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A Philosophical and Comparative Legal Analysis of Amnesty: Lessons from Indonesia and the United States

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Abstract

Introduction: *Amnesty occupies an uneasy position within contemporary legal systems, situated between the ideals of justice, mercy, and constitutional authority. While often justified as an extraordinary legal response to exceptional circumstances, its application continues to provoke concerns regarding legal certainty, equality before the law, and institutional accountability within modern constitutional democracies.*

Purposes of the Research: *This article seeks to explore the philosophical foundations and legal justification of amnesty through a comparative analysis of its practice in Indonesia and the United States. It aims to examine how differing constitutional traditions conceptualise the legitimacy, limits, and moral implications of amnesty as a legal institution.*

Methods of the Research: *The research adopts a normative legal methodology employing philosophical, statutory, and comparative approaches. Constitutional texts, legal doctrines, and theoretical perspectives are analysed through qualitative legal reasoning in order to assess the normative coherence of amnesty within each legal system.*

Results Main Findings of the Research: *The findings indicate that although both Indonesia and the United States recognise amnesty as an extraordinary legal mechanism, they diverge significantly in terms of constitutional design, institutional safeguards, and moral justification. This article contributes by reframing amnesty not merely as an executive prerogative, but as a legal institution that demands philosophical accountability and constitutional restraint.*

Keywords: Amnesty; Clemency Power; Rule of Law; Comparative Constitutional Law; Legal Philosophy.

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INTRODUCTION

Amnesty has long been recognised as one of the most exceptional legal instruments within modern constitutional systems. Unlike ordinary mechanisms of criminal justice, amnesty operates by suspending or extinguishing legal responsibility through an act of sovereign discretion. In legal philosophy, this exceptional character places amnesty in a precarious position, as it simultaneously embodies the ideals of mercy and reconciliation while challenging the foundational principles of legal certainty and equality before the law. As noted

in *Amnesties and Inclusive Political Settlements*[1], amnesty is often justified as a pragmatic response to extraordinary political or social conditions, yet its normative legitimacy remains deeply contested within rule-of-law frameworks.

From the perspective of constitutional theory, the tension surrounding amnesty emerges from its potential to disrupt the coherence of criminal law. The principle that similar cases should be treated alike constitutes a core element of legal justice; however, amnesty introduces selective exemption that may privilege certain actors or offences. This concern is particularly emphasised in *Presidential Pardons and the Problem of Impunity*[2], where amnesty and pardon powers are described as capable of transforming from corrective mechanisms into instruments of impunity when exercised without principled constraints. Rather than functioning as a humanitarian safeguard, unregulated amnesty risks eroding public trust in the integrity of legal institutions.

In contemporary legal systems, debates on amnesty increasingly intersect with discussions on constitutional accountability. The exercise of clemency powers by the executive branch has prompted legal scholars to question whether mercy can coexist with institutional responsibility. According to *Focusing Presidential Clemency Decision-Making*[3], the absence of transparent standards in clemency decisions creates a normative gap between constitutional authority and moral justification. This gap highlights the philosophical dilemma faced by modern states: while mercy may serve as a moral corrective to rigid legalism, it must not undermine the structural commitment to the rule of law.

The Indonesian legal system presents a particularly illustrative case of this dilemma. Constitutionally, amnesty is recognised as a presidential prerogative exercised with legislative consideration. However, the normative framework governing its application remains relatively underdeveloped. As argued in *Rekonstruksi Kebijakan Pengampunan (Amnesti) Presiden* [4],

[1] Louise Mallinder, "Amnesties and Inclusive Political Settlements," *Queen's University Belfast School of Law* (Belfast, 2018), https://doi.org/10.2139/ssrn.3341311.

[2] Frank O Bowman, "Presidential Pardons and the Problem of Impunity," *23 N.Y.U. Journal of Legislation and Public Policy* 23 (2020): 1–83, https://doi.org/10.2139/ssrn.3728908.

[3] Paul J Larkin, "Focusing Presidential Clemency Decision-Making," *Buffalo Law Review* 70, no. 1 (2022): 1–85, https://doi.org/10.2139/ssrn.3778145.

[4] Lisnawaty W Badu and Ahmad, "Purifikasi Pemberian Amnesti Dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang Undang Dasar 1945," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 5, no. 2 (2021): 93–111, https://doi.org/10.35308/jic.v5i2.2547.

