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Analysis of Legal Discovery Methods by Judges in Rechterlijk Pardon's Perspective to Resolve Criminal Cases

Gatot Sugiharto
Universitas Ahmad Dahlan, Yogyakarta, Indonesia
gatot.sugiharto@law.uad.ac.id

Mira Julita Sari
Universitas Ahmad Dahlan, Yogyakarta, Indonesia

Kurnia Dewi Anggraeny
Universitas Ahmad Dahlan, Yogyakarta, Indonesia

Fauzan Muhammadi
University of Malaya, Malaysia

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Corresponding Author:
Gatot Sugiharto
gatot.sugiharto@law.uad.ac.id

ABSTRACT

Purpose of the study: This research aims to ascertain the legal discovery process that judges use to assess whether to grant rechtlijk pardon in order to resolve criminal cases, as well as the challenges judges encounter while attempting to do so.
Methodology: Normative legal research was used in this paper. Normative legal research, which is carried out in the literature review in the form of pertinent legal regulations and norms, is a scientific research technique grounded in the logic of jurisprudence (doctrine) to seek truth from a normative perspective.
Results: The study's findings lead to the following conclusions: firstly, judges can perform rechvorming through the use of the construction legal discovery method, which takes the form of legal narrowing or legal refining, while determining rechterlijk pardon. Secondly, in carrying out the revision, the court employed the process of finding construction law based on restorative justice.
Applications of this study: The study gives a more comprehensive understanding analysis, given that the current criminal law formulation policy does not embrace the value of genuine forgiveness by judges. However, judges retain very particular authority in cases where the defendant

has been legally and convincingly established to have committed a criminal conduct, but the judge may grant forgiveness without imposing a sentence.
Novelty/Originality of this study: A concrete decision that has become jurisprudence as an implementation of Rechvorming with the discovery of construction law in the form of legal refinement (narrowing of the law) by judges in the perspective of Rechterlijk Pardon is the North-East Jakarta District Court Number 46/Pid/78/UT/Wanita and the North-East Jakarta District Court Decision Number 90/PID/1976/TIM. The Panel of Judges takes into account the seriousness of the offense, the offender's personal circumstances, or the circumstances surrounding the crime at the time it was committed when awarding a rechterlijk pardon. The existence of peace between the parties, justice, and humanity may also be taken into consideration by the judicial panel while deciding whether to prosecute or take no action of parties as an extra option for deciphering rechterlijk pardon.

Keywords: Legal Discovery, Judge, Rechtlijk Pardon

ABSTRAK

Tujuan Penelitian: *Penelitian ini bertujuan untuk mengetahui proses penemuan hukum yang digunakan hakim dalam menilai apakah akan memberikan pengampunan hukum (rechtlijk pardon) untuk menyelesaikan kasus pidana serta tantangan yang dihadapi hakim dalam melakukannya.*
Metodologi: *Penelitian ini menggunakan metode penelitian hukum normatif. Penelitian hukum normatif yang dilakukan dalam bentuk kajian literatur berupa peraturan hukum dan norma yang relevan adalah teknik penelitian ilmiah yang didasarkan pada logika yurisprudensi (doktrin) untuk mencari kebenaran dari perspektif normatif.*
Hasil Penelitian: *Hasil penelitian menunjukkan beberapa kesimpulan berikut: Pertama, hakim dapat melakukan pembentukan hukum melalui metode penemuan hukum konstruksi yang berupa penyempitan hukum atau pemurnian hukum dalam menentukan rechterlijk pardon. Kedua, dalam melakukan revisi, pengadilan menggunakan proses penemuan hukum konstruksi berdasarkan keadilan restoratif.*
Aplikasi Penelitian: *Penelitian ini memberikan pemahaman dan analisis yang lebih komprehensif mengingat kebijakan formulasi hukum pidana saat ini tidak mengadopsi nilai pengampunan sejati oleh hakim. Namun, hakim tetap memiliki kewenangan khusus dalam kasus di mana*

