



Comparison of the Legal Regulation of the *Rechterlijk Pardon* in Indonesia and The Netherlands

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Abstract

The concept of rechterlijk pardon represents a new legal formulation introduced in Indonesia through Law Number 1 of 2023 concerning the Criminal Code, aimed at aligning criminal law with contemporary societal conditions. Beyond traditional deterrence, this concept empowers judges to consider mitigating circumstances and individual offender situations. Several European countries, including the Netherlands, have long regulated rechterlijk pardon, prompting a comparative analysis of its application between the Netherlands and Indonesia. This normative legal research compares the provisions of rechterlijk pardon in the Indonesian Criminal Code (KUHP) with those in Dutch law. The findings reveal both similarities and differences: both systems require judges to justify their decision for granting pardon and offer alternative pardon requirements, yet Indonesia includes specific considerations of justice not detailed in Dutch law. The study underscores the importance of clarifying the criteria for rechterlijk pardon implementation in Indonesia to preempt potential conflicts. Ultimately, the research advocates for a clear and harmonized framework for judicial pardon in Indonesia, ensuring consistency and fairness in its application within the criminal justice system.

Keywords: Rechterlijk Pardon, Indonesia, Netherlands, Criminal Code, Comparative Law.

A. INTRODUCTION

Efforts and policies aimed at formulating effective criminal law regulations are fundamentally intertwined with the goal of crime prevention. Crime prevention

initiatives constitute a crucial aspect of law enforcement, ensuring community safety through the establishment of legal frameworks. Thus, it is natural for criminal law reform, also known as penal reform, to constitute an important component of criminal law policy.

Criminal law reform encompasses various dimensions, including sociopolitical, sociophilosophical, and sociocultural perspectives, as well as considerations from diverse policy realms such as social policy, criminal policy, and law enforcement policy (Arief, 2016). This reformative process reflects the recognition that existing laws may no longer adequately align with the evolving needs of society.

The current formulation of Indonesia's material punishment system traces its origins to Dutch colonial heritage, characterized by a focus on criminals and influenced by individualistic and liberal philosophical underpinnings from the classical/neo-classical school of thought (Evandy & Arief, 2017). This historical basis, however, has become increasingly incongruent with contemporary societal developments.

Recognizing this discrepancy, the Government of the Republic of Indonesia took decisive action by enacting Law Number 1 of 2023 concerning the Criminal Code, which supersedes Law Number 1 of 1946 concerning Criminal Law Regulations. This legislative revision represents a pivotal step towards establishing a national criminal law system aligned with Indonesia's foundational principles of Pancasila and the 1945 Constitution. These principles are adapted to reflect current legal and societal dynamics, fostering national legal development in response to evolving societal needs and heightened legal awareness.

The reformulation of the Criminal Code underscores Indonesia's commitment to modernizing its legal framework, ensuring it is responsive to contemporary challenges

and supportive of justice, equity, and the rule of law. By aligning legal norms with current realities, Indonesia seeks to enhance the effectiveness of its criminal justice system and uphold the rights and welfare of its citizens within a dynamic and evolving legal landscape.

One of the ideas for criminal reform in Law Number 1 of 2023 is the concept of judge's forgiveness or what is known as *Rechterlijk Pardon*. This provision contains sentencing guidelines which really help judges in considering the measure or severity of punishment and gives the judge the authority to forgive others. someone who commits a minor crime. The judge's concept of forgiveness is not only focused on providing a deterrent effect on criminals, but also takes into account the condition of the perpetrator and the lightness of the criminal act committed based on Pancasila values and human rights.

The concept of judge forgiveness is not new in the criminal justice system. In several European countries, one of which is the Netherlands, the concept of judge forgiveness has been regulated in their respective state regulations. The concept of a judge's forgiveness in the Netherlands is regulated in section 9a of the Criminal Code of the Netherlands in certain cases, a judge cannot impose a sentence on the perpetrator of a criminal act. In the National Criminal Code, the idea of forgiving judges is a new breakthrough in the criminal system in Indonesia which will only be implemented after three years from the date of promulgation. So, in order to carry out legal reform, it is necessary to make a comparison between Indonesia and countries that have implemented the concept of judge's forgiveness so that it can be used as a lesson and consideration as to whether the concept of judge's forgiveness as regulated in the

National Criminal Code is in accordance with the social and cultural conditions of society so that later it can be implemented effectively.

