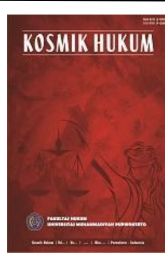

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Judicial Pardon and Restorative Justice: Towards Corrective Sentencing in the Indonesian Criminal Law System

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Abstract
The essence of restorative justice lies in achieving a balanced fulfillment of criminal law objectives, which extend beyond mere legal certainty to encompass justice and societal benefit. Within this framework, judicial pardon defined as the judge's authoritative discretion to grant forgiveness to an offender serves as a corrective response to the rigidity of the legality principle in the criminal justice system. This study employs a non-doctrinal paradigm with a descriptive approach to analyze the role of judicial pardon as a form of corrective sentencing in Indonesia's criminal justice system. The findings indicate that a judicial pardon allows judges to render a verdict without imposing punishment when an offender is found guilty but, in the judge's view, does not warrant penal sanction. Such verdicts differ fundamentally from acquittals, releases, or convictions, thereby establishing judicial pardon as a unique category of judgment. However, despite its recognition in the National Criminal Code, the absence of technical provisions in the Draft Criminal Procedure Code (RKUHAP) limits its practical application. Therefore, judicial pardon should be regulated not only within substantive criminal law but also in procedural criminal law, ensuring its operative function in delivering both moral and legal justice through restorative mechanisms. By conceptualizing judicial pardon as corrective justice, this research not only highlights its normative and procedural challenges but also offers insights for strengthening the balance between moral justice and legal justice in Indonesia's evolving criminal law system.

Keywords: Judge's Pardon, Corrective Sentencing, Restorative Justice, Criminal Justice System

I. Introduction

The reform of Indonesia's Criminal Code (KUHP) through Law Number 1 of 2023 marks a significant milestone in the development of national criminal law, which will officially take effect in January 2026. This reform reflects the state's commitment to harmonize criminal law with societal developments, human rights values, and contemporary legal policies, shifting away from the colonial legacy of the *Wetboek van Strafrecht (WvS).* One of the most notable innovations

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introduced is the concept of judicial pardon *(rechterlijk pardon)*, which grants judges the authority to declare a defendant guilty without imposing punishment under certain circumstances.[1] This concept not only challenges the rigid tradition of legality that has long dominated Indonesia's criminal justice system but also represents a paradigm shift toward corrective and restorative justice. In this context, judicial pardon is expected to serve as a bridge between legal justice and moral justice, ensuring that law enforcement does not merely apply formal provisions but also upholds fairness, humanity, and social harmony in the resolution of criminal cases.

The consideration behind the creation of the National Criminal Code is that national criminal law must be adapted to legal policy, circumstances, and developments in society, nation, and state that aim to respect and uphold human rights, with material that also regulates the balance between public or state interests and individual interests, between the protection of perpetrators of criminal acts and victims of criminal acts.

Criminal law is all regulations that determine prohibited acts and include criminal acts, as well as determining the type of punishment that can be imposed on violators. Moeljatno states that a criminal act is an act that is prohibited and punishable by law for anyone who violates these rules.[2]

Richard Quinney argues that crime is a formulation of human behavior created by those in authority in a politically organized society; crime is the result of a formulation of behavior imposed on a group of people by others; thus, crime is something that is created.[3]

The types of judicial decisions as stipulated in Article 191 paragraphs (1) and (2), as well as Article 93 paragraph (1) of the Criminal Procedure Code, state that judicial decisions include sentencing, acquittal, and dismissal. With the harmonization efforts in the form of amendments to the *Wetboek van Strafrecht (Wvs)* in 1983, it became possible to add a type of decision by incorporating the concept of judicial pardon, so that there is a correlative relationship between the Criminal Code and the Criminal Procedure Code (KUHAP).

In the National Criminal Code itself, judicial pardon is confirmed in Article 54 paragraph (2), which states that the severity of the act, the personal circumstances of the perpetrator, or the circumstances at the time the crime was committed and what happened afterwards can be used as a basis for consideration not to impose a criminal penalty or not to take action, taking into account aspects of justice and humanity.

