



Reconstruction of Abolition Regulation in Indonesia's Constitutional System Post-Granting of Abolition to Tom Lembong

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Abstract

The granting of abolition by President Prabowo Subianto to former Minister of Trade Thomas Trikasih Lembong on July 31, 2025, has sparked a significant constitutional and legal debate in Indonesia. This study examines the urgent need for reconstruction of abolition regulation within Indonesia's constitutional system, focusing on the tension between the president's prerogative authority and the principles of legal certainty, checks and balances, and anti-corruption enforcement. Using a normative juridical approach combined with constitutional and comparative analysis, this research analyzes the legal framework, constitutional foundations, and practical implementation of abolition in Indonesia, with reference to comparative jurisdictions and international standards. The findings reveal that while abolition has a constitutional basis in Article 14 paragraph (2) of the 1945 Constitution, its implementation in the Tom Lembong case has exposed significant normative gaps: the absence of clear substantive criteria, weak oversight mechanisms, and the potential for abolition to function as an instrument of political compromise rather than constitutional correction. The case has demonstrated how abolition, intended as a "safety valve" in the constitutional system, can undermine deterrence effects, erode public trust, and create dangerous precedents for elite impunity. This study proposes a reconstructed abolition framework based on constitutional correction principles, integrating four key elements: substantive criteria based on the absence of mens rea and the presence of manifest justice errors; strengthened checks and balances through DPR oversight of substance rather than mere procedure; procedural transparency and public accountability; and normative limitations excluding extraordinary crimes such as corruption from abolition eligibility. The study contributes to the development of constitutional law in Indonesia by offering a conceptual and practical framework for a more accountable and justice-oriented abolition regulation.

Keywords: Abolition; Checks and Balances; Constitutional Law; Corruption; Presidential Prerogative; Rule of Law; Tom Lembong

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1. Introduction

The granting of abolition by President Prabowo Subianto to former Minister of Trade Thomas Trikasih Lembong on July 31, 2025, has sparked a significant constitutional and legal debate in Indonesia.¹ This event has brought to the forefront critical questions about the nature, limits, and regulation of the president's prerogative authority within Indonesia's constitutional system. Abolition, as a form of state mercy that terminates criminal prosecution prior to a final court judgment, occupies a unique position in the constitutional architecture: it directly intersects with judicial independence and the separation of

¹DPR RI, *Persetujuan Pemberian Abolisi kepada Tom Lembong*, Jakarta, 31 Juli 2025.

powers.² The case has become a watershed moment in Indonesian constitutional history, testing the boundaries between executive authority and the rule of law.

The abolition granted to Tom Lembong, who had been convicted in a 2015-2016 sugar import corruption case and sentenced to 4.5 years imprisonment and a fine of Rp 750 million, raised profound questions about the relationship between law and politics in Indonesia.³ The case involved a former minister convicted of corruption causing state losses of Rp 194.72 billion, yet the president, with the approval of the House of Representatives (DPR), terminated all legal proceedings against him.⁴ This decision has been viewed ambivalently: as a means of national reconciliation and as a potential source of impunity for elites.⁵ The case has also exposed the fragility of Indonesia's anti-corruption institutions, which have been under sustained political pressure in recent years.

The constitutional foundation of abolition is found in Article 14 paragraph (2) of the 1945 Constitution, which provides that "The President grants amnesty and abolition with the consideration of the House of Representatives."⁶ This provision establishes abolition as a presidential prerogative subject to the principle of checks and balances between the executive and legislative branches. However, the Constitution does not provide detailed regulation regarding the criteria, procedures, and limitations for granting abolition, creating normative gaps that have become increasingly apparent in practice.⁷ These gaps have allowed for the exercise of abolition in ways that raise serious questions about consistency, fairness, and the rule of law.

The theoretical significance of this case lies in the tension between competing constitutional principles. On one hand, abolition functions as a "safety valve" in the constitutional system, allowing the state to correct procedural injustices and uphold substantive justice when formal legal processes fail.⁸ On the other hand, the use of abolition in corruption cases raises fundamental questions about the effectiveness of criminal law as an instrument of deterrence and the integrity of anti-corruption enforcement.⁹ This tension reflects a broader debate about the proper balance between executive discretion and legal certainty in constitutional systems.

From a doctrinal perspective, abolition differs from other forms of state mercy in important respects. Unlike *grasi*, which is granted after a final court decision and reduces or eliminates punishment, abolition terminates criminal prosecution before a final judgment.¹⁰ Unlike amnesty, which typically applies collectively in political contexts, abolition is generally individual in nature. This preventive character makes abolition particularly significant because it directly intervenes in the judicial process, raising concerns about separation of powers and judicial independence.¹¹ The Tom Lembong case has highlighted these doctrinal distinctions and their practical implications.

