VOLUME 13

ALSA LEGAL ENGLISH HANDBOOK

# STANDING BETWEEN *Law* AND *Politics*:

## THE ROLE OF THE PRESIDENT'S PREROGATIVE RIGHTS FOR ABOLITION AND AMNESTY

# Director's FOREWORD

Assalamualaikum Wr. Wb.,
Shalom,
Om Swastiastu,
Namo Buddhaya,

Warm regards to everyone!
Praise and gratitude to the presence of the One God who always brings us blessings, grace, and protection upon us all.

Asian Law Students' Association Local Chapter Brawijaya University is an organization that aims to connect law students from the corners of Asia. As one of the 15 Local Chapters under the auspices of the Asian Law Students' Association National Chapter Indonesia, ALSA Local Chapter Brawijaya University always focuses and adheres to the firm principles to carry out the Vision and Objectives of ALSA as written in the ALSA Constitution. In pursuit of these goals, ALSA Local Chapter at Brawijaya University strives to always prioritize the 4 pillars of ALSA in order to create individuals who can understand the different legal systems of each member of the National Chapter within ALSA, develop its members into individuals with international insights, be responsible for the society, have a high commitment to their academics, and also have competitive legal skills to extend their benefits to the surrounding community.

With this, I, Rayhan Adiprawira, as the Director of ALSA Local Chapter Universitas Brawijaya for the period 2024/2025, proudly present ALSA Legal English Handbook to all readers. We sincerely hope that ALSA Legal English Handbook with the title "Standing Between Law and Politics: The Role of the President's Prerogative Rights for Abolition and Amnesty." can serve as a comprehensive guide to ALSA LC UB and other readers.

Finally, we hope all of our readers could gain new knowledge and resources for future references. May we all contribute by providing full support to all students in building the nation and country we love.

Wassalamualaikum Wr. Wb.,
Shalom,
Om Shanti Shanti Shanti Om,
Namo Buddhaya,
Warm regards to everyone.

Together Will Be,
Connected as One,
ALSA, Always be One!

**Rayhan Nurrahman Adiprawira**
**Director ALSA LC UB**

# PiC's FOREWORD

To begin with, let us thank the Almighty God for His mercy and benevolence, for enabling us to publish this edition of the ALSA Legal English Handbook. ALSA Legal English Handbook is an activity which occurs every three months that provides information on various legal topics and helps us learn more legal terminologies.

In this volume, we focus on the complex and compelling theme, "**Standing Between Law and Politics: The Role of the President's Prerogative Rights for Abolition and Amnesty**". This handbook contains a deep analysis of the president's prerogative rights, a constitutional power that sits at the delicate intersection of legal authority, political strategy, and social justice. It discusses the philosophical and legal basis of these powers, their application in historical and contemporary contexts, and their profound implications for the nation's legal landscape and social fabric. The analysis also explores comparative approaches to clemency powers in other nations, providing a crucial perspective for understanding the unique challenges and potential reforms within our own system.

As the Person in Charge, I am honored to present ALSA Legal English Handbook Volume 13. I hope that this analysis of a matter of supreme state authority will provide valuable knowledge and stimulate critical thought among its readers. Lastly, I sincerely thank all the people who contributed their expertise, effort, and time to the completion and success of this handbook.

Wassalamualaikum Wr. Wb.
Shalom,
Om Shanti-Shanti Om,
Namo Buddhaya,
Salam Kebajikan.

Together we will be,
Connected as one,
ALSA, Always be One

**Putu Andhika Widiatama Prasetyo**
**Person in Charge**

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## 1.1 Understanding Prerogative Rights

Prerogative linguistically comes from Latin Language *praerogativa* (selected as the first to vote), *praerogativa* (asks as the first to vote), *praerogare* (asks before asking another).[1] Presidential prerogative rights occupy a unique and often controversial position within the constitutional framework of modern democratic states, representing a sphere of executive authority that transcends ordinary legal constraints while remaining ostensibly bound by constitutional principles.[2] These powers become particularly significant when exercised in the context of abolition and amnesty, where the president acts not merely as chief executive but as an agent of transformative justice bridging existing law and emerging political realities. The theoretical foundations trace to John Locke's *Two Treatises of Government*, where he defined prerogative as "the power to act according to discretion for the public good, without the prescription of the law and sometimes even against it."[3] This formulation established a fundamental paradox within liberal constitutionalism: the necessity of extra-legal executive action within a system predicated on the rule of law.

The use of prerogative directly challenges core tenets of the rule of law, such as the principles of legal certainty

[1] Manan, B. (2000, Mei 27). UUD 1945 tak mengenal hak prerogatif. Republika, p. 8.
[2] Schmidt, C. J. (2017). John Locke and the primacy of prerogative. St. John's Law Review, 91(2), 301–325.
[3] Simmons, A. J. (2016). Locke on the nature of prerogative power. *Political Studies*, 64(2), 429–445. https://doi.org/10.1111/1467-9248.12190

