

## Position and Implications of the Judge's Pardon Decision (*Rechterlijk Pardon*) in the Criminal Code System and the New Criminal Code: A Normative Study Based on SEMA Number 1 of 2026

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### ABSTRACT

*The evolution of Indonesian criminal law reflects a significant paradigm shift in sentencing, transitioning from a retributive framework toward a more humane and substantive justice-oriented approach. A pivotal manifestation of this reform is the codification of judicial pardon (Rechterlijk Pardon) under Law Number 1 of 2023 on the Criminal Code (KUHP), which empowers judges to withhold criminal sanctions from a defendant proven guilty, subject to specific equitable considerations. This study aims to analyze the legal standing of Rechterlijk Pardon within the sentencing architecture of the new Criminal Code (KUHP) and the new Criminal Procedure Code (KUHAP), examine its regulatory framework and application under Supreme Court Circular (SEMA) Number 1 of 2026, and assess its juridical implications for the overarching objectives of punishment. Employing a normative legal research methodology, this study utilizes statutory, conceptual, and case-based approaches. The findings indicate that Rechterlijk Pardon serves as an instrument of sentencing flexibility that reinforces the realization of substantive justice. The novelty of this research lies in its critical analysis of the interplay between the normative provisions of the new KUHP and their operationalization through SEMA Number 1 of 2026, which serves to circumscribe judicial discretion while ensuring systemic consistency across the national criminal justice apparatus.*

**Keywords:** *Judicial Pardon (Rechterlijk Pardon), Criminal Law, New Penal Code, New Criminal Procedure Code.*

### A. Introduction

The reform of the national criminal law is through the enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP) and brings fundamental changes in the penal system in Indonesia, one of which is the introduction of the concept of a judge's pardon (*Judicial pardon*).<sup>1</sup> This concept gives the judge the authority to declare the defendant guilty but not impose a criminal sentence if it considers the factors of justice, humanity, and the

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<sup>1</sup> Tagor Hutapea, Zulkarnein Koto, and Syafruddin Syafruddin, "Police Policy in an Effort to Effectively Implement the New Criminal Law Concept in Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code," *Journal of Police Science* 18, no. 1 (2024).

purpose of a more proportionate sentence. Juridically, the regulation regarding the judge's pardon can not impose a criminal sentence by considering the nature of the act, the circumstances of the perpetrator, as well as the value of justice and utility.<sup>2</sup> Philosophically, this provision reflects a new paradigm of Indonesian criminal law that is not solely oriented towards retributive *justice*, but also on human values, proportionality, and substantive justice.<sup>3</sup> In judicial practice, the Supreme Court also issued Supreme Court Circular Letter (SEMA) Number 1 of 2026 as a guideline for Judges in implementing judges' pardon decisions so that their application remains in line with the principles of legal certainty and uniformity of decisions. Sociologically, the existence of this mechanism is seen as a response to criticism of the penal system that is too repressive and the need to bring more humane justice in the settlement of criminal cases. Therefore, the existence of *Judicial pardon* in the new Criminal Code is an important part of efforts to modernize Indonesian criminal law that emphasizes the balance between legal certainty, justice, and utility.

A number of studies in recent years have examined the concept of judge pardon (*Right excuse me*) as part of criminal law reform in Indonesia. Barda Nawawi Arief (2021) emphasized that this concept is an instrument of criminal flexibility that allows judges to consider aspects of substantive justice in imposing sentences.<sup>4</sup> This research has similarities with previous research in terms of examining the concept of judge pardon (*Judicial Pardon*) as part of the reform of the penal system in the new Criminal Code. However, this study has a fundamental difference because it not only examines the concept from a normative perspective in the new Criminal Code, but also analyzes the position, regulation and application as well as the implications of the application of judges' pardon decisions in the criminal system integrated with the Criminal Code and the Supreme Court's implementing guidelines through SEMA Number 1 of 2026.

