

Reconstruction of the Kribligation Code on Judges' Forgiveness (*Rechterlijk Pardon*) in the New Criminal Code

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Abstract

This study examines the reconstruction of the Criminal Procedure Code concerning judicial pardon (rechterlijk pardon) in the new Criminal Code, with the objective of understanding the concept of judicial forgiveness as outlined in Constitution Number 1 of 2023. It aims to analyse the types of decisions in accordance with Article 191 of the Criminal Procedure Code. persuasive manner in court. The judge's pardon is governed by Article 52, paragraph 2 of Law Number 1 of 2023. However, if legal imposition employs procedural law under the Criminal Procedure Code, there exists a legal void, as the Criminal Procedure Code only addresses three types of decisions: acquittal, dismissal of all legal claims, and criminal conviction. The Criminal Procedure Code necessitates reconstruction for the specified decision types. Utilises research This is a consideration regarding the Constitution, particularly the present.

1. Introduction

The Criminal Code (KUHP) currently in effect in Indonesia pertains to the legacy of the Dutch colonialists, which are no longer suitable in the context of contemporary development. This will affect the Indonesian criminal law system, which remains highly absolute and inflexible in its determination of criminal matters. This can be interpreted as the legal products' characteristics intrinsically linked to the legal policies of the colonising nation (the Netherlands) aimed at subjugating the indigenous population, whereby any method, including punitive measures against natives for minor transgressions, was employed.

In last few decades, Indonesian criminal law has undergone considerable revisions. The government and the House of Representatives of the Republic of Indonesia (DPR) are collaborating to amend and modernise criminal legislation to align with the requirements of contemporary society. Numerous modifications have been implemented, including the elimination of discriminatory clauses, the enhancement of penalties for severe crimes, the safeguarding of victims' rights, the protection of children, and the adaptation to technological advancements.¹

Reforming Indonesian criminal law extends beyond the mere establishment of institutions; it encompasses a comprehensive development of criminal law, including substantive aspects and legal products in the form of regulations governing offences that reflect cultural characteristics, attitudes, and values that influence the national legal system.²

To administer justice in civil society, criminal law must be enforced. For fostering and sustaining transformation, the national Criminal Code must adapt to advancements in international technology, knowledge, and agreements.³ The reform of criminal law intends to establish a cohesive framework of Indonesian national criminal law, with the express objective of criminalisation articulated in Law No. 1 of 2023 about the Criminal Code (New Criminal Code).

The principle of individualisation in criminal law possesses significant qualities that enhance the renewal process of criminal law, granting judges the discretion to select and determine sanctions or actions based on their most judicious assessment⁴. For the culprit to commit a criminal act. The principle of individualisation in criminal law that emphasises the rights of the perpetrator and aims to ensure justice and legal certainty has been articulated in Article 54, paragraph (2) of the new Indonesian Criminal Code, which states: "The leniency of the sentence, the personal circumstances of the offender, or the context at the time of the offence may serve as grounds for not imposing a criminal sentence or for applying alternative measures, taking into account aspects of justice and humanity."

The judge's clemency is also recognised by the Dutch legal system, which permits judges to express remorse to a criminal notwithstanding a guilty verdict. This matter aims to serve as a model for a solution that is better suitable for the offender, who was sentenced to a punishment that aligns with the objectives of the current criminal sanctions in the new Criminal Code.

The Dutch legal system acknowledges the judge's clemency, allowing

¹ Parningotan Malau, "Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (2023): 837–44.

² Satjipto Rahardjo, *Hukum Dan Masyarakat* (Bandung: Angkasa, 1980).

³ M. Ali Zaidan, *Menuju Pembaruan Hukum Pidana*. (Jakarta: Sinar Grafika, 2015).

⁴ Lukman Hakim (Yogyakarta: Graha Ilmu, 2019).

judges to convey contrition to a convicted individual despite a guilty conviction⁵. This matter seeks to exemplify a solution more appropriate for the offender, who received a sentence that corresponds with the aims of the contemporary criminal sanctions outlined in the new Criminal Code⁶.