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and equality before the law, as it creates an exception to legal processes that should apply equally to all citizens.[4] Despite this, the existence of prerogative is considered a necessary constitutional "safety valve." A rigid legal system is sometimes incapable of responding to extraordinary situations that demand political wisdom for a greater purpose, such as preserving national unity, fostering reconciliation after a conflict, or correcting a systemic miscarriage of justice that the formal legal system cannot remedy. In such situations, the prerogative allows the state to act flexibly for the *public good*, a goal that serves as its highest justification. In the Indonesian constitutional context, this Lockean paradox is managed and formalized through Article 14 of the 1945 Constitution (UUD 1945). This article explicitly grants the President the authority to grant amnesty (a general pardon that erases all legal consequences of a crime) and abolition (the termination of a legal prosecution). However, this power is not absolute. To prevent its misuse, the constitution establishes a checks and balances mechanism by requiring the President to act "with due consideration to the opinion of the House of Representatives (DPR)."[5] This involvement of the DPR has a strong constitutional logic: because amnesty and abolition have broad political and social impacts, input from the institution representing the people is crucial. This differs from the granting of pardons (*grasi*) and rehabilitation, which are more judicial in nature and thus require consideration from the Supreme Court (MA).[6] Therefore, the prerogative right to grant abolition and amnesty is not a relic of monarchical power but a consciously designed instrument of modern democracy. It forces a President to stand at the crossroads between their role as the enforcer of the law and their role as a political leader, weighing the rigid text of the law against the broader demands of justice and national well-being.


[4] Thelen, I. (2025). The "benign prerogative": Political theory and executive pardoning. *Political Science Quarterly*. https://onlinelibrary.wiley.com/doi/10.1111/psq.12895

[5] Lenta, P. (2023). Amnesties, transitional justice and the rule of law. *Transitional Justice Review*. https://link.springer.com/article/10.1007/s40803-023-00199-9

[6] Razali, M. F. (2022). Amnesti: Hak prerogatif presiden dalam perspektif fiqh. *Legitimasi: Jurnal Hukum Pidana Islam*, 11(1). https://jurnal.ar-raniry.ac.id/index.php/legitimasi/article/view/15218

# Chapter 1
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## 1.2 Philosophical and History Basis

The prerogative powers of the President, particularly in relation to amnesty and abolition, are philosophically grounded in classical theories of political authority. Locke conceives prerogative as the discretionary authority of the executive to act for the public good beyond or even against statutory law, insofar as it safeguards societal welfare.[7] Rousseau situates the pardon power within the sovereign as the embodiment of the general will, but cautions against its frequent use, which would erode both justice and legal authority (Rousseau, 1762/1978). Montesquieu likewise emphasizes that in moderate systems of government, clemency can preserve balance and justice, whereas despotic regimes that reject mercy tend towards legal imbalance.[8] Hence, prerogative power is philosophically justified as an extraordinary device, to be reconciled with principles of justice and the rule of law.

Historically, the prerogative originated in monarchical systems as the royal "power of mercy." Its subsequent incorporation into constitutional democracies is exemplified by Article II of the United States Constitution, which grants the President expansive pardon powers derived from English common law.[9] Contemporary constitutional systems often maintain such powers but embed institutional checks to prevent their arbitrary deployment.

In Indonesia, the constitutional basis of prerogative is articulated in Article 14 of the 1945 Constitution, which vests the President with authority to grant amnesty and abolition, subject to the consideration of the House of Representatives (DPR). This framework illustrates the fusion of philosophical justifications for executive discretion with a historically informed constitutional adaptation. The requirement of DPR involvement functions as a structural safeguard, embedding prerogative within a democratic and accountable process. [10]

[[7] Simmons, A. J. (2016). Locke on the nature of prerogative power. *Political Studies*, 64(2), 429–445. https://doi.org/10.1111/1467-9248.12190
[8] Rousseau, J. J. (1978). *On the social contract* (D. A. Cress, Trans.). Hackett Publishing. (Original work published 1762)
[9] Schmidt, C. J. (2017). John Locke and the primacy of prerogative. *St. John's Law Review*, 91(2), 301–325. https://scholarship.law.stjohns.edu/lawreview/vol91/iss2/2/
[10] Razali, M. F. (2022). Amnesti: Hak prerogatif presiden dalam perspektif fiqh. *Legitimasi: Jurnal Hukum Pidana Islam*, 11(1). https://jurnal.ar-raniry.ac.id/index.php/legitimasi/article/view/15218

