

A Comparison of Criminal Record Regulations in France and Indonesia as a Process of Social Reintegration for Defendants Granted Judicial Pardon

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ABSTRACT

This study examines the expungement of criminal records as a consequence of a judicial pardon, comparing the regulations governing this process in France and Indonesia. The methodology employed is a normative legal analysis using a comparative law approach. The research findings indicate that France has more systematic mechanisms in place to restrict access to and the retention period for criminal records, including rehabilitation and automatic expungement under certain conditions. Meanwhile, Indonesia lacks comprehensive regulations governing the expungement of criminal records following a judge's pardon, which could result in ongoing stigma for individuals. Therefore, a reformulation of legal policy in Indonesia is necessary to ensure a balance among legal certainty, public protection, and the right to rehabilitation for offenders who have been granted judicial pardon.

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INTRODUCTION

Law essentially serves to regulate social behavior, maintain order, and achieve justice. This law enforcement is supported by sanctions imposed on every violator, particularly in the realm of criminal law. In the classical view, sanctions are understood as a form of retribution for the perpetrator's actions, as reflected in the concept of *lex talionis*, or "eye for an eye" (Gunawan, 2015). Punishment is imposed strictly with the aim of creating a deterrent effect. Consequently, the interests of both victims and perpetrators are often neglected, as the primary focus is on retribution, known as retributive punishment. This type of punishment generally involves severe sanctions and causes suffering, making it closely related to the protection of individual and human rights (Yoserwan, 2019). This situation places criminal law in a paradoxical position: on the one hand, it aims to protect the interests of society or individuals, but on the other hand, it has the potential to harm the rights of those individuals. As thinking develops, the retributive approach is being abandoned by various countries, and a shift toward utilitarian-oriented punishment follows, giving rise to the concept of restorative justice. Within this framework, criminal law is seen as a last resort in protecting the common good when other legal instruments are no longer effective, known as the doctrine of *ultimum remedium*. Based on this doctrine, criminal sanctions function as a secondary or subsidiary means when other sanction mechanisms cannot function optimally.

The theory of utility (utilitarianism) has encouraged the emergence of various approaches to punishment that are more oriented towards humanitarian values and able to accommodate the interests of all parties. This shift in orientation is clearly

evident in the major changes that occurred after several United Nations (UN) Congresses on The Prevention of Crime and the Treatment of Offenders. One form of implementing utility-based punishment is the introduction of the concept of judicial pardon (*rechterlijk pardon*). This concept has been implemented in several countries and is considered relevant as part of criminal law reform in Indonesia. Judicial pardon gives judges the authority to refrain from imposing punishment on perpetrators, taking into account the prevailing sense of justice in society. According to Chairul Huda, the application of this concept is possible in cases of a minor nature or trivial cases (Pandjaitan & Kikilaitety, 2007). In line with this, in order to avoid rigidity in sentencing, a balance is needed between legal certainty and flexibility, so that judicial pardon becomes important in the criminal law system (Arief, 2017). In Indonesia, this idea has been accommodated in Law Number 1 of 2023 concerning the Criminal Code (KUHP), one of which is reflected in Article 54 paragraph (2) which states:

"The lightness of the act, the personal circumstances of the perpetrator or the circumstances at the time the act was committed or what happened subsequently, can be used as a basis for consideration not to impose a criminal penalty or to take action by taking into account aspects of justice and humanity."

The government's intention to introduce a new paradigm in criminal law is increasingly clear. The concept of judicial pardon affords considerable discretion to judges in achieving justice, though it may create tension with the principle of legal certainty. At first glance, this concept appears to marginalize victims' interests, but when applied within certain criteria, victims' rights can still be protected, particularly in the form of compensation for losses suffered. Sociologically, judicial pardon also has the potential to foster a sense of justice in society, although the exact measure of justice is often debated.

