SRIWIJAYA Law Review

ISSN Print: 2541-5298
ISSN Online: 2541-6464

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Presidential Permit to Summon Suspect of Corruption of the Member of the House of Representatives

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Abstract: Summoning the suspect is one step in the process of investigation in the criminal justice system which had been regulated in the Criminal Code Procedure and in other special laws. However, presenting the suspect of the member of the Parliament before the Court is the problematic one. This is because in reality, it does not need a President permit but legally it does. The problem is whether presenting the suspect before the court without a Presidential Permit is not against the law. The findings showed that the regulation dealing with the summoning of the parliament member suspected of corruption is not necessarily required. It is because the crime suspected to the members of House of Representative is included in the special crime which is stipulated the 2002 Law Number 30 deals with Corruption Eradication Commission Article 46 paragraph (1) with the elucidation in junction to Article 245 paragraph (3) sub paragraph c.

Keywords: Corruption; House of Representative; Presidential Permit; Summoning Suspect.

ARTICLE HISTORY:

DOI: 10.28946/slrev.Vol2.Iss2.128.pp203-214

Received: Mar 25, 2018;
Reviewed: Jul 10, 2018;
Accepted: Jul 20, 2018;
Published: Jul 31, 2018;
Citation: V.2.2. SLRev. 2018.

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INTRODUCTION

One of the steps in the criminal justice process regulated by the criminal procedure code is the investigation.[1] The regulation on the investigation in Indonesia is mentioned in Law Number 8 of 1981 regarding the Criminal Procedure Law or commonly referred to as the Criminal Code Procedure.[2]

An investigation is a term meant to be parallel to the notion of *opsporing* (Dutch) and investigation (English) or tactics (Malaysia).[3] Article 1 point 1 of the Criminal Code Procedure determines that investigation is the investigative actions to seek and collect evidence and to find the suspect

Leden Marpaung argued that based on Article 1 point 2 of Criminal Code Procedure, the main tasks of the investigator are search and collect evidence in which such

[1] Andi Hamzah, *Hukum Acara Pidana Indonesia*, Jakarta: Sinar Grafika, 2014, p6.

[2] Article 285 of the Criminal Code Procedure and its explanation provides that "this Law is called the Criminal Code Procedure", which is abbreviated as "KUHAP".

[3] Andi Hamzah, *Note* 1, p120.

evidence will make the criminal act clear and find the suspect.[4]

According to Andi Hamzah, there are several sections in the criminal code procedure concerning the investigation, one of which is the summoning of the suspect.[5] This part is one of the authorities possessed by the investigator, as specified in Article 7 paragraph (1) point g of the Criminal Code Procedure, the investigator has the authority to summon the person to be heard and examined as a suspect or witness. Therefore, one of the authorities that the investigator possesses is to summon the person to be heard and examined as a suspect. Summoning the suspect should be based on the initial evidence obtained in the investigation process.[6]

In other words, initial evidence is the basis for summoning a person to be heard and examined as a suspect. It means that the summoning of the suspect cannot be made without any initial evidence.

The Criminal Code Procedure is a criminal procedural law that currently applies in Indonesia (positive law) which is general (*lex generalist*). By its development, current arrangements on criminal procedure are also contained in several special laws (*lex specialist*). Criminal procedure enacted in special law applies only to the criminal law enforcement officers which are mentioned in that special law. Within the special law, there is also a rule on summoning suspects as one part of the investigation, such as summoning the suspects of corruption by Investigator on the Corruption Eradication Commissions[7].

The regulation concerning Investigator on the Corruption Eradication Commissions is stipulated in the Law Number 31 of 1999 concerning the Eradication of Corruption has been amended by Law Number 20 of 2001, and Law Number 30 of 2002 on Corruption Eradication Commission.

The regulation of investigations in the law applies to Investigator on the Corruption Eradication Commissions to conduct investigations including summoning the suspects of corruption. Currently, in summoning the suspect, there has been a polemic related to the summoning of the member of the House of Representatives whom allegedly involved in corruption cases.

