

**Naskah Publikasi**

**THE INDEPENDENCE AND INTEGRITY OF CORRUPTION  
ERADICATION COMMISSION IN COMBATING CORRUPTION IN  
INDONESIA**

**UNDERGRADUATE THESIS**



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**Name : Annisa Riani Artha  
Student Number : 20140610029  
Faculty : Law  
Major : International Program for Law and Sharia  
Field of Study : Constitutional Law**

**FACULTY OF LAW  
UNIVERSITAS MUHAMMADIYAH YOGYAKARTA**

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## **ABSTRACT**

**Background:** Strengthening the independence and integrity of Corruption Eradication Commission (hereafter KPK) become a matter which needs more focused. Since, the House of Representative has conducted the right of investigation to the KPK in order to evaluate the performance and independence of KPK. In another issue, the Commissioners and investigators of KPK also conducted the violation of code of ethic and involve to the criminal case.

**Purpose:** This research aims to analyse how to guarantee the independence and integrity of Corruption Eradication Commission.

**Method:** The research is a normative legal research with descriptive qualitative method.

**Conclusion:** The result of the research shows that there are two important elements to gurantee the independence and integrity of KPK, namely firstly, strengthen the internal supervision of KPK. Secondly, the selection mechanism should be reduced the elements of political interest.

**Recommendation:** The research recommmends that, firstly, the KPK Commissioners should be avoid the potential intervention through avoid the indication of double loyalty of the KPK investigators. Secondly, the KPK can adopt the the Anti-Corruption of Singapore experience that conduct a polygraph test to all empoleeyes who accused conducted the crimnal act of corruption to ensure its integrity to the public. Thirdly, the process of examining the violation of code of ethics of KPK employess including the Commissioners should be open to public. It is in order to give the report to the public that how the KPK enforce the code of ethics with the zero tolerance principle.

**Keywords:** independence, integrity, Corruption Eradication Commission

## BACKGROUND

In 2017, the House of Representative (hereafter DPR) has conducted the right of investigation to evaluate the Corruption Eradication Commission (hereafter KPK) with several reasons. One of the reasons is the KPK reject to open the recording of Miryam S. Haryani's examination in electronic identity card case.<sup>1</sup> In the KPK report, there are also 7 indications of violation of laws and regulations which conducted by the KPK such as official duty without a warrant, the standard payment of fee and honorarium which is not balance and planning of KPK's building budget which is overpayment.<sup>2</sup> In another 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.<sup>3</sup>

It is not easy for KPK to conduct their authorities and tasks if their independence and integrity intervened by others because KPK is a state institution which carry out its

duties and authorities independently and free from any influence of power.<sup>4</sup>

The results of a survey which was conducted by the Polling Center and Indonesia Corruption Watch (hereafter ICW)<sup>5</sup>, the level of public trust in corruption eradication efforts which conducted by the KPK get high trust.<sup>6</sup> So, KPK become an important commission which has influence in combating corruption. It is become a reason why the strengthening the independence and integrity of KPK is important.

Based on the discussion before, it is interesting topic to discuss on how to guarantee the independence and integrity of KPK in combating corruption. Since DPR has conducted the right of investigation to the KPK because the DPR would like to evaluate the performance and independence of KPK whether KPK conduct their authorities in line with the law or not. In another issue, KPK also still has internal conflict such as abusing of power and the violation of code of ethic did by the Commissioners or the investigators. Indonesia needs a better KPK to optimize its performance and

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<sup>1</sup> 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

<sup>2</sup> Yopy Perdana Kusuma, 2017, "Propaganda Hak Angket DPR Terhadap KPK (Analisis Propaganda dan Komunikasi Politik)", *Jurnal LONTAR*, Vol. 5, No. 1, p. 49

<sup>3</sup> Elshinta, "Dua Pimpinan KPK 'Tersangka' Dugaan Kasus Surat Perpanjangan Pencegahan Setya Novanto", November 8th 2017, taken from <http://www.bbc.com/indonesia/vert-cap-41912137>

<sup>4</sup> Article 3 of Law No. 30 of 2002 on Corruption Eradication Commission

<sup>5</sup> ICW is an Indonesian-based and led non-governmental organization (NGO) whose primary mission is to monitor and report to the public incidents of corruption in Indonesia.

