

CHAPTER FOUR

FINDING AND ANALYSIS

A. The Supervision of Corruption Eradication Commission

One of the main topics of an independent commission is the meaning of independence itself. Independence here does not mean that the independent commission is without supervision. In this concept, independence means that a system of accountability must be strengthened.¹ So, independence here is not an uncontrollable commission that will be free but has built the best supervisory system.

A state institution is an independent body which is ideally independent of any interference of power and outside the branch of executive, legislative and judicial power.² It means that the Corruption Eradication Commission as a state institution should be free from any influence in conducting its duties and authorities in combating corruption.³

Based on Article 1 of Law No. 30 of 2002 on KPK, it defines that supervision is one of action series to prevent and combate the corruption. One of KPK's supervisory duties is to supervise the institutions that carry out their duties and authorities relating to the corruption eradication, and the

¹Denny Indrayana, *Op.Cit.*, p. 50

²Zainal Arifin Muchtar and Iwan Satriawan, 2009, "Efektivitas Sistem Penyeleksian Pejabat Komisi Negara di Indonesia", *Jurnal Konstitusi*, Mahkamah Konstitusi Republik Indonesia, Vol. 2, No. 1, p. 147

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

institution which carry out public services.⁴ It means that the KPK has the authority to supervise the agencies such as the Supreme Audit Board, the Financial Supervisory Board, and the State Asset Wealth Check Commission, the departmental inspectorate or the Non-Departmental Government Institution.⁵

Referring to other institutions such as the police department which is supervised by the National Police Commission and judges who are also supervised by the Supreme Court and Judicial Commission. It is contradict with the KPK, until now there is no special body that supervise the performance of the KPK. Without any supervisory body, KPK was supervised by the people through the House of Representatives (DPR) and anti-corruption non-governmental organizations (NGO).⁶ Futhermore, the supervision conducted by DPR is carried out through the mechanism of hearings regularly or after responding to certain issues which is developed in the society only. The reason why KPK is supervised by the DPR is because the appointment of Commissioners of the KPK was done through fit and proper test conducted by the DPR which is then appointed by the President of the Republic of Indonesia.

Based on the explanation above, the KPK supervisory system still creates controversy because the DPR can intervene the KPK's performance

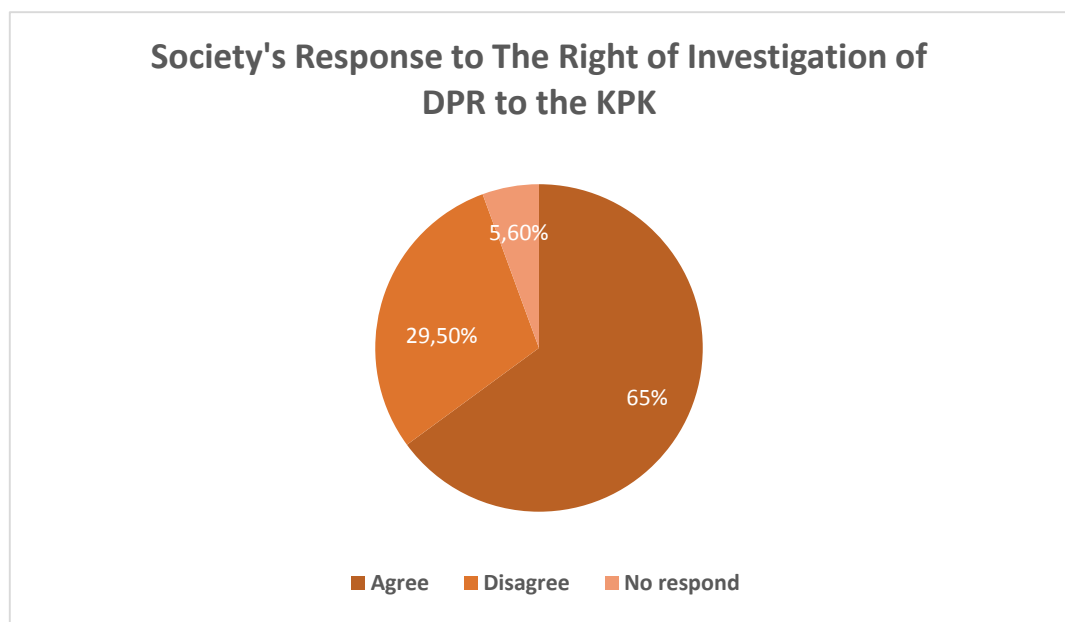
⁴Article 6 point b and article 8 point 1 of Law No 30 of 2002 on Corruption Eradication Commission

⁵Charlie Lumenta, 2014, "Pengawasan terhadap Penegak Hukum dalam Penanganan Perkara Tindak Pidana Korupsi", *Lex Crimen*, Vol. 3 No. 1, p. 130

⁶*Ibid*, p. 131

objectivity. For example, in 2017, DPR used its right of investigation to evaluate the performance of Corruption Eradication Commission.⁷ In a survey conducted by Saiful Mujani Research and Consulting (SMRC)⁸ on May 14 to May 20th, 2017 with 1,350 respondents⁹ are as follows:

Figure 4.2
The Society Response to the Right of Investigation of DPR to the KPK



Source:

<http://nasional.kompas.com/read/2017/06/16/06062611/bukan.aspirasi.masyarakat.untuk.siapa.hak.angket.kpk>

⁷Gibran Maulana Ibrahim, "Ini Sederet Alasan DPR Gulirkan Hak Angket KPK", April 28th 2017, taken from <https://news.detik.com/berita/d-3486828/ini-sederet-alasan-dpr-gulirkan-hak-angket-kpk> accessed on Friday, October 6th 2017 at 5:40 p.m.

⁸Established in 2011, SMRC is firmly rooted in the tradition of public opinion surveys in Indonesia. The founder of SMRC, Saiful Mujani, is one of the pioneers of political studies and public policy based on quantitative surveys.

⁹Robertus Belarminus, "Bukan Aspirasi Masyarakat, untuk siapa Hak Angket KPK?", June 16th 2017, taken from <http://nasional.kompas.com/read/2017/06/16/06062611/bukan.aspirasi.masyarakat.untuk.siapa.hak.angket.kpk> accessed on Saturday, January 27th 2018 at 9.28 p.m.

Based on these facts, it shows that indirectly KPK already has supervisor through other institutions, but the supervision is still not effective due to debateable mechanism whether the supervision conducted by other institution can strengthen the KPK or can disturb the independence of the Commission or public do not trust to the DPR as the representative of the people whose members of the DPR are still involved to the corruption case itself.

Internal control (self-control) is the primary key for the supervision of independent institutions, which can minimize the interventions from other institutions.¹⁰ For anti corruption commission, the internal control system is the best supervision to ensure the independent of the commission, although external supervision should still exist but can be minimized. In other words, the KPK needs more effective supervision and internal control is the best choice for independent commissions.

Thus, while independent commission is free from any intervention but it still has limitation of powers. Independent commission also is the subject to checks and balances with other state institutions including main state institutions as constitutional organs.

In practice, KPK has a Committee of Ethic as the results of deliberations among Commissioners of KPK. The Committee of Ethic here is the supervisor who responds or observes the ethics of the KPK

¹⁰Denny Indrayana, *Op.Cit.*, p. 50

Commissioners. The Committee of Ethics has the main duties to observe seeking information and examine anyone who are related to the case.

Based on the decision of KPK Commissioners No: KEP-6/P.KPK/02/2004 on the Code of Ethics of KPK Commissioners, in article 7 point 2 mentions that the Committee of Ethics was formed with 5 people, 2 people of internal KPK and 3 people from external KPK. It needs to be done as an action to settle certain cases objectively, transparently and accountably. Based on the decision, three people from external KPK are considered and required to have high integrity and credibility and commitment to the KPK.¹¹

Meanwhile, Abdullah Hehamahua as the advisor of KPK has explained that in KPK there are two kinds of code of ethics mechanism, namely employees and Commissioners ethics of code. If an employee violates the code of ethics, then the process is internal supervisor, which then formed Employees Advisory Board (hereafter DPP) as an examination council which will decide the result and then it will be submitted to the Commissioners to be executed. While, the violations committed by the Commissioners will be processed by the Committee of Ethics which consist of the Commissioners, advisor, and external KPK who have integrity.¹²

¹¹Komisi Pemberantasan Korupsi, “KPK Bentuk Tim Komite Etik Terkait Dugaan Kebocoran Draf Sprindik”, February 25th 2013, taken from <http://kpk.go.id/id/berita/berita-kpk-kegiatan/864-kpk-bentuk-tim-komite-etik-terkait-dugaan-kebocoran-draf-sprindik> accessed on Saturday, March 3rd 2018 at 11.16 a.m.

