

Application of The Death Penalty to Police Officers in Murder Cases (Cassation Study No. 813 K/Pid/2023)

Giovani Alber^{1*}, Zainal Abidin Pakpahan², Muhammad Yusuf Siregar³

^{1,2,3} Faculty of Law, Labuhanbatu University, Labuhanbatu, Indonesia

*Corresponding Author:

Email: giovanialber189@gmail.com

Abstract.

The background of this article is the phenomenon of strict law enforcement against law enforcement officers themselves, especially in murder cases involving members of the Indonesian National Police. The Supreme Court's Cassation Decision No. 813 K/Pid/2023, which imposed the death penalty on a police officer, is an important precedent to be studied. This article analyzes the effectiveness of the death penalty in this context by considering the defendant's positive contributions in the past. The discussion is conducted through philosophical, juridical, and sociological approaches. The results indicate that the consideration of the defendant's contributions does not automatically negate the unlawful nature of his actions, thus the death penalty is deemed effective as an effort to restore justice and public trust. In conclusion, this decision affirms the principle of equality before the law and functions as a shock therapy for the Police institution.

Keywords: Cassation Decision; Death Penalty; Indonesian National Police; Murder and Criminal Law.

I. INTRODUCTION

The Unitary State of the Republic of Indonesia as a state based on law (*state law*) which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia, places the principle of equality before the law as a fundamental pillar in the administration of the state and government. This constitutional principle is not merely normative rhetoric, but rather demands real implementation that every citizen without exception, both ordinary people and state officials, must submit to and be treated equally under the applicable law. The substantive challenge to this noble principle actually arises when law enforcers themselves, who should be the front guard of norms and justice, turn into perpetrators of crimes that undermine the foundations of the rule of law. Philosophically, the existence of the death penalty in the Indonesian legal system continues to be a never-ending debate between the retributive and utilitarian approaches. Retributive capital punishment is interpreted as a form of proportional justice, particularly for crimes categorized as the most serious crimes that have deeply wounded humanity. However, its application to members of the Indonesian National Police (Polri) raises a profound ethical-proportional dilemma, given their position as the spearhead of law enforcement. On the one hand, there is an imperative demand from society to uphold absolute justice for victims regardless of the background and status of the perpetrator. On the other hand, a philosophical question arises as to whether an individual's positive contribution to maintaining state sovereignty and protecting the public can serve as a significant mitigating factor in legal considerations.

Furthermore, the punishment of law enforcers is essentially a reflection of the principle of the rule of law itself, which states that the law must be enforced without discrimination, including against those with the authority to enforce it. Sociologically, this death penalty verdict has a very significant double-edged effect in the context of Indonesian society undergoing a process of legal reform. On the one hand, this firm, integrity-based, and impartial verdict can serve as a catalyst for restoring public trust, the most important social capital for the legitimacy of law enforcement institutions. The public will see that the law is truly enforced fairly and without discrimination. On the other hand, this verdict has the potential to cause psycho-sociological turmoil within the National Police (Polri) itself, given that the convict is part of the extended Polri family and is considered to have rendered services. Another sociological impact is the potential for differential perceptions to emerge within the community, between those who support this verdict as a form of legal bravery and those who view it as unnecessary legal violence. From a legal-formal perspective, this cassation decision is a tough test for the consistency of interpretation and application of Article 340 of the Criminal Code (KUHP) concerning the crime of premeditated murder. This decision serves as a living legal laboratory to measure the

proportional weight between mitigating factors (*verzachtende omstandigheden*), such as a track record of devotion, service, and positive contributions, and aggravating factors (*verzwarende omstandigheden*), such as abuse of authority, betrayal of the oath of office, and broad social impact.¹⁰ The legal construction in this decision also tests the extent to which the principles of legality and culpability can be applied proportionally to perpetrators who have a background as law enforcers.

In the context of progressive law enforcement, this decision can be seen as an attempt to transcend the meaning of law beyond the law itself, where judges are not only fixated on the letter of the law, but also consider the social and political legal impacts of their decisions. An in-depth analysis of this decision is crucial for understanding the shift in the paradigm of justice in Indonesia, from purely retributive justice to a more responsive and contextual justice, particularly in addressing crimes committed by law enforcement officers. A state based on the rule of law (*rechtsstaat*) places the principle of equality before the law as its primary pillar. This principle demands that every citizen, without exception, be subject to and treated equally by the law. A significant challenge to this noble principle arises when law enforcers, who should be the vanguard of maintaining norms, are instead the perpetrators of crimes. The murder case of Brigadier J, a member of the Indonesian National Police, which resulted in a death sentence through Supreme Court Decision Number 813 K/Pid/2023, is a paradigmatic and crucial case study. This verdict becomes increasingly complex and unique when, in its legal considerations, the panel of judges acknowledged that the convict had previously contributed to maintaining order and security and upholding the law. This consideration creates a legal dialectic between appreciation for past services (rewards) and criminal responsibility (punishment) for present-day heinous acts.

