

CHAPTER TWO

LITERATURE REVIEW

A. State Auxiliary Body

The political reform in Indonesia which happened in 1998 had encouraged the change of Indonesian state structure, including the state institutions and its authorities. After the reform era, many institutions and commissions were formed.¹ The state institution is not only explicitly mentioned in the 1945 Constitution but also has stipulated in the laws.²

The issuance of Law No. 20 of 2001 on the amendment of Law No. 31 of 1999 on Criminal Act of Corruption is an early indication of the government's commitment to answer public demands at that time. In the development of the state structure, some institutions were previously unknown established, for example state auxiliary body.

State auxiliary body is the tool of the realization of goals and desires of the state (*staatswill*). Some state auxiliary bodies were established such as Corruption Eradication Commission, General Election Commission, National Commission of Human Rights, National Ombudsman Commission and others. The growth of these auxiliary bodies are worldwide phenomenon. In addition, these institutions were born because the

¹Septi Nur Wijayanti and Iwan Satriawan, 2009, *Hukum Tata Negara*, Yogyakarta, Fakultas Hukum Universitas Muhammadiyah Yogyakarta, pp. 72-73

²Jimly Asshiddiqie, 2006, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Refromasi*, Jakarta, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, p. 25

performance of the main institution has not worked effectively and it was motivated by public pressure in order to realize the good governance principles.³

According to Sri Soemantri, the state institutions which was mentioned in the 1945 Constitution can be divided into two, based on the duty and authority of the institution. Firstly, the main state's organs which consist of Financial Audit Agency, the House of Representative, the Regional of Representative Council, People of Representative Assembly, the President, Supreme Court, Constitutional Court. Secondly, the state auxiliary body is Judicial Commission.⁴

The existence of Judicial Commission in the 1945 Constitution is to strengthen the judicial power.⁵ in the Indonesian constitutional system. Judicial Commission has authority to appoint and maintain the honour, dignity and behavior of judges.⁶ The authority of Judicial Commission does not perform judicial power but its existence cannot be separated from the judicial authorities. Jimly Asshiddiqie states that the Judicial Commission has equal structural position to the Supreme Court and the Constitutional

³ Isbon Pagano, 2010, "Peran dan Kedudukan Lembaga-Lembaga Sampiran Negara (State Auxiliary Agencies)", *Jurnal Academica*, Vol. 2, No. 1, pp. 301-302

⁴ Sri Soemantri, 2007, *Lembaga Negara dan State Auxiliary Bodies dalam Sistem Ketatanegaraan Menurut UUD 1945*, Surabaya, Fakultas Hukum Universitas Airlangga, p. 3

⁵ Article 24 of the 1945 Constitution "Judicial power shall be independent and shall possess the power to organise the judicature in order to enforce the law and justice".

⁶ Article 24 B paragraph (1) of the 1945 Constitution

Court. However, functionally, its role is auxiliary to the institution of judicial power.

Based on the constitution, the establishment of state auxiliary body can be divided into two, established by law (for example the Corruption Eradication Commission) and established through the Presidential Decree (for example National Ombudsman Commission).⁷

One of the most phenomenal state auxiliary bodies is the Corruption Eradication Commission (known as KPK). KPK was formed to optimize the eradication of corruption that has been going on. The existence of the Corruption Eradication Commission began to receive a strong reaction, especially from those who did not want its presence. The reaction arose because the KPK is a state auxiliary body which has extra ordinary authority in terms of eradication of corruption. This commission is known as an institution with extra power or superboddy.

B. Corruption

Power tends to corrupt and absolute power corrupt absolutely.⁸ It means that when the power is absolute, the power will corrupt absolutely. So, power and corruption have strong relationship. Therefore, the legislative, executive and judiciary are known as the one of state institutions

⁷ Center for Election and Political Party, "State Auxiliary Organs", October 13th 2015, taken from <http://cepp.fisip.ui.ac.id/2015/10/13/state-auxiliary-organs-dibutuhkan-atau-dibubarkan/> accessed on April 24th 2018 at 7.52 p.m.

⁸Ermansyah Djaja, 2010, *Meredesain Pengadilan Tindak Pidana Korupsi*, Jakarta, Pena Grafika, pp. 1-2

which has power of being important to supervise each other in order to prevent and eradicate corruption.⁹

The term corruption comes from the Latin word, corruption or *corruptus*. From Latin, it has many European languages, like English, namely corruption, corrupt; France, namely corruption; and the Netherlands, namely *corruptie*, *korruptie*. From the Dutch the word went into Indonesian, which is known as *korupsi* or corruption.¹⁰

Based on Law No. 31 of 1999 on The Criminal Act of Corruption, corruption means that anyone who illegally commits an act to enrich oneself or another person or a corporation, thereby creating losses to the state finance or state economy.¹¹

H.A. Brasz¹² defines that corruption as something related to the abuse of power. Corruption is a tacit use of power to benefit oneself or others, by misusing authority.¹³

According to Gunnar Myrdal,¹⁴ corruption is to include not only all forms of improper or selfish exercise of power and influence attached to a

⁹ Romli Atmasasmita, 2004, *Sekitar Masalah Korupsi Aspek Nasional dan Aspek Internasional*, Bandung, Mandar Maju, p. 38.

