



DOI: <https://doi.org/10.38035/gijlss.v4i3>
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A Substantive Justice-Based Model for Controlling Judicial Discretion in the Application of Judicial Pardon

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Abstract: This study examines the problem of judicial discretion in the application of judicial pardon under Article 54 paragraph (2) of Law Number 1 of 2023 concerning the Indonesian Criminal Code (KUHP). Judicial pardon represents a significant reform in the sentencing system, as it allows judges to refrain from imposing criminal sanctions or measures even when the defendant has been proven guilty. However, the formulation of the provision contains broad and open-ended phrases such as “the minor nature of the offense,” “the personal circumstances of the offender,” “justice,” and “humanity,” which may give rise to subjectivity, sentencing disparities, and legal uncertainty if not accompanied by adequate control parameters. This study employs a normative-prescriptive legal research method using statutory, conceptual, and limited comparative approaches. The findings indicate that the application of judicial pardon should be guided by a substantive justice-based model encompassing four control mechanisms: proof of culpability, eligibility for pardon, consideration of the interests of victims and society, and explicit as well as reviewable legal reasoning. This model positions judicial pardon not as an act of subjective leniency, but as a rational, proportional, and accountable judicial mechanism.

Keywords: Judicial Pardon, Judicial Discretion, Substantive Justice, Indonesian Criminal Code (KUHP), Sentencing.

INTRODUCTION

The reform of Indonesia’s national criminal law through Law Number 1 of 2023 concerning the Criminal Code (KUHP) not only replaces the colonial-era codification but also introduces a fundamental shift in the understanding of punishment and sentencing. Punishment is no longer viewed merely as retribution for an offender’s wrongdoing but as an instrument whose utility must be assessed in restoring social balance, protecting victims, rehabilitating offenders, and maintaining public order. Within this framework, judges are required not only to determine whether the elements of a criminal offense have been proven but also to assess whether the imposition of punishment in a particular case remains necessary.

One provision that reflects this shift in orientation is the regulation of judicial pardon (*rechterlijk pardon*). Article 54 paragraph (2) of the Criminal Code grants judges the authority to refrain from imposing a criminal sanction or corrective measure, even when the defendant has been proven guilty of a criminal offense, provided that there are grounds relating to the minor nature of the offense, the personal circumstances of the offender, the circumstances at the time the offense was committed, or subsequent circumstances, while taking into account considerations of justice and humanity. This provision creates space for greater flexibility in judicial decision-making, particularly in cases that formally satisfy the elements of a criminal offense but, substantively, may not warrant punishment.

In overly rigid sentencing systems, proof of guilt is often understood as inevitably requiring the imposition of punishment. In reality, however, not all criminal cases possess the same degree of seriousness. Some cases involve harm that has already been remedied, offenders who demonstrate genuine remorse, minor misconduct, or circumstances arising after the offense that render punishment less urgent or unnecessary. In such situations, judicial pardon may serve as a corrective mechanism, ensuring that criminal law does not operate mechanically and remains responsive to the demands of concrete justice.

Nevertheless, judicial pardon presents an inherent ambivalence. On the one hand, it is necessary to prevent excessive rigidity in sentencing. On the other hand, it grants judges broad discretionary authority. The concepts of “justice” and “humanity” contained in Article 54 paragraph (2) are essential, yet they are inherently open-ended. Without clear standards to guide judicial consideration, these concepts may lead to excessive subjectivity. Consequently, similar cases may result in different outcomes, not because of relevant factual distinctions, but because of differing judicial interpretations regarding the appropriateness of granting a pardon.

This issue must be viewed proportionately. Judicial discretion should not be regarded as inherently problematic, as without discretion judges would function merely as mechanical executors of statutory provisions. At the same time, discretion cannot be exercised without clear limits. In the context of judicial pardon, discretion becomes particularly sensitive because judges are not merely determining the severity of punishment but deciding whether punishment should be imposed at all, despite a finding of guilt. Accordingly, the central issue is not the existence of judicial discretion itself, but rather how such discretion is exercised and controlled so that it remains rational, proportional, and accountable.

Under the judicial pardon mechanism, the defendant is still declared guilty of committing a criminal offense. What is omitted is the imposition of criminal punishment or corrective measures. Judicial pardon therefore does not erase culpability; rather, it reflects a determination that punishment is no longer necessary in a particular case. This distinction is significant because the Indonesian Code of Criminal Procedure (KUHAP) currently recognizes only three forms of judgments: convictions, acquittals, and dismissals of charges. These categories do not fully accommodate the unique character of judicial pardon as a judgment declaring guilt without imposing punishment (Ningtias & Shofa, 2024).