Based on the above conditions, the researcher focuses on several issues including: The position of the concept of judges' pardons in the penal system according to the Criminal Code and the new Criminal Procedure Code, Regulation and application of judges' pardon decisions based on the Supreme Court Circular Letter (SEMA) Number 1 of 2026 in judicial practice in Indonesia, as well as the Juridical Implications of the application of the Judge's Pardon decision to the penal system and the purpose of punishment in the Criminal Code and the Criminal Code. New Criminal Code.

The novelty of this research lies in the effort to examine the relationship between the normative arrangements in the new Criminal Code and the mechanism for its application in criminal justice practice through the judicial guidelines. Thus, this study proposes the argument that the existence of the Supreme Court guidelines not only functions as an administrative instrument, but also has implications for the application of the concept

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<sup>2</sup> Tengku Mabar Ali, Yopiza Yopiza, and Putri Ramadhani Rangkuti, "Forgiving of the Victim and/or Family Towards the Perpetrator As a Consideration in Imposing Criminal and Punishment According To the Law Number 1 of 2023 Concerning the Criminal Code," *RECTUM JOURNAL: A Juridical Review of Criminal Handling* 5, no. 1 (2023): 1037, <https://doi.org/10.46930/jurnalrectum.v5i1.2901>.

<sup>3</sup> Faisal et al., "Progressive Consideration of Judges in Deciding Sentencing Under Indonesia New Criminal Code," *Jambe Law Journal* 6, no. 1 (2023): 85-102, <https://doi.org/10.22437/ijl.6.1.85-102>.

<sup>4</sup> Barda nawawie Arief, Purpose and guidelines of criminalization, ( semarang, Publishing Agency of Diponegoro University Page, 43 2009.

*Judicial Pardon* in the national penal system. The urgency of this research is based on the need to comprehensively examine the implementation of the judge's pardon decision (*Judicial pardon*) in the framework of the reform of the penal system in Indonesia. So that it raises the main legal issue, which is related to the position and implications of the Judge's pardon decision (*Judicial Pardon*) in the penal system according to the new Criminal Code, especially after the issuance of SEMA Number 1 of 2026 as a guideline for its implementation. The problem that arises is not only related to the limits of the judge's discretion in imposing a pardon verdict on defendants who are proven guilty, but also how the mechanism is integrated into the criminal justice system that guarantees legal certainty, justice, and utility.

## B. Research Methods

### 1. Types of Research

The type of research used in this study is normative legal research (Normative juridical). Normative legal research is a research that satisfies its study of written legal norms, legal principles, legal theory, and the doctrine of experts related to the problem being studied. This research focuses on the literature review of laws and regulations as the main source of law.

### 2. Research Approach

The approaches used in this study include:

#### a. Statute Approach

This approach is carried out by examining and reviewing various laws and regulations related to the position and implications of the Judge's pardon decision (*Rechterlijk Pardon*) in the criminal system of the new Criminal Code and Criminal Code based on SEMA Number 1 of 2026. Especially Article 54 paragraph (2) of the Criminal Code, Article 51 of the Criminal Code, Article 246 of the Criminal Code, SEMA Number 1 of 2026 concerning Guidelines and Pardons of Judges, as well as relevant laws and regulations.

#### b. Conceptual Approach

A conceptual approach is used to analyze legal problems based on legal concepts, doctrines, and theories that develop in the academic literature. In this study, a conceptual approach is used to examine the concept of judge pardon (*rechterlijk pardon*) from the perspective of criminal law theory, especially as it relates to the purpose of punishment, criminal individualization, and substantive justice. Through this approach, it is possible to understand the philosophical basis and implications of the application of judge pardon in the penal system according to the new Criminal Code and SEMA Number 1 of 2026.

