

Judgment

Defendant Yayat Sudrajat

**Indonesian Ad Hoc Tribunal
Judgment of Yayat Sudrajat**

VERDICT

No. 11/PID.B/HAM.AD HOC/2002/PN.JKT.PST.

"For Just Under the One True God"

The Ad Hoc Human Rights Court at the Central Jakarta State Court who assessed and held the trial for the criminal case on Human Rights Violation of the first degree in acara Pemeriksaan Biasa (ordinary procedure), gave a Judgment as follows, in the case of the Defendant:

Name : Letkol Inf. YAYAT SUDRAJAT

Place of birth : Cimahi, West Java

Age/date of birth : 43 years old/June 15, 1959

Sex : Male

Nationality : Indonesian

Religion : Islam

Address : Jl. R.A. Fadillah I No. F-12, Komplek Kopassus,

Cijantung III, East Jakarta

Occupation : TNI-AD/Kopassus/Colonel Inf./Ex Dansatgas Tribuana VIII

Education : AKABRI class 1982

The Defendant was not detained.

The Defendant was accompanied by TNI's Advocating Team: Kolonel CHK A.B. Setiawan, S.H., Lekol CHK Hurhajizah M., S.H., Mayor Laut Adnan Madjid, Mayor CHK Subagyo Santosa, S.H., Kapten CHK Zulkarnaen Effendi S.H., Joao Meco, S.H., Yan Juanda Saputra, S.H., Amir Karyatin, S.H., and Agus Takabobir, S.H.

The Ad Hoc Human Rights Court:

Upon reading the trial dossier;

Upon reading the Decree of the Head of the State/Human Rights Court of Central Java No. 11/Pid.HAM/Ad.Hoc/2002PN.JKT.PST. dated July 2, 2002 on the appointment of the Panel of Judges who assessed and held the trial for this case;

Upon reading the Appointment of the Ad Hoc Chair Judge No.

08/Pid.HAM/Ad.Hoc/2002/PN.JKT.PST dated July 3, 2002 on the date of the trial;

Upon hearing and observing the memorandum of indictment from the Ad Hoc General Prosecutor, Case Registration Number: 12/HAM/Timtim/07/2002 dated July 1, 2002;

Upon hearing and observing the Preliminary Ruling of the Ad Hoc Human Rights Court on the objections and the exceptions from the Defendant's Legal Defense Team;

Upon hearing and observing the legal requisition from the Ad Hoc General Prosecutor presented in the trial that in essence recommended the Ad Hoc Panel of Judges who asses and hold the trial of this case to deliver a verdict that:

I. states that the Defendant Kolonel Inf. Yayat Sudrajat is legally and beyond reasonable doubt guilty of the crime of gross violation of Human Rights as stated in article 42 verse 1 letters a, b, jis, article 7 letter b, article 9 letter a, article 37 Law No. 26 year 2000 and article 42 verse 1 letters a, b, jis, article 7 letter b, article 9 letter h, article 40 Law No. 26 year 2000, as stated in the First and Second Primary indictment of the General Prosecutor's memorandum of indictment;

II. sentences the Defendant to 10 years imprisonment;

III. states that the items of evidence:

A. Documents:

a. A copy of TR. Pangab No. TR/50/1999 dated January 21, 1999 on the Plan of Departure of Satgas (Task Force) Tribuana VII, VIII, DENSHANDA V, VI personnel to conflict areas of Irian Jaya and East Timor by Navy ships.

b. A copy of SEKP Danjen Kopassus No. Skep/92/XII year 1998 dated December 8, 1998 on the establishment of the Taskforce Tribuana VIII and its assignment to the new region namely East Timor.

c. A copy of SPRIN Danjen Kopassus No. Sprin.25/35/I/1999 and No. Sprin/37/I/1999 dated January 27, 1999 on the departure of the Taskforce Tribuana VIII to the conflict (or: dangerous) area of East Timor

d. A copy of SPRIN Danrem 164/WS No. Sprin/27/II/1999 dated February 11, 1999 on the Assignment of the Taskforce Tribuana in the conflict area of East Timor.

e. A copy of Special Report No. R/184/Lapsus/IV/1999 dated April 7, 1999 on the clashes and riots between the pro-integration and pro-independence community groups in Liquisa Regency.

B. Explosives:

1. Two units of hand grenades made in Korea under the trademark Grenade Hand Frag Delay K 5 Comp. B Lot. E.C. 82 H 6001-001, EC. 85 M 605-03.

to be returned to the General Attorney of the Republic of Indonesia to be presented as evidence in other trials.

IV. sentences the Defendant to pay the case cost in the amount of Rp. 5,000.00 (five thousand rupiahs).

Upon hearing and observing the Defendant's legal defense presented in the trial by himself and through his legal attorneys which in essence urged the Honorable Ad Hoc Human Rights Panel of Judge to deliver a verdict that:

1. States that the Defendant Kolonel Inf. Yayat Sudrajat is not proven to be guilty by law and beyond reasonable doubt of committing the crimes indicted by the Ad Hoc General Prosecutor

2. Therefore states that the defendant is released from the Defendant of all charges indicted by the Ad Hoc General Prosecutor

3. Restores the Defendant's position and dignity as he possessed prior to this case;

4. Places the burden of case cost to the state

Upon hearing the replik (reply to the defense closing brief) of the General Prosecutor and the duplik (reply to the replik) of the Defendant's Legal Defense Team addressed subsequently to the court;

Taking into account that the Defendant was brought to court by the General Prosecutor under the following indictments:

PRIMARY:

First:

- That the defendant YAYAT SUDRAJAT as the Commander of the Intelligence Task Force Tribuana VIII (by TR.PANGAB No. TR/50/1999 dated January 21, 1999 and SKEP DANJEN KOPASSUS No. SKEP/92/XII/1998 dated December 18, 1998), on April 3, 4, 5,

and 6, 1999 or at any other time in the month of April 1999, at the Church Complex of Liquisa East Timor or at least at other areas within Liquica Regency in East Timor or at other areas where the Ad Hoc Human Rights Court at the State Court of Central Jakarta has the jurisdiction to try and deliver a judgment, based on the Republic of Indonesia Presidential Decree No. 96 year 2001 on the Amendment of the Decree of the Republic of Indonesia Presidential Decree No. 53 year 2001 on the establishment of the Ad Hoc Human Rights Court at the State Court of Central Jakarta, can be held accountable for the crimes within the jurisdiction of the Court on Human Rights, which were committed by the troop under his effective command and control whereupon the crime is a result of his lack of control over his troop, whilst as the Commander of the Intelligence Task Force Tribuana VIII, which was placed under the control of DANREM 164/Wira Dharma as the DANREM's (Tono Suratman's) Special Staff, the Defendant main responsibilities were:

- a. Monitoring and finding information on the situation of the territory of East Timor, related to the geographic, demographic, and social conditions of East Timor in order to assist the tasks of KOREM 164/Wira Dharma
- b. Assisting the efficient execution of KODIM's duties by conducting territorial operations.
- c. Helping to create conducive situation for a peaceful Reconciliation between the two parties in conflict in East Timor by ensuring the success of the referendum.

These responsibilities were to be conducted by gathering all information received by the Intelligence Task Force Tribuana VIII placed at various KODIMs, analyzing them, and then reporting them to the DANREM; also by performing technical supervision on DANREM's activities by coordinating with the commanders of the KODIM.

- In carrying out his duties, the Defendant YAYAT SUDRAJAT assigned and designated the personnel of Intelligence Task Force Tribuana VIII to the KODIMs in East Timor, amongst others as the following:

a. Dili

- KOSATGAS Intelligence Tribuana VIII : 27 personnel
- Representative at Taibesi (logistic guards) : 4 personnel
- BKO KODIM Dili : 10 personnel
- Kodensandha : 13 personnel

b. KODIM Los Palos : 6 personnel

c. KODIM Baucau : 10 personnel

d. KODIM Viqueque : 6 personnel

e. KODIM Manatuto : 3 personnel

f. KODIM Same : 6 personnel

g. KODIM Ainaro : 7 personnel

h. KODIM Ermera : 8 personnel

i. KODIM Liquisa : 4 personnel

j. KODIM Maliana : 12 personnel

- The Defendant YAYAT SUDRAJAT as a Military Command (Commander of the Intelligence Task Force Tribuana VIII) knew or under the current circumstances should have known that the troop were committing or just committed a gross violation of Human Rights which was as a crime against humanity was an act committed as a part of a widespread and systematic attack, which he knew to be directed upon civilians in the form of killings, whilst the Defendant did not take the necessary and reasonable measures within his or her power to prevent or repress its commission, hence there occurred an attack against the civilians who were pro-independence mass who took refuge in the complex of the Church of Liquisa, causing 22 dead victims, namely:

1. JACINTO DA COSTA PEREIRA
2. AGUSTINHO

3. JOANICO
4. ABRAO DOS SANTOS
5. AGUSTO MAUZINHO
6. AMEKO DOS SANTOS
7. NARSIZIO
8. HERMINO DOS SANTOS
9. FERNANDO DOS SANTOS
10. LAURINDO PEREIRA
11. MARIKI DOS SANTOS
12. MANUEL LISBOA
13. VITOR DA COSTA
14. ALBERTO OLIVEIRA
15. AMANDIO CESAR DOS SANTOS
16. CESAR DOS SANTOS
17. AGUSTINHO DOS SANTOS
18. LAURINDA DOS SANTOS
19. SANTIAGO
20. JOHNNY a.k.a. MAU SOKO
21. Unidentified, buried at Maubara
22. Unidentified, buried at Maubara

- Neither did the Defendant YAYAT SUDRAJAT submit the matter to the competent authorities for inquiry, investigation, and prosecution, these actions were committed by the Defendant in the following ways:

- That the defendant under Letter of Command from DANREM 164/WD No.

SPRIN/29/II/1999 on February 11, 1999 as the Commander of the Intelligence Task Force Tribuana VIII was BKO-ed (placed under the operational control) of DANREM 164/Wira Dharma with a total of 116 personnel.

- On April 3, 1999, the pro-independence group had threatened to murder the pro-integration group in the village of Dato, Liquisa regency and the community security and order situation and condition was growing to be more volatile.

- On April 4, 1999 the pro-independence group led by JACINTO DA COSTA PEREIRA burned down the houses of the pro-integration mass because the Besi Merah Putih (BMP) mass from Pukelara and Maubara had burned down the house of one FELIS BERTO DOS SANTOS and killed his son, ELIDIO, who was a part of the troop of the pro-independence group.

- On April 5, 1999 a mass of approximately 2,000 people from the pro-independence group took refuge in the residence of Pastor RAFAEL DOS SANTOS at the complex of the Church of Liquisa based on the information from Pastor HENRI of Maubara stating that the pro-integration mass would come to attack Liquisa and that there had been shootings resulting in 2 fatalities and 7 injured, among them were JOSE and SIRILIO DOS SANTOS, afterwards, at approximately 16.30 WITA the mass of Besi Merah Putih (BMP) group together with TNI troops and POLRI officers gathered at the MAKODIM of Liquisa.

- On April 6, 1999 at approximately 06.00 WITA, from the direction of Maliana to the MAKODIM of Liquisa came BRIMOB personnel in four trucks; at approximately 07.00 WITA, around 300 people from the pro-integration mass (the Besi Merah Putih group) led by MANUELL SAUSA gathered and surrounded the residence of Pastor RAFAEL DOS SANTOS, carrying generic fire arms, swords, blades, spears, bow and arrows, while yelling "for the pro-independence group to come out of the Church of Liquisa complex."

- That the defendant YAYAT SUDRAJAT was at Liquisa at the order of the DANREM of 164/WS to accompany WADANREM MUDJIONO to personally check the situation in

Liquisa due to the information received from DANDIM 1638 Liquisa, Asep Kuswani (elaborated in a separate case dossier), stating that the atmosphere in the Regency of Liquisa had become more tense between the two conflicting groups between mass of the pro-independence group and the mass of besi merah putih (pro-integration)

- That the defendant YAYAT SUDRAJAT was in Liquisa at that time along with 3 personnel from the Intelligence Task Force Tribuana VIII, Serda SOFYAN, Prada DIONISIUS BERE and Serda EDY, accompanied by two units of TNI.

- At approximately 08.00 WITA, two Brimob personnel named DAMIANUS DAPA and FRANSISCUS SALAMALI approached Pastor RAFAEL DOS SANTOS and asked him to surrender JACINTO DA COSTA PEREIRA and GREGORIO DOS SANTOS but the request was not granted by Pastor RAFAEL DOS SANTOS fearing that the pro-integration group would murder them.

- At approximately 11.30 WITA five police officers led by Lettu. Pol JOHN REA came to the residence of Pastor RAFAEL DOS SANTOS requesting him to surrender JACINTO DA COSTA PEREIRA; at that time Pastor RAFAEL DOS SANTOS gave two conditions: that JACINTO DA COSTA PEREIRA and his comrades should be brought directly to the Police Headquarter in Dili, and that the Besi Merah Putih mass should be drawn from Liquisa; meanwhile the pro-integration mass threatened the refugees at the Liquisa Church Complex by yelling: "leave the complex or the second tier mass will arrive (and) though you're in a church by 12 o'clock WITA we would attack the church;" the situation at that time was extremely frightening and intimidating because the TNI troops from KODIM 1638/Liquisa and Brimob/Polri personnel from the Polres of Liquisa joined the pro-integration/Besi Merah Putih (BMP) mass blockading the Church of Liquisa.

- That the Defendant YAYAT SUDRAJAT and WADANREM MUDJIONO held a meeting at the MAKODIM of Liquisa along with the DANDIM, KAPOLRES and the Regent of Liquisa (elaborated in a separate case dossier), to discuss and listen to the report from KASAT SERSE POLRES, JOHN REA, on the unsuccessful attempt to negotiate with Pastor RAFAEL DOS SANTOS; then based on the report, the Defendant YAYAT SUDRAJAT coordinated with the DANDIM, KAPOLRES and the Regent of Liquisa (a defendant in a separate case dossier) and the result of the meeting was to accept the two conditions forwarded by Pastor RAFAEL DOS SANTOS and appointed the Regent of Liquisa (LEONETO MARTINS) to accept JACINTO DA COSTA PEREIRA and his comrades under his custody; however, fearing murder, based on mutual agreement the WADANREM (MUDJIONO) assigned Lettu. Pol. JOHN REA to meet again with Pastor RAFAEL DOS SANTOS at his residence; however a moment after Lettu. Pol. JOHN REA left, a gunfire was heard, followed by the attack by Besi Merah Putih (BMP) and at that moment the Defendant YAYAT SUDRAJAT immediately went out of the MAKODIM and rushed to the scene of attack launched by the Besi Merah Putih mass assisted with the troops from TNI/Polri, including three personnel from the Intelligence Task Force Tribuana VIII named Serda SOFYAN, Serda EDY, and Prada DIONISISUS BERE joining in the attack resulting in the death of 22 (twenty-two) people whose names are mentioned above from the pro-independence mass who were taking refuge at the residence of Pastor RAFAEL DOS SANTOS in the Liquisa Church complex.

- That the Defendant as the Commander of the Intelligence Task Force Tribuana VIII knew or under the circumstances at that time should have known the widespread and systematic attack on the civilians who took refuge and seek for protection at the residence of Pastor RAFAEL DOS SANTOS in the Church of Liquisa complex that was executed by the three personnel of the Intelligence Task Force Tribuana VIII, named Serda SOFYAN, Serda EDY, and Prada DIONISISUS BERE, along with the mass from the pro-integration group (Besi Merah Putih), and the TNI/Polri troops, where the 3 (three) personnel of the Intelligence Task Force

Tribuana VIII was at the site at the time of the attack, whereas the Defendant should have taken the proper and necessary actions within his jurisdiction to prevent or stop the act, or to surrender the three personnel of his troop who joined the pro-integration mass (Besi Merah Putih group) and the TNI/Polri troops to the authorized officials to be inquired, investigated, and prosecuted.

-- The deed of the Defendant has violated the stipulations in article 42 verse 1 letters a, b, jis, article 7 letter b, article 9 letter a, article 37 Law No. 26 year 2000 on the Human Rights Court.

Second:

- That the Defendant YAYAT SUDRAJAT as the Commander of the Intelligence Task Force Tribuana VIII (by TR.PANGAB No. TR/50/1999 dated January 21, 1999 and SKEP DANJEN KOPASSUS No. SKEP/92/XII/1998 dated December 18, 1998), at the time and place as stated in the primary indictment above, can be held accountable for the crimes within the jurisdiction of the Court on Human Rights, which were committed by the troop under his effective command and control whereupon the act of crime is a result of his lack of control over his troop, whilst as the Commander of the Intelligence Task Force Tribuana VIII, which was placed under the control of DANREM 164/Wira Dharma as the DANREM's (Tono Suratman's) Special Staff, the Defendant had the main tasks of:

a. Monitoring and finding information on the situation of the territory of East Timor, in terms of the geography, demography, and social conditions of East Timor, to assist the tasks of KOREM 164/Wira Dharma

b. Assisting the efficient execution of KODIM's main duties by conducting territorial operations.

c. Helping to create a conducive situation in the attempt to peacefully reconcile the two clashing parties in East Timor by ensuring the success of the referendum.

With the work mechanism of gathering all information received by the Intelligence Task Force Tribuana VIII placed at various KODIMs, analyzing them, and then reporting them to the DANREM; also of acting as the technical supervisor for DANREM by coordinating with the commanders of the KODIMs.

- In carrying out his tasks, the Defendant YAYAT SUDRAJAT assigned and designated the personnel of Intelligence Task Force Tribuana VIII to the KODIMs in East Timor as such:

a. Dili

- KOSATGAS Intelligence Tribuana VIII : 27 personnel

- Representative at Taibesi (logistics) : 4 personnel

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j. KODIM Maliana : 12 personnel

- The Defendant YAYAT SUDRAJAT as a Military Command (Commander of the Intelligence Task Force Tribuana VIII) knew or under the current circumstances should have known that the troop were committing or just committed a gross violation of Human Rights which was as a crime against humanity was an act committed as a part of a widespread and

systematic attack, which he knew to be directed upon civilians in the form of the persecution against a specific identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, or other grounds that are universally recognized as impermissible under the international law, whilst the Defendant did not take the necessary and reasonable measures within his or her power to prevent or repress its commission, hence there occurred an attack against the civilians who were pro-independence mass who took refuge in the complex of the Church of Liquisa, which injured 21 people, namely:

1. JOSE RAMOS
2. FRANSISCO DOS SANTOS
3. JOAO PEREIRA
4. ABILIO DOS SANTOS
5. JOSE NUNES SERRAO
6. LUCAS SOARES
7. MATEUS PANLERO
8. RICARDO RODRIGUES PEREIRA
9. LAKUMAU
10. JANUARI
11. FELIS
12. JOAO KUDA
13. ARMANDO
14. ANTONIO
15. LUIS
16. EMILIO
17. LUCAS DOS SANTOS
18. JOAO DS SANTOS
19. SEBASTIAO
20. RAMIRIO
21. MATIUS ALVES CORREIA

- Neither did the Defendant YAYAT SUDRAJAT submit the matter to the competent authorities for inquiry, investigation, and prosecution, these actions were committed by the Defendant in the following ways:

- That the defendant under Letter of Command from DANREM 164/WD No.

SPRIN/29/II/1999 on February 11, 1999 as the Commander of the Intelligence Task Force Tribuana VIII was BKO-ed (placed under the operational control) of DANREM 164/Wira Dharma with a total of 116 personnel. On April 3, 1999, the pro-independence group had threatened to murder the pro-integration group in the village of Dato, Liquisa regency and the community security and order situation and condition was growing more volatile.

- On April 4, 1999 the pro-independence group led by JACINTO DA COSTA PEREIRA burned down the houses of the pro-integration mass because the Besi Merah Putih (BMP) mass from Pukelara and Maubara had burned down the house of one FELIS BERTO DOS SANTOS and killed his son, ELIDIO, who was a part of the troop of the pro-independence group.

- On April 5, 1999 a mass of approximately 2,000 people from the pro-independence group took refuge at the residence of Pastor RAFAEL DOS SANTOS at the complex of the Church of Liquisa based on the information from Pastor HENRI of Maubara stating that the pro-integration mass would come to attack Liquisa and that there had been shootings resulting in 2 fatalities and 7 injured, among them were JOSE and SIRILIO DOS SANTOS, afterwards, at approximately 16.30 WITA the mass of Besi Merah Putih (BMP) group together with TNI troops and POLRI officers gathered at the MAKODIM of Liquisa.

- On April 6, 1999 at approximately 06.00 WITA, from the direction of Maliana to the

MAKODIM of Liquisa came BRIMOB personnel in four trucks; at approximately 07.00 WITA, around 300 people from the pro-integration mass (the Besi Merah Putih group) led by MANUELL SAUSA gathered and surrounded the residence of Pastor RAFAEL DOS SANTOS, carrying generic fire arms, swords, blades, spears, bow and arrows, while yelling "for the pro-independence group to come out of the Church of Liquisa complex."

- That the defendant YAYAT SUDRAJAT was at Liquisa at the order of the DANREM of 164/WS to accompany WADANREM MUDJIONO to personally check the situation in Liquisa due to the information received from DANDIM 1638 Liquisa, Asep Kuswani (elaborated in a separate case dossier) which stated that the atmosphere in the Regency of Liquisa had become more tense between the two conflicting groups; between mass of the pro-independence group and the mass of besi merah putih (pro-integration).

- That the defendant YAYAT SUDRAJAT was in Liquisa at that time along with 3 personnel from the Intelligence Task Force Tribuana VIII, Serda SOFYAN, Prada DIONISIUS BERE and Serda EDY, accompanied by two units of TNI.

- At approximately 08.00 WITA, two Brimob personnel named DAMIANUS DAPA and FRANSISCUS SALAMALI approached Pastor RAFAEL DOS SANTOS and asked him to surrender JACINTO DA COSTA PEREIRA and GREGORIO DOS SANTOS but the request was refused by Pastor RAFAEL DOS SANTOS fearing that the pro-integration group would murder them.

