VERDICT

No. 1185 K/Pid/2006

For Justice Be Based on God the Almighty

The Supreme Court

Has examined the criminal case on the appellate court and has decided for the defendant's case as followed:

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|---|---|
| Name | : POLLYCARPUS BUDIHARI PRIYANTO |
| Birth Place | : Solo; |
| Age/Date of Birth | : 44 years old/ January 26, 1961 |
| Sex | : Man; |
| Nationality | : Indonesian; |
| Place of Residency | : Jl. Pamulang Permai I Blok B No.1 RT 01/22 Pamulang Barat, Tangerang; |
| Religion | : Catholic; |
| Occupation | : Pilot of Garuda |

The defendant has been detained:

1. By the investigator since March 19, 2007 to April 7, 2005;
2. in Extension by the Prosecutor since April 8, 2005 to May 17, 2005;
3. in Extension by the Head of First Instance Court since May 18, 2005 to June 16, 2005;
4. in Extension by the Head of First Instance Court since June 17, 2005 to July 16, 2005;
5. By the Prosecutor since July 15, 2005 to August 3, 2005;
6. By The Judge of First Instance Court since July 29, 2005 to August 27, 2005;
7. In Extension by the Head of First Instance Court since August 28, 2005 to October 26,2005;

8. In Extension by the Head of Appellate Court since October 27, 2005 to December 25, 2005;
9. In Extension by the Head of Appellate Court since November 26, 2006 to December 25, 2005;
10. Judge of Appellate Court since December 21, 2005 to January 19, 2006
11. In Extension by the Vice Head of Appellate Court since January 20, 2006 to March 20, 2006;
12. In Extension by the Vice Head for Judicial Matters of Indonesian Supreme Court since March 21, 2006 to April 19, 2006;
13. Based on the Promulgation of the Head of Indonesian Supreme Court Number 364/2006/S.231.TAH/PP/2006/MA on May 18, 2006 the Defendant was ordered to be arrested for 50 (fifty) days taking effect on April 19, 2006;
14. The Extension was based on the Promulgation of the Head of Indonesian Supreme Court Number 503/2006/S.231.TAH/PP/2006/MA on May 18, 2006 the Defendant was ordered to be arrested for 60 (sixty) days taking effect on June 8, 2006;
15. The extension was based on the Promulgation of the Head of Indonesian Supreme Court Number 565/2006/1185 K/PP/2006/MA on July 31, 2006 that the Defendant was ordered to be arrested for 30 (thirty) days taking effect on August 7, 2006;
16. The Extension was based on the Promulgation of the Head of Indonesian Supreme Court Number 625/2006/1185 K/PP/2006/MA on August 29, 2006 that the defendant was ordered to be arrested for 30 (thirty) days taking effect on September 6, 2006;

And be brought before the trial at the Jakarta Pusat First Instance Court for being convicted:

FIRST:

That the Defendant POLLYCARPUS BUDIHARI PRIYANTO either committed the crime individually or collectively with YETY SUSMIARTI and OEDI IRIANTO (in separate files) on Monday September 6, 2004 until Tuesday September 7, 2004 or at least in certain time in September 2004 inside the aircraft of Garuda Indonesia Airways Flight

Number GA-974 with the destination from Jakarta to Singapore which then based on the Article 3 of the Penal Code in conjunction with Article 86 of the Procedural Penal Code and that the Jakarta Pusat First Instance Court has the authority to examine and try the case, has committed, persuade other to commit or assisting a premeditated and on purpose actions to kill other person that is the victim MUNIR, S.H which was carried out by the defendant in such manners as:

- that the Defendant POLLYCARPUS BUDIHARI PRIYANTO who has committed many activities in his defense to uphold the Unifying Nation of the Republic of Indonesia saw the victim MUNIR, S.H as the NGO activist and the Coordinator of Kontras that often identify himself as the motor and the pioneer of democracy development, the Human Rights defender and often time criticizing the government's program, making social critics, comments and negative connotation comments and other activities which then judged by the Defendant or other party to be very annoying and could be an obstacle or barrier for having the application of government's program which then caused other party including the defendant for not accepting his actions;
- having used the assumption and judgment as encouragement the Defendant thought it would be necessary to terminate all of the activities of the victim MUNIR, S.H by planning a very well though means to kill the victim MUNIR, S.H.
- in order to fulfill his plan in murdering the victim MUNIR, S.H the Deffendant started to monitor the activities of MUNIR, S.H directly or indirectly so then he knew the victim's, MUNIR, S.H, plan to continue his study to the Netherlands;
- then to assure the departure of MUNIR, S.H on September 4, 2004 the defendant had tried to call MUNIR, S.H through the victim's cell-phone which then received by the witness SUCIWATI (the wife of MUNIR, S.H) by asking when MUNIR, S.H be departed to the Netherlands and was answered by the witness SUCIWATI that MUNIR, S.H would leave on Monday, September 6, 2004;
- After reassuring the departure date of MUNIR, S.H then the defendant sought opportunity to leave together with MUNIR, S.H on September 6, 2004 where the defendant then asked for a change on his flying assignment as extra crew whereas

in his previous schedule he was scheduled to be assigned on September 5, 2004 to September 9, 2004 to Peking China but then changed to September 6, 2004 to Singapore. The change was seen in the Note on Change number: )FA/219/04 on September 6, 2004 which was made by ROHAINIL AINI with the reason as mentioned by the Defendant at that time that there would be an assignment from the witness RAMELGIA ANWAR as the Vice President Corporate Security of PT. Garuda Indonesia which in the implementation on the task would contact the Chief Pilot KARMAL FAUZA SEMBIRING. The assignment was never taken any place but due to the reason the General Declaration then issued for the departure of the Defendant to Singapore as Extra Crew to fulfill the task of Aviation Security while the task was not the specialization of the Defendant's job in PT. Garuda Indonesia and his original task was Pilot or at the very least the defendant did not posses a special assignment letter as the Aviation Security;

- Then on September 6, 2004 the defendant went to the Soekarno-Hatta International Airport to depart to Singapore by taking garuda Indonesia Airways aircraft with the flight number of GA-974 or the same aircraft as MUNIR, S.H;
- After checking in for the seat and belongings, the defendant then walked to the aircraft through a corridor that connected the waiting room to the aircraft door. At that time the Defendant saw MUNIR, S.H walking to the aircraft door;
- The Defendant then came to MUNIR, S.H greeted and asked him of where his seat would be which then MUNIR, S.H showed his seat number of 40 G in Economy class;
- Then MUNIR, S.H asked where that seat was and the Defendant answered that the seat was located in the back. However at that time the Defendant offered him his seat in Business Class number 3K to MUNIR, S.H where he meant to ease his plan in murdering MUNIR, S.H because there would only be 18 seats in the business class;
- In order to distract other people's suspicion of his actions, the Defendant then told the witness BRAHMANIE HASTAWATI as the Airplane Purser on his changing seat to MUNIR, S.H's seat then the witness BRAHMANIE HASTAWATI came by to MUNIR, S.H and shook his hand;

- After that the witness BRAHMANIE HASTAWATI allowed the Defendant to sit in the Premium Class and just a few minutes before take-off the witness OEDI IRIANTO as the flight attendant implemented his task in preparing welcome drink to all passengers including MUNIR, S.H. As the witness OEDI IRIANTO prepared the Welcome drink, the Defendant rose from his seat and walked to the Pantry near the premium bar. At that time the Defendant tried to put something in the orange juice which would be served to MUNIR, S.H in which according to the laboratory examination of the Forensic Lab of the Ministry of Justice in the Netherlands dated on October 13, 2004 and signed by dr. ROBBERT VISSER, doctor and pathologist in cooperation with dr. B.KUBAT it was assured that it was arsenic poison in deadly amount;
- The Defendant then put the arsenic poison to the orange juice because the Defendant was aware that MUNIR, S.H did not drink alcohol while the served welcome drinks were only orange juice and wine;
- Then the Witness YETI SUSMIARTI as the flight attendant took two glasses of wine and two glasses of orange juice where the two orange juice glasses had already arsenic poison in and arranged in the tray in sequential order where the two glasses in the front row were the wine while the other two in the back row were the orange juice in which the arsenic poison had been put in all two glasses of orange juice in the same composition. Then the witness YETI SUSMIARTI walked to the 3K seat at the business class where MUNIR, S.H was seated to serve the drinks. As she arrived in front of MUNIR, S.H, the witness YET SUSMIARTI offered the drinks to the witness LIE KHIE NGIAN who was sitting next to MUNIR, S.H first and the witness took the wine;
- When offering the beverages, the defendant, the witness OEDI IRIANTO as well as the witness YETI SUSMIARTI were aware and could assure that the witness LIE KHIE NGIAN who was the citizen of the Netherlands would rather to have wine;
- After that the witness YETI SUSMIARTI served the beverage to MUNIR, S.H who without any suspicion then took the orange juice which was served at the front row and it was the beverage mixed with arsenic poison;

- At the same time what the defendant did was monitoring the witness YETI SUSMIARTI's activity in serving the beverage to MUNIR, S.H who was sitting in his chair while drinking the orange juice in his hand, and the Defendant then walked back and forth in front of the pantry near the Business Class bar. And after the Defendant was assure that MUNIR, S.H had drunk up all of the orange juice which had the arsenic poison in it, the Defendant then walked up to the upper deck of the premium class and had the chance to go in to the cockpit to speak to the witness PANTUN MATONDANG who was the pilot in the flight;
- After 120 (a hundred and twenty) minutes of the flight, then at 11.32 PM the Garuda Indonesia Airways aircraft flight GA-974 landed in Changi Airport Singapore and then all crew including the Defendant walked down from the aircraft to have the changing of crew in the airport and all Jakarta crew then stayed at the Novotel Hotel Singapore;
- Before continuing the trip to the Netherlands, MUNIR ,S.H had to wait for 1 hour and 13 minutes at the Changi Airport to have the transit. Then MUNIR, S.H went back to the aircraft and had to sit on his original seat 40 G Economy Class and the aircraft then took off at 00.45 AM on September 7, 2004 from the Changi Airport. 15 minutes after the take-off MUNIR, S.H started to feel stomachache as the result of the arsenic poison reacting inside his body, then the victim started to project vomit until covering the front part of his shirt and pants at that time;
- 3 (three) hours after the take-off from Singapore, the witness PANTUN MATONDANG as the pilot received report from the purser MADJIB R.NASUTION that the victim MUNIR, S.H was ill and had been taken care of by doctor Tarmizi. The witness PANTUN MATONDANG then ordered the purser MADJIB R.NASUTION to monitor the development of the condition. At that time it was decided that the victim MUNIR, S.H was brought to the business class and had him lying down and the witness Dr. TARMIZI gave him 2 (two) tables of New Diatabs; 1 (one) tablet of Zantac; 1 (one) tablet of Promag and also injected him with Primperam and Diazepam so the victim MUNIR, S.H remained calm;
- But 2 (two) hours before landing, the witness PANTUN MATONDANG received another report from the purser MADJIB NASUTION that the victim MUNIR,