Philosophically, the death penalty aims to provide appropriate retributive justice, especially for crimes that are considered very serious (*most serious crimes*) and violates fundamental human rights. However, its application to members of the Indonesian National Police (Polri) raises a profound ethical dilemma. On the one hand, there is an absolute demand to uphold justice for victims and the community, regardless of the perpetrator's background. On the other hand, the question arises whether an individual's positive contributions to safeguarding the nation can be considered in commuting the death penalty. Sociologically, this decision has a significant dual impact. On the one hand, a firm and impartial decision can restore public trust, the most important social capital for law enforcement institutions. On the other hand, this decision has the potential to create unrest and controversy within the Indonesian National Police (Polri) itself. From a legal perspective, this ruling tests the consistency and interpretation of Article 340 of the Criminal Code (KUHP) concerning premeditated murder. This ruling serves as a living legal laboratory for weighing mitigating factors (*verzachtende omstandigheden*), such as merit and contribution, against aggravating factors (*verzwarende omstandigheden*), such as abuse of authority, betrayal of the oath of office, and broad social impact. Analysis of this ruling is crucial for understanding the shifting or affirming paradigm of justice in Indonesia, particularly in addressing crimes committed by officials.

Based on the background description which includes philosophical, sociological and legal studies above, the problem formulation in this article is:

1. What are the legal considerations of the Supreme Court in the Cassation Decision 813 K/Pid/2023 which sentenced the National Police member who committed murder to death despite his positive contributions in the past?

2. To what extent is the effectiveness of the death penalty in the decision reviewed from the aspects of justice, legal certainty, and benefits for restoring public trust?

II. RESULT AND DISCUSSION

1. Analysis of Legal Considerations in Cassation Decision 813 K/Pid/2023

The Supreme Court (MA) Decision No. 813 K/Pid/2023 is a final and binding decision, which confirms the death penalty sentence for the defendant Brigadier J. The considerations of the cassation panel of judges are crucial for understanding the legal position of the death penalty for perpetrators of murder who are also law enforcers.

a. Burdensome Considerations (*Verzwarende Omstandigheden*)

The Supreme Court panel of judges assessed that the defendant's actions had fulfilled the elements in Article 340 of the Criminal Code in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code. Several factors that were considered aggravating included: first, the *modus operandi* of the crime was planned and used a service firearm, which indicated a high level of danger and abuse of authority. Second, the defendant's actions were deemed to have tarnished the dignity and public trust in the National Police institution as a whole. Third, the broad psychological impact on the victim's family and the community, as well as causing massive social unrest. These factors ultimately outweighed all considerations that benefited the defendant.

b. Consideration of the Defendant's Positive Contribution as a Failed Mitigating Factor

In their plea, the defendants presented a number of services and contributions during their service in conflict zones as factors worthy of consideration in mitigating the sentence. The panel of judges acknowledged these contributions as factual, but legally, past contributions cannot erase or negate the unlawful nature of the crime (*wederrechtelijkheid*) of the premeditated murder he committed. The applicable legal principle is that "the law does not recognize ulterior motives" or subjective considerations outside the facts of the trial. Therefore, the defendant's contribution is not considered a justification (*schulditsluitingsgrond*) or a justification (*rechtvaardigingsgrond*) that can eliminate the criminal penalty.

2. The Effectiveness of the Death Penalty from the Perspective of Justice, Legal Certainty, and Social Benefits

The application of the death penalty in this case has received various responses. To measure its effectiveness, a multidimensional approach is needed.

a. Viewed from the aspect of justice (*Ius Constituendum*)

The theory of retributive justice requires that punishment be proportionate to the crime committed. Premeditated murder committed by law enforcement officers is a very serious crime because it constitutes a betrayal of the oath of office and public trust. The death penalty, in this context, is seen as fulfilling a sense of justice, not only for the victim's family but also for the wider community, who feel betrayed by the very individuals who should be protecting them. This verdict sends a message that no one is above the law (*equality before the law*), including those who have "star services".

b. Viewed from the aspect of legal certainty (*Ius Constitutum*)

In terms of legal certainty, this decision has gone through a multi-tiered judicial process, starting with the district court, through the appeals process, and finally the cassation process. The application of Article 340 of the Criminal Code has been consistent. Legal certainty is also reflected in the Supreme Court's rejection of past contributions as a basis for acquittal or sentence commutation, which could set a precedent for handling similar cases in the future. This emphasizes that legal certainty must be upheld objectively, regardless of the perpetrator's background.

c. Viewed from the Benefits Aspect (*Utility*) and Restoration of Public Trust

Effectiveness from a utility perspective lies in its powerful general prevention function. The death penalty is expected to have a significant deterrent effect, particularly on other law enforcement officers, preventing them from abusing their authority. Furthermore, this decision serves as "shock therapy" for the National Police (Polri) to undertake more serious internal reforms (bureaucratic reform). By imposing the maximum penalty, it is hoped that public trust, which had been damaged by individuals who tarnished the institution's reputation, can be restored.

III. CONCLUSION

Based on the discussion above, the following conclusions can be drawn:

The Supreme Court's legal considerations in Decision 813 K/Pid/2023 were based on the preponderance of aggravating factors, namely the premeditated nature of the murder committed through abuse of authority and its highly detrimental impact on institutions and society. While the defendant's past positive contributions are factually acknowledged, they cannot legally eliminate or mitigate the sentence for the serious crime he committed, as they are not considered excusable or justifiable. The death penalty in this decision is effective

from a retributive justice perspective because it provides an appropriate punishment for the perpetrator. From the aspect of legal certainty, this decision affirms the principle of equality before the law and the consistent application of the Criminal Code. From the aspect of benefits, this decision has the potential to restore public trust and function as a general deterrent and a catalyst for internal reform of the National Police institution. This first conclusion is an abstraction of the first point/subheading in the Discussion . The writer must comply with the rules in this environmental style, including the substance and systematics of writing.

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