PATTIMURA Legal Journal

Volume 4 Issue 3, December 2025: p. 255-270
https://ojs3.unpatti.ac.id/index.php/pela//issue/view/1287

E-ISSN: 2830-2435
10.47268/pela.v4i3.21292

Political Interests Versus the Supremacy of Law: A Critical Review of Constitutional Law Regarding the Abolition of Tom Lembong and Amnesty for Hasto Kristiyanto

Fakhry Amin[a], Souad Ahmed Ezzerouali[b]

[a,] National Defense Institute, Jakarta, Indonesia.
[b,] College of Law, Dhofar University, Salala, Oman

: fakhry.amin2@gmail.com
Corresponding Author*

Abstract

Introduction: *The President's authority to grant amnesty and abolition is a constitutional prerogative that provides flexibility in resolving legal issues with political and social implications, such as reconciliation and conflict resolution.*
Purposes of the Research: *This research aims to provide a critical analysis regarding the granting of amnesty to Hasto Kristiyanto and the abolition granted to Tom Lembong from the perspective of constitutional law.*
Methods of the Research: *This research is a normative legal study with a conceptual and legislative approach.*
Results Main Findings of the Research: *The constitutional authority of the President to grant amnesty and abolition is a prerogative right that provides flexibility and special power to resolve legal issues related to political and social dimensions, such as reconciliation and conflict resolution. The case of granting amnesty to Hasto Kristiyanto and abolition to Tom Lembong has sparked a debate about the balance between the supremacy of law and political interests, where the decision has the potential to mature the subordination of law to political interests, thus demanding transparency and accountability so that the President's prerogative is not misused for short-term political gain. Therefore, a checks and balances mechanism involving the House of Representatives and high transparency must be implemented so that the President's authority can be exercised in an accountable manner and in favor of the people's interests as a whole.*

Keywords: Abolition; Amnesty; Prerogative Rights; Political Interests; Rule of Law.

Submitted: 2025-08-13	*Revised: 2025-10-15*	*Accepted: 2025-10-17*	*Published: 2025-10-19*

How To Cite: Fakhry Amin, Souad Ahmed Ezzerouali. "Political Interests Versus the Supremacy of Law: A Critical Review of Constitutional Law Regarding the Abolition of Tom Lembong and Amnesty for Hasto Kristiyanto." *PATTIMURA Legal Journal* 4 no. 3 (2025): 255-270. https://doi.org/10.47268/pela.v4i3.21292

Copyright © 2025 Author(s) Creative Commons Attribution-NonCommercial 4.0 International License

INTRODUCTION

The rule of law essentially emphasizes that the applicability of law is sovereign and a fundamental aspect in a country based on popular sovereignty.[1] In a democratic country, law serves as the primary foundation that maintains justice, order, and the balance of power among

[1] Soesi Idayanti, Toni Haryadi, and Tiyas Vika Widyastuti, "Penegakan Supremasi Hukum Melalui Implementasi Nilai Demokrasi," *Diktum : Jurnal Ilmu Hukum* 8, no. 1 (2020): 83–93, https://doi.org/10.24905/diktum.v8i1.85.

various state institutions and society.[2] Law has the function of limiting and facilitating democracy.[3] Law functions to limit democracy because democracy limited by law makes democracy run substantively and still guarantees the rights of the people which are generally manifested in human rights.[4] The function of law to facilitate democracy means that law must accommodate various aspects of democracy as part of the development of society to obtain legal arrangements. In the relationship between law and democracy, the rule of law is an important aspect in which law must facilitate and limit democracy.

One form of the rule of law is the existence of an independent and free judicial power. Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirms that the judicial power has an important task to realize law and justice in society so that the judicial power needs to be guaranteed independence that is free from executive and legislative power.[5] The independence of the judiciary is manifested, among other things, in the judicial process, be it through the trial process, court decisions, and even the execution of court decisions. If independence and freedom are not guaranteed in the judicial process, court decisions, and even the execution of court decisions, it can be said that the independence of the judiciary and the rule of law have not been optimally realized.[6]

In practice, one form of the supremacy of law through judicial power is the existence of court decisions.[7] Under normal procedure, court decisions that are considered not to reflect the values of justice can be subject to further legal remedies in the form of appeals, cassation, and judicial review.[8] Even so, in "extraordinary" procedures, a court decision can be annulled either in the form of forgiveness or termination of all legal efforts by the President through amnesty

[2] Tejas Parasher, "Federalism, Representation, and Direct Democracy in 1920s India," *Modern Intellectual History* 19, no. 2 (2022): 444–72, https://doi.org/10.1017/S1479244320000578.

[3] Nandini Sundar, "'We Will Teach India Democracy': Indigenous Voices in Constitution Making," *Journal of Imperial and Commonwealth History* 1, no. 1 (2023): 1–33, https://doi.org/10.1080/03086534.2023.2196838.

[4] Robyn L. Holder and Albin Dearing, "Human Dignity, Rights and Victim Participation in Criminal Justice," *International Criminology* 4, no. 1 22, 2024): 108–19, https://doi.org/10.1007/s43576-024-00119-3.

[5] Adiel Muhammad Kanantha and Ferry Edwar, "Independensi Pengadilan Pajak Ditinjau Dari Pasal 24 Ayat (1) Uud Nri 1945," *Reformasi Hukum Trisakti* 4, no. 3 (2022): 519–28, https://doi.org/10.25105/refor.v4i3.13828.

