

SYNCHRONIZATION OF JUDICIAL PARDON REGULATIONS IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM

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Abstract

Judicial Pardon is a legal mechanism that grants judges the discretion to decide a case even when the defendant is formally proven guilty. Unlike the traditional criminal law approach, which emphasizes legality and punishment, Judicial Pardon takes into account personal, situational, and social impact factors related to sentencing. This study employs a normative legal method with a synchronization type, analyzing the alignment of laws and regulations both vertically and horizontally. The findings indicate that the synchronization of judicial pardon within Indonesia's penal system is based on three main foundations: philosophical, juridical, and sociological. Philosophically, judicial pardon aligns with the principles of substantive and restorative justice, ensuring proportional punishment while providing room for the rehabilitation of offenders and the restoration of society. The ideal concept of judicial pardon in Indonesia's future is crucial for establishing a more just, humane, and responsive criminal justice system.

Keywords: Judicial Pardon, Criminal Justice Reform, Substantive Justice, Penal Policy, KUHAP

I. PENDAHULUAN

The Concept of Judicial Pardon, known in Dutch as *rechterlijk pardon*, translates in Indonesian to “pemaafan hakim” (judicial forgiveness). Judicial Pardon is a unique legal mechanism as it grants judges flexibility in deciding a case, even when the defendant is formally proven guilty. This idea carries both philosophical and theoretical weight, aiming to balance strict legal application with substantive justice values. Judicial pardon is essentially intended to avoid rigidity and

absolutism in law enforcement, particularly in the context of the rigid application of the legality principle. Law applied without considering the context and specific conditions surrounding a case risks producing unjust outcomes.¹

Judicial pardon serves as a “*veiligheidsklep*” (safety valve) or “*nooddeur*” (emergency exit) in the criminal justice system. In other words, it acts as a corrective instrument to prevent potential injustices resulting from overly mechanistic applications

¹ Adery Ardhan Saputro, *Konsepsi Rechterlijk Pardon Atau Pemaafan Hakim Dalam Rancangan Kuhp*,

Jurnal Mimbar Hukum, Volume 28, Nomor 1, Februari 2016, Fakultas Hukum Universitas Indonesia, hlm. 63, *Jurnal Ilmiah “Advokasi”* Vol. 13, No. 02, July, 2025

of the law. In certain situations, rigid enforcement of criminal norms can lead to unfairness for the defendant such as in cases involving minor offenses, remorseful offenders who have taken responsibility for their actions, or socio-economic contexts that influence the offender's behavior.²

Judicial pardon is also understood as a judicial corrective to the legality principle. While the principle of legality is fundamental in criminal law, its application should not be absolute to the point of ignoring social realities and individual justice. Judicial pardon introduces flexibility within the legal framework while maintaining the legitimacy of the criminal justice system.³

The concept of judicial pardon also represents the integration of the idea and paradigm of "wise judgment" (hikmah kebijaksanaan) into criminal justice practice. This paradigm emphasizes the importance of wisdom in adjudicating cases, going beyond purely legalistic approaches. Wise judgment includes ethical considerations, social values, and the long-term impact of judicial decisions. Thus, judges are not merely enforcers of the law but also guardians of humanity and social harmony.⁴

Judicial pardon serves as a means to integrate and implement the purposes of punishment into sentencing requirements, thereby functioning as a justification for punishment. This implies that punishment should be oriented toward specific objectives such as rehabilitation, prevention, or social reintegration of the offender not merely retribution.⁵

Judicial pardon is not solely a jurisprudential concept but also a manifestation of the fundamental values contained in Indonesia's legislation, both constitutionally and statutorily. In a deeper perspective, judicial pardon aligns with the noble values of the First Principle of Pancasila, Belief in the One and Only God, which promotes moral and spiritual teachings of forgiveness and compassion. Excessively repressive punishment that leaves no room for mercy contradicts religious teachings that encourage kindness and forgiveness, as upheld by many faiths practiced across Indonesian society.⁶

