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Ideal Judicial Pardon Decision Format in The Indonesia Criminal Justice System Based on Comparative Law

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Abstract

The recognition of judicial pardon in the 2023 Criminal Code reflects a shift in Indonesia's sentencing paradigm from retribution toward substantive justice grounded in proportionality and humanity; however, this provision has not been accompanied by a clear formulation of decision formats in criminal procedural law, resulting in a normative gap that may generate disparity and legal uncertainty. This research examines how judicial pardon is implemented in the Dutch criminal justice system and how an ideal decision format may be constructed for adoption in Indonesia. Employing a normative juridical method with statutory, conceptual, and comparative approaches, the analysis shows that under Article 9a of the Wetboek van Strafrecht, Dutch judges affirm the fulfillment of the elements of the offense and criminal responsibility while waiving punishment through explicit reasoning on proportionality, the social insignificance of the act, and the objectives of sentencing, demonstrating that judicial pardon does not eliminate guilt but serves as a rational limitation on penal power. Therefore, an ideal judicial pardon decision in Indonesia should retain the evidentiary structure of ordinary sentencing decisions, supplemented by specific considerations that systematically assess the necessity of punishment under Article 54 of the 2023 Criminal Code, and this study recommends that the Supreme Court formulate technical guidelines to ensure consistency, accountability, and harmonization between legal certainty and substantive justice in national criminal justice practice.

Keywords

Judicial Pardon, Sentencing, Decision Format, Substantive Justice

I. Introduction

Through the enactment of Law Number 1 of 2023 concerning the Criminal Code, hereinafter referred to as the 2023 Criminal Code, in the 2023 Criminal Code judicial pardon has been recognized as part of sentencing reform. However, until now there has been no clear regulation regarding the form and format of judicial pardon decisions in the practice of criminal justice in Indonesia. This absence is feared in the future will lead to inconsistency of decisions and has the potential to cause legal uncertainty.

With the birth of the 2023 Criminal Code within the Indonesian criminal justice system, Indonesian criminal justice law has undergone changes.¹ With these changes, the concept of sentencing in Indonesia has certainly experienced changes and a shift in paradigm. The concept of sentencing in Indonesia now undergoes a transformation from previously being more focused on revenge (retributive) and then toward a restorative justice approach.² Legal change is necessary because essentially law is not a rigid and static normative structure, but rather a social system that moves dynamically following societal developments that continuously change.³ Law exists to answer all human needs, so that the norms within it must always be able to adapt to social, technological, cultural changes, as well as the

¹ Rohadhatul Aisy, "Judicial Pardon as a Humanizing Approach to Criminal Sentencing: Reconstructing Judicial Decisions under the New Indonesian Criminal Code," *The Digest: Journal of Jurisprudence and Legisprudence* 6, no. 2 (2025): 2, <https://doi.org/10.15294/digest.v6i2.37174>.

² Muhammad Hazwi Yarus and Zainudin Hasan, "KONSEP RECHTERLIJK PARDON DAN FAKTOR- FAKTOR YANG MEMPENGARUHI PENERAPANNYA DI INDONESIA" 3, no. 4 (2025): 3, <https://doi.org/10.61722/jipm.v3i4.1070>.

³ Made Joy Januarta, "Kodifikasi Dan Eksistensi Ilmu Hukum Dalam Perkembangan Hukum Modern," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 2 (2025): 1, <https://doi.org/10.62383/aliansi.v2i4.1096>.

needs of justice in every era.⁴ Through the enactment of the 2023 Criminal Code and Law Number 20 of 2025 concerning the Criminal Procedure Code, hereinafter referred to as the 2025 Criminal Procedure Code, the state seeks to build a sentencing system that is more proactive and responsive to the values of Pancasila.⁵

Historically, the sentencing system in Indonesia prior to the enactment of the 2023 Criminal Code, namely in Law Number 1 of 1946 concerning Criminal Law Regulations, hereinafter referred to as the old Criminal Code, was oriented toward Dutch law or the *Wetboek van Strafrecht*.⁶ The old Criminal Code still adhered to a retributive orientation, which can be seen from sentencing as a proportionate retaliation for every criminal act committed.⁷ Based on this retributive approach, the purpose of sentencing was limited to giving a deterrent effect to the perpetrator of a criminal offense and affirming the prohibition to society not to commit similar criminal acts. Thus, the perpetrator was positioned as an object that must be punished, while the humanitarian dimension and the possibility of restoration of the perpetrator and the relationship between the perpetrator and the victim received less attention. This can be seen in the case of Minah with Decision No.247/PID.B/2009/PN.Pwt. Minah only took 3 cocoa

⁴ Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: PT Kompas Media Nusantara, 2010).