With implementation of the judge's forgiveness as stipulated in Chapter 54 paragraph 2 of the new Criminal Code and if no revisions to the Criminal Procedure Code (KUHP) coincide with the implementation of the new Criminal Code, uncertainty in judicial decisions may happen. In Article 191 of the Criminal Procedure Code there are 3 (three) types of decision namely acquittal, decision to release from all legal charges and criminal decision. The judge's pardon is not included in the three decisions stated, necessitating a revision of the chapter.

The principle of judicial forgiveness pertains to laws enacted becomes effective on January 1, 2026. Their implementation will necessitate alignment with other legislative regulations and require coordination between law enforcement agencies and civil entities. There are inherent deficiencies that must be promptly addressed to achieve the objective of this principle, which aims to diminish the number of unnecessary criminal sanctions.

Practically, the judge's clemency will be directly linked to the judge's decision, as stipulated by the provisions within both the Criminal Procedure Code and the new Criminal Code. Currently, there is no framework governing such decisions. Therefore, in the author's view, the absence of provisions regarding the regulation of judicial forgiveness in formal law, namely the Criminal Procedure Code could severely hinder the practical application of these regulations, potentially rendering them ineffective.

The judicial pardon arrangement in the new Criminal Code must be aligned with the provisions in the draft Criminal Procedure Code, which will subsequently implement judicial forgiveness under the new Criminal Code, ensuring it does not become obsolete. There is a pressing need for amendments to the Criminal Procedure Code, influenced by the ratification of the new Criminal Code. Criminal procedure law is not static; rather, it is dynamic, shaped by the prevailing circumstances and societal conditions. Revisions to the Criminal Procedure Code are also necessary for harmonisation with various existing regulations that govern separate procedural laws outside the Criminal Procedure Code, such as the Human Rights Court Law, the Anti-Corruption Law, the Electronic Transactions Act, and the Juvenile Justice System Law.

2. Research Methods

This research is a normative legal research, namely a research that aims to explain and analyze the judicial forgiveness (*rechterlijk pardon*) contained in Article 54 paragraph (2) of the new Indonesian Criminal Code (Law Number 1

⁵ Sugeng Jatmiko, "Rechterlijk Pardon (Pemaafan Hakim) Dalam Tindak Pidana Perpajakan" 6, no. 1 (2022), <https://doi.org/DOI: http://dx.doi.org/10.33603/hermeneutika.v6i1.6774>.

⁶ Kai Imran, S. Y M. I. P., Ismail, D. E., "Asas Pemaafan Hakim Dalam Pembaharuan Hukum Pidana Di Indonesia," *Doktrin : Jurnal Dunia Ilmu Hukum Dan Politik* 2, no. 1 (2024): 162–74.

of 2023) concerning the Criminal Code as a basis for reconstructing Law Number 8 of 1981 concerning the Criminal Procedure Law (KUHP).

In typology, this research is a descriptive research, namely legal research conducted by examining library materials or secondary data. Primary data in this study consists of primary legal materials sourced from laws and regulations, while secondary legal materials consist of books, journals, and articles.

3. Results and Discussion

Article 54 paragraph (1) of Law Number 1 of 2023 regulates the judge's obligation to consider the sentencing, namely specifically: a. the nature of the perpetrator's criminal act; b. the motive and intent behind the criminal act; c. the psychological disposition of the perpetrator; d. whether the criminal act was premeditated or spontaneous; e. the method employed in committing the crime; f. the perpetrator's behaviour following the commission of the crime; g. the perpetrator's life history, social circumstances, and economic conditions; h. the potential impact of the crime on the perpetrator's future; i. the repercussions of the crime on the victim or the victim's family; j. any expressions of forgiveness from the victim or the victim's family; k. the prevailing legal and societal values of justice.

