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### Appointing top officials in a democratic indonesia: the corruption eradication commission

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## APPOINTING TOP OFFICIALS IN A DEMOCRATIC INDONESIA: THE CORRUPTION ERADICATION COMMISSION

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Democratisation has brought checks and balances, and new state agencies, to Indonesian politics. Checks and balances and greater responsiveness to the public have also been sought in the appointment processes for the senior management of these new bodies. This paper examines the merits of the new appointment processes, in particular sequential selection, through a case study of the leadership selection process for the Corruption Eradication Commission. It reviews the process stipulated by law and its implementation in 2003, 2007 and 2010. The study argues that, while the short-listing of candidates by the selection committee aims at unprecedented openness and meritocracy, the process used has been tedious and has given insufficient weight to candidates' track records. Despite criticism that the final selection was pre-determined, the paper concludes that the overall selection process has upheld the principle of checks and balances between the executive and the legislature and ensured diversity of political support.

*Keywords: appointment systems, anti-corruption commission, governance, democratisation, corruption, law enforcement*

### INTRODUCTION

Although corruption benefits the individuals involved and may in the short-term overcome institutional inefficiencies, its social impact is damaging. Scholars widely acknowledge corruption to constitute a 'public bad', distorting markets (Klitgaard 1990: 191; Tanzi and Davoodi 1997), deterring foreign direct investment (Mauro 1995; 1997) and causing loss of state legitimacy and disproportionate harm to the poor (Gupta, Davoodi and Alonso-Terme 1998). Indonesia's continued progress toward higher living standards and democracy therefore depends in part on the success of efforts to reduce corruption, including the strengthening of law enforcement.

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The Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK) is a prominent example of a state auxiliary body established in the spirit of *reformasi* to compensate for the failure of the existing law enforcement agencies to control rampant corruption. Law 30/2002 on the Corruption Eradication Commission (henceforth, 'the KPK Law') provides for an agency with operational autonomy, but the KPK was not created in a vacuum. McLeod (2005: 383) highlights the dilemma of anti-corruption initiatives in an environment of endemic corruption:

The problem is that other individuals within the same system need to take firm action against those found to be corrupt, but such individuals are themselves likely to be (or, at least, to have been) involved in malfeasance.

Indeed, from the beginning of discussions on the KPK Law, there was concern that the agency would be co-opted by political interests and come to suffer the same level of public distrust as the existing law enforcement agencies. This was most likely to occur through the appointment of commissioners who would collude with particular groups or parties.<sup>1</sup>

A comparative study by the United Nations Development Programme (UNDP) of institutional arrangements to fight corruption acknowledges that the 'public credibility of a commission or agency will depend largely on whether the public perceives that its members have integrity [and] are competent, and that all relevant interests in society are represented' (UNDP 2005: 5, footnote). The study further suggests that '[a]nother way to enhance the autonomy of the ACA [anti-corruption agency] is to ensure that the selection and appointment of the executive(s) of the ACA [are] the shared responsibility of several institutions' (UNDP 2005: 5).<sup>2</sup> This seems all the more important given that misuse of anti-corruption agencies as a tool of political victimisation is cited as a frequent cause of their failure (Shah and Schacter 2004: 42).

This paper assesses the selection process for the KPK leadership, examining its sequential nature and how this relates to the independence of the commission and the quality of the candidates. The underlying objective is to shed light on two questions. Is the selection process of the KPK leadership adequate to produce an independent, competent leadership? What could be improved?

To answer these questions, in the next section I review the main forms of selection process used to appoint senior public officials in Indonesia today. I then discuss the formal selection process and the candidate criteria stipulated by the KPK Law, and analyse the implementation of the KPK selection process in 2003 and 2007. Lastly, I discuss how sudden vacancies in the KPK leadership in 2009

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1 There are other ways of reducing the effectiveness of the KPK, of course, but these are beyond the scope of this paper.

2 Appointments for the Corrupt Practices Investigation Bureau in Singapore and the Independent Commission Against Corruption in Hong Kong – both widely considered successful – are conducted by the respective heads of the executive alone. Although the organisational blueprint of these two agencies could easily be copied, their political context – in particular, the strong political will accumulated mainly in the hands of the head of the executive – cannot.

challenged the precautions put in place by the KPK Law. In conclusion, I contend that the KPK leadership selection process demonstrates progress in Indonesia's democratisation. While there are inefficiencies and shortcomings in implementation, there is no better alternative to an essentially sequential selection process for the KPK leadership.

### MAIN FORMS OF APPOINTMENT PROCESS

More than a decade after the demise of the New Order regime and the end of the executive's dominance over the legislature and the judiciary, Indonesia's appointment procedures for senior public office in state auxiliary bodies suggest an appreciation of the importance of checks and balances. Institutions established before 1998 still have rather simple appointment processes conducted by a single branch of state. For example, the president appoints the chair of the Finance and Development Supervisory Board (Badan Pengawasan Keuangan dan Perkembangan, BPKP), whereas the House of Representatives (Dewan Perwakilan Rakyat, DPR) chooses the members of the Audit Board (Badan Pemeriksa Keuangan, BPK).

By contrast, selection procedures for senior appointments to most new bodies emphasise checks and balances. Former Supreme Court Justice Jimly Asshiddiqie (2006: vii) considers the creation of these bodies to be a reaction to the demand for better public services and greater government responsiveness to the public. Further arguments for their establishment have been the increasing complexity of certain government tasks overwhelming existing organisations, the need for more coordination, and the desire for more public participation in government (Deputi Bidang Kelembagaan 2008: 2). Greater responsiveness and public participation have also been attempted in the processes for appointing the senior management of these new bodies.

Three broad approaches to the quest for appropriate checks and balances can be distinguished. The first is the simultaneous appointment of officials by multiple branches of the state (figure 1a). This applies in the case of the Constitutional Court, to which the judiciary (the Supreme Court), the executive (the president) and the legislature (the DPR) nominate three justices each (Constitution, art. 24C (3)). The second approach is evident in the appointment of the governor and senior deputy governor of the central bank (Bank Indonesia), where the DPR has veto power over candidates suggested by the president, but no power to choose.<sup>3</sup>

A third approach has now become more common: sequential selection, which may involve either two or three phases (figure 1b). In the first phase, a selection committee, appointed by the president and including representatives of both the government and the community, screens applicants against specified eligibility criteria, and then selects a number of eligible applicants for nomination to the president. The committee's list of nominees – typically containing two or three times as many names as the number of positions to be filled – is forwarded by the president to the DPR for the final phase, in which the DPR chooses its preferred candidates for appointment. This process is used for appointments to the Judicial

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3 Law 3/2004 on the Amendment of Law 23/1999 on Bank Indonesia, art. 41 (3, 4).

