OPEN ACCESS
Scholars International Journal of Law, Crime and Justice
Abbreviated Key Title: Sch Int J Law Crime Justice
ISSN 2616-7956 (Print) |ISSN 2617-3484 (Online)
Scholars Middle East Publishers, Dubai, United Arab Emirates
Journal homepage: https://saudijournals.com

Original Research Article

Principle of Prosecutors Independency in Deponering Criminal Cases for Public Interest in Indonesia

Didik Kurniawan[1], Heni Siswanto[1*], Dini Nurina Chairani[1]

[1]Faculty of Law, University of Lampung, Bandar Lampung Jl. Prof. Sumantri Brojonegoro No.1 Bandar Lampung, Indonesia

DOI: 10.36348/sijlcj.2022.v05i04.002 | **Received:** 09.03.2022 | **Accepted:** 16.04.2022 | **Published:** 25.04.2022

***Corresponding author:** Heni Siswanto
Faculty of Law, University of Lampung, Bandar Lampung Jl. Prof. Sumantri Brojonegoro No.1 Bandar Lampung, Indonesia

Abstract

The deponering of criminal cases is one of the Attorney General powers to not prosecute. Deponering is the implementation of the opportunity principle given by law to the Attorney General as a public prosecutor to deponering cases for public interest. The opportunity principle allows the public prosecutor not to prosecute an alleged criminal act with public interest as background because it is feared that by prosecuting it will cause more harm than not suing. This research wants to see whether the deponering of cases in the public interest based on the opportunity principle; what are the limitations in the public interest for the deponering of criminal cases (seponering); and what are the juridical consequences of deponering the case.

Keywords: Prosecutor Independency, Deponering, Ceiminal Cases, and Public Interest.

INTRODUCTION

Deponering a criminal cases by attorney general is when he took the attitude and steps to not bring Chandra M. Hamzah and Bibit Samad Rianto cases to court. The Attorney General issued a Decision Letter on Termination of Prosecution (SKPP) with No. TAP-01/0.1.14/Ft.1/12/2009 on behalf of Chandra Martha Hamzah and No. TAP-02/0.1.14/Ft.1/12/2009 on behalf of Bibit Samad Rianto on December 1, 2009.

By the issuance of the two Termination Letters of Prosecution, Anggodo Widjojo submitted a pretrial which was granted by the South Jakarta District Court. The Panel of Judges ordered the Prosecutor's Office to transfer the case files of the two suspects which had been declared complete (P21) to the court for trial. Based on the court's decision, the Attorney General did *deponering* cases of Bibit Samad Rianto and Chandra Hamzah. However, the Attorney General's move was widely criticized by the public because the deponering taken due to political pressure and the basis for *deponering* was deemed inappropriate and illegal.

Article 35 letter c Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia does not explain the meaning of the opportunity principle. The Prosecutor's Law only stipulates that the Attorney General has the duty and authority to deponering cases in the public interest. What is meant by "public interest" is the interest of the nation and state and/or the interest of the wider community. In practice, the notion of "public interest" becomes unclear because it is a limitation of the public interest and there is a vague limitation on the authority of the opportunity, so that there is no legal certainty in its application. Therefore, it is necessary to formulate the problem (1) Is deponering cases for the public interest based on opportunity principle? (2) What are the limitations for the public interest? and (3) What are the juridical consequences of deponering the case?.

METHOD OF RESEARCH

The research method used is a normative juridical approach, namely research related to legal principles or legal rules [1]. The normative approach method is used to examine the deponering concept. In addition, this research uses a historical approach to identify the stages of legal development, especially the

[1] Soerjono Soekanto and Sri Mamudji, 2010, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Rajawali Pers, Jakarta, p. 24.

development of legislation [2]. The data source is primary data supported by secondary data. Secondary data collection is done through documentation studies or library research. Data analysis was carried out descriptively-qualitatively [3].