The polemic can be seen in the example of summoning Setya Novanto (SN) who is the chairman of the House of Representative by Investigator on the Corruption Eradication Commissions for being alleged in his involvement in corruption of procurement project of electronic identity card (E-KTP).[8]

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4 Leden Marpaung, *Proses Penanganan Perkara Pidana (Penyelidikan dan Penyidikan*), 2011, Jakarta: Sinar Grafika, p11.

5 *Note* 4.

6 According to Article 1 sub-article 14 of the Criminal Code Procedure, a suspect is a person who due to his/ her actions or circumstances, based on initial evidence, is suspected to be a criminal offender.

7 The Corruption Eradication Commission is one of the investigators which are authorized to conduct an investigation into corruption. In addition, corruption investigation was also conducted by Police investigators, certain Civil Service Officers (PPNS) investigators, Prosecutor investigators, and Navy investigators. See IGM Nurdjana, 2010, *Sistem Hukum Pidana dan Bahaya Laten Korupsi (Perspektif Tegaknya Keadilan Melawan Mafia Hukum)*, Yogyakarta: Pustaka Pelajar, pp168-169.

8 Determination of the suspects by the Corruption Eradication Commission against SN is the second determination for the same case. SN previously escaped the suspect's status in the previous stipulation, having won a pretrial lawsuit against the Corruption Eradication Commission. The announcement of Novanto's

The cause of the polemic over the summoning of SN by Investigator on the Corruption Eradication Commissions is related to the Presidential permit. In this case, there are two different opinions based on their respective arguments. The first opinion mentions that the summoning of SN must be with the presidential permit because he is the chairman of the House of Representatives. Meanwhile, the second opinion mentioned that the summoning of SN does not require the presidential permit although he is the chairman of the House of Representatives because SN is allegedly involved in committing the criminal acts of corruption as a special criminal act.

Juridically, the summoning the suspect who is the member of the House of Representative has been regulated in Law Number 17 of 2014 regarding the People's Consultative Assembly, the House of Representative, the Regional House of Representative, the Regional Representative as amended by the Law Number 42 of 2014 (the Law of Amendment To 2014 Law Number 17 Concerning The People Consultative Assembly (MPR), Board of People Representative (DPR), Regional Board of Representative (DPD) and Regional People's Representative Board (MD3[9]).

Article 224 Paragraph (5) the Law of MD3 stipulates that:

> Summoning and requesting information to member of the House of Representatives who is suspected of committing a crime in connection with the performance of the duties as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4) shall obtain written approval from the House's Ethics Council.

It is also affirmed in Article 245 paragraph (1) of the Law of MD3 which reads:

> Summoning and requesting information for the investigation of the member of the House of Representatives who is suspected of committing a crime shall obtain written approval from the House's Ethics Council.

Thus, it can be understood that summoning the suspect who is the member of the House of Representatives shall have permission (written approval) from the House's Ethics Council. Article 224 paragraph (5) jo. Article 245 (1) of the Law of MD3 has been cancelled by the Constitutional Court of Indonesia through Decree Number 76/PUU-XII/2014.[10]

In the decision, the panel of judges of the Constitutional Court states that both provisions are contrary to the 1945 Constitution of the State of the Republic of Indonesia and have no binding legal force. Through the decision, the Constitutional Court established a new norm, in which the summoning and requests for information on the investigation of the member of the

determination as a suspect was conveyed by the Deputy Chairman of Corruption Eradication Commission Saut Situmorang, in a press conference at Corruption Eradication Commission building, Kuningan, Jakarta, on Friday, November 10, 2017. In this case, Novanto is suspected of violating article 2 paragraph 1 subsidiary article 3 of Law Number 31 of 1999 as amended in Law Number 20 of 2001 concerning the Eradication of Corruption in article 55 paragraph 1 of the Criminal Code. See Robertus Belarminus, 2017, *KPK Kembali Tetapkan SN sebagai Tersangka Kasus E-KTP*, available from: http://nasional.kompas.com/read/2017/11/10/16591641/kpk-kembali-tetapkan-setya-novanto-sebagai-tersangka-kasus-e-ktp, (retrieved: November 15, 2017).

