Multidisciplinary Output Research For Actual and International Issue (MORFAI Journal) ISSN (e): 2808-6635
Volume 6 No. 6 (2026)

APPLICATION OF THE LAW OF PARDON IN CRIMINAL PUNISHMENT FOR THE CRIMINAL ACTS OF EMBEZZLEMENT: ANALYSIS OF DECISION NUMBER 236/PID.B/2026/PN PTK

Hilda Lestari[1*], Yahyanto[2], Hasdin Yadin[3]
Universitas Sembilanbelas November Kolaka, Kolaka
E-mail: hl2967943@gmail.com[1]*, antokeple3@gmail.com[2], hasdinyadin153@gmail.com[3]

Received:05/09/2026 | **Revised** : 12/09/2026 | **Accepted:** 30/09/2026 | **Published:** 02/11/2026

Abstract

This study aims to analyze the application of rechterlijk pardon in the sentencing of embezzlement cases based on Decision Number 236/Pid.B/2026/PN Ptk. The analysis focuses on the assessment of evidence, the legal basis for granting judicial pardon under Supreme Court Regulation Number 3 of 2026 concerning Judicial Pardon Decisions, the form of the judgment, and the considerations underlying the judge's decision to grant a pardon. This study employs a normative legal research method using statutory, case, and conceptual approaches. The legal materials are analyzed using qualitative and prescriptive methods by examining Law Number 1 of 2023 concerning the Criminal Code, Supreme Court Regulation Number 3 of 2026, and Decision Number 236/Pid.B/2026/PN Ptk. The findings indicate that the defendant was legally and convincingly found guilty of participating in embezzlement; however, the Panel of Judges granted rechterlijk pardon without imposing a criminal penalty or measure. The granting of judicial pardon was based on objective and individual-relational considerations, including the seriousness of the offense and the potential criminal penalty, the defendant's role as a participant in the offense (medepleger), the defendant's personal circumstances, and the compensation for the victim's losses and reconciliation with the victim. This application demonstrates that judicial pardon distinguishes between establishing guilt and determining whether a criminal penalty is necessary. It also reflects the relevance of restorative justice while maintaining the distinction between judicial pardon and restorative justice mechanisms.

Keywords: Deelneming; Judicial Pardon; Rechterlijk Pardon; Restorative Justice

\INTRODUCTION

Criminal law is essentially not only directed at providing retribution to perpetrators of criminal acts, but also aims to realize justice, legal certainty, legal benefits, and protection for victims and society. The development of criminal law shows a change in the orientation of punishment that takes into account proportionality, the concrete circumstances of the perpetrator, the consequences of the act, and the interests of the victim. In the renewal of Indonesian criminal law, this change is realized through Law Number 1 of 2023 concerning the Criminal Code (KUHP), which introduces the concept of rechterlijk pardon or judicial pardon. (Panggabean et al., 2026) explain that judicial pardon under Article 54 paragraph (2) of the Criminal Code is related to efforts to ensure that punishment is imposed proportionally, taking into account the characteristics of the crime and the circumstances of the defendant.

Judicial pardon provides the judge with the discretion to declare the defendant guilty without imposing a penalty or action under certain circumstances. Unlike an acquittal or a decision releasing the defendant from all legal charges, a judicial pardon does not negate the finding that the defendant's guilt has been proven. Article 54 paragraph (2) of the Criminal Code provides a basis for judges to consider the triviality of the act, the personal circumstances of the perpetrator, the circumstances at the time the crime was committed, and the circumstances following the commission of the crime when determining whether a penalty should be imposed. Thus, sentencing is not based solely on the fulfillment of the elements of a criminal offense, but also takes into account the concrete circumstances of the perpetrator and the act committed (Panggabean etal., 2026).

The application of judicial pardon raises issues concerning the parameters used by judges, particularly because the concept of the triviality of an act does not have a specific quantitative threshold. Tamba et al. (2026) demonstrate that Article 54 paragraph (2) of the Criminal Code still contains general indicators and does not establish concrete operational normative parameters, potentially giving rise to subjectivity, sentencing disparities, and legal uncertainty. This issue has become increasingly relevant following the issuance of Supreme Court Regulation Number 3 of 2026 concerning Judicial Pardon Decisions, which was stipulated on June 23, 2026, and promulgated on July 9, 2026.

This regulation serves as a guideline for judges to ensure that judicial pardons are granted in a measured, consistent, and accountable manner. The enactment of Supreme Court Regulation Number 3 of 2026 is important for examining how the new legal norms are applied in judicial practice. One relevant case is Decision Number 236/Pid.B/2026/PN Ptk concerning the crime of embezzlement. In this case, the defendant was found guilty of participating in the embezzlement, but the panel of judges granted a judicial pardon. This decision is important for analyzing the relationship between proof of the criminal offense, criminal responsibility, the defendant's role as a participant, and the granting of judicial pardon.

