



THE DISTRICT COURT OF
SOUTH JAKARTA

OFFICIAL COPY OF
CIVIL CASE JUDGMENT

Number : 01/Pid.C/2007/PK. Jak-Sel

Dated : 31 July 2007

In the name of: : VIJAYESWARAN VIJAYARATNAM a.k.a.
VIJAYARATNAM a.k.a. VIJAY VIJAYARATNAM
a.k.a. VIJAYESWARAN and colleagues

Given to : the Proxy of the Appelees

On : 31 July 2007

The District Court of South Jakarta

Court Registrar/Secretary

[sealed and signed]

Mrs. HAJJ. LILIES DJUANINGSIH, Bachelor of Law

Empl. ID. No. : 040028345

COURT JUDGMENT

No. 01/Pid.C/2007/PN.Jak.Sel.

FOR THE SAKE OF JUSTICE BASED ON GOD THE ALMIGHTY

The District Court of South Jakarta examining and trying the criminal case with an expeditious examination conducted a hearing at the District Court building in Jl. Ampera Raya No. 133 Ragunan - Pasar Minggu South Jakarta has passed the Judgment as follows to:

- I Full name : VIJAYESWARAN VIJAYARATNAM a.k.a. VIJAY
ESWARAN a.k.a. VIJAY VIJAYARATNAM
a.k.a. VIJAYESWARAN.
- Age/date of birth : 46 years old
- Place of birth : Penang, Malaysia
- Sex : Male
- Nationality : Malaysian
- Residence : 2603 Fraser Tower 92, Jalan 5/60
Petaling Jaya Selangor, Malaysia.
- Current Address : Summerset Jl. Permata Hijau Blok U V,
South Jakarta
- Religion : Hindu
- Occupation : Businessman
- II Full name : TAGUMPAY PABLO PEREZ KINTANAR

Age/date of birth : 45 years old
Place of birth : Manila
Sex : Male
Nationality : Filipino
Residence : 100 Don Primitivo ST. Don Antonio HTS,
Quezon City 1127, Philippines
Current Address : Summerset Jl. Permata Hijau Blok U V,
South Jakarta
Religion : Christian
Occupation : Businessman

III Full name : JOSEPH LUIS ELEUTERIO TOMACRUZ BISMARCK

Age/date of birth : 45 years old
Place of birth : Makati, the Philippines
Sex : Male
Nationality : Filipino
Residence : 7 Temasek Boulevard Tower I 15 Floor
Singapore
Current Address : Summerset Jl. Permata Hijau Blok U V,
South Jakarta
Religion : Hindu
Occupation : Businessman

IV Full name : DONNA MARIE GLENN IMMSON

Age/date of birth : 40 years old

Place of birth : Manila
Sex : Female
Nationality : Filipino
Residence : 9 Temasek Blvd 2402 Suntec Tower 2
Singapore
Current Address : Summerset Jl. Permata Hijau Blok U V,
South Jakarta
Religion : Christian
Occupation : Business woman

The aforementioned had been detained for the first time by the Police Investigator under Police Order dated 4 May 2007 No.Pol: SP Han/287/V/2007/Dit Reskrimun for Vijayeswaran Vijayaratman a.k.a. Vijay Eswaran, No.Pol: SP Han/288/V/2007/Dit Reskrimun for Tagumpay Pablo Perez Kintanar No.Pol: SP Han/289/V/2007/Dit Reskrimun for Yoseph Luis Eleuterio Tomacruz Bismark No.Pol: SP Han/290/V/2007/Dit Reskrimun, No. Pol: SP Han/287 up to 290/V/2007/Dit Reskrimun for Donna Marie Immson, from 4 May until 23 May 2007;

The detention had been extended upon the request from both the Chairman of the District Court of South Jakarta and the Public Prosecutor, and until now they remain in detention pursuant to Detention Extension

Letter No. 170/Pen.Pid/2007/PN.Jak.Sel dated 19 July 2007;

The said District Court;

Having read the documents in the case dossier;

Having heard the testimonies from the Police Investigators;

Having heard the statements from the aforementioned;

Having heard the opinion from the Public Prosecutor which essentially states that based on the date received and results of the court hearing, it was evident that the red notice for extradition from the Philippines government submitted to the Ministry of Foreign Affairs of the Republic of Indonesia and passed on by the Minister of Law and Human Right and filed to the District Court, had been properly and legally executed;