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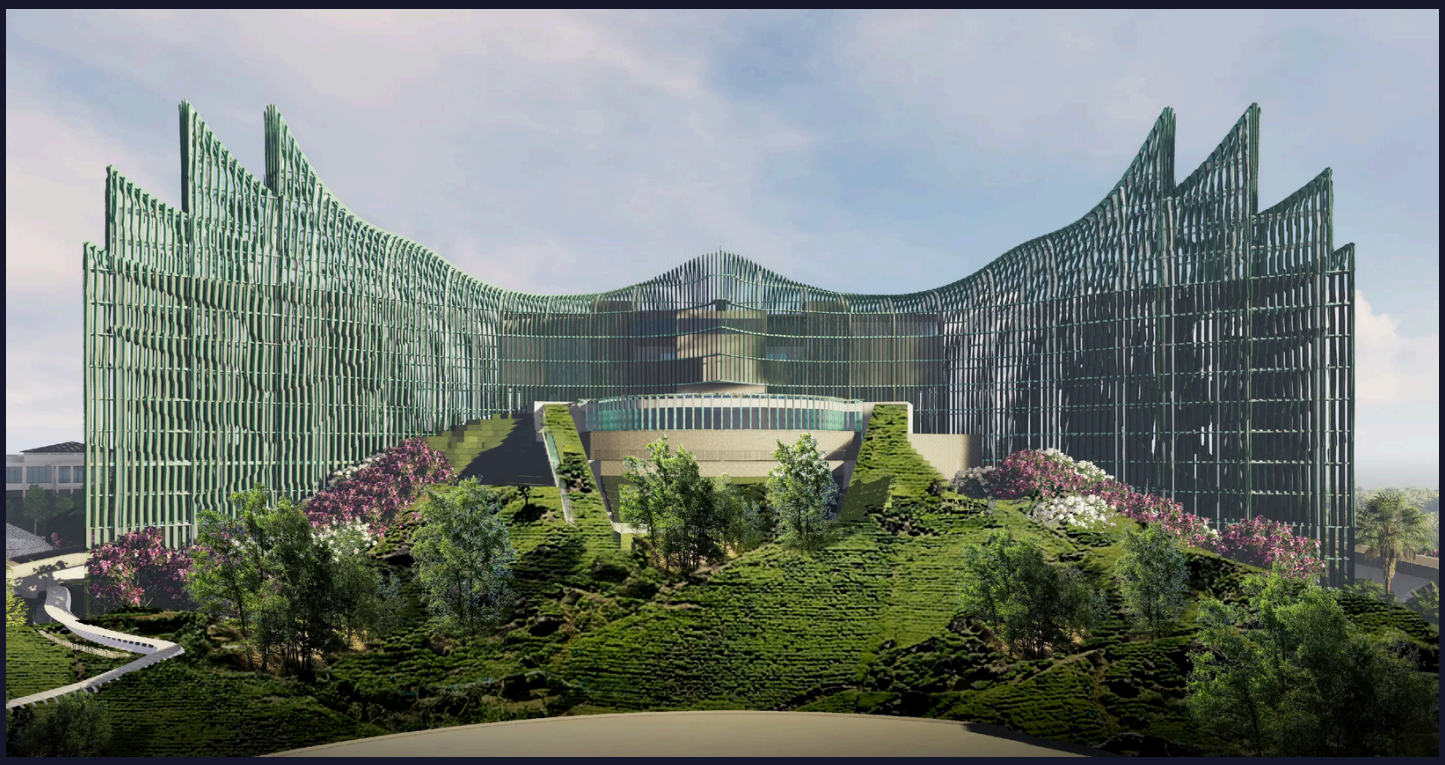
Indonesian practice confirms this dual character: the amnesty of Baiq Nuril (2019) and the amnesty issued in the context of the Aceh peace process (2005) demonstrate that prerogative operates not merely as a juridical instrument but also as a political mechanism for reconciliation, justice, and national cohesion.[11] Accordingly, the philosophical and historical foundations of presidential prerogative position it as a constitutional safety valve—an extraordinary power that affords necessary flexibility, yet remains bounded by checks and balances to preserve legality and democratic integrity.



[11] Abas, G. H. (2025). Tinjauan yuridis terhadap kewenangan presiden dalam pemberian amnesti dan abolisi: Antara hukum dan kepentingan politik. *JIMU: Jurnal Ilmiah Multi Disiplin*, 3(4), 496–503. https://ojs.smkmerahputih.com/index.php/jimu/article/download/1107/798/2699

# Chapter 2.
# The Developments and Legal Basis of Amnesty and Abolition

## 2.1 Unfolding the developments of Amnesty and Abolition

As mentioned in Chapter 1, the mechanism for granting Amnesty and Abolition is part of the President's prerogative right as stipulated in Article 14 of the 1945 Constitution (UUD 1945). Based on the constitutional mandate, the desire to further strengthen the President's position in granting Amnesty and Abolition has been expressed in the form of requirements for consideration by the Dewan Perwakilan Rakyat (DPR) and the Mahkamah Agung (MA).[12] Throughout history, the implementation of this prerogative has often left room for interpretation that has the potential to create a legal vacuum (*recht vacuum*) due to the absence of specific laws regulating the procedure, requirements, and limitations of granting such rights. In global practice, democratic countries impose strict standards on the use of prerogative rights themselves through public deliberation and transparency as their foundation.[13] In Indonesia, the urgency of strengthening the governance of granting Amnesty and Abolition has not yet been fulfilled by rigid and specific positive legislation.[14]

The development of Amnesty and Abolition began with the first President of the Republic of Indonesia, Soekarno, who issued Decree No. 180 of 1959 on the Granting of Amnesty and Abolition on August 15th of 1959.[15] In this decree, Amnesty and Abolition were granted for the sake of the state and national unity, namely for, "those involved in the Daud Beureuh rebellion in Aceh. With the granting of Amnesty, all criminal charges against the persons concerned were dropped, and it was also decided that "with the granting of abolition, the prosecution of the persons concerned would be discontinued".[16] In its development, President Soekarno, in Decree No. 449 of 1961, expanded the meaning of the rebellion to include the rebellion of the Revolutionary Government of the Republic of Indonesia and the Universal Struggle in North Sumatra, West Sumatra, Riau, South Sumatra, Jambi, North Sulawesi, South Sulawesi, Maluku, West Irian and other areas, including the Kahar Muzakar rebellion in South Sulawesi, the Kartosuwirjo rebellion in West Java and Central Java, the Ibnu Hadjar rebellion in South Kalimantan, and the South Maluku Republic rebellion in Maluku.[17]

