JOURNAL OF LAW AND POLICY TRANSFORMATION

87 Vol. 11 Issue 1, 2026, 87-112

Reformulation of Judicial Forgiveness Policy Based on Justice Values That Are Useful in Criminal Law Enforcement

Annisa Dian Permata Herista[1*], Maroni[2], Heni Siswanto [3]

[1-3]Doctoral Program in Law, Faculty of Law, University of Lampung, Indonesia
Email: annisadianpermataherista@gmail.com

History of Article
Submitted : 2026-05-19
Revised : 2026-06-22
Accepted : 2026-07-10
DOI ` : https://doi.org/10.37253/jlpt.v11i1.12252

Copyright©2025 by Author(s). This work is licensed under a CreativeCommons Attribution-Non Commercial-Share Alike 4.0 International License.All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

Abstract

This study examines the reformulation of judicial pardon policy based on the value of justice that is beneficial in the context of Indonesian criminal law enforcement after the ratification of the National Criminal Code. The paradigm shift from retributive to restorative justice marks a fundamental transformation of the criminal justice system that is no longer solely oriented towards retribution, but also towards recovery and humanity. However, the existence of judicial pardon provisions in Article 54 paragraph (2) and Article 70 of the National Criminal Code has not been accompanied by comprehensive procedural law regulations, thus creating uncertainty in its implementation. This study uses a normative juridical method with a statute approach and a theoretical approach to analyze the urgency of reformulating judicial pardon policy. The results of the study indicate that a paradigm shift and legal culture of judges are needed from formal legalism to substantial humanism, the establishment of clear guidelines and implementation mechanisms through a dismissal process system based on the checklist of Article 70, and the integration of restorative justice values and Pancasila in every stage of the examination. This reformulation includes mandatory inclusion of sentencing objectives and guidelines in sentencing decisions, requirements for frank confessions from defendants, victim rehabilitation as a key indicator, strict restrictions on recidivism and cases of power imbalance, and an efficient expedited procedure mechanism that still upholds human rights. This policy is expected to address correctional overcrowding, encourage social rehabilitation, and increase public trust in Indonesia's criminal justice system.

Keywords: Judicial Pardon; Beneficial Justice; National Criminal Code; Restorative Justice.

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

INTRODUCTION

In Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code) which has been ratified, there is a fundamental value of balance where the National Criminal Code is no longer oriented towards retributive justice that prioritizes revenge, but is oriented towards the modern criminal law paradigm. The shift in the orientation of punishment in the colonial era which was retributive towards restorative marks a change in the criminal system that does not only focus on the restoration and fulfillment of the rights of victims who were robbed due to crime, but also on sentencing that takes into account the sense of justice and humanity for the perpetrators. The National Criminal Code is part of the changes that aim to replace the Criminal Code/WvS because the basic ideas/concepts of thought and philosophical values during its drafting period are considered no longer in accordance with the basic ideas/concepts of thought formulated in the concept of nationality (Arief, 2010). The basic ideas/concepts of thought and philosophical values of the drafting of the National Criminal Code are Pancasila whose interweaving of ideas in each of its principles reflects the Values of Divinity, Humanity and Community Values. The ratification of the National Criminal Code will certainly have an impact on the implementation of criminal law in Indonesia, where the National Criminal Code regulates matters that are not yet known in the Criminal Code/WvS.

One of these new provisions is the concept of judicial pardon, also known as Rechterlijk Pardon, non-imposing of penalty, or dispensa de pena. In various countries, in certain circumstances, judges may waive punishment for perpetrators of criminal acts. In foreign criminal law systems, several legal concepts have formulated forgiveness within their parent legal systems, allowing judges to grant pardons or withhold punishment from perpetrators in applying the law (Sukma &

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

Cumbhadrika, 2023). In accordance with the National Criminal Code, the principle of judicial pardon is based on the following ideas or principles:

1. Avoiding the rigidity/absolutism of criminal punishment;
2. Providing a safety valve (veiligheidsklep);
3. A form of judicial correction to the legality principle;
4. Implementing/integrating the values or paradigms of wisdom in Pancasila;
5. Implementing/integrating the objectives of criminal punishment into the sentencing requirements (because in granting forgiveness, judges must consider the objectives of the punishment);
6. The conditions or justification for punishment are not only based on the existence of a criminal act (principle of legality) and error (principle of culpability), but also on the purpose of punishment.

The judge's authority to grant forgiveness (Rechterlijk Pardon) by not imposing any criminal sanctions/actions is balanced by the principle of culpa in causa (or actio libera in causa), which authorizes the judge to hold the perpetrator of a crime accountable even if there are grounds for expungement, if the perpetrator is blameworthy (blameable) for the circumstances that constitute the reason for expungement. Therefore, the judge's authority to forgive (not impose a sentence) is balanced by the authority to impose a sentence even if there are grounds for expungement. The National Criminal Code (KUHP) defines the purpose of punishment as outlined in the general provisions of Article 51 and the sentencing guidelines in Article 54, which allow judges to pardon perpetrators of crimes deemed forgivable even if clearly proven guilty. Article 51 of the National Criminal Code states that the purpose of punishment is:

1. Preventing the commission of crimes by upholding legal norms for the protection of society;

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

2. Socializing the convict through providing guidance so that they become good and useful individuals;
3. Resolving conflicts caused by criminal acts, restoring balance, and bringing peace to society;
4. Absolving convicts of guilt.