#### c. Case Approach

The case approach is used to analyze court decisions related to the application of judges' pardons (*rechterlijk pardon*). In this study, the case approach is carried out by examining several court decisions that apply the concept to find out the judge's legal considerations and their implications in the criminal system. Through this approach, it can be understood how the application of *rechterlijk pardon* in judicial practice after the existence of SEMA Number 1 of 2026.

### 3. Source of Legal Materials

This research uses three types of legal materials, namely primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, especially Law Number 1 of 2023 concerning the Criminal Code (KUHP), Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHP), and Supreme Court Circular Letter (SEMA) Number 1 of 2026 concerning Guidelines for the Implementation of Judges' Pardon (*Rechterlijk Pardon*). Secondary legal materials consist of books, scientific journals, research results, and expert opinions related to criminal law, criminality, and the concept of *rechterlijk pardon*. The tertiary legal materials are in the form of legal dictionaries, the Great Dictionary of the Indonesian Language (KBBI), legal encyclopedias, and other reference sources that support the understanding of terms and concepts used in research.

### 4. Legal Material Collection Techniques

The technique of collecting legal materials in this study is carried out through library *research*, namely by collecting, reading, studying, and reviewing legal materials that are relevant to research problems, both sourced from laws and regulations, books, scientific journals, and other written sources.

### 5. Legal Materials Analysis Techniques

The legal material analysis technique used in this study is qualitative analysis with a deductive mindset, which is drawing conclusions from general legal provisions to specific problems. Primary, secondary, and tertiary legal materials are analyzed systematically, logically, and argumentatively to examine the position and implications of the Judge's Pardon Decision (*Rechterlijk Pardon*) in the penal system. The analysis is carried out through grammatical, systematic, and teleological interpretation of the provisions in the Criminal Code, the new Criminal Code, and SEMA Number 1 of 2026. In addition, this study also examines the relationship between normative regulation and its application in criminal justice practice in order to obtain comprehensive, objective, and academically accountable conclusions.

## C. Results and Discussion

### 1. The Position of the Concept of Judge's Pardon (*Rechterlijk Pardon*) in the Penal System according to the Criminal Code and the new Criminal Procedure Code

The development of the criminal law system in Indonesia shows a shift in the criminal paradigm from a repressive approach to a more humanist and substantive justice-oriented approach. One of the manifestations of this paradigm change is the regulation regarding the forgiveness of judges (*rechterlijk pardon*) in Law Number 1 of 2023 concerning the Criminal Code (KUHP). This concept gives the judge the authority not to impose a criminal sentence on the defendant even though it is legally proven that he committed a criminal act, taking into account certain conditions related to justice and legal utility.<sup>5</sup> In the classical criminal system, punishment is generally seen as a consequence that must be

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<sup>5</sup> JAUHARI D. KUSUMA, B. FARHANA KURNIA LESTARI, and JUNI PUSPITA DEWI, "Comparative Juridical Analysis of Judicial Pardon in Law No. 1 of 1946 concerning Regulations on Criminal Law with Law No. 1 of 2023 concerning the Criminal Code," *Ganec Swara* 19, no. 1 (2025): 461-69, <https://doi.org/10.59896/gara.v19i1.238>.

imposed on everyone who is proven guilty of committing a criminal act. The approach is based on the principle of retributive justice which emphasizes retribution against the perpetrators of crimes. However, along with the development of modern criminal law thinking, the penal system began to accommodate a more flexible approach by considering the perpetrator's condition, the level of offense, and the social impact of a criminal act.<sup>6</sup> The concept of *rechterlijk pardon* in the new Criminal Code is part of a national criminal law reform effort that emphasizes the importance of criminal individualization. This principle requires that judges in imposing judgments not only be guided by normative provisions alone, but also consider various aspects related to the personal circumstances of the perpetrator, the motive for the act, and the consequences arising from the criminal act.<sup>7</sup> Normatively, the regulation regarding the pardon of judges in the new Criminal Code is listed in Article 54 paragraph (2) of Law Number 1 of 2023 concerning the Criminal Code, which gives the judge the authority not to impose a criminal sentence if he considers that the act committed by the defendant is relatively minor and considers the personal circumstances of the perpetrator and certain other conditions.

