# THE DUALISM OF EXECUTIVE PREROGATIVE: A JURIDICO-POLITICAL ANALYSIS OF ABOLITION (Case Study: Abolition Granted to Tom Lembong)

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**Abstract**

*The President's granting of abolition is a complex legal and political instrument. Juridically, abolition is a prerogative right regulated by Article 14 Paragraph (2) of the 1945 Constitution and Emergency Law No. 11 of 1954. It functions as a mechanism to stop ongoing criminal proceedings, returning the individual to their original legal status. The problem arises in the tension between this ideal legal function and the political reality of its application. This study examines this gap by analyzing the granting of abolition to Tom Lembong, a decision that sparked public controversy and raised questions about the political motivations behind a legal act. Lembong, a former Minister of Trade, had been sentenced at first instance in a sugar-import corruption case, but the judgment was not yet final. The abolition stopped this prosecution before it reached a final and binding court decision. The analysis shows that the abolition was procedurally valid, since the case was not yet final and the DPR's consideration was obtained, but that this consideration worked as a fast formal checkpoint rather than a substantive check. The reasons stated officially (national unity and the beneficiaries' contributions) are documented, whereas further motives such as elite loyalty and alliance-building are presented as analytical interpretations, not established facts. The study concludes that procedural validity alone does not protect the prerogative from selective use, and that in Indonesia's constitutional system law and politics are not always separate.*

## A. Introduction

Legal basis of abolition is a presidential prerogative right that is constitutionally regulated in Article 14 Paragraph (2) of the 1945 Constitution.[1] Technical provisions on amnesty and abolition are found in Emergency Law Number 11 of 1954 concerning Amnesty and Abolition, while Law Number 22 of 2002 regulates clemency (grasi) only.[2] Article 14 Paragraph (2) of the

[1] Suyogi Imam Fauzi, "Politik Hukum Pemberian Grasi, Amnesti dan Abolisi sebagai Konsekuensi Logis Hak Prerogatif," *Jurnal Hukum & Pembangunan* 51, no. 3 (2021): 621–636, https://doi.org/10.21143/jhp.vol51.no3.1064.
[2] Central Government Indonesia, "1945 Constitution of the Republic of Indonesia" (1945), art. 14(2); Central Government Indonesia, "Emergency Law No. 11 of 1954 Regarding Amnesty and Abolition" (1954), arts. 1 and 4, https://peraturan.go.id/files/uudrt11-1954.pdf; Central Government Indonesia, "Law No. 22 of 2002 Regarding Clemency, as Amended by Law No. 5 of 2010" (2002).

1945 Constitution is the main legal foundation that legitimizes abolition as a presidential right. It provides that the President grants amnesty and abolition with due regard to the consideration of the House of Representatives (DPR), whereas clemency and rehabilitation under Article 14 Paragraph (1) require the consideration of the Supreme Court (MA).[3]

Abolition is both a political and a legal instrument. Although it is often compared with amnesty, the two differ.[4] Abolition stops ongoing legal processes, while amnesty eliminates the legal consequences of criminal acts that have been committed, as if those criminal acts never occurred. Both are granted for the public interest. The granting of abolition is usually done in cases related to state interests or very urgent humanitarian reasons.[5] This is a tool for the president to maintain political stability or address extraordinary situations that cannot be resolved through ordinary legal processes. Thus, abolition is not merely a right, but also a responsibility that must be used wisely for the good of society.[6]

Early use of abolition under the Old Order. During President Soekarno's era, abolition was used to resolve internal conflicts of a political nature.[7] The granting of abolition to perpetrators of rebellion in Aceh (1961) and separatist figures of RMS (1964) showed that this right functions as a tool for political reconciliation to reduce tensions and reintegrate opposing groups into the framework of the Unitary State of the Republic of Indonesia (NKRI) without having to go through lengthy court processes.[8]

Use of abolition under the New Order. Under President Soeharto's leadership, the use of abolition remained oriented toward stability. The granting of abolition to followers of the Fretilin movement in East Timor (1977) became part of a political strategy to normalize the situation

[3] 1945 Constitution, art. 14(1) and (2).
[4] Ilham Habiburohman, "Hubungan Presiden dan Dewan Perwakilan Rakyat Pasca Amendemen Perspektif Teori Constitutional Retrogression," *Jurnal Hukum Ius Quia Iustum* 28, no. 1 (2021): 21–44, https://doi.org/10.20885/iustum.vol28.iss1.art2.
[5] Rizky Malinto Ramadani, Indra Perwira, and Bilal Dewansyah, "Problem Pemberian Amnesti oleh Presiden dalam Perspektif Kepentingan Negara," *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 3 (2021): 975–981, https://doi.org/10.33087/jiubj.v21i3.1688.
[6] Joni Laksito, *Yurisprudensi*, ed. Agus Wibowo (Semarang, 2023).
[7] Mutiara Nora Peace Hasibuan, Moh. Kamaluddin, and Annisa Sabilla Sueni, "Amnesti dan Abolisi bagi Pelaku Korupsi dalam Perspektif Viktimologi Kritis," *Jurnal Hukum Pidana Indonesia* 3, no. 1 (2026): 1–22, https://doi.org/10.67468/jhpi.v3i1.51.
[8] Kintan Farhayanti Dewi, Gede Sumerta, and Eri Hidayat, "Potensi Konflik antara Pemerintah Provinsi Aceh dan Pemerintah Pusat Republik Indonesia terhadap Implementasi Memorandum of Understanding Helsinki dalam Perspektif Amnesti Internasional," *Jurnal Education and Development* 10, no. 1 (2022): 1–7, https://doi.org/10.37081/ed.v10i1.3215.

following the integration of that territory.[9] This shows that abolition can be utilized as a mechanism to suppress resistance and support development programs. It is important to note that this right is part of the executive power exercised by the president.

