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The mechanism for implementing judicial pardon in the criminal justice system in Indonesia: Comparative study with various countries

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ABSTRACT

Background: This study discusses the mechanism of implementing judicial pardon in the criminal justice system in Indonesia with the legal basis of Law Number 1 of 2023 concerning the Criminal Code/*Kitab Undang-Undang Hukum Pidana (*KUHP) 2023. Although it has been regulated in the 2023 Criminal Code, this concept is not balanced with formal provisions in the Criminal Procedure Code/*Kitab Undang-Undang Hukum Acara Pidana* (KUHAP). **Methods:** This study is through functional comparative legal with various countries regarding laws and regulations, literature, and other legal materials in analyzing the mechanism of judges in granting judicial pardon, especially regarding the form of decisions and their legal remedies against decisions containing judicial pardons that are in accordance with the regulations and application of judicial pardon in Indonesia. **Findings:** Although the validity of judicial pardon is only included in the 2023 Criminal Code, the existence of the application of this judicial pardon has existed in criminal justice practices in Indonesia. In addition, there are several countries that have regulated the application of judicial pardon formally in the Criminal Procedure Code, especially the form of the decision and its legal remedies. **Conclusion:** There is an urgency to regulate the mechanism for imposing judicial pardon in the Criminal Procedure Code which includes the form of the decision on the granting of judicial pardon which is regulated as a special decision and legal remedies against the judicial pardon decision in the form of cassation. **Novelty/Originality of this article:** This study comprehensively conducts a comparative study with several countries that have regulated the mechanism for applying judicial pardon to find the right formulation for applying judicial pardon to be implemented in Indonesia.

KEYWORDS: application of law; decision; judicial pardon; legal remedy; verdict.

1. Introduction

The concept of forgiveness has been known since the reign of King Hammurabi in Babylon, as stated in The Code of Hammurabi. The Code of Hammurabi is one of the oldest legal arrangements, containing 282 rules that set standards for realizing the balance between sentencing and forgiveness by limiting revenge and determining mitigating circumstances (King, n.d.). These conditions can be seen in how the Code of Hammurabi regulates severe punishment but balances it with forgiveness if the offender is a child who is a first-time offender. No punishment needs to be imposed (The Code of Hammurabi). However, if the child commits a serious offence for the second time, the family relationship can be removed. A similar practice was known during the Roman period, where Roman

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soldiers deemed to have performed meritorious deeds were granted immunity and pardon by the royal authority (Rolph, 1978). The royal authority to take life was balanced by the executive prerogative to show mercy (Cox, 2020).

In the development of modern law, the institution of forgiveness is owned not only by the executive and the judiciary, known as the concept of judge forgiveness. Judge's pardon was first regulated in positive law in the French criminal justice system on 11 July 1975 through the Code de Procédure Pénale, which regulates the declaration of guilt without imposing a penalty. One of the cases was Pardons et statement in which the jury, which is part of the judicial institution, pardoned Anne Pasquio, a convict who was proven to have committed the crime of murder out of compassion for her child, who had acute autism and was charged with the death penalty (guillotine) (Gruel, 1991). The jury at the time considered that although Anne's actions had fulfilled the elements of the crime and the evidence was sufficient, considering the personal circumstances of the perpetrator, Anne was entitled to forgiveness (Tait, 2001). Thus, the jury and the panel of judges agreed to impose a lenient sentence, namely imprisonment for 3 years with probation.

In addition to France, the Dutch criminal justice system also conceptualizes a judge's pardon in Article 9a of the Wetboek van Strafrecht after revision in 1983 through Law 31-3-1983 (Dutch Criminal Code), namely: "The judge may determine in the judgment that no punishment or measure shall be imposed, where he deems this advisable, because of the lack of gravity of the offence, the character of the offender, or the circumstances attendant upon the commission of the offence or thereafter" (Criminal Procedure Code of the Netherlands). This concept became known as the concept of judicial pardon. According to Professor Nico Keizer, the concept of judicial pardon is motivated by the fact that many defendants have fulfilled the elements of a criminal offence. However, if a conviction is imposed, it will be contrary to a sense of justice, or if a conviction is imposed, it will cause a clash between legal certainty and legal justice (Keizer & Schaffmeister, 1990). Since the enactment of judicial pardon in the Dutch Criminal Code, the conflict between justice and legal certainty can be eliminated because judges can pardon defendants proven legally and convincingly to have committed a criminal offence (Yuliawati, 2021). Thus, the implementation of judicial pardon is a flexibility to avoid rigidity in the application of criminal law (Saputro, 2016) and provide relief to the perpetrator by considering the severity of the act, the personal circumstances of the perpetrator, and the circumstances at the time of the criminal offence not to be sentenced (Hasibuan, 2021).

In this case, legal experts try to define what judicial pardon means (Kusik, 2024). According to Andi Hamzah, judicial pardon means that the judge may not impose punishment or other meaningful actions but may also impose punishment (Abidin & Hamzah, 2010). This idea is an influence of the notion of subsociality (subsocialiteit), which means that if an act is included in an offence but is socially considered as a "small" act, then there is no need to impose a punishment or an action (Hamzah, 2019). Furthermore, Barda Nawawi Arief argues that judicial pardon is the authority of the judge to apologize (rechterlijk pardon) by not imposing criminal sanctions or any actions balanced by the principle of culpa in causa or the principle of action libera in causa (Hasibuan, 2021). This principle states that a person cannot avoid criminal responsibility if the emergency faced is caused by their actions or mistakes (Malasai, 2019). These two principles then become the authority of the judge to continue to declare that the perpetrator is guilty and can be held responsible for the crime he committed even though there are reasons to erase or excuse the perpetrator. Thus, the judge's authority to grant forgiveness and not impose sanctions or actions is balanced with the authority to continue to declare the perpetrator guilty even though there are reasons for criminal erasure or reasons for forgiveness (Sasmita et al., 2023). This concept aims to eliminate the rigidity of judges who punish by the idea of balance, namely the balance between legal certainty and flexibility (Arief, 2017).