From the background description above, the author is interested in highlighting it in an article entitled: Comparative Study: "Regulation of *Rechterlijk Pardon* in Indonesia and the Netherlands". With the problem formulation, namely how the *Rechterlijk Pardon* is regulated in Indonesia and the Netherlands. The author focuses carefully in this article on a comparison of the regulation of the *Rechterlijk Pardon* concept in the Netherlands and Indonesia, where this comparison aims to reform the law and develop policies or law reform and develop policy, especially since the State of Indonesia in early 2023 has passed the Law- Law Number 1 of 2023 concerning the Criminal Code which will come into force in 2026.

Based on the description above, this paper aims to analyze the "*Rechterlijk Pardon* Regulations in Indonesia and the Netherlands" by using a normative juridical approach, the author examines and compares the *Rechterlijk Pardon* regulations or judge forgiveness in the Indonesian and Dutch Criminal Codes. Related to the above, the main focus of this study is to examine the regulations, limitations and compare the existing regulations in the National Criminal Code with the Dutch Criminal Code. The data used in this research is secondary data. The secondary data used consists of primary legal materials, secondary legal materials and tertiary legal materials. The primary legal materials used are Law Number 1 of 2023 concerning the Criminal Code, the Criminal Code of the Netherlands and the Criminal Procedure Code of the Netherlands. The secondary legal materials used are legal research materials obtained from books, scientific journals and papers. Then the tertiary legal materials are a large Indonesian dictionary and a Dutch-Indonesian dictionary.

B. RESULTS AND DISCUSSION

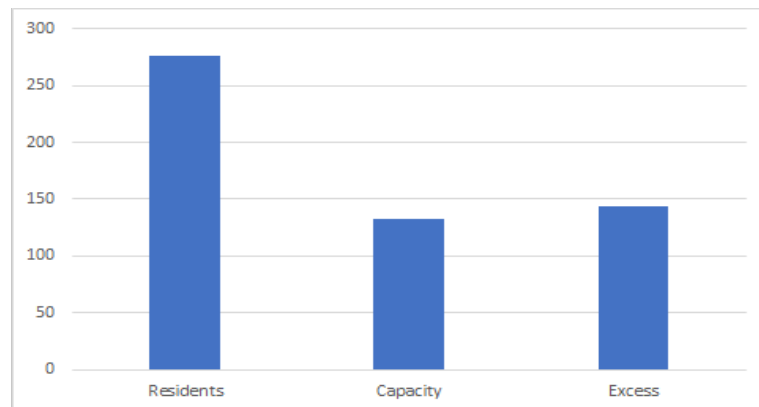
History of *Rechterlijk Pardon* (Judge's Forgiveness)

The terms "forgiveness", "pardon", "mercy", "clemency", "indemnity" and "amnesty", do not have a rigid (flexible) meaning, but in general can be interpreted as a pardon for actions that are contrary to the legality of the law. , on the basis of social justice. Forgiveness is a form of forgiveness/exemption from mistakes committed. As a form of forgiveness, with forgiveness, someone who is guilty is not sentenced or does not need to feel punishment (Adery Syahputra, 2016). *Rechterlijk Pardon* or judge's forgiveness, known as non-imposing of penalty, judicial pardon, or *dispensa de pen*, is where a defendant is proven guilty, but is not sentenced by the Panel of Judges (Zafirah Maschaer Masiming, 2020).

Since 1960, crime rates have been increasing over time in various countries, especially European countries. This crime rate will be directly proportional to the number of perpetrators, the number of perpetrators who are proven and sentenced to imprisonment, this causes huge financial costs due to the large number of prisoners, giving rise to criminal inefficiencies. In 1960, many academics and practitioners opposed the existence of prison sentences, especially for "short prison terms". According to academics, if a person is only sentenced to a minor crime for a light crime, then when he has finished serving his sentence "he will become a criminal for a serious crime". This view cannot be separated from the stigma or label from society which would say that prison is a school for criminal acts (Adery Ardhan Saputro, 2016).

In line with the current situation, in Indonesia based on data from the Directorate General of Corrections (Ditjenpas) of the Ministry of Law and Human Rights, there were 276,172 residents of correctional institutions (Lapas) and detention centers (rutan) on September 19 2022. Thus, there was an excess of 144,065 people. (109%) of the total capacity of 132,107 people. According to their status, there are 227,431 people who are convicts and 48,741 people who are detainees (Viva Budy Kusnandar, 2022).

