

***Strengthening the Independency of Indonesian Corruption Eradication Commission
Through Redesigning the Recruitment Mechanism of its Chairman***

Jamaludin Ghafur¹, Universitas Islam Indonesia, Indonesia

The European Conference on Politics, Economics & Law 2016
Official Conference Proceedings

Abstract

The Indonesian Corruption Eradication Commission was formed as a special government institution to combat corruptions. The institution is constitutionally granted an authority to combat corruption. Thus, it is important to be an independent institution which is free from other institutions' interference. The independency requirement of the Corruption Eradication Commission is very crucial in order to maintain its function to perform social justice in Indonesia and to protect human rights. However, the recruitment system of the institution is not independent, it is proven by the strong authority of the Indonesian Parliament in the election process of the Commission member including the chairman. In the process to determine the Corruption Eradication Commission members and the Chairman is not purely based on the best candidates who fulfil all requirements, but it is based on the candidates who can compromise with a certain interest of political parties. The paper analyses comprehensively why it is necessary to redesign the recruitment mechanism system of the Corruption Eradication Commission's Chairman. The paper is a normative research and the methodology employed in this paper is library research. While the approaches employed in the paper are statute approach and conceptual approach. The research finds that redesign the recruitment mechanism of the institution is urgent, since the involment of the Indonesian Parliament in the process of recruitment affects the function of the institution.

Keywords : corruption, social justice, human rights, and political parties

iafor

The International Academic Forum
www.iafor.org

¹ Paper presented at the International Conference the Third European Conference on Politics, Economics & Law (ECPEL 2016) Jurys Inn Brighton Waterfront Hotel, London, Thursday, July 7th-Sunday, July 10, 2016

A. Introduction

Corruption in Indonesia has growth very rapidly into a very worrying state and is widespread in almost all facets of public life. Over the years every aspect of corruption has been increasing, either in the number of cases, the amount of state financial losses and in terms of quality of the criminal offenses. They are getting much more systematically and penetrating to all aspects of community life. Increase on the uncontrolled quantity and quality of corruption will carry a terrible disaster, not only undermine the foundations of national economy which interrupts the manifestation of fair and prosperous society, but also pose a real threat to the fields of education and public services. Furthermore, it will also influence the mentality of the authorities and endanger national political stability. Finally, corruption mostly could endanger the stability of national life.

The data shows that, per 30th April 2016, in 2016 the Corruption Eradication Commission (later mentioned as the Commission) is handling 28 cases, investigating 32 cases, and prosecuting 19 cases. As many as 17 cases are inkracht, and 24 cases have been executed. From 2004 to 2016, total handling of corruption case is 780 cases; 500 cases under investigation, 408 cases in prosecution, 337 cases stated inkracht, and the execution has been carried out for 357 cases.² Various international studies show that corruption is widespread and systematic in Indonesia which has made Indonesia as the most corrupt country in the world. Corruption cannot be longer classified as an ordinary crime; it has become an extraordinary crime. Then it requires extraordinary effort to overcome and eradicate crime of corruption.

Law enforcement process in eradicating corruption as extraordinary crime by using conventional way is proven ineffective and often finding obstacles and constraints in the implementation. The available law enforcement officials (human) and legal instruments (regulations/law) are not considered inadequate. An extraordinary law enforcement is needed, and the establishment of independent state institutions that possess broad authority and are free from any intervening powers may become a solution. The state institutions are expected to carry out the reduction and eradication of corruption in an intensive, effective, optimum, fast, and sustainable way.³

In this context, the Commission's presence is very important. The preamble of Commission Law states that the establishment of the corruption eradication commission KPK is in consideration of: (a) that in order to establish a fair and prosperous society based on Pancasila and the 1945 Constitution, eradication of corruption has not been able to be implemented optimally. Therefore, the eradication of corruption needs to be improved in a professional, intensive and progressive way because corruption has hurt state financials, the economy of the state, and impede national development; (b) that the government agencies that deal with corruption cases do not function effectively and efficiently in combating corruption.

