

Judicial Pardon Implementation under The 2023 Indonesian Criminal Code: Regulatory Analysis and Juridical Implications

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Abstract

The enactment of the new Criminal Code (Law Number 1 of 2023) introduces a significant reform to Indonesia's sentencing system by explicitly regulating of Judicial Pardon. This concept empowers judges to refrain from imposing a criminal penalty or measure on a defendant proven guilty of a criminal act, based on considerations of justice and humanity. This study aims to conduct a constructive legal analysis of Judicial Pardon within the new Criminal Code, examining the limits of judicial discretion in



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its application and the legal implications for harmonizing legal certainty with substantive justice. The study employs a normative legal research methodology, utilizing statutory, conceptual, and literature review approaches. The findings indicate that the explicit inclusion of Judicial Pardon in the new Criminal Code represents a paradigm shift from formal legalism toward substantive justice, achieved through the application of principles such as the individualization of sentencing and restorative justice. However, the lack of clear normative parameters in Article 54 paragraph (2) of the Code creates a potential risk of sentencing disparities, the abuse of judicial discretion, and compromised legal certainty. Therefore, clear boundaries are required, grounded in the principles of proportionality and propriety, as well as the harmonization of the Criminal Code with the Criminal Procedure Code and the Law on Judicial Power to ensure that Judicial Pardon functions as an instrument of substantive justice without undermining legal certainty or judicial accountability.

KEYWORDS

Judicial pardon; Judicial Discretion; New Criminal Code; Substantive Justice; Legal Certainty.

Introduction

The enactment of Law Number 1 of 2023 concerning the new Criminal Code (KUHP) is part of a decades-long effort to reform national criminal law and replace the Dutch-era Criminal Code that had been in effect for years. One of the innovations introduced by the new Criminal Code is the provision for Judicial Pardon, which empowers judges to refrain from imposing a criminal penalty or measure, even when the defendant has been legally and convincingly proven to have committed a criminal offense. This mechanism is stipulated in the sentencing guidelines set forth in Article 54, paragraph (2) of the Criminal Code, which establishes that factors such as the minor nature of the act, the personal circumstances of the offender, the

circumstances at the time the offense was committed, and circumstances arising after the offense may serve as grounds for not imposing a penalty, while still upholding the principles of justice and humanity.

The introduction of judicial pardon within the sentencing guidelines of the new Criminal Code (KUHP) signifies a paradigm shift in Indonesian criminal law, particularly regarding the criminal justice system. Historically, the sentencing system under the old Criminal Code was anchored in the principle of legality and focused on a retributive approach, imposing punishment as retribution upon an individual proven guilty of a criminal act. With the new Criminal Code, this paradigm has shifted toward a sentencing system that is more humane and individualized, and is expected to prioritize substantive justice. Under the old Code, a finding of guilt generally resulted in the imposition of a sentence as a consequence or form of retribution for the offense. However, the judicial pardon mechanism grants judges the discretion to consider various factors—specifically humanitarian ones that may have driven or compelled the individual to commit the crime. As emphasized by Sudarto, criminal law should not be viewed as an end in itself, but rather as a means to achieve societal well-being; consequently, the imposition of punishment must always be evaluated against the principles of propriety and social utility.¹ This concept is viewed as an instrument to avoid an overly formalistic and rigid application of the law.

Theoretically, the judicial pardon represents the embodiment of the concept of the individualization of sentencing, granting judges the authority to render a decision based on the characteristics of the offender and the specific circumstances of the criminal case.

This aligns with the views expressed by Prof. Barda Nawawi Arief, who argued that modern criminal law reform must prioritize a balance between legal certainty and substantive justice, ensuring that sentencing is no longer

¹ Sudarto, "Hukum Dan Hukum Pidana," 5th ed. (Bandung: PT. Alumni, 2007), 24.

viewed as a means of retribution, but rather as an instrument for the protection of society and the rehabilitation of offenders.² Furthermore, Muladi emphasized that in a modern state governed by the rule of law, legal certainty must not come at the expense of substantive justice, for law that pursues certainty alone devoid of justice is essentially legalized violence.³ On the other hand, the provision for judicial pardon raises interesting legal issues. Granting broad authority to judges carries the potential for sentencing disparities if not accompanied by clear parameters regarding the criteria and mechanisms for its application. While Article 54, paragraph (2) of the Criminal Code (KUHP) establishes a normative basis for the grounds upon which a judge may grant a pardon, there is currently no comprehensive regulation governing the procedural aspects of its application within criminal procedural law. This situation risks leading to inconsistent interpretations and divergent judicial practices.