Previous studies have provided an important foundation for discussions on judicial pardon. Adery Ardhana Saputro conceptualized *rechterlijk pardon* as an instrument for correcting the rigidity of the legality principle and creating greater flexibility in sentencing (Saputro, 2016). Nefa Claudia Meliala associated judicial pardon with restorative justice and the need for reform within the criminal justice system (Meliala, 2020). Hana Krisnamurti emphasized the importance of harmonizing judicial pardon within Indonesia’s positive legal framework, particularly among the Criminal Code, the Code of Criminal Procedure, and the Judicial Power Act (Krisnamurti, 2025). Meanwhile, Ayu Dian Ningtias and Ahmad Faris Shofa highlighted the need to synchronize judicial pardon with criminal procedural law to

ensure that it functions not merely as a concept within substantive criminal law but also as an effective procedural mechanism (Ningtias & Shofa, 2024).

These studies demonstrate that judicial pardon has been extensively discussed from conceptual, restorative, and procedural harmonization perspectives. However, there remains a significant area requiring further development, namely the formulation of a model for controlling judicial discretion in the application of judicial pardon. This issue is crucial because the principal challenge of judicial pardon lies not merely in its recognition within the Criminal Code but in the manner in which judges exercise this authority in practice. Without an adequate control framework, judicial pardon risks becoming a progressive legal norm whose implementation is inconsistent and unpredictable.

Within this context, substantive justice becomes particularly relevant. Substantive justice extends beyond compliance with procedural requirements and the formal wording of statutory provisions. It requires judicial decisions to be grounded in objective, honest, impartial, and rational considerations while taking into account the legal values that live within society (Syamsudin, 2010). This standard is essential in assessing whether judicial pardon is genuinely granted because punishment is no longer necessary or merely because of unmeasured considerations of leniency. In other words, the broader the discretion granted to judges, the stronger the demand that they clearly articulate the legal reasoning underlying their decisions.

This study proceeds from the assumption that judicial pardon should not be understood merely as the authority to forgive offenders. Rather, it should be regarded as a judicial mechanism requiring multiple layers of scrutiny. Judges must first establish the defendant's guilt, assess the appropriateness of granting a pardon under Article 54 paragraph (2) of the Criminal Code, consider the interests of victims and society, and provide explicit and reviewable legal reasoning. Through such an approach, judicial pardon can function as an instrument of substantive justice without becoming a source of sentencing disparity and legal uncertainty.

The novelty of this research lies in its formulation of a substantive justice-based model for controlling judicial discretion in the application of judicial pardon. This model is not intended to unduly restrict judicial independence but rather to ensure that such independence is exercised responsibly. Through this framework, judicial pardon is expected to function not only as a progressive norm within the Criminal Code but also as a judicial practice that is rational, proportional, accountable, and responsive to the interests of victims and society's sense of justice.

Based on the issues outlined above, this study focuses on two principal research questions. First, what are the problems associated with judicial discretion in the application of judicial pardon under the Criminal Code? Second, what model of controlling judicial discretion in the application of judicial pardon can ensure consistency with substantive justice?

METHOD

This study employs a normative-prescriptive legal research method. The selection of this method is based on the nature of the issue under examination, namely the application of judicial pardon in the Indonesian Criminal Code (KUHP) as a substantive criminal law norm that still requires conceptual construction and implementation parameters within judicial practice. Normative legal research is utilized to examine legal norms, principles, doctrines, and concepts related to judicial pardon. Meanwhile, the prescriptive nature of the study is adopted because the research does not merely explain the existence of legal norms but also proposes a model for controlling judicial discretion to ensure that the application of judicial

pardon is carried out in a rational, proportional, and substantively just manner (Marzuki, 2017; Soekanto & Mamudji, 2015).

The approaches employed in this study include the statutory approach, conceptual approach, and limited comparative approach. The statutory approach is used to examine the provisions of Law Number 1 of 2023 concerning the Indonesian Criminal Code, particularly Article 54 paragraph (2) as the normative basis for judicial pardon. This approach is also used to analyze the relationship between this provision and the regulations concerning the objectives of sentencing, sentencing guidelines, and judicial decisions within criminal procedural law. Through this approach, judicial pardon is not viewed as an isolated norm but rather as an integral component of the national sentencing system.