In cases involving participation (deelneming), the evidentiary assessment concerns not only the fulfillment of the elements of embezzlement but also the nature and extent of the defendant's involvement. Therefore, the application of judicial pardon needs to be analyzed from the evidentiary stage to determine how the judge establishes the defendant's actions and culpability before deciding not to impose a penalty or action. This is important because judicial pardon is applied after the judge has determined that the defendant's guilt has been proven. Accordingly, the reasons for granting a judicial pardon must be distinguished from the reasons underlying the determination of whether the criminal offense has been proven.

The judge's considerations also need to be analyzed in terms of objective and relational factors. Objective factors include the characteristics of the crime, the degree of culpability, the losses or consequences resulting from the act, and the concrete circumstances surrounding the offense. Meanwhile, relational factors concern the relationship between the defendant and the victim, the defendant's conduct after the crime, and efforts to compensate for or restore the losses incurred. This approach is consistent with Penggabean et al. (2026) who place judicial pardon within the framework of proportional sentencing. The application of judicial pardon is also related to the development of restorative justice, which emphasizes redress for the consequences of crime and the involvement of relevant parties. Akbar (2022) demonstrates that restorative justice in Indonesia has developed across various stages of the criminal justice system, although its regulatory framework remains dispersed across different legal instruments and does not yet fully ensure legal certainty.

Despite its restorative potential, judicial pardon cannot automatically be equated with restorative justice. Therefore, Decision Number 236/Pid.B/2026/PN Ptk needs to be analyzed to determine whether the judge considered the victim's circumstances, the losses incurred, the defendant's conduct, and the circumstances following the commission of the crime. The defendant's role as a participant (deelneming) is also important because each participant may have a different role and degree of involvement. In the context of judicial pardon, this role does not automatically determine whether a pardon should be granted, but it may form part of the assessment of the defendant's culpability and individual circumstances.

Previous research indicates that studies on judicial pardon have addressed normative parameters, proportionality in sentencing, and the development of restorative values. Tamba et al. (2026) emphasized the need for normative parameters to ensure legal certainty, Panggabean et al. 2026 discussed judicial pardon from the perspective of proportional sentencing, while Akbar (2022) examined the development of restorative justice and judicial pardon. However, the present study specifically focuses on the application of Supreme Court Regulation Number 3 of 2026 in Decision Number 236/Pid.B/2026/PN Ptk by examining the assessment of evidence, the legal basis for the decision, the form of the judgment, objective and relational factors, restorative justice, and the defendant's role as a participant.

Based on these issues, this study employs normative legal research by examining legislation, particularly Law Number 1 of 2023 and Supreme Court Regulation Number 3 of 2026, as well as relevant scholarly literature and Decision Number 236/Pid.B/2026/PN Ptk. The analysis identifies the evidentiary assessment, the legal basis for granting rechterlijk pardon, the form of the judgment, and the judge's consideration of objective and relational factors. This approach is used to assess whether the application of judicial pardon is consistent with the applicable legal provisions and the principles of restorative justice. In this way, the research provides an overview of the initial application of rechterlijk pardon following the enactment of Supreme Court Regulation Number 3 of 2026.

This study aims to analyze the application of rechterlijk pardon in Decision Number 236/Pid.B/2026/PN Ptk, including the evidentiary assessment, the legal basis under Supreme Court Regulation Number 3 of 2026, and the form of the judgment. It also examines the judge's considerations based on objective and relational factors, their relationship with the principles of restorative justice, and the influence of the defendant's role as a participant (deelneming) on the decision to grant judicial pardon. This study is important for understanding the application of rechterlijk pardon in judicial practice and for contributing to scholarly discussions on judicial pardon, criminal responsibility, and the individualization of sentencing.

OPEN ACCESS

Based on this focus, this research is entitled "Application of Rechterlijk Pardon in Embezzlement Cases: An Analysis of Decision Number 236/Pid.B/2026/PN Ptk." The research questions are as follows: (1) How is rechterlijk pardon applied in Decision Number 236/Pid.B/2026/PN Ptk, particularly in relation to the evidentiary assessment, the legal basis under Supreme Court Regulation Number 3 of 2026, and the form of the judgment? (2) What considerations inform the judge's application of rechterlijk pardon in Decision Number 236/Pid.B/2026/PN Ptk, particularly regarding objective and relational factors, consistency with the principles of restorative justice, and the influence of the defendant's role as a participant (deelneming) on the decision to grant judicial pardon?