[6] Andi Safriani, "Due Process Of Law Dalam Pembubaran Organisasi Masyarakat Tanpa Melalui Proses Pengadilan," *Alauddin Law Development Journal (ALDEV)* 4, no. 2 (2022): 277–93.

[7] Tanto Lailam and Nita Andrianti, "Legal Policy of Constitutional Complaints in Judicial Review: A Comparison of Germany, Austria, Hungary, and Indonesia," *Bestuur* 11, no. 1 (2023): 75–94, https://doi.org/10.20961/bestuur.v11i1.70052.

[8] Totok Yanuarto et al., "Pengintegrasian Mediasi Penal Sebagai Penyelesaian Perkara Pidana Ditinjau Dari Perspektif Pembaharuan Hukum Di Indonesia," *Jurnal Rechtens* 13, no. 1 (June 22, 2024): 149–65, https://doi.org/10.56013/rechtens.v13i1.2845.

or abolition mechanisms.[9] Amnesty is generally understood as an act of granting forgiveness for a criminal act, which then eliminates the criminal punishment against a person or a group of people, while abolition is an effort to stop the entire legal process against a person or a group of people.[10]

Although amnesty and abolition are substantially different, in general they have something in common, namely that they are prerogative rights.[11] The President must obtain the approval of the House of Representatives. This is clearly regulated in Article 14 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which affirms that as the President's prerogative right, amnesty and abolition must obtain the approval of the House of Representatives.[12] One of the phenomenal cases related to the granting of amnesty and abolition is the amnesty given to Hasto Kristiyanto and the abolition given to Tom Lembong.[13] The granting of amnesty to Hasto Kristiyanto and the abolition given to Tom Lembong is interesting because the legal processes of both issues are still ongoing. From these two cases, this research aims to provide a critical analysis related to the granting of amnesty to Hasto Kristiyanto and the abolition given to Tom Lembong from a constitutional law perspective. This critical analysis is to clarify whether the granting of amnesty to Hasto Kristiyanto and the abolition given to Tom Lembong is an effort to realize the rule of law and justice in society or is based solely on political interests. Two legal issues that are answered in this research are: (i) the President's constitutional authority regarding the granting of amnesty and abolition, and (ii) a critical review of the granting of amnesty to Hasto Kristiyanto and the abolition given to Tom Lembong: between the rule of law or political interests.

METHODS OF THE RESEARCH

[9] Patrick Lenta, "Amnesties, Transitional Justice and the Rule of Law," *Hague Journal on the Rule of Law* 15, no. 3 (2023): 441–69, https://doi.org/10.1007/s40803-023-00199-9.

[10] Rikiandi Sopian Maulan et al., "Urgensi Pembentukan Undang-Undang Grasi,
Amnesti, Abolisi Dan Rehabilitasi Ditinjau Dari Kepastian Hukum," *Jurnal Diskresi* 3, no. 1 (2024): 52–59.

[11] Muhammad Mutawalli Mukhlis et al., "Heavy Parliamentary v. Heavy Executive: Ambiguity of Power in Indonesian Constitutional Practices," *Jurnal Media Hukum* 31, no. 2 (July 8, 2024): 186–205, https://doi.org/10.18196/jmh.v31i2.21703.

[12] Nadia Marsya Ramdhani, Khoirunnisa Putri Diksy, and Kirana Amelia Sitanggang, Daniella, "The Effectiveness of The Death Penalty In Indonesia Through A Human Rights Perspective (A Comparative Study Of The Application Of The Death Penalty With Australia)," *Journal of Ius Comparatum Law Studies* 1, no. 1 (2025): 1–11.

[13] Tempo.co, "Pro-Kontra Amnesti Dan Abolisi Untuk Kasus Korupsi," 2025, https://www.tempo.co/hukum/pro-kontra-amnesti-dan-abolisi-untuk-kasus-korupsi--2055449.

PATTIMURA Legal Journal, 4 (3) December 2025: 255 - 270
E-ISSN: 2830-2435
Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

This research, which aims to provide a critical analysis related to the granting of amnesty to Hasto Kristiyanto and the abolition given to Tom Lembong from a constitutional law perspective, is normative legal research based on doctrines, concepts, theories, and legal principles. The primary legal materials in this study are: the 1945 Constitution of the Republic of Indonesia and Emergency Law Number 11 of 1954 concerning Amnesty and Abolition (Amnesty and Abolition Law). The secondary legal materials used include books, journal articles, websites, and research results that discuss the authority of abolition, amnesty, and related to the cases of granting amnesty to Hasto Kristiyanto and abolition given to Tom Lembong. Non-legal material is a legal dictionary. The analysis carried out in this study is prescriptive, which means formulating what should be from the legal issues in this study. The approach used is a conceptual and statutory approach.

