

REFORMULATION OF AMNESTY AND ABOLITION IN THE STATE SYSTEM IN INDONESIA

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ABSTRACT

The granting of amnesty and abolition is a presidential prerogative. This is regulated in the 1945 Constitution. Although it is a presidential prerogative, the question remains whether the granting of amnesty and abolition by the president recently has been in accordance with statutory regulations. This study uses a normative juridical research method with a statutory, conceptual, and comparative approach. The results show that amnesty and abolition are legal instruments derived from the president's constitutional authority as head of state. Both instruments function as extraordinary forms of forgiveness or waiver of legal charges, as they concern the interests of the state, reconciliation, and political and social stability. However, in Indonesian constitutional practice, the granting of amnesty and abolition often sparks debate. On the one hand, the president's authority is seen as a manifestation of the prerogative recognized in the constitution; on the other hand, there are concerns about the emergence of impunity practices that could undermine the rule of law and the independence of the judiciary. Therefore, reformulating the concepts of amnesty and abolition within the framework of the state system is a necessity to ensure a balance between state interests and upholding the principles of the rule of law.

Keywords: *Legal Reformulation; Abolition; Amnesty*

Journal History

Received	: September 17, 2025;
Reviewed	: September 22, 2025;
Accepted	: October 11, 2025;
Published	: October 11, 2025.

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INTRODUCTION

Amnesty and abolition are two legal instruments that have a strategic position in the Indonesian constitutional system.¹ Both stem from the President's constitutional authority, which essentially falls within the prerogatives of the head of state. Amnesty is understood as a pardon that removes the criminal consequences for a particular group, while abolition means the removal of the criminal prosecution process.

Although the President's authority to grant amnesty and abolition is legitimized in the 1945 Constitution of the Republic of Indonesia, its implementation in state practice often sparks debate. Normatively, this authority is designed as an extraordinary measure to maintain political stability, support the national reconciliation process, and protect the broader interests of the state, particularly in times of crisis or socio-political conflict that are difficult to resolve through ordinary legal channels.² Within this framework, amnesty and abolition are seen as important tools for restoring social harmony and rebuilding public trust in the government. However, such extensive powers also pose potential problems. If used excessively or without clear boundaries, amnesty and abolition can open up opportunities for impunity, where lawbreakers escape accountability for political reasons.³

In state practice, conditions such as this have the potential to weaken the supremacy of law and erode the principle of the rule of law which is the main foundation of a modern constitutional state.⁴ Several political cases in Indonesia demonstrate that the granting of amnesty and abolition often draws criticism, as they are perceived as being more oriented toward political interests than principles of justice. Such practices foster the perception that the law can be negotiated or even ignored for specific purposes. Consequently, public trust in the judiciary is eroded, as pardon decisions appear to nullify the legal process that has been pursued diligently by law enforcement officials and the public seeking justice.

From a rule of law perspective, this situation is very risky, because the fundamental principle of the rule of law emphasizes equality before the law and the accountability of

¹ Rizky Malinto Ramadani, Indra Perwira, and Bilal Dewansyah, 'The Problem of Granting Amnesty by the President from the Perspective of State Interests', *Scientific Journal of Batanghari Jambi University*, 21.3 (2021), 984 <<https://doi.org/10.33087/jiubj.v21i3.1688>>.

² Nirwan MOH Nur, 'The Relationship of Authority Between the President and', *Journal: Faculty of Law, Muhammadiyah University of Luwuk*, 1, 2023, 17–31.

³ Tévécia Ronzon and others, 'Legal Politics of Granting Pardons in Narcotics Abuse Cases in the Perspective of Syariyyah', *Syarif Hidayatullah State Islamic University*, 2025 <<https://pubmed.ncbi.nlm.nih.gov/28459981/>> <<https://doi.org/10.1016/j.resenv.2025.100208>> <<http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y>> <<http://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005>> <<https://www.w>>.

⁴ Imam Subechi, 'Realizing the Indonesian Legal State', *Journal of Law and Justice*, 1.3 (2012), 339 <<https://jurnalhukumdanperadilan.org/index.php/jurnalhukumperadilan/article/view/129>>.

