

A Judge's Pardon as a Form of Judgment: A Juridical Review of Aspects of Legal Certainty

Ni Putu Inten Kusuma Yanti¹⁾, Nurini Aprilianda²⁾, Faizin Sulistio³⁾

^{1,2,3)}Faculty of Law, Brawijaya University, Indonesia

*Corresponding Author

Email: inten_kusuma@student.ub.ac.id

Abstract

This scholarly investigation examines the imperative need for establishing regulatory frameworks governing judicial clemency (rechterlijk pardon) within Indonesia's criminal justice system. The study highlights critical gaps between substantive criminal law, which recognizes forgiveness principles, and procedural criminal law, which lacks comprehensive clemency provisions. Employing normative juridical methodology through legislative analysis, comparative assessment, and case studies, this research utilizes primary legal sources including statutory provisions and judicial decisions, supplemented by secondary materials. The investigation reveals that Indonesia's Criminal Procedural Law currently recognizes only three judicial determinations: acquittal, case dismissal, and punitive sentencing. This limitation creates procedural uncertainty when judges seek to grant clemency to defendants proven guilty through established legal proceedings. The research demonstrates that Criminal Procedural Law reformation is essential to incorporate judicial clemency as a fourth verdict category. Such legislative reform would establish legal certainty, ensure consistency in judicial determinations, and safeguard defendants' human rights within Indonesia's criminal justice framework. Implementation of this mechanism would significantly enhance procedural integrity and humanitarian considerations while maintaining adherence to fundamental legal principles, ultimately strengthening Indonesia's criminal justice system.

Keywords: Verdict, Judge's Pardon, Legal Certainty

INTRODUCTION

Human rights protection and acknowledgment constitute essential components in establishing effective legal governance systems. Indonesia, functioning as a constitutional state, bears fundamental obligations to preserve, acknowledge, and honor Human Rights as inherent entitlements that exist within every person from birth. These intrinsic entitlements represent divine endowments that remain inviolable and cannot be withdrawn or confiscated by any entity. Human rights safeguarding must be extended universally, transcending discriminatory barriers related to age, gender, religious affiliation, or diverse backgrounds. Consequently, acknowledging and fulfilling Human Rights represents an imperative obligation as integral components of basic entitlements possessed by all individuals (Purwanto, 2020). Under these circumstances, Indonesia assumes significant accountability for addressing societal challenges while ensuring comprehensive recognition and protection of human rights for every citizen. Human rights preservation cannot be compromised by alternative interests, as these entitlements constitute *essential rights* forming the cornerstone of equity and humanitarian principles within contemporary legal frameworks. Accordingly, all governmental policies, legislative development processes, regulatory formulation, and determinations made by state officials, particularly judicial authorities, must consistently adhere to human rights protection principles to achieve comprehensive justice across all societal segments (Aprilianda, 2023). This systematic approach ensures that legal institutions maintain their commitment to upholding fundamental human dignity while promoting equitable treatment throughout Indonesia's diverse population.

Judicial clemency (*rechterlijk pardon*) represents an innovative framework incorporated within the National Criminal Code, scheduled for implementation on January 2, 2026, serving as a mechanism to enhance human rights safeguards throughout Indonesia's criminal justice proceedings. This framework grants judicial authorities expanded discretionary powers in

decision-making processes, enabling judges to transcend restrictive normative punishment structures. Consistent with this perspective, Hazairin expressed that imprisonment sanctions in Indonesia have diminished necessity, given the inherent deficiencies within penal systems utilizing incarceration penalties. Aligned with Hazairin's viewpoint, Herman Bianchi advocated more radically for eliminating correctional facilities and imprisonment sanctions entirely, arguing that their existence generates numerous adverse consequences or detrimental aspects within criminal law enforcement practices (Singadimedja, 2021).

From an etymological perspective, *judicial pardon* or *rechtelijk pardon* terminology signifies clemency granted by judicial authorities. The concepts of "clemency" or "forgiveness" can fundamentally be expressed through various international terms, including *forgiveness*, *pardon*, *mercy*, and *amnesty*. These expressions lack absolute or inflexible definitions. Nevertheless, generally speaking, clemency terminology encompasses forgiveness for conduct violating established regulations or statutory laws, grounded in humanitarian principles and equity within societal contexts (Saputro, 2016). Specifically, judicial clemency concepts are articulated within Article 54 paragraph (2) provisions of the National Criminal Code, declaring that "The minor nature of the offense, personal circumstances of the offender, or conditions during crime commission and subsequent developments may serve as grounds for consideration against imposing criminal sanctions or refraining from implementing measures while considering justice and humanitarian aspects." This framework establishes grounds for judicial consideration against imposing specific penalties or measures based on humanitarian and equitable principles. Despite representing an advancement within the National Criminal Code, judicial clemency concepts were previously regulated and applied through Law Number 11 of 2012 concerning Juvenile Criminal Justice Systems. Subsequently, incorporating judicial clemency regulations within the National Criminal Code demonstrates a paradigmatic transition from formalistic legal certainty toward legal certainty embracing more responsive and contextual legal methodologies, where criminal considerations extend beyond criminal acts and culpability to encompass subjective offender circumstances and actual situational factors experienced by perpetrators.

