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The Inconvenient Problems of Law Enforcement in Indonesia in Relation to the Case of Bibit-Chandra

RA Rahadjeng Endah KS¹

In this article, the author presents a description and analysis of recent developments in Indonesian law enforcement. The leaders of Corruption Eradication Commission (KPK), Bibit S. Rianto and Chandra M. Hamzah, are currently facing legal problems. Both have been accused of abuse of authority by issuing a travel ban letter preventing Anggoro Wodjojo and Joko Tjandra from leaving Indonesia. In addition, the two KPK leaders are also accused of corruption. In the following process of police investigation, Bibit S. Rianto and Chandra M. Hamzah were arrested by the police. Legal proceedings against Bibit S. Rianto and Chandra M. Hamzah then became a national issue, and the two accused gained support from people throughout Indonesia. Efforts to arrest Bibit S. Rianto and Chandra M. Hamzah were regarded as an attempt to criminalize the Corruption Eradication Commission (KPK). In order to quell increasingly vocal protests, President Susilo Bambang Yudhoyono formed an independent fact-finding team to make clarifications in connection with the case of Bibit S. Rianto and Chandra M. Hamzah. The independent team delivered recommendations to President Susilo Bambang Yudhoyono calling for an immediate stop to the investigation against Bibit S. Rianto and Chandra M. Hamzah, among others, by reason of insufficient evidence. This case then ended with the issuance of a Termination of Prosecution Assessment Letter (Surat Ketetapan Penghentian Penuntutan (SKPP)) from the Attorney General of the Republic of Indonesia.

Keywords: Law enforcement, Criminal law

The main problem discussed in this paper is:

Whether the implementation of criminal legal procedures during the investigation of Bibit S. Rianto and Chandra M. Hamzah is in accordance with the provisions of applicable law, in the matters of preliminary evidence to determine when a person becomes a suspect?

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I. Introduction

In the history of human civilization, criminal law has undergone a process of great development. This can be seen from the many interpretations to understand the meaning of criminal law itself, which, according to Van Hatttum (among others), was expressed as a whole from the principles and rules followed by the state or any other general legal community to maintain law and order by prohibiting certain acts and linking such violations to specific punishment². Meanwhile, Simons held the view that criminal law consists of prohibitions and imperatives imposed by the state or by some other common law societies, the violation of which have been associated with a specific penalty, as well as the body of regulations dealing with legal consequences and the imposition and implementation of the punishment itself³.

Based on such definitions of the criminal law, one can conclude simply that the criminal law is a legal system that serves to establish rules or restrictions, stipulates certain penalties for violations, and also provides for the implementation and execution of such punishment. Therefore it can also be concluded that the criminal law consists of both substantive law and procedure. The subject of criminal law enforcement, then, should consider the system of criminal procedural law as well as the underlying substantive rules they are intended to implement.

In general it can be said that the arrangements regarding the implementation of criminal law enforcement in Indonesia have been taken over by the provisions of Law of the Republic of Indonesia Number 8 Year 1981 regarding the Code of Criminal Procedure, or also known by the legal practitioners as Book of Criminal Procedure Code (hereinafter referred to as the **KUHAP**), which serves as a procedural vehicle for the implementation of substantive criminal law provisions contained in the Book of Criminal Law (Indonesian Penal Code or **KUHP**).

In the development of legal system in Indonesia, the numbers of criminal law provisions has increased. Such development can be seen, for instance, in Law of the Republic of Indonesia Number 31 Year 1999 regarding Eradication of Corruption, as amended by Law of the Republic of Indonesia Number 20 Year 2001 regarding the Amendment of the Law of

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² Dasar-Dasar Untuk Mempelajari Hukum Pidana Yang Berlaku Di Indonesia. P.A.F. Lamintang. Bandung. Sinar Baru. 1984. page 2

the Republic of Indonesia Number 31 Year 1999 regarding Eradication of Corruption (Law No. 31 Year 1999 & UU No. 20 Year 2001). Law No. 31 Year 1999 & UU No. 20 Year 2001 confer a privilege to disregard all provisions related to KUHP in matters involving corruption (the principle of *Lex Specialist Derogat Legi Generalis*). This can be seen in the following provisions:

- a. Article 2 Law No. 31 Year 1999:
  1. Any person who acts unlawfully enrich themselves or others or a corporation that can damage the finances of the state or the state economy, shall be punished with imprisonment for life imprisonment or imprisonment of at least 4 (four) years and not exceeding 20 (twenty) years and a fine of at least Rp200.000.000, 00 (two hundred million rupiah) and at most Rp1.000.000.000, 00 (one billion rupiah).
  2. In the case of corruption as referred to in paragraph (1) performed in certain circumstances, capital punishment may be imposed.
- b. Article 3 of Law No. 31 of 1999:

