

APPLICATION OF THE RECHTERLIJK PARDON PRINCIPLE IN CRIMINAL CASE DECISIONS WITHIN THE REFORM OF NATIONAL CRIMINAL LAW

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Abstract

The enactment of Law Number 1 of 2023 concerning the Indonesian Criminal Code (KUHP) introduces significant reforms to the national criminal law system, one of which is the incorporation of the rechterlijk pardon principle. This principle grants judges the authority not to impose punishment on defendants proven guilty of minor offenses, taking into account considerations of justice and humanity. This study analyzes three key issues: (1) the application of the rechterlijk pardon principle in current criminal case decisions and its future implementation under the new Criminal Code; (2) the strengths and weaknesses of implementing the rechterlijk pardon principle in criminal case decisions. The research employs a normative legal method with a statutory approach, utilizing primary, secondary, and tertiary legal materials analyzed qualitatively. The findings reveal that the rechterlijk pardon principle is not recognized in the current Dutch-derived KUHP, thereby providing no legal room for judges to pardon defendants in minor cases. The new KUHP, through Article 54 paragraph (2), introduces a significant reform by granting judges the discretion not to impose punishment in the interest of justice and humanity. Although newly codified, the practice of judicial pardon has long existed in the Netherlands and has begun to appear in several Indonesian court decisions. The weaknesses of its implementation include the lack of synchronization between the KUHP and the Criminal Procedure Code (KUHP), while its strengths lie in sentencing flexibility, recognition of behavioral reform, reduction of prison overcrowding, and enhancement of a more humane justice system.

Keywords: *Implementation – Rechterlijk Pardon Principle – Criminal Case Decision – National Criminal Law.*

Abstrak

Disahkannya Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP) membawa pembaruan penting dalam sistem hukum pidana nasional, salah satunya melalui pengaturan asas rechterlijk pardon. Asas ini memberikan kewenangan kepada hakim untuk tidak menjatuhkan pidana kepada terdakwa yang terbukti bersalah atas tindak pidana ringan dengan mempertimbangkan nilai keadilan dan kemanusiaan. Kajian ini menganalisis tiga persoalan pokok: 1) penerapan asas rechterlijk pardon pada putusan perkara pidana yang berlaku saat ini dan dalam hukum pidana nasional di masa yang akan datang? 2) Bagaimana kelemahan dan keunggulan penerapan asas rechterlijk pardon pada putusan perkara pidana? Metode yang digunakan ialah penelitian hukum normatif dengan pendekatan peraturan perundang-undangan, menggunakan bahan hukum primer, sekunder, dan tersier yang dianalisis secara deskriptif kualitatif. Hasil kajian menunjukkan bahwa penerapan asas rechterlijk pardon belum dikenal dalam KUHP warisan Belanda yang berlaku saat ini, sehingga hakim tidak memiliki ruang hukum untuk memaafkan terdakwa dalam perkara ringan. KUHP baru melalui Pasal 54 ayat (2) membawa pembaruan penting dengan memberikan kewenangan kepada hakim untuk tidak menjatuhkan pidana demi keadilan dan kemanusiaan. Meskipun konsep ini baru disahkan, praktik pemaaftan hakim telah lama diterapkan di Belanda dan mulai tampak dalam beberapa putusan hakim di Indonesia. Kelemahan penerapan asas ini ialah belum sinkronnya ketentuan dalam KUHP dan KUHP, sedangkan keunggulannya meliputi fleksibilitas hukuman, pengakuan perubahan perilaku, pengurangan kepadatan penjara, dan peningkatan keadilan yang lebih manusiawi.

Kata Kunci: *Penerapan - Asas Rechterlijk Pardon - Putusan Perkara Pidana - Hukum Pidana Nasional*

I. INTRODUCTION

The Dutch Criminal Law (*Wetboek van Strafrecht*), which was enacted through Law Number 1 of 1946 (*mutatis mutandis*), later became known as the Kitab Undang-Undang Hukum Pidana (KUHP) or the Indonesian Penal Code. Since Indonesia declared its independence, there has been a national aspiration to develop its own criminal law a *national* penal code that reflects the values and character of the Indonesian nation. Beginning in the 1960s, Indonesian legal scholars initiated efforts to conceptualize and realize this aspiration by drafting the preliminary concept of a draft Bill on the Penal Code).¹

That overall, Indonesia's legal reform efforts began with the enactment of the 1945 Constitution (UUD 1945) and cannot be separated from the fundamental principles and objectives stated in its Preamble. The intended goal is "to protect the entire Indonesian nation and to promote the general welfare based on Pancasila." These broad policy directions serve as both the foundation and the ultimate aim of Indonesia's legal politics, forming the basis and objectives of every legal reform initiative, including reforms in criminal law and policies on crime prevention in Indonesia.²

The enactment of Law Number 1 of 2023 concerning the Criminal Code (New KUHP) will certainly have an impact on the implementation of criminal law in Indonesia. This law introduces new provisions that were not previously recognized in the old Criminal Code. One of the new principles introduced is the *rechterlijk pardon* principle, as stipulated in Article 54 paragraph (2), which reads as follows: "The minor nature of the act, the personal circumstances of the offender, or the circumstances at the time the criminal act was committed and those that occurred thereafter may serve as grounds for not imposing a sentence or for not applying a measure, taking into account considerations of justice and humanity."

