

Juridical Comparison of the Mechanisms of Abolition and Amnesty in the Legal Systems of Russia and Indonesia

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ABSTRACT

The mechanisms of amnesty and abolition in the Indonesian and Russian legal systems serve similar objectives granting pardon or terminating criminal proceedings yet differ in scope and procedure. In Indonesia, amnesty extinguishes criminal legal consequences while preserving the conviction record, whereas abolition terminates prosecution and expunges all charges from inception. Under Article 14 of the 1945 Constitution, the President may propose amnesty or abolition subject to the approval of the House of Representatives (DPR). In contrast, Article 89 of the Russian Constitution vests in the President the individual prerogative to grant pardon without requiring legislative consent. This comparative qualitative study employs data triangulation and an audit trail to ensure the validity, reliability, and transparency of its findings. The study's results indicate that in Indonesia, the 2025 instances of amnesty for political figures and abolition for former ministers exemplify the politicization of clemency processes, characterized by minimal victim participation and absence of objective criteria. Conversely, in Russia, the standard pardon procedure mandates an individual's petition and acknowledgment of guilt, yet the practice of recruiting prisoners into military service under promises of clemency raises ethical and security concerns. Both systems vest broad interpretative discretion in the executive, heightening the risk of arbitrariness. Recommended reforms include the enactment of objective clemency criteria and increased procedural transparency in both jurisdictions, alongside integration of restorative justice principles such as mandatory acknowledgment of guilt, victim involvement, and public oversight to enhance accountability, promote restorative justice, and mitigate executive abuse of power.

Keywords: Amnesty, Abolition, Clemency, Comparative Law, Restorative Justice.

Introduction

In various countries, the prerogative powers to grant abolition (the termination of criminal proceedings) and amnesty (the removal of all legal consequences of a criminal offense) are often regarded as controversial because they touch upon the principles of justice, legal certainty, and the system of checks and balances among branches of government. In Indonesia, these powers are regulated under Article 14 paragraph (2) of the 1945 Constitution and Emergency Law No. 11/1954 on Amnesty and Abolition. On the other hand, the Russian legal system also recognizes the president's authority to grant clemency through the pardon mechanism (grace and amnesty) pursuant to Articles 89 and 50 of the Constitution of the Russian Federation and Presidential Decree No. 787/2020 on the Pardon Commissions in each federal subject (Vasiljević Prodanović et al., 2022).

The divergence between the legislation and practices of the two countries raises critical questions regarding their effectiveness, limitations, and legal consequences. In Indonesia, the dual usage of the terms and procedures “amnesty” and “abolition” often gives rise to public misconceptions, as exemplified by the politically charged grant processes in the cases of Tom Lembong and Hasto Kristiyanto in July 2025 (Official Inews, 2025). Meanwhile, in Russia, although the pardon mechanism has been standardized through regulations governing application procedures and the pardons commission, in practice there is an emphasis on the offender's admission of guilt and the continuation of a politics of clemency, including

gratuities for former convicts who are recruited to fight in Ukraine (Baumgartner & Morris, 2024).

The court's judgments and the president's decisions in the two countries reveal a fundamental distinction: (1) In Indonesia, the grant of amnesty to political offenders on a collective basis must receive the House of Representatives' approval, and has at times been criticized as a tool of executive political power (Ahmad, 2021). (2) In Russia, although pardon applications are individual in nature and do not require legislative approval, their juridical legitimacy is linked to the requirement of a guilty plea and the corresponding function of the pardon commission at the federal level (Baumgartner & Morris, 2024).

Theoretically, the instrument of clemency is rooted in the state's policy of law aimed at preserving national stability, fostering reconciliation, and addressing humanitarian considerations. The theory of restorative justice holds that granting clemency can alleviate excessive incarceration burdens and serve as a tool for social reconciliation. However, if it is not grounded in substantive and procedural justice principles, this instrument may instead perpetrate injustice against victims and undermine public confidence in the judicial system (Ahmad, 2021).

Several previous studies: (1) A normative juridical study on the granting of amnesty in Indonesia, focusing on the historical and political aspects of amnesty in political cases from the post-1949 period up to the Baiq Nuril Maknun case (Khairunnisah, 2022). (2) A critical analysis of the 1945 constitutional reforms proposes restoring the Supreme Court's role as the primary advisor to the executive on matters of amnesty and abolition (Ahmad, 2021). (3) A comparative study in Russia has largely focused on the pardon mechanism and its effects in the context of human rights enforcement during the Ukraine conflict, but has not specifically contrasted this with Indonesia's mechanisms (Baumgartner & Morris, 2024).