The provisions on the objectives of criminal punishment above explain that criminal punishment has a noble purpose, namely preventing crime for the sake of protecting society. Criminal punishment also aims to develop convicts to become good and useful individuals, and is tasked with resolving conflicts, restoring balance, and also bringing a sense of peace within society. The objectives of criminal punishment above contain societal values that are in accordance with the character of the Indonesian nation (Pancasila). Furthermore, the objectives above are more integrative, focusing more on the perpetrator of the crime than the criminal act itself (Flora, 2018). Article 52 of the National Criminal Code is also no less important in reconstructing the objectives of criminal punishment because it states that "criminal punishment is not intended to degrade human dignity," this indicates that the objectives of criminal punishment in the National Criminal Code are highly humanitarian and allow for forgiveness by judges. In addition to the objectives of criminal punishment that can allow for forgiveness by judges, the guidelines for criminal punishment in the National Criminal Code clearly show the formulation of forgiveness in the substance of its formulation.

In the National Criminal Code, Article 54 paragraph (1) of the sentencing guidelines states that in sentencing, it is mandatory to take into account things that are oriented towards the perpetrator of the crime, such as the form of the error, motive and purpose, the perpetrator's mental attitude, how to commit a crime, the attitude and actions of the perpetrator after committing a crime, life history, social and economic conditions of the perpetrator, the influence of the crime on the perpetrator's future, the influence of the crime on the victim, forgiveness from

the victim and/or his/her family, and the legal and justice values that exist in society (Gunarto, 2009). The existence of sentencing guidelines in Article 54 paragraph (1) of the Criminal Code above, can enable judges in the future sentencing system to be able to see the orientation of criminal cases more closely to the perpetrator of the crime, not only on his/her actions that violate the law and can give judges the freedom to assess the perpetrator and even provide forgiveness to the perpetrator of the crime. In the sentencing guidelines, Article 54 paragraph (2) of the National Criminal Code states that the lightness of the act, the personal circumstances of the perpetrator, or the circumstances at the time the act was committed or that occurred subsequently, can be used as a basis for consideration not to impose a sentence or not to impose action by considering aspects of justice and humanity (Sari, 2024). With this basis, the judge will have legal standing to be able to forgive people who have clearly committed a crime on the grounds of the perpetrator's personal circumstances and humanitarian considerations. The explanation of Article 54 paragraph (2) of the National Criminal Code states that the provisions in this paragraph are known as the principle of rechterlijke pardon or judicial pardon which gives the judge the authority to forgive someone who is guilty of committing a minor crime. This forgiveness is included in the judge's decision and must still be stated that the defendant is proven to have committed the crime charged to him. The provision for pardon by the judge is not in the Criminal Code/WvS. Article 54 paragraph (2) of the Criminal Code emphasizes a possibility that can conclude that by adhering to the purpose of punishment in Article 51 and referring to the guidelines for punishment that are oriented towards the perpetrator in Article 54 paragraph (1), the criminal system in Indonesia will be able to forgive criminals by considering the aspects of justice and humanity. This regulation provides the possibility for judges to not continue to impose criminal

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

sentences on defendants even though they have been proven to have committed a minor and non-serious crime. Referring to Article 70 of the National Criminal Code regarding imprisonment which has also included criminal guidelines related to the idea of forgiveness or the limits of not imposing a sentence, Article 70 paragraph (1) of the National Criminal Code explains that by still considering Articles 51 to 54, imprisonment as far as possible will not be imposed if certain circumstances are found, such as the defendant is a child, the defendant is over 75 years old, the defendant has committed a crime for the first time, losses and The victim's suffering was not too great, the defendant had paid compensation to the victim, and other mitigating circumstances existed (Sari, 2024). Based on the above background, the problems examined in this research are: how is judicial forgiveness implemented in criminal law enforcement in Indonesia today? What is the urgency of reformulating judicial forgiveness policies based on justice values that are beneficial in criminal law enforcement? And how can judicial forgiveness policies be reformulated based on justice values that are beneficial in criminal law enforcement?.

RESEARCH METHOD

This research uses a normative legal research method that examines law as a norm or das sollen. The approaches used are the statute approach and the theoretical approach (Antony et al., 2026). The statutory approach is carried out by examining all laws and regulations related to judicial forgiveness, especially the National Criminal Code and the Criminal Procedure Code (Law No. 20 of 2025), as well as their implementing regulations. The theoretical approach is carried out by examining relevant legal concepts and theories, including the theory of punishment, the theory of justice, the theory of utility, and the theory of restorative justice (Tan, 2021). The data sources used are secondary data consisting of primary legal materials (statutory

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

regulations), secondary legal materials (textbooks, scientific journals, research results, and legal articles), and tertiary legal materials (legal dictionaries and encyclopedias) (Qamar & Rezah, 2022). Data collection techniques are carried out through library research by collecting, reading, and analyzing various relevant literature. Data analysis was conducted qualitatively using a descriptive-prescriptive method, namely describing the existing legal conditions and then providing prescriptions or policy recommendations that should be implemented to realize judicial forgiveness based on beneficial justice values (Disemadi, 2022).