terdakwa secara sah dan meyakinkan terbukti melakukan tindakan pidana tetapi hakim dapat memberikan pengampunan tanpa menjatuhkan hukuman.
Kebaruan/Orisinalitas Penelitian: *Keputusan konkret yang telah menjadi yurisprudensi sebagai implementasi Rechvorming dengan penemuan hukum konstruksi dalam bentuk pemurnian hukum (penyempitan hukum) oleh hakim dalam perspektif Rechterlijk Pardon adalah Pengadilan Negeri Jakarta Timur Nomor 46/Pid/78/UT/Wanita dan Putusan Pengadilan Negeri Jakarta Timur Nomor 90/PID/1976/TIM. Majelis Hakim mempertimbangkan keseriusan pelanggaran, keadaan pribadi pelaku, atau keadaan di sekitar kejahatan pada saat itu dilakukan saat memberikan rechterlijk pardon. Keberadaan perdamaian antara pihak-pihak, keadilan, dan kemanusiaan juga dapat dipertimbangkan oleh majelis hakim saat memutuskan untuk menuntut atau tidak melakukan tindakan terhadap pihak-pihak sebagai opsi tambahan untuk menafsirkan rechterlijk pardon.*

Kata Kunci: Penemuan Hukum, Hakim, Rechtlijk Pardon

INTRODUCTION

There must be an unbiased and independent judiciary in any State of Law. The existence of this basis allows judges in exercise their judicial authority without interference; judges are immune to the influence of political or financial interests. No one from executive or legislative branches of government, the public, or the mass media may interfere with judge's decision-making in order to protect justice and truth (Rodrigo, 2014:2).

The genuine forgiveness does not exist in current criminal law formulation policy in current criminal law because still adheres to rigid legal principles and to retributive theory, achieving justice through compensation for the suffering/pain caused by the way the offender is sentenced appropriately or more severely so that it seems that imprisonment is the only available remedy for those who commit crimes (Shukri, 2018:29).

In the opinion of Prof. Nico Keizer, the rationale behind the inclusion of the concept of Rechterlijk Pardon is that, although many defendants have fulfilled the necessary evidence, imposing a conviction would go against the notion of justice: there would be a conflict between legal certainty and legal justice. If any of the aforementioned issues arose prior to 1983, the Panel of Judges would have been "forced" to impose an especially mild punishment. This

explanation makes it clear that Article 9A of the Dutch WvS is primarily a "penal guideline" that is intended to be flexible rather than rigid. The judge's pardon guidelines may also be thought of as an as an emergency door or safety valve (veiligheidsklep or noodeur) (Adery, 2016: 63).

The foundation of rechterlijk pardon is the notion that, even when the evidence points to the defendant’s guilt, a sentence is deemed to be unjust. The current criminal law code has not included the concept of judges' pardons. The idea of judges' pardons is not part of the present criminal law statute. Judges possess a unique power to refuse to impose a sentence even in cases where the defendant's guilt has been established beyond a reasonable doubt. This study sought to ascertain the legal discovery process that courts employ when granting a rechterlijk pardon to settle criminal cases, as well as the challenges that judges encountered while granting a rectherlijk pardon.

As an application of Rechvorming with the discovery of construction law in the form of legal refinement (narrowing of the law) by judges in the perspective of Rechterlijk Pardon, the decision of the North-East Jakarta District Court Number 46/Pid/78/UT/Wanita and the North-East Jakarta District Court Decision Number 90/PID/1976/TIM with the decision to be free from all legal demands is a concrete decision that has become jurisprudence. When conferring a rechterlijk pardon, the Panel of Judges considers the gravity of the offense, the offender's personal situation, or the circumstances surrounding the crime at the time it was committed. The existence of peace between the parties, justice, and humanity may also be taken into consideration by the Panel while deciding whether to prosecute or take no action. parties as an additional choice for determining a righteous pardon.

Jan Remmelink claims that Rechterlijk Pardon was originally incorporated into the Dutch Code of Criminal Procedure. It is understood to be admission of guilt, devoid of criminal conviction, granted by a by/on the authority of cantonal judges (lower level judges). Furthermore, in the judge's forgiveness, the compact meaning of the criminal conduct committed as well as the circumstances and conditions surrounding its executions will be taken into account, allowing the canton court to decide not to impose a crime in its sentence (verdict) (Arif, 2021: 17).

The pardon of judges or rechterlijk pardon is one of the concepts for criminal law reform that needs more research to advance both theoretically and practically in court mileu. In this instance, the judge has extremely specific authority because it is legally and credibly established

that the defendant committed a crime; nonetheless, the court has the option to pardon without finding the prisoner guilty. Due to the fact that judges are the ones who implement criminal penalties, their position is crucial.