RESULTS AND DISCUSSION

A. The President's Constitutional Authority Regarding the Granting of Amnesty and Abolition

Black's Law Dictionary confirms that "*a sovereign act of oblivion for past acts, granted by a government to all persons (or to certain persons) who have been guilty of crime or delict, generally political offenses, treason, sedition, rebellion*".[14] In general, amnesty is an act of sovereignty in the form of forgiveness or elimination of punishment for past actions granted by the government to all people (or certain groups) who have committed crimes or offenses, generally related to political crimes such as treason, subversion, and rebellion. Amnesty usually eliminates the criminality of these acts so that they are no longer considered punishable criminal acts.[15] Amnesty basically means the official removal of the legal consequences of previously committed criminal acts.[16] Amnesty is collective and includes the elimination of all criminal consequences of the act, unlike a "pardon" (*grasi*) which applies to individuals and only removes or mitigates the punishment without eliminating the basis of criminality.[17] Basically,

[14] Henry Campbell Black Bryan A. Garner, *Black's Law Dictionary*, 11th ed. (Minnesotta: West Publishing Co, St. Paull, 2019).
[15] Lenta, "Amnesties, Transitional Justice and the Rule of Law."
[16] Javier Padilla, "Is Satisfaction with Democracy Higher After Transitional Justice Trials?," *Political Behavior* 1, no. 1 (2025): 2–7, https://doi.org/10.1007/s11109-025-10007-9.
[17] Liantha Adam Nasution et al., "Pardon for Corruptors: An Examination of Repentance and Restitution in Islamic Criminal Law," *JUSTISI* 11, no. 3 (2025): 719–31, https://doi.org/10.33506/js.v11i3.4365.

amnesty is the government's prerogative right to forgive or eliminate crimes that have been committed, usually given to a group of people involved in certain criminal acts, especially political crimes, so that they can no longer be punished for these acts.[18] Amnesty can be granted before or after a person is convicted. In principle, granting amnesty requires legislative approval, such as in Indonesia through Emergency Law Number 11 of 1954 which regulates amnesty and abolition. Amnesty eliminates all criminal legal consequences including prosecution and punishment, unlike clemency which only mitigates or eliminates the punishment without eliminating the criminal status.

Abolition, according to *Black's Law Dictionary* and the general legal context, is a decision to stop or abolish the process of investigation, examination, and prosecution of a case before the court renders a verdict.[19] Abolition does not mean forgiveness of a judgment that has already been handed down, but rather stopping or withdrawing charges against a person before a court verdict.[20] In detail, abolition can be defined as the right or authority of the president (or head of state) to cancel or eliminate criminal charges and stop ongoing legal proceedings against an individual or a group of defendants or suspects.[21] The legal basis for abolition is usually specifically regulated, such as in Emergency Law Number 11 of 1954 concerning Amnesty and Abolition in Indonesia, and its granting takes into account aspects of national interest or public interest. The main difference between abolition and amnesty and pardon is that abolition is only given to those who have not been convicted and stops the process before a court decision, while amnesty can be given to those who have been convicted or not, and eliminates the legal consequences of the crime.[22] Abolition is also usually used in the context of political reasons or to maintain government stability by stopping legal processes that are considered detrimental to public or state interests.[23] In short, abolition is a decision or action that stops the criminal

[18] Loammi Wolf, "The Disqualification of Candidates for Election: MK Political Party v Independent Electoral Commission," *South African Journal on Human Rights* 1, no. 1 (2025): 1–14, https://doi.org/10.1080/02587203.2025.2455069.

[19] Bryan A. Garner, *Black's Law Dictionary*.

[20] Susan McCarter, Gilbert Singletary, and Destiny Reyes, "Abolish or Reform Criminal Justice in the United States? A Forensic Social Work Perspective," *Journal of Forensic Social Work* 9, no. 1 (2025): 4–21, https://doi.org/10.15763/issn.1936-9298.2025.9.1.4-21.

[21] Thomas Christiano and Andrew Williams, "Symposium on Tommie Shelby's The Idea of Prison Abolition," *Politics, Philosophy & Economics* 24, no. 3 (2025): 215–16, https://doi.org/10.1177/1470594X251337222.

[22] Joseph Paul Essien, Maduka Enyimba, and Thomas Egaga Ushie, "The Abolition of Death Penalty and Crime Control in Nigeria," *The International Journal of Human Rights* 1, no. 1 (2025): 1–12, https://doi.org/10.1080/13642987.2025.2533989.

[23] Georg Wenzelburger, "Policy Windows and Criminal Justice Reforms: A Multiple Streams Framework Analysis," *Policy & Politics* 53, no. 2 (2025): 296–314, https://doi.org/10.1332/03055736Y2024D000000060.

PATTIMURA Legal Journal, 4 (3) December 2025: 255 - 270
E-ISSN: 2830-2435
Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

prosecution process before a court verdict, so that the defendant or suspect is no longer subject to legal proceedings and the charges are withdrawn or abolished.

Although different in substance, amnesty and abolition have a major similarity. Amnesty and abolition are two legal concepts that have a fundamental similarity, namely that both are forms of pardon or termination of legal proceedings carried out by the state against perpetrators of criminal acts, with the aim of providing an opportunity to end or mitigate the legal consequences of actions previously taken. Both are the prerogative right of the president or head of state and are often used in the context of political crimes or situations that require comprehensive settlement efforts to maintain social and political stability.[24] In addition, amnesty and abolition both have the effect of eliminating criminal acts; amnesty eliminates all legal consequences of the criminal act, including the elimination of the criminal status itself, while abolition stops or revokes the investigation and prosecution process before a court decision, thus effectively freeing the suspects from legal charges. Procedurally, both are also usually regulated in special laws and may involve legislative approval as part of the granting process. Thus, the main similarity between amnesty and abolition lies in their function and purpose as legal instruments that pardon or stop ongoing or future legal processes, to achieve reconciliation and order in society, although the mechanisms and timing of their granting differ.

