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Granting Clemency to Antasari Azhar as the Object of a State Administrative Law Dispute

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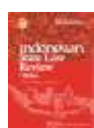
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Abstract

This study provides an overview of the state administrative law dispute surrounding the granting of clemency to Antasari Azhar, a prominent figure involved in a high-profile legal case. The controversy stems from the exercise of executive power and the application of clemency within the framework of state administrative law. Antasari Azhar, a former Indonesian Corruption Eradication Commission (KPK) chairman, was convicted in a notable corruption case. Subsequently, his request for clemency sparked debates, legal challenges, and concerns about the integrity of the administrative process. This study delves into the legal dimensions of Antasari Azhar's clemency case, examining the constitutional and administrative law aspects involved. Key issues include the discretionary powers of the executive in granting clemency, the potential influence of political considerations, and the adherence to legal procedures during the decision-making process. The research aims to shed light on the broader implications of this case for the rule of law, the separation of powers, and the accountability of public officials. Through a comprehensive analysis of relevant legal frameworks, court decisions, and scholarly perspectives, this study seeks to contribute to the understanding of the complex interplay between executive powers and the legal principles governing clemency in the context of state administrative law. Furthermore, it addresses the implications of such disputes for the overall legal



and political landscape, emphasizing the importance of transparency, due process, and accountability in the exercise of executive clemency.

Keywords

Antasari Azhari, Clemency, Object of Dispute

Submitted : March 21, 2023
Revised : June 27, 2023; August 12, 2023
Accepted : September 27, 2023
Published online : October 31, 2023

Introduction

ANTASARI AZHAR EMERGED as a central figure in the murder case of Nasrudin Zulkarnaen on March 14, 2009, in Tangerang. Zulkarnaen, the victim, tragically suffered fatal gunshot wounds to the head while playing golf. The inclusion of Antasari in the case was prompted by the discovery of a threatening message directed at the victim, serving as incriminating evidence. The legal proceedings unfolded with Antasari's defense contending that their client was wrongly implicated as the mastermind or intellectual force behind Zulkarnaen's murder. The pivotal context was framed by the belief that Zulkarnaen was on the verge of undertaking an operation to expose high-level corruption. The victim met his demise with two gunshot wounds to the head while atop his car after concluding a game of golf.¹

The case gained significant attention as evidence surfaced indicating that Antasari had engaged in messaging characterized by threatening undertones directed at the victim. This not only fueled the controversy surrounding the

¹ Ivany Atina Arbi, "Antasari Azhar Jadi Tersangka Pembunuhan 12 Tahun Lalu saat Hendak Bongkar Kasus Korupsi Besar." *KOMPAS*, March 14, 2021. Retrieved from <https://megapolitan.kompas.com/read/2021/03/14/10152891/antasari-azhar-jadi-tersangka-pembunuhan-12-tahun-lalu-saat-hendak?page=all>. See also Edy Nathan, *Antasari Azhar: Dalang atau Korban? Konspirasi Penghancuran KPK!* (Jakarta: Galangpress Group, 2009).

murder but also elevated Antasari to a trending status, further intensifying the scrutiny and public interest in the unfolding legal proceedings.²

During Inspector General Wahyono's tenure as the head of the Metro Jaya Regional Police, he declared that Antasari was under strong suspicion of being the intellectual mastermind behind the murder of Zulkarnaen. Simultaneously, prior to this announcement, law enforcement had apprehended ten suspects in connection to the case. These individuals, identified by their initials (H, D, HS, E, C & A, JK & WW, AM, and SHW), held various roles within the alleged conspiracy. (Initials H) was implicated as the recipient of the order, (Initials D) as the executor, (Initials HS) as the motorcyclist, (Initials E) as the orderer, (Initials C & A) as monitors of conditions and surrounding situations, and (Initials JK & WW) as liaisons, with (Initials AM) overseeing Zulkarnaen as the victim monitor and (Initials SHW) serving as the opinion party regarding the fund. Antasari's arrest transpired in May 2009 amidst the unfolding developments in the investigation, casting a spotlight on the intricate web of alleged roles and responsibilities within the Zulkarnaen murder case.³

Antasari assumed the role of chairman of the Corruption Eradication Commission (KPK) in 2007, securing the position through a majority vote victory over rival candidate M. Hamzah. Throughout his tenure, Antasari demonstrated notable accomplishments by spearheading successful operations, including:

- 1) Operation against Urip Tri Gunawan: Antasari led an operation against Urip Tri Gunawan, then a prosecutor implicated in receiving bribes from Suryani, also known as Ayin, in the BLBI case. This operation implicated

² See BBC News Indonesia, "Sengketa' SBY-Antasari: Inilah rekam jejak Antasari Azhar", *BBC News Indonesia*, February 14, 2017. Retrieved from <https://www.bbc.com/indonesia/trensosial-38968519>

