

## ANALYSIS OF JUDGES' FORGIVENESS (RECHTERLIJK PARDON) FOR CHILDREN PERPETRATED BY THEFT UNDER AGGRAVATING CIRCUMSTANCES (CASE STUDY OF DECISION NO. 2/PID.SUS-ANAK/2021/PN RGT)

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### Abstract

The concept of *Rechterlijk Pardon* gave judges the authority to exclude the implication of punishment, especially in legal violations involving children. This research aims to analyze the application of the concept in a case involving a child committing theft, referring to Decision Number 2/Pid.Sus-Anak/2021/PN Regt. The case showed the judge's policy of choosing not to impose a sentence even though the child was declared guilty. The focus of the study was on how the judge's pardon was implemented in the juvenile criminal justice system in Indonesia, as well as the alignment of the decision with the principle of *Rechterlijk Pardo*. The method used was normative juridical with case study approach, collecting information sourced from statutory provisions and court decisions. The findings showed that the judge chose not to impose a sentence on the child who committed theft even though the elements of the offense were proven. The judge's considerations included the child's age, family background, educational history, remorse, and potential for social rehabilitation. The judge argued that punishment would not bring about substantive justice and might harm the child's future life. The essence of *Rechterlijk Pardon* is a reflection of the transition toward a justice system that prioritizes recovery and restorative justice. Judges have a central role in ensuring harmony between law enforcement and safeguarding children's rights. Thus, this concept becomes an important instrument for giving a second chance to children in conflict with the law.

**Keywords:** *Rechterlijk Pardon, Criminal Act, Child Perpetrator*

### INTRODUCTION

Children hold a strategic position in ensuring the sustainability of the nation and state. Within Indonesia's constitutional framework, children have the right to a decent life, optimal growth and development, and freedom from all forms of violence and discriminatory acts. Similarly, Article 1 paragraph (3) of the 1945 Constitution states, "The State of Indonesia is a State of law," which requires that human rights, including children's rights, be upheld. Protecting children is not merely a social responsibility, but also an aspect of the constitutional mandate that requires the state to prioritize children's interests in various aspects of national and state life.<sup>1</sup> The Juvenile Justice and Child Protection Law (SPPA) is not simply intended to punish children involved in the legal process, but rather emphasizes an approach that maintains a sense of security and peace of mind for children. Article 5 of the law emphasizes that the juvenile criminal justice system must prioritize restorative justice. While this may seem at odds with the formal and strict nature of criminal law, the implementation of the juvenile justice system demonstrates that the legal approach can be flexible and harmonious with restorative principles. Mistakes are still frequently encountered in the treatment of children facing legal challenges, where they are treated on an equal footing with adult perpetrators, without considering the child's psychological and maturity aspects.<sup>2</sup> The public often assumes

<sup>1</sup>Fachrezi F, Muhammad Hatta, and Herinawati, "Juridical Review of Restorative Justice for Children Perpetrators of Attempted Murder", Scientific Journal of Law Students, Malikussaleh University 8, no. 1, 2025, Accessed June 11, 2025: <https://ojs.unimal.ac.id/jimfh/article/view/19344>

<sup>2</sup>Nafi' Mubarak, Juvenile Criminal Justice System, Insight Mediatama, 2022, p. 29

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that children caught in criminal acts do not need to be held accountable for their violations. However, the fundamental difference lies in the specific handling mechanisms. In criminal cases, children can occupy the same legal position as adults, whether as perpetrators, suspects, defendants, witnesses, or victims. The Child Protection Act (UU SPPA), which addresses legal protection for children in conflict with the law, covers the process from the investigation stage to rehabilitation through guidance.<sup>3</sup> Children caught in criminal acts must receive different treatment from adults who commit similar offenses. Handling children needs to consider their specific needs, both psychologically and socially. With the increasing number of criminal cases involving minors, it is important to emphasize that even if they are guilty, children still deserve legal protection and treatment that takes into account their future and well-being as part of the nation's generation.

