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**Political Analysis of the Granting of Pardons, Amnesty, and Abolition by  
the President as the Holder of Prerogative Rights**

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Article	Abstract
<p><i>Received: Des 02, 2025; Reviewed: Jan 07, 2026; Accepted: Feb 09, 2026; Published: Feb 26, 2026</i></p>	<p>The President's authority to grant prerogative rights as stipulated in Article 14 paragraph (2) of the 1945 Constitution?, and how is the implementation and impact of the President's prerogative rights granted to prisoners?. This study aims to provide a legal-political analysis of the implementation of the President's prerogative rights in granting his prerogative rights and oversight in the process of granting pardons, amnesties, and abolitions. The research method used in this study is descriptive analysis, which aims to analyse and provide an overview of the subject and objects of the study, as well as the results of the research. Based on Article 14 of the 1945 Constitution before it was amended, the President had the authority to grant clemency, amnesty, remission of punishment, and rehabilitation. After the first amendment to the 1945 Constitution, this provision underwent minor changes, namely that in granting pardons and rehabilitation, the President must consider the recommendations of the Supreme Court, and in granting amnesty and remission of punishment, the President must consider the recommendations of the People's Representative Council, The President's prerogative to grant clemency, amnesty, abolition, and rehabilitation is part of Indonesia's legitimate and constitutionally recognized constitutional system.</p> <p><b>Keywords:</b> ; presidential prerogative, president, amnesty, abolition</p>

## A. INTRODUCTION

In terms of Indonesia's constitutional system, the President has the prerogative to administer the state. The general power of governance is the power to administer the state, while the specific power of governance is the constitutional task and authority of the President, which is prerogative in nature, including the power to grant pardons, amnesties, abolitions, and rehabilitations. (Dhian Deliani, 2011).

Article 14 of the 1945 Constitution, before it was amended, stated that the President had the authority to grant pardons, amnesties, abolitions, and rehabilitations. This article was slightly amended after the first amendment, namely that in granting pardons and rehabilitations, the President must consider the decision of the Supreme Court, and in granting amnesties and abolitions, the President must consider the decision of the House of Representatives. (Abdul Ghofar, 2009).

The change in the rules for granting clemency in the 1945 Constitution, which began with Law No. 3 of 1950 concerning Clemency Petitions, became Law No. 22 of 2002 concerning Clemency, and there was one change in Law No. 5 of 2010 concerning Amendments to Law -Law No. 22 of 2002 on Pardons (Law No. 5 of 2010) provides the latest rules for the procedure for granting pardons. An interesting point in the legal system governing clemency is that Article 14 of Law No. 22 of 2002 states:

*“Provisions regarding the procedures for resolving clemency petitions as referred to in paragraphs (1) and (2) are further regulated by Government Regulations.”*

The provisions of Article 14 of the 1945 Constitution before the amendment stated that the President had the authority to grant pardons, amnesties, abolitions, and rehabilitations. After the first amendment to the 1945 Constitution, these provisions underwent slight changes, namely that in granting pardons and rehabilitations, the President must take into consideration the recommendations of the Supreme Court, and in granting amnesties and abolitions, the President must take into consideration the recommendations of the House of Representatives. (Heri Suandi Banurea, 2020).

The granting of amnesty and abolition is currently a hot issue in the legal and political world under the leadership of President Prabowo Subianto, who granted abolition to Thomas Trikasih Lembong and amnesty to Hasto Krisyanto for the corruption cases involving the two. Under President Prabowo Subianto's leadership, the granting of amnesty and abolition in corruption cases has sparked various reactions, as this is one of the steps that has caused pros and cons in the granting of amnesty and abolition by the President. The granting of pardons, amnesties, and abolitions is a presidential prerogative regulated in Article 14, which states that “the President grants pardons, amnesties, abolitions, and rehabilitations.” In this case, how can a balance be struck between the power of the President and the principles of the rule of law, which uphold justice and the supremacy of law.

The regulation of the right to grant clemency in the Law and Government Regulation on clemency, which is more technical in nature, has a mechanism in its implementation that provides facilities for prisoners to change, mitigate, reduce, or cancel the execution of their

sentences by submitting a request for clemency to the president in accordance with the applicable mechanism. Article 2 explains the types of crimes that are eligible for clemency, namely those with a final and binding sentence (*inkracht van gewijsde*) of death, life imprisonment, or a minimum of 2 years imprisonment. Conversely, the laws on amnesty and abolition are essentially still the same and have not undergone any changes to date. (Suyogi Imam Fauzi, 2021).