On the surface, the application of judicial pardons may not present significant problems. However, upon closer examination, this regulation harbors considerable complexity, particularly because it is still relatively new in the Indonesian legal system. The reform of criminal procedure law through Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP) has even accommodated judicial pardons as a new form of decision. This is reflected in the provisions of Article 1, number 18 of the KUHAP, which classifies a pardon decision as part of a court decision, namely:

"A court decision is a statement by a judge made in an open court session, which can be in the form of a criminal sentence, an acquittal, a dismissal from all legal charges, a pardon, or a decision in the form of an action."

Although judicial pardons have been recognized as a form of sentencing, there are currently no further regulations regarding their procedural aspects. Conceptually, judicial pardons that do not impose a penalty or action seem at odds with social reality, where perpetrators of criminal acts, regardless of their level, often continue to experience negative stigma even after serving their sentences. This situation opens up the possibility of social sanctions. This stigma often causes individuals to be shunned in social life and experience difficulties in continuing their lives, particularly financially.

Furthermore, labeling former criminals reinforces discrimination, including racially motivated discrimination, which is difficult to eradicate. Numerous studies consistently show that even a criminal record for minor offenses can reduce a person's chances of finding employment, including in the initial stages of recruitment, as noted

by Blanks, Chiricos, and Pager. In a study involving fictitious applicants, some with criminal records and some without, only about 51% received job offers, while the rest did not. In Indonesia, the presence of a criminal record also has a significant impact on employment conditions. Data from the Central Bureau of Statistics shows that approximately 59.17% of the workforce is in the informal sector, while approximately 40% is in the formal sector. Therefore, stigma or social labels have a significant influence in triggering widespread discrimination and have negative impacts (Hipes, 2019).

The impact of the Police Clearance Certificate (SKCK) and the social stigma against former criminals extends beyond difficulties in meeting basic living needs, but also potentially leads to recidivism, even leading to more serious crimes. In general, factors triggering recidivism can be classified into three categories: internal, external, and legal. Being negatively labeled as a criminal reinforces external factors, particularly in the economic sphere. Difficulty finding employment leads to economic instability, prompting individuals to seek quick solutions. In such situations, criminal activity is often chosen without careful consideration as a means of coping with economic pressures.

In contrast to the conditions in Indonesia, in the United States, based on a report by the Vera Institute of Justice, at least 31 states have enacted regulations regarding the expungement of criminal records, many of which even expand the types of crimes that can be expunged. Meanwhile, in France, expungement of criminal records is automatic if the offender has undergone rehabilitation, reimbursed the damages caused by the crime, and public order has been restored. During the trial, the defendant also has the opportunity to request that their conviction be removed from a specific section of the criminal record (*casier judiciaire*). Furthermore, after a conviction is rendered, individuals can still request expungement of their criminal record by meeting certain requirements. However, there are exceptions, particularly for serious crimes such as murder, which cannot be expunged from the criminal record.

The expungement of criminal records is a crucial aspect in the implementation of judicial pardons, ensuring that the concept truly operates without the imposition of any form of criminal punishment. The absence of clear regulations regarding criminal records in Indonesia has the potential to hinder the primary goal of judicial pardons, namely rehabilitation and social reintegration. Furthermore, this situation can also give rise to a form of veiled discrimination against individuals who have legally received pardons. Therefore, the criminal registration system needs to be designed in such a way that it allows for expungement of records for individuals who receive judicial pardons, including regulations regarding the requirements that must be met and the types of crimes that can be expunged. This way, the removal of the stigma as criminals, both socially and legally, for pardoned individuals can be optimally realized.

METHOD

This study employs normative legal research focusing on statutory regulations. This research is based on the concept of judicial pardon as stipulated in Law Number 1 of 2023 concerning the Criminal Code, which then focuses on the expungement of criminal records as a form of judicial pardon implementation that eliminates all effects of criminal punishment.