Although Article 54 paragraph (2) of the Criminal Code gives discretion to judges not to impose criminal penalties on defendants who are proven to have committed criminal acts, this authority cannot be understood as absolute freedom. The discretion of judges in the application of *rechterlijk pardon* is essentially still limited by the principles of legality, legal certainty, and accountability of court decisions. The phrases used in these provisions, such as "the lightness of the act", "the personal circumstances of the perpetrator", and "the circumstances at the time of the crime or what occurred later", are open *legal concepts* so that they have the potential to cause differences in interpretation between judges. This condition can give birth to disparities in decisions in cases that have similar characteristics if they are not accompanied by clear and measurable parameters regarding the conditions for granting a judge's pardon.

Critically, it should be noted that the expansion of judges' discretion through the concept of *rechterlijk pardon* contains two conflicting consequences. On the one hand, this authority allows judges to realize substantive justice by considering the individual aspects of the perpetrator and the concrete conditions of the case that cannot always be accommodated by the formulation of the law. However, on the other hand, overly broad discretion without adequate normative boundaries has the potential to create subjectivity in the decision-making process. As a result, the judge's pardon decision can be perceived as a form of inconsistency in law enforcement, especially if the considerations used are not explained comprehensively and rationally in the *ratio decidendi*.

In addition, the application of *rechterlijk pardon* must also pay attention to the interests of the victim and the community as the party affected by the crime. Excessive focus on the condition of the perpetrator has the potential to shift the function of legal

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<sup>6</sup> Padlilah Padlilah et al., "Reevaluation and Reorientation of the Philosophy of Retributive Justice to Restorative Justice in Imposing Criminal Sanctions," *La Sociale newspaper* 4, no. 2 (2023): 45-51, <https://doi.org/10.37899/journal-la-sociale.v4i2.786>.

<sup>7</sup> Alfret Alfret and Mardian Putra Frans, "The Concept of a Pardon Decision by a Judge (Rechterlijk Pardon) as a New Type of Decision in the Criminal Code," *Krtha Bhayangkara* 17, no. 3 (2023): 587-600, <https://doi.org/10.31599/krtha.v17i3.2968>.

protection for victims and reduce the *deterrent effect* of criminal law. Therefore, the granting of a judge's pardon should not only be based on factors that benefit the perpetrator, but also consider the level of damage caused, the attitude of the perpetrator after committing a criminal act, the existence of recovery efforts for the victim, and the community's response to the act. Thus, the use of judges' discretion remains in the balance corridor between the interests of the perpetrator, the victim, and the public interest.

From the perspective of the state of law (*rechtstaat*), the judge's discretion in imposing a *rechterlijk pardon* must be tested through objective and transparent legal argumentation. It is not enough for the judge to state that the defendant deserves a pardon, but it is also necessary to describe in detail the juridical, philosophical, and sociological reasons on which his consideration is based. This obligation is important to ensure that the exercise of discretion does not turn into arbitrary authority. In this context, the existence of SEMA Number 1 of 2026 has important significance as an instrument that provides interpretive guidelines for judges so that the application of *rechterlijk pardon* remains in line with the principles of legal certainty, equality *before the law*, and the purpose of punishment that has been set out in the Criminal Code.

