E-ISSN: 2776-9674
ISSN : 2776-9259
ILREJ, Vol 4, No. 1, 2024

INDONESIA LAW REFORM JOURNAL

The Rechtelijk Pardon Concept in Reforming the Penal System to Realize Restorative Justice in Indonesia

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Abstract

Strategy to the type of punishment from retributive to restorative is one strategy used to foster intimacy in conflicted community lives. This strategy is still in place to encourage all members of society, including perpetrators and victims, to participate in case resolution so that crimes do not always result in jail time. As a formulation of reforming Indonesian criminal law, Rechtelijk Pardon, or judge forgiveness, gives judges the theoretical authority to avoid criminal penalties against those who commit crimes, depending on the circumstances surrounding the decision. This paper attempts to discuss this concept, which is currently unknown in Indonesian criminal law. Other countries' laws and the Rechtelijk Pardon concept are some of the current and upcoming legal sources that were examined through the use of a conceptual approach and normative legal research methodology. According to this study, the KUHP is starting to implement the concept of judges' forgiveness, or Rechtelijk Pardon. Legal problems may arise even if the idea is not included in the official language, particularly the KUHAP. Nevertheless, this is a good start in the direction of fortifying Indonesia's criminal justice system. In the future, punishment will be adaptable to achieve the objectives of the law, justice, and legal clarity within the bounds of the state and society.

Keywords: *Rechtelijk Pardon, Punishment, Law Reform, Restorative Justice*

Abstrak

Strategi untuk mencapai keselarasan kehidupan bermasyarakat yang dilanda konflik terus diupayakan melalui reformasi pemidanaan itu sendiri, dari pemidanaan retributif menjadi pemidanaan restoratif, dan penegakannya terus memberikan dampak baik bagi korban maupun masyarakat sebagai korban Pelaku dilibatkan dalam penyelesaian kasus dengan tujuan memastikan tidak semua kejahatan selalu berakhir dengan hukuman penjara. Artikel ini mencoba membahas salah satu konsep yang masih belum dikenal dalam hukum pidana Indonesia sebagai rumusan reformasi hukum pidana Indonesia. Hal ini pada hakikatnya memberikan hakim kekuasaan untuk menghindari sanksi pidana terhadap pelaku kejahatan. Metode penelitian yang digunakan untuk menganalisis konsep ini adalah hukum normatif, yaitu suatu pendekatan konseptual yang memasukkan bahan-bahan hukum saat ini dan yang akan datang seperti rancangan undang-undang, konsep amnesti dari negara lain, serta peraturan perundang-undangan dari negara lain sebagai metode penelitian. Kajian ini menunjukkan bahwa konsep hak pengampunan secara bertahap mulai diintegrasikan ke dalam hukum pidana, namun konsep ini tidak dijelaskan secara rinci dalam aspek formil yaitu dalam hukum acara pidana. Meskipun masih terdapat kesenjangan dan implikasi hukumnya akan menimbulkan

perbedaan pendapat, hal ini menunjukkan bahwa terdapat upaya awal untuk membawa sistem peradilan pidana Indonesia ke tingkat yang lebih tinggi. Ke depan, kebebasan dalam pidana harus diberikan demi tercapainya tujuan hukum, kepastian hukum, dan keadilan dalam kehidupan berbangsa dan bermasyarakat.

Keywords: Pemaafan Hakim, Pemidanaan, Pembaharuan Hukum, Keadilan Restoratife.

A. INTRODUCTION

Van Hamel defined criminal law as "all the fundamentals and regulations that a nation adopts to carry out the law," which includes forbidding actions against the law and placing penalties on those who violate them. The statement posits that criminal law is an integral aspect of national legislation, defining fundamental guidelines and prohibiting certain activities. It also carries criminal penalties for those who engage in such behavior. How can criminal legislation be imposed when can it be applied, and under what circumstances can individuals who have broken the rule face criminal penalties?

