



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

Geneva, December 2021

No. 189/POL-II/XII/2021

Dear Special Procedure Mandate Holders,

Pursuant to our previous letter, no. 165/POL-II/XI/2021 of 22 November 2021, I have the honour to transmit my Government's further response to your Joint Communication, Ref. No. AL IDN 8/2021 of 20 October 2021, regarding the defamation lawsuit by Mr. [REDACTED] against Mr. Haris Azhar and Ms Fatia Maulidiyati.

I would further like to reiterate Indonesia's previous clarification during the 48th session of the Human Rights Council last September, that first and foremost, the on-going case between Mr. [REDACTED] and Mr. Haris Azhar - Ms. Fatia Maulidiyati is **a legal case between three nationals whose rights are guaranteed by the Indonesian Constitution and prevailing laws**. A more detailed elaboration of our position can be found in our comprehensive response, as attached.

While I appreciate the continuing efforts of mandate holders in communicating and highlighting issues of common concern to the Government of Indonesia, I would like to also use this opportunity to raise my Government's **serious concern over your persistent practice of publishing one-sided news releases on concerns that:**

- 1) we have duly responded to;
- 2) are still under the 60-day confidentiality period, that you yourself have made clear in your communications;
- 3) prejudices the matter and completely **disregards** and leaves out the Government's views and positions on the matter; and
- 4) are issued, sometimes at the end of the week, **without** any prior effort on your part to have consultations with the Indonesian Mission, as the country concerned.

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

CC: Chair of the Coordinating Committee of the SPMH

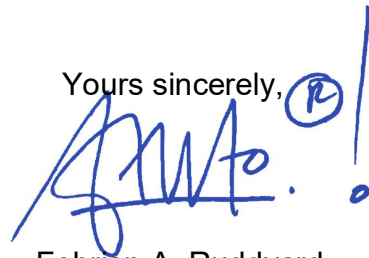
As we have conveyed many times and in various occasions, most recently with the Chief of the Special Procedures Branch, Ms. Beatrice Balbin, Indonesia seriously regrets your proclivity towards the “megaphone” approach, rather than to actually pursue constructive dialogue with our Mission. With due respect, your actions are **counterproductive** and **erodes the trust** that my Government has towards the Special Procedures Mandate holders to work in a professional, objective, transparent, constructive, non-selective and non-politicized manner.

I sincerely implore you to re-evaluate your approach. If indeed promoting human rights is our common objective, then the only way forward is through constructive dialogue and cooperation. Promoting libellous statements and unfounded allegations through media sensationalism will contribute absolutely **nothing** to this common objective.

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.

Please accept, Special Procedures Mandate Holders, the assurances of my highest consideration

Yours sincerely,



Febrian A. Ruddyard

Ambassador/Permanent Representative

Reply of the Government of Indonesia
to the Joint Communication of the Special Procedures Mandate Holders
Ref. No. AL IDN 8/2021 of 20 October 2021

Mr. [REDACTED], in his personal capacity had sent a *somasi* demand letter¹ twice, and most recently filed a complaint of defamation to the Indonesian National Police in Jakarta, NOT in his capacity as Coordinating Minister of Maritime and Investment Affairs, but as a national of Indonesia. Again, this is an exercise of constitutional rights where everyone is guaranteed equal before the law. Accordingly, the Government of Indonesia as the executive branch, will not and will never violate the rule of law by intervening any judicial process.

In addressing the **serious allegation** expressed by the Joint Communication that the Government of Indonesia has somehow conducted so-called “judicial harassment” towards its nationals, this reply will focus on the legal basis in exercising defamation cases, which applies to all Indonesian nationals. Our response shall demonstrate that the related laws are in conformity with prevailing international norms and laws, including the International Covenant on Civil and Political Rights.

Furthermore, legal processes allow parties concerned to bring their cases, make their arguments and defend their respective positions in a transparent and accountable manner. In this connection, we call for all parties to dutifully follow all legal processes and not use the “court of public opinion” instead of the “court of justice” as the medium to solve the issue in good faith.

We urge the Special Procedure Mandate Holders (SPMH) to wait and observe the rest of the legal process and let the Indonesian judicial entity to determine what is right and what is fact. As a practice in most countries that upholds the rule of law, we expect the SPMH

¹ We do not use the term used in the Joint Communication which is “cease and desist letter” because “*somasi*”, as it is traditionally identified under the legal practice in Indonesia, does not have a legal power nor legal basis. It is sent as a warning or a form of demand, can be sent by anyone to anyone. It contains a form of warning that if the demands to the other parties are not fulfilled then the party who sent the letter will take the judicial step. *Somasi* is a common practice in Indonesia, and intently created to seek peaceful mediation before taking a case to the Court.

to understand the importance of the rule of law and to adhere to the principles of independent judiciary.