⁵ Alam Suryo Laksono and B Patmawanti, "Politik Pembaruan Hukum Pidana Berkarakter Pancasila," *Unes Journal of Swara Justisia* 8, no. 4 (2025): 1, <https://doi.org/10.31933/07495384>.

⁶ Dika Agusta, Abdul Madjid, and Nurini Aprilianda, "REFORMING INDONESIAN CRIMINAL LAW: INTEGRATING SUPERVISION, PUNISHMENT, AND REHABILITATION FOR RESTORATIVE JUSTICE," *International Jurnal Islamic Education, Research and Multicturalism (IJIERM)*: 7, no. 1 (2025): 2, <https://doi.org/10.47006/ijierm.v7i1.434>.

⁷ Fransiskus Saverius Nurdin, Gunarto, and Lathifah Hanim, "MELIHAT DIFERENSIASI FUNDAMENTAL KUHP LAMA (WvS) DAN KUHP NASIONAL INDONESIA" 3, no. 3 (2025): 8, <https://doi.org/10.59246/aladalah.v2i4>.

Pods that were seen lying under the tree, which was later discovered by the foreman and Minah admitted and apologized to the foreman.⁸ However, the case of Minah still proceeded to the Court. In that case it is clearly seen that the restoration of the relationship as well as the humanitarian dimension received less attention.

The transformation in the 2023 Criminal Code shifts the orientation of the Indonesian criminal justice system toward a restorative justice approach, this approach has the perspective that the settlement of criminal cases is not only directed at the imposition of punishment on the perpetrator, but also pays balanced attention to the interests of victims and society.⁹ Restorative justice is a sentencing system that aims to restore the welfare of all parties affected by crime starting from the victim, the perpetrator, to the wider community, and to prevent the occurrence of further criminal acts.¹⁰ Through restorative justice, victims are provided with the opportunity to have their position formally recognized.¹¹ This paradigm shift opens space for the recognition of new concepts in the criminal justice system, one change that can be seen is the emergence of the principle of judicial pardon in Indonesian criminal justice in which in Law Number 8 of 1981 concerning Criminal Procedure Law, hereinafter referred to as the old Criminal Procedure Code in which the Panel of Judges only

⁸ Cahya Wulandari, "PENYELESAIAN PERKARA PIDANA MELALUI MEDIASI PENAL: ACCESS TO JUSTICE DI TINGKAT KEPOLISIAN," *HUMANI (Hukum Dan Masyarakat Madani)* 8, no. 1 (2018): 8, <https://doi.org/10.26623/humani.v8i1.1389>.

⁹ Safaruddin Harefa, Sri Ismawati, and Mega Fitri, "Transformasi Kebijakan Pemidanaan Dalam Kuhp Nasional: Menuju Sistem Pemidanaan Yang Berkeadilan Dan Humanis," *SIMBUR CAHAYA* XXXII, no. 2 (2025): 2, <https://doi.org/10.28946/sc.v32i2.5050>.

¹⁰ Marian Liebmann, *Restorative Justice: How It Works* (London: Jessica Kingsley Publishers, 2007).

¹¹ Jessica Dewastyana, Rodiyah, and Anis Widyawati, "Implementation of Restorative Justice in Traffic Accidents by the Ambon Police Traffic Unit" 15, no. 03 (2025): 2, <https://doi.org/10.58471/justi.v15i03>.

recognized 3 (three) forms of decisions as stated in Articles 191 and 193 of the old Criminal Procedure Code, namely.

1. Acquittal decision (*vrij spraak*)
2. Decision released from all legal charges given (*onslag van recht vervolging*)
3. Decision imposing a criminal sanction (*veroordeling tot enigerlei sanctie*)

Normatively, the authority of judicial pardon obtains a written legal basis in Article 54 paragraph (1) and paragraph (2) of the 2023 Criminal Code. These provisions show that the lawmaker provides broad space for judges to assess contextually whether sentencing is still relevant and proportional to the actual circumstances of the case.

