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Amnesty and Abolition in the Perspective of Islamic Law: The Dialectic of Political Reconciliation and Justice in the Case of Indonesia

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Abstract

The discourse on amnesty and abolition in Indonesia has tended to be understood merely as a political legal instrument oriented toward the interests of the state, when in practice there is a tension between the aspects of justice, political reconciliation, and the protection of human rights. The cases of granting amnesty to Hasto Kristiyanto and abolition to Thomas Trikasih Lembong show a gap between the normative basis of positive law and the need for equitable reconciliation. This study aims to analyze the concepts of amnesty and abolition not only as political products, but also as legal instruments that have moral and religious legitimacy. The method used is normative legal research with a legislative, conceptual, historical, and theological approach, supported by primary legal sources, secondary literature, and authoritative references to Islamic jurisprudence. The results of the study show that, conceptually, amnesty and abolition not only serve to ease political conflict, but also have relevance to Islamic legal values. Amnesty can be interpreted as a reflection of the principle of rahmah (mercy) and the restoration of substantive justice through forgiveness and reconciliation, while abolition is in line with the principle of daf' al-mafsadah (prevention of harm) as an effort to maintain social stability and national unity. The common ground between the two legal frameworks is that they both view amnesty and abolition not merely as political products, but also as means of achieving justice and national reconciliation. Amnesty and abolition in the perspective of Islamic law can also strengthen the legitimacy of Indonesian positive law while providing a more comprehensive legal protection framework. This study offers an integration of Islamic legal values with positive law in the context of transitional justice, thereby enriching the scientific discourse on the relationship between law, politics, and religion in conflict resolution and national reconciliation in the contemporary era.
Keyword: Amnesty; Abolition; Political Reconciliation; Justice; Islamic Law.

Abstrak

Diskursus mengenai amnesti dan abolisi di Indonesia selama ini cenderung dipahami sebatas instrumen hukum politik yang berorientasi pada kepentingan negara, padahal dalam praktiknya terdapat tarik-menarik antara aspek keadilan, rekonsiliasi politik, dan perlindungan hak asasi manusia. Kasus pemberian amnesti kepada Hasto Kristiyanto dan abolisi kepada Thomas Trikasih Lembong menunjukkan adanya kesenjangan antara landasan normatif hukum positif dengan kebutuhan rekonsiliasi yang berkeadilan. Penelitian ini bertujuan untuk menganalisis konsep amnesti dan abolisi tidak hanya sebagai produk politik, tetapi juga sebagai instrumen hukum yang memiliki legitimasi moral dan keagamaan. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, historis, dan teologis, yang didukung oleh sumber hukum primer, literatur sekunder, serta rujukan otoritatif fikih Islam. Hasil penelitian menunjukkan bahwa secara konseptual, amnesti dan abolisi tidak hanya berfungsi meredakan konflik politik, tetapi juga memiliki relevansi dengan nilai-nilai hukum Islam. Amnesti dapat dimaknai sebagai refleksi prinsip rahmah (kasih sayang) dan pemulihan keadilan substantif melalui pemaafan dan rekonsiliasi, sedangkan abolisi sejalan dengan prinsip daf' al-mafsadah (pencegahan kerusakan) sebagai upaya menjaga stabilitas sosial dan persatuan bangsa. Titik temu kedua kerangka hukum yaitu sama-sama menempatkan amnesti dan abolisi bukan sekadar produk politik, melainkan juga sarana mencapai keadilan dan rekonsiliasi nasional. Amnesti dan abolisi dalam perspektif hukum Islam juga dapat memperkuat legitimasi hukum positif Indonesia sekaligus menghadirkan kerangka perlindungan hukum yang lebih komprehensif. Penelitian ini menawarkan integrasi nilai hukum Islam dengan hukum positif dalam konteks keadilan transisional, sehingga memperkaya wacana keilmuan mengenai hubungan antara hukum, politik, dan agama dalam penyelesaian konflik dan rekonsiliasi nasional di era kontemporer.
Kata Kunci*:* Amnesti; Abolisi; Rekonsiliasi Politik; Keadilan; Hukum Islam.

Introduction

"Il n'y a point encore de liberté si la puissance de juger n'est pas séparée de la puissance législative et de l'exécutrice" (There is no freedom if the power to judge is not separated from the legislative and executive powers).[1] This adage becomes relevant when discussing the President's authority to grant amnesty and abolition, which are essentially prerogative powers, but are still limited by the principle of checks and balances.[2] In practice, granting this privilege has the potential to weaken the function of the judiciary because it can erase or stop ongoing legal processes, even in cases that have already been decided. This seriously clashes with the principles of equality before the law and due process of law, because it unilaterally shifts judicial authority to the executive realm.[3]

The authority for amnesty and abolition often lies in a gray area between reconciliation and politicization. Without strict legal guidelines and measurable criteria, amnesty has the potential to be used as a tool of legal intervention. This can undermine the

[1] Sam J Ervin Jr, "Separation of Powers: Judicial Independence," *Law and Contemporary Problems* 35 (1970): 108, https://www.jstor.org/stable/1191032.
[2] Sulkiah Sulkiah, "Pelaksanaan Hak Prerogatif Presiden Dalam Penyusunan Kabinet Berdasarkan Pasal 17 UUD 1945 Amandemen Suatu Tinjauan Sistem Ketatanegaraan Indonesia," *Nurani Hukum* 2, no. 1 (2020): 42–52, https://doi.org/10.51825/nhk.v2i1.8169.
[3] Sujatmiko Sujatmiko and Willy Wibowo, "Urgensi Pembentukan Regulasi Grasi, Amnesti, Abolisi Dan Rehabilitasi," *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021): 91–108, https://doi.org/10.30641/dejure.2021.V21.91-108.

integrity of the judiciary and undermine public trust in the government. At this point, a gap is evident between the normative basis of positive law that grants constitutional legitimacy to the president and demands for a more just political reconciliation that favors the interests of the people.