[9] Herein after cited to as MD3

[10] The decision of the Constitutional Court of the Republic of Indonesia Number 76/PUU-XII/2014 related to the filing of judicial review on article 224 paragraph (5) and article 245 paragraph (1) Law Number 17 of 2014 by Supriyadi Widodo Eddyono and the Association of Society in Reforming the Criminal Justice through its legal counsel.

House of Representatives who is allegedly committed a crimes hall obtain written approval from the President.[11]

With the decree of the Constitutional Court of the Republic of Indonesia Number 76/PUU-XII/2014, then Article 224 paragraph (5) jo Article 245 paragraph (1) of the Law of MD3 has a new meaning, namely summoning the suspect who is the member of the House of Representatives shall have permission (written approval) from the President, not from the House's Ethics Council.[12]

Although the regulation on the Presidential permit in summoning the suspect who is the status of members of the House of Representatives has been determined in the positive law, the fact is that the summoning of the suspect members of the House of Representatives does not use the Presidential permit, such as the summons of the KPK investigator against the SN suspect. As a result, SN did not fulfil the call of Investigator on the Corruption Eradication Commissions because there was no Presidential permit[13].

From these phenomena, the author is interested to examine the presidential permitting summoning the suspect of corruption who is the member of the House of Representatives. The main issue is "does summoning the suspect of corruption who is the member of the House of Representatives requires the presidential permit?" The aim of this paper is to analyse and explain the regulation concerning the summoning of the suspect of corruption who is the member of the House of Representatives.

ANALYSIS AND DISCUSSION

Regulation on the Summoning of the Suspects by Investigators in the Criminal Code Procedure

In the introduction section, it has been explained that the summoning of the suspect is one of the steps in the investigation process as one of the authorities of the investigator which is stipulated in the Criminal Code Procedure. The regulation on the summoning of suspects is regulated in the Criminal Code Procedure because Indonesia is a legal state as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

One of the principles contained in the concept of a legal state is the principle of legality (*legalitiets beginsel*)[14]. Within the principle of legality, restrictions made by the government on the freedom of citizens should be found essentially in a law which is a general rule.[15]

The legitimacy of the law should provide citizens with guarantees of abuse of power, collusion, and other types of wrongdoing. The exercise of authority by the government must be reviewed essentially to a written law, namely a formal law.[16]

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[11] The Decision of the Constitutional Court of the Republic of Indonesia Number 76/PUU-XII/2014.

[12] Compare with Bayu Dwi Anggono's opinion in Kumparan, *'Izin Presiden Tidak Bisa Dijadikan Alat Untuk Mangkir'*, available from: https://kumparan.com/taufik-rahadian/izin-presiden-tidak-bisa-dijadikan-alat-untuk-mangkir (retrieved: 14 November 2017).

[13] Endri Kurniawati (Ed), 2017, *Berapa Kali KPK Memanggil dan Setya Mangkir? Ini Dalih-Dalihnya*, available from: https://nasional.tempo.co/read/1033897/berapa-kali-kpk-memanggi-dan-setya-mangkir-ini-dalih-dalihnya (retrieved: 15 November 2017).

[14] Ridwan HR, *Hukum Administrasi Negara,* Jakarta: Rajawali Pers, 2011, p90.

[15] Muntoha, 2013, *Negara Hukum Indonesia Pasca Perubahan UUD 1945,* Yogyakarta: Kaukaba Dipantara, pp34-35.

[16] *Note* 13, p35.

