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JURIDICAL STUDY ON THE CONCEPT OF JUDICIAL PARDON AND VICTIM PROTECTION IN JUVENILE CASES: ANALYSIS OF DECISION NUMBER 2/PID.SUS-ANAK/2021/PN RGT

Rani Adriana[1], Nurini Aprilianda[2], Sriti Hesti Astiti[3]
[1,2,3] Universitas Brawijaya
Email: rani.adriana19@gmail.com, nurini.aprilianda@ub.ac.id, sritihestia2021@gmail.com

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Abstract

Judicial pardon (rechterlijk pardon) is an approach within the juvenile criminal justice system that allows judges to refrain from imposing penalties despite a proven guilty verdict, by considering aspects of restorative justice and the best interests of the child. This study examines the application of the judicial pardon concept in Decision No. 2/Pid.Sus-Anak/2021/PN Rgt, which demonstrates a progressive approach in Indonesia's juvenile criminal justice system. Pursuant to Article 70 of Law No. 11 of 2012 on the Juvenile Criminal Justice System (hereinafter referred to as the Juvenile Justice Law), judges consider the minor nature of the offense, the personal circumstances of the child, and the conditions during and after the commission of the offense. This study also proposes legal reconstruction to clarify the criteria for judicial pardon, such as defining "minor nature of the offense" and "personal circumstances of the offender," to prevent legal uncertainty and potential abuse. This approach aligns with the spirit of the Juvenile Justice Law and the new Criminal Code (Law No. 1 of 2023), which prioritize restorative justice, rehabilitation, and social restoration, drawing inspiration from practices in the Netherlands. This research aims to contribute to the development of a more humane and effective juvenile criminal justice system in Indonesia.

Keywords: Judicial Pardon, Rechterlijk Pardon, Restorative Justice, Juvenile Criminal Justice System

Introduction

Judicial pardon, also known as rechterlijk pardon, enables courts to impose sanctions despite a guilty verdict, based on principles of legal justice and welfare. Article 19 of Law No. 48 of 2009 on Judicial Power (hereinafter referred to as the Judicial Power Law) stipulates that judges and constitutional justices exercise judicial authority in accordance with applicable laws. As judicial officers, independence and a thorough understanding of their duties, scope, and responsibilities under the law are essential to ensuring legal certainty. Furthermore, judicial pardon in the context of juvenile criminal law, commonly referred to as rechterlijk pardon, is closely associated with restorative justice, as regulated by Supreme Court Regulation No. 1 of 2024 on Guidelines for Restorative Justice-Based Criminal Adjudication (hereinafter referred to as the Restorative Justice Regulation). This regulation emphasizes the involvement of victims, victims' families, children, children's families, and other relevant parties in the judicial process, aiming to achieve healing beyond mere restoration in criminal cases. The Restorative Justice Regulation refers to the parent provisions of the Juvenile Justice Law, which explicitly outlines that policies concerning juvenile offenders are governed by special provisions oriented not only toward retribution but also prioritizing the best interests of the child. In this context, children are regarded as a divine gift and trust bestowed upon families to be nurtured and protected. Children represent the future of the nation and are expected to become agents of change who uphold inherent values. They require supervision and protection to ensure their physical, mental, and social development. The Juvenile Justice Law clearly defines children in conflict with the law as those categorized as perpetrators, victims, or witnesses of a criminal act. Judicial pardon is

incorporated within the juvenile criminal justice system alongside restorative justice.[1] The relevant article succinctly states: "The personal circumstances of the child, the minor nature of the offense, or the conditions during or subsequent to the commission of the offense may serve as a basis for the judge to refrain from imposing a penalty or to impose measures with due consideration to humanity and justice."[2] This provision explicitly grants judges the authority to adjudicate juvenile cases with an expectation to avoid imprisonment, even when the child in conflict with the law is legally proven guilty based on evidence presented in court. However, Article 70 of the Juvenile Justice Law provides various forms of assistance to judges or juvenile court judges in granting judicial pardon. Nico Keizer argues that the regulation of judicial pardon is necessary because many offenders meet the elements of a criminal offense, but imposing penalties on all offenders would conflict with the sense of justice or legal certainty.

In this regard, guidelines on judicial pardon also serve as a safety valve. The regulation of judicial pardon aligns with restorative justice, but the provisions of Article 70 of the Juvenile Justice Law will have substantive meaning only if the judge's orientation is directed toward restorative justice. Since the enactment of the Juvenile Justice Law, few judges have applied restorative justice-oriented sentencing when adjudicating juvenile offenders, despite the law's emphasis on restorative victim recovery. Diversion, which involves transferring juvenile cases from criminal to non-criminal proceedings, is also perceived to overlap with the concept of judicial pardon. Agreements to transfer case resolution between the parties and court-ordered diversions can prevent children from entering the trial phase and facing criminal prosecution. For instance, in a case involving Samhudi, a junior high school teacher who pinched a student, the judge imposed a lenient three-month imprisonment sentence. In another case involving Suyanto and Kolil, who were proven guilty of stealing watermelons, the court imposed a 15-day sentence with probation. The absence of a legal basis in the Criminal Code or Criminal Procedure Code for applying judicial pardon has led to judicial hesitation and reluctance to impose lenient sanctions on offenders.[3]

