Court Judge, Maria Farida Indrati; Constitutional Court Judge I, Dewa Gede Palguna; Constitutional Court Judge, Suhartoyo; and Constitutional Court Judge, Saldi Isra. These four Constitutional Court Judges have different opinion, namely: The capacity to control potential abuses of executive power is a fundamental task that must be held by parliament. By considering the design of the Indonesian state regulated in the 1945 Constitution as well as the position and relation of the two branches of power based on article 20 A paragraph (2) of the 1945 Constitution, in carrying out its constitutionality functions, DPR has the right of interpellation, the right of inquiry, and the right to express an opinion. As rights inherent in legislative body, each of these rights has different backgrounds.

First, based on the historical interpretation, both in the parliamentary and presidential government system, inquiry right is a manifestation of the legislative supervisory authority over the executive as the holder of government power. Government can be interpreted as follows:

1. Command is a statement aiming to ask someone to do something.
2. Government is a power to govern a country or the highest body that governs a country (i.e. a cabinet is a government).
3. Government is an act (way, thing, affairs, etc.) of governing.²⁹

The system used in Indonesia can be seen from the decisions made during the amendments to the 1945 Constitution; one of them by maintaining a presidential system. In Articles 4 and 17 of the 1945 Constitution, it is stated that the President of the Republic of Indonesia holds governmental power, and in carrying out its governmental power, the President is assisted by the Vice President and the State Ministers. The State Ministers are appointed and dismissed by the President. It means that the position of the state ministers is highly dependent on the President.³⁰

Second, based on the systematic interpretation, by looking at the relationship between the overall norms contained in Article 79 of Law no. 17 of 2014, it cannot be interpreted other than it is aimed at the executive. It is because, when interpreting the state as a paradoxical instrument, on one

²⁸ *Ibid.*, p. 51. 77

²⁹ Dasril Rajab, 2005, *Hukum Tata Negara Indonesia*, Rineka Cipta, Jakarta : Rineka Cipta, p. 64.

³⁰ *Ibid.*, p. 71.

side, the state becomes a tool for the welfare of the people, but, on the other hand, the state becomes a tool of legitimacy for the elite class to deviate and escape its interests. Hence, the state becomes the scope of corrupt behavior, especially if the state is led by an authoritarian regime and the institutional control is not functioning.³¹

Third, based on the authentic interpretation, Article 79 paragraph (3) of Law no. 17 of 2014 is also not possible to be interpreted to include things outside the scope of government power (executive). In the explanation of Article 79 paragraph (3) of Law No. 17 of 2014, it is stated "the implementation of a law and/or government policy can be in the form of policy implemented by the President, the Vice President, the State Minister, the National Police, the Attorney General, or the Head of non-ministerial government agencies". Thus, there have been restrictions imposed by lawmakers on the scope of the object of inquiry right so that it only covers executive power. Of the three interpretations, both historically, systematically and authentically, there is a conclusion which is in accordance with the aspect of unity of the constitution, the aspect of practical coherence, and the aspect of appropriate working of the constitution. The concept can be elaborated with an explanation that as a state, the principle of the rule of law is strongly embedded in the government system in Indonesia. It implies that in carrying out any action, the state, including the government and other state institutions, must be based on law or must be responsible.³²

Law shall not be separated from the idea of justice. According to Hans Kelsen, separating the concept of law from the idea of justice is quite difficult because they are constantly mixed politically with regard to the ideological tendency to make law appear as justice. Thus, it can be concluded that the rules governing human behavior shall apply to everyone and everyone finds joy in it.³³ Further, practically, Indonesia adopted a presidential government system. Hence, the President is the main responsible person of the government (executive). If we look for references to describe the development of modern law, then we must refer to the development of community and its laws that occur in western world, not from our own community.³⁴

Concerning the legislative supervisory system over the government, the constitution has set the supervisory concept to supervise the executive power. The Constitution has regulated the main state organs in which the President holds the mandate of the 1945 Constitution and the Law in running the government. Along with the strong position of the President, the House of Representatives is present to provide pressure so that the concept of *checks and balances* can be applied by using the inquiry right owned by the executive. Constitutional Court Judge, Maria Farida, believes the establishment of KPK is a continuation of MPR Decree No. VIII/MPR/2001 concerning Recommendation of the Direction of Policy on Eradication and Prevention of Corruption, Collusion and Nepotism. In the consideration of letter b, it is stated "that government agencies handling criminal acts of corruption have not functioned effectively and efficiently in eradicating corruption."

