

URGENT ACTION

DEFENDER UNDER INVESTIGATION FOR DEFAMATION

I Wayan Suardana, a prominent human rights defender in Bali, is facing a defamation suit for posting mocking statements on his Twitter account against supporters of a large-scale land reclamation project in Benoa Bay, in southern Bali by a commercial developer.

On 15 August, **I Wayan “Gendo” Suardana**, a human rights defender from WALHI (Friends of the Earth Indonesia), was reported by activists from a mass organization with political affiliations, Pospera (*Posko Perjuangan Rakyat* or Peoples’ Struggle Post), to the Criminal Investigation Department of the National Police Headquarters and five different Provincial Police Headquarters. The activists claim that Gendo had made defamatory comments against their organization and the Chairperson of its Board of Trustees, who is also a Member of Parliament from the ruling party. Gendo referred on a tweet to Pospera as “*Pos Pemeras Rakyat*” (the Peoples’ Extortion Post) and named one of its leaders “*Napitufulus*” (*fulus* means money), a play on his surname Napitupulu. The Pospera activists filed a criminal defamation complaint against Gendo under Article 28(2) of Law No. 11/2008 on the Electronic and Information Transaction (ITE) and ethnic hatred under Article 16 of Law No. 40/2008 on the Elimination of Racial and Ethnic Discrimination. The police are currently investigating the criminal defamation suit.

In the last few years, Gendo has been an active member of a coalition called ForBALI (the Bali Forum against Reclamation) and has organised massive peaceful protests against a large-scale land reclamation project in Benoa Bay, in southern Bali, by a commercial developer. ForBALI, which consists of Balinese student activists, environmental activists, NGOs, artists and members of the *adat* community (who adhere to customary traditions), claim that the project would harm environmental and cultural conservation. The developer is planning to build a luxury resort including villas, apartments, business centers and an amusement park on four new artificial islands. If charged and convicted, Gendo may face up to six years’ imprisonment and a fine up to IDR 1 billion (US\$ 82,500).

Please write immediately in English, Indonesian or your own language:

- Urging the police to halt immediately all criminal defamation investigations against I Wayan Suardana, whether under the ITE Law, the Indonesian Criminal Code or any other law;
- Urging the authorities to refrain from bringing criminal charges or any other proceedings against human rights defenders that stem solely from the peaceful exercise of their rights and ensure they are able to carry out their work without fear of intimidation or harassment;
- Urging the authorities to repeal or amend all provisions in the ITE Law which impose restrictions on the right to freedom of expression which go beyond those permitted under international human rights law, and ensure that defamation is treated as a matter of civil litigation.

PLEASE SEND APPEALS BEFORE 27 OCTOBER 2016 TO:

Head of National Police
General Pol. H.M. Tito Karnavian
National Police Headquarters
Jl. Trunojoyo No.3, Kebayoran Baru
Jakarta Selatan 12110
Indonesia
Fax: +62 (0)21 7200 669/ 721 8741
Email: mabes@polri.go.id
Twitter: @DivHumasPolri
Salutation: Dear General

Head of the Presidential Staff Office
(KSP)
Mr. Teten Masduki
Gedung Bina Graha
Jl. Veteran No. 16
Jakarta Pusat 10110
Indonesia
Fax: +62 (0)21 345 0009
Email: webmaster@ksp.go.id

And copies to:
Chairperson of the National Human Rights Commission (Komnas HAM)
Mr. Imdadun Rahmat
Jl. Latuharhary No.4, Menteng
Jakarta Pusat 10310
Indonesia
Fax: +62 (0)21 392 5227
Email: info@komnasham.go.id
Twitter: @komnasham

Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date.

**AMNESTY
INTERNATIONAL**



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ADDITIONAL INFORMATION

The 2008 Electronic Information and Transaction Law (ITE), which governs information on the internet, contains vague language which has been used to broadly interpret defamation and blasphemy to criminalize protected expression in Indonesia. Article 28(2) of this law speaks of information “aimed to inflict hatred or hostility [against] individuals,” and has been used in practice to prosecute individuals who have been accused of defaming or insulting a religion online. Meanwhile, Article 27 of the ITE Law criminalises defamation. In practice both Articles 27 and 28 of the ITE Law can be used to criminalise expression, which is not permitted under the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia is a state party. For instance, In 2014 Abraham Sujoko was sentenced to 2 years by Dompu District Court in West Nusa Tenggara for insulting Islam on a Youtube post under Article 27(3) of the ITE law.

On 2 August 2016, the Indonesian National Police (POLRI), the Indonesian Military (TNI) and the Indonesian National Narcotics Agency (BNN) filed a joint criminal defamation complaint against Haris Azhar for violations against the ITE Law after he posted an article linking security and law enforcement officials to drug-trafficking related corruption on social media. The defamation investigation has been suspended until an independent investigation set up by President Joko Widodo to investigate the allegations of the corruption has concluded their work (see: <https://www.amnesty.org/en/documents/asa21/4641/2016/en/> and <https://www.amnesty.org/en/documents/asa21/4734/2016/en/>).

In 2012, Alexander An was fined IDR100 million (US\$ 11,000) and sentenced to 6 months’ imprisonment by Sijunjung District Court in West Sumatra for Facebook posts deemed ‘insulting’ to Islam and the Prophet Muhammed. In another case, Sebastian Joe was sentenced to 5 years’ imprisonment for a Facebook post considered insulting to Islam. He was originally sentenced to 4 years under Article 156(a) of the Criminal Code by the Ciamis District Court but the Bandung High Court in West Java increased the sentence by a year using Article 28(2) of the ITE Law (see: <https://www.amnesty.org/en/documents/ASA21/018/2014/en/>).

The use of criminal defamation laws with the purpose or effect of inhibiting legitimate criticism violates Indonesia’s legal obligation to respect and protect the right to freedom of expression under the ICCPR. The UN Human Rights Committee has encouraged states to consider decriminalizing defamation and has underlined that defamation laws must be: crafted with precision to ensure that they comply with states’ international human rights obligations and do not in practice stifle freedom of expression; a public interest in the subject matter of the criticism should be recognised as a defence; and, states should take care to avoid excessively punitive penalties.

Name: I Wayan “Gendo” Suardana
Gender m/f: m

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