This study presents an unprecedented comparative juridical analysis that uniquely positions the Indonesian and Russian clemency systems within a comprehensive framework that bridges constitutional law, criminal justice, and restorative justice theories. While previous scholarship has examined amnesty and abolition mechanisms in isolation within single jurisdictions, this research introduces a novel tri-dimensional analytical approach that simultaneously evaluates constitutional foundations, procedural implementations, and contemporary political applications across two distinct legal traditions – the civil law system of Indonesia and the hybrid constitutional-federal system of Russia. The study's originality lies in its empirical examination of recent high-profile clemency cases (Indonesia's 2025 political amnesty and abolition decisions, and Russia's military recruitment-based pardons during the Ukraine conflict) through the lens of restorative justice principles, revealing previously unidentified patterns of executive discretionary abuse and procedural politicization. Unlike existing comparative legal research that focuses primarily on structural differences, this investigation advances a transformative theoretical framework that conceptualizes clemency not merely as executive prerogative, but as a restorative justice instrument requiring victim participation, public transparency, and objective criteria. The study's methodological innovation combines data triangulation with audit trail verification specifically adapted for cross-jurisdictional clemency analysis, establishing a replicable research model for future comparative studies of executive clemency powers. This research fills a critical gap in international comparative law by providing the first systematic analysis of how clemency mechanisms can be reformed through restorative justice integration, offering concrete procedural recommendations that transcend traditional jurisdictional boundaries and contribute to both theoretical understanding and practical policy reform in executive clemency systems globally.

This study conducts a juridical comparison of abolition and amnesty mechanisms within Russian and Indonesian legal systems through: (1) constitutional framework analysis; (2) empirical evaluation of selected cases from Indonesia and post-2020 Russian pardon practices; and (3) best-practice recommendations integrating restorative justice principles with inter-institutional transparency.

Key research questions examine how regulations and applications differ between countries, the juridical implications for justice and law enforcement principles, institutional roles in clemency processes, and consequences for public perception plus inter-institutional power relations. This analytical framework seeks comprehensive understanding of legal forgiveness mechanisms across these divergent systems.

Methods Research

This study employs a qualitative methodology with a comparative-normative approach aimed at juxtaposing Indonesia's abolition and amnesty mechanisms with Russia's pardon (grace) system. The qualitative design was selected to explore legal phenomena in depth and in their natural context without data manipulation. The comparative method involves analyzing statutory frameworks, implementation procedures, and the roles of relevant institutions in the grant of legal clemency within both legal systems.

Primary legal materials including constitutions, statutes, presidential regulations, judicial decisions, and presidential decrees serve as the core data sources, supplemented by secondary legal materials such as academic literature and policy reports. Additionally, empirical case studies from selected instances in Indonesia and Russia provide analytical substance. Data analysis techniques comprise content analysis of legal documents and regulations and comparative analysis to identify fundamental similarities and differences between the two systems. Empirical case analysis further assesses the impact of abolition and amnesty practices on principles of justice and transparency.

This methodology is reinforced by data triangulation to enhance the validity and reliability of findings, as well as by an audit trail to ensure transparency and research replicability. Such an approach aligns with the standards of comparative qualitative legal research recommended in the literature, which emphasize deep analysis and cross-system comparison as means to understand the divergences and juridical implications arising in both practical and theoretical contexts.

The selection of Indonesia's 2025 clemency cases involving Tom Lembong (abolition) and Hasto Kristiyanto (amnesty) alongside Russia's 2024 prisoner-military recruitment pardons represents a methodologically sound application of "critical case" selection criteria, where cases are chosen for their theoretical significance and contemporary relevance rather than statistical representativeness. These cases exemplify what comparative legal scholars term "most different systems" design, enabling examination of how distinct constitutional frameworks Indonesia's parliamentary-presidential hybrid requiring DPR approval versus Russia's pure presidential prerogative system produce similar patterns of executive discretionary abuse despite different procedural constraints. The temporal proximity of these cases (2024-2025) ensures analytical contemporaneity while their high political profile guarantees sufficient documentary evidence and public scrutiny necessary for rigorous comparative analysis. Indonesia's cases demonstrate clemency politicization through reconciliation rhetoric aimed at securing broader political coalition support, while Russia's military recruitment pardons reveal instrumentalization of clemency for state warfare objectives. Both cases satisfy the "critical case" criterion by representing extreme instances that illuminate broader systemic vulnerabilities: if clemency abuse occurs in these highly visible, politically sensitive contexts, it suggests endemic problems in executive clemency systems

more generally. Furthermore, these cases provide what methodological literature terms "diverse outcomes on the dependent variable" different types of clemency abuse (political reconciliation versus military recruitment) generated by similar causal mechanisms (unconstrained executive discretion), thereby strengthening theoretical inferences about the relationship between institutional design and clemency misuse.

Results and Discussion

Executive Clemency in Indonesia: Legal Framework and Practice

1. Constitutional and Statutory Basis

In the Indonesian legal system, the granting of clemency, amnesty, and abolition is a presidential prerogative, a power specifically regulated by Article 14 of the 1945 Constitution. This constitutional provision serves as the foundational grant of authority for the President to issue these forms of executive mercy. The exercise of these prerogative rights, however, is not absolute but is subject to a system of checks and balances, a feature that became particularly pronounced following the amendments to the 1945 Constitution (Adhayanto et al., 2018).

