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*By Universitas Muhammadiyah Sidoarjo*

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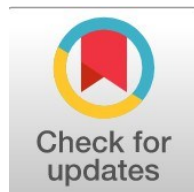
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## Limitations of the President's Prerogative Rights in Granting Abolition and Amnesty for Convictions with Permanent Legal Force

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### Abstract

**General Background:** Constitutional government requires state authority to operate within the rule of law, separation of powers, and checks and balances. **Specific Background:** Article 14 of the 1945 Constitution of the Republic of Indonesia grants the President authority to provide amnesty and abolition, yet this authority becomes controversial when applied to cases that have passed judicial processes or obtained permanent legal force. **Knowledge Gap:** Previous studies have discussed procedures, institutional relations, and prerogative characteristics, but have not comprehensively formulated constitutional limits for amnesty and abolition after legally binding court decisions. **Aims:** This normative legal study aimed to analyze constitutional limits on presidential prerogative power, identify weaknesses in existing regulation, and formulate an ideal legal construction to prevent abuse of authority. **Results:** The study found that Indonesian regulation still leaves broad discretion because substantive criteria for granting amnesty and abolition remain unclear. This condition may create legal uncertainty, weaken equality before the law, reduce judicial legitimacy, and turn parliamentary consideration into political formality. **Novelty:** The study proposes constitutional limitation through clear substantive criteria, stronger House of Representatives oversight, an independent advisory institution, open evaluation, and possible procedural review by the Constitutional Court. **Implications:** The proposed model can help align presidential clemency powers with democratic rule of law, judicial independence, legal certainty, public interest, and human rights protection.

### Highlights:

- Existing regulation leaves broad room for executive judgment.
- Weak oversight may reduce legal certainty and equality.
- An advisory body and transparent review are proposed.

**Keywords:** Abolition, Amnesty, Presidential Prerogative

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## Introduction

Indonesia, as a state of law, places the constitution as the main instrument for limiting state power. All authority possessed by state institutions, including the President, in principle must be exercised within the corridor of law and the constitution.[1] In the Indonesian state administration system, the President has a number of special authorities commonly referred to as prerogative rights, one of which is the authority to grant amnesty and abolition as regulated in Article 14 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Historically, the concept of prerogative originated from the English constitutional tradition, which granted certain powers to the king to act outside the legislative mechanism. However, in the development of modern democratic states, this authority is no longer understood as absolute power, but rather as a constitutional power that must comply with the principles of the rule of law and constitutionalism.[2]

Problems arise when the powers of amnesty and abolition are used against cases that have been processed through judicial mechanisms. In 2025, the granting of abolition to Tom Lembong and amnesty to Hasto Kristiyanto sparked a wide debate regarding the limits of the President's authority in intervening in the legal consequences of a judicial process. The debate was not only related to legal aspects but also concerned constitutional legitimacy, the independence of the judiciary, and the protection of the principle of equality before the law.[3]

Previous research generally focused on the procedural aspects of granting amnesty and abolition, the relationship between the President and the House of Representatives, as well as the characteristics of prerogative authority in the Indonesian constitutional system. Some recent studies have also begun to examine the cases of Tom Lembong and Hasto Kristiyanto as contemporary legal-political phenomena.[4] However, the research has not comprehensively discussed the constitutional limitations on the President's prerogative rights after a legally binding court decision. Thus, there is a research gap in the form of the absence of a theoretical formulation regarding the constitutional limits on the use of abolition and amnesty in a democratic rule-of-law state that places the independence of the judiciary as the main parameter.

## Method

This research is normative legal research that focuses on the analysis of positive legal norms regulating the granting of amnesty and abolition by the President. The approaches used include: Legislative approach (statute approach); Conceptual approach (conceptual approach); Case approach (case approach).[5] Primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, Emergency Law Number 11 of 1954 concerning Amnesty and Ablution, and Law Number 48 of 2009 concerning Judicial Power. Secondary legal materials include books on constitutional law, national and international journals, as well as recent research discussing the granting of amnesty and ablation in the practice of Indonesian state administration. The analysis is carried out prescriptively and argumentatively to find an ideal legal construction capable of addressing the research problems.