Historically, amnesty and abolition in Indonesia have been strategic political and legal instruments for resolving conflicts and easing national tensions. President Sukarno used amnesty to re-engage rebel groups such as Darul Islam/Tentara Islam Indonesia (DI/TII)[4] and PRRI-Permesta,[5] As part of reconciliation efforts and to maintain the nation's integrity after the war of independence, President Soeharto issued Presidential Decree No. 63 of 1977, which regulated general amnesty and abolition for Fretilin followers in East Timor as part of the regional integration and development process. President Habibie took a similar step after the 1998 reforms,[6] by granting amnesty to student activists who had previously been criminalized by the New Order regime, as a symbol of political change towards democratization.[7] Keppres Number 91 of 2000 granted amnesty to activists such as Jauhari Mys, Fauji Ibrahim, Kleemens Rom Sarvir, and Leseren Dampari Karma, while Keppres Nomber 93 of 2000 granted amnesty to R. Sawito Kartowibowo who was accused of subversion (Kompas, 2000). President Megawati Soekarnoputri issued Keppres Nomber 53 of 2002 to grant amnesty to Jauhar bin Saleh and Amin Amsar, including the restoration of their dignity and legal status. President Susilo Bambang Yudhoyono also used amnesty as part of the peace agreement between the Indonesian government and the Free Aceh Movement (GAM), which was outlined in the 2005 Helsinki MoU and became an important turning point in suppressing separatism in Aceh peacefully and constitutionally.

[4] Pemerintah Pusat Indonesia, "Keputusan Presiden (KEPPRES) Nomor 303 Tahun 1959 Tentang Pemberian Amnesti Dan Abolisi Kepada Orang-Orang Yang Tersangkut Dengan Pemberontakan D.I./T.I.I. Kahar Muzakar Di Sulawesi Selatan, Yang Telah Melaporkan Dan Menyediakan Diri Kepada Negara Dihadap," Pub. L. No. 303 (1959), https://peraturan.bpk.go.id/Details/94037/keppres-no-303-tahun-1959.

[5] Pemerintah Pusat Indonesia, "Keputusan Presiden (Keppres) Nomor 449 Tahun 1961 Tentang Pemberian Amnesti Dan Abolisi Kepada Orang-Orang Yang Tersangkut Dengan Pemberontakan," Pub. L. No. 449 (1961), https://peraturan.bpk.go.id/Details/162606/keppres-no-449-tahun-1961., yang mencakup pemberontakan Daud Beureu'eh di Aceh, PRRI/Permesta di Sumatera dan Sulawesi, Kartosuwirjo di Jawa, Ibnu Hadjar di Kalimantan, dan RMS di Maluku

[6] Pemerintah Pusat Indonesia, "Keputusan Presiden (Keppres) Nomor 80 Tahun 1998 Tentang Pemberian Amnesti Atau Abolisi," Pub. L. No. 80 (1998), https://peraturan.bpk.go.id/Details/59194/keppres-no-80-tahun-1998., memberikan amnesti dan/atau abolisi kepada tokoh oposisi Orde Baru seperti Sri Bintang Pamungkas dan Muchtar Pakpahan.

[7] Pemerintah Pusat Indonesia, "Keputusan Presiden (Keppres) Nomor 123 Tahun 1998 Tentang Pemberian Amnesti Dan Abolisi Kepada Beberapa Terpidana Yang Terlibat Dalam Tindak Pidana Tertentu," Pub. L. No. 123 (1998), https://peraturan.bpk.go.id/Details/59313/keppres-no-123-tahun-1998., memberikan amnesti kepada tahanan politik Papua seperti Hendrikus Kowip, Kasiwirus Iwop, dan Benediktus Kuawamba.

During the era of President Susilo Bambang Yudhoyono, Keppres Number 22 of 2005 granted amnesty to political prisoners of the Free Aceh Movement (GAM) as part of the peace agreement. Under President Joko Widodo, amnesty was granted to Baiq Nuril in 2019 for a case related to the ITE Law, to Saiful Mahdi in 2021 for a case also related to the ITE Law, and to Antasari Azhar in 2017 for humanitarian reasons. One of the most recent dynamics that has captured public attention is the presidential policy of July 31, 2025, when Hasto Kristiyanto received amnesty and Thomas Trikasih Lembong received a pardon. Hasto's case stemmed from the ongoing legal proceedings for alleged corruption. The President argued that amnesty was necessary to maintain national political stability after the election. After receiving approval from the House of Representatives (DPR), the amnesty was granted, wiping out all criminal consequences for Hasto, as if the crime had never occurred. This contrasted with Thomas Trikasih Lembong, who faced legal proceedings related to alleged violations in the management of state investments. The President considered that terminating the legal process through pardon was necessary for the benefit of the state and to maintain investor confidence. With DPR approval, pardon was granted, halting the prosecution even though the legal facts of the crime were still considered to exist.

