

CHAPTER FOUR

FINDING AND ANALYSIS

A. Brief Introduction of the Issue

1. Brief Introduction of 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 Interpelation, the Right of Investigation, and Right 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 matters, strategic, and have wide impact for the life of society, nation, and state which is contrary with the laws and regulations.

The definition of the Right of Investigation derived from the Black Law Dictionary is anquete which means "An examination of the witnesses (take down a writing) by the an authorized judge for the purpose of gathering testimony to be used in trial. The definition of the Right of Investigation in the Black Law dictionary has the meaning of an investigation to witness (in writing) either after or before being ratified by a judge with the aim of gathering witnesses to be used in court. According to the Great Indonesian Dictionary (KBBI) the Right of Investigation is the process of Investigation by the House of Representatives against the government policies.

In the regulation concerning the Right of Investigation, it does not explain what are the reasons for the issuing of the Right of Investigation. It is stipulated that the Right of Investigation is the right of the House of Representatives to conduct an investigation into the implementation of laws and / or government policies. Thus the Right of Investigation are imposed on government policies or the implementation of the act by the government.

Supervision is an activity that aims to ensure the implementation of the State in accordance with the regulation. If it is associated with the constitutional law, supervision has a meaning which aims to ensure the implementation of state administration by state institutions in accordance with applicable law.¹

There are some the Right of Investigation conducted by the House of Representatives have pros and cons because in the implementation of the Rights of Investigation is conducted on the state institutions such as the Rights of Investigation conducted against the Bank of Indonesia in the case of Century Bank and also against the Corruption Eradication Commission. Both institutions are outside the government that are not legally to conduct the Right of Investigation of the House of Representatives.

Based on to the Corruption Eradication Commission, the origin of the Right of Investigation carried out by the House of Representatives to the Corruption Eradication Commission is originated from corruption cases of E-KTP. The House of Representatives ask to the Corruption Eradication Commission for video recorder of the suspect's E-KTP, Miriam S. Haryani.

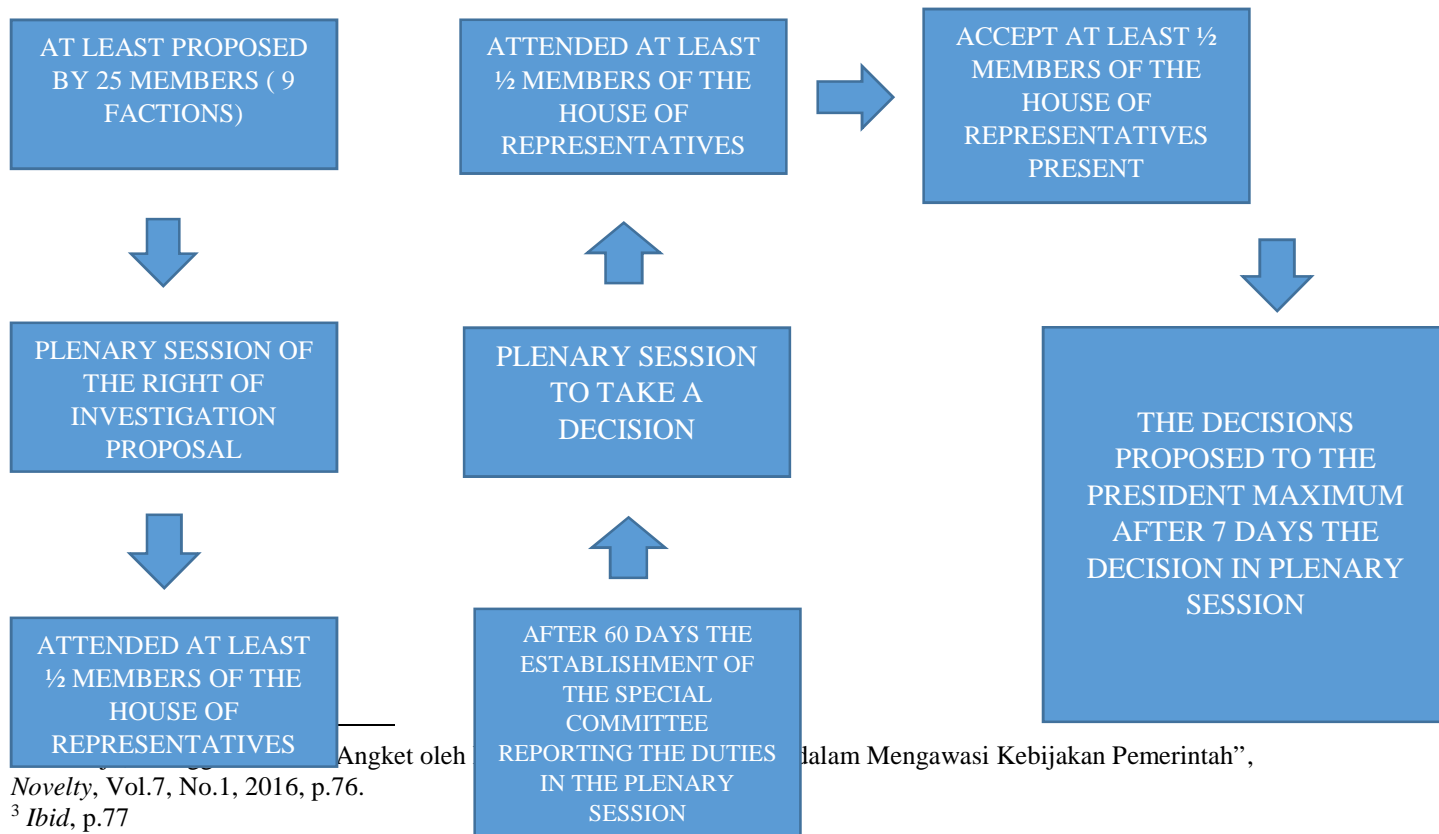
In connection with the case of the Century Bank, the government's policy to save the Century Bank is automatically became the object of the Rights of Investigation conducted by the House of

¹ Sri Soemantri, et al, 2008, *Ketatanegaraan Indonesia dalam Politik Indonesia*, Jakarta, 30 Tahun kembali ke Undang-Undang Dasar 1945, p.285.