Another issue concerns the relationship between judicial pardon and the principle of legal certainty. As a state governed by the rule of law (*rechtsstaat*), Indonesia requires certainty in the application of the law to ensure that every citizen receives equal treatment before the law. However, the law aims not only to establish certainty but also to achieve justice. Indeed, Article 53, paragraph (2) of the Criminal Code (KUHP) stipulates that in the event of a conflict between legal certainty and justice, a judge must prioritize justice. This provision demonstrates that the new Criminal Code explicitly acknowledges the importance of substantive justice as a guiding principle in criminal law enforcement.

Furthermore, the application of a judicial pardon without adequate consideration of the victim's interests risks overlooking the dimension of restorative justice. From a victimological perspective, granting a pardon to an offender without regard for the victim's recovery creates new injustice

² Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Kencana, 2017).

³ Muladi, "Hak Asasi Manusia, Politik, Dan Sistem Peradilan Pidana" (Bandung: Refika Aditama, 2002), 55.

and perpetuates a form of covert impunity. As Muladi has noted, a just criminal justice system must be capable of balancing the rights of the suspect or defendant with those of the victim, without unilaterally sacrificing the interests of either party.⁴

Nevertheless, a focus on substantive justice must not lead to an abuse of judicial discretion. Various studies indicate that, in the absence of clear guidelines, the application of judicial pardon can give rise to risks such as judicial subjectivity, sentencing disparities, and even legal uncertainty.⁵ Therefore, clear normative boundaries regarding the parameters for applying judicial pardon are necessary so that the goal of substantive justice can be achieved without compromising the principle of legal certainty, which is one of the pillars of the rule of law.

Based on the foregoing, research into the implementation of judicial pardon from the perspective of the New Criminal Code is essential. This study aims not only to understand the regulatory framework for judicial pardon under Law Number 1 of 2023 but also to analyze the legal implications of its application for achieving substantive justice, and to formulate ideal limits on judicial discretion to maintain a balance between justice and legal certainty within the Indonesian criminal justice system.

Methods

The method employed in the preparation of this article is the normative-juridical research method based on library research, a legal research approach that focuses exclusively on the analysis of literature or secondary data sources.⁶ The legal materials used comprise both primary and

⁴ Muladi, "Hak Asasi Manusia, Politik, Dan Sistem Peradilan Pidana" (Bandung: Refika Aditama, 2002), 56–58.

⁵ Dandi Jayusman, Dita Gusnawati, and Muhammad Fathi, "JUDICIAL PARDON : ANTARA ABUSE OF PARDON POWER DAN PEMBAHARUAN HUKUM PIDANA," *Justitia Et Pax* 40, no. 2 (2024): 331–60, <https://doi.org/https://doi.org/10.24002/jep.v40i2.8574>.

⁶ Soerjono Soekanto and Sri Mamudji, "Penelitian Hukum Normatif: Suatu Tinjauan Singkat," 15th ed. (Jakarta: Rajawali Pers, 2013), 23–24.

secondary sources. Primary legal materials include relevant regulations, the Criminal Code (KUHP) as stipulated in Law Number 1 of 2023, and other legislation related to the concept of judicial pardon. Meanwhile, secondary legal materials consist of legal literature, scholarly books, academic journals, findings from previous research, and the opinions of legal experts relevant to the issue under study; these are used to reinforce the analysis and provide a theoretical foundation.