This principle allows a judge not to impose a punishment on an offender even though the person has been proven legally and convincingly guilty of committing a criminal act, provided that the elements stipulated in Article 54 paragraph (2) are fulfilled. In its elucidation, it is stated that: "The provision in this paragraph is known as the principle of *rechterlijke pardon* or *judicial pardon*, which grants the judge the authority to forgive a person who is guilty of committing a criminal act of a minor nature. This pardon must be stated in the judge's decision, and it must still be declared that the defendant is proven to have committed the criminal act as charged."

The principle of judicial pardon (*rechterlijk pardon*) is the authority granted to a judge to grant forgiveness to a person who has been found guilty of committing a criminal act, by considering the minor nature of the offense, the personal circumstances of the offender, or the conditions at the time the crime was committed, as well as the aspects of

¹ Barda Nawawi Arief, *An Anthology of Criminal Law Policy: The Development of the Drafting of the New Criminal Code (KUHP) Concept*, Jakarta: Kencana Prenada Media Group, 2010, pp. 2–4.

² Barda Nawawi Arief, *The Determination of Imprisonment in Legislation within the Framework of Crime Prevention Efforts*. Universitas Padjadjaran, Bandung, 1986, p. 79.

justice and humanity. This principle aims to eliminate the execution of a criminal sentence when its enforcement would result in injustice.³

According to P.A.F. Lamintang, the application of judicial pardon (*rechterlijk pardon*) aims to serve as a corrective measure against the rigid application of the principle of legality and as an alternative to short-term imprisonment.⁴ The principle of legality upholds the supremacy of legal certainty, which aligns with the provision of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, stating that Indonesia is a state based on law (*rechtsstaat*). As a state governed by law, legal certainty is held in high regard because every action taken must be grounded in and accountable under the law.⁵

The principle of judicial pardon (*rechterlijk pardon*) can serve as one of the concepts applied in the reform of Indonesia's criminal law, particularly in transforming the notion of legal certainty from rigid to flexible.⁶ The principle of judicial pardon (*rechterlijk pardon*) in criminal case decisions, as part of national criminal law reform, can also be utilized to shift the orientation of criminal law from one that imposes suffering, hardship, or other unpleasant consequences toward restorative justice, which emphasizes restoring the situation to its original state.⁷

According to the Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure (KUHP), there are three types of verdicts that may be rendered by the Panel of Judges, namely: 1) Conviction or imposition of punishment (*veroordeling tot enigerlei sanctie*); 2) Acquittal (*vrijspraak*); and 3) Dismissal of all legal charges (*ontslag van recht vervolging*).⁸

However, these three types of verdicts have not yet been able to guarantee legal certainty, as there are many defendants whose guilt has been proven, but the imposition of a sentence would conflict with the sense of justice.⁹ For example, in the criminal case Number 247/PID.B/2009/PN.Pwt involving Grandma Minah, who stole three cocoa pods, she was sentenced to one month and fifteen days of imprisonment with a probation period of three months. Similarly, Grandma Asyani, who stole seven teak logs, was sentenced to one year of imprisonment with a probation period of fifteen months and a fine of Rp 500 million, with a subsidiary punishment of one day's detention.

In these cases, the public considered that the actions committed by Nenek Minah and Nenek Asyani were disproportionate to the verdicts rendered or did not warrant punishment. However, on the other hand, the judges acted in accordance with the

³ Nefa Claudia Meliala, "Rechterlijk Pardon (Judicial Pardon): An Effort Toward a Criminal Justice System with a Restorative Justice Paradigm," *IUS Journal: Studies of Law and Justice*, Vol. 8, No. 3, December 2020, pp. 553–562.

⁴ P.A.F. Lamintang, *The Fundamentals of Indonesian Criminal Law*, Citra Aditya Bakti, Bandung, 1996, pp. 3–5.

⁵ Nany Suryawati, *Women's Political Human Rights*, Ideas Publishing, Gorontalo, 2020, p. 12.

⁶ Adery Ardhan Saputro, "The Concept of *Rechterlijk Pardon* or Judicial Pardon in the Draft Criminal Code," *Mimbar Hukum*, Volume 28, Number 1, February 2016, p. 61.

⁷ *Ibid*

⁸ M. Yahya Harahap, *Discussion of Problems and Application of the Indonesian Code of Criminal Procedure: Investigation and Prosecution*, Sinar Grafika, Jakarta, 2006, pp. 347–354.

⁹ Helmi Firdaus, Nenek Asiani, Found Guilty, <https://www.cnnindonesia.com/nasional/20150423151941-12-48782/> accessed on October 22, 2025, at 10:55 a.m. (WIB).

prevailing laws, whereby the actions of Nenek Minah and Nenek Asyani constituted criminal offenses that must be adjudicated based on the applicable legal provisions governing such acts and the types of judgments available to the court. At that time, the principle of judicial pardon (*rechterlijk pardon*) had not yet been established as one of the verdicts that could be applied by judges.

