

# **The President's Authority in Granting Abolition as State Mercy From A Legal and Political Perspective (Case Study of Tom Lembong's Abolition)**

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## **Abstract**

This study examines the authority of the President in granting abolition within the framework of the Indonesian rule of law, focusing on the tension between legal certainty and substantive justice. The main issue of this study is the shift in the function of abolition from a normative corrective mechanism to a pragmatic political instrument, as seen in the controversial case of Thomas Trikasih Lembong. The purpose of this study is to analyze



the philosophical and juridical basis of abolition and to evaluate how political dynamics influence the decision to grant abolition in 2025. Using a normative legal research method through a legislative, conceptual, and case approach, this study finds that although abolition has a constitutional basis in Article 14 section (2) of the 1945 Constitution of the Republic of Indonesia, its implementation in the Thomas Lembong case functions as "political language" to maintain national stability and reconciliation among elites. The findings of the study show a gap between formal legal legitimacy and public perception, where abolition is viewed ambivalently as a means of reconciliation and a potential source of impunity for elites. This study concludes that abolition is an important "safety valve" in the constitutional system to bridge procedural law with humanitarian values, but transparent technical regulations and objective criteria are needed to ensure that this discretionary authority remains accountable and consistent with the principles of justice and the rule of law.

### **KEYWORDS**

Abolition, Legal Policy, Presidential Authority, Thomas Trikasih Lembong.

## Introduction

Within the ideal framework of a constitutional and democratic state, the President's authority to grant abolition is understood as an important instrument designed to maintain a balance between legal certainty and substantive justice, whereby the law is not merely a rigid and mechanistic system of norms, but rather an ethical-political means to achieve broader goals of justice, namely the protection of human dignity, social stability, and the legitimacy of state power. Abolition embodies the value of state mercy, which philosophically reflects the view that the state, as the holder of a monopoly on punitive power, has a moral responsibility to correct the effects of injustice that may arise from the formalistic application of positive law.<sup>1</sup>

John Rawls' idea of justice as fairness is relevant to explain the function of abolition as a corrective mechanism when the application of law results in inequality or injustice that contradicts the principle of justice as fair equality, especially when the legal process takes place in the context of unequal power relations or is influenced by certain political interests.<sup>2</sup> In line with this, the progressive legal theory put forward by Satjipto Rahardjo asserts that the law should be responsive and oriented towards substantive justice,<sup>3</sup> so that the existence of abolition can be understood as an expression of the state's courage to place justice above narrow legalism, while remaining within the constitutional framework.

Normatively, the President's authority to grant abolition has a clear constitutional basis in Article 14 section (2) of the 1945 Constitution of the Republic of Indonesia, which requires consideration by the DPR as a form of checks and balances mechanism,

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<sup>1</sup> Ade Adhari, Tundjung Sitabuana, and Indah Siti Aprilia, "Morality In Law: An Analysis Towards The Legal Philosophy And Indonesia National Legal System," *Indonesia Law Review* 13, no. 2 (2023): 1–19, <https://doi.org/10.15742/ilrev.v13n1.1>.

<sup>2</sup> Yolanda Felicia Arianto et al., "Konsep Keadilan Restoratif Dalam Perspektif Teori Keadilan John Rawls," *Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora* 3, no. 1 (2025): 1–19, <https://doi.org/10.11111/nusantara.xxxxxxx>.

<sup>3</sup> Mardona Siregar, "Teori Hukum Progresif Dalam Konsep Negara Hukum Indonesia," *Muhammadiyah Law Review* 8, no. 2 (2024): 1–15, <https://doi.org/10.24127/mlr.v8i2.3567>.

so that this authority is not absolute or personal, but is institutionalized in a state structure that demands political and moral accountability. In this constitutional design, abolition should ideally be carried out through procedures that are transparent, argumentative, and legally and ethically accountable, with a primary focus on the public interest, the protection of human rights, and the strengthening of public trust in the rule of law. In line with Mark Bovens' thinking, public accountability requires that every use of the state's discretionary authority, including abolition, is not only formally valid but also subject to rational public scrutiny, in which the reasons, objectives, and impacts of the policy must be communicated openly so that the public can assess whether the decision truly reflects the public interest and democratic values.<sup>4</sup> However, constitutional practice shows that the granting of abolition in Indonesia does not always go hand in hand with this normative construction and theoretical idealism, because in political reality, abolition decisions are often perceived as the product of power compromises laden with strategic interests, giving rise to a bias between legal norms that demand objectivity and political practices that tend to be pragmatic.

This condition is evident in various public debates surrounding the President's decision to grant abolition, including in the case of Thomas Trikasih Lembong, which has caused sharp polarization among groups who view abolition as an instrument of political reconciliation and correction of a legal process deemed politically motivated, and those who see it as a form of impunity that has the potential to undermine the principle of equality before the law. Sociologically, this polemic reflects the latent tension between public expectations for objective, impartial law enforcement free from political intervention, and the reality that in a democratic political system, strategic state decisions often cannot be separated from calculations of power and governmental stability.

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<sup>4</sup> Mark Bovens, Robert E. Goodin, and Thomas Schillemans, *The Oxford Handbook Public Accountability* (Oxford: Oxford University Press, 2014).