A restorative justice approach is a priority in handling juvenile criminal cases. For this reason, the SPPA Law presents a new approach that not only emphasizes recovery but also introduces the principle of *Rechterlijk Pardon* or judicial forgiveness. This concept was adopted as part of legal reforms already implemented in several civil law countries, in order to provide judges with discretion in wisely assessing juvenile criminal cases. This study examines how judges implement forgiveness in juvenile criminal cases in Indonesia, and whether Decision Number 2/Pid.Sus-Anak/2021/PN Rgt can be considered to illustrate the principle of *Rechterlijk Pardon*. This study aims to examine the implementation of this concept in cases involving juveniles who commit theft. The literature reviewed shows that Law No. 11 of 2012 concerning the Juvenile Criminal Justice System promotes a restorative justice approach, with the aim of creating a just and balanced legal system for perpetrators, victims, and the wider community. This study aims to foster a more comprehensive understanding of *Rechterlijk Pardon* in the juvenile justice system in Indonesia and to motivate regulatory strength and increased awareness of the concept's application in the future.

No	Author and Year	Previous Research Titles	Focus and Key Findings	Limitations in Previous Research	New Research Plan	The Novelty Offered
1.	Prusut Papandri, 2020. <sup>4</sup>	The Implementation of <i>Rechterlijk Pardon</i> (Judicial Forgiveness) in Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System and Its Development in the Reform of Indonesian Criminal Law	examine how the current juvenile justice system relates to a <i>rechterlijk pardon</i> mechanism, considering that criminal law is still influenced by the Dutch system which is rigid, very individualistic and liberalistic, so that it can cause rigidity in criminal law.	Gaps in the application of Judicial Pardon ( <i>Rechterlijk Pardon</i> ) in Law No. 11 of 2012 include a lack of publicity and understanding of the stages of forgiveness, unclear criteria, and limited oversight of judicial decisions. Disparities in interpretation among judges can lead to inconsistencies. Limited data and research also hamper the evaluation of the effectiveness of judicial forgiveness in the context of juvenile criminal justice.	This study aims to determine how judges decide to grant leniency to juveniles who have committed aggravated theft. It also examines how the concept of forgiveness is used in juvenile criminal cases and how it impacts the rehabilitation and social reintegration of juveniles. This study will make practical suggestions to improve the efficiency and fairness of existing policies.	This study explains the legal considerations of judges in granting leniency to juveniles convicted of aggravated theft, as well as how the concept of forgiveness is used and how it impacts the rehabilitation and social reintegration of children. This study aims to understand the power of judges in the juvenile criminal justice system and make suggestions for improving the fairness and effectiveness of existing policies.
2.	Lespiana Br Sitanggang, 2022. <sup>5</sup>	Policy Analysis of the Formulation of	This analysis evaluates the judicial pardon	The limitations of criminal law reform under the Draft	This study aims to examine the rationale behind leniency	This research focuses on the application of legal pardon to

<sup>3</sup>Aprilianda, 2023, Exploring the Meaning of Judicial Forgiveness for Children Through the Legislative Ratio of Article 70 of the Juvenile Criminal Justice System Law, Volume 16 Number 2, p. 425.

<sup>4</sup>Prusut PaDadndrio, *PeneraDadn Rechterlijk Pardon (Pemaafan HaKim) Dalam Uyoung-Uyoung Number 11 tahun 2012 Tentang Pera Systemdilan PidanaAnak Dan DevelopmentngannyaYeslam Pembaruan Humym PidanaIndonesia*, Uuniversitys Islam Negeri Sunan KaLijano2020, p. 6.

<sup>5</sup>Researchn LespianaSister Sitanong, *AnaPolicy Analysisyoun FormlaPemaafan Hakim (Rechterlijk Pardon)*

