

# Presidential Authority to Grant Abolition under the 1945 Constitution of Indonesia

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## ABSTRACT

This study aims to analyze the President's authority to grant abolition as regulated under Article 14 paragraph (2) of the 1945 Constitution of the Republic of Indonesia and to examine its implications for the rule of law and the principle of checks and balances within the Indonesian constitutional system. Abolition constitutes a distinctive form of state clemency because it terminates criminal prosecution prior to a final court judgment, thereby directly intersecting with judicial independence. This research employs a normative juridical method using statutory, conceptual, and case approaches, with the granting of abolition to Tom Lembong serving as a case study. The results show that, normatively, the President's authority to grant abolition is constitutionally valid; however, the absence of comprehensive statutory regulation creates legal uncertainty and weakens normative safeguards. Furthermore, the findings reveal that the supervisory role of the House of Representatives tends to function procedurally rather than substantively, thereby reducing the effectiveness of the checks and balances mechanism. Accordingly, this study concludes that strengthening the normative framework and oversight mechanisms is essential to ensure that the exercise of abolition remains consistent with the rule of law, substantive justice, and the independence of Indonesia's criminal justice system.

**Keywords:** Abolition, Presidential Authority, Rule of Law, Checks and Balances, Criminal Justice System.

## 1. INTRODUCTION

Article 14 of the 1945 Constitution affirms the President's authority to grant clemency in the form of pardon, amnesty, abolition, and rehabilitation. Among these instruments, abolition is the most sensitive because it directly eliminates criminal prosecution and potentially interferes with the core functioning of the criminal justice system. Consequently, the exercise of abolition cannot be separated from the principle of judicial independence under Article 24 paragraph (1) of the Constitution and the mechanism of checks and balances through the requirement to consider the opinion of the House of Representatives. Within a rule of law framework, the use of abolition must be accountable and rational to avoid undermining the legitimacy of law enforcement and public perceptions of justice (Marwiyah, 2021; Hamdani et al., 2022).

Conceptually, abolition lies at the intersection of criminal policy, constitutional policy, and legal politics. From the perspective of penal policy, Barda Nawawi Arief emphasizes that criminal policy should aim at protecting society and human rights through careful and proportional use of penal measures, while Muladi highlights the importance of an integrated criminal justice system operating within due process. Accordingly, abolition should be treated as an extraordinary policy

instrument grounded in genuine public interest rather than short-term political preferences. From a constitutional law perspective, the principle of checks and balances serves to prevent concentration of power, requiring that presidential prerogative powers—including abolition—be supported by transparent procedures and effective political oversight (Asshiddiqie, 2006; Manan, 2004).

The rule of law further requires that state actions comply not only with formal legality but also with legal certainty, substantive justice, and accountability. Classical and modern rule of law theories—from Dicey's supremacy of law and equality before the law, Fuller's internal morality of law, to Hart's rule of recognition—underscore that the legitimacy of abolition depends not merely on who exercises authority, but also on how procedures and substantive reasons meet legal and moral standards. Moreover, from a justice perspective, Rawls' concept of justice as fairness and the growing emphasis on victims' rights in Indonesia demand that abolition decisions balance state interests against the rights of victims and the public at large.

Normatively, the absence of a specific statutory framework governing abolition creates a risk of unchecked discretion and weak accountability. Without clear, predictable, and reviewable standards, abolition may be perceived as an expedient political shortcut that undermines due process, judicial independence, and public trust. Therefore, this study seeks to formulate a normative framework and operational recommendations concerning the criteria, procedures, oversight mechanisms, and victim-oriented safeguards necessary to ensure that abolition functions as a constitutionally legitimate and responsibly exercised instrument within Indonesia's democratic rule-of-law system (Rahardjo, 2009; Asshiddiqie, 2006).

This study addresses two main issues: first, how the President's authority to grant abolition is regulated under the 1945 Constitution and statutory laws and its implications for the independence of Indonesia's criminal justice system; and second, how the granting of abolition can be juridically analyzed from the perspective of checks and balances within Indonesia's constitutional system. Accordingly, this research aims to analyze the legal basis and regulation of the President's authority to grant abolition, to explain its implications for judicial independence in the criminal justice system, and to examine the position of abolition authority within the checks and balances relationship between the President, the House of Representatives, and the judiciary.