Any person who in order to benefit himself / herself or another person or a corporation, abusing authority, opportunity or means available to him for the position or positions that can damage the finances of the state or the country's economy, is liable to imprisonment for life or imprisonment for at least 1 (one) year and not exceeding 20 (twenty) years and or a fine of not less Rp50.000.000, 00 (fifty million rupiah) and at most Rp1.000.000.000, 00 (one billion rupiah).
- c. Article 25 Law No. 31 Year 1999:

Investigation, prosecution, and examination in court in criminal cases of corruption should take precedence over any other criminal cases for court resolution as soon as possible.
- d. Article 26 Law No. 31 Year 1999:

Investigation, prosecution, and examination in court for criminal conduct of corruption, are pursuant to the applicable of criminal procedural law, unless otherwise stipulated in this Law.
- e. Article 1 Paragraph 4 Law No. 20 Year 2001:

In between Article 26 and Article 27 inserted 1 (one) a new chapter to become Article 26 A, which reads as follows:

“Pasal 26A”

Legitimate evidence in the form of instructions referred to Article 188 paragraph (2) of Law No. 8 of 1981 on Criminal Proceedings, for corruption can also be obtained from:

- a. other evidence in the form of the spoken information, sent, received, or stored electronically by means of optical or similar to it; and
  - b. documents, in essence every record data or information which can be seen, read, and / or heard that may be issued with or without the aid of a vehicle, whether written on paper, any physical object other than paper, or recorded electronically, the form of writing, sound, images, maps, plans, photographs, letters, signs, numbers, or perforation that has meaning.
- f. Article 43 Law No. 31 Year 1999:
- (1) In no later than 2 (two) years since this Act came into force, the Commission for Eradication of Corruption obliged to be established.
  - (2) The Commission referred to in paragraph (1) has the duty and authority to coordinate and supervision, including the investigation, investigation, and prosecution in accordance with the provisions of applicable law⁴.

Thus in relation to the principle of *Lex Specialis Derogat Legi Generalis* contained in Law no. 31 Year 1999 and Law No. 20 Year 2001 as described above and based on the Law of the Republic of Indonesia No. 30 Year 2002 Regarding the Commission for Eradication of Corruption (Law No. 30 Year 2002), the Commission for Eradication of Corruption (KPK) was established and has a special duty to implement the provisions of the criminal law relating to matters of corruption in Indonesia.

II. Case Description

Today the people of Indonesia have witnessed a controversial event in the development of criminal procedural law in Indonesia, namely the legal

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³ Ibid. page 8

⁴ Law of the Republic of Indonesia Number 31 Year 1999 regarding Eradication Corruption as amended by the Law of the Republic of Indonesia Number 20 Year 2001 regarding the Amendment of the Law of the Republic of Indonesia Number 31 Year 1999 regarding Eradication of Corruption

case involving two KPK leaders, Bibit S. Rianto (**Bibit**) and Chandra M. Hamzah (**Chandra**). Bibit and Chandra were considered suspects by the Republic of Indonesia National Police (**POLRI**) and the Attorney General of the Republic of Indonesia (**Kejaksaan**) in connection with alleged acts of corruptions, as well as alleged abuses of authority in the imposition of a travel ban on a Director of PT Masaro Radiocom, and in the imposition, and subsequent lifting, of a travel ban on Soegiarto Djoko Tjandra, Director of PT Era Giat Prima.

According to statements made by police chief, General (Police) Drs. H. Bambang Hendarso Danuri, MM, (**Head of POLRI**) to the news media, the investigation into Bibit and Chandra was initiated following the testimony of Antasari Azhar on May 16, 2009, which stated that a few leaders of KPK had received money in the sum of Rp 6.700.000.000 - (six billion seven hundred million rupiah). At the time such testimony was given, Antasari Azhar, who is a non-active Chairman of KPK, was arrested by POLRI for his involvement in the murder of Nasrudin Zulkarnaen, Director of PT Putra Rajawali Banjaran. Although Antasari Azhar's testimony was not initially followed-up by the police, he made an official report on July 6, 2009 about alleged corruption in KPK to Metro Jaya Regional Police (Polda Metro Jaya). The report was later transferred to the Police Headquarters of the Republic of Indonesia, which then conducted a further investigation. On August 7, 2009, the investigators uncovered criminal abuse of authority by Bibit and Chandra in the imposition of a travel ban on Anggoro, and in the imposition and subsequent lifting of a travel ban on Joko Tjandra. The travel bans on Anggoro and Joko Tjandra were decided by Bibit, and the lifting of the travel ban against Joko Tjandra was decided by Chandra. Based on the fact that such decisions were not made collectively by the leaders of KPK, Bibit and Chandra were in violation of the provisions of Article 21 paragraph 5 of Law No. 30 Year 2002, which stipulates that the KPK leadership must collectively perform its duty. Later, other facts were found which indicate the flow of funds to Bibit and Chandra. These facts are supported by four pieces of evidence. On September 15, 2009, Bibit and Chandra became a suspect on the basis of alleged violation of the provisions of Article 23 of Law No. 31 of 1999. On October 2, 2009, Chandra's file was sent to the Kejaksaan and, on October 9, 2009, the Bibit's file was also sent to the Kejaksaan. On October 29, 2009, POLRI then arrested Bibit and Chandra on several charges, including that that the