S.H had passed away. After that the witness PANTUN MATONDANG as the pilot invited doctor TARMIZI to get information on the victim's condition that MUNIR, S.H suffered from stomachache, vomiting and diarrhea, and upon receiving the report that the victim, MUNIR, S.H had died he then made the death certificate;

- Based on the autopsy report which was made pro-justice from the Forensic Institution of the Ministry of Justice in the Netherlands dated on October 13, 2004 which was signed by dr. ROBERT VISSER, a doctor and pathologist who was working with dr. B.KUBAT explained that they had performed an autopsy of a corpse with the name MUNIR, S.H from September 8, 2004 to October 13m 2004 with a conclusion that MUNIR at age 38 years old died for the cause taken from toxicology examination there had been found "an extreme increased of concentrate of arsenic" in the blood, "an increased" concentrate of arsenic in the urine and the "extreme" increase of concentrate of arsenic in the content of the stomach;
- Then the victim's clothes which was stained by vomit on the plane after an examination at the Center of Forensic Laboratory of Crime of the Indonesian Police Department, based on the Dossier of Examination from the Center of Forensic Laboratory of Crime of the Criminal Investigation Department of the Indonesian Police Department Number LAB : 3952/KTF/2002 dated on July 14, 2005, were examined: grey-and-blue short sleeves shirt, black jeans trousers; blue socks and brown underwear owned by the victim MUNIR, S.H, it could be concluded that the evidences of 1 (one) piece of grey-and-blue short sleeves shirt and 1 (one) piece of black jeans trousers were positive with arsenic;

The Defendant's POLLYCARPUS BUDIHARI PRIYANTO action was ruled and subject to Article 340 of Penal Code in conjunction with Article 55 paragraph (1) of the Penal Code;

AND

SECOND:

That the Defendant POLLYCARPUS BUDIHARI PRIYANTO either committed individually or collectively with RAMELGIA ANWAR and ROHAINIL AINI (in

separate files) on Monday September 6, 2004 in the Office of PT. Garuda Indonesia Airways at the Soekarno-Hatta International Airport Cengkareng that based on Article 84 Paragraph 2 of the Procedural Penal Code the Jakarta Pusat First Instance Court has the authority to examine and try the case, had committed, ordered to commit or assisting the action by intentionally used forge letter or forged letter which was assumed to be original and the use of the letter could cause damages which actions taken by the Defendant with means as followed:

- That the Defendant on September 6, 2004 around 03.00 PM to 06.00 PM or at least in the afternoon had called the witness ROHAINIL AINI where at that time the Defendant asked about the whereabouts of the Captain which then answered by the witness ROHAINIL AINI "What For?"
- Then the Defendant said that the Defendant had been assigned by the witness RAMELGIA ANWAR to Singapore and would be on-board in GA-974 although the Defendant knew that the witness RAMELGIA ANWAR was out of town. Hearing the request the witness ROHANIL AINI then asked about how about Mister KARMAL (the witness Captain KARMAL FAUZA SEMBIRING) as the direct superior of the Defendant and the Defendant answered that the witness RAMELGIA ANWAR would call Mr. KARMAL. Then the witness ROHANIL AINI before hung up the phone said that " You have promised that Mr. RAMELGIA should contact Capt. KARMAL" and the Defendant said, "yes";
- Based on the conversation the witness ROHANIL AINI convinced and believed because of the Defendant's status as Garuda senior pilot which then made the witness ROHANIL AINI made the Changing Note on Schedule Number OFA.219/04 at that exact moment and the witness ROHANIL AINI signed the note oneself although the witness was not authorized to do so. The Changing Not on Schedule was made as a replacement of the Note OFA/210/04 dated August 31, 2004 which contained the cancellation of the departure of Defendant as extra crew to Peking. The confidence of witness ROHANIL AINI was also based on the Letter of the Chief Director of Garuda Number DZ/2270/04 dated on August 11, 2004 where in the letter the Defendant was assigned as assisting staff at the

Corporate Security/IS which was chaired by the witness M. RAMELGIA ANWAR;

- Based on the Changing Note of Schedule Number OFA/219/04 dated September 6, 2004 which in turned to be forged because before the note made there had never been any order from the witness RAMELGIA ANWAR that assigned the Defendant to Singapore but the Defendant then went to Singapore acting as if he was assigned as extra crew to perform Garuda Aviation Security task by using Garuda Boeing 747-400 with the flight number GA-974;
- That upon his return from Singapore to Indonesia the trip had incurred extra cost for transportation and accommodation. Therefore the witness Captain KARMAL FAUZA SEMBIRING called the Defendant and asked the Defendant to report it to the witness RAMELGIA ANWAR. Then the Defendant asked the witness RAMELGIA ANWAR to make an assignment letter for the Defendant and the witness RAMELGIA ANWAR then made and signed assignment letter Number IS/1177/04 dated September 15, 2004 then handed it over to the Defendant. The purpose of the assignment letter was to make the incurred cost for the Defendant's trip was on responsibility of witness RAMELGIA ANWAR and not the responsibility of the Captain KARMAL FAUZA SEMBIRING;
- Considering that the Defendant had his trip to Singapore on September 6, 2004 was using extra crew assignment letter to convince others as if the task was really true. The Defendant requested again to witness RAMELGIA ANWAR to make assignment letter dated before September 6, 2004, which then based on the request the witness RAMELGIA ANWAR finally made the assignment letter with the same number and content which was the letter number IS/1177/04 dated September 4, 2004;
- Then based on the forged letter Number IS/1177/04 dated September 4, 2004 which was made as if it was an original one, the PT. Garuda Indonesia was then hold the responsibility of all incurred cost from the Defendant's trip which caused a loss from PT. Garuda Indonesia at least for the amount of Return ticket from Jakarta-Singapore and the accommodation cost for renting hotel during his stay in Singapore.

The Defendant’s actions were ruled and subject to crime penalty based on the Article 263 paragraph (2) of Penal Code in conjunction with Article 55 (1) of the Penal Code;

The Supreme Court;

Reading out the indictment of the General Prosecutor/Attorney at the State Attorney Office of Central Jakarta on December 1, 2005 as followed:

1. Stated that the Defendant POLLYCARPUS BUDIHARI PRIYANTO is proven guilty and convincingly guilty in conducting criminal action of “ Premeditated murder and used forged letter “ as it is stated in Article 340 of the Penal Code in conjunction with Article 55 paragraph (1) the first one of the Penal Code and Article 263 paragraph (2) of the Penal Code in conjunction with Article 55 paragraph (1) the first one of the Penal Code;
2. Indicted the Defendant POLLYCARPUS BUDIHARI PRIYANTO with the indictment of a life time sentence with the order of the Defendant being stay arrested;
3. Stated evidences in the form of:
    1. 1 (one) sheet of original Letter with Garuda Indonesia letterhead Number: GARUDA/DZ-227/04 dated August 11, 2004 on Assignment Letter directed to the Defendant POLLYCARPUS BUDIHARI PRIYANTO/522659 Flight Operation Unit (JKTOFGA) and signed by INDRA SETIAWAN (Director in Chief of PT. Garuda Indonesia);
    2. 1 (one) sheet of original Interoffice Correspondence letter with Garuda Indonesia letterhead which was directed to OFA Ref. No: IS/1177/04 dated September 4, 2004 on the Assignment signed by M. RAMELGIA ANWAR (Vice Corporate Security);
    3. 1 (one) sheet of original Interoffice Correspondence letter with Garuda Indonesia letterhead, which was directed to OFA Ref. No: IS/1177/04 dated September 15, 2004 on the Assignment, signed by M. RAMELGIA ANWAR (Vice Corporate Security) with serial Number 00781;
    4. 3 (three) sheets of original letter dated September 8, 2000, which was signed by POLLYCARPUS BUDIHARI PRIYANTO BHP directed to Mr. VP Corporate Security of PT. Garuda Indoensia;

5. 2 (two) sheets of riginal letter dated September 8, 2004, which was signed by POLLYCARPUS BUDIHARI PRIYANTO directed to the Flight Operational Manager of PT. Garuda Indonesia;
6. 1(one) bundle of original letters dated September 8, 2004, which was directed to Mr. VP. Corporate Security of PT. Garuda Indonesia signed by the Defendant POLLYCARPUS BUDIHARI PRIYANTO/522659 on the Assignment Report PDZ-2270/04;
7. 1 (one) original sheet of Tax Invoice from Novotel Apollo Singapore under the name of the Defendant POLLYCARPUS BUDIHARI PRIYANTO F/O Garuda GA 826 Room Number 1618 arrived on September 6, 2004 and departed on September 7, 2004;
8. Monthly Schedule Original under the name of the Defendant POLLYCARPUS BUDIHARI PRIYANTO from August 1 to September 26, 2004;
9. 1 (one) original ID Card under the name of POLLYCARPUS BUDIHARI PRIYANTO Number 522659 of Aviation Security Office issued on June 16, 2004 signed by VP HR MANAGEMENT DAAN ACHMAD;
10. 1 (one) original sheet of General Declaration Singapore-Amsterdam flight dated September 7, 2004;
11. 1 (one) copy of letter from Chief Pilot A.330 signed by ROHANIL AINI Note OFA/219/04 dated August 31, 2004 on the Request of Transformation on the Flight Schedule change under the name of POLLYCARPUS BUDIHARI PRIYANTO;
12. 1 (one) copy of letter from Chief Pilot A.330 signed by ROHANIL AINI Note OFA/219/04 dated August 31, 2004 on the Request of Transformation on the Flight Schedule change under the name of POLLYCARPUS BUDIHARI PRIYANTO;
13. 1 (one) original bundle from Kininklijke Merechaussee District Schiphol Algemed Recherche, Dossieer Onderzoek Niet Batuurlijke Dood Munir Gebaren : 08-12-1965 te Malang, Indonesia;