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		Judicial Pardon (Rechterlijk Pardon) from the Perspective of Criminal Law Reform According to the Draft Criminal Code	policy in the criminal law reform in the Draft Criminal Code, in the main points that several clear aspects of granting pardon are needed to reduce legal uncertainty and forgiveness that is in line with the restorative principle for child rehabilitation.	Criminal Code (RUU KUHP) include crucial aspects that result in limited or minimal assessment of judicial pardon formulation policies (Rechterlijk Pardon). The lack of structured and detailed aspects regarding the conditions and procedures for granting pardons can lead to uncertainty in legal practice. The Draft Criminal Code also does not fully incorporate judicial pardons into the principle of restorative justice, which prioritizes the recovery and reintegration of children into society.	granted by judges to juveniles convicted of aggravated theft, evaluate how forgiveness is implemented in juvenile criminal justice, and assess its impact on rehabilitation and social reintegration. Ultimately, this research yields a comprehensive understanding of judicial pardon authority and provides suggestions for improving the efficiency and fairness of current policies.	children involved in aggravated theft, by examining Decision Number 2/Pid.Sus-Anak/2021/PN Rgt as a case study. Unlike the discussion in the Draft Criminal Code, which remains normative and general, this study provides a clearer and more detailed understanding of the practice of legal pardon in the juvenile justice system, while also enriching the relevant and applicable empirical data.
3.	Samuel Rio Andres Nainggolan, 2022. <sup>6</sup>	A Legal Review of Rechterlijk Pardon in the Draft Criminal Code as an Alternative Decision in Criminal Law Reform in Indonesia	Focusing on how the theory of punishment is applied to the concept of rechterlijk pardon as a reform of criminal law in Indonesia and how the objectives of law enforcement are aligned when rechterlijk pardon is an alternative to a judge's decision.	The limitations are the lack of comprehensive explanations regarding the mechanisms and stages of granting forgiveness, the lack of studies regarding the characteristics that must be fulfilled, and the minimal emphasis on recovery in the rehabilitation of offenders, which hinders a comprehensive assessment of the Rechterlijk Pardon policy.	This study aims to examine how forgiveness is applied in juvenile criminal justice and assess its impact on rehabilitation and social reintegration. Ultimately, this research produces a comprehensive understanding of judicial pardon authority and provides suggestions for improving the efficiency and fairness of current policies.	The novelty of this research lies in its in-depth analysis of child perpetrators of aggravated theft, using a case study of Decision Number 2/Pid.Sus-Anak/2021/PN Rgt. Unlike the general legal review of the Draft Criminal Code, this research specifically reveals the judge's considerations and their actual impact, making it more practically relevant for criminal law reform in Indonesia.

## RESEARCH METHODS

This study addresses two research questions: how the concept of judicial forgiveness is applied in the Indonesian juvenile criminal justice system, and whether the judge's decision in case number 2/Pid.Sus-Anak/2021/PN Rgt reflects this concept. The method used in this study is a normative legal method with a qualitative literature study approach. This study applies two approaches: a legislative approach and a conceptual approach. The primary legal materials used in the form of statutory regulations and court decisions are examples of legal references that must be followed because of their legally binding nature.<sup>7</sup>The primary legal materials used in this study are the 1945 Constitution, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, court decision Number 2/Pid.Sus-Anak/2021/PN.Rgt, and relevant treaties. The data collection method in this study uses a bibliography study approach, namely the process of reviewing legal sources that come from various references

*Dalam Perspective of the Reader Haruan Humym Pidana Menurut RUUMYMOBILE PHONE*, Uuniversitys Lateacherng 2022, p. 10

<sup>6</sup>SayourEl Rio Andres NaEnglishn, *Fecesuan Yuridis Rechterlijk Pardon Dalam RKUHP sebano Helternatif Putheresan Dalam PembaHaruan Humym PidanaIn Indonesia*, Uuniversitys Sriwijayes 2022, p. 8

<sup>7</sup>Peter Mahmud Marzuki, 2006, *Legal Research*, Dating, Jakarta, p. 141.