Considering that Vijayeswaran Vijayaratnam a.k.a. Vijay Eswaran, Tagumpay Pablo Perez Kintanar, Joseph Luis Eleuterio Tomacruz bismark, Donna Marie Immson, had been brought to the court hearing of the District Court of South Jakarta under a petition for a judgment from a court whether the aforementioned would be subject to such extradition, Number 249/Ep.1/JKTSL/07/2007 dated 16 July

2007 submitted by SUPARDI, Bachelor of Law, the Main Public Prosecutor for General Crimes at the Chief Public Prosecutor Office of the Special Capital Territory of Jakarta, which essentially requested the District Court of South Jakarta to pass a Judgment of whether or not the aforementioned would be extradited in compliance to Law No.1 of 1979.

Considering that on the court hearing day as scheduled, the aforementioned were present to the court accompanied by their lawyers, namely DR. Tommy S. Bhail, Bachelor of Law., LL.M, Rasida Siregar, Bachelor of Law, Herman Ginting, Bachelor of Law, Master of Law, Sarma Evrilina Sihombing, Bachelor of Law, lawyers and counselors at law at TOMMY S BHAIL & PARTNERS with its office in Komplek Duta Merlin Blok C No. 33, 2nd floor Jl. Gajah Mada Kav. 3-5 Jakarta 10130, in accordance with the Special Power of Attorney dated 23 July 2007;

Considering that as the Indonesian court system uses Bahasa Indonesia, therefore to ensure smooth examination, the aforementioned was accompanied by a translator who had first took an oath, that being an official translator, he would interpret all the testimonies and

statements from Bahasa Indonesia to English and vice versa accurately and correctly, namely:

Name : Drs. Andrew Budiyo, Address
Bekasi, 45 years old

Place and date of birth : 12 December 1954, Occupation: private
individual, Religion : Christian

Considering that the Judge had explained the purpose of the court hearing, namely in correspond to the extradition request from the Philippines government to the Indonesian government which had been submitted to the Director of International Agreement of the Directorate General of Ministry of Foreign Affairs of the Republic of Indonesia and passed on to the Minister of Law and Human Right of the Republic of Indonesia in respect to the crime committed by Vijayeswaran Vijayaratnam a.k.a. Vijay Eswaran, Tagumpay Pablo Perez Kintanar, Joseph Luis Eleuterio Tomacruz Bismark, Donna Marie Immson in the Philippines whereby before their case had been examined in the Philippino Court, they were in Indonesia to attend the V-Team International seminar.

Considering that during the court hearing, the testimonies from the witnesses had been heard, namely from:

1. Witness: Police Commissioner, Ir. Dadang Sutrasno, assigned to the NCB Interpol Jakarta, Jl. Trunojoyo No. 3 Kebayoran Baru South Jakarta, who under oath testified as follows:
 - It was evident the witness is an Indonesian police officer assigned to NCB Interpol. He was aware of the Red Notice issued by the French Interpol based on the request of Philippines Interpol;
 - It was evident that the witness along with other witnesses from the Indonesian Police arrested the Extradition Appellees at Sultan Hotel Jakarta on 3 May 2007;
 - It was evident that the witness had notified such arrest to the Interpol of the Republic of Philippines, and in the Philippines itself, the case charged to the Extradition Appellees remains controversial and considered as a civil matter.
 - It was evident that the identification of the Extradition Appellees matched with those of the Interpol's Red Notice and the passports of the Extradition Appellees.

2. Witness: **Jajang Ruhivat STP**, who under oath testified essentially as follows:

- It was evident that testimonies of the witness were the same as those of witness, Ir. Dadang Sutrisno as they were in the same team.
- It was evident that the information originated from the Red Notice from Philippines Interpol regarding 4 extradition appellees, and the witnesses arrested them all at Hotel Sultan Jakarta;
- It was evident that the identifications of the extradition appellees are the same as the data on the Red Notice from Philippines Interpol.
- It was evident that the witness could recognize the passports of the respective Appellees;

3. Witness: **H. Suradi Bin Warnodiharjo**, who under oath testified essentially as follows:

- It was evident that the witness is assigned to the Mobile Investigation Unit of the Regional Police of Metropolitan Jakarta;
- It was evident that the witness along with the other witnesses arrested the extradition appellees at Hotel Sultan Jakarta;

- It was evident that the identifications of the arrested extradition appellees matched with those on the passports and Red Notice from the Interpol;
- It was evident that the witness found the evidence submitted to the court tally with the owners;

4. Witness: Yusmanto Bin Harjoprawiro, who under oath essentially testified as follows:

- It was evident that the witness is assigned to the Mobile Investigation Unit of the Regional Police of Metropolitan Jakarta;
- It was evident that the witness arrested the extradition appellees at Hotel Sultan Jakarta;
- It was evident that the witness matched the identifications of the extradition appellees with those on the respective passports;
- It was evident that when the extradition appellees were arrested, they were holding a kind of meeting, but the witness had no idea what kind of meeting it was.
- It was evident that the witness recognized the passports submitted to the court.