Representatives because it has a wide impact on the life of the society and the state, because that policy is directly related to the financial state. The unclear disbursement of bailout funds for the Century Bank that encourages the involvement of several state officials in this case, such as the Governor of the Bank of Indonesia and also the Ministry of Finance. The House of Representatives established the Rights of Investigation to solve the bailout case.²

Before conducting the Right of Investigation, firstly to conduct research on the purpose of implementation of the Right of Investigation and make a special committee of the Right of Investigation. The mechanism to submitted the Right of Investigation which can be done by the House of Representatives based on Article 177 up to Article 182 of Law Number 27 Year 2009 concerning the Legislative Body in Indonesia.³:

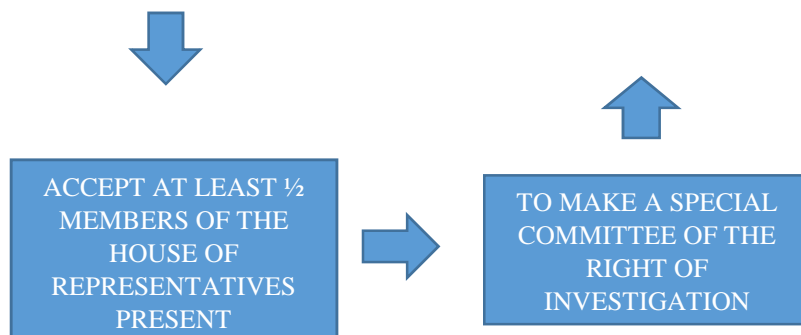
Mechanism of the Right of Investigation of the House of Representatives:⁴



Novelty, Vol.7, No.1, 2016, p.76.

³ *Ibid*, p.77

⁴ *Ibid*, p.79.



2. Brief Introduction of the State institutions

Indonesian state institutions are established under the 1945 Constitution, law, or by lower regulations.⁵ 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 (KY);

⁵ Jimly Asshiddiqie, 2006, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Jakarta, Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, p.41.

2.) Institutions established under laws such as the Attorney General's Office, the Bank 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.⁶

In terms of hierarchy, state institutions can be distinguished into three. The first can be called the state higher institution, the second can be called the state institutions and the third is a state institution whose source of authority comes from regulators or legislators under the law: ⁷

A. State higher institution consisting of:

- a) the President and the Vice President ;
- b) the House of Representatives ;
- c) the Regional Representative Council ;
- d) the People's Consultative Assembly ;
- e) the Constitutional Court (MK) ;
- f) the Supreme Court (MA) ;

⁶ *Ibid*, p.49.

⁷ *Ibid*, p. 105-107.

- g) the Judicial Commission (KY) ; and
- h) the Supreme Audit Board (BPK).

B. Secondary state institutions under the 1945 Constitution

- a) State Minister (Article 17) the Minister of Home Affairs, the Minister of Foreign Affairs, the Minister of Defense is mentioned explicitly in the 1945 Constitution (Article 8 Paragraph 3).
- b) General, permanent, and independent electoral commissions, which are further stipulated in the law - the General Election Commission (Article 22E Paragraph 5)
- c) The Central Bank or in Indonesia which becomes the Bank of Indonesia whose structure, position, authority, responsibility and independence shall be further regulated by law – the Central Bank (Article 23D).
- d) The Indonesian National Army (Article 30 Paragraph 3) the Army, the Navy and the Air Force are mentioned explicitly in the 1945 Constitution (Article 10).
- e) State Police (Article 30 Paragraph 4).

There are also other institutions aligned with the second tier organization of state institutions established by law, drawn up between the House of Representatives and the President. This institution may be dissolved if the law or article governing the institution is cancelled through a judicial review in the Constitutional Court. Some examples of these institutions are:

- 1) the Attorney General's Office (Law No 16 of 2004);
- 2) the Financial Services Authority (Law No 21 of 2011);

- 3) the Deposit Insurance Corporation (Law No 24 of 2004);
- 4) the National Commission on Human Rights (Law No 39 of 1999);
- 5) the Corruption Eradication Commission (Law No 20 of 2002);
- 6) the Indonesian Broadcasting Commission (Law No 30 of 2002);
- 7) the Business Competition Supervisory Commission (Law No 5 of 1999);
- 8) the Indonesian Child Protection Commission (Law No 23 of 2002);
- 9) the Ombudsman of the Republic of Indonesia (Law No 37 of 2008)

The third group is the constitutional organs belonging to the category of state institutions whose source of authority comes from regulators or legislators under the law. That is, its existence is legally solely based on presidential policy (presidential policy). If the President is about to disband him again, then surely the President is authorized to do so. That is, its existence depends entirely on the President's policy. Examples of these institutions are:

- 1) the Creative Economy Agency (Presidential Decree No 6 of 2015)
- 2) the Finance and Development Supervisory Agency (Presidential Decree No 192 year 2014)
- 3) the Government Goods / Service Procurement Institution (Presidential Decree No 106 year 2007)
- 4) the National Resilience Institute (Presidential Decree No 67 year 2016);

In addition to state institutions within the structure located in the third part of the state institutions there are also the state auxiliary institutions whose position and the authority arranged in the law. As an the state auxiliary institutions the status and authority of the state auxiliary institutions is independent to carry out its functions and authority.

