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Judicial Pardon after the New Criminal Procedure Code: Procedural Operationalization in Indonesia's Criminal Justice Reform

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Abstract:
Judicial pardon is an important innovation in Indonesia's 2023 Criminal Code because it allows judges to declare a defendant guilty while refraining from imposing punishment or measures. This article examines judicial pardon as a form of judicial discretion oriented toward proportionality, substantive justice, and the humanization of punishment, while also analysing its procedural operationalization after the enactment of the New Criminal Procedure Code of 2025. Using doctrinal legal research with statutory, conceptual, case, and comparative approaches, this article compares analogous mechanisms in the Netherlands, England and Wales, and France. The findings show that the New Criminal Procedure Code has formally recognized judicial pardon as a distinct form of court decision and allows legal remedies against it. However, its implementation still requires clearer procedural safeguards, particularly concerning eligibility requirements, stages of examination, victim participation, the duty to give reasons, judgment format, review mechanisms, and oversight. Comparative experience shows that discretion not to impose punishment can operate effectively only when embedded in a transparent, participatory, reasoned, and reviewable procedure. This article argues that a Supreme Court Regulation, as mandated by Article 246(4) of the New Criminal Procedure Code, is necessary to operationalize judicial pardon in a fair, proportionate, accountable, and legally certain manner.

Keywords:
criminal procedure reform; judicial discretion; judicial pardon; procedural safeguards; restorative justice.

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Introduction

Criminal law is an essential instrument for maintaining social order and protecting fundamental rights.[1] As a coercive means of social control, its application must not only ensure certainty and firmness, but also justice and humanity.[2] In contemporary criminallaw, it is increasingly recognized that not every act proven to violate the law must necessarily result in punishment. Proportionality and individualized assessment of the offender are therefore important in determining whether punishment remains appropriate, particularly to balance law enforcement with rehabilitation and to minimize the negative effects of punishment on

[1] Parningotan Malau, "Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (June 2023): 837–44, https://doi.org/10.37680/almanhaj.v5i1.2815.
[2] Yana Kusnadi Srijadi et al., "Aspek Kriminologis Tentang Peranan Masyarakat Dalam Pengendalian Sosial Di Desa Sekarwangi Kecamatan Cibadak Kabupaten Sukabumi," *Jurnal Kajian Ilmiah* 23, no. 4 (April 2024): 349–56, https://doi.org/10.31599/t0910772.

offenders and society.[3] Across various jurisdictions, modern criminal law has shifted from a purely punitive orientation toward more corrective and restorative approaches.[4] These approaches position offenders as subjects capable of restoration, while victims are no longer treated merely as evidentiary tools but as parties entitled to be heard and to obtain meaningful justice.[5] In this context, punishment is not an end in itself, but an instrument for achieving justice, legal certainty, and utility.[6]

Indonesia's national criminal-law reform reached an important milestone with the enactment of the New Criminal Code 2023.[7] One of its significant reforms is the recognition of judicial discretion in the form of a judge's authority not to impose punishment, even when the defendant has been lawfully and convincingly proven guilty.[8] Article 54(2) of the Code provides that "the triviality of the act, the personal circumstances of the offender, or the circumstances at the time the criminal act was committed as well as those arising thereafter may be taken into consideration as grounds for not imposing punishment or measures, having regard to justice and humanity." Substantively, this provision represents judicial pardon, namely the authority of a judge to acknowledge that guilt has been proven while refraining from imposing punishment because punishment is no longer necessary, disproportionate, or inconsistent with justice and humanity. Judicial pardon demonstrates that Indonesian criminal law is no longer solely directed toward punishing offenders, but also toward opening space for a more just and humane form of sentencing. It may reduce the burden on the criminal justice system and provide a more comprehensive solution for offenders, victims, and society.[9] It also reflects a paradigm that views criminal justice as a dialogic space in which the interests of offenders, victims, and society are considered in balance. In practice, judicial pardon can prevent excessive criminalization and avoid punishment for offenders who do not require correctional intervention.[10] Accordingly, judicial pardon may be understood as an instrument for humanizing punishment by linking proportionality, restorative justice, and substantive justice.

Nevertheless, the substantive basis of judicial pardon in the Criminal Code does not, by itself, answer how this authority should be exercised in criminal proceedings. Broad judicial discretion may generate legal uncertainty if it is not constrained by clear parameters concerning requirements, stages, reasoning standards, and control mechanisms. Such safeguards are necessary to ensure that a judicial pardon does not obscure legal certainty,

[3] Asep Suherman, "Esensi Asas Legalitas Dalam Penegakan Hukum Pidana Lingkungan," *Bina Hukum Lingkungan* 5, no. 1 (October 19, 2020): 133, https://doi.org/10.24970/bhl.v5i1.133.
[4] Mas Tri Wulandari Ni Gusti Agung Ayu, "A Progressive Criminal Law View Regarding Criminal Liability In Robotic Crimes," *Vyavahara Duta* 18, no. 2 (October 2023): 1–12, https://doi.org/10.25078/vyavaharaduta.v18i2.3063.
[5] Atikah Rahmi, "Urgensi Perlindungan Bagi Korban Kekerasan Seksual Dalam Sistem Peradilan Pidana Terpadu Berkeadilan Gender," *Jurnal Mercatoria* 11, no. 1 (June 2018): 37, https://doi.org/10.31289/mercatoria.v11i1.1499.
[6] Sahat Maruli Tua Situmeang, Musa Darwin Pane, and Wahyudi Wahyudi, "Optimalisasi Peran Penegak Hukum Dalam Menerapkan Pidana Kerja Sosial Dan Ganti Rugi Guna Mewujudkan Tujuan Pemidanaan Yang Berkeadilan," *Jurnal Hukum Ius Quia Iustum* 27, no. 3 (September 2020), https://doi.org/10.20885/iustum.vol27.iss3.art4.
[7] Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (April 2023): 190–214, https://doi.org/10.1080/10383441.2023.2243772.
[8] Hasbullah Hasbullah, "Criminal Procedure Law Reform on Non-Imposing of Penalty in Judicial Decisions Following the Enactment of Law Number 1 of 2023 on the Indonesian Criminal Code," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (June 2025): 4637–55, https://doi.org/10.31941/pj.v24i2.6386.
[9] Ryan Aditama and Novia Yolanda, "Penerapan Restorative Justice Pada Peradilan Pidana Anak Terkait Pembaharuan Hukum Pidana Di Indonesia," *Wajah Hukum* 4, no. 2 (October 2020): 483, https://doi.org/10.33087/wjh.v4i2.213.
[10] M. Rizki Yudha Prawira, "Potensi Overkriminalisasi Pada Pengaturan Tindak Pidana Kohabitasi Dalam Kitab Undang – Undang Hukum Pidana: Perspektif Fair Trial," *Jurnal Hukum Statuta* 4, no. 1 (December 2024): 31–49, https://doi.org/10.35586/jhs.v4i1.9530.