Transition to democracy in the Reform Era. During the Reform Era, President B.J. Habibie used abolition as a symbol of change.[10] Granting abolition to pro-democracy activists such as Sri Bintang Pamungkas (1998) was not merely a legal action, but also a political gesture to uphold the rule of law and end the oppression of political opposition that occurred in the past. This paved the way for national reconciliation.

The post-reform period. The use of abolition by President Abdurrahman Wahid for R. Sawito Kartowibowo (2000) further emphasized the political dimension of this instrument.[11] This decision served as a step to erase traces of past injustices and demonstrate the government's commitment to freedom of expression and the enforcement of human rights.

Overall, the history of abolition in Indonesia demonstrates that this instrument has never been purely juridical in nature, but has always intersected with political interests.[12] The use of abolition by each President from era to era reflects how law can become a tool to achieve political objectives, such as stability, reconciliation, and the enforcement of civil rights, without having to rely on conventional legal processes.[13] This analysis provides a strong contextual foundation for understanding how abolition functions within the dynamics of power in Indonesia.[14]

Emergency Law Number 11 of 1954 concerning Amnesty and Abolition is the statute that gives more detailed content to Article 14 Paragraph (2). It authorizes the President, in the interest of the state, to grant amnesty and abolition to persons who have committed a criminal act, and it

[9] Conrado M. Cornelius, "Menafsirkan Pancasila: Wewenang Pemerintah atau Peran Warga Negara? Suatu Telaah dari Perspektif Hermeneutika Kritis Habermasian," *Mimbar Hukum* 33, no. 2 (2021): 320–345, https://doi.org/10.22146/mh.v33i2.2299.
[10] Ahmad Depri Kurniawan, Didik Sukriono, and Rosyid Al Atok, "B. J. Habibie's Political Thought in Democratization in Indonesia," *Journal of Politics and Policy* 3, no. 2 (2021): 157–176.
[11] Haeruman Jayadi, "Analisis Yuridis dan Politis Pemberhentian Presiden dan/atau Wakil Presiden Berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Risalah Kenotariatan* 5, no. 1 (2024): 191–207, https://doi.org/10.29303/risalahkenotariatan.v5i1.241.
[12] Moh. Deliyanto, "Pergeseran Kekuasaan Presiden dalam Sistem Ketatanegaraan Republik Indonesia dalam Perspektif Sosial, Politik dan Hukum," *Journal Syntax Idea* 7, no. 6 (2025): 837–854, https://doi.org/10.46799/syntaxidea.v7i6.13114.
[13] Ari Wibowo, Asep Rohman Dimyati, and Junaedi Junaedi, "Mewujudkan Sistem Hukum Nasional yang Adil dan Efektif: Urgensi Penataan Regulasi dalam Perspektif Politik Hukum di Indonesia," *Journal of Contemporary Law Studies* 2, no. 3 (2025): 223–236, https://doi.org/10.47134/lawstudies.v2i3.3793223.
[14] Agus Wibowo, *Negara Hukum Administrasi* (2025).

distinguishes the two: amnesty removes all criminal-law consequences, whereas abolition nullifies the prosecution of the person concerned (Articles 1 and 4).[15] Law Number 22 of 2002 concerning Clemency, as amended by Law Number 5 of 2010, is a separate statute that regulates clemency only.[16]

The 1954 statute pre-dates the amendment of the 1945 Constitution. In its original text the President acted after receiving written advice from the Supreme Court, whereas Article 14 Paragraph (2), as amended, refers to the consideration of the DPR. In practice, the constitutional text is followed on how the consideration is obtained.[17] Several authors have called for the older statute to be revised or replaced so that the rules are consistent and legally certain.[18] This tension between an old statute and a newer constitutional rule is one reason why the DPR's consideration, examined in Section 2 below, is only thinly regulated.

The granting of abolition by the President is one of the legal instruments and prerogative rights of the head of state that has very complex juridical and political dimensions.[19] Juridically, abolition is a right that is explicitly regulated in the constitution and laws in Indonesia[20], functioning as a legal mechanism to eliminate criminal prosecution against someone who is undergoing or will undergo the judicial process. This right is essentially a manifestation of executive power to intervene in the legal process, but within a very limited framework and with noble purposes, namely to uphold justice and prevent judicial errors.[21]

Ideally, the granting of abolition should be based on objective and rational legal considerations. In principle, this right is used as a corrective mechanism to ensure that justice can truly be upheld, especially when there are strong indications of errors in the judicial process, or to prevent substantial injustice. This view aligns with the principle of "due process of law" where

[15] Emergency Law No. 11 of 1954, arts. 1 and 4.
[16] Aldriansyah Rangga Putra et al., "Tinjauan Yuridis tentang Pemberian Grasi oleh Presiden dalam Sistem Hukum di Indonesia," vol. 12 (2023), http://repository.unand.ac.id/17166/.
[17] Dandapala, "Rekonstruksi Amnesti dan Abolisi dalam Tata Hukum Indonesia," https://dandapala.com/opini/detail/rekonstruksi-amnesti-dan-abolisi-dalam-tata-hukum-indonesia.
[18] 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.
[19] Fauzi, "Politik Hukum Pemberian Grasi," 621–636.
[20] Rikiandi Sopian Maulana et al., "Urgensi Pembentukan Undang-Undang Grasi, Amnesti, Abolisi dan Rehabilitasi Ditinjau dari Kepastian Hukum," *Jurnal Diskresi* 3, no. 1 (2024): 52–59, https://doi.org/10.29303/diskresi.v3i1.5072.
[21] Mochammad Rayhan Romadhona, "Kekuasaan Kehakiman Bersifat Independensi: Tantangan dan Integritas," *Hukum Dinamika Ekselensia* 6, no. 4 (2024): 559–581.