For clemency and rehabilitation, the President is constitutionally required to consider the views of the Supreme Court. This requirement is explicitly articulated in Article 14, paragraph (1) of the 1945 Constitution. Conversely, for the granting of amnesty and abolition, the procedure mandates the approval of the House of Representatives (DPR). This parliamentary consent represents a key distinguishing characteristic of Indonesia's system, setting it apart from more unilateral executive powers found in other jurisdictions.

Specific legislation further defines the scope and application of these powers. Clemency, for instance, is regulated by Law No. 5 of 2010, which amends Law No. 22 of 2002 concerning Clemency. This legislation stipulates that clemency can be sought by individuals sentenced to death, life imprisonment, or a minimum of two years in prison, provided that the court ruling has achieved permanent legal force (*Inkracht*). Furthermore, Article 6, paragraph (1) of Law No. 5 of 2010 explicitly mandates that clemency decisions must align with human rights standards and uphold justice (Setyaningrum & Setiyono, 2021). In contrast, the legal frameworks governing amnesty and abolition have not undergone updates since the amendments to the 1945 Constitution, a condition that has led to regulatory stagnation and is a significant point of critique.

The historical development of presidential prerogative in Indonesia reveals a deliberate shift in governance philosophy. The initial 1945 Constitution, prior to its amendments, established an "executive heavy" system, granting the President significant, almost absolute, freedom in exercising prerogative rights, including those under Article 14. This concentration of power drew criticism regarding the democratic nature of the state. The post-1998 amendments to the 1945 Constitution were specifically designed to curtail presidential power and reinforce a strict separation of powers, introducing requirements for approval or consideration from other state institutions (Adhayanto et al., 2018). This evolution demonstrates a conscious move towards a more democratic and accountable governance model, where executive mercy is not a unilateral act but a shared responsibility, embodying a commitment to checks and balances. The differentiation in institutional concurrence Supreme Court for clemency/rehabilitation and DPR for amnesty/abolition reflects a nuanced approach to distinct forms of executive mercy, likely acknowledging their varying legal impacts and political sensitivities. Clemency, often an individual act of compassion applied after conviction, involves judicial review, while amnesty and abolition, which can affect groups or ongoing prosecutions and carry broader political implications, necessitate legislative oversight.

The persistent stagnation of laws governing amnesty and abolition, despite the constitutional amendments requiring DPR approval, suggests a legislative inertia or a deliberate absence of detailed operational guidelines. This stands in stark contrast to the more developed legal framework for clemency, as evidenced by Law No. 5 of 2010. This disparity indicates a potential gap in the legislative commitment to fully operationalize the checks and balances for amnesty and abolition, potentially leaving them more susceptible to discretionary and politically influenced application compared to clemency.

2. Procedures and Application

The general procedure for amnesty and abolition in Indonesia involves a presidential proposal that requires approval from the House of Representatives (DPR). For clemency, the President makes the final decision after considering the Supreme Court's views.

The types of forgiveness and their legal consequences are distinct within the Indonesian system. Amnesty extinguishes all criminal legal consequences for an individual or a group, but the criminal record itself persists. This implies that while the penalty is removed, the underlying conviction remains. In contrast, abolition terminates the prosecution process for specific persons and comprehensively expunges both the charges and the punishment. This represents a more complete erasure of legal consequences. Clemency, as a presidential privilege, involves changes, waivers, reductions, or the complete elimination of criminal executions, and it becomes applicable only after a court decision has attained permanent legal force (*Inkracht*) (Setyaningrum & Setiyono, 2021).

A significant challenge arises from the absence of updated regulations and clear operational guidelines, which makes it difficult for the public to discern the precise distinctions between amnesty (erasure of legal consequences) and abolition (termination of prosecution). This lack of clarity contributes to an environment of opacity surrounding these executive acts. It is crucial to differentiate between the presidential prerogative of abolition, which is an executive act terminating prosecution, and the "reasons for the abolition of the crime" as stipulated in the Criminal Code (KUHP) (Asmadi, 2022). The latter refers to judicial defenses or justifications, such as *overmacht* (coercive power) under Article 48, forced defense under Article 49(1), or inability to be responsible under Article 44, which prevent a judge from imposing a penalty even if an offense has been committed. These are internal criminal law principles, distinct from the executive act of abolition. This report focuses exclusively on the executive prerogative.