RESEARCH METHOD

This research employs a normative research known as legal research, which is carried out by examining library resources or secondary data (Soekanto, 2003: 13). Normative legal research is also referred to as doctrinal legal research. Finding legal rules, principles, and doctrines to address the legal questions at hand is the process of normative research, in the opinion of Peter Mahmud Marzuki (Marzuki, 2010: 35), thereafter, reinforced by the conceptual approach method. When researchers do not depart from existing legal regulations, they employ the conceptual approach (Marzuki, Mahmud, 2011: 95).

From point of view of Soekanto and Mamudji (2001: 12–14), secondary data from legal source searches—primary, secondary, and tertiary legal materials—serve as the source of data for normative legal research. This method of gathering data is one way to obtain the resources needed for research, which can be done by doing a literature review. A library's contents that are relevant to this investigation can be read, examined, noted, and interpreted to create this literature research.

Qualitative juridical data analysis, which describes discussion data in words or sentences without the use of numbers and is based on applicable laws or norms, was used to examine the study data (Huberman & Matthew, 1992: 15–16). After selecting data depending on the problem and reviewing pertinent provisions, library research material is organized methodically and analyzed using descriptive techniques to generate a solution.

RESULTS & DISCUSSION

A. The method of legal discovery by judges in determining Rechterlijk Pardon to resolve criminal cases

Among the many issues with legislative regulations are their rigidity, their inability to satisfy all legal requirements or events, and their tendency to create what is known as legal vacuum or rechstvacuum. Instead of a legal vacuum, perhaps the acceptable is a vacuum in statutory regulations. Judges must therefore have an understanding of legal discovery due to these flaws in statute restrictions, even though in some circumstances

this legal discovery is restricted for the purpose of justice. If the law is the only source of law, then a legal vacuum is quite likely to emerge. Judges are needed in more ways than just upholding the law (Rodrigo, 2014: 9).

Since the criminal justice system is individualistic and based on formal procedures, it has disregarded the reality of the significance of peace and does not utilize it as a justification for eliminating punishment. The state still has a great and substantial interest in seeing criminal prosecutions through to completion, even in the situation when the perpetrator and victim have reconciled. It appears as though the removal of the punishment from the offender who had been pardoned and made good on the victims' losses would make the State culpable. The Criminal Code does not pay enough attention to the existence and application of the philosophy of deliberation and consensus (based on Pancasila) in peace as a principle for resolving conflicts between members of society, including individuals and public order. There is concern that if a criminal mentality that disregards peace continues, society's legal culture may change. It is unfortunate that if Indonesian culture, which was originally a friendly nation, communication, and making peace, has devolved into an emotional and self-centered nation since the legal system does not view peace as the removal of punishment (Suhariyanto, 2017:2).

"The idea of forgiveness by judges (rechterlijk pardon)" is one of the policy formulations that are being considered in relation to this subject. around Pancasila ideals. At the moment, there are no basic regulations governing a judge's ability to pardon under the Criminal Code/Wvs. Consequently, several minor offenses like stealing watermelons, sandals, and cocoa were given harsh punishments that went against society's human principles (Arief, et al, 2017: 29).

Judges' forgiveness is also referred to as Rechterlijk pardons, judicial pardons, non-imposing of penalties, and dispensa de pena. Judges have the authority to choose not to punish criminals in a number of different nations. The ius constituendum, or aspiring law, is currently being drafted by the Indonesian government and is known as the Rechterlijk Pardon idea. The presence of this concept is a form of appeasing the community's legal sentiments, which are founded on the harmony of justice, certainty, expediency, and humanity - a balance that has historically been applied extremely strictly to criminal sentencing. Only recently was the existence of Rechterlijk Pardon, or judicial forgiveness, acknowledged in Indonesia's draft Criminal Code (Arif, 2021:84).

The most recent legal value to change the strict criminal justice system in the Criminal Code/Wvs is the concept of judge forgiveness, or rechterlijk pardon, as it is outlined in the Draft Criminal Code Bill. According to the criminal system, a crime can be imposed if certain requirements are fulfilled. Due to its reliance on these two requirements, the Criminal Code's punishment is perceived as being extremely strict and not helping to advance national legal reform's efforts to address law enforcement issues (Arief, et al, 2017: 30).

Judges can interpret the law in order to fill the void left by the Rechterlijk Pardon, but they are not allowed to use analogies with relation to criminal justice explicitly. The court’s authority to make legal discoveries is also a consequence of the principles of justice where "the court must not refuse to examine, try and decide a case submitted on the pretext that the law does not exist or is unclear but is obliged to examine and try it" (Rodrigo, 2014 :10).