every individual has the right to a fair legal process.[22] This principle emphasizes that the use of the President's prerogative right must be in harmony with the spirit of fair law enforcement without excessive political intervention. Abolition should become a 'safety valve' in the legal system, not a tool of power.[23]

However, in practice, the implementation of this right often generates controversy and questions. The gap between the ideal conditions that should exist and the reality on the ground becomes an interesting phenomenon to study. Cases of granting abolition in various countries, including Indonesia, frequently raise speculation about the political motivations and implications behind such decisions.[24] This creates tension between law as a neutral instrument and politics as a realm fraught with interests.

The case of granting abolition to Thomas Trikasih Lembong, known as Tom Lembong, presents facts that point to strong political dimensions. Tom Lembong, a former Minister of Trade who had been sentenced at first instance to four and a half years in prison in a sugar-import corruption case, received an abolition from President Prabowo Subianto that sparked widespread and controversial public discussion.[25] Some commentators read the decision as extending beyond legal aspects to issues of power and political loyalty; this study treats that reading as an interpretation to be examined, not as an established fact. Many parties questioned the legal basis used and highlighted the possibility that political considerations underlay the decision, given Tom Lembong's prior position as a minister.[26]

This granting of abolition triggered heated debate among legal experts, academics, and political practitioners. Some argued that the decision was the President's full prerogative, while others contended that abolition must meet strict and transparent requirements to prevent misuse.[27] The gap between legal provisions that should be neutral and independent and the actual practice laden with political nuances is the main focus of this research.

[22] Basuki, "Paradoks Tindakan Hukum Penyidik Pegawai Negeri Sipil dalam Sistem Peradilan Pidana Indonesia" (Disertasi, Universitas Jayabaya, 2020).
[23] Bintang Mandala Karyudi and Nuril Firdausiah, "Implementasi Supremasi Hukum dalam Penegakan Hukum di Indonesia," *Lex et Lustitia* 1, no. 2 (2024): 86–98, https://ejournal.umsj.ac.id/index.php/lel/index.
[24] Ramadani, Perwira, and Dewansyah, "Problem Pemberian Amnesti," 975–981.
[25] Putra et al., "Tinjauan Yuridis."
[26] Ilham Fathir Arifuddin and Hudi Yusuf, "Kontroversi Pemberian Abolisi dalam Kasus Korupsi Impor Gula: Analisis Kriminologi terhadap Penegakan Hukum dan Ketimpangan Keadilan," *JICN: Jurnal Intelek dan Cendikiawan Nusantara* 2, no. 4 (2025): 4729–4735.
[27] Ibid.

Juridically, this research will be based on the Theory of Legal Sovereignty. This concept asserts that every state action, including the President's prerogative rights, must be based on and limited by law. Prerogative rights must not be used arbitrarily, but must be subject to legal principles, including the principle of legality and the principle of justice.[28] In the context of abolition, the rule of law requires clear procedures, accountable reasons, and legal certainty that the decision does not violate citizens' fundamental rights.[29] This research will examine whether the granting of abolition to Tom Lembong meets these legal standards or deviates from them.

Power is examined in two complementary senses. In the constitutional sense, the Theory of Power is often associated with the head of state's prerogative rights. In this view, abolition can be considered as remnants of absolute monarchical power, where the king had the right to pardon or punish without intervention.[30] However, in a modern constitutional state, this power must be limited and supervised by other institutions, such as the legislative and judiciary, to prevent abuse of power.

In the political sense, this research employs Power Theory in its conflict-oriented form, associated with Karl Marx, in which power derives from control over resources and tends to serve the interests of those who hold it. In this context, the granting of abolition can be seen as a manifestation of Presidential power.[31] The decision to grant abolition to Tom Lembong, a former minister, may be analyzed as the President's attempt to consolidate power or demonstrate loyalty to individuals deemed important. This reading is an analytical hypothesis; this research examines whether the available sources support it, or only the narrower conclusion that the prerogative was exercised within formal limits.

[28] M. Zaki Mubarak, Ahmadi Hasan, and Masyithah Umar, "Tata Kelola Demokratis: Pemanfaatan Kedaulatan Rakyat dalam Memerangi Korupsi," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 1, no. 4 (2023): 889–905, https://doi.org/10.62976/ijijel.v1i4.240.
[29] Pramesti Ratu Fiqih, Adellia Mahardhika Widodo, and Anisa Miftahul Firdaus, "Analisis Penerapan Rule of Law oleh Mahkamah Konstitusi sebagai The Guardian of Constitution (Studi pada Kasus Putusan MK Nomor 90/PUU-XXI/2023)," *DISCOURSE: Indonesian Journal of Social Studies and Education* 1, no. 3 (2024): 238–249, https://doi.org/10.69875/djosse.v1i3.126.
[30] Flor Avelino, "Theories of Power and Social Change: Power Contestations and Their Implications for Research on Social Change and Innovation," *Journal of Political Power* 14, no. 3 (2021): 425–448, https://doi.org/10.1080/2158379X.2021.1875307.
[31] Diva Raya et al., "Sumber Kekuasaan dalam Negara: Analisis Berdasarkan Teori Konflik Karl Marx," *Public Sphere: Jurnal Sosial Politik, Pemerintahan dan Hukum* 3, no. 2 (2024): 33–39, https://doi.org/10.59818/jps.v3i2.810.