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: <https://doi.org/10.30596/nomoi.v6i2.26565>

public officials.⁵If the powers of amnesty and abolition are exercised without clear boundaries, it can create the impression of discriminatory legal treatment: some offenders receive leniency, while others continue to serve their full sentences. Furthermore, this has the potential to undermine judicial independence, as executive intervention through pardon policies can nullify the authority of court decisions.

From a legal perspective, amnesty and abolition are viewed as constitutionally legitimized legal instruments that serve as extraordinary legal measures to support political stability and foster national reconciliation. These powers are essentially designed to address conflicts or crises that are difficult to resolve through conventional legal mechanisms. For example, during the Sukarno era, amnesty and abolition policies were granted to members of the Indonesian Islamic Party (DI/TII) and certain political groups as an effort to ease tensions and maintain national unity. Furthermore, during the reform era, President Abdurrahman Wahid implemented similar policies for a number of political prisoners, including those involved in the 1965 events, within the framework of national reconciliation. Then, in 2005, President Susilo Bambang Yudhoyono issued an amnesty for former members of the Free Aceh Movement (GAM) as a follow-up to the Helsinki Agreement, which proved effective in ending the armed conflict and achieving peace in Aceh.⁶

However, in practice, granting amnesty and abolition often draws criticism. In a number of political cases, these policies are considered to be fraught with vested interests, creating the perception that the law is negotiable. This situation has the potential to undermine the supremacy of law and erode the principle of the rule of law.⁷This is especially true when pardons are perceived as nullifying the legal process undertaken by law enforcement. From a rule of law perspective, this is dangerous because it can lead to discrimination, with some offenders receiving pardons while others continue to serve their full sentences.⁸

Therefore, although amnesty and abolition have strategic value, their implementation needs to be placed within a strict oversight mechanism, public transparency, and clear accountability. Thus, the implementation of this constitutional authority not only serves to

⁵ Ismail Marzuki, 'The Rule of Law and the Principle of Equality Before the Law: Theory and Its Manifestation in Indonesia', *Journal of Legal Ideas*, 10.1 (2024) <<https://doi.org/10.20884/1.jih.2024.10.1.495>>.

⁶ L Inrastuti and S Polamolo, 'Constitutional Law and Constitutional Reform in Indonesia', *Constitutional Law*, I.II (2019), 1–208 <<http://ejurnal.unisri.ac.id/index.php/bkhtn/article/viewFile/3075/2637>>.

⁷ Muhammad yusrizal adi & Mhd Anzor Lubis, 'State Administrative Law', in *State Administrative Law*, I (Purbalingga: Eureka Media Aksara, 2024), pp. 1–250 <<https://repository.penerbiteureka.com/publications/563313/hukum-tata-negara>>.

⁸ Mhd. Anzor Lubis, Hera Fauziah Lubis, and Rizkan Zulyadi, *Introduction to State Science Complete with Classical to Modern Forms of State and Government*, Eureka Media Aksara (Eureka Media Aksara, 2024).

maintain political stability, but also aligns with the principles of justice, strengthens the integrity of the rule of law, and supports the development of constitutional democracy in Indonesia.

METHOD

The research method used is normative juridical⁹ with a statutory approach to examine the provisions of the 1945 Constitution, Law Number 11 of 1954 concerning Amnesty and Abolition, and various related regulations; with a conceptual approach to understand the theories and principles underlying the President's authority, prerogative rights, and the principles of the rule of law; and a comparative approach¹⁰ This study compares the regulations and practices of amnesty and abolition in several other countries. The legal sources used in this study include primary legal materials, secondary legal materials, and tertiary legal materials. Data collection was conducted through library research on laws and regulations, legal documents, academic literature, and other relevant sources. Data collection techniques were conducted through library research, while data analysis was conducted qualitatively, emphasizing the consistency between the principles of justice, accountability, and constitutional democracy with the need for amnesty and abolition reformulation in the Indonesian constitutional system. The analysis was conducted qualitatively, interpreting and constructing the legal materials obtained to produce systematic legal arguments. The results of the analysis are directed at finding a reformulation of the concept, mechanism, and oversight of amnesty and abolition that is in line with the principles of justice, accountability, and constitutional democracy.

