

Criminal Procedure Law Reform on Non-Imposing of Penalty in Judicial Decisions Following the Enactment of Law Number 1 of 2023 on the Indonesian Criminal Code

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Abstract

The reform of criminal law under Law Number 1 of 2023 on the Indonesian Penal Code (KUHP) as the new material criminal law introduces the concept of Judicial Pardon or Rechterlijk Pardon. This reform allows for the possibility of a guilty verdict without the imposition of a criminal sentence in the Indonesian Penal Code. The central issues addressed in this study are: (1) What are the aims and conceptual foundations of Judicial Pardon or Rechterlijk Pardon? and (2) How is the concept regulated under Law Number 1 of 2023 on the Penal Code, Law Number 8 of 1981 on the Criminal Procedure Code (KUHP), and the 2012 Draft Criminal Procedure Code (RKUHAP)? This study employs a normative juridical method, using both the statute approach and the comparative approach. The research is based on secondary data, gathered through library research, and analyzed qualitatively. The criminal law reform through Law Number 1 of 2023 introduces Judicial Pardon or Rechterlijk Pardon as an alternative consideration for judges, allowing them to refrain from imposing a sentence while still upholding the principles of justice and humanity. However, this reform in the concept has yet to be accommodated within Indonesia's formal criminal law, as reflected in the Criminal Procedure Code of 1981 and the 2012 Draft Criminal Procedure Code. These codes currently do not recognize Judicial Pardon as a valid form of judgment—that is, a decision wherein a defendant is proven guilty beyond reasonable doubt but is not punished due to judicial clemency. Therefore, harmonization and adjustment are needed to ensure consistency in the application of Judicial Pardon or Rechterlijk Pardon within both material and formal criminal law systems, contributing to a more coherent and unified criminal justice system in Indonesia.

I. Introduction

The Republic of Indonesia has undergone a long historical journey — from the colonial era to independence and the current phase of modernization. This journey has directly shaped the national legal system in place today. In its state administration, Indonesia adheres to its primary constitution, the 1945 Constitution of the Republic of Indonesia. This constitution regulates fundamental aspects such as the protection of human rights, the direction of national development, the economic system, and the overall governance structure. Article 1, paragraph (3) explicitly states that “Indonesia is a state based on law,” meaning that all citizens, as well as state institutions, must submit to binding and enforceable legal norms.

As a state governed by law, Indonesia positions the law as the foundation for regulating societal behavior. Any individual who violates the law—such as through committing a crime—must be held accountable through a legitimate judicial process. This principle also applies to institutions and state bodies without exception. The law does not merely serve as a means of control but also as a guarantee of justice (Saputra, 2024).

Following its independence, Indonesia did not immediately develop its own criminal law system. As a form of legal continuity, the country continued using the Dutch colonial criminal code, known as the *Wetboek van Strafrecht* (WvS), which was later adopted into national law through Law Number 1 of 1946. This old version of the Criminal Code (KUHP) was heavily imbued with a retributive spirit — emphasizing punishment for crimes committed. In other words, those proven guilty had to be punished accordingly, without consideration for rehabilitative or compassionate elements (Bramantyo et al., 2024). This outlook positioned the KUHP as an instrument for enforcing social order through a rigid and punitive approach.

Nonetheless, the Criminal Code still played a crucial role in shaping a fair criminal justice system. It served as the primary legal instrument to protect society and ensure legal certainty in criminal enforcement. Amid Indonesia’s pluralistic legal environment—which includes customary and religious law—the national criminal system strives to remain inclusive and uphold substantive justice (Sumardi et al., 2021).

Even after gaining independence, Indonesia continued to inherit its criminal legal system from the colonial era. In practice, the country maintained the use of the *Wetboek van Strafrecht* (WvS), or what is more commonly known as the Criminal Code (KUHP), a legacy of Dutch colonialism, as the national criminal law reference. This code was formally institutionalized through Law Number 1 of 1946.

However, the spirit embedded in the old KUHP reflects a legal paradigm that leans toward repression. Its core principle is retribution: every individual proven to have violated the law must be given a punishment commensurate with their offense, with

no consideration for humanitarian aspects such as compassion or rehabilitation (Barlian & Heradhyaksa, 2019). Within this framework, the law is viewed more as a tool to instill fear and control rather than as a means of social transformation and justice.

Even so, the KUHP has remained an important instrument in maintaining public order. Its primary role has been to provide protection to the public from criminal acts, while also building a criminal justice system grounded in the principles of justice and legal certainty for all Indonesians. Over time, Indonesia's social and technological landscape has continued to evolve. Amid these changes, the colonial-era KUHP, which had been in use for more than seven decades, increasingly felt out of sync with Indonesia's cultural values and the needs of its contemporary society. Many articles in the old KUHP were considered outdated and incapable of addressing the social dynamics of a modern society (Malau, 2023).