The stagnation of laws governing amnesty and abolition directly impacts legal certainty. When procedures are opaque and definitions are unclear, as evidenced by the public's difficulty in distinguishing between amnesty and abolition, it creates an environment susceptible to misinterpretation and potential misuse. This lack of clarity, compounded by the pervasive influence of interference and political power within the broader Indonesian legal system, can significantly erode public trust. If the mechanisms for executive mercy are not transparently and consistently applied, they risk being perceived as arbitrary or politically motivated, rather than as instruments of justice or compassion. This situation directly correlates with broader legal challenges in Indonesia, particularly the perceived disconnect between the perspectives of academics and experts and the decision-making processes of the government in law enforcement, leading to "weak legal requirements and loss of public trust". The absence of clear operational guidelines and updated regulations for amnesty and abolition means that their application relies heavily on presidential and parliamentary discretion, potentially leading to inconsistent outcomes and a perception of selective justice, thereby undermining the fundamental principle of the rule of law, where similar cases should be treated consistently (Widjaja, 2022).

3. Contemporary Practices and Criticisms

A primary criticism leveled against the Indonesian mechanism for executive clemency is its inherent potential for politicization. The existing regulatory framework, characterized by a lack of updates and operational guidelines, renders these procedures easily exploitable as political instruments.

Recent cases exemplify this concern. President Prabowo Subianto's granting of amnesty to Hasto Kristiyanto, the Secretary-General of the Indonesian Democratic Party of Struggle (PDI-P), and abolition to former Trade Minister Thomas Lembong, are widely cited as highly political maneuvers. The amnesty granted to Kristiyanto, which nullified his punishment while retaining the guilty verdict, was perceived as a strategy to secure support from the largest party in Parliament. Similarly, the abolition granted to Lembong, which fully erased both the charges and the sentence, was viewed as a direct response to public protest (Teresia, 2025).

Another significant shortcoming is the limited involvement of victims and the community in the amnesty and abolition processes. Decisions are typically made by the President and the House of Representatives without consulting those who have been harmed. This absence of victim participation directly contradicts the core principles of encounter and repair central to restorative justice. Consequently, victims of corruption or political crimes frequently experience marginalization, while perpetrators appear to receive political privileges. The granting of such executive mercy without adequate consideration for justice for victims may also infringe upon principles of non-discrimination and the right to legal protection (Fauzi, 2021).

Furthermore, the potential for politicization and the lack of transparency in these mechanisms raise concerns about their capacity to weaken anti-corruption law enforcement efforts.

The explicit mention of "securing support from the largest party in Parliament" and "response to public protest" as underlying motivations for granting amnesty or abolition reveals a profound tension between political expediency and the fundamental principles of the rule of law. While executive mercy can serve legitimate purposes, such as fostering national unity or rectifying miscarriages of justice, its deployment as a tool for political maneuvering fundamentally compromises its integrity. This creates a perception that justice is not impartial but rather swayed by power dynamics, potentially fostering impunity for politically connected individuals. This situation further exacerbates existing criticisms within the broader Indonesian legal landscape regarding a "legal mafia" and the notion that "law is ready to be played" (Widjaja, 2022). The distinction that amnesty removes only the penalty while retaining the criminal record, whereas abolition expunges both, provides a graded political instrument, allowing for varying degrees of "forgiveness" based on political calculation. The politicization of these mechanisms, coupled with the lack of victim involvement, suggests that they currently function more as instruments for consolidating political power than as genuine tools for justice or societal reconciliation. This undermines the legitimacy of the justice system in the eyes of the public and victims.

Executive Pardon in Russia: Legal Framework and Practice

1. Constitutional and Statutory Basis

In Russian law, the right of pardon is established as a constitutional institution. It is regarded as a right enshrined within the constitution for the benefit of the convicted person, serving as a juridical mechanism to mitigate the execution of punishment and to eliminate the legal consequences of the conviction. Article 89 of the Constitution of the Russian Federation

explicitly grants the President the power to "decide on pardoning". Unlike the Indonesian system, this power does not necessitate legislative approval, thereby underscoring the President's extensive discretionary authority in this domain.

Article 85 of the RF Criminal Code defines the forms of pardon within the criminal law sphere, specifying that pardon is applicable only to individuals currently serving criminal sentences, and each case must be considered individually. The legislative regulation of pardons is further supplemented by secondary regulation, notably the Regulation on the Procedure for Considering Petitions for Pardon in the Russian Federation, which is approved by a Decree of the President of the Russian Federation. The 2020 Regulation, in particular, introduced significant novelties to this process (Seliverstov, 2021).

The constitutional framing of clemency as an "individual constitutional right" in Russia presents a crucial distinction from Indonesia's "prerogative power requiring concurrence." While the authority to grant pardon rests with the President, characterizing it as an "individual right" implies a more standardized and potentially accessible process for the convicted person to petition for relief. This theoretical framework suggests an emphasis on the individual's right to seek mercy, rather than solely on the state's discretion to grant it. However, the practical application, particularly the prerequisite of an admission of guilt and the recent trend of military recruitment, reveals a considerable disparity between this theoretical "right" and its actual instrumentalization by the state. This creates a tension where a "right" ostensibly designed to benefit the individual is paradoxically leveraged to serve state interests.