This study aims to provide a legal-political analysis of the implementation of the President's prerogative rights in granting his prerogative rights and oversight in the process of granting pardons, amnesties, and abolitions. It also examines the President's authority in exercising his prerogative rights in the form of pardons, abolitions, amnesties, and rehabilitations as regulated in Article 14 (2) of the 1945 Constitution. The urgency of this research is to determine how and when a President should exercise his prerogative rights in the form of pardons, amnesties, abolitions, and rehabilitations as regulated in Article 14 (2) of the 1945 Constitution and to determine the granting of abolition and amnesty in the corruption cases of Thomas Trikasih Lembong and Hasto Krisyanto.

Based on the above description, the author would like to discuss the President's authority to grant prerogative rights as stipulated in Article 14 paragraph (2) of the 1945 Constitution?, and how is the implementation and impact of the President's prerogative rights granted to prisoners?

## **B. MATERIALS AND METHOD**

The research method used in this study is descriptive analysis, which aims to analyse and provide an overview of the subject and objects of the study, as well as the results of the research. In this study, the researcher focuses on the authority to grant prerogative rights in the form of abolition and amnesty, which are given by the President in cases of corruption. In this study, the researcher used legislative and conceptual approaches. The data used is secondary data consisting of primary legal sources in the form of the 1945 Constitution.

The secondary data used consists of:

- 1) Books;
- 2) Articles;
- 3) scientific journals;
- 4) research results, and
- 5) materials from the internet and other sources that are relevant to this study and are used as references to enrich and deepen the analysis of the study.

In conducting legal research, there must be certain types of materials required for the research. The legal materials used in this research are secondary materials, namely materials obtained from literature or reference materials related to the research subject. (Sigit Sapto Nugroho, et al. 2020). These legal materials include relevant laws and regulations, journals, research results, articles, or other books.

In this normative legal research, a technique for collecting legal materials is required. To find and collect these legal materials, a literature study of legal materials is conducted, including primary, secondary, and tertiary legal materials. To search for and collect legal materials, reference documents can be used, such as books, research results, and scientific journals. Once the legal materials have been collected, they will be selected and processed, then analyzed as legal issues that need to be addressed, and conclusions will be drawn using the deductive method, which is drawing conclusions from general issues to specific issues that need to be addressed.

## C. RESULT AND DISCUSSION

### 1. The President's authority to grant prerogative rights as stipulated in Article 14 paragraph (2) of the 1945 Constitution

Prior to the amendment of the 1945 Constitution of the Republic of Indonesia (UUD 1945), Article 14 stated that the President had the authority to grant pardons, amnesties, abolitions, and rehabilitations without having to consider the opinions of other institutions. However, after the amendment, this provision underwent significant adjustments. In the first amendment to the 1945 Constitution, it was stated that in granting pardons and rehabilitations, the President must first consider the opinion of the Supreme Court, while in granting amnesties and abolitions, the President must consider the opinion of the House of Representatives (DPR). This change reflects the spirit of legal reform and democratization, whereby the President's power is no longer absolute but is limited by the principle of checks and balances, which is characteristic of a democratic state based on the rule of law. This principle is important to ensure that the President's power remains within the bounds of the law and is not abused for purely political interests.

Under Article 14 of the 1945 Constitution prior to amendment, the President had the authority to grant pardons, amnesties, abolitions, and rehabilitations. After the first amendment to the 1945 Constitution, this provision underwent slight changes, namely that in granting pardons and rehabilitations, the President must take into consideration the recommendations of the Supreme Court, and in granting amnesties and abolitions, the President must take into consideration the recommendations of the House of Representatives.

Definition of pardon, rehabilitation, amnesty, and abolition

#### A. Definition of Pardon

A pardon is a form of clemency in the form of a change, reduction, or elimination of the execution of a sentence imposed on a convicted person, granted by the president. This is regulated in Article 1 of Law of the Republic of Indonesia Number 22 of 2002 concerning Pardons. Regarding the submission of a pardon request, pursuant to Article 2 of the Pardon Law in conjunction with Law No. 5 of 2010, only convicted individuals who have received a court decision that has attained final and binding legal force may submit a pardon request to the President.

#### B. Amnesty and Abolition

Amnesty is the President's prerogative to revoke all criminal consequences against a person or group of people for certain criminal acts, granted with consideration from the House of Representatives. In accordance with Article 14 paragraph (2) of the 1945 Constitution, the President grants amnesty with consideration of the DPR's deliberations, so that its implementation must go through a mechanism of balance between the executive and legislative branches. Amnesty granted by the President is usually given to perpetrators of political crimes before or after an investigation has been conducted. Or before or after a court decision has been made, as explained in the legal explanation and practice of the Presidential Decree.

“According to Article 1 of Law Number 11 of 1954, it states that, “The President, in the interests of the State, may grant amnesty and abolition to persons who have committed a criminal act. The President grants this amnesty and abolition after receiving written advice from the Supreme Court, which submits the advice at the request of the Minister of Justice.”