This made legal reform an urgent necessity. The government responded by initiating updates to the national criminal legal system. This process was accompanied by various challenges, especially differing views among segments of society regarding the content and direction of legal changes. Nevertheless, the reform process continued, involving academics, legal practitioners, activists, and civil society. The goal was for the new KUHP to truly reflect the needs and aspirations of the Indonesian people in an inclusive manner (Estiningtyas et al., 2024).

The comprehensive revision of the KUHP, which had been used since 1946, marks a significant milestone in Indonesia's legal development. No longer a patchwork effort, this legal reform represents a major initiative to build a more adaptive, humane, and contextually relevant criminal legal system.

In 2023, Indonesia officially enacted Law Number 1 of 2023 concerning the Criminal Code (KUHP), a major milestone in the reform of the national criminal law system. This step demonstrates the government's commitment to updating a legal system that had long relied on colonial Dutch legacies. The reform was critical, considering that the outdated criminal law was increasingly seen as incapable of addressing the nature of modern-day crimes—aptly captured in the legal adage *het recht hink achter de feiten aan*, which means that the law often lags behind the events it seeks to regulate (Mubarok, 2024).

The enactment of the new Indonesian Penal Code (KUHP) introduces not only structural reforms but also significant conceptual changes. The approach adopted is more modern and progressive, enabling the national criminal law system to respond to the growing complexity of crimes in line with contemporary developments (Nasution, Ali & Lubis, 2024). Although Law Number 1 of 2023 will only come into effect in 2026, it has already sparked widespread public debate. This is largely due to several provisions in the law being perceived as controversial, even though it is undeniable that the new KUHP offers a distinct perspective compared to the Dutch

colonial legacy it replaces (Padang, Siregar & Rosmalinda, 2024). The reform of substantive criminal law introduced through this legislation is closely linked to procedural criminal law, specifically the criminal procedure code. Currently, Indonesia's criminal procedural system still relies on Law Number 8 of 1981 (KUHP), which is essentially an adaptation of the colonial legal framework. Hence, the renewal of the KUHP should ideally be accompanied by a revision of the procedural criminal code to ensure synchronization and effectiveness in law enforcement (Samusamu, Pasalbessy & Adam, 2023).

Furthermore, Law Number 1 of 2023 introduces alternative approaches to sentencing. These approaches are designed to align more closely with the broader goals of criminal justice—focusing not only on punishment but also on the rehabilitation and social reintegration of offenders (Dharmawan & Ramadanti, 2024). As such, the new KUHP serves as a crucial foundation for building a more equitable and contextually relevant Indonesian criminal justice system.

The government's criminal law reform is not limited to revising the KUHP as the substantive criminal law. An equally important step is the revision of the Criminal Procedure Code (KUHP) as the formal aspect of criminal law. This effort is a vital component of the broader and sustainable development of a comprehensive national legal system, as outlined in the government's agenda (Dani Diyaulhaq et al., 2022).

The proposed reform of the KUHP aims to address overlapping regulations and interpretive inconsistencies that often complicate legal proceedings. The government has submitted the Draft Criminal Procedure Code (RKUHP) to the House of Representatives (DPR), which will then form a Working Committee to deliberate and refine the draft's contents (Abdullah, 2020). The inclusion of RKUHP in the 2025 Priority National Legislative Program (Prolegnas) underscores the state's commitment to reforming criminal procedural law (Ady Thea DA, 2025). One of the main distinctions between the old KUHP and Law Number 1 of 2023 lies in their respective penal philosophies. The former focused on the imposition of punitive sanctions as a form of retribution for acts deemed harmful to public order (Hariyanto, Adhayanto & Shalihah, 2023). This approach treats punishment as a strict and definitive response to criminal behavior.

Conversely, the new KUHP adopts a more progressive and humanistic stance, incorporating the concept of restorative justice. This approach aims not only to penalize offenders but also to restore the victim's situation and repair the social relations disrupted by the crime (Hasibuan, 2022). It reflects a paradigm shift in Indonesian criminal law, moving toward a justice system that is more responsive to societal developments and the need for balanced justice.

The old KUHP has often been criticized as rigid and inhumane for its heavy emphasis on retribution without accounting for substantive justice. The paradigm shift introduced by Law Number 1 of 2023 brings a more flexible approach—where

sentencing considers not only the offender's act and culpability but also the overarching goals of the penal system.

