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The Urgency of Governing Amnesty Authority in Indonesia's Democratic Rule of Law: A Study of the Case of Hasto Kristiyanto

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Abstract: The granting of amnesty to Hasto Kristiyanto has sparked serious public debate, particularly regarding the potential politicization of this legal instrument. This study analyzes the authority of amnesty in the Hasto Kristiyanto case using a normative-juridical approach. The results show that although procedurally it meets formal requirements, this amnesty raises questions regarding constitutional limitations and legal political implications. The concept of "state interest" as the basis for granting amnesty requires a more objective interpretation to avoid political subjectivity. The resulting implications include the potential for weakening judicial independence, erosion of the rule of law, and decreased public trust in the Indonesian criminal justice system. The study recommends the need for governance of amnesty authority in a democratic Indonesia, such as objective criteria for state interests, strengthening the checks and balances mechanism, limiting the types of crimes that can be pardoned, and increasing transparency to ensure fair implementation and in line with the principles of a democratic state under the rule of law.

Keywords: authority, amnesty, democratic

INTRODUCTION

Corruption is a serious problem facing Indonesia as a developing nation. Corruption is a form of extraordinary crime because it falls within the domain of Hostis Humanis Generis, or the enemy of all humanity. Furthermore, the victims of corruption are the state and its people, as corruption disrupts the nation's finances and economy (Alkostar, 2013). Corruption not only harms state finances but also undermines the social, economic, and political order of the nation. In its efforts to eradicate corruption, the state has various legal instruments, ranging from prevention to prosecution through the judicial process.

On the other hand, the Indonesian legal system also recognizes the concepts of amnesty and abolition as forms of pardon that the state can grant to perpetrators of criminal acts. Amnesty and abolition are presidential prerogatives stipulated in the 1945 Constitution and

its regulations. However, the use of these two instruments in the context of corruption raises complex issues and debates.

Granting amnesty in corruption cases creates a dilemma between political interests, law enforcement, and the public's sense of justice. A major case that garnered widespread public attention was the granting of amnesty to Hasto Kristiyanto, a defendant in an ongoing corruption case.

The government granted amnesty to Hasto Kristiyanto, the Secretary General of the Indonesian Democratic Party of Struggle (PDIP). Minister of Law Supratman Andi Agtas stated that this was done to foster unity ahead of Indonesia's Independence Day celebrations on August 17th. The House of Representatives (DPR) approved amnesty for 1,116 convicted individuals, including Hasto Kristiyanto, as stipulated in Presidential Decree No. 42 Pres 072725 dated July 30, 2025. It marked the first implementation of presidential prerogative by President Prabowo Subianto and set an important precedent in contemporary Indonesian constitutional practice. This policy sparked a profound constitutional debate regarding the limits of the amnesty authority within the Indonesian legal system. The political-legal dynamics surrounding this decision reflect the complex relationship between the executive, judicial, and legislative branches in resolving politically charged criminal cases.

Hasto Kristiyanto was sentenced to 3.5 years in prison for bribery related to the Harun Masiku corruption case. The Hasto Kristiyanto case relates to alleged bribery in the replacement process for members of the House of Representatives (DPR). The complexity of both cases lies in the political-legal dimension behind them, where the law enforcement process is considered inseparable from certain political interests. This makes the implementation of amnesty a controversial but relevant instrument for resolution, requiring in-depth study.

Article 14, paragraph (2) of the 1945 Constitution authorizes the President to grant amnesty and abolition, considering the considerations of the House of Representatives. The implementation of this constitutional provision is outlined in Emergency Law Number 11 of 1954 concerning Amnesty and Abolition, which states that the President, in the interest of the state, may grant amnesty and abolition to individuals who have committed a crime after receiving written advice from the Supreme Court at the request of the Minister of Justice. The provisions of Article 4 of the Emergency Law explain that granting amnesty removes all criminal legal consequences, while granting abolition eliminates prosecution. This fundamental difference reflects the gradation of pardons that the President can grant, where amnesty removes legal consequences following a court ruling. This legal basis provides the constitutional legitimacy for the President's pardoning of Hasto Kristiyanto.

In response to this policy, the ICJR called for transparency in explaining the rationale behind granting Hasto Kristiyanto amnesty. The ICJR believes that without a clear justification, this decision could be considered an intervention in the law enforcement process, which should be independent and free from political interests. The ICJR has noted the lack of a transparent general policy explaining the criteria for granting amnesty and how the verification process is done. It is merely a narrative from government actors, with no clear, standardized rules.