The conceptual approach is employed to examine the concepts of judicial pardon, judicial discretion, sentencing disparity, substantive justice, and criminal liability. This approach is important because Article 54 paragraph (2) of the Criminal Code contains several open-ended phrases, such as “the minor nature of the offense,” “the personal circumstances of the offender,” “justice,” and “humanity.” These phrases cannot be adequately understood through grammatical interpretation alone but must be interpreted in light of legal doctrines, sentencing theories, and the general principles underlying fair judicial decisions.

A limited comparative approach is employed primarily to examine the experiences of other jurisdictions that have recognized *rechterlijk pardon*, particularly the Netherlands. This comparison is not intended to directly adopt a foreign legal system but rather to provide reflective insights regarding the importance of clear parameters, forms of judicial decisions, and legal reasoning in the application of judicial pardon. Accordingly, the comparative approach serves as a supporting instrument to strengthen the study’s arguments rather than as its primary focus.

The legal materials utilized in this research consist of primary and secondary legal sources. Primary legal materials include Law Number 1 of 2023 concerning the Indonesian Criminal Code, the Indonesian Code of Criminal Procedure, Law Number 48 of 2009 concerning Judicial Power, and other relevant legal instruments. Secondary legal materials include books, journal articles, institutional reports, and prior research addressing judicial pardon, judicial discretion, substantive justice, sentencing disparity, and criminal law reform.

Legal materials were collected through library research and analyzed qualitatively. The analysis was conducted by interpreting legal norms, relating them to relevant legal doctrines and principles, and constructing a prescriptive argument concerning a model for controlling judicial discretion. Conclusions were then drawn deductively, moving from general norms and concepts regarding sentencing, judicial discretion, and substantive justice toward the formulation of a more operational model for the application of judicial pardon under the Indonesian Criminal Code.

RESULTS AND DISCUSSION

Problems of Judicial Discretion and the Absence of Parameters for Judicial Pardon in the Criminal Code

The regulation of judicial pardon under Article 54 paragraph (2) of the Indonesian Criminal Code (KUHP) constitutes one of the most significant aspects of the reform of Indonesia’s sentencing system. Through this provision, judges are granted the authority to refrain from imposing criminal sanctions or corrective measures upon a defendant, even when the charged criminal offense has been proven. The grounds for such consideration include the minor nature of the offense, the personal circumstances of the offender, the circumstances existing at the time the offense was committed, subsequent circumstances, as well as considerations of justice and humanity. This provision demonstrates that the Criminal Code no longer treats punishment as an automatic consequence of a proven criminal offense.

From a theoretical perspective, judicial pardon may be understood as a corrective mechanism against the rigidity of sentencing. In highly legalistic criminal justice systems, proof of the elements of a criminal offense is often regarded as inevitably requiring the imposition of punishment. In reality, however, criminal cases arise within varying contexts. Certain cases may formally satisfy the legal elements of an offense, yet substantively, punishment may no longer be necessary, beneficial, or even just. In such circumstances, judicial pardon provides judges with an opportunity to evaluate cases more comprehensively, considering not only the fulfillment of statutory elements but also the degree of culpability, the offender's circumstances, any restoration that has occurred, and society's sense of justice (Saputro, 2016).

However, the principal strength of judicial pardon simultaneously constitutes its greatest weakness. The provision grants judges a broad sphere of discretion. Phrases such as "the minor nature of the offense," "the personal circumstances of the offender," "justice," and "humanity" are open-ended concepts requiring interpretation. On the one hand, such openness is necessary to prevent the mechanical application of law. On the other hand, without sufficiently clear parameters, such openness may evolve into a realm of subjectivity that is difficult to measure. One judge may regard a particular circumstance as sufficient grounds for granting a pardon, whereas another judge may reach the opposite conclusion in a relatively similar case.

The issue of judicial discretion therefore becomes highly relevant. Judicial discretion in the application of judicial pardon cannot be viewed merely as an individual judge's freedom to determine what is fair or unfair in a particular case. Rather, such discretion must be understood as a judicial authority inherent in the adjudicative function. Consequently, judicial freedom must continue to operate through legal reasoning, evidentiary assessment, fact-finding, and judicial reasoning that is capable of review. Judicial independence is indeed an essential requirement of a fair judiciary, but such independence is not synonymous with unlimited freedom. In a state governed by the rule of law, the broader the discretion granted, the greater the need for accountability in judicial reasoning (Krisnamurti, 2025).

A significant problem with Article 54 paragraph (2) of the Criminal Code is that it does not provide sufficiently operational standards to guide judges. The provision identifies several grounds for consideration but does not explain how each should be assessed. For example, what constitutes "the minor nature of the offense"? Should the seriousness of an offense be measured solely by the statutory penalty, the amount of loss caused, the manner in which the offense was committed, the resulting consequences, or also by the relationship between the offender and the victim? Likewise, "the personal circumstances of the offender" may encompass numerous factors, including age, economic condition, health condition, personal background, social status, remorse, and the likelihood of reoffending. Without more measurable guidelines, these grounds may be applied inconsistently.

