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Underutilization of Death Row Clemency and Its Implications for Justice and Human Rights

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Abstract:
The death penalty in Indonesia is controversial because it is contrary to human rights principles, although executions are carried out based on the sovereignty of national law. The uncertainty of the clemency process has a double impact: the convict experiences an unclear fate, and the state is criticized for the inconsistent application of the law. The "death row phenomenon" is recognized as a form of psychological torture for convicts awaiting a decision. This study analyzesdimensions of justice, ethical dimensions and the theoretical framework, as well as victim exclusion in the Indonesian Clemency Law. The study employs a normative method with a legislative and conceptual approach. Data is collected through literature studies of primary, secondary, and tertiary legal materials. The analysis was conducted qualitatively with legal interpretation. The study identified three dimensions of death penalty clemency: the impact on justice, ethical considerations, and the effect on victims. Gaps were found in the transparency of the process, inconsistent application, low success rate (4.8%), and lack of victim involvement, which hinders psychological recovery. Clemency in the death penalty acts as a mechanism for correcting injustice and protecting human rights, but its implementation shows inconsistency. Regulatory reform is needed that balances retributive justice with humanitarian values through increased transparency, victim involvement, and the establishment of clear substantive criteria.

Keywords:
clemency; death row phenomenon; human rights; Indonesia.

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Introduction

The death penalty remains in place in 55 countries, while 142 countries have adopted a moratorium or de jure abolition, reflecting a global trend towards abolition. This global shift represents more than a simple statistical change, reflecting deeper societal and institutional transformations across nations. It embodies a transition toward governance frameworks based on human rights that prioritize rehabilitation over retribution.[1] Global statistics show a 28% decline in executions in the last decade, with only 579 executions recorded in 2022. However, the actual figure is thought to be much higher due to data secrecy in some countries such as China, Vietnam, and North Korea.[2] The granting of clemencies in death penalty cases shows a mixed pattern that reveals profound tensions between retributive and restorative justice paradigms. Countries with the highest success rates, such as the United States (23%),

[1] Daniel Pascoe, "Republic of Indonesia," in *Last Chance for Life: Clemency in Southeast Asian Death Penalty Cases* (Oxford University PressOxford, 2019), 159–92, https://doi.org/10.1093/oso/9780198809715.003.0007.
[2] R Hood and S Deva, "Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion," 2014, https://doi.org/10.1093/acprof:oso/9780199685776.001.0001.

typically operate within strong executive review systems that emphasize rehabilitative considerations and systemic error correction, reflecting a more restorative approach to justice.[3] Conversely, countries with rigid legal systems, such as Japan (less than 1%) demonstrate adherence to retributive justice principles that prioritize punishment certainty over mercy.[4] This variation illustrates how different constitutional frameworks strike a balance between executive discretion and judicial finality.[5]

Indonesia, with 448 death row inmates as of December 2022, presents a compelling case study of this theoretical tension. Its remarkably low clemency success rate (4.8%), compared to Malaysia (17%) and the Philippines before the abolition (32%)[6], reflects a system where retributive justice considerations predominate over restorative alternatives, with 60% of applications rejected and the remainder still pending.[7] This disparity becomes theoretically significant when viewed through the lens of executive discretion versus checks and balances. While Indonesia's legal framework grants the President constitutional authority to exercise mercy, the practical implementation suggests institutional constraints that limit this discretionary power. The contrast of data shows that of the 112 clemency requests for death row inmates in the last five years, only 6 requests were granted, reflecting a policy that tends to be retentionist even though there have been no executions since 2016.

In Indonesia, the term *clemency* is formally referred to as *grasi*. The authority to grant clemency is vested in the President under Article 14 paragraph (1) of the 1945 Constitution, and its exercise must take into account the consideration of the Supreme Court, as emphasized in several legal studies. Risal explains that clemency constitutes an act of forgiveness in the form of modification, mitigation, reduction, or annulment of criminal penalties imposed upon a convicted person, and this authority rests with the President.[8] Another study highlights that the Clemency Law - 2002, amendment 2010, defines clemency as the President's right to grant forgiveness through the alteration, mitigation, reduction, or annulment of penalties that have acquired permanent legal force.[9] Furthermore, research also indicates that although the Supreme Court provides legal considerations, such advice is not legally binding upon the President, but rather functions as a judicial safeguard to maintain the balance of governance.[10] In international discourse, the term *pardon* is often used interchangeably; however this study consistently employs the term *clemency* to better capture the broader notion of mercy, which includes commutation and remission rather than mere forgiveness, in accordance with the Indonesian legal framework.

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[3] Daniel Pascoe, "Singapore and Thailand: Explaining Differences in Death Penalty Clemency," 2016, 165–83, https://doi.org/10.1007/978-3-319-54942-2_12.

[4] Daniel Pascoe, "Last Chance for Life: Clemency in Southeast Asian Death Penalty Cases," 2019, https://doi.org/10.1093/OSO/9780198809715.001.0001.

[5] Putri Imaniar Setyaningrum and Setiyono, "Review of the Implementation of Clemency in the Indonesian Criminal Law System," *Journal of Humanities Social Science and Business (JHSSB)* 1, no. 1 (November 2021): 81–89, https://doi.org/10.55047/jhssb.v1i1.701.

[6] Pascoe, "Last Chance for Life: Clemency in Southeast Asian Death Penalty Cases."

[7] Daniel Pascoe and Andrew Novak, "Deadly Justice without Mercy in East Asia?," *International Journal of Comparative and Applied Criminal Justice* 46 (2020): 141–65, https://doi.org/10.1080/01924036.2020.1824873.

[8] Chaerul Risal, "Eksistensi Grasi Menurut Perspektif Hukum Pidana," *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 4, no. 2 (December 5, 2017): 96, https://doi.org/10.24252/jurisprudentie.v4i2.4055.

[9] Adrian Maramis, "Pemberian Grasi Dalam Ketentuan Perundang-Undangan Yang Berlaku Di Indonesia," *Lex Et Societatis* 5, no. 3 (2020): 248–53, https://doi.org/https://doi.org/10.35796/les.v7i7.26842.

[10] Deki Azhari and Qurrata Ayuni, "Inkonstitusionalitas Pembatasan Jangka Waktu Pengajuan Grasi Analisis Putusan Mahkamah Konstitusi Nomor 107/PUU-XIII/2015," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 3 (2025): 1826–35, https://doi.org/10.38035/jihhp.v5i3.3855.