Although Article 54 of the 2023 Criminal Code has provided a normative basis for judges not to impose punishment through the mechanism of pardon, this regulation is not accompanied by operational guidelines regarding how the dictum of a judicial pardon decision must be formulated. The legislation does not provide guidance regarding the structure of considerations, editorial requirements, nor formal limitations that must be contained in the decision. This regulatory absence creates very broad discretion and interpretation space for judges when formulating the format of pardon decisions. In practice, this condition can result in variations in decision formats, differences in assessing the element of “deserving to be pardoned,” and inconsistency in the substance of legal considerations. This inconsistency ultimately has the potential to cause disparity in judicial practice as well as problems of legal certainty for the defendant, the public prosecutor, and parties with an interest in the criminal justice system.

The absence of a standardized decision format raises broader institutional issues, considering that court decisions are the primary instrument to concretize criminal law norms as well as a means of

judicial accountability to the public. Decisions that do not have standardized standards risk causing incorrect interpretations of the judicial pardon norm, creating the perception of legal uncertainty, and even opening space for suspicion of abuse of authority or inconsistency in the application of the principle of justice. Therefore, the search and formulation of the concept of a judicial pardon decision format becomes both an academic necessity and a practical necessity to ensure that this new mechanism can be implemented consistently, transparently, accountably, and remains in line with the objectives of national criminal law reform.

In the context of developing a model decision format, comparative law becomes one of the relevant approaches to seek a more structured model of judicial pardon decision format. A country that has earlier recognized the concept of judicial pardon, such as the Netherlands, can serve as a reference to understand how the practice of judicial pardon is operationalized in their legal system. Although that country does not determine a rigid standardized format, judicial practice and the developing legal doctrine can provide an illustration of what elements may be considered by judges when deciding to grant a pardon. This comparative analysis can show general patterns as well as variations of practice that can be adapted, modified, or adjusted to the development of the Indonesian criminal law system.

The urgency of research regarding the form of judicial pardon decisions becomes stronger when associated with the orientation of national criminal law reform which emphasizes the values of humanity, proportionality, and substantive justice. Judicial pardon, as a relatively new legal mechanism, is not sufficient if its regulation is only normative in nature, but requires implementative guidelines in order to function optimally in practice. Without adequate guidance, there is a risk that the pardon norm will only become “law on paper” that is rarely used, applied sporadically, or even misinterpreted so that it deviates from the

purpose of its formation.

Another urgency lies in the need to prevent the emergence of decision disparity that has the potential to harm the sense of public justice. In conditions where the pardon mechanism is granted inconsistently, the public may view the criminal justice system as not transparent or discriminatory. This can erode the legitimacy of judicial institutions and weaken public trust in the ability of the courts to protect the rights of citizens. By formulating a more structured decision format either through academic study or by proposing an operational model, this research also supports the improvement of transparency, predictability, and uniformity in the application of law.

The results of this analysis can subsequently serve as a foundation for formulating a more systematic and consistent judgment format for judicial pardon, in line with the characteristics of Indonesia's criminal justice system, which is grounded in the values of Pancasila. Accordingly, this study aims to examine the practice of judicial pardon in criminal court decisions in the Netherlands and offers novelty by proposing an ideal judgment format for judicial pardon to be implemented within Indonesia's criminal justice system, in order to ensure legal certainty, consistency in judicial decisions, and the protection of the rights of all parties involved.

II. Method

This research uses a normative juridical research method with a qualitative approach because the issues examined in this study are oriented toward the analysis of norms, principles, and the construction of legal argumentation concerning judicial pardon in the criminal justice

system.¹² The approaches used include a statutory approach to examine the regulation of judicial pardon in the 2023 Criminal Code and related provisions, a conceptual approach to analyze the doctrine of the purposes of sentencing, proportionality, and judicial discretion in legal literature, as well as a comparative law approach. The data used consist of secondary data comprising primary legal materials in the form of legislation and court decisions as well as secondary legal materials in the form of books, scientific journals, and relevant scholarly opinions, obtained through library research, inventoried, and classified based on legal issues and legal reasoning systematically by examining the coherence of norms, comparing judicial practices, and synthesizing legal doctrines to formulate the construction of decisions.

III. The Practice of Judicial Pardon in Criminal Court Decision in the Netherlands

Judicial pardon is a condition in which a Judge is given the authority not to impose a sentence.¹³ This authority is exercised by considering aspects of justice, humanity, and concrete circumstances comprehensively surrounding the perpetrator and the criminal act, so that sentencing is not merely based on the fulfillment of the elements of the offense, but also on substantive legal objectives. The regulation concerning judicial pardon in the Dutch criminal law system can be found in Article 9a of the *Wetboek van Strafrecht* of 1984 which provides

¹² Muhaimin, *Metode Penelitian Hukum* (Mataram, 2020).