The explanation of Article 54 paragraph (2) states that the provisions in this paragraph are known as the principle of *rechterlijcke pardon* or judicial pardon, which gives judges the authority to pardon someone who is guilty of a minor criminal offense. This pardon is included in the judge's decision and it must still be stated that the defendant is proven to have committed the criminal offense with which they are charged.

The revision of criminal law establishes a new concept of judicial leniency, which is not only materially incorporated into the National Criminal Code but also formally enshrined in the wording of Article 56(2) of the Draft Criminal Procedure Code (RKUHAP). This means that under certain circumstances, a judge may grant leniency, and the defendant may be found guilty without being sentenced. The concept of judicial leniency has actually been proven, but if a sentence is imposed, it would be contrary to the sense of justice.

In material terms, the RKUHAP does not explicitly regulate whether the idea of judicial leniency is an integral part of the grounds for criminal exemption, which consist of justifiable

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1 Suryawan, Ridwan. "Asas Rechtelijk Pardon (Judicial Pardon) dalam Perkembangan Sistem Peradilan Pidana Indonesia." *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 2.3 (2021): 170-177.

2 Moeljatno. 1987. *Asas-asas Hukum Pidana*. PT, BINA ASKARA: Jakarta. pg. 1

3 Yesmil Anwar, *Kriminologi*, (Bandung: Refika Aditama, 2003), pgl. 178

grounds and grounds for leniency. Although formally, the three types of judicial decisions regulated in Article 191 paragraphs (1) and (2) and Article 193 paragraph (1) of the Criminal Procedure Code, namely acquittal, release, and punishment, can be used as a basis for the panel of judges to impose a decision without punishment or a pardon.[4]

The National Criminal Code stimulates corrective and restorative justice in a contemporary manner, when linked to how judges decide criminal cases. The Criminal Code, as a manifestation of the modern criminal law paradigm, contains elements of corrective and restorative justice that are relevant to human values, as is the objective of this study and the focus of the scientific analysis that the researcher raises, namely corrective punishment as part of restorative justice in the form of judicial forgiveness in a criminal case.

This study also relates to Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. This PERMA is the Supreme Court's response to developments in the sentencing system, which no longer relies solely on sentencing the defendant but has shifted towards reconciling the interests of the victim's recovery and the defendant's accountability using a restorative justice approach. The restorative justice approach is not yet sufficiently regulated in the criminal justice system, especially regarding the types of cases, requirements, and procedures for its application at the trial level for decisions that include a restorative justice approach.

Quoting Adery Ardhan Saputro, there are two objectives of the judicial pardon institution, namely: 1. as an alternative to short prison sentences (alternative penal measures to imprisonment); and 2. judicial correction to the principle of legality (judicial corrective to the legality principle).[5]

The inclusion of the concept of judicial pardon is in line with Nico Keizer's view that it is based on the findings of several defendants who actually met the burden of proof, but if a sentence were imposed, it would be contrary to the sense of justice. Article 183 of the Criminal Procedure Code states: "A judge may not impose a sentence on a person if, based on at least two pieces of valid evidence, he is convinced that a crime has actually been committed and that the defendant is guilty of committing it.

According to the researcher, this is intertwined with the objectives and guidelines for sentencing through a judge's decision to acquit, by not imposing a sentence or by considering the minor nature of the offense, the personal circumstances of the perpetrator, and aspects of justice and humanity, which is the implementation of corrective sentencing and a form of restorative justice in the Indonesian Criminal Justice System.

This study offers a new perspective by positioning judicial pardon *(rechterlijk pardon)* as a form of corrective punishment within the broader framework of restorative justice as recognized in the new Indonesian Criminal Code (KUHP 2023) and the Draft Criminal Procedure Code (RKUHAP). Unlike previous research that has primarily emphasized criminal liability or sentencing, this study highlights how judicial leniency serves as a bridge between corrective justice and restorative justice, allowing judges to uphold justice and humanity without negating the principle of legality. The novelty lies in integrating judicial pardon not merely as a doctrinal innovation, but as a practical judicial tool that responds to contemporary demands for a more humane criminal justice system.