LITERATURE REVIEW

Rechterlijk Pardon in the Penal System

Rechterlijk pardon, or judicial pardon, is one of the developments in the reform of Indonesian criminal law that allows judges not to impose a criminal penalty or measure even when the defendant has been found guilty of a criminal offense. This concept demonstrates that punishment does not always have to result in the imposition of a criminal penalty if the specific circumstances of the case indicate that such punishment is unnecessary. In this context, judicial pardon is related to the judge's authority to consider the circumstances of the offense and the individual circumstances of the perpetrator. Adriyanti (2025) explain that Article 54 paragraph (2) of Law Number 1 of 2023 gives judges the authority to grant pardons when the defendant is proven guilty, but criminal punishment is not necessary based on certain considerations. The study also shows that the absence of objective indicators and a uniform decision structure can cause problems in the application ofjudicial pardon. In subsequent developments, the application of judicial pardons was guided by Supreme Court Regulation (PERMA) Number 3 of 2026 concerning Judicial Pardon Decisions. The Supreme Court explained that this PERMA provides guidelines for the measured, consistent, and responsible application of judicial pardon decisions. These guidelines are important because judicial pardons are a distinct category of decision from acquittals, releases, or convictions. Therefore. The existence of PERMA Number 3 of 2026 is an important part in seeing the concrete development of the implementationlegal pardonin Indonesian judicial practice.

Subsequently, the application of judicial pardon was addressed by Supreme Court Regulation (PERMA) Number 3 of 2026 concerning Judicial Pardon Decisions. According to the Supreme Court, this regulation provides guidelines for ensuring that judicial pardon decisions are made in a measured, consistent, and accountable manner. These guidelines are important because judicial pardon decisions constitute a distinct category from acquittals, decisions releasing defendants from all legal charges, and convictions involving the imposition of criminal penalties. Therefore, PERMA Number 3 of 2026 is relevant to assessing the development of judicial pardon in Indonesian judicial practice.

Parameters of the Triviality of the Act in Judicial Pardon

One of the key issues in the application of judicial pardon is determining the meaning of the triviality of an act. This provision allows judges to consider the minor nature of an offense but does not establish a single quantitative criterion for determining whether an act is sufficiently minor to warrant a judicial pardon. Nazara (2025) demonstrate that unclear indicators concerning the seriousness of an act can create difficulties in applying judicial pardon, particularly in relation to the nature and seriousness of the offense, the potential criminal penalty, and fines. Their study employs a normative legal approach and examines these issues in relation to the principles of legality and legal certainty.

This issue is relevant to the present study because Decision Number 236/Pid.B/2026/PN Ptk requires an examination of how the panel of judges assessed the nature and seriousness of the embezzlement offense before granting a judicial pardon. Accordingly, this research examines not only whether the judicial pardon provision was applied but also how the judges' reasoning established that the case met the conditions for granting a pardon. This aspect is important for examining the relationship between judicial discretion and legal certainty in the application of judicial pardon.

Judicial Pardon, Substantive Justice, and Restorative Justice

Judicial pardon is also related to the development of a criminal justice system that increasingly considers substantive justice and the specific circumstances of both perpetrators and victims. Mufrizal (2025) examined judicial pardon through the daad-dader-slachtoffer strafrecht paradigm. Their study indicates that the provisions on judicial pardon in Indonesia's National Criminal Code remain more oriented toward the offense and the perpetrator, while the victim's perspective has not been optimally incorporated. The study compares Indonesian regulations

OPEN ACCESS

with those of Portugal and highlights the importance of considering the victim's circumstances, including whether the victim or the victim's family has granted forgiveness.

This perspective is relevant to the present study because the judicial reasoning in Decision Number 236/Pid.B/2026/PN Ptk can be analyzed by considering not only the defendant's circumstances but also the victim's circumstances, the losses incurred, the defendant's conduct after the offense, and the possibility of restoring the losses. However, rechterlijk pardon cannot automatically be equated with restorative justice. Restorative justice has a broader orientation toward repairing harm and involving affected parties, whereas rechterlijk pardon is a legal mechanism that authorizes judges not to impose a criminal penalty or measure under certain conditions.

Judicial Pardon as an Alternative to Criminal Sentencing

Judicial pardon can also be understood as an alternative legal response to a criminal offense. Ningtias (2025) examined judicial pardon as an alternative form of judicial decision-making within the Indonesian criminal justice system. Their study places judicial pardon within the broader development of criminal justice, which provides judges with an option not to impose a criminal penalty on defendants who have been found guilty. This perspective provides a basis for understanding judicial pardon as part of the development of the criminal justice system rather than as a means of eliminating the defendant's guilt.

In the present study, this perspective is used to analyze Decision Number 236/Pid.B/2026/PN Ptk, particularly the judge's reasons for granting a judicial pardon after the defendant was found guilty of embezzlement. Accordingly, the research focuses on the judge's reasoning in determining the appropriate legal response to a criminal offense that has been proven.