DISCUSSION

Constitutional Position of Amnesty and Abolition

Article 14 paragraph (2) of the 1945 Constitution (UUD 1945) expressly states that the President has the authority to grant amnesty and abolition by taking into account the considerations of the People's Representative Council (DPR). This formulation emphasizes that the President's authority is not absolute, but rather subject to the principle of checks and balances through the involvement of the DPR as a legislative body representing the people.¹¹ The presence of the DPR in this mechanism is intended to prevent potential abuse

⁹ Soerjono and Sri Mamudji Sukanto, 'Normative Legal Research: A Brief Review' (Jakarta: PT Raja Grafindo Persada, 2009).

¹⁰ Soerjono Sukanto, 'Empirical Legal Research Methodology', 1st edn (Jakarta: University of Indonesia, 1990).

¹¹ Rizky Andrian Ramadhan Pulungan and Lita Tyesta ALW, 'Implementation Mechanism of the Checks and Balances Principle Between Legislative and Executive Institutions in the Formation of Laws in the Indonesian Constitutional System', *Indonesian Legal Development Journal*, 4.2 (2022), 280–93 <<https://doi.org/10.14710/jphi.v4i2.280-293>>.

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: <https://doi.org/10.30596/nomoi.v6i2.26565>

of power by the President and ensure that the granting of amnesty and abolition is in line with the public interest and values of justice.

However, this constitutional norm still presents both conceptual and practical challenges. One of the most crucial issues is the multiple interpretations of the meaning of "DPR consideration." The fundamental question that arises is whether the DPR consideration is binding, requiring formal DPR approval for the President's decision, or whether it is merely a non-binding advisory opinion, allowing the President to make a final decision even without DPR approval.¹²

This ambiguity has serious implications for state administration. If the House of Representatives' considerations are considered merely formalities, the President's prerogatives return to near-absoluteness, potentially diminishing the House's oversight function. Conversely, if the House of Representatives' considerations are understood as binding approval, the President's authority becomes heavily dependent on the political process in parliament, which could lead to the politicization of amnesty and abolition.

Furthermore, these multiple interpretations have also given rise to differing views in the literature on constitutional law. Some experts believe that the House of Representatives' (DPR) considerations should be viewed as a legitimate form of political approval, as the DPR represents the people. Therefore, a presidential decision is only valid if it receives legitimacy from the DPR. Meanwhile, others argue that the DPR's considerations should be viewed as a form of procedural checks and balances that do not diminish the President's prerogative, making them more akin to moral-political advice than legal ratification.¹³

The lack of a clear interpretation of the phrase "consideration of the DPR" in Article 14 paragraph (2) of the 1945 Constitution not only raises theoretical issues, but also has direct implications for legal certainty in state administration practices. This ambiguity often results in amnesty and abolition being influenced by political interpretations that develop between the President and the DPR. In practice, the debate over whether the DPR's consideration should be understood as a binding decision or merely a formality often leaves the President's position in decision-making uncertain. As a result, the President's authority, which should be based on the principle of prerogative, is hampered by political dynamics in parliament, thereby reducing the effectiveness of government.

Furthermore, this uncertainty has the potential to create a conflict of authority between the executive and legislative branches. If the President proceeds without the

¹² Sunarto Efendi, Sylli Meliora Sterigma, and Nur Alfitra Mappuna, 'Measuring the Binding Power of Constitutional Court Decisions in the Dismissal of the President and/or Vice President in Indonesia', *Journal of Constitution and Democracy*, 4.2 (2024), 95 <<https://doi.org/10.7454/jkd.v4i2.1406>>.

¹³ Tanto Lailam, 'Problems and Solutions for Arranging the Checks and Balances System in the Process of Making Law and Constitutional Review in Indonesia', *State of Law: Building Law for Justice and Welfare*, 12.1 (2021), 123–42 <<https://jurnal.dpr.go.id/index.php/hukum/article/view/1721>>.

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: <https://doi.org/10.30596/nomoi.v6i2.26565>

approval of the DPR, his decisions are vulnerable to political and legal debate, which could create tension between state institutions.¹⁴ Conversely, if the President relies entirely on the approval of the House of Representatives, the President's constitutional independence and authority are diminished and he becomes a tool of the political interests of the parliamentary majority. This situation can clearly be detrimental to constitutional stability, particularly when the country faces emergencies or conflicts that demand legal certainty and swift decisions from the head of state.

Reformulation of the provisions regarding amnesty and abolition is needed as an urgent measure to ensure legal certainty while maintaining a balanced relationship between the President and the House of Representatives. This reform effort can be achieved through at least two complementary mechanisms.