The same concern arises with the phrases "justice" and "humanity." These concepts are indispensable, yet they are also highly vulnerable to abstract application. A judicial decision that merely invokes "justice and humanity" without explaining its factual and legal basis is insufficient to justify the granting of judicial pardon. Justice and humanity must be translated into concrete reasoning: why punishment is unnecessary, why the pardon does not prejudice the victim, why the interests of society remain protected, and why the defendant should still be declared guilty despite the absence of punishment. Without such explanations, judicial pardon may appear to be an act of personal compassion rather than a legal determination.

The absence of clear parameters also creates the potential for sentencing disparity. Disparity is not inherently problematic, as every case possesses its own unique characteristics. Differences in judicial outcomes are justified when based upon relevant factual distinctions. The problem arises when disparities cannot be rationally explained. In

the context of judicial pardon, disparities may occur when cases involving similar levels of culpability, harm, and offender circumstances are treated differently without adequate justification. Such conditions may undermine legal certainty and create the perception that judicial pardon depends largely upon the personal preferences of individual judges (Nugroho, 2012; Indonesia Corruption Watch, 2014).

In addition to substantive concerns, judicial pardon also presents procedural challenges. The nature of judicial pardon differs from the three types of judgments traditionally recognized in Indonesian criminal procedure: conviction, acquittal, and dismissal of charges. In an acquittal, the defendant is not proven beyond reasonable doubt to have committed the offense. In a dismissal of charges, the act is proven but does not constitute a criminal offense or cannot be punished under the law. In a conviction, the defendant is found guilty and a criminal sanction is imposed. Judicial pardon occupies a distinct position: the defendant is found guilty, yet no punishment or corrective measure is imposed (Meliala, 2020).

This distinction gives rise to practical questions. Should judicial pardon be treated as a variation of a conviction, or should it be recognized as a separate category of judicial decision? If it is regarded as a conviction, difficulties arise because a conviction ordinarily includes the imposition of punishment. Conversely, if judicial pardon is not placed within a clearly defined category of judgment, judges may encounter difficulties in formulating both the operative part of the judgment and its legal reasoning. This issue demonstrates that judicial pardon cannot be adequately regulated solely through substantive criminal law. It also requires procedural legal support to ensure its orderly implementation and to avoid uncertainty in judicial practice (Ningtias & Shofa, 2024).

Another equally important issue concerns the position of victims. Article 54 paragraph (2) of the Criminal Code places greater emphasis on the circumstances of the offense and the offender. Yet in criminal proceedings, victims are the parties who directly experience the consequences of criminal conduct. A judicial pardon that focuses exclusively on the offender may create new forms of injustice if it disregards the victim's losses, need for restoration, receipt of an apology, compensation, or views regarding the resolution of the case. Accordingly, judicial discretion in granting a pardon cannot be based solely upon considerations relating to the offender but must also assess whether the interests of victims and society have been adequately taken into account (United Nations Office on Drugs and Crime, 2020; United Nations, 1990).

Accordingly, the principal problem of judicial pardon within the Criminal Code does not lie in the existence of the provision itself. In principle, the provision is important and consistent with the broader movement toward a more humanistic sentencing system. The problem lies in the absence of adequate parameters to ensure that this authority is exercised consistently, proportionately, and accountably. Judicial pardon requires standards of legal reasoning that not only assess whether a defendant deserves forgiveness but also explain why punishment is no longer necessary in a particular case.

Therefore, controlling judicial discretion has become an urgent necessity. Such control is not intended to standardize all judicial outcomes or eliminate judicial wisdom and flexibility. Rather, what must be standardized is the structure of legal reasoning. Judges should remain free to reach different conclusions according to the specific characteristics of each case, but those differences must be capable of explanation through clear and transparent reasoning. In this way, judicial pardon can function as an instrument of substantive justice rather than as a new source of disparity and uncertainty within the criminal justice system.

A Substantive Justice-Based Model for Controlling Judicial Discretion in the Application of Judicial Pardon

Judicial pardon should not be understood merely as the authority to refrain from imposing punishment upon a defendant who has been proven guilty. If understood in such a simplistic manner, judicial pardon may easily devolve into a highly subjective exercise of compassion. In a criminal justice system, however, every judicial decision must be grounded in law, supported by evidence presented at trial, based on reasoning that is capable of review, and directed toward sentencing objectives that can be justified. Consequently, judicial pardon requires a model for controlling judicial discretion.