A. Under the Indonesian legal system, defamation is categorized as a criminal offense, complaint-based offense, and applied to all citizens

1. The Indonesian Criminal Code/*Kitab Undang-Undang Hukum Pidana* (KUHP) regulates the offense of defamation under Chapter XVI, Article 310-321.
2. If defamation is conducted within the realm of the internet, Article 27 (3) of Law No. 11 of 2008 concerning Electronic Information and Transactions/*Undang-Undang Informasi dan Transaksi Elektronik* (UU ITE) shall be invoked.
3. According to the Law No. 19 of 2016 on the revision of Law No. 11 of 2008, defamation under Article 27 (3) must be in accordance with the definition of defamation under Article 310 and 311 of KUHP.
4. Based on this framework, there are several elements that must be highlighted, which are:
 - a. The scope of defamation offense under Article 310 and 311 of KUHP reaches every national. It can be petitioned by anyone who is allegedly defamed, because his/her honour or reputation is slandered by an illicit fact that is made public by someone or a group of people. While the legal framework does not differ between public official and private citizen, public officials cannot petition the defamation clause on the account that his position is slandered or affronted. Defamation clause must be petitioned based on someone's personal identity.
 - b. The right to petition the defamation clause, or other complaint-based offense, is guaranteed by:
 - i. Article 27 (1) of UUD 1945
"All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions."

- ii. Article 17 of Law No. 39 of 1999 concerning Human Rights
 “Everyone, without discrimination, has the right to justice by submitting applications, grievances, and charges, of a criminal, civil, and administrative nature, and to a hearing by an independent and impartial tribunal, according to legal procedure that guarantees a hearing by a just and fair judge allowing an objective and impartial verdict to be reached”.
 - iii. Article 108 (1) of Law No. 8 of 1981 concerning the Code of Criminal Procedure
 “Anyone who experiences, sees, observes and/or becomes a victim of an event which constitutes a criminal act has the right to submit a report or complaint to the examiner and/or the investigator orally as well as in writing”.
- c. Exemption: Article 27 (3) of UU ITE cannot be applied to journalistic works published by accredited journalists. Issues related to journalistic work must be placed under the framework regulated by Law No. 40 of 1999 concerning the Press.

B. Indonesia promotes the exercise of responsible freedom of expression

- 5. As a robust democracy, Indonesia possesses a Constitution and laws that comprehensively promote and protect the right to freedom of expression. With hundreds of ethnicities, languages, cultures and traditions, as well as different religions and faiths, people are free to express their thoughts through any channels, be it through academic fora, peaceful demonstrations, filmography, arts, etc. Many notable books, movies, podcasts, academic discussions, researches that may be deemed sensitive by some parts of society, are published and consumed by the public.
- 6. Lawmaking in Indonesia involves public consultations, hence the continuous evolvement of laws and regulations at the national and regional levels. For instance, in response to the concerns related to the use of UU ITE, in February 2021 the Coordinating Minister for Political, Legal and Security formed a team to

review UU ITE. The team worked inclusively by involving all related stakeholders, including NGOs. The team has completed its task by recommending several articles in the UU ITE to be revised and formulating guidelines for their implementation. Currently, the recommendation of revisions is expected to be discussed by the parliament in 2022.

C. Protection of freedom of speech/expression as a constitutional right and also in line with international law

7. **Indonesia's Constitution, the *Undang-Undang Dasar 1945* (UUD 1945), provides guarantees of citizens' freedoms** as well as limitations on how they exercise those freedoms. On freedom of speech and freedom of expression, UUD 1945 guarantees its safeguards on Article 28, Article 28E (2), and Article 28E (3).
8. On the other hand, the exercise of freedom of expression is constitutionally limited by Article 28J (2) of UUD 1945, which states, "(1) Every person shall have the duty to respect the human rights of others in the orderly life of the community, nation and state; (2) In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society".
9. **This limitation is in accordance with Article 19 (3) of the ICCPR** which states, "the exercise of the rights provided for in paragraph 2 (on freedom of expression) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: a) for respect of the rights or reputations of others; b) for the protection of national security or of public order, or of public health or morals."
10. The limitation stipulated by Article 28J (2) UUD 1945 is designed to ensure that the exercise of all rights may be carried out harmoniously. Regarding freedom of expression, **the limitation is established to ensure that the exercise of**

freedom of expression does not generate any form of offense, such as but not limited to, defamation or spreading hoaxes.