DISCUSSION

1. Deponering Cases for Public Interest Based on the Opportunity Principle

a. Deponering Cases for Public Interest

Historically, Indonesian criminal law has been largely oriented to Dutch criminal law. There are 2 (two) terms that are familiar and often used, namely deponering and seponeren. Seponeren means *terzijde leggen* (to put aside), *niet vervolgen* (not to sue) with the reasoning that the terminology is only known in criminal law as regulated in *Het Nederlandsch Strafprocessrecht* (Dutch Criminal Procedure Code) [4]. Meanwhile, in the Dutch-Indonesian dictionary, deponering comes from the word deponeren which etymologically means to entrust, submit a case, register, deposit, and save [5]. Deponering of criminal cases in the criminal process is an exception to the principle of legality. According to A.L. Melai [6], that the absence of a prosecution by the Prosecutor as a public prosecutor is a rechtvinding (discovery of a new law) which must be considered at times when the law demands justice and legal equality.

When the Prosecutor's Office set aside criminal cases in the public interest (deponeering) against the cases of Bibit Samad Riyanto and Chandra M. Hamzah, a debate arise among legal practitioners and academics regarding the meaning of deponeering. In Indonesia, the deponeering cases in the public interest is based on the opportunity principle which the authority is only given to the Attorney General of the Republic of Indonesia for policy reasons, namely to prevent misuse of prosecution discretion. Therefore, the Prosecutor who wants to use his authority in deponeering cases must submit an application to the Attorney General to set aside a case in the public interest. However, the Attorney General of the Republic of Indonesia very rarely uses this authority. According to the Criminal Procedure Code [7]. There are two kinds of mechanisms to terminate prosecution, namely:

1. Termination of prosecution for technical reasons according to Article 140 Paragraph (2) of the Criminal Procedure Code:

a. If the evidence is not sufficient;
b. If the incident is not a criminal act;
c. If the case is closed for the sake of law (the suspect dies and is *nebis in idem*).
d. Cessation of prosecution for policy reasons. The Public Prosecutor connects the authority to carry out criminal prosecutions with the public interests (general) and the interests of law and order.

M. Yahya Harahap [8] explains the difference between deponeering cases in the public interest by the Attorney General and the termination of prosecution as follows:

1. In the case aside or deponeering, the case in question has sufficient reasons and evidence to be submitted and examined before a court session. Based on the facts and available evidence, it is very likely that the defendant can be sentenced. However, this case with sufficient facts and evidence was not transferred to a court session by the Public Prosecutor for reasons "in the public interest". In addition to cases, law enforcement is sacrificed for the public interest. That is why the opportunity principle is discriminatory and undermines equality before the law. Because to certain people by using reason of public interest, the law is not treated or to him for the sake of law enforcement is deponeering. In the case of deponeering, once deponeering is carried out or the case is set aside in the public interest, there is no longer any reason to bring the case back to court.

2. While the termination of the prosecution, the reasons are not based on the public interest, but are solely based on the reasons and the interests of the law itself:

a. The case in question "does not" have sufficient evidence. So that if it is submitted to a court hearing, it is strongly suspected that the defendant will be acquitted by the judge, on the grounds that the alleged guilt is not proven. To avoid such an acquittal decision, it would be wiser if the public prosecutor stopped the prosecution.
b. What is sues for the defendant does not constitute a crime or violation.

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[2] Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Kencana, Jakarta, p. 88.
[3] Soerjono and Abdurrahman, 2005, *Metode Penelitian, Suatu Pemikiran dan Penerapan*, Rineka Cipta, Jakarta, p. 56.
[4] Darmono, *Penyampingan Perkara Pidana Seponering dalam Penegakan Hukum*, Solusi Publishing, Jakarta, 2013, p. 44.
[5] Oetje Rahajoekoesoemah, 1990, *Kamus Belanda-Indonesia*, Rineka Cipta, Jakarta, p. 308.
[6] Djoko Prakoso, 1985, *Eksistensi Jaksa di Tengah-tengah Masyarakat*, Ghalia Indonesia, p. 89-90.
[7] Departemen Hukum dan Hak Asasi Manusia RI, "*Laporan Hasil Kerja Tim Analisis dan Evaluasi Hukum tentang Pelaksanaan Asas Oportunitas dalam Hukum Acara Pidana Tahun Anggaran 2006*, p. 11-12.
[8] M. Yahya Harahap, 2006, *Pembahasan Permasalahan dan Penerapan KUHAP Penyidikan dan Penuntutan*, Edisi Kedua, Cetakan ke-8, Penerbit Sinar Grafika, Jakarta, pp.436-437.

c. The basis of the case is closed by law or deponeering for the following reasons:

1) Because the suspect/accused died.
2) Reason for *nebis in idem.*
3) Public prosecutor case is about to prosecute turns out to have expired as regulated in Articles 78 to 80 of the Criminal Procedure Code.