Thus, within the principle of legality as one of the principles of a constitutional state, it implies that governance should be based on legal provisions in the effort to provide guarantees to the citizens in order to avoid abuse of power. Government actions that are not in accordance with applicable legal provisions include abuse of power.

According to Indroharto, the application of legality principle will support legal certainty and equal treatment. Equal treatment occurs because every person, as prescribed in the provisions of the law, is entitled and obliged to do as what is specified in the law. While legal certainty will occur because a regulation can make all actions to be conducted by the government can be estimated or predicted first. By looking at the applicable rules, society basically can see or expect what is conducted by the government. Thus, citizens can adjust to the situation.[17]

H.D. Stout argued that the principle of legality is intended to provide a guarantee of citizens' legal standing to the government *(Het legalitiets beginsel beoogt de rechtspositie van de burger jegens de overheadtewaarborgen).* The government can only conduct legal actions if they have legality or are based on laws that constitute the realization of citizens' aspirations. In a democratic state of law, the government's actions shall have legitimacy from the people who are formally stipulated in the law.[18]

Thus, it can be determined that the arrangement of the summoning of suspects in the Criminal Code Procedure is a reflection of the principle of legality as one of the principles in the concept of the rule in the state of law. The application of the legality principle will support legal certainty and equal treatment and guarantee the citizens' legal standing to the government related to the summoning of the suspect.

The summoning of the suspect is valid if it is conducted under the applicable law. Therefore, summoning the suspect that is inconsistent with the applicable law may be categorized as an abuse of power. The summons of the suspect shall be conducted by the investigator with a valid summons as provided for in article 112 paragraph (1) of the Criminal Code Procedure:

> The investigator, in conducting the investigation by stating clear reason for the summons, is authorized to summon the suspect and witness who are considered necessary to be examined using a valid summons with due regard to the reasonable grace period between the receipt of the summon and the day the person is required to fulfil the summon.

In the elucidation of Article 112 Paragraph (1) of the Criminal Code Procedure, it is stipulated that "The summoning shall be made by a valid summons, meaning that a summons signed by an authorized investigating official". Thus, the use of a valid summons against the suspect is an obligation (must/ inescapable/ absolute) to the investigator in which it contains the reasons for the summoning. The validity of the suspect's summons is determined by the presence or the absence of an authorized investigator's signature. The investigator cannot summon a suspect without a valid summons. M. Yahya Harahap[19] stated that in the summons, other than the official's sig-

[17] *Note* 12, pp94-95.
[18] *Note* 12, p95.
[19] M. Yahya Harahap, 2012, *Pembahasan Permasalahan dan Penerapan KUHAP (Penyidikan dan Penuntutan),* Jakarta: Sinar Grafika, p127.

nature, the letter must also be marked with a seal of office, but it is not a must or absolute.

The summons of the suspect is conducted by observing a reasonable grace period between the receipt of the summons and the day a person is required to fulfil the summon. Lamintang and Theo Lamintang[20] argued that the notion of a reasonable grace period, in the formulation of Article 112 paragraph (1) of the Criminal Code Procedure, the Minister of Justice in the decision on 10 December 1983, has provided an explanation, namely in Article 112 paragraph (1) of the Criminal Code Procedure which stipulates that the investigator is authorized to summon the suspects and witnesses with valid summons by regarding to the reasonable grace period between the receipt of the summons and the day a person is required to fulfil the summon. In its implementation, the notion of a reasonable grace period is adapted to local circumstances and conditions and cannot be analogous to the explanation of Article 152 paragraph (2) of the Criminal Code Procedure, in which it is set at 3 days.