<sup>6</sup> Komisi Pemberantasan Korupsi, "Menjaga Kepercayaan Tanpa Melupakan Kewajiban", July 27th 2017, taken from <https://www.kpk.go.id/id/berita/berita-kpk-kegiatan/4023-menjaga-kepercayaan-tanpa-melupakan-kewajiban>

authorities to combat the corruption. So, based on the statement before, it arises a question that how to guarantee the independence and integrity of KPK in combating corruption.

## RESEARCH METHOD

The type of the research is normative legal research. Normative legal research is a research based on the documentary or normative fact, focusing on reading and analysis of the primary and secondary materials.<sup>7</sup> The researcher collect the data from library in order to find the regulation and theory related to the object of research. Through those materials, the researcher can analyze the object of the research.

The method of collecting data in this research will be through library research with literature learning. The method will collect data by reading, analyzing and concluding from related documents such as constitution or law, books, legal journals, and others which related to the main problem as the object of this research. The data was analyzed systematically through descriptive qualitative approach. It means that the research analyzed based on the constitution, legislation, and other theories which is related with the issues of Independence and Integrity

of Corruption Eradication Commission in Combating Corruption.

## FINDING AND ANALYSIS

### 1. The Supervision of Corruption Eradication Commission

An independent institution is an institution which is ideally independent of any interference of power and outside the branch of executive, legislative and judicial power.<sup>8</sup> It means that the Corruption Eradication Commission should be free from any influence in conducting its duties and authorities in combating corruption.<sup>9</sup> Independence here does not mean that the independent institution is without supervision but the system of accountability must be strengthened.

Discussing the supervision of 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 non-governmental organizations (NGO) anti-corruption.<sup>10</sup> 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 of the

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<sup>7</sup>Johnny Ibrahim, 2006, *Teori dan Metodologi Penelitian Hukum Normatif*, Second Edition, Malang, Bayu Media, p.46

<sup>8</sup>Zainal Arifin Muchtar and Iwan Satriawan, 2009, "Efektivitas Sistem Penyeleksian Pejabat Komisi Negara di Indonesia", *Jurnal Mahkamah*

*Konstitusi Republik Indonesia*, Vol. 2, No. 1, p. 147

<sup>9</sup>Article 3 of Law No 30 of 2002 on Corruption Eradication Commission

<sup>10</sup>Zainal and Iwan, *Op.Cit.*, p. 131

KPK supervised by the DPR is because in the appointment of Commissioners of the KPK was done through fit and proper test conducted by the DPR which is 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 objectivity. For example, in 2017, DPR has conducted the right of investigation to evaluate the performance of Corruption Eradication Commission.<sup>11</sup> In a survey conducted by Saiful Mujani Research and Consulting (SMRC)<sup>12</sup> on May 14 to May 20th, 2017 with the 1,350 respondents shows that 65% (sixty-five percent) of respondents assessed the DPR decision to conduct the right of investigation to the KPK is unjustifiable and only 29,5% (twenty-nine point five percent) of respondents who stated that the DPR's action conduct the right of investigation to KPK was justified, while 5.6% (five point six percent) respondents did not answer.<sup>13</sup>

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 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.

According to Denny Indrayana, internal control (self-control) is the primary key for the supervision of independent institutions, which can minimize the interventions from other institutions.<sup>14</sup> 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 it can reduce the other interventions. In other words, the KPK needs more effective supervision and internal control is best choice for independent commissions.

In practice, the 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 Commissioners. The Committee of Ethic has the main duties are

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<sup>11</sup>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>

<sup>12</sup>Established 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.

<sup>13</sup>Robertus 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>.