- At approximately 11.30 WITA five police officers led by Lettu. Pol JOHN REA came to the residence of Pastor RAFAEL DOS SANTOS requesting him to surrender JACINTO DA COSTA PEREIRA; at that time Pastor RAFAEL DOS SANTOS gave two conditions: that JACINTO DA COSTA PEREIRA and his comrades should be brought directly to the Police Headquarter in Dili, and that the Besi Merah Putih mass should be drawn from Liquisa; meanwhile the pro-integration mass threatened the refugees at the Liquisa Church Complex by yelling: "leave the complex or the second tier mass will arrive (and) though you're in a church by 12 o'clock WITA we would attack the church;" the situation at that time was extremely frightening and intimidating because the TNI troops from KODIM 1638/Liquisa and Brimob/Polri personnel from the Polres of Liquisa joined the pro-integration/Besi Merah Putih (BMP) mass blockading the Church of Liquisa.

- That the Defendant YAYAT SUDRAJAT and WADANREM MUDJIONO held a meeting at the MAKODIM of Liquisa along with the DANDIM, KAPOLRES and the Regent of Liquisa (elaborated in a separate case dossier), to discuss and listen to the report from KASAT SERSE POLRES, JOHN REA, on the unsuccessful attempt to negotiate with Pastor RAFAEL DOS SANTOS; then based on the report, the Defendant YAYAT SUDRAJAT along with the DANDIM, KAPOLRES and the Regent of Liquisa (a defendant in a separate case dossier) discussed (the matter) and the result of the meeting was to accept the two conditions put forth by Pastor RAFAEL DOS SANTOS and appointed the Regent of Liquisa (LEONETO MARTINS) to accept JACINTO DA COSTA PEREIRA and his comrades under his custody; however, because LEONETO MARTINS feared that he was going to be murdered, Lettu. Pol. JOHN REA was assigned to meet again with Pastor RAFAEL DOS SANTOS at his residence; however a moment after Lettu. Pol. JOHN REA departed, a gunfire was heard, followed by the attack by Besi Merah Putih (BMP) and at that moment the Defendant YAYAT SUDRAJAT immediately went out of the MAKODIM and rushed to the location where the Besi Merah Putih mass which was merged with the troops from TNI/Polri, including three personnel from the Intelligence Task Force Tribuana VIII named Serda SOFYAN, Serda EDY, and Prada DIONISISUS BERE launched the attack and committed the murder of the pro-independence mass who were taking refuge at the residence of Pastor RAFAEL DOS SANTOS in the Liquisa Church complex.

- That the Defendant as the Commander of the Intelligence Task Force Tribuana VIII knew or

under the circumstances at that time should have known the widespread and systematic attack on the civilians who took refuge and seek for protection at the residence of Pastor RAFAEL DOS SANTOS in the Church of Liquisa complex that was executed by the three personnel of the Intelligence Task Force Tribuana VIII, named Serda SOFYAN, Serda EDY, and Prada DIONISISUS BERE, along with the mass from the pro-integration group (Besi Merah Putih), and the TNI/Polri troops, where the 3 (three) personnel of the Intelligence Task Force Tribuana VIII was at the site at the time of the attack, whereas the Defendant should have taken the proper and necessary actions within his jurisdiction to prevent or repress the act, or to surrender the three personnel of his troop who joined the pro-integration mass (Besi Merah Putih group) and the TNI/Polri troops to the authorized officials to be inquired, investigated, and prosecuted.

-- The deed of the Defendant has violated the stipulations in article 42 verse 1 letters a, b, jis, article 7 letter b, article 9 letter h, article 40 Law No. 26 year 2000 on the Human Rights Court.

SUBSIDIARY

First:

- That the Defendant YAYAT SUDRAJAT as the Commander of the Intelligence Task Force Tribuana VIII (by TR.PANGAB No. TR/50/1999 dated January 21, 1999 and SKEP DANJEN KOPASSUS No. SKEP/92/XII/1998 dated December 18, 1998), at the time and place as stated in the primary indictment above, deliberately provided assistance for the commission of crime against humanity in the form of the killing of a certain group, which was a part of a widespread and systematic attack and he knew it was directly targeted at the civilians; the Defendant's acts were carried out in the following ways:

- That the defendant based on Under Letter of command from DANREM 164/WD No. SPRIN/29/II/1999 dated February 11, 1999, as the Commander of the Intelligence Task Force Tribuana VIII, was placed under the control (BKO) of DANREM 164/Wira Dharma with a total of 116 personnel and assigned to, amongst others:

a. Monitoring and finding information on the situation of the territory of East Timor, in terms of the geography, demography, and social conditions of East Timor, in order to assist the tasks of KOREM 164/Wira Dharma

b. Assisting the efficient execution of KODIM's main duties by conducting territorial operations.

c. Helping to create a conducive situation in the attempt to peacefully reconcile the two clashing parties in East Timor by ensuring the success of the referendum.

- With the work mechanism of gathering all information received by the Intelligence Task Force Tribuana VIII placed at various KODIMs, compiling and analyzing them, and then reporting them to the DANREM; also of acting as the technical supervisor for DANREM by coordinating with the commanders of the KODIMs.

- In carrying out his tasks, the Defendant YAYAT SUDRAJAT assigned and designated the personnel of Intelligence Task Force Tribuana VIII to the KODIMs in East Timor as such:

a. Dili

- KOSATGAS Intelligence Tribuana VIII : 27 personnel

- Representative at Taibesi (logistics) : 4 personnel

- BKO KODIM Dili : 10 personnel

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- g. KODIM Ainaro : 7 personnel
- h. KODIM Ermera : 8 personnel
- i. KODIM Liquisa : 4 personnel
- j. KODIM Maliana : 12 personnel

- On April 3, 1999, the pro-independence group had threatened to murder the pro-integration group in the village of Dato, Liquisa regency and the community security and order situation and condition was growing to be more volatile.

- On April 4, 1999 the pro-independence group led by JACINTO DA COSTA PEREIRA burned down the houses of the pro-integration mass because the Besi Merah Putih (BMP) mass from Pukelara and Maubara had burned down the house of one FELIS BERTO DOS SANTOS and killed his son, ELIDIO, who was a part of the troop of the pro-independence group.

- On April 5, 1999 a mass of approximately 2,000 people from the pro-independence group took refuge to the residence of Pastor RAFAEL DOS SANTOS at the complex of the Church of Liquisa based on the information given by Pastor HENRI of Maubara stating that the pro-integration mass would come to attack Liquisa. Upon arrival of the pro-integration mass, a shoot out occurred which resulted in 2 fatalities and 7 injured, among them were JOSE and SIRILIO DOS SANTOS. Afterwards, at approximately 16.30 WITA the mass from Besi Merah Putih (BMP) with the troops from TNI and POLRI gathered at the MAKODIM of Liquisa.

- On April 6, 1999 at approximately 06.00 WITA, from the direction of Maliana to the MAKODIM of Liquisa came BRIMOB personnel in four trucks; at approximately 07.00 WITA, around 300 people from the pro-integration mass (the Besi Merah Putih group) led by MANUELL SAUSA gathered and surrounded the residence of Pastor RAFAEL DOS SANTOS, carrying generic fire arms, swords, blades, spears, bow and arrows, while yelling "for the pro-independence group to come out of the Church of Liquisa complex."

- That the defendant YAYAT SUDRAJAT was at Liquisa at the order of the DANREM of 164/WS to accompany WADANREM MUDJIONO to personally check the situation in Liquisa due to the information received from DANDIM 1638 Liquisa, Asep Kuswani (elaborated in a separate case dossier), stating that the atmosphere in the Regency of Liquisa had become more tense between the two conflicting groups between mass of the pro-independence group and the mass of besi merah putih (pro-integration)

- That the defendant YAYAT SUDRAJAT was in Liquisa at that time along with 3 personnel from the Intelligence Task Force Tribuana VIII, Serda SOFYAN, Prada DIONISIUS BERE and Serda EDY, accompanied by two units of TNI.

- At approximately 08.00 WITA, two Brimob personnel named DAMIANUS DAPA and FRANSISCUS SALAMALI approached Pastor RAFAEL DOS SANTOS and asked him to surrender JACINTO DA COSTA PEREIRA and GREGORIO DOS SANTOS but the request was not granted by Pastor RAFAEL DOS SANTOS fearing that the pro-integration group would murder them.

- At approximately 11.30 WITA five police officers led by Lettu. Pol JOHN REA came to the residence of Pastor RAFAEL DOS SANTOS requesting him to surrender JACINTO DA COSTA PEREIRA; at that time Pastor RAFAEL DOS SANTOS gave two conditions: that JACINTO DA COSTA PEREIRA and his comrades should be brought directly to the Police Headquarter in Dili, and that the Besi Merah Putih mass should be drawn from Liquisa; meanwhile the pro-integration mass threatened the refugees at the Liquisa Church Complex by yelling: "leave the complex or the second tier mass will arrive (and) though you're in a church by 12 o'clock WITA we would attack the church;" the situation at that time was extremely frightening and intimidating because the TNI troops from KODIM 1638/Liquisa

and Brimob/Polri personnel from the Polres of Liquisa joined the pro-integration/Besi Merah Putih (BMP) mass blockading the Church of Liquisa.

- That the Defendant YAYAT SUDRAJAT and WADANREM MUDJIONO held a meeting at the MAKODIM of Liquisa along with the DANDIM, KAPOLRES and the Regent of Liquisa (elaborated in a separate case dossier), to discuss and listen to the report from KASAT SERSE POLRES, JOHN REA, on the unsuccessful attempt to negotiate with Pastor RAFAEL DOS SANTOS; then based on the report, the Defendant YAYAT SUDRAJAT coordinated with the DANDIM, KAPOLRES and the Regent of Liquisa (a defendant in a separate case dossier) and the result of the meeting was to accept the two conditions forwarded by Pastor RAFAEL DOS SANTOS and appointed the Regent of Liquisa (LEONETO MARTINS) to accept JACINTO DA COSTA PEREIRA and his comrades under his custody; however, fearing murder, based on mutual agreement the WADANREM (MUDJIONO) assigned Lettu. Pol. JOHN REA to meet again with Pastor RAFAEL DOS SANTOS at his residence; however a moment after Lettu. Pol. JOHN REA left, a gunfire was heard, followed by the attack by Besi Merah Putih (BMP) and at that moment the Defendant YAYAT SUDRAJAT immediately went out of the MAKODIM and rushed to the scene of attack launched by the Besi Merah Putih mass assisted with the troops from TNI/Polri, including three personnel from the Intelligence Task Force Tribuana VIII named Serda SOFYAN, Serda EDY, and Prada DIONISISUS BERE joining in the attack resulting in the death of 22 (twenty-two) people, namely:

1. JACINTO DA COSTA PEREIRA
2. AGUSTINHO
3. JOANICO
4. ABRAO DOS SANTOS
5. AGUSTO MAUZINHO
6. AMEKO DOS SANTOS
7. NARSIZIO
8. HERMINO DOS SANTOS
9. FERNANDO DOS SANTOS
10. LAURINDO PEREIRA
11. MARIKI DOS SANTOS
12. MANUEL LISBOA
13. VITOR DA COSTA
14. ALBERTO OLIVEIRA
15. AMANDIO CESAR DOS SANTOS
16. CESAR DOS SANTOS
17. AGUSTINHO DOS SANTOS
18. LAURINDA DOS SANTOS
19. SANTIAGO
20. JOHNNY a.k.a. MAU SOKO
21. Unidentified, buried at Maubara
22. Unidentified, buried at Maubara

- The Defendant YAYAT SUDRAJAT deliberately provided the opportunity for the pro-integration mass (the Besi Merah Putih group) and the TNI/Polri troops, including the three personnel of the Intelligence Task Force Tribuana VIII to commit the crime against humanity by killing the civilians mentioned above, by not carrying out his duties properly as the Commander of the Intelligence Task Force Tribuana VIII, who then had been BKO-ed into becoming the special staff of DANREM 164/WD, namely to create a conducive atmosphere in the attempt to reconcile the two clashing groups, the pro-independence and the pro-integration masses.

The Defendant has violated the regulations in article 7 letter b jis article 9 letter a, article 37, article 41 Law No. 26 year 2000 on the Human Rights Court.

Second:

- That the Defendant YAYAT SUDRAJAT as the Commander of the Intelligence Task Force Tribuana VIII (by TR.PANGAB No. TR/50/1999 dated January 21, 1999 and SKEP DANJEN KOPASSUS No. SKEP/92/XII/1998 dated December 18, 1998), at the time and place as stated in the primary indictment above, deliberately provided assistance for the commission of crime against humanity in the form of the persecution against a specific identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, or other grounds that are universally recognized as impermissible under the international law, which he knew to be directed upon civilians; the Defendant's acts were carried out in the following ways:

- Under Letter of command from DANREM 164/WD No. SPRIN/29/II/1999 on February 11, 1999, the Defendant acted as the Commander of the Intelligence Task Force Tribuana VIII, which was placed under the control (BKO) of DANREM 164/Wira Dharma with a total of 116 personnel and received the tasks of:

a. Monitoring and finding information on the situation of the territory of East Timor, in terms of the geography, demography, and social conditions of East Timor, to assist the tasks of KOREM 164/Wira Dharma

b. Assisting the efficient execution of KODIM's main duties by conducting territorial operations.

c. Helping to create a conducive situation in the attempt to peacefully reconcile the two clashing parties in East Timor by ensuring the success of the referendum.

With the work mechanism of gathering all information received by the Intelligence Task Force Tribuana VIII placed at various KODIMs, compiling them, and then reporting them to the DANREM; also of acting as the technical supervisor for DANREM by coordinating with the commanders of the KODIMs.

- In carrying out his tasks, the Defendant YAYAT SUDRAJAT assigned and designated the personnel of Intelligence Task Force Tribuana VIII to the KODIMs in East Timor as such:

a. Dili

- KOSATGAS Intelligence Tribuana VIII : 27 personnel

- Representative at Taibesi (logistics) : 4 personnel

- BKO KODIM Dili : 10 personnel

- Kodensandha : 13 personnel

b. KODIM Los Palos : 6 personnel

c. KODIM Baucau : 10 personnel

d. KODIM Viqueque : 6 personnel

e. KODIM Manatuto : 3 personnel

f. KODIM Same : 6 personnel

g. KODIM Ainaro : 7 personnel

h. KODIM Ermera : 8 personnel

i. KODIM Liquisa : 4 personnel

j. KODIM Maliana : 12 personnel

- On April 3, 1999, the pro-independence group had threatened to murder the pro-integration group in the village of Dato, Liquisa regency and the community security and order situation and condition was growing to be more volatile.

- On April 4, 1999 the pro-independence group led by JACINTO DA COSTA PEREIRA burned down the houses of the pro-integration mass because the Besi Merah Putih (BMP) mass from Pukelara and Maubara had burned down the house of one FELIS BERTO DOS

SANTOS and killed his son, ELIDIO, who was a part of the troop of the pro-independence group.

- On April 5, 1999 a mass of approximately 2,000 people from the pro-independence group took refuge in the residence of Pastor RAFAEL DOS SANTOS at the complex of the Church of Liquisa based on the information from Pastor HENRI of Maubara stating that the pro-integration mass would come to attack Liquisa and that there had been shootings resulting in 2 fatalities and 7 injured, among them were JOSE and SIRILIO DOS SANTOS, afterwards, at approximately 16.30 WITA the mass of Besi Merah Putih (BMP) group together with TNI troops and POLRI officers gathered at the MAKODIM of Liquisa.

- On April 6, 1999 at approximately 06.00 WITA, from the direction of Maliana to the MAKODIM of Liquisa came BRIMOB personnel in four trucks; at approximately 07.00 WITA, around 300 people from the pro-integration mass (the Besi Merah Putih group) led by MANUELL SAUSA gathered and surrounded the residence of Pastor RAFAEL DOS SANTOS, carrying generic fire arms, swords, blades, spears, bow and arrows, while yelling "for the pro-independence group to come out of the Church of Liquisa complex."

- That the defendant YAYAT SUDRAJAT was at Liquisa at the order of the DANREM of 164/WS to accompany WADANREM MUDJIONO to personally check the situation in Liquisa due to the information received from DANDIM 1638 Liquisa, Asep Kuswani (elaborated in a separate case dossier), stating that the atmosphere in the Regency of Liquisa had become more tense between the two conflicting groups between mass of the pro-independence group and the mass of besi merah putih (pro-integration)

- The Defendant YAYAT SUDRAJAT was in Liquisa at that time along with 3 personnel from the Intelligence Task Force Tribuana VIII, Serda SOFYAN (aide), Prada DIONISIUS BERE (driver) and Serda EDY (aide), along with two TNI units.

- At approximately 08.00 WITA, two Brimob personnel named DAMIANUS DAPA and FRANSISCUS SALAMALI approached Pastor RAFAEL DOS SANTOS and asked him to surrender JACINTO DA COSTA PEREIRA and GREGORIO DOS SANTOS but the request was not granted by Pastor RAFAEL DOS SANTOS fearing that the pro-integration group would murder them.

- At approximately 11.30 WITA five police officers led by Lettu. Pol JOHN REA came to the residence of Pastor RAFAEL DOS SANTOS requesting him to surrender JACINTO DA COSTA PEREIRA; at that time Pastor RAFAEL DOS SANTOS gave two conditions: that JACINTO DA COSTA PEREIRA and his comrades should be brought directly to the Police Headquarter in Dili, and that the Besi Merah Putih mass should be drawn from Liquisa; meanwhile the pro-integration mass threatened the refugees at the Liquisa Church Complex by yelling: "leave the complex or the second tier mass will arrive (and) though you're in a church by 12 o'clock WITA we would attack the church;" the situation at that time was extremely frightening and intimidating because the TNI troops from KODIM 1638/Liquisa and Brimob/Polri personnel from the Polres of Liquisa joined the pro-integration/Besi Merah Putih (BMP) mass blockading the Church of Liquisa.

- That the Defendant YAYAT SUDRAJAT and WADANREM MUDJIONO held a meeting at the MAKODIM of Liquisa along with the DANDIM, KAPOLRES and the Regent of Liquisa (elaborated in a separate case dossier), to discuss and listen to the report from KASAT SERSE POLRES, JOHN REA, on the unsuccessful attempt to negotiate with Pastor RAFAEL DOS SANTOS; then based on the report, the Defendant YAYAT SUDRAJAT coordinated with the DANDIM, KAPOLRES and the Regent of Liquisa (a defendant in a separate case dossier) and the result of the meeting was to accept the two conditions forwarded by Pastor RAFAEL DOS SANTOS and appointed the Regent of Liquisa (LEONETO MARTINS) to accept JACINTO DA COSTA PEREIRA and his comrades under his custody; however, fearing murder, based on mutual agreement the WADANREM

(MUDJIONO) assigned Lettu. Pol. JOHN REA to meet again with Pastor RAFAEL DOS SANTOS at his residence; however a moment after Lettu. Pol. JOHN REA left, a gunfire was heard, followed by the attack by Besi Merah Putih (BMP) and at that moment the Defendant YAYAT SUDRAJAT immediately went out of the MAKODIM and rushed to the scene where the Besi Merah Putih mass assisted with the troops from TNI/Polri, including three personnel from the Intelligence Task Force Tribuana VIII named Serda SOFYAN, Serda EDY, and Prada DIONISISUS BERE attacked and persecuted the Pro-independence refugees mass, resulting in the injury of 21 people, namely:

23. JOSE RAMOS
24. FRANCISCO DOS SANTOS
25. JOAO PEREIRA
26. ABILIO DOS SANTOS
27. JOSE NUNES SERRAO
28. LUCAS SOARES
29. MATEUS PANLERO
30. RICARDO RODRIGUES PEREIRA
31. LAKUMAU
32. JANUARI
33. FELIS
34. JOAO KUDA
35. ARMANDO
36. ANTONIO
37. LUIS
38. EMILIO
39. LUCAS DOS SANTOS
40. JOAO DS SANTOS
41. SEBASTIAO
42. RAMIRIO
43. MATIUS ALVES CORREIA

- The Defendant YAYAT SUDRAJAT deliberately provided the opportunity to the pro-integration mass (the Besi Merah Putih group) and the TNI/Polri troops, including the three personnel of the Intelligence Task Force Tribuana VIII to commit the crime against humanity by attacking the civilians from the pro-independence movement, by not carrying out his duties properly as the Commander of the Intelligence Task Force Tribuana VIII, which was to create a conducive atmosphere in the attempt to reconcile the two clashing groups, the pro-independence and the pro-integration masses.

-- The Defendant has violated the regulations in article 7 letter b jis article 9 letter h, article 40, article 41 Law No. 26 year 2000 on the Human Rights Court.

Taking into account that evidences have been brought in front of the court, which are:

A. Documents:

- a. A copy of TR. Pangab No. TR/50/1999 dated January 21, 1999 on the Plan of Departure of the Task Force Tribuana VII, VIII, DENSHANDA V, VI personnel to conflict areas of Irian Jaya and East Timor by Navy ships.
- b. A copy of SEKP Danjen Kopassus No. Skep/92/XII year 1998 dated December 8, 1998 on the Assembly of the Taskforce Tribuana VIII and its assignment to East Timor.
- c. A copy of SPRIN Danjen Kopassus No. Sprin.25/35/I/1999 and No. Sprin/37/I/1999 dated January 27, 1999 on the departure of the Taskforce Tribuana VIII to the conflict area of East Timor

d. A copy of SPRIN Danrem 164/WS No. Sprin/27/II/1999 dated February 11, 1999 on the Assignment of the Taskforce Tribuana in the conflict area of East Timor.

e. A copy of Special Report No. R/184/Lapsus/IV/1999 dated April 7, 1999 on the clashes and riots between the two masses of the pro-integration and pro-independence groups in Liquisa.

The original documents were never shown to the court;

B. Explosives:

- Two units of hand grenades made in Korea under the trademark Grenade Hand Frag Delay K % Comp. B Lot. E.C. 82 H 6001-001, EC. 85 M 605-03.

Taking into account that witnesses had delivered their accounts to the court under oath, which in essence were as follows:

1. Witness Brigjen Inf. M. NOER MUIS

- That the witness had been examined by the Indonesian General Attorney Investigators and the witness had verified the BAP;

- That the witness was acquainted with the Defendant Yayat Sudrajat when he acted as the Commander of the Intelligence Task force Tribuana VIII under the operation command (BKO) of KOREM 164/Wira Dharma while the witness acted as the Commander of KOREM 164/WD;

- That the witness acted as DANREM 164/WD from August 3, 1999 through March 30, 2000;

- That the Intelligence Taskforce Tribuana VIII which was put under the control (BKO) of KOREM 164/WD had the duty to assist KOREM's elements in terms of gathering information especially regarding the demography of the entire KOREM 164/WD area, and report all actual demographical changes throughout East Timor to DANREM 164/WD;

- That the Taskforce Tribuana VIII was comprised of approximately 116 personnel who were stationed at the military district commands (KODIMs) of KOREM 164/WD in East Timor;

- That all of the activities of the Taskforce Tribuana VIII personnel who were stationed at the military district commands were to be reported to DANDIM with a carbon copy directed to DANSATGAS Tribuana VIII;

- That the Defendant was functioned as one of the Special Staffs to assist KOREM in monitoring and reporting any progress or changes of the most actual demographic condition throughout KOREM 164/WD area and reporting the result to the DANREM;

- That the witness had never heard nor received the report on the Defendant's involvement, or any other TNI personnel for that matter, in the Liquisa incident;

The Defendant verified the witness' accounts.