The terms Amnesty and Abolition became increasingly familiar with the political changes (reforms) in Indonesia

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[12] Heridah, a., & Kasim, A. (2025). Urgensi Pembentukan Undang-Undang Amnesti dan Abolisi: Mengatasi Kekosongan Hukum dan Kepastian dalam Sistem Ketatanegaraan. *INNOVATIVE: Journal of Social Science Research*, 5(4), 11597-11607. https://j-innovative.org/index.php/Innovative/article/view/21203/14358
[13] Ibid.
[14] Ginsburg, T., & Moustofa, T. (2008). Rule by law: *The politics of courts in authoritarian regimes. Cambridge University Press.* https://doi.org/10.1017/CBO9780511814822
[15] Prosiding Seminar Nasional Kewarganegaraan Universitas Nusa Putra. (n.d.). https://prosiding.semnaskum.nusaputra.ac.id/index.php/prosiding/article/view/4/2
[16] *Keputusan Presiden.* (1959). Lembaran Negara Republik Indonesia.
[17] Prosiding Seminar Nasional Kewarganegaraan Universitas Nusa Putra. (n.d.). https://prosiding.semnaskum.nusaputra.ac.id/index.php/prosiding/article/view/4/2

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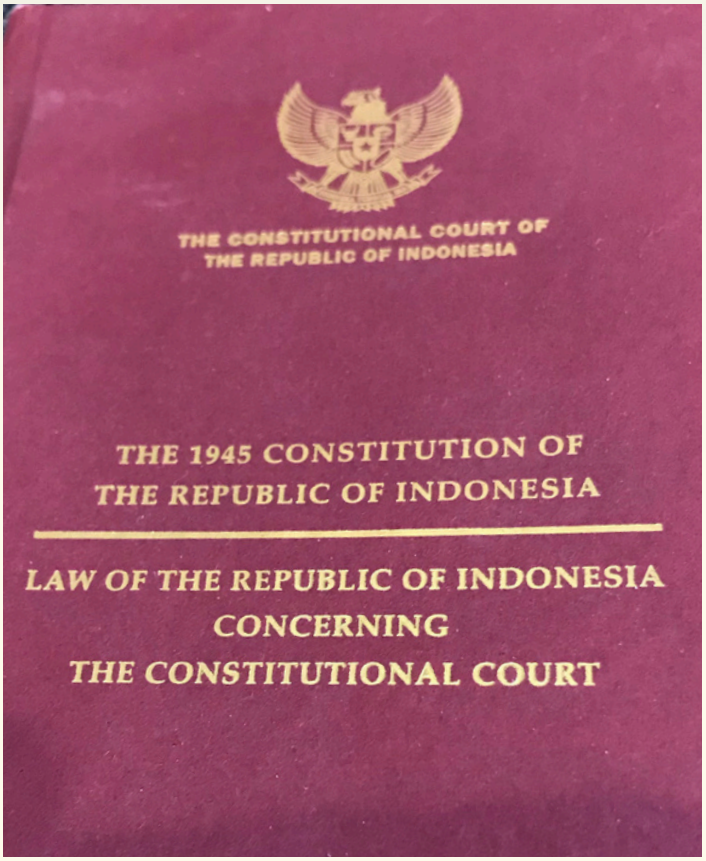
following the fall of the second President of the Republic of Indonesia, Soeharto.[18] The third President of the Republic of Indonesia, BJ. Habibie, then issued Presidential Decree No. 80/1998 on May 14th 1998.[19] The most successful developments in Amnesty and Abolition occurred during the term of the sixth President of the Republic of Indonesia, Susilo Bambang Yudhyono (SBY). President SBY granted Amnesty to almost all convicted activists of the Free Aceh Movement (GAM) as a result of the Helsinki Memorandum of Understanding (MoU) on August 15th 2005, between the Government of Indonesia and representatives of GAM. [20] When looking at the practices of granting Amnesty and Abolition carried out by the presidents of the Republic of Indonesia, it was granted to perpetrators of political crimes. According to Hazewingkel Suringa, there are four theories in determining a political offense, namely: 1) Objective Theory, 2) Subjective Theory, 3) Predominant Theory, and 4) Political Incidence Theory.[21] Objective Theory emphasizes that political offenses are directed against the state and the functioning of state institutions. Furthermore, the Subjective Theory is based on the principle that political crimes are essentially the same as general crimes, but are committed with political crimes are essentially the same as general crimes, but are committed with political motives and objectives. Then, the Predominant Theory explains that if the predominant aspect of an act is the crime itself, then it is classified as a general crime and not a political crime. [22]


[18] Undang-Undang Darurat tentang Amnesti dan Abolisi, UU No. 11 Tahun 1954. Lembaran Negara Republik Indonesia Tahun 1954 Nomor 38.
[19] Prosiding Seminar Nasional Kewarganegaraan Universitas Nusa Putra. (n.d.). https://prosiding.semnaskum.nusaputra.ac.id/index.php/prosiding/article/view/4/2
[20] Ibid.
[21] Agustian, R. A. (2020). Tindak pidana terhadap keamanan negara dalam perspektif delik politik di Indonesia. *E-Journal Undip*. https://ejournal.undip.ac.id
[22] Prosiding Seminar Nasional Kewarganegaraan Universitas Nusa Putra. (n.d.). https://prosiding.semnaskum.nusaputra.ac.id/index.php/prosiding/article/view/4/2