The existence of judicial pardon is one of the implementations of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which presents an idea of the development of a more "humanizing" orientation of criminalization in the form of guidance, rehabilitation, and reintegration of offenders into society (United Nation,

2000). This congress encouraged a punishment system that focuses on developing and rehabilitating offenders with restorative goals rather than just retributive punishment. Judicial Pardon in Indonesia's criminal justice system is a legal reform that authorizes judges not to punish offenders who have been proven guilty based on specific considerations. Indonesian criminal law adheres to the principle of legality stipulated in Article 1 paragraph (1) of the Criminal Code. However, in reality, this principle has experienced various forms of shift and expansion. The existence of judicial pardon aims to eliminate the legal rigidity of the strict legality principle by providing a more flexible and "humane" alternative to punishment, especially in some instances where the application of punishment is deemed not to reflect a sense of justice when viewed in the social context or circumstances of the criminal offender. Thus, judicial pardon functions as a legal instrument to correct the strict application of the principle of legality in the criminal justice system (Matczak, 2020; Puspito & Masyhar, 2023).

Furthermore, this judicial pardon is interpreted as an effort to avoid the imposition of short-term imprisonment (alternative penal measures to imprisonment) and a judicial corrective to the legality principle (Saputro, 2016). Related to the imposition of short-term imprisonment, the Commission of Ministers of the Council of Europe, through Resolution No. 10/1976 dated 9 March 1976 concerning Alternative Penal Measures to Imprisonment, has mandated that judges have the right to not impose penalties for minor crimes as in point 3 letter a of this resolution, which reads: "To study various new alternatives to prison with a view to their possible incorporation into their respective legislations and in particular: a. to consider the scope for penal measures which simply mark a finding of guilt but impose no substantive penalty on the offender." (Resolution 10/1976) This is based on the fact that punishment is the last resort or ultimum remedy, so there needs to be an alternative penal measure to imprisonment, especially for minor crimes. Moreover, the imposition of imprisonment for minor crimes often causes overcapacity in correctional institutions. It is ineffective in the rehabilitation of perpetrators or the reintegration process of perpetrators of criminal acts (Anwar). Therefore, granting judicial pardon as an alternative to punishment can reduce the negative impact of imprisonment and provide a rehabilitative approach.

Furthermore, related to the purpose of judicial correction, Indonesia, which adheres to the principle of legality, "forces" judges to impose sentences, at least at the minimum criminal penalty for criminal acts in the Criminal Code, without considering the individual circumstances of the perpetrator of the crime. The existence of judicial pardons provides flexibility for judges to consider justice and humanity to support the process of reintegrating perpetrators into society. In the reform of criminal law in Indonesia, the concept of judicial pardon has been regulated in positive law, namely in Article 54 paragraph (2) of Law Number 1 of 2023 concerning the Criminal Code (KUHP 2023), which reads: "The lightness of the act, the personal circumstances of the perpetrator, or the circumstances at the time the crime was committed and what happened later can be used as a basis for consideration not to impose a penalty or not to impose action by considering aspects of justice and humanity" (KUHP, 2023) However, the regulation in Article 54 paragraph (2) of the 2023 Criminal Code is not balanced with formal provisions in the Draft Criminal Procedure Code/*Rancangan Kitab Undang-Undang Hukum Acara Pidana* (RKUHAP) of 11 December 2020 which should contain the procedure for proceedings in the application of judicial pardon. In the RKUHAP 2020, there are no regulations regarding the formulation of the application of judicial pardon, namely how to formally regulate it in criminal law, the requirements for the application of judicial pardon, and the process of applying judicial pardon in Indonesia.

The 2020 RKUHAP re-regulates 3 (three) forms of judge's decisions, namely criminal decisions, acquittal decisions (*vrijspraak*), and release decisions (*ontslag van rechtsvervolging*). A criminal decision is a decision if the judge believes that, based on the examination results at the trial, the criminal act committed by the defendant has been proven legally and convincingly so that the defendant is sentenced to a criminal sentence (RKUHAP, 2020). An acquittal decision is if the judge believes that, based on the trial