<sup>14</sup>Denny Indrayana, 2016, *Jangan Bunuh KPK*, Malang, Intrans Publishing, p. 50

observing seeking information and examining 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 Ethic 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.<sup>15</sup>

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, Abdulllah 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).<sup>16</sup>

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<sup>15</sup>Komisi 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>

<sup>16</sup>Edi Abdulllah, "Pembentukan Komite Etik KPK, Landasan Hukum Pembentukannya", taken from

In drafting the result, the Committee of Ethic determines who the witnesses are and examined in case of leakage of documents belonging to the KPK. Then, the result of this case is examined and adjudicated the leakage case to Abraham Samad as KPK Commissioner. The committee was found violation of Code of Ethics in the medium category because his attitudes and commit of leakage of investigation letter of Anas Urbaningrum.<sup>17</sup> The sanctions are decided upon the decision of the committee. In the code of ethics of KPK Commissioners, there is no specific rules related to sanctions, but it will be formulated by the offenses.<sup>18</sup>

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 observed. It is proven by the Abraham Samad who has given a warning for what he has done.

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

<http://makassar.lan.go.id/index.php/survei/refleksi/665-pembentukan-komite-etik-kpk-landasan-hukum-pembentukannya>

<sup>17</sup>*Ibid.*

<sup>18</sup>Article 7 of Commissioners of Corruption Eradication Commission Decision No. KEP-06/P.KPK/02/2014 on Code of Ethics of KPK Commissioners

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 keep become the internal supervisor of the KPK which has integrity and can observe to the ethics to KPK Commissioners and investigators. This method is expected that everything that happens in the internal can be directly detected.<sup>19</sup>

## **2. The Selection Mechanism of Commissioners & Investigators of KPK**

In combating corruption, ensuring the independence and integrity of the anti-corruption commission is important.<sup>20</sup> 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 processes. Thus, the KPK has credible and competent people to combat the corruption.<sup>21</sup>

There are also several criterias that KPK investigators need to be

fulfill such as knowledge of investigation, integrity and capability. For the recruitment of investigators, 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 investigators.<sup>22</sup>

In 2012, one of the controversial issues has occurred as many as 20 investigators who were withdrawn to the Police because the Police did not renew the contract of 20 investigators who work in KPK. In this case, almost a quarter of KPK investigators have been withdrawn and indirectly disrupted the performance of the KPK. Therefore, it shows that KPK is still dependent on the Police in terms of investigator resources.<sup>23</sup>

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.<sup>24</sup>

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<sup>19</sup>Adnan Topan Husodo, dkk, 2011, *Evaluasi dan Road Map Penegak Hukum KPK*, Jakarta, Indonesia Corruption Watch, p. 18

<sup>20</sup>Diana Napitupulu, 2010, *KPK in Action*, Jakarta, Raih Asa Sukses (Penebar Swadaya Grup), p. 5

<sup>21</sup>Indonesia Corruption Watch Report, "Mengenal Proses Seleksi Pimpinan Komisi Pemberantasan Korupsi", p. 2

<sup>22</sup>Komisi Pemberantasan Korupsi, "KPK Buka Program Indonesia Memanggil 11", taken from <https://www.kpk.go.id/berita/berita-kpk-kegiatan/3640-kpk-buka-program-indonesia-emanggil-11>

<sup>23</sup>Icha 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>

<sup>24</sup>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>

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 can be conclude that every investigator can only be terminated by the KPK. Although, in fact Police can withdraw investigators of KPK and around 20 investigators who 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.<sup>25</sup>

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 are temporarily relinquished of their duties at Police institution and the Prosecutor's Office while they are under the employees of the KPK. It means that the Police does not has authority to terminate the investigators of KPK because they are temporarily relinquishing of the Police institution.<sup>26</sup>

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 issues is the problem of double loyalty due to various background investigators in the KPK such as Police, Attorney and internal investigators who have removed the 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.<sup>27</sup>

Similarly, according to Denny Indrayana,<sup>28</sup> 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.<sup>29</sup>

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 is only 3 countries are employees of a fixed and non-permanent mix of Brazil, Nigeria and Indonesia. While the rest, 15 other countries apply the concept of a permanent personnel system.<sup>30</sup>

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<sup>25</sup> Indonesia Corruption Watch, "Penarikan Penyidik dapat Melumpuhkan KPK", October 2nd 2012, taken from <https://antikorupsi.org/id/news/penarikan-penyidik-dapat-melumpuhkan-kpk>

<sup>26</sup> *Ibid.*

<sup>27</sup> 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>

<sup>28</sup> Denny Indrayana is one of the founders of the Indonesian Court Monitoring and Anti-Corruption Studies Center Faculty of Law, Gadjah Mada University.