² <http://acch.kpk.go.id/statistik-rekapitulasi-penindakan>

³ Constitutional Court Decision of Indonesia Number 012-016-019/PUU-IV/2006, pg. 64

Institutionally, the existence of Corruption Eradication Commission is not explicitly mentioned in the 1945 Constitution. However, in line with the rule of law determined by Article 1 (3) of the 1945 Constitution, the Commission can still be said to have a very important position in constitutional law. Moreover, constitutionally its existence can be tracked by the implicit command provision of Article 24 paragraph (3) of the 1945 Constitution which states, "Other agencies whose functions are related to the judicial authority regulated by constitution". Therefore, law enforcement agencies formed under the legislation such as the Commission can be said to have "constitutional importance" as the constitutional institution outside the 1945 Constitution.⁴

The Commission (KPK) is not established to take over the task of eradicating corruption from institutions that existed previously. Explanation part of the Commission Law mentions the role of the Commission as a trigger mechanism, which functions as a stimulus to efforts carried out by existing institutions to combat corruption are to be more effective and efficient. The task of the Commission is to coordinate and supervise with the institutions authorized to eradicate corruption, to make inquiry, investigate and prosecute criminal acts of corruption. The Commission also take measures to prevent corruption and monitor the implementation of state government.

One of many factors that can lead to the success of this Commission is the independence of the institution.⁵ Some studies suggest that the success and effectiveness of anti-corruption institutions need independence. Hence, Article 3 of Commission Law asserted, "Corruption Eradication Commission is a state institution that is independent in carrying tasks and authorities and is free from the influence of any." The self-reliance or independence of the Commission is needed in order to accelerate the eradication of corruption involving state administration at all existing lines, either in the executive, legislative, and judicial branches. On the contrary, the Commission dependence is one of the entrances to undermine aspirations to build the state of Indonesia as a country that is free from various forms of corruption.

When independence is defined as free from the influence of any, then one of potential factors that led to influx of intervention from other powers, especially legislative power to the Commission, is the recruitment process of the commissioner. The commissioner election mechanism by the House of Representatives does not have objective standard value and is even suspected to have political objectives. Therefore, the public questions the authority of parliament in determining the desirability of the Commission leaders which is widely misused to elect only certain people who can cooperate. The parliament intervention is understandable because members of The House are very concerned about the fact that most corruption cases investigated by the Commission involve members of the House of Representatives. According to the data tabulation on Corruption Actors by

⁴ Jimly Asshiddiqie, *Lembaga-Lembaga Negara, Organ Konstitusional Menurut UUD 1945*, pg, 3-4

⁵ John S.T. Quah, *Defying Institutional Failure: Learning from The Experiences of Anticorruption Agencies in Four Asian Countries*, Crime Law Social Change, 2010 and John R. Helbrunn, *Anticorruption Commission: Panacea or Real Medicine to Fight Corruption?* Word Bank Institute, Washington, The Word Bank, 2004

Position Years 2004-2016 (per 30 April 2016), members of The House (DPR and DPRD) involved in corruption cases extend to great number of 112.⁶ A survey even indicates that the House of Representatives is one of the most corrupt institutions in Indonesia.

B. Problem Statement

1. Why the Indonesian Corruption Eradication Commission need to be Independent?
2. How to Strengthening the Independency of Indonesian Corruption Eradication Commission?

C. Literature Review

Corruption Eradication Commission is classified as State Commission. State Commission is often defined in several different terms. In the United States, it is known as administrative agencies. According Asimow, the state commission are units of government created by statute to carry out specific tasks in implementing the statute. Most administrative agencies in the executive branch fall, but some important agencies are independent.⁷

An independent state commission is a state organ idealized to be independent and therefore it is outside the executive, legislative and judiciary power branches; it has the function of 'mixer' of all three instead.⁸ In the language of Funk and Seamon, independent commission often possesses the rule of quasi-legislative, executive power and quasi-judicial.⁹ Independent state commission is different from usual state commission. Asimow concluded that regular state commission is only a part of the executive, and has no important role.¹⁰

Furthermore, citing the United States Supreme Court decision in the case of Humphrey's Executor vs. United States, Asimow argued that the definition of independent is closely linked to the dismissal of members of the commission which only can happen based on the reasons set out in the law establishment of the commission. It is not like the regular state commission which can be dismissed by the president at any time, for it is firmly part of the executive's job.¹¹ Identically, William F. Fox Jr. stated that a state commission is independent when it is clearly defined by the Congress in the relevant commission law. Or, when the President is limited not to freely decide (discretionary decision) the dismissal of the commission leadership.¹² Besides the issue of dismissal which is free from the intervention of the president, Funk and Seamon added that the independent nature is also reflected in: (1) collective leadership is, not "a" leader; (2) the leadership is