Rechtwissenschaft its die wissenschaft von objectiven sinn dess positive rechts, wrote Gustav Radbruch in his Vorschule der Rechtsfilosofie. In other words, positive legal objectivity is the goal of legal science. Concerning criminal law science, it can be stated that the goal of criminal law science is to ascertain the impartiality of positive criminal law. One can observe the objectivity of positive criminal law in its governing banned activities. Some acts are classified as rechtdelicten, which literally translates to "legal offenses," and wetsdelicten, which literally translates to "statutory offenses." The enforcement of the criminal law itself is a goal of positive criminal law.. That is, the acts that are violated in Material criminal law must be subject to action by the state. Law enforcement officers tasked with enforcing the positive criminal law of In terms of superstructure, it means that the institution has been established and is equipped with duties and obligations as well as authority according to law and in terms of Infrastructure means the facilities and infrastructure for the work of the apparatus law enforcement is available.[1]

Rechterlijk Pardon is a notion that Dutch law has also accepted, according to which the judge may pardon the accused. That is, the judge may pardon under certain circumstances, in which case the accused is found guilty even though they have not yet received a sentence. The criminal law that applies in Indonesia is Dutch criminal law (Wetboek van Strafrecht) which is enforced through Law Number 1 1946 (mutatis-mutandis) and then called the Code of Laws Criminal Law (KUHP). Since Indonesia declared its independence, There is already a desire from this nation to have a Criminal Law (KUHP) "product" of the nation itself as the National Criminal Code, which then since 1960- Indonesian legal experts are starting to think about and

[1] Eddy O.S Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2015).

realize it in depth draft form of the Draft Law on the Criminal Code.[2] While the Preamble to the 1945 Constitution outlines the objectives to be met, the general legal reform initiatives in Indonesia have been ongoing since the document's adoption and are inextricably linked to it. "To safeguard the whole nation of Indonesia and to promote general welfare based on Pancasila" is the stated goal.

This overarching policy serves as the cornerstone and objective of all corporate legal reforms in Indonesia, including those pertaining to criminal law and crime prevention. It also serves as the premise and end goal of legal politics in the country. The judge's ruling, which may generally be classified as either criminal or non-criminal, is the last step in the criminal justice system process. It is one of the most intricate and important in Indonesian criminal law, which is a legacy of the Dutch heritage. At this stage, several inquiries concerning justice are often raised, both from the victim's and the offender's points of view. Nonetheless, it is imperative that we concentrate on the application of criminal law in this specific circumstance. In particular, the state must take into account the benefits to the victim of a criminal conviction and can offer justice for the victim in the case that a criminal act occurs but the offender is judged not guilty or is unable to fulfill their sentence.[3]

In terms of the Criminal Procedure Code (KUHAP), a judge's decision can be classified into one of three categories: criminal, acquittal (vrijspraak), or release from all pending legal requests (onslag van recht vervolging).[4] According to the Criminal Procedure Code, if the court determines that the defendant is guilty of the crime for which he is charged, then a criminal decision will be made. In the meantime, if the court determines after the trial that there is insufficient evidence to establish the defendant's guilt of the offense against him, a decision of acquittal is rendered. Finally, the defendant will be released from all legal obligations if the court determines that the acts claimed against them are true but not unlawful. The conduct charged against the defendant are therefore not guilty (intentional/negligent), nor are they illegal, or there is a basis for forgiveness (feit d'excuse), even when the evidence against the defendant in an acquittal verdict is sufficiently shown legally and convincingly.[5]

Then the problem is if the parties are in conflict or such disputes are unable and unwilling to be reconciled, what is the role of law enforcement institutions in terms of maintaining relations in society in order to realize the intended justice. So in the middle This dilemma arises from the principle of Rechtelijk Pardon, a principle that originates from Netherlands, long ago in Dutch procedural law, Netherland Wetbook Van Strafvordering (Dutch procedural law book) Jan Remmelink stated The Rechtelijk Pardon principle is a false statement without criminal penalties from the cantonal judge as the lowest level court. By The language of Rechtelijk Pardon is forgiveness or forgiveness of power by a judge. In this case the cantonal judge is of the view that if he is convicted, then there is value The harm is more than the benefits, as well