RESULT AND DISCUSSION

The Application of Judicial Pardons in Criminal Law Enforcement in Indonesia

The current application of judicial pardons in criminal law enforcement in Indonesia aims to achieve a balance between firm law enforcement and humanitarian policies. Judicial pardons applied with the principle of beneficial justice can provide solutions to various challenges in the criminal justice system, including reducing overcrowding in correctional institutions, encouraging social rehabilitation, and increasing public trust in the judiciary (Arief, 2011). In the context of the National Criminal Code, judicial pardons are regulated in several key articles. Article 51 of the National Criminal Code regulates the purpose of punishment, which is no longer solely retributive, but also encompasses prevention, development, conflict resolution, restoration of balance, and exoneration. This orientation provides a philosophical foundation for judges to consider humanitarian aspects in issuing decisions (Robensyah et al., 2026).

Article 54 paragraph (1) of the National Criminal Code provides comprehensive sentencing guidelines by requiring judges to consider eleven important aspects, including the

perpetrator's form of culpability, motive and purpose, mental attitude, life history, social and economic circumstances, the impact of the crime on the perpetrator's future, the impact on the victim, the victim's forgiveness, and prevailing legal values. These guidelines allow judges to make a holistic assessment of the defendant, not solely based on the act itself. A key provision is contained in Article 54 paragraph (2) of the National Criminal Code, which explicitly regulates the principle of legal pardon. This article states that the minor nature of the act, the perpetrator's personal circumstances, or the circumstances at the time of the act or subsequent events can be used as a basis for not imposing a sentence or imposing sanctions, taking into account aspects of justice and humanity. This provision provides legal standing for judges to pardon defendants who have clearly committed a crime.

Article 70 of the National Criminal Code provides more specific guidelines regarding when imprisonment should be avoided, as far as possible. This article details 15 circumstances that can be taken into consideration, including: the defendant is a child, the defendant is over 75 years old, the defendant is a first-time offender, the victim's losses and suffering are not too great, the defendant has paid compensation to the victim, the crime occurred due to very strong incitement, the victim encouraged the crime to occur, and various other mitigating circumstances. However, Article 70 paragraph (2) of the National Criminal Code provides a clear limitation that this provision does not apply to imprisonment of more than five years, crimes that are threatened with special penalties, crimes that endanger society, and crimes that harm state finances. This limitation shows that the judge's forgiveness cannot be applied absolutely, but must consider the severity of the crime and the public interest.

In practice, the application of judicial forgiveness faces several significant challenges. First, the absence of a clear and detailed procedural legal mechanism in the new Criminal

Procedure Code (Law No. 20 of 2025) makes it difficult for judges to operationalize the provisions of forgiveness. Second, there is still an old paradigm among law enforcement that emphasizes formal-legalistic legal certainty over substantive justice (Sukma & Cumbhadrika, 2023). Third, the absence of uniform objective standards can lead to disparities in decisions and the potential for abuse of authority (Rahardjo, 2009). Nevertheless, judicial forgiveness provides significant benefits to the criminal justice system. From a philosophical perspective, judicial forgiveness embodies the values of Pancasila, particularly the Second Principle (Just and Civilized Humanity) and the Fifth Principle (Social Justice for All Indonesian People). From a sociological perspective, judicial forgiveness aligns with Indonesian culture, which prioritizes deliberation, kinship, and social harmony. From a legal perspective, judicial forgiveness serves as a correction to the rigidity of the principle of legality and provides a safety valve (veiligheidsklep) within the criminal justice system. Therefore, synergy between criminal justice theory, criminal law policy, and judicial practice is necessary so that judicial forgiveness can provide optimal benefits for the legal system and society as a whole. Judicial forgiveness should be viewed not as a weakening of law enforcement, but as an instrument for achieving more substantive and humane justice (Wicaksono et al., 2025).

The Urgency of Reformulating Judicial Pardon Policies Based on Beneficial Justice Values

The urgency of reformulating judicial forgiveness policies based on values of justice that are beneficial in criminal law enforcement is based on several fundamental considerations. First, it considers cultural and religious aspects that have long been part of Indonesian social life. The culture of deliberation and conflict resolution within the family prioritizes social harmony over repressive punishment (Sukma & Cumbhadrika,

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

2023). Similarly, in the religious teachings embraced by the majority of Indonesians, forgiveness is a primary value recommended in dispute resolution, especially if it can provide greater benefits for the individual and society. Second, the restorative justice approach emphasizes the restoration of the victim's well-being, the perpetrator's responsibility, and reconciliation between the two. Judicial forgiveness, from this perspective, considers not only individual interests but also broader social welfare. Restorative justice differs fundamentally from retributive justice, which focuses solely on retribution against the perpetrator. In restorative justice, the primary goal is to restore relationships damaged by the crime, provide an opportunity for the perpetrator to take responsibility for his actions, and ensure that the victim receives proper reparation (Adamsyah et al., 2023).