In addition, abolition also intersects with social values that exist within society (living law), because in Indonesian political culture, which emphasizes deliberation, harmony, and mutual cooperation, abolition can be perceived as a means of reconciliation and healing of socio-political conflicts. but at the same time, if implemented without transparency and clear parameters, abolition has the potential to undermine the sense of collective justice and deepen public skepticism towards state institutions. The accumulation of these normative, political, and sociological tensions has direct implications for the level of public trust in the judicial system and the legitimacy of the government, because the rule of law is not only measured by the existence of written rules, but also by the extent to which the practice of exercising power is able to reflect the values of justice as perceived by the public. A number of previous studies have examined the President's authority to grant pardons, amnesties, and abolitions, particularly from a normative and constitutional legal perspective, focusing on the position of the President in the constitutional system, the relationship between the executive and legislative branches in the deliberation mechanism, and the implications for the principles of separation of powers and checks and balances.<sup>5</sup> Several studies also highlight the political dimension of abolition, particularly in the context of post-Reformation democratic transition, where abolition is often used as an instrument to end political conflict, reduce social tension, or consolidate power in crisis situations.<sup>6</sup> However, most of these studies are still legalistic in nature and have not comprehensively integrated philosophical analysis of the moral basis and ethical rationality of abolition with sociological studies of public perception, socio-political impacts, and implications for the legitimacy of democracy and the rule of law.

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<sup>5</sup> Rikiandi Sopian Maulana et al., "Urgensi Pembentukan Undang-Undang Grasi, Amnesti, Abolisi Dan Rehabilitasi Ditinjau Dari Perspektif Kepastian Hukum," *Diskresi* 3, no. 1 (2024): 1–8, <https://doi.org/https://journal.unram.ac.id/index.php/diskresi>.

<sup>6</sup> Suyogi Imam Fauzi, "Politik Hukum Pemberian Grasi, Amnesti Dan Abolisi Sebagai Konsekuensi Logis Hak Prerogatif," *Hukum & Pembangunan* 51, no. 3 (2021): 1–17, <https://doi.org/10.21143/jhp.vol51.no3.3126>.

This limitation has created a gap in academic literature, particularly in understanding abolition as a multidimensional phenomenon at the intersection of law, politics, and social values, thus requiring a more holistic approach to assess whether the practice of granting abolition in Indonesia has been in line with constitutional ideals and public expectations of justice. Based on these conditions, this paper aims to examine in depth the President's authority in granting abolition through a legal and political approach, using the case of Thomas Trikasih Lembong's abolition as a starting point for analysis. This is to assess the compatibility between constitutional norms and state practices, evaluate the effectiveness of the checks and balances mechanism through the role of the House of Representatives (DPR), and analyze the socio-political implications-political implications of the abolition decision on public perception, trust in the law, and democratic stability. By integrating philosophical, normative, and sociological approaches, this discussion is expected to not only provide a more complete conceptual understanding of abolition as a constitutional authority of the President, but also to offer an evaluative framework and policy recommendations that encourage the practice of granting abolition to be more transparent, accountable, and consistent with the principles of a democratic state of law that upholds justice, humanity, and people's sovereignty.

From the background described above, several issues can be drawn, namely: What is the position and philosophical and normative legal basis of the President's authority in granting abolition according to the legal system and principles of the Indonesian state? How do political and legal dynamics influence the granting of abolition to Thomas Trikasih Lembong?

## Methods

This study uses a normative legal research method<sup>7</sup> with a statute approach, conceptual approach, and case approach to examine the synchronization between the norms of Article 14 section (2) of the 1945 Constitution of the Republic of Indonesia and the practice of granting abolition in the Indonesian constitutional system. Through primary and secondary legal sources collected through literature studies, this research analyzes qualitatively and deductively the philosophical position of abolition as an instrument of state mercy and substantive justice while evaluating the dimensions of public accountability in the context of the political dynamics of the Thomas Trikasih Lembong case. This analysis aims to find an ideal framework for granting abolition that is able to balance the President's discretion with the checks and balances mechanism of the House of Representatives (DPR) in order to guarantee legal certainty and democratic legitimacy in Indonesia.

## Result and Discussion

### 1. The position and philosophical and normative legal basis of the President's authority to grant abolition according to the legal system and principles of the Indonesian constitutional state

#### Position and Philosophical Basis of Abolition

The President's authority to grant abolition cannot be understood solely as a technical instrument of state administration, but must be placed in a more fundamental relationship between law, justice, and state power. Within the framework of the rule of law, law is commonly understood as a binding, rational system of norms that must be

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<sup>7</sup> Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2007).

consistently enforced in order to ensure certainty and social order. However, this understanding is not entirely sufficient to explain the fact that, in practice, law does not always correspond to justice. The history of legal development shows that legal norms can have a dual function: on the one hand, as an instrument for the protection of rights and justice, but on the other hand, as a mechanism for legitimizing unequal power relations and morally problematic practices. It is this awareness of tension that has given rise to various critiques of legal positivism, including ideas that later developed within the horizon of abolitionist thinking.

Abolition cannot be separated from the development of critical thinking regarding the coercive nature of modern criminal law, which gave rise to what is known as the abolitionist movement. This movement began to develop systematically in Vienna, Austria, in 1983 as a non-repressive approach to crime. In its early stages, the abolitionist movement focused on criticizing imprisonment as the main instrument of criminal law enforcement. However, as the discourse and practice developed, the movement expanded ideologically with the aim of replacing the entire coercive criminal justice paradigm (code penal) with mechanisms that were more reparative and oriented towards social welfare.<sup>8</sup>

Abolitionism stems from the fundamental assumption that certain social and legal practices have lost their moral legitimacy from the outset, and therefore cannot be justified, even though they have been legally institutionalized and socially accepted for a long time. Abolitionist criticism does not stop at the procedural or technical aspects of a legal practice, but more radically questions its justification. In a historical context, this idea gained momentum when the law was used to support the system of slavery, a practice that was formally legal but substantively denied human dignity and freedom.<sup>9</sup>

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<sup>8</sup> Yogi Natanael Christanto, *Quasi Abolisionisme Dan Transformasi Hukum: Implikasi Implementasi UU No. 1 Tahun 2023* (Indramayu: Adab, 2024).

