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The Existence and Application of The Principle of Judge's Forgiveness (Rechterlijk Pardon/Judicial Pardon) In Criminal Law and Court Decisions

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ABSTRACT

In the practice of criminal justice, judges sometimes find cases that are minor in nature and do not have a significant impact on society, which socially, are considered unnecessary for punishment, but are still punished because there is no regulation that authorizes judges to forgive these types of cases. The formulation of the problems in writing this thesis, namely; First, to understand the principle of judge forgiveness (rechterlijk pardon/judicial pardon) in criminal law and second, to understand the application of the principle of judge forgiveness in court decisions. This type of research is normative juridical, which emphasizes legal principles and legal comparisons. The data sources used include primary data, secondary data, and tertiary data. Data collection techniques using the literature study method. From the results of the problem research, there are two main things that can be concluded. First, that the principle of judge forgiveness (rechtelijk pardon/judicial pardon) is explicitly regulated in 2 (two) criminal law regulations although it is still not regulated comprehensively and completely. Second, that in court decisions made by judges, there are differences in the application of the principle of judge forgiveness (rechtelijk pardon/judicial pardon) and not all are in accordance with the formulation regulated in the criminal law. The author suggests, First, that the regulation regarding the concept of the principle of judge forgiveness (rechterlijk pardon/judicial pardon) be regulated more fully and comprehensively. Second, to encourage judges to be able to use the principle of judge forgiveness (rechterlijk pardon/judicial pardon) objectively and in accordance with the formulations stipulated in the criminal law that regulates it.

Keyword: *Judge's principle of forgiveness, Criminal Law, Judgment Court*

1. Introduction

As we know, our country's substantive criminal law is regulated in the Kitab Undan-Undang Hukum Pidana Number 1 of the Republic of Indonesia (KUHPidana 1946) which originated from the Dutch Kitab Undang-Undang Hukum Pidana (WvS). Formal criminal law in our country is regulated in Law Number 8 Year 1981 on Criminal Procedure of the Republic of Indonesia (KUHAP). The 1946 KUH Pidana itself is a strict substantive criminal law system based on three aspects of criminal law, namely criminal acts (strafbaarfeit), negligence (schuld), and punishment (straf/punishment/poena). The purpose of punishment variable does not exist in the StGB/WvS formulation model or guidelines. Because the purpose is not clearly stated in the KUHP, the "purpose" seems to be outside the system and is ignored or forgotten

by law enforcement officials.[1]

For example, there are many cases such as the theft of cocoa/chocolate fruits by a grandmother named Minah in Purwokerto, the theft of sandals by AAL in Palu, the theft of a handful of peppercorns by Rawi in Sinjai, the theft of 8 (eight) Adenium flower stalks by FN in Soe, South Central Timor and the mugging of Rp1000.00 (one thousand rupiah) by DW in Denpasar, which formally fulfill the elements of a criminal offense regulated in the KUH Pidana and are relatively light in terms of the impact of the crime. The development of information technology in this era of globalization allows everyone to receive information quickly and is not limited to place and time. Technological advances in the era of globalization have caused the dissemination of information to take place widely and quickly.[2] Due to the advancement of information technology, the public immediately reacts to the legal process of trivial matters above.

However, because judges are limited in making decisions on these cases, inevitably, judges must make decisions as stipulated in Article 191 Paragraphs (1) and (2) and Article 193 Paragraph (1), namely acquittal if the perpetrator's actions are not proven, acquittal if the perpetrator's actions are proven but not a criminal act, and conviction if the perpetrator's actions are proven as a criminal offense. In any case, the judge's decision reflects the values and structure of society. However, decisions such as the one above do not seem to reflect the values of society at all. Given the applicable provisions regarding court decisions, it can be concluded that the court decision is a limited decision or normative decision in the sense of Criminal Procedure Law. In this phenomenon, the act charged to the defendant is proven legally and convincingly, but the judge has the view/opinion that the act is not necessary and should not be imposed. In this case, there is a legal vacuum because there are no rules governing it. the court can base its decision on. What they have in mind is a sense of public justice and humanity, so that criminal sanctions are not necessary. The judge cannot make a decision other than what has been determined, because this concerns the certainty of the law itself.[3]