In practice, there have been numerous criminal cases in Indonesia where judicial outcomes failed to reflect the public's sense of justice. Criminal law reform is expected to address such gaps—particularly in cases where defendants are proven guilty beyond reasonable doubt, yet punishment may not serve justice. One of the significant innovations of the new KUHP is the inclusion of the concept of Judicial Pardon or *Rechterlijk Pardon* (Non-Imposing of Penalty), which grants judges the authority to refrain from sentencing offenders, emphasizing the principles of justice and humanity.

However, implementing Judicial Pardon requires support from a compatible procedural law framework. Unfortunately, Indonesia still relies on the outdated KUHP of 1981, a colonial-era legacy. Thus, the revision of the Criminal Procedure Code through the RKUHP becomes imperative to ensure alignment between substantive and procedural criminal laws within Indonesia's justice system (Vincentius Patria & Setyawan, 2021).

2. Research Method

This study employs a normative juridical research method, aiming to examine statutory regulations and relevant literature related to the issue under investigation. This approach focuses on the study of legal documents as the primary source of analysis, particularly in the context of the regulation of Judicial Pardon within Indonesia's criminal justice system.

The researcher applies two main approaches. First, the statute approach is used to analyze the regulation of Judicial Pardon in Indonesian criminal procedure law following the enactment of Law Number 1 of 2023 concerning the new Penal Code (KUHP). This approach enables the researcher to assess the coherence and relevance of the prevailing legal norms in relation to the issue being explored.

Second, the comparative approach is employed by comparing Law Number 1 of 2023 with the previous Penal Code (*Wetboek van Strafrecht*), Law Number 8 of 1981 on the Criminal Procedure Code (KUHP), and the Draft Criminal Procedure Code (RKUHP). This approach also includes a comparison with other countries that have adopted the concept of Judicial Pardon, aiming to identify key differences and the potential for adopting procedural legal principles aligned with justice and humanity. The data used in this study consists of secondary data, obtained through library research. All data is analyzed qualitatively by examining, interpreting, and drawing conclusions from the legal

3. Results and Discussion

1. General Overview of Judicial Pardon

The reform of criminal law through Law Number 1 of 2023 concerning the Criminal Code introduces a new concept that was previously not regulated in Law Number 1 of 1946, which served as the old Criminal Code. This new concept is Judicial Pardon, which grants judges the authority not to impose punishment on the perpetrator of a criminal offense. The concept of Judicial Pardon had previously been a subject of discussion among legal experts until it was eventually adopted in the Indonesian Criminal Code as a part of criminal law reform that prioritizes principles of justice and humanity (Suryawan, 2021).

Judicial Pardon offers judges an alternative verdict in addition to the three existing verdict types in Indonesia: punitive verdicts (*veroordeling tot enigerlei sanctie*), acquittals (*vrijspraak*), and dismissal of all legal charges (*onslag van recht vervolging*) (Suryawan, 2021).

The term “pardon” is synonymous with “forgiveness,” “mercy,” “clemency,” “indemnity,” and “amnesty,” all of which refer to the act of granting forgiveness for conduct considered contrary to or in violation of the law based on the community’s sense of justice. According to Black’s Law Dictionary, a pardon is an act or event that officially nullifies a punishment or legal consequence of a crime. Judicial Pardon is also known by other terms, such as Non Imposing of Penalty, *Rechterlijk Pardon*, and *Dispensa De Pena*, which all refer to situations where a criminal offender is proven guilty but not punished by the panel of judges (Sutrisno, Irawan and Pradana, 2024).

Several legal scholars provide the following interpretations of the concept of Judicial Pardon:

- a. **Jan Rummelink** argues that the concept of Judicial Pardon (or *Rechterlijk Pardon*) was initially regulated in the Dutch Code of Criminal Procedure, which allows for a declaration of guilt without the imposition of a sentence as a form of judicial forgiveness (Singadimedja and Rosidi, 2021).
- b. **Andi Hamzah** states that the Judicial Pardon decision will take the form of a guilty verdict without a sentence (Singadimedja and Rosidi, 2021:46).
- c. **Jeroen Chorus** posits that if a judge chooses to grant pardon to an offender, the verdict will still declare the defendant guilty but without punishment. The judge’s pardon may be based on factors such as the minor nature of the offense, personal circumstances, or the context in which the crime was committed (Mahraen, 2023).
- d. **James D. Barnett** suggests that while legal rules are designed to impose punishment without compassion, human compassion forms the basis for some countries to apply Judicial Pardon as an alternative sentencing method for minor offenses, arguing it is inappropriate to impose punishment for such minor violations (Mahraen, 2023).
- e. **Nico Keizer** believes that the Judicial Pardon or *Rechterlijk Pardon* is necessary because there are many offenders whose crimes meet the evidentiary threshold, but sentencing them would conflict with the principle of justice (Kai, Ismail and Imron, 2024).
- f. **Chairul Huda** maintains that judges can grant Judicial Pardon if they believe the offender’s degree of guilt is sufficient to justify not imposing further punishment, and that it should be limited to simple or minor cases (Kai, Ismail and Imron, 2024).
- g. **Barda Nawawi Arief** emphasizes that the Judicial Pardon or *Rechterlijk Pardon* serves to avoid rigidity and absolutism in sentencing, provides a safeguard mechanism (*veiligheidsklep*), and functions as a judicial corrective to the legality principle. It also