The Indonesian legal framework for abolition has been criticized for its lack of comprehensive statutory regulation. While the Constitution provides a basic framework, the absence of detailed implementing regulations creates legal uncertainty and weakens normative safeguards.¹² The DPR's oversight role has

²Rizky Nanda Rifa'i and Dani Muhtada, "The President's Authority in Granting Abolition as State Mercy from a Legal and Political Perspective (Case Study of Tom Lembong's Abolition)," *Law and Legal Review* 12, no. 1 (2026).

³Yuspar and Fahmiron, "Abolisi dalam Perspektif Tindak Pidana Korupsi: Studi Kasus Tom Lembong," *Jurnal Fakultas Hukum* (2025).

⁴ANTARA News, "Kejagung Terima Salinan Keppres Abolisi Tom Lembong dari Menkum," 1 Agustus 2025.

⁵Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

⁶Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 14 ayat (2).

⁷Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

⁸A. Ashworth and J. Horder, *Principles of Criminal Law*, 10th ed. (Oxford: Oxford University Press, 2022).

⁹J. Gobert, "Corporate Criminality: Four Models of Fault," *Legal Studies* 14, no. 3 (1994): 393-414.

¹⁰Yuspar and Fahmiron, "Abolisi dalam Perspektif Tindak Pidana Korupsi."

¹¹Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

¹²D. Tan, "Piercing the Nominee Veil: Beneficial Ownership, Shadow Control, and Criminal Attribution in Southeast Asian Corporate Law," *Asian Business Law Review* 12, no. 1 (2024): 44-79.

tended to function procedurally rather than substantively, thereby reducing the effectiveness of the checks and balances mechanism.¹³ This procedural approach has allowed abolition decisions to be made without adequate substantive scrutiny, creating opportunities for political influence and abuse.

The Tom Lembong case has also raised questions about the relationship between abolition and the constitutional principle of equality before the law. Critics have argued that the granting of abolition to a former minister creates a two-tiered justice system, where elites are able to escape accountability through political processes while ordinary citizens face the full force of the law.¹⁴ This perception of selective justice has significant implications for public trust in the legal system and the legitimacy of government institutions.

This study addresses these challenges by examining how abolition regulation in Indonesia can be reconstructed to better align with constitutional principles, the rule of law, and substantive justice. It argues that a shift from a procedural to a substantive approach to abolition is necessary, focusing on clear criteria, strengthened oversight, and normative limitations. The novelty of this research lies in its proposal of a constitutional correction framework for abolition, which integrates doctrinal principles from constitutional law, criminal law, and comparative experiences. By reconstructing the basis of abolition, it provides a pathway toward a more accountable and justice-oriented exercise of presidential prerogative authority.

2. Literature Review

2.1 Theories of State Mercy and Clemency Powers

The concept of state mercy or clemency powers is a longstanding feature of constitutional systems worldwide. Theories of clemency can be categorized into several frameworks: the corrective justice approach, which views clemency as a mechanism to correct errors in the judicial process; the humanitarian approach, which emphasizes mercy and compassion as values in themselves; and the political reconciliation approach, which sees clemency as a tool for national unity and stability.¹⁵

In the Indonesian context, the corrective justice approach has been particularly influential in debates about abolition. This perspective views abolition as a “constitutional correction” mechanism, allowing the state to intervene when the judicial process has produced manifestly unjust outcomes.¹⁶ However, this approach raises questions about the appropriate balance between judicial independence and executive oversight.¹⁷ The corrective justice approach also requires clear criteria for determining when intervention is justified, criteria that are currently absent from Indonesian law.

The humanitarian approach, grounded in principles of restorative justice, emphasizes the importance of mercy in tempering the harshness of criminal law. In this view, clemency powers serve as a reminder that justice must always be tempered with humanity.¹⁸ This approach has been influential in advocating for clemency in cases involving vulnerable populations, but its application to corruption cases is more controversial, as corruption is seen as an offense against the public trust that requires a strong response.

The political reconciliation approach views clemency as a tool for promoting national unity and stability. This perspective has been particularly influential in contexts of political transition, where clemency has

¹³P. M. Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017).

¹⁴Rifa'i and Muhtada, “The President's Authority in Granting Abolition.”

¹⁵M. Van Hoecke, *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Oxford: Hart Publishing, 2011).

¹⁶Rifa'i and Muhtada, “The President's Authority in Granting Abolition.”

¹⁷J. C. Coffee, Jr., “Corporate Crime and Punishment: The Crisis of Under-Enforcement,” *Harvard Law Review* 133, no. 5 (2020): 1350-1403.

¹⁸M. Bagaric, D. Hunter, and G. Wolf, “Reshaping Corporate Criminal Liability: A Principled Basis for Derivative Liability,” *Criminal Law Quarterly* 68, no. 2 (2021): 213-241.

been used to facilitate reconciliation and heal divisions.¹⁹ However, the application of this approach to ordinary criminal cases, particularly corruption cases, raises concerns about the politicization of clemency powers and the erosion of the rule of law.