2. Witness Brigjen TNI Tono Suratman

- That the witness had been through the discovery conducted by the Indonesian General Attorney Investigators and the witness had verified the discovery report;

- That the witness has been acting as the DANREM 164/WD in East Timor since July 31, 1999;

- That the witness was acquainted with the Defendant Yayat Sudrajat when he acted as the Commander of the Intelligence Task force Tribuana VIII who received his orders from his Command Unit through TR PANGAB TR/Jo/1999 dated January 21, 1999 and Skep DANJEN Kopassus No. Skep/1992/XII/1988 dated December 8, 1998 on the assignment of the Intelligence Taskforce Tribuana VIII to East Timor;

- That the Taskforce Tribuana VIII was comprised of 116 personnel who were stationed at the KODIMs and had the duty of ensuring the success of the KODIMs' main task in carrying Territorial operation;

- That the personnel of the Taskforce Tribuana VIII were to report to the DANDIM and the

Commander of the Intelligence Taskforce Tribuana VIII, who each was to report the DANREM;

- That the witness received the report on the attack of the Church/residence of Pastor Rafael;
- That the witness never received a report that any TNI personnel were involved in the clash at the church;
- That the military personnel who were sent to Liquisa were the WADANREM Mudjiono, the Defendant, two groups from the Battalion Unit 744, the Defendant's aides, all of whom were equipped with organic weaponry;
- That the witness received the report on the incident at Pastor Rafael's church in Liquisa from the WADANREM at approximately 14.00 WITA on April 1999 via the radio which reported that there had occurred a clash between the pro-independence and pro-integration groups that took the lives of 5 people and injured 25; meanwhile one TNI personnel received a gun shot-a member of the Taskforce Tribuana VIII named Serda. Sofyan;
- That the witness had never received any report claiming the Defendant's of any other TNI personnel's involvement in the Liquisa incident;
- That on April 7, 1999 the witness went to Liquisa and met Pastor Rafael who reported that the clash between the pro-independence and the pro-integration masses on April 6, 1999 claimed the lives of 5 people and wounded more than 20 others.
- The Defendant verified the witness' accounts.

3. Witness JOHN REA

- That the witness had been through the discovery conducted by the Indonesian General Attorney Investigators and the witness had verified the discovery report;
- The witness knew that the Defendant YAYAT SUDRAJAT was stationed at the Makodim 1638 Liquisa; the witness was not related to the Defendant;
- That the witness was ordered by the Kapolres Liquisa to negotiate with Pastor Rafael on April 6, 1999 at 11.30 WITA at the Church of Liquisa complex, persuading the Pastor to surrender the Suspect Jacinto Da Costa Pereira to be interrogated by the authority;
- That on April 6, 1999 just before the incident, the witness saw that there were some TNI personnel in the vicinity of the MAKODIM;
- That the witness saw Polri personnel taking guard at the gate of the church by blocking the Besi Merah Putih mass who were yelling and appeared very emotional;
- That the witness saw inside the church complex many people-men, women, and children-taking refuge; meanwhile the mass who surrounded the church complex were comprised entirely of men;
- That Pastor Rafael agreed to surrender Jacinto Da Costa with two conditions: a. The gathering mass outside must be drawn out of the church complex; and b. Jacinto Da Costa Pereira have to be interrogated at the Polda of East Timor;
- That the witness saw the Defendant at the MAKODIM wearing a civilian outfit; the Defendant was involved in the discussion the conditions put forward by Pastor Rafael, which in the end was agreed upon by the Muspida;
- That during the discussion, the Defendant offered himself to go and further negotiate with the Pastor, but Adios Salova ordered the witness instead to go and meet Pastor Rafael;
- That the moment the witness was about to conduct the second negotiation and tell the Pastor that his two conditions were accepted, a gunshot was heard from the church;
- That the witness saw that the Besi Merah Putih group led by Manuel Sousa clashed with the pro-integration mass;
- That the witness saw that the two clashing groups used fire arms, arrows, spears, and swords;
- That the attack occurred because on April 4, 1999 at 09.45 WITA, a pro-independence mass led by Jacinto Da Costa Pereira attacked, two women from the pro-integration mass and burned down eleven houses, all belonged to pro-integration mass, in Kampung Pukeilara,

Dato Village, Liquisa; Jacinto Da Costa Pereira then fled and hid at the residence of Pastor Rafael; the pro-integration mass from the Besi Merah Putih group were raged and demanded Jacinto to be surrendered to the authority; when gunshot ignited the already volatile atmosphere and the clash broke out;

- That the witness saw from inside the church complex how the pro-independence mass fled out of the church;
- That after the clash, the witness saw the TNI personnel from the MAKODIM assisted Polri to stop the riot, hence the clash was put out;
- That the witness did not see any TNI nor Polri personnel got involved in the riot;
- That the witness saw five bodies in a truck parked on the road near Kodim on the afternoon of April 6, 1999; the people died due to the clash earlier that day; other evidences found at the scene were 100 arrows, 100 blades, 20 spears, 50 knives, 20 bullets, and 15 fire arms;
- That the caretaker who buried the five bodies at the Maubara Cemetery was the Camat of Maubara, Jose Afat;
- That the clashing mass was greater than the number of Polri personnel;
- That there were men, women, and children who hid at the back of Pastor Rafael's residence during the clash;
- The Defendant did not respond to the witness' accounts.

4. Witness DAMIANUS DAPA

- That the witness had been through the discovery conducted by the Indonesian General Attorney Investigators and the witness had verified the discovery report;
- That in the month of April 1999 the witness acted as Kasat Sabhara at the Polres of Liquisa;
- That on April 4, 1999 in Kampung Pukelara, 11 houses owned by people from the pro-integration mass were burned down to the ground by the pro-independence mass, led by the Village Leader, Jacinto Da Costa Pereira; Jacinto and his accomplices fled afterwards and hid at the residence of Pastor Rafael; the raged pro-integration mass demanded that Jacinto Da Costa Pereira surrendered himself and be accounted for his actions;
- That on April 6, 1999, just before the incident, the witness saw how Polri and Brimob personnel took guard by blocking the entrance to the church complex, while the TNI personnel were stationed at the vicinity of the Makodim;
- That the witness, accompanied by Fransiscus Salamale and by the order of the Kapolres of Liquisa, had a negotiation with Pastor Rafael, asking the Pastor to surrender the alleged arsons, Jacinto Da Costa Pereira and his accomplices; Pastor Rafael agreed to surrender them under two conditions: one, that Jacinto and his colleagues be transported and interrogated at the Polda of East Timor, and two, that the Besi Merah Putih militia be drawn from the church complex;
- That the Pastor claimed that Jacinto Da Costa was indeed at his residence and that he would not surrender Da Costa unless the two conditions were accepted;
- That to the extent of the witness' knowledge, the Besi Merah Putih group was an mass based organization comprised of indigenous East Timorese in Liquisa under their own initiative, led by Manuel Sousa;
- That the witness reported the result of the negotiation and the conditions put forward by Pastor Rafael to the Kapolres of Liquisa, who later instructed Lettu. Pol. John Rea, Letda Pol. Fransisco Salamale, and Serma Donatus Mau, to conduct a further negotiation; the witness himself was ordered to standby at the Mapolres;
- That the witness' and Letda. Fransiscus Salamale's one-platoon troop was comprised of Brimob units from the Polda of East Timor and Polres of Liquisa;
- That the witness was sure that the available personnel would not be enough to handle the situation if a riot broke out since they were outnumbered by the pro-integration mass;
- That the witness was aware that there were TNI troops positioned at the Makodim of Liquisa;

- That the witness saw and heard the pro-integration mass, led by Manuel Sousa, gave an ultimatum from outside the gate of the church that if the Village Leader Jacinto Da Costa Pereira were not surrendered, they would attack the church; the witness tried to reason with Manuel Sousa and urged him to leave, but he and his men would not listen; they further gave a deadline of 12.00 WITA for Pastor Rafael to surrender Jacinto Da Costa or they would begin the attack;
- That the Besi Merah Putih mass had already been in the vicinity of the church when the witness arrived there at approximately 08.30 WITA on April 6, 1999;
- That the witness was acquainted with the Besi Merah Putih group and its leader, but was in no way connected to them;
- That during the negotiation with Pastor Rafael, the witness saw how the mass from the pro-integration movement built at the gate;
- That the BMP mass were carrying with them weapons such as blades and clubs;
- That the witness was later ordered to standby at the Mapolres and hence was not aware of the following incidents that occurred at the church;
- That the witness had never heard of any Polri nor TNI personnel who was involved in the incident at the Church of Liquisa;
- The Defendant did not respond the witness' accounts;

5. Witness ADIOS SALOVA:

- That on April 6, 1999 at approximately 11.00 WITA, at the Makodim, the witness who acted as the Kapolres of Liquisa met with Mujiono, Asep Kuswani, the Regent of Liquisa Leoneto Martins, and the Defendant Yayat Sudrajat, to discuss the best way of taking Jacinto Da Costa Pereira from the residence of Pastor Rafael; later on, John Rea came and reported that the Pastor was willing to surrender Jacinto Da Costa provided that he were to be surrendered directly to Kapolda and the Besi Merah Putih mass that had gathered at his place be drawn out;
 - That John Rea was then ordered to return to Pastor Rafael and tell him that his conditions were accepted; the Defendant volunteered to take John Rea's place in further negotiating with Pastor Rafael, but his suggestion was not taken and Adios Salova ordered John Rea to return to Pastor Rafael to conduct further negotiation; just as John Rea was about to leave, gunshots were heard for 15 minutes whereupon they reacted and rushed to the scene; half an hour later, at the scene, when the situation was still in chaos, the witness saw the Defendant covered in blood; the Defendant claimed that he had been assisting the victims;
 - That the witness had assigned Polri and Brimob personnel to secure the church complex before the gunshots were heard at around 12.00 WITA;
 - That the witness as the Kapolres of Liquisa did ask the Pastor to surrender Jacinto Da Costa since Jacinto was accountable for the attack on 11 houses that belonged to the surrounding society; the witness ordered Damianus Dapa to meet with Pastor Rafael Dos Santos at approximately 08.30 WITA; later on, the witness ordered John Rea to negotiate with the Pastor at around 10.00 WITA;
 - That the witness assigned one platoon of the Police force comprised of 25 Polri personnel with an additional of 20 personnel from the Brimob unit to secure the Church of Liquisa; the witness was confident that the number of his personnel was enough to secure the mass who gathered at the church;
 - That at that time the TNI personnel were still stationed at the Makodim;
 - That the witness had never heard of any TNI, Polri, or Brimob personnel who was involved in the attack against the church;
- That the witness, together with members of the Police Force and TNI, evacuated the victims, which consist of 5 (five) dead persons and more or less 20 injured persons;

- That the evidences shown to the witness at the court in form of 2 (two) Korean Grenades, the witness claimed to know nothing about them.
The defendant claimed no objection to the witness's testimony.

6. Witness FRANS SALAMALI:

- That the witness as Brimob's Platoon Commander, together with his company from Polda Dili had been BKO -ed at Polres Liquisa in April 4th 1999, and were directly allocated in Mako Polres Liquisa.
- That it is true that since 07.00 Wita, the witness stayed around Pastor Rafael's residence, outside the gate, with assignment to secure the house of Pastor Rafael and the Church from the threat of attack by Besi Merah Putih group, which was led by Mr. Manuel Sausa as the Dan Ki at that time;
- That Besi Merah Putih group was a group of people of East Timor origin that was spontaneously emerged in order to form a security system of each group's surrounding to avoid any security disturbance that might erupt and support the Pro-Integration struggle;
- That the witness was acquainted with the leader of Besi Merah Putih Group named Manuel Sausa, however the witness did not have a superior - subordinate nor a family relation;
- That the witness had witnessed himself that inside Pastor Rafael's residential house there were people consisting of men, women and children, and that the witness did not see any weapon at Pastor's house;
- That Pastor Rafael's comment on the negotiation with Kapus Kodalops Jhon Rea with the witness is that the people were taking refuge in Pastor Rafael's house where Jacinto Da Costa was inside. However, if they were to be allowed to get out then their safety should be ensured and that the Pastor's request was then reported by the witness John Rea to Kapolres Liquisa.
- That the witness had a dialog with Manuel Sousa in order to prevent Pastor Rafael's house from being attacked by BMP Group, and Manuel Sousa's response was that the people did not want to come home to their houses and that according to them there were weapons, knives, blades, arrows, and spears inside pastor Rafael's house, which should be handed over to the security, in this case the Police.
- That at the beginning the Witness did not see the weapons possessed by Besi Merah Putih group;
- That when the attack happened at 12.00 Wita , which was initiated by the sound of a gun shot, at that time the witness saw that Besi Merah Putih squad led by Manuel Sousa was marching in to the Church complex, in direction to Pastor's residential house with hand-made weapons, blades, spears and clubs in possession;
- That the witness together with the members were equipped with tear gas to stop the fighting but it was ineffective and they could not differentiate between the civilians and the TNI because those coming out from Pastor's house were wearing civilian outfit;
- That before the attack there was screams from outside to force the people inside Pastor's house to get out and it turned out that they did not want to get out, then there were blasts of fire weapons which can not be precisely detected by the witness whether they were from inside or outside. Then in a frontal manner, from the left, right and above, behind, there was an ambush aimed to the inside part of the house by Besi Merah Putih Group;
- That because the situation was as such, the witness ordered the members based on the direction from Kapuskodal to help the people coming out of Father Pastor Rafael's house who were crying, screaming, and yelling, to be taken to the house of Kapolres, and were transported again by Brimob 's car to the Regent's house, they were big in numbers.
- That the witness did not see any Police, Brimob nor TNI members who was involved in the attack inside the Church complex;
- That the witness did not recognize the evidences, both the letter nor the grenade.

7. Witness Drs. HULMAN GULTOM:

- That the witness did not know the personnel nor the activities of Satgas Tribuana VIII, which was BKO-ed at Kodim Dili and as Dili's Kapolres , the witness has never been in contact with Dansatgas Tribuana.
- That the witness has never heard any report saying that the Defendant Yayat Sudrajat was involved in the attack or mass riot in Liquisa;
- That the witness knows nothing about the activities of Satgas Tribuana VIII in Liquisa region.
- That the witness did not recognize the evidences in forms of a copy of letter and a grenade. The defendant claimed no objection to the witness's testimony.

8 Witness Kol. Inf. MUDJIONO:

- That on April 6th 1999, as WADANREM WD , the witness was ordered by DANREM WD to go to Liquisa, and for that order the witness was accompanied by DANSATGAS TRIBUANA VIII as well as 2 (two) squads consisting of + 20 persons, members of the TNI from KOREM WD.
- That the witness received the order separately from the order from DANREM to DANSATGAS TRIBUANA VIII because the witness was being called separately by DANREM.
- That other than 2 (two) units of members, in the defendant's car there were three KOPASSUS personnel (members of SATGAS TRIBUANA VIII) who accompanied the Defendant;
- That the Defendant, as DAN SATGAS TRIBUANA VIII was not under the WADANREM WD's line of command, however he was under DANREM WD;
- That soon upon their arrival in Liquisa, the witness together with the defendant held a meeting at MAKODIM Liquisa. The meeting was attended by the Regent of Liquisa (LEONETO MARTINS), KAPOLRES Liquisa (ADIOS SALOVA), whereby at that time, JOHN REA (Kasat Serse POLRES Liquisa)'s report was being discussed, it was about the result of negotiation with Pastor Rafael dos Santos in order to hand over of JACINTO and friends who stayed in the church complex and pastor's house to the Polres, 2 (two) pre-conditions were set, which are: that JACINTO and friends should be investigated in East Timor Polda and that the mass blockading the church complex should be pulled back.
- That the decision of the meeting was a consensus to accept Pastor's conditions and to re-send John Rea to go and talk to Pastor Rafael;
- That not long after JOHN REA left MAKODIM Liquisa, there was a sound of blasts of firearm followed by series of standard automatic weapons from the outer side to the inner side of the church complex.
- That at that moment, all attendees of the meeting was immediately gone on their own ways, exactly where was not known, while the witness himself, together with Witness Asep Kuswani were heading to the back side and ordered the squad to immediately help to stop the riot and the witness ordered the Witness Asep Kuswani as Dandim to control the situation;
- That a moment later, situation was becoming calmer and the witness saw that on the defendant's clothes there were many blood stains, and when the witness asked the defendant about his blood-covered clothes, the defendant said that he just helped the injured children;
- That what the witness knows is that there were 5 dead (five) victims, all of them were refugees inside the Liquisa church complex. Those who were injured consist of more than 20 (twenty) persons, all of them were already evacuated.
- That the witness did not hear and has never received a report stating that there was a member of TNI, POLRI, nor Brimob who has a part in attacking the residential house of

Pastor Rafael in Liquisa Church Complex;

- That the dead victims were sent to MAPOLRES Liquisa to be autopsied and then they were buried at MAUBARA, which was conducted by Muspika led by Camat, JOSE AFAT.
- That the witness saw that there was a member of SATGAS TRIBUANA VIII who was injured by a shot named Serda SOFYAN.
- That it is true that when the witness returned from Liquisa to Dili in the afternoon of April 6th 1999, all of the incident and the result of the task was reported by the witness to DanRem.
- That there was no member of SATGAS TRIBUANA VIII who were being BKO-ed to KODIM Liquisa before April 6th 1999.

The defendant said that the witness testimony was true.

9. Witness Letkol Inf. ASEP KUSWANI:

- That the witness had been investigated by the Investigation Officer of the Attorney General and had signed the BAP (pre-trial statement);
- That based on the report received by the witness concerning the attack directed to the civilians in Pastor Rafael's house, the chronology is as follow:
- That on April 4th 1999, there was a conflict between the anti-integration group and the pro-integration group, which engendered an excess of attacks directed to the house of pro-integration group.
- That on April 5th 1999 the anti-integration group led by Jacinto Da Costa Pareira was responsible for the burning and destruction as well as taking a hostage of a child from the pro-integration group. The pro-integration group reported the incident to the POLRI . Afterwards, the Joint-Team managed to free the hostage and Jacinto Da Costa's group from the anti-integration side ran away and shelter themselves at Pastor Rafael's house.
- That on April 6th 1999 the pro-integration group made a request to Pastor Rafael through the Police for the anti-integration group that was responsible for the burning, destruction and taking hostage led by Jacinto and friends to be handed over to the police to be processed according to the due process law. The police had tried to convey this proposal, however it was not granted by Pastor Rafael. When the negotiation result from Lettu Pol. John Rea was about to be reported to the KAPOLRES in MAKODIM, there was a sound of a gunshot from the house of Pastor Rafael's direction to the pro-integration direction. Afterwards, the pro-integration group sporadically attacked the house of Pastor Rafael. As the result, there were 5 (five) dead victims and 25 (twenty five) persons were injured from both the anti-integration group and the pro-integration group.
- That the incident was reported by the witness to Danrem 164/WD, initiated with an early report by a radio/radio call, and was followed by a telegram.
- That 4 members of Satgas Tribuana VIII that has been BKO-ed to Kodim Liquisa were actively begun in May 1999 and were placed at Makodim.
- That after the riot at Pastor Rafael dos Santos's house on April 6th 1999, the witness saw the Defendant, Letkol Inf. Yayat Sudrajat accompanying Wadanrem 164/WD Kol. Inf. Mudjiono to Kodim 1638/Liquisa and the defendant's activity at the TKP was to help the injured victims and secure the refugees, but during the riot, the witness did not know the defendant's action nor activity.
- That the witness acknowledged that there was 1 (one) member of the Defendant named Serda Sofyan that was shot at his thigh;
- That the defendant went to KODIM Liquisa with Wadanrem on April 6th 1999 around 11.30 Wita, when a negotiation was being held in Liquisa church complex at that time.
- That the witness did not recognize the evidences shown at the court, in a form of Korean grenade and its trigger.

The defendant's response confirmed all of the witness's testimony with an addition that on April 17th 1999, the defendant met the witness again during IRJEN MABES TNI .

10. Witness Letkol. Inf. SOEDJARWO:

- That the witness recognized the defendant and that they don't have family relations;
- That the witness had held office as DANDIM Dili from August 1999 until September 17th 1999.
- That the witness was studying at school (or training) on April 1999.
- That the witness did not know the April 1999 incident in Liquisa;
- That the witness had seen a Korean grenade during his course of education (or training) and did not know the presence of the evidence shown at this court.

The defendant gave no comment on the witness's testimony.

11. Witness TOYIB ANWARI:

- That the witness recognized the defendant Letkol Inf. Yayat Sudrajat as Dansatgas Tribuana VIII when he was assigned in East Timor.
- That when he knew the Defendant, the witness was assigned as Pasi Intel Kodim 1627 Dili;
- That the witness did not know the Defendant's activity in Liquisa and that the witness has never heard about the defendant's involvement in Liquisa incident;
- That the witness recognized what is called Korean grenade, however the evidence has never been shown during investigator examination.

The defendant gave no comment on the witness's remark, but added that since the defendant was BKO-ed he has never wore KOPASSUS uniform but adjusted himself with attributes worn at KOREM but still with KOMANDO pin.