Rational Choice Theory is used as an interpretive lens to ask whether the decision is consistent with cost-benefit considerations.[32] Under this theory, a President can be expected to weigh the political benefits to be gained, such as coalition stability or public image.[33] However, a President can also be expected to weigh the political costs that may arise, such as public criticism or distrust toward the legal system.[34] This research does not claim to establish the rational motivations behind the President's decision. It asks only whether the documented facts are consistent with a cost-benefit reading.

To bridge the gap between law and politics, Legal Realism Theory becomes important in this research to connect law with politics. This theory views that legal decisions are not only based on formal rules, but are also influenced by non-legal factors, such as political, social, and economic considerations.[35] In the view of legal realism, the decision of a judge or, in this case, the President, is not entirely neutral, but rather the result of interaction between legal rules and the existing political context. This theory is highly relevant for analyzing this case because it directs attention to how law may become a vehicle for political interests.[36]

According to Almond and Verba, political culture comprises political orientations that include attitudes toward the political system, its components, and the role of individuals within that system. In line with this view, Lucian Pye emphasizes that political culture is a set of attitudes, beliefs, and convictions of society that influence the arrangement of political systems and processes, while simultaneously reflecting their feelings, attitudes, and views toward political life. Thus, political culture can be understood as a pattern of values and orientations that shape society's political behavior within a political system..[37]

[32] Costas Panagopoulos and Ching-Hsing Wang, "Rationality, Affect, and Vote Choice," *Frontiers in Political Science* 7 (2025): Article 1640408, https://doi.org/10.3389/fpos.2025.1640408.
[33] Muhammad Hilmi Naufal Aflah and Arif Hidayat, "Dominant Coalition Sebagai Strategi Penyederhanaan Partai Politik Dalam Perspektif Penguatan Sistem Presidensiil," *Puskapsi Law Review* 5, no. 1 (2025): 155–179, https://doi.org/10.19184/puskapsi.v5i1.53743.
[34] Christine S. T. Kansil and Putri Meilika Nadilatasya, "Dampak Putusan Mahkamah Konstitusi terhadap Dinamika Politik dan Kepercayaan Publik di Indonesia: Analisis Implikasi Hukum dan Etika," *UNES Law Review* 6, no. 4 (2024): 10753–10760, https://doi.org/10.31933/unesrev.v6i4.2039.
[35] Matthew Angelosanto, "Legal Realism and the Predictability of Judicial Decisions," *Interdisciplinary Studies in Society, Law, and Politics* 2, no. 3 (2023): 4–14, https://doi.org/10.61838/kman.isslp.2.3.2.
[36] Merdi Hajiji, "Relasi Hukum dan Politik dalam Sistem Hukum Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, no. 3 (2013): 361–373, https://doi.org/10.33331/rechtsvinding.v2i3.65.
[37] Yuli Safitri, Anwar Efendi Pane, and Elly Warnisyah Harahap, "Analisis Perilaku Politik, Budaya Masyarakat dan Agama di Indonesia," *Journal of Education Research* 4, no. 3 (2023): 1375–1380, https://doi.org/10.37985/jer.v4i3.392.

This view is enriched by Miriam Budiardjo, who emphasizes that political culture is a subjective aspect that includes individual political views, norms, and orientations.[38] This can be connected to how abolition is used as a political instrument in Indonesia, as political decisions made by the government are not only influenced by formal structures, but also by the political culture that lives in society. In line with this, Thomas Tokan Pureklolon emphasizes that political policies taken by leaders are often influenced by cultural backgrounds and limited by structural obstacles in the form of societal culture and political situations,[39] According to Liddle, a leader can not only be constrained by the cultural structure around them, but can also utilize that culture as a political tool. In other words, the value orientations, norms, and political views of society also determine the direction and acceptance of abolition policies implemented in Indonesian political practice.[40]

Previous research on this topic can be grouped into four strands. The first treats clemency, amnesty, and abolition as a matter of legal policy and constitutional design, including the political-law rationale of the prerogative,[41] the relationship between the President and the DPR after the constitutional amendments,[42] and the call for a dedicated statute that would give legal certainty.[43] The second strand examines the presidential power to grant amnesty from the standpoint of the state's interest.[44] The third strand addresses the 2025 decisions directly: criminological and victimological studies of the abolition controversy in the sugar-import case,[45] and a criminal-law review of the legal basis and mechanism of the abolition for Tom Lembong and the amnesty for

[38] Camelia Florela Voinea, "Political Culture Research: Dilemmas and Trends. Prologue to the Special Issue," *Quality & Quantity* 54, no. 2 (2020): 361–382, https://doi.org/10.1007/s11135-019-00943-0.
[39] N. I. Pratiwi et al., "Hegemony in Political Communication: The Swing Voter Phenomenon in the 2020 Regional Election in Karangasem Regency, Bali," *Global International Journal of Innovative Research* 2, no. 10 (2024): 2344–2356, https://doi.org/10.59613/global.v2i10.247.
[40] Fence Wantu and Usman Rasyid, "Evaluasi Pelaksanaan UUD NRI Tahun 1945," *Jurnal Majelis* 8 (2020): 33–60.
[41] Fauzi, "Politik Hukum Pemberian Grasi," 621–636.
[42] Habiburohman, "Hubungan Presiden dan DPR," 21–44.
[43] Maulana et al., "Urgensi Pembentukan Undang-Undang," 52–59; Badu and Ahmad, "Purifikasi Pemberian Amnesti," 93–111.
[44] Ramadani, Perwira, and Dewansyah, "Problem Pemberian Amnesti," 975–981.
[45] Arifuddin and Yusuf, "Kontroversi Pemberian Abolisi," 4729–4735; Hasibuan, Kamaluddin, and Sueni, "Amnesti dan Abolisi bagi Pelaku Korupsi," 1–22.

