



NGO in Special Consultative Status with the Economic and Social Council of the United Nations since 2013

**BY REGISTERED MAIL AND FAX**

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Perihal: Rancangan Undang-Undang  
Advokat

Amsterdam, 23 September 2014

Yang terhormat Bapak Ketua Dewan  
Perwakilan Rakyat, Bapak Presiden,

Lawyers for Lawyers Foundation ("Stichting  
Advocaten voor Advocaten" atau "**L4L**")  
adalah sebuah Lembaga Swadaya  
Masyarakat dari Belanda yang mempunyai  
Status Konsultasi Khusus dengan Dewan  
Ekonomi dan Sosial Perserikatan Bangsa-  
Bangsa (ECOSOC). L4L mempromosikan  
ketaatan terhadap traktat Hak Asasi  
Manusia PBB dan instrumen lainnya dalam  
kegiatan kami dengan para advokat dan  
asosiasi advokat di berbagai negara.  
Tepatnya, kami menekankan ketaatan atas  
Prinsip Dasar PBB mengenai Peran Advokat  
("**Prinsip Dasar**").<sup>1</sup>

<sup>1</sup> Prinsip Dasar PBB mengenai Peran Advokat  
memberikan penjelasan ringkas mengenai  
norma internasional sehubungan dengan aspek

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Subject: Bill on Advocates

Amsterdam, 23 September 2014

Dear Mr Speaker, Dear Mr President,

The Lawyers for Lawyers Foundation  
("Stichting Advocaten voor Advocaten" or  
"**L4L**") is a Dutch Non-Governmental  
Organisation in Special Consultative Status  
with the United Nations Economic and Social  
Council (ECOSOC). L4L promotes adherence  
to United Nations (UN) human rights treaties  
and other instruments in our work with  
lawyers and lawyers' associations in several  
countries. In particular, we emphasize  
compliance with the UN Basic Principles on  
the role of lawyers (the "**Basic  
Principles**").<sup>1</sup>

<sup>1</sup> 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



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Bersama surat ini, L4L ingin menyampaikan keprihatinannya mengenai Rancangan Undang-Undang Advokat yang saat ini sedang didiskusikan oleh Dewan Perwakilan Rakyat. Walaupun beberapa pasal dalam RUU tersebut mengakui dan memberikan hak kepada para advokat Indonesia untuk berpraktek secara bebas dan independen, RUU tersebut belum memenuhi standar internasional.

Keprihatinan kami yang utama adalah sehubungan dengan pembentukan Dewan Advokat Nasional. Walaupun para advokat mempunyai hak untuk membentuk organisasi advokatnya sendiri, kewenangan organisasi advokat akan secara efektif dibatas oleh Dewan Advokat Nasional, yang akan mempunyai beberapa tugas dan kewenangan yang biasanya dilangsungkan oleh organisasi advokat, termasuk mempromosikan kelangsungan pendidikan advokat, pelatihan dan perlindungan integritas profesional. Anggota Dewan Advokat Nasional juga akan berperan sebagai perwakilan dalam Majelis Kehormatan, yang akan menangani kasus-kasus banding mengenai prosedur disipliner terhadap para advokat (lihat Pasal 39 dan 40 RUU Advokat).

Pasal 36 ayat 2 RUU Advokat menuliskan bahwa Dewan Advokat Nasional merupakan lembaga yang bersifat mandiri dan tidak memiliki hubungan organik dengan lembaga

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diadopsi secara mufakat oleh Kongres PBB ke Delapan mengenai Pencegahan Kriminal dan Perlakuan Pelaku Pelanggaran, Havana, Kuba, 27 Agustus sampai 7 September 1990. Selanjutnya, Majelis Umum PBB "menyambut baik" Prinsip Dasar tersebut di dalam resolusi 'Hak asasi manusia dalam administrasi keadilan', yang di adopsi tanpa keperluan pengambilan suara pada tanggal 18 Desember 1990 di kedua sesi Komite Ketiga dan juga dalam rapat pleno Majelis Umum PBB.

With this letter, L4L would like to express its concern about the Bill on Advocates that is currently deliberated by the People's Representative Council. Although containing several provisions that should further enable Indonesian advocates to practice law in freedom and independence, the Bill on Advocates falls short of international standards.

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).

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

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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.

negara dan instansi pemerintahan lainnya, serta dalam menjalankan tugas dan wewenangnya bebas dari campur tangan kekuasaan lainnya. Tetapi, menurut Pasal 44 RUU Advokat, Presiden membentuk panitia seleksi calon anggota Dewan Advokat Nasional. Menurut Pasal 45 RUU Advokat, setelah menerima nama calon dari panitia seleksi, Presiden mengajukan 18 calon kepada Dewan Perwakilan Rakyat, yang kemudian akan memilih 9 calon untuk menjadi anggota Dewan Advokat Nasional.