This model is not intended to diminish judicial independence. Judicial independence remains a fundamental prerequisite for a fair judiciary. Nevertheless, judicial independence must be distinguished from unrestrained discretion. In cases involving judicial pardon, judges are indeed granted the authority to consider justice and humanity, but such authority must be exercised through a clear and structured process of legal reasoning. Accordingly, what requires control is not the outcome of the decision itself, but rather the reasoning process through which a judge reaches the conclusion that punishment should not be imposed.

The model of discretionary control proposed in this study is based on the principle of substantive justice. Substantive justice does not merely inquire whether a decision complies with procedural requirements; it also asks whether the decision genuinely considers the nature of the case, the degree of culpability, the offender's circumstances, the interests of victims, the interests of society, and the objectives of sentencing. Thus, a judicial pardon grounded in substantive justice is not a pardon arising from spontaneous sympathy but rather one that is tested through objective, honest, impartial, and rational legal reasoning aimed at restoring social balance (Syamsudin, 2014; Judicial Commission of the Republic of Indonesia, 2010).

On this basis, the model for controlling judicial discretion in granting judicial pardon is formulated into four interrelated forms of control: (1) control of proof of guilt, (2) control of the appropriateness of granting a pardon, (3) control of victims' and societal interests, and (4) control of legal reasoning. These four controls are interconnected. If any one of them is neglected, judicial pardon risks losing its legitimacy as a decision grounded in justice.

1. Control of Proof of Guilt

The first control mechanism in the application of judicial pardon is the control of proof of guilt. Judicial pardon may only be applied where the defendant has been lawfully and convincingly proven to have committed the charged criminal offense. This stage is crucial to prevent conceptual confusion between judicial pardon, acquittal, and dismissal of charges.

If the elements of the criminal offense are not proven, the appropriate judgment is an acquittal. In such circumstances, the judge is not pardoning the defendant but rather declaring that the prosecution has failed to prove the charge. Conversely, where the act has been proven but does not constitute a criminal offense or where legal grounds exist that exclude punishment, the appropriate legal construction is a dismissal of charges. Judicial pardon occupies a distinct category: the act is proven, culpability is established, yet punishment or corrective measures are not imposed due to considerations of justice and humanity.

This distinction is important because judicial pardon must never serve as a shortcut to conceal weaknesses in evidentiary proof. Judges may not invoke judicial pardon when doubts remain regarding the fulfillment of the elements of the offense or the defendant's culpability. Where such doubts exist, the principles of proof in criminal procedure must prevail. Accordingly, judicial pardon becomes relevant only after the judge has reached a firm conviction that the defendant bears criminal responsibility.

As a consequence, a judgment granting judicial pardon must first provide a complete analysis of the evidence establishing the criminal offense and the defendant's guilt. Considerations regarding pardon must not precede proof of guilt. The sequence must be explicit: the defendant is proven guilty, and only thereafter does the judge assess whether punishment remains necessary. This structure preserves the fundamental logic of criminal liability.

Control of proof of guilt also serves to protect the dignity of victims and the interests of society. A declaration that the defendant has been proven guilty retains significant legal value. It affirms that the law recognizes the occurrence of a violation, acknowledges the existence of a victim or an impaired legal interest, and emphasizes that judicial pardon does not erase culpability. In this way, judicial pardon preserves the declaratory function of criminal judgments even in the absence of punishment.

2. Control of the Appropriateness of Granting a Pardon under Article 54 Paragraph (2) of the Criminal Code

Once the defendant's guilt has been established, the judge must proceed to the second stage: assessing the appropriateness of granting a pardon. This stage constitutes the core of the application of Article 54 paragraph (2) of the Criminal Code.

The provision identifies several grounds for consideration, namely the minor nature of the offense, the personal circumstances of the offender, the circumstances existing at the time the offense was committed, circumstances arising thereafter, and considerations of justice and humanity. These factors should not be treated as a formal checklist that merely needs to be mentioned in a judgment. Rather, they must be concretely examined based on the facts established at trial.

First, the judge must assess the minor nature of the offense. The seriousness of an offense cannot be determined solely by the statutory penalty prescribed by law. While statutory penalties may provide an initial reference point, they do not necessarily reflect the actual gravity of a particular case. Judges should evaluate the manner in which the offense was committed, the harm caused, the extent of loss, the degree of danger posed to victims or society, and whether the offense was committed with strong criminal intent or under more complex circumstances. Conduct that appears legally minor may produce serious social consequences, and vice versa.