Harmonization and Limits of Judicial Discretion

The application of judicial pardon also requires a balance between judicial discretion, justice, and legal certainty. Krisnamurti (2025) discusses the need to harmonize the principle of judicial pardon within Indonesian positive law so that its application remains consistent and promotes justice with dignity. The study indicates that judicial pardon requires a clear legal framework to prevent judicial discretion from resulting in inconsistent application. This issue is important in the present study because PERMA Number 3 of 2026 provides relatively new guidelines for judicial practice.

Therefore, Decision Number 236/Pid.B/2026/PN Ptk can be examined to determine how these guidelines are applied in a concrete case. The analysis focuses on the relationship between the legal norms governing judicial pardon and the judge's reasoning in determining the basis for granting such a pardon.

Gap Previous Research and Research Gap

Previous research has examined judicial pardon from various perspectives. Adriyanti (2025) focused on the proposed form of judicial pardon decisions and the problem of inconsistent decision structures. Nazara (2025) emphasized the meaning of the triviality of the act in relation to the principles of legality and legal certainty. Meanwhile, Mufrizal (2025) developed the discussion through the daad-dader-slachtoffer strafrecht paradigm, highlighting the position of the victim in the legal framework of judicial pardon. Ningtias (2025) examined judicial pardon as an alternative form of decision-making within the criminal justice system. These studies provide a theoretical and normative foundation for further examining the application of judicial pardon in Indonesian judicial practice.

Nevertheless, there remains room for research into the concrete application of PERMA Number 3 of 2026 in judicial decisions, particularly in embezzlement cases involving multiple participants in the offense (deelneming). The present study addresses this research gap through an analysis of Decision Number 236/Pid.B/2026/PN Ptk. Its focus extends beyond the normative basis for granting judicial pardon to include the assessment of evidence, the form of the judgment, objective and relational factors, the relationship between judicial pardon and restorative justice, and the defendant's role as a participant in the offense. Accordingly, this research aims to provide an overview of how the legal framework governing rechterlijk pardon is applied in concrete cases following the issuance of the Supreme Court's new guidelines.

.

METHOD

This research employs a normative legal research method focusing on legal norms, legal principles, doctrines, legislation, and court decisions related to the application of rechterlijk pardon in the sentencing of embezzlement cases. The research uses three approaches: the statutory approach, the case approach, and the conceptual approach.

OPEN ACCESS

The statutory approach is used to analyze the provisions governing rechterlijk pardon under Law Number 1 of 2023 concerning the Criminal Code and Supreme Court Regulation Number 3 of 2026 concerning Judicial Pardon Decisions. The case approach is used to examine Decision Number 236/Pid.B/2026/PN Ptk as the primary object of the research, while the conceptual approach is used to examine the concepts of rechterlijk pardon, sentencing, proportionality, restorative justice, and deelneming (participation in a criminal offense).

The legal materials used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include Law Number 1 of 2023 concerning the Criminal Code, Supreme Court Regulation Number 3 of 2026 concerning Judicial Pardon Decisions, and Decision Number 236/Pid.B/2026/PN Ptk. Secondary legal materials include legal books, scientific journal articles, research findings, and expert opinions relating to rechterlijk pardon, sentencing, criminal responsibility, restorative justice, and deelneming. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other reference sources that provide explanations of relevant legal terms and concepts.

Legal materials were collected through a literature review involving the identification and inventory of legislation, court decisions, scientific journal articles, books, and other legal sources relevant to the research topic. The collected materials were then classified according to their relevance to the research questions. The legal materials were analyzed using qualitative and prescriptive methods by describing, interpreting, and relating the applicable legal provisions to the legal facts presented in Decision Number 236/Pid.B/2026/PN Ptk. The analysis focused on the assessment of evidence, the legal basis for applying Supreme Court Regulation Number 3 of 2026, the form of the judgment, objective and relational factors, the relationship between judicial pardon and the principles of restorative justice, and the defendant's role as a participant in the criminal offense (deelneming). The findings were then systematically organized to answer the research questions and draw conclusions regarding the application of rechterlijk pardon in the embezzlement case. Through this method, the research seeks to assess whether the application of judicial pardon in the judgment is consistent with the applicable legal provisions and supported by adequate legal reasoning.

RESULTS AND DISCUSSION

Implementation Legal Pardonin Decision Number 236/Pid.B/2026/PN Ptk

Based on the research findings, Decision Number 236/Pid.B/2026/PN Ptk concerns an embezzlement case involving the defendant, Andreas Satrya alias Sambo. The defendant was charged with participating in embezzlement under Article 486 in conjunction with Article 20 letter c of Law Number 1 of 2023 concerning the Criminal Code. The case began in May 2025, when the defendant and two other individuals rented a Toyota Innova Reborn belonging to the victim, Tri Sutrisno, from a rental service in Pontianak. The vehicle was subsequently sold to another party without the owner's permission. In this case, the defendant provided operational funds amounting to IDR 3,300,000 and received a share of the proceeds amounting to IDR 6,000,000, while the victim suffered a loss of IDR 270,000,000. According to the case records, the case transfer letter was registered under Number B-4396/O.1.10/Eoh.2/05/2026 and dated May 26, 2026.