The following is an state auxiliary institutions that is already regulated in the law:

A. The General Election Commission (KPU)

The provisions concerning the election are governed in Article 22 E of the 1945 Constitution, which reads as follows:

- a. General elections are held in a direct, general, honest, free and fair manner in every five years.
- b. General elections shall be conducted to choose the members of the House of Representatives, Regional Representatives Council, the President and Vice President, and the Regional House of Representatives.
- c. General election contestants to elect members of the House of Representatives and members of the Regional House of Representatives shall be political parties.
- d. An general election participant to elect a member of the Regional Representatives Council shall be an individual.
- e. General elections shall be organized by a national, permanent, and independent General election commission.
- f. Further provisions on general elections shall be governed by law.

Further provisions of article 22 E of the 1945 Constitution are governed by Law Number 22 Year 2007 concerning the Implementation of general elections.

In the Law Number 22 of 2007 stipulated on the implementation of the general elections conducted by an general election commission, as referred to the General Election Commission (KPU), which is national, permanent, and independent. The national character reflects that the working area and responsibility of the General Elections Commission (KPU) as the organizer of the election covers the entire territory of the Republic of Indonesia. The permanent character reflects that the General Election Commission (KPU) as a state institution that performs the duty of having sustainable although can be limited by certain period. The independent character indicates that the General Election Commission in performing its duties is free from any party's influence.⁸

Although the Law Number 3 of 1999 has stated that the general elections are held by a free and independent of the General Election Commission (KPU) but its membership consists of the political parties members and the government so that independence from the General Election Commission is very difficult and causes of the conflict interest between the participants of the general election. Therefore, the Law Number 22 of 2007 can improve the position of the General Election Commission (KPU) as the organizer of the general election.⁹

B. The National Commission of Human Right (Komnas HAM)

To carry out the obligations based on the 1945 Constitution the People's Consultative Assembly through MPR Decree Number XVII / MPR / 1998 on Human Rights, affirms that for

⁸ Ni'matul Huda, 2015, *Hukum Tata Negara Indonesia*, Jakarta, Rajawali Pers, p. 244.

⁹ *Ibid*, p.245.

all states apparatus have to respect, uphold and disseminate an understanding of the Human Rights to all the people and ratify the United Nations (UN) instruments on Human Rights which is not contradictory to the 1945 Constitution.

In line with that, Law Number 39 of 1999 on Human Rights was established. The law refers to the United Nations Declarations of Human Rights . The material of this law is also adopted to the legal needs of the community and the development of national law based on Pancasila and the 1945 Constitution.

Law Number 39 of 1999 regulates the establishment of the National Commission of Human Rights (Komnas HAM) as an independent institution having functions, duties, authority, and responsibility for carrying out research, , monitoring and mediation on Human Rights which is regulated in Presidential Decree No. 50 of 1993.¹⁰

Based on the Law Number 39 of 1999 it can be seen that the position of the National Commission on Human Rights (Komnas HAM) is an independent state institution which has a function to assist the government to develop conditions conducive to the implementation of human rights in Indonesia. Thus its position in the constitutional system is under the institutions who make which is the President and the House of Representatives.¹¹

C. The Corruption Eradication Commission

Based on the analysis of the Law Number 30 of 2002 regarding the Corruption Eradication Commission related to the characteristics of state commissions that are independent:

¹⁰ *Ibid*, p.247.

¹¹ Ni'matul Huda, *op. cit.*, p. 251.

a.) The independence of the Corruption Eradication Commission explicitly stated by the Article 3 stating "The Corruption Eradication Commission is a state institution which carry out its duties and authority that is independent and free from any influence of power".

b.) Article 20 Paragraph (1) states "The Corruption Eradication Commission shall be responsible for the public for the performance of its duties and to submit its report openly and periodically to the President of the Republic of Indonesia, the House of Representatives, and the State Audit Board."

c.) Appointment of commissioners of the Corruption Eradication Commission shall be regulated by mechanisms specified specifically by articles 30 and 31, while dismissal is regulated in article 32. "

d.) Article 29 (h) stated that "The Corruption Eradication Commission is not include officially of any political party." This provision is in accordance with the characteristics because the chairman or member of the Corruption Eradication Commission is not allowed to become a member of a political party so that the Corruption Eradication Commission can not be controlled by sympathizers of political parties.

e.) Whereas constitutionally the Constitutional Court has acknowledged that the Corruption Eradication Commission is an independent state commission which is outside the three branches of powers because of the development of classical doctrine of separation of state powers.

The following is the opinion of the Constitutional Court stated that "That in the development of the current state system is reflected in the legal provisions in many countries especially since the 20th century the existence of State commissions such as the Corruption Eradication

Commission has been a common thing”. The classical doctrine of the separation of power into these three branches of power has been greatly enhanced, among others, marked by the adoption of the institutionalization of state commissions such as the Corruption Eradication Commission which in some countries is authorized to exercise the functions of state power.