Third, Pancasila, as the foundation of the state, embodies values of justice that are not only formal and legal in nature but also based on just and civilized humanity. The Second Principle of Pancasila explicitly emphasizes the humanitarian aspect, meaning that every legal policy must consider human dignity. Judicial pardons are a concrete implementation of Pancasila values in the criminal justice system, where justice is not only understood as the rigid application of the law, but as achieving a balance between legal certainty, fairness, and expediency. Fourth, the new National Criminal Code provides a clearer direction in sentencing, namely not solely oriented towards retribution but also taking into account the broader benefits for society. The sentencing guidelines in the National Criminal Code emphasize that punishment must be balanced, proportional, and consider aspects of justice, legal certainty, and expediency (Sukma & Cumbhadrika, 2023). These three aspects must go hand in hand and cannot be separated from one another.

Fifth, the overcrowding of correctional institutions in Indonesia urgently requires alternative sentencing solutions.

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

Data shows that many correctional institutions in Indonesia are operating above capacity, with some reaching 200-300% of their intended capacity. This situation not only violates the human rights of inmates but also hinders the goals of rehabilitation and rehabilitation (Pramudhito, 2021). Judicial pardons can be one solution to reduce the burden on correctional institutions, particularly for minor crimes where the perpetrators have the potential to be rehabilitated outside the institution. Sixth, there is a need to increase public trust in the criminal justice system. The public is increasingly critical of court decisions that are perceived as not reflecting a sense of justice. Minor cases that are processed through the courts and result in convictions often raise questions in the community about the proportionality of punishment. With a clear judicial pardon mechanism based on the values of beneficial justice, it is hoped that this will increase the legitimacy of the justice system in the eyes of the public.

Seventh, the global paradigm shift in the criminal justice system increasingly emphasizes humanism and effectiveness. Various countries have developed judicial pardon systems or similar mechanisms with positive results. Comparative studies show that countries such as the Netherlands, France, and Portugal have successfully integrated the concept of judicial pardon into their legal systems with clear and accountable mechanisms. Eighth, the need to correct the rigidity of the formal legality system. The principle of legality, which states "nullum delictum nulla poena sine praevia lege poenali," is indeed important for ensuring legal certainty, but its overly rigid application can lead to injustice (Farikhah, 2018). Judicial pardons function as a judicial corrective to the legality principle, providing the flexibility necessary to achieve substantive justice without sacrificing overall legal certainty. Ninth, the importance of integrating the purpose of punishment into the sentencing requirements. In traditional criminal justice systems, the requirements for punishment are based solely on the existence of

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

a crime (the principle of legality) and guilt (the principle of culpability). However, in the concept of judicial forgiveness, the purpose of sentencing is also an important consideration. Judges must consider whether imposing a sentence will achieve the purpose of sentencing as stipulated in Article 51 of the National Criminal Code, or whether forgiveness would be more effective in achieving that goal (Sukma & Cumbhadrika, 2023).

Tenth, the urgency of creating a more efficient justice system. The Indonesian criminal justice system faces a massive caseload. With an effective judicial pardon mechanism, qualifying minor cases can be resolved more quickly, freeing up judicial resources to focus on more serious and complex cases. Based on the aforementioned considerations, reformulating judicial pardon policies based on beneficial values of justice is urgently needed. This reformulation must encompass not only the substantive aspects of the law, but also procedural law and legal culture within law enforcement. Thus, the implementation of judicial pardons can create a more humane, effective justice system, and one that balances the rights of victims, perpetrators, and the interests of the wider community.

Reformulation of Judicial Pardon Policy Based on the Principle of Socially Beneficial Justice

Reformulating judicial pardon policies based on justice values that are beneficial in criminal law enforcement includes three main aspects: shifting the legal paradigm from punishment to social recovery, establishing clear implementation guidelines, and systematic procedural mechanisms.

a. Paradigm Shift and Changes in the Legal Culture of Judges in Sentencing. A paradigm shift is an important foundation in reformulating judicial pardon policy. The old legalistic-formalistic paradigm must transform into a humanistic-substantive paradigm. In the old paradigm, judges tended to act as "mouthpieces of the law" (*la bouche de la loi*), simply

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

applying the wording of the law without considering the social context, the perpetrator's condition, or the impact of punishment on society. This paradigm arose from the influence of legal positivism, which prioritizes legal certainty above all else. The new paradigm needed is a progressive legal paradigm that views law as an institution aimed at leading people to a just, prosperous, and happy life (Setiawan & Ismail, 2023). In the context of judicial pardon, this means judges are no longer fixated solely on the question "did the defendant commit an act prohibited by law?" but also ask "will the imposition of punishment achieve the objectives of punishment and benefit all parties?"

This paradigm shift must be accompanied by a shift in the legal culture of judges. Legal culture is the mental attitude and behavioral patterns of law enforcers in dealing with the legal system. Currently, many judges still adhere to a legalistic legal culture, where they feel safer applying the law textually without engaging in progressive interpretations. This is understandable because the judicial career and accountability system values "safe" decisions over innovative ones. To change the judicial culture, several strategic steps are necessary. First, comprehensive education and training on the philosophy and mechanisms of judicial forgiveness. The Supreme Court needs to organize a judicial education program that not only teaches the technical-legal aspects of judicial forgiveness, but also its philosophical and sociological aspects. Judges need to understand that forgiveness is not a form of weakness or compromise with the law, but rather a manifestation of higher justice.