embodies the spirit of wise decision-making rooted in Pancasila, aiming to ensure sentencing objectives are met with a broader view of justice—not just retribution for wrongdoing. However, the judge’s authority to grant a Judicial Pardon must be balanced by the application of the principles of *culpa in causa* or *action libera in causa*, which means that the act itself must still be blamed and held accountable, even if the punishment is waived (Aries, 2022).

Therefore, it can be concluded that the concept of Judicial Pardon or *Rechterlijk Pardon* is a legal mechanism where, if someone commits a criminal offense and deserves punishment, the judge must evaluate the benefit of imposing that punishment. If the judge finds no benefit, it is more appropriate to issue a pardon verdict, thus shifting the purpose of punishment from retribution to restoration. The implementation of the Judicial Pardon concept in resolving criminal cases offers a precise solution for certain offenses deemed undeserving of punishment. The introduction of Judicial Pardon in Law Number 1 of 2023 is expected to help achieve a deeper sense of justice—both moral and legal—in the application of criminal law in Indonesia.

The regulation concerning the concept of Judicial Pardon or *Rechterlijk Pardon* in Law Number 1 of 2023 concerning the Criminal Code (KUHP) is stipulated in Article 54 of the 2023 KUHP. Article 54(1) outlines sentencing guidelines that judges may use to consider the severity or leniency of criminal punishment imposed on perpetrators. These guidelines are expected to ensure that the punishment imposed is proportional and comprehensible to the public. The provisions within these guidelines are limited in scope, allowing judges to consider additional factors outside those listed in Article 54(1) when sentencing offenders (Indonesia, 2023).

Article 54(1) of the 2023 KUHP mandates that the following factors be considered when sentencing:

- a. The form of culpability of the offender;
- b. The motive and purpose of the criminal act;
- c. The mental attitude of the offender;
- d. Whether the crime was premeditated or not;
- e. The manner in which the crime was committed;
- f. The conduct and actions of the offender post-offense;
- g. The offender’s life history, social condition, and economic status;
- h. The impact of punishment on the future of the offender;
- i. The impact of the crime on the victim or the victim’s family;
- j. Forgiveness from the victim and/or the victim’s family;
- k. The values of justice and law prevailing in society (Indonesia, 2023).

Furthermore, Article 54(2) introduces the concept of Judicial Pardon or *Rechterlijk Pardon*, granting the judicial panel the authority to pardon offenders who commit minor criminal offenses. This judicial pardon is formalized in the judge’s decision, which still acknowledges that the offender is legally and convincingly guilty. Article 54(2) stipulates that the minor nature of the offense, the offender’s personal circumstances, or the circumstances at the time of the offense and thereafter, may serve as the basis for not imposing a sentence or measure, considering the principles of justice and humanity (Indonesia, 2023).

In cases of uncertainty during judicial examination, trial, and judgment for minor offenses,

the judge may utilize Judicial Pardon as an alternative in delivering a verdict. This serves as a middle ground when there is a conflict between the conscience-driven humanitarian considerations of the judicial panel and the obligation to enforce criminal law provisions (Hunowu, Puluhulawa & Dunga, 2023).

The regulation of Judicial Pardon in Article 54 of the 2023 KUHP signifies that the new Criminal Code grants judges the authority not to impose criminal penalties on offenders who have been legally and convincingly proven guilty. This authority, however, is subject to several conditions:

a. **Minor nature of the offense**

Article 54(2) allows judges to grant pardon to offenders guilty of minor crimes. The "minor nature" refers to classification within the typology of crimes, where the offense is considered trivial and/or has negligible impact on the victim. Barda Nawawi Arief argues that the provision lacks clarity, which is intentional to prevent restricting judges' discretion to specific offenses only (Sutrisno, Irawan & Pradana, 2023).

b. **The offender's personal condition**

While not explicitly defined, this condition may refer to the considerations in Article 54(1), which include the offender's life background and personal circumstances (Indonesia, 2023).

c. **Circumstances during and after the offense**

Similar to other elements, this is not detailed specifically. However, it can include whether the crime was planned or spontaneous, the method and timing, and the behavior of the offender afterward. For instance, Mardjono Reksodiputro illustrates this with the case of a father accidentally hitting his child while hurriedly reversing a car, where lack of intent and situational factors may warrant leniency (Manafe & Sumanto, 2024).

d. **Basis for not imposing sentence or measures**

The use of the term "may" grants judges discretion to pardon the offender, even if the previous elements are met. The judge may decide whether to pardon or proceed with sentencing (Meliala, 2020).

e. **Considerations of justice and humanity**

Although undefined, this aspect underscores the importance of moral and humanistic values in judicial decisions. Judges must ensure that justice is served while upholding human dignity (Meliala, 2020; Manafe & Sumanto, 2024).