Only since 2023, in the Law of the Republic of Indonesia Number 1 Year 2023 on the Criminal Code (KUHPidana 2023), there have been reforms in our national criminal law system. One of the reforms is in Article 54 Paragraph (2) which states that "The severity of the act, the personal circumstances of the perpetrator, or the circumstances at the time of the crime as well as those that occur later can be used as a basis for consideration not to impose punishment or not to impose measures by considering aspects of justice and humanity". This is what has been explained and even stated in the KUHPidana 2023 called the principle of judge forgiveness (rechterlijk pardon/judicial pardon). According to Nico Keitzer and Schaffmeister, the emergence

[1] Aristo Evandy, A. Barlian, and Barda Nawawi Arief, 'Formulasi Ide Permaafan Hakim (Rechterlijk Pardon) Dalam Pembaharuan Sistem Pemidanaan Di Indonesia', 13.1 (2017).
[2] Kasmanto Rinaldi, *Dinamika Kejahatan Dan Pencegahannya (Potret Beberapa Kasus Kejahatan Di Provinsi Riau)* (Ahlimedia Press, 2022).
[3] M. Musa, *Bunga Rampai Horizon Hukum Dalam Sistem Hukum Nasional* (LeutikaPrio, 2020).

of the concept of the principle of legal pardon (rechterlijk pardon/judgemental pardon) is a reaction to the fact that many defendants who meet the evidentiary requirements, even though these defendants if sentenced, will be sentenced to imprisonment. legal pardon. It can be argued that going against intuition or imposing punishment creates a contradiction between legal certainty and justice in the eyes of the law.[4]

However, although the principle of rechterlijk pardon/judicial pardon is explicitly mentioned in the 2023 KUHPidana as well as in its explanation, in fact at some times and places, several judges have applied the principle of rechterlijk pardon/judicial pardon in their decisions, long before the principle of rechterlijk pardon/judicial pardon was regulated in writing in the 2023 KUHPidana. The implementation can vary, not always following the formula formulated in Article 54 Paragraph (2) of the 2023 KUHPidana. Based on what has been explained in the phenomenon above, the author is interested in further examining the principle of judge forgiveness (rechterlijk pardon/judicial pardon) in judges' decisions to find out what is the basis for consideration and how it is implemented in criminal law enforcement in Indonesia.

The author takes a point of view regarding the existence or existence of the principle of judge forgiveness (rechtelijk pardon/judicial pardon) in the criminal law applicable in Indonesia and in the decisions of judges in deciding cases. The writing of this thesis is different from the research of Budi Sulistiyono entitled The Appropriateness of Rechterlijk Pardon A report on the Indonesian criminal justice system which focuses on the possibility of applying legal amnesty in the Indonesian criminal justice system. It is different from Areef Setiawan's research entitled "Rechterlijk Pardon" (Revision of Draft KUHP and Conception of Judicial Pardon in Draft KUHAP) which examines the conception of judicial pardon in Draft KUHP and KUHAP. Code of Procedure. The focus is on the relationship with the draft. Procedural law examines the Code in relation to restorative justice principles, focusing on the status of the concept of judicial pardon and its impact on decisions. This is the work of Aristo Evandi A. Balurian which focuses on the formulation of the idea of legal pardon (Rechterlijk Pardon) in criminal justice reform and policies to formulate and implement the value of legal pardon. In contrast to the research. Criminal justice in Indonesia.

2. Research Method

Normative legal research is related to legal principles and comparative law, in which in this study the author examines legislation and court decisions that contain elements of the principle of judge forgiveness (rechtelijk pardon/judicial pardon) and its application and compares the application with other legal systems. This research uses data sources from secondary legal materials, namely applicable laws and regulations and literature or research that is in line with the title of this research.