According to *Black's Law Dictionary*, prerogative is defined as "an exclusive privilege or distinctive right, a peculiar power, privilege, immunity, or advantage vested in a person in office, either generally or in connection with a particular office or office, such as a court or legislature."[25] This prerogative right is a discretionary and supreme power that is not subject to external control, and historically reserved for the preeminence of a monarch or head of state over others. In a legal context, prerogative rights include the ability to make important decisions and take actions independently without the need for approval from other bodies.[26]

[24] Andrew Novak, "Contesting the Royal Prerogative of Mercy: The Queen's Pardons and the 1968 Constitutional Crisis over the Death Penalty in Rhodesia," *The Journal of Imperial and Commonwealth History* 53, no. 1 (2025): 82–106, https://doi.org/10.1080/03086534.2025.2460092.

[25] Bryan A. Garner, *Black's Law Dictionary*.

[26] Carolyn Strange, Daniel Pascoe, and Andrew Novak, "The Politics of Abolition: Reframing the Death Penalty's History in Comparative Perspective," *Punishment & Society* 27, no. 3 (2025): 486–505, https://doi.org/10.1177/14624745241298220.

PATTIMURA Legal Journal, 4 (3) December 2025: 255 - 270
E-ISSN: 2830-2435
Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

More specifically, this prerogative right is often associated with the special powers of the head of state, such as granting honorary titles, pardons, amnesties, and taking certain important legal actions in the interest of the state. This right originates from the English common law tradition but is also used as a foundational principle in various modern constitutional systems, which allows the head of state to act quickly and effectively in certain situations in accordance with state responsibilities.[27] Although privileged, the use of prerogative rights must still be subject to legal provisions and principles of justice to prevent abuse.

Prerogative rights are essentially special rights and high and exclusive discretionary powers, possessed by certain state officials (usually the head of state), which allow them to make certain decisions and take legal actions without having to obtain approval from other institutions.[28] The president's prerogative right is the authority or special right possessed by the president as head of state and head of government to make certain decisions or take certain actions independently without requiring approval from other institutions.[29] This concept aims to provide flexibility and effectiveness in carrying out state duties, especially in situations that are urgent or require speed and accuracy of action to maintain the continuity and stability of government. This prerogative right arises from the principle that the president must be able to exercise governmental power fully and responsibly in accordance with the 1945 Constitution of the Republic of Indonesia. The president's prerogative rights include various strategic authorities, such as declaring a state of war and peace, declaring a state of emergency, granting pardons and rehabilitations, appointing and dismissing ministers, and appointing ambassadors and consuls.[30] These matters are explicitly regulated in the articles of the 1945 Constitution, including Article 11 paragraph (2), Article 12 paragraph (1), Article 14 paragraphs (1) and (2), Article 17 paragraph (3), and Article 13 paragraph (3). With the existence of prerogative rights, the President is free to carry out these functions quickly and effectively in

[27] Philip Sales, "Constitutional Values In The Common Law Of Obligations," *The Cambridge Law Journal* 83, no. 1 (2024): 132–57, https://doi.org/10.1017/S0008197324000011.

[28] Hazim Alnemari, "God's Law, King's Court: Ḥudūd Jurisprudence under Saudi Monarchical Decrees," *Journal of Islamic Law* 6, no. 1 (2025): 3–8, https://doi.org/10.53484/jil.v6.alnemari.

[29] Nasri Wijaya, "Analysis of Abolition Opportunities for Johenas Gluba Gebze in Indonesian Legal Perspective," *Papsel Law Journal* 1, no. 1 (2024): 21–25.

[30] Devi Yusvitasar, "Penerapan Prinsip Persona Non Grata Terhadap Duta Besar Ditinjau Dari Perspektif Hukum Internasional (Studi Kasus Penganiayaan TKI Oleh Duta Besar Arab Saudi Di Jerman)," *Ganesha Civic Education Journal* 1, no. 1 (2019): 60–71.

the interests of the nation and state. Although these prerogative rights are special and independent, their use must not be absolute or arbitrary.

Prerogative rights must still be subject to constitutional provisions, laws and regulations, and the principles of democracy and justice.[31] The President is obliged to be accountable to the people for the use of his prerogative rights through the House of Representatives and ensure that the actions taken do not conflict with the public and state interests. In addition, there are also constitutional conventions and customs that serve as guidelines in the implementation of these prerogative rights.[32] Thus, prerogative right is a special right granted to facilitate the implementation of state power but is still supervised and limited by legal norms and good governance. The concept of the president's prerogative right is a special and independent authority that allows the president to make important and strategic decisions in government without an approval process by other institutions, with the aim of ensuring the smooth and effective administration of the state, while still adhering to the rule of law and being politically and legally accountable to the people and the legislature. The President's authority to grant amnesty and abolition is part of the prerogative rights that are clearly regulated in Article 14 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. As a prerogative right, amnesty and abolition are special powers possessed by the president to eliminate or stop the criminal legal consequences against a person or group of people, which are usually carried out based on considerations of state interest and socio-political stability. Amnesty is the elimination of all legal consequences of a criminal act that has been committed, including the criminal status that is abolished, usually given to those who have been convicted or sentenced, while abolition stops or revokes the prosecution process before a court verdict, so that the defendant or suspect is acquitted of criminal charges. In practice, the implementation of this authority is not carried out unilaterally by the president even though it is a prerogative right, the granting

[31] Isnawati Isnawati et al., "The Indonesian President's Prerogative Rights In The Appointment Of Ministers After The Amendment To The 1945 Constitution," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 10, no. 2 (2023): 254–74, https://doi.org/10.22304/pjih.v10n2.a6.

