

Monitoring the Trial concerning The Murder of Munir

Session II The Central Jakarta District Court Jakarta, 16 August 2005

Material: Reading of the *Exception*

Time: 10.38 -12.00 WIT

Place: Central Jakarta District Court, Level II, Court Room V

A. *Exception* on the Indictment No Reg. Case: PDM-1305/JKT. PST/07/05 Central Jakarta District Court in the name of the Accused Pollycarpus Budihari Priyanto.

By the Team of Legal Advisors:

1. Mohammad Assegaf SH
2. Dendy K. Amudi, SH
3. Imron Halimy, SH
4. Heru Santoso, SH
5. A. Wirawan Adnan, SH
6. Akhmad Jazuli, SH, MH
7. Iwan Priyanto, SH
8. Uki Indra Budhaya, SH
9. Suhardi Somomoeljono, SH
10. Hendrik F. Siregar, SH
11. A. Ali Tjasa, SH, MH
12. Erman Umar, SH

B. Summary of the *Exception* Material

1. Introduction

- ▶ The indictment of Pollycarpus as the sole perpetrator, gives the impression of being forced and fabricated, as a consequence of the confusion and frustration of the investigating team, assisted by the Fact-finding Team, that has failed to find the actual murder.

- ▶ Whether it stands to reason that Pollycarpus, whose background in life has been devoted to working as a pilot and is far removed from political affairs has an interest in killing Munir. Likewise with the cabin crew members Yety and Oedi; the placing of Pollycarpus, Yety, Oedi as the only perpetrators, is very speculative and premature, because the planner and murder of Munir has actually not been found yet, based on the following facts:
 1. The existence of pressure from the Fact-finding Team (whose mandate had expired) on the President in order to continue to have a role to pressure the police to solve the case.

2. Because of an awareness that the Munir case is not yet complete, the former head of the Fact-finding Team, Brigadier General (Pol) Marshudi Hanafi was appointed to replace Brigadier General (Pol) Pranowo Dahlan.
 3. According to the Fact-finding Team and the police, there are other parties who are responsible and still need to be investigated.
 4. There was an order from Kapolri to Brigadier General Marshudi Hanafi (head of the Investigating Team) to continue the investigation, this shows there are other parties who must be caught.
- ▶ The murder of Munir was definitely done by a person or group of people who have a direct interest and strong motivation as well as standing to reason. Pollycarpus definitely does not fulfil these criteria.
 - ▶ If there is another party involved or, in fact, became the intellectual actor, then as to the capacity of the accused in this case, there has already been a change between the finding of the investigator in dossier (BAP) with the indictment.
 - ▶ The arrest of two new accused, whatever their role and eventually whether they were involved, what is the fate of Pollycarpus who was late in being charged.
 - ▶ The investigator and the public prosecutor delegated this case not for reasons of upholding the law, but more to promote their reputation.

II. About the Fact Finding Team (TPF)

- ▶ Was it necessary for one investigation outcome that still needed more in-depth investigatory action to be leaked to the public? The Fact-finding Team has already done that with the result that it gave birth to opinion in the community together with controversy. Whereas the Fact-finding Team was mandated by the President to undertake the investigation with the aim of looking for and gathering facts to assist the Polri Investigating Team, the Fact-finding Team to report its results to the President, and the government will announce the result of the Team’s investigation to the community.
- ▶ The action in publishing the findings, including recommendations of a person to be investigated gave rise to problems, and it is not appropriate for the government to announce the findings that are still in the investigation phase, because according to the Criminal Code, “investigation” represents a series of actions to ascertain criminal events or not and not yet to determine the perpetrators.

III. Legal Basis

Regarding the Prosecutor’s (JPU) accusation (in session I), the Legal Advisor Team used Article 143 of the Criminal Code. Article 143 Paragraph (2) specifies that the indictment has to fulfil formal (Article 143 Paragraph 2a) and material requirements (Article 143 Paragraph 2b). It further specifies what is meant by material requirements:

- An analysis that is precise, complete, clear and complete with the criminal act that is accused,
- *Tempus delicti* and *locus delicti*.

VI. Reason for the *Exception*

A. *The indictment is not precise, clear or complete:*

1. **The Accusation is not based on dossiers (BAP)**

“that the accused Pollycarpus Budihari who since 1999 has undertaken various activities with the pretext of establishing NKRI...and so on (read the accusation).

- On the basis of what investigation or which witnesses has the public prosecutor (JPU) given the accused the attribute **“an Unitary state of Indonesia (NKRI) activist.”**
- There isn’t a single document in the case file that can prove the above statement.
- On what basis did the public prosecutor make the accusation of an Unitary state of Indonesia (NKRI) background, from where was the year 1999 obtained.
- The public prosecutor ignored the fact, that the accused worked daily as a Garuda pilot.
- In the dossiers (BAP) there is no information that the accused became a member of any organization, let alone was wholly involved in Unitary state of Republic of Indonesia.