The controversy surrounding the granting of amnesty to Hasto Kristiyanto and abolition to Tom Lembong on July 31, 2025, has sparked serious debate among academics, legal practitioners, and civil society. Constitutional law expert Bivitri Susanti believes this policy is fraught with dangerous politicization of the law and has the potential to set a bad precedent for corruption eradication.[8] The Center for Law and Policy Studies (PSHK) emphasized that executive intervention through amnesty and abolition weakens the consistency of law enforcement and threatens judicial independence.[9] Similar criticism came from Indonesia Corruption Watch (ICW) and Transparency International Indonesia, which considered this policy a form of political interference that undermines the principle of checks and balances.

Furthermore, political observer Adi Prayitno believes this decision is more influenced by the need for elite political reconciliation than the interests of law enforcement. Legal media also highlighted that this step ignores the basic principle that corruption is an

[8] Ady Anugrahadi, "Kata Pakar Soal Pemberian Abolisi Tom Lembong Dan Amnesti Hasto Kristiyanto," Liputan6.com, 2025, https://www.liputan6.com/news/read/6120861/kata-pakar-soal-pemberian-abolisi-tom-lembong-dan-amnesti-hasto-kristiyanto.

[9] Pusat Studi Hukum dan Kebijakan Indonesia, "Abolisi Dan Amnesti Tom Lembong Dan Hasto Kristiyanto Mengancam Konsistensi Penegakan Hukum," Pusat Studi Hukum dan Kebijakan Indonesia (PSHK), 2025, https://pshk.or.id/publikasi/abolisi-dan-amnesti-tom-lembong-dan-hasto-kristiyanto-mengancam-konsistensi-penegakan-hukum/.

extraordinary crime that should be processed through legal mechanisms, not political compromise. The debate is further complicated by differing views among legal experts regarding the nature of amnesty and abolition: does amnesty completely erase the crime as if it never occurred, while abolition only stops prosecution without erasing the fact of the crime, or can both be interpreted more broadly.

Based on these historical dynamics and contemporary controversies, the fundamental issue to be examined in this research lies in the nature of amnesty and abolition in Indonesia, particularly in relation to the search for a more substantive form of justice. This study not only positions both as political-legal instruments within a constitutional framework but also links them to an Islamic legal perspective. Through the values of mercy, ishlah, and maslahah, this research highlights the possibility of understanding amnesty and abolition not merely as products of political compromise, but as legal instruments oriented toward reconciliation and justice.

A number of previous studies have examined in depth the practice of granting amnesty and forms of presidential prerogative in the Indonesian constitutional law system. Research by Manthovani and Kukuh Tejomurti (2019) shows that amnesty functions as a constitutional corrective instrument against legal decisions that do not reflect public justice, emphasizing the dimensions of social justice and the restoration of individual dignity.[10] Meanwhile, Sujatmiko and Willy Wibowo (2021) highlight the absence of comprehensive regulations governing the mechanisms, procedures, and limitations of granting pardons, amnesties, abolitions, and rehabilitations, which has the potential to lead to subjectivity and politicization of executive power.[11] Furthermore, Rikiandi Sopian Maulana et al. (2024) emphasize the importance of legal certainty and a clear normative basis so that every form of pardon has constitutional legitimacy and measurable accountability.[12] The three studies above provide important contributions to strengthening the theoretical and normative framework for the practice of amnesty granting in Indonesia. Overall, these findings underscore the need for the establishment of specific laws regarding clemency, amnesty, abolition, and rehabilitation, both to ensure legal certainty and substantive justice, as well as to prevent the politicization of presidential authority. This study will further develop these

[10] Reda Manthovani and Kukuh Tejomurti, "A Holistic Approach of Amnesty Application for Baiq Nuril Maknun in the Framework of Constitutional Law of Indonesia," *Yustisia Jurnal Hukum* 8, no. 2 (2019): 277–91, https://doi.org/10.20961/yustisia.v8i2.32852.
[11] Sujatmiko and Wibowo, "Urgensi Pembentukan Regulasi Grasi, Amnesti, Abolisi Dan Rehabilitasi."
[12] Rikiandi Sopian Maulana et al., "Urgensi Pembentukan Undang-Undang Grasi, Amnesti, Abolisi Dan Rehabilitasi Ditinjau Dari Perspektif Kepastian Hukum," *Jurnal Diskresi* 3, no. 1 (2024): 52–59, https://doi.org/10.29303/diskresi.v3i1.5072.

findings by evaluating contemporary cases such as the Hasto Kristiyanto amnesty and the Thomas Trikasih Lembong abolition, and assessing their compliance with constitutional principles, sharia law, and public expectations regarding the integrity of the national legal system.