Theoretically, this study contributes to the development of constitutional law and criminal law scholarship concerning the President's constitutional authority to grant abolition. Practically, it offers input for policymakers and law enforcement institutions to ensure that the exercise of abolition authority aligns with principles of justice, legal certainty, and human rights protection. Academically, this research is expected to serve as a reference for scholars and students interested



in further studies on abolition and the distribution of power within Indonesia's constitutional system.

## **2. RESEARCH METHOD**

This study employs a normative juridical research method with a descriptive-analytical design, aiming to examine and analyze legal norms, principles, and practices governing the President's authority to grant abolition and its implications for the criminal justice system. The research applies a statutory approach to analyze relevant constitutional and legislative provisions, a conceptual approach to clarify key legal concepts such as abolition, presidential prerogative authority, judicial independence, and checks and balances within the rule of law framework, as well as a case approach to assess relevant practices or precedents of abolition. The legal materials used consist of primary legal materials, including the Constitution, statutory regulations, and official state documents; secondary legal materials comprising scholarly books, journal articles, and academic writings; and tertiary legal materials as supporting references. Legal materials are collected and processed systematically through identification, verification, classification, and data extraction, supported by document triangulation to ensure analytical consistency. The analysis is conducted qualitatively using doctrinal, systematic, teleological, and historical interpretations, complemented by case analysis and critical evaluation to assess the conformity of abolition practices with the principles of the rule of law, due process of law, checks and balances, and the protection of victims' rights.

## **3. RESULTS AND DISCUSSION**

### **Regulation of the President's Authority to Grant Abolition under the 1945 Constitution and Statutory Laws**

The regulation of the President's authority to grant abolition has a clear constitutional basis in Article 14 of the 1945 Constitution, which places abolition alongside pardon, amnesty, and rehabilitation as instruments of state clemency. However, abolition is the most sensitive instrument because it directly results in the termination of an ongoing criminal prosecution, thereby intersecting with law enforcement mechanisms and the principle of judicial independence. Accordingly, this authority cannot be understood as an absolute presidential prerogative, but rather as a constitutional power constrained by the principle of checks and balances through the requirement to consider the opinion of the House of Representatives, as well as by the principle of

judicial independence as affirmed in Article 24 paragraph (1) of the Constitution ( Asshiddiqie, 2006; Manan, 2004).

The absence of a specific statute regulating the procedures, criteria, and limitations for granting abolition renders its regulation in Indonesian positive law partial and opens broad discretionary space for the executive. This condition potentially creates legal uncertainty and shifts the supervisory function of the House of Representatives toward a more political rather than juridical role, due to the lack of clear normative parameters defining state interest or public interest as the basis for granting abolition (Hamdani et al., 2022). From a rule of law perspective, such regulatory gaps risk undermining the principles of legal certainty and equality before the law (Manan, 2004).

Within the criminal justice system, abolition occupies a problematic position because it operates outside the mechanisms for terminating prosecution as regulated by the Criminal Procedure Code. Termination of prosecution through abolition is carried out by the President as an executive authority, rather than by the public prosecutor as *dominus litis*, and can therefore be understood as a form of extra-judicial termination of prosecution. This situation creates tension between the principle of legality and state discretion, as the termination of criminal proceedings is not based on the usual grounds recognized in criminal procedural law (Hamzah, 2014). The Lex Journal emphasizes that an accountable criminal justice system requires clarity of authority and adherence to legal procedures in order to safeguard legal integrity and public trust (Vieta et al., 2020).

The most significant implication of granting abolition lies in its impact on the independence of the criminal justice system. By terminating prosecution before a case is examined by the court, the space for judges to perform their adjudicative function is effectively closed, thereby functionally reducing judicial independence. Jimly Asshiddiqie asserts that presidential constitutional powers intersecting with judicial functions must be interpreted restrictively to prevent executive dominance over the judiciary (Asshiddiqie, 2006). Moreover, granting abolition without transparent criteria risks eroding public confidence in the criminal justice system and fostering the perception that law can be negotiated through political decisions (Rahardjo, 2009; Marwiyah & Borman, n.d.).

Thus, although abolition is constitutionally recognized, its use must be treated as an extraordinary measure supported by strong, transparent, and accountable constitutional reasons. In the absence of clear normative regulation and effective oversight mechanisms, the granting of abolition risks weakening the rule of law, undermining judicial independence, and reducing the



legitimacy of the criminal justice system in Indonesia (Hamdani et al., 2022; Marwiyah & Borman, n.d).