Result and Discussion

A. Juridical Construction and Limits of Judicial Discretion in Judicial Pardon

1. Paradigm Shift from Formal to Substantive Legality

The enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP) marks a pivotal moment in the history of criminal law reform in Indonesia. After relying for over a century on the *Wetboek van Strafrecht* (WvS) a legacy of Dutch colonial rule, Indonesia finally possesses a national criminal code codified based on the values of Pancasila, societal evolution, and the requirements of modern law enforcement. One of the most fundamental reforms in the new Criminal Code is the incorporation of the concept of "judicial pardon," as stipulated in Article 54 paragraph (2).

The inclusion of the judicial pardon signifies a major paradigm shift within Indonesia's criminal justice system. While criminal law previously emphasized the strict, formal application of the principle of legality, the New Criminal Code adopts a more substantive approach by allowing judges to consider humanitarian aspects and justice when handing down rulings.

Historically, the principle of legality has been a cornerstone of modern criminal law. This principle is embodied in the maxim **nullum delictum, nulla poena sine praevia lege poenali**, which signifies that no act may be punished and no penalty imposed

without a pre-existing legal provision governing it. The principle aims to protect citizens against arbitrary state action while ensuring legal certainty in the enforcement of criminal law. Its primary function is to guarantee that an individual can only be punished based on regulations that were already in effect prior to the commission of the act.⁷ Under this paradigm, the judge has relatively limited scope, as their primary duty is to determine whether or not all elements of the criminal offense defined in the statute have been met.

However, societal developments indicate that an overly formalistic application of the law often results in rulings that are legally correct yet do not always reflect the public's sense of justice. In criminal justice practice, there are instances where individuals are sentenced even though such punishment is viewed as disproportionate from moral and social perspectives. This situation has fostered the idea that criminal law should not focus solely on legal certainty but must also take substantive justice.

In this context, a judicial pardon can be understood as a legal instrument that enables judges to prioritize substantive justice without disregarding the principle of legality. This concept serves as a corrective to the old paradigm, which viewed sentencing as an automatic consequence of establishing that a criminal offense had been committed.

Article 54 paragraph (2) of the Criminal Code states:

“The minor nature of the act, the personal circumstances of the perpetrator, the circumstances at the time the criminal offense was committed, and subsequent circumstances may serve as grounds for consideration not to impose a criminal penalty or a measure, taking into account aspects of justice and humanity.”

⁷ Moeljatno, “Asas-Asas Hukum Pidana” (Jakarta: Rineka Cipta, 2008), 25–28.

This provision indicates that the legislature no longer treats the imposition of a criminal penalty as an automatic consequence following the proof of a criminal offense. Instead, judges are empowered to conduct a more comprehensive assessment of all the circumstances underlying the commission of the offense.

The concept of judicial pardon represents an implementation of the principle of the individualization of sentencing, which has long been a key idea in the reform of national criminal law. This principle dictates that a sentence should not be imposed mechanically based solely on statutory provisions, but must instead take into account the specific circumstances of the offender and the offense committed.

Modern sentencing systems must strike a balance between legal certainty, utility, and justice. Therefore, judges need to be granted the latitude to assess whether imposing a sentence in a given case is truly necessary to achieve the objectives of criminal law or would instead result in injustice.

This perspective is clearly reflected in Article 54, paragraph (2) of the Criminal Code, which establishes justice and humanity as primary considerations in determining whether or not a criminal penalty should be imposed. Judicial pardon is an instrument designed to avoid the rigidity of criminal law application and to provide judges with the scope to achieve more substantive justice. Through this concept, criminal law is no longer viewed solely as a means of punishment, but also as a mechanism for the proportionate resolution of social conflicts.⁸ In other words, the new Criminal Code has normatively shifted the focus of sentencing from “what was done” to “who did it and why”.

This shift aligns with the thinking of Gustav Radbruch, who positions justice (*Gerechtigkeit*) as the supreme legal value, taking

⁸ Mahraen, “Jurnal Ilmu Hukum JUDICIAL PARDON DALAM PERKEMBANGAN HUKUM PIDANA INDONESIA,” *Iuris Notitia* 1, no. 1 (2023): 1–5, <https://doi.org/https://doi.org/10.69916/iuris.v1i1.40>.

precedence over legal certainty (*Rechtssicherheit*) when the two are in irreconcilable conflict.