During the trial, the Public Prosecutor demanded a one-month prison sentence, less the period already served. The prosecution did not request that the defendant be granted a judicial pardon. However, on August 4, 2026, the Panel of Judges issued a decision that differed from the Public Prosecutor's demand. The Panel of Judges declared the defendant legally and convincingly proven guilty of participating in embezzlement but granted the defendant a judicial pardon (rechterlijk pardon). Consequently, no criminal penalty or measure was imposed on the defendant, who was ordered to pay court costs of IDR 5,000.

The form of the decision illustrates the defining characteristic of rechterlijk pardon: the defendant is found guilty but is not subjected to a criminal penalty or measure. In this case, the Panel of Judges did not negate the defendant's guilt but granted a judicial pardon after considering the circumstances of the case. The decision states that the defendant was proven guilty of participating in embezzlement and subsequently grants a judicial pardon. This is consistent with Adriyanti (2025) who explain that Article 54 paragraph (2) of Law Number 1 of 2023 authorizes judges to grant a pardon when the defendant has been found guilty but the imposition of a criminal penalty is deemed unnecessary based on certain considerations. Their study also identifies judicial pardon as part of the sentencing framework under the National Criminal Code. Thus, Decision Number 236/Pid.B/2026/PN Ptk illustrates how rechterlijk pardon distinguishes the finding of guilt from the decision to impose a criminal penalty.

Saputro (2016) explains that rechterlijk pardon is a form of judicial forgiveness that allows judges to resolve criminal cases by considering the specific circumstances of the defendant and the offense. Similarly, Farikhah (2018) explains that judicial pardonis part of the development of the concept of sentencing which provides room

OPEN ACCESS

for judges to consider certain circumstances so that sentencing does not always end with the imposition of a sentence. This concept was then strengthened in the National Criminal Code through Article 54 paragraph (2). Anwar et al. (2025) also explained that the concept judge's forgiveness This is part of the development of national criminal law, which allows judges to consider pardoning defendants based on the specific circumstances of the case. Thus, Decision Number 236/Pid.B/2026/PN Ptk demonstrates the concrete application of this concept in embezzlement cases.

The application of judicial pardon also reflects a shift in the orientation of the criminal justice system from an exclusively retributive approach toward one that considers restoration and proportionality. Meliala (2020) explains that judicial pardon is one means of moving toward a criminal justice system informed by the restorative justice paradigm. Azhar (2019) similarly explains that restorative justice places the restoration of harm caused by criminal acts at the center of criminal case resolution. This perspective is reinforced by Adytia et al. (2024) who describe judicial pardon as part of the reform of the criminal justice system, reflecting a shift from a retributive paradigm toward a more restorative approach. Therefore, the application of judicial pardon in this case can be understood as part of the development of criminal justice, allowing judges to assess whether punishment remains necessary after considering the circumstances of the case.

However, the application of judicial pardon does not mean that judges have unlimited authority. Article 54 paragraph (2) grants discretion to judges, but the exercise of this discretion must be supported by clear and adequate reasoning. Adriyanti (2025) indicate that several factors under Article 54 paragraph (2) remain subjective and are not all accompanied by clear objective indicators. This may create difficulties in ensuring consistency in the application of judicial pardon if adequate guidelines are not available. Therefore, the difference between the Public Prosecutor's demand for a one-month prison sentence and the judge's decision to grant a pardon should be understood not only in terms of judicial independence but also in terms of the need for transparent and accountable judicial reasoning.

Jayusman et al. (2024) emphasize that the development of judicial pardon requires attention to the potential misuse of the authority to grant pardons. Judicial independence in determining the form of a decision must therefore be accompanied by accountability and transparency in judicial reasoning. In this case, the difference between the Public Prosecutor's demand and the court's decision indicates that the judge independently assessed the circumstances of the case. Accordingly, judicial pardon may be understood as an exercise of judicial authority, but its application must be justified by reference to the applicable legal provisions and the facts established during the trial.

Judicial Considerations in Granting Rechterlijk Pardon

The research findings indicate that the Panel of Judges of the Pontianak District Court based its decision to grant a judicial pardon (rechterlijk pardon) to the defendant, Andreas Satrya alias Sambo, on four main groups of factors: the severity of the criminal penalty and the seriousness of the act, the defendant's role as a participant in the offense (medepleger), the defendant's personal circumstances, and the compensation for the victim's losses and reconciliation with the victim. These factors were analyzed based on the trial proceedings, the established legal facts, and the official decision recorded in the Case Tracking Information System (SIPP) of the Pontianak District Court for Decision Number 236/Pid.B/2026/PN Ptk. Taken together, these factors indicate that the granting of a judicial pardon involves not only an objective assessment of the criminal offense but also consideration of the defendant's personal circumstances and the relationship between the defendant and the victim.

