SUPREME COURT OF INDONESIA

Decision No 822 K/ Pid.Sus (Special Criminal Division) / 2010
For the sake of Justice under God Almighty

THE SUPREME COURT

In consideration of this criminal case on appeal (cassation) to the Supreme Court, the following was decided with regard to the defendant's case:

Name of Defendant: Prita Mulyasari
Birth Place: Jakarta
Age/Date of Birth: 31 years of age/27 March 1977
Sex: Female
Nationality: Indonesian
Address: Komp. Sekneg. Cidodol No. 42 Rt .008/011
Kelurahan Grogol Kecamatan Kebayoran Lama
Jakarta Selatan
Religion: Islam
Occupation: Office worker/White collar worker
The defendant is not in detention.

The defendant appeared in the trial before the Tangerang District Court on the following charges:

FIRST:

That the defendant, Prita Mulyasari, on 15 August 2008 or at some other time during the month of August 2008, whilst located within the Bintaro Tangerang International Hospital or at least at a location within the jurisdiction of the Tangerang District Court, violated Article 27, paragraph 3 (of Law No. 11 of 2008 on Electronic Information and Transactions). That subsection makes it an offence to intentionally and unlawfully distribute and/or transmit and/or make accessible to the public electronic information and/or electronic documents which cause offence or damage a person's good name/reputation (offensiveness and/or defamation). The alleged offence was against Dr Hengky Gosal, Sp.PD and Dr Grace H. Yarlen Nela. The alleged act of the defendant occurred as follows:

On 7 August 2008 at approximately 8:30pm, the defendant arrived at Omni International Tangerang Hospital with a high temperature and dizziness. A blood test reported that her thrombocyte count was 27,000 at the time the defendant was handled by Dr Indah (general practitioner) and was informed that she must be admitted for further treatment.

Dr Indah then asked the defendant which specialist doctor she would like to examine her. The defendant then asked for a reference from Dr Indah because she had no idea who to elect, and Dr Indah recommended Dr Hengky.

Dr Hengky then examined the defendant through verbal questioning and noted symptoms of feeling faint, a three-day long fever, strong headaches, body pains, nausea, vomiting and an inability to eat. The doctor also diagnosed symptoms of a fever, suspecting scarlet fever as opposed to a viral infection or a secondary infection. As a result the defendant was infused and given an injection that night. The next morning, Dr Hengky informed that the revised test results revealed that the cell count was not 27,000 but 181,000. The defendant's right hand soon began to swell up and she requested for the infusions and injections to stop.

Because the defendant felt that her condition was worsening and her neck and her eyes were swelling, the defendant finally left the Omni International Alam Sutera Tangerang Hospital on 12 August 2008 with a final diagnosis of inflammation of the thyroid glands and she immediately moved to Bintaro Tangerang International Hospital where she was admitted from 12-15 August 2008.

In relation to her treatment at the Omni International Alam Sutera Tangerang Hospital, the defendant submitted a written complaint to the management of the Omni Hospital which was received by Ogi (Customer Service Coordinator) and Dr Grace Hilza Yarlen Nela (Customer Service Manager). The substance of the complaint regarded the health condition of the defendant's body at the time she entered the emergency ward, the lab results and her condition at the time she left Omni International Alam Sutera Tangerang Hospital. The complaints were that during the defendant's treatment she did not receive service or information that was good or clear regarding the condition of the defendant's health from Dr Hengky Gosal, Sp.PD. However the reaction from Dr Grace about the defendant's complaint was unprofessional, so whilst the defendant was being treated in Bintaro Tangerang International Hospital, she wrote and sent an email or electronic letter, and what is meant by an email or electronic letter is a method involving the creation, sending, storage and receiving of a letter/message by storing and sending data in a letter/message via the medium of electronic communication. Furthermore, the defendant sent that email using the email address "PritaMulyasari@yahoo.com" to a group of people,entitled "The Fraud of Omni International Alam Sutera Tangerang Hospital" which among other things, included statements that "I also informed Dr Hengky's practice in Cipto Mangunkusumo Hospital (RSCM), and I am not saying that RSCM was bad,but am warning people to be more cautious with the medical treatment from Dr Hengky" and "the response from Dr Grace, who was supposedly responsible for dealing with my complaint, was very unprofessional" and "there was no politeness or etiquette in their customer service";

The alleged offence of the defendant is regulated and punishable under Article 45, paragraph (1) and Article 27, paragraph (3) of Law No. 11 of 2008;

OR

SECOND:

That the defendant, PRITA MULYASARI, on 15 August 2008 or at some other time during the month of August 2008,whilst located within the Bintaro Tangerang International Hospital or at least at a location within the jurisdiction of the Tangerang District Court, intentionally attacked the honour or reputation of another person. Those persons are Dr Hengky Gosal, Sp.PD and Dr Grace H. Yarlen Nela. The defendant accused them of something, which was clearly intended to be done so that it was publically known when it was written or drawn and broadcast, shown or attached in the public sphere. The alleged act of the defendant occurred as follows:

On 7 August 2008 at approximately 8:30pm, the defendant arrived at Omni International Tangerang Hospital with a high temperature and dizziness. A blood test reported that her thrombocyte count was 27,000 at the time the defendant was handled by Dr Indah (general practitioner) and was informed that she must be admitted for further treatment.

Dr Indah then asked the defendant which specialist doctor she would like to examine her. The defendant then asked for a reference from Dr Indah because she had no idea who to elect, and Dr Indah recommended Dr Hengky.

Dr Hengky then examined the defendant through verbal questioning and noted symptoms of feeling faint, a three-day long fever, strong headaches, body pains, nausea, vomiting and an inability to eat. The doctor also diagnosed symptoms of a fever, suspecting dengue fever as opposed to a viral infection or a secondary infection. As a result the defendant was infused and given an injection that night. The next morning, Dr Hengky informed that the revised test results revealed that the cell count was not 27,000 but 181,000. The defendant's right hand soon began to swell up and she requested for the infusions and injections to stop.

Because the defendant felt that her condition was worsening and her neck and her eyes were swelling, the defendant finally left the Omni International Alam Sutera Tangerang Hospital on 12 August 2008 with a final diagnosis of inflammation of the thyroid glands and she immediately moved to Bintaro Tangerang International Hospital where she was admitted from 12-15 August 2008.

In relation to her treatment at the Omni International Alam Sutera Tangerang Hospital, the defendant submitted a written complaint to the management of the Omni hospital which was received by Ogi (Customer Service

Coordinator) and Dr Grace Hilza Yarlen Nela (Customer Service Manager). The substance of the complaint regarded the health condition of the defendant's body at the time she entered the Emergency ward, the lab results and her condition at the time she left Omni International Alam Sutera Tangerang Hospital. The complaints were that during the defendant's treatment she did not receive service or information which was good or clear regarding the condition of the defendant's health from Dr Hengky Gosal, Sp.PD. However the reaction from Dr Grace about the defendant's complaint was unprofessional, so whilst the defendant was being treated in Bintaro Tangerang International Hospital, she wrote and sent an email or electronic letter, and what is meant by an email or electronic letter is a method involving the creation, sending, storage and receiving of a letter/message by storing and sending data in a letter/message via the medium of electronic communication. Furthermore, the defendant sent that email using the email address "PritaMulyasari@yahoo.com" to a group of people titled "The Fraud of Omni International Alam Sutera Tangerang Hospital" which among other things, included statements that "I also informed Dr Hengky's practice in Cipto Mangunkusumo Hospital (RSCM), and I am not saying that RSCM was bad, but am warning people to be more cautious with the medical treatment from Dr Hengky" and "the response of Dr Grace, who was supposedly responsible for dealing with my complaint, was very unprofessional" and "there was no politeness or etiquette in their customer service";

The alleged offence of the defendant is regulated and punishable under Article 310, paragraph 2 of the Criminal Code.

OR

THIRD:

That if the defendant, PRITA MULYASARI, on 15 August 2008 or at some other time during the month of August 2008,whilst located within the Bintaro Tangerang International Hospital or at least at a location within the jurisdiction of the Tangerang District Court,committed the crime of defamation or written defamation, she is permitted to prove which allegations are correct or not proven, and which charges conflict with other known evidence.The alleged act of the defendant occurred as follows:

On 7 August 2008 at approximately 8:30pm, the defendant arrived at Omni International Tangerang Hospital with a high temperature and dizziness. A blood test reported that her thrombocyte count was 27,000 at the time the defendant was handled by Dr Indah (general practitioner) and was informed that she must be admitted for further treatment.

Dr Indah then asked the defendant which specialist doctor she would like to examine her. The defendant then asked for a reference from Dr Indah because she had no idea who to elect, and Dr Indah recommended Dr Hengky.

Dr Hengky then examined the defendant through verbal questioning and noted symptoms of feeling faint, a three-day long fever, strong headaches, body pains, nausea, vomiting and an inability to eat. The doctor also diagnosed symptoms of a fever, suspecting dengue fever as opposed to a viral infection or a secondary infection. As a result the defendant was infused and given an injection that night. The next morning, Dr Hengky informed that the revised test results revealed that the cell count was not 27,000 but 181,000. The defendant's right hand soon began to swell up and she requested for the infusions and injections to stop.

Because the defendant felt that her condition was worsening andher neck and her eyes were swelling, the defendant finally left the Omni International Alam Sutera Tangerang Hospital on 12 August 2008 with a final diagnosis of swelling of the thyroid glands and she immediately moved to Bintaro Tangerang International Hospital where she was admitted from 12-15 August 2008.