¹²*Ibid.*

Based on the explanation above, the Committee of Ethics and DPP are only formed when there are violations of ethics occurred. So, there is no intensive supervision on the ethics to employees, investigators or Commissioners of KPK.

For example in 2013 in the Leak of Investigation Letter Draft case, KPK Commissioners formed a Committee of Ethics to find the parties who are involved to the case. In this case, internal KPK consists of KPK Commissioners, Bambang Widjojanto, and the KPK advisor, Abdullah Hehamahua. Then, three people from external KPK, namely Abdul Mukti Fajar (academics), Anies Baswedan (Rector of the University of Paramadina), and Tumpak Hatorangan Panggabean (ex-Commissioners of the Commission).¹³

In drafting the result, the Committee of Ethics determines who the witnesses are and examined in case of leakage of documents belonging to the KPK. In the inspection process takes around a month to find the result. Then, the result of this case is examined and adjudicated the leakage case to Abraham Samad as KPK Commissioners. The committee found violation of code of ethics in the medium category because his attitudes and commit of leakage of investigation letter of Anas Urbaningrum.¹⁴

¹³Edi Abdullah, "Pembentukan Komite Etik KPK, Landasan Hukum Pembentukannya", taken from <http://makassar.lan.go.id/index.php/survei/refleksi/665-pembentukan-komite-etik-kpk-landasan-hukum-pembentukannya> accessed on Saturday, March 3rd 2018 at 1.53 p.m.

¹⁴*Ibid.*

Although, it is not proven directly but Abraham Samad is considered negligent supervising his secretary, Wiwin Suwandi. So, Wiwin Suwandi leaked the investigation letter to some media crew. As a result Abraham Samad was sentenced in the form of a written warning to improve his attitude, actions and behaviour. While, Wiwin Suwandi who is Secretary of Abraham samad was fired because she was declared as the main actor of the leakage case.¹⁵

The sanctions of Abraham Samad was determined based on the findings of the Committee of Ethics. The sanctions are decided upon the decision of the committee. In the code of ethics on KPK Commissioners, there is no specific rules related to sanctions but it will be formulated based on the finding.¹⁶ Based on this case, the committee of KPK should be appreciated because it is one of the committee that has integrity in carrying out its duties in observing. It is proven by Abraham Samad who has given a warning for what he has done.

According to Febri Diansyah as spokesman of KPK, the Committee of Ethics had conducted supervision to KPK effectively and it involved by internal and external parties. One of the external parties was

¹⁵*Ibid.*

¹⁶Komisi Pemberantasan Korupsi, “KPK Resmikan Komite Etik Sprindik”, taken from <https://www.kpk.go.id/id/berita/berita-sub/868-kpk-resmikan-komite-etik-sprindik> accessed on Saturday, March 3rd 2018 at 11.28 a.m.

also is a DPR member. Then, actually supervision was done as a whole by the public.¹⁷

However, the problem is whether the Committee of Ethics and the DPP as the ad hoc supervisor will be effective because those only exist when the KPK Commissioners and employees did violation, not intensively. It also should be a warning for KPK to be able to ensure more the cooperation and effectiveness of KPK Commissioners in the future.

Discussing on the supervision, the special committee which was established by DPR has submitted the recommendation as the result of their work. In the recommendations, there are four aspects namely institutional, authority, human resource management and budget. In the institutional aspect, the special committee recommends KPK to establish a Supervisory Board.¹⁸

According to the committee even though the KPK has a Committee of Ethics in the form of ad hoc. However, the KPK is expected to have an institution that not only exist if there is a violation but conducts intensive

¹⁷Sabir Lallahu, “KPK Tidak Sepakat dengan rekomendasi Pansus Angket DPR”, February 14th 2018, taken from <https://nasional.sindonews.com/read/1282225/12/kpk-tidak-sepakat-dengan-rekomendasi-pansus-angket-dpr-1518622140/> accessed on Friday, March 9th 2018 at 11.30 a.m.

¹⁸Mula Akmal, “DPR Setujui Laporan Akhir dan Rekomendasi Pansus Hak Angket KPK”, February 14th 2018, taken from <https://nasional.sindonews.com/read/1282245/12/dpr-setujui-laporan-akhir-dan-rekomendasi-pansus-hak-angket-kpk-1518625809> accessed on Friday, March 9th 2018 at 11.15 a.m.

supervision. The special committee considered that the KPK needs permanent supervision to supervise the tasks of corruption eradication.¹⁹

In the recommendation, the committee of DPR recommended that the KPK should establish an independent supervisory body which consist of internal and external KPK. The people are figures with integrity in order to create checks and balances. According to Vice Chairman of the DPR, Fahri Hamzah, if the supervisory institutions are formed, it should be based on the law through revision of the Law of Corruption Eradication Commission.²⁰

However, this issue is still debateable in public whether the supervisory board will strengthen the KPK or not. Indonesian Corruption Watch (ICW) criticized the recommendation of the special committee on the establishment of the supervisory board of the Corruption Eradication Commission. ICW assessed that it is an inappropriate recommendation because the Commission has a Committee of Ethics to investigate the violations of ethics. In fact, the DPR also supervise the KPK in political and its performance. Thus, ICW assessed the recommendation as an effort to weaken the KPK.²¹

¹⁹Glery Lazuardi, “Bamsuet Sebut Dewan Pengawas dan Komite Etik KPK Berbeda”, February 1st 2018, taken from <http://www.tribunnews.com/nasional/2018/02/01/bamsuet-sebut-dewan-pengawas-dan-komite-etik-kpk-berbeda> accessed on Saturday, March 3rd 2018 at 3.23 p.m.

²⁰Andri Saubani, “Soal Dewan Pengawas KPK, Fahri Saran UU KPK Direvisi”, February 14th 2018, taken from <http://nasional.republika.co.id/berita/nasional/hukum/18/02/14/p44uxx409-soal-dewan-pengawas-kpk-fahri-saran-uu-kpk-direvisi> accessed on Saturday, March 3rd 2018 at 3.25 p.m.

²¹Srihandriatmo Malau, “ICW Nilai Rekomendasi Pembentukan Dewan Pengawas sebagai Upaya Terakhir DPR Lemahkan KPK”, February 1st 2018, taken from <http://www.tribunnews.com/nasional/2018/02/01/icw-nilai-rekomendasi-pembentukan-dewan-pengawas-sebagai-upaya-terakhir-dpr-lemahkan-kpk?page=2> accessed on Saturday, March 3rd 2018 at 3.34 p.m.

According to Andi Hamzah,²² the Supervisory Board will be established in order to have an institution that supervise the performance of KPK including wiretapping. According to him, the existence of the Supervisory Board is not necessary because it will only add to the bureaucratic process and increase the state budget. Actually, the House of Representatives and the President should supervise the KPK because they are the onw who have authority. The KPK also must give annual report to DPR and the president as a form of accountability to the public.

Romli Atmasasmita argues that the Supervisory Board needs to be established in order to supervise to the wiretaps as one of the authority of KPK. For example, wiretaps must get permission from the Supervisory Board beside KPK Commissioners. While, Romli also admit that the KPK's concerns through the Supervisory Board could be interfered by executive interests because the Supervisory Board will be appointed by the President.

Regarding the Supervisory Board, the KPK argue that there are many institution that supervise the KPK indirectly. For example, the House of Representatives supervises through the hearings and the authority which DPR has. Then, Audit State Agency (BPK) also conducts supervision in financial audits and the public also conducts daily supervision. All things done by the KPK related to the judicial process will be monitored through

²²Andi Hamzah is a Profesor of Faculty of Law in Univesitas Trisakti

the judicial mechanism. Even in case of ethical violation, there is the Committee of Ethics which observes and supervises the violation.

Therefore, it is better for KPK to strengthen internal controls. Strengthening internal supervision should be done by enforcing a code of ethics under the Zero Tolerance principle and free from corruption. Meanwhile, KPK can strengthen internal supervision, the ethics and values of anticorruption to KPK employees. It can be done through a risk management program in the field of prevention. Then, the Committee of Ethics still become the internal supervisor of the KPK which has integrity and can observe the ethics of KPK Commissioners and investigators. This method is expects that everything that happens in the internal can be directly detected.²³

B. The Selection Mechanism of Commissioners and Investigators

The anti-corruption commission should be an independent institution. If the anti-corruption commission does not has independence, then the success of the commission will not be achieved in carrying out its duties in combating corruption.²⁴ Corruption is one of the complicated issues in the world including Asian countries. Every country has their own efforts to eradicate the corruption such as strengthening through their own law and commission.