FIGURE 1 *Checks and Balances in Indonesia's Appointment Processes*

Figure 1a *Simultaneous Selection*  
(Constitutional Court)

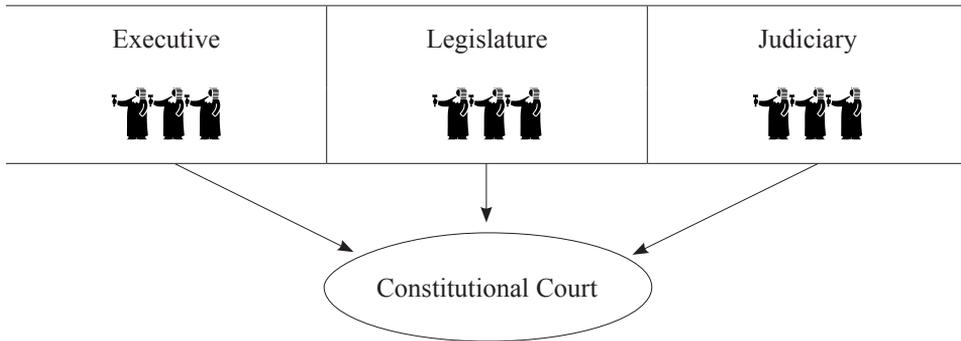
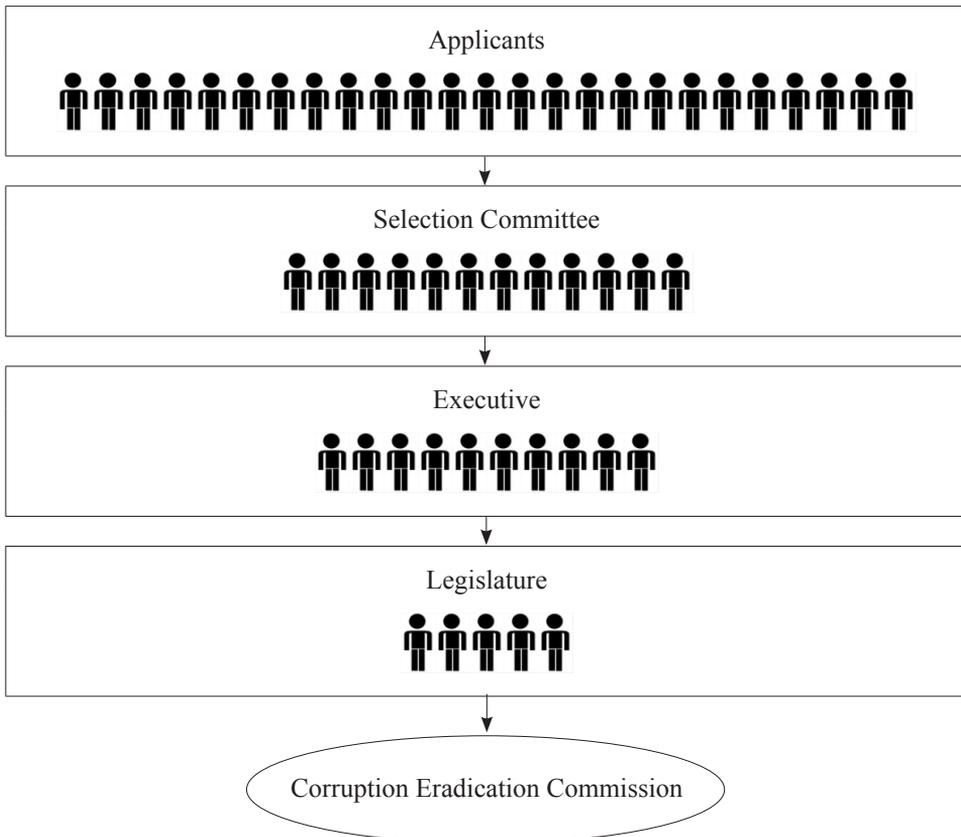


Figure 1b *Sequential Selection*  
(e.g. Corruption Eradication Commission)



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TABLE 1 *Selection Phases for Appointments to Various Agencies*

	Number of Nominees from		
	Selection Committee to President	President to DPR	Final Selection by DPR
Corruption Eradication Commission	Unspecified <sup>a</sup>	10	5
Elections Commission	21	21	7
Judicial Commission	14	14	7
Ombudsman	18	18	9
Victim and Witness Protection Agency	21	14	7

a The KPK Law does not specify the number of nominees the selection committee has to submit to the president. In practice, in 2003, 2007 and 2010 the committee's list included the exact number of nominees required for submission to the DPR, thereby leaving the president with no choice.

Source: Law 30/2002, art. 30, and legislation cited in footnotes 4–7.

Commission,<sup>4</sup> the Elections Commission<sup>5</sup> and the Ombudsman.<sup>6</sup> In at least two cases, however, the KPK and the Victim and Witness Protection Agency,<sup>7</sup> there is an intermediate phase in which the president chooses candidates from the list submitted by the committee, then forwards this shorter list to the DPR (table 1). In practice, the selection committee for the KPK commissioners has always presented the president with the exact number of applicants to be submitted to the DPR, leaving the president with no choice.<sup>8</sup>

At the time of writing, the delay of a government bill on the planned Financial Services Authority (McLeod 2011: 27) has been attributed to politicking over the details of the appointment process, with the government pushing for the majority of commissioners to the new body to be appointed by the president, and the DPR insisting on a process similar to that just described, with the president nominating 10 candidates to the DPR, of whom five would then be chosen for appointment (*Jakarta Globe*, 26/5/2011).

4 Law 22/2004 on the Judicial Commission, art. 28.

5 Law 22/2007 on Elections, arts 12–15. This was the process used for appointments to the Elections Commission for the 2004 and 2009 elections (Law 12/2003 and Law 22/2007 on Elections, respectively). In 1999, appointments followed the simultaneous process: each of the 48 political parties that had registered for the elections appointed one representative, and the president appointed five government representatives; the two groups (the 48 party representatives and the five presidential appointees) had an equal number of votes (Law 3/1999).

6 Law 37/2008 on the National Ombudsman, arts 15–16.

7 Law 13/2006 on the Protection of Victims and Witnesses, art. 20.

8 Legal scholar Romli Atmasasmita maintains that the president has the right to make changes to the short-list (Hanni 2007d). This, to the author's knowledge, has not yet happened. Given the public attention that the short-listing processes receive, the president would need very convincing reasons to reject a candidate.

In short, post-Soeharto selection processes in most cases feature two novelties: checks and balances between the branches of the state – at least the legislature and the executive – and enhanced public participation through mixed selection committees. The inclusion of ‘elements of the government and the public’ in selection committees is intended to lend the process credibility and ensure public participation.<sup>9</sup> The short-listing phase of the selection process can be quite comprehensive, especially when positions are publicly advertised and applications are open to anyone, as is the case with the KPK. Ideally, anyone qualified for the advertised position should have a chance of being short-listed. This presupposes, however, that potential applicants able to fulfil the eligibility requirements actually apply, which – as the KPK case study below demonstrates – is not necessarily the case.

The sequential selection process has the advantage of encouraging greater diversity of political support and being more consensus-oriented: the successful candidates usually have the support of both the executive and the majority in the legislature. In a presidential system like Indonesia’s, this may be important when cabinet composition differs from party representation in the DPR. The sequentially achieved consensus also diffuses the loyalties successful candidates may owe to either branch of the state or to political parties. Mietzner (2010: 415) explains a similar effect of the simultaneous, or ‘multi-track’, system for appointing Constitutional Court judges: ‘This mechanism ... has not only produced a very diverse bench but also loosened the ties between justices and their nominating institutions. With judges able to explore several opportunities to seek re-appointment, they are not bound to a single political actor.’ Mietzner provides the example of Justice Harjono, who was appointed by President Megawati in 2003; he was not considered for re-appointment by the Yudhoyono government in 2008, but returned to the bench by appointment from the DPR (Mietzner 2010: 415). While this case highlights the independence of the choices made by the branches of state in the simultaneous appointment system, it does not imply the absence of ties between judges and particular groups. In this case, a judge with previous support from Megawati’s party (the Indonesian Democratic Party of Struggle, PDI-P) stood a good chance of being re-appointed by the DPR when the PDI-P was no longer in government but constituted a strong opposition force in the DPR.