In relation to her treatment at the Omni International Alam Sutera Tangerang Hospital, the defendant submitted a written complaint to the management of the Omni hospital which was received by Ogi (Customer Service Coordinator) and Dr Grace Hilza Yarlen Nela (Customer Service Manager). The substance of the complaint regarded the health condition of the defendant's body at the time she entered the Emergency ward, the lab results and her condition at the time she left Omni International Alam Sutera Tangerang Hospital. The complaints were that during the defendant's treatment she did not receive service or information that was good or clear regarding the condition of the defendant's health from Dr Hengky Gosal, Sp.PD. However the reaction from Dr Grace about the defendant's complaint was unprofessional, so whilst the defendant was being treated in Bintaro Tangerang International Hospital, she wrote and sent an email or electronic letter, and what is meant by an email or electronic letter is a method involving the creation, sending, storage and receiving of a letter/message by storing and sending data in a letter/message via the medium of electronic communication. Furthermore, the defendant sent that email using the email address "PritaMulyasari@yahoo.com" to a group of people titled "The Fraud of Omni International Alam Sutera Tangerang Hospital" which among other things, included statements that "I also informed Dr Hengky's practice in Cipto Mangunkusumo Hospital (RSCM), and I am not saying that RSCM was bad, but am warning people to be more cautious with the medical treatment from Dr Hengky" and "the response of Dr Grace, who was supposedly responsible for dealing with my complaint, was very unprofessional" and "there was no politeness or etiquette in their customer service";

The alleged offence of the defendant is regulated and punishable under Article 311, paragraph 1 of the Criminal Code.

This Supreme Court:

Reads the criminal charges laid by the Public Prosecutor from the Tangerang Prosecutor's Office on 18 November 2009 as follows:

We declare that PRITA MULYASARI wrongfully committed the crime of intentionally and unlawfully distributing and/or transmitting and/or making accessible to the public electronic information and/or electronic documents which are offensive or defamatory, as regulated and punishable under Article 27(3) and Article 45(1) of Law No. 11 of 2008 on Electronic Information and Transactions as contained in the Public Prosecutor's Letter of Indictment for Registered Case No.: PDM-432/TNG/05/2009, on 20 May 2009, with regard to the first charge.

The defendant, PRITA MULYASARI, is faced with a potential sentence of 6 (six) months imprisonment, less any time already spent in detention whilst the defendant is ordered to do so.

Pieces of evidence attached in the case file:

1 (one) print out copy of the website/email which was sent by PRITA MULYASARI on 15 August 2008, having the subject of "The Fraud of OMNI International Alam Sutera Tangerang Hospital";

1 (one) copy of the email entitled "Good Morning…HOPEFULLY THIS DOES NOT HAPPEN AT RSIB (Bintaro International Hospital)!!! Best wishes for your work…Kind Regards, June", dated the 22 August 2008.

We establish that if the defendant is found guilty, she must pay the case fee of Rp.1,000 (one thousand Indonesian Rupiah).

Rulings from earlier trials in the Tangerang District Court for this case:

- The interlocutory injunction hearing from the Tangerang District Court, (Case No. 1269/PID.B/2009/PN.TNG), dated 25 June 2009, ruled as follows:

The Court supported the case for the defendant, thus deciding in favour of Prita Mulyasari;

It ruled that the Prosecution's indictment, Case No. Pdm-432/TNG/05/2009, dated 20 May 2009, as being void and having no legal effect;

The court costs were to be burdened upon the State.

- The decision from Tangerang District Court, (Case No 1269/PID.B/2009/PN.TNG), dated 29 December 2009 ruled as follows:

The court held that the defendant, PRITA MULYASARI, was not proven to have validly and convincingly committed the criminal offences laid out in the first, second and third charges;

The court acquitted the defendant of all of the above criminal charges;

The defendant's rights were restored in respect of her previously acknowledged ability, position, dignity and status.

The following pieces of evidence remained in the case file:

- 1 (one) copy of news in the Yahoo email having the subject of "The Fraud of OMNI International Alam Sutera Tangerang Hospital", dated 22 August 2008;
- 1 (one) copy of the following email: From - Prita Mulyasari; Sent - Friday, 15 August 2008, 3:51pm; Subject - "The Fraud of OMNI International Alam Sutera Tangerang Hospital".

The court costs were to be burdened upon the State.

Ruling from the Banten High Court regarding this case:

The interlocutory injunction hearing from the Banten High Court (Appeals Court), Case No 95/PID/2009/PT.BTN, dated **27 July 2009**, ruled as follows:

DECIDING:

The court received an appeal application from the Prosecution;

The decision from the Tangerang District Court on 25 June 2009, Case No 1269/PID.B/2009/PN.TNG was quashed, thus ruling in favour of the Prosecution.

INDEPENDENT DECISION OF THE BANTEN HIGH COURT:

We reject the objection from the defendant and the defendant's counsel (who challenged the Prosecutor's indictment);

Order that the Tangerang District Court examine the case on behalf of the defendant: PRITA MULYASARI based on theProsecution's Letter of Indictment, Case No. Pdm-432/TNG/05/2009, dated 20 May 2009, and then re-decide that case (which was re-decided on 29 December 2009, where the District Court again held in favour of Prita Mulyasari).

Delay the court costs for the second level of court until the final decision;

The Supreme Court:

Recalls the cassation(an appeal heard by the highest court and dealing only with legal aspects of the case) application No. 59/Kasasi Akta Pid/2009/PN.TNG made by the Tangerang District Court Registrar, which represented that on 10 August 2009, the defendant submitted an application for cassation/appeal against the decision of the Banten High Court, No: 95/PID/2009/PT.BTN, dated 27 July 2009.

Recall also the cassation appeal application No. 59/Kasasi/Akta Pid/PN.TNG made by the Tangerang District Court Registrar, which represented that on 11 January 2010, the Prosecution submitted a cassation application with regard to the re-trial/secondDistrict Court decision.

Consider the cassation memorandum dated 10 August 2009, from the defendant's attorney, which was submitted for and on behalf of the defendant as the Cassation Applicant based on a specific power of attorney dated 4 August 2009, which was received by the Secretariat of the Tangerang District Court on 10 August 2009.

Consider also the corresponding cassation memorandum from the Prosecution as the respondent, which was received by the Secretariat of the Tangerang District Court on 26 August 2009.

Consider the further cassation memorandum dated 21 January 2010, from the Prosecution as the cassation applicant, received by the Secretariat of the Tangerang District Court on that day.

Consider also the corresponding cassation memorandum, dated 8 March 2010, from the defendant as the other cassation applicant, received by the Secretariat of the Tangerang District Court on that day.

The Supreme Court reads the relevant documents and submissions;

Consider, that the above District Court decision (re-trial) was handed down before the Public Prosecutor on 29 December 2009, and the Public Prosecutor submitted the cassation application on 11 January 2010 and the memorandum of cassation was received by the Tangerang District Court Registrar on 21 January 2010, and thus the cassation application along with reasons were already filed on time and in a manner consistent with the law.

Consider also, that the decision of the Banten High Court, No: 95/PID/2009/PT.BTN. dated 27 July 2009 was known by the defendant on 3 August 2009 and the defendant submitted the cassation application on 10 August 2009 and the memorandum of cassation was received by the Tangerang District

Court Registrar on that day, and thus the cassation application along with reasons were already filed on time and in a manner consistent with the law.

Consider, that Article 244 of the Indonesian Code of Criminal Procedure (CCP) states that for a decision in a criminal case which was handed down by the highest level court other than the Supreme Court, the defendant or public prosecutor is permitted to submit a request for cassation to the Supreme Court, unless a full acquittal (on grounds of insufficient evidence) was ordered.

Consider, that even though the Supreme Court believes that as the highest judicial body with the task to foster and maintain that all laws and legislation in every region of Indonesia are applied correctly and fairly, the Supreme Court must examine any party that submits an application for cassation against a lower court which acquitted the defendant, in order to determine whether the lower court decision was made correctly and fairly or not.

Consider, that despite this, according to prevailing jurisprudence, if the lower court decision which acquitted the defendant was actually a full acquittal on grounds of insufficient evidence, then according to Article 244 of the Code of Criminal Procedure, an application for cassation cannot be accepted.

Consider, that on the contrary, if the acquittal was on grounds of an erroneous interpretation of a particular criminal offence contained in the letter of indictment and not because a particular element of the offence could not be proven, or if that acquittal of all charges was actually due to some legal error or excuse, or if in the prior decision the Court exceeded their authority (although this alone is not a grounds for appeal), then the Supreme Court will deem that that acquittal was not a proper acquittal such that they will have to accept the application for cassation.

Consider, that the essential arguments or grounds of appeal submitted by the public prosecutor and the defendant, are as follows:

Arguments from the Prosecution:

FAILED OR INSUFFICIENT APPLICATION OF THE LAW:

Not applying Article 182, paragraphs (3) and (4) of the Code of Criminal Procedure

The (trial) judge from Tangerang District Court, in page 59 of the judgment, considered as follows:

That what became the issue regarding the distribution of the electronic document was whether the defendant had a right to do so or not;

That in this case, the right to do or not do so is related to whether or not the contents of the document distributed by the defendant insulted or defamed the reputation of Dr Hengky and Dr Grace;

That the charges laid by the prosecution purported that the defendant send the email using the email address of PritaMulyasari@yahoo.com to a group of people titled "The Fraud of Omni International Alam Sutera Tangerang Hospital" which among other things, included statements that "I also informed Dr Hengky's practice in Cipto Mangunkusumo Hospital (RSCM), and I am not saying that RSCM was bad, but am warning people to be more cautious with the medical treatment from Dr Hengky" and "the response of Dr Grace, who was supposedly responsible for dealing with my complaint, was very unprofessional" and "there was no politeness or etiquette in their customer service";

That these issues cannot be examined just from one sentence, but must be seen contextually regarding the legal relationship between the defendant and Dr Hengky and Dr Grace, what happened in that legal relationship, and from that to see if the potentially harmful sentence was accurate or not based on what happened between the defendant and Dr Hengky and Dr Grace.