The concept of judicial pardon is rooted in the National Development Goals outlined in the Preamble of the 1945 Constitution, particularly the goal to protect all Indonesians

² Indi Muhtar Ismail, Dominikus Rato, Bayu Dwi Anggono, Kepastian Hukum Penerapan Asas Rechterlijk Pardon Pada Putusan Perkara Pidana, *Jurnal Hukum Humani*, Volume 13 No. 2 November 2023, Fakultas Hukum, Universitas Jember, hlm. 398

³ Farikhah, Mufatikhatul. "Konsep Judicial Pardon (Pemaafan Hakim) dalam Masyarakat Adat di Indonesia." *Jurnal Hukum Media* 25.1 (2018): hlm. 81-92.

⁴ Hakim, Lukman. "Penerapan Konsep 'Pemaafan Hakim' sebagai Alternatif dalam

Menurunkan Tingkat Kriminalitas di Indonesia." *Jurnal Keamanan Nasional* 5.2 (2019): hlm. 185-202.

⁵ Sukma, F., & Cumbhadrika, C. (2023). Urgensi Penerapan Rechterlijk Pardon Sebagai Pembaharuan Hukum Pidana Dalam Perspektif Keadilan Restoratif. *Gorontalo Law Review*, 6(1), hlm. 46-61.

⁶ Vincentius Patria Setiawan dan Itok Dwi Kurniawan, "The Urgency of Rechterlijk Pardon Regulation in Criminal Law Renewal", *Jurnal Inovasi Penelitian* 2, no.2 (2021): hlm. 643.

and the entire homeland. In this context, judicial pardon is part of a social defense strategy, meaning that the legal system not only punishes offenders but also protects society through humane and reintegrative approaches. Moreover, judicial pardon contributes to achieving other national goals such as promoting public welfare, advancing education, and fostering world order based on freedom, lasting peace, and social justice as a broad form of social welfare. Thus, criminal justice should not only serve as a means of retribution but also as an educative and corrective vehicle for building a more harmonious and just society.⁷

From a constitutional standpoint, judicial pardon gains legitimacy through several articles in the 1945 Constitution. Article 18(2) recognizes customary law communities and their traditional rights, reflecting the importance of local values including resolving disputes through deliberation and wisdom. Article 24(1) states that judicial power is exercised to uphold law and justice, not merely formal rules. In this context, judicial pardon affirms the judge's active role in pursuing living justice, rather than being merely a mouthpiece of the law. Article 28D emphasizes every citizen's right to

fair legal certainty and equality before the law, making judicial pardon under specific conditions a form of protection for human rights and substantive justice.⁸

Further normative foundations for judicial pardon are found in Law No. 48 of 2009 on Judicial Power. Article 2(1) declares that justice is carried out "For the Sake of Justice Based on the Belief in the One and Only God," explicitly grounding legal considerations in moral, humanitarian, and spiritual values. Article 2(2) states that judicial authority aims to uphold law and justice based on Pancasila, thereby requiring all penal practices to respect the nation's noble values. Judicial pardon becomes relevant as a corrective mechanism to rigid law enforcement, in order to fulfill the public's sense of justice. Similarly, Article 5(1) requires judges to explore, follow, and understand legal values and justice as lived in society, allowing room for the use of wisdom in making decisions that are not purely textual or formalistic.⁹

Additionally, Article 8(2) of the same law mandates that in assessing sentencing severity, judges must also consider the good and bad character of the defendant, consistent with judicial pardon as a response to

⁷ ArifSetiawan, *Konsep Permaafan Hakim (Rechterlijk Pardon) Dalam Pembaharuan RUU KUHP Dan RUU KUHAP*. Universitas Islam Indonesia, 2021. hlm.44.

⁸ Vita Adolfina Manafe, Listiyowati Sumanto, *Asas Pemaafan Hakim (Rechterlijk Pardon) Sebagai Upaya Penyelesaian Tindak Pidana Ringan Untuk Pembaharuan Hukum Pidana Nasional*, *Jurnal Hukum Modern*, Volume 06, No. 3, Juli 2024, Fakultas Hukum,

Universitas Pembangunan Nasional Veteran Jakarta, hlm 340.

