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Individual UPR submission

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Presented by:

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An NGO in special consultative status with ECOSOC,
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A. Introduction

1. Lawyers for Lawyers (hereinafter 'L4L') submits this report on the state of human rights, especially those relating to the legal profession, in Indonesia, with recommendations to the OHCHR for the 27th session of the UPR Working Group in the UN Human Rights Council in May/June 2017.
2. L4L is an independent and non-political Netherlands foundation, which was established in 1986 and is funded by lawyers' donations. L4L promotes the proper functioning of the rule of law through a free and independent exercise of the legal profession around the world and has special consultative status with ECOSOC since 2013.

B. Executive Summary

3. This submission highlights L4L's key concerns regarding Indonesia's compliance with its international and national human rights commitments to guarantee effective access to legal services provided by an independent legal profession as set out in the UN Basic Principles on the Role of Lawyersⁱ ('Basic Principles'), focusing on the lack of effective guarantees for the functioning of lawyers. Non-compliance with the Basic Principles undermines the proper functioning of the judicial system and the right to fair trial in particular.

Recommendations to the government:

- (a) to provide lawyers with all the facilities, rights and privileges necessary for discharging their functions, including the right to consult and communicate with their clients freely and in full confidentiality and to have access to information, files and documents at the earliest appropriate time, in accordance with articles 16(b), 21 and 22 of the Basic Principles;**
- (b) to take all measures necessary to prevent that lawyers are threatened, intimidated, hindered, harassed or subjected to improper interference while exercising their professional duties, in accordance with article 16(a) of the Basic Principles;**
- (c) to take all measures necessary to ensure that crimes, harassment and other violations against lawyers are effectively investigated, publicly condemned at all levels and perpetrators of such acts are prosecuted, in accordance with article 17 of the Basic Principles;**
- (d) to take all measures necessary to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with articles 16(c) and 26, 27, 28 and 29 of the Basic Principles;**
- (e) to continue to implement in legislation as well as in practice recommendations 108.117, 108.118 and 108.119, as accepted by the Indonesia government during the UPR cycle 2012**
- (f) to ensure that any new legislation on advocates meets international standards to guarantee an independent legal profession, including articles 24 and 28 of the Basic Principles;**

C. Normative and institutional framework of the State

4. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are free to carry out their professional duties independently. This follows from the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which Indonesia is a party.
5. In its task of promoting and ensuring the proper role of lawyers, the Indonesian government should respect and take into account the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.
6. During the interactive dialogue in the UPR cycle of 2012 several recommendations with respect to the independence and working environment of human rights defenders, including lawyers, were supported by Indonesiaⁱⁱ, including recommendations 108.117ⁱⁱⁱ and 108.118^{iv}. Indonesia furthermore accepted a recommendation on conducting impartial and independent investigations into acts of violence committed against human rights defenders (recommendation 108.119^v).
7. The laws governing the legal profession in Indonesia contain principles guaranteeing the performance, in full independence, of the role of lawyers.^{vi} However, reports gathered by L4L and information that we received from lawyers in Indonesia, demonstrate that Indonesia does not always uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. As a consequence, lawyers encounter difficulties in carrying out their profession independently. This also undermines the proper functioning of the judicial system, including the right to fair trial.

D. Promotion and protection of human rights

(i) No effective guarantees for the functioning of lawyers

8. L4L has been informed by several lawyers and civil society organisations in Indonesia that Indonesian lawyers are regularly subjected to improper interference or attempts to put pressure on them by members of law enforcement agencies or investigative bodies. Furthermore, lawyers regularly do not have the opportunity to meet with their clients in full confidentiality.

Cases:

Lawyers Simon Banundi, Theresje Julianty Gasperz and Samuel Aaron Yensenem were facing severe obstructions while representing the legal interests of four clients. These clients, who are activists of the National Committee of West-Papua (KNPB), had been arrested on 20 May 2015 during a peaceful demonstration. The four clients were kept in

custody of the special police headquarters in Manokwari (Mako Brimob), with limited contact to their lawyers.