<sup>9</sup> Yun Galbinst, *Gerakan Abolisionis Dan Sejarah Perbudakan Di Zaman Kuno* (Cambridge: Cambridge Stanford Books, 2010).

From this experience, an understanding developed that legality is not always synonymous with justice, and that there are moral limits that the law must not exceed. Abolitionism is based on the recognition that humans have intrinsic value that cannot be reduced to tools or means for the interests of others. Any legal system that treats humans solely as objects of regulation, without considering their dignity and autonomy, is considered contrary to substantive justice. Therefore, practices that contain structural coercion or institutional domination cannot be remedied solely through procedural reform. The root of the problem lies not in the manner of law enforcement, but in the existence of a system that allows such injustice to occur. This view emphasizes that law cannot be separated from ethical and humanitarian considerations.

This criticism is relevant when faced with the reality that legal systems never exist in a vacuum, but are always intertwined with the social spaces in which they operate. Legal systems shape and are shaped by social structures, power relations, and value constructs that exist within society. In this context, criticism of the criminal justice system, which is considered repressive, formalistic, and insensitive to the complexity of human behavior, has given rise to reflections on the development of a criminal justice model that is not solely oriented towards the rigid enforcement of norms, but also takes into account the ontological dimension of humans as dignified subjects. This shift in thinking is reflected in the proposed alternative or *stuur* model of justice, which places a juridical approach based on scientific understanding of human behavior as the basis for legal decision-making. In this case, abolition is interpreted as a concrete manifestation of correction to a legal system that structurally allows for injustice. If abolitionism asserts that practices involving structural coercion or institutional domination cannot be saved through procedural reform alone, then the President's authority to grant abolition can be understood as a constitutional instrument that opens space for ethical intervention in the workings of criminal law. This authority reflects the state's recognition that there are certain situations in which the continuation of the law

enforcement process, although formally valid, has the potential to conflict with the sense of justice and the goal of social welfare.

## **The Development of Abolition in the Legal System**

Abolition is a legal institution that occupies a unique position in the development of modern legal systems. Its existence reflects the complex relationship between law, state power, and the value of justice. Throughout legal history, abolition did not emerge as a technical instrument, but rather as a response to the limitations of criminal law in guaranteeing meaningful justice for humans. Therefore, the development of abolition cannot be understood solely through a formal normative approach, but also through the dynamics of legal thinking that underlies its formation.

In early legal traditions, law was understood as a manifestation of the will of the ruler. Obedience to the law was seen as an absolute obligation of citizens without any moral evaluation of the content of the norms.<sup>10</sup> In this configuration, justice is attached to certainty and order, not to the protection of human dignity. Criminal law functions as the state's primary tool for maintaining social stability through threats and the application of sanctions. Within this framework, the authority to remove or suspend the consequences of criminal law rests entirely with the ruler as an expression of personal sovereignty.

As legal thinking evolved, especially after the emergence of the idea of limiting state power, law was no longer understood solely as a command, but as a normative system that must be in harmony with the value of justice. The concept of the rule of law introduced the principle that state power must be limited by law, and that law must be

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<sup>10</sup> Fandy Pradana Saputra, Regina Amalia Putri, and Azka Farida Putri Hindrawan, "Konsep Positivisme Hukum John Austin: Paradigma Hukum Modern," *Pendidikan, Seni, Sains Dan Sosial Humanioral* 3, no. 1 (2025): 1-12, <https://doi.org/10.11111/nusantara.xxxxxxx>.

subject to the values of rationality and humanity. This transformation has fundamental implications for the way criminal law is positioned within the legal system. Criminal law is no longer seen as an absolute instrument that is always correct, but rather as a means that has the potential to give rise to injustice if applied without sensitivity to the social and political context. In this dynamic, abolition began to develop as a corrective mechanism. Abolition is not intended to eliminate the validity of criminal law, but to suspend or terminate its application in certain situations when the law loses its legitimacy of justice. This development shows a shift in legal thinking from a legalistic orientation to an ethical orientation. Legality is no longer seen as the only measure of justice. The law began to face questions about moral boundaries that should not be crossed, even by norms established through legitimate procedures.

The development of abolitionism is also closely related to criticism of legal positivism. Legal positivism places law as a closed system of norms that is autonomous from moral and social considerations. Within this framework, the task of law enforcement is limited to the application of existing norms.<sup>11</sup> Criticism of this paradigm shows that law that is detached from its social and humanitarian context has the potential to become an instrument of domination. Criminal law, with its coercive nature, is the most obvious area where tensions between legal certainty and substantive justice arise. Abolitionism is the answer to these tensions. Its existence signifies the recognition that criminal law is not always capable of resolving issues of justice through ordinary judicial mechanisms. In certain cases, the application of criminal law can prolong social conflict, deepen distrust of the state, or perpetuate structural injustice. Therefore, abolition has developed as an instrument that allows the state to stop the workings of criminal law without having to negate the entire legal system.