This study aims to critically examine the practices of amnesty and abolition from an Islamic law perspective by looking at how both become a space for dialectics between political reconciliation and legal justice in the current Indonesian context, particularly in the cases of Hasto Kristiyanto's amnesty and Thomas Trikasih Lembong's abolition. This study is not only intended to understand the legal aspects, but also to explore the ethical and moral meanings contained in the application of these prerogative rights. Through a constitutional approach combined with the principles of justice in Islamic law, this study seeks to broaden the horizon of understanding about the function of amnesty and abolition as instruments of justice that favor the benefit and protection of human dignity.

Research Methods

This research uses the normative legal research type with a focus on doctrinal studies.[13] The aim is to examine the principles, principles, and legal provisions governing amnesty and abolition. The approaches used include a statute approach, namely examining the legal norms regulated in Article 14 of the 1945 Constitution, Law Number 11 of 1954 concerning Amnesty and Abolition, and related Presidential Decrees; a conceptual approach to examine the definition, scope, and distinction between amnesty and abolition in legal literature; a historical approach to trace the history of amnesty and abolition in Indonesia from the Soekarno era to the Joko Widodo era; a case approach to examine the practice of implementing amnesty and abolition through analysis of official documents and concrete cases such as Hasto Kristiyanto and Tom Lembong; and a theological approach to link, understand, and examine research objects based on Islamic teachings.

Results and Discussion

1. The Essence of Amnesty

The term amnēstia comes from the Greek ἀμνηστία (amnēstia) which means forgetting or forgetting.[14] The use of amnesty was known even in the 12th century BC and in

[13] G Bhaghamma, "A Comparative Analysis of Doctrinal and Non-Doctrinal Legal Research," *ILE Journal of Governance and Policy Review* 1, no. 1 (2023): 88–94.
[14] Cinzia Bearzot, "The Athenian Amnesty and Reconstructing the Law" (JSTOR, 2017), https://www.jstor.org/stable/26533910.

403 BC in Athens. In modern history, amnesty developed primarily in Europe. After the French Revolution of 1789, it was used as a political instrument and for national reconciliation.[15] Meanwhile, in the Common Law tradition, such as England, pardons are better known as royal pardons, which derive from the King's prerogative. However, royal pardons are closer to the concept of individual clemency, rather than collective amnesty.[16]

In Indonesia, the concept of amnesty was adopted through the influence of Dutch colonial law. As a country with a civil law system, Indonesia inherited the Dutch Wetboek van Strafrecht (WvS) of 1915, which recognized a mechanism for the expungement of criminal offenses through political decisions. This legacy later became the basis for amnesty and abolition regulations in Indonesia's national legal system.[17]

Under the pre-amendment 1945 Constitution, amnesty was granted through a Presidential Decree, covering crimes related to the state or government. This mechanism was direct and did not require the consideration of other institutions, thus granting the president's authority.[18] Unlike UUDS of 1950, amnesty was regulated in more detail through law, thus involving the legislative role.[19] This type of amnesty focused more on criminal offenses resulting from political disputes, with the requirement for consideration by the Supreme Court and a proposal from the Minister of Justice, reflecting the characteristics of parliamentary democracy.[20]

In the UUDS of 1945 after the amendment, the practice of amnesty returned through a Presidential Decree, but with a more open mechanism because the president must take into account the considerations of the House of Representatives. The types of cases that can be granted amnesty have also expanded, not only related to crimes against the state or government, but also include certain crimes, based on the explanation of the Minister of Law regarding the criteria for cases that can be submitted for amnesty, including insults to the head of state; inmates suffering from long-term illnesses and mental disorders; cases of

[15] Sandy Kurnia Christmas and Evi Purwanti, "Perkembangan Sistem Pemerintahan Dan Konsep Kedaulatan Pasca Revolusi Perancis Terhadap Hukum Internasional," *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (2020): 22–235, https://doi.org/10.14710/jphi.v2i2.222-235.
[16] Syukrian Rahmatul Ula, "Tinjauan Yuridis Pemberian Grasi Antasari Azhar (Keputusan Presiden Nomor 1/G/2017) Perspektif Hukum Islam Dan Hukum Positif" (UIN Syarif Hidayatullah Jakarta, 2021).
[17] Ampuan Situmeang, "Dari Kolonial Ke Konstitusional: Dekolonialisasi Hukum Pidana Indonesia Dengan KUHP Nasional," in *Proceedings Series on Social Sciences & Humanities*, vol. 23, 2025, 141–48, https://doi.org/10.30595/pssh.v23i.1559.
[18] Hasim Hartono, "Mekanisme Pemberian Grasi, Amnesti Dan Abolisi Atas Hak Prerogatif Presiden," *Lakidende Law Review* 4, no. 2 (2025): 847–59, https://doi.org/10.47353/delarev.v4i2.100.
[19] Imanuel Tampubolon, "Tinjauan Yuridis Prerogatif Presiden Menerbitkan Peraturan Pemerintah Pengganti Undang-Undang" (Universitas HKBP Nommensen, 2022), https://repository.uhn.ac.id/handle/123456789/7309.
[20] Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, "Naskah Akademik Rancangan Undang-Undang Tentang Grasi, Amnesti, Abolisi Dan Rehabilitasi," 2022, https://bphn.go.id/data/documents/na_ruu_gaar_ttd.pdf.

unarmed treason in Papua; and drug users who should be rehabilitated.[21] The amnesty practices in Indonesia are as follows:

Table I. List of Presidential Decrees on Amnesty Prior to the Amendment

Nu. Presidential Decree	Year	Recipient/Application	Case Type
180	1959	Prisoner / political suspect	Politics (Post-Liberal Democracy)
303	1959	Related persons DI/TII Kahar Muzakar (South Sulawesi)	Armed Rebellion
449	1961	Rebels PRRI/Permesta	Armed Rebellion
568	1961	Rebels / gang	Armed Rebellion
2	1964	Certain political groups	Ideological/Political Conflict
1	1969	Awom, Mandacan, Wagete-Enaratoli (West Irian)	Papuan Separatists
63	1977	Followers of the Fretilin Movement (Timor Timur)	East Timor Separatists
80, 82, 85, 105, 123, 125, 126, 127, 202	1998	Political prisoner / activist (Sri Bintang, Muchtar Pakpahan, etc.)	Pro-Democracy Politics/Activism
127	1998	H. Andi Mappetahang Fatwa	Islamic Political Activist
68	1999	Dita Indah Sari	Labor Activist
108	1999	Political prisoner/ pro-democracy activist	Post-Reform Politics

Compiled from data in the Academic Manuscript of the 2022 Amnesty and Abolition Bill.

Furthermore, the UUD of 1945 was amended in October 1999, amending the amnesty provisions in Article 14 which stipulates that: (1) The President grants pardons and rehabilitation by taking into account the considerations of the Supreme Court; (2) The President grants amnesty and abolition by taking into account the considerations of the People's Representative Council.

Table II. Presidential Decree on Amnesty after the Amendment

Nu.	Presidential Decree	Year	Type (Amnesty/Abolition)	Description
1	Presidential Decree Nu. 157	1999	Amnesty	Granted after the reform as part of political reconciliation

[21] AdminICJR, "ICJR Pertanyakan Amnesti Hasto Kristiyanto Dan Abolisi Tom Lembong: Reformasi Hukum Yang Justru Harus Jadi Prioritas," Institute for Criminal Justice Reform, 2025, https://icjr.or.id/pertanyakan-amnesti-hasto-kristiyanto-dan-abolisi-tom-lembong-reformasi-hukum-yang-justru-harus-jadi-prioritas/.

2	Presidential Decree Nu. 158	1999	Amnesty	Targeting specific groups convicted of political/security-related crimes
3	Presidential Decree Nu. 159	1999	Amnesty	Selective in nature, given to a select number of people
4	Presidential Decree Nu. 160	1999	Individual Amnesty	Special case, aimed at an activist
5	Presidential Decree Nu. 173	1999	Amnesty	Still in the context of transitional reform politics
6	Presidential Decree Nu. 53	2002	Amnesty	Related to the resolution of domestic political conflicts
7	Presidential Decree Nu. 22	2005	Amnesty & Abolisi	Part of the implementation of the Helsinki MoU for peace in Aceh

Compiled from data in the Academic Manuscript of the 2022 Amnesty and Abolition Bill

In every Presidential Decree regarding amnesty, the considerations section always shows the same orientation, namely political interests, security, and national reconciliation. From Keppres 1959 to 2005, amnesty was granted not for general crimes, but rather to resolve political and ideological conflicts that had the potential to threaten national stability. During the Guided Democracy period, Presidential Decree Nu. 180/1959 and Presidential Decree Nu. 303/1959 considered that granting amnesty was necessary to calm political turmoil and provide an opportunity for reconciliation for those who had been involved in the DI/TII rebellion or other political movements. Similarly, Presidential Decree Nu. 449/1961 and Presidential Decree Nu. 568/1961 emphasized the importance of national unity in facing the PRRI/Permesta rebellion.

In the New Order era, , Presidential Decree Nu. 63/1977 considered the need for political stability after the integration of East Timor, so that amnesty and abolition were granted to Fretilin followers. In the Reformation era, from 1998 to 1999, a series of Presidential Decrees on amnesty considered the interests of democratization, human rights, and the elimination of the authoritarian political residue of the New Order, such as in the cases of Sri Bintang Pamungkas, Muchtar Pakpahan, Andi Mappetahang Fatwa, and Dita Indah Sari. culminating in , Presidential Decree Nu. 22/2005 concerning the granting of amnesty and abolition for members of the Free Aceh Movement (GAM) explicitly considered the interests of national peace after the signing of the Helsinki Memorandum of Understanding (MoU) between the Government of the Republic of Indonesia and GAM. Of all the Presidential

Decrees, the pattern of consideration is always based on three main things: first, the interests of political reconciliation after the rebellion or ideological conflict; second, the interests of national security stability to reduce armed tensions; Third, the interests of democratization and human rights, especially after the 1998 Reformation.

Amnesty is primarily intended for political crimes, namely acts committed with the intent to oppose a legitimate government or the ruling power. Political crimes are considered dangerous because they directly impact state stability, public order, and national unity. Therefore, amnesty is often used as a legal and political instrument to defuse conflict, create national reconciliation, and restore relations between the state and opposing groups.[22] Therefore, the granting of amnesty is based on consideration by the DPR because it concerns political crimes.