First, through the formation of legislation. This mechanism is intended to provide a more detailed and operational legal basis for the provisions of Article 14 paragraph (2) of the 1945 Constitution. Through legislation, comprehensive regulations can be made regarding the procedures for granting amnesty and abolition, the formal procedures that must be followed, and the limits of the authority of the President and the DPR. In addition, the law also functions to clarify the status of "considerations of the DPR", whether they are binding or merely recommendations in the decision-making process. With clear regulations at the level of legislation, state administration practices are no longer solely influenced by political interpretations, but are based on consistent, transparent, and accountable legal rules.

Second, through constitutional interpretation by the Constitutional Court (MK). This route is necessary to ensure a final and binding interpretation of Article 14 paragraph (2) of the 1945 Constitution, particularly regarding the position of the DPR's considerations. The MK's decision can serve as an official reference for both the President and the DPR, thus avoiding differences in interpretation. If disputes or ambiguities arise in the practice of granting amnesty and abolition, the MK has the authority to define the boundaries of authority between branches of state power.¹⁵ In addition, the Constitutional Court's decision has stronger constitutional legitimacy because it arose from the judicial review function of the 1945 Constitution.

Reformulation of amnesty and abolition regulations is expected to establish a system with a higher level of legal certainty, justice, and accountability. Legislation provides detailed and operational normative guidelines, while Constitutional Court decisions ensure consistency in constitutional interpretation. This integration not only reinforces legal

¹⁴ R William Liddle and others, *Improving the Quality of Democracy in Indonesia: A Debate*, 2012.

¹⁵ Christine ST Kansil and Keiko Patricia Liwe, 'The Constitutional Court in the Indonesian Constitutional Law System', in *Constitutional Court*, 2024, iv, 99–106.

certainty but also strengthens the principle of checks and balances within Indonesia's constitutional democracy.

The Urgency of Reformulating Amnesty and Abolition in the Constitutional System

Reformulation of amnesty and abolition within the Indonesian constitutional system is an urgent need, not only related to legal aspects but also to the principles of democracy, accountability, and government legitimacy. To achieve a comprehensive reformulation, the direction of reform can be viewed from several key dimensions, namely:

a. Normative Aspects.

Normatively, the updated regulations regarding amnesty and abolition are intended to provide clearer certainty in the constitution and laws, particularly regarding the limitations, criteria, and procedures for granting these two forms of pardon. This urgency stems from Article 14 paragraph (2) of the 1945 Constitution, which states that the President has the authority to grant amnesty and abolition by taking into account the considerations of the House of Representatives (DPR). However, these constitutional provisions are still general in nature, giving rise to various interpretations, particularly regarding whether the DPR's position is binding or merely advisory.¹⁶

The ambiguity of the norms has further created problems in practice. A concrete example is the amnesty case for human rights activist Baiq Nuril Maknun in 2019.¹⁷, where debate has arisen over whether the President can grant amnesty immediately or whether he must first wait for formal approval from the House of Representatives. This situation highlights the urgent need for the formulation of firmer regulations to avoid legal uncertainty that could potentially set a political precedent in the future.

Clarity in the rules is crucial not only to eliminate the possibility of multiple interpretations that are prone to politicization, but also to ensure that the granting of amnesty and abolition is truly based on the principles of substantive justice and the values of the rule of law (*rechtstaat*). Therefore, granting pardons should not be seen simply as the President's prerogative, but rather must be based on a strong, consistent, and transparent legal framework.

Furthermore, detailed regulations will clarify the relationship of authority between the President and the House of Representatives (DPR), preventing overlapping or blurring the checks and balances mechanism. The President retains the prerogative rights guaranteed by

¹⁶ Suyogi Imam Fauzi, 'Legal Politics of Granting Pardons, Amnesties and Legal Politics of Granting Pardons, Amnesties and Abolition as a Logical Consequence of Prerogative Rights', *Journal of Law & Development*, 51.3 (2021), 622 <<https://doi.org/10.21143/jhp.vol51.no3.3126>>.