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[4] https://www.hukumonline.com/berita/a/memahami-rechterlijk-pardon-atau-konsep-pemaafan-hakim-lt6438c43d2efab/?page=2 access on 15 Februari 2025

[5] Adery Ardhan Saputro, *Konsepsi Rechterlijk Pardon Atau Pemaafan Hakim Dalam Rancangan KUHP*, Jurnal Mimbar Hukum, Hlm.66 https://jurnal.ugm.ac.id/jmh/article/view/15867, https://doi.org/10.22146/jmh.15867, Access on, 14 Februari 2025

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The significance of this research is its contribution to strengthening Indonesia's criminal law reform, particularly in guiding the implementation of KUHP 2023 and the Supreme Court Regulation No. 1 of 2024 on Restorative Justice. By providing a normative and practical analysis, this study enriches the discourse on balancing the interests of victims, perpetrators, and society, thereby reinforcing the foundations of a modern criminal justice system that prioritizes fairness, human rights, and social harmony.

II. Research Problems

The main problem addressed in this study is how the concept of judicial pardon is applied as an alternative to restorative justice-based punishment within the Indonesian criminal justice system, particularly in the context of the new Criminal Code and its procedural counterpart. Although judicial pardon has been formally recognized as a judicial mechanism, its application raises critical questions about its role in achieving justice that transcends mere legality. Specifically, this research seeks to examine how judicial pardon can be understood as a form of corrective punishment that bridges legal justice and moral justice, ensuring that judicial decisions not only comply with statutory requirements but also reflect fairness, humanity, and social harmony in line with the restorative justice paradigm.

III. Research Method

This study employs a normative legal research approach, focusing on the analysis of legal principles, statutory provisions, and legal doctrines relevant to the institution of judicial pardon within the Indonesian criminal justice system. The normative approach is complemented by a non-doctrinal perspective to capture the broader social, moral, and justice-oriented implications of judicial pardon as a form of corrective punishment under the restorative justice paradigm.

The research type is descriptive-analytical, aiming not only to describe but also to critically examine the role of judicial pardon as an alternative sentencing mechanism that balances legal justice and moral justice. The data sources consist of:

1. Primary legal materials: Laws and regulations (KUHP 2023, Draft KUHAP, Supreme Court Regulation No. 1 of 2024), as well as relevant judicial decisions.
2. Secondary legal materials: Books, journal articles, and authoritative legal commentaries on criminal law, judicial pardon, and restorative justice.
3. Tertiary materials: Legal dictionaries, encyclopedias, and supporting references that provide definitions and contextual understanding.

The data collection technique relies on literature study, systematically reviewing and interpreting legal texts and academic works. The analysis technique applies a qualitative juridical analysis, combining statutory approach, conceptual approach, and comparative approach. This triangulation allows for a comprehensive understanding of judicial pardon by examining not only the written law but also the underlying concepts and comparative practices in other jurisdictions. Through this design, the research seeks to generate a holistic interpretation of judicial pardon as corrective punishment, highlighting its novelty and significance in the development of restorative justice within Indonesia's criminal justice system.

IV. Result and Discussion

1. The application of judicial pardon as an alternative to restorative justice-based punishment in the Indonesian Criminal Justice System

The Criminal Justice System is a system that aims to combat crime; it is one of society's efforts to control crime so that it remains within acceptable limits. Its components consist of the Police, the Attorney General's Office, the Courts, and Correctional Institutions.[6] Eva Achjani Zulfa, in her book "Defining Restorative Justice," argues that the restorative justice approach is a paradigm that can be used as a framework for criminal case handling strategies aimed at addressing dissatisfaction with the workings of the criminal justice system. On the other hand, restorative justice is also a new framework that can be used in responding to criminal acts by law enforcement and legal professionals.[7] In deciding a case, the Panel of Judges, according to the Criminal Procedure Code, only allows for three possibilities, namely: 1. Punishment or sentencing (*veroordeling tot enigerlei sanctie),* 2. Acquittal *(vrijspraak)*, 3. Dismissal of all legal charges *(onslag van recht vervolging).*[8]

The inclusion of Article 9a WvS has been harmonized by adding the possibility for judges to issue a judicial pardon as a judicial correction to the rigid application of the principle of legality. The next issue is that if the defendant has been proven legally and convincingly to have committed the crime charged, but if this would result in injustice, the judge has no alternative ruling other than the three types of rulings mentioned above, so the judge imposes a judicial pardon.