examination results, the defendant's criminal act has not been proven legally and convincingly so that the defendant is free from punishment (RKUHAP, 2020). An acquittal decision is if the judge believes that the act charged to the defendant has been proven based on the examination results at the trial. However, there is a basis for eliminating the criminal sentence so that the defendant is sentenced to an acquittal (RKUHAP, 2002). So what about the judge's decision that contains a judicial pardon? Explanation of Article 54 paragraph (2) of the 2023 Criminal Code states, "The provisions in this paragraph are known as the principle of rechterlijke pardon or judicial pardon, which gives the judge the authority to grant forgiveness to someone guilty of committing a minor crime. This pardon is stated in the judge's decision and must still be stated that the defendant is proven to have committed the crime charged against him" (Explanation of the 2023 Criminal Code). Thus, the 2023 Criminal Code states that this pardon is stated in the judge's decision and must still be asked whether the defendant is proven to have committed the crime charged against him. However, the 2020 Criminal Procedure Code does not have a decision of this type. Finally, apart from the form of the decision, the application of judicial pardon also needs to consider the scope of legal remedies against decisions containing judicial pardon. Indonesia has regulated the rights of defendants or public prosecutors who do not accept the court's decision to file an objection or legal remedy (Criminal Procedure Code, 1981). The 2020 Criminal Procedure Code Bill has not yet regulated legal remedies against decisions containing judicial pardons, whether they will be final, like acquittals and releases or criminal decisions that can be subject to legal remedies. The regulation of judicial pardon in the 2023 Criminal Code is an advancement for the criminal justice system in Indonesia. However, the regulation of judicial pardon in the 2023 Criminal Code that is not balanced with the regulation of its legal application in the Criminal Procedure Code has the potential to cause disparities, differences in interpretation, and conflicts of interest, especially between judges and public prosecutors. The regulation in the 2023 Criminal Code that is not balanced with the regulation of its legal application has the potential to make the article on judicial pardon a dead article that becomes an obstacle to implementing judicial pardon. Thus, there is an urgency to regulate and implement regulations related to the application of judicial pardons in the criminal justice system in Indonesia in order to ensure legal certainty regarding the application of judicial pardons. This paper aims to examine the regulation of judicial pardon and its application in the criminal justice system and to determine the correct concept of judicial pardon applied in the criminal justice system in Indonesia. The results of this writing are expected to be recommendations in regulating the RKUHAP and benefits for legal practitioners, especially judges in deciding cases and public prosecutors and defence-defence attorneys in submitting legal efforts to guarantee legal certainty for defendants who receive judicial pardons.

2. Methods

The research method uses the doctrinal research method. The doctrinal research method is research based on literature studies (Soekanto, 2007). This writing aims to explain the problems of implementing positive law, present basic research in the field of law, and compile recommendations for legal reform plans. The research typology used by the Author in this study is functional comparative legal, which compares. It compares legal regulations from various countries and analyzes how law functions in practice and its impact on society (Hoecke, 2015). The Functional Comparative Legal research typology plays an important role in policy-making. By understanding how the legal system in other countries functions, the Researcher can provide recommendations for legal reform in Indonesia. The focus of the research is substantive comparison. Substantive comparison compares the content or substance of existing legal norms from various countries. Through this typology, the Author will compare legal rules to find similarities and differences in positive law. In this study, the Author conducted Functional Comparative Legal to see how the regulation, mechanism, and implementation of judicial pardons from various countries that regulate judicial pardons, including the Netherlands, Greece, Portugal, Uzbekistan,

France, and Somalia. The selection of these countries is based on the six countries that have comprehensively regulated the regulation of judicial pardons in formal criminal law, including the criteria for granting them, the form of the decision, and their legal efforts. In addition, these countries have the same legal system as Indonesia, namely civil law. Somalia has a xeer legal system based on statutory regulations, so it can be a reference for regulating judicial pardons in the Criminal Procedure Code. The data collection methods that the Author will use in this study are primary data and secondary data. The primary data in question is the results of interviews with judges. The Author interviewed judges regarding the application of judicial pardon in the criminal justice system. The interviews were conducted with judges who had given judicial pardons based on best practices and with judges who had never given judicial pardons. This interview is expected to provide and strengthen this research based on the judge's views on judicial pardon in judicial practice in Indonesia. Meanwhile, the secondary data the Author uses are primary legal materials in the form of laws and regulations in Indonesia, the Netherlands, Greece, Portugal, Uzbekistan, France, and Somalia, as well as books, journals, scientific articles, and the internet. These legal materials are relevant to the Author's research because the Author will focus on regulation, which will be more directed at literature studies or researching related literature.

3. Results and Discussion

3.1 Application of judicial pardon in Indonesia

Although the provisions regarding judicial pardon in Indonesia, as stated in Article 54 paragraph 2 of the 2023 Criminal Code, will only come into effect in 2026, the precedent regarding the validity of judicial pardon in Indonesia has been illustrated through various criminal justice practices in Indonesia. Table 1 below includes several court decisions that illustrate the best practice of judicial pardon in Indonesia.

Table 1. General overview of judicial pardon practices in Indonesia

Convict Name	Case Number	Case Description
Minah	Putusan No. 247/PID.B/2009/PN Pwt	Minah's grandmother was charged with Article 362 of the Criminal Code concerning Theft for her actions of taking 3 (three) cocoa beans belonging to PT RSA, which caused a loss of IDR 30,000. The prosecutor then charged the defendant 6 (six) months in prison. In his decision, the judge stated that the defendant was guilty of committing a crime and sentenced her to 1 (one) month and 15 (fifteen) days with the provision that the criminal sentence did not need to be served with a probationary period of 3 (three) months. The judge's considerations for granting pardon were because the defendant was elderly (55 years old), the defendant was living in poverty, the defendant had admitted and apologized for her actions, it was a first-time crime, PT RSA did not suffer too much loss, and the stolen goods had been returned.
Samirin	Putusan Nomor 590/Pid.B/2019/PN Sim	Samirin's grandfather was charged and prosecuted under Article 107 letter d of Law Number 39 of 2014 on Plantations for taking 1.9 kilograms of latex belonging to PT Bridgestone RSE, which caused a loss of IDR 17,000. The prosecutor then charged the defendant with 10 (ten) months in prison. In his decision, the judge stated that the defendant was guilty of committing a crime and sentenced him to a detention period of 2 (two) months and 4 (four) days.