¹⁰ Andi Hamzah, 2005, *Pemberantasan Korupsi melalui Hukum Pidana Nasional dan Internasional*, Jakarta, PT Raja Grafindo Persada, p.4

¹¹ Article 2 of Law No 31 of 1999 on Eradication of The Criminal Act of Corruption

¹² H. A. Brasz was an author of some book on corruption namely *The Society of Corruption and Administrative Corruption in Theory and Practice*

¹³ Andi Hamzah, *Op.Cit.*, p. 5

¹⁴ Gunnar Myrdal was a Swedish economist, sociologist and politician. He received the Nobel Memorial Prize in Economic Sciences. He also published his first books, including the *Political Element in the Development of Economic Theory*.

public office or the special position one occupies in the public life but also the activity of the bribers.¹⁵

So, based on the definition above, corruption is inappropriate action which is related to the abuse of power, government activities or certain action to enrich illegally. Centre for International Crime Prevention (hereafter CICP)¹⁶ explains several actions which are categorized as corruption namely bribery, embezzlement, fraud, extortion, abuse of discretion, exploiting a conflict interest, insider trading, nepotism and illegal commission.¹⁷

According to Romli Atmasasmita,¹⁸ corruption is an extraordinary crime because corruption is a violation of human rights (social and economic rights). This is due to the nature of corruption that has been systematic, ingrained and flagrant which resulted in financial losses.¹⁹

Thus, if corruption occurs, the society who will get most impact of the corruption itself because the state or government will be harmed, then indirectly it also harms the society itself.²⁰ The impact of continuous corruption is not only harmful for the state and national economy but also give life impact of the nation and the state.

¹⁵Ermansjah Djaja, *Memberantas Korupsi Bersama Komisi Pemberantasan Korupsi*, *Op.Cit.*, p. 24
¹⁶ICPC is a unique international forum and resource centre dedicated to the exchange of ideas and knowledge on crime prevention and community safety.

International Centre for the Prevention of Crime, Introduction on ICPC, taken from <http://www.crime-prevention-intl.org/> accessed on Wednesday, November 8th, 2017 at 2:55 p.m.

¹⁷Ermansjah Djaja, *Memberantas Korupsi Bersama Komisi Pemberantasan Korupsi*, *Op.Cit.*, p. 22

¹⁸Romli Atmasasmita is an academician and professor in Law Science especially in International Law at Padjadjaran University

¹⁹Ermansyah Djaja, 2010, *Meredesain Pengadilan Tindak Pidana Korupsi*, *Op.Cit.*, p.11 & 28

²⁰Surachmin and Suhandi Cahaya, 2013, *Strategi dan Teknik Korupsi*, Jakarta, Sinar Grafika p.101

The criminal act of corruption is a violation of the social and economic rights of the people, so the corruption is not only classified as the ordinary crimes, but it is classified as extra ordinary crime. It means that corruption needs an extra ordinary effort to combat.²¹

So, the establishment of Corruption Eradication Commission is one of the effort from the government to combat the corruption. Corruption Eradication Commission is one of the auxiliary body which has extra ordinary power because the Corruption Eradication Commission is an independent institution in carrying out its authorities and duties independently.²²

C. Independence

The understanding of independence means a condition or position where someone is not bound by any party. It means that its existence is independent or does not carry out the interests of certain parties or organizations.²³

Regarding to a state institution, the Corruption Eradication Commission is a state institution which carries out its duties and authorities independently and free from any influence of power. Based on this understanding, the Corruption Eradication Commission is an independent state institution, whereas independence here means that the condition is free

²¹Elwi Danil, 2012, *Korupsi: Konsep, Tindak Pidana, dan Pemberantasannya*, Jakarta, PT Rajagrafindo Persada, p. 76 & 77

²²Article 3 of Law No 30 of 2002 on Corruption Eradication Commission

²³Pengertian Independensi dan Dependensi, taken from <http://www.pengertianmenurutparaahli.com/pengertian-independen-dan-dependen/> accessed on Sunday, December 17th 2017 at 3:15 p.m.

from dependence, control or restriction of the other parties.²⁴ In other words, independence means that the KPK shall be free from any influence that could affect the tasks and authorities of the KPK including the Commissioners individually, from any executive, legislative, judiciary and any other entities connected to a corruption case or for any situation and reason.