Article 54 Paragraph (2) within the National Criminal Code establishes judicial clemency principles (*rechterlijk pardon*). Nevertheless, this statutory provision appears to lack optimal implementation capacity, given the absence of comprehensive technical regulatory frameworks within the Criminal Code. When examining the Criminal Code provisions, three distinct judgment categories exist for judicial determination in criminal proceedings: acquittal verdicts (*vrijspraak*), dismissal from all legal proceedings (*onslag van recht vervolging*), and punitive sentences. Acquittal verdicts are rendered when trial examination results demonstrate that defendants cannot be established legally and convincingly as having perpetrated criminal violations. Conversely, dismissal from all legal proceedings occurs when charged conduct against defendants is substantively established but fails to satisfy criminal act elements according to statutory requirements, whereas punitive sentences are imposed when judicial panels determine defendants are legally and convincingly established as guilty of committing criminal violations as alleged by prosecutorial authorities (Rahmat, 2019).

The subsequent challenge emerges when judicial panels conclude that defendants are legally and convincingly established as having committed criminal violations as prosecutorial indictments allege, yet imposing criminal sanctions against defendants potentially generates inequitable outcomes contradicting humanitarian principles. Under such circumstances, judges lack alternative decision-making options beyond the three judgment categories restricted within the Criminal Procedural Law. This situation aligns with legality principles serving as foundational elements in criminal procedural law, mandating that all law enforcement activities must derive from applicable statutory provisions. Alternatively stated, law enforcement personnel are forbidden from undertaking actions that deviate from or exceed boundaries established by prevailing legal regulations. This regulatory limitation creates procedural

constraints where judicial authorities recognize moral and contextual factors warranting clemency yet remain bound by existing legal frameworks that do not accommodate such humanitarian considerations within formal judicial determinations (Nusa & Kasim, 2019).

Throughout this investigation's duration, the researcher identified merely one judicial determination explicitly applying judicial clemency principles, specifically within the juvenile criminal proceeding at Rengat District Court Number 2/Pid.Sus-Anak/2021/PN Rgt. This evidence demonstrates that limited numbers of judicial authorities venture to grant clemency within their determinations, despite this framework achieving solid normative foundations since 2012 within Indonesia's juvenile criminal justice framework. Should future Criminal Procedural Law provisions fail to establish clear formulations regarding decision formats incorporating judicial clemency, this deficiency potentially obstructs the advancement and implementation of judicial clemency concepts within court practices, while simultaneously hampering legal maturation and certainty during Indonesian implementation processes. Consequently, judicial clemency concepts remain underdeveloped and unestablished within Indonesia's judicial practices.

This juridical matter represents urgent and substantial importance requiring comprehensive examination, as it directly correlates with criminal justice system effectiveness in achieving more humanitarian equity, consistent with contemporary Indonesian criminal law reformation principles. Without definitive Criminal Procedural Law, judicial clemency concepts grounded in equity principles, proportionality, and humanitarian values risk becoming unimplementable norms within judicial practices. This circumstance generates not only legal uncertainty but also establishes structural impediments preventing judges from executing progressive functions that balance criminalization objectives with accused rights protection. Therefore, explicit legal norms are essential to regulate formats and juridical consequences of determinations containing judicial clemency, enabling effective concept application within judicial practices. Such regulatory frameworks would provide necessary guidance for judicial authorities while ensuring consistent implementation of humanitarian principles throughout Indonesia's criminal justice system. The absence of these comprehensive regulations continues to limit judicial discretion and prevents the full realization of more equitable and contextually responsive criminal justice outcomes that contemporary legal reforms seek to achieve.

Drawing from the comprehensive analysis outlined previously, this investigation endeavors to identify and develop a structured framework for judicial clemency determinations to establish substantive legal predictability. The analysis in this study serves to both critique and complement prior related research, such as the study conducted by Adery Ardhan Saputro, which concluded that, in order to prevent the judicial pardon mechanism from becoming a dormant provision, its concretization should be achieved by classifying a judicial pardon ruling as a *discharge from all legal prosecution* (Saputro, 2016). Likewise, in the research conducted by Bunga Kharisma Octafiana and Frans Simangunsong, it is stated in their findings that the need to incorporate judicial pardon rulings has become increasingly urgent, given the numerous cases where the formal imposition of a sentence does not align with society's sense of justice. However, that study did not provide any recommendation regarding the legal form or procedural formulation of the judicial pardon ruling itself (Octafiana & Simangunsong, 2025).