The process by which judges and other legal authorities create laws by applying basic legal rules to specific legal situations is known as legal discovery. The application of the law, on the other hand, is the concretization or individualization of general legal regulations (das Sollen) by remembering certain concrete events (das Sein). Van Eikema Hommes refers to this kind of legal discovery as a typical logicistic perspective of justice, where analytical logical elements are elevated to the status of absolutes. Wiarda refers to this as the discovery of heteronomous law (Mertokusumo, 2004: 37).

Legal discoveries occur due to the application of provisions to facts; occasionally, these provisions must be created because they are not always incorporated in existing laws. There are two different kinds of legal discoveries made by judges (Loudoe, 1985; 69):

1. Legal discovery in the implementation of a rule to a concrete event;
2. Legal discovery in legal formation

As specified by John Z. Laudoe, the facts referred to in legal have nothing to do with habits or interests in social life which give rise to demands that require fulfillment and pursue certain goals that can only be fulfilled with the assistance of the law. However, the facts of the case itself, the facts that lead to a resolution which is thenthat is then evaluated logically within the relevant, determine the ruling which Hymans refers to recht der werkelijkheid or legal reality (Loudoe, 1985; 69).

The facts need to be thoroughly investigated; we need to know what transpired, what the individual in question did, and what they wanted; only then would the suitable conclusion appear before us by an inexplicable process, a satisfactory decision. Several terms in legal discovery (Hamidi, 1999:85):

1. Rechvinding, legal discovery, or law-making in the sense that it is not that the law does not exist but the law already exists, but still needs to be explored and discovered
2. Rechtshandhaving, and implementing the law implies carrying out the law without any disputes or violations.
3. Rechtstoepassing the application of law means nothing other than applying abstract legal regulations to the event.
4. Reforming the legislative process involves creating broad guidelines that pertain to all parties..

Achmad Ali affirms that according to the aforementioned schools, judges are granted the greatest latitude to make legal discoveries, not only the application of the law by the judge, but also expansion and formation of regulations in the court's decisions. Judges may even depart from the law in order to reach the highest standard of justice for the good of society (Achmad, 2002: 138).

If the Rechterlijk Pardon is not governed by law, the judge may employ the legal construction technique in accordance with his or her authority. Legal construction is employed in situations where regulations are lacking or there are no legislative provisions that can be immediately applied to the legal issue at hand, creating either a legal vacuum (recht vacuum) or a legal vacuum (wet vacuum). To fill this gap in the law, judges utilize their logical reasoning to expand a legal text. Judges no longer adhere to the sound of the text, they nevertheless uphold the fundamental ideas of the legal system. By using the legal construction technique, judges can make decisions that benefit the community and uphold the community's sense of justice in the real events they preside over. In the legal construction method, there are four methods used by judges when discovering the law, namely (Rodrigo, 2014: 8):

1. Argumentum per analogium (analogy), the analogy method refers to extending overly restrictive statutory requirements to situations that are like, or similar to those regulated in the Law.

2. Argumentum is a contrario, this method uses the reasoning that if the law stipulates certain things for certain events, it implies that the regulations are only applicable to that certain event, and that for events outside of them, the opposite applies.
3. Rechtsverfijning (legal narrowing), this method of narrowing or concretizing the law aims to narrow down a legal rule that is too abstract, passive, and broad. This is to ensure that legal rules can be applied to a particular event.
4. Legal fiction, namely something imaginary is employed in legal science as words, stand-alone terms, or sentences intended to provide a legal understanding.

Regarding the legal void of the Rechterlijk Pardon regulation and the criminal system in Indonesia, when the Panel of Judges encounter problems that arise in cases where the panel of judges is of the opinion that the defendant has been legally and convincingly proven to have committed the criminal act for which he is charged, but the convict of the defendant will give rise to injustice. Therefore, the author believes that based on the authority freedom, and independence possessed by judges, judges can revise using the method of finding construction law in the form of legal refinement (narrowing of the law) by forming the law in the decision product by abstracting the principles of a provision and then applying those principles." as if "narrows its application to a concrete event for which there is no regulation yet to resolve or address a concrete event and, conversely, is a legal regulation for the future.