A notable inconsistency arises from the 2020 Regulation's attempt to broaden the categories of convicts eligible for pardon to include those on parole, with suspended sentences, or deferred sentences. This directly contradicts Article 85 of the RF Criminal Code, which explicitly limits pardon to those "serving criminal sentences". This inconsistency suggests a regulatory overreach, where the executive's desire to expand the practical application of pardon potentially to address specific state needs, foreshadowing the military recruitment clashes with established criminal law principles, leading to what has been described as "legal nonsense" (Seliverstov, 2021).

2. Procedures and Application

The pardon mechanism in Russia is primarily petition-based, meaning a convicted individual may submit a request for relief from punishment. Administratively, the President holds the authority to establish clemency commissions in each federative unit, which are tasked with reviewing these applications. A fundamental prerequisite for the consideration of a pardon petition is the applicant's admission of guilt, coupled with the presence of humanitarian grounds. The ultimate decision on pardon rests with the President.

The 2020 Regulation on the Procedure for Considering Petitions for Pardon in the Russian Federation introduced several notable changes (Seliverstov, 2021):

- 1) **Increased Rotation Period for Commission Members:** The composition of pardon commissions is now updated by one-third every five years, a significant increase from the previous two-year period. This change aims to foster deeper engagement and professionalism among commission members.
- 2) **Clarified Analytical and Oversight Functions:** The commissions' oversight function has been reformulated to focus on "monitoring the observance of the right of a person to ask for pardon," although specific forms and methods for this oversight remain undefined.
- 3) **Inclusion of Social Adaptation:** Social adaptation has been explicitly included as a factor to consider when evaluating a pardon petition. This involves assessing elements such as a permanent place of residence, guaranteed employment, maintenance of family connections, and educational attainment.

- 4) **Exclusion of Personal Data Publication:** The new Regulation removed the requirement for publishing personal data of individuals recommended for pardon in the mass media, aligning with personal data protection legislation.
- 5) **Consideration of Victims' Opinions:** The Regulation now allows for the opinions of victims or their relatives to be considered at all stages of the pardon petition process.
- 6) **Expanded Categories for Pardon:** The Regulation expanded the categories of convicts eligible for pardon to include persons released on parole, those with suspended sentences, or deferred sentences (e.g., for drug addiction). This expansion, however, has been criticized as "legal nonsense" because Article 85 of the RF Criminal Code limits pardon to those *serving* sentences, creating a direct contradiction.
- 7) **Direct Application to Commission:** Certain categories of individuals, such as parolees or those with an unexpunged criminal record, are now permitted to apply for pardon directly to the commission at their place of residence or stay, bypassing the administration of institutions that execute sentences. This provision contradicts Article 176 of the RF Criminal Code, which stipulates that a convicted person submits a petition for pardon through the administration of the institution or body executing the sentence, without exceptions.

While the constitutional framing of pardon as an "individual right" and the administrative regulation through commissions might suggest a "more standardized procedure than that of Indonesia", the 2020 Regulation introduces significant internal contradictions. The expansion of pardon eligibility to individuals *not serving* sentences (e.g., parolees, those with suspended sentences) directly conflicts with Article 85 of the RF Criminal Code. This is not merely a procedural adjustment but a fundamental redefinition of "pardon" that subverts established criminal law principles. This indicates that the "standardization" is superficial, and the underlying legal framework is being stretched or even violated to serve unstated, potentially expedient, purposes. The criticism that such changes constitute "legal nonsense" underscores this erosion of legal coherence. These internal inconsistencies within Russian legal regulations regarding pardon create legal uncertainty and undermine the predictability and fairness of the justice system, potentially leading to arbitrary application and further eroding public trust in the rule of law.

3. Contemporary Practices and Criticisms

The most significant contemporary criticism regarding executive pardon in Russia pertains to its instrumentalization in the context of the Ukraine conflict. Thousands of Russian convicts have entered into contracts with the Ministry of Defence to serve in assault units on the front lines, receiving a pardon and release from penal colonies in return.

A prominent example is the case of Tamerlan Eskerkhanov, a murderer sentenced to 14 years' imprisonment, who was granted clemency and released in March 2024 after signing a military contract. In contrast, other individuals involved in the same offense remained incarcerated for having declined the military contract.¹ This phenomenon highlights a fundamental divergence within the Russian system: clemency is being used as an incentive to fulfill the state's military needs.

The pardon process in Russia largely remains without participatory mechanisms involving the legislature or victims, with the ultimate decision resting solely with the President. Although the 2020 Regulation allows for the consideration of victims' opinions, the overall process maintains a closed nature. Despite the constitutional provision framing clemency as an individual right, which theoretically promotes a standardized procedure, its practical application undermines fundamental principles of justice when forgiveness is granted as compensation for participation in armed conflict.¹ Furthermore, the requirement

of a guilt admission and the general absence of victim involvement can diminish the moral legitimacy of the pardon process.

The practice of recruiting inmates for military service is profoundly inconsistent with the principles of restorative justice. Clemency in this context is granted in exchange for participation in conflict, rather than as an effort towards relational repair or rehabilitation. The return of inmates who have served in the war without adequate recovery and reintegration programs poses a risk of increasing crime rates and eroding public trust.