The research anticipates delivering significant theoretical contributions by advancing scholarly discourse within jurisprudential studies, particularly regarding future Criminal Procedural Law evolution concerning judicial clemency verdict structures, while simultaneously offering practical value through intellectual contributions to the judiciary, specifically addressing innovative judicial decision formats encompassing clemency rulings. Employing legal certainty theory as the primary analytical framework, this examination addresses the fundamental inquiry regarding the structural formulation of judicial clemency decisions within prospective Criminal Procedural Law provisions. Through systematic implementation of statutory regulatory

methodologies, cross-jurisdictional comparative analysis, and case-study examination approaches, the investigation pursues the discovery of a singular innovative verdict structure that effectively incorporates judicial clemency principles as a manifestation of legal predictability within contemporary Indonesian criminal justice operations. This scholarly pursuit represents a critical advancement in understanding how judicial discretionary powers can be systematically structured to enhance legal certainty while maintaining the fundamental principles of justice and fairness inherent in modern criminal procedure. The anticipated outcomes will contribute substantially to both academic legal scholarship and practical judicial administration, offering a robust foundation for future legislative and procedural reforms.

RESEARCH METHODS

This investigation employs a doctrinal legal methodology, which encompasses comprehensive examination of scholarly literature through reference to established jurisprudential principles. This is in line with the view of Soerjono Soekanto, who stated that normative legal research refers to library-based legal research (Soekanto & Mamudji, 2022). Accordingly, normative legal research may be utilized to evaluate a legal situation or to propose solutions to a legal problem (Efendi & Rijadi, 2022). The analytical framework incorporates a statutory examination approach, systematically evaluating provisions within Article 54 paragraph (2) of the Republic of Indonesia Law Number 1 of 2023 regarding the Criminal Code, Article 70 of Republic of Indonesia Law Number 11 of 2012 concerning Juvenile Criminal Justice Systems, and Law Number 8 of 1981 addressing Criminal Procedure Code regulations. Additionally, a cross-jurisdictional comparative methodology is utilized, contrasting Indonesian criminal procedural law provisions with Dutch legal frameworks, complemented by a case study approach through detailed analysis of juvenile criminal adjudication at Rengat District Court Case Number 2/Pid.Sus-Anak/2021/PN Rgt. Data acquisition procedures are executed through comprehensive bibliographic research incorporating documentation of authoritative and pertinent scholarly sources, encompassing primary juridical materials consisting of applicable statutory regulations and judicial decisions possessing conclusive legal authority, secondary juridical materials comprising academic literature, scholarly publications, and additional legal documentation, alongside tertiary juridical materials including legal lexicons and encyclopedic references. Subsequently, collected data undergoes analytical processing utilizing descriptive methodologies and interpretative analytical techniques to derive meaningful conclusions and insights for the research objectives.

RESULT AND DISCUSSION

The Development of the Concept of Judge Pardon and Its Urgency in the National Criminal Code

The principle of clemency embodied within judicial pardoning doctrine has been extensively recognized throughout traditional legal frameworks that emerged, flourished, and evolved within Indonesian societal contexts. Multiple customary legal provisions governing diverse regional jurisdictions have established comprehensive conflict resolution mechanisms emphasizing forgiveness for customary norm violations. This clemency approach is furthermore classified as a sanctioning modality within traditional legal systems. For effective implementation of forgiveness-based dispute resolution frameworks, individuals violating customary regulations must demonstrate genuine remorse through sincere apologies while

expressing authentic regret toward victims and their extended families. An exemplary settlement model based upon clemency principles is evidenced through *Mewari* practices prevalent among Lampung Menggala indigenous communities. *Mewari* represents a customary judicial determination manifesting as reconciliation agreements between conflicting parties, subsequently accompanied by establishing kinship bonds among disputants. This agreement culminates in ceremonial traditions designed to formalize fraternal relationships, symbolizing conflict termination and initiating harmonious interactions resembling familial connections between previously opposing parties. Such traditional mechanisms demonstrate the profound integration of forgiveness principles within indigenous legal consciousness, offering valuable insights for contemporary judicial reform initiatives seeking to incorporate restorative justice elements while maintaining cultural authenticity and legal effectiveness in modern Indonesian criminal justice administration (Farikhah, 2018).