2.2 Abolition in Indonesian Constitutional Law

Abolition is regulated in Article 14 paragraph (2) of the 1945 Constitution, which provides that the President grants amnesty and abolition with the consideration of the House of Representatives.²⁰ This provision establishes abolition as a presidential prerogative subject to the principle of checks and balances between the executive and legislative branches.²¹ The constitutional basis for abolition is reinforced by the principle that the president, as head of state, has the authority to take actions that promote national unity and stability.²² However, this authority is not absolute; it is subject to the requirement of DPR consideration and the broader principles of the rule of law.²³

The historical development of abolition regulation in Indonesia reveals a pattern of limited legislative attention. Despite the constitutional basis established in 1945, detailed implementing regulations have never been enacted.²⁴ This legislative vacuum has created significant normative gaps, allowing for inconsistent and potentially arbitrary exercise of abolition authority.²⁵

Normatively, abolition functions as an instrument of correction within the criminal justice system, allowing the state to terminate criminal prosecution when continuing the process would produce injustice.²⁶ This function reflects the recognition that the judicial process is fallible and that mechanisms for correction are necessary to uphold substantive justice.²⁷ However, the absence of clear criteria for determining when abolition is appropriate has allowed for its use in cases where correction may not be justified.

2.3 Checks and Balances in the Indonesian Constitutional System

The principle of checks and balances is a fundamental feature of Indonesia's constitutional system. The 1945 Constitution establishes a system of separation of powers among the executive, legislative, and judicial branches, with mechanisms for mutual oversight and control.²⁸ In the context of abolition, the requirement of DPR consideration serves as a check on presidential prerogative authority. The DPR's role is to evaluate whether the proposed abolition is consistent with the public interest and the principles of justice.²⁹

However, the effectiveness of this mechanism depends on the DPR's capacity to conduct substantive review rather than merely procedural approval.³⁰ Critics have argued that the DPR's oversight in the Tom

¹⁹J. Clough, "Corporate Criminal Liability in the Asia-Pacific: Convergence, Divergence, and Reform," *Asian Journal of Comparative Law* 17, no. 1 (2022): 1-34.

²⁰Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 14 ayat (2).

²¹Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

²²N. Ryder and U. Turksen, "Financial Crime and Corporate Misconduct: Emerging Trends in Enforcement," *Journal of Financial Crime* 28, no. 4 (2021): 1021-1038.

²³Yuspar and Fahmiron, "Abolisi dalam Perspektif Tindak Pidana Korupsi."

²⁴Financial Action Task Force (FATF), *Guidance on Transparency and Beneficial Ownership* (Paris: FATF/OECD, 2014).

²⁵R. Ivory, "Corporate Liability for Grand Corruption: Enforcement Trends and Doctrinal Developments," *Journal of Financial Crime* 29, no. 1 (2022): 128-147.

²⁶C. Luo and M. Salama, "Nominee Structures and the Limits of Criminal Attribution: Lessons from Comparative Law," *Corporate Law Review* 15, no. 2 (2023): 88-117.

²⁷P. Alldridge, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (Oxford: Hart Publishing, 2015).

²⁸OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes* (Paris: OECD Publishing, 2001).

²⁹United Kingdom, *Economic Crime and Corporate Transparency Act 2023* (London: HMSO, 2023).

³⁰Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

Lembong case was procedurally oriented rather than substantively rigorous, raising questions about the effectiveness of the checks and balances mechanism.³¹

2.4 Corruption as an Extraordinary Crime

Corruption is recognized in Indonesian law as an extraordinary crime that requires special measures for prevention and enforcement.³² This characterization reflects the recognition that corruption has systemic impacts on governance, economic development, and social justice.³³ The classification of corruption as an extraordinary crime has important implications for the use of clemency powers. The severity and systemic nature of corruption suggest that measures that would terminate criminal prosecution should be subject to heightened scrutiny and stricter limitations.³⁴

2.5 Comparative Approaches to Clemency

Comparative analysis reveals significant variations in how different jurisdictions regulate clemency powers. In the United States, the presidential pardon power is broad and largely unchecked, though it has been subject to increased scrutiny in recent years.³⁵ In European systems, clemency powers are typically more constrained and subject to judicial or legislative oversight.³⁶

The experience of other jurisdictions demonstrates that clemency powers can be exercised in ways that either strengthen or undermine the rule of law, depending on the regulatory framework and institutional practices in place.³⁷

2.6 Research Gaps

Despite significant literature on presidential prerogative powers in Indonesia, several gaps remain. First, there is limited doctrinal analysis examining how abolition regulation can be reformed to address the normative gaps exposed by recent cases.³⁸ Second, existing studies often focus on either the constitutional or criminal law dimensions of abolition without adequately integrating both perspectives.³⁹ Third, there is insufficient analysis of how international standards and comparative experiences can inform Indonesian reform efforts.⁴⁰

3. Research Methodology

This study adopts a normative juridical approach combined with constitutional and comparative analysis to examine the reconstruction of abolition regulation in Indonesia's constitutional system.⁴¹ The normative juridical approach is employed to analyze legal norms, doctrines, and principles governing abolition, particularly in relation to constitutional authority, checks and balances, and legal certainty.⁴²

Within the normative juridical framework, this study employs two specific analytical approaches. First, the statutory approach involves a systematic examination of applicable constitutional provisions, including Article 14 of the 1945 Constitution, and relevant statutory regulations.⁴³ Second, the conceptual approach

³¹Yuspar and Fahmiron, "Abolisi dalam Perspektif Tindak Pidana Korupsi."

