

# The Urgency of Legal Justice for Society Against the Expansion of the Authority of Judges from a Criminal Law Perspective

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## Abstract

Expansion of the authority of judges in the RKUHP is an interesting discussion where this is related to guaranteeing legal certainty for the community. The purpose of this research is to examine more deeply the impact of expanding the authority of judges in the RKUHP on legal certainty. The method used is a qualitative method. Then for this type of research using literature study by collecting journal articles related to the title being studied. The results of this study indicate that the expansion of authority in the form of judicial pardon is a means for realizing a balance between legal certainty and justice for the community, both of which are closely related to one another. In the RKUHP, the existence of the judge's pardon principle indicates a more flexible nature in criminal law. Unlike in the western Criminal Code which is more rigid. It is feared that this flexible nature will lead to more acts of fraud by law enforcers. In real terms, crime in Indonesia is increasingly modern. So that right now it really needs a legal system that is firm and able to provide legal certainty for its citizens. Studies related to the expansion of the judge's authority which are classified as increasingly flexible in the RKUHP are very important to do. Judicial Pardon is expected to be able to provide a balance between legal certainty and legal justice.

## Keywords

Justice; Legal Certainty; Judicial Pardon



## Introduction

The rapid development of technology makes it easier for many people to carry out their activities. Driven by the pace of globalization which seems as if there is no distance between citizens in the world. This is an advantage for countries in the world, because it encourages progress in various fields. However, this does not rule out the possibility of creating a challenge or threat to a country. Where these advances can trigger a variety of more modern crimes. Crimes that occur today are increasingly making people anxious. The modes used by the perpetrators of crimes are packaged neatly so that it is not uncommon for the crime rate to increase from year to year. And of course with the number of victims that are not small.

In this regard, it forces strict laws to provide a sense of security and legal certainty for the community. Law enforcers and members of the public must work together to create a sense of security, peace and ensure legal certainty for perpetrators of crimes. Actions that violate the rules must be given a penalty according to what was done. Of course, to achieve this is not easy, it requires a lot of support from all elements of the state. This is in order to achieve order in society, it is hoped that the crime rate will decrease and the law can apply properly. Related to this, the existence of a flexible discourse on the RKUHP has made many views especially regarding the guarantee of legal certainty for the community and the fear that it will lead to many irregularities that occur by law enforcers <sup>1</sup>.

Based on the Criminal Code, which incidentally is more rigid, there are still many deviations from the applicable law. In the RKUHP there is the principle of pardoning judges, which is one of several forms of expanding authority regulated in the RKUHP. Not infrequently these arrangements have given many responses from various parties, both academics and legal experts in Indonesia. Therefore to examine how the guarantee of legal certainty for the community is reviewed from the perspective of criminal law related to the expansion of the judge's authority. This needs to be discussed with the aim of providing an understanding to the wider community regarding the contents and a small part of the content in the RKUHP which is currently in process. So that the public knows and understands how the legal rules will be used in the future.

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<sup>1</sup> P M L Dewi and I K R Setiabudhi, "Kebijakan Formulasi Rechterlijk Pardon (Pemaafan Hakim) Dalam RKUHP," *Kertha Wicara: Journal Ilmu Hukum* 9, no. 9 (2020): 1–18.

## Method

The method used is a qualitative method. Research with a qualitative approach contains characteristics, namely: rooted in the natural environment as a whole, relying on humans as a research tool, using qualitative methods to carry out inductive data analysis, is descriptive in nature, more concerned with process than results. This type of research uses literature study by collecting journal articles related to the title being studied. the data used in the form of secondary data. Secondary data consists of primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials are obtained from statutory regulations, jurisprudence, namely the Criminal Code, the Criminal Code, and the Criminal Procedure Code<sup>2</sup>. Secondary legal materials consist of journals, books. Meanwhile, tertiary legal materials come from news and dictionaries. The data analysis method is qualitative so that the research results are in the form of descriptive-analysis.