³ See also Dian Septiar, "SBY behind murder accusations against me: Antasari", *The Jakarta Post*, February 14, 2017. Retrieved from <https://www.thejakartapost.com/news/2017/02/14/sby-behind-murder-accusations-against-me-antasari.html>; ALSA UGM, "Antasari Azhar v. SBY: Grudge Match for the Truth of a Cold Case", *ALSA Local Chapter UGM*, April 28, 2017. Retrieved from <https://www.alsacugm.org/single-post/2017/04/28/antasari-azhar-v-sby-grudge-match-for-the-truth-of-a-cold-case>

influential figures like Sjamsul Nursalim. Ayin received a prison sentence, and Urip Tri Gunawan was sentenced to twenty years in prison.⁴

- 2) Operation involving Al Amin Nur Nasution: Antasari orchestrated an operation leading to the arrest of Al Amin Nur Nasution, a politician accused of accepting illegal funds related to changes in the function of protected forests in the Bintan region. Nasution was found guilty and faced a fine of Rp. 250,000,000.⁵
- 3) Arrest of Aulia Pohan: Antasari's tenure included the arrest of Aulia Pohan, the father-in-law of former President SBY. Pohan, along with associates, was implicated in a fund flow from YAPPI amounting to Rp. 100 billion to various officials. He was initially sentenced to 4.5 years in prison, later receiving leniency with a reduced sentence of three years.⁶

Antasari's leadership at the KPK showcased a series of impactful operations, addressing corruption at different levels and involving high-profile individuals, contributing significantly to the commission's anti-corruption efforts during his term.⁷

⁴ H. R. Mufti, and B. Kanumayoso. "KPK and the commitment of the Indonesian government to eradicate corruption (2004–2014)." *Cultural Dynamics in a Globalized World* (2018): 29-37; J. Danang Widoyoko, "Reproduksi Korupsi: Studi Kasus Korupsi Jaksa Urip Tri Gunawan." *Masalah-Masalah Hukum* 42, no. 1 (2013): 13-22; Ramelan Ramelan. "Anotasi Putusan Perkara Tindak Pidana Korupsi AN Terdakwa Artalyta Suryani Alias Ayin." *Jurnal Hukum Prioris* 3, no. 2 (2013): 95-124.

⁵ Ruslan Abdul Gani, "Eksistensi KPK dalam Pemberantasan Korupsi di Indonesia." *Lex Specialist* (2017): 65-71; Sahuri Lasmadi, and Elly Sudarti. "Modus Operandi Pelaku Tindak Pidana Korupsi Yang Dilakukan Anggota DPR Dalam Pelepasan Kawasan Hutan Lindung Pantai Air Telang Kabupaten Banyuasin Sumatera Selatan." *Jurnal Komunikasi Hukum (JKH)* 5, no. 1 (2019): 1-20.

⁶ Indonesian Corruption Watch, "Aulia Pohan Jadi Tersangka; Burhanuddin Abdullah Divonis 5 Tahun Penjara", *Indonesian Corruption Watch*, October 30, 2008. Retrieved from <https://antikorupsi.org/id/article/aulia-pohan-jadi-tersangka-burhanuddin-abdullah-divonis-5-tahun-penjara>; Martahan Sohuturon, "Antasari Sebut SBY Lobi Kasus Aulia Pohan Lewat Hary Tanoe", *CNN Indonesia News*, February 14, 2017. Retrieved from <https://www.cnnindonesia.com/nasional/20170214142204-12-193452/antasari-sebut-sby-lobi-kasus-aulia-pohan-lewat-hary-tanoe>.

⁷ BBC News Indonesia. "SBY-Antasari dispute: Here's Antasari Azhar's track record". Loaded in <https://www.bbc.com>.

Furthermore, Antasari Azhar's legal representative raised concerns about procedural irregularities in his client's case, specifically pointing to potential violations related to the judge's professionalism overseeing the trial. The Judicial Commission (KY) also expressed apprehension over what they perceived as a lapse in the judge's professionalism during the handling of the Antasari case. This concern was further emphasized by the alleged neglect of crucial evidence throughout the trial proceedings, spanning from the initial hearing to the cassation.⁸

The judge was criticized for overlooking significant pieces of evidence, including testimonies from ballistics and forensic experts, as well as the victim's clothing, which were not presented during the trial. Antasari's lawyer contended that this omission undermined the integrity of the legal process. Moreover, the lawyer asserted that several other crucial pieces of evidence, such as chat records between Antasari and Zulkarnaen, were not brought forth during the trial, adding to the perceived deficiencies in the presentation of the case. The assertion of these irregularities raises questions about the fairness and comprehensiveness of the legal proceedings against Antasari Azhar, emphasizing the importance of upholding the standards of professionalism and due process within the judicial system.⁹

Antasari persistently pursued various legal avenues to secure his release, despite previous unsuccessful attempts. In April 2015, his legal representatives took a unique approach by seeking clemency from the President. In November 2016, Antasari was granted parole, and by 2017, he obtained full release after

⁸ Dewi Puji Astuti, "Upaya Hukum Permohonan Peninjauan Kembali Berdasarkan Novum Rekayasa Barang Bukti dan Ketidaksesuaian Keterangan Ahli dalam Perkara Antasari Azhar (Studi Putusan dalam Putusan Mahkamah Agung Nomor: 117 Pk/Pid/2011)." *Thesis* (Surakarta: Universitas Sebelas Maret, 2014).