Second, the judge must assess the personal circumstances of the offender. This factor should not be interpreted as an opportunity to grant special treatment based on social status, public office, or influence. Personal circumstances must be evaluated in relation to criminal responsibility and sentencing objectives. Factors such as advanced age, serious health conditions, first-offender status, genuine remorse, family responsibilities, and the offender's prospects for rehabilitation may be considered insofar as they directly relate to the necessity of punishment. By contrast, social standing or official position should not justify a pardon where they instead demonstrate an abuse of trust or authority.

Third, judges must consider the circumstances existing at the time the offense was committed. Criminal conduct rarely arises in a vacuum. Certain circumstances may help explain why an offense occurred, even though they do not eliminate culpability. Economic hardship, spontaneous conflict, provocation, the relationship between the offender and the victim, or particular circumstances that constrained the offender's choices may be relevant considerations. Nevertheless, judges must remain cautious to ensure that such circumstances are not used to justify criminal conduct. Their function is not to negate culpability but to assist in assessing whether punishment remains proportionately necessary.

Fourth, judges must evaluate circumstances arising after the commission of the offense. This factor is particularly important because post-offense developments may significantly affect the necessity of punishment. Genuine apologies, compensation for losses, restoration of the victim's condition, voluntary reconciliation, active efforts by the offender to repair the consequences of the offense, or the absence of continuing conflict between the parties may all constitute relevant considerations. However, post-offense circumstances should not be accepted mechanically. Compensation, for example, does not automatically justify a pardon, particularly where it is offered solely to avoid punishment or occurs within an unequal power relationship.

Fifth, judges must evaluate all of these circumstances through the lenses of justice and humanity. This is where both the difficulty and significance of judicial reasoning become apparent. Justice and humanity must not remain abstract normative expressions. Judges must explain what justice means in the particular case, whose interests are being considered, and how humanitarian considerations are applied without neglecting victims or society. In cases involving judicial pardon, justice is not synonymous with leniency toward the offender; rather, it signifies a balance between acknowledging culpability, repairing harm, protecting victims, and rationally determining that punishment is unnecessary.

Accordingly, control of the appropriateness of granting a pardon requires a multi-layered assessment. Judges cannot merely state that the offense was minor or that the offender has expressed remorse. They must demonstrate the connection between these circumstances and the conclusion that punishment is no longer necessary. In other words, judicial pardon possesses a strong foundation only where there are convincing reasons showing that the objectives of sentencing have already been achieved or would not be better served through the imposition of punishment.

At this stage, Article 70 of the Criminal Code may function as a supporting provision, although it must not be equated with judicial pardon. Article 70 is more appropriately understood as a guideline for avoiding the imposition of imprisonment under certain circumstances. Article 54 paragraph (2), by contrast, governs the possibility of refraining from imposing any punishment or corrective measure whatsoever. Accordingly, Article 70 may assist judges in assessing whether imprisonment is unnecessary, but the conclusion that the defendant should not be subjected to punishment or corrective measures must remain grounded in Article 54 paragraph (2).

This distinction is important to prevent the misuse of judicial pardon. Not every circumstance that makes imprisonment inappropriate automatically means that a defendant should be fully pardoned. Imprisonment may be disproportionate while other sanctions, corrective measures, restitution, or specific obligations remain necessary. Judges must therefore distinguish between reasons for avoiding imprisonment and reasons for refraining from imposing punishment altogether.

3. Control of Victims' and Societal Interests

The third control mechanism concerns the consideration of victims' and societal interests. This aspect is important because judicial pardon may easily be perceived as an instrument that is overly offender-oriented. In modern criminal law, however, victims cannot be treated merely as a background element of criminal proceedings. Victims are the parties who directly experience the consequences of criminal conduct, whether in the form of material loss, psychological harm, diminished feelings of security, or disruption of social relationships.

In applying judicial pardon, judges must assess whether the interests of victims have been adequately considered. The relevant question is not merely whether the offender

deserves forgiveness but also whether the victim has received appropriate restoration. Such restoration may take the form of compensation, an apology, acknowledgment of wrongdoing, restoration of relationships, or other measures relevant to the circumstances of the case. Without consideration of the victim's position, judicial pardon may appear to be a decision that benefits only the offender while disregarding the interests of the injured party.

At the same time, victims' interests should not be reduced to a matter of formal consent. In certain cases, victims may express forgiveness due to social pressure, unequal power relations, economic dependence, or exhaustion resulting from legal proceedings. Consequently, judges must assess whether reconciliation or forgiveness has genuinely been given voluntarily. Forgiveness arising from coercion or pressure cannot serve as a strong basis for concluding that the case has been substantively resolved.