Since 2019, President Joko Widodo has used amnesty in certain cases deemed to involve substantive justice and freedom of expression. In 2019, Baiq Nuril, a victim of sexual harassment who was charged under the ITE Law, was released by Presidential Decree after gaining support from the House of Representatives. This amnesty was seen as a corrective measure by the state to protect women's rights and uphold substantive justice beyond the constraints of rigid positive law. Furthermore, in 2021, President Jokowi also granted amnesty to Saiful Mahdi, a lecturer at Syiah Kuala University who was convicted under the ITE Law for his academic criticism. These two cases demonstrate that the practice of amnesty after 2005 is not limited to traditional political issues, but also extends to human rights, gender, and academic freedom issues relevant to the development of contemporary Indonesian democracy.

Based on the indicators that have been discussed, it can be emphasized that amnesty is basically aimed at:

a. Political and Security Orientation
   Reducing political and ideological conflicts that threaten the stability of the country (for example: DI/TII, PRRI/Permesta, Fretilin, GAM).
b. National Reconciliation
   Creating peace and restoring relations between the government and opposing parties.
c. Democratization and Human Rights
   Removing political residue, strengthening civil liberties, expression, and political freedom after the 1998 Reformation.
d. Criminalization through the ITE Law

[22] I Wayan Parthiana, *Hukum Pidana Internasional Dan Ekstradisi* (Bandung: Yrama Widya, 2003).

Amnesty can be granted for criminal cases through the ITE Law, such as protection for victims of harassment, academic criticism, or freedom of expression.

Meanwhile, the bribery case that ensnared Hasto is more appropriately categorized as a criminal act of corruption, which in modern legal doctrine is seen as an extraordinary crime.[23] The extraordinary nature of crimes means that corruption should not be given leniency through amnesty instruments, because its nature is not a political crime or treason, but rather damages the integrity of state institutions, especially the KPU as the election organizer.

Thus, when linked to the practice of amnesty, Hasto's case does not meet the criteria for a political crime that could be covered by amnesty. However, it must be remembered that this case occurred long ago and has now undergone a change in government regime. Politically, its relevance and urgency for discussion within the context of amnesty have also weakened, as this extraordinary legal instrument no longer has a strong foundation, both in terms of legal substance and the country's current political interests.

2. The Essence of Abolition

Abolition comes from the Latin abolitio, meaning "removal" or "cancellation." The word is rooted in the verb abolere, which literally means "to remove," "to stop," or "to abolish". The President's right to grant abolition was first stipulated in the post-independence UUD of 1945, which, in Article 14, states that the President has the authority to grant pardons, amnesties, abolitions, and rehabilitations. However, changes in the form of the state brought about a shift in constitutional regulations. Through the UUD 1950, the President's authority to grant abolitions was regulated in more detail: abolitions can only be granted based on law or the authority of law, and must be approved by the Supreme Court.[24]

As an implementation, Emergency Law No. 11 of 1954 concerning Amnesty and Abolition was issued, which stipulates that:[25]

a. The President may grant amnesty and abolition in the interests of the state, after obtaining written advice from the Supreme Court at the request of the Minister of Justice.

[23] Ewaprilyandi Fahmi Saputra and Hery Firmansyah, "Politik Hukum Dalam Upaya Pemberantasan Tindak Pidana Korupsi Melalui Pembaharuan Pengaturan Tindak Pidana Korupsi Sebagai Extraordinary Crime Dalam KUHP Nasional," *UNES Law Review* 6, no. 2 (2023): 4493–4504, https://doi.org/10.31933/unesrev.v6i2.1284.
[24] Mahesa Rannie, "Hak Prerogatif Presiden Di Indonesia Pasca Perubahan UUD 1945," *Simbur Cahaya* 27, no. 2 (2020): 98–117, https://doi.org/10.28946/sc.v27i2.1040.
[25] Rannie.

b. Amnesty and abolition are only granted to perpetrators of crimes arising from the political conflict between the Republic of Indonesia (Yogyakarta) and the Kingdom of the Netherlands before December 27, 1949.
c. Amnesty removes all criminal legal consequences, while abolition stops the prosecution process.

These regulations demonstrate that abolition during the early years of independence was closely tied to state interests and political conflicts, and was limited in scope and duration. Following the 1959 Presidential Decree, Indonesia returned to the 1945 Constitution, which subsequently underwent four amendments (1999–2002). In the first amendment, the President's authority regarding abolition was re-established in Article 14 of the 1945 Constitution, which stipulated that the President grants amnesty and abolition by taking into account the considerations of the House of Representatives (DPR). This amendment emphasized the principle of checks and balances, so that granting abolition was no longer the President's absolute prerogative, but rather had to be conducted through a political mechanism in conjunction with the DPR.

Table III. Presidential Decree on Abolition

No.	Presidential Decree	Event	Description
1	Presidential Decree Nu. 63 of 1977	The Fretilin Movement in East Timor	Granting of general amnesty and abolition after the integration of East Timor into Indonesia.
2	Presidential Decree Nu. 80 of 1998	Post-New Order political dynamics	Granting of amnesty and abolition during the transition period of reform.
3	Presidential Decree Nu. 91 of 2000	Certain political and security cases	As part of the national reconciliation policy.
4	Presidential Decree Nu. 93 of 2000	Political and social conflicts	Continuing the reform policy in conflict resolution.
5	Presidential Decree Nu.115 of 2000	Post-reform political and security issues	Amnesty/abolition to strengthen national peace.
6	Presidential Decree Nu. 22 of 2005	Free Aceh Movement (Gerakan Aceh Merdeka;. GAM)	Part of the Helsinki peace agreement, general amnesty and abolition for the sake of peace in Aceh.

