



JUDICIAL SYSTEM MONITORING PROGRAMME PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

SUMMARY

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OE-CUSSE DISTRICT COURT HELD TRIAL ON CRIMINAL CASES

On 17/11 the Oe-Cusse District Court was scheduled to conduct hearings into the following three criminal cases: Case No. 34/P.CO/IX/TDO/2007 (defendant VO and others), Case No. 37/P.CO/IX/TDO/2007 (defendant NDS and others) and Case No. 45/TDO/2008 (GDR). However only the first two cases could be heard because the defendant in the three case was not present. JSMP did not monitor these criminal cases however a judicial officer at the aforementioned court provided information about the hearings.

On 18/11 the Oe-Cusse District Court adjourned the trial into a case of maltreatment involving the defendant FL. The trial was adjourned because the victim was unable to attend because she had just given birth one week before the scheduled date of the hearing. Therefore the judge decided to adjourn the hearing of this matter until January.

In addition to the fact that the victim was the wife of the defendant and had just given birth, the judge emphasized that the trial required the presence of the victim because the indictment contained a medical report indicating that the victim had suffered serious injuries. Therefore the judge believed that the wife of the defendant was not a witness but a victim and therefore the court needed to hear her presence in court to provide testimony.

On the same day the Oe-Cusse District Court also announced a decision against the defendant RR in a case of **negligence** that resulted in a collision. The Public Prosecutor charged the defendant with Article 360 (1) of the Indonesian Penal Code. The defendant was sentenced to 6 months imprisonment and probation for one year. In addition to the custodial sentence the court also fined the defendant \$150 to compensate the victim who had suffered an illness or injury requiring hospital care for approximately one week based Article 72 of the Penal Code Procedure.

On 19/11 the Oe-Cusse District Court conducted a hearing into a case of sexual assault involving the defendant HN. Based on monitoring conducted by JSMP at the aforementioned court, the trial was closed to the public because the case related to the chastity of minors (13 and 11 years old). JSMP was informed by the lawyer for the defendant that the defendant did not provide consistent testimony throughout the course of the trial in regards to what he had previously told police during their investigations. This was also the case with testimony provided by the witness (mother of the victims). The two victims decided to say nothing when invited to make a statement.

As the testimony of the defendant kept changing the prosecution was not able to establish the elements of the charge (Article 285 of the Indonesian Penal Code). In his final statement the lawyer for the defendant asked the court to acquit the defendant from all charges because his guilt had not been established. Finally, the defendant informed the court that he and the victims had agreed to an amicable settlement (forgiveness). However, it appears that the court did not recognize this agreement because it was unclear.

According to the indictment read out to the court, in March 2007 in Betasi, Taiboko the defendant LL entrusted some traditional medicine to the defendant ES to be given to the victim J and to be taken in accordance with instructions set out by the defendant LL. The aim of the two defendants was to enable the victim to abort her four month old fetus. The defendant instructed the victim to take the medicine regularly for three weeks. After several days the victim gave birth and neither the victim nor her baby could be saved. At that time the victim was unconscious and was immediately rushed to the Oe-Cusse hospital but efforts to save the victim were in vain and she died. In the indictment the public prosecutor stated that the defendant said that the defendant carried out the act based on his own free will.

Before the court the defendant responded to the contents of the indictment that had been read out to him. He corrected the date and month of the offence mentioned in the indictment. He provided testimony that he actually met with the victim in August 2007. During these meetings the defendant ES and the victim had sexual intercourse 6 times in different locations. This statement did not answer the judge's question about his involvement in taking medicine to the victim at the instructions of the defendant LL, namely that he (ES) should give the medicine to the victim J. In his testimony before the court he clearly rejected the charges made by the public prosecutor.

In response to questions about the death of the victim, the defendant ES said that he was not aware because he was in police custody. The defendant said that he didn't know why the police had arrested him. The defendant also said that he didn't know about the victim's pregnancy.

When the judge asked the defendant about his sexual relations with the victim and if he had ejaculated into the vagina of the victim the defendant answered that he was certain.

The victim was married and the victim often asked the defendant for money. The defendant gave \$ 15.00 to the victim at that time.

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