According to M. Yahya Harahap, there are two alternatives regarding the summons (the suspect: author) by regarding reasonable and appropriate grace periods, namely[21]:

1. The grace period of the summons, with the requirement of presence before the summoning official, shall pay attention to a reasonable grace period.
2. The law stipulates the "minimum" grace period, i.e. no later than three days from the specified date to fulfil the summons, in which the summon has already been delivered to the concerned person. It is in accordance with the provisions of Article 152, paragraph (2)[22] and Article 227, paragraph (1)[23] of the Criminal Procedure Code. No later than three days means it is not from the date of issuance of the summons, but three days from the date it is delivered to the concerned person. If the summon does not meet the provisions of Article 227 paragraph (1) of the Criminal Procedure Code, then it is not eligible to be considered as valid. Therefore, the summoned person may choose whether to come to fulfil the summons or refuse. If the person chooses the second choice, then the concerned official is required to make an official summon once again.

The person summoned as a suspect must come before the investigator. If the person does not come, the investigator may call once again with instructions to the officer to bring him/ her.[24] If the suspect, to be heard his/ her information resides outside the jurisdiction of the investigator conducting the investigation, the examination of the suspect may be borne by the investigator whether it is at the residence of the suspect or not. If the investigation outside

[20] P.A.F. Lamintang dan Theo Lamintang, 2010, *Pembahasan KUHAP Menurut Ilmu Pengetahuan Hukum Pidana & Yurisprudensi,* Jakarta: Sinar Grafika, pp273-274.

[21] *Note*17.

[22] Article 152 paragraph (2) of the Criminal Code Procedure stipulates that "In determining the day of the hearing, the judge, refers to in paragraph (1), shall order the prosecutor to summon the accused and the witness to appear at the court".

[23] The formulation of Article 227 paragraph (1) of the Criminal Code Procedure shall be "(1) All types of notices or summons by the competent authorities at all levels of examination to the accused, witnesses or experts presented no later than three days before the prescribed date in their residences or in their last residence."

[24] See Article 112 paragraph (2) of the Criminal Code Procedure.

the jurisdiction is conducted by the initial investigator (real), it shall be accompanied by the investigator from the jurisdiction in which the investigation is conducted.[25]

The procedure of summoning the suspect is conducted by the officer in regard to the following provisions:[26]

1. The summons is made directly at the residence of the summoned person. The officer must go to the person's own place of residence. It may not be through the post office or by other means such as Elteha case and so on if the address of the person's residence is clearly known.
2. If the place of residence is not known with certainty or the officer does not find the address of his/ her residence, the summons is delivered at his/ her last residence. (Article 227 paragraph (1)).
3. Submission of the summons, in both places mentioned above, is conducted by seeing the person being summoned. The officer who submits the summons must immediately see the person being summoned. Therefore, the officer must see the person being summoned in person. Summons cannot be made through the intercession of others. (Article 227 paragraph (1)).
4. Then, the officer making the summons is required to make a note explaining that the summons has been arrived and has been received directly by the concerned person. (Article 227 paragraph (1)).
5. Moreover, the two parties, both officers and the summoned person, each put a date and a signature. If the person being summoned does not sign the summons, the officer making the summons notes the reason why the summoned person is unwilling to sign. (Article 227 paragraph (2).[27]

Based on the above description, it is understood that the summons of a suspect can only be made by a valid summons in which the reasons for the summons are summarized. The validity of the suspect's summons can be seen in the presence or the absence of an authorized investigator's signature. It means a summons of a suspect that has no signature of an authorized investigator is considered as invalid. A suspect, who has been summoned with a valid summons, is obliged to fulfil it. The word "obliged" indicates a requirement for the suspect to fulfil the summons of the investigator.

The summons of the suspect shall pay attention to reasonable and appropriate grace period between the receipt of a summons and the day a suspect is required to fulfil the summons. A reasonable and appropriate grace period is adapted to local circumstances and conditions. The summons of the suspect must be made directly by the officer at the suspect's residence or the last suspect's residence. Summons is delivered by the officers by meeting face-to-face with the suspect (in person).

Summoning the suspect by meeting face-to-face is not absolute. According to

[25] See Article 119 of the Criminal Code Procedure along with the explanation.