The idea of judicial discretion in the new Criminal Code grants judges the authority to dismiss criminal charges based on their conscience. It remains to be determined whether this principle will extend to current criminal cases within their jurisdiction with the requisite integrity of judges over the forthcoming decision. Consequently, it is quite probable that decisions rendered may exhibit bias or partiality⁷.

In the Indonesian criminal justice system, the provisions for judicial clemency in the new Criminal Code will serve as guidelines for sentencing in the future. The idea of forgiveness is crucial for the framework of criminalisation due to its significant role in the criminal justice system. The incorporation of criminalisation guidelines into the codification of a country's criminal code will demonstrate the philosophical orientation or rationale underlying the country's approach to criminalisation. One of the main forces behind the creation of new ideas in criminal law is the enhanced attention on criminalisation globally. The notion of judicial clemency is a novel element in Indonesian criminal law⁸.

Current judicial forgiveness policy in Indonesia is solely governed by the new Criminal Code, which alone pertains to substantive criminal law. The arrangement of the judge's forgiveness must be consistent with the existing provisions of the Criminal Procedure Code as formal criminal law in the future. The absence of a section regarding judicial pardons in the new Criminal Code

⁷ Indi Muhtar Ismail, Dominikus Rato, and Bayu Dwi Anggono, "Implikasi Penerapan Asas Rechterlijk Pardon Dalam Putusan Perkara Pidana Ditinjau Dari Perspektif Kepastian Hukum," *Humani (Hukum Dan Masyarakat Madani)* 13, no. 2 (2023): 398–412.

⁸ Yusuf Syakir and Herman Sujarwo, "Kebijakan Pemaafan Hakim (Rechterlijk Pardon) Dalam KUHP Baru," *Syariat: Jurnal Studi Al-Qur'an Dan Hukum* 9, no. 1 (2023): 109–18.

creates uncertainty, as the formal law must also encompass regulations pertaining to judicial clemency.

In the revised Indonesian Criminal Code, the idea of judicial pardon (*rechterlijk pardon*) is referred to as a decision of forgiveness, which is distinct from a verdict of acquittal, as well as the existing criminalisation outlined in the current Criminal Procedure Code. This enables the judge to grant clemency to the defendant's criminal actions contingent upon specific criteria and limitations⁹.

a. The Authority of Judges in the System Justice Criminal

As an enforcer of the law, the judge is tasked with examining, trying, and determining whether the law is clear or not. Consequently, each judge may not possess sufficient responses to assist seekers of justice in overcoming problems and obstacles while adhering to the principles that the judge comprehends all law (*ius curia novit*)¹⁰.

The implementation of *ius curia novit* principle for judges in handling criminal cases within the criminal justice system in Indonesia aims to avoid rigidity while adhering to a flexible panel structure, unless otherwise stipulated by law. There must be a minimum of three judges in one assembly to ensure mutual collaboration and completion among them. The Constitution affirms that in cases of interest inspection in court, all courts must provide mutual assistance. Judges are obligated to investigate, adhere to, and comprehend legal principles and the prevailing sense of justice in society, thereby facilitating the resolution of every case presented to them.

The judge must comprehend the duties, authorities, and obligations established by regulatory legislation as part of an independent judiciary. After comprehending their tasks, authorities, and obligations, judges must strive to professionally manage and conclude the cases assigned to them¹¹. The judge plays a crucial role in establishing a legal state in Indonesia, hence being regarded as a noble profession (*officium nobile*). Even when the judge is the sole individual addressed as "Your Majesty" during the trial, it demonstrates that the judge occupies a highly esteemed profession.

During the trial process, the judge should not postpone the trial or fulfil the parties' requests. Consequently, the judge must be resolute in conducting the trial and proactively surmount impediments and barriers to ensure a swift, cost-effective, and straightforward legal process¹². Postponing trial means delaying justice, which also diminishes the authority of the court. Due to its

⁹ Mardian Putra Frans, "Konsep Putusan Pemaaf Oleh Hakim (Rechterlijk Pardon) Sebagai Jenis Putusan Baru Dalam KUHP," *KRTHA BHAYANGKARA* 17, no. 3 (2023): 587–600.