Prior to the amnesty, the Corruption Eradication Commission (KPK) had prepared to file an appeal with the Jakarta High Court. However, it was again unable to do anything because Hasto had been granted amnesty by the government. The KPK was left with no choice but to act after the President granted Hasto Kristiyanto amnesty. The KPK stated that it had worked optimally in pursuing the legal process against the Secretary-General of the Indonesian Democratic Party of Struggle (PDI-P). KPK Spokesperson Budi Prasetyo, at the KPK's Red and White Building, emphasized that the anti-corruption agency had performed well and had been reviewed by the KPK Supervisory Board. Furthermore, the investigative

team and investigators had performed well throughout the process, from gathering evidence and preparing the indictment and the prosecution to the judge's verdict.

The ICJR emphasized concerns that such a policy would be unclear, prone to politicization, and fail to address the root of Indonesia's legal problems. How could all complex legal policy issues be resolved simply by granting amnesty? Problematic law enforcement will continue to occur if the criminal justice process is unaccountable and there is no effective oversight. Based on the background that has been described, this study aims to analyze in depth, first, what the constitutional limitations of the President's authority to grant amnesty are based on the 1945 Constitution and related laws and regulations in the context of the Hasto Kristiyanto case. Second, how is the procedural mechanism for granting amnesty to Hasto Kristiyanto reviewed from a normative-juridical aspect, including the fulfillment of administrative and substantive requirements stipulated in Emergency Law Number 11 of 1954? Third, what are the legal and political implications of the implementation of the amnesty for the Indonesian criminal justice system, particularly in terms of judicial independence, the rule of law, and public trust in the legal system?

METHOD

This research employs a normative legal research method with a statute approach and a case approach. The research paradigm used is the legal positivism paradigm, which views law as an autonomous system of norms that can be studied objectively through analysis of positive legal texts.

This research utilizes secondary data consisting of primary, secondary, and tertiary legal materials. The data collection technique was carried out through document studies (documentary study) by means of inventory, identification, and classification of legal materials relevant to amnesty, presidential authority, and the Hasto Kristiyanto case. The data analysis technique used is qualitative analysis with a legal interpretation method through a legal hermeneutics approach.

RESULT AND DISCUSSION

Constitutional Basis for Amnesty Authority

The President's authority to grant amnesty is a constitutional prerogative explicitly regulated in Article 14 paragraph (2) of the 1945 Constitution, which states that "The President grants amnesty and abolition by taking into account the considerations of the People's Representative Council." This provision indicates that the amnesty authority is an attributive authority granted directly by the constitution to the President as head of state and head of government. In the context of H.D. van Wijk's theory of authority, this authority is attributive because it derives directly from the constitution without going through a delegation process or mandate from another institution (For, Tasks, and Fulfillment 2024). The implementation of this constitutional provision is further elaborated in Emergency Law Number 11 of 1954 concerning Amnesty and Abolition. Article 1 of this law states that "The President, in the interest of the state, may grant amnesty and abolition to persons who have committed a crime. The President grants amnesty and abolition after receiving written advice from the Supreme Court, which delivers such advice at the request of the Minister of Justice."

This provision demonstrates the existence of a checks and balances mechanism in the implementation of amnesty authority, where the President must consider advice from the DPR and the Supreme Court (Pangaribuan, Palilingan, and Wewengkang 2023). The fundamental difference between amnesty and abolition lies in the timing of the grant and its legal consequences. According to Article 4 of Emergency Law Number 11 of 1954, "By granting amnesty, all criminal legal consequences are extinguished for the individuals in question. By granting abolition, prosecution against the individuals in question is abolished."

Amnesty is granted after a legally binding court decision and extinguishes all criminal legal consequences, while abolition is granted before or during the trial process and halts prosecution. This constitutional basis provides strong legal legitimacy for the President to use the amnesty authority as an instrument of pardon in the Indonesian criminal justice system, but remains within the constitutional corridor and with due regard to the principles of the rule of law (Pembinaan and Nasional 2022).

Constitutional and Procedural Limitations on Amnesty Powers

The implementation of amnesty cannot be carried out arbitrarily because it is bound by strict constitutional and procedural limitations. The first constitutional limitation is the President's obligation to "take into account the considerations of the People's Representative Council" as mandated in Article 14, paragraph (2) of the 1945 Constitution. The phrase "taking into account the considerations" indicates that the DPR has an important role in the amnesty decision-making process, even though these considerations are not absolutely binding on the President (Ahmad 2021). This reflects the principle of checks and balances in the Indonesian constitutional system, where executive power is limited by legislative power (MPR RI 2017). The second procedural limitation is the President's obligation to obtain written advice from the Supreme Court at the request of the Minister of Law and Human Rights (Mahardika 2019). This provision indicates a legal consultation mechanism that must be met before the President exercises his authority (Rohmah 2024).