At the termination of the prosecution, the case in question can generally be resubmitted. It is happend, if in another day turns out new reasons are found that allow the case to be transferred to a court session. On the one hand, the Criminal Procedure Code only stipulates that the termination of the case is only for legal purposes. While on the other hand, the Criminal Procedure Code recognizes the authority deponeering for the public interest, so that there is dualism in the Criminal Procedure Code. The Criminal Procedure Code firmly recognizes the principle of legality, but on the other hand the principle of legality is negated by the fact that the Criminal Procedure Code itself recognizes the existence of the principle of opportunity [9]. This situation can make the meaning of deponeering cases in the public interest disappear, because the Criminal Procedure Code or the law itself does not specify explicitly and clearly. So the situation is included in the category of public interest.

b. Opportunity Principle

The opportunity principle from France through the Netherlands was incorporated into Indonesia as customary law (unwritten law) continued until the Japanese colonial period and the independence period until the time of independence 1961. Now the opportunity principle is included in Law No. 16 of 2004 [10]. According to the opportunity principle, the Attorney General of the Republic of Indonesia has the authority to sue and not to take a case to court, either with or without conditions. The public prosecutor may decide conditionally or unconditionally to make the prosecution to court or not. So in this case the public prosecutor is not obliged to demand someone commit a crime, if according to the public prosecutor consideration it will harm the public interest. In the public interest, someone who commits a crime is not prosecuted [11]. According to Andi Hamzah, in Japan and the Netherlands, the benchmark for applying the opportunity principle in adjudicating cases relates to trivial cases, old age, and damage has been settled.

The opportunity principle was developed with the possibility of imposing certain conditions such as by paying a fine (transactie). In Germany, deponeering is made conditionally and unconditionally. It is only by asking permission from the judge, because they adhere to the legality principle. That permission is generally granted [12]. The discretion of the prosecutor in Norway is wider than the discretion of the prosecutor in the Netherlands and Japan. Even Norwegian prosecutors can pass sentences or impose sanctions without court intervention. The imposition of sanctions or actions is known as *patale unlatese*. For more serious cases, they must seek the approval of the Attorney General, so prosecutors in Norway are called semi judges [13].

The application of the opportunity principle in the Netherlands is based on the principle of discretionary powers, as formulated in Article 167 Paragraph (2) and Article 242 Paragraph (2) *Wetboek van Strafvordering* (Dutch Criminal Procedure Code). Implementation of the opportunity principle in the Netherlands, the prosecutor has the authority to sue and not to sue a case to court, either with or without conditions. The public prosecutor may decide conditionally or unconditionally to make the prosecution to court or not. So, the Public Prosecutor is not obliged to prosecute someone who commits a crime if according to his considerations it will harm the public interest [14]. The logical consequence of the opportunity principle (*opportuniteitsbeginsel*) of the Dutch Criminal Procedure Code, the public prosecutor is not in a position to have an absolute obligation to prosecute; on the basis of the 'public interest' (g*ronden aan het algemeen belang ontleend*). The Public Prosecutor is also authorized to decide on seponering or resolving cases out of court. Another important aspect related to the task of the Public Prosecutor is not only responsible for advancing the public interest, but also the rights of the victim and the suspect/defendant during the entire criminal examination process [15].

