



Juridical analysis of the granting amnesty based on the presidential decree of the republic of Indonesia number 17 year 2021

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Abstract

Amnesty is one of the prerogatives of the President granted in the form of a Presidential Decree. This study aims to analyze how the policy mechanism for granting amnesty is and to find out whether the presidential decree of the Republic of Indonesia number 17 of 2021 has fulfilled the sense of justice or not. This study uses a normative juridical method supported by an empirical juridical method. This study concludes that until now there are no clear rules regarding the policy mechanism for granting amnesty, and granting amnesty as stated in Presidential Decree of the Republic of Indonesia Number 17 of 2021 has not fulfilled a sense of justice because the granting of amnesty does not consider justice for the victim, in this case the recipient of the amnesty is the perpetrator of the crime. Criminal information and electronic transactions where the crime is a complaint offense. Therefore, the Government should immediately stipulate a Law on Amnesty which contains clear boundaries regarding subjective requirements and objective conditions regarding amnesty followed by implementing regulations, especially regulating policy mechanisms related to granting amnesty, so that the existence of this Law will create sense of justice for both victims and perpetrators of crime.

Keywords: amnesty, presidential decree on amnesty

Introduction

One of the President's prerogatives is amnesty. Amnesty is regulated in the Emergency Law of the Republic of Indonesia Number 11 of 1954 ("UU Drt No. 11 of 1954"). Article 1 of emergency law Number 11 of 1954 states that, "The President, in the interest of the State, may grant amnesty and abolition to persons who have committed a criminal act. The President grants amnesty and abolition after receiving written advice from the Supreme Court who conveys the advice at the request of the Minister of Justice. "

Based on article 14 of the 1945 Constitution prior to the amendment, the President has the authority to grant clemency, amnesty, abolition and rehabilitation. However, after the first amendment to the 1945 Constitution, the provisions underwent changes, namely in terms of granting clemency and rehabilitation, the President had to pay attention to the considerations of the Supreme Court, while in terms of granting amnesty and abolition, the President took into account the considerations of the DPR. This is intended to increase supervision over the administration of government by the President in order to avoid the occurrence of arbitrary powers.

Based on the provisions of Article 2 of UU Drt No. 11 of 1954 concerning Amnesty and Abolition, where it is stated that: "Amnesty and abolition are granted to all those who before 27 December 1949 had committed a real criminal act as a result of a political dispute between the Republic of Indonesia. (Yogyakarta) and the Kingdom of the Netherlands".

However, in reality, one of the cases that received attention related to Amnesty was the case of Saiful Mahdi (SM), a lecturer at the Mathematics and Natural Sciences Faculty at Syiah Kuala University, where previously SM was reported to the police on February 25, 2019 after criticizing the recruitment process for prospective employees. Civil Servant (CPNS) at the Faculty of Engineering and Technology, Syiah Kuala University, Aceh, then in July 2019 SM was reported to the police for allegedly committing acts of defamation through electronic means or media as stipulated in Article 27 paragraph 3 Jo. Article 45 paragraph (3) of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to the Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions.

In the ongoing legal process, SM was brought before the Court on charges of violating Article 27 paragraph 3 Jo. Article 45 paragraph (3) of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to the Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions. then the panel of judges at the Banda Aceh District Court decided the SM case in decision Number: 432/Pid.Sus/2019/PN.Bna dated April 21, 2020, with the verdict: "Declare that the defendant SM was legally and convincingly proven guilty of committing a crime "intentionally and without the right to distribute, transmit and make accessible Electronic Information that has a defamatory content", as stated in the indictment of the Public Prosecutor; Sentencing the defendant therefore with imprisonment for 3 (three) months and a fine of Rp.