### **A Juridical Analysis of the Granting of Abolition to Tom Lembong**

The granting of abolition to Tom Lembong cannot be separated from the legal case brought against him and the political and legal dynamics surrounding it. As a public figure who previously held strategic positions within the government, the legal proceedings involving Tom Lembong carried significant public and political dimensions, causing the law enforcement process to be assessed not only in procedural terms but also in relation to substantive justice and its broader societal impact. The chronology of the case indicates that the prosecution was at a stage that should have been resolved through the ordinary criminal justice process; however, it was terminated through the President's exercise of constitutional authority to grant abolition prior to a final and binding court decision. This situation generated debate regarding the rationale behind the abolition, particularly as to whether it was genuinely based on objective state interests or predominantly driven by political considerations (Mahfud MD, 2011).

Normatively, the legal basis for granting abolition to Tom Lembong is found in Article 14 paragraph (2) of the 1945 Constitution, which authorizes the President to grant amnesty and abolition with due consideration of the House of Representatives. From the perspective of formal legality, such authority is constitutionally valid provided that the prescribed procedures are fulfilled. Nevertheless, within a rule of law framework, the legality of a constitutional action cannot be assessed solely on formal authority, but must also be measured against principles of legal certainty, justice, and limitation of power. Jimly Asshiddiqie emphasizes that presidential constitutional powers must be exercised proportionally and be capable of rational justification to prevent executive dominance (Asshiddiqie, 2006). Furthermore, the absence of a specific statutory framework governing abolition leaves its application dependent on constitutional interpretation and political practice, which may undermine legal certainty. Bagir Manan cautions that without clear normative parameters, the exercise of such authority risks deviating from the rule of law and becoming a matter of political discretion (Manan, 2004).

### **The Granting of Abolition from the Perspective of Checks and Balances in the Indonesian Constitutional System**

The principle of checks and balances constitutes a fundamental pillar of modern constitutional systems aimed at preventing the concentration of power within a single branch of government. In Indonesia's presidential system, this principle is implemented through the distribution of authority among the executive, legislative, and judicial branches, each of which



exercises functions and oversight mechanisms to ensure that power is exercised proportionally, responsibly, and in accordance with the Constitution. Jimly Asshiddiqie explains that checks and balances serve as a corrective to the rigid classical doctrine of separation of powers, emphasizing the necessity of mutual control to prevent institutional dominance, particularly in the exercise of presidential prerogative powers. In this context, the granting of abolition is constitutionally designed not to be absolute, as reflected in Article 14 paragraph (2) of the 1945 Constitution, which requires consideration of the House of Representatives.

The role of the House of Representatives in the granting of abolition represents a concrete manifestation of the checks and balances mechanism within Indonesia's constitutional framework. By requiring the President to consider the legislature's opinion, the Constitution seeks to ensure that abolition decisions are not based solely on executive discretion but also reflect broader public and national interests. However, the absence of detailed regulations governing the form, procedure, and substance of such legislative consideration risks rendering parliamentary oversight merely formalistic. Bagir Manan emphasizes that effective oversight must be grounded in clear and reviewable normative standards rather than functioning as political legitimation. Consistent with this view, studies published in *Lex Journal: Kajian Hukum & Keadilan* underline that weak legislative oversight may erode public trust in the legal system and foster perceptions that law is subordinated to political power.

The granting of abolition to Tom Lembong constitutes an important test of the effectiveness of the checks and balances mechanism in Indonesian constitutional practice. Although the decision formally involved consideration by the House of Representatives, questions arise as to whether such involvement was substantive or merely procedural. Mahfud MD observes that political configurations often influence the effectiveness of legislative oversight, potentially weakening the rule of law. When the termination of legal proceedings against a public figure is carried out through political decisions without transparent justification, the checks and balances mechanism risks losing its substantive meaning and undermining the legitimacy of law enforcement.

The practice of granting abolition also has significant implications for the balance of power among state institutions. While abolition is a constitutionally recognized presidential authority, its exercise without effective oversight may strengthen executive dominance and weaken the principle of limited government. Jimly Asshiddiqie asserts that a balance of power can only be maintained when each state institution performs its functions optimally, particularly the legislature in exercising its oversight role. Satjipto Rahardjo further warns that law which loses social legitimacy



due to excessive political intervention will be difficult to enforce and may be perceived merely as an instrument of power.

Accordingly, the granting of abolition must be situated within a robust checks and balances framework, supported by the substantive strengthening of the House of Representatives' oversight role, clear normative regulation, and transparency in decision-making. Without these conditions, the practice of abolition risks weakening the rule of law and undermining the balance of power within Indonesia's constitutional system.