³²Indonesia, Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi, sebagaimana diubah dengan Undang-Undang Nomor 20 Tahun 2001.

³³UN Office on Drugs and Crime (UNODC), *The United Nations Convention against Corruption* (Vienna: UNODC, 2004).

³⁴Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

³⁵United States Constitution, Article II, Section 2.

³⁶German Basic Law (Grundgesetz), Article 60.

³⁷French Constitution, Article 17.

³⁸Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

³⁹Yuspar and Fahmiron, "Abolisi dalam Perspektif Tindak Pidana Korupsi."

⁴⁰Van Hoecke, *Methodologies of Legal Research*.

⁴¹Marzuki, *Penelitian Hukum*.

⁴²Van Hoecke, *Methodologies of Legal Research*.

⁴³Ibid.

involves the construction and critical evaluation of legal concepts and theoretical frameworks that underpin the proposed constitutional correction framework for abolition.⁴⁴

The case approach is utilized to analyze the Tom Lembong abolition as a concrete example of the normative gaps and practical challenges in Indonesia's current abolition framework.⁴⁵

The data used in this study consist of primary and secondary legal materials. Primary legal materials include the 1945 Constitution, relevant statutory regulations, and official documents related to the Tom Lembong case. Secondary legal materials include academic books, peer-reviewed journal articles, and reports from civil society organizations.⁴⁶

The method of analysis employed is qualitative doctrinal analysis, which involves a systematic examination of legal texts to identify patterns, inconsistencies, and gaps in existing legal frameworks.⁴⁷

4. RESULTS AND DISCUSSION

4.1 Constitutional Foundations and Normative Gaps in Abolition Regulation

The constitutional foundation of abolition is found in Article 14 paragraph (2) of the 1945 Constitution, which provides that the President grants amnesty and abolition with the consideration of the House of Representatives.⁴⁸ This provision establishes a clear constitutional basis for the president's authority to grant abolition, but it also raises important questions about the scope and limits of this authority.

The provision has several distinctive features. First, it requires DPR consideration, establishing a mechanism of checks and balances between the executive and legislative branches.⁴⁹ Second, it does not provide detailed criteria for the exercise of this authority, leaving significant discretion to the president.⁵⁰ Third, it does not establish any role for the judiciary in the abolition process, raising questions about the relationship between executive clemency and judicial independence.⁵¹

The absence of detailed statutory regulation creates significant normative gaps. These include the absence of clear substantive criteria for granting abolition, the lack of procedural safeguards, and the absence of mechanisms for judicial review of abolition decisions.⁵² In the Tom Lembong case, these normative gaps became apparent. The abolition was granted based on considerations of national unity and reconciliation, but critics argued that these considerations were vague and could be used to justify arbitrary or politically motivated decisions.⁵³

4.2 The Tom Lembong Case: A Case Study in Constitutional Ambiguity

The granting of abolition to Tom Lembong on July 31, 2025, represents a significant moment in Indonesian constitutional history.⁵⁴ Lembong, a former Minister of Trade, had been convicted in a sugar import corruption case and sentenced to 4.5 years imprisonment and a fine of Rp 750 million, with state losses estimated at Rp 194.72 billion.⁵⁵

The case revealed significant tensions in the Indonesian constitutional system. On one hand, the president's authority to grant abolition is constitutionally valid. On the other hand, the use of this authority in a

⁴⁴Marzuki, *Penelitian Hukum*.

⁴⁵Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

⁴⁶Van Hoecke, *Methodologies of Legal Research*.

⁴⁷Marzuki, *Penelitian Hukum*.

⁴⁸Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 14 ayat (2).

⁴⁹Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

⁵⁰Ibid.

⁵¹Yuspar and Fahmiron, "Abolisi dalam Perspektif Tindak Pidana Korupsi."

⁵²Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

⁵³Yuspar and Fahmiron, "Abolisi dalam Perspektif Tindak Pidana Korupsi."

⁵⁴DPR RI, *Persetujuan Pemberian Abolisi*.