12. Witness Letkol. Inf. LODEWIJK FREDY PAULUS:

- That the witness has known the defendant since his graduation from AKMIL in 1983, and that together with the defendant, the witness followed Anti-Terror education in 1983/1984;
- That the defendant's last assignment in East Timor was as DANSATGAS TRIBUANA VIII, while the witness took office as Operational Deputy Assistant DANJEN KOPASSUS who was assigned to prepare the defendant's assignment as DANSATGAS TRIBUANA VIII.
- That it is true that the defendant's assignment as DANSATGAS TRIBUANA VIII in East Timor were to prepare the commencement of popular vote in East Timor in a form of materials for combatant's training and to prepare logistic requirements.
- That it is true that during the posting of SATGAS TRIBUANA VIII squad to East Timor, the placement arrangement for the squad was never determined and it was just determined afterwards.
- That it is true that the total number of SATGAS TRIBUANA VIII members was 116 persons.
- That it is true that every SATGAS TRIBUANA VIII commander described their activities on duty in front of DANJEN KOPASSUS, which was also attended by the assistants and unit commanders of KOPASSUS, after the end of their assignments' term.
- That it is true that in relation to the defendant's man named Serda Sofyan who was shot, it was not reported by the defendant in his activity report to DANJEN KOPASSUS, when according to standard procedure all occurrences related to a member should be reported in the end-term final report to his superior.

13. Witness AGUSTINUS BERLIANTO PANGARIBUAN:

- That the witness's rank when he was assigned to East Timor was Kasat Serse Polres Dili.
- Than in order to overcome the security and order problem in Dili, such as: the sweeping

activity which was often carried out, members of Kodim participated in providing back-up due to the situation in the operational area.

- That the witness recognized the Defendant Letkol Inf. Yayat Sudrajat as Satgas Tribuana VIII commander who was once assigned in Dili, wearing Kopassus uniform.
- That between the witness as the Chief Unit of Serse Polda Dili and Satgas Tribuana VIII, there has never been a cooperation nor a coordination, both personally nor in conducting his duties, he has never coordinated with the defendant, Letkol Inf. Yayat Sudrajat.
- That the witness on April 9-30 1999 was in Bali to take a selection test for Sesmimpol education.
- That the witness found out about the fighting incident happened in Liquisa from TV broadcast when he was in Denpasar, Bali.
- That the investigation of Liquisa case was fully handed to POLDA East Timor and there were 3 (three) defendants detained;
- That the witness continued to carry out the investigation process and it was passed to the District Attorney's office for charges, however the witness could not remember the names of the defendants anymore.
- That on the evidence, the witness did not recognize the evidences that were being shown at the court.

The defendant response to the witness's remark was that the defendant has never worn a red barrette but adjusted by wearing KOREM uniform.

14. Witness Letkol Inf. Drs. HERMAN SEDYONO:

- That the witness recognized the defendant Letkol Inf. Yayat Sudrajat, but when the defendant was assigned to East Timor, the witness has never met the defendant.
- That during the popular vote process, there were many group fighting and all was able to be controlled by the officers; and meetings were organized by Pemda in field attended by the pro-integration group and the anti-integration group, peace mass held at Suai church, traditional ceremonies commenced, all was done to ensure peaceful and friendly climate, whatever was the result of the popular vote.
- That the witness received the circular letter from East Timor PROVINCE concerning the incident in Liquisa in which the number of victims reached to more than 1 (one) person.
- That the witness had been assigned to East Timor as the Regent of Covalima from 1994 until 1999;
- That the witness heard the Liquisa incident in 1999 from the news about the riot in Pastor Rafael's house, the news from a Daily in East Timor, that there were dead victims from the incident but he did not know for sure the exact number;
- That the witness did not know the cause of the clash between the pro integration group and the pro independence group and that the witness also did not know that there were people being investigated because of the fighting in Liquisa;
- That the witness did not know the presence of the evidence in a form of hand grenade that was being shown at this court.

The defendant confirmed the witness's testimony.

15. Witness Mayor Inf. SUGITO:

- That the witness was appointed as Suai's Danramil since 1992 until 1999.
- That the witness had just known the defendant since September 2000 in relation to the investigation of the case of gross human rights violation in East Timor in JAKARTA.
- That while holding office as Suai's Danramil, the witness has never heard anything about Satgas Tribuana VIII that was assigned in Suai.
- That before meeting the defendant in Jakarta, he had heard stories about the fighting

between the pro-integration group and the pro-independence group in Liquisa. The defendant's response on the witness's remark was that the witness had once become a member of KOPASSUS but after he went out from the unit, he was no longer a KOPASSUS member.

16. Witness EURICO GUITERRES:

- That the witness had been investigated as a witness and signed the BAP.
 - That on the incident at pastor Rafael Dos Santos's House and Liquisa church on April 6th 1999, the witness was in Liquisa and saw the defendant, Letkol Inf. Yayat Sudrajat in Liquisa with Wadanrem.
 - That on the attack operated by the pro-integration group to Pastor Rafael Dos Santos's house, it was caused by a killing by members of pro-independence led by Mr. Jacinto towards a member of the pro-integration group, and when the pro-integration group tried to chase him, Mr. Jacinto ran and took shelter at pastor Rafael Dos Santos's house.
 - That the witness in Liquisa, on April 6th 1999, based on the request of Mgr. Belo, tried to become a mediator in the clash between the pro and anti-integration group, but the mediation failed.
 - That the witness saw that there were people gathering inside the church and in Pastor Rafael Dos Santos's house.
 - That Manuel Sousa said that before taking refuge, Jacinto and friends were accused to have engineered the burning of the people's house and kidnapping the pro-integration group. When it was reported to the authorized officer, Jacinto and friends were hiding inside Pastor Rafael Dos Santos's residential house, so that the pro-integration group demanded that Jacinto and friends to be handed to the authority.
 - That when the witness came to Pastor Rafael Dos Santos to settle the matter of handing over Jacinto and friends and at that moment, Pastor Rafael said that "if Leoneto Martins can, why can't we?".
 - That when Wadanrem and the Defendant arrived at Liquisa, the sound of firearms blast had not been heard yet, but in Maubara, houses had been burned.
 - That the witness saw that there were 5 (five) dead victims and some were injured and 1 (one) TNI member was shot.
 - That no one from the Police, Brimob nor the TNI was involved in the fighting in Liquisa Church Complex;
 - That it is true that the witness did not know anything about the defendant's activities in Liquisa at the moment before the riot.
 - That it is true that the Pro-Integration Fighters (Pasukan Pejuang Pro-Integrasi) as an umbrella (organization?) for the Pro Integration group in East Timor has been acknowledged nationally and internationally.
- The defendant's response to the witness's remark is that they were all true.

17. Witness Letkol Inf. HARDIONO SAROSO, SN:

- That the witness knows the defendant during their 3 (three) years in the Military Academy, but they do not have family relations.
- That the witness had been questioned by the investigator and the BAP was composed and he signed it.
- That the witness was the last official in East Timor as KASREM WD/Dili.
- That the witness was in East Timor since 1997 and took office as KASREM since June 1997.
- That as a DANSATGAS TRIBUANA VIII, the defendant had troops positioned at KODIMs, with Liquisa as an exception, with the total number of soldiers between 10 up to 100 persons.
- That as an officer the defendant was specifically responsible to DANREM.

- That the defendant was under the command of DANREM, while the relationship between defendant and the witness was limited to mere coordination.
 - That according to the report that was read by the witness, on April 1999 in Liquisa there had been a mass fighting between the Pro-integration group and the anti-integration group.
 - That there were 20 persons (2 groups) who went to Liquisa on April 6th 1999, while the defendant was guarded by 1 (one) assistant and 2 (two) guards.
 - That the witness recognized that the defendant's personnel, Serda SOFYAN suffered from a shot on his thigh and was hospitalised.
 - That the witness recognized that the defendant went to Liquisa with 2 (two) groups of TNI around 08.30 WIT.
 - That the fighting happened between the pro integration group and the pro anti-integration group with both groups armed with hand-made weapons.
 - That during the incident in Liquisa, other than Serda SOFYAN who was injured, the witness did not know about other TNI members who were injured.
 - That the defendant made a report to DANREM that during the incident in Liquisa, there were 5 (five) dead victims and 20 persons were injured.
- The defendant response to the witness's testimony was that it was all true.

18. Witness a de charge Serda SOFYAN:

- That the witness knew the defendant while he was in charge as a Group Commander -4 Cijantung, but they do not have a family relations.
 - That he was assigned in East Timor as a member of SATGAS TRIBUANA VIII as an assistant for the Defendant, DANSATGAS TRIBUANA VIII.
 - That the witness and the defendant went to Liquisa at 11.00 WIT on April 6th 1999, and that by the defendant's order, he was dressed as a civilian and he brought supplies to carry out his duty for 3 (three) days and was armed with organic weapons.
 - That the witness with the defendant, as well as witness EDI SUTRISNO, DION and 1 (one) driver of DANSATGAS TRIBUANA VIII directly went to MAKODIM on a car.
 - That the witness did not know in advance the meeting that was being conducted at MAKODIM.
 - That the witness was given an order by the defendant to monitor the situation at the field where he saw that there were 2 (two) groups of TNI and a member of KODIM near Makodim, and a few people were gathered outside the gate of Liquisa Church;
 - That while he was monitoring the situation as ordered by the Defendant, the witness did not carry a weapon, and all of the Defendant's weapon which was a gun and the witness's weapon in a form of an SS1 was kept and guarded by witness Edi inside the car.
 - That the witness saw that there were so many mass and Police officers who were in alert position surrounding the residential house of Pastor Rafael Dos Santos.
 - That when the witness was shot, the fighting had not been started yet, and after the shot, the witness did not know the progress of the situation.
 - That the witness was never involved in the fighting incident in Liquisa;
 - That there were 27 personnel of SATGAS TRIBUANA VIII under the direct command/control of the defendant whose headquarter was in Dili.
 - That the witness, the witness EDI SUTRISNO and witness DIYON, as ordered by DANSATGAS TRIBUANA VIII, went to Liquisa.
- The defendant's response on the witness's testimony was that it was all true, and he added that the weapon carried by the defendant was a gun, as for the rest of the members, they carried SS1.

19. Witness a de charge Serda EDI SUTRISNO:

- That the witness recognized the defendant as the witness's superior, and that they do not have family relations.
 - That the witness received an order from the defendant to stand by in the car in order to guard the weapons.
 - That the witness helped Serda SOFYAN entering the car whereby at that moment he was limping because of the shot.
 - That the witness reported to the defendant as DANSATGAS TRIBUANA VIII, according to the defendant's input, whereby at that time the defendant asked the witness: "Where was SOFYAN got shot?". Afterwards, the witness saw that the defendant walked to the car with Dion.
 - That when Serda SOFYAN was being taken to the hospital, the witness stayed in the car on the driver's seat, when the witness heard the sound of a gun shot from the right side of the car afterwards and that at that moment, the witness was on alert position.
 - That the witness stayed alert, but the witness was never involved in the fighting;
 - That at that time the witness saw that in the street junction, the defendant carried a little child, and that he saw the defendant's clothes were covered by blood.
 - That the defendant ordered the witness to stay in the car.
 - That the witness did not see a member of Satgas Tribuana VIII who was involved in the fighting;
 - That the witness heard the sound of automatic firearms' blasts/shots with some intervals and that the witness was on alert position and he saw that the number of officers in the field was bigger.
- The defendant's response on the witness's testimony was that it was all true.

20. Witness a de charge VINISIUS IOWAY alias DIONISIUS BERE LOE:

- That the witness recognized the defendant because the witness was the defendant's subordinate at SATGAS TRIBUANA VIII from Kopassus's Group III with was given a package of 116 personnel and that they do not have family relations.
- That the witness was assigned at MAKO SATGAS TRIBUANA VIII Dili since 1998, as an assistant and driver for the defendant.
- That on April 6th 1999, the witness accompanied the defendant leaving Dili to Liquisa with Serda EDI and Serda SOFYAN around 10.00 and arrived in Liquisa around 11 WITA. Other than the car that carried the defendant's group and the witness, there was also the car of WADANREM escorted by 2 (two) squads of TNI and KOREM WD or around 20 personnel.
- That after around 11.00 Wita, the witness saw the defendant entering DANDIM Liquisa office with WADANREM, when the witness with Serda EDI and Serda SOFYAN were waiting outside and monitoring the situation and condition around Liquisa church complex, which was around 50 meters from MAKODIM. In the mean time, 2 (two) squads from KOREM Dili were still getting ready in Makodim area.
- That around 12.00 WIT, the witness heard the sound of a standard automatic gun's blast.
- That the witness and 2 (two) members of SATGAS TRIBUANA VIII who were leaving with the defendant were not given the letter of command, but according to the convention at KOPASSUS corps, when the commander gives order, the subordinate must immediately follow the order.
- That since the first sound of blast at the TKP, the witness did not know the defendant's whereabouts and what he was doing, but a few moment later, the witness saw that the defendant's clothes were covered with blood;
- That upon their arrival at Liquisa, the witness heard the defendant ordering Serda SOFYAN to monitor the situation surrounding Kodim and Liquisa Church;

- That Serda SOFYAN was shot at his thigh, but the witness did not know where Serda Sofyan was shot;
 - That the witness was never involved in Liquisa fighting and that the witness has never heard about TNI members's involvement in Liquisa fighting.
 - That the defendant was armed by a gun and the witness and 2 (two) other members were armed with SS1, while the 2 (two) TNI squads that accompanied the defendant's group and WADANREM were armed by full standard automatic weapons of TNI.
 - That the witness saw the defendant changed his blood-covered clothes in the car and once they arrived at MAKOREM Dili, the defendant went to see DANREM directly.
- The defendant's response on the witness's testimony was that it was all true.

21. Expert's Remark: Prof. Dr. Muladi, S.H.:

- That the witness is an Honorary Professor at the Faculty of Law University of Diponegoro, Semarang, with educational background of postgraduate school, with a title of Professor Doctor, with expertise in Criminal Law, once a member of Komnas HAM;
- That the witness did not know the defendant and he just knew him at court.
- That the system of proving the command responsibility from the superior and the subordinate require a subordinate to be involved and proven to be involved in a gross human rights violation;
- That someone can be considered having the position of a commander when that person is able use his power to give an order in a binding manner and is able to control his subordinate on the basis of command system.
- That the relations between a superior and his subordinate that is de jure in nature is when it is based on an organic formal position according to each rank as superior-subordinate;
- That the de facto position of a superior and his subordinate can occur because of the situation happening spontaneously in the field, where someone who does not have a position or rank as a commander is able to give order to the squad in the field just like a commander.
- That both the de jure and the de facto command relations is still under the line of the unit, which is the military with the military, or the police with police or civilians with civilians according to the positions in the organic unit;
- That such relationship can be called effective if it is aimed to achieve the organization's target;
- That a troop is a part of a military unit, which is systematic and having a hierarchy in command relations, while the subordinate is part of a unit inside or outside the military and in relations to the power to control the subordinate effectively;
- That the definition of being under the effective command or power and control is a situation where a commander or a superior of the police or other civilian position can use the power according to his position and has the ability to prevent a criminal act (effective control), or to stop, including to hand the perpetrator to the authority and such order is binding to the troop or the subordinate;
- That what is defined as under the command or power is according to the provisions which become the ground of power or command possessed by the commander or superior;
- That TNI can take temporary action to detain the defendant, in a case where he was caught in the act, to be later on handed to the investigator according to the provisions in KUHAP .
- That the wide definition in the Law Number 26 Year 2000 is that the action was taken together and it was done seriously towards the civilians.
- That in the development of the formulation of crimes under the Human Rights Court's jurisdiction may include attack in form of killing (and the killing of) even one person can be considered as a crime against humanity.
- That in 1999, the witness was the Minister of Justice and in May 1999 he was the

MENSESNEG.

- That the legal base for de jure accountability is a written decree/decision, whereas de facto resolves are based on the command in the field without having to have a written decree.
 - That the wide definition is as in the example of Rwanda, Tokyo, Yugoslavia, for a gross human rights violation where even when there was only 1 (one) victim, if the attack was a part of a widespread or systematic attack, and if that is not the case then it can be considered as ordinary crime.
 - That the crime of omission or oversight can only be implemented in a case where a gross human rights violation is happening or afterwards. In the mean time if the violation has not occur and it is still an assumption then it cannot be considered as an omission;
 - That the most important thing is the commander's stance after hearing or properly acknowledge that his squad or subordinate is committing a crime against humanity or a crime under the jurisdiction of the Human Rights Court;
 - That the case of General Yamashita in the Philippines who were accused of mass rape where he was supposed to acknowledge or know accordingly that the action that is being taken, or was just being taken by his troop's personnel in the field, then the accountability form is "strict liability" (accountability without any misconduct).
- The defendant's response to the expert witness was that is was all true.

Considering that the Public Attorney has made a request at the court to read the testimony of witnesses who had been summoned accordingly a few times, however they were not in attendance, they are: 1. Rafael Dos Santos; 2. Antonio Da Conceicao Santos; 3. Joao Pereira; 4. Lucas Soares; 5. Maria Fernanda Mendes; 6. Emilio Barreto; 7. Jacinto Da Costa Freitas; 8. Laurentino Soares alias Moko; 9. Abilio Jose Osorio Soares; with the reasons: that because based on the letter of East Timor Attorney General that failed to summon the witnesses based on security reason, and for the requests, the Court has ordered the Public Attorney to read the testimony of witnesses according to the full version of the dossier and it would be considered as an integrated part of the content of this ruling;

Considering that based on the testimony of witnesses that was being read, the Defendant Colonel Inf. Yayat Sudrajat stated that he denied parts of the testimony mentioning the Defendant's involvement in a criminal act, and stated that he refused the testimony of witness that contains lies and that he requested that the testimony should not be made an evidence;

Considering that the Defendant Colonel Inf. Yayat Sudrajat has given a testimony at court, basically as follows:

- That it is true that the defendant confirmed all of the defendant's statement in the dossier of investigation.
- That the Defendant was a Dan Satgas Tribuana VIII who was positioned Under the Operational Control (BKO-ed) at Korem Dili;
- That on April 6th 1999 the defendant was ordered by Dan Rem to accompany Wadan Rem to leave Dili to control the situation in Liquisa;
- That at that moment, the defendant was ordered to check the situation and condition in Liquisa, and then the defendant, accompanied by 3 (three) of his guards who were members of Satgas Tribuana VIII, went together with WADANREM's group to Liquisa, arrived at Liquisa and met the Dan-Dim, Kapolres and Regent of Liquisa between 10.00-11.00 Wita.
- That the defendant carried a gun and the each defendant's guard, 3 (three) persons, carried SS1 fire weapon;

- That it is true that the defendant with 3 (three) guards and WADANREM went to Liquisa and met DANDIM, then DANDIM reported the tense situation that had/were happened between the Pro-Integration group and Pro-Independence group that was being handled by Kapolres Liquisa at that time.
- That it is true that Kapolres Liquisa ordered JOHN REA to mediate a negotiation between the 2 (two) conflicting parties and the Pro-Independence group was represented by Pastor RAFAEL DOS SANTOS;
- That after the negotiation with Pastor RAFAEL DOS SANTOS, JOHN REA reported the negotiation result to Kapolres Liquisa concerning the situation report at the pastor's house as well as passing the demands from Pastor RAFAEL DOS SANTOS as follows:
 - For JACINTO to be handed over to POLDA of East Timor and not POLRES Liquisa.
 - To immediately dismiss the mass from the Pro-Integration group outside the complex and residential house of Pastor.
- That after the discussion at the meeting attended by Kapolres, DANDIM Liquisa, WADANREM and the defendant, it was decided that the demand from Pastor RAFAEL DOS SANTOS can be fulfilled.
- That the defendant also volunteered to conduct the negotiation with Pastor RAFAEL DOS SANTOS, but it was not responded in the meeting;
- That when the witness John Rea left to Pastor RAFAEL DOS SANTOS's house to re-negotiate, suddenly there was a sound of a gunshot once and then it was followed by several standard automatic gun blasts.
- That after hearing the gun shot, all of the participants of the meeting in Makodim Liquisa rushed out and that the defendant immediately ran forward and saw that people are coming out of Pastor Rafael Dos Santos's house to save themselves, at that time the defendant witnessed that the mass has blended into one and they were slashing one another.
- That afterwards, the defendant saw an old man carrying a little child whose hand was hurt by a stab, the defendant immediately gave his hand and carry the blood-covered little child to be brought to a safe place;
- That during the fighting, the sound of gun shots were continuously heard, then the police and Brimob gave a shot aimed above as a warning shot and with the help of Kodim squad they were finally able to control the situation;
- That the defendant saw Serda SOFYAN who suffered an injury caused by a shot where he was not in the car at that time;
- That the defendant did not bring any squad other than the 3 (three) members according to the standard procedure;
- That he did not know and he did not recognize Manuel Sousa nor Besi Merah Putih group, the defendant had just heard the name of Manuel Sousa after he was being investigated in this court;
- That according to the information available, the result of Liquisa incident was that there were 5 (five) dead victims and more than 20 (twenty) persons were injured, but the defendant did not witness the dead victims himself;
- That the defendant went back to Dili on April 6th 1999 in the afternoon, and he went straight to Korem Commander to report;
- That the total personnel of SATGAS TRIBUANA VIII squad in Dili was 27 persons including the defendant and the members were directly under the defendant's control;
- That the defendant saw that the mass was carrying weapons in forms of blades or knives and that none of them carried fire arms;
- That before a squad was sent to operational area, they were first prepared with shooting practice, patrolling and maintaining physical condition;
- That the establishment of SATGAS TRIBUANA VIII squad was based on a certain goal, in

which the defendant had received information beforehand that said that East Timor was in a turmoil and then the defendant was sent to East Timor to help KOREM WD in carrying on the territorial operation in order to create a conducive situation.

- That the defendant had never known anything about the incident on April 4th - 5th 1999, and was made aware about the April 6th 1999 incident in Liquisa only after receiving the information from witness Dan Rem TONO SURATMAN who had assigned the defendant afterwards;

- That SATGAS TRIBUANA VIII squad who went to Liquisa were equipped with stock and equipment for 3 (three) days, which consisted of: weaponry, ammunition, clothes and other equipment;

- That the one entitled to give orders and control all three personnel of the defendant was the defendant himself.

- That the defendant has a family consisting of 1 (one) wife and 3 (three) children, the oldest is in 2nd grade of high school, the second one is in the 3rd grade of junior high school and the youngest is on the first grade of junior high school;

- That the defendant has never been convicted before and he has never been involved in any criminal case as a defendant beforehand.

