



PERMANENT MISSION OF THE
REPUBLIC OF INDONESIA TO THE UNITED NATIONS
WORLD TRADE ORGANIZATION (WTO)
AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

Geneva, 22 November 2021

No. 165/POL-II/XI/2021

Dear Madam and Sir,

I wish to acknowledge receipt of your Joint Communication, Ref. No. AL IDN 8/2021 of 20 October 2021. I appreciate the continuing efforts of mandate holders in communicating and highlighting issues of common concern to the Government of Indonesia. As a member of the Human Rights Council, rest assured of Indonesia's continued commitment to work together with mandate holders in advancing the promotion and protection of human rights.

As requested, I have transmitted the Joint Communication to the relevant authorities in Indonesia. At this juncture, allow me to share initial information that we have gathered regarding some of the issues presented in the Joint Communication.

The alleged "judicial harassment" of Ms. Fatia Maulidiyanti and Mr. Haris Azhar

As the Indonesian Delegation has clarified in the exercise of its right of reply during the 48th session of the Human Rights Council last September, the legal action taken against Ms. Fatia Maulidiyanti and Mr. Haris Azhar was brought forward by a private citizen exercising his legal rights as protected by Indonesia's prevailing laws and regulations.

At the same time, please note that Indonesia's laws and regulations also guarantee equal legal rights to Ms. Maulidiyanti and Mr. Azhar to challenge the claims that have been made against them, as well as to pursue other legal remedies.

In 15 November 2021, a mediation process offered to the parties of this dispute was rejected by Ms. Maulidiyanti and Mr. Azhar. On the same day, in a statement to the press, both Mr. Azhar and [REDACTED] conveyed their readiness to settle the dispute in court.

In view of these developments, I urge you, as mandate holders, to respect the on-going judicial process, and to refrain from prejudging both the process itself, i.e. as "judicial harassment", as well as the future outcome of this process.

Ms. Mary Lawlor, Special Rapporteur on the situation of human rights defenders

Ms. Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mr. Clement Nyaletsossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association

As a robust democracy, the Government of Indonesia remains steadfast in its commitment to **uphold the rule of law**. In this regard, the Government will continue to promote and protect the guarantee of equality before the law, as well as due process of law, **for all its citizens**.

Moreover, your letter suggests that the executive branch should somehow intervene in the work of the judicial branch. Please be mindful that Indonesia's governance is centered on the tenets of the separation of powers between the executive, judicial, and legislative branches. The executive branch thus has no power to intervene in matters under the purview of the judicial branch.

With regard to the protection of human rights defenders as a whole, Indonesia firmly believes that human rights defenders, in all their forms and professions, are key partners in the advancement of human rights. Therefore, Indonesia subscribes to the position that the right of human rights defenders to carry out legitimate work in an enabling environment, and to be free from threats, attacks, reprisals, and acts of intimidation must always be protected, especially during this time of pandemic.

This is a position that we have made clear as a traditional co-sponsor of all HRC resolutions on the Mandate of the Special Rapporteur on the Situation of Human Rights Defenders.

"The shrinking space for civil society in Indonesia"

Based on my elaborations above, I would like to also categorically reject your assertion that "...the judicial harassment of Ms. Maulidiyanti and Mr. Azhar is illustrative of the shrinking space for civil society in Indonesia".

As I have mentioned, this particular case is a legal matter between private citizens, and is in no way reflective of the Government of Indonesia's progressive policies in ensuring the right to freedom of expression for all citizens, as guaranteed under our Constitution and prevailing laws. One recent and very concrete example of Indonesia's progressive stance to safeguard civic space is the Government of Indonesia's decision to revise the Information and Electronic Transaction Law (Law No. 11 of 2008) to prevent its misuse as a tool to silence dissent.

Furthermore, I deeply regret your use of the term "judicial harassment" to describe a citizen's legitimate use of his or her legal rights to submit a legal claim. Your biased and reckless use of this term in essence undermines the principles of rule law, namely the principle of equality before the law.

Above all else, the use of available legal avenues to settle a dispute should be lauded rather than condemned, or in this matter -be reduced to an act of "judicial harassment". In a democratic society based on the rule of law, quoting former UN Secretary General Kofi Annan,

"...all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency".

Allegations of "judicial harassment" or reprisals against human rights defenders in Indonesia, therefore, is a very serious claim, and thus should be carefully scrutinized before they are made. Serious steps must be taken by the UN human rights mechanisms to **distinguish between legitimate law enforcement actions and "judicial harassment"**.

This distinction is clearly stipulated in the Universal Declaration of Human Rights, the UN Charter, and in various international human rights covenants and conventions.

Article 29 of the Universal Declaration of Human Rights stipulates that: "In the exercise of rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Please accept, Madam and Sir, the assurances of my highest consideration

Yours sincerely,



Grata E. Werdaningtyas
Ambassador/Deputy Permanent Representative