

## 15. DISCLOSING MUNIR'S BUMP-OFF: AN ACID TEST TO INDONESIA-NETHERLANDS INTERPLAYS

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### Prologue

**M**unir, an Indonesian human rights icon, was found dead on his flight from Jakarta to Amsterdam on 7 September 2004. Despite he might be less internationally known than e.g. the leading activist of the Ogoni people in eastern Nigeria, Ken Sara Wiwa who had been put to death several years earlier, but Munir's snuffing not only lengthen the deceasing lines of human rights defenders but also has implications on the interplays between Indonesia and the Netherlands.

98 — About two months later, the Nederlands Forensisch Instituut, which carried out the post-mortem examination, gave the low-down that there was a lethal level of arsenic in his body and it concluded Munir was a prey of an assassination. Because Munir died while in an Indonesian aeroplane which was flying above the Romanian sky and destined to land at the Schiphol airport, it places the Netherlands—in terms of legal and international system—at rather delicate position in the concerting efforts to solve the case.

This essay seeks to shade the light on predictions on some probabilities in the course of disclosing the case and how it challenges Indonesia-the Netherlands relationship, as it is not a calibre of case that can be sneezed at.

### Munir as a Human Rights Activist

Born in Malang, East-Java in 1965, Munir emerged to the national theatre of human rights protection in the final epoch of President Soeharto's era. End of 1997 and early 1998 a number of pro-democracy activists mysteriously disappeared. Munir staged a campaign to investigate the cases and founded and coordinated *Kontras* (Commission for Disappearances and

Victims of Violence). This human rights organisation concentrated on fighting political violence, promoting respect for due process of law, ensuring victims' physical and psychological recovery, and endorsing reconciliation and peace (*The Right Livelihood Awards*, 12/2004).

Residual to the post-popular consultation in East-Timor in 1999, the allegation of human rights violations by pro-Indonesia militia backed by the military mounted and the atrocities were soon internationalised. In response, Indonesian National Human Rights Commission created the Commission to Investigate Human Rights Violations in East Timor in September 1999, and Munir was appointed a member. Its investigations produced a lot of evidence of the Indonesian army's involvement in recruiting, financing, training and using the militia, which caused such havoc at the time of the UN Referendum. Beyond that, Munir was also invited to talk about human rights in police and army trainings, seminars and workshops, and appointed to a drafting committee for law on human rights courts. Prior to his death, Munir was the Executive Director of Imparsial, an Indonesian human rights monitor.

For his works and achievements, the human rights organisation he initiated, Kontras awarded the prestigious Yap Thiam Hien human rights prize in 1998. Moreover, he was chosen as the 'Man of the Year' by the UMMAT magazine in 1998, a 'Young Leader for the Millennium in Asia' by the *Asiaweek* in October 1999, and a laureate of the prestigious Right Livelihood Awards of Sweden in December 2000.

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#### **Expected Disclosing Possibilities**

To predict the course of the case's disclosure, in our view, there are at least three significant probabilities that can be put on table: first, the investigation and legal processes in Indonesia developed within acceptable pace and the case could be solved and justice was done; second, the process faced obstacles and progressed at a snail's pace but there is still a window of opportunity to solve it; or third, the process developed into impasse and finally unresolved. The sequence of these trends reflected their level of probabilities; the earlier it is in order, the bigger its probability.

The first possibility well merits an account. This is very possible considering the significant internal reforms that are taking place in Indonesia. The Era Reformasi has empowered the public to more vocally demand for improvement and protection of fundamental rights. Besides, the newly elected president-vice president, Susilo Bambang Yudhoyono-Jusuf Kalla (SBY-JK) had promised to the electorates prior to the elections that they would construct a safe, just and prosperous Indonesia—which imply protection of human rights. Although it was a promise to approach the electorates, but its subsequent implementation would directly impinge on the levels of popular confidence to the duo. Any ‘public lies’ could dilute their reputation and meagre their chance for the second terms in 2009. Within this strategic perspective, it is unlikely at the end Munir’s case would vanish into thin air.

Now we turn to the second possibility. Similar to the circumstance forecasted in the first scenario, however, the case fell into protracted trajectory since the disclosing process might foment standoff from the ‘real’ perpetrator(s). While such resistance may slowdown the progress but SBY-JK’s administration would not take any chance and leave no stone unturned for the solution. (The tsunami apocalypse in Aceh and North Sumatra that has struck all of a heap most of the Government capabilities could also contribute to the abeyance).

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The third possibility could not be ruled out considering it was frequent that some human rights violation cases being investigated by Indonesian ‘state-apparatus team’ remained inexplicable and left many ‘real’ perpetrators at large or enjoyed impunity. As Abdurrahman Wahid, a former Indonesian president, observed the public confidence on the implementation of rules of laws was at rock-bottom (A. Wahid, 23/11/2004). He pointed out the investigation on the death cases of former Indonesia’s Attorney General, B. Lopa, a journalist in Bantul, the victims of alleged human rights violations in Aceh, the ‘sorcerers’ in Banyuwangi, shooting cases in West Papua, Ambon, and Poso which all sank in oblivion. Even the Netherlands itself experienced similar frustration in efforts to solve the death of a Dutch journalist after the popular consultation in East-Timor, a case that is still unexplained (P. Jansen, *De Telegraaf*, 21/12/2004).