In judicial practice, the application of this concept has begun to be seen in several District Courts. One of them is contained in the Banjarnegara District Court Decision Number 97/Pid.Sus/2025/PN Banjarnegara on behalf of the Defendant Burhani Hasan Bin Alm. Asan Miharjo, for information, the Judge's pardon decision was handed down in the gambling crime committed by the defendant. The Panel of Judges of the Banjarnegara District Court who handed down the decision of the Judge's pardon in the case in question were Anteng Supriyo, SH., MH as the Presiding Judge, Dr. M. Arief Kurniawan, SH., MH and Sahriman Jayadi, SH., MH as Member Judges, respectively. The Judge's Pardon Decision is based on the provisions of Article 54 Paragraph (2) of the National Criminal Code and Article 234 of the New Criminal Code. In the case in question, the Panel of Judges considers 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, which can be used as a basis for consideration not to impose a penalty or not to impose an action, taking into account the aspects of justice and humanity. The case, including a relatively minor and non-recidivist crime, and the defendant was 73 years old, so the Panel of Judges agreed to impose a pardon for the Judge.<sup>8</sup>

This provision shows that there is room for judges to use discretion in achieving more substantive justice.<sup>9</sup> In the context of the national penal system, the existence of *rechterlijk pardon* is also closely related to the purpose of punishment as stipulated in Article 51 of the new Criminal Code which emphasizes that punishment is not only aimed at inflicting suffering on the perpetrator, but also to improve the perpetrator and restore balance in society. With this provision, the concept of judge pardon can be understood as a legal mechanism that provides flexibility for judges in assessing whether punishment is still

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<sup>8</sup><https://marinews.mahkamahagung.go.id/berita/perdana-pn-banjarnegara-jatuhkan-putusanpardon-judge-0Vb> accessed on Tuesday 10 March 2026 at 20:40

<sup>9</sup>Dandi Jayusman, Dita Gusnawati, and Muhammad Fathi, "Judicial Pardon: Between Abuse of Pardon Power and Criminal Law Reform," *Justitia and Pax* 40, no. 2 (2024): 331-60, <https://doi.org/10.24002/jep.v40i2.8574>.

needed in a case. Under certain conditions, punishment can actually have a greater social impact than the benefits obtained from the punishment itself. In relation to the new Criminal Procedure Code (Draft Criminal Procedure Code), the concept of *rechterlijk pardon* has an important position because it relates to the decision-making mechanism in the criminal justice process. The Criminal Code provides a procedural framework for how judges assess evidence and determine the verdict against the defendant. With the concept of judge pardon, judges have an alternative verdict other than imposing a criminal sentence or acquitting the defendant. The position of *rechterlijk pardon* in the criminal system also shows the relationship between material criminal law and criminal procedural law. The Criminal Code as a material criminal law regulates the basis for granting a judge's pardon, while the Criminal Procedure Code provides a mechanism for how the verdict can be handed down in the judicial process. In addition, this concept is also related to the development of thinking about *restorative justice* which emphasizes the resolution of cases by considering the restoration of relationships between perpetrators, victims, and society. In some circumstances, pardoning judges can be a more effective alternative to repressive punishment. From the perspective of legal theory, the discussion of judges' pardons can be analyzed using the Theory of Justice proposed by John Rawls. According to Rawls, justice must provide protection for every individual through the principle of equality and provide the greatest benefits to the most disadvantaged parties in society. The relevance of John Rawls's theory of justice in the context of *rechterlijk pardon* can be seen from the efforts of the legal system to provide fair treatment to perpetrators of criminal acts who are in certain conditions. In some cases, a stiff sentence without considering the perpetrator's condition can cause injustice that is contrary to the purpose of the law itself.

Therefore, the existence of a judge's pardon in the new Criminal Code can be seen as a form of implementation of the principle of substantive justice that provides space for judges to consider the humanitarian aspect in imposing a verdict. In addition, this concept also shows that the modern penal system is no longer only oriented towards punishment, but also on efforts to achieve a balance between the interests of the law, the interests of society, and the protection of individual rights. Nevertheless, the application of *rechterlijk pardon* in judicial practice requires clear guidelines so as not to create legal uncertainty or disparity in judgments. Therefore, further regulation through judicial policies such as SEMA Number 1 of 2026 is important to provide guidelines for judges in exercising this authority. Thus, it can be concluded that the position of the concept of judges' pardon in the penal system according to the new Criminal Code and the Criminal Code is part of the criminal law reform that aims to create a more flexible, humane, and fair penal system. This concept provides space for judges to consider various aspects in passing judgments so that criminality is no longer seen as the only form of settlement in criminal cases.