⁹ Ridwan Suryawan, *Asas Rechterlijk Pardon (Judicial Pardon) dalam Perkembangan Sistem Pemidanaan di Indonesia*, Vol. 2, No. 3, November 2021, *Indonesian Journal of Criminal Law and Criminology*, Fakultas Hukum, Universitas Sebelas Maret, hlm 170

humanitarian values in sentencing. Finally, Article 50(1) affirms that court rulings must contain legal provisions derived not only from statutory law but also unwritten legal sources, including customary values and prevailing social norms.¹⁰

In reality, however, many cases in society demonstrate that Indonesia's criminal justice system still lacks the flexibility to consider social context, the offender's age or intent, and the consequences of the act. A system that should uphold substantive justice often falls into formalistic legalism, rigidly adhering to the normative letter of the law without exploring the deeper values of justice in society. As a result, vulnerable groups especially the poor and elderly are often victims of an inflexible and inhumane legal approach.¹¹

Such cases are precisely where a judicial pardon approach would be appropriate as a form of judicial wisdom that reflects substantive justice and respect for humanity. Examples include:

- a. The case of Samirin, an elderly man in North Sumatra, sentenced for taking tree sap worth only Rp 17,000, illustrates how the system still rigidly adheres to legality.

- b. The case of Saulina Boru Sitorus, another elderly woman, shows failure to consider age and social justice factors.
- c. The case of Asyani, convicted for allegedly stealing wood from land she believed was her own, should have warranted deeper judicial review.
- d. The elderly couple Anjol Hasim and Jamilu Nani, sentenced for stealing six bamboo sticks, highlights how the law can act overly formalistic in cases that could be resolved peacefully and communally.
- e. The case of Minah, accused of stealing three cacao pods worth Rp 2,000, clearly reflects a disproportion between the offense and the sentence imposed.

These five cases should serve as a serious reflection for law enforcers: punishment must not be applied indiscriminately or solely to fulfill legal formalities. Judicial pardon offers an alternative that is not only legally valid but also embodies the spirit of the Constitution, Pancasila, and social justice values mandated in Indonesia's legal system from the 1945 Constitution to the Law on Judicial Power. Through a more humanistic approach, the criminal justice system can become a tool for restoration and protection, not merely a vehicle for retribution.¹²

¹⁰ Mufatikhatul Farikhah, *Rekonseptualisasi Judicial Pardon Dalam Sistem Hukum Indonesia (Studi Perbandingan Sistem Hukum Indonesia Dengan Sistem Hukum Barat)*, *Jurnal Hukum & Pembangunan* 48 No. 3 (2018), Fakultas Hukum Universitas Brawijaya, hlm. 559.

¹¹ Ali Zaidan, *Menuju Pembaruan Hukum Pidana* (Jakarta: Sinar Grafika, 2015), hlm. 61.

¹² <https://news.detik.com/berita/d-1244955/mencuri-3-buah-kakao-nenek-minah-dihukum-1-bulan-15-hari-diakases> tanggal 7 April 2025, Jam 15.50 Wib., Jam 13.00 Wib.

II. METODE PENELITIAN

The type of research employed by the author is normative legal research, also commonly referred to as “legal research.”¹³ This normative research adopts a synchronization-level approach, which focuses on analyzing the harmonization or consistency among various laws and regulations, both vertically (across different hierarchical levels of legislation) and horizontally (among laws of the same level).¹⁴

The objective of this research is to identify and evaluate whether inconsistencies, overlaps, or contradictions exist within the legal system, and to provide recommendations for achieving legal harmonization. This study relies on secondary data sources, such as legislation, court decisions, and other legal documents. The analysis is carried out by comparing and assessing the extent to which these legal provisions support or contradict each other, as well as examining their impact on law enforcement and the realization of justice.¹⁵

III. HASIL PENELITIAN DAN PEMBAHASAN

3.1 Sinkronisasi Judicial Pardon Dalam Sistem Pemidanaan Di Indonesia

The philosophical, juridical, and sociological foundations, as well as the

practices of countries that have adopted the concept of judicial pardon in their penal systems, underscore the urgent need to synchronize judicial pardon within Indonesia’s penal system as part of a broader reform of the criminal justice system.

