

CHAPTER TWO

LITERATURE REVIEW

1. The House of Representatives

The origin of the House of Representatives is the power to make a laws. The power of the House of Representatives in formulating the law is inseparable from the classical doctrine of separation of powers theory or better known in Indonesia as the theory of trias politica.¹ Trias politica theory or separation of power theory in indonesia are divided into 3, namely the executive power as an institution that runs the law, the legislative power that function as legislative institutions, and judicial power as an institution of supervision.

Through out the New Order government there has never been a law making from the House of Representatives. All initiatives come from the Executive Body, the House of Representatives only has the function to legalize the Act. The most prominent role of the House of Representatives in 1999- 2004 was the function of supervision of the executive while the role in the legislative and budget functions had not been prominent.²

Article 19 paragraph (1) of the 1945 Constitution of the House of Representatives shall be elected by General Election and Article 67 of Law Number 27 of 2009 the House of Representatives consists of political parties elected directly in the General Election. Article 68 of Law Number 27 of 2009 The House of Representatives shall be a representative institutions of the people domiciled as a state institution in Indonesia.

¹ Hananto Widodo, "Politik Hukum Hak Interpretasi Dewan Perwakilan Rakyat Republik Indonesia", *Rechtswinding*, Vol 1, No 3, 2012, p.420.

² Ni'matul Huda, 2015, "Hukum Tata Negara Indonesia", Jakarta, Rajawali Pers, p.174.

Article 20 Paragraph (1) of the 1945 Constitution the House of Representatives holds the power to make laws. Article 20 A Paragraph (1) and Paragraph (2) the House of Representatives have the functions of legislation, budgeting, and supervising functions. The House of Representatives have the Right of Interpelation, the Right of Investigation and the Opinion Right. Article 21 of the 1945 Constitution the members of the House of Representatives have the right to propose a bills.

In the 1945 Constitution is explicitly stated that the state of indonesia is a state based on the rule of law. In the state of law, that the law becomes the highest command in running a government.³ In the concept of trias politica which embraced by Indonesia the House of Representatives as a legislative Institutions that serves to make laws and oversee the run of laws by the government as an executive. The function of supervision can be said to run well if the House of Representatives is more critical to government policies that are in accordance with the interests of the people. Meanwhile, the function of legislation can be said to run well if the legal products made by the House of Representatives have been able to meet the aspirations and desires of the society.⁴

*The function of supervision of the House of Representatives is philosophically precisely in order to supervising for executive power. The executive body has recently become a government institution that has developed quite rapidly, especially in administrative law.*⁵

2. The Right of Investigation

Article 20 A Paragraph (2) of the 1945 Constitution explains that in performing its functions, the House of Representatives has the right of Interpletation, the Right of Investigation, and Right

³ Andi Ippéh, “Keberadaan Hak Angket dalam Fungsi Pengawasan Dewan Perwakilan Rakyat terhadap Pemerintah”, *Jurnal Ilmu Hukum Legal Opinion*, Vol.2, No.3, 2014, p.3.

⁴ *Ibid*, p.7.

⁵ Hananto Widodo, *op. cit.*, p.422.

of Opinion. The Right of Investigation is one of the rights possessed by the House of Representatives in performing its functions as a legislative institutions.

Article 77 Paragraph (3) of Law Number 17 of 2014 concerning the legislative institutions in Indonesia explains that the Right of Investigation is the right of the House of Representatives to conduct an investigation into a law and or government policy related to the important things, strategic, and have wide impact for the life of society, nation, and state which is contrary with the laws and regulations.

The term of investigation should not be used. Although the Right of Investigation is basically derived from a foreign language that is *anquette* from French language which means investigation but has been accepted as a political term in Indonesia. Use of the term the Right of Investigation may lead to miss understanding. The Right of Investigation can be used as a fact-finding or to formulate a policy by the House of Representatives.⁶

Before the House of Representatives implemented the Right of Investigation first is to conduct research on the purpose of implementation of the Right of Investigation and make a special committee of the right of investigation.⁷

The Right of Investigation is one of the rights that can assist the functioning of the House of Representatives in carrying out its legislative functions, but is often misused as an instrument to cover up the errors of the House of Representatives itself. The Right of Investigation should be

⁶ Bagir Manan, 2005, *Dewan Perwakilan Rakyat, DPD, dan MPR dalam UUD 1945 baru*, Yogyakarta, FH Uii Press, p.38.

⁷ Andi Ippeh, *op. cit.*, p.3

used wisely so it can be beneficial not only for the people of representatives but for the life of the society.

3. The State Institutions

Indonesian state institutions are established under the 1945 Constitution, Laws, or by lower regulations.⁸ The state institutions at the central level can be distinguished in three institutional levels:

- 1) Institutions established under the 1945 Constitution such as the President, the Vice President, the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Audit Board, the Supreme Court, the Constitutional Court, the Bank Central and the Judicial Commission;
- 2) Institutions established under laws such as the Attorney General's Office, the Bank of Indonesia, the General Election Commission, the Corruption Eradication Commission, the Indonesian Broadcasting Commission, the Ombudsman and others;
- 3) Institutions established under Government Regulation or Presidential Regulation; and Institutions established under the Ministerial Regulation.⁹

The position of the states institutions in the whole governmental structure in Indonesia is in between the governmental political sphere (supra-structure) in the upper side and the socio-political sphere (infra-structure) in the lower side.¹⁰

⁸ Jimly Asshiddiqie, 2006, *Perkembangan dan Konsolidasi Lembaga Negara pasca reformasi*, Jakarta, Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia , p.41.

⁹ *Ibid*, p.49.

¹⁰ Miranfa Risang Ayu, "Kedudukan Komisi Independen sebagai State Auxiliary Institutions dan Relevansinya dalam Struktur Ketatanegaraan", *Jurnal Konstitusi*, Vol.1, No.1, 2009, p.9.

This position reflects the main objective of their establishments to make bridging tools between the power of the societies and the power of the governments. These state institutions are not totally separated from the main governmental institutions. The positions of the state institutions which have not had clear independences become ambiguous in the whole governmental structure. This fact causes the current development of these institutions in Indonesia become irrelevant with their roles in the governmental structure.¹¹

The birth of the independent institutions namely the Corruption Eradication Commission because the earlier institutions failed to create a sense of security for the people. Even the legitimacy of state institutions is questionable because of the many corrupt practices inherent in the state institutions itself.¹² The independent of the Corruption Eradication Commission has an important role as the spearhead as a clean commission and has the function to clean up other state institutions and state apparatuses from the corruption acts.

¹¹ *Ibid*, p.10.

¹² Firmansyah Arifin, 2005, "Lembaga Negara dan Sengketa Kewenangan Antar Lembaga Negara", Jakarta, Konsorsium Reformasi Hukum Nasional, p.54.