Several previous studies conducted at various universities in Indonesia were carried out as part of academic accountability. Therefore, it is necessary to briefly present these studies to provide a comparison between the findings of previous researchers and those of the current research. The studies that have been conducted with relevant discussions include the following:

1. Ika Mulianita, *The Application of the Judicial Pardon Principle (Rechterlijk Pardon) in the Settlement of Minor Criminal Cases as an Effort for National Criminal Law Reform*. Master's Thesis in Law, University of Batanghari Jambi, 2023. The strength of this research lies not only in its normative examination but also in its explanation of how judges consider aspects of justice, humanity, and the offender's personal circumstances. This strengthens its relevance to judicial practice. However, despite mentioning judicial considerations, the study does not include concrete case studies or court decisions, resulting in limited illustration of its practical implementation.¹⁰
2. Fadjar Sukma, *Chitto Cumbhadrika: The Urgency of Applying Rechterlijk Pardon as a Reform of Criminal Law in the Perspective of Restorative Justice*. *Gorontalo Law Review*, Vol. 6, No. 1, 2023. The strength of this study lies in its strong conceptual foundation. The author successfully positions *Rechterlijk Pardon* within the paradigm shift from retributive to restorative justice, thereby illustrating the direction of criminal law reform toward humanitarian values and substantive justice. However, it remains confined to the realm of ideas and conceptual discourse without providing a normative analysis of positive legal texts (since it was written before the 2023 Criminal Code). Consequently, the argumentation lacks practical enforceability and empirical evidence of implementation in Indonesia.¹¹
3. Benny Satrio Wicaksono, et al., *Rechterlijke Pardon as a Balancer of the Principle of Legality in the Reform of Indonesian Criminal Law*. *Ranah Research: Journal of Multidisciplinary Research and Development*, Vol. 7, No. 4, 2025. The strength of this research lies in its focus on the historical and philosophical roots of the legality principle and its connection to Indonesia's social context. This demonstrates strong theoretical depth and a critical reflection on legal colonialism. However, it primarily discusses the broader conceptual relationship between the legality principle and judicial pardon without detailing the boundaries or indicators of its practical application.¹²

¹⁰ Ika Mulianita, "The Application of the Judicial Pardon Principle (Rechterlijk Pardon) in the Settlement of Minor Criminal Cases as an Effort for the Reform of National Criminal Law." Thesis, Master of Laws Program, Batanghari University Jambi, 2023.

¹¹ Fadjar Sukma, *Chitto Cumbhadrika: The Urgency of Implementing Rechterlijk Pardon as a Reform of Criminal Law in the Perspective of Restorative Justice*. *Gorontalo Law Review Journal*, Vol. 6, No. 1, 2023.

¹² Benny Satrio Wicaksono, et al. "Rechterlijke Pardon as a Balancer of the Principle of Legality in the Reform of Indonesian Criminal Law." *Ranah Research: Journal of Multidisciplinary Research and Development*, Vol. 7, No. 4, 2025.

In terms of scientific contribution and novelty, the author occupies a strategic position as a primary reference in analyzing the application of *rechterlijk pardon* in the post-criminal law reform era of Indonesia, while the three previous studies serve as conceptual foundations that strengthen the normative and philosophical arguments for national criminal law reform. Consequently, a new idea emerges to apply the principle of judicial pardon (*rechterlijk pardon*) within the framework of national criminal law reform, enabling the Panel of Judges to render a verdict without imposing a penalty (*nonimposing of a penalty*) as an effort to fulfill the sense of justice. The concept of *Rechterlijk Pardon*, according to Nico Keizer, refers to cases in which many defendants have indeed fulfilled the elements of proof, but imposing punishment would contradict the sense of justice.¹³ In other words, if a punishment were imposed, it would create a conflict between legal certainty and legal justice. Prior to 1983, when such issues arose, the Panel of Judges was compelled to impose a sentence, even if it was very light.¹⁴

At present, the government has carried out a reform of the criminal law product, commonly referred to as the Criminal Code (KUHP), which introduces the concept of *rechterlijk pardon* a principle that grants judges the authority to pardon an offender who has been found guilty of committing a minor criminal act. Based on the aforementioned background, the author will elaborate on *the Application of the Principle of Rechterlijk Pardon in Criminal Case Decisions within the Framework of the Reform of Indonesia's National Criminal Law*.

II. STATEMENT OF THE PROBLEMS

Based on the background described above, the problems can be formulated as follows:

1. How is the application of the *rechterlijk pardon* principle in current criminal case decisions and in the future development of national criminal law?
2. What are the strengths and weaknesses of applying the *rechterlijk pardon* principle in criminal case decisions?

III. RESEARCH METHOD

This study employs a normative legal research method. The legal materials used consist of primary legal materials, including Law Number 1 of 1946 concerning the Criminal Code (KUHP); Law Number 1 of 2023 concerning the Criminal Code; Law Number 8 of 1981 concerning the Code of Criminal Procedure; and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Secondary and tertiary legal materials are also utilized. The research approach applied is the statutory approach. Data analysis is conducted using a descriptive qualitative method by elaborating on relevant aspects of the study and subsequently drawing conclusions.

IV. RESEARCH RESULTS AND DISCUSSION

¹³ Nico Keizer and D. Schaffmeister, "Several Notes on the 1998 Preliminary Draft of Book I of the New Indonesian Criminal Code," as cited by Adrey Ardhan Saputro, "The Conception of *Rechterlijk Pardon* or Judicial Pardon in the Draft Criminal Code," *Mimbar Hukum Journal*, Vol. 28, No. 1, February 2016, p. 63.