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Indonesian amnesty practice tends to prioritise political discretion over clearly articulated legal standards. This condition creates uncertainty regarding the philosophical boundaries of amnesty and raises concerns about its compatibility with constitutional equality and legal predictability. A similar concern is echoed in Legal Politics of Clemency, Amnesty and Abolition, which situates amnesty within the broader discourse of presidential prerogative in Indonesia. Fauzi explains that while the Constitution provides formal authority, it offers limited guidance on the ethical and legal objectives of amnesty. As a result, amnesty risks being perceived not as an instrument of justice, but as a manifestation of executive dominance over the criminal justice system. This perception becomes increasingly problematic in cases involving serious offences or politically sensitive actors.

By contrast, the United States constitutional tradition has generated a more extensive doctrinal debate regarding the scope and limits of clemency powers. In *An Unappreciated Constraint on the President's Pardon Power*[5], amnesty and pardon are framed not as unlimited prerogatives, but as powers implicitly constrained by constitutional structure and historical practice. This interpretation reflects an effort to reconcile executive mercy with institutional accountability, even in the absence of explicit statutory limitations. The American experience thus demonstrates that amnesty may be constitutionally recognised while remaining subject to normative scrutiny.

Further scholarly discourse in the United States underscores the moral risks associated with unchecked clemency. *The Legality of Presidential Self-Pardons* [6] illustrates how extreme applications of pardon power provoke constitutional anxiety precisely because they blur the line between mercy and self-interest. Such debates reinforce the argument that amnesty cannot be understood merely as a technical legal mechanism, but must be evaluated through philosophical considerations of justice, responsibility, and moral restraint.

Beyond executive clemency, contemporary legal scholarship has also explored alternative models of forgiveness within criminal law. The concept of judicial pardon, for instance, reflects

[5] Aaron J Rappaport, "An Unappreciated Constraint on the President's Pardon Power," *Connecticut Law Review* 52, no. 1 (2020): 271–318, https://digitalcommons.lib.uconn.edu/law_review/444.

[6] Paul J Larkin, "The Legality of Presidential Self-Pardons," *Harvard Journal of Law and Public Policy* 44, no. 2 (2021): 763–825, https://doi.org/10.2139/ssrn.3737850.

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an attempt to institutionalise mercy within the judiciary rather than concentrating it in the executive branch. As discussed in *Judicial Pardon: Renewal of Criminal Law Towards Minor Criminal Offense*[7], judicially grounded forgiveness mechanisms aim to humanise criminal law while preserving procedural integrity. This development suggests that mercy need not be incompatible with the rule of law, provided it is embedded within transparent and accountable legal structures.

Against this theoretical and comparative backdrop, amnesty emerges as a legal institution that demands philosophical as well as constitutional evaluation. The divergent practices of Indonesia and the United States illustrate how similar powers can be justified through markedly different normative frameworks. Accordingly, this article addresses the following research questions: how is amnesty philosophically justified within contemporary legal systems, and to what extent do constitutional designs in Indonesia and the United States succeed in balancing mercy with the imperatives of the rule of law?

METHODS OF THE RESEARCH

This study employs normative legal research as its primary methodological framework, given that the focus of the analysis lies in examining legal norms, constitutional doctrines, and philosophical justifications governing the exercise of amnesty within contemporary legal systems. Normative research is particularly appropriate for this study because amnesty operates not merely as a factual policy instrument, but as a constitutional and moral construct that must be evaluated through legal reasoning rather than empirical measurement. The research adopts a philosophical approach to explore the normative foundations of amnesty, especially its relationship with justice, mercy, and the *rule of law*. Through this approach, amnesty is analysed as a legal concept that reflects deeper tensions between legal certainty and moral discretion, as discussed in the broader discourse on clemency and accountability[8]. This philosophical lens allows the study to move beyond descriptive accounts and engage with the ethical legitimacy of amnesty as a legal institution. In addition, a statutory and constitutional

[7] Sagung Putri M.E., Purwani, and Putu Mery Lusyana Dewi, "Judicial Pardon: Renewal of Criminal Law Towards Minor Criminal Offense," *Yustisia: Jurnal Hukum* 10, no. 3 (2021): 415–30, https://doi.org/10.20961/yustisia.v10i3.55347.

[8] Larkin, "Focusing Presidential Clemency Decision-Making."