The Corruption Eradication Commission is not part of the executive power. This is in line with the opinion of the Constitutional Court which states that the Corruption Eradication Commission includes other institutions that are judicial institutions. Meanwhile, the institutions that handle corruption cases have not functioned effectively and efficiently in cracking down on corruption. Therefore the establishment of institutions such as the Corruption Eradication Commission can be considered constitutionally important and includes institutions whose functions related to the judicial authorities referred into the article 24 paragraph (3) of the 1945 Constitution.

Lehouck as Constitutional Law expert stated that the establishment of an general election commission that isolates itself from the executive body has greatly contributed to the strengthening of the constitutional democracy. The success of South American to innovate the establishment of new institutions free from the influence of the executive and legislative institutions which later led to the adoption of such regulations by several countries in the world.¹²

As a result in the last two decades, there has been a rapid growth in the number of the state auxiliary around the world. Institutions formed by democratic demands and made into the independent institutions, such as general election commission, anti-corruption institutions, judiciary institutions and administrative institutions such as the ombudsman. In addition,

¹²Zainal Arifin Mochtar, 2016, *Lembaga Negara Independen*, Jakarta, Raja Grafindo Persada, p.34.

constitutional reforms in some countries have also begun to be established on the regulation of state auxiliary institutions in the new constitution. There are 81 countries that include independent agencies within their constitution and 248 state auxiliary institutions across the continent of Africa, Asia, Europe and America.¹³

Tabel 1. The number of the state auxiliary institutions according to geographical distribution.¹⁴

REGION	AUXILIARY INSTITUTIONS
AFRICAN	89
AMERICAN	51
ASIAN	49
EUROPAN	59
TOTAL	248

¹³ *Ibid*, p. 35.

¹⁴ *Ibid*, p. 37.

Tabel 2. Country with four or more the state auxiliary institutions¹⁵

NEGARA	AUXILIARY INSTITUTIONS
CHILE	4
AFGANISTAN	5
PHILIPINES	5
HUNGARY	5
MALAWI	5
MEXICO	5
MOZAMBIQUE	5
SERBIA	5
UGANDA	5
BHUTAN	6
SWAZILAND	6
ECUADOR	7

¹⁵ *Ibid*, p.38.

PERU	7
NIGERIA	10
RWANDA	10
VENEZUELA	10
IRAQ	11
SOMALIA	12
SOUTH AFRICA	12
INDONESIAN	5
GREECE	4
TOTAL	144

In the Republic of Indonesia there are many the state auxiliary institutions that have a role in the Indonesian state administration system. The state auxiliary institutions such as the General Election Commission, Nationality Commission on Human Rights , and the Corruption Eradication Commission. The state auxiliary institutions have different authority and can not get interference by any state institution to achieve the goal of every the state auxiliary institutions.¹⁶

In the development of the state auxiliary institutions such as the National Commission on Human Rights (Komnas HAM), the General Election Commission (KPU), the Ombudsman

¹⁶ Putera Astomo, 2014, *Hukum Tata Negara Teori dan Praktek*, Yogyakarta, Thafa Media, p.171.

Commission, the Business Competition Supervisory Commission (KPPU), the State Commission on Examination of Wealth (KPKPN), the Corruption Eradication Commission (KPK), Truth Commission Reconciliation (KKR), and so forth.¹⁷

In the constitutional system, the existence of the state auxiliary institutions must be accompanied by a clear position, role and mechanism, so that according to Purnadi and Soerjono Soekanto, it is necessary to have a status or position to become a subject of constitutional law. It should also include a power, public service, freedom or human rights, and obligations to the public interest.¹⁸

B. The Implementation of the Right of Investigation of the House of Representatives to the Corruption Eradication Commission.

The House of Representatives through a plenary session formally to submit the formation of the Special Committee for the Right of Investigation of the Corruption Eradication Commission on 30 May 2017. The special committee of the Right of Investigation of the Corruption Eradication Commission (KPK) is still established despite many opposition from the public and some factions within the House of Representatives. One of example of the rejecting the establishment of the special committee of the Right of Investigation of The Corruption Eradication Commission was by the 357 professors from various universities in Indonesia.

The Right of Investigation itself is regulated in the Article 79 paragraph (3) of the Law No.17 of 2014 which states that the Rights of Investigation is the right of the House of Representatives to conduct an investigation on the implementation of the law and / or government

¹⁷ *Ibid*, p. 240.

¹⁸ *Ibid*, p. 241.

policy related to important, strategic and broad impact for the life of society, nation, state that contrary to the laws and regulations.

Members of the Commission III of House of Representatives, Taufiqulhadi, informed the Corruption Eradication Commission compliance report in 2015 regarding the budget governance that became the beginning of the People of Representatives in implementing the Rights of Investigation to the Corruption Eradication Commission. In the Corruption Eradication Commission compliance report in 2015 there are 7 indications of non-compliance of the Corruption Eradication Commission against the laws and regulations. There are 7 indications of non-compliance against the laws and regulations by the Corruption Eradication Commission¹⁹ :

1. Overpayment of salaries of the Corruption Eradication Commission employees who have not been completed for the execution of learning tasks.
2. Expenditures made by the directorate monitor information and data that is not equipped with adequate accountability and not in accordance with the budget.
3. Payment of official travel expenses, rental spending, and services from professional law firm not in accordance with the budget.
4. Travel activities from prosecution deputy of that are not supported by the warrant.
5. Standard cost of payment for honorarium of prosecution deputy not appropriate to the budget.
6. The realization of regular service travel expenditure is not in accordance with minimum budget requirements.