equality before the law, and judicial accountability. They are also consistent with restorative justice, which emphasizes restoration and reconciliation rather than retribution.[11] This issue has become more relevant after the enactment of the New Criminal Procedure Code of 2025. Unlike the previous procedural framework, this Code expressly accommodates judicial pardon as a distinct form of court decision. Article 1 recognizes court decisions as including convictions, acquittals, releases from all legal charges, judicial pardons, or decisions imposing measures. It also defines judicial pardon as a judicial statement delivered in open court declaring that the defendant has been proven guilty, but no punishment or measure is imposed due to the triviality of the act, the offender's personal circumstances, or circumstances at the time of the offence and thereafter, by taking justice and humanity into account.[12] Article 246 further confirms that judges may render such a decision, classifies judicial pardon as an independent type of court decision, allows the parties to pursue legal remedies, and mandates that further provisions concerning its form, format, and requirements be regulated by a Supreme Court Regulation.[13]

This formal recognition marks an important procedural breakthrough because it bridges the substantive authority provided by the New Criminal Code with the adjudicative structure of criminal procedure. However, recognition as a type of court decision does not automatically resolve all implementation problems. Several operational issues remain open, including when a judicial pardon may be raised, who may propose or object to it, how victims should be heard, what minimum reasoning standards judges must satisfy, how the operative part of the judgment should be formulated, and how legal remedies should operate. Thus, the central problem is no longer the absence of procedural recognition, but the adequacy of procedural operationalization and safeguards.

Several previous studies have examined judicial pardon in Indonesia from different perspectives. Farikhah discusses judicial pardon as a form of court decision in criminal procedure reform and argues for the need to accommodate a "guilty without punishment" decision within procedural law.[14] Suryawan examines *rechtelijk pardon* in the development of Indonesia's sentencing system, emphasizing its role as a middle path between retributive punishment and restorative sentencing, as well as its function in preventing rigidity in punishment.[15] Meanwhile, Firmansyah, Liman, and Azisa reconceptualize judicial pardon as an instrument of substantive justice by emphasizing clearer normative boundaries, stronger judicial reasoning, and safeguards against arbitrary discretion.[16] These studies contribute to

[11] La Ode Awal Sakti, "Konsep Keseimbangan Dalam Pemberlakuan Penghentian Penuntutan Berdasarkan Keadilan Restoratif," *Sang Pencerah: Jurnal Ilmiah Universitas Muhammadiyah Buton* 7, no. 4 (November 2021): 585–92, https://doi.org/10.35326/pencerah.v7i4.1530.
[12] Muhamad Habibullah AR et al., "Kewenangan Dan Tanggung Jawab Pemerintah Dalam Hukum Tatanegara," *Hutanasyah : Jurnal Hukum Tata Negara* 3, no. 2 (February 2025): 83–103, https://doi.org/10.37092/hutanasyah.v3i2.1004.
[13] Dwi Setyo Budi Utomo, Widodo T. Novianto, and , Supanto, "Penjatuhan Pidana Bersyarat Bagi Koruptor Dalam Perspektif Upaya Pemberantasan Tindak Pidana Korupsi Di Indonesia," *Jurnal Hukum Dan Pembangunan Ekonomi* 5, no. 2 (July 2017), https://doi.org/10.20961/hpe.v5i2.18270.
[14] Mufatikhatul Farikhah, "The Judicial Pardon Arrangement as a Method of Court Decision in the Reform of Indonesian Criminal Law Procedure," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 8, no. 1 (2021): 1–25, https://doi.org/10.22304/pjih.v8n1.a1.
[15] Ridwan Suryawan, "Asas Rechtelijk Pardon (Judicial Pardon) Dalam Perkembangan Sistem Peradilan Pidana Indonesia," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 2, no. 3 (November 2021): 170–77, https://doi.org/10.18196/ijclc.v2i3.12467.
[16] Agung Firmansyah, Padma D. Liman, and Nur Azisa, "Reconceptualizing Judicial Pardon (Rechterlijke Pardon) in the National Criminal Code: Understanding the Role of Judges as Guardians of Substantive Justice," *Veredas Do Direito* 23, no. 7 (May 2026): e236470, https://doi.org/10.18623/rvd.v23.6470.

the substantive and conceptual understanding of judicial pardon, particularly in relation to sentencing theory, judicial discretion, criminal-law reform, and restorative justice.

However, the existing literature has not yet provided an integrated procedural model for operationalizing judicial pardon after its recognition as a distinct form of court decision in the New Criminal Procedure Code. The research gap lies in the absence of a framework that translates the substantive authority under the New Criminal Code and the formal recognition under the New Criminal Procedure Code into detailed safeguards concerning eligibility, examination stages, victim participation, reason-giving, judgment documentation, control mechanisms, legal remedies, and implementing instruments under the mandate of the Supreme Court Regulation. This article fills that gap by offering a procedural model for judicial pardon and by situating Indonesia within a broader comparative discussion involving the Netherlands, England and Wales, and France. Its contribution to the international community lies in presenting Indonesia as a case study of how a civil-law jurisdiction operationalizes judicial discretion not to impose punishment while preserving transparency, accountability, and victims' rights. Building on these problems, this article examines the procedural operationalization of judicial pardon under the New Criminal Procedure Code as a complement to the substantive authority already granted by the New Criminal Code. It addresses two main questions: first, what are the legal and practical consequences of recognizing judicial pardon as a form of court decision without sufficiently detailed procedural safeguards; and second, what procedural formulation is ideal for operationalizing this authority so that it may be exercised fairly, proportionately, transparently, and accountably. By answering these questions, this article seeks to provide a conceptual and operational basis for judicial pardon that is humane, measurable, and reviewable within Indonesia's criminal justice reform.

Method

This study is a doctrinal legal research that examines the legal construction of judicial pardon in the New Criminal Code of 2023 and its procedural operationalization under the New Criminal Procedure Code of 2025. The study analyses the legal and practical implications of recognizing judicial pardon as a distinct form of court decision and assesses whether the existing procedural framework provides adequate safeguards for its implementation.[17] To achieve these objectives, this study employs statutory, conceptual, case, and comparative approaches.[18] The statutory approach examines the New Criminal Code and the New Criminal Procedure Code, especially the provisions on judicial pardon as a form of court decision and its legal consequences. The conceptual approach analyses judicial pardon, judicial discretion, substantive justice, proportionality, restorative justice, due process of law, and procedural safeguards. The case approach examines relevant decisions concerning judicial discretion, sentencing reasoning, the duty to give reasons, and the protection of parties' rights in criminal proceedings. The comparative approach is used functionally to examine analogous

[17] Patrick Corputty, Yunanto Yunanto, and Andri Sutrisno, "Kesenjangan Normatif Dalam Perlindungan Hak Keperdataan Anak Luar Kawin Dalam Sistem Hukum Indonesia," *IBLAM Law Review* 5, no. 2 (May 2025): 125–36, https://doi.org/10.52249/ilr.v5i2.615.
[18] Tariq Hidayat Pangestu, "Analisis Yuridis Praktik Diskriminasi Dalam Penjualan Kargo Angkutan Udara (Studi Kasus Putusan KPPU Nomor 7/KPPU-I/2020)," *Jurnal Persaingan Usaha* 1, no. 2 (December 2021): 15–26, https://doi.org/10.55869/kppu.v2i.20.

mechanisms in the Netherlands, England and Wales, and France as references for evaluating procedural standards for judicial pardon in Indonesia.