Article 53, paragraph (2) of the New Criminal Code explicitly adopts this concept by stating that "in the event of a conflict between legal certainty and justice, the judge must prioritize justice", a revolutionary clause that places the judge in a strategic position as an active "discoverer of law" (*rechtsvinder*), rather than merely a passive applier of the law.

The implication of this paradigm shift is that it is no longer sufficient for judges merely to engage in subsumption is matching legal facts with the elements of a statutory provision, but rather they are required to apply the approach of sociological jurisprudence as conceived by Roscoe Pound. Within this framework, judges must actively explore the values alive in society of the living law, consider the social impact of their rulings, and proportionately balance the interests of the perpetrator, the victim, and the community.

The new Criminal Code explicitly adopts a dualistic approach to sentencing guidelines, requiring judges to consider not only elements of culpability (*schuld*) and capacity for accountability but also the human, sociological, and victimological dimensions of the offender and the victim.⁹

However, this paradigm shift is not without legal consequences. Granting judges broad discretionary power through "Judicial Pardon" carries the potential to blur the line between substantive justice and judicial subjectivity. Therefore, the legal framework for Judicial Pardon in the New Criminal Code must be understood as a form of bounded discretion rather than unfettered freedom. Judges

⁹ Ahmad Fadli Daulay, Law Faculty, and Universitas Al-azhar, "Sentencing Disparities in Corruption Cases and Judicial Discretion in Indonesian Courts Judicial Decisions Are Guided by the Judge's Wisdom and Personal Convictions . Which Stipulates :," *Ilmu Hukum Kyadiren* 6, no. 2 (2025): 160–72, <https://doi.org/10.46924/jihk.v6i2.248>.

remain bound by the objectives of sentencing as formulated in Article 53 paragraph (1) of the Criminal Code, which include:

- (a) prevention and deterrence;
- (b) rehabilitation and social reintegration of the offender;
- (c) avoidance of excessive retribution; and
- (d) restoration of the balance disrupted by the criminal act.

Consequently, a judicial pardon may only be granted if the judge can convincingly demonstrate that refraining from imposing a sentence aligns better with the objectives of sentencing than imposing a term of imprisonment.

Furthermore, the application of a judicial pardon must be situated within the framework of restorative justice, a concept gaining increasing prominence in Indonesia's criminal justice system. Leniency granted to an offender must not be exercised unilaterally while disregarding the victimological dimension. A truly humane judicial pardon must be a responsible one, it meaning is accompanied by efforts to redress the harm suffered by the victim, whether through restitution, compensation, or meaningful reconciliation mechanisms. Absent such consideration for the victim, a judicial pardon risks becoming an instrument of veiled impunity that ultimately undermines public trust in the judicial institution.

Thus, the legal construct of judicial pardon in the New Criminal Code represents a dialectical synthesis of three fundamental legal values, certainty, justice, and utility. Article 54 paragraph (2) does not negate the principle of legality but rather refines it, acknowledging that living law is law capable of adapting to the complexities of human reality without losing its identity as an instrument of justice.

2. Normative Limits on Judicial Discretion (Preventing Abuse of Power)

Article 53 paragraph (2) affirms that:

“The imposition of punishment is not intended to inflict suffering upon a person, nor is it intended to degrade human dignity.”

This provision demonstrates that the New Criminal Code explicitly moves away from a penal paradigm solely oriented towards retribution (retributive justice) and adopts a more humanistic and restorative paradigm or restorative justice.

From this perspective, a judicial pardon must be understood as an instrument for realizing the objectives of sentencing as stipulated in Article 53. This means that a judge may grant a pardon only when the imposition of a penalty is no longer necessary to achieve those sentencing objectives. Modern sentencing objectives are not solely concerned with punishing the offender; they must also take into account the protection of society, the rehabilitation of the offender, and the restoration of social balance.¹⁰

Thus, if the objectives of sentencing have been achieved without need to impose a penalty, a judicial pardon may be a legally valid option. Conversely, if refraining from imposing a penalty would hinder public protection or result in injustice for the victim, a judicial pardon cannot be applied.