The granting of amnesty by the President may be done directly or based on a request submitted by the applicants for amnesty. The President has the authority to grant amnesty to prisoners without a petition, which is not regulated by the law regarding the direct granting of amnesty by the President. Meanwhile, for the granting of abolition based on a petition, it is necessary to regulate the procedure for submitting it in order to provide legal certainty for the petitioner. The granting of amnesty will also have legal consequences resulting from the amnesty granted by the President, which include the elimination of the criminal acts that have been committed. With the elimination of these criminal acts, the recipients of amnesty will not have to serve their criminal sentences and the acts committed by the recipients of amnesty will be forgotten.

Thus, amnesty and abolition are judicial consequences resulting from political decisions made by the executive and legislative branches to release a person from criminal liability if they have not yet been tried, or to release a convicted person from the sentence they are serving. Article 14 paragraph (2) of the 1945 Constitution states that by granting amnesty, all criminal consequences against that person are eliminated. Meanwhile, when a person is granted abolition, the prosecution against that person is eliminated. The granting of amnesty and abolition by the president takes into account the considerations of the House of Representatives.

The controversy over granting amnesty and abolition has resurfaced during President Prabowo Subianto's administration. One issue that has attracted public attention is when the President granted abolition to Thomas Trikasih Lembong and amnesty to Hasto Krisyanto in cases related to corruption. This policy has sparked controversy because corruption is an extraordinary crime that has a systemic impact on the life of the nation and state. Many parties question whether granting amnesty and abolition to

perpetrators of corruption is still in line with the spirit of eradicating corruption and the principles of the rule of law that uphold justice and accountability. Although constitutionally the President has this authority, its implementation cannot be separated from moral and ethical responsibilities, especially since this decision has a direct impact on public trust in the legal system and government.

The granting of amnesty and abolition to individuals involved in corruption cases raises concerns that the President's prerogative rights could be abused to protect certain parties for political interests or loyalty. This reminds us that in a state governed by the rule of law, no power is above the law. Therefore, in the current context, the exercise of the President's prerogative must be carried out with great care and through careful consideration, not only juridically, but also politically and socially. The public has the right to know and assess the reasons for granting clemency, amnesty, abolition, and rehabilitation, especially in cases that attract widespread public attention. Openness of information and transparency in decision-making are very important so that the President is not considered to be abusing his authority or undermining the public's sense of justice.

A number of previous studies have also discussed similar themes. For example, research by Sudarsono (2020) in the *Journal of Law and Development* highlights that the President's prerogative rights after the amendment of the 1945 Constitution must be placed within a framework of checks and balances to prevent abuse of authority. Lestari and Nugroho (2021) in the *Journal of Constitution* also argue that the granting of amnesty and abolition needs to be limited by the principle of public accountability, especially when it comes to corruption cases. Meanwhile, research by Rahman (2022) in the *Indonesian Political Law Journal* emphasizes that the exercise of presidential prerogative rights must be accompanied by procedural transparency and the participation of supervisory institutions so as not to conflict with the spirit of legal reform. This study attempts to complement previous studies by highlighting the aspects of political law and oversight of the exercise of the President's prerogative rights, particularly in the context of actual cases that have sparked public debate.

Considering the development of the legal system in Indonesia, it is necessary to evaluate and refine the regulations governing these prerogative rights, especially those relating to amnesty and abolition. More technical, detailed, and transparent legislative reforms are needed so that the exercise of these prerogative rights does not give rise to multiple interpretations or political exploitation. In addition, oversight from state institutions such as the House of Representatives, the Supreme Court, and public participation must continue to be strengthened so that the exercise of the President's prerogative rights can be carried out in accordance with the principles of the rule of law and democracy. In a democratic country, the President, as head of state, has a

responsibility to ensure that all of his powers are used for the benefit of the people, not for personal or group interests.

## **2. The implementation and impact of granting the President's prerogative rights to prisoners.**

Law No. 22 of 2002 on Clemency does not specify a time limit for the submission of clemency petitions by prisoners sentenced to death, resulting in the execution or implementation of the death penalty being delayed indefinitely. For the sake of legal certainty, it is necessary to regulate the time limit for the submission of clemency petitions by prisoners sentenced to death. In making a decision on a clemency petition, the President must consider wisely and prudently matters related to the crimes committed by the convict, particularly crimes committed repeatedly (recidivism), crimes against morality, and crimes committed sadistically and with premeditation.