[4] Muh. Iksan Putra Kai, Dian Ekawaty Ismail, and Suwitno Yutye Imran, 'Asas Pemaafan Hakim Dalam Pembaharuan Hukum Pidana Di Indonesia', *Doktrin: Jurnal Dunia Ilmu Hukum Dan Politik*, 2.1 (2024).

3. Result and Discussion

3.1 Existence of Judge's Pardon (Rechtelijk Pardon/Judicial Pardon) in Indonesian Criminal Law

In the development of Indonesian criminal law, legal arrangements regarding the principle of legal forgiveness are regulated in the following two laws: Law of the Republic of Indonesia Number 12 of 2011 concerning the Juvenile Criminal Justice System (SPPA Law) and Law of the Kitab Undang-Undang Hukum Pidana of the Republic of Indonesia Number 1 of 2023 (KUH Pidana 2023).

A. Law of the Republic of Indonesia No. 11 of 2012 Concerning the Juvenile Criminal Justice System (SPPA Law)

The principle of judge forgiveness (rechterlijk pardon/judicial pardon) can be seen in Article 70 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Child Criminal Justice System (SPPA Law) which reads: "The severity of the offense, the personal circumstances of the child, or the circumstances at the time of the offense or that occurred later can be used as the basis for the judge's consideration not to impose punishment or impose measures by considering the aspects of justice and humanity". When looking at the Elucidation of Article 70 of the SPPA Law, it is written quite clearly. However, the author will elaborate on the meaning of the elements in Article 70 of the SPPA Law.

1) The lightness of the act. The lightness of the act referred to in the formulation of this article is a criminal offense of a minor nature committed by a child. The meaning of the lightness of the act leads to the substance of the act and to the qualification of the act.
2) Personal circumstances of the child. The element of the child's personal circumstances involves consideration of the personal aspects of the child who committed the offense. This can be done by looking at the background, origin, family, and social life of the offender, but can also be done with the help of other applied sciences such as psychology, anthropology, and so on. In essence, the personal circumstances of the child refer to the circumstances of the child's inner self.
3) Circumstances at the time and after the crime was committed. This factor takes into account the personal circumstances of the child who committed the crime, as well as the circumstances experienced by the child at the time and after the crime, including the child's capacity to take responsibility for the act and whether or not the crime was legal.
4) Can be used as a basis for testing.) This factor can be used as a basis for consideration and is considered subjectively important. Because the word "may" means 'can' or "allowed" and if the elements formulated are met, the judge remains free to impose a sentence, although he is not obliged to pardon the child.
5) No sanctions or criminal action will be taken. The fact that no sanctions or

criminal action will be taken in this case may mean that amnesty will still be granted through the court's decision-making mechanism.

6) Justice and humanity. This element is open to a much broader interpretation than the other elements. Justice and humanity are abstract and not limited by time or space. Each person can define justice and humanity according to his or her own point of view. Justice has an important place in every society, including throughout human history, regardless of differences between people. This is a difficult task for judges, because in these circumstances it requires wisdom to justify the granting of pardons as a concrete manifestation of the desired justice, both in terms of justice and humanity.

The provisions in Article 70 of the SPPA Law, which have a slight difference in phrases and elements, where in the KUHPidana 2023 there is the phrase perpetrator, but in the SPPA Law it is changed to Child. Likewise, the phrase "..... can be used as a basis for consideration for not imposing punishment or not imposing action...". This means that there are two options for judges, namely not imposing punishment or imposing measures...".[5]

