

## VERDICT

No. : 277/Pdt.G/2006/PN.JKT.PST

### PRO JUSTITIA BASED ON THE ONE SUPREME GOD

The District Court of Central Jakarta after examining and trying the Civil cases in the first level has passed verdict in a case between:

**SUCIWATI**, residing at Jl. Diponegoro No. 74, Central Jakarta. In this case represented by her Legal Attorneys Asfinawati,SH, M. Choirul Anam, SH, Ori Rahman, SH, Anton Prajasto,SH, Umar Husein,SH, Muhammad Arfiandi Fauzan,SH, Hermawanto,SH, R. Dwiyanto Prihartono,SH, Sudaryatmo,SH, Vera S Wenny, SH, Indria Fernida,SH, Poengky Indarti,SH, Edwin Partogi,SH, Gatot,SH, Khaeruddin,SH, Dimas Prasidi,SH, Totok Yulianto,SH, Arko Kana Dianto,SH, Melda Kumalasari,SH, Agus Pratiwi,SH, Abusaid Pelu,SH, Sinung Karto,SH, Nurcholis Hidayat,SH, Virza Roy Hizzal,SH, by virtue of Special Power of Attorney dated September 5, 2006, hereinafter referred to as: **PLAINTIFF**:-----

### VERSUS

1. **P.T. (Persero) Perusahaan Penerbangan Garuda Indonesia**, Hereinafter referred to as **P.T. Garuda Indonesia**, a State Owned Company running in air transportation service, having its domicile in Garuda Indonesia Building, Jl. Merdeka Selatan No. 13, Jakarta 10110, Indonesia. Hereinafter referred to as **DEFENDANT I**; -----

2. **Indra Setiawan**, as Individual and President Director of PT. Garuda Indonesia 2002-2005, PT. Garuda Indonesia, residing at Jl. Taman Maruya Ilir H7/14 Meruya Utara, West Jakarta, hereinafter referred to as **DEFENDANT II**; -----
3. **Ramelgia Anwar**, as Individual and Vice President Corporate Security/Directorate of Strategy and General Affairs 2002-2005, PT. Garuda Indonesia, residing at Jl. Parkit I No. 28 Griya RT 02/10, Limo Sub District, Limo - Depok, hereinafter referred to as **DEFENDANT III**; -----
4. **Rohainil Aini**, as Individual and Flight Operation Support Officer/Administrator Airbus A-330 1998 - 2005, PT. Garuda Indonesia, residing at Jl. Danau Kelapa Dua VIII/5 RT 02/05, Kelurahan (Village of) Kelapa Dua, Curug, Tangerang District, hereinafter referred to as **DEFENDANT IV**; -----
5. **Pollycarpus Budihari Priyanto**, as Individual and pilot/staff of Aviation and Internal Security of PT. Garuda Indonesia, residing at Pamulang Permai Block B No. 1, Tangerang District, hereinafter referred to as **DEFENDANT V**;
6. **Yeti Susmiyarti**, as Individual and Crew of Cabin GA 974 Jkt-Sin September 6, 2004, PT. Garuda Indonesia, residing at Perumahan Taman Elang Block o/06 RT 03/10, Desa Periuk, Periuk Sub District, Tangerang Municipality, hereinafter referred to as **DEFENDANT VI**; -----
7. **Oedi Irianto**, as Individual and Crew of Cabin GA 974 Jkt-Sin September 6, 2004, PT. Garuda Indonesia, residing at Jl. Cirata II Block DA/2 RT 001/012, Kel. (Village of) Jaka Sampurna, Bekasi, hereinafter referred to as **DEFENDANT VII**;

8. **Brahmani Hastawati**, as Individual and Purser of GA 974 Jkt-Sin September 6, 2004, PT. Garuda Indonesia, residing at Jl. Cucur Timur A.6/2 BTR IV RT 02/09, Pondok Karya, Pondok Aren, Tangerang Municipality, hereinafter referred to as **DEFENDANT VIII**; -----
9. **Pantun Matondang**, as Individual and Pilot of GA 974 SIN-AMS September 6, 2004, PT. Garuda Indonesia, residing at Kav. DKI Block 80 No. 31, Meruya, West Jakarta, hereinafter referred to as **DEFENDANT IX**; -----
10. **Madjib Radjab Nasution**, as Individual and Purser of GA 974 SIN-AMS September 6, 2004, PT. Garuda Indonesia, residing at Griya Kencana I Block A/16, RT 01/04, Kel. (Village of) Pedurenan, Karang Tengah Sub District, Tangerang Municipality, hereinafter referred to as **DEFENDANT X**;-----
11. **Sabur M. Taufik**, as Individual and Pilot of GA 974 Jkt-Sin September 6, 2004, PT. Garuda Indonesia, residing at Jl. Taman Giri Loka B/23 Bumi Serpong Damai, Kel. (Village of) Lengkong Wetan, Tangerang Municipality, hereinafter referred to as **DEFENDANT XI**; -----

The said DISTRICT COURT;-----

Having read the relevant case files as well as all relevant letters;-----

Having heard the testimony of the parties;-----

Having learnt all incidents occurred in the hearing to the present case;-----

**CASUS POSITIO:**

Considering, whereas the PLAINTIFF in her suit dated September 06, 2006 which was registered with the Registrar's Office of the District Court of Central Jakarta under register No. 277/Pdt.G/2006/PN.JKT.PST, and the Plaintiff through the Panel of Judges has changed her Suit before hearing on October 09, 2006 and before hearing dated October 30, 2006 states the following matters:

**I. LEGAL POSITION AND INTEREST OF THE PLAINTIFF**

1. That the PLAINTIFF is the wife of the Deceased Munir and as the mother guardian of two natural children mentioned above born from the marriage of the PLAINTIFF to the deceased, all are the heirs of the deceased MUNIR passing away on September 7, 2004 in the flight of Garuda Indonesia Airlines Aircraft operated by the DEFENDANT 1, Flight Number: GA 974 with route Jakarta-Amsterdam (Exhibit P-4);
2. That based on matters above, the PLAINTIFF reserves right to file suit of illegal act for the failure of the DEFENDANT 1 to fulfill its responsibility to guarantee the security, convenience as well as safety of the passengers; -----

**II. LEGAL FACT**

3. That the Deceased Munir was the passenger of the Aircraft operated by the Defendant 1, the Flight Number GA 974, route Jakarta-Amsterdam, Ticket no. 1263273535522.2, Booking Code QLKJF 8, date of issued September 1, 2004. -----

4. That the ticket of the Deceased Munir is for flight Jakarta-Amsterdam on September 6, 2004, economic class at the name of the [deceased] Munir. -----
5. That when the Deceased Munir was on boarding in the passengers queue before getting in the Aircraft GA 974, the Deceased Munir met with the DEFENDANT V who already been known or ever met before in this case in his profession as pilot and working in the DEFENDANT 1's company (Exhibit P-6a); -----
6. That on the Aircraft GA 974, the Deceased Munir was going to sit on the seat Number 40 G, Economic Class based on the determination of seat by the ground officer of Garuda when checking at Airport Soekarno-Hatta. But, after on the board, the relevant party was moved to seat Number 3K, Business Class. (Exhibit P-6b); -----
7. That the movement of the seat of the Deceased Munir was made before the aircraft took off from Jakarta at the initiative of the DEFENDANT V recently known following the flight of Aircraft GA 974 with Airport destination Changi Singapore in his capacity as extra crew who would perform task issued by the DEFENDANT I and DEFENDANT II as Aviation and Internal Security. (Exhibit P-6c). -----
8. That the movement by the DEFENDANT V caused the Deceased Munir sat on the seat number 3K, business class without business class ticket; -----
9. That the movement of the seat of the Deceased Munir from the economic class [40G] to the Business class [3K] at

instruction of the DEFENDANT V was not prohibited by the flight pilot at the time namely the DEFENDANT XI as well as not inhibited by the DEFENDANT VII who that at the time was assigned as Purser. (Exhibit P-6s); -----

10. That the DEFENDANT VI as the cabin crew at the time also asked to the DEFENDANT V whether he had requested for permission to the DEFENDANT VIII, who at the time acted as purser, when the DEFENDANT V stated that he would exchange his seat to Munir's. But the DEFENDANT VI did not reconfirm to the DEFENDANT VII about the seat movement (Exhibit P-6e); -----

11. That the movement of the seat of the Deceased Munir from the economic class to the business class means that the Deceased Munir was placed in the different condition; -----

12. That the selection and procedure of food serving in the business class is much different from the economic class, in the economic class, the passenger obtains the food in mass (no choice but fixed offer) except for the special food order (diet, Moslem etc.). While in the business class, there are various selections thereby the food is more individual. The procedure of serving is different as well. Before being served, the food is firstly opened by the cabin crew performing his task in front of the passengers. (Exhibit P-6f); -----

13. That the procedure of drink serving is also different between the economic class and the business class. In the economic class, the drink is poured in front of the passenger

according to his choice, while in the business class it is poured in the pantry and then served to the passenger. (Exhibit P-6g); -----

14. That in the flight GA 974 Jkt-Sin, the DEFENDANT V sat about 1 meter from the premium class mini bar, and the distance of the premium class mini bar to the pantry is about 5 meters; -----

15. That in the flight of GA 974 Jkt-Sin, the DEFENDANT V was to and fro in the cockpit although at the time he was not crew on duty. (Exhibit P-6h); -----

16. That in addition, the DEFENDANT V also was at pantry two times. (Exhibit P-6i); -----

17. That the DEFENDANT V had time to take walking and enter to pantry at a time before the food and or drink were served;

18. That the deceased Munir drank 'welcome drink' of about 10 minutes after getting on the aircraft and ate the food served of about 50-60 minutes after the drink was served by the DEFENDANT VI and DEFENDANT VI, the cabin crews at the time; -----

19. That after transit in the Changi Airport-Singapore, the aircraft GA 974 continued its flight to Amsterdam; -----

20. That in the flight GA 974 Singapore-Amsterdam, the DEFENDANT X was as purser having responsibility for all acts occurring in the cabin and those carried out by cabin crew. While the DEFENDANT IX acted as pilot captain having responsibility to all things occurring on the flight GA 974 Singapore-Amsterdam. -----

21. That since the departure of the Aircraft GA 974 from the Changi Airport, Singapore toward Amsterdam, the Deceased Munir returned to his original seat namely number 40G in Economic Class and no longer after that, he began to complain about stomachache and vomiting followed by defecating which was then known as the symptom/reaction of the poison consumed by the Deceased Munir (Exhibit P-6j); -
22. That before vomiting followed by defecating, at the Changi Airport, the Deceased Munir has experienced stomach pain symptom. In addition, the Deceased Munir had time to request for medicine for this stomach pain to the cabin crew when just getting on aircraft with route Singapore - Amsterdam;
23. That due to his sickness, the Deceased Munir had to repeatedly go to toilet of Aircraft GA 974, even the relevant party was no longer able to walk by himself toward toilet thereby requiring assistance of the cabin crew. (Exhibit P-6k); -----
24. That after knowing the condition of the Deceased Munir as mentioned above, the DEFENDANT IX should immediately have consulted to the Ground Officer to request for permit to land his aircraft on the nearest airport. (Exhibit P-7); --
25. That about two hours before the Aircraft GA 974 landed to Airport Schipol, the Netherlands, or about 04.05 of local time, the Deceased Munir was found passing away; -----
26. That the result of visum et repertum conducted by the Netherlands Forensic Institution [Netherlands Forensisch Instituut - NFI], concluded that the Deceased Munir passed

away due to the acute arsenic toxin. It is based on the toxicology examination that there was found very high arsenic concentration in the blood, urine and stomach (Exhibit P-8); -----

27. That the testimony of the expert stated that, the reaction of arsenic toxin entering to the body of the Deceased Munir is maximum 90 (ninety) minutes before the initial symptom emerges (Exhibit P-a); -----

28. That the time interval between the emerging of the initial symptom to the incorporation of poison matched to the time when the Deceased Munir consumed food and drink of the DEFENDANT 1 served in the flight between Jakarta - Singapore (Exhibit P-9b); -----

29. That therefore it was known that on the flight GA 974 Jakarta - Singapore there were toxic food and or drink, which were then served by the DEFENDANT VI and DEFENDANT VII to the Deceased Munir, rendering his death; -----

30. That after the first time hearing news about the death of the Deceased Munir through Kontras, the PLAINTIFF called the DEFENDANT I to ascertain such news. The PLAINTIFF called the DEFENDANT I's office in Jakarta and in Amsterdam respectively 3 times thereby at least 6 times the PLAINTIFF called the DEFENDANT I's office but he was not willing to give the information; -----

31. That on such calls, the DEFENDANT I was not willing to provide information with many arguments. Then on the latest call to the representative of the DEFENDANT I in Schipol,

the PLAINTIFF was informed that it is true that the Deceased Munir passed away. And she was requested to not inform to any parties that she knew the news about the death of the Deceased Munir from himself; -----

32. That after the death of the Deceased Munir, there were found important facts about the flight of GA 974 in relation to the death of the Deceased Munir, namely: -----

a. That the DEFENDANT V was on aircraft GA 974 in his capacity as extra crew (Exhibit P-61); -----

b. That recently it was known that the departure of the DEFENDANT V on GA 974 was based on the assignment letter of the DEFENDANT II to the DEFENDANT V as aviation and internal security (JKTISGA) under the letter number GARUDA/DZ-2270/04, dated August 11, 2004; (Exhibit P-10); -----

c. That the assignment letter has peculiarity, namely the assignment was very general in nature, without time limit and without furnished with clear accountability system for the implementation of task; -----

d. That besides the peculiarity above, the assignment letter was issued by the DEFENDANTS I and II, directly to a Co-Pilot Garuda by neglecting the level of decision making in Garuda management environment, namely Director for Operational, Vice President for Flight Operation and Chief of Pilot; -----

e. That the assignment letter of the DEFENDANT V was issued at the time nearly simultaneously with the news on mass

media about the Munir's plan to continue his study to the Netherlands; -----

- f. That it was successfully identified that the departure of the DEFENDANT V is not according to the procedure. On September 6, 2004, the DEFENDANT V visited the DEFENDANT IV to request for being involved as crew in the flight GA 974 on the same day (September 6, 2004). The DEFENDANT IV had time to deny but after the DEFENDANT V stated that he had obtained consent from the DEFENDANT III, the DEFENDANT IV permitted the DEFENDANT V to board the flight of GA 974. (Exhibit P-6m); -----
- g. That the DEFENDANT V could be on the aircraft GA 974 on September 6, 2004, based on the schedule change note number OFA/219/04 signed by the DEFENDANT IV himself, as Flight Operation Support Officer. Such note constitutes the change and the Note Number OFA/210/04 dated August 31, 2004.(Exhibit P-6n); -----
- h. That the schedule change letter was officially issued as the document of the DEFENDANT I although the DEFENDANT IV knew that such matter actually became the authority of the chief of pilot. (Exhibit P-6o); -----
- i. That therefore, the departure of the DEFENDANT V was without permit from Chief of Pilot Carmel Sembiring who actually had such authority. (Exhibit P-6p); -----
- j. That then the DEFENDANT III as Vice President for Corporate Security issued letter No. 15/1177/04 to strengthen the assignment letter of the DEFENDANT 1 and

DEFENDANT II to the DEFENDANT V made by the DEFENDANT IV. But it was known that the letter was in fact back dating, namely after the death of Munir [antidatum]. (Exhibit P-11); -----

k. That the DEFENDANT V arrived in Singapore at about 00.30 - and back to Jakarta by the first flight at 06.30 on September 7, 2004, thereby indicating that the DEFENDANT V has no sufficient time to perform the task he claimed already carried out during in Singapore. (Exhibit P-12);

l. That the report of the DEFENDANT V to the DEFENDANT III on September 8, 2004 was unprofessional, because with the capacity as a pilot operating the aircraft on computerized basis, while the report of the DEFENDANT V to the DEFENDANT III was only made by using manual typewriter. (Exhibit P-13); -----

33. That the DEFENDANT 1, after the death of the Deceased Munir has established the Investigation team called SH@Re investigation, producing *Safety Hazardous Report subject "Death on Board GA 974 B747-400 PK-GSG SIN-AMS, Sept 7<sup>th</sup> 2004 No. INV/OZI/B744/001/04 Basis No. 24/04/744 issued on October 19, 2004 and prepared by Hartati, Betty Nila P and Boy Umarsyah and verified by Capt. Novianto Herupratomo and approved by Capt. A Krismanto.* (Exhibit P-14); -----

34. That in SH@Re Investigation, producing *Safety Hazardous Report subject "Death on Board GA 974 B747-400 PK-GSG SIN-AMS, Sept 7<sup>th</sup> 2004 No. INV/OZI/B744/001/04 Basis No.*

24/04/744 issued on October 19, 2004 contained the investigation findings, among others: -----

- "before Mr. Munir's death, PiC didn't make any contact seeking of medical advice from the ground ..".-----
- crew did not really understood kind of reportable occurrence should reported on ASR and CSR and which Department should be (the first hand) received the preliminary report".---
- "crew did not really understood international rules/regulation of ICAO annex 13 when such incident/accident occurs in the country other than the original country of the operator".-----
- "crew did not realize that wrapping or packaging of medicine and medical equipment used by doctor during medical treatment, should kept as evidence."-----

35. That the DEFENDANT II ever issued the statement acknowledged by the public through media about his acknowledgement of unprofessionalism of GARUDA management related to the fact of existence of back dating/antidatum letter, the report of the DEFENDANT V and assignment letter of the DEFENDANT II to the DEFENDANT V. (Exhibit P-15); -----

36. That besides such acknowledgment, the DEFENDANT II ever made the fact vague by providing statements thereby there was untrue news about the death of the Deceased Munir namely basically guaranteeing that the death of Munir was not due to poisoning, since as explained by the relevant party, "the food is distributed randomly, if due to the Garuda's

food, of course all passengers will be exposed to poison."