When making a decision, a judge does not just look at the provisions of the law but also considers the facts presented to him. The court's ruling is also inextricably linked to the basis of the judge's behavioral capacity, known as the code of ethical conduct, which embraces a commitment to moral integrity based on 3 (three) principles of inner attitude (character), namely accuracy, innovation, and persistence in determination; Three (three) minds—rational, practical, and actual—serve as the foundation for judges' "mental process" during the trial process; as well as operational foundations through the application of 3 (three) elements of the court's intuitive considerations as described by Sudikno Mertokusumo, namely (Mertokusumo, 2000:26):

a. The element of legal certainty (rechtssicherkeit), ensures that legal materials are utilized such that decisions made in one type of case can also be applied to another.
b. The element of usefulness (zweckmassigheit) refers to the fact that the judgment's conclusions are advantageous to both the parties involved in the litigation and the wider community, the public is interested in the judge's decision because society values a balance of social order.
c. The element of justice (gerechttigkeit), which provides justice for the party concerned even if the opposing party considers it unfair, society must be able to accept it as fair. As is the legal principle: "lex durased tamen scripta" which Briliyan Erna Wati, Analysis of the Evidence of the Crime of Premeditated Murder in the Criminal Justice System, implies that although the law may seem harsh, it actually serves a purpose. In the event of a discord between justice and legal certainty and usefulness, the element of justice takes precedence.

The primary issue brought up by the ruling of North-East Jakarta District Court Number 90/PID/1976/TIM on February 25, 1976, is the borrowing and lending of money at interest rates that are higher than allowed by law. The defendant in this case is Mrs. Meneria Marpaung Tampubolon, a housewife with six dependent children. The oldest child was enrolled at the Bandung Institute of Technology (ITB), while the other children were in elementary and middle school (Antonius Sudirman, 2007: 223). Among other things, the verdict said that the defendant, Mrs. Meneria Marpaung Tampubolon, was found guilty of having committed the alleged act; however, in this particular case, her activities were driven by assisting witness H. Sutan Daulay, who need funds for his capital, rather than by immoral or unjust goals, and as a result, he must be released from all legal obligations (Antonius Sudirman, 2007: 223).

The judge's choice to create legal history by deciding not to press charges in cases where a settlement had been reached served as additional confirmation of this. According to the verdict of District Court Number 46/Pid/78/UT/Women in North-East Jakarta. In this instance, Mrs. Ellya Dado imprisoned Devy and also ridiculed and threatened her. Because of Devy’s attitude toward wrecking her car, Mrs. Ellya Dado took this action, but she did not obtain enough repairs for the damage. Nonetheless, Mrs. Ellya Dado and

Devy were in a good term, which motivated the occurrences. Mrs. Ellya Dado, Soraya Dado's best friend, was Devy. Since they attended the same school, their friendship endured until the incident. The Public Prosecutor subpoenaed the defendant before a court trial because the case was a criminal matter (Budi, 2017:2).

In his indictment letter, the public prosecutor added new allegations and asked that the defendant come in for a summary, or quick examination. The following is a summary of the indictment's main points: First, the defendant is accused of knowing and unlawfully interfering with Devy's rights, so depriving him of her freedom, in violation of Article 333 of the Criminal Code. The second allegation is a subsidiary one: Devy was coerced into handing over her belongings by the suspect by threats or acts of violence, all with the intention of hurting her or others. This behavior violates Article 368, paragraph 1 of the Criminal Code. Third, there is an additional allegation that the defendant verbally attacked Devy with malice and in violation of the law. This activity violates Article 315 of the Criminal Code. The Public Prosecutor then requested in her prosecution letter that the defendant be sentenced to two weeks in prison during a one-month probationary period, return the gold bracelet and gold ring evidence to victim witness Devy, and pay court costs for violating Article 315 of the Criminal Code. (Budi, 2017:2).

Both the accused and the victim are making efforts to settle this dispute amicably through the legal system. After the victim and the accused worked out a peace deal, the accused was declared innocent by the court. The court's ruling said, among other things, that regardless of the validity of the primary, or subsidiary accusations, Mrs. Ellya Dado, the defendant, had engaged in actions that were legally and unequivocally proven to be accurate. However, since the parties reached an amicable resolution, the actions are no longer considered crimes or offenses, and the accused is no longer facing any legal repercussions. The Supreme Court upheld the Court's finding in this case as precedent, assuring that future Court rulings will adhere to the legal criteria wherein peace is cited as a rationale for release from all claims (Budi, 2017: 2).