¹⁴ *Ibid*

1. The Application of the *Rechterlijk Pardon* Principle in Current Criminal Court Decisions and in the Future of National Criminal Law

The positive law in Indonesia to this day still adheres to the colonial Dutch legal system codified in the Criminal Code (KUHP). In its development, however, the values underlying Dutch law no longer align with those of Indonesian society. Consequently, Indonesian criminal law appears rigid, as the KUHP continues to uphold the formal legality principle, which seemingly disregards the living law in society and recognizes only written law. Therefore, a reform of criminal law is necessary to revive the living law that was once suppressed by the colonial legal system.

The currently applicable KUHP does not regulate the principle of judicial pardon (*rechterlijk pardon*) because the Dutch-origin KUHP is rooted in values of individualism and liberalism. As such, the needs and interests of individuals were not prioritized; instead, collective interests were emphasized. Whether a person receives justice or not is considered irrelevant the only matter of concern is whether the individual's conduct fulfills the elements of an offense as defined by law, in which case that person is declared guilty and must be punished.

The author argues that if the principle of judicial pardon (*rechterlijk pardon*) were applied within Indonesia's positive law, *mutatis mutandis*, judges would place greater consideration on the purposes and guidelines of sentencing. In fact, within Indonesia's positive law, the juvenile criminal justice system has already accommodated this principle. This is reflected in Article 70A of Law No. 11 of 2012, which states: "*The minor nature of the act, the child's personal circumstances, or the conditions at the time the act was committed or thereafter may serve as grounds for the judge to refrain from imposing a sentence or applying measures, taking into account considerations of justice and humanity.*"¹⁵

Explicitly, the regulation on the purpose of punishment within the formulation of judicial pardon is not clearly stipulated in the Criminal Code (KUHP). Substantively, however, the penal system rests on three core issues in criminal law crime, fault, and punishment whose application remains rigid. The absence of an explicit formulation regarding the "purpose of punishment" results in judicial decisions functioning merely as the mouthpiece of the law (*la bouche des lois*). Therefore, a change in the sentencing scheme is needed to allow judicial pardon for offenders who should not be punished, in accordance with the conception of the principle of judicial pardon (*Rechterlijk Pardon*).¹⁶

The rigidity of the Criminal Code (KUHP), which does not regulate the principle of judicial pardon (*rechterlijk pardon*), gives the impression that criminal law is aimed solely at retribution, as if a person who is guilty according to the law cannot be forgiven. The current KUHP indeed does not address the issue of judicial

¹⁵ Article 70a of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (State Gazette of the Republic of Indonesia Year 2012 Number 153, Supplement to the State Gazette of the Republic of Indonesia Number 5532).

¹⁶ Andi Hamzah, *The Concept of Rechterlijk Pardon*, Sinar Grafika, Jakarta, 2018, p. 8.

pardon; therefore, it is necessary to formulate and incorporate this principle into the future Criminal Code.¹⁷

Because the judicial pardon principle (*rechterlijk pardon*) reflects the humanitarian principle embedded in the nation's philosophy, Pancasila, and transforms the rigid paradigm of the Criminal Code (KUHP) into a more flexible and integral system, the reform of substantive criminal law will ultimately influence the implementation of criminal punishment. The judicial pardon principle provides a solution to address the issue of overcapacity in correctional institutions, which has long been a major problem in Indonesia. This represents a fundamental weakness of the current Criminal Code.

In the Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code, the judicial pardon principle (*rechterlijk pardon*) is explicitly incorporated into the Criminal Code under Article 54 paragraph (2), which forms part of the sentencing guidelines, as follows: "*Minority of the act, the personal circumstances of the offender, or the situation at the time of the act or thereafter may serve as grounds for not imposing a punishment or a measure, taking into account considerations of justice and humanity.*"

This article aligns with the provisions concerning the purposes of punishment stated in Article 51 paragraph (1) of the Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code, which are as follows:

- 1) To prevent the commission of criminal acts by upholding legal norms for the protection and welfare of society;
- 2) To rehabilitate and reintegrate the convicted person through guidance and counseling so that they become a good and useful individual;
- 3) To resolve conflicts arising from criminal acts, restore balance, and bring about peace and security in society; and
- 4) To foster a sense of remorse and relieve the offender's sense of guilt.

Furthermore, Articles 52 and 53 paragraphs (1) and (2) of the same law state that punishment is not intended to degrade human dignity. In adjudicating criminal cases, judges are obliged to uphold law and justice. When there is a conflict between legal certainty and justice, as referred to in paragraph (1), the judge must prioritize justice. The regulation on judicial pardon contained in the new Criminal Code serves as a sentencing guideline within Indonesia's criminal justice system for the future. The existence of such a guideline is of great importance, considering its central role in the administration of criminal justice. The inclusion of sentencing guidelines in the main codification of a country's criminal law reflects the underlying philosophy or orientation of punishment adopted by that nation.¹⁸

The development of sentencing orientations in the global context has become one of the underlying factors behind the emergence of new concepts in criminal court decisions. One of these new concepts is the *judicial pardon* (*rechterlijk pardon*).

¹⁷ M. Holy One, N. Singadimedja, and Ahmad Rosidi, "Exploring the Possibility of Judicial Pardon as an Alternative Form of Sentencing," *Rinjani Scientific Journal*, Vol. 9, No. 1, 2021, p. 47.

¹⁸ Muhammad Yusuf Syakir, "The Policy of Judicial Pardon (*Rechterlijk Pardon*) in the New Criminal Code," *Journal of Qur'anic and Legal Studies* 9, No. 1 (2023): 103.