The purpose of regulating Judicial Pardon in the 2023 KUHP is not only to address the legal vacuum surrounding judicial pardons but also to solve problems caused by crime and to restore social balance. It also aims to reform Indonesia's penal system from one focused solely on punishment to one that incorporates moral and social dimensions for fostering peace and safety within communities (Meliala, 2020; Hunowu, Puluhulawa & Dunga, 2023).

Several cases in Indonesia illustrate the relevance of the Judicial Pardon concept:

1. A junior high school teacher, Muhammad Samhudi, was found guilty of physically assaulting a student and sentenced to three months with a six-month probation period by the Sidoarjo District Court (Yozami, 2016).
2. In the case of an elderly woman, Minah, who stole three cocoa pods from a plantation owned by PT Rumpun Sari Antan, the Purwokerto District Court sentenced her to one month and fifteen days with a three-month probation period (Fachri, 2023).
3. In a watermelon theft case, the Kediri District Court sentenced offenders Suyanto and Kholil to fifteen days of imprisonment (Meliala, 2020; Manafe & Sumanto, 2024).

These are only a few of many minor criminal cases involving impoverished individuals—some of which have not even been reported in the media. Therefore, the application of Judicial Pardon is crucial to transforming Indonesia's rigid, retributive penal system into one that achieves both moral and legal justice (Sutrisno, Irawan & Pradana, 2023; Mahraen, 2023).

2. Concept of Judicial Pardon

The concept of Judicial Pardon (*Rechtelijk Pardon*) is regulated in the 2023 Indonesian Criminal Code (Law No. 1/2023) as a legal reform fulfilling societal needs based on values and morality. This concept allows judges to grant forgiveness as an alternative to criminal punishment.

a. Philosophical Foundation

The philosophical basis includes:

1. Pancasila as the fundamental norm, particularly its second principle ("just and civilized humanity") and fifth principle ("social justice for all Indonesians"). Judicial Pardon embodies Pancasila's wisdom by emphasizing humanity, societal values, and justice (Farikhah, 2018).
2. The 1945 Constitution of Indonesia, especially the fourth paragraph affirming the state's goal to protect all Indonesians by humanizing and respecting human dignity through justice.
3. The principle of legality (Article 1(1) of the 2023 Criminal Code) which states no act is punishable unless previously regulated by law. The 1946 Criminal Code's rigidity is replaced with flexibility through Judicial Pardon, allowing non-punitive decisions (Saputro, 2016).

b. Legal Foundation

The legal basis addresses:

1. Filling the legal gap by regulating Judicial Pardon in Article 54(2) of the 2023 Criminal Code (Rakhmawati, 2024).
2. Recognizing the tradition of judicial forgiveness in customary and Islamic law, facilitating social acceptance of this legal norm (Purwani & Dewi, 2021).
3. Guiding judges on sentencing, protection, rehabilitation, and forgiveness of offenders (Dewi & Setiabudhi, 2020).

c. Theoretical Foundation

This includes:

1. Political foundation emphasizing national pride in reforming colonial-era laws (Hasibuan, 2021).
2. Adaptive foundation recognizing Indonesia's sovereignty and its need to engage with global developments (Masiming, 2020).

d. Sociological Foundation

Key societal factors include:

1. Overcrowded prisons and social stigma against ex-offenders, causing reintegration challenges (Sukma & Cumbhadrika, 2023).
2. Judicial forgiveness aligns with local customs where offenders ask for forgiveness and pay compensation, preserving cultural wisdom (Farikhah, 2018a).
3. Islamic law highly respects forgiveness and reconciliation, though differs from judicial pardon by involving mediation and restorative justice (Rakhmawati, 2024).

