

SSEAC Podcast Transcript:

“Sex, Cyanide and CCTV: A Review of the Jessica Wongso Case” An interview with Professor Simon Butt

Dr Natali Pearson 0:01

I'm Natali Pearson from the Sydney Southeast Asia Centre, and today on the SSEAC podcast, I'm joined by Simon Butt, professor of Indonesian law here at the Sydney Law School, and Associate Director of the Centre for Asia and Pacific Law here at the University of Sydney. So as a professor of Indonesian law, Simon's research focuses on... Indonesian law! This includes constitutional criminal, civil, human rights, commercial, Islamic and customary law. And he's even written a book called *Indonesian Law*. Simon is currently an Australian Research Council Future Fellow, and he's also a member of the Sydney Southeast Asia Centre's Executive Team. Welcome, Simon, and thank you for joining us.

Professor Simon Butt 0:44

Ah, it's a pleasure, Natali.

Dr Natali Pearson 0:45

Today we're going to be talking about the Jessica Wongso case, which you have described as one of the most high-profile and controversial criminal cases in Indonesian legal history, and it was certainly the most televised. So have you focused on the case?

Professor Simon Butt 0:59

Well, it's certainly a sensational case, one that I think has in fact drawn more attention than many others in Indonesian legal history. The case arose out of the death of a 27-year-old female called Mirna Salihin. And quite sensationally, she collapsed at an upmarket cafe, the Oliver Café, at Grand Indonesia, one of Indonesia's most luxurious malls in early 2016. And police say she died of cyanide poisoning, and that she was poisoned by one of her friends. Of course, we have many of the elements here of a successful soap opera, and as you'd expect of a successful soap opera, everyone could watch it. It was on TV. As the trial was progressing, the trial was televised itself. And as a person, Wongso was quite attractive, quite young. People thought she acted a bit oddly on television, during interviews, during the trial, on the footage that was used as evidence against her. And so it developed quite a bit of a following, and people made a bit of a hobby of speculating about whether she was guilty or innocent. But from a research perspective, it was really quite interesting because the trial was, as I said, televised, which meant that we had open access to court proceedings in Indonesia. People can go and visit court proceedings in Indonesia, most of them are open to the public. But here we had every single session televised and it, I think, exposed many flaws in Indonesia's criminal justice system.

Dr Natali Pearson 2:38

Simon, before we get into the details of the case, I want to start by asking you to sketch out the Indonesian criminal justice system, just in very broad strokes, as it is something that many of us may not be familiar with.

Professor Simon Butt 2:50

Indonesia's criminal justice system is made up of two primary laws, the Criminal Code and the Code of Criminal Procedure. There are many other laws as well, but those are the two kind of fundamental aspects of the criminal law system. The Criminal Code just celebrated its 100th birthday in 2018. It's very old, contains outdated offences. Indonesia's Code of Criminal Procedure, which details how investigations, prosecutions, trials, etc, are supposed to be run, provides some forms of rights for suspects, things established such as police

procedures, trial procedures, these types of things. Not in that Code, but elsewhere in Indonesian law, there is the presumption of innocence as well. But all of these protections, I think it's fair to say, are quite routinely violated by police and prosecutors and courts in practice. Because there are no formal sanctions imposed by the Codes for violation, we see, as I said, quite routine violation of the various rights that these provisions give to suspects and defendants. We have also, in Indonesia, quite a long complex appeals procedure. So we have most trials beginning in the district courts, and then an appeal to a provincial High Court, then an appeal to the Supreme Court if required. And perhaps uniquely, Indonesian law also allows for defendants, even prosecutors in some cases, to seek a reopening of the case called a PK. The PK involves the Supreme Court going through all the case files from scratch, seeing whether any mistakes have been made, usually assessing whether there's been a judicial error or if there's been a new circumstance that if known at the time of the initial case, might have led to a different outcome. This is quite interesting because Jessica Wongso has exhausted the final PK appeal. And she's going to try, perhaps to lodge a second case reopening, which the Constitutional Court opened the possibility of there being a fourth or fifth bite of the cherry, as the case may be. One thing that we'll see as we go through the Wongso case that's I think emerging with more clarity in Indonesian legal proceedings, is the courts tending to side with prosecution, rather than defence arguments. I think it's fair to say that in high-profile cases in Indonesia, we're seeing more of an instinct on the part of judges to convict rather than acquit.