The Supreme Court, as the highest judicial institution, has the competence to provide legal advice regarding the legal aspects of the amnesty plan. This process ensures that the President's decision does not conflict with the principles of law and justice. The third substantive limitation is the requirement of "state interest" as the basis for granting amnesty. The concept of state interest in this context must be interpreted objectively and not narrowly, encompassing the interests of national unity, political stability, and national reconciliation.

In the case of Hasto Kristiyanto, the argument of national interests was linked to efforts to create unity ahead of the celebration of Indonesian Independence Day. However, this interpretation of state interest must be proportionate and not contradict the principle of the rule of law. These limitations demonstrate that, despite its prerogative nature, the amnesty authority remains subject to the rule of law and cannot be used to protect narrow political interests or avoid legal accountability that should be upheld (Ramadani, Perwira, and Dewansyah 2021).

Hasto Kristiyanto Amnesty Case Analysis

Case Description 1: Corruption committed by Suspect HASTO KRISTIYANTO, together with HARUN MASIKU and colleagues, involved giving gifts or promises to WAHYU SETIAWAN, a member of the General Elections Commission of the Republic of Indonesia for the 2017-2022 period, along with AGUSTIANI TIO F, regarding the appointment of elected members of the Indonesian House of Representatives for the 2019-2024 period, as referred to in Article 5 paragraph (1) letter a or Article 5 paragraph (1) letter b, or Article 13 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code.

The acts include:

- a. Mr. HASTO KRISTIYANTO, together with Mr. HARUN MASIQU, Mr. SAEFUL BAHRI, and Mr. DONNY TRI ISTIQOMAH, bribed Mr. WAHYU SETIAWAN and Ms. AGUSTINA TIO FRIDELINA in the amount of SGD 19,000 and SGD 38,350 so that Mr. HARUN MASIQU could be appointed as a member of the Indonesian House of Representatives for the 2019-2024 period from South Sumatra Electoral District I.
- b. HASTO KRISTIYANTO carried out preliminary actions before bribing WAHYU SETIAWAN, namely ordering and threatening RIEZKY APRILIA to resign as an elected legislative candidate so that HARUN MASIQU could replace him.
- c. HASTO KRISTIYANTO ordered Mr. DONNY TRI ISQITOMAH to prepare a legal study on the Implementation of the Supreme Court Decision of the Republic of Indonesia No. 57P/HUM/2019 dated August 5, 2019, and a letter requesting the implementation of the Supreme Court's Fatwa request to the General Elections Commission (KPU);
- d. HASTO KRISTIYANTO directed and controlled SAEFUL BAHRI and DONNY TRI ISTIQOMAH in providing bribes to General Elections Commission (KPU) Commissioner WAHYU SETIAWAN;
- e. HASTO KRISTIYANTO signed a letter requesting a Judicial Review to the Supreme Court on June 24, 2024, and signed letter number 2576/ex/dpp/viii/2019 dated August 5, 2019, regarding the request for the implementation of the Judicial Review decision. He also signed a letter to the Supreme Court on September 13, 2019, requesting a Supreme Court fatwa.

Description of Case 2:

The incident of corruption committed by the suspect HASTO KRISTIYANTO and his friends, namely by intentionally preventing, obstructing, or thwarting directly or indirectly the investigation of the alleged corruption case related to the determination of elected members of the DPR RI 2019-2024 carried out by the suspect HARUN MASIQU together with SAEFUL BAHRI, giving gifts or promises to Civil Servants or State Administrators, namely WAHYU SETIAWAN, as a Member of the General Election Commission of the Republic of Indonesia for the period 2017 to 2024. 2022 together with AGUSTIANI TIO F. as referred to in Article 21 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code.