That Article 182, paragraph (3) and (4) of the Code of Criminal Procedure stipulates the following:

> (3) After that, the judge is to hold a final deliberation to make a decision, and where necessary, that deliberation is to be held only after the defendant, witnesses, legal advisors, the prosecution and other attendees have left the courtroom.
> (4) The above deliberations in paragraph (3) must be based on the letter of indictment and every issue which was proven throughout the hearing in court.

That in a deliberation as described above, the trial judge (as fact-finder) made its ruling based on the sentence in the prosecution's letter of indictment, whereas other facts in dispute were not considered, such as:

> Did not consider the contents of the email as a whole;
> Did not consider the testimony of Dr Hengky Gosal Sp.PD, nor the testimony of Dr Grace H. Yarlen Nela;
> Did not consider the testimony from a language expert who was the most competent to evaluate whether the defendant's email was offensive or defamatory. However, the prosecution then examined the testimony of that language expert, Dr Sriyanto MM, a summary of which was contained in pages 28 and 29 of the judgment

> transcript. Because the language expert's testimony was only summarized, we have attached a CD recording from the first instance trial to find the substantive truth in addition to the summary, with the hope that it can be helpful for the Supreme Court Judge (as tryer of law), as per Article 253 paragraph (3) of the Code of Criminal Procedure, and also so as not to be manipulated by the transcript from the trial proceedings which was only signed by the Chair of the judging panel and the deputy registrar.

Based on these arguments, the trial judge already failed to apply the law correctly, specifically not applying Article 182 paragraphs (3) and (4) of the Code of Criminal Procedure, such that the deliberations were only based on examining that one sentence on the letter of indictment, but not considering every issue that was proven during the court hearing.

By not considering every issue that was proven during the court hearing in its entirety, the trial judge has negligently conducted the proceedings.

<u>The trial judge wrongfully interpreted the element of the crime in the first charge as stated and proven in the prosecution's indictment.</u>

That the first instance decision was in error because the trial judge wrongfully interpreted the element of "being offensive and/or defamatory" which was committed by the defendant as merely being a "criticism and for the public interest".

According to the Latest Bahasa Indonesia Dictionary equipped with updated spelling by the Reality team at Reality Publisher, First Edition, 2008, on page 388; "criticism is a critique which often involves a consideration of the positives, negatives, and an evaluation/way out".

Based on this understanding of 'criticism' from the Bahasa Indonesia dictionary, in daily life the word 'criticism' is 'always accompanied with the word 'recommend'.

That the trial judge's decision did not take into consideration which sentence of the defendant's email contained considerations of positives and negatives, and which sentence was an evaluation or recommendation, such that the relevant offensiveness and/or defamation was interpreted as a criticism.

Professor Dr Wirjono Prodjodikoro in his book 'Certain Punishment in Indonesia', published by PT Refika Aditama in 2003, wrote the following on page 102: "Besides that, the offender cannot release himself from the charge

by bringing up the public interest or arguing self-defence. However, as already mentioned, there must be some kind of objectivity, in that there must be an objective measure of how the average person would be offended if they were the victim of the attack/assault".

The Dutch East Indies Appeal Court Judgment already determined that objective measure, contained as follows in a decision dated 9 December 1912: "to attack the honour of another person, does not require that the relevant person themselves feel offended. A person's honour can exist merely in the eyes of one who considered it offensive, irrespective of the subjective feelings of the targeted person".

The fact of the trial is that the defendant claims that the email was just a complaint. Even the defendant's testimony and other evidence has never explained or proven that the act of sending the email was a criticism or in the public interest. Therefore, the trial judge's decision that the act of the defendant was a "criticism and in the public interest" is not supported by evidence, and the reasons in the decision did not use objective considerations, such that the offensiveness and/or defamation was interpreted as criticism and in the public interest.

That the Dutch East Indies Appeal Court Judgment dated 26 November 1934 already gave limits to the principle "if publication of certain things is carried out in the public interest, then one must do so fairly. By harshly accusing something, the public interest is not being defended". A fact from the trial which was not considered was the witness testimony of Ogi Anna Yandri who testified that the defendant spoke with the witness over the telephone using swear words, among other things, and said: "You are all stupid jerks", "You just do whatever you like, how do you call yourselves Customer Service", and also the statement "Don't you become Omni's bitch". These expletive phrases were actually not considered in the decision, and they should have indicated that the act of the defendant was not defending the public interest.

A fact of the trial that was also not considered was the purpose of the defendant's email, because it was also addressed to Andri Nugroho (the defendant's husband), so it is an unfair act for a wife to call it a "complaint". This complaint could have been made at any time without sending an email, let alone sending the email using her husband's laptop.

<u>The trial judge did not apply the correct Laws of Evidence.</u>

The trial judge did not even consider the witness testimony from language expert, Dr. Sriyanto MM, who, among other things, stated:

That it is permissible to call someone unprofessional, but it is risky.

That the followed “played” sentence in the defendant’s email: “…The next day my condition was worsening and the right side of my neck had swollen and my temperature had risen to 39 degrees, however I still did not want to go back to the emergency room of this hospital, but wanted to move to another hospital. But I needed my full medical data/information and once again I was played and given incorrect and made up medical data”, can be categorised as negative.

That the email read by the Chair judge in the trial with the sentence: “…In the medical notes, information was given saying that my BAB (treatment) was fine/smooth, but I had complications ever since being admitted into this hospital there was no follow-up at all, and then the lab results returned and stated that my thrombocyte count was 181,000 and not 27,000”, is an accurate description according to an expert opinion so as long as this is true then there is no issue with it.

That the sentence “not professional at all” has negative connotations, so if this is true then there is no issue with it.

That the sentence read by the public prosecutor from the email: “I am tired of hearing it and am very angry with Omni Hospital for lying to me by saying that I had a fever and giving me various injections with high dosages which caused me to experience breathing difficulties”, where the phrase “experience breathing difficulties” was a conclusion which should have actually been provided and drawn by an expert.

That the defendant’s email contained parts that were just casual writing, and a part that is a conclusion.

That the sentence “…so I called all of the management at Omni Big Liars. Watch out for their games - they toy with the people’s lives”, contained words of anger towards the management, not anger towards a person.

That the sentence “…especially Dr Grace and Ogi, there was no politeness or etiquette in their customer service, not based on the international standards to which this hospital is held”, means that the focus is not polite and has negative connotations.

That the sentence “…I said to Dr Grace, someone will come to Omni to take the letter, and when my husband came to Omni it was just left at reception…etc.”, is only a descriptive one.

That the sentence “…why were my husband and I persistent about that letter? Because I want to know whether the lab results with the 27,000

reading were correct or false so that Omni Hospital can treat patients. And after the several times that we were lulled into promises, the lab results which read a count of 27,000 were actually incorrect, and I did not actually need to be admitted for treatment and did not need any injections and the breathing difficulties and my health would not have got increasingly worse because it could have been handled better", has negative connotations because it already makes a particular conclusion. The sentence regarding the deception with promises contains an accusation.

That it is indeed permitted to write something descriptive, but if it is a valuation or accusation then it is not permitted.

That the title of the defendant's email already indicates an accusation, but only aimed at the Omni Hospital.

That if it is defamation then it needs proof or verification, whereas offensiveness does not need proof.

That the distinction between criticism and offensiveness is that criticism must have positive elements as well.

That saying "unprofessional", if between the speaker and the person being addressed are not familiar or close to one another, then it has negative connotations.

That the sentence "…I also informed Dr Hengky's practice in Cipto Mangunkusumo Hospital (RSCM), and I am not saying that RSCM was bad, but am warning people to be more cautious with the medical treatment from Dr Hengky", contains negative connotations.

Based on the Supreme Court Decision dated 14 February 1983, Case No. 221 K/Pid/1982 contained the principle that "there has been an error in the application of evidence laws, because the High Court did not carefully consider and value all of the evidence in its entirety which had been obtained during the trial".

This Supreme Court decision is also consistent with the Practice Note of the Supreme Court of the Republic of Indonesia, dated 23 November 1974, No M.A./Pemb./1154/74 (The Set of Supreme Court Practice Notes) and Supreme Court Regulation of Indonesia 1951-2009, page 230 as follows:

Together with this, the Supreme Court draws your attention to the following matters:

In one statement, the decisions handed down in the District Court and High Court sometimes are not accompanied by considerations which are required by the law.

As known, Article 23 (1) of Law No. 14 of 1970 (and Article 25(1) of Law No. 4 of 2004) on the Main Provisions of Judicial Power say that: "All court decisions, apart from having to contain reasons and grounds for the decision, also must contain reference to the relevant provisions and regulations or unwritten legal sources which became the basis for the adjudication", thus requiring reasons and considerations for the decision of the District Court or High Court.

By providing no or inadequate reasons/considerations, even "if the reasons are unclear, difficult to understand or contradict each other, then it will be viewed as negligent procedure which can lead to a repealing of the relevant decision in examination at the appeal/cassation stage.

The Supreme Court asks that the legal provisions that require or oblige the Court to give reasons, be fulfilled by my colleagues to prevent the potential repeal of a Court decision if it is not supported with reasons and considerations.

That the trial judge only considered a small section of the writing in the defendant's email as contained in page 61, that is, the sentence: "…I also informed Dr Hengky's practice in Cipto Mangunkusumo Hospital (RSCM), and I am not saying that RSCM was bad, but am warning people to be more cautious with the medical treatment from Dr Hengky", whereas page 59 of the deliberations stated as follows:

> That in regards to this matter, it cannot be viewed from just one sentence, but must be seen contextually with reference to the legal relationship between Dr Hengky and Dr Grace, what happened within that legal relationship, whether the contents of that statement are true or false regarding what happened within the legal relationship between Dr Hengky and Dr Grace.