The controversy over the death penalty in Indonesia continues to roll because it clashes with the principles of human rights guaranteed by the constitution. However, executions are still carried out with the argument of national legal sovereignty. Legal uncertainty in the clemency process creates a double impact: convicts experience an unclear fate for years, and the state faces criticism for inconsistent application of the law. The "death row phenomenon" has been recognized as a form of psychological torture in its own right, with studies showing symptoms of acute anxiety, depression, and post-traumatic stress disorder in prisoners awaiting clemency decisions[11]. In the international dimension, the execution of foreign nationals has sparked diplomatic tensions, as in the case of the Bali Nine, which resulted in the withdrawal of the Australian ambassador from Indonesia.[12] Furthermore, inconsistencies in the death penalty clemency process erode public trust in the justice system, especially when there are indications of non-legal considerations in clemency decisions, which ultimately undermine the legitimacy of the legal system as a whole.[13]

A comprehensive literature review on clemencies in Indonesia reveals a significant evolution from the Clemency Law of 1950 to the Clemency Law of 2002 (as amended in 2010), accompanied by crucial institutional changes. These changes includelimiting the time for filing a clemency to one year from the time the verdict becomes legally binding and eliminating the provision for filing a clemency twice, except under special conditions.[14] This legal transformation reflects Indonesia's ongoing efforts to systematize its clemency procedures within a more structured judicial framework. Comparative studies across Southeast Asia reveal dramatic variations in clemency practices, with Thailand demonstrating a clemency rate of up to 95% for death row inmates, in contrast to Indonesia's inconsistent clemency policy, whichremains heavily influenced by political dynamics.[15] In the domestic context of Indonesia, normative research has shown that convicted drug offenders face far greater obstacles in obtaining clemency than perpetrators of murder.[16] This disparity raises fundamental questions about equal treatment under law and the consistency of humanitarian considerations in clemency decisions.

Research identifies several key determinants in clemency decisions, including humanitarian considerations, political context, diplomatic pressure, and judicial factors such as dissenting opinions in court decisions or the presence of new mitigating evidence.[17] However, studies on the role of the Supreme Court reveal a concerning gap between institutional design and practice: although the law requires the Supreme Court to provide recommendations in the clemency process, empirical evidence shows that presidential

[11] Olga Hempel, "Death Row Phenomenon : A Fate Worse than Death : Torture on Death Row from Psychological and Legal Perspective" (University of Vienna, 2016).
[12] W. A. Maslov, "On the Foreign Practice of Applying the Death Penalty and Chemical Castration as Measures of Criminal Legal Impact," *Вестник Пермского Университета. Юридические Науки*, no. 4(58) (2022): 709–37, https://doi.org/10.17072/1995-4190-2022-58-709-736.
[13] Kara Sharkey, "Delay in Considering the Constitutionality of Inordinate Delay: The Death Row Phenomenon and the Eighth Amendment," *University of Pennsylvania Law Review* 161, no. 3 (2013): 861–96.
[14] Irlan Puluhulawa, "Grasi Dalam Kasus Narkotika Di Antara Kebijakan Keadilan Dan Upaya Penegakan Hukum," *Collegium Studiosum Journal* 7, no. 1 (June 30, 2024): 221–33, https://doi.org/10.56301/csj.v7i1.1331.
[15] Pascoe, "Republic of Indonesia."
[16] Puluhulawa, "Grasi Dalam Kasus Narkotika Di Antara Kebijakan Keadilan Dan Upaya Penegakan Hukum."
[17] Marina Zaloznaya, Jennifer Glanville, and W Reisinger, "Explaining Putin's Impunity: Public Sector Corruption and Political Trust in Russia," *Post-Soviet Affairs* 38 (2022): 386–409, https://doi.org/10.1080/1060586X.2022.2063633.

decisions are not always aligned with these recommendations, raising fundamental questions about the effectiveness of checks and balances mechanisms in Indonesia's clemency system.[18] Despite growing scholarly attention to capital punishment clemencies, three critical research gaps persist: the systemic impact of clemencies on justice principles within Indonesia's legal framework, the ethical dimensions underlying death sentence clemency decisions that have received minimal empirical exploration, and the absence of comprehensive analysis regarding clemency implications for victim recovery and family welfare as key criminal justice stakeholders. These gaps significantly hinder understanding of effectiveness and legitimacy of the clemency mechanism in Indonesia's justice system.

Current developments underscore the urgent need for research on clemency mechanisms in Indonesia. High-profile cases, such as Mary Jane Veloso, who has awaited a clemency decision for nearly a decade, exemplify the legal uncertainty plaguing the current system and its impact on convicts and their families.[19] The ongoing death penalty moratorium debate has gained momentum following the National Commission on Human Rights' recommendations to temporarily halt executions, supported by findings that 11 of 18 studied death penalty cases contained significant procedural flaws potentially resulting in unfair sentences.[20] Jurisprudential developments demonstrate evolving perspectives, notably Constitutional Court Decision Number 107/PUU-XIII/2015, which confirmed the death penalty's constitutionality while establishing conditions allowing sentence commutation if convicts demonstrate behavioral improvements over 10 years.[21] The 2023 Criminal Code introduces significant reforms through the "death penalty with probation" concept, providing 10-year rehabilitation opportunities for death row inmates before execution implementation. These domestic developments occur within a global trend toward death penalty abolition, with 112 countries having completely abolished capital punishment and 36 others implementing de facto moratoriums, positioning Indonesia among the minority of nations actively conducting executions.[22] This global context adds complexity to Indonesia's clemency decisions, particularly in terms of international diplomatic considerations and human rights obligations.

This study offers novelty by integrating dimensions of justice, ethics, and victim exclusion within the Indonesian clemency system, which distinguishes it from previous works. *Pascoe* demonstrates that clemency practices in East Asia are rarely utilized and function only as a limited mechanism for reducing death sentences, thereby framing justice merely as a legal formality without considering victims' perspectives or broader ethical concerns.[23] Pascoe and Manikis emphasize that victims often lack a role in clemency decision-