With actions in the form of:

- a. That during the investigation of the Corruption Crime case, giving gifts or promises to Civil Servants or State Administrators, namely WAHYU SETIAWAN as a Member of the General Election Commission of the Republic of Indonesia for the period 2017 to 2022 together with AGUSTIANI TIO F. related to the Determination of the elected Members of the DPR RI 2019-2024 carried out by the suspect HARUN MASIQU together with SAEFUL BAHRI, as referred to in Article 5 paragraph (1) letter a or Article 5 paragraph (1) letter b or Article 13 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption j.o. Article 55 paragraph (1) point 1 of the Criminal Code in accordance with the Investigation Order Letter Number Sprin.Dik/07/DIK.00/01/01/2020 dated January 9, 2020, and Investigation Order Letter Number Sprin.Dik/07B.2020/DIK.00/01/05/2023 dated May 5, 2023, it was found that HASTO KRITIYANTO, as Secretary General of the PDI Perjuangan for the 2015-2024 period, committed acts of obstruction of justice;

- b. That on January 8, 2020, during the KPK's sting operation, HASTO KRISTIYANTO ordered NUR HASAN (guard of the aspiration house on Jl. Sutan Syahrir No. 12 A, which is usually used as an office by HASTO KRISTIYANTO) to call HARUN MASIKU to soak HARUN MASIKU's communication device/cellphone in water and run away so that it would not be found by KPK officers who were carrying out the sting operation at that time. Since HASTO KRISTIYANTO's order, Harun Masiku has disappeared and is currently on the KPK's wanted list, thus hampering the investigation.
- c. That on January 8, 2020, HASTO KRISTIYANTO and HARUN MASIKU fled and hid in the National Police School Complex, Police Science College (PTIK), from the pursuit of KPK officers who were carrying out their duties. HASTO KRISTIYANTO and HARUN MASIKU, assisted by HENDI KURNIAWAN et al., deliberately obstructed and prevented KPK officers from achieving the objectives of the sting operation. KPK officers were detained for several hours at the PTIK (Indonesian Police Criminal Investigation Unit) for this purpose.
- d. That on June 6, 2024, before the KPK's witness examination, HASTO KRISTIYANTO ordered Kusnadi to drown his cell phone to prevent it from being found by the KPK.
- e. That based on several pieces of evidence indicating the whereabouts of HARUN MASIKU, KPK investigators summoned HASTO KRISTIYANTO on June 10, 2024. During the witness examination, KPK investigators successfully confiscated a cell phone and several other items suspected of being related to the case. Regarding the confiscation of the goods, the investigators reported to the KPK Supervisory Board, the National Human Rights Commission, the National Police Criminal Investigation Agency, the Metro Jaya Regional Police, the National Police's Propam, and a civil lawsuit at the South Jakarta District Court. On HASTO KRISTIYANTO's cellphone, investigators found a voice recording of HASTO KRISTIYANTO with several parties, including YANUAR PRAWIRA WASESA (PDIP PH Team, who managed the defendant Wahyu's PB, and met DANIEL MASIKU after the search. That YANUAR PRAWIRA WASESA is a KPK witness who was questioned on June 12, 2024. That, before being summoned by the KPK, YANUAR PRAWIRA WASESA was summoned on June 6, 2024, and met with HASTO KRISTIYANTO at Sutan Syahrir's house, Number 12A. At the meeting, HASTO KRISTIYANTO directed YANUAR PRAWIRA WASESA to provide a statement that did not expand before being questioned by the Corruption Eradication Committee on June 12, 2024. Due to HASTO KRISTIYANTO's actions, the investigation and search for DPO Harun Masiku were hampered, and the investigation of the case experienced obstacles.

The granting of amnesty to Hasto Kristiyanto, who was sentenced to 3.5 years in prison in a bribery case related to the replacement of members of the House of Representatives (DPR), raises various legal and political issues. From a legal perspective, this amnesty meets formal requirements because it was granted following a legally binding court decision. Hasto Kristiyanto has undergone a complete judicial process, from investigation and prosecution to trial, making the amnesty procedurally justified. However, from a substantive perspective, there are questions regarding the proportionality of amnesty in a corruption case involving a public official. Hasto Kristiyanto's case relates to an alleged bribe of Rp 1.5 billion to former General Elections Commission (KPU) Commissioner Wahyu Setiawan in the process of appointing Harun Masiku as a member of the DPR RI to replace the late Nazarudin Kiemas in the Electoral District of South Sumatra I.

The granting of amnesty in this case eliminates all criminal legal consequences, including imprisonment, fines, and revocation of certain rights. From a corruption eradication perspective, granting amnesty to corruptors could negatively impact corruption prevention and eradication efforts in Indonesia. The political-legal aspects of granting amnesty to Hasto Kristiyanto also require critical analysis. Hasto Kristiyanto is the Secretary-General of the

Indonesian Democratic Party of Struggle (PDIP), which holds a strategic position in the national political landscape. Granting amnesty to this important political figure could be interpreted as an attempt at political reconciliation or as a form of transactional politics. Evaluation of the granting of amnesty to Hasto Kristiyanto must consider the balance between the interests of political reconciliation and upholding the rule of law in Indonesia's criminal justice system.