Considering that the Court has considered everything throughout the process of questioning at Court, for the conciseness of the ruling, it is enough for the Court to refer to the matters presented on the dossier of the trial and preliminary statements, in which all has been deemed to be included and considered in this ruling;

Considering that based on all of the evidences, be it in forms of the witness's testimony, expert's remark, defendant's statement and evidences as well as letters in relations to one another, revealing facts in the course of the trial which truth is undeniable, and primarily consist of the following:

1. That it is true that the Defendant, Colonel Infantry Yayat Sudrajat took office as a Commander of Assignment Unit (DanSatGas) Tribuana VIII since January 1999 until December 1999, and his daily duty was accountable to the direct superior Danrem 164 / Wira Dharma, which was positioned in Dili;
2. That it is true that the Defendant had a squad or subordinate consisting of members of satgas, some were BKO -ed at some Kodims in Dili region;
3. That it is true that on April 4th and 5th 1999, there had been a riot in the village of Pukelara, Region of Maubara, in the form of destruction and burning of houses that belong to the Pro Integration group, which was done by the Pro Independence group led by Jacinto Da Costa Pereira, who were later on found taking refuge and hide at the residential house of Pastor Rafael Dos Santos;
4. That it is true that on April 6th 1999 since morning, there were many native people gathering at the residential house of Pastor Rafael, intended to seek safe refuge, they were people from the Pro Independence group consisting of elderly men and women as well as children. In the mean time, outside the gate of Pastor Rafael's residence there was a mass gathering, which was known as BMP or Besi Merah Putih under the leadership of Manuel Sousa, it was included in the Pro Integration group consisting of men who were all carrying traditional weapons in the forms of blades, spears, arch, and other wood-based weapons;
5. That it is true that on April 6th 1999, outside Liquisa Church complex there had been a group of people known as Besi Merah Putih in emotionally screaming, demanding to Pastor Rafael Dos Santos to hand over the leader of the Pro Independence Jacinto Da Costa Pareira, who had been known to be inside the residential house of Pastor Rafael, to be responsible for his action in front of the authority in order to take responsibility of his deeds on April 4th and

5th 1999;

6. That it is true that Besi Merah Putih group had threatened in screams that if Jacinto was not being handed over, then later on at 12.00 Wita they would attack;

7. That it is true that Besi Merah Putih consisted of the native people of Liquisa, East Timor, who spontaneously and out of their own free will form a security group in their area, and in their activities they also supported the Pro Integration group;

8. That it is true that on April 6th 1999 since morning there was Polri squad and one company of Brimob who were standing alert and isolating the two conflicting mass groups from each other under the leadership of witness Letda Pol Frans Salamali.

9. That it is true that before the incident inside Liquisa Church Complex, the members of TNI squad from Kodim were standing alert at Makodim in case assistance/back up was required;

10. That it is true that right before noon on April 6th 1999, Muspida Liquisa that consisted of Witness Let Kol Asep Kuswani; Witness AKBP Adios Salova; Regent Leonato Martins, have had a meeting at Makodim 1638 Liquisa to discuss arrangement related to the mass concentration outside Liquisa Church Complex and the refugees who seek protection at Pastor Rafael's residential house which was within the Church Complex.

11. That it is true that on April 6th 1999 around 10.00 Wita, the Witness AKBP Adios Salova had ordered his subordinate, John Rea to negotiate with Pastor Rafael Dos Santos to persuade him to hand over Jacinto and friends who had burnt the residents' houses in Pukelara on April 4th and 5th 1999 to be taken to Polres Liquisa office to be legally process and to suppress the pro integration mass fury who were blockading the Church complex, but the effort failed to succeed because Pastor Rafael did not let Jacinto to be handed to the authority based on the reason that he was worried that he would be killed.

12. That it is true that after the first negotiation between Pastor Rafael Dos Santos and the Witness Lettu Pol John Rea failed and it was reported to Witness AKBP Adios Salova that Pastor Rafael would be willing to hand over Jacinto Da Costa with preconditions that the questioning should be done at East Timor POLDA and that the Besi Merah Putih mass gathering around the church area and Pastor's residential house should be dismissed and pulled back.

13. That it is true that witness John Rea reported the first negotiation result to Witness AKBP Adios Salova who was staying at Makodim 1638 Liquisa at that time, also attended by Wadan Rem Let Kol Mudjiono and the Defendant Let Kol Yayat Sudrajat with a consensus that the proposal or the preconditions requested by Pastor Rafael Dos Santos was approved and re-assigned Lettu Pol John Rea to see Pastor Rafael.

14. That it is true that not long after Lettu Pol John Rea left for Pastor Rafael's residential house, suddenly there was a sound of gun shot coming from Pastor Rafael's residential house in Liquisa Church Complex, so that the meeting between Muspida and Wadan Rem Let Kol Mudjiono and the Defendant Yayat Sudrajat was over and every one of them left the meeting room at Makodim Liquisa.

15. That it is true that on April 6th 1999 around 12.00 Wita there was a sound of fire arm in the area of the mass gathering and Besi Merah Putih led by Manuel Sousa who were armed with traditional weapons in the forms of spears, swords, arch and wood-made clubs came inside and attacked the people inside Pastor Rafael's house in Liquisa Church Complex.

16. That it is true that the people hiding in Pastor Rafael's residential house consisted of men and women as well as children who were unarmed.

17. That it is true that in the mean time there were more sounds of shots from all direction where the conflicting group mass had been blended in a big number following the attack to Liquisa Church complex done by Besi Merah Putih group, so that POLRI officers and Brimob squad who had built a partition previously failed to contain or prevent the fighting between mass groups, because Polri's force and the total number of Brimob was only less than a

hundred, far below the number of mass that reached thousands of people.

18. That it is true that during the attack by Besi Merah Putih pro-integration mass and the mess, the refugees inside Liquisa Church complex were running outside to save themselves, some are running to the Regent's official house, Polres office and Kodim Liquisa, and in the end all of them were directed to the official house of Liquisa Regent.

19. That it is true that Witness Let Kol Inf. Asep Kuswani ordered his subordinates under the TNI leadership Joko Waluyo to proceed to Liquisa Church complex to aid the Police in handling the situation and to save Pastor Rafael Dos Santos.

20. That it is true that after the squad aid ordered by Witness Asep Kuswani as Dandim, at that time the situation was getting calm and the riot was under controlled.

21. That it is true that because of the incident of attack by Besi Merah Putih mass in Pastor Rafael's residential house in Liquisa Church complex, there were 5 (five) dead victims and around 20 (twenty) persons were injured.

22. That it is true that all of the dead victims were buried accordingly in Maubara area based on the consensus of Muspida in Liquisa.

23. That it is true that after the situation were under controlled, a police line were set and on the next day April 7th 1999, Polres Liquisa Team explored the scene for the investigation and questioning to the 3 (three) defendants in this Liquisa case.

24. That it is true that the investigation of defendants on Liquisa case was being conducted by Polres Liquisa officers, together with Dit Serse Polda of East Timor.

25. That it is true that from the scene, some arrows and clubs as well as sharp weapons were found and were being collected to be secured by the authorized Police.

26. That other facts would be discussed altogether in the assessment and verification of the Public Attorney's indictment.

Considering that subsequently the facts above would be considered as the basis of verification of the Public Attorney's indictment towards the Defendant Yayat Sudrajat, which was composed as follows:

PRIMARY :

First :

Article 42 point (1) letter a, b jis. Article 7 letter b, Article 9 letter a, Article 37, the Act of Law Number 26 Year 2000 on the Human Rights Court ; -

Second :

Article 42 point (1) letter a, b jis. Article 7 letter b, Article 9 letter h, Article 40 the Act of Law Number 26 Year 2000 on the Human Rights Court ;

SUBSIDIARY :

First :

Article 7 letter b jis. Article 9 letter a, Article 37, Article 41 the Act of Law Number 26 Year 2000 on the Human Rights Court ;

Second :

Article 7 letter b, jis. Article 9 letter h, Article 40, Article 41 the Act of Law Number 26 Year 2000 on the Human Rights Court ;

Considering that in proving the indictment of the Public Attorney that was composed alternatively in a cumulative form, it is imperative for the Court to prove every alternative indictment by accumulating the first indictment and the second indictment. In the case where one of the alternative indictment has been proven legally and persuasively, then the rest of the indictment do not have to be proven to any further extent;

"First-Primary" Indictment:

Considering that the First-Primary indictment from the Public Attorney related to Article 42 point (1) letter a, b jis. Article 7 letter b, Article 9 letter a, Article 37, the Act of Law Number 26 Year 2000 on the Human Rights Court was assessed as follows :

Considering that the articles of first-Primary indictment of the Public Attorney consist of articles containing the complete elements of a criminal act, and that there is a supplementary article to refer to the qualification of the substantiated criminal act ;

Considering that when the composition of articles in the first-Primary indictment above is carefully examined, it is possible to deduct that the Prosecutor intends to prove that the Defendant is liable to the crime under the Human Rights Court's jurisdiction in a form of "killing" on the basis of the existence of effective command and control responsibility or under the power of effective control on the crime under the jurisdiction of Human Rights court, which was done by the troop under his effective command and control ;

Considering that in assessing and verifying elements contained in every article of the first-Primary indictment above, arising questions as follows should be answered beforehand :

- a. Is it true that there was a crime under the jurisdiction of Human Rights Court?
- b. Who was the perpetrator of the crime?
- c. Is the Defendant liable for the crime under the jurisdiction of the Human Rights Court?

Considering that the questions above should be answered in sequence, that is for the later question can only be answered after the answer to the previous question is found ;-

Considering that Article 42 point (1) letter a, b the Act of Law Number 26 Year 2000 which is a provision of the new command responsibility would be assessed after the articles that consist of the formulation of gross violation of human rights are proven ;

Considering that Article 7 letter b the Act of Law Number 26 Year 2000 stated that : "Gross violation of human rights consists of : ... b. crime against humanity".

That "gross violation of human rights covers crime against humanity" is included in the Human Rights Court's jurisdiction ;-

That the article above merely provides a name for gross violation of human rights, which is a form of crime against humanity and it does not contain elements of crime that has to be proven further;

That in order to know the formulation and to assess the existing elements in the definition of the article above, it has to be related to the rest of the indictment articles, so that this article could be proven if there are other supplementary articles which elements have been fulfilled ;

-

Considering that Article 9 letter a the Act of Law Number 26 Year 2000 stated that : "Crime against humanity as mentioned in Article 7 letter b is an act taken as a part of a widespread or systematic attack that (he) knew to be directly targeted on civilians, in forms of : a. killings...."

Considering that the article above contains elements as follows :

1. Element of "an act taken as a part of a widespread or systematic attack" ; -
2. Element of "(he) knew to be directly targeted on civilians" ; -
3. Element of "the action taken in form of killing as stated in Article 340 of the Criminal Code" ; -

Considering that subsequently the elements above are being assessed in sequence as follows :
Ad. 1. Element of "an act taken as a part of a widespread or systematic attack" :

Considering that the Act of Law Number : 26 Year 2000 on the Human Rights Court with its elaboration does not set a limitation nor a clear definition on widespread attack, therefore in

order to set a limit on the definition or meaning on the element, the Court considered the following reasons ; -

That the element of widespread contains a meaning that an action that creates an impact nationally or internationally, such action causes a great suffering, tangible and intangible loss, horrible, is a brutal action to force his political intention, is taken seriously and altogether, causes individual or communal insecurity, and involves many parties, causes series of similar occurrences ; -

That the meaning contained in the element of widespread above is enough to be considered as provided when one of the meaning was being done by the perpetrator;

That the facts revealed in the trial number 15, 17 and 18 stated that the incident in front of and at Pastor Rafael's residential house was in form of an attack conducted by Besi Merah Putih group aimed at the people seeking protection inside Pastor Rafael's residential house in Liquisa church complex ;

That Witness Damianus Dapa and Witness John Rea explained that before the incident occurred, the witnesses saw the young men of Besi Merah Putih gathering in front of the Church gate screaming emotionally while holding traditional weapons such as blades, spears, arrows and clubs;

That witness Frans Salamali who was assigned to stand alert outside the Church gate near Pastor Rafael's residential house explained that around 12.00 Wita there was a sound of a fire arm, and at that time Besi Merah Putih group led by Manuel Sausa who were armed with traditional weapons started to attack Pastor Rafael's residential house inside the gate of Liquisa Church complex ;

That according to the fact revealed in the trial number 16 the people hiding inside Pastor Rafael's residential house consisted of men and women as well as children who were all unarmed ;

That because of the attack, a riot occurred, the mass at the scene felt afraid and screaming for help, and finally it was known that because of the incident, Pastor Rafael's residential house was full of destruction, which was not a small loss and that there were victims, more or less 20 (twenty) persons were injured, and 5 (five) dead victims, according to the fact revealed in the trial number 21 ; -

Considering that based on the witnesses nor the Defendant's explanation that stated that there was no attack aimed at the pro-independence people, but what happened was more of a clash between Besi Merah Putih group against the Pro Independence inside the Pastor Rafael's residential house, the Court perceived it as follows :

That in a situation where on one side, there were people consisting of men, women, the elders and children who were unarmed in a house inside the Church complex to seek protection because they were afraid, and on the other side there were people of Besi Merah Putih group who were moving inside and were armed by traditional weapons as well as other sharp weapons in emotional state, then the riot that happened was not a clash where the condition and situation were balanced and both sides were attacking each other, but it was a situation where one side was passive, seeking protection and were afraid, and the other side was actively forcing in order to gain their objective ; -

Considering that based on the assessment above, the Court thinks that the incident happened on April 6th 1999 at Pastor Rafael's residential house inside Liquisa Church Complex was an attack on one side by Besi Merah Putih group aimed at another side, which was the refugees from the people of Pro Independence who were afraid and seeking protection; -

Considering that the attack incident which caused the destruction of Pastor Rafael's residential house and resulted in a great suffering in form of physical loss that was not small as well as injuries and lives of victims from that community, the Court is of the opinion that it could be categorized as the outcome of action or a kind of action that was being taken simultaneously and that it could be considered as brutal and horrible action as stated in the definition of widespread attack; -

Considering that based on the points above, the Court thinks that the sub-element of "widespread attack" has been fulfilled.

Considering that this element Ad.1 is alternative in nature, so that if "widespread" element has been provided, then the element of "systematic" need not be assessed anymore, however the Court perceives that it is necessary to comment on the element of "systematic" as such:

That what is meant by the element of "systematic" is something planned as a policy being set or an extension of a certain policy. It could happen directly or indirectly.

That in direct nature, in this case the perpetrator was involved in organizing the acts he wanted and intended as well as the result he wanted.

That indirectly, it could be a form of authorizing or approving action, wanting the action to be taken, tolerating, facilitating to ease the perpetrator in doing what he wanted. It could be carried out through cooperation or conspiracy emerging from a policy that has been approved or the omission to something that had happened. So that the perpetrators can carry on his will without any obstacle. Or after the perpetrators carried on his will, then the perpetrators indirectly took the obstructive measures, but the impact had already occurred.

That based on the facts revealed in the trial on point 4, 5 and 6 showing that Besi Merah Putih group led by Manuel Saosa had gathered and threatened the people inside Pastor Rafael's residential house since morning until noon on April 6th 1999 ; -

That according to facts revealed in court on number 7 group Besi Merah Putih consisted of original East Timor people who spontaneously form and join an organization to support the security in their respective areas. And this group joined the Pro integration group which was an independent mass organization outside the government's organization structure.

That the interval between April 6, 1999 morning and almost noon before 12.00 WITA, when the first gunshot was heard, gave enough time for Manuel Saosa and members of his troops named Besi Merah Putih to consolidate and cooperate to conspire in order to prepare the attack thoroughly.

That facts in trial show that with a signal of a gunfire shot in April 6, 1999 about 12.00 WITA, group Besi Merah Putih, led by Manuel Sousa and part of Pro Integration group, simultaneously launched an attack from different directions using traditional weapons to Pastor Rafael's residence, located in Liquisa Church area, where citizens from Pro Independence group take refuge for security.

That the attack by group Besi Merah Putih was an act of coordination or an extension of a policy made by that organization on its own without interference from other parties.

Considering, that based on the explanations above the Court agrees that sub element "systematic attack" is fulfilled;

Considering, that based on the explanations above, element ad.1 "As part of a widespread or systematic" is fulfilled;

Element ad 2 "The attack was known to be directly targeted at civilians".

Considering, that the element above could be examined as follows:

Considering, that the Explanation of Article 9 Act No 26 Year 2000 stated that "attack targeted directly at civilians" means a series of action taken against civilians as an extension of the policies of the authorities or policies related to an organization; -

Considering, that the meaning above is in the same line with provisions in Article 7 Verse 2 of the Rome Statute, which states that an attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred against civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack

That facts in trial on number 4, 5 and 6 show that before the attack at Pastor Rafael's residence in Church Liquisa area, since morning until almost noon around 12.00 WITA,

Group Besi Merah Putih had gathered around the gate of the Church Liquisa area; -

That based on that fact, there was a clue that shows enough time to plan a policy by organization or group Besi Merah Putih to attack the pro independence refugees;-

That there was no other aim inside Pastor Rafael's residence in the Church area than the frightened refugees who were not armed at all;-

That it is an undeniable fact on number 16 that the group of refugees in Pastor Rafael's residence was categorically civilians who became target of the attack, consisted of men and women, children, including nuns and pators;-

Considering, that based on the explanations above, it is revealed that group Besi Merah Putih as part of the Pro Integration group had executed an attack with a single aim and launched directly against those civilians;-

Considering, that based on the explanations above, the Court agrees that element ad 2 "the attack was directly targeted at civilians" is fulfilled.

Ad. 3 Element "action taken in the form of murder as stated in Article 340 Criminal Code"

Considering, that the element above is examined as follows:

Considering, that Article 340 Criminal Code states "Those who deliberately or planned before-hand the elimination of another person's life, shall be punished for planned murder with capital punishment or life-time imprisonment or imprisonment with a maximum of 20 years".

That the article above includes the elements: a. deliberately ; b. premeditated ; c. elimination of another person's life.

That "those" stated in the Article above is meant to know who or whoever the person who committed the deed formulated in the related article;

That related to the question in number 1 to explain the existence of crime under the jurisdiction of the Human Rights Court or action of gross violation of human rights, then to know who the persons are there has to be an explanation of the elements;

Element a. "deliberately" is examined as follows:

That the meaning of deliberate is an action performed by a person or any perpetrator with complete awareness that the action will eliminate another person's life;

That the perpetrator's awareness of the result that would emerge, be it according to the objective or an intention or possibility of another person being dead, the perpetrator did not stop the intention and even continued to execute the action;

That according to the facts revealed in court on number 15 which basically states that on April

6, 1999 around 12.00 WITA, a riot happened in Pastor Rafael's residence in Church Liquisa area, group Besi Merah Putih used weapons to attack from outside the Church area into Pastor Rafael's residence in that Church area;

That Witnesses Damianus Dapa, John Rea and Fransisco Salamali were all in line constructing a fact that Besi Merah Putih group from Pro Integration group had entered and attacked refugees from pro independence group inside Pastor Rafael's residence, Witness saw Manuel Sousa and his members bringing traditional weapons like spears, samurai and wooden bat;

That the account of Witness Fransisco Salamali who saw Manuel Sousa while standing with Besi Merah Putih members outside the Church gate, and Witness Frans Salamali asked them to dissolve because those inside were their brothers as well, but was ignored by Manuel Sousa, they even continued shouting for Jacinto to surrender and come out of the Pastor's residence,-

That the Ad Hoc Human Rights Court does not agree with the Defendant's Team of Lawyers nor the Prosecutor who justify the incident in Ave Maria Church area as a clash, by referring to the result of the analysis of the facts and witnesses in court, the Court perceives that what happened was not a clash but an attack by Besi Merah Putih group against unarmed civilians in Pastor Rafael's residence;-

That under normal conditions, Besi Merah Putih group from Pro Integration led by Manuel Sousa was aware, with consciousness intact, that the swing of a sharp weapon in a form of samurai, spear and arrow directed to a human body would absolutely or supposedly cause that human being to be injured and die;

That with complete awareness and full of enthusiasm to attack covered with irritation because Jacinto Da Costa Pereira continued to hide inside the Pastor's residence, Besi Merah Putih group led by Manuel Sousa in fact never stop their intention to attack, instead they continued to attack and caused around 20 (twenty) people injured and 5 (five) people dead;-

That although different in the system of deliberation on the crime elements or facts revealed in trial, but the Court agrees with the Prosecutor's explanation as long as the element "deliberately" by Besi Merah Putih group has been fulfilled;-

Considering, that based on the explanation above, according to the Court's opinion element a. "deliberately" is fulfilled.

Element b. "premeditated" is examined as follows:

That premeditated means that between the intention to take action until the execution of action the perpetrator had sufficient time to think composedly how, when and with what tool the action would be executed;

That the time interval should be appropriate, meaning that it is not too short and pressing, not too long and most importantly within the time interval the perpetrator or crime architect could also think composedly that he/she has a chance to cancel or stop the intention to execute the crime, but he/she did not and even continued to execute it;

That the action executed as crime is in the form of murder;

That Witness Damianus Dapa, Frans Salamali and Adios Salva explained the number of refugees inside the Church area is more than Besi Merah Putih group outside the Church area;-

That thorough preparation or strategic planning of Besi Merah Putih group to attack inside Pastor Rafael's residence in the Church area is given sufficient time, i.e. from morning until noon around 12.00 WITA when a gunshot was heard;

That the time interval was sufficient for Besi Merah Putih group to think, prepare tools and weaponry and determine the mechanism and right time, or actually it is possible for the perpetrators to stop their intention or cancel their plan, but they never stop their intention and

even continued to attack together creating a riot that caused several people injured and dead;- That the mass group inside the Church area was helpless and the riot stopped after aid came from TNI soldiers ordered by Witness Asep Kuswani to help POLRI and Brimob control the situation;

Considering, that based on the explanations above, the Court agree that between the intention and execution of action there was sufficient time for the perpetrators of crime to think composedly how to execute the action, this is called planned action, so the Court agree that element b. "premeditated" is fulfilled.

Element c. "elimination of another person's life" is examined as follows:

That the sentence "elimination of another person's life" means that during the event there must be an action that caused another person than the perpetrator to die;

That according to the facts revealed in court on number 21, the attack executed by Besi Merah Putih group resulted in civilian victims consisting of Pro Independence group inside Pastor Rafael's residence and inside the Church of Liquisa area with 5 (five) victims dead and around 20 people injured;-

Considering, that based on the explanation above, the Court agree that element c. "Taking away or eliminating another person's life" is fulfilled.