defendants interfered with the investigation by making public statements to the media and through discussion forums. The Chief of Police specifically stated that Bibit and Chandra made efforts to sway public opinion by declaring that the investigation was being manipulated by certain parties. These statements referred to the transcript of recorded conversations involving such parties⁵.

Other statements to the media is also given by the Chief of Police on September 25, 2009, as quoted from *vivanews.com* website is as follows:

*"...From the results of examination of Antasari Azhar (non active Chairman of KPK), Anggoro Widjojo (boss Masaro), Anggoro Widjojo (brother Anggoro), Edy Soemarsono (people near Antasari), Ary Muladi (Anggoro accomplice), Putra Nefo (Manager Masaro), "said Bambang told reporters, Friday, September 25, 2009 ... it was acknowledged that Anggoro has submitted to Ary Muladi money at the sum of Rp 5, 15 billion in three stages .....Stage 1 at the Hotel Peninsula at the sum of Rp 3, 75 billion (August 11, 2009), stage 2 at the sum of Rp. 400 million (13 November 2008), and the last at the sum of Rp. 1 billion (February 13, 2009) ...The delivery of this money, said Bambang, supported by written evidence...There was confession from Ary Muladi that the money was for the leaders of KPK...."*⁶

Based on information from the Deputy Attorney General for Special Crimes, Marwan Effendy stated that the Attorney General had received the case files on Chandra from the police investigators. Based on the case files, it was alleged that Chandra had violated applicable provisions of Article 12 letter (e) and Article 23 of Law No. 31 Year 1999 and Law No. 21 Year 2001 Section 12 Letter (e) which limit the ability of civil servants or the state to force someone to give something or do something for the requesting party's personal gain. Besides that, the Attorney General has received a request from police to take reasonable precautions to preclude Bibit and Chandra from leaving Indonesia. for a travel ban on Bibit and Chandra was imposed by the Directorate General of Immigration Department of Justice and Human Rights, and effectively applied as of October 2, 2009. Kejaksaan stated that such ban was valid for one year⁷.

⁵<http://nasional.kompas.com/read/xml/2009/10/30/20562153/inilah.kronologi.kasus.penyidikan.kasus.chandra.dan.bibit>

⁶http://korupsi.vivanews.com/news/read/92312dugaan_suap_oknum_kpk_versi_polisi

The detention of Bibit and Chandra by police investigators elicited a very strong reaction from the people of Indonesia. Various demonstrations and mass protests against POLRI and Kejaksaan were held in various regions of the Republic of Indonesia⁸.

The various actions and movements of people were widespread and raised fears of political and social instability in many parts of Indonesia. One indication of the political and social instability can be seen from the various protests and demonstrations which occurred continually in various parts of Indonesia, namely:

In the city of Bogor, West Java, the students demanded the release of Bibit and Chandra and also demanded unconditional dismissal of Susno Duaji from his post as Kabareskrim Police⁹.

In the city of Bandung, the students demanded that President Susilo Bambang Yudoyhono save KPK, beginning with the release of Bibit and Chandra. In the town of Magelang, Central Java, students distributed black ribbons to the residents and called for resistance against those attempting to weaken KPK. In Medan, North Sumatra, the students collected signatures from legislators and local residents to urge the President of the Republic of Indonesia to act immediately to end the turmoil in the eradication of corruption¹⁰.

In Cirebon, West Java, as a form of protest against the detention of Chandra and Bibit by police, students blocked the streets along the north coast of Cirebon, resulting in traffic jams. Various elements of the community viewed the arrests made by police as an attempt to stop the eradication of corruption in Indonesia.¹¹

In Solo, Central Java, the various elements of society, both nongovernmental organizations, academics, and lawyers, condemned the arrest of Bibit and Chandra. In Cirebon, West Java, a number of legal practitioners and academics gave support to Bibit and Chandra. Similar support was also

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⁸<http://www.detiknews.com/read/2009/09/16/010635/1204370/10/kronologi-penetapan-2-pimpinan-kpk-sebagai-tersangka-oleh-polri> dan <http://cetak.kompas.com/read/xml/2009/10/03/03214920/bibit-chandra.dicegah>

⁹ <http://cetak.bangka.com/metronews/read/27091.html>

¹⁰ <http://www.jurnalbogor.com/?p=61702>

¹¹ <http://berita.liputan6.com/daerah/200911/249714/Berbagai-Aksi-Mendukung-Bibit-dan-Chandra>

¹² <http://metrotvnews.com/index.php/metromain/newsvideo/2009/11/02/93332/Pantura-Macet-Akibat-Aksi-Protes-Kebijakan-Polri>

shown by the dozens of activists and community leaders who joined in the Anti-corruption demonstrations in Bandung, West Java¹².