¹⁹Gibran Maulana Ibrahim, 2017, Reason of People Representative to make Right Of Investigation to Corruption Eradication Commission, taken from, <https://news.detik.com/berita/d-3486828/ini-sederet-alasan-dpr-gulirkan-hak-angket-kpk> accessed on wednesday, November 8th, 2017 at 3. 11 AM.

7. Planning of the Corruption Eradication Commission building is not careful, resulting in overpayment.

According to the Corruption Eradication Commission, the origin of the Right of Investigation carried out by the House of Representatives to the Corruption Eradication Commission is originated from corruption cases of E-KTP. The House of Representatives asked to the Corruption Eradication Commission for video recorder of the suspect's E-KTP, Miriam S. Haryani, who stated that there were members of the House of Representatives who received the corruption result from the criminal act of corruption cases of E-KTP. The Corruption Eradication Commission mentioned the reason by not giving the recording because it felt that the tape owned by the Corruption Eradication Commission has been one of the evidence in the ongoing investigation and trial process.²⁰

According to Miko Ginting (researcher of the Center for Legal and Policy Studies) said that the Commission III to open a recording of the examination of Miryam Haryani is a form of intervention to the law enforcement process. These efforts also shape the law enforcement process into the political process. The House of Representatives should understand the examination of Miriam taking place in the framework of law enforcement (*pro justitia*).²¹

The House of Representatives cannot force the Corruption Eradication Commission to provide records owned by the Corruption Eradication Commission because basically a proof in the hearing and the trial process is still running and cannot be publicized because it is the domain of privacy from the investigator to thoroughly investigate the case. The Right of Investigation cannot be used to disclose evidence in the current legal proceedings even if the House of

²⁰ Anonymous, 2017, The beginning of Right of Investigation of People Representative to Commission Eradication Commission, Taken from, <https://www.youtube.com/watch>, accessed on Friday, November 10th, 2017 at 3. 55 AM.

²¹ Putra Diyan Novlarang, "Hak Angket Dewan Perwakilan Rakyat Terhadap Komisi Pemberantasan Korupsi", Fakultas Hukum Universitas Diponegoro, Vol.2, No.3, 2017, p.6 .

Representatives has a reason for not believing that a member of the House of Representatives receives a result of corruption funds in the corruption cases of E-KTP.

The implementation of the Right of Investigation of the House of Representatives against the Corruption Eradication Commission has pros and cons related to its implementation. The Corruption Eradication Commission, which is clearly regulated in the law, is an independent state institution which has become the object of the Rights of Investigation conducted by the House of Representatives. According to Article 79 paragraph (3) of Law No. 17 of 2014 the Right of Investigation is an investigation conducted by the House of Representatives on government policies related to important, strategic, and have a wide impact on the life of the society, nation and state as contradiction to legislation.

Based on the decision of the Constitutional Court NUMBER 36 / PUU-XV / 2017 which examined Law No. 17 of 2014 regarding the implementation of the Rights of Investigation conducted by the House of Representatives by the petitioners parties from the Law and Constitutional Studies Forum, Yudisthira Rifky Darmawan, and Tri Susilo has violated the constitution and is not in accordance with article 79 paragraph 3 of Law No. 17 of 2014. The House of Representatives cannot exercise the Right of Investigation to the Corruption Eradication Commission because it is an independent institution and not an institution under the government.

According to the petitioners that the scope of the Right of Investigation owned by the House of Representatives has been clearly and firmly regulated in "a quo" norm, especially on the phrase "the implementation of a law and / or Government policy". It is then affirmed in the limitative explanation stating "The implementation of a law and / or Government policy may be a policy carried out by the President himself, the Vice President, the state minister, the TNI

Commander, the Chief of Police, the Attorney General, or the head of the non-ministerial government institution.²²

If the Rights of Investigation imposed on the Corruption Eradication Commission, the investigation efforts that are compelling to the Corruption Eradication Commission to submit the data to the special committee of the Right of Investigation without any regulatory constraints can disrupt the independence of the Corruption Eradication Commission which has been regulated in the law. This is one of the interventions to the effort of the Corruption Eradication Commission to eradicate the corruption.²³

Looking at the special committee of the Right of Investigation of the Century Bank, the House of Representatives may not exercise the right to express an opinion but directly use the recommendation from the government and all related parties although it has been decided through the plenary session of the House of Representatives. The recommendations are very harmful and allow for the weakening scenario of the Corruption Eradication Commission. The first possibility is the issuance to replace the Law on Corruption Eradication Commission which consist of articles that may weaken the authority of the Corruption Eradication Commission. Actually the recommendation will be made to dissolve the Corruption Eradication Commission and restore its functions to the police and prosecutors.²⁴

²² Resume Constitutional Court Decision Number 36/PUU-XV/2017 , 2017, Taken From http://www.mahkamahkonstitusi.go.id/public/content/persidangan/resume/resume_perkara_1775_Perkara%20No%2036.pdf , Accessed on Sunday March 25th, 2018 at 00.20 AM.

²³ Constitutional Court Decision Number 36/PUU-XV/2017, 2017, Taken From http://www.mahkamahkonstitusi.go.id/public/content/persidangan/risalah/risalah_sidang_9400_PERKARA%20NO MOR%2036.37.PUU-XV.2017%2019%20JULI%202017.pdf , Accessed on Sunday March 25th, 2018 at 00.50 AM.