B. Law of the Republic of Indonesia Number 1 Year 2023 on the Kitab Undang-Undang Hukum Pidana

Law Number 1 Year 2023 on the Kitab Undang-Undang Hukum Pidana also includes the concept of forgiveness by the judge. Precisely Article 56 Paragraph (2) which states; "The severity of the act, the personal circumstances of the perpetrator, or the circumstances at the time of the crime and what happened later can be used as a basis for consideration not to impose punishment or not to impose measures by taking into account aspects of justice and humanity". The elaboration of the elements in this article is not much different from Article 70 of the SPPA Law. If we look at the Elucidation of Article 56 Paragraph (2) of the KUHPidana 2023, it states: "The provision in this paragraph is known as the principle of rechterlijk pardon or judicial pardon which authorizes the judge to pardon a person who is guilty of a minor crime. This pardon is included in the judge's decision and it must still be stated that the defendant is proven to have committed the criminal offense charged to him. This is something new because so far we have known that pardons (amnesty, abolition, and clemency) are the authority held by the president as the holder of executive power, but now the KUHPidana 2023 places pardons or forgiveness as an authority of judges as part of the judiciary.[6]

However, in the KUHPidana 2023, before a judge imposes a sentence, it is mandatory for a judge to consider matters as stipulated in Article 54 Paragraph (1) of the 2023 Criminal Code, which consists of:

[5] Nurini Aprilianda, 'Menggali Makna Pemaafan Hakim Bagi Anak Melalui Ratio Legis Pasal 70 Undang-Undang Sistem Peradilan Pidana Anak', *Jurnal Arena Hukum*, 16.2 (2023).
[6] Dewi Rohayati, 'Pengaturan Yudisial Pardon Dalam Pembaharuan Hukum Pidana', *Jurnal Wacana Paramarta*, 15.2 (2016).

a) the form of negligence of the perpetrator;
b) the motive and purpose of committing the crime;
c) the mental attitude of the perpetrator;
d) the crime can be committed with planning or without planning.
e) the ways of committing the crime;
f) the attitude and behavior of the perpetrator after committing the crime;
g) the background, social, and economic conditions of the perpetrator; and
h) the impact of criminal sanctions on the future of the perpetrator.
i) the impact of the crime on the victim or the victim's family; forgiveness from the victim and/or the victim's family; and/or (k) the prevailing values of law and justice in society.

In essence, Article 54 paragraph (1) provides guidelines for judges before imposing punishment. This article is often referred to as individualization of punishment in which the judge must carefully elaborate the severity of the crime and the background of the perpetrator. Regarding the implementation of punishment, it must also see the level of effectiveness and efficiency in efforts to combat crime, so that punishment is no longer considered universal for all criminals based on actions alone, but for the effectiveness and efficiency of punishment must be more individualized by promoting individualization of punishment.[7]

Simply put, judicial clemency in this article gives judges the discretionary power to not punish criminals who are proven to have committed a criminal offense by considering various aspects including restorative aspects. For example, when deciding on a judicial pardon, the judge also considers the rights of the victim. If the victim/family of the victim has forgiven the perpetrator in a statement, the perpetrator's sentence is not increased, and the victim/family of the victim feels they have recovered, then the judge will find the defendant guilty. The court may base its decision on giving clear reasons. explanation but not condemning the perpetrator. Him. In this case, the judge's pardon mechanism is an application of the restorative justice approach, which is carried out at the sentencing and post-sentencing stages. This further reinforces the principle of restorative justice, which can be applied at all stages of the criminal justice system.[8]

C. Comparison of the Arrangement of the Judicial Pardon Principle (Rechterlijk Pardon/Judicial Pardon)

The principle of judge forgiveness (rechterlijk pardon/judicial pardon) adopted in the KUHPidana 2023 and the SPPA Law, is actually rooted in the practice and legal content applied in the Netherlands. Like it or not, the legal system in Indonesia still quite strongly adopts Dutch law. Although it has begun to be adjusted to the values

[7] Anggian Cassilas and Rugun Romaida Hutabarat, 'Prinsip Individualisasi Pidana Dalam Penempatan Narapidana Berdasarkan Jenis Kejahatan', 6.2 (2024), pp. 6473–79.
[8] Maidina Rahmawati Et.al, 'Peluang Dan Tantangan Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia'.