Second, changes are needed in the judicial evaluation and accountability system. Currently, judges who issue pardon decisions may face questions or criticism, both from superiors and the public. The evaluation system needs to be changed so

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

that judges who issue pardons with careful consideration and strong arguments are recognized as judges who have the courage to apply the law progressively and humanely. Third, strong leadership from the Supreme Court is needed to encourage the implementation of judicial pardons. The Supreme Court can issue a Circular Letter (SEMA) or a Supreme Court Regulation (PERMA) that provides Technical guidelines for the implementation of judicial pardons, as well as providing case examples that can be used as references. Furthermore, the Supreme Court can also establish a panel of experts or a special team to provide assistance to judges facing cases that are potentially eligible for pardons. Fourth, there needs to be dialogue and outreach to other stakeholders in the criminal justice system, including prosecutors, advocates, and the general public. Prosecutors need to understand that judicial pardons do not indicate a failure of their prosecution, but rather are part of a justice system aimed at achieving substantive justice. Advocates need to understand how to effectively petition for pardons for their clients. The general public needs to understand that judicial pardons do not equate to impunity or condoning crimes. Fifth, there needs to be a monitoring and evaluation mechanism for the implementation of judicial pardons. The Supreme Court needs to collect data on the number of cases pardoned, the characteristics of those cases, the judges' considerations, and the impact on the perpetrators and society. This data is crucial for evaluating the effectiveness of the policy and making adjustments if necessary.

b. Building a New Paradigm for Judicial Legal Culture in Criminal Procedure Building a new paradigm for judicial legal culture requires systematic and sustainable transformation. This new paradigm must be built on a foundation of beneficial justice, integrating three elements: legal certainty, justice, and utility. These three elements must be viewed as an inseparable whole, not as mutually

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

exclusive options. Legal certainty remains crucial to ensure the predictability and consistency of decisions (Sia & Sujono, 2024). However, legal certainty should not be interpreted rigidly as a requirement to always impose a penalty when a legal violation occurs. Legal certainty in the context of judicial pardons means having clear guidelines on when and how pardons can be granted, thereby avoiding arbitrariness or uncertainty for justice seekers.

Justice must be understood not only as procedural justice but also as substantive justice. Procedural justice is fulfilled when the case examination process is conducted in accordance with applicable procedural law. However, substantive justice questions whether the final outcome of the process is truly fair to all parties. Judicial forgiveness is an instrument for achieving substantive justice, especially in cases where imposing a sentence would actually lead to greater injustice. The utility in the context of judicial forgiveness must be measured from various perspectives (Sutiyoso, 2010). First, the benefit to the perpetrator, namely whether forgiveness will be more effective in rehabilitating the perpetrator compared to criminal punishment. Second, the benefit to the victim, namely whether the victim receives better recovery through forgiveness (for example, through restitution) compared to criminal punishment of the perpetrator. Third, the benefit to society, namely whether forgiveness will prevent similar crimes in the future and improve social harmony.

This new paradigm must also integrate the values of restorative justice. Restorative justice views criminal acts not only as violations against the state, but also as violations against the victim and society, causing damage to social relationships. The primary goal of restorative justice is to restore these damaged relationships through dialogue, reconciliation, and restitution. Judicial forgiveness aligns closely with the principles of restorative justice, as it opens up space for a more

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

comprehensive solution than simply imposing punishment. In this new paradigm, judges must position themselves as problem solvers, not merely decision makers. Judges not only decide who is at fault and what the appropriate punishment should be, but also consider the best solution to resolve the conflict arising from the crime. In some cases, the best solution may not be a criminal sentence, but forgiveness accompanied by certain obligations such as restitution to the victim, community service, or a development program.

The new paradigm must also emphasize the importance of individualizing sentencing. Each case has its own unique characteristics that must be considered by judges. Two normatively identical cases (for example, both theft) may require different handling depending on the context, the perpetrator's motivation, the victim's condition, and various other factors. Judicial pardons provide the flexibility necessary to individualize sentencing. Furthermore, the new paradigm must recognize the importance of victim participation in the judicial process.24 In the traditional criminal justice system, victims are often merely witnesses who provide testimony, without having an active role in determining the resolution of the case. In the context of judicial pardons, the forgiveness of the victim is an important consideration as regulated in Article 54 paragraph (1) letter j of the National Criminal Code. This provides space for victims to actively participate in the justice process. Building a new paradigm also requires adequate infrastructure support. This includes a legal information system that contains judicial pardon decisions so that they can serve as references for other judges, facilities for mediation between perpetrators and victims, and alternative programs such as community service or development programs that can be made a condition for forgiveness.

c. Guidelines and Mechanisms for Implementing Judicial Pardons Based on Beneficial Justice Values

Systematic and comprehensive to ensure that forgiveness is granted objectively, accountably, and achieves the beneficial goals of justice. This mechanism begins with a dismissal process system that uses a checklist instrument based on Article 70 paragraphs (1) and (2) of the National Criminal Code to help judges identify cases worthy of forgiveness from the start of the trial. This dismissal process system is an initial screening stage carried out after the indictment is read. The judge will use a checklist containing 15 criteria in Article 70 paragraph (1) of the National Criminal Code to assess whether the case has the potential to be pardoned. If the case meets at least three criteria and does not fall within the limitations of Article 70 paragraph (2), then the case can enter the forgiveness examination stage. By requiring the inclusion of the objectives and guidelines of Article 54 and Article 70 in every pardon decision, this policy systematically forces judges to build a new legal culture that is more humanistic and not only fixated on formal legalistic certainty. Each pardon decision must explicitly state which sentencing objectives from Article 51 are to be achieved, which sentencing guidelines from Article 54 paragraph (1) are taken into consideration, and which criteria from Article 70 paragraph (1) are fulfilled.