[2] Sagung Putri M.E. Purwani Dewi and Lusyana Putu Mery, "Judicial Pardon: Renewal of Criminal Law Towards Minor Criminal Offense," *Yustisia Jurnal Hukum* 10, no. 3 (2021): 415–30, https://doi.org/10.20961/yustisia.v10i3.55347.
[3] Meldy Ance Almendo, "PRINSIP KEADILAN DALAM TANGGUNG JAWAB NEGARA TERHADAP KORBAN TINDAK PIDANA KARENA PELAKU TIDAK MENJALANI PEMIDANAAN," *Yuridika* 31, no. 1 (January 9, 2016): 19, https://doi.org/10.20473/ydk.v31i1.1956.
[4] Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2008).
[5] Andi Hamzah, *Hukum Acara Pidana Indonesia*, 2nd ed. (Jakarta: Sinar Grafika, 2008).

as the conditions covers its implementation. So the judge decided not to impose a crime in his sentence (Ridwan Suryawan, 2021). Legal foundation Given that restorative justice is based on the principles of justice, public interest, punishment as a last resort, and speed, low cost, and simplicity, its application refers to Article 2 of Perja Number 15 of 2020.

B. METHOD

Based on on what has been described above, this article will try to dig further into the Rechtelijk Pardon (forgiveness judge) in the criminal law system historically and philosophically and as far as where is the urgency of implementing the Rechtelijk Pardon (judge's forgiveness) in criminal law system as another form of judge's decision on Indonesian criminal law reform reviewed from a justice perspective restorative. Based on the problem to be researched, Normative juridical research, or legal research, is the methodology employed in this study. This is accomplished by investigating the regulations pertaining to the issues raised by undertaking a study of secondary data or library materials as the foundation for the research.[6] Furthermore, another method employed in research is the conceptual approach, or legal concept analysis method.. This research begins by describing legal facts, then looking for a solution to a legal case with the aim or resolve the legal case.[7] Normative legal research methodology was employed in this work. Regarding the normative legal research techniques employed, the kinds of information utilized to respond to inquiries in This study will use secondary legal materials, which are readings related to research titles such as books, articles, journals, scientific papers, and other literature, as support for its primary legal material, which covers the Draft Law and various applicable laws and regulations.

C. RESULTS AND DISCUSSIONS

1. Historical and Philosophical Rechtelijk Pardon in Reforming the Penal System to Realize Restorative Justice in Indonesia

Rechterlijk pardon concept. This new institution gives judges the authority to forgive someone who is guilty of committing a crime that is very light in nature (not serious), and/or has mild circumstances for their actions. The judge's ruling includes this forgiveness, but it still needs to be mentioned that the defendant's guilt for the alleged crime has been established.[8]

According to Prof. Nico Keizer, many defendants have genuinely provided the necessary proof; yet, it would be unfair to condemn them. Alternatively, one could argue that the imposition of a sentence will lead to a conflict between the certainty of the law and its justice. If the aforementioned problem occurred before 1983, the Panel of Judges would be "forced" to impose a penalty, no matter how light. The phrase "rechterlijk pardon" in criminal justice practice refers to a recent development that permits judges to pardon criminal defendants even after they have been found guilty, given that they fulfill certain conditions. According to the Criminal Procedure Code, this forgiveness takes the form of a decision that is conceptually

[6] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005).
[7] Amirudin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Rajawali Pers, 2010).
[8] Mufatikhatul Farikhah, "The Judicial Pardon Arrangement as a Method of Court Decision in the Reform of Indonesian Criminal Law Procedure," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 8, no. 1 (2021): 1–25, https://doi.org/10.22304/pjih.v8n1.a1.

different from a variety of other decision kinds, such as criminal, acquittal, and decision free from all legal demands.[9]

Although the meanings of the phrases "forgiveness," "pardon," "mercy," "clemency," "indemnity," and "amnesty" are not strictly defined, they can generally be understood to entail pardoning someone for doing something against the law on the grounds of social justice. Actually, since the Code of Hammurabi, there has been a historical link between punishment and pardon. The Hammurabi Code establishes a balance between the strict application of the law and the justice that results from society.[10]