Chart 1. Data on prison and detention center residents in September 2022



The condition of excess capacity in correctional institutions and detention centers is triggered by several things, one of which is the increase in the number of new inmates due to the large number of legal products containing prison sentences. This condition needs to be addressed because the density of capacity in prisons and detention centers means that the guidance carried out by correctional officers does not run effectively. (Satria Nenda Eka Saputra & Siswah Isnawati, 2022). in the National Criminal Code provides a new enlightening solution that not everyone who is proven to have committed a criminal act must be punished or subject to action, but consideration must be given to the lightness of the act committed by the

perpetrator and the circumstances that accompanied the perpetrator at the time the crime was committed, if it meets the requirements then the judge should grant forgiveness as stated as stated in Article 54 paragraph (2).

Historically, the concept of forgiveness (pardon) in sentencing in Indonesia was only formulated in the 2005, 2008 to 2016 Draft Criminal Code Bill. Previously, the old Criminal Code had not regulated judge forgiveness in the law. After going through long discussions, finally at the beginning of 2023, Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code) was officially passed and will come into force after 3 (three) years since it was passed.

One of the new policies regulated in the National Criminal Code is the *Rechterlijk Pardon* policy which is regulated in Article 54 paragraph (2) of the National Criminal Code. The aim of implementing this policy is expected to be to fulfill a sense of justice in the application of law, namely Moral Justice and Legal Justice. The *Rechterlijk pardon* concept implemented in Indonesia is the result of a comparative study with several countries, one of which is the Netherlands (Farikhah, 2018). The concept applied in the Netherlands and in Indonesia has a different formulation but has the same meaning, where the judge is given the authority by law to grant forgiveness to a defendant who has been proven guilty of committing a criminal offense by paying attention to the conditions that must be met for forgiveness. the.

To find out whether the *Rechterlijk pardon* concept is suitable and can later be implemented in Indonesia, it is necessary to first know the origins and background to the emergence of this concept. So the method that can be done is to make a comparison with countries that have implemented this concept.

***Rechterlijk Pardon* Arrangement in The Netherlands**

One of the ideas that emerged in the international development of the *Rechterlijk Pardon* (Judge's Forgiveness) concept, where this concept has been included in the criminal law regulations of various countries, including the Netherlands. In the Netherlands 60% of criminal cases are no longer resolved in court, but by the Public Prosecutor outside of court, in the Netherlands it is known as *afdoening buiten proces* (settlement of cases outside of court). Minor cases are resolved outside of court, minor cases in question are criminal acts that are punishable by imprisonment for less than 6 (six) years by means of compensation for damages by the perpetrator of the crime to the victim. Another form, if minor cases are still resolved in court, then the judge can decide with *Rechterlijk pardon* (judge's forgiveness) by paying attention to the severity of the act, the condition of the perpetrator of the criminal act and the conditions before or after the criminal act was committed (Yosuka & Daeng, 2018).

The concept of *Rechterlijk pardon* in the Netherlands is regulated in article 9a of the Criminal Code of the Netherlands which reads: "Indien de rechter dit raadzaam acht in verband met de geringe ernst van het feit, de persoonlijkheid van de father of de omstandigheden waaronder het feit is begaan, dan wel die zich nadien hebben voorgedaan, kan hij in het vonnis bepalen dat geen straf of maatregel zal worden opgelegd." Which, when translated, means "If the judge considers it appropriate due to the small significance of an act, the personality of the perpetrator or the circumstances at the time the act was committed, as well as after the act was committed, he determines in the decision that no crime or action will be imposed."

From the formula above, if you explain each element, they are:

1. The small meaning of an action

This article does not explain the limitations regarding minor offenses, however, based on science, minor offenses can be categorized as actions that do not cause significant consequences for the victim.