Dr Natali Pearson 5:32

And is that a defensive move on their part to sort of protect them from criticism that they're not doing their jobs?

Professor Simon Butt 5:39

I think that's a very large part of it. The Indonesian criminal justice system has long been criticised for lacking independence. And during the Suharto period, the courts were dependent on the State for budgets, for promotions, for all sorts of things, that led the courts very rarely siding with defendants, particularly in cases the government was interested in. These days, with the opening up of the political system and various judicial reforms being made, I think we've seen a bit of a shift. Corruption is still a problem in the Indonesian judicial system, but I think also, the media is creating expectations that judges feel they must meet in their decision making. It's often the case of these types of trials, such as the Wongso case, but also others like the Neil Bantleman case, the Ahoc case, various other corruption cases that have been widely reported in Indonesia. The media will often portray the alleged perpetrators as actual perpetrators, will talk about the evidence against them. And so by the time many of these cases come to trial, the public, through the media, may have an expectation of guilt. And I think in some cases at least, judges might feel pressure to convict even where evidence does not point towards guilt, if they think that's what the public sentiment is.

Dr Natali Pearson 7:04

Is there a jury involved in Indonesia's criminal court system?

Professor Simon Butt 7:08

No, like many other civil law countries, of which Indonesia is one, there is no system of being adjudicated, your guilt being determined by your peers. We have judge alone trials. But there are usually three judges on each case, which is supposed to mean that one judicial opinion is not the only determinant of someone's guilt.

Dr Natali Pearson 7:31

So does the decision need to be unanimous? Or is it a majority decision for the judges?

Professor Simon Butt 7:36

It's a majority decision system, but mainly, they're unanimous.

Dr Natali Pearson 7:40

Let's turn now to Jessica Wongso, and I do want to make it very clear here that we're not going to be focusing on whether she's guilty or not. If you want to talk about that, you can jump onto Twitter. This is an opportunity for us to tease out some of the issues with the Indonesian criminal justice system. So Simon, tell us about Jessica Wongso and give us a little bit more detail about the case and what she's been accused of.

Professor Simon Butt 8:03

Well, Jessica Wongso came to Sydney City and did a design course, which is where she met Mirna, her alleged victim. Jessica returns to Jakarta to look for a job and she contacts Mirna for a catch-up. Mirna agrees and brings along a mutual friend named Hani. They agree to meet at the Oliver Café in Grand Indonesia. Jessica arrives well before her two friends, and prosecutors say she turned up to the café, scoped the layout, reserved a table after identifying where the café's CCTV cameras were, and then went shopping. And when she got back to the café to wait for her friends, she put three large paper gift bags on the table in front of her. CCTV captured her doing this. Before her friends arrived, Jessica ordered some drinks for them and famously ordered Mirna the Vietnamese iced coffee. Prosecutors say that she then obscured the drinks with the bags, and that's when she put a lethal dose of cyanide in Mirna's coffee. Her friends arrive; Mirna has a drink of the coffee, says it tastes horrible and collapses. Despite having training in CPR and other first aid, Jessica stands by and watches Mirna as she's foaming from the mouth and looks like she's having a seizure. Others rush to try and help her, try and eventually revive her. An ambulance is called; she ends up dying on the way to hospital. As I said, that's the prosecution's version of events, which the Central Jakarta District Court largely accepted, found Wongso guilty of premeditated murder, and sentenced her to 20 years imprisonment, and that's where she is now, in jail.

Dr Natali Pearson 9:55

I guess the question is, does the evidence stack up? Was this a closed case or were their gaps in the evidence?

Professor Simon Butt 10:04

In short, the evidence doesn't stack up. In my view, it's not even close to what you would need to establish a conviction on any objective view. Let me explain what the key prongs of the prosecution's case was, or at least the evidence that substantiated that case.