The widespread use of pardon as a military recruitment tool represents a profound perversion of its traditional purpose, which is to offer mercy or rectify injustices. By transforming pardon into a transactional commodity freedom in exchange for military service—the state prioritizes its immediate military needs over fundamental principles of justice, rehabilitation, and public safety. This practice not only undermines the moral legitimacy of the pardon system but also establishes a two-tiered justice system: one for those willing to engage in military service and another for those who are not. The release of violent offenders, such as Tamerlan Eserkhanov, without proper rehabilitation or consideration for public safety, raises serious questions about the state's responsibility to its citizens and the long-term societal consequences, including potential increases in crime rates and the erosion of public trust. This instrumentalization of pardon for military purposes transforms a mechanism of individual mercy into a strategic state tool, blurring the lines between criminal justice and national security. This sets a dangerous precedent, potentially normalizing the use of criminal populations as expendable assets and further distancing the justice system from its stated goals of rehabilitation and societal well-being. It also raises significant human rights concerns, particularly regarding coercion and the potential exploitation of vulnerable individuals.

Comparative Analysis and Restorative Justice Principles

This section provides a detailed comparative analysis of the Indonesian and Russian clemency mechanisms, highlighting their structural and practical divergences and their respective adherence to, or deviation from, restorative justice principles.

1. Structural and Practical Divergences

The constitutional frameworks and operational realities of executive clemency in Indonesia and Russia present notable divergences. In terms of constitutional basis and oversight, Indonesia emphasizes a system of checks and balances, requiring parliamentary (DPR) approval for amnesty and abolition, and Supreme Court consideration for clemency. This design reflects an intent to limit unilateral executive power and promote shared responsibility. Conversely, Russia grants extensive discretionary powers to its President, framing pardon as an individual right that does not necessitate legislative approval. This structure reflects a more centralized executive authority.

Regarding the types of forgiveness, Indonesia clearly distinguishes between amnesty, which removes the penalty but retains the criminal record, and abolition, which halts prosecution and expunges all charges. Russia, on the other hand, primarily focuses on "pardon," which frees a convict from sanctions and removes legal consequences, typically requiring an admission of guilt. The 2020 Regulation in Russia attempts to broaden the scope of pardon, but this has introduced internal legal contradictions (Seliverstov, 2021).

In terms of procedural transparency and regulatory evolution, Indonesia suffers from regulatory stagnation, opaque procedures, and a notable absence of operational guidelines for amnesty and abolition, making it difficult for the public to differentiate between these mechanisms. Russia, while having a more administratively regulated procedure involving clemency commissions, introduced novelties in its 2020 Regulation aimed at standardization

and incorporating victim opinions. However, these novelties have also created "legal nonsense" by contradicting existing criminal law provisions.

The contemporary practices and underlying motivations for executive clemency also differ significantly. In Indonesia, empirical evidence suggests a susceptibility to utilization for political purposes, primarily for political reconciliation and securing parliamentary support. In Russia, the system has demonstrated a susceptibility to utilization for military interests, exploiting the institution of pardons as a recruitment tool for war.

Finally, concerning the issue of justice and accountability, Indonesia faces criticism for potential politicization, lack of transparency, and the potential weakening of anti-corruption law enforcement. In Russia, while individual pardons tend to be standardized, the closed nature of the procedures, the requirement for a guilty plea, and particularly the recruitment of prisoners for military service raise significant questions about accountability, moral legitimacy, and security concerns.

Indonesia's system, with its explicit checks and balances (DPR approval, Supreme Court consideration), theoretically offers greater safeguards against the abuse of power. However, the available information reveals that despite these structural safeguards, the system remains vulnerable to politicization due to regulatory stagnation and a lack of transparency. This indicates that mere structural checks are insufficient without robust, updated operational guidelines and a strong commitment to transparent implementation. Conversely, Russia's centralized, presidential discretion

theoretically allows for swift and decisive action. Yet, in practice, this broad discretion has led to the instrumentalization of pardon for state military needs, fundamentally undermining justice principles. This highlights a paradox: while Indonesia's system is structurally more accountable, its practical application is hampered by legislative inertia; Russia's system, while structurally less accountable, has actively exploited its unilateral nature for state expediency, leading to more egregious violations of justice. The comparison reveals that both models, despite their differing structural designs, ultimately grapple with the challenge of ensuring that executive clemency serves justice rather than political or state interests. The effectiveness of constitutional design is heavily dependent on the integrity of its implementation and the willingness of political actors to adhere to its spirit.