²³Adnan Topan Husodo, 2011, *Evaluasi dan Road Map Penegak Hukum KPK*, Jakarta, Indonesia Corruption Watch, p. 18

²⁴Diana Napitupulu, 2010, *KPK in Action*, Jakarta, Raih Asa Sukses (Penebar Swadaya Grup), p. 5

In combating corruption, ensuring the independence and integrity of the anti-corruption commission is important. The selection mechanism of KPK Commissioners is one of the critical issue of the destructive process of independence and integrity. The requirements and mechanisms of selection of investigators and Commissioners of KPK are expected to be transparent and accountable. Thus, the KPK has credible and competent people to combat corruption.²⁵

Discussing the requirements of KPK investigator candidates, based on the Regulation of Corruption Eradication Commission No. 2 of 2017 on the Procedures of Selection Recruitment and Development of Specialist Employees, there are some requirements to be a KPK investigator, namely:

1. Indonesian citizen;
2. Believe in One God;
3. Physical and Spiritual Health;
4. Age min. 23 (twenty three) years and max. 39 (thirty nine) years at the deadline of the registration date
5. Never get into drug, criminal and financial problems
6. Never be dismissed dishonourably as an employee
7. Unbound ties of blood relationship up to 3rd degree with officials / employees of KPK

²⁵Indonesia Corruption Watch Report, “Mengenal Proses Seleksi Pimpinan Komisi Pemberantasan Korupsi”, p. 2

8. Unbound ties of blood relationships, up to 3rd degree with suspects / defendants / convicted criminal acts of corruption.²⁶

Futhermore, in other requirements there are also several criterias that KPK investigators need to fulfill such as knowledge of investigation, integrity and capability. For the recruitment of investigator, KPK employees who register have been assigned for at least two years in their position because it is considered to be a basic experience for those concerned in following the selection of investigator. In the selection also it does not only consider experiences, but also a series of other tests to be performed such as potential test, psychology, competencies, English, and interviews. In the selection, the investigator is usually selected by Audit and Development Agency (hereafter BPKP) while the public prosecutor is selected by the Attorney General Office.²⁷

In 2012, one of the controversial issues occurred. As many as 20 investigators were withdrawn to the Police institution because the Police institution did not renew the contract of 20 investigators who work in KPK. In this case, almost a quarter of KPK investigators had been withdrawn and indirectly disrupted the performance of the KPK. Therefore, the KPK sent a letter to the Chief of Police institution to request that the withdrawal of 20

²⁶Komisi Pemberantasan Korupsi, “KPK Buka Program Indonesia Memanggil 11”, taken from <https://www.kpk.go.id/id/berita/berita-kpk-kegiatan/3640-kpk-buka-program-indonesia-emanggil-11> accessed on Wednesday, February 28th 2018 at 10.50 a.m.

²⁷*Ibid.*

investigators to be postponed. KPK is still dependent on the Police in terms of investigator resources.²⁸

The contract between KPK and Police on investigator has been regulated in Government Regulation No. 63 of 2005 on Human Resource Management System of KPK. In Article 5 paragraph 3 mentions that the period of assignment of civil servants who are employed on a commission maximum 4 years and can only be extended once.²⁹

Based on Article 43 of Law No 30 Of 2002 on KPK, it mentions that an investigator of KPK is appointed and terminated by the KPK. Based on that article, it can be concluded that every investigator can only be terminated by the KPK. Although, in fact, the Police institution can withdraw investigators of KPK and around 20 investigators were withdrawn. It was known that 4 of them were willing to return after working for 6 years in the KPK. However, 12 of them are on duty for one year.³⁰

In this case, it contradicts with Law No. 30 of 2002 on KPK and Government Regulation No. 63 of 2005 on Human Resources of KPK. In Article 39 point 3 of Law No 30 of 2002 on KPK, it emphasizes that investigators, indictors, and general prosecutors who hold office at the KPK

²⁸Icha Rastika, "Ini Kriteria Penyidik yang Dibutuhkan KPK", September 18th 2012, has taken from <http://nasional.kompas.com/read/2012/09/18/19561086/Ini.Kriteria.Penyidik.yang.Dibutuhkan.KPK> on Monday, February 26th 2018 at 1.58 p.m.

²⁹ Detik News, "KPK akan Tinjau Kembali Kontrak Kerja Pegawai Bantuan", November 25th 2008, taken from <https://news.detik.com/berita/1042883/kpk-akan-tinjau-kembali-kontrak-kerja-pegawai-bantuan> accessed on Saturday, March 10th 2018 at 9.55 a.m.

³⁰ Indonesia Corruption Watch, "Penarikan Penyidik dapat Melumpuhkan KPK", October 2nd 2012, taken from <https://antikorupsi.org/id/news/penarikan-penyidik-dapat-melumpuhkan-kpk> accessed on Monday, February 27th 2018 at 3.21 p.m.

are temporarily relinquished of their duties at Police institution and the Prosecutor's Office while they are under the employment of the KPK. It means that the Police institution does not have authority to terminate the investigators of KPK because they are temporarily relinquished of the Police institution. It also would not be effective if a new investigator in charge of one year has been trained to the institution of origin.³¹

Nevertheless, the KPK cannot immediately change 20 new investigators because there is a selection process that must be passed to become an investigator of KPK. The selection process does not take a short time to ensure that all investigators will fulfill the requirement as the standard of KPK.

In 2017, the KPK has received 7 (seven) investigators from the Police institution. They have passed the process of recruitments and selection mechanism of the KPK.³² Based on the data, the total number of KPK investigators are 89 people, with details 44 people who are permanent employees of KPK and 45 people from the Police.³³

According to Dahnil Anzar Simanjuntak as the Chairman of Muhammadiyah Youth said that KPK should solve the internal situation of KPK at this time. One of the issues is the problem of double loyalty due to

³¹ *Ibid.*

³² Feri Agus, "KPK Sebut Masih Butuh Penyidik Polri dan Penuntut Kejaksaan", October 12th 2017, taken from <https://www.cnnindonesia.com/nasional/20170912142101-20-241172/kpk-sebut-masih-butuh-penyidik-polri-dan-penuntut-kejaksaan> accessed on Monday, February 26th 2018 at 12.48 a.m.

³³ *Ibid.*

various background investigators in the KPK such as Police, Attorney and internal investigators who have removed their origin institution. According to Anzar, all KPK investigators have a single loyalty to conduct the duty to eradicate corruption through the KPK. If it is not solved, then the KPK will face many problems in the future.³⁴

Similarly, according to Denny Indrayana,³⁵ if the investigators can still return to their origin institution, then the intervention will be easier to do as an indication of KPK investigator withdrawal by the Police. Thus, to avoid double loyalty and to avoid intervention, the status of KPK employees should be clarified and no longer any KPK employees who have double status and disrupt the independence of the KPK.³⁶

Based on a comparative study conducted by the KPK, more than 19 countries was analysed, only one country has a non-permanent employee, namely Sri Lanka. Also there are only 3 countries whose employees are fixed and non-permanent mix those are Brazil, Nigeria and Indonesia. While the rest, 15 other countries apply the concept of a permanent personnel system.³⁷

Based on the issues above, indirectly when the investigators of KPK are still dependent on the Police, it may disturb the independence of the KPK

³⁴ Ivan Setyadi, “Rekrutmen Penyidik KPK Perlu Dikaji Ulang”, September 15th 2017, taken from <https://nasional.inilah.com/read/detail/2404595/rekrutmen-penyidik-kpk-perlu-dikaji-ulang> accessed on Monday, February 26th 2018 at 1.06 p.m.

³⁵ Denny Indrayana is one of the founders of the Indonesian Court Monitoring and Anti-Corruption Studies Center Faculty of Law, Gadjah Mada University.

³⁶ Prof. Denny Indrayana, *Op.Cit.* p. 199

³⁷ *Ibid.*, p. 198

and make it easier to be intervened. The KPK should be free from the other parties' intervention. So, KPK must emphasize to choose the employees as permanent employees in the KPK and cannot return to their origin institutions (Police or Attorney).

It is based on Article 7 of the Government Regulation No. 63 of 2005, it states that the civil servants employed in the KPK may transfer their employment status to a permanent employee in accordance with the requirements and procedures stipulated in the Regulation of Commission.

Based on Article 3 point a of Government Regulation No. 63 of 2005 on Human Resources of KPK mentions that there are three classifications of employees in KPK, namely permanent employees, civil servants employees and non-permanent employees. The meaning of the permanent employee is the Indonesian citizen who fulfils the requirements and appointed by the Commissioners of the Commission as a permanent employee of the KPK. Thus, the KPK may appoint investigators not only through the Police but can recruit independently.

So, the KPK should be able to solve the problem of double loyalty. KPK has to appoint and dismiss its own employees, including investigators and prosecutors. They have to be independent from the Police and the Prosecutor's Office. As long as the KPK is still unable to recruit its own investigators, so long as the KPK is not really independent.