The data consist of secondary sources obtained through literature review and examination of legal documents.[19] These materials include the New Criminal Code, the New Criminal Procedure Code, relevant judicial decisions, and comparative legal materials, including Article 9a of the *Wetboek van Strafrecht* in the Netherlands, absolute and conditional discharge in England and Wales, and *dispense de peine* under the French *Code pénal*, particularly Articles 132-59 to 132-62. This study also relies on journal articles, academic books, policy reports, sentencing guidelines, and official documents discussing judicial pardon, judicial discretion, criminal procedure reform, restorative justice, proportionality, judicial accountability, and non-punitive mechanisms in criminal justice. The materials are analysed qualitatively through grammatical and systematic interpretation, the extraction of *ratio decidendi* from relevant decisions, and functional comparison to identify procedural elements adaptable to Indonesia.[20] These elements include eligibility requirements, examination stages, parties entitled to propose or object, victims' right to be heard, the duty to give reasons, judgment documentation, legal remedies, and control and oversight mechanisms. The analysis is directed toward formulating a procedural model that strengthens justice, predictability, and accountability in Indonesia's criminal justice system.

Discussion

1. Judicial Pardon, Substantive Justice, and Procedural Operationalization under the New Criminal Procedure Code.

Judicial pardon is one of the important innovations in Indonesia's criminal-law reform because it gives judges the option not to impose punishment or measures, even though the defendant's guilt has been lawfully and convincingly proven.[21] This norm is formulated in Article 54(2) of the New Criminal Code, which allows the triviality of the act, the personal circumstances of the offender, the circumstances at the time of the offence, and circumstances arising thereafter to be considered as grounds for not imposing punishment or measures, having regard to justice and humanity. Normatively, this provision should not be understood merely as a technical exception to sentencing, but as an expression of a shift in Indonesia's sentencing orientation.[22] It shows that Indonesian criminal law is moving from a purely retributive model toward a more contextual, proportionate, corrective, and restorative model.25 Within this framework, punishment is no longer an automatic consequence of a proven offence, but a legal response that must be assessed by considering culpability, harm, the offender's circumstances, the victim's interests, and the needs of society.[23] This reform is

[19] Ni Luh Gede Wulandari, "Analisis Hukum Kasus Korupsi Pengadaan Laptop Chromebook 2025 Terkait Tanggung Jawab Administratif Dan Pidana," *Syntax Literate ; Jurnal Ilmiah Indonesia* 10, no. 11 (November 2025): 9135–45, https://doi.org/10.36418/syntax-literate.v10i11.62323.
[20] Hamzah Robbani, "Strategi Hukum Untuk Penyelesaian Sengketa Dalam Penerbitan Akademik Di Indonesia," *IBLAM Law Review* 4, no. 2 (May 2024): 1–8, https://doi.org/10.52249/ilr.v4i2.394.
[21] Nova Yolandya Sitanggang, La Syarifudin, and Nur Aripkah, "Tinjauan Yuridis Asas Pemaafan Hakim Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial Dan Politik* 3, no. 1 (January 2026): 85–99, https://doi.org/10.62383/demokrasi.v3i1.1525.
[22] Hana Krisnamurti, "Harmonisasi Asas Permaafan Hakim (Judicial Pardon) Dalam Hukum Positif Indonesia Untuk Mencapai Keadilan Yang Bermartabat," *Litigasi* 26, no. 2 (October 2025): 104–34, https://doi.org/10.23969/litigasi.v26i2.22645.
[23] Arizal Anwar et al., "The Concept of Judge's Forgiveness (Rechterlijk Pardon) in The National Criminal Law Code," *DiH: Jurnal Ilmu Hukum* 21, no. 2 (August 2025): 183–208, https://doi.org/10.30996/dih.v0i0.12674.

consistent with the direction of the New Criminal Code, which seeks to build a criminal-law paradigm responsive to restorative justice, human rights, and living social values.[24]

The elucidation of Article 54(2) confirms that judicial pardon is intended to provide judges with room to exercise judicial wisdom in cases that, morally or socially, do not deserve punishment even though the elements of the offence have been fulfilled. In this sense, judicial pardon is not a denial of law, but an application of proportionality in sentencing.[25] Proportionality requires that punishment correspond to the gravity of the act, the degree of culpability, the harm caused, and the sentencing objectives to be achieved.[26] When punishment no longer provides a relevant benefit or risks producing new injustice, criminal law must provide corrective space so that judges are not trapped in rigid legal formalism. Judicial pardon, therefore, obtains its substantive legitimacy as an instrument that keeps criminal law within the framework of justice and humanity.[27]

Historically, the idea of pardon in criminal law is not entirely new. In both continental and Anglo-Saxon legal traditions, mechanisms such as pardon, clemency, discretionary discharge, dispensation of punishment, and other forms of non-imposition of penalty have long existed.[28] However, the distinctive feature of judicial pardon in the New Criminal Code lies in its position as a judicial authority exercised within the sentencing process, rather than as an executive power after judgment. The evaluation of whether punishment remains necessary is therefore conducted within adjudication, based on trial facts, legal reasoning, and the concrete circumstances of the case. This transforms pardon from an act of mercy into part of sentencing rationality that must be legally justified. From the perspective of legal philosophy, judicial pardon may be read through the lens of Aristotelian justice, particularly the idea that justice requires treatment appropriate to concrete circumstances.[29] It may be understood as a form of *epieikeia*, namely, a correction to the rigidity of general law when literal application would produce injustice. Criminal-law norms are general and abstract, whereas criminal cases arise within complex social realities that cannot always be fully captured by statutory formulations.[30] Judicial pardon, therefore, bridges general norms and concrete justice by enabling judges to consider the offender's circumstances, actual harm, restoration, the relationship between offender and victim, and the social context of the offence.

In modern sentencing theory, judicial pardon is consistent with the shift from retributive punishment toward rehabilitative, corrective, and restorative sentencing.[31]

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[24] Dibi Vation Manik et al., "Reform of Indonesian Criminal Law Reviewed From Law Number 1 of 2023 About the Criminal Code," *International Journal of Sociology and Law* 2, no. 1 (January 2025): 177–91, https://doi.org/10.62951/ijsl.v2i1.330.

