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Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council
of the United Nations*
Promoting human rights by protecting those who defend them
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3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

To the honorable
CHIEF OF SOUTH JAKARTA DISTRICT COURT
Attn: Justice Martin Ponto Bidara
South Jakarta District Court
Jalan Ampera Raya No. 133, Pasar Minggu
Jakarta Selatan 12550
JAKARTA SPECIAL CAPITAL REGION
INDONESIA

Amsterdam, 28 January 2018

Subject: Support Letter in Ongoing Pre-trial
Lawsuit (No. 04/Pid.Prap/2018/PN.JKT.SEL)

Your Excellency,

Lawyers for Lawyers (“L4L”) is an independent and non-political Dutch foundation that seeks to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession. Lawyers’ Rights Watch Canada is a committee of lawyers and others promoting international human rights through advocacy, legal research and education.

Lawyers for Lawyers and Lawyers’ Rights Watch Canada write to express their concern about the termination of investigation of the maltreatment of Mr. Alldo Fellix Januarydy (Pretrial Case Number 04/Pid.Prap/2018/PN.JKT.SEL). Alldo Fellix Januarydy is an independent public interest lawyer at the Legal Aid Institute (LBH) in Jakarta. LBH provides legal aid to the poor and marginalized people in Indonesia, including people in slum areas in Jakarta who face forced eviction by the government.

Alldo Fellix Januarydy was maltreated by members of the Civil Service Police Unit during a forced eviction in Bukit Duri, Tebet, South Jakarta on 12 January 2016, following his effort to negotiate a suspension of the plan to forcefully evict his clients. The Administrative District Court was still to issue

Kepada Yang Mulia
KETUA PENGADILAN NEGERI JAKARTA SELATAN
U.P. HAKIM MARTIN PONTO BIDARA
Pengadilan Negeri Jakarta Selatan
Jalan Ampera Raya No. 133, Pasar Minggu
Jakarta Selatan 12550
DAERAH KHUSUS IBUKOTA JAKARTA
INDONESIA

Amsterdam, 28 Januari 2018

RE: Surat Dukungan terhadap Perkara
Praperadilan (No. 04/Pid.Prap/2018/PN.JKT.SEL)

Dengan hormat,

Lawyers for Lawyers (“L4L”) adalah yayasan Belanda independen dan non-politik yang bekerja untuk mempromosikan fungsi negara hukum yang baik dengan berusaha mencapai profesi hukum yang bebas dan mandiri. Lawyers’ Rights Watch Canada adalah komite pengacara dan profesi lainnya yang mempromosikan hak asasi manusia internasional melalui advokasi, penelitian hukum dan edukasi.

Lawyers for Lawyers dan Lawyers’ Rights Watch Canada menulis surat ini untuk menyatakan keprihatinannya tentang penghentian penyidikan atas pengeroyokan Alldo Fellix Januarydy (Perkara Praperadilan Nomor 04/Pid.Prap/2018/PN.JKT.SEL). Alldo Fellix Januarydy adalah seorang pengacara publik di Lembaga Bantuan Hukum (LBH) di Jakarta. LBH memberikan bantuan hokum kepada orang-orang yang miskin dan marginal di Indonesia, termasuk orang-orang di kawasan kumuh di Jakarta yang menghadapi penggusuran paksa dari pemerintah.

Alldo Fellix Januarydy dianiaya oleh anggota Satuan Polisi Pamong Praja saat sedang terjadi penggusuran paksa di Bukit Duri, Tebet, Jakarta Selatan pada tanggal 12 Januari 2016, setelah mencoba menegosiasikan penundaan atas rencana penggusuran paksa para kliennya.



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a ruling on the legality of the eviction. Furthermore, the people of Bukit Duri were still awaiting the outcome of an audience with the Municipal Council. Alldo Fellix Januarydy requested the members of the Civil Service Police Unit and the Sub-District Head of Tebet 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 and the Sub-District Head of Tebet attacked Alldo Fellix Januarydy, resulting in wounds on his eyebrow and chin, and damage to his goods.

Shortly after his maltreatment, Alldo Fellix Januarydy filed a police report against the perpetrators at the South Jakarta Police Office. However, the South Jakarta Police Office recently decided to terminate the police investigation after 1.5 years, even though it was reported that there is compelling evidence of the maltreatment. According to our information, among others, witnesses were present during the maltreatment, of which photos were published by the mainstream media.

