MECHANISM AND PROCESS OF INQUIRY RIGHTS IMPLEMENTATION OF REPRESENTATIVE HOUSE MEMBERS OF REPUBLIC OF INDONESIA IN REFERENCE WITH CONSTITUTION NUMBER 17 2014 ABOUT PEOPLE'S CONSULTATIVE ASSEMBLY, REPRESENTATIVE HOUSE MEMBER, HOUSE OF REGIONAL REPRESENTATIVE, AND PROVINCIAL LEGISLATIVE COUNCIL

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Abstract

In the 1945 Constitution was explained that the legislative and supervision function, the main institution is Representative House Member (DPR). Being underscored in the Article 20A verse (1) Constitution 1945 that “Representative House Member posses function of legislation, budgeting, and supervision” after that according to Article 20A verse (2) Constitution 1945 that “in implementing its function, among the rights regulated in other Articles of this constitution, the Representative House Member also has rights of interpellation, inquiry, and opinion”. The Representative House Member in running its function must comply to the principles and regulations applied so that they can provide good impact and prosper to society. The Representative House Member declares a controversial decision which is about the rights of inquiry. Juridically, the Rights of Inquiry is regulated in Article 79 verse (3) Constitution Number 17 2014 s, the presence of state institutions is also an indicator of a government that runs its governance. In implementing that governance, each institution has duties, authorities, functions and other responsibilities and rights. Commission for Corruption Eradication (KPK) is an independent state institution which in running its duties and authorities is free from intervention of any parties.

Keywords: Representative House Member (Dpr), Commission For Corruption Eradication (Kpk) And Rights Of Inquiry.
A. INTRODUCTION

1. Research Background

Constitution is a fundamental law that is utilized as a basis in running a state. Constitution of Republic of Indonesia 1945 latter on typed as (UUD 1945) has been amended for 4 times, the first amendment was in 1999, the second amendment was in 2000, the third amendment was in 2001, and the fourth one was in 2002. In the amendment of this constitution is found the reformation and renewal of state institutions. Constitution is the fundamental law that is used as the basis in running a state. The Constitution of Republic of Indonesia 1945. The Constitution 1945 has been amended for four times, In this amendment was found the reformation and renewal of state institutions. The amendment is taken to make the principle of checks and balance in in the republic of Indonesia administrative systems be established optimally. In the Constitution of 1945, it was explained that in an attempts of legislation and supervision, the main institution is Representative House Member (DPR). Restated in Article 20A verse (1) Constitution 1945 that “Representative House Member has function of legislation, budgeting, and supervision” and then according to Article 20A verse (2) Constitution 1945 that “In implementing of its function, a part from rights regulated in another article in this Constitution, Representative House Member is authorized with rights of interpellation, inquiry, and opinion”. Several days before, Representative House Member (DPR) made a controversial decision which is rights of Inquiry towards Commission of Corruption Eradication. Juridically, the rights of Inquiry is governed in Article 79 verse (3) Constitution

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1 Jimly Asshidiqie, Konstitusi & Konstitusionalisme Indonesia, Sinar Grafika, Jakarta 2010, Pg. 47.
Number 17 2014 about People's Council Assembly, Representative House Member, Society, House of Regional Representative, and Provincial Legislative Council later typed as (UUMD3), it is explained that the rights of inquiry is the Representative House Member's rights to conduct investigations towards:

1) Implementation of a constitution; and/or

2) Government policies that are important, strategic and widely impacting on the life of society, nation and state which allegedly contradict with the laws and regulations.