From the description, it is clear that KPK is an institution that has different orientation from the Police and the Prosecutors' Office. Yet, according to Satjipto Rahardjo, the law has its own dynamism which is not always imagined and anticipated by the lawmaker itself; the law has become like that since it was "released" to the community so that the lawmaker is no longer the one playing the role, but the interaction between the law and the real conditions plays the role.³⁵

³¹Mansyur Semma, 2008, *Negara dan Korupsi*, Jakarta : Yayasan Obor Indonesia, p. 172.

³²Lihat Putusan Mahkamah Konstitusi No.36/PUU-XV/2017 Terhadap Pengujian Undang-Undang No. 17 Tahun 2014

Tentang PR, DPR, DPD, dan DPRD.

³³Jimly Asshiddiqie & M. Ali Safa'at, 2006, *Teori Hans Kelsen tentang Hukum*, Jakarta : Konstitusi Pers, p. 253.

³⁴Satjipto Rahardjo, 2006, *Membedah Hukum Progresif*, Jakarta : Kompas, p. 13.

³⁵*Ibid.*, p. 97.

The establishment of KPK, whose authority derives from the law, does not necessarily make it a mandate for the House of Representatives which is given strict supervision like the President and the State Ministries who are the main executors of the formation of the law. If we analogize every institution established by the law as part of the scope of inquiry right, then it will become a time bomb that will worsen the balance of the axis of power. The nature of Constitutional Court Decision which is binding on all parties, as the regulation being tested is the Law, makes the Constitutional Court unconsciously give an additional constitutional basis to DPR to summon any institution that is in conflict with the political orientation desired by DPR. This act is a denial of the concept designed by Parliament during the amendments to the 1945 Constitution in which it was agreed to implement a full presidential system and avoid mechanisms deemed to be failed in the new order.

Eventually, the core of *checks and balances* supervisory mechanism will emerge, namely what kind of supervision is appropriate for supervising auxiliary state organs whose main nature is not directly carrying out the main functions of the axis of power, such as legislative, executive, and judiciary. The main reason of using inquiry right is basically the efforts made to revise government policies in the politics of state administration. The use of inquiry right to institutions engaged in law enforcement is not an urgent matter considering that law enforcement that is intervened by political interests often causes the degradation of the spirit of corruption eradication. If we relate the supervision conducted by DPR through the inquiry right to the concrete case stated in the petition, then KPK is included in the realm of executives which stands independently in carrying out its duties and authorities. Although KPK is not responsible to the public and reports openly and periodically to the President of the Republic of Indonesia, the House of Representatives, and the Audit Board, KPK should not be the object of DPR's inquiry right. Besides, if we look at the previous Constitutional Court Decision, then Constitutional Court Decision No. 36/PUU-XV/2017 has the potential to conflict with the Constitutional Court Decision No. 012-016-019/PUU-IV/2006 concerning Judicial Review of Law No. 30 of 2002 concerning Commission for the Eradication of Criminal Acts of Corruption.³⁶

B. The implications of the Constitutional Court Decision No. 36/PUU-XV/2017 against Judicial Review of Law No. 17 of 2017 concerning MPR, DPR, DPD and DPRD in Relation to the Position of KPK

1. The Position of Corruption Eradication Commission (KPK)

Various views have emerged after the Constitutional Court rejected the petition and decided that the inquiry right owned by DPR over KPK is constitutional as it does not concern investigations and prosecutions which were the main duties of KPK as the state commission of the Republic of Indonesia in realizing the state's goal to eradicate corruption. In author's opinion, with the issuance of Constitutional Court Decision No. 36/PUU-XV/2017, the constitutionality of inquiry right as the right to investigate the implementation of the law and/or government policy is not in doubt because the Constitutional Court declares the inquiry right is constitutional as long as it does not concern judicial duties (investigations and prosecutions) of Corruption Eradication Commission.

