

Summary of the Munir Case

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Defenders

Action Committee in Solidarity with Munir (KASUM)

January 18, 2009

Summary: There is no case more central to the security of human rights defenders in Indonesia than the 2004 murder of the prominent human rights lawyer Munir. That case is now at risk of collapse. On December 31, 2008, a former senior intelligence official was acquitted on all charges following a trial marked by the systematic retraction of prior sworn statements by key witnesses, and by the presence of organized groups seeking to influence the trial. The acquittal, now under appeal to the Supreme Court, indicates:

- *The Indonesian justice system is not yet able to effectively prosecute senior officials with powerful connections, due to weak prosecution capacity and witness intimidation.*
- *State bodies, in this case the State Intelligence Agency, have not sufficiently reformed and continue to threaten the security of human rights defenders.*

If these conditions are to change, a successful resolution of the Munir case is essential. Such a resolution will require the full support of Indonesia's leadership, which depends in turn on sufficient domestic and international pressure. The United Nations Special Procedures can play an essential part in seeking information and urging the Indonesian leadership to ensure that:

1. the **Indonesian National Police** continues their investigation until the case of Muchdi, and anyone else responsible for planning and ordering the murder, has been successfully resolved.
2. the **Attorney General's Office** assigns a professional and committed prosecution team that can submit an effective appeal of the Muchdi verdict. The AGO should also investigate the apparently coordinated retraction of prior statements by witnesses during the trial.
3. the **State Intelligence Agency** cooperates fully, especially by making available those witnesses who refused to appear at previous hearings, namely the agent Budi Santoso and Deputy Director As'ad Said Ali.

I. Progress in the Munir Case

On December 31, 2008, the South Jakarta District Court found Muchdi Purwopranjono not guilty on all charges in the murder of Munir. Muchdi, a former commander of the army's Special Forces branch and later a senior Deputy at the State Intelligence Agency (BIN), is the fourth person to be prosecuted in connection with Munir's death, but the first to be charged with planning or ordering the murder.

Munir, a leading human rights defender in Indonesia, was murdered while travelling from Jakarta to Amsterdam on September 7, 2004. So far the Indonesian court has convicted two persons: Pollycarpus, a pilot for Garuda Airlines and also an agent of the State Intelligence Agency and Indra Setiawan, former Executive Director of Garuda, a state-owned company. Both were convicted for their complicity in the murder of Munir: Pollycarpus was sentenced to 20 years imprisonment and Indra Setiawan was sentenced to one year for facilitating Pollycarpus' access to Munir on the flight; a second Garuda employee was acquitted. During these trials, Indra Setiawan testified that he met Muchdi and received a request both verbally and by a letter from the intelligence agency to assign Pollycarpus to the same flight with Munir.

The acquittal of Muchdi was a setback not only for the case, but also for the enforcement of human rights and the protection of other human rights defenders more broadly. Impunity is pervasive in Indonesia, and for such cases the justice system needs public pressure and support, domestically and internationally, to be able to work properly. Since the fall of the authoritarian Soeharto regime in 1998, no high-ranking military officer has been successfully prosecuted for a human rights abuse. Moreover, Muchdi was the first person to be tried for planning and ordering this crime. The trial was therefore a crucial step to reach the mastermind of the assassination.

On January 12 prosecutors filed their appeal of the Muchdi decision directly to the Supreme Court. That court is expected to consider the case later this year.

II. Problems in the Munir Case

1. Police and Investigation

Although the murder investigation was initially slow to get going, under Bambang Hendarso Danuri, who has since been promoted to chief of the Indonesian National Police, the Criminal Investigation Department made a remarkable effort. New evidence was gathered and new witnesses were interrogated, including several staff members of the intelligence agency. This evidence and witness testimony were used in the trial of Pollycarpus (during the Supreme Court's case review) and of Indra Setiawan. However, there remains important evidence that the police could not obtain, such as the content of the more than 40 calls from the Pollycarpus' phone to Muchdi's phone. This raises a big question on the integrity of the Indonesian police force, since they were assisted by the U.S. Federal Bureau of Investigation to uncover the conversation of the phone connections.