⁹ See Simon Butt, "Anti-corruption reform in Indonesia: an obituary?." *Bulletin of Indonesian Economic Studies* 47, no. 3 (2011): 381-394; Leo Agustino, et al. "Corruption Eradication in Indonesia: The Experience of The Corruption Eradication Commission (KPK)." *Journal of Governance* 6, no. 2 (2021): 231-243.

the President approved his request. This decision, however, sparked controversy within society, leading to widespread speculation.¹⁰

The public's attention on the clemency process reflected a pattern of contentious incidents, such as the case of Ola in January 2000, involving the smuggling of three and a half kg of heroin and 3 kg of cocaine. Similarly, in September 2003, then-President SBY received a clemency request from Ola, who had initially been sentenced to death but had it commuted to life imprisonment.¹¹ The controversial trajectory continued with Corby's case in May 2005, where a 20-year prison sentence for smuggling 4.2 kg of marijuana to Bali was later reduced to 15 years. The final case causing widespread debate was the clemency granted to Annas Maamnun, who saw his initial seven-year prison sentence lightened to six years.¹² These instances of clemency distribution have consistently drawn public attention and triggered speculations, highlighting the controversial nature of such decisions within the community.

A new controversy surrounding clemency surfaced in May 2012, centering on Schapelle Corby, an Australian individual convicted of smuggling 4.2 kg of marijuana, and Franz Grobmann, a German involved in criminal cases related to illegal drugs and narcotics. The President's decisions in these cases garnered widespread opposition, as they were perceived to contradict the principles of drug eradication. In response, an anti-drug movement, named "*GRANAT*," emerged in Indonesia, and in 2012, they even pursued legal action

¹⁰ Joniansyah Hardjono, "Antasari Azhar to be Granted Parole in November", *TEMPO*, September 14, 2016. Retrieved from <https://en.tempo.co/read/804054/antasari-azhar-to-be-granted-parole-in-november>

¹¹ See Satrio Kolopita, "Penegakan Hukum Atas Pidana Mati Terhadap Pelaku Tindak Pidana Narkotika." *Lex Crimen* 2, no. 4 (2013); Aldi Pradani, and Winsherly Tan. "Analisis Tentang Pemberian Grasi Pelaku Tindak Pidana Narkotika." *Jurnal Analisis Hukum* 5, no. 1 (2022): 40-55.

¹² Meydianto Mene, "Hak Grasi Presiden dalam Sistem Ketatanegaraan Republik Indonesia." *Ensiklopedia of Journal* 4, no. 3 (2022): 92-97.

by filing a lawsuit to the green table, expressing their discontent with the perceived leniency granted in these clemency decisions.¹³

In accordance with Law Number 5 of 2010 concerning Amendments to Law Number 22 of 2002 concerning Clemency, which signifies a departure from previous constitutional regulations, clemency is defined as a legal remedy with the nature of reducing, forgiving, or mitigating, and it is bestowed by the President upon individuals of their choosing. This special legal remedy becomes applicable after an inkrah verdict, ranging from the most severe, such as the death penalty, to imprisonment with a minimum sentence of two years. Following due consideration by the Supreme Court, the President holds the prerogative to grant clemency at their discretion. It is crucial to note that clemency cannot postpone the execution of criminals, except in cases where the punishment is death.¹⁴ The exercise of clemency, in essence, permits the reduction of a severe punishment to a lesser one.

The examination of clemency as a preferential legal remedy within the Indonesian legal state forms the core focus of the discussion based on the foregoing description. The unique nature of clemency, elucidated by Law Number 5 of 2010, underlines its distinctive characteristics as a mechanism designed for reduction, forgiveness, or mitigation of penalties. From the perspective of the Indonesian legal system, understanding how clemency operates as a preferential remedy involves exploring its constitutional foundations and its role within the broader framework of legal principles governing executive powers.¹⁵

¹³ Dzikry Gaosul Ashfiya, and Anna Erliyana. "Clemencial Review oleh Peradilan Tata Usaha Negara (Telaah Kritis Keputusan Presiden tentang Pemberian Grasi dalam Sistem Pemerintahan Presidensiil di Indonesia)." *PALAR (Pakuan Law Review)* 6, no. 1 (2020): 159-186.