The process of submitting a clemency petition as stipulated in Articles 8-12 of Law No. 22 of 2002 includes:

- 1) The convict or his/her family, through their legal representative, must write a clear and concise clemency petition addressed to the President.
- 2) A copy of the clemency petition is then submitted to the court that decided the case at the first level to be forwarded to the Supreme Court.
- 3) The convict can explain the clemency and a copy of the clemency petition through the Head of the Correctional Institution where the convict is serving their sentence.
- 4) In relation to the clemency and the copy of the clemency petition, the Head of the Correctional Institution may explain the clemency to the President and the copy of the clemency petition shall be sent to the court that decided the case at the first level no later than 7 (seven) days from the date of receipt of the clemency petition and its copy.
- 5) The clemency petition shall have a maximum period of 20 (twenty) days from the date of receipt of a copy of the clemency petition. The court of first instance shall send a copy of the petition and the convicted person's case file to the Supreme Court.
- 6) The Supreme Court shall send its considerations to the President no later than 3 (three) days after receiving the copy.
- 7) The President shall make a decision on the clemency petition after considering the Supreme Court's considerations.
- 8) The President's decision may be to grant or deny clemency.
- 9) The period for granting or rejecting clemency is no later than 3 (three) months from the date of receipt of the Supreme Court's considerations.
- 10) The President's decision regarding the clemency petition shall be communicated to the convicted person within a period of no later than 14 (fourteen) days after the President's decision is finalized.
- 11) A copy of the President's decision regarding the request for clemency shall be submitted to:
  - a. The Supreme Court
  - b. The court that decided the case at the first level

- c. The district attorney's office that prosecuted the convicted person, and
- d. The correctional institution where the convicted person is serving their sentence.

Furthermore, the procedure for submitting applications must be designed to be effective and efficient, and not complicated so as not to cause difficulties or confusion for applicants. The following are several concepts for submitting amnesty applications

- 1) Amnesty applications can be submitted in two ways, namely by applying directly to the President or by applying to the Minister of Law and Human Rights.
- 2) Amnesty applications must be accompanied by documents that provide information about the applicant's status and case. These documents are necessary for the preparation of supporting studies.
- 3) When submitting an application, applicants must choose between submitting it directly to the President or to the Minister of Law and Human Rights. (Widodo Ekatjahjana, 2022.)

Therefore, it can be concluded that the President's prerogative to grant clemency, amnesty, abolition, and rehabilitation is part of Indonesia's constitutionally recognized and legitimate state system. However, its implementation must always refer to the principles of the rule of law, upholding justice, transparency, and accountability. In the current context, when challenges to legal integrity and public trust are increasing, the exercise of this prerogative must be based on the spirit of reform and a commitment to substantive justice. Thus, the President is not only a symbol of state power, but also the main guardian of constitutional values and social justice in the life of the nation and state.

Therefore, according to the author, the impact of the president's granting of amnesty and abolition to prisoners convicted of corruption will be viewed differently by the public because abolition is a form of pardon, while amnesty is a removal of legal consequences. However, they will remain on record as convicted of corruption forever. This will differ from the outcome of a court ruling that has decided that he is not guilty, in which case his good name will be legally restored, he will no longer be recorded as a convicted corruption offender, and he will be entitled to rehabilitation.

Therefore, the political analysis of granting amnesty and abolition to prisoners is a way for the government to defuse tensions and bring peace to situations that disrupt the stability and sovereignty of the state due to political crimes. Therefore, the President, based on his prerogative, issues a Presidential Decree (Keppres) for the granting of clemency, amnesty, and abolition. This is not an absolute validity because every government action under its authority often has flaws that give rise to legal consequences. These flaws can occur both materially and formally in the granting of clemency, amnesty, and abolition. (Suyogi Imam Fauzi. 2021).

## D. CONCLUSION

Prior to the amendment of the 1945 Constitution of the Republic of Indonesia (UUD 1945), Article 14 stated that the President had the authority to grant pardons, amnesties, remissions of punishment, and rehabilitations without having to consider the opinions of other institutions. However, after the amendment, this provision underwent significant changes. In the first amendment to the 1945 Constitution, it was stated that in granting pardons and rehabilitation, the President must first consider the opinion of the Supreme Court, while in granting amnesty and remission, the President must consider the opinion of the House of Representatives (DPR). This change reflects the spirit of legal reform and democratization, in which the President's power is no longer absolute but is limited by the principle of checks and balances, which is a hallmark of a democratic state based on the rule of law. This principle is important to ensure that the President's power remains within legal limits and is not abused for political interests alone.

The President's right to grant pardons, amnesties, remissions, and rehabilitations is part of Indonesia's constitutional system and is legally recognized. However, its implementation must always be in accordance with the principles of the rule of law, upholding the values of justice, transparency, and accountability. In the current context, where challenges to legal integrity and public trust are increasing, the exercise of this prerogative power must be guided by the spirit of reform and a commitment to substantive justice.

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