Moral support for Bibit and Chandra, as well as strong protest against POLRI and the Kejaksaan, were shown by more than a dozen community leaders from various elements of society. Even the Chairman of Legal Affairs of the Democratic Party, Amir Shamsuddin, provided an assessment that the detention of Bibit and Chandra reflected badly on the government of President Susilo Bambang Yudhoyono, and represented a dark moment in the history of law enforcement against corruption. Amir Shamsuddin also stated that the reason for the detention was totally unreasonable and unacceptable, as police argued that the travel bans against Djoko Tjandra and Anggoro were not signed collectively by the leaders of KPK. Another high-ranking Democrat, chairman of Commission III of the House of Representatives of the Republic of Indonesia (DPR) Benny K Harman, gave an opinion stating that the Police had worsened the situation and damaged the image of the President of the Republic of Indonesia. The President was committed to eradicating corruption. Support to Bibit and Chandra was also provided in other forms by various community leaders. Seventeen members of the of Hanura Party faction in DPR were willing to pledge themselves as collateral for Bibit¹³

In addition to demonstrations in most parts of Indonesia, moral support for Bibit and Chandra, as well as strong protest against the POLRI and Kejaksaan, also occurred in a variety of Internet sites. On October 29, 2009, a faculty member at the University of Bengkulu Muhamadiyah named Usman Yasin initiated a movement called the Facebookers' Million Moral Supports to Chandra-Bibit. This movement was initiated on *facebook*, a social networking site on the internet. As of November 7, 2009, within ten days of its creation, this movement counted 1,046,971 (one million forty-six thousand nine hundred and seventy-one) members. The creator of the movement, Usman Yasin, said that he was sad to see the injustice that had befallen Bibit and Chandra, so he tried to voice the community's opinion through the social networking site. This movement provided an alternative method for people to give their support to Bibit and Chandra¹⁴.

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¹²<http://cetak.kompas.com/read/xml/2009/11/02/0344543/tiga.solusi.diusulkan.kepada.president>

¹³<http://cetak.kompas.com/read/xml/2009/10/31/03070754/rasa.keadilan.publik.terkoyak>

¹⁴http://www.republika.co.id/berita/87786/Lebih_1_3_Juta_Facebookers_Dukung_Bibit_Chandra

Defense attorneys for Bibit and Chandra repeatedly claimed that POLRI and Kejaksaan were manipulating provisions of the criminal law in their investigation of Bibit and Chandra. They stated that they found evidence indicating the precise engineering of the process of recording the transcripts of phone conversations that the presumption of criminal allegations against the Bibit and the Chandra¹⁵

Defense attorneys for Bibit and Chandra also challenged Article 32 paragraph 1 letter c of Act No. 30 of 2002 before the Constitutional Court (*Mahkamah Konstitusi*), on the following grounds:

“Position as Leaders of KPK was removed or terminated because such person has become the accused party related to criminal conduct”

In the defense attorneys’ opinion, Article 32 paragraph 1 letter c of Law Number 30 Year 2002 must be analyzed by the Constitutional Court because it is considered contrary to the principle of presumption of innocence. Thus, the dismissal of Bibit and Chandra amounts to a form of punishment without proper judicial process, and carries permanent consequences, even though Bibit and Chandra themselves may eventually be declared innocent of wrongdoing in court proceedings. The team will also seek a ruling by the Constitutional Court that all investigations by police and prosecutors should be stayed until the Constitutional Court has decided upon the challenge to Article 32 paragraph 1 letter c Act No. 30 of 2002. In addition, the legal defense team of Bibit and Chandra also submitted to the Constitutional Court a request to summon the KPK’s new leaders to testify and also to play the recorded phone conversations of the parties, in relation to the claim that the investigation of Bibit and Chandra was manipulated¹⁶.

