

## RECONCEPTUALIZING JUDICIAL PARDON (*RECHTERLIJKE PARDON*) IN THE NATIONAL CRIMINAL CODE: UNDERSTANDING THE ROLE OF JUDGES AS GUARDIANS OF SUBSTANTIVE JUSTICE

### *RECONCEITUALIZANDO O PERDÃO JUDICIAL (RECHTERLIJKE PARDON) NO CÓDIGO PENAL NACIONAL: COMPREENDENDO O PAPEL DOS JUÍZES COMO GUARDIÕES DA JUSTIÇA SUBSTANTIVA*

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#### **Abstract**

This article examines the urgency of reconceptualizing the judicial pardon norm (*rechterlijke pardon*) within Indonesia's National Criminal Code (KUHP) in the context of rapid digital transformation and technological advancement. Judicial pardon grants judges the discretion to refrain from imposing punishment, even when the defendant's conduct formally fulfills the elements of a criminal offense, based on considerations of humanity, proportionality, and social justice. This study aims to analyze the relevance and application of judicial pardon in the era of Artificial Intelligence (AI), particularly as AI technologies are increasingly utilized in crime prevention, predictive policing, and biometric-based offender identification. This research employs a normative juridical method, utilizing statutory, conceptual, and comparative approaches. The findings reveal that while AI significantly enhances efficiency in law enforcement and contributes to crime detection and prevention, its rigid application especially when heavily reliant on technological evidence, risks marginalizing the humanistic dimension of justice. Accordingly, the reconceptualization of judicial pardon becomes essential to provide clearer normative guidelines for judges in balancing the efficiency of AI-driven law enforcement with the principles of restorative justice and the protection of human rights. Such integration ensures that the criminal justice

#### **Resumo**

*Este artigo examina a urgência de reconceituar a norma do perdão judicial (*rechterlijke pardon*) no âmbito do Código Penal Nacional da Indonésia (KUHP), no contexto da rápida transformação digital e do avanço tecnológico. O perdão judicial confere aos juízes o poder discricionário de abster-se de impor uma pena, mesmo quando a conduta do réu preenche formalmente os elementos de um crime, com base em considerações de humanidade, proporcionalidade e justiça social. Este estudo tem como objetivo analisar a relevância e a aplicação do perdão judicial na era da Inteligência Artificial (IA), particularmente à medida que as tecnologias de IA são cada vez mais utilizadas na prevenção do crime, no policiamento preditivo e na identificação de infratores com base em dados biométricos. Esta pesquisa emprega um método jurídico normativo, utilizando abordagens estatutárias, conceituais e comparativas. Os resultados revelam que, embora a IA aumente significativamente a eficiência na aplicação da lei e contribua para a detecção e prevenção de crimes, sua aplicação rígida, especialmente quando fortemente dependente de evidências tecnológicas, corre o risco de marginalizar a dimensão humanística da justiça. Nesse sentido, a reconceitualização do perdão judicial torna-se essencial para fornecer diretrizes normativas mais claras aos juízes, a fim de equilibrar a*



system does not operate in a purely mechanical and repressive manner, but remains humane, proportional, and socially responsive. Furthermore, strengthening the judicial pardon norm in the context of AI development serves as a safeguard against the potential misuse of technology, reinforces judicial independence, and ensures that justice remains grounded in human dignity as the fundamental value of law.

**Keywords:** Judicial Pardon. Rechterlijke Pardon. National Criminal Code. Artificial Intelligence. Restorative Justice.

*eficiência da aplicação da lei impulsionada pela IA com os princípios da justiça restaurativa e da proteção dos direitos humanos. Tal integração garante que o sistema de justiça criminal não funcione de maneira puramente mecânica e repressiva, mas permaneça humano, proporcional e socialmente sensível. Além disso, o fortalecimento da norma do perdão judicial no contexto do desenvolvimento da IA serve como uma salvaguarda contra o potencial uso indevido da tecnologia, reforça a independência judicial e garante que a justiça continue fundamentada na dignidade humana como valor fundamental do direito.*

**Palavras-chave:** Indulto Judicial. Indulto Judicial. Código Penal Nacional. Inteligência Artificial. Justiça Restaurativa.

## 1 INTRODUCTION

Within the Indonesian criminal law system, the administration of justice is fundamentally oriented toward achieving fairness, not merely imposing punishment upon offenders. In principle, criminal law enforcement is expected to balance legal certainty with substantive justice, ensuring that judicial decisions reflect not only the formal application of statutory provisions but also broader social and humanitarian considerations. However, in practice, the rigidity of legal norms often limits the ability of judges to deliver decisions that are responsive to the complexities of individual cases. In this context, the concept of rechterlijke pardon (judicial pardon) emerges as a significant normative innovation that allows judges to exercise discretion in refraining from imposing punishment despite the formal fulfillment of the elements of a criminal offense. (Galiot, 2017)

Judicial pardon, also referred to as legal pardon, provides an opportunity for judges to consider the specific circumstances of the offender, the nature of the offense, and the broader social implications of punishment. This concept reflects a shift from a purely retributive approach toward a more humane and rehabilitative model of criminal justice, emphasizing social reintegration and proportionality. It aligns with contemporary developments in criminal law that recognize the importance of individualized sentencing

and the need to accommodate moral, social, and humanitarian considerations within judicial decision-making. In Indonesia, the principle of *rechterlijke pardon* has been explicitly incorporated into Article 54 paragraph (2) of the National Criminal Code (KUHP) as enacted under Law Number 1 of 2023. This provision grants judges the authority not to impose punishment even when the defendant is proven guilty, provided that certain considerations are met. The formulation of this norm is closely related to the broader objectives of punishment as stipulated in Article 51 paragraph (1) of the KUHP, which include crime prevention, offender rehabilitation, conflict resolution, and the cultivation of remorse. These objectives demonstrate that the Indonesian criminal justice system is gradually moving toward a more restorative and human-centered paradigm. (Priambada, 2024)

Although the formal recognition of judicial pardon in the 2023 KUHP represents a significant legal development, the concept itself is not entirely new in Indonesian law. A similar provision can be found in Article 70 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which allows judges to refrain from imposing punishment on child offenders based on considerations such as the minor nature of the offense, the personal circumstances of the child, or conditions surrounding the commission of the act. However, the application of this principle was previously limited to juvenile cases, whereas the 2023 KUHP extends its scope to the general criminal justice system. (Bakhtiar et al., 2019)

The introduction of judicial pardon in the National Criminal Code is also influenced by comparative legal traditions, particularly Article 9a of the Dutch *Wetboek van Strafrecht*. This provision allows judges to determine that no punishment or measure shall be imposed if the offense is considered minor, or if the offender's personality and circumstances justify such a decision. The adoption of this concept reflects Indonesia's continued engagement with its historical legal foundations while simultaneously adapting them to contemporary legal and social realities. Despite its progressive nature, the formulation of Article 54 paragraph (2) of the KUHP raises several critical issues. The provision states that "the minor nature of the offense, the personal condition of the offender, or circumstances at the time of the offense or thereafter may serve as the basis for not imposing punishment or measures, taking into account justice and humanity." While this wording provides flexibility, it also introduces significant ambiguity. Key

phrases such as “minor nature of the offense,” “personal condition of the offender,” and “considerations of justice and humanity” lack precise legal definitions, thereby creating potential inconsistencies in interpretation and application.(UPR, 2022)