Discussing on the guarantee of KPK's independence, beside KPK investigators then the requirements and selection mechanism to be KPK Commissioners also become necessary to be considered. According to Zainal Arifin Mochtar, there are three criterias that must be fulfilled by the candidates of KPK Commissioners, namely integrity, capability, and acceptability. Integrity means having ability, dignity and honesty. The capabilities or abilities is not only legal technicality, but also courage. KPK Commissioners also must have acceptability which means acceptable to any community, especially the public.³⁸

In 2015, the President issued the Government Regulation in Lieu of Law No. 1 of 2015 on the amendment to Law No. 30 of 2002 on Corruption Eradication Commission which has been approved by the House of Representatives and enacted through Law No. 10 of 2015 on its amendment.³⁹ The amendment discusses about the KPK Commissioners selected by the House of Representatives and the candidate is proposed by the President through Selection Committee. Then, the committee will select and deliver the name of candidate who will pass to the fit and proper test from the DPR.

³⁸ Indonesian Corruption Watch, "Seleksi Pimpinan KPK; Calon Harus Penuhi Tiga Syarat", May 31st 2010, taken from <https://antikorupsi.org/id/news/seleksi-pimpinan-kpk-calon-harus-penuhi-tiga-syarat> accessed on Monday, February 26th 2018 at 8.49 p.m.

³⁹ Novianto M. Hantoro, 2015, "Akseptabilitas Politik dalam Seleksi Calon Pimpinan KPK", *Peneliti Madya Hukum Konstitusi, Bidang Hukum, Pusat Pengkajian Pengelolaan Data dan Informasi, Sekretaris Jenderal DPR Republik Indonesia*, Vol. VII, No. 18, p. 1

Based on Article 30 of Law No. 30 of 2002 on KPK, KPK Commissioners are elected by the House of Representatives based on the candidate who are proposed by the President. The President will deliver the names of candidates of the KPK Commissioners as much as 2 (two) times the number of positions required by the DPR. The House of Representatives is obliged to determine 5 (five) candidates required within no more than 3 (three) months. The House of Representatives also obliged to determine among candidates, one as a Chairman and the rest of 4 (four) candidate members will be the Vice Chairman. The Commissioner candidates shall be submitted by the DPR to the President at least 7 (seven) working days determining the candidates to be approved by the President as the Head of State.⁴⁰

Based on Article 29 of Law No. 30 of 2002 on Corruption Eradication Commission, the requirements shall be fulfilled by the candidates namely:

- a. An Indonesian citizen;
- b. Believe in One God;
- c. Physically and mentally fit;
- d. Has an undergraduate degree in Law, or other degrees of expertise as well as at least fifteen years of experience in areas of Law, Economics, Finance, or Banking;

⁴⁰ *Ibid.*, p. 2

- e. Is at least forty years old and at most sixty-five years old during the year of selection;
- f. Has never acted improperly;
- g. Is competent, honest, has a high moral integrity and is of good repute;
- h. Is not a caretaker of a political party;
- i. Relinquishes all other offices while being a member of the KPK;
- j. Does not pursue his/her profession while a member of the KPK;
- k. Publicizes his/her wealth according to the prevailing laws.

The selection mechanism in the DPR is regulated based on the House of Representatives Regulations on Code of Conduct. The procedures for the selection and deliberation shall be determined by the respective commission including: administrative research; delivery of vision and mission; fit and proper test; determining the sequence of candidates; and or notification to the public, either through print or electronic media.⁴¹

Futhermore, Zainal Arifin Mochtar propose that the House of Representatives should change the selection mechanism of KPK Commissioners from the political interest because it is possible that only the candidates who have closeness with the political party to be selected. The selection mechanism of the candidates of KPK Commissioners through fit and proper test in DPR also raises concerns. Thus, it is a good idea to ask all political parties to pledge not intervene the political process in the selection

⁴¹ *Ibid.*

of the candidates of KPK Commissioners and the better suggestion for the experts in the election process. The expert will raise a balance and anticipate the political interests from DPR members.⁴²

In the selection of KPK Commissioners, the political interest must be reduced both from the Law and also public opinion. To support the effective selection mechanism, the President must propose candidates through the selection committee, while the DPR also should involve the experts in their selection process. According to Jimly Asshiddiqie, the DPR only conducts political selection which prioritizes candidate ideology while the special committee takes into the technical selection within the capacity, integrity, health and administrative completeness.⁴³

Therefore, to support the independence on the selection mechanism, the requirement to be KPK Commissioners need to be added that the candidates are not from the member of political party or if the candidates are the member of a political party, there should be a period of his termination, for example, 5 years before being nominated for KPK Commissioners. The problem of limiting the candidates from political parties is in line with the decision of the Constitutional Court Number 53/PUU-XV/2017 on the factual verification of all political parties of election candidates, in order to ensure the independence of the General Election Commission (hereafter KPU) as the commission who has authority

⁴² *Ibid.*, p. 3

⁴³ *Ibid.*

to carry out the election. The members of KPU are prohibited from political parties' members, except after stopping for 5 years. So, the Commissioners of the anti-corruption commission can avoid themselves from any political interference by political parties⁴⁴

The main requirements for anti-corruption commission is the institution itself must be free from the practice of corruption. According to John Quah, there are two main reasons why anti-corruption commissions should be free from corruption, first, if the anti-corruption commission personnel themselves are caught up in corruption then they will lose their legitimacy. Second, corruption in anti-corruption institutions will not only harm the institution, but also it will disturb the performance of commission members to combat the corruption. Therefore, the selection mechanism of the KPK Commissioners and investigators is important because it is to find the personnel with high capability who will be selected from a good selection.⁴⁵

Thailand's experience is one of bad examples that can be a lesson learned for anti corruption commission. The first, anti-corruption commission of Thailand was dissolved because five Commissioners of the Thailand Anti-Corruption Commission involved in the corruption. Then, in May 2005, all nine Commissioners of the National Counter Corruption

⁴⁴ Denny, *Op.Cit.* p. 192-193

⁴⁵John ST Quah, 2007, "Anti-Corruption Agencies in Four Asian Countries: A Comparative Analysis", *International Public Management Review*, Vol. 8 No. 2, p. 82

Commission (hereafter NCCC) resigned. They were found guilty by the Supreme Court of Thailand for abusing their power when issuing a decision that raised his salary by 45,000 baht (US \$ 1,125).⁴⁶

The personal integrity of the anti-corruption commission should be ensured in terms of their honesty, competence and selected through a strict process. Any personnel of the anti-corruption commission which has committed an offense especially committing corruption, the sanction for the person should be strictly imposed, for example, dismissal punishment.⁴⁷

Among this issues committed by the personnel of anti corruption commission, a corruption case that was committed by three investigators of the Corruption Eradication Commission in Indonesia. They are Ario Bilowo, Arend Arthur Duma, and Edy Kurniawan. They are reported by Ikham Aufar Zuhairi and Arief Fadillah who accused them of abusing authority as KPK's investigators.⁴⁸ Based on the case, it can be concluded that the integrity of KPK employees were questioned because it will impact the performance of anti-corruption commission and it is one of the important problems that must be solved by the KPK to ensure the integrity of the KPK to the society.

⁴⁶ *Ibid.*

⁴⁷ *Ibid*

⁴⁸ Akhdi Martin Pratama, "Dituduh Salah Gunakan Wewenang, Pegawai KPK Dilaporkan ke Polisi", October 30th 2017, taken from <http://megapolitan.kompas.com/read/2017/10/30/16302261/dituduh-salah-gunakan-wewenang-pegawai-kpk-dilaporkan-ke-polisi> accessed on Sunday, December 17th 2017 at 3:05 p.m.

