

## CHAPTER TWO

### LITERATURE REVIEW

#### A. The House of Representatives (DPR)

The House of Representatives (DPR) is a state institution that runs a state government system as legislative organ. the DPR has its own duties and powers which are aimed to ensure that the implementation does not overlap with other state institutions. Based on Article 1 Paragraph 1 of Law Number 2 of 2018 the House of Representatives or the DPR is the House of Representatives as referred to in the 1945 Constitution of the State of the Republic of Indonesia.

Constitutionally, DPR has some inherent rights. In the provisions of the 1945 Constitution of the State of the Republic of Indonesia the right of the House of Representatives as mentioned in Article 20A Paragraph (2) of the 1945 Constitution, the amendment results are as follows: To carry out its functions the DPR, apart from the rights regulated elsewhere in this Constitution, has the rights of interpellation, investigation right, and expressing opinions.<sup>13</sup>

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<sup>13</sup>Indra Noling, 2011, Pasal 20A ayat (2). *Undang-Undang Dasar Republik Indonesia Tahun 1945*, Pustaka Tanah Air, p. 27.

## **1. The Functions of the House of Representatives**

The stipulation of the function of the House of Representatives is written in the Article 20A paragraph 1 of 1945 Constitution. It explains that the House of Representatives has the functions of legislation, budget functions and supervisory functions. The meaning of these three functions are:

- a. The function of legislation is the function of formulating the Laws discussed with the President to obtain mutual consent. The Bill may come from the DPR, President, or DPD;
- b. The function of the budget is the function to discuss and give approval or not to give approval to the draft law on the state budget proposed by the President; and
- c. The function of supervision is the function of supervising the implementation of the 1945 Constitution and the laws and regulations of its implementation.<sup>14</sup>

## **2. The Duties and the Authority of the House of Representatives**

In performing those functions, it should be referring to Article 71 Law Number 2 of 2018 on the MPR, DPR, DPD that DPRD, DPR that has duties and authority namely:

- a. Forming legislation discussed with the President for approval together;

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<sup>14</sup>Bagir Manan, 2006. *Konvensi Ketatanegaraan*. Yogyakarta: FH UII PRESS. p. 11

- b. Approving or not approving the government regulation in lieu of law submitted by the President to become law;
- c. Discuss the Bill submitted by the President or Parliament relating to decentralization, central and local relations, the establishment and expansion as well as the merging of regions, management of natural resources and the other economic resources, and financial balance between central and local, to include DPD before taken mutual agreement between the House of Representatives and the President;
- d. Taking into consideration the DPD on the Bill on the state budget and the Bill relating to taxation, education, and religion;
- e. Discuss with the President by taking into consideration the DPD and approve the Bill on the state budget proposed by the President;
- f. Discuss and follow up on the results delivered by DPD supervision over the implementation of the law on regional autonomy, the establishment, expansion and merging of regions, central and local relations, management of natural resources and other economic resources, the implementation of the state budget, taxes, education, and religion;
- g. Give approval for certain international agreements, arising from a broad and fundamental to the lives of people in relation to the financial burden of the state and or require modification or creation of laws;

- h. Give consideration to the President of the amnesty and abolition;
- i. Give consideration to the President in terms of lifting the ambassador and receive placement ambassadors of other countries;
- j. Give consideration to the President in terms of lifting the ambassador and receive placement ambassadors of other countries;
- k. Choose BPK members by taking into consideration of the DPD;
- l. Give approval to the President on the appointment and dismissal of members of the Judicial Commission;
- m. Approving nominees proposed Judicial Commission to set as justices by the President; and
- n. Choose three (3) constitutional judges and submit it to the President to be unveiled by the President's decision.<sup>15</sup>

### **3. The Rights and Obligations of the House of Representatives**

In the 1945 Constitution Article 20A Paragraph (2) mentioned in performing its functions, other than the rights set forth in other articles of this Constitution, the House of Representatives has the right of interpellation, right of investigation and right of opinion. subsequent to Paragraph (3) added in addition to the rights set forth in other articles of this Constitution, every member of the House of Representatives shall have the right to ask questions, convey suggestions and opinions, as well

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<sup>15</sup> Yoseph Indrajaya. 2011. *Profil Lembaga Negara Rumpun Legislatif*. Jakarta. p. 45-46.

as the right of immunity. For the elucidation of the right of DPR in paragraph 2 are as follows:

a. Right of Interpellation

Interpellation Right is the right of the House of Representatives to request information to the government on important government policies and strategic and broad impact on the life of society, nation and state. Implementation of interpellation rights may be made if the proposed implementation is submitted by at least 25 (twenty-five) members of the House of Representatives and more than 1 (one) faction.

