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Legal Implications Of The Prosecutor's Office Strategy In Responding To The Presidential Abolition Granted To Tom Lembong: The Role Of The Prosecutor's Office In Law Enforcement And Human Rights

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ABSTRACT

This study examines the legal and social implications of the presidential abolition granted to Tom Lembong and analyzes the institutional strategies required of the Attorney General's Office of the Republic of Indonesia to preserve the credibility of law enforcement and the protection of human rights. The study addresses two questions: how the abolition affects the Prosecutor's Office in carrying out law-enforcement functions, and what strategies should be adopted to prevent adverse legal and social consequences in cases terminated through abolition. A normative legal research design is employed using a statute approach, supported by the analysis of constitutional provisions, legislation on prosecution and criminal procedure, anti-corruption law, human-rights norms, public-information rules, legal doctrine, and relevant case materials. The findings show that abolition, although constitutionally recognized under Article 14 paragraph (2) of the 1945 Constitution, can interrupt an ongoing prosecution and create institutional tension between executive prerogative and prosecutorial independence. It can also influence public perceptions of equality before the law, legal certainty, and the legitimacy of anti-corruption enforcement. The study proposes four interrelated strategies: internal evaluation guidelines, inter-institutional coordination, transparent public communication, and post-decision monitoring and policy review. Academically, the study contributes a governance-oriented framework for reconciling presidential prerogative with the rule of law, checks and balances, substantive justice, institutional accountability, and public trust in the criminal justice system.

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Introduction

Abolition is one of the constitutional powers vested in the President of the Republic of Indonesia. Article 14 paragraph (2) of the 1945 Constitution provides that the President grants amnesty and abolition after considering the opinion of the House of Representatives. Unlike clemency, rehabilitation, or amnesty, abolition directly concerns the termination of criminal proceedings before a case reaches a final and binding judgment. The legal consequence is therefore immediate: a prosecution that has been prepared or is already underway may no longer continue. Although the authority is constitutional, its exercise remains connected to the rule of law, justice, accountability, and respect for human rights. The central legal problem is not whether the President possesses the authority, but how that authority should be exercised so that it does not undermine legal certainty, equality before the law, or the institutional integrity of the criminal justice system.

Indonesian positive law does not provide a single comprehensive statutory framework governing the contemporary administration of abolition. Constitutional authority is principally found in Article 14 paragraph (2) of the 1945 Constitution, while Law Number 11 of 1954 on Amnesty and Abolition is historically specific and does not provide a complete modern procedural architecture for every future case. This normative fragmentation creates uncertainty regarding criteria, consultation procedures, evidentiary assessment, the position of victims and public interests, and the role of law-enforcement institutions when abolition is considered. The absence of detailed procedural standards becomes more significant when the

underlying criminal case concerns corruption, a category of crime that is closely associated with public accountability and the protection of state finances. The Attorney General's Office occupies a strategic position in the Indonesian criminal justice system. As the institution responsible for prosecution and as dominus litis, it controls the continuation of cases within the prosecutorial domain and must ensure that legal proceedings comply with legislation. In the context of abolition, however, prosecutorial authority may be interrupted by a constitutional decision of the President. The Prosecutor's Office therefore faces a dual responsibility. It must comply with a valid constitutional decision while at the same time protecting the professional credibility, legality, and fairness of the prosecution process that preceded that decision. This requires legal analysis, institutional coordination, and public communication capable of explaining the relationship between presidential prerogative and prosecutorial independence.

The abolition granted to Tom Lembong attracted substantial public attention because it arose from a corruption case involving sugar-import policy during his term as Minister of Trade. The case had legal, economic, and political dimensions. Public debate did not focus only on the formal authority of the President but also on whether termination of the case was consistent with anti-corruption commitments, equality before the law, and public expectations of an impartial justice system. From the perspective of John Rawls's theory of justice, public institutions should maintain fair treatment and avoid arbitrary distinctions. From the perspective of the rule of law, public power must be exercised within predictable legal constraints. These theoretical perspectives make the case relevant for evaluating how constitutional discretion interacts with prosecutorial functions.