10,000,000,- (ten million rupiah) with the provision that if the fine is not paid it is replaced with imprisonment for 1 (one) month;

Whereas against the Banda Aceh District Court Decision above, the Defendant's Legal Counsel stated an appeal to the Banda Aceh High Court through the Banda Aceh District Court Registrar on 21 April 2020, and against the Appeal Legal Efforts submitted by the Defendant's Legal Advisor, the Banda Aceh High Court has issued a Decision, namely Decision Number: 104/PID/2020/PT BNA dated June 16, 2020, with the verdict: Accepting an Appeal Request from the Defendant; Confirming the decision of the Banda Aceh District Court dated April 21, 2020 Number: 432/Pid.Sus/2019/PN BNA for which the appeal was requested;

Furthermore, the defendant's legal counsel submitted an appeal to the Supreme Court on July 6, 2020 which basically contained an objection to the decision of PT Number: 104/PID/2020/PT BNA above. The Supreme Court of the Republic of Indonesia in its decision Number 1909 K/Pid.Sus/2021 dated June 29, 2021 stated: "Rejects the Cassation Application from the Cassation Petitioner/Defendant SM".

Furthermore, on September 2, 2021, SM was sentenced to 3 (three) months in prison. While SM was serving a sentence, his family and legal advisors submitted an amnesty request to the President.

On October 12, 2021, the President signed the Presidential Decree of the Republic of Indonesia Number 17 of 2021 (hereinafter Presidential Decree No. 17 of 2021) regarding the granting of amnesty, which contained the consideration that the sentence handed down to brother SM had generated sympathy and solidarity from the community, which in essence conveyed support. Granting amnesty by the president to SM, so that based on these considerations and taking into account the decision of the House of Representatives of the Republic of Indonesia Number: 12/DPR RI/I/2021-2022 dated October 7, 2021, regarding the consideration of the House of Representatives of the Republic of Indonesia on the request for amnesty to SM.

On October 13, 2021, SM was expelled from the Class IIA Penitentiary in Banda Aceh according to the instructions contained in Presidential Decree No. 17 of 2021 concerning Granting Amnesty to SM.

The President granted an amnesty to SM which was based on the decision of the Banda Aceh District Court Number 432/Pid.sus/2019/PN Bna dated April 21, 2020 Jo. Banda Aceh High Court Decision Number 104/PID/2020/PT BNA dated June 16, 2020 Jo. Supreme Court Cassation Decision Number 1909K/Pid.Sus/2021 dated June 29, 2021 has been sentenced to imprisonment for 3 (three) months and a fine of Rp. 10, 000, 000,- (ten million rupiah) subsidiary to imprisonment for 1 (one) month, because he was accused of committing a crime "intentionally and without rights distributing, transmitting and making accessible electronic information that has a defamation charge" as stated in the indictment public prosecutor.

The SM case is often discussed and becomes a debate among legal experts, the right legal solution to ensure a sense of justice and as a form of legal protection to citizens, either by granting clemency or by granting amnesty. Whereas in reality President Joko Widodo, in order to give justice to SM with consideration because the sentence handed down has generated sympathy and solidarity from the people who support the granting of amnesty to SM so that the President decided to grant amnesty. The amnesty that has been granted by President Joko Widodo to SM has become a historic event in the legal system in Indonesia. Because this is the first time that amnesty has been given based on consideration because the sentence of 3 (three) months in prison has aroused sympathy and solidarity from the people who support the granting of amnesty.

In the Law No. Drt. 11 of 1954 concerning Amnesty and Abolition, there is no article that regulates the policy mechanism regarding the granting of amnesty, starting from the application, subjective requirements and objective conditions, types of criminal acts, whether the complaint offense has the right to amnesty or is only limited to certain offenses, who only those who have the right to apply for amnesty, how long the sentence is imposed, the technical application and expiration date, etc. which can be used as guidelines for the stipulation of a presidential decree (Keppres) on granting amnesty.

Research Method

Under the formulation of the problem posed in this article, the method used is the normative juridical method, by examining the presidential decree number 17 of 2021 regarding granting amnesty. Therefore, the materials used consist of primary legal materials in the form of legislation, secondary legal materials in the form of literature in the form of books and scientific journals related to this paper. As well as tertiary legal materials in the form of encyclopedias and legal dictionaries. The data will be analyzed using descriptive analysis.

