

ASEAN Regional Coalition to **#StopDigitalDictatorship**



#StopDigitalDictatorship

JOINT SOLIDARITY STATEMENT

Indonesia: Stop Abusing Cyberlaw and Criminal Defamation to Harass Human Rights Defenders Fatia Maulidiyanti and Haris Azhar & to Stop Them from Speaking Truth to Power!



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21 September 2021,

We, Manushya Foundation, Access Now, ALTSEAN-Burma, Cambodian Center for Human Rights (CCHR), the Institute of Policy Research and Advocacy (ELSAM), PEN International, and Southeast Asia Freedom of Expression Network (SAFENet), as the ASEAN Regional Coalition to #StopDigitalDictatorship, stand in solidarity with the human rights defenders Fatia Maulidiyanti, Coordinator of the Commission for the Disappeared and Victims of Violence (KontraS), and Haris Azhar, Executive Director of Lokataru. We call for immediate action to ensure Indonesian authorities do not abuse Indonesia’s criminal defamation and cyber laws to harass and silence these human rights defenders, who exercised their right to freedom of expression to unveil the realities behind the Indonesian military involvement in the gold mining industry in the Blok Wabu area of Sugapa District, Intan Jaya Regency, Papua Province.

We call on the Government of Indonesia to uphold its international human rights obligations, under Article 19 of the Universal Declaration of Human Rights (UDHR) and under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), both of which protect the right to freedom of expression of individuals, including their right to seek, receive and impart information through the media, including online. We also urge the government to ensure the protection of human rights defenders against harassment and persecution related to their work, especially their online freedom of expression, in line with the UN Guiding Principles on Business and Human Rights.¹

We denounce the government’s digital dictatorship and failure to comply with its international human rights obligations. We are concerned that Coordinating Minister for Maritime Affairs and Investment Luhut Binsar Panjaitan’s threats to silence human rights defenders, by weaponizing the defamation offenses in the Indonesian Criminal Code and the Electronic Information and Transaction Law, are a form of judicial harassment and abuse of power. These human rights defenders’ right to freedom of expression are guaranteed not only under international human rights law, but also under Law No. 39/1999 (Article 23(1) and 25)² and the Indonesian Constitution (Article 28E)³, both of which stipulate that: every person shall be free to express his or her opinions in public. Article 28E (3) of the Constitution also protects the rights to seek, receive and impart information and ideas, orally and in writing, through printed and electronic media.

On August 26, 2021, Coordinating Minister Luhut Binsar Panjaitan sent a subpoena to Haris Azhar and Fatia Maulidiyanti, threatening them with legal action for defamation, under Article 27 of the Electronic Information and Transactions Law (UU ITE)⁴, and Article 310 (1) of the Indonesian Penal Code⁵, in case they refused to comply with his demands to apologize and pledge not to repeat the act of dissemination of information online on YouTube, mass media, or online media. The subpoena was issued following a talk show on Haris’s YouTube channel, titled [Ada Lord Luhut di balik Relasi Ekonomi-Ops Militer Intan Jaya!! Jenderal BIN Juga Ada!!](#), in which Haris Azhar and Fatia Maulidiyanti discussed the findings of a multi-stakeholder Report⁶, revealing the involvement of Indonesian army officials and retirees into the business operations of a gold mining actor. The report also documents the name of Luhut Binsar Pandjaitan who was identified as being affiliated with the PT Madinah Qurrata'ain which holds the Derewo River Gold Project permit in Papua’s Intan Jaya Regency, located along the Derewo fault zone, northwest of



Grasberg and Wabu. Luhut Binsar Pandjaitan is affiliated through his shareholding in PT Toba Sejahtra, whose subsidiary (PT Tobacom Del Mandiri or PT Tambang Raya Sejahtra) is said to have acquired a 30% stake in PT Madinah Qurrata'ain. The report also records various escalations of violent conflicts and armed conflicts triggered by military operations that took place, one of which in the Intan Jaya Regency. The conflict has resulted in the loss of civilian lives, and the displacement of thousands of civilians, including children and women.

Monitoring and exposing government conduct shall never be criminalized as a defamation offense. Nonetheless, Indonesian authorities are misusing the defamation provisions in the Criminal Code and the ITE law⁷ to silence the truth and harass these two human rights defenders who merely exercised their right to freedom of expression, on the basis of the Report's clear methods, data and references.