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<sup>11</sup> Andini Yuliani et al., "Tinjauan Pengaruh Teori Positivisme Hukum Terhadap Sistem Peradilan Pidana Di Indonesia," *Kajian Kontemporer Hukum Dan Masyarakat* 1, no. 2 (2024): 1–23, <https://doi.org/10.55606/mateandrau.v3i2.2900>.

The historical journey of abolition shows significant changes in character. In the early stages, abolition was part of the personal prerogative of rulers and was not bound by norms. Rulers had full authority to pardon or stop legal proceedings without accountability. This practice was often used as a political tool, both to maintain power and to manage the loyalty of certain groups. In this configuration, abolition represented power rather than justice. The development of the rule of law brought fundamental changes to the position of abolition. This authority was not abolished, but institutionalized and limited. Abolition began to be placed within a constitutional framework as a legitimate but extraordinary authority. This institutionalization shows that the rule of law does not close the space for discretion, but regulates it so that it does not turn into arbitrariness. In this context, abolition developed as part of the design of the legal system, not as a residue of absolute power. In a democratic state based on the rule of law, abolition has a clear normative basis and strict oversight mechanisms. This authority does not stand alone, but is intertwined with the principles of separation of powers and political accountability. The existence of conditions and procedures for granting abolition reflects the state's efforts to maintain a balance between the need for legal correction and the protection of the rule of law. Abolition is not intended to interfere with judicial power, but to fill gaps that cannot be reached by the judicial process. The development of abolition also reflects the recognition that law is a product of power relations. Legal norms are not born in a vacuum, but in specific political, economic, and social contexts. This awareness has led to the creation of corrective mechanisms that allow the state to reflect on the impact of law enforcement. Abolition is a means for the state to acknowledge that laws can be wrong, irrelevant, or unfair in certain situations.

In modern legal systems, abolition occupies a position as an extraordinary power that is used selectively. Its use is often related to cases that have strong political and social dimensions. This shows that abolition is at the intersection of law and politics. However,

the existence of a political dimension does not necessarily negate the legitimacy of abolition. The main challenge lies in how to ensure that political considerations do not sacrifice the principles of justice and legal certainty.

## **The Legal Framework for Abolition in Indonesia**

Provisions regarding abolition in the Indonesian legal system are rooted directly in the 1945 Constitution of the Republic of Indonesia. Constitutional provisions that explicitly mention abolition are contained in Article 14 section (2), which grants the President the authority to grant amnesty and abolition with due consideration to the House of Representatives (DPR). The inclusion of abolition in constitutional norms indicates that this authority is not a product of ordinary policy, but rather part of the state design that was conceived at the time of the country's founding. The constitution recognizes that under certain conditions, the application of criminal law may require correction through legitimate political authority, as long as it is carried out within the framework of institutional oversight. Before this provision was institutionalized in the constitution, the practice of removing the consequences of criminal law was already known in the legal tradition that influenced the formation of the Indonesian legal system. During the Dutch colonial period, the authority to grant pardons was in the hands of the colonial rulers as part of their administrative prerogative. This authority was not based on the principle of the rule of law, but rather on the logic of power that placed the ruler as the highest source of law. In this context, the termination of prosecution or the abolition of criminal penalties was entirely discretionary and not bound by constitutional accountability mechanisms.<sup>12</sup>

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<sup>12</sup> Andrew Cornford, "The Aims and Functions of Criminal Law," *Modern Law Review* 87, no. 2 (2024): 398–429, <https://doi.org/10.1111/1468-2230.12846>.

After Indonesia proclaimed its independence, the need to manage political and security conflicts prompted the state to adopt a more structured mechanism for amnesty and criminal record expungement. In the early days of independence, the government faced various criminal issues related to political unrest, rebellion, and armed conflict. In this situation, strict application of criminal law was seen as potentially prolonging the conflict and hindering the consolidation of the state. Therefore, the state used its authority to abolish criminal penalties as a means of defusing conflict and maintaining stability. More systematic regulations regarding amnesty and abolition were later incorporated into Emergency Law No. 11 of 1954 on Amnesty and Abolition. This law provided a legal basis for the President to grant amnesty and abolition in the interests of the state. The existence of this law shows that from the outset, the Indonesian state has recognized the importance of providing corrective mechanisms for the application of criminal law. Although it was emergency and contextual in nature, this law became an important milestone in the history of the implementation of abolition because it emphasized that this authority was not exercised arbitrarily, but within a recognized legal framework.

Along with the development of the constitutional system, the power of abolition was not abolished even though the emergency context had passed. On the contrary, this power was retained and institutionalized in the constitution. The 1945 Amendment to the Constitution of the Republic of Indonesia clarified the regulations regarding abolition by separating it from clemency and rehabilitation. Pardon and rehabilitation are placed in Article 14 section (1) with the involvement of the Supreme Court, while amnesty and abolition are placed in section (2) with the involvement of the House of Representatives (DPR). This separation reflects the different characteristics of the powers, where abolition is understood as a power that has a broader political dimension and public interest.

In constitutional practice, abolition is used selectively and generally relates to cases that have significant political or social dimensions. The use of abolition in this context shows that the state does not view criminal law as a stand-alone instrument, but rather as part of state policy that must be in line with the objectives of maintaining order, stability, and justice. The decision to grant abolition is not directed at the judicial assessment of individual guilt, but rather at considerations of public interest that are beyond the scope of ordinary judicial mechanisms. This historical development shows that abolition in the Indonesian legal system did not arise suddenly, but rather through a long process influenced by colonial experiences, post-independence political dynamics, and efforts to consolidate the rule of law. The constitutionalization of abolition confirms that the state recognizes the limitations of criminal law in addressing all issues of justice. Thus, abolition serves as a legitimate corrective instrument, enabling the state to maintain a balance between legal certainty, justice, and the public interest.