14. Copy of “Verslag betreffende een niet natuurlijke dood” which was issued by HB. Dammen as “de Officer van Justitle in het aroondissement Haarlem” dated Spetember 7, 2004;
15. Letter of “Voorlopige Bevindungen”, which was issued by dr. R. VISSER as the Pathologist of Menisterie Van Justitle-Nederlands Forensich Instituut in Rijkwijk dated September 8, 2004;
16. 16 (sixteen) pages contained photographs of the deceased MUNIR during the autopsy dated September 8, 2004;
17. Letter from dr. R. VISSER of NFI to Mr. E. VISSER the officer at Arrondissementsparket Haarlem on October 13, 2004;
18. Letter from Pro-Justice postmortem examination No. 04-419/R.102 composed by dr. R. VISSER from the Ministerie van Justitie-Nederlands Forensich Instituut dated October 13, 2004;
19. The letter of “Deskundigenrapport, voorlopig rapport”, which was issued by dr. K.J. LUSTHOV, a pharmacist, toxicologist from the Ministerie van Justitie-Nederlands Forensich Instituut, Zaaknummer 2004.09.08.036, Uw kenmerk BPS/XPOL Nummer PL278C/04-08133, Sectie Nummer: 2004419 dated October 1, 2004;

VI. Determining Evidences as followed :

1. 1 (one) sheet of original Letter with Garuda Indonesia letterhead Number: GARUDA/DZ-227/04 dated August 11, 2004 on Assignment Letter directed to the Defendant POLLYCARPUS BUDIHARI PRIYANTO/522659 Flight Operation Unit (JKTOFGA) and signed by INDRA SETIAWAN (Director in Chief of PT. Garuda Indonesia)
2. 1 (one) copy of letter from Chief Pilot A.330 signed by ROHANIL AINI Note OFA/219/04 dated August 31, 2004 on the Request of Transformation on the Flight Schedule change under the name of POLLYCARPUS BUDIHARI PRIYANTO
3. 1 (one) copy of letter from Chief Pilot A.330 signed by ROHANIL AINI Note OFA/219/04 dated September 6, 2004 on the Request of Transformation on the

Flight Schedule change under the name of POLLYCARPUS BUDIHARI PRIYANTO;

4. 1 (one) sheet of original Interoffice Correspondence letter with Garuda Indonesia letterhead which was directed to OFA Ref. No: IS/1177/04 dated September 4, 2004 on the Assignment signed by M. RAMELGIA ANWAR (Vice Corporate Security);
5. 1 (one) sheet of original Interoffice Correspondence letter with Garuda Indonesia letterhead, which was directed to OFA Ref. No: IS/1177/04 dated September 15, 2004 on the Assignment, signed by M. RAMELGIA ANWAR (Vice Corporate Security) with serial Number 00781;
6. 3 (three) sheets of original letter dated September 8, 2000, which was signed by POLLYCARPUS BUDIHARI PRIYANTO BHP directed to Mr. VP Corporate Security of PT. Garuda Indonesia;
7. 2 (two) sheets of riginal letter dated September 8, 2004, which was signed by POLLYCARPUS BUDIHARI PRIYANTO directed to the Flight Operational Manager of PT. Garuda Indonesia;
8. 1(one) bundle of original letters dated September 8, 2004, which was directed to Mr. VP. Corporate Security of PT. Garuda Indonesia signed by the Defendant POLLYCARPUS BUDIHARI PRIYANTO/522659 on the Assignment Report PDZ-2270/04;
9. 1 (one) original ID Card under the name of POLLYCARPUS BUDIHARI PRIYANTO Number 522659 of Aviation Security Office issued on June 16, 2004 signed by VP HR MANAGEMENT DAAN ACHMAD;
10. 1 (one) original sheet of Tax Invoice from Novotel Apollo Singapore under the name of the Defendant POLLYCARPUS BUDIHARI PRIYANTO F/O Garuda GA 826 Room Number 1618 arrived on September 6, 2004 and departed on September 7, 2004;
11. Monthly Schedule Original under the name of the Defendant POLLYCARPUS BUDIHARI PRIYANTO from August 1 to September 26, 2004;

12. 1 (one) original bundle from Kininklijke Merechaussee District Schiphol Algemed Recherche, Dossieer Onderzoek Niet Batuurlijke Dood Munir Gebaren : 08-12-1965 te Malang, Indonesia
13. Copy of “Verslag betreffende een niet natuurlijke dood” which was issued by HB. Dammen as “de Officer van Justitle in het aroondissement Haarlem” dated Spetember 7, 2004;
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15. 16 (sixteen) pages contained photographs of the deceased MUNIR during the autopsy dated September 8, 2004;
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18. The letter of “Deskundigenrapport, voorlopig rapport”, which was issued by dr. K.J. LUSTHOV, a pharmacist, toxicologist from the Ministerie van Justitie-Nederlands Forensich Instituut, Zaaknummer 2004.09.08.036, Uw kenmerk BPS/XPOL Nummer PL278C/04-08133, Sectie Nummer: 2004419 dated October 1, 2004;
19. The letter of “Deskundigenrapport, voorlopig rapport”, which was issued by dr. K.J. LUSTHOV, a pharmacist, toxicologist from the Ministerie van Justitie-Nederlands Forensich Instituut, Zaaknummer 2004.09.08.036, Uw kenmerk BPS/XPOL Nummer PL278C/04-08133, Sectie Nummer: 2004419 dated November 4, 2004;
20. Copy of legalized Letter of Document Transfer from the Ministerie van Justitie to the Embassy of the Republic of Indonesia dated November 25, 2004;
21. 1 (one) NOKIA brand cell-phone with black-brown casing along with card (SIM card) number 081596690617;

22. 1 (one) original sheet of Singapore-Amsterdam Flight General Declaration dated September 6, 2004;
23. 1 (one) original sheet of Singapore-Amsterdam Flight General Declaration dated September 7, 2004;
24. One Memo Pad owned by the Defendant POLLYCARPUS;
25. Acer Travel Mate Note Book Seri 4000 model ZL 1 along with the carrying bag;
26. Nokia brand cell-phone 9210, CE 168 type RAE-3N;
27. Telkomsel SIM-Card No. 621010 0013006566;
28. Clothes worn by the victim MUNIR, SH on the flight of Jakarta-Singapore-Amsterdam;

The evidences were returned to the Prosecutor to be used as evidences in other case;

Considering that the verdict from the Jakarta Appellate Court No.16/PID/2006/PT DKI dated March 12, 2006 which disposition is as followed:

- Accepting the appeal request from the Prosecutor and the Defendant;
- Amplifying the verdict of Central Jakarta First Instance Court dated December 20, 2005 No. 1361/Pid/B/2005/PN.Jkt.Pst which was asked for the appeal as mentioned above;
- Stipulating that the Defendant would remain in prison;
- Making the Defendant pay for the court costs in two level of court at the appellate level which was promulgated for the amount of Rp. 5,000,- (five thousand Rupiah)

Considering that the act on appellate request No.20/Akta.Pid/2006/PN.JKT.PST which was made by the clerk of the court in the Central Jakarta First Instance Court that stated that both Prosecutor and the Defendant each on April 19, 2006 and April 26, 2006 proposed appeal requests to the Appellate Court as mentioned above;

Noting that the appellate memo dated on May 2, 2006 from the Prosecutor/Attorney as the 1st Appeal Applicant, which was accepted in the Clerk office of the Central Jakarta First Instance Court dated May 2, 2006;

As well as noting the appellate memo dated on May 8, 2006 from the Defendant's Legal Counselor based on special power of attorney dated April 19, 2006 as the Second

Appeal Applicant which was accepted in the Clerk Office of the Central Jakarta First Instance Court dated May 8, 2006;

Reading the abovementioned letters;

Considering that the verdict of the Appellate Court was informed to the Prosecutor/Attorney and the Defendant each on April 12, 2006 and April 17, 2006 then the Prosecutor/Attorney and the Defendant apply for appeal each on April 19, 2006 and April 26, 2006 and the appeal memo has been received by the Clerk Office of the Central Jakarta First Instance Court each on May 2, 2006 and May 8, 2006, therefore the appellate application along with the grounds have been proposed in the timeframe and means according to the law thus the appellate application posed by the 1st Appeal Applicant and 2nd Appeal Applicant are considered to be formally accepted;

Considering that the grounds posed by the 1st Appeal Applicant/Prosecutor/Attorney and the 2nd Appeal Applicant/Defendant are basically as followed:

The 1st Appeal Applicant/Prosecutor/Attorney:

- that the Jakarta Appellate Court does not include/consider states that are in favor and burden as posed by the Prosecutor/Attorney in the indictment therefore the *judex facti* has mistakenly applied the law that is not applying Article 197 paragraph (1) letter (f) of the Penal Code;

The 2nd Appeal Applicant/Defendant:

I. Objection on the *judex factie* decision in the First Indictment.

1. Objection for the judex factie did not apply the law as how it should be.

1.1 On the Defendant's Motivation

To state that the Defendant had MOTIVATION in murdering MUNIR, SH, the Prosecutor on the page 2 of the indictment stated that: Pollycarpus Budihari Priyanto who had been involved in some activities since 1999 with excuses to uphold the Unifying State of the Republic of Indonesia felt disturbed by MUNIR, SH as the Chairman of Executive Board of Kontras. Based on the assumption the Defendant felt the urge to stop MUNIR, SH. The Prosecutor in page 60 of the indictment letter also amplifies this;

Strangely, instead of stating the indictment letter and prosecution letter of the Prosecutor was proven or not the Judex Factie drew one's conclusion which was obviously diverted/inappropriate from the indictment letter and the prosecution letter of the Prosecutor as included in the Verdict of the First Degree Panel of Judges page 83 to 88 which was amplified by the Appellate Panel of Judges;

Judex Factie concluded that the Appeal Applicant, Pollycarpus had the motivation to murder Munir based on the number of telephone conversation which had regular frequency to the owner 0811900978. From the degree of frequency in having conversation with the owner of 0811900978 then the Judex Factie concluded that the Defendant had "had an agreement" to murder Munir;

The drawing of conclusion is a mistake taken by the Judex Factie in applying the probative law since there has never been any validation test on the printed out material shown by the Prosecutor before the court. Who had the conversation? How did they get the printed-out material? What was the telecommunication provider? What was the conversation about? Moreover the recorded telephone conversation in the print-out was inaccurate, prone to change, and suspicious validity due to the technological or non-technological factor which then caused uncertain originality and truth;

If the conversation indeed occurred between the Appeal Applicant and the owner of 0811900978 then it would still be a breach of probative law when it was concluded that the Defendant/Appeal Applicant had similar motivation as the owner of the phone.