that live in society, there are several contents in the KUHPidana 2023 that are taken from the Dutch KUHPidana. One of them is this principle of judge forgiveness. From the author's observations, there are several differences between the principle of judge forgiveness (rechterlijk pardon/judicial pardon) adopted by Indonesian law, (Criminal Code 2023 and SPPA Law) and that adopted by Dutch law, namely:

1) In the Netherlands, when formulating the principle of pardon, judges use the term "inferiority of the act". This refers to the consequences of a crime (section 9a of the Dutch KUHP). According to Andy Hamzah, the element of "inferiority of the act" is influenced by the concept of subsociality, where an act is classified as a criminal offense but the social impact is small. If the impact is relatively small, then the perpetrator does not need to face any criminal punishment or criminal action. [9] Whereas in Indonesia, the substance of the act and the qualification of the act (Article 54 Paragraph (2) of the KUHPidana 2023 and Article 70 of the SPPA Law).
2) In the Dutch criminal law, we do not find the elements of justice and humanity in the formulation (Article 9a of the Dutch KUHPidana). Whereas in Indonesia, the principle of forgiveness of the judge is always followed by the phrase justice and humanity (Article 54 Paragraph (2) of the KUHPidana 2023 and Article 70 of the SPPA Law). This is a manifestation of the implementation of Pancasila values, especially the 2nd and 5th precepts, into the provisions of national criminal law.
3) In the Netherlands, the regulation of the principle of judge forgiveness or rechterlijk pardon has been harmonized with the provisions of procedural law in the Wetboek van Strafvorderingen in the form of arrangements in addition to acquittal (vrijs praak), release (onslag van recht vervol ging), punishment decisions as well as decisions to forgive judges (rechterlijk pardon).[10] Meanwhile, the provisions on the principles of Criminal Law (KUHAP) have not been integrated into the current Criminal Procedure Code.
4) In the Netherlands, against the judge's forgiveness decision (rechterlijk pardon), in accordance with the provisions in Article 402 Paragraph (2) letter a Wetboek van Strafvorderingen/Criminal Procedure Code of the Netherlands / Dutch Criminal Code cannot be appealed. Then in Article 427 Paragraph (2) letter a Wetboek van Strafvorderingen / Criminal Procedure Code of the Netherlands/Dutch KUHAP states that the decision to forgive is conceptually not subject to cassation. This is very different from judicial practice in Indonesia. Explicitly, there are no rules regarding legal remedies against the judge's forgiveness decision (rechterlijk pardon) because, the judge's forgiveness decision (rechterlijk pardon) itself in criminal procedure

[9] Indi Muhtar Ismail Dominikus Rato and Bayu Dwi Anggono, 'Kepastian Hukum Penerapan Asas Rechterlijk Pardon Pada Putusan Perkara Pidana', *Jurnal Humani (Hukum Dan Masyarakat Madani),* 13.2 (2023).
[10] Adery Ardhan Saputro, 'Konsepsi Rechterlijk Pardon Atau Pemaafan Hakim Dalam Rancangan KUHP', *Jurnal Mimbar Hukum*, 28.1 (2016).

law is not included as one of the types of decisions handed down based on Article 191 Paragraph (1), Paragraph (2) and Article 193 Paragraph (1) of KUHAP.[11]

3.2 Application of the Principle of Judge's Pardon (Rechterlijk Pardon) in Court Decisions

After the author has explained the existence of the principle of rechterlijk pardon/judicial pardon in criminal law, which the principle of rechterlijk pardon/judicial pardon is regulated in the KUHPidana 2023 and the SPPA Law, then the author will further discuss several decisions that were found to have elements of forgiveness from the judge when passing a verdict in a table as follows:

No.	Case	Criminal Offenses	The Verdict	Use of the Judge's Forgiveness Principle
1	Putusan Number 1/Pid.C/2021/ PN Ttn	Petty theft	Trial	Making the principle of forgiveness for judges to impose probationary punishment
2	Putusan Number 2/Pid.Sus-Anak/2020/PN Rgt	Theft with aggravation	Guilty but not sanctioned	Using the principle of judge forgiveness as formulated by the judge in Article 70 of the SPPA Law
3	Putusan Number 104/Pid.B/2020/PN Lbb	Embezzlement	Criminalization	Making the judge's forgiveness principle to reduce the defendant's sentence
4	Putusan Number 1038/Pid.B/LH/2019/PN Pbr	Land burning	Freely	Making the principle of forgiveness the judge to release the defendant
5	Putusan Number 8/Pid.B/2022/ PN Rtg	Persecution	Trial	Making the principle of forgiveness the judge to impose

From some of the decisions listed above, it can be seen that judges have various understandings related to the principle of judge forgiveness (rechterlijk pardon/judicial pardon). Some judges apply the principle of judge forgiveness (rechterlijk pardon/judicial pardon) in accordance with the formulation referred to in Article 54 Paragraph (2) of the KUHPidana 2023 and Article 70 of the SPPA Law, while others include elements of judge forgiveness (rechterlijk pardon/judicial pardon) limited to legal considerations only. For convenience, the author makes the following grouping:

1) Pure application of the principle of judge forgiveness. This is a type of decision from a judge/judge panel that consequently applies the judge's forgiveness (rechterlijk pardon/judicial pardon) in accordance with the formulation contained

[11] Alfret and Mardian Outra Frans, 'Konsep Putusan Pemaaf Oleh Hakim', *KRTHA Bhayangkara*, 17.3 (2023).

in Article 54 Paragraph (2) of the KUHPidana 2023 and Article 70 of the SPPA Law, which states that the perpetrator/child of the perpetrator is proven guilty but does not impose punishment or measures.

2) The application of the principle of judge's forgiveness as a consideration to impose a lighter punishment. This is a type of decision from a judge/judge panel that applies judge's forgiveness (rechterlijk pardon/judicial pardon) but not in accordance with the formulation contained in Article 54 Paragraph (2) of the KUHPidana 2023 and Article 70 of the SPPA Law. Judge forgiveness (rechterlijk pardon/judicial pardon) is only used to a limited extent in the legal considerations of the judge/judge panel before deciding the case to reduce the sentence. In the verdict, the judge/judge panel still states that the perpetrator/child of the perpetrator is guilty and is still sentenced to punishment, but it is lighter than the punishment that should be imposed.
3) The application of the principle of judge's forgiveness as a consideration to impose probation. This is a type of decision from a judge/judge panel that applies a judge's pardon (rechterlijk pardon/judicial pardon) but not in accordance with the formulation contained in Article 54 Paragraph (2) of the KUHPidana 2023 and Article 70 of the SPPA Law. The judge's forgiveness (rechterlijk pardon/judicial pardon) is only used to a limited extent in the legal considerations of the judge/judge panel before deciding the case to impose probation on the perpetrator/child of the perpetrator. In the verdict, the judge/judge panel still states that the perpetrator/child of the perpetrator is guilty and still sentenced to punishment, but the punishment is probationary, which means that the punishment does not need to be executed as long as the perpetrator/child of the perpetrator does not repeat his/her actions within a certain period of time.
4) The application of the principle of judge forgiveness as a consideration to acquit from all charges. This is a type of decision from a judge/judge panel that applies a judge's pardon (rechterlijk pardon/judicial pardon) but not in accordance with the formulation contained in Article 54 Paragraph (2) of the KUHPidana 2023 and Article 70 of the SPPA Law. Judge forgiveness (rechterlijk pardon/judicial pardon) is only used to a limited extent in the legal considerations of the judge/judge panel before deciding the case to release the perpetrator/child of the perpetrator. In the verdict, the judge/judge panel declares the perpetrator/child offender not guilty and acquits him/her of all charges.