⁶ <http://acch.kpk.go.id/berdasarkan-profesi/jabatan>

⁷ Michael R. Asimow, *Administrative Law*, West Academic, 2002, pg. 1

⁸ Jimly Asshiddiqie, *Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat UUD Tahun 1945*, makalah dalam Seminar Pembangunan Hukum Nasional VIII, Denpasar 14-18 Juli 2003

⁹ William F. Funk dan Richard H. Seamon, *Administrative Law: Examples & Explanations*, 2001, pg. 23-24.

¹⁰ Michael R. Asimow, *Op., Cit*, pg. 2

¹¹ *Ibid*, pg. 20

¹² William F. Fox Jr, *Understanding Administrative Law*, Lexis Publishing, 2000, pg. 56

not dominated by certain political parties; and (3) The incumbency of the commission's leaders does not run out simultaneously, but alternately (staggered terms).¹³

In theory of state administration, when formulating a state institution outside the executive, judiciary and legislative, there are three theories that are often offered. (i) the separation of powers which typically do not accept the presence of supporting institutions, so that the existence of those state commissions can be summed up as an extra constitutional. (ii) the separation of function, which is able to accept their presence as long as they still relate to the functions of the executive, legislative or judicial. (iii) the checks and balances theory which fully accept the presence of other supporting institutions as part of the 4th or 5th power principles after the legislative, judiciary and executive powers.¹⁴

Conventional models of separation of power which only assume three branches of power in a state - the executive, legislative and judicial - no longer answer the complexities of a modern state. It is inseparable from the development of government system around the world with the emergence and development of the welfare state doctrine. Therefore, independent regulatory agencies are needed to complete the modern constitutional institutions, with a model of mutual relations and more complete control among state institutions (state organs). The development of independent bodies is also happening in the United States as expressed by Ackerman that: ... the American system contains (at least) five branches: House, Senate, President, Court, and independent agencies such as the Federal Reserve Board. Complexity is compounded by the bewildering institutional dynamics of the American federal system. The crucial question is not complexity, but whether we Americans are separating power for the right reasons.¹⁵

Hamdan Zoelva defines Independent Bodies as an institution formed due to the urgency of the special task that cannot be accommodated in government institutions (conventional) with a certain uniqueness. Independent bodies have the urgent task characteristics and are unique, integrated and effective.¹⁶ The presence of various independent state commission is not only a phenomenon that occurs in Indonesia, but also in many countries of the world, such as in the UK, South Africa, Thailand, United States, etc. In general, the presence of an independent state commission is aimed to enhance the democratization process that continues to evolve with the changing of social and political conditions that occur in the community.¹⁷

On the other hand, the existence of the independent state commission in many democratic countries is also a correction form on the existing classification of state government

¹³ William F. Funk dan Richard H. Seamon, Op., Cit, pg.7

¹⁴ Peter L. Strauss, *The Place of Agencies in Government: Separation of Powers and Fourth Branch*, 1984, *Columbia Law Review.*, John H. Garvey and Alexander Aleinkov, *Modern Constitutional Theory*, West Publishing and Co, Minnesota, USA, 1994, pg. 296.

¹⁵ Bruce Ackerman, *The New Separation of Powers*, The Harvard Law Review vol. 113, 2000, pg. 728

¹⁶ Hamdan Zoelva, *Tinjauan Konstitusional Penataan Lembaga Non-Struktural di Indonesia*, Jurnal Negarawan, Sekretariat Negara RI, November 2010, pg. 65

¹⁷ Constitutional Court Decision of Indonesia Number 6 PUU-XII-2014, pg. 28

authority, in which branch of state power is only grouped into three: the power to make laws (legislative), the power of government (executive), and the judicial power (judicial). The three branches of power are considered no longer capable of doing their tasks, even partially assessed to have declining credibility. An institution outside those three is required to cover up weaknesses.