If A were a judge who often had conversation with B, a criminal who happened to hate C and in the future C was known to be dead, could it be concluded that A had the motivation to kill C?

The use of printed out material as the "Indication" proof on the existence of the motivation is obviously inappropriate with Article

184 paragraph (1) of the Penal Code because the telephone printed-out was not determined as tool of evidence while in the Article 188 paragraph (1) and (2) of the Penal Code it was not mentioned that the telephone printed-out material was the ground of getting indication proof. Moreover, the Printed-out material was not included as one of the evidences posed in court. Please refer to the Verdict of the First Degree Court page 9 to 12;

We would like to ask for the honorable Panel of the Appellate Judges, from the abovementioned matters it could be seen that there was no certainty of what the grounds of the Defendant's motivations are, whether it was concluded from the Dossier at the investigation level which was the testimony of Hian Tan that had never been presented by the Prosecutor or it was based on the print-out of the recorded telephone conversation that had never been tested for its truthfulness. This showed that the Prosecutor has indeed failed in proving the grounds of the indictment letter and the prosecution letter, and the Judex Factie has given conclusion without any grounds from court probative result. Therefore the decision of Judex Factie of the presence of the Defendant's motivation in murdering Munir, S.H should then be annulled;

1.2. Judex Factie was not fair in judging the testimonies of Expert Witnesses.

In the legal consideration of the First Degree Panel of Judges in page 99 and the legal consideration has been taken over by the Appellate Panel of Judges, Judex Factie has stated that the in take of arsenic poison was during the flight of Jakarta-Singapore. This was based on the ground that the Panel of Judges used : "theory of 3-4 hours maximum" as stated by 1 (one) Expert Witness Addy Quresman (the expert also shared similar opinion with other two experts regarding the 90 minutes time frame but then the expert

added his opinion that the 90 minutes time frame could be extended to maximum of 3-4 hours depending on the victim's physical condition at that time), while the other 2 (two) expert witnesses which were Ridla Bakri and Boedi Sampoerno both asserted on the preliminary symptoms of arsenic poisoning which normally occurred 10-60 minutes after the first in-take then added to the deviation of more or less 30 minutes so within the maximum 90 minutes of time (after the in-take of the arsenic poison) the body would react;

The legal consideration of the Judex Factie that put the grounds of the opinion based only on 1 (one) Expert only and ignored the other 2 (two) experts' opinions that would be in favor to the Defendant's position showed that the Judex Factie was not fair in deciding an a quo case as well as breaching the probative law principles that is on fairly judging the experts' opinions;

1.3. Judex Factie did not consider Defense Note and Appeal Memo which was posed by the Appeal Applicant/the Defendant.

That the Appeal Applicant objected severely with the Decision of Judex Factie because the Decision was put without any consideration to the Defense Note and Appeal Memo, which were posed by the Defendant either objection in relation to the legal facts before the court or the objection that is related to the breach of application of penal code principles. By not considering the Defense Note and Appeal Memo posed by the Defendant the Judex Factie has obviously breached the Defendant's rights in his effort to defend oneself in proving oneself innocent;

One of the examples of obvious wrongly legal facts that occurred which showed in the verdict but Judex Factie never gave one's legal consideration was that the legal fact indicted by the Prosecutor of the existence of conversation between the Appeal Applicant and the witness Pantun Matondang (page 5 of the

Indictment Letter and Page 7 of the Appeal Verdict) although the pilot in charge for Jakarta-Singapore flight was Sabur Muhammad Taufik not Pantun Matondang as revealed in the reconstruction which unfortunately was also ignored by the Judex Factie;

1.4. Judex Factie decided the a quo case inappropriate with the indictment letter and the prosecution letter of the Prosecutor.

In the indictment letter on page 4 3rd paragraph, the Prosecutor said that the arsenic poison was put in through orange juice beverage which in complete sentence is as followed:

"That the Defendant put the arsenic poison to the orange juice beverage because the Defendant knew that MUNIR, S.H did not take alcohol beverage while the served beverages for the welcome drinks were only orange juice and wine". '

Based on the indictment letter the court has examined all of the evidences and the tools of evidences in the form of letters or testimonies of witnesses. Then the prosecutor of the court presented the indictment letter in which among others asserting some of the followings:

- "…. Then at that time the Defendant put the arsenic poison in one of the orange juice glasses…" (page 69 of the Prosecution Letter);
- "…. Then based on the abovementioned facts there have been some proof that the arsenic poison was given orally through the media of liquid food. … This calculation was the one which proven that due to the in-take in the Singapore flight that the arsenic poison was given through the beverage taken by Munir on the plane (page 71 of the Prosecution Letter); and
- " …. In relation to the in-take of the arsenic poison to the orange juice, it has been proven." (page 72 of the Prosecution Letter).;

But strangely, Judex Factie then did not decide this case by determining whether the indictment letter and the prosecution letter of the Prosecutor was correct and stated that the Appeal Applicant was proven guilty or the Judex Factie has agreed on the Defense Note and the Appeal Memo of the Legal Counsel Team of the Defendant and stated that the Appeal Applicant was not guilty in conducting the criminal action as included in the Indictment Letter and the prosecution letter made by the Prosecutor. But then the Panel of Judges on the first degree on their legal consideration in page 91 and 97, and the legal consideration has been taken over by the Panel of Judges at the Appellate Level which was actually diverted from the indictment letter and the prosecution letter stated that the in-take of arsenic poison to Munir's body was by the serving of meal in the form of fried noodle instead of orange juice. Although it was obvius that the Court had never deliberated and proven the legal consideration, which stated that the in-take of arsenic poison to Munir's body was through the serving of meal in the form of fried noodle;

If the Supreme Court has agreed on the Legal consideration of the Judex Factie then the Supreme Court would have demanded that in one indictment letter and prosecution letter there would not be any deliberations on the criminal action conducted by the Defendant, and the Defendant should not be given any opportunity to draft a defense note because the judge in putting the verdict on a criminal case could change the procedure of court aside from the indictment letter and prosecution letter, and as well ignored the Defendant's defense note as what Judex Factie has done;

The legal consideration of the Judex Factie has obviously disregarded the indictment letter and the prosecution letter of the Prosecutor, ignored the rights of the Defendant to defend oneself,

and it is contradictory with penal law principles and the procedural law as followed:

a. Contradicted with the principle that the Judge could not put the verdict on the matters indicted or prosecuted.

   As we have all known in an a quo case, the Prosecutor presented the Defendant in this Court with indictment of conducting premeditated murder toward Munir by putting the arsenic poison in one of orange juice glasses (indictment letter page 4 and the prosecution letter page 69, line 4). Therefore the Court should have only proven the in-take of arsenic poison through orange juice (as how it is in the indictment letter) and instead considering the in-take of arsenic poison through fried noodle (which was not included in either prosecution letter or the indictment letter);

   According to M. Yahya Harahap, S.H in his book Deliberation of Problems and Application of the Penal Code, Published by Pustaka Kartini, 3rd Edition 1993, in Page 419 it was mentioned:

   " The objective and the use of indictment letter is a base or ground for the criminal examination in Court. Judge in examining a case could not be diverted from what have been formulated in the indictment letter. Thus a Defendant who has been presented before the Court could only be punished for being proven conducted criminal action as mentioned or stated by the prosecutor in the indictment letter."

b. Contradicted with the Article 197 paragraph (1) of the Penal Procedural Law.

   According to the explanation of Article 197 paragraph (1) letter (d) of the Penal Procedural Law it is stated that: "

What refers as ‘facts and situation here’ is all the matters that are existing and what have been found in court by the parties involved in the process among others the Prosecutor, witnesses, experts, the Defendant, the Legal Counsel and victim witness”. Linking to the provision in the Article 185 paragraph (1) of the Penal Procedural Law which stated: “ The witness’ statement as proof is what the witness has said in the court”, therefore the Judex Factie consideration that said the arsenic poison was given through fried noodle since it was concluded/achieved not based on the evidences and facts revealed in court, then it should be rejected and cancelled;

That on the rejection and cancellation of the verdict was not based on the reveal probative process in court as it was stated in the Penal Procedural Code in Article 197 paragraph (2) that stated: “the incompletion of provision in paragraph (1) letter d of this article would have caused the verdict cancelled for the law”;

c. Contradicted with the result of post-mortem report and the statement of Toxicologist.

   If the Supreme Court considers the result of autopsy and the post-mortem report valid, then the legal consideration of the Judex Factie, which stated that the arsenic poison was given through fried noodle, is obviously contradicted with the testimony of expert witness and in contravention with the post-mortem report. From the autopsy report of Netherlands Medical Justice as it was concluded in the post-mortem autopsy report, it could not be known how the arsenic poison was given in whether it was given through food or beverage. This is also amplified by the statement of Toxicologist in court that stated that it was not clear how

the arsenic poison entering the body whether it was through food or beverage. Therefore the conclusion/legal consideration of the Judex Factie, which stated the arsenic poison in-take was through fried noodle, is obviously contradicted with the testimony of expert witness and in contravention with the post-mortem autopsy report therefore the legal consideration of the Judex Factie should be legally null and void;

Based on those grounds, the verdict put by the Judex Factie has obviously violated the principles of penal procedural law, therefore the consideration of the Panel of Judges at the Appellate Level in page 21 stated: "that based on that state it is unnecessary to debate on whether the arsenic poison was entering Munir's stomach through orange juice as mentioned by the Prosecutor in the indictment letter or through fried noodle as mentioned by the First Degree Panel of Judges in their verdict" should be legally null and void;

The objection of the Appeal Applicant is also in contravention with the Dissenting Opinion of the Panel of Judges at the Appellate Level in their verdict on page 25, 26, and 29;

The inappropriateness of the Judex Factie's verdict with the Indictment Letter and prosecution letter was also shown in the Judex Factie's legal consideration on the Defendant's motivation as we have elaborated in point 1.1 above;

1.5. The Judex Factie accepted and used illegible tools of evidence. In the court, there has never been proven of the presence of consent of the Indonesian Government in regards to the autopsy upon the deceased Munir to the Government of the Netherlands, while the post-mortem autopsy report was examined and presented as evidence therefore the autopsy is legally null and void because in criminal case the one that represents the public interest is the state's authority

and in reality the state has never given any consent of the abovementioned autopsy;

If the Supreme Court allowed the autopsy of its citizen conducted in a foreign country without any consent from the Government of Indonesia, then it would have been a bad precedent for Indonesia. Having the illegibility of the post-mortem report then it is sensible if the case, which put Pollycarpus as the Defendant, is unacceptable;

1.6. The A Que verdict is imperfect in terms of its legal consideration (onvoldoende gemotiveerd).

In putting the verdict of an a quo case the Panel of Judges in the Appellate Court is imperfect in giving their legal consideration (onvoldoende gemotiveerd) because in their verdict on page 21, the Panel of Judges only took over all of the legal considerations of the Panel of Judges at the First Degree and did not re-examine the case either on the facts or on the legal applications which continuously amplify the verdict of the First Instance Court;

That according to Jurisprudence of the Indonesian Supreme Court dated December 16, 1970 No.492 K/Sip/1970 it is stated that:

"The verdict of Appellate Court should be annulled for lacking of considerations (onvoeldoende gemotiveerd) which was because in the verdict it only considered ignoring the posing objections in the appeal memo and without re-examining the case either on the facts or on the legal applications which continuously amplify the verdict of the First Instance Court."