## Result and Discussions

### The Relationship between Criminology and Criminal Law

In essence, the term criminology (crime) is one of the sciences which focuses on studying issues related to crime (crimes). However, crime from a criminological point of view is certainly different from the view of criminal law. Crime based on the perspective of criminal law is interpreted as an act that violates statutory regulations that can be punished based on criminal law. The Criminal Code states that the crime is part of a crime. Whereas in criminology it is broader than that where crime is not only seen from a juridical aspect but also acts that are not in accordance with the norms that apply in society. It also includes social problems that encourage crime

In theory, criminal law has the nature of *ultimum remedium*, namely criminal law is used as the last means to overcome crime if other methods cannot be used. Criminal law has a function that is static in nature

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<sup>2</sup> Muhammad Rijal Fadli, "Memahami Desain Metode Penelitian Kualitatif," *Humanika* 21, no. 1 (2021): 33–54, <https://doi.org/10.21831/hum.v21i1.38075>.

so that it is considered less sensitive to the development of behavior that develops in society. In order to cover up these weaknesses, a new science emerged known as criminology, which essentially studies behavior in society, including disgraceful behavior and violating statutory regulations. Criminal law and criminology both study crime but have their own differences. Where criminology is known as a scientific discipline that studies human behavior empirically and factually. When talking about criminology, it is certainly inseparable from criminal law, where criminology is present to complement the shortcomings of criminal law <sup>3</sup>.

But still, from the two things above, both criminology and criminal law cannot be separated from law interference in them. Where the law becomes a means to oversee the freedom and human rights of individuals. Individual freedom cannot be restricted by unnecessary laws because the law is used to maintain, protect individual independence and provide guarantees of legal certainty. The goal is to create order and obey the law in people's lives. However, from time to time violations of the applicable rules are rife. As if the law is unable to regulate society in accordance with the rules. In fact, more and more crimes are committed by society. In fact, not only ordinary people, but now many high-ranking officials have been entangled in criminal acts, both corruption, narcotics and so on. So there is a need for stricter law enforcement in dealing with criminal acts. Such enforcement must be carried out fairly and provide legal certainty. It does not mean that high officials are punished but are given excellent facilities such as in hotels, while ordinary people are punished with great torment. Law in this country must be oriented towards justice and legal certainty for all its citizens <sup>4</sup>.

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<sup>3</sup> Mufatikhatul Farikhah, "Konsep Judicial Pardon (Pemaafan Hakim) Dalam Masyarakat Adat Di Indonesia," *Jurnal Media Hukum* 25, no. 1 (2018): 81–92, <https://doi.org/10.18196/jmh.2018.0104.81-92>.

<sup>4</sup> Riska Ariana, "濟無No Title No Title No Title," 2016, 1–23.

## The Importance of Law and Legal Certainty in Society

Law is interpreted as a set of prohibitions or orders in which it regulates social order and must be obeyed by the people concerned (Utrecht: 1996). In order to create conditions that are safe, peaceful, rules are needed to regulate people's lives in their social environment. So that humans can behave well and politely. Law enforcement can run normally but can also occur due to violations of the law. Thus the law that is violated needs to be upheld. There are 3 (three) objectives of law enforcement namely justice, legal certainty and expediency (Gustav Radbruch: 2010). Legal certainty can be achieved by applying it to real events. Existing rules must not deviate, because that is what is expected from legal certainty.

Legal certainty becomes a justifiable protector from arbitrary actions, meaning that a person can get what he wants under certain conditions. Many people want legal certainty whose reason is solely for public order. In Indonesia, if you look at the 3 objectives of law enforcement, Indonesia tends to prioritize legal certainty. In fact it is very difficult if the three elements must be achieved because they contradict each other. Legal certainty is more in view of statutory regulations and formal legal. Law in Indonesia tends to be more rigid, especially in criminal law. Nonetheless, various violations of the rule of law are still rife. The Criminal Code is considered too rigid in dealing with problems that exist in society. then the discourse emerged that there would be an RKUHP in which law enforcement would be more flexible. This of course reaped a lot of responses from various circles. The concern of many people regarding this flexible nature is that it will add to the acts of fraud committed by law enforcers. At present, criminal acts are not only committed by ordinary people, but many high-ranking officials, even law enforcers such as judges, have also been entangled in many criminal acts such as corruption, bribery and so on <sup>5</sup>.