From the background explanation above, I was interested in proposing a research title as “MECHANISM AND PROCESS OF INQUIRY RIGHTS IMPLEMENTATION OF REPRESENTATIVE HOUSE MEMBERS OF REPUBLIC OF INDONESIA IN REFERENCE WITH CONSTITUTION NUMBER 17 2014 ABOUT PEOPLE'S CONSULTATIVE ASSEMBLY, REPRESENTATIVE HOUSE MEMBER, HOUSE OF REGIONAL REPRESENTATIVE, PROVINCIAL LEGISLATIVE COUNCIL (UUMD3)”

2. PROBLEM IDENTIFICATION

Based on the explanation above, the focuses of research investigation are:

1. How was the mechanism and process of Inquiry rights implementation by the Representative House Member of Republic of Indonesia based in reference with Constitution Number 17 2014, about People's Consultative Assembly, Representative House Member, Regional House of Representative, and Provincial Legislative Council (UUMD3)?
2. How was the status of Representative House Member's Rights of Inquiry of the Republic of Indonesia 1945 before and after amendments?

B. Research Method

Type of this research was categorized as Normative Law research, consisting of positive law of inventory management, law principles, clinical law, a research that review the systematic of laws and regulations, laws comparison and history. This type of research was a normative law one that was descriptive and aimed at clearly describing characteristics of an individual, state, symptoms or a particular group, or to determine a symptoms spread, or whether or not there was a relationship of symptom between one to another in society.

C. RESEARCH RESULT AND DISCUSSION

1. Mechanism and Initiation
   Proses of Inquiry Rights

Implementation of Representative House Member of Republic of Indonesia in reference with Constitution Number 17 Regarding to People's Consultative Assembly, Representative House Member, Regional House of Representative, and Provincial Legislative Council.

State Institutions are essential elements in a state in which they run the state functions. A part from being the instruments to run a governance, the presence of State Institutions is also the reflection of the country's progressive governance. In running that governance, each institution has duties, authorities, functions, responsibilities and rights. One among examples is the Representative House Member (DPR) which is people's representative Institution assigned as state institutions.

The rights of Representative House Member to conduct an investigation towards the
enactment of a constitution and/or government policies that are related to important, strategic and widely impacting things in terms of society, nation and statehood which was allegedly contradicting constitutions. In terms of Inquiring committee as stipulated in Article 201 verse (2) Constitution Number 17 2014 regarding to People's Consultative Assembly, Representative House Member, Regional House of Representative, and Provincial Legislative Council states that the membership of special committee consist of whole fraction elements. However, the reality shows that the establishment of Special Committee of Commission for Corruption Eradication (KPK) fails to meet this requirement. The DPR's objective in activating their rights of inquiry to KPK, one among them, is to seriously ask the KPK to hand over the Minutes of Inquiry (BAP) paper and expose the inquiry recordings towards Miryam S. Haryani because several DPR members thought that it was necessary to investigate towards the names of DPR who were mentioned by Miryam S. Haryani when she was being investigated by the KPK investigators in the case of E-ID (electronic Identity Card), then to evaluate the KPK performances, to inquire allegation of misuse of authority by the KPK, to check indication of KPK budgeting disobedience, and to look for an indication of disunity in the KPK's body. Commission for Corruption Eradication is an independent state institution which is free from any from any interventions established by constitution of Republic of Indonesia Number

4 Article 79 verse (3) Constitution Number 17 2014 about People's Consultative Assembly Representative House Member, Regional Legislative Council, and provincial Legislative Council.

2002. Commission for Corruption Criminal Act Eradication. In this Article 3 states that “Commission for Corruption Eradication is a state institution in fulfilling its job and duties that is independent and free from any interventions”. With in the explanation of article 3, it is explained that “in this condition what is meant by “any interventions” are the interventions that can influence the job and duties of Commission for Corruption Eradication or the its members individually from executive, adjudicative, and legislative sides, other parties that were linked to the corruption criminal acts, or any forms of state, situation, and reasons.”