Within the CID, the police still maintain special task force for the investigation of Munir's case, as they still believe that there is another important mastermind behind the assassination. However, their investigation very much depends on the Supreme Court's decision. Questions remain about whether other high-ranking intelligence officers, including those at the highest levels, were involved in the plot.

2. The Attorney General Office and the Prosecution

Although the Attorney General's Office has good relations with the victim (Suciwati) and with KASUM (the NGO coalition for the Munir case) by having regular meetings, we are quite disappointed by the prosecutor's indictment of Muchdi. First, they focused on proving Muchdi's motive for the assassination, which was very difficult in a murder involving abusive state power. Second, the prosecutor failed to bring key witnesses before the court from the intelligence service that could prove the official relationship between Pollycarpus and Muchdi. Third, they could do nothing in response to the witnesses from the intelligence service that at trial withdrew their previous sworn testimony from the investigation dossier, even though the police have confirmed that there was no torture, intimidation, or psychological pressure during the interrogations. Moreover, during the interrogation process, those witnesses were accompanied by the State Intelligence Agency's lawyer.

3. The Judiciary and the Trial

Despite the fact that his trial had several flaws, the evidence presented against Muchdi is compelling. The verdict handed down on December 31, 2008, was a controversial decision. The decision did not consider a number of aspects of the case, *inter alia*: 1) the court did not consider that the nature of a crime of conspiracy involving an intelligence agency can not be handled through the conventional method normally applied to a criminal case; and 2) the panel of judges also did not focus on the legal, formal, and substantive value of the evidence submitted in the court, including the testimony of the defendant's and the witnesses who retracted their statements to the police. During the court proceedings, the panel of judges noted the difference between the prior statements and the current testimony. They warned the discrepancies would be noted in the Transcript of Proceedings (consistent with Article 163 of the Criminal Procedure Code) and reminded the witnesses of the maximum punishment if they give false testimony. However, the judges did not order the arrest of witnesses or recommend their prosecution under the laws relating to false testimony (Article 174 paragraph (1) and (2) of the Criminal Procedure Code).

The panel of judges accepted into evidence a deleted letter recovered from Muchdi's computer, from the intelligence agency to Garuda ordering Pollycarpus assignment to corporate security (which later enabled him to travel on Munir's flight). However the judges found that the letter could not prove that Muchdi had abused his authority. The judges also recognized the evidence that Muchdi had met Garuda's executive director, Indra Setiawan, to give him the letter, but not that it proved

Muchdi's involvement in the assassination. The court also didn't take into account the previous decisions on Pollycarpus and Indra Setiawan.

The other serious problem with regard to the trial is about the telephone communication between Muchdi and Pollycarpus. The judges accepted the Call Data Record (CDR) as evidence, but found that it could not prove who was communicating and what the content of the calls was. The judges accepted the defense argument that Muchdi's telephone could have been used by someone else. However, it is hard to believe that Muchdi, a senior deputy of intelligence service, regularly allowed his mobile phone to be used by someone else.

4. Lack of Support from the President and lack of Cooperation of State Intelligence Agency

The other party who could be blame for the recent development of this case is the President himself. Soon after it was revealed that Munir died because of being poisoned, President Yudhoyono called the case as a "test of our history." However, he did not back up this statement with strong action. He created an independent fact finding team (TPF), but failed to order the State Intelligence Agency to cooperate with the team. He also didn't push BIN to make their agents and officers testify when called, including a key witness transferred to Pakistan and then Afghanistan . This failure relates to the broader lack of civilian oversight of the agency.

III. Other Problems

Muchdi mobilized several groups of thugs or militias, some of them using nationalist or religious sentiments, to intimidate Munir's supporters in the court, including Suciwati. Those groups have a violent history dealing with civil society organizations.

Following his acquittal Muchdi announced that he would file criminal defamation suits against four human rights defenders: Usman Hamid (*KontraS*), Suciwati (Munir's wife), Poengky (*Imparsial*) and Hendaradi (*Setara Institute*), all of whom gave testimony during the trial. So far he has filed complaints to the police only about Hamid.

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