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<sup>5</sup> Indi Muhtar Ismail and Bambang Sugiri, "International Journal of Multicultural and Multireligious Understanding Consequences of Regulating the Rechterlijk Pardon Concept Against the Types of Criminal Decisions in Indonesia," no. 8 (2022): 120–29.

This adds to the list of evidence that law enforcement in Indonesia is still weak. Creating order and obeying the law in today's society requires more effort, where today's increasingly modern society will add to the difficulties in creating legal awareness. Influences from outside cultures have made Indonesian society increasingly oriented towards western culture. Not infrequently our people love foreign products more than local products. With the rapid flow of globalization, not only in the social, economic, science and technology and so on, but also related to the field of law, including the defense and security of this country. The progress of a country will actually pose new challenges, this is because there will be an increasing variety of crimes <sup>6</sup>. Of course, this needs further discussion in order to analyze and identify in relation to these matters whether the provisions in the RKUHP will guarantee that the Indonesian legal system will be better.

## **Flexible RKUHP**

In order to meet the demands of the times, which also means the development of people's lives which are increasingly very complex. This requires the renewal of legal regulations that regulate people's behavior so that it is appropriate and creates order in society. It is felt that many of the Dutch-era Criminal Code are no longer in accordance with conditions in Indonesia, so a draft criminal law code from Indonesia was compiled. Although still adopting the Dutch heritage Criminal Code. in the RKUHP it is regulated regarding the expansion of the judge's authority in deciding a case. One of them is in the form of the judge's pardon principle. Where this gives a flexible judge's decision. The RKUHP focuses more on achieving justice for society rather than legal certainty. In contrast to the Criminal Code which tends to prioritize legal certainty. Punishment that is oriented towards justice and humanity is indeed a good thing of renewal. However,

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<sup>6</sup> Sugeng Jatmiko, "Rechterlijke Pardon (Pemaafan Hakim) Dalam Tindak Pidana Perpajakan," *HERMENEUTIKA: Jurnal Ilmu Hukum* 6, no. 1 (2022), <https://doi.org/10.33603/hermeneutika.v6i1.6774>.

regarding the expansion of the judge's authority, one of which is the principle of the judge's forgiveness, many parties criticize this<sup>7</sup>.

With this principle in mind there will be irregularities, which we know does not guarantee that a judge will not commit fraud in carrying out his duties. In fact, many judges have committed irregularities. Not infrequently the RKUHP is still in conflict regarding rules and articles that are considered to be able to bring harm in the future. The RKUHP is here to change the criminal justice system to a more humane one, no longer oriented towards torture. Criminals are not meant to frighten people from committing unlawful acts, but punishments are given to give a deterrent effect to the perpetrators. The punishment system is also educative in nature where it is hoped that the perpetrators of criminal acts can be accepted back in the community well. The punishment system that has been implemented is more of a torture nature, it is considered that it is still not effective in providing a deterrent effect for offenders. So the RKUHP was born to provide a new breakthrough in order to provide a more humane punishment system that pays attention to human rights.

Several articles that were updated in the RKUHP related to the sentencing system, then there was an expansion of the authority of judges such as the principle of forgiveness of judges. This principle is related to the perpetrators of criminal acts whose cases are not directly criminalized but there is a judge's consideration. The judge has the duty to try criminal cases. The thoughts of judges who are only bound by formal legality will create a law enforcement that seems unfair or undermines the sense of justice in society<sup>8</sup>. Judges are very influential on law enforcement in force. The judge's decision also determines the fate of a person. Where in deciding a case the judge must consider properly. Don't let the decision be wrong and it will cause harm to someone.

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<sup>7</sup> Muhammad Ramzi Maulana and Pujiyono Pujiyono, "Restrukturisasi Independensi Hakim Dalam Sistem Peradilan Pidana Yang Berwawasan Pancasila," *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 2 (2021): 580, <https://doi.org/10.33087/jiubj.v21i2.1387>.

<sup>8</sup> Rancangan Kuhp, "Rechterlijk Pardon," n.d., 61–76.