Therefore it is proven that because in putting the verdict on an a quo case the Panel of Judges in the Appellate Court was imperfect in giving their legal considerations (onvoeldoende gemotiveerd) then according to the Jurisprudence of Indonesian Supreme Court dated December 16, 1970 No.492 K/Sip/1970, the Verdict of Appellate Court should be annulled;

1.7. Judex Factie did not apply the provision in Article 183 of the Penal Procedural Law.

In the Article 183 of the Procedural Law it is stated that "Judge could not put a verdict on someone unless with the provision at the very least two eligible tools of evidence. He or she would be assured that the crime did took place and that the Defendant is found guilty committing it."

This article asserts that the assurance of the Judge should be achieved by having the result of eligible proof. It should not be the "assurance" first then the assurance is proven in court. The article 158 of the Penal Procedural Law even prohibited the Judge in showing attitude or making statement in court on his/her assurance of the guilty or innocent state of the Defendant. Therefore the assurance of the Defendant's guilty or not should be carried out after the whole process of examination before the court is completed. But this assurance should also be emerged as the cause of having proof of at the very least 2(two) tools of eligible evidences as mentioned above.

However in putting the verdict on a quo case without having 2(two) eligible evidences the Judex Factie has already put the verdict guilty on the Defendant in committing the crime as it is stated in the first indictment, therefore it is sensible and fair if the verdict made by Judex Factie is legally null and void.;

The objection of the Appeal Applicant is in accordance to the Dissenting Opinion from the Panel of Judges at the Appellate Level in their verdict on page 26;

2. The Judex Factie's verdict was resulted from means of inappropriate judging.

   2.1. The a quo verdict was based on uncertain and fluctuating states.

   May I have the attention of the honorobal member of the Appellate Judges? The Appeal Applicant has an opinion that the verdict on the

a quo case was put based on uncertain and fluctuating states which as followed:

a. that according to the Judex Factie in order to murder MUNIR, S.H, the Defendant Pollycarpus Budihari Priyanto had incorporated with witness Oedi Irianto and witness Yeti Susmiarti. This is shown by the considerations of the Judex Factie which stated that the incident in which the Defendant put the arsenic poison in 2 (two) packets of food which were fried noodle and pasta by cooperating with the witness Oedi Irianto (the legal consideration of the First Level of Panel of Judges on page 93 which has been taken over by the Appellate Panel of Judges) then the fried noodle was served by Yeti Susmiarti to Munir (legal consideration of the First Level of Panel of Judges on page 94);

b. that however until the verdict of the Appellate Panel of Judges is dropped down on March 27, 2006 there has never been any court's verdict which stated that the witness Oedi Irianto and the witness Yeti Susmiarti have been proven guilty and convincingly committed conspiracy in murder with the Defendant Pollycarpus Budihari Priyanto;

c. that by not having court's decision which stated that the witness Oedi Irianto and the witness Yeti Susmiarti have been proven committing conspiracy in murder with the Defendant Pollycarpus Budihari Priyanto then it would also be uncertain on the truth of Judex Factie's consideration which stated that the Defendant Pollycarpus Budihari Priyanto has conspired with witness Oedi Irianto and witness Yeti Susmiarti in murdering Munir;

d. That the uncertain state occurred because when the witness Oedi Irianto and witness Yeti Susmiarti are being tried as Defendants and the Court put down the verdict to both witnesses innocent in

committing murder to Munir, S.H, then the Defendant would not be proven committing the murder either;

e. That because Judex Factie had put the verdict guilty on the Defendant in committing conspiracy with the witness Oedi irianto and witness Yeti Susmiarti in murdering Munir, S.H. although the wtiness Oedi Irianto and witness Yeti Susmiarti have not legally been proven guilty in murdering Munir, S.H then the a quo verdict which had been put on based on uncertain and fluctuating grounds of legal considerations. Therefore it is proven that the a quo verdict was obviously violated the human rights of Pollycarpus Budihari Priyanto as the Defendant to have a fair and honest trial;

2.2. Judex Factie has gained illegal Evidence of “Indication”.

That the incident when the Defendant put the arsenic poison in 2 (two) food packets, which were fried noodle and pasta by collaborating such action with witness Oedi Irianto (legal consideration of the First Degree Panel of Judges on page 93 which has been taken over by Appellate Panel of Judges) then the fried noodle was served by the witness Yeti Susmiarti to Munir (legal consideration of the First Degree Panel of Judges on page 94) according to Judex Factie was based on the existence of Evidence of “Indication”;

The evidence of “Indication” was merely based on the followings:

a. The fact that during the flight of Jakarta-Singapore the Defendant was never seen seated in his seat;
b. The fact that the Defendant had shared greetings with Brahmani Hastawati, Oedi Irianto and Yeti Susmiarti, and;
c. The fact that they had known each other before;

The Panel of Judges then interpreted the facts as the presence of evidence of indication on the Defendant’s preparation to speak and arrange how to put the arsenic poison in the food (the legal

consideration of the First Degree Panel of Judges on page 93 which has been taken over by the Appellate Panel of Judges);

The Appeal Applicant was very objected with the evidence of indication as mentions above because the evidence of indication was gained by inappropriate ways which were in contravention with provision in Article 188 paragraph (2) of the Penal Procedural Law that determines the evidence of indication should only be obtained through: (a). witness statement, (b). Letter and (c). the Defendant's statement since what Judex Factie referred as evidence of indication was obviously in contravention with the under-oath testimonies from the witnesses which were Oedi Irianto, Yeti Susmiarti, and was also in contravention with the Defendant's testimony as mentioned in the Verdict of First Degree of Panel of Judges on page 68, line 3, page 70 line 6, and page 38 line 9. The objection of the Appeal Applicant is in accordance to the Dissenting Opinion of the Appellate Panel of Judges in the verdict on page 25 and 29;

As well as the obtaining evidence of indication on the Defendant's motivation, since the evidence of indication was obtained based on the print-out of the conversation between the phone number of the Appeal Applicant with the cellular phone number 0811900978 and was not obtained from: (a) witness statement (b). Letter and (c) the Defendant's statement then the verdict of Judex Factie in the a quo case was proven based on the illegal obtaining of the evidence of indication so therefore it is sensible that the verdict of Judex Factie is legally null and void;

2.3. Judex Factie has tried in contravention to the indictment letter and the Prosecution letter of the Prosecutor.

The Legal consideration of the First Degree Panel of Judges on page 91 and 97 in which the legal consideration has been taken over by the Appellate Panel of Judges stated that the in-take of arsenic

poison to Munir's body was through the serving of dinner meal in the form of fried noodle instead of orange juice;

The legal consideration obviously shows that Judex Factie has tried this case illegally because it has been diverted from the indictment letter and prosecution letter posed by the Prosecutor because the in-take of arsenic poison in Munir's body through fried noodle had never been deliberated and proven before the court;

Our elaboration and objections at point 1.4 above have also proven that the Judex Factie has indeed tried the case inappropriately with the provision. Therefore it is sensible and deserving that the verdict of Judex Factie be announced null and void legally;

2.4. Judex Factie has neglected reconstruction.

Judex Factie has obviously not given legal consideration and neglected carried out reconstruction on the a quo case although in the reconstruction there were some matters that were revealed as followed:

a. that the commencing of Reconstruction was carried out based on the statements of the witnesses and statement of the Appeal Applicant as written in the Dossier and that the Reconstruction process went well, no witness refused any scene photographed during the reconstruction;

b. that in the Reconstruction, the Appeal Applicant has never chatted in the pantry with either witness Oedi Irianto or witness Yeti Susmiarti (according to the Dossier, the witness Oedi Irianto and the Appeal Applicant or the incident revealed before the court there had never been any facts showing that the witness Oedi Irianto and the Appeal Applicant had conversation in the Pantry). This is in accordance with the Second Phase Reconstruction Dossier No. 26 along with the Reconstruction pictures where the scene of reconstruction photograph, the witness Oedi Irianto was preparing the welcome drink as well as

preparing the food in the form of fried noodle and pasta, and the Appeal Applicant had never been seen being in the Pantry;

c. that the whole Reconstruction scenes from the very beginning to the end, there has never been any scene where the Appeal Applicant entering the pantry and the Appeal Applicant has never been around the business class;

d. that in the Reconstruction Dossier and the photographs of Reconstruction, the witness Yeti Susmiarti served the welcome drink and the food from the first row seats then moved to the subsequent seats behind the front ones with orderly lined glasses;

e. that in the Reconstruction photograph No.22 in the scene where the Appeal Applicant was in the Cockpit room (aircraft steering room) along with Captain Taufik Sabur which was observed by the investigation and both Captain Taufik Sabur and the Defendant agreed (no refusal);

f. that no party was objected on the whole Reconstruction scenes on June 23, 2005 and all witnesses, Appeal Applicant and the investigator have already signed them on July 4, 2005;

By ignoring the result of the Reconstruction then Judex Factie has tried in unfairly manners so therefore it is sensible and fair if the verdict of Judex Factie is legally annulled;

3. Judex Factie has surpassed its authority.

The grounds and objections of the Appeal Applicant which have been mentioned above on : (a) Judex Factie did not try fairly according to the indictment letter of the Prosecutor and (b) Judex Facti obtained the evidence of indication illegally and by doing so also proven that Judex Factie has surpassed its authority in trying and deciding the case a quo. Therefore it is sensible and fair if the Supreme Court annulled the verdict of Judex Factie;

II. Objection on the verdict of Judex Factie in the Second Indictment.

1. The verdict of Judex Factie did not apply the law as it should have been.

1.1. Judex Factie has mistakenly applied the law in putting the A quo Verdict on the cumulative indictment letter of the Prosecutor.