Lawyers play a fundamental role in defending human rights by providing independent legal services. It is of vital importance that all cases of violence against them are condemned, investigated and that those responsible are held accountable. Failing to do so has a chilling effect on society as lawyers are unable to properly defend their clients, and may become reluctant to take on sensitive human rights cases.

Both national laws and international standards require the Indonesian government and its representatives to protect lawyers in the execution of their profession. In his capacity of lawyer, Alldo Fellix Januarydy is protected by the Indonesian Law on Lawyers (Undang-Undang Nomor 18 Tahun

Pengadilan Tata Usaha Negara waktu itu belum mengeluarkan putusan terkait keabsahan penggusuran tersebut. Kemudian, masyarakat Bukit Duri juga masih menunggu hasil dari pertemuan mereka dengan Pemerintah Kota. Alldo Fellix Januarydy meminta anggota Satuan Polisi Pamong Praja dan Camat Tebet untuk menunggu hasil proses hukum sebelum mengambil tindakan. Bukannya menerima permintaan yang sah ini, para anggota Satuan Polisi Pamong Praja dan Camat Tebet menyerang Alldo Fellix Januarydy, menyebabkan luka pada alis dan dagunya, serta kerusakan pada barang-barangnya.

Segera setelah penganiayaannya, Alldo Fellix Januarydy menyampaikan laporan polisi terhadap para pelaku di Kantor Polisi Jakarta Selatan. Tetapi, Kantor Polisi Jakarta Selatan baru-baru ini telah memutuskan untuk menghentikan penyidikan polisi setelah 1.5 tahun, meskipun telah dilaporkan bahwa terdapat bukti-bukti yang meyakinkan atas penganiayaan tersebut. Berdasarkan informasi kami, antara lain, saksi-saksi hadir pada saat penganiayaan, dimana foto-foto disebar oleh media masa.

Para pengacara menjalankan peran fundamental dalam membela hak asasi manusia dengan memberikan jasa hukum independen. Adalah sangat penting bahwa semua kasus-kasus kekerasan terhadap mereka ditolak, disidik dan semua yang bertanggungjawab atas hal tersebut diadili. Kegagalan untuk melakukannya mengakibatkan masyarakat ragu-ragu menggunakan haknya karena para pengacara tidak dapat membela kliennya dengan benar, dan mungkin menjadi ragu untuk mengambil kasus hak asasi manusia yang sensitif.

Baik hukum nasional dan standar internasional mewajibkan pemerintah Indonesia dan perwakilannya untuk melindungi para pengacara dalam melaksanakan profesinya. Dalam kapasitasnya sebagai pengacara, Alldo Fellix Januarydy dilindungi oleh Undang-Undang

2003) and the UN Basic Principles on the Role of Lawyers.¹

In particular, Article 15 of Indonesian Law No. 18 / 2003 establishes that a lawyer shall be free to perform his professional task of defending a case that has become his responsibility while respecting the professional ethics code and prevailing laws and regulations. Furthermore, 18(2) of Indonesian Law No. 18 / 2003 establishes that a lawyer shall not be identified with his client when defending his client by authorised parties and/or the public.

Furthermore, we would like to draw your attention to the UN Basic Principles on the Role of Lawyers, more in particular Principles 16, 17 and 23, which read:

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (...)(b) are able to travel and to consult with their clients freely both within their own country and abroad;

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and

Advokat Nomor 18 Tahun 2003 dan Prinsip Dasar Peran Pengacara di Perserikatan Bangsa-Bangsa.¹

Secara khusus, Pasal 15 Undang-undang No. 18 tahun 2003 tentang Advokat ("UU Advokat") menyatakan bahwa advokat bebas dalam menjalankan tugas profesinya untuk membela perkara yang menjadi tanggung jawabnya dengan tetap berpegang pada kode etik profesi dan peraturan perundang-undangan. Lebih dari itu, Pasal 18(2) Undang-undang No. 18 tahun 2003 tentang Advokat juga menyatakan bahwa Advokat tidak dapat diidentikkan dengan Kliennya dalam membela perkara Klien oleh pihak yang berwenang dan/atau masyarakat.

Kami ingin menarik perhatian anda terhadap Prinsip Dasar, khususnya Prinsip 16, 17 dan 23, yang berbunyi:

16. Pemerintah harus menjamin bahwa pengacara (a) dapat menjalankan fungsi profesinya tanpa intimidasi, halangan, ancaman atau intervensi yang tidak wajar (...) dan (b) dapat bepergian dan melakukan konsultasi dengan kliennya secara bebas didalam negeri mereka sendiri maupun di luar negeri.