¹³ Nefa Claudia Meliala, "Rechterlijk Pardon (Pemaafan Hakim) : Suatu Upaya Menuju Sistem Peradilan Pidana Dengan Paradigma Keadilan Restoratif RECHTERLIJK PARDON : (JUDICIAL PARDON) : AN EFFORT TOWARD CRIMINAL JUSTICE SYSTEM WITH RESTORATIVE," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 30 (2020): 3, <https://doi.org/10.29303/ius.v8i3.820>.

a normative basis for Dutch judges. Through the provisions of Article 9a of the *Wetboek van Strafrecht*, Dutch criminal law affirms that the fault of the perpetrator and the proof of the elements of the criminal act remain the center of criminal responsibility. However, the consequence of sentencing may be set aside on the basis of justice. Therefore, judicial pardon does not eliminate the unlawful nature of the act nor the fault of the perpetrator of the criminal act, but only eliminates the criminal sanction.

According to Prof. Nico Keijzer, before the existence of provisions concerning judicial pardon formulated explicitly in Dutch legislation, in the practice of Dutch criminal justice there had actually developed the view that in certain situations the imposition of punishment on the perpetrator of a criminal act was not always necessary.¹⁴ However, at that time judges remained in a difficult position because normatively they still had to impose punishment, although often the verdict given was very light. This regulation reflects the modern sentencing paradigm carried out by the Netherlands, which no longer views punishment as the objective of sentencing itself, but as a means to achieve the objectives of criminal law. In the Dutch sentencing system, punishment is positioned as *ultimum remedium* or the application of criminal sanctions is placed as a last resort used when other sanction instruments or legal mechanisms are no longer considered effective in resolving the problem.

The application of the concept of judicial pardon in the Netherlands is highly relevant to the theory of subsociality proposed by M.P. Vrij, in which according to Vrij, in determining whether an act can be regarded as an act deserving of criminal punishment, it is not sufficient only to consider the existence of fault and the unlawful nature materially, but there is an additional element that must also be considered, namely

¹⁴ Muh. Iksan Putra Kai, Dian Ekawaty Ismail, and Suwitno Yutye Imran, "Asas Pemaafan Hakim Dalam Pembaharuan Hukum Pidana Di Indonesia" 2, no. 1 (2024): 2, <https://doi.org/10.59581/Doktrin-widyakarya.v2i1.1936>.

the element of subsociality.¹⁵ The element of subsociality emphasizes the extent to which an act has relevance for criminal law, namely whether the act causes harm or potential danger to society, even though the level of danger produced is relatively small.

In the practice of Dutch criminal justice, judicial pardon cannot be applied uniformly to all criminal cases, but is limited to certain conditions that are assessed to meet the criteria of justice and propriety. One of the main characteristics of the practice of judicial pardon is the existence of contextual and individual considerations. In judicial pardon, judges are required to explore deeply the background of the act, the level of fault of the perpetrator, as well as the consequences of imposing punishment.¹⁶

Another important characteristic is the obligation of judges to provide explicit and rational legal considerations in the decision. Judicial pardon may not be imposed arbitrarily or without a clear basis of argumentation. A decision declaring the defendant guilty without punishment must contain concrete reasons why the sentencing is considered unnecessary, not proportional, or not in accordance with the objectives of criminal law. The practice of judicial pardon also reflects a rehabilitative and restorative orientation in the Dutch criminal law system. By not imposing punishment, judges provide space for the perpetrator of a criminal act to remain responsible for the act without having to bear the stigma and negative impact of sentencing. This is in line with the objective of resocialization of the perpetrator which becomes the main focus of modern sentencing.

To understand how the concept of judicial pardon in the Netherlands is applied concretely in its criminal justice practice, it is

¹⁵ Andi Hamzah, "Asas-Asas Hukum Pidana Edisi Revisi," 2008, 111.

¹⁶ Albert Aries, "Judicial Pardon as Perfection of the Implementation of Legality Principle in Sentencing," *INTERNATIONAL JOURNAL OF RESEARCH IN BUSINESS AND SOCIAL SCIENCE* 11, no. 1 (2022): 4, <https://doi.org/10.20525/ijrbs.v11i1.1670>.

necessary to examine one decision that explicitly applies the provisions of Article 9a of the *Wetboek van Strafrecht*. Analysis of this decision is important to see how judges in the Netherlands assess the fault of the defendant, consider the concrete circumstances of a case, and formulate legal considerations that lead to a judicial pardon decision.