Historical and Cultural Context

Judicial Pardon roots in customary dispute resolution in Indonesia:

- **Batak Karo:** Family-based mediation led by *sangkep enggeluh*, emphasizing apology and reconciliation (Farikhah, 2018a).
- **Lampung Menggala:** Disputes resolved through local elders with apologies and forming kinship ties (Farikhah, 2018a).
- **Minangkabau:** Resolution through *nagari* courts emphasizing consensus and compensation over punishment (Farikhah, 2018a).
- **Javanese:** Emphasis on peaceful, family-based conflict resolution with or without community involvement (Farikhah, 2018a).
- **Aceh:** Traditional *Tuha Peut* council mediates disputes, with formal courts as last resort (Farikhah, 2018a).

These practices do not eliminate penalties but replace imprisonment with fines paid to victims to restore social balance. The Indonesian Judicial Pardon in Article 54 of Law No. 1/2023 is inspired by comparative law studies from civil law and Anglo-Saxon countries that have implemented similar concepts (Farikhah, 2018; Saputro, 2016).

The concept has been implemented by several countries as follows:

- Greece
Greek criminal law does not explicitly regulate the concept of Judicial Pardon (Rechtelijk Pardon), but certain provisions allow courts to refrain from imposing punishment under specific conditions: minor offenses causing minimal harm,

consideration of the offender's character (including psychological assessment), and situations where punishment would not prevent reoffending. Law No. 1419/1984 adds that pardon can be granted if the victim is a close family member or if the offender suffers from trauma (Farikhah, 2018; Saputro, 2016).

- **Netherlands**
Dutch criminal law, which has influenced Indonesia, has evolved from strict retributive principles to a more flexible system. Article 9a of the Dutch Penal Code allows judges to acquit offenders based on the minor nature of the act, personality of the offender, and circumstances during and after the offense. Additional procedural laws stipulate that judicial pardon decisions are final and must be justified by the court (Purwani & Dewi, 2021; Hasibuan, 2018).
- **Portugal**
Portugal's criminal justice system includes "dispensa de pena," a form of pardon for crimes punishable by up to six months imprisonment or fines, where the offense is minor, damage is repaired, and no public interest prevents exemption (Rakhmawati, 2024).
- **Australia**
Australian sentencing law allows courts to issue orders without punishment, dismiss charges, or impose non-custodial measures. Factors such as offender's age, health, mental state, and offense severity are considered to decide whether punishment is necessary (Masiming, 2020).
- **Somalia**
Somalia's Penal Code permits reduced sentences or pardons for offenders under 18 or over 70 years, limiting punishments to three years or fines. Judicial pardon may only be granted once per offender (Sukma & Cumbhadrika, 2023).
- **France**
France allows judges to declare guilt without imposing a sentence to provide legal flexibility. This approach acknowledges the offender's wrongdoing symbolically while avoiding punishment (Putri, 2024).
- **Greenland**
Greenland's Penal Code authorizes courts to forgo sentencing if justified by factors like good intent, rehabilitation prospects, or special circumstances of the defendant (Putri, 2024).
- **Uzbekistan**
Uzbek law permits pardon if the offender's situation changes post-offense, showing they no longer pose a social danger (Putri, 2024).
- **United States**
In the US, the pardon concept is embedded in plea bargains. Federal law requires that guilty pleas be voluntary, with prosecutors and defendants negotiating charges, facts, and sentencing before trial, reducing the judge's direct role (Farikhah, 2018).
- **United Kingdom**
UK pardon differs, relying on offender petitions for mercy and jury discretion rather than judicial or governmental grant. This reflects social stratification within the justice system and extends beyond judges in courts (Farikhah, 2018).

3. Judicial Pardon Regulation in Law Number 1 of 2023 Regarding the Criminal Code and the Criminal Procedure Code of 1981 as well as the Draft Criminal Procedure Code of 2012

The reform of criminal law, which began with the enactment of Law Number 1 of 2023 regarding the Criminal Code as the new substantive criminal law, brings changes to the criminal justice system in Indonesia. One such change is the introduction of judicial forgiveness through the concept of Judicial Pardon or *Rechtelijk Pardon*, regulated in Article 54 paragraph (2) of Law Number 1 of 2023 regarding the Criminal Code, which was not previously regulated in Law Number 1 of 1946 regarding the Criminal Code. The concept of Judicial Pardon or *Rechtelijk Pardon* grants judges the authority to forgive offenders who are proven legally and convincingly to have committed a crime. Although the judge declares the offender guilty of committing a criminal act, the judge must also state the granting of forgiveness in the verdict. Therefore, the criminal law reform allows for a guilty verdict without accompanying punishment.