[18] Ary Muktian Syah, "Granting Clemency to Antasari Azhar as the Object of a State Administrative Law Dispute," *Indonesian State Law Review (ISLRev)*, 2023, https://doi.org/10.15294/islrev.v6i1.68233.
[19] Mohamad Fahmi Fiddin and Karli Karli, "Analysis of Legality Principle in the President's Authority to Suspend the Execution of Death Penalty Convict Mary Jane Veloso," *FOCUS* 4, no. 2 (July 2023): 185–92, https://doi.org/10.37010/fcs.v4i2.1334.
[20] Esther Gumboh, "The Death Penalty in Malawi: An Assessment against Regional and International Human-Rights Standards," *Southern African Public Law*, 2018, https://doi.org/10.25159/2522-6800/4874.
[21] Daniel Pascoe, "Clemency in Southeast Asian Death Penalty Cases," 2014, https://doi.org/10.2139/SSRN.2459414.
[22] P Hudson, "Does the Death Row Phenomenon Violate a Prisoner's Human Rights under International Law?," *European Journal of International Law* 11, no. 4 (2000), https://doi.org/10.1093/ejil/11.4.833.
[23] Daniel Pascoe and Andrew Novak, "Deadly Justice without Mercy in East Asia?," *International Journal of Comparative and Applied Criminal Justice* 46, no. 2 (April 2022): 141–65, https://doi.org/10.1080/01924036.2020.1824873.

making, even though their participation could open space for restorative justice, thus making this study significant in critiquing the absence of a victim's perspective in Indonesia's clemency law.[24] Meanwhile, Mulyana, through the theory of *Dignified Justice*, argues that the death penalty in Indonesia is problematic not only from a legal-formal perspective but also when assessed against Pancasila's ethical values, highlighting the need for a normative framework rooted in local philosophy.[25] Accordingly, this article differs from Pascoe, who situates clemency underutilization within the broader East Asian context; from Pascoe and Manikis, who focus mainly on normative victim participation; and from Mulyana, who primarily addresses the legitimacy of capital punishment. Instead, this study provides a synthesis by explicitly examining the underutilization of clemency in Indonesia through a combined lens of justice, ethics, and victim exclusion.

This study has three explicit objectives: first, to examine the dimensions of justice within the Indonesian clemency system; second, to analyze the ethical dimensions and theoretical framework underlying clemency in the Indonesian context; and third, to explore the issue of victim exclusion in Indonesia's clemency law. The findings are expected to provide evidence-based recommendations for improving clemency regulations and mechanisms, aiming forgreater transparency and accountability. These findings can serve as a reference for other countries with similar legal systems seeking to balance executive clemency powers with democratic governance standards. This study makes a significant contribution to the international academic community in several ways. First, it provides empirical insights into clemency practices within a developing democracy that maintains the death penalty, offering valuable comparative data for scholars studying criminal justice systems in transitional societies. Second, the study's methodology for analyzing the intersection of legal, ethical, and victim-centered perspectives in clemency decisions presents a replicable framework for researchers examining similar issues in other jurisdictions. Third, the findings regarding the psychological impact of prolonged clemency processes on both death row inmates and victims' families contribute to the growing international discourse on humane treatment in capital punishment systems.

Method

This study aims to identify the paradoxical nature of presidential clemency implementation within Indonesia's death penalty system and examine the gaps between legal frameworks and practical enforcement. The study employed a normative juridical methodology through three complementary approaches: a statutory approach for systematic examination of legislation, a conceptual approach for analyzing theoretical frameworks underlying clemency mechanisms, and comparative legal analysis for understanding clemency practices across different jurisdictions. The data examined comprised secondary sources, composed of constitutional provisions, national legislation, court decisions, government regulations, academic literature, expert analyses, official reports, and comparative studies from other legal systems.

[24] Pascoe and Novak.
[25] Pascoe and Novak.

Data collection was conducted through systematic searches of both international and Indonesian legal databases. Constitutional and legislative documents were obtained from the official Legal Documentation and Information Network (JDIH) maintained by the Indonesian government, and accessible at https://jdihn.go.id, which provides authenticated versions of all national laws and regulations. Court decisions were retrieved from the Supreme Court's official database (https://putusan.mahkamahagung.go.id) and Constitutional Court records (https://www.mahkamahkonstitusi.go.id). Academic literature was gathered through international databases, including Scopus, Web of Science, JSTOR, HeinOnline, and Westlaw, while Indonesian scholarly works were accessed through national academic repositories. Government reports and policy documents were obtained directly from the official websites of relevant ministries and institutional archives. The collected data was analyzed using doctrinal legal analysis, examining the internal consistency of legal norms, identifying discrepancies between statutory provisions and implementation practices, and comparing Indonesia's clemency framework with international standards and practices in similar jurisdictions.

Discussion

1. Dimensions of Justice in the Indonesian Clemency System.

The dimensions of justice within the Indonesian clemency system can be examined through various aspects of the legal system, gender disparities, and external sociopolitical influences. From the perspective of the justice system and access, clemency pleas serve as an important archive of judicial failures, exposing breakdowns in legal processes and highlighting the pursuit of fairness, rehabilitation, and redemption for individuals whose lives have been devastated by violence, neglect, and systemic injustice.[26] Clemency also operates as a final safeguard against wrongful convictions and excessive sentences by allowing courts to reassess aggravating and mitigating circumstances that may have been overlooked during trial proceedings. This mechanism, therefore, provides the last opportunity to prevent miscarriages of justice arising from biases based on gender, race, or other social factors.[27]

Another dimension relates to gender disparities in the forgiveness process. Prosecutors often display greater reluctance in extending clemency to younger women, while appellate court decisions tend to consider factors such as gender stereotypes and perceived moral character. These dynamics highlight the persistence of cultural and confrontational biases that significantly disadvantage female petitioners. As a result, clemency petitions filed by women are frequently undermined by biased reasoning and unequal evidentiary standards, thereby reinforcing retributive approaches in the criminal justice system.[28] In addition to systemic and gender-related issues, external factors exert substantial influence on clemency decisions. The politicization of clemency has become increasingly evident, with capital

[26] Jingfeng Xia, "A Comparison of Subject and Institutional Repositories in Self-Archiving Practices," *The Journal of Academic Librarianship* 34, no. 6 (2008): 489–95, https://doi.org/https://doi.org/10.1016/j.acalib.2008.09.016.
[27] Carol Jacobsen and Lora Bex Lempert, "Institutional Disparities: Considerations of Gender in the Commutation Process for Incarcerated Women," *Signs* 39, no. 1 (2013): 265 – 289, https://doi.org/10.1086/670772.
[28] Jacobsen and Lempert.

punishment cases often exploited to advance political agendas or to project a tough-on-crime image, even at the expense of humanitarian considerations. Likewise, socio-demographic factors, including race, ethnicity, and economic status, have been shown to correlate with clemency outcomes, reflecting broader patterns of inequality and structural discrimination within the justice system.[29]