One decision that is relevant to be analyzed is the decision of the District Court of The Hague dated 18 February 2020 with case number ECLI:NL:RBDHA:2020:1267. The decision contains how the judge still declared the defendant proven guilty, however the judge decided not to impose a sentence (granting a judicial pardon decision) based on various considerations revealed during the trial.

To obtain a systematic description of the structure and characteristics of the judicial pardon decision, the following presents an analysis of the decision format in the form of a table which includes the principal elements of the decision, legal considerations, as well as the form of the dictum of the decision.

Table 1: Example Case of a Judicial Pardon Decision in the Netherlands

Structure of the Decision	Content	Characteristics in Judicial Pardon
Heading of The Decision	Contains the name of the Court, case number, and date of the decision	There is no difference from an ordinary criminal decision
Identitif of the Defendant	Contains the complete identity of the defendant	There is no difference from an ordinary criminal decision
Indictment	Contains a description of the act charged by the public prosecutor	There is no difference from an ordinary criminal decision

Consideration of Evidence	Analysis of evidence and the opinions of the parties	The results of the analysis show that the judge still declares that the defendant's act is proven
Unlawfull Nature	Assessment that the defendant can be held criminally responsible	Shows that fault remains
Criminal Responsibility	The Judge considers various matters, starting from the condition of the defendant	There is no justification or excuse as support for judicial pardon
Imposition of Sentence	The consequences of the act, and the proportionality of sentencing	At this stage the judge assesses whether judicial pardon can be granted to the defendant
Article Apllied	The defendant is charged under Articles 285, 300, 57, and 9a WvSr	The article of the offense is still applied, while Article 9a becomes the basis for not imposing a sentence
Holding	Declares the defendant remains guilty but without imposing a sentence (The defendant is granted judicial pardon)	Difference from an ordinary sentence

Source : ECLI:NL:RBDHA:2020;1267 – Rechtbank Den Haag, 18-02-2020 / 09/253133-19

Based on the analysis of the decision, the application of judicial pardon in Dutch criminal justice practice continues to follow the full stages of criminal adjudication, ranging from evidentiary assessment and the evaluation of unlawfulness to the affirmation of the defendant's

criminal liability. The distinction arises explicitly at the sentencing stage, where the judge declares that punishment is no longer necessary in the concrete case. This determination is grounded in measured considerations, including the proportionality of the act, the personal circumstances of the offender, and the relevance of the purposes of punishment. Accordingly, judicial pardon functions as a corrective mechanism that allows the judge to declare the defendant guilty without imposing punishment, through legal reasoning that is rational, structured, and accountable within the framework of substantive justice.

IV. The Ideal and Appropriate Judicial Pardon Decision to Be Implemented in The Indonesian Criminal Justice System

In the criminal justice system, a court decision is a concrete form of the exercise of judicial power as well as the final stage of the criminal law enforcement process. Through the decision, the judge not only determines whether an act is proven or not, but also determines the state's response to that act.¹⁷ In Indonesia itself, there are five types of judicial decisions based on Article 1 paragraph (18) of Law Number 20 of 2025, namely, sentencing decisions, acquittal decisions, decisions released from all legal charges, judicial pardon decisions, or decisions in the form of measures. This classification shows that Indonesian criminal procedure law does not only recognize the dichotomy of punishing or acquitting, but provides variations of responses that allow the state to adjust its reaction to the character of the event and the perpetrator.

¹⁷ Syaiful Akhyar Harahap, Muhammad Arsad Nasution, and Adi Syahputra Sirait, "Pemeriksaan Pada Anak," *EL-THAWALIB* 2, no. 4 (2021): 2, <https://doi.org/10.24952/el-thawalib.v2i4>.

Among these forms of decisions, judicial pardon decisions occupy a distinctive position because they are between punishment and acquittal. In a judicial pardon decision, a judge still declares that the defendant has been proven guilty, but does not impose a sentence.¹⁸ This intermediate position raises theoretical as well as practical issues in which if fault has been proven, why does the state not punish and in what circumstances is punishment not necessary. This question shows that proof of fault is not always identical with the need for sentencing. Criminal law does not merely operate based on the logic of “proven then punished” but based on an assessment of whether the punishment still has justification to be imposed.