## 2. Regulation and Application of Judges' Pardon Decisions (*Rechterlijk Pardon*) Based on Supreme Court Circular Letter (SEMA) Number 1 of 2026 in Judicial Practice in Indonesia.

The regulation regarding the application of judges' pardon decisions (*rechterlijk pardon*) in criminal justice practice in Indonesia has been strengthened through the

Supreme Court Circular Letter (SEMA) Number 1 of 2026. The SEMA was issued as a guideline for judges in implementing the provisions of *rechterlijk pardon* as stipulated in Law Number 1 of 2023 concerning the Criminal Code (KUHP). Its presence aims to provide uniformity in the application of the law and minimize differences in interpretation in the use of judges' discretion.

Normatively, SEMA Number 1 of 2026 provides a number of parameters that can be considered by the judge, including the lightness of the defendant's actions, the existence of remorse, efforts to recover losses, and the impact caused to the victim and the community. These criteria show that the application of *rechterlijk pardon* does not only rely on formal legal aspects, but also considers the value of substantive justice and the usefulness of the law. Thus, the judge can still declare the defendant proven guilty, but not impose a criminal sentence if the purpose of the sentence is considered to have been achieved without punishment.

In judicial practice, the arrangement reflects a shift in the criminal paradigm that is no longer oriented solely on *retributive justice*, but also on improving perpetrators and restoring social balance. The application of *rechterlijk pardon* provides space for judges to assess the concrete conditions of a case so that punishment can be carried out more proportionately in accordance with the principle of criminal individualization adopted by the new Criminal Code.

Nevertheless, the effectiveness of SEMA Number 1 of 2026 still faces a number of challenges. Juridically, criteria such as "the lightness of the act", "the defendant's remorse", or "certain circumstances" are relatively abstract concepts and have the potential to cause differences in interpretation between judges. As a result, the application of *rechterlijk pardon* can cause disparity in decisions in cases that have similar characteristics. The presence of SEMA aims to provide legal certainty and prevent differences in interpretation in the application of the concept of *rechterlijk pardon* by judges in various courts.<sup>10</sup> In addition, because SEMA is basically an internal guideline of the judiciary and not a law and not a law and regulation, its binding power in limiting the discretion of judges also has limitations. Therefore, the quality of judges' legal considerations (*ratio decidendi*) is the main factor in ensuring consistency and accountability in the application of *rechterlijk pardon*.

On the other hand, the application of *rechterlijk pardon* is closely related to the development of the concept of *restorative justice* which emphasizes the restoration of relationships between perpetrators, victims, and society. In certain cases that have been resolved through peace or recovery of damages, the judge's pardon can be an instrument that supports a more humane and fair settlement of the case. However, its application must still consider the interests of the victim, the sense of justice of the community, and the purpose of the punishment so as not to create the perception that the perpetrator is free from legal responsibility.

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<sup>10</sup> Annisa Dian Permata Herista and Aristo Evandy A. Barlian, "Rechterlijk Pardon in Indonesian Criminal Policy and Application," *Legal Institutions* 15, no. 2 (2020): 132-42, <https://doi.org/10.36448/pranatahukum.v15i2.225>.

Thus, the regulation of *rechterlijk pardon* through SEMA Number 1 of 2026 is an important step in supporting the implementation of the new Criminal Code oriented towards substantive justice. However, to ensure consistency in its application, more measurable parameters and comprehensive legal arguments are needed in each decision so that the use of judges' discretion remains within the corridor of legal certainty, justice, and utility.

