

# Monitoring the Trial concerning The Murder of Munir

## Session III The Central Jakarta District Court Jakarta, 23 August 2005

**Material:** Opinion of the Public Prosecutor (JPU) on the *Exception* of the Legal  
Advisor for the Accused Pollycarpus Budihari Priyanto

**Time:** 10.55 - 11. 20 (West Indonesia Time)

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

## I. The Opinion of the Public Prosecutor (JPU) concerning the *Exception*.

The material on the opinion of the Public prosecutor concerning the *Exception* of the accused Pollycarpus Budihari Priyanto consists of 13 pages. The public prosecutor divided the material into 3 chapters, consisting of Chapter I (Introduction), Chapter II (Public Prosecutor Opinion) and Chapter III (Conclusions).

### CHAPTER I: INTRODUCTION

- A. The public prosecutor won't accept the *Exception* of legal advisor because it does not have juridical value.
- B. The public prosecutor relies on article 156 Paragraph (1) of the Criminal procedure as the legal basis for the delivery of its opinion: *“In the matter of the accused or legal advisor presenting an objection that the court does not have the authority to try his case or the accusation cannot be accepted or the indictment has to be cancelled, after giving the opportunity to the public prosecutor to express his opinion, the judge considers this objection and henceforth makes a decision.”*

### CHAPTER II: OPINION OF THE PUBLIC PROSECUTOR

| <b>The <i>Exception</i> of the Accused’s Legal Advisor</b>   | <b>The Opinion of the JPU concerning the <i>Exception</i> of the Accused’s Legal Advisor</b>   |
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| <p><b>A On the Introduction of the <i>Exception</i></b></p> <ol style="list-style-type: none"> <li>1. The indictment was made not on the basis of the results of the investigation, but was based more on imagination and speculation, with the result that it generally gives the impression of being fabricated.</li> <li>2. The case against Pollycarpus Budihari Priyanto as the sole perpetrator gives the impression of being forced and fabricated, because the investigation team that was assisted by the Fact-finding Team failed to find</li> </ol> | <p>The opinion or objection is outside that which is regulated by Article 165 Paragraph (1) of the Criminal procedure.</p> <p>What was written by the legal advisor in the introduction gives the impression of creating an opinion to influence the process of the court session, because what was put forward is outside the scope of the <i>exception</i> material.</p> |

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| <p>the actual murder.</p> <p>3. What is the interest of the accused in murdering Munir.</p> <p>4. The relevance of the accused’s court proceeding with the performance of the Fact-finding Team and issues associated with the development of the investigation with quotes of the mass media and NGOs.</p>    |  |
| <p><b>B. On the Munir Fact-finding Team</b></p> <p>It was not appropriate for the Fact-finding Team to publish what was described as still superficial findings to the public.</p>   | <p>The case of the accused is based on the case file from the investigator of criminal section of Police No Pol: BP/10/vi/2005/Dit-I dated 13 June 2005, and not from the findings of the Fact-finding Team.</p> <p>Questioning the Munir Fact-finding Team is outside the scope of the <i>exception</i>, and what has been made a problem with the Fact-finding Team is quite contradictory with legal counsel’s <i>Exception</i> in 3 pages 10 to 12 “<b>discussing the legal basis of the submission of the objection on the basis of the accusation made by the public prosecutor</b>”.</p>  |
| <p><b>C. On the Legal Basis</b></p> <p><i>The accusation is vague and unclear:</i></p> <p>The first paragraph of page 10 (the accusation); the statement of the accused who does not understand the statement of the public prosecutor who refers to him as an Unitary state of Indonesia (NKRI) activist.</p> | <p>“<i>that there is something that can’t be understood</i>” concerning the accusation is the right of the accused. <i>Based on the opinion of D. Simon in the book of Indonesian criminal procedure by Dr. Andi Hamzah, SH, “the freedom of the accused to refute has to be respected”</i> although it only expresses the words “there is something that is not understood”, means there are a lot of accused who understand from the accusation, that apparently after being explained by the Panel of Judges the accused understands the content of the accusation.</p> <p>The accused’s words “activist in the Unitary state of Indonesia (NKRI) movement” are not engineered, imagined or speculation, but are rather based on information from the witness Hian Tan alias ENI in the dossierr (BAP) dated 10 June 2005 that was attached to the case file.</p> |
| <p><b>D. Not based on the dossierr (BAP) as result of investigation</b></p> <p><i>The accusation is not clear because it is not complete:</i></p> <p>The accusation is not based on dossierr (BAP).</p>  | <p>By the process of the accused’s writings he undertook activities to establish unitary state of Indonesia, based on</p>  |