The proposal is a right of interpellation of the DPR if it is approved by a plenary session of the House of Representatives attended by more than  $\frac{1}{2}$  (one half) of the total members of the DPR and the decision is taken with the approval of more than  $\frac{1}{2}$  (half) of the number of DPR members present.

b. The Investigation Right

The Investigation Right is the right of the House of Representatives to investigate the implementation of a law and or government policy related to the important, strategic and broad impact on the life of the community, nation and state allegedly contrary to the laws and regulations.

The Investigation Right is proposed by at least 25 (twenty-five) members of DPR and more than 1 (one) faction. Proposal of the right of investigation shall be accompanied by documents containing at least the following: the policy materials and or the implementation of the law to be investigated, and the reasons for the investigation. The Proposed Rights of Investigation shall be the right of the House of Representatives to obtain approval from the plenary session of the House of Representatives attended by more than ½ (half) of the total members of the House of Representatives and the decision shall be taken with the approval of more than ½ (half) of the number of DPR members present.<sup>16</sup>

c. Right of Express Opinion

The right to express opinion is the right of the House of Representatives as an institution to express an opinion on government policy or concerning extraordinary events occurring in the country or internationally accompanied by its completion recommendation or as a follow-up to the implementation of Right of Interpellation and Rights of Information the allegation that the President and or The President committed a law violation in the form of respect for the state, corruption, bribery, other serious crimes or disgraceful acts or no longer qualify as President and or Vice President.

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<sup>16</sup>*Ibid*, p. 76-77.

The right to express an opinion is proposed by at least 25 (twenty-five) members of the House of Representatives. The nomination of the right to express the opinion referred to is accompanied by a document containing at least:

- 1) The materials and reasons for the submission of a statement of opinion;
- 2) The material resulted in the exercise of the right of interpellation or right of investigation; and
- 3) The material and legal evidence of alleged action as referred to in Article 79 paragraph (4) Point C of Law Number 2 of 2018, or material and legal evidence for the allegation of non-compliance with the requirements as President and or Vice President.

The proposed right of opinion shall be the right to express the opinion of the DPR if approved by a plenary session of the DPR attended by at least  $\frac{3}{4}$  (three quarters) of the total members of the House of Representatives and a decision shall be made with the consent of at least three (3) quarters of the number of DPR members present.

Each member of the House of Representatives also has several rights that are contained in the Law, among others:

a) The Right to Propose the Bill

This right is intended to encourage, stimulate the creativity, spirit and quality of DPR members in addressing and channeling and following up the aspirations of the people it represents in the form of proposals for the Bill.

b) The Right to Propose Questions

The right of members of the House of Representatives to propose the questions both oral and written to the government relates to the duties and authorities of the DPR.

c) The Right to Propose Idea and Opinion

The Right of members of the House of Representatives to propose their ideas and opinions freely both to the government and to the legislative itself so there is a guarantee of independence in accordance with the call of conscience and credibility. Therefore, every member of the House of Representatives cannot be directed by anyone in the decision-making process. However, the procedures for submitting such proposals and opinions shall remain concerned with etiquette, ethics, morals, courtesy and decency as representatives of the people.



d) The Right to Choose and to be Chosen

The right to vote is the right of members of the House of Representatives to use their votes in an election activity. The right to vote is the right of members of the House of Representatives to run for election.

e) The Right to Self-defense

The Right of members of the House of Representatives to defend itself against any allegations directed against him in court.

f) The Right of Immunity

The Right of Immunity for members of the House of Representatives to be unable to be prosecuted because of statements and opinions submitted in Parliamentary meetings with the government and other DPR meetings in accordance with the laws and regulations.

g) The Right of Protocol

The Right of members of the House of Representatives to obtain respect in respect of their positions in official occasions or official events or in the performance of their duties.

h) Financial and Administrative Rights

The Right of members of the House of Representatives to earn salary, honorarium, and other allowances under the applicable provisions.