2. **The accusation is not clear and not complete:**

- How did a Garuda pilot whose flying schedule is full have the opportunity to become an NKRI activist.
- In the analysis there is no detail on the words *“since 1999 has undertaken various activities”*. What activities? With whom? Where?

3. The accusation is not clear or precise in the mention of a motive for the accusation:

".....that was determined by the accused as well as a particular party as seriously disturbing the implementation of government programs... and so on resulted in a situation where the party, including the accused himself who can't accept it...and so on"

- There is no explanation what is meant by not specific.
- To become the sole accused requires a motive, thus the accused's motive was sought as an NKRI activist who was not happy with Munir's activities.
- The expression of the motive is not based on the results of research and investigation, but nothing more than the lack of success of the Fact-finding Team and/or the investigation to find the perpetrator of the murder of Munir.
- The public prosecutor hasn't mentioned the motivation that caused Yety and Oedi and the accused to undertake the planning for the murder (Article 340).

4. Article 56 of the Criminal Code was dropped

- In the accusation, the public prosecutor imposed article 340 of the Criminal Code in connection with Article 55 (1) ke -1 of the Criminal Code, while in the case file, the accused was investigated under Article 340 of the Criminal Code in connection with Article 56 - 1 e of the Code, on what basis did the public prosecutor omit Article 56 -1e of the Code to be replaced with Article 340 in connection with Article 55 (1) ke-1.
- If the application of Article 55 is considered correct (quo non), the application is not clear because it does not contain the criminal action that is being alleged. The public prosecutor didn't clarify how each of Yety, Oedi and the accused carried out their roles.
- Article 56 of the Criminal Code (charge of assisting) that was used against the accused during the investigation level was bypassed by the public prosecutor, because the public prosecutor can't present the shape of Mr X as the perpetrator who was assisted by the accused.

5. Premature Indictment

- The indictment by the prosecutor should not be submitted yet, because the research and investigation process is still underway and may, in fact, find a new accused, this will make the cases overlap.

6. The indictment is vague and unclear on “collective” commission, ordering the commission and involvement in committing:

- The first accusation, first paragraph the accused is accused of committing a criminal act together with Yety Susmiarti and Oedi Irianto, but in the same sentence the accused together are also accused of *undertaking, ordering the undertaking or involvement in committing the action and so on*”.
- The first accusation has already been confused by several forms of participation (*deelneming*) of one accused so the accusation has become vague and unclear, because the accused is charged as the person committing the offence (*pleger*) and together ordering the commission (*doen pleger*) as well as involvement in the commission (*medepleger*).
- The *tempus delicti* between the person who ordered the commission (*doen pleger*) with the person who undertook the action (*pleger*) can have an individual *tempus delicti*. Ordering the commission (*doen pleger*) must happen before who committed the offence (*pleger*), the public prosecutor did not analyze this matter.
- Yety and Oedi are accused of conspiring to commit a criminal action, the condition “conspire” as the source of the criminal action has not been further clarified.
- The public prosecutor did not give a clear description of who is placed as the person committing the falsification, Ramelgia or Pollycarpus.
- The public prosecutor did not analyze in detail the conspiracy to falsify the letter, the role of Rohainil and who ordered Rohainil.
- The public prosecutor did not touch upon the motive of Oedi and Yety in killing Munir.

7. Speculative Analysis

- The indictment is only based on the consideration of the public prosecutor without basis in the results of the investigation and analyzing what is the background to the condition stated by the public prosecutor.
- The information that the accused knew for certain Munir did not drink alcohol, should have been disentangled first. To what extent the accused knew Munir so Munir was certain to choose orange juice, and has not depicted the closeness of Munir with the accused.
- Without a logistical reason, the public prosecutor is sure that Oedi and Yety knew and could ensure that the witness Lie khian Ngian, a Dutch citizen, would choose wine.

- Given that other passengers besides Munir drank orange juice, a lot of other passengers sat together with Munir and Lie Khian Ngian.
- The public prosecutor did not analyze how the accused put the poison in the juice.
- There has been no description of the collective condition undertaken by the accused and Oedi.

8. False Letter

- The public prosecutor did not analyze how that letter was falsified, whether the contents of the letter should not have been, or changed the content of the letter.
- The public prosecutor has the opinion: “not to obtain the order or authority from other people as falsifying the letter.” According to Article 263 it was not the case. Whether the absence of authority by Rohainil is included in the forgery of the letter.

9. Visum Et Repertum

- The *locus delicti* in Indonesia, but the processing of the place of occurrence (TKP), Visum et Repertum, and autopsy were undertaken by a foreign institute, not by Indonesian authorities.
- Based on Article 131 Paragraph 1 of the Criminal Code, the investigators should undertake the place occurrence (TKP) process, in the case of Munir this was not undertaken, so Pollycarpus is accused on the basis of Dutch legal process with the result that the judicial process is legally flawed because of the involvement of foreign authorities.