Pardon in Black's Law Dicrionary is defined as "The act or an instance of officially nullifying punishment or other legal consequences of a crime". The form of forgiveness in this sense is given by the executive head of a government which is then termed executive pardon. The term "pardon" was originally understood and practiced as an executive (or other person legally authorized) action that reduces or eliminates a sentence that has been determined/imposed by a court, or that modifies a sentence in a way that would normally be considered mitigating.[11] Thus, this authority is outside the judicial institution and is applied after a decision in the form of punishment occurs. However, in line with the development of constitutional theory, one of which has a big influence is the theory of separation of powers, the institution of forgiveness then also becomes one of the authorities possessed by judicial institutions with a term which is then better known in some countries as non-imposing. of penalty / rechterlijk pardon / dispensa de pen and judicial pardon.[12] One classic example is Pardon et Chatiments in France, where the jury in the case apologized to the defendant who was proven guilty, thus preventing the defendant from being sentenced to death (Muhammad Rifai Yusuf, 2021). The modification of the forgiveness institution, which was previously only in the executive, but is now also in the judiciary, is in line with recommendations from the Commission of Ministers of the Council of Europe (Resolution No.10/1976 dated 9 March 1976). In fact, before the resolution was issued, the French criminal justice system had also introduced the institution of judge forgiveness on 11 July 1975 through Law Number 75-624 of the French Criminal Procedure Code (CCP) which regulates the declaration of guilt without imposing a penalty.[13]

Based on what has been described above, it shows that various countries have implemented the concept or given the right to judges to forgive minor crimes to prevent punishment that is not justified/necessary from the perspective of need, both the need to protect society and to rehabilitate the perpetrator. In the Indonesian Criminal Code currently in force, there is nothing known about the regulation of the Rechterlijk pardon concept. This legal product, which was the brainchild of the Dutch colonial government, still appears rigid in

[9] Sri Wiyanti Eddyono, "Restorative Justice for Victim's Rights on Sexual Violence," *Journal of Southeast Asian Human Rights* 5, no. 2 (December 31, 2021): 176, https://doi.org/10.19184/jseahr.v5i2.28011.
[10] Adery Ardhan Saputro, "KONSEPSI RECHTERLIJK PARDON ATAU PEMAAFAN HAKIM DALAM RANCANGAN KUHP," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 28, no. 1 (February 15, 2016): 61, https://doi.org/10.22146/jmh.15867.
[11] Ridwan Suryawan, "Asas Rechtelijk Pardon (Judicial Pardon) Dalam Perkembangan Sistem Peradilan Pidana Indonesia," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 2, no. 3 (November 20, 2021): 170–77, https://doi.org/10.18196/ijclc.v2i3.12467.
[12] Aliansi Nasional Reformasi KUHP, *Tinjauan Atas Non-Imposing of a Penalty/Rechterlijk Pardon/Dispensa de Pena* (Jakarta: Institute for Criminal Justice Reform, 2016).
[13] Barda Nawawi Arief, *Kapita Selekta Hukum Pidana* (Bandung, 2013).

determining the criminal system that is still applied in Indonesia to this day. The criminal system implemented only pays attention to aspects of legality and accountability. In fact, the purpose of punishment is also a very important part because it is the spirit and soul of the punishment system in Indonesia.[14]

2. The Concept of Rechtelijk Pardon in Reforming the Penal System to Realize Restorative Justice in Indonesia

Criminal law concentrates on the entire universe rather than just one or a few sides because it is a product of narrow minds and only addresses issues pertaining to humans. The most recent advancements in criminal law determine the best form of future criminal law, which is in line with societal conditions. Therefore, criminal law reform genuinely advances civilization, particularly in the area of criminal law politics.[15]

The concept of material criminal law reform has been implemented since Law No. 1 of 1946 was published, and it was reaffirmed in a national seminar held in Semarang in 1963. The panel of experts, which included "Soedarto, Oemar Seno Adji, and Ruslan Saleh," discussed the significance of creating a national criminal code that is systemic and founded on national ideas, attitudes, and perceptions rather than being ad hoc and patchwork. Of course, the philosophy and cultural values of the Indonesian people that are connected to the criminal law principles do not exclude the application of universal criminal law, which is governed by internationally recognized criminal law treaties, resolutions, and organizations. These criminal law organizations then produce a variety of norms, standards, and principles. Additionally, BPHN hosted several scientific seminars that resulted in the formation of the Criminal Code Bill team. National needs and demands to implement comprehensive criminal law reform (structure, substance, and culture) served as the driving force for this preparation.[16]