¹⁰ Yuristyan Pambudi Wicaksana, "Implementasi Asas Ius Curia Novit Dalam Penafsiran Hukum Putusan Hakim Tentang Keabsahan Penetapan Tersangka," *Lex Renaissance* 3, no. 1 (2018): 3–3.

¹¹ H Margono, "Asas Keadilan, Kemanfaatan, Dan Kepastian Hukum Dalam Putusan Hakim," 2019.

¹² Bambang Sutiyoso and Sri Hastuti Puspitasari, *Aspek-Aspek Perkembangan Kekuasaan Kehakiman Di Indonesia* (UII press, 2005).

intermediary role between the two parties in the case, the judge must uphold an impartial stance towards the primary judge's responsibilities in managing the case¹³. Furthermore, the judge only adopts a passive stance or awaits cases filed to him, particularly in criminal matters.

A judge in the criminal justice system can only adjudicate a criminal case after it has been filed by the Public Prosecutor, following an investigation and inquiry conducted by the police and prosecutors. In certain instances, they can only await the results of the investigation and inquiry. In criminal cases, a passive judge neither obstructs nor hinders efforts to investigate, comprehend, and examine the ideals of law and the sense of justice that exist within the public sphere¹⁴.

In criminal court procedures, the judge must be objective in evaluating the trial facts. This process aims to assess the veracity of evidence regarding a defendant's culpability. If found guilty, the judge will determine the appropriate criminal sanction; conversely, if the defendant is acquitted or if the alleged act is unproven, a judgement may be rendered in the form of an acquittal or dismissal of all legal charges (*onslag van alle rechtsvervolging*)¹⁵. The subsequent decision should evoke a feeling of fairness that aligns with the prevailing values of public justice.

b. Decision in the Case Criminal

Decision is the essence and objective of all activities inside the judicial process. This addresses the settlement of the issue that has been onerous for the parties since the inception of the process. The judge's ruling is the final outcome of an internal judicial process following a case inspection. In Dutch, a judge's decision or court ruling is referred to as a legal norm¹⁶.

Throughout the trial process, only the judge's ruling can ascertain the rights and obligations of the parties involved. Only a judge's ruling can ascertain the legitimacy of an action under the law or if the obligated party in a case is required to act. The judge will render a decision after the inspection is completed¹⁷.

Lilik Mulyadi asserts that a criminal verdict is the determination rendered by the judge in an open criminal trial case for the public. This typically encompasses decision, punishment, release, or exemption from all legal obligations, and is documented in writing with the purpose of concluding the matter¹⁸. Based on the aforementioned remark regarding the concept or meaning of a decision, it can be asserted that a criminal justice decision is the

¹³ Sufirman Rachman, "Pengetahuan Dasar Dalam Beracara Perdata," 2008.

¹⁴ Margono, "Asas Keadilan, Kemanfaatan, Dan Kepastian Hukum Dalam Putusan Hakim."

¹⁵ Lilik Mulyadi, *Seraut Wajah Putusan Hakim Dalam Hukum Acara Pidana Indonesia: Perspektif, Teoretis, Praktik, Teknik Membuat, Dan Permasalahannya* (Citra Aditya Bakti, 2010).

¹⁶ Yan Pramadya Puspa, "Kamus Hukum Edisi Lengkap," *Lengkap. Jakarta: Aneka Semarang*, 1977.

¹⁷ Sudikno Mertokusumo, "Hukum Acara Perdata Indonesia," 2009.

¹⁸ Lilik Mulyadi, *Seraut Wajah Putusan Hakim Dalam Hukum Acara Pidana Indonesia: Perspektif, Teoretis, Praktik, Teknik Membuat, Dan Permasalahannya* (Citra Aditya Bakti, 2010).

outcome of a judicial process within criminal law that serves to resolve a criminal case.