2. Perpetrator's Personality

To find out the personality of the perpetrator, you can look at the personal character of the perpetrator. Personal character can be seen from the origin of the perpetrator, whether from genetic factors, namely how the perpetrator's family is, or by looking at the environment in which the perpetrator lives. Apart from that, it can also be seen from the character of the perpetrator which can be studied through characterology/character science. Human types are classified into (Farikhah, 2018):

- a. Physiological physical conditions or innate characteristics from birth. These are characteristics that are unique, original and cannot be changed.
- b. Temperament is a person's characteristic that is influenced by the presence of a mixture of substances in their body. So temperament means the nature of the soul's behavior, in relation to physical characteristics. Temperaments are also characteristics that are fixed and cannot be changed.
- c. Character is an inner quality that influences all thoughts, behavior, manners and habits of humans or other living creatures.

Apart from that, according to Heymans, a Dutch psychologist (Farikhah, 2018), human character is classified into three types, namely:

- a. Emotienoliteit, emotional people are quick to take sides, have strong fantasies, write and speak a bit strangely, have little love for the truth, get angry easily, love easily and like sensations.

- b. Secondary Function, people who function secondary feel at home, obedient to customs, loyal in friendship, have great gratitude, find it difficult to adapt, easily adapt and are consistent.
- c. Active, active people like to work, are easy to take action, have many hobbies, easily overcome difficulties and so on.

So by assessing someone psychologically the judge can see the truth behind a person, so that the judge can judge fairly. In addition, the court may not impose any sanctions if:

1. If the victim loses his life or is injured due to the negligence of the perpetrator's next of kin.
2. If the perpetrator should not be punished because of the psychological trauma he suffered because of the offense. From the above formulation it is clear that the most important thing is that there is an element of negligence, the victim is a close family member, and the perpetrator experienced psychological trauma. Negligence can be interpreted as the perpetrator's lack of intention to commit a crime, but due to a lack of caution, this causes a criminal act to occur. What is said to be close family are those who are genetically related or blood related, while the psychological trauma experienced by the perpetrator can be determined by assessment from a psychologist.
3. Conditions at the time the action was carried out and after the action was carried out, this element looks at the conditions at the time the action was carried out as well as the conditions after the action was carried out. This looks more at the elements that created it, where the conditions that

followed the perpetrator when the act occurred and afterwards are also taken into consideration in providing forgiveness to the perpetrator.

If these three elements have been fulfilled, the judge must forgive the perpetrator. This can be seen in the sentence "he determined in the decision that no crime or action would be imposed" where the word "determine" has the meaning of determining or ensuring. So, if the judge has seen that these three elements are present in the perpetrator, then in his decision the judge must determine and confirm the contents of his decision that the perpetrator is guilty but is not subject to any crime or action.

Rechterlijk pardon Arrangements in Indonesia

Indonesia, as a country with the Pancasila ideology, has a society consisting of various ethnicities and cultures that are very pluralistic. Indonesia is said to be a country that has a democratic system based on Pancasila. From the various differences that Indonesia has, it is certain that the laws that apply in Indonesia are different from the laws that apply in other countries, because considering the culture that lives in Indonesian society is different from the culture that lives in other countries even though they have the same goals for the welfare of society, providing protection to society and peace in society. Historically, Indonesia cannot deny the fact that it is a former Dutch colony, however, as time and development progresses, Indonesia is currently reforming its legal system to adapt to the needs and lives of existing society.

The aim of punishment is to carry out a supporting function for the function of criminal law in general which is to be achieved as the ultimate goal is to realize welfare and protection of society (Social defense and social welfare), which is oriented towards the aim of protecting society to achieve social welfare. In Chapter III of the

National Criminal Code, paragraph I explains the purpose of punishment as contained in Article 51, namely that punishment aims to:

- a. Prevent the commission of criminal acts by enforcing legal norms for the protection and protection of society;
- b. Socializing convicts by providing training and guidance so that they become good and useful people;
- c. Resolving conflicts resulting from non-criminal consequences, restoring balance, and bringing a sense of security and peace in society; And
- d. Foster a sense of remorse and relieve the convict of guilt.

The purpose of punishment formulated in the National Criminal Code is based on the theory of relative punishment, namely to achieve benefits, protect society and lead to social welfare, to prevent repetition of criminal acts, to provide guidance to convicts so that they can be well received when they return to society. The theory of punishment in the National Criminal Code contains social values that are in line with the nation's ideology, namely Pancasila, where punishment is not intended to degrade human dignity. With the aim of this punishment, it is very possible to implement the concept of *Rechterlijk pardon* (judge's forgiveness) for perpetrators of criminal acts.