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| <p>“that the accused since 1999 has undertaken activities with the pretext of establishing unitary state of Indonesia (NKRI) and so on (page 2 of the indictment).</p> <p>The accusation does not describe a conspiracy to murder as found by the Fact-finding Team (page 13 of the <i>exception</i>).</p>   | <p>the dossierr (BAP), in the manner previously explained.</p> <p>The indictment mentioning the accused, collectively with Yety Susmiyati and Oedi Irianto, has already been very clearly analyzed in the accusation on the role of each respectively.</p>   |
| <p><b>E. A Certain Party</b></p> <p>Part of the sentence “...that was evaluated by a CERTAIN party is already very... and so on this analysis is not clear, because there is no clarification on who is the certain party.</p>   | <p>The indictment has already analyzed the elements of article that is brought to court by analyzing the facts of the act undertaken by the accused, both individually or together with others, by mentioning the time and place where the accused committed the act.</p> <p>While the acts committed by the accused as well as the occurrence of the act that have a mutually causative relationship have already been included in the case material that will be proven in the court.</p>  |
| <p><b>F. Article 56 of the Criminal Code is dropped.</b></p> <p>On what basis the public prosecutor omitted article 56 Paragraph 1 of the Criminal Code, and on what basis the public prosecutor arranged the indictment by applying the accusation of the accused with article 340 of the Criminal Code connected with article 55 Paragraph 1 to I.</p> | <p>A. According to Dr. Andi Hamzah, SH in the book “The Law on Criminal Procedure” page 173:</p> <ul style="list-style-type: none"> <li>- The article on criminal determined by the police can be changed by the public prosecutor to adjust the accusation with the facts as well as arrange the accusation based on the offence.</li> <li>- The public prosecutor has the authority to change the article to one that is more appropriate, because it has responsibility for prosecution policy.</li> </ul> <p>According to expert opinion, the public prosecutor has the authority to determine the appropriate article in an accusation that is consistent with the facts of the dossierr as result of investigation.</p> <p>The appropriate article that is consistent with the facts is article 55 Paragraph 1 to I of the Criminal code, it is not article 56 to I that is connected with the main crime, not including article 56 of the Criminal Code to be confirmed according to law, it does not mean it is omitted or manipulated.</p> <p>B. Application of the accusation of article 340 connected with article 55 Paragraph 1 to I of the Criminal Code</p> |