[25] Aristo Evandy A.Barlian and Barda Nawawi Arief, "Formulasi Ide Permaafan Hakim (Rechterlijk Pardon) Dalam Pembaharuan Sistem Pemidanaan Di Indonesia," *Law Reform: Jurnal Pembaharuan Hukum* 13, no. 1 (March 2017): 28, https://doi.org/10.14710/lr.v13i1.15949.

[26] Deni Setiawan et al., "Prinsip Proporsionalitas Dalam Penerapan Hukuman Pidana Di Indonesia," *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. 3 (October 2024): 266–78, https://doi.org/10.71153/jimmi.v1i3.144.

[27] Muhammad Kharisma Bayu Aji et al., "The Potential Disparity in Judicial Pardon Decisions," *Jurnal Hukum Dan Peradilan* 14, no. 1 (March 2025): 63–90, https://doi.org/10.25216/jhp.14.1.2025.63-90.

[28] Baharuddin Badaru, "Kepentingan Umum Dalam Asas Oportunitas Pada Sistem Peradilan Pidana," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (September 2023): 1737–54, https://doi.org/10.37680/almanhaj.v5i2.3715.

[29] Dwi Edi Wibowo, "Penerapan Konsep Utilitarianisme Untuk Mewujudkan Perlindungan Konsumen Yang Berkeadilan Kajian Peraturan Otoritas Jasa Keuangan Nomor: 1/POJK.07/2013 Tentang Perlindungan Konsumen Sektor Jasa Keuangan," *Syariah: Jurnal Hukum Dan Pemikiran* 19, no. 1 (March 2019): 15, https://doi.org/10.18592/sy.v19i1.2296.

[30] Samud Samud and Samud Samud, "Penegakan Hukum Pidana Perspektif Nilai Kemanusiaan Yang Adil Dan Beradab," *INKLUSIF (Jurnal Pengkajian Penelitian Ekonomi Dan Hukum Islam)* 6, no. 1 (June 2021): 50, https://doi.org/10.24235/inklusif.v6i1.8439.

[31] A.Barlian and Arief, "Formulasi Ide Permaafan Hakim (Rechterlijk Pardon) Dalam Pembaharuan Sistem Pemidanaan Di Indonesia."

Punishment is no longer understood solely as retribution, but also as a means of rehabilitating offenders and restoring social balance.[32] Accordingly, judicial pardon cannot be reduced to "not punishing"; it is a legal choice based on the assessment that punishment is not always the most appropriate response. In certain cases, imprisonment or other sanctions may produce disproportionate effects, worsen the offender's social condition, or provide no real benefit to victims and society.[33] Conversely, non-imposition of punishment may be more rational when the offender has shown remorse, harm has been repaired, social relations have been restored, and punishment would produce counterproductive effects. This reform is closely related to judicial discretion in achieving substantive justice. In previous criminal-law practice, once the elements of an offence were proven, punishment tended to be regarded as an almost automatic consequence.[34] Such a condition may produce substantive injustice, particularly in cases involving complex personal, social, or situational circumstances.[35] Judicial pardon addresses this limitation by allowing judges to evaluate cases not only from a legal-formal perspective but also from moral, social, and humanitarian perspectives. However, judicial discretion is legitimate in a rule-of-law state only when exercised on the basis of clear, reviewable, and accountable parameters.[36]

Within sentencing theory, judicial pardon integrates classical and modern sentencing models. It does not abandon retribution because it still requires a criminal act and proven guilt, but it incorporates corrective, rehabilitative, and restorative values that balance the interests of the offender, victim, and society.[37] This idea is consistent with the view that modern justice systems should combine retributive and restorative aims within an integrated framework, so that law does not become dogmatic but remains humanistic.[38] Judicial pardon is therefore not merely a mechanism to avoid punishment, but an instrument for securing more humane and rational justice.[39] This also confirms the role of judges as reflective actors whose decisions are shaped by legal norms, institutional experience, and social context.[40] Judicial reasoning may therefore draw on broader social realities rather than operate mechanically.[41]

Judicial pardon also reflects the principle of individualization of punishment. This principle requires that punishment be adjusted to the offender's characteristics, the

[32] Walesa Putra I Made, "Ideologi Pancasila Sebagai Dasar Tujuan Pemidanaan Dalam Pembaharuan Hukum Pidana Nasional," *Vyavahara Duta* 17, no. 1 (April 2022): 55–64, https://doi.org/10.25078/vyavaharaduta.v17i1.966.
[33] Airlangga Surya Nagara, Elizabeth Ayu Puspita Adi, and Reza Ilham Maulana, "Dampak Penerapan Penghentian Penuntutan Berdasarkan Keadilan Restoratif Terhadap Korban Dan Pelaku," *Journal of Law, Society, and Islamic Civilization* 13, no. 2 (October 2025): 154, https://doi.org/10.20961/jolsic.v13i2.107070.
[34] Rudi Pradisetia Sudirdja, "Penguatan Kewenangan Penuntut Umum Melalui Pengesampingan Perkara Pidana Dengan Alasan Tertentu," *Litigasi* 20, no. 2 (January 2020): 291–313, https://doi.org/10.23969/litigasi.v20i2.2032.
[35] Haryono Haryono, "Penegakan Hukum Berbasis Nilai Keadilan Substantif (Studi Putusan MK No. 46/PUU-VII/2012 Tertanggal 13 Februari 2012)," *Jurnal Hukum Progresif* 7, no. 1 (April 2019): 20, https://doi.org/10.14710/hp.7.1.20-39.
[36] Nurmayani Nurmayani and Mery Farida, "Problematika Konsep Diskresi Dalam Penyelenggaraan Administrasi Pemerintahan Pasca Undang-Undang Cipta Kerja," *Jurnal Ilmiah Hukum Dan Hak Asasi Manusia* 1, no. 1 (July 2021): 11–20, https://doi.org/10.35912/jihham.v1i1.412.
[37] A.Barlian and Arief, "Formulasi Ide Permaafan Hakim (Rechterlijk Pardon) Dalam Pembaharuan Sistem Pemidanaan Di Indonesia."
[38] Syauqi Askolani, "Restorative Justice: A Modern Approach to Criminal Law and Conflict Resolution," *LAWYER: Jurnal Hukum* 2, no. 2 (September 2024): 62–69, https://doi.org/10.58738/lawyer.v2i2.653.
[39] Nova Yolandya Sitanggang, La Syarifudin, and Nur Aripkah, "Tinjauan Yuridis Asas Pemaafan Hakim Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana."
[40] Roman Vandzhurak et al., "Socio-Legal Phenomenon of Judicial Reasoning in the Context of the Implementation of a Functional State," *Social and Legal Studios* 9, no. 1 (May 2025): 108–17, https://doi.org/10.32518/sals2.2025.108.
[41] Renita Kamil, "Legal Positivism Influence on Law Enforcement and Judicial Practice in Indonesia," *Justisi* 11, no. 2 (May 2025): 542–69, https://doi.org/10.33506/js.v11i2.4049.

