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@Nuku Soleiman: Prisoner of Conscience

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A human rights activist, **Nuku Soleiman**, has been jailed for criticizing Indonesia's President Suharto and for calling on him to accept responsibility for human rights violations committed under his rule. Amnesty International regards Nuku Soleiman as a prisoner of conscience, detained solely for the peaceful exercise of his right to free speech as guaranteed under international law and the Indonesian Constitution. The organization is calling for his immediate and unconditional release. It is also calling on the Indonesian authorities to release 21 other peaceful demonstrators arrested in a related incident on 14 December 1993, and currently being tried on similar charges.

Nuku Soleiman, aged 29, was arrested on 25 November 1993 during a peaceful protest outside Indonesia's national parliament in Jakarta. The demonstration coincided with a parliamentary hearing about the country's state-backed lottery which had come under increasing criticism from opposition groups. Nuku was accused of distributing stickers in which the acronym for the lottery (SDSB) was given a new meaning deemed to be insulting to President Suharto. The stickers said "Suharto is the mastermind of all disasters" (*Suharto Dalang Segala Bencana*) and cited numerous instances of serious human rights violations committed by Indonesian security forces since the President came to power following a military coup almost three decades ago.

A university student and executive director of an independent human rights organization, *Yayasan Pijar*, Nuku Soleiman was sentenced to four years in prison by the District Court of Central Jakarta on 24 February 1994, following a month-long political show-trial. He was charged under Article 134 of the Indonesian Criminal Code, a law inherited from Dutch colonial rule, under which insulting the head of state is an offence punishable by up to six years in prison.

Nuku Soleiman's was a show-trial which failed to meet international standards of fairness. From the outset, the trial was marked by an atmosphere of intimidation. Military and police security presence in and around the court was heavy, and access was strictly controlled. Witnesses reported that many of the "spectators" allowed in were members of military and police intelligence units in plainclothes. In his first defence statement (*eksepsi*) read before the court on 24 January 1994, Nuku Soleiman said:

Just look around! From the first day of the session, it is as if the army and police are in command here...In front of this building they have lined up trucks full of armed troops. At the entrance to this hall, they block my friends, my relatives, and the general public who want to attend this trial. In this court-room they have assigned plainclothes officers to occupy a large number of the chairs for visitors. As the trial began, a group of police officers equipped with rattan clubs and canes marched in here, though there was not the slightest sign of unrest in this hall...I feel this as terror, as intimidation. Does the Council of Judges not also feel the same?... Is it not the case that such an atmosphere is bound to influence the verdict of the Court?³

The most blatant evidence of the court's lack of independence was its refusal to allow defence counsel to summon witnesses. The court agreed to hear the testimony of only one of seventeen witnesses requested by the defence, while hearing 19 witnesses for the prosecution. In seeking to justify that decision, the presiding judge reportedly said: "*This court does not need any experts because we know everything that is linked to this case.*" Defence lawyers walked out of the court in protest at the court's rejection of their witnesses, and urged that the trial be postponed pending an official ruling by the Supreme Court on the issue. The District Court ignored their request and continued with the trial.

Shortly after Nuku Soleiman's sentencing, officials of the office of the District Attorney in Jakarta announced that a further 21 young people would soon be brought to trial on similar charges². Their trials began in March. The 21 were arrested in Jakarta on 14 December 1993, during a peaceful demonstration in which they urged parliament to hold a special session to look into the President's responsibility for past human rights abuses. The authorities have indicated that they are to be charged with publicly

¹ See Appendix I for the full text of Nuku Soleiman's *eksepsi*.

² See Appendix II for the list of defendants.

expressing feelings of hostility toward the government (Article 154), a crime punishable by up to seven years in prison.

The article under which the 21 other demonstrators have been charged is one of the so-called *Haatzaai Artikelen* (Hate-sowing Articles), which prohibit public criticism of the government. They were introduced by the Dutch colonial administration in the early 1900s and incorporated into Indonesia's Criminal Code after independence in 1949. The *Haatzaai Artikelen*, and the article under which Nuku Soleiman was charged, have often been used by the Indonesian authorities to imprison or threaten, alleged political opponents. Those targeted in this way include trade unionists, students, farmers and human rights activists.

KEYWORDS: PRISONERS OF CONSCIENCE / HUMAN RIGHTS ACTIVISTS / TRIALS / STUDENTS / CENSORSHIP / DEMONSTRATIONS / PRISONERS' TESTIMONIES / PRISONERS' LISTS / LEGISLATION /

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APPENDIX I

NUKU SOLEIMAN

EKSEPSI
(Defence Statement)

(Read before the District Court of Central Jakarta)
24 January 1994

Respected Council of Judges, Public Prosecutor, Defence Counsel, Ladies and Gentlemen.

I would have liked to begin by describing the current psychological situation of the Indonesian people, so that the Court would understand the context of my case. However, this would surely fill many pages so to simplify matters let me instead sketch the situation in the following dialogues:

Emha Ainun Najib:

...it's astonishing that the people of a certain country
have such a strong character
that even when they have been robbed of everything
they keep smiling, resigned to their fate.