The first factor concerns the severity of the applicable criminal penalty and the seriousness of the act. The research findings, based on information from the Pontianak District Court's SIPP records, indicate that the offense committed by the defendant was considered to have a relatively low level of seriousness and a relatively light potential criminal penalty within the framework of Article 54 paragraph (2) of Law Number 1 of 2023. Assessing the seriousness of the act is relevant to determining whether the imposition of a criminal penalty remains necessary. Adriyanti (2025) explain that one problem in applying Article 54 paragraph (2) is the absence of sufficiently clear objective indicators for assessing the factors that form the basis for granting judicial pardon. Therefore, the assessment of the seriousness of the act must be explained concretely rather than relying solely on the judge's subjective assessment. In this case, the seriousness of the act constitutes one of the objective factors considered in granting the pardon.

The second factor concerns the defendant's role as a participant in the offense (medepleger). Based on the legal facts established during the trial, the defendant was characterized as a participant rather than the principal or intellectual perpetrator. This distinction is relevant because offenses committed jointly may involve several

individuals whose roles and contributions differ. Fahrurrozi (2019) explain that participation in a criminal offense involves the involvement of multiple individuals and the allocation of responsibility according to their respective roles. Therefore, the defendant's role as a participant may be relevant to assessing the extent of his involvement and individual culpability. In this case, the defendant's involvement in providing operational funds and receiving a share of the proceeds was considered in assessing his degree of culpability and the appropriateness of granting a judicial pardon.

The third factor concerns the defendant's personal circumstances, including a cooperative attitude, an honest confession, genuine remorse, and a record indicating that the defendant was a first-time offender. The personal circumstances of the perpetrator are relevant to the principle of individualized sentencing, under which the legal response to a criminal offense considers not only the act itself but also the specific circumstances of the person who committed it. Saputro (2016) describes judicial pardon as a concept that allows judges to consider the particular circumstances of the perpetrator and the offense. Anwar et al. (2025) similarly explain that judicial pardon allows judges to consider relevant circumstances before determining whether a sentence should be imposed. Accordingly, the defendant's personal circumstances form part of the individualized assessment required to determine a fair and proportionate legal response.

The fourth factor concerns compensation for the victim's losses and reconciliation with the victim. According to the legal facts presented in the research, the victim's losses were compensated, and a settlement agreement was reached on April 14, 2026. This agreement was subsequently supported by a Victim's Statement Letter dated May 23, 2026. The compensation demonstrates an effort to address the harm suffered by the victim following the offense. This aspect is closely related to restorative justice, which emphasizes the interests of the victim and the restoration of the situation affected by the crime. Azhar (2019) explains that restorative justice directs the resolution of criminal cases toward repairing the harm caused by the offense while taking into account the interests of the perpetrator, the victim, and the community. Meliala (2020) also relates rechterlijk pardon to the development of a criminal justice system oriented toward restorative justice.

Nevertheless, the relationship between judicial pardon and restorative justice must be understood proportionately. Sanna (2025) explains that restorative justice and judicial pardon operate within different legal frameworks, although they may complement each other in the development of modern criminal justice. Judicial pardon concerns the judge's authority to grant a pardon after the defendant has been found guilty, whereas restorative justice has a broader scope focused on repairing harm and addressing the needs of affected parties. Therefore, reconciliation and compensation in this case may support a restorative approach, but they do not make judicial pardon identical to restorative justice.

Adytia et al. (2024) describe judicial pardon as part of the reform of the criminal justice system toward an approach that places greater emphasis on restoration. This perspective reinforces the relevance of compensation and reconciliation when assessing the circumstances of the case as a whole. However, the restoration of the victim's interests should be considered alongside other objective and individual factors rather than treated as the sole basis for granting a judicial pardon. Accordingly, the granting of judicial pardon in Decision Number 236/Pid.B/2026/PN Ptk is analyzed by considering both the objective characteristics of the offense and the individual and relational circumstances of the defendant.

These four factors demonstrate that the considerations underlying the granting of judicial pardon can be examined through two main dimensions: objective and relational. The objective dimension concerns the seriousness of the act and the potential criminal penalty. The relational dimension concerns the defendant's role in the offense, the defendant's personal circumstances, and the restoration of the relationship between the defendant and the victim following the crime. Herista (2020)) explain that the application of judicial pardon in Indonesian criminal policy is connected to the development of proportional sentencing. Meanwhile, Jayusman et al. (2024) emphasize the importance of appropriate limitations and accountability in exercising the authority to grant judicial pardon. Judicial reasoning that addresses these dimensions can provide a transparent basis for understanding the decision and promote consistency in judicial practice.