Considering, that the elements above are fulfilled, if related to "those", to know who or whoever the persons who have fulfilled the elements of action in the indictment article, then it shows that the one who executed crime of "murder" is Besi Merah Putih group led by Manuel Sousa;

Considering, that all elements in Article 9 a is fulfilled, then the article of the Prosecutor's indictment should be claimed proven in court. And when related to Article 7 letter b in the same indictment above, then it is concluded that the Prosecutor's indictment saying that a crime happened under the jurisdiction of the Human Rights Court or gross violation of Human Rights in the form of "killing" is fulfilled.

Considering, that based on the explanations above, then the questions in number 1 and 2 are answered, they are:

1. It is true that crime happened under the jurisdiction of Human Rights Court or gross violation of Human Rights in the form of killing;

2. The Perpetrator of crime or gross violation of Human Rights is Besi Merah Putih group led by a person named Manuel Sousa;-

Considering, that the Court would next examine about the question in point 3 about: Could the Defendant Yayat Sudrajat be held responsible for that crime under the jurisdiction of the Human Rights court or gross violation of Human Rights?

Considering, that to answer that question, then the next article will be examined in indictment Primary-first i.e. Article 42 verse (1) a, b Act No. 26 Year 2000 as follows.

Considering, that Article 42 verse (1) a and b says as follows:

" A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Human Right Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

- a. That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
- b. That military commander or person failed to take all necessary and appropriate/ reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for inquiry, investigation and prosecution.

Considering, that the Article above includes the following elements:

1. Military commander or person effectively acting as military commander,
2. is held responsible for crime under the jurisdiction of the Human Rights Court, executed by soldiers under his/her command and effective control, or under his/her effective authority and control,
3. that crime is a result of absence of appropriate control, i.e.:
 - a. that military commander or person knows or in the situation at that time should have known that the soldiers are executing or had just executed gross violation of Human Rights, and
 - b. that military commander or person did not take appropriate and necessary action within his power to prevent or stop that action or surrender the perpetrators to officials with authorities to inquire, investigate, and prosecute.

Considering, that the elements above is examined and proven as follows:

Ad.1 element "military commander or person effectively acting as military commander".

Considering, that based on facts revealed in court on number 1, the Defendant Col. Inf. Yayat Sudrajat acted as Commander of Task Unit (DanSatGas) Tribuana VIII since January 1999 until September 1999, and in his daily duties reported to his direct superior Danrem 164/Wira Dharma located in Dili;-

It is true that the Defendant had soldiers or subordinates consists of task unit members whom some were put in BKO in Kodims in Dili region;

Considering, that based on the explanations above, the Court agree that the Defendant had the capacity as a military commander or a person effectively acting as military commander so that element ad 1 "military commander or a person effectively acting as military commander" is fulfilled;-

Element ad 2 "is held responsible for crime under the jurisdiction of the Human Rights Court, executed by soldiers under his/her command and effective control, or under his/her effective authority and control"

Considering, that in order to examine the element above, the Court refers to the result of examination on Article 9 letter a i.e. it is proven that in April 6, 1999 crime happened under the jurisdiction of the Human Rights Court or gross violation of human rights in the form of crime against humanity in form of killing in Pastor Rafael's residence located inside the Church of Liquisa area executed by Besi Merah Putih group led by Manuel Sousa;

Considering, that element ad 2 "crime under the jurisdiction of the Human Rights Court" means the element of crime stated to be proven on Article 9 letter a i.e. "killing",-

Considering, that to prove whether element ad2 above is fulfilled by the Defendant, then the following question should be answered:

"Was there any hierarchical command line relation and effective control between the Defendant and Besi Merah Putih group led by Manuel Sousa?", or vice versa "Was Besi Merah Putih a group under the command and effective control, or under the effective authority and control of the Defendant?";

Considering, that the above question is answered as follows:

That a person is considered to have a hierarchical command line relation with another person if there is a standard regulation stating that based on organic position a person and the other is vertically superior and subordinate or vice versa subordinate and superior;-

That facts in trial on number 9 claim that Besi Merah Putih group part of Pro Integration is a mass group of original East Timorese that was established alone from their own willingness voluntarily in order to support security in their own region;

That according to facts revealed in court on number 15, 17 and 18, the one who attacked refugees in Pastor Rafael's residence is Besi Merah Putih group led by Manuel Sousa;

That during court examination, no evidence, be it in the form of documents or witnesses, show the existence of a superior-subordinate relationship between Besi Merah Putih group in one side and Defendant Yayat Sudrajat in the other side;

That document evidence of photocopy of letters where the original versions were never shown in court, according to the Court does not have the weight as a legal evidence therefore should be put aside;

That subordinates or members under the command of the Defendant, each Dionisius, Edi Sutrisno and Sofyan, during court examination there has been no evidence explaining that they had performed gross violation of human rights crime in the form of attack against the refugees in Pastor Rafael's residence;

That Witnesses, each Frans Salamali, Damianus Dapa, John Rea, Eruico Guterres, Mudjiono, Tono Suratman, M. Noer Muis had all explained in line that no member of TNI, Polri and Brimob were involved in the attack, so the Prosecutor's indictment stating that 3 (three) members of the Defendant's troop were involved in the attack against refugees inside the Church area and Serda Sofyan being injured was never revealed in court, so it has to be put aside;

Considering, that based on the explanations above, then the Court agree that the Defendant does not have a command line and effective control over Besi Merah Putih group, and vice versa Besi Merah Putih group was not a troop under the command and or power and effective control of the Defendant;

Considering, that based on the explanations above, then the question above could be answered, i.e.:

"There is no hierarchical command line relation and effective control between the Defendant Yayat Sudrajat and Besi Merah Putih group as part of Pro integration group", and vice versa Besi Merah Putih group is not a troop under the command and effective control, or under the effective authority and control of the Defendant".

Considering, that with the answer of the question about the Defendant's relations with Besi Merah Putih group, then the answer for the main question on number 3 i.e. "Could the Defendant be held responsible for the crime executed under the jurisdiction of the Human Rights court or gross violation of Human Rights?", and the answer is "The Defendant Yayat Sudrajat could not be held responsible over that gross violation of Human Rights".

Considering, that based on the explanations above, then the Court agree that element ad 2 Article 42 verse (1) letter a and b saying "could be held responsible over crime executed by troops under the command and effective control, or under the effective authority and control" is not fulfilled;-

Considering, that because an element of Article 42 verse (1) letter a and b and verse (2) Act No. 26 year 2000, then the remaining elements need not be further examined, and Article 42 verse (1) both letter a and b Act No. 26 Year 2000 must be claimed not fulfilled;-

Considering, that because Article 42 verse (1) letter a and b and verse (2) Act No. 26 year 2000 as part of the primary-first indictment had elements that were not fulfilled, then on Article 37 Act No. 26 Year 2000 regulating about crime provisions, according to the Court need not be further examined;-

Considering, that because one article of the Primary-first indictment was not fulfilled, then indictment "Primary-first" against the defendant must be claimed not proven legally and convincingly, and The Defendant must be claimed free from indictment "Primary-first";-

Considering, that because indictment "Primary-first" is not proven legally and convincingly, then the Court examine and consider indictment "Primary-second" as follows:

Indictment "Primary - second":

Considering, that the Prosecutor's Primary-second indictment included Article 42 verse (1) a, b, jis, Article 7 letter b, Article 9 letter h, Article 40, Act No. 26 Year 2000 about Human Right Court is examined as follows:

Considering that the articles of the Prosecutor's Primary-second indictment consist of articles with complete elements formulating crime, and some are complementary articles to define qualifications for proven crime;

Considering, that after observation over the structure of articles in the above Primary-second indictment show the Prosecutor's desire to prove that the Defendant could be held responsible over crime under the jurisdiction of the Human Rights court in the form of "persecution" based on the existence of command responsibility and effective control or under effective power control on the occurrence of crime under the jurisdiction of the Human Rights court, executed by troops under his command and effective control;

Considering, that in examining and proving elements in every article of the above Primary-second indictment, the following problems must be answered first:

- a. Is it true that crime occurred under the jurisdiction of the Human Rights court?
- b. Who was the perpetrator of that crime?
- c. Could the Defendant be held responsible over that crime under the jurisdiction of the Human Rights court?

Considering, that the questions above must be answered successively, i.e. the succeeding questions could be answered after the previous ones are answered;-

Considering, that Article 42 verse (1) letter a, b Act No. 26 Year 2000 as provisions about command responsibility will be examined after articles defining gross violation of human rights could be proven;

Considering, that Article 7 letter b Act No. 26 Year 2000 stating as follows: "Gross violation of human rights include: ... b. crime against humanity".

That "gross violation of human rights includes crime against humanity" is under the jurisdiction of Human Rights Court;-

That the article above only provides one type of gross violation of human rights, i.e. crime against humanity and does not include elements of crime that has to be proven further;

That to know the construction and examine elements in the definition of the articles above, then the articles above must be related to the remaining indictment articles, so that this article could be proven as well if elements of other complementary articles have been fulfilled;-

Considering, that Article 9 letter h Act No. 26 year 2000 say as follows:

"Crime against humanity as defined in Article 7 letter b is an action executed as part of a widespread or systematic attack known to be directly targeted at civilians, in the form of: h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law, ...;"

Considering, that the articles above include the following elements:

1. Element "action executed as part of a widespread or systematic attack";-
2. Element "action known to be directly targeted at civilians";-
3. Element "Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law, ...;"-

Considering, that the elements above will be examined consecutively as follows:

Element ad 1. "action executed as part of a widespread or systematic":

Considering, that in examining that element, it is enough to refer to the result of examination of the same element in indictment Primary-first, where element ad.1. "action executed as part of a widespread and systematic" is fulfilled;-

Element ad 2. "action known to be directly targeted at civilians" ;-

Considering, that in examining that element, it is enough to refer to the result of examination of the same element in indictment Primary-first indictment, where element ad 2. "action known to be directly targeted at civilians" is fulfilled;

Element ad 3. "Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law, ...;"-

Considering, that the meaning of "persecution" as defined in Article 351 Criminal Code Indonesia, do not give clear meaning, but according to constant Jurisdiction, the meaning of persecution is deliberate action that inflicts hurt, pain or injury. While according to verse (4) Article 351 Criminal Code, persecution is the same as action to harm a person's health deliberately;

Considering, that based on the definitions above, persecution in the context of crime under the jurisdiction of Human Rights court include the elements:

- a. "deliberate"
- b. "inflicts hurt, pain or injury or harms other person's health"
- c. "against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law, ...;"

Element a. "deliberately":

Considering, that in examining that element, it is enough to refer to the result of examination of the seam element in indictment Primary-first, where element a. "deliberately" is fulfilled.

Element b. "inflicts hurt, pain or injury or harms other person's health"

Considering, that elaboration of this element has different alternatives, therefore could be considered proven if one of the elements is fulfilled:

Considering, that hurt, or pain, or injury or harmed health could be considered as a person

suffering from wound and need treatment for recovery;-

That medically or based on physical science publicly known, that if a person suffers injury and need treatment to recover, that person would certainly feel pain, or hurt or health is harmed:

That according to facts revealed in court on number 21, as result of the attack by Besi Merah Putih mass to Pastor Rafael's residence in Church of Liquisa area cause victims of 5 (five) people dead, and around 20 (twenty) people injured;

That the condition of injury suffered by around 20 (twenty) people is enough to show that actions by Besi Merah Putih group resulted in some people feeling hurt, pain or having health disturbance or considered harmed;

Considering, that based on the examination above, the Court agree that element b. "inflicts hurt, pain or injury or harm other person's health" is fulfilled.

Element c. against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law, ...; is examined as follows:

That facts revealed in court on number 7, 15, 16, 17 and 18, show that the attack executed by Besi Merah Putih group led by Manuel Sousa with a political view of Pro Integration was aimed at unarmed civilian refugees which is a group with the political view of Pro Independence;

Considering, that based on the examination above, the Court agree that element c.

"persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law" is fulfilled.

Considering, that because all elements a, b, and c is fulfilled, then element ad 3. "action executed in the form of persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law" is fulfilled.

Considering, that because all elements included in Article 9 h is fulfilled, then the article which is the Prosecutor's indictment have to be claimed proven in court. And if related to Article 7 letter b in the same indictment above, then it is concluded that the Prosecutor's indictment state that gross violation of Human Rights had happened in the form of persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law" is fulfilled;-

Considering, that it is revealed that crime as regulated in Article 7 letter b and Article 9 letter h is considered as crime under the jurisdiction of the Human Rights court;

Considering, that based on the examination above, then questions number 1 and 2 are answered, which are:

1. It is true that gross violation against human rights in the form of persecution against a certain group or association based on similarities in political view, race, nationality, ethnic, culture, religion, sex or other reasons recognized universally as a prohibited matter according to international law";

2. Perpetrator of that violation is Besi Merah Putih group led by Manuel Sousa;-

Considering, that next the court will examine the question in point 3 about: "Could the Defendant be held responsible over crime under the jurisdiction of the Human Rights court?".

Considering, that to answer that question, then the next article in indictment Primary-second which is Article 42 verse (1) a, b Act No. 26 Year 2000 as follows:

Considering, that in examining and proving elements of Article 42 verse (1) a, b Act No. 26 Year 2000, it is sufficient to refer to the result of examination and proof of the same indictment elements in the above Primary-first indictment, where the elements in Article 42 verse (1) a, b Act No. 26 Year 2000 is not fulfilled, therefore the Primary-second indictment must be claimed not proven legally and convincingly, and the Defendant Col. Inf. Yayat Sudrajat must be claimed free from the Primary-second indictment;

Considering, that because Article 42 verse (1) a, b Act No. 26 year 2000 as part of the second-primary indictment is not proven, then the Court agree that Article 40 Act no 26 year 2000 about provisions of crime need not be examined further;-

Considering, that because the Primary-second indictment is not proven, then the Court examine and consider the Subsidiary-first indictment as follows:

Indictment ""Subsidiary-first":

Considering, that the Subsidiary-first indictment relates to Article 7 letter b, jis Article 9 letter a, Article 37, Article 41 Act No. 26 year 2000 about Human Rights Court, examined as follows:

Considering, that when the articles in the Subsidiary-first indictment are observed, the implementation of Article 7 letter b and Article 9 letter a is the same with the Primary-first indictment, therefore to examine and prove those articles, it is sufficient to refer to the result of examination on the same articles;

Considering, that the complete statement of Article 41 Act 26 Year 2000 is as follows: "Attempt, evil conspiracy or assistance to do violation as defined in Article 8 or Article 9 shall be punished with the same punishment with the provisions as defined in article 36, article 37, article 38, article 39, and Article 40".

Considering, that the Articles above consist of the following elements:

1. Element "attempt, evil conspiracy or assistance";-
2. Element "to do violation as defined in Article 8 or Article 9 Act No. 26 year 2000".

Element ad. 1. "attempt, evil conspiracy or assistance":

Considering, that element ad. 1 above is a definition or qualification for crime with no independent implementation, which means it must be attached with provisions of article elements which is an independent article about crime as in element ad.2, therefore the examination start from examination of element ad.2 as follows;-

Considering, that the Prosecutor's Subsidiary-first indictment has referred to Article 7 letter b and Article 9 a Act No. 26 Year 2000;-

Considering, that as the result of examination of Article 7 letter b jo. Article 9 letter a Act No. 26 Year 2000 in Primary-first, the Court agree that crime has happened under the jurisdiction of the Human Rights Court in the form of "killing" or gross violation of human rights in the form of crime of murder has been done by Besi Merah Putih group who is part of Pro Integration group;-

Considering, that the result of examination on the Primary-first indictment during Article 7 letter b jo. Article 9 letter a, when related to elements of the articles.

Considering, that the result of examination on the Primary-first indictment during Article 7 letter b jo. Article 9 letter a, when related to elements of articles in the Subsidiary-first indictment on ad.2, according to the Court is in line and shall be taken as result of examination of the Subsidiary-first indictment on ad.2, i.e. element "do violation as defined in Article 8 or Article 9 Act No. 26 year 2000";-

Considering, that based on the reference to the result of examination on the Primary-first indictment, the Court agree that element ad. 2 "do violation as defined in Article 8 or Article 9 Act No. 26 year 2000, is fulfilled;-

Considering, that element ad.1 Article 41 Act No. 26 year 2000 has different alternatives, meaning that it is sufficient to prove one of the qualifications and the remaining ones need not be examined further;-

Considering, that the first alternative as sub element ad.1. "attempt" is examined as follows:

Considering, that until now no provision in the Act provide a certain definition on the meaning of trial in Article 41;-

Considering, that the Court refers to what is stated in Article 53 Criminal Code which could be considered as guideline for this examination;-

That Article 53 verse (1) Criminal Code state that attempt to commit a crime could be subjected for punishment, if the intention of the perpetrator is real by beginning the action and the action was not accomplished because of other factors aside from the perpetrator's will;-

That Article 53 provides parameters where the action or crime had begun, but never accomplished, the incompleteness of the action is not due to the perpetrator's will, but caused by other factors apart from him/herself or by another person;-

That it is revealed from the result of examination on element ad.2. Article 41 Act No. 26 Year 2000, crime has happened under the jurisdiction of the Human Rights court or gross violation of human rights i.e. crime against humanity in the form of murder which is an accomplished crime, according to the Court this clearly does not fulfill the parameter of "attempt" was stated in Article 53 Criminal Code;-

Considering, that based on the explanation above, the Court agree that sub element ad.1 "attempt" is not fulfilled;-

Considering, that the second alternative of sub element ad.2. "evil conspiracy" is examined as follows:

That the Explanation of Article 41 Act No. 26 year 2000 stated that the definition of "evil conspiracy" is when 2 (two) people or more agree to do gross violation of human rights";-

That actually the meaning of "evil conspiracy" is known by the term "sammenspanning" i.e.

act of consensus to conduct crime;-

That the crime should be done by at least 2 (two) people or more;-

That all conversations or negotiations or meetings that are not to execute the crime could not be included as evil conspiracy;

That no witness explained or no evidence showed that the Defendant Yayat Sudrajat had a conversation with Besi Merah Putih group in a certain time or place to do gross violation of human rights or crime against humanity as has been proven to be action of murder;-

That according to facts in trial on number 13 and 14 , it was revealed that the Defendant Yayat Sudrajat was present in the meeting with local leaders (Muspida) in order to make peace and find solution to bring the candidate suspect Jacinto who was in Pastor Rafael's residence;

That the Defendant's action was not to conduct crime, instead it was to uphold the law;-

That the Defendant never acquainted with Besi Merah Putih group, and just heard the name Manuel Sousa after being present in his trial;-

Considering, that based on the explanation above, the Court agree that the second alternative of element ad.1 "evil conspiracy" is not fulfilled.

Considering, that the third alternative of element ad.1 "assistance" is explained as follows:

Considering, that the definition of "assistance" is not given in any explanation in Act No. 26 Year 2000, therefore it is needed to refer to the definition of "assisting" regulated in Criminal Law Article 56 Criminal Code as follows: "Punished as a person who assist in conducting crime:

1e. those who deliberately help conduct that crime;

2e. those who deliberately give opportunity, effort or information to conduct that crime"

Considering, that the elements above are examined as follows:

Element ad.1. "deliberately help conduct that crime"

Considering, that the definition of those in the element of that article is the Defendant Col. Inf. Yayat Sudrajat;

Considering, that for examination of element "deliberately", it is sufficient for the Court to refer to result of examination on the Primary-first indictment, therefore element "deliberately" is considered fulfilled;

Considering, that element "assisting" in conducting crime, in this event has to be in the form of a person or the Defendant being involved in conducting the action, but does not perform all elements of crime as the perpetrator does;

Considering, that a person could be claimed guilty in "helping to conduct" or medeplichtig, if he/she deliberately gives assistance at the time or before, meaning not after the crime is conducted.

Considering, that element "deliberately" is fulfilled in the Primary-first indictment above and only valid for members of Besi Merah Putih group led by Manuel Sousa in conducting crime against humanity in the form of murder;-

Considering, that therefore element deliberate need to be further examined and meant for the Defendant as follows:

That in referring to the parameter of the definition of "deliberately" in the Primary-first indictment, then a person is said to be deliberate if that person with complete awareness will conduct crime and after knowing the result that will definitely or probably happen, that person never restrain his/her purpose and intention, instead continue to conduct it;-

That the event of riot that happened in Pastor Rafael's residence in Church of Liquisa area, is an event that the Defendant never knew or predicted before, furthermore the Defendant never exactly knew the cause of riot nor the purpose of Besi Merah Putih group who conducted crime against humanity;-

That according to facts revealed in court, the riot pacify and dissolve after aid came from TNI Kodim and the Defendant separated the conflicting parties and help injured people and evacuate citizens to Kodim headquarters and Bupati Liquisa's official residence;-

Considering, that based on the explanation above, the Court agree that element ad.1. "deliberately help to conduct crime" is not fulfilled;

Considering, that furthermore element ad.2. "deliberately give opportunity, effort or information to conduct that crime"

Considering, that the definition of those in that article is aimed at the Defendant as a person who conducted "assistance" in the form or mechanism of deliberately giving opportunity, effort or information to conduct crime on Article 56 verse (2e) and could be interpreted as the material perpetrator having the initiative to ask for opportunity or effort to the person who assisted in conducting the crime;-

That during the trial, no witness explained nor any evidence show that the perpetrator, in this case Besi Merah Putih group, has went to meet the Defendant or conducted conversation with him with the purpose of asking for opportunity, effort or information in any form in order to conduct the attack against Jacinto and his friends and the Pro Independence people inside Pastor Rafael's residence in Church of Liquisa area;

That according to the facts in trial the Defendant never knew Besi Merah Putih group nor the person named Manuel Sousa;-

That the Defendant's action of trying to help separate the conflicting parties and help a small child covered with blood is not an assistance to conduct crime or violation, instead it is an action that upholds humanity;

That Witness Dionisius Bere, Witness Edi Sutrisno and Witness Mujiono all explained that the Defendant's clothes were covered with blood for carrying a child that was a victim of the riot;

Considering, that based on the examination above the Court agree that the Defendant's series of action do not fulfill elements of giving opportunity, effort or information to conduct crime against humanity in the form of murder;-

Considering, that what the Prosecutor stated in his legal indictment as action of omission or assistance to conduct crime against humanity is contradictive to the fact revealed in court, therefore the Court agree that element ad.2 "giving opportunity, effort or information to conduct crime" is not fulfilled:

Considering, that because the result of examination on elements in Article 41 is not fulfilled on the Defendant Yayat Sudrajat, then the implementation of Article 37 which is a crime provision need not be examined further, the Subsidiary-first indictment is claimed not proven

legally and convincingly, and further The Defendant Col. Inf. Yayat Sudrajat must be free from the Subsidiary-first indictment;

Indictment "Subsidiary-Second":

Considering, that next the Court would examine and prove the Prosecutor's last indictment on the Subsidiary-second part, which refer to Article 7 letter b, jis Article 9 letter h, Article 40, Article 41 Act No.26 Year 2000 about Human Rights Court, examined and considered as follows:

Considering, that because the Prosecutor's Subsidiary-second indictment implement the same articles, then in examining and proving that indictment, it is sufficient for the Court to refer and take over the result of examination on the same articles in the indictments that have been examined above;

That to examine Article 7 letter b jo. Article 9 letter h, it is sufficient to refer and take over the result of examination on the Primary-second indictment where the elements are not fulfilled; That to examine Article 41, it is sufficient to refer and take over the result of examination on the Subsidiary-second indictment where the elements are not fulfilled; That because the elements of the articles in the main indictment are not fulfilled, the Article 40, which is a provision for crime need not be examined further, and the Subsidiary-second indictment is claimed not proven legally and convincingly, and further The Defendant Col. Inf. Yayat Sudrajat is ruled to be free from the Subsidiary-second indictment.