# Chapter 2.
# The Developments and Legal Basis of Amnesty and Abolition

## 2.2 Constitutional Law and Criminal Law Perspectives




According to the perspective of Constitutional Law, amnesty and abolition are regulated in several written regulations governing the constitutional authority of the President regarding the granting of amnesty and abolition. Article 14 paragraph (2) of the 1945 Constitution states that the President has the authority to grant amnesty and abolition, but in its implementation must still take into account the considerations of the House of Representatives. This shows that the granting of amnesty and abolition must be accompanied by a mechanism of checks and balances, so that the use of the President's prerogative remains in line with democratic principles. Article 1 of Emergency Law No. 11 of 1954 states that the President may grant amnesty and abolition to persons who have committed a criminal act in the interests of the State, provided that such amnesty and abolition are granted after receiving written advice from the Supreme Court, which submits such advice at the request of the Minister of Justice. However, this law is of an emergency nature and applies for a specific period, so it is not relevant to resolving existing cases. In practice, there is no law that specifically regulates the implementation, procedures, criteria, and limitations on the granting of amnesty and abolition.

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## 3.1 Amnesty and Abolition cases in Indonesia

Indonesia as a rule of law upholds the principle that all forms of power must be exercised based on legal provisions (*rechtsstaat*), not mere power (*machtsstaat*). In this context, the constitution grants the President, as the head of state, the authority to issue amnesty and abolition.[23] This authority is explicitly regulated in Article 14 (2) of the 1945 Constitution[24], which states that "*the President grants amnesty and abolition with the consideration of the House of Representatives*". One form of amnesty is the granting of amnesty to Baiq Nuril (2019). Baiq Nuril Maknun is a teacher in West Nusa Tenggara who was sentenced for violating IT Law after recording a conversation containing sexual harassment by her superior. This case sparked widespread condemnation as Nuril was seen as a victim of sexual violence, not the perpetrator. The President's action. After the Supreme Court rejected Baiq Nuril's appeal, President Joko Widodo submitted a request for amnesty to the DPR. The DPR gave approval through consensus in a plenary session.[25] The President then issued Presidential Regulation Number 24 Year 2019[26] granting amnesty to Baiq Nuril. Legal and Political Consideration. The public and civil society viewed the punishment of Baiq Nuril as undermining the sense of justice. The President used the amnesty power to correct legal imbalances and respond to public pressure. The impact

of this amnesty is seen as a victory for substantive justice and protection for sexual violence victims. However, some legal experts debate the use of amnesty in individual cases, which may not necessarily relate to national political interests.

In 2025, the Indonesian government granted clemency to the former Minister of Trade, Tom Lembong, and issued amnesty to the Secretary General of PDIP, Hasto Kristiyanto. The Minister of Law and Human Rights, Supratman Andi Agtas, explained that the main reason behind this decision was to create a sense of national unity ahead of Indonesia's Independence Day on August 17. The House of Representatives approved the amnesty for 1,116 convicts, including Hasto Kristiyanto, as stated in Presidential Decree Number 42 Pres 072725 issued on July 30, 2025. This policy has sparked debates about the limits of amnesty and abolition authority within the legal system, considering the importance of oversight mechanisms among the

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[23] Abas, G. H. (2025). Tinjauan yuridis terhadap kewenangan presiden dalam pemberian amnesti dan abolisi: Antara hukum dan kepentingan politik. *JIMU: Jurnal Ilmiah Multi Disiplin*, 3(4), 496-497.
[24] *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Pasal 14 ayat (2).
[25] Abas, G. H. (2025). Tinjauan yuridis terhadap kewenangan presiden dalam pemberian amnesti dan abolisi: Antara hukum dan kepentingan politik. *JIMU: Jurnal Ilmiah Multi Disiplin*, 3(4), 503. https://ojs.smkmerahputih.com/index.php/jimu/article/download/1107/798/2699
[26] *Keputusan Presiden Republik Indonesia Nomor 24 Tahun 2019 tentang Pemberian Amnesti kepada Baiq Nuril Maknun.*

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executive, legislative, and judiciary. Tom Lembong was sentenced to 4.5 years in prison for alleged corruption in the importation of crystal sugar while serving as the Minister of Trade during the 2015–2016 period. Meanwhile, Hasto Kristiyanto was sentenced to 3.5 years in prison related to a bribery case involving sudden replacement of DPR members. Although both cases involve prominent figures, they exhibit different legal characteristics and issues. According to Article 4 of Emergency Law No. 11 of 1954, amnesty serves to eliminate all criminal legal consequences after a court's decision has permanent legal force, whereas abolition stops the legal process before a decision is made. Amnesty and abolition are types of legal pardons from the President that provide flexibility depending on the situation and the stage of the legal process of a case.