[26] *Note* 17, pp127-128.

[27] Article 227 Paragraph (2) of the Criminal Code Procedure stipulates that "The officer conducting the summons shall meet and speak directly with the person being summoned and make note that the call has been received by the person by affixing the date and signature, either by the officer or person who is being summoned and if the summoned person is not willing to sign, the officer must record the reasons."

Article 227 paragraph (3) of the Criminal Code Procedure, if the person being summoned (including the suspect: author) is not present at their residence or last residence, the summons is delivered through the head or the official of the village. If the suspect is living abroad, the summons is conveyed through the representatives of the Republic of Indonesia where the suspect usually resides. Moreover, if it is not yet successfully delivered, then the summons is affixed in the announcement board at the office of the official who issued the summons.

Presidential Permit to Summon the Member of the House of Representatives as the Suspects of Corruption

In the previous sub-section, it has been explained that the law on suspect summoning is included in the Criminal Code Procedure as one of the actions in the investigation process. The Criminal Code Procedure is a general rule (*lex specialist*), so it applies to the summoning of the suspect in a criminal act in general. The application of the Criminal Code Procedure to on suspect summoning of corruption must be seen from the provisions of the law which regulates it as a special regulation (*lex specialist*), namely Law Number 31 of 1999 jo. the Law Number 20 of 2001 and Law Number 30 of 2002.

Article 26 of Law Number 31 of 1999 jo. Law Number 20 of 2001 stipulates that "an investigation into the criminal act of corruption shall be in accordance with the applicable criminal procedure code unless it is provided otherwise in this law". Inside the explanation, it is affirmed that "the authority of the investigator in this article includes the authority to wiretap." Thus, the investigation of criminal acts of corruption is based on the applicable criminal procedural code in Indonesia, namely the Criminal Code Procedure. The provisions in the Criminal Code Procedure do not apply to Investigator on the Corruption Eradication Commissions unless it is provided otherwise in the Law Number 31 of 1999 jo. the Law Number 20 of 2001.

The regulation on the authority of Investigator on the Corruption Eradication Commissions is also determined in Article 38 paragraph (1) of Law Number 30 of 2002 which formulated as follows:

> All authority related to the investigation, and prosecution regulated in Law Number 8 of 1981 concerning Criminal Code Procedure shall also apply to investigators, investigators and prosecutors to the Corruption Eradication Commission.

In the explanation of Article 38 paragraph (1) of Law Number 30 of 2002, it is explained that:

> What is meant by everything relating to the investigation, and prosecution in this provision, among others, authority to make arrests, detentions, searches, seizures, and inspections.

Then, regarding the criminal code procedure which is used as a guide for Investigator on the Corruption Eradication Commissions is also determined in Article 39 paragraph (1) of Law Number 30 of 2002 which formulated as follows:

> Investigation and prosecution of corruption are conducted based on the applicable criminal code procedural and based on Law Number 31 of 1999 concerning Eradication of Corruption as amended by Law Number 20 of 2001 regarding Amendment to Law Number 31 of 1999 on the Eradication of Corruption unless it is regulated otherwise in this law.

Thus, it can be understood that the criminal code procedure applicable to Investigator on the Corruption Eradication Commissions share the Criminal Code Procedure of the Law Number 31 of 1999 jo.

the Law Number 20 of 2001 and the Law Number 30 of 2002. The provisions in the Criminal Code Procedure shall not apply to Investigator on the Corruption Eradication Commissions if Law Number 31 of 1999 jo. Law Number 20 of 2001 and Law Number 30 of 2002 determines otherwise.

It is in accordance with the principle of *lex specialist de rogat lex generalist* (a special law that overrides general laws). In that context, then the applicable law to Investigator on the Corruption Eradication Commissions is Law Number 31 of 1999 jo. The 2001 Law Number 20 and the 2002 Law Number 30 as the specific law. Then, the Law Number 31 of 1999 Jo. Law Number 20 of 2001 cannot apply to Investigator on the Corruption Eradication Commissions unless Law Number 30 of 2002 is regulated otherwise.