The debate also illustrates a broader institutional problem. Supporters of abolition may regard it as a legitimate constitutional mechanism that can be justified by humanitarian considerations, public interest, legal correction, or other exceptional circumstances. Critics may view its use in a corruption case as political intervention that risks weakening judicial independence and public trust. Both views demonstrate that the legal validity of abolition does not automatically resolve questions of legitimacy. The quality of the process, the clarity of the reasons, the consistency of institutional standards, and the transparency of the decision-making environment all influence whether the public accepts the result as compatible with justice.

For the Prosecutor's Office, this situation creates a need for an institutional strategy that prevents abolition from producing wider negative consequences. Internal guidelines are needed to standardize legal evaluation. Inter-agency coordination is needed to ensure that constitutional actors receive accurate legal information. Public communication is required to reduce misinformation and explain the consequences of the decision. Finally, monitoring and evaluation are necessary to identify whether the use of abolition creates inconsistent treatment, moral hazard, or recurring procedural weaknesses. Existing literature discusses presidential prerogatives, separation of powers, prosecution, and the rule of law, but specific attention to the Prosecutor's Office as an institutional actor managing the legal and social consequences of abolition remains limited.

Accordingly, this study addresses two research questions. First, what are the legal and social implications of the abolition granted in the Tom Lembong case for the Prosecutor's Office in carrying out law enforcement? Second, what strategies should the Prosecutor's Office adopt in cases affected by abolition to avoid negative legal and social consequences? The objective is to develop a normative and institutional analysis that places abolition within the constitutional framework while preserving prosecutorial integrity, human-rights protection, legal certainty, and public confidence.

Method

This research is a normative legal study employing a statute approach and conceptual legal analysis. The statute approach is used to examine constitutional provisions and legislation relevant to presidential prerogative, prosecution, criminal procedure, corruption, human rights, and public information. The principal legal framework includes the 1945 Constitution of the Republic of Indonesia, the Criminal Procedure Code, the Law on the Prosecutor's Office, the Anti-Corruption Law, the Human Rights Law, and the Public Information Disclosure Law. The study also considers doctrinal writings concerning the rule of law, checks and balances, justice, legal legitimacy, and prosecutorial authority. Primary legal materials consist of constitutional and statutory provisions governing the authority of state institutions and the prosecution process. Secondary legal materials include books, journal articles, legal commentaries,

institutional documents, and publicly available materials concerning the sugar-import case and the subsequent abolition. The materials are analyzed qualitatively through legal reasoning, interpretation, construction of norms, and comparison between constitutional authority and institutional consequences. The analysis does not attempt to determine criminal guilt or reassess evidentiary findings in the underlying case. Instead, it focuses on the legal position of the Prosecutor's Office, the institutional consequences of terminating prosecution through abolition, and the strategies required to preserve rule-of-law values and public accountability.

Results and Discussion

Legal and Social Implications of the Abolition Granted in the Tom Lembong Case

The principal legal implication of abolition is the interruption of an ongoing criminal process by a constitutionally authorized executive act. In the Tom Lembong case, the Prosecutor's Office had undertaken investigative and prosecutorial steps related to alleged corruption in sugar-import policy. Once abolition was granted, the legal process could no longer proceed in the ordinary manner. This situation illustrates a structural tension between the prosecutorial function and presidential prerogative. The tension does not mean that the constitutional power is unlawful. Rather, it demonstrates that the exercise of prerogative can have direct consequences for the autonomy, continuity, and public perception of law enforcement.

The underlying case originated from allegations concerning the issuance of raw sugar import approvals during Tom Lembong's tenure as Minister of Trade. Investigators stated that an inter-ministerial coordination meeting on 2 May 2015 had concluded that Indonesia was experiencing a sugar surplus and did not require imports. Despite that conclusion, an approval was later issued for the importation of 105,000 tons of raw crystal sugar by a private company. The allegation emphasized that the approval was not preceded by the expected coordination mechanism and did not rely on recommendations from relevant technical ministries. The legal controversy was therefore connected not only to the existence of administrative authority but also to the manner in which that authority was exercised.