The presence of SEMA aims to provide legal certainty and prevent differences in interpretation in the application of the concept of *rechterlijk pardon* by judges in various courts. Normatively, SEMA Number 1 of 2026 provides guidelines regarding certain conditions that can be the basis for judges to consider in imposing a pardon decision. Some of the considerations that can be used include the lightness of the act committed by the defendant, the remorse of the defendant, the absence of major losses to the victim or the community, and the existence of recovery efforts made by the perpetrator. These considerations show that the application of a judge's pardon is not only based on the juridical aspect, but also pays attention to the moral and social dimensions of a criminal act.<sup>11</sup> In criminal justice practice, the application of *rechterlijk pardon* is carried out after the judge states that the defendant is legally and convincingly proven to have committed a criminal act based on the evidence presented at trial. The guidelines emphasize that the application of *rechterlijk pardon* must be carried out carefully and accompanied by clear legal considerations in the judge's decision. This is important to prevent abuse of authority and ensure that the application of a judge's pardon remains within the framework of the principles of legal certainty and justice.<sup>12</sup>

However, after considering various factors related to the purpose of the sentence and the interest of justice, the judge may decide not to impose a sentence on the defendant. Thus, the judge's pardon decision is a form of decision that states the defendant's guilt but is not followed by the imposition of criminal sanctions. The application of this concept in judicial practice shows a development in the mindset of judges who are no longer solely oriented towards punishment. In some criminal cases with relatively minor error rates, judges may consider that criminalization is not always the most effective solution to achieve legal goals. In this context, granting a judge's pardon can be a more proportionate and fair alternative. In addition, the existence of SEMA Number 1 of 2026 also provides a limit on the use of judges' discretion in issuing a pardon decision.

### **3. Juridical Implications of the Application of the Judge's Pardon Decision (*Rechterlijk Pardon*) to the Criminal System and the purpose of Punishment in the new Criminal Code and Criminal Code.**

The application of the judge's pardon decision (*rechterlijk pardon*) in the Indonesian criminal law system has significant juridical implications for the penal system as stipulated in Law Number 1 of 2023 concerning the Criminal Code. This concept suggests that sentencing is no longer rigidly understood as a consequence that must be imposed

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<sup>11</sup> Iryanto Irvan Jaya Rifka Alkhilyatul Ma'rifat, I Made Suraharta, "JUDICIAL PARDON: A CONCEPTUAL APPROACH TO SUBSTANTIAL JUSTICE" 2, no. 1 (2024): 306-12.

<sup>12</sup> Alfret and Mardian Putra Frans, "The Concept of a Pardon Decision by a Judge (*Rechterlijk Pardon*) as a New Type of Decision in the Criminal Code."

on every perpetrator who is found guilty, but rather provides space for judges to consider substantive justice aspects. Thus, *the rechterlijk pardon* becomes an instrument that supports the achievement of a balance between legal certainty, justice, and utility.

Juridically, the existence of *rechterlijk pardon* is also related to the purpose of punishment as stipulated in Article 51 of the Criminal Code which emphasizes that punishment is not only aimed at inflicting suffering on the perpetrator, but also on improving the perpetrator and restoring balance in society. Therefore, in certain circumstances, the judge may consider that the purpose of the punishment has been achieved without the need to impose a penalty, especially if the perpetrator shows remorse, is responsible for his actions, or has recovered the losses caused. This condition reflects the application of the principle of criminal individualization that pays attention to the concrete circumstances of the perpetrators and their actions.

Nonetheless, the application of *rechterlijk pardon* also poses a juridical challenge. The provisions of Article 54 paragraph (2) of the Criminal Code, which uses indicators such as the lightness of the act and the personal circumstances of the perpetrator, provide a wide scope of interpretation for judges. This condition has the potential to cause *abuse of discretion* if it is not accompanied by clear parameters. In addition, there is a possibility of *sentencing disparity* in cases that have similar characteristics due to differences in judges' assessments of the aspects of justice, utility, and the condition of the perpetrator. Therefore, the exercise of discretion must be based on objective, rational, and accountable legal considerations. Thus, the application of judge pardon is one of the instruments that allows a balance to be achieved between legal certainty, justice, and usefulness in criminal law enforcement<sup>13</sup>