(Exhibit P-16); -----

37. That moreover, the DEFENDANT 1 had no commitment to assist the disclosure of the case of the death of Munir, even there is tendency to conceal it, supported by the fact of canceling pre-reconstruction of the murder of Munir on the aircraft, as stated by the Investigator of Munir case, Marsudhi; -----

38. "Marsudhi also criticized Garuda that is considered has no commitment to assist the disclosure of the death of Munir. Indication of the absence of commitment is among others many officials and officers of PT Garuda Indonesia tend to conceal it. Other indication is, he added, Garuda does not carry out internal investigation. "Garuda cancels pre-reconstruction of Munir murder case on the aircraft with insignificant reason," Marsudhi confirmed (Exhibit P-17);

### **III. THE DEFENDANT'S ILLEGAL ACT**

39. That the flight of the Aircraft GA 974 with Route Jakarta-Amsterdam with transit in Changi Airport, Singapore is international flight complying with Warsawa Convention; ---

40. That Munir passed away due to accident occurring in Garuda aircraft operated by the DEFENDANT I, therefore based on article 17 of Warsaw Convention 1929, the DEFENDANT I shall be responsible for the loss suffered. -----

41. That the safety, security and convenience of the Deceased Munir in the flight of Garuda GA 974 JKT-AMS on September

6, 2004 fully becomes the responsibility of the Defendant I, res ipsa loquitur; -----

**A. Intentionality to place the passenger in uncomfortable, unsafe, and insecure condition, consisting of:**

**a. the movement of seat not according to the boarding pass**

42. That the movement of the seat of the Deceased Munir on the aircraft GA 974 from seat Number 40G, Economic Class, to Seat Number 3K, Business Class, immediately before the flight of Jakarta-Singapore constitutes the act contradictory to the civil company's flight standard, let alone as mentioned above, the flight of Aircraft GA 974 was in the scope of international flight; -----

43. That in addition, the movement of the passenger's seat also can not be allowed in term of the perspective of investigation act (forensic) to the victim if there is aircraft accident. This movement may obscure the victim identification in the aircraft accident since the position of seat is not in accordance with the existing passenger's manifest; -----

44. That in the case of the death of the Deceased Munir, the movement of seat at initiative of the DEFENDANT V as well as 'act to let' made by the DEFENDANTS VII and XI can not be justified since such act then placed the Deceased Munir in dangerous condition as the target [easily] for poisoning; -

45. That since the act to move made by the DEFENDANT V that was let by the DEFENDANTS VIII and X constituting the employees

or officers of the DEFENDANT I's company placing the Deceased Munir in the position not guaranteeing his security, safety and convenience as the passenger clearly can also be considered as illegal act since breaching the prevailing legislation and the legal obligation itself, namely: -----

a. Basic Operation Manual (BOM) date Jan 1, 1998, issue No. 2 BOM 5.1.4 page 1 containing: -----

- "In case of up-or downgrading a note should be made on the passenger information sheet and PiC as well as the purser should be informed before embarkation of passengers.-----

- Economy class passengers on the following conditions may occupy First class seats:-----

(1) In case of overselling, according to current upgrading sequence rules. -----

(2) In those cases were, for ad-hoc technical reasons, a mixed configuration aircraft is scheduled to fly on an all economy service, it is not against IATA rules that economy class passenger occupy first class seats", -----

b. Article 4 item [a] of Law Number 8 of 1999, Regarding Consumer's Protection, that "The Consumers shall be entitled to among others the convenience, security and safety in consuming the goods and/or service." -----

46. That moving Munir from the seat in economic class according to the ticket issued by the DEFENDANT I and accepted by Munir,

namely the economic class ticket, to the business class as already taking place, actually there is no reason of overselling or ad hoc technical reasons, in this respect i.c must be construed that the carrier (the DEFENDANT I) has accepted a passenger without ticket, namely without business class ticket as provided for in article 3(2) Warsaw Convention 1929, thereby as the consequence, the DEFENDANT I's responsibility becomes unlimited; -----

47. That for the act of the DEFENDANT 1, DEFENDANT V, DEFENDANT VIII and DEFENDANT XI which is illegal as stated above, then the DEFENDANT 1, DEFENDANT V, DEFENDANT VIII and DEFENDANT XI should be declared by the District Court of Central Jakarta had committed illegal act (onrechtmatigedaad); ----

48. That in addition, that it is also reasonable according to law if the DEFENDANT 1, DEFENDANT V, DEFENDANT VIII and DEFENDANT XI based on Articles 1365 and 1367 of Indonesian Civil Code shall be fully responsible jointly to all losses arising as the consequence of the illegal act they committed. -----

**b. the Existence of the Defendant I's Crew with illegal official Assignment Letter**

49. That the act of the DEFENDANT I and DEFENDANT II issuing the assignment letter to the DEFENDANT V as Aviation and Internal Security under letter number GARUDA/DZ-2270/04, dated August 11, 2004 that is without the time limit, without furnished with the accountability system, and also

neglecting the level of decision maker according to the management of the DEFENDANT I is contradictory to the legal obligation of the DEFENDANT I and DEFENDANT II; -----

50. That the assignment of the DEFENDANT V in the flight GA 974 used note No. OFA/219/04 signed by the unauthorized party namely the DEFENDANT IV, alias illegal; -----

51. That the act of the DEFENDANT I and DEFENDANT III [Vice President for Corporate Security] issuing letter No. 15/1177/04 but in fact the letter was back date, is an effort to conceal and/or make vague the fact and not support an effort to reveal the case of the death of Munir is contradictory to the legal obligation of the DEFENDANT I and the DEFENDANT III according to Article 5 Paragraph 3 of Law No.19/2003, regarding State Owned Companies (BUMN) principally explaining that: "Implementation of task in implementing his task as the member of Board of Directors principally shall implement the professionalism, efficiency, Transparency, Accountability, Responsibility as well as equity principles and not contradictory to Article 7 items a, b and c of Law No. 8/1999, Regarding Consumer's Protection, which principally explained that: "the obligation of the businessmen to have good-faith in implementing his business, providing clear and honest information about the goods and or service condition as well as the use, improvement and maintenance, as well as treating or serving the consumers correctly and honestly as well as not discriminatively." -----

52. That the DEFENDANT V making the forward dated letter is an act not allowed since contradictory to the equity. The DEFENDANT IV should have denied to make such letter, especially when making such letter, the news on the death of the Deceased Munir has been exposed on mass media thereby the DEFENDANT IV should also have known the intention of making of such forward dating letter; -----
53. That the act of the DEFENDANT V determining his own task ask Aviation and Internal Security in flight GA 974 to Singapore without special assignment letter, but using note issued by the DEFENDANT IV actually he should know the existence of permit from the authorized party namely chief pilot as well as letting the existence of back dating letter to complete his act to fly without special assignment letter indicates that the DEFENDANT V has jointly committed illegal act committed by the DEFENDANT I, DEFENDANT II, DEFENDANT III and DEFENDANT IV; -----
54. That the illegal act of the DEFENDANT V above is still added by the improper and unprofessional act in terms of use of manual type writer in writing his report. It is clearly not in accordance with the capacity that should have been owned by a co-pilot who in daily task operates the computerized system aircraft; -----
55. That the act of the DEFENDANT I, DEFENDANT II, DEFENDANT III and DEFENDANT IV amicably and intentionally to fly the crew that should not fly in this case the DEFENDANT V and then conceal the fact by back dated letter, also

contradictory to the right of others, namely the right of the Deceased Munir as the DEFENDANT's Consumer. The DEFENDANT's act also breaches; -----

a. Article 28G paragraph 1 of Constitution 1945, stipulating: "every person shall be entitled to .. sense of safety and protection from fear of taking or not taking act;"

b. Article 28D paragraph [1] of Constitution 1945, stipulating: "every person shall be entitled to the fair legal acknowledgment, warranty, protection and certainty and equal treatment before law"; -----

c. Article 4 of Law No. 8/1999, Regarding Consumer's Protection: [1] right to convenience, security and safety in consuming the goods and/or service; [2] right to choose the goods and/or service as well as obtaining the goods and/or service according to the exchange value and condition as well as guarantee promised; [3] right to correct, clear and honest information on the condition and guarantee of the goods and/or service; ---

d. Based on equity and operational standard of Garuda and the Government Regulation No. 3 of 2001 regarding the flight security and safety, the following principles must be fulfilled; -----

- the flight security is a condition materialized from the operation of flight free from disturbance and/or illegal act;-----

- flight safety is a condition materialized from the smooth operation of the flight according to the operation procedure and technical feasibility requirements against the flight facilities and infrastructure together with supporting equipment thereof;-----

56. That based on Government Regulation No. 3 of 2001, a flight must be safe and or free from any unlawful act. But in flight of GA 974 Jakarta-Singapore led by the DEFENDANT IX, in fact there was the DEFENDANT V as extra crew boarding unlawfully. In which the DEFENDANT V used note No. OFA/219/04 signed by unauthorized party namely the DEFENDANT IV. The DEFENDANT XI should have denied the boarding of the DEFENDANT V in the flight of GA 974 Jakarta-Singapore;----

57. That the existence of the DEFENDANT V who was unlawful in GA 974 Jkt-Sin that was based on unlawful act committed by the Defendants I, II and IV, actually could be stopped by the purser and the flight captain at the time namely Defendants VIII and XI. Negligence of responsibility by the Defendants VIII and XI constitutes unlawful act breaching his legal obligation as set forth in Basic Operation Manual (BOM):-----

- "Purser ... the FA I is accountable to monitor flight safety conduct in the cabin, especially during take off and landing. The FA I coordinates the work of other flight attendants in a flight in compliance with valid regulation and policies and report any concerns that affect the quality of the flight to the PIC and/or

concerned chief cabin. To ensure contibuty of service between pre, in and post flight, an FA I has the job to conduct quality control to all uplift supplies at the related sector and coordinates passenger service/handling with the passage officer, ramp coordinator and catering service... BOM 212 page 5 date Sept 1 2003 issue 2.-----

- "In accordance with the CASR 121.533 the responsibility for control during day to day operations are determined as follows: pilot in command (PiC) during flight time is responsible for the safety of the passengers, crewmembers, cargo and aircraft, has full control and authority without limitation over other crewmembers duties whether or not he/she holds valid certificates authorizing him/her to perform the duties of those crew members."-----

58. That the movement of Munir from the seat in the economic class to the business class without business ticket breaching the regulation and the assignment of the DEFENDANT V in the flight of one aircraft with Munir was based on untrue assignment letter since breaching the procedure as already mentioned above, the DEFENDANT I i.c shall be considered have committed "willful misconduct" as referred to in article 25 of Warsaw Convention 1929 and therefore the responsibility of the DEFENDANT I for the loss arising become unlimited; -----

59. That for the act of the DEFENDANTS I, II, III, IV, V, VIII and XI which is illegal as stated above, then the

DEFENDANTS I, II, III, IV, V, VIII and XI should be declared by the District Court of Central Jakarta have committed illegal act [onrechtmatigedaad]; -----

60. That therefore, it is also proper according to law if the DEFENDANTS I, II, III, IV, V, VIII and XI based on Articles 1365 and 1367 of Indonesian Civil Code shall be responsible jointly for all losses arising as the consequence of the illegal act they committed; -----

B. The negligence until placing the passenger in uncomfortable, unsafe, and insecure condition -----

a. Gross Negligence to supervise the food and drink thereby rendering the death of the deceased Munir. -----

61. That since the symptom firstly experienced by the Deceased Munir was immediately after the Flight GA 974 took off from Changi Airport, Singapore and the expert's testimony that the intake of poison was 90 minutes from the first reaction, then it can be concluded that the arsenic entered to the body of the Deceased Munir through the food and or drink served in the Aircraft GA 974 which was then taken and or consumed by him during the flight from Jkt-Sin. ----

62. That in the flight of GA 974 Jkt-Sin, the Defendants VI and VII were as cabin crew responsible for preparing food and drink at pantry and serving the food and drink in good, safe and comfortable conditions, in fact the food and drink under responsibility of the Defendants VI and VII has caused the poisoning rendering the death of the deceased Munir. -----

63. That in the flight of GA 974 Jkt-Sin, the Defendant VIII was assigned as the Purser responsible for the security, convenience and safety in the cabin. In fact in such flight, the Defendants VI and VII serve food and or drink containing poison rendering death of the deceased Munir. --

64. That based on BOM (Basic Operations Manual)..... In accordance with the CASR 121.533 the responsibility for control during day to day operations are determined as follows: pilot in command (PiC) during flight time is responsible for the safety of the passengers, crewmembers, cargo and aircraft, has full control and authority without limitation over other crewmembers duties whether or not he/she holds valid certificates authorizing him/her to perform the duties of those crew members.", the Defendant XI should be responsible for the safety of the passenger especially the deceased Munir but in fact, the deceased Munir passed away due to consuming food and or drink prepared and served in GA 974. -----

65. That therefore the Defendants I, VI, VII, VIII and XI also at least have made a negligence in supervising the safety of food and or drink distributed to the passengers; -----

66. That at the time, the serving of food and or drink consumed by Munir in fact contains deadly poison in the Defendant I's aircraft as already described above even though it is considered cannot be proven that it had been made deliberately -- quod non --, at least i.e must be considered as gross negligence, grove schuld or gross

*negligence* in Defendant I party, or to use the term in article 25 (1) Warsaw Convention 1929, or by such negligence, thereby the responsibility of the DEFENDANT I for the loss generated becomes not limited. -----

67. That for the act of the DEFENDANTS I, II, III, IV, V, VIII and XI which is illegal as stated above, then the DEFENDANTS I, II, III, IV, V, VIII and XI should be declared by the District Court of Central Jakarta have committed illegal act [onrechtmatigedaad]; -----

68. That therefore, it is also proper according to law if the DEFENDANTS I, II, III, IV, V, VIII and XI based on Articles 1365 and 1367 of Indonesian Civil Code shall be responsible jointly for all losses arising as the consequence of the illegal act they committed; -----

b. Gross negligence in handling the sickness of the deceased Munir. -----

69. That the DEFENDANT IX's act is proven not professional as provided for in BOM 5.2.1 - 01 confirmed by report on *Safety Hazardous Report subject "Death on Board GA 974 B747-400 PK-GSG SIN-AMS, Sept 7<sup>th</sup> 2004 No. INV/OZI/B744/001/04 Basis No. 24/04/744 issued on October 19, 2004 and prepared by Hartati, Betty Nila P and Boy Umarsyah and verified by Capt. Novianto Herupratomo and approved by Capt. A Krismanto among others finding several facts as follows (page 6 Flight Safety Department (OZ)) as follows: point "k" (in the report) mentions that: "before Mr. Munir dead,*

PiC didn't make any contact seeking of medical advice from the ground ..". -----

70. That the act of the DEFENDANT X is also proven unprofessional by incapability to perform his legal obligation as purser as stated in Basic Operation Manual "Purser ... the FA I is accountable to monitor flight safety conduct in the cabin, especially during take of and landing. The FA I coordinates the work of other flight attendants in a flight in compliance with valid regulation and policies and report any concerns that effect the quality of the flight to the PIC and/or concerned chief cabin. To ensure contibuty of service between pre, in and post flight, an FA I has the job to conduct quality control to all uplift supplies at the related sector and coordinates passenger service/handling with the passage officer, ramp coordinator and catering service BOM 212 page 5 date Sept 1 2003 issue 2 as indicated in *Safety Hazardous Report subject "Death on Board GA 974 B747-400 PK-GSG SIN-AMS, Sept 7<sup>th</sup> 2004 No. INV/OZI/B744/001/04 Basis No. 24/04/744 issued on October 19, 2004.* -----

- "crew did not really understood kind of reportable occurrence should be reported on ASR and CSR and which Department should be (the first hand) received the preliminary report".-----
- "crew did not really understood international rules/regulation of ICAO annex 13 when such incident/accident

occurs in the country other than the original country of the operator".-----

- "crew did not realize that wrapping or packaging of medicine and medical equipment used by doctor during medical treatment, should kept as evidence."-----

71. That for the act of the DEFENDANTS I, II, III, IV, V, VIII and XI which is illegal as stated above, then the DEFENDANTS I, II, III, IV, V, VIII and XI should be declared by the District Court of Central Jakarta have committed illegal act [onrechtmatigedaad]; -----

72. That therefore, it is also proper according to law if the DEFENDANTS I, II, III, IV, V, VIII and XI based on Articles 1365 and 1367 of Indonesian Civil Code shall be responsible jointly for all losses arising as the consequence of the illegal act they committed; -----

73. That since the DEFENDANT I still performed the operation of air passenger carriage, the public should know about the failure of the DEFENDANT I in maintaining the security, safety and convenience of the passenger until causing the death. Therefore the DEFENDANT I should make public announcement through advertisement on printed and electronic media or other notification; -----

74. That in addition, the DEFENDANT I should also make introspection thereby the failure to maintain the safety and convenience of the passenger until rendering the death is not repeated in the future, among others by identifying the cause of such failure through comprehensive audit

including the crews, carried out by the independent team, asking for apology to the PLAINTIFF and constructing remembrance monument to allow this incident is remembered forever and used as lesson as well as unforgettable; -----

**IV. THE LOSS OF PLAINTIFF**

75. That the consequence of the illegal act committed by the DEFENDANTS as mentioned above, whether committed intentionally or due to their failure, is in various terms of loss for the PLAINTIFF that can be calculated immaterially (moral) or materially; -----

76. That the immaterial loss is inestimable, it is difficult to count the immaterial loss but to provide legal certainty relating to the filing of this suit, the immaterial loss suffered by the PLAINTIFF if valued in terms of money is Rp 9,000,700,400.00 (say: Nine billion seven hundred thousand four hundred Rupiah); -----

77. That the other consequence of the illegal act of the DEFENDANTS is that materially the PLAINTIFF also has suffered and will continuously suffer from losses, since the Deceased Munir is the only economic backbone in the the PLAINTIFF's life. There is clearly no longer source of fulfillment of the PLAINTIFF's living cost. Therefore based on the provisions in Article 1365 of Indonesian Civil Code, which the gist stipulates the legal obligation for the party making loss to compensate all material losses arising due to its act, then based on the PLAINTIFF's calculation,

the DEFENDANTS should jointly pay compensation for loss amounting to Rp 4,028,407,100.00 (say: Four billion twenty eight million five hundred seven thousand one hundred Rupiah), with breakdown as follows: -----

Type of loss	Unit	Total
a. Monthly income calculated as of September 2004 [passing away] until the Deceased Munir at age of 65 years	Rp 7,130,000.00/month	Rp. 3,389,887,200
b. Education cost of 2 (two) children until Strata 1 (one);	<ul style="list-style-type: none"> <li>• Sulttan Alif Allende</li> <li>• Diva Suukyi Larasati</li> </ul>	Rp. 299,091,500 Rp. 258,953,400
c. Children therapy and medicine	<ul style="list-style-type: none"> <li>• Therapy: Rp 150,000.00 x 8/months x 42</li> <li>• Supplement: Rp 1,000,000.00/2 months x 21</li> </ul>	Rp. 50,400,000 Rp. 21,000,000
d. Cost already incurred by the Deceased Munir to attend Strata 2 (two) education to the Netherlands.	<ul style="list-style-type: none"> <li>• English private lesson Rp. 5,000,000</li> <li>• Airport tax Rp. 75,000</li> <li>• Fiscal Rp. 1,000,000</li> </ul>	Rp. 6,075,000
e. Funeral cost, etc	<i>Tahlilan</i> and construction of gravestone	Rp. 3,000,000
<b>Total</b>		<b>Rp. 4,028,407,100</b>

78. That besides the losses above, the PLAINTIFF has also incurred the lawyer service fee in the present case amounting to Rp 1,300,000,000.00 (One Billion three hundred million Rupiah); -----

79. That in addition, according to the PLAINTIFF's opinion, it is also appropriate according to law that the District Court of Central Jakarta passes verdict for the DEFENDANTS to pay all case charges arising from the present case; ----

80. That based on all arguments stated by the PLAINTIFF, it is clear that the arguments in the present case were based on the prevailing law and furnished with the sufficient as well as undeniable evidences. Therefore the District Court of Central Jakarta examining and trying the present case should pass verdict based on justice; -----

81. That to avoid the ill-faith from the DEFENDANTS in implementing the court's verdict, then the PLAINTIFF hereby kindly requests the District Court of Central Jakarta to put Conservatory Sequestration against the goods owned by the DEFENDANTS in terms of: -----

- A piece of land located at Jl. Merdeka Selatan No. 13, Jakarta 10110, Indonesia, together with the building thereon owned by the DEFENDANT I;-----
- Jl. Taman Maruya Ilir H7/14 Meruya Utara, West Jakarta, owned by the DEFENDANT II;-----
- Jl. Parkit I No. 28 Griya RT 02/10, Limo Sub District, Limo - Depok, owned by the DEFENDANT III;-----
- Jl. Danau Kelapa Dua VIII/5 RT 02/05, Kelurahan (Village of) Kelapa Dua, Curug, Tangerang District, owned by the DEFENDANT IV;-----
- Pamulang Permai Block B No. 1, Tangerang District, owned by the DEFENDANT V;