The way that the Indonesian criminal justice system works is the police will investigate and hand on evidence to prosecutors in order to proceed to trial. Now prosecutors can send the case back to police for more evidence if they want it. And in this case, the prosecution sent the police back the file of evidence four times asking for more evidence, and it wasn't until prosecutors received a fifth version of the evidence that they decided to proceed to trial. The case though, only contains what we would call circumstantial evidence. No one saw Wongso putting anything in Mirna's drink. We had some testimony from café employees about what they saw and did; grainy CCTV footage; there are also expert testimony about Jessica Wongso's mental state, which was very controversial. I think the biggest hole in the prosecution's case was it couldn't really prove beyond any doubt that Mirna had died from ingesting poison, let alone cyanide. Critically, no autopsy was conducted. All we have are toxicology tests conducted 70 minutes or so after her death, which revealed absolutely no cyanide in her gastric fluid, bile, liver or urine. Only very small amounts of cyanide were found in her stomach contents in a test conducted a few days later, but this was probably from embalming fluids according to some experts. There's a lot of doubt as to what her cause of death was. As for the coffee itself, it had a lethal dose of cyanide in it, but it depends on whether you believe or trust the police testing.

When police visited the café, they asked for the coffee that Mirna had drunk. The café staff took the remaining coffee, poured it into a used water bottle, cling-wrapped the cup and gave it to police. The lab results indicated there was enough cyanide in the coffee to have been lethal. But there were different amounts of cyanide in the glass and in the bottle. The strange part about it was that obviously the police had poured some of the coffee out of the bottle into the glass. And so it's unclear, A. why they did that; why would they not just test the coffee in the bottle; and B. why would there be a different amount of cyanide in the bottle compared with coffee in the glass? It's also difficult to understand in light of this police forensic testing of the coffee, how two people at least tried the coffee after Mirna drank it and collapsed, but didn't have the same reaction as Mirna, didn't die. This lends some credibility, I think, to defence arguments that perhaps the cyanide was added to the coffee after Mirna drank it, but before police testing, if the police tests themselves weren't manipulated. All this points to the possibility that Mirna died of natural causes, she may have had a heart attack or a stroke, for example. Regardless of what actually happened, of how Mirna died, I think based on the evidence that the prosecution presented, her conviction probably should not have stood.

Dr Natali Pearson 13:43

What motive did the prosecution put forward for this?

Professor Simon Butt 13:47

It wasn't entirely clear, but I think I could summarise it as follows. There was some suggestion that there might have been a love triangle. There was also a suggestion that Mirna told Jessica that she should break up with her boyfriend. There was also the suggestion that Jessica was jealous of Mirna, because Mirna had a boyfriend with whom she seemed to be very happy, and in fact, after Mirna left Australia and went back to Indonesia, she married her boyfriend, but didn't invite Jessica Wongso to the wedding. Also critical to the establishment of Jessica's state of mind, if not her motive to commit the crime, was the fact that in Australia, there were several police reports made about her behaviour. She was found to have engaged in drunk driving. She made several suicide attempts; and even a former boyfriend had gotten an apprehended violence order out against her. So combined with these events, or the relationship between Mirna and Jessica apparently breaking down or at least appearing strained, prosecutors presented the case that she may have overreacted. But again, the motive was, I think, quite unclear and not very well articulated at trial.

Dr Natali Pearson 15:02

Yeah, it certainly has all the elements of a soap opera, as you said earlier. You've mentioned that it was broadcast live on a couple of Indonesian television stations, is that common? And how different was the role of the media in this case compared with other cases in the criminal system?

Professor Simon Butt 15:17

That's very uncommon in the sense that we had an entire trial, as far as I can tell, or at least the majority of an entire trial broadcast. But other cases, I think the Ahok case, for example, the case involving the former Jakarta governor, trial for blasphemy, only parts of that broadcast for various reasons. Other high-profile cases have had parts broadcast, perhaps live. Some Indonesian courts these days are livestreaming; the Constitutional Court is one of them. I think what the Wongso case adds to the debate about the media and the law is that sometimes the media can go too far and can affect whether someone gets a fair trial. And this is why in countries like Australia but in many other countries too, we have these subjudice laws which prevent the media talking about active cases in too much detail. We had in Wongso's case what I thought were quite startling, but are actually quite common in Indonesia, quite startling pictures of her dressed in a prison outfit, of her sitting at the table

with this sign saying suspect, “tersangka”, around her neck, in front of a couple of glasses of Vietnamese coffee, at that very table. And these pictures get out, get broadcast on the internet, published in newspapers, and I think contribute to this sentiment that she's probably guilty. People see her dressed in prison outfit, and they think “Oh, she's done it!” And it's that kind of pressure I think, that judges must feel when they come to make the decisions. If they're to acquit because of lack of evidence presented at trial, after all of this apparently incriminating footage is shown, then perhaps they're seen to be weak, aren't doing their job properly.

Dr Natali Pearson 17:04

Okay, so I understand that having been convicted by the Supreme Court she was sentenced to 20 years jail, which she is currently serving, and that having unsuccessfully appealed against her conviction three times, most recently in early 2019, her lawyers are now gearing up for a fresh appeal this year. But given her defeat every step of the way so far, do you think it's likely that this new appeal is going to succeed? What are her chances here?

Professor Simon Butt 17:32

Her lawyers might be considering an appeal. I'm not sure how far along the process they are with that, if they're planning to lodge an appeal at all, but I think what they'll find is difficulties in establishing new evidence. This would be her lawyers trying to reopen for the second time her case in the Supreme Court. And in order to do this, you would really have to establish that there was some new piece of evidence that had come to light after her trial, that if had been known at her trial, would have, or could have changed the outcome. And unfortunately, in cases like this, where you have big legal teams, usually quite good lawyers, I think she had a good lawyer in Otto Hasibuan, one of Indonesia's best criminal lawyers, they've thrown the kitchen sink at the case already. They've already, I think, put together quite a strong wall of evidence that the court has just ignored. And so I don't think they've got much of a prospect.

Dr Natali Pearson 18:26

Let's wrap up here, Simon. And I would like to do that by asking you to tell us what this case says about the Indonesian judicial system. Are we still seeing the sort of government interference that characterises early days of court cases in the past? Or is it more a matter of judicial professionalism these days?

Professor Simon Butt 18:45

Back in the Suharto era, we had a court system clearly dependent on government for budgets, promotions of judges, career progression, these types of things, and the government certainly wasn't afraid of leveraging these aspects of control that it had over the judicial system. By most accounts, this type of state interference in the judicial system has now subsided quite significantly. This is a result of many of the reforms put in place after the fall of Suharto in 1998. Nowadays, we have different types of interference in the system, according to most scholars and commentators. The worst, I suppose, amongst them is corruption, which is still regarded to be very high in the courts, unfortunately. There is also another avenue of interference in judicial processes, which I think highly inappropriate, which is public pressure. Courts are becoming renowned for succumbing to what judges think the public wants them to decide. So rather than looking at the law and the evidence, and applying the law to that evidence, as courts should do, in some cases, you could argue the courts are deciding the cases in accordance with what they think public sentiment is. It's not just Wongso. I think there are several cases, including Wongso, recently that have shown that the courts aren't really scrutinising the prosecution case and giving adequate weight to defence claims. We also have, I think, another example in the Ahok case, many evidentiary holes in that case as well that were just ignored by the Supreme Court all the way up on appeal. And I think the courts in Indonesia, they must fear public reprisal, public criticism of their decisions.

Dr Natali Pearson 20:31

Sounds like there are some quite grave broader implications in terms of future defendants in Indonesia. So Simon, thank you so much for summarising the Wongso case for us and talking about some of these broader implications. It's been really interesting, and we might have to get you back to tell us more about some of the other examples that you've raised.

Professor Simon Butt 20:51

Anytime. Thanks very much, Natali.

Dr Natali Pearson 20:53

Thanks, Simon.

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