Based on the formulation of the judicial pardon policy contained in the new Criminal Code (KUHP), it is evident that this regulation grants judges the authority not to impose punishment on a defendant who has been proven guilty of committing a criminal act. Although *explicit verbis* the provision does not directly mention a ruling in the form of a judicial pardon (*rechterlijk pardon*), its essence clearly reflects such judicial discretion.¹⁹

However, there are several limitations underlying the authority of the Panel of Judges to render a verdict based on judicial pardon. These limitations are as follows:

a. The Minor Nature of the Offense

This provision, in the author's view, is closely related to the categorization of the type of offense, or in other words, the weight of the criminal act committed is very light and/or does not cause any significant consequences or harm to the victim.

b. The Personal Circumstances of the Offender

According to the author, this provision is connected to the offender's mental attitude (*mens rea*), age, motive and purpose in committing the crime, life history, social condition, and economic capacity. It also includes consideration of whether the act was committed for the first time and not a repeated offense (*recidive*).

c. Circumstances at the Time of or Following the Offense

In the author's view, this provision pertains to whether the crime was premeditated or not, the manner and timing of the act, as well as the offender's attitude and actions after committing the crime.

d. Considerations of Justice and Humanity

This provision, according to the author, falls within the subjective domain of the judge in assessing the values of justice and humanity toward the offender. This reflects that the new Criminal Code (KUHP) represents significant progress, positioning justice above legal certainty. Such a principle is explicitly provided in Article 53 of the new KUHP, whereas the previous KUHP tended to be purely legalistic.

The principle of judicial pardon (*Rechterlijk Pardon*) is a new legal institution that grants judges the authority to forgive an offender who has been found guilty of committing a minor (non-serious) criminal act and/or whose offense is considered to have mitigating circumstances. *Rechterlijk Pardon*, or judicial pardon, also known as *non-imposing of penalty*, *judicial pardon*, or *dispensa de pena*, refers to a situation in which the defendant is proven guilty, yet no punishment is imposed by the panel of judges.²⁰

Furthermore, regarding the regulatory provision on judicial pardon contained in Article 54 paragraph (2) of the new Criminal Code (KUHP), the author believes that it essentially shares similarities with the concept of conditional punishment as

¹⁹ *Ibid*

²⁰ *Ibid*

regulated in Article 14a paragraph (1) of the KUHP. However, there is a slight difference: under the provision of conditional punishment, the defendant is still sentenced, but is not required to serve the sentence commonly referred to as a suspended or probationary sentence. In contrast, under judicial pardon, the defendant is declared guilty of committing a criminal act, but no sentence is imposed because the judge grants pardon. Both concepts have similar legal implications, namely that the perpetrator who is proven guilty of committing a criminal act is ultimately not subjected to imprisonment.²¹

With the scheme that the author has presented above, the objectives and guidelines for sentencing become prerequisites for the imposition of any punishment. This also affirms that a defendant who receives pardon and is not sentenced (as stipulated in Article 54 paragraph (2) of the new Criminal Code) will have a clearer legal position due to the explicit formulation of sentencing purposes and guidelines in the main framework of the criminal law codification (the new Criminal Code). Consequently, Indonesia's future criminal justice system will be more aligned with the noble ideals of the Indonesian nation namely, a national legal system founded upon the values of Pancasila.

On this basis, the implementation of judicial pardon regulations, complemented by the objectives and guidelines of sentencing in the new Criminal Code (KUHP), will obtain a clear position and legal status within Indonesia's criminal law system, thus enabling their application by the Panel of Judges. Furthermore, by incorporating the variables of sentencing objectives and guidelines into the conditions of punishment, the forthcoming Criminal Code establishes that the justification or legitimization for imposing a sentence is not limited merely to the criminal act itself (objective requirement/legalitas) and the culpability of the offender (subjective requirement/culpabilitas), but also extends to the objectives and guidelines of sentencing.²²

Although Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (KUHP), which regulates the principle of *rechterlijk pardon* (judicial pardon), has only recently been enacted, in practice this principle has already been considered in several criminal case decisions. Since the current Indonesian Criminal Procedure Law has not yet been able to accommodate the substance of the *rechterlijk pardon* principle as it should, the interpretation and implementation of this principle in criminal cases depend on each individual judge or panel of judges, as can be briefly observed in the following explanation:²³

a. Pekanbaru District Court Decision Number 1038/Pid.B/LH/2019/PN Pbr.

Case Position: A farmer was charged with violating Article 98 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management, due to his action of clearing land by burning. The fire unintentionally spread to

²¹ Muhammad Yusuf Syakir, *Op. cit.*, p. 109.

²² *Ibid*

²³ Directory of Decisions of the Mahkamah Agung Republik Indonesia, accessed on 23 April 2024 at 16:00 WIB.

nearby bushes, resulting in the burning of an area of approximately 400 square meters.

Judicial Considerations Regarding the Principle of *Rechterlijk Pardon*: Initially, the defendant intended to clear the bushes by gathering and piling them up before burning. Prior to burning, he had also made firebreaks to prevent the fire from spreading to other areas. Based on these facts, the Panel of Judges held that the principle of *strict liability*, which served as the basis of the public prosecutor's indictment, could not be applied in this case, since *strict liability* applies only in the context of civil environmental law, not in criminal environmental cases.