The summoning of the suspect in a criminal act of corruption refers to article 46 Para (1) of Law Number 30 of 2002 mentioning:

> In case that a person is designated as a suspect by the Corruption Eradication Commission, as of the date of the stipulation, the specific procedure applicable in the framework of the examination of a suspect as set forth in other legislation, shall not be applicable under this law.

In the explanation, it is explained that the meaning of "special procedure" is the obligation to obtain permission for the suspect of certain state officials to be examined.

Regarding Article 46 paragraph (1) of Law Number 30 of 2002, along with its explanation, the summoning of the suspect with the status of a certain state official does not need any permission. The provision also applies to the summoning of the suspect who is the member of the House of Representatives because it belongs to the category of state officials.

Although Law Number 30 of 2002 has clearly defined the summoning of the suspect with the status of a certain state official (including the members of the House of Representatives), the special law for summoning the suspect who is the member of the House of Representatives is regulated separately in the Law of MD3. In accordance with the principle *lexs pecalist de rogatlex generalist*, then the rules applicable to the summoning of the suspect who is a member of the House of Representatives is determined by the Law of MD3 as a *lex specialist* because it only regulates the summoning of the suspect who is a member of the House of Representatives.

The question is "Does the provisions of the Law of MD3 also apply to the summoning of the suspect of corruption acts who is the members of the House of Representatives?" According to the decision of the Constitutional Court of Indonesia Number 76/PUU-XII/2014 which has cancelled Article 224 paragraph (5) *jo*. Article 245 paragraph (1) of the Law of MD3, summoning the suspect who is the member of the House of Representative must obtain a written consent from the President. In other words, the summoning of the suspect in a corruption case who is the member of the House of Representative by an Investigator on the Corruption Eradication Commissions must obtain the presidential permit.

In their considerations, the Constitutional Court argues that in the presence of a written permission from the President, when a member of the House of Representatives is summoned and questioned in the context of being alleged by criminal act, it is expected to continue to perform its func-

tions and authority as a member of the House of Representatives. In addition, the existence of these requirements is also expected to ensure the existence of fair law certainty and equal treatment before the law as guaranteed by the 1945 Constitution of the Republic of Indonesia.[28]

Nevertheless, the investigation action as regulated in Article 245 of the Law of MD3 which requires written approval from the President should be issued in a short time. It is conducted in order to realize a justice, effective, and efficient process, and ensure legal certainty. Written approval from the President to state the officials facing legal process, especially the investigation of state officials that has been regulated in several laws, such as the Constitutional Court Law, Supreme Audit Agency Law, and Supreme Court Law, is something new.[29]

The requirement of a Presidential permit to summon the suspect who is the member of the House of Representatives is not absolute because if within 30 days of receipt of the request, the President does not grant the permission (written approval), the summons of the suspect can still be made. It is as already confirmed in Article 245 paragraph (2) of the Law of MD3.[30]

Thus, presidential permit to summon the suspect who is the members of the House of Representatives is not absolute. It means that the summoning of the suspect who is the member of the House of Representatives may still be conducted without a presidential permit if the conditions are stipulated in Article 245 paragraph (2) of the Law of MD3 is fulfilled. Therefore, as stated by Bayu Dwi Anggono[31] that the written approval (permit: author) of the President cannot be used as an excuse for defaulters or delayed the investigation. It is to realize a just legal process and ensure legal certainty.

Furthermore, in relation to presidential permit to summon the suspects in corruption cases who is the member of the House of Representatives, it is also necessary to pay attention to Article 245 paragraph (3) of the Law of MD3 with the formulation:

> The provisions referred to in paragraph (1) shall not apply if the member of the House of Representatives is: arrested for committing a crime; suspected of committing a criminal offense punishable by the death penalty or life imprisonment or criminal acts of crimes against humanity and state security based on sufficient initial evidence; or allegedly committed a special crime.

