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Lawyers' Rights Watch Canada

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

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BY AIRMAIL

Advocate General Drs. H. Muhammad Prasetyo,
SH MH
Advocate General Office
Jl. Panglima Polim Raya
South Jakarta, **INDONESIA**

Amsterdam, 4 April 2016

Subject: Lawyers Tigor Gempita Hutapea and Obed Sakti Andre Dominika

Dear Sir,

Lawyers for Lawyers 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 are concerned about the beating, arrest, criminal investigation and prosecution of lawyers Tigor Gempita Hutapea and Obed Sakti Andre Dominika 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 on 30 October 2015. Tigor Gempita Hutapea and Obed Sakti Andre Dominika are independent public interest lawyers at the Legal Aid Institute (LBH) in Jakarta. They have represented numerous people in a great variety of public interest cases.

Tigor Gempita Hutapea and Obed Sakti Andre Dominika were arrested along with 23 labor union members and one student activist for the alleged misdemeanor of disobeying officers. However, we were informed that just like the other arrested, Tigor Gempita Hutapea and Obed Sakti Andre Dominika, 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.

Tigor Gempita Hutapea and Obed Sakti Andre Dominika were charged under article 216 of the Indonesian Criminal Code for 'disobeying police orders'. The criminal charges initiated by the Jakarta Police and the prosecution of Tigor Gempita Hutapea and Obed Sakti Andre Dominika by the Advocate General Office appear to relate solely to their legitimate actions as lawyers and human rights defenders.

Indonesia has international law obligations to ensure the equal enjoyment by all people

within its territory of the personal and advocacy rights articulated by the *Universal Declaration of Human Rights* (UDHR) and guaranteed by the *International Covenant on Civil and Political Rights* (ICCPR).¹ To discharge these obligations, Indonesia must ensure the right of all people to legal representation. It is widely accepted that states must adopt and maintain effective measures to ensure the safety and independence of lawyers and ensure their freedom to engage in advocacy without reprisals or interference from any sector including state agents.

Specific state duties necessary to ensuring the right to legal representation are identified by the United Nations *Basic Principles on the Role of Lawyers* (Basic Principles).² Compliance with the Basic Principles is a fundamental pre-condition to fulfilment of the requirement of every state to ensure effective access both to enforcement of rights and the legal representation required for the effective enforcement of rights and remediation of violations.

We draw your attention to the Basic Principles, 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 (...) and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

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 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.

Indonesia, as a member of the United Nations, is obligated to ensure the protection of these rights and the observance of these principles³.

¹ Indonesia acceded to the ICCPR on 23 February 2006.

² 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.

³ Please also refer to the principle to uphold international law with respect to human rights included in the ASEAN Charter, to which Indonesia is a party.

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

- immediately drop the prosecution of Tigor Gempita Hutapea and Obed Sakti Andre Dominika, for instance by submitting an exception that the letter of accusation is null and void by operation of law (in accordance with Article 143(3) of the Indonesian Code on Criminal Procedure) and/or requesting the court to acquit Tigor Gempita Hutapea and Obed Sakti Andre;
- ensure that all members of the Prosecution are made aware of the legitimate role of lawyers and their responsibility and refrain from prosecution of lawyers solely in connection with their legitimate work as lawyers.

Thank you for your attention to this very important matter. We will continue to monitor this case closely.

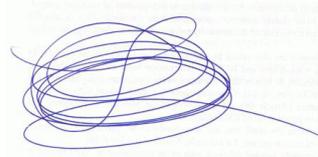
Yours sincerely,

Lawyers for Lawyers



Adrie van de Streek
Executive director

Lawyers' Rights Watch Canada



Gail Davidson
Executive director

Copies of this letter were sent to:

- The President of the Republic of Indonesia, his Excellency Ir. Joko Widodo
- Head of the National Police, General Drs. Badrodin Haiti
- The Chairman of the National Ombudsman Commission, Mr Danang Girindra Wardana, S.IP.
- The Special Rapporteur on the Independence of Judges and Lawyers, Prof. Dr. Mónica Pinto
- The Indonesian Bar Association (PERADI), Luhut MP Pangaribuan, Juniver Girsang and Fauzie Yusuf Hasibuan