The Prosecutor indicted the Appeal Applicant/Defendant with cumulative indictment as it is provisioned in Article 141 letter b of the Penal Procedural Law, therefore in the elaboration of the indictment letter the Prosecutor explained all of the relating actions taken by the Defendant which in turn according to the Prosecutor, the Appeal Applicant/Defendant was proven to commit criminal action as mentioned in the first and second indictments;

Based on the grounds delivered by the Appeal Applicant on our objections of the verdict on the first indictment above, then the Appeal Applicant is obviously not proven committing criminal action as indicted by the Prosecutor in the first indictment. Therefore Judex Factie should also state that the second indictment is not proven;

It would be something peculiar, weird and insensible if the Appeal Applicant committed criminal action as indicted in the second indictment while the first indictment was obviously not proven. Why would the Appeal Applicant conspire to forge letter or use forge letter if indeed the Appeal Applicant did not commit the criminal action as indicted in the first indictment? Is it possible that the Appeal Applicant who is a senior pilot to take a trip to Singapore by forging or using forge letter? Is not it a common practice in the aviation industry where he is currently involved in?

The Dissenting opinion delivered by two Appellate Judges that stated the first Indictment of the Prosecutor was not proven but the Defendant was proven in committing the crime as indicted in the second indictment is in contravention with the legal logic. This shows their inconsistency because if the first indictment was not proven, strangely why would the second indictment, which was indicted by the prosecutor as a way to have it, reasonable as a crime in the first indictment be stated as proven?

Therefore the legal consideration in the dissenting opinion of the two appellate judges should be annulled;

1.2. The A quo verdict in blaming the Defendant for the Criminal Action that was not indicted.

May we have the attention of the Honorary Appellate Judges who Examine the A quo case? In the Second indictment letter, the Prosecutor indicted the Defendant with Article 263 92) in conjunction with Article 55 (1) of the 1st in the Penal Code TO BE COPERPRETATOR OF USING FORGE LETTER, but in the legal consideration that has been taken over by the Appellate Panel of Judges which stated:

"Considering that the Defendant in committing the criminal action did not commit all available elements of crime, but still in need of other party's role which would be the witness Ramelgia Anwar then the court had the opinion that the role of the Defendant Pollycarpus in Article 55 Paragraph 1 of the 1st in the pedal Code would be someone who is also involved in the effort of forging letters" shows that Judex Factie did not consider the elements of Article 263 92) of the Penal Code as indicted;

In the legal consideration, the Judex Factie considered and blamed the Defendant for being guilty in committing criminal action of TO BE COPERPETRATOR OF USING FORGE LETTER as mentioned in Article 263 (1) of the Penal Code (which was not included in the Indictment Letter and Prosecution Letter), and did not blame the Defendant for being guilty in committing criminal action of TO BE COPERPETRATOR OF USING FORGE LETTER as mentioned in Article 263 (2) of the Penal Code (which was included in the Indictment Letter and Prosecution Letter);

According to M. Yahya Harahap, S.H. in his book of the Deliberation of Problems and Application of the Penal Code, Published by Pustaka Kartini, 3rd Edition in 1993, page 419, it is stated "The objective and function of indictment letter is as base or ground of a case's examination in a trial. In examining the case, the Judge could not divert oneself from

what have been formulated in the indictment letter. Therefore, a Defendant who is faced in a trial could only be convicted if it had been proven one committed a criminal action as mentioned or stated by the Prosecutor in the indictment letter";

Therefore, since the Judex Factie has blamed the Defendant on criminal action that was not indicted to him, then it is proven that the verdict on a quo case has breached the principles of penal code and violated the Defendant's rights in conducting one's self defense thus it is sensible if the verdict of the Judex Factie is legally null or void;

1.3. The A quo verdict is imperfect in regards to the legal consideration (ONVOELDOENDE GEMOTIVEERD).

That in putting the verdict on an a quo case the Panel of Judges in the Appellate Court was imperfect in regards to the legal considerations (onvoeldoende gemotiveerd) because in the verdict on page 21the Panel of Judges only took over all of the legal considerations from the First Degree Panel of Judges and did not even re-examine the case either on the facts or even on the legal application, and kept on amplifying the Verdict of First Instance Court;

That according to the Jurisprudence of the Indonesian Supreme Court dated December 16, 1970 No.492K/Sip/1970, it is stated that:

"The verdict of the Appellate Court should be annulled for lacking of considerations (onvoeldoende gemotiveerd) which is because in its verdict it would only consider the ignorance of objections posed in the appeal memo and without re-examining the case either on the facts or in the legal applications and keep on amplifying the verdict of First Instance Court";

That then it is proven since in putting a verdict on a quo case the Panel of Judges in the Appellate Court was imperfect in having its legal considerations (onvoeldoende gemotiveerd), then according to the Jurisprudence of the Indonesian Supreme Court dated December 16, 1970 No. 492K/Sip/1970, the verdict of the Appellate Court should be annulled;

2. The Judex Factie's decision in trying without considering the objection notes, defense notes, and appeal memo posed by the Appeal Applicant/Defendant.

The Appeal Applicant is very objected with the Verdict of First Degree Court in relation to the second indictment, which is in page 105 to 111 and the Appellate Court amplifies it. This objection was due to the verdict of Judex Factie did not obviously consider the note of objection, defense note and appeal memo posed by the Defendant either objections in relation to the legal facts in trial or objections in relation of the existence of breach of penal code principles. By not having the legal consideration on the Defense Note and Appeal Memo of the Appeal Applicant, then the verdict of Judex Factie was taken through inappropriate means of trying in contravention to legal principles and provisions in penal procedural code;

III. On the Dissenting Opinion of Two Appellate Judges.

On the dissenting opinions delivered by 2 (two) Appellate Judges which were H. Basoeki, S.H and Sri Handoyo, S.H, herewith the Appeal Applicant would deliver some of the followings;

1. That the Appeal Applicant stated his agreeing with the Opinions of 2 (two) Appellate Judges which in their opinion on the First indictment because the dissenting opinion is appropriate with the Note of Defense, Appeal Memo and the grounds of this Memo to the Supreme Court Appeal;
2. That having the dissenting opinion delivered by 2 (two) Appellate Judges showed that the Appeal Decision was not based on one firm assurance among 5 (five) Panels of Appellate Judges. While the Penal Procedural Law has required of having one firm assurance from the judges and this assurance should be stating it was the defendant who was guilty in committing the crime. Therefore if the Judges are giving the verdict to the Defendant, the judges must have a firm confidence (100%) without any doubt on the truth of the crime or whether the Defendant deserves to be convicted or not. This is what we called as "beyond a reasonable doubt" as what other countries with "common law" legal procedures. This principle has taught us that if there were a little doubt in the judge on whether the Defendant deserves to be convicted or not, then the Defendant must be

acquitted. There is even an anecdote which said “it is better to acquit 10 innocent people than convicting 1 innocent person”;

The fact that there were 2 (two) out of 5 (five) Appellate Judges with dissenting opinion on a quo verdict, it showed that the a quo verdict was not based on a firm assurance (100%) and it also proves that there was indeed a doubt on the truth of crime which was indicted by the Defendant;

Therefore, since the a quo verdict has been dropped with less assurance as well as very doubtful then it is sensible that the Panel of Appellate Judges annulled it;

While on the opinion and conclusion on the Second Indictment the Appeal Applicant could elaborate it as followed:

1.1. The Appeal Applicant agrees that the First Degree Panel of Judges and 3(three) other Appellate Judges who did not give the dissenting opinion have made mistakes by putting the verdict on other than what have been indicted and prosecuted by the Prosecutor in the Second indictment (Memo of the Supreme Court Appeal page 22, number 1.2) so therefore it is sensible if the verdict of Judex Factie should be annulled legally;

1.2. But the Appeal Applicant could not also agree with the dissenting opinions of Judge H.Basoeki, S.H and Sri Handoyo, S.H which then stated that the Appeal Applicant is proven he has breached the Article 263 paragraph (2) of the Penal Procedural Law that is “using forge letter” based on the grounds as followed:

    a. That the prosecutor in the indictment letter which was cumulative in nature has obviously indicted the Appeal Applicant in accomplice to murder. In order to smooth one’s way of the murder the Prosecutor stated that one of the Defendant’s ways was to use forge letter. Therefore, the indictment of forge letter occurred as the cause of having the indictment for murder, which was indicted to the Defendant. So it would be strange if the Judge H. Basoeki, S.H and Sri Handoyo, S.H stated that the First

Indictment was not proven but the Second Indictment was because the First and Second Indictments were one dependent "package" therefore the Second Indictment is annulled automatically. Is not the use forge letter as included in the Indictment Letter of the Prosecutor to smooth the murder? Then when the indictment of murder is not proven, why would the Defendant use forge letter? Since the Judge H.Basoeki, S.H and Sri Handoyo, S.H stated that the First Indictment is not proven, then legally the Second Indictment is not proven either.

b. That it would be insensible a senior pilot like the Appeal Applicant to conduct crime using forge letter just for the convenience of having a trip to Singapore and staying in a hotel considering that it was the Appeal Applicant's daily task;

Considering that based on the grounds the Supreme Court has opinion:

Toward the 1st Appeal Applicant/Prosecutor/Attorney:

That those grounds are unjustified because the Appellate Court in amplifying the Verdict of First Instance Court has taken over the First Instance Court that has considered all the matters in favor and disadvantage the Defendant, according to the authority and on the magnitude of the conviction of this case is the authority of Judex Factie which all actions are obeying the appellate unless they drop the conviction surpassing the maximum sentence or less than the minimum sentence which is provisioned by the provisions or dropping the sentence by not giving sufficient consideration;