The concept of judicial pardon functions as a correction to the tendency of overcriminalization, namely the excessive use of punishment to respond to various forms of violations.¹⁹ When sentencing continues to be imposed even though it is not necessary, criminal law changes from a means of protection into a source of injustice. Here judicial pardon obtains its normative justification, in which it maintains that criminal law remains within its rational limits. However, this flexibility must not turn into legal uncertainty. A decision without sentencing can only be accepted if it is based on parameters that can be tested argumentatively in the judge’s considerations. This means that the judge is obliged to show why the punishment no longer has a function in the concrete case. Without this obligation of argumentation, judicial pardon has the potential to become arbitrary discretion.

The recognition of judicial pardon in substantive criminal law gives rise to direct consequences for criminal procedure law. The criminal

¹⁸ Mardian Putra Frans Alfret, “Konsep Putusan Pemaaf Oleh Hakim (Rechterlijk Pardon) Sebagai Jenis Putusan Baru Dalam KUHAP,” *Krtha Bhayangkara* 17, no. 3 (2023): 2, <https://doi.org/10.31599/krtha.v17i3.2968>.

¹⁹ Mohammad Yofarrel, “Kriminalisasi Berlebihan (Overcriminalization) Sebagai Faktor Struktural Overcrowding Lapas Dalam Sistem Peradilan Pidana,” *Unes Law Review* 7, no. 4 (2025): 3, <https://doi.org/10.31933/unesrev.v8i1.2504>.

justice system is basically a unity between substantive and procedural law, therefore every change in the structure of criminal responsibility must be followed by adjustment of the structure of decisions. Without such adjustment, there will be disharmony between the assessment of fault and the form of the decision. In this context, the existence of judicial pardon places the judge in a situation of declaring the defendant guilty but not imposing a sentence. This situation does not yet have structural argumentation space in the 2025 Criminal Procedure Code so that it has the potential to give rise to forms of decisions that are not systematic.

To avoid such irregularity, reconstruction of the structure of decisions is required that is able to accommodate the juridical consequences of judicial pardon explicitly. This reconstruction is not intended to form a new type of decision outside the existing system, but to place a guilty decision without sentencing within a procedural framework that is structured and can be classified. As comparative material, the author takes the case of judicial pardon that has existed above and is followed by the 2025 Criminal Procedure Code as well as the new decision format by the author. Based on the need for harmonization, the following presents a comparative chart between the systematics of decisions in the 2025 Criminal Procedure Code, the model of judicial pardon practice in Dutch criminal justice, and the reconstructed decision format by the author to accommodate considerations of judicial pardon.

Table 2: Reconstruction of an Ideal Decision Format According to the Author Based on Comparative Study

2025 Criminal Procedure Code (Article 250 paragraph (1))	Dutch Judicial Pardon Case	Author's Reconstruction
The Heading of the Decision which is written as follows: "FOR THE SAKE OF JUSTICE BASED ON THE BELIEF IN THE ALMIGHTY GOD"	Heading of the Decision (Contains the name of the Court, case number, and date of the decision)	There is no difference from an ordinary criminal decision
Identity of the defendant containing (Full name, place of birth, age or date of birth, gender, nationality, place of residence, religion, and occupation of the defendant);	Identity of the Defendant (Contains the complete identity of the defendant)	There is no difference from an ordinary criminal decision
Indictment;	Indictment	There is no difference from an ordinary criminal decision
Considerations arranged clearly and completely;	Consideration of Evidence	There is no difference from an

Regarding the facts and circumstances along with the evidence obtained from the examination at the court hearing which become the basis for determining the fault of the Defendant	Unlawful Nature	ordinary criminal decision
The article of legislation which becomes the basis for sentencing and the article of legislation which becomes the legal basis of the decision, accompanied by aggravating and mitigating circumstances of the Defendant;	Criminal Responsibility	There is no difference from an ordinary criminal decision
The day and date of the deliberation of the Panel of Judges, except the case is examined by a single judge;	Imposition of Sentence	There is no difference from an ordinary criminal decision
The day and date of the deliberation of the Panel of Judges, except	Article Applied	There is no difference from an

the case is examined by a single judge;

Statement of the fault of the defendant, statement that all elements in the formulation of the criminal offense have been fulfilled accompanied by its qualification and the sentence and/or measure imposed;