So far, the author has not found any decisions that contain elements of judge forgiveness (rechterlijk pardon/judicial pardon) used by the judge/judge panel as a consideration to decide the perpetrator/child of the perpetrator to be released from all charges (ontslag van alle rechtsvervolging). However, it does not rule out the possibility that in the past there were judge decisions that made the judge's forgiveness as a basis for consideration to decide the perpetrator/child of the perpetrator to be released from all charges (ontslag van alle rechtsvervolging). There are several reasons that make the application of the principle of judge forgiveness (rechterlijk pardon/judicial pardon) not fully maximized by judges in handling a case. According

to the author, among these reasons are:

1) **The Concept of Judge's Pardon (Rechtelijk Pardon/Judicial Pardon) is Still Relatively New in the Indonesian Criminal Law System.**
It is undeniable that the principle of judge forgiveness (rechtelijk pardon/judicial pardon) adopts the concept of judge forgiveness contained in the Dutch KUHPidana. The concept of the principle of judge forgiveness was first explicitly contained in criminal legislation in Indonesia in the SPPA Law promulgated in 2012. In fact, the KUHPidana 2023, which also contains the principle of judge forgiveness, will only be effective in 2026. So that it further narrows the opportunity to use the principle of forgiveness of judges as the formulation regulated by the principle of forgiveness itself.
However, law enforcers, especially judges, are not yet familiar with the concept of the principle of judge forgiveness. This is natural with the limited literature and narrow access to information at that time. Thus, it is understandable that the concept of judge forgiveness can partly be found in previous court decisions such as the North-East Jakarta Court Decision No. 46/PID/78/UT/WANITA in 1978 and the North-East Jakarta District Court Decision No. 90/PID/1976/TIM dated February 25, 1976.[12] which contains the concept of the principle of forgiveness of judges only in its consideration without imposing rulings such as the actual formulation of the principle of forgiveness of judges.

2) **Unclear Regulations on Types of Judicial Pardon Decisions (Rechtelijk Pardon/Judicial Pardon).**
The regulation of the principle of rechterlijk pardon/judicial pardon cannot only be regulated in the KUHPidana 2023, because in essence the KUHPidana 2023 only provides substantive criminal law. In fact, the provisions regarding judicial pardons were previously absent from the current Kitab Undang-Undang Hukum Pidana 1946. Therefore, the principle of legal pardon (rechterlijk pardon/judicial pardon) needs to be adjusted to the upcoming Criminal Procedure Code (RKUHAP). Therefore, the provisions regarding the judicial amnesty system are not just "dead-end" provisions that cannot be actually enforced by the courts.[13]
Decisions containing the principle of judge's pardon (rechterlijk pardon/judicial pardon) Clemency decisions have very different concepts and provisions from the three decisions above, namely only when the defendant has been proven to have committed a criminal offense, there is no further reason to revoke the criminal sanction, and justification or clemency is only granted. However, the judge will adhere to the legal provisions of the sentence and will not impose a fine on the defendant. Pardon from the judge. Therefore, in his decision, the judge decides that the defendant is guilty but will not be punished for his negligence.

[12] Antonius Sudirman, *Hati Nurani Hakim Dan Putusannya. Sebuah Pendekatan Dari Perspektif Ilmu Hukum Prilaku (Behavioral Jurisprudence) Kasus Hakim Bismar Siregar* (Citra Aditya Bakti, 2007).
[13] Adery Syahputra, 'Tinjauan Atas Non-Imposing of a Penalty/ Rechterlijk Pardon/ Dispensa de Pena Dalam R KUHP Serta Harmonisasinya Dengan R KUHAP', *Institue for Criminal Justice Reform (ICJR)*, 2016.

It is necessary to create a new type of sentencing decision: the judge's pardon decision. A judge's pardon decision does not include a criminal conviction and is therefore not included in the sentencing decision. This is in line with Dutch practice, where there are four types of sentences: criminal sentences, acquittal sentences, release sentences, and judge pardon sentences. This is because the author argues that once a person has been found guilty, he or she should automatically be punished in some form, be it a conviction, a measure, or even a pardon. What is emphasized is that the status of the perpetrator is guilty. His actions remain attached to him. However, if the forgiveness decision is included in the type of punishment decision, then inevitably the legal remedies that are regulated hierarchically start from appeals, cassations, to judicial review. Meanwhile, according to the author, the judge's forgiveness should be final as adopted by the Dutch KUHAP.