The reform of the Judicial Pardon or *Rechtelijk Pardon* concept in the 2023 Criminal Code as the new substantive criminal law requires alignment with the formal criminal law as the executor of criminal procedure law. Legal certainty in the application of the Judicial Pardon or *Rechtelijk Pardon* concept plays a crucial role. If the Criminal Procedure Code as formal criminal law does not provide detailed and consistent regulation aligned with the Criminal Code as substantive criminal law regarding the types of verdicts that can accommodate the application of judicial forgiveness in the concept of Judicial Pardon or *Rechtelijk Pardon*, the implementation of judicial forgiveness will face challenges because judges lack guidelines to grant forgiveness, and the concept remains theoretical without real implementation. The following is the classification of verdict types in Indonesian Criminal Procedure Law:

Criminal Procedure Law Number 8 of 1981	Draft Criminal Procedure Code 2012
Punishment Verdict (<i>Veroordeling Tot Enigerlei Sanctie</i>) Article 193 paragraph (1) states that if the court finds the defendant guilty of the charged offense, the court imposes a punishment.	Article 187 paragraph (1) states that if the judge finds that the charged offense is proven legally and convincingly, the defendant is sentenced.
Acquittal Verdict (<i>Vrijkpraak</i>) Article 191 paragraph (1) states that if the court finds that the defendant's guilt for the charged act is not proven legally and convincingly, the defendant is acquitted.	Article 187 paragraph (2) states that if the judge finds that the charged offense is not proven legally and convincingly, the defendant is acquitted.
Release from All Legal Charges (<i>Onslag Van Alle Rechtsvervolging</i>) Article 191 paragraph (2) states that if the court finds that the charged act is proven but does not constitute a criminal act, the defendant is released from all legal charges.	Article 187 paragraph (3) states that if the judge finds that the charged act is proven but there is a reason for criminal exemption, the defendant is released from all legal charges.

Table 1: Classification of Verdict Types in the Criminal Procedure Code

The table shows that the old Criminal Procedure Law Number 8 of 1981 and the Draft Criminal Procedure Code of 2012 as the new formal criminal law have not yet accommodated verdict types stating that an offender proven legally and convincingly guilty is not sentenced because the judge considers granting judicial forgiveness. The Judicial Pardon or *Rechtelijk Pardon* concept should be regulated not only in substantive criminal law but also in formal criminal law. Therefore, to ensure the relevance and practical implementation of judicial forgiveness under the Judicial Pardon or *Rechtelijk Pardon* concept regulated in Law Number 1 of 2023 on the Criminal Code as the new substantive criminal law, harmonization is needed. This includes adjusting regulations such as adding a verdict type to accommodate judicial forgiveness in the Draft Criminal Procedure Code of 2012 as the new formal criminal law.

Besides harmonizing the regulation by adding a verdict type accommodating judicial forgiveness, harmonization or regulatory adjustments are also needed concerning legal remedies against judicial pardon verdicts. Currently, Law Number 1 of 2023 on the Criminal Code as substantive criminal law and the Draft Criminal Procedure Code of 2012 as formal criminal law do not limit provisions for appeals against judicial pardon verdicts. The reform of criminal law giving judges the authority to issue judicial pardon verdicts must consider sentencing guidelines in Article 54 paragraph (1) of the 2023 Criminal Code and the Judicial Pardon elements in Article 54 paragraph (2) of the 2023 Criminal Code. Therefore, errors or judicial mistakes in granting judicial pardon verdicts are possible. Hence, the author argues that harmonizing or adjusting regulations on judicial pardon implementation in the Draft Criminal Procedure Code of 2012 requires not only adding a new verdict type accommodating judicial pardon but also provisions for legal remedies allowing appeals against such verdicts.

Regulatory alignment by adding a judicial pardon verdict type in the Draft Criminal Procedure Code is not merely to increase verdict types in the criminal justice system but is an essential step to strengthen Indonesia's criminal justice system through criminal law reform. The Judicial Pardon or *Rechtelijk Pardon* concept provides judges more freedom in issuing verdicts while guaranteeing substantive justice in every criminal case. Along with ongoing legal reform, it is crucial that Indonesia's Criminal Procedure Law reflects the evolving values of humanity and justice in society. With more complete and humane legal foundations, Indonesia can build a criminal justice system that not only respects the law but also prioritizes deep justice for all members of society.

Constraints Factors in the Implementation of Legal Protection for Geographical Indications of Lampung Robusta Coffee in Improving the

Economy of West Lampung Coffee Farmers

Implementation of legal protection for Geographical Indications for West Lampung Robusta coffee is not easy, because in its implementation there are several obstacles, including the following:

1. Low level of public education
2. Lack of awareness of coffee farmers in West Lampung Regency in including Geographical Indications of West Lampung Robusta Coffee in Product Design. So, when the product is exported both nationally and internationally, there is no legal certainty that the product comes from West Lampung. In fact, by including Geographical Indications in the brand design, coffee farmers will also benefit, because the quality and quantity of the goods or coffee products are guaranteed.