[9] *Ibid*., p. 37.
[10] *Ibid*., p. 71 .
[11] Departemen Hukum dan Hak Asasi Manusia RI, "*Laporan Hasil Kerja Tim Analisis dan Evaluasi Hukum tentang Pelaksanaan Asas Oportunitas dalam Hukum Acara Pidana Tahun Anggaran 2006*", *Op.Cit.*, p. 8.
[12] Andi Hamzah, "*Reformasi Penegakan Hukum", Pidato Pengukuhan diucapkan pada Upacara Pengukuhan Jabatan Guru Besar Tetap dalam Ilmu Hukum pada Fakultas Hukum Universitas Trisakti di Jakarta*, 23 July 1998, p. 11.
[13] R.M. Surachman, *Mozaik Hukum I*, Sumber Ilmu Jaya, Jakarta, 1996, p. 72.
[14] Departemen Hukum dan Hak Asasi Manusia RI, *Op.Cit.*, p. 9.
[15] Jan Crijs, *Kesepakatan dengan saksi dalam Proses Pidana Kesepakatan dengan Saksi dalam Peradilan Pidana Belanda dan Pelajaran yang mungkin dapat dipetik oleh Indonesia*: *Hukum Pidana dalam Perspektif.* Editor: Agustinus Pohan, Topo Santoso, Martin Moerings. –Ed.1. – Denpasar: Pustaka Larasan; Jakarta: Universitas Indonesia. Universitas Leiden. Universitas Groningen. 2012, p. 161.

The implementation of the opportunity principle in the United States is known as *substansial assistance* [16]. According to Linda Drazga Maxfield and John H. Kramer [17] is:

"Substantial assistance is an initiative from the government which states that the defendant has provided substantial assistance in the investigation or prosecution of other people who committed violations, so that in court proceedings they may deviate from general guidelines".

Based on The Guidelines Manual, the Statute, and Prosecutorial Directives such as the U.S. The U.S. Department of Justice's (DOJ's) Attorneys Manual that there are four provisions in the implementation of substantial assistance, namely: [18] First, the factors that will be used by the prosecutor before determining whether a working defendant can be given "substantial" assistance there is a guarantee that it can help for unresolved matters; Second, it is limited in prosecution actions; Third, substantial assistance related to cooperation regarding investigations prosecution of others; Fourth, not all substantial assistance is equal In the United States Prosecutors has wide discretion in Plea Bargaining with defendants [19].

Di Inggris juga dikenal diskresi penuntutan (*Prosecutorial discretion*) seperti yang diucapkan oleh *Attorney General* (Jaksa Agung), Sir Hartley Shocrecross:[20].

"It's never been a regulation in this country. I almost never say that a suspect committing a criminal act should automatically be the subject of prosecution. Indeed the main rule (criminal prosecution) which the director of public prosecutors works to prepare when it is committed. It shows the requirement of public interest as decisive consideration".

Attorneys in the United States (U.S. Attorney, Country Attorney and District Attorney or State Attorney) are almost independent in exercising their discretionary powers from the earliest stages of investigation to post-trial process. Their decisions in the field of prosecution are "almost completely free from the scrutiny of another person or entity". Their can stop the case process by stopping the prosecution or making compromises regarding the charges, which in the language of American legal practitioners is called plea bargaining or "compromise confession", so that the suspect can admit his guilt (plead guilty) before tried [21].

The prosecution's discretion will open up opportunities for prosecutors to capture criminal cases more effectively before prosecution by suspending prosecution, so that the perpetrator can rehabilitate himself. This was stated by UNAFEI which stated that the benefits of prosecution discretion were: [22].

1) It allows effective screening of cases before prosecution;
2) It afford the prosecutions it suspend prosecution in suitable cases thus allowing the accused himself;
3) It also allows promulgation of criminal policy guidelines at the time.

However, the prosecution (discretion) policy must be implemented with adequate reasons and sufficient information, with adequate rules and guidelines, with an adequate training program for those who will be released. So to achieve this goal, the most appropriate to carry it out is the prosecutor as a legal artist, who has legal skills [23].

c. The Opportunity Principle in Indonesia

In Indonesia, only the Attorney General of the Republic of Indonesia who has the authority in the prosecution process and deponeering cases for public interest as the implementation of the opportunity principle. Deponeering cases can be made by the Attorney General of the Republic of Indonesia after take notice the suggestions and opinions of state power agencies which related to the cases. Therefore, the Attorney General is not completely independent in adjudicating cases. Besides, the law also does not explain that the agencies of state power are related to the cases. This can be seen when the Attorney General

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[16] *Ibid*., p. 84.

[17] Linda Drazga Maxfield and John H. Kramer, *Subtantial Assitance; An Empirical Yardstik Gauging Equity In Current Federal Policy And Practice*, (*United States Sentencing Commission*, January 1998), p. 2.