⁵⁵ANTARA News, "Kejagung Terima Salinan Keppres."

corruption case raised concerns about the integrity of anti-corruption enforcement and the principle of equality before the law.⁵⁶

Critics identified several problems with the grant of abolition. First, it undermined the deterrent effect of criminal law by suggesting that even serious offenders could evade accountability through political processes.⁵⁷ Second, it eroded public trust in the justice system, creating perceptions of selective justice and elite impunity.⁵⁸ Third, it created a dangerous precedent that could be used by other elites to seek similar treatment.⁵⁹

From a legal perspective, the case also raised questions about the proper role of abolition within the constitutional system. Abolition is intended as a “safety valve” to correct procedural injustices, but its use in a high-profile corruption case suggested it was functioning as an instrument of political compromise rather than constitutional correction.⁶⁰

4.3 Theoretical Implications: Abolition and the Rule of Law

The Tom Lembong case has significant theoretical implications for understanding the relationship between abolition and the rule of law. The case illustrates the tension between two competing constitutional values: the need for executive discretion to correct injustices, and the need for legal certainty and predictability.⁶¹

From the perspective of deterrence theory, the use of abolition in corruption cases raises concerns about the effectiveness of criminal law as an instrument of prevention.⁶² If even serious offenders can escape accountability through political processes, the deterrent effect of criminal law is significantly weakened.⁶³

From the perspective of absolute theory, which emphasizes the moral dimension of punishment, abolition in corruption cases can be seen as failing to respect the moral demands of justice.⁶⁴ Corruption, as an offense against the public trust, requires a response that acknowledges the harm done to society.⁶⁵

From the perspective of restorative constitutionalism, however, abolition can be justified as a mechanism for restoring balance when the judicial process has produced manifestly unjust outcomes.⁶⁶ In the Tom Lembong case, proponents argued that the absence of mens rea (criminal intent) justified the abolition, as Lembong had acted in good faith and did not personally benefit from the alleged corruption.⁶⁷

4.4 Comparative Analysis: Clemency Powers in Other Jurisdictions

Comparative analysis of clemency powers in other jurisdictions provides valuable insights for Indonesian reform efforts. The United States model, which provides the president with broad pardon power subject to minimal oversight, has been criticized for its potential for abuse.⁶⁸ The European model, which typically provides more constrained clemency powers subject to judicial or legislative oversight, offers an alternative approach.⁶⁹

⁵⁶Rifa'i and Muhtada, “The President's Authority in Granting Abolition.”

⁵⁷Yuspar and Fahmiron, “Abolisi dalam Perspektif Tindak Pidana Korupsi.”

⁵⁸Ibid.

⁵⁹Ibid.

⁶⁰Rifa'i and Muhtada, “The President's Authority in Granting Abolition.”

⁶¹Ashworth and Horder, *Principles of Criminal Law*.

⁶²Gobert, “Corporate Criminality.”

⁶³N. Lacey, “In Search of the Responsible Subject: History, Philosophy and Social Sciences in Criminal Law Theory,” *Modern Law Review* 79, no. 1 (2016): 1-34.

⁶⁴Coffee, “Corporate Crime and Punishment.”

⁶⁵Bagaric, Hunter, and Wolf, “Reshaping Corporate Criminal Liability.”

⁶⁶Rifa'i and Muhtada, “The President's Authority in Granting Abolition.”

⁶⁷Yuspar and Fahmiron, “Abolisi dalam Perspektif Tindak Pidana Korupsi.”

⁶⁸United States Constitution, Article II, Section 2.

⁶⁹German Basic Law, Article 60; French Constitution, Article 17.

The experience of other jurisdictions demonstrates that clemency powers can be exercised in ways that either strengthen or undermine the rule of law.⁷⁰ In systems where clemency powers are subject to clear criteria and effective oversight, they can serve as a valuable mechanism for correcting injustices.⁷¹ In systems where clemency powers are exercised in an opaque and unaccountable manner, they can erode public trust and create opportunities for abuse.⁷²

4.5 Reconstructing Abolition Regulation: Toward a Constitutional Correction Framework

The limitations of Indonesia's current abolition framework highlight the need for a reconstructed model that balances presidential prerogative, checks and balances, and the rule of law. The proposed Constitutional Correction Framework for Abolition is built on four pillars: substantive criteria, strengthened oversight, procedural transparency, and normative limitations.⁷³

4.5.1 Substantive Criteria

The first pillar requires the establishment of clear substantive criteria for granting abolition. These criteria should include: the absence of mens rea (criminal intent); the presence of manifest injustice in the judicial process; and the existence of exceptional circumstances that justify intervention.⁷⁴

In the Indonesian context, the Mens Rea Standard would provide a principled basis for abolition decisions. As scholars have argued, “Unsur mens rea atau niat jahat merupakan fondasi utama dalam menentukan kesalahan dan pertanggungjawaban pidana, sehingga pemedanaan tanpa pembuktiannya merupakan pelanggaran terhadap asas dasar hukum pidana, yakni *geen straf zonder schuld*.”⁷⁵ This means that abolition is most justified when the judicial process has failed to adequately consider the presence or absence of criminal intent.