The principle of judicial clemency within Indonesia's criminal justice framework represents an innovative legal concept, empowering judicial authorities to extend forgiveness toward criminal offenders who have demonstrably satisfied criminal act elements and established guilt through legal proceedings. Nevertheless, considering offense gravity or exceptional circumstances surrounding criminal conduct, imposing conventional penalties or sanctions may potentially undermine justice principles and humanitarian values. Despite its conceptual merit, judicial clemency remains unrecognized within criminal procedural law structures established through Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP). The Criminal Procedure Law restrictively defines judicial decision categories into exclusively three classifications: acquittal verdicts (*vrijspraak*), dismissal rulings from all legal proceedings (*ontslag van alle rechtsvervolging*), and conviction judgments (*veroordeling*). This limited typology creates procedural constraints for implementing clemency-based judicial discretion, highlighting the necessity for comprehensive legal reform to accommodate restorative justice principles within contemporary Indonesian criminal jurisprudence. The absence of judicial pardon mechanisms within existing procedural frameworks represents a significant gap between progressive criminal justice theory and practical legal implementation, necessitating legislative adaptation to address evolving societal expectations regarding balanced, humanitarian approaches to criminal adjudication (Pangaribuan, et al., 2017).

The development of Indonesia's National Criminal Code emerges from compelling requirements for comprehensive criminal law transformation, addressing contemporary criminalization challenges resulting from evolving criminal jurisprudence dynamics intrinsically connected to societal transformations requiring protection through criminal law mechanisms and instruments. Nevertheless, criminal law utilization should not constitute the exclusive approach pursued or prioritized, particularly when non-punitive preventive strategies maintain strategic importance and require optimization and reinforcement in practical implementation. Conversely, evolving perspectives regarding justice values oriented toward substantive fairness in sanctioning have generated diverse punishment objective theories that have progressed chronologically, spanning from retributive theory to utilitarian doctrine emphasizing practical benefits. Punishment objectives represent fundamental components within criminal law frameworks, not exclusively in Indonesia, but across global jurisdictions. This importance emerges because national civilization levels can be partially assessed through societal treatment of incarcerated individuals. Consequently, punishment purposes may be regarded as manifestations of philosophical foundations and cultural values embraced by nations. Criminal sanctions implementation, typically executed through correctional facilities, does not consistently produce behavioral improvement among criminal offenders. Despite initial correctional institution establishment objectives focusing on deterrent effects, practical operations encounter overcrowding difficulties alongside recidivism phenomena, whereby convicted individuals recommit criminal offenses following sentence completion. These systemic challenges highlight

fundamental contradictions between theoretical punishment objectives and practical correctional outcomes, necessitating comprehensive reevaluation of existing punitive approaches and exploration of alternative justice mechanisms that prioritize rehabilitation, restorative principles, and sustainable behavioral transformation rather than purely retributive measures within contemporary Indonesian criminal justice administration (Purwani & Dewi, 2021).

Concurrent with evolving criminal law regulatory frameworks in Indonesia, the Government has established normative foundations through the National Criminal Code enabling judicial clemency concept implementation toward defendants. Clemency provision is grounded upon considerations regarding offense severity, perpetrator personal circumstances, and situational contexts during criminal conduct execution, while maintaining adherence to justice principles and humanitarian values. Judicial clemency concepts within the National Criminal Code are demonstrated through Article 54 provisions, wherein Article 54 stipulates:

(1) Sentencing considerations encompass:

- a. Criminal offense forms committed by perpetrators;
- b. Motivational factors and objectives underlying criminal conduct;
- c. Perpetrator psychological conditions;
- d. Premeditated versus spontaneous criminal act execution;
- e. Criminal conduct methodologies;
- f. Post-offense perpetrator behaviors and attitudes;
- g. Perpetrator biographical background, social standing, and economic circumstances;
- h. Criminal sanctions impact on perpetrator future prospects;
- i. Criminal conduct consequences on victims or victim families;
- j. Victim and/or victim family forgiveness;
- k. Legal and justice values prevalent within society.

(2) Offense mildness, perpetrator personal situations, or circumstances during criminal conduct and subsequent developments may serve as foundational considerations for avoiding criminal sanctions or action imposition while considering justice and humanitarian aspects.

Through Article 54 paragraph (2) provisions within the National Criminal Code, judicial authorities receive discretionary powers to evaluate enumerated elements when rendering defendant verdicts. When these considerations lead judges to conclude that criminalization or action imposition against legally and convincingly proven defendants would contradict justice and humanitarian values, judges may elect to avoid imposing criminal sanctions or actions against defendants. This process of avoiding criminal sanctions or actions despite proven criminal act elements, based upon justice, humanitarian, offense mildness, perpetrator personal circumstances, and criminal conduct situational considerations, constitutes judicial clemency or *judicial pardon* application. Through recognizing judicial clemency institutional existence, defendants may potentially avoid criminal sanctions or actions despite Public Prosecutor demands. Beyond representing legal progressivity, *judicial pardon* implementation contributes toward addressing correctional institutional overcapacity challenges. This innovative approach demonstrates judicial discretionary evolution within Indonesian criminal justice, offering alternative resolution mechanisms that balance legal accountability with humanitarian considerations, ultimately promoting more nuanced, individualized justice administration that recognizes complex circumstances surrounding criminal conduct while maintaining societal protection objectives and victim rights acknowledgment (Alhakim, 2023).