Because there was a challenge regarding the conflicting deliberations, specifically because more than a mere consideration of part of a sentence is required, and because the trial judge actually only considered a small portion of the defendant's email, then following the Practice Note of the Supreme Court of the Republic of Indonesia, dated 23 November 1974, No M.A./Pemb./1154/74, the decision from Tangerang District Court, Case No 1269/PID.B/2009/PN.TNG, dated 29 December 2009 must be repealed, because no or inadequate considerations were given, and the reasons actually given were unclear, difficult to understand and contradictory.

The consideration of the trial judge (as fact-finder) about the justification "in the public interest" contradicts the defendant's testimony.

In the defendant's testimony, PRITA MULYASARI submitted that she sent the email only to close friends and did not have any defamatory intentions. Therefore, according to the defendant, she did not intend to spread the email to the general public. Because of the lack of intention to share the email publically, the consideration of the justification that it was "in the public interest" indeed already conflicts with the defendant's testimony. Because the defendant's testimony and the judge's considerations contradicted each other, there has been negligence in the proceedings with all requirements for reasoning being unfulfilled, which should lead to the case being repealed. Based on the Practice Note of the Supreme Court of the Republic of Indonesia, dated 23 November 1974, No M.A./Pemb./1154/74 and as argued by the public prosecutor/cassation applicant, the case must be repealed or quashed.

The trial judge (as fact-finder) did not apply Article 312(1) of the Criminal Code for the contents of the defendant's email which contained elements of aggravated defamation.

That the trial judge's reasoning only paid attention to the part of the defendant's email which contained the defamatory elements, and thus failed to apply Article 312 paragraph (1) of the Code of Criminal Procedure which states as follows:

> "Proof of the truth of the accusation can only be obtained in the following ways: (1) when the judge feels it necessary, he can consider the defendant's testimony, whether the act was done in the interests of the public, or whether the act was forced in self-defense, in order to examine the truth of the accusation."

Considerations only looked to the defendant's testimony, which evidently contained aggravated defamation, and the truth of it must be proven, as seen in page 60, as follows:

> That on the third day the defendant was treated by Omni Hospital, both of her hands, her eyes and her neck were swollen or inflamed.
>
> This consideration comes from the defendant's testimony and is not supported by any other evidence, because there is no witness or other documentary evidence that can prove, in truth, that on the third day of the defendant's treatment, both hands, eyes and neck were swollen or inflamed. Because there is no evidence to support the physical condition of the defendant at that time, the alleged aggravated defamation must be proved by the Honorary Medical Disciplinary Board of Indonesia.

The consideration on page 61 was as follows:

> That from the chain of events related to the statement in the defendant's email that: "…I also informed Dr Hengky's practice in Cipto Mangunkusumo Hospital (RSCM), and I am not saying that RSCM was bad, but am warning people to be more cautious with the medical treatment from Dr Hengky", the judging panel took the view that the above sentence was a criticism of Dr Hengky's services, because after five days of medical treatment there was no analysis of the illness suffered by the defendant.

This consideration comes from the defendant's testimony and is not supported by other evidence, and it even conflicts with the witness testimony of Ogi Anna Yandri which was not considered in the decision. Ogi Anna Yandrti testified that at the time the defendant exited the hospital, she saw that the defendant was already healthy because she had come down from level three to the lobby, as per the court transcript on the first line of page 26, and this testimony was not denied by the defendant in the trial. The Supreme Court Judges are asked to listen to the CD recording of the witness' testimony and the defendant's response to said testimony (as per Article 164(1) of the Code of Criminal Procedure).

Because there is no evidence in support of Dr Hengky not analyzing the defendant's illness for 5 days, the alleged aggravated defamation had to be proven earlier by the Honorary Medical Disciplinary Board of Indonesia as per Article 66 of Law No. 29 of 2004 on Medicine Practice, which states as follows:

> Any person who is aware of, or whose personal interests were harmed by the actions of a doctor or dentist in the running of their medical practice, can make a written complaint to the Head of the Honorary Medical Disciplinary Board of Indonesia. The complaint must at least contain:
>
> - the identity of the complainant
> - the name and address of the doctor's or dentist's place of practice at the time the act occurred; and
> - reasons for the complaint.
>
> The making of a complaint as per paragraphs (1) and (2) does not relieve the right of a person to report an alleged criminal offence to an authoritative body and/or suing for damages in court.

Therefore, the trial judge on page 62, said that they "do not agree with the prosecution who said that if the defendant was not satisfied with the doctor's service, then the defendant should have made a formal complaint about the doctor to the Honorary Medical Disciplinary Board of Indonesia".

> The reasoning on page 62 was as follows:
>
> "That from the commentary on the above element in point 3, the trial judged thought that the defendant's email, as already analysed above, was not offensive or defamatory, because the

sentence was a criticism and in the public interest, to spare society from such treatment from a hospital and/or doctor who does not provide good medical service for sick persons who hope to improve their health”.

This consideration was in error because the facts were not revealed in the trial regarding which persons were harmed by the practices of Dr Hengky Gosal, Sp.PD. The phrase “…to spare society…’ as commented above, shows that there had not yet occurred any bad medical service by Dr Hengky Gosal, but that it was still a possibility of occurring. Because it was just a possibility that poor medical services were going to be provided by Dr Hengky Gosal Sp.PD, then there is no public interest which is being defended by the defendant.

That the trial judges did not consider the sentence in the first line of page 1 of the defendant’s email, which contained the defamatory element, as follows:

> “Don’t let what happened to me also befall the precious lives of others, especially children, the elderly and babies”.

The prosecution argues that there must be an objective measure of whether there was any malpractice that afflicted the defendant, which can only be determined by the Honorary Medical Disciplinary Board of Indonesia.

There was also a sentence in the defendant’s email that was defamatory, on the third and fourth line on page 4, as follows:

> “I am tired of hearing it and am very angry with Omni Hospital for lying to me by saying that I had a fever and giving me various injections with high dosages which caused me to experience breathing difficulties. I asked the new hospital about those injections and they said that I was definitely not strong enough to be given that high dosage, and that caused the breathing difficulties”.

Whether it is true that the injections given to the defendant were a high dosage and whether or not the breathing difficulties experienced by the defendant resulted from those high dosages of various injections, and also whether it is true that the defendant was indeed not strong with that high dosage, because the testimony from the language expert was not considered in the decision, can only be decided by an expert at the Honorary Medical Disciplinary Board of Indonesia.

Prof. Satochad Kartengara, SH said: “according to the system of the Code of Criminal Procedure, there are four (4) kinds of crimes which are aim at the honour of another person and which are in pure form, that is: 1. Insult (abuse); 2. Verbal; 3. Aggravated defamation; and 4. Mild insult.

Professor Dr Wirjono Prodjodikoro in his book on page 100 wrote the following: “I feel, that if an offender defends themselves by raising the public interest defence or another defence, then almost always or perhaps always, the issue will then be about the truth or falsity of the charges laid upon the victim. In my view, according to Article 312, a judge’s research about how the truth of an accusation can only be allowed if, among other things, the judge believes the research is necessary to evaluate the offender’s defence that he/she acted in the public interest or was absolutely necessary to defend something”.

The Dutch East Indies Appeal Court Judgment, dated 22 April 1901, also contains the principle that “Only if the defamation is proved to exist will it prove the fact that the act occurred”.

Because the judging panel did not examine the truth of the defendant’s testimony nor the full contents of the defendant’s email, the Decision from the Tangerang District Court, Case No 1269/PID.B/2009/PN.TNG, dated 29 December 2009, must be quashed/repealed.

<u>The judging panel did not consider the elements of the second and third charges.</u>

Article 197(1)(h) of the Code of Criminal Procedure states:

> “A declaration of guilt by the defendant, a declaration which fulfills all the requisite elements of the particular criminal offence along with any qualifications, and the crime or act. On the contrary, if the first charge is not proven, then the panel of judges must prove any other charges”.

But in consideration of the third paragraph on page 63, the above elements were not actually proven.

To explain, we will quote from the previous judge’s deliberations which did not canvass the elements of the second or third charges:

> “Consider, that Article 310(2) of the Criminal Code and Article 311(1) of the Criminal Code is essentially the same, that is they make it a criminal offence to attack the honour of another in writing, is only in Article 310 (2) of the Criminal Code, only that in Article 310(2) of the Criminal Code includes attacking someone’s honour using pictures, and Article 311(1) of the Criminal Code gives permission to prove whether the accusation was rightly or wrongly made, whereas Article 310(2) of the Criminal Code does not contain that clause”, so the panel of judges wrongfully applied the law and not as per Article 197, paragraph (1)(h) and Article 199, paragraph (1) of the Code of Criminal Procedure.

THE FIRST INSTANCE JUDGING PANEL EXCEEDED THEIR AUTHORITY:

On page 62 of their deliberations, the panel of judges (as fact-finders) stated: "…because although this case has already made the news and has drawn public attention, an action is yet to be heard before the Honorary Medical Disciplinary Board of Indonesia, because the defendant has not filed a report", is an *ultra vires* consideration made outside of the Court's authority, because it has already been tested as to how to apply Article 66 of Law No. 29 of 2004 on Medicine Practice.

That according to Law No. 29 of 2004 on Medicine Practice, especially Article 66, there is no obligation for the Honorary Medical Disciplinary Board of Indonesia to inform the panel of judges/District Court. That there was no hearing or proceedings before the Honorary Medical Disciplinary Board does not mean there are no proceedings from the Honorary Medical Disciplinary Board regarding this case.