¹⁷ Mutiara Fahmi Razali, Azmil Umur, and Sinta Kartika Putri, 'Amnesty: Presidential Prerogative in the Perspective of Fiqh Siyasah', *Legitimasi: Journal of Criminal Law and Legal Politics*, 11.2 (2022), 266 <<https://doi.org/10.22373/legitimasi.v11i2.15218>>.

the constitution, while the DPR carries out its oversight function to ensure that the granting of pardons does not deviate from the public interest and the community's sense of justice. In this context, legal reform can be achieved through revisions to outdated laws, such as Law Number 11 of 1954 concerning Amnesty and Abolition, which are no longer in line with the current political and legal dynamics in Indonesia.

With the presence of new, comprehensive regulations, the amnesty and abolition mechanisms will have greater legal certainty, be consistent with the principles of constitutional democracy, and be able to prevent abuse of authority that could potentially damage the integrity of the legal system and the national democratic order.

The following is a comparison of amnesty/abolition practices in several countries with Indonesia as follows:

Country	Constitutional/Legal Basis	The Giving Actor	Types of Authority	The Role of Parliament	Sample case
United States of America	Constitution Article II paragraph (2)	President	Broad pardon (including mass amnesty)	None (except impeach)	Vietnam-era conscription amnesty (1977)
French	Constitution + organic law	Parliament (amnesty), President (individual pardon)	Amnesty = Law; pardon = individual	Parliament must approve amnesty	<i>Loi d'amnistie</i> politics (1953, 1981)
Great Britain	<i>Royal prerogative of mercy</i>	King (on the advice of PM/minister)	Individual pardon; amnesty = law	Amnesty must be passed by law	Northern Ireland Amnesty (Legacy Act 2023/2024)
German	Basic Law Article 60(2)	Federal President (individual pardon), Bundestag (amnesty)	Individual pardon; amnesty through federal law	Bundestag passes amnesty law	<i>Straffreiheitsgesetz</i> 1954, 1964
Spanish	1978 Constitution Article 62	King (individual pardon),	General pardons prohibited;	Parliament passes amnesty law	Post-Franco Amnesty Act of 1977

	(prohibition of general pardons)	Parliament (amnesty)	amnesty remains possible via law		
Italy	Constitution Articles 79 & 87	Parliament (amnesty/indulto), President (pardon)	Amnesty & indulto via UU (2/3 vote); individual pardon	Approval of 2/3 of parliament is mandatory	Amnesty Law of the 1990s
Portugal	Constitution	Parliament (amnesty), President (pardon)	Generic amnesty/indulto via law; individual pardon	Parliament approves amnesty/indulto	1999 National Youth Day Amnesty
Brazil	1988 Constitution + 1979 Amnesty Law	Parliament (amnesty), President (pardon)	Amnesty via law; pardon via the president	Parliament passes amnesty law	Amnesty Law 1979; political pardon STF 2010
South Africa	1996 Constitution Article 84(2) (j) + TRC special law	President (pardon), Parliament (amnesty via law)	Pardon = Presidential prerogative; amnesty = special law	Parliament forms TRC Law	TRC Amnesty Committee (1995–2002)
Philippines	1987 Constitution Article VII §19	President (amnesty & pardon)	Amnesty = need concurrence of Congress; pardon = President	Congress must agree to amnesty	Amnesty for former rebels (2011, 2021)

b. Institutional Aspects.

Reformulation should not only focus on normative aspects, but should also be directed at strengthening the institutional mechanisms that play a role in maintaining the balance of power (checks and balances) between the President, the House of Representatives (DPR), and the judiciary. Clarity in regulations regarding the functions of each institution is crucial to prevent unilateral domination by either the executive or legislative branches, and to

prevent the authority to grant amnesty and abolition from being reduced to mere political instruments.

The involvement of the Constitutional Court as guardian of the constitution has important significance in ensuring that the practice of granting pardons, whether in the form of amnesty or abolition, remains within the framework of the country's basic law.¹⁸ The Constitutional Court's function is not merely to safeguard constitutional norms, but also to balance the power relations between the executive and legislative branches, ensuring that the President's prerogative is not reduced to a practical political instrument that could potentially undermine the principle of justice. Through its authority, the Constitutional Court has the authority to conduct limited reviews of the procedures, legality, and compliance of pardons with constitutional principles, including respect for human rights, equality before the law, and protection of victims' interests.