[32] Dicky Eko Prasetio, Muh. Ali Masnun, and Noviyanti Noviyanti, "Post-Election Reconciliation in 2024 as a Constitutional Convention in Indonesia: A Progressive Legal Culture Perspective," *Jambura Law Review* 7, no. 1 (2025): 176–96, https://doi.org/10.33756/jlr.v7i1.26999.

PATTIMURA Legal Journal, 4 (3) December 2025: 255 - 270
E-ISSN: 2830-2435
Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

of amnesty and abolition must obtain approval or consideration from the House of Representatives as a check and balance mechanism in the government system.[33]

Thus, prerogative right is a special right granted to facilitate the implementation of state power but is still supervised and limited by legal norms and good governance. The concept of the president's prerogative right is a special and independent authority that allows the president to make important and strategic decisions in government without an approval process by other institutions, with the aim of ensuring the smooth and effective administration of the state, while still adhering to the rule of law and being politically and legally accountable to the people and the legislature.

The President's authority to grant amnesty and abolition is part of the prerogative rights that are clearly regulated in Article 14 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. As a prerogative right, amnesty and abolition are special powers possessed by the president to eliminate or stop the criminal legal consequences against a person or group of people, which are usually carried out based on considerations of state interest and socio-political stability. Amnesty is the elimination of all legal consequences of a criminal act that has been committed, including the criminal status that is abolished, usually given to those who have been convicted or sentenced, while abolition stops or revokes the prosecution process before a court verdict, so that the defendant or suspect is acquitted of criminal charges. In practice, the implementation of this authority is not carried out unilaterally by the president even though it is a prerogative right, the granting of amnesty and abolition must obtain approval or consideration from the House of Representatives as a check and balance mechanism in the government system.

B. A Critical Review of the Amnesty Granted to Hasto Kristiyanto and the Abolition Granted to Tom Lembong: Between the Supremacy of Law or Political Interests

The granting of amnesty in Indonesia is a presidential prerogative right constitutionally regulated in Article 14 paragraph (2) of the 1945 Constitution and further regulated in

[33] Hananto Widodo, Dicky Eko Prasetio, and Fradhana Putra Disantara, "Relasi Kekuasaan Antar Presiden Dan Wakil Presiden Dalam Sistem Ketatanegaraan Republik Indonesia," *Pandecta Research Law Journal* 15, no. 1 (2020): 13–25, https://doi.org/10.15294/pandecta.v15i1.24554.

PATTIMURA Legal Journal, 4 (3) December 2025: 255 - 270
E-ISSN: 2830-2435
Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

Emergency Law Number 11 of 1954 concerning Amnesty and Abolition.[34] Legally, amnesty eliminates all criminal legal consequences, while abolition eliminates prosecution for criminal acts committed by an individual or a group of people. The main reason for granting amnesty in Indonesia often relates to state interests, especially to maintain national unity, integrity, and stability.[35] In a number of cases, the granting of amnesty is aimed as a political reconciliation step to ease tensions, avoid prolonged conflicts, and unite all elements of the nation.[36] One example is the granting of amnesty to Kahar Muzakar during the era of President Soekarno. Kahar Muzakar was granted amnesty because he was a DI/TII rebel in South Sulawesi.[37] The amnesty was granted on the grounds that Kahar and his group had repented and wanted to return to the Unitary State of the Republic of Indonesia. President Abdurrahman Wahid (Gus Dur) granted amnesty to political figures and political prisoners such as Budiman Sudjatmiko and several Free Aceh Movement members who were considered to have repented and wanted to return to the Unitary State of the Republic of Indonesia. President Joko Widodo granted amnesty to a number of prisoners related to Information and Electronic Transactions Law cases, such as Baiq Nuril Maknun and Saiful Mahdi. Regarding abolition, the granting of abolition in the past was usually given to those involved in political conflicts and rebellions, such as followers of the Fretilin Movement in East Timor during the era of President Soeharto. This movement sought to liberate East Timor, and its followers received abolition as part of reconciliation efforts after a prolonged political conflict. President Abdurrahman Wahid (Gus Dur) also granted abolition to a number of political prisoners and activist groups who had previously been arrested on charges of subversion and treason, as part of national reconciliation.[38]

In general, from the history of granting amnesty and abolition above, it can be concluded that one of the objectives is to achieve political stability and realize national reconciliation, and

[34] Ahmad Ahmad, "Purifikasi Pemberian Amnesti Dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang Undang Dasar 1945," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 5, no. 2 (2021): 93–99, https://doi.org/10.35308/jic.v5i2.2547.

[35] Rizky Malinto Ramadani, Indra Perwira, and Bilal Dewansyah, "Problem Pemberian Amnesti Oleh Presiden Dalam Perspektif Kepentingan Negara," *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 3 (2021): 984, https://doi.org/10.33087/jiubj.v21i3.1688.

[36] Rohmatul Jannah et al., "Analisis Hukum Kedudukan Lembaga Negara Berdasarkan UUD 1945 Dalam Sistem Ketatanegaraan Indonesia," *Hukum Inovatif : Jurnal Ilmu Hukum Sosial Dan Humaniora* 1, no. 3 (2024): 65–78, https://doi.org/10.62383/humif.v1i3.291.