This understanding contradicts the principle of legality as one of the fundamental principles in criminal procedure law,[9] which states that all actions of law enforcement must be based on legal provisions and laws. In other words, law enforcement officials are not justified in acting outside the provisions of the law.[10]

Article 53 (1) of the Criminal Code stipulates that in adjudicating a criminal case, judges must uphold the law and justice. Article 54 (1) In sentencing, the following must be considered: a. the nature of the offender's crime; b. the motive and purpose of committing the crime; c. the offender's personal history, social circumstances, and economic circumstances; d. the impact of the punishment on the offender's future. This discretion of the judge can be one of the efforts to achieve the two senses of justice in the application of law and legislation, namely legal justice and moral justice, even though it cannot be implemented immediately. This concept in the RKUHAP has a positive influence on future sentencing. When adjudicating a criminal case, judges do not merely rely on the criminal act and the perpetrator of the crime. Instead, judges are required to consider the objectives, guidelines, and conditions of sentencing.

Through the concept of judicial pardon, judges are given the discretion to pardon offenders whose punishment would be inconsistent with the objectives of criminal punishment itself.[11] The integration of the concept of judicial pardon into the new Criminal Code reflects a commitment to respond to legal demands that have existed for more than six decades.

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[6] Mardjono Reksodiputro, *Kriminologi dan Sistem Peradilan Pidana*, Kumpulan karangan Buku Kedua, Pusat Pelayanan Keadilan dan Pengabdian Hukum, Universitas Indonesia, Jakarta, 1994, pg.. 140.

[7] Eva Achjani Zulfa, *Keadilan Restoratif*, (Depok: Badan Penerbit FHUI, 2009), pg.. 2

[8] M.Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP*, (Jakarta:Sinar Grafika,2006), pg. 347-354.

[9] Corsei, Andreea. "The Principle of Legality in Criminal Proceedings." *Acta Universitatis Danubius. Juridica* 21.1 (2025): 21-26.

[10] Nefa Claudia Melia, *Rechterlijk Pardon (Pemaafan Hakim) : Suatu Upaya Menuju Sistem Peradilan Pidana Paradigma Keadilan Restoratif*, Jurnal IUS Kajian Hukum dan Keadilan Volume 8 Issue. 3, December 2020, http://jurnalius.ac.id/ojs/index.php/jurnalIUS access on 15 Feb 2025

[11] Hirsch, Andreas von. "Deserved criminal sentences." (2017): 1-128.

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Judicial pardon can be applied in a restorative justice-based sentencing system, which is expected to be one of the driving forces for achieving justice in the application of law and legislation.[12] However, beyond that is the question of how to realize restorative justice-based sentencing.

Therefore, for the concept of judicial pardon to remain relevant, appropriate legal harmonization needs to be carried out, including the synchronization of the Criminal Procedure Code (RKUHAP) – so that the application of this concept must be practical and not merely theoretical. The regulation of judicial pardon should be viewed not only from the perspective of substantive criminal law, but also from the perspective of criminal procedure law. With this approach, the panel of judges can issue a judicial pardon that has unique characteristics compared to the other three types of verdicts. Judicial pardon has its own characteristics and is not included in the category of acquittal, release, or punishment.[13]

The integration of judicial pardon into the National Criminal Code represents a fundamental shift in Indonesia's criminal justice paradigm, which for decades has been limited to the rigid framework of legality and the three conventional verdicts of punishment, acquittal, and dismissal of charges. The theoretical foundation of this development lies in the dialectic between legal justice and moral justice, where the strict application of the principle of legality is no longer sufficient to ensure fairness in criminal adjudication. Judicial pardon offers a corrective mechanism that allows judges to consider not only the legality of the offense but also the proportionality, humanity, and social consequences of punishment.