Outside of the rights of members of legislative, there are also some Obligations of members of the House of Representatives as follows:

- a) Practicing Pancasila;
- b) Implement the 1945 Constitution and comply with all laws and regulations;
- c) Implementing democratic life in government administration;
- d) Maintain and maintain the national harmony and the unity of the unitary state of the Republic of Indonesia;
- e) Pay attention to efforts to improve people's welfare;
- f) Absorb, collect, accommodate, and follow up on community aspirations;
- g) Prefer state interests above personal, group and group interests;
- h) Giving morally and politically accountable to voters and electoral districts;
- i) Obey the code of ethics and the rules of the House of Representatives; and
- j) Maintain ethics and norms in working relationships with relevant institutions.<sup>17</sup>

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<sup>17</sup>See [www.dpr.go.id](http://www.dpr.go.id), 2016, <http://www.dpr.go.id/id/tentang-dpr/tata-tertib/bab-10>. accessed on 30 December 2017 at 02.00

## B. Investigation Right

Black Law Dictionary defines, the Investigation Right as: "An examination of witnesses (take down a writing) by or before authorized judge for the purpose of gathering testimony to be used in trial".<sup>18</sup> Based on the definition of Investigation Right in the Black Law Dictionary, it can be interpreted as an investigation to the witness (in writing) either after or before the judges give decision a judge with the purpose of collecting testimony for using in court.<sup>19</sup> The Investigation Right of legislative body on government activities is commonly associated with the Investigation in criminal term. Although the Investigation Right comes from a foreign language (French: *anquette*) but has been accepted as a term in the Indonesian Constitution.

The use of the term investigation may lead to misunderstandings. The term investigation is the initial preliminary process in revealing allegations of criminal acts, as the translation of *opsporing* (Dutch). Practically, there has been an uncertainty of implementation of the Investigation (Criminal Term) as the Investigation Right. As an Investigation Right, an investigation should be conducted in accordance

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<sup>18</sup>Brian A Garner, 2009, *Black Law Dictionary, Ninth Edition*, West Group, p. 610.

<sup>19</sup>Departemen Pendidikan Nasional, 2005, *Kamus Besar Bahasa Indonesia*, ed.4 (Jakarta: Gramedia Pustaka Umum), p. 69.

with certain procedures as regulated by the law. The Investigation Right can be used for a fact finding or to formulate a policy.<sup>20</sup>

The definition on the Investigation Right is regulated in definition in Article 20A Paragraph (2) of the Amendment of the 1945 Constitution as follows: In performing its functions, beside the regulated another article of this Constitution, the House of Representatives shall have the right of interpellation, Investigation Right, and right of opinion.<sup>21</sup>

Furthermore, the definition of the Investigation Right explicitly can be seen in Article 79 Paragraph 3 of Law No. 2 of 2018 on the People's Consultative Assembly, the House of Representatives, Regional Representatives Council and Regional House of Representatives, which states as follows: "The Investigation Right is the right of the House of Representatives to investigate important and strategic government policies and to has wide impact on the life of the society and the state which is against Constitution."<sup>22</sup>

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<sup>20</sup>Bagir Manan, 2005, *DPR, DPD, dan MPR dalam UUD 1945 Baru*, FH UII Press, Cet I, II, dan III Yogyakarta, Mei, p. 42.

<sup>21</sup>Indra Nolind, 2011, Pasal 20A ayat (1) dan ayat (2). *Undang-Undang Dasar Republik Indonesia Tahun 1945*, Pustaka Tanah Air, p. 27.

<sup>22</sup>Yopy Perdana Kusuma, 2017, "*Propaganda Hak Angket DPR Terhadap KPK (Analisis Propaganda dan Komunikasi Politik)*" *Jurnal Lontar* Vol 5 Number 1 January-June 2017, Tangerang, p. 42