[18] *The Guidelines Manual, the statute, and prosecutorial directives such as the U.S. Department of Justice's (DOJ's) U.S. Attorneys Manual, include four that are cited below. First, the factors to be used by the prosecutor prior to sentencing to determine whether the cooperation of a given defendant is "substantial" — and therefore warrants a substantial assistance departure motion — are unaddressed, Second, the authority to move for a §5K1.1 departure is limited to the prosecution. Third, substantial assistance is linked to cooperation concerning the investigation or prosecution of another person Finally, apparently not all substantial assistance is equal.*

[19] Artidjo Alkostar, *Kebutuhan Responsifitas Perlakuan Hukum Acara Pidana dan Dasar Pertimbangan Pemidanaan serta Judicial Immunity", m*akalah disampaikan dalam RAKERNAS 2011 Mahkamah Agung dengan Pengadilan Seluruh Indonesia. Jakarta: 18-22 September 2011 p. 4.

[20] Andi Hamzah, 1996, *Hukum Acara Pidana Indonesia*, Sapta Artha Jaya, Jakarta, p. 36.

[21] Departemen Hukum dan Hak Asasi Manusia RI, *Op.Cit.*, p. 54.

[22] *Ibid*., p. 18.

[23] R.M Surahman dan Andi Hamzah, 1996, *Jaksa di Berbagai Negara, Peranan dan Kedudukanya*, (Jakarta: Sinar Grafika, p. 46.

of the Republic of Indonesia made a decision to leave the Bibit-Chandra case aside, the Attorney General of the Republic of Indonesia asked for statements and suggestions from five institutions regarding deponering. These institutions are the President of the Republic of Indonesia, the House of Representatives of the Republic of Indonesia, the Supreme Court of the Republic of Indonesia, the Constitutional Court of the Republic of Indonesia, and the Indonesian Police. According to Basrief [24], The five institutions have stated that they understand the reason why the Attorney General's Office chose the deponeering of the Bibit-Chandra case.

Juridically, deponeering cases for public interest is the duty and authority of the Attorney General of the Republic of Indonesia. It is as regulated in Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia Article 35 letter c which states that the Attorney General of the Republic of Indonesia has the authority in deponeering cases for the public interest. Meanwhile, the explanation of Article 35 letter c of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia states that "public interest is the interest of the nation and state and/or the public interest. Deponeering is the application of the opportunity principle which only can be done by the Attorney General of the Republic of Indonesia after take notice the suggestions and opinions of state power agencies which related to the cases".

Deponeering cases for public interest is also regulated in the elucidation of Article 77 of the Criminal Procedure Code which states that "what is meant by termination of prosecution does not include deponeering cases for the public interest which are the authority of the Attorney General". According to Indriyanto Seno Aji, the opportunity principle is:[25]. "An overheidsbeleid that implements staatsbeleid, because it can be used in a binding discretionary power or active authority. This active authority is related to the opportunity principle which giving Attorney General the authority to take action against disguised norms as long as this authority is based on the general principles of good governance".

Discretion according to Lawrence M. Friedman [26] usually refers to a case where a person as the subject of a rule has the power to choose between four forms alternative of discretion. By looking at the provisions of the opportunity principle and its implementation in other countries, it seems that it would be more effective if the authority of this opportunity was given directly to the Prosecutors in Indonesia. Thus, cases that will be transferred to court can be screened before reaching the court and minor thefts will not be repeated to the court. It is because by looking at the currently number of exist cases, it is impossible for all of them to depend on the authority of the Attorney General policy opportunities [27].

[24] Antikorupsi.org, "Kejaksaan Resmi Deponering Kasus Bibit Chandra" 25 January 2011,<http://m.antikorupsi, org/?q=content/19239/kejaksaan-resmi-deponering-kasus-bibit-chandra>

[25] Indriyanto Seno Adji, *2006, Korupsi Kebijakan Aparatur Negara & Hukum Pidana*, Diadit Media. Jakarta, p. 465.