However, Corruption Eradication Commission which is an *ad hoc* institution should maximize the coordination and supervision functions of the Police and the Prosecutors. This is in accordance with the function of *trigger mechanism* as mandated by the law. KPK will not monopolize the handling of corruption cases. The presence of KPK is expected to stimulate and increase the capacity of other law enforcement officials to jointly prevent and eradicate corruption. The success of KPK is also measured by its success as an institution that has a trigger mechanism

³⁶Muhammad Ali Rahman, "Penggunaan Hak Angket Dewan Perwakilan Rakyat Terhadap Komisi Pemberantasan Korupsi", *Jurnal Jurist Diction*, Vol. 1, No. 1, September 2018, p. 299

ction, not only from the number of cases handled each year.³⁷ Based on Law No. 30 of 2002 and Law No. 28 of 1999 concerning Good State Governance that is Free of Corruption, Collusion and Nepotism, KPK has the duties to:

- a. Coordinate with agencies authorized to eradicate criminal acts of corruption;
- b. Carry out supervision against agencies authorized to eradicate criminal acts of corruption;
- c. Conduct investigations and prosecutions on criminal acts of corruption;
- d. Take actions to prevent criminal acts of corruption and monitor the implementation of state administration.³⁸

As the Constitutional Court has included KPK to the realm of executives, then DPR has the right to ask for the accountability of KPK in carrying out its duties and authorities, even though KPK is an independent state institution. In its consideration, the Constitutional Court Judge states that KPK is independent in the sense of being free from other powers; DPR as the people's representative has the right to ask for the accountability of KPK in carrying out its duties and authorities.³⁹

The nature of Constitutional Court Decision which is *declarator constitutief* towards the testing of the law shows that the Constitutional Court Decision creates or negates a new legal condition or establishes law as a negative legislator so that it does not require an officer carrying out the Constitutional Court Decision.⁴⁰ Thus, if the government or other state institutions do not comply with the decision and apply the law that has been declared not to have binding legal force, then there will be a personal loss to compensate for losses through the political process in DPR which has been become a very important part in upholding justice mechanism in this country.

If this condition happens, it would not be in accordance with the independent meaning as an authentic characteristic contained in the law governing the establishment of Corruption Eradication Commission. Yet, theoretically, KPK still remains an independent institution that can be seen from its coordination and supervision functions as a logical consequence of the role of KPK as an independent and superbody institution and as a result of ineffective works done by the police and prosecutors in eradicating corruption in the early era of reform. In legal political manner, an inquiry right is basically driven by political interests to limit the power of the head of government who has the possibility of interpreting state agency policies differently. Thus, Corruption Eradication Commission becomes the subject of state institutions in the Constitution which can be disputed at any time through inquiry right owned by DPR.

2. Constitutional Court Decision Gives Limitation on the Objects of Inquiry Right

Inquiry right is a part of supervisory mechanism carried out by DPR. To discuss the supervisory role of DPR, the first thing to consider is the provisions contained in the explanation of the 1945 Constitution. In the explanation of the 1945 Constitution, it is stated that "DPR can always supervise the actions of the President, if the Council considers that the President has violated the state guidelines set by the 1945 Constitution."⁴¹ The phrase "can always supervise the actions of the President" indicates the supervisory function of DPR over the President as the organizer of government power, namely whether the state administration runs in accordance with the guideline set

³⁷Romli Atmasasmita, 2016, *Sisi Lain Akuntabilitas KPK dan Lembaga Pegiat Antikorupsi: Fakta dan Analisis*, Jakarta : Gramedia, p. 48.