82. That this suit is based on the exhibits as referred to in article 180 (I) of HIR thereby the verdict in this case can be declared provisionally executable despite any remedy in terms of protest, appeal, cassation or other remedy. -----

**V. SUIT**

Based on all descriptions above, then the PLAINTIFF hereby kindly requests the panel of judges of the District Court of Central Jakarta examining and trying the present case to pass verdict as follows:-----

1. To accept and grant the Plaintiff's suit in its entirety; -
2. To pronounce DEFENDANT I, DEFENDANT II, DEFENDANT III, DEFENDANT IV, DEFENDANT V, DEFENDANT VI, DEFENDANT VII, DEFENDANT VIII, DEFENDANT IX, DEFENDANT XI and DEFENDANT X have committed illegal act; -----
3. To instruct the DEFENDANTS to ask for apology to the PLAINTIFF through 5 Printed Media namely: KOMPAS, KORAN TEMPO, Jawa Pos, Suara Pembaharuan and JAKARTA POST and 7 electronic media, namely: SCTV, TRANS TV, RCTI, INDOSIAR, METRO TV, TV 7, LATIVI with format and content determined by the PLAINTIFF for 7 days consecutively; -----
4. To instruct the DEFENDANT I to carry out the independent audit to the performance of the DEFENDANT II, DEFENDANT III, DEFENDANT IV, DEFENDANT V, DEFENDANT VI, DEFENDANT VII, DEFENDANT VIII, DEFENDANT IX, DEFENDANT XI and DEFENDANT X and the aircraft crew in flight of GA 974 dated September 6, 2004. The independent auditor shall involve the

academicians, flight experts, company's management expert elements and ten representatives from NGO relating to Munir; -----

5. To instruct the DEFENDANT I to make the Monument of Remembrance for the Death of Human Rights Activist Munir in the Aircraft GA 974 at the yard of the DEFENDANT I's office with picture and dimension determined by the PLAINTIFF. ---
6. To instruct the DEFENDANT I to issue warning to the community about the safety to fly with Garuda containing statement, one of them "THERE WAS EVER VICTIM OF POISONING ON THIS AIRCRAFT". Such warning must be printed in all tickets together with all objects relating to the flight of the DEFENDANT I; -----
7. To instruct the DEFENDANT I to take legal act in terms of imposition of administrative/personnel sanction according to the level of offense of each party upon the DEFENDANT III, DEFENDANT IV, DEFENDANT V, DEFENDANT VI, DEFENDANT VII, DEFENDANT VIII, DEFENDANT IX, DEFENDANT XI and DEFENDANT X
8. To sentence the DEFENDANTS to jointly pay all losses suffered by the PLAINTIFF, namely amounting to Rp 14,329,107,500.00 (Fourteen Billion three hundred twenty nine million one hundred seven thousand five hundred Rupiah) with breakdown: -----
  - a. Immaterial loss amounting to Rp 9,000,700,400.00
  - b. Material loss amounting to Rp 4,028,407,100.00
  - c. Lawyer's fee amounting to Rp 1,300,000,000.00

9. To pronounce valid and worthy the conservatory sequestration already put against the relevant goods; -----
- a. At Jl. Merdeka Selatan No. 13, Jakarta 10110, Indonesia, together with the building thereon owned by the DEFENDANT I;
  - b. Jl. Taman Maruya Ilir H7/14 Meruya Utara, West Jakarta, owned by the DEFENDANT II;
  - c. Jl. Parkit I No. 28 Griya RT 02/10, Limo Sub District, Limo - Depok, owned by the DEFENDANT III;
  - d. Jl. Danau Kelapa Dua VIII/5 RT 02/05, Kelurahan (Village of) Kelapa Dua, Curug, Tangerang District, owned by the DEFENDANT IV;
  - e. Pamulang Permai Block B No. 1, Tangerang District, owned by the DEFENDANT V;
10. To sentence the DEFENDANTS to pay all case charges arising from the present case jointly; -----
11. To pronounce that this verdict is provisionally executable despite any remedy in terms of protest, appeal, cassation or other remedy (Uit voerbaar bij voorrardd). -----
- If the Panel of Judges is of other opinion, we seek for justice (Ex Aequo Et Bono).-----

Considering, whereas, on the stipulated hearing day, the parties hereto appeared, namely:

- The Plaintiff represented by her Legal Attorneys Asfinawati,SH, M. Choirul Anam, SH, Ori Rahman, SH, Anton Prajasto,SH, Umar Husein,SH, Muhammad Arfiandi Fauzan,SH, Hermawanto,SH, R. Dwiyanto Prihartono,SH,

Sudaryatmo,SH, Vera S Wenny, SH, Indria Fernida,SH, Poengky Indarti,SH, Edwin Partogi,SH, Gatot,SH, Khaeruddin,SH, Dimas Prasidi, SH, Totok Yulianto,SH, Arko Kana Dianto,SH, Melda Kumalasari,SH, Agus Pratiwi,SH, Abusaid Pelu,SH, Sinung Karto,SH, Nurcholis Hidayat,SH, Virza Roy Hizzal,SH, by virtue of Special Power of Attorney dated September 5, 2006; -----

- The Defendants I, II, V, VI, VII represented by its Legal Attorneys Mohamad Assegaf, SH, A. Wirawan Adnan, SH, Amir Hamzah, SH, Iwan Priyanto,SH, Heru Santoso,SH, Advocates in Law Firm Mohamad Assegaf & Partners, having its office at Jl. H. Samadi No. 29, South Jakarta based on Special Power of Attorney Number DZ/SKU-041/06 dated September 22, 2006. -----
- The Defendants III, IV, VIII, IX, XI represented by their legal proxies Debdy K. Amudy, SH, Iim A. Hlaim, SH, Akhmad Jazuli, SH, M.Hum, Advocates at Team of Legal Proxies of Former Employees of PT. Garuda Indonesia, having its address at Graha Pratama Building 10<sup>th</sup> Floor, Jl. MT. Haryono Kav. 15, South Jakarta, by virtue of Special Power of Attorney dated October 4, 2006; -----

Considering, whereas the reconciliation effort through mediation procedure and also already recommended by the Panel of Judges to the parties hereto were in fact fruitless, then the examination to the relevant case was started by reading

out the Plaintiff's suit which the content was maintained by the Plaintiff;-----

Considering whereas as the response to the suit, the Defendants I, II, V, VI, VII submitted reply in writing dated December 07, 2006, reading as follows:

**IN CONVENTION**

**IN EXCEPTION**

1. That principally, the DEFENDANTS expressly deny all arguments of the suit filed by the Plaintiff, except those the truths are expressly admitted by the DEFENDANTS. -----

**THE PLAINTIFF'S SUIT IS UNCLEAR AND OBSCURE**

2. That the PLAINTIFF'S Suit is obscure and unclear. The obscurity and unclearness are stated based on the legal reasons as follows: -----

2.1 Posita in letter of the Plaintiff's suit is in foreign language, not translated by the sworn translator into Indonesian;-----

2.1.1 That in the posita of her suit, namely in Posita items 34, 45, 57 and 70, the PLAINTIFF has used the sentences in foreign language. But, they are not translated by the Sworn Translator into Indonesian;-----

2.1.2 That the absence of the translation of such Posita into Indonesian will render the suit obscure and clear;-----

2.1.3 That the obscurity and unclearness occur since the posita in foreign language may have multi-meaning and also multi- interpretation, therefore rendering the PLAINTIFF'S suit is declared UNACCEPTABLE;-----

- 2.2 the Plaintiff's suit is unclear, whether it is based on illegal act or negligence;-----
- 2.2.1 That in the posita item 75, the PLAINTIFF stated that the DEFENDANTS are proven of committing illegal act;----
- 2.2.2 That the title of the PLAINTIFF's suit is illegal act, but in Posita of suit items 45.b, 51 and 55.c, the PLAINTIFF has referred to Law No. 8 of 1999, regarding the Consumer's Protection, meaning that the PLAINTIFF has argued the DEFENDANTS made negligence, since the basis of legal relation of the Deceased Munir and the DEFENDANTS is AIR TRANSPORTATION SERVICE AGREEMENT contained in every passenger's ticket. Actually two types of suit have different characteristic and essence, since the suit for default is from the existence of agreement, while the suit for illegal act (onrechtmatigedaad) is from the commitment arising from the law, not agreement;-----
- 2.2.3 That the combination of such suit is contradictory to the law of procedure as mentioned in the Verdict of the Supreme Court of the Republic of Indonesia No. 1875 K/Pdt/1984 dated April 24, 1986, reading as follows: "The combination of suit for illegal act and the default act can not be justified in the law of procedure and must be settled separately";-----
- 2.2.4 That in addition, M. Yahya Harapah, S.H., in his book Hukum Acara Perdata (Indonesian Civil Law), Sinar Grafika, Jakarta, 2006, on page 455, states that:-----

"Therefore, in formulating posita or argument of the suit:

- it is not allowed to commingle the negligence and illegal act (PMH) in suit"; -----

2.2.5 That therefore, it is proven that the procedure of commingling the suit is contradictory to law, therefore, the PLAINTIFF'S suit is declared UNACCEPTABLE (Niet Ontvankelijke legal science doctrine, therefore it is reasonable if the suit is verklaard).-----

THE PLAINTIFF'S SUIT IS LEGALLY BASELESS

3. That in her suit, the PLAINTIFF stated that the DEFENDANTS has committed illegal act, namely: -----

3.1 The DEFENDANTS intentionality placed the passenger in uncomfortable, unsafe, and insecure condition namely by (a) move the seat not according to the boarding pass, (b) the existence of crew with illegal Assignment Letter;----

3.2 The existence of negligence until placing the passenger in uncomfortable, unsafe, and insecure condition namely due to (a) gross negligence in supervising the food and drink rendering the death of the deceased Munir, (b) Gross negligence in handling the disease suffered by the deceased Munir. As such based on the reasons above, the PLAINTIFF feels that she is harmed by the DEFENDANTS;----

4. That the issue of the Verdict of the Supreme Court of the Republic of Indonesia No. 1185K/Pid/2006 dated October 3, 2006 ("the Verdict of the Supreme Court of the Republic of Indonesia No. 1185K/Pid/2006"), principally stating that

DEFENDANT V/POLLYCARPUS BUDIHARI PRIYANTO (assisted by and or in cooperation the DEFENDANT VI and DEFENDANT VII) is NOT PROVEN validly and convincingly that they have been guilty of committing crime namely PLANNED MURDER by using poison against the deceased Munir, THEN all reasons, opinions, arguments and statement being the basis of the PLAINTIFF'S suit mentioned above namely regarding the movement of seat not according to the boarding pass, existence of crew based on the illegal official Assignment Letter, and gross negligence in supervising the food and drink rendering the death of the deceased Munir or gross negligence in handling the disease suffered by the deceased Munir, clearly have been denied and automatically forfeited, SINCE the acts of the DEFENDANTS above argued by the PLAINTIFF as illegal act are CLEARLY NOT PROVEN OF RENDERING the demise of the deceased Munir, OR there is no casualty relation to the death of the deceased Munir, then therefore the Plaintiff's suit is based on law thereby must be declared unacceptable [sic]; -----

THE PLAINTIFF'S SUIT IS PREMATURE

5. That the PLAINTIFF registered her suit through the Registrar's Office of the District Court of Central Jakarta on September 6, 2006. -----
6. That the verdict of the Supreme Court No. 1185K/Pid/2006 was passed on October 3, 2006, if the Plaintiff arranged her suit after the issue of the verdict of the Supreme Court, then the DEFENDANTS believed that the PLAINTIFF would not

arrange what is called as "LEGAL FACT" as arranged in the Plaintiff's suit. Therefore it is clear that, the basis of the PLAINTIFF'S suit is premature. Therefore it is feasible that the PLAINTIFF'S suit is declared UNACCEPTABLE (Niet Ontvankelijk Verklaard); -----

THE PLAINTIFF'S SUIT IS LESS SUBJECT

(exception ex juri terti)

7. That in Posita items 29, 62, 63 and 66), the PLAINTIFF principally argued there was poison on the aircraft operated by the DEFENDANT I, if it were true that the Deceased Munir passed away on the aircraft GA 974 was due to poison - QUOD NON - then the PLAINTIFF should also have sued the party responsible for the incorporation of poison to the aircraft namely PT. Angkasa Pura II Airport Soekarno-Hatta. -----
8. That such matter is based on legal basis: the party responsible for carrying out inspection to the incorporation of goods brought (especially hazardous, chemical/poison/dangerous goods) owned by all passengers (INCLUDING the crew of the DEFENDANT I) that will get on the aircraft operated by the DEFENDANT I is PT. Angkasa Pura II Airport Soekarno-Hatta;
9. That by the NON-INVOLVEMENT OF PT. Angkasa Pura II Airport Soekarno-Hatta as DEFENDANT in the present case, then the dispute questioned can not be settled thoroughly and comprehensively, since the party that should also be responsible for the incorporation of hazardous goods, chemical/poison/dangerous goods namely PT. Angkasa Pura II Airport Soekarno-Hatta is not sued, thereby it is

reasonable if the PLAINTIFF's suit is declared UNACCEPTABLE  
(Niet Ontvankelijke Verklaard); -----

• IN PETITUM

The DEFENDANTS kindly request that the matters already described  
in the EXCEPTION above shall be considered forming integral  
part of this PETITUM;-----

1. That principally, the DEFENDANTS expressly deny the  
arguments of suit filed by the PLAINTIFF, except those the  
truth are expressly admitted by the DEFENDANTS. -----

2. That in relation to the issue the Verdict of the Supreme  
Court No. 1185K/Pid/2006, then all opinions, arguments and  
statement in the PLAINTIFF'S suit regarding the movement of  
seat not according to the boarding pass, existence of crew  
based on the illegal official Assignment Letter, about gross  
negligence in supervising the food and drink rendering the  
death of the deceased Munir and gross negligence in  
handling the disease suffered by the deceased Munir,  
clearly can no longer be used as reason and legal basis to  
file the present suit. -----

THE DEFENDANTS HAVE NO RESPONSIBILITY TO THE LOSS SUFFERED BY  
THE PLAINTIFF

3. That Article 43 paragraph (1) item a of Law No. 15 of 1992  
regarding Flight, expressly stating that: -----

"The air transportation company running in commercial air  
transportation activity shall be responsible for:

a. the death or injury of the passenger transported."

Then the ELUCIDATION to Article 43 paragraph (1) item a of Law No. 15 of 1992 regarding Flight, states that: "The responsibility of the air transportation company as referred to in this provision is if the death or injury of the passenger is caused by the accident during the air transportation and occurring on the aircraft or accident upon getting on or getting off the aircraft. The definition of injury of the passenger includes the physical and/or mental disability"; -----

4. That since the cause of death of the deceased Munir in the flight of Aircraft GA 974 with route Jakarta-Singapore-Amsterdam is hitherto legally not yet identified and there is "presumption" that it is due to arsenic toxin, then the death of the deceased Munir shall be excluded from the category of accident according to Article 43 paragraph (1) item a of Law No. 15 of 1992 regarding Flight. -----
5. That according to the Verdict of the Supreme Court No. 1185K/Pid/2006, it is PROVEN that the death of the deceased Munir is NOT caused by the food and or drink containing poison served by Yeti Susmiyarti (DEFENDANT VI) and Oedi Irianto (DEFENDANT VII) in the flight of Aircraft GA 974 with route Jakarta-Singapore on September 6, 2004. Based on such reasons, the DEFENDANT I and all other DEFENDANTS in the present case, whether based on the Warsawa Convention 1929, Law No. 15 of 1992 regarding Flight or other legal regulation, can not be requested for accountability in any forms for the death of the deceased Munir. Since entire

posita and petitum relating to the accountability of all DEFENDANTS for the death of the deceased Munir are legally baseless and therefore it is reasonable and feasible to deny it; -----

EXCHANGE OF SEAT OF THE DECEASED MUNIR IS NOT UNLAWFUL ACT

6. That posita items 42 through 46, principally the PLAINTIFF has argued that the movement of seat has caused the deceased Munir become the easy target of poisoning; -----
7. That the posita of the PLAINTIFF in items 42 through 46 is untrue, since the deceased Munir passed away not due to eating or drinking the food and drink served in the Aircraft of the DEFENDANT I, and it is also untrue that in the Flight Jakarta-Singapore, the deceased Munir was as target of poisoning; -----
8. That the movement of seat is one of forms of service and respect to the Aircraft's passenger constituting public figure, including the deceased Munir. The movement of seat becomes unlawful act if it is made by force. In case of the movement of the deceased Munir to the business class seat, it is clearly NOT PROVEN that the deceased Munir was forced by the DEFENDANT I's crew to move his seat, but the deceased Munir moved his seat voluntarily after being offered to occupy the seat in business class. -----
9. That the movement of Munir's seat from number 40 G to 3 K is categorized into type of movement of SEAT EXCHANGE, not UPGRADING, since SEAT EXCHANGE neither renders the consequence of increase in operational cost nor changes the

flight document, thereby it is unnecessary to report to the Captain, but the flight attendant assigned in the Business Class sufficiently notifies the Purser. -----

10. That the movement of Munir's seat from number 40 G to 3 K is categorized into SEAT EXCHANGE, thereby it is unnecessary to change the Load Sheet and Passenger Manifest as well as Passenger Information Sheet and there is no relation at all with Basic Operation Manual (BOM) date Jan 1, 1998 issue No. 2 BOM 5.1.4 page 1, argued by the PLAINTIFF. -----

11. That therefore the DEFENDANTS I, V, VIII and XI IS NOT PROVEN of committing illegal act relating to the movement of the deceased Munir to the Business Class and plus the existence of the legal fact of the issue of the Verdict of the Supreme Court No. 1185K/Pid/2006 (about the cause of the death of the deceased Munir), then it is reasonable and feasible to put aside the Posita of the PLAINTIFF in items 47 and 48 in its entirety; -----

EXISTENCE OF THE DEFENDANT I'S CREW HAS BEEN IN ACCORDANCE WITH THE OFFICIAL ASSIGNMENT LETTER ISSUED BY THE DEFENDANT I

12. That the assignment letter issued by the DEFENDANT I through DEFENDANT II, to the DEFENDANT V as Aviation and Internal Security has been in accordance with the internal rule prevailing in PT. Garuda Indonesia (Persero). And also the Note No.: OFA/219/04, issued by the DEFENDANT IV, has also been in accordance with the internal rule prevailing in PT. Garuda Indonesia (Persero), thereby it is reasonable and feasible to put aside the posita of the PLAINTIFF in items

49 and 50 in its entirety. That irrespective of the problem on the validity of the assignment letter, it is clear that such letter cannot be related to the death of the deceased Munir in the flight of GA 974. -----

13. That the DEFENDANTS deny the argument of the PLAINTIFF in her posita item 51, since the legal fact about back date does not to conceal and/or obscure the effort to reveal the case of the death of the deceased Munir at all, since such letter is for administrative purpose and there is no relation at all to the incident on the death of the deceased Munir, thereby it is reasonable and feasible to put aside the posita of the PLAINTIFF in items 51 and 52 in its entirety. -----