Multiple perspectives from criminal jurisprudence scholars exist concerning judicial clemency institutional terminology (*rechtelijk pardon*). Among these, Jan Rummelink articulated that *judicial pardon* or *rechtelijk pardon* provisions originated within Dutch Criminal Code frameworks, interpreted as guilt acknowledgment without accompanying criminal sanctions,

manifesting as clemency granted by or through Canton Judge authority (first instance judicial officers). Within clemency institutional implementation, judges evaluate criminal conduct severity levels alongside perpetrator circumstantial conditions and behavioral contexts, enabling Canton Judges to determine criminal sentence omission within their verdicts.

According to Andi Hamzah, *rechtelijk pardon* as codified in Wetboek van Strafrecht (WvS) Article 9a, empowers judges to avoid imposing specific crimes or actions, while retaining possibilities for criminal sentence imposition. This provision reflects *subsociability* conceptual influence (*subsociabiliteit*), maintaining that actions fulfilling offense elements yet producing negligible social consequences require no criminal sanctions or actions. This *subsociability* doctrine initially emerged within socialist legal frameworks including China and Russia.

Consequently, *rechterlijk pardon* transcends merely avoiding short-term incarceration applications, simultaneously preventing disproportionate or unnecessary sanctions when assessed through community protection requirements and perpetrator rehabilitation processes. Therefore, judicial clemency institutions encompass dual primary objectives:

1. Serving as alternatives to short-term imprisonment applications; and
2. Functioning as judicial corrective mechanisms addressing rigid legality principle implementations.

This institutional framework demonstrates progressive judicial evolution, recognizing that mechanical legal application may occasionally contradict justice and proportionality principles. Through incorporating discretionary clemency powers, judicial systems achieve greater flexibility in addressing individual case complexities while maintaining legal consistency and societal protection objectives. Such mechanisms represent sophisticated balance between legal certainty requirements and individualized justice administration, ultimately enhancing overall criminal justice system effectiveness and humanitarian considerations within contemporary legal practice (Jelindo & Laksana, 2025; Saputro, 2016).

Judge's Pardon Decision as a Juridical Review of the Aspect of Legal Certainty

Rechterlijk pardon (judicial clemency) regulatory provisions exist exclusively within the National Criminal Code containing substantive criminal law frameworks. Optimizing this conceptual application within criminal justice practice requires systematic harmonization, coordination, and integration alongside criminal procedural law provisions codified within the Criminal Procedure Code as formal criminal legislation. Consequently, judicial clemency (*rechterlijk pardon*) regulatory articles must establish legal certainty guarantees while enabling definitive and concrete implementation throughout judicial proceedings. This procedural integration represents essential prerequisites for transforming theoretical clemency concepts into practical judicial mechanisms.

The compelling necessity for explicit *rechterlijk pardon* regulation within the Criminal Procedure Law gains prominence when connected to verdict models or categories rendered against defendants who are legally and conclusively proven guilty of criminal conduct, yet subsequently receive judicial clemency (Mulianita, 2024). Regarding Indonesian Criminal Procedural Law frameworks codified within the Criminal Procedural Law, three judicial decision categories exist:

1. Acquittal verdicts (*vrijspraak*) are rendered when defendants are declared not legally and conclusively proven guilty of criminal conduct as alleged by Public Prosecutors in their charges. Consequently, acquittals result from Judicial Panel assessments that prosecutorial charges presented during proceedings lack substantive evidence as mandated in Criminal Procedural Law Article 184, with judges maintaining no conviction regarding defendants' actual commission of alleged criminal conduct;
2. Dismissal verdicts from all legal proceedings (*ontslag van alle rechtsvervolgning*) as codified in Criminal Procedural Law Article 191 paragraph (2) fundamentally establish that when alleged conduct is proven during proceedings, yet such conduct fails to qualify

as criminal offenses, defendants must receive dismissal decisions from all legal proceedings. Through these provisions, two primary elements underpin dismissal verdict issuance: (1) charged conduct is legally and conclusively proven, and (2) according to judicial assessment, such conduct does not constitute criminal acts;

3. Conviction verdicts (*veroordeling*) involve criminal sanction imposition against individuals who have been legally and conclusively proven culpable or committed criminal acts. Prosecutorial charges presented during proceedings are substantiated by valid evidence as mandated in Criminal Procedural Law Article 184, and through such evidence judges obtain conviction that defendants actually committed alleged criminal conduct.

These established verdict categories create procedural limitations for implementing judicial clemency concepts, as current frameworks lack accommodation for situations where defendants are proven guilty yet deserve clemency based on mitigating circumstances. This gap necessitates comprehensive procedural reform to incorporate *rechterlijk pardon* mechanisms within existing judicial decision structures, enabling judges to exercise discretionary clemency powers while maintaining legal certainty and procedural consistency throughout criminal justice administration (Narendra, et al., 2020).