Philosophically, judicial pardon is aligned with the principles of substantive justice and humanistic values. The principle of substantive justice emphasizes that the enforcement of law must consider individual conditions and contexts, so that any punishment imposed truly reflects a sense of genuine justice. Furthermore, the principle of humanity affirms that the law must be implemented with respect for human dignity and should not operate solely in a repressive manner. In many cases, convicted individuals may demonstrate behavioral changes or face circumstances that make continued punishment disproportionate. Judicial pardon allows the legal system to apply justice more flexibly not only based on formal rules, but also by considering moral and social aspects that evolve within society.

Juridically, the synchronization of judicial pardon in Indonesia’s penal system is necessary to ensure legal certainty and consistency in its application. Currently, while Indonesia’s criminal justice mechanism provides several legal avenues, it does not explicitly regulate judicial pardon. This legal

¹³ Bambang Sunggono, *Metodologi Penelitian Hukum*, PT Raja Grafindo Persada, Jakarta, 2013, hlm. 93

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi, Kencana, Jakarta: 2013, hlm 112

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vacuum can create uncertainty in judicial practice, as there is no standard rule outlining how and under what circumstances the court may grant pardon to a convict. This lack of clarity risks unequal application of justice, where the decision to grant a pardon depends heavily on a judge's discretion without clear guidelines. With explicit regulation on judicial pardon, Indonesia can ensure that such decisions are made objectively, transparently, and without abuse of judicial authority.

From the perspective of international law, judicial pardon is also in line with various human rights instruments recognized by Indonesia, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Both instruments emphasize the importance of protecting individual rights, including the right to humane and non-arbitrary treatment. In many legal systems worldwide, judicial pardon has been applied as part of a more flexible and progressive judicial mechanism. Therefore, the synchronization of judicial pardon within Indonesia's penal system will not only strengthen the national legal framework but also reflect Indonesia's commitment to aligning its domestic law with more advanced international legal standards.

Sociologically, judicial pardon also responds to society's demand for a more just, humane, and effective criminal justice system. One of the persistent problems in Indonesia's penal system is prison overcrowding. The high number of inmates often undermines

rehabilitation and reintegration efforts, making it difficult to achieve the primary goal of corrections to return individuals to society with improved behavior. In this context, judicial pardon can serve as a solution to reduce prison overcrowding by granting clemency to eligible convicts, such as those who have shown positive behavioral changes or are suffering from serious health conditions that make further imprisonment unreasonable.

Moreover, the regulation of judicial pardon could contribute to enhancing public trust in the criminal justice system. The public is more likely to trust the legal system when they see that the judiciary not only focuses on punishment but also considers broader dimensions of justice, including giving individuals the opportunity to reform and make amends. When people perceive the law to be implemented fairly and proportionately, legal compliance improves. Public trust in the legal system is a key element in fostering sustainable social order. Therefore, the presence of a judicial pardon mechanism can be a crucial step in building a legal system that is more adaptive to social developments and responsive to community needs, drawing from legal practices in other countries that can serve as models for application in Indonesia.

Through the synchronization of judicial pardon in the penal system, Indonesia can establish a more comprehensive, just, and constitutionally-aligned criminal justice system that also meets international standards.

This mechanism will not only reinforce the

principle of substantive justice but also ensure that law operates in a more humane and socially responsive manner. Thus, integrating judicial pardon into Indonesia's legal framework represents a progressive step toward building a more inclusive criminal justice system oriented toward recovery and rehabilitation.

Based on the author's analysis and the theory of criminal law reform, a paradigm shift is needed from a retributive approach to one that is more humanistic, corrective, and restorative. Within this framework, synchronizing judicial pardon in Indonesia's penal system becomes highly relevant. Judicial pardon is a form of judicial discretion that allows a judge to refrain from imposing punishment, even if the defendant is found guilty, based on humanitarian considerations, substantive justice, and the social context of both the offender and the victim.