The case materials further described the role of eight private companies involved in processing imported raw crystal sugar into white crystal sugar. According to the prosecutorial narrative, the companies held licenses associated with refined sugar processing, while the regulatory framework for public-consumption sugar imports placed an important role on state-owned enterprises. The sugar was subsequently distributed to the public through affiliated distributors at approximately IDR 16,000 per kilogram, above the then applicable highest retail price of approximately IDR 13,000 per kilogram. These allegations were used to support the contention that the policy generated economic consequences and potentially benefited particular actors rather than functioning solely as a market-stabilization measure.

The Attorney General's Office questioned Tom Lembong on several occasions in October 2024 and later named him a suspect together with another individual. The alleged offenses were connected to provisions of the Anti-Corruption Law in conjunction with participation provisions of the Criminal Code. Tom Lembong subsequently filed a pretrial challenge before the South Jakarta District Court, contesting the legality of the suspect designation and detention. His legal team raised concerns regarding access to counsel, the adequacy of preliminary evidence, the lawfulness of investigative actions, the basis for detention, and the alleged absence of an unlawful act. The procedural contestation is significant because it demonstrates that the case was already embedded in judicial mechanisms designed to test the legality of law-enforcement actions.

In January 2025 the Attorney General's Office announced additional suspects from the private sector in connection with the same alleged sugar-import corruption scheme. This development indicates that the case was not framed as an isolated act by a single official but as a broader set of transactions involving public and private actors. From the perspective of law enforcement, such a multi-actor case requires consistency in the treatment of participants. When abolition is granted to one defendant or accused person while proceedings against others continue, prosecutors must be able to explain the legal distinction and ensure that remaining cases are handled according to objective evidentiary and statutory standards.

From a rule-of-law perspective, the central risk is a shift from predictable legal process toward rule by discretion. Executive discretion is not inherently incompatible with the rule of law, because constitutions may deliberately create exceptional powers. The problem arises when discretion lacks transparent criteria, reasoned justification, or effective checks. Montesquieu's theory of separation of powers is relevant because it emphasizes that governmental authority should be structured so that no branch can dominate the others without institutional restraint. In the context of abolition, the constitutional requirement that the President consider the House of Representatives constitutes one formal check, but the quality of the legal analysis supplied by law-enforcement institutions remains important to the substantive legitimacy of the decision.

Institutional risk management is therefore essential for the Prosecutor's Office. A high-profile abolition can create the perception that prosecutorial work may be overridden for political reasons. Even when that perception is not legally accurate, it can weaken confidence in professional prosecution. The Prosecutor's Office must distinguish between lawful constitutional control and improper political interference. The former is part of the constitutional order; the latter would threaten the independence of prosecution. This distinction should be communicated through documented legal analysis, institutional procedures, and consistent treatment of comparable cases.

The social implications are equally significant. Public confidence in law enforcement depends partly on the belief that similar cases will be treated similarly and that legal outcomes are not determined by political proximity. The alleged sale of sugar above the highest retail price and the broader discussion of state financial loss created a public-interest dimension that extended beyond the rights of the accused. Rousseau's social-contract perspective helps explain why public trust becomes central: citizens accept the authority of the state because public institutions are expected to exercise power for common interests under lawful rules. If a high-profile case is terminated without an intelligible explanation, citizens may interpret the decision as evidence of unequal treatment.

The Prosecutor's Office therefore faces a reputational challenge even though the decision to grant abolition belongs to the President. The public may view the institution as powerless if a case developed through investigation and prosecution is terminated by an executive decision. This perception can encourage legal cynicism, a condition in which citizens believe that law functions primarily as an instrument of power rather than as a neutral framework of justice. Legal cynicism can reduce cooperation with law-enforcement institutions, weaken voluntary compliance, and increase skepticism toward anti-corruption enforcement.

Max Weber's concept of legal-rational authority is also relevant. The legitimacy of modern legal institutions depends on the perception that decisions are made through rational, general, and consistently applied rules. If citizens believe that exceptional political decisions routinely displace ordinary legal processes without transparent standards, the legal-rational basis of authority can be weakened. In corruption cases, this effect may be more severe because corruption directly concerns the misuse of public authority and public resources. An abolition process that lacks adequate explanation can therefore create moral hazard, including the belief that political access may offer an alternative route to avoid criminal accountability.