circumstances of the act, culpability, consequences, and the need for restoration.[42] Without individualization, sentencing may become uniform and insensitive to the complexity of each case. Yet individualization requires standards to prevent it from becoming judicial subjectivity. The New Criminal Code provides a substantive basis, but it does not fully explain the technical parameters for what constitutes the "triviality of the act," what personal circumstances are relevant, or what post-offence circumstances may justify non-imposition of punishment. This ambiguity creates flexibility, but also opens space for uncertainty. The absence of technical parameters may pose several risks: disparity in judgments, perceived judicial subjectivity, weakened judicial legitimacy, and neglect of victims if pardon is granted without hearing their interests or objections. For these reasons, the exercise of judicial discretion in granting pardons requires clear boundaries to maintain legal certainty and prevent abuse of authority.[43] Criminallaw literature also shows that mechanisms such as judicial pardon or dispensation of punishment are generally applied narrowly and are subject to criminal procedure in each jurisdiction.[44]

The main issue in Indonesia no longer lies in whether judicial pardon has a place in criminal procedure. Law Number 20 of 2025 on the Criminal Procedure Code has expressly accommodated judicial pardon as a distinct form of court decision. Article 1 recognizes court decisions as including convictions, acquittals, releases from all legal charges, judicial pardons, or decisions imposing measures. It also defines judicial pardon as a judicial statement delivered in open court declaring that the defendant has been proven guilty, but no punishment or measure is imposed due to the triviality of the act, the offender's personal circumstances, or circumstances at the time of the offence and thereafter, by taking justice and humanity into account. This recognition resolves the earlier uncertainty over whether a judge could declare guilt while refraining from imposing punishment. Article 246 of the New Criminal Procedure Code further confirms the procedural status of judicial pardon. It provides that judges may render a decision declaring the defendant guilty without imposing punishment or measures by considering the triviality of the act, the offender's personal circumstances, and/or the circumstances at the time and after the offence. The provision categorizes such a decision as a distinct type of court decision, allows the parties to pursue legal remedies, and mandates that further provisions concerning the form, format, and requirements of judicial pardon decisions be regulated by a Supreme Court Regulation. Thus, the New Criminal Procedure Code has moved beyond substantive recognition and has placed judicial pardon within the formal structure of criminal adjudication.

However, formal recognition as a type of decision does not automatically resolve all practical questions. Criminal procedure must still clarify how judicial pardon is raised during trial, whether it may be considered *ex officio* or upon request, how victims are heard, what minimum reasoning standards must be satisfied, how the operative part of the judgment should be formulated, and how legal remedies operate in practice. Thus, the challenge has

[42] Dhandy Parindo et al., "Penerapan Konsep Dasar HAM Dan Pembaharuan Tiga Pilar Utama Hukum Pidana Dalam KUHP Baru UU No. 01 Tahun 2023," *Jurnal Hukum Indonesia* 3, no. 3 (July 2024): 129–42, https://doi.org/10.58344/jhi.v3i3.796.
[43] Khilmatin Maulidah and Nyoman Serikat Putra Jaya, "Kebijakan Formulasi Asas Permaafan Hakim Dalam Upaya Pembaharuan Hukum Pidana Nasional," *Jurnal Pembangunan Hukum Indonesia* 1, no. 3 (September 2019): 281–93, https://doi.org/10.14710/jphi.v1i3.281-293.
[44] Adery Ardhan Saputro, "Konsepsi Rechterlijk Pardon Atau Pemaafan Hakim Dalam Rancangan KUHP," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 28, no. 1 (February 2016): 61, https://doi.org/10.22146/jmh.15867.

shifted from the absence of procedural recognition to the adequacy of procedural operationalization. This shift is crucial because theories of substantive justice, proportionality, and individualized sentencing can only function in adjudication if translated into procedural safeguards. Without such safeguards, judicial pardon may remain conceptually progressive but uneven in practice. As a form of judicial discretion, a judicial pardon must be subject to accountability and openness. Broad discretion must be framed by procedural boundaries so that it does not open space for abuse and so that public trust in courts is maintained.[45] The New Criminal Procedure Code already provides the basic architecture by recognizing judicial pardon as a form of decision, allowing legal remedies, and mandating further regulation through a Supreme Court Regulation. Nevertheless, several operational matters still require clarification, particularly the role of prosecutors, defendants, defence counsel, and victims in proposing or responding to a pardon. If judicial pardon is consistent with restorative justice, victims should be given space to participate in decisions concerning offender accountability.[46]

In Indonesian practice, forms resembling judicial pardon have appeared in several court decisions, although they were not explicitly based on Article 54(2) of the New Criminal Code. Some judges have relied on moral, humanitarian, or penal-effectiveness reasons to refrain from imposing punishment.[47] This shows that the need for judicial pardon is not merely theoretical, but has already emerged in judicial practice.[48] The recognition of judicial pardon in the New Criminal Procedure Code provides a formal basis for practices that previously operated without a clear procedural status. The task after codification is to ensure that such decisions are not left to individual intuition, but are supported by structured standards on eligibility, reasoning, documentation, victim participation, and review. From the standpoint of criminal procedure principles, the operationalization of judicial pardon must protect due process of law, equality before the law, and the right to be heard.[49] Due process requires decisions affecting parties' rights to be made through fair, open, and reviewable procedures. Equality before the law requires similar cases to be treated equally based on predictable parameters. The right to be heard requires affected parties, including victims, to express their views before an important decision is made. A pardon granted without a transparent procedure may raise serious questions about the integrity of the judgment, particularly when its legal and sociological reasons are not fully elaborated.