Regarding criminal liability, there are two points of view. The first is the monistic point of view, which was articulated by Simon. He defined strafbaar feit as "Eene staffbaar gestelde, onrechtmatige, met sculd in verband staande handeling van een torekeningvatbaar persoon" (an act which is punishable by law, contrary to law, committed by a guilty person and that person is deemed responsible for his actions). According to monism, the staff's elements are composed of both creation—also referred to as subjective elements—and action—also referred to as objective elements. Because strafbaar feit is equivalent to the requirements for criminal imposition, it may be inferred by combining the parts of the act and the author's work. Consequently, it can be anticipated that if strafbaar feit occurs, the offender will undoubtedly face consequences.[17]

Actions that are reprehensible to society are accountable to the person who produced them, meaning that objective blame for that action is then passed on to the defendant, so it can

[14] Barda Nawawi Arief, *Penetapan Pidana Penjara Dalam Perundang-Undangan Dalam Rangka Usaha Penanggulangan Kejahatan*, Universita (Bandung, 1986).
[15] Aska Yosuki and Dian Andriawan Daeng Tawang, "KEBIJAKAN FORMULASI TERKAIT KONSEPSI RECHTERLIJKE PARDON (PERMAAFAN HAKIM) DALAM PEMBAHARUAN HUKUM PIDANA DI INDONESIA," *Jurnal Hukum Adigama* 1, no. 1 (July 18, 2018): 49, https://doi.org/10.24912/adigama.v1i1.2136.
[16] Muladi, *Kapita Selekta Sistem Peradilan Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 1995).
[17] Oksidelfa Yanto Yanto, Imam Fitri Rahmadi, and Nani Widya Sari, "Can Judges Ignore Justifying and Forgiveness Reasons for Justice and Human Rights?," *Sriwijaya Law Review* 6, no. 1 (January 31, 2022): 122, https://doi.org/10.28946/slrev.Vol6.Iss1.1054.pp122-142.

be said that it is impossible for a person to be held accountable and punished if he or she has not committed a criminal act. But even if he commits a criminal act, he cannot always be punished.[18] Because there must be a mistake in his actions. When is it deemed that you have made a mistake, when from the perspective of society, the action can be blamed, because you can still do something else, because the mistake can be blamed and can also be avoided.[19] So we begin to look for the inner state of the perpetrator of the criminal act, and the inner problem in criminal law is the problem of capacity for responsibility, and then it is related to intention, negligence, and reasons for forgiveness, as elements of error. Everything is an inseparable element.[20]

In general, solving problems or disputes, especially criminal ones, can be taken in two ways, namely by using the litigation route and the non-litigation route. Nowadays, when a crime occurs, people tend to use the court route which in concept will create justice, but in reality this is something that is not easy to achieve.[21] According to Satjipto Rahardjo, the legal system, which leads to a court ruling, is a slow method of enforcing the law. This is a result of the lengthy process that law enforcement goes through, involving the police, district court, high court, prosecutor's office, and even the Supreme Court. Ultimately, this affects how many cases wind up in court.[22]

Referring to the theory stated above, Rechterlijk pardon can be placed as part of the Criminal Justice System by fulfilling one of the fundamental principles in criminal procedural law, namely the principle of legality. Which in principle states that all law enforcement actions must be based on the law or in other words law enforcement officers are not allowed to act outside the provisions of the law.[23] This principle places the interests of law and legislation above everything else in order to realize the supremacy of law.[24] Thus, law enforcers are not permitted to act outside the provisions of the law (undue process) or act arbitrarily (abuse of power).[25] It is hoped that Rechterlijk pardon can become one of the motors for achieving the two senses of justice that exist in the application of law and law, namely Moral Justice and Legal Justice. This hope is of course hoped for by not only law enforcers but also all elements