This view is supported by the authors' review of cases involving children since the enactment of the Juvenile Justice Law. Decisions involving judicial pardon for juvenile cases are scarce. One notable case identified is the Rengat District Court Decision No. 2/Pid.Sus-Anak/2021/PN Rgt, which applied the concept of judicial pardon, known in the Netherlands as rechterlijk pardon. The concept of rechterlijk pardon is inherently linked to criminalization, allowing judges to refrain from imposing imprisonment on offenders. In response to this context, the authors are motivated to conduct normative research concerning the judicial decision in Case No. 2/Pid.Sus-Anak/2021/PN Rgt, which exhibits a progressive approach by applying judicial pardon to juvenile offenders, well before the enactment of Law No. 1 of 2023 on the new Criminal Code. This research aims to serve as a reference for adjudicating cases involving children, prioritizing their best interests without neglecting victims' rights. Based on the foregoing, the practical handling of juvenile cases in courts still raises legal issues regarding the implementation of judicial pardon. Thus, the authors have chosen "Implications of Applying Judicial Pardon (Rechterlijk Pardon) to Children in Conflict with the Law from a Restorative Justice Perspective" as the title of this research.

Discussion

A. Statement of the Problem

Based on the above, this research aims to address two main issues:

1. **Research Questions**
   a. What legal considerations were applied by the judge in implementing the concept of judicial pardon in Decision No. 2/Pid.Sus-Anak/2021/PN Rgt?
   b. What is the proposed legal reconstruction for the ideal application of judicial pardon in the Indonesian legal system?
2. **Research Objectives**

[1] Article 1, Number 2 of Law No. 11 of 2012 on the Juvenile Criminal Justice System

[2] Article 70 of Law No. 11 of 2012 on the Juvenile Criminal Justice System

[3] Aristo Evandy A. Barlian, Barda Nawawi Arief, Formulasi Ide Permaafan Hakim (Rechterlijk Pardon) dalam Pembaharuan Sistem Pemidanaan di Indonesia, Jurnal Law Reform, Volume 13-Nomor 1, 2017, hlm. 33.

a. To understand and analyze the legal considerations applied by the judge in implementing the concept of judicial pardon in Decision No. 2/Pid.Sus-Anak/2021/PN Rgt.
b. To understand and analyze the proposed legal reconstruction for the ideal application of judicial pardon in the Indonesian legal system.
c.

B. Legal Considerations Applied by the Judge in Implementing Judicial Pardon in Decision No. 2/Pid.Sus-Anak/2021/PN Rgt

Criminal cases involving children as perpetrators require a special approach in their handling, as stipulated in the Juvenile Justice Law, which emphasizes restorative justice and the protection of the child's best interests. In Case No. 2/Pid.Sus-Anak/2021/PN Rgt, a child was charged with stealing a motorcycle at night from a shop owned by the parent of the child's friend.[4] This case is significant as a study of the application of juvenile criminal law in the context of conventional offenses. The incident occurred on Saturday, January 23, 2021, at approximately 06:00 WIB, at a shop owned by witness Dimas Poniran alias Popon, located in Belimbing Village, Batang Gansal Subdistrict, Indragiri Hulu Regency. According to the indictment, the child perpetrator was at the shop with witness Ricky Rama Daniel alias Ambia, the shop owner's child, after spending time together playing on their phones. This seemingly ordinary daily behavior led to the commission of the theft. At around 04:30 WIB, the child perpetrator woke up earlier and saw their friend still asleep. At that moment, the intent to steal the motorcycle emerged. The child opened the shop's door, which was locked from the inside, took the Kawasaki LX 150D (D Tracker) motorcycle without the owner's permission, and started the engine manually due to the absence of a key. This act fulfilled the elements of "taking another's property, wholly or partly, with the intent to possess it unlawfully."

After successfully taking the motorcycle, the child perpetrator fled to Tembilahan. There, they were stopped by police for not wearing a helmet and failing to present vehicle ownership documents. The child attempted to contact their friend to send the vehicle documents but received no response. They then left the police post and stayed at a friend's house in Tembilahan before returning to Rengat two days later. As a result of this act, the vehicle owner, Dimas Poniran, suffered a material loss of IDR 12,000,000 (twelve million rupiah). The public prosecutor stated in the indictment that the child perpetrator fulfilled the elements of the crime under Article 363 of the Criminal Code, specifically theft committed at night in a house or enclosed yard, by a person whose presence was unknown or unwanted by the homeowner. The indictment demonstrated that both objective and subjective elements of the crime were met. The objective elements included taking the property without permission, at night, in a closed building. The subjective elements were evidenced by the conscious intent that arose when the child woke up and saw an opportunity to take the motorcycle, as well as the independent execution of the act without external coercion.

However, given that the perpetrator was a child, the legal approach must adhere to the principles of the Juvenile Justice Law. This requires considering the child's age, prior behavior, family conditions, and the possibility of diversion or non-institutional rehabilitation.[5] No indication was found in the indictment that diversion was attempted or that mediation with the victim's family was pursued. Notably, the relationship between the perpetrator and the victim was close, as the perpetrator was a friend of the victim's child. This added a social dimension to the case, where the trust given by the victim's family was violated. Such personal relationships require a careful restorative approach involving both parties. Within the juvenile criminal justice framework, there is room to assess whether the act falls within boundaries that can be addressed through non-penal measures, such as penal mediation or restorative justice.[6] However, the public prosecutor pursued formal litigation under Article 363 of the Criminal Code. This case illustrates that conventional crimes like theft can still be committed by children in complex situations. When family and social supervision are suboptimal, the potential for children to commit legal violations increases. Therefore, the justice system's role extends beyond punishing the perpetrator to providing a balanced response that considers justice, child protection, and victim interests.