Indonesia's clemency framework, governed by the Clemency Law of 2002 (as amended in 2010), presents a fundamental contradiction between constitutional ideals and practical implementation. While designed as a corrective mechanism for judicial system failures, the country's remarkably low 4.8% clemency success rate demonstrates a predominantly punitive approach that substantially weakens the restorative capacity inherent in mercy-based judicial remedies. A comparative analysis across Southeast Asia reveals significant variations in clemency practices and outcomes. Thailand maintains an exceptional 95% success rate, primarily through its constitutional monarchy framework, where royal clemency decisions possess deep cultural authority grounded in Buddhist philosophical traditions. These traditions emphasize "karma" and spiritual redemption over purely punitive measures, creating institutional support for mercy in judicial proceedings.[30] Malaysia demonstrates moderate success with a 17% clemency rate within its federal structure, where the Yang di-Pertuan Agong exercises clemency powers through consultation with state Clemencies Boards.[31] This system incorporates Islamic principles of divine mercy ("rahma") alongside inherited British common law traditions that historically favored rehabilitative justice approaches, creating a more balanced framework for clemency consideration. The Philippines, before abolishing capital punishment, achieved a 32% clemency success rate under its presidential system, which provided substantial executive discretion in mercy decisions. This relatively higher rate reflected Catholic social doctrine, which emphasizes forgiveness and redemption, combined with civil law traditions inherited from Spanish colonialism that prioritize individual rehabilitation over state retribution. These theological and juridical foundations created institutional mechanisms supporting mercy considerations in capital cases.[32]

Indonesia's restrictive approach to clemency is a result of multiple juridical and political factors. The persistent influence of Dutch colonial legal frameworks emphasized rigid state authority and legal formalism while minimizing discretionary mercy. The New Order regime's authoritarian legacy institutionalized preferences for legal certainty and state power over individual clemency considerations, creating systematic barriers to mercy.[33] Contemporary "war on drugs" policies have established systematic discrimination in clemency decisions based primarily on offense categories rather than individualized circumstances or

[29] Talia Roitberg Harmon, James R. Acker, and Craig Rivera, "The Power to Be Lenient: Examining New York Governors' Capital Case Clemency Decisions," *Justice Quarterly* 27, no. 5 (2010): 742–64, https://doi.org/10.1080/07418820903317453.
[30] Daniel Pascoe, "An Investigation of Clemency and Pardons in Death Penalty Cases in Southeast Asia from 1975-2009," 2013; Pascoe, "Last Chance for Life: Clemency in Southeast Asian Death Penalty Cases"; Pascoe, "Singapore and Thailand: Explaining Differences in Death Penalty Clemency," 2016.
[31] Daniel Pascoe, "Singapore and Thailand: Explaining Differences in Death Penalty Clemency," in *Comparative Criminology in Asia* (Cham: Springer International Publishing, 2017), 165–83, https://doi.org/10.1007/978-3-319-54942-2_12.
[32] Pascoe, "Last Chance for Life: Clemency in Southeast Asian Death Penalty Cases."
[33] Pascoe.

rehabilitative potential. This punitive orientation manifests clearly in clemency statistics, where drug offense convicts face significantly lower clemency rates compared to murder convicts. Such categorical discrimination contradicts fundamental principles of individualized justice assessment that should govern mercy decisions, revealing how Indonesia's clemency system functions as an extension of punitive state policy rather than a genuine corrective mechanism for judicial failures.[34] The existing procedural framework, despite providing certain protections, including automatic suspension of execution during clemency review, fundamentally lacks substantive decision-making criteria.[35] This absence of clear evaluative guidelines creates what legal scholars identify as systematic failures in the administration of justice.[36] Clemency requests frequently reveal underlying problems, including procedural violations, inadequate legal representation, racial or ethnic prejudice, and socio-economic discrimination. Yet, they rarely receive a genuine assessment based on rehabilitation evidence or documentation of legal error.[37] This procedural vacuum enables systematic discrimination based on nationality, with foreign nationals facing disproportionately low clemency success rates regardless of individual circumstances. Crime-type discrimination similarly undermines clemency's corrective function, as decisions appear to be predetermined by offense categories rather than a careful evaluation of specific case factors, including procedural fairness, defendant rehabilitation, and victim impact considerations.[38]

The socio-economic dimension compounds these systematic failures significantly. Wealthy defendants with sophisticated legal representation navigate clemency processes more successfully than indigent defendants relying on overworked public defenders. This economic stratification in clemency outcomes contradicts constitutional principles of equal justice and demonstrates how Indonesia's mercy system perpetuates rather than corrects broader inequalities within the criminal justice framework. Such disparities reveal fundamental flaws in the design and implementation of the clemency system. Rather than serving as an equalizing mechanism that addresses systemic disadvantages faced by vulnerable populations, the current system reinforces existing hierarchies and discriminatory practices embedded throughout Indonesia's justice system. The stark disconnect between constitutional principles and clemency practice undermines the legitimacy of Indonesia's judicial system. Constitutional guarantees of equal treatment and individual dignity become meaningless when clemency decisions systematically favor certain defendants based on their economic status, nationality, or offense type rather than individualized assessment of circumstances, rehabilitation potential, or procedural fairness. This contradiction is particularly problematic given clemency's constitutional role as a final safeguard against judicial errors and excessive punishment. When clemency systems fail to function effectively, they eliminate crucial protections for defendants who may have experienced procedural

[34] Pascoe, "Singapore and Thailand: Explaining Differences in Death Penalty Clemency," 2017.
[35] Austin Sarat, "Mercy, Clemency, and Capital Punishment: Two Accounts," 2005.
[36] Cathleen Burnett, "Justice Denied: Clemency Appeals in Death Penalty Cases," 2002, https://doi.org/10.2307/1556513.
[37] Sharkey, "Delay in Considering the Constitutionality of Inordinate Delay: The Death Row Phenomenon and the Eighth Amendment."
[38] Pascoe and Novak, "Deadly Justice without Mercy in East Asia?," 2020.

violations, inadequate representation, or other systemic failures during their original proceedings.