Through examination of three judicial decision categories recognized and codified within Criminal Code provisions—specifically acquittals, dismissals, and criminal convictions—fundamental distinctions emerge between these verdict classifications and judicial clemency or *judicial pardon* concepts. *Judicial pardon* doctrine empowers judges to render clemency verdicts toward defendants, possessing distinctive characteristics absent from Criminal Procedural Law verdict classifications. Consequently, this demonstrates procedural gaps between substantive legal norms governing judicial clemency and criminal procedural law provisions required as foundations for court-level decision imposition and execution.

Judicial pardon concepts cannot be equated with dismissal verdicts, since within *judicial pardons*, defendants have been legally and conclusively proven guilty of charged conduct, with such conduct legally constituting criminal acts. Nevertheless, judges receive discretionary authority to evaluate factors including conduct severity, defendant personal circumstances, and criminal commission contexts, enabling clemency decisions based upon justice and humanitarian considerations.

Without technical procedural law arrangements, *rechterlijk pardon* or judicial clemency institutions risk becoming ineffective and non-operational norms within judicial practice. Despite normative accommodation within the National Criminal Code as substantive criminal legislation, specific Criminal Code provision absence renders this institution merely theoretical within Indonesian criminal procedural law frameworks. Therefore, normative innovations are essential for ensuring effective *rechterlijk pardon* practical enforceability, particularly through expanding criminal case judicial decision classification categories.

This procedural inadequacy represents significant systemic challenges within contemporary Indonesian criminal justice administration, where theoretical clemency concepts exist without corresponding implementation mechanisms. Such gaps undermine judicial discretionary effectiveness and limit courts' capacity to address complex cases requiring individualized justice approaches. Comprehensive procedural reform becomes imperative to bridge these institutional disconnections, ensuring that substantive clemency provisions translate into practical judicial tools capable of enhancing justice delivery while maintaining legal consistency and certainty throughout criminal proceedings.

As a comparative reference, the criminal law system in the Netherlands (*Criminal Code of the Netherlands*) has progressively anticipated the existence of *rechterlijk pardon* within its framework of criminal procedure law. In this system, there are four forms of final verdicts that can be handed down by judges in criminal cases, namely:

1. A free verdict (*vrijspraak*), that is, if the elements of the criminal act are not proven;
2. A verdict of release from all lawsuits (*ontslag van alle rechtsvervolging*), if the act committed by the Defendant is proven but cannot be punished for the reason of criminal expungement or the act committed does not constitute a criminal offense;
3. A criminal verdict (*veroordeling tot enigerley sanctie*), which is the imposition of a criminal sentence on the defendant;
4. Judge's pardon verdict (*rechterlijk pardon*), which is a statement of guilt without being followed by criminal imposition or action.

The regulation of *rechterlijk pardon* in the Netherlands is contained in Article 9a of the *Wetboek van Strafrecht* (Dutch Criminal Code) which states:

"The judge may determine in the judgement that no punishment or measure shall be imposed, where he deems this advisable, by reason of the lack of gravity of the offense, the character of the offender, or the circumstances attendant upon the commission of the offense or thereafter."

Furthermore, to ensure the accountability of the pardon decision, Article 359 paragraph (4) of the Dutch Criminal Procedural Law also requires the judge to include special considerations underlying the granting of a pardon, which reads:

"In the application of section 9a or section 44a of the Criminal Code, the judgment shall state the special reasons which led to the decision."

Through these regulatory provisions, it becomes evident that Dutch *rechterlijk pardon* constitutes neither a derivative nor variant of three conventional verdict categories (acquittal, dismissal, conviction), but rather represents a distinct judgment form possessing independent specificity and jurisprudential foundation. Drawing from Netherlands implementation practices, achieving legally valid and *executable rechterlijk pardon* within Indonesian criminal justice frameworks necessitates comprehensive national criminal procedural law reformation. Among strategic measures available involves recognizing and institutionalizing *rechterlijk pardon* as the fourth verdict category within Indonesian criminal procedural law systems. Consequently, Criminal Procedural Law decision classification frameworks require future expansion into four categories:

- 1) Acquittal verdicts;
- 2) Dismissal verdicts from all legal proceedings (*ontslag van alle rechtsvervolging*);
- 3) Conviction verdicts (*ververdeling tot enigerley sanctie*); and
- 4) Judicial clemency verdicts (*rechterlijk pardon*). This structural expansion would establish procedural accommodation for judicial discretionary clemency while maintaining systematic legal consistency and providing comprehensive verdict options that reflect contemporary justice administration requirements within Indonesian criminal jurisprudence.