On 16 June 2015, when the lawyers requested to meet with their clients, the police responded this was not possible for there was no "proper" meeting room available. Furthermore, the police claimed that one of their officers needed to be present to observe the meetings between the lawyers and their clients.

On 24 July 2015, Mr. Banundi went to the police headquarters alone, where he was prohibited access to his clients again. Mr. Banundi was told that, by order of the police chief, nobody, including their own lawyers, was allowed to speak to the four prisoners.^{vii} By refusing access to their clients, Mako Brimob made it temporarily impossible for the lawyers to properly defend their clients' interests.

9. Lawyers are also the victim of threats, intimidation and physical attacks, including by members of law enforcement agencies or investigative bodies. This is illustrated by the following cases:

Olga Hamadi

In September 2012, human rights lawyer Olga Hamadi was informed by local sources that prior to the pre-trial hearing, allegedly the police resort disseminated text messages to the murder victim's family and members of the local community. These text messages stated that the police department managed to catch the perpetrators of a murder and that Ms. Hamadi was interfering with the case and wanted to stop the legal process, and essentially provoked people to turn against Ms. Hamadi's responsible and lawful activities during the pre-trial investigation.

Following dissemination of the above text messages, Ms. Hamadi has several times not been able to attend the pre-trial hearings in the Wamena District Court, because a crowd of people (including family members of the murdered victim) violently blocked her from entering the court and the leader of the group even threatened to kill her in case she would not withdraw the pre-trial application. The police officers did not guard her safety when attending the pre-trial hearings, nor made it possible in any way for her to attend the pre-trial hearings.^{viii}

Latifah Anum Siregar

On 16 September 2014, human rights lawyer Latifah Anum Siregar was physically attacked and robbed while returning from pre-trial court hearings to her hotel in Wamena city, Papua province. The assailants also stole her suitcase, which contained her laptop and documentation relating to an ongoing legal case.^{ix}

Alldo Fellix Januarydy

On 12 January 2016, human rights lawyer Alldo Fellix Januarydy was attacked following his effort to negotiate a suspension of the plan to forcefully evict his clients, residents of a riverbank slum in Tebet, Central Jakarta. The Administrative District Court was still to issue a ruling on the legality of this eviction. Furthermore, the clients were still awaiting the outcome of an audience with the Municipal Council. Mr. Januarydy requested the police to await the outcome of the legal process before taking any actions. Instead of accepting this legitimate request, members of the Civil Service Police Unit attacked Mr. Januarydy, resulting in wounds on his eyebrow and chin.^x

Mr. Januardy filed a complaint about his physical assault to the Polda Metro Jaya, which transferred the case to Polres Metro Jakarta Selatan. All evidence has been submitted, however until date there are no official suspects in this case.

Asrul Azis Sigalingging

On 25 March 2016, seven students who were eating at a food stall were suddenly targeted by a sweeping operation and attacked by Satpol PP personnel in Padang. The Satpol PP accused the students of disturbing public order. One student, Gianesha, was arrested. Subsequently, Gianesha was brought to the Satpol PP office.

Shortly after receiving this information, lawyer Asrul Azis Sigalingging went to the Satpol PP's office and tried to provide legal assistance to Gianesha. Rather than obtaining access to Gianesha, Mr. Sigalingging was himself brutally attacked, pushed to the ground and forcibly drugged by Satpol PP personnel. Moreover, Mr. Sigalingging's advocate identity card was taken from him.^{xi} This maltreatment was reported by LBH Padang to the regional police office. Reportedly the case has been brought into investigation, however there are no significant developments yet.

10. As shown above, when lawyers report the threats and attacks against them to the police, Indonesian authorities sometimes fail to carry out prompt, thorough, impartial and transparent investigations into such threats and attacks, so as to identify all those responsible and bring them to justice. In addition to the direct effects on the lawyers in question, impunity could have a "chilling effect" on other lawyers, negatively influencing the quality of their work, potentially forcing them to renounce certain kinds of cases, and work in the fear that they or their families may be at risk because of their work.
11. We have furthermore been informed that lawyers are also subjected to criminal investigations and proceedings.