Due to the strong public support for Bibit and Chandra, the President finally decided to form a fact-finding team, known as the Independent Fact-

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¹⁵<http://cetak.kompas.com/read/xml/2009/10/21/03132783/chandra.sebut.ada.skenario>
<http://cetak.kompas.com/read/xml/2009/10/22/03221481/kpk.har.us.mau.ajukan...rekaman>
http://batampos.co.id/Terbaru/Terbaru/Facebookers_Dukung_Cicak_Tembus_1_Juta!.html
<http://www.mediaindonesia.com/read/2009/11/08/104521/92/14/Facebookers-Dukung-Chandra-Bibit-Tembus-Satu-Juta>
<http://cetak.kompas.com/read/xml/2009/10/23/03383954/kepala.polri.tak.percaya.skenario>
<http://cetak.kompas.com/read/xml/2009/10/26/03242120/jaksa.agung.buktikan...adanya.rekama>
¹⁶<http://cetak.kompas.com/read/xml/2009/10/27/03481883/bibit.dan.chandra.di.mk>
<http://cetak.kompas.com/read/xml/2009/11/02/0344543/tiga.solusi.diusulkan.kepada.president>
<http://cetak.kompas.com/read/xml/2009/11/03/04035023/harapan.tinggi.kepada.tim>

Finding Team regarding the Law Cases against Bibit and Chandra (**Fact-Finding Team**). This Fact-Finding Team was formed in response to people's distrust of the law enforcement process and doubts concerning the credibility of POLRI and Kejaksaan. The Fact-Finding Team will also conduct an investigation into allegations that the investigation of Bibit and Chandra has been manipulated, including through an analysis of the contents of recorded conversations¹⁷

On November 4, 2009, the Constitutional Court held a hearing regarding the matter of Article 32 paragraph 1 letter c of Act No. 30 of 2002. The Constitutional Court considered that the recording of mobile phone conversations between Anggodo Widjojo and a number of police officials and prosecutors constituted evidence and, therefore, could be played during this hearing. The hearing was held openly for hundreds of people and was covered directly by various television and news media. This hearing was attended by community leaders, the Fact-Finding Team, as well as government officials, including Minister of Justice and Human Rights Patrialis Akbar. The recorded conversations openly mentioned a plan against Bibit and Chandra, carried by Anggodo Widjojo, police officials and prosecutors, as well as a sum of money payable for the services of police officials and prosecutors for the benefit of Anggodo Widjojo. The recording also revealed that the President had approved the plan against Bibit and Chandra. Worst of all, the recordings also mentioned that Anggodo Widjojo intended to arrange for Chandra's murder while in police custody. As the result of this hearing, people were shock and angered, realizing that it was very easy to manipulate the law enforcement process for the benefit of certain persons¹⁸.

¹⁷<http://cetak.kompas.com/read/xml/2009/10/31/03070754/rasa.keadilan.publik.terkoyak>
<http://cetak.kompas.com/read/xml/2009/10/31/0323411/cicak.versus.buaya.di.mata.anggota.dpr.baru>
<http://cetak.kompas.com/read/xml/2009/11/01/03560256/dukungan.moral.membesar>
<http://cetak.kompas.com/read/xml/2009/11/02/03431899/praperadilan.disiapkan>
¹⁸<http://cetak.kompas.com/read/xml/2009/11/04/03385571/dagelan.hukum.di.mahkamah.konstitusi>
<http://cetak.kompas.com/read/xml/2009/11/04/03365520/bibit.dan.chandra.ke.luar.tahanan>
<http://cetak.kompas.com/read/xml/2009/11/05/04274539/pemutaran.rekaman.buka.mata.rakyat>
<http://cetak.kompas.com/read/xml/2009/11/05/03192373/jakung.dan.kapolri.dituntut.mundur>
<http://cetak.kompas.com/read/xml/2009/11/05/03165427/kekuatan.rakyat.membahana>
<http://cetak.kompas.com/read/xml/2009/11/05/03201297/masih.besar.pengaruh.mafia.di.kepolisian>
<http://suaramerdeka.com/v1/index.php/read/news/2009/12/08/41585>

The Fact-Finding Team conducted a thorough investigation on the criminal case against Bibit and Chandra. Pursuant to this investigation, they found the following facts in connection with the investigation of Bibit and Chandra:

1. Ary Muladi in fact never gave money to Bibit and Chandra. Ary Muladi had stated that the money from Anggod Widjojo was given to a person named Yulianto;
2. Antasari Azhar's testimony was based only on information from Anggoro Widjojo. Antasari Azhar himself admitted that he did not believe the information from Anggoro Widjojo. Antasari Azhar's testimony was considered by POLRI and Kejaksaan as part of the evidence pointing directly to Bibit and Chandra;
3. Antasari Azhar's official report to the police was made at the request of police investigators;
4. this statement from Antasari Azhar was different from the statement of the Chief of POLRI, who stated that POLRI had all required evidence, information, witnesses and expert witnesses to confirm the criminal acts of abuse of authority, bribery, and extortion perpetrated by Bibit and Chandra;
5. the investigation by KPK of PT Masaro Radiocom was still ongoing;
6. there is a broken link in the case of Bibit and Chandra, namely the lack of proof of any flow of funds between Ary Muladi and Bibit and Chandra; and