Therefore, **we urge the Indonesian authorities to end any form of harassment against Haris Azhar and Fatia Maulidiyanti**, and we reiterate our concern about the potential consequences that these acts might have on other human rights defenders. The pattern of legal threats like this has the potential to escalate into SLAPP (Strategic Lawsuits Against Public Participation) proceedings, creating an environment devoid of democratic space and undermining human rights defenders' ability to carry out their work and speak truth to power without fear of retaliation. If charged and eventually convicted, Haris Azhar and Fatia Maulidiyanti could face up to nine months in jail for criminal defamation offenses, and/or up to four years for the distribution of defamatory content online, setting a dangerous legal precedent for Indonesian authorities to abuse these laws and impose other restrictive practices over the Indonesian digital sphere.

Threats against human rights defenders to silence the truth also puts undue interference in the public's right to information. Indonesian people have the right to be informed, via both online and traditional media, on matters of public concerns. Civil society research and reporting are therefore essential sources of information for the public, as they strengthen good governance, and increase transparency and accountability.

In light of these concerns, the ASEAN Regional Coalition to #StopDigitalDictatorship denounces the misuse of defamation and cyber laws to judicially harass, silence and criminalize human rights defenders in Indonesia. We commend and stand in solidarity with all people speaking truth to power, highlighting the importance of respecting civic freedoms both offline and online, notably by ensuring that civil society actors and human rights defenders are free from abuse, harassment, or intimidation.

Therefore, we **call upon the government of Indonesia to:**

1. Immediately drop the threat of prosecution against Fatia Maulidiyanti and Haris Azhar;
2. In line with the General Comment No. 34 of the United Nations Human Rights Committee,⁸ decriminalize defamation by repealing criminal defamation provisions of the Penal Code and the ITE law;
3. Ensure that the National Commission on Human Rights identifies Fatia Maulidiyanti and Haris Azhar as human rights defenders whose work should be protected;
4. Carry out preventive action on criminalization of human rights defenders and take corrective measures for the abuse of authority of state officials who intimidate human rights defenders; and
5. Revise or repeal all discriminative and repressive regulations, including articles about defamation, that repress human rights defenders' freedom of opinion.



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Endnotes

1. International Covenant on Civil and Political Rights, (1976), available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; Universal Declaration of Human Rights, (1948), available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>; OHCHR, Guiding principles on business and human rights: implementing the United Nations "Protect, Respect and Remedy" framework, (2011), available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.
2. Indonesia: Law No. 39 of 1999 on Human Rights, available at: <https://www.refworld.org/docid/4da2ce862.html>
3. Indonesia's Constitution of 1945, Reinstated in 1959, with Amendments through 2002, available at: https://www.constituteproject.org/constitution/Indonesia_2002.pdf?lang=en
4. Tribatanews, *Chief of Police, Attorney General, Minister of Communication and Information Technology and Informatics Signed Joint Decree of ITE Law Implementation Guidance*, (25 June 2021), available at: <https://tribatanews.polri.go.id/read/9223/42/chief-of-police-attorney-general-minister-of-communication-and-information-technology-and-informatics-signed-joint-decree-of-ite-law-implementation-guidance-1624594006>
5. Human Rights and Peace for Papua, *Indonesian Penal Code KUHP*, (1 March 2016), available at: <https://humanrightspapua.org/resources/nlaw/175-indonesian-penal-code-kuhp>
6. Report: *"Economic-Political Military Placement in Papua: The Case of Intan Jaya"*, launched by YLBHI, WALHI National Executive, Pusaka Bentala Rakyat, WALHI Papua, LBH Papua, KontraS, JATAM, Greenpeace Indonesia, Trend Asia, together with #BersihkanIndonesia, (August 2021).
7. Article 310(3) of the Penal Code states that "(3) Neither slander nor libel shall exist as far as the principal obviously has acted in the general interest or for a necessary defense", while the Joint Decree by the Minister of Communication and Information, the Attorney General, and the National Police Chief enshrines that under the Electronic Information and Transaction Law, Article 27(2), no act of defamation could be charged "if the content is in the form of judgments, opinions, evaluation results, or a fact."
8. UN Human Rights Committee (HRC), *General Comment No. 34, Article 19, Freedoms of opinion and expression*, CCPR/C/GC/34, (12 September 2011), available at: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>