As mentioned before, there are significant differences as well as commonalities between the two rulings. The resemblance stems from the fact that each decision contains the principle of rechterlijk pardon, as now expressed in the RKUHP. The Public Prosecutor's allegations against the two defendants, Mrs. Ellya Dado and Mrs. Meneria Marpaung Tampubolon, were validated; yet, the sentence was suspended due to particular

circumstances. The emphasis on consideration is where the two differ. Whereas the North-East Jakarta District Court Decision Number 90/PID/1976/TIM is mostly based on the defendant's situation or circumstances, the judge's forgiveness in the North-East Jakarta District Court Decision Number 46/pid/78/UT/Woman is established on the principle of peace. The court came to this groundbreaking conclusion about forgiveness solely out of a feeling of justice.

The judgment to grant forgiveness was reached by the North-East Jakarta District Court Number 46/pid/78/UT/Wanita; basically, this ruling is based on the fact that the parties had made reparations. Furthermore, the victim's activities in this case encouraged the defendant to commit a crime against her; the victim later expressed regret for her acts, which further encouraged the defendant to commit crime. In order to maintain a good rapport, the judge apologized to the defendant in his decision..

The use of restorative justice and the existence of efforts for peace between the victim and the accused, respectively, are two sources of legal discovery in the field of justice that result from the application of the legal discovery method. The other source is a concrete decision that becomes jurisprudence. Rechterlijk Pardon states that one measure that courts may employ in legal discovery processes is rechvorming (Budi, 2017:2).

Judges might base their sentence decisions on a number of ideas in both criminal and civil matters. As per Mackenzie, the methodology that magistrates can employ is (Ahmad, 2011: 105-113):

1) Balance Theory: When making a decision, the judge weighs the interests of all parties involved in the case, such as the victim, the community, and the plaintiff or defendant, against the requirements of the law.
2) Theory of Art and Intuition Approach: Judges’ decisions take instinct or intuition into account more than legal understanding, despite the Criminal Procedure Law having a negative evidence system.
3) Scientific Approach Theory: A judge's ruling that gives weight to scientific evidence over gut feeling or intuition. The judge typically takes into account a wide range of relevant ideas and doctrines before making his ruling.

4) Experience Approach Theory: Judge's decisions are based on the background and experience of a judge in deciding a case. The more experience judge possesses, the higher the judge's proficiency with legal nuances.
5) Ratio Decidendi Theory: The ruling of the judge, considering the underlying philosophical foundation. The judge in this instance will first take into account every element of the case before determining which statutory provisions to use as the case's legal foundation.
6) Wisdom Theory: The judge's ruling, which at first relates to situations involving children. This theory's central tenet is that, in the event of a criminal conduct, the state, the community, and the family—that is, the kid's parents—should also be accountable for raising and directing the child such that the criminal decision is rendered moot.

Artidjo Alkostar states that a decision handed down must contain the following matters (Artidjo, 2009: 36-37):

1) It must contain an authoritative solution, which offers a means for the parties to resolve their legal issues, and no institution other than a higher judicial body has the authority to reverse a court decision.
2) It must be efficient in the sense that it must be quick, easy, and inexpensive because, in and of itself, delayed justice is an injustice (justice postponed is justice denied).
3) It must be following the objectives of the law which is used as the basis for the court decision.
4) It must have elements of stability, such as social order and public tranquility, as determined by court rulings .
5) It must be fair, meaning that a court ruling must give the parties (the prosecutor or the defendant in criminal cases) who are engaged in litigation equal chances.

Criminal acts are by definition against the law, whether order is required. Criminal activity is defined as behavior that is harmful to society, interferes with, or goes against the morally just social order. Along with criminal culpability and criminal proceedings, one of the areas governed by criminal law is criminal activities. While criminal proceedings fall under the purview of formal law, criminal activities and criminal

liabilities fall under the purview of material criminal law. We use the legality principle, which states that before a person can be held accountable for their actions and be punished, the act must be established as such by a legal rule (Article 1 paragraph (1) of the Criminal Code) or, at the very least, by a legal rule that already exists and applies to the defendant (Vishnu, 2014: 3).

Criminal rulings are often handed down by the Indonesian Criminal Justice System, which operates at both the Judex Juris (Supreme Court) and Judex Factie (District Court and High Court) levels. Despite the fact that the criminal decision includes a conditional criminal decision, only about 7% of all criminal choices that are available are of this sort. There is a direct correlation between the annual increase in crime and the predisposition to render criminal judgments. This indicates that the large number of criminal decisions rendered does not have a positive impact on lowering the level of crime in society. In relation to the criminal decisions themselves, it appears that most of the decisions made pertain to instances where the principal penalty is less than or equal to five (five) years. In this case, solving the issue is largely dependent on the notion of judicial forgiveness as it will be developed in the RKUHP (Hakim, 2019: 190).