The research approach used is a legislative approach by studying and tracing the laws and regulations that discuss the matter *judicial pardon* in the criminal law system, such as the Criminal Code and Criminal Procedure Code, as well as a comparative approach by comparing laws in one country with laws in other countries related to the same topic or matter. In this approach, the author uses a comparison of regulations *judicial pardon* in Indonesia with France. Indonesia and France both allow the existence of *judicial pardon* in the legislation as a final decision. Besides, both are countries *civil law* or continental Europe, which have criminal justice systems similar to Indonesia's. These two countries are far more developed in terms of rehabilitation mechanisms for criminal offenders, particularly those sentenced to pardons, and can serve as a reference for regulating rehabilitation, particularly expungement of criminal records.

Furthermore, the types and sources of legal materials used include primary, secondary, and tertiary legal materials. The legal material search technique was conducted through literature studies from various sources. Meanwhile, the legal material analysis techniques used were teleological, systematic, and comparative interpretation.

RESULTS AND DISCUSSION

On the one hand, criminal records play a strategic role in supporting law enforcement and maintaining public safety. However, on the other hand, their existence has significant impacts on individuals who are registered, primarily in the form of social stigma and restrictions on various civil rights, such as access to employment, education, and participation in social life (Goffman, 1963). This problem has become increasingly complex since the regulation of judicial pardons in Article 54 paragraph (2) of the Criminal Code. As a new form of decision, judicial pardons open up the possibility for perpetrators who are legally proven to have committed a crime to not be subject to any form of punishment. For optimal implementation, this concept needs to be supported by further regulations. Not only is it limited to issuing a verdict without criminal charges, but it also includes the removal of all criminal consequences, especially regarding criminal records which until now have not been adequately regulated, either in material or formal criminal law. In this context, the removal of criminal records as an integral part of judicial pardons is seen as important to create a balance between the interests of the state and the protection of individual rights.

In Indonesia, criminal records are often used as a requirement in job recruitment processes, which in practice can hinder individuals from obtaining decent employment. This situation indicates that the use of criminal records lacks a clear screening and control mechanism, and furthermore, there are no specific regulations regarding access to these records in legislation. This contrasts with a number of other countries that have long recognized the negative impacts of criminal records. The idea of expungement of criminal records first developed in the early 20th century in the United States, with Illinois being the first state to implement it in 1905, specifically for juvenile delinquency cases. Its development accelerated in the 1970s with the emergence of more modern criminal justice reform movements. This policy gained widespread support, primarily because it was seen as capable of reducing the social stigma against perpetrators of minor offenses. A number of countries subsequently adopted a similar approach by restricting access to criminal records and recognizing

expungement mechanisms, including France, the Netherlands, the United Kingdom, the United States, Canada, and Australia.

The process for expunging a criminal record varies depending on the country in which it is implemented. Generally, expungement is achieved by filing a petition with the court to remove the criminal record. The various requirements for applying for expungement include:

- a. The defendant was found not guilty and did not commit a particular category of crime or against a particular category of people, such as women and children.
- b. The accused was pardoned or released without punishment.
- c. The crime committed was not a serious crime. The perpetrator must complete their sentence or serve probation.
- d. If the perpetrator is committing a crime for the first time, the category and nature of the crime greatly influence whether the criminal record can be expunged or not.

This study uses France as a comparison in its regulation of expungement of criminal records related to judicial pardons. France has a modern criminal justice system that emphasizes individualization of punishment, proportionality, and rehabilitation, and has integrated judicial pardons with criminal records. As a country that adheres to a system *civil law* Like Indonesia, France places codification as the primary source of law. In general, the approach *civil law* in continental Europe also put forward the concept *right to be forgotten* in managing criminal records, in contrast to the Anglo-Saxon system which places greater emphasis on transparency (Zand-Kurtovic et.al, 2023). This shows that criminal records are an integral part of the criminal justice system that is connected to the judge's decision.

1. Criminal Record Expungement Regulations in France

France, a pioneer in criminal law reform, places human rights as a core principle. Its legal framework is heavily influenced by the value of freedom, including the recognition that human rights violations can cause public suffering. In practice, criminal record requirements in job recruitment processes often limit individuals' access to the right to work and a decent standard of living, particularly for those with criminal convictions.