²⁴ Constitutional Court Decision Number 36/PUU-XV/2017, 2017, Taken From http://www.mahkamahkonstitusi.go.id/public/content/persidangan/putusan/putusan_sidang_2754_20180209151027_36%20PUU%202017_UU_MD3-TOLAK.qrqr-%20wmActionWiz.pdf ,Accessed on Sunday March 25th, 2018 at 01.15 AM.

After the Decision of the Constitutional Court Number 36 / PUU-XV / 2017 was issued, the court made a press release that explains the reason why they rejected the petitioners. In a press release issued by the Constitutional Court there are several important points related to the implementation of the Rights of Investigation carried out by the House of Representatives against the Corruption Eradication Commission.²⁵

- 1) The Decision of the Constitutional Court Number 36 / PUU-XV / 2017 basically rejects the petitioners argument concerning the principle of unconstitutionality based on the Article 79 paragraph (3) of Law Number 7 of 2014 in particular phrase "the implementation of a law and / or Government policy". The Constitutional Court stated that the Corruption Eradication Commission is the scope of executive power.
- 2) In the decisions of the Court, it is clearly stated that there are essential points, namely :
 - A. Positioning the Corruption Eradication Commission into state institutions located in the realm of executive power, for carrying out the task of investigation, and prosecution in the corruption case which is the same as the authority of the police and / or prosecutor.
 - B. Based on this matter, the Corruption Eradication Commission is a state institution in the domain of executive power. Therefore the Corruption Eradication Commission can be the object of the use of the Right of Investigation of the House of Representatives as the representative of the people who carry out the supervision function.
 - C. Although the implementation of the Right of Investigation can not be applied in the event that the Corruption Eradication Commission carries out the investigation, and

²⁵ Conference Pers Constitutional Court Decision Number 36/PUU-XV/2017 , 2017, Taken From http://www.mahkamahkonstitusi.go.id/public/content/infoumum/press/pdf/press_425_15.2.18%20press%20release%20putusan%20hak%20angket%20dpr.pdf ,Accessed on Sunday March 25th, 2018 at 04.15 AM.

prosecution tasks, the independence of the Corruption Eradication Commission cannot be intervened by other parties

- 3) The decision made by the Constitutional Court, there is a growing opinion in the public that based on the Decision Number 36 / PUU-XV / 2017 is inconsistent or contradictory to the previous decision, as it is mentioned, in some decisions such as (1) Decision Number 012-016-019 / PUU -IV / 2006 dated December 19, 2006, (2) of Decision Number 5 / PUU-IX / 2011 dated June 20, 2011; and (5) Decision Number 49 / PUU-XI / 2013 14 November 2013. It is important to emphasize that in the previous rulings, the Court has never held the opinion that the Corruption Eradication Commission is essentially a state institution in a certain domain of authority, whether it is legislative, executive, or judiciary. Based on the new Decision Number 36 / PUU-XV / 2017 , the Court expressed the opinion that the Corruption Eradication Commission is a state institution in the realm of executive power. It can be tracked by tracing the three decisions.
- 4) Basically it can be said that the Constitutional Court affirms the Right of Investigation as the constitutional right of the House of Representatives to perform a supervisory function can be implemented to the Corruption Eradication Commission. The Constitutional Court also upheld the position of Corruption Eradication Commission because although it is became the object of the Right of Investigation of the House of Representatives. The Right of Investigation is restricted not to the judicial duties and jurisdiction of Corruption Eradication Commission and investigation corruption. The Constitutional Court stated that this decision is not a form or effort to weaken the Corruption Eradication Commission.
- 5) The Constitutional Court affirmed that the Corruption Eradication Commission is a state institution which in carrying out its duties and authority independently. Although it should

not be interpreted not covered by the supervision of the House of Representatives as the people's representative. This verdict actually affirms the arrangement of institutional relations between the House of Representatives and the Corruption Eradication Commission based on constitutional principles and government systems in line with the paradigm of checks and balances under the 1945 Constitution.

In the Decision Number 36 / PUU-XV / 2017, because there is no question of constitutionality in Article 79 paragraph (3) , then the verdict is rejected. It shows, not only the norm of Article 79 paragraph (3) does not contain constitutional problems, but more confirmed its constitutionality as the basis of legal acts for Parliament. Therefore, it is totally irrelevant to argue about the validity of the verdict.²⁶

Based on the decision of the Constitutional Court, there are many pro and cons that become a polemic among observers of Constitutional Law related to the explanation of the Constitutional Court which allows the Corruption Eradication Commission as an object of the Rights of Investigation conducted by the House of Representatives. Not only related to the decision of the Constitutional Court which allows it to happen but there are pro and cons regarding the implementation of the Rights of Investigation conducted by the House of Representatives against the Corruption Eradication Commission.

According to the Chairman of the Association of Administrative Law and Constitutional Law, Mahfud MD, there are three basic matters related to the Special Committee created by the

²⁶ Conference Pers Constitutional Court Decision Number 36/PUU-XV/2017 , 2017, Taken From http://www.mahkamahkonstitusi.go.id/public/content/infoumum/press/pdf/press_425_15.2.18%20press%20release%20putusan%20hak%20angket%20dpr.pdf , Accessed on Sunday March 25th, 2018 at 04.15 AM.