The concept of *Rechterlijk pardon* (judge's forgiveness) in Indonesia has only been regulated in Law Number 1 of 2023 concerning the Criminal Code. Before the publication of the National Criminal Code, Indonesia still rigidly applied the principle of legality and used imprisonment as a remedy to overcome crime. However, as time goes by, this concept is no longer effective and even gives rise to new problems such as prison overcapacity and a lack of justice for society. After going through quite a long discussion, the Indonesian people finally succeeded in compiling and realizing a

national criminal law that has been adapted to legal politics, conditions and developments in social life, and upholds human rights based on Pancasila.

In handing down a sentence, the judge is obliged to consider several things that make it possible to implement the concept of *Rechterlijk Pardon* (Judge's Forgiveness), namely: a. the form of the perpetrator's fault; b. motive and purpose of committing a criminal act; c. the inner attitude of the perpetrator of the crime; d. Criminal acts are committed planned or unplanned; e. how to commit a criminal act; f. the attitude and actions of the perpetrator after committing the crime; g. life history, social conditions and economic conditions following criminal acts; h. the influence of crime on the future of criminal offenders; i. the influence of the crime on the victim or the victim's family; j. forgiveness from the Victim and/or the Victim's family; and/or k. the values of law and justice that exist in society as stated in Article 54 paragraph (1) of the National Criminal Code.

The existence of sentencing guidelines stated in Article 54 paragraph (1) provides an opportunity for judges to consider the condition of the perpetrator at the time the criminal act was committed by not only looking at the unlawful act committed by the criminal perpetrator. The sentencing guidelines above can be used as a reference for judges to grant forgiveness to perpetrators of criminal acts. Then the regulation regarding *Rechterlijk pardon* or judge's forgiveness according to the National Criminal Code which is regulated in article 54 paragraph (2) reads, "The severity of the act, the personal condition of the perpetrator, or the conditions at the time the crime was committed and what happened afterwards can be used as a basis for consideration for not imposing a crime or not taking action by considering aspects of justice and humanity."

The elements of this article are as follows:

a. Lightness of Action

The National Criminal Code does not clearly state the nature of the lightness of the crime, however in the explanation of article 132 letter d it provides an explanation regarding light crimes which are only punishable by a Category I or Category II fine. If you violate the provisions above, there is no need for prosecution on condition that you pay the maximum fine that is threatened.

b. Perpetrator's Personal Circumstances

What is meant by the perpetrator's personal condition according to the explanation of Article 22 of the National Criminal Code is a situation where the perpetrator or helper is older or younger, has a certain position, is in a certain profession, or has a mental disorder. However, the National Criminal Code does not regulate this clearly in the articles of the National Criminal Code.

c. Conditions at the time the crime was committed and after the crime was committed

This element looks at the conditions at the time the action was carried out as well as the conditions after the action was carried out. This looks more at the elements that created it, where the conditions that followed the perpetrator when the act occurred and afterwards are also taken into consideration in providing forgiveness to the perpetrator.

d. Considering aspects of justice and humanity.

Regarding the element of "considering aspects of justice and humanity", this basically has to be seen in the context of the polarization of justice which originates from the logistical conception adopted in the National Criminal Code. However, there

is no explanation regarding the measure of justice in the National Criminal Code, however, article 53 paragraph (2) emphasizes that if in upholding law and justice there is a conflict between legal certainty and justice, judges are obliged to prioritize justice.

In the explanation of this article, it is explained that judges are given the authority to forgive someone who is guilty of committing a minor crime. Then the judge's forgiveness will be included in the judge's decision. The contents of the judge's decision will still state that the defendant has been proven to have committed the crime for which he has been charged, then later in the decision the reasons will be included so that the judge does not impose a crime on the defendant.

Then in Article 70 paragraph (1) of the National Criminal Code, several conditions are stipulated to affirm alternative crimes other than the crime of deprivation of liberty in the form of a judge's forgiveness, namely:

- a. The defendant is a child;
- b. The defendant is over 75 (seventy five years old);
- c. The defendant committed a crime for the first time;
- d. The losses and suffering of the victims were not too great;
- e. The defendant has paid compensation to the victim;
- f. The defendant did not realize that the criminal act he committed would cause major losses;
- g. Criminal acts occur due to very strong instigation from other people;
- h. The victim of a criminal act encourages or incites the occurrence of the criminal act;
- i. This criminal act is the result of a situation that is unlikely to happen again;

- j. The defendant's personality and behavior ensure that he will not commit another crime;
- k. Imprisonment will cause great suffering for the defendant and his family;
- l. It is estimated that development outside a correctional institution will be successful for the defendant;
- m. Imposing a lighter sentence will not reduce the serious nature of the crime committed by the defendant;
- n. Criminal acts occur within the family and/or;
- o. Criminal acts occur due to negligence.