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|   | <p>because:</p> <ul style="list-style-type: none"> <li>- In the case file it is proven there are factors of cooperation of the accused Yeti Susmiarti and Oedi Irianto.</li> <li>- Based on the qualities of the accused, he was charged under article 340 together with article 55 Paragraph 1 to I of the Criminal Code.</li> </ul>   |
| <p><b>G. Premature</b></p>  | <p>In the terminology of Law on Criminal Procedure there is no known meaning of <b>Premature Indictment</b>.</p>  |
| <p><b>H. Analysis of Participation</b><br/>                 The indictment is vague and unclear on “collectively” committing, ordering the commission, and involved in committing; whether Yeti and Oedi are classified together as committing a criminal act, together ordered the commission, collectively involved in committing, or it was the accused who ordered the commission.</p>  | <p>Article 55 paragraph 1 of the first Criminal Code is formulated “<i>sentenced as the perpetrator of a criminal act, the person who commits, who orders the commission or is involved in committing the act</i>”.</p> <p>From the element of article 55 Paragraph 1 of the first Criminal Code, only discussed by relevant elements in the indictment, namely the element of “involvement” that in the accusation is constructed with the meaning “together”.</p>   |
| <p><b>I. Speculative Analysis</b><br/>                 The indictment on page 4 paragraph III, the public prosecutor states “<i>the accused put arsenic poison in the orange juice because the accused knew Munir, SH, did not drink alcohol....dst.</i>”</p> <p>The last paragraph on page 4 “<i>at the time the drink was offered, both the accused Pollycarpus Budihari Priyanto, witness Oedi Irianto, and witness Yeti Susmiarti knew and could ensure that the witness Lie Khie Ngian (a Dutch citizen) would choose wine</i>”.</p> | <p>The objection to this material is already entered in the case material and an answer is not relevant.</p>  |
| <p><b>J. False Letter</b><br/>                 Why the accused is accused of using a false letter in the manner of article 263, Paragraph (2) of the Criminal Code, while it is not clear whether Rohainil Aini or Ramelgia Anwar falsified the letter.</p> <p>On what basis did the public prosecutor declare that the memorandum on the change of schedule number OFA/219/04 dated 06 September 2004 is false.</p>  | <p>The criminal act in article 263 Paragraph (2) of the Criminal Code does not become erased because the criminal act in article 263 (1) of the Criminal Code is not yet known (according to S.R. Sianturi, SH in the book “<i>Criminal act of Criminal Code offers the following explanation</i>”, page 149) “does not become a problem whether who uses it knows who made the false letter or who falsified the letter, <b>but has knowledge that it was falsified or made in a false way.</b>”</p> <p>In accordance with information of the witness Ramelgia Anwar, Rohainil and the witness Capt Karmal Fauza Sembiring the memorandum on the schedule change no OFA/219/04 dated 06 September 2004, was made at the request of the accused with the reason that it was ordered by the witness Ramelgian Anwar and was then signed by</p> |

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|  | <p>the witness Rohainil Aini who did not have the authority, whereas the witness Ramelgia Anwar never ordered the making of the said memorandum as extra crew to Singapore used aircraft Garuda Boeing 747-400 with a flight number GA-974.</p>  |
| <p><b>K. Visum et Repertum</b><br/>                 The objection to the juridical problem is based on Section 131 Paragraph 1 of the Criminal Procedure on <i>Visum et Repertum</i> that was made <i>pro justisia</i> by the Dutch Forensic Institute of the Ministry of Justice on 13 October 2004, signed by Dr Robert Visser and Pathologist in cooperation with Dr. B. Kubat, who undertook the autopsy on the deceased, Munir.</p> | <p>Based on the Indonesian High Court Circular No. 1 of 1985 dated 1 February 1985, on the strength of dossierr (BAP) testimony and <i>Visum et Repertum</i> that is made abroad by a foreign official has the power of legitimate legal evidence when the <i>visum et repertum</i> is legitimized by the ambassador or representative of the Republic of Indonesia in the relevant country.</p> <p><i>Visum et repertum</i> was made <i>pro justisia</i> by the Dutch Forensic Institute of the Ministry of Justice on 13 October 2004, signed by Dr Robert Visser and pathologist in cooperation with Dr. B. Kubat, and legitimized by the embassy of Indonesia in den Haag, Netherlands on 26 November 2004, so this <i>visum et repertum</i> has the strength of legal evidence.</p> |

### CHAPTER III : CONCLUSIONS

On the basis of the abovementioned reaction, the public prosecutor is of the opinion that the *exception* of the accused’s team of legal advisor, that was read to the court on 16 August 2005 does not fulfil the requirement of section 156 paragraph (1) of the Criminal Procedure and the *Exception* should not have been accepted.

For this reason, the public prosecutor seeks of the Judges Panel to:

- a. Declare that the *exception* of the legal advisor not be accepted.
- b. Declare that the indictment No REG. Case : PDM-1305/JKT. PST/07/05 Central Jakarta District Court in the name of the accused Pollycarpus Budihari Priyanto has fulfilled the formal and material requirement in accordance with the requirements of article 143 paragraph (2) parts (a) and (b) of the Criminal Procedure.
- c. Declare the receipt of the Public Prosecutor’s indictment.

- d. To continue the court proceedings to investigate and try this case.