Arguments from the defendant:

A. THE PROSECUTION'S CHARGES ARE VAGUE, SUCH THAT THE CHARGES SHOULD BE HELD TO BE VOID AND WITHOUT LEGAL EFFECT.

The outline or formula of an indictment needs to be 'thorough, clear and complete', yet the precise meaning of these requirements cannot be found in the elucidation of Article 143 of the Code of Criminal Procedure. However, by looking to literature and opinions from several experts that have already been recognised and followed in court proceedings and Supreme Court jurisprudence, the following understandings can be deduced:

> Understanding of 'thorough': that what is meant by 'thorough' is the carefulness in the making of the indictment so that there are no shortcomings or mistakes which result in not being able to prove the charges.
>
> Understanding of 'clear': that what is meant by 'clear' is that there must be clarity in the description of the elements of the alleged offence, combined with a description of the material facts of the accused's alleged act.
>
> Understanding of 'complete': that what is meant by 'complete' is a description in the indictment letter which includes every element of the alleged offence, combined with a description of the situation and events related to the alleged act of the accused.

Regarding the understanding of 'thorough, clear and complete' above, according to the Supreme Court Case No. 492 K/Kr/1981, dated 8 January 1983 and the decision of the Banjarmasin High Court No. 1881/Pid.S/PT/Bjm, dated 20

April 1981, the main requirement of an indictment is that it has a full, clear and accurate description of the acts for which the accused is charged, consistent with the formulation of the offence carrying criminal punishment. Therefore, an indictment must undeniably contain a thorough, clear and complete description or formulation of the act performed by the accused, which can precisely and accurately fulfill each element of every offence charged against the accused.

Our legal advisors argue that the prosecution's indictment is not clear for the following reasons:

THE PUBLIC PROSECUTOR'S INDICTMENT DID NOT CLEARLY DESCRIBE THE CHAIN OF EVENTS AS REQUIRED

On page 2 of the indictment, the Public Prosecutor said that: "…However, the reaction from Dr Grace about the defendant's complaint was unprofessional, so whilst the defendant was being treated in Bintaro Tangerang International Hospital, she wrote and sent an email or electronic letter, and what is meant by an email or electronic letter is a method involving the creation, sending, storage and receiving of a letter/message by storing and sending data in a letter/message via the medium of electronic communication…".

In the prosecution's description, it was postulated that the defendant sent an electronic document by saving and sending data via the medium of electronic communication, however the prosecution in no way explained in detail what the defendant used to send that email. There is therefore a lack of thoroughness, a lack of clarity, and a lack of completeness in the public prosecutor's description, such that the indictment is vague, so it must be deemed void at law.

Also regarding the first charge and on page 2, the prosecution said: "…Furthermore, the defendant sent that email using the email address "PritaMulyasari@yahoo.com" to a group of people…etc."

For this argument, the prosecution postulated that there was an act of the defendant which "intentionally" and "without a right" distributed, transmitted or made publically accessible, electronic information or documents which are offensive and/or defamatory, as set in the first charge, but the prosecution in no way explained in detail about who the defendant actually sent the email to. The prosecution only stated: "to a group of people" without giving a complete or thorough description regarding: the names of the parties who received the defendant's email; or the email addresses of the parties who received the email from the defendant.

By not including the names or email addresses of the parties who received the email from the defendant, the public prosecutor has described the statement of facts vaguely and without the clarity required from an indictment. Because of this, the public prosecutor's indictment should be held to be void at law.

That each of the defendant's acts involved in this case were personal and only shown to a select few people, that is, it was only shown to her close friends. The defendant did not intend to defame or offend Omni International Hospital or the doctors who work there, because the defendant only revealed facts about the truth of the events she experienced as a patient at this hospital.

Furthermore, we emphasise that the defendant has a right to reveal her experiences because the defendant is a consumer at the Omni International Hospital. The right of the defendant as a consumer is regulated in Chapter 3, Article 4 of Law No. 8 of 1999 on Consumer Protection, which primarily, among other things, gives the right to a consumer to give information that is correct, clear and honest and also has a right for her opinion and complaint to be heard. The act of the defendant was aimed as a form of control or security towards the public service in the health sector for those to whom the email was sent. Based on this argument, the act of the defendant was not to "intentionally" or "without a right" to spread an email which was aimed to defame or offend another person or to damage business at Omni International Hospital, or display that email to the general public.

That Article 27(3) and Article 45(1) of Law No. 11 of 2008 about Electronic Information and Transactions cannot stand on their own because they do not contain a definition or understanding of what is meant by "which are offensive or defamatory", as required and regulated by Article 310 of the Code of Criminal Procedure.

The act of the defendant, as a criminal act as described in the indictment, clearly conflicts with the spirit of the World Press Freedom Day, declared on 3 May 2009 in Doha, Qatar. With this commemoration, the international community appeals to countries around the world to adhere to Article 19 of the Universal Declaration of Human Rights (UDHR), enacted by the United Nations on 10 December 1948, which states that:

> "Every person has a right to the freedom of opinion and expression and this right includes the freedom to have an opinion without interference and to find, receive and share information and ideas by any means, without the restriction of State borders".

This warning was to draw the international community's attention to the increasing amount of litigation for offensiveness or defamation in courts all around the world, including Indonesia and including this case.

B. THE PROSECUTION'S CHARGES CANNOT BE ACCEPTED

The Code of Criminal Procedure cannot give an explanation as to the measure or criteria of the reasons for which an indictment can be rejected. Thus, we need to look to expert opinions, namely from M Yahya Harahap ('Debates

and Application of the Code of Criminal Procedure', Jakarta: Pustaka Kartini, 1985, pp 662-663), who states that the objection for an 'indictment to be refused' is based, among other things, on the following legal reasons:

- That the prosecution's charge is inaccurate both in law and concerning the aims of the charges, because the defendant's act was not a criminal act of violence or violation of the law, such as if the defendant were to charged with theft, but what was supposedly stolen actually belonged to her, not someone else. Thus the act of the defendant was not against the law in any way.
- That the charge is inaccurate, because the charges on the defendant were already decided upon by lower courts, and already have the strength of law.
- That the charge is inaccurate, because the relevant limitation of actions has already expired.
- That the charge is inaccurate, because what the defendant was charged with is inconsistent with the crime in question.
- That the charge is inaccurate, because the charge is not a criminal act; rather it is a private problem or dispute.
- That the charge is inaccurate, because the charges on the defendant were actually for a 'complaint offence', but the person who had the right to complain never exercised that right.

After examining the indictment, Article 156(1) of the Code of Criminal Procedure and the above opinions of M Yayha Harapan, we are certain that the indictment in this case must be said to be an indictment which cannot be accepted. Our contention that the prosecution's charge cannot be accepted is explained as follows:

<u>That the prosecution's charge is inaccurate both in law and concerning the aims of the charges, because the defendant's act was not a criminal act of violence or violation of the law, such as if the defendant were to charged with theft, but what was supposedlystolen actually belonged to her, not someone else. Thus the act of the defendant was not against the law in any way.</u>

The essence of the first, second and third charges, is an alleged defamation offence committed by the defendant. An act is said to be defamatory if it concerns something committed or expressed before the general public.

Article 27(3) of Law No. 11 of 2008 states: "Any person who intentionally and unlawfully distributes and/or transmits and/or makes accessible to the public electronic information and/or electronic documents and causes offence and/or defame a person's good name/reputation".

R. Soesilo, in his book entitled "Commentary of the Criminal Code – Article by Article", on page 136, discusses the understanding of "performed in a

public place, in a place visited by the public or where the public can hear the information".

It is the right of every person to have their opinion heard on any matter, especially on something they have experienced, which is protected in Article 28E(3) of the Indonesian Constitution, which states: "Each person has the right to freedom of association, assembly and of expression".

It was the defendant's right as a patient at Omni International Hospital who was unsatisfied with the hospital services to make a complaint about her personal experiences.

The email made by the defendant is a form of story and/or complaint about what occurred during her time whilst being treated at Omni International Hospital in Tangerang, which was then told by the defendant to a limited group of people close to the defendant via a personal email. An email is a form of communication which is personal, closed and secret, and not everyone can access and/or open and/or read all the information in someone's email. This is proven with the requirement to have a password for one's email account, chosen by the owner of that account. Therefore, only the person who has a right to access, and owns the password for the relevant email addresses can access and/or know about the information sent via email. The defendant, Prita Mulyasari, in expressing her opinion and/or complaining about her experiences while being treated at Omni International Hospital in Tangerang, sent the email to email addresses of those people who are closest to her and it was not posted on and/or sent to a blog or publicly accessible website which can be seen and/or read by the general public without having password access. Thus the defendant's complaint and/or story could only be accessed by people close to her, and not the general public.

Therefore, the element of "so that the matter be publically known" is not fulfilled. Thus the defendant's act of sending the email to people in a limited group is not a criminal offence because it does not fulfill the main element of Article 310(1) of the Criminal Code, as charged by the prosecution.

To prove the first charge against the defendant, under Article 27(3) of Law No. 11 of 2008, it must first be proven what qualifies as'offensive and/or defamatory'. This is because Law No. 11 of 2008 on Electronic Information and Transactions does not clearly describe how a certain act can be said to be 'offensive and/or defamatory', such that there is legal uncertainty. Thus it must first be proved whether the relevant acts constitute the criminal offence of being 'offensive and/or defamatory'.

Offensiveness and/or defamation are both regulated under Article 310(1) of the Criminal Code. Article 310(1) of the Criminal Code states: "whoever attacks the honour or reputation of another by accusing them of something,

which is done intentionally so that it become public knowledge, shall, being guilty of libel or slander, face punishment of a maximum imprisonment of nine months or a maximum fine of Rp4,500.

Recall that the element of Article 310(1) of the Criminal Code, (that it must be committed “so that it becomes public knowledge”) was not fulfilled, as argued above, so there was no criminal act of defamation committed by the defendant.