Considering that none of the expert witnesses were present in the court hearing and at the request of the

Public Prosecutor and upon the approval from the Lawyer of the extradition appellees, their written statements were read out:

1. Witness, Prof. Prof. Hikmahanto, Bachelor of Law., LL.M., Phd., who essentially explained as follows:

- That upon having carefully read the dossiers/evidence of extradition request, the witness stated that the Indonesian government is not obligated to fulfill the extradition request from the Philippines government;
- That the case implicating the Extradition Appellees is a civil one;
- That for civil case, one is not subject to extradition request because the Extradition Agreement between Indonesia and the Philippines concerns only with criminal acts;
- That the charge against the Extradition Appellees under the term "*Estafa (Syndicated)*" is unknown in the Indonesian Criminal Code;
- That the Extradition Agreement requires Dual Criminality meaning a criminal act committed in both the Philippines and Indonesia, is recognized as a crime;

2. Expert Witness : Teuku Nasrullah, Bachelor of Law,
Master of Law, who essentially
explained as follows:

- That the legal issue charged against the Extradition Appellees relates to an investment cooperation involving a sum of money, which according to the Indonesian civil law, it falls into a civil scope;
- That pursuant to article 3 paragraph 2 of Law No. 1 of 1979 regarding Extradition and article II point A of Law No. 10 of 1976 regarding the Extradition Agreement between Indonesia and the Philippines, that one the extradition principles is double criminality. Under this definition, the cause must be qualified as a crime in both the Philippines and Indonesia;
- That to justify whether a crime is committed in an investment activity by hearing only from one party, namely the appellants without first hearing any counter statement from the appellees is absolutely premature.

Considering that the Lawyer of the Extradition Appellees had also presented an expert witness, namely Suharmoko, Bachelor of Law, Master of Law who under the oath essentially stated as follows:

- That a business transaction involving 2 parties is categorized as a civil matter according to Book volume III of Civil Code;
- Lending and borrowing is a contract and not regulated under Criminal Law;
- That *Estafa* is unknown in Indonesian civil law;
- That loan or borrowing which has been converted into shares will become a loan exchange. Under such circumstance, the shareholder must pay for the share value. Consequently, such loan no longer exists upon such conversion followed by titles to the shares, namely voting rights and dividends;
- The conversion of loan to shares is legal and a common practice under the Indonesian law by virtue of Government Regulation of 1999 as the implementation of Law No. 1 of 1995.

Considering that the following evidence had been submitted to the court:

1. Passport No. TT0921429 in the name of Joseph Luis Eleutrio Bismark
2. Passport No. ZZ149797 in the name of Tagunpay Pablo Perez Kintanar
3. Passport No. ZZ145762 in the name of Donna Marie Imson

4. Passport No. A10683429 in the name of Vijayeswaran S
Vijaratnam;

Considering that the Lawyers of the Extradition
Appellees had made their conclusion;

Considering all matters considered during the court
hearing of which its full version is contained in the
Minutes of Court Hearing. And to summarize the Court
Judgment with reference to the Minutes of Court Hearing
and declared as being sufficiently contained and
considered here;

As Regards the Legal Consideration

Considering that the purpose of presenting
Vijayeswaran Vijayaratnam a.k.a. Vijay Eswaran, Tagumpay
Pablo Perez Kintanar, Joseph Luis Eleuterio Tomacruz
Bismark, Donna Marie Glenn Immson to the court hearing of
the District Court of South Jakarta was in response to
the Extradition request from the Philippines government
pertaining to the indicted *Estafa* crime committed by the
aforementioned in the Philippines based on the complaint
lodged by from Enrico Noel P'uy and Patrick D. Zuniga
dated 29 March 2005.