14. That the Posita of the PLAINTIFF in item 53 is not true, since the DEFENDANT V is unable to and has no authority to determine as well as arrange its own task as Aviation and Internal Security, while the assignment of the DEFENDANT V is at the instruction of the DEFENDANT III based on the policy of the DEFENDANT I. So, the task implemented by the DEFENDANT V to Singapore is the official task acknowledged by the DEFENDANT I and DEFENDANT III. Therefore, the argument of the PLAINTIFF has no legal basis and it must be denied; -----

15. That the Posita of the PLAINTIFF in item 54 stating the use of manual type writer by the DEFENDANT V is unprofessional act is not true. The use of manual type writer to prepare the report is something allowed, and not improper and

unprofessional act as well as has no relation to the task of the DEFENDANT V in operating the aircraft. -----

16. That therefore the assignment of the DEFENDANT I to the DEFENDANT V has been made in accordance with the prevailing procedure, then the Posita of the PLAINTIFF in items 55 through 58 becomes baseless, thereby it is reasonable and feasible to put aside it in its entirety; -----

17. That since the DEFENDANTS I, II, III, IV, V, VIII and XI are NOT PROVEN of committing illegal act relating to the assignment letter of the DEFENDANT V and moreover there is legal fact on issue of the Verdict of the Supreme Court No. 1185K/Pid/2006, then it is reasonable and feasible to put aside the Posita of the PLAINTIFF in items 59 through 60 in its entirety; -----

THE DECEASED MUNIR PASSED AWAY NOT DUE TO CONSUMING OR DRINKING THE TOXIC FOOD AND DRINK ON THE DEFENDANT I'S

AIRCRAFT

18. That by issue of the Verdict of the Supreme Court No. 1185K/Pid/2006, then all arguments of the PLAINTIFF in his COUNTERPLEA items 41 through 49 become no longer having law basis, SINCE from the Verdict of the Supreme Court No. 1185K/Pid/2006 it can be identified that the death of the deceased Munir is not due to food and or drink containing poison served on the Aircraft GA 974 with destination Jakarta - Singapore as argued by the PLAINTIFF in her suit. Therefore it is quite reasonable if the Panel of Judges

Examining the Case waives all Posita of the PLAINTIFF items 61 through 66. -----

19. That the Supreme Court of the Republic of Indonesia in the Verdict of the Supreme Court No. 1185K/Pid/2006 has decided that the death of the deceased Munir IS NOT DUE TO poison added by the DEFENDANT V assisted by the DEFENDANT VI and DEFENDANT VII and/or poison due to food and or drink served by the DEFENDANT I. Therefore the DEFENDANTS I, VI, VII, VIII and XI ARE NOT PROVEN of committing illegal act relating to food poisoning experienced by the deceased Munir, then it is reasonable and feasible to put aside the Posita of the PLAINTIFF in items 67 and 68 in its entirety;

TREATMENT TO THE SICKNESS SUFFERED THE DECEASED MUNIR ON BOARD HAS BEEN MADE PROPERLY, ACCORDING TO PROCEDURE AND PROFESSIONAL

20. That the DEFENDANTS deny the arguments of the PLAINTIFF's suit in posita items 69 and 70 since party knowing and diagnosing that someone is declared suffering from serious (requires emergency act) or not serious disease is an expert namely DOCTOR, if a doctor informs to the aircraft's crew that the sick person requires emergency act, then the aircraft's crew must do the same according to the existing procedure; -----

21. That the posita of the PLAINTIFF in items 69 and 70 stating that the treatment to the disease suffered by the deceased Munir on the Aircraft is not professional. In fact, when the deceased Munir started to complain for his sickness and

then showed the name card of a doctor sitting in the business Class, then the DEFENDANT X and other cabin crew immediately looked for and brought the deceased Munir to the relevant doctor (Dr. Tarmizi Hakim). Of course the Defendant X and other cabin crew would look for the doctor via Announcement to the passenger through loud speaker if the deceased Munir previously did not appoint and select the doctor he desired. Subsequently, Dr. Tarmizi Hakim treated and took act against the deceased Munir and since there was no emergency message from Dr. Tarmizi Hakim to the cabin crew, then all acts and treatment made by the cabin crew to the deceased Munir was according to the instruction of Dr. Tarmizi Hakim as a party who was most competent and familiar with the health condition of the deceased Munir at the time. Based on matters above, then the treatment to the passenger who was sick on the aircraft made by the DEFENDANT I has been in accordance with the prevailing procedure. Among others by providing Doctor's Kit with quality exceeding standard provisions specified in Medical Guidelines for Airline Travel 2003, it was made by the DEFENDANT 1 solely to provide the health service for the passenger. Therefore it is untrue that the DEFENDANT I, DEFENDANT IX and DEFENDANT X did not provide service in handling of the sick passenger (the deceased Munir), then it is reasonable and feasible to put aside the Posita of the PLAINTIFF in items 71 through 74 in its entirety; -----

THE DEFENDANTS ARE NOT RESPONSIBLE FOR THE LOSS SUFFERED BY  
THE PLAINTIFF

22. That as already described in the Reply of the DEFENDANTS above, since the death of the deceased Munir was not due to the food or drink served by the DEFENDANT I's crew, and NOT due to the DEFENDANT I crew's negligence in handling the disease suffered by the deceased Munir on the Aircraft, and the death of the Deceased Munir is also EXCLUDED from the category of death or injury of the passenger caused by the accident during the air transportation and occurring on the aircraft or accident upon getting on or getting off the aircraft, as referred to in Article 43 paragraph (1) item a of Law No. 15 of 1992 regarding Flight, then according to law, the DEFENDANTS have no responsibility for the loss suffered by the PLAINTIFF in relation to the death of the deceased Munir, therefore it is reasonable and fair to deny the PLAINTIFF's Posita in items 75, 76 and 77 in its entirety. -----

23. That the DEFENDANTS expressly deny the Posita of the PLAINTIFF in items 78 and Petitum item 8c charging the lawyer's fee amounting to Rp 1,300,000,000.00 (One Billion three hundred million Rupiah) to the DEFENDANTS, since the Jurisprudence of the Supreme Court of the Republic of Indonesia No. 635 K/Sip/1973 dated July 4, 1974 stipulates: "That regarding the honorarium of the Advocate, there is no regulation in H.I.R requiring the disputing party to solicit for assistance from a Lawyer, then such fee cannot be

charged to the opposite party, therefore the suit must be denied." -----

24. Based on all replies of the DEFENDANTS above, then it can be concluded that the PLAINTIFF's suit is not based on law. It is according to Prof. Dr. Sudikno Mertokusumo, in his book Indonesian Civil Code, Liberty, Yogyakarta, 1993, on page 84, stating that: if the suit is not based on law, namely if the incidents as basis of claim does not justify the claim, then the suit will be declared unacceptable (niet ontvankelijkverklaar)". Therefore it is reasonable and fair if the Plaintiff's Posita in items 79 and 80 is entirely denied or at least declared unacceptable (niet ontvankelijkverklaar). -----

THE REQUEST FOR SEQUESTRATION BY THE PLAINTIFF IS NOT SUPPORTED BY THE STRONG EVIDENCE AND IT IS GROUNDLESS

25. That since the DEFENDANTS are not proven of committing unlawful act harming the PLAINTIFF as argued by the PLAINTIFF in his Suit, then automatically the conservatory sequestration applied for shall become legally baseless, therefore it is very reasonable to deny it.

**IN RECONVENTION**

1. That in this suit in RECONVENTION, the DEFENDANT I in convention is referred to as the PLAINTIFF IN RECONVENTION I, the DEFENDANT VI is referred to as the PLAINTIFF IN RECONVENTION II, and the DEFENDANT VII is referred to as the PLAINTIFF IN RECONVENTION III, and subsequently the PLAINTIFFS IN

RECONVENTION I, II, and III are referred to as the PLAINTIFFS IN RECONVENTION, while the PLAINTIFF in convention is referred to as the DEFENDANT IN RECONVENTION;

2. That on September 6, 2006, the DEFENDANT IN RECONVENTION has filed Suit against the PLAINTIFFS IN RECONVENTION through the District Court of Central Jakarta; -----
3. That the reason of the DEFENDANT IN RECONVENTION to file Suit against the PLAINTIFFS IN RECONVENTION as mentioned in Posita of the Suit of the DEFENDANT IN RECONVENTION in items 29, 62 and 63 is due to the husband of the DEFENDANT IN RECONVENTION/Munir passed away due to poison added by the PLAINTIFFS IN RECONVENTION and/or eating and drinking the food and drink containing poison served in the aircraft operated by the PLAINTIFF IN RECONVENTION I; -----
4. That, the Posita in the Suit of the DEFENDANT IN RECONVENTION however has been filed legally baseless even already contradictory to the verdict of the Supreme Court No. 1185K/Pid/2006 was passed on October 3, 2006 stating that the deceased Munir passed away NOT DUE TO being poisoned by the PLAINTIFFS IN RECONVENTION, and also NOT due to intoxication of the food and drink served by the PLAINTIFFS IN RECONVENTION; -----
5. That therefore it is proven that the DEFENDANT IN RECONVENTION has clearly harmed the PLAINTIFFS IN RECONVENTION by accusing the PLAINTIFFS IN RECONVENTION have intentionally committed murder against the deceased

Munir, WITHOUT clear and strong exhibit, even has been contradictory to the Verdict of the Supreme Court; -----

6. That the accusation of the DEFENDANT IN RECONVENTION in her suit clearly constitutes form of illegal act and harmed the PLAINTIFFS IN RECONVENTION; -----

7. That as the consequence of the illegal act committed by the DEFENDANT IN RECONVENTION, the PLAINTIFFS IN RECONVENTION suffer from loss, both materially and immaterially in terms of as follows: -----

7.1 That the consequence assumed by the PLAINTIFF IN RECONVENTION I is RUINED ITS REPUTATION as the company complying with the regulation and always maintaining the passenger's safety and security in running its operation in the eyes of the clients and business relation of the PLAINTIFF IN RECONVENTION I, even there was statement from one of Advocates that "they will no longer use Garuda"; -----

7.2 That the consequence of accusation of the DEFENDANT IN RECONVENTION against the PLAINTIFFS IN RECONVENTION II and III already serving the food containing poison, then the PLAINTIFFS IN RECONVENTION II and II were placed in position as if they as the murderer of the deceased Munir. -----

8. That as the consequence of those all, the PLAINTIFFS IN RECONVENTION has suffered from material and immaterial losses, broken down as follows: -----

- 8.1 MATERIAL loss in terms of costs that must be incurred for arranging for this case, namely amounting to Rp 1,000,000.00 (one million rupiah); -----
- 8.2 IMMATERIAL loss at invaluable amount against money, but the PLAINTIFFS IN RECONVENTION considered feasible and adequate if the DEFENDANT IN RECONVENTION is sentenced to pay the compensation in this case amounting to Rp 1,000,000.00 (one million Rupiah); ---
- 8.3 That since the illegal act of the DEFENDANT IN RECONVENTION has ruined the good reputation and render psychical pressure, especially experienced by the PLAINTIFFS IN RECONVENTION II and III, then it is feasible if the DEFENDANT IN RECONVENTION is sentenced to request for apology in writing to the PLAINTIFF IN RECONVENTION; -----

Based on reasons above, we kindly request the Panel of Judges Examining the present case to pass Verdict as follows:-----

**IN CONVENTION**

- In Exception:

To accept the exception of THE DEFENDANTS IN CONVENTION in its entirety; -----

- In Petitem:

To deny the Plaintiff IN CONVENTION's suit in its entirety;---

**IN RECONVENTION**

1. To grant THE PLAINTIFFS IN RECONVENTION's suit in its entirety;

2. To pronounce that the Defendants in Reconvencion has committed unlawful act; -----
3. To sentence the Defendant in reconvention to pay the material and immaterial loss amounting to Rp 2,000,000.00 (two million Rupiah); -----
4. To sentence the DEFENDANT IN RECONVENTION to request for apology in writing to the PLAINTIFFS IN RECONVENTION; -----

IN CONVENTION AND RECONVENTION

To sentence the PLAINTIFF IN CONVENTION/DEFENDANT IN RECONVENTION to pay case charges. -----

SUBSIDIARY

If the judge is of other opinion, we seek for justice (ex aequo et bono).

Considering, whereas as the response to the Plaintiff's suit, the DEFENDANTS III-IV-VIII-IX-X-XI hereby file the reply in writing dated December 07, 2006 reading as follows:

**IN EXCEPTION**

The DEFENDANTS III-IV-VIII-IX-X-XI have exception to the PLAINTIFF's suit with reasons and statements as follows:-----

1. THE PLAINTIFF'S SUIT IS PREMATURE

The PLAINTIFF registered her suit to the Registrar's Office of the District Court of Central Jakarta on September 6, 2006, at the time the Supreme Court of the Republic of Indonesia was examining the criminal case of the DEFENDANT V who was accused jointly with the DEFENDANT VI and DEFENDANT VII of murdering the deceased Munir, as such the

PLAINTIFF's suit in the present case was prepared before the issue of the verdict of the Supreme Court No. 1185K/Pid/2006 was passed on October 3, 2006. Therefore, the PLAINTIFF's suit should not have been made since the criminal case of the DEFENDANT V accused of murdering the deceased Munir jointly with the DEFENDANT VI and DEFENDANT VII at the time was still taking place and underway. Based on such matter, then it is reasonable and fair if the Honorable Panel of Judges examining the present case states that the PLAINTIFF's suit is premature thereby shall be declared unacceptable; -----

2. THE PLAINTIFF'S SUIT IS LEGALLY BASELESS

(EXCEPTIE ONRECHTMATIG OF ONGEGROND)

In her suit, the PLAINTIFF stated that the DEFENDANTS has committed illegal act, due to:

2.1 Intentionality place the passenger in uncomfortable, unsafe, and insecure condition namely by (a) move the seat not according to the boarding pass, (b) the existence of crew with illegal official Assignment Letter;-----

2.2 The existence of negligence until placing the passenger in uncomfortable, unsafe, and insecure condition namely due to (a) gross negligence in supervising the food and drink rendering the death of the deceased Munir, (b) Gross negligence in handling the disease suffered by the deceased Munir. As such based on the reasons above, the PLAINTIFF feels that she is harmed by the DEFENDANTS;----

By issue of the Verdict of the Supreme Court of the Republic of Indonesia No. 1185K/Pid/2006 dated October 3, 2006 ("the Verdict of the Supreme Court of the Republic of Indonesia No. 1185K/Pid/2006"), of which the dictum of verdict among others reads: "To pronounce the Accused POLLYCARPUS BUDIHARI PRIYANTO is NOT PROVEN validly and convincingly that they have been guilty of committing crime as accused in the First accusation", then all reasons, opinions, arguments and statement being the basis of the PLAINTIFF'S suit mentioned above namely regarding the movement of seat not according to the boarding pass, existence of crew based on the illegal official Assignment Letter, and gross negligence in supervising the food and drink rendering the death of the deceased Munir or gross negligence in handling the disease suffered by the deceased Munir, clearly has been denied and automatically forfeited. Therefore the Plaintiff's suit has no legal basis thereby it must be declared unacceptable;-----

3. THE PLAINTIFF'S SUIT IS UNCLEAR AND OBSCURE (EXCEPTIE OBSCUUR LIBEL) -----

The PLAINTIFF'S Suit is obscure and unclear since confusing the suit for illegal act and suit for negligence. The PLAINTIFF argued that her suit is suit for illegal act, but the legal relation of the deceased Munir to the DEFENDANT I is relation between the Businessman and the consumer as contained in the agreement in every the aircraft's passenger ticket. It is implicitly admitted by the PLAINTIFF herself in Posita items 45.b, 51 and 55.c of her suit, which relies on the

articles in Law No. 8 of 1999 regarding the Consumer's Protection. Therefore, it can be construed that the PLAINTIFF has declared that the DEFENDANTS I, II, III, IV, V, VIII and IX have been in negligence for the agreement between the Businessman and the consumer, therefore, the PLAINTIFF's suit is suit for negligence and not suit for illegal act. It indicates the PLAINTIFF's suit is obscure, whether categorized into suit for illegal act or suit for negligence;-----  
Based on the reasons above, then it is reasonable and fair if the Panel of Judges Examining the Case pronounce that the Plaintiff's suit is unacceptable since failing to fulfill the formality of filing of suit;-----

**IN PETITUM**

1. The DEFENDANTS III-IV-VIII-IX-X-XI expressly and strictly deny all testimonies, statements, arguments and opinion of the PLAINTIFF except those the truth are expressly admitted by the DEFENDANTS III-IV-VIII-IX-X-XI. -----

**ABOUT THE MOVEMENT OF Munir's SEAT**

2. That posita items 42 through 46, principally the PLAINTIFF has argued that the movement of seat has caused the deceased Munir become the easy target of poisoning; -----  
3. That the posita of the PLAINTIFF in items 42 through 46 is untrue, since the deceased Munir passed away not due to eating or drinking the food and drink served in the Aircraft of the DEFENDANT I, and it is also untrue that in the Flight Jakarta-Singapore, the deceased Munir was as target of poisoning; -----

4. That the movement of seat is one of forms of service and respect to the Aircraft's passenger constituting public figure, including the deceased Munir. The movement of seat becomes unlawful act if it is made by force. -----
5. That therefore the DEFENDANTS I, V, VIII and XI IS NOT PROVEN committed illegal act relating to the movement of the deceased Munir to the Business Class, then it is reasonable and feasible to put aside the Posita of the PLAINTIFF in items 47 and 48 in its entirety; -----

**ABOUT THE CREW'S ASSIGNMENT LETTER**

6. The assignment letter issued by the DEFENDANT I through DEFENDANT II, to the DEFENDANT V as Aviation and Internal Security has been in accordance with the prevailing internal rule, thereby it is reasonable and feasible to put aside the posita of the PLAINTIFF in items 49 and 50 in its entirety.
7. That the Letter No.: 15/1177/04 issued by the DEFENDANT I through DEFENDANT III, is not to obscure the fact nor to support to reveal the death of Munir at all. Such letter has NO relation at all to the death of Munir. Such letter was issued by the DEFENDANT II to fulfill the administrative requirements for the charging of official trip cost of the DEFENDANT V already carried out according to the habit in the flight world, thereby it is also feasible and fair to put aside the posita of the PLAINTIFF in items 51 and 52; -
8. That since the DEFENDANTS I, II, III, IV, V, VIII and XI are NOT PROVEN of committing illegal act relating to the

assignment letter of the DEFENDANT V, then is reasonable and feasible to put aside the Posita of the PLAINTIFF in items 59 through 60 in its entirety; -----

ABOUT NEGLIGENCE IN SUPERVISING THE FOOD AND DRINK CAUSING THE  
DEATH OF THE DECEASED MUNIR

9. In Posita items 61 through 66, the PLAINTIFF principally stated that the Munir passed away due to consuming or drinking the food and drink served in the aircraft GA 974. The PLAINTIFF's arguments are clearly legally baseless and there is impression that it is forced, since the death of Munir is not due to the food and or drink served by Yeti Susmiyarti (DEFENDANT VI) and Oedi Irianto (DEFENDANT VII) in the flight of Aircraft GA 974 operated by the DEFENDANT I, as such the DEFENDANT I, DEFENDANT VI, DEFENDANT VII, DEFENDANT VIII, and DEFENDANT XI are not proven of committing illegal act. Therefore it is reasonable if the Panel of Judges Examining the Case put aside all Posita of the PLAINTIFF in items 61 through 66 in its entirety. -----