Another example is Singapore. In 1997, a senior official of the Corrupt Practices Investigation Bureau (hereafter CPIB of Singapore) was caught in collusion case with a businessman. Chua Cher Yak, as the Director of CPIB, has ordered a polygraph test to all employees, including himself, to prove their integrity which is proven by Chua and his employee passed the test. The effort of Chua is successful to keep the trust of the Singaporean, especially through the idea of Chua in order to enhance their integrity to the public, it may also be implemented for the Anti-Corruption commission in Indonesia with their own solution⁴⁹

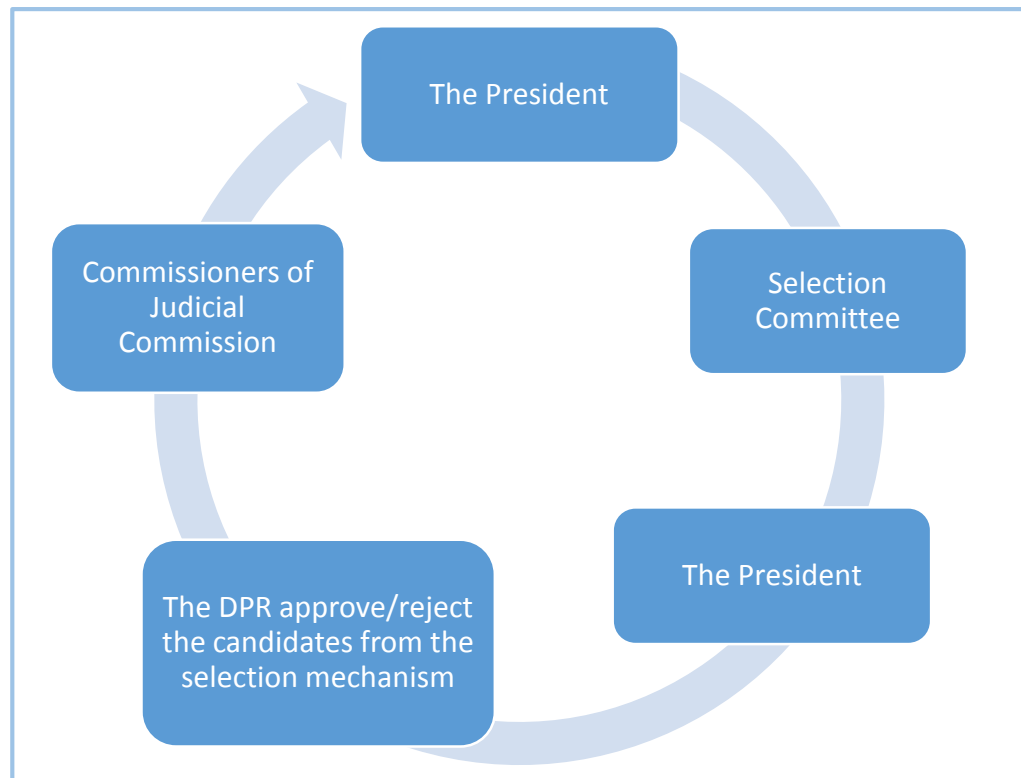
The effort conducted by Chua as the Director of CPIB is a good lesson on how Indonesia can take on the meaning of integrity made by CPIB Singapore that can ensure its integrity to the public. So, an integrity for the anti-corruption commission is important because if the commission has lost its integrity, its performance also will be doubtful in combating corruption.

The integrity cannot be separated from the selection mechanism of the KPK Commissioners. Nowadays, the selection mechanism of the independent commission is still various. For example, selection mechanism of Commissioners of Judicial Commission. In this model, the House of Representative (known as DPR) can only reject or approve the appointment from the selection committee as the representative of Executive branch. This

⁴⁹ John ST Quah, *Op.Cit.* p. 82

model is based on the Article 27 and Article 28 of Law No. 22 of 2004 on Judicial Commission

Figure 4.3
The Selection Mechanism of Commissioners Judicial Commission



Source:

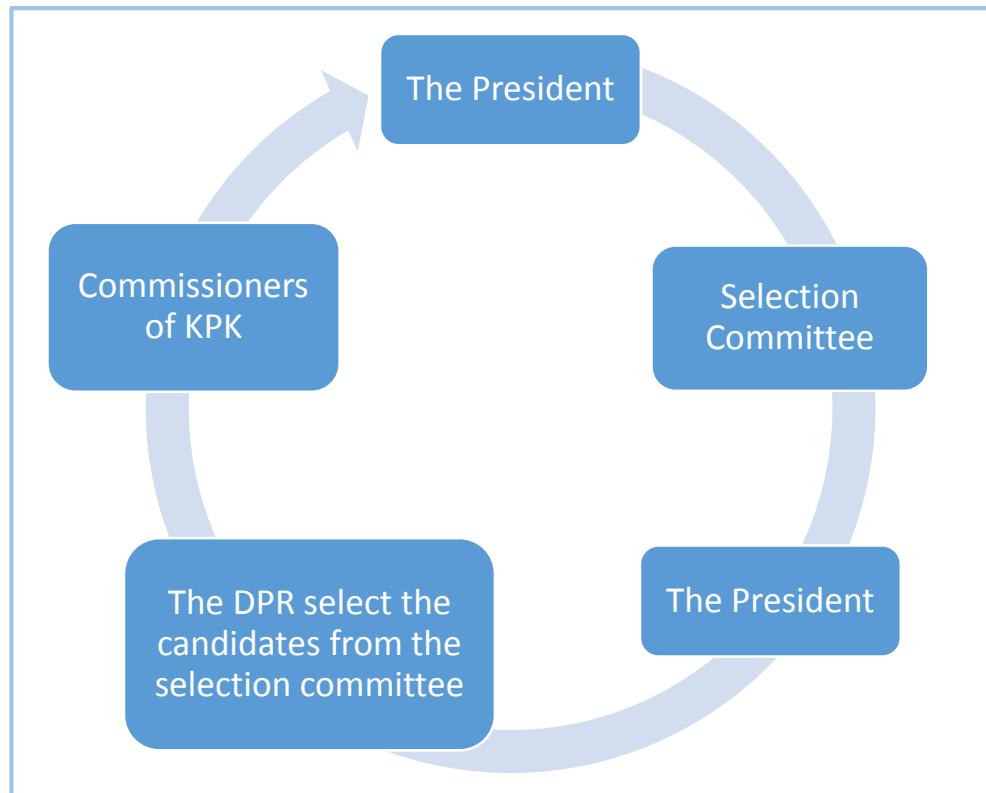
Denny Indrayana, 2016

Another example is the selection mechanism of KPK Commissioners. In this mechanism, the DPR will select the candidates from the selection committee which twice the required amount candidates needed. It means that the special committee submits 10 candidates and the DPR has opportunity to select 5 candidates.⁵⁰

⁵⁰ See Denny, *Op.Cit.* p. 193

The Figure 4.4

The Selection Mechanism of Commissioners Corruption Eradication Commission



Source:

Denny Indrayana, 2016

According to Denny Indrayana, the model of Judicial Commission arise a risk of bringing the gridlock when the DPR never agrees with the proposed candidates of selection committee. The last incident, the DPR refused 2 candidates from 9 candidates who has been submitted. The rejection has hampered the recruitment of the Judicial Commission Commissioners and the President must propose two more candidates for approval to the DPR. There is still a risk that the DPR will again disagree

on the candidates who were proposed by the President and it arises the deadlock and vacancy of the Commissioners of Judicial Commission.⁵¹

Furthermore, the model of KPK open the chances for the DPR to select the candidates, as well as this theory is close the possibility of deadlock. Although, last time in the selection process of the KPK Commissioners began to arise unfounded arguments to reject the candidates of KPK Commissioners submitted by the special committee. The rejection of the House of Representatives has no legal basis and therefore should not be done. The process in the DPR is indeed vulnerable to various political considerations which therefore need to be anticipated by a system so that political interests do not disturb the independence of the KPK.⁵²

Based on the explanation above, Prof. Denny Indrayana also proposed a better selection mechanism of KPK Commissioners. It will be better to give the House of Representatives a chance to select the candidates who submitted by special committee with a more limited choice. For example, for KPK Commissioners which consist of 5 (five) persons. Then, DPR is not only allowed to choose or reject like Judicial Commission model; or choose 5 from 10 candidates who are submitted by the special committee, but the special committee only proposes 7 candidates, and the DPR can reject 2 people and must choose 5 of them to be KPK Commissioners. Thus, the potential deadlock as possible in the Judicial