Ultimately, the history of abolition in Indonesia shows that law is not understood as a closed and absolute normative system. The existence of abolition marks the awareness that law must be able to adapt to social realities and evolving human values. By placing abolition within a constitutional framework, the Indonesian constitutional state does not negate the supremacy of law, but rather strengthens it through the provision of responsible and constitutionally based corrective mechanisms.

## **2. Political and Legal Dynamics Regarding the Granting of Abolition to Thomas Trikasih Lembong**

The granting of abolition by the President of the Republic of Indonesia is a political-legal phenomenon that cannot be understood conceptually in a partial or reductionist manner. In Indonesian constitutional practice, abolition functions not only as a legal instrument that terminates criminal prosecution, but also as a means of

political policy that reflects power relations, government orientation, and the current state of democracy and the rule of law.<sup>13</sup> Therefore, the analysis of the granting of abolition to Thomas Trikasih Lembong needs to be placed in an integrative framework that harmonizes all the political and legal dynamics that work simultaneously in the Indonesian constitutional system.

Normatively, abolition is the constitutional authority of the President as stipulated in Article 14 section (2) of the 1945 Constitution of the Republic of Indonesia. The existence of this norm shows that the Indonesian constitution consciously provides discretion to the President to take action outside the ordinary criminal justice mechanism. This discretion does not arise from a legal vacuum, but rather from a constitutional awareness that positive law is not always able to adequately respond to complex and dynamic political, social, and state situations. In this context, abolition has from the outset been constructed as a political legal instrument, not merely as an administrative or technical legal decision.<sup>14</sup>

However, recognition of this constitutional authority does not automatically eliminate the problems that accompany it. The main problem in the practice of abolition does not lie in the existence of this authority, but rather in the way this authority is operationalized in certain political configurations. The granting of abolition to Thomas Trikasih Lembong clearly shows that there is a very wide scope for interpretation between constitutional norms and political practice. It is this room for interpretation that opens up opportunities for political interests, power calculations,

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<sup>13</sup> Aksah Kasim and Andi Heridah, "Urgensi Pembentukan Undang-Undang Amnesti Dan Abolisi: Mengatasi Kekosongan Hukum Dan Kepastian Dalam Sistem Ketatanegaraan," *Innovative: Journal Of Social Science Research* 5, no. 4 (2025): 11597–607, <https://doi.org/https://doi.org/10.31004/innovative.v5i4.21203>.

<sup>14</sup> Steinly Suwanto Putra et al., "Re-Examining Amnesty and Abolition Practices in Indonesia : A Normative Evaluation and Framework for Procedural Guidance Amnesty and Abolition Are the President ' s Prerogative , as Stipulated in Article 14 of the 1945 Constitution . 1 Despite a Clear Con," *Hukum Ius Quia Iustum* 32, no. 3 (2025): 709–33, <https://doi.org/https://doi.org/10.20885/iustum.vol32.iss3.art8>.

and non-judicial considerations to enter into a legal decision that is formally valid but substantively controversial.<sup>15</sup>

The granting of abolition to Thomas Trikasih Lembong by President Prabowo Subianto in 2025 is one of the most crucial legal phenomena in the history of modern Indonesian state administration, which starkly illustrates how a particular criminal case can move beyond the normative legal dimension and enter the realm of political law, which is fraught with considerations of power, stability, and national interests.<sup>16</sup> In a democratic constitutional state (*Rechtstaat*), the enforcement of criminal law must, in principle, be strictly based on the principle of legality (*nullum delictum sine praevia lege poenali*), the principle of equality before the law, and the independence of the judiciary free from intervention.<sup>17</sup> However, the case of Thomas Lembong proves that the law never operates in a sterile vacuum. On the contrary, the law often functions as a legal policy instrument used by political authorities to achieve strategic goals that are considered greater than mere procedural legal certainty.

Conceptually, this phenomenon can be understood through the thinking of Zainal Arifin Mochtar, who classifies amnesty and abolition as "political language",<sup>18</sup> a view that provides a theoretical framework that although constitutionally this mechanism is regulated in Article 14 section (2) of the 1945 Constitution, in practice they are political decisions cloaked in legal garb. Abolition is not merely an administrative instrument to stop prosecution, but a political statement that signifies that legal proceedings against certain individuals are considered disruptive to national stability or socio-political

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<sup>15</sup> Servasius Edwin Telaumbanua and Tamaulina Br Sembiring, "Pengaruh Politik Hukum Dalam Penegakan Hukum Indonesia," *Humaniora* 2, no. 12 (2024): 1273–79.

<sup>16</sup> Agus Awaludin et al., "Realitas Dan Idealitas Dalam Penegakan Hukum Di Era Kegundahan Politik," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 4 (2025): 4212–20, <https://doi.org/10.61104/alz.v3i4.1924>.

<sup>17</sup> Laurensius Arliman, "Mewujudkan Penegakan Hukum Yang Baik Untuk Mewujudkan Indonesia Sebagai Negara Hukum," *Jurnal Hukum DOCTRINAL* 2, no. 2 (2020): 509–32.

<sup>18</sup> Tasya, "Pakar Hukum UGM Soroti Pemberian Amnesti Dan Abolisi Pada Terdakwa Korupsi," Universitas Gadjah Mada, 2025.

cohesion. In Indonesia's constitutional history, this has often been used as a safety valve in the resolution of political conflicts or national reconciliation. When the subject of the legal proceedings is a public figure with a strategic position and a track record in the central government structure, it is almost impossible to separate the legal process from the surrounding political context, so that the law no longer operates as a fully autonomous normative system, but rather transforms into an arena for the negotiation of interests among the power elite.

Looking at the factual dynamics prior to the issuance of the Presidential Decree (Keppres), the case of Thomas Trikasih Lembong began with allegations of criminal corruption in sugar imports that caused significant losses to the state. The 4.5-year prison sentence handed down by the Jakarta Corruption Court shows that, judicially, there was material evidence that convinced the judges,<sup>19</sup> However, public and political perceptions of this case have never been uniform from the outset, as opposition groups and some academics view this legal process as a form of politically motivated prosecution or criminalization of a figure who once opposed the mainstream power structure. The emergence of support from national figures such as Anies Baswedan, who expressed deep disappointment at the verdict<sup>20</sup> reinforces the fact that this case has been interpreted as an issue that goes far beyond the technical realm of law. which is further reinforced by the presence of an *amicus curiae* from the Academic Alliance for Justice, consisting of dozens of law professors, arguing that the prosecution of Lembong contains strong political elements and calling for judicial correction in the name of substantive justice.<sup>21</sup> This proves the tension between the formal legal truth produced

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<sup>19</sup> Willy Medi Christian Nababan, "Tak Patuh Aturan Dan Perkaya Orang Lain, Tom Lembong Divonis 4 Tahun 6 Bulan Penjara," Kompas, 2025, <https://www.kompas.id/artikel/dari-tak-patuh-aturan-hingga-perkaya-orang-lain-tom-lembong-divonis-45-tahun-penjara>.

<sup>20</sup> Agatha Olivia Victoria, "Anies Baswedan Mengaku Sangat Kecewa Dengan Vonis Kasus Tom Lembong," Antara, 2025, <https://www.antaraneews.com/berita/4976733/anies-baswedan-mengaku-sangat-kecewa-dengan-vonis-kasus-tom-lembong?>

<sup>21</sup> Indopos, "ALIANSI AKADEMIK PEDULI KEADILAN Perihal: Pengajuan Pandangan Hukum Sebagai *Amicus Curiae* Dalam Perkara Thomas Trikasih Lembong," Indopos, 2025,

by the court and the sociological-political justice perceived by the intellectual community, so that the President's decision to take the path of abolition rather than allowing the appeal process to continue until it becomes final and binding (*inkracht*) reflects a very mature political risk calculation.

From a political sociology perspective, continuing legal proceedings against a figure of Thomas Trikasih Lembong's caliber has the potential to escalate tensions between elites, which could disrupt government consolidation. Therefore, abolition serves as a risk management tool to reduce potential political turmoil and maintain the government's legitimacy in the eyes of the international and national public. This move, referred to by political expert Hendri Satrio as a " , " marks the beginning of an era of total reconciliation, in which by granting abolition to Lembong and amnesty to other political figures such as Hasto Kristiyanto, the President is symbolically embracing opposing political factions to bring them into the circle of national stability, in line with Machiavelli's thinking, which places stability and the continuity of power as the main logic of politics that allows the law to be set aside for the sake of the state (*raison d'état*).<sup>22</sup>

The involvement of the Indonesian House of Representatives (DPR) in approving the abolition proposal at the end of July 2025 provides a crucial dimension of formal political legitimacy, because in Indonesia's system of checks and balances, the DPR's approval is not merely a formality but a form of collective political support from the people's representatives, demonstrating a consensus at the legislative level<sup>23</sup> that the termination of Thomas Lembong's case is the best option for maintaining macro-political stability. This approval also dispels the notion that granting abolition is an

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<https://indoposs.com/2025/08/01/aliansi-akademik-peduli-keadilan-perihal-pengajuan-pandangan-hukum-sebagai-amicus-curiae-dalam-perkara-thomas-trikasih-lembong/>.

<sup>22</sup> Ahmad Syarofuzzaman and Rizal Al-hamid, "Dinamika Stabilitas Politik Di Indonesia Ditinjau Dari Pemikiran Politik Kekuasaan Nicholas Machiavelli," *Politeia: Jurnal Ilmu Politik* 16, no. 1 (2024): 22-29, <https://doi.org/10.32734/politeia.v16i1.11833>.

<sup>23</sup> Yumna Fahira, "Sistem Checks and Balances Dalam Menjaga Prinsip Demokrasi Di Indonesia," *Jurnal Media Akademik (Jma)* 3, no. 6 (2025): 3031-5220, <https://doi.org/10.62281>, Hal XX-XX.

authoritarian, unilateral act, but rather a decision that has gone through a process of negotiation in the legislative arena. However, behind this legitimacy, the reality of political relativity remains prominent because the meaning of granting abolition depends heavily on the perspective of the actors who view it. whereas for government supporters, this is a statesmanlike step towards reconciliation, but for anti-corruption activists and critical groups, this is a dangerous precedent that shows that the law can be "tamed" for the sake of the political stability of the elite.

The philosophical perspective on politics as a space of tension between objectivity and relativity provides a deeper explanation as to why this decision to abolish the death penalty was never neutral, because Chantal Mouffe's idea of politics as an arena of battle over meaning without a final truth<sup>24</sup> reminds us that what is considered to be in the national interest or justice is always the result of the construction of power. In this context, the objectivity of political law is not a static condition but rather the result of dynamic negotiations, in which the granting of abolition to Tom Lembong shows that the state acknowledges the possibility of errors in the legal process or at least acknowledges that the adverse effects of continuing the legal process outweigh the benefits of law enforcement itself, which touches on the philosophy of modern abolitionism that views law as a product of power that must be continually criticized if it has the potential to perpetuate structural injustice.

However, the significance of this case also raises serious legal and public morality issues, where criticism from Indonesia Corruption Watch (ICW) stating that abolishing corruption cases could weaken the spirit of national corruption eradication<sup>25</sup> should not be ignored because when a criminal act that has dimensions of state losses is resolved

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<sup>24</sup> Tedy Aprilianto, "Konsep Populisme Kiri Dalam Kritik Demokrasi," *Pratyaksa: Jurnal Ilmu Pendidikan, Sosial Dan Humaniora* 1, no. 2 (2025): 233–47.

<sup>25</sup> Nivell Rayda, "Prabowo's Landmark Pardon of 2 Rivals for Graft 'Purely Political', but Casts Doubt on Corruption Fight," Channel New Asia, 2025, <https://www.channelnewsasia.com/asia/indonesia-prabowo-pardon-hasto-kristiyanto-thomas-lembong-precedent-anti-corruption-commitment-5277776>.

through political channels, there are concerns about "commodification of the law" where criminal cases become bargaining chips in political negotiations. This situation creates ambiguity between constitutional oversight and consolidation of power, where constitutional mechanisms are formally upheld but substantively fail to produce effective restrictions on executive discretion, thus shifting the principle of power limitation towards mere procedural compliance. As long as constitutional procedures are fulfilled, political-legal decisions are considered valid even though their substantive implications for justice and accountability are still questionable. This has a direct impact on the perception of public justice because in a democratic state of law, justice is not only measured by the conformity of procedures with legal norms but also by the public's perception of equality and fairness in legal treatment.<sup>26</sup>

Granting abolition to public figures through a relatively closed political mechanism with minimal substantive explanation has the potential to create the perception that the law is not applied equally, reinforcing the assumption that the law is sharply discriminatory towards those at the bottom but blunt towards those at the top, thereby undermining public trust in the legal system. This perception of injustice is further reinforced by the absence of objective and transparent standards regarding the criteria for granting abolition, given that the constitution does not provide clear limitations on the extraordinary circumstances or national interests that can be used as a basis for granting abolition, so that the justification for abolition decisions is highly dependent on the political narrative constructed by the government.

In the case of Thomas Trikasih Lembong, the narrative of political stability and national interests became dominant, while substantive legal arguments were not adequately communicated to the public. This widened the gap between formal legal legitimacy and social legitimacy, and had ambivalent implications for the legitimacy of

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<sup>26</sup> Naufal Akbar Kusuma Hadi, "Penegakan Hukum Di Indonesia Dilihat Dari Perspektif Sosiologi Hukum," *Jurnal Hukum Dan Pembangunan Ekonomi* 10, no. 2 (2022): 227.

the government. On the one hand, abolition can strengthen short-term political legitimacy by reducing potential conflicts and maintaining the effectiveness of governance. However, on the other hand, if perceived as political intervention in the legal process, abolition can actually weaken the moral legitimacy of the government and deepen public skepticism about the state's commitment to the rule of law. The legitimacy of government is not only determined by compliance with the constitution but also by the quality of transparency, accountability, and legal rationality in decision-making,<sup>27</sup> so that all these dynamics show that the ambiguity and bias in granting abolition are not solely caused by weaknesses in constitutional norms but are the result of legal political practices that are not yet fully in line with the principles of a democratic rule of law. Law and politics are intertwined in an unbalanced relationship where politics tends to be more dominant in determining the direction of legal policy, a condition that requires a restructuring of the political framework of abolition so that the constitutional authority of the President can still be exercised without sacrificing the principles of accountability and substantive justice. This restructuring is not intended to eliminate the political dimension of abolition, but rather to place politics within a more transparent and measurable legal framework, in which abolition must be reaffirmed as an extraordinary legal policy that is only used in certain conditions with clear and proportional legal arguments.

Furthermore, the role of the House of Representatives (DPR) needs to be strengthened as a forum for substantive deliberation and not merely as a provider of political legitimacy, where transparency in political communication of the law to the public is an important element in maintaining the perception of justice and legitimacy of the government so that the main challenges of the Indonesian rule of law, which lie in the practice of exercising power that has not fully made the law an instrument to limit

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<sup>27</sup> Heldi et al., "Demokrasi, Keadilan, Dan Utilitarianisme Dalam Upaya Legitimasi Kekuasaan Birokrasi," *Jurnal Dialektika: Jurnal Ilmu Sosial* 19, no. 1 (2021): 1–12, <https://doi.org/10.54783/dialektika.v19i1.58>.

power, can be overcome.<sup>28</sup> Aligning all political and legal variables means placing politics within a legal framework that is accountable, transparent, and oriented towards substantive justice as the foundation of a democratic state based on the rule of law. Therefore, concrete corrective measures are needed to reorganize the practice of political law abolition through the acceleration of the formulation of technical regulations regarding the granting of abolition. The absence of procedural guidelines has opened up too much room for interpretation of the President's constitutional authority, making technical regulations an urgent necessity to provide a clear framework regarding the stages, criteria, and considerations for the use of abolition, including the position of the House of Representatives (DPR) in providing considerations. With this framework in place, abolition will continue to be exercised as a constitutional discretion, but the President's authority will be within procedural limits that can be monitored, evaluated, and accounted for, so that the character of abolition as an extraordinary legal policy does not shift into a routine or purely political practice that erodes the dignity of the judiciary. Strengthening the practice of abolition also requires the development of a policy document model that contains the arguments and reasons for the President's granting of abolition as a means of political and ethical accountability of the state to the public, explaining the context of the case, the public interest protected, and the reasons why the ordinary criminal justice mechanism is considered inadequate. The existence of these written arguments will clarify that abolition is not intended as an intervention in judicial power but as a state policy oriented towards substantive justice, creating a balance between procedure and substance while strengthening the legitimacy of abolition as a legitimate corrective instrument in Indonesia's increasingly dynamic constitutional system.

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<sup>28</sup> Fahmi Ramadhan Firdaus, "Mewujudkan Supremasi Hukum Melalui Penataan Legislasi Yang Demokratis," *APHTN-HAN* 4, no. 2 (2025): 105–23, <https://doi.org/https://doi.org/10.55292/japhtnhan.v4i2.194>.

This entire description leads us to understand that the Thomas Lembong case is a turning point that tests Indonesia's institutional resilience, where former President Joko Widodo's position, which also justified this decision as a constitutional prerogative, adds a layer of legitimacy but at the same time reinforces the sociological view of law that law tends to follow the direction of the ruling power (law follows the power).<sup>29</sup> In the context of President Prabowo's leadership, granting this abolition can be interpreted as an effort to create an image of an inclusive and non-retributive government, which prioritizes national unity over divisive punishment. However, the biggest challenge remains how to ensure that this policy does not turn into institutionalized impunity for elite actors. This analysis concludes that the relevance of the Thomas Trikasih Lembong abolition case lies not only in the procedural aspect of granting abolition itself but also in its political and legal implications for the understanding of the position of the President, which requires the integration of legal, social, and moral legitimacy as an absolute requirement for the sustainability of a healthy constitutional state. Without transparency and objective criteria, the use of the right of abolition will continue to be trapped in the stigma of selective law enforcement that hurts the sense of justice of the wider community, so that the future of Indonesian political law is highly dependent on the courage to transform pure discretion into transparent public accountability. In closing, this restructuring is the price that must be paid to prevent democracy from being destroyed by political pragmatism that uses the law as a shield, but rather to ensure that the law remains a sword of justice that is capable of dissecting the interests of those in power for the benefit of all Indonesian people, without exception.

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<sup>29</sup> Dodik Harnadi, *Hukum Negara Vis a Vis Hukum Masyarakat: Perspektif Sosiologi Hukum* (Surabaya: Licensi, 2020).

## Conclusion

The President's authority to grant abolition is an extraordinary constitutional prerogative, which is legally normative based on Article 14 section of the 1945 Constitution of the Republic of Indonesia with the involvement of the House of Representatives (DPR) as a counterbalance through the provision of considerations, and supported by historical-legal foundations in Emergency Law Number 11 of 1954. Philosophically, this authority is rooted in critical abolitionist thinking, which recognizes that formal legality is not always synonymous with substantive justice, so that abolition serves as an instrument of ethical correction to the coercive nature of criminal law, which has the potential to give rise to structural injustice or disrupt the national interest. In the principle of Indonesia's democratic rule of law, abolition occupies the position of a "safety valve" that bridges the tension between procedural legal certainty and ontological human values, ensuring that the law does not operate absolutely in a vacuum, but remains adaptive to the needs of reconciliation, national stability, and the restoration of human dignity for the sake of broader social welfare.

The granting of abolition to Thomas Trikasih Lembong by President Prabowo Subianto in 2025 represents a highly complex constitutional dialectic, in which the position of law no longer stands merely as an autonomous system of norms, but is deeply intertwined with the philosophical dimension of critical abolitionism, which views formal legality as often failing to capture the essence of substantive justice. Juridically and normatively, this authority is firmly based on Article 14 section (2) of the 1945 Constitution of the Republic of Indonesia as a presidential prerogative, but in its implementation in the case of Thomas Lembong, the law was transformed into a "political language" laden with strategic risk calculations in order to maintain national stability and reconciliation between elites after the election. This complexity can be seen in how a corruption case that has been decided judicially can be annulled through ethical-political intervention wrapped in a constitutional cloak, creating a sharp tension

between the need for *raison d'état* (state interests) and the principle of equality before the law, which is the pillar of the rule of law (*Rechtstaat*). On the one hand, this move was praised as the "biggest political move" to embrace opposing factions and cool social-political tensions triggered by perceptions of criminalization and *amicus curiae* support from academics. On the other hand, it leaves behind ethical issues regarding the potential commodification of law and the weakening of the spirit of anti-corruption due to the lack of objective standards and transparency in granting such discretion. This phenomenon ultimately shows a shift from the principle of power limitation to mere procedural compliance, where the involvement of the House of Representatives (DPR) often only serves as a provider of collective political legitimacy rather than a forum for substantive deliberation, thus emphasizing the urgency of restructuring the technical regulatory framework so that the right of abolition does not turn into an instrument of elite impunity that erodes public trust in the integrity of the national judicial system. Thus, the Thomas Lembong case is not merely a matter of terminating individual prosecution, but a fundamental test of Indonesia's institutional resilience in balancing political pragmatism for stability with legal idealism, which must remain an instrument for limiting power that is accountable and oriented towards transparent public welfare.

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