## **RESEARCH RESULTS AND DISCUSSION**

### **a. The Concept of Judicial Forgiveness (Rechterlijk Pardon) in the Juvenile Criminal Justice System in Indonesia**

The concept of legal pardon originally developed in the Dutch legal system, where judges are given the authority to waive punishment in certain situations, taking humanitarian considerations into account. In practice, the Netherlands uses this principle to provide flexibility for judges, particularly in cases involving minors or cases with minimal social impact. France, on the other hand, has adopted a similar theory, allowing judges to reduce sentences based on ethical and moral considerations. Furthermore, although the United Kingdom and the United States do not explicitly recognize legal pardon in their common law systems, both have procedures such as clemency and pardon, granted by the executive branch in the form of pardons.<sup>9</sup> In order to reform criminal law to be more progressive and uphold humanitarian values, Indonesia has integrated the concept of Rechterlijk Pardon into the Draft Criminal Code (RKUHP). This principle allows judges to render decisions based on justice, namely granting leniency to perpetrators of crimes who meet legal requirements, taking into account the degree of culpability and the circumstances under which the crime was committed, in order to uphold the principles of justice and humanity.<sup>10</sup> The Criminal Code currently in force in Indonesia is a legacy of Dutch colonial rule and is based on Law No. 1 of 1946, which has undergone numerous revisions. Meanwhile, Law No. 1 of 2023 concerning the new Criminal Code adopts a neoclassical approach, emphasizing the harmony between objective (action) and subjective (intention or mental attitude) elements, but no longer accommodates the interests of the perpetrator.

Essentially, Law Number 8 of 1981 concerning Criminal Procedure does not address the pardon decisions that judges can make in the realm of legal forgiveness. According to the Criminal Procedure Code (KUHAP), judges' decisions are divided into three categories: acquittals, dismissals of all charges, and criminal sentences. Meanwhile, the concept of judicial forgiveness, also known as rechterlijk pardon, has distinct characteristics, allowing judges to issue pardons for perpetrators who have been found guilty of a crime. A pardon differs from a pardon because the judge considers the level of culpability and the perpetrator's condition at the time of the incident before granting forgiveness.<sup>11</sup> In the Draft Criminal Code (RKUHP), this concept was introduced as a new method for imposing sanctions, particularly in cases of children in legal situations. Although Law Number 11 of 2012 concerning the Child Protection Act (SPPA) does not explicitly mention the term Rechterlijk Pardon, a similar theory has been implemented through diversion mechanisms and restorative justice. Judges use this concept of judicial forgiveness as a basis for reviewing the objectives and reasons for sentencing, taking into account the elements of the crime (objective/legality requirements) and errors (subjective requirements) when determining the reasons for sentencing a defendant.<sup>12</sup> The concept of judicial forgiveness has long been recognized in Indonesia's juvenile criminal justice system. This is reflected in Law No. 11 of 2012 concerning the Juvenile Justice System (SPPA), which explicitly regulates the principle of judicial forgiveness (rechterlijk pardon) in Article 70. This article empowers judges to refrain from sentencing children by considering the seriousness of the behavior, the child's individual condition, and the circumstances at the time or after the act occurred, and based on principles of justice and humanity. As stated in Article 70 of the SPPA Law, which is intended for the sake of justice and humanity, judges have the discretion not

<sup>8</sup>Faculty of Law, Malikussaleh University, 2022, Final Thesis Writing Guide, Faculty of Law, Lhokseumawe. p. 61

<sup>9</sup>Jan Rummelink, Criminal Law on the Most Important Articles of the Dutch Criminal Code and Their Equivalents in the Indonesian Criminal Code. Jakarta: Gramedia Pustaka Utama, 2003, p. 465

<sup>10</sup>Vincentius Patria Setyawan1 and Itok Dwi Kurniawan, 2023, World Journal of Legal Science, Judicial Forgiveness in Indonesian Criminal Law Reform, Volume 1; Number 1, DOI: <https://doi.org/10.59435/juridikum.v1i1.97>, p. 22

<sup>11</sup>Wahyuni W, 2023, April 14, Understanding Rechterlijk Pardon or the Concept of Judges' Forgiveness Hukum Online.com, <https://www.hukumonline.com/berita/a/memahami-rechterlijk-pardon-atau-konsep-pemaafan-hakim-lt6438c43d2efab>