Not to charge anyone or institution that may lead to the use of a devious ‘detective story’ to deduce the facts to unveil any possible ‘actor’ behind Munir’s poisoning it is basically that he collided with many foes in the struggle for human rights in his country. The Inter-Church Organisation for Development Co-operation, for instance, expected: ‘His study at the University of Utrecht had to grant him opportunity to make reflections and to systematically put all information he had in his memory on to paper’—emphasis added in our translation (ICCO, 7/9/2004). Since it suggested Munir could give away certain secrets through his study in the Netherlands, the argument would sustain that this third possibility—whatever slim it might be—worth to be considered.

### **Implications to Indonesia-the Netherlands Relations**

The efforts to solve the case certainly place Indonesian authorities at the solely legally liable position since Munir was an Indonesian national and died in an Indonesian airliner. Fair and transparent solution of the case puts Indonesia’s international reputation at stake. Steps towards that end have shown some progress after President SBY signed a decision to set up an independent investigation team to get to the bottom of the case. 101

While the Dutch liability could be said merely in sharing the ‘moral responsibility’ and in providing information related to the post-mortem enquiry and interrogation on passengers at Schiphol as the plane landed at the international airport and Munir had died outside the Netherlands. As emphasised by Minister Donner of the Justice Ministry, the Netherlands had no legal power (*rechtsmacht*) in solving the case.

Beyond such reasons and modes above, the moral responsibility carried by the Netherlands were bolstered up by the local human rights NGOs, its ‘moral’ obligation because The Hague is the capital of International Court of Justice, and its EU membership which obliged it to protect fundamental rights. It would be for the Netherlands’ national interests and international standing the country would involve in ensuring Indonesia to solve the case.

With the three possibilities in hand, it can be argued that the first possibility by far could not risk the mutual interests between Indonesia

and the Netherlands, while the second might, and the third would be the hardest challenge to both. However, if the second and third possibilities—not to underrate Indonesia’s seriousness as it could only happen when Indonesian authorities drew a complete blank in solving the case—did inevitably emerge, the degrees of Dutch involvement, efforts, measures, channels, and instruments would be likely to multiply. The Netherlands initial stance to entrust the investigation and judicial process within an acceptable range of time solely to the Indonesian legal system—except if the legal process might imply the perpetrators could face death penalty—while providing necessary support to technical assistance to prepared materials and evidence it acquired for the legal process would be no longer sufficient (*Nederlands Omroep Stichting*, 25 & 30/11/2004). The moral responsibility it bears, pressures from national (leftist) politicians, domestic and Indonesian human rights NGOs and activists could compel the Dutch Government to consider the use of available means and instruments within its foreign policy capacity: international forums, the use of instruments such as human rights dialogues, states’ litigation rights, and multilateral cooperation. Beyond that, a wider alliance could also be established such as the ‘Global Compact’, cooperation with business world, and non-governmental organisations (*Notitie Mensenrechtenbeleid 2001*).

Nevertheless, the question sticks on to what degree the Netherlands would involve itself and wield those mechanisms to evade aggravation in its relations with Indonesia. The ‘colonial burden’, ‘trauma of decolonisation’, and Indonesian decision in 1992 to freeze the long-standing cooperation with the Inter-Governmental Group on Indonesia which was chaired by the Netherlands on account of Indonesia’s rejection of human rights situation as conditionality for the aids, have taught the Dutch to be cautious. This indication had been implied by a trifling schism between Minister B. Bot of the Foreign Ministry and Mr. Donner of the Justice Ministry on how to transfer the autopsy result. In a meeting on 10 November 2004 Mr. Bot wanted the report conveyed to the Indonesian authorities while Mr. Donner had expected it to be given to Munir’s relatives. Mr. Bot preferred the post-mortem report to be handed over to the Indonesia

Government fearing the case could trigger bilateral fractures (W. Dewabrata, *Kompas Cyber Media*, 22/11/2004).

### Epilogue

The deliberations above lead to some conclusions. From the predictions on the three possibilities of how the process may evolve, the latter two possibilities—where it proceeded slowly, or the case unresolved—may put both sides on the horn of dilemma in their interplays. Fair process and justice is done would remain as the best option and for the common interests of the two.

Since it had no legal power to interfere in the efforts to solve the case and largely bore the ‘moral’ ones, it seemed impossible for the Netherlands to stir up a hornet’s nest, which could provoke backlash from Indonesia. However, its limit of participation would still be put in ordeal if a variant to the two worse possibilities—not to be tendentious—appeared that the investigation proceeded well and the suspected perpetrators brought to justice but it apparently failed to try the ‘real’ perpetrators as in several cases the current Indonesian justice system ruled decisions that in fact have become a legal device to ‘freeing’ the ‘real’ culprits from persecution. Although it is actually a relative question of law and domestic affairs, but this optional possibility remains a challenge to the nerve of Dutch foreign policy in regards to its involvement.

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Matured by the experiences dealing with Indonesia on sensitive issues such as the human rights, the Netherlands would be likely to balance its economic interests with the endeavours to promote human rights in Indonesia. The balance is manifested by Minister Bot’s formulation that his country is strong in principles of promoting human rights but inclines to exercise flexibility in its actions. It is hoped, nonetheless, this elasticity would not be interpreted as an Achilles’ heel by Munir’s relatives, human rights activists and organisations on the one hand, and the Indonesian Government on the other, in helping to solve Munir’s case.