From the standpoint of substantive justice, the exercise of abolition should also consider the interests of victims, affected communities, and the public. Rawls's theory of justice requires institutions to assess whether exceptional treatment can be justified within a fair system. Although criminal procedure primarily concerns the state and the accused, corruption cases have diffuse social victims because the alleged harm may involve public finances, public services, market prices, and trust in government. The Prosecutor's Office should therefore include the broader social consequences of case termination in its legal opinion and institutional risk analysis.

The case also illustrates the importance of differentiating abolition from other legal mechanisms. Abolition is a presidential constitutional power. Termination of prosecution under criminal procedure follows statutory grounds and prosecutorial procedures. Deponering, or setting aside a case in the public interest, is a specific authority of the Attorney General under the Prosecutor's Office framework. These mechanisms have different legal bases, decision makers, criteria, and consequences. Blurring the distinctions may create uncertainty and weaken institutional accountability. A clear doctrinal separation is therefore necessary in any prosecutorial guideline on abolition.

The broader implication is that abolition can affect the relationship among state institutions. The President, House of Representatives, Prosecutor's Office, Ministry responsible for legal affairs, courts, and other oversight bodies may each possess different functions. A sound constitutional process should not treat these institutions as competitors but as parts of a system of checks and balances. The Prosecutor's Office contributes legal and factual analysis; the House of Representatives provides constitutional consideration; the President makes the final constitutional decision; and courts remain responsible for adjudication where proceedings continue. Clarity regarding these roles can reduce conflict and strengthen institutional legitimacy.

For the Prosecutor's Office, the decisive issue is therefore how to preserve its professional integrity after a case has been affected by abolition. It must avoid two extremes. First, it should not resist a valid constitutional decision in a manner inconsistent with the legal order. Second, it should not allow constitutional compliance to erase the need for institutional learning, transparent explanation, and protection of prosecutorial independence. The appropriate response is a structured governance strategy that documents the legal basis of the decision, explains its procedural effects, safeguards related cases, and identifies reforms needed to prevent uncertainty in future cases.

Prosecutorial Strategies to Prevent Adverse Legal and Social Effects of Abolition

The study identifies four principal strategies for the Prosecutor's Office: internal standardization, inter-institutional coordination, public communication, and post-decision monitoring. These strategies are interconnected. Internal guidelines improve consistency; coordination improves constitutional and administrative coherence; communication protects social legitimacy; and monitoring allows the institution to learn from the consequences of each decision. Together they form a governance framework for managing exceptional constitutional intervention in criminal proceedings.

First, the Prosecutor's Office should establish clear internal guidelines for evaluating cases in which abolition is proposed or anticipated. The guidelines should define the scope of the prosecutor's legal opinion and set out minimum standards of assessment. Relevant criteria include legality, proportionality, the stage of proceedings, evidentiary status, the nature of the alleged offense, effects on victims and the public, potential precedent, human-rights considerations, and risks to equality before the law. The purpose is not to transfer the President's constitutional authority to prosecutors, but to ensure that prosecutorial input is professional, consistent, and capable of being audited.

The internal procedure should require a written legal opinion before the Prosecutor's Office provides formal institutional input. The opinion should distinguish abolition from statutory termination of prosecution and from deponering in the public interest. It should also describe the procedural consequences of abolition for indictments, detention, evidence, related defendants, asset recovery, and any continuing civil or administrative measures. Where the case involves corruption, the opinion should specifically address the consequences for state-loss recovery and for proceedings against other alleged participants. A standardized analytical matrix would reduce the risk that similar cases are treated differently without sufficient justification.

A multidisciplinary review team can strengthen the quality of the analysis. Such a team may include criminal-law prosecutors, constitutional-law specialists, human-rights experts, public-policy analysts, and institutional risk officers. The review should test both procedural fairness and distributive justice. Procedural fairness requires respect for the rights of the accused, victims, witnesses, and other affected parties. Distributive justice requires attention to whether an exceptional decision imposes unequal burdens on the public or generates an unjustified advantage for a particular individual or group. These considerations are especially important in corruption cases where public harm may be widespread and indirect.