Thus far, the investigator has discovered exclusively one judicial determination that explicitly employs judicial clemency principles within its adjudication, specifically the juvenile criminal case proceeding at Rengat District Court registered under case number 2/Pid.Sus-Anak/2021/PN Rgt. Within this adjudication, the presiding Judge established that the minor defendant had been legally and definitively proven culpable of perpetrating "theft under aggravating circumstances," however, the judicial authority abstained from imposing penalties whether punitive or administrative measures, mandating the minor's immediate liberation from detention upon verdict declaration. Judicial clemency regulations concerning juvenile matters receive explicit codification within Article 70 of Republic of Indonesia Law Number 11 of 2012 regarding Juvenile Criminal Justice Systems. The judicial clemency decision was established upon the subsequent analytical foundations:

- The initial prerequisite for judicial clemency implementation concerns offense severity committed by the minor defendant. Regarding statutory interpretation, the Judge

identified no definitive standards establishing conduct classification as minimal severity, consequently producing ambiguous benchmarks for offense gravity evaluation. Nevertheless, the Judge concluded that the minor's criminal behavior did not constitute grave criminality classification.

- The secondary prerequisite for judicial clemency implementation encompasses the minor's individual circumstances and contextual background. For this assessment, the Judge consulted Community Research Documentation for Court Proceedings prepared by Community Supervisory personnel, providing comprehensive evaluation regarding the minor's personal situation and developmental environment.
- The tertiary prerequisite for judicial clemency implementation addresses situational factors during offense commission. Concerning these prerequisites, aligned with trial-established evidence, the minor's motivation for appropriating another individual's property involved personal utilization rather than commercial distribution, and during criminal conduct execution, the minor neither destroyed appropriated items nor caused damage to additional victim possessions. Founded upon trial testimony, the tertiary prerequisite was determined satisfied by judicial assessment.
- The quaternary prerequisite for *Rechtelijk Pardon* implementation involves subsequent developments and circumstances. Regarding this prerequisite, trial evidence documented reconciliation between the minor perpetrator's family and victim preceding court proceedings, subsequently reconfirmed before judicial authority during trial sessions, accompanied by genuine contrition from the minor defendant and reinforced by victim appeals for punishment avoidance. Furthermore, from victim impact perspectives, material damages remained negligible since items appropriated by the minor were recovered undamaged in the minor's custody and scheduled for victim restitution. Based upon these elements, the Judge determined these prerequisites were satisfied.
- The quintenary prerequisite, constituting mandatory requirements supplementing four preceding discretionary prerequisites for *Rechtelijk Pardon* application, involves justice and humanitarian evaluations. From justice perspectives, the foundational philosophy underlying Republic of Indonesia Law Number 11 of 2012 concerning Juvenile Criminal Justice Systems emphasizes restorative justice principles, wherein case resolution transcends retributive approaches, directing efforts toward restoring circumstances to pre-offense conditions. Through this methodology, all stakeholders including victims, minors, and associated parties participate actively in collaborative equitable solution development, generating mutually beneficial resolutions. From humanitarian viewpoints, connections must be established with Juvenile Criminal Justice System foundational principles, particularly best interest doctrines for children and child survival and developmental principles. The perpetrator minor, according to parental testimony, currently maintains educational enrollment status, and considering chronological development, the perpetrator minor retains substantial future opportunities, prompting judicial conclusion that punishment implementation through criminal or administrative sanctions would constitute inappropriate intervention.

This extensive judicial examination demonstrates advanced implementation of clemency principles within juvenile justice structures, balancing legal responsibility with developmental factors while emphasizing restorative results over punitive measures, ultimately illustrating progressive criminal justice advancement in managing minor offender cases through personalized, compassionate approaches that recognize children's unique situations and rehabilitation potential within modern Indonesian legal frameworks. The implementation of judicial clemency concepts in Rengat District Court Decision Number 2/Pid.Sus-Anak/2021/PN Rgt offers tangible and practical demonstration of judicial discretionary usage to nullify sentencing, despite the minor being legally and conclusively proven to have perpetrated criminal

conduct. This becomes exceptionally pertinent for examination within legal certainty theoretical frameworks, emphasizing not merely written legal norm existence (statutory provisions), but also their consistent implementation by judicial institutions through court determinations. According to legal certainty doctrine, law must deliver clarity, organization, and predictability for society.

Nevertheless, legal certainty does not always equate with standard positive norm existence, but is also manifested through consistent and equitable jurisprudential practice. In this context, when common patterns emerge, judicial clemency concept application in juvenile cases represents legal implementation upholding justice and humanitarian values. Consequently, achieving legal certainty in future judicial practice necessitates positive law formulation accommodating judicial clemency concept existence within Indonesian criminal procedural law frameworks. This remains crucial for providing formal legal certainty regarding judicial discretion based upon substantive justice principles, while encouraging judicial practice uniformity in comparable cases. Therefore, the Rengat District Court Decision constitutes significant precedent applicable as foundation for drafting new norms or criminal procedural law reformation recognizing judicial clemency forms without disregarding legal certainty principles representing rule of law spirit. Subsequently, judicial clemency concepts will evolve into mature and established principles enforced within Indonesian judicial practice, creating systematic frameworks for discretionary clemency application while maintaining procedural consistency and legal predictability throughout criminal justice administration.