Considering that based on the abovementioned consideration it turned out that the verdict of judex factie in this case does not in contravention with the law and/or provisions then the appeal application posed by the 1st Appeal Applicant: the Prosecutor/Attorney should be rejected;

Toward the 2nd Appeal Applicant/the Defendant:

On the First Indictment:

That aside from the grounds for appeal, the Judex Factie has wrongly applied the probative law with the following considerations:

1. That of the evidences posed by the Prosecutor and those revealed during the trial at the First Instance Court, there have been some legal facts obtained as elaborated in the Verdict of the First Instance Court;
2. That in the considerations the judex factie used indications/clues as tools of evidence as elaborated on page 85,87, 88, 93, 97, 100, 101, 103;
3. That based on Article 188 (2) of the Penal Procedural Law, indications as evidences should be based on the witness statement, letters, and the defendant's statement;
4. That in the considerations the Judex factie gave opinions as elaborated in the verdict of the First Instance Court among others are:
   a. There has been an agreement in the conversation between the Defendant and the cell-phone number 0811900978 on how they wanted to kill Munir (The First Instance Court Decision Page.86);
   b. There were no other objectives or motivations other than the Defendant would want to kill Munir as discussed with the speaker through cell-phone number 0811900978 which the speaker remained unknown (The First Instance Court Decision Page 88);
   c. To obtain powder arsenic poison was very easy for the Defendant by buying it in a store that sold arsenic poison which was sold practically everywhere and easy to carry in terms of the form and amount to the plane without being detected since it was not illegal substance or reported goods (The First Instance Court Decision Page 93);
   d. There has been a short conversation between witness Yeti Susmiarti and the Defendant on thinking and planning how to implement the Defendant's intention to kill Munir by putting in the arsenic poison in the pantry room except for the three of them (the First Instance Court Decision Page 97);
   e. The Defendant walked to the pantry room to meet the witness Yeti Susmiarti and the witness Oedi Irianto who were already in the pantry room and prepare to talk and arrange how to put the arsenic poison in the meal (the First Instance Court Decision Page.93);

f. Shortly after the short conversation and the division of tasks, the Defendant immediately went out of the pantry to the premium bar (The First Instance Court Decision Page 94);

g. The Defendant along with the witness Oedi Irianto and Yeti Susmiarti who had known each other before were assured to use the meal preparation time smoothly by having the witness Oedi Irianto opened the tin foil sealed or the cover of whatever was on top of the food, then the Defendant spread the arsenic poison to two of the meal packages available which were fried noodle and pasta, then have it closed neatly (the First Instance Court Decision page 93);

h. Meanwhile the witness Oedi Irianto and the witness Yeti Susmiarti prepared and placed two of the meal options in which the Defendant had spread the arsenic poison were separated to be offered to Munir, and the ones that were not poisoned were given to other passengers (the First Instance Court Decision Page 94);

i. Since the victim could only chose the meals offered by the witness Yeti Susmiarti, then when the victim determined his choice for Fried Noodle, the witness Yeti Susmiarti gave the poisoned fried noodle to the victim (The First Instance Court Decision Page 94);

j. All series of the witness Yeti Susmiarti's actions from serving the fried noodle up to the time when the Victim had eaten all the meal up, the witness Oedi Irianto always observed her since it was his duty as well as he was being observed by the Defendant (the First Instance Court Decision Page 94);

5. That based on the facts presented in the court, the Judex Factie's opinion was not supported by any tools of evidence in the form of the witness' statement, letter or the Defendant's statement as referred by the Article 188 (1) and (2) or the Penal Procedural Code;

6. The Judex Factie concluded that time for the in-take of arsenic poison took place during the Jakarta-Singapore flight which was during the serving of meal (The First Instance Court Decision Page 99), the conclusion was wrong because:

   a. According to all experts in the court, the time distance between the in-take of arsenic body and the appearance of the first symptom is:

   1). Statement from Addy Quresman ST: 30 minuts to 4 hours;

2). Statement from Dr. Boedi Sampoerno : 10 minutes to 110 minutes;

3). Statement from Dr. Ridla Bakri; 30 minutes to 90 minutes;

based on the statements, the average time distance is 10 minutes to 4 hours;

b. Based on the facts presented in the court, the first symptoms of occurring in the victim (Munir) were during the flight of Singapore-Amsterdam that was when the victim (Munir) asked for Promag medicine around 15 minutes before take-off and before the serving of meals for the victim (Munir) he went to the toilet. During the serving of the meal, around 30-40 minutes after take-off, the victim (MUnir) did not want to eat and said that he had stomachache (the statements from TIa Dewi Ambari, a flight attendant in the First Instance Court Decision page 40);

c. The time distance of the victim's trip using GA 974 plane on September 6, 2004 were:

1). The Jakarta-Singapore flight : 98 minutes

2). Transit at Changi airport : 60 minutes

3). The occurrence of first symptoms in the victim's body in the flight of Singapore-Amsterdam : 10-15 minutes;

d. If the average time distance the occurrence of first symptoms of arsenic poison is applied to the victim's time trip, then there would be three possibilities of the arsenic poison in-take to the victim's body which are:

1). Before the Jakarta-Singapore Flight;

2). In the Jakarta-Singapore Flight;

3). After the Jakarta-Singapore Flight ( at the Changi Airport);

e. Of when and where the arsenic poison in-take took place, it was undeterminable, because from the facts presented in the trial, not one single evidence could be used as a base to determine it;

7. That based on the abovementioned matters, we could conclude that:

a. the Judex Factie's consideration was based merely on assumptions and was not based on the revealed evidences on trial;

b. It could not be proven that it was the Defendant who caused the death of the victim (Munir) by putting in arsenic poison in either the orange juice or the fried noodle which was eaten or drunk by the victim;

c. It could not be proven that the Defendant had put or asked someone to put the arsenic poison in the beverage or meal served to the victim in the Jakarta-Singapore flight;

8. That based on the abovementioned considerations, the Supreme Court thinks that the elements of the First Indictment were not fulfilled thus the First Indictment could not be proven legitimately and convincingly, therefore the Defendant should be released from the charges;

On the Second Indictment:

Of the 2nd Reason Point 1 and 2:

That the reasons could not be justified because judex factie was appropriately applied, and the reasons on the judgment of the probative result that was a reward of a fact, that kind of objections could not be considered in the supreme court examination because at that level it was only related to the inappropriate application of a law or a provision or whether the trial was not conducted based on the provision in the Law and whether the Court has exceeded its authority as mentioned in the Article 253 of the Penal Procedural Law (the Law No.8, 1981);

That although there are some relations with the first indictment, the second indictment was a single independent indictment (Article 65 (1) of the Penal Code). Aside from that the Judex Factie has mistakenly elaborated the formulation of criminal act qualification conducted by the Defendant as said in the Second Indictment. The qualification of criminal act conducted by the Defendant should be the use of forge letter (Article 263 (2) of the Penal Code) not the act of letter forgery (Article 263 (1) of the Penal Code);

Considering that on the opinions of the Appellate Board of Judges there are some dissenting opinions, which are:

The Opinion of the Judge Artidjo Alkostar, S.H, LLM:

A. On the appeal of the District Attorney:
  - granting the appeal proposal of the District Attorney by considering:
  1. Judex Factie has inappropriately applied the law for not applying the Article 197 paragraph (1) letter f of the Penal procedural Code. In the verdict, Judex Facti (or the First Instance Court) did not give considerations on the burdening and favoring factors appropriately in putting the verdict;

2. Judex Factie has inappropriately applied the law since the Defendant's action was considered as a Concurus (simultaneous actions) between murder, the Article 340 of the Penal Code and letter forgery, the Article 263 paragraph (2) of the Penal Code therefore the criminal indictment required a limited accumulation which was the maximum sentence added with a third of the whole sentence;
3. Stating that the Defendant Pollycarpus Budihari Priyanto is proven legitimately and convincingly guilty in committing "premeditated murder and the use of forge letter" as stated in the Article 340 of the Penal Code in conjuction with Article 55 paragraph 91) the 1st of Penal Code and the Article 263 paragraph (2) of the Penal Code in conjuction with Article 55 paragraph (1) the 1st of Penal Code;
4. Putting the verdict on the Defendant Pollycarpus Budihari priyanto with a life sentence;

B. On the Appeal proposed by the Defendant/the Legal Counsel;

- Refusing the appeal application proposed by the Defendant/Legal Counsel with legal considerations:

1. The Judex Factie was right in the legal consideration and verdict for considering all the relevant matters jurisdictionally; that the Judex Factie used indication evidences according to the Article 188 paragraph (1) and (2) of the Penal Code: In the logic philosophy there are 3 causality relations, which are:
    1. From cause to impact;
    2. From impact to cause;
    3. From impact to impact (see the Scientific Logic by Dr. W. Poespoprodjo, S.H, SS, BPh, LPh, 1999:245);

   And what happened in the murder case of Munir was that the impact of Munir's murder was because he was poisoned by someone or many people;
2. Judex Factie was right in the legal consideration by using a-posteriori method of thinking by considering a series of events that were conditio sine qua non, so the murder of Munir occurred as the cause of being poisoned. With all the legal facts that become indications and there was a causal relation with the impact of Munir's murder for being poisoned;

3. The Judex Factie was in fact imbalance in judging the statement given by expert witness because either the statements from Ridla Bakri and Boedi Sampoerno or the expert witness Addy Quresman have both considered the most relevant testimonies with the occurrence of impact of Munir's death for being poisoned;
4. Judex Factie was right in the legal consideration for all relevant matters jurisdictionally have been considered appropriately by the Judex Factie either for all matters proposed by the District Attorney or the Defendant and/or his Legal Counsel;
5. The judex factie did not put the verdict accordingly with the indictment letter or prosecution letter from the District attorney; that Judex Factie used causal relation logic a-posteriori which was the incident of Munir's death as the impact of a cause of having a poison in-take in his bod; the in-take of the poison in Munir's body is inseparable from all previous incidents which could be passed on beverage or meal; From the moment up until Munir's death, based on the testimonies and indications found by the Judex Factie, the poison in-take was through meal; The Judex Factie remained strict to the essence of indictment letter which stated that there was a causal relation between Munir's death and the Defendant's actions;
6. The Judex Factie did not accept and use in putting the verdict on using all matters revealed in court; Qualification of the tools of evidence lays in the authority of the expert validity, the validity theory asserts that there 6 categories of validity, which are:
    1. Face Validity;
    2. Logical Validity or known as Construction Validity or the Validity of Definition;
    3. Factorial Validity;
    4. Content Validity;
    5. Empirical Validity (see the Introduction to the Social Research Methodology by Kartini Kartono, 1980: 101);