Judicial pardon must also be situated within the relationship among justice, legal certainty, and utility. Radbruch argued that law contains three principal values: justice, legal certainty, and utility.[50] In judicial pardon, justice requires judges to refrain from imposing punishment when punishment is no longer proportionate or humane; legal certainty requires

[45] Mhd Faiz Yushar and Harisman Harisman, "Independence and Transparency of Judges in Adjudicating Cases in Indonesia and Thailand: A Comparative Analysis of Judicial Practice," *Law Jurnal* 5, no. 1 (December 2024): 58–70, https://doi.org/10.46576/lj.v5i1.5750.
[46] Padlah Riyadi, "Reconstruction of Restorative Justice Regulations Within the Indonesian Penal System Post-Law No. 1 of 2023," *Peradaban Journal of Law and Society* 3, no. 2 (December 2024): 154–67, https://doi.org/10.59001/pjls.v3i2.241.
[47] Mufatikhatul Farikhah, "Konsep Judicial Pardon (Pemaafan Hakim) Dalam Masyarakat Adat Di Indonesia," *Jurnal Media Hukum* 25, no. 1 (2018), https://doi.org/10.18196/jmh.2018.0104.81-92.
[48] Krisnamurti, "Harmonisasi Asas Permaafan Hakim (Judicial Pardon) Dalam Hukum Positif Indonesia Untuk Mencapai Keadilan Yang Bermartabat."
[49] Kimico Margaretha Tjhia and Azis Budianto, "Criminal Procedure Law Reform in Indonesia as a Step Towards a Fairer and More Effective Justice System," *Journal of World Science* 4, no. 7 (July 2025): 882–88, https://doi.org/10.58344/jws.v4i7.1447.
[50] Ani Triwati, "Pengesampingan Perkara Demi Kepentingan Umum Pasca Putusan Mahkamah Konstitusi," *Jurnal Ius Constituendum* 6, no. 1 (December 2020): 32–54, https://doi.org/10.26623/jic.v6i1.2092.

clear procedures; and utility requires better social outcomes, such as avoiding over-penalization, promoting reintegration, and reducing the burden on the correctional system.[51] Thus, judicial pardon can function properly only when these values are balanced through measurable procedural standards. In term of justice, pardon discretion enables judges to realize substantive justice rather than mere formal legality by considering the offender's background, culpability, harm, and restoration.[52] In term of certainty, however, this authority entails risks if not exercised according to consistent guidelines. Legal discretion without firm guidance may produce sentencing disparity, strengthen perceptions of subjectivity, and undermine the legitimacy of courts.[53] Therefore, judicial pardon must remain within a measurable and predictable framework through judicial guidelines, reason-giving obligations, and internal oversight. In term of utility, a judicial pardon can serve as a rational response to the limits of the sentencing system. Prison overcrowding, limited law-enforcement resources, and the need for social rehabilitation show that punishment is not always the most effective response. Judicial pardon, if properly directed, can promote social reintegration, reduce recidivism, and strengthen reconciliation. In term of progressive law, law should not be viewed merely as a rigid normative text, but as a means of achieving social goals and substantive justice.[54]

Progressive law affirms that law is an instrument for human beings and that judges must actively interpret law according to the values of justice living in society.[55] In this paradigm, judges do not function merely as the mouthpiece of legislation, but as ethical subjects who interpret law in accordance with living values of justice.[56] Judges may take progressive positions when the rigid application of positive law becomes an obstacle to substantive justice.[57] Judicial pardon is a progressive instrument with significant potential to strengthen substantive justice, but only when framed by robust procedure. The New Criminal Procedure Code has taken an important step by recognizing judicial pardon as a distinct form of court decision and by mandating further regulation through a Supreme Court Regulation. Yet this recognition must be operationalized through clearer standards concerning eligibility, initiation, victim participation, judicial reasoning, judgment format, legal remedies, and supervision. The central task, therefore, is not to establish the existence of judicial pardon, but to ensure that its implementation under the New Criminal Procedure Code is structured, transparent, and reviewable.

[51] Fadly Andrianto, "Kepastian Hukum Dalam Politik Hukum Di Indonesia," *Administrative Law and Governance Journal* 3, no. 1 (April 2020): 114–23, https://doi.org/10.14710/alj.v3i1.114-123.
[52] Nova Yolandya Sitanggang, La Syarifudin, and Nur Aripkah, "Tinjauan Yuridis Asas Pemaafan Hakim Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana."
[53] Ahmad Fadli Daulay, "Sentencing Disparities in Corruption Cases and Judicial Discretion in Indonesian Courts," *JIHK* 6, no. 2 (January 2025): 160–72, https://doi.org/10.46924/jihk.v6i2.248.
[54] M. Zulfa Aulia, "Hukum Progresif Dari Satjipto Rahardjo: Riwayat, Urgensi, Dan Relevansi," *Undang: Jurnal Hukum* 1, no. 1 (June 2018): 159–85, https://doi.org/10.22437/ujh.1.1.159-185.
[55] Noor Rahmad and Wildan Hafis, "Hukum Progresif Dan Relevansinya Pada Penalaran Hukum Di Indonesia," *El-Ahli : Jurnal Hukum Keluarga Islam* 1, no. 2 (January 2021): 34–50, https://doi.org/10.56874/el-ahli.v1i2.133.
[56] Teja Sukmana, "Responsive Law and Progressive Law: Examining the Legal Ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo," *Peradaban Journal of Law and Society* 2, no. 1 (June 2023): 92–105, https://doi.org/10.59001/pjls.v2i1.82.
[57] Yordan Elang Mulya Lesmana, "Modalitas Hukum Progresif," *Verstek* 8, no. 2 (August 2020), https://doi.org/10.20961/jv.v8i2.44116.

2. Comparative Procedural Safeguards and the Implementing Model of Judicial Pardon in Indonesia

To understand how judicial pardon can be operationalized effectively, it is necessary to examine jurisdictions that have long recognized analogous mechanisms in their sentencing systems. The comparison is not intended to transplant foreign models directly into Indonesia, but to identify procedural principles that may be adapted contextually. The Netherlands, England and Wales, and France are relevant because each allows a court to find a defendant guilty without imposing punishment or without imposing a repressive sanction. Despite differences in legal tradition and sentencing structure, these jurisdictions share one feature: discretion not to impose punishment is framed by procedure, reason-giving, participation of relevant parties, and review mechanisms. This comparison is relevant not because Indonesia lacks formal recognition of judicial pardon, but because the New Criminal Procedure Code still requires operational standards to ensure that judicial pardon is applied consistently, transparently, and accountably.

Judicial pardon and analogous mechanisms should not be understood merely as expressions of judicial compassion. They are forms of judicial decision-making with serious legal consequences because they affect the defendant's guilty status, the victim's interests, the legitimacy of the judgment, and public trust in the courts. Jurisdictions that regulate such mechanisms generally provide limits on eligibility, initiation, victim participation, judicial reasoning, and review. These procedural limits are essential to bridge the tension between legal certainty and utility, as required by progressive legal thinking.[58] The following table summarizes the main procedural safeguards in the Netherlands, England and Wales, and France.