In its implementation, judicial forgiveness requires the defendant to honestly admit their mistake as a moral basis for the state to grant pardon through judicial authority. This confession is not merely a formal admission in court, but must be accompanied by sincere regret and a commitment not to repeat the act. The judge needs to assess the sincerity of this confession through an in-depth examination of the defendant's attitude and behavior. The judge is obliged to examine the case with reference to Article 51, Article 54 paragraph (1), and Article 70, where a minimum of three conditions in Article 70 must be met for forgiveness to be granted. This minimum requirement of three conditions is intended to ensure that forgiveness is not

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

granted arbitrarily, but truly in cases that are truly deserving of forgiveness based on objective considerations. This policy flexibility also allows for forgiveness to still be granted on alternative charges even if one of the criminal threats exceeds five years, but remains limited by strict rules. In the case of alternative charges, if the primary charge carries a sentence of more than five years, but one or more subsidiary charges carry a sentence of less than five years and are proven, then pardon can still be granted for the charge carrying the sentence of less than five years.

Pardons may only be granted once in a defendant's lifetime and do not apply to recidivists in similar cases or cases involving unequal power relations. This limitation is important to prevent abuse of the forgiveness mechanism. A person who has received forgiveness should learn from the second chance given and not repeat the same mistake. If someone re-commits a crime after receiving forgiveness, this indicates that forgiveness has not been effective in reforming that person, making punishment more appropriate. Imbalances in power relations include cases such as domestic violence, sexual harassment in the workplace, or crimes involving child victims. In such cases, forgiveness from the victim is often granted not because the victim truly forgives, but because of pressure, intimidation, or economic dependence. Therefore, judicial forgiveness cannot be granted in cases involving unequal power relations, even if the victim states that they forgive the perpetrator.

The usefulness aspect of this policy is strengthened by placing victim recovery as the primary indicator. Judges are required to consider the victim's losses and wishes, as stipulated in Article 54 paragraph (2). Victim recovery does not only mean material recovery through restitution or compensation, but also psychological and social recovery. Judges need to ensure that the forgiveness granted does not cause additional trauma for the victim or create a feeling that justice has not been upheld. If the

pardon decision has received the victim's approval, its legal status becomes legally binding (inkracht) and cannot be appealed, in order to guarantee certainty of reconciliation (Yosaliza et al., 2025). This provision is important to provide finality to the resolution of cases through forgiveness. If the pardon decision can still be appealed, it will create uncertainty and could undermine the reconciliation that has been achieved between the perpetrator and the victim. The entire series of examination processes are carried out through a fast procedure mechanism, similar to that for minor crimes, thus creating judicial efficiency that remains in line with the protection of human rights and the values of justice in society. This fast procedure is intended so that cases that have the potential to receive forgiveness do not need to go through a lengthy trial process, thereby saving time and costs for both the defendant, the victim, and the justice system. The concluding chapter basically contains the essence of the study and is also the answer to the problems studied in the article. Therefore, the preparation of the conclusion chapter should be adjusted to the order of the existing issues. In addition to containing the essence of the study, the conclusions can also be used to test whether or not research or study objectives are achieved.

This expedited procedure involves several stages. First, after the indictment is read, the judge conducts an assessment using the checklist outlined in Article 70. Second, if there is potential for pardon, the judge will hear testimony from the defendant, victim, and relevant witnesses within a short time. Third, the judge can facilitate mediation between the defendant and victim to reach a restitution agreement. Fourth, if all requirements are met and the victim agrees, the judge will issue a pardon decision within a maximum of seven days of the completion of the examination. The pardon decision must contain several important elements. First, a statement that the defendant has been proven to have committed the crime charged. This is crucial

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

to provide legal certainty that a crime has indeed occurred. Second, the judge's reasoning for granting pardon, referring to Articles 51, 54, and 70 of the National Criminal Code. Third, a statement of consent from the victim, if relevant. Fourth, the defendant's obligations, if any, must be fulfilled, such as restitution to the victim or community service. To ensure accountability and transparency, every pardon decision must be reported to the Supreme Court and published in the decision directory. This allows the public to know which cases have been pardoned and what considerations judges used. This publication can also serve as a learning experience for other judges and provide predictability for justice seekers.

The Supreme Court needs to establish a special unit tasked with monitoring and evaluating the implementation of judicial pardons. This unit will collect statistical data on the number of cases granted pardons, the types of crimes, the reasons for granting pardons, and their impact on recidivism. This data is crucial for evaluating the effectiveness of the policy and making adjustments if necessary. Furthermore, safeguard mechanisms are needed to prevent abuse. These include the obligation for judges to make detailed and comprehensive considerations, a peer review mechanism where pardon decisions can be reviewed by senior judges, and a reporting system for any indication of abuse of authority. Judges found to have abused their pardoning authority, for example by accepting bribes or having a conflict of interest, must be subject to strict sanctions in accordance with the code of ethics and disciplinary regulations for judges. With these clear and systematic guidelines and mechanisms, it is hoped that judicial pardons can be implemented effectively, benefiting all parties, and improving the quality of the Indonesian criminal justice system as a whole. Judicial pardons are not simply about not imposing punishment, but about finding the best solution to resolve conflicts arising from criminal acts in a more humane, effective, and just manner.