		The judge's consideration in granting pardon was because the defendant was elderly (68 years old), admitted and apologized for his actions, the losses were small, and the stolen goods had been returned. The judge believed the sentence was sufficient to make the defendant and the public aware that similar actions would not be repeated.
Asyani	Putusan Nomor 39/Pid.B/2015/PN Sit	Asyani's grandmother was charged and prosecuted under Article 12 letter d in conjunction with Article 82 paragraph (1) of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Companies for having forest products in the form of 38 (thirty-eight) shingles allegedly belonging to Perhutani without a Certificate of Legality of Forest Products which caused a loss of IDR 4,300,000. This act is punishable by a minimum of 1 (one) year in prison. In his decision, the judge declared the defendant guilty of committing a crime and sentenced her to 1 (one) year in prison and a fine of 500 (five hundred) million with the provision that the sentence does not need to be served with a probationary period of 1 (one) year and 3 (three) months. The judge's consideration in granting pardon was because the defendant was elderly (63 years old), and there was a request for a postponement.
Children in Conflict with the Law	Putusan Nomor 2/Pid.Sus-Anak/2021/PN Rgt	The perpetrator's child was charged and prosecuted under Article 363 paragraph (1) 3 of the Criminal Code in conjunction with Article 1 number 1 of Law Number 11 of 2012 concerning the Juvenile Justice System (UU SPPA) for his actions in stealing a motorbike at night in a closed shophouse which caused a loss of IDR 12,000,000. The prosecutor then charged Anak Pelaku with 3 (three) months in prison. In his decision, the judge stated that the defendant was guilty of committing a crime and eliminated sanctions by imposing a criminal sentence or measures. The judge's considerations in granting pardon refer to the validity of Article 70 of the UU SPPA, namely that Anak Pelaku actions are criminal acts that can be diverted, the perpetrator is a child, it is a first-time crime, based on the results of the assessment of the community research report, there is a small risk of repeating his actions, the stolen goods have been returned, there is a peace deed, and a prison sentence has the potential to complicate the child's reintegration process into society.

(Dwiatmojo, 2012; Notoprodjo, 2022; Putro, 2010).

In practice, for criminal acts that have a minimum threat of punishment, the judge will grant a judicial pardon when there is a request for a suspension, considering that the judge, as a law enforcement officer, is required to decide the case by referring to the procedural guidelines. A request for a suspension is a request to release a suspect or defendant from detention before the end of their detention period. In granting a judicial pardon, after a request for a suspension, the judge will decide by considering the aspects of humanity and justice. The perpetrator's humanity refers to the perpetrator's circumstances. In practice in Indonesia, the personal circumstances of the perpetrator generally refer to age; for example, if the perpetrator is old and decrepit or is a child, as regulated by the SPPA Law.

Meanwhile, justice refers to the circumstances at the time the crime was committed and afterwards, which is generally found in cases of mass pressure or conflict areas. In

addition, in cases where the crime is not minor, the judge will consider it based on the value of the loss due to the crime committed; if the value of the loss is not too great, the defendant can be considered for release from detention. In deciding a case, the judge not only refers to how the law works but also considers how the balance in society can be maintained, where the judge must be able to anticipate so that a decision does not harm society. So, many factors colour the judge's considerations in deciding a case with judicial pardon and not just seeing the law must be enforced. In addition, viewed from the aspect of criminal procedure law, if the defendant is proven to have committed a crime, the court will issue a criminal sentence, which includes a criminal sentence (KUHAP, 1981). However, if the judge believes that the defendant has been legally and convincingly proven to have committed the crime charged, but if a sentence is imposed, it will cause injustice because there is a clash with the principle of legality. The principle of legality in law is reflected in the provisions of Article 3 of the Criminal Procedure Code, namely "trials are carried out by the methods regulated in this law (KUHAP, 1981). and Article 1 number (1) of the Criminal Code, namely "an act cannot be punished, except based on the strength of existing criminal law provisions" (KUHP) Referring to the provisions of the article, if an act has violated the provisions of the Criminal Code, meets the elements in the article, and meets the requirements for punishment, then there is no reason for the judge not to sentence the defendant. In practice in Indonesia today, considering that the Criminal Procedure Code only regulates 3 (three) forms of decisions, then in the practice of judicial pardon, the decision imposed is criminal. Referring to Article 197 of the Criminal Procedure Code, there are provisions on the form of decision that must be met so that the decision is not null and void by law. Because a criminal decision must include a sentence, the judge, in granting a judicial pardon, will impose a sentence during the defendant's detention period. In the verdict, the defendant was found guilty because he was proven to have committed a crime, but the sentence served was his sentence during the detention period. After the defendant was found guilty, the defendant would be immediately released from the sentence.

There is the potential for legal uncertainty in applying for a judicial pardon. The absence of clear regulations regarding applying the law of judicial pardon in the Criminal Procedure Code can lead to differences in paradigm, especially between judges and public prosecutors. Differences in interpretation, for example, where judges emphasize aspects of individual justice and rehabilitation of prisoners, but public prosecutors focus on law enforcement and the interests of society. Without clear regulations, criteria, procedures, and limitations in granting judicial pardons, it is difficult for law enforcement officers to understand how they will be applied. In addition, the lack of a unified paradigm and undirected discretion can lead to disparities in decisions, which can have implications for damaging public trust in the criminal justice system. Therefore, the regulation regarding the judicial pardon mechanism, which is specifically regulated in the Criminal Procedure Code as a guideline for law enforcement officers, especially judges and prosecutors, is important to ensure legal certainty and prevent abuse of authority in order to achieve effective implementation, as well as being a clear guide for law enforcement officers, especially judges, in exercising their discretion regarding judicial pardon.

3.2 Application of judicial pardon in various countries

This study suggests that the regulation on judicial pardon has been included in the Criminal Procedure Code in various countries, including Portugal, France, Somalia, Greece, the Netherlands, and Uzbekistan. As presented in Table 2, 3 (three) countries regulate judicial pardon as a criminal decision, namely Portugal, France, and Somalia; 1 (one) country that regulates judicial pardon as an acquittal, namely Greece, and 2 (two) countries that regulate judicial pardon as a unique decision. Furthermore, 5 (five) other countries, Portugal, France, Somalia, Greece, and the Netherlands, open space for filing legal remedies against decisions containing judicial pardon. Meanwhile, the Netherlands regulates that judicial pardon decisions are final and have binding legal force (final and binding). This final and binding means that the decision immediately obtains permanent legal force since it was

pronounced, and no legal remedies can be taken against the decision.