[37] Tempo.co, "Sukarno Hingga Prabowo Pernah Keluarkan Abolisi Dan Amnesti," 2025, https://www.tempo.co/politik/sukarno-hingga-prabowo-pernah-keluarkan-abolisi-dan-amnesti-2054461.

[38] Tempo.co.

therefore the granting of amnesty and abolition is generally related to political crimes or due to Information and Electronic Transactions Law cases or as victims of sexual violence as experienced by Baiq Nuril.[39] The granting of amnesty to Hasto Kristiyanto and abolition to Tom Lembong has sparked strong controversy with fundamental questions regarding whether the decisions reflect the rule of law or are motivated solely by political interests. Legally, amnesty and abolition are presidential prerogative rights regulated in the 1945 Constitution and Law Number 11 of 1954 concerning Amnesty and Abolition, which grants the president the authority to eliminate all legal consequences or legal processes against criminal acts that have been decided by the court. In this case, Hasto Kristiyanto was found guilty of bribery related to the management of replacements between members of the DPR (People's Representative Council), while Tom Lembong was proven guilty of corruption, but both still received legal forgiveness.

Regarding the granting of amnesty to Hasto Kristiyanto and abolition to Tom Lembong, the biggest concern is the potential normalization of corruption in the eyes of the public, so that corrupt acts are considered "forgiven" and no longer a serious legal burden. In addition, the process of granting amnesty and abolition is considered rushed, less open, without clear criteria and transparent verification procedures, thus giving rise to accusations of political intervention in law enforcement that should be independent. The Minister of Law seeks to emphasize that the amnesty and abolition were granted based on considerations of maintaining national stability, political conduciveness, and brotherhood of the nation's children amidst a complex political situation. This shows that the decision was not solely to free the two individuals from legal entanglement, but rather part of a state political strategy that prioritizes reconciliation and avoids prolonged conflict. However, this reason is very vulnerable to being interpreted as prioritizing political interests over justice and the rule of law.

Critically, President Prabowo Subianto's decision to grant amnesty and abolition in corruption-related cases raises difficult questions about the balance between the rule of law, where the law must be enforced impartially, and the political reality that often prioritizes

[39] Budi Haritjahjono and Sodikin Sodikin, "Implementation of the Lex Certa Principle towards the Ambiguity of Digital Law's in Indonesia," *Amnesti: Jurnal Hukum* 7, no. 1 (2025): 1–14, https://doi.org/10.37729/amnesti.v7i1.5873.

stability and political concessions. If law enforcement is excessively intervened with for political purposes, the legal foundation of the state will be eroded and public trust in justice will decline significantly. On the other hand, political considerations are often a pragmatic tool in a democratic system to manage conflicts and social tensions.

A critical review of the amnesty granted to Hasto Kristiyanto and the abolition to Tom Lembong indicates an attempt to reduce the rule of law for political interests, regardless of the fact that the abolition granted to Tom Lembong was essentially correct because there was an error in the legal construction by the judge in Tom Lembong's case. The granting of amnesty to Hasto Kristiyanto and abolition to Tom Lembong shows a tension between formal legal regulations and ongoing political dynamics, where the rule of law faces the risk of subordination by more pragmatic and strategic political interests. This issue urges transparency, accountability, and strict evaluation so that in the future the president's prerogative right in granting amnesty and abolition is not misused to cover up corruption or other serious cases for short-term political gain.

CONCLUSION

The President's constitutional authority to grant amnesty and abolition is a prerogative right that provides flexibility and special power to resolve legal issues related to political and social dimensions, such as reconciliation and conflict resolution. However, the exercise of this authority often faces challenges in the form of subjectivity and the potential for politicization in determining the recipients of amnesty or abolition, which can open the door for abuse of power and disregard the principles of justice and public transparency. In addition, because this process is administrative and does not touch substantive court decisions, there needs to be strict oversight so that it does not weaken the rule of law and judicial independence. Therefore, to maintain a balance between executive power and the principles of the rule of law, a checks and balances mechanism involving the House of Representatives (People's Representative Council) and high transparency is needed, so that the President's authority can be exercised in an accountable, fair, and pro-people manner as a whole. The granting of amnesty to Hasto Kristiyanto and abolition to Tom Lembong has sparked a sharp debate over whether the

PATTIMURA Legal Journal, 4 (3) December 2025: 255 - 270
E-ISSN: 2830-2435
Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

decisions reflect the rule of law or are more driven by political interests. Amnesty and abolition are presidential prerogative rights regulated in the constitution and laws, giving the authority to eliminate the consequences or legal processes against convicts. Hasto was found guilty of bribery related to the replacement of House of Representatives members, and Tom Lembong was convicted in a sugar import corruption case, but both received legal forgiveness. The biggest controversy is the risk of normalizing corruption if corrupt acts can be "forgiven," as well as a process that is considered rushed and less transparent, thus raising suspicions of political intervention in law enforcement that should be independent. The government argues that the amnesty and abolition are to maintain national stability and brotherhood amidst a complex political situation, as a reconciliation strategy to avoid prolonged conflict. However, this reason is prone to being interpreted as prioritizing politics over justice and the rule of law. Critically, this decision shows the tension between impartial law enforcement and pragmatic political realities, where if the law is intervened with for political purposes, public trust in justice can decline drastically. Although the abolition for Tom Lembong is considered appropriate because there was an error in the legal construction in his case, the granting of amnesty and abolition shows the risk of subordination of the rule of law by political interests and demands transparency and accountability so that the president's prerogative rights are not misused for short-term political purposes.