Based on various Presidential Decrees, the status of those receiving abolition varies. Some are still suspects, as stipulated in Presidential Decree Nu. 91 of 2000 and Presidential Decree Nu. 115 of 2000, so that abolition is granted before the case is submitted to court.

Others are defendants, for example, in Presidential Decree No. 93 of 2000, which mentions the prosecution of a subversion case at the Jakarta District Court, indicating that the process has entered the judicial stage. Furthermore, abolition is also granted to parties who are said to be "involved" in a political movement, even though they have not yet been legally processed. This is evident in Presidential Decree Nu. 63 of 1977 (followers/parties associated with Fretilin) and Presidential Decree Nu. 22 of 2005 (parties involved in the Free Aceh Movement/GAM). Subjects in this category can include those who have surrendered, are being investigated, detained, or even those who have not yet been legally processed.

From this practice, it can be concluded that abolition can be granted at various stages of the legal process: before investigation, while the case is in the prosecution stage, or after it has entered the court but has not yet become legally binding. This variation in status demonstrates the flexibility of abolition as a political-legal instrument and provides an important basis for formulating time limits and mechanisms for applying for abolition in the future. The rationale for granting an abolition can be traced through the considerations in the Presidential Decree.

In Presidential Decree Nu. 80 of 1998, No. 91 of 2000, and No. 115 of 2000, abolition was granted to create a more stable national and state order, ensure smooth governance, national development, respect for human rights, and strengthen national unity. Meanwhile, in Presidential Decree Nu. 93 of 2000, the primary reason for granting abolition is respect for human rights. In general, the reasons for granting abolition are closely related to the interests of the state,[26] which can be interpreted to include:

a. Protecting and respecting human rights;
b. Strengthening national unity;
c. Supporting national development, and
d. Guaranteeing national defense and security.

Thus, the basis for granting abolition is not solely legal considerations, but also political and humanitarian ones. It is important to explicitly articulate these reasons in future abolition regulations so that there are clear limits on when abolition can be granted. If we look at the history of abolition practices in Indonesia, almost all Keppres (1977–2005) indicate that abolition was granted for the political interests of the state, especially in the context of: political conflict (Fretilin, GAM); regime transition (post-New Order, reform); national reconciliation; and respect for human rights. In other words, abolition is closely related to

[26] Aditya Pranata Kaban et al., "Analisis Hukum Tentang Kepentingan Umum Menurut Pasal 310 Ayat (3) KUHP Di Indonesia Sebagai Alasan Penghapusan Pidana Dalam Kegiatan Pers," *Mahadi: Indonesia Journal of Law* 1, no. 2 (2022): 153–80, https://doi.org/10.32734/mah.v1i2.8754.

political crimes, whether they have been, are being, or have not been legally processed. The recipients are generally those "involved" in political movements that threaten the stability of the state, not general crimes.

Meanwhile, if we consider the Tom Lembong case (Case Number: 34/Pid.Sus-TPK/2025/PN.Jkt.Pst), if we consider it to involve the crime of bribery (extraordinary crime), then in substance it does not meet the criteria as in previous abolition practices. Bribery/corruption is a crime that damages institutional integrity and public trust, not a political conflict or issue of state reconciliation. Therefore, the political-legal basis for granting abolition is not met. However, if this case is linked to aspects of power politics (for example, occurring amidst the political turmoil of elections or a government transition), political discourse could still emerge to use abolition. However, this has the potential to violate the principle of checks and balances in Article 14 of the 1945 Constitution of the Republic of Indonesia, because abolition should require consideration from the House of Representatives and can only be justified if there is a greater national interest.

3. The Concept of Forgiveness in Islamic Law

The concept of forgiveness in Islam has strong roots in the values of rahmah (compassion) and 'afw (forgiveness) taught in the Qur'an and Hadith.[27] Forgiveness was once carried out by Rasulullah SAW during the Fathu Makkah incident (Conquest of Makkah). At that time, he had a strong moral and political basis for punishing enemies who had previously oppressed, tortured and even fought Muslims. However, Rasulullah SAW actually stated "Go, you are free," (idhhabuu fa antumuth thulaqaa) as a form of forgiveness.[28] The legal basis can be seen in QS. Ash-Shura (42): 40 which emphasizes that forgiveness and reconciliation are better, as well as QS. Al-Maidah (5): 13 which emphasizes the importance of forgiving and forgiving.[29] In terms of hadith, Rasulullah SAW gave many examples of forgiveness, such as to the people of Taif who rejected his preaching in a harsh manner, but he still prayed for guidance.[30]

If classified, the forgiveness granted by the Prophet Muhammad (peace be upon him) during the Conquest of Mecca falls within the realm of political crimes, as it involved rebellion, hostility, and war between the ruling group and its opponents. This forgiveness was not