¹⁴ Fajri Setiyo Hadi, and Rizky Nur Fajar. "Pembunuhan Berencana Antasari Azhar Kepada Nasrudin Zulkarnain." *Jurnal Sosial dan Sains* 2, no. 1 (2022): 13-27.

¹⁵ See Suci Putri Marthalia, "Kewenangan Presiden dalam Pemberian Grasi Berdasarkan Undang-Undang Nomor 5 Tahun 2010 Tentang Perubahan Atas Undang-Undang Nomor 22 Tahun 2002 Tentang Grasi." *Thesis (Padang: Universitas Andalas, 2011)*. See also Mohammad Rezza Naufal, Fifiana Wisnaeni, and Ratna Herawati. "Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 107/PUU-XIII/2015 Tentang Pengujian Undang-Undang Nomor 5 Tahun 2010

In addition to probing the preferential nature of clemency, a critical analysis centers on whether the granting of clemency to Antasari Azhar becomes the subject of a dispute within the realm of state administrative law. Antasari Azhar's case, marked by its intricate legal complexities, raises questions about the adherence to due process, transparency, and the rule of law in the clemency decision-making process. Evaluating whether Antasari's clemency is an object of state administrative law dispute requires a comprehensive examination of legal provisions, precedents, and potential violations within the administrative procedures involved in the executive decision to grant clemency.¹⁶

By addressing these key issues, the discussion aims to contribute to a nuanced understanding of clemency within the Indonesian legal state, shedding light on its preferential nature and exploring the potential administrative law implications surrounding the controversial case of Antasari Azhar.

Clemency as An Examination of its Distinctive Role as a Legal Remedy within the Indonesian Legal Framework

INDONESIA, RECOGNIZED AS a nation governed by the rule of law, operates within a legal framework consisting of positive laws applicable throughout the country. The paramount legal document within Indonesia's

Tentang Perubahan Atas Undang-Undang Nomor 22 Tahun 2002 Tentang Grasi Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Diponegoro Law Journal* 6, no. 2 (2017): 1-14.

¹⁶ Bagus Teguh Santoso, "Pemberian Grasi oleh Presiden Bagi Terpidana Antasari Azhar." *MIMBAR YUSTITIA: Jurnal Hukum dan Hak Asasi Manusia* 1, no. 1 (2017): 1-20. See also Syukrian Rahmatul Ula, "Tinjauan Yuridis Pemberian Grasi Antasari Azhar (Keputusan Presiden Nomor 1/G/2017) Perspektif Hukum Islam dan Hukum Positif". *Thesis* (Jakarta: UIN Syarif Hidayatullah Jakarta, 2021); Sujatmiko Sujatmiko, and Willy Wibowo. "Urgensi Pembentukan Regulasi Grasi, Amnesti, Abolisi dan Rehabilitasi." *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021): 91-108.

constitutional hierarchy is the 1945 Constitution (UD 1945), establishing the highest standard to which all other laws must conform. This adherence ensures that the legal landscape remains consistent and aligned with the foundational principles outlined in the constitution.¹⁷ In this constitutional hierarchy, laws and regulations are structured to uphold a continuous and orderly framework, from central authorities to regional entities. It is imperative that regulations at each level do not contradict the constitutional regulations above them, maintaining coherence within the legal system. Laws and regulations, defined as sets of provisions containing norms, are created by authorities, and they apply uniformly to Indonesian society.¹⁸

The concept of a state of law serves as a symbolic reference, affirming that the state is fundamentally grounded in legal principles. This term encapsulates the broader notion that the state operates within a legal framework, ensuring that laws are not only established but are also enforced across the populace. The term *state based on law* encompasses a wide range of meanings, serving both as a symbol and a representation of the state's commitment to the application and enforcement of laws within its jurisdiction.¹⁹

As a nation upholding the status of a state of law, every action taken by the Indonesian state must be grounded in legal principles. Deviations from the law not only undermine the established legal order but also run counter to the fundamental spirit of the prevailing legal framework. The state plays a crucial role in legislating and formulating regulations, wielding the authority to

¹⁷ Simon Butt, and Tim Lindsey. *Indonesian Law*. (Oxford: Oxford University Press, 2018).

¹⁸ See also Mietzner, Marcus. *Money, Power, and Ideology: Political Parties in Post-authoritarian Indonesia*. (Singapore: NUS Press, 2013). See also Mohammad Wahyu Adji Setio Budi, "Indonesian State System Based on Pancasila and the 1945 Constitution: A Contemporary Developments". *Indonesian Journal of Pancasila and Global Constitutionalism* 1, no. 1 (2022): 1-16.