While background checks are important for employers, they also have the potential to lead to discrimination. Therefore, France has adopted a rehabilitative approach, regulating the limitation and expungement of criminal records based on certain conditions. This policy is part of a modern penal system oriented toward social reintegration, including through judicial pardon mechanisms (*dispense de peine*) and criminal record management (*casier judiciaire*), allowing deserving individuals to receive a second chance without the burden of prolonged stigma.

Judicial pardon (*dispense de peine*) has long been in effect in France, namely since July 11, 1975 through Law Number 75-624 of the French Criminal Procedure Code which regulates "the declaration of guilt without imposing a penalty". Further regulations on the dispense of money can be seen explicitly in Article 132-59 of the Penal Code, which reads:

"A suspended sentence may be granted when it appears that the offender has been rehabilitated, that the damage caused has been repaired, and that the disturbance resulting from the offense has ceased. The court granting a suspended sentence may decide that its decision will not be recorded in the criminal record. The suspended sentence does not extend to the payment of court costs."

This article gives the judge the authority not to impose a penalty (dispense de peine) or to waive the penalty (de la dispense) if three cumulative conditions are met, namely that the perpetrator has achieved social reintegration, the losses caused by the crime have been restored, and the disruption of social order due to the crime has ended.

In 2022, pain relief orders were issued in 2,747 cases, with the following details:

Table 1 Number of Dispense de Peine Implementations in France in 2022

Classification	Amount
Single crime	2.121
Concurrent criminal acts	626

The table above shows that the pardon has been widely implemented in France. The article regarding judicial pardons is not merely a supplementary regulation but has also been implemented throughout the criminal justice system.

In practice, a dispense de pain is a form of judicial forgiveness that still acknowledges the perpetrator's guilt without imposing a penalty. In the context of a criminal record, the judge may also order that the decision not be recorded in the casier judiciaire (dispense d'inscription). This demonstrates that the application of judicial forgiveness in France takes into account all consequences of punishment, including the expungement of the criminal record. In the absence of a penalty or action, the criminal record is also eliminated, in line with the nature of judicial forgiveness, which is within the realm of punishment, not criminal accountability.

As a country oriented towards social reintegration, France comprehensively regulates criminal records in its Code of Criminal Procedure, specifically Articles 768–781. In fact, the dispense d'inscription mechanism is regulated in detail to allow a decision to be made from the outset without long-term administrative consequences, as further stipulated in Article 775-1 concerning the management of the case of judicial review, which states:

“The court that pronounces a sentence may expressly exclude its mention in extract no. 2 either in the judgment of conviction, or by a judgment rendered subsequently on the request of the convicted person, investigated and judged according to the rules of jurisdiction and procedure set out in Articles 702-1 and 703. The competent courts are then composed in accordance with the provisions of the last paragraph of Article 702-1.”

“The removal of a conviction from criminal record extract no. 2 entails the lifting of all prohibitions, disqualifications or incapacities of any kind resulting from that conviction.”

“The provisions of this article do not apply to persons convicted of one of the offences mentioned in Article 706-47.”

“This article also applies to judgments or rulings declaring criminal irresponsibility due to mental disorder.”

“If a French national has been convicted by a foreign court, he can also, following the same procedure, ask the correctional court of his place of residence, or of Paris if he resides abroad, to have the entry excluded from record no. 2.”

Through this mechanism, the court can rule that bulletin no. 2 need not be included, either in a criminal judgment or through a subsequent application. This provision applies not only to judgments in France but also to individuals sentenced by a foreign court, with the application being filed with the court of domicile or in Paris for those residing abroad.

Under the *casier judiciaire* system, French criminal records are divided into three types. Bulletin No. 1 contains the entire judgment and is accessible only to judicial authorities and can be expunged upon a judge's order. Bulletin No. 2 contains a portion of the judgment and is accessible to certain agencies, but does not apply to judgments without conviction and can therefore be expunged upon a judge's pardon. Meanwhile, Bulletin No. 3 is a limited extract accessible only to individuals and is generally used for work purposes and can also be expunged if Bulletin No. 2 is omitted.