From a restorative justice perspective, judicial pardon can be understood as an instrument that restores balance between the interests of the state, the victims, and the perpetrators by preventing punishments that would contradict the sense of justice. This aligns with Eva Achjani Zulfa's argument that restorative justice is not merely a procedural innovation but a new paradigm for handling criminal cases that addresses dissatisfaction with the criminal justice system. In this sense, judicial pardon is not a deviation from legality, but a higher expression of justice, correcting the law where its mechanical application would lead to moral injustice.

Theoretically, this concept also resonates with the views of scholars such as Richard Quinney, who emphasize that crime and punishment are social constructs shaped by power and politics.[14] Judicial pardon deconstructs this rigidity by opening space for judicial discretion as a corrective to legality, thereby ensuring that law remains responsive to human dignity and social harmony. Furthermore, by embedding judicial pardon in both substantive (KUHP) and procedural law (RKUHAP), Indonesia demonstrates an effort toward legal harmonization, ensuring that this mechanism is not only normative but also operational in judicial practice.

In conclusion, judicial pardon should be regarded as a unique and independent form of verdict, distinct from acquittal, release, or punishment, with its own normative justification. Its presence signals the maturity of Indonesia's criminal law reform, moving toward a modern criminal justice system that prioritizes restorative values, corrects the shortcomings of strict legality, and ultimately realizes justice in its truest sense justice that is not only legal but also moral, humane, and socially responsive.

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[12] Paneyakh, Ella. "The practical logic of judicial decision making: Discretion under pressure and compromises at the expense of the defendant." *Russian Politics & Law* 54.2-3 (2016): 138-163.

[13] Fadjar Sukma dan Chitto Cumbhadrika, "*Urgensi Penerapan Rechterlijk Pardon Sebagai Pembaharuan Hukum Pidana Dalam Perspektif Keadilan Restorati*f" Gorontalo Law Review 6, No. 1, (April 2023).

[14] Quinney, Richard, and Randall G. Shelden. *Critique of the legal order: Crime control in capitalist society*. Routledge, 2018.

2. Consideration of judicial pardon as a manifestation of corrective punishment, a combination of legal justice and moral justice

Judicial pardon is intended as a renewal of a more adequate model for resolving criminal cases involving crimes that are deemed not worthy of punishment or that are not expected to serve the purpose of punishment if a sentence is imposed.[15] The elements of judicial pardon, according to WvS, mainly involve the primary condition or circumstance of the act being minor in terms of its impact. This element is influenced by modern criminal law, which Andi Hamzah refers to as subsosialiteit (subsociality), which states that if an act constitutes a crime but is socially insignificant, then society's view has a major influence on the magnitude of the consequences of the crime.[16] If this element is fulfilled, then the judge must grant leniency to the perpetrator, meaning that the perpetrator is guilty but will not be subject to criminal punishment or any other action.

The offense committed by the perpetrator of the crime cannot be separated from the importance of the principle of no punishment without guilt expressed by Romli Atmasasmita, taking into account the principle which is a manifestation of the classical theory regarding the function of criminal law in society that reflects the relationship between criminal acts (punishable acts) and criminal responsibility.[17]

However, in law enforcement practice, there are many court decisions that tend to focus on the elements of offenses contained in the law, without considering broader legal norms and the surrounding social context. This often results in the neglect of the values of justice that should be the foundation of the judicial process.[18] Quoting Muladi's view that restorative justice is justice as described by Muladi, namely that the roles of the victim of a crime and the perpetrator are recognized, both in determining the problem and in resolving the rights and needs of the victim, where the perpetrator is encouraged to take responsibility for their actions.

The characteristics of restorative justice according to Muladi include the perpetrator's responsibility being formulated as an understanding of their actions and directed towards deciding what is best, and criminal acts being understood in a comprehensive moral, social, and economic context.[19] Judicial pardon is a policy that gives judges the authority not to impose criminal penalties on defendants who have been proven guilty. The concept of judicial pardon is based on considerations of justice and humanity. These considerations include: the severity of the crime, the character of the offender, and the circumstances at the time of committing the crime or after committing the crime.

In the context of judicial pardon, punishment must essentially have a humane purpose, be beneficial, and be corrective in nature. The element of corrective punishment as part of restorative justice in the Criminal Code is reflected in judicial pardon in order to achieve a deterrence effect for perpetrators of criminal acts, in line with the current Criminal Code's much more contextual criminal justice policy, which regulates several efforts at restorative justice or the resolution of legal problems in a humane manner through a judge's decision, particularly judicial pardon.