Considering that the said Extradition request had been submitted by the government of the Republic of Philippines via its Embassy in Jakarta, Indonesia to the government of the Republic of Indonesia through the Ministry of Foreign Affairs c.q. the Director General of Political Affairs; and subsequently the request had been further passed on to the Minister of Law and Human Rights of the Republic of Indonesia;

Considering that the said Extradition request had been followed up by the Indonesian Police. Furthermore, the Chief Public Prosecutor Office of the Special Territory of Republic of Indonesia had requested a Court Judgment whether the extradition could be applied to Vijayeswaran Vijayaratnam a.k.a. Vijay Eswaran, Tagumpay Pablo Perez Kintanar, Joseph Luis Eleuterio Tomacruz Bismark, Donna Marie Immsen as mentioned above;

Considering that based on the provision of article XVII paragraph 2 of Law No. 10 of 1976 regarding the Handover of Extradition Agreement between the Republic of Indonesia and the Republic of Philippines as well as the protocol and article 22 paragraph 4 of Law No. 1 of 1979 concerning extradition, it was evident before the Court that such extradition request had been made in compliance

to the prevailing law. Consequently, the formal extradition itself was acceptable;

Considering that according to the provision of article 32 of Law No. 1 of 1979 regarding Extradition, it is stated that:

- a. The identifications and nationalities of the extradition appellees must match with the information and evidence submitted by the appellant;
- b. The crime stated is the one that must fulfill the extradition criteria according to article 4, and not political or military crime.
- c. The right to prosecute or execute the Court judgment has or has not expired;
- d. The crime committed by the said person has or has not received any court judgment with permanent legal force;
- e. The crime is subject to a death penalty in the requesting country, but not so in Indonesia;
- f. The person is under investigation in Indonesia under the same crime;

Considering that based on the facts revealed in the court, namely the passports and photos affixed on the Red Notice of the Philippines Interpol as well as the

testimonies from the witnesses, namely Ir. Dadang Sutrisno, Jajang Ruhiyat, Suradi and Yusmanto as well as the statements from the Appellees in the court, it was evident that the identification and nationalities of the Appellees matched;

Considering that based on the remarks/arguments from the Public Prosecutor, the reason for requesting the extradition of the *aquo* case, in principle the Appellees had been charged of committing an *Estafa* as regulated in article 315 paragraph 2 (a) as amended through Presidential Decree No. 1189 on Criminal Code;

Considering that based on the testimonies of the witnesses in the court, the following facts were obtained:

Witness: Ir. Dadang Sutrasno testified:

- That the witness as the Chief of General Crime Section, of NCB Indonesian Interpol, on 23 April 2007 received a Red Notice from the Philippines Interpol in the name of the Extradition Appellees;
- That the witness had been contacted by Senior Liaison of the Indonesian Police in the Philippines and was coordinating with the Philippines Police to obtain confirmation that evidently in the Philippines itself, the case remains a controversy

whether the case implicating the Extradition Appellees is a crime or civil matter;

Considering that while the witnesses Jajang Ruhiyat, Suradi and Yusmanto had explained that they made the arrest pursuant to the Red Notice from NCB Interpol Office;

Considering that the expert witnesses, namely Prof. Hikmahanto Yuwana, Bachelor of Law. LL.M., Ph.D and Teuku Nasrullah, Bachelor of Law, Master of Law., and Suharnoko, Bachelor of Law, LL.M., had stated as follows:

- that case charged to the Extradition Appellees is a civil matter as it had developed from a Lending and Borrowing Agreement;
- That the fraud indictment called *Estafa* is virtually unknown under the Indonesian law, whereas the extradition agreement recognizes the Dual Criminality principle, which means that both Indonesia and the Philippines must consider that the action is crime;
- That a civil case does not qualify any extradition request, as the extradition agreements in general, and between Indonesian and the Philippines are valid only for committed crimes;
- It is a premature to state whether a crime has been

committed in an investment activity upon simply hearing from the complainants without first hearing from the respondents;

- The crime indicted has not received any court judgment with permanent legal force. The appellees have been indicted for having committed a crime based on a complaint from the appellants only.
- That the legal matter made as indictment against the suspects Vijayeswaran Vijayaratnam a.k.a. Vijay Eswaran and colleagues pertains to an investment cooperation involving some money which according to the Indonesian law falls into a civil case category;

Considering that based on the facts above, the Court is of the opinion that the *Estafa* (Syndicated) is unknown in the Indonesian Criminal Code. Under such circumstance, the Double Criminality principle is not therefore fulfilled;

Considering that the action indicted against the Extradition Appellees does not fall into a crime category as referred to in the enclosure of Law No. 1 of 1979 or Article II of Law No. 10 of 1976;