Table 1. Comparative Overview of Judicial-Pardon Mechanisms in Selected Jurisdictions

Aspect	**Netherlands – Art. 9a *Wetboek van Strafrecht***	**England and Wales – Absolute / Conditional Discharge**	**France – *dispense de peine***	**Lesson for Indonesia**
Legal basis and nature	Court may find guilt without imposing punishment.	Court may record guilt without punishment, either absolutely or conditionally.	Court may exempt the offender from punishment despite a conviction.	Judicial pardon must be treated as a formal court decision, not as informal leniency.
Eligibility	Applied where punishment is unnecessary or disproportionate due to personal and case circumstances.	Generally applied to minor cases where further punishment is unnecessary.	Applied where the offender has reformed, or punishment no longer adds benefit.	Eligibility must be based on measurable criteria such as triviality, culpability, restoration, and proportionality.
Participation	Defence may raise the issue; the prosecutor and	Prosecution and defence may argue for or against discharge.	Prosecutor's position and the victim's statement	Prosecutor, defendant, defence counsel, and victim should be given procedural space.

[58] Dafit Supriyanto Daris Warsito, "Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahguna Narkotika," *Jurnal Daulat Hukum*, 2018, https://doi.org/10.30659/jdh.v1i1.2562.

	victim views may be considered.		form part of the assessment.	
Reasons and control	Use of Art. 9a must be expressly reasoned and reviewable.	Court must explain the grounds and consequences of discharge.	Dispensation requires legal reasoning and cannot rest merely on compassion.	Article 246(4) should be followed by a Supreme Court Regulation on reasons, format, remedies, and evaluation.

Source: author's analysis results

The Dutch model is the closest to Indonesia's judicial pardon. Article 9a of the *Wetboek van Strafrecht* allows the court to find the defendant guilty without imposing punishment when the offender's personal circumstances and the context of the case make punishment unnecessary or disproportionate.[59] The trial continues in the ordinary manner; guilt is assessed, facts are proven, and legal reasoning is formulated. The distinctive point lies at sentencing, where the judge concludes that the purposes of punishment need not be realized through a sentence. Article 9a cannot be applied implicitly or without reasons; its application must be clearly stated and supported by adequate legal reasoning.[60] Dutch Supreme Court jurisprudence also limits judicial discretion by requiring consideration of rehabilitation, social circumstances, and recidivism risk.[61] For Indonesia, this confirms that judicial pardon must be placed within a structured judgment, supported by explicit and reviewable reasons, especially because Article 246 of the New Criminal Procedure Code already recognizes judicial pardon as a distinct form of court decision.

England and Wales provide a different model through absolute and conditional discharge. Under absolute discharge, the court records guilt without imposing a sanction, generally in minor cases where remorse, a clean record, and the circumstances do not justify further intervention.[62] Conditional discharge requires the offender not to commit another offence within a specified period; breach may result in further legal consequences.[63] The key lesson is that non-punitive outcomes still require transparency. Even when no sanction is imposed, the conviction remains legally meaningful and must be accompanied by reasons.[64] For Indonesia, this model shows that a judicial pardon decision must not stop at the formula "guilty but no punishment"; it must contain clear reasoning, a precise operative part, and an accessible mechanism of review.

France offers another model through *dispense de peine*, regulated in Articles 132-59 to 132-62 of the *Code pénal*. This mechanism allows the court to exempt a defendant from punishment when the offender has reformed or when punishment no longer provides

[59] Cantika Qori Nirmalasari and Muhammad Azil Maskur, "Penerapan Judicial Pardon Di Belanda Dan Indonesia: Analisis Komparatif Terhadap Rechtelijk Pardon Pada KUHP Baru Di Indonesia," *Legalite : Jurnal Perundang Undangan Dan Hukum Pidana Islam* 11, no. 1 (February 2026): 116–36, https://doi.org/10.32505/legalite.v11i1.13592.

[60] Jeroen Martijn ten Voorde, "The Dutch Penal Code Under Review," *Indonesia Law Review* 7, no. 3 (December 2017), https://doi.org/10.15742/ilrev.v7n3.355.

[61] J.M.W. Lindeman, "De (Niet) Ontvankelijkheid van Het OM En Het Rechterlijk Pardon," *Tijdschrift Voor Bijzonder Strafrecht & Handhaving* 7, no. 2 (April 2021): 113–22, https://doi.org/10.5553/TBSenH/229567002021007002004.

[62] J. V. Roberts, "Sentencing Guidelines and Judicial Discretion: Evolution of the Duty of Courts to Comply in England and Wales," *British Journal of Criminology* 51, no. 6 (November 2011): 997–1013, https://doi.org/10.1093/bjc/azr044.

[63] Julian V. Roberts, "Structured Sentencing: Lessons from England and Wales for Common Law Jurisdictions," *Punishment & Society* 14, no. 3 (July 2012): 267–88, https://doi.org/10.1177/1462474512442305.

[64] Hari Wibowo et al., "The Legal Status of Circumstantial Evidence in the Context of Criminal Cases in Indonesia," *Justisi* 10, no. 3 (September 2024): 716–28, https://doi.org/10.33506/js.v10i3.3307.

additional benefit.[65] The grounds may include restitution, penal mediation, apology, or social engagement.[66] The French model connects non-imposition of punishment with restoration and the achievement of sentencing objectives through non-penal means. It also requires the court to consider the prosecutor's position and the victim's statement. This is relevant for Indonesia because the future implementing regulation must clarify how restoration, victim participation, and judicial reasoning should be assessed in concrete cases.

From these three models, several points of convergence can be identified. First, non-punitive decisions are placed within a clear legal framework and are not treated as informal leniency. Second, their application is limited to cases meeting certain substantive and procedural criteria. Third, prosecutors, defendants, defence counsel, and victims are given space to participate. Fourth, courts are required to provide explicit and reviewable reasons. These commonalities show that Indonesia's task after the enactment of the New Criminal Procedure Code is not to create judicial pardon, because that recognition already exists, but to develop operational standards for its implementation. In Indonesia, the implementing model should begin with formal and material requirements. Formal requirements may include eligible case categories, the stage at which pardon may be considered, the parties entitled to propose or respond to it, and the obligation to record the process in the minutes of proceedings. Material requirements may include the triviality of the act, culpability, absence of serious harm, restoration, remorse, the offender's personal circumstances, and whether punishment would still provide real benefit.[67] These requirements are necessary so that judicial pardon operates on reviewable parameters rather than judicial intuition. Judicial pardon may be identified by the judge, defendant, defence counsel, or prosecutor after evidentiary examination and before judgment. The party proposing it should explain the factual and legal basis for the request. The court should hear the prosecutor, defendant, defence counsel, and victim before assessing proportionality, restoration, the offender's circumstances, victim impact, and public interest. The judgment must then provide explicit reasons for granting or refusing a judicial pardon. These stages are important for the Supreme Court Regulation mandated by Article 246(4), because that regulation should transform the general recognition of judicial pardon into a concrete adjudicative process.