Moreover, the imposition of a criminal sentence on the defendant a small-scale elderly farmer would, in the end, undermine the sense of justice within society. The Panel of Judges further provided additional considerations concerning the judge's authority to grant pardon (*rechterlijk pardon*), grounded on the idea of avoiding rigidity in sentencing, serving as a corrective to the principle of legality, reflecting the value of the fourth principle of Pancasila "wisdom guided by deliberation" and embodying a penal policy that considers not only the crime and culpability, but also the ultimate purpose of punishment.

Verdict: The defendant was acquitted of all charges brought by the public prosecutor.

b. Rengat District Court Decision Number 2/Pid.Sus-Anak/2021/PN Rgt

Case Position: A 15-year-old minor was charged with stealing one unit of a Kawasaki D Tracker motorcycle. Based on the evidence presented in court, the child was proven legally and convincingly guilty of committing a theft under aggravating circumstances.

Judge's Consideration Regarding the Principle of *Rechterlijk Pardon*: The judge considered the *rechterlijk pardon* principle as regulated in Article 70 of Law Number 11 of 2012 on the Juvenile Criminal Justice System in handling this case. The consideration was based on several factors: the offender was still classified as a child; both parties had agreed to settle the dispute amicably; the stolen property had been returned to the victim; the child expressed remorse and apologized to the victim; the victim forgave the child; and reconciliation had occurred between the parties, meaning the issue was deemed resolved. Moreover, the judge emphasized that the punishment of children should be minimized, in line with the principle of criminal law as *ultimum remedium*. After reviewing these facts and linking them with the community research report, the judge assessed the elements of Article 70 and, based on those considerations, concluded that the child deserved forgiveness through the implementation of the *rechterlijk pardon* principle in this case.

Judgment: The judge rendered a decision in the form of the elimination of criminal sanctions for the child. From the previously described rulings, it can be observed that judges have diverse interpretations of *rechterlijk pardon*. Some judges perceive it as a ground for eliminating the unlawful nature of an act; others view it as a substantive consideration embedded within Indonesia's criminal law and include it as an additional basis in their rulings. There are also judges who have not yet applied the *rechterlijk pardon* principle appropriately, given that it has not been

accommodated in Indonesia's Criminal Procedure Law, while some judges correctly understand its essence and apply it properly in criminal cases by adhering to more specific legal provisions (*lex specialis derogat legi generali*).

2. Weaknesses and Strengths of the Application of the *Rechterlijk Pardon* Principle in Criminal Case Decisions under Law Number 1 of 2023 concerning the National Criminal Code (KUHP)

a. Weaknesses of Applying the *Rechterlijk Pardon* Principle in Criminal Case Decisions under Law Number 1 of 2023 concerning the National Criminal Code (KUHP)

The principle of *rechterlijk pardon* is regulated in Article 54 paragraph (2) of the new Criminal Code (KUHP), which reads as follows: "The minor nature of the act, the personal circumstances of the offender, or the circumstances at the time the criminal act was committed and those that occurred afterward may serve as the basis for consideration not to impose punishment or not to apply measures, by taking into account aspects of justice and humanity." Furthermore, the explanatory section elaborates that: "The provision in this paragraph is known as the *rechterlijk pardon* or *judicial pardon*, which grants judges the authority to grant forgiveness to a person who is guilty of committing a minor criminal offense. This forgiveness is stated in the judge's decision, and it must still be declared that the defendant has been proven to have committed the criminal act as charged."

Based on the wording of Article 54 paragraph (2) and its elucidation, it can be understood that the judge may grant pardon to an offender who has been proven guilty, thereby refraining from imposing a punishment. However, such a provision subsequently raises the question of what type of judicial decision would result from the granting of pardon by the judge to a proven offender. If the offender were to be acquitted (*vrijspraak*), it would contradict the very definition of an acquittal, which may only be rendered when the accused is found not guilty (Article 191 paragraph (1) of the Criminal Procedure Code). In contrast, in cases where the principle of *rechterlijk pardon* is applied, the offender has been proven guilty, yet the judge grants pardon (Article 54 paragraph (2) of the New Criminal Code).

Furthermore, if the offender is acquitted of all legal charges (*onslag van recht vervolging*), this is also not an appropriate option because such a verdict can only be rendered when it is proven that the defendant committed the act, but the act itself does not constitute a criminal offense (Article 191 paragraph (2) of the Criminal Procedure Code). Finally, if the offender is sentenced to punishment (*veroordeling tot enigerlei sanctie*), it would clearly contradict the nature of that type of verdict, which requires the judge to impose a criminal sanction upon the defendant who has been proven guilty (Article 193 paragraph (1) of the Criminal Procedure Code). If the imposition of punishment is omitted from the verdict in order to conform to the principle of *rechterlijk pardon*, such a decision would be rendered null and void by law (Article 197 paragraph (1) of the Criminal Procedure Code). From this explanation, it can be concluded that none of the types

of verdicts regulated in the Indonesian Criminal Procedure Code (KUHP) are compatible with the principle of *rechterlijk pardon*.

