

# Monitoring the Trial of Munir's Murder

Session IV  
The Central Jakarta District Court  
Jakarta, 30 August 2005

Material: Reading of the Interim Verdict  
Time: 10:20 – 11:15 am (Western Indonesia Time)  
Location: The Central Jakarta District Court, 2<sup>nd</sup>  
Floor, Courtroom 5

## **Interim Verdict**

Agenda:

Interim Verdict number 1361 Common Law Procedure 2005 Central Jakarta District Court concerning the accused Pollycarpus Budihari Priyanto.

Consideration:

The Central Jakarta District Court has read the case file concerned, and has heard and read the exceptions from the accused's legal advisory team as well as the response from the Public Prosecutor on the exceptions.

Considering,

Case number 1305/JKT.PST/07/2005, the Public Prosecutor has submitted the following charges:

1. Article 340 Criminal Code juncto Article 55 (1) 1<sup>st</sup> of the Criminal Code
2. Article 263 Paragraph (2) of the Criminal Code juncto Article 55 (1) 1<sup>st</sup> of the Criminal Code

Considering,

***To the charges, the legal advisory team for the accused has filed exceptions, principally:***

### **1. Legal Basis**

- The legal advisor's exceptions, pages 10 - 12, state "the written charges are not understood by the accused", in which the Public Prosecutor states that the accused is an activist of the Unitary State of the Republic of Indonesia.
- Objection to the accusation of being an activist of the Unitary State of the Republic of Indonesia.

### **2. Not based on the dossier as results of the investigation**

- The Public Prosecutor's explanation of the charges is not based on the dossier as recorded in the case file.

### **3. A certain party**

- The Public Prosecutor's explanation of the charges, "judged by the accused or a certain party ... and so on". The legal advisor asks "Who is the certain party as referred to by the Public Prosecutor?"

### **4. Article 56 dropped**

- On what basis has the Public Prosecutor omitted Article 56 Paragraph 1 of the Criminal Code? Furthermore, on what basis has the Public Prosecutor

arranged the charges using Article 340 of the Criminal Code juncto Article 55 (1) 1<sup>st</sup> of the Criminal Code?

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#### **5.Premature summons from Public Prosecutor**

- It would be proper if the summons from the Public Prosecutor was not yet submitted, as in reality the process of investigation and inquiry is still continuing and there are even new suspects.

#### **6.Attached explanation not clear and vague**

- Concerning the accused “in collaboration did commit, order the committing of, and participate in” connected to the sentence “the accused Pollycarpus Budihari Priyanto whether alone or in collaboration with Yeti Susmiarti and Oedi Irianto”.

#### **7.Explanation is speculative**

- The Public Prosecutor wrote “the accused added arsenic poisoning to a glass of orange juice, because it is known that Munir did not drink alcohol”.

#### **8.Secondary accusation, the accused is charged with using a falsified letter**

- It is not clear who produced the falsified letter. If the letter itself was not clear then it is further unclear how the accused is expected to have used the falsified letter.

#### **9.Visum et Repertum**

- The Public Prosecutor concludes that the death of Munir was caused by a high level of arsenic, based on the autopsy report produced for the court by the Forensic Institute at the Netherlands’s Ministry of Justice, dated 13 October 2004 (produced and signed by Dr Robert Visser). In this matter the Public Prosecutor is not accurate, because of the dependence of the conclusion upon a foreign institution that is not an apparatus nor an institution of Indonesia; based on Article 13 1 of the Criminal Code there should have been a police investigation at the crime scene in the Netherlands, however why was this not done; the legal process contains flaws as there was the involvement of a foreign apparatus which was later used a basis for the Public Prosecutor.

- Based upon these reasons, it is requested that the exceptions be accepted, and that the charges by the

Public Prosecutor be declared legally nullified.

- Following is the discussion and consideration by the Panel of Judges on the exceptions presented by the accused's legal advisors, forming the basis of the interim decision.

*Considering:*

- Based on Article 156 Paragraph (1) of the Criminal Code: "In the event that the accused or the legal advisor files an objection that the court does not have the competence to try a matter or that the charges cannot be accepted or the summons should be nullified, then an opportunity will be given to the public prosecutor to state the prosecutor's opinion. The judge will consider the objections in order to take a decision."

*Considering:*

- On the material provided by the Legal Advisors, the Public Prosecutor perceives that on the whole all is complete and clear in the Results of the Investigation.

*Considering:*

- From the stipulation above, the exceptions covering the lack of court competence to try and examine the matter, and the summons not being fulfilled as is stipulated in Article 143 Paragraph 2 letter b, and Article 143 Paragraph 3 of the Criminal Code, which concern the summons from the Public Prosecutor being nullified.

*Considering:*

- After the Public Prosecutor has paid attention to relevant materials and the exceptions, there appears to be no problems with the competency of the Central Jakarta District Court in examining and trying this case.