As a form of forgiveness, there is a judge's forgiveness, a person who is guilty is not sentenced or does not need to suffer punishment in the form of prison with the limitations as stated in Article 70 paragraph (1) of the National Criminal Code above.

As for the limitations of criminal acts that receive a judge's forgiveness facility based on Article 70 paragraph (2) of the National Criminal Code, where the judge's forgiveness facility does not apply to criminal acts that are punishable by imprisonment for 5 (five) years or more; threatened with a special minimum sentence; certain criminal acts that are very dangerous or detrimental to society; or detrimental to the country's finances or economy.

Comparison of *Rechterlijk Pardon* in Indonesia and the Netherlands

Indonesia and the Netherlands are countries that have a civil law legal system, which is currently the legal system applied in most Western European countries, Latin America, countries in the East and most of Africa. This system was derived from Ancient Roman law and was first applied in Europe based on Roman *jus civile* (private law that can be applied to citizens and between citizens within the borders of a

state in a domestic context). This legal system is also called *Ius Aquiritum* as opposed to *Ius Gentium* (law that can be applied internationally or between countries). Furthermore, this law is compiled and codified, so that many observers refer to civil law as the most important codified law (Ulfah, 2022). The civil law system has three characteristics, namely the existence of codification, the law is not bound by precedent so that the law is the main source of law, and the judicial system is inquisitorial in nature. These three things differentiate the civil law system from the common law system (Marzuki, 2018).

The reason for the similarities between the Indonesian and Dutch legal systems is due to historical links, Indonesia is a former Dutch colony, where countries that were once colonized by countries with civil law legal systems have a tendency to also use the civil law system. Likewise, countries that have been colonized by countries that implement a common law system tend to follow the common law legal system (Gozali, 2018).

The similarity of the legal systems between Indonesia and the Netherlands is the reason for carrying out legal comparisons regarding the concept of reform in criminal law, namely what Indonesia is currently doing. This legal comparison is not carried out to look for weak points in the law that will be implemented but to analyze the harmony of existing concepts. designed and will be implemented by Indonesia in the next few years with the existence of the National Criminal Code. One of the reform efforts in criminal law regarding punishment is the existence of regulations regarding *Rechterlijk pardon* (appointment of judges) which provides a new enlightening solution that not everyone who is proven to have committed a criminal act must be subject to punishment or action, with the existence of this

concept when connected with the criminal purpose of the Criminal Code concept. National appears to be based on the theory of relative punishment which has the aim of achieving benefits to protect society and lead to social welfare. The aim of punishment is no longer to retaliate against the perpetrator, where sanctions are emphasized on their purpose, namely to prevent people from committing crimes (Irmawanti & Arief, 2022). Based on the description above, the following is a comparison of the *Rechterlijk pardon* arrangements in Indonesia and the Netherlands which have several similarities and differences which are presented in table form as follows:

Requirements for Rechterlijk Pardon			
No	Element	Netherland	Indonesia
1.	Lightness of Action	Less Serious Violation In the Netherlands, minor offenses are divided into several classifications as stated in the third book, namely, Minor Offenses Related to General Safety of Persons and Property, Public Order, Public Authority, Civil Status, People in Distress, Public Morals, Rural Police, Minor Offenses that involving Abuse of Position and Misdemeanors Related to Shipping	Lightness of Action In Indonesia, it is not clearly regulated regarding light crimes or minor crimes, but in the explanation of article 132 paragraph (1) letter d, it explains light crimes which are only punishable by category I or category II fines.
2.	Personal Circumstances / Character of the Perpetrator	Character of the perpetrator Judging from the negligence, the victim was a close family member, and the perpetrator experienced psychological trauma.	Perpetrator's Personal Circumstances It can be seen from the perpetrator's age being older or younger, having a certain position, pursuing a certain profession, or experiencing a mental disorder.
3.	Conditions at the time the crime was committed and	Circumstances Concomitant at The Time of The Violation or Later. Where this element looks at	Conditions at the time the crime was committed and after the crime was committed.