Gustaf Kawer

In September 2014, the Papua Regional Police opened an investigation into human rights lawyer Gustaf Kawer in connection with "crimes against public authority". The charges, under articles 211 and 212 of the Criminal Code, refer to events alleged to have occurred during a court hearing in June 2014 while he was acting as a defence lawyer in court.

On 5 June 2014, Gustaf Kawer had applied on behalf of a client for the postponement of a hearing scheduled for 12 June. At the 12 June hearing, the court decided to deny the postponement and proceeded with the hearing in the absence of Mr. Kawer and his client. Upon his arrival to court, the human rights lawyer protested on the basis that the court had granted a postponement on three previous occasions at the request of the government, the other party in the court proceedings. Reportedly, the human rights lawyer was asked to leave the courtroom if he disagreed with the court's decision; subsequently, Mr. Kawer left the courtroom.

Tigor Gempita Hutapea and Obed Sakti Andre Dominika

Tigor Gempita Hutapea and Obed Sakti Andre Dominika, lawyers at the Legal Aid Institute (LBH) in Jakarta, were arrested on 30 October 2015, following their monitoring of Police violence committed during a peaceful protest rally to demand a change in the minimum wage formula before the Presidential Palace.

Tigor Gempita Hutapea and Obed Sakti Andre Dominika were arrested for the alleged misdemeanor of disobeying officers. However, we were informed that just like the other

individuals (23 in total) that got arrested, the lawyers had actually begun to voluntarily disperse when the Police came, and beat and arrested them. In addition, we understand from various independent sources that the Police failed to follow proper procedures when arresting the 26 people.^{xii}

The Public Prosecutor decided to prosecute Mr. Hutapea and Mr. Dominika in relation to the above. The criminal proceedings are ongoing. Currently witnesses are being interviewed, among them other lawyers who were present at the peaceful protest rally. If Mr. Hutapea and Mr. Dominika would be found guilty, they could be facing a maximum penalty of four months imprisonment, merely for fulfilling their legitimate role as lawyer. We were informed that the Indonesian Bar Association, PERADI, fully supports both lawyers in the criminal proceedings.

12. The examples mentioned above show that the Indonesian authorities have not fully and adequately implemented recommendations 108.117, 108.118 and 108.119 of the UPR cycle in 2012.

13. Recommendations to the Indonesian government:

- (a) to provide lawyers with all the facilities, rights and privileges necessary for discharging their functions, including the right to consult and communicate with their clients freely and in full confidentiality and to have access to information, files and documents at the earliest appropriate time, in accordance with articles 16(b), 21 and 22 of the Basic Principles;**
- (b) to take all measures necessary to prevent that lawyers are threatened, intimidated, hindered, harassed or subjected to improper interference while exercising their professional duties, in accordance with article 16(a) of the Basic Principles;**
- (c) to take all measures necessary to ensure that crimes, harassment and other violations against lawyers are effectively investigated, publicly condemned at all levels and perpetrators of such acts are prosecuted;**
- (d) take all measures necessary to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with articles 16(c) and 26, 27, 28 and 29 of the Basic Principles.**
- (e) continue to implement in legislation as well as in practice recommendations 108.117, 108.118 and 108.119, as accepted by the Indonesia government during the UPR cycle 2012**

(ii) [Bill on attorneys](#)

14. In September 2014, Indonesian Parliament deliberated a new Bill of Advocates. Although the proposed bill contains several provisions that should further enable Indonesian lawyers to practice law in freedom and independence, it falls short of international standards.

15. Our primary concern relates to the creation of a National Advocates Council (*Dewan Advokat Nasional*). Although lawyers have the right to create their own bar associations, the authority of these bar associations will effectively be limited by the National Advocates Council, which shall have several tasks and authorities that are

normally performed by bar associations, including the promotion of lawyers' continuing education and training and protection of professional integrity. The members of the National Advocates Council will also play a role as representatives in an Honorary Council (*Majelis Kehormatan*), which shall handle appeal cases in disciplinary proceedings against lawyers (see Article 39 and 40 of the Bill on Advocates).