The judge's decision is essentially carried out in order to provide answers to the problems that come to him. Decisions must include considerations which are acceptable to reason, both from law enforcers, academics, forums and the wider community in general. Judges' decisions are often not in accordance with what is expected, in fact there are still many decisions that are considered to lack a sense of justice for all Indonesian people. The rules are different from the reality that actually happened, creating social jealousy. Not infrequently in several corruption cases committed by high-ranking state officials, the punishment is that they are given luxurious facilities, such as in a hotel where the place is fairly comfortable, not like a prison for ordinary people, which is cramped, and very torturous. So that justice in sentencing has not been realized properly. Substitution of punishment in Indonesia has shifted from retributive to restorative where this has also happened in countries around the world. With the emergence of the concept of judicial pardon or the forgiveness of judges, it becomes a middle way, which is aimed at avoiding rigidity in matters of criminal imposition. This principle has been adopted in our country's RKUHP, namely in juvenile justice <sup>9</sup>.

With this principle in place, it is estimated that the Indonesian state criminal system in the future will be more flexible in terms of sentencing in order to create fair legal certainty. If you look at the Criminal Code from the Netherlands, it is more based on actions, while in the RKUHP, in the future it will change towards the perpetrators. This renewal of criminal law is caused by the development of the times and the crimes that occur are increasingly complex so that a criminal justice system is needed that is in accordance with current conditions. The principle of judicial pardon contained in the RKUHP is deemed appropriate, in order to eliminate the rigidity of judges in imposing punishments in line with the idea of balance, namely the balance between legal certainty and flexibility. This principle can be applied as long as the judge considers that the weight of the

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<sup>9</sup> Sagung Putri M E Purwani, Putu Mery, and Lusiana Dewi, "Yustisia Jurnal Hukum Judicial Pardon : Renewal of Criminal Law Towards Minor Criminal Offense" 10, no. 3 (2021): 415–30.



defendant's guilt is sufficient<sup>10</sup>. This principle has been urgently applied to address real problems in the legal world in the hope that the objectives of the law initiated by Gustav Radbruch can be properly realized.

This judicial pardon is not far from the clash between retributive theory and restorative theory. This retributive emphasizes punishment solely to be used for retaliation. Some experts also reveal that this principle was adopted from the thought of abolitionism. Where even though a person is convicted but sees the benefits of the punishment if it does not provide benefits it is better for the judge to decide with a decision called pardon. So that the penal system in Indonesia in the future will lead to restorative, not retaliatory. Of course, the application of this principle has been considered long before it was included in the RKUHP. The current Indonesian penal system is more humane and respects the fact that everyone has human rights that must be respected and upheld by anyone. Although in certain circumstances these human rights are not absolute, because they can be reduced or revoked. related to the principle of forgiveness of judges is very interesting to be discussed in more depth, because it is something new in the criminal system in Indonesia. Where is it an attempt to reform the criminal system inherited from the Dutch heritage that we have been using for a long time, namely the Criminal Code.

## **Expansion of the Authority of Judges (Judicial Pardon)**

The judge becomes a predicate that exists in a person where that person has a focus on expertise in the realm of law and justice. Of course, judges often even face many issues regarding legal freedom and justice in the context of the decisions of the cases they make. In making fair decisions, judges must be given freedom, where the freedom of judges is a guarantee

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<sup>10</sup> Tri Hidayati and Erry Fitriya Primadhany, "Perlindungan Hukum Usaha Mikro, Kecil, Dan Menengah Melalui Fasilitasi Sertifikasi Halal Produk Pangan (Studi Terhadap Praktek Di Kalimantan Tengah)," *Jurnal Hukum Ius Quia Iustum* 28, no. 2 (2021): 481–504, <https://doi.org/10.20885/iustum.vol28.iss2.art7>.

for the justice that society expects. The judge in giving a decision must be in accordance with his wishes and thoughts, but there must be a limit, namely he is also responsible for the decision that is handed down. A judge in giving a decision is always guided by the applicable laws and regulations and is given a freedom in determining a fair sentence based on his conscience.