The ruling is also encompassed by the Criminal Procedure Code, as the judge's remark was delivered in an open court hearing, which may manifest as a criminal conviction or acquittal, all contingent upon legal stipulations and procedural arrangements. The criminal verdict rendered is the outcome of considerations grounded in the indictment and all evidence presented throughout the court proceedings.

c. Types of Decisions in the Criminal Procedure Code

The judge must evaluate the facts of the trial in addition to statutory regulations. The court renders decisions based on ethical conduct, which encompasses a dedication to honesty as a judge, grounded in three principled attitudes: precision, innovation, and persistence in determination¹⁹.

The Criminal Procedure Code has not undergone significant revisions regarding the categories of judicial decisions, which remain categorised as before. The judge's ruling is categorised into three types: acquittal, dismissal of all charges, and conviction²⁰.

Meanwhile, upon further examination of the application of judicial clemency, it becomes evident that while the act has been established, no penalty has been administered. Consequently, the author interrogates the nature of the judgement that should be enforced onto the defendant who has received the judge's clemency. To address this issue, I delineate the components included in three distinct sorts of decisions:

1. Acquittal

The provisions of the acquittal decision as referred to in Article 191 paragraph (1) of the Criminal Procedure Code which reads as following : " If the court believes that from the result of examination during a session, the t defendant's guilt for the ast he has been accused of has not been legally and convincingly proved, the defendant shall be declared free".

Acquittal decision releases defendant from all verdict as it is sued by the public prosecutor, because the judge has belief that the charges brought to court is not proven²¹. Acquittal can be caused by three possibilities, the first is insufficient evidence, the second is that the available evidence is not sufficient to convince the judge that the defendant committed a crime, and the third is that the elements of the crime charged have not been proven.²²

¹⁹ Frans, "Konsep Putusan Pemaaf Oleh Hakim (Rechterlijk Pardon) Sebagai Jenis Putusan Baru Dalam KUHAP."

²⁰ Lilik Mulyadi, *Seraut Wajah Putusan Hakim Dalam Hukum Acara Pidana Indonesia: Persepektif, Teoritis, Praktik, Teknik Membuat Dan Permasalahannya* (Bandung: Citra Aditya Bakti, 2014).

²¹ Erdianto Efendi, *HUKUM ACARA PIDANA, Perspektif KUHAP dan Peraturan Lainnya* (Bandung: Refika Aditama, 2021).

²² Frans, "Konsep Putusan Pemaaf Oleh Hakim (Rechterlijk Pardon) Sebagai Jenis Putusan Baru Dalam KUHAP."

According to M. Yahya Harahap²³, several factors may lead a judge to render an acquittal in court, namely: a) the principle of proof as stipulated in the Constitution is not fulfilled. This occurs when the judge lacks sufficient confidence in the evidence presented by the prosecution to establish the defendant's guilt, resulting in the charges not being proven in a valid and convincing manner. b) The evidence presented does not substantiate the claimed crime against the defendant, as it fails to meet the minimum threshold of proof outlined in Article 185, paragraph (2) of the Criminal Procedure Code, which requires at least one witness. c) Although the error of the defendant can be officially established, the judge did not possess confidence in the defendant's error.

The aforementioned provisions concerning acquittal decisions indicate that the judge's pardon decision is in direct conflict with the requirements for acquittal, which stipulate that "the actions constituting the charged crime must not be proven in a legitimate and convincing manner." In the context of the defendant's actions, this implies that not all elements alleged by the Public Prosecutor have been fulfilled, as per the evidentiary provisions outlined in the Constitution, which are interpreted negatively under the Criminal Procedure Code. It would be erroneous for the panel of judges to dismiss the decision of judicial clemency based on the requirements of the acquittal, as there are no stipulations concerning offenders who have been demonstrably and convincingly proven guilty of the accusations, yet may be granted forgiveness.