Second, the Prosecutor's Office should develop a stable mechanism of coordination with the President, the House of Representatives, the ministry responsible for legal affairs, and other relevant institutions. Constitutional coordination should not be understood as political bargaining. Its function is to ensure that the decision-making process is supplied with accurate legal information and that institutional responsibilities are clearly understood. Because Article 14 paragraph (2) requires the President to consider the House of Representatives, the prosecutorial analysis should be capable of informing the constitutional deliberation without displacing the independent judgment of the constitutional actors.

Coordination should be documented. Meeting minutes, legal memoranda, policy-option matrices, and risk registers can create an institutional record showing what information was considered and how legal risks were assessed. Documentation serves several purposes. It protects prosecutors from allegations that decisions were made informally, supports institutional memory, facilitates future evaluation, and provides a basis for explaining the process to oversight institutions. Where information is confidential or legally exempt from disclosure, documentation can still be preserved internally while public summaries are prepared in accordance with information-disclosure law.

The coordination framework should also recognize the role of human-rights principles. Abolition may benefit the accused by ending prosecution, but the process must also consider the rights and interests of others. Human-rights analysis should address non-discrimination, due process, access to justice, and the legitimate interests of affected communities. In high-profile cases, the Prosecutor's Office should also identify whether termination of the prosecution could influence witness protection, asset recovery, or related proceedings. A rights-based assessment helps prevent the constitutional prerogative from being viewed solely as a political instrument.

Third, public communication is essential to maintaining social legitimacy. The Prosecutor's Office should not present abolition as if it were an ordinary prosecutorial decision. It should clearly explain that the final decision is a constitutional act of the President, describe the legal effect on the case, and state what prosecutorial actions had been completed before the decision. This distinction protects institutional credibility while respecting constitutional authority. Communication should avoid inflammatory language, political speculation, or disclosure of protected case information.

The Public Information Disclosure Law provides a basis for transparent communication while recognizing legitimate exemptions. The Prosecutor's Office can publish a concise legal summary explaining the applicable constitutional provision, the stage of the proceedings, the effect of abolition, and the status of related cases. Public question-and-answer documents and structured media briefings can reduce misinformation. The objective is not to persuade the public to agree with the political decision, but to ensure that citizens understand the legal framework and the institutional responsibilities of each actor.

Consistent communication is particularly important where public debate uses terms such as impunity, intervention, or selective justice. These concepts carry strong normative implications. The Prosecutor's Office should respond with verifiable procedural facts rather than political argument. For example, it can state whether the case file had been declared complete, whether an indictment had been filed, what steps remain legally possible after abolition, and whether proceedings against other defendants continue. Such factual communication supports Weberian legal-rational legitimacy because it demonstrates that the institution continues to operate according to defined rules even when an exceptional constitutional decision changes the outcome of a particular case.

Fourth, abolition should be followed by structured monitoring and evaluation. The Prosecutor's Office should assess whether the decision creates inconsistency in comparable cases, affects recovery of state losses, alters the workload of related proceedings, or produces significant changes in public trust. Periodic internal review can identify whether standard operating procedures require amendment. The review can also assess whether prosecutors need additional guidance on the treatment of evidence, detention status, asset measures, and coordination with other institutions after a case is terminated through abolition.

Post-decision monitoring should be incorporated into a learning loop. Quarterly or semiannual evaluation reports can summarize legal consequences, institutional challenges, public-response patterns, and recommendations for procedural improvement. These reports need not disclose confidential case information. Their purpose is to ensure that the Prosecutor's Office develops institutional memory rather than treating each abolition as an isolated political event. Over time, accumulated evaluations can support the development of clearer national standards and possibly future legislative reform.

External oversight can reinforce this learning process. The Prosecutorial Commission and other appropriate oversight bodies may review whether prosecutorial procedures were followed, whether institutional independence was maintained, and whether public communication complied with legal and ethical standards. External oversight should not interfere with the professional judgment of prosecutors or

with the President's constitutional power. Its function is accountability: verifying that the Prosecutor's Office managed the process consistently, lawfully, and transparently.