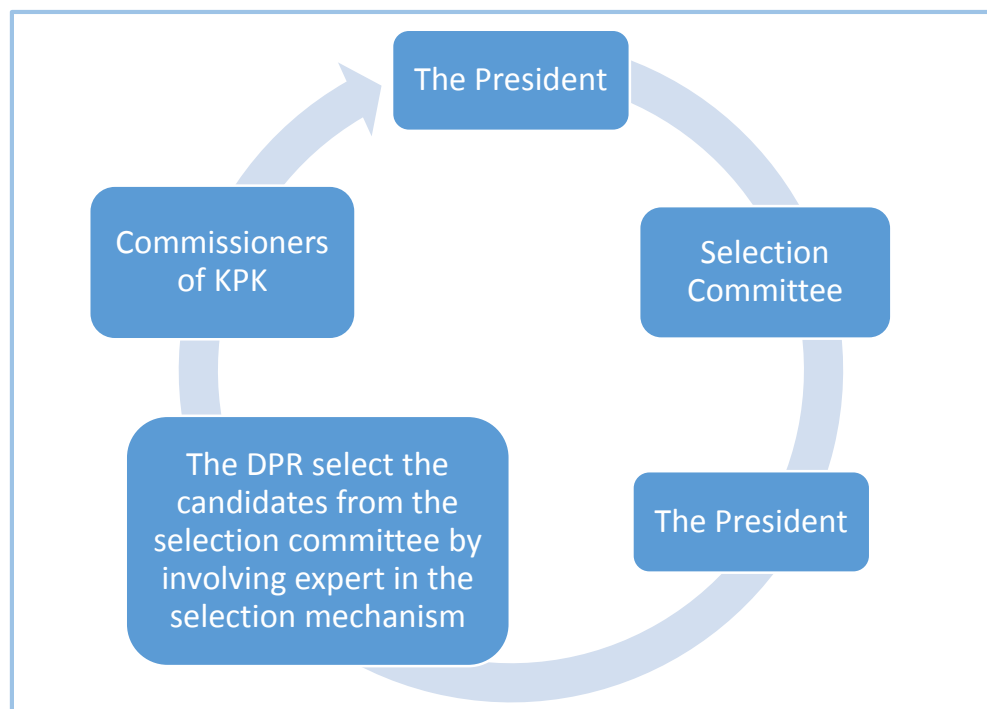
⁵¹ *Ibid.*

⁵² *Ibid.* p. 194

Commission model will not occur, but the potentially destructive politicization as in the KPK model can also be avoided. This is the selection model that involves the DPR but is more limited.⁵³

Based on the discussion above, the researcher would like to propose a better selection mechanism of the KPK Commissioners. In the selection, the President through selection committee will propose 10 candidates. Then, the candidates of KPK Commissioners will be selected by fit and proper test in DPR which involve the experts. The experts have right to select 7 from 10 candidates and the DPR has final decision to select 5 from 7 candidates of KPK Commissioners.

The Figure 4.5
The Proper Selection Mechanism of Commissioners Corruption
Eradication Commission



⁵³ *Ibid.*

C. The Restriction of Commissioners of the KPK

Corruption is a serious problem that can endanger the stability and security of the state. It also can undermine the values of democracy and morality because it can gradually become a culture. Thus, combating corruption is an important task for the whole society. Society should support the KPK as an anti-corruption agency to be an independent agency with integrity.

Based on Article 21 point (1) of Law no 30 of 2002 on the Corruption Eradication Commission, the structure of KPK consists of: a. Five Commissioners to act as the leaders of the KPK; b. A team of advisors consist of 4 (four) members; and c. KPK employees to conduct the task means that KPK employees indirectly as the representative of the commission. So, it is also an important issue on how KPK employees should be the role models for the community including the Commissioners.

In the Code of Ethics of KPK Commissioners, there are some restrictions namely (1) Prohibited to use public resources for personal or group interests; (2) Receives monetary rewards for activities related to the functions of the KPK; (3) Request or receive helping from anyone in any form that has a potential conflict of interest with the KPK; and (4) Playing golf with parties directly or indirectly which has the potential to cause the conflict of interest.⁵⁴

⁵⁴ Article 6 point 2 of Commissioner Decree of KPK No. KEP-06.P.KPK/02/2004 on Code Ethic of Commissioner's KPK of Republic of Indonesia

It is interesting to discuss that one of the points above mentions that the Commissioners of KPK are prohibited to play golf. Playing golf is perceived by the general public as an expensive and exclusive sport and has an impact of lobbying and other behaviours that are contrary to the KPK mission, except with his wife/husband, family and KPK colleagues.⁵⁵

Furthermore, the KPK Commissioners are prohibited from receiving monetary rewards for activities related to the KPK's functions. They also are prohibited from receiving official honorariums if they become speakers at an event. The remuneration for the KPK Commissioners and staff is only the official salary received every month which is in line with the applicable rules.⁵⁶

It is because the KPK Commissioners are prohibited to use public resources for personal or group interests, the KPK Commissioners are prohibited from using official operational vehicles, office equipments, communication equipments and other office facilities for personal interest or receiving personal affairs at the office and accepting guests for office affairs at home.⁵⁷

In addition to these restrictions, there are twenty-two points of the KPK Commissioners' obligations. For example, KPK Commissioners are

⁵⁵ Pimpinan KPK Dilarang Main Golf Sembarangan, February 20th 2004, taken from <http://www.hukumonline.com/berita/baca/hol9739/pimpinan-kpk-dilarang-main-golf-sembarangan> accessed on Monday, March 5th 2018 at 12.09 a.m.

⁵⁶ Article 6 point 1 of Commissioner Decree of KPK No. KEP-06.P.KPK/02/2004 on Code of Ethics of Commissioners of KPK of the Republic of Indonesia

⁵⁷ *Ibid.*

obliged to limit meetings in public area, such as in hotels, restaurants, office or in other public spaces. The exception is only applicable if they are officially invited as speakers at the meeting or come to wedding invitations or similar events.⁵⁸

To guarantee the independence and objectivity, the KPK Commissioners are also obliged to refuse to be paid meals, accommodation fees, and other forms of entertainment from anyone. The exceptions is only applicable when they are invited by a family or and KPK colleagues. Another duty of the KPK Commissioners are to inform the other Commissioners as soon as possible when a suspected person or suspect becomes known as a business associate, friend, former professional associate, or member of other associations, institutions, communities or organizations.⁵⁹

Based on the existing regulations, KPK Commissioners should firm to what appropriate or inappropriate because all violations of the code of ethics has the sanctions which is determined by the ethics committee. KPK Commissioners are absolutely required to keep themselves from the influence of others.

⁵⁸ Thomas Koten, “Menegakkan Kode Etik Hakim”, January 27th 2015, has taken from <http://news.metrotvnews.com/columnist/VNxM6JDb-menegakkan-kode-etik-kpk> on Wednesday, February 28th 2018 at 2.33 p.m.

⁵⁹ Article 6 point 1 of Commissioner Decree of KPK No. KEP-06.P.KPK/02/2004 on Code Ethic of Commissioner’s KPK of Republic of Indonesia

In 2009, Antasari Azhar as the Chairman of KPK Commissioners violated the code of ethics by playing golf together with Director of PT Masaro Radiokom, Anggoro Widjaja, so he was involved in an alleged corruption case in Singapore. At the same time, Antasari was in detention for allegedly involved in the murder case of the Director of PT. Rajawali Banjaran, Nasrudin Zulkarnaen. Based on the Article 6 paragraph 2 of Code of Ethic of KPK Commissioners, it is clearly stated that the KPK Commissioners are prohibited from playing golf. So, KPK has disabled Antasari as the Chairman of the Commission because of the violation of the code of ethic and involvement in murder case.⁶⁰

Based on the evidence and testimony of witnesses in the trial, the judges decided Antasari has committed a murder to Nasrudin. Thus, Antasari was accused of violating Article 340 of the Criminal Code on murder and Antasari got imprisonment with 18 years. As the result, on May 7th, 2009, Antasari was officially dismissed as the Chairman of the KPK.⁶¹

This case got the public's attention, not only because the suspect as the Commissioners of KPK but there were so many legal irregularities in the trial. Some media also announced that Antasari Azhar was not involved in

⁶⁰ Anang Zakaria, "Kebiasaan Antasari Main Golf Diselidiki", August 20th 2009, has taken from <https://nasional.tempo.co/read/193567/kebiasaan-antasari-main-golf-diselidiki> accessed on Tuesday, March 6th 2018 at 3.32 p.m.

⁶¹ Sengketa SBY-Antasari: Inilah Rekam Jejak Antasari Azhar, February 14th 2017, taken from <http://www.bbc.com/indonesia/trensosial-38968519> accessed on Saturday, March 10th 2018 at 11.25 a.m.

Nasrudin case but Antasari Azhar had been criminalized by someone.⁶² The legal irregularities include: it is mentioned that there are another team as the executor, the testimony of a witness who stated he was under pressure during the investigation, the testimony of ballistic witnesses who stated that bullets lodged in the head of the victim different from bullets on the weapons used as evidence, and testimony of a forensic witness who stated that the victim's body was handed over in a manipulative manner.⁶³

The case of the violations of the code of ethics, especially involving the KPK Commissioners can influence the public trust and show the integrity of the KPK. Based on a survey by the National Survey Institute (hereafter LSI) in 2011, public trust to the KPK in 2005 reached 58.3%, but it decreased in 2011 to 41.6% due to four factors. First, the decreasing of KPK's courage in dealing with the authorities. Second, KPK is considered had been intervened by the authorities in the case of Century. Third, KPK Commissioners assumed to be involved in legal mafia and KPK is considered not objective in handling certain cases.⁶⁴

Considering the several cases of code of ethics violations that allegedly involved KPK employees and Commissioners, in the future KPK

⁶² Ramdani Soalohon, "Resepsi Khayalah Terhadap Pemberitaan Ksusus Antasari Azhar dalam Portal Berita Online", Departemen Ilmu Komunikasi FISIP UNDIP, Vol. 6, No. 1, January 2018, p. 6

⁶³ Audrey Santoso, "Polisi Masih selidiki Unsur Sangkaan Palsu di Kasus Antasari Azhar", March 2nd 2017, taken from <https://news.detik.com/berita/d-3436632/polisi-masih-selidiki-unsur-sangkaan-palsu-di-kasus-antasari-azhar> accessed on Saturday, March 10th 2018 at 11.33 a.m.