People of Representatives to implement the Right of Investigation to the Corruption Eradication Commission, namely²⁷ :

- 1) The legal subject of the Right of Investigation made by the People of Representatives to the Corruption Eradication Commission is incorrect because in its history referred to in article 77 paragraph 3 of Law Number 27 of 2009 the Rights of Investigation used to investigate the implementation of laws and or government policies that are not in accordance with the laws and regulations. The government in this case includes presidents, vice presidents, ministers, attorneys, chiefs, and government agencies who are not from the ministry. The Corruption Eradication Commission here is not included because the Corruption Eradication Commission is not an institution under government and it is independent.
- 2) The object of the Right of Investigation submitted by the House of Representatives against the Corruption Eradication Commission is the cases of E-KTP and the case is carried out by the Corruption Eradication Commission. The object of the Right of Investigation should fulfill three conditions that must be an important matter, strategic in the interest of the State, and have wide impact for the life of the society. The handling cases being investigated by the Corruption Eradication Commission in the cases of E-KTP is not an extraordinary case to fulfill the conditions became the object of the Right of Investigation.
- 3) Procedures by the House of Representatives in making the Right of Investigation to the Corruption Eradication Commission to propose the special committee have violated law. There should be a plenary session to determine and make a special committee by the

²⁷ Kristian Erdianto, 2017, Right Of Investigation for Corruption Eradication Commission is not fulfill the requirments based on Act Number 27 of 2009, Taken from, <https://nasional.kompas.com/read/2018/02/09/09004431/mahfud-md-putusan-mk-soal-angket-kpk-bertentangan-dengan-4-putusan> Accessed on Tuesday April 17th , 2018 at 04.13 AM.

voting. Therefore only 7 factions sent their representatives in the formation of the special committee of the Right of Investigation to the Corruption Eradication Commission, and according to Article 201 paragraph 3 of Law Number 27 of 2009 all representatives of the factions must have their representatives in the special committee of Right of Investigation to Corruption Eradication Commission.

The expert of Constitutional Law, Yusril Ihza Mahendra considers the House of Representatives have an authority in establishing a special committee of the Right of Investigation to the Corruption Eradication Commission. The formation of a special committee is considered to have legality because it is in accordance with the duties and authority of the House of Representatives in exercising supervision over the implementation of the law. The House of Representatives implemented the Right of Investigation to the Corruption Eradication Commission because the Corruption Eradication Commission is established by the law.²⁸

He considered the Corruption Eradication Commission is an executive body for conducting investigations, and prosecutions of corruption cases, as did the Attorney and Police Department. He refused if the Corruption Eradication Commission was referred to as part of the judiciary. The task of investigation, and prosecution is the task of the executive, not the legislation and the judiciary.²⁹

According to Yusril Ihza Mahendra, the Corruption Eradication Commission is an institution that uses the state budget, so it should be supervised by the House of Representatives. Yusril refused if the House of Representatives could not conduct a Right of Investigation against the

²⁸ Dimas Jarot Bayu, 2017, Dewan Perwakilan Rakyat Berwenang Mengadakan Hak Angket terhadap Komisi Pemberantasan Korupsi, Taken from, <https://katadata.co.id/berita/2017/07/10/yusril-dpr-berwenang-bentuk-pansus-hak-angket-kpk> , Accessed on Tuesday April 17th , 2018 at 02.13 PM.

²⁹ *Ibid.*

Corruption Eradication Commission on the grounds of independence. The reason is not correct to reject the Right of Investigation to Corruption Eradication Commission. Because the House of Representatives once conducted the Right of Investigation against Bank Indonesia.³⁰

The following is a recommendations from the House of Representatives to Corruption Eradication Commission :

1. Ask the president in perfecting organization structure of the Corruption Eradication Commission based on Law No.3 of 2002.
2. Ask the Corruption Eradication Commission to increasing the relationship with the law enforcement institutions and the other institutions.
3. The president and the Corruption Eradication Commission should be making an independent institutions to supervise the task of Corruption Eradication Commission.
4. The Corruption Eradication Commission to build the strenght work relationship in coordination duties with the Police and the Attourney.
5. To optimalize the using of budgeting.

B. The Implementation of the Right of Investigation of the House of Representatives to the Bank of Indonesia

The Special Committee of the Right of Investigation of the House of Representatives to the Bank of Indonesia was formed on 1 December, 2009. Then in a plenary session proposed by

³⁰ *Ibid.*

the 503 members of the House of Representatives, the House of Representatives legalized and approved the implementation of the Right of Investigation to reveal the scandal of Century Bank supported by 9 fraction.³¹

The Special Committee on the Rights of Investigation of Century Bank originated from the proposers consisting of nine people who came to be called Team 9, namely Maruarar Sirait (PDIP), Ahmad Muzani (Gerindra), Andi Rahmat (PKS), Lili Wahid (PKB), Mukhamad Misbakhun (PKS), Akbar Faisal (Hanura), Chandra Tirta Wijaya (PAN), Kurdi Mukhtar (PPP), and Bambang Soesetyo (Golkar). The focus point of the Investigation sent by some members of the House of Representatives, are as follows: ³²

- 1) To know the implementation of the regulation related to its decision to disburse bailout funds Rp 6.76 trillion for Century Bank. There is any indication of violation of laws, both criminal and civil.
- 2) Unravel transparently the case of disbursement bailout funds of Century Bank. Including why there could be a sudden change in the Bank of Indonesia Regulation, the involvement of Police Headquarters Komjen Susno Duardji, in the disbursement of Century Bank customer funds, and possible conspiracy between the major shareholders of Century Bank and the government's banking and financial authorities.
- 3) To Investigate why bailout funds can happen to Rp 6.76 trillion for Century Bank? While Century Bank is just a small private bank that has been troubled since the beginning, even when it receives a bailout, the bank is under special surveillance status. Is that Rationale if

³¹ Anonymous, 2014, Hak Angket DPR terhadap BI, Taken from, https://id.wikipedia.org/wiki/Panitia_Khusus_Hak_Angket_Bank_Century, Accessed on Wednesday April 24th, 2018 at 2.26 PM.