Results and Discussion

The Meaning of Amnesty

According to the Encyclopaedia Britannica (2015), the word Amnesty or "amnesco" comes from the Greek language which means "to forget". Amnesty has been applied since time immemorial as a form of kindness by the ruler (king) to forgive those who have committed crimes. In its development, in some modern countries, amnesty has become the right of the head of state as outlined in the constitution

Amnesty is the right of the president to grant pardons for violations committed by someone. This pardon also comes directly from the president and the policy is aimed at a group of people who commit violations. When the president wants to carry out an amnesty, it is not necessary to submit an individual proposal, but directly to the president's policy with the consideration of the Supreme Court.

Technically amnesty is different from pardon, because amnesty is given when someone who has been proven to have committed a crime and is sentenced to serve a prison sentence, meaning that the act that has been

committed actually exists and has been proven before the trial, then the President gives a gift in the form of amnesty, namely no longer have to serve a crime or sentence even though the sentence has not yet ended.

Legal Basic of Amnesty

Amnesty is regulated in Article 14 paragraph (2) of the 1945 Constitution which states that the President grants amnesty and abolition by taking into account the considerations of the House of Representatives ("DPR").

In a state of emergency the president may take action to make government regulations in lieu of the law. This provision is regulated in Article 12 and Article 22 of the 1945 Constitution.

- a. Article 12: "The President declares a state of danger. The conditions and consequences of the state of danger are determined by law."
- b. Article 22: "In the event of a compelling emergency, the president has the right to stipulate government regulations in lieu of law."

Based on the two provisions above, it can be seen that there are two categories of conditions according to the 1945 Constitution

- a. Danger situation
- b. The matter of compelling urgency.

For this reason, in 1954, President Soekarno issued Emergency Law Number 11 of 1954 concerning Amnesty and Abolition because at that time there was an urgent situation so that the regulation needed to be promulgated in the interest of the State to a person or group of people who had committed a criminal act. granted amnesty and abolition.

In Article 1 of the Emergency Law Number 11 of 1954 concerning the granting of amnesty and abolition, it is very clear that the president has the authority to grant amnesty to Indonesian people or citizens who really need amnesty, so that the grant must be reviewed according to whether or not it is based on law and the interests of the state.

Amnesty Polisy Mechanism

Amnesty has privileges in the interests of the State related to the recognition, appreciation and protection of Human Rights and Constitutional Rights, in relation to amnesty, citizens are constitutional because the constitutional mandate to administering the state is to guarantee the Human Rights and Constitutional Rights of every citizen. The granting of amnesty in a formal juridical manner in the Constitutional basis, there are no limits and criteria for certain criminal cases. So far, there has been a limit to granting amnesty because the existing laws and regulations still stipulate that, even though it is no longer relevant to the situation when the amnesty that has been happening so far is granted in terms of:

1. Political crimes still use the legal basis in the Emergency Law Number 11 of 1954, which is based on Article 2 and is dilated by political disputes.
2. Violation of human rights has the right to use a legal basis in the form of Law Number 27 of 2004 concerning the Truth and Reconciliation Commission which is null and void by the provisions of the Constitutional Court no. 006/PUU/IV/2006 and until now and before the succession of the Act that regulates it.

There is no specific regulation that regulates the mechanism or procedure for applying for amnesty, but in practice the ministry of state secretariat will make a proposal for a list of names of prisoners who will receive amnesty after an internal review, then the proposal will be sent to the House of Representatives of the Republic of Indonesia (DPR RI) to get approval or rejection, then if the DPR RI has approved in a plenary meeting the President considers that amnesty needs to be granted, then the President will issue a Presidential Decree regarding amnesty, and through the Presidential Decree, the convict in question will be released from the correctional institution. This is regulated in Presidential Regulation Number 24 of 2015 concerning the Ministry of State Secretariat ("Perpres 24/2015") that the Ministry of State Secretariat has the task of providing technical and administrative support and analysis of government affairs in the field of state secretariat to assist the President and Vice President in administering the government. Country.

In carrying out its duties, based on Article 3 letter d of Presidential Regulation 24/2015, the Ministry of State Secretariat carries out the following functions: technical support, administration, and analysis in preparing initiative permits and finalizing draft laws and regulations, preparing legal opinions, finalizing Draft Decisions President regarding clemency, amnesty, abolition, rehabilitation, extradition, remission of changes from life imprisonment to temporary imprisonment, and naturalization, as well as requests for approval to the Cabinet Secretary on requests for permission to initiate drafts of legislation and the substance of draft laws and regulations.