CONCLUSION

Drawing from comprehensive analytical examinations conducted by the researcher, it becomes evident that *judicial pardon* or judicial clemency represents criminal law advancement emphasizing substantive justice and humanitarian doctrines. The National Criminal Code, through Article 54, accommodates the authority of judges to refrain from imposing a sentence where the offender's act is deemed minor, accompanied by considerations of humanity and aligned with the values of justice. Despite accommodation within the National Criminal Code as substantive criminal legislation, technical procedural arrangement absence within the Criminal Procedure Law as formal legislation has prevented effective implementation within judicial practice. Thus, it can be stated that there exists a gap between substantive legal norms and procedural legal norms. The Rengat District Court Decision Number 2/Pid.Sus-Anak/2021/PN Rgt constitutes jurisprudential precedent demonstrating urgent necessity for formal judicial clemency recognition as distinct decision classification. Consequently, criminal procedural law reformation is essential to accommodate judicial clemency or *judicial pardon* as quaternary verdict within criminal justice frameworks. This measure remains crucial for ensuring legal certainty, verdict uniformity, and defendant rights protection within equitable rule of law structures. Such procedural evolution would establish systematic foundations for discretionary clemency implementation while maintaining judicial consistency and legal predictability throughout contemporary Indonesian criminal justice administration, ultimately bridging theoretical clemency concepts with practical judicial mechanisms.

REFERENCES

- Alhakim, A. (2023). The Ideas of Judicial Pardon as A Restorative Justice Approach: From Vengeance to Recovery?. *Ganesha Law Review*, 5(1): 2.
- Aprilianda, N. (2023). Exploring the meaning of judge's pardon for children through the ratio legis of article 70 of the Law on the Juvenile Criminal Justice System. *Legal Arena Journal of Legal Sciences*, 16 (2): 423-442. <https://doi.org/10.21776/ub.arenahukum.2023.01602.10>
- Efendi, J. & Rijadi, P. (2022). *Metode Penelitian Hukum Normatif dan Empiris*. Jakarta: Kencana.
- Farikhah, M. (2018). The Concept of Judicial Pardon (Forgiveness of Judges) in Indigenous Peoples of Indonesia. *Journal of Legal Media*. 25 (1):87.
- Jelindo, R. & Laksana, A.W. (2025). Implementation of Judicial Pardon in the Reformation of the Criminal Justice System Based on Legal Certainty. *Journal of Law and Justice*. 20(2):1338–1345.
- Mulianita, I. (2024). The Practice of Judges' Pardons (Rechterlijk Pardon) in the Indonesian Criminal Justice System, *Thesis*. Sultan Agung Islamic University.
- Narendra. Suryawan. & Widyantara, I.M. (2020). Legal considerations of the judgment are exempt from all lawsuits (ontslag van rechtsvervolging). *Journal of Legal Construction*. 1(2): 244-245.
- Nusa, A. & Kasim, H. (2019). *Criminal Procedure Law: Theory, Principles & Its Development After the Constitutional Court Decision*. Medan: Nusa Rahmat.
- Octafiana, B.K. & Simangunsong, F.(2025). Urgensi Penambahan Putusan Permaafan Hakim (Rechterlijk Pardon) Dalam Pasal 191 KUHAP. *Iuris Studia Jurnal Kajian Hukum*. 5(3): 655-666.
- Pangaribuan, Aristo. M.A. Mufti, A. & Zikry, I. (2017). *Introduction to Criminal Procedure Law in Indonesia*. Jakarta: Rajawali Press.
- Purwani, S.P. & Dewi, P. Mery. L. (2021). Judicial Pardon: Renewal of Criminal Law Towards Minor Criminal Offense. *Jurisprudence Journal of Law*. 10(3): 417. <https://doi.org/10.20961/yustisia.v10i3.55347>
- Purwanto. (2020). Legal Protection of Children as Victims of Crime in the Perspective of Indonesian Positive Law. *Journal of Legal Ideas*. 6(1):78.
- Rahmad, R.A. (2019). *Introduction to Indonesian Criminal Procedure Law*. Depok: Rajawali Press
- Saputro, A.A. (2016). The Conception of Rechterlijk Pardon or Judge's Pardon in the Draft of the Criminal Code. *Journal of the Pulpit of Law*. 28(1): 64.
- Singadimedja, M.H. (2021). Seeking the possibility of judicial pardon as an alternative form of punishment. *Rinjani Scientific Journal*. 9(1): 44-45.
- Soekanto, S. & Mamudji, S. (2022). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Depok: Raja Grafindo Persada.