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approach is applied to examine the formal legal basis of amnesty in Indonesia and the United States. This includes an analysis of constitutional provisions, relevant statutes, and doctrinal interpretations that shape the scope and limits of amnesty powers within each system. The statutory analysis is complemented by a comparative approach, which enables the identification of similarities and differences in constitutional design, institutional safeguards, and normative constraints between the two jurisdictions. Comparative analysis is used not to rank legal systems, but to reveal how distinct constitutional traditions conceptualise and legitimise amnesty[9]. The legal materials used in this research consist of primary legal sources, such as constitutions and statutory instruments, and secondary legal materials, including scholarly articles and doctrinal writings published within the last eight years. These materials are analysed qualitatively using descriptive and analytical legal reasoning, with the aim of constructing coherent arguments regarding the philosophical and constitutional dimensions of amnesty. By integrating philosophical inquiry with comparative constitutional analysis, this methodology seeks to ensure that the discussion of amnesty remains both theoretically grounded and legally rigorous.

RESULTS AND DISCUSSION

A. Philosophical Foundations of Amnesty in Modern Legal Thought

At the philosophical level, amnesty is often understood as a legal manifestation of mercy that operates beyond the ordinary mechanics of punishment. As articulated in *Amnesties and Inclusive Political Settlements*[10], amnesty historically emerges in contexts where strict adherence to criminal accountability is perceived as insufficient to restore social order or political stability. This view positions amnesty not merely as an exception to law, but as a deliberate legal response to extraordinary circumstances. However, such justification immediately raises a normative question: can mercy, when institutionalised through amnesty, coexist with the foundational demand of justice as equal application of law. From a classical legal-philosophical standpoint, justice is commonly associated with consistency and predictability. Amnesty disrupts this logic by introducing selective forgiveness, thereby challenging the principle of

[9] Rappaport, "An Unappreciated Constraint on the President's Pardon Power."
[10] Louise Mallinder, "Amnesties and Inclusive Political Settlements."

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equality before the law. In this regard, *Presidential Pardons and the Problem of Impunity*[11], warns that amnesty risks degenerating into impunity when it is detached from clear moral and legal constraints. Bowman's critique does not reject amnesty outright; rather, it underscores that mercy becomes normatively problematic when it ceases to function as a corrective mechanism and instead shields wrongdoing from accountability.

The philosophical tension between mercy and legality becomes more pronounced when amnesty is exercised through executive discretion. According to *Focusing Presidential Clemency Decision-Making*[12], clemency powers—including amnesty—are often justified as humanitarian tools designed to mitigate the harshness of rigid legal systems. Yet Larkin argues that without principled decision-making standards, such powers risk undermining the moral credibility of law itself. Mercy, in this sense, must be disciplined by normative reasoning; otherwise, it transforms from a moral virtue into an arbitrary exercise of authority.

Nevertheless, legal philosophy also recognises that strict legalism may fail to capture the moral complexity of certain cases. Amnesty is sometimes defended as a necessary corrective to the limitations of positive law, particularly when law becomes excessively punitive or detached from social realities. In this context, mercy is framed as an integral component of substantive justice rather than its negation. Such reasoning reflects a more nuanced understanding of justice—one that accommodates compassion without abandoning accountability.

The challenge, however, lies in institutionalising this balance. *An Unappreciated Constraint on the President's Pardon Power*[13], suggests that constitutional systems implicitly limit amnesty through structural principles, even when explicit statutory restrictions are absent. This perspective implies that amnesty must be interpreted within a broader constitutional morality that restrains power through ethical expectations and historical practice. Amnesty, therefore, is not philosophically defensible as an unfettered prerogative, but as a constrained legal institution embedded within a normative order.

[11] Bowman, "Presidential Pardons and the Problem of Impunity."
[12] Larkin, "Focusing Presidential Clemency Decision-Making."
[13] Rappaport, "An Unappreciated Constraint on the President's Pardon Power."

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Ultimately, the philosophical foundations of amnesty reveal a persistent dialectic between mercy and justice, discretion and legality. Amnesty occupies a liminal space within legal thought, functioning neither as a purely moral act nor as a routine legal sanction. Its legitimacy depends on the extent to which legal systems can articulate and enforce normative boundaries that preserve both compassion and the integrity of law. This philosophical tension provides the conceptual framework for analysing how different constitutional systems—particularly Indonesia and the United States—translate these abstract ideals into concrete legal practice.

B. Constitutional Design of Amnesty Power in Indonesia

Within the Indonesian constitutional framework, amnesty is formally recognised as a presidential authority rooted in the 1945 Constitution. Article 14 of the Constitution positions amnesty alongside pardon and abolition as part of the President's prerogative powers, exercised with consideration from the House of Representatives. From a doctrinal standpoint, this arrangement reflects a constitutional compromise between executive discretion and legislative oversight. However, the constitutional text itself provides minimal guidance regarding the philosophical objectives and normative limits of amnesty, leaving its substantive meaning largely to political interpretation.

As observed in Reconstruction of the President's Amnesty Policy[14], the Indonesian model of amnesty is characterised by a strong emphasis on presidential discretion rather than a structured legal doctrine. Ismail notes that while constitutional recognition grants formal legitimacy, it does not automatically resolve questions concerning justice, equality, and accountability. In practice, amnesty decisions tend to be framed as political or reconciliatory acts, rather than as outcomes of principled legal reasoning grounded in constitutional morality.

This condition reflects a broader issue within Indonesia's constitutional design, where prerogative powers are acknowledged but insufficiently theorised. According to Legal Politics of Clemency, Amnesty and Abolition[15], the absence of clear normative standards allows amnesty to operate within a grey area between law and politics. Fauzi argues that such

[14] Badu and Ahmad, "Purifikasi Pemberian Amnesti Dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang Undang Dasar 1945."
[15] Suyogi Imam Fauzi, "Politik Hukum Pemberian Grasi, Amnesti Dan Abolisi Sebagai Konsekuensi Logis Hak Prerogatif Presiden," *Jurnal Hukum & Pembangunan* 51, no. 3 (2021): 621–36, https://doi.org/10.21143/jhp.vol51.no3.3126.

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ambiguity weakens the legal identity of amnesty, transforming it from a legal institution into a discretionary political tool. As a result, the exercise of amnesty often generates public controversy, particularly when applied to cases involving serious crimes or politically influential individuals.

From the perspective of the rule of law, this discretionary character raises concerns about legal certainty and equality before the law. Amnesty, when implemented without transparent criteria, risks undermining the predictability that is at the core of constitutional governance, in constitutional practice Indonesia lacks procedural safeguards capable of ensuring that amnesty decisions are guided by objective legal considerations and not opportunistic political interests. This shows that the constitutional design, although formally adequate, remains normatively incomplete.

The philosophical implications of this design become evident when amnesty is evaluated against substantive justice. Indonesian legal discourse increasingly acknowledges that mercy must not negate accountability. However, the current constitutional structure does not clearly articulate how amnesty should reconcile forgiveness with responsibility. In this respect, Indonesia's approach contrasts with legal systems that develop doctrinal constraints through jurisprudence or long-standing constitutional conventions. The Indonesian model relies heavily on political judgment, which may vary depending on context and leadership, thereby limiting the development of a stable normative framework.

Interestingly, Indonesian legal scholarship has begun to explore alternative models that could complement or restrain executive amnesty. The discourse on judicial pardon offers a conceptual counterbalance by embedding forgiveness within the judiciary rather than the executive. As discussed in The Principle of Judge's Pardon as an Effort to Humanize Crime[16], judicially administered forgiveness is perceived as more compatible with procedural fairness

[16] Vita Adolfina Manafe and Listiyowati Sumanto, "Asas Pemaafan Hakim (Rechterlijk Pardon) Sebagai Upaya Penyelesaian Tindak Pidana Ringan Untuk Pembaharuan Hukum Pidana Nasional," *Quantum Juris: Jurnal Hukum Modern* 6, no. 3 (2024): 338–49, https://journalversa.com/s/index.php/jhm/article/view/3102.

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and legal accountability. While judicial pardon differs doctrinally from constitutional amnesty, its emergence reflects a growing concern with the concentration of mercy in executive hands.

Overall, the constitutional design of amnesty in Indonesia reveals a tension between formal authority and normative clarity. While the Constitution grants the President significant discretion, it does not sufficiently define the ethical and legal boundaries of amnesty. This gap invites a philosophical reassessment of amnesty as a legal institution that should not merely depend on political legitimacy, but also be anchored in principles of justice, accountability, and constitutional restraint. This unresolved tension sets the stage for a comparative evaluation with the United States, where the discourse on clemency has developed through a different constitutional trajectory.

C. Clemency and Amnesty in the United States Legal System

The limitations observed in the Indonesian constitutional design of amnesty invite a broader comparative reflection on how other constitutional systems conceptualise mercy and accountability. A comparison becomes particularly instructive when examining the United States, a legal system that similarly entrusts clemency powers to the executive yet has developed a more elaborate philosophical and doctrinal discourse surrounding their exercise. Unlike Indonesia, where amnesty remains largely framed as a political prerogative, the American legal tradition has long subjected executive clemency to sustained constitutional and moral scrutiny. In the United States, the authority to grant pardon and amnesty is derived from Article II of the Constitution, which vests the President with the power to grant reprieves and pardons for offences against the United States. Although this power is textually broad, American legal scholarship has consistently resisted interpreting it as absolute. As argued in *An Unappreciated Constraint on the President's Pardon Power* [17], the constitutional design implicitly embeds limitations through structural principles such as separation of powers, federalism, and historical practice. This interpretation reflects an understanding that clemency, while discretionary, remains constitutionally situated rather than politically unbounded.

[17] Rappaport, "An Unappreciated Constraint on the President's Pardon Power."

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From a philosophical standpoint, American discourse tends to frame clemency as a constitutional safety valve rather than a political concession. *Guiding Presidential Clemency Decisionmaking* [18], emphasises that clemency functions as a corrective mechanism intended to address systemic rigidity, miscarriages of justice, or disproportionate punishment. However, Larkin also cautions that without principled standards, clemency risks undermining the moral authority of criminal law. This duality illustrates how mercy in the American system is conceptually tethered to justice, not detached from it.

Concerns regarding abuse of clemency power are particularly visible in debates surrounding controversial or self-interested pardons. In *The Legality of Presidential Self-Pardons*[19], clemency is examined through the lens of constitutional morality, highlighting the danger of transforming mercy into an instrument of self-protection. Such debates reveal that American legal thought does not treat amnesty as a neutral executive privilege, but as a power that must be justified within a broader ethical and institutional framework. The very contestation of self-pardon underscores a normative expectation that clemency should serve justice rather than personal or political expediency.

Empirical and doctrinal analyses further reinforce this expectation. *Statistical Analysis of Presidential Pardons*[20], demonstrates that clemency practices in the United States are often evaluated against patterns of consistency, transparency, and fairness. Although disparities and controversies persist, the existence of sustained scholarly and public scrutiny contributes to a culture of accountability surrounding amnesty and pardon powers. This culture contrasts with systems where clemency decisions remain insulated from critical evaluation.

Moreover, American legal scholarship has explored decentralised models of forgiveness that dilute executive dominance. The concept of municipal or local pardon power, as discussed in *Municipal Pardon Power* [21], reflects an attempt to reconceptualise mercy as a distributed legal

[18] Paul J Larkin, "Guiding Presidential Clemency Decision Making," *Georgetown Journal of Law & Public Policy* 18, no. 2 (2020): 451–503, https://doi.org/10.2139/ssrn.3489987.

[19] Larkin, "The Legality of Presidential Self-Pardons."

[20] Nicholas M Pace et al., "Statistical Analysis of Presidential Pardons," *Available at SSRN*, 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3919202.

[21] Hayato Watanabe, "The Municipal Pardon Powe," *Michigan Law Review* Hayato Wat, no. 118 (2020): 4, https://doi.org/10.36644/mlr.118.4.municipal.

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function rather than an exclusive presidential prerogative. While such models remain limited in scope, they illustrate an ongoing effort to reconcile forgiveness with democratic accountability and procedural fairness.

Taken together, the United States legal system presents a model in which amnesty and clemency are constitutionally recognised yet philosophically constrained. Mercy is not rejected, but neither is it allowed to eclipse the demands of legality and accountability. The American experience demonstrates that the legitimacy of amnesty depends less on the breadth of constitutional authority than on the depth of normative reasoning that accompanies its exercise. This distinction provides a crucial comparative lens for evaluating the Indonesian approach and sets the foundation for a direct normative comparison between the two systems.

D. Comparative Evaluation: Amnesty, Rule of Law, and Philosophical Accountability

The preceding discussions reveal that although Indonesia and the United States both constitutionally recognise amnesty or clemency as extraordinary legal instruments, they operationalise these powers through markedly different normative frameworks. A comparative evaluation therefore necessitates moving beyond textual authority to examine how each system reconciles mercy with the foundational demands of the *rule of law*. The contrast is not merely institutional, but philosophical, reflecting divergent assumptions about accountability, discretion, and constitutional morality. In Indonesia, amnesty is predominantly framed as a presidential prerogative grounded in constitutional text, yet relatively detached from a developed doctrine of normative restraint. As highlighted earlier, the lack of articulated standards allows amnesty to function within a broad discretionary space[22]. This design prioritises political legitimacy—derived from constitutional authority and legislative consideration—over philosophical accountability. Consequently, amnesty decisions are often evaluated in terms of political expediency rather than their coherence with principles of equality and legal certainty. By contrast, the United States demonstrates a stronger tendency to embed amnesty within a culture of constitutional justification. Even in the absence of explicit statutory limitations, American legal discourse insists on interpreting clemency through

[22] Badu and Ahmad, "Purifikasi Pemberian Amnesti Dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang Undang Dasar 1945."

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structural and ethical constraints (*An Unappreciated Constraint on the President's Pardon Power*, Rappaport, 2020). This approach reflects an implicit commitment to constitutional morality, whereby the legitimacy of mercy depends on its alignment with institutional responsibility. In this sense, amnesty is not insulated from critique, but subjected to continuous doctrinal and philosophical examination.

The differing treatments of accountability further illustrate this divergence. Indonesian scholarship frequently expresses concern that amnesty may dilute criminal responsibility when applied without transparent criteria,[23]. These concerns are amplified in cases involving serious crimes, where public perception of injustice becomes difficult to dispel. In the American context, similar anxieties have prompted robust debates on the moral hazards of clemency, particularly where pardon powers risk shielding wrongdoing from legal consequence[24]. The critical difference lies not in the existence of such risks, but in the institutional response to them.

From a philosophical standpoint, this comparison underscores two competing models of mercy. The Indonesian model tends to treat amnesty as an external corrective to the legal system—an intervention justified by exceptional circumstances but insufficiently integrated into a normative framework. The American model, conversely, conceptualises mercy as an internal component of constitutional governance, constrained by ethical expectations and historical practice[25]. Mercy, in this latter view, is legitimate only insofar as it reinforces rather than undermines the moral credibility of law.

The emergence of alternative forgiveness mechanisms further sharpens this contrast. Indonesian discourse on judicial pardon reflects a growing awareness that executive-centric mercy may be normatively problematic[26]. This development parallels American explorations of decentralised pardon models, which seek to distribute mercy across institutional actors. Both trends indicate a shared recognition that forgiveness must be institutionalised in ways that preserve accountability and procedural integrity. Ultimately, the comparative evaluation

[23] Fauzi, "Politik Hukum Pemberian Grasi, Amnesti Dan Abolisi Sebagai Konsekuensi Logis Hak Prerogatif Presiden."
[24] Bowman, "Presidential Pardons and the Problem of Impunity."
[25] Larkin, "Guiding Presidential Clemency Decision Making."
[26] Manafe and Sumanto, "Asas Pemaafan Hakim (Rechterlijk Pardon) Sebagai Upaya Penyelesaian Tindak Pidana Ringan Untuk Pembaharuan Hukum Pidana Nasional."

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reveals that the legitimacy of amnesty does not hinge solely on constitutional authorisation, but on philosophical accountability. Amnesty that lacks normative grounding risks eroding public confidence and weakening the *rule of law*. Conversely, amnesty that is philosophically constrained and institutionally scrutinised can function as a legitimate expression of mercy within constitutional democracy. The experiences of Indonesia and the United States thus offer contrasting yet complementary lessons on how legal systems may—or may not—successfully balance compassion with justice.

CONCLUSION

This study demonstrates that amnesty occupies a fundamentally ambivalent position within contemporary legal systems, functioning simultaneously as an instrument of mercy and a potential challenge to the rule of law. Through a philosophical and comparative analysis of Indonesia and the United States, it becomes evident that the legitimacy of amnesty cannot be assessed solely on the basis of constitutional authorisation. Rather, it depends on how legal systems articulate and enforce normative boundaries that reconcile compassion with accountability. In the Indonesian context, amnesty remains predominantly framed as a presidential prerogative grounded in constitutional text but insufficiently supported by a coherent normative doctrine. The absence of clearly articulated philosophical and legal standards has allowed amnesty to operate within a wide discretionary space, often blurring the distinction between legal mercy and political expediency. This condition weakens legal certainty and risks undermining public confidence in the fairness of the criminal justice system. By contrast, the United States illustrates a model in which amnesty and clemency powers, while constitutionally broad, are embedded within a tradition of sustained doctrinal debate and moral scrutiny. Mercy is treated not as an unchecked privilege, but as a constitutional safety valve that must be justified through ethical reasoning and institutional accountability. This approach reflects a deeper integration of amnesty into constitutional morality, rather than its isolation as an exceptional political act. The comparative findings suggest that amnesty can be a legitimate legal institution only when it is philosophically constrained and institutionally accountable. Mercy should function as a corrective to legal rigidity, not as a substitute for

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justice or a shield against responsibility. Legal systems that fail to embed amnesty within a coherent normative framework risk transforming it into a source of inequality and impunity. Ultimately, this article argues that the future of amnesty in constitutional democracies depends on a reconceptualisation of mercy as an integral component of the rule of law. By aligning amnesty with principles of justice, transparency, and moral responsibility, legal systems may preserve its humanitarian purpose without sacrificing legal integrity. For Indonesia, this entails moving beyond formal constitutional recognition toward a philosophically grounded and normatively disciplined model of amnesty that strengthens, rather than weakens, constitutional governance.

REFERENCES

Badu, Lisnawaty W, and Ahmad. "Purifikasi Pemberian Amnesti Dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang Undang Dasar 1945." *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 5, no. 2 (2021): 93–111. https://doi.org/10.35308/jic.v5i2.2547.

Bowman, Frank O. "Presidential Pardons and the Problem of Impunity." *23 N.Y.U. Journal of Legislation and Public Policy* 23 (2020): 1–83. https://doi.org/10.2139/ssrn.3728908.

Fauzi, Suyogi Imam. "Politik Hukum Pemberian Grasi, Amnesti Dan Abolisi Sebagai Konsekuensi Logis Hak Prerogatif Presiden." *Jurnal Hukum & Pembangunan* 51, no. 3 (2021): 621–36. https://doi.org/10.21143/jhp.vol51.no3.3126.

Larkin, Paul J. "Focusing Presidential Clemency Decision-Making." *Buffalo Law Review* 70, no. 1 (2022): 1–85. https://doi.org/10.2139/ssrn.3778145.

———. "Guiding Presidential Clemency Decision Making." *Georgetown Journal of Law & Public Policy* 18, no. 2 (2020): 451–503. https://doi.org/10.2139/ssrn.3489987.

———. "The Legality of Presidential Self-Pardons." *Harvard Journal of Law and Public Policy* 44, no. 2 (2021): 763–825. https://doi.org/10.2139/ssrn.3737850.

Louise Mallinder. "Amnesties and Inclusive Political Settlements." *Queen's University Belfast School of Law*. Belfast, 2018. https://doi.org/10.2139/ssrn.3341311.

M.E., Sagung Putri, Purwani, and Putu Mery Lusyana Dewi. "Judicial Pardon: Renewal of Criminal Law Towards Minor Criminal Offense." *Yustisia: Jurnal Hukum* 10, no. 3 (2021): 415–30. https://doi.org/10.20961/yustisia.v10i3.55347.

Manafe, Vita Adolfina, and Listiyowati Sumanto. "Asas Pemaafan Hakim (Rechterlijk Pardon) Sebagai Upaya Penyelesaian Tindak Pidana Ringan Untuk Pembaharuan Hukum Pidana Nasional." *Quantum Juris: Jurnal Hukum Modern* 6, no. 3 (2024): 338–49. https://journalversa.com/s/index.php/jhm/article/view/3102.

Pace, Nicholas M, James M Anderson, Shamena Anwar, Danielle Schlang, Melissa Bradley, and

PATTIMURA Legal Journal, 5 (1) April 2026: 49 - 63
E-ISSN: 2830-2435
Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

A V Chari. "Statistical Analysis of Presidential Pardons." *Available at SSRN*, 2021. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3919202.

Rappaport, Aaron J. "An Unappreciated Constraint on the President's Pardon Power." *Connecticut Law Review* 52, no. 1 (2020): 271–318. https://digitalcommons.lib.uconn.edu/law_review/444.

Watanabe, Hayato. "The Municipal Pardon Powe." *Michigan Law Review* Hayato Wat, no. 118 (2020): 4. https://doi.org/10.36644/mlr.118.4.municipal.

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