<sup>12</sup>Sahbani A, 2021, February 22, Restorative in the Draft Criminal Code, Hukum Online.Com, <https://www.hukumonline.com/berita/a/guru-besar-ini-jelaskan-konsep-keadilan-restoratif-dalam-rkuhp-lt603270d0b4ac1>



to impose a criminal sentence by considering the severity of the act, the child's character, and the context in which the act was committed and its aftermath.<sup>13</sup> The introduction of Article 70 of the Child Protection Act (UU SPPA) is rooted in the legal policy underlying the creation of this law as a whole. The article aims to provide special protection for children in the criminal justice system. This also aligns with the Convention on the Rights of the Child, which establishes regulatory principles that ensure the protection of children caught up in legal problems. To avoid inappropriate criminal penalties for children, it is understood that imposing a criminal sentence is not always the best solution, given that they are still in their developmental stage.<sup>14</sup> Fundamentally, limitations on sentencing children aim more at educating and improving behavior than simply imposing sanctions. The implementation of diversion mechanisms and the concept of legal pardon are efforts to prevent children from engaging in criminal justice mechanisms, which can potentially have negative impacts. Sentencing children in community institutions is often ineffective in the rehabilitation process due to high recidivism rates and capacity constraints.<sup>15</sup> Article 70 of the SPPA Law provides an opportunity for judges to refuse to sentence children to punishment and to grant legal forgiveness, although this forgiveness only applies in certain cases and its effect is limited, even if the defendant's mistake is quite serious.

The provisions of Article 70 of the SPPA Law are in line with the principles stated in The Beijing Rules, Resolution No. 40/33 of 1985, which emphasizes that the right to freedom can only be revoked if the act committed is serious and involves violence against others, or constitutes another serious violation of the law, and when there is no other more appropriate alternative.<sup>16</sup> The principle that loss of liberty applies only to serious crimes without adequate alternatives, as stipulated in the Beijing Rules, forms the basis for the application of the concept of judicial pardon (Rechterlijk Pardon) in Article 70 of the Juvenile Justice Act. This judicial pardon makes punishment for children a last resort, if the judge deems the child's actions to be minor. This is in accordance with the principle in the Beijing Rules, which states that restrictions on liberty are permitted only for serious acts.<sup>17</sup> Philosophically, judicial forgiveness under Article 70 of the Child Protection and Juvenile Justice Law is rooted in the principles of Pancasila. The second principle, "Just and Civilized Humanity," is defined as an awareness of human morality and ethical behavior, grounded in conscience and cultural norms. Article 70 of the Child Protection and Juvenile Justice Law provides judges with the authority to protect children's rights to justice by considering humanitarian considerations in sentencing or sentencing. This principle also aligns with international standards, which emphasize that child punishment should be limited to serious crimes, not minor offenses.<sup>18</sup>

### **b. Analysis of the Judge's Considerations in Applying the Concept of Judicial Forgiveness (Rechterlijk Pardon) in Decision Number 2/Pid.Sus-Anak/2021/PN.Rgt**

Article 1, number 11 of the Criminal Procedure Code states that a court decision is an explanation given by a judge in open court, which can take the form of a sentence, acquittal, or release from all legal charges, as stipulated in statutory regulations. From a criminological perspective, there are three models of the juvenile justice system: the retributive model, the offender rehabilitation model, and the restorative justice model, each of which reflects different approaches and characteristics.<sup>19</sup> In the case in question, the public prosecutor filed a single charge against the child perpetrator for the crime of "Aggravated Theft," as regulated in Article 363 paragraph (1) 3 of the Criminal Code, as well as Article 1 number 1 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Consideration of this case must be carried out carefully and wisely, because it concerns crucial aspects of the decision that reflect the principles of justice (*ex aequo et bono*), legal certainty, and benefits for all parties concerned. Before making a decision, the judge is obliged to ensure that all facts in the case are truly proven and have a valid legal basis between

<sup>13</sup>Article 70 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

<sup>14</sup>Arif & Ambarsari, Application of Restorative Justice Principles in the Criminal Justice System in Indonesia, Al-Adl: Jurnal Hukum Vol. 10, No. 2, (2018): 174.