The presence of this judicial oversight mechanism strengthens the application of the principle of the rule of law (*rechtstaat*), where every authority, including prerogative rights, cannot be separated from the constitutional accountability framework.¹⁹ Thus, decisions to grant amnesty or abolition not only gain political legitimacy but also legal and moral legitimacy derived directly from the constitution. Furthermore, the Constitutional Court's role will strengthen the system of checks and balances, prevent potential abuse of authority, and ensure that the instrument of pardon is truly granted for substantive justice, national reconciliation, and legal stability, rather than merely to satisfy short-term political interests.

The following table compares the role of the Constitutional Court/Judiciary in supervising the President's prerogative powers in several countries, as follows:

Country	Legal basis	Presidential Authority	The Role of the Constitutional Court/Judiciary	Sample case
Spanish	1978 Constitution, STC 147/1986	Individual clemency (King), amnesty through law	The Constitutional Tribunal examined the conformity of the amnesty with constitutional principles.	STC Decision 147/1986 affirmed the constitutionality of the 1977 Amnesty Law

¹⁸ Nurul Syafriyani, 'The Role of the Constitutional Court in Maintaining the Rule of Law and Striving for the Protection of Human Rights', *Journal of Human Education and Social Humanities*, 2.3 (2024), 90–99 <<https://journal.widyakarya.ac.id/index.php/jipsoshum-widyakarya/article/view/3401>>.

¹⁹ Abd. Razak Said and Suparji Ahmad, 'The Right of Inquiry in Strengthening the Oversight Function of the House of Representatives of the Republic of Indonesia', *Binamulia Hukum*, 13.2 (2024), 361–76 <<https://doi.org/10.37893/jbh.v13i2.950>>.

Italy	Constitution Articles 79 & 87	The President grants clemency; amnesty & indulto through law	The Constitutional Court has the authority to test the amnesty/indulto law to ensure it complies with constitutional procedures.	Constitutional test of the 2006 Indulto Law
German	Basic Law Article 60	President grants individual pardon	The Bundesverfassungsgericht can test the procedural/constitutional aspects of pardons	Decisions on equality of rights regarding the granting of pardons
South Africa	1996 Constitution Article 84(2)(j)	The president grants clemency	The Constitutional Court opens up space for judicial review of discriminatory pardons	<i>President v Hugo</i> (1997): prerogative can be tested if it is discriminatory
India	1950 Constitution Article 72	The president grants clemency	The Supreme Court can test to ensure there is no abuse/injustice	<i>Kehar Singh v Union of India</i> (1989): clemency decisions are subject to judicial review.

A comparison of practices across several countries reveals that the role of the judiciary, particularly the Constitutional Court or high courts, varies in its oversight of the President's prerogative powers regarding amnesty, abolition, and pardons. In countries such as Spain and Italy, judicial oversight focuses more on testing the constitutionality of laws governing amnesty or indulto, thus ensuring normative oversight, focusing on the consistency of legal norms with the constitution. In Germany, however, the authority of the Bundesverfassungsgericht is more limited to procedural aspects, particularly in ensuring that the principle of equality is upheld in the practice of granting pardons.

In contrast, in countries with more progressive constitutional traditions, such as South Africa and India, constitutional courts even allow for direct judicial review of presidential decisions if the granting of pardons is deemed discriminatory, irrational, or deviates from principles of substantive justice. This mechanism demonstrates that judicial oversight is not solely directed at abstract legal norms, but also at the concrete implementation of prerogative authority.

Thus, this comparative pattern demonstrates that judicial oversight mechanisms serve as a crucial instrument for upholding the principle of the rule of law (*rechtstaat*) while preventing potential abuse of authority. In this context, the involvement of the Constitutional Court or similar judicial institutions not only strengthens the principle of checks and balances but also ensures that any amnesty or abolition is truly aligned with constitutional values, respects human rights, and is oriented toward substantive justice.

c. Procedural Aspects.

From a procedural perspective, amnesty and abolition regulations should be updated to increase transparency, accountability, and public involvement in the decision-making process. Ideally, the pardon process should not be conducted behind closed doors, but should provide clear access to information regarding the basis for the considerations and impact of the President's decision. This transparency allows the public to assess the decision's compliance with principles of justice and the public interest.

In addition, community participation²⁰Public participation, whether through public hearings in the House of Representatives (DPR) or through contributions from civil society organizations, plays a strategic role in strengthening policy legitimacy and preventing potential abuse of power. This public involvement also reflects respect for democratic values and reduces the likelihood of political or social resistance.

Thus, amnesty and abolition should not be viewed solely as exclusive policies or the prerogative of the President, but rather as participatory, responsive public decisions rooted in broad social legitimacy. In this context, the pardon-granting process should ideally involve the participation of various parties, including civil society, legislative bodies, and academics, so that the resulting policy truly reflects the shared aspirations and interests of society at large.

Public involvement in the amnesty and abolition processes is crucial in preventing these policies from being viewed solely as elitist political tools favoring certain groups. Open public participation not only strengthens legal legitimacy but also provides a moral and democratic basis for every decision. By involving the voices of civil society, academics, and independent institutions, pardon policies can be made more in line with principles of justice, consider the interests of victims, and reflect broader public aspirations.

Internationally, several countries have implemented public involvement in pardon mechanisms. South Africa, for example, through its Truth and Reconciliation Commission (TRC), requires perpetrators to publicly confess to victims and the public, making amnesty

²⁰ Riskiyono, 'Public Participation in the Formation of Laws and Regulations', 1.2 (2024), 25–38.

an integral part of the national reconciliation process, not simply an elitist policy.²¹ Canada has taken a different approach by establishing a Parole Board as an institution that collects public input and considers the public interest before deciding on a pardon (record suspension). Meanwhile, in Colombia, amnesty for armed groups within the context of the peace agreement with the FARC was implemented through a legislative mechanism involving broad consultations, including the participation of civil society organizations and victims' groups.

Thus, amnesty and abolition are not only interpreted as the President's prerogative within the framework of pardons, but also as strategic instruments to promote national reconciliation, strengthen socio-political stability, and ensure the sustainability of the rule of law. More broadly, these policies can be viewed as a bridge between state interests and public aspirations, ensuring that their implementation not only resolves individual cases but also supports the creation of a more just, inclusive, and sustainable social order.

The following is a comparative table of public involvement in the amnesty and abolition processes in several countries as follows:

Country	Public Engagement Mechanism	Main Characteristics	Implications
Indonesia	Still limited to the President's authority, with the approval of the DPR; public participation has not been regulated in detail.	The process tends to be elitist and executive–legislative dominant.	Weak social legitimacy, potentially perceived as a political instrument.
South Africa	<i>Truth and Reconciliation Commission (TRC)</i> involving open confession of the perpetrator in front of the public and the victim.	Amnesty is part of national reconciliation; the affected communities are directly involved.	Amnesty has strong moral and social legitimacy, strengthening the reconciliation process.
Canada	<i>Parole Board of Canada</i> conducting a transparent process, by opening up space for public	Decisions are more accountable because they take into account the interests of the	Suppressing social resistance, strengthening legal

²¹ Muhammad Ajisatria Suleiman, 'Granting Amnesty to Perpetrators of International Crimes During the Political Transition Period: A Review of International Law and Its Regulations in Indonesia', in University of Indonesia, 2008, pp. 1–201.

	input before granting pardons.	general public, not just the individual applicant.	and public legitimacy.
Colombia	The amnesty for the FARC was implemented through a legislative mechanism with broad consultation, including with victims' groups and civil society.	Amnesty is part of a national peace agreement, with multi-actor involvement.	Highly legitimized, amnesty is seen as a peaceful strategy, not merely a decision of the political elite.
Italy & Spain	The courts have a role in testing laws related to amnesty (indulto) to ensure their compliance with the constitution.	Public oversight is more indirect, through judicial mechanisms.	Guarantees legal certainty, but public participation is relatively limited.

The table above shows that public involvement in granting amnesty and abolition varies significantly across countries. The South African, Canadian, and Colombian models demonstrate more progressive practices, providing direct participation for civil society and victims, thus strengthening policy legitimacy. Meanwhile, the Italian and Spanish models place greater emphasis on normative judicial oversight. Indonesia can learn from this by expanding public participation and ensuring transparency mechanisms so that amnesty and abolition are seen not merely as elitist decisions but as democratic instruments for justice, reconciliation, and national stability.

Parameters for Granting Amnesty and Abolition from a Constitutional Perspective

The parameters for granting amnesty and abolition from a constitutional perspective can be understood as a set of legal and political guidelines, principles, and criteria that serve as a reference for the President in exercising his prerogative authority. These parameters encompass the constitutional dimension, namely the obligation to ensure that every decision is in line with the 1945 Constitution as the highest law; the procedural dimension, which requires the involvement of other state institutions such as the House of Representatives (DPR) and the Constitutional Court as a form of deliberation and oversight mechanism; and the substantive dimension, which emphasizes that the pardon policy must be in line with the principles of justice, respect for human rights, and the interests of society at large.

In the context of state administration, these parameters serve to maintain a balance between executive authority and the principle of checks and balances, ensuring that amnesty

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: <https://doi.org/10.30596/nomoi.v6i2.26565>

and abolition are not trapped in arbitrary actions or purely political interests. Furthermore, the clarity of these parameters also strengthens legal and moral legitimacy, positioning amnesty and abolition not merely as mechanisms for forgiveness but also as strategic instruments for strengthening socio-political stability, promoting national reconciliation, and ensuring the upholding of the principle of the rule of law (rechtstaat).

Thus, this parameter ensures that granting amnesty and abolition is not only the President's prerogative, but also part of a democratic, just state mechanism, and in accordance with the principle of checks and balances.. The following is a summary table of the parameters for granting amnesty and abolition from a constitutional perspective, as follows:

Parameter	Explanation	The main purpose
Constitutional	It must be based on the 1945 Constitution and the principles of the rule of law. The president's prerogatives are limited by the constitution.	Ensure that decisions are in accordance with basic law and are not absolute.
Procedural	It involves consideration by the House of Representatives and can be overseen by the judiciary. The process must be transparent.	Provide checks and balances and prevent abuse of authority.
Substantive	Paying attention to justice, human rights, the interests of victims and the wider community.	Make amnesty/abolition an instrument of reconciliation, not just political interests.
Democratic & Participatory	Involving input from civil society, academics, and independent institutions. Open to the public.	Increase the moral, legal, and social legitimacy of decisions.
Stability & National Interests	Used to maintain unity, peace and political stability.	Making amnesty/abolition a strategic instrument for the interests of the nation and state.

Within the constitutional framework, amnesty and abolition cannot be understood solely as the President's prerogative, but must be subject to a number of clear parameters. Constitutionally, every decision must be based on the 1945 Constitution and the principles of the rule of law. Therefore, this authority is not absolute but remains bound by the basic law. Meanwhile, procedurally, the process of granting amnesty and abolition requires the approval of the House of Representatives (DPR) and opens up the possibility of judicial oversight to establish a checks and balances mechanism that prevents abuse of power.

From a substantive perspective, presidential decisions must consider the principles of justice, respect for human rights, protection of victims' interests, and broader public aspirations. This emphasizes that amnesty and abolition should serve as a means of national reconciliation, not merely a political instrument. Furthermore, democratic and participatory parameters must be emphasized by involving civil society, academics, and independent institutions in the decision-making process, ensuring that the resulting policies have stronger moral, legal, and social legitimacy.

Ultimately, the dimensions of stability and national interests must be the primary foundation. Amnesty and abolition should be aimed at strengthening national unity, maintaining peace, and ensuring socio-political stability. Therefore, this policy serves not only as a means of pardon, but also as a strategic instrument in strengthening the rule of law and upholding democracy.

CONCLUSION

Amnesty and abolition are inherent powers vested in the President. Constitutionally, Article 14 paragraph (2) of the 1945 Constitution explicitly states that the President has the authority to grant amnesty and abolition, taking into account the considerations of the House of Representatives (DPR). Therefore, the granting of amnesty and abolition by the President is a constitutional right guaranteed by the constitution.

The reformulation of amnesty and abolition in the Indonesian constitutional system emphasizes that the President's prerogative authority cannot be absolute, but must be based on the 1945 Constitution, the principle of the rule of law, and checks and balances. This policy requires the involvement of the House of Representatives (DPR), judicial oversight, and public participation so that every decision has not only political legitimacy but also legal, moral, and social legitimacy. Thus, amnesty and abolition serve not merely as a means of forgiveness but also as a strategic instrument for strengthening national reconciliation, maintaining socio-political stability, and affirming democracy.

In principle, although amnesty and abolition are the President's prerogative, their implementation must be in accordance with parameters for their exercise. The parameters for granting amnesty or abolition include constitutional, procedural, substantive, democratic and participatory aspects, as well as national stability and interests. In this regard, it is important to consider these before the President exercises his authority to grant amnesty or abolition.

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