There are several principles in the practice of criminal law, namely (Bambang, 1978: 76):

1) *Geen straf zonder schuld* (no punishment without fault).
2) *Rechtsvaardigingsronden* (justifying reasons).
3) *Schulduitingsgronden* (forgiving reasons).
4) *Onvervolgbaarheid/ Vervolgbaarheid uitsluiten* (reasons for eliminating prosecution).

According to the Rechterlijk Pardon theory, restorative justice and judge forgiveness are related. A theory of justice known as restorative justice places a strong emphasis on making amends for harms inflicted by criminal activity. All parties engaged in a cooperative procedure to achieve this improvement attempt. There are guiding principles in restorative justice that control how the process is carried out. First, restorative justice holds that in order for justice to be served, victims, criminals, and communities affected by crime must all be repaired and healed. Second, the community, offenders, and victims must all be given the chance to actively participate in the legal system at any time and to the extent that they see fit. Third, in order to advance justice,

the respective roles and duties of society and the government must be examined. The government is in charge of upholding law and order in order to foster peace.

The judge's understanding of forgiveness necessitates the existence of conditions or circumstances both at the time the offense was committed and thereafter, regardless of how minor the act was. If the implementation of restorative justice is associated with prerequisites for peace, then these prerequisites are intimately tied to the circumstances surrounding the practice's execution and its aftermath. Therefore, this falls under the first restorative principle, which calls for the victim's repair and healing, if the criminal accepts responsibility for his actions after committing a crime by making up for the loss in order to restore the victim's condition. In addition, granting the victim's request in order to facilitate the perpetrator's process of recouping losses complies with the second principle, which states that victims, offenders, and the community must be given the chance to participate fully and as early in the legal system as they desire. According to the above description, the judge may forgive the defendant if it can be shown that, following the incident, he intended to accept responsibility for his actions and that, thereafter, the victim and defendant engaged in negotiations to find a peaceful solution. (Arif, 2021: 79).

The Rechterlijk Pardon arrangement is the application of restorative justice concepts to the criminal judicial system, according to the restorative justice implementation model if it is linked to the notion. Because the criminal justice system and restorative justice work hand in hand in this model. Attempts to evade a court from imposing a crime or punishment are integrated into the criminal justice system, where the judge uses his authority to make a ruling (Arif, 2021: 83).

Regarding the RKUHP which governs the application of Rechterlijk Pardon, however, if the Panel of Judges applies the method of determining Rechterlijk Pardon, it can be applied, but in terms of use; this is because of the relationship between Rechterlijk Pardon and restorative justice, the existence of the basis for abolition, and the authority possessed by judges. Because there is no current legal foundation for the Rechterlijk Pardon, the Panel of Judges must employ a legal narrowing construction in order to completely execute the pardon.

The North-East Jakarta District Court Decision Numbers 46/pid/78/UT/Woman and 90/PID/1976/TIM, which both contain rechterlijk pardon, serve as examples of this.

Accordingly, the author believes that the Panel of Judges considered the following factors when determining whether rechterlijk pardon existed:

1) Mildness of Action;
2) Sense of Justice, when the offender's prison term is ruled unsuitable, necessitating the employment of the Rechterlijk Pardon as a substitute in some circumstances;
3) The purpose of punishment is not only retaliation but also education;
4) when the offender's prison term is ruled unsuitable, necessitating the employment of the Rechterlijk Pardon as a substitute in some circumstances;
5) Effectiveness and usefulness of the decision;
6) The judge's assessment of whether a rechterlijk pardon is appropriate also takes into account the state of harmony between the offender and the victim, since the perpetrator may utilize this tranquility as a determining or mitigating factor.

Thus, it can be concluded that in determining Rechterlijk Pardon the Panel of Judges must consider a number of factors, namely the severity of the act, the personal condition of the perpetrator, or the circumstances at the time the crime was committed and what transpired thereafter. Additionally, the Panel may decide not to prosecute the offender or take other action by taking into account aspects of justice and humanity, as well as peace between the parties as a further option.

B. Aims and Benefits of Judge Policy from Rechterlijk Pardon's Perspective

The main aim of a court decision is to put a case to an end in the best manner and result in a way that best satisfies the requirements of justice. Justice is intended to be served by a decision that actually settles the matter without leading to other issues down the road. The victim and the community are two parties involved in the criminal act, and as such, the judge's decision in a criminal case considers both of them (Rifai, 2021: 108).