## Results And Discussion

### A. The Constitutional Construction of the President's Prerogative Rights in Granting Abolition and Amnesty

The President's prerogative right is one form of constitutional authority explicitly granted by the 1945 Constitution of the Republic of Indonesia to the President as the head of state. In modern constitutional law literature, prerogative rights are no longer understood as absolute power inherent to the ruler as developed in the classical monarchy system, but rather as constitutional power that derives its legitimacy and limitations directly from the constitution. Therefore, although this authority originates from the constitution, its implementation must still adhere to the principles of the rule of law, constitutional supremacy, and oversight mechanisms within a constitutional democratic system.[6]

In the development of constitutional theory, the concept of prerogative has undergone a significant transformation. During the era of absolute monarchy, prerogative was seen as an exclusive power that could not be challenged by other institutions. However, with the rise of constitutionalism, every form of state power must be limited to prevent abuse of authority. It emphasizes that no state authority is above the law, including powers derived directly from the constitution. Thus, the President's prerogative rights must be understood as powers that are constitutionally legitimate but can still be evaluated based on the principles of a state governed by law.[7]

In the context of Indonesia, Article 14 paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that the President grants amnesty and abolition with due consideration of the DPR (House of Representatives). This provision indicates that the Indonesian constitution does not adopt the concept of absolute prerogative. The involvement of the DPR is a form of a checks and balances mechanism aimed at ensuring that the exercise of presidential authority does not conflict with broader constitutional interests. Conceptually, amnesty and abolition have different characteristics even though both are forms of state pardon. Amnesty essentially involves the elimination of criminal legal consequences for certain individuals or groups so that the criminal penalties imposed by the state are considered no longer applicable. In contrast, abolition serves to stop the prosecution process or nullify certain legal consequences of a criminal case before all its legal consequences are carried out.[8]

These conceptual differences indicate that amnesty and abolition are not merely instruments of criminal law, but also instruments of legal politics that have a constitutional dimension. In the practice of various countries, granting amnesty is generally used for purposes of national reconciliation, political conflict resolution, or democratic transition. Therefore, the existence of amnesty and abolition is essentially an exception to the general principle of criminal law enforcement, which requires every perpetrator of a criminal act to be held accountable for their actions before the law.[9]

**Table 1.** Conceptual Differences Between Amnesty and Abolition in the Perspective of Constitutional Law

Aspect	Amnesty	Abolition
Conceptual Basis	State forgiveness of the legal consequences of a crime	Termination or dismissal of the prosecution process
Object	Convicted person or party who has been subjected to criminal consequences	Suspect, defendant, or certain case
Legal Consequence	Menghapus akibat hukum pidana	Stopping the legal process
Political Dimension	Very strong	Strong
Main Goal	Reconciliation and national interest	Resolution of certain legal or political conflicts
Constitutional Basis	Article 14 paragraph (2) of the 1945 Constitution of the Republic of Indonesia	Article 14 paragraph (2) of the 1945 Constitution of the Republic of Indonesia

Nevertheless, constitutional issues arise when amnesty and abolition are granted for cases that have already obtained final and binding legal decisions (*inkracht van gewijsde*). In legal theory, a decision that has obtained binding legal force embodies the principle of *res judicata pro veritate habetur*, meaning the judge's decision must be considered correct and binding as long as it is not overturned through a legitimate legal mechanism. This principle is an important foundation for legal certainty because it ensures that a case is not continuously contested after a final decision has been made. It is at this point that a tension occurs between the President's prerogative powers and the independence of the judiciary. From a constitutional perspective, the President has the authority to grant amnesty and abolition. However, from the perspective of the rule of law, court decisions that have obtained binding legal force must be respected as the result of an independent judicial process. When the President's authority is used to erase the legal consequences of the ruling, questions arise regarding the limits of executive intervention in the judicial realm.[10]

The issue becomes increasingly relevant in the case of granting a pardon to Tom Lembong and an amnesty to Hasto Kristiyanto in 2025. In this context, the argument put forward by the government rests on national interest, political stability, and reconciliation. However, the use of these reasons faces a fundamental problem because there are no clear normative parameters regarding the extent of national interest that can justify bypassing the legal consequences of a criminal verdict. From a constitutionalism perspective, the absence of such parameters has the potential to give rise to what is called constitutional arbitrariness, which is the use of constitutional authority without an objective standard that can be legally tested. This situation is dangerous because it can create the impression that the legal treatment of citizens is determined by political considerations, rather than by the principle of equality before the law.[11]

**Table 2.** Potential Constitutional Conflicts in Granting Amnesty and Abolition

Constitutional Principles	Protected Interests	Conflict Potential
President's Prerogative	The country's flexibility in resolving political and national issues	Potential for excessive use of authority
Judicial Independence	Maintaining the independence of judges and the finality of decisions	Court decisions lose social legitimacy
Legal Certainty	Ensuring the predictability of the	As a result, the legal decision becomes

	law	uncertain
Equality Before The Law	Equal treatment under the law	Potential for special treatment towards certain parties
Checks and Balances	Inter-agency supervision	The consideration of the House of Representatives has the potential to become a political formality

