

# THE FIVE-YEAR OLD MUNIR CASE

## Inadequate Progress Against Impunity

by Atty. Sri Suparyarti

The five-year efforts to resolve the case of Munir only show the lack of commitment on the part of the government to find out the mastermind. Now, after the acquittal of the last defendant, Muchdi Purwopranjono, he was released from prison through a court order on 31 December 2008. This problematic situation is also supported by the Attorney General who has not yet followed up the appeal for a case review.

After his release, Muchdi Purwopranjono filed a charge of defamation against *KontraS* Director, Usman Hamid. This charge was issued by the Indonesian Police Department. The charge letter mentioned that Mr. Hamid committed an act of defamation against Muchdi Purwopranjono for accusing the latter as the killer of Munir. Allegedly, Mr. Hamid has no right to tell the public who he believes as Munir's murderer, otherwise, he violates the Article 310 of the Criminal Code on Defamation.

Both issues are the new progress in the process of revealing the case of Munir in order to bring justice to the victim and his family and to the Indonesian society. The case of Munir is a test of our history, a test of other human rights violations which occurred in Indonesia in the past. The case of Munir has a strong relation with past abuses such as the 1997/1998 disappearance of activists and the massacre of Talangsari, Lampung in 1984. With the renewed mandate of the Indonesian president, will the Indonesian government pass this test?

This brief article attempts to look into the developments of Munir's murder and how far the government has concretized its avowed commitment to uncover the mastermind. Is the government serious in revealing the truth about the murder of Indonesia's strongest human rights defender? Is it really bent on resolving, once and for all, this internationally-condemned murder?

### The Release of the Key Planner

After the punishment of the Garuda crew, Polycarpus, the pilot who was accused of administering the poison and later acquitted, was subjected to a case review by the Supreme Court. He was sentenced to twenty years of

imprisonment. While this conviction is a victory in the search for justice, it is not enough element to fully resolve the case, since the key planner still has to be punished. The other defendant was General Muchdi Purwopranjono, who, because of an alleged personal motive against the victim, was charged of killing Munir under the Article 55 point (1) 2 KUHP (Indonesian Criminal Code); of Article 340 KUHP or under Article 55 ayat (1) 1 KUHP of Article 340 KUHP.<sup>1</sup> To reiterate, the Attorney General hinted a personal motive of the killing due to an alleged personal revenge of Muchdi against Munir.<sup>2</sup> Then, in the explanation of this personal revenge, it was said that the murder was related to the activity of Munir when he was advocating the resolution of the enforced disappearance of activists in 1997 and 1998 where, at that time, Muchdi was one of the members of *Kopassus* (*Komando Pasukan Khusus* or Special Force Command) under the Rose team. Muchdi was known to be responsible for the action.<sup>3</sup> Accordingly, when Muchdi was the Deputy V of *BIN* (*Badan Intelijen Negara* or State Intelligence Body), he was free to take revenge against Munir.<sup>4</sup>

The next role of Muchdi was to kill Munir. Polycarpus, a Garuda pilot, said to be a person known to Munir, was allegedly in the position to kill him. The relationship between Muchi and Polycarpus was identified from the position of Polycarpus as an organic agent who conducted intensive communications to



Muchdi Purwopranjono freed of all charges. (© Antara/ Ujang Zaelani)



Susilo Bambang Yudhoyono, 59, is a retired general and the president of Indonesia. In July 2009, he became the first Indonesian president ever re-elected, winning in a landslide. (© AP)

execute the murder plan especially on 7 September 2004. This, he did from the order of Muchdi that Munir be killed.<sup>5</sup> As a non-organic agent, Polycarpus, of course would obey only with the handler.<sup>6</sup> Then, Muchdi appointed Polycarpus as aviation security in Garuda in order to facilitate the execution of his plan to kill Munir.<sup>7</sup> Besides, Muchdi also sent some money to Polycarpus which was taken from the funds of Deputy V of BIN.<sup>8</sup>

The letter of charge is clear in explaining the involvement of Muchdi to kill Munir. However, in the level of witnesses' examinations, some gave testimonies which were different from what they presented earlier when they were in front of the investigation team (*BAP* or police investigation files).<sup>9</sup> Therefore, the credibility of the witnesses is questionable. In the process of examination by the police, it was clear that those witnesses were not under terror, intimidation or torture by the police.<sup>10</sup> Unfortunately, the judges did not include the oral information about it as well as the audiovisual record which was produced by the team of investigators as part of their consideration when they conducted the witness examination.<sup>11</sup>

Moreover, the judges tend to release some legal considerations to the advantage of the defendant. One of them could be seen from the fact that the judges could not consider the witness of Budi Santoso and As'ad who delivered their testimonies by reading the *BAP*. In fact,

their testimonies can supposedly be already considered and admitted as evidence by the judges to conclude that Polycarpus and Indra Setiawan are guilty. Additionally, when Muchdi told a different information regarding the meeting between Indra Setiawan, former president of Garuda<sup>12</sup> and the vice head of BIN, As'ad, the judges could not cross check those differences. A cross examination is relevant to adjust the information taken from Muchdi and Indra Setiawan.