Indonesia's clemency system requires comprehensive reform to align practice with constitutional ideals and international standards for mercy-based judicial remedies. Essential reforms include establishing clear substantive criteria for clemency evaluation that prioritize individual circumstances over categorical determinations based on offense types. The system must eliminate systematic discrimination based on crime categories, ensuring that all clemency petitions receive equal consideration regardless of the underlying offense. This requires developing transparent evaluation criteria that assess factors such as procedural fairness during original proceedings, evidence of rehabilitation, victim impact statements, and broader circumstances surrounding individual cases. Ensuring adequate legal representation throughout clemency proceedings represents another critical reform priority.[39] The current system's reliance on overworked public defenders creates inherent disadvantages for indigent defendants, thereby contradicting the constitutional principle of equal justice. Comprehensive legal representation during clemency proceedings should include access to experienced attorneys, adequate resources for case preparation, and sufficient time for the thorough development of the petition.[40] Creating transparent review processes that prioritize individual justice over political considerations requires institutional reforms that insulate clemency decisions from political pressure while maintaining appropriate executive oversight. This balance requires clear procedural guidelines, documented decision-making criteria, and public accountability mechanisms that ensure clemency decisions reflect careful evaluation of individual circumstances rather than political expedience. Without fundamental structural reforms, Indonesia's clemency mechanism will continue operating as an extension of punitive state power rather than fulfilling its essential constitutional function as a safeguard against judicial failures and a pathway toward restorative justice outcomes. The current system's 4.8% success rate reflects not rigorous standards for mercy, but systematic failures that undermine constitutional principles and international human rights obligations. Meaningful reform requires political commitment to transforming clemency from a largely symbolic process into a genuine mechanism for correcting judicial failures and promoting restorative justice principles within Indonesia's legal framework.[41]

2. Ethical Dimensions and Theoretical Framework in the Indonesian Context.

The ethical dimensions of clemency decisions can be analyzed through two major aspects, namely narration and framing, as well as moral considerations. From the perspective of narration, clemency is often framed within the broader narrative of forgiveness. As revealed by Canossini, three central justifications serve to validate clemency decisions: the individual's

[39] Ian Edwards, "An Ambiguous Participant: The Crime Victim and Criminal Justice Decision-Making," *British Journal of Criminology* 44 (2004): 967–82, https://doi.org/10.1093/BJC/AZH050.
[40] Sarat, "Mercy, Clemency, and Capital Punishment: Two Accounts."
[41] Pascoe, "Republic of Indonesia"; Pascoe, "An Investigation of Clemency and Pardons in Death Penalty Cases in Southeast Asia from 1975-2009"; Pascoe, "Singapore and Thailand: Explaining Differences in Death Penalty Clemency," 2016.

deservingness, the benefits for the community, and the ideals of justice. [42] This framing emphasizes that clemency is not merely a discretionary act, but one deeply rooted in the normative foundations of fairness and the public good. In terms of moral considerations, clemency decisions raise significant ethical issues. Discussions of clemency are considered to challenge excessive punitiveness by narrowing the social distance between individuals with a criminal history and law-abiding society, while simultaneously advocating for moderation in punishment and penal reform. [43] Furthermore, the role of clemency petitions can be seen as a form of memorialization of injustice. As Xia notes, while clemency reflects the importance of religion, family, and charitable acts in shaping American perspectives on remorse, redemption, and mercy, it should also be understood as a historical record of systemic failures within the death penalty regime, including the tragic circumstances of lives shattered by poverty, abuse, and neglect. [44]

The ethical foundations underpinning Indonesia's clemency system reveal a profound tension between competing justice paradigms, with the current legal framework demonstrating an overwhelming bias toward retributive rather than restorative approaches. While the Clemency Law of 2002 (as amended in 2010) ostensibly attempts to balance humanitarian considerations with punitive demands, its practical implementation consistently favors retributive justice principles that undermine the inherent moral purpose of clemency. Indonesia's clemency legislation theoretically incorporates restorative elements through its explicit emphasis on "essential justice and human rights" alongside concepts of "forgiveness" and mercy. These provisions align with Canossini's tripartite framework, which identifies three fundamental justifications for clemency: individual worthiness assessment, broader community benefits, and the advancement of justice ideals. However, the conspicuous absence of substantive criteria for evaluating these philosophical elements renders them essentially symbolic rather than operationally meaningful in actual clemency determinations.[45]

The dominance of retributive paradigms manifests through several critical deficiencies within Indonesia's clemency framework. First, the systematic exclusion of rehabilitation evidence from clemency considerations directly contradicts the correctional system's theoretical commitment to social reintegration and offender transformation.[46] This exclusion prevents meaningful evaluation of individual change, personal growth, or demonstrated commitment to societal reconciliation—factors that should be central to mercy-based decisions. Second, the disproportionate influence of public sentiment and political considerations over individualized assessment undermines the fundamental purpose of clemency as a corrective mechanism for legal system failures. When clemency decisions prioritize political expediency or popular opinion over careful evaluation of individual circumstances, the system abandons its constitutional role as a safeguard against injustice. It

[42] Erika Canossini, "Justifying Leniency at a Time of Punitiveness: Federal Clemency Narratives in the United States," *Punishment and Society* 25, no. 5 (2023): 1334–52, https://doi.org/10.1177/14624745231168780.
[43] Canossini.
[44] Xia, "A Comparison of Subject and Institutional Repositories in Self-Archiving Practices."
[45] Hempel, "Death Row Phenomenon : A Fate Worse than Death : Torture on Death Row from Psychological and Legal Perspective."
[46] Kerstin Braun, *Victim Participation Rights*, Palgrave Studies in Victims and Victimology (Cham: Springer International Publishing, 2019), https://doi.org/10.1007/978-3-030-04546-3.

becomes merely another arena for political calculation.[47] Third, the absence of proportionality analysis in clemency decisions represents a fundamental ethical failure.[48] The severity of imposed punishment relative to specific crime circumstances, offender culpability, and mitigating factors receives minimal systematic consideration.[49] This approach treats clemency as a binary political decision rather than a nuanced moral evaluation requiring careful balancing of competing ethical demands.[50]

From a restorative justice perspective, Indonesia's clemency system fails catastrophically to fulfil its potential role in bridging "the social distance between individuals with criminal history and law-abiding society."[51] Rather than facilitating healing processes that could benefit both offenders and broader communities, the system's obsession with finality and punishment prevents the development of reconciliation mechanisms that represent clemency's highest ethical purpose.[52] The ethical implications become particularly stark when examining the treatment of vulnerable populations within Indonesia's clemency framework. While Hempel demonstrated that governors showed a greater inclination to grant clemency to young offenders and cases involving significant mitigating factors, Indonesia's system exhibits no comparable nuanced approach to vulnerable defendants. The systematic failure to consider age, mental health status, intellectual capacity, or social vulnerability as meaningful factors reflects an ethical framework that prioritizes abstract legal principles over concrete human circumstances, which require individualized moral assessment.[53] This ethical rigidity particularly disadvantages defendants from marginalized communities, foreign nationals without sophisticated legal representation, and individuals whose crimes occurred within contexts of social disadvantage, mental illness, or coercive circumstances. By failing to account for these vulnerability factors, Indonesia's clemency system perpetuates rather than corrects systemic inequalities within the broader criminal justice framework[54].