Hasto Kristiyanto.[46] The fourth strand is comparative work on the extent of, and checks on, the pardon power, which concentrates on the United States.[47]

Against this background, this study makes three specific contributions. First, it reconstructs the procedural sequence of the Lembong abolition (the presidential letter of 30 July 2025, the DPR's consideration on 31 July 2025, and Presidential Decree Number 18 of 2025 of 1 August 2025), so that validity is tested against documented facts rather than assumed. Second, it treats the DPR's consideration as an object of analysis in its own right, asking about its extent, legal character, and effectiveness, an aspect that, to the authors' knowledge, has received limited sustained attention in the studies above. Third, it assigns each theory a defined analytical function and observable indicators (Table 1) and separates documented facts from analytical interpretations of motive. The study does not claim to establish the President's actual motives. It asks what the documented procedure and the officially stated reasons allow us to infer, and whether procedural regularity alone can protect the prerogative against selective use.

This issue is significant because, despite substantial scholarly attention to abolition as a legal instrument, few studies have examined a contemporary abolition decision through the combined lens of legal doctrine and political theory. The Tom Lembong case offers a timely and instructive example of how a formally valid legal instrument can simultaneously function as a strategic political tool, exposing a gap between normative legal analysis and political-science perspectives on the exercise of presidential prerogative power. Closing this gap matters both academically, by enriching the discourse on the boundary between law and politics within Indonesia's presidential system, and practically, by informing public understanding of how prerogative rights such as abolition can be exercised, monitored, and held accountable. Building on this rationale, this study aims to: (1) analyze the juridical basis and procedural validity of the abolition granted to Tom Lembong under Article 14 Paragraph (2) of the 1945 Constitution and Emergency Law Number 11 of 1954; (2) evaluate the extent, legal character, and effectiveness of the DPR's consideration as a constitutional check; and (3) interpret the political dimensions underlying the decision,

[46] Muhammad Havez, Muhammad Rusjana, and Erine Nur Maulidya, "A Legal Review of the Granting of Abolition and Amnesty in the Cases of Tom Lembong and Hasto Kristiyanto under Indonesian Criminal Law," *Journal of Law and Policy Transformation* 10, no. 2 (2026), https://doi.org/10.37253/jlpt.v10i2.11264.
[47] Max Guirguis, "The Nature and Extent of Presidential Pardon Power: An Analysis in Light of Recent Political Developments," *Commonwealth Review of Political Science* 5, no. 1 (2021): Article 4, https://doi.org/10.61611/2994-0044.1038.

without claiming to establish the President's actual motives, using the theories of legal sovereignty, power, rational choice, legal realism, and political culture outlined above.

From a criminal law perspective, this case matters because the abolition stopped the proceedings in a sugar-import corruption case after a first-instance conviction and before the judgment became final. Normally, only the court decides guilt, weighs evidence, and ends a criminal case, through an open and adversarial process. When the President ends a prosecution instead, a political decision replaces a judicial one, without a public hearing or appellate correction. This matters for the criminal justice system because it removes judicial findings on the alleged conduct and may suggest that politically connected defendants can exit the ordinary criminal process. For this reason, the case needs to be examined through criminal law, not only through political theory.

## B. Method

This research employs normative legal research with a case study approach to conduct an in-depth analysis of abolition from juridical and political aspects. This approach was chosen because its focus is on examining law as norms and applicable rules, not on social facts in the field. Therefore, the data used is secondary in nature, derived from document studies or literature.[48] To collect data, the technique applied is document study which includes the collection and analysis of primary legal materials (such as the 1945 Constitution and Emergency Law No. 11 of 1954 concerning Amnesty and Abolition, and Presidential Decree No. 18 of 2025 concerning the granting of abolition), secondary legal materials (various literature, journals, and legal books), as well as tertiary legal materials (dictionaries and encyclopedias). Data analysis is conducted qualitatively and analytically, where the collected data will be organized, classified, and explained systematically to produce comprehensive conclusions.

The case materials consist of three kinds of sources, which are used for different purposes. Legal materials (the 1945 Constitution, Emergency Law Number 11 of 1954, and Presidential Decree Number 18 of 2025) establish the norms against which the decision is tested. Official statements by the Minister of Law, a Deputy Minister of State Secretary, and the DPR leadership,

[48] Sidi Ahyar Wiraguna, "Metode Normatif dan Empiris dalam Penelitian Hukum: Studi Eksploratif di Indonesia," *Public Sphere: Jurnal Sosial Politik, Pemerintahan dan Hukum* 3, no. 3 (2024): 58–65, https://doi.org/10.59818/jps.v3i3.1390.

as reported by national news media, document the procedural sequence and the reasons stated publicly.[49] Scholarly literature and expert commentary supply the interpretive frameworks. News reports are used only to document dates, statements, and events; they are not treated as proof of the President's motives. Where this study discusses motives, it labels them as analytical interpretations and distinguishes them from documented facts.