This ambiguity may lead to substantial disparities in judicial decisions, as different judges may interpret these criteria in divergent ways. The absence of clear parameters increases the risk of subjective or arbitrary decision-making, which could undermine legal certainty and public trust in the judiciary. Moreover, if these elements are interpreted as non-cumulative, the provision may open avenues for misuse, allowing defendants in relatively serious cases to avoid punishment based on selective considerations. For instance, an offender involved in an aggravated theft case could potentially benefit from judicial pardon by invoking personal circumstances, despite the gravity of the offense. Furthermore, the introduction of judicial pardon challenges the traditional classification of judicial decisions within Indonesian criminal procedure law. Historically, court decisions have been categorized into three types: acquittal (*vrijspraak*), dismissal of charges (*onslag van recht vervolging*), and conviction (*veroordeling*). The inclusion of judicial pardon effectively introduces a fourth category, where a defendant is found guilty but no punishment is imposed. This development necessitates a re-evaluation of existing procedural frameworks to ensure coherence and consistency within the criminal justice system.(Faisal, 2023)

Another critical issue arises from the explanatory section of Article 54 paragraph (2), which limits the application of judicial pardon to offenses categorized as “minor.” This restriction contradicts the underlying philosophical rationale of judicial pardon, which aims to provide flexibility, serve as a “safety valve” (*veiligheidsklep*), and function as a judicial corrective to the rigidity of the legality principle. By confining its application to minor offenses, the provision risks reducing judicial pardon to a symbolic norm with limited practical impact, rather than a meaningful instrument for achieving substantive justice. In essence, the concept of *rechterlijke pardon* is intended to promote a balanced approach in criminal justice, ensuring harmony between public interests and individual rights, as well as between the interests of offenders and victims. It embodies the principle of individualized justice and reflects the integration of humanitarian values into the legal system. However, the current legal framework does not yet fully support the effective

implementation of this concept, either at the level of substantive law or procedural law.(Murphy, 2010)

Given these challenges, the presence of judicial pardon in the 2023 KUHP, while progressive, remains vulnerable to misinterpretation and misuse due to its ambiguous and insufficiently detailed regulation. This situation highlights the urgent need for a comprehensive reconceptualization of the judicial pardon norm, grounded in legal principles that ensure clarity, consistency, and accountability. Based on the foregoing analysis, this study seeks to conduct a critical legal examination of the judicial pardon norm (*rechterlijke pardon*) within Law Number 1 of 2023 concerning the National Criminal Code. By employing a principled legal approach, this research aims to explore the essence, relevance, and urgency of judicial pardon within Indonesia's criminal justice system, as well as to propose a more coherent and robust conceptual framework for its future implementation.

### **1.1 Statement of the problem**

The enactment of Law Number 1 of 2023 concerning the Indonesian National Criminal Code marks a significant milestone in the reform of Indonesia's criminal law system. One of the notable innovations introduced in this legislation is the formal recognition of the *Rechterlijke Pardon* (judicial pardon) principle, which grants judges the discretion not to impose punishment despite the fulfillment of the elements of a criminal offense. This norm reflects a shift from a rigid, retributive paradigm toward a more flexible and humanistic approach that emphasizes proportionality, individualization of punishment, and substantive justice.

However, the normative formulation of *Rechterlijke Pardon* within the current legal framework raises several critical issues. The ambiguity of its conceptual boundaries, the lack of clear parameters for its application, and the potential for disparity in judicial decisions highlight the need for deeper theoretical and normative examination. Moreover, in the context of modern criminal law development characterized by the growing influence of restorative justice principles and technological advancements there is an urgent need to reassess whether the existing formulation of judicial pardon adequately accommodates the demands of justice, legal certainty, and judicial accountability.

## 1.2 Research questions

Against this background, this study formulates the following research questions:

1. What is the philosophical, juridical, and theoretical essence of the principle of *Rechterlijke Pardon* that underlies its codification in Law Number 1 of 2023 concerning the Indonesian National Criminal Code?
2. Why is the reconceptualization of the *Rechterlijke Pardon* norm necessary within the contemporary development of criminal law, particularly in addressing issues of legal certainty, justice, and proportionality?
3. How should the ideal formulation of the *Rechterlijke Pardon* norm be constructed in Law Number 1 of 2023 in order to ensure coherence with the principles of legality, judicial discretion, and restorative justice?

## 1.3 Research objectives

Based on the research questions formulated above, this study aims to achieve the following objectives:

- 1 To analyze the philosophical, juridical, and theoretical foundations of the *Rechterlijke Pardon* principle as codified in Law Number 1 of 2023 concerning the Indonesian National Criminal Code.
- 2 To examine the urgency of reconceptualizing the *Rechterlijke Pardon* norm in light of contemporary developments in criminal law, particularly in relation to legal certainty, justice, and proportionality.
- 3 To formulate an ideal model for the regulation of the *Rechterlijke Pardon* norm within the Indonesian National Criminal Code, ensuring its alignment with the principles of legality, judicial discretion, and restorative justice.

## 1.4 Scope of research

This research is limited to the study of the *Rechterlijke Pardon* (judicial pardon) norm as regulated in Law Number 1 of 2023 concerning the Indonesian National Criminal

Code (KUHP Nasional). The scope of analysis primarily focuses on the philosophical, juridical, and theoretical dimensions of the judicial pardon principle, including its conceptual foundations, normative formulation, and its implications within the Indonesian criminal justice system.(Alschuler, 2015)

This study adopts a normative juridical approach, emphasizing the examination of statutory regulations, legal doctrines, and relevant legal principles. Accordingly, the research is confined to the analysis of legal norms, particularly Article 54 paragraph (2) of the National Criminal Code, as well as related provisions that reflect the principles of punishment, judicial discretion, and restorative justice. Comparative insights from other legal systems, particularly those recognizing similar forms of judicial pardon, are also considered to enrich the analysis and support the development of an ideal normative framework. Furthermore, this research is limited to the context of criminal law reform in Indonesia and does not extend to a comprehensive empirical assessment of judicial practices across all jurisdictions. However, selected judicial decisions and practical illustrations may be used illustratively to support normative arguments. The study also does not aim to evaluate all aspects of the National Criminal Code, but rather concentrates specifically on the reconstruction and reconceptualization of the judicial pardon norm as a distinct legal issue.(Komalasari, 2021)

In addition, while this research acknowledges the broader development of modern criminal law including the influence of restorative justice and technological advancements it limits its discussion to the extent that such developments are relevant to the reconceptualization of *Rechterlijke Pardon*. Therefore, the primary focus remains on establishing a coherent and ideal normative formulation that balances legal certainty, justice, and judicial accountability within the Indonesian legal system

### **1.5 Significance of the study**

This research is expected to provide both theoretical and practical contributions to the development of criminal law, particularly in relation to the reconceptualization of the *Rechterlijke Pardon* (judicial pardon) norm within the Indonesian National Criminal Code. From a theoretical perspective, this study contributes to the enrichment of legal scholarship by offering a comprehensive analysis of the philosophical, juridical, and

conceptual foundations of judicial pardon. It seeks to bridge the gap between the principle of legality and the need for judicial discretion in achieving substantive justice. By integrating perspectives from criminal law theory, restorative justice, and modern legal developments, this research provides a more holistic understanding of how judicial pardon can function as a balancing mechanism between legal certainty, justice, and proportionality. Furthermore, it contributes to the discourse on criminal law reform by proposing a reconceptualized framework that aligns with contemporary legal values and human rights principles. (Lüth, 2021)

From a practical perspective, this study is expected to serve as a reference for policymakers, legislators, and law enforcement authorities in refining the normative formulation of judicial pardon within the National Criminal Code. The proposed model of reconceptualization may assist in minimizing interpretative ambiguities, reducing the risk of judicial disparity, and strengthening the accountability of judicial decisions. For judges, this research offers conceptual guidance in exercising discretion responsibly, particularly in determining when the application of judicial pardon is justified. In addition, this research holds significance for the broader criminal justice system by promoting a more humane and proportional approach to law enforcement. By emphasizing the integration of restorative justice principles, this study supports the development of a criminal justice system that not only enforces the law but also upholds human dignity, social harmony, and fairness. Ultimately, the findings of this research are expected to contribute to the realization of a modern Indonesian criminal law system that is not only legally sound but also socially responsive and just.