Table 1. Comparative Analysis of Indonesia and Russia

Aspect	Indonesia	Rusia
Constitutional basis	Article 14 of the 1945 Constitution gives the President the prerogative to issue amnesties and abolitions; this requires the approval of the DPR.	Article 89 of the Constitution of the Russian Federation grants the President the power to grant pardon as an individual right; it does not require legislative approval.
Types of forgiveness	Amnesty removes all legal consequences but the criminal record remains, while abolition stops prosecution and expunges the charges.	A pardon frees a convict from the execution of sanctions and removes legal consequences; the condition is usually an admission of guilt.
Procedure	The President proposes amnesty/abolition; the DPR must approve; there is no mechanism for victim or community participation; regulations have not been updated.	The convict submits a petition; the clemency commission assesses; the president decides; no legislative approval is required. In the context of war, the government actively recruits convicts with promises of clemency.

Aspect	Indonesia	Rusia
Contemporary practices	The 2025 case exemplifies the amnesty for opposition politicians and the abolition of former ministers, which has drawn criticism as a political move to unite political forces.	In 2024, thousands of prisoners were granted pardons after signing military contracts; this exploited the institution of pardons as a recruitment tool for war.
The issue of justice	Potential for politicization and lack of transparency; amnesty/abolition could weaken anti-corruption law enforcement.	Individual pardons tend to be standardized, but the closed nature of the procedures and the requirement for a guilty plea raise questions of accountability; the recruitment of prisoners for war raises moral and security concerns.

From the table above, it is evident that Indonesia emphasizes checks and balances through parliamentary approval, yet lacks comprehensive operational guidelines. Russia emphasizes the individual rights of convicts while granting extensive discretionary powers to the president. Empirical practice demonstrates that both systems are susceptible to utilization for political purposes, whether in the context of political reconciliation (Indonesia) or military interests (Russia).

In restorative justice theory, forgiveness should bring together perpetrators, victims, and the community to repair harm. However, amnesty and abolition mechanisms in Indonesia rarely involve victims. Decisions tend to be made by the president and the House of Representatives without consultation with those who have been harmed. Consequently, victims of corruption or political crimes feel marginalized, while perpetrators receive political privileges. The absence of victim participation contradicts the principles of encounter and repair in restorative justice (Zehr & Mika, 2017).

In Russia, pardon is designed as a personal right administered through commissions. Although this administrative process provides structure, the requirement of a guilt admission and the absence of victim involvement can diminish its moral legitimacy. The practice of recruiting inmates for war, as outlined by Reuters, does not meet the principles of restorative justice, as clemency is granted in exchange for participation in the conflict, rather than as an effort toward relational repair or rehabilitation. The return of inmates who have served in the war without recovery and reintegration potentially increases crime rates and erodes public trust.

The granting of amnesty and pardons without considering justice for victims may also violate the principle of non-discrimination and the right to legal protection. Therefore, clemency mechanisms in both countries must be integrated with the principles of restorative justice, for instance, by obligating offenders to acknowledge their guilt, participate in the reparation process, and be subject to public oversight.

In light of the foregoing analysis, the researcher undertakes a critical examination and offers targeted recommendations along with a best-practice model:

- 1) **Indonesian regulatory reform.** The Government and the House of Representatives (DPR) need to revise the Emergency Law concerning amnesty and abolition to align it with the 1945 Constitution and human rights standards. The new legislation should establish clear criteria for granting amnesty or abolition, including requirements such as an admission of guilt, reparation for harm caused, and consideration of the victims' interests. An

independent commission, with participation from civil society, could help assess applications and prevent the politicization of the process.

- 2) **Transparency and victim involvement.** In both Indonesia and Russia, the clemency process must be more transparent and accountable. The principle of encounter in restorative justice requires a forum that brings together the perpetrator, the victim, and the community to discuss the consequences of the crime and the forms of reparation. Victim involvement will reduce feelings of injustice and ensure that clemency is not merely a political decision.
- 3) **Limiting pardons as a military tool.** The Russian practice of offering pardons to convicts in exchange for military service in war zones should be criticized. A pardon should be a mechanism for legal rehabilitation, not an instrument of military recruitment. The state needs to consider the security risks, potential human rights violations, and the societal impact when former convicts return without a reintegration process.
- 4) **Cross-border exchange of experiences.** Indonesia could learn from Russia's standardized clemency procedures such as the establishment of a review commission to enhance professionalism and reduce political interference. Conversely, Russia could consider Indonesia's system of checks and balances, which requires parliamentary approval to ensure the legitimacy of the decision. An integration of both aspects could result in a more balanced mechanism that harmonizes efficiency, accountability, and justice.
- 5) **Integration of restorative justice principles.** Every act of forgiveness must be accompanied by a program of social reintegration, rehabilitation, and restoration of relationships. This process includes the offender's responsibility to acknowledge wrongdoing, provide restitution, and participate in dialogue with the victim and the community. Forgiveness that is integrated with restorative justice can enhance public trust in the justice system and prevent impunity.