REFERENCES

Ahmad, Ahmad. "Purifikasi Pemberian Amnesti Dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang Undang Dasar 1945." *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 5, no. 2 (2021): 93–99. https://doi.org/10.35308/jic.v5i2.2547.

Alnemari, Hazim. "God's Law, King's Court: Ḥudūd Jurisprudence under Saudi Monarchical Decrees." *Journal of Islamic Law* 6, no. 1 (2025): 3–8. https://doi.org/10.53484/jil.v6.alnemari.

Bryan A. Garner, Henry Campbell Black. *Black's Law Dictionary*. 11th ed. Minnesotta: West Publishing Co, St. Paull, 2019.

Christiano, Thomas, and Andrew Williams. "Symposium on Tommie Shelby's The Idea of Prison Abolition." *Politics, Philosophy & Economics* 24, no. 3 (2025): 215–16. https://doi.org/10.1177/1470594X251337222.

Essien, Joseph Paul, Maduka Enyimba, and Thomas Egaga Ushie. "The Abolition of Death Penalty and Crime Control in Nigeria." *The International Journal of Human Rights* 1, no. 1 (2025): 1–12. https://doi.org/10.1080/13642987.2025.2533989.

Haritjahjono, Budi, and Sodikin Sodikin. "Implementation of the Lex Certa Principle towards the Ambiguity of Digital Law's in Indonesia." *Amnesti: Jurnal Hukum* 7, no. 1 (2025): 1–14. https://doi.org/10.37729/amnesti.v7i1.5873.

Holder, Robyn L., and Albin Dearing. "Human Dignity, Rights and Victim Participation in Criminal Justice." *International Criminology* 4, no. 1 (2024): 108–19. https://doi.org/10.1007/s43576-024-00119-3.

Idayanti, Soesi, Toni Haryadi, and Tiyas Vika Widyastuti. "Penegakan Supremasi Hukum Melalui Implementasi Nilai Demokrasi." *Diktum : Jurnal Ilmu Hukum* 8, no. 1 (2020): 83–93. https://doi.org/10.24905/diktum.v8i1.85.

Isnawati, Isnawati, Adam Setiawan, Fatma Hidayati, and Rezky Robiatul Aisyiah Ismail. "The Indonesian President's Prerogative Rights In The Appointment of Ministers After The Amendment to The 1945 Constitution." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 10, no. 2 (2023): 254–74. https://doi.org/10.22304/pjih.v10n2.a6.

Kanantha, Adiel Muhammad, and Ferry Edwar. "Independensi Pengadilan Pajak Ditinjau Dari Pasal 24 Ayat (1) UUD NRI 1945." *Reformasi Hukum Trisakti* 4, no. 3 (2022): 519–28. https://doi.org/10.25105/refor.v4i3.13828.

Lailam, Tanto, and Nita Andrianti. "Legal Policy of Constitutional Complaints in Judicial Review: A Comparison of Germany, Austria, Hungary, and Indonesia." *Bestuur* 11, no. 1 (2023): 75–94. https://doi.org/10.20961/bestuur.v11i1.70052.

Lenta, Patrick. "Amnesties, Transitional Justice and the Rule of Law." *Hague Journal on the Rule of Law* 15, no. 3 (2023): 441–69. https://doi.org/10.1007/s40803-023-00199-9.

Maulan, Rikiandi Sopian, Chrisdianto eko Purnomo, Haeruman Jayadi, and Rachman Maulana Kafrawi. "Urgensi Pembentukan Undang-Undang Grasi,Amnesti, Abolisi Dan Rehabilitasi Ditinjau Dari Kepastian Hukum." *Jurnal Diskresi* 3, no. 1 (2024): 52–59.

McCarter, Susan, Gilbert Singletary, and Destiny Reyes. "Abolish or Reform Criminal Justice in the United States? A Forensic Social Work Perspective." *Journal of Forensic Social Work* 9, no. 1 (2025): 4–21. https://doi.org/10.15763/issn.1936-9298.2025.9.1.4-21.

Mukhlis, Muhammad Mutawalli, Harlida Abdul Wahab, Zulhilmi Paidi, Nila Sastrawaty, and Haslinda Hasan. "Heavy Parliamentary v. Heavy Executive: Ambiguity of Power in Indonesian Constitutional Practices." *Jurnal Media Hukum* 31, no. 2 (2024): 186–205. https://doi.org/10.18196/jmh.v31i2.21703.

Nasution, Liantha Adam, Fatimah Islamy Nasution, Siti Aminah, and Zulfahmi Zulfahmi.

"Pardon for Corruptors: An Examination of Repentance and Restitution in Islamic Criminal Law." *JUSTISI* 11, no. 3 (2025): 719–31. https://doi.org/10.33506/js.v11i3.4365.

Novak, Andrew. "Contesting the Royal Prerogative of Mercy: The Queen's Pardons and the 1968 Constitutional Crisis over the Death Penalty in Rhodesia." *The Journal of Imperial and Commonwealth History* 53, no. 1 (2025): 82–106. https://doi.org/10.1080/03086534.2025.2460092.