Judicial pardon arises from the concern that there will be a conflict between legal certainty and justice. In some countries this term sounds foreign because in fact this concept is widely applied in institutions such as the executive, not applied to judicial institutions. With the judge's pardon, this can actually be used as an emergency exit, this is so that there is no rigidity in the criminal justice system. Sentence guidelines also arise because of the idea of flexibility which also aims to avoid rigidity. The link between punishment and forgiveness has actually emerged since the existence of the code of hamurabi. Then this principle was also applied to the Roman state where in the Roman era the use of the concept of forgiveness was carried out arbitrarily which was intended to strengthen the authority of the empire. Apart from Rome, in China there are also so many abuses that are committed, this concept of forgiveness seems to allow all actions that are contrary to the rules only for certain interests. Some of these incidents are the concept of forgiveness in the executive branch, but along with the development of the times, the pardon of judges is also applied in judicial institutions. In a French resolution, judges are given the right not to impose any punishment on minor offences. However, experts state that this judicial pardon is an alternative to short prison terms and judicial corrections from the principle of legality <sup>11</sup>.

Judicial pardon has actually been properly included in the RKUHP, this is because the existence of the principle of forgiveness from judges creates flexibility in decisions which in turn can create a balance between legal certainty and justice for the community. Because that is what the

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<sup>11</sup> 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 JUSTICE PARADIGM," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 3 (2020): 552–68.

general public expects. The judge's forgiveness will shift the penal system in Indonesia from being rigid to being more flexible. The expansion of the judge's authority must also be limited with great responsibility, because if it is not there will be many violations committed by law enforcers. This principle is relatively new for Indonesia, so there are concerns that there will be many misuses by related parties. The same is true of other countries that have applied this principle first, such as China, Rome, France, where there are many deviations. Even if this principle is misused, it will allow all actions to achieve certain interests.

All elements of the state must jointly review and continue to actively participate in the implementation of this principle both in terms of supervising and implementing it. Because this does not only concern a defendant but is also related to the public interest in the form of legal certainty and justice. The law applies to provide certainty, benefits and justice for the community. All of this, of course, must be achieved by joint efforts in upholding the law in accordance with the applicable system. With this judicial pardon, it is able to answer the demands of the people who want renewal of the penal system in Indonesia. The existing system has not been able to solve the many problems that exist, therefore the community has a great deal of hope for this principle to be applied in the penal system in Indonesia. Where the existing penal system has not been implemented optimally, which only focuses on legal certainty. Meanwhile, in terms of justice, it is still far from fair. To create justice is not as easy as turning the palm of the hand, of course strategic efforts are needed to achieve this goal. The current penal system is still very inhumane which only seems to give torture to the perpetrators.

Not infrequently the perpetrators will actually rebel even more with punishments that are highly oriented towards torture. Punishment should lead to education, and create a deterrent effect on the perpetrators. By torturing them does not mean they will not commit crimes again, it does not even rule out that they will commit acts that are more severe than before. In applying the Criminal Code, one has to be very careful because most of the nature of our society is vengeful. The Criminal Code which is

assessed is not in accordance with the times where many articles must be revised or updated, so that Indonesia is trying to make the Criminal Code from Indonesia and no longer entirely from the Dutch colonial Criminal Code.

Society has long been waiting for a legal system that is truly orientated towards fairest justice. Not only in discourse or in the setting but also in practice. Often times in the criminal justice system in Indonesia there are still many discrepancies or discrimination against certain interests. Not infrequently the small community often gets the impact of losses from decisions they receive that are not fair. This is both in the imposition of sanctions and in the implementation which gives the impression of discriminating against certain groups. In the RKUHP it is regulated regarding the freedom of judges in giving their decisions on a criminal case. This is shown so that judges are not shackled to the rules but also the thoughts and conscience of the judges themselves. This is also intended so that the judge in making his decision is more flexible, which allows the imposition of criminal sanctions to be fairer.

The judge's pardon is also based on the existence of more humane sentencing guidelines, not only focusing on retaliation but also emphasizing aspects of justice. Punishment is not only to provide a deterrent effect for the offenders, but also to think about how in the future the offenders can be well received in the social environment of society. Because it is not only in the community environment that the perpetrators are harmed, but also in the economic, educational and so on, they are also affected. So that punishment must prioritize education, not only related to revenge, torture. This shift in punishment from retributive to restorative is considered to be more humane in imposing criminal sanctions. Because it is not uncommon for the penal system to give the impression of torture to the perpetrators of crimes, after leaving prison they will be more brutal to commit crimes with more severe sanctions. This happened because there was a feeling of revenge for what he received. Which, if we examine the basic nature of Indonesian society, which incidentally is vengeful, so we must be very careful in imposing criminal sanctions.