[26] Discretion usually refers to the case where a person as a subject of the regulation has the power to choose among alternatives. Discretion produces four types of formal regulations, First as fixed regulations from two sides both the public and officials which don't have a choice, and criminal law regulations mostly take this form. For example prohibiting murder, stealing; regulations on paper are absolute, officers have no formal right to let a violator off the hook. Second, namely authorization, applies discretionary to the public but not to officers. Ror example; a man and a woman apply for marriage, then there are others who file a lawsuit for it which creates a personal choice in the eyes of the law, so that state officials have no choice but to react in the official ways that have been outlined. Three, privileges apply discretionary in two respects: a person who fulfills the provisions can carry it out or not according to his will and there is also discretion on the public side. Fourth, only officers who have alternatives. a very common thing in criminal law, often there is wide discretion for judges in determining sentences, the defendant has no right to say anything. See Lawrence M Friedman, *Sistem Hukum Perspektif Sosial* [*The Legal System A socila Science Perspective*], translated by M. Khozim, (Bandung: Nusa Media, tanpa tahun), p. 42.

[27] It is in stark contrast to the opportunity principle which is known globally as the authority of all prosecutors (not only the Attorney General), to implement this principle with the understanding: "The public prosecutor can sue or not demand conditionally or unconditionally a case to court" (the public prosecutor may decide – conditionally or unconditionally - to make prosecution to court or not"). Thus, in countries such as the Netherlands, Japan, Korea (South), Israel, Norway, Denmark, Sweden, etc., this principle is fully implemented. So that in the Netherlands only 50% of cases are submitted to courts which accepted by public prosecutors. In Japan, only 0.001% of cases are acquitted from the court, or in 100.000 cases that are submitted by public prosecutors to court, only one is acquitted. It is because prosecutors have strictly selected cases which only cases with sufficient evidence to be submitted to court. In Norway, prosecutors can even impose their own sanctions as a condition for not being prosecuted in a court called

In relation deponeering cases for public interest on behalf of Bibit Samad Rianto and Chandra M. Hamzah, there were several reasons why the Attorney General finally took the same steps to resolve the case. It is because the Attorney General's Office has declared the case files for Bibit Samad Rianto and Chandra M. Hamzah issued a notification letter that the results of the investigation were complete (P.21). Thus, it means that the Public Prosecutor opinion about the case is appropriate and can be prosecuted, based on Article 143 paragraph (1) of the Criminal Procedure Code, the public prosecutor is obliged to immediately delegate the case to the court. However, the Prosecutor's Office issued a Letter of Decision on Termination of Prosecution (SKPP) with No. TAP-01/0.1.14/Ft.1/12/2009 on behalf of Chandra Martha Hamzah and No. TAP-02/0.1.14/Ft.1/12/2009 on behalf of Bibit Samad Rianto dated December 1, 2009 [28].

The SKPP on behalf of Bibit Samad Rianto and Chandra Martha Hamzah who was submitted by Anggodo Widjojo as a suspect in the criminal act of attempting to bribe KPK officials. In the pretrial decision of the South Jakarta District Court stated that the SKKP of the two Indonesian Corruption Eradication Commission (KPK) commissioners did not and ordered the Prosecutor's Office to transfer the case to the court. Based on the pretrial decision based on Article 83 Paragraph (2) of the Criminal Procedure Code, the Prosecutor's Office filed an appeal to the Jakarta High Court. However, the Jakarta High Court in its decision upheld the decision of the South Jakarta District Court. Likewise, at the level of the Supreme Court of the Republic of Indonesia, the Public Prosecutor's legal efforts have been rejected.

Furthermore, with the decision of the Supreme Court of the Republic of Indonesia, President Susilo Bambang Yudhoyono followed up on Team 8's recommendation which suggested to settle the Bibit-Chandra case out of court. Therein lies the lack of independence of the Prosecutor's Office due to public pressure and an appeal from the President of the Republic of Indonesia who is authorized to appoint and dismiss the Attorney General, so the Prosecutor chooses the seponering option rather than delegating the case to court. Furthermore, the Attorney General, in this case Plt. Attorney General Darmono issued a letter seponering TAP 001/A/JA/2011 on behalf of Chandra M. Hamzah and TAP 002/A/JA/2011 on behalf of Bibit S. Rianto on January 24, 2011.