[4] Rengat District Court Decision No. 2/Pid.Sus-Anak/2021/PN Rgt.
[5] Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana, Op.cit, hlm. 195.
[6] IJRS, Peluang dan Tantangan Penerapan Restorative Justice dalam Sistem Peradilan Pidana di Indonesia, Jakarta, ICJR, 2022, hlm. 85.

As a case study, this matter highlights the need to strengthen mechanisms for handling juvenile cases that avoid immediate penal sanctions and open avenues for educational and corrective resolutions.[7] Systemic application of restorative justice at all stages of the judicial process, from investigation to judgment, is crucial in preventing recidivism and safeguarding the child's future. This case also serves as an evaluation of the extent to which law enforcement actors—police, prosecutors, and courts—have internalized child protection principles in daily practice. If the legal process prioritizes punishment over restoration, the objectives of the Juvenile Justice Law risk being unfulfilled. Therefore, a cultural and systemic overhaul in training law enforcement officials is necessary for handling children in conflict with the law.[8]

In this study, the object of analysis is the judge's considerations in Case No. 2/Pid.Sus-Anak/2021/PN Rgt. This case is significant in the dynamics of applying the juvenile criminal justice system in Indonesia, balancing protection for the child perpetrator and justice for the victim. In the indictment, the public prosecutor alleged that the defendant violated Article 363(1)(3) of the Criminal Code in conjunction with Article 1(1) of the Juvenile Justice Law. As the perpetrator was a minor, the process and sentencing were subject to the provisions of the Juvenile Justice Law. Following the review of the community research report by the Community Guidance Officer regarding the profile and conditions of the child perpetrator, the judge actively encouraged reconciliation. This encouragement was extended to the child perpetrator, parents, legal counsel, victim, and other relevant parties, aligning with the provisions of the Directorate General of General Courts Decree No. 1691/DJU/SK/PS.00/12/2020 on Guidelines for Implementing Restorative Justice in General Courts, which mandates efforts to resolve juvenile cases peacefully and justly.[9] In implementing restorative justice principles, the child perpetrator's parent, Margiati binti (deceased) Sukirno, and the victim, Dimas Poniran alias Popon bin Wagiran, confirmed that they had reached a prior reconciliation. This reconciliation was formalized in a peace agreement dated January 28, 2021, signed by both parties on stamped paper to affirm the seriousness and legality of the agreement. The agreement contained several key points for a familial resolution. First, both parties agreed to resolve the issue through a familial approach without escalating to hostility. Second, the child's parent formally apologized to the victim, who accepted the apology and forgave the child perpetrator. Third, the child explicitly expressed regret for their actions and committed to not repeating the offense, intending to become a better individual. Fourth, the victim stated that they no longer considered the child's actions an issue, as the stolen property had been recovered.

As part of validating the agreement, the judge provided opportunities for both parties to confirm the accuracy of the peace agreement's contents.[10] The child perpetrator, their parent, and the victim reaffirmed their commitment to the agreement without any retraction or objection. To support social restoration and rehabilitation, the victim expressed hope that the judge would not impose a penalty on the child perpetrator, reflecting empathy and a view that juvenile legal processes should prioritize rehabilitation over punishment. Based on the facts revealed in court, the judge deemed Article 70 of the Juvenile Justice Law a relevant legal basis for deciding the case. This article states that "the minor nature of the offense, the personal circumstances of the child, or the conditions at the time of or subsequent to the offense may serve as a basis for the judge to refrain from imposing a penalty or applying measures, considering aspects of justice and humanity." Thus, this provision was considered an appropriate legal reference for determining the decision regarding the child perpetrator. In interpreting Article 70 of the Juvenile Justice Law, the judge employed a grammatical interpretation method, focusing on the textual language of the provision, specifically the phrase "may serve as a basis for the judge to refrain from imposing a penalty or applying measures, considering aspects of justice and humanity."[11] Based on this interpretation, the judge understood that the article grants discretion to refrain from imposing penalties or measures on the child perpetrator, even if the elements of the offense are proven.

[7] Margarita Zernova, Restorative Justice: Ideal and Realities, Burlington, Ashgate Publishing Limited, 2003, hlm. 128.
[8] Jon F. Klaus, Handbook on Probation Service: Guidelines for Probation Practitioners and Managers, Roma, United Nations Interregional Crime and Justice Research Institute, 1998, hlm. 75.
[9] Decree of the Directorate General of General Courts No. 1691/DJU/SK/PS.00/12/2020 on Guidelines for the Implementation of Restorative Justice in General Courts, issued on December 22, 2020, was temporarily suspended. This decree was subsequently updated in the form of the Restorative Justice Regulation (Perma RJ)
[10] Pursuant to Article 7, Paragraph (1) of the Restorative Justice Regulation (Perma RJ), in the event that the victim states during the trial that a reconciliation has been reached prior to the trial, the Judge is authorized to examine the agreement made between the Defendant and the Victim.
[11] Elias E. Savellos & Richard F. Galvin, Reasoning and the Law: The Elements, Belmont, Wadsworth, 2001, hlm. 13.

