



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

Geneva, 28 December 2021

No. 190/POL-II/XII/2021

Dear Special Procedure Mandate Holders,

Pursuant to your Joint Communication, Ref. No. AL IDN 9/2021 of 29 October 2021, I have the honour to transmit herewith, my Government's response to the allegations and questions that you have posed in the aforesaid letter, concerning the case of Mr. Egi Primayogha and Mr. Miftachul Choir.

I would like to reiterate that **the on-going case** between Mr. Moeldoko, Mr. Egi Primayogha and Mr. Miftachul Choir **is a legal case between three private individuals whose rights are guaranteed under the Indonesian Constitutions** and prevailing laws. A more detailed elaboration of our position can be found in our comprehensive response, as attached.

This response is yet another example of the Government of **Indonesia's serious commitment and effort to work together with mandate holders to address issues of mutual concern**. To date, my Government has responded to 9 of the 11 SPMH joint communications that we have received in 2021. A response to the remaining 2 communications should be expected in the upcoming weeks.

I would like to once again take this opportunity to underline the importance of constructive dialogue and cooperation between mandate holders and States, as well as the need to **avoid the "megaphone approach" by prejudging the outcomes of on-going cases through sensationalist media releases**.

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

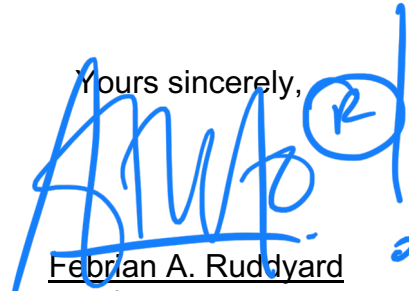
Ms. Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ms. TlaleIng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest standard of physical and mental health

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,

A handwritten signature in blue ink, appearing to read 'Febrina A. Ruddyard', with a stylized flourish at the end.

Febrina 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 9/2021 of 29 October 2021

Mr. Moeldoko sent 3 (three) letters of **request for clarification** (*somasi*)¹ on 29 July 2021, 5 August 2021, and 20 August 2021, prior to the filing of a defamation complaint (pursuant to Article 45(3) & Article 27 (3) Law No. 19 of 2016 on the Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (UU ITE), as well as Article 310 and Article 311 of the Indonesian Criminal Code/*Kitab Undang-Undang Hukum Pidana* (KUHP)), to the Indonesian National Police in Jakarta on 10 September 2021. Currently the case is under investigation by the Indonesian National Police.

Although **Mr. Egi Primayogha and Mr. Miftachul Choir and/or Indonesia Corruption Watch (ICW) have apologized for errors on parts of their report** in September 2021, specifically allegations related to rice exports, it does not remove Mr. Moeldoko's right to pursue further legal action.

These actions are conducted by Mr. Moeldoko through his personal lawyer in his personal capacity, **NOT** in his capacity as Presidential Chief of Staff. This is an exercise of Indonesian constitutional rights where everyone is guaranteed equality before the law. Hence, the Government of Indonesia as the executive branch will not and will never violate the rule of law by intervening any judicial process.

This reply will address and clarify the legal bases in defamation cases in Indonesian law, which applies to all Indonesian nationals in Indonesia. 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.

¹ We do not use the term used in the Joint Communication, namely "subpoena" 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, the party who has sent the letter will take legal action. *Somasi* is a common practice in Indonesia, and is intended to seek peaceful mediation before taking a case to court.

The ongoing legal process will ensure that all Parties are able to bring forward their cases, make their arguments and defend their positions in a transparent and accountable manner before the Court of Law.

We request the Special Procedure Mandate Holders (SPMH) to let the judicial entity in Indonesia to decide upon the matters. We also expect the SPMH to understand the importance of the rule of the law and to adhere to the principles of independent judiciary.