V. Closure

- Request the public prosecutor not to avoid its obligation with the response “the *exception* of the legal Advisor has already been included in the main case”.
- Request the panel of judges to hand down a decision:
 1. to accept and grant the *exception*
 2. declare the indictment cancelled for the sake of the law
 3. free the accused from all accusations of the public prosecutor
 4. order the public prosecutor to release the accused from detention
 5. award costs against the state

C. Participants and Court Situation

A. Panel of Judges (District Court of Central Jakarta, Jakarta, Indonesia)

1. Cicut Sutiarto (Chief Judge)
2. Sugito (Member of Judge)
3. Lileik Mulyadi (Member of Judge)
4. Agus Subroto (Member of Judge)
5. Ridwan Mansur (Member of Judge)

B. Public Prosecutor (Central Jakarta Public prosecutor’s Office)

The Public Prosecutors (JPU) in attendance number 11 people, including:

1. Domu, P Sihite, SH. MH.
2. Suroto
3. Edi Saputra
4. Giyanto
5. Muhammad Rum
6. Saptani

The names of other members of the public prosecutor are not yet known.

C. Lawyers

There are twelve legal advisors accompanying the accused, including:

1. Mohammad Assegaf SH
2. Dendy K. Amudi, SH
3. Imron Halimy, SH
4. Heru Santoso, SH
5. Wirawan Adnan, SH
6. Akhmad Jazuli, SH, MH
7. Iwan Priyanto, SH
8. Uki Indra Budhaya, SH
9. Suhardi Somomoeljono, SH
10. Hendrik F. Siregar, SH
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D. The Situation surrounding the Court and Court Room

The court session on the case of the murder of Munir with the accused Pollycarpus was attended by approximately 400 people who came especially to see and follow proceedings. The attendees had a variety of interests for coming but the majority were community members who support the thorough investigation of the Munir case.

Together with Suciwati (Widow of the Victim: The late Munir), the attendees who came consisted of community organizations like KontraS, UPC, Imparsial, FPPI, SKP-HAM, IKOHI, Komnas HAM (Ruswiyati and Zumrotin). Also in attendance were a number of victims families from various cases of human rights abuses that had been advocated by KontraS and Munir, like the kidnappings and forced disappearances of 1998, Semanggi I (1998), Semanggi II (1999), the violence of May 1998, Tanjung Priok and several areas of Jakarta. Also in attendance were around 40-60 journalists from the print and electronic media, both domestic and overseas. The assistant to the head of legal matters at the National Intelligence Agency was apparently also seen.

In addition, a number of security personnel from the National Police were also seen guarding the Court precincts, in the court room and at the front of the court room and entry way. It is estimated that there were 30 security personnel in attendance for this court session, they came from the regional police, eight of them were motorcycle patrol officers. Three others brought long-barreled weapons, two others carried pistols.

A large group that called itself The Student Forum of Eastern Indonesia numbering dozens of people distributed two leaflets:

1. In the name of the Community of Students of Eastern Indonesia (KOMIT), containing: “support for the accused and legal counsel as well as AM Hendropriyono, and concerned with NGOs”.
2. In the name of Wawan H. Purwanto who identified themselves as intelligence observers, containing “protection for BIN and concerns about NGOs associated with the distribution of funds within the NGO movement.”

VIII. Court Notes

A. Court Session

The court session was opened by the chief judge Cicut Setiarso at 10.38 am who directly asked the accused to enter the court room. The accused entered the court

room and was wearing a grey long-sleeved shirt, chocolate-coloured pants, escorted by four members of the police and two people from the Chief Public prosecutor’s office as well as a throng of media. The accused appeared calm and smiling. Furthermore, the chief judge reminded visitors and court room participants to observe the ethics of the court room. Then the legal advisor was asked to read out the *exception*. Mohammad Assegaf, the first legal advisor to read out the *exception* was followed by other colleagues. The *exception* consisting of 30 pages took around one hour to read. The *exception* was signed by A. Wirawan Adnan, SH. For the legal advisor team of the accused and dated 16 August 2005.

After the reciting of the *exception* by the legal advisor, the chief judge gave the opportunity of a week to prepare a response to the *exception*. The public accepted the offer of the judge and it was agreed by the court to continue with the response to the *exception* on Tuesday, 23/8/05. The court closed at 12.00.

C. Post Court

After the court session closed, the accused had the opportunity to speak with legal advisor and waved and smiled while expressing thanks to the press. Then, the accused was immediately escorted by the police in the direction of the front steps of the court, and directly towards the prison van. The wife of Pollycarpus, Herawati, hurriedly left the court room while flanked by 2 men with the distinctive face and skin of the Eastern part of Indonesia. Two other people, with the same distinctive appearance, distributed leaflets containing support for the accused, legal counsel and the National Intelligence Agency (BIN). Outside, KontraS, IKOHI and dozens of victims undertook an action and gave orations with the use of masks and posters with the words **“why was he silenced”**.

Thirty minutes later, a number of KontraS activists and several victims of human rights abuses undertook a parade together using motorcycles towards the State Palace and the HI roundabout. This is a regular activity that will continue to be undertaken by KontraS, given that Tuesday is the day of Munir’s death. Using motorcycles is also part of the effort to remember Munir who was identified with the motorcycle in his daily activities.