16. Article 36(2) of the Bill on Advocates states that the National Advocates Council shall constitute an independent institution that has no organisational ties with any state bodies or other government institutions and, in the performance of its tasks and authorities, shall be independent from any other influence. However, according to Article 44 of the Bill on Advocates, the President forms a committee for the selection of members of the National Advocates Council. According to Article 45 of the Bill in Advocates, following the selection of candidates by the committee, the President proposes 18 candidates to the People's Representative Council, which should select 9 candidates to become members of National Advocates Council.

17. The above provisions are contrary to the Basic Principles on the Role of Lawyers, and more specifically Principle 24^{xiii}, which establishes that lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity, which executive body of shall be elected by its members and shall exercise its functions without external interference, and Principle 28, which established that disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.^{xiv}

18. The deliberations were ceased after a large group of lawyers staged a protest in front of Parliament. However, the bill is listed in the National Legislative Program (*Prolegnas*) for deliberation later this year.

Recommendation to the Indonesian government:

19. **to ensure that any new legislation on the legal profession meets international standards to guarantee an independent legal profession, including Article 24 and 28 of the Basic Principles.**

ⁱ The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 7 September 1990. Subsequently, the UN General Assembly "welcomed" the Basic Principles in their 'Human rights in the administration of justice' resolution, which was adopted without a vote on 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly.

ⁱⁱ Report of the Working Group on the Universal Periodic Review on Indonesia, A/HRC/21/7, 5 July 2012, par. 108

ⁱⁱⁱ 108.117. Continue efforts to fully guarantee the protection and independence of human rights defenders (Greece);

^{iv} 108.118. Ensure a safe and enabling environment for all human rights defenders (Norway);

^v 108.119. Conduct impartial and independent investigations into acts of violence committed against human rights defenders, to bring those responsible to justice and fully guarantee freedom of expression (France);

^{vi} Article 14 of Law of the Republic of Indonesia No. 18 / 2003 on Lawyers establishes that a lawyers shall be free to express his/her opinion or make statements in the defence of a case that is under his/her responsibility in court proceedings while respecting the professional ethics code and prevailing laws and regulations. Article 15 of Law of the Republic of Indonesia No. 18 / 2003 on Lawyers establishes that a lawyer shall be free to perform his/her professional task of defending a case that has become his/her responsibility while respecting the professional ethics code and prevailing laws and regulations. Article 16 established that a lawyers cannot be privately or criminally sued while performing his professional task in good faith in the interest of the defence of his/her client in court proceedings. Article 17 establishes that in the performance of his/her profession, a lawyer has the right to obtain information, data and other documents that is needed to defend the interest of his/her client both from the government or other parties relating to such interest in accordance with prevailing laws and regulations. Furthermore, Article 18(2) of Law of the Republic of Indonesia No. 18 / 2003 on Lawyers establishes that a lawyer shall not be identified with his client when defending his client by authorised parties and/or the public. Finally, Article 19(2) establishes that a lawyer has the right to keep confidential his right with a client, including the protection of papers and documents against seizure or investigation and protection against tapping of electronic communication of a lawyer. As for the right for legal privilege, please also refer to, *inter alia*, Articles 43 and 170 of the Indonesian Criminal Procedural Law.

^{vii} <http://www.advocatenvooradvocaten.nl/10919/indonesia-lawyers-denied-access-to-clients/>

^{viii} <http://www.advocatenvooradvocaten.nl/actions/olga-hamadi/>

^{ix} <http://www.advocatenvooradvocaten.nl/actions/gustaf-kawer-and-latifah-anum-siregar/>

^x <http://www.advocatenvooradvocaten.nl/11518/indonesia-lawyer-alldo-felix-januardy-attacked/>

^{xi} <http://www.advocatenvooradvocaten.nl/11638/indonesia-attack-on-lawyer-asrul-azis-sigalingging/>

^{xii} <http://www.advocatenvooradvocaten.nl/11499/indonesia-two-lawyers-arrested/>

^{xiii} Basic Principle 24 reads: Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

^{xiv} <http://www.advocatenvooradvocaten.nl/9599/indonesia-letter-on-bill-on-advocates/>.