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[15] Farikhah, Mufatikhatul. "The Judicial Pardon Arrangement as a Method of Court Decision in the Reform of Indonesian Criminal Law Procedure." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 8.1 (2021): 1-25.

[16] Mufatikhatul Farikhah, *Rekonseptualisasi Dispensa de pena Dalam Sistem Hukum Indonesia (Studi Perbandingan Sistem Hukum Indonesia dengan Sistem Hukum Barat*) Jurnal Hukum & Pembangunan, Volume 48 Number 3, 2018, Universitas Indonesia, pg.574.

[17] Romli Atmasasmita, *Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan (Geen Straf Zonder Schuld)*, Cetakan Kedua, (Jakarta: PT Gramedia Pustaka Utama, 2018), pg. 143.

[18] Bunga Kharisma Octafiana, Frans Simangunsong, *Urgensi Penambahan Putusan Permaafan Hakim (Rechterlijk Pardon) Dalam Pasal 191 KUHAP*, Jurnal Kajian Hukum Iuris Studia, Vol 5, No 3 (2024), pg.660

[19] Muladi, *Kapita Selekta Sistem Peradilan Pidana*, (Semarang : B. P. Universitas Diponegoro, 1995), pg. 129

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The concept of judicial pardon can be understood within the broader theoretical framework of modern criminal law, which seeks to move beyond the rigidity of classical legality toward a more contextualized, humane, and socially responsive paradigm of justice. At its core, judicial pardon aligns with the principle of subsosialiteit as articulated by Andi Hamzah, which emphasizes that acts constituting crimes but deemed socially insignificant should not automatically warrant criminal punishment. This approach is consistent with the classical principle of geen straf zonder schuld (no punishment without guilt) as elaborated by Romli Atmasasmita, which links criminal liability to personal culpability while allowing space for judicial discretion to prevent punishment that fails to serve its social purpose.

From the perspective of restorative justice theory, as explained by Muladi, judicial pardon embodies justice that recognizes both the rights of the victim and the responsibilities of the offender, encouraging accountability without necessarily resorting to punitive measures. Restorative justice emphasizes that crimes must be understood not only in legal terms but also in their moral, social, and economic contexts, thereby framing punishment as a corrective and reconciliatory process.[20]

Thus, judicial pardon serves as a theoretical bridge between legal justice and moral justice, reconciling the strict demands of the principle of legality with the evolving need for humane and restorative responses to crime. It situates punishment within a framework that is not only retributive but also corrective and restorative, ensuring that the administration of justice remains relevant to societal values and human dignity. In this way, judicial pardon represents a progressive shift in Indonesia's criminal justice system, reflecting the transition from a purely retributive model toward a restorative justice paradigm rooted in fairness, proportionality, and humanity.

V. Conclusion

First, the application of judicial pardon as an alternative to restorative justice-based punishment in the Indonesian criminal justice system reflects a progressive shift from rigid legality toward a more humane and socially responsive sentencing model. Judicial pardon provides judges with the discretion to acknowledge the defendant's guilt while refraining from imposing punishment when such punishment would be disproportionate or contrary to the sense of justice. This mechanism not only serves as an alternative to short-term imprisonment but also embodies the restorative justice paradigm, which prioritizes reconciliation, victim recovery, and offender accountability over purely retributive measures.

Second, judicial pardon can be considered a manifestation of corrective punishment that bridges legal justice and moral justice. It corrects the limitations of strict legal formalism by incorporating considerations of fairness, humanity, and social harmony into judicial decision-making. In this sense, judicial pardon operationalizes the principle that the goal of law is not only to enforce rules but also to realize justice in its moral dimension. Thus, judicial pardon strengthens the integration of corrective justice into the Indonesian criminal justice system, aligning substantive and procedural law with the broader objectives of restorative justice.

[20] Braithwaite, John. "Principles of restorative justice." *Restorative justice and criminal justice: Competing or reconcilable paradigms* 360 (2003): 1-20.

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