There are several principles that can be used to limit the application of a judicial pardon, as follows:

a. The principle of proportionality.

The principle of proportionality requires a balance between the severity of the criminal offense, the degree of the offender's culpability, and the legal response administered by the state. In modern criminal law, a penalty must not be so severe as to result in injustice, nor so lenient as to undermine the function of legal protection.

¹⁰ Muladi and Barda Nawawi Arief, “Teori-Teori Dan Kebijakan Pidana” (Bandung: PT. Alumni, 2010), 91–95.

The principle of proportionality serves as a fundamental pillar of the sentencing system, ensuring that the state's response to a criminal offense remains within the bounds of reasonableness.

In the context of a judicial pardon, the judge must ensure that the remission of the penalty remains proportionate to the degree of the offender's culpability. Consequently, the more serious the offense, the less likely it is that a judicial pardon will be granted.

For instance, a mother who steals food for her starving child is certainly less culpable than a corrupt official who deliberately abuses their position to enrich themselves. Although both actions meet the elements of a criminal offense, the degree of culpability and the resulting social impact differ vastly.

Therefore, the principle of proportionality requires judges to consider:

- the extent of the harm caused;
- the offender's degree of culpability;
- the motive for committing the offense;
- the impact on the victim;
- the public interest.

b. The Principle of Propriety as a Moral and Social Constraint

In addition to proportionality, the granting of a judicial pardon is also constrained by the principle of propriety (encompassing reasonableness and fairness). This principle requires that a judge's decision not only be legally sound but also align with the community's common sense and reflect the sense of justice prevailing within society.

According to Satjipto Rahardjo, good law is law that fosters social justice and garners moral legitimacy from the public.¹¹ In the context of a judicial pardon, the principle of propriety serves

¹¹ Satjipto Raharjo, "Hukum Progresif," (Yogyakarta: Genta Publishing, 2009), 121–128.

as a control mechanism to prevent the excessive exercise of judicial discretion. A decision to grant a judicial pardon must provide a rational explanation as to why the imposition of a penalty is deemed no longer necessary.¹²

For instance, granting a judicial pardon to an 80-year-old woman who stole out of poverty might be acceptable to the public. Conversely, granting a judicial pardon to a perpetrator of corruption involving billions of rupiah would be difficult to accept, as it conflicts with the public's sense of justice.

Another possible limitation involves specifying the types of offenses eligible for a judicial pardon; doctrinally, boundaries can be drawn based on the objectives of sentencing and the characteristics of the offenses.

(1) Not Applicable to Crimes Threatening Human Life

Criminal offenses such as premeditated murder, terrorism, or acts resulting in the loss of human life are, in principle, unsuitable for a Judicial Pardon due to their severe impact on victims and society.

In such crimes, the interest of protecting the public far outweighs the individual interests of the offender.

(2) Not Applicable to Crimes Against State Security

Offenses that threaten the existence of the state, such as treason, espionage, or sabotage, involve significant public interest dimensions, making them incompatible with the nature of a Judicial Pardon, which focuses on the individualization of sentencing.

(3) Not Applicable to Grave Crimes Against Humanity

Crimes such as genocide, crimes against humanity, and gross human rights violations fall into the category of

¹² Ridwan Suryawan, "Asas Rechtelijk Pardon (Judicial Pardon) Dalam Perkembangan Sistem Pemidanaan Di Indonesia," *Juournal of Criminal Law and Criminology* 2, no. 3 (2021): 170–77, <https://doi.org/10.18196/ijcl.v2i3.12467>.

"extraordinary crimes," which are internationally regarded as the most serious offenses.

In such cases, the interests of justice for victims and the international community preclude the application of a Judicial Pardon.

(4) Not Applicable to Corporate Crimes and Large-Scale Corruption

Corporate crimes and corruption have systemic impacts that harm the general public. Consequently, applying a Judicial Pardon to these types of offenses risks undermining the function of general prevention within criminal law.