Jimly Asshiddiqie stated that the establishment of an independent state commission in third world countries is driven by the fact that the bureaucracy in government cannot yet fulfill public's demand of public services with quality standards and increasing diversity.¹⁸ Meanwhile, Muladi explained that one of the reasons on the formulation of independent bodies is a democratic transition, as quoted from Klug that "each new wave of state reconstruction seems to produce new variations in the division of power, between center and periphery and between different organs of government, as well as new conceptions of the relationship between different branches of government."¹⁹

Generally, there are several factors behind the establishment of independent bodies, some of them are:²⁰ (i) The lack of credibility of the institutions that already exist as a result of the assumption (and evidence) about corruption that is difficult to eradicate; (ii) There is no such independent state agencies that they are not immune enough from intervention of a state authority or other authorities; (iii) inability of existing government institutions to perform urgent tasks during transition to democracy due to bureaucracy issue and corruption, collusion and nepotism; and (iv) pressure from international institutions, not only as a prerequisite to play the global market but also democracy as the only way for countries under authoritarian rule.

D. Redesigning the Recruitment Mechanism of The Corruption Eradication Commission's Chairman

The establishment of anti-corruption institutions in various countries around the world, including in Indonesia, according to Jeremy Pope, is as a result of the increasingly complex and sophisticated way of corruption perpetrators. In addition, conventional law enforcement institutions such as the police force is also seen increasingly no longer able to uncover and bring major corruption cases to court.²¹ Therefore, the Commission institution must be handled by great people who are able to conduct maximum efforts to combat corruption. The entrance to produce qualified the Commission's leaders must be

¹⁸ Jimly, *Beberapa Catatan Tentang Lembaga-Lembaga Khusus dalam Penyelenggaraan Pemerintahan Negara*, Seminar Nasional Lembaga-Lembaga Non Struktural, Kementerian Pertahanan, Maret 2011, pg. 2.

¹⁹ Muladi, *Penataan Lembaga Non-Struktural (LNS) Dalam Kerangka Reformasi Birokrasi serta Upaya Formulasi Kebijakan Strategis Kelembagaan Negara*, Jurnal Negarawan, Sekretariat Negara RI, November 2010, pg. 24.

²⁰ Firmansyah et al, Assidiqie, Indrayana, dan Budiono dalam *Kajian Desain Kelembagaan Pemerintah Pusat (Arsitektur Kelembagaan Tahun 2014-2019)*, Pusat Kajian Kinerja Kelembagaan Deputi Bidang Kelembagaan & Sumber Daya Aparatur Negara, LAN, Jakarta, 2013, pg. 78

²¹ Jeremy Pope, *Strategi Memberantas Korupsi: Elemen System Integritas Nasional*, Jakarta, yayasan obor Indonesia, 2003, pg. 177

started from the arrangement of recruitment mechanism. Bad recruitment procedures will inevitably result in incompetent Commission's leaders either.

Generally, there are some factors in determining criteria for electing a public servant in government, are:²² (i) having a variety of quality such as intellectual quality, moral integrity, and visionary. (ii) possessing the optimal level of honesty because honesty is the best policy. Thus, leader's honesty should actually be top priority. A leader must be honest to people, honest to himself and honest to God Almighty. (iii) capable of making sacrifices in his personal interests for benefits of larger public interest, the nation and the state. (iv) possessing good characters, not easily to get angry, not reactive, emotional, etc.

One of the effort to assess the candidates for public office is through the mechanism of fit and proper test. This mechanism is considered a better guarantee for a democratic election process. Through the fit and proper test, it is expected that each candidate's personal profile is revealed in connection to occupy a public office. On the implementation of fit and proper test, the prospective officials will be asked about various things including: (a) curriculum vitae of candidates, (b) general knowledge of positions offered, and (c) vision and mission to be performed related to the post the candidate will be assigned to.

By using a fit and proper test, someone can be considered proper and reasonable enough to occupy a certain position. Managerial skills, knowledge, vision and mission to the organization and high integrity can be used as a fit and proper assessment of whether a candidate is qualified enough or not. Information on the profile of the individual will therefore be obtained during fit and proper test and the whole process of such testing is conducted openly so that the public can identify and assess the results of tests performed. Fit and proper test has an important role in generating the candidate standard. Even with the fit and proper test the targets that have been set by the organization can be achieved. If the system of the test is carried out well, it may result in the election of competent human resources who meet the standards set. However, implementation of the fit and proper test still has some weaknesses, for instance the existence of a potential influx of political intervention. This is due to the involvement of parliament in the selection of the Commission's leaders. In practice, fit and proper test in Indonesia is determination of state officials as representation of interest group rather than electing candidate based on the qualification.²³