The angels sigh:
"How sweet is this fatalism,
yet how out of place!"

(Emha Ainun Najib, from the poem "Syair Heran")

* * *

Benyamin S. :

...It's no use...
You can't fight Kingkong

(Benyamin S. in a mosquito repellent ad)

This introduction is not meant as a joke. It describes the psycho-political context of my case, a context I hope you will soon understand.

To start, I wish to register my protest against the atmosphere of intimidation in this Court. Just look around! From the first day of the session, it is as if the army and police are in command here. In front of this building they have lined up trucks full of armed troops. At the entrance to this hall, they block my friends, my relatives, and the general public who want to attend this trial. In this court-room they have assigned plainclothes officers to occupy a large number of the chairs for visitors. As the trial began, a group of police officers equipped with rattan clubs and canes marched in here, though there was not the slightest sign of unrest in this hall.

All this display of power shows that this trial is not free from control and interference. I feel this as terror, as intimidation. Does the Council of Judges not feel the same?

Does the Council of Judges feel able to try this case justly and freely in such an atmosphere of intimidation? Does the Council of Judges not feel that it too is being tried by forces outside this Court? Is it not the case that this atmosphere is bound to influence the verdict of the Court? Don't we feel ashamed as a nation to conduct show-trials like this, with the eyes of the world upon us? I trust the Council of Judges will use its authority to try to take care of these shameful matters while I read my eksepsi [defence statement].

Respected Council of Judges,

Last week, at the first session of this trial, I said clearly that I did not understand the content of the public prosecutor's accusation. Of course I clearly heard each of the sentences read out in his indictment, especially since the public prosecutor read the indictment with such great enthusiasm. Indeed, if I heard correctly, the public prosecutor even took the trouble to tighten the grammatical structure of the acronym SDSB which is considered to be my "creation", so that it read: "Suharto Mastermind Of All Disasters". The word "of" was the public prosecutor's own addition, though he later corrected his error.

I do not wish to request the presence of expert psychologists to examine the "sub-conscious" of the public prosecutor, who was apparently so taken with the SDSB word-play that he felt compelled to tighten it up by adding the word "of" to it. Though I am no expert, based on the little I have learned at university, I do know that this type of "slip of the tongue" can constitute a predisposition rooted in a person's subconsciousness. Is that not what the psychologists say?

Respected Court,

Let us move for a moment from psychology to logic. In the interest of clear thinking, I have to say that the one who has insulted the head of state is the prosecutor himself. Why? Because it was he who assumed that the name "Suharto" mentioned in the acronym SDSB was that of "the head of state of the Republic of Indonesia". Why could it not be a different Suharto (for instance a Suharto who sells mung bean porridge)? Why must it be the Suharto who is the President of Indonesia? The answer is very simple, namely that the public prosecutor understands and agrees that it is only for a certain Suharto (the President, and not the porridge seller) that the word "mastermind" has any political meaning. So, in fact, it was the public prosecutor who first explicitly expressed the view that President Suharto is the mastermind of (that is, the person bearing ultimate responsibility for) all national policy.

And the public prosecutor is indeed right because every political drama is definitely staged by a mastermind, and if there is an error in the staging then it is entirely appropriate that the mastermind should be held responsible. The word "Mastermind" in this case is not a "humiliating" "accusatory" or "pejorative" term, but

rather expresses the most original and the fullest meaning to concepts such as "guided", "direction" and "final responsibility". It is original because this word is deeply rooted and alive in our own culture. It is full because the word all at once encompasses the meaning of leadership and responsibility.

Thus, once again it is the astuteness of the public prosecutor which has made it clear to us that responsibility is the main principle of leadership.

Respected Council of Judges,

The above argument is not just clever talk designed to trap the public prosecutor. I simply wanted to demonstrate some of the knowledge of logic that I've learned at university. I hope that the public prosecutor, who was surely once a university student himself, will understand this. Even if he doesn't, I will of course forgive him. Let me now return to the main issues of this case.

Respected Court,

After contemplating the indictment of the public prosecutor over the past ten days, I have become increasingly aware of how little I understand it. So I must beg the forgiveness of the Council of Judges if I now have to confirm that I cannot comprehend the absurdity of the public prosecutor's allegations. On this basis I can only conclude that this court has not the slightest authority to try me.

My grounds for saying this are as follows. First, with respect to the law under which I am charged, I regret to have to repeat what has been so often stated by law practitioners and theoreticians, that the Haatzaai Artikelen are relics from the colonial era.

As Adnan Buyung Nasution has recently reminded us, laws of this kind were created in the Middle Ages in Europe for the purpose of forcing the people to respect the absolute monarch. Britain, for example, included such offences in the British Indian Penal Code in 1915 for the purpose of forcing the obedience of the people in its colony, India. In 1918 the Dutch included similar articles in the criminal code (Wetboek van Strafrecht) which Indonesia's post-colonial rulers simply translated into Indonesian, as the Kitab Undang-Undang Hukum Pidana (KUHP).