Provision regarding to whom the court costs are charged by stating the exact amount and provisions regarding evidence;

Statement that all letters are proven false or statement indicating where the falsification lies, if there is an authentic letter considered false; Order that the Defendant be detained or remain in detention or be released; and

ordinary criminal decision

Addition of judicial pardon considerations (containing the judge's argumentation as to why the Defendant deserves to be granted judicial pardon)

Provision regarding who will bear the court costs

Statement of a false letter if the authentic letter is considered false

The day and date of the decision, the name of the Public Prosecutor, the name of the Judge who decided, and the name of the clerk

Order that the Defendant be detained or remain in detention or be released, and;

the day and date of the decision, the name of the Public Prosecutor, the name of the Judge who decided, and the name of the clerk

Source : Undang-Undang Nomor 20 Tahun 2025 and ECLI:NL:RBDHA:2020;1267 – Rechtbank Den Haag, 18-02-2020 / 09/253133-1

The reconstruction of the judicial pardon decision format as formulated in the table above may be considered ideal if it is not only procedurally structured within the systematics of the judgment, but also consistently realized through the integration of the philosophy of sentencing in the 2023 Criminal Code into every part of the judge's reasoning. The 2023 Criminal Code explicitly affirms that the purpose of sentencing is no longer retribution, but the protection of society, guidance and resocialization of the perpetrator, settlement of conflict, restoration of balance, as well as the affirmation of legal norms.²⁰ Consequently, punishment is no longer regarded as an automatic consequence of proven guilt, but rather as a normative instrument whose relevance must be assessed in each individual case. Within this framework, the inclusion of judicial pardon considerations in the

²⁰ Muhammad Idris Nasution, Muhammad Ali, and Fauziah Lubis, "Pembaruan Sistem Pemidanaan Di Indonesia: Kajian Literatur Atas KUHP Baru," *Judge: Jurnal Hukum* 5, no. 1 (2024): 1, <https://doi.org/10.54209/judge.v5i02.xxx>.

structure of judicial decisions gains clear normative legitimacy. This stage functions as an evaluative mechanism that requires judges to concretely assess whether punishment remains necessary in the case at hand.

The first ideality is supported by the insignificance principle, which affirms that criminal law should not be activated against acts that socially do not have sufficient significance to justify repressive state intervention.²¹ This principle emphasizes that not every formally established wrongdoing must be responded to with punishment. In practice, judges must assess whether the act carries sufficient social weight to justify the imposition of a penal sanction. Where the conduct does not pose a real threat to society, does not substantially disrupt social balance, and does not demonstrate an urgent need for correction through punishment, the imposition of sanction may, in fact, contradict the rational objectives of sentencing. Therefore, the reconstructed judgment format requires judges to explicitly incorporate consideration of judicial pardon, ensuring that punishment is not imposed mechanistically, but is instead based on a concrete assessment of the social significance of the act and the necessity of penal intervention as a state response.

Second, the parsimony principle requires that punishment be imposed sparingly and proportionally, namely only to the extent truly necessary to achieve the objectives of sentencing.²² This principle is reflected in the sentencing guidelines of the 2023 Criminal Code, which require judges to systematically assess the degree of culpability, the offender's motives and objectives, the manner in which the offense was committed, the offender's post-offense conduct, the personal circumstances of the defendant, the impact on the victim, as well as the

²¹ Siti Khumairoh, Kusuma Arum, and Khilmatin Maulidah, "Pembaruan Hukum Pidana Melalui Penerapan Prinsip Insignifikansi: Kajian Dalam KUHP Baru Indonesia," *Jurnal Hukum Ekualitas* 1, no. 1 (2025): 3, <https://doi.org/10.56607/jhe>.

²² Putri Ayu Wulandari and Mochammad Zaidun, "The Replacement of Criminal Fine in Criminal Taxation," *Yuridika* 35, no. 1 (2020): 6, <https://doi.org/10.20473/ydk.v35i1.15749>.

possibility of rehabilitation without punishment. These guidelines emphasize that sentencing must be grounded in a concrete evaluation of its effectiveness and necessity in each case. Where, based on such assessment, the objectives of punishment have been achieved, the conflict has been resolved, or social balance has been restored without the imposition of punishment, the application of sanctions would exceed rational legal necessity. In this context, judicial pardon is a manifestation of consistency with the principle of economical use of penal power, not a form of neglect of criminal responsibility.