[27] Ariyani Ariyani, Fikri, and Andi Marlina, "The Concept of Al-Islam and the Restorative Justice Approach in Settlement of Criminal Cases," *DELICTUM : Jurnal Hukum Pidana Islam*, no. Articles (2023): 28–43, https://doi.org/10.35905/delictum.vi0.6403.
[28] M Yakub Amin, "Amnesti Umum Nabi Muhammad SAW Pada Peristiwa Fathu Mekkah," *Politea: Jurnal Pemikiran Politik Islam* 4, no. 1 (2021): 109–28, https://doi.org/10.21043/politea.v4i1.10527.
[29] Hastini Laelani, "Interpretasi Lex Talionis Dalam Qs. Asy-Syura Ayat 39-43 Perspektif The Qur'an: A Reformist Translation" (IAIN Palopo, 2025), https://repository.iainpalopo.ac.id/id/eprint/10457/.
[30] Rizem Aizid, *The 10 Habits of Rasulullah* (Yogyakarta: Diva Press, 2018).

related to general crimes (such as theft or murder), but rather concerned the political stability and security of the Islamic state at that time. Therefore, the essence of forgiveness in Islam is not merely a leniency of the law, but also a strategy for reconciliation, unity of the people, and the affirmation of the principle of rahmatan lil-'alamin (blessing for all the worlds).

In Islamic law, hudud is a right of Allah (haqq Allah), a punishment directly stipulated in the Qur'an and Hadith to protect religion, honor, and social security.[31] Because of its nature as a right of Allah, hudud cannot be abolished or forgiven by humans, whether by the victim, society, or the authorities. This distinguishes hudud from qisas-diyat and ta'zir, which still allow for forgiveness or removal of the punishment based on the considerations of the victim, the victim's family, or the authorities.[32] In the context of Indonesian positive law, amnesty and abolition mechanisms can be granted even for political crimes or certain crimes, such as in the case of Baiq Nuril or Saiful Mahdi, through a presidential decree with the approval of the DPR. Meanwhile, in Islamic law, hudud cannot be abolished by any authority because the law is qat'i (certain), for example adultery (QS. An-Nur [24]:2), theft (QS. Al-Maidah [5]:38), hirabah/robbery (QS. Al-Maidah [5]:33), drinking alcohol (HR. Bukhari & Muslim), and qadzf or accusation of adultery without evidence (QS. An-Nur [24]:4). This comparison shows a fundamental difference in paradigm: in positive law, the abolition of criminal acts through amnesty and abolition functions as a political-legal instrument to maintain state stability and social reconciliation, while in Islamic law hudud is permanent and cannot be abolished because it is considered a divine mechanism that maintains the public interest. Meanwhile, forgiveness in Islam is only possible in the realm of qishash-diyat and ta'zir, which is of a ḥuqūq al-ʻibād nature or depends on considerations of the welfare of the ruler.

In Islamic law, the crimes of bribery (risywah) and corruption (ghulul or embezzlement of public assets) are considered major sins because they undermine justice, betray trust, and cause harm to the wider community. Both acts are expressly prohibited in the Quran and Hadith and are seen as a betrayal of public trust. Therefore, the crimes of bribery and corruption should not be included in the category of amnesty or abolition, as legal amnesty for such crimes would contradict the principles of al-'adl (justice) and maslahah (public benefit), which are the primary foundations of Islamic law.

[31] Annisa Hafizhah, Mohammad Ekaputra, and Muhammad Asla Fathi, "Capital Punishment: Islamic Criminal Law Perspective," *Mahadi: Indonesia Journal of Law* 2, no. 2 (2023): 134–41, https://doi.org/10.32734/mah.v2i2.13412.
[32] Sumardi Efendi, "Analisis Sanksi Pidana Dalam Hukum Islam Pendekatan Teoritis Dan Pustaka," *MAQASIDI: Jurnal Syariah Dan Hukum* 3, no. 2 (2023): 151–62, https://doi.org/10.47498/maqasidi.v3i2.3524.

Conclusion

Amnesty, derived from the Greek term amnēstia ("forgetting" or "to forget"), has been a political and reconciliation instrument since ancient times and was adopted by Indonesia through its Dutch legal heritage. In Indonesia, before the amendment to the 1945 Constitution, amnesty was granted directly by the President for crimes against the state. During the 1950 Provisional Constitution, it involved the legislature and the Supreme Court; and after the amendment, the President must consult with the House of Representatives (DPR) for a broader scope of cases, including insulting the head of state, narcotics, and political crimes. Amnesty is primarily aimed at easing political conflict, fostering national reconciliation, strengthening democratization, and protecting human rights, as seen in the cases of Baiq Nuril (2019) and Saiful Mahdi (2021) related to the ITE Law. Meanwhile, abolition, the removal or termination of legal proceedings, is used in the interests of the state and national stability, usually for political crimes, rather than extraordinary crimes such as corruption. From an Islamic legal perspective, forgiveness (al-'afwu/al-maghfirah) emphasizes mercy and forgiveness, as demonstrated by the Prophet Muhammad (peace be upon him) during the Conquest of Mecca, including political crimes, while hudud is a divine decree and cannot be forgiven. Overall, amnesty, abolition, and forgiveness play a strategic role in reconciliation, political stability, and the protection of individual rights, but differ from general crimes or extraordinary crimes that undermine the integrity of the state.

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