According to the author, the President's prerogative in granting amnesty and abolition should not be understood as a form of executive power superiority over the judiciary. On the contrary, such authority must be positioned as a corrective instrument that can only be used in extraordinary circumstances. In other words, the constitutional legitimacy of amnesty and abolition can only be justified if there is a constitutional interest that is higher than the interest of ordinary law enforcement. The concept that can be used to explain this condition is constitutional necessity. Within this framework, the granting of amnesty or abolition can only be carried out if three cumulative conditions are met. First, there is a real and measurable national interest. Second, there is no other legal mechanism available that can resolve the same issue. Third, the constitutional benefits obtained outweigh the potential harm to the principle of legal certainty.[12]

Based on this argument, it can be concluded that the constitutional limit of the President's prerogative rights does not lie in the existence of his authority, but in the reasons and purposes for its use. As long as amnesty and abolition are used to protect legitimate constitutional interests and are carried out through accountable mechanisms, this authority retains its legitimacy in a democratic rule of law. Conversely, if used without clear parameters, amnesty and abolition have the potential to become political instruments that actually weaken the rule of law principles guaranteed by the constitution.[13]

## B. The Problematics of Regulating Abolition and Amnesty in the Indonesian Legal System

Although amnesty and abolition are constitutional powers of the President guaranteed under Article 14 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the legal regulations in effect until now still leave various normative issues. These problems are not only related to the absence of norms but also concern the relationship between the executive, legislative, and judicial powers within the framework of a democratic rule of law. In constitutional practice, a number of emerging controversies indicate that the existing regulations have not been able to provide adequate limits on the use of these powers. As a result, amnesty and abolition often lie at the crossroads between the state's political needs and the demands for legal certainty.[8]

Theoretically, every constitutional authority must be accompanied by clear limitation mechanisms to prevent it from becoming an instrument of power that is vulnerable to abuse. This principle aligns with the doctrine of constitutionalism, which positions the constitution as an instrument to limit state power. In this context, the President's authority to grant amnesty and abolishment cannot be understood as an absolute right, but rather as an authority that must be exercised in an accountable, proportional, and legally responsible manner. However, the current regulations actually show that there are still several fundamental weaknesses that have the potential to disrupt the principles of the rule of law.[14]



**Figure 1.** Hierarchy of Issues in the Regulation of Amnesty and Abolition in the Indonesian Legal System

The diagram above shows that the problem of regulating amnesty and abolition does not stand alone, but rather forms a hierarchically interconnected relationship. The absence of normative parameters, the dominance of political considerations, and weak parliamentary oversight are issues at the regulatory level that then give rise to an overly broad presidential discretion. At the next level, this condition has the potential to lead to abuse of authority, which impacts the independence of the judiciary. In the long term, the accumulation of these problems can reduce public trust in the judicial system and the rule of law principles guaranteed by the constitution. The first problem lies in the lack of clarity of normative parameters. The 1945 Constitution of the Republic of Indonesia as well as Emergency Law Number 11 of 1954 on Amnesty and Abolition do not provide clear criteria regarding the substantive reasons for granting amnesty and abolition. The existing regulations only regulate the authority of the President and the involvement of the House of Representatives, but do not explain what conditions can serve as the basis for granting such state pardon. Consequently, the President's discretionary space becomes very broad and opens up the possibility of various different interpretations regarding the meaning of state interest, national interest, or humanitarian reasons.[15]

From the perspective of the rule of law, this condition is a serious problem because the law should provide clear standards for the use of public authority. Dicey emphasizes that one of the main characteristics of a state governed by law is the limitation of power through norms that can be predicted and tested objectively. When the parameters for granting amnesty and abolition are not explicitly formulated, it becomes difficult to determine whether a decision is truly based on constitutional needs or merely on temporary political considerations. The absence of such standards also has the potential to create unequal treatment under the law for citizens in similar situations. The second problem relates to the dominance of political considerations in the process of granting amnesty and abolition. Conceptually, this authority indeed has a political dimension because it relates to the interests of the state and national stability. However, the political dimension should not erase its legal character as an authority that must adhere to the principles of accountability and legal rationality. Problems arise when political considerations become the dominant factor without being balanced by clear legal parameters.[16]

The case of granting abolition to Tom Lembong and amnesty to Hastu Kristiyanto in 2025 became a current example of how arguments of national stability, political reconciliation, and national interest were used as the basis for policy. However, the concept of national interest is a very abstract concept and does not have a definite normative measure. As a result, it is difficult to test whether the reasons used truly reflect constitutional interests or are merely the political preferences of decision-makers. In such conditions, amnesty and abolition have the potential to shift from constitutional instruments to instruments of political power. The third problem relates to the independence of the judiciary. Article 24 paragraph (1) of the 1945 Indonesian Constitution affirms that judicial power is an independent power to organize trials to uphold law and justice. That independence not only means the freedom of judges in deciding cases, but also respect for the decisions that have been produced through a legitimate and fair judicial process.[17]