Third, the restraint principle places criminal law as ultimum remedium whose use must be strictly limited in order to prevent disproportionate expansion of the power to punish.²³ This principle functions as a normative limit against the tendency of excessive use of punishment and ensures that penal intervention is only carried out when truly necessary to protect essential legal interests. This principle is in line with the theoretical concept of criminal law.²⁴ The recognition of judicial pardon in the 2023 Criminal Code must be concretely implemented in judicial practice. To this end, judges are required to incorporate considerations of judicial pardon into the structure of their decisions by explicitly formulating and explaining the reasons for granting it. Through such implementation, judicial pardon is no longer treated as a casuistic exception, but as the result of a systematic assessment of the objectives and guidelines of sentencing.

²³ Muamar Azmar Mahmud Farig, "Melampaui Batas: Judicial Restraint Dan Dilema Hakim Indonesia," MARINews, 2025, <https://marinews.mahkamahagung.go.id/artikel/melampaui-batas-judicial-restraint-dan-dilema-hakim-0fZ>.

²⁴ Indah Fitri Cahyani, Uche Nnawulezi, and Ogah Chinyere Constance, "The Urgency of Legal Justice for Society Against the Expansion of the Authority of Judges from a Criminal Law Perspective," *Indonesian Journal of Criminal Law Studies* 8, no. 1 (2023): 3, <https://doi.org/10.15294/ijcls.v8i1.40402>.

The assessment of the ideality of judicial pardon based on these three principles requires clear limitations, judicial pardon can only be justified insofar as it does not undermine the objectives and guidelines of sentencing. In this context, judges are required to construct structured reasoning by demonstrating that the affirmation of the defendant's guilt sufficiently fulfills the function of general deterrence, that the defendant shows prospects for rehabilitation, that the harm suffered by the victim has been minimized or restored, and that no real risk is posed to society by the absence of punishment. Without such explicit and systematic evaluation, judicial pardon loses its functional legitimacy within the criminal justice system.

Furthermore, Article 54 of the 2023 Criminal Code provides objective parameters that must serve as guiding standards. Accordingly, an ideal judicial pardon decision must go beyond merely listing these factors as mitigating circumstances; it must clearly establish a causal relationship between these factors and the conclusion that punishment is no longer necessary. In this sense, judicial pardon must be positioned as the outcome of rational, measurable, and reviewable legal reasoning, rather than as an expression of personal empathy on the part of the judge.

Within this framework, the ideality of judicial pardon decisions is not measured by the degree of leniency granted to the defendant, but by the strength of the reasoning that effectively constrains the use of penal power in a rational manner. Through such limitations, Indonesia's criminal justice system reflects its moderating character, the law remains firm in upholding norms, yet refrains from excessive reliance on punishment. It is at this point that judicial pardon attains its theoretical and constitutional legitimacy as an integral component of Indonesia's criminal law reform.

V. Conclusion

Judicial pardon in the Indonesian criminal justice system affirms that proven fault does not automatically require the imposition of punishment. Based on Article 54 of the 2023 Criminal Code, judges are authorized to eliminate sentencing after conducting an examination of proportionality, relevance, and the objectives of sentencing, without eliminating the unlawful nature or the criminal responsibility of the perpetrator. This mechanism reflects a transformation of the paradigm from retributive toward substantive justice, by placing punishment as *ultimum remedium* which is only imposed when truly necessary. The experience of practice in the Netherlands shows that the legitimacy of judicial pardon lies in explicit, rational, and structured argumentation, so that discretion remains controlled within the framework of judicial accountability.

In line with the recognition of the concept of judicial pardon in the 2023 Criminal Code (KUHP), the legislature, together with the Supreme Court, must promptly formulate a clear and operational judgment format to guide judges in judicial practice. This format should retain the evidentiary structure of conventional criminal judgments, while incorporating a specific section dedicated to the consideration of judicial pardon. In this section, judges must systematically establish the fulfillment of all elements of the offense and explicitly assess the necessity of punishment in the concrete case by analyzing the social significance of the act, the principle of proportionality, and the limitation of penal power. By mandating such a structured reasoning process, judicial pardon decisions will no longer depend on subjective discretion, but instead reflect a measured, consistent, and reviewable legal reasoning. Therefore, the implementation of this format is essential to ensure consistency in judicial decisions, strengthen judicial accountability, and maintain a

balance between legal certainty and substantive justice within Indonesia's criminal justice system.

VI. References

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