Consideration of victims' interests must also be read together with the interests of society. Criminal law serves not only to protect individual victims but also to preserve social norms and public order. Accordingly, even where a victim has forgiven the offender, judges must still evaluate whether granting judicial pardon would be consistent with society's sense of justice. In cases involving broad social impacts, abuse of authority, or serious violence, judicial pardon should be applied with particular caution.

At this point, the principles of restorative justice may provide guidance, although they must not be oversimplified. Restorative justice is not merely reconciliation between the offender and the victim, nor simply a justification for terminating or mitigating criminal proceedings. Its essence lies in repairing harm, acknowledging responsibility, involving affected parties, and restoring social balance. Therefore, if judicial pardon is to be grounded in a restorative spirit, judges must ensure that there are genuine processes or circumstances demonstrating accountability and restoration, rather than merely an administrative settlement (United Nations Office on Drugs and Crime, 2020; Satria, 2018).

Consideration of victims' and societal interests is also essential for maintaining the legitimacy of judicial decisions. A judgment granting judicial pardon that fails to explain the position of the victim may create the impression that the court is more concerned with the offender than with the injured party. Conversely, if the judge clearly explains that the victim has been restored, losses have been repaired, conflict has subsided, and society will not be adversely affected by the absence of punishment, judicial pardon will be more readily understood as a just decision.

Accordingly, the control of victims' and societal interests functions as a counterbalance to the offender-centered tendency that may arise in the application of judicial pardon. Substantive justice requires judges to consider not only the humanity of the offender but also the humanity of the victim. The concept of humanity contained in Article 54 paragraph (2) of the Criminal Code must therefore be interpreted comprehensively as humanity for offenders, victims, and society as a whole.

4. Control of Explicit and Reviewable Legal Reasoning

The fourth control mechanism is the obligation of judges to provide explicit and reviewable legal reasoning. This control represents the culmination of the entire model of discretionary control. Even where judges have properly considered proof of guilt, the appropriateness of granting a pardon, and the interests of victims, judicial pardon will remain vulnerable if those considerations are not clearly articulated in the judgment.

Legal reasoning in a judicial pardon decision should contain at least four elements. First, the judge must explain that the elements of the criminal offense and the defendant's culpability have been lawfully and convincingly established. Second, the judge must set

out the facts that render the case appropriate for consideration under Article 54 paragraph (2) of the Criminal Code. Third, the judge must demonstrate how the interests of victims and society have been taken into account. Fourth, the judge must explain why the objectives of sentencing no longer require the imposition of punishment or corrective measures.

The obligation to provide reasons is not a mere formality. In cases involving judicial pardon, the quality of legal reasoning serves as the primary safeguard against discretion degenerating into subjectivity. A judgment that merely states that the defendant is pardoned on grounds of justice and humanity is insufficient. Judges must demonstrate the path of their reasoning. They must explain which facts were considered relevant, which legal norms were applied, which values were taken into account, and why all of these considerations led to the conclusion that punishment was unnecessary.

At this stage, substantive justice converges with judicial accountability. Substantive justice should not be understood as a justification for abandoning legal certainty. On the contrary, to prevent substantive justice from appearing merely subjective, it must be expressed through rational legal reasoning. A substantively just decision is not one that simply invokes “justice,” but one that enables readers to understand why justice in the particular case genuinely requires the non-imposition of punishment.

Control of legal reasoning is also important for preventing unhealthy sentencing disparities. As previously noted, differences in judicial outcomes are not inherently problematic. However, such differences must be capable of explanation. If judicial pardon is granted in one case and denied in another, the distinction must be attributable to differences in facts, degrees of culpability, victim restoration, or societal interests. Thus, the consistency sought is not uniformity of outcomes but consistency in methods of legal reasoning.

The experience of various legal systems demonstrates that sentencing discretion requires guidelines to prevent it from becoming a source of uncertainty. Such guidelines do not necessarily take the form of rigid and exhaustive rules. They may instead consist of stages of assessment, mandatory factors for consideration, aggravating and mitigating factors, and obligations to provide reasons. In the context of judicial pardon, the most important form of guidance is a framework for legal reasoning, because judges must still retain the ability to assess the unique circumstances of individual cases (Griffith, 2005; Sentencing Council, 2021).