³² *Ibid.*

the government's reason for Century Bank should be saved because it has systemic impact for national banking as a whole.

- 4) To know how much the state losses incurred by the Century Bank bailout case and a number of possible state rescue funds can be done. In the aspect of saving the state money is very important to be perioritas in order to meet the sense of justice of the people. Furthermore, to saved the financial of the state can be used for the benefit of improving the welfare of the society.

Related to the implementation mechanism of the Right of Investigation in the case of Century Bank experienced a lot of debate that occurred between the House of Representatives. The existing fraction in the House of Representatives have different views, then basically the Right of Investigation will only proceed on the political interest. If the meeting mechanism is debated then it is followed by a vote, with a majority vote determining the final outcome of a determined an investigation, in the case of Century Bank where the majority of the House of Representatives determines by option that the Right of Investigation is continued in the legal proceedings by calling Vice President and Finance Minister Sri Mulyani to be investigated by law enforcement.³³

The Audit Board Institutions submitted the results of an investigation of the 6.7 trillion rupiah of the Century Bank funds to the House of Representatives. In the audit, the Bank of Indonesia's error in Century Bank case was seen. The violation is suspected when Century Bank has bad debts but rated good by Bank of Indonesia. Furthermore, the Bank of Indonesia is not explicit against other violations, and the Bank of Indonesia provides minor of sanction for Century Bank. There is also a crime when giving Short Term funding facility to Century Bank. In the

³³ Sulkaris S. Lepa Ratu, "Hakikat Hak Angket oleh DPR dalam Sistem Ketatanegaraan Indonesia", *Mimbar Keadilan Jurnal Ilmu Hukum*, Vol.5, No.1, 2017, p.222.

implementation as a failed bank, the Bank of Indonesia cannot provide accurate data and the disbursement of bailout funds of Century Bank swelled from the original plan is Rp632 billion to Rp6, 7 Trillion.

According to former Indonesian Economic Ministry Rizal Ramli there is actually another way to solve the case of Century Bank other than bailout funds that is by closing or take over Century Bank by another bank such as Mandiri Bank, however, his proposal did not get any response from the Bank of Indonesia that preferred to conduct bailout funds to the Century Bank.

Actually, the Bank of Indonesia is one of the independent institutions regulated by the law but it does not make the Bank of Indonesia not became the object of the Rights of Investigation conducted by the House of Representatives. According to the House of Representatives, the Century Bank case involving the Bank of Indonesia as the central of the banking system in Indonesia is considered to make some mistakes against the public interests related to state finances and some policies in the case of Century Bank and contrary with the regulation.

Related to the implementation of the Right of Investigation to the Bank of Indonesia conducted by the House of Representatives, it has some important meaning either related to public interest related to state finance and also related to political interest. Basically the Rights of Investigation conducted by the House of Representatives brought along important figures such as former Vice President at that time is Boediono and also former Finance Ministry Sri Mulyani which of course it felt to have a certain meaning to give bad image that government at that time has failed to provide a sense of security to the interests of the people, because Vice President Boediono was examined related to bailout funds to the Century Bank.

The House of Representatives issued several conclusions and recommendations regarding the Rights Investigation to the Bank of Indonesia. The conclusions are :³⁴

- 1) The Century Bank problems arise since mergers that are unclear under applicable regulations. Mergers even violate the rules of law, fraud, and money laundering by the bank managers.
- 2) There is a strong indication that the Century Bank determination as a failed bank without having systemic accurate data and not accompanied by prudential principles. But it can be understood because the decision was made in times of crisis.
- 3) At the stage of Bailout funds there is still debate about emerging state losses. The Special Committee provides that to law enforcement for follow-up.
- 4) The Special Committee has not found the evidence that there is a flow of funds to a political party or one of the vice president candidate.

The following is a recommendations from the House of Representatives against the Bank of Indonesia concerning the Century Bank cases: ³⁵

- 1) The legal process is required to the management of the Century Bank, including taking legal steps to the Bank of Indonesia officials who allegedly involved in committing a crime.
- 2) Ask the House of Representatives to revise the legislation related to monetary and fiscal sectors.

³⁴ *Ibid.*

³⁵ Anonymous, 2014, Hak Angket DPR terhadap BI, Taken from, https://id.wikipedia.org/wiki/Panitia_Khusus_Hak_Angket_Bank_Century, Accessed on Wednesday April 24th, 2018 at 2.43 PM

- 3) The Government and the House of Representatives must established a Law on the Financial Services Authority for the independence of the financial institutions and the financial safety sector act as the legal jurisdiction of the government to draw conclusions in times of crisis.
- 4) The Bank of Indonesia must improve internal rules to minimize the abuse of authority by its officials.
- 5) The government needs to established a team of asset hunters taken illegally by perpetrators of criminal acts. Such efforts should be reported to the House of Representatives.

The implementation of the Right of Investigation to the Bank of Indonesia which in fact is an State Auxiliary Bodies outside the government is considered to hasty by the House of Representatives without giving clarity and benefit from the existence of Rights of Investigation to the Bank of Indonesia. Should the Rights of Investigation which is one of the rights possessed by the House of Representatives is more used for things that have a more direct effect on the interests of the people so that the public can assess more clearly whether the right to solve a case or any interest behind the issuance of the Right of Investigation against the political interests of some political parties through his representatives in the House of Representatives.