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<b>Legal Advisors' Exceptions</b>	<b>Consideration of the Panel of Judges</b>
<p>Considering:</p> <ul style="list-style-type: none"> <li>•The accused's legal advisory team proposed exceptions as in</li> </ul>	<p>Considering:</p> <ul style="list-style-type: none"> <li>•For exceptions No. 1, 2, 3 and 7, the Central Jakarta District Court is of the opinion that the charges by the Public Prosecutor have been made complete and clear concerning <i>tempus</i> and <i>locus delicti</i>, as</li> </ul>

<p>point 1 - 9 which are summarized as:</p> <ul style="list-style-type: none"> <li>•The summons from the Public Prosecutor does not fulfill the regulation s as stipulated in Article 143 Paragraph 2 letter b of the Criminal Code and therefore must be nullified because the Public Prosecutor's explanatio n is not clear and incomplete concerning the criminal actions brought to court naming the time and place of the crime.</li> </ul>	<p>well as the manner of the criminal acts. This is evidenced by the explanation of the summons, page 1, "the accused, Pollycarpus Budihari Priyanto, whether alone or with others, on Monday 6 September to Tuesday 7 September 2004, or in any case on Garuda Indonesia Airways flight number GA 974 from Jakarta to Singapore".</p> <p>Considering:</p> <ul style="list-style-type: none"> <li>•That because the charges by the Public Prosecutor were compiled completely and accurately, covering the tempus and locus delicti, and the manner of the criminal act being brought to trial, therefore as mandated in the stipulations of Article 143 Paragraph 2 letter b of the Criminal Code, the exceptions on the stated basis are not based on law.</li> </ul>
<p><i>Considering:</i></p> <ul style="list-style-type: none"> <li>•Questioning why the Public Prosecutor dropped Article 56</li> </ul>	<p><i>Considering:</i></p> <ul style="list-style-type: none"> <li>•The District Court is of the same opinion as Andi Hamzah who said, "the Public Prosecutor has the authority to change Articles in accordance with the facts because the prosecutor is</li> </ul>

<p>Paragraph 1 of the Criminal Code, and changed it with Article 55 Paragraph 1<sup>st</sup> (from exception point 4)</p>	<p>responsible for prosecution policy.</p>
<p><i>Considering:</i></p> <ul style="list-style-type: none"> <li>•The legal advisor stating that the charges are premature.</li> </ul>	<p><i>Considering:</i></p> <ul style="list-style-type: none"> <li>•In this respect the District Court is of the same opinion as the response of the Public Prosecutor who said that the terminology of premature charges is not known in the stipulations of the Indonesian Criminal Code.</li> </ul>
<p><i>Considering:</i></p> <ul style="list-style-type: none"> <li>•The exceptions which find problems with the attachments.</li> </ul>	<p><i>Considering:</i></p> <ul style="list-style-type: none"> <li>•It is the judgment of the District Court that this has been related to the case material to be discussed and is based on evidence law.</li> </ul>
<p><i>Considering:</i></p> <ul style="list-style-type: none"> <li>•Concerning the second charge – the suspect accused of using a falsified letter, without explaining who produced the falsified letter.</li> </ul>	<p><i>Considering:</i></p> <ul style="list-style-type: none"> <li>•The District Court believes that whoever produced the falsified letter or falsified the letter is not an extensive issue. What is an issue is whether the accused had used the falsified letter, which will be further discussed in the evidence.</li> </ul>
<p><i>Considering:</i></p> <ul style="list-style-type: none"> <li>•Concerning the exceptions</li> </ul>	<p><i>Considering:</i></p> <ul style="list-style-type: none"> <li>•The District Court is of the opinion that the Visum has been approved by the Indonesian</li> </ul>

that take issue with the Visum et Repertum produced for the court by the Forensic Institute at the Netherlands's Ministry of Justice, dated 13 October 2004 signed by Dr Robert Visser, as an inaccurate step of the Public Prosecutor in the preparation of the case file.

Embassy as the representative of the Republic of Indonesia in the Netherlands, which is also the judgment of the Panel of Judges who examined it.

*Considering:*

- Based on all these considerations, the District Court concludes that all the exceptions from the accused's legal advisory team are not based on law and therefore cannot be accepted.

*Considering:*

- As the exceptions from the accused's legal advisory team cannot be accepted, the District Court orders the Public Prosecutor to continue the examination of the case.

*Considering:*

- Concerning case fees, this is postponed until the final decision.

*Recalling:*

- The stipulations of Article 143 Paragraph 2 letter b juncto Article 156 Paragraph 1 and 2 of the Criminal Code.

*Judging:*

1. Stating that the exceptions of the legal advisory team cannot be accepted.
2. Ordering the Public Prosecutor to continue the examination.
3. Postponing a decision on fees until the final decision.