In Hasto Kristiyanto's case, the granting of amnesty officially met the requirements because the amnesty was given after the legal decision had permanent legal force. All legal processes had been passed, starting from investigation to trial. However, questions arose about the proportionality of the amnesty in the context of corruption crimes involving public officials, which have a significant impact on the legal system and anti-corruption efforts. Amnesty eliminates all criminal legal consequences, including sentences and revocation of certain rights. On the other hand, the abolition received by Tom Lembong halted the criminal charges process before reaching a permanent legal decision, even though there was already a verdict at the first level. The crystal sugar import policy that is the core of this case is the authority of public officials, which is considered a discretionary power. This abolition raises questions about the criminal responsibility of officials for decisions that harm the country. These two cases provide a real illustration of the implementation of the President's prerogative power in accordance with Article 14 paragraph (2) of the 1945 Constitution and Emergency Law No. 11 of 1954,[27] which allows the granting of amnesty and abolition with the consideration of the House of Representatives. Resolution through amnesty and abolition routes has a strong

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legal basis but must also be analyzed from the perspective of justice principles and the rule of law to avoid inconsistencies in law enforcement.

### 3.2 Constitutional Limitations on Presidential Prerogative

While Article 14 (2) of the 1945 Constitution[28] grants the President authority to issue amnesty and abolition, these prerogatives are far from absolute. The constitutional framework embeds a layered set of procedural and substantive constraints designed to ensure that discretion operates within the bounds of the rule of law and does not erode the principle of separation of powers. These limitations reveal a constant tension between the political flexibility necessary for national reconciliation and the constitutional accountability required to preserve judicial integrity.

The first and most familiar limitation is in the procedural stage, where it is required that the House of Representatives (DPR) give their consideration. Although the Constitution deliberately employs the term "consideration" rather than "approval", state practice consistently demonstrates that the President does not act without DPR endorsement. In Baiq Nuril's case, DPR approval was secured through consensus in the plenary session before President Joko Widodo issued Presidential Regulation No. 24 of 2019.[29] Likewise, in 2025, the amnesty for 1,116 convicts, including Hasto Kristiyanto, was issued only after explicit DPR consent through Presidential Decree No. 42. The absence of precedent where a president bypassed DPR input indicates that this requirement functions as a substantive limitation rather than a mere formality, ensuring democratic legitimacy and imposing political accountability.

Substantive limitations also derive from the principle of non-arbitrariness inherent in a rechtsstaat. Instead of being based on personal preferences, prerogatives must be used for valid reasons. The Baiq Nuril amnesty demonstrated a constitutionally sound exercise, correcting a miscarriage of justice that had provoked strong public reaction. By contrast, the 2025 cases illustrate more complex dynamics. The Tom Lembong abolition was justified on the grounds that his policy decision on crystal sugar imports, though controversial, did not in fact constitute corruption because no state financial loss was incurred, a necessary element under Indonesian corruption law. In this sense, the abolition corrected a

[27] *Undang-Undang Darurat No. 11 Tahun 1954 tentang Amnesti dan Abolisi.* Lembaran Negara Republik Indonesia Tahun 1954 Nomor 38.
[28] *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Pasal 14 ayat (2).
[29] *Keputusan Presiden Republik Indonesia Nomor 24 Tahun 2019 tentang Pemberian Amnesti kepada Baiq Nuril Maknun.*

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misapplied criminal charge and upheld sound economic governance. Yet the fact that such resolution came through presidential intervention rather than judicial clarification highlights how prerogatives can sideline the courts and blur the distinction between legal correction and political symbolism. In Hasto Kristiyanto's case, the amnesty for a bribery conviction carried a greater risk of arbitrariness, as the justification of "national unity" appeared less connected to correcting injustice and more aligned with shielding political elites. Both instances underscore how substantive limitations demand careful scrutiny, especially when prerogatives intersect with corruption cases that directly affect public trust in law enforcement. At a broader level, these limitations come together into a fundamental limitation, presidential prerogatives must not be exercised in ways that undermine Indonesia's constitutional order or weaken its commitment to the rule of law. While prerogatives may formally comply with Article 14 (2) of the 1945 Constitution and Emergency Law No. 11 of 1954, their constitutional legitimacy ultimately depends on being exercised to strengthen, rather than erode, justice and accountability. Procedural safeguards such as DPR consideration, substantive requirements of non-arbitrariness, and the preservation of judicial independence all function collectively to ensure that executive discretion remains compatible with the principles of a constitutional democracy. Read together, these constitutional limitations define the boundaries of legitimate presidential power and serve as essential safeguards against the transformation of Indonesia from a rechtsstaat to a machtsstaat, ensuring that no individual or institution stands above the law.

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# Practice, Constitutional Limits, and Practical Considerations

## 3.3 Political and Law Consideration to Apply Amnesty and Abolition

Politics can be understood as a process of determining and implementing policies related to the state and citizens within a country, such as power, decision-making and policy-making, as well as the distribution and allocation of values within society.[30] According to Aristotle and Plato, politics is an endeavour to realise and achieve the best political society (polity), in which people will live in peace and happiness because they have the opportunity to develop their talents, socialise with a sense of community and live in an atmosphere of high morality.[31] However, in a general sense, politics refers to various activities within a political system (state) that involve the process of determining and implementing objectives. These activities include:[32]

1. **Decision-making:** Concerning the objectives of the system.
2. **General policy:** Concerning the distribution and allocation of values within society.
3. **Power and authority:** To implement policies, foster cooperation, and resolve conflicts.

As mentioned above, in practice, politics is the activity of making decisions. According to Prajudi Atmosudirjo, a decision is the conclusion of a process of thinking about an issue or problem in order to answer the question of what should be done to overcome the problem, by choosing one alternative.[33] Moreover, the political aspect, with its very broad scope, influences the running of a country and the formation of laws.