Table 2. Comparison of decision-making mechanisms containing judicial pardon and legal remedies in various countries

Counties	Criminal Decision	Appeal
Portugal	Based on Article 336, paragraphs (1) and (2) of the Portuguese Criminal Procedure Code, a decision containing a judicial pardon is a criminal decision.	Based on Articles 371 and 387 of the Greek Criminal Procedure Code, a judicial pardon decision that is a criminal sentence can be appealed and reviewed.
France	Based on Article 542 of the French Criminal Procedure Code, a decision containing a judicial pardon is a criminal sentence. Based on Article 542 in conjunction with Article 769 paragraph (1) and (3) point 8, the perpetrator who receives a judicial pardon will have their criminal record erased.	Based on Article 469 and Article 662 of the French Criminal Procedure Code, a judicial pardon decision or a criminal sentence can be appealed and reviewed.
Somalia	Based on Article 123, paragraphs (1) and (3) of the Somali Criminal Procedure Code, a decision containing a judicial pardon is a criminal sentence. As stipulated in Article 121 paragraph (2) letter b of the Somali Criminal Procedure Code, a criminal sentence containing a judicial pardon does not need to include a criminal threat.	Based on Article 273 and Article 274 paragraph (2) of the Somali Criminal Procedure Code, a judicial pardon decision is res judicata in nature, which means that no legal action can be taken in the civil and/or administrative realm. However, referring to the provisions of Article 227 paragraph (2) point a, a judicial pardon decision can still be appealed in the criminal realm.
Greece	A decision containing a judicial pardon is an acquittal, according to Article 368, paragraph (2) of the Greek Criminal Procedure Code.	Based on Article 486 of the Greek Criminal Procedure Code, a judicial pardon decision that is an acquittal decision can be appealed to restore the perpetrator's reputation. According to Article 569 paragraph (2) point b.d and Article 569 paragraph (3) point a, a perpetrator who receives a judicial pardon still has a criminal record.
Netherlands	Based on Article 359 paragraph (4) of the Dutch Criminal Procedure Code, a decision containing a judicial pardon is in a unique form: a guilty verdict without a criminal penalty, where the judge must include the reasons for granting a judicial pardon in his decision.	Based on Article 404 paragraph (2) point a and Article 427 paragraph (2) point, a judicial pardon decision cannot be appealed or castrated.
Uzbekistan	Based on Article 463 paragraph (3) point 3 of the Uzbek Criminal Procedure Code, a decision containing a judicial pardon is a special decision, namely a verdict without imposing a punishment.	Judicial pardon decisions can be appealed, castrated, and reviewed under Articles 497-2, 498, and 494 paragraph (3) of the Uzbekistan Criminal Procedure Code.

3.3 Opportunities for regulating the form of decisions regarding the application of judicial pardon in the criminal justice system in Indonesia

This study found that decisions containing judicial pardon cannot be given an acquittal or release. Referring to comparing countries, Greece regulates the application of judicial pardon as an acquittal as stipulated in Article 368 paragraph (2) of the Greek Criminal Procedure Code. In Indonesia, an acquittal is regulated in Article 192 paragraph (2) of the 2020 Criminal Procedure Code, which states that "If the judge believes that the results of the examination at the trial, the crime charged has not been proven legally and convincingly, the defendant is declared acquitted" (Criminal Procedure Code, 2020). Referring to this provision, for the defendant to be declared acquitted, the crime committed must not be proven legally and convincingly. Meanwhile, in the Explanation of Article 54 paragraph (2) of the 2023 Criminal Code, it is stated that "This pardon is stated in the judge's decision, and it must still be stated that the defendant is proven to have committed the crime charged to him". This provision clearly states that in a judicial pardon decision, the defendant must be found guilty of committing a crime or, in other words, proven to have committed a crime. Proven to have committed a crime is interpreted as the defendant fulfilling all the elements charged by the public prosecutor, both in terms of the minimum limit of proof and the principle of proof according to the law negatively. Therefore, it would be a mistake if the judge issued a judicial pardon decision in the form of an acquittal against a defendant who has been legally and convincingly proven to have committed a crime, even though the judge gave a pardon that had implications for not imposing a sentence on the defendant as if he had been acquitted.

Furthermore, the acquittal decision has not and may not be applied in judicial pardon decisions in various countries. Looking at the validity of the acquittal decision in Indonesia, the acquittal decision is regulated in Article 192 paragraph (3) of the 2020 RKUHAP, which states that "If the judge believes that the act charged to the defendant is proven, but there is a basis for eliminating the criminal offence, the defendant is declared free from all legal charges". Suppose a judicial pardon is applied as an acquittal decision. In that case, it will become a problem for some instances that do not meet the qualifications of the basis for justification and the basis for forgiveness to be stated as having a basis for eliminating the criminal offence to be categorized as an acquittal decision. Reviewing one of the cases, for example, the Theft Case of 3 (three) Cocoa Fruits with the defendant Minah, does the case meet the justification and forgiveness basis? In the verdict, even though he is old and frail, the defendant, Minah, can still be held responsible for his actions. In addition, his actions were proven to have been carried out unlawfully. Therefore, it can be stated that the defendant Minah cannot be said to have a justification and forgiveness basis to remove the criminal penalty so that if his actions are sentenced to acquittal from all legal charges, it will be contrary to the law because the defendant Minah does not meet the elements to be given an acquittal. In addition, if judicial pardon is classified as a verdict of acquittal, then the forgiveness given by the Panel of Judges will be in vain, considering that the acquittal alone is enough to prevent the defendant from being convicted; in fact, the defendant can be said not to have committed a crime. The following form of decision will also conflict with the validity of judicial pardon in the 2023 Criminal Code, where the judicial pardon decision is a statement of guilt. However, the judge is given the authority not to impose any punishment or action on the defendant.