The current system's ethical shortcomings extend beyond individual cases to undermine public confidence in the justice system. When clemency operates primarily as an extension of punitive state power rather than a genuine mechanism for moral correction, it fails to serve its essential constitutional function as a final safeguard against irreversible injustice.[55] Reform of Indonesia's clemency system requires a fundamental ethical reorientation toward restorative principles that prioritize individual circumstances, evidence-based rehabilitation, and community healing over political considerations and abstract retributive demands. Only

[47] Marie Manikis, "International and Comparative Legal Perspectives on Victim Participation in Criminal Justice," 2020, https://doi.org/10.1093/acrefore/9780190264079.013.604.
[48] Pascoe, "An Investigation of Clemency and Pardons in Death Penalty Cases in Southeast Asia from 1975-2009."
[49] Sarat, "Mercy, Clemency, and Capital Punishment: Two Accounts."
[50] Pascoe, "Singapore and Thailand: Explaining Differences in Death Penalty Clemency," 2016.
[51] Julian Roberts and Loretta Stalans, "Restorative Sentencing: Exploring the Views of the Public," *Social Justice Research* 17 (2004): 315–34, https://doi.org/10.1023/B:SORE.0000041296.99271.52.
[52] M Wenzel et al., "Retributive and Restorative Justice," *Law and Human Behavior* 32 (2008): 375–89, https://doi.org/10.1007/S10979-007-9116-6.
[53] Hempel, "Death Row Phenomenon : A Fate Worse than Death : Torture on Death Row from Psychological and Legal Perspective."
[54] Mugambi Jouet, "Death Penalty Abolitionism From the Enlightenment to Modernity," *SSRN Electronic Journal*, 2020, https://doi.org/10.2139/ssrn.3733016.
[55] Burnett, "Justice Denied: Clemency Appeals in Death Penalty Cases."

through such transformation can clemency fulfil its highest moral purpose as an instrument of justice, rather than mere state power.[56]

3. Victim Exclusion in Indonesian Clemency Law

Legal developments reveal a steady decline in the use of clemency, particularly in cases involving capital punishment. Xia emphasizes that clemency in capital cases has now become exceedingly rare. This phenomenon is primarily attributed to the rejection of rehabilitation as the guiding philosophy of criminal sentencing, coupled with the growing politicization of crime and punishment issues since the 1960's.[57] In a similar vein, Harmon et al. explain that the infrequent exercise of executive clemency in contemporary capital cases is more closely related to significant differences in death penalty laws and their administration across different eras, rather than to a diminished role of mercy. [58] This global trend is also reflected in Indonesia, where the clemency framework remains primarily focused on the offender, thereby excluding victims from meaningful participation and perpetuating a critical gap in achieving substantive justice.

The most significant gap in Indonesia's clemency system lies in the complete exclusion of victims and their families from the clemency process.[59] Unlike international best practices that increasingly recognize victim participation as essential to restorative justice, the Clemency Law of 2002 (as amended in 2010) contain no provisions for victim notification, consultation, or involvement in clemency proceedings.[60] This exclusion represents a fundamental departure from contemporary restorative justice principles that emphasize healing for all parties affected by crime. International frameworks increasingly mandate victim notification of clemency applications, providing opportunities for impact statements and meaningful participation in mercy determinations. Such involvement enables victims to express their perspectives on rehabilitation, forgiveness, and appropriate resolution while ensuring their voices influence decisions that directly affect their sense of justice and closure.[61]

The absence of victim participation in Indonesia's clemency system creates several critical problems. First, it prevents the development of genuine reconciliation processes between offenders and those they have harmed. Second, it denies victims agency to determine whether mercy serves their interests or undermines their sense of justice. Third, it eliminates valuable information about victim preferences regarding punishment versus rehabilitation that could inform more nuanced clemency decisions. Furthermore, this exclusion contradicts Indonesia's broader legal commitment to protecting victims' rights .[62] The systematic denial

[56] Irlan Puluhulawa, "Granting Clemency To Narcotics Convicts: Overview From The Political Perspective Of Indonesian Criminal Law," *Jurnal Legalitas* 14, no. 2 (October 31, 2021): 107–27, https://doi.org/10.33756/jelta.v14i2.11147.
[57] Xia, "A Comparison of Subject and Institutional Repositories in Self-Archiving Practices."
[58] Harmon, Acker, and Rivera, "The Power to Be Lenient: Examining New York Governors' Capital Case Clemency Decisions."
[59] Daniel Pascoe and Marie Manikis, "Making Sense of the Victim's Role in Clemency Decision Making," *International Review of Victimology* 26 (2018): 28–33, https://doi.org/10.1177/0269758018805567.
[60] "International and Comparative Law Quarterly," *International and Comparative Law Quarterly*, 2020, https://doi.org/10.1017/S0020589320000111.
[61] Alessandra Cuppini, "The Participation of Victims in International Criminal Proceedings," 2022, https://doi.org/10.4324/9781003215448.
[62] Kirsten Bowman, "The Politics of Victim Participation in the International Criminal Court," 2020, 142–60, https://doi.org/10.4324/9780429287565-9.

of victim participation in clemency proceedings represents a missed opportunity to transform punishment into healing, undermining clemency's potential as a restorative mechanism that serves all stakeholders rather than merely expressing state prerogatives.[63] This exclusion creates multiple justice deficits: Informational Justice Deficit - victims remain uninformed about clemency applications, decisions, and their rationales, creating ongoing uncertainty about case resolution; Participatory Justice Deficit, victims cannot present impact statements, express views on clemency appropriateness, or contribute to the assessment of offender rehabilitation; Procedural Justice Deficit, the absence of victim voices undermines the legitimacy of clemency decisions in the eyes of those most directly affected by the crimes.[64]

Comparative international analysis reveals that Indonesia's systematic exclusion of victims from clemency proceedings positions the country significantly behind evolving global standards in restorative justice implementation.[65] This exclusion represents not merely a procedural oversight but a fundamental philosophical divergence from contemporary approaches to criminal justice, which prioritize healing, reconciliation, and comprehensive stakeholder engagement in determining appropriate responses to serious crimes.[66] The United States' clemency system has increasingly incorporated comprehensive victim impact statements into clemency proceedings, representing a paradigmatic shift toward acknowledging victims' central role in justice processes.[67] These statements allow families to articulate their perspectives on mercy, rehabilitation, and appropriate resolution of cases with unprecedented depth and nuance. Victims can detail not only the immediate impact of crimes but also their ongoing consequences, their observations of offender rehabilitation efforts, and their personal views on whether mercy serves broader justice interests.[68] These statements provide crucial emotional and factual context that enables more informed clemency decisions while acknowledging victims' fundamental stake in justice outcomes. The process acknowledges that victims possess unique insights into the genuine nature of offender transformation, having firsthand experienced the consequences of criminal behavior and often maintained awareness of rehabilitation progress through victim services programs.[69]