According to the author, the principle of *rechterlijk pardon* as stipulated in Article 54 paragraph (2) of the new Criminal Code (KUHP) has several weaknesses, among others:

First, it does not include any requirement that judicial pardon must be preceded by an act of forgiveness from the victim of the crime. Another weakness lies in the lack of synchronization or harmony between the provisions of judicial pardon in the KUHP and those in the Criminal Procedure Code (KUHP), as the latter does not yet regulate the type of judicial decision applicable for the implementation of a judicial pardon.

Second, as previously discussed, the principle of *rechterlijk pardon* in the new KUHP grants judges discretion to apply or not apply this principle in criminal cases. This is evident from the use of the word “may” (*dapat*) in the article’s wording. On one hand, such a provision supports judicial independence, especially when applied by judges with high integrity. However, the outcome could be different if applied by judges lacking integrity, as the resulting decisions might become discriminatory or biased.

Third, there are ambiguous phrases in the article, such as “minor offense” (*ringannya perbuatan*) and “principle of justice and humanity” (*asas keadilan dan kemanusiaan*). These abstract terms are not further elaborated upon in the explanatory section, potentially leading to varied interpretations in practice and inconsistent application in criminal court decisions.

Fourth, there is a potential for misuse of judicial discretion. The discretionary authority granted to courts in applying *rechterlijk pardon* could be abused, leading to unwarranted leniency in certain cases without adequate consideration of factors such as the severity of the offense or its impact on victims and society.

Fifth, concerns about inconsistent justice may arise. The flexibility afforded by *rechterlijk pardon* could lead to inconsistencies in judicial outcomes, where similar cases receive different rulings from different courts, thereby creating a perception of injustice among the public.

Sixth, the lack of protection for victims. The application of *rechterlijk pardon* may result in victims feeling that offenders have not received punishment commensurate with their wrongdoing, thereby diminishing their sense of justice and exacerbating psychological harm.

Seventh, it may increase the potential for acts of revenge. When victims or the public perceive that offenders are not adequately punished, it may provoke retaliatory actions outside the legal system, thereby endangering social peace and stability.

Eighth, there are difficulties in applying objective considerations. Determining when *rechterlijk pardon* is appropriate can be highly subjective and difficult to measure objectively, leading to inconsistent and confusing judicial decisions.

Considering that the *rechterlijk pardon* principle is a legal product created by humans, it is inherently imperfect; thus, both in its regulation and

implementation in practice, certain shortcomings are inevitable. Therefore, cooperation from all elements of society is required to oversee the implementation of the *rechterlijk pardon* principle in the handling of criminal cases in Indonesia, so that it aligns with the original intent of its formulation within Indonesian criminal law provisions and functions as a means to minimize the imposition of unnecessary criminal sanctions.

b. Strengths of the Application of the Rechterlijk Pardon Principle in Criminal Case Decisions under Law Number 1 of 2023 concerning the National Criminal Code (KUHP)

According to the author, the application of the Rechterlijk Pardon principle in criminal case decisions under Law Number 1 of 2023 concerning the National Criminal Code (KUHP) has several advantages that can improve the Indonesian criminal justice system:

First, flexibility in sentencing. The Rechterlijk Pardon principle provides flexibility for the court to adjust punishment based on the individual circumstances and context of the case. This allows the court to consider factors such as genuine remorse, the offender's role in the crime, and any efforts made toward restitution or recovery.

Second, recognition of behavioral change. By granting offenders the opportunity to receive forgiveness through Rechterlijk Pardon, the legal system acknowledges and encourages positive behavioral transformation. This can serve as an incentive for offenders to reform and avoid future criminal conduct.

Third, more effective social reintegration. Compared to harsh and uncompromising punishments, Rechterlijk Pardon can facilitate the reintegration of offenders into society more effectively. By providing a chance to regain trust and support for social reintegration, this principle helps reduce the likelihood of recidivism.

Fourth, minimizing prison overcrowding. By offering an alternative to imprisonment through Rechterlijk Pardon, the justice system can help alleviate prison overcrowding. This reduces pressure on the correctional system and allows resources to be redirected toward more effective measures, such as rehabilitation and social reintegration.

Fifth, promoting restorative justice. The implementation of Rechterlijk Pardon strengthens the restorative justice approach within the criminal law system. By emphasizing restoration, reconciliation, and community engagement, this approach better addresses the needs of victims and society as a whole.

The application of *rechterlijk pardon* is carried out carefully and fairly, without compromising justice for the victim or minimizing the importance of accountability for criminal acts.

V. CONCLUSION

Based on the discussion presented above, the following conclusions can be drawn:

1. The Application of the *Rechterlijk Pardon* Principle in Criminal Case Decisions
The current Criminal Code (KUHP), inherited from the Dutch colonial era, essentially does not regulate the principle of judicial pardon (*rechterlijk pardon*). As a result, when trivial cases arise involving minor or insignificant acts, judges tend to impose criminal penalties as though no alternative exists that allows leniency toward the defendant. This occurs because judges are bound by a rigid KUHP that formulates criminal acts solely based on statutory provisions. The application of the *rechterlijk pardon* principle in Indonesia's future criminal justice system, as stipulated in Article 54 paragraph (2) of the new Criminal Code, provides a sentencing guideline that was absent in the old Dutch-based KUHP. The policy of judicial pardon in the new KUHP grants judges the authority to forgive defendants proven guilty of committing a criminal act. However, even before its enactment, this principle had already been applied in several countries, including the Netherlands. Furthermore, certain Indonesian court decisions have implicitly reflected the values of judicial pardon. The forthcoming challenge lies in ensuring that judges apply *rechterlijk pardon* prudently and wisely to achieve justice for all parties, while maintaining legal compliance and social order in its implementation.
2. Weaknesses and Strengths of the *Rechterlijk Pardon* Principle
The weaknesses of implementing the *rechterlijk pardon* principle include the absence of a prerequisite that judicial pardon be preceded by forgiveness from the victim, and the lack of harmony between the provisions in the KUHP and the Criminal Procedure Code (KUHAP), which does not specify what type of verdict should be used in cases involving judicial pardon. Meanwhile, the strengths of the principle include: (1) flexibility in sentencing; (2) recognition of behavioral reform; (3) more effective social reintegration; (4) reduction of prison overcrowding; and (5) promotion of restorative justice.