Court judgments reflect the decision of the majority on the panel of judges, but dissenting judges have the opportunity to make their opinions public. Opinions within the KPK leadership may diverge and decisions may have to be made by majority vote (discussed in more detail later). However, in the KPK there is no formal acknowledgment of dissenting opinions. Given that the KPK commissioners are not intended to represent any particular group, and that they are supposed to manage and represent the commission collectively, a simultaneous selection (or multi-track) appointment process would be counter-productive, and would

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9 Although not mandatory, ad hoc selection committees with the task of screening candidates have become common. This was the case, for example, with the appointment of Constitutional Court judges by the government in 2008 (‘Pemerintahumumkan 15 calon hakim konstitusi yang terseleksi [Government announces 15 chosen candidates for appointment as Constitutional Court judges]’, *Kompas*, 2/8/2008, <<http://nasional.kompas.com/read/2008/08/02/00272545/pemerintah.umumkan.15.calon.hakim.konstitusi.yang.terseleksi>>; interview with senior government official, 10/12/2009).

probably create more dissent in the commission than a sequential selection process. This is because in a simultaneous selection process an applicant is selected by a particular branch of state, and is likely to feel loyalty to the interests of the nominating group. In a sequential selection process these loyalties are diluted.

The following sections examine the sequential nature of the KPK selection process in law and practice, and consider which parts of the process have tended to support or inhibit the selection of candidates with competence and integrity.

## THE KPK LEADERSHIP SELECTION PROCESS

The KPK Law requires the government to set up a selection committee consisting of an unspecified number of government and community representatives to conduct the short-listing process. This process, specified in article 30 of the KPK Law, is remarkable in two respects. First, anyone can apply, although only those meeting the general criteria discussed below will have their applications accepted. Second, public scrutiny and feedback must be sought on the candidates. There is a timeline for these steps, broken by an undefined period during which the selection committee must submit a short-list to the president, who has only two weeks to forward this list to the DPR. The parliamentary commission in charge of law enforcement affairs then has three months to conduct final 'fit and proper' tests and to select five commissioners from among the 10 short-listed candidates. The commissioners must be sworn in by the president within a month. This process took between four and six months in the 2003 and 2007 selection rounds for commissioners, and in the selection of a chair in 2010 (see below).

### Candidate requirements

The KPK Law sets out 11 essential criteria for appointment to the KPK leadership (art. 29). Although these requirements are presented in the Law as an undifferentiated list, it is helpful to re-order and group them while retaining the original numbering.

Eligibility is restricted to those who:<sup>10</sup>

- (a) are of Indonesian citizenship;
- (b) believe in an almighty god;
- (c) are physically and mentally fit;
- (d) hold an undergraduate degree and have at least 15 years experience in the field of law, economics, finance or banking;
- (e) are at least 40 and at most 65 years of age in the year of selection; and
- (h) do not hold office in a political party.

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10 In 2007, the required supporting documents included an application letter; a curriculum vitae; a photocopy of the applicant's identity card; three passport photos; legalised photocopies of a mental health certificate from a government psychiatrist, a physical health certificate from a government general practitioner, and a police clearance certificate; evidence of a recent 'clean' drug test; a signed declaration of experience in the area of law, economy, finance or banking for at least 15 years; and signed declarations that the applicant does not hold a position in a political party, is willing to leave all other offices and not to undertake his or her profession if selected as a KPK commissioner, and is prepared to declare his or her assets if selected as a KPK commissioner (PGRI 2007: 12-13).

Among those who meet these criteria, successful applicants for appointment must also be able to demonstrate that they:

- (f) have never acted improperly; and
- (g) are competent and honest, have high moral integrity and enjoy a good reputation.

In order to be appointed as a commissioner,<sup>11</sup> applicants must:

- (k) declare their wealth in accordance with prevailing legislation.

Finally, during their term of appointment to the KPK, commissioners must:

- (i) give up all other offices; and
- (j) not pursue their profession.

While requirements (a), (b) and (c) are general and apply to other public offices in Indonesia, the next three are more specific to the tasks of the KPK. Of some concern, however, is that requirements (d) and (e) have prevented application by persons who were considered otherwise qualified for the office. Both criteria have been challenged in the Constitutional Court by failed applicants, but these challenges have been rejected by the Court on the basis that education and age requirements are accepted objective measures of skills and capacities that are needed to fulfil duties in public office (Decisions 19/PUU-V/2007 and 37-39/PUU-VII/2010). Requirements (h), (i) and (j) are clearly designed to avoid partisanship and conflicts of interest.

It is in relation to requirements (f) and (g) that the selection committee has the opportunity to make a valuable contribution. Unlike age and educational qualifications, neither 'good reputation' nor character can be unambiguously measured, so a good deal of effort will be needed to obtain and evaluate relevant information on each eligible applicant. As will be seen below, although these criteria are crucial to selecting suitable candidates, they were also the ones most obviously ignored in the actual selection process, particularly in 2007.

The reference to 'prevailing legislation' in requirement (k) was initially interpreted as relating to applicants from the civil service, who were subject to Law 28/1999 on a Corruption-free State Administration. This Law requires public officials and representatives to file asset declarations (wealth reports) when entering service or changing position. Evidence of wealth out of proportion with licit income would call into question the integrity of applicants. The KPK Law appears not to require asset declarations to be filed at the application stage, but rather on appointment. This means that they cannot serve as inputs to the selection process, but can only provide a baseline for monitoring changes in the wealth of KPK commissioners over time, which, if excessive, may indicate illicit enrichment. To overcome this problem, a group of non-governmental organisations (NGOs) successfully insisted in 2007 that all applicants must submit an asset declaration before the final interview with the selection committee (see below).

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<sup>11</sup> In practice, the selection committee has requested the asset declarations in the final stages of the short-listing process, allowing the financial situation of the candidates to be known before the interviews take place.

### **The 2003 selection committee**

After the KPK Law was enacted, the Megawati government took more than nine months to set up the first selection committee by presidential decree in September 2003. Indeed, the appointment of committee members took longer than the selection process itself. The justice ministry's secretary general, Romli Atmasesmita, was appointed chair, and the committee consisted of high-ranking officials from the Attorney General's Office and the Police, along with academics and NGO representatives. The Partnership for Governance Reform (PGRI) supported the short-listing process and facilitated the participation of NGOs.<sup>12</sup>

### **The 2007 selection committee**

In 2007 President Yudhoyono appointed Taufik Effendi, State Minister for Administrative Reform, as chair of the selection committee, after the suitability of the Minister of Justice and Human Rights for this position had been widely questioned.<sup>13</sup> Now chaired by a minister rather than a secretary general, the 2007 selection committee found itself at a higher hierarchical level. It was also more diverse in its representation, and included only one retired police officer. Once again the PGRI supported the selection process.<sup>14</sup>

### **The short-listing processes in 2003 and 2007**

In both 2003 and 2007 the details of the short-listing process were largely at the discretion of the selection committees. Following a call for applications in various media all over Indonesia, the process consisted of administrative screening to check the completeness of documents and the eligibility of the applicant; the submission of a paper on the applicant's anti-corruption strategy; a psychological profile assessment; background checks on the applicant's track record; a reflective essay; and an interview with the committee. The evaluation of all material was undertaken in accordance with previously agreed criteria, and noted in evaluation matrices (PGRI 2007: 20, 24, 54).

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12 The Partnership for Governance Reform in Indonesia (PGRI, known as 'Partnership' or 'Kemitraan') was founded in 2000 as a multi-donor initiative, under Indonesian management (see <<http://www.kemitraan.or.id/>>). Formally a UNDP project at first, it has since become an independent organisation. The Partnership supported two NGOs involved in the 2003 KPK leadership selection process: the Indonesian Society for Transparency (MTI), with a grant of \$184,000 (Rp 1.563 million), and Demos, with a grant of \$92,000 (Rp 782 million) (PGRI 2004: 73).

13 Justice Minister Hamid Awaluddin had only narrowly escaped being designated a suspect in an Election Commission corruption scandal; his predecessor and later Minister of State, Yusril Izha Mahendra, had become involved in a public row with KPK chair Taufiqurrahman Ruki. Further, when Yusril and Hamid were in office the Ministry of Justice and Human Rights had assisted the repatriation of assets to Tommy Soeharto (the son of former President Soeharto, who was in prison at the time for ordering the murder of a judge who had convicted him of corruption in 2000; see footnote 16) from Bank Paribas in London. Both ministers would be dismissed during a cabinet reshuffle in May 2007 (Mangut, Suditomo and Wijaya 2007).