2. Decision off (Putusan Lepas; belum tahu versi inggrisnya)

If the Panel of Judges renders a verdict of acquittal (onslag van alle rechtvervolging) in the judge's pardon decision, it is evidently in contradiction with Article 191, paragraph (2) of the Criminal Procedure Code, which states: "If the court believes that the act of which a defendant is accused has been proved, but (2) the act does not constitute a criminal act, the defendant shall be acquitted of all legal charges"

If the purported action of defendant does not constitute a criminal act, then from the outset, the judge could not accept the requests of the general prosecutor. This implies that defendant is not guilty, nor does it indicate a violation of the law or a justification for exoneration²⁴.

Article 191, paragraph (2) of the Criminal Procedure Code applies when the examination in court demonstrates that the claimed act attributed to the defendant is not a criminal act, as established by valid and convincing evidence in accordance with criminal law provisions. The act attributed to the defendant was substantiated; yet, the judge's ruling resulted in the defendant's discharge from all legal obligations. The justifications for

²³ Andre G Mawey, "Pertimbangan Hakim Dalam Menjatuhkan Putusan Lepas Dari Segala Tuntutan Hukum," *Lex Crimen* 5, no. 2 (2016).

²⁴ Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2019).

existence, forgiveness, and rationale in the Criminal Code are insufficiently comprehensive, particularly in relation to conditions such as mental illness (Article 44, paragraph (1)), emergency circumstances (Article 48), self-defence (Article 49), execution of lawful orders (Article 50), and fulfilment of official duties (Article 51)²⁵.

In this context, a judge's pardon does not meet the criteria for a judgement of acquittal, as it acknowledges the defendant's criminal act as proven, yet grants clemency. The author clearly indicates that it would be erroneous for the Panel of Judges to determine the judge's pardon based on the type of acquittal judgement.

3. Criminal Verdict

Criminal verdict commonly accepted in societal discourse as a derived word from the Dutch "verdict." Criminal verdict is the judgement issued by a court judge, who determined that the defendant has, in a valid and convincing manner, committed the criminal acts as charged by the prosecutor

The criminal verdict signifies that the panel of judges adjudicating the case determines the defendant's guilt about the actions specified in the indictment. This decision was taken because the panel of judges considers there are at least two genuine and compelling pieces of evidence showing the crime referenced in the indictment actually occurred²⁶.

If the panel of judges determined to employ a decision type that criminalises the principle of judicial clemency, I contends that this is also incorrect. In the context of criminal verdict, if the defendant has been proven, through valid and convincing means, to have committed a criminal act, then the judge must render a sentencing decision to penalise the defendant

This situation strongly contrasts with the judge's ruling about forgiveness, wherein the defendant, although demonstrating genuine and convincing evidence of illegal conduct, received no punitive term but was instead forgiven.

d. Reconstruction of the Criminal Procedure Code against Judicial Pardon in the New Criminal Code

According to the delineation of the three categories of judicial rulings that exist in The stipulations of the Criminal Procedure Code associated with the nature of judicial pardon decisions; thus, the author contends that complications will ensue if the judicial pardon regulations in the new Criminal Code are implemented without any modifications or updates to the decision types specified in the Criminal Procedure Code.

The absence of provisions related to the type of judicial pardon decision

²⁵ Mulyadi, *Seraut Wajah Putusan Hakim Dalam Hukum Acara Pidana Indonesia: Perspektif, Teoretis, Praktik, Teknik Membuat, Dan Permasalahannya*, 2010.