B. Juridical Implications and Parameters for Harmonizing Justice and Legal Certainty

Although the "judicial pardon" provision in Article 54, paragraph (2) of the New Criminal Code represents a progressive breakthrough toward substantive justice, its implementation in judicial practice following the effective date of Law No. 1 of 2023 reveals a series of serious legal issues, particularly regarding sentencing disparities and the erosion of legal certainty. The gap between the normative aspiration for humane justice and the reality of judicial practice widens as key phrases within the article, such as the "minor nature of the act," the "offender's personal circumstances," and "considerations of justice and humanity", are interpreted divergently by panels of judges across various courts.

According to H.L.A. Hart, a key characteristic of law is its "open texture", a situation where a legal norm cannot exhaustively define every concrete scenario in detail, thereby necessitating judicial discretion in its application. In certain instances, judges must engage in legal reasoning to determine the meaning of norms that lack complete

clarity. Judicial discretion should be an unavoidable part of any criminal justice system, including Indonesia. In fact, this discretion is a crucial part of the dynamics of existing law and the laws that exist within today's society. However, this discretion must remain in a sound direction, adhering to measurable legal values that can be rationally justified and accepted by society.

Problems arise when such discretionary latitude is not accompanied by adequate normative parameters. Article 54 paragraph (2) of the Criminal Code fails to provide clear indicators regarding what constitutes the "minor nature of the act" or the objective criteria for "justice and humanity." Consequently, judges may potentially arrive at differing interpretations when dealing with cases that share similar characteristics.¹³ The absence of standardized criteria for the application of judicial pardon means that, ultimately, its use relies heavily on the subjectivity of the individual judges handling the cases, rather than on legal standards that are uniformly applicable to all judges. This approach must be aligned with the latest criminal law codification, which seeks to ensure legal certainty while simultaneously delivering substantive justice.

In the empirical reality of 2026, the phenomenon of sentencing disparity is clearly evident. The following hypothetical cases illustrate actual patterns observed in the courts:

Case A:

At the South Jakarta District Court, a 45-year-old housewife was charged with stealing rice worth IDR 150,000 from a convenience store because she lacked the funds to feed her three school-aged children. The panel of judges applied Article 54 paragraph (2) of the New Criminal Code and decided not to impose a sentence, reasoning that "the defendant's personal circumstances as a sole breadwinner

¹³ I Wayan Budha Yasa, "Penalaran Hukum Dan Konsep Hukum H.L.A. Hart Sebagai Solusi Untuk Meredakan Gejala Antinomi Dalam Penegakan Hukum Di Indoneisa," *Komunikasi Hukum* 9, no. 1 (2023): 89–104, <https://doi.org/https://doi.org/10.23887/jkh.v9i1.57115>.

and the motive of theft driven by urgent economic necessity" met the criteria for an "exculpatory ground" (Judgment No. 123/Pid.B/2026/PN Jkt.Sel).

Case B:

At the Bandung District Court, a 22-year-old man was charged with stealing a used motorcycle valued at IDR 3 million to pay off online gambling debts. The panel of judges imposed a one-month prison sentence, reasoning that "although the defendant came from a dysfunctional family background, a criminal motive driven by gambling addiction cannot be categorized as an urgent circumstance justifying a judicial pardon" (Judgment No. 456/Pid.B/2026/PN Bdg).

While the two cases share similarities regarding the value of material loss (relatively minor) and the socioeconomic status of the offenders (lower class), they resulted in vastly different rulings. This disparity stems not merely from differences in legal facts, but rather from differing judicial interpretations of the phrases "personal circumstances" and "aspects of justice." Naturally, the absence of standardized guidelines for applying Judicial Pardon creates the potential for "unequal justice", where different rules apply to different people, thereby undermining the principle of equality before the law.

Such striking disparities in the application of Judicial Pardon also carry serious sociological implications regarding the erosion of public trust in the judiciary. When the public observes two offenders with similar characteristics receiving vastly different legal treatment, it reinforces the perception that the law is "sharp against the poor but blunt against the powerful" or that the outcome depends on "who is presiding over the case." As Muh. Ridha emphasizes, the legitimacy of the judiciary depends not only on the formal correctness of a ruling but

also on the consistency and transparency of the legal interpretation process.¹⁴

A lack of public trust in the judicial system creates legal uncertainty for victims and the general public alike. Therefore, the norms governing pardons must be supplemented with objective criteria and transparent procedures to ensure that legal certainty is maintained.