This discretion, according to the judge's interpretation, can be applied if certain conditions are met: (1) the act committed by the child is minor; (2) the child's personal circumstances support granting pardon; (3) mitigating factors exist at the time of the offense; (4) new circumstances arise post-offense that warrant consideration; and (5) all considerations are framed within justice and humanity. Furthermore, the judge did not limit the interpretation to grammatical aspects but also examined the provision through a systematic interpretation method. This approach views a legal provision in connection with other provisions within the same or different laws.[12] Using this method, Article 70 of the Juvenile Justice Law was seen as part of a national legal system moving toward the concept of judicial pardon (rechterlijk pardon). In this context, the judge referred to the development of a similar concept in the Draft Criminal Code (RKUHP). According to a review of the 2015 RKUHP Academic Paper by the National Legal Development Agency (BPHN) of the Ministry of Law and Human Rights, the concept of rechterlijk pardon was incorporated as part of national criminal law reform. The academic paper explicitly states that the Criminal Code reform includes granting judges the authority to provide pardon without imposing penalties, even when a criminal act is proven. It also explains that rechterlijk pardon is an integral part of sentencing guidelines in the new criminal law system, emphasizing that despite fulfilling the elements of a crime, judges retain the authority to grant pardon based on substantive and humanitarian reasons.

This authority is not intended to ignore the criminal act but to provide room for social restoration and rehabilitation, particularly in cases involving juvenile offenders. Thus, it serves as a legal instrument enabling the justice system to adapt to the social, psychological, and future contexts of children in conflict with the law.[13] The judge concluded that interpreting Article 70 of the Juvenile Justice Law cannot be detached from the spirit of Indonesia's criminal law reform, which prioritizes a humane, proportional, and future-oriented approach. This aligns with the philosophy of modern sentencing systems that emphasize restoration and rehabilitation over retribution. By adopting the rechterlijk pardon approach, the judge sought to bridge the obligation to uphold the law with the protection of children's rights. In this context, sentencing is not the sole resolution but can be replaced by more appropriate alternatives based on utility and substantive justice.[14] This concept is crucial in building a progressive juvenile criminal justice system, where judicial pardon is not impunity but part of a comprehensive evaluation of the offense's impact, intent, age, and potential for reform. The judge does not merely act as a mouthpiece of the law but as a guardian of social justice and humanity within the national legal system.

The textual formulation of Article 70 of the Juvenile Justice Law shares similarities with provisions in the Draft Criminal Code (RKUHP), indicating that lawmakers consciously adopted identical normative structures in different regulations with a progressive and flexible sentencing spirit. To confirm whether Article 70 truly reflects the rechterlijk pardon principle, the judge employed a comparative interpretation method, comparing the national legal system with the Dutch legal system, which has long adopted the judicial pardon principle.[15] The legal basis for rechterlijk pardon in the Netherlands is found in Article 9a of the Dutch Criminal Code, which substantively authorizes judges to refrain from imposing penalties if the offense is minor, considering the offender's personality and circumstances during and after the offense. The normative substance of Article 9a of the Dutch Criminal Code is essentially aligned with Article 70 of the Juvenile Justice Law. Both grant judges the authority to prioritize juridical and ethical considerations in determining whether an act warrants punishment, even when legally proven. This alignment reflects continuity of thought between Indonesia's national legal system and the Dutch system as a reference model. Through normative and comparative interpretation, the judge gained confidence that Article 70 of the Juvenile Justice Law is fundamentally based on the same principles as the Dutch rechterlijk pardon. This provision grants judges full authority to refrain from imposing penalties or measures on children proven to have committed a crime, provided certain conditions are met. The rechterlijk pardon concept is understood as part of sentencing guidelines emerging from a spirit of flexibility in law enforcement, aiming to

[12] Utrecht, Pengantar Dalam Hukum Indonesia, disadur oleh Moh. Saleh Djindang, Jakarta, Ichtiar Baru, 1983, hlm. 212-213.
[13] Aristo Evandy A. Barlian & Barda Nawawi Arief, Op.cit, hlm. 42.
[14] Daniel W. Van Ness & Karen Heetderks Strong, Restoring Justice: An Introduction to Restorative Justice, Massachusetts, Anderson Publishing, 2015, hlm. 160.
[15] Riyanta, "Metode Penemuan Hukum (Studi Komparatif antara Hukum Islam dengan Hukum Positif)", Jurnal Penelitian Agama, Vol. 17, No. 2, 2008, hlm. 416.

avoid mechanistic and rigid legal application.[16] Judges are required to consider not only statutory texts but also the prevailing sense of justice in society. Thus, judicial pardon serves as a safety valve (veiligheidsklep) or emergency exit (noodeur) enabling a more humane justice system. In juvenile criminal cases, rechterlijk pardon is particularly significant when diversion cannot be implemented due to unmet formal requirements. When parties desire resolution through reconciliation but the legal system mandates court proceedings, judicial pardon offers a viable alternative aligned with restorative justice principles, even outside the diversion mechanism. Article 70 of the Juvenile Justice Law reflects modern sentencing principles, providing room for juvenile offenders to avoid sanctions if their actions substantively warrant consideration for pardon. Overall, the application of rechterlijk pardon through Article 70 not only represents a reform in Indonesian criminal law but also underscores a commitment to corrective justice values. It emphasizes the judge's role as a legal interpreter who not only applies norms but also weighs the utility and social impact of each decision.

