

ABSTRACT

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LEGAL IMPLICATION OF AMNESTY BY PRESIDENT IN THE BAIQ NURIL MAKNUN CASE

(xiv + 154 pages; 1 picture; 2 tables; 3 attachments)

Baiq Nuril Maknun's legal case regarding violation of Article 27 paragraph (1) in conjunction with Article 45 paragraph (1) of Law no. 11 of 2008 jo. concerning Information and Electronic Transactions led to the refusal of the review by the Supreme Court Judge, this attracts the public's attention. Defamation cases have been criticized for using controversial laws to incriminate a victim of sexual harassment. The amnesty was then submitted to the President, because there were no legal remedies for justice and protection for women. In the history of Indonesian constitutional law, so far the amnesty has only been applied to political crimes, severe human rights violations, and taxation on a different legal basis. Amnesty has never been granted because humanity refers to Emergency Law No. 11 of 1954. The problems being examined in this study are: 1) how an amnesty and its procedure is given to Baiq Nuril Maknun? 2) how the act of granting amnesty by the President in the Baiq Nuril Maknun case will bring legal implication(s)? This study uses a normative juridical research method with a statutory approach and a concept approach. The type of data used is secondary data consisting of primary, secondary, and tertiary legal materials obtained through literature, and as a complement to the data, the author conducted an interview with Aziz Fauzi, the attorney of Baiq Nuril Maknun and Patrice Rondonuwu as lecturer of law within the University of Pelita Harapan. Data obtained from the literature study were analyzed descriptively qualitatively. The results of the study show that first, on the consideration of DPR RI, President Joko Widodo through the Ministry of State Secretariat (*Kementerian Sekretariat Negara RI*) and Deputy of Laws and Regulations of Laws Sector (*Deputi Hukum dan Perundang-Undangan*) declared President Act No. 24 Tahun 2019 regarding the grant of amnesty Baiq Nuril Maknun. Second, an amnesty is appropriate to given for Baiq Nuril Maknun because of the President's authority for the interests of the state, guaranteeing human rights and citizens' rights to obtain legal protection and free from discrimination, the Amnesty and Abolition Law contradicts Article 14 paragraph (2) of the 1945 Constitution, and in line with Indonesia's commitment to the fulfillment of women's rights and eliminate discrimination because of CEDAW Ratification. With the granting of amnesty, Baiq Nuril Maknun was deemed to have never committed a criminal act. Therefore a new law is established due to the granting of amnesty to Baiq Nuril Maknun, amnesty can be possibly given to other cases beside politics, especially criminal acts that is related to human rights with by considering Pancasila and UUD NRI 1945.

Keywords: amnesty, presidential prerogative, checks and balances

References: 103 (1961 – 2019)