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[18] Farikhah, "The Judicial Pardon Arrangement as a Method of Court Decision in the Reform of Indonesian Criminal Law Procedure."
[19] Suryawan, "Asas Rechtelijk Pardon (Judicial Pardon) Dalam Perkembangan Sistem Peradilan Pidana Indonesia."
[20] Saiful bakhri, "'PROBLEMATIKA PEMBARUAN HUKUM PIDANA INDONESIA.' Seminar Nasional "Menyikapi Pembahasan RUU- KUHP" (Bandung, 2016).
[21] Sukardi Sukardi and Hadi Rahmat Purnama, "Restorative Justice Principles in Law Enforcement and Democracy in Indonesia," *Journal of Indonesian Legal Studies* 7, no. 1 (June 1, 2022): 155–90, https://doi.org/10.15294/jils.v7i1.53057.
[22] Henny Saida Flora, ""KEADILAN RESTORATIF SEBAGAI ALTERNATIF DALAM PENYELESAIAN TINDAK PIDANA DAN PENGARUHNYA DALAM SISTEM PERADILAN PIDANA DI INDONESIA," *UBELAJ* 2, no. 58 (2018): 142.
[23] Nur Rochaeti et al., "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices," *Sriwijaya Law Review* 7, no. 1 (January 27, 2023): 87, https://doi.org/10.28946/slrev.Vol7.Iss1.1919.pp87-104.
[24] Mustafa Lutfi and Asrul Ibrahim Nur, "Reconstruction of Norm in Selection System of Constitutional Court Judge Candidates from the Perspective of the Paradigm of Prophetic Law," *Legality : Jurnal Ilmiah Hukum* 30, no. 1 (April 15, 2022): 116–30, https://doi.org/10.22219/ljih.v30i1.20744.
[25] Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP* (Jakarta: Sinar Grafika, 2006).

of society in Indonesia.[26] This concept is the same as Judicial Pardon, namely in indigenous communities, including the Batak Karo Community, the Lampung Menggala Community, Minangkabau, and in Aceh. For this reason, it is necessary to have a basic framework for the concept of rechterlijk pardon which will be based on the Universal legal system used by countries that have practiced this concept and it is also necessary to look at the concept that exists in Indonesia so that the basic aim of criminal law reform is related to the existing sentencing guidelines. the final result is that a fair decision can be reached.[27]

Rechterlijk pardon principle or Judge's Forgiveness Development of the Draft Criminal Code, namely in the draft KUHP 4 July 2022, it has begun to regulate Rechterlijk pardon (Judge's Forgiveness) regarding sentencing guidelines, where this regulation gives the authority to judges to prioritize values and a sense of justice in the future. The article reaffirms this authority by stating that the judge may consider the individual's circumstances, the circumstances at the time of the offense, or subsequent events when determining whether to convict someone of a crime or take other appropriate action. When the idea of a Rechterlijk Pardon (a judge's forgiveness) applies, the judge must additionally consider the offense, the mistake, and the objectives and rules of the sentencing. As stated in Article 54 paragraph (2) of the New Criminal Code, the judge will pardon the offender of the crime of justice and humanity if the judge determines that the individual does not need to be punished "The severity of the act, the personal condition of the perpetrator, or the circumstances at the time the crime was committed and what happened afterwards can be used as a basis for consideration for not imposing a crime or not taking action by considering aspects of justice and humanity."

Departing from the provisions of 2 (two) Articles above, it provides a breath of fresh air regarding the material application of the Concept of Rechterlijk Pardon (Judge's Forgiveness) which gives freedom to judges in deciding cases, as well as expanding the authority of judges in exploring and seeking justice based on the values that live in society.[28] Andi Hamzah said that the essence of this conception is that later, when the Public Prosecutor's indictment is legally and convincingly proven and the judge forgives, the perpetrator of the crime will not be convicted or punished. Simply put, the form of the judge's forgiveness will be a guilty verdict without punishment.[29]