Law is a set of rules, both written and unwritten, that govern how people should behave towards one another and how they should live their lives.[34] Politics and law are two inseparable aspects of the state because they influence each other. In the formation of law, there is legal politics that can determine the direction of the law's objectives. As is well known, laws are formulated by the legislative body and ultimately implemented by the executive body. The executive body that enforces the law must limit its actions so that they remain within the scope of the legislation.

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[30] Eviany, E. (2019). *Pengantar ilmu politik dan ruang lingkupnya*. CV Cendikia Press.
[31] Ibid.
[32] Sakti, F. T. (2020). *Pengantar ilmu politik*. Jurusan Administrasi Publik Fakultas Ilmu Sosial dan Ilmu Politik UIN Sunan Gunung Djati Bandung.
[33] Atmosudirjo, P. (1981). *Hukum administrasi negara* (p. 124). Ghalia Indonesia.
[34] Rachmawati, E. (2024). Hubungan antara hukum dan politik di Indonesia (p. 328). Fakultas Hukum, Universitas Islam Nusantara.

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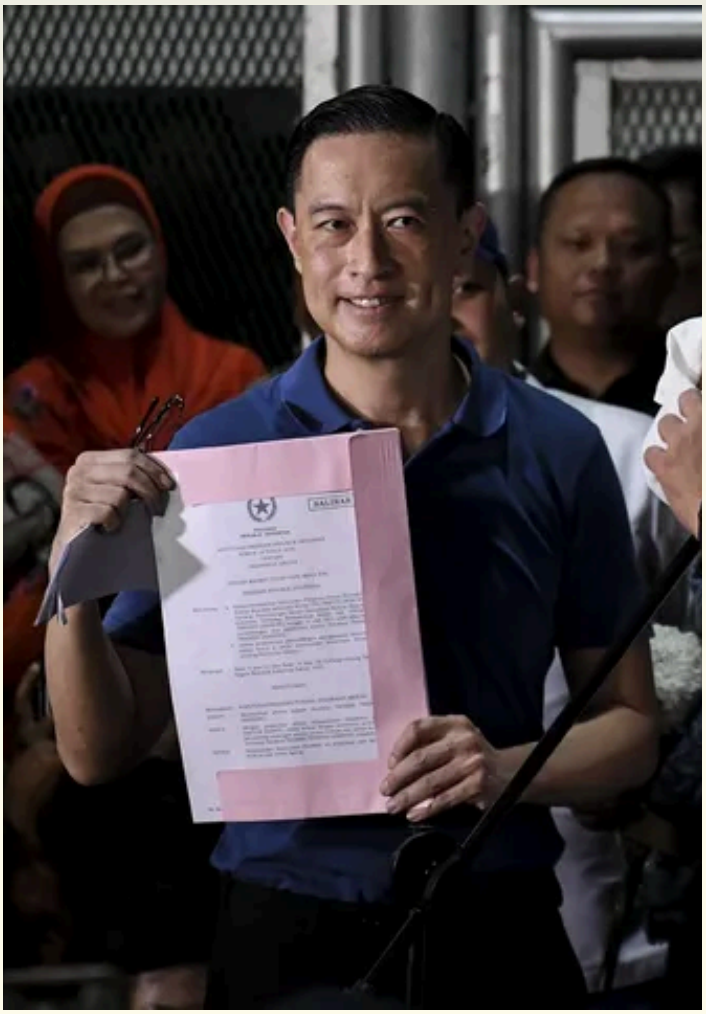
Article 14 letter b of the 1945 Constitution stipulates that the President may grant amnesty and abolition with due consideration from the House of Representatives.[35] Not only that, referring to Emergency Law No. 11 of 1954, it explains that the President may grant amnesty and abolition in the interests of the state.[36] Morgenthau argues that 'the meaning of national interest is survival – protection of physical, political, and cultural identity against encroachments by other nation-states', while Vernon Von Dyke argues that 'National interest is, which states seek to protect or achieve in relation to each other. It means' desires on the part of sovereign states'. In addition, the Preamble to the 1945 Constitution also mentions several national interests, namely promoting general welfare, educating the nation, and participating in establishing world order based on freedom, eternal peace and social justice. Therefore, the president and the House of Representatives, in implementing amnesty and abolition, must consider their compatibility with the interests and objectives of the state in order to maintain legal and political stability.



[35] Atmosudirjo, P. (1981). Hukum administrasi negara (p. 124). Ghalia Indonesia.
[36] Rachmawati, E. (2024). Hubungan antara hukum dan politik di Indonesia. Fakultas Hukum, Universitas Islam Nusantara.

# Chapter 4
# CLOSING

## 4.1 Conclusion

We can conclude that the President's prerogative, particularly when it comes to amnesty and abolition, is a type of constitutional authority that serves as both a tool for state politics and a legal instrument. Article 14 paragraph (2) of the 1945 Constitution, which grants the President the power to grant amnesty and abolition with the House of Representatives' consideration, governs this right. The principles of checks and balances, non-arbitrariness, and the values of the rule of law (*rechtsstaat*) limit the authority, which is not absolute. The concepts of John Locke, Rousseau, and Montesquieu, who viewed the prerogative as an extraordinary executive power in the public interest, are the philosophical foundation of the concept. The prerogative has philosophical roots in the theories of John Locke, Rousseau, and Montesquieu. These thinkers view the prerogative as an unusual executive power that serves the public interest, but it must still be subject to the supremacy of law and the fairness principle. From the Baiq Nuril Amnesty case in 2019 to the political leaders' amnesty and abolition in 2025, Indonesian practice has demonstrated that the President's prerogative is utilized as a tool for substantive justice restoration, political reconciliation, and legal rectification.