3. There is no regulation at the West Lampung Regency Government level in implementing the inclusion of Geographical Indications for West Lampung Robusta Coffee. Thus, the public cannot be forced to include Geographical Indications for West Lampung Robusta Coffee.
4. Weak public legal awareness of the importance of Geographical Indications

As mentioned earlier, the legal protection of intellectual property rights is a concept that was previously unknown in the Indonesian legal system. IPR originally came from the concept of western legal culture that puts forward individual rights, while Indonesia generally recognizes a legal system based on the principles of togetherness and kinship so that the presence of IPR is very difficult to implement in the Indonesian legal system.

Legal protection of Geographical Indications generally touches the farming community more, because Geographical Indications protect the potential of agricultural and plantation products that have certain reputations and characteristics, in addition to forestry, marine fisheries, handicrafts and certain other industries. PP No. 51 of 2007 has several articles that are somewhat complicated, but the presence of this PP should be welcomed by West Lampung Coffee Farmers to develop their regional assets. Protection of Geographical Indications does not have a period of time as long as the characteristics and quality of the Geographical Indications are maintained, thus in addition to obtaining economic benefits, legal protection.

Geographical Indications also serve as a means to preserve nature. Field research on the community's efforts to protect the potential of Geographical Indications, the authors assume that West Lampung Coffee Farmers do not yet have legal awareness about the need for inclusion of Geographical Indications in their products. Therefore, so that the potential of Geographical Indications in this area can develop properly and get legal protection, the empowerment of human resources and institutional development needs to be improved as one of the efforts to protect the authenticity and uniqueness of products with potential Geographical Indications for Lampung Robusta Coffee.

4. Conclusion

The reform of criminal law through Law Number 1 of 2023 concerning the Criminal Code introduces a new concept that was previously not regulated in Law Number 1 of 1946 concerning the Criminal Code. This concept is the Judicial Pardon, which grants judges the authority not to impose a sentence on perpetrators of criminal acts. The regulation of the Judicial Pardon or *Rechtelijk Pardon* concept is stipulated in Article 54 paragraph (2) of the 2023 Criminal Code, which authorizes judges not to impose criminal penalties on offenders who have been legally and convincingly proven to have committed a criminal act. This consideration takes into account several factors, such as the minor nature of the crime, the personal circumstances of the offender, the situation at the time the crime was committed and what happened afterward, which can serve as a basis for refraining from sentencing or

imposing measures, alongside considerations of justice and humanity. The purpose of regulating the Judicial Pardon or *Rechtelijk Pardon* concept is not only to fill the legal void regarding the forgiveness granted by judges to offenders but also to resolve issues caused by crime with the aim of restoring social balance.

The regulation of the Judicial Pardon or *Rechtelijk Pardon* concept through the criminal law reform in Law Number 1 of 2023 concerning the Criminal Code is based on philosophical, juridical, theoretical, and sociological foundations. Historically, judicial forgiveness used to restore balance disrupted by legal violations under the Judicial Pardon or *Rechtelijk Pardon* concept has been practiced in customary law in Indonesia, such as in the Batak Karo community, Lampung Menggala community, Minangkabau community, Javanese community, and Aceh community. Moreover, the Judicial Pardon or *Rechtelijk Pardon* concept in Article 54 of Law Number 1 of 2023 concerning the Criminal Code is an implementation of judicial forgiveness derived from comparative studies with other countries that have adopted the concept. Comparative studies were conducted with countries that apply civil law or Anglo-Saxon legal systems, such as Greece, the Netherlands, Portugal, Australia, Somalia, France, Greenland, Uzbekistan, the United States, and the United Kingdom.

The Judicial Pardon or *Rechtelijk Pardon* concept in the 2023 Criminal Code as the new substantive criminal law requires alignment with procedural criminal law. The old procedural criminal law, Law Number 8 of 1981 concerning Criminal Procedure Law, and the Draft Criminal Procedure Code 2012, which will serve as the new procedural criminal law, have not yet accommodated a type of decision stating that the offender, who has been legally and convincingly proven to have committed a criminal act, is not sentenced because the judge considers granting judicial forgiveness. Therefore, for the application of judicial forgiveness under the Judicial Pardon or *Rechtelijk Pardon* concept regulated in Law Number 1 of 2023 concerning the Criminal Code as the new substantive criminal law to be relevant and not merely theoretical, harmonization in the form of regulatory adjustments is necessary. These adjustments include adding a type of decision that can accommodate the application of judicial forgiveness and provisions that open opportunities for the submission of legal remedies for judicial forgiveness decisions under the Judicial Pardon or *Rechtelijk Pardon* concept in the Draft Criminal Procedure Code

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