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

CONCLUSION

Based on the discussion above, several important points can be concluded regarding the reformulation of judicial pardon policies based on values of justice that are beneficial in criminal law enforcement: (1) The current application of judicial pardons in criminal law enforcement in Indonesia aims to achieve a balance between firm law enforcement and humane policies. Judicial pardons applied with the principle of beneficial justice can provide solutions to various challenges in the criminal justice system, including reducing overcrowding in correctional institutions, encouraging social rehabilitation, and increasing public trust in the judiciary. Synergy between criminal punishment theory, criminal law policy, and judicial practice is needed so that judicial pardons can provide optimal benefits for the legal system and society as a whole.

(2) The urgency of reformulating judicial pardon policies based on values of justice that are beneficial in criminal law enforcement is very urgent because it takes into account cultural aspects, religion, restorative justice, Pancasila values, and the sentencing guidelines in the National Criminal Code. The implementation of judicial pardons can create a more humane and effective justice system that balances the rights of victims and perpetrators, and the interests of the wider community. The concept of forgiveness has long been a part of Indonesian social life through a culture of deliberation and family-based conflict resolution that prioritizes social harmony. The restorative justice approach emphasizes the restoration of the victim's well-being, the responsibility of the perpetrator, and reconciliation between the two. Pancasila, as the foundation of the state, embodies values of justice grounded in just and civilized humanity, while the National Criminal Code provides a direction for sentencing that is not solely oriented toward retribution but also considers the benefits for society.

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

(3) Reformulating judicial forgiveness policies based on values of justice that are beneficial in criminal law enforcement includes a shift in the legal paradigm from punishment to social recovery and establishing guidelines for the application of forgiveness by judges. This mechanism begins with a dismissal process system that utilizes a checklist based on Article 70 paragraphs (1) and (2) of the National Criminal Code to help judges identify cases worthy of forgiveness from the outset of the trial. By requiring the inclusion of the objectives and guidelines of Articles 54 and 70 in every verdict, this policy systematically forces judges to build a new, more humane legal culture that transcends formal legal certainty. In its implementation, judicial pardon requires the defendant to honestly admit his guilt as a moral basis for the state to grant pardon through judicial authority. Judges are obliged to examine cases by referring to Article 51, Article 54 paragraph (1), and Article 70, where a minimum of three conditions in Article 70 must be met for pardon to be granted. The flexibility of this policy also allows pardon to still be granted on alternative charges even if one of the criminal threats exceeds five years, but is still limited by strict rules, namely that it can only be granted once in a lifetime and does not apply to recidivists in similar cases or cases involving unequal power relations. The aspect of usefulness in this policy is strengthened by placing victim recovery as the main indicator, where judges are required to consider the losses and wishes of the victim as regulated in Article 54 paragraph (2). If the pardon decision has received approval from the victim, its legal status becomes legally binding (inkracht) and cannot be appealed in order to guarantee certainty of peace. The entire series of examination processes are carried out through a fast-track procedure mechanism, similar to that for minor crimes, thus creating judicial efficiency that remains in line with the protection of human rights and the values of justice in society.

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

REFERENCES

Adamsyah, A., Erwinsyahbana, T., & Ramlan, R. (2023). Perspektif pendekatan keadilan restorasi dan hukum pidana adat Minangkabau dalam penyelesaian tindak pidana ringan di wilayah hukum Polres Kabupaten Pariaman. *Iuris Studia: Jurnal Kajian Hukum*, 4(3), 186–198. https://doi.org/10.55357/is.v4i3.454

Antony, A., Sudirman, L., & Situmeang, A. (2026). Legal research methodology as a critical epistemological framework for legal argumentation and legal development. *Barelang Journal of Legal Studies*, 4(1), 21–50. https://doi.org/10.37253/barjoules.v4i1.12379

Arief, B. N. (2010). Kebijakan legislatif dalam penanggulangan kejahatan dengan pidana penjara. Genta Publishing. Katalog Perpustakaan Universitas Muhammadiyah Surakarta

Arief, B. N. (2011). Bunga rampai kebijakan hukum pidana: Perkembangan penyusunan konsep KUHP baru. Kencana Prenada Media Group. Katalog Perpustakaan Universitas Indonesia

Disemadi, H. S. (2022). Lensa penelitian hukum: Esai deskriptif tentang metodologi penelitian hukum. *Journal of Judicial Review*, 24(2), 289–304. https://doi.org/10.37253/jjr.v24i2.7280

Farikhah, M. (2018). Rekonseptualisasi judicial pardon dalam sistem hukum Indonesia (Studi perbandingan sistem hukum Indonesia dengan sisitem hukum Barat). *Jurnal Hukum & Pembangunan*, 48(3), 556–588. https://doi.org/10.21143/jhp.vol48.no3.1262

Flora, H. S. (2018). Keadilan restoratif sebagai alternatif dalam penyelesaian tindak pidana dan pengaruhnya dalam sistem peradilan pidana di Indonesia. *University of Bengkulu Law Journal*, 3(2), 142–158. https://doi.org/10.33369/ubelaj.3.2.142-158

