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The People's Representative Council's Right to Inquiry Against the Corruption Eradication Commission Institution in the Perspective of Constitutional Law in Indonesia

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ABSTRACT

This research discusses the House of Representatives' (DPR) Right to Inquiry against the Corruption Eradication Commission (KPK) in the context of constitutional law in Indonesia. The right to inquiry is one of the control instruments possessed by the DPR to monitor the performance of state institutions, including the Corruption Eradication Commission. However, the application of the right to inquiry against the Corruption Eradication Committee has given rise to a number of debates regarding its authority and limitations in the constitutional justice system. This research analyzes the constitutional and regulatory basis regarding the DPR's right to inquiry against the KPK, as well as its impact on the independence and effectiveness of the KPK in eradicating corruption. By considering a constitutional law perspective, this research also evaluates the political and legal implications of implementing the right to inquiry against the Corruption Eradication Commission in the context of the system of monitoring and eradicating corruption in Indonesia.

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INTRODUCTION

The history of the right to inquiry has gone through a long process, namely being regulated in four laws (the four laws are Law Number 6 of 1954 concerning Determination of the DPR's Right to Inquiry; Law Number 22 of 2003 concerning the Composition and Position of the People's Consultative Assembly , the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council; Law Number 27 of 2009 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council; and Law Number 17

of 2014 concerning People's Consultative Assembly, People's Representative Council, Regional Representative Council, and Regional People's Representative Council).

The long process of revising the regulations on the DPR's right to inquiry in several of the laws mentioned above does not guarantee that the regulations on the right to inquiry are regulated clearly and comprehensively. In fact, the right to inquiry is an instrument of supervision and a consequence of granting strong powers to the DPR, so the rules must be clear. The consequence of this clear regulation is that strengthening the DPR while strengthening the construction of checks and balances can be realized[1].

The confirmation of the supervisory authority given to the DPR in the 1945 Constitution of the Republic of Indonesia is primarily aimed at balancing the power of the DPR with the power of the President.[2]. So executive power that is too large (usually called executive heavy) without the "checks and balances" adopted in the 1945 Constitution before the amendment is no longer applied[3]. This is also in line with the confirmation of our country's institutional format which places Indonesia as a presidential country.[4]

In the Century Bank case, the DPR's investigation was aimed at uncovering allegations that criminal acts had occurred regarding the short-term financing facility (FPJP) and temporary capital participation (PMS) policies. 4 amounting to IDR 6.7 trillion at Bank Century[5]. This government policy was a decision of the Financial System Stability Committee (KSSK) which at that time served as Minister of Finance Sri Mulyani and Governor of Bank Indonesia Boediono[6].

In handling the Banck Century case, it was the KSSK that designated Bank Century as a failed bank which was suspected to have a systemic impact and must be seen as a policy which at that time was made with all the considerations in mind. The KSSK decision is a state government policy. Based on the presidential system, the Bank Century special inquiry committee should not only examine the policies of the president's assistants, or in this case the policies of the Minister of Finance Sri Mulyani as chairman of the KSSK and the Governor of Bank Indonesia Boediono

[1] Nelman Kusuma, Parliamentary System in the Constitutional Perspective in Indonesia, Genta Publishing, Yogayakarta, 2014, p. 134.
[2]Bagir Manan, Dissecting the 1945 Constitution, UB Press, Malang, 2012, p. 83.
[3]Ni'matul Huda, Indonesian Constitutional Law, PT. Raja Grafindo Persada, Jakarta, 2016, p.106.
[4] Deny Indrayana, Amendment to the 1945 Constitution: Between Myth and Demolition, Mizan, Bandung, 2007, p. 276.
[5]Accessed from http://cdn.assets.print.kompas.com/baca/polhuk/politik/2015/06/26/Bank-Century%2c- Banyak-Pertanyaan-Belum-Terbesar dated 10 December 2017.
[6]Adnan Buyung Nasution, Constitutional Democracy, PT Kompas Media Nusantara, Jakarta, 2010, p. 173.

as deputy chairman of the KSSK. However, it also examines government policies.[7]In the end, this investigation drained the energy of DPR members and absorbed a lot of the state budget.

Normatively, the DPR's right to inquiry is regulated in Article 79 paragraph (3) of the MD3 Law which reads: "The right to inquiry as referred to in paragraph (1) letter b is the DPR's right to conduct an investigation into the implementation of a relevant law and/or Government policy. with matters that are important, strategic, and have a broad impact on the life of society and the nationand state which is alleged to be in conflict with statutory regulations." The meaning of this article in the explanation of the article states that the right to inquiry can be imposed on the implementation of a law and/or government policy, which can be a policy implemented by the President, Vice President, state minister, TNI Commander, National Police Chief, Attorney General, or head of an institution. non-ministerial government. This article creates ambiguity because the DPR, through the Chairman of the Special Committee for Inquiry Rights of the Corruption Eradication Commission (KPK Inquiry Rights Committee) Agun Gunandjar Sudarsa, said that the DPR has the authority to carry out its supervisory function through the right to inquiry against the Corruption Eradication Committee because the KPK is part of the implementation of the law which can supervised by the DPR and subjected to a questionnaire[8].

Constitutional Law observer, Satya Arinanto, also said that this article does provide a gap for the DPR to exercise its rights not only against the government as an executive institution, but also all state institutions implementing laws. This contradicts the explanation in Article 79 paragraph (3) of the MD3 Law itself, even though it is full of multiple interpretations. This is also reinforced by looking at the custom that occurs in the Indonesian state administration that the right to inquiry is always only imposed on the government (executive) and not on other state institutions.

The phenomenon of the regulation and practice of the right to inquiry is very interesting to study again to see the actual position of the right to inquiry against the Corruption Eradication Committee in the view of constitutional law in Indonesia.

[7]Muhammad Addi Fauzan, The Urgency of Reorganizing the Questionnaire Rights of the House of Representatives (DPR) in the Post-Reformation Indonesian Constitutional System, Thesis, Legal Studies Program, Faculty of Law, Islamic University of Indonesia, Yogyakarta, 2018.
[8]Muhammad Adi Fauzani, Op., cit

Formulation of the problem

Based on the background description above, the problem in this paper can be formulated as follows:

How is the House of Representatives' right to inquiry against the Corruption Eradication Commission regulated in Indonesia's constitutional system?

RESEARCH METHODS

JeThe nature of this research islibrary (library research). Library research is research carried out by examining library materials or secondary data. This research includes library research because the data used is mostly secondary data in the form of legal documents. The approach used in this research is philosophical. The philosophical approach in legal research is to examine law from an ideal perspective. This research uses a philosophical approach because the law studied is at an ideal level. The data source used in this research is secondary data. Secondary data is data obtained indirectly or provided by other parties. Secondary data is used as the main reference which is available in written form in books, scientific journals or other written sources. Data collection techniques are carried out through conventional and online searches. Conventional literature searching is the activity of searching for library sources in data storage places. Meanwhile, online review is the activity of searching for library sources in cyberspace via the internet network. Conventional literature searches are carried out by searching for library materials in libraries, purchasing books, journals and attending scientific activities (seminars). Meanwhile, online searching is done by searching on the internet. The data analysis method used is qualitative. Qualitative data analysis is the process of organizing and sorting data into patterns, categories and basic units of description so that themes can be found which are presented in narrative form. This research uses qualitative data analysis because the data will be presented in a narrative-descriptive manner, not in numerical or numerical form.

DISCUSSION

Regulation of the People's Representative Council (DPR)'s right to inquiry against the Corruption Eradication Committee in the Indonesian constitutional system

In accordance with the concept of trias politica in the 1945 Constitution of the Republic of Indonesia, it is clearly illustrated that in the context of legislative, budget and supervisory functions, the main institution is the DPR as a representative institution of the people, so that in order to exercise its authority it m 67 based on the provisions as regulated in the 1945 Constitution of the Republic of Indonesia and in Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council (UU MD3). To carry out the functions of the DPR, it is accompanied by several rights described in Article 20A paragraph (2) of the 1945 Constitution which explains that "In carrying out its functions, apart from the rights regulated in other articles of this Constitution, the DPR has the right of interpellation, the right of inquiry, and the right to express opinions." This means that the DPR in its function of exercising the right to inquiry has a very extraordinary right in carrying out its function to investigate government actions that are considered deviant orimplementationits policies are outside the provisions of statutory regulations.

1. Reasons for the emergence of the right to inquiry

Article 79 paragraph (3) of the MD3 Law emphasizes that the right to inquiry is the DPR's right to conduct investigations into the implementation of laws and/or government policies. Thus, the right to inquiry is imposed on government policy or the implementation of laws by the government. This Law limits this by adding a provision that the policy or implementation of the Law that is carried out has a connection or connection to important, strategic matters and has a broad impact on people's lives. Then there is the possibility of violations of statutory regulations. The reasons that make it possible to hold a right of inquiry are regarding policy requirements or the implementation of legislation relating to important, strategic and broad impact matters. There is no limit to how important the policy is, regarding the benchmarks for whether or not a policy is subject to the Right of Inquiry.

2. Mechanism for Forming a Special Questionnaire Committee

The formation of a special committee for questionnaires is regulated in Article 1 99 of Law Number 17 of 2014 concerning MD3, which states that:

> "The application for the Right to Inquiry must be proposed by at least twenty-five members and more than one faction accompanied by documents containing at least the policy material and/or implementation of the law to be investigated and the reasons for the investigation. The proposal for the right to inquiry must also receive approval from the plenary session of the House of Representatives which is attended by more than ½ of the members of the House of Representatives and the decision is taken with the approval of more than ½ of the members of the House of Representatives present."

According to Article 201 paragraph (1) of the MD3 Law, the special committee on inquiry rights must consist of all factions in the DPR. In the issue discussed, the DPR Special Committee on Inquiry Rights against the Corruption Eradication Committee was only joined by six out of a total of ten factions. In fact, the latest developments only left four factions because two factions, namely Golkar and Nasdem, withdrew. So the Special Committee for Inquiry Rights did not comply with the procedures stated in Article 201 of the MD3 Law, because the DPR's application for Inquiry Rights against the Corruption Eradication Committee did not receive approval from all factions in the DPR. To improve constitutional practices in the future, DPR members who will use the right of inquiry need to change the methods used so far. One way is to elaborate in depth on the meaning of "government policies that are important and strategic and have a broad impact on social and state life which are alleged to be in conflict with statutory regulations". If this can be done, the efforts of every person proposing the right to inquiry will increasingly gain a place in the eyes of the public[9].

The meaning of investigation referred to by the right to inquiry cannot be completely equated with investigation in the Criminal Procedure Code. Regarding forced actions such as arrests, ordering to stop, taking fingerprints, photographing people and bringing and presenting people to investigators, of course the DPR does not have the authority to do so. When it is suspected that there has been a violation of the law and/or abuse of authority, then the right to inquiry can be carried out, but the findings are not for taking legal action (pro justitia). This is a

[9] Subardjo, (2016), Use of the Right to Inquiry by the DPR RI in Supervising Government Policy, Novelty Law Journal, 7(1): 71-82 DOI: http://dx.doi.org/10.26555/novelty.v7i3.a3935.7 (1), p.79

constitutional action, such as holding the president and/or vice president accountable (impeachment), or to formulate policies (revise or form a law). If a violation of the law is found (suspected criminal act), it can be forwarded to law enforcement agencies. Only investigating officials, whether KPK, Police, Prosecutor's Office or PPNS, legally carry out investigations (opsporing) and investigations (nasporing) to prove that a criminal act has occurred. Legally, if they contain the truth, however, all the DPR's findings cannot be used as evidence that a criminal act has occurred[10].

However, in carrying out the right to inquiry, there are several rights and authorities that can be exercised by the DPR in conducting investigations, namely:

a. Request information from the government, legal entities, organizations, professional witnesses, experts and/or related parties 1. Witnesses can be Indonesian citizens or foreign citizens in Indonesia, 2. Obtain information from witnesses or experts who are abroad through questions in writing to the relevant minister who helps fulfill these questions with Indonesian representatives abroad, 3. When summoning the DPR, you can do so in writing.
b. Administer an oath to witnesses or experts over 16 years of age
c. Prosecuting negligent witnesses or experts, through the District Court Prosecutor.
d. Forcing witnesses or experts to come to respond to summons with the assistance of the Police or Prosecutor's Office.
e. Detain disobedient expert witnesses through the chairman of the District Court.
f. Checking letters kept by ministry employees.
g. Confiscate and/or copy letters unless they contain state secrets through the District Court.

Thus, the rights and authority possessed by the DPR are the right to evaluate the implementation of the duties of the government or state administrators, in this case the executive power, and not to enforce the law.

Provisions regarding what matters are the object of investigation can be found in Article 79 paragraph (3) of Law Number 17 of 2014, namely:

1. In connection with the implementation of laws and/or government policies,
2. Relating to important, strategic matters and having a broad impact on the lives of society, nation and state, 3. Allegedly contrary to statutory regulations.

[10] Naswar, N. (2012), The Right to Inquiry in the Indonesian Constitutional Constellation, Constitution Journal, 1(1): 1-13, p.7 Jurnal Kertha Patrika, Vol. 41, no. April 1, 2019, p. 27-39

The object of the questionnaire carried out by the DPR is the government's policies or implementation of laws which fall within the realm of executive power. This provision also basically stipulates that the use of the DPR's right to inquiry is basically an institutional right of the DPR granted by law.

The explanation of Article 79 paragraph (3) of the MD3 Law has obscured the essence of the right to inquiry as a form of relationship between state institutions that takes place at the Indonesian constitutional level.

Substantively, the right to inquiry is aimed at implementing laws and/or government policies, which if we look closely is part of the implementation of executive power carried out by the President, Vice President, Indonesian Police, Indonesian National Army, Attorney General's Office, and/or non-KPK institutions based on pretexts. that the Corruption Eradication Commission is not based on statutory regulations, therefore it can be questioned. The exercise of the DPR's right to inquiry against the Corruption Eradication Commission could also give rise to constitutional confusion. The formulation of the presence of the Corruption Eradication Commission in the Indonesian constitutional system is in accordance with Article 3 of the Corruption Eradication Commission Law which confirms that "The Corruption Eradication Commission is a state institution which in carrying out its duties and authority is independent and free from any power". In this provision, what is meant by "any power" is power that can influence the duties and authority of the Corruption Eradication Commission or individual commissions from the executive, judiciary, legislative, other parties related to criminal cases of corruption, or circumstances and situations or even with any reason[11].

Attempts to see the Corruption Eradication Commission as an executive institution in carrying out its functions and authority are wrong without seeing that in the development of state administration the trias politica doctrine developed rapidly and the three branches of power, namely executive, legislative and judicial power, are classic teachings, resulting in the emergence of institutions or commissions. is a form of constitutional development, in this case the KPK can be said to be a branch of power concept outside the classic branch of power doctrine, while the presence of a KPK institution is a form of response to corruption which is increasing day by day.

[11] Explanation of Article 3 of the Law. Corruption Eradication Commission. Kertha Patrika Journal, Vol. 41, no. April 1, 2019, p. 27-39

Seriousness in responding to corruption is indicated by the presence of several laws and regulations, including:

a. Law Number 28 of 1998 concerning State Administrators who are Clean and Free from Corruption, Collusion and Nepotism
b. Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes
c. Government Regulation Number 71 of 2000 concerning Procedures for Implementing Community Participation and Giving Awards in the Prevention and Eradication of Corruption Crimes
d. Law Number 15 in conjunction with Law Number 25 of 2003 concerning the Crime of Money Laundering
e. Law Number 30 of 2002 concerning the Corruption Eradication Commission.

Based on the several regulations above, it is clearly illustrated that efforts to eradicate criminal acts of corruption must be carried out by institutions that are independent and free from any power as outlined in the provisions of Article 3 of the Corruption Eradication Committee Law. So the DPR's right to inquiry against the Corruption Eradication Committee can backfire in the context of eradicating corruption and can become an obstacle to eradicating criminal acts of corruption, because the DPR is a representative institution consisting of several political party groups, each of which brings interests, and these interests could even be brought to the Corruption Eradication Commission. namely the interests of inquiry, investigation and prosecution. Ultimately, the nature of the KPK's independence can be undermined by the entry of legislative power, in this case the DPR.

3. Constitutional Court Decision Constitutional Court (MK)

In its decision on cases Numbers 36 and 37 / PUU- not yet optimal in eradicating criminal acts of corruption. According to the Constitutional Court judges, the legal construction is that the duties of these three institutions fall within the realm of executive institutions that carry out executive functions. Therefore, the Corruption Eradication Committee (KPK) can be used as the object of the DPR's inquiry rights in its supervisory function[12]not in the realm of the judiciary, because it is not a judicial body that has the authority to examine, try and decide cases.

[12] Novianti, (2018), Implications of the Constitutional Court's Decision on the Use of the DPR's Right to Inquiry Against the Corruption Eradication Committee, Short Info Journal, X (04), p. 2.

The KPK is also not a legislative body, because it is not an institution that makes laws. Constitutional Court Decision Number 36/PUU-XV/2017, precisely in early February 2018, which granted the DPR's lawsuit in the case of reviewing the constitutionality of Article 79 paragraph (3) of Law Number 17 of 2014 concerning MD3 has added to the long debate regarding the institutionalization of the Corruption Eradication Commission itself. As a court tasked with overseeing and acting as the final interpreter of the constitution (the Guardian and the Interpreter of the Constitution), the decision of the Constitutional Court as stipulated in the 1945 Constitution of the Republic of Indonesia Article 24C paragraph (1) is final and binding so that even though there are pros and cons from various parties in their decisions related to the object of the DPR's right to inquiry which has an impact on the institutional position of the Corruption Eradication Commission. With this Constitutional Court decision, the Corruption Eradication Commission is an institution in the executive realm, together with the Police and Prosecutor's Office, so that the Corruption Eradication Committee is part of the executive tasked with carrying out inquiries, investigations and prosecutions.

Article 6 of the Corruption Eradication Commission Law gives the Corruption Eradication Committee the right to coordinate and supervise agencies authorized to eradicate criminal acts of corruption. So the Corruption Eradication Committee (KPK) is not part of the executive, which means that the Police and Prosecutor's Office have the same functions and authority as the Corruption Eradication Committee (KPK). In a presidential government system as per Montesquieu's teachings, namely trias pilitica or separation of powers, the principle of democracy must be a separation of powers consisting of executive, legislative and judiciary to avoid absolute or centralized power.[13].

Therefore, checks and balances over the presence of any state institution must still be monitored in order to achieve balance in the running of a government. This is related to the ruling of the Constitutional Court Number 36/PUU-XV/2017 placing the Corruption Eradication Commission as the executive and can be questioned by the DPR. Then the Constitutional Court does not place restrictions on what can be the object of an inquiry against the Corruption Eradication Committee, so this Constitutional Court decision has legal implications. towards the KPK as an independent institution that is free from the influence of any power.

[13] Charity, ML (2017), Op.Cit, p.246. Kertha Patrika Journal, Vol. 41, no. April 1, 2019, p. 27-39

Theoretically, the supervisory authority possessed by the DPR can be detailed in at least six things, which include the following:

a. Supervision of policy determination (control of policy making)
b. Supervision of policy implementation (control of policy executing)
c. Supervision of state budgeting and expenditure (control of budgeting)
d. Supervision of the implementation of the state budget and expenditure (control of budget implementation)
e. Implementation of government performance (control of government performances)
f. Supervision of the appointment of public officials (control of political appointment of public officials).

Based on the above supervisory authority possessed by the DPR, the Constitutional Court's decision should place limits on questionnaires, because this questionnaire is part of the supervision possessed by the DPR. Because the DPR's questionnaire is the Corruption Eradication Commission, where the task and function of the Corruption Eradication Commission is to eradicate criminal acts of corruption, so if there are no restrictions, this questionnaire could expand into the realm of KPK law enforcement to eradicate criminal acts of corruption. The DPR's right to inquiry is the right to investigate matters related to the government and/or state administrators, not law enforcement.

The absence of restrictions on the DPR's right to inquiry against the Corruption Eradication Commission through the Constitutional Court decision Number 36/PUU-XV/2017 can and may have implications for law enforcement carried out by the Corruption Eradication Commission. The KPK is a state institution which in carrying out its duties and authority is independent and free from the influence of any power (Article 3 of Law Number 30 of 2002). The aim of establishing the Corruption Eradication Commission was none other than to increase the efficiency and effectiveness of efforts to eradicate criminal acts of corruption[14].

In making its decision, the Constitutional Court should have focused on the KPK's position and function as an institution that remains independent so that it can be a strength for the Corruption Eradication Commission in carrying out its duties and authority to eradicate criminal

[14] Sugiarto, T (2013), The Role of the Corruption Eradication Commission (KPK) in Eradicating Corruption Crimes in Indonesia, Jurnal Cakrawala Hukum, 18(2): 188 - 196, p. 188.

acts of corruption. Obstacles in handling criminal acts of corruption are due to interference from external parties, for example the executive, judiciary, or legislative[15].

However, the position of the Corruption Eradication Committee (KPK) which is in the executive domain and has been designated as the subject and object of the right to inquiry as part of the implementation of the DPR's supervisory function based on Constitutional Court decision Number 36/PUU-XV/2017 does not strengthen its institutional legal basis and characteristics as an independent state institution. Furthermore, this not only has implications for institutions, but also for their authority, accountability and integrity. It needs to be understood that the independence of a strong state institution, without strong authority, will not make the Corruption Eradication Committee (KPK) effective in carrying out its duties. Therefore, the decision of the Constitutional Court Number 36/PUU-XV/2017 has implications for the position of the Corruption Eradication Committee as a state institution which in carrying out its duties and authority is independent and free from the influence of any power, in accordance with Article 3 of the Corruption Eradication Commission Law.

CONCLUSION

Based on the discussion in the previous chapter, several conclusions can be drawn:

The regulation of the House of Representatives' right to inquiry in the post-reform Indonesian constitutional system has been regulated in four laws and one implementing regulation, namely House of Representatives Regulation Number 1 of 2014 concerning Rules of Procedure. The differences in regulations are very visible in Law Number 6 of 1954 when compared with other laws. This is because Law Number 6 of 1954 was formed on the basis of the 1950 UUDS which adheres to a parliamentary system. Law Number 22 of 2003 was tested at the Constitutional Court and resulted in Constitutional Court Decision No. 014/PUU-I/2003 which states that the "hostage taking" arrangement which is an instrument of the right to inquiry to carry out the DPR's supervisory function is constitutional. Regulatory dualism occurred when Law Number 27 of 2009 was established which resulted in the annulment of Law Number 6 of 1954 through Constitutional Court Decision No. 8/PUUVIII/ 2010. Law Number 17 of 2014 was tested at the Constitutional Court because the DPR rolled out the right of inquiry to the Corruption Eradication Committee

[15] Nugroho, H. (2013), Effectiveness of Coordination and Supervision Functions in Investigating Corruption Crimes by the Corruption Eradication Commission, Journal of Legal Dynamics, 13 (3): 392-401

which resulted in Constitutional Court Decision No. 36/PUU-XV/2017. Constitutional Court Decision No. 36/PUU-XV/2017 states that the KPK's right to inquiry is constitutional. House of Representatives Regulation Number 1 of 2014 concerning Rules of Procedure does not further regulate the provisions with multiple interpretations in Law Number 17/2014 and does not regulate additional provisions at all, in fact they tend to be the same as Law Number 17 of 2014. So it has been misinterpreted and misused by the DPR in the case of the KPK's right to inquiry.

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