In practice, Indonesia's criminal courts often continue to resolve minor criminal offenses particularly those involving vulnerable groups such as the elderly, children, or the poor through formal proceedings that result in imprisonment. This practice suggests that the legal system still lacks sufficient space for moral, social, and humanitarian considerations that live within society. In fact, criminal law should not only enforce written norms but also deliver contextual justice that reflects local values and social dynamics.

Unfortunately, Indonesia's legal framework does not yet explicitly regulate

judicial pardon as an option in judicial decisions. This causes judges to be bound strictly by the principle of legality and a rigid evidentiary system, without a strong legal basis to issue more just rulings in minor or incidental cases. Yet, various relevant legal instruments—such as the Criminal Code (KUHP), Criminal Procedure Code (KUHP), the Law on Judicial Power, and the new National Criminal Code—clearly state that judges must explore and internalize the legal values and the sense of justice that live in society.

Therefore, synchronizing judicial pardon in Indonesia's penal system is necessary to accommodate the concept as a form of progressive and proportional punishment. This aligns with the development of modern criminal law, which no longer rests solely on the principle of legal certainty but also emphasizes justice and utility. Judicial pardon can serve as an efficient alternative for resolving cases, reduce over-criminalization and prison overcrowding, and enhance public trust in a criminal justice system that is more humane and socially just.

In conclusion, synchronizing judicial pardon in Indonesia's penal system is a crucial step to ensure that the criminal justice system operates in a fairer, more humane, and more effective manner. By incorporating the principles of retributive, restorative, and substantive justice, this mechanism provides a balance between punishment and rehabilitation, and ensures that law remains

responsive to the evolving needs of society. Therefore, an explicit legal framework governing judicial pardon as part of Indonesia's national legal system is a key element of legal modernization to align with universally accepted principles of justice.

3.2 Konsep Ideal Judicial Pardon di Indonesia di Masa Yang Akan Datang

The Ideal Concept of Judicial Pardon in Indonesia in the Future:

- a. Determination of the Classification of Judicial Pardon Verdicts within the Indonesian Penal System: The introduction of the concept of judicial pardon in the 2023 Indonesian Penal Code (KUHP) is a significant step forward in the reform of Indonesia's criminal law, aligning with principles of substantive justice and legal humanism. Judicial pardon allows a judge to find a defendant guilty without imposing a sentence, based on humanitarian and contextual justice considerations. These considerations may include the minor nature of the offense, personal circumstances of the offender such as old age, life history, or economic hardship, and circumstances surrounding the crime, such as reconciliation with the victim or genuine remorse. Through judicial pardon, a judge may disregard minimum penalties, such as the statutory minimum one-day imprisonment or a fine of at least IDR 50,000. This indicates a
- shift from a rigid penal system toward one that allows moral and social evaluation of criminal acts. Judges are granted broader authority to prioritize substantive justice over mere procedural formality. The application of judicial pardon must be accompanied by adjustments in Indonesia's penal system, including the Penal Code (KUHP), the Criminal Procedure Code (KUHP), and their derivative regulations. Therefore, regulations must be enacted to govern the procedures and limitations of judicial pardon—from the prosecution stage to the delivery of verdicts—so that this concept does not result in legal uncertainty. Furthermore, technical guidelines for judges and prosecutors are necessary to prevent misuse or the perception of discrimination, while ensuring the protection of victims' rights and public sense of justice.
- b. Regulation of Legal Remedies for Judicial Pardon Verdicts within Indonesia's Penal System In addition to regulating the type of verdict, criminal procedural reform must also address the legal remedies available against judicial pardon decisions. This aspect is crucial to ensure judicial oversight mechanisms and maintain balance between judicial discretion and the rights of parties involved in the trial process. In the Netherlands, for instance, judicial pardon decisions cannot be appealed or reviewed

through cassation, as they are considered a final form of judicial mercy and fall under the sole discretion of the judge. This approach reflects a view that judicial pardon is an expression of substantive justice that does not require further legal correction.