To keep the political theories from replacing the legal analysis, they are applied only after the juridical validity of the abolition is established. Each source is first read for two kinds of facts: procedural facts, such as the stage of the case and the existence of DPR consideration, and political facts, such as Lembong's position and the public reaction. Legal Sovereignty Theory and Power Theory are applied to the procedural facts, to test whether the prerogative stayed within its legal limits. Rational Choice Theory and political culture are applied to the political facts, to explain the motives behind the decision. Legal Realism is applied last, to connect both sets of findings. In this way, the political theories support the legal analysis instead of replacing it.

Because the study uses several theories, each one is assigned a specific analytical function and a set of observable indicators, so that the theories structure the analysis instead of merely describing the case (Table 1). Political culture is treated as a contextual explanation of public acceptance, not as a test of the President's motives.

Table 1. Analytical framework: theories, analytical functions, and indicators

| Theory | Analytical function | Indicators (questions put to the sources) | Main materials |
|---|---|---|---|
| **Legal Sovereignty** | Tests legality and equality before the law | (1) Is there a constitutional basis (Art. 14(2))? (2) Had the case reached a final decision? (3) Was the DPR's consideration obtained before the decree? (4) Are legal reasons stated? | 1945 Constitution; Emergency Law 11/1954; Presidential Decree 18/2025; official statements on dates |
| **Power Theory (constitutional and conflict-oriented senses)** | Tests whether the prerogative is effectively checked and whose interests it may serve | (1) Form, speed, and publicity of the DPR's consideration; (2) whether the President must explain reasons; (3) the beneficiary's position relative to power holders | DPR statements; timeline of the process; literature on President–DPR relations |
| **Rational Choice** | Offers an interpretation of the decision as cost–benefit weighing; it is not a test of motive | (1) Benefits stated by officials; (2) costs visible in public debate; (3) consistency of the outcome with that weighing | Official statements; press reports; expert commentary |

[49] "Menteri Hukum: Keppres Pembebasan Hasto dan Tom Lembong Berlaku 1 Agustus 2025," *Bisnis.com*, August 1, 2025, https://kabar24.bisnis.com/read/20250801/16/1898646/menteri-hukum-keppres-pembebasan-hasto-dan-tom-lembong-berlaku-1-agustus-2025.

| Theory | Analytical function | Indicators (questions put to the sources) | Main materials |
|---|---|---|---|
| **Political Culture** | Explains the conditions under which the decision was accepted or contested | (1) Reactions of elites and the public; (2) continuity with earlier uses of abolition | Press reports; historical literature cited in the Introduction |
| **Legal Realism** | Synthesizes: compares formal compliance with political function | (1) Do valid procedure and political function coexist? (2) Does legal reasoning, not only procedure, explain the outcome? | Results of the four analyses above |

## C. Analysis and Discussion

### 1. Formal Juridical Validity: Legal Sovereignty, Power Theory, And The Limits Of Prerogative

As set out in the Introduction, abolition rests on Article 14 Paragraph (2) of the 1945 Constitution and Emergency Law Number 11 of 1954, and it ends the prosecution of a person before a final and binding court decision. Under the Theory of Legal Sovereignty, the question is therefore not whether the President holds the power, but whether this particular exercise stayed within its limits.

The documented sequence satisfies the formal requirements. Tom Lembong, a former Minister of Trade, had been sentenced to four and a half years in prison by the Jakarta Corruption Court on 18 July 2025 in the sugar-import case, but the judgment had not acquired permanent legal force.[50] The President's letter requesting the DPR's consideration (Number R43/Pres/07/2025) is dated 30 July 2025, the DPR gave its consideration on 31 July 2025, and the abolition decree (Presidential Decree Number 18 of 2025) took effect on 1 August 2025.[51] On these facts, the constitutional requirement of DPR consideration was met and the prosecution had not been concluded by a final decision. One doctrinal point deserves separate treatment: the abolition came after a first-instance verdict, a stage at which abolition, understood as the nullification of prosecution, is not self-evidently applicable. The officials involved treated all pending proceedings

[50] "Bebas dari Penjara, Tom Lembong Ucapkan Terima Kasih ke Prabowo dan DPR," *Kompas.com*, August 1, 2025, republished at Kontan, https://nasional.kontan.co.id/news/bebas-dari-penjara-tom-lembong-ucapkan-terima-kasih-ke-prabowo-dan-dpr.
[51] "Menteri Hukum," *Bisnis.com*.

as halted by the abolition,[52] but whether the instrument may be used at that stage should be settled expressly when the 1954 statute is revised.

However, formal validity alone is not enough. Legal Sovereignty Theory requires that law apply equally to everyone. Granting abolition to a former minister raises the question of whether an ordinary defendant would receive the same treatment. Power Theory adds that the President's prerogative must stay under control. DPR consideration is what keeps this power within legal limits. If that consideration were ignored, the same act would become an abuse of power. Formal validity is therefore established, but it depends entirely on whether DPR consideration works as a real check, a question examined in the next section.