In juvenile criminal cases, criminal law should be positioned as an ultimum remedium or last resort.[17] If restorative and social balance objectives are achieved, sentencing becomes irrelevant and may lead to injustice. The concept of criminal law as an ultimum remedium implies that penal measures should be used only when non-penal efforts fail to yield effective results. As long as alternative resolutions, such as familial approaches or restorative reconciliation, are viable—considering the nature and severity of the child's act—sentencing should be avoided as much as possible.
The Juvenile Justice Law explicitly embodies the spirit of positioning criminal law as a last resort. Article 2(i) of the Juvenile Justice Law states that "deprivation of liberty and sentencing are measures of last resort." The general explanation of the law further emphasizes that its core substance is the strict regulation of restorative justice and diversion, aiming to avoid judicial processes to reduce stigma and enable children to reintegrate into society naturally. The principle of minimizing sentencing for children is universally accepted in the legal systems of civilized nations. The United Nations Convention on the Rights of the Child, in Article 37(b), states that no child shall be arbitrarily or unlawfully deprived of liberty. Arrest, detention, and imprisonment of children should be used only as a last resort and for the shortest possible duration. As a state party to the convention, Indonesia is obligated to ensure its implementation within its legal system.

Based on these principles, the application of rechterlijk pardon to juvenile offenders heavily depends on fulfilling the conditions outlined in Article 70 of the Juvenile Justice Law. The primary consideration is the existence of reconciliation between the perpetrator and victim, supported by other trial facts indicating that judicial pardon is the most just and proportional step in the case.[18] The wording of Article 70 uses the conjunction "or" between the first four conditions, meaning their fulfillment is alternative, not cumulative. Thus, meeting one of the four conditions, along with the fifth condition, allows the judge to use this article as a legal basis to refrain from imposing penalties or measures. Nevertheless, in this decision, the judge carefully considered each condition stipulated by the law. The first condition is that the act committed by the child is minor.[19] The explanation of Article 70 does not explicitly define criteria for a "minor act." This raises questions about whether "minor" refers to offenses explicitly mentioned in the Criminal Code, such as Article 364, or to classifications of offense severity, such as terrorism or murder. The lack of clear boundaries prompted the judge to adopt a systematic interpretation. To address this ambiguity, the judge referred to the explanation of Article 9(1) of the Juvenile Justice Law, which classifies juvenile offenses into two categories: ordinary offenses and serious offenses. Examples of serious offenses include murder, rape, drug trafficking, and terrorism. Using this systematic approach, the judge determined that the offense committed by the child perpetrator did not constitute a serious offense.
Based on this consideration, the child's act, charged under Article 363(1)(3) of the Criminal Code, was categorized as a minor offense. Thus, the first condition of Article 70 was fulfilled and could serve as a basis for applying rechterlijk pardon. This conclusion underscores the importance, within a restorative and child-protective juvenile justice system, of comprehensively assessing the individual conditions of the perpetrator and the nature of their act. The aim is to ensure that sentencing is applied only when absolutely necessary, and that the ultimum remedium principle is not merely a slogan but is genuinely implemented in fair and humane judicial practice.

[16] Marcus Priyo Gunarto, "Asas Keseimbangan dalam Konsep Rancangan Undang-Undang Kitab Hukum Pidana", Jurnal Mimbar Hukum UGM, Vol. 24, No. 1, Februari 2012, hlm. 88.
[17] Faisal & Derita Prapti Rahayu, "Reformulasi Syarat Diversi: Kajian Ide Dasar Sistem Peradilan Pidana Anak", Masalah-Masalah Hukum, Jilid 50, No. 3, Juli 2021, hlm. 333.
[18] Sri Mulyani, "Penyelesaian Perkara Tindak Pidana Ringan Menurut Undang-Undang dalam Perspektif Restorative Justice", Jurnal Penelitian Hukum De Jure, Vol. 16, No. 3, 2016, hlm. 345.
[19] This provision is regulated under Article 54, Paragraph (2) of Law No. 1 of 2023 on the Criminal Code.

The second condition for applying rechterlijk pardon is the personal circumstances of the child perpetrator. The judge referred to the Community Research Report compiled by the Class II Pekanbaru Correctional Center's Community Guidance Officer as an official assessment instrument. The report explicitly stated that the child had no prior legal violations and was at low risk of recidivism. Based on this information, the judge concluded that the child's personal circumstances met the second condition for granting rechterlijk pardon, due to the absence of a criminal record and low risk of reoffending. The third condition relates to the circumstances at the time of the offense. Based on trial facts, the child took another's property solely for personal use, not for resale. No damage was caused to the stolen item or other property of the victim during the offense. These facts indicated that the act was not committed with malicious intent that posed significant harm, leading the judge to conclude that the third condition was also met.

The fourth condition concerns circumstances arising after the offense.[20] Before the trial began, the child's family and the victim had reached a reconciliation, which was reaffirmed in court. Additionally, the child expressed deep remorse, and the victim requested that no penalty be imposed. The material loss was not significant, as the stolen item was recovered and remained in the child's possession. These facts confirmed that the fourth condition was fulfilled. The fifth condition, a mandatory requirement alongside one of the previous four, pertains to considerations of justice and humanity, forming the philosophical basis for the decision. In terms of justice, the Juvenile Justice Law emphasizes restorative justice, focusing on restoring original conditions rather than retribution. This approach involves all parties—victim, perpetrator, and families—in seeking a just resolution that creates a win-win solution. The ultimate goal is to avoid stigmatizing the child and facilitate natural social reintegration.[21] Given the reconciliation and the victim's request for no punishment, the justice consideration supported the application of rechterlijk pardon.