European clemency systems demonstrate even more sophisticated victim consultation mechanisms that integrate seamlessly with broader restorative justice philosophies.[70] Several jurisdictions mandate formal notification procedures ensuring victims receive timely information about clemency applications affecting their cases, treating such notification as a fundamental procedural right rather than an administrative courtesy. Some systems establish structured consultation processes that allow victims to express preferences regarding mercy decisions, participate in mediation sessions with offenders, or engage in facilitated dialogue

[63] Huzela Mykhailo et al., "The Victimity of Subjects of Criminal Processes and the Prevention of Criminal Offenses against Them," *Novum Jus*, 2023, https://doi.org/10.14718/novumjus.2023.17.1.1.
[64] Edna Erez and Pamela Tontodonato, "Victim Participation in Sentencing and Satisfaction with Justice," *Justice Quarterly* 9 (1992): 393–417, https://doi.org/10.1080/07418829200091451.
[65] Manikis, "International and Comparative Legal Perspectives on Victim Participation in Criminal Justice."
[66] Bowman, "The Politics of Victim Participation in the International Criminal Court."
[67] Edwards, "An Ambiguous Participant: The Crime Victim and Criminal Justice Decision-Making."
[68] Pascoe, "An Investigation of Clemency and Pardons in Death Penalty Cases in Southeast Asia from 1975-2009."
[69] Braun, *Victim Participation Rights*.
[70] Manikis, "International and Comparative Legal Perspectives on Victim Participation in Criminal Justice."

about rehabilitation progress and community reintegration concerns. These mechanisms recognize that clemency decisions affect not only offenders but entire networks of individuals whose lives have been fundamentally altered by criminal acts.[71] Germany's clemency system, for instance, incorporates victim conferences where family members can engage directly with clemency review boards, presenting their perspectives on appropriate outcomes while receiving information about offender rehabilitation programs.[72] These conferences often reveal complex victim preferences that transcend simple support or opposition to clemency, including conditional approval based on specific reintegration requirements or community service obligations. France has developed similar mechanisms that allow victims to participate in clemency review processes through written submissions and, in some cases, direct consultation with clemency committees.[73]

Even within Southeast Asia, neighboring countries have demonstrated greater sensitivity to victim perspectives in clemency processes, suggesting that cultural or regional factors need not preclude victim inclusion. The Philippines, prior to capital punishment abolition, maintained informal channels allowing victim input into mercy determinations. These mechanisms, although not legally mandated, recognized victims' moral authority to directly influence decisions about cases that affect their lives and provided pathways for expressing forgiveness, opposition, or conditional support for clemency based on demonstrated offender transformation. Thailand's clemency system, though still developing, is increasingly acknowledging victim perspectives through Buddhist-influenced reconciliation processes that emphasize healing and community restoration. These approaches demonstrate that Asian cultural values can complement rather than conflict with victim-inclusive clemency practices.

The juridical explanation for Indonesia's exclusion stems from deeply embedded civil law traditions inherited from Dutch colonial legal frameworks. This tradition primarily conceptualizes criminal offenses as violations against state authority rather than as harms inflicted upon individual victims. Under this paradigm, the state assumes exclusive responsibility for prosecuting crimes and determining punishments, effectively displacing victims from central roles in justice administration. This conceptualization views crime as an abstract offense against social order, rather than a concrete harm that requires an individualized response and healing. The state becomes the sole injured party, with victims reduced to mere witnesses or sources of evidence rather than stakeholders with legitimate interests in case resolution. Indonesia's constitutional framework positions clemency as an executive prerogative rather than a judicial or quasi-judicial process requiring comprehensive fact-finding and stakeholder consultation. Article 14 of the 1945 Constitution grants the President broad discretionary authority over clemency decisions, emphasizing political discretion over procedural thoroughness. This executive model creates structural barriers to victim participation that would complicate streamlined presidential decision-making processes. The emphasis on efficiency and executive autonomy inherently conflicts with more

[71] Braun, *Victim Participation Rights*.
[72] Manikis, "International and Comparative Legal Perspectives on Victim Participation in Criminal Justice."
[73] Bowman, "The Politics of Victim Participation in the International Criminal Court."

deliberative, consultative approaches that would incorporate victim perspectives into clemency determinations.[74]

The psychological consequences of systematic victim exclusion extend far beyond mere procedural concerns, creating what scholars term "secondary victimization through exclusion." Victims and their families experience profound alienation when their suffering appears irrelevant to crucial decisions affecting their cases. This exclusion communicates that their perspectives, healing needs, and preferences regarding mercy carry no weight in determining outcomes that fundamentally concern their sense of justice, closure, and safety. Research in victimology demonstrates that procedural exclusion can produce trauma responses comparable to those experienced during initial victimization. Families report feeling re-victimized by systems that treat them as irrelevant to processes determining the fate of those who harmed them.[75] Moreover, this exclusion prevents the development of meaningful restorative processes that could facilitate genuine healing and reconciliation between offenders, victims, and broader communities. International literature on victim-offender reconciliation programs demonstrates that structured dialogue opportunities can produce profound healing benefits for all parties when properly facilitated. Victims often report increased closure, reduced fear, and a greater sense of agency when permitted to engage with offenders who have demonstrated genuine remorse and rehabilitation. These interactions can transform relationships from adversarial to collaborative, with victims becoming advocates for appropriate reintegration rather than permanent punishment.[76]

The absence of such mechanisms in Indonesia's clemency system represents a significant missed opportunity to transform punishment into healing, perpetuating adversarial rather than restorative approaches to justice administration. Reform efforts should prioritize establishing formal victim notification requirements, consultation mechanisms, and optional participation opportunities that respect victim autonomy while enabling more comprehensive, humane clemency determinations that serve all stakeholders rather than merely expressing executive prerogatives. These reforms should include mandatory victim notification systems, structured consultation processes, and optional victim-offender dialogue programs that acknowledge the complex needs and preferences of those most directly affected by serious crimes. Such changes would position Indonesia as a regional leader in progressive clemency practices while honoring both traditional Indonesian values of reconciliation and contemporary international standards of victim rights recognition.[77]