10. That since the DEFENDANTS III, IV, VIII, IX, X and XI are NOT PROVEN of committing illegal act relating to negligence to make supervision to the food and drink as argued by the PLAINTIFF as the cause of the death of the deceased Munir, then it is reasonable and feasible to put aside the Posita in items 60 through 68 of the PLAINTIFF's suit in its entirety; -----

ABOUT NEGLIGENCE IN HANDLING THE SICKNESS SUFFERED BY THE  
DECEASED MUNIR ON AIRCRAFT GA 974

11. That the DEFENDANTS III, IV, VIII, IX, X and X deny the arguments of the PLAINTIFF in posita of its suit in items 69 and 70 stating that the treatment to the disease suffered by the deceased Munir on the Aircraft is not professional. The treatment to the disease suffered Munir on the Aircraft was carried out correctly, professionally and maximally, according to the prevailing procedure. When Munir complained about his sickness and then shown the name card of a doctor sitting in the business Class, the DEFENDANT X and other cabin crew immediately looked for and brought the deceased Munir to the relevant doctor (Dr. Tarmizi Hakim). If the deceased Munir did not appoint the doctor, then the cabin crew would announce by using loud speaker to all passengers about the need for doctor to treat the deceased Munir. But since Munir has appointed the doctor, then the cabin crew submitted the same to DR. Tarmizi Hakim, subsequently, Dr. Tarmizi Hakim treated and took act against the deceased Munir. The Doctor did not provide recommendation to carry out emergency landing although it was known that in the condition to safe the passenger in critical condition, the aircraft may land in the nearest airport that is able to provide adequate health service. Since there was no emergency message from Dr. Tarmizi Hakim to the cabin crew, then all acts and treatment of the cabin crew to the deceased Munir was according to the instruction of Dr. Tarmizi Hakim. Based on matters above, then the treatment to the passenger who was

sick on the aircraft made by the DEFENDANT I has been in accordance with the prevailing procedure. -----

12. The DEFENDANTS III, IV, VIII, IX, X and X also deny the arguments of the PLAINTIFF stating that the DEFENDANTS I, IX and X failed to perform their tasks professionally by relying on the separation of the Basic Operation Manual (BOM) and Safety Hazardous Report (SHARE). The PLAINTIFF should have realized that exactly the existence of the SHARE proves (1) the DEFENDANT I is professional since already performing provisions in ICAO (International Civil Aviation Organization); (2) By realizing such SHARE, then the posita of the PLAINTIFF in item 36 arguing that the DEFENDANT I has no commitment to assist the disclosure of the death of Munir is denied, since although the SHARE is an internal document, but to assist the disclosure of the death of the deceased Munir, such document has been known by the Police's investigator and Fact Finding Team of Munir case. It is very peculiar if then, the PLAINTIFF on the other hand in good-faith uses the same partially and uses it as basis of this suit. It also proves the existence of quality and ill-faith of the PLAINTIFF in filing this suit. (3) Existence of SHARE also proves that the accusation of the PLAINTIFF in posita in item 38 regarding the absence of internal investigation carried out is untrue. -----

13. Based on reasons above, the DEFENDANT I, DEFENDANT IX and DEFENDANT X ARE NOT PROVEN of committing illegal act relating to the treatment to the disease suffered by Munir

on the Aircraft, thereby the Posita of the PLAINTIFF in items 71 through 74 becomes legally baseless and it is feasible to put aside it; -----

THE DEFENDANTS III, IV, VIII, IX, X and XI HAVE NO

RESPONSIBILITY TO THE LOSS SUFFERED BY THE PLAINTIFF

14. That Article 43 paragraph (1) item a of Law No. 15 of 1992 regarding Flight, expressly stating that:

"The air transportation company running in commercial air transportation activity shall be responsible for:... a. the death or injury of the passenger transported." -----

Then the ELUCIDATION to Article 43 paragraph (1) item a of Law No. 15 of 1992 regarding Flight, states that: "The responsibility of the air transportation company as referred to in this provision is if the death or injury of the passenger is caused by the accident during the air transportation and occurring on the aircraft or accident upon getting on or getting off the aircraft. The definition of injury of the passenger includes the physical and/or mental disability"; -----

15. Since the cause of death of the deceased Munir in the flight of Aircraft GA 974 with route Jakarta-Singapore-Amsterdam is hitherto legally not yet identified and there is "presumption" that it is due to arsenic toxin , and not due to the accident during the air transportation and taking place on the aircraft or accident during getting on or getting off the aircraft, then the death of the deceased Munir shall be EXCLUDED from the category of accident

according to Article 43 paragraph (1) item a of Law No. 15 of 1992 regarding Flight. -----

16. According to the Verdict of the Supreme Court No. 1185K/Pid/2006, the death of Munir was also NOT due to the toxic food and drink served by Yeti Susmiyarti (DEFENDANT VI) and Oedi Irianto (DEFENDANT VII) in the flight of Aircraft GA 974 with route Jakarta-Singapore on September 6, 2004. -----

17. Based on such reasons, then the DEFENDANTS III, IV, VIII, IX, X and XI and all other DEFENDANTS in the present case, legally have no responsibility for the death of the deceased Munir, thereby entire posita and petitum relating to the accountability of all DEFENDANTS for the death of the deceased Munir is legally baseless and therefore it is reasonable to deny it; -----

18. Since according to law, the DEFENDANTS have no responsibility for the death of the deceased Munir, then no claim can be filed against all DEFENDANTS to pay COMPENSATION in any terms. Therefore it is reasonable and fair to deny the PLAINTIFF's Posita in items 75, 76 and 77 in its entirety. -----

19. That the DEFENDANTS III, IV, VIII, IX, X and XI expressly denied the Posita of the PLAINTIFF in items 78 and Petitum item 8c charging the lawyer's fee amounting to Rp 1,300,000,000.00 (One Billion three hundred million Rupiah) to the DEFENDANTS, since the Jurisprudence of the Supreme Court of the Republic of Indonesia No. 635 K/Sip/1973 dated

July 4, 1974 stipulates: "That regarding the honorarium of the Advocate, there is no regulation in H.I.R requiring the disputing party to solicit for assistance from a Lawyer, then such fee can not be charged to the opposite party, therefore the suit must be denied." -----

20. In addition, according to Prof. Dr. Sudikno Mertokusumo, in his book Indonesian Civil Code, Liberty, Yogyakarta, 1993, on page 84, stating that: if the suit is not based on law, namely if the incidents as basis of claim do not justify the claim, then the suit will be declared unacceptable (niet ontvankelijkverklaar)", therefore it is reasonable to deny or at least declare unacceptable the Plaintiff's Posita in items 79 and 80 in its entirety (niet ontvankelijkverklaar). -----

21. That since the DEFENDANTS are not proven of having committed illegal act harming the PLAINTIFF, then automatically the petition for conservatory sequestration is legally baseless, and therefore must be denied; -----

22. Since the suit filed by the PLAINTIFF is not based on the exhibits as referred to in article 180 (1) of HIR, then it is reasonable to deny or at least declare unacceptable the Plaintiff's Posita in item 82 in its entirety (niet ontvankelijkverklaar). -----

Based on reasons above, then the DEFENDANTS III-IV-VIII-IX-XXI kindly request the Panel of Judges Examining the present Case to pass verdict with dictum as follows:

IN EXCEPTION:

1. To accept and grant the exception of the Defendants in its entirety; -----

2. To pronounce the PLAINTIFF's suit is DENIED or AT LEAST declared UNACCEPTABLE (Niet Ontvankelijkeverklaard). -----

IN PETITUM:

1. To deny the Plaintiff's suit in its entirety; -----

2. To sentence the PLAINTIFF to pay case charges -----

or If the judge is of other opinion, we seek for justice (ex aequo et bono).-----

Considering, whereas the Plaintiff submitted her Rejoinder on January 11, 2007 and the Defendants submitted Counterplea on January 25, 2007;-----

Considering, whereas to support the arguments of her suit, the Plaintiff has put forward the exhibits and CD/film duly stamped and already verified against their original and marked:-----

P-1 : Marriage Certificate of the Plaintiff to the Deceased Munir (True copy); -----

P-2 : Birth Certificate of Saultan Alif Allende (True copy);

P-3 : Birth Certificate of Diva Suukyi Larasati (True copy);

P-4 : Family Member Card of the deceased Munir (True copy); -

P-5 : Flight Ticket no. 126 3273535522.2, Booking Code QLKJF 8, date of issued September 1, 2004. (True copy); -----

P-6a : Verdict of the Criminal Case No. 1361/Pid.B/2005/PN.Jkt.PST at the name of the Pollycarpus Budihari Priyanto (True copy); -----

- P-6b : Verdict of the Criminal Case No. 1361/Pid.B/2005/PN.Jkt.PST  
at the name of the Pollycarpus Budihari Priyanto (True  
copy); -----
- P-6c : Tempo Newspaper, October 5, 2005 "Pilot does not know  
the Movement of Munir's Seat (original); -----
- P-6d : Verdict of the Criminal Case No. 1361/Pid.B/2005/PN.Jkt.PST  
at the name of the Pollycarpus Budihari Priyanto (True  
copy); -----
- P-6e : Verdict of the Criminal Case No. 1361/Pid.B/2005/PN.Jkt.PST  
at the name of the Pollycarpus Budihari Priyanto (True  
copy); -----
- P-6f : Verdict of the Criminal Case No. 1361/Pid.B/2005/PN.Jkt.PST  
at the name of the Pollycarpus Budihari Priyanto (True  
copy); -----
- P-6g : Verdict of the Criminal Case No. 1361/Pid.B/2005/PN.Jkt.PST  
at the name of the Pollycarpus Budihari Priyanto (True  
copy); -----
- P-6h : Detik.com dated April 14, 2005, 'On the aircraft,  
Pollycarpus Requested for Exchange of Seat"; -----
- P-6i : Verdict of the Criminal Case No. 1361/Pid.B/2005/PN.Jkt.PST  
at the name of the Pollycarpus Budihari Priyanto (True  
copy); -----
- P-6j : Verdict of the Criminal Case No. 1361/Pid.B/2005/PN.Jkt.PST  
at the name of the Pollycarpus Budihari Priyanto (True  
copy); -----

- P-6k : Verdict of the Criminal Case No. 1361/Pid.B/2005/PN.Jkt.PST  
at the name of the Pollycarpus Budihari Priyanto (True  
copy); -----
- P-6l : Verdict of the Criminal Case No. 1361/Pid.B/2005/PN.Jkt.PST  
at the name of the Pollycarpus Budihari Priyanto (True  
copy); -----
- P-6m : Verdict of the Criminal Case No. 1361/Pid.B/2005/PN.Jkt.PST  
at the name of the Pollycarpus Budihari Priyanto (True  
copy); -----
- P-6n : Verdict of the Criminal Case No. 1361/Pid.B/2005/PN.Jkt.PST  
at the name of the Pollycarpus Budihari Priyanto (True  
copy); -----
- P-6o : Verdict of the Criminal Case No. 1361/Pid.B/2005/PN.Jkt.PST  
at the name of the Pollycarpus Budihari Priyanto (True  
copy); -----
- P-7 : *Safety Hazardous Report subject "Death on Board GA 974  
B747-400 PK-GSG SIN-AMS, Sept 7<sup>th</sup> 2004 No.  
INV/OZI/B744/001/04 Basis No. 24/04/744 issued on  
October 19, 2004 and prepared by Hartati, Betty Nila P  
and Boy Umarsyah and verified by Capt. Novianto Herupratomo  
and approved by Capt. A Krismanto (photocopy from  
photocopy); -----*
- P-8 : NFI forensic result, contained in the Appendices to  
Final Report TPF, June 23, 2005 (True copy); -----
- P-9 : Testimony of Dr. Budi Sampoerna to TPF dated June 10,  
2005, contained in the Appendices to Final Report TPF,  
June 23, 2005 (copy from copy); -----

- P-9a : Testimony of Dr. Budi Sampoerna to TPF dated June 10, 2005, contained in the Appendices to Final Report TPF, June 23, 2005 (copy from copy); -----
- P-9b : Testimony of Dr. Budi Sampoerna to TPF dated June 10, 2005, contained in the Appendices to Final Report TPF, June 23, 2005 (copy from copy); -----
- P-10 : Assignment Letter of the DEFENDANT I signed by the DEFENDANT II No. GARUDA/DZ-2270/04 dated August 11, 2004, contained in the Appendices to Final Report TPF, June 23, 2005 (True copy); -----
- P-11 : Back Date Letter Np. IS/1177/04 signed by the DEFENDANT III, contained in the Appendices to Final Report TPF, June 23, 2005 (True copy); -----
- P-12 : Kompas Cyber Media (original); -----
- P-13 : Report of the DEFENDANT V dated September 8, 2004, contained in the Appendices to Final Report TPF, June 23, 2005 (copy from copy); -----
- P-14 : *Safety Hazardous Report subject "Death on Board GA 974 B747-400 PK-GSG SIN-AMS, Sept 7<sup>th</sup> 2004 No. INV/OZI/B744/001/04 Basis No. 24/04/744 issued on October 19, 2004 and prepared by Hartati, Betty Nila P and Boy Umarsyah and verified by Capt. Novianto Herupratomo and approved by Capt. A Krismanto (copy from copy); -----*
- P-15 : Record of SCTV dated March 5, 2005 "Garuda, What Did You Conceal (Case of Munir Death) (True copy); -----

- P-16 : Tempointeractive dated November 30, 2004 "Garuda Supported the Police to Investigate the Munir Case" (print out from TEMPO); -----
- P-17 : Tempointeractive dated February 23, 2005 "Munir Case Team Was Disappointed with Garuda" (print out from TEMPO); -----
- P-18 : Basic Operation Manual and translation thereof
- \* 1.1.1 page 3
  - \* 2.1.2 page 3
  - \* 2.1.2 page 5
  - \* 4.1.1 page 4 no. 9
  - \* 5.2.1 page 1 nos. 01 & 03 (True copy); -----
- P-19 : Verdict of the Supreme Court No. 1185 K/Pid/2006 (true copy) -----
- P-20 : Warsawa Convention and translation thereof (articles 3, 22 and 25 (true copy); -----
- P-21 : Film "Garuda Deadly Upgrade" (original). -----
- P-22 : Sworn translation of *Safety Hazardous Report subject "Death on Board GA 974 B747-400 PK-GSG SIN-AMS, Sept 7<sup>th</sup> 2004 No. INV/OZI/B744/001/04 Basis No. 24/04/744* (copy from the original); -----
- P-23 : Sworn translation of NFI forensic result of the deceased Munir (True copy); -----
- P-24 : Kasum Letter 008/SK/KASUM/01/07 to the Attorney General together with the receipt and the letter of ex secretary of TPF Munir (original); -----

Considering, whereas to support the arguments of their suit, the Defendants I, II, V, VI and VII have put forward the exhibits duly stamped and already verified against their original and marked:

1. T1-I,II,V,VI,VII : Verdict of the Supreme Court of the Republic of Indonesia No. 1185 K/Pid/2006 dated October 3, 2006 (true copy)-----
2. T2-I,II,V,VI,VII : *Safety Hazardous Report subject "Death on Board GA 974 B747-400 PK-GSG SIN-AMS, Sept 7<sup>th</sup> 2004 together with translation thereof (True copy);-----*

Considering, that to support the arguments of their suit, the Defendants III, IV, VII, IX, X and XI have put forward the exhibits duly stamped and already verified against their original and marked:

1. T-1 : *Safety Hazardous Report No. INV/OZI/B744/001/04 dated October 19, 2004 (Share) and translation thereof (True copy);-----*
2. T-2 : *Explanation to Safety Hazardous Report No. INV/OZI/B744/001/04 dated October 3, 2004 (True copy);-----*
3. T-3 : *International Standard and Recommended Practices, Annex 13 to the convention on International Civil Aviation-Aircraft Accident an Incident Investigation, Ninth Edition, July 2001, International Civil Aviation Organization and translation thereof (true copy);---*
4. T-4 : *About Notak (true copy);-----*

Considering, whereas besides putting forward the exhibits to support the arguments of her suit, the Plaintiff also brought forward the witness claiming to have name:

**1. Expert witness, Fahri Mahmud SH,**

The witness, had his oath administered, provided testimonies as follows:

- That the witness was not familiar with suciwati, Garuda Indonesia Company and its Directors and management; -----
- That the witness was also not familiar with the other Defendants; -----
- That according to the witness, the Flight of Aircraft Garuda Jakarta-Amsterdam is categorized into International flight;
- That as International flight, the Aircraft with route Jakarta-Amsterdam complies with the provisions on Warsawa convention 1992 since during convention it was discussed about the convention of International Air transportation; --
- That the Warsawa Convention 1929 was ratified by Indonesia and we see that it was ratified by the Netherlands in 1932 and then based on Bogenvile Convention, it was also ratified by Stblat 1939 No. 100 constituting the application of the convention in Indonesian Law; -----
- That the original warsawa convention is in French; -----
- That the witness knows the High Protocol 1955 is not yet ratified by Indonesia; -----
- That the warsawa convention constitutes the part of International Private airlaw constituting a direction in case of Conflict in Airlaw, so for person understanding

- Private International Airlaw will understand that it constitutes a direction to overcome any conflict in Airlaw;
- That it is true that article 3 paragraph 1 of Warsawa Convention 1929, the Carrier must deliver ticket to the passenger; -----
  - That legally according to the Law, upgrading the seat means there is no ticket when in the business class; -----
  - That if a passenger sits on the aircraft without ticket, as the consequence, the passenger is free from limitedability and limited responsibility of the agency according to Article 3 paragraph 2 that he could not release himself from responsibility for limited cost and it will become the responsibility of the carrier. -----
  - That the position of Extra Crew status is same as the passenger, so he has no authority; -----
  - That an Airlines up to Standard must complain and it usually occurs in case there is Crash for easier identification of victim and the most important is such person has right to sit in the business or economic class; -----
  - That Over Selling usually occurs not only to Garuda, but other International Airlines if there is over seats in the economic class and there is no seat in economic class thereby can be moved to business class. And for such matter, there is justification. And such legal act constitutes non procedural and it has its own provisions; -----
  - That by movement of sea from the Economic class to Business class according to the expert, it is unlaw up grading act

namely the Carrier can not exercise its right to decrease or restrict the responsibility for the loss arising and relating to article 25 it is the spirit of Warsawa convention in case of negligence or default of the State carrier, thereby rendering victim from the passenger, then he has no responsibility if he committed negligence or default; -----

- That the movement of the passenger from the Economic Class to Business Class was made by an Extra Crew with counterfeit assignment letter and then the Extra Crew has been subjected to imprisonment which the verdict has been final and the movement was made by the Extra Crew whose position is same as the ordinary passenger, it may encourage the conclusion of the expert that the responsibility for loss is not limited. According to Article 25; -----

- That it is true that on page 9 of the Report, it is mentioned that there was movement of the passenger For Out New Reason, whether it is true that it is mentioned that there is movement of passenger with unknown reasons; -----

- That Garuda Indonesia as International Airlines should have international network facility for Medical aid. -----

- That since Garuda has no International network facility for such medical aid if there is passenger suffering from vomiting, diarrhea repeatedly, the act of pilot subsequently depends on the regulation of the airlines itself, there are several cases that action of Captain for such emergency problem is