Armansyah (2025) explains that judicial pardon can be understood as a corrective response within the criminal justice system, whereby a person is found guilty but, based on the judge's assessment, does not require a criminal penalty or measure. This perspective is relevant to Decision Number 236/Pid.B/2026/PN Ptk because the decision declares the defendant guilty, grants a judicial pardon, and does not impose a criminal penalty or measure. Thus, the decision illustrates the role of judicial pardon as an alternative to imposing a criminal penalty after the defendant's guilt has been established in court. Overall, Decision Number 236/Pid.B/2026/PN Ptk illustrates the application of judicial pardon through the principle that a defendant may be found guilty without being subjected

OPEN ACCESS

to a criminal penalty or measure. The considerations examined in this research include the seriousness of the act, the defendant's role as a participant in the offense (medepleger), the defendant's personal circumstances, and the compensation for the victim's losses and reconciliation. These findings are consistent with literature that views judicial pardon as part of the reform of the criminal justice system and the development of a restorative approach. Adriyanti (2025) emphasize the importance of clear indicators in exercising judicial discretion to grant a pardon, while Armansyah (2025) describes judicial pardon as a corrective response within the criminal justice system. Therefore, the application of judicial pardon in this case highlights not only an alternative to imprisonment but also the importance of transparency and consistency in judicial reasoning when applying Article 54 of the National Criminal Code in conjunction with PERMA Number 3 of 2026.

CONCLUSION

Based on the research findings concerning the application of rechterlijk pardon in Decision Number 236/Pid.B/2026/PN Ptk, it can be concluded that judicial pardon is a form of criminal law response that allows a defendant to be found guilty without being subjected to a criminal penalty or measure when, based on the specific circumstances of the case, the imposition of such a penalty or measure is no longer necessary. In this case, the Panel of Judges found the defendant legally and convincingly guilty of participating in embezzlement under Article 486 in conjunction with Article 20 letter c of Law Number 1 of 2023 concerning the Criminal Code. However, the Panel of Judges granted rechterlijk pardon and did not impose a criminal penalty or measure. Thus, the application of rechterlijk pardon demonstrates the distinction between establishing the defendant's guilt and determining whether a criminal penalty should be imposed.

The application of judicial pardon was based on considerations involving both objective and individual-relational aspects. The objective aspect concerns the assessment of the seriousness of the act and the potential criminal penalty, while the individual-relational aspects concern the defendant's role as a participant in the offense (medepleger), the defendant's personal circumstances as a first-time offender, the defendant's cooperative attitude and remorse, and the compensation for the victim's losses and reconciliation with the victim. The defendant's role as a participant in the offense also forms part of the assessment of the extent of involvement and the degree of individual culpability. Meanwhile, compensation and reconciliation indicate a restorative dimension in the case, although rechterlijk pardon cannot be equated entirely with restorative justice mechanisms because the two have different scopes and legal characteristics.

Decision Number 236/Pid.B/2026/PN Ptk also highlights the importance of Supreme Court Regulation Number 3 of 2026 as a guideline for applying judicial pardon so that this authority can be exercised in a measured, consistent, and accountable manner. Nevertheless, the application of judicial pardon requires transparent judicial reasoning, particularly when explaining the criteria used to assess the seriousness of the act, the defendant's degree of culpability, the victim's circumstances, and the reasons why criminal penalties or other measures are no longer necessary. This is important to prevent inconsistent exercises of judicial discretion while maintaining a balance between judicial independence and legal certainty.

To improve the application of judicial pardon in the future, consistency is needed in articulating the indicators and reasons supporting judicial pardon in judicial decisions. Courts should also proportionately consider factors relating to the offense, the perpetrator, the victim, the degree of involvement in the offense, the restoration of losses, and the circumstances following the crime. Therefore, the development of judicial pardon practices following the enactment of Supreme Court Regulation Number 3 of 2026 is expected to establish a more measured and consistent pattern of application while preserving judges' ability to individualize sentencing in accordance with the specific circumstances of each case.

REFERENCES

Adriyanti, N. & Zulfa, E. A. (2025). Judicial pardon: Projections of judges' verdicts in criminal cases after Law Number 1 of 2023 comes into effect. Nagari Law Review, 8(2), 356–370. https://doi.org/10.25077/nalrev.v.8.i.2.p.356-370.2024

Adytia, N. A. P., Wachdin, S. Z. S., Affan, M., & Said, S. (2024). The Rechtelijk pardon concept in reforming the penal system to realize restorative justice in Indonesia. Indonesia Law Reform Journal, 4(1), 91–101. https://doi.org/10.22219/ilrej.v4i1.33101

Akbar, Muhammad Fatahillah. (2022). Restorative justice reform in the Indonesian criminal justice system. Legal Issues, 51(2), 199–208. https://doi.org/10.14710/mmh.51.2.2022.199-208