The criminal issue is indeed very sensitive where it really intersects with the fate, dignity and survival of a person. Many former convicts feel alienated from prison when they leave society. This is what creates a feeling of isolation, lack of confidence and a sense of uselessness, so that sometimes former convicts want to go back to prison. This is why judges must be correct and precise in imposing criminal sanctions in a case that occurs. This judge's forgiveness must be carried out properly in order to achieve the goal in accordance with what is expected. The flexibility of judges is also still relatively foreign to the legal system in Indonesia, therefore it needs supervision and participation from many parties to prevent irregularities that are feared to occur. It does not rule out the possibility that the expansion of the judge's authority will actually create new, more complicated problems. So that this must also be considered considering that there are so many cases that have ensnared judges in Indonesia. There is no guarantee that high-ranking law enforcement officials will not commit fraud. The flexibility of judges must also be balanced with a sense of responsibility and independence of judges to be further enhanced, given the increasing number and complexity of cases that occur.

The large number of cases which are felt to be far from justice in the imposition of criminal sanctions makes this judicial pardon urgent to be implemented immediately. Cases such as stealing mangoes, theft of 3 cocoa pods and many other minor cases have yet to be revealed clearly. This case adds to the unfavorable impression of the community. The public considers law enforcement in Indonesia to be weak and unfair. It is increasingly difficult for the community to seek justice where law enforcers are still only oriented towards statutory regulations, not to achieve justice. This rigid nature often results in a clash of justice in resolving problems that exist in society. This very rigid Criminal Code makes legal experts look for alternative solutions to bridge the gap between legal certainty and justice. so that a balance can be achieved in the criminal justice system. Some experts even argue for a country not to apply imprisonment, because there are many negative impacts that arise from this punishment (Hazairin: 2021). The judge's pardon is very appropriate to meet the demands of society who

have expected a system that is truly oriented towards justice. Because the previous criminal justice system has not been able to be the answer to the problems that occur in this country. With this freedom, it is hoped that the judges will be wiser and more responsible in giving decisions to the defendants.

The verdict that was given to the defendant who was proven guilty but not in prison because of the judge's pardon, this is still being debated because the article in the Criminal Procedure Code does not have a criminal verdict related to judicial pardon. So thus the application of this judicial pardon must really be properly studied in fear that it will conflict with other articles. It is also feared that it will cause chaos and overlap of the applicable legal rules, which can result in ineffectiveness in implementing law in Indonesia. The government is trying to immediately pass the RKUHP into law. In its implementation, it is hoped that all elements of society will be able to support, comply with, and supervise the enactment of the rules in the RKUHP. the rules that are made will work well when all parties are involved and participate in the success of the existing rules. In essence, the judge's decision is very influential on the fate of a person's life. So it is not uncommon for judges to consider both in terms of regulations and from their own conscience. Because at the time of giving a decision it is also supported by the judge's belief in deciding a case he is facing. Becoming a judge is not an easy thing. Maybe if you look at it, it looks easy, but in practice it is very complicated and very risky. Where this judge is also a law enforcer which of course will be an example and provide a good example to the wider community, often judges are even made as a roll model of several people. This freedom or flexibility of judges is indeed very appropriate when applied to the penal system in Indonesia in order to provide or create justice for people who have long hoped for a system that is more oriented to justice than just focusing on laws.

## **The Impact of Judicial Pardon on the Penal System in Indonesia**

Actions that violate the rules will certainly get sanctions, in which the actions that have been committed will be rewarded with an appropriate reward as well. In criminal law, punishment is aimed at those who violate the applicable rules. However, the compensation received is sometimes not in accordance with what someone has done. Becoming a convict is not an aspiration that someone wants to achieve, but because of circumstances and certain motives or goals that make a person commit acts that deviate from the applicable rules. The impact after getting out of prison does not mean that everything will return to normal as before. In fact, this is the initial stage where life will begin again with many differences that will be felt and accepted by ex-convicts. Not infrequently ex-convicts will actually feel alienated after leaving iron bars. These things will make ex-convicts feel isolated, not considered, and lack self-confidence. Many things will be difficult for those who have been in prison, both in terms of social, education and even employment.