- finding the nearest place for landing and if it is not made, it can be said that it is negligence or default case; -----
- That the Manual of Garuda itself stipulates that if there is passenger suffering from stomachache, he could not take the medicine orally, but by infuse and if the infuse device is not available, then it is a negligence; -----
  - That on page 11 item 5, there is report from Garuda that the existing Doctor's kit in such International Flight is not in accordance with the Standard Airlines as mentioned as negligence; -----
  - That as the investigation finding, it is found that the Aircraft's crew did not understand the function and coverage of the Light system Department, the aircraft's crew did not know the incidents that must be reported by ASR and CSR. The Aircraft's crew did not know the IPO International regulations, Annex 13, if such incident is in other countries or in country of Operator origin. The Aircraft's crew was not alert of making the notes on medicine that was administered by the Doctor to the passenger suffering from sickness during the flight. The Aircraft's crew did not know that the medicine package/wrap administered by the Doctor for passenger suffering from sickness must be kept as evidence. Before the passenger passes away, the Captain Pilot did not make any contact to look for paramedical from land, since Garuda has no medical aid in International network. However if the airlines prevent such incident, then it can be

- concluded that such incident is not intentionality but a negligence; -----
- That in the onboard itself, there is no word about Crase, if the passenger passes away on the aircraft, then the aircraft must be responsible. So the death or injury to the passenger is unnecessarily relating to the aircraft incident itself; -
  - That in warsawa convention, there is no provision on the passenger movement; -----
  - That the carrier in warsawa convention is party entering into agreement with the passenger to carry the passenger with scope of article 1 of warsawa convention; -----
  - That the description of captain is party responsible for and deciding anything on the flight by obligation to perform provisions in BOM; -----
  - That IATA stipulates about international medical network; --
  - That SAR is not provided for in warsawa convention; -----
  - That if there is crash, the captain pilot has made checklist before conducting flight, then it become the responsibility of captain pilot and airlines; -----

Considering, whereas besides putting forward the exhibits to support the arguments of their denial, the Defendants also brought forward the witness claiming to have name:-----

**1. Expert witness, Mudigdo Theodore Henri Purnama**

The witness, had his oath administered, provided testimonies as follows:

- That the witness has no family relation with the Plaintiff and has no employment relation but the witness is familiar with the Plaintiff through mass Media and the witness formerly worked with Garuda Indonesia and with the other defendants he has no family relation; -----
- That in general in Indonesia, it is known IATA in operation of aircraft number 1 is passenger's safety, No. 2 Convenience, 3. Scheduling, 4. calculation on company's economic basis those are the terms determined by state provided for in international body as well effective in Garuda. The priority scale is same and provided for in BOM;
- That according to the rule, the party with the highest authority for a flight after the door is closed is Captain that is fully responsible for, that has Captain in command (PiC) usually sit on cockpit; -----
- If there is passenger on the aircraft suffering from sickness, the Captain's act according to the Captain Function on the aircraft is ensuring the safety, security to all passengers, usually the captain pilot knows from the crew and aid is made by looking for the doctor to provide aid by using medical kit already made available. And the Captain Pilot can only monitor from the cabin's crew report;
- That the captain instructed the aircraft to land to the nearest airport after obtaining the cabin crew's report already obtaining doctor providing information that the passenger suffering from sickness must obtain the urgent medical treatment, then based on such report, the captain

- looked for the airport that is possible for landing by the observing from the weather, landing strip, political element in order to be able to resume the flight; -----
- That if there is no doctor, the captain's act only obtains report from the crew and if possible, the captain will check directly, since the crew is not equipped with the medical knowledge, then based on captain's assumption and the worst possibility to occur will be handled by the captain; -----
  - That for the emergency landing, the pilot will account for the same to the airlines company; -----
  - That the cabin crew, captain move the seat based on their consideration commercially if there is no objection, it can be made. -----
  - That incident and accident are occurrences relating to the aircraft operation rendering damage, injury or death; -----
  - That the murder is not accident, since excluded from the aircraft operation; -----
  - That in case of movement of seat in Garuda, the chief cabin having authority and the data on the movement are not recorded. And the movement of passenger is a usual thing; --
  - That the flight security and safety is a condition to realize the flight implementation safely and securely according to the flight plan. The flight security is a condition realized from the operation of flight free from disturbance or unlawful act; -----
  - That if during the flight there is no illegal act, it means there is no the flight security in the flight operation. ---

- That all flights or Airlines have business operation management; -----
- That in the air law there is regulation that the pilot in command may breach law; -----
- That if the passenger movement is provided for in BOM, then it is allowed; -----
- That if during the flight there is illegal act, it means the flight security is not realized; -----
- That the flight safety is a condition realized from the smooth operation according to the operation procedure and the best feasibility requirements of the flight facilities and infrastructures together with supporting thereof and the operation procedure are provided for in BOM; -----
- That by made configuration aircraft shall mean the Aircraft have first class, business class and economic class. -----
- That if an aircraft consists of first class, business class and economic class, then the passenger movement may be made;
- That if the Accident relates to the injuries for more than several days in the hospital and if less than that, the case is considered incident, more reporting system and data taking; -----
- That the commercial flight is provided for in IATA and IPO that the Pilot and cabin crew must be good at English. -----
- That the personnel involved in a flight, the Pilot in command, captain, chief cabin crew assisted by his crew and each personnel shall have their respective responsibility and for Pilot, his responsibility is to fly the passenger to

- the point of destination safely. The cabin crew responsibility is to provide service to the passenger, assist the passenger evacuation in case of accident; -----
- That to use the doctor's kit, the cabin crew must report to the Captain and if there is insufficiency, they also must report to the equipment department; -----
  - That on the aircraft, there are medicines but no medical personnel. And administration of medicine to the passenger is general. -----
  - That if there is a passenger requiring more treatment, we must land, and based on information from the passenger as well as the passenger suffering from sickness stating that he can no longer resist, then the aircraft must immediately make landing; -----
  - That the accident relating the aircraft operation, due to negligence rendering death for example the food poisoning is categorized into aircraft operation; -----
  - That the pilot is not responsible for the illegal passenger, since the pilot focuses on the front part and if there is illegal passenger, it will become the joint responsibility including airport, security etc. -----

**2. Expert witness, DR.H.K. Martono, SH.LLM**

The witness, had his oath administered, provided testimonies as follows:

- That the witness has no family relation with the Plaintiff and has no employment relation but the witness is familiar

- with the Plaintiff through mass Media and the witness formerly worked with Garuda Indonesia and with the other defendants he has no family relation; -----
- That the Accident is accident. Incident is incident. In the flight world, the accident is incident beyond human being's capability occurring when the passenger are getting on from the airport or port of departure until the airport of destination and during which there is death, injury, sickness or loss caused by collision of aircraft body or the aircraft requires spare parts that must be replaced or structural damage or injury etc due to aircraft machine blow or the aircraft is totally loss. Incident is incident beyond the human being capability other than such accident, the collection of incident, then becoming accident. For example: the oil infiltrating is let, then tends to cause accident. -
  - That an Indonesian airlines performs international flight, then such flight constitutes international flight complying with warsawa convention provided that the country of departure and the country of designation comply with the warsawa convention and exactly our National Law will apply;
  - That there is no regulation conflicting in the warsawa convention and Indonesian Flight Law; -----
  - That the pilot has inherent authority in a flight; -----
  - That PiC has significant authority thereby able to breach Law, work agreement or anything provided that the safety and security is the priority. The party knowing the safety first is flight profession. Flight associate determining whether

the act is safety first, otherwise it will be subjected to sentence. In Tokyo conference, it is stated that the flight has significant authority, may ask the passenger to get off, throw the goods, immune against the criminal, civil suits with safety reason. The flight's captain is not responsible for any matters relating to flight, he has so vast power as long as still in cockpit, it is called the master king; ----

- That IATA is International Asia Transport Association, the airlines association operating international flight regulating tariff normality while ICAO is a UNO body having objective to develop international civil flight, issue recommendation to the member countries; -----

- That the definition of passengers according to warsawa convention are those having legal relation between the payment problem and the passenger proven by ticket; -----

- That the definition of carriage according to warsawa convention shall be the airlines carrying passenger and between the carrier and the passenger relating to the air transportation agreement, the ticket is one of the evidences; -----

- That the definition of Passenger without ticket shall be illegal passenger without carriage document and subjected to sentence. The illegal passenger is not furnished with carriage document. The passenger without ticket approved by the airlines may be unlimited *labelity*; -----

- That in the international flight, the passenger in the economic class may move to business class. It is not a legal problem, but only administrative problem of the company; ---
- That the interpretation of warsawa convention regulation depends on the judge of each country; -----
- That in flight, legal relation is proven by the existence of ticket regardless the problem on economic or business class;
- That the warsawa convention is not part of Air Law prevailing in Indonesia; -----
- That the gist provided for in warsawa convention is the Responsibility of the carrier, and the amount of compensation;-----
- That the warsawa convention creates rules on legal responsibility and number of responsibility known as presumption of guilty or reverse verification charge.
- That if the passenger with economic ticket sits in the business class, then Airlines may prove not guilty, free from responsibility. -----

Considering, whereas both parties in dispute submitted conclusion, respectively dated April 12, 2007, and finally they kindly request the court's verdict;-----

Considering, whereas further there were already incidents as described clearly in the Minutes of the relevant hearing, which are considered included in as well as form integral part hereof;-----

**ABOUT LEGAL CONSIDERATION:**

**IN CONVENTION**

**IN EXCEPTION**

Considering, whereas, the DEFENDANTS in their exception principally stating that the Plaintiff's suit must be declared unacceptable by stating the following matters:

1. The Plaintiff's Suit is Unclear and Obscure, since
  - a. Posita in letter of the Plaintiff's suit is in foreign language, not translated by the sworn translator into Indonesian; -----
  - b. the Plaintiff's suit is unclear, whether it is based on illegal act or negligence, since in her posita, the Plaintiff reveals both matters; -----

2. THE PLAINTIFF'S SUIT IS LEGALLY BASELESS (Exceptie Onrechtmatig of Ongegrond). -----

Since by issue of the Verdict of the Supreme Court of the Republic of Indonesia No. 1185K/Pid/2006 dated October 3, 2006 ("the Verdict of the Supreme Court of the Republic of Indonesia No. 1185K/Pid/2006"), principally stating that DEFENDANT V/POLLYCARPUS BUDIHARI PRIYANTO (assisted by and or in cooperation the DEFENDANT VI and DEFENDANT VII) is NOT PROVEN validly and convincingly that they have been guilty of committing crime namely PLANNED MURDER, then the acts of the DEFENDANTS argued by the PLAINTIFF as illegal act become legally baseless.

3. THE PLAINTIFF'S SUIT IS PREMATURE

Since the PLAINTIFF's suit was registered through the Registrar's Office of the District Court of Central Jakarta

on September 6, 2006. While the verdict of the Supreme Court No. 1185K/Pid/2006 was passed on October 3, 2006, thereby the argument of the Plaintiff's suit mentioning the existence of "LEGAL FACT" as suit basis is premature. -----

4. THE PLAINTIFF'S SUIT IS LESS SUBJECT

(exception ex juri terti)

Since if it is true that the Deceased Munir passed away on the aircraft GA 974 is due to poison, then the PLAINTIFF should also have sued the party responsible for the incorporation of poison to the aircraft namely PT. Angkasa Pura II Airport Soekarno-Hatta. -----

Considering, whereas, in her Rejoinder, the Plaintiff provided response against such Exception, principally denying the arguments of the Defendants' exception;-----

Considering, whereas based on the Defendants' Exception and the Plaintiff's Response against such Exception, the Panel of Judges provides consideration as follows:-----

Considering, whereas the Exception of the present DEFENDANTS are not about the exception to the judge competency to try or Relative or absolute competency, then based on Article 136 of HIR, it must be decided jointly with the Petitem;-----

**Ad.1 About the Plaintiff's Suit is Unclear and Obscure, since**

a. Posita in letter of the Plaintiff's suit is in foreign language, not translated by the sworn translator into Indonesian;-----

Considering, whereas the Indonesian Civil Code effective currently, namely H.I.R. does not stipulate the forms of exception that can be qualified as Exception to Obscure Suit;-  
That in her Rejoinder, the Plaintiff provides response about this matter by referring to opinion of M. Yahya Harahap in his book, Indonesian Civil Code;-----

That the Panel of Judge is of opinion that such source can be used as reference in the present case, which it is mentioned that in practice, it is known several forms of exception that can be qualified as Exception to Obscure Suit, among others:--

- Unclear legal basis of the suit's argument
- Unclear the object of dispute
- Unclear petitum of suit
- The problem on posita of negligence and illegal act.

That therefore the absence of translation of the foreign language into Indonesian in the Plaintiff's Suit can not be qualified as "Unclear and obscure Suit"(obscur libel). In practice, the existence of foreign language is intended to show the sentence or sound of article quoted from its original source which is in foreign language thereby the meaning of the sentence can be clearly understood;-----

Let alone the foreign law terms are frequently difficult to translate;-----

While the provisions in foreign language must be translated into Indonesian by the Sworn translator, in practice it is designated for exhibit in foreign language put forward in the verification before court;-----

b. the Plaintiff's suit is unclear, whether it is based on illegal act or negligence, since in her posita, the Plaintiff reveals both matters;

That this point is also not provided for in the prevailing Indonesian Civil Code (H.I.R). The doctrine (M. Yahya Harahap in the Indonesian Civil Code) declares that combining or accumulating both in a suit is possible provided that the separation must be clear;-----

That in addition, the Verdict of the Supreme Court of the Republic of Indonesia No. 2686K/Pdt/1985 stipulates that "although the suit's argument stated is an illegal act (PMH), while the actual legal incident is negligence, but the suit is considered not obscure."-----

**Ad.2. THE PLAINTIFF'S SUIT IS LEGALLY BASELESS (Exceptie Onrechtmatig of Ongegrond).**

That legally baseless suit shall mean the suit posita fails to explain the legal basis and incident underlying the suit;-----

That after examining and scrutinizing the present Plaintiff's Suit, irrespective whether the truth of the argument of the suit posita is proven or not, the matter that will be proven in petitum, the Panel of Judges is of the opinion that the suit posita has explained the legal basis and the incident underlying the suit, among others as follows:-----

- The existence of the illegal act committed by the Defendants that fail to secure the convenience, safety and security of the passengers;-----

- That the Defendants have committed illegal act by the existence of Crew based on illegal official assignment letter. -----

**Ad.3. THE PLAINTIFF'S SUIT IS PREMATURE**

That a suit is stated as premature suit if it is filed too earlier for examination of the dispute, among others for example:

- The suit is submitted preceding the period agreed in the agreement; -----
- The suit filing is postponed due to deferring factor, thereby it is too early to examine the suit filed. For example, the heirs suing for the distribution of inheritance while the predecessor is still alive; -----

Considering, whereas based on description above, the defendants' argument about the Premature Plaintiff's Suit is excluded from the definition of premature suit as mentioned above;

**Ad.4. THE PLAINTIFF'S SUIT IS LESS SUBJECT**

**(exceptio ex juri terti)**

That about this exception, the Panel of Judges refers to the Verdict of the Supreme Court No. 305K/Sip/1971 dated June 16, 1971, the Verdict of the Supreme Court of the Republic of Indonesia No. 366K/Sip/1973 dated December 10, 1973, and the Verdict of the Supreme Court of the Republic of Indonesia No.

2471K/Sip/1981 dated January 18, 1982, stating that the Plaintiff has authority to determine the parties to sue;-----  
That let alone the most important thing, according to the Panel of Judges, by the absence of suit against PT. Angkasa Pura II Airport Soekarno-Hatta did not cause the inhibition of the Defendants' right to defend itself.-----

Considering, whereas based on the consideration description above, the Panel of Judges is of the opinion that, the Exception of the Defendants is legally baseless and therefore it must be denied;-----

**IN PETITUM**

Considering, whereas the aims and objectives of the Plaintiff's suit is as mentioned above;-----

Considering, whereas the petitum of the Plaintiff's Suit is basically about the illegal act committed by the Defendants failing to fulfill their responsibility to secure security, convenience as well as safety of the passengers, thereby rendering material and immaterial loss, in this case relating to the death of the deceased Munir in the aircraft of the Defendant I;-----

Considering, whereas to the arguments of the present suit, the Defendants in their replies principally have denied, thereby based on Article 163 of HIR, the Plaintiff should prove her suit argument, while the Defendants are charged to prove the arguments of their denial;-----

Considering, whereas to support the arguments of her suit, the Plaintiff has brought forward the exhibits in terms of letter or expert witness, namely:

- Exhibit marked P-1 through P-25, duly stamped and already verified against their original, except the Exhibits P-9 through P-14; -----
- 1 (one) Expert witness, namely Fachri Mahmud, S.H.; -----

Considering, whereas to support the arguments of their denial, the Defendant I, Defendant II, Defendant V, Defendant VI and Defendant VII have brought forward the exhibits in terms of letter or 2 (two) expert witnesses, namely:

- Exhibit marked T I, T II, T III, T V, T VI, T VII-1 through T I, T II, T III, T V, T VI, T VII-2, duly stamped and already verified against their original; -----
- 2 (two) Expert witnesses, namely Mudigdo Theodore Henri Purnama and DR.H.K. Martono, S.H., LLM; -----

While the Defendant III, Defendant IV, Defendant VIII, Defendant IX, Defendant X and Defendant XI have brought forward exhibits in terms of letter marked T-1, T III, IV, VIII, IX and XI through T-4 T III, IV, VIII, IX, and XI, duly stamped and already verified against their original, except the Exhibits T-1, T III, IV, VIII, IX and XI;-----

Considering, whereas before taking into account the arguments of the parties as well as exhibit brought forward to support their arguments, the Panel of Judges thinks that it is

necessary to position: the Legal Aspect covering the present suit case;-----

Considering, whereas in the arguments of posita of Suit, and the Defendant do not deny it:-----

- That the deceased MUNIR passed away on September 7, 2004 in the flight of Garuda Indonesia Airlines Aircraft operated by the DEFENDANT 1, under Flight Number: GA 974 with route Jakarta-Amsterdam; -----

- That as the passenger of Garuda Indonesia Airlines aircraft, the Flight Number GA 974, route Jakarta-Amsterdam, the Deceased Munir had economic class, at the name of Munir, ticket no. 1263273535522.2, Booking Code QLKJF 8, date of issued September 1, 2004. -----

Considering, whereas, Article 41 paragraph (2) of Law No. 15 of 1992 regarding Flight states, "the passenger ticket or baggage ticket shall constitute evidence already agreed by carriage agreement and transportation fare payment";-----

Considering whereas the flight of Garuda Indonesia Airlines aircraft GA 974 is an international route, namely Jakarta - Amsterdam, and the flight problem closely relates to the international provision, then the discussion in this case will also refer to the point prevailing in the International Transportation Law;-----

Considering, whereas the Warsawa Convention 1929 revised by Den Haag Protocol, stipulates that "The Passenger ticket shall constitute prima facie evidence of the conclusion and condition of the contract carriage";-----

That it contains meaning, between the Airlines Service and the passenger there is carriage agreement proven by the existence of the passenger's ticket;-----