<sup>29</sup> Prof. Denny Indrayana, *Op.Cit.* p. 199

<sup>30</sup> *Ibid.*, p. 198



Based on the issues above, indirectly when the investigator of KPK is still dependent on the Police, it may cause the independence of the KPK will be 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 institution (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. So, the KPK should be able to solve the problem in double loyalty. KPK have to appoint and dismiss its own employees, including for investigators and prosecutors. As long as the KPK is still unable to recruit its own investigators, so long as the KPK is not really independent.

Discussing on guarantee the independence of KPK, besides 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 technically, but also courage. KPK Commissioners also must have acceptability which means acceptable to any community, especially the public.<sup>31</sup>

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 name of candidates of the KPK Commissioners as much as twice the number of positions required to 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.<sup>32</sup>

Futhermore, Zainal Arifin Mochtar propose that the House of Representatives should change the election mechanism of KPK Commissioners from the political interest because it may only the

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<sup>31</sup> 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>

<sup>32</sup> 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 RI* Vol. VII, No. 18, p. 1

candidates who have closeness with the political party to be elected. 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 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.<sup>33</sup>

In the selection of KPK Commissioners, the political role must be reduced both from the Law and also public opinion. To support the effective selection mechanism, the President have through the committee proposed the candidate, while the DPR also should involve the experts in their selection process.<sup>34</sup> According to Jimly Asshiddiqie, the DPR only conducts political election which prioritizes candidate ideology while the special committee takes into the technical selection within the capacity, integrity, health and administrative completeness.

Therefore, to support the independence on the selection mechanism, the requirement to be KPK Commissioners needs 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 to carry out the election. The members of KPU are prohibited from political party members, except after stopping for 5 years. So, the Commissioners of the anti-corruption commission can avoid themselves from any political interference by political parties.<sup>35</sup>

The personal integrity of the anti-corruption commission should be ensured in term of their honest, competent, and elected people 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.<sup>36</sup>

For 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

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<sup>33</sup> *Ibid.*, p. 3

<sup>34</sup> John ST Quah, 2007, "Anti-Corruption Agencies in Four Asian Countries: A

Comparative Analysis", *International Public Management Review*, Vol. 8 No. 2, p. 82

<sup>35</sup> Denny, *Op.Cit.* p. 192-193

<sup>36</sup> *Ibid*

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 corruption commission in Indonesia with their own solution<sup>37</sup>

The effort conducted by Chua as 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.<sup>38</sup>

The integrity cannot be separated from the selection mechanism of the KPK Commissioners. Nowadays, the selection mechanism of the independent commission is still various. The political law of the selection of an independent commission is still diverse. 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 model is based on the Constitutional Court Decision regarding the Law of Judicial Commission. 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.<sup>39</sup>

Based on the explanation above, Prof. Denny Indrayana also proposed to change the 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 Commission model will not occur, but the potentially destructive politicization as in the KPK model can also be avoided. This is the selection mode

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<sup>37</sup> John ST Quah, *Op.Cit.* p. 82

<sup>38</sup> Adnan Topan Husodo, dkk, 2011, *Evaluasi dan Road Map Penegak Hukum KPK*, Jakarta, Indonesia Corruption Watch, pp. 15-16

<sup>39</sup> See Denny, *Op.Cit.* p. 193

that involves the DPR but is more limited.<sup>40</sup>

Based on the discussion above, the researcher propose the better selection mechanism of Commissioners Corruption Eradication Commission. 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.