⁶⁴ Adnan Topan Husodo, 2011, *Evaluasi dan Road Map Penegak Hukum KPK*, Jakarta, Indonesia Corruption Watch, pp. 15-16

Commissioners need to evaluate the KPK's internal code of ethics rules. In order to avoid multi-interpretation of the ethics code, KPK's code of ethics needs to be very detail to include what technical matters are and what KPK Commissioners and employees can do and cannot do.

Hence, the process of examining the violation of the code of ethics should be made open, especially in the publication of the results of the examination and its recommendations. In this case, KPK should admit that KPK is worse than the Public Prosecution in delivering the examination to public such as the number of prosecutors who are given sanctions, including those who are dismissed for violating the code of ethics and disciplinary rules of civil servants.⁶⁵

KPK also should develop a model of obedient supervision to the ethic code through a variety of strategies. The witness and reporting protection system that has been used for the purposes of disclosure of corruption cases should be used as an instrument to obtain outside information about the violation of the code of ethics of KPK employees and Commissioners.

D. The Current Issues on Independence and Integrity of KPK

The various problems in combating corruption, it becomes the challenges for the KPK to keep the independence and its integrity to conduct its duties properly. In 2017, DPR had used its right of investigation to evaluate the Corruption Eradication Commission with several reasons. One

⁶⁵ *Ibid.* p. 20

of the reasons was the KPK rejected to open the recording of Miryam S. Haryani's examination in Electronic Identity Card case and other reason was DPR wanted to evaluate the performance of KPK including the budget affairs.

The rights of investigation by DPR is regulated in Article 79 paragraph 3 of Law No. 17 of 2014 which states that the right of investigation is the right of the DPR to investigate the implementation of laws and or government policies related to important, strategic and broad impact for the life of society, a nation, a state which contradict with laws and regulations. Taufiqulhadi as one of the special committee members of the right of investigation, analyses the KPK's report regarding budget governance. In the report, there are 7 indications of violation laws and regulations which were committed by KPK.⁶⁶

First, it is the overpayment of salaries of KPK employees that have not completed their study. Second, it is the goods expenditure on the deputy monitor directorate of information and data which is not equipped with adequate accountability and not suitable with the budget. Third, it is the payment of official travel expenses, rental spending, and services professionals in law firms. Fourth, the travel activities of deputies are not supported by the warrant. Fifth, it is the standard cost of over payment,

⁶⁶ Gibran Maulana Ibrahim, "Ini Sederet Alasan DPR Gulirkan Hak Angket KPK", April 28th 2017, taken from <https://news.detik.com/berita/d-3486828/ini-sederet-alasan-dpr-gulirkan-hak-angket-kpk> accessed on Friday, October 6th 2017 at 5:40 p.m.

honorarium of prosecution. Sixth, the realization of regular travel expenses that do not comply with the minimum requirements. Seventh, inaccurate KPK building planning resulting in over budget.⁶⁷

However, in other case, during a hearing at the Corruption Court on March 31, 2017 regarding the allegation of electronic identity card case, Miryam S. Haryani revoked the investigation report on herself for claiming that she was being pressured by KPK investigators. Thus, the House of Representatives proposed the right of investigation to evaluate it by opening the recording of Miryam investigation. While by reason of the recording and investigation report of Miryam still used by the KPK and KPK refused to open the recording and submitted the investigation report to the DPR.⁶⁸

Regarding to the special committee for the right of DPR to the KPK, there are 132 professors of law signed the Association of Professor of Constitutional Law (APHTN) and the Center for Constitutional Studies at Faculty of Law of Andalas University submitted the results its study to the KPK on June 14, 2017. The professors judged that the right of investigation to the KPK is unlawful. They argue that the DPR is considered the wrong object of the case and unconstitutional.⁶⁹

⁶⁷ Yopy Perdana Kusuma, 2017, "Propaganda Hak Angket DPR Terhadap KPK (Analisis Propaganda dan Komunikasi Politik)", *Jurnal LONTAR*, Vol. 5, No. 1, p. 49

⁶⁸ Ini Daftar 23 Anggota DPR di Pansus Hal Angket KPK, June 9th 2017, taken from <http://nasional.kompas.com/read/2017/06/09/13231501/ini.daftar.23.anggota.dpr.di.pansus.hak.angket.kpk> accessed on Monday, February 19th 2018 at 11.43 a.m.

⁶⁹ Fachrur Rozie, "132 Guru Besar Hukum Sebut Hak Angket KPK Cacat", June 14th 2017, taken from <http://news.liputan6.com/read/2990852/132-guru-besar-hukum-sebut-hak-angket-kpk-cacat> accessed on Monday, February 19th 2018 at 12.00 a.m.

According to Mahfud MD, there are two problems namely unlawful in subject and object. Based on the analysis to Article 24 of the 1945 Constitution, Article 3 of the Corruption Eradication Commission Law, and Article 79 paragraph 3 of Law Number 17 Year 2014 concerning MPR, DPR, DPD, & DPRD, the right of investigation to KPK is unlawful in subject.

It also was supported by one of the study center at the oldest university in Indonesia, namely the Anti-Corruption Study Center (Pukat) at Faculty of Law in Gajah Mada University. Pukat urged the DPR to stop proposing the rights of investigation to KPK. The proposal is considered as a form of political intervention that could hinder the performance of KPK in uncovering cases of electronic identity card and other cases. Therefore, Pukat supports KPK is not being the subject to political intervention by DPR.⁷⁰

Previously, the submission of the right of investigation to the KPK was debated because the object and the subject under investigation were legally unconstitutional. Earlier this year, Laode M Syarif as Vice Chairman of the Corruption Eradication Commission claimed to be disappointed by the Constitutional Court decision related to the right of investigation to the KPK. The Constitutional Court rejected the petition for a judicial review

⁷⁰ Universitas Gajah Mada , “Pukat UGM Desak DPR Menghentikan Hak Angket KPK”, April 28th 2017, taken from <https://www.ugm.ac.id/id/news/13776-pukat.ugm.desak.dpr.menghentikan.hak.angket.kpk> accessed on Monday, February 19th 2018 at 1.55 p.m.

submitted by some KPK officials regarding the right of investigation. The Constitutional Court has decided the KPK could become the object of investigation right.⁷¹

The Constitutional Court justice consider that KPK is an executive body established under the law as auxiliary body. The justice argued that the KPK conduct its duties and authority as an executive body. Thus, the KPK is a legitimate object for the right of investigation of DPR. The House of Representatives as a representative of the people is entitled to hold accountable for the implementation of KPK's duties and authority, even though the KPK also is responsible to the public. From the nine justices of Constitutional Court, only five agreed to decide the KPK as the legitimate investigation of the House of Representatives and others proposed different opinions or dissenting opinions.⁷²

According to Febri Diansyah as the KPK spokesman, the right of investigation will indirectly give impact to the performance and independence of KPK in eradicating corruption. From the case, if the KPK has to show the evidence that is being held in the legal process, it is certainly

⁷¹ Vincentius Jyestha Candraditya, "KPK Kecewa dengan Putusan MK Terkait Hak Angkat DPR", February 8th 2018, taken from <http://www.tribunnews.com/nasional/2018/02/08/kpk-kecewa-dengan-putusan-mk-terkait-hak-angket-dpr> accessed on Monday, February 19th 2018 at 1.25 p.m.

⁷² Kodrat Setiawan, "MK Putuskan KPK sebagai Obyek Pansus Hak Angket DPR", February 8th 2018, taken from <https://nasional.tempo.co/read/1058789/mk-putusan-kpk-sebagai-obyek-pansus-hak-angket-dpr> accessed on Wednesday, February 28th 2018 at 1.20 p.m.

risky to obstruct the legal process and may implicate the process of eradicating corruption cases including electronic identity card case.⁷³

In fact, the right of investigation is a constitutional right of DPR. Implementation of this right as embodiment of principle of checks and balances. The principle of checks and balances means that controlling between branches of power, so the consequence is that all three branches of legislative, executive, and judicial power have the same position of being able to control each other. So, the abuse of power can be handled properly.⁷⁴

However, the principle of checks and balances is not exercised to weaken the function and reduce the independence of KPK which would interfere with the performance of the institution concerned. In this case, theoretically there is a reason for the revocation of the right of investigation is to request the Commission to open the recording of the results of Miryam investigation, which is the position of the KPK at that time as law enforcement is not as implementing the policy.⁷⁵

In order to ensure the independence of the KPK, juridically it has been regulated in Article 36 of Law No 30 of 2004 on KPK that the Commission is prohibited to establish a direct relationship or not with suspects or other parties related to corruption cases are handled. Based on the investigation

⁷³ Tito Sianipar, "Ini Akibat Hak Angket terhadap KPK", April 27th 2017, taken from <https://netz.id/news/2017/04/28/00516-01016/1007280417/ini-akibat-hak-angket-terhadap-kpk> accessed on Monday, February 19th 2018 at 1.52 p.m.