Pasal-pasal tersebut di atas bertentangan dengan traktat internasional dan prinsip internasional yang diakui PBB, termasuk Prinsip 24 dan 28 dalam Prinsip Dasar, yang menyatakan:

*Prinsip 24*

*Pengacara harus berhak untuk membuat dan bergabung dalam asosiasi profesi yang independen untuk mewakili kepentingan mereka, mempromosikan kelangsungan pendidikan dan pelatihan dan melindungi integritas profesional mereka. Badan eksekutif asosiasi profesi harus dipilih oleh anggotanya dan melaksanakan fungsinya tanpa campur tangan eksternal.*

*Prinsip 28*

*Prosedur disipliner terhadap pengacara harus diajukan ke depan komite disipliner yang dibentuk oleh profesi hukum, di depan otoritas independen yang diakui hukum, atau di muka pengadilan, dan harus tunduk kepada pengujian hukum yang independen.*

bodies or other governments 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 on 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.

The above provisions are contrary to international treaties and international principles adopted by the United Nations, including Principle 24 and 28 of the Basic Principles, which state:

*Principle 24*

*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.*

*Principle 28*

*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.*

Sebagai anggota PBB, Indonesia mempunyai kewajiban untuk memastikan bahwa setiap orang dalam wilayah negaranya diperlakukan sama secara personal dan mempunyai hak yang dilindungi oleh Deklarasi Hak Asasi Manusia dan Kovenan Internasional tentang Hak-hak Sipil dan Politik ("ICCPR"). Pelaksanaan kewajiban ini bermaksud untuk memastikan hak setiap orang untuk representasi hukum yang dijamin oleh ICCPR.<sup>2</sup> Telah diterima secara umum bahwa untuk menjamin hak atas representasi hukum, Negara-negara harus mengadopsi dan melakukan tindakan-tindakan yang efektif untuk menjamin keamanan dan independensi advokat dan kebebasan untuk melaksanakan advokasi tanpa gangguan. Prinsip Dasar menjelaskan kewajiban-kewajiban Negara yang diterima secara umum bahwa penting untuk menjamin independensi dan keamanan advokat dan melindungi advokat dari campur-tangan negara dan oknum lainnya. Ketaatan atas Prinsip Dasar adalah prasyarat mendasar untuk pemenuhan setiap Negara untuk memastikan akses yang efektif atas pelaksanaan hak dan representasi hukum yang ditegakkan secara efektif dan perbaikannya.

Mengingat hal tersebut diatas, L4L memohon perhatian Dewan Perwakilan Rakyat dan Presiden, dalam kepatuhan terhadap kewajiban internasional Negara Republik Indonesia, untuk mengamandemen Rancangan Undang-Undang Advokat dan, taat pada hukum internasional, termasuk Prinsip Dasar untuk:

- membiarkan promosi kelangsungan pendidikan advokat dan pelatihan

<sup>2</sup> Pasal 14 ICCPR.

As a member of the UN, Indonesia has obligations to ensure to all people within its territory the equal enjoyment of the personal and advocacy rights protected by the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights ("ICCPR"). Discharge of these obligations entails ensuring everyone the right to legal representation guaranteed by the ICCPR.<sup>2</sup> It is widely accepted that in order to ensure the right to legal representation, States must adopt and maintain effective measures to ensure the safety and independence of lawyers and the freedom to engage in advocacy without reprisals. The Basic Principles describe specific State duties widely accepted as necessary to ensuring the right to representation through ensuring the independence and safety of lawyers and protecting lawyers from interference by state and other actors. Compliance with the basic Principles is a fundamental precondition to fulfilment of the requirement of every State to ensure effective access both to enforcement of rights and the legal representation required for effective enforcement and remediation.

In view of the above, L4L calls upon the People's Representative Council and the President, in compliance with the international obligations of the Republic of Indonesia, to amend the Bill on Advocates and, in compliance with the international law, including the Basic Principles:

- leave the promotion of lawyers' continuing education and training and

<sup>2</sup> Article 14 ICCPR.



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dan perlindungan integritas profesinya kepada organisasi(-organisasi) profesi yang berpemerintahan sendiri, dimana badan eksekutif dipilih oleh para anggotanya dan melaksanakan fungsi-fungsinya tanpa campurtangan eksternal, dan;

- Hanya membentuk komite disipliner yang dimana proses disipliner terhadap advokat dapat dilakukan, yang tidak berpihak dan didirikan oleh profesi advokat.

the protection of their professional integrity to self-governing members and professional associations, which executive body is elected by their exercises its functions without external interference, and;

- solely create disciplinary committees before which disciplinary proceedings against lawyers can be brought that are impartial and established by the legal profession.

L4L berterima kasih atas perhatian Bapak mengenai hal penting ini. Kami yakin terhadap itikad baik dan rasa keadilan Bapak dan akan tetap mengawasi hal ini dengan seksama.

L4L wishes to thank you for your attention to this important matter. We are confident of your good will and sense of justice and will continue to monitor this matter closely.

Hormat Kami / Sincerely,

Adrie van de Streek  
Director / Direktur

Tembusan:

- Pelapor Istimewa PBB untuk Independensi Hakim dan Advokat
- Duta Besar/Wakil Tetap Republik Indonesia untuk PBB
- Surat kabar dan media elektronik

Copy to:

- The UN Special Rapporteur on the Independence of Judges and Lawyers
- Ambassador and Permanent Representative of the Republic of Indonesia to the United Nations
- Newspapers and electronic media