The application of this principle can be seen in the Decision of the Sungailiat District Court Number 1/Pid.C/2026/PN Sgl The single judge, Satra Lombanturuan, SH., MH, handed down the Judge's Pardon Decision to the defendant Rahmat Riandy bin Tusirin because it had been legally and convincingly proven to have committed the Crime of Petty Theft of oil palm belonging to PT. The Earth was a major success. In his consideration, the Judge emphasized that the defendant was sentenced to a Judge's Pardon Decision with the consideration that the Criminal Act committed by the Defendant was a Crime of Petty Theft with the price of the stolen goods not exceeding Rp.500,000.00 (Five Hundred Thousand Rupiah) as stipulated in article 478 of the Criminal Code. In addition, the Judge also considers the personal circumstances or motives/objectives of the defendant who in committing the criminal act was carried out solely to meet the urgent basic needs of the defendant because the defendant did not have a job, and the defendant himself had never been in the law.<sup>14</sup>

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<sup>13</sup> Herista and A. Barlian, "Rechterlijk Pardon in Indonesian Criminal Policy and Application."

<sup>14</sup><https://marinews.mahkamahagung.go.id/berita/hakim-pn-sungailiatperdanajatuhkanverdict-pardon-judge-Np> accessed on Tuesday 10 March 2026 at 20.40

#### D. Conclusions and Recommendations

This study shows that the judge's pardon (*Judicial pardon*) is a form of criminal law reform in Law Number 1 of 2023 concerning the Criminal Code which affirms a shift in the orientation of punishment from a repressive approach to a more humane, proportional, and substantive justice approach. Ranking *Judicial pardon* in the penal system provides space for the judge not to impose a sentence on the defendant who is proven guilty by considering the leniency of the act, the personal circumstances of the perpetrator, and the purpose of the punishment as stipulated in Article 51 and Article 54 paragraph (2) of the Criminal Code. This arrangement was then strengthened through SEMA Number 1 of 2026 which serves as a guideline for judges in implementing judges' pardons in a more targeted and consistent manner. Thus, *Judicial pardon* not only being a legal instrument that supports the individualization of crime, but also reflecting efforts to realize a balance between legal certainty, justice, and utility in the Indonesian criminal justice system.

However, this study found that the implementation of *rechterlijk pardon* still faces challenges in the form of a wide space of discretion for judges which has the potential to cause differences in interpretation, disparity in decisions, and even abuse of authority if not accompanied by clear parameters. Therefore, the scientific contribution of this research lies in the analysis of the relationship between the regulation of *rechterlijk pardon* in the new Criminal Code and SEMA Number 1 of 2026 and the juridical implications it has on the national penal system. The novelty of this research lies in a critical study of the limits of judges' discretion and the potential disparity of decisions in the implementation of *rechterlijk pardon* after the issuance of SEMA Number 1 of 2026. Based on these findings, the Supreme Court needs to develop more detailed and operational guidelines on the indicators of the implementation of *rechterlijk pardon* and conduct periodic evaluations of the decisions that apply it to ensure consistency, accountability, and legal certainty in criminal justice practice.

## References

### A. Legislation – Invitations

Article 246 of the Criminal Procedure Code Number 20 of 2025  
Article 51 of the Criminal Code Number 1 of 2023  
Article 54 Paragraph (2) of the Criminal Code Number 1 of 2023  
Supreme Court Circular Letter Number 1 of 2026

### B. Journal

Alfret Alfret and Mardian Putra Frans, "The Concept of a Pardon Decision by a Judge (Rechterlijk Pardon) as a New Type of Decision in the Criminal Code," *Krtha Bhayangkara* 17, no. 3 (2023): 587–600, <https://doi.org/10.31599/krtha.v17i3.2968>.

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