OPEN ACCESS

Anwar, A., Suhartono, S., Mangesti, Y. A., & Setyorini, E. H. (2025). The concept of judge's forgiveness (Rechterlijk Pardon) in the National Criminal Law Code. DiH: Jurnal Ilmu Hukum, 21(2), 183–208. https://doi.org/10.30996/dih.v0i0.12674

Armansyah. (2025). Judicial pardon and restorative justice: Towards corrective sentencing in the Indonesian criminal law system. Kosmik Hukum, 25(3), 643–651. https://doi.org/10.30595/kosmikhukum.v25i3.28358

Azhar, A.F (2019). Application of the concept of restorative justice in the criminal justice system in Indonesia. MK: Journal of Islamic Law Studies, 4(2), 134–143. https://doi.org/10.24235/mahkamah.v4i2.4936

Fahrurrozi, & Gare, S. B. M. (2019). The criminalization system in the inclusion of criminal acts according to the Criminal Code. Journal of Justice Media Law, 10(1), 50–63. https://doi.org/10.31764/jmk.v10i1.1103

Farikhah, M. (2018). Reconceptualization of judicial pardon in the Indonesian legal system (Comparative study of the Indonesian legal system with Western legal systems). Journal of Law and Development, 48(3), 556–588.

Herista, A. D. P., & Barlian, A. E. A. (2020). Legal pardon in Indonesian criminal policy and implementation. Legal Institutions, 15(2), 132–141.

Indonesia. (2025). Law of the Republic of Indonesia Number 20 of 2025 concerning the Criminal Procedure Code. State Gazette of the Republic of Indonesia of 2025 Number 188, Supplement to the State Gazette of the Republic of Indonesia Number 7149.

Jayusman, D., Gusnawati, D., & Fathi, M. (2024). Judicial pardon: Between abuse of pardon power and criminal law reform. Justitia Et Pax, 40(2), 331–360. https://doi.org/10.24002/jep.v40i2.8574

Krisnamurti, H. (2025). Harmonizing the principle of judicial pardon in Indonesian positive law to achieve dignified justice. LITIGASI, 26(2), 104–134. https://doi.org/10.23969/litigasi.v26i2.22645

Meliala, N. (2020). Rechterlijk pardon (Judicial forgiveness): An effort towards a criminal justice system with a restorative justice paradigm. IUS Journal of Law and Justice Studies, 8(3), 552–568.

Mufrizal, M. G. H., & Noviantama, D. (2025). Reconceptualization of judicial forgiveness in the National Criminal Code with the daad-dader slachtoffer straftrecht paradigm (Comparison with the Portuguese Criminal Code). Legal Literacy, 9(2). https://doi.org/10.31002/lh.v9i2.3080

Nazara, I., Burhanudin, K., & Putra Frans, M. (2025). The legal meaning of minor crimes in the concept of judicial pardon reviewed based on the principle of legality. Widya Yuridika: Jurnal Hukum, 8(1), 9–18. https://doi.org/10.31328/wy.v8i1.5573

Ningtias, A. D., Nahdliyah, H., & Shofa, A. F. (2025). Judicial pardon as an alternative to a judge's decision. Independent Journal, 13(1), 22–34. https://doi.org/10.30736/ji.v13i1.365

Panggabean Chandra Marojahan, S., & Budiman, A. (2026). Judicial Pardon Under Article 54(2) of the 2023 Criminal Code: A Proportionality Analysis of Sentencing in the Garut and Mempawah District Court Decisions. Journal of Law, Politic and Humanities, 6(5), 4086–4100. https://doi.org/https://doi.org/10.38035/jlph.v6i5.3535

Sanna, A. (2025). Challenges and opportunities: The sentencing paradigm regarding restorative justice as rechterlijke pardon in the National Criminal Code. Journal of Legal Interpretation, 6(1), 61–76. https://doi.org/10.22225/juinhum.6.1.11975.61-76

Saputro, A.A (2016). The concept of legal pardon or judicial forgiveness in the Draft Criminal Code. Law Forum, 28(1), 61–76. https://doi.org/10.22146/jmh.15867

Supreme Court of the Republic of Indonesia. (2026). Supreme Court Regulation of the Republic of Indonesia Number 3 of 2026 concerning Judicial Clemency Decisions. State Gazette of the Republic of Indonesia of 2026 Number 461.

Pontianak District Court. (2026). Decision Number 236/Pid.B/2026/PN Ptk [Case data]. Case Tracking Information System (Sistem Informasi Penelusuran Perkara, SIPP), Pontianak District Court. https://sipp.pn-pontianak.go.id

Tamba, Tono Wilson, Ni Putu Ega Parwati, & I Putu Dwika Ariestu (2026). Judicial pardon in the Indonesian criminal justice system: The construction of normative parameters to ensure legal certainty. Journal of Indonesian Comparative of Syari'ah Law, 9(2), 239–250. https://doi.org/10.21111/jicl.v9i2.90

OPEN ACCESS