### **3. The Restriction of Commissioners of the KPK**

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.<sup>41</sup>

It is interesting to discuss that one of the point 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 impact of lobbying and other behaviours that are contrary to the KPK mission, except with his wife/husband, family and KPK colleagues.<sup>42</sup>

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.

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<sup>40</sup> *Ibid.*

<sup>41</sup> 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

<sup>42</sup> Pimpinan KPK Dilarang Main Golf Semarang, February 20th 2004, taken

from

<http://www.hukumonline.com/berita/baca/ho19739/pimpinan-kpk-dilarang-main-golf-sembarangan> accessed on Monday, March 5th 2018 at 12.09 a.m.

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.<sup>43</sup>

Considering the several cases of code of ethics violations that allegedly involved KPK employees and Commissioners, in the future KPK 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.<sup>44</sup>

#### **4. The Current Issues on Independence and Integrity of KPK**

There are some issues which related to the independence and integrity of KPK including the Commissioners and the investigators. For example, case of the right of investigation of DPR to the KPK, case of Agus Rahardjo & Saut Situmorang as the KPK Commissioners were reported on abusing of making and using fake letter, the case of Abraham Samad as the Chairman of KPK Commissioner was sencesed by violating the code of ethics, the case of Aris Budiman as KPK Commissioner has violated the Law because he attended a hearing with the special committe of DPR, the case of Adnan Pandu Praja as the KPK Commissioners reported by the Police who involved in the fake notarization letter and removal shares from various institutions.

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

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<sup>43</sup> Anang Zakaria, "Kebiasaan Antasari Main Golf Diselidiki", August 20th 2009, has taken from <https://nasional.tempo.co/read/193567/kebia>

[saan-antasari-main-golf-diselidiki](#) accessed on Tuesday, March 6th 2018 at 3.32 p.m.  
<sup>44</sup> *Ibid.* p. 20

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.

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*).

## **CONCLUSION AND RECOMMENDATION**

### **A. Conclusion**

Based on the discussion in the previous chapter, it may arrive at the conclusion that there are some actions which can guarantee the independence of KPK in combating corruption. The selection mechanism of investigators and Commissioners of KPK should reduce the elements of political interest. The selection mechanism of KPK Commissioners which involves the House of Representative and therefore the selection mechanism needs to anticipate the political interference by first, providing requirement that the candidates are not part of political parties, at least five years before registration. Second, the DPR needs to involve the expert in the process of selection.

To guarantee its integrity, the KPK has to strengthen the internal supervision especially in the implementation of code of ethic through strengthen the enforcement a code of ethic with the zero tolerance principle to the employees, investigators and also the Commissioners.

### **B. Recommendation**

Based on the problem that has been discussed, some recommendations are proposed, as follows: first, there should be revision of Law No. 30 of 2002 on Corruption Eradication Commission to the House of Representative regarding on the Article 29 (on the requirement of KPK Commissioners) and Article 30 (on the selection process of KPK Commissioners) to implement the better selection mechanism of the KPK Commissioners. For the better selection mechanism, the House of Representative process should be deleted in the Selection Process of KPK Commissioners.

Second, the KPK Commissioners should avoid the potential intervention by avoiding the indication of double loyalty of the KPK investigators. In ensuring the independence of KPK, the Commissioners should emphasize the status of KPK investigators who have double loyalty and disturb the independence of the KPK.

Third, the Anti-Corruption of Singapore experience can be a good lesson for the KPK on how important the integrity of Anti-Corruption is.

The Corrupt Practices Investigation Bureau (hereafter CPIB of Singapore) conduct a polygraph test to all employees who were accused of committing the criminal act of corruption. It prove the effort of the CPIB of Singapore to keep the public trust of Singaporean. It will be a good example for Indonesia to adopt this idea to ensure its integrity to the public.

Fourth, the process of examining the violation of code of ethics of KPK employees including the Commissioners should be open to public. For example, KPK deliver the examination of the number of the KPK employee who are sentenced by the violation of code of ethics including who are dismissed and also who violate the disciplinary rules of civil servants. It is in order to give the report to the public that how the KPK enforce the code of ethics with zero tolerance principle.

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