Considering, whereas the legal responsibility emerges from the existence of agreement generating right and obligation. Based on Article 1233 of the Indonesian Civil Code, the right and obligation (commitment) is from the agreement and law;---- That commitment taking law as sources is divided again into the legal and illegal act. The commitment taking agreement as source imposes the contracting parties to exercise their right and obligation (achievement). If either party fails to exercise the achievement, then it can be categorized making default;---

Considering, whereas therefore the Responsibility of the Airlines Service in Civil Law perspective can be categorized into:

1. The responsibility of the Airlines Service based on negligence;
2. The responsibility of the Airlines Service based on Unlawful Act; -----

Considering, whereas in the Plaintiff's Suit both in title and posita and her petitum expressly demanded the responsibility of the Defendants based on Unlawful Act;-----

Considering, whereas based on the considerations described above, the Panel of Judges is of the opinion that the Legal aspect underlying the verdict of this case is legal aspect of Air Transportation agreement including the Legal aspect of the responsibility of the Airlines Service;-----

Considering, whereas based on all argumentations of the parties hereto as well as verification thereof, whether in terms of letter or expert witness, now, the Panel of Judges will consider whether the Plaintiff is able to prove the arguments of her suit thereby the petitum of suit is worth granted;-----

**PETITUM POINT 2 "STATING THE DEFENDANTS HAVE COMMITTED ILLEGAL ACT"**

Considering, whereas Article 1365 of Indonesian Civil code mentions that "Every unlawful act rendering loss to other person shall require the person who due to his negligence causes such loss, to pay compensation";-----

That subsequently Article 1366 of Indonesian Civil code stipulates that, "Every person shall be responsible not only for the loss caused by his act, but also that caused by his negligence or carelessness";-----

That Article 1365 of Indonesian Civil code stipulates that the claim for compensation for unlawful act can just be made if fulfilling the elements as follows:

1. The act must be illegal; -----
2. The act must render loss; -----
3. the act must contain error element; -----
4. and the act must have cause-effect relation; -----

**Ad.1 The act must be illegal;-----**

That since the verdict of Hoge Raad January 31, 1919 in the case of Lindenbaum-Cohen, the concept of unlawful act has developed/expanded. Since then, there are 4 criteria of unlawful act, namely:

1. Contradictory to legal obligation of the perpetrator; -----
2. Breaching subjective right of other party; -----
3. Breaching norm rule; -----
4. Contradictory to equity, prudence as well as cautious attitude principles that must be owned by someone in social life with co-community's member or others' assets; -----

Considering, whereas based on the Warsaw Convention revised by Den Haag Protocol, in the carriage agreement, the Airlines Service is carrying the passenger through the point of destination securely and safely; -----

Considering, whereas based on the exhibits of the Plaintiff marked P-5, P-6, P-7, P-8, P-9, P-14, P-15, P-18, P-19, P-20, P-22, P-23 there were gained facts as follows:

1. That on September 6, 2004, the Deceased Munir was the passenger of the Aircraft Garuda Airlines GA 974 with seat number: 40 G economic class for flight Jakarta-Amsterdam --
2. That the party act as Captain Pilot of the flight from Jakarta-Singapore is the Defendant X; -----
3. That before the Aircraft departed from Jakarta with destination Changi Airport, at initiative of the Defendant V, the Deceased Munir's seat was moved to seat Number 3K of Business Class, without prohibited by the Defendant X. ----
4. That the movement of the seat was known by the DEFENDANT VI as the cabin crew; -----
5. That the serving of food in the business class is much different from economic class. In the economic class, the

passenger obtained the food in mass, while in the business class, the distribution of food and drink is individually.

6. That Aircraft GA 974 made transit at the Changi airport - Singapore and then continuing the flight toward Amsterdam;
7. That in the flight GA 974 Singapore-Amsterdam, the DEFENDANT IX was acted as pilot captain; -----
8. That since the departure from the Airport Singapore, the Deceased Munir back to his original seat namely number 40G in Economic Class and no longer after that, he started to complain about stomachache and vomiting followed by defecating; -----
9. That the Deceased Munir had time to request for medicine for stomach pain to the cabin crew. The Deceased Munir had to repeatedly to toilet, even the relevant party was no longer able to walk by himself thereby assisted by the cabin crew;
10. That the DEFENDANT IX as Pilot in Command (PiC) knew the condition of the Deceased Munir but did not immediately consult to the Ground Officer to request for permit to land his aircraft on the nearest airport; -----
11. That about two hours before the Aircraft GA 974 landed to Airport Schipol, the Netherlands, the Deceased Munir was found passing away; -----
12. That the result of visum at repertum conducted by the Netherlands Forensic Institution [Netherlands Forensisch Instituut - NFI], concluded that the Deceased Munir passed away due to the acute arsenic toxin, since based on the

toxicology examination, there was found very high arsenic concentration in the blood, urine and stomach; -----

13. That the crew did not fully understand about ICAO International regulation annex 13 in case of incident/accident; -----

14. That the existence of the Defendant VF in the capacity as extra crew performing task from the Defendant I and Defendant II as Aviation and Internal Security, based on the Assignment Letter made by the Defendant IV with back dating date; -----

15. That to the case of demise of the deceased Munir was brought to court for examination process in which the Defendant V Pollycarpus Budihari priyanto was brought as Accused, and the District Court of Central Jakarta has issued the verdict for such case and the High Court of DKI Jakarta has voided the verdict of the District Court of Central Jakarta; -----

16. That in the Cassation level, the Supreme Court of the Republic of Indonesia has passed verdict voiding the verdict of the High Court with dictum among others: -----

1. To pronounce the Accused Pollycarpus Budihari Priyanto it not proven validly and convincingly guilty for committing criminal act as accused in the First Accusation;-----

2. To release the Accused from the First Accusation;-----

3. To pronounce the Accused Pollycarpus Budihari Priyanto has been proven validly and convincingly guilty for committing criminal act "Using Illegal Letter";-----

4. To impose sentence upon the Accused with imprisonment of maximum 2 (two) years.-----

Considering, whereas the facts described above must be used as thinking basis in analyzing the consideration of this verdict, regarding matters as follows:

- That by the verdict of the Supreme Court of the Republic of Indonesia in Cassation level voiding the verdict of the High Court of DKI Jakarta that voided the Verdict of the District Court of Central Jakarta, it means the Defendant V Pollycarpus Budihari Priyanto as the accused is not proven of committing planned murder to the deceased Munir; -----
- That therefore, to the death of the deceased Munir, there is no final Verdict of Criminal Court pronouncing the party responsible for such death; -----
- That there is no the Verdict of the Criminal Court pronouncing the party putting arsenic toxin to the food or drink consumed by the deceased Munir; where the arsenic toxin is given, whether on board in the flight of Jakarta-Singapore, or in Changi Airport, Singapore, or in the flight of Singapore-Amsterdam; -----

In other words, about anyone adds arsenic toxin to the food or drink consumed by the deceased Munir, how and where it is put into are the competency of the Judge of Criminal Case to examine and try, on the basis of finding out the material truth, and therefore excluded from the scope of discussion in this Verdict;-----

That once again, it is confirmed that the discussion of this Verdict will start from Legal Aspect of the Air Transportation

Agreement, including the responsibility of the Air Transportation Service Airlines;-----

That based on the facts gained above, then the important thing and the prioritized matter are:-----

The parties that must be responsible relating to the legal aspect of relation of carriage agreement in the present case, and therefore it can be said that they have committed unlawful act;

Considering, whereas relating to matters above, the Panel of Judges provides considerations as follows:-----

Considering, whereas the Plaintiff in her Suit sued the Defendants, in their respective capacity, have committed unlawful act. The Defendants are as follows:-----

Airlines Service, in this case PT. Garuda Indonesia (Defendant I);-----

Article 24 of Ordinance of Air Transportation (Stb 100: 1939) stipulates that:

- (1) The carrier is liable for losses as the consequence of injury or other wounds in the body, suffered by a passenger, if the accident which caused the loss has relation to the air transportation and occurring on board or during taking an act in relation to getting on or getting off the aircraft. -----

That Article 43 paragraph (1) a of Law No. 15 of 1992 regarding Flight, states that: The air transportation company running in commercial air transportation activity shall be responsible for the death or injury of the passenger transported.-----

That the elucidation of this article stipulates that, the responsibility of the air transportation company is if the death or injury of the passenger is caused by the accident during the air transportation and occurring on the aircraft;

That for International Flight, Article 17 of Warsaw Convention 1929 stipulates that:

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the .. etc

That one of requirements in Article 24 of Ordinance that is not found in Article 17 of Convention, namely: such accident must have relation to the air transportation.-----

Considering, whereas as already mentioned above, since the flight GA 974 used by the deceased Munir was the international flight route, then of course the responsibility of the carrier shall comply with the International Law provision, namely Article 17 of Warsaw Convention. It is in line with Article 1 paragraph (1) of Convention stating that:-----

This convention applies to all international carriage of persons, luggage or goods performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertakings:-----

That subsequently, Law No. 15 of 1992 or Warsaw Convention does not explain what is meant by "accident";-----

That however in Article 17 of Warsaw Convention, the term of "accident" is expanded with 'on board aircraft' that can be construed by "during the flight";-----

That by "accident" according to annex 13 to International civil flight convention from ICAO/International Civil Aviation Organization shall mean, "an incident, relating to aircraft operation occurring when someone getting on aircraft with intention to board the aircraft flight until when all people on board get off aircraft, in which someone passes away or experiences serious injuries as the consequence of their existence on such board, or direct collision with any part of the aircraft, or subjected to blow directly from the aircraft jet machine;"-----

That based on the testimony of the Expert witness of the Plaintiff, Fachri Mahmud and the Expert witness of the defendant, Martono, the Warsaw Convention 1929 did not define the word "accident". Includes "accident" if whether it is an extraordinary thing, an usually occurring, thereby its definition can be left to the interpretation of the Judge;-----

That since there is no clear definition of the "accident", and then the interpretation is left to the Judge, the Panel of Judges will adopt the Rechtsvinding's thought, as mediator of Legisme's thought and Freie Rechtsbewegung thought, having opinion that the Judge is bound with the law but not as tight as the Legisme thought;-----

In other word, the Judge has bound freedom (gebondenvrijheid) or free bound (vrije gebondenheid);-----

That the Rechtsvinding's thought harmonizes law to the era's demand;-----

That in relation to such competency, the Panel of Judges is of the opinion that nowadays era in which there are many people highly depend on air transportation facility, then the requirements restricting the responsibility of the carrier for all incidents on the aircraft must be eliminated. It is to increase the awareness of the Air Transportation Service Airlines to increase their performance;-----

That the relation of the passenger to the Air Transportation Service is irrespective of the protection to the consumers, thereby the provisions in Law Number 8 of 1999 Regarding Consumer's Protection (Law on Consumers) is relevant to be used as basis in the consideration of the verdict of the present case;-----

That Article 4 item [a] of Law Number 8 of 1999, Regarding Consumer's Protection mentioned that, "The Consumers shall be entitled to among others the convenience, security and safety in consuming the goods and/or service."-----

That in general the existence of carriage contract/ agreement is defined indirectly in the contract/agreement that the passenger will be transported safely and with feasible treatment;-----

That one of restrictions provided for in the Carriage Law is that the Transportation Service Company can not Release itself from the legal responsibility to the passenger suffering from injury or death due to negligence;-----

Considering, whereas based on the fact undenied by the Defendants, as described above, namely when: the Deceased Munir suffered from stomachache, vomiting and defecating, the Deceased Munir had time to request for medicine for stomach pain to the cabin crew;-----

That the Deceased Munir had to repeatedly to toilet, even he was no longer able to walk by himself thereby assisted by the cabin crew;-----

That but the DEFENDANT IX as (PiC) knew the condition of the Deceased Munir but did not immediately consult to the Ground Officer to request for permit to land his aircraft on the nearest airport;-----

That about two hours before the Aircraft GA 974 landed to Airport Schipol, the Netherlands, the Deceased Munir was found passing away, and based on the result of visum at repertum (autopsy) conducted by the Netherlands Forensic Institution [Netherlands Forensisch Instituut - NFI], concluded that the Deceased Munir passed away due to the acute arsenic toxin-----

That based on Basic Operation Manual (BOM) 5.2.1, if the passenger experienced serious sickness on the aircraft, PIC shall:

- decide, by consulting with Purser/Senior Attendant, whether or not it is necessary to continue the flight as planned; --
- if doubt, then always ask for medical advise from ground; --

That although the Defendant IX has known the condition of the Deceased Munir through Purser and has obtained assistance of a passenger who was as doctor, but with the worse condition of

the deceased Munir, namely vomiting and defecating, even he could not walk, actually already consuming medicine for stomach pain, but the Defendant did not ask for medical advice from the Ground Officer;-----

That the Defendant IX as Pilot in Command (PIC) has committed act contradictory to his legal obligation, already stipulated in (BOM). That it is also in accordance with Article 23 of Law No. 15 of 1992 jo Article 80 of Government Regulation No. 3 of 2001, stipulating that the Captain of Aircraft shall be responsible to take any act for the security and safety of the flight as well as be responsible for the security and safety of the flight;-----

That as the consequence of the PIC (Defendant IX)'s act, breaching subjective right of the deceased Munir for being carried safely and with proper treatment; It has breached the norm rule, and contradictory to equity, prudence as well as cautious attitude principles that must be owned by a Captain Pilot acting as PIC. Therefore the defendant IX did not take the acts in such away or as maximum as possible that is obliged to him;-----

In other words, that the Defendant IX has been in default in implementing his obligation;-----

That according to Article 1366 of Indonesian Civil code already mentioned in the initial of discussion, that, "Every person shall be responsible not only for the loss caused by his act, ut also that caused by his negligence or carelessness";-----

That based on the consideration mentioned above, then the Defendant IX's act has fulfilled the unlawful element;-----

That subsequently, the Article 1367 of Indonesian Civil code stipulates that, "Every person shall not only be responsible for the loss caused by his act, but also the loss caused by other persons' act under his responsibility or goods under his control";-----

That the Defendant IX is the Pilot working in the Defendant I, PT (Persero) Perusahaan Penerbangan Garuda Indonesia, then based on Article 1367 of Indonesian Civil code, the Defendant I shall also be responsible for the unlawful act committed by the Defendant IX;-----

**Defendant IX, as Individual and Pilot of GA 974 Singapore-Amsterdam**

That the Defendant IX as argued by the Plaintiff was as the Captain Pilot of GA 974 Singapore-Amsterdam, but the Defendant IX as PIC was familiar with the condition of the deceased Munir but not immediately consulting to Ground Officer to ask for aircraft landing permit to the nearest airport;-----

That to avoid repetition, the description in the consideration on "whether the Defendant I has committed unlawful act" above, also determining whether there is negligence of the Defendant IX, then on mutatis mutandis, the consideration is considered already contained in the consideration about the Defendant IX;

That based on the description above, then the Defendant IX is considered already committing unlawful act;-----

**Defendant II, Indra Setiawan as Individual and President Director of PT. Garuda Indonesia 2002-2005**

That against the Defendant II, in the posita of suit, the Plaintiff argued as follows:

- That the role of the Defendant II is related to the existence of the DEFENDANT V as extra crew that will perform task from the DEFENDANT I and DEFENDANT II as Aviation and Internal Security based on the assignment task made by the Defendant IV on the back dating date; -----
- That the DEFENDANT II has issued the Assignment Letter as aviation and internal security, for the existence of the DEFENDANT V on the aircraft GA 974 as extra crew; -----
- That the assignment letter has peculiarity, namely the assignment which is very general in nature, without time limit and without furnished with clear accountability system for the implementation of task; -----
- That the assignment letter was issued by the DEFENDANTS I and II, directly to a Co-Pilot Garuda by neglecting the level of decision making in Garuda management environment, namely Director for Operational, Vice President for Flight Operation and Chief of Pilot; -----
- That the existence of the Defendant V in the flight GA 974 is argued by the Plaintiff as person relating to the death of the deceased Munir. -----

That once again, the Panel of Judges reprimands that, the party adding the arsenic poison to the food or drink consumed

by the deceased Munir, how and where the arsenic poison was entered, are the authority of the Criminal Judge to examine and try them, and therefore excluding from the scope of the Discussion in this Verdict;-----

That let alone until this verdict was read out, there was no the final Verdict of the Criminal Court about such matter;----

That based on Exhibit P-19, in which the Defendant V as the Accused in the Cassation level, the Supreme Court of the Republic of Indonesia has passed verdict principally stating that the Accused POLLYCARPUS BUDIHARI PRIYANTO is NOT validly and convincingly proven guilty of committing crime "PLANNED MURDER" but it is proven committing crime of "Using Counterfeit Assignment Letter";-----

That now it is necessary to discuss, Whether the act of the Defendant II issuing the Assignment Letter to the Defendant V declared counterfeit can be related to the negligence committed by the Defendant IX, relating to the responsibility of the carrier for its passenger;-----

That Article 23 of Law No. 15 of 1992 jo Article 80 of Government Regulation No. 3 of 2001, stipulates that the Captain of Aircraft shall be responsible to take any act for the security and safety of the flight as well as be responsible for the security and safety of the flight;-----

Considering, whereas, to avoid repetition of discussion, then on mutatis mutandis, the consideration about the Defendant I, and Defendant IX above is considered already contained in the consideration to the Defendant II, in which

the act of the Defendant IX as PIC that has made negligence in performing his obligation is also the responsibility of the Defendant I as the Carrier Service Company;-----

That based on the description above, the Panel of Judges is of the opinion that the Defendant II's act issuing the Assignment Letter to the Defendant V declared counterfeit has no relation to the negligence of the Defendant IX;-----

In other words, there is no cause-effect relation between the Defendant II's act issuing the Assignment Letter with back dating to the Defendant V as argued by the Plaintiff to the negligence of the Defendant IX;-----

Considering, whereas based on the consideration above, as the consequence, in relation to the responsibility of the carrier in the scope of Civil Law, it is wrong to say that the Defendant II has committed unlawful act;-----

**Considering, whereas subsequently the role of the other Defendants argued in the Suit, namely:**

- o That the movement of the seat of the Deceased Munir from the seat number 40 G of Economic class to the seat number 3K, business class was made at the initiative of the DEFENDANT V;
- o That the existence of the Defendant V in the flight of Aircraft GA 974 is in his capacity as extra crew, whose departure is based on the assignment letter issued by the DEFENDANT II as Aviation and Internal Security. -----
- o That the DEFENDANT V visited the DEFENDANT IV to request for being involved as crew in the flight GA 974 on September 6,

2004 and it was firstly denied by the Defendant IV, but after obtaining consent from the DEFENDANT III, the DEFENDANT IV permitted the DEFENDANT V to board the flight of GA 974. -----

- o That the existence of the DEFENDANT V on the aircraft GA 974 is based on the schedule change note number OFA/219/04 signed by the DEFENDANT IV as Flight Operation Support Officer. Such note constitutes the change and the Note Number OFA/210/04 dated August 31, 2004. -----
- o That the Defendant as Vice President for corporate Security issued letter No. 15/1177/04 to strengthen the assignment letter of the DEFENDANT I and DEFENDANT II to the DEFENDANT V made by the DEFENDANT IV which was then the letter in fact back dating; -----
- o That the movement of the seat of the Deceased Munir at the initiative of the DEFENDANT V was let by the Defendant VIII as Purser and the Defendant X as employee of the Defendant I's company; -----
- o That the flight GA 974 Jakarta-Singapore, the Defendant IV and the DEFENDANT VII as the cabin crew responsible for preparing for food and drink at pantry and serving them; ---
- o That the DEFENDANT IX based on *Safety Hazardous Report* is unable to perform his obligation as purser; -----