Considering, that because all the Prosecutor's indictment is claimed not proven legally and convincingly, then The Defendant Col. Inf. Yayat Sudrajat must be claimed free from all indictments as written on the verdict below;

Considering, that the existence of evidence shown in court in the form of photo-copy of letters which original versions were never shown, could not support the proof of the Prosecutor's indictment. Therefore the Court agree that for the totality and completion of one bundle of case file, then that document evidence should stay as an attachment in the case file, and the Prosecutor's request to return that evidence to the General Attorney of Republic of Indonesia is not reasonable;

Considering, that evidence in the form of 2 (two) units of hand grenades made in Korea, according to the Court is reasonable to be returned to the Prosecutor as the first party to propose that evidence in this trial;

Considering, that before the verdict, the Court deems it necessary to declare the followings:

Considering, that based on the result of examination and proof of the Ad Hoc Prosecutor's indictment, it was revealed that the mention of Pro Integration group and Pro Independence group emerged in order to examine the existence of riot among masses or people who gathered in the Church of Liquisa area, i.e. Pro Independence who gather inside Pastor Rafael's residence inside the Church gates, while Pro Integration gather outside the church gates.

Considering, that the mention of the groups as written in the Ad Hoc Prosecutor's indictment, which the Defendant's Team of Lawyers objected or proposed an exception at, was

sufficiently reasonable and clarified the indictment, therefore the Team of Lawyer's exception on the mention of those terms are not reasonable and disregarded;

Considering, that the remaining exception proposed by the Team of Lawyers, according to the Court has been examined sufficiently and considered carefully in the Preliminary ruling and Final Ruling of this case;

Considering, that information from witnesses, who were not present in court although have been summoned appropriately and consecutively, were then read on the Ad Hoc Prosecutor's request, and was revealed to be denied and rejected by the Defendant in court;

Considering, that according to the regulation, witness' information is legal evidence when given under oath directly in the trial which was conducted for that purpose;

Considering, that because the Defendant denied witness' information which was read out loud, then its legal power as a witness' information is weak and could not be considered in examining and proving the Ad Hoc Prosecutor's indictment. This disadvantages the Ad Hoc Prosecutor in proving his indictment;

Considering, that mistake over indictment of a crime under the jurisdiction of the Human Rights Court is based on legal and reasonable grounds according to the decision makers. And not based on mysterious consideration or other party's prejudice against the Defendant that was never proven in court;

Considering, that to free the Defendant without trial, would definitely make the victims feel harassed or contradict with the Defendant's sense of justice.

Considering, that an act of punishment generally without clear evidence of fault would in itself violate promises that have been uttered and contradict with the conscience of the wise;

Considering, that religious norms state: "avoid implementation or verdict of punishment (hudhud) as long as there are unclear matters that make the judge doubtful";

Considering, that because the Defendant is free from all indictments, then the cost of this case is burdened to the State, and the Defendant is given direct rehabilitation by including a statement of rehabilitation in the verdict below;

Considering, that at the end the Court consider the statements in the verdict below has been based on sufficient legal grounds, therefore considered right and just and does not surpass the authority of the Ad Hoc Human Rights Court;

Pursuant to and considering all legal rules, which are Article 7 letter b, Article 9 letter a and letter h, Article 37, Article 40, Article 41, Article 42 verse (1) a and b, Act No. 26 year 2000; Article 351 and Article 340 Criminal Code, Article 191 verse (1), Article 194, Article 197 Criminal Code, Article 14 verse (1) Government Regulation No. 27 Year 1983, and other related provisions of rules;

RULING

I. State the Defendant Col. Inf. Yayat Sudrajat is not proven legally and convincingly guilty in doing crime indicted in the Primary-first, Primary-second. Subsidiary-first and Subsidiary-second indictments;

II. Free the Defendant Col. Inf. Yayat Sudrajat from all Primary-first, Primary-second, Subsidiary-first and Subsidiary-second indictments;

III. Recover the Defendant's rights in capacity, position, pride and dignity.

IV. Burden the cost of case to the State.

V. Claim that evidence in the form of:

A. Documents:

1. Photo copy of TR. Pangab No. : TR/50/1999 date January 21, 1999 about Plan for Departure or Personnel joining Satgas Tribuana VII, VIII, DESHANDA V, VI to volatile regions Irian Jaya and East Timor using Navy ships;
2. Photo copy of SKEP Danjen Kopasus No: Skep/92/XII year 1998 date December 8, 1998 about Establishment of Satgas Tribuana VIII for assignment to new region East Timor;
3. Photo copy of SPRIN Danjen Kopasus No: Sprin/35/1/1999 and No Sprin/37/1/1999, date January 27, 1999 about departure of Satgas Tribuana VIII to volatile region East Timor;
4. Photo copy of SPRIN Danrem 164/WD No Sprin/27/II/1999 date February 11, 1999 about Task Implementation of Satgas Tribuana in volatile region East Timor;
5. Photo copy of Special Report No: R/184/Lapsus/IV/1999 date April 7, 1999 about conflict between Pro Integration mass group and Anti Integration group in Liquisa region; still attached in the case file.

B. Explosives:

- 2 (two) unit of hand grenades made in Korea brand Grenade Hand Frag Delay K 5 Comp. B Lot. E.C. 82 H 6001-001, EC. 85. M 605-03; returned to the Prosecutor for other cases.

Thus decided in the meeting of the Ad Human Rights Panel of Judges on Friday, December 27, 2002, with the Panel consisting of Cicut Sutiarmo, SH, MH, as Chair of Judge, Jalaluddin, SH, Abdulrahman, SH, MH, Amiruddin, SH, and Prof. Dr. Rachmat Syaefi, MA, each as Member Judge according to the Resolution of Chair of Human Rights Court in State Court Central Jakarta No. 11/Pid.Ham/Ad Hoc/2002/PN.Jkt.Pst, dated July 2, 2002. The verdict was claimed in a court open for public on Monday, December 30, 2002 by the Chair of Judge together with Member Judges, together with Lindawati Serikit, SH and Yanwitra, SH, MH, Ida Iskandaria, SH, Substitute Registrar on that Court, and attended by YUSUF, SH and Z.DJAFRIN, SH, as Ad Hoc Prosecutor and the Defendant assisted by his Team of Lawyers.

That according to facts revealed in court on number 7 group Besi Merah Putih consisted of original East Timor people who spontaneously form and join an organization to support the security in their respective areas. And this group joined the Pro integration group which was an independent mass organization outside the government's organization structure.

That the interval between April 6, 1999 morning and almost noon before 12.00 WITA, when the first gunshot was heard, gave enough time for Manuel Saosa and members of his troops named Besi Merah Putih to consolidate and cooperate to conspire in order to prepare the attack thoroughly.

That facts in trial show that with a signal of a gunfire shot in April 6, 1999 about 12.00 WITA, group Besi Merah Putih, led by Manuel Sousa and part of Pro Integration group, simultaneously launched an attack from different directions using traditional weapons to Pastor Rafael's residence, located in Liquisa Church area, where citizens from Pro Independence group take refuge for security.

That the attack by group Besi Merah Putih was an act of coordination or an extension of a policy made by that organization on its own without interference from other parties.

Considering, that based on the explanations above the Court agrees that sub element "systematic attack" is fulfilled;

Considering, that based on the explanations above, element ad.1 "As part of a widespread or systematic" is fulfilled;

Element ad 2 "The attack was known to be directly targeted at civilians".

Considering, that the element above could be examined as follows:

Considering, that the Explanation of Article 9 Act No 26 Year 2000 stated that "attack targeted directly at civilians" means a series of action taken against civilians as an extension of the policies of the authorities or policies related to an organization; -

Considering, that the meaning above is in the same line with provisions in Article 7 Verse 2 of the Rome Statute, which states that an attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred against civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack

That facts in trial on number 4, 5 and 6 show that before the attack at Pastor Rafael's residence in Church Liquisa area, since morning until almost noon around 12.00 WITA, Group Besi Merah Putih had gathered around the gate of the Church Liquisa area; -

That based on that fact, there was a clue that shows enough time to plan a policy by organization or group Besi Merah Putih to attack the pro independence refugees;-

That there was no other aim inside Pastor Rafael's residence in the Church area than the frightened refugees who were not armed at all;-

That it is an undeniable fact on number 16 that the group of refugees in Pastor Rafael's residence was categorically civilians who became target of the attack, consisted of men and women, children, including nuns and pastors;-

Considering, that based on the explanations above, it is revealed that group Besi Merah Putih as part of the Pro Integration group had executed an attack with a single aim and launched directly against those civilians;-

Considering, that based on the explanations above, the Court agrees that element ad 2 "the attack was directly targeted at civilians" is fulfilled.

Ad. 3 Element "action taken in the form of murder as stated in Article 340 Criminal Code"

Considering, that the element above is examined as follows:

Considering, that Article 340 Criminal Code states "Those who deliberately or planned before-hand the elimination of another person's life, shall be punished for planned murder

with capital punishment or life-time imprisonment or imprisonment with a maximum of 20 years".

That the article above includes the elements: a. deliberately ; b. premeditated ; c. elimination of another person's life.

That "those" stated in the Article above is meant to know who or whoever the person who committed the deed formulated in the related article;

That related to the question in number 1 to explain the existence of crime under the jurisdiction of the Human Rights Court or action of gross violation of human rights, then to know who the persons are there has to be an explanation of the elements;

Element a. "deliberately" is examined as follows:

That the meaning of deliberate is an action performed by a person or any perpetrator with complete awareness that the action will eliminate another person's life;

That the perpetrator's awareness of the result that would emerge, be it according to the objective or an intention or possibility of another person being dead, the perpetrator did not stop the intention and even continued to execute the action;

That according to the facts revealed in court on number 15 which basically states that on April 6, 1999 around 12.00 WITA, a riot happened in Pastor Rafael's residence in Church Liquisa area, group Besi Merah Putih used weapons to attack from outside the Church area into Pastor Rafael's residence in that Church area;

That Witnesses Damianus Dapa, John Rea and Fransisco Salamali were all in line constructing a fact that Besi Merah Putih group from Pro Integration group had entered and attacked refugees from pro independence group inside Pastor Rafael's residence, Witness saw Manuel Sousa and his members bringing traditional weapons like spears, samurai and wooden bat;

That the account of Witness Fransisco Salamali who saw Manuel Sausa while standing with Besi Merah Putih members outside the Church gate, and Witness Frans Salamali asked them to dissolve because those inside were their brothers as well, but was ignored by Manuel Sausa, they even continued shouting for Jacinto to surrender and come out of the Pastor's residence,-

That the Ad Hoc Human Rights Court does not agree with the Defendant's Team of Lawyers nor the Prosecutor who justify the incident in Ave Maria Church area as a clash, by referring to the result of the analysis of the facts and witnesses in court, the Court perceives that what happened was not a clash but an attack by Besi Merah Putih group against unarmed civilians in Pastor Rafael's residence;-

That under normal conditions, Besi Merah Putih group from Pro Integration led by Manuel Sousa was aware, with consciousness intact, that the swing of a sharp weapon in a form of samurai, spear and arrow directed to a human body would absolutely or supposedly cause that human being to be injured and die;

That with complete awareness and full of enthusiasm to attack covered with irritation because Jacinto Da Costa Pereira continued to hide inside the Pastor's residence, Besi Merah Putih group led by Manuel Sousa in fact never stop their intention to attack, instead they continued to attack and caused around 20 (twenty) people injured and 5 (five) people dead;-

That although different in the system of deliberation on the crime elements or facts revealed in trial, but the Court agrees with the Prosecutor's explanation as long as the element "deliberately" by Besi Merah Putih group has been fulfilled;-

Considering, that based on the explanation above, according to the Court's opinion element a. "deliberately" is fulfilled.

Element b. "premeditated" is examined as follows:

That premeditated means that between the intention to take action until the execution of

action the perpetrator had sufficient time to think composedly how, when and with what tool the action would be executed;

That the time interval should be appropriate, meaning that it is not too short and pressing, not too long and most importantly within the time interval the perpetrator or crime architect could also think composedly that he/she has a chance to cancel or stop the intention to execute the crime, but he/she did not and even continued to execute it;

That the action executed as crime is in the form of murder;

That Witness Damianus Dapa, Frans Salamali and Adios Salva explained the number of refugees inside the Church area is more than Besi Merah Putih group outside the Church area;-

That thorough preparation or strategic planning of Besi Merah Putih group to attack inside Pastor Rafael's residence in the Church area is given sufficient time, i.e. from morning until noon around 12.00 WITA when a gunshot was heard;

That the time interval was sufficient for Besi Merah Putih group to think, prepare tools and weaponry and determine the mechanism and right time, or actually it is possible for the perpetrators to stop their intention or cancel their plan, but they never stop their intention and even continued to attack together creating a riot that caused several people injured and dead;-

That the mass group inside the Church area was helpless and the riot stopped after aid came from TNI soldiers ordered by Witness Asep Kuswani to help POLRI and Brimob control the situation;

Considering, that based on the explanations above, the Court agree that between the intention and execution of action there was sufficient time for the perpetrators of crime to think composedly how to execute the action, this is called planned action, so the Court agree that element b. "premeditated" is fulfilled.

Element c. "elimination of another person's life" is examined as follows:

That the sentence "elimination of another person's life" means that during the event there must be an action that caused another person than the perpetrator to die;

That according to the facts revealed in court on number 21, the attack executed by Besi Merah Putih group resulted in civilian victims consisting of Pro Independence group inside Pastor Rafael's residence and inside the Church of Liquisa area with 5 (five) victims dead and around 20 people injured;-

Considering, that based on the explanation above, the Court agree that element c. "Taking away or eliminating another person's life" is fulfilled.

Considering, that the elements above are fulfilled, if related to "those", to know who or whoever the persons who have fulfilled the elements of action in the indictment article, then it shows that the one who executed crime of "murder" is Besi Merah Putih group led by Manuel Sousa;

Considering, that all elements in Article 9 a is fulfilled, then the article of the Prosecutor's indictment should be claimed proven in court. And when related to Article 7 letter b in the same indictment above, then it is concluded that the Prosecutor's indictment saying that a crime happened under the jurisdiction of the Human Rights Court or gross violation of Human Rights in the form of "killing" is fulfilled.

Considering, that based on the explanations above, then the questions in number 1 and 2 are answered, they are:

3. It is true that crime happened under the jurisdiction of Human Rights Court or gross violation of Human Rights in the form of killing;

4. The Perpetrator of crime or gross violation of Human Rights is Besi Merah Putih group led by a person named Manuel Sousa;-

Considering, that the Court would next examine about the question in point 3 about: Could the Defendant Yayat Sudrajat be held responsible for that crime under the jurisdiction of the Human Rights court or gross violation of Human Rights?

Considering, that to answer that question, then the next article will be examined in indictment Primary-first i.e. Article 42 verse (1) a, b Act No. 26 Year 2000 as follows.

Considering, that Article 42 verse (1) a and b says as follows:

" A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Human Right Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

c. That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

d. That military commander or person failed to take all necessary and appropriate/ reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for inquiry, investigation and prosecution.

Considering, that the Article above includes the following elements:

4. Military commander or person effectively acting as military commander,

5. is held responsible for crime under the jurisdiction of the Human Rights Court, executed by soldiers under his/her command and effective control, or under his/her effective authority and control,

6. that crime is a result of absence of appropriate control, i.e.:

c. that military commander or person knows or in the situation at that time should have known that the soldiers are executing or had just executed gross violation of Human Rights, and

d. that military commander or person did not take appropriate and necessary action within his power to prevent or stop that action or surrender the perpetrators to officials with authorities to inquire, investigate, and prosecute.

Considering, that the elements above is examined and proven as follows:

Ad.1 element "military commander or person effectively acting as military commander".

Considering, that based on facts revealed in court on number 1, the Defendant Col. Inf. Yayat Sudrajat acted as Commander of Task Unit (DanSatGas) Tribuana VIII since January 1999 until September 1999, and in his daily duties reported to his direct superior Danrem 164/Wira Dharma located in Dili;-

It is true that the Defendant had soldiers or subordinates consists of task unit members whom some were put in BKO in Kodims in Dili region;

Considering, that based on the explanations above, the Court agree that the Defendant had the capacity as a military commander or a person effectively acting as military commander so that element ad 1 "military commander or a person effectively acting as military commander" is fulfilled;-

Element ad 2 "is held responsible for crime under the jurisdiction of the Human Rights Court, executed by soldiers under his/her command and effective control, or under his/her effective authority and control"

Considering, that in order to examine the element above, the Court refers to the result of examination on Article 9 letter a i.e. it is proven that in April 6, 1999 crime happened under the jurisdiction of the Human Rights Court or gross violation of human rights in the form of crime against humanity in form of killing in Pastor Rafael's residence located inside the Church of Liquisa area executed by Besi Merah Putih group led by Manuel Sousa;

Considering, that element ad 2 "crime under the jurisdiction of the Human Rights Court" means the element of crime stated to be proven on Article 9 letter a i.e. "killing",-

Considering, that to prove whether element ad2 above is fulfilled by the Defendant, then the following question should be answered:

"Was there any hierarchical command line relation and effective control between the Defendant and Besi Merah Putih group led by Manuel Sousa?", or vice versa "Was Besi Merah Putih a group under the command and effective control, or under the effective authority and control of the Defendant?";

Considering, that the above question is answered as follows:

That a person is considered to have a hierarchical command line relation with another person if there is a standard regulation stating that based on organic position a person and the other is vertically superior and subordinate or vice versa subordinate and superior;-

That facts in trial on number 9 claim that Besi Merah Putih group part of Pro Integration is a mass group of original East Timorese that was established alone from their own willingness voluntarily in order to support security in their own region;

That according to facts revealed in court on number 15, 17 and 18, the one who attacked refugees in Pastor Rafael's residence is Besi Merah Putih group led by Manuel Sousa;

That during court examination, no evidence, be it in the form of documents or witnesses, show the existence of a superior-subordinate relationship between Besi Merah Putih group in one side and Defendant Yayat Sudrajat in the other side;

That document evidence of photocopy of letters where the original versions were never shown in court, according to the Court does not have the weight as a legal evidence therefore should be put aside;

That subordinates or members under the command of the Defendant, each Dionisius, Edi Sutrisno and Sofyan, during court examination there has been no evidence explaining that they had performed gross violation of human rights crime in the form of attack against the refugees in Pastor Rafael's residence;

That Witnesses, each Frans Salamali, Damianus Dapa, John Rea, Eruico Guterres, Mudjiono, Tono Suratman, M. Noer Muis had all explained in line that no member of TNI, Polri and Brimob were involved in the attack, so the Prosecutor's indictment stating that 3 (three) members of the Defendant's troop were involved in the attack against refugees inside the Church area and Serda Sofyan being injured was never revealed in court, so it has to be put aside;

Considering, that based on the explanations above, then the Court agree that the Defendant does not have a command line and effective control over Besi Merah Putih group, and vice versa Besi Merah Putih group was not a troop under the command and or power and effective control of the Defendant;

Considering, that based on the explanations above, then the question above could be answered, i.e.:

"There is no hierarchical command line relation and effective control between the Defendant

Yayat Sudrajat and Besi Merah Putih group as part of Pro integration group", and vice versa Besi Merah Putih group is not a troop under the command and effective control, or under the effective authority and control of the Defendant".

Considering, that with the answer of the question about the Defendant's relations with Besi Merah Putih group, then the answer for the main question on number 3 i.e. "Could the Defendant be held responsible for the crime executed under the jurisdiction of the Human Rights court or gross violation of Human Rights?", and the answer is "The Defendant Yayat Sudrajat could not be held responsible over that gross violation of Human Rights".

Considering, that based on the explanations above, then the Court agree that element ad 2 Article 42 verse (1) letter a and b saying "could be held responsible over crime executed by troops under the command and effective control, or under the effective authority and control" is not fulfilled;-

Considering, that because an element of Article 42 verse (1) letter a and b and verse (2) Act No. 26 year 2000, then the remaining elements need not be further examined, and Article 42 verse (1) both letter a and b Act No. 26 Year 2000 must be claimed not fulfilled;-

Considering, that because Article 42 verse (1) letter a and b and verse (2) Act No. 26 year 2000 as part of the primary-first indictment had elements that were not fulfilled, then on Article 37 Act No. 26 Year 2000 regulating about crime provisions, according to the Court need not be further examined;-

Considering, that because one article of the Primary-first indictment was not fulfilled, then indictment "Primary-first" against the defendant must be claimed not proven legally and convincingly, and The Defendant must be claimed free from indictment "Primary-first";-

Considering, that because indictment "Primary-first" is not proven legally and convincingly, then the Court examine and consider indictment "Primary-second" as follows:

Indictment "Primary - second":

Considering, that the Prosecutor's Primary-second indictment included Article 42 verse (1) a, b, jis, Article 7 letter b, Article 9 letter h, Article 40, Act No. 26 Year 2000 about Human Right Court is examined as follows:

Considering that the articles of the Prosecutor's Primary-second indictment consist of articles with complete elements formulating crime, and some are complementary articles to define qualifications for proven crime;

Considering, that after observation over the structure of articles in the above Primary-second indictment show the Prosecutor's desire to prove that the Defendant could be held responsible over crime under the jurisdiction of the Human Rights court in the form of "persecution" based on the existence of command responsibility and effective control or under effective power control on the occurrence of crime under the jurisdiction of the Human Rights court, executed by troops under his command and effective control;

Considering, that in examining and proving elements in every article of the above Primary-second indictment, the following problems must be answered first:

- a. Is it true that crime occurred under the jurisdiction of the Human Rights court?
- b. Who was the perpetrator of that crime?
- c. Could the Defendant be held responsible over that crime under the jurisdiction of the Human Rights court?