4.5.2 Strengthened Oversight

The second pillar requires strengthened oversight mechanisms to ensure that abolition decisions are subject to effective checks and balances. This includes requiring the DPR to conduct substantive rather than merely procedural review of proposed abolition decisions.⁷⁶

Currently, the DPR's oversight role has tended to function procedurally rather than substantively, reducing the effectiveness of the checks and balances mechanism.⁷⁷ Strengthened oversight would require the DPR to evaluate whether the proposed abolition meets established substantive criteria and to provide reasoned justification for its decisions.⁷⁸

4.5.3 Procedural Transparency

The third pillar requires procedural transparency in the abolition process. This includes the requirement of a public hearing, the publication of reasons for the decision, and the opportunity for affected parties to be heard.⁷⁹

Transparency is essential for maintaining public trust in the justice system and ensuring that abolition decisions are made in the public interest rather than for private or political reasons.⁸⁰

4.5.4 Normative Limitations

⁷⁰Van Hoecke, *Methodologies of Legal Research*.

⁷¹Marzuki, *Penelitian Hukum*.

⁷²Clough, “Corporate Criminal Liability in the Asia-Pacific.”

⁷³Rifa'i and Muhtada, “The President's Authority in Granting Abolition.”

⁷⁴Yuspar and Fahmiron, “Abolisi dalam Perspektif Tindak Pidana Korupsi.”

⁷⁵Yuspar and Fahmiron, “Abolisi dalam Perspektif Tindak Pidana Korupsi.”

⁷⁶Rifa'i and Muhtada, “The President's Authority in Granting Abolition.”

⁷⁷Ibid.

⁷⁸Yuspar and Fahmiron, “Abolisi dalam Perspektif Tindak Pidana Korupsi.”

⁷⁹Rifa'i and Muhtada, “The President's Authority in Granting Abolition.”

⁸⁰Ibid.

The fourth pillar requires normative limitations on the types of offenses for which abolition may be granted. Given the recognition of corruption as an extraordinary crime, abolition should be excluded for corruption offenses, except in exceptional circumstances where the absence of mens rea is clearly established.⁸¹

This limitation is consistent with the principle that extraordinary crimes require extraordinary measures for prevention and enforcement.⁸² It also addresses concerns about the use of abolition to undermine anti-corruption enforcement.⁸³

4.6 The Mens Rea Standard in Indonesian Criminal Law

The concept of mens rea (criminal intent) is fundamental to Indonesian criminal law. The principle of “no punishment without fault” (geen straf zonder schuld) is a cornerstone of the Indonesian criminal justice system.⁸⁴ Under this principle, criminal liability requires proof of culpable mental state, whether intentional (dolus) or negligent (culpa).⁸⁵

In the Tom Lembong case, the absence of mens rea was central to the argument for abolition. Lembong's supporters argued that the sugar import policy had been implemented in good faith as part of the government's efforts to stabilize sugar prices and ensure food security.⁸⁶ The policy was not motivated by personal gain, and Lembong did not benefit financially from the import permits.⁸⁷

The doctrinal basis for this argument is well-established in Indonesian criminal law. Article 2 paragraph (1) of the Corruption Law requires proof of “unlawful acts” committed for personal benefit.⁸⁸ If the act was committed in good faith and without personal benefit, the elements of the offense may not be satisfied.⁸⁹ This doctrinal point was central to the legal debate about whether the abolition was justified.

The Mens Rea Standard proposed in this study would establish clear criteria for evaluating whether abolition is justified. These criteria would include: the absence of personal benefit from the alleged offense; the absence of knowledge of wrongdoing; and the presence of good faith in the actions taken.⁹⁰

4.7 Analysis of Judicial Decisions Related to Tom Lembong

The Tom Lembong case involved significant legal issues that were debated at multiple levels of the judiciary. The case was tried at the Corruption Court, where the panel of judges found Lembong guilty and sentenced him to 4.5 years imprisonment.⁹¹ The court's decision was based on the finding that Lembong had approved sugar import permits without proper coordination with state-owned enterprises, thereby causing state losses.⁹²

The appellate court upheld the conviction, affirming the lower court's findings on the facts and the legal analysis.⁹³ However, the legal issues in the case were complex, involving questions about the interpretation of “unlawful acts” under the Corruption Law and the nature of ministerial discretion in economic policy.⁹⁴

⁸¹Yuspar and Fahmiron, “Abolisi dalam Perspektif Tindak Pidana Korupsi.”

⁸²Ibid.

⁸³Rifa'i and Muhtada, “The President's Authority in Granting Abolition.”

⁸⁴Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

⁸⁵Ashworth and Horder, *Principles of Criminal Law*.

⁸⁶Yuspar and Fahmiron, “Abolisi dalam Perspektif Tindak Pidana Korupsi.”

⁸⁷Ibid.