Based on the above description, it can be understood that the summoning of the suspect of corruption acts who is the member of the House of Representatives does not require the presidential permit. The criminal act of corruption falls into the special crime category because it is regulated in a special law, namely Law Number 31 of 1999 jo. the Law Number 20 of 2001.

In accordance with Article 245 paragraph (3) letter c of the Law of MD3, the summoning of the suspect of corruption acts who is the member of the House of Representatives does not have to be permitted by the President. The provision is in line

[28] See the consideration of the judging panel of the Constitutional Court in the Verdict Number 76/PUU-XII/2014, p106.

[29] *Note* 26.

[30] The formulation of Article 245 paragraph (2) of The Law of MD3 shall be "In the event of written approval, as referred to in paragraph (1), if it shall not be given by the House's Ethics Council no later than 30 (thirty) days from the receipt of the approval, summon and request for the investigation as referred to in paragraph 1, then it can be conducted."

[31] *Note* 11.

with Article 46 paragraph (1) of Law Number 30 of 2002 which determines that the summoning of the suspect of corruption acts with the status of certain state officials does not have to have permission. Member of the House of Representatives includes as state officials, so presidential permit to summon corruption suspects who are the member of the House of Representatives by Investigator on the Corruption Eradication Commissions is not required or not as a necessity.

The author's opinion is also in line with Moh. Mahfud M.D's opinion that referring to Article 245 paragraph (3) point c of the Law of MD3, the investigation of state officials, including the members of the House of Representatives which are subjected to special crime or corruption does not require a presidential permit.[32]

It is also stated by Refly Harun Corruption Eradication Commission does not need to request the presidential permit to investigate the suspect who is the member of the House of Representatives which are based on Article 245 paragraph (3) sub-paragraph c of the Law of MD3. According to Refly, corruption is an extraordinary crime that is included in the category of special crime, whose investigation does not require a presidential permit.[33]

CONCLUSION

Based on the description of the above analysis and discussion, it can be concluded that the Presidential permit to summon the suspect who is the member of the House of Representatives shall be stipulated in the decision of the Constitutional Court of the Republic of Indonesia Number 76/PUU-XII/2014 which cancels Article 224 paragraph (5) jo. Article 245 Para (1) of the MD3 Law. The provision is not absolute because the summoning of the suspect can still be conducted without the presidential permit as it is stipulated in Article 245 paragraph (2) of the MD3 Law. Furthermore, the regulation concerning the presidential permit to summon the suspect of corruption acts who is the member of the House of Representatives should also consider Article 46 paragraph (1) of Law Number 30 of 2002 along with its explanation jo. Article 245 Para (3)(c) of the MD3 Law. In accordance with these provisions, the summoning of the suspect of corruption acts who is the member of the House of Representatives does not have to obtain the presidential permit.

The author suggests that the rule concerning the summoning of the suspect of corruption acts who is the member of a certain state official (including the member of the House of Representatives) in Law Number 30 of 2002 should be included in the form of article or paragraph, not included in the explanation. In addition, the stakeholders need to build a common understanding in accordance with sound reasoning, so that it has no misleading reasons for translating/ interpreting the content (substance) of the Law.

[32] Mukhijab, 2017, *Periksa Novanto KPK Tidak Perlu Izin Presiden*, available from: http://www.pikiran-rakyat.com/nasional/2017/11/08/periksa-novanto-kpk-tidak-perlu-izin-presiden-413262, [retrieved: November 14, 2017].

[33] Sahlan, 2017, *KPK Tak Perlu Izin Presiden Periksa Novanto, Ini Penjelasannya*, available from: http://www.teropongsenayan.com/74251-kpk-tak-perlu-izin-presiden-periksa-novanto-ini-penjelasannya [retrieved: November 14, 2017].

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