Like the English, the Dutch used these articles to support their power in the colonies. These articles silenced the fighters of independence movements in the colonies by repressing their freedom of expression. How ironic then that we continue to use the same articles which were used to oppress us. What have we done with our brains?

Yet, I reject the accusation of the public prosecutor not primarily because of the history and the repressive function of the articles under which I am charged, but

because I do not believe that this court is competent to adjudicate what is in effect a political game between two political actors.

Pak Harto [President Suharto] is a political actor and so am I. That is precisely what makes democracy meaningful, the interaction between political actors. There is communication between the political actors. Should I feel insulted and immediately file a legal complaint if, for instance, Pak Harto says that the student movement has been exploited, that it uses methods like the PKI [Indonesian Communist Party], and so on? That is his political statement. And who could accuse Pak Harto of insulting others? Surely it is the same if I say, for instance, that Suharto is the mastermind of all disasters. That too is a political statement, so there is no need for that it to be tried before a court of law. This is the dynamic of political life, this is what life in a political community is all about - an interplay between the political actors. That is the basis of political communication.

I know that Pak Harto is entrusted with leading the state. Still he is, after all, just another political actor like me. The difference is only that he governs while I am governed, nothing more. That difference is only instrumental (not substantive) and only temporary (not permanent). What is substantive is our status as fellow political actors, the basis of which is fair political competition. What is permanent is our status as citizens of this country. What gives every person the possibility of becoming President is the fact that he or she is a citizen. To be a citizen is primarily to have that political status. Thus, citizenship always precedes administrative status, or functional status in the management of the state. The Presidency is an administrative function, no different from that of Regent, District Administrator, or Chairman of the radio and television listening groups in the villages. What is substantive about all of those who hold such positions is that they are all citizens of Indonesia.

Citizens, then, are in essence political actors. This is the philosophical basis for understanding the whole process of my political action. This means that there is no chance that I will make a political statement calling on the President to take responsibility if the atmosphere within society does not require it. In other words, I react because there is an action, whether that action is a political event or a political statement.

Pak Harto has said "I will pummel anyone who tries to undermine the Constitution". This is surely an insult to the Constitution. It implies that the Constitution is subordinate to the President, and that it is up to the President alone to determine who ought to be punished and who coddled. Yet, when I heard the President's words I tried not to feel insulted as a citizen, as one who respects of the Constitution as the highest authority. I knew that what he said was a political statement aimed at other political actors. I concluded that if Pak Harto can behave as a political actor, I must have the same right.

A few days ago, a senior officer of the armed forces described some student demonstrators as "mangey cats". Isn't that an insult of the worst kind? No doubt about it, I could sue that official, because I know he is not a zoo-keeper, but the Military Commander for Greater Jakarta. But, if you stop to think about it, what would be the point of suing him? I know that Major General Hendro [Priyono] is a "son of Jakarta", and that for Jakartans "mangey cat" is a common term that sometimes expresses camaraderie and sometimes anger. There's no point in getting too worked up about it.

And so, respected Council of Judges, may I suggest that it would be best for us to use our intelligence to place such cases as this in their proper perspective and context. In the case of the "mangey cats" the context is cultural, while in the case of the "Mastermind" the context is political.

In short, it would be best if we were conscious from the outset that this case is a simple matter of communication among political actors. That is, in fact, the only sound basis for understanding the case. How funny it would be if, instead, all political opinions became matters of criminal jurisdiction. There would not be enough public prosecutors to drag all the accused before the courts, since political opinions flood from the mouths of Indonesian citizens every day, praising as well as cursing the New Order government.

To praise and to curse are normal in a democracy. And so I conclude, respected Council of Judges, in the name of common sense and in the interest of our national pride, please act wisely and declare this case null and void. Consider it as training in democracy.

Thank you.

Nuku Soleiman

APPENDIX II

List of demonstrators arrested on 14 December 1993

1. A Yunus, IAIN university, Yogyakarta
2. Farid Paskah, from Palembang
3. Mazduki, Universitas Brawijaya, Surabaya
4. Gunardi Aswantoro, ITS, Surabaya
5. Antony L.J Ratag, Universitas Airlangga, Surabaya
6. Mandri Sri Martiana, ITN, Malang
7. M Rifqi, Universitas Darul 'Ulum Jombang
8. Suwito, Universitas Darul 'Ulum Jombang
9. Adi Kurniawan, Universitas Darul 'Ulum Jombang
10. Piryadi, Universitas Darul 'Ulum Jombang
11. M Huda, Universitas Darul 'Ulum Jombang
12. Yenny R Damayanti, Universitas Nasional, Jakarta
13. Hendrik D Sirait, Universitas Nasional, Jakarta
14. Ferry Haryono, Universitas Nasional, Jakarta
15. Wandu N Tuturoong, Universitas Nasional, Jakarta
16. Andrianto, Universitas Nasional, Jakarta
17. Andi Hartono, Universitas Nasional, Jakarta
18. Tony Sinaga, ISTN, Jakarta
19. Sunandar, Universitas Pakuan, Bogor
20. P Teddy W, Universitas Pakuan, Bogor
21. Saef Lukman, Stita, Cianjur