

The past is another country : designing amnesty law for past human rights violators / Harison Citrawan

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Abstrak

In the context past gross human rights violation cases in Indonesia, the President's constitutional authority to propose amnesty law might by and large implicate legal and ethical aspects. Holistically, any forgiveness and oblivion against any human rights violators should consider the development and the dynamic of international criminal law, which arguably have been directed to an absolute individual criminal responsibility. Against this issue, this paper finds that based on legal and ethical arguments, accompanied with various technical preconditions outlined in the Belfast Guideline on Amnesty and Accountability, an amnesty towards past gross human rights violators must be taken paradigmatically. Arguably, amnesty proceeding through an independent ad hoc committee shall be able to challenge Indonesia's transitional framework, namely: to work as a historian and a jurist. This suggests that the elements of amnesty, both procedural and substantial, need to work in the area of deliberative democracy that calls for public participation and the protection of human rights.

Dalam konteks kasus pelanggaran berat hak asasi manusia (HAM) di Indonesia, kewenangan Presiden dalam memberikan amnesti dapat berimplikasi pada dua aspek, yakni: legal dan etik. Secara holistik, pemaafan dan pelupaan terhadap para pelanggar HAM pada masa lalu patut mempertimbangkan perkembangan dan dinamika hukum pidana internasional, yang mengarah pada pertanggungjawaban pidana secara absolut. Tulisan ini menyimpulkan bahwa logika argumentatif secara legal dan etik, serta berbagai prasyarat teknis di dalam Belfast Guideline on Amnesty and Accountability mengindikasikan bahwa amnesti terhadap pelanggar HAM masa lalu harus dilakukan secara paradigmatis. Dalam hal ini, proses amnesti melalui komite ad hoc yang mandiri dapat menjawab dua tantangan dalam kerangka kerja transisional di Indonesia, yakni: untuk bekerja sebagai sejarawan dan juga praktisi hukum. Dengan demikian, kebijakan amnesti mengisyaratkan bahwa elemen-elemen amnesti secara prosedural dan substantif wajib dijalankan dalam area demokrasi deliberatif yang menghendaki adanya partisipasi publik dan perlindungan terhadap HAM.