The division of criminal records in France demonstrates that from the outset, the country has implemented differentiated levels of access to criminal records to balance societal protection with the individual's right to social reintegration. Thus, judicial pardons not only result in the expungement of the criminal record but also encompass administrative aspects such as the restriction or removal of the record. However, this policy is not absolute, as serious crimes such as murder, child sexual abuse, and offenses threatening public safety are generally exempted for the public interest.

If the judge's pardon is not granted or the verdict remains on the record, French law provides a post-judgment expungement mechanism through *rehabilitation*, both judicially and automatically. *Judicial rehabilitation* can be submitted after a certain period of time on condition that the crime is not repeated and that one behaves well, which will result in the deletion of the record in *bulletin n°2* and *n°3* and restoration of civil rights. Under certain conditions, this can also affect *bulletin n°1*. Although access remains limited, this application has a specific time limit, such as five years for serious crimes, but exceptions can be made for individuals who have rendered exceptional service to the state.

Meanwhile, *full rehabilitation* The law allows for the automatic expungement of criminal records after a specified period of time without reoffending. This period varies from three years for fines or minor offenses, five years for certain crimes outside of aggravated imprisonment, to ten years for fixed-term imprisonment. This mechanism does not apply to very serious crimes and can be extended in the event of recidivism. For conditional sentences, the time period begins when the verdict is declared null and void. This provision reflects a structured, proportional system oriented toward social reintegration.

Overall, the French criminal record expungement system demonstrates a comprehensive and multi-layered system. Judicial pardons, through *dispense de peine* and *dispense d'inscription*, serve as preventive mechanisms to prevent the formation of administrative stigma in the first place, while rehabilitation serves as a corrective mechanism to remove stigma after the offender demonstrates behavioral change. This system is relevant as a comparative reference for Indonesia, particularly in formulating a mechanism for expunging criminal records for offenders who receive judicial pardons, to ensure social reintegration and prevent ongoing discrimination.

2. Comparison of Criminal Record Arrangements on Judicial Pardons in France and Indonesia

Indonesian criminal law is striving to modernize like other countries, but the implementation of judicial pardons, as a new concept, has not been optimal. This is due to the lack of a clear procedural mechanism, including a guarantee that pardoned individuals will not be subject to other consequences, such as administrative sanctions in the form of criminal records. In the Indonesian criminal law system, a criminal record is an administrative consequence of a conviction, which relates to three main pillars: the crime, criminal responsibility, and punishment. This record is reflected in the Police Clearance Certificate (SKCK) issued by the Police under Police Regulation Number 6 of 2023.

On the other hand, according to Law Number 27 of 2022 concerning Personal Data Protection, criminal records constitute specific personal data and must be processed legally, in a limited, and proportionate manner. Therefore, recording or disseminating criminal records without a strong legal basis, especially for individuals who have not been convicted of a crime, has the potential to violate data protection principles. In practice, criminal records play a crucial role, particularly as an administrative requirement for employment, education, and public services. However, they also have significant social and economic impacts, as individuals with criminal histories often face stigma and barriers to accessing appropriate opportunities.

Criminal record management in Indonesia is still lagging behind other countries. A number of countries have already adopted the concept *expungement*, which is a mechanism for removing criminal records from the administrative system after meeting certain requirements, such as in the United States. Meanwhile, countries such as the United Kingdom and Australia apply the concept *spent conviction*, where after a certain period of time without new offenses, criminal records no longer need to be disclosed for administrative purposes.