### SBY's Lack of Commitment

To note, during the first term of Susilo Bambang Yudhoyono (SBY) as president of Indonesia, he stated that Munir's case is a test of history, apparently showing a grand commitment to resolve the case. His act of establishing the fact-finding team to investigate the murder had facilitated the imprisonment of field

perpetrator, Polycarpus. It, however, took a long process before a case review could be reached. Perhaps, it could have been right when the next perpetrator was brought to the court that Muchdi Purwopranjono was convicted as part of the conspirators.

The so-called commitment of SBY in resolving the case diminished when the next perpetrator, Muchdi was brought to the court. The Indonesian president made a flimsy excuse that he had no control over court decisions. The trial against Muchdi started with poor quality of evidences shown by witnesses. The court rejected a number of witnesses who were already earlier covered in the front of the police (in *BAP*). There was no effort on the part of the judges to cross check the information coming from the witnesses and deeply uncover some important information from them.

It seems that the president does not want to intervene the court process. When Muchdi was released, there were no efforts on his part to review the case. Neither were there efforts coming from the Attorney General to appeal for a case review, unlike what was done with Polycarpus before. In the level of the police, little or no effort is being done to be active in the team of investigators in order to dig further new pieces of evidence to support the Attorney General to appeal for a case review. In this situation, it is expected that SBY





On 7 September 2009, exactly five years after the murder of Munir, Jakarta artist Toni Malakian published a cartoon to honor Munir. It depicts the late Munir, once again, inside a Garuda flight asking a flight attendant, "Sister, please give me another drink. This time, no arsenic please ..." (© 2009 Toni Malakian)

will supposedly order those institutions to conduct such efforts, since they are under his control.

During the second term of the presidency of SBY, having been reelected by a landslide majority, significant moves on his part to ensure the resolution of Munir's case could not yet be seen. First, there is no commitment in his speech inauguration as president of the country in front of the head of the People's Consultative Assembly (MPR) and People's Representative Council (DPR) regarding the issue of upholding human rights. Second, he did not make significant changes regarding the configuration of people in judicial institutions especially in the level of the Attorney General where there are several notes regarding the quality of letter of charge against Muchdi, especially on the quality of witnesses. Worse still, there is still no action from SBY to reactivate the team of investigators on the case at the level of the police.

On a positive note, there was an effort to examine and verify the evidence and the trial process of Muchdi's acquittal by the National Commission on Human Rights (*Kommas HAM*) in February 2009. The result of the examination showed that Mr. Muchdi's trial and the subsequent appeal by the Prosecutor had suffered from a number of misdeeds, including allegations of witness tampering; the prosecutor's unprofessional handling of the case; the failure of the district court judge to summon at least two key witnesses for the prosecution and the appellate court judge's lack of experience in reviewing criminal trials.

#### **Defamation as a Consequence of Advocacy**

Defamation as a consequence of advocacy of the case of Munir is used as a tool to stop one from speaking out about the case. A defamation case is being charged to Usman Hamid as the one who actively speaks about

the involvement of Muchdi in the murder. The case filed by Muchdi against Usman is based on the latter's alleged statement that Muchdi is the murderer of Munir.

In this context, defamation could be seen as a significant tool of the government to curtail the people's right to express their opinion. The police, as a government institution, uses the article in the criminal code (*KUHP*) to charge people of acts of defamation when they speak against other people who violate or are alleged to have violated the rule. It is regulated under the Article of 310 to 321 of *KUHP*. Regarding the case of Mr. Hamid, he is being charged under the Article of 310 and 311 of *KUHP*. With this, it is possible that he be punished for four years if the court so decides.

It is clear that the trend of threatening human rights defenders has been changed from the kind of terror or intimidation to a criminal act of defamation. At the moment, it is not only Usman accused as an actor of defamation, but also the other human rights defenders who handle cases related to corruption. Two cases of defamation have already been released by the police against two staff members of Indonesia Corruption Watch (ICW) on their opinion regarding the corruption in the Attorney General's office.

While the case of Munir remains unresolved and impunity continues to loom in this country which boasts itself to be in a stage of transition from dictatorship to democracy, more human rights defenders are being persecuted. This is ironic considering that Indonesia is one of the founding members of the UN Human Rights Council and the seat of the Secretariat of the newly established UN Human Rights Body.

As SBY is mandated to be Indonesia's president for the second time, it is imperative for him to prove a breakthrough in the field of human rights.

1 See letter of charge of Muchdi Purwopranjono available at: <http://www.sahabatmunir.com/muchdi> (in Indonesian language).  
2 See Monitoring of the court of Muchdi Purwopranjono available at: [www.sahabatmunir.com/muchdi](http://www.sahabatmunir.com/muchdi) (in Indonesian language).  
3 Ibid.



Usman Hamid, Executive Director of KontraS, accused of criminal defamation for seeking to investigate Munir's murder. (© AP)

4 Ibid.

5 Op cit letter of charge of Muchdi Purwopranjono available at: [www.sahabatmunir.com/muchdi](http://www.sahabatmunir.com/muchdi) (in Indonesian language).

6 Ibid.

7 Ibid.

8 Ibid.

9 The examination analyzes of statement of Muchdi, Kasum: p.1

10 Ibid, p.2

11 Ibid, p.3

12 Indra Setiawan is a former Director of Garuda who issued the letter for Pollycarpus to board the plane taken by Munir from Jakarta to Singapore



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