³⁸Indonesia, Undang Undang Nomor 30 Tahun 2002 Tentang Komisi Tindak Pidana Korupsi Lembaran Negara Republik Indonesia (LNRI) Tahun 2004 Nomor 89 dan Tambahan Lembaran Negara (TLN) Nomor 4415. Jo Indonesia, Undang Undang Nomor 28 Tahun 1999 Tentang Penyelenggaraan Negara Yang Bersih dan Bebas Dari Korupsi, Kolusi dan Nepotisme Lembaran Negara Republik Indonesia (LNRI) Tahun 2004 Nomor 89 dan Tambahan Lembaran Negara (TLN) Nomor 4415.

³⁹Jorawati Simarmata, "Akibat Hukum Putusan Mahkamah Konstitusi Terhadap Rekomendasi Pansus Hak Angket DPR", *Jurnal Legislasi Indonesia*, Vol. 16, No. 1, Maret 2019, p. 123

⁴⁰Maruarar Siahaan, *Hukum Acara...*, Op.Cit, p. 214.

⁴¹Dahlan Thaib, 2004, *DPR Dalam Sistem Ketatanegaraan Indonesia*, Yogyakarta : Liberty, p. 54.

by the 1945 Constitution or by the MPR. Thus, in terms of supervisory function, the relationship between DPR and the President is unilateral because only DPR that has the right to supervise the President.⁴² However, in its decision, the Constitutional Court states that KPK was included into the realm of executive power even though KPK is not directly responsible to the President. The decision was taken by the Constitutional Court based on three basic aspects; one of which is because KPK conducts investigations and prosecutions in corruption, but its nature remains independent.⁴³

Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states:

“Other institutions whose functions are related to judicial powers shall be regulated by law”.

The phrase “shall be regulated by law” indicates that the law does not need to be specific, such as the law on the Prosecutors’ Office, the Police, etc. It means that the provisions regarding other institutions are sufficiently regulated by law. Thus, Corruption Eradication Commission established through law will certainly have a constitutional importance as an institution which was decided by Constitutional Court Decision to include to the scope of institutions that can be supervised by DPR.⁴⁴

If the reason of using DPR’s inquiry right over KPK is in the context of carrying out the principle of *checks and balances*, it is not appropriate to use inquiry right as the only form of supervision over KPK considering that DPR, in the framework of supervisory function, can hold a meeting with KPK at any time, especially in a Meeting Commissions in the form of hearings or when KPK submits an annual report to the DPR, the President and the Audit Board. With this form of supervision, KPK will be far from the impression of intervention or interference from DPR and does not harm the principle of *check and balance* considering that supervision is carried out by the legislative body to the executive. If supervision is carried out by using inquiry right, then there is a potential for intervention from DPR. Considering that the Inquiry Right has investigation aspect, DPR can summon various parties related to the case or issue to obtain complete information from various aspects and reviews. Besides, DPR can use *subpoena* right, namely the right to forcefully summon a party by asking the police to bring the party by force. The party then gives information in a public hearing so that the public can follow directly or get information from the news in the media.⁴⁵ It is difficult to imagine if the person who will be questioned is a person who is undergoing legal proceedings in KPK, whether as a witness or suspect/defendant, because it will then greatly interfere with the legal process, especially if there is no guarantee that the use of inquiry right will not be in contact with judicial domain. If it happens, the confidential information in law enforcement can be leaked to certain parties. This condition will endanger law enforcement and disrupt the performance of KPK as the front guard in eradicating corruption. The position of KPK as an independent state institution, as stated in Article 3 of Law No. 30 of 2002, is feared to loss its independent nature due to the power that can affect its duties and authorities. This condition will certainly tarnish the spirit of the establishment of this anti-racial institution as an institution responsible for eradicating corruption that cannot be intervened by any power.⁴⁶

Even though the Constitutional Court has issued Constitutional Court Decision No. 36/PUU-XV/2017 which limits the inquiry right to not enter the realm of judiciary, but no one can guarantee

⁴²*Ibid.*,

⁴³Mei Susanto, “Hak Angket DPR, KPK dan Pemberantasan Korupsi”, *Jurnal Integritas*, Vol. 4, No. 2, Desember 2016, p. 109.

⁴⁴Jimly Ashiddiqie, 2006, *Sengketa Kewenangan Konstitusional Lembaga Negara*, Jakarta : Konstitusi Pers, p. 194.