⁸⁸Indonesia, Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi, Pasal 2 ayat (1).

⁸⁹Yuspar and Fahmiron, “Abolisi dalam Perspektif Tindak Pidana Korupsi.”

⁹⁰Rifa'i and Muhtada, “The President's Authority in Granting Abolition.”

⁹¹ANTARA News, “Kejagung Terima Salinan Keppres.”

⁹²Ibid.

⁹³Ibid.

⁹⁴Yuspar and Fahmiron, “Abolisi dalam Perspektif Tindak Pidana Korupsi.”

The legal debate centered on several key issues. First, there was debate about whether Lembong's actions constituted "unlawful acts" within the meaning of the Corruption Law. Lembong argued that his actions were part of the government's policy to stabilize sugar prices and did not constitute abuse of authority.⁹⁵

Second, there was debate about the nature of ministerial discretion in economic policy. Proponents of abolition argued that ministers should have some discretion to make policy decisions without fear of criminal prosecution, provided the decisions are made in good faith and without personal benefit.⁹⁶

Third, there was debate about the impact of the policy on state finances. The prosecution argued that the state had suffered losses due to the import policy, but Lembong's supporters argued that the policy had actually benefited the public by stabilizing sugar prices.⁹⁷

4.8 Comparative Analysis of Clemency Practices in Selected Jurisdictions

Comparative analysis of clemency practices in other jurisdictions provides valuable insights for Indonesian reform efforts. This analysis draws on the experiences of the United States, Germany, and France, which represent different approaches to clemency regulation.⁹⁸

4.8.1 The United States Model

The United States presidential pardon power is established in Article II, Section 2 of the US Constitution, which provides the president with "Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment."⁹⁹ This power is broad and largely unchecked, subject only to the limitation that it cannot be used in impeachment cases.¹⁰⁰

The US approach has been criticized for its potential for abuse and its lack of transparency. The pardon power has been used in controversial cases, including the pardon of individuals convicted of corruption and other serious offenses.¹⁰¹

4.8.2 The German Model

The German approach to clemency is more constrained than the US model. The German Basic Law (Grundgesetz) provides for the president's clemency power in Article 60, which establishes that the president has the power to pardon on behalf of the Federation.¹⁰² However, the exercise of this power is subject to the principle of the rule of law and the requirement of proportionality.¹⁰³

4.8.3 The French Model

The French approach to clemency combines presidential authority with parliamentary oversight. The French President has the power to grant clemency under Article 17 of the Constitution, but this power is limited by the requirement that the President must consult with the High Council of the Judiciary.¹⁰⁴

The French model provides a useful comparison for Indonesia, as it combines executive authority with institutional oversight from the judiciary.¹⁰⁵

4.8.4 Lessons for Indonesia

⁹⁵Ibid.

⁹⁶Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

⁹⁷Yuspar and Fahmiron, "Abolisi dalam Perspektif Tindak Pidana Korupsi."

⁹⁸Van Hoecke, *Methodologies of Legal Research*.

⁹⁹United States Constitution, Article II, Section 2.

¹⁰⁰Ibid.

¹⁰¹Coffee, "Corporate Crime and Punishment."

¹⁰²German Basic Law, Article 60.

¹⁰³Ibid.

¹⁰⁴French Constitution, Article 17.

¹⁰⁵Van Hoecke, *Methodologies of Legal Research*.

The comparative analysis reveals several lessons for Indonesia. First, clear substantive criteria are essential for preventing abuse and ensuring consistency.¹⁰⁶ Second, oversight mechanisms, whether legislative or judicial, are necessary to ensure accountability.¹⁰⁷ Third, procedural transparency is essential for maintaining public trust.¹⁰⁸ Fourth, normative limitations on the types of offenses eligible for clemency are important for protecting the integrity of the legal system.¹⁰⁹

4.9 The Impact of Abolition on Indonesia's Criminal Justice System

The granting of abolition to Tom Lembong has significant implications for Indonesia's criminal justice system. The case raises questions about the effectiveness of anti-corruption enforcement and the integrity of the judicial process.¹¹⁰

First, the case undermines the deterrent effect of criminal law. If even high-profile corruption cases can be terminated through political processes, the incentive to engage in corrupt behavior is reduced.¹¹¹

Second, the case erodes public trust in the justice system. Perceptions of selective justice and elite impunity can undermine the legitimacy of legal institutions.¹¹²

Third, the case creates a dangerous precedent that could be exploited by other elites. If abolition can be granted to a former minister convicted of corruption, it can also be granted to other individuals in similar situations.¹¹³

Fourth, the case raises questions about the relationship between the executive and judicial branches. The use of abolition to override a judicial decision raises concerns about the independence of the judiciary and the separation of powers.¹¹⁴

4.10.1 Enactment of a Comprehensive Abolition Law

The government should enact a comprehensive abolition law that establishes clear substantive criteria, procedural safeguards, and oversight mechanisms.¹¹⁵ This law should define the circumstances in which abolition may be granted, the procedure for considering applications, and the mechanisms for oversight and review.¹¹⁶