## **1.6 Definition of key terms**

To avoid ambiguity and ensure conceptual clarity, several key terms used in this research are defined as follows:

1. **Rechterlijke Pardon (Judicial Pardon);** Rechterlijke Pardon refers to the judicial authority granted to judges not to impose punishment on a defendant despite the proven fulfillment of the elements of a criminal offense. This principle is recognized in Article 54 paragraph (2) of Law Number 1 of 2023 and is grounded

in considerations of justice, humanity, proportionality, and the individual circumstances of the offender.

2. National Criminal Code (KUHP Nasional); The National Criminal Code refers to Law Number 1 of 2023 concerning the Indonesian Criminal Code, which represents the reformation and codification of Indonesia's criminal law system, replacing the previous colonial-based Criminal Code (Wetboek van Strafrecht).
3. Reconceptualization; Reconceptualization in this research refers to the process of critically re-examining and reformulating the normative and theoretical framework of judicial pardon to address existing ambiguities, enhance legal coherence, and align the norm with contemporary legal developments and societal needs.
4. Judicial Discretion; Judicial discretion refers to the authority of judges to make decisions based on their reasoned judgment within the boundaries of the law. In the context of this study, it specifically relates to the judge's power to determine whether punishment should be imposed or waived based on the principles underlying judicial pardon.
5. Restorative Justice; Restorative justice is an approach to criminal justice that emphasizes the restoration of relationships between the offender, the victim, and the community, rather than focusing solely on punishment. It seeks to achieve accountability, reconciliation, and social harmony.
6. Legal Certainty; Legal certainty refers to the principle that laws must be clear, predictable, and consistently applied, ensuring that individuals can foresee the legal consequences of their actions and that legal decisions are not arbitrary.
7. Proportionality; Proportionality refers to the principle that the severity of a legal response, including punishment, must be balanced with the nature and gravity of the offense, as well as the circumstances of the offender.
8. Criminal Law Reform; Criminal law reform refers to the process of revising and improving the substance, structure, and culture of criminal law to ensure its relevance, effectiveness, and alignment with contemporary legal values and societal expectations.

## 2 LITERATURE REVIEW

The objectives of law and the objectives of punishment, although closely interconnected, represent two distinct yet complementary domains within criminal law theory. The objective of law operates at a broader normative level, encompassing the regulation of social order, the protection of rights, and the realization of justice, while the objective of punishment is more specific, relating to the justification, function, and implementation of penal sanctions. Understanding this distinction is essential for situating contemporary developments such as judicial pardon within a coherent theoretical framework. The purpose of criminal law has historically been shaped by several major philosophical schools, particularly the classical, modern (positivist), and neo-classical schools. Each of these schools offers a different perspective on the role of law, the nature of crime, and the justification of punishment. (Firman Wijaya, 2022)

The classical school rests upon three fundamental principles: legality, culpability, and retribution. It adopts a *daad-strafrecht* orientation, focusing on the act rather than the offender. Consequently, the system of punishment is typically characterized by a single-track system, where sanctions are limited to criminal penalties without consideration of rehabilitative measures. In contrast, the modern (positivist) school shifts the focus from the act to the offender (*dader-strafrecht*). Influenced by thinkers such as Cesare Lombroso and Enrico Ferri, this school seeks to understand crime through empirical and interdisciplinary approaches, including criminology, psychology, and sociology. Its central aim is the protection of society (*social defense*), rather than mere retribution. (Sthan, 2015)

A key principle of the modern school is *ultimum remedium*, which posits that criminal law should function as a last resort when other legal mechanisms fail. This idea has been reinforced by scholars such as Franz von Liszt, who viewed criminal law as a subsidiary instrument within the broader legal system. The divergence between the classical and modern schools reflects a fundamental tension between legal certainty and social utility. While the former prioritizes rigid adherence to legal norms, the latter advocates flexibility and responsiveness to social realities.

## 2.1 The purpose of punishment

The purpose of punishment has long been debated within criminal law theory, resulting in three principal frameworks: retributive (absolute) theory, utilitarian (relative) theory, and integrative (combined) theory. The retributive theory asserts that punishment is justified solely as a response to wrongdoing (*quia peccatum est*). It is rooted in moral philosophy and emphasizes justice as moral balance. According to Immanuel Kant, punishment must be imposed because the offender deserves it, not because it produces beneficial consequences. Similarly, Johannes Andenaes argues that punishment serves to satisfy the claims of justice. In contrast, the utilitarian (relative) theory views punishment as a means to achieve future-oriented goals, particularly crime prevention (*ne peccetur*). It encompasses both general deterrence influencing society at large and special deterrence preventing recidivism by the offender. Anselm von Feuerbach introduced the concept of *psychological coercion*, suggesting that the threat of punishment can deter individuals from committing crimes. (Olásolo, 2007)

The integrative (combined) theory, advocated by scholars such as Pellegrino Rossi and further developed by Muladi, attempts to reconcile the tensions between retribution and utility. This approach recognizes that punishment serves multiple purposes simultaneously: retribution, deterrence, rehabilitation, and social restoration. It reflects a more nuanced understanding of criminal justice as a dynamic process aimed at restoring balance within society. Within this integrative framework, punishment is not merely a tool of repression but also a mechanism for social reintegration and conflict resolution. It aligns closely with contemporary paradigms such as restorative justice, which emphasize healing, reconciliation, and the restoration of social harmony.

## 2.2 Judicial pardon (*rechterlijke pardon*)

Judicial pardon, or *rechterlijke pardon*, represents a significant and progressive development in modern criminal law, granting judges the authority to refrain from imposing punishment despite the formal fulfillment of all elements of a criminal offense. This concept reflects a paradigmatic shift from rigid legal formalism toward a more humane, proportional, and context-sensitive approach to justice. Rather than viewing

punishment as an automatic consequence of criminal liability, judicial pardon recognizes that, in certain circumstances, the imposition of sanctions may be unnecessary, excessive, or even counterproductive to the broader aims of justice

In the Indonesian legal context, judicial pardon has been formally codified in the National Criminal Code (Law No. 1 of 2023), particularly in Article 54(2), which provides judges with discretionary authority not to impose punishment under specific conditions. This provision marks a fundamental transformation in Indonesia's penal philosophy, moving away from a purely retributive model toward a more balanced approach that incorporates elements of restorative and utilitarian justice. Although recently codified, the conceptual foundation of judicial pardon is not entirely new. Elements of similar reasoning can be found in earlier legal frameworks, particularly within juvenile justice systems and special statutory regimes that prioritize rehabilitation, protection, and proportionality over strict penal enforcement .(Hamamah et al., 2025)

From a comparative perspective, the concept of judicial pardon is neither isolated nor uniquely Indonesian. It has been recognized, with varying doctrinal formulations, in several jurisdictions such as the Netherlands, Greece, and Portugal. These legal systems demonstrate a shared recognition that strict adherence to punitive outcomes may not always align with the principles of justice and social utility. For instance, in the Netherlands, Article 9a of the *Wetboek van Strafrecht* allows courts to declare a defendant guilty without imposing punishment, particularly in cases where the offense is minor or where the personal circumstances of the offender warrant leniency. Similarly, Greek criminal law permits courts to refrain from sentencing under certain conditions, reflecting a commitment to proportionality, fairness, and individualized justice. These comparative models illustrate that judicial pardon functions as a mechanism to reconcile legal certainty with substantive justice by allowing flexibility at the sentencing stage.(Schabas, 2011) Historically, the emergence of such discretionary mechanisms is closely linked to the evolution of the civil law tradition, particularly the influence of Roman law as codified in the *Corpus Juris Civilis* under Emperor Justinian I. This tradition emphasizes systematic codification, rational legal reasoning, and the role of judges in interpreting and applying legal norms within structured boundaries. Within this framework, judicial

discretion is not viewed as arbitrary power, but as a necessary instrument to achieve equitable outcomes in cases where rigid application of the law would lead to injustice

The philosophical justification for judicial pardon can also be understood through the lens of legal pragmatism, as articulated by Rudolf von Jhering. Jhering argued that the development and adoption of legal institutions should be guided by considerations of utility, social need, and practical effectiveness, rather than rigid adherence to tradition or legal nationalism. From this perspective, the incorporation of judicial pardon into Indonesia's criminal law system represents a rational and necessary response to the complexities of contemporary society, where legal problems often require flexible and context-sensitive solutions. Furthermore, judicial pardon reflects a broader shift in criminal law toward the recognition of individualized justice. It allows judges to consider not only the legal elements of the offense, but also the personal circumstances of the offender, the impact of the crime, and the broader social context. In doing so, it aligns with modern penal theories that emphasize proportionality, rehabilitation, and restorative justice, rather than purely retributive objectives, the exercise of judicial pardon must be carefully structured and guided by clear normative standards to prevent arbitrariness and ensure consistency in judicial decision-making. Without such safeguards, the broad discretion inherent in judicial pardon may lead to unequal application and undermine legal certainty. Therefore, while judicial pardon offers a valuable mechanism for achieving substantive justice, its implementation must be accompanied by principled limitations and transparent reasoning.

In sum, judicial pardon constitutes an important innovation in Indonesian criminal law, reflecting both comparative influences and evolving domestic needs. It embodies a more adaptive and humane approach to criminal justice, one that seeks to balance legal certainty with fairness, and formal legality with substantive justice.

### **2.3 Theoretical justification**

Judicial pardon serves several important functions within modern criminal justice systems:

1. Mitigating the rigidity of legal formalism, thereby preventing unjust outcomes in exceptional cases;

2. Acting as a safety valve (*veiligheidsklep*) to address gaps between legal norms and social realities;
3. Providing judicial correction to the principle of legality, ensuring that justice is not reduced to mere procedural compliance;
4. Integrating moral and humanitarian values, particularly those reflected in Pancasila;
5. Aligning punishment with its broader objectives, including rehabilitation and social harmony.

However, the implementation of judicial pardon also raises critical concerns, particularly regarding legal certainty, potential abuse of discretion, and disparities in judicial decisions. These challenges highlight the need for a clear and coherent reconceptualization of the norm within Indonesia's criminal law framework.

### 3 RESEARCH METHODOLOGY

This study employs normative legal research, which focuses on examining law as a system of norms or rules as reflected in statutory regulations (law in books). Normative legal research is understood as a process of identifying legal principles, doctrines, and rules in order to address specific legal issues. As articulated by Peter Mahmud Marzuki, this type of research aims to produce legal arguments, theories, and new concepts that function as prescriptive solutions to existing legal problems. In this context, the research seeks to formulate a reconceptualization of the judicial pardon (*rechterlijke pardon*) norm within Indonesia's National Criminal Code by analyzing its philosophical foundations, normative structure, and practical implications. (Widiarty, 2024)

this objective, the study applies several complementary approaches. The statutory approach is used to examine relevant laws and regulations, particularly the provisions of Law No. 1 of 2023 concerning the Indonesian Criminal Code, in order to understand the formal construction of the judicial pardon norm. The conceptual approach is employed to explore and clarify the meaning and scope of judicial pardon as a legal concept, including its relationship with justice, proportionality, and humanity. In addition, the theoretical approach is utilized to analyze various legal theories especially theories of

punishment and judicial discretion that underlie the existence and application of judicial pardon. Furthermore, an interpretative approach is adopted to interpret statutory provisions in accordance with their true meaning and underlying values, allowing for a deeper understanding of the norm and its potential ambiguities.(Efendi, 2022)

The legal materials used in this research consist of primary, secondary, and tertiary sources. Primary legal materials include statutory regulations, particularly the Indonesian Criminal Code, as well as official legislative documents relevant to its formulation. Secondary legal materials comprise scholarly works such as textbooks, journal articles, and academic commentaries that provide critical analysis and interpretation of legal norms. Meanwhile, tertiary legal materials include supporting references such as legal dictionaries and explanatory documents that assist in understanding the primary and secondary sources. The collection of these materials is conducted through library research and document analysis, by systematically identifying, reviewing, and organizing legal sources relevant to the issue of judicial pardon.(Rizkia & Fardiansyah, 2023)

The analysis of legal materials is carried out using a prescriptive and qualitative method. The collected materials are first selected and classified based on their relevance, then systematically arranged to ensure a coherent analytical framework. The study does not merely describe existing legal norms but also evaluates their consistency, identifies gaps and ambiguities, and proposes normative solutions. Through an inductive reasoning process, general legal principles and theoretical frameworks are used to derive specific conclusions regarding the ideal formulation of the judicial pardon norm. This approach ultimately aims to produce a comprehensive and well-founded reconceptualization that aligns with the principles of justice, legal certainty, and social benefit within the Indonesian criminal law system.(Spradley & Elizabeth, 2007)

## **4 RESEARCH FINDINGS AND DISCUSSION**

### **4.1 The essence of *rechterlijke pardon* in the national criminal code**

The principle of *Rechterlijke Pardon* emerges from the need of modern criminal law to mitigate the rigidity inherent in the strict application of the legality principle and

the principle of culpability in sentencing practices. Within the framework of the Indonesian National Criminal Code, *Rechterlijke Pardon* is understood as the authority of judges to refrain from imposing punishment on a defendant who has been lawfully and convincingly proven guilty, where such punishment is deemed inconsistent with the objectives of criminal law. In this regard, the concept does not negate criminal liability but functions as a corrective mechanism against overly mechanical and formalistic sentencing outcomes. From a doctrinal perspective, *Rechterlijke Pardon* does not undermine the principles of legality or culpability; rather, it complements them by introducing a more flexible and contextual approach to criminal justice. Its normative essence lies in the recognition that punishment is not an end in itself but a means to achieve justice, utility, and social protection. Consequently, the incorporation of *Rechterlijke Pardon* into the National Criminal Code reflects a paradigm shift from a purely retributive model toward a more teleological and humanistic approach to punishment. (Muhni et al., 2025)

In light of the objectives of punishment as formulated in the National Criminal Code, *Rechterlijke Pardon* serves to prevent disproportionate sentencing, provide space for social restoration, and maintain a balance between the interests of the offender, the victim, and society. In certain cases, the imposition of punishment may, in fact, generate new forms of injustice, whether due to the minor nature of the offense, the personal circumstances of the offender, or the broader social consequences of punishment. Therefore, philosophically, this principle is grounded in substantive justice and humanitarian values, positioning law as an instrument to realize justice as it lives within society. Historically, the idea of pardon in criminal law is not novel. The concept of forgiveness has existed since ancient legal systems, such as the Code of Hammurabi, and was also reflected in Roman legal practices, where certain individuals could be granted clemency or immunity under specific conditions. In its modern development, this concept was adopted into European continental legal systems, particularly in the Netherlands through Article 9a of the revised *Wetboek van Strafrecht* (WvS) of 1983. This provision allows judges to refrain from imposing punishment by considering factors such as the minor nature of the offense, the character of the offender, and the circumstances surrounding the commission of the act. (Velarde Rodriguez, 2014)

This Dutch provision has significantly influenced the formulation of *Rechterlijke Pardon* in Indonesian criminal law, particularly as reflected in Article 54 paragraph (2) of Law Number 1 of 2023 concerning the Criminal Code. The provision states that the minor nature of the act, the personal circumstances of the offender, or the conditions at the time of the offense and thereafter may serve as grounds for not imposing punishment, taking into account considerations of justice and humanity. This formulation affirms that the authority of judges to grant pardon is legally recognized within the Indonesian criminal justice system. However, despite its normative and philosophical justification, the current formulation of *Rechterlijke Pardon* in the National Criminal Code raises critical concerns, particularly from a victimological perspective. The provision predominantly emphasizes the offender and the nature of the act (*daad-dader strafrecht*), while insufficiently accommodating the interests and rights of victims. In practice, judges may grant pardon without necessarily considering the victim's perspective or obtaining their consent, which may result in a sense of injustice for victims. This is problematic, given that victims are entitled to restoration and compensation as part of a fair criminal justice process.

Accordingly, contemporary criminal law should not be exclusively oriented toward either the act (*daad strafrecht*) or the offender (*dader strafrecht*), as such approaches risk producing imbalanced justice. Instead, it should evolve toward a more integrated paradigm that also incorporates the interests of victims (*slachtoffer strafrecht*). The absence of victim consideration within the framework of *Rechterlijke Pardon* highlights a significant normative gap in the current regulation, as it fails to establish a balanced approach that adequately reflects the interests of all parties involved. Ultimately, *Rechterlijke Pardon* embodies a progressive legal concept aimed at ensuring that criminal law is not applied rigidly but remains responsive to the demands of substantive justice. It enables judges to avoid formally correct yet substantively unjust punishments, while also promoting a more humane and proportionate approach to sentencing. Nevertheless, its current regulation in the National Criminal Code necessitates further reconceptualization to ensure that it fully aligns with the principles of justice, including the protection and recognition of victims' rights within the criminal justice system. (Faaza, 2022)

Criminal law reform constitutes an inevitable necessity within a modern rule of law that is inherently dynamic and responsive to societal developments. The concept of

the rule of law (*rechtsstaat*) is no longer confined to the pursuit of legal certainty alone, but also encompasses justice and utility as fundamental objectives of the legal system. From a legal philosophical perspective, law cannot be understood as a static set of norms detached from social reality; rather, it must function as an adaptive instrument capable of responding to changes in values, social structures, and societal needs. In its classical formulation, the rule of law primarily functioned as a mechanism to limit state power. However, its evolution into the modern welfare state has expanded its role to include law as a tool of social engineering. Within this framework, criminal law must be positioned proportionally so that it does not transform into a purely repressive instrument that contradicts the protection of human rights. A dynamic rule of law thus requires a legal system that is flexible, progressive, and capable of maintaining a balance between legal certainty, justice, and social benefit. (Liss, 2024)

The notion of a dynamic rule of law reflects the understanding that law must continuously evolve alongside society. As emphasized in the theory of *living law*, effective law is not merely that which is codified in legislation, but that which operates and is accepted within social life. Consequently, legal norms must remain open to reinterpretation and reform in order to maintain their relevance and legitimacy. In this sense, criminal law cannot remain bound to rigid, formalistic, and retributive traditions, but must evolve toward a system that is more humane, proportional, and socially responsive. The necessity of criminal law reform arises as a logical consequence of these dynamics. Reform, in this context, refers to a systematic effort to review, adjust, and improve legal norms to ensure their alignment with principles of justice, effectiveness, and social relevance. Criminal law, as the most coercive branch of law, requires continuous evaluation not only of its substantive norms but also of its sentencing system and underlying objectives. Scholars such as Sudarto and Moeljatno emphasize that criminal law must be understood as part of social policy aimed at protecting society and promoting social welfare, rather than merely as a mechanism for punishment. (Matwijkiw et al., 2025)

In the Indonesian context, the urgency of criminal law reform is closely linked to the need to align the legal system with the values of Pancasila, human rights, and contemporary social developments. Barda Nawawi Arief asserts that criminal law reform is a structural necessity within a modern legal state, as it ensures that criminal law remains

relevant, humane, and effective in addressing evolving forms of crime and social conflict. Similarly, Marc Ancel's concept of *defence sociale nouvelle* highlights the importance of shifting the focus of criminal law from retribution toward social protection and offender rehabilitation. Moreover, the development of modern crime, influenced by globalization and technological advancement, further reinforces the necessity of reform. As noted by Muladi, changes in the nature and complexity of crime demand a criminal law system that is capable of balancing social protection, legal certainty, and respect for human rights. In addition, public trust in the legal system, as emphasized by Lawrence M. Friedman, is strongly influenced by legal culture namely, the values and perceptions of society toward law and legal institutions. When criminal law fails to reflect societal notions of justice, its legitimacy is inevitably weakened, thereby necessitating reform. (Aji, 2024)

Normatively, the urgency of criminal law reform is also reinforced by international standards on human rights and criminal justice. Institutions such as the United Nations advocate for proportionality in sentencing, the use of alternative sanctions, and restorative approaches as essential components of a modern criminal justice system. These principles underscore that punishment should not be the sole response to crime, particularly where alternative measures may achieve more effective and just outcomes. Within this framework, the principle of *Rechterlijke Pardon* can be understood as a logical extension of modern criminal law principles that emphasize justice, humanity, and proportionality. It reflects the idea that not every proven offense must result in punishment, and that, in certain circumstances, a declaration of guilt without the imposition of a penalty may sufficiently fulfill the objectives of criminal law. Therefore, criminal law reform is not merely a policy choice, but a normative imperative inherent in the concept of a dynamic rule of law.

#### **4.2 Distinction between judicial pardon, acquittal, dismissal of charges, and suspended sentencing**

Judicial pardon (*rechterlijke pardon*) must be clearly distinguished from other forms of judicial decisions within the criminal justice system, particularly acquittal, dismissal of charges, and suspended sentencing. Although these mechanisms may appear

similar in that they can result in the absence of punishment, they differ fundamentally in their legal nature, basis, and implications.

First, judicial pardon differs from an acquittal. An acquittal is rendered when the court finds that the prosecution has failed to prove the defendant's guilt beyond a reasonable doubt. In such cases, the defendant is declared not guilty, and no criminal responsibility is established. In contrast, judicial pardon presupposes that the defendant's guilt has been legally and convincingly proven. However, despite the fulfillment of all elements of the offense, the judge decides not to impose punishment based on considerations of justice, proportionality, or the minor nature of the act.

Second, judicial pardon must also be distinguished from dismissal of charges (*ontslag van alle rechtsvervolging*). A dismissal occurs when the act committed by the defendant is proven, but it does not constitute a criminal offense, either because of the absence of unlawfulness or the presence of justifying or excusing grounds. Thus, in dismissal, the issue lies in the legal qualification of the act. Conversely, in judicial pardon, the act remains a criminal offense and the defendant remains legally culpable; however, punishment is waived as a matter of judicial discretion.

Third, judicial pardon is fundamentally different from suspended sentencing. In a suspended sentence, the court imposes a criminal penalty but postpones its execution under certain conditions. The punishment remains legally binding and may be enforced if the conditions are violated. By contrast, judicial pardon does not impose any punishment at all. It represents a complete waiver of penal sanctions, even though criminal liability has been established.

These distinctions highlight that judicial pardon constitutes a unique legal mechanism that operates at the sentencing stage, rather than at the level of determining guilt or the criminal nature of the act. It reflects a shift toward a more flexible and humanistic approach in criminal law, allowing judges to balance legal certainty with substantive justice in appropriate cases.

### 4.3 Judicial pardon in the perspective of substantive justice and the humanization of criminal law

Justice, as the philosophical foundation of *Rechterlijke Pardon*, constitutes a fundamental value in criminal law that cannot be detached from the broader objectives of punishment. In modern criminal law discourse, justice is no longer confined to the formalistic application of legal norms, but is instead understood as a dynamic effort to achieve a balanced reconciliation between the interests of the state, society, and the offender. Consequently, a just sentencing framework must holistically consider not only the act and the culpability of the offender, but also the concrete circumstances surrounding the individual, ensuring that the law does not lose its human dimension. Within this framework, *Rechterlijke Pardon* operates as a doctrinal instrument that allows judges to transcend rigid legalism in pursuit of a more equitable outcome. From the standpoint of substantive justice, *Rechterlijke Pardon* affirms that the fulfillment of the elements of a criminal offense does not automatically justify the imposition of punishment. Instead, it introduces a critical evaluative layer in which judges assess whether punishment is truly necessary and proportionate in a given case. Substantive justice requires that legal decisions reflect not only normative correctness but also moral appropriateness and social fairness. Thus, in certain situations, punishment may paradoxically produce injustice particularly where the gravity of the offense is minimal, the offender's personal circumstances are compelling, or the social consequences of punishment are disproportionately severe. In such contexts, judicial pardon emerges as a corrective mechanism designed to prevent the law from becoming an instrument of injustice. (Pardon, 2020)

The institutionalization of this principle within Indonesia's Criminal Code (Law No. 1 of 2023) demonstrates a significant normative shift toward contextual and case-sensitive justice. By granting judges the authority to refrain from imposing punishment, the legal system acknowledges that justice is not monolithic but rather contingent upon the specificities of each case. This approach elevates the role of the judiciary, positioning judges as key actors in determining whether the imposition of punishment aligns with the broader goals of criminal law, including fairness, social utility, and humanity. In this regard, judicial pardon reflects an evolution from rigid legality toward a more flexible

and morally responsive legal order. Furthermore, *Rechterlijke Pardon* serves as a mechanism to mitigate the adverse effects of disproportionate punishment, including excessive suffering, social stigma, and long-term marginalization of offenders. A purely retributive approach often neglects the broader social implications of punishment, particularly its capacity to disrupt familial structures, hinder reintegration, and perpetuate cycles of exclusion. By contrast, a humanistic approach to criminal law embodied in judicial pardon prioritizes dignity, proportionality, and the potential for rehabilitation. It reorients the criminal justice system from a punitive apparatus into a forum for contextual justice and social restoration. (Liman, n.d.)

Closely related to this is the principle of proportionality, which lies at the core of modern sentencing theory. Judicial pardon enables courts to calibrate the intensity of penal responses in accordance with the degree of culpability and the actual harm caused. Rather than imposing uniform sanctions, judges are empowered to tailor their decisions to reflect the nuanced realities of each case. This flexibility is particularly relevant in cases involving minor offenses accompanied by significant mitigating factors, where the imposition of punishment would neither serve deterrence nor promote justice. In such instances, the decision to withhold punishment may better fulfill the objectives of criminal law than the imposition of sanctions. At the same time, the relationship between judicial pardon and human rights protection is of fundamental importance. Punishment that disregards the personal conditions of the offender such as health, economic vulnerability, or family responsibilities may risk violating basic principles of human dignity. Judicial pardon offers a safeguard against such outcomes by embedding humanitarian considerations into judicial reasoning. However, this discretion must be exercised with caution to avoid undermining the rights of victims. Accordingly, transparency, reasoned justification, and, where appropriate, victim participation become essential components in maintaining the legitimacy of judicial pardon. (Berlianto & Liman, 2025)

In practical terms, the application of *Rechterlijke Pardon* also carries systemic implications, particularly in alleviating the burden on correctional institutions. By reducing reliance on custodial sentences in appropriate cases, it contributes to addressing issues such as prison overcrowding and the associated humanitarian concerns. Moreover, it facilitates alternative forms of accountability, including community-based sanctions

and social rehabilitation programs, which may be more effective in achieving long-term reintegration. The success of such measures, however, depends on the availability of institutional support, including social services and monitoring mechanisms. Despite its normative and practical advantages, judicial pardon is not without challenges. The broad discretion it grants to judges raises concerns بشأن consistency, accountability, and potential disparities in sentencing. Without clear guidelines, there is a risk that similar cases may yield significantly different outcomes, thereby undermining legal certainty. (Maskun et al., 2020) To address this, it is essential to develop structured judicial guidelines that outline objective criteria for the application of judicial pardon, including the assessment of mitigating factors, risk evaluation, and the articulation of reasons in judicial decisions. Such measures would help balance the need for flexibility with the demands of consistency and fairness. Theoretically, the legitimacy of *Rechterlijke Pardon* is reinforced by contemporary criminal law scholarship. Scholars such as Andrew Ashworth emphasize that sentencing should not be mechanical but must reflect rational and humane considerations. Similarly, Barda Nawawi Arief underscores that not all criminal acts warrant punishment, particularly when punishment would produce outcomes contrary to justice and social benefit. These perspectives align with the broader movement in criminal law toward individualized justice and the rejection of excessive penalization. (Sukma & Cumbhadrika, 2023)

This paradigm shift is further supported by the concept of normative culpability, which reconceptualizes fault as a matter of evaluative judgment rather than mere psychological fact. Thinkers such as Claus Roxin argue that culpability must be assessed in light of whether the offender could reasonably have acted differently under the circumstances. This approach introduces flexibility into the attribution of responsibility and, by extension, into sentencing decisions. In the Indonesian context, this perspective resonates with the views of scholars like Moeljatno and Sudarto, who emphasize the ethical and social dimensions of culpability. Equally important is the evolving role of judges as agents of substantive justice. Moving beyond the traditional notion of judges as mere “mouthpieces of the law,” contemporary legal thought recognizes their function as interpreters and co-creators of law. This view, articulated by Mauro Cappelletti, highlights the necessity of judicial creativity in addressing gaps and ambiguities within legal systems. In Indonesia, this role is constitutionally grounded in the mandate that

judges uphold both law and justice, reinforcing their responsibility to deliver decisions that are not only legally valid but also socially legitimate. (Latif et al., 2024)

The humanization of criminal law provides the broader philosophical context within which *Rechterlijke Pardon* operates. Drawing on the ideas of Gustav Radbruch, the balance between legal certainty, justice, and utility must be maintained, with justice taking precedence in cases of intolerable injustice. Judicial pardon exemplifies this principle by allowing limited departures from strict legality in order to achieve fairer outcomes. It represents a conscious effort to ensure that criminal law remains a tool for protecting human dignity rather than an instrument of rigid and impersonal enforcement. In sum, *Rechterlijke Pardon* embodies the convergence of several key developments in modern criminal law: (Maskun, 2013) the recognition of substantive justice, the humanization of punishment, the flexibility of normative culpability, and the active role of judges in achieving equitable outcomes. These elements collectively signal a departure from mechanistic legalism toward a more responsive and humane system of criminal justice. By integrating these principles, judicial pardon not only enhances the moral legitimacy of the legal system but also reinforces its capacity to adapt to the complexities of contemporary society. (Azisa et al., 2025)

#### **4.4 The novelty of the application of the rechterlijke pardon principle**

The novelty of this research lies in its effort to reconceptualize the application of the *rechterlijke pardon* principle within the Indonesian criminal justice system through a structured and accountable framework. While judicial pardon has been recognized in the Indonesian Penal Code as an expression of modern criminal law that emphasizes substantive justice and humanity, its normative design remains underdeveloped. Existing legal frameworks tend to grant broad discretion to judges without providing adequate parameters to guide and control its application. This research departs from that condition by proposing a systematic model that transforms judicial discretion from an implicit and potentially arbitrary space into a structured, guided, and reviewable legal mechanism. (Setiawan, 2021)

At the core of this novelty is the formulation of a normative design for controlling judicial discretion. Judicial discretion is not rejected, as it constitutes an essential element

of judicial independence and a prerequisite for achieving individualized justice. However, this research argues that discretion must operate within a clear normative structure that ensures consistency, accountability, and legal certainty. In this regard, *rechterlijke pardon* is repositioned not as a purely intuitive or moral judgment of the judge, but as a legal instrument grounded in objective criteria, such as the degree of culpability, the proportionality of punishment, the social impact of the offense, and the relevance of sentencing objectives. By embedding discretion within a structured normative framework, this research introduces the concept of guided discretion, which preserves judicial independence while preventing arbitrariness and disparity in sentencing outcomes.

A central and original contribution of this study is the introduction of the concept of a *heightened reasoning standard* as a foundational requirement for the legitimate application of *rechterlijke pardon*. This concept is based on the premise that the decision to waive punishment despite proven guilt constitutes a justified deviation from the ordinary consequences of criminal liability, and therefore demands a higher level of justification. The greater the deviation from conventional sentencing, the heavier the burden of reasoning that must be fulfilled by the judge. In this sense, legitimacy is no longer derived solely from formal authority, but from the quality and transparency of judicial reasoning. The *heightened reasoning standard* proposed in this research requires judges to construct their decisions through a layered and integrated form of legal reasoning. (Arizal Anwar, 2026)

First, juridical reasoning ensures that the offense and the defendant's culpability have been established in accordance with the law, and that the decision to waive punishment is grounded in a valid legal basis within the criminal justice system. This layer is crucial to prevent any misinterpretation that judicial pardon constitutes an erasure of wrongdoing or a denial of legal responsibility. Second, philosophical reasoning connects the decision to fundamental principles of criminal law, including justice, proportionality, and humanity, thereby situating the decision within broader normative and ethical considerations. Third, sociological reasoning requires judges to assess the real-world implications of their decision, including its impact on victims, societal order, and public trust in the justice system. The integration of these three layers represents a significant departure from conventional judicial reasoning, which often treats such

considerations implicitly and unsystematically. Furthermore, this research advances a new understanding of *rechterlijke pardon* as an accountable corrective mechanism within the criminal justice system. Rather than viewing it as a mere exception applied on a case-by-case basis, this study positions judicial pardon as an integral component of the sentencing framework that functions to correct the rigidity of positive criminal law. In situations where the formal application of punishment would result in substantive injustice, *rechterlijke pardon* operates as a “safety valve” that allows the legal system to remain responsive to the complexities of human behavior and social realities. However, this corrective function is not left unchecked. It is embedded within a framework of accountability that requires transparency, reasoned justification, and openness to judicial review and public scrutiny.

In this context, the novelty of the research lies not only in redefining the function of *rechterlijke pardon*, but also in integrating it into a broader paradigm of criminal law reform that emphasizes the importance of judicial reasoning as a source of legitimacy. The study demonstrates that modern criminal justice cannot rely solely on the certainty of legal rules, but must also be supported by the rationality, consistency, and accountability of judicial decisions. By combining a normative design of controlled discretion with the *heightened reasoning standard*, this research provides a comprehensive framework that balances judicial independence with the demands of legal certainty, equality before the law, and public trust. Ultimately, this research contributes to the development of a more humane, responsive, and legitimate criminal justice system by offering a model in which judicial pardon is not merely an act of leniency, but a structured and principled instrument of substantive justice.

#### **4.5 Requirements and elements for the application of *rechterlijke pardon***

The normative regulation of judicial pardon (*rechterlijke pardon*) must be formulated in a clear, measurable, and systematic manner to ensure its accurate application within criminal justice practice. An ideal framework should encompass objective, subjective, and procedural elements that operate in an integrated and complementary way. These elements are essential not only to guide judicial discretion but also to ensure that the application of judicial pardon remains consistent with the

principles of legal certainty, justice, and accountability.(Maskun; Achmad; Naswar; Assidiq Armelia; Napang, Marthen; Hendrapati, Marcel, 2020)

Objectively, the application of *rechterlijke pardon* must be limited to criminal acts that do not involve aggravating circumstances and do not produce significant social harm. The notion of the “minor nature of the offense” should not be understood merely through formal classifications or statutory penalty thresholds. Instead, it must be interpreted substantively and contextually, focusing on the actual harm caused, the intensity of the violation, and its broader social impact. An offense may be considered minor when it results in minimal and reparable harm, does not inflict serious suffering on victims, and does not disrupt public order or undermine societal trust in the legal system. Additionally, offenses that are incidental, spontaneous, and non-recurring further support the classification of minor wrongdoing, indicating that punitive intervention may not provide meaningful corrective or preventive value.(Yudhi Hertanto, 2026)

Subjectively, the personal circumstances of the offender play a crucial role in determining the appropriateness of judicial pardon. This element reflects the principle of individualized sentencing, where the focus extends beyond the act itself to include the character and condition of the offender. Relevant considerations include the absence of prior criminal history, the offender’s social integration, psychological condition, and behavior before and after the offense. Offenders who demonstrate genuine remorse, cooperate during legal proceedings, and actively attempt to repair the harm caused exhibit a level of moral responsibility that may render formal punishment unnecessary. Conversely, where the offender displays persistent criminal tendencies, recidivism, or a lack of accountability, the justification for judicial pardon diminishes significantly.

In addition to these objective and subjective elements, the contextual dimension—namely the circumstances at the time of the offense and subsequent developments—must also be carefully evaluated. Judicial pardon is more appropriately applied in cases where the offense occurred under exceptional or situational pressures that, while not constituting legal excuses or justifications, nonetheless mitigate the relevance of punishment. Equally important are post-offense developments, such as reconciliation with the victim, restitution, and constructive engagement with the justice process. These factors may indicate that the fundamental goals of criminal law, including restoration and prevention, have already been achieved without the need for formal sentencing.

At the normative level, considerations of justice and humanity function as the ultimate evaluative framework. Even when the objective and subjective requirements are satisfied, judicial pardon must still pass a fundamental test: whether refraining from punishment genuinely reflects substantive justice and respect for human dignity. Justice, in this sense, requires a proportional balance between the wrongdoing, its consequences, and the state's response, ensuring that victims' rights and societal expectations are not disregarded. Humanity, on the other hand, emphasizes that offenders remain individuals with inherent dignity and the capacity for moral transformation. Judicial pardon thus operates as a safeguard against disproportionate punishment and the dehumanization of offenders within the criminal justice system. Importantly, *rechterlijke pardon* can only be applied after the defendant has been lawfully and convincingly proven guilty. It does not eliminate the unlawfulness of the act or the culpability of the offender but rather constitutes an exception to the imposition of punishment at the sentencing stage. This positioning is critical to maintaining coherence with the principle of legality and distinguishing judicial pardon from acquittal or dismissal of charges. (Azisa et al., 2024)

Nevertheless, clear limitations must be established to prevent misuse. Judicial pardon should not be applied to serious crimes, such as offenses against life, grave sexual offenses, corruption with significant societal impact, organized crime, or acts causing substantial harm to victims. In such cases, punishment serves essential protective and symbolic functions that cannot be substituted by pardon. Finally, the application of *rechterlijke pardon* must be accompanied by explicit, structured, and transparent legal reasoning within judicial decisions. Judges are required to articulate in detail the justification for not imposing punishment, including their assessment of the minor nature of the offense, the offender's personal circumstances, and the considerations of justice and humanity. This requirement ensures accountability, facilitates judicial review, and contributes to the development of consistent jurisprudence. In sum, *rechterlijke pardon* represents a significant instrument of corrective justice within modern criminal law. However, its legitimacy and effectiveness depend on its careful, selective, and responsible application. Without clear requirements and well-defined boundaries, it risks undermining legal certainty and public trust in the criminal justice system. Conversely, when properly structured and applied, it enhances the system's capacity to deliver substantive, humane, and proportionate justice.

## 5 CONCLUSIONS AND RECOMMENDATIONS

### 5.1 Conclusions

The incorporation of *rechterlijke pardon* within the Indonesian criminal law framework represents a significant shift toward a more humane, flexible, and substantively just approach to sentencing. This mechanism reflects an evolution from a rigid, retributive model of punishment toward a system that prioritizes proportionality, individual circumstances, and the broader objectives of justice. However, the legitimacy and effectiveness of judicial pardon are inherently dependent on the existence of clear normative boundaries and structured judicial reasoning. This study demonstrates that the application of *rechterlijke pardon* cannot be left to unfettered judicial intuition. Instead, it requires a carefully designed framework consisting of objective, subjective, and contextual elements, complemented by overarching considerations of justice and humanity. The “minor nature of the offense,” the personal circumstances of the offender, and the situational and post-offense context collectively function as cumulative thresholds that must be satisfied before judicial pardon can be justified. These elements ensure that the mechanism operates selectively and proportionally, rather than arbitrarily.

At the same time, the research highlights the urgency of strengthening normative control over judicial discretion through the introduction of a *heightened reasoning standard*. This concept serves as a central contribution of the study, emphasizing that the legitimacy of judicial pardon lies not merely in the authority of the judge, but in the quality, transparency, and accountability of legal reasoning. By requiring layered justification juridical, philosophical, and sociological this standard transforms judicial pardon into a rational and reviewable legal mechanism, rather than a subjective act of leniency. Ultimately, *rechterlijke pardon* should be understood as an accountable corrective mechanism within the broader architecture of criminal law. It functions as a safeguard against the rigidity of positive law, enabling courts to align legal outcomes with substantive justice without undermining legal certainty. When applied within a structured normative framework and supported by rigorous reasoning, judicial pardon has the potential to enhance the legitimacy of the criminal justice system, reinforce public trust,

and promote a more balanced integration of justice, humanity, and legal certainty in modern criminal law.

## 5.2 Strategic recommendations

Based on the findings of this study, several recommendations can be proposed to strengthen the effectiveness and fairness of the pretrial institution within the Indonesian criminal justice system. Future research directions: The effective implementation of *rechterlijke pardon* within Indonesia's criminal justice system requires not only a sound normative foundation but also a coherent set of strategic measures that bridge legal doctrine, judicial practice, and institutional capacity. Without such alignment, the risk of inconsistency, legal uncertainty, and diminished public trust remains significant.

1. First, it is essential to strengthen the normative framework governing *rechterlijke pardon* by providing clearer legislative guidance on its scope and limitations. While Article 54(2) of the Indonesian Criminal Code (Law No. 1 of 2023) establishes the basic parameters, further clarification—either through statutory interpretation or supplementary regulations—is necessary, particularly regarding the meaning of the “minor nature of the offense.” A more elaborated normative formulation will reduce interpretive ambiguity and ensure more consistent application across courts.
2. Second, the adoption of a *heightened reasoning standard* should be institutionalized as a mandatory component of judicial decision-making in cases involving judicial pardon. This can be operationalized through Supreme Court circulars, judicial guidelines, or internal benchbooks that require judges to articulate layered reasoning—juridical, philosophical, and sociological—when deciding not to impose punishment. By embedding this standard into judicial culture, the system can promote accountability without undermining judicial independence.
3. Third, the development of flexible sentencing guidelines is crucial to support judges in exercising discretion in a structured manner. These guidelines should not function as rigid rules but as normative references that outline indicative criteria, relevant factors, and illustrative case patterns for the application of *rechterlijke*

*pardon*. Such guidance would help reduce sentencing disparities while preserving the individualized nature of criminal justice.

4. Fourth, capacity-building initiatives for judges and other legal practitioners must be prioritized. Training programs should focus on strengthening skills in legal reasoning, ethical judgment, and contextual analysis, particularly in relation to proportionality, restorative justice, and victim-sensitive approaches. Enhancing judicial competence in these areas will ensure that *rechterlijke pardon* is applied with depth, rigor, and sensitivity to justice.
5. Fifth, mechanisms for judicial oversight and review should be reinforced to maintain accountability. Decisions involving *rechterlijke pardon* must remain open to appellate scrutiny, and higher courts should play an active role in developing consistent jurisprudence. Over time, a body of case law can emerge as a reference point, guiding lower courts and promoting uniform standards in application.
6. Sixth, transparency and public communication should be improved to strengthen the legitimacy of judicial pardon. Courts should ensure that decisions are accessible and clearly reasoned, enabling public understanding of why punishment is withheld in certain cases. This is particularly important to prevent misperceptions that judicial pardon reflects leniency or bias, rather than principled legal reasoning.

Finally, future research and policy development should continue to monitor and evaluate the implementation of *rechterlijke pardon* in practice. Empirical studies on its impact particularly regarding sentencing consistency, recidivism, victim satisfaction, and public trust will provide valuable feedback for refining both normative frameworks and judicial practice. In sum, the strategic direction for *rechterlijke pardon* must rest on a balance between discretion and control, flexibility and certainty, as well as independence and accountability. Through coherent regulatory design, strengthened judicial reasoning, and institutional support, judicial pardon can function as a legitimate and effective instrument of substantive justice within Indonesia's evolving criminal law system.

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