- The decisions above were taken on Monday 29 August 2005 by the Panel of Judges consisting of:

1. Cicut Sutiarmo Presiding Judge
2. Sugito Member Judge
3. Lileik Mulyadi Member Judge
4. Agus Subroto Member Judge
5. Ridwan Mansur Member Judge

- In accordance with the decision, the Presiding Judge of the Central Jakarta District Court, 29 August 2005 1361/Pid B 2005 Central Jakarta District Court concerning the assignment of the Panel of Judges.

- These decisions were announced during the open public session by the Presiding Judge and the Member Judges, accompanied by Yan Mitra and Astuti as a substitute committee to the Central Jakarta District Court attended by Domu P Sihite as the Public Prosecutor along with the accused and his legal advisory team.

## **The Situation surrounding the Court Session**

### **1. Before the Session**

- By 10.10 am local time, visitors and sympathizers consisting of victims of May, Tanjung Priok, Semanggi, 65, Timor Lorosae, as well as university students, had arrived at the court. While waiting for the session to open, the community of victims and students staged an action in front of the court room, wearing masks of Munir and spreading out posters with the writing "There are no exceptions to the law, including the National Intelligence Agency", "Who is the mastermind behind Munir's murder?", "Thoroughly examine Munir's case" and "Why was he silenced?".

- At that moment, KOMIT (the Community of Eastern Indonesia), as usual, distributed propaganda widely with material concerning the credibility of Munir, Usman, KontraS and organizations such as the Fact Finding Team. Each time, up until the fourth court session, their propaganda material has not differed – always defending the National Intelligence Agency and concerning the credibility of non-government organizations KontraS and the Fact Finding Team as well as the families of victims. Strangely, the spread of materials in the name of these Eastern Indonesia university students has never been formally signed as a statement.
- At this court session, Pollycarpus arrived at the court in a blue prison vehicle, guarded by a police motorcycle patrol. Pollycarpus was wearing a grey shirt, black pants and black shoes.

## **2. The Court Session**

- Around 100 visitors and sympathizers filled the court room, and around 17 journalists covered the session. This was quite different from the three previous sessions, being filled with visitors and the media. Pollycarpus entered the court room guarded by approximately six members of Headquarters Detachment police, three among them named Heriyanto, Salmun L and A. Hidayat. As security they carried long-barreled rifles. Arrivals also included two Public Prosecutors from the Attorney General's office, Jakarta, and two police carrying police radio communications (one of them named Naih).
- In accordance with the schedule for the day, after the opening of the session, the Presiding Judge, Cicut Setiarso inquired as the health of the accused. His face appeared more gloomy than usual, and he occasionally coughed and wiped his nose. Continuing, the Presiding Judge read the materials concerning the interim decision in turns. Eight legal advisors, ten Public Prosecutors and two committee members attended the session.
- After the reading of the decision, the legal advisors as represented by Mohammad Assegaf stated their appeal against the decision of the Panel of Judges which had rejected the exceptions. Meanwhile, the Public Prosecutor accepted the decision as an injunction. Continuing, the judge ordered the session be continued with an examination of

witnesses for evidence.

- The legal advisors asked for the list of witnesses and physical evidence that would be presented at the following session in order that they could make the best possible preparation. The Presiding Judge explained that there would be 36 witnesses and a letter on Garuda letterhead. For the following session, victims would be prioritized. The Public Prosecutor said, for the initial examination of witnesses, it was planned to call four witnesses, however, the prosecutor did not name them, and consequently the legal advisors pressed for their names. In the end, the Presiding Judge stated, that for the examination of witnesses in the following session, they would aim for five; Suciwati, Indra, Rohainil Aini, Faizah and Ramelgia.
- At the moment their names were read out, the microphone was cut so that their names could not be heard. The cutting out of the microphone often occurred and therefore what was being said in the session could not be heard by the participants.
- The Panel of Judges decided that the following session would take place on Tuesday, 6 September 2005 with the examination of witnesses.

### **3. After the Session**

- The Public Prosecutor, Domu P. Sihite, at the time of confirmation of the names of witness to be called for the following session, named Suciwati, Ramelgia and Indra. When asked who Faizah was and whether she could attend the following session, the Public Prosecutor could not confirm, he only said he would see the following day. Unlike the three previous sessions, this time Domu was extremely cooperative – requesting the support of the press to support the court. It was previously noted that Domu always avoided the press and had never endorsed providing the case file or his response to the legal advisor's exceptions.
- Mohammad Assegaf, head of the legal advisory team, stated in the appeal against the interim decision of the Panel of Judges, the police named Pollycarpus as a assisting party, the Public Prosecutor had altered it to become a "single" party, whereas in the case file he was still referred to as a "certain" party and there was no clarification on his being an

activist of the Unitary State of the Republic of Indonesia. In his opinion, this could be brought under the appeal to the High Court and the Supreme Court. When it was confirmed that Pollycarpus was often active in conflict areas, Assegaf answered that his presence in conflict areas was not as an activist of the Unitary State of the Republic of Indonesia, but as a missionary helping unfortunate people.