**2. The DPR's Consideration As A Constitutional Check: Extent, Legal Character, And Effectiveness**

Article 14 Paragraph (2) of the 1945 Constitution requires the President to act with due regard to (memperhatikan) the consideration of the DPR when granting amnesty and abolition. Paragraph (1) uses the same formula for clemency and rehabilitation but assigns the consideration to the Supreme Court.[53] The difference is institutional: the Supreme Court advises where a decision touches an individual judgment, whereas the DPR, as a representative body, advises where a decision has broad political consequences.[54] Clemency is also regulated in detail by Law Number 22 of 2002, while amnesty and abolition rest on a statute that pre-dates the amendment of the Constitution.[55]

The extent of the check follows from the constitutional wording. The President must obtain the DPR's view and take it into account, but the text does not say that the DPR's consent is required or that its view binds the President. A constitutional law expert commenting on this case made the same point: the DPR may give a positive or a negative consideration, and the substance of the decision remains with the President.[56] The Constitution is also silent on the form of the

[52] "Keppres Abolisi Terbit, Tom Lembong Bebas Penjara Hari Ini," *CNN Indonesia*, August 1, 2025, https://www.cnnindonesia.com/nasional/20250801161023-12-1257703/keppres-abolisi-terbit-tom-lembong-bebas-penjara-hari-ini.
[53] 1945 Constitution, art. 14(1)–(2).
[54] "Dua Sisi Abolisi dan Amnesti," *detikNews* (column), https://news.detik.com/kolom/d-8047540/dua-sisi-abolisi-dan-amnesti.
[55] Donald A. Rumokoy and J. Ronald Mawuntu, "Kewenangan Presiden dalam Pemberian Grasi Berdasarkan Sistem Ketatanegaraan Indonesia," *Lex Administratum* 8 (2020).
[56] "Jangan Sampai Tom Lembong Mendekam Lagi karena Keppres Telat," *RMOL*, August 1, 2025, https://rmol.id/read/2025/08/01/674719/jangan-sampai-tom-lembong-mendekam-lagi-karena-keppres-telat-.

consideration (a written opinion, a plenary decision, or a consultation meeting), the time allowed, the criteria against which it is given, and whether it must be published.

In this case the DPR acted through a consultation meeting with the government and announced that it had given "consideration and approval" to the President's letter on the abolition.[57] The word "approval" goes beyond the constitutional word "consideration," and two readings are possible. On the first, the DPR's act is a non-binding political opinion, and "approval" is political courtesy. On the second, repeated practice may be turning the DPR's consent into a constitutional convention, so that a President would be expected not to proceed without it. This study adopts the first reading as the closer one to the constitutional text, and treats the second as a possible development that would give the check more force but has not been codified. On either reading, the DPR's act is a political rather than a judicial assessment: it is given by party factions, not on the basis of the case file, and it is not tested in an adversarial process.

Effectiveness has to be judged by what the check required in this case. The President's letter is dated 30 July 2025, the DPR announced its consideration and approval on 31 July 2025, and the decree took effect on 1 August 2025, so the whole chain took about two days.[58] All factions in the DPR were reported to have agreed to the proposal.[59] The reasons given publicly were that the decision would support national unity ahead of the 17 August independence celebrations and recognize the contributions of the two beneficiaries.[60] In the sources available to this study, no published written DPR opinion, public hearing, or statement of the legal reasons for the abolition was identified. On that record, the check appears to have operated as a quick endorsement rather than as scrutiny. This is an observation about the documented record only: internal DPR deliberations, if any, were not available to this study.

Taken together, the DPR's consideration satisfies the constitutional text but is weak as a check: it is advisory, unregulated as to form and criteria, and in this case it was given quickly and without recorded dissent. This supports the view that procedural compliance is necessary but not

[57] "Prabowo Memberikan Abolisi Tom Lembong & Amnesti Hasto, Ini Alasannya," *CNBC Indonesia*, July 31, 2025, https://www.cnbcindonesia.com/news/20250731225229-4-654063/prabowo-memberikan-abolisi-tom-lembong-amnesti-hasto-ini-alasannya/amp.
[58] "Menteri Hukum," *Bisnis.com*.
[59] "Prabowo Memberikan Abolisi," *CNBC Indonesia*; "6 Hal soal Prabowo Beri Abolisi ke Tom Lembong dan Amnesti ke Hasto," *detikNews*, August 1, 2025, https://news.detik.com/berita/d-8039577/6-hal-soal-prabowo-beri-abolisi-ke-tom-lembong-dan-amnesti-ke-hasto.
[60] "6 Hal soal Prabowo," *detikNews*.

sufficient, and it grounds the reform proposals in the Conclusion, namely statutory rules on the form, timing, and publication of the DPR's consideration and a written statement of reasons by the President.

### 3. Political Rationality: Power, Rational Choice, And Political Culture In The Lembong Decision

The history summarized in the Introduction shows that abolition has often served political purposes, from reconciliation to stabilization. That history makes a political reading of the Lembong decision plausible, but it does not prove it. This section therefore separates three levels of evidence. The first is documented fact: the DPR's consideration, the decree, and the inclusion of the abolition in a package that also granted amnesty to Hasto Kristiyanto and to 1,116 other people.[61] The second is officially stated reasons: the Minister of Law said the decision was meant to support unity ahead of the 17 August celebrations and to recognize the contributions of the two beneficiaries,[62] and a Deputy Minister of State Secretary said both met the criteria and were regarded as good people.[63] The third is analytical interpretation: elite loyalty, political alliances, and cost–benefit calculation. These are not documented in any primary source consulted for this study. They are offered as interpretations that the first two levels make plausible, not as established motives.