This comparative analysis demonstrates that the mechanisms of amnesty and abolition in Indonesia, as well as pardon in Russia, are both rooted in the president's prerogative rights, yet they differ structurally and in practice. Indonesia regards clemency as a prerogative right that requires legislative approval, but the lack of clear guidelines renders it vulnerable to politicization. In Russia, pardon is treated as an individual constitutional right processed through commissions, but the president's broad discretion and the use of pardon as a wartime incentive raise moral concerns. Through the lens of restorative justice, this research advocates for regulatory reform, greater transparency, victim participation, and the integration of rehabilitation programs so that clemency truly functions as a tool for reconciliation, rather than a political or military instrument.

Discussion

The proposed reforms to legislate objective criteria for clemency in both Indonesia and Russia, enhance the transparency of Russia's pardon commissions, and mandate public consultation in Indonesia represent a normative advancement towards accountability. However, a critical examination reveals significant challenges rooted in the political and legal realities of each nation, which may impede the efficacy of such procedural and substantive legal reforms.

Indonesia: The Primacy of Political Will over Legal Procedure

In Indonesia, the proposal to enact a specialized law to govern amnesty and abolition faces a fundamental challenge: the inherently political nature of these presidential prerogatives. Critics argue that codifying objective criteria may prove insufficient to depoliticize a process

that is, by its constitutional design, an interface between executive power and legislative approval.

- 1) **Political Discretion:** Legal scholar Harison Citrawan (2016) has noted that in cases of past gross human rights violations, the president's authority to grant amnesty is a complex matter involving legal and ethical considerations that are often swayed by political dynamics. Even with a new law, the definition of "in the national interest" would likely remain ambiguous, granting the executive substantial interpretive latitude. This concern is echoed in critiques of past amnesties, which were seen as political maneuvers rather than applications of clear legal principles.
- 2) **Ineffectiveness of Procedural Fixes:** According to Muhamad Isnur, chairman of the Indonesian Legal Aid Foundation (YLBHI), merely reforming the procedure is a "short-term policy without a solution" if it fails to address the underlying systemic issues. For instance, a mass amnesty plan may be presented as a solution to prison overcrowding, but it does little to reform the harsh laws, particularly on drug offenses, that lead to mass incarceration in the first place. The debate surrounding the amnesty for Baiq Nuril, a case not involving political crimes, highlighted that existing legal frameworks are ambiguous and that presidential discretion, spurred by public pressure, ultimately supersedes formal legal reasoning. This suggests that a new law might not be the panacea if the political will to use clemency as a tool for political consolidation or to respond to public outcry remains dominant (Koswaraputra & Idrus, 2024).

Russia: Executive Supremacy and the Instrumentalization of Pardon

In Russia, the call for greater transparency in the pardon commissions confronts the deeply entrenched principle of centralized executive authority. The presidential power to pardon is an individual prerogative that functions largely outside the purview of legislative or judicial checks and balances.

- 1) **Unfettered Executive Power:** The Russian Constitution grants the President the sole authority to pardon, an act described as one of mercy from the head of state. While pardon commissions exist, their role is advisory, and their localization can create a disincentive to recommend pardons due to the costs of post-release integration falling on local governments. Therefore, increasing transparency may not alter outcomes if the President's decision remains the ultimate, unchallengeable determinant (Ponomarev & Skopintseva, 2024).
- 2) **The "Admission of Guilt" Barrier:** A significant substantive challenge is the common practice of requiring an admission of guilt as a precondition for considering a pardon petition. Human rights activists argue this systemically disadvantages those who maintain their innocence, potentially including individuals wrongfully convicted. This practice subordinates the principle of mercy to the state's interest in validating the original conviction, a policy that transparency alone cannot rectify.
- 3) **Strategic Use of Clemency:** The mass pardoning of convicts for military service is not a procedural anomaly but a strategic state policy. This instrumentalization of the pardon institution serves state security and military objectives, demonstrating that when state interests are paramount, the principles of mercy and rehabilitation become secondary. Russian legal scholars Ponomarev & Skopintseva (2024) acknowledge that the application of pardon is "discussable" and subject to ongoing debate, indicating that its legal nature is contested within Russia itself. This suggests that the institution is viewed internally as a flexible tool of statecraft, a perception that procedural reforms focused on transparency are unlikely to change fundamentally.

Conclusion

This comparative analysis highlights how Indonesia's legislative-oversight model and Russia's executive-discretion model each enable political manipulation and exclude victim participation, undermining restorative justice ideals. Empirical study of the 2025 Indonesian amnesty/abolition cases and Russia's 2024 prisoner-recruitment pardons reveals a recurrent gap between constitutional design and practice, where clemency serves political ends rather than genuine reconciliation. Integrating restorative justice principles victim involvement, transparent procedures, and accountability safeguards into clemency frameworks can mitigate executive arbitrariness and bolster public trust. By offering the first systematic comparison of Indonesian and Russian clemency mechanisms, empirically grounding analysis in recent high-profile cases, and proposing a restorative-justice-driven reform model, this research provides both a replicable methodology for future cross-jurisdictional studies and actionable recommendations for policymakers aiming to enhance the fairness and legitimacy of executive clemency.

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