The theoretical foundation of these strategies combines several legal principles. Dicey's rule of law supports legal certainty and equality before the law. Radbruch's legal philosophy emphasizes the relationship among certainty, justice, and utility. Rawls provides a framework for evaluating substantive fairness. Montesquieu explains the need for institutional checks and balances. Weber clarifies why rational and consistent procedure is essential to legitimacy. Soerjono Soekanto's perspective on law enforcement highlights the institutional and social factors influencing legal effectiveness. These approaches collectively support a model in which the Prosecutor's Office acts not merely as a technical litigation agency but as a guardian of institutional legality.

The strategy also requires objective legal assessment before any recommendation concerning abolition. Prosecutors should present a measured chronology of the case, the status of evidence, the alleged degree of responsibility, the public impact of the alleged conduct, and the consequences of termination. This analysis should be separated from political preference. The Prosecutor's Office must remain capable of explaining, from a legal standpoint, both the reasons why prosecution was initially pursued and the consequences that follow when a constitutional authority subsequently terminates the case.

A stronger oversight mechanism is similarly necessary to prevent bad precedent. The Prosecutor's Office should function as a critical institutional partner that balances respect for presidential prerogative with the principles of the rechtsstaat. A constitutionally valid abolition should not become a general expectation that serious criminal cases may be resolved through political access. To prevent that risk, exceptional decisions should remain exceptional, supported by documented reasons and assessed against standards capable of being applied consistently to future cases.

Social-impact assessment should accompany the legal assessment. In corruption cases, the effect of the alleged conduct may extend to public finances, market conditions, access to public goods, and confidence in government. Therefore, the evaluation should project whether abolition could create a sense of injustice, reduce cooperation with law enforcement, or weaken confidence in anti-corruption institutions. Such analysis does not transform public opinion into a legal veto. Rather, it recognizes that the legitimacy and effectiveness of law depend partly on social acceptance and institutional trust.

Finally, a long-term reform agenda is needed. The Tom Lembong case demonstrates the benefits of clearer rules concerning the procedure, criteria, and institutional consultation associated with amnesty and abolition. Legislative or regulatory clarification could define the materials that should accompany a proposal, the role of prosecutorial legal opinions, the treatment of victims and state losses, documentation requirements, and post-decision consequences. Any reform must preserve the constitutional authority of the President and the constitutional role of the House of Representatives, while reducing ambiguity that can otherwise generate accusations of arbitrariness. Clearer rules would strengthen both presidential legitimacy and prosecutorial independence.

Conclusion

The abolition granted in the Tom Lembong case has significant legal and social implications for the Attorney General's Office. Legally, abolition can terminate an ongoing prosecution and therefore creates institutional tension between presidential prerogative and the prosecutorial mandate to carry cases through the criminal justice process. Socially, it may affect public perceptions of equality before the law, anti-corruption consistency, prosecutorial independence, and the legitimacy of state institutions. These risks are particularly important where the underlying case has already attracted intense public attention and concerns alleged misuse of public authority.

The study concludes that the appropriate prosecutorial response requires a layered institutional strategy. The Prosecutor's Office should establish written internal guidelines for abolition-related legal analysis, form multidisciplinary review mechanisms, strengthen documented coordination with constitutional and legal institutions, provide factual and transparent public communication, and conduct post-decision monitoring. These measures allow the institution to respect a valid constitutional decision while continuing to protect legal certainty, human rights, professional independence, and public trust. The

principal academic contribution is a governance framework that integrates rule of law, checks and balances, substantive justice, and institutional accountability in the management of abolition.

This study is limited by its normative legal design and reliance on publicly available legal and institutional materials. It does not evaluate confidential prosecutorial evidence or measure public perceptions empirically. Future research should examine comparative abolition or clemency procedures in other constitutional systems, assess public trust through empirical methods, and evaluate whether clearer statutory criteria can reduce uncertainty while preserving presidential prerogative.

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