¹⁹ Nur Hidayat, and Desi Apriani. "Koherensi Sistem Hukum Pancasila dengan Metode Penalaran Ideologi Pancasila (The Coherence of The Pancasila Legal System with the Ideology Reasoning Method of Pancasila)." *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 12, no. 1 (2021): 143-160. See also Andre Setyo Nugroho, "Pancasila as a Source of Law in Enforcing Corruption in Indonesia". *Indonesian Journal of Pancasila and Global Constitutionalism* 2, no. 1 (2023): 103-138.

enforce them upon society. In this context, the law serves as a pivotal instrument for social control, with the state assuming a primary responsibility in its implementation.²⁰

Additionally, Peter de Cruz emphasizes that the position and organizational structure of the court institution are indirectly shaped by the legal system adopted by a state. The term 'legal system' encompasses a comprehensive framework comprising legal regulations, operational institutions, and procedures. This system can be categorized as either a parent legal system or a principal legal system, reflecting the two prevailing legal paradigms worldwide. Nations exhibiting characteristics aligning closely with the principal legal features can be considered as adhering to the primary legal system.²¹

Continuing within the Indonesian context, the commitment to a state of law and adherence to legal principles extend to the realm of human rights. Building on the foundation of the 1945 Constitution and Pancasila, these documents serve as the bedrock for understanding and upholding human rights within the nation. The intertwining of these principles with the country's historical narrative underscores their significance as guiding milestones in the establishment of the Indonesian state.

Within this framework, human rights are not isolated concepts but are integral components of the broader system governing state life. It is imperative that the inherent rights of individuals remain inviolable and protected by the legal structures of the state. Central to this concept is the principle that every individual possesses the right to equal treatment before the law. Life, in its essence, hinges on mutual respect and love for one another, acknowledging diverse indicators of existence. By embracing these fundamental principles, a

²⁰ Achmad Irwan Hamzani, "Menggagas Indonesia Sebagai Negara Hukum Yang Membahagiakan Rakyatnya." *Yustisia Jurnal Hukum* 3, no. 3 (2014): 137-142.

²¹ Umar Dani, *Konsep Dasar dan Prinsip-Prinsip Peradilan Tata Usaha Negara* (Jakarta: Raja Grafindo Persada, 2022).

nation can foster an environment conducive to peaceful coexistence and prosperity.²²

According to L.J. van Apeldoorn, the purpose of law is to orchestrate the societal order, fostering a state of peaceful coexistence and prosperity. In his perspective, the indispensability of peace in life is underscored, and this can be safeguarded by preserving a harmonious balance of legal interests among individuals. Essential life indicators must be both protected and maintained within the social fabric. The law, through its system of order, plays a crucial role in steering society towards justice and tranquility. Realizing this vision necessitates the presence of capable human resources within the community, facilitating the adoption of mature and responsible behaviors. Given the common occurrence of conflicts of interest within society, the pursuit of harmonization becomes imperative to preemptively address and mitigate potential conflicts arising from competing interests.²³

The ongoing constitutional reform signifies a tangible commitment to adapting the legal framework to the increasingly intricate dynamics of contemporary life. A key manifestation of this commitment is the deliberate process of amending the Constitution. This amendment seeks to align legal structures with the complexities of our evolving societal systems. As the government gradually spearheads developmental initiatives, the formulation of fresh laws is underway, aimed at addressing the multifaceted challenges characteristic of this era.

Crucially, the rule of law must be applied with impartiality and comprehensiveness, avoiding sharp disparities in its downward and upward application. Acknowledging the intricate nature of this endeavor, the

²² Made Hendra Wijaya, "Karakteristik Konsep Negara Hukum Pancasila." *Jurnal Advokasi* 5, no. 2 (2015): 199-214.

²³ L. van Apeldoorn, *Pengantar Ilmu Hukum*, translated by Oetarid Sadino. (Jakarta: Pradnya Paramita, 2009). See also Aep Gunarsa, and B. Arief Sidharta. *Meuwissen Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum*. (Jakarta: Refika Aditama, 2007); Herbert Lionel Adolphus Hart, and Leslie Green. *The Concept of Law*. (Oxford: Oxford University Press, 2012).

government's earnest efforts to realize the state's ideals deserve recognition. The task of reestablishing a state's legal foundation is inherently challenging and requires considerable dedication.

Key markers of progress in this constitutional rejuvenation include the effective enforcement of the rule of law, the clear separation of powers, safeguards for human rights, the maintenance of a neutral judiciary, and the assurance of justice. These facets collectively contribute to the creation of a legal framework that not only reflects the intricacies of contemporary life but also upholds the fundamental principles of fairness, equity, and justice.²⁴

In accordance with Law Number 5 of 2010, which marks a significant departure from prior constitutional regulations, clemency is delineated as a legal remedy encompassing reduction, forgiveness, or mitigation, bestowed at the discretion of the President. This unique legal avenue becomes applicable following the issuance of an *inkrah* verdict, covering the entire spectrum from the most severe penalty, such as the death penalty, to imprisonment with a minimum sentence of two years.