VI. REFERENCES

- Andi Hamzah, *The Concept of Rechterlijk Pardon*, Sinar Grafika, Jakarta, 2018.
- Barda Nawawi Arief, *The Determination of Imprisonment in Legislation as an Effort to Combat Crime*, Bandung, Universitas Padjadjaran, 1986.
- Barda Nawawi Arief, *An Anthology of Criminal Law Policy: The Development of the Drafting of the New Criminal Code (KUHP) Concept*, Jakarta: Kencana Prenada Media Group, 2010.
- M. Yahya Harahap, *Discussion of Problems and Application of the Indonesian Code of Criminal Procedure: Investigation and Prosecution*, Sinar Grafika, Jakarta, 2006.
- Nany Suryawati, *Women's Political Human Rights*, Ideas Publishing, Gorontalo, 2020.
- P.A.F Lamintang, *The Fundamentals of Indonesian Criminal Law*, Citra Aditya Bakti, Bandung, 1996.

- Adery Ardhan Saputro. "The Concept of *Rechterlijk Pardon* or Judicial Pardon in the Draft of the Indonesian Criminal Code." *Mimbar Hukum* 28, no. 1 (February 2016).
- Benny Satrio Wicaksono et al. "Rechterlijke Pardon as a Balancer of the Principle of Legality in the Reform of Indonesian Criminal Law." *Ranah Research: Journal of Multidisciplinary Research and Development* 7, no. 4 (2025). DOI: <https://doi.org/10.38035/rrj.v7i4.1574>
- Fadjar Sukma, Chitto Cumbhadrika. "The Urgency of Implementing *Rechterlijk Pardon* as a Reform of Criminal Law from the Perspective of Restorative Justice." *Gorontalo Law Review* 6, no. 1 (2023). DOI: <https://doi.org/10.32662/golrev.v6i1.2678>
- M. Holy One N. Singadimedja and Ahmad Rosidi. "Exploring the Possibility of Judicial Pardon as an Alternative Form of Punishment." *Rinjani Scientific Journal* 9, no. 1 (2021).
- Muhammad Yusuf Syakir. "The Policy of Judicial Pardon (*Rechterlijk Pardon*) in the New Criminal Code." *Journal of Qur'anic and Legal Studies* 9, no. 1 (2023).
- Nico Keizer and D. Schaffmeister. "Some Notes on the 1998 Preliminary Draft of Book I of the New Indonesian Criminal Code," cited in Adery Ardhan Saputro, "The Concept of *Rechterlijk Pardon* or Judicial Pardon in the Draft of the Criminal Code," *Mimbar Hukum* 28, no. 1 (February 2016).
- Nefa Claudia Meliala. "Rechterlijk Pardon (Judicial Pardon): An Effort Toward a Criminal Justice System with a Restorative Justice Paradigm." *IUS Journal: Studies of Law and Justice* 8, no. 3 (December 2020).
- Ika Mulianita. "The Application of the Principle of Judicial Pardon (*Rechterlijk Pardon*) in the Settlement of Minor Criminal Offenses as an Effort for the Reform of National Criminal Law." Master's Thesis, Postgraduate Program in Law, University of Batanghari Jambi, 2023.
- Law Number 1 of 1946 concerning the Criminal Code (KUHP).
- Law Number 1 of 2023 concerning the Criminal Code (KUHP), State Gazette of the Republic of Indonesia Year 2023 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 6842.
- Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP), State Gazette of the Republic of Indonesia Year 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209.
- Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, State Gazette of the Republic of Indonesia Year 2012 Number 153, Supplement to the State Gazette of the Republic of Indonesia Number 5532.

Helmi Firdaus, *Grandmother Asiani Found Guilty*,
<https://www.cnnindonesia.com/nasional/20150423151941-12-48782/nenek-asiani-dinyatakan-bersalah>.

<https://www.mahkamahagung.go.id/id>, Directory of Supreme Court Decisions of the Republic of Indonesia, Decision of the Pekanbaru District Court Number 1038/Pid.B/LH/2019/PN Pbr.

<https://www.mahkamahagung.go.id/id>, Directory of Supreme Court Decisions of the Republic of Indonesia, Decision of the Rengat District Court Number 2/Pid.Sus-Anak/2021/PN Rgt.

<https://www.mahkamahagung.go.id/id>, Directory of Supreme Court Decisions of the Republic of Indonesia, Decision Number 247/PID.B/2009/PN.Pwt.

<https://www.mahkamahagung.go.id/id>, Directory of Supreme Court Decisions of the Republic of Indonesia, Decision Number 39/Pid.B/2015/PN.Sit.