17. Dimana keamanan pengacara terancam sebagai akibat menjalankan fungsinya, mereka harus dilindungi secara layak oleh otoritas.

23. Pengacara seperti warga negara lainnya berhak atas kebebasan berpendapat,

¹ 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. / Prinsip Dasar PBB mengenai Peran Advokat memberikan penjelasan ringkas mengenai norma internasional sehubungan dengan aspek penting mengenai hak-hak untuk memperoleh nasihat hukum yang independen. Prinsip Dasar 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.



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assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

On Indonesia, as a member of the United Nations, rests the obligation to ensure the protection of these rights and the observance of these principles.

In view of the above, Lawyers for Lawyers and Lawyers' Rights Watch Canada respectfully urge you to:

- Nullify the decision of the South Jakarta Police to terminate the investigation into the maltreatment of Alldo Fellix Januarydy;
- ensure the protection of Mr. Alldo and all public interest lawyers by accepting Alldo Fellix Januarydy as a victim in the legal proceedings of maltreatment by police officers, allowing that the perpetrators shall be brought to justice.

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

berkeyakinan, berserikat dan berkumpul. Khususnya, mereka harus mempunyai hak untuk mengambil bagian dalam diskusi publik mengenai hukum, administrasi keadilan dan promosi dan perlindungan hak asasi manusia dan untuk bergabung atau mengadakan organisasi lokal, nasional atau internasional dan untuk menghadiri pertemuan-pertemuan tersebut tanpa menanggung batasan profesional dengan alasan tindakan mereka adalah dalam batas hukum atau kenggotaan mereka adalah di dalam organisasi yang sah. Dalam melaksanakan hak tersebut, pengacara harus bertindak sesuai dengan hukum dan standar yang diakui dan etika profesi hukum.

Indonesia sebagai anggota PBB, mempunyai kewajiban untuk menjamin perlindungan hak-hak dan menghormati Prinsip Dasar tersebut.

Dengan pertimbangan diatas, Lawyers for Lawyers dan Lawyers' Rights Watch Canada dengan hormat meminta anda agar:

- Membatalkan keputusan Kepolisian Jakarta Selatan yang menghentikan penyidikan atas penganiayaan Alldo Fellix Januarydy;
- memastikan perlindungan Alldo dan semua pengacara publik menerima Alldo Fellix Januarydy sebagai korban dalam proses hokum penganiayaan oleh pejabat polisi, memungkinkan para pelaku untuk diadili.

Terima kasih atas perhatian anda mengenai hal yang sangat penting ini. Kami yakin akan itikad baik dan rasa keadilan yang anda miliki dan akan tetap memonitor perkara ini.



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Yours sincerely,
Lawyers for Lawyers

Hormat kami,
Lawyers for Lawyers

p.p. 

Phon van den Biesen
President

p.p. 


Phon van den Biesen
Ketua

Lawyers' Rights Watch Canada



Gail Davidson
Executive Director

Lawyers' Rights Watch Canada



Gail Davidson
Direktur Eksekutif

Copies of this letter were sent to:

- The President of the Republic of Indonesia, his Excellency Ir. Joko Widodo
- The Head of Police Section Metropolitan Tebet, Police Commissioner Nurdin A. Rahman
- Sub-District Head of Tebet, Drs Mahludin
- Resor Police of Jakarta Selatan
- The Chairman of the National Ombudsman Commission, Prof. Amzulian Rifai, S.H., LL.M., Ph.D
- The Chairman of the Indonesian Bar Association (PERADI), Dr. H. Fauzie Yusuf Hasibuan, S.H., M.H.
- Ambassador and Permanent Representative of the Republic of Indonesia to the United Nations, his Excellency Mr. Dian Triansyah Djani

Copy surat ini dikirimkan kepada:

- Presiden Republik Indonesia, yang terhormat Ir. Joko Widodo
- Kepala Polda Metro Tebet, Komisaris Polisi Nurdin A. Rahman
- Camat Tebet, Drs Mahludin
- Kepolisian Resor Jakarta Selatan
- Kepala Ombudsman Republik Indonesia, Prof. Amzulian Rifai, S.H., LL.M., Ph.D
- Ketua Persatuan Advokat Indonesia (PERADI), Dr. H. Fauzie Yusuf Hasibuan, S.H., M.H.
- Duta Besar dan Perwakilan Permanen Indonesia kepada Perserikatan Bangsa-Bangsa, yang terhormat Mr. Dian Triansyah Djani