⁷⁴ Ni'Matul Huda, 2014, *Hukum Tata Negara Indonesia*, Jakarta, Rajawali Pers, p. 107

⁷⁵ May Lim Charity, "Implikasi Hak Angket Depan Perwakilan Rakyat Republik Indonesia terhadap Komisi Pemberantasan Korupsi", *Jurnal Legislasi Indonesia*, Vol. 14, No. 03, September 2017, p. 249

result that was revoked by Miryam, there was an involvement of legislative members in the case of electronic identity card case. Therefore, the right addressed to KPK is theoretically and juridically inappropriate. Thus, indicating the House of Representatives wants to intervene, undermine the independence of the KPK in the disclosure of electronic identity card cases.⁷⁶

The process of law enforcement by KPK should be independent and free from any influence of power including legislative power. The KPK deserves to reject the proposal of the right of House of Representation under Article 3 of the Corruption Eradication Commission Law. Based on Article 17 point 1 of the Law of Corruption Eradication Commission, it is also a form of state protection to law enforcers in carrying out its duties because law enforcement cannot be intervened.⁷⁷

In addition, problems will challenge the KPK to solve corruption cases in Indonesia, not only the external intervention but also internal problems. Nowadays, there is three investigators of the Corruption Eradication Commission were reported to the police. They are Ario Bilowo, Arend Arthur Duma, and Edy Kurniawan. They are reported by Ikham AUFAR Zuhairi and Arief Fadillah which is on allegations of abuse of authority as KPK's investigators. In the report, the legal basics of this case are Article

⁷⁶ *Ibid*, p. 252

⁷⁷ *Ibid*, p. 253

421 of the Criminal Code concerning on abuse of authority and Article 335 of the Criminal Code concerning on unpleasant deeds.⁷⁸

In other case, in the early October 2017, Agus Rahardjo and Saut Situmorang as the Commissioners of KPK were reported on abusing of making and using a fake letter on extension of prevention for Setya Novanto to go abroad as the suspect of the electronic identity card case. It is based on Article 253 of the Criminal Code jo Article 55 paragraph (1) to the Criminal Code and or Article 421 of the Criminal Code.⁷⁹

In other case, previously there is the case of ethics violation of KPK Commissioners, Abraham Samad. In this case, Abraham has delivered speculative information about the legal status of a person in a corruption case. The Commissioners actually should be the valid and credible information. If it announces the wrong information, it will certainly harm others because of the legal status of a person. The KPK also can be sued and accused of giving uncertain information for other purposes.

The facts found by the Committee of Ethics in the report mentioned that Abraham Samad never conveyed to the other Commissioners on the results of the exposure of the Deputy Team of Judgment in Anas Urbaningrum case. It is not in line with the collective principle of KPK

⁷⁸ Dituduh Salah Gunakan Wewenang, Pegawai KPK Dilaporkan ke Polisi, October 30th 2017, taken from <http://megapolitan.kompas.com/read/2017/10/30/16302261/dituduh-salah-gunakan-wewenang-pegawai-kpk-dilaporkan-ke-polisi> accessed on Sunday, December 17th 2017 at 3:05 p.m.

⁷⁹ Dua Pimpinan KPK 'Tersangka' Dugaan Kasus Surat Perpanjangan Pencegahan Setya Novanto, November 8th 2017, taken from <http://www.bbc.com/indonesia/vert-cap-41912137> accessed on Thursday, February 20th 2018 at 1.55 p.m.

Commissioners as regulated by the KPK Law. The collective principle of KPK Commissioners was established to avoid the Commissioners from intervention.⁸⁰ If there is the Commissioners who gets the intervention to sentence other Commissioners or to protect a certain person then the collective mechanism will block it. So, Abraham Samad has been proven committed minor offenses by the Committee of Ethics of KPK based on the Decision Number 01/KE-KPK/4/2013.⁸¹

In other case, the case of KPK Commissioners, Bambang Widjojanto arrested by Police Criminal Investigator related to the fake information on the Regional Election of West Waringin City, Central Kalimantan. Although, the case was suspended because it was not brought or processed to court.⁸² This case is not related to the position of Bambang as KPK Commissioners but the police sued this case after KPK arrested the Police officer, Budi Gunawan as a suspect of bribery and gratification.⁸³

In other case, Aris Budiman as the KPK Commissioner had violated the Law. Aris Budiman who attended a hearing with the special committee (Special Committee for the Right of KPK in the House of Representatives) is a prohibition for KPK Commissioners. It is based on Article 36 of the

⁸⁰ Febri Diansyah, "Etika Pimpinan KPK", April 26th 2013, taken from <https://antikorupsi.org/id/news/etika-pimpinan-kpk> accessed on Wednesday, February 28th 2018 at 2.58 p.m.

⁸¹Etika Ketua KPK, May 17th 2014, taken from <https://nasional.sindonews.com/read/864567/16/etika-ketua-kpk-1400339069> accessed on Monday, February 27th 2018 at 00.01 a.m.

⁸² Aghnia Adzkia, "Perkara Bambang Widjojanto, Cepat Ditangkap dan Dilupakan", January 22th 2016, taken from <https://www.cnnindonesia.com/nasional/20160123093906-12-106158/perkara-bambang-widjojanto-cepat-ditangkap-dan-dilupakan> accessed on Thursday, March 1st 2018 at 3.26 p.m.

⁸³ *Ibid.*

Law of KPK which states that KPK Commissioners are prohibited to have direct or indirect relationship with the suspects or other parties related to corruption criminal cases handled by the Corruption Eradication Commission for any reason. Then, based on Article 65 and Article 66 of the Corruption Eradication Commission Law stipulates that KPK employees may be subject to imprisonment sanctions for a maximum of 5 (five) years, in violation of Article 36 of the Law of Corruption Eradication Commission.⁸⁴

In addition, Adnan Pandu Praja as the KPK Commissioners has reported to the Directorate of Corruption Crime Police Criminal Investigation by PT Desy Timber, Mukhlis Ramdhan. It started in 2006 when Adnan Pandu Praja and Mohamad Indra Warga Dalam become the company's legal counsel. Since 2006, Adnan Pandu Praja and Mohamad Indra Warga were involved in fake notarization letter and removal of shares from various institutions. At that time, as many as 40% of the company's shares had been submitted to the pesantren Al Banjari in Balikpapan and local companies as well as some communities. The other 60% shares are controlled by the family owner of PT Desy Timber.⁸⁵

Based on the case above, it shows that in fact there are still many problems of integrity that occurred in the employees, investigators and

⁸⁴ Fachri Fachrudin, "Bambang Widjojanto Nilai Aris Budiman Langgar UU KPK", Oktober 5th 2017, taken from <https://nasional.kompas.com/read/2017/09/05/23085481/bambang-widjojanto-nilai-aris-budiman-langgar-uu-kpk> accessed on Thursday, March 1st 2018 at 3.40 p.m.

⁸⁵ Wakil Ketua KPK Adnan Pandu Praja Diadukan ke Bareskrim, January 24th 2015, taken from http://www.bbc.com/indonesia/berita_indonesia/2015/01/150124_adnan_kpk_timber accessed on Wednesday, February 28th 2017 at 4.18 p.m.

Commissioners of KPK. KPK is the commission which has extra ordinary power and trusted by the public should not be intervened by other, including its own Commissioners. Therefore, the Commissioners of KPK must ensure their integrity to solve the problem in declining of public trust.

The existence of a strategic position like the Commissioners of KPK is not only face the formal law or the violation of the law, but also more related to ethics because it is correlated with elements of honour and dignity. Therefore, how can the KPK guarantee its public trust if the Commissioners conduct improper behavior.

According to Jean Jacques Rousseau as the founder of social contract, every citizen will always feel under the supervision of the public, so if ordinary citizens cannot be separated from public observations, how about state officials who should be a role model.

So, the KPK Commissioners must stand on the characteristics of public office which has moral responsibility and ethical action that anyone who has the duties as KPK Commissioners should direct all their actions and responsibilities to the common good (*bonum commune*).