Recall that in the Prosecution’s indictment, Article 45(1) and Article 27(3) of Law No. 11 of 2008 are not followed, because an element of Article 27(3) is that an act of offensiveness or defamation comes from Article 310(1) of the Criminal Code, so by not fulfilling the “so that it becomes public knowledge” element as argued above, the prosecution’s first charge cannot be applied against the defendant, Prita Mulyasari.

To explain further, Article 27(3) of Law No. 11 of 2008 states as follows: “Any person who intentionally and unlawfully distributes and/or transmits and/or makes accessible to the public electronic information and/or electronic documents and causes offence and/or defames a person’s good name/reputation”.

Article 311(1) of the Code of Criminal Procedure states: “the one who committed the crime of offensiveness or defamation is permitted to prove which allegations are correct or not proven, but if the defendant is unable to prove that the accusation was made in conflict withother known evidence, then she will have committed aggravated defamation, which carries a maximum imprisonment of four years”.

Article 311(1) of the Code of Criminal Procedure, which forms the third charge from the prosecution, cannot be satisfied here because the essence of Article 311(1) is that it is the offensiveness or defamation which must be proved. Because it was not proven that there was a criminal offence of offensiveness or defamation as charged against the defendant, Article 311(1) of the Code of Criminal Procedure fails.

Based on our above argument that key elements of the first charge were not proven, the second or third charges should also be rejected.

<u>That the charge is inaccurate, because it was not based on a direct complaint from the victim, recalling that it the defendant was charged with a ‘complaint offence’.</u>

The prosecution’s charge is classified as a ‘complaint offence’. This type of offence has its own chapter in the Criminal Code (Chapter VII on Making and

Retracting Complaints in Criminal Matters)and it is only chargeable upon complaint.

On this point, we must look to external expert opinions, namely from M Yahya Harahap, SH (‘Debates and Application of the Code of Criminal Procedure’ (Investigation and Prosecution), Jakarta: Sinar Grafika, 1985, pp 118-119) which states that the law distinguishes two types of complainants:

a) **One who is given the “right” to report or complain:** A person who has experienced, seen, witnessed or is a victim to, a crime, “has the right” to submit a complaint to an investigator. That right to submit a complaint is not granted to one who merely “hears” (hearsay). According to M Yahya Harahap, it is realistic and rational to not include ‘hearing’ an incident as sufficient to have the right to make a complaint, because it is very difficult to guarantee the accuracy and objectivity of hearing something, because it could be fake news or lies or contrary to what actually occurred.
b) **One who has a legal “obligation” to report or complain:** This group is the opposite of group (a), because here some people have a legal “obligation” to make a report or complaint. That is, people who know of a plot to commit a criminal act against the public peace or people’s property rights, or any civil servant who knows of any criminal act occurring whilst performing their duties.

M Yahya Harahap thinks that the nature of a report or a complaint is the “informing” by someone to an official with the authority to deal with criminal matters. The difference is that because of the characteristics of a ‘complaint offence’, the person who informs such an official must be a “particular” person as outlined above according to the Criminal Code provision. Therefore, for a complaint, the informing can only come from a victim of a crime, and only then can the authority conduct an investigation and charge the alleged offender.

> That Article 72(1) of the Criminal Code states: “If the person harmed by a crime chargeable only upon complaint is under sixteen years of age or is not of capacity or is unable to make the complaint for some extreme circumstances, then a legal representative is able to make the complaint on the victim’s behalf in civil proceedings”.

This is all gathered from an examination of an investigation report(Case No. BP/5511/2009/ Directorate of the Public Criminal Investigation Bureau, dated 22 January 2009)regarding the defendant Prita Mulyasari, as filed by an investigator to investigate the allegations of defamation committed by the defendant based on Police Report No. LP/2260/K/IX/2008/SPK Unit 1, dated 5 September 2008, which in turn was based on a report conducted by Renold

parentino Panjaitan, SH – the attorney for Dr Hengky Gosal, Sp.PD and Dr Grace Hilza Yarlen Neta.

Therefore if we rely on the expert opinion of M Yahya Hrahap and look to Article 72(1) of the Criminal Code and we construe this type of ‘complaint offence’, then we find that a ‘complaint offence’ can only be processed if the complaint comes directly from the victim, unless: the victim is sixteen years of age or younger and/or is not of capacity; and/or the victim is under guardianship.

In the prosecution’s charge, the victims of the criminal offence of defamation allegedly committed by the defendant, Prita Mulyasari,are Dr Hengky Gosal, Sp.PD and Dr Grace Hilza Yarlen Nela, so they should have been the ones who made the complaint to the Indonesian Police. However, the complaint was in fact made by Mr. Renold Parentino Panjaitan, SH who is an attorney, and not the victim.

Therefore, the police report that became the basis for the investigation by the Indonesian Police was not legal because it was based on a report from the victim’s attorney, Mr. Renold Parentino Panjaitan, SH. Because of this, the entire investigation and charging of the defendant were not run according to the law. Therefore, the prosecution’s charges cannot rightly be accepted.

<u>That the charge is inaccurate because nothing has been done outside of the law regarding the defendant’s email, which was only intended to be a cautionary note to the health sector in the Public service.</u>

The act of the defendant in writing the email and sending it to her friends and relatives was only one way of expressing her disappointment towards the poor service provided while the defendant was being treated at Omni International Hospital. The email essentially outlined the chain of events which she personally experienced since she first arrived at Omni International Hospital until she decided to relocate to another hospital because of the poor treatment. As a consumer, the defendant has a right to get the best treatment, and the hospital as a provider of a public service, has a duty to give the best possible service to each consumer, so when that service is not received, and here the defendant felt that the service was very poor, then it is fair that the defendant feel deep disappointment towards Omni International Hospital.

It is health services that are being complained of here, and the health of a person is something which is of utmost importance, so if a provider of such health services is seen to not seriously handle its patients, then they should have the right to criticise and make a complaint. As an organisation, a hospital that provides health services has a responsibility to serve each patient as best as possible, and similarly, each patient has a right to get the best possible treatment. The hope of every person seeking health services is to get healthier,

or of they are sick, to recover. When the defendant came to Omni International Hospital complaining of a fever and having a headache, and after being treated for several days, given the drip, medicines and injections, she was not cured and instead her condition worsened, experiencing swelling all over her body, forcing her to relocate to another hospital. The complaints the defendant made to the management of Omni Hospital were handled unsatisfactorily, increasing her disappointment in the Omni International Hospital's services.

As a result of this disappointment, the defendant wrote the email describing what happened and her disappointment at the poor services of Omni International Hospital. The email was made to criticise Omni International Hospital, as a cautionary note to the health sector in the public service, so that Omni could improve and increase the quality of their services. The act of cautioning the public service can take many known forms, such as contacting a call centre, and many other media outlets that cater for complaints and community input regarding public services. Through these cautionary measures, society can express their dissatisfaction or even their satisfaction, towards particular services, with the aim to reprimand and gain wide attention amongst society, and of course to warn the service provider themselves, with the aim that they will improve their weaknesses and provide higher quality services. When these cautionary measures are used like a boomerang to criminalise consumers such as what happened to the defendant, then where else is the public meant to submit their complaints and how are they to caution the public service? Based on this argument, it can be seen that the defendant only used her right to convey her opinion and/or complain about the services received and in no way did she break the law. Because of that, the prosecution's charge must be said to be unacceptable.

<u>That the charge is inaccurate because the defendant only acted to express her opinion and the requisite mental element of intention to commit a crime is absent.</u>

The act of the defendant is not criminal because there is no element of intention. The defendant only aimed to express her disappointment regarding the poor service received while she was being treated at Omni International Hospital. The crux of her email was just her opinion, where as a consumer she has a right to have an opinion about the treatment she received. On this matter, the defendant was deeply dissatisfied with the services provided by Omni International Hospital, which she expressed in an email to her friends and relatives.

As an organisation that provides a public service, Omni International Hospital must open their doors for patients to express their dissatisfaction with the hospital. This is important because Omni International Hospital is an organisation that offers a public service, and criticism from society is useful to spur improvements within the hospital and provide better services. Beside this,

expressing one's opinion, whether it is a complaint or a compliment, is a right of every person protected by legislation.

> Article 1(d) of Law No. 8 of 1999 on Consumer Protection is as follows: "there is a right for opinions and complaints about goods and/or services to be heard".

The defendant already made a complaint to the management of Omni International Hospital, but she was not satisfied with the response so she wrote the email and sent it to friends and relatives to express her opinion and complaints about the poor services she experienced at the hospital, and everything written in the email was a recount of her personal experiences. Every statement by the defendant in the email was based on her opinion towards her treatment at Omni International Hospital about what she experienced and personally felt and she never intended to attack the honour or reputation as alleged by the prosecution in the charges.

If the defendant's act of expressing her opinion and complaining about the poor services from Omni International Hospital is taken as an act which intentionally attacked the honour and reputation of another, then what about the dozens of 'letters to the editor' which are published in daily newspapers throughout Indonesia? Hundreds or even thousands of 'letters to the editor' contain complaints that have a critical tone like the defendant's email, so why should the defendant be criminalised?

C. NEGLIGENT APPLICATION OF THE LAW:

i) Application of Article 45(1) and Article 27(3) of Law No 11 of 2008 in the previous court was inaccurate, such that the indictment should be held to be void at law:

That the prosecution, in indictment Registered Case No. Pdm-432/TNG/05/2009, stated the following in paragraph 1: "that the defendant, Prita Mulyasari, on 15 August 2008 or at some other time during the month of August 2008, whilst located within the Bintaro Tangerang International Hospital or at least at a location within the jurisdiction of the Tangerang District Court, violated Article 27 (3), which makes it an offence to intentionally and unlawfully distribute and/or transmit and/or make accessible to the public electronic information and/or electronic documents which are offensive and/or defamatory, namely towards Dr Hengky Gosal, Sp.PD and Dr Grace H. Yarlen Nela…etc.".