The new regulation introduces several noteworthy provisions aimed at streamlining the clemency process. Among these provisions is the stipulation that clemency requests may be submitted once and not more, along with a specified timeframe for the Supreme Court to provide its consideration. Additionally, the mandate of authority to review clemency requests is transferred to the Minister of Public Affairs, with a predetermined timeline for the submission of clemency requests. These adjustments in the legal framework underscore an effort to refine and systematize the clemency process, introducing measures to enhance efficiency and clarity in the pursuit of this special legal remedy.²⁵

²⁴ John Rawls, "Justice as Fairness." *The Philosophical Review* 67, no. 2 (1958): 164-194; John Rawls, "Justice as fairness: Political not metaphysical." *Equality and Liberty: Analyzing Rawls and Nozick*. (London: Palgrave Macmillan UK, 1991), pp. 145-173.

²⁵ Delliana Melri Landung, "Kewenangan Presiden dalam Pemberian Grasi Berdasarkan Sistem Ketatanegaraan Indonesia." *Lex Administratum* 8, no. 4 (2020): 36-44.

In accordance with Law Number 5 of 2010, a departure from previous constitutional regulations, clemency is defined as a unique legal remedy encompassing reduction, forgiveness, or mitigation, bestowed at the discretion of the President upon individuals of their choosing. This special legal avenue becomes applicable after the issuance of an *inkrah* verdict. Notably, the process of granting clemency is solely within the prerogative of the President, devoid of any external intervention or communication with the judiciary, including judges. It is imperative for the President to exercise fairness and impartiality in executing this mandate.

The technical terms of clemency underscore that only the President holds the authority to determine its application. Misappropriation, such as aiding criminal perpetrators or providing undue legal assistance, is strictly prohibited. The exclusive right of the President to decide on clemency emphasizes the need for accountability and fairness in the execution of this special legal remedy.²⁶

Clemency Granted to Antasari Azhar: A Contested Matter in State Administrative Law

INDONESIA, ESTABLISHED AS a unitary state based on Pancasila, firmly maintains its status as a state governed by law, as highlighted in the 1945 Constitution. The interpretation and application of the rule of law in this framework are intricately connected to the values embedded in Pancasila, serving as the fundamental foundation for all legal sources. Notably, state

²⁶ Hasan Basri, "Kewenangan Konstitusional (Hak Prerogatif) Presiden dalam Memberikan Grasi Kepada Terpidana Atas Kasus Narkoba." *PALAR (Pakuan Law review)* 5, no. 1 (2019): 57-79. See also Desran Joko Wagularsih Saragih, "Kebijakan Pidana Penjara Seumur Hidup: Analisis Yuridis Sosiologis dalam Kerangka Tujuan Pemidanaan di Indonesia." *Unnes Law Journal* 3, no. 2 (2014): 34-41; Abraham Paripurna Manalu, "The Effectiveness of the Implementation of the Death Penalty for Suspects in Serious Crime Cases, Both Narcotics and Corruption in order to reduce Corruption and Narcotics Cases that Occur in Indonesia for the Advancement of the Nation and the State." *Journal of Creativity Student* 6, no. 1 (2021): 65-86.

institutions, including the Presidency with its prerogative of clemency, are integral components of the government, wielding substantial influence in the legal and state affairs of Indonesia.²⁷

Broadly defined, the government functions as an organization endowed with the authority to formulate and enforce laws within a specific jurisdiction. Within the Indonesian state of law, distinct characteristics emerge, prominently featuring Pancasila as the primary basis and source of law.²⁸ Consequently, the Indonesian legal landscape is often referred to as the state of Pancasila law, highlighting the unique and foundational role that Pancasila plays in shaping the legal framework and governance of the nation.²⁹

The trias politica framework categorizes state power into three distinct types, each endowed with distinct functions and authorities, all aimed at establishing a delicate equilibrium to prevent the emergence of a harmful dictatorship. The executive power, positioned as the highest authority, assumes administrative control, with the President occupying a pivotal role within this sphere. In the context explored in this discussion, the President exercises the right to grant clemency, a unique and significant presidential prerogative.

Clemency, bestowed by the President, is grounded in robust arguments, serving as a bolstering rationale for pardoning individuals. Its formal expression

²⁷ Some scholars also highlighted collectively contribute to the broader discourse on legal systems and penalties, considering different approaches and perspectives. In the context of clemency in the Indonesian legal system, insights from these articles may offer varied viewpoints on the application of penalties, the role of international legal perspectives, and the consideration of human rights in such cases. The examination of these diverse perspectives can enrich the understanding of the legal complexities surrounding clemency decisions in Indonesia. See Anis Widyawati, et al. "Application of The Juridic-Scientific Religious Approach Model in Execution of Penal Law Enforcement." *Pandecta Research Law Journal* 17, no. 1 (2022): 146-157; Ananda Ima Saputri, "International Legal Perspective on the Implementation of the Death Penalty Case Study of Mary Jane Fiesta Veloso." *The Digest: Journal of Jurisprudence and Legisprudence* 1, no. 2 (2020): 163-196; Dewi Indah Lestari, "The Imposition of the Death Penalty for Drug Dealers in the Perspective of Human Rights." *Semarang State University Undergraduate Law and Society Review* 1, no. 1 (2021): 35-50.