14 In 2007 the PGRI provided Rp 3 billion in support of the selection process (correspondence with PGRI staff, 5/7/2010).

The formal requirements of the selection process constitute a threshold that not everyone interested in the job is able, or willing, to pass. NGO activists often lack the required formal educational qualifications and continuous work experience in the relevant fields of expertise (law, economics, finance or banking). Anti-corruption NGOs had mushroomed only after the collapse of the New Order regime (Lindsey 2002), and most activists did not yet meet the professional experience or minimum age requirements (Hanni 2007a). More candidates from NGOs can be expected in the future.

Some potentially suitable individuals were unwilling to undergo the administrative and other tests that followed. Particularly after the first selection round in 2003, the 'fit and proper' test in the DPR was named by highly qualified officials as a reason not to apply. In 2003 Marsilam Simanjuntak, a highly qualified, well-respected former state secretary and justice minister and an obvious choice for the job, had been short-listed, but not selected as commissioner by Commission II of the DPR (PGRI 2007: 16–17; Hanni 2007a). After this episode, some highly qualified senior government officials became unwilling to apply for office and submit themselves to the gruelling assessment procedures. At the summit of their careers, they expected their past performance to be acknowledged, and believed they should be appointed to an office without having to apply for it in competition with 'job-seekers' (interview with former selection committee member, 12/8/2009; PGRI 2007: 28).

There were indeed many 'job-seekers'. In 2003 the selection committee received 523 applications, but fewer than half passed the administrative screening process (*Jakarta Post*, 19/11/2003). In 2007 there were 661 applications; 546 passed the screening, suggesting an increased awareness of the eligibility requirements. During both selection rounds, doubt was expressed about the quality of the applicants and the likelihood of finding 10 suitable candidates for the short-list (*Jakarta Post*, 19/11/2003; *Kompas*, 21/6/2007). The selection committees encouraged NGOs to submit applications on behalf of particular individuals, allowing eminent persons the pretence of having been nominated by these NGOs rather than overtly seeking office themselves, although they would still have to undergo the tests in person.

After each step the list of applicants who had passed was published in national newspapers (e.g. *Republika*, 28/10/2003). In 2007, applicants' names and resumés were also published on the website of the State Ministry for Administrative Reform. In both 2003 and 2007 the candidates were asked to submit an essay of 8–10 pages on corruption. The selection committee received 218 papers in 2003 and 466 in 2007. It was not feasible for the committee members alone to assess the papers, so a support team of reviewers was used (PGRI 2007: 20). The papers were written without supervision, so authorship could not be verified – they may have indicated no more than the ability to muster a good ghost-writing team. This test thus achieved little but to consume vast resources of time for both candidates and reviewers.

In both 2003 and 2007, the selection committee and the Partnership agreed to employ a human resources consultancy to conduct psychological assessments of candidates.<sup>15</sup> All had to undergo a written psychological test and answer questions

15 In both years the consultancy firm Dunamis (<<http://www.dunamis.co.id/home>>) won the bidding. In 2003 it was supported by Daya Dimensi Indonesia (<<http://www.dayadimensi.co.id/>>).

designed to evaluate professional competence. In 2007 this process reduced the number of candidates from 236 to 26. The 26 then underwent written tests on their integrity, courage and vision, described as a 'multi-dimensional attitude battery' (PGRI 2007: 33). The next day, they had two hours to write a reflective essay entitled 'Who am I?'

While these 2007 assessments were under way, the NGO Coalition on Court Monitoring (Koalisi Pemantau Peradilan, KPP)<sup>16</sup> was given the task of collecting and analysing information on the candidates' integrity and performance (PGRI 2007: 39; interview with former selection committee member, 25/11/09). It produced briefs on each of the 26 remaining candidates. The committee itself and its official support staff played only a marginal role in these background checks, a matter of regret to both the NGOs and the committee (PGRI 2007: 48). The NGOs regretted that the committee had not been more active and persistent in seeking the official records of the candidates, a complaint also made in 2003 (*Kompas*, 29/11/2003). On the other hand, committee members criticised the reliability of some information provided by the NGOs, such as allegations that the acquisition by candidate Antasari Azhar of a house in the wealthy Jakarta suburb of Pondok Indah was related to his handling of Tommy Soeharto's case at the South Jakarta prosecutor's office.<sup>17</sup> Antasari denied the accusation, and no contrary evidence could be produced ('Falling by the wayside', *Tempo*, 11–17 September 2007: 33; interview with former selection committee member, 25/11/2009).

Nevertheless, the NGO coalition exercised some leverage, particularly on the exclusion of candidates with political affiliations and the requirement that every candidate (not just civil servants) must submit an asset declaration before being interviewed (PGRI 2007: 49). The coalition also pushed for the exclusion of candidates from 'agencies that have never been touched by the reform stream and may later affect the KPK adversely' (PGRI 2007: 50). The implicit target here was the State Intelligence Service (Badan Intelijen Negara, BIN). Reportedly, candidate Saut Situmorang, who worked at BIN, was considered for the short-list after the final interviews, but when NGOs lobbied against short-listing a candidate with an intelligence background he was replaced by public prosecutor Antasari Azhar

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16 The coalition (<<http://koalispemantauperadilan.blogspot.com/>>) consisted of several reputable NGOs: Masyarakat Pemantau Peradilan Indonesia – Fakultas Hukum, Universitas Indonesia (the Society for Indonesian Court Monitoring – Law Faculty of the University of Indonesia, Mappi FHUI); Indonesia Corruption Watch (ICW); Konsorsium Reformasi Hukum Nasional (the National Law Reform Consortium, KRHN); Lembaga Kajian dan Advokasi untuk Independensi Peradilan (the Institute for Research and Advocacy for Judicial Independence, LeIP); Pusat Studi Hukum dan Kebijakan Indonesia (the Indonesian Centre for the Study of Law and Policy, PSHK); and Yayasan Lembaga Bantuan Hukum Indonesia (the Indonesian Legal Aid Foundation, YLBHI).

17 Antasari Azhar was in charge of effecting Tommy Soeharto's detention in 2000, after the latter had been found guilty of an \$11 million land scam. Tommy escaped and evaded capture for over a year (<<http://www.tempo.co.id/harian/profil/prof-antasari.html>>; BBC, 30/7/2002, <<http://news.bbc.co.uk/2/hi/asia-pacific/1881066.stm>>).

(PGRI 2007: 63–4; *Kompas*, 11/9/2007). Notably, the NGOs also strongly rejected Antasari.<sup>18</sup>

The test results and the information on candidates' track records were not made public, but served as background information for the final one-hour interviews. Though not admitted to the interview room, the public could watch the proceedings on closed-circuit television. Part of the audience was an 'independent evaluation team', consisting of well-known scholars from the University of Indonesia, the director of a think-tank, a former judge and a senior journalist. Some questions to the candidates were very personal, covering matters such as their relationships with, and the influence of, deceased parents (PGRI 2007: 57–8). In contrast, an academic observer, Meutia Ghani Rachman of the University of Indonesia, considered the questions on the candidates' track records 'very polite' and 'not interrogative enough' (Hanni 2007c).

Following the interviews, the 'independent team' released its own short-list of 10 candidates, compiled on the basis of the interviews, the candidates' resumés, and 'credible information from the public' (PGRI 2007: 59). Its recommendation differed from the decision of the selection committee in respect of only two of the 10 spots on the short-list. The independent team selected Saut Situmorang and Saleh Khalid (a former member of the Public Officials' Wealth Audit Commission), whereas the committee selected two public prosecutors, Antasari Azhar and Marwan Effendi. Although the committee had selected Antasari Azhar at the last minute to replace Saut Situmorang following NGO objections to his intelligence background, the NGOs also criticised the inclusion of three candidates from law enforcement agencies. They argued that the KPK would be in a better position to exercise a supervisory function over other law enforcement agencies if its leadership did not include people affiliated with them; the same argument had been made in 2003 (Taufik, Multazam and Mawardi 2003). This is one side of a continuing debate about whether the KPK should employ any staff from those agencies whose inability or unwillingness to address corruption had been the main reason for the KPK's establishment by law in 2002.

The KPK Law does not require the leadership to include persons with a specific organisational background, and neither does it exclude persons on the basis of their organisational background (except for political party affiliation). The NGO coalition maintained that the KPK Law referred only to 'elements of the government and the community' (article 21 (4)) and that the investigative and prosecutorial powers were an attribute that came with KPK leadership independently of the commissioners' professional background (PGRI 2007: 62–3).

More conservative voices from the government contended that the competencies of public prosecutors and investigators were needed within the KPK leadership (PGRI 2007: 63). At the time, Goenawan Hadisusilo, the secretary

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18 Besides Antasari's affiliation with the public prosecutor's office, the NGO coalition objected to his track record. He was the candidate about whom it had received the largest body of controversial information from the public. He was suspected of involvement in the escape of Tommy Soeharto (footnote 17) and in the cover-up of a 1999 scandal involving Bank Bali, of having received bribes in relation to corruption cases in Central Sulawesi, and of having offered money to a journalist in relation to reporting on KPK leadership candidates (*Kompas*, 4/12/2007).

of the selection committee, who was a deputy minister at the State Ministry of Administrative Reform, denied that selection was based on organisational affiliation, but admitted that a ratio was sought between candidates working for the government and those having previously worked outside it. He compared the KPK to a house that needed a mason, a painter and a welder. 'The composition has to be balanced so that [the members] complement each other', he explained to the Indonesian daily *Kompas* (Hanni 2007b).

### Evaluation of the short-listing process

... [P]ublic participation in the selection of candidates for the KPK has this time been given serious space and response from the state .... The implication in the long run is that anyone who conducts a recruitment process and selection of public officials has to be careful, transparent, participatory and accountable (PGRI 2007: 50).

The KPK short-listing process became a role model for the selection processes of other state auxiliary bodies such as the Judicial Commission and the Victim and Witness Protection Commission (interviews with former selection committee members, 12/8/2009; 25/12/2009). Open recruitment and psychological assessments have become the rule for these processes. The open recruitment process and its inherent attempt at meritocracy unquestionably constitute a new paradigm for a society in which appointments were previously largely a matter of patronage.

The question is whether such resource-intensive screening is really necessary to identify competent candidates. In 2010, political scientist J. Kristiadi suggested replacing open recruitment for the Elections Commission with 'talent scouting', that is, by approaching qualified individuals directly (Dewabrata 2010); this might well make psychological tests and essay writing redundant. Neither psychological profiling nor the writing of essays is required by the KPK Law, although both have been used to lend the selection process an aura of objectivity. Does all the effort put into this 'multi-dimensional attitude battery' actually deliver better results than might a simpler process?

For senior positions that by law require integrity and professional experience of 15 years, candidates' resumés, referee reports and track records appear to be a more directly relevant measure than essays and psychological testing. The next section will show that track records carried little weight in the DPR's 'fit and proper' test – at least not in the way one would expect. NGO critics argue that public reports about applicants' integrity need to be investigated more thoroughly. It is crucial that only applicants with impeccable track records be included in the short-list. In the future, the selection committee should therefore afford track records a more substantial role. There are, however, limits to the mandate and authority of the selection committee: it cannot be expected to hold 'trials' based on allegations of criminal conduct against applicants. Fundamental debate on the assessment of track records is still needed.

### The 'fit and proper' test at the DPR

The final selection of the KPK candidates is conducted by the DPR Commission in charge of law enforcement and legal affairs: in 2003 this was Commission II (Komisi II), but from 2004 onwards it was Commission III (Komisi III). The 'fit and proper' test consists of public interviews of each of the 10 short-listed

TABLE 2a *Outcomes of the 'Fit and Proper' Test at the DPR in 2003*

Finalists	Professional Background	Main Ballot <sup>a</sup>	Ballot for Chair <sup>a</sup>
<b>Successful</b>			
Taufiqurrahman Ruki	Deputy at the Coordinating Ministry for Political and Security Affairs (under Susilo Bambang Yudhoyono)	43	37
Amien Sunaryadi	Senior analyst with PricewaterhouseCoopers, formerly at BPKP <sup>b</sup>	42	6
Sjahrudin Rasul	Deputy at BPKP <sup>b</sup>	39	1
Tumpak H. Panggabean	Secretary for Special Crimes, AGO <sup>b</sup>	26	0
Erry Riyana Hardjapamekas	CEO of PT Tambang Timah (mining company)	24	0
<b>Unsuccessful</b>			
Mohammad Yamin	Head of the AGO's training centre <sup>b</sup>	22	
Iskandar Sonhadji	Lawyer, ICW legal affairs coordinator <sup>b</sup>	7	
Marsilam Simandjuntak	Former attorney general and state secretary	6	
Chairul Imam	Public prosecutor and member of the Public Officials' Wealth Audit Commission	4	
Momo Kelana	Former head of the police academy and member of the Public Officials' Wealth Audit Commission	1	

<sup>a</sup> There were 44 members in Commission II in 2003, so each candidate could get a maximum of 44 votes.

<sup>b</sup> BPKP: Badan Pemeriksa Keuangan dan Pembangunan, Financial and Development Supervisory Board; AGO: Attorney General's Office; ICW: Indonesia Corruption Watch.

Source: Ballot data: *Kompas*, 17/12/2003: 1 (see footnote 21).

candidates, followed by anonymous voting. In the main ballot, each of the DPR Commission members must select five names. The chair is then selected from among the commissioners in a second ballot. The 10 short-listed candidates in 2003 and 2007, and the votes they obtained in the DPR, are presented in tables 2a and 2b.

In 2003 Amien Sunaryadi, a senior risk analyst with PricewaterhouseCoopers and former auditor with BPKP, gained 42 of a possible 44 votes, the second largest number of votes in Commission II. He was the only KPK commissioner to re-apply for the job in 2007. Within the anti-corruption community and among reformers he was widely considered one of the most suitable candidates of the 2007 selection round in terms of integrity, commitment and competence. However, he came only seventh, with 16 of the possible 49 votes of Commission III members in 2007 (table 2b). What had happened?

Amien Sunaryadi faced the discontent of Commission III members not only with the KPK in general but, as quickly became evident, also with himself as an individual. This discontent must be seen in the context of KPK arrests of politicians affiliated with Golkar (the state political party under the New Order, and one of the major post-New Order parties) and PDI-P – among others, the governors

TABLE 2b *Outcomes of the 'Fit and Proper' Test at the DPR in 2007*

Finalists	Professional Background	Main Ballot <sup>a</sup>	Ballot for Chair <sup>a</sup>
<b>Successful</b>			
Chandra M. Hamzah	Lawyer	44	8
Antasari Azhar	Deputy Attorney General for General Crimes	37	41
Bibit Samad Rianto	Dean of Bhayangkara Jaya University (police academy)	30	
Haryono Umar	Head of Planning and Supervision Office, BPKP <sup>b</sup>	30	
Mochammad Jasin	Director of Research and Development, KPK	28	
<b>Unsuccessful</b>			
Marwan Effendi	Head of the AGO's training centre <sup>b</sup>	27	
Waluyo	Prevention deputy, KPK	19	
Amien Sunaryadi	KPK commissioner (2003-07)	16	
Surachmin	Inspector for Monitoring and Losses to the State, Audit Board	8	
Iskandar Sonhadji	Lawyer; ICW legal affairs coordinator <sup>b</sup>	6	

<sup>a</sup> There were 49 members in Commission III in 2007, so each candidate could get a maximum of 49 votes.

<sup>b</sup> See table 2a, note b.

Source: 'Profil dan rekam jejak calon pimpinan KPK [Profiles and track records of KPK leadership candidates]', *Kompas*, 3/12/2007: 3.

of Aceh, Riau and South Kalimantan, the mayor of Medan and his deputy (all members of Golkar) and the governor of East Kalimantan (PDI-P).<sup>19</sup> Furthermore, members of the DPR felt threatened by the KPK's investigations into the flow of funds from Bank Indonesia to a number of legislators (Susanto, Sutarto and Wibowo 2007). As the strategic mind behind the KPK's introduction of search and seizure, computer forensics and wire-tapping in corruption case investigations, and having no track record of taking bribes or trading influence, Amien Sunaryadi was a threat to anyone in conflict with the anti-corruption laws. He was supported only by representatives of Islamic parties – the Prosperous Justice Party (Partai Keadilan Sejahtera, PKS) and the United Development Party (Partai

19 On PDI-P discontent, see, for example, *Kompas*, 6/12/2007, where the Secretary General of the PDI-P, Pramono Anung, is quoted as saying that he 'hoped the new KPK leadership would be more professional and not conduct character assassination'. 'The old KPK was more political', he continued, 'and its impact was felt by the PDI-P. Suwarna (PDI-P cadre and non-active governor of East Kalimantan) was investigated as a witness in the morning, at noon he was a suspect and in the evening he was arrested. Why is such a thing not done to other people?' ('KPK bukan badan super; wakil presiden akui koruptor di Indonesia bernyalai besar [The KPK is not a super-body: vice president highlights the audacity of Indonesia's corruptors]', <<http://m.antikorupsi.org/?q=node/11819>>).

Persatuan Pembangunan, PPP) – along with seven other members of Commission III. Amien Sunaryadi himself concluded: ‘What I felt was that I did not match ... what Commission III was looking for’ (Baskoro 2007).

In fact, what the majority of Commission III members were looking for seems to have been decided before the ‘fit and proper’ test was conducted. The heads of the factions reportedly met before the test, and those of PDI-P and Golkar, at least, reached an informal agreement to vote for Antasari and Bibit and to sideline Amien (Baskoro 2007: 28). Indeed, the names of the five finalists as determined on 5 December 2007 in the DPR were already circulating in the press after a November meeting of several parties.<sup>20</sup> Legislators were reluctant to admit this at the time, but one of them confirmed later that party headquarters had instructed its representatives in Commission III to vote for Bibit and Antasari, and not for Amien, and that the rest of the vote was up to them. Instructions of this kind from party headquarters are apparently not uncommon, although in some less politicised ‘fit and proper’ tests for appointments to other commissions the choice has been left entirely to individual legislators (interview with parliamentarian, 5/10/2009).

The first ballot in 2003 also suggests a preference for two packages of candidates, with the same combinations of candidates recurring in the voting. The winning leadership ‘package’ of candidates was voted for 17 times, and a second package was voted for seven times (*Kompas*, 17/12/2003).<sup>21</sup> The 2003 vote for the chair included all five successful finalists from the main ballot, and was won by the candidate with the most votes in that ballot, Taufiqurrahman Ruki. By contrast, in 2007 the second ballot included only the top two vote winners from the main ballot. Although Chandra Hamzah received more votes in the first ballot, he lost the second ballot to Antasari by 41 votes to only eight.

### Opposing views on DPR decisions

‘It was a political decision, not a decision about morality and integrity. That was the business of the selection committee’, a member of Commission III told the author about the ‘fit and proper’ test of 2007 (interview with parliamentarian, 17/9/2009). The same member stated:

There were instructions<sup>22</sup> at government level, even more so in the legislature. [...] Many people have interests in who is on the KPK leadership: black business people, corrupt bureaucrats, judges, prosecutors, police officers have interests. The legislature also has interests (interview with parliamentarian, 17/9/2009).

20 Hanni (2007e) reports on a meeting of Golkar, PKS, the Crescent Star Party, the National Awakening Party, the National Mandate Party and the Democratic Party in a hotel opposite the KPK office on 27 November 2007, but there were also reports of meetings in other hotels (Susanto, Sutarto and Wibowo 2007).

21 ‘DPR pilih 5 pimpinan KPK – Taufiequrachman Ruki menjadi ketua [Parliament chooses five Corruption Eradication Commission leaders – Taufiequrrahman becomes chair]’, *Kompas*, 17/12/2003: 1. The names in the second package were Mohammad Yamin; Taufiqurrahman Ruki; Tumpak Panggabean; Sjahrudin Rasul; and Amien Sunaryadi.

22 The Indonesian word is *titipan-titipan*, which in this context refers to messages of support for candidates from people interested in their nomination. This can go beyond mere lobbying and may include political or personal pressure.

Another member indicated that in order to be selected, lobbying with party headquarters was necessary: 'Those who did not lobby did not get selected' (interview with parliamentarian, 5/10/2009). While inter- and intra-party consultation is a legitimate part of any political process, back-room deals affecting criminal investigations clearly are not. It is beyond the knowledge of this author where along this spectrum of legitimate-illegitimate agreements the consultations that took place belong.

In any case, these statements by members of Commission III stand in sharp contrast to public expectations of an entirely merit-based selection. Premeditation rendered the interviews with the candidates over three days a 'political ceremony' or 'empty talk [*basa basi*]' in the eyes of many observers (Hanni 2007e; Adnan Buyung Nasution in an interview<sup>23</sup> with *Kompas*). The same gap between public expectations and practice had occurred in 2003, when Commission II selected the 'bottom five' of the 10 candidates submitted by the government (*Kompas*, 30/12/2003). Teten Masduki, then coordinator of the NGO Indonesia Corruption Watch (ICW), concisely expressed the public's disappointment in an opinion article:

The disappointment is understandable for two reasons. First, there are strong figures with high integrity and a long resumé of commitment in the fight against corruption who do not get selected, and get only very few votes. Second, of those who do get selected the majority are retirees of advanced age from institutions that, in the eyes of the public, have become symbols of failure, or even obstacles, in the fight against corruption, namely the police, the public prosecutor's office and the BPKP (Masduki 2003).

This scrutiny and criticism by NGO representatives is an important part of the selection process, and has steered public attention and pressure towards the performance of the newly elected commissioners. With the luxury of hindsight, it can be observed that public scepticism turned into general support for both generations of commissioners. Ever since it commenced operations in 2004, the KPK has had much better ratings in opinion polls than the Attorney General's Office and other law enforcement agencies have had (see for example, Litbang *Kompas* 2005, 2007,<sup>24</sup> 2009).

Further, if illegitimate agreements had been made with candidates about the handling of the Bank Indonesia case in 2007,<sup>25</sup> they did not have the desired effect. The rigour of the KPK's investigation was not relaxed after the second leadership group took office, and a number of politicians from almost all parties represented in the DPR have been indicted since. In 2008, when Antasari Azhar was

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23 'Komisi Antikorupsi: keraguan publik jadi pemicu KPK lebih baik [Anti-corruption Commission: public doubt a trigger for KPK improvement]', *Kompas*, 7/12/2007, <<http://m.antikorupsi.org/?q=node/11821>>.

24 In the 2005 and 2007 polls, the police force scored well in regard to action taken against corruption, but at the same time was itself considered corrupt by respondents.

25 In this case, the Bank Indonesia (BI) governor and deputies embezzled Rp 100 billion from central bank funds. Rp 68.5 billion of this was used to support five former top BI officials who were involved in the Indonesian Banking Liquidity Assistance (BLBI) corruption case. The remaining Rp 31.5 billion was used to bribe members of DPR Commission IX on Finance and Banking to cover up the BLBI corruption and pass an amendment to the banking law (*Jakarta Post*, 27/11/2008).

chair, the governor of Bank Indonesia, Burhanuddin Abdullah, and four deputies were arrested, including the president's son-in-law, Aulia Pohan. Legislators Dudie Makmum Murod (PDI-P), Endin Soefihara (PPP), Udju Djuhaeri (BPK, a former member of the armed forces/police faction in the DPR) and Hamka Yamdhu (Golkar) were also indicted. By the end of 2010, 43 parliamentarians had been convicted of corruption (Butt 2011, this issue).

### DISMISSAL, LEADERSHIP COLLECTIVITY AND VACANCIES

Confronted by concerns about the suitability of chosen candidates, Aziz Syamsuddin, Golkar deputy chair of Commission III, misleadingly reassured the press in 2007: 'If it [Antasari's performance] is bad, we will dismiss him' (Baskoro 2007). In fact, commissioners cannot be dismissed for poor performance and not, in any case, by the legislature. The tenure of a commissioner is for four years and only a few specific circumstances stipulated explicitly in article 32 of the KPK Law can bring the term to a premature end. These can be divided into two broad categories: the commissioner may no longer be available owing to death, prolonged absence or resignation; or he or she may become a defendant in a criminal case or the object of other sanctions under the KPK Law. In either case the president would issue the dismissal and start a new selection process, as outlined above (articles 32 (3) and 33). These provisions were put in place to support the commissioners' autonomy once they were appointed.

When Antasari Azhar, chair of the KPK, was arrested in May 2009 for allegedly master-minding a murder (Butt 2011, in this issue), public debate erupted about whether the KPK, under the leadership of its four vice-chairs, was formally able to continue its operations. The four vice-chairs were at the forefront of reassurances that decision making was collective and not dependent on the chair. The KPK Law requires the leadership to make decisions as a collective, although there is some ambiguity about whether the decisions must be unanimous.<sup>26</sup> In practice this has meant that when no consensus could be found, each commissioner had one vote and a simple majority (three over two votes) was sufficient.<sup>27</sup>

When two more commissioners, Chandra Hamzah and Bibit Samad Rianto, were indicted in September 2009 on what later turned out to be fabricated charges (Butt 2011, in this issue), the president set up a committee to select a replacement chair and two vice-chairs.<sup>28</sup> He did this by emergency decree (*peraturan pemerintah pengganti undang-undang, perpu*), without following the selection process as stipulated in the KPK Law and described above. Citing the urgency of the situation,<sup>29</sup>

26 Article 21 (5) of the KPK Law states that: 'The leadership of the KPK as defined in paragraph (2) works collectively (*bekerja secara kolektif*)'. In the Elucidation 'works collectively' is defined as all decisions having to 'be made together (*disetujui dan diputuskan bersama-sama*)'.

27 It is not clear how the scenario of a tied vote in an even-numbered commission should be handled. At the time of Antasari's arrest, the focus was on whether the vice-chairs were allowed to make a decision at all.

28 On the struggle between the KPK and other law enforcement agencies and the president's reluctance to intervene, see Von Luebke (2010); Patunru and Von Luebke (2010).

29 The two commissioners remaining in office had so far been in charge of prevention, data and information processing and internal oversight. There was concern about their

the president selected five eminent persons to find three suitable interim candidates. The departing legislature<sup>30</sup> was quiet about the president's action, but it was sharply criticised by the public and by the KPK itself (Malau and Rini 2009; Noorastuti 2009; Noorastuti and Anggadha 2009). A take-over of the KPK by the executive was feared until the names of the three interim replacements were made public. Tumpak H. Panggabean, the KPK vice-chair (2003–07), was appointed interim chair. Waluyo, the KPK Deputy for Prevention (2005–08) and a finalist in the 2007 leadership selection, was appointed as an interim vice-chair, as was Mas Ahmad Santosa, a founder of NGOs in the legal field and a member of the KPK leadership selection committee in 2007. These were sensible choices, and public criticism and KPK discontent quickly died down. This episode gave a glimpse of the possible composition of a very competent KPK leadership if the appointments were to be made by the (current) president alone. Under less dramatic circumstances and less public scrutiny, however, the choice of the president might be different. There might be more political consultation and, probably, compromise. In any case, appointment by the president alone would jeopardise the KPK's independence.<sup>31</sup>

Legally, it was debatable whether there was indeed an emergency in September 2009, with two commissioners (Mochammad Jasin and Haryono Umar) still being in office. In November 2009 the investigations against Bibit and Chandra were halted and both were re-installed in their positions by presidential decree, after the Constitutional Court had ruled this permissible.<sup>32</sup> Of the three interim appointments, only Tumpak Panggabean remained, continuing as chair in place of Antasari.

An emergency decree becomes law if approved by the DPR during the subsequent session; otherwise it is revoked (Constitution, art. 22). In March 2010, seven factions in the newly elected DPR struck down the emergency decree (Anggadha and Kusumadewi 2010). Three different arguments were put by the parties: PDI-P and Golkar argued that the *perpu* breached the process stipulated in the KPK Law; Hanura (Partai Hati Nurani Rakyat, the People's Conscience Party), Gerindra (Gerakan Indonesia Raya, the Greater Indonesia Movement [Party])

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capacity to keep the KPK's enforcement operations running on their own (interview with senior government official, 10/12/2009).

30 The members of the DPR were about to be replaced by those elected in the 2009 parliamentary elections.

31 As a reviewer of this paper noted, the appointment of qualified replacement commissioners also set a precedent, and 'the more often elected officials act in this way, the more likely a convention will emerge around the appointment of qualified leaders to state institutions rather than the cronies that would have been selected under Soeharto.'

32 Bibit and Chandra had filed an application for constitutional review of the KPK Law's prescription of immediate and irreversible dismissal the moment a commissioner becomes a defendant in a criminal case. They argued that this discriminated against KPK commissioners, because state officials are normally suspended, but not permanently dismissed, on becoming defendants in a criminal case. The Constitutional Court ruled that the commissioners could not be dismissed permanently from office unless found guilty by a court (*Jakarta Post*, 25/11/2009; Constitutional Court Decision 133/PUU-VII/2009). Temporary commissioners Waluyo and Mas Ahmad Santosa returned to their former positions when Bibit and Chandra rejoined the KPK.

and PPP argued that the emergency ceased when commissioners Chandra and Bibit were re-installed; and PKS and the National Mandate Party (PAN) disagreed that there had ever been an emergency, and criticised the *perpu* for (potentially) compromising the KPK's independence. Only the president's Democratic Party and the National Awakening Party (PKB) voted in favour of the *perpu* becoming law (Anggadha and Kusumadewi 2010).<sup>33</sup> With the *perpu* rejected, interim chair Tumpak Panggabean was forced to resign. The president consequently set up a new committee under the Minister of Justice and Human Rights, Patrialis Akbar, to short-list two candidates for the position of chair, this time in line with the procedure stipulated by the KPK Law. In November 2010, Commission III selected Busyro Muquoddas to replace Antasari Azhar as chair for the remainder of the current leadership's term, which ends in December 2011 (*Jakarta Post*, 25/11/2010). Notably, with the selection of Busyro, a former academic and head of the Judicial Commission, there was no former public prosecutor among the KPK leadership.

During the selection process, debate arose about whether the appointment of the new chair should be for four years or only until the end of the other commissioners' terms in 2011 (Yuliawati and Dhyatmika 2010). Several anti-corruption activists, along with ICW, filed a petition with the Constitutional Court to clarify the term of replacement for KPK commissioners. In June 2011, only hours before the registration deadline for the 2011–15 selection process, the Constitutional Court decided that a replacement commissioner should have a full four-year term in office (Decision 5/PUU-IX/2011; *Jakarta Globe*, 20/6/2011). Hence Busyro Muquoddas will be in office until 2014, and only four vice-chairs will be selected in 2011, to serve until 2015.

An advantage of overlapping (staggered) terms lies in continuity and easier transfer of institutional knowledge. Saldi Isra, a professor of constitutional law at Andalas University who was consulted as an expert witness during the Constitutional Court hearing, also pointed out that staggered terms spread the selection of commissioners across 'regimes', thereby somewhat diffusing possible political influence on the KPK (Decision 5/PUU-IX/2011: 23). The Court dismissed the argument of the DPR that because the KPK leadership is required to work collectively (KPK Law, art. 21 (5)) it ought also to be appointed collectively.

Nevertheless, separate appointment processes will emphasise the distinction between the chair and the vice-chairs and possibly lead to a weakening of the principle of collective decision making, because the chair and vice-chairs will be recruited from different groups of applicants. Applicants for commissionership in 2003 and 2007 did not know whether they would be chair or vice-chair. This, together with the equal votes the commissioners have, fostered a sense of equality, the chair being a *primus inter pares* at most. With separate selection processes, applicants will have different expectations, with some interested only in being chair, thereby putting the chair in an elevated position. At least one of the applicants in the selection process for the chair in 2010 insisted that he was interested only in the position of chair, and not in becoming a vice-chair (*Kompas*, 26/8/2010). This raises the possibility that the hierarchical differentiation between chair and

33 A similar fracture of the government's coalition parties emerged in the parliamentary vote on the bail-out of Bank Century (Von Luebke 2010: 83).

vice-chairs may first informally increase and later be spelled out in internal regulations.

Potentially, there could be further splits in the selection of the KPK leadership, for example, if there were a need to replace a vice-chair before the end of his or her term. Separate appointment processes will increase costs. In its reasoning, the Constitutional Court supported the argument of the petitioners that expediency required the costly appointment of the replacement commissioner to be for a full term (Decision 5/PUU-IX/2011:74-75).<sup>34</sup> This argument seems invalid, because that decision will force separate appointment processes in the future, costing the state more than a single appointment process for all five commissioners.

## CONCLUSION

There is no *deus ex machina* that provides for an entirely merit-based, politically neutral selection of senior public officials. It is the formal procedures and informal conventions and their implementation that determine the result – a result that may reflect political compromise and only ever come close to fulfilling naïve expectations of perfect meritocracy. The appointment procedures for senior management of new state auxiliary bodies in Indonesia attest to an appreciation of the importance of checks and balances within the state, especially between the legislature and the executive, and demonstrate the institutionalisation of democratic principles. Because of the widely acknowledged urgency of controlling corruption, and the public attention the KPK has received, the appointment of the KPK leadership was chosen as a case study for this research project. Is the selection process of the KPK leadership adequate to produce an independent and competent leadership? What could be improved?

While acknowledging the validity of some criticisms of the process, this study's overall assessment of it is favourable. The fact that there has been such well-informed criticism is, in itself, a sign of the relative transparency and accessibility of the process, which would have been unthinkable under the New Order regime. In 2003 and 2007 the KPK leadership was endorsed by a broad agreement between government and legislature, as well as across parties. A selection solely by the executive or solely by the legislature would have jeopardised the independence of the KPK.

A sequential selection process, such as that used to choose the KPK leadership in 2003 and 2007, diffuses candidate loyalties to particular groups. A simultaneous selection process and the potential loyalties it creates to the nominating groups, such as applied in the appointment of Constitutional Court judges, would not sit well with the collective decision-making process in the KPK. Unlike judges, who can publicly convey a dissenting opinion, the KPK commissioners do not present their individual decisions on particular issues or cases; they present only the decision of the commission as a whole.

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34 The Court acknowledged that the appointment of the replacement chair was almost as costly as appointing five commissioners. According to media reports, the selection process for the five commissioners cost Rp 4.7 billion in 2003 and Rp 2.9 billion in 2007 (*Kompas*, 22/10/2007, 17/11/2007), while Rp 2.5 billion was allocated to selection of the replacement chair in 2010 (Widjaya and Darmawan 2010).

With its decision to reject the president's emergency decree on replacement commissioners, the DPR set a precedent that, in this author's opinion, upheld the spirit of the KPK Law's provision about an independent leadership selected by both the legislature and the executive. The recent decision by the Constitutional Court that replacement commissioners be granted a full term in office may further heighten the independence of the KPK, but the consequent separate appointment processes for chair and vice-chairs may also increase hierarchy within the KPK leadership, and will certainly increase costs.

DPR Commissions II (in 2003) and III (in 2007) bore the brunt of public tirades for having chosen some candidates whose integrity was doubted by NGOs but whom it suited the commission members to select. However, NGOs were very supportive of the KPK commissioners, with the exception of Antasari Azhar, once they were in office and found themselves under attack. Less criticism was directed towards the selection committee than towards the DPR. This may be due to the presence of civil society representatives on the selection committee, and its greater responsiveness to the procedural concerns of NGOs, such as the request for asset disclosure for all candidates, rather than just civil servants.

Suggestions that the short-list submitted to the DPR should be reduced to five names, leaving it with veto power but no choice, reflect an unbalanced evaluation of the responsibility for the selection results. To address public disappointment with the results, it would be more useful to review the weight given to track records in the short-listing process. If only candidates with clean records were short-listed, then the DPR could choose only from candidates with clean records.

At the time of writing, the selection round for the four vice-chairs for 2011–15 was under way, with fewer applicants but the same multi-tiered short-listing process. This process should be reconsidered in the future. The most important potential improvements are within the discretion of the selection committee, and could be implemented immediately, while others might require legislative changes. A fundamental issue needing review is the efficiency of 'bottom-up' processes that are open to any applicant and consume substantial resources. On the one hand, this openness can be seen as reflecting equal opportunity and democracy: after all, democratic elections too are very resource-intensive. On the other hand, it is counter-productive if highly suitable senior public officials are reluctant to apply because of the intensive selection process, and need to be lobbied by the selection committee to undergo psychological profiling, essay writing and DPR scrutiny. Nevertheless, as humiliating as some may consider this competitive aspect of the short-listing process to be, it reduces the likelihood of the straightforward patronage appointments of the past.

Changing the bottom-up process altogether would require a revision of the KPK Law. But this may not be necessary if changes were made to aspects that are within the discretion of the selection committee. For example, the introduction of psychological assessments may have been a genuine attempt to achieve greater objectivity in the selection process, but their relevance to the ultimate outcome is questionable, and they have also been the least transparent element in the process.

The selection committee should retrieve candidates' track records from relevant government agencies, and these and referee reports should be given greater weight in assessing applications. According to a member of the 2011 selection committee, this is already happening. For the 2011 selection round, cooperation

has been intensified with the KPK, the Attorney General's Office, the Police, the National Intelligence Agency, the Supreme Court, the Ministry of Justice and Human Rights and NGOs in an effort to check candidates' track records (personal communication, 29/7/2011). The selection committee failed three applicants from the KPK – Commissioner Chandra Hamzah, Enforcement Deputy Ade Rahardja and spokesperson Johan Budi – when accusations were made that they had conspired with the head of the Democratic Party, Anas Urbaningrum, in a bribery case allegedly involving several senior figures of the party. The secretary of the selection committee told the media that the committee wanted to prevent the KPK from becoming a 'shooting target' under the next leadership (Rastika and Margianto 2011). According to the KPK's ensuing internal investigations, the accusations were unfounded (Parlina 2011). This incident has emphasised once more the challenges and risks facing the selection committee in assessing accusations against candidates within the time constraints of the selection process. While consistency in approach is desirable, accusations against candidates will still need to be assessed on a case-by-case basis.

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