Victim participation must also become a core safeguard. If judicial pardon is connected to restorative justice, the victim cannot be treated merely as a passive party. Victims should be allowed to express the impact of the offence, the restoration that has or has not occurred, and their views on the possibility of non-imposition of punishment.[68] However, this participation should not amount to a veto. The judge remains the final decision-maker, but the judgment must show that the victim's voice has been genuinely considered.[69] In addition, the duty to give reasons must be central. A judge granting a judicial pardon should explain why the act is trivial or why punishment is unnecessary, what personal circumstances are

[65] Pierrette Poncela, "Chapitre 1 - Les Peines Applicables," in *Droit de La Peine* (Presses Universitaires de France, 2001), 115–75, https://doi.org/10.3917/puf.ponce.2001.01.0115.
[66] Gehad Mohamed and Mouaid Al Qudah, "Judicial Pardon of Punishment: An Evaluative and Comparative Review," *International Journal of Membrane Science and Technology* 10, no. 3 (August 2023): 1318–32, https://doi.org/10.15379/ijmst.v10i3.1705.
[67] Saputro, "Konsepsi Rechterlijk Pardon Atau Pemaafan Hakim Dalam Rancangan KUHP."
[68] Noveria Devy Irmawanti and Barda Nawawi Arief, "Urgensi Tujuan Dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana," *Jurnal Pembangunan Hukum Indonesia*, 2021, https://doi.org/10.14710/jphi.v3i2.217-227.
[69] Nick Gill et al., "The Limits of Procedural Discretion," *Social & Legal Studies* 27, no. 1 (February 2018): 49–78, https://doi.org/10.1177/0964663917703178.

relevant, what restoration has occurred, how the victim's interests are considered, and why a pardon is more proportionate than punishment. Without clear reasons, a judicial pardon will be difficult to review and may create public suspicion. Because Article 246 recognizes the decision form but does not yet detail minimum reasoning standards, the future implementing regulation should make reason-giving one of its central requirements.

Control mechanisms are equally necessary, control may be exercised through collegial reasoning by the judicial panel, legal remedies under Article 246(3), administrative and ethical supervision by the Supreme Court and Judicial Commission, and data-based monitoring of pardon decisions. The recognition of legal remedies is important, but their effectiveness depends on whether the judgment contains sufficient reasoning and a clear operative formulation. Data-based monitoring is also needed to evaluate whether judicial pardons reduce over-penalization or instead create new disparities. Since the New Criminal Procedure Code has already accommodated judicial pardon as a distinct form of court decision, the regulatory need can not be framed as an effort to insert a new norm into criminal procedure law. The urgent task is to prepare implementing instruments that connect the substantive norm in the New Criminal Code and the formal recognition in the New Criminal Procedure Code with courtroom practice. Such instruments should primarily take the form of a Supreme Court Regulation, as mandated by Article 246(4), or sentencing technical guidelines governing eligibility, examination stages, participation, reason-giving, judgment format, legal remedies, recording, and evaluation.

It is also important to distinguish judicial pardon from termination of prosecution, diversion, restorative justice at the prosecutorial stage, and clemency. A judicial pardon operates at the adjudicative stage after guilt has been established. It is therefore different from diversion or termination of prosecution, which generally occurs before the merits are fully examined. It also differs from clemency, which is an executive power exercised after a final and binding judgment. This distinction confirms that a judicial pardon is not impunity, because guilt is still declared; what is withheld is the imposition of punishment for legally justifiable reasons. In term of criminal policy, judicial pardon can help reduce over-penalization.[70] Not every legally proven case requires punishment.[71] In minor, situational, or restored cases, punishment may create greater social costs than benefits. Judicial pardon can rationalize the use of criminal law as an *ultimum remedium*. However, this contribution will only be achieved if pardon is applied in a measured way. If too broad, it may weaken deterrence; if too narrow, it loses corrective value. Therefore, implementing instruments in accordance with the New Criminal Procedure Code must place judicial pardon within a balanced policy design that combines humanization with procedural control.

Based on the comparison and synthesis above, the ideal Indonesian model should contain five minimum components: eligibility criteria, participation rights, explicit and

[70] Rohadhatul Aisy, "Judicial Pardon as a Humanizing Approach to Criminal Sentencing: Reconstructing Judicial Decisions under the New Indonesian Criminal Code," *The Digest: Journal of Jurisprudence and Legisprudence* 6, no. 2 (December 2025): 151–74, https://doi.org/10.15294/digest.v6i2.37174.

[71] Krisnamurti, "Harmonisasi Asas Permaafan Hakim (Judicial Pardon) Dalam Hukum Positif Indonesia Untuk Mencapai Keadilan Yang Bermartabat."

documented judicial reasoning, control through legal remedies and supervision, and evaluation through systematic recording and monitoring of judicial pardon decisions. These components should be understood as the minimum architecture mandated by Article 246(4) of the New Criminal Procedure Code for the Supreme Court Regulation. Accordingly, the experience of the Netherlands, England and Wales, and France demonstrates that discretion not to impose punishment can be effective only when embedded in a mature procedure. After the enactment of the New Criminal Procedure Code, Indonesia's most urgent task is not to establish judicial pardon as a form of decision, because that recognition already exists, but to operationalize it through implementing instruments that guide judges in concrete cases. Such regulation must ensure that judges retain space to realize substantive justice while remaining constrained by transparency, participation, legal reasoning, legal remedies, and oversight. Only in this way can judicial pardon humanize punishment while preserving legal certainty, equality, and the legitimacy of criminal justice

Conclusion

Judicial pardon under the New Criminal Code represents an important shift in Indonesia's sentencing policy from a purely retributive orientation toward a more proportionate, restorative, and humane model of punishment. This authority allows judges to declare the defendant guilty while refraining from imposing punishment or measures when punishment is no longer necessary or proportionate. The New Criminal Procedure Code strengthens this reform by recognizing judicial pardon as a distinct form of court decision and by allowing legal remedies against it. However, formal recognition alone is insufficient. The central issue lies in the adequacy of procedural operationalization, particularly regarding eligibility standards, examination stages, victim participation, the duty to give reasons, judgment format, legal remedies, and oversight. Without these safeguards, judicial pardon may create uncertainty, sentencing disparity, judicial subjectivity, and the marginalization of victims.

The comparative analysis of the Netherlands, England and Wales, and France shows that discretion not to impose punishment can operate effectively only when embedded in a clear, participatory, reasoned, and reviewable procedure. For Indonesia, the most urgent task after the enactment of the New Criminal Procedure Code is not to establish judicial pardon as a form of decision, because that recognition already exists, but to operationalize it through implementing instruments. A Supreme Court Regulation, as mandated by Article 246(4), should provide guidance on eligibility criteria, procedural stages, participation of the prosecutor, defendant, defence counsel, and victim, judicial reasoning, the operative part of the judgment, legal remedies, and data-based evaluation. In this way, judicial pardon can function not as individual compassion or uncontrolled discretion, but as a measurable judicial mechanism that humanizes punishment while preserving legal certainty, equality before the law, accountability, and the legitimacy of Indonesia's criminal justice system.

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