Padilla, Javier. "Is Satisfaction with Democracy Higher After Transitional Justice Trials?" *Political Behavior* 1, no. 1 (2025): 2–7. https://doi.org/10.1007/s11109-025-10007-9.

Parasher, Tejas. "Federalism, Representation, and Direct Democracy in 1920s India." *Modern Intellectual History* 19, no. 2 (2022): 444–72. https://doi.org/10.1017/S1479244320000578.

Prasetio, Dicky Eko, Muh. Ali Masnun, and Noviyanti Noviyanti. "Post-Election Reconciliation in 2024 as a Constitutional Convention in Indonesia: A Progressive Legal Culture Perspective." *Jambura Law Review* 7, no. 1 (2025): 176–96. https://doi.org/10.33756/jlr.v7i1.26999.

Ramadani, Rizky Malinto, Indra Perwira, and Bilal Dewansyah. "Problem Pemberian Amnesti Oleh Presiden Dalam Perspektif Kepentingan Negara." *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 3 (2021): 984. https://doi.org/10.33087/jiubj.v21i3.1688.

Ramdhani, Nadia Marsya, Khoirunnisa Putri Diksy, and Kirana Amelia Sitanggang, Daniella. "The Effectiveness of The Death Penalty In Indonesia Through A Human Rights Perspective (A Comparative Study Of The Application Of The Death Penalty With Australia)." *Journal of Ius Comparatum Law Studies* 1, no. 1 (2025): 1–11.

Rohmatul Jannah, Dyah Hayu, Ersy Aulia, Lois Salwa, Fathan Akbar, and Kuswan Hadji. "Analisis Hukum Kedudukan Lembaga Negara Berdasarkan UUD 1945 Dalam Sistem Ketatanegaraan Indonesia." *Hukum Inovatif : Jurnal Ilmu Hukum Sosial Dan Humaniora* 1, no. 3 (2024): 65–78. https://doi.org/10.62383/humif.v1i3.291.

Safriani, Andi. "Due Process Of Law Dalam Pembubaran Organisasi Masyarakat Tanpa Melalui Proses Pengadilan." *Alauddin Law Development Journal (ALDEV)* 4, no. 2 (2022): 277–93.

Sales, Philip. "Constitutional Values In The Common Law Of Obligations." *The Cambridge Law Journal* 83, no. 1 (2024): 132–57. https://doi.org/10.1017/S0008197324000011.

Strange, Carolyn, Daniel Pascoe, and Andrew Novak. "The Politics of Abolition: Reframing the Death Penalty's History in Comparative Perspective." *Punishment & Society* 27, no. 3 (2025): 486–505. https://doi.org/10.1177/14624745241298220.

Sundar, Nandini. "'We Will Teach India Democracy': Indigenous Voices in Constitution Making." *Journal of Imperial and Commonwealth History* 1, no. 1 (2023): 1–33.

https://doi.org/10.1080/03086534.2023.2196838.

Tempo.co. "Pro-Kontra Amnesti Dan Abolisi Untuk Kasus Korupsi," 2025. https://www.tempo.co/hukum/pro-kontra-amnesti-dan-abolisi-untuk-kasus-korupsi--2055449.

———. "Sukarno Hingga Prabowo Pernah Keluarkan Abolisi Dan Amnesti," 2025. https://www.tempo.co/politik/sukarno-hingga-prabowo-pernah-keluarkan-abolisi-dan-amnesti-2054461.

Wenzelburger, Georg. "Policy Windows and Criminal Justice Reforms: A Multiple Streams Framework Analysis." *Policy & Politics* 53, no. 2 (2025): 296–314. https://doi.org/10.1332/03055736Y2024D000000060.

Widodo, Hananto, Dicky Eko Prasetio, and Fradhana Putra Disantara. "Relasi Kekuasaan Antar Presiden Dan Wakil Presiden Dalam Sistem Ketatanegaraan Republik Indonesia." *Pandecta Research Law Journal* 15, no. 1 (2020): 13–25. https://doi.org/10.15294/pandecta.v15i1.24554.

Wijaya, Nasri. "Analysis of Abolition Opportunities for Johenas Gluba Gebze in Indonesian Legal Perspective." *Papsel Law Journal* 1, no. 1 (2024): 21–25.

Wolf, Loammi. "The Disqualification of Candidates for Election: MK Political Party v Independent Electoral Commission." *South African Journal on Human Rights* 1, no. 1 (2025): 1–14. https://doi.org/10.1080/02587203.2025.2455069.

Yanuarto, Totok, Pika Sari, I Gede Widihiana Suarda, and Ainul Azizah. "Pengintegrasian Mediasi Penal Sebagai Penyelesaian Perkara Pidana Ditinjau Dari Perspektif Pembaharuan Hukum Di Indonesia." *Jurnal Rechtens* 13, no. 1 (2024): 149–65. https://doi.org/10.56013/rechtens.v13i1.2845.

Yusvitasar, Devi. "Penerapan Prinsip Persona Non Grata Terhadap Duta Besar Ditinjau Dari Perspektif Hukum Internasional (Studi Kasus Penganiayaan TKI Oleh Duta Besar Arab Saudi Di Jerman)." *Ganesha Civic Education Journal* 1, no. 1 (2019): 60–71.

Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest,

Copyright: © **AUTHOR.** This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License. (CC-BY NC), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

PATTIMURA Legal Journal (Pela) is an open acces and peer-reviewed journal published by Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia.

OPEN ACCESS