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¹⁹<http://cetak.kompas.com/read/xml/2009/11/08/03335294/rasa.keadilan.tak terpenuhi>
<http://cetak.kompas.com/read/xml/2009/11/09/0246568/antasari.tak.yakin.ada.suap>
<http://cetak.kompas.com/read/xml/2009/11/09/02552064/yulianto.masih.misteri>
<http://cetak.kompas.com/read/xml/2009/11/10/02343954/kasus.tak.layak.ke.pengadilan>
<http://cetak.kompas.com/read/xml/2009/11/12/02361193/dugaan.pelemahan.kpk.semakin.kuat>
<http://cetak.kompas.com/read/xml/2009/11/16/03160315/hari.ini.rekomendasi.diserahkan.ke.presiden>
<http://cetak.kompas.com/read/xml/2009/11/18/04275126/tim.8.hentikan.proses.hukum>
<http://nasional.kompas.com/read/xml/2009/11/17/20044693/Inilah.Dokumen.Lengkap.Rekomendasi.Tim.Delapan.3>
<http://cetak.kompas.com/read/xml/2009/11/28/03071577/kejaksaan.agung.jangan.menunda>
<http://cetak.kompas.com/read/xml/2009/11/29/02595012/jaksa.susun.alasan.penghentian>
<http://cetak.kompas.com/read/xml/2009/12/01/03050150/perkara.bibit-chandra.distop>
<http://cetak.kompas.com/read/xml/2009/12/01/03251746/kini.penghentian.perkara>
<http://cetak.kompas.com/read/xml/2009/12/02/02412568/status.bibit.dan.chandra.orang.bebas>

7. It is known that investigators from POLRI used Ary Muladi's first statement as evidence confirming that Ary Muladi had given money to Bibit and Chandra. The police had not considered the fact that Ary Muladi had already retracted his first statement and firmly claimed that he never delivered the money to Bibit and Chandra.

The Fact-Finding Team recommended that the legal process against Bibit and Chandra be stopped. Their recommendation was based on the lack of sufficient evidence to continue proceedings against Bibit and Chandra. The Fact-Finding Team proposed the suspension of the police investigation or the termination of the prosecution's case. Based on the recommendation of Fact-Finding Team, the President declared that the criminal case against Bibit and Chandra should not proceed to trial. The Attorney General stopped the legal process against Bibit and Chandra by issuing a termination of prosecution decree (SKPP). In the end, the issuance of Presidential Decree dated December 4, 2009 confirmed the reinstatement of Bibit and Chandra as KPK leaders¹⁹.

III. Main Problems Related to Preliminary Evidence

Whether the commencement of criminal legal proceedings during the investigation of Bibit S. Rianto and Chandra M. Hamzah was in accordance with the provisions of applicable law regarding preliminary evidence to determine when a person becomes a suspect?

In relation to Bibit and Chandra case as described above, we can easily conclude that there are disagreements relating to the meaning of evidence between the Fact-Finding Team, POLRI and Kejaksaan. The investigators, the POLRI and Kejaksaan, had concluded that they already possessed sufficient evidence (or perhaps preliminary evidence) to commence legal proceedings against Bibit and Chandra and to detain them. On the other hand, the investigation conducted by the Fact-Finding Team found that the evidence obtained by POLRI and Kejaksaan was not sufficient to formally charge Bibit and Chandra with wrongdoing.

This problem can be seen from the legal and sociological reasons stated by Kejaksaan to stop the legal proceeding against Bibit and Chandra. Legally, Kejaksaan claimed that the actions of Bibit and Chandra constituted criminal offenses as stipulated in Article 12 item E and Article 23 Law No. 31 Year 1999 as amended by Law No. 20 Year 2001. However, from

the sociological perspective, three reasons were given to end the proceedings. First, situation of harmony causing this case is not suitable to put on trial, thus there will be more negative impact than positive impacts if the case were put on trial. Second, for the harmony of law enforcement institutions. Third, in the public's opinion, Bibit and Chandra did not deserve to be punished for their actions, since they were performing duties to eliminate corruption, and that extreme action was sometimes needed to create a legal breakthrough. Based on these legal and sociological reasons, Kejaksaan decided to stop the legal proceedings in this case²⁰

Thus the SKPP itself created another problem, namely, whether Bibit and Chandra were guilty or not. According to Kejaksaan, Bibit and Chandra were guilty from a legal perspective, but social harmony favored keeping the case out of court. Yet if the legal aspects of the case were meritorious enough to bring Bibit and Chandra into court, then Kejaksaan should not have stopped the legal proceedings against them.