- c. Efforts to Implement the Ideal Concept of Judicial Pardon in Indonesia's Future Penal System In Indonesia, the ideal concept of judicial pardon remains a pressing issue in criminal law reform, particularly due to legal gaps in its implementation. The aim is to ensure that the justice system does not solely focus on punishment but also incorporates social and humanitarian considerations.

Although some mechanisms indirectly resemble judicial pardon, such as prosecution termination based on the principle of opportunity by prosecutors or diversion in juvenile justice, these mechanisms do not grant judges the authority to pardon offenders based on justice and humanitarian considerations. In modern criminal justice systems, judges play a crucial role in enforcing substantive justice—not only based on positive law but also humanitarian values. Thus, strengthening the judge's role in granting judicial pardon is essential for building a more equitable and flexible criminal justice process.

To realize the ideal concept of judicial pardon in the future, several steps are necessary across regulatory, institutional, and practical aspects:

- a. Reforming Regulations and Strengthening Legal Foundations: Add provisions regarding judicial pardon in Indonesia's penal system.
- b. Strengthening the Role of Judges in Judicial Pardon To build a more humane and just criminal justice system, the role of judges in implementing judicial pardon must be reinforced through policy and regulatory reform. Judges play a central role in interpreting the law and ensuring that every decision reflects not only retributive justice but also the principles of substantive justice.
- c. Strengthening Victims' Rights in the Judicial Pardon Process: Granting victims the right to participate in the judicial pardon process Victims' rights must be prioritized, especially in cases where the defendant may receive judicial pardon. Victims should be given ample opportunity to participate and express their views before the judge decides whether judicial pardon is appropriate. This participation ensures that the decision does not neglect the interests and suffering of victims resulting from the crime.
- d. Oversight and Prevention of Judicial Pardon Misuse: Involving the Supreme Court and Judicial Commission in evaluating judicial pardon verdicts To ensure transparency and accountability, a strict oversight mechanism is needed for every judicial

pardon decision. The Supreme Court and the Judicial Commission play a critical role in ensuring that judicial pardons are granted objectively, legally sound, and not misused for particular interests.

From the perspective of the relative theory of punishment (utilitarianism), the ideal concept of judicial pardon in Indonesia has a strong justification. Relative theories, especially utilitarian approaches, emphasize the prevention of future crimes and the protection of society. Punishment is not merely for retribution, but functions socially to educate offenders, prevent recidivism, and provide a proportionate deterrent to maintain public order.

In this context, judicial pardon becomes highly relevant as it allows judges to assess whether a sentence is truly necessary in cases where the offender is guilty but the wrongdoing is minor, or where the offender's personal circumstances suggest the potential for rehabilitation without actual imprisonment. For instance, in cases involving first-time offenders, youth acting on impulse, or individuals who have endured long pretrial detention and shown deep remorse—judicial pardon could serve as a more rational and humane resolution without compromising legal protection for society.

From a utilitarian point of view, judicial pardon can improve the efficiency of the criminal justice system, reduce prison overcrowding, and avoid unnecessary punishment that could damage the future of

individuals who still have the potential to reform. It also reinforces the rehabilitative and preventive functions of punishment. Moreover, judicial pardon supports corrective and distributive justice by ensuring that sentences are more aligned with the degree of guilt, social impact, and the offender's circumstances.

IV. KESIMPULAN

The synchronization of judicial pardon within the Indonesian penal system is based on three main foundations: philosophical, juridical, and sociological. Philosophically, judicial pardon aligns with the principles of substantive and restorative justice, ensuring proportional punishment while allowing space for the rehabilitation of both the offender and society.

The ideal concept of judicial pardon in Indonesia for the future is crucial for establishing a more just, humane, and responsive criminal justice system. Currently, the judiciary in Indonesia tends to be formalistic and punishment-oriented, often neglecting humanitarian aspects. Judicial pardon provides flexibility for judges to consider justice and humanity, especially for convicted individuals who demonstrate positive behavioral change or are in special circumstances.

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