    In this probation, the validity used is logical validity;

7. The Judex Factie's verdict was not onvoeldoende gemotiveerd because the Judex Factie has considered all jurisdictionally relevant matters;
8. Judex Factie has properly considered in sequential manner with a-posteriori all incidents before Munir was on the plane, and all incidents happened in the Garuda aircraft up until before his death and after his death;
9. The Judex Factie did not apply Article 183 of the Penal Procedural Code because in his verdict, the Judex Factie had considered more that two legitimate and valid evidences. The legitimate clue appeared in the trial;
10. Other appeal reason was not justified because it related to the judgment of the result of probation which was the authority of Judex Factie;
11. Other reasons which in relation to the judgment of the presence of dissenting opinion were not relevant, because dissenting opinion has been provisioned in the Law No.4/2004;

Considering that based on the abovementioned considerations, the Supreme Court thinks that the Verdict of the First Instance Court No. 16/PID/2005/PT.DKI, dated March 27, 2005 and the verdict of the Jakarta Pusat First Instance Court No.1361 K/Pid.B/2005/PN.Jkt.Pst dated December 20, 2005 could not be maintained anymore, therefore it should be annulled and the Supreme Court would try the case as mentioned below;

Considering that since the Defendant was not proven committing criminal act as mentioned in the First Indictment and proven committing the criminal act as mentioned in the Second Indictment then before putting the verdict on the Defendant, there should be matters needed to be considered that would favor and burden the Defendant:

The Favoring matters:

- The Defendant was polite and respecting the court;
- The Defendant had never committed any unlawful actions;
- The Defendant has a family to support;

The Burdening matters:

- The Defendant's action could trigger distrust of the community toward Garuda as the state owned company;

- The Defendant's action has smeared Garuda's population;

Considering that the appeal application of the Appeal Applicant I/DA/Attorney was rejected and the appeal applicant of the Appeal Applicant II/Defendant was granted, but since the Defendant was proven and sentenced, then the Defendant should pay the case cost of this appellate level;

Noting the Article 340 of the Penal Code in conjunction with Article 55 (1) of the 1st Penal Code, Article 263 paragraph (2) of the Penal Code in conjunction with Article 55 (1) of the 1st Penal Code, the Law No.8/1981, The Law No.4/2004, the Law No.14/1985 as amended by the Law No.5/2004 and other related law and provisions;

TO PRONOUNCE JUDGMENT ON:

Rejecting the Appeal Application of the Appeal Applicant I: District Attorney/Prosecutor in the Jakarta Pusat District Attorney Office;

Granting the Appeal Application of the Appeal Applicant II/Defendant: POLLYCARPUS BUDIHARI PRIYANTO;

Annul the verdict of the Jakarta First Instance Court No. 16/PID/2006/PT.DKI dated March 27, 2006 which annulled the Jakarta Pusat First Instance Court No.1361/Pid.B/2005/PN.Jkt/Pst dated December 20, 2005;

TO INDEPENDENTLY PRONOUNCE JUDGMENT ON:

1. Stating that the Defendant POLLYCARPUS BUDIHARI PRIYANTO was not legitimately and convincingly guilty in committing the criminal action as indicted in the First Indictment;
2. Releasing the Defendant from the First Indictment;
3. Stating that Defendant POLLYCARPUS BUDIHARI PRIYANTO was legitimately and convincingly guilty in committing the criminal action of "Using Forge Letter";
4. Putting the Verdict therefore the Defendant will receive 2 (two) years of imprisonment;
5. Promulgating the length of sentence of the Defendant before the decision has static legal status which will be deducted of all imprisonment verdict put on him;

6. Promulgating the evidences to be returned to the District Attorney/Prosecutor to be made as evidences in other case which are:
    1. 1 (one) original copy of Letter with Garuda Indonesia letterhead Number GARUDA/DZ-2270/04 dated August 11, 2004 on the subject of Assignment Letter directed to POLLYCARPUS BUDIHARI PRIYANTO/522659 Unit Flight Operation (JKTOFGA) and signed by INDRA SETIAWAN (General Director of PT. Garuda Indonesia)
    2. 1 (one) copy of Letter from A.330 Chief Pilot signed by ROHANIL AINI Note OFA/210/04 dated August 31, 2004 on the Request of Schedule Change;
    3. 1 (one) copy of letter from Chief Pilot A.330 signed by ROHANIL AINI Note OFA/219/04 dated September 6, 2004 on the Request of Transformation on the Flight Schedule change under the name of POLLYCARPUS BUDIHARI PRIYANTO;
    4. 1 (one) sheet of original Interoffice Correspondence letter with Garuda Indonesia letterhead which was directed to OFA Ref. No: IS/1177/04 dated September 4, 2004 on the Assignment signed by M. RAMELGIA ANWAR (Vice Corporate Security);
    5. 1 (one) sheet of original Interoffice Correspondence letter with Garuda Indonesia letterhead, which was directed to OFA Ref. No: IS/1177/04 dated September 15, 2004 on the Assignment, signed by M. RAMELGIA ANWAR (Vice Corporate Security) with serial Number 00781;
    6. 3 (three) sheets of original letter dated September 8, 2000, which was signed by POLLYCARPUS BUDIHARI PRIYANTO BHP directed to Mr. VP Corporate Security of PT. Garuda Indonesia;
    7. 2 (two) sheets of riginal letter dated September 8, 2004, which was signed by POLLYCARPUS BUDIHARI PRIYANTO directed to the Flight Operational Manager of PT. Garuda Indonesia;
    8. 1(one) bundle of original letters dated September 8, 2004, which was directed to Mr. VP. Corporate Security of PT. Garuda Indonesia signed by

the Defendant POLLYCARPUS BUDIHARI PRIYANTO/522659 on the Assignment Report PDZ-2270/04;

9. 1 (one) original ID Card under the name of POLLYCARPUS BUDIHARI PRIYANTO Number 522659 of Aviation Security Office issued on June 16, 2004 signed by VP HR MANAGEMENT DAAN ACHMAD;
10. 1 (one) original sheet of Tax Invoice from Novotel Apollo Singapore under the name of the Defendant POLLYCARPUS BUDIHARI PRIYANTO F/O Garuda GA 826 Room Number 1618 arrived on September 6, 2004 and departed on September 7, 2004;
11. Monthly Schedule Original under the name of the Defendant POLLYCARPUS BUDIHARI PRIYANTO from August 1 to September 26, 2004;
12. 1 (one) original bundle from Kininklijke Merechaussee District Schiphol Algemed Recherche, Dossieer Onderzoek Niet Batuurlijke Dood Munir Gebaren : 08-12-1965 te Malang, Indonesia
13. Copy of "Verslag betreffende een niet natuurlijke dood" which was issued by HB. Dammen as "de Officer van Justitle in het aroondissement Haarlem" dated Spetember 7, 2004;
14. Letter of "Voorlopige Bevindungen", which was issued by dr. R. VISSER as the Pathologist of Menisterie Van Justitle-Nederlands Forensich Instituut in Rijkwijk dated September 8, 2004;
15. 16 (sixteen) pages contained photographs of the deceased MUNIR during the autopsy dated September 8, 2004;
16. Letter from dr. R. VISSER of NFI to Mr. E. VISSER the officer at Arrondissementsparket Haarlem on October 13, 2004;
17. Letter from Pro-Justice postmortem examination No. 04-419/R.102 composed by dr. R. VISSER from the Ministerie van Justitie-Nederlands Forensich Instituut dated October 13, 2004;
18. The letter of "Deskundigenrapport, voorlopig rapport", which was issued by dr. K.J. LUSTHOV, a pharmacist, toxicologist from the Ministerie van Justitie-Nederlands Forensich Instituut, Zaaknummer 2004.09.08.036, Uw

kenmerk BPS/XPOL Nummer PL278C/04-08133, Sectie Nummer: 2004419 dated October 1, 2004;

19. The letter of "Deskundigenrapport, voorlopig rapport", which was issued by dr. K.J. LUSTHOV, a pharmacist, toxicologist from the Ministerie van Justitie-Nederlands Forensich Instituut, Zaaknummer 2004.09.08.036, Uw kenmerk BPS/XPOL Nummer PL278C/04-08133, Sectie Nummer: 2004419 dated November 4, 2004;
20. Copy of legalized Letter of Document Transfer from the Ministerie van Justitie to the Embassy of the Republic of Indonesia dated November 25, 2004;
21. 1 (one) NOKIA brand cell-phone with black-brown casing along with card (SIM card) number 081596690617;
22. 1 (one) original sheet of Singapore-Amsterdam Flight General Declaration dated September 6, 2004;
23. 1 (one) original sheet of Singapore-Amsterdam Flight General Declaration dated September 7, 2004;
24. One Memo Pad owned by the Defendant POLLYCARPUS;
25. Acer Travel Mate Note Book Seri 4000 model ZL 1 along with the carrying bag;
26. Nokia brand cell-phone 9210, CE 168 type RAE-3N;
27. Telkomsel SIM-Card No. 621010 0013006566;
28. Clothes worn by the victim MUNIR, SH on the flight of Jakarta-Singapore-Amsterdam

Applied the cost for the Defendant to pay the case at the appellate level for Rp.2.500,- (Two thousand five hundred rupiah);

In witness thereof this document was promulgated in the meeting of Supreme Court on Tuesday, October 3, 2006, by Iskandar Kamil, S.H, Supreme Judge which was promulgated by the Head of Supreme Court as the Chairman of the Counsel, H. Atja Sondjaya, SH and Artidjo Alkostar, S.H. The Supreme Justices as the members and stated outloud the open session of trial for public in the same day by the Chairman of the Counsel and the members of Supreme Justice and

assisted by Mien Trisnawaty S.H, M.H as the Alternate Court Registrar and was not attended by the Appeal Applicant I: District Attorney/Prosecutor and the Appeal Applicant II/Defendant;

Members of the Supreme Justice; Chairman

Alternate Court Registrar