The theoretical framework surrounding death penalty clemencies encompasses several interconnected approaches that illuminate different aspects of executive clemency. At the foundation lies the tension between retributive and restorative justice theories. Retributive

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[74] R Holder and Elizabeth Englezos, "Victim Participation in Criminal Justice: A Quantitative Systematic and Critical Literature Review," *International Review of Victimology* 30 (2023): 25–49, https://doi.org/10.1177/02697580231151207.
[75] C Stahn, Héctor Olásolo, and K Gibson, "Participation of Victims in Pre-Trial Proceedings of the ICC," *Journal of International Criminal Justice* 4 (2006): 219–38, https://doi.org/10.1093/JICJ/MQI089.
[76] Juan-Pablo Pérez-León-Acevedo, "Assessing Victim Participation during Sentencing at the International Criminal Court," *Journal of International Criminal Justice*, 2019, https://doi.org/10.1093/JICJ/MQZ021.
[77] Megan Alderden and L Long, "Sexual Assault Victim Participation in Police Investigations and Prosecution," *Violence and Victims* 31 (2016): 819–36, https://doi.org/10.1891/0886-6708.VV-D-14-00103.

justice emphasizes punishment as a deserved consequence for wrongdoing, viewing the death penalty as proportional retribution for heinous crimes. Conversely, restorative justice prioritizes healing, rehabilitation, and addressing the broader harm caused by crime. Clemencies represent a manifestation of restorative principles operating within a predominantly retributive system, offering pathways to redemption and second chances. Constitutional theory provides the legal framework for presidential clemency authority, grounding this power in executive prerogative and constitutional mandate. This perspective positions clemencies as essential checks and balances within the judicial system, allowing executive intervention when legal processes may produce unjust outcomes. The clemency power represents a form of constitutional sovereignty, legitimizing presidential discretion in matters of justice and mercy. Criminal law policy theory expands the understanding of clemencies beyond pure justice considerations. This framework recognizes that effective penal policy must integrate multiple factors including humanitarian concerns, political stability, and the maintenance of social order .

Clemencies serve as policy instruments that can address systemic inequities, correct procedural errors, or respond to evolving social values regarding punishment. Clemency theory conceptualizes forgiveness as a corrective mechanism against rigid judicial structures. This approach acknowledges that formal legal processes, while necessary, cannot capture every relevant circumstance or consideration. Clemency provides essential flexibility, allowing decision-makers to weigh factors such as genuine rehabilitation, extraordinary personal circumstances, procedural injustices, or changed social understanding of particular crimes.Together, these theoretical perspectives demonstrate that death penalty clemency operates at the intersection of law, morality, policy, and governance, serving multiple functions beyond simple mercy.[78] The theory of proportionality of punishment establishes a fundamental principle that criminal penalties should correspond appropriately to the severity of the offense committed. This concept serves as a crucial evaluative framework for determining whether a particular punishment fits the gravity of the crime, ensuring that neither excessive nor inadequate sanctions are imposed. Proportionality theory operates on the premise that justice requires a balanced relationship between wrongdoing and consequences. Minor offenses should receive lighter penalties, while serious crimes warrant more severe punishment. This principle helps prevent arbitrary or excessive sentencing that could constitute cruel and unusual punishment. In capital punishment cases, proportionality theory becomes particularly significant as a basis for clemency applications. Legal advocates frequently argue that the death penalty represents a disproportionate response to certain crimes, especially when compared to the sentences received by co-defendants or similar cases. Courts and clemency boards evaluate whether execution is proportionate to the specific circumstances, considering factors such as the defendant's role, mental state, background, and the particular nature of the offense committed.[79]

[78] Sarat, "Mercy, Clemency, and Capital Punishment: Two Accounts."
[79] William Cala Calvet, "El Principio De Proporcionalidad En La Justicia Ordinaria Y Transicional," 2019.

Conclusion

Indonesia's clemency system embodies a fundamental constitutional contradiction that demands immediate normative realignment. The legal framework, governed by the Clemency Law of 2002 (as amended in 2010), establishes theoretical mechanisms for executive mercy while simultaneously creating procedural barriers that render clemency virtually inaccessible, as evidenced by the stark 4.8% success rate, which places Indonesia among the most restrictive clemency jurisdictions globally. This paradox reveals a deeper tension between humanitarian constitutional values and punitive policy implementation, where systematic discrimination based on crime type rather than individual circumstances contradicts principles of justice. At the same time, the complete exclusion of victims from the clemency process creates what this study terms "secondary victimization through exclusion." The system's retributive orientation undermines both the legitimacy of Indonesia's criminal justice system and the restorative potential inherent in executive clemency mechanisms. This study offers significant theoretical and empirical insights to international clemency scholarship by demonstrating how clemency systems in transitional democracies exhibit distinct patterns of constitutional contradiction. These patterns arise from the interaction of colonial legal legacies with contemporary political dynamics, creating systematic discrimination in clemency decisions. The study establishes victim exclusion as a critical analytical framework for evaluating the legitimicay of clemency system, extending beyond procedural concerns to encompass psychological and restorative justice dimensions, while providing a replicable methodological framework for analyzing clemency systems in retentionist developing democracies. The empirical findings necessitate comprehensive legal reform across four critical dimensions: procedural transparency through clear substantive criteria and mandatory publication of decision rationales, victim integration through legislative amendments enabling notification procedures and impact statement opportunities, anti-discrimination safeguards eliminating systematic disparities through standardized assessment protocols, and constitutional realignment harmonizing clemency practice with Indonesia's human rights commitments through judicial oversight mechanisms and international best practices integration.

These recommendations acquire particular urgency within the context of Indonesia's 2023 Criminal Code reform, which introduces the revolutionary concept of "death penalty with probation" for a period of ten years, creating unprecedented opportunities to implement clemency reform as part of broader criminal justice modernization. The new code emphasizes rehabilitation rather than retribution, providing a constitutional foundation for integrating restorative justice principles into clemency procedures. Global abolition trends in Asia, illustrated by Malaysia’s recent moratorium and Thailand’s de facto suspension, place Indonesia at a critical juncture where clemency reform could serve as a transitional mechanism toward eventual abolition, while still respecting national sovereignty. The study findings provide empirical foundation for policy makers to develop clemency procedures that align with both the 2023 Criminal Code's rehabilitative philosophy and international human rights standards, potentially transforming Indonesia from a clemency restrictionist state into

a regional leader in humane death penalty administration that could serve as a model for other retentionist democracies navigating the tension between capital punishment retention and human rights compliance in an increasingly abolitionist global context.

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