## **II. Participants and Court Situation**

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

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

### **B. Public Prosecutors (Office of the Public Prosecutor, Central Jakarta)**

The Public Prosecutor in attendance number 11 people, among whom are:

1. Domu, P Sihite, SH. MH.
2. Suroto
3. Edi Saputra
4. Giyanto
5. Muhammad Rum
6. Saptani
7. Meghanada
8. F Eyert L

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
11. Ali Tjasa, SH, MH
12. Erman Umar, SH

## **D. The Situation surrounding the Central Jakarta District Court and the Court Room**

The court session that should have started at 10.00 am local Time commenced late with an explanation of technical problems (that was not explained by the public prosecutor). The new session was opened by the Panel of Judges at 10. 55 am and ended at 11. 20 am. Visitors including the victims of May 1998, Tanjung Priok and kidnappings, KontraS activists, Suciwati (the wife of the late Munir) and other human rights activists had packed the court room since 9.30 am. Most visitors were already starting to get restless because the court session was overdue, and filled in the time by reading the KontraS bulletin.

In contrast with the two previous court sessions (9/8) and (19/8), today’s court session (23/8) was quiet. There were no more than 200 people, (in the two previous sessions around 400 people were in attendance), there also appeared to be fewer media, previously around 40 print and electronic media packed the court room, while today (23/08) there were no more than 20 or so media covering the session. The security of Pollycarpus in approaching the court room was overseen by around 7 members of the police from Indonesian police headquarters and two public prosecutor from Chief Public Prosecutor’s office. Pollycarpus was wearing a long-sleeved chocolate and cream-coloured shirt with long grey trousers. The court room was protected by four police personnel from the district police of Metro Jaya.

## **VIII. Notes of the Court Session**

### **A. Court Session**

According to the schedule, the court session starts at 10.00 am, but due to technical reasons that were not explained by the public prosecutor, the new session was opened by the Chief Judge Cicut Setiarso at 10.55 am, almost one hour later than the appointed time. In accordance with today’s schedule (23/08) the agenda of the court session was to read out the opinion of the public prosecutor on the *exception* of the legal advisor team. After opening the session, the judge informed the court that if the reading of the public prosecutor’s opinion on the *exception* of the accused’s legal advisor had not been completed by 12.00 o’clock, there would be a break (mid-afternoon rest)

and the Chief Judge also reminded the court that if participants required by the court are not in attendance during the following court session, the court session could be cancelled. Furthermore, Public Prosecutor Domu P Sihite, SH read out “the opinion on the *exception* of the accused’s legal advisor team” consisting of 13 pages, 3 chapters, dated Jakarta 23 August 2005, public prosecutor Domu P Sihite, SH, MH, Primary Public Prosecutor NIP 230016855.

At the conclusion of the reading, the Chief Judge declared that at today’s session there would be no opportunity for the accused and his legal advisor, because the public prosecutor has the right to respond to the *exception*. Then the panel of judges ordered the court session to resume on the following Tuesday, 30 August 2005, at 10.00 am. The court session was closed at 11.20.

## **B. Post Court**

The one of public prosecutors, Domu P Sihite, after the court session was met by various media outlets and asked to provide the file “Opinion of the public prosecutor on the *Exception* of the Legal advisorl Team” that had been read out to the court. For fabricated reasons (has to make a report first and has already been recorded by friends of the journalist) Domu P Sihite persisted in not giving the file requested. For around 15 minutes, requests for photocopies of the file by reporters and journalists as well as KontraS were not given heed by Domu P Sihite. The same thing also happened after the court session for the reading of the indictment, Domu P Sihite was not prepared to provide the indictment file. This was truly contradictory with the attitude of the legal advisor who were cooperative with the print and electronic media, willingly sharing the *exception* and providing the opportunity to the public to copy the file of the opinion of the public prosecutor on the legal advisor’s *exception*.

Suhardi Sumomoeljono, when interviewed by the media after the court session, declared (on the opinion of the public prosecutor and accusation) that it did not declare a motive in the accusation against Pollycarpus. In his opinion, in planning the murder, the motive is the main measurement of the existence of the criminal act.