In the Indonesian state system, the president's prerogative is therefore a "constitutional safety valve" that allows for extraordinary resolutions to legal and political problems; however, it must still be exercised in a way that is open, accountable, and consistent with the spirit of democracy and the rule of law.

## 4.2 Recommendations for a Just and Accountable Implementation

The president should use amnesty and abolition only in clear and limited situations, such as fixing a clear legal mistake, supporting reconciliation after political or social conflict, or serving a public interest. Decisions should be in a simple and open sequence, which is an application; a short legal review by the Ministry of Law with input from the Supreme Court; a brief public hearing to invite reasoned responses; consideration by the House of Representatives (DPR); and a presidential decree that states reasons in full. To protect the rule of law, the government should exclude cases of “grand” corruption and gross human rights violations, except in some circumstances that meet strict tests and receive cross-party support. If the case involves political allies or officials, an independent group of academics and civil society figures should publish an advisory note before the decision. Each decision should also include measures for people who were harmed, such as restitution or restoring someone’s good name, so that mercy comes with repair. Finally, the presidency should release a clear annual report and keep a searchable list of all grants so that the public can see what was done and why.

# GLOSSARY

**1. Abolition**

The termination or cessation of criminal prosecution against a person who has committed a criminal act, before a court decision with permanent legal force is issued. Abolition is granted by the President with consideration from the House of Representatives (DPR) based on the interests of the state.

**2. Amnesty**

Apardon or elimination of all criminal legal consequences for a person who has been sentenced by a court decision with permanent legal force. Amnesty eliminates all criminal law consequences including sentences and revocation of certain rights.

**3. Arbitrariness**

The quality of being based on random choice or personal whim rather than any reason or system. In the context of prerogative rights, presidential actions must not be arbitrary but must have valid justification.

**4. Checks and Balances**

A system of oversight and balance of power in the constitutional structure that ensures no single branch of power dominates others. In the context of amnesty and abolition, the DPR functions as a checks and balances mechanism against Presidential authority.

**5. Constitutional Safety Valve**

A constitutional mechanism that functions as a "safety valve" to address extraordinary situations that cannot be resolved by a rigid legal system. The presidential prerogative right is considered a constitutional safety valve in Indonesia's constitutional system.

**6. Discretion**

The authority to make decisions based on one's own consideration and judgment within the limits determined by law. The President has discretionary power in granting amnesty and abolition, but it remains limited by constitutional mechanisms.

**7. Executive Prerogative**

Special authority possessed by the chief executive (president) to act outside or even contrary to the law for the public interest. This concept originates from John Locke's theory of executive power.

**8. General Will**

A concept from Jean-Jacques Rousseau referring to the common will or collective interest of society. In the context of amnesty, the power of pardon must align with the general will and not undermine society's sense of justice.

### 9. Legal Certainty

Legal certainty which is a basic principle in a rule of law state, guaranteeing that the law applies equally to all citizens. The use of prerogative rights can challenge the principle of legal certainty.

### 10. *Machtsstaat*

A state based solely on power without regard to law. This concept is contrary to rechtsstaat and represents a threat that must be avoided in the exercise of prerogative rights.

### 11. Miscarriage of Justice

A failure or error in the judicial process resulting in injustice. Amnesty can be used to correct a miscarriage of justice, as in the case of Baiq Nuril.

### 12. National Interest

The fundamental interests of a state encompassing security, welfare, and national identity. Based on Emergency Law No. 11/1954, amnesty and abolition can only be granted for the national interest.

### 13. Political Offenses

A criminal act that has political motivation or objectives, or is directed against the state and the functioning of state institutions. In Indonesian practice of granting amnesty and abolition, most have been given to perpetrators of political offenses.

### 14. Power of Mercy

The power to grant mercy or pardon historically held by kings or heads of state. In modern systems, the power of mercy is inherited by the president as head of state.

### 15. Prerogative Right

A special privilege or authority possessed by the President as head of state to make certain decisions without requiring approval from other institutions, although in practice in Indonesia it still requires consideration from the DPR.

### 16. Public Good

Public interest or welfare which is the main justification for the use of prerogative rights. According to John Locke, prerogative must always be directed toward the public good.

### 17. *Rechtsstaat*

A rule of law state that prioritizes the supremacy of law in state administration. Indonesia adheres to the rechtsstaat concept where all power must be exercised based on law.

### 18. Rule of Law

The supremacy of law which is the basic principle of a democratic state, ensuring that all citizens including the government are subject to the law. Prerogative rights create a paradox in the rule of law.

### 19. Separation of Powers

The separation of power among the legislative, executive, and judiciary to prevent concentration of power. Constitutional limitations on prerogative rights are designed to maintain separation of powers.

### 20. Substantive Justice

Substantive justice that emphasizes essential justice, not merely procedural justice. Baiq Nuril's amnesty is considered an enforcement of substantive justice.

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