²⁸ Aminuddin Ilmar, *Hukum Tata Pemerintahan*. (Jakarta: Prenada Media, 2014).

²⁹ Zairin Harahap, *Hukum Acara Peradilan Tata Usaha Negara*. (Jakarta: PT Rajagrafindo Persada, 2019).

takes the shape of a Presidential Decree, encapsulating a written statement that possesses a definitive, individual, and concrete nature. Aligned with the conceptual framework of objects in the TUN, this Presidential Decree serves as an instrument eligible for legal proceedings on the court. Crucially, the President, as both a leader and head, is obligated to maintain a neutral stance while wielding prerogatives. Within the constitutional system, the act of granting clemency stands as a manifestation of presidential power, exemplifying the role and influence of the President in a presidential democratic system.³⁰

Clemency holds the unique quality of reducing, forgiving, or mitigating, a prerogative exercised by the President at their discretion. This special legal remedy becomes relevant following the confirmation of an *inkrah* verdict. Notably, the process of granting clemency is exclusively within the President's prerogative, devoid of any external influence from other institutions, and maintained without direct contact with judges. The imperative for the President is to execute this mandate with fairness and impartiality.

Following a comprehensive review by the Supreme Court, the President is presented with choices, allowing for the acceptance or rejection of clemency requests. This grants the President the authority to annul executions, extend clemency, or reduce the duration of criminal sentences. Clemency, in essence, serves as a means of humanizing individuals within the legal system, acknowledging the potential for errors in decisions for various reasons. It offers opportunities for reconsideration and mercy, embodying a commitment to justice and compassion within the legal framework.³¹

In the process of considering clemency, the President is presented with three distinct options. The first involves the cancellation or deletion of the execution component of the judgment. The second allows for the partial implementation of the original judgment, while the third option entails

³⁰ Ashfiya, and Erliyana. "Clemencial Review oleh Peradilan Tata Usaha Negara (Telaah Kritis Keputusan Presiden tentang Pemberian Grasi dalam Sistem Pemerintahan Presidensiil di Indonesia)."

³¹ Mene, "Hak Grasi Presiden dalam Sistem Ketatanegaraan Republik Indonesia."

offering leniency or modifying the verdict to reflect a more compassionate or reformed outcome. These choices empower the President to make nuanced decisions based on the unique circumstances of each case.³²

In the further context, in the realm of the rule of law, administrative justice assumes a crucial role, serving as a vital reflection of a nation's progress in establishing a state governed by law. A democratic rule of law underscores the imperative of equality for all, necessitating concerted efforts by the judiciary to foster fairness and harmony in societal life. The presence of a robust judiciary not only signifies the democratic nature of a country but also functions as a pivotal instrument for state oversight, preventing potential abuses by those in power. Any deviation from democratic principles by the ruler poses a threat to the integrity of the rule of law.³³

In alignment with the principle of maintaining a balance between state institutions, the act of granting clemency by the President must be executed with careful consideration. It is imperative that the President not act recklessly, and instead, take into account the perspectives of other institutions, particularly the Supreme Court. This approach serves to impose limits on the President's prerogative, fostering a balanced interaction between institutions in accordance with democratic principles. This practice can be aptly described as the power of consultation, emphasizing that, in wielding their authority, the President must heed the voices of other institutions to maintain democratic equilibrium.³⁴

The Presidential Decree, serving as a tangible expression of clemency, constitutes a decision within the purview of Administrative Court (TUN) officials, thereby categorizing the President as one of these officials. The nature of the Presidential Decree, particularly in the context of clemency, is

³² Suyogi Imam Fauzi, "Politik Hukum Pemberian Grasi, Amnesti dan Abolisi Sebagai Konsekuensi Logis Hak Prerogatif." *Jurnal Hukum & Pembangunan* 51, no. 3 (2021): 621-636.

³³ Enrico Simanjuntak, *Hukum Acara Peradilan Tata Usaha Negara: Transformasi & Refleksi*. (Jakarta: Sinar Grafika, 2021).

³⁴ Basri, "Kewenangan Konstitusional (Hak Prerogatif) Presiden dalam Memberikan Grasi Kepada Terpidana Atas Kasus Narkoba."

characterized by its finality, individuality, concreteness, and its imposition on legal subjects, encompassing civil law entities and individuals. This characteristic renders the Presidential Decree subject to legal consequences.