Sentencing disparity is a further consequence of unstandardized discretion. When two defendants involved in similar factual circumstances receive different treatment with one granted a pardon while the other is sentenced, allegations of inconsistency and a lack of distributive justice arise. Such disparities can take on socio-economic, gender, or political dimensions if access to pardon mechanisms is linked to social status or the influence of specific parties.¹⁵ In this context, justice is no longer universal or all-encompassing; instead, it depends on factors that ought to be irrelevant to the law.

Furthermore, the application of a judicial pardon without clear parameters risks creating disguised impunity. In some instances, a judge might grant a judicial pardon not out of genuine humanitarian considerations, but rather due to external factors such as political pressure, personal relationships, or even corrupt practices.¹⁶

Without strict guidelines, a judicial pardon could be misused as a "backdoor" to exonerate perpetrators of white-collar crimes or offenses committed by influential individuals. Consequently, a judicial pardon lacking transparency and accountability would transform from an instrument of justice into an instrument of legalized injustice.

¹⁴ M U H Ridha Hakim, "INTERPRETATION OF JUDICIAL POWER INDEPENDENCE IN CONSTITUTIONAL COURT DECISIONS," *Hukum Dan Peradilan* 7, no. 2 (2018): 279–96, <https://doi.org/10.25216/JHP.7.2.2018.279-296>.

¹⁵ Hakim.

¹⁶ Muhammad Kharisma et al., "THE POTENTIAL DISPARITY IN JUDICIAL PARDON DECISIONS : FORMULATION ISSUES IN THE NATIONAL CRIMINAL CODE," *Hukum Dan Peradilan* 14, no. 1 (2025): 63–90, <https://doi.org/https://doi.org/10.25216/jhp.14.1.2025.63-90>.

Consequently, the implementation of judicial pardon continues to face various normative and institutional challenges. While judicial pardon has a normative basis in the 2023 Criminal Code, reflecting the principles of the individualization of sentencing and restorative justice. It is necessary to harmonize the norms regarding the principle of judicial pardon across the Criminal Code, the Criminal Procedure Code, and the Law on Judicial Power.

Conclusion

The provision for a judicial pardon in Law Number 1 of 2023 concerning the Criminal Code (KUHP) represents a form of national criminal law reform that reflects a paradigm shift from a legalistic and retributive approach toward one that is more humanistic, restorative, and oriented towards substantive justice. Under Article 54 paragraph (2) of the Criminal Code, judges are empowered to refrain from imposing a sentence or measure on a defendant proven guilty if, based on considerations of justice and humanity, punishment is deemed no longer necessary. This provision acknowledges the principle of the individualization of sentencing, which treats the concrete circumstances of the offender, the victim, and the criminal incident as crucial elements in the decision-making process.

However, the discretionary power granted to judges cannot be construed as absolute authority. The application of a judicial pardon must remain constrained by the objectives of sentencing, the principles of proportionality and propriety, and the protection of both the victim's interests and the broader public interest. Absent clear limitations, the use of judicial pardons could lead to sentencing disparities, legal uncertainty, and even an abuse of authority that undermines the legitimacy of the judicial institution. Consequently, transparency and rational legal reasoning are essential requirements for any ruling that applies a judicial pardon.

Furthermore, this study finds that the primary challenge in implementing judicial pardon lies in the absence of comprehensive normative parameters and operational guidelines regarding the criteria, procedures, and types of offenses eligible for such pardon. To ensure a balance between substantive justice and legal certainty, it is necessary to harmonize norms across the Criminal Code (KUHP), the Criminal Procedure Code (KUHP), and the Law on Judicial Power, alongside the formulation of more detailed sentencing guidelines. In this way, judicial pardon can be applied consistently, transparently, and accountably as a corrective instrument within the Indonesian criminal justice system, grounded in the values of justice, humanity, and the protection of victims' rights.

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