

CHAPTER ONE

INTRODUCTION

A. Background

The fall of the authoritarian of the New Order Regime marked by the resignation of President Soeharto's¹ on 21 May 1998 provides an opportunity for Indonesia to reorganize political life, economics, and law to a more open-fair and democratic.² The transfer of power from President Soeharto to Vice-president B.J Habibie at that time brought significant changes to the Indonesian political system. The Indonesian political system changes can be seen from the presence of Indonesia's political system transformation of previously authoritarian style into a more democratic direction. At that time the political power becomes determinant of the direction toward the construction of better Indonesia.

Indonesia is constitutional state, which is a state regulated by Constitution. In the four classic characteristics of Continental Law State commonly called *rechtsstaat*, there are elements of limitation of powers as one of the fundamental characteristics of a state of law.³ Montesquieu in the theory of *trias politica* –legislative, executive and judiciary state that there is no dominance in carrying out the government. The executive in carrying out

¹Soeharto's the Former President of Indonesia in the period of 1968-1998

²Syamsuddin Haris, 2007, *Konflik Presiden – DPR dan Dilema Transisi Demokrasi Indonesia*, Pustaka Utama Grafiti, Jakarta, p. 1.

³Jimly Asshiddiqie, 2009, *Pengantar Ilmu Hukum Tata Negara*, Cet I, Rajawali Pers, Jakarta, p. 281.

its policy is always supervised by the legislative or in Indonesia called as the House of Representatives (DPR).⁴

The House of Representatives (DPR) as the legislative body that has supervisory function can be seen in Article 20A Paragraph 1 of the 1945 Constitution as follows: The House of Representatives has the legislation function, budgeting function, and supervisory functions.⁵ Actually, those functions are implemented optimally after the Amendment of the 1945 Constitution of the Republic Indonesia which was conducted in four changes from 1999 to 2002. It has created some of the basic changes which are also in line with the conceptual of problems that arised in the Indonesian constitutional practice. It has shifted the relations of government power from the executive to the legislative which is closely related to the scope of responsibility and maintaining of the supervision of government.

Supervision is an activity that is intended to ensure that the state administration in accordance with the plan.⁶ Related with Constitutional Law, supervision means an activity intended to guarantee the implementation of state administration by state institutions in accordance with applicable law.

⁴*Ibid*, p. 283.

⁵See the House of Represenatatives (DPR), “*Undang-Undang Dasar 1945*”, <http://www.dpr.go.id/jdih/uu1945> Accessed on 29 December 2017 at 23.00

⁶Julpikar, “*Kedudukan Dewan Perwakilan Rakyat dalam Penetapan dan Pengawasan APBN di Indonesia*”, De Lega Lata, Vol I, Number 1, January-June 2016, p. 166

The supervisory function according to Bagir Manan⁷ is usually directly related to the content material concerning the formation of law regulation and the determination of state budget revenues,⁸ as set out in the Law Number 2 of 2018 on the People's Consultative Assembly, the House of Representatives, Regional Representatives Council, and Regional House of Representatives to article 70 paragraph (3) states as follows: "The function of supervision as referred in article 69 paragraph 1 Point C shall be conducted through supervision over the implementation of the state budget revenues regulation (*APBN*)."

Furthermore, in carrying out its function, the House of Representatives has the Investigation Right which is closely related to the right of the House of Representatives as a member and institution, referring to Bagir's view as described below:

"The Investigation Right is commonly paired with the Investigation Right, the use of the term of Investigation Right may lead to misunderstanding because the term investigation is a preliminary process in revealing allegations of criminal offenses, as in the *opsporing* (*Dutch*) translation. Although the Investigation Right is derived from a foreign language (*French: anquette*) but has been accepted as a constitutional term in Indonesian"⁹

Furthermore, in Article 79 Paragraph 3 of Law No. 2 of 2018 on the People's Consultative Assembly, the House of Representatives, Regional

⁷Bagir Manan is the Former Chairman of Supreme Court in Period of 2001-2008.

⁸Naswar, Hak Angket dalam Konstelasi Ketatanegaraan Indonesia, *Jurnal Konstitusi*, Vol. I, No. 1, November 2012, p. 7.

⁹Bagir Manan, 2005, *DPR, DPD, dan MPR dalam UUD 1945 Baru*, FH UII Press, Cet III, Yogyakarta, p. 42.

Representative Council and Regional House of Representative explained with regard to the Investigation Right are:

"The right of the House of Representatives to conduct an investigation into the implementation of regulation or government policies relating to the important thing, strategic, and has wide impact on society, nation and state who allegedly contrary the legislation."

The Investigation Right is an investigation conducted by the House of Representative on a matter. That matter explained by Logemann; some activities undertaken to obtain the views in the framework of the implementation of tasks set policy. The Investigation Right can also be used for a fact finding or to formulate a policy.¹⁰ Reviewed from Indonesian constitutional practice, the Investigation Right is rarely implemented.¹¹ There were two times during the regime of the Old Order and also implemented during the regime of the New Order.¹²

The use of investigation increases significantly after the Political Reform. This can be seen since Abdurrahman Wahid era until Joko Widodo era. Investigation Right of the House of Representatives essentially become irrelevant as a means of supporting supervision within the scope of the principle of supervision and mutual balance (checks and balances).

¹⁰Bagir Manan, *Op. Cit*, p. 42.

¹¹I Gede Pantja Astawa dan Suprin Na'a, 2009 *Memahami Ilmu Negara dan Teori Negara*, PT Refika Aditama, Bandung, p. 11.

¹²*Ibid.* p. 11.

There are many cases of Investigation Right. One of them is the Investigation Right of Corruption Eradication Commission or can be called as E-KTP case. This case has dragged many members of the House of Representatives. In fact, Setya Novanto as the Chairman of the House of Representatives was suspected in this case. This right tends to make political intention that has been always happening when members of the House of Representatives consisting of various political parties that has proposed this kind of right.

After political reform there are several cases concerning the use of Investigation Right, such as the bulog-gate case, oil prices issue and the case of the Investigation Right to Corruption Eradication Commission. The existing Investigation Right and the superiors power conducts by executive body in reformation era are reason why the House of Representatives gave mandate of supervision functions, especially the use of Investigation Right. Within this scope the authors undertake research on the Investigation Right conducted by the House of Representatives. This will be discussed in the writing of this thesis with the title:

“Legal Review on The Implementation of Investigation Right by The House of Representatives (After the Political Reform)”

B. Statement Problem

Based on the background of the problem, the things that will be examined by the author are:

1. How is the implementation of Investigation Right by the House of Representatives after the political reform?
2. What are the implication of using the Investigation Right by the House of Representatives after the political reform?

C. Objective of Research

Some objectives of the research are as follows:

1. To understand the concept of Investigation Right of the House of Representative.
2. To evaluate the implementation of using the Investigation Right of the House of Representative from Abdurrahman Wahid period to Joko Widodo period.
3. To propose recommendation for a better of Investigation Right by the House of Representatives (After the political reform)

D. Benefit of Research

The benefits of research, are:

1. Theoretical Benefit

This research can be as a contribution to the science of Constitutional Law, especially regarding the use of the Investigation Right by the House of Representatives.

2. Practical Benefit

This research can be used as references for the House of Representatives how to implement the better mechanism of the Investigation Right for the future.