If the rights of inquiry is defined as can be done towards Constitution Officers and/or institutions in a broad perspective then Commission for Corruption Eradication is also subjected to that rights, therefore can create an ambiguity where it can disturb the independence of Commission for Corruption Eradication (KPK) in fulfilling its jobs and duties. Constitutional Court (MK) states that the Representative House Member's rights of inquiry towards KPK as denoted in Article 79 verse (3) Constitution Number 17 2014 about People Consultative Assembly, Representative House Member, Regional House of Representative, and Provincial Legislative Council (UUMD3) is limited to only the ad interim official of KPK. Constitutional Court (MK) re-conducted a hearing for judicial review about the legality of inquiry rights that was mentioned in Article 79 verse (3) Constitution Number 17 2014 about People Consultative Assembly, Representative House Member, Regional House of Representative, and Provincial Legislative Council. In the Constitutional Court Hearing, it is noticed that the Representative


Constitution is a fundamental law that is used as the reliable basis to run a state. Constitution as written law, along with unwritten law principles and Norms that live as state administration convention in the practice of running a state, is included as the definition or fundamental law (droit constitutionnel) in a country. Constitution 1945 was firstly legalized and acknowledged as a state constitution in Preparatory Committee of Independence of Indonesia (PPKI) on August 8th 1945 after the independence declaration. However, after formally legalized on the 18th of August 1945, Constitution 1945 had not been used as a reference in every state and government decision. Thus, although the constitution 1945 was very brief and only contained 37 Articles, yet the three material of constitution that must present had been fulfilled according to general requirement of Constitution.

The amendment of Constitution 1945 then was conducted incrementally and became one of yearly session agenda of Representative House Member since 1999 until the fourth amendment on the hearing of Representative House Member in 2002 along with an agreement of Forming Constitution Committee who were assigned for comprehensive review regarding to the amendment of Constitution 1945 based of the Decision of MPR No.1/MPR/2002 about the formation of Constitution Committee.

One of great successes that was achieved during the reformation

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6 Ibid, Konstitusi & Konstituionalisme Indonesia, hlm. 29
time is constitutional Reform. Constitutional Reformation is perceived as a need and must-executed agenda as Constitution 1945 before the amendment was not sufficient to control and lead the committee in line with the society's demand, the establishment of good governance, and supporting the enforcement of democracy and human rights. The amendment of Constitution 1945 was conducted incrementally and became one agenda of the hearing of MPR since 1999 until 2002. The first amendment was done in the general session of MPR in 1999. The aim of the first amendment of Constitution 1945 was to limit the president's power and strengthen the Representative House Member status (DPR) as legislation Institution.

The second amendment was conducted in the annual hearing of MPR in 2000. This created the formulation of articles' changes which included the state problems and Regional Government structure, to perfect the first amendment in strengthening the status of Representative House Member, and details about Human Rights.

The third amendment was decided on the annual hearing of MPR in 2001. This amendment changes and/or adds articles' provisions about fundamental principles of running a state, state institutions, and the relation among state institutions, and provision regarding to General Election. Where as the fourth amendment was conducted in the annual hearing of MPR in 2002. That amendment has included provisions about state institutions and the relation among them, the disposal of Supreme Advisory Board (DPA), education and culture, economic and social welfare, and transitional rules as well as additional rules.

The four amendment stages of Constitution 1945 covers almost the entire of it's materials. From the

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7 Compared to: http://mahkamahkonstitusi.go.id accessed on June 10th 2018.
8 Ibid
qualitative point of view, the amendment of Constitution 1945 is very fundamental because this amends the principle of people sovereignty which firstly was conducted entirely by MPR then was moved to Constitution. This makes all of the state institutions in the Constitution 1945 be in the same level and establish the people sovereignty in it's own domain. Another amendment is from the power of the president which, used to be very big, (concentration of power and responsibility upon the President) becomes principles that checks and balances one another.