Gunarto, M. P. (2009). Sikap memidana yang berorientasi pada tujuan pemidanaan. *Mimbar Hukum*, 21(1), 93–108. https://doi.org/10.22146/jmh.16248

Hamzah, A. (2014). Asas-asas hukum pidana. Rineka Cipta. Katalog Perpustakaan Bawaslu

Muladi, & Arief, B. N. (2010). Teori-teori dan kebijakan pidana (Cet. ke-4). Alumni. Katalog Perpustakaan Mahkamah Konstitusi

Pananjung, L. K., & Akbar, N. N. (2014). Peranan Badan Narkotika Nasional (BNN) dalam penegakan hukum terhadap pelaku penyalahgunaan narkotika untuk dirinya sendiri (pecandu) di Indonesia. *Recidive: Jurnal Hukum Pidana dan Penanggulangan Kejahatan*, 3(3), 241–247. https://doi.org/10.20961/recidive.v3i3.40528

Pramudhito, Y. A. (2021). Efektivitas lembaga pemasyaraktan dalam membina narapidana di Indonesia: Sebuah tinjauan pustaka. *Jurnal Yustisiabel*, 5(1), 69–82. https://doi.org/10.32529/yustisiabel.v5i1.859

Qamar, N., & Rezah, F. S. (2022). The dichotomy of approach in the study of legal science: A critical review. *SIGn Jurnal Hukum*, 4(2), 191–201. https://doi.org/10.37276/sjh.v4i2.162

Rahardjo, S. (2009). Hukum progresif: Sebuah sintesa hukum Indonesia. Genta Publishing. Katalog Google Books

Robensyah, A., Aripin, R., Putri, R. T., Susmita, S., & Wardani, K. K. (2026). Analisis Pasal 51 tentang tujuan pemidanaan dalam KUHP nasional perspektif hukum pidana Islam. *Pagaruyuang Law Journal*, 9(2), 14–30. https://doi.org/10.31869/plj.v9i2.6918

Saleh, R. (1983). Perbuatan pidana dan pertanggungjawaban pidana (Cet. ke-3). Aksara Baru. Katalog Dinas Perpustakaan dan Arsip Daerah DIY

Saputra, W. (2024). Disharmoni kebijakan kriminal tujuan pemidanaan dan pelaksanaan pidana penjara melalui lembaga pemasyarakatan di Indonesia. *Jurnal BATAVIA*, 1(4), 171–179. https://doi.org/10.64578/batavia.v1i4.77

Sari, N. A. (2024). Pengaturan tentang peringanan hukuman terhadap pelaku pembunuhan akibat penghinaan. *Jurnal Kewarganegaraan*, 8(1), 1265–1273. https://doi.org/10.31316/jk.v8i1.6461

Setiawan, A., & Ismail, R. R. A. (2023). Paradigma positivisme hukum John Austin di era posmodernisme. *Arena Hukum*, 16(3), 485–508. https://doi.org/10.21776/ub.arenahukum.2023.01603.3

Sia, M. Y., & Sujono, S. (2024). Kajian yuridis pertimbangan hukum hakim dalam implementasi prinsip hukum progresif sebagai paradigma pembaharuan sistem peradilan pidana di Indonesia. *J-CEKI: Jurnal Cendekia Ilmiah*, 3(6), 7992–8002. https://doi.org/10.56799/jceki.v3i6.5762

Sukma, F., & Cumbhadrika, C. (2023). Urgensi penerapan rechterlijk pardon sebagai pembaharuan hukum pidana dalam perspektif keadilan restoratif. *Gorontalo Law Review*, 6(1), 46–61. https://doi.org/10.32662/golrev.v6i1.2678

Sutiyoso, B. (2010). Mencari format ideal keadilan putusan dalam peradilan. *Jurnal Hukum IUS QUIA IUSTUM*, 17(2), 217–232. https://doi.org/10.20885/iustum.vol17.iss2.art3

Tan, D. (2021). Metode penelitian hukum: Mengupas dan mengulas metodologi dalam menyelenggarakan penelitian hukum. *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial*, 8(8), 2463–2478. https://doi.org/10.31604/jips.v8i8.2021.2463-2478

Wicaksono, B. S., Ismansyah, I., & Elda, E. (2025). Rechterlijke pardon sebagai penyeimbang asas legalitas dalam pembaharuan hukum pidana Indonesia. *Ranah Research: Journal of Multidisciplinary Research and Development*, 7(4), 2658–2665. https://doi.org/10.38035/rrj.v7i4.1574

Yosaliza, M., Adriaman, M., & Prakasa, R. S. (2025). Implementasi restitusi dalam tindak pidana kekerasan seksual berdasarkan Putusan Pengadilan Negeri No. 101/Pid.sus/2024/PN Pyh. *Sumbang12 Law Journal*, 3(2), 1–15. https://jurnal.umsb.ac.id/index.php/smb12lj/article/view/6382

ACKNOWLEDGMENTS

The authors received no external assistance or support requiring acknowledgment.

DECLARATION OF GENERATIVE AI USE

The authors declare that no generative artificial intelligence tools were used in the preparation of this manuscript.

COMPETING INTERESTS

The authors have declared that no competing interests exist.

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam