Monitoring the Trial
Concerning the Murder of Munir

Session XVIII
The Central Jakarta District Court
Jakarta, 16 November 2005

Material: Examining the witness, Chairul Huda, a legal expert
Time: 11.00 -12. 00 Western Indonesian Time
Place: The Central Jakarta District Court, third floor, courtroom one

I.Before the trial

At 9.20 Wib, in front of the building of the Central Jakarta District Court, nearly 20 people from KontraS, the victims and families of Mei'98 case and Tanjung Priok, come together for a rally. They ask the prosecutors to bring other people behind Munir's murder before the court and not only Pollycarpus. The messages in their banners are very clear: "*Bring Muchdi and Nurhadi before the court*", "*Polly, don't let them make you a scapegoat*", "*Hendro clearly involves, why only Polly*?", "*Arrest and prosecute the mastermind*".
Moreover, the protesters also bring the pictures and posters of Munir with a statement: "*Why he was made silent*?","*Who is the mastermind*?". Two police officers from Central Jakarta Police Station escorted the rally. Pollycarpus arrives at Central Jakarta District Court escorted by five police officers from the Indonesian Police Headquarters and one patrol car from Central Jakarta Police Station.

II.The trial

At 11.00 WIB, the panels of judges open the court. Five police officers from Central Jakarta Station are standing inside the courtroom. Nearly 90 people are coming to see the trial. They are among others KontraS' activists, the victims and the families who have been under KontraS' assistance up to now.

The panels of judges are:
1. Cicut Setiarso (The chief of the panels)
2. Sugito (Member)
3. Ridwan Mansur (Member)
4. Replacing judge, Agus Subroto (Member)
5. Replacing judge, Liliek Mulyadi (Member)

The public prosecutors are:
1. Jefri
2. Supardi
3. Saptani

The legal advisers of the defendant, Pollycarpus Budihari Priyanto:

1. Assegaf
2. Heru Santoso
3. Uki
4. Imron Halimy

The opening session

The chief judges asked the defendant about his health condition. The chief also asked the prosecutors about the witnesses for the day. The public prosecutors told the judges that witness Chairul Huda were ready to testify as a legal expert. Meanwhile, two other witnesses, Avriyanto and Rizal Ali, as aviation experts, would come in the next session of the court.
The prosecutors also added that witness Hian Tian already called but the address of the witness was not in Sorong anymore and the new address remain unclear. The prosecutors then asked permission to read the testimony of the witness Hian Tian. According to the chief judges, the prosecutors should eagerly call the witness to come before the court and the prosecutors could ask assistance from related institution to bring the witness before the court.

The legal advisers made their objection on the status of the witness as a legal expert

Concerning the status of the witness as a legal expert, Assegaf as one of the legal advisers, made the objection by saying that the judges, the prosecutors and the legal advisers were already expert in law. Therefore, opinions from another legal expert should only be in the indiction and the court should not listen to him anymore. According to Assegaf, based on the dossier of the witness, he had already made a judgement on the facts whether incorrect or not.

Based on the objection, the panel of judges made an internal discussion and eventually rejected the opinion from legal advisers. According to the panels, the dossier of the witness was already in the case and the witness would be only asked things related to his expertise. Should irrelevant questions appeared, the panels would select them.

Examining the legal expert witness, DR. Chairul Huda

Personal identity

Name	: DR . Chairul Huda, SH, MH
Place/Date of birth	: Tangerang 28 Oktober 1970
Religion	: Islam
Occupation	: Lecturer, Faculty of Law, Muhammadiyah University, Jakarta
Address	: Jl. Otista Sakti Gg Lurah Rt 01/11 Ciputat Tangerang

The chief judges told the witness that the questions would be only within witness expertise in law. The witness was advised to think carefully before answering the questions and he did not have to answer all questions. The chief judges hoped that the explanation from the witness could help all parties making the conclusions. The chief judges also said that the objection made by the legal advisers already recorded in the court. The witness took the oath as a Moslem and he admitted that he did not recognize the defendant.

Questioning materials of the public prosecutors

Jefri asked the following:
Did the police ever show the witness a letter with number IS/1177/04 adressed to OFA when the witness examined by the police? **The witness** said that the police showed the letter to him. **The prosecutors added** by saying that the dossier mentioned two letters dated September 4 and 15. If there are two similar letters with different date, can we be sure that one is original and valid to be used in bureaucracy system? **The witness said** that we could be sure one was original and valid. **The prosecutor continued** by asking which one was the valid letter. **The witness explained** that the valid letter was the one made by following the rule.

If one letter explained one event already occurred before that letter issued and brought consequence in accommodation expense, was it permitted? The witness told the court that the letter should be made following the rule in penal code article 263 (1) on incorrect procedure in making a letter. The penal code mentioned two ways to produce invalid letter. First, writing a fake letter. Second, writing a letter by following incorrect ways. If one letter was made and brought a

right to someone and there was another similar letter, there was indication that one letter was made incorrectly as stated in penal code article 263.

If the letter mentioned that, "all the accommodation costs borne to JKT ISGA". The letter was a reference for all costs including accommodation cost. If the letter was issued for the objective mentioned above but the cost had not been disbursed, could we say using that letter means using a fake letter? **The witness answered** that according to penal code article 263 (2), it mentioned "the possibility to incur loss". The loss did not have to be there. If there was a potential situation that might cause loss, then the activity behind that was already under article 263 (2).

The chief judges Cicut S told the witness, science and fact is not similar and the witness should distinguish the two since he did not know the event.

How could we say a letter is a fake? Is it the content or the use of the letter? The witness explained that we should look on the meaning of a letter first. A letter is an expression of what we think in words and written in a paper. In addition to that, according to penal code article 263 (1), a fake letter could be produced by two ways. First, writing a fake letter. Second, writing a letter by following incorrect ways. This depends on the person behind the letter whether he has the authority to write the letter or not. If he has, then we can not say the letter is incorrectly made. On the other hand, writing a fake letter means making a letter as if the original one. It means the making of the letter is incorrect and the person behind also incorrect. It is possible that the person who signs the letter is the related officer but since he has not the authority or capacity to write the letter, then the letter is a fake.

Questioning material of the legal advisers

Imron Halimy asked the following:

How many times did the witness testify before the court as an expert witness? **The witness said** that he have testified for many times but usually only before the police for cases such as corruption, murder or making a fake letter.

In a fake letter, it could be the procedure or the content and which one asked by the prosecutor? **The witness said** that the prosecutor asked about the procedure.

Did the witness read the letter? Did the witness fell something was made as if it was original? **The witness admitted** that he read the letter before giving statement.

Did the police show the letter with regard to the procedure or the content? **The witness** said that it was both of them. According to the police, the letter was actually signed by the authorized person but it was incorrectly made.

If the witness says that it is a fake letter, what is the reason? The witness answered that the letter is a fake since the letter is actually not the original and then, even if the letter is original but the person behind the letter has no authority, the letter is incorrectly made. Therefore, “it is an original but fake letter”.

Is it the letter made by following a fake procedure or the content also a fake? **The witness said** that the penal code article 263 mentioned if a letter made by a fake procedure or the content also a fake, then obviously the letter is a fake one.

The article 263 mentioned about the procedure and the material if someone who has not the authority makes a letter. According to regular practice in Indonesian law, what if someone who has not the authority makes the letter but reports them to the one with the authority? If such practice already happens for years, what is the witness’ opinion? **The witness explained** that it depends on the institution if such practice is acceptable or not. Every institution will have different practices.

If in one institution, unauthorized person makes a letter but he reports to the authorized person and such practice already happens for five years, is it legally acceptable? **The witness said** that the institution should decide whether it is acceptable or not.

If the authority let such practice happens for years, is it legally correct? **The witness said** that he did not want to say it is legally correct or not. It may apply to that institution but it is not a general truth.

The Chief judges reminded "If the law said that, what if the habitual practice for five years", which one the witness put first if the letter should be signed by the chief and the chief is not there then it signed by the deputy, with or without permission, and it happens for five years. **The witness said** according to the penal code article 263, if unauthorized person made the letter, regardless it was a habitual practice, the letter was made by following incorrect ways. **The legal advisers continued by asking,** "Even if such practice happens for five years and admitted by the authorized person?" **The witness said** yes.

The witness was examined twice and was made a dossier. Did the dossier contain correct information? **The witness confirmed** the true information in the dossier. **Imron said** that he wanted to ask one by one. In the dossier, after the police explained the facts "our opinion, facts are not always correct", the witness said that Garuda had a loss. What was the reason behind the statement? **The witness explained** that the defendant obtained the right to fly, receive facilities as an extra crew because the letter. If someone gets the right for something based on a letter made incorrectly, that is a loss for Garuda. Imron asked, "Did the police explain that the costs paid by a particular unit in Garuda?" **The witness said** the police did not explain that.

If there is original letter then someone makes a fake or as if a fake, could we classify the letter into ""it is an original but fake letter". **The witness said** if there was an original letter, then someone made a letter as if the original, such practice is considered as producing fake letter.

Should we have the original one before? **The witness answered** that we should not have the original one before but something like the original one. For instance, a diploma was made and someone had the right to use it. However, the diploma was signed by a *camat* (administrative leader in a sub-district-ed), then the diploma was a fake since *camat* did not have the right to sign a diploma.