Then, for the first charge, the prosecution said in paragraph 2: "The defendant's act is regulated and punishable under Article 45(1) and Article 27(3) of Law No. 11 of 2008. That the basis of the prosecution charging the defendant under Article 45(1) and Article 27(3) of Law No. 11 of 2008 is because the email

was a complaint by the defendant against the services of Omni International Alam Sutera Tangerang Hospital. If we look to the essence of that email, it is very clear that the defendant recounted what she experienced, beginning form her illness felt on 7 August 2008, at which time she was treated at Omni International Hospital until 12 August 2008 and the handling of her condition by Omni International Hospital, which was very disappointing and unprofessional, and should be categorized as malpractice. That handling included:

- The defendant was infused and given an injection without explanation of what it was for or without requesting permission from the patient or the patient's family;
- Dr Hengky informed the defendant that the lab results were not 27,000 as first measured, but were actually 181,000;
- The defendant's left hand began to swell up;
- The defendant was infused and given 2 ampoules/vials which lead to her suffering breathing difficulties for 15 minutes, so had to be given extra oxygen;
- The defendant's right hand also became swollen, like the left hand;
- The defendant's condition worsened with swelling to the left side of her neck and her left eye;
- Dr Hengky did not give a satisfactory explanation, but instead instructed the nurse to continue giving more medicine and required that no more infusions be administered;
- The next day, the defendant's condition had worsened again with the left side of her neck also swelling up and her body temperature increasing to 39 degrees;
- In the medical notes, there was information that the defendant's BAB (treatment) was smooth, however the defendant had actually experienced difficulties ever since she began treatment at the hospital;
- That the lab results stating the 27,000 count were not printed, and what was actually printed was just the final 181,000 count;
- The defendant filed a written complaint to the Omni management, which was received by Ogi (customer service coordinator) and the defendant requested a receipt. The receipt only noted that it was a 'recommendation' which was delivered, not a 'complaint';
- That even with a thrombocyte count of 181,000, the defendant still did not need to stay in hospital overnight;
- After that, the defendant relocated to another hospital, and was initially treated in an isolation room because the virus had spread;
- The defendant was very angry with Omni Hospital for wrongfully diagnosing scarlet fever and giving various injections with high dosages which caused her breathing difficulties;

Article 27(3) of Law No. 11 of 2008 on Electronic Information and Transactions (ITE) states "Any person who intentionally and unlawfully distributes and/or transmits and/or makes accessible to the public electronic information

and/or electronic documents which are offensive and/or defamatory". Violation of this provision can be punishable by a maximum imprisonment of 6 years or maximum fine of Rp1 billion. Elements of this provision that must be considered carefully are the words "intentionally", "without a right (unlawfully)", "to distribute" and "make accessible".

Intention is the essence of the offence of mistake, for the doctrine of mistake consist of two types: intentional and negligent. The legislation does not give clear information on the full meaning of 'intention'. In the MvT dictionary, there is some explanation of *opzettelijk* ('intentionally'). In its literal meaning, 'intentionally or deliberately' is to desire and to know of one's aim in doing something intentionally, meaning that they wish to realise an action which they are cognisant of, they understand the value of the action and are aware of the results which will follow that act. When related to the formulation as appears in Article 27(3) of Law No. 11 of 2008, 'intention' can be said to be when there is a will to perform a certain act or knowledge of a certain act, or when particular objects which are desired, knowledgeable of, or aware of, result from the act. Based on information from the above dictionary excerpt, every aspect of 'intention' in the formulation of a particular criminal offence is found by looking to aspects of intent within every element of the offence. So according to Article 27(3) of Law No. 11 of 2008, the following must be proved to show the defendant's 'intention':

- without a right;
- distributing and/or transmitting and/or making accessible;
- electronic information and/or electronic documents;
- which are offensive and/or defamatory.

The defendant's intention as per Article 27(3) of Law No. 11 of 2008 means:

> The defendant knows, and is aware, that the act of distributing and/or transmitting and/or making accessible electronic information and/or electronic documents is an act done "without a right", that such an act conflicts with legal obligations or conflicts with the rights of others, as argued in the prosecution's first charge. Considered with regards to the defendant's email (prita.mulyasari@yahoo.com), which complains about the services provided by Omni International Hospital to the defendants friends, it cannot be said be said to be an act done "without a right". This is because it is every Indonesian citizen has the Human Right to communicate and express an opinion, for example with the function of improving the services provided by Omni International Hospital to the rest of society. Besides that, as a consumer who used the services of Omni International Hospital, the defendant is protected by Article 4 of Law No. 8 of 2009 on Consumer Protection. Also, patient's rights are regulated under Article 52 of Law No. 29 of 2004 on Medical Practice.

With this knowledge, in relation to the first charge, the email sent by the defendant to a limit circle of people cannot be categorised as an act to distribute

and/or transmit and/or make accessible electronic information and/or an electronic document, because the email sent is essentially of a personal nature and cannot be accessed by the public.

The defendant knows and is aware of the potential for distributed electronic information and/or electronic documentsto contain offensive and/or defamatory aspects. Seen from a Human Rights perspective, the email was a complaint sent by a citizen just expressing her opinion. It was also a consumer complaint to the Omni International Hospital as producer of services, under the Consumer Protection Law. Furthermore, it was a patient's complaint for the violation of rights regulated under the Medical Practice Law. Therefore, the complaints expressed in the email are not offensive or defamatory because the information in the email has a control function that can just be denied or refuted by Omni International Hospital.

That the main elements of the provision relied upon in the indictment for Registered Case No. PDM-432/TNG/05/2009, dated 20 May 2009, as explained above are supported by an inspection of the facts found in the Police Investigation Report (PIR). Yet as we studied it carefully, there are actually no facts or documents in the PIR that should have been included in the PIR.

It seems correct that the aim of the prosecution in charging the defendant under Article 27(3) of the Law on Electronic Information and Transactions was a means to the end of arresting her. That it cannot be justified to include a certain regulation for a criminal act, for the sole purpose of detaining a person or placing them under arrest. Yet this is what the Tangerang Public Prosecution Department has done. Because of this, the strong reaction from the Indonesian people to this case is not misplaced, for they know of the Prosecution's intentions.

That based on the above explanation, it is known that the Prosecution has committed a large error by using Article 45(1) and Article 27(3) of Law No. 11 of 2008 on Electronic Information and Transactions. As a result, the Prosecution's indictment should rightfully be said to be void at law.

ii) Application of Article 45(1) and Article 27(3) of Law No 11 of 2008 in the First Charge was inaccurate because they cannot stand on their own:

In the first charge, on the second paragraph of page two, it is argued: "the defendant's act is regulated and punishable under Article 45(1) and Article 27(3) of Law No. 11 of 2008". To recognise that Articles 45(1) and 27(3) cannot stand alone but need an explanation as to the meaning of 'offensiveness and/or defamation', Article 310(1) of the Criminal Code or Government Regulations are also canvassed. These regulations state the following:

Article 45(1): Any person who falls under the requirement of Article 27, paragraphs 1, 2, 3 or 4, commits a crime punishable by a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000 (one billion Rupiah).
Article 27(3): Any person who intentionally and unlawfully distributes and/or transmits and/or makes accessible to the public electronic information and/or electronic documents, which are offensive and/or defamatory (and damaging to one's good name/reputation).
Article 310(1): Any person who intentionally attacks the honour or reputation of another by accusing them of something, which clearly intends for that thing to become public knowledge, commits a crime punishable by a maximum imprisonment of nine months or a maximum fine of Rp. 4,500 (four thousand, five hundred Rupiah).

That the fourth line in the first paragraph of the First Charge states: "…which satisfy the elements of Article 27 (3) of Law No. 11 of 2008, that is, to intentionally and unlawfully distribute and/or transmit and/or make accessible to the public electronic information and/or electronic documents which are offensive and/or defamatory, namely of Dr Hengky Gosal, Sp.PD and Dr Grace H. Yarlen Nela…etc.".

That besides taking notice of Article 54(2) of Law No. 11 of 2008, we can also see a connection between Article 27(3) and Article 310(1) of the Criminal Code, where Article 310(1) explains the meaning of 'offensiveness or defamation', but in the First Charge, the prosecution failed to explain that connection, so we cannot be forced to combine those articles.

That Article 27(3) of Law No. 11 of 2008 is capable of multiple interpretations, so further explanation is required in a Government Regulation, which was last set for drafting in 2010.

Based on this analysis, it is known that the Prosecution was not able to explain the meaning of the elements of "being offensive and/or defamatory" within Article 27(3) of Law No. 11 of 2008, such that it should be rightfully said to be void at law.

iii) Dr Hengky and Dr Grace do not have a right to make a complaint about the offensiveness. Because of this, the State in the form of the Public Prosecution, does not have a right to prosecute the defendant:

That following the Prosecution's line of thinking, we should look to the writing in the defendant's email:"The Fraud of Omni International Alam Sutera Tangerang Hospital". From that email title, it is clear that the accusations were towards the corporation of Omni International Hospital, not towards Dr Hengky

and Dr Grace personally. At the same time, according to the Criminal Law system, we especially need to look to general offensiveness in Chapter XVI of the Criminal Code, which does not include kinds of offensive conduct towards corporations. So it cannot be justified that Dr Hengky and Gr Grace were offended by the title of that email. Although the contents of the email personally involve Dr Hengky and Dr Grace, there is no concrete accusation within the writing in the email title itself. If both doctors feel personally offended by the complaint written by the defendant which tells others to beware of Dr Hengky, then this kind of warning was not 'offensive', but it was a complaint by the defendant as an ex-patient at Omni International Hospital and a complaint from a consumer who felt that she received inadequate services.