On the other hand, France orients its criminal justice system toward individual rehabilitation by implementing a criminal records system that supports social reintegration. Unlike Indonesia, which does not yet have a publicly accessible mechanism for expungement of criminal records, France regulates expungement comprehensively, including through restrictions on access to criminal records. A comparison between Indonesia and France is presented in the following table:

Table 2 Comparison of Criminal Record Arrangements in France and Indonesia

Information	Indonesia	France
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Criminal Record Terms	Police Record (SKCK)	Criminal Record
Managing Institution	Republic of Indonesia National Police	Ministry of Justice
Main Legal Basis	Regulation of the Republic of Indonesia National Police Number 6 of 2023 concerning the Issuance of Police Record Certificates	Code of Criminal Procedure (CCP)
Criminal Record Regulations Related to Social Integration	Limited to SKCK	Limited to Bulletin No. 2, which may be requested by employers
Criminal Record Expungement Mechanism	Not regulated	In cases of judicial pardon, there is a limited deletion mechanism in Bulletins No. 2 and No. 3, as determined by the judge in the ruling. If not specified, two alternative mechanisms apply: <i>r�habilitation judiciaire</i> and <i>r�habilitation de plein droit</i>
Approach Used	Primarily for law enforcement purposes	Oriented toward rehabilitation and social reintegration

Based on this description, it is clear that criminal record management in Indonesia is still lagging behind, focusing solely on Police Clearance Certificates (SKCK) without a mechanism for expungement or specific regulations regarding judicial pardons. The implementation of judicial pardons has not been accompanied by a policy of expungement of criminal records, even though this significantly impacts individuals' access to employment, public office, education, and social participation. This situation creates a legal vacuum (*right vacuum*), as reflected in Decision Number 512/Pid.B/2025/PN Mpw which does not regulate the removal of criminal records, especially in SKCK.

Conceptually, a criminal record can be viewed as part of the consequences of criminal punishment (*collateral consequences of punishment*), although not explicitly referred to as punishment. This view aligns with Jeremy Bentham's thinking, who saw punishment as any form of suffering inflicted by the state as a result of a violation of the law, including administrative consequences that limit individual rights (Bentham, 2017).

Referring to Article 246 paragraph (4) of the Criminal Procedure Code, further provisions regarding judicial pardons need to be outlined in Supreme Court regulations, including those regarding the expungement of criminal records. This provision is important so that judicial pardons do not only stop at the aspect of not imposing a sentence, but also include administrative implications for the perpetrator. Therefore, provisions regarding the recording or expungement of criminal records should be emphasized in the verdict, by adopting practices such as those in France which integrate judicial decisions with the national criminal registration system.

CONCLUSION

The French criminal record expungement regulation could serve as a key basis for formulating regulations in Indonesia. This country explicitly stipulates that a judicial pardon decision may require a request for expungement, or dispense d'inscription, under Article 775-1 of the CCP. Under this mechanism, the court can declare that Bulletin No. 2 (a public criminal record) does not need to be included. However, if it remains recorded in the case of a judicial case, other mechanisms can be invoked, such as judicial rehabilitation (the right to apply after a certain period of time) and plein-droit rehabilitation (automatic expungement after a certain period of time).

The regulation of expungement of criminal records in Indonesia is not regulated by any legislation. The Personal Data Protection Law (PDP) does not even stipulate a mechanism for expungement, even though it is included in personal data that has the right to be expunged. Indonesian National Police Regulation Number 6 of 2023 concerning the Issuance of Police Record Certificates as the basis for issuing Police Clearance Certificates (SKCK) also does not regulate expungement of criminal records, which can be issued administratively. This opens up the possibility of a legal vacuum regarding expungement of criminal records in relation to judicial pardons, especially since judicial pardons attempt to eliminate all effects arising from criminal convictions. Based on the results of the analysis of the discussion regarding the comparison of regulations on expungement of criminal records in France and Indonesia regarding judicial pardon decisions, it is necessary to formulate articles that can accommodate expungement of criminal records in relation to judicial pardons. The French regulations can serve as a basis for formulating articles in Indonesia, which can later be regulated through Supreme Court Regulations. These regulations are a continuation of the Criminal Procedure Code (KUHAP) order, which states that further regulations on judicial pardons are regulated by Supreme Court Regulations.

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