### **Synthesis of Discussion and Research Findings**

Based on the overall analysis, it can be synthesized that the regulation and practice of granting abolition in Indonesia are normatively valid but still present substantial problems in their implementation when viewed through the principles of the rule of law. The rule of law requires not only formal legality, but also legal certainty, substantive justice, limitation of power, and protection of human rights. Normatively, Article 14 paragraph (2) of the 1945 Constitution places abolition as an extraordinary constitutional instrument granted to the President with consideration from the House of Representatives. Jimly Asshiddiqie emphasizes that such constitutional powers are recognized exceptions intended for exceptional circumstances, yet they must be interpreted restrictively to avoid undermining constitutional supremacy and the rule of law.

However, the absence of a specific statutory framework governing the procedures, criteria, and limitations of abolition results in broad executive discretion and weakens legal certainty. Bagir Manan underlines that legal certainty depends on clear, consistent, and predictable norms. In practice, particularly in the case of Tom Lembong, the granting of abolition formally complied with constitutional requirements but raised substantive concerns, as the termination of prosecution prior to judicial review prevented legal certainty and judicial legitimacy. From the perspective of progressive law, Satjipto Rahardjo stresses that law must serve substantive justice and public trust; thus, the political termination of criminal proceedings risks reducing the moral and social function of law. Consequently, while abolition is constitutionally justified, its practical application has not fully aligned with the substantive requirements of the rule of law, especially regarding judicial independence and equality before the law.

### **Normative Implications for Strengthening Checks and Balances**

The findings further indicate an urgent need to strengthen the principle of checks and balances in relation to the President's authority to grant abolition. Although Article 14 paragraph (2) of the 1945 Constitution establishes legislative involvement as a control mechanism, the lack of detailed legal regulation renders this oversight largely procedural rather than substantive. Jimly



Asshiddiqie argues that effective checks and balances must operate not only at the normative level but also in consistent and accountable constitutional practice, in order to prevent executive dominance.

Marwiyah and Borman highlight that unchecked discretionary power may lead to abuse of authority and weaken the foundations of the rule of law. Therefore, strengthening checks and balances requires clearer normative criteria for granting abolition, particularly concerning public interest, impact on the criminal justice system, and protection of victims' rights. Bagir Manan further asserts that legislative oversight must be grounded in objective and reviewable standards, rather than political considerations. In addition, the termination of prosecution through abolition has direct implications for judicial independence, as emphasized by Vieta et al., who stress that consistent and accountable criminal proceedings are essential to maintaining public trust in the legal system.

Accordingly, future reform should focus on establishing a comprehensive legal framework regulating abolition, enhancing the substantive role of the House of Representatives, safeguarding judicial independence, and ensuring transparency and accountability in decision-making. Without such reforms, the practice of granting abolition risks undermining the balance of power and contradicting the core principles of a democratic rule-of-law state.

#### **4. CONCLUSIONS**

Based on the analysis and discussion in this study, it can be concluded that the President's authority to grant abolition has a legitimate constitutional basis as stipulated in Article 14 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. However, this authority is not absolute, as it is constrained by the principles of the rule of law and the mechanism of checks and balances through the requirement to consider the opinion of the House of Representatives. In practice, the regulation of abolition in Indonesian statutory law remains limited and has not yet been governed by a specific statute, resulting in issues of legal certainty.

The granting of abolition, particularly in the case of Tom Lembong, demonstrates that although the decision formally complies with constitutional provisions, it continues to raise substantive concerns regarding the independence of the criminal justice system, legal certainty, and public perceptions of justice. The termination of prosecution through abolition prior to a court decision has the potential to reduce the role of the judiciary in upholding law and justice and may affect public trust in the criminal justice system. Therefore, the practice of granting abolition must be exercised proportionally so as not to contradict the principles of the rule of law.



Based on these conclusions, it is recommended that the legislature formulate a more comprehensive legal framework on abolition through a specific statute that clearly and measurably regulates its criteria, procedures, and limitations. Furthermore, the role of the House of Representatives in providing consideration for abolition should be strengthened substantively rather than merely formally, in order to ensure the effective operation of checks and balances. For the President, the exercise of abolition authority should be conducted cautiously, transparently, and oriented toward the public interest and substantive justice, in order to safeguard judicial independence and enhance public confidence in Indonesia's legal system.

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