Although legally amnesty and abolition do not annul court decisions, the use of such authority in cases that have already obtained legally binding verdicts can give rise to the perception of political intervention in the outcome of the judicial process. From a sociological perspective, society may view that the results of a lengthy legal process can ultimately be set aside through political decisions. Such perceptions have the potential to reduce the legitimacy of the judiciary as an independent and impartial institution. This condition becomes even more problematic if amnesty or abolition is granted in cases that have widespread implications for public interests, such as corruption crimes, economic crimes, or cases related to the integrity of state administration. In such situations, there arises a concern that the principle of equality before the law no longer functions optimally due to different legal treatments towards individuals.[18]

The fourth problem is the weakness of the DPR's oversight mechanism. The involvement of the DPR in granting amnesty and abolition is essentially intended as a mechanism of checks and balances so that the President does not exercise his authority unilaterally. The DPR's presence in this process is a form of political oversight designed by the constitution to maintain a balance of power among state institutions. However, in practice, this oversight function has not been fully effective. The DPR's considerations often reflect the prevailing political configuration rather than a substantive evaluation of the legal reasons for granting amnesty and abolition. As a result, the DPR's approval tends to be seen as political legitimacy for the President's decision, rather than as an instrument to constitutionally test the use of that authority. In addition, there is not yet a mechanism that requires the House of Representatives to develop evaluation parameters that are transparent and publicly accessible, so the level of accountability in the decision-making process is still relatively low.[19]

Based on the above explanation, it can be understood that the main problem with the regulation of amnesty and abolition in Indonesia does not lie in the existence of such authority as part of the constitutional system, but rather in the absence of an adequate limitation system. The lack of normative parameters, the dominance of political considerations, the potential interference with judicial independence, and the weak supervision by the House of Representatives indicate that the current regulations still leave gaps that could undermine the principles of a legal state. Therefore, a clearer, more objective, and accountable legal construction formulation is needed to ensure that the use of amnesty and abolition remains within the constitutional corridor and does not create conflicts with the fundamental principles of a democratic rule of law.

## C. Formulation of Ideal Legal Construction

To address these various weaknesses, this study proposes the concept of constitutional limitation of prerogative power. First, a revision of Emergency Law Number 11 of 1954 is required to include clear substantive criteria regarding the reasons for granting amnesty and abolition. These criteria should at least cover: post-conflict national reconciliation; correction of systemic errors in legal processes; protection of human rights; objectively measurable constitutional interests. Second, an independent Amnesty and Abolition Advisory Commission should be established. This commission is tasked with conducting academic, legal, and human rights assessments before the President submits a proposal to the House of Representatives. Third, the House of Representatives must be required to carry out an open evaluation process so that all arguments underlying the granting of amnesty and abolition can be known to the public. Such transparency is important to prevent abuse of authority. Fourth, the Constitutional Court needs to be given space to examine the procedural aspects of granting amnesty and abolition if there are allegations of violations of the rule of law principles. Fifth, it needs to be emphasized that granting amnesty and abolition in corruption cases can only be done under extraordinary circumstances that meet the standard of constitutional necessity. This approach is important to maintain public trust in the anti-corruption agenda. Thus, limiting the President's authority is not intended to remove prerogative rights, but to ensure that its use remains in line with the principles of the rule of law, constitutional democracy, and judicial independence.

## Conclusion

Based on the research results, it can be concluded that the President's prerogative rights in granting abolition and amnesty are constitutional authorities granted by the 1945 Constitution of the Republic of Indonesia as part of a corrective mechanism within the state governance system. Nevertheless, this authority is not an absolute power, but is limited by constitutional provisions, the principle of the rule of law, the principle of separation of powers, and the mechanism of checks and balances through the consideration and approval of the authorized state institutions. In the context of criminal cases that have obtained permanent legal force (*inkracht van gewijsde*), the granting of abolition and amnesty must be carried out carefully by taking into account aspects of justice, legal certainty, and utility. The exercise of such authority must not disregard the independence of the judiciary nor diminish the authority of court decisions that have obtained permanent legal force. Therefore, limitations on the President's prerogative rights are necessary to prevent abuse of power and to ensure that the granting of abolition and amnesty remains in line with the principles of constitutional democracy and the protection of human rights. Thus, the President's prerogative right in granting abolition and amnesty for crimes with permanent legal force must be understood as a constitutional authority whose implementation is subject to legal limits, public interest, and values of justice, so that it can function as a state instrument supporting the realization of a democratic rule of law.

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