Forgiveness is a decision that takes into account a number of factors, including the victim's relationship with the offender and the severity of the conduct, in addition to the offender's condition and the consequences of the act. The interests of the victim are taken into account while deciding whether or not to forgive for at least two reasons. First, First, because criminal law is public law, the victim is technically a party to the criminal justice

system. He can serve as a witness (victim witness), where his information is taken into consideration, even though he is represented by the public prosecutor. Second, since the victim is actually the one who suffers from the crime, it makes sense that the judge's perspective on the offender will also take the victim's suffering into account (Rifai, 2021: 108).

The rechterlick pardon, a judge's policy, serves the dual purpose of preventing punishments that are not warranted or essential from the standpoint of need, taking into account the need to protect society as well as the offender's need for rehabilitation. Therefore, there are two reasons why a judge's forgiving institution exists (Adery, 2016: 66):

1. In the context of alternative penal measures to imprisonment (alternative penal measures to imprisonment);
2. Judicial correction to the legality principle.
3. Providing a safety valve (*veligheidsklep*);
4. Implementation/integration of values or wisdom paradigms in Pancasila.

The majority of judges regard the peace between the victim and the offender as a mitigating factor when making decisions in criminal justice practice. Even though the offender and the victim have written a statement letter, which essentially states that the victim has forgiven the defendant and will not sue him for his actions—even asking the officers to release the defendant from punishment—the peace made between them cannot absolve the defendant of responsibility or actions that have been committed (Alef, 2005: 142-143).

Visionary, tolerant, and foresighted judges will always take into account the possibility that the criminal case being reviewed and determined will satisfy the victim's and the offender's sense of justice. Victims and offenders of illegal crimes should receive special attention since not all judges who hear criminal cases are sensitive enough to see the warning indications associated with the cases they preside over. Judges who espouse a progressive stance are the only ones qualified to conduct extracurricular activities like a peace "ceremony" between the offending party and the victim who has suffered injury, whether on purpose or as a result of negligence. In addition to healing the victim's psychological trauma, the order for the defendant to apologize to the victim and express

regret for the actions that have hurt them, done sincerely and sincerely, will also serve as an incentive for the offender to have their sentence reduced (Natangsa, 2015:204-205).

It is customary for judges to reduce punishments in peacemaking judgments when it affects the victim's forgiveness. In addition to this rule, the North-East Jakarta District Court Number 46/Pid/78/UT/Wanita has rendered a decision that releases parties from demands that they pay a price in exchange for peace. In court, attempts are being made to settle this case by fostering harmony between the victim and the accused. The accused was released from all legal demands by the court in its decision, stating that the peace between the perpetrator and the victim served as the foundation for the release of the accused from all legal demands because there had been an agreement in the form of peace between the victim and the accused. This act had to be deemed innocent of all charges since the judge panel could not find a moral basis for punishing it (Budi, 2017: 10).

Judges must actively monitor the emergence of justice sentiments that are vibrant and expanding among society. Recent events have demonstrated that the paradigm of justice is changing, moving from retributive justice to restorative justice (Budi, 2017: 10).

CONCLUSION

The judge may use the construction legal discovery method to carry out rechvorming in order to determine the Rechterlijk Pardon, which is not regulated by Indonesian law. The judge may use the construction legal discovery method to carry out rechvorming in order to determine the Rechterlijk Pardon, which is not regulated by Indonesian law, narrowing its application to a concrete event for which there is currently no regulation or resolve a concrete event but on the other hand is a legal regulation for the future.

The court employs the restorative justice foundation to determine construction legislation in the revised version. Because the criminal justice system and restorative justice work hand in hand in this model. A judge uses his or her authority to issue a decision, and attempts to prevent the imposition of a crime or penalty by the judge are an integrated part of the criminal justice system..

The Panel of Judges applying the Rechterlijk Pardon must take into account a number of factors, including the gravity of the act, the offender's personal circumstances, or the circumstances at the time the crime was committed and its aftermath. These factors may also

be taken into account when deciding whether to prosecute or not, taking into account aspects of justice and humanity as well as the existence of peace between the parties as a further option.

The fact that the decision to grant forgiveness has no legal foundation makes it difficult to apply Rechterlijk Pardon in criminal situations. There will be issues with specific situations that don't fit the mold of forgiving and justifying offenders if you classify this kind of judge's judgment as a release decision. Therefore, certain laws pertaining to rechterlijk pardon are required.

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