Not infrequently to be able to get a decent job some jobs and companies require a certificate of good behavior. This is not something that is easy for someone to accept and carry out, it takes a strong mentality to deal with it in order to move on with life. In fact, the negative impact of imprisonment, namely burdening the state budget, negative stigmatization from society, for heads of families who are unable to support their families, the possibility of committing more serious crimes. With this negative impact, the RKUHP regulates the pardon of judges, which is intended for defendants who commit minor crimes without being imprisoned because there is forgiveness. This is of course very helpful for those who commit minor crimes, so that no negative stigma arises from society. Then the existence of judicial pardon is able to provide justice for the community, because of its more flexible nature where judges are given freedom in giving decisions to defendants.

The hope is that there is a balance between legal certainty and justice which is what most people in Indonesia really look forward to, wanting a justice-oriented system that is not solely focused on legislation alone. But still, in its implementation, strict supervision is needed so that there are no

irregularities that occur when implementing it later. So both the community and officials must coordinate with each other and establish good communication in order to achieve the expected goals. The more harmonious the relationship between elements of the state, the stronger and more orderly life and law enforcement will increase in order to reduce the high crime rate in Indonesia.

## Conclusion

From the description of the discussion above, in order to uphold justice and legal certainty in society, it is necessary to reform the penal system which is more flexible, especially in making judge's decisions. Where judges must be given freedom in making decisions that are not rigid and only focus on statutory regulations. But also must be given freedom of thought in accordance with his conscience. The judge's pardon is seen as an answer to the many demands of society who want a more humane punishment system that does not only prioritize legal certainty but also prioritizes justice. With this concept, it can be a breakthrough to provide a balance between legal justice and legal certainty.

The existing system in the Dutch heritage Criminal Code is considered incapable of providing justice and seems torturing the perpetrators of criminal acts. With a rigid and torturous nature, it still cannot reduce the crime rate in Indonesia. It should be remembered again that the character of the Indonesian people is vengeful, so they must be careful in applying a rule or legal system. The renewal of the penal system in the RKUHP is one of the strategic steps in improving the legal system in Indonesia, especially in criminal law. Indeed, in our country, judicial pardon is very foreign because it has never been implemented in a judicial institution. Meanwhile, in several countries such as Rome, China, France, this concept has been implemented in executive non-judicial institutions. Even so, the implementation of this concept is still relatively new in Indonesia, so there is a need for strict supervision to prevent fraud by law enforcers, especially judges. In the RKUHP it is considered that the criminal system prioritizes justice rather than legal certainty, besides that it is also more flexible than the Dutch heritage Criminal Code.

Thus, the community hopes that the forgiveness of judges can be used as a means to make punishment in Indonesia more humane and to ensure a balance between justice and legal certainty. The hope is that in the future with the ratification of the RKUHP it can uphold justice and legal



certainty. Given that the level of crime that occurs in Indonesia is increasing, it is necessary to update the adequate system. In addition, in order to achieve this goal, it is not something that is easy to achieve, it is necessary to have cooperation between elements of the state. Both law enforcers and the community must coordinate well with each other, establish good communication so that the regulations applied can be implemented properly too. Public participation is very important for the implementation of a good legal system. The community is also required to always be responsive, participate actively and supervise every action or policy issued by the government.

The implementation of the concept of pardoning judges is also inseparable from the concern of experts and legal thinkers who are responsive to the legal system in Indonesia. This concept also arises because of an imbalance between several elements of law, namely the clash between justice and legal certainty, so that in order to create a balance between the two there must be a renewal of a system that bridges the two. It is for judges to further improve their professionalism and independence so that they do not easily abuse their positions, where in Indonesia there are many judges who have been caught in cases of bribery, corruption and so on. Therefore, all elements of society are required to obey and comply with applicable laws in order to create order in the community environment.

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# Culpe poena par esto

**Execute the punishment according to the deed.**