<sup>15</sup>Derman, Muhammad Kemal, Restorative Justice, Reparations, and Compensation: Policies and Priorities. Depok: Faculty of Social and Political Sciences, University of Indonesia, 2016, p. 63

<sup>16</sup>Romi Asmara, Sumiadi, Laila M Rasyid, Juvenile Delinquency: A Judge's View, Biena Education, 2015, p. 78

<sup>17</sup>Sri Sutatiek, Child Judges in Indonesia, Aswaja Pressindo: Sleang Yogyakarta, 2013, p. 53

<sup>18</sup>Nurini Aprilianda, 2023, Legal Arena, Exploring the Meaning of Judicial Forgiveness for Children Through the Ratio Legis of Article 70 of the Juvenile Criminal Justice System Law, Vol. 16 No. 2, DOI: 10.21776/ub.arenahukum.2023.01602.10, p. 438

<sup>19</sup>Romi Asmara, Yuzrizal, Legal Aspects of Child Protection, Sefa Bumi Persada, 2021, p. 52

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the parties.<sup>20</sup>The main points regarding the authority of judges are regulated in the 1945 Constitution, Chapter IX, especially Article 24 and Article 25, and are clarified through Law No. 48 of 2009. Article 24 paragraph (1) in the explanation of Law No. 48 of 2009 firmly states that the authority of judges is an independent state authority, which is tasked with administering justice for the sake of enforcing law and justice referring to Pancasila and the 1945 Constitution, for the sake of realizing a state of law in the Republic of Indonesia. The judge's review consists of 2 (two) categories, namely:<sup>21</sup>In rendering a verdict, the judge considers the legal aspects derived from the legal facts presented in the trial, such as the prosecutor's indictment, the charges, the testimony of witnesses and the defendant, and the evidence. This is in line with Article 197 letter e of the Criminal Procedure Code, which requires the judge to include the articles of the prosecutor's demands in the verdict. In addition, the judge also assesses non-legal aspects, namely social and community considerations, especially if the crime committed causes significant harm to the stability of social life or values upheld by society. This aspect is used to ensure justice is not only seen from a legal perspective, but also from a humanitarian and social perspective.

If all the elements in Article 363 paragraph (1) 3 of the Criminal Code in conjunction with Article 1 number 1 of Law No. 11 of 2012 concerning SPPA have been proven, then the child perpetrator must be declared legally and convincingly guilty of the crime as accused in the prosecutor's single indictment.<sup>22</sup>Before proceeding to assess the appropriateness of sentencing the juvenile offender, the judge must first consider the trial facts, particularly those related to the peace agreement reached between the parties in this case. After the community research report was read, the judge actively encouraged the juvenile offender and related parties to seek a peaceful solution together. This effort is in accordance with the provisions of the Decree of the Directorate General of General Courts Number 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in General Courts. Grammatical interpretation of law is often the starting point for analyzing statutory provisions. However, to achieve a more comprehensive understanding of legal provisions, judges also employ a systematic interpretation method. This method explores the structure of articles within a law, both within the same and different regulations, to understand their interrelationships within the legal system as a whole. In this context, Article 70 of Law No. 11 of 2012 is interpreted with reference to the concept of *rechterlijk pardon*, as formulated in the Draft Criminal Code. The grammatical approach emphasizes the textual meaning of a legal norm, while the systematic approach connects it to the entire legal system to capture the essence and primary intent of the legislation.

In principle, a person can be punished if a crime has been proven. However, under the sentencing guidelines to be stipulated in the new Criminal Code, there will be the possibility for judges to apply the concept of legal pardon, by not imposing a penalty or action, even if the defendant has been proven guilty and meets the elements of the crime. This concept provides room for judges to review relevant specific circumstances, allowing forgiveness to be granted without the need to impose a penalty or action against the perpetrator.<sup>23</sup> A legal pardon is essentially a sentencing guideline that arises from the need to create flexibility in the legal system and prevent the application of rigid laws. In this regard, the role of judicial forgiveness can be likened to a safety net (*Veiligheidsklep*) or emergency exit (*noodeur*), allowing for alternative resolutions. This is particularly relevant in juvenile cases, particularly when diversion is not feasible, but all parties desire a peaceful resolution. In such circumstances, a legal pardon provides judges with the opportunity to offer more humane solutions without disregarding applicable legal provisions.<sup>24</sup> The implied meaning of the purpose of criminal punishment emphasizes that punishment has a prospective nature and focuses on the future, while the concept of retribution in punishment based on "moral guilt" which is oriented towards the past no longer has a place in the Criminal Code that will be implemented. The decision to apply the judge's forgiveness (*Rechterlijk Pardon*) to the Child Perpetrator is based on the first two aspects, namely the existence of peace and the fulfillment of the criteria contained in Article 70 of Law No. 11 of 2012 concerning the Child Protection and Child Protection Agency (SPPA). In assessing this case, the judge experienced difficulties because there was no clear definition of actions categorized as minor. This matter caused confusion, whether the reference used refers to