The extremely important problem raised in the case of Bibit and Chandra was that the Criminal Procedure Code (KUHP) does not regulate and explain clearly the meaning of sufficient preliminary evidence as a legal basis for someone to be charged as a criminal suspect. Article 1 points 14 Code of Criminal Procedure simply provides that a suspect is a person who, because of his/her actions or the situation, based on preliminary evidence, is reasonably suspected of being the perpetrator of a crime. However, the exact meaning and understanding of the term of preliminary evidence is not explicitly regulated or defined by the Code of Criminal Procedure. The Criminal Procedure Code only regulates evidence in Article 183 and Article 184, which provide:

Article 183

Judge must not decide any verdict unless with at least two legitimate evidence he obtained a conclusion that a crime actually occurred and that the defendant is guilty of doing.

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²⁰<http://cetak.kompas.com/read/xml/2009/11/28/03071577/kejaksaan.agung.jangan.menunda>
<http://cetak.kompas.com/read/xml/2009/11/29/02595012/jaksa.susun.alasan.penghentian>
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<http://cetak.kompas.com/read/xml/2009/12/01/03251746/kini.penghentian.perkara>
<http://cetak.kompas.com/read/xml/2009/12/02/02412568/status.bibit.dan.chandra.orang.bebas>

Article 184

- (1) Valid evidences are: (a). testimony of witnesses; (b). testimony of experts; (c). document (d) clues; (e). testimony of defendant.
- (2) Matters generally known and do not have to be proven.

Pursuant to Decree No. Kapolri SK. Pol. SKEEP/04/I/1982, dated February 18, 1982, sufficient preliminary evidence is evidence that the information and data contained in two of the following:

1. Police report;
2. Investigation Report on Crime Scene;
3. Investigation Result Report;
4. Testimony of witness/expert; and
5. material of evidence.

shows that a criminal act has been committed²¹

On the other hand, the criminal conduct of corruption is especially set out in Article 44 paragraph 2 of Law No. 30 Year 2002, which states that sufficient preliminary evidence is deemed to exist if it is found in at least two sources of evidence.

The existence of legal problems relating to the meaning of preliminary evidence in the Code of Criminal Procedure is already acknowledged in the Decree of the Minister of Justice of the Republic of Indonesia Number: M.01.PW.07.03 TH.1982 regarding Book of Guidelines for the Implementation of Law of Criminal Procedure Law, Chapter III, point 6, on the Imprisonment Problem. The Decree of the Minister of Justice states that KUHAP does not provide a definition of preliminary evidence; therefore, a common understanding and interpretation is necessary to avoid undesirable problems, as evidence that could be considered sufficient by the investigators may be deemed insufficient by the pretrial judge to charge someone as a suspected perpetrator. As evidence from the investigation is equal by means with the evidence at the prosecution and trial stages, then there exists a possibility that the verification of proof will encounter problems. In light of this problem it is not surprising that the Code of Criminal Procedure gives the

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²¹ Darwan Prints, S.H. *Hukum Acara Pidana Dalam Praktek*, Jakarta: Djambatan dan Yayasan Lembaga Bantuan Hukum Indonesia, cetakan revisi tahun 2002., Hal. 50-51

investigators certain discretion to determine, based on considerations of fairness, whether a matter constitutes preliminary evidence²².

In relation to the Bibit and Chandra case described above, we can easily conclude that issues surrounding the meaning of preliminary evidence (as stated in the Decree of the Minister of Justice) has occurred. There is a dispute between POLRI and Kejaksaan, on the one hand, and the Fact-Finding Team on the other hand, relating to the meaning of evidence in the Bibit and Chandra case.

At minimum, there are four important facts found by the Fact-Finding Team that should be considered by POLRI and Kejaksaan:

First, Antasari Azhar himself admitted that he did not believe any information from Anggoro Widjojo stating that Anggoro Widjojo had given money to Bibit and Chandra in order to obtain assistance relating to the KPK's investigation of PT Masaro Radiocom. This fact contradicts the statement of the Chief of POLRI himself that the investigation regarding Bibit and Chandra had been initiated following the testimony of Antasari Azhar on May 16, 2009, which later on firmly concluded in the official report to Metro Jaya Regional Police (Polda Metro Jaya).²³ Therefore, any information regarding Bibit and Chandra pursuant to Antasari Azhar's testimony and/or his police report had already been discredited. This means, therefore, that Antasari Azhar's testimony and/or his police report could not have been considered as evidence.

Second, Ary Muladi in fact never gave any money to Bibit and Chandra. Instead, Ary Muladi himself had confessed that the money had been given to a person named Yulianto. This later on was strongly confirmed by Ary Muladi's decision to retract his prior statement to POLRI and to change it by confirming that he never delivered the money Bibit and Chandra. Ary Muladi firmly stated that he delivered the money to a person named Yulianto, who has not since been found and has never been questioned in connection

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²² Luhut M Pangaribuan. *Hukum Acara Pidana, Satu Kompilasi Ketentuan-Ketentuan KUHAP Serta dilengkapi dengan Hukum Internasional Yang Relevan*. Jakarta: Djambatan. 2000. page. 464.