A. Indonesia's Constitution and Law Guarantee the Freedom of Speech and the Freedom of Expression

1. Indonesia guarantees the freedom of speech and the limitations of such rights can be expressed for all its citizens. The provision on freedom of speech and freedom of expression are contained in Article 28, Article 28E (2), Article 28E (3), and Article 28F of the 1945 Indonesia's Constitution, or the *Undang-Undang Dasar 1945* (UUD 1945).
2. The limitation of the freedom of speech and freedom of expression is stipulated in Article 28J 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”.
3. The purpose of the limitation as stipulated in Article 28J UUD 1945 is to ensure that the exercise of the one right to another may be carried out harmoniously, and to ensure they will not generate negative effects, including but not limited to defamation or hoaxes.
4. This limitation to the freedom of speech is in accordance with the Article 19(3) of the International Covenant on Civil and Political Rights (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.”

B. Defamation in the Indonesian Legal System

5. The Indonesian legal system guarantees the right to protect honour and dignity as contained in Article 28G (1) of UUD 1945, which stipulates that “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”.
6. The legal guarantee to protect a person’s honour and reputation is also contained in ICCPR Article 17 that states “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”.
7. Defamation in Indonesian Law is regulated in Chapter XVI, Article 310-311 of the KUHP. Defamation in the cyber realm/internet, is regulated under Article 45(3) & Article 27 (3) of Law No. 11 of 2008 concerning Electronic Information and Transactions/*Undang-Undang Informasi dan Transaksi Elektronik* (UU ITE).
8. Defamation under Indonesia’s criminal law is a complaint-based offense and applies to all private citizens. To lodge a complaint for a defamation offense, it must be petitioned to the Police by one whose reputation is slandered by an illicit fact made publicly by another person or a group of people.
9. The right to petition the defamation clause, or other complaint-based offense, is guaranteed by:
 - a. 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 exception.”

b. 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”.

c. 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”.

10. Exemption: In the case of journalistic works published by accredited journalists, Law No. 40 of 1999 concerning the Press applies instead of UU ITE.

C. Measures in the eradication of corruption in Indonesia

11. Indonesia has numerous national laws and regulations as well as law enforcement bodies to deal with corruption, including through the establishment of Indonesia's Corruption Eradication Commission in 2003. Indonesia is also a Party to the UN Convention against Corruption and actively participates in the efforts to prevent and eradicate corruption at the national and international levels.

12. The active efforts to prevent and eradicate corruption at the national level has also resulted in the arrest and subsequent prosecution against numerous high level officials.

13. The human rights defenders that work in anti-corruption are valuable allies in the effort to prevent and eradicate corruption in Indonesia. The Government of Indonesia partners with a number of NGOs, including Indonesia Corruption Watch (ICW) where Mr. Egi Primayogha and Mr. Miftachul Choir work, to advance

Indonesia's corruption eradication agenda. For decades, the ICW has been able to freely conduct their legitimate work in advocating for anti-corruption.

D. Conclusion

- 14. Indonesia's laws and regulations guarantee equal legal rights to Mr. Egi Primayogha and Mr. Miftachul Choir to make their arguments and defend their positions in a transparent and accountable manner before the Court of Law.**
- 15. 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 as well as the future outcome of this process.**
16. Moreover, as 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.
- 17. 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.
18. Indonesia provides many official avenues to express the grievances, such as the Indonesian Ombudsman for public services, including those conducted through private companies; National Police Commission (*Kompolnas*) for police-related matters; as well as directly to the Indonesia National Police or the Corruption Eradication Commission.
19. Above all else, the use of available legal avenues to settle a dispute should be lauded rather than condemned. **Allegations of reprisals against human rights**

defenders in Indonesia, 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 act of reprisals.

20. We also urge the SMPH to honour its mandate as an “independent and impartial” expert. **Raising a concern on specific human rights issues by forwarding SIMILAR narratives and framings that is used by certain parties in Indonesia, is not categorically objective, independent nor impartial.** In this context, verifying the case before taking official action is essential.

21. 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.