Considering that based upon the written evidence and documents submitted by the Lawyers of the Extradition Appellees (Exhibit TE-5), it was evident that the

Extradition Appellees are requesting for an appeal or Motion For Reconsideration over their Warrant of Arrest. Apart from that, based on exhibit TE-6, namely a photocopy of letter from the Department of Justice of Manila to the Public Prosecutor, Cielito C. Celi dated 18 July 2007, it was evident that the legal case confronting the Extradition Appellees is not final as it needs a court review;

Considering that based on the above considerations, the request for Extradition of the said Appellees was legally unreasonable and must be turned down;

Considering that pursuant to article 34 of Law No. 1 of 1979 which reads: the detention pursuant to article 25 must be revoked in the event that:

- a. it is ordered by the Court;
- b. has passed the mandatory period of 30 days, unless it is extended by the Court at the request from the Public Prosecutor;
- c. the extradition request is overturned by the President;

As the request is turned down, the detention of the Extradition Appellees must be revoked.

Considering that the extradition request is rejected, the passports of the Extradition Appellees

shall be returned to the Appellees;

Considering that as the investigation of the Extradition Appellees' case is included in the special examination pertaining to the Bilateral International Agreement, the expenses of this case will be charged to the State;

In view of Law No. 10 of 1976, Law No. 1 of 1979 as well as other related legal provisions;

S T I P U L A T E D :

1. To declare that the Extradition Request for the Extradition Appellees is turned down;
2. To legally declare that Vijayaeswaran Vijayaratnam a.k.a. Vijay Eswaran, Tagumpay Pablo Perez Kintanar, Joseph Luis Eleuterio Tomacruz Bismark, Donna Marie Glenn Imson are not subject to any extradition as requested by the Philippines government;
3. To revoke the Detention Order and Release the Extradition Appellees from detention;
4. To instruct the following evidence comprising:
 - a. Passport No. TT0921429 in the name of Joseph Luis Eleutrio Bismark;
 - b. Passport No. ZZ149797 in the name of Tagunpay Pablo Perez Kintanar;
 - c. Passport No. ZZ145762 in the name of Donna Marie

Imson;

d. Passport No. A10683429 in the name of
Vijayeswaran S Vijaratnam;

be returned to DR.TOMMY S. BHAIL, Bachelor of Law, LLM,
and subsequently handed over to the respective
Extradition Appellees;

5. To charge the fee of this case amounting to Rp 1,000
(one thousand rupiah).

IN WITNESS WHEREOF, this judgment was passed in
Jakarta and was announced to the court opened to the
public on TUESDAY dated 31 July 2007 by PRASETYO IBNU
ASMARA, Bachelor of Law, Master of Law, Judge at the
District Court of South Jakarta, assisted by SUWARNI,
Bachelor of Law, Substitute Registrar with the presence
of the Extradition Appellees accompanied by their
Lawyers, and SUPARDI, Bachelor of Law, Public Prosecutor
from the Chief Attorney Office at the Special Capital
Territory of Jakarta.

SUBSTITUTE REGISTRAR,

[signed]

(SUWARNI, Bachelor of Law)

THE SAID JUDGE,

[signed]

(PRASETYO IBNU ASMARA, Bachelor of
Law, Master of Law)

THE DISTRICT COURT OF SOUTH JAKARTA
Jalan Ampera Raya No. 133 Ragunan, Phone 7805909
JAKARTA

Copy

Photocopy of Judgment for Criminal Case examined
expeditiously, at the First Level dated 31 July
2007

No. 61/Pid.C/2007/PN.Jak-Sel

NOTE:

The dossier of Criminal Case examined expeditiously, in
the name of VIJAYESWARAN VIJAYARATNAM a.k.a. VIJAYESWARAN
a.k.a. VIJAY VIJAYARATNAM a.k.a. VIJAYESWARAN.

The Judgment of the District Court of South Jakarta, Case
No. 01/Pid.C/2007/PN.Jak-Sel

Was passed on 31 July 2007

Attended by the Suspects' Lawyers and the Suspects.

This is a true copy of the original, made on ___ July 2007

The copy
photocopy of this Judgment was given on ___ July 2007

The copy of the Judgment was given to the Lawyers of the
Suspects on ___ July 2007

The said Registrar/Secretary

[sealed and signed]

Hajj.LILIES DJUANINGSIH, Bachelor of Law

Empl. ID No. 040 028 345

(initial of the recipient)