²⁶ Jonaedi Efendi, *Rekonstruksi Dasar Pertimbangan Hukum Hakim: Berbasis Nilai-Nilai Hukum Dan Rasa Keadilan Yang Hidup Dalam Masyarakat* (Prenada Media, 2018).

in the Criminal Procedure Code, in the author's opinion, will cause the judicial pardon decision to potentially become a decision that is null and void and has no binding legal force because the Criminal Procedure Code does not regulate it. However, on the other hand, the author also sees that in judicial practice in Indonesia there is a type of decision that is actually not regulated by the Criminal Procedure Code, but is used and running (not null and void and has binding legal force), namely the type of null decision.

The author contends that prior to the ratification of the judicial pardon regulations in the RKUHP (Draft of Indonesian Criminal Code), amendments should be made to the decision types outlined in the KUHP (Indonesian Criminal Code) by incorporating provisions on judicial pardons. This aims to ensure that the judicial pardon decision does not risk becoming an ineffective or unenforceable provision.

Based on the problems that the author has described above, the author will give 2 recommendations, harmonizing the provisions on judicial pardon contained in the Draft Criminal Code with the provisions on the types of decisions contained in the Criminal Procedure Code, they are:

1. Placing the Judge's Pardon Decision as the fourth type of decision

The Criminal Procedure Code delineates only three categories of judicial decisions; therefore, the author proposes the inclusion of a judge's pardon decision as a new category, that is:

- a. Acquittal (freelance/acquisition)
- b. Discretionary decision (dismissal of all legal proceedings)
- c. Criminalisation decision (verification).
- d. Decision remission judge (legal clemency).

Judges as one of the 4 types of final decisions in criminal cases, can add the judge's pardon decision to the provisions of the Criminal Procedure Code as an effort to harmonize the provisions on judges' pardons in the Draft Criminal Code, as has also been done in the Dutch justice system.

2. Carrying out a reconstruction of the provisions of the acquittal decision contained in Article 191 paragraph (1) of the Criminal Procedure Code

From the stipulations of the decision-free, a reconstruction can be executed to integrate the stipulations of the judge's pardon judgement inside Indonesian criminal procedure legislation without introducing a new category of decision as previously described. Such a reconstruction involves incorporating the sentence: "or if the court argues that, based on the examination results, the defendant's error regarding the alleged act is proven in a valid and convincing manner, yet the judge grants leniency to the defendant." The author can comprehensively elucidate the formulation as follows:

Article 191, paragraph (1) after revision: " If the court believes that from the result of examination during a session, the t defendant's guilt for the ast he

has been accused of has not been legally and i (1) convincingly proved, the defendant shall be declared free”.

The reconstruction of Article 191, paragraph (1), concerning decisions made freely, incorporates the element of judicial clemency as previously articulated. Here I asserts that, fundamentally, the legal outcomes remain identical, specifically the acquittal of the defendant, despite the differing conditions associated with each element. Nevertheless, these elements can together be utilised in the stipulations of the acquittal decision type.

According to my analysis of the significance of the judicial pardon regulation policy in relation to the current Indonesian Criminal Procedure Code, a further examination through the lens of progressive legal theory indicates that immediate harmonisation of the provisions on judicial pardons in both substantive and procedural law is imperative. Failure to achieve this harmonisation may result in provisions that are ineffective and devoid of purpose due to a lack of technical specification.

Certainly, if this happens, it will have an impact on the Indonesian criminal justice system, namely being in a "status quo" state, and judges will not have enough courage to make a decision that contains progressive values in the form of forgiveness to defendants who have been legally proven to have committed a crime due to the absence of a legal basis that is in harmony between existing material and formal laws.

4. Conclusion

The reconstruction of the Criminal Procedure Code regarding the judicial pardon as stated in Article 54 paragraph (2) of the Criminal Code can only be done by the legislator by adding a new type of decision as stated in Article 191 of the Criminal Procedure Code, namely an acquittal, a release from criminal penalties and a judicial pardon. In addition, by changing the provisions of Article 191 paragraph (1) of the Criminal Procedure Code to " If the court believes that from the result of examination during a session, the defendant's guilt for the ast he has been accused of has not been legally and convincingly proved, the defendant shall be declared free”."

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