Political-Legal Implications for the Criminal Justice System

The implementation of amnesty to Hasto Kristiyanto has significant implications for Indonesia's criminal justice system, particularly in terms of judicial sovereignty, the rule of law, and public trust. From the perspective of judicial independence, granting amnesty and abolition could create the perception that the judicial process has been futile because the final decision rests with the executive branch. It has the potential to undermine the credibility of judicial institutions and create legal uncertainty for law enforcers in carrying out their duties. Judges, prosecutors, and investigators may question the effectiveness of their work if their decisions can be overturned through an amnesty mechanism.

The implications for the rule of law are also a major concern in a democratic state governed by the rule of law. The equality before the law requires that all citizens, including public officials and political figures, be treated equally before the law without discrimination. Granting amnesty and abolition to noteworthy figures can create the perception that there is special treatment for certain individuals with political ties to those in power. It has the potential to undermine the principle of the rule of law and create a two-tiered justice system where public officials are treated differently from ordinary citizens. Public trust in the legal system is also tested by the implementation of this amnesty.

The public, who have seen the law enforcement process proceed according to procedure, may be disappointed when they see corruptors released through a political pardon mechanism. It can erode public confidence in the government's commitment to eradicating corruption and consistently enforcing the law. In the long term, this erosion of public trust can impact the legitimacy of the legal system and the stability of democracy. However, on the other hand, amnesty can also be viewed as an instrument of political reconciliation necessary to maintain national stability. The challenge is how to implement this authority proportionally and transparently, while remaining in line with the principles of a democratic rule of law and avoiding long-term negative influences on Indonesia's criminal justice system.

Governance of Amnesty Authority in a Democratic Rule of Law in Indonesia

Based on the analysis of the implementation of amnesty in the Hasto Kristiyanto case, several recommendations are needed to ensure that the president's prerogative authority can be implemented fairly and remains in line with the principles of a democratic rule of law.

First, there needs to be objective and transparent criteria regarding "state interest" as the basis for granting amnesty and abolition. These criteria must be clearly formulated in legislation to avoid subjective interpretation or political bias. The interests of the state must be interpreted broadly to include the interests of national unity, political stability, national reconciliation, and the long-term strategic interests of the Indonesian nation.

Second, there is a need to strengthen the checks and balances mechanism in the amnesty-granting process by giving a more substantive role to the House of Representatives (DPR) and the Supreme Court. The DPR, as representatives of the people, must be given the authority to approve or reject the president's amnesty proposal, not merely to provide consideration. The Supreme Court also needs to be given broader authority to conduct judicial review of the basis and rationale for granting amnesty. This will ensure an effective oversight system for the use of presidential prerogative authority.

Third, there needs to be restrictions on the types of crimes for which amnesty is permitted. Certain crimes, such as corruption, crimes against humanity, genocide, and war crimes, should be excluded from the possibility of amnesty and abolition because they are contrary to Indonesia's international commitments and can lead to impunity.

Fourth, the implementation of amnesty must be accompanied by transparency and public accountability through the publication of the reasons and considerations underlying the decision. It will increase public trust and allow for objective evaluation of government policies.

Fifth, there needs to be a mechanism for periodically evaluating the impact of amnesty on the criminal justice system and corruption eradication in Indonesia.

CONCLUSION

The granting of amnesty in corruption cases, although a presidential prerogative under Article 14 paragraph (2) of the 1945 Constitution, has the potential to be politicized due to the involvement of the House of Representatives (DPR) in the deliberations. The Hasto Kristiyanto case demonstrates that this decision is inconsistent with the principle of proportional justice, prioritizing political interests over legal certainty and deterrent effects. The situation undermines legal consistency, weakens public trust in the judicial system, and creates injustice between political elites and ordinary citizens.

Amnesty needs to be reformulated to be more transparent, accountable, and based on the principle of proportional justice. Pardoning corruptors can only be considered if there is a greater national interest, accompanied by a guarantee of restitution of state losses, and not exploited for short-term political gain. The DPR should emphasize substantive evaluation over political ones, while the government is obliged to ensure that the process is open to public oversight to maintain the legitimacy of the decision.

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