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Reformulation of Institutional Relationship between the People's Representative Council and the Corruption Eradication Commission

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Abstract

This study aims to reformulate the institutional relationships between legislative bodies and independent state institutions, by taking case studies of the House of Representatives (DPR) and the Corruption Eradication Commission (KPK). This research was conducted with a normative method using a conceptual and statutory approach. The results showed that the DPR-KPK institutional relationship can be formulated into authority relationship, supervisory relationship and financial relationship. In terms of the authority relationship, the principal-agent approach is used to place DPR as the principal whose duty is to support and provides the resources needed for the KPK as its agent. In this context, the KPK is the recipient of the task whose authority is within the subject of DPR. For the Supervision Relationship, The New Public Management Model (NPM) is used to initiate better supervision through the input and output control mechanism. Input control is carried out by DPR through the legislation and commissioner selection process, while output control is



carried out based on accountability reports made by KPK. Thus, DPR is not allowed to intervene while the KPK exercise its duty. In terms of financial relationship, the DPR can regulate funding aspects for KPK through financial legislation. However, this budget politics must be adjusted to the needs and workload in carrying out KPK duties.

A. Introduction

In the course of Indonesian constitutionality, there are still pros and cons to the emergence of Independent State Institutions (LNI).¹ There are many opinions that the establishment of these independent institutions brings new hope for institutional reform in Indonesia, but not a few also think that the emergence of LNI tends to be only reactionary and incidental without an adequate conceptual basis.² The absence of uniformity of views regarding the concept of LNI causes a high potential for disputes of authority and institutional conflicts between LNI and other institutions.³

One of the best examples is the case of anti-corruption institutions in Indonesia. The Corruption Eradication Commission (KPK) is an institution in Indonesia that was formed in 2003 to tackle, tackle and eradicate corruption in Indonesia. This commission was established based on the provisions of Article 43 of Law of the Republic of Indonesia Number 30 of 2002 concerning the Corruption Eradication Commission. Then the institutional matters of the KPK are specifically regulated in Law Number 30 of 2002 concerning the Corruption Eradication Commission as amended in Law Number 19 of 2019 (KPK Law). In the provisions of the law, the formation of the Corruption Eradication Commission aims to increase effectiveness and efficiency in efforts to eradicate corruption crimes that have been running before.⁴ In carrying out its duties and powers, the KPK is independent and free from the influence of any power.⁵

As one of the popular LNI in Indonesia, the Corruption Eradication Commission (KPK), which has been drained of time and energy to eradicate corruption in Indonesia, must be caught up in several institutional disputes and conflicts. Some of the popular cases involved the National Police Department (POLRI) in the long drama of “lizard vs crocodile (KPK v. POLRI)”. It also conflicted with the House of Representatives (DPR) in the case of the DPR's inquiry rights against the KPK (DPR v. KPK).⁶ Various reasons were put forward by the DPR

¹ Hendra Nurtjahjo, “Lembaga, Badan, Dan Komisi Negara Independen (State Auxiliary Agencies) Di Indonesia: Tinjauan Hukum Tata Negara,” *Jurnal Hukum & Pembangunan* 35, no. 3 (2017): 275–87, <https://doi.org/10.21143/jhp.vol35.no3.1518>.

² Gunawan A. Tauda, “Kedudukan Komisi Negara Independen Dalam Struktur Ketatanegaraan Republik Indonesia,” *PRANATA HUKUM* 6, no. 2 (July 31, 2011), <http://jurnal.ubl.ac.id/index.php/PH/article/view/163>.

³ Moch Andry W W Mamonto Rizki Ramadani, “The Independency of the Corruption Eradication Commission of the Republic of Indonesia (KPK RI) in Indicators of Independent Regulatory Agencies (IRAs),” *Substantive Justice International Journal of Law*, accessed February 10, 2021, <https://substantivejustice.id/index.php/sucila/article/view/18>.

⁴ Article 4 of Law No. 30 of 2002 on Corruption Eradication Commission.

⁵ Article 3 Law No. 19 of 2019 on The Revision of Law No. 30 of 2002 on Corruption Eradication Commission.

⁶ Mei Susanto, “Hak Angket DPR, KPK Dan Pemberantasan Korupsi,” *Jurnal Integritas*, accessed February 10, 2021, <https://jurnal.kpk.go.id/index.php/integritas/article/view/294>.

why it was necessary to investigate the KPK, including the findings of the DPR regarding indications of violations and non-compliance of the KPK in carrying out its duties.⁷

Even so, this conflict was quite controversial because it was carried out amid many public appreciations of the KPK's performance in eradicating corruption. Added to this is the negative perception that the DPR has long been considered to have been aggressively making efforts to systematically weaken the KPK, including through various criticisms and attempts to revise the KPK Law which was initiated by the DPR from 2010 to February 2016.⁸ It was then succeeded in 2019. Even though the DPR-KPK conflict is considered resolved after the Constitutional Court decision Number 36 / PUU-XV / 2017, the disharmony of the DPR-KPK relationship has become a bad precedent for the development and efforts of anti-corruption institutions in Indonesia.⁹

Therefore it is important to re-examine how to properly organize a better institutional relationship between the DPR and the KPK, without reducing or weakening the essence of the institution. In the Indonesian context, the institutional relationship between the legislative body and independent state institutions such as the KPK, in general, has not been well developed and formulated. This research tries to draw a common thread from institutional relations outside the trias politica concept that is reflected between the DPR and the KPK. In the study of political science in the west, principal-agent theory is commonly used to explain the basis for the formation and pattern of relations between the legislature (congress) and state institutions with independent characteristics. Although to a certain degree, it still leaves problems at the practical level.

In addition to the principal-agent theory, the concept of check and balance is also used as an analytical tool to see the concept of the relationship built in the 1945 Constitution and the DPR-KPK relationship mechanism in the respective institutional laws. Thus, it is hoped that an ideal institutional relationship pattern can be formulated, which later becomes a reference or arrangement for the relationship between the legislature and LNI in general. This study intends to formulate a pattern of institutional relations between the DPR-KPK which is divided into three aspects: the authority relationship, the supervision relationship, and the finance relationship.

B. Discussion

Not without reason Andrew Knapp and Yves mentioned the Independent State Institution (LNI) as “the headless fourth branch of government” or the fourth branch of power outside the trias politica concept.¹⁰ The issue of the extent to which an LNI is independent, how to properly monitor and limit its authority, has become a hot topic of discussion among western academics.

In principle, although the law has embedded the phrase "independent", as long as an institution is still managed by humans, there is also the potential for negligence, inaccuracy and abuse of power. This is in line with what Lord Acton said long ago, that "Power tends to Corrupt, absolute power corrupts absolutely." But on the other hand, all kinds of efforts to reduce the authority of state institutions that have been agreed upon and stipulated in the law,

⁷ Idul Rishan, “Batas Konstitusional Penggunaan Hak Angket Terhadap Komisi Pemberantasan Korupsi,” *Jurnal Konstitusi* 16, no. 3 (2019): 630–54, <https://doi.org/10.31078/jk1639>.

⁸ Muh Rinaldy Bima and Rizki Ramadani, “Position of Supervisory Board Organ and Its Implications for the Institutional Corruption Eradication Commission,” *LAW REFORM*, vol. 16 (PROGRAM STUDI MAGISTER ILMU HUKUM FAKULTAS HUKUM UNIVERSITAS DIPONEGORO SEMARANG, September 27, 2020), <https://doi.org/10.14710/LR.V16I2.33770>.

⁹ Rizki Ramadani and Andika Prawira Buana, “The Needed but Unwanted Independent Regulatory Agencies: Questioning Their Legitimacy and Control in Indonesia ” (Atlantis Press, 2020), 674–84, <https://doi.org/10.2991/assehr.k.201209.351>.

¹⁰ Mény, Yves, and Andrew Knapp. *Government and Politics in Western Europe: Britain, France, Italy, Germany*. Oxford: Oxford University Press, 1993., p. 281.

or attempts to obstruct the exercise of this authority cannot be legally justified. This is where accuracy and caution are needed in determining the relationship between independent agencies such as the KPK and main state institutions such as the DPR.

Discussions regarding institutional relations between the Corruption Eradication Commission and other state institutions, especially the legislative body, must be viewed from the perspective of equal or coordinating institutional relations, not subordination. This is because often the existence of the KPK is still considered limited to an ad hoc institution or an auxiliary institution in addition to the main state institutions in the trias politica structure.¹¹ However, there is no unified opinion on what indicators can be used to assess whether an institution is the main state institution or an auxiliary state institution. Is it based on its function, the amount of power, or is it seen from the legal basis of its formation.¹²

Some experts have speculated that the main state institutions are those that have the main and vital function in the administration of government, in the sense that without the existence of these institutions the state cannot function as it should. In this case, the institution in question is within the framework of the trias politica, namely the executive, legislative and judiciary institutions. Thus, several other institutions such as the Supreme Audit Agency (BPK), the Indonesian Broadcasting Commission (KPI) including the KPK are secondary or supporting institutions formed to assist the main institutions. This belief seems to ignore the facts and views of the previous theorists regarding the domination and strategic role of LNI in today's government. This measure by itself can be refuted, for example by Jimly's argument that in matters of oversight of the government, the DPR has the main function, while the BPK is the supporting function. However, in terms of financial supervision, the BPK is the main institution compared to the DPR.

For this reason, in examining the pattern of relations between the KPK as an LNI and the DPR as a legislative institution, the author does not use the Main state organ-Auxiliary state organ theoretical framework. In this discussion, the DPR-KPK institutional relationship will be examined in the perspective of Independent agencies theory, principal-agent theory and delegation doctrine, as well as the much more relevant principle of check and balance. As quoted from Gunawan Abdullah Tauda, that the pattern of institutional relations between the legislative power (DPR) and LNI, related to the functions and rights of the DPR can be detailed as follows;¹³

- 1) may form and eliminate LNI through the constitution (together with the DPD in the MPR) and laws.
- 2) Provide and determine the amount of budget needed by LNI, through discussion and approval of the draft law on state revenue and expenditure budget (APBN)
- 3) To determine, add and reduce the powers of LNI to carry out certain tasks and functions through law.
- 4) Conduct monitoring (monitoring) of LNI

If an outline is drawn, the concept of the DPR-KPK institutional relationship can be examined from three relationship perspectives; First, the relationship of authority is related to the nature, principles, and intersections of the authority of each institution. Second, financial

¹¹ Sukmariningsih, Retno Mawarini. "Penataan Lembaga Negara Mandiri dalam Struktur Ketatanegaraan Indonesia." *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 26, no. 2 (2014): 194-204. <https://doi.org/10.22146/jmh.16039>

¹² Kelik Iswandi and Nanik Prasetyoningsih, "Kedudukan State Auxiliary Organ Dalam Sistem Ketatanegaraan Di Indonesia," *Jurnal Penegakan Hukum Dan Keadilan* 1, no. 2 (August 24, 2020), <https://doi.org/10.18196/jphk.1208>.

¹³ Tauda, Gunawan A. *Komisi Negara Independen: Eksistensi Independent Agencies sebagai Cabang Kekuasaan baru dalam Sistem Ketatanegaraan*. Genta Press, 2018.

relationships relating to sources and allocation of foreign financing. Third, the supervisory relationship is related to the accountability process.

1. The Authority Relationship Between DPR and KPK

Before going further to discuss the relationship of authority, it is necessary to define some definitions of authority, especially concerning the administration of the government as a whole to become a limitation in analyzing governmental authority and its division. The principle of legality is the basis of every state and government administration. In other words, every state and government administration must have legitimacy, that is, the authority granted by law. Thus, the substance of the legality principle is authority, namely the ability to carry out certain legal actions. According to H.D, Stout, as quoted by Ridwan HR. Authority is a definition derived from the law of governmental organizations, which can be explained as a whole of the rules relating to the acquisition and use of governmental powers by public legal subjects in public legal relations. Meanwhile, according to F.P.C.L. Tonnaer, the government authority in this regard is considered the ability to implement positive law, and by doing so, a legal relationship can be created between the government and citizens.¹⁴

According to Bagir Manan, authority in legal language is not the same as power (*macht*). Power only describes the right to do or not to act. In the context of regional governance, the relationship of authority discusses how to divide governmental affairs or how to determine regional household affairs between the center and the regions.¹⁵ In the context of the relationship between the DPR and the KPK, the authority relationship here is intended to examine the intersection of authority arrangements between the DPR and the KPK.

Funk dan Seamon stated that LNI is the creature of the statute.¹⁶ This is based on the fact that the basis for forming LNI is generally formed or obtaining a delegation of authority through the statutory regulations.¹⁷ So in this context, the relationship of authority between LNI and lawmaking institutions such as DPR is basically the relationship between delegators (givers of authority) and delegates (recipients of authority).

To answer the reasons for the delegation of authority to an independent State commission, Fabrizio explained it in an analogy which he called the principal-agent approach to explain his rational basis. In this approach, the government can be analogized as a principal who at certain times is too busy or does not have sufficient knowledge to carry out certain functions. The solution is that the principal (government) can hand over the matter to another agent (Independent Institution) who has more knowledge and can be specifically assigned to these matters.

A similar view about principal-agent is also expressed by Dietmar Braun who wrote;¹⁸
"The principal-agent literature deals with a specific social relationship, that is, delegation, in which two actors are involved in an exchange of resources. The principal is the actor who disposes of several resources but "not those of the appropriate kind to realize the interest.... He or she then needs the agent, who accepts these appropriate resources and is willing to further the interests of the principal."

¹⁴ Ridwan, H. R. "Hukum Administrasi Negara, Cetakan Kedua." (2003). p. 70-71.

¹⁵ Septi Nur Wijayanti, "Hubungan Antara Pusat Dan Daerah Dalam Negara Kesatuan Republik Indonesia Berdasarkan Undang-Undang Nomor 23 Tahun 2014," *Jurnal Media Hukum* 23, no. 2 (2017): 186-99, <https://doi.org/10.18196/jmh.2016.0079.186-199>.

¹⁶ Lihat Funk, William F., and Richard H. Seamon. *Administrative law: examples and explanations*. Aspen Publishers, 2009. p. 28

¹⁷ Some LNIs in Indonesia are mentioned in the 1945 Constitution of the Republic of Indonesia, such as the Judicial Commission (KY) (article 24) or the Supreme Audit Agency (Article 15). However, matters related to the main duties, rights, duties and authorities are regulated in detail in the law, such as KY.

¹⁸ Dietmar Braun and David H Guston, "Principal-Agent Theory and Research Policy: An Introduction," *Science and Public Policy* 30, no. 5 (October 1, 2003): 302-8, <https://doi.org/10.3152/147154303781780290>.

In the view of American political scientists, a delegation of authority from Congress (legislative) to independent institutions is the highest type of delegation, in addition to several other types of delegation such as delegation from the people to their representatives in parliament, or delegations from the government to ministerial and bureaucratic institutions.¹⁹

Referring to the description above, in the context of its authority relationship with the KPK, the DPR is positioned as the principal or delegate to the KPK as an agent who has a special task in the field of eradicating corruption. Basically, the KPK is "the creature of the statute" or an institution that is born from the law, in this case through Law Number 20 of 2001 concerning Corruption Crime and Law Number 30 of 2002 Jo. UU no. 19 of 2019 concerning the Corruption Eradication Commission (KPK Law), in which the DPR is the initiator and legislator.

As noted by Dietmar Braun, in the principal-agent theory, the independence of the KPK does not signify the complete separation of the institution from political decision-makers. The KPK remains the subject of coordination principles in state government. The delegation of public affairs to LNI is always formed by two actors, namely those who delegate their authority (who make decisions and carry out supervision) and those who receive part of the authority to carry out public tasks.²⁰

Thus, even though the Article in the KPK Law confirms that the KPK is an independent institution that is free from any power, In principle, the KPK remains the subject of the coordination of the DPR as the mandate provider. If at any time the DPR feels that the KPK's authority needs to be strengthened, then according to the doctrine of the delegation, the DPR has the authority to revise the law and add things deemed necessary. On the other hand, if at any time the DPR deems that the KPK's authority is too large so that it is prone to abuse, then based on the principal-agent theory, the DPR has the right to limit this authority through law as well. However, one thing that should be noted is that the DPR must be bound by an objective assessment and good faith to strengthen efforts to eradicate corruption. Therefore, considerations to increase and decrease authority must be carried out objectively and based on clear assessment results. For this reason, it is necessary to formulate an appropriate monitoring model so that it does not lead to an intervention and restriction.

The thing to remember is that each of these assessments must be measurable through clear, transparent and objective reasons and procedures. The DPR, in its assessment process of the KPK's performance, must not intervene. The fact that has happened so far is that the news that has developed about the revision of the KPK Law always has a negative connotation as a systematic weakening effort.²¹ Because amidst the incessant performance of the KPK in uncovering corruption cases in the country, the content material in the revision of the law tends to lead to restrictions on the KPK's authority. For example, with the discourse of eliminating the autonomy of wiretapping by KPK (Article 47 and 12B Law No. 19 of 2019), efforts to bring corruption offense as a *lex generalis* (revision draft of new KUHP), or to reduce the position of the KPK to being under the President.

Another problem, as the principal, the DPR does not provide sufficient authority like the KPK to be able to maximize its potential as an independent agency in the anti-corruption sector. For example, until now the KPK has not been given the authority to recruit

¹⁹ Fabrizio Gilardi, "Principal-Agent Models Go to Europe: Independent Regulatory Agencies as Ultimate Step of Delegation," n.d.

²⁰ Dietmar Braun, "Debate: State Intervention and Delegation to Independent Regulatory Agencies," *Swiss Political Science Review* 8, no. 1 (April 1, 2002): 93–125, <https://doi.org/10.1002/j.1662-6370.2002.tb00336.x>.

²¹ One of them was admitted by Bambang Widjayanto as a former commissioner of the KPK, who stated that the revision of the KPK Law had no clear academic script, had never been discussed to the public, and the basic purpose of its interests was unclear.

independent investigators but has only borrowed investigators from other agencies.²² In fact, in the revision of Law no. 30 of 2002 became Law No. 19 of 2019 (KPK Law) , the provisions of Article 1 point 7 Changing the status of KPK employees to civil servants and government employees with a work agreement. Instead of liberating the KPK to carry out employee selection independently, what happened was an attempt to consolidate the KPK under executive subordination.

This, of course, bring some negative consequences. The dispute between the KPK and the police over the SIM exam simulator case, for example, has a long tail and has implications for the "detention" of KPK investigators at the Korlantas building shortly after the KPK confiscated many documents that could be used as evidence. Even up to the threat of withdrawing 20 KPK investigators from the police agency. With the withdrawal of several KPK investigators, it will directly or indirectly weaken the KPK in continuing the many cases it is handling. Armed with only 58 investigators with around 240 cases being investigated, it is clear that this will overload the investigators and some cases will be neglected.²³

Thus, in principle, if the DPR as the principal does not provide the equal authority with the targets and workload of the KPK, then the DPR's assessment standards for KPK performance will also be problematic so that it is unfair and objective for the KPK as the agent. Therefore, in the future revisions still need to be made to the KPK law, but not to weaken or reduce existing powers, but to further strengthen the KPK institution so that it is balanced with its performance burden.

2. The Supervision Relationship Between DPR and KPK

In the United States, the supervisory relationship between LNI and the legislature (Congress) is carried out through input (initial) and output (final) oversight mechanisms based on a principal-agent perspective.²⁴ Not through intervention in the middle of carrying out tasks. As the Principal (forming / giving authority), input supervision is carried out by congress at the beginning of the drafting of the law on the institution concerned. For example, what authority should and should not be given to an LNI. Meanwhile, output monitoring is carried out with results orientation. LNI as Agent (authorized recipient) is required to make periodic accountability reports which are then evaluated by congress. The report will be taken into consideration for the congress to assess the performance of LNI, whether it is in accordance with the purpose of its formation, including budget matters. So that transparency and accountability of LNI can be guaranteed.

In the Doctrine of The New Public Management (NPM), which has become the standard reference in the formation of LNI in the UK, there is an almost similar concept, which is called the result control aspect. NPM emphasizes a paradigm shift from ex-ante (input and procedure-based) supervision to output-based supervision. The result control aspect is based on two concepts, namely "let public managers manage" and "make public managers manage". In the first concept, institutional autonomy will create and accustom efficient performance, but it does not automatically encourage public officials to act efficiently. Therefore it takes encouragement or exhortation. Here, results-based control or supervision plays a crucial role in encouraging, even pressure for LNI officials to work more efficiently. Thus the result control is used in creating the condition "make public managers manage".²⁵

²² Article 39 paragraph (3) states, "Investigators, investigators and public prosecutors who are employees of the Corruption Eradication Commission, are temporarily suspended from the police and the prosecutor's office while they are employees of the Corruption Eradication Commission."

²³ See <http://www.kemitraan.or.id/blog-partnership/penyidik-independen-kpk>, Accessed on June 24, 2015.

²⁴ Rizki Ramadani, "Lembaga Negara Independen Di Indonesia Dalam Perspektif Konsep Independent Regulatory Agencies," *Jurnal Hukum Ius Quia Iustum* 27, no. 1 (2020), <https://doi.org/10.20885/iustum.vol27.iss1.art9>.

²⁵ Fabrizio Gillardi, *loc.cit.*

In this regard, the KPK in its law has actually institutionalized a mechanism for monitoring input and output. Input oversight is reflected, among others, in the mechanism for filling the position of Commissioner which involves the authority of the DPR. Article 30 paragraph (1) of the KPK Law states; "The head of the Corruption Eradication Commission is elected by the House of Representatives of the Republic of Indonesia based on candidate members proposed by the President of the Republic of Indonesia." Whereas output monitoring can be carried out by the DPR on KPK performance reports as instructed in Article 15 Point 2 of the KPK Law, that the KPK is obliged to prepare an annual report and submit it to the President of the Republic of Indonesia, the People's Representative Council of the Republic of Indonesia, and the Audit Board.

From the point of view of principal-agent theory, this input and output control is basically sufficient to limit the LNI from abusing its authority and independence. This principle does not allow the principal to intervene in the middle of the performance implementation. However, in fact, the pattern of this supervisory relationship was damaged, among others, by the DPR's efforts to attract the KPK. Around April 2017²⁶, suddenly the public was shocked by the DPR's decision to propose the right to inquiry against the KPK. The right to the inquiry is the right of the DPR to carry out investigations into the implementation of laws and/or Government policies that are important, strategic, and have a broad impact on the life of the community, nation and state that are alleged to conflict with statutory regulations.²⁷ Various reasons were put forward by the DPR why it was necessary to investigate the KPK, including the findings of the DPR regarding indications of violations and non-compliance of the KPK in carrying out its duties.²⁸ However, some people consider this to be very tendentious, especially when the discourse on the right to inquiry emerged at the same time a corruption case caught a member of the DPR, Miriam S. Hariyani. At that time, the KPK was reluctant to provide the BAP recording requested by Commission III of the DPR. So that many parties consider the right to the inquiry as an excuse to force the KPK to open investigative data that is confidential in nature.

In the midst of the controversy that occurred, some of the public and the KPK took the initiative to file a judicial review lawsuit to the Constitutional Court (MK) against the provisions of Article 79 paragraph (3) of the MD3 Law, whose decision was finally read out on February 8, 2018. Through decision number 36 / PUU / XV / 2017 regarding the DPR's inquiry rights against the KPK, the court decided to reject the petitioner's claim, which means that the DPR has the authority to apply for inquiry rights against the KPK.²⁹ Against this decision, the Court considered the KPK as a government institution in the sense of an independent executive, not in the sense of LNI so that it was included as the object of the DPR's inquiry right.³⁰ Thus, the Constitutional Court has indirectly reduced the position of the

²⁶ The final decision regarding the right to an inquiry was ruled by the DPR on April 28, 2017.

²⁷ Essentially, the DPR inquiry right is a form of implementation of the oversight function of the DPR of the 1945 Constitution of the Republic of Indonesia Article 20A paragraph (1) which reads, "The House of Representatives has a legislative function, a budgetary function and a supervisory function". then paragraph (2) states "In carrying out its functions, apart from the rights stipulated in other articles of the Constitution, the House of Representatives has interpellation rights, inquiry rights, and rights to express opinions. Further regulation regarding this matter is then outlined in Law Number 17 of 2014 concerning the MPR, DPR, DPD and DPRD (MD3 Law) which in Article 79 paragraph (3), which formulates the definition of the right to inquiry.

²⁸ Firdaus, Dasep M. "Hak Angket Dewan Perwakilan Rakyat Republik Indonesia (DPR RI) Terhadap Komisi Pemberantasan Korupsi (KPK)." *Jurnal Asy Syariah* 20, no. 2 (2018).

²⁹ Dasep Muhammad Firdaus, "HAK ANGKET DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA (DPR RI) TERHADAP KOMISI PEMBERANTASAN KORUPSI (KPK)," *Asy-Syari'ah* 20, no. 2 (December 21, 2018): 191–202, <https://doi.org/10.15575/as.v20i2.3028>.

³⁰ Law Number 17 of 2014 concerning the MPR, DPR, DPD and DPRD (MD3 Law) Article 79 paragraph (3) reads, "The right to the inquiry as referred to in paragraph (1) letter b is the right of the DPR to conduct an

KPK from independent agencies or LNI to become merely an independent government agency. This is certainly a bad precedent for the travel of Indonesians in Indonesia. In fact, the systems in Europe and America in no way allow any form of intervention to the performance of LNI by congress. Thus, the supervisory relationship between the legislature and LNI in the US is more of a manifestation of the principles of check and balance and good governance, not on the basis of suspicion, let alone the intention to intervene and weaken each other. This seems to have not materialized in the context of the oversight relationship between the DPR and the KPK, which is very tendentious and political in nature.

In principle there is no freedom without responsibility, no power without control, however, as much as possible we create a supervisory mechanism that does not degrade the degree of an institution. In principal-agent theory, the most appropriate supervision of independent state institutions (LNI) is a form of input and output control. Input supervision can be carried out by the DPR during the formulation of the KPK Law, while output supervision is oriented towards performance results. The DPR is not justified in intervening in the KPK even based on supervision, especially through inappropriate use of authority.

If indeed the KPK is forced to be caught, then steps that can be taken are to clearly and firmly determine the domain and boundaries of the inquiry right. For example, it is only aimed at the aspects of budget governance or public administration, not on the exercise of authority whose independence is guaranteed and protected by law. This needs to be done so that every state agency can carry out its duties and functions, still within the framework of the rule of law and legal restrictions itself.