D. The Constitution of Indonesia and international law guarantees the right to protection of honour, dignity, and reputation

11. It is important to understand how the Indonesian legal system rules on defamation.

UUD 1945 guarantees the right to protection of honour and dignity, as stipulated in Article 28G (1) of UUD 1945, "Every person shall have the right to protection of his/herself, family, honour, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right".

12. The ICCPR explicitly provides safeguard on how people's honour and reputation must be protected by law. Article 17 states that, "1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation; 2) Everyone has the right to the protection of the law against such interference or attacks".

E. Strengthening the role of Human Rights Defenders

13. Indonesia firmly believes that human rights defenders, in all their forms and professions, are key partners in the advancement of human rights. Indonesia is of the view that the right of human rights defenders to carry out legitimate work in an enabling environment, and be free from threats, attacks, reprisals and acts of intimidation must be protected, especially during the pandemic.

14. This is a position we 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. Furthermore, with the COVID-19 crisis that exposes inequalities in many fronts, including the Council's attention towards the plight of frontline and health workers as human rights defenders, Indonesian government has been

actively advocating the need for better recognition of the role of health human rights defenders and their protection.

15. Since the beginning of the pandemic, Indonesia has emphasized the protection of health workers in COVID-19 responses. Their contribution in saving lives should compel the Council to also recognize them as human rights defenders. We therefore urge the SPMH to play a constructive role in supporting our efforts. This includes efforts to guarantee universal, timely, and equitable access and fair distribution of essential vaccines, medicines, and health technologies. These are crucial factors to ensure our safe navigation out of the COVID-19 crisis and protection for health human rights defenders, in particular.

F. Indonesia places higher priority to protect the environment and promote responsible business practices.

16. Indonesia is committed to the promotion and protection of human rights in the framework of business activities through the dissemination and inclusion of the human rights principles as contained in the UN Guiding Principles on Business and Human Rights (UNGP) to business practices in the country.

17. Ten years after endorsement of the UNGP by the Human Rights Council, Indonesia continues to take important steps in its business and human rights policy development. These includes establishment of the National Task Force on Business and Human Rights and the launch of an online human rights' due diligence tool for business entities, or PRISMA.

18. More recently, the Government is in the process of developing a national strategy on business and human Rights to improve implementation of the UNGP at the national level. The drafting is conducted inclusively, involving the business sector, academics, and NGOs. One of the NGOs is also affiliated with Mr. Haris Azhar. In November 2021 Indonesia hosted the Regional Conference on Business and Human Rights, involving 200 representations of governments, business entities, academicians, and NGOs from 19 countries in the Asia-Pacific region.

19. With respect to access to remedies, Indonesia also continues to improve access through both judicial and non-judicial mechanisms, through the online complaint application of SIMAS HAM, under the Ministry of Law and Human Rights.
20. As party to the Paris Agreement, the Government of Indonesia has put its best efforts to prevent and mitigate environmental issues for the past years. Below are some of Indonesia's efforts and achievements:
- a. Indonesia is committed to decrease NDC emission by as much as 41% by the end of 2030.
 - b. Indonesia has regulated a moratorium on forest and land use for 66 million hectares of forest and land.
 - c. The greenhouse gas emission has dropped to 0,03 Gton CO₂ in 2020, 0,9 Gton CO₂ in 2019 and 1.5 Gton CO₂ in 2018.
 - d. Wildfire in 2020 in Indonesia at its lowest rate. Compared to 2019 when wildfire was spread in 1.6 million hectares of forest and 2.6 million in 2015, in 2020 Indonesia managed to push down the scope to 290.000 hectare.

G. Conclusions

21. Indonesia supports the work of related SPMH that should highly value objectivity and thorough examination of any information received concerning particular human rights violation allegation. It is crucial for the SPMH to maintain constructive and cooperative relationship with member states in carrying its duty by setting aside assumptions and avoiding the use of sensationalist language.
22. We urge the SMPH to honour its mandate as an "independent and impartial" experts. Raising a concern on specific human rights issues by forwarding SIMILAR narratives and framings that used by certain conflicting parties in Indonesia, is not categorically objective, independent nor impartial. In this context, verifying the case before taking official action is essential.

23. In addition, the SPMH preference to use a megaphone approach instead of constructive engagement with member states will only diminish trust and credibility of your work and mandate.

24. Further, as one of the founding members of the Human Rights Council, Indonesia would like to highlight again the importance of constructive engagement and genuine dialogue between Special Procedures Mandate Holders and the Governments as stipulated in the UN General Assembly Resolution 60/251 as well as Human Rights Council Resolution 5/1.