Judicial pardon as a criminal sentence is the most widely applied in various countries that have implemented judicial pardon in their criminal justice systems, including Portugal, France, and Somalia (Ssenyonjo, 2024). Provisions regarding criminal sentences in Indonesia refer to Article 192 paragraph (1) of the 2020 Criminal Procedure Code, namely, "If the judge believes that the results of the examination at the trial, the criminal act charged is proven legally and convincingly, the defendant is convicted" (Criminal Procedure Code, 2020). This article explains that the judicial pardon decision fulfils the elements to be given a criminal sentence where the defendant's actions are proven legally and convincingly to be a criminal act. There are 3 (two) possibilities if a judicial pardon is categorized as a criminal sentence. First, the decision states that the defendant's punishment is during the detention period. In several criminal cases, there are circumstances where the defendant is detained for examination as stipulated in Article 59 of the 2020 RKUHAP and is detained because he

meets the objective requirements for detention as stipulated in Article 60 of the 2020 RKUHAP. In these cases, in several criminal decisions in practice in Indonesia, the decision is to sentence the defendant to a period of detention, where, in principle, the defendant's actions are still proven to have committed a crime recorded in the criminal record (Reform, 2022). It can be seen in the Case of Theft of Plantation Business Results with Defendant Samirin, where the defendant was found guilty with a sentence of 2 (two) months and 4 (four) days, which was the time the defendant was arrested and detained after the verdict was read out the defendant was immediately released from detention. However, the court felt that it did not provide real (actual) legal consequences for the defendant, considering that the defendant had previously been "punished" by undergoing detention (Reform, 2022). Second, Tanziel Aziezi argues that a judicial pardon decision can be a criminal sentence, so the sentence imposed is zero (Reform, 2022). It can be seen in the Case of Theft by Children in Conflict with the law, where the verdict states that the defendant has been proven legally and convincingly guilty of committing a crime but eliminates sanctions by imposing a sentence or other actions against the Child Perpetrator. Third, the verdict is in the form of probation. A probationary sentence al, a conditional or probationary sentence, is a decision that allows the convict not to serve a prison sentence during the probationary period (Ariawan, 2024). This decision is given with certain conditions that are given through the verdict. This can be seen in the Cocoa Theft Case with the Defendant Minah and the Illegal Logging Case with the Defendant Asyani, where the verdict states that the defendant does not need to serve a sentence as given in the criminal sentence unless later there is a judge's decision that determines otherwise or the defendant commits a crime during the probationary period stipulated in the verdict.

However, based on the provisions in Article 197 paragraph (2) of the Criminal Procedure Code, if the provisions regarding the head of the verdict, the identity of the defendant, the indictment, the demands, the basis for the sentence along with the basis for mitigating and aggravating sentences, the statement of guilt and the sentence or actions imposed, and information if there is a fake letter, are not included in the verdict, then the verdict is null and void (Criminal Procedure Code, 2020). Referring to these provisions, if a criminal verdict does not include a sentence for the defendant, then the verdict has no legal force or is null and void. In Somalia, where the judicial pardon decision is in the form of a criminal verdict, it is also regulated that if a criminal verdict does not include a sentence for the defendant, the verdict will be null and void. As stated in Article 121 paragraph (2) letter b of the Criminal Procedure Code of Somalia, which reads, "A judgment shall be null and void: b. If the part of the judgment relating to the question of guilt and the sentence, if any is lacking or incomplete in any of its essential elements" (The Criminal Procedure Code of the Republic of Somalia 1963). However, in Somalia, specifically in Article 123 paragraph (3) of the Somali Criminal Procedure Code, which states, "When a Court finds an accused guilty of the charge brought against him, the President of the Court shall: pronounce sentence, except in the cases provided for in Article 126" (The Criminal Procedure Code of the Republic of Somalia 1963) specifies that the sentence must be included in the sentencing decision. However, there is an exception to the decision that grants judicial pardon (If the part of the judgment relates to the question of guilt and the sentence), then the sentence does not need to be included. This special regulation makes the decision that contains judicial pardon, even though it is classified as a criminal decision, will not be null and void by law.

Furthermore, if we look at the Netherlands, if we review the formulation in the Explanation of Article 54 paragraph (2) of the 2023 Criminal Code which states that a judicial pardon decision is a guilty decision but does not impose any punishment or action and the reasons for its issuance must be stated in the decision adopting the provisions of Article 359 paragraph (4) of the Dutch Criminal Procedure Code. Article 359, paragraph (4) of the Dutch Criminal Procedure Code states that "In the application of section 9a or section 44a of the Criminal Code, the judgment shall state the special reasons which led to the decision" (Criminal Procedure Code of the Netherlands). Referring to this provision, the Netherlands does not explicitly verbise that its decision is a special judicial pardon decision.