The position of the Republic of Indonesia Attorney General in the Indonesian state administration system is not independent in making decisions. The handling of the complicated cases of Bibit Samad Rianto and Chandra Martha Hamzah is because the Attorney General is a government agency. The chairman of the Attorney General's Office of the Republic of Indonesia is the head of a government agency. This situation can be interpreted or meant that the Attorney General's Office as a government agency is the executive power [29]. Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia places the position of the Prosecutor's Office in the realm of the executive.

The main task of the Prosecutor's Office in the criminal justice system in Indonesia is prosecution. Prosecution is the sole authority that belongs to the Prosecutor's Office and not owned by other judicial institutions. The authority to carry out prosecutions is the embodiment of the *Dominus Litis* principle as a case controller in the prosecution and implementation of court decisions that have permanent power. The Prosecutor's Office is a body is functionally related to judicial power. If it's only "related" it doesn't have to mean that the Prosecutor's Office is part of the judicial power itself [30]. Meanwhile, in the Elucidation of Article 2 Paragraph (2) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, what is meant by "independently" is to carry out its functions, duties and authorities regardless of the influence of government power and the influence of other powers. According to Laica Marzuki, that the Attorney General's Office under the Attorney General carries out its intended functions, duties and authorities, it cannot be intervened or influenced by the President [31]. In practice, the Attorney General of the Republic of Indonesia is not completely independent in carrying out his authority.

3. Limitation of the Public Interest

Regarding the public interest as referred to in Article 35 letter c of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia mentioned that "the interests of the nation and state and/or the interests of the wider community". This definition of public interest is expanded to include legal interests, because they are not only based on legal

patale unnlantese. This is to prevent cases from piling up in court and making prisons overcrowded. Recently a regulation was issued in the Netherlands, that all cases punishable by imprisonment for under six years. If the case is mild, it will take notice the circumstances at the time the offense was committed. If the defendant has changed his behavior, it will subject to afdoening or an out-of-court settlement on condition that the defendant pays an administrative fine. See Departemen Hukum dan Hak Asasi Manusia RI, *Op.Cit.*, p. 28-29.

[28] Poskota.co.id,"*Bibit Chandra harus diadili", Ibid*.

[29] Mahkamah Konstitusi, *Putusan nomor Nomor 49/PUU-VIII/2010 tanggal 3 September 2010*, p. 38,

[30] Yusril Ihza Mahendra, "K*edudukan Kejaksaan dan Posisi Jaksa Agung dalam Sistem Presidensial di bawah UUD 1945*, makalah, Jakarta, 8 Agustus 2010, p. 8.

[31] Mahkamah Konstitusi RI, *Op.Cit*, p.102.

reasons, but are also based on other reasons. Among other things are social reasons for the interests of state safety. Currently, it also includes factors of interest in achieving national development. Guidelines for the Implementation of the Criminal Procedure Code (Government Regulation of the Republic of Indonesia Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code) provides an explanation of what is meant by "in the public interest" in the case study as follows: “Thus the criteria for " public interest" in the application of the opportunity principle in our country is based on the interests of the state and nation and/or the interests of the wider community, not only for the public interests". This is similar to Soepomo's opinion which said: "Both in the Netherlands and in the "Dutch Indies" apply a principle called "opportunity" in criminal charges is means that the Public Prosecutor's Office has the authority not to carry out a prosecution. If there is a claim not considered as an "opportunity," so it is not for the public interest to [32].

A new debate will arise if the cases of Bibit Samad Rianto and Chandra Hamzah are in deponering in relation to the deponering, whether it is true for "the interests of the nation and state and/or the interests of the wider community". The main reason for deponering this case is because Bibit and Chandra are the leaders of the Indonesian Corruption Eradication Commission or KPK, which is tasked with eradicating corruption in this country. The KPK must run normally without being disturbed by the vacancy of its leadership. It is because if both are tried, then the President obliged to temporarily suspend the position of them as KPK leaders [33]. But what is called "the interests of the nation and the state and/or the interests of the wider community". Meanwhile, if Bibit Samad Rianto and Chandra Hamzah are suspended, will the Indonesian KPK not function normally in carrying out its duties and obligations? KPK still an institution, not individuals, so that if two of its leaders are disabled, KPK can still carry out its duties and re-elect its commissioners.