Considering, that the questions above must be answered successively, i.e. the succeeding questions could be answered after the previous ones are answered;-

Considering, that Article 42 verse (1) letter a, b Act No. 26 Year 2000 as provisions about command responsibility will be examined after articles defining gross violation of human rights could be proven;

Considering, that Article 7 letter b Act No. 26 Year 2000 stating as follows: "Gross violation of human rights include: ... b. crime against humanity".

That "gross violation of human rights includes crime against humanity" is under the jurisdiction of Human Rights Court;-

That the article above only provides one type of gross violation of human rights, i.e. crime against humanity and does not include elements of crime that has to be proven further;

That to know the construction and examine elements in the definition of the articles above, then the articles above must be related to the remaining indictment articles, so that this article could be proven as well if elements of other complementary articles have been fulfilled;-

Considering, that Article 9 letter h Act No. 26 year 2000 say as follows:

"Crime against humanity as defined in Article 7 letter b is an action executed as part of a widespread or systematic attack known to be directly targeted at civilians, in the form of: h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law, ...;"

Considering, that the articles above include the following elements:

4. Element "action executed as part of a widespread or systematic attack";-

5. Element "action known to be directly targeted at civilians";-

6. Element "Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law, ...";-

Considering, that the elements above will be examined consecutively as follows:

Element ad 1. "action executed as part of a widespread or systematic":

Considering, that in examining that element, it is enough to refer to the result of examination of the same element in indictment Primary-first, where element ad.1. "action executed as part of a widespread and systematic" is fulfilled;-

Element ad 2. "action known to be directly targeted at civilians" ;-

Considering, that in examining that element, it is enough to refer to the result of examination of the same element in indictment Primary-first indictment, where element ad 2. "action known to be directly targeted at civilians" is fulfilled;

Element ad 3. "Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law, ...";-

Considering, that the meaning of "persecution" as defined in Article 351 Criminal Code Indonesia, do not give clear meaning, but according to constant Jurisdiction, the meaning of persecution is deliberate action that inflicts hurt, pain or injury. While according to verse (4) Article 351 Criminal Code, persecution is the same as action to harm a person's health deliberately;

Considering, that based on the definitions above, persecution in the context of crime under the jurisdiction of Human Rights court include the elements:

d. "deliberate"

e. "inflicts hurt, pain or injury or harms other person's health"

f. "against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law, ...;"

Element a. "deliberately":

Considering, that in examining that element, it is enough to refer to the result of examination of the seam element in indictment Primary-first, where element a. "deliberately" is fulfilled.

Element b. "inflicts hurt, pain or injury or harms other person's health"

Considering, that elaboration of this element has different alternatives, therefore could be considered proven if one of the elements is fulfilled:

Considering, that hurt, or pain, or injury or harmed health could be considered as a person suffering from wound and need treatment for recovery;-

That medically or based on physical science publicly known, that if a person suffers injury and need treatment to recover, that person would certainly feel pain, or hurt or health is harmed:

That according to facts revealed in court on number 21, as result of the attack by Besi Merah Putih mass to Pastor Rafael's residence in Church of Liquisa area cause victims of 5 (five) people dead, and around 20 (twenty) people injured;

That the condition of injury suffered by around 20 (twenty) people is enough to show that actions by Besi Merah Putih group resulted in some people feeling hurt, pain or having health disturbance or considered harmed;

Considering, that based on the examination above, the Court agree that element b. "inflicts hurt, pain or injury or harm other person's health" is fulfilled.

Element c. against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law, ...; is examined as follows:

That facts revealed in court on number 7, 15, 16, 17 and 18, show that the attack executed by Besi Merah Putih group led by Manuel Sousa with a political view of Pro Integration was aimed at unarmed civilian refugees which is a group with the political view of Pro Independence;

Considering, that based on the examination above, the Court agree that element c.

"persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law" is fulfilled.

Considering, that because all elements a, b, and c is fulfilled, then element ad 3. "action executed in the form of persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sex or other grounds that are universally recognized as impermissible under international law" is fulfilled.

Considering, that because all elements included in Article 9 h is fulfilled, then the article which is the Prosecutor's indictment have to be claimed proven in court. And if related to Article 7 letter b in the same indictment above, then it is concluded that the Prosecutor's indictment state that gross violation of Human Rights had happened in the form of persecution against any identifiable group or collectivity on political, racial, national, ethnic,

cultural, religious, sex or other grounds that are universally recognized as impermissible under international law" is fulfilled;-

Considering, that it is revealed that crime as regulated in Article 7 letter b and Article 9 letter h is considered as crime under the jurisdiction of the Human Rights court;

Considering, that based on the examination above, then questions number 1 and 2 are answered, which are:

3. It is true that gross violation against human rights in the form of persecution against a certain group or association based on similarities in political view, race, nationality, ethnic, culture, religion, sex or other reasons recognized universally as a prohibited matter according to international law";

4. Perpetrator of that violation is Besi Merah Putih group led by Manuel Sousa;-

Considering, that next the court will examine the question in point 3 about: "Could the Defendant be held responsible over crime under the jurisdiction of the Human Rights court?".

Considering, that to answer that question, then the next article in indictment Primary-second which is Article 42 verse (1) a, b Act No. 26 Year 2000 as follows:

Considering, that in examining and proving elements of Article 42 verse (1) a, b Act No. 26 Year 2000, it is sufficient to refer to the result of examination and proof of the same indictment elements in the above Primary-first indictment, where the elements in Article 42 verse (1) a, b Act No. 26 Year 2000 is not fulfilled, therefore the Primary-second indictment must be claimed not proven legally and convincingly, and the Defendant Col. Inf. Yayat Sudrajat must be claimed free from the Primary-second indictment;

Considering, that because Article 42 verse (1) a, b Act No. 26 year 2000 as part of the second-primary indictment is not proven, then the Court agree that Article 40 Act no 26 year 2000 about provisions of crime need not be examined further;-

Considering, that because the Primary-second indictment is not proven, then the Court examine and consider the Subsidiary-first indictment as follows:

Indictment ""Subsidiary-first":

Considering, that the Subsidiary-first indictment relates to Article 7 letter b, jis Article 9 letter a, Article 37, Article 41 Act No. 26 year 2000 about Human Rights Court, examined as follows:

Considering, that when the articles in the Subsidiary-first indictment are observed, the implementation of Article 7 letter b and Article 9 letter a is the same with the Primary-first indictment, therefore to examine and prove those articles, it is sufficient to refer to the result of examination on the same articles;

Considering, that the complete statement of Article 41 Act 26 Year 2000 is as follows: "Attempt, evil conspiracy or assistance to do violation as defined in Article 8 or Article 9 shall be punished with the same punishment with the provisions as defined in article 36, article 37, article 38, article 39, and Article 40".

Considering, that the Articles above consist of the following elements:

3. Element "attempt, evil conspiracy or assistance";-

4. Element "to do violation as defined in Article 8 or Article 9 Act No. 26 year 2000".

Element ad. 1. "attempt, evil conspiracy or assistance":

Considering, that element ad. 1 above is a definition or qualification for crime with no independent implementation, which means it must be attached with provisions of article elements which is an independent article about crime as in element ad.2, therefore the examination start from examination of element ad.2 as follows;-

Considering, that the Prosecutor's Subsidiary-first indictment has referred to Article 7 letter b and Article 9 a Act No. 26 Year 2000;-

Considering, that as the result of examination of Article 7 letter b jo. Article 9 letter a Act No. 26 Year 2000 in Primary-first, the Court agree that crime has happened under the jurisdiction of the Human Rights Court in the form of "killing" or gross violation of human rights in the form of crime of murder has been done by Besi Merah Putih group who is part of Pro Integration group;-

Considering, that the result of examination on the Primary-first indictment during Article 7 letter b jo. Article 9 letter a, when related to elements of the articles.

Considering, that the result of examination on the Primary-first indictment during Article 7 letter b jo. Article 9 letter a, when related to elements of articles in the Subsidiary-first indictment on ad.2, according to the Court is in line and shall be taken as result of examination of the Subsidiary-first indictment on ad.2, i.e. element "do violation as defined in Article 8 or Article 9 Act No. 26 year 2000";-

Considering, that based on the reference to the result of examination on the Primary-first indictment, the Court agree that element ad. 2 "do violation as defined in Article 8 or Article 9 Act No. 26 year 2000, is fulfilled;-

Considering, that element ad.1 Article 41 Act No. 26 year 2000 has different alternatives, meaning that it is sufficient to prove one of the qualifications and the remaining ones need not be examined further;-

Considering, that the first alternative as sub element ad.1. "attempt" is examined as follows:

Considering, that until now no provision in the Act provide a certain definition on the meaning of trial in Article 41;-

Considering, that the Court refers to what is stated in Article 53 Criminal Code which could be considered as guideline for this examination;-

That Article 53 verse (1) Criminal Code state that attempt to commit a crime could be subjected for punishment, if the intention of the perpetrator is real by beginning the action and the action was not accomplished because of other factors aside from the perpetrator's will;-

That Article 53 provides parameters where the action or crime had begun, but never accomplished, the incompleteness of the action is not due to the perpetrator's will, but caused by other factors apart from him/herself or by another person;-

That it is revealed from the result of examination on element ad.2. Article 41 Act No. 26 Year 2000, crime has happened under the jurisdiction of the Human Rights court or gross violation of human rights i.e. crime against humanity in the form of murder which is an accomplished crime, according to the Court this clearly does not fulfill the parameter of "attempt" was stated in Article 53 Criminal Code;-

Considering, that based on the explanation above, the Court agree that sub element ad.1 "attempt" is not fulfilled;-

Considering, that the second alternative of sub element ad.2. "evil conspiracy" is examined as follows:

That the Explanation of Article 41 Act No. 26 year 2000 stated that the definition of "evil conspiracy" is when 2 (two) people or more agree to do gross violation of human rights";-

That actually the meaning of "evil conspiracy" is known by the term "sammanspanning" i.e. act of consensus to conduct crime;-

That the crime should be done by at least 2 (two) people or more;-

That all conversations or negotiations or meetings that are not to execute the crime could not be included as evil conspiracy;

That no witness explained or no evidence showed that the Defendant Yayat Sudrajat had a conversation with Besi Merah Putih group in a certain time or place to do gross violation of human rights or crime against humanity as has been proven to be action of murder;-

That according to facts in trial on number 13 and 14 , it was revealed that the Defendant Yayat Sudrajat was present in the meeting with local leaders (Muspida) in order to make peace and find solution to bring the candidate suspect Jacinto who was in Pastor Rafael's residence;

That the Defendant's action was not to conduct crime, instead it was to uphold the law;-

That the Defendant never acquainted with Besi Merah Putih group, and just heard the name Manuel Sousa after being present in his trial;-

Considering, that based on the explanation above, the Court agree that the second alternative of element ad.1 "evil conspiracy" is not fulfilled.

Considering, that the third alternative of element ad.1 "assistance" is explained as follows:

Considering, that the definition of "assistance" is not given in any explanation in Act No. 26 Year 2000, therefore it is needed to refer to the definition of "assisting" regulated in Criminal Law Article 56 Criminal Code as follows: "Punished as a person who assist in conducting crime:

1e. those who deliberately help conduct that crime;

2e. those who deliberately give opportunity, effort or information to conduct that crime"

Considering, that the elements above are examined as follows:

Element ad.1. "deliberately help conduct that crime"

Considering, that the definition of those in the element of that article is the Defendant Col. Inf. Yayat Sudrajat;

Considering, that for examination of element "deliberately", it is sufficient for the Court to refer to result of examination on the Primary-first indictment, therefore element "deliberately" is considered fulfilled;

Considering, that element "assisting" in conducting crime, in this event has to be in the form of a person or the Defendant being involved in conducting the action, but does not perform all elements of crime as the perpetrator does;

Considering, that a person could be claimed guilty in "helping to conduct" or medeplichtig, if he/she deliberately gives assistance at the time or before, meaning not after the crime is conducted.

Considering, that element "deliberately" is fulfilled in the Primary-first indictment above and only valid for members of Besi Merah Putih group led by Manuel Sousa in conducting crime against humanity in the form of murder;-

Considering, that therefore element deliberate need to be further examined and meant for the Defendant as follows:

That in referring to the parameter of the definition of "deliberately" in the Primary-first indictment, then a person is said to be deliberate if that person with complete awareness will conduct crime and after knowing the result that will definitely or probably happen, that person never restrain his/her purpose and intention, instead continue to conduct it;-

That the event of riot that happened in Pastor Rafael's residence in Church of Liquisa area, is an event that the Defendant never knew or predicted before, furthermore the Defendant never exactly knew the cause of riot nor the purpose of Besi Merah Putih group who conducted crime against humanity;-

That according to facts revealed in court, the riot pacify and dissolve after aid came from TNI Kodim and the Defendant separated the conflicting parties and help injured people and evacuate citizens to Kodim headquarters and Bupati Liquisa's official residence;-

Considering, that based on the explanation above, the Court agree that element ad.1. "deliberately help to conduct crime" is not fulfilled;

Considering, that furthermore element ad.2. "deliberately give opportunity, effort or information to conduct that crime"

Considering, that the definition of those in that article is aimed at the Defendant as a person who conducted "assistance" in the form or mechanism of deliberately giving opportunity, effort or information to conduct crime on Article 56 verse (2e) and could be interpreted as the material perpetrator having the initiative to ask for opportunity or effort to the person who assisted in conducting the crime;-

That during the trial, no witness explained nor any evidence show that the perpetrator, in this case Besi Merah Putih group, has went to meet the Defendant or conducted conversation with him with the purpose of asking for opportunity, effort or information in any form in order to conduct the attack against Jacinto and his friends and the Pro Independence people inside Pastor Rafael's residence in Church of Liquisa area;

That according to the facts in trial the Defendant never knew Besi Merah Putih group nor the person named Manuel Sousa;-

That the Defendant's action of trying to help separate the conflicting parties and help a small child covered with blood is not an assistance to conduct crime or violation, instead it is an

action that upholds humanity;

That Witness Dionisius Bere, Witness Edi Sutrisno and Witness Mujiono all explained that the Defendant's clothes were covered with blood for carrying a child that was a victim of the riot;

Considering, that based on the examination above the Court agree that the Defendant's series of action do not fulfill elements of giving opportunity, effort or information to conduct crime against humanity in the form of murder;-

Considering, that what the Prosecutor stated in his legal indictment as action of omission or assistance to conduct crime against humanity is contradictive to the fact revealed in court, therefore the Court agree that element ad.2 "giving opportunity, effort or information to conduct crime" is not fulfilled:

Considering, that because the result of examination on elements in Article 41 is not fulfilled on the Defendant Yayat Sudrajat, then the implementation of Article 37 which is a crime provision need not be examined further, the Subsidiary-first indictment is claimed not proven legally and convincingly, and further The Defendant Col. Inf. Yayat Sudrajat must be free from the Subsidiary-first indictment;

Indictment "Subsidiary-Second":

Considering, that next the Court would examine and prove the Prosecutor's last indictment on the Subsidiary-second part, which refer to Article 7 letter b, jis Article 9 letter h, Article 40, Article 41 Act No.26 Year 2000 about Human Rights Court, examined and considered as follows:

Considering, that because the Prosecutor's Subsidiary-second indictment implement the same articles, then in examining and proving that indictment, it is sufficient for the Court to refer and take over the result of examination on the same articles in the indictments that have been examined above;

That to examine Article 7 letter b jo. Article 9 letter h, it is sufficient to refer and take over the result of examination on the Primary-second indictment where the elements are not fulfilled;
That to examine Article 41, it is sufficient to refer and take over the result of examination on the Subsidiary-second indictment where the elements are not fulfilled;
That because the elements of the articles in the main indictment are not fulfilled, the Article 40, which is a provision for crime need not be examined further, and the Subsidiary-second indictment is claimed not proven legally and convincingly, and further The Defendant Col. Inf. Yayat Sudrajat is ruled to be free from the Subsidiary-second indictment.

Considering, that because all the Prosecutor's indictment is claimed not proven legally and convincingly, then The Defendant Col. Inf. Yayat Sudrajat must be claimed free from all indictments as written on the verdict below;

Considering, that the existence of evidence shown in court in the form of photo-copy of letters which original versions were never shown, could not support the proof of the Prosecutor's indictment. Therefore the Court agree that for the totality and completion of one bundle of case file, then that document evidence should stay as an attachment in the case file, and the Prosecutor's request to return that evidence to the General Attorney of Republic of Indonesia is not reasonable;

Considering, that evidence in the form of 2 (two) units of hand grenades made in Korea, according to the Court is reasonable to be returned to the Prosecutor as the first party to propose that evidence in this trial;

Considering, that before the verdict, the Court deems it necessary to declare the followings:

Considering, that based on the result of examination and proof of the Ad Hoc Prosecutor's indictment, it was revealed that the mention of Pro Integration group and Pro Independence group emerged in order to examine the existence of riot among masses or people who gathered in the Church of Liquisa area, i.e. Pro Independence who gather inside Pastor Rafael's residence inside the Church gates, while Pro Integration gather outside the church gates.

Considering, that the mention of the groups as written in the Ad Hoc Prosecutor's indictment, which the Defendant's Team of Lawyers objected or proposed an exception at, was sufficiently reasonable and clarified the indictment, therefore the Team of Lawyer's exception on the mention of those terms are not reasonable and disregarded;

Considering, that the remaining exception proposed by the Team of Lawyers, according to the Court has been examined sufficiently and considered carefully in the Preliminary ruling and Final Ruling of this case;

Considering, that information from witnesses, who were not present in court although have been summoned appropriately and consecutively, were then read on the Ad Hoc Prosecutor's request, and was revealed to be denied and rejected by the Defendant in court;

Considering, that according to the regulation, witness' information is legal evidence when given under oath directly in the trial which was conducted for that purpose;

Considering, that because the Defendant denied witness' information which was read out loud, then its legal power as a witness' information is weak and could not be considered in examining and proving the Ad Hoc Prosecutor's indictment. This disadvantages the Ad Hoc Prosecutor in proving his indictment;

Considering, that mistake over indictment of a crime under the jurisdiction of the Human Rights Court is based on legal and reasonable grounds according to the decision makers. And not based on mysterious consideration or other party's prejudice against the Defendant that was never proven in court;

Considering, that to free the Defendant without trial, would definitely make the victims feel harassed or contradict with the Defendant's sense of justice.

Considering, that an act of punishment generally without clear evidence of fault would in itself violate promises that have been uttered and contradict with the conscience of the wise;

Considering, that religious norms state: "avoid implementation or verdict of punishment (hudhud) as long as there are unclear matters that make the judge doubtful";

Considering, that because the Defendant is free from all indictments, then the cost of this case is burdened to the State, and the Defendant is given direct rehabilitation by including a statement of rehabilitation in the verdict below;

Considering, that at the end the Court consider the statements in the verdict below has been based on sufficient legal grounds, therefore considered right and just and does not surpass the authority of the Ad Hoc Human Rights Court;

Pursuant to and considering all legal rules, which are Article 7 letter b, Article 9 letter a and letter h, Article 37, Article 40, Article 41, Article 42 verse (1) a and b, Act No. 26 year 2000; Article 351 and Article 340 Criminal Code, Article 191 verse (1), Article 194, Article 197 Criminal Code, Article 14 verse (1) Government Regulation No. 27 Year 1983, and other related provisions of rules;

RULING

VI. State the Defendant Col. Inf. Yayat Sudrajat is not proven legally and convincingly guilty in doing crime indicted in the Primary-first, Primary-second. Subsidiary-first and Subsidiary-second indictments;

VII. Free the Defendant Col. Inf. Yayat Sudrajat from all Primary-first, Primary-second, Subsidiary-first and Subsidiary-second indictments;

VIII. Recover the Defendant's rights in capacity, position, pride and dignity.

IX. Burden the cost of case to the State.

X. Claim that evidence in the form of:

A. Documents:

1. Photo copy of TR. Pangab No. : TR/50/1999 date January 21, 1999 about Plan for Departure or Personnel joining Satgas Tribuana VII, VIII, DESHANDA V, VI to volatile regions Irian Jaya and East Timor using Navy ships;
2. Photo copy of SKEP Danjen Kopasus No: Skep/92/XII year 1998 date December 8, 1998 about Establishment of Satgas Tribuana VIII for assignment to new region East Timor;
3. Photo copy of SPRIN Danjen Kopasus No: Sprin/35/1/1999 and No Sprin/37/1/1999, date January 27, 1999 about departure of Satgas Tribuana VIII to volatile region East Timor;
4. Photo copy of SPRIN Danrem 164/WD No Sprin/27/II/1999 date February 11, 1999 about Task Implementation of Satgas Tribuana in volatile region East Timor;
5. Photo copy of Special Report No: R/184/Lapsus/IV/1999 date April 7, 1999 about conflict between Pro Integration mass group and Anti Integration group in Liquisa region; still attached in the case file.

B. Explosives:

- 2 (two) unit of hand grenades made in Korea brand Grenade Hand Frag Delay K 5 Comp. B Lot. E.C. 82 H 6001-001, EC. 85. M 605-03; returned to the Prosecutor for other cases.

Thus decided in the meeting of the Ad Human Rights Panel of Judges on Friday, December 27, 2002, with the Panel consisting of Cicut Sutiarto, SH, MH, as Chair of Judge, Jalaluddin, SH, Abdulrahman, SH, MH, Amiruddin, SH, and Prof. Dr. Rachmat Syafei, MA, each as Member Judge according to the Resolution of Chair of Human Rights Court in State Court Central Jakarta No. 11/Pid.Ham/Ad Hoc/2002/PN.Jkt.Pst, dated July 2, 2002. The verdict was claimed in a court open for public on Monday, December 30, 2002 by the Chair of Judge together with Member Judges, together with Lindawati Serikit, SH and Yanwitra, SH, MH, Ida Iskandaria, SH, Substitute Registrar on that Court, and attended by YUSUF, SH and Z.DJAFRIN, SH, as Ad Hoc Prosecutor and the Defendant assisted by his Team of Lawyers.