So in this case it is clear that the Ministry of State Secretariat carries out the function of finalizing the Draft Presidential Decree regarding amnesty.

In addition, the above functions are the duties of the Deputy for Law and Legislation as regulated in Article 48 letter e of Presidential Regulation 24/2015 which reads: "In carrying out the duties as referred to in Article 47, the Deputy for Law and Legislation carries out the following functions: analysis, completion, and preparation of

the Draft Presidential Decree concerning clemency, amnesty, abolition, rehabilitation, extradition, remission of changes from life imprisonment to temporary punishment, and naturalization.

The instructions for implementing the preparation of a Presidential Decree are regulated in Chapter I letter d number (1) Attachment to the Regulation of the Minister of State Secretary Number 15 of 2016 concerning Instructions for the Implementation of the Preparation of a Presidential Decree, which defines a Presidential Decree as follows: A Presidential Decree is a written stipulation issued by the President of the Republic of Indonesia, Indonesia, which contains legal actions based on concrete, individual and final laws and regulations that have legal consequences for a person or civil legal entity.

Meanwhile, the conditions or limitations that must be met in applying for amnesty are not clearly regulated except for those contained in the Emergency Law Number 11 of 1954 concerning Amnesty and Abolition. So to provide legal certainty there should be a legal rule in the form of a law that regulates amnesty. In addition, the rule of law must also clearly clarify the definition and indicators of state interests. This will make it easier for the President to exercise his prerogative rights and the DPR as well as the public can also monitor the process of granting amnesty by the President because the boundaries are clear because until now there has not been found a statutory regulation that regulates the policy mechanism for granting amnesty.

The Presidential Decree Number 17 of 2021 Regarding Granting Amnesties

The Presidential Decree Number 17 of 2021 ("Keppres No. 17 of 2021") regarding granting amnesty is a presidential decree of Joko Widodo regarding the case of Saiful Mahdi ("SM"), SM obtained amnesty from President Joko Widodo through Presidential Decree No. 17 of 2021 due to being entangled in the Information and Electronic Transaction cases.

The chronology of the SM case was initially reported to the police on February 25, 2019 after criticizing the process of accepting prospective civil servants (CPNS) at the Faculty of Engineering and Technology, Syiah Kuala University, Aceh. It is known that SM is also a lecturer in the Mathematics and Natural Sciences Faculty at Syiah Kuala University, Aceh. Then in July 2019 SM was reported to the police for allegedly having committed acts of defamation through electronic means or media as stipulated in Article 27 paragraph (3) Jo. Article 45 paragraph (3) of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to the Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions.

Starting from the criticism made by SM on the process of accepting the civil servant candidate test (CPNS) for lecturers at the Unsyiah Engineering Faculty on February 25, 2019. SM criticized the recruitment process because he was aware of the participant's file which was allegedly not in accordance with the requirements, but was still passed by the party. campus. SM criticized via Whatsapp group, "Innalillahi wainnailahirajun. Got the sad news of the death of common sense in the ranks of the FT Unsyiah leadership during the PNS test yesterday. Evidence of technical determinism is very easy to corrupt? Gong Xi Fat Cai!!! there is a new faculty that is so proud? Because meritocracy applies since recruitment is only for mediocre or those who are trapped in "debt" who are afraid of meritocracy".

SM was charged with "intentionally and without rights distributing and/or transmitting and/or making accessible electronic information and/or electronic documents that contain insults and/or defamation",

In the course of this case, SM was later found guilty and sentenced to 3 (three) months in prison and a fine of Rp. 10,000,000 (ten million rupiah) by the panel of judges at the Banda Aceh District Court Number: 432/Pid.Sus/2019/PN.Bna dated April 21, 2020, with the verdict: "Declare the Defendant Saiful Mahdi is proven legally and convincingly guilty of committing a criminal act "intentionally and without rights distributing, transmitting and making accessible Electronic Information that has a defamatory charge" , as in the single indictment of the Public Prosecutor; Sentencing the Defendant therefore with imprisonment for 3 (three) months and a fine of Rp. 10,000,000,- (ten million rupiah) with the provision that if the fine is not paid it is replaced with imprisonment for 1 (one) month.