⁴⁵Patrialis Akbar, 2013, *Lembaga Negara Menurut Undang-Undang Dasar Republik Indonesia 1945*, Jakarta : Sinar Grafik, p. 63.

⁴⁶Indonesia, Undang Undang Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi, Lembaran Negara Republik Indonesia (LNRI) Tahun 2004 Nomor 89 dan Tambahan Lembaran Negara (TLN) Nomor 4415., Pasal 3

if the use of inquiry right will not enter the realm of judiciary considering that DPR is a political institution. Hence, all political interests are very likely to be inserted in the use of inquiry right against KPK, especially if someone being processed (investigated or prosecuted) by KPK is a member of DPR who has a strategic position in parliament. This condition will certainly become a threat for KPK as an independent law enforcement institution. Besides, this condition is also feared to disrupt the performance of KPK when KPK will investigate the involvement of DPR members in a corruption case. The disruption of the performance of KPK is reasonable because DPR can use its inquiry right. If there is a massive number of corruption cases involving DPR members, even though with an excuse that the inquiry right is only used to investigate the implementation of the law and/or policies outside the context of judicial duties (investigation and prosecution), but, psychologically, it will burden KPK and will lead to ineffective performance of KPK in eradicating corruption cases involving DPR members. Normatively, the inquiry right of DPR to KPK is in conflict with KPK Law which is *lex specialis* in nature and KIP Law.⁴⁷ Although there are still pros and cons, the Constitutional Court as a state institution given the authority by the constitution to examine the Law has made its decision which is final and binding. Therefore, as the state based on the rule of law, all parties must obey to the decision. Yet, to clarify the regulation of inquiry right, it is necessary to make a law on DPR's inquiry right which is separated from MD3 Law.⁴⁸

CONCLUSION

The consideration of the Constitutional Court in issuing Constitutional Court Decision No. 36/PUU-XV/2017 is based on the fact that the inquiry right held by DPR is constitutional as it does not relate to the authority of investigation and prosecution owned by KPK because KPK is a state institution that is included to the realm of executives. This issue has become something new in the Indonesian state administration because, since the reform era, the inquiry right only applied to the President as the head of government as well as the departmental or ministerial institutions that are directly responsible to the President. Ideally, state institutions that are not directly responsible to the President have a special supervisory mechanism. It is different from the state ministers who are directly responsible to the President so that they are included in the object of DPR's inquiry right. The Constitutional Court Decision is ambiguous and has the potential to conflict with the previous decision, namely Constitutional Court Decision No. 012-016-019/PUU-IV/2006.

Rejecting the petition for constitutionality test of inquiry right will give rise to a new oligarchy in this Republic. The issuance of the Constitutional Court Decision has shifted the position of KPK due to: 1) the influence of the strong pressure given by DPR to KPK even though the inquiry right cannot touch the authority of KPK in conducting Investigations and Prosecutions. However, there is an indication that the inquiry effort is basically not a legal effort, but rather a political effort which is widely practiced in countries adhering to a parliamentary system where the parliament tends to be more dominant than the executive; and 2) KPK is currently not a fully independent state institution because, constitutionally, it is the object of inquiry right, even though KPK has actually accounted its performance to the state through an audit conducted by BPK.

SUGGESTION

The suggestions proposed in this study are; 1) in deciding on a case, Constitutional Court Judges should use a stronger grammatical and systematic interpretation based on *original intense*; and 2) there needs to be a more thorough and complete evaluation of the scope of the inquiry object

⁴⁷ May Lim Charity, "Implikasi Hak Angket Dewan Perwakilan Rakyat Republik Indonesia Terhadap Komisi Penegakan Perilaku Korupsi", *Jurnal Legislasi Indonesia*, Vol. 14, No. 3, September 2017, p. 253

⁴⁸ Novianto M. Hantoro, "Urgensi Pembentukan Undang-Undang Hak Angket DPR RI", *Jurnal Negara Hukum*, Vol.8, No.2, November 2017, p. 193.

that can be used by DPR against state institutions that are not directly responsible to the President as the head of government and is stated in the revision of MD3 Law.

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