4. Juridical Consequences of Case Deponering

If (deponering) or setting aside the case for public interest, then there is no longer any reason to bring the case back to court [34]. Another problem is, if the deponeering is issued, it will implicitly admit that Bibit and Chandra are people who are indeed suspected of having committed a crime and the evidence for that is complete as stated by the Prosecutor in the indictment [35]. On the one hand, deponering cases for the sake of the public interest is a deviation from the principle of equality before the law which there is a burden if the Bibit and Chandra cases are deponering. Then the Anggodo Widjojo case related to the cases suspected of Bibit Samad Rianto and Chandra Hamzah should also be deponering.

Nowadays in Indonesia, there is no jurisprudence on deponering cases for public interest. The law neither allows nor prohibits. In the legal theory as developed in the Netherlands, deponeering is the implementation of opportunity beginsel on the "opportunity principle "which is owned as the "right" of the Attorney General of the Republic of Indonesia. However, Article 35 of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia does not mention this as a right, but as a “duty and authority” of the Attorney General. If it is the duty and authority, then it is not impossible that the deponeering decision will be challenged in court. To question whether in carrying out the duties and authorities of deponering cases, the Attorney General of the Republic of Indonesia has carried out the duties and authorities with sufficient reasons, namely the extent to which the deponeering fulfills the requirements terms "for public interest", namely "the interests of the nation and state and/or the interests of the wider community” [36].

CONCLUSION

1. Deponering criminal cases in criminal proceedings is an exception to the principle of legality. When the Prosecutor's Office set aside criminal cases in for public interest (deponeering) against suspects, it sparked debate among legal practitioners and academics regarding the meaning of deponeering. In Indonesia, set aside cases for public interest is based on the principle of opportunity. The authority is only given to the Attorney General of the Republic of Indonesia for policy reasons, namely to prevent misuse of prosecution discretion. Prosecutors who wish to exercise their deponering authority must submit an application to the Attorney General of the Republic of Indonesia to set aside cases for public interest. The Criminal Procedure Code recognizes the deponering authority for public interest, so there is dualism in the Criminal Procedure Code. On the one hand, the Criminal Procedure Code firmly recognizes the principle of legality, but on the other hand the principle of legality is negated by the fact that the Criminal Procedure Code itself recognizes the existence of the principle of opportunity. This situation can make the meaning of deponering cases for public interest disappears, because the Criminal Procedure Code or the Prosecutor's Law does not

[32] *Ibid.*, p. 15.

[33] Yusril Ihza Mahendra, “*Problematika Deponering Kasus Bibit-Chandra*,”artikel,2010, <http://yusril.ihzamahendra.com/2010/10/12/deponering-kasus-bibit-chandra-dan-problematikanya/

[34] M. Yahya Harahap, 2006, *Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan*, Edisi Kedua, Cetakan Ke-8, Penerbit Sinar Grafika, Jakarta, pp. 436-437.

[35] Yusril Ihza Mahendra. *Ibid*.

[36] *Ibid*.

specify explicitly and clearly regarding the deponering cases.

2. The limitation for the public interest is regulated in Article 35 letter c of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, namely "the interests of the nation and state and/or the interests of the wider community". This definition of public interest is expanded to include legal interests, because they are not only based on legal reasons, but are also based on other reasons. Among others are social reasons and reasons for the interests of state safety. Currently, it also includes factors of interest in achieving national development. The Guidelines for the Implementation of the Criminal Procedure Code (Government Regulation of the Republic of Indonesia Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code) provide an explanation of what is meant by "for public interest" in the case review as follows: "Thus the criteria for "for public interest" in the application of the opportunity principle in our country are: based on the interests of the state and nation and/or the interests of the wider community, not only for the interests of the community."
3. The juridical consequence of deponering case for public interest, if it is carried out, then there is no longer any reason to re-submit the case at the Court session. Another problem is, if deponeering is issued, it implicitly implies that the suspect is a person who is indeed suspected of having committed a crime and the evidence for that is complete as stated by the Prosecutor in the indictment. On the one hand, deponering cases in the public interest is a deviation from the principle of equality before the law which there is a burden if the suspect's case is deponering, then deponeering should also be carried out for other suspect cases related to the case suspected of the initial suspect

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