Under this model, judges are not compelled either to grant or to deny judicial pardon in particular categories of cases. They remain free to assess the specific circumstances of each case. However, that freedom operates within a structure of reasoning that is transparent and reviewable. If a pardon is granted, the reasons why punishment is unnecessary must be clearly articulated. If a pardon is denied, the reasons why punishment remains necessary despite mitigating circumstances must likewise be explained. This structure helps distinguish responsible judicial discretion from unmeasurable subjectivity.

Ultimately, the substantive justice-based model for controlling judicial discretion in the application of judicial pardon may be formulated as a four-stage model. First, the judge establishes the existence of the criminal offense and the defendant’s culpability. Second, the judge assesses the appropriateness of granting a pardon based on the grounds set forth in Article 54 paragraph (2) of the Criminal Code. Third, the judge meaningfully considers the interests of victims and society. Fourth, the judge incorporates all of these considerations into explicit, rational, and reviewable legal reasoning.

This model positions judicial pardon as a cautious and carefully structured instrument. It does not reject flexibility, but it rejects arbitrariness. It does not eliminate

humanitarian considerations, but it ensures that humanity is not invoked at the expense of victims. It does not equate legal certainty with rigidity, nor does it allow substantive justice to become an ambiguous justification. In this way, judicial pardon can function as a corrective mechanism against unnecessary punishment while simultaneously preserving the integrity of the criminal justice system.

The model also carries implications for the reform of criminal procedural law. Judicial pardon should be accorded a clear procedural status, either as a distinct form of judgment or, at minimum, as a judicial decision with a specific operative formulation and reasoning structure. Without procedural support, judicial pardon will continue to occupy a gray area between convictions, acquittals, and dismissals of charges. Accordingly, the control of judicial discretion through a structured reasoning model must proceed in parallel with reforms to criminal procedural law to ensure the effective implementation of Article 54 paragraph (2) of the Criminal Code.

Through such control, judicial pardon is no longer understood as an exceptional measure that depends entirely upon a judge's personal sense of justice. Instead, it becomes a judicial mechanism characterized by structure, limits, and accountability. This is what distinguishes a substantive justice-based judicial pardon from mere leniency. Judicial pardon continues to provide room for humanity, but that humanity is expressed through legal reasoning that is transparent, rational, and accountable.

CONCLUSION

Judicial pardon under Article 54 paragraph (2) of the Indonesian Criminal Code (KUHP) constitutes one of the most significant reforms in Indonesia's sentencing system. This provision grants judges the authority to refrain from imposing criminal sanctions or corrective measures, even when the defendant has been proven guilty of committing a criminal offense. Accordingly, judicial pardon reflects the principle that proof of guilt does not necessarily have to be followed by punishment, particularly where the imposition of punishment in a specific case is no longer necessary, proportionate, or consistent with considerations of justice and humanity.

Nevertheless, judicial pardon also gives rise to issues concerning judicial discretion. The phrases "the minor nature of the offense," "the personal circumstances of the offender," "justice," and "humanity" are open-ended formulations that require judicial interpretation. Such openness is necessary to enable judges to assess cases contextually; however, without clear parameters, it may result in subjectivity, sentencing disparities, and legal uncertainty. These concerns are further compounded by the fact that Indonesian criminal procedural law has not yet fully provided a form of judicial decision that explicitly accommodates the distinctive nature of judicial pardon, namely a judgment in which the defendant is declared guilty but no punishment or corrective measure is imposed.

Based on this analysis, this study proposes a substantive justice-based model for controlling judicial discretion in the application of judicial pardon. The model consists of four forms of control. First, control of proof of guilt, whereby judicial pardon may only be applied after the defendant has been lawfully and convincingly proven to have committed the criminal offense. Second, control of the appropriateness of granting a pardon, requiring judges to assess concretely the grounds set forth in Article 54 paragraph (2) of the Criminal Code, including the minor nature of the offense, the personal circumstances of the offender, the circumstances at the time the offense was committed, circumstances arising after the offense, and considerations of justice and humanity. Third, control of victims' and societal interests, requiring judges to evaluate judicial pardon not solely from the offender's perspective but also with due regard to victim restoration, social impact, and society's sense

of justice. Fourth, control of legal reasoning, requiring judges to provide explicit, rational, proportionate, and reviewable reasons for granting or refusing judicial pardon.

This model positions judicial pardon not as an act of subjective leniency but as an accountable judicial mechanism. The control of judicial discretion within this framework is not intended to unduly restrict judicial independence; rather, it seeks to ensure that such independence is exercised within a structured and measurable framework of legal reasoning. In this way, judicial pardon can function as an instrument of substantive justice without sacrificing legal certainty, victim protection, or the integrity of the criminal justice system.

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