Considering, whereas to the role of the Defendants III, IV, V, VI, VII, VIII, X and XI related to the considerations described above, the Panel of Judges is of the opinion that the Defendants played no role in the negligence of the

Defendant XI and therefore they could not be declared already committing unlawful act;-----

**Ad.2 The act must render loss;**

That the loss caused by the unlawful act can be in form of material and immaterial losses:-----

That in practice currently, both in the domestic and international flight, if there is a loss or accident of aircraft, the payment of compensation to the victim is always made without bothering whether there is error element or not from the carrier. So absolute responsibility principle has been applied, although formally Warsawa convention still adopts responsibility principle based on presumption of liability;----

Application of absolute responsibility principle in air transportation will provide facility for the victim to obtain compensation with fast process. Except in certain matters (if the victim or his family suspects about the indication of the extraordinary negligence element in the carrier party rendering the carrier is responsible without limitation) may file the claim before the court;-----

That in her Posita, the Plaintiff argued the consequence of the Defendants' act whether intentionally or due to their negligence, namely failure to fulfill their responsibility to secure the security, convenience, as well as safety of the passengers, thereby generating material and immaterial loss, in this case relating to the death of the deceased Munir on the Defendant I's aircraft.-----

Considering, whereas based on the considerations above, in case of the death of the deceased Munir, since there is indication of extraordinary negligence element in the carrier party, then the carrier in this case the Defendant I shall be responsible without limitation;-----

That the Panel of Judges simultaneously will consider here: Whether the amount of compensation can be granted.-----

The material and immaterial losses as follows:-----

**Material Loss**

That the material losses claimed by the PLAINTIFF is amounting to Rp 4,028,407,100.00 (say: Four billion twenty eight million five hundred seven thousand one hundred Rupiah), with breakdown as mentioned in the suit.-----

That however the amount of the breakdown is not supported by any evidences:-----

That however based on equity and norm, the death of the deceased Munir, as a husband and a father, of course will have consequence to the family's economic life. In which the deceased Munir left a wife who is unemployed and 2 (two) children who are still minor and require education cost;-----

That based on the considerations above, and based on the social justice and moral justice, in granting the amount of the present material loss, the Panel of Judges will be based on equity and norm in the community's life, as follows:-----

- a. For payment of income that must be paid, the Panel of Judges complies with provision on the husband or wife income

applicable to a civil servant in Indonesia who passed away, namely 3 (three) months' salary; then the income of the deceased Munir that will be paid is  $3 \times \text{Rp } 7,130,000.00 = \text{Rp } 21,390,000.00$  (twenty one million three hundred ninety thousand Rupiah);-----

b. Education cost of 2 (two) children until Strata 1 (one), about this amount claimed by the Plaintiff is considered reasonable and fair namely amounting to  $\text{Rp } 299,091,500.00$  and  $\text{Rp } 258,953,400.00$ ;-----

c. For Children therapy and medicine cost in this suit is not supported by the evidence thereby it is unclear the type of therapy and medicine, but it is fair and reasonable to predict the existence of expenditure for the children health care, thereby the panel of judges may grant the same, but the amount granted is only a half, namely  $\text{Rp } 25,200,000.00$  and  $\text{Rp } 10,500,000.00$ ;-----

d. Cost already incurred by the Deceased Munir to attend Strata 2 (two) education to the Netherlands, although not supported by evidences, but since undenied by the Defendants, the panel of judges may grant the same, namely amounting to  $\text{Rp } 6,075,000.00$  (six million seventy five thousand Rupiah);---

e. Funeral cost, etc, including "Tahlilan" and construction of gravestone, is fair and reasonable expenditure, thereby the panel of judges may grant the same, namely amounting to  $\text{Rp } 3,000,000.00$ .-----

Thereby total material loss that can be granted is Rp 624,209,900.00 (six hundred twenty four million two hundred nine thousand nine hundred Rupiah);

**Immaterial Loss**

That the Plaintiff did not break down the items categorized into the immaterial loss;-----

That based on the jurisprudence of loss that is not broken down clearly can not be granted, however based on the equity and norm in the community, by the death of a husband and a father as family backbone, will cause a mental shock for the family left, and further render loss of various expectation;--

Considering, whereas since there is no parameter in determining the amount of immaterial loss, then the Panel of Judges in determining the amount of this immaterial loss will refer to the compensation based on Article 43 of Government Regulation No. 40 of 1995 regarding Air Transportation, namely benefit for the passenger passing away namely Rp 40,000,000.00 (forty million Rupiah) which this provision is also based on the provision in Warsawa Convention;-----

That besides losses above, the Plaintiff claims for the compensation for lawyer's fee namely Rp 1,300,000,000.00 (One Billion three hundred million Rupiah);-----

That about this case, the Panel of Judges agrees with the opinion of the Defendants, that pursuant to the Jurisprudence of the Supreme Court of the Republic of Indonesia No. 635 K/Sip/1973 dated July 4, 1974: "That regarding the honorarium

of the Advocate, there is no regulation in H.I.R requiring the disputing party to solicit for assistance from a Lawyer, then such fee can not be charged to the opposite party."-----

Considering, whereas based on the consideration described above, then the element ad.2 has also been fulfilled;-----

**Ad.3 The act must contain error element.**

That an error can be in terms of intentionally and negligence. Intentionality means someone taking an act and this act is intended to render a consequence, while a negligence is defined not taking an act that should be taken;-----

That as already considered in detail above, and mutatis mutandis considered contained in the consideration of Ad.3:

That such matters is among others: The Defendant IX as Pilot in Command (PIC) failing to perform his legal authority and obligation, already stipulated in (BOM) and determined in Article 23 of Law No. 15 of 1992 jo Article 80 of Government Regulation No. 3 of 2001, stipulating that the Captain of Aircraft shall be responsible to take any act for the security and safety of the flight as well as be responsible for the security and safety of the flight;-----

That as the consequence of the Defendant IX's act, it also breaches the subjective right of the deceased Munir for being carried safely and with proper treatment;-----

It has breached the norm rule, and contradictory to equity, prudence as well as cautious attitude principles that must be owned by a Captain Pilot acting as PIC. The defendant IX did

not take the acts in such away or as maximum as possible that is obliged to him; Then, the Defendant I and Defendant IX have failed to fulfill their responsibility to secure the security, convenience as well as safety of the passengers, thereby generating material and immaterial losses.-----

Considering, whereas based on the consideration above, then the Defendant I and Defendant IX are considered in default in implementing their obligation, then the element ad.3 has also been fulfilled;-----

**Ad.4 The act must have cause-effect relation.**

That the causal relation constitutes cause-effect relation between the illegal act and loss. This causal relation in Article 1365 of Indonesian Civil Code can be seen in sentences "... any act of which due to his negligence renders loss...". Therefore such loss must arise as the consequence of the act of someone. If there is no act (cause), then loss (effect) will not arise;-----

That based on the fact mentioned above, that the Defendant IX as Pilot in Command (PIC) has committed act contradictory to his legal obligation, already stipulated in Basic Operation Manual (BOM) and Article 23 of Law No. 15 of 1992 jo Article 80 of Government Regulation No. 3 of 2001, stipulating that the Captain of Aircraft shall be responsible to take any act for the security and safety of the flight as well as be responsible for the security and safety of the flight;-----

That based on Basic Operation Manual (BOM) 5.2.1, if the passenger experienced serious sickness on the aircraft, PIC shall:

- decide, by consulting with Purser/Senior Attendant, whether or not it is necessary to continue the flight as planned; --
- if doubt, then always ask for medical advise from ground; --

That in the condition, in which the deceased Munir suffer from serious disease as described above, the Defendant IX took no act to have consultation with medical from Ground Officer. That in fact then about two hours before the aircraft GA 974 landed in Schipol Airport, the Netherlands, the deceased Munis was found passing away;-----

Considering, whereas the negligence of the Defendant IX caused the deceased Munir did not obtain maximum treatment thereby rendering loss, namely the death of the deceased Munir, and simultaneously material and immaterial losses;-----

Considering, whereas based on considerations above, the negligence made by the Defendant I and Defendant IX is considered has cause-effect relation to the losses arising from the death of the deceased Munir; thereby based on the consideration above, then the element ad.4 has also been fulfilled;-----

Considering, whereas based on all description of considerations above, then elements of unlawful act ex Article 1365 of Indonesian Civil Code have been fulfilled thereby the Defendant I and the Defendant IX must be declared already conducting unlawful act;-----

Considering, whereas subsequently, the Panel of Judges will discuss the arguments of denial and exhibits from the Defendants as follows:-----

That based on:

- Exhibit marked T I, T II, T III, T V, T VI, T VII-1 through T I, T II, T III, T V, T VI, T VII-2, duly stamped and already verified against their original; -----
- 2 (two) Expert witnesses, namely Mudigdo Theodore Henri Purnama and DR.H.K. Martono, S.H., LLM; -----
- The Defendant III, Defendant IV, Defendant VIII, Defendant IX, Defendant X and Defendant XI have brought forward exhibits in terms of letter marked T-1, T III, IV, VIII, IX and XI through T-4 T III, IV, VIII, IX, and XI, duly stamped and already verified against their original, except the Exhibits T-1, T III, IV, VIII, IX and XI, there are facts as follows:

1. That to the case of the death of the deceased Munir, there is already the Verdict of the Supreme Court of the Republic of Indonesia No. 1185K/Pid/2006 dated October 3, 2006 declaring that DEFENDANT V is NOT PROVEN validly and convincingly guilty of committing crime jointly namely PLANNED MURDER, Article 340 of Indonesian Criminal Code jo. Article 55 paragraph (1) first of Indonesian Criminal Code;
2. That to the case of the death of the deceased Munir, the Defendant I has responded by conducting internal research and investigation to all crews on duty when the incident

occurred, contained in Safety Hazardous Report, subject: "Death on Board GA 974 B747-400 PK-GSG SIN-AMS, Sept 7<sup>th</sup> 2004;----

3. That the term "accident" according to annex 13 to International civil flight convention from ICAO/International Civil Aviation Organization shall mean, "an incident, relating to aircraft operation occurring when someone getting on aircraft with intention to board the aircraft until all people on board get off aircraft, in which: ----- someone passes away or experiences serious injuries as the consequence of their existence on such board, or direct collision with any part of the aircraft, or subjected to blow directly from the aircraft jet machine;" -----
4. That the flight of Garuda Indonesia Airlines has stipulated about the content of Doctor's Kit referring to the Medical Guidelines for Airline Travel 2003; -----

Considering, whereas, however from the argument and exhibit of denial of the Defendants, the existence of the fact is inevitable that there is already incident in which the deceased Munir as Passenger of the Aircraft Garuda Indonesia Airline GA 974 with destination Jakarta-Amsterdam, on the flight on January 7, 2004 passed away, preceded with stomachache and vomiting, and based on the autopsy result from the Netherlands Forensic Institution, the deceased Munir passed away due to arsenic poison;-----

Considering, whereas, once again, it is confirmed to the party administering poison and where it is given, are excluded from the scope of competency of the Civil Judge to examine it,

let alone there is not yet the Final Verdict of the Criminal Court about this matter;-----

Considering, whereas, however, irrespective of the description above, scrutinizing the obligation of the Flight Transportation Service Airline is to carry its Passengers safely, and securing the convenience, safety and security of the passenger;-----

That, while the Defendant I has responded by conducting internal research and investigation to all crews on duty when the incident occurred, contained in Safety Hazardous Report, subject: "Death on Board GA 974 B747-400 PK-GSG SIN-AMS, Sept 7<sup>th</sup> 2004 is the act after the death of Munir; -----

Considering, whereas based on the considerations above, the Panel of Judges is of the opinion that the defendants could not counter the Plaintiff's argument, and therefore the Petition point 2 has legal basis and therefore must be granted;

**PETITUM POINT 3 "TO INSTRUCT THE DEFENDANTS TO ask for apology", POINT 4 "to INSTRUCT THE DEFENDANT TO CONDUCT INDEPENDENT INVESTIGATION", POINT 5 "TO INSTRUCT THE DEFENDANT I TO CONSTRUCT monument", AND PETITUM 6 "TO INSTRUCT THE DEFENDANT I TO ISSUE WARNING", PETITUM POINT 7 "TO INSTRUCT THE DEFENDANT I TO IMPOSE UPON SANCTION"**

Considering, whereas, based on the Article 1365 of Indonesian Civil used as basis of the present suit, that "Every unlawful act rendering loss to other person shall require the person who due to his negligence causes such loss, to pay compensation";-----

That by the loss herein, namely based on Article 165 of Indonesian Civil Code through Article 1371 of Indonesian Civil Code are material and immaterial losses valued against sum of money; In other words, the form of compensation is sum of money; That especially about petitum point 7, the claim for imposition of sanction upon its employees is internal act of the Defendant I, and not the Court's competency;-----

Considering, whereas, based on consideration above, the petitum points 3, 4, 5, 6 and 7 has no legal reasons and therefore must be denied;-----

**PETITUM POINT 8 "To sentence the DEFENDANTS to jointly pay all losses suffered by the PLAINTIFF, namely amounting to Rp 14,329,107,500.00 (Fourteen Billion three hundred twenty nine million one hundred seven thousand five hundred Rupiah)-----**

Considering, whereas in taking into account the Petitum Point 8, to avoid the repetition in the discussion, then the description of the consideration in the discussion on Unlawful act element in Ad.2 about "The act Must Render Loss" on mutatis mutandis is considered contained in this consideration;-----

That the petitum point 8 has legal reason and therefore can be granted;-----

- Considering, whereas, the losses that can be granted are:
- a. Immaterial amounting to Rp 40,000,000.00 (forty million Rupiah);-----
  - b. Material amounting to Rp 624,209,900.00 (six hundred twenty four million two hundred nine thousand nine hundred Rupiah);

Thereby total losses is Rp 664,209,900.00 (six hundred forty four million two hundred nine thousand nine hundred Rupiah);--

**PETITUM POINT 9 "To pronounce valid and worthy the conservatory sequestration"**

Considering, whereas, no conservatory sequestration put against the present case, then the Petition Point 9 has no legal reason and therefore must be denied;-----

**PETITUM POINT 11 "To pronounce that this verdict is provisionally executable"-----**

Considering, whereas in order to be able to pass immediate verdict pursuant to Article 180 of HIR, the following terms must be fulfilled:

- a) Existence of authentic deed or deed privately made of which the content and signature are acknowledged by the Defendant;-----
- b) The verdict is based on a final verdict-----
- c) A provisional suit is granted;-----
- d) The object of suit is the plaintiff's properties controlled by the defendant;-----

Considering, whereas none of the terms mentioned above are fulfilled in the present case, then petition point 11 has no legal reason and therefore must be denied;-----

Considering, whereas since the Defendants filed the Suit in Reconvention, then the case charges (Petition 10) will be considered after discussing the Suit in Reconvention;-----

**IN RECONVENTION**

Considering, whereas, the aims and objectives of the suit in Reconvension shall be as mentioned above;-----

Considering, whereas principally the Plaintiffs in Reconvension claimed that the Defendant in Reconvension has committed illegal act, since already accusing the Plaintiffs in Reconvension II and III of have served the food containing poison, thereby ruining the reputation of the Plaintiff in Reconvension I;-----

That to this end, the Plaintiffs in Reconvension claimed the Defendant in Reconvension to pay Material compensation amounting to Rp 1,000,000.00 (one million rupiah) and immaterial loss amounting to Rp 1,000,000.00 (one million Rupiah);-----

Considering, whereas to the present Suit in Reconvension, the Defendant in Reconvension in her Counterplea principally denies all arguments of the Suit in Reconvension;-----

Considering, whereas to the Suit in Reconvension and the Reply of the Defendant in Reconvension, regarding whether the Defendant in Reconvension/Plaintiff in Convention has committed unlawful act, the Panel of Judges is of the opinion as follows:-----

That the Constitution 1945, Law No. 39 of 1999 regarding Human Rights, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (recently already ratified by Indonesia), secure every one to be able to defend

his right before Court (Access to a Court or Access to Justice)-----

That therefore, the act of the Defendant in Reconvention is to exercise her right, in which she feels that her rights are infringed by the Plaintiffs in Reconvention, and the act of the Defendant in Reconvention is according to the law procedure;-----

Considering, whereas, based on the considerations above, the Panel of Judges is of the opinion that the suit in Reconvention has no legal reason and therefore must be declined;-----

**IN CONVENTION AND RECONVENTION**

Considering, whereas since the suit of the Plaintiff in Convention/Defendant in Reconvention is granted while the suit of the Plaintiff in Reconvention/Defendants in Convention is denied, then the case charges is imposed upon the Defendants in Convention/Defendants in Reconvention.-----

By taking into account Article 136 of H.I.R, Article 163 of H.I.R., Article 1365 of Indonesian Civil Code, Ordinance of the Air Transportation No. 100 of 1939, Warsawa Convention 1929, Law No. 15 of 1992, Government Regulation No. 40 of 1995, as well as other relevant legislations;-----

**HAS TRIED:**

**In Exception:**

To deny the Defendants' exception;-----

**In Petitum:**

1. To grant the Plaintiff's suit partly; -----
2. To pronounce that the Defendant I: PT. (Persero) Perusahaan Penerbangan GARUDA INDONESIA and the Defendant IX: Pantun Matondang, have committed unlawful act; -----
3. To sentence the Defendant I and Defendant IX to jointly pay loss suffered by the Plaintiff amounting to Rp 664,209,900.00 (six hundred forty four million two hundred nine thousand nine hundred Rupiah) with breakdown: -----
  - a. Immaterial amounting to Rp 40,000,000.00 (forty million Rupiah); -----
  - b. Material amounting to Rp 624,209,900.00 (six hundred twenty four million two hundred nine thousand nine hundred Rupiah); -----

Thereby total losses is Rp 664,209,900.00 (six hundred forty four million two hundred nine thousand nine hundred Rupiah);
4. To deny the remaining suit of the Plaintiff;

**IN RECONVENTION**

To deny the Suit in Reconvention in its entirety;-----

**IN CONVENTION AND RECONVENTION**

To sentence the Defendant I and Defendant IX IN CONVENTION/ Plaintiffs IN RECONVENTION to pay case charges amounting to Rp 664,000.00 (four hundred sixty four thousand Rupiah).-----

In testimony whereof, this adjudication was passed in a deliberative meeting of the Panel of Judges on: Thursday,

dated May 3, 2007 by me: ADRIAN NURDIN, SH.MH, as the Chairman, KUSRIYANTO, SH, and H. SUTIYONO, SH., respectively as Member Judge. The Verdict was pronounced before a hearing open to public on the same day by the Chairman of the Panel of Judges and the member judges as well as Wiji Astuti SH as Substitute Clerk in the presence of legal attorney of the Defendants.-----

Member Judges,

*signed*

**KUSRIYANTO, SH**

Chairman of Judges Panel,

*signed*

**ANDRIANI NURDIAN, SH, MH**

*signed*

**SUTIONO, SH**

Substitute Clerk,

*signed*

**WIJI ASTUTI, SH**

---

I do hereby certify that the above is a true and accurate translation of the Indonesian document presented to me.

Jakarta, June 20, 2007

**Fatchurozak**  
Sworn & Authorized Translator