Furthermore, according to Funk and Seamon, independence is the process of appointment of KPK Commissioners which is free from the President's interference. In addition, Funk and Seamon state that the characteristics of an independent state agency are: First, it is led by collective leadership. Second, it shall not be controlled by the majority of certain political party. Third, the commissioners have a fixed tenure by means of tiered election (staggered terms), which means that they do not end their term simultaneously. Fourth, the members can only be removed from office based on what is mentioned by the regulation and not in the manner decided by the President as the executive branches. It is one of the way to ensure and maintain the independence of independent state agency.²⁵

D. Integrity

Integrity is a concept that refers to consistency among actions, values and principles. In ethics, integrity is defined as the honesty and truth of someone's actions. According to Pahala Nainggolan as the Deputy of

²⁴ Futher Explanations of Article 3 of Law No 30 of 2002 on Corruption Eradication Commission

²⁵ Denny Indrayana, *Op.Cit.*, p. 50

Prevention of KPK, he said that the integrity assessment will be seen from the way of public officials perform their duties in transparent, accountable and free from corruption.²⁶

There are two kinds of integrity, the first is external integrity, it is on transparency, accountability and free from the corruption. The second is internal integrity, it is on the culture of integrity which consist of organizational culture, anti-corruption system, and the integrity of work such as human resource implementation, budget management as well as leaders and senior staff.²⁷

The KPK has to be an institution which has high integrity to optimize its authorities and duties in combating corruption. It also means that the existence of KPK is very important and strategic as a trigger mechanism to ensure the integrity for other institutions in eradicating corruption. It is because KPK were born from the performance of main institution which had not worked effectively and it was motivated by public pressure in order to realize the good governance.²⁸ So, KPK has to be an example for other institutions, on how an institution can be consistent in eradicating the corruption honestly and prove the truth. It will get more optimal law enforcement officers in combating corruption.

²⁶Komisi Pemberantasan Korupsi, “Bersama Membangun Integritas Bangsa”, August 25th 2016, taken from <http://kpk.go.id/id/berita/berita-kpk-kegiatan/3637-bersama-membangun-integritas-bangsa> accessed on Tuesday, November 14th 2017 at 8.16 p.m.

²⁷ *Ibid.*

²⁸ Isbon Pagano, *Loc.Cit.*

E. Corruption Eradication Commission

The independence of the KPK was stated explicitly by the legislator in the Law No 30 of 2002 on Corruption Eradication Commission. Based on Article 3 of Law No 30 of 2002 on Corruption Eradication Commission, it is stated that KPK is to be a state agency that will perform its duties and authorities independently and free from any influence.

In the development and changing demands of the constitutional system, Indonesia needs to reform some constitutional matters in various ways, including institutional reform. Therefore, government formed some state auxiliary bodies as the body which assist the duties of government, including enforcement of the law and improvement of court figure.

In order to implement the good governance, some additional bodies were established to open more opportunities as an effort to apply the principles of good governance. It is important to realize that the establishment of the KPK arised from the assumption that corruption in Indonesia is considered as an extra ordinary crime so state needs an extra ordinary institution with extra ordinary powers to eradicate the corruption.²⁹

The idea of establishment of the KPK started due to the assumption that corruption is difficult to eradicate.³⁰ Thus, the police and clerk agencies have lost trust from the society to eradicate the corruption. The police and

²⁹Fitriani, "Eksistensi Komisi Pemberantasan Korupsi (KPK) sebagai Lembaga Negara Penunjang dalam Sistem Ketatanegaraan Indonesia", *Jurnal Nestor Magister Hukum*, Vol. 2 No. 2, p. 1

³⁰Teten Masduki and Danang Widoyoko, 2005, "Menunggu Gebrakan KPK", *Jurnal Jantera*, Edition VIII, p.41

clerk are assumed as institutions which is not effective in combating corruption.³¹

Therefore, the settlement of corruption cannot be carried out only by using ordinary effort, but must be with extra ordinary effort through a new institution.³² In order to return public trust in law enforcement, the government established the KPK as a new state institution that is expected to return the image of law enforcement in Indonesia.

In other words, the purpose of the establishment of the commission is to increase the effectiveness of corruption eradication. The establishment of the KPK is the response of the police and clerk which is not effective yet to combat the corruption. The KPK also is expected to be able to encourage the implementation of good governance. It means that the existence of the KPK is important but the KPK needs to coordinate with other institutions which has authorities related to the corruption eradication.³³

Moreover, the KPK has big authority in carrying out its duties. The KPK is tasked to coordinate with other actors which have authority to eradicate the corruption, conducting investigations, indictments and prosecutions against criminal acts of corruption, preventing criminal acts of corruption and monitoring the government.³⁴

³¹*Ibid.*

³²Ermansjah Djaja, *Memberantas Korupsi Bersama Komisi Pemberantasan Korupsi, Op.Cit.*, p. 30

³³Firmansyah Arifin, 2005, *Lembaga Negara dan Sengketa Kewenangan Antarlembaga Negara*, Jakarta, Konsorsium Reformasi Hukum Nasional (KRHN), pp. 87-88

³⁴Article 6 of the Law No 30 of 2002 on Corruption Eradication Commission

Furthermore, based on the Article 11 of Law No 30 of 2002 on Corruption Eradication Commission, the authority of the KPK in investigation and prosecution can be conducted in certain corruption case which has some criterias, the first is the case should involve law enforcer, state officer, and other people who are related to corruption case committed by law enforcers or state officers. The second is the case that receives big attention from the society. The third is the case where the state loses at least IDR 1,000,000,000.00 (one billion rupiahs).³⁵

³⁵Surachmin and Suhandi Cahaya, *Op.Cit.*, p.138