That if it is true that the phrase in the title accused the Hospital of fraud, then it is indeed strange that the aggrieved party who brought the action was Dr Hengky Gosal, Sp.PD and Dr Grace. Such an action can only be brought by one who has a right to do so, and not a corporation, so Dr Hengky and Dr Grace actually do not have a right to bring a claim, such as Police Report No Pol: LP/2260/K/IX/200S/SPK Unit 1, which was the basis for the action against the defendant. That report was submitted by Renold Parentino Panjaitan, SH, as the attorney for Dr Hengky Gosal, Sp.PD and Dr Grace Hilza Yarlen Nela. Therefore, the claim by the two doctors cannot be accepted. Because the claimant had no right to bring an action, we argue that the State and Prosecution indeed also had no authority to prosecute the defendant.

iv) The Prosecution's charges cannot be directed at the defendant alone:

That based on the email not being inaccessible by anyone other than those to whom it is addressed, it could not be read by other parties, such as Omni International Hospital or Dr Hengky or Dr Grace. If there was another party who received or read the email, then it was certainly the result of the action of another.

That that other person was actually the one who performed the act of spreading the email, so that other person was actually the sole offender. And if the defendant is to be implicated, then the act of the defendant cannot be the one who spread the email, and thus the defendant is not the instigating offender. If there was knowledge (intention) that another person would spread the email, then the defendant would only an accomplice in the matter.

As a result, the prosecution's indictment should have involved other defendants as per Article 55 and Article 56 of the Criminal Code.

That the prosecution has not created an indictment which properly allocates the subject of the charges. The kind of charges laid cannot be justified, and must be said to be void at law and nullified, or at least said to be unacceptable.

Response from the Supreme Court:

CONSIDER, THAT REGARDING THESE ARGUMENTS, THE SUPREME COURT INFERS AS FOLLOWS:

On the Prosecution's cassation arguments:

The Prosecution's cassation arguments can be justified becausethey can actually prove that the defendant's acquittal was just an 'impure discharge' (where by the defendant is released without a court making a decision on the merits of the case), as inferred from the following considerations:

> That the defendant's email was actually not a criticism made for the public interest so that society could be spared from similar hospital practices and/or doctors who give poor services. Rather the email was uncalled for or unnecessary,such that it was offensive and defamatory. The opposite question should be asked to society as to who else has also been harmed by the practices of Dr Hengky Gosal, Sp.PD;
>
> That the defendant was not defending the public interest because the email was directed at Dr Hengky Gosal, Sp.PD. Therefore, the defendant's *lip service* was only to try and free herself from the criminal sanctions of Law No. 29 of 2004 on Medical Practice, which regulates that any person whose interests are harmed by the actions of a doctor or dentist whilst running their medical practice can make a written complaint to the Honorary Medical Disciplinary Board of Indonesia, not via an email;
>
> That at the time of the incident, the defendant was pregnant and very worried, and as a lay person she did not know the specifics of the law so she vented her resentment in an email, not via the correct procedure, which would have been to report it to the Honorary Medical Disciplinary Board of Indonesia, so the Board could have eased the punishment upon the defendant;
>
> That based on these considerations, the defendant has proven to have the requisite intention for this crime, even though the full consequences of her actions were notconsidered before committing the act (*dolus eventualis/opzet bij mogelijkheid* – 'the ability to design one's consciousness'*)*. Thus the defendant is proven to have committed the criminal offence of the First Charge laid by the prosecution, so the defendant must be sentenced.

On the defendant's cassation arguments:

The defendant's cassation argument cannot be justified because the defendant's act has already formed the principle case, and Article 156(1) of the Code of Criminal Procedure is not relevant here, for those objections were dealt with and refused by the fact-finders in the (Banten) High Court;

DISSENTING OPINION:

Consider, that during the deliberations among the Supreme Court panel of judges, there was a dissenting opinion from Dr SALMAN LUTHAN, SH.MH, one of the judges who examined and decided in this case. He held the following view:

On the Prosecution's argument:

The Prosecution's argument cannot be upheld, and the previous court judges correctly applied the law when they decided that the defendant was not proven to have committed the alleged crime. Because of that,and based on a correct application of the law, the defendant was acquitted of all charges;

To say that a certain statement is offensive or defamatory, it must be viewed in the context of the events surrounding the incident, looking to what the aims of that statement were, not looking solely to the contents of the statement made. The defendant's statement on the email that she sent to several people about the services of Omni International Hospital and the services of Dr Hengky Gosal, Sp.PD and Dr Grace Hilza Yarlen Nela who harmed her interests, viewed in context cannot be qualified as offensive or defamatory in nature, rather the defendant criticises the Omni International Hospital services, Dr Hengky Gosal, Sp.PD and Dr Grace Hilza Yarlen Nela;

Looking to the defendant's aim, the statements directed at the Omni International Hospital, Dr Hengky and Dr Grace, cannot qualify as offensive or defamatory because their aim is to warn society so that they do not experience similarly poor health services. The rest of the prosecution's cassation arguments, like the defendant's cassation arguments, evaluate the proof elements relating to the statement, however, these aspects cannot be considered at the cassation level of proceedings because cassation investigations can only pertain to wrongful applications of the law, violations of valid law, any negligent application of compulsory legislation requirementswhere such negligence will lead to a nullification of the earlier decision, or if the court had no authority or exceeded their authority as outlined in Article 30 of Law No. 14 of 1985 as amended by Law No. 5 of 2004 and the second amendment of Law No. 3 of 2009.;

As a result, the second member of the judging panel, Dr Salman Luthan, SH.MH, suggests: to refuse the cassation applications from both the prosecution and the defendant.

Summary and Sentencing:

Consider, that because of the dissenting opinion amongst the judges, who have seriously assessed this case yet have not reached a unanimous opinion, and according to Article 30(3) of Law No. 14 of 1985 as already amended by Law No. 5 of 2004 and amended again by Law No. 3 of 2009, yet after reasoning and taking a majority vote, the Supreme Court upholds the cassation application from the prosecution, and rejects the defendant's cassation application.

Consider, that prior to sentencing, the Supreme Court will weigh up the aggravating and mitigating factors in relation to the defendant:

Aggravating Factors:

- The defendant's act was defamatory towards the victim, it was widely distributed, and it cannot ever be undone;
- There has been no out of court settlement between the defendant and the victims, Dr Hengky and Dr Grace.

Mitigating Factors:

- The defendant behaved politely in court;
- The defendant has no previous criminal record;
- The defendant has a child who is still a toddler;
- As a layperson, the defendant did not understand the full consequences of her actions.

Consider, that based on the above reasons, the Supreme Court holds that the decision from Tangerang District Court (Case No. 1269/PID.B/2009/PN. TNG), dated 29 December 2009, cannot be upheld. Therefore, that case is repealed, and the Supreme Court will decide the case for itself, as written below.

Consider, that because the cassation application of the prosecution is upheld and the defendant is guilty and is being sentenced, the court costs for each level of court proceedings in this case are to be borne by the defendant;

The relevant legislation for this case include Article 45(1) and Article 27(3) of Law No. 11 of 2008, Law No. 8 of 1981 (Code of Criminal Procedure), Law No. 48 of 1985 as amended by Law No. 5 of 2004 and amended further by Law No. 3 of 2009, as well as other relevant laws.

DECIDING:

The Court upholds and accepts the cassation application of the Prosecution from the Tangerang Prosecutor's Office.

The Court overrules the decision from Tangerang District Court, Case No 1269/PID.B/2009/PN.TNG, dated 29 December 2009.

INDEPENDENT RULING OF THE SUPREME COURT:

The Supreme Court:

States that the defendant, PRITA MULYASARI is proven guilty of validly and convincingly committing the crime of "INTENTIONALLY AND UNLAWFULLY DISTRIBUTING AND/OR TRANSMITTING AND/OR MAKING ACCESSIBLE TO THE PUBLIC ELECTRONIC INFORMATION AND/OR ELECTRONIC DOCUMENTS WHICH ARE OFFENSIVE AND/OR DEFAMATORY (DAMAGE ONE'S GOOD NAME/REPUTATION)".

Sentences the defendant, PRITA MULYASARI to 6 (six) months imprisonment;
Stipulates that the above sentence does not need to be carried out or enforced unless the defendant commits a punishable crime within 1 (one) year.

Orders that the following pieces of evidence remain in the case file:

- 1 (one) print out copy of the website/email which was sent by PRITA MULYASARI on 15 August 2008, having the subject of "The Fraud of Omni International Alam Sutera Tangerang Hospital";
- 1 (one) copy of the email entitled "Good Morning…HOPEFULLY THIS DOES NOT HAPPEN AT RSIB (Bintaro International Hospital)!!! Best wishes for your work…Kind Regards, June", dated the 22 August 2008.

Rejects the claim from the following cassation applicant:The defendant, PRITA MULYASARI.

Imposes upon the defendant to pay the court costs for all levels of proceedings for this cassation, which comes to Rp 2,500 (two thousand five hundred Rupiah).

The court thus decides from deliberations on Thursday, 30 June 2011, by Supreme Court Judges **R. IMAM HARJADI, SH.MH,** -**H.M ZAHARRUDIN UTAMA, SH.MM.** (the appointed chair of the panel of judges)and **DR SALIMAN LUTHAN, SH.MH**. The supreme court judges announce in

open court on this day, led by the head of the judging panel with the other aforementioned judges in attendance, and assisted by TETY SITI ROCHMAT SETYAWATI, SH., the deputy Registrar, yet with the following applicants not in attendance: the Prosecutor and defendant.

Members of the Judiciary:

- H.M. ZAHARUDDIN UTAMA, SH.MM (Chairperson Judge)
- R. IMAM HARJADI, SH.MH.;
- DR. SALMAN LUTHAN, SH.MH.

Deputy Registrar (Transcriber)

TETY SITI ROCHMAT SETYAWATI, SH.

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