3) Unclear Regulations on Judicial Remedies for Pardon Decisions

Apart from being related to the type of decision, the reason why we rarely find judges' decisions that apply the principle of judge forgiveness as formulated in the criminal law is because it is unclear whether legal action against the judge's forgiveness is possible. In the Netherlands, for example, the decision to pardon a judge cannot be appealed or cassated. In this context, Al-Shir argues that the decision to pardon the judge still requires legal procedures such as appeal and cassation. This is in accordance with Al-Shir's view that a judge's pardon is part of the criminal judgment and that appeals and petitions for higher appeals are also permitted.

When considering an appeal against a judge's pardon decision, it is important to consider the judge's considerations when making the pardon decision (in addition to the judge's considerations when sentencing). The judge must also consider: 1) The ease of the crime. 2) The personal circumstances of the offender; 3) The circumstances in which the crime was committed and what happened afterwards. The above considerations need to be supported by evidentiary findings in the form of factual legal facts, and therefore there is no longer any reason for the appeal court not to review the judge's clemency decision.

4) A judicial paradigm that emphasizes case resolution with restorative justice

The KUHPidana 2023 and the SPPA Law both explicitly and implicitly contain the concept of restorative justice as an alternative to case settlement that prioritizes justice and expediency. Conceptually, restorative justice has points of thought and technical arrangements that are more fully accommodated in Indonesian legislation than the concept of judge forgiveness. Thus, it is very rare to find decisions of judges using the principle of judge forgiveness in deciding a case they handle. These judges prefer to use restorative justice methods which are considered “safe” and have a clear legal basis in the Indonesian criminal law system. This is not surprising because in fact, the principle of judge forgiveness

aims as the last safety valve that can be used by judges so that the verdict imposed is still just for the perpetrators of criminal acts.

4. Conclusion

In the development of criminal law in Indonesia, legal regulations governing the principle of judge forgiveness can be found in 2 (two) laws, namely: Law of the Republic of Indonesia Number 12 of 2011 concerning the Juvenile Criminal Justice System (SPPA Law) and Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (KUHPidana 2023), although it is still not comprehensively and completely regulated. This is something new because so far we have known that pardons (amnesty, abolition, and clemency) are the authority held by the president as the holder of executive power, but now the KUHPidana 2023 places pardons or forgiveness as an authority of judges as part of the judiciary. In the development of criminal law in Indonesia, legal regulations governing the principle of judge forgiveness can be found in 2 (two) laws, namely: Law of the Republic of Indonesia Number 12 of 2011 concerning the Juvenile Criminal Justice System (SPPA Law) and Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (KUHPidana 2023), although it is still not comprehensively and completely regulated. This is something new because so far we have known that pardons (amnesty, abolition, and clemency) are the authority held by the president as the holder of executive power, but now the KUHPidana 2023 places pardons or forgiveness as an authority of judges as part of the judiciary. to acquit the defendant or to release the defendant from all charges. The reasons why in court decisions we rarely see judges using the principle of judge forgiveness in deciding a case that should not be punished are: a) There are no clear regulations on the types of decisions and legal remedies against decisions that contain the principle of judge forgiveness (rechterlijk pardon/judicial pardon); b) Considering that the orientation of punishment in the KUHPidana 2023 and the SPPA Law emphasizes restorative justice, avoidance of imprisonment by prioritizing fines or actions, then imprisonment as the last resort in imposing punishment, so that the function of the principle of judge forgiveness (rechterlijk pardon/judicial pardon) is intended as a safety valve in achieving justice in a case after all of the above efforts have been implemented but not enough to achieve justice.

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