Read through Rational Choice Theory, the decision can be interpreted as a weighing of benefits and costs. The benefits that officials themselves named are national unity and recognition of the beneficiaries' contributions; the visible cost is public criticism that a prominent defendant was favored. That the decision went ahead indicates that the decision-makers judged the costs acceptable, but this is an inference from the outcome and not evidence of the President's reasoning. The further claims often made in public debate, that the decision served to consolidate political loyalty or strengthen alliances, cannot be confirmed from the sources used here and remain hypotheses for future research, ideally tested with DPR records, interviews, and the full text of the decree's considerations. Political culture, as described by Almond, Verba, Pye, and Budiardjo, adds a different kind of explanation. It concerns not the President's motives but the conditions

[61] "Soal Pemberian Abolisi Tom Lembong dan Amnesti Hasto, Wamensesneg Bilang Begini," *Kompas.com*, August 1, 2025, republished at Kontan, https://nasional.kontan.co.id/news/soal-pemberian-abolisi-tom-lembong-dan-amnesti-hasto-wamensesneg-bilang-begini.
[62] "6 Hal soal Prabowo," *detikNews*.
[63] "Soal Pemberian Abolisi," *Kompas.com*.

under which such a decision is publicly tolerated. To the extent that Indonesian political culture gives weight to personal relations and elite networks, as the literature cited in the Introduction suggests, an act of leniency toward a prominent figure may be accepted or contested along existing lines of loyalty. This helps explain why a rarely used right was applied in this case without contradicting the juridical finding above.

**4. Legal Realism As The Synthesizing Thread: Juridical Validity And Political Motive As One Continuum**

Legal Realism connects the two analyses above. It holds that legal decisions are shaped not only by formal rules, but also by political and social context. The formal validity of the Lembong abolition and its possible political motives are therefore not separate explanations. They describe the same decision from two angles.

The DPR's consideration shows this clearly. Legally, it is the safeguard that makes the abolition valid. Politically, as Section 2 showed, it worked as a fast endorsement, because the rules do not require the President to explain the reasoning behind the decision. Formal compliance and political function therefore coexist in the same act: the law supplied a valid form, and, on the interpretation developed in Section 3, political considerations may have supplied the reason to use it. Legal Realism also helps explain why the legal system tolerates this. The constitutional text leaves the prerogative wide room, so a decision driven by political needs can be legitimated without breaking any rule.

This is what Legal Realism predicts. A decision can be procedurally correct and may still serve a political purpose at the same time. For criminal law, this is a serious concern. If formal compliance is enough to justify ending a prosecution, procedure alone cannot stop this right from being used selectively to protect politically connected figures, which is not what Article 14 Paragraph (2) was meant for.

## D. Conclusion

This study has shown that the granting of abolition to Tom Lembong cannot be understood through legal analysis alone, nor political analysis alone, but only through their intersection. Procedurally, the decision satisfied Article 14 Paragraph (2) of the 1945 Constitution and Emergency Law Number 11 of 1954: the case had not reached a court decision with permanent legal force, and consideration was sought from the DPR. Yet formal validity does not exhaust the

meaning of the act. Read through Legal Realism, Power Theory, and Rational Choice Theory, the decision can also be interpreted as a political instrument. The officially stated aims, national unity and recognition of the beneficiaries' contributions, are documented; the further possibilities that it served to manage elite loyalty or to avoid the reputational costs of a protracted trial are analytical interpretations that the available sources neither confirm nor refute.

This duality carries consequences beyond the Tom Lembong case itself. If a prerogative right such as abolition can be exercised in ways that are procedurally correct yet substantively driven by political calculation, procedural compliance alone is an insufficient safeguard against its misuse. The DPR's consideration, as practiced in this case, functioned more as a formal checkpoint than a substantive check, since the process took about two days and the rules do not require the President to disclose the reasoning behind a decision or demonstrate that legal, rather than political, considerations predominated.

Accordingly, this study offers three concrete recommendations. First, Emergency Law Number 11 of 1954 should be replaced by a modern statute that aligns it with Article 14 Paragraph (2) and requires the President to publish a written justification whenever abolition is granted to a public official or politically connected figure, so legal reasoning can be distinguished from political motive and subjected to public scrutiny. Second, the DPR's consideration mechanism should be regulated by statute, specifying the form, minimum time, and publication of its opinion, and strengthened into a substantive review, including open hearings for cases of significant public interest, rather than remaining a closed administrative formality. Third, monitoring of abolition, amnesty, and clemency decisions by academics and civil society should be institutionalized, for example through a standing watchdog body or periodic parliamentary reporting, to prevent the gap between legal doctrine and political practice identified here from becoming a normalized feature of Indonesian governance. Only through such reforms can abolition retain its intended function as a corrective legal mechanism, rather than degrade into an unaccountable instrument of executive power.

This case also has a long term effect on the criminal justice system. If a prerogative right can end a prosecution once procedure is met, regardless of the political reason behind it, politically connected defendants gain an exit route that ordinary defendants do not have. Even used only occasionally, this weakens public trust that the law applies equally to everyone. Without reform, this risk can become a normal part of how power operates in Indonesia.

This study has limits. It relies on legal texts and on official statements reported in the media; it did not have access to the DPR's internal minutes, the full considerations of Presidential Decree Number 18 of 2025, or interviews with decision-makers. Its conclusions on the procedural validity of the abolition and on the weakness of the DPR check rest on documented facts, whereas its readings of political motive are interpretive. Future research could test those readings with DPR records and interviews, and by comparing this case with other abolition and amnesty decisions, including the amnesty granted to Hasto Kristiyanto in the same package.

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