From a humanitarian perspective, considerations focused on the best interests of the child and ensuring their continued survival and development. According to the parent's testimony, the child was still in school and at an age with significant potential for reform and guidance. The judge concluded that imposing a penalty or measure would create negative stigma, potentially damaging the child's future and hindering reintegration into society. Through this analysis, the judge determined that both the minimum and overall conditions of Article 70 were met, rendering penal sanctions or measures irrelevant. In such circumstances, the judge's authority to refrain from imposing penalties or measures was a logical and ethical choice. The application of Article 70 resulted in a decision distinct from the categories outlined in Article 1(11) in conjunction with Article 191 of the Criminal Procedure Code, which limits decisions to conviction, acquittal, or dismissal of charges. However, under Article 70, judges are granted the discretion to issue decisions omitting sanctions, whether penalties or measures, despite proven criminal elements. Thus, Article 70 not only reflects juridical flexibility favoring restorative justice and child protection but also expands the framework for judicial decisions beyond conventional criminal procedure. Choosing not to impose sanctions in juvenile cases concretely acknowledges children's rights to humane and proportional justice.

C. Proposed Legal Reconstruction for the Ideal Application of Judicial Pardon in the Indonesian Legal System

Terms such as "pardon," "amnesty," "mercy," "clemency," "compensation," or "forgiveness" have flexible meanings but generally refer to the absolution of an act contrary to law based on justice. Pardon constitutes a release from liability for a committed wrong. In the context of pardon, a guilty individual may avoid punishment or be exempt from serving a sentence.[22] Rechterlijk pardon, or judicial pardon, is a decision where the judge refrains from imposing a penalty, also known as judicial pardon or dispensa de pena, when the defendant is proven guilty but not sentenced by the judicial panel. Since the 1960s, crime rates have risen in various countries, particularly in Europe, correlating with an increase in convicted offenders sentenced to imprisonment. This has led to significant state budget burdens due to the high number of inmates, resulting in inefficiencies. In the 1960s, many academics and practitioners opposed imprisonment, especially short-term sentences, arguing that imprisoning individuals for minor offenses could lead to

[20] The Explanation of Article 54, Paragraph (2) of Law No. 1 of 2023 on the Criminal Code stipulates that the granting of a pardon must be included in the judge's decision while still declaring that the Defendant is proven to have committed the charged criminal act.

[21] Ernest Sengi, "Restorative Justice dalam Perkara Anak yang Berhadapan dengan Hukum di Pengadilan Negeri Tobelo", Refleksi Hukum, Vol. 2, No. 2, April 2018, hlm. 159. DOI: https://doi.org/10.24246/jrh.2018.v2.i2.p153-166.

[22] Adery Ardhan Saputro, Konsepsi Rechterlijk Pardon atau Pemaafan Hakim Dalam Rancangan KUHP, Mimbar Hukum, Vol. 1, No. 28, 2016, hlm. 61

recidivism for more serious crimes. This is attributed to the lack of differentiation in correctional facilities for minor and serious offenders, contributing to societal stigma labeling all former inmates as "criminals."[23] According to data from the Directorate General of Corrections (Ditjenpas) of the Ministry of Immigration and Corrections, as of July 14, 2025, there were 194,319 inmates in correctional facilities, with a maximum capacity of 100,483, resulting in an overcapacity of approximately 93.39%.[24] The capacity shortfall in correctional and detention facilities is attributed to several factors, including an increase in repeat offenders due to ineffective rehabilitation caused by limited capacity and competency of correctional institutions, compounded by overcrowding, which reduces the intensity of guidance by officers. Law No. 1 of 2023 on the Criminal Code introduces a breakthrough by stipulating that not all individuals proven to have committed a crime must be penalized or subjected to measures. In certain cases, if the act is minor and mitigating circumstances exist, judges may grant pardon, as regulated in Article 54(2) of the law.

Historically, the concept of judicial pardon in Indonesian sentencing was first formulated in the Draft Criminal Code (RUU KUHP) in 2005, 2008, and 2016. The previous Criminal Code did not regulate judicial pardon. After extensive discussions, Law No. 1 of 2023 on the Criminal Code was enacted in early 2023 and will take effect three years after its promulgation. A new policy introduced in the National Criminal Code is judicial pardon, regulated under Article 54(2) of Law No. 1 of 2023. The objective is to fulfill the sense of justice in law enforcement, encompassing moral and legal justice. The judicial pardon concept in Indonesia draws from comparative studies with countries like Portugal and the Netherlands.[25] While applied in the Netherlands and adapted in Indonesia, there are differences in formulation but similarities in meaning, granting judges legal authority to pardon defendants proven guilty of a crime but deemed worthy of pardon for specific reasons. Historically, the relationship between sentencing and pardon has existed since the Code of Hammurabi, which balanced legality with societal justice.[26] During the Roman Empire, soldiers who served in wars were granted immunity and pardon by the royal authority.[27] However, such pardons were often applied arbitrarily without clear regulations. In ancient China, during the Han Dynasty, the emperor used pardons as if all legal violations could be forgiven at the emperor's discretion.[28]

In common law systems, notable cases include King Charles II's pardon of Danby, the English Prime Minister facing impeachment for a proven crime. This action was controversial, as the king, as head of state, traditionally did not interfere with parliamentary impeachments. Additionally, King Charles II's sale of pardons for two shillings was opposed by Luther and other legal scholars, who argued that pardons should not be commodified.[29] Such historical practices led to perceptions that pardons were merely executive interventions in judicial matters, as they were exclusively under executive authority. This sparked protests in France post-Revolution, leading to the abolition of executive pardons by the legislature for violating the separation of powers (trias politica). However, pardons were reinstated in France with a different model aligned with trias politica, granting judicial authority to pardon alongside the executive, based on the separation of powers. A notable case, Pardons et Châtiments, saw a jury, as part of the judiciary, grant pardon to a proven guilty defendant, sparing them from the death penalty (guillotine). The jury had the authority to link the act with underlying factors, even with sufficient evidence. The shift of pardon authority from the executive to the judiciary was recommended by the Committee of Ministers of the Council of Europe in Resolution No. 10/1976, dated March 9, 1976.[30] The resolution mandated that pardon authority be granted to judges, as in a democratic system, judges, as holders of judicial power, determine the legality of an act, particularly for minor offenses. The resolution states: "To study various new alternatives to prison with a view to their possible incorporation into their respective legislations and in particular:

[23] Ibid, hlm. 63.
[24] Number of Inmates in Correctional Institutions (Lapas), State Detention Centers (Rutan), Special Juvenile Correctional Institutions (LPKA), and Women's Correctional Institutions (LPP), https://sdppublik.ditjenpas.go.id/#chart_statistic_unit_group-panel, (July 15, 2025).
[25] M. Farikhah, Op.cit, hlm. 556.
[26] David Tait, Pardons in Perspective: The Role of Forgiveness in Criminal Justice, termuat dalam Federal Reporter, 2000, hlm. 6.
[27] Rolph, The Queen's Pardon, Southampton: Littlehampton Book Services Ltd, 1978, hlm. 83.
[28] McKnight, The Quality of Mercy Strained: Wrestling the Pardoning Power from the King, Honolulu: University Press of Hawaii, 1981, hlm. 238.
[29] Hewitt, The Queen's Pardon, London: Casell, 1978, hlm. 174.
[30] Article 3, Letter a of Resolution No. 10 of 1976 on Alternative Penal Measures to Imprisonment

1. To consider the scope for penal measures which simply mark a finding of guilt but impose no substantive penalty on the offender."

This gave rise to the rechterlijk pardon concept, incorporated into the criminal laws of various countries, including France's Criminal Procedure Code (CCP), which regulates "the declaration of guilt without imposing a penalty,"[31] Portugal's dispensa de pena, and the Netherlands. In the Netherlands, approximately 60% of criminal cases are resolved outside court by public prosecutors through afdoening buiten proces (out-of-court settlement). Minor offenses, defined as those with imprisonment threats of less than six years, are resolved through victim compensation. Alternatively, if minor cases proceed to court, judges may issue rechterlijk pardon by considering the offense's severity, the offender's circumstances, and conditions before or after the offense.[32] The rechterlijk pardon concept in the Netherlands is regulated under Article 9a of the Dutch Criminal Code, which states:

"If the judge deems it appropriate due to the minor nature of the offense, the personality of the offender, or the circumstances under which the offense was committed, or those arising thereafter, they may determine in the judgment that no penalty or measure shall be imposed." Translated into Indonesian: "If the judge considers it necessary due to the minor significance of the act, the offender's personality, or the circumstances at the time of or after the act, they shall determine in the judgment that no penalty or measure will be imposed." The elements are:

1. **Minor Nature of the Offense**
   The minor nature is not explicitly defined but refers to acts with insignificant consequences for the victim.
2. **Offender's Personality**
   The offender's personality is assessed based on their character, origin (genetic or environmental), and psychological traits, such as emotionality (quick to take sides, imaginative, easily angered, sensation-seeking), secondary function (content, loyal, adaptable, consistent), or activity (hardworking, decisive, varied hobbies, quick to move on).

Using psychological approaches, Dutch judges assess the offender's reasons and personal conditions before and during the offense. Pardon may be granted if the offender experienced psychological trauma from their act, particularly if they have a close familial relationship with the victim, indicating negligence rather than intent. Negligence arises from a lack of caution leading to the offense. These considerations are analyzed through psychological assessments by experts. In the Netherlands, psychological assessments evaluate the offender's mental state or behavior. If these elements are met, judges are obliged to grant pardon, declaring the defendant guilty but imposing no or proportional sanctions to address the victim's rights or losses. In Indonesia, rechterlijk pardon was introduced in Law No. 1 of 2023 on the Criminal Code. Previously, Indonesia rigidly applied the legality principle, relying on imprisonment as a primary crime deterrent. However, this approach became less effective, causing issues like prison overcapacity and a lack of societal justice. After extensive discussions, Indonesia developed a national criminal law aligned with legal policy, societal conditions, and human rights based on Pancasila. In sentencing, judges must consider factors enabling rechterlijk pardon: (a) the nature of the offender's fault; (b) motive and purpose of the offense; (c) the offender's mental state; (d) whether the offense was planned; (e) the method of commission; (f) the offender's attitude and actions post-offense; (g) life history, social, and economic conditions post-offense; (h) the offense's impact on the offender's future; (i) the offense's impact on the victim or their family; (j) forgiveness from the victim or their family; and/or (k) prevailing legal and justice values in society, as stipulated in Article 54(1) of the new Criminal Code. These sentencing guidelines allow judges to consider the offender's conditions at the time of the offense, beyond merely the unlawful act. The regulation of rechterlijk pardon under Article 54(2) states: "The minor nature of the offense, the personal circumstances of the offender, or the conditions at the time of or subsequent to the offense may serve as a basis for refraining from imposing a penalty or measure, considering aspects of justice and humanity."