after the crime was committed.	the conditions at the time the action was carried out as well as the conditions after the action was carried out. This looks more at the elements that make it. Apart from that, the defendant regretted his actions and then apologized and there was forgiveness from the victim/victim's family.	Just like in the Netherlands, in Indonesia it is stated in writing in Article 70 paragraph (1) of the National Criminal Code
4. Considering the Justice Aspect	Not regulated in the Dutch Criminal Code regarding the element "considering aspects of justice" in article 9a criminal code.	Considering Aspects of Justice There is no explanation regarding the measure of justice, but in article 53 of the National Criminal Code, when trying a criminal case, the judge is obliged to uphold the law and justice, but if there is a conflict between legal certainty and justice, the judge is obliged to prioritize justice.
5. Defendant Still Found Guilty	Defendant Still Found Guilty The defendant is still declared guilty but the judge's decision includes the reasons for considering the judge's forgiveness so that he is not subject to a crime	Overall, it is the same as in the Netherlands, where the defendant is still found guilty but the decision includes consideration of the judge's forgiveness
6. The nature of the conditions for the application of <i>Rechterlijk pardon</i> (Judge's Forgiveness)	In the Netherlands it is strictly regulated that if the conditions for a judge's forgiveness have been met, the judge has no choice and is obliged to grant the judge's forgiveness to the defendant.	In Indonesia, if the conditions for granting a judge's forgiveness have been met, this does not mean that the judge must forgive the defendant. This can be seen from the word "can" which can be interpreted as "may/could" so that even if the elements are met the judge may not give a judicial pardon decision against the perpetrator.

There is no information regarding the nature of the elements that a judge can grant forgiveness for, whether cumulative or alternative, whether in the Netherlands or Indonesia. However, if we look at their nature, it can be said that each element stands alone, which can be seen from the presence of the word "or" in the formulation, which means that the nature of the conditions for granting a judge's forgiveness has an alternative nature, meaning that all elements do not have to be fulfilled in order for *Rechterlijk* pardon or forgiveness of the judge. However, this returns to the judge's consideration regarding whether or not the defendant is appropriate to be given forgiveness.

In Indonesia, of the six elements contained in the formulation of the article on *Rechterlijk* pardon, there are 3 elements that are of concern and need improvement. The unclear meaning contained in the elements of lightness of action, the words "can be taken into consideration" and the principles of justice and humanity. If it is not immediately corrected, it can cause errors in implementation so that the objectives of punishment based on justice, benefit and legal certainty will not be achieved.

Apart from that, there is a need for reformulation, not only in terms of concept but also in terms of formal law or material law enforcement. The concept of *Rechterlijk pardon* will influence the form of decision that will be handed down to criminal perpetrators who have fulfilled the requirements contained in the elements of Article 54 paragraph (2) of the National Criminal Procedure Code. However, in Indonesia itself there is still no formulation of a form of decision regarding forgiveness for criminal perpetrators who receive forgiveness from judges. In the criminal procedure law, the Dutch state has regulated the forms of decisions, one of

which is the judge's forgiveness decision (*Rechterlijk pardon*), so that the panel of judges in the Netherlands can give a decision in a special form and has a final nature, meaning that no appeal or cassation can be taken. .

C. CONCLUSION

The *Rechterlijk pardon* arrangements in the Netherlands and in Indonesia have almost the same formulation. However, there are several differences, namely in the conditions for applying *rechterlik pardon*, although at first glance they are the same, the conditions stated in the National Criminal Code require clear details so that there is no confusion for the judge when making a decision. Indonesia, as a country that has just implemented the concept of *Rechterlijk pardon* in the National Criminal Code, has many shortcomings and needs to be corrected immediately before it is implemented. There needs to be an improvement in the formulation that makes the concept of *Rechterlijk pardon* appropriate and practicable in Indonesian criminal law. Therefore, it is not enough to look at this concept only from western law which has implemented this concept, but you must also explore the laws that apply in Indonesian society itself. Apart from that, to provide legal certainty regarding its implementation, it is necessary to clearly formulate what criminal acts a judge can forgive and to immediately formulate the RKUHAP as one of the types of decisions that a judge can give for a judge's forgiveness.

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