
THE LEGAL AUTHORITY OF CLEMENCY IN MITIGATING SENTENCES FOR CONVICTS IN PLANNED MURDER CASES

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ABSTRACT

Planned murder is a regular form of homicide, similar to Article 338 of the Indonesian Criminal Code (KUHP), but it is carried out with premeditation. Notable cases of planned murder in Indonesia include the 'kopi siandia' case, which resulted in the death of Mirna, and the planned murder case of Brigadier J by Ferdy Sambo. The president can grant clemency upon the convict's request, taking into account the considerations of the Supreme Court. Clemency can be seen as a form of presidential pardon after the convict submits a request to the President. The aim of this research is to analyze the legal strength of clemency in mitigating sentences for convicts in cases of planned murder. This study is a normative legal research employing legislative and historical approaches. Primary and secondary legal materials are used as sources, utilizing qualitative descriptive analysis method. Convicts involved in planned murder cases who request clemency from the president may have their sentences mitigated by the court, either through leniency, a change in the type of punishment, reduction of the punishment, or the abolition of the punishment execution. This clemency is an acknowledgment from the convict, admitting to their actions based on the facts. Consequently, the president will consider whether to grant or deny the clemency request based on this admission, considering the Supreme Court's recommendations. Clemency serves as a legal recourse for convicts to lighten or modify their sentences.

Keyword: clemency, premeditated murder, criminal law.

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INTRODUCTION

Premeditated murder is a common form of homicide, as defined in Article 338 of the Indonesian Penal Code (KUHP), but it is carried out with prior planning (Wulandari, 2020). Premeditation (voorbedachte rade) means that there is an intention to kill, and the perpetrator has a period of time to calmly consider how the murder will be executed (Bremiti, 2021). The difference between premeditated murder and regular murder lies in the fact that in murder cases covered by Article 338 of the KUHP, the act is committed immediately upon forming the intent. In premeditated murder, the execution is postponed after the intent arises, allowing the perpetrator to plan and contemplate how the murder will be carried out (Darmayanti & Tarigan, 2023). There is a significant gap of time between the formation of the intent to kill and the actual execution, giving the perpetrator the opportunity to decide whether to proceed, cancel, or plan how to commit the murder (Yanri, 2017). An example of premeditated murder that occurred in Indonesia is the case of the "Kopi Siandia" in 2016, where Mirna died after drinking coffee laced with cyanide. The suspect, Jessica Kumala Wongso, was sentenced to 20 years in prison. Another recent case of premeditated murder in Indonesia happened in 2022, involving the planned murder of Brigadier J by Ferdy Sambo.

Premeditated murder, as defined in Article 340 of the Indonesian Penal Code (KUHP), states: *"Anyone who intentionally and with premeditation takes another person's life is subject, because of premeditated murder, to the death penalty or life imprisonment or imprisonment for a specified term, up to a maximum of twenty years."*

The Republic of Indonesia is a state based on the rule of law, as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (Marbun, 2014). Every person within the territory of Indonesia must comply with the laws applicable in Indonesia, and no one is exempt from the law. All actions must be based on and have consequences in accordance with the laws and regulations of the Republic of Indonesia, aiming to realize a society and a state that are orderly, prosperous, and just in order to achieve the goals of the state as mandated in the preamble of the 1945 Constitution (PAF Lamintang & Theo Lamintang, 2023).

The protection and recognition of human rights (HR) of every individual or citizen are obligations for the state as a logical consequence of its establishment as a legal entity. Indonesia is a state governed by the rule of law (Article 1, paragraph (2) of the 1945 Constitution) and is obliged to protect and acknowledge the human rights of every individual or citizen. This declaration is followed by the statement that every citizen has an equal position before the law, known as the principle of equality before the law, as stated in Article 27, paragraph (1) of the 1945 Constitution. In addition to the obligation to protect and recognize human rights, there is also the obligation of legality, where the government must act in accordance with and on behalf of the law. The principle of legality is designed to regulate government power to prevent the abuse of power, and this principle is also accompanied by a system of checks and balances in the concept of a state governed by the rule of law (Fauzi, 2021).

One form of government power that recognizes human rights, accompanied by the principle of legality in the system of checks and balances among the judicial, executive, and legislative branches, is the right to grant criminal accountability release to individuals, namely pardon, amnesty, and abolition (Anggraini et al., n.d.). This right is granted to the president under the mandate of the 1945 Constitution of the Republic of Indonesia (UUD 1945) in Article 14, with limitations imposed by the system of checks and balances (Sunarto, 2016). The limitation of this right is that the president can grant a pardon upon the request of a convicted person, taking into account the considerations of the Supreme Court. Therefore, a pardon can be considered as a form of presidential pardon granted after a convicted person submits a request to the President. The authority to grant a pardon under Article 14 (1) of the UUD 1945 has been delegated to Law No. 22 of 2002 concerning Pardon (Pardon Law) and Government Regulation No. 67 of 1948 concerning Pardon (Pardon Regulation) (Fauzi, 2021). Based on the description above, the objective of this research is to analyze the legal potency of presidential pardons in mitigating sentences for convicts in cases of premeditated murder.