In the dossier, the witness said "Letter IS/1177 made based on the lies of the defendant", How could the witness say so?, **The witness said** that it was based on the facts. **Imron continued** by asking why the witness said that. **The witness said** that based on his explanation before, the police already told him the facts and he drew the conclusion based on those facts. He could not remember the facts since it was quite long time ago. **Imron added** by asking, "Even if the facts are incomplete?', **The witness said** that he did have the right to say the fatcs were inclompete or not.

The legal advisers was reminded by the chief judges to ask the things related to the theory and witness’ expertise because his opinion was based on the explanation by the police. **Imron responded** by saying, *“The witness should not easily believe the fatcs given to him and draw conclusion based on the facts. The witness should be able to defend his conclusion in the court*”.

When the police asked him about supporting and main actor, the witness said that the supporting actor could be prosecuted first and then the main actor. Why did the witness say that? The witness told the court that he believed in dual theory about the activities and the responsibilities. Statement about supporting activities expanded statement on main activities. Therefore, such statement has expanded the definition on criminal activities and it did not say about the expansion of responsibilities since the rule in the second and third book of penal code already expanded by the statement on accompanying activities including supporting activities. In this case, the supporting actor stands by itself. Second, in a book about the basic concept of law, it is explained there that in practice, the supporting actor could be prosecuted first if the main actor is died, not yet arrested or a diplomatic officer. Based on this, we could prosecute the supporting actor first since the main actor is not yet arrested. In a case of buying stolen goods, we did not have to prove the stealing activities first since buying stolen good is one case and stealing is another case. This is the dual theory says since it distinguishes the actor and the responsibilities. The supporting actor is committing an independent criminal activity.

If the main actor already examined and sentenced, is there any reason to prosecute the supporting actor first? The witness said that it merely technical problem for the public prosecutor if we talked about reasons.

The witness said that Pollycarpus could not be charged under article 55 since he was only supporting actor. Why did the witness say that? **The witness told** the court that it was based on the facts given by the police. If anyone or more is helping a criminal activity involving someone or more, then such activity is classified as accompanying the crime. The main difference between article 55 and 56 is on the degradation of the role. Supporting activities are not important since the offence continues. In article 55, if there are no supporting activities, the offence could not continue.

Cicut reminded the witness not to expand his explanation and the legal advisers not to discuss the facts. In the charge and defending statement, they could refer

to the expert witness therefore there should be no dispute with the expert. Since the witness is an expert, they should focus on his expertise.

Assegaf asked the following:

Did the witness say something in the dossier based on the fatcs given by the police? **The witness confirmed** that it was based on police’s explanation.

On the fake letter and the authority to make, did the police show the witness on the authorized persons? **The witness said** yes.

Cicut asked, “How about if the letter say something happened on first date while in fact it happened on second date? **The witness said** that it might happened sometime that the content is different with the reality, for instance the letter is made today while in fact is written the day after. **Cicut continued** by asking, “For example, the event occurred on the first day and reported on the next day?”

The defendant’ response

Pollycarpus told the court that many letters come later for instance, flying duty letter usually come later because the order could suddenly happen. This is normal practice. Pollycarpus asked if all those letters in Garuda are fake based on that situation. The witness said that it was difficult to answer if in such situation. However, there is an incorrect procedure and other factors also played the role. Fake letter is not only about the procedure but also about the loss that might come as its consequence.

Cicut said the witness’ explanation should not bind and every one could have different opinions.

On the witnesses that have not been present

On the witnesses that have not been present, the chief judges reminded the prosecutors to bring the witness before the court with every possible ways. If they have no money, we should provide. If they are afraid, we should protect. If they reject, we should punish. For tomorrow, the prosecutors should bring *ad charge* witness.

Cicut added that reading the testimony could be done if all possible efforts have been done. According to prosecutor Jefri, the public prosecutors have used all possible ways to bring the witness but the witness’ position remains unclear. The prosecutors could not force the witness to come since these are the second calls for them. For witness Tian Hian, since the time is until tomorrow, the prosecutors said that they probably could not bring the witness. The public prosecutors asked to read Eni’s testimony since they have checked that Eni was not in Sorong anymore and the police continued to check that.

Assegaf asked about the reasons on unpresent witnesses. According to Jefri, the prosecutors already called the witness Muchdi and Nurhadi but they have not yet confirmed and the prosecutors would go to Muchdi’s office to ask him to come. Meanwhile Nurhadi is in Nigeria as the Indonesian Ambassador. Therefore, he would not come tomorrow.

The judges said that the court could not be adjourned and if the witness rejects to come, they should be punished. Therefore, the witness must come. According to the judges, if the witness is facing difficult situation or threatened by someone, the public prosecutors should approach the witness in personal.