Sociologically, the concept of Rechterlijk Pardon (Judge's Forgiveness), which is part of the Draft Criminal Code, undoubtedly represents the goal of satisfying society's legal demands, a goal that has been sought for more than 60 (sixty) years. The principles of an independent and sovereign nation form the foundation of this demand. Because Indonesian society is evolving along with the rest of the world and because there is a strong desire for justice and legal

[26] Jefferson Hakim and Azeem Marhendra Amedi, "Prosecutorial Application of Restorative Justice: Overview, Mechanism, and Commentary on Prosecution Cessation," *Jurnal Hukum Dan Peradilan* 12, no. 2 (July 31, 2023): 319, https://doi.org/10.25216/jhp.12.2.2023.319-346.
[27] Saputro, "KONSEPSI RECHTERLIJK PARDON ATAU PEMAAFAN HAKIM DALAM RANCANGAN KUHP."
[28] Yosuki and Tawang, "KEBIJAKAN FORMULASI TERKAIT KONSEPSI RECHTERLIJKE PARDON (PERMAAFAN HAKIM) DALAM PEMBAHARUAN HUKUM PIDANA DI INDONESIA."
[29] Irma Yuliawati, "Comparison of Rechterlijk Pardon Concept on 2019 Criminal Code Draft and Article 70 Law Number 11 of 2012 Concerning Juvenile Criminal Justice System," *Journal of Law and Legal Reform* 2, no. 4 (August 18, 2021): 603–22, https://doi.org/10.15294/jllr.v2i4.48368.

certainty, some of the criminal law formulations found in the Criminal Code are no longer valid legal foundations for resolving social issues.[30]

However, what needs to be an important note is that so that the concept of Rechterlijk Pardon does not become useless, there must be a legal harmonization that supports the concept of Rechterlijk Pardon, namely that it also needs to be regulated in terms of criminal formalities, namely the KUHAP, which until today's developments has not yet regulated Rechterlijk Pardon technically so that it does not stop. only in the conceptual realm but can be applied concretely.[31] Restorative justice is one theory of the goal of punishment in criminal law. It is a method of resolving cases in accordance with the law by involving the victim, the offender, the victim's family, and other related parties to seek a just resolution with an emphasis on restoration back to its original state and not retaliation. Therefore, it may be said that the Rechterlijk Pardon Concept (Judge's Forgiveness) is consistent with the purpose of punishment in criminal law, which is Restorative Justice, based on the requirements that courts can offer forgiveness.[32]

D. CONCLUSION

Based on the descriptions outlined above, we have get the conclusion that the punishment formulation applies in the system Indonesian criminal justice currently only recognizes objective requirements as follows. The basis of Indonesian criminal law is the legality and subjective requirements assumption. Owing to an error, the court's decision-making process can result in one of three outcomes: conviction, acquittal (vrijspraak), or release from all outstanding legal petitions (onslag van recht vervolging). However, as mentioned in KUHP articles 53 and 54 paragraph (2), judges now have the discretion to grant forgiveness to an individual who has been shown to have committed a crime and allow them to escape punishment under a variety of conditions. n to embrace the idea of Rechterlijk Pardon, or Judge's Forgiveness. The Rechterlijk Pardon, or Judge's Forgiveness, is one concept that supports equity and restorative justice. As a result, it makes sense to incorporate the Concept Rechterlijk Pardon (Judge's Forgiveness) into the KUHP in order to modernize Indonesian criminal law and the criminal justice system. Harmonization law is necessary for the realization of Rechterlijk Pardon (Judge's Forgiveness) or for it to transcend the conceptual hierarchy. This is accomplished by adding content based on this idea to the official criminal law system through the RKUHAP. This is so because the judge's pardon in the KUHAP merely permits; there isn't currently an article that governs formal provisions expressly.

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[30] Lego Karjoko et al., "The Urgency of Restorative Justice on Medical Dispute Resolution in Indonesia," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 2 (December 31, 2021): 362–92, https://doi.org/10.19105/al-lhkam.v16i2.5314.

[31] Muhammad Iftar Aryaputra, "Pemaafan Hakim Dalam Pembaruan Hukum Pidana Indonesia" (Universitas Indonesia, 2013).

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