The involvement of parliament in the election of the Commission leadership will not only produce incompetent leaders, but also will cause political intervention that will result in independent institution of the Commission. Independence is very needed by the Commission as one of the conditions for the success and effectiveness of the work. The independence of anti-corruption units is the starting point in building successful policies

²² Zaenal Arifin, dkk, *Laporan Akhir Pengkajian Hukum Tentang Fit And Proper Test dalam Proses Pemilihan Pejabat Negara*, Badan Pembinaan Hukum Nasional Departemen Hukum Dan Hak Asasi Manusia R.I, Jakarta, pg. 19-20

²³ *Ibid*

for countering corruption.²⁴ The independence of a specialized anti-corruption institution is considered to be a fundamental requirement for the proper and affective exercise of its function. This consensus is reflected in all major international legal instruments. Reason why the independence criterion rank so high on the anti-corruption agenda are closely linked with the nature of corruption. Corruption in many respects equals abuse of power.²⁵

One of the indicators that can be used to measure the independence of the Commission is variable recruitment patterns of the institutional leaders. Is the recruitment pattern created open space or actually close any chances of power intervention in the duties and authority of the state institutions? If the recruitment pattern set turns out to open space for intervention, the independence will be polluted, and in turn the ideals of the Commission formation will never be achieved or is difficult to achieve. Therefore, the idea of dissociate the recruitment process led independent state commission whose job is related to law enforcement and the judiciary from power of political interest should be supported in many ways. However, political interests will always try to influence the process of law enforcement in any way.²⁶

Based on the provisions of Article 30 of Commission Law, the Commission's recruitment process is conducted through the following steps: (a) selection is made by the Selection Committee formed by the government consisting of society elements and government; (b) the selection committee will determine names of candidates of leaders to the president in doubled number from the positions needed; (c) the president gives the names of candidates for the Commission's chairmen to parliament; (d) The House votes and determines the candidates of the Commission's chairmen and the arrangement of its chairman and vice chairman of the Commission; (E) parliament delivers the elected candidate to the president; and (f) the president determines and assigns the elected candidates as leaders of the Commission.

Article 30 paragraph (2) and (3) of the Commission Law as the legal foundation of the government in forming the Selection Committee states that members of the Selection Committee are composed of representatives of the government and society. Thus, the Selection Committee has involved people as "the owner of sovereignty" as a manifestation of Article 1 (2) of the 1945 Constitution. In addition, the Selection Committee also invites the involvement of NGOs and other civil society communities to be involved in providing input and overseeing the process of recruitment conducted by the Selection Committee. That is why there is a track record of data, background happenings and other information from the prospective Commission given by NGOs and civil society groups through the process of previous investigation and study. Based on this, parliament should no longer need to make the selection of candidates for the chairmen that have been proposed by the selection committee, but the House just need to

²⁴ Rositsa Dzhekova, et., All., *Countering Police Corruption: European Perspectives*, Center for the Study of Democracy, 2013, pg. 13

²⁵ OECD, *Specialised Anti-Corruption Institutions; Review of Models: Second Edition*, OECD Publishing, 2008, pg. 24

²⁶ Constitutional Court Decision of Indonesia Number 6 PUU-XII-2014, pg. 31

approve it. Moreover, the facts show that the existing selection process by the parliament is only a technical selection followed by a "potential conflict of interest" and "political intervention".

Now the number of positions filled by the election by the House continue to multiply. Each Act or Law that introduced the establishment of new state institutions or commissions is always associated with the authority of parliament to make a selection of the commissioners or members. Parliament's involvement in the recruitment of public officials is actually just a variant course of the oversight function of the parliament as stipulated in the 1945 Constitution. In the United States, for example, it is associated with the right to confirm the appointment of certain public officials by president (right to confirm) as part of the political oversight function of the governmental process. However, in Indonesia, the term "right to confirm" tends to deviate on the function from a political nature to a very technical one. In practice, "the right to confirm" has evolved into "the right to elect," and more technically rise to "right to select" and even "right to test". The negative impacts are certainly more numerous and widespread. Productivity of legislative program continues to decline, both in quantity and quality. The political sense in the recruitment of technical officials has also become increasingly inevitable and later affects the performance of state institutions.²⁷ In this case, role of the president and the parliament should be limited, so that the space intervention in the process of filling existing positions can be reduced as minimum as possible. At the same time, the recruitment pattern by involving non-partisan and professional figures is opened more widely.

The reason of parliament involvement in the selection of the Commission's leaders is usually intended to establish a mechanism of checks and balances. In the constitutional law theory, the mechanism of checks and balances is the relationship between agencies that are in a similar position. For example, if the Commission's leaders' candidates are selected by the government or the President, by reason of checks and balances, the government authorities should get checks or reassessment from the parliament. But when the president no longer has a role in the selection process, it is also the same reason for the Parliament not to choose for checks and balance reason. the parliament will no longer have the authority to choose, but simply to approve or disapprove. At the same time, they only need to pick through the selection process, including fit and proper test that is fully submitted to the selection committee (consisting of professional groups and community representatives). The process will narrow the space for political intervention that could threaten the independence of state commission.

The Commission's leaders must be people who are free from certain political interests because they will carry out law enforcement duties in which members of parliament are also parts of the people who are likely to be prosecuted by the Commission. On this basis, the authority of the House of Representatives to choose and assign chairmen of the Commission shall be limited to only a mere grant approval.

²⁷ Jimly Asshiddiqie, *Liberalisasi Sistem Pengisian Jabatan Publik*, makalah, Disampaikan dalam rangka Konferensi Hukum Tata Negara ke-2, di UNAND, Padang, September 2015, pg. 9

E. Conclusion

Independence is really needed by the Commission. Some studies suggest that the success and effectiveness of anti-corruption institutions need independence. The independence of a specialized anti-corruption institution is considered to be a fundamental requirement for the proper and affective exercise of its function. This consensus is reflected in all major international legal instruments. Reason why the independence criterion rank so high on the anti-corruption agenda are closely linked with the nature of corruption. Corruption in many respects equals abuse of power. So, the independence of anti-corruption units is the starting point in building successful policies for countering corruption

I urge redesign of the chairman's selection mechanism. The change is mainly focused on the involvement of the parliament in the process. As what has happened in several countries, the representatives only possess rights to agree but they don't have rights to select as well as rights to retest the candidate of public officials including the Commission's commissioner/chairman.

Actually, the parliament's involvement on public officer selection through the authority of right to confirm does not only take place in Indonesia. It is also possessed by parliaments at almost all countries. In the constitutional law theory, it is called the principle of checks and balances. However, parliament's authority in some countries - except in Indonesia - is only to give approval (right to confirm), not to do selection (right to select) or even to conduct testing (right to test) as what happens in Indonesia

However, in Indonesia, the term "right to confirm" tends to deviate on the function from a political nature to a very technical one. In practice, "the right to confirm" has evolved into "the right to elect," and more technically rise to "right to select" and even "right to test". The negative impacts are certainly more numerous and widespread. Productivity of legislative program continues to decline, both in quantity and quality. The political sense in the recruitment of technical officials has also become increasingly inevitable and later affects the performance of state institutions.

The parliament involvement in selecting public officials has caused recruitment process is full of corruptive practices and intervention of political interest. It means that the election of state officials is no longer based on the capability and integrity. What means a lot is how much money that can be offered to parliament members or at least how far the candidates are willing to compromise with the parliament political interests. As a consequence, many state institutions in Indonesia whose chairmen are elected by the parliament experience public confidence crisis due to unaccountable and subjective recruitment process. The further effects of this phenomenon is the decline of some state institutions' performance because the lack of competence from the in-charge public officials. This really endanger democratization process that is developing in Indonesia.

Suggestions for redesigning of the Commission's Chairman recruitment to strengthen its existence in Indonesia; (a) The president forms selection committee consisting of government and society elements who have integrity and competence in their own fields.

The committee is then instructed to conduct selection process on Indonesian citizen registering as candidate of the Commission's chairman; (b) The committee carries out selection process including administrative and competence tests from the candidates and also conducts track record research to find out the integrity of the candidates; (c) The selection committee submits names of candidates who have passed all administrative, competence, and integrity tests to the president; (d) The president hands the names to the parliament; (f) The parliament gives approval on the names of the candidates.

In giving the approval, the parliament does not need to conduct competence test again and only need to recheck the selection process carried out by the selection committee whether it runs fairly or not. Furthermore, the parliament may give opportunity to the public to bring in some suggestions and inputs. If the surveillance result from the parliament on the selection committee performance matches with the existing regulation and the selection is done fairly, then the parliament may directly give approval on the entire candidates submitted by the president to further be decided as the Commission's chairmen. However, if the parliament finds out that the selections process is not conducted fairly and/or there is some objection and complaints from the public, that the candidates selected by the committee have questionable track record, the parliament may deny giving approval to one candidate.

References

Hamdan Zoelva, *Tinjauan Konstitusional Penataan Lembaga Non-Struktural di Indonesia*, Jurnal Negarawan, Sekretariat Negara RI, November 2010.

Jeremy Pope, *Strategi Memberantas Korupsi: Elemen Sistem Integritas Nasional*, Jakarta, Yayasan Obor Indonesia, 2003.

Jimly Asshiddiqie, *Liberalisasi Sistem Pengisian Jabatan Publik*, makalah, Disampaikan dalam rangka Konferensi Hukum Tata Negara ke-2, di UNAND, Padang, September 2015.

_____, Beberapa Catatan Tentang Lembaga-Lembaga Khusus dalam Penyelenggaraan Pemerintahan Negara, Seminar Nasional Lembaga-Lembaga Non Struktural, Kementerian Pertahanan, Maret 2011.

_____, *Lembaga-Lembaga Negara, Organ Konstitusional Menurut UUD 1945*, http://www.jimly.com/makalah/namafile/50/ORGAN-ORGAN_KONSTITUSI.doc.

_____, Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat UUD Tahun 1945, makalah Seminar Pembangunan Hukum Nasional VIII, Denpasar 14-18 Juli 2003

John S.T. Quah, *Defying Institutional Failure: Learning from The Experiences of Anticorruption Agencies in Four Asian Countries*, Crime Law Social Change, 2010.

John R. Helbrunn, *Anticorruption Commission: Panacea or Real Medicine to Fight Corruption?* Word Bank Institute, Washington, The Word Bank, 2004

Michael R. Asimow, *Administrative Law*, West Academic, 2002

OECD, *Specialised Anti-Corruption Institutions; Review of Models: Second Edition*, OECD Publishing, 2008

Rositsa Dzhekova, et all., *Countering Police Corruption: European Perspectives*, Center for the Study of Democracy, 2013

William F. Fox Jr, *Understanding Administrative Law*, Lexis Publishing, 2000

William F. Funk and Richard H. Seamon, *Administrative Law: Examples & Explanations*, 2001

Peter L. Strauss, *The Place of Agencies in Government: Separation of Powers and Fourth Branch*, Columbia Law Review, 1984

John H. Garvey and Alexander Aleinikoff, *Modern Constitutional Theory*, West Publishing and Co, Minnesota, USA, 1994.

Bruce Ackerman, *The New Separation of Powers*, The Harvard Law Review Vol. 113, 2000.

Muladi, *Penataan Lembaga Non-Struktural (LNS) Dalam Kerangka Reformasi Birokrasi serta Upaya Formulasi Kebijakan Strategis Kelembagaan Negara*, Jurnal Negarawan, Sekretariat Negara RI, November 2010.

Firmansyah et al, *Kajian Desain Kelembagaan Pemerintah Pusat (Arsitektur Kelembagaan Tahun 2014-2019)*, Pusat Kajian Kinerja Kelembagaan Deputi Bidang Kelembagaan & Sumber Daya Aparatur Negara, LAN, Jakarta, 2013.

Zaenal Arifin, dkk, *Laporan Akhir Pengkajian Hukum Tentang Fit and Proper Test Dalam Proses Pemilihan Pejabat Negara*, Badan Pembinaan Hukum Nasional Departemen Hukum Dan Hak Asasi Manusia R.I, Jakarta.

<http://acch.kpk.go.id/statistik-rekapitulasi-penindakan>

<http://acch.kpk.go.id/berdasarkan-profesi/jabatan>

Constitutional Court Decision of Indonesia Number 012-016-019/PUU-IV/2006

Constitutional Court Decision of Indonesia Number 6 PUU-XII-2014

Contact email: jamaludin.ghafur@uii.ac.id