3. The Financial Relationship Between DPR and KPK

According to John S.T. Quah, as quoted by Denny Indrayana, there are six elements that a special anti-corruption agency must have in order to be successful in carrying out its duties, namely: (1) The anti-corruption commission must be free from corruption, (2) The anti-corruption commission must be independent of political control, (3)) must be supported by comprehensive anti-corruption regulations, (4) Must have sufficient human resources and funding, (5) must establish regulations indiscriminately, (6) have political support.³¹

Regarding financial matters, when compared to anti-corruption institutions in other Asian countries such as Hong Kong or Singapore, the KPK is among the lowest-funded. The per capita budget of the Indonesian KPK is far behind when compared to the ICAC per capita budget in Hong Kong, wherein 2013 it reached US \$ 121.87, which means 441.6 times the KPK's per capita budget of only 0.276.³²

This fact remains to be exacerbated by the DPR's resistance to the KPK in financial matters. Instead of providing support through its power in the budget sector, the DPR has been more counterproductive to the KPK institution. In 2008, for example, the DPR had refused to provide a budget for the KPK who wanted to build a new building. Even though the KPK building has exceeded its capacity which makes their work less effective. This refusal eventually led to the mass movement "Saweran for the KPK". Apart from the KPK building, the DPR has also rejected the budget for the formation of five KPK representatives in the regions and the establishment of an anti-corruption community.³³

investigation into the implementation of laws and/or government policies... "Thus the object of the DPR's inquiry right is any policy issued by the" Government".

³¹ Jon S.T. Quah, "Anti-Corruption Agencies in Four Asian Countries: A Comparative Analysis," *Research in Public Policy Analysis and Management* (Emerald Group Publishing Limited, 2008), [https://doi.org/10.1016/S0732-1317\(08\)17006-3](https://doi.org/10.1016/S0732-1317(08)17006-3).

³² *Ibid.*, p. 188.

³³ <https://nasional.tempo.co/amp/885616/8-upaya-pelemahan-kpk-oleh-dpr-menurut-catatn-icw>. Diakses pada 23 Januari 2019.

The availability of a sufficient budget is one of the factors affecting the independence and performance of LNIs. Therefore, LNI like the KPK should not be bothered by the need for a workable budget that is insufficient or not approved in the formulation of the APBN Budget. In this context, the DPR as an institution that has the authority in the field of legislation and budgeting should be able to support KPK finances through its political budget policies. Not only financial support in terms of investigations but also includes employee welfare, facilities and infrastructure.

C. Conclusion

Generally speaking, today's relationship between the DPR and KPK are not well formulated, as shown by the tension and sentiment between the two institutions. Thus, in order to reformulate better relationship between those institutions, the following conclusions can be drawn; First, in terms of authority relationship, the principal-agent framework could be used to explain better the position and duty of both institution. The DPR as the legislator has the position of the principal, whose duty is to delegates several task and authorities to KPK as its agent. DPR as principal is obligated to support and provides the resources needed for KPK to perform its duty and authority. In this context, the KPK is the recipient (*delegans*) of the task whose authority is still within the subject of coordination. Thus, the DPR with its wisdom can reduce or increase the authority of the KPK by referring to an objective assessment of the KPK's performance. Despite the fact, this position and authority must not be misused by the DPR members to manipulate the KPK for their own interests or deliberately weaken it in order to seek personal gain. Second, in terms of Supervision Relationship, the concept of New Public Management (NPM) offer such as the the input and output control mechanism as a solution. Input supervision can be carried out by DPR at the KPK law formulation stage. By limiting authority and giving adequate standard of procedure to KPK through legislation. It can also be carried out at the commissioner selection phase by involving the expert committee to conduct a more objective selection. Meanwhile, output control is carried out based on the accountability reports made by KPK regularly. The DPR is not allowed to intervene KPK in the midst of exercising its authority, or individual corruption case. The KPK must remain independent while performing its duty in solving the corruption cases. Third, in terms of financial relations, the DPR, through its powers in the field of legislation and budgeting, can regulate funding aspects for KPK institutions through the APBN legislation. This budget politics must be adjusted to the times, the needs and workload in carrying out the KPK's duties.

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