SM and his attorney did not accept the Court's decision and made legal efforts, namely to appeal to the High Court, but SM's appeal was in vain because the Banda Aceh High Court Judge accepted the appeal but stated that he affirmed the decision of the Banda Aceh District Court Number: 432/Pid.Sus/2019/PN.Bna dated April 21, 2020, this is stated in Decision Number: 104/PID/2020/PT BNA dated June 16, 2020, with the verdict: "Accepting an Appeal Request from the Defendant; Strengthening the decision of the Banda Aceh District Court dated April 21, 2020 Number: 432/Pid.Sus/2019/PN BNA for which the appeal was requested".

Feeling dissatisfied with the decision of the High Court Number: 104/PID/2020/PT BNA dated June 16, 2020, SM and his attorney took another legal remedy, namely Cassation, the request for cassation was submitted by SM and his attorney on July 6, 2020 which basically contains the objection to the decision of the Banda Aceh Tiggs Court Number: 104/PID/2020/PT BNA, in which against the objections of the defendant SM and his attorney, it was stated in the minutes of the memorandum of cassation, and against the minutes of the memorandum of cassation SM and his attorney, the public prosecutor also submitted the minutes of the Contra Memory of Cassation, which contains things to break the memory of cassation filed by the defendant SM and his attorney.

Then the Supreme Court of the Republic of Indonesia in its Decision Number: 1909 K/Pid.Sus/2021 dated June 29, 2021 stated: "Rejecting the Cassation Application from the Cassation Petitioner/Defendant SM". Because the cassation filed by the defendant SM and his attorney was rejected. then after the Public Prosecutor accepted the decision on Cassation Number: 1909 K/Pid.Sus/2021 on August 26, 2021, then on September 2, 2021, a

summons was made to Br. SM to implement the Banda Aceh District Court Decision No. 432/Pid.Sus/2019/PN.Bna, to serve imprisonment for 3 (three) months in prison.

When SM was carrying out the court's decision, namely serving a prison sentence, SM's family and their legal counsel decided to apply for an amnesty to the President of the Republic of Indonesia. And on the 43rd day the convict SM was serving a prison sentence as a prisoner, the request for amnesty SM was granted by President Joko Widodo (Jokowi), President Jokowi granted amnesty by issuing Presidential Decree of the Republic of Indonesia Number 17 of 2021 dated October 12, 2021 concerning granting amnesty.

As for the consideration of the president in the Presidential Decree Number 17 of 2021 is that the sentence handed down to SM has caused sympathy and solidarity from the community, which in essence conveys support for granting amnesty by the president to SM, so based on these considerations and taking into account the decision of the House of Representatives of the Republic of Indonesia Number: 12/DPR RI/2021-2022 dated October 7, 2021 regarding the consideration of the House of Representatives of the Republic of Indonesia on the request for amnesty to SM, the President granted the request for amnesty.

The granting of the amnesty is considered to have harmed the face of the law because in this case law enforcement officers ranging from investigators to executors (prosecutors) who have carried out their duties and functions to enforce the law have become useless.

the information and electronic transactions case is a complaint offense where there is a victim or aggrieved party who has reported this case to the police because they feel that SM's actions have resulted in the victim's good name being tarnished, it should be the victim, not the president as head of state, who should give pardons, besides that what about the other similar or immoral cases. Therefore, in this case the presidential decree does not fulfill the sense of justice at all.

Conclusion

Until now, there are no rules governing the policy mechanism in terms of granting amnesty, and the Presidential Decree number 17 of 2021 regarding granting amnesties has not fulfilled the sense of justice.

Therefore, it is recommended that the government immediately issue a Law on Amnesty which clearly regulates the policy mechanism in granting amnesty and contains subjective conditions, objective conditions and clear boundaries so that a sense of justice can be created.

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