METHOD

This type of research is normative legal research. The term normative legal research originates from English, "normative legal research," and Dutch, "normatief juridisch onderzoek." Normative legal research, also known as doctrinal legal research or legal dogmatic research or legislative research, which in Anglo-American literature is referred to as legal research, is internal research within the discipline of law (Muhaimin, 2020). In this research, several approaches are utilized: first,

the Statutory Approach. This approach involves examining all relevant laws and regulations related to the legal issue being investigated. Second, the Historical Approach. This approach entails studying the background and development of regulations concerning the issue at hand.

The bibliographic materials used in this research were collected from primary legal sources and secondary legal sources. Primary legal sources include binding legal materials consisting of fundamental norms or principles, such as the preamble of the 1945 Constitution, Basic Regulations, Legislation, Uncodified legal materials like customary law, Jurisprudence, Treaties, and Legal materials from the colonial era that are still in effect, such as the Criminal Code. The primary legal sources used in this research include the 1945 Constitution of the Republic of Indonesia, Law No. 22 of 2002 concerning Pardons, Government Regulation No. 67 of 1948 concerning Pardons (PP concerning Pardons). Secondary legal sources refer to materials that provide explanations about primary legal materials, such as draft laws, research results, works by legal experts, legal opinions, or others. The data collection techniques employed in this research are library study and document analysis. The analysis used in this research employs a qualitative analysis method, which involves interpreting the processed legal materials. The use of interpretation in this research aims to interpret the law, specifically identifying legal gaps, legal conflicts, and vague legal norms within the primary legal material (Muhaimin, 2020).

RESULTS AND DISCUSSION

Etymologically, "Grasi" comes from the Dutch word "gratie," which is defined as the reduction of punishment granted by the head of state to a convicted person. (Sudarsono, 2012). Law Number 22 of 2002 provides the definition of "grasi," which is a pardon in the form of alteration, mitigation, reduction, or elimination of punishment given to a convict by the president (Permatasari, n.d.). In a narrow sense, the term "grasi" refers to an act of pardon involving alteration, mitigation, reduction, or elimination of the execution of a sentence or punishment that has been decided by a judge (Ecep Nurjamal, 2023).

According to Jimly Asshiddiqe, "grasi" is a presidential authority of a judicial nature aimed at restoring justice related to court decisions, which includes reducing sentences, granting pardons, or eliminating punishments associated with judicial powers (Ashiddieqe, 2006).

Pardon is also regulated in the 1945 Constitution, Article 14, paragraph (1), which states that the president is given the authority to grant pardons and rehabilitation based on the consideration of the Supreme Court. This authority is a special privilege for the head of state because it must be handled by the judiciary. The provision of pardon is also found in the Criminal Code (KUHP) Article 33a, which states: if a person detained is later sentenced to prison or if someone else, with their consent, applies for clemency, the period from the time the application is submitted until there is a presidential decision is not counted as part of the sentence, unless the president, considering the case circumstances, decides that the entire or part of that time should be counted as time served for the sentence.

In addition to the Criminal Code, pardon is also regulated in the Criminal Procedure Code (KUHAP) Article 196, paragraph (3), which states: immediately after the verdict, the presiding judge must inform the defendant of their rights, namely: accepting and rejecting the verdict, studying the verdict, filing an appeal and a pardon application, and others. Under Law Number 5 of 2010, the

amendment of Law Number 22 of 2002 concerning Pardons, the opportunity to receive a pardon from the President is limited; the limitations are the length of the sentence and the death penalty. According to the law, only convicts who can apply for a pardon are:

1. Death penalty.
2. Life imprisonment.
3. Imprisonment for a minimum of 2 years.

According to the researcher, convicts involved in premeditated murder cases who submit a pardon request to the president can mitigate the punishment handed down by the court. This mitigation can take the form of leniency or changing the type of punishment, reducing the severity of the punishment, or abolishing the execution of the sentence. This pardon represents an acknowledgment from the convict, who admits to their actions based on the established facts. The president will consider the pardon request based on the acknowledgment and the considerations provided by the Supreme Court, deciding whether to grant or deny the request.

Pardons serve as a legal avenue available to convicts to lessen or alter the verdict given by the judge. The president's granting of a pardon does not imply exoneration for the criminal act. Moreover, it does not signify the erasure of the crimes committed; thus, the possibility of the convict repeating similar offenses (recidivism) is taken into account when making decisions in court. The president's approval of a pardon request, when submitted, can serve as an opportunity for the criminal to rehabilitate themselves. For convicts facing the death penalty, a pardon becomes a matter of life and death. With a granted pardon, the death sentence can be commuted to life imprisonment or a reduced prison term. In contrast, without a pardon request, criminals have no chance to rehabilitate themselves from their past mistakes (Sari, 2020).

Article 14, paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that the granting of clemency is the prerogative right of the president. Additionally, Article 35 of Law Number 14 of 1985 regarding the Supreme Court states: "The President, as the head of state, receives advice from the Supreme Court in the granting or denial of clemency." Based on this, the Supreme Court is obligated to provide considerations to the President regarding the approval or denial of clemency applications.

According to Satochid Kartanegara, the reasons that can serve as the basis for granting clemency include (Kartanegara, 2001):

1. To rectify the consequences of the implementation of the law itself, which are considered unfair in some aspects, for example, when the punishment imposed on an individual would result in their family being left destitute, or
2. When the convict is suffering from a severe illness.
3. For the benefit of the State.

The nature of granting clemency is merely to correct the punishment that has been imposed, not to correct the fundamental considerations of the case. This nature is more evident in the three types of decisions that the President can make regarding the granting of clemency:

- a. Cancelling the implementation of the entire sentence imposed in the court's decision;
- b. Implementing only a portion of the sentence imposed in the decision;
- c. Changing the type of punishment (commutation) imposed in the decision to a lighter punishment, either within the same type of basic punishment (for example, a life sentence changed to 10 years

of imprisonment) or a different type of basic punishment (for example, changing a death sentence to 15 years of imprisonment).

If we consider the three types of content in clemency decisions, the clemency that serves as the basis for the revocation of the criminal execution is only the one mentioned in letter a. However, clemency that falls under letter b and c does not eliminate the state's right to enforce the punishment; it merely mitigates the execution of the penalty. UTRECHT mentions four reasons for granting clemency, namely:

- a. Family interests of the convict;
- b. The convict has contributed to society;
- c. The convict suffers from an incurable disease;
- d. The convict has exhibited good behavior while in correctional facilities and shown remorse for their actions.

The granting of clemency based on the opinion of J.E. Sahetapy includes:

- a. If a convicted person suddenly suffers from a severe, incurable illness;
- b. Judges are human and may make mistakes or there might be developments that the judge did not consider when convicting the defendant;
- c. Changes in the state or social structure that create an urgent need for clemency, regardless of cases of abolition and amnesty;
- d. When there is such blatant injustice, for example, after a revolution or war.

Pompe argues that there are certain circumstances that can be used as reasons for granting clemency, namely:

1. Deficiencies in the legislation: In legal proceedings, these deficiencies might force a judge to impose a specific punishment. If the judge were given greater flexibility, it could lead to a person either being released or not being prosecuted, or being sentenced to a lighter punishment.
2. Factors not considered by the judge: Sometimes, there are circumstances that the judge didn't take into account when issuing a sentence, which could have been considered to mitigate or eliminate the imposed punishment. Pompe provides examples such as a convict being ill or unable to pay the penalty imposed by the judge.
3. Recently released convicts: If a convict has just been released from prison, Pompe has stated that Article 15 of the prevailing clemency decision in the Netherlands always refers to this situation.
4. Granting clemency after completion of probation: This situation allows the convict to be considered worthy of pardon, especially if they have successfully completed a probation period.
5. Clemency linked to significant historical events: According to Pompe, clemency of this kind can make convicts always remember the historical event associated with it. This type of clemency can also assist the government in achieving its goals if it is granted to individuals convicted of politically motivated crimes.

Based on the opinions of experts regarding the reasons for granting clemency, the researcher concludes that clemency is granted to convicts due to factors of justice and humanity, serving the interests of the state, the convict's family, and rectifying the consequences of the implementation of laws deemed unfair in certain aspects. In Indonesia, according to Achmad Ali, serious crimes, including corruption, drug crimes, terrorism, severe human rights violations, and premeditated murder, are subject to specific and selective application of the death penalty. Only convicts proven

beyond reasonable doubt in court as perpetrators of these crimes are sentenced to death. This provision is not in conflict with the constitution.