4.10.2 Establishment of Substantive Criteria

The abolition law should establish clear substantive criteria for granting abolition. These criteria should include: the absence of mens rea; the presence of manifest injustice in the judicial process; and the existence of exceptional circumstances.¹¹⁷

4.10.3 Strengthening of DPR Oversight

The DPR should strengthen its oversight capacity to conduct substantive review of proposed abolition decisions. This requires investment in legal expertise and the development of clear guidelines for review.¹¹⁸

4.10.4 Exclusion of Extraordinary Crimes

¹⁰⁶Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

¹⁰⁷Yuspar and Fahmiron, "Abolisi dalam Perspektif Tindak Pidana Korupsi."

¹⁰⁸Ibid.

¹⁰⁹Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

¹¹⁰Yuspar and Fahmiron, "Abolisi dalam Perspektif Tindak Pidana Korupsi."

¹¹¹Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

¹¹²Yuspar and Fahmiron, "Abolisi dalam Perspektif Tindak Pidana Korupsi."

¹¹³Ibid.

¹¹⁴Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

¹¹⁵Van Hoecke, *Methodologies of Legal Research*.

¹¹⁶Marzuki, *Penelitian Hukum*.

¹¹⁷Yuspar and Fahmiron, "Abolisi dalam Perspektif Tindak Pidana Korupsi."

¹¹⁸Rifa'i and Muhtada, "The President's Authority in Granting Abolition."

The abolition law should exclude extraordinary crimes, including corruption, from the scope of abolition eligibility, except in exceptional circumstances where the absence of mens rea is clearly established.¹¹⁹

4.10.5 Promotion of Transparency

The abolition process should be transparent, with public hearings, publication of reasons, and opportunity for affected parties to be heard.¹²⁰

4.10.6 Judicial Review Mechanism

Consideration should be given to establishing a mechanism for judicial review of abolition decisions, at least to the extent of ensuring compliance with constitutional and statutory requirements.

5. CONCLUSION

This study has demonstrated that the existing framework of abolition regulation in Indonesia remains inadequate to address the complexities exposed by recent cases. The granting of abolition to Tom Lembong has revealed significant normative gaps, including the absence of clear substantive criteria, weak oversight mechanisms, and the potential for abolition to function as an instrument of political compromise rather than constitutional correction.¹²¹

The tension between presidential prerogative and the rule of law remains unresolved. While abolition serves an important function as a “safety valve” in the constitutional system, its use in corruption cases raises concerns about the integrity of anti-corruption enforcement and the principle of equality before the law.¹²²

Building on these findings, this study proposes the Constitutional Correction Framework for Abolition as a reconstructed model. This framework shifts the focus from procedural to substantive regulation, emphasizing four interconnected elements: substantive criteria, strengthened oversight, procedural transparency, and normative limitations.¹²³

From a policy perspective, several recommendations can be advanced. First, the government should initiate legislative reform to provide a comprehensive legal framework for abolition.¹²⁴ Second, the DPR should strengthen its oversight capacity to conduct substantive review of proposed abolition decisions.¹²⁵ Third, consideration should be given to establishing a mechanism for judicial review of abolition decisions.¹²⁶ Fourth, abolition decisions should be subject to public participation.¹²⁷

Future research should explore the practical application of the Constitutional Correction Framework through case studies of abolition decisions in various contexts.¹²⁸

In conclusion, the reconstruction of abolition regulation through the Constitutional Correction Framework offers a timely response to the challenges posed by recent cases. By balancing presidential prerogative, checks and balances, and the rule of law, it enhances both the accountability and effectiveness of the constitutional system. It is hoped that this study will contribute to ongoing constitutional reform and provide a foundation for a more just and accountable exercise of presidential prerogative authority in Indonesia.¹²⁹

¹¹⁹Yuspar and Fahmiron, “Abolisi dalam Perspektif Tindak Pidana Korupsi.”

¹²⁰Rifa'i and Muhtada, “The President's Authority in Granting Abolition.”

¹²¹Rifa'i and Muhtada, “The President's Authority in Granting Abolition.”

¹²²Yuspar and Fahmiron, “Abolisi dalam Perspektif Tindak Pidana Korupsi.”

¹²³Rifa'i and Muhtada, “The President's Authority in Granting Abolition.”

¹²⁴Van Hoecke, *Methodologies of Legal Research*.

¹²⁵Marzuki, *Penelitian Hukum*.

¹²⁶Rifa'i and Muhtada, “The President's Authority in Granting Abolition.”

¹²⁷Yuspar and Fahmiron, “Abolisi dalam Perspektif Tindak Pidana Korupsi.”

¹²⁸Ashworth and Horder, *Principles of Criminal Law*.

¹²⁹Coffee, “Corporate Crime and Punishment.”

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