The regulation that governs the inquiry rights that is the authority of Representative House Member (DPR), was early stipulated in the Article 70 Temporary Constitution 1950 (UUDS) that states “Representative House Member has rights to inquire (enquete), determined by Constitution”. And then, regulated with in Constitution Number 6 1945. At that time, Parliamentary system was applied in a country with presidential system. ⁹

After that, through the amendment of Constitution 1945, the inquiry rights on a whim stated as the Rights of Representative House Member in Article 20A verse (2) Constitution 1945 which states that “In conducting its function, not only governed in the Constitution Articles, Representative House Member has interpellation rights, inquiry rights, and opinion rights:. Therefore, Inquiry rights is the constitutional authority of DPR that is authorized by constitution. Although not common, sometimes lead to theoretic clashes about the initiation of inquiry rights in presidential system when formulating the constitution 1945, at the end, the inquiry rights is given to the DPR in order to support the checks and balances functions between the DPR and the Government.

D. CLOSING

⁹ The Decision of Constitutional Court Number 36/PUU-XV/2017, pg. 13
1. CONCLUSION

As written in the problem identification part about the mechanism and process of Inquiry Rights Implementation the Formation of Representative House Member of Republic of Indonesia based on Constitution Number 17 2014 about People's Consultative Assembly, Representative House Member, Regional House of Representative, and Provincial Legislative Council, Thus based on the research result and discussion, the researcher concluded that:

1. Representative House Member has rights of interpellation, inquiry and opinion. The Representative House Member's inquiry rights is the rights to conduct an investigation towards the implementation of a constitution and/or government policies that are important, and strategic and widely impacting for the aspects of life as a society, nation and state which allegedly contradict the laws and regulations. In implementing a constitution and/or policy can be in the form of policies that are enacted by the President, Vice President, state ministers, Army General Commander, Police Head Sergeant, General Attorney, or non-Ministry State Institution Head. The implementation of Inquiry rights are regulated in Article 199 to 209 Constitution Number 17 2004 about People's Consultative Assembly, Representative House Member, Regional House of Representative, and Provincial Legislative Council. And further explanation in regards to the implementation of inquiry rights is regulated in Representative House Member's Regulation Number 1 2014 about
Procedure. KPK is a state institution that is independent in fulfilling its jobs and duties and free from any party's intervention. KPK is categorized as executive power that is usually called as state institution although has independence characteristics. Independence in here means in terms of fulfilling its jobs and duties (The decision of Constitutional Court Number 012-016-019/PUU-IV/2006).

Although KPK is not responsible directly to the president, in fulfilling its jobs and duties KPK is responsible to report to public and regularly and openly to the President, Representative House Member, and Finance Auditory Body (BPK). The implementation of Inquiry Rights is usually taken towards the government but rarely happens. Thus, the Representative House Member decision is considered as very regrettable.

2. The regulations that govern the Inquiry Rights is the authority of Representative House Member (DPR), firstly regulated in the Article 70 Temporary Constitution 1950 (UUDS) that states that “Representative House Member has rights to investigate (enquete), according to the regulation provided by the constitution”. Thenceforth is regulated in Constitution Number 6 1954. At that time was applied parliamentary system and uncommon used by presidential system. After that, through the second amendment of Constitution 1945, the inquiry rights then expressively stated as Representative House Member rights in Article 20A verse (2) Constitution 1945 that state “in fulfilling
its jobs and duties, besides the rights that is governed in this Constitutional Articles, Representative House Member has rights of Interpellation, inquiry and opinion”. Hence, inquiry rights is the authority of Representative House Member given by the Constitution 1945

2. SUGGESTION

Based on the conclusion above, the writer with all of her weaknesses and humble heart, in the ending part of this thesis writing would like to give suggestions that can be useful for everybody.

1. The number of Pros and Cons towards the formation of inquiry rights of Representative House Member towards the Commission of Corruption Eradication, the Representative House Member is supposed to be able to apply the inquiry rights procedure in the guidance of the provision of regulations of law in effect, of which among them is Constitution 1945 of Republic of Indonesia, Constitution Number 17 2004 about People's Consultative Agency, Representative House Member, House of Regional Representative, Provincial Legislative Council, as well as the regulation of Representative House Member Number 1 2014 about Procedure.

2. Representative House member is expected to compose regulation about the rights of Representative House Member clearly, particularly about the mechanism of inquiry rights application to avoid ambiguities.

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