Correspondingly, the object of TUN exhibits a similar nature, implying that the Presidential Decree, as the physical instrument of clemency, falls within the scope of objects subject to dispute within TUN proceedings. While no clemency case has been brought before the Administrative Court thus far, should such a lawsuit arise, the judge would be tasked with making a decision. It is noteworthy that what can be contested is not the president's prerogative itself but rather the Presidential Decree, as a tangible instrument of clemency, making it susceptible to legal challenge within the Administrative Court.³⁵

The Presidential Decree, serving as the tangible embodiment of clemency, stands as one of the decisions issued by Administrative Court (TUN) officials, thus categorizing the President as a TUN official. The object within the jurisdiction of TUN possesses characteristics of finality, individuality, concreteness, and imposition on legal subjects, encompassing both civil law entities and individuals, thereby resulting in legal consequences. Similarly, the Presidential Decree shares a comparable nature with the object of TUN. In his capacity as the head and leader, the President holds the authority to grant clemency, an authority intrinsic to the role of the President as a TUN official. Consequently, clemency, in its physical form as a Presidential Decree, becomes an object within the purview of TUN, thereby subject to normative juridical challenges under the law.³⁶

³⁵ Darul Rakhman, Asmara Sutji, and Rosita Indrayati. "Analisis Yuridis Pengujian Keputusan Presiden Nomor 22/G/2012 tentang Pemberian Grasi kepada Schapelle Leigh Corby oleh Peradilan Tata Usaha Negara." *Thesis* (Jember: Universitas Jember, 2013); Andi Sahputra Sinaga, "Analisis Yuridis Pemberian Grasi Bagi Terpidana Berdasarkan Perspektif Keadilan Dalam Sistem Peradilan Pidana Indonesia". *Thesis* (Pekanbaru: Universitas Islam Riau, 2021).

³⁶ See Bradley Holland, "Clemency and constitutional duties in Indonesia: A promise made is a promise kept?" *Australian Journal of Asian Law* 19, no. 1 (2018): 23-45; Pascoe, Daniel. "Clemency in Southeast Asian Death Penalty Cases." *Center for Indonesian Law, Islam and Society Policy Paper* 4 (2014). Online at

Upon establishing that clemency, conveyed through its Presidential Decree, is an object within the jurisdiction of the Administrative Court (TUN) and susceptible to legal challenges, the process of litigation requires meticulous attention. Carelessness is not permissible during the course of a lawsuit; instead, it demands a nuanced understanding of valid arguments as substantiating reasons. The outcome ultimately hinges on the judge's decision, which is influenced by the accuracy and strength of the presented arguments.

Should the arguments prove to be true and compelling, there exists a possibility that the lawsuit against clemency may find favor with the judge. A pivotal element in the approval of clemency is the adherence to the general principle of good governance (AAUPB). If it is demonstrated that the clemency granted by the President contravenes the AAUPB, and the plaintiff can convincingly substantiate their argument, the judge may rule in favor of the claim against clemency. In the administrative system, the AAUPB plays a crucial role in gauging the government's performance, indicating whether it aligns with good governance or involves violations.³⁷

Conclusion

THIS STUDY CONCLUDED that the elucidation on clemency and its legal intricacies provides a comprehensive foundation for understanding the potential challenges surrounding the granting of clemency, particularly in the case of Antasari Azhar. The nature of clemency, as a special legal remedy under Law Number 5 of 2010, and its subsequent manifestation through the

https://law.unimelb.edu.au/__data/assets/pdf_file/0005/1547816/ALC-CILISPolicyPaper_Pascoe_web2.pdf

³⁷ Santoso, "Pemberian Grasi oleh Presiden Bagi Terpidana Antasari Azhar." *See also* Farida Umami, Ahkam Nashrullah Maududi, and Aminah Rizqi Mahmudah. "A Discourse of General Principles of Good Governance in Public Services in Indonesia." *Indonesian Journal of Pancasila and Global Constitutionalism* 1, no. 1 (2022): 17-32; Putri Imaniar Setyaningrum, "Review of the Implementation of Clemency in the Indonesian Criminal Law System (Study of Constitutional Court Decision Number 32/PUU-XIV/2016)." *Journal of Humanities, Social Sciences and Business* 1, no. 1 (2021): 81-89.

Presidential Decree, establishes the groundwork for potential disputes within the State Administrative Law (TUN) framework. Antasari Azhar's case, marked by the granting of clemency, becomes a pertinent subject for examination within the State Administrative Law dispute. The complexities involved, including the prerogatives of the President, the legal consequences arising from the Presidential Decree, and the normative juridical challenges that may be encountered, highlight the potential for disputes within the TUN. As Antasari Azhar's clemency becomes a concrete application of the legal principles discussed, the State Administrative Law dispute surrounding this case takes on added significance within the context of Indonesia's rule of law.

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Acknowledgment

None

Funding Information

None

Conflicting Interest Statement

There is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.