It only states that its decision must contain the reasons for granting a judicial pardon. However, the difference and problem in its application in Indonesia is that the Netherlands regulates this provision in the Criminal Procedure Code, making the judicial pardon decision a special decision, namely a guilty decision without punishment (Marguery, 2008). Meanwhile, Indonesia regulates these provisions in the Explanation of Article 54 paragraph (2) of the 2023 Criminal Code, which does not make it a special decision that regulates judicial pardon. Thus, if Indonesia wants to regulate the judicial pardon decision as a criminal decision, Indonesia can regulate the decision like the criminal decision in Somalia, which excludes the requirement to include a sentence for the application of judicial pardon, or Indonesia can regulate provisions regarding the judicial pardon decision specifically in the RKUHAP.

Considering that the judicial pardon decision cannot be classified into the 3 (three) forms of decisions as regulated in the RKUHAP 2020, there is an urgency for Indonesia to regulate decisions that apply for judicial pardon as a special decision, namely a guilty decision without punishment or a judicial pardon decision. The 2023 Criminal Code is currently not supported by the Criminal Procedure Code, so it applies; it will refer to the 1981 Criminal Procedure Code, which only regulates the 3 (three) forms of decisions. This Criminal Code Procedure is based on providing legal certainty, maintaining order, and uniformity in applying procedural law. It is necessary to regulate the decision firmly and explicitly (lex scripta) when the judge grants a judicial pardon (Iramaya, 2024). Furthermore, a decision containing a judicial pardon cannot be classified as an acquittal or acquittal. In addition, if it is classified as a criminal decision, there is the potential for the decision to be null and void if the criminal decision does not contain a criminal sentence. Indonesia also does not regulate exceptions to not imposing a sentence in the provisions of the criminal division in the 2020 RKUHAP. Furthermore, in addition to the decision being null and void, there is the potential for a criminal decision to be vulnerable to extraordinary legal remedies for judicial review if it does not include a decision. In Article 265, paragraph (2) is in conjunction. Article (3) of the 2020 Criminal Procedure Code states that "A request for judicial review is made based on: a court decision that has permanent legal force can be submitted for a request for judicial review, if in the decision an act that is accused has been declared proven, but is not followed by a criminal sentence" (Criminal Procedure Code, 2020). In the provisions of this article it is stated that in "a decision the act that is accused is proven but is not followed by a criminal sentence" which is the definition of a judicial pardon decision as per Article 54 paragraph (2) of the 2023 Criminal Code. The provisions of this article will open up opportunities for every criminal decision that contains a judicial pardon to be a reason for extraordinary legal remedies for judicial review, even though, in reality, a decision for judicial review of a criminal decision without punishment will only be submitted by the Prosecutor considering that the defendant or the defendant's family benefits from the defendant's release from punishment. Thus, these matters become urgent for implementing a judicial pardon decision as a special decision.

Reflecting on the regulation of the application of judicial pardon in the form of a special decision in the Netherlands and Uzbekistan, if Indonesia wants to make a judicial pardon decision a special decision, several things need to be regulated in the Criminal Procedure Code regarding its validity. First, related to the form of the decision, which is a decision declaring the defendant guilty of committing a crime but not imposing any punishment, and the reasons for granting a judicial pardon are stated in the decision as stipulated in the Explanation of Article 54 paragraph (3) of the 2023 Criminal Code. Second, related to the nature of the decision and its legal remedies, whether the decision is final and binding and whether the decision is judicial pardon, there are legal remedies that can be done or not. Given that this judicial pardon decision is a criminal decision, which is basically against a criminal decision, there can be legal remedies; the legal consequences of this decision are the release of the defendant like a free and acquittal decision, which is final and binding. Thus, the regulation in the application must be explicitly verbalized in the Criminal Procedure Code.

3.3 Opportunities for regulating legal remedies against judicial pardon decisions in the criminal justice system in Indonesia

A judicial pardon is a guilty decision where the defendant is proven legally and convincingly to have committed a crime. The characteristics of this decision are like a criminal decision, where in the criminal decision, there are legal facts that prove that the defendant is guilty of committing a crime. If the defendant is found guilty, it means that there is a fact that the defendant is a "convict" who has a criminal record, whose status is attached to the defendant; only the defendant is not sentenced or given any action (Reform, 2022). However, on the one hand, the defendant is released from punishment like a person who is acquitted or released, where both do not serve any sentence or action. So, is legal action necessary against a decision containing a judicial pardon? Reflecting on the Netherlands, the Dutch Criminal Procedure Code, especially in Article 404 paragraph (2) letter a of the Dutch Criminal Procedure Code, states that a judicial pardon decision cannot be appealed and Article 427 paragraph (2) letter a states that a judicial pardon decision cannot be appealed. Thus, no legal action can be taken against a judicial pardon decision in the Netherlands. In determining the appropriate legal remedy against a judicial pardon decision, examining the possibility of the party filing a judicial pardon is necessary. Suppose we viewed it from the perspective of the convict. In that case, the judicial pardon decision has benefited the convict where even though the convict is found guilty because he is proven to have committed a crime, the convict is freed from the punishment due to the crime he committed, so it is unlikely that the convict will file a legal remedy. However, the party that may file a legal remedy against a judicial pardon is the public prosecutor, who, in this case, represents the state or the victim.