²³ <http://nasional.kompas.com/read/xml/2009/10/30/20562153/inilah.kronologi.kasus.penyidikan.kasus.chandra.dan.bibit>

<http://cetak.kompas.com/read/xml/2009/11/09/0246568/antasari.tak.yakin.ada.suap>

²⁴ <http://cetak.kompas.com/read/xml/2009/11/08/03335294/rasa.keadilan.tak terpenuhi>
<http://cetak.kompas.com/read/xml/2009/11/09/02552064/yulianto.masih.misteri>

with the alleged flow of fund to Bibit and Chandra²⁴. Thus, another source of evidence against Bibit and Chandra has been eliminated.

Third, the data from Anggodo Widjojo's recorded phone conversations, which included statements that POLRI and Kejaksaan officials were cooperating with Anggodo Widjojo to manipulate the legal proceedings against Bibit and Chandra, especially in matters of evidence. Even though further investigations relating to Anggodo Widjojo's phone conversations were warranted, it would have been easy to conclude, based on such conversations, that there were strong indications that the legal proceedings against Bibit and Chandra were truly being manipulated. In light of this, no evidence that had been collected by POLRI or Kejaksaan relating to Bibit and Chandra should have been considered valid, as such evidence, according to Anggodo Widjojo's phone conversations, had been designed to mount a false case against Bibit and Chandra. Thus, by law, any accusation against Bibit and Chandra, including abuse of authority and corruption, should have been postponed until it could be understood and determined whether there truly existed any manipulation of legal proceedings against them. The only solution to this problem was for POLRI and Kejaksaan, and also the KPK itself, to perform a thorough investigation concerning the statements made in Anggodo Widjojo's phone conversations.

Finally, as it can be concluded that the key evidence against Bibit and Chandra was invalid, any imprisonment action against Bibit and Chandra could not be carried out in accordance with law. Pursuant to Article 21 Paragraph 1 KUHAP, and order of imprisonment or further imprisonment made against a suspect or defendant who allegedly committed a crime must be based on sufficient evidence. Therefore, the imprisonment of a suspect is not possible if there is insufficient evidence to support a criminal case.

IV. Conclusion

Based on Decree No. Kapolri SK. Pol. SKEEP/04/I/1982 above, actually it is very easy for investigators to determine that a person is a criminal suspect when there are at least two sources of evidence, as mentioned above. For instances, a police report (a report of a crime victim) and a statement from another witness would be sufficient to serve as preliminary evidence. But in the Bibit and Chandra case, no such evidence could be found. This leads to an important question why POLRI and Kejaksaan were so deter-

mined to continue legal proceedings against Bibit and Chandra, and seemed reluctant to perform any investigation upon Anggodo Widjojo or any other related parties.

The lack of certainty relating to the meaning of evidence and/or preliminary evidence in the Criminal Procedure Code provides ample opportunity for the manipulation of invalid evidence, as happened in the case of Bibit and Chandra. It could be argued that, unless the data relating to the recorded cell phone conversations of Anggodo Widjojo with the relevant parties can be obtained by KPK, it will be extremely difficult for KPK to uncover and disclose the existence of any manipulation. This is an extremely dangerous situation, because evidence of such manipulation cannot always be uncovered. Therefore, one solution to this problem would be to evaluate and revise the Criminal Procedure Code (KUHAP) and related regulations, especially in connection with the meaning of evidence and preliminary evidence.

In addition, a government institution with the authority to observe and clarify any misconduct or wrongdoing relating to criminal investigations should be established. Thus, under the watchful eye of this institution, the number of legal proceedings not in accordance with prevailing law and regulations could be reduced or perhaps eliminated. Such authority could be granted to the Judicial Commission, or to a new government institution.

Another important aspect that should be considered is the international perspective on corrupt practices. Within the international community, institutions such as the Corruption Eradication Commission (KPK) have been established in many developing and developed nations. For example, in Malaysia, there is an institution known as *Badan Pencegah Rasuah*, which performs functions similar to those of the Corruption Eradication Commission (KPK) in Indonesia. The international community, through the United Nations, has also established an anti-corruption day, which falls on 9 December. These facts can only mean that the international society is serious about fighting corruption and eliminating corrupt practices. The experience of the international community relating to corruption eradication should be considered as examples and become a reference point for the Indonesian government, especially the Corruption Eradication Commission (KPK), in order to achieve maximum impact in the attempt to eliminate corrupt practices.

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