

November 14, 2014



The Law Society of
Upper Canada

Barreau
du Haut-Canada

Dr. H. Susilo Bambang Yudhoyono
President of the Republic of Indonesia
Jl. Alternatif Cibubur Puri Cikeas Indah No. 2
Desa Nagrag Kec. Gunung Putri
Bogor – 16967, Indonesia

Office of the Treasurer

Osgoode Hall
130 Queen Street West
Toronto, Ontario
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Dear President Yudhoyono,

tel 416-947-3415
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Re: investigation and intimidation of human rights lawyer Gustaf Kawer

I write on behalf of The Law Society of Upper Canada* to voice our grave concern over the case of Gustaf Kawer. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Mr. Kawer is a prominent human rights lawyer in the Indonesian province of Papua. He has worked on many cases dealing with workers' rights, land ownership, and socio-political rights. For example, in 2013, he defended five persons facing treason charges in a case involving the issue of freedom to express political opinion, during which he was threatened with prosecution.

It should be noted that Mr. Kawer and his colleague were third on the Jury's shortlist for the international Lawyers for Lawyers Award in 2013.

Reports indicate that Mr. Kawer was representing a client in a land dispute against the government and had applied to the court to postpone a hearing scheduled for 12 June 2014. The court denied Mr. Kawer's request for a postponement, following which he protested on the basis of partiality, since the judge had previously granted three postponements requested by the government. The court asked Mr. Kawer to leave the courtroom if he disagreed, which he did. The court reportedly proceeded in the absence of Mr. Kawer and his client.

It is reported that on 22 August 2014, Mr. Kawer received a witness summons relating to a case of coercion and rebelliousness under Articles 211 and 212 of the Indonesian Penal Code. The summons contained no information about the suspect. Several days later, Mr. Kawer learned that he was the suspect of the investigation. This was confirmed through communications with the officer in charge, as well as a second summons, dated 25 August 2014, sent to the Indonesian Bar Association (PERADI). The summons demanded Mr. Kawer's presence for an interrogation at Papua Regional Police headquarters on 1 Sept 2014.

On 27 August 2014, the chairperson of PERADI reportedly communicated to authorities that, in accordance with protocol, Mr. Kawer would not appear until PERADI carried out its own investigation of the case. A summons related to the work of a lawyer must be directed to PERADI. The results of PERADI's investigation would be communicated to the authorities.

On 17 September 2014, a police person attempted to serve a third summons upon Mr. Kawer, even though PERADI had not contacted authorities with results of their investigation into his case.

The officer who attempted to serve the third summons tried to do so upon Mr. Kawer's wife. Mr. Kawer was not present at his address at that time. Reports indicate that he stayed away from home for an undetermined period of time due to the fear of possible arrest. If Mr. Kawer is prosecuted and found guilty, he could face up to four years in prison.

The Law Society is concerned that Papua Regional Police are failing to adhere to established Indonesian law in respect to investigating the conduct of lawyers, and that the charges under which Mr. Kawer is being investigated are unsubstantiated.

The Indonesian Law on Advocates No. 18/2003 establishes that a lawyer shall not be subject to criminal or civil action in relation to the performance in good faith of his or her professional duties in defending a client in court. The Law Society understands that this provision was recently reaffirmed by the Constitutional Court of Indonesia in its Judgement No. 26/PUU-XI/2013.

In addition, Article 12(2) of the UN *Declaration on human rights defenders* calls upon states to "take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration."

The Law Society asks that you also consider Principles 16, 20 and 28 of the UN *Basic Principles on the Role of Lawyers*. Principle 16 states:

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; 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.

Principle 20 states:

Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

Principle 28 states:

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.

The Law Society urges the government of Indonesia to:

- a. cease the unlawful investigation of Gustaf Kawer immediately;
- b. guarantee in all circumstances the physical and psychological integrity of Gustaf Kawer;
- c. guarantee all the procedural rights that should be accorded to Gustaf Kawer, and other human rights defenders in Indonesia;

- d. conduct a fair, impartial and independent investigation into any allegations of misconduct in the investigation of Gustaf Kawer, in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- e. guarantee that adequate reparation would be provided to Gustaf Kawer if he is found to be a victim of abuses;
- f. put an end to all acts of harassment against Gustaf Kawer, as well as other human rights defenders in Indonesia;
- g. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor

Treasurer

**The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

cc:

Mr. Amir Syamsuddin
Minister of Law and Human Rights of the Republic of Indonesia
Jl. H.R. Rasuna Said Kav. 6-7 Kuningan
Jakarta 12940, Indonesia

Dr. Marty Natalegawa
Minister of Foreign Affairs of the Republic of Indonesia
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Dr. Dienne Hardianti Moehario
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Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the High Commissioner for Human Rights

Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Nicholas Fluck, President, The Law Society of England and Wales

Sarah Smith, International Development and Human Rights, The Law Society of England and Wales

Mr. Hafid Abbas, Commissioner, Indonesian National Commission on Human Rights

Dr. Otto Hasibuan, SH., MM, Chair of the Indonesian Bar Association (PERADI)

Budi Setyanto, S.H., Chair of the Jayapura branch of the Indonesian Bar Association (PERADI)