Regarding the appeal in Indonesia, the appellate court is tasked with re-examining the legal facts and application of the law in the first instance court decision (Harahap, 2010). The appellate court has the authority to conduct a comprehensive examination that includes the legal facts in the first-instance decision, such as evidence in the case, the application of the law, and whether there are actions that exceed the judge's authority in deciding the case (Harahap, 2010). In the case of a judicial pardon being granted, the defendant has been proven to have committed a crime based on the facts presented in the trial. The Public Prosecutor is unlikely to object to the guilty statement. Furthermore, in granting judicial pardon, the judge considers the circumstances at the time of the crime and afterwards, which, in general, in the trial, the defendant has already admitted his actions, so that, in reality, there is no need for a re-examination of the facts because the crime has been proven. However, the Public Prosecutor may question the application of a judicial pardon, including whether the perpetrator is worthy of a judicial pardon or whether there is no arbitrariness on the judge's part in granting a judicial pardon to the perpetrator. Therefore, in the application of judicial pardon, the problem or objection that may be raised does not regard the fact that the defendant has committed a crime or judex factie because the defendant has been proven guilty. There is no debate in this regard, but rather the application of judicial pardon or the legal aspect or judex jurist, which debates whether the judge is correct or not in granting a judicial pardon, whether the granting of a judicial pardon can be applied to the defendant, and whether there is any authority that the judge has exceeded. Thus, an appeal against a judicial pardon decision is not necessary, but one can directly file a cassation appeal to examine the application of judicial pardon from a legal perspective (judex jurist)

Regarding the cassation appeal in Indonesia, the cassation court is tasked with re-examining whether the legal regulations have been appropriately applied, whether there was an error by the judge in adjudicating, or whether there was a limit of authority violated (Harahap, 2010). This cassation appeal is also the authority of the Supreme Court to examine decisions under its judicial scope to create a unity of legal application by cancelling decisions that are contrary to the law or are wrong in applying the law (Harahap, 2010). The judge possibly made an error or mistake in deciding the case even though the defendant was given a judicial pardon, which could be detrimental to the defendant or the victim.

Finally, regarding the extraordinary judicial review in Indonesia, the Supreme Court is authorized to adjudicate in cases where there are new circumstances, circumstances that conflict with each other, or if there is an error or mistake that is real from the judge who decides the case against the verdict that has permanent legal force (Harahap, 2010). A judicial review can also be filed if there are new circumstances that have the potential to provide a verdict of acquittal, release, or lighter provisions. In the case of a judicial pardon decision, a decision in which the convict does not receive any punishment or action has been "beneficial" for the convict because there are no individual rights that are deprived. It is impossible to apply lighter criminal provisions as one of the legal consequences of the review. Therefore, the convict does not need a legal remedy for a review. However, the public prosecutor, in his duties and responsibilities to represent the state, has an interest in filing a review in order to protect the interests of justice for the victim, including the state, where the prosecutor's authority is placed proportionally in the same and balanced position (equality of arms principle) with the convict or his heirs (Prosecutor's Office Law, 2004). Moreover, this judicial review can be submitted by the prosecutor if a decision where the charges against the defendant are proven but not followed by a criminal sentence (Prosecutor's Office Law, 2004). However, based on Article 263 paragraph (1) of the Criminal Procedure Code, only the convict and his heirs can file a judicial review, so the public prosecutor does not have the authority to file a judicial review (Criminal Procedure Code, 1981). This clause is reinforced by the Constitutional Court Decision Number 20/PUU-XXI/2023, which states that Article 30C letter h of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which initially stated that the prosecutor can file a judicial review does not have binding legal force. Thus, extraordinary legal remedies for judicial pardon review of the judicial pardon decision are unnecessary, considering that the judicial pardon decision does not contain a punishment, especially deprivation of liberty, for the convict. Thus, it is better to take legal action against the judicial pardon decision, namely the cassation legal action, because the appeal of legal action is unnecessary. After all, there is no need for a re-examination by judex fact, considering that the defendant has been proven to have committed a crime and, generally, has admitted his actions. However, space for cassation legal action is still needed considering that legal action is still needed for the implementation of a fair trial and to guarantee human rights, including the Public Prosecutor who, in this case, represents the state or victim to obtain justice and possibly to file an objection regarding the application of the judicial pardon. Furthermore, the extraordinary legal action of judicial review is unnecessary, considering the judicial pardon decision does not contain a punishment.

4. Conclusions

This study states that until now, the 2020 Indonesian Criminal Procedure Code (RKUHAP) regulates 3 (three) forms of decisions: criminal, acquittal, and release. The 2020 RKUHAP has not regulated the decision imposed on the application of judicial pardon in Indonesia. Reflecting on the best practices in court decisions in Indonesia, in terms of the application of judicial pardon, the decision will generally be in the form of a criminal decision where the defendant is proven guilty of committing a crime. However, referring to the provisions of the Criminal Procedure Code, if a judicial pardon is sentenced to a criminal sentence, then the decision can be null and void because it does not contain a sentence as a provision of the criminal sentence. In addition, a criminal sentence that does not contain a sentence is also vulnerable to judicial review efforts by the Public Prosecutor. Suppose a judicial pardon is given an acquittal or release decision. In that case, it is inappropriate because, in an acquittal or release decision, the defendant cannot be found guilty of committing a crime as stipulated in the judicial pardon decision in the explanation of Article 54 paragraph (2) of the 2023 Criminal Code. Therefore, it is urgent to regulate the judicial pardon decision as a unique decision, namely a guilty decision without criminal punishment as regulated in the Netherlands and Uzbekistan. In this decision, the judge must include the

reasons for granting a judicial pardon and not impose any punishment or action against the defendant. In addition, it is necessary to regulate legal remedies against judicial pardon. The Netherlands regulates that a judicial pardon decision is final and binding where no legal remedies can be taken against the decision. However, in its validity in Indonesia, it is necessary to open space for legal remedies against a judicial pardon decision, namely a cassation legal remedy, to examine the application of judicial pardon legally. In practice, a Judicial pardon will be the judge's authority, so as an atrial step in its implementation, Indonesia can first regulate the mechanism for imposing judicial pardon in the Supreme Court regulations as a guideline for judges in applying judicial for pardon. Furthermore, comprehensive regulations regarding the mechanism for imposing sentences, forms of decisions, and legal remedies can be regulated in the Criminal Procedure Code.

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