The elements of Article 54(2) are:

1. **Minor Nature of the Offense**
   According to Barda Nawawi Arief, the new Criminal Code does not provide clear criteria for "minor nature of the offense." This ambiguity is a weakness, potentially conflicting with the legality principle. However, Arief

[31] Law No. 75-624 of the French Criminal Procedure Code (CCP)

[32] Yosuki & Tawang, Kebijakan Formulasi Terkait KOnsepsi Rechterlijke Pardon (Pemaafan Hakim) Dalam Pembaharuan Hukum Pidana di Indonesia, Jurnal Hukum Adigama, Vol. 1, No. 1, 2018, hlm. 49

argues that this lack of rigidity prevents limiting judicial discretion to specific offenses. The new Criminal Code does not classify offense severity but allows fines instead of imprisonment for offenses with less than five years' imprisonment, considering sentencing objectives and guidelines (Article 71).

Arief classifies offenses in the new Criminal Code implicitly as:

- **Very Minor Offenses**: Offenses punishable solely by fines (Category I or II), equivalent to less than one year's imprisonment or light fines in the old Criminal Code.
- **Serious Offenses**: Offenses punishable by one to seven years' imprisonment with alternative fines (Categories III and IV).
- **Very Serious Offenses**: Offenses punishable by over seven years' imprisonment, death, or life imprisonment, possibly with fines (Category V).

However, the new Criminal Code does not clarify "minor nature of the offense" in Article 56(2), as no provision explicitly defines it. Only Category I and II fines qualify for judicial pardon based on penalty classifications.

If "minor nature of the offense" is based on "very minor offenses," issues persist due to the lack of clear criteria for classifying an offense as very minor. The new Criminal Code explicitly identifies "minor offenses" only in the explanation of Article 132(d).

Thus, the regulation of rechterlijk pardon in Law No. 1 of 2023 should clarify criteria for minor, serious, and very serious offenses, with specific clauses to prevent "commercialization of decisions" or judicial corruption, collusion, and nepotism.

2. **Personal Circumstances of the Offender**
   The new Criminal Code does not define "personal circumstances," similar to "minor nature of the offense." However, Article 22 explains "personal circumstances" as "conditions where the offender or accomplice is significantly older or younger, holds a specific position, practices a specific profession, or has a mental disorder." This definition applies to offenses involving multiple perpetrators. Questions arise about whether this definition applies to Article 54(2) for judicial pardon, as its lack of concrete application may conflict with the legality principle, leaving interpretation to individual judges.

In practice, assessing personal circumstances for judicial pardon may require forensic psychological assessment, a branch of psychology focusing on psychological assessment and intervention in criminal law enforcement. Forensic psychologists are essential for identifying the psychological profiles of offenders and victims, providing a comprehensive understanding of the offender's personality at the time of and after the offense.

3. **Circumstances at the Time of and After the Offense**
   The new Criminal Code lacks clarity on this condition, and the explanation of Article 56(2) does not define "circumstances at the time of or subsequent to the offense." Future regulations should clarify this to ensure legal certainty in applying judicial pardon. Additionally, "circumstances at the time of the offense" should not be conflated with the state of emergency (noodtoestand).
4. **Considerations of Justice and Humanity**
   Beyond the three conditions above, judges must consider justice and humanity, the most critical guideline for granting judicial pardon. Judges must ensure decisions deliver justice and uphold humanitarian values, preventing the commercialization of judicial pardon within the judiciary.

Conclusion

The application of rechterlijk pardon in Indonesia's juvenile criminal justice system reflects a new spirit in enforcing humane and restorative justice. Through the case study of Decision No. 2/Pid.Sus-Anak/2021/PN Rgt, it is evident that judges prioritize not only legality but also substantive justice, particularly for juvenile offenders. The use of Article 70 of the Juvenile Justice Law provides judges with the discretion to exempt children who have reconciled with victims from penal sanctions. Judicial considerations involve contextual factors such as the minor nature of the offense, the child's personal circumstances, and post-offense conditions. This process demonstrates that Indonesia's juvenile justice system is beginning to adopt the rechterlijk pardon principles developed in the Netherlands, though not yet fully established. Thus, a rehabilitation and social restoration-oriented approach marks a significant direction in national criminal law policy. More broadly, rechterlijk pardon is relevant not only in juvenile justice but also in transforming the general sentencing paradigm. Indonesia's new Criminal Code, through Article 54(2), explicitly accommodates judicial pardon as an alternative to penal sanctions. However, normative challenges remain, such as the lack of clarity in defining

"minor nature of the offense" or "personal circumstances of the offender," which must be addressed to prevent legal uncertainty or judicial commercialization. The Netherlands' experience with psychological assessments, mediation, and support systems like social workers can serve as a reference to strengthen Indonesia's system. The role of supporting actors is critical in providing contextual information not reflected in formal documents. Judicial pardon, therefore, is not impunity but a legal instrument designed to ensure proportional, contextual, and humane justice. Moving forward, its application requires a more concrete regulatory framework aligned with criminal law reform and restorative justice principles prioritizing the future of both offenders and victims.

Recommendations

To maximize the effectiveness of rechterlijk pardon in Indonesia, regulatory strengthening is needed to explicitly outline its mechanisms, criteria, and implementation stages. The new Criminal Code, which accommodates judicial pardon, requires implementing regulations to clarify "personal circumstances of the offender" and "minor nature of the offense." Without such clarity, judicial discretion may lead to disparities and legal uncertainty. The government, Supreme Court, and judicial institutions should develop guidelines based on restorative justice principles and Indonesia's socio-cultural context. Additionally, limited trials of rechterlijk pardon in specific cases can test its effectiveness before broader implementation. These recommendations align with the spirit of criminal law reform promoting a humanistic and rehabilitative approach. Academic support and advocacy from practitioners and civil society organizations are also vital in strengthening the legitimacy of this institution.

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