<sup>20</sup>Khasum, U.Kalsum, U., & Saputra, F. (2023). Legal Analysis of Rape Against Children Perpetrated by Mahram (Study of Decision Number: 6/JN/2021/MS. Lsm). Scientific Journal of Law Faculty Students, Malikussaleh University, <https://ojs.unimal.ac.id/index.php/jimfh/article/view/10094>, p. 18

<sup>21</sup>Jonaedi Efendi, Reconstruction of the Basic Legal Considerations of Judges, Prenadamedia Group: Cimanggis, Depok, 2018, p. 79

<sup>22</sup>Decision number 2/Pid.Sus-Anak/2021/Rgt, page 12

<sup>23</sup>Enny Nurbaningsih, 2015, Academic Manuscript of the Draft Criminal Code, by the National Legal Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia, p. 120

<sup>24</sup>Ibid. p. 125

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Article 364 of the Criminal Code or based on the level of seriousness of the crime as applies to terrorism cases. To overcome this ambiguity, the judge used a systematic interpretation method by referring to paragraph (1) of Article 9 of the Law, separating ordinary crimes from serious crimes. From this analysis, the judge decided that the actions of the Child Perpetrator were classified as minor actions in line with Article 363 paragraph (1) 3 of the Criminal Code. The second aspect of the application of Legal Pardon concerns the individual condition of the child involved. The judge's assessment in this case is based on a community research report compiled by a Class II Pekanbaru Bapas officer. The report contains crucial data on the background and development of the child offender. Meanwhile, the assessment recommendations in the report indicate that, according to the risk assessment instrument, the child offender's chances of reoffending are low. Referring to these findings, the judge concluded that the second requirement for applying Legal Pardon is appropriate. Therefore, the judge's decision to grant this pardon is based on careful consideration of two main aspects: the nature of the act and the personal condition of the child offender.

## CONCLUSION

The institution of pardon plays a crucial role in addressing weaknesses in the criminal justice system, but the Draft Criminal Procedure Code (RKUHAP) still does not specifically regulate judicial pardons. Currently, the RKUHAP only recognizes three types of verdicts: acquittal, release, and conviction, with judicial pardons acting as the "last resort" in upholding justice in society. The rules regarding judicial pardons are considered imperfect, and the mechanism for decisions declaring guilt without punishment lacks a clear legal framework. This risks misinterpreting a pure acquittal as a true form of forgiveness. The application of *Rechterlijk Pardon* is determined by the mildness of the act and considerations of justice and humanity. Article 70 of the SPPA Law stipulates that punishment for children should be a last resort, based on the principles of Pancasila, the 1945 Constitution, and the Beijing Rules to prevent adverse impacts on a child's development. The SPPA Law adopts a restorative justice approach, so judicial pardons are seen as a more responsive sentencing option than a rigid approach to legal certainty.

A comprehensive understanding of the concept of judicial forgiveness needs to be explicitly outlined in the revised Criminal Code and Criminal Procedure Code. This is crucial to ensure a firm legal basis, thereby preventing potential abuse of authority. The government is expected to establish a comprehensive criminal justice system that is responsive to societal dynamics and grounded in humanitarian and nationalist values. This is achieved by exploring prevailing legal norms within the community to ensure a more just and humane application of punishment. Judges must also effectively implement the provisions of the Juvenile Justice and Juvenile Justice Law, prioritizing the principle of restorative justice to optimally achieve the components of humanity, justice, certainty, and legal benefits.

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