Chapter III of Law Number 22 of 2002 in conjunction with Law Number 5 of 2010 concerning Clemency states the following procedures for clemency applications:

1. Article 5, paragraph (1) states that the right to submit a clemency application is conveyed to the convict by the judge or the chief judge who presides over the case at the first level. Alternatively, Article 5, paragraph (2) specifies that if the convict is absent, they will be notified in writing by the court clerk who decided the case at the first level.
2. Article 6 states that a clemency application can be directly submitted by the convict, either through legal representation or their family, with the convict's consent.
3. Clemency applications can be made by the family, with or without the criminal's approval, in the case of a death penalty sentence.
4. Article 7 declares that the clemency application can be submitted immediately upon the issuance of a legally binding court decision, and there is no specific time limit for submission.
5. Clemency applications are submitted in writing through the first-level court that decided the case, to be forwarded to the Supreme Court. The response from the President can be received either through the head of the correctional institution where the convict is serving their sentence, or directly through the first-level court where the case was decided. Copies of the application are also sent to the first-level court where the case was decided.

The time frame for the President's decision on clemency applications from convicts is regulated in Article I number (4) of the Republic of Indonesia Law Number 5 of 2010 concerning Amendments to Law Number 22 of 2002 concerning Clemency. Article 10 states that within a maximum period of 30 (thirty) days from the receipt of the copy of the application and the case file as referred to in Article 9, the Supreme Court shall send written considerations to the President.

The concept of public interest is always closely associated with national interest. Connecting the granting of clemency with the national interest is an effort by the state in upholding the rule of law, protecting legal society, and respecting human rights values. As a form of legal protection and enforcement of human rights, the Government of the Republic of Indonesia, together with the People's Consultative Assembly of the Republic of Indonesia, passed amendments to Law Number 22 of 2002 concerning Clemency through a plenary session at the Indonesian Parliament building on April 26, 2010, via Law Number 5 of 2010 concerning Amendments to Law Number 22 of 2002 concerning Clemency. These amendments were based on issues arising from clemency applications and the challenges faced in the clemency process.

According to Parialis Akbar, there are several objectives behind these amendments. First, to ensure legal certainty in processing clemency applications as mandated in Article 15 of Law Number 22 of 2002 concerning Clemency. Second, to enhance public trust in the government's sincerity regarding clemency applications. Third, as one of the government's efforts in respecting human rights values, and fourth, to strengthen the enforcement of legal supremacy (Irawan & SH, 2016).

There are several new provisions introduced in the amendment of Law No. 22 of 2002. Firstly, the submission of clemency applications is clarified to be allowed only once. This is intended to provide legal certainty in filing clemency applications, avoid discrimination, reduce the burden in processing clemency applications, and prevent the misuse of clemency requests. Secondly, the right

to submit clemency applications is granted to the Minister of Law and Human Rights and the presiding judge of the first-instance court, as a preventive measure in case death row convicts or their legal representatives do not file for clemency. This is the state's effort to acknowledge the rights of convicts, even those sentenced to death, in line with natural justice.

Thirdly, clemency applications can be submitted once the verdict becomes legally binding and are not restricted by a specific time frame, except for convicts sentenced to death. The deadline for submitting clemency applications is one year from the date the court's decision becomes legally binding.

There are several key points in the amendment to the clemency law. These include the restriction of clemency applications to only one submission, to be made no later than one year after the legally binding verdict, and an expedited review process by the Supreme Court, reduced from three months to 30 days. In this regard, the government is not merely passive but can actively request eligible parties to file for clemency. The government aims for those filing clemency requests to include underage individuals, the elderly, and those suffering from permanent illnesses. These changes to Law No. 22 of 2002 regarding Clemency prioritize humanitarian considerations.

CONCLUSION

Clemency is a form of pardon involving alteration, mitigation, reduction, or elimination of the execution of a sentence given to a convict by the president. A convict in a premeditated murder case who applies for clemency to the president can mitigate the punishment imposed by the court, either through leniency or changing the type of punishment, reducing the severity of the punishment, or abolishing the execution of the sentence. This clemency represents an acknowledgment from the convict, admitting to their actions based on the established facts. Based on this acknowledgment, the president will consider the clemency application, deciding whether to approve or reject it based on the considerations provided by the Supreme Court. Clemency is a legal effort that convicts can make to lighten or alter the verdict given by the judge.

The president's granting of clemency is not a form of rectification for criminal offenders. Furthermore, clemency is not a means to erase the mistakes committed or to challenge the law by the convict. Hence, the possibility of the convict repeating the same offense (recidivism) is taken into account when judges in court make decisions. The president's approval of a clemency application, when submitted, can serve as an opportunity for the criminal to rehabilitate themselves. For convicts facing the death penalty, clemency becomes a matter of life and death. With clemency, the death penalty can be commuted to life imprisonment or a reduced prison term, altering the previous sentence or imposing a specific prison term.

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