

IMPLEMENTATION OF JUDICIAL PARDONS IN VARIOUS COUNTRIES

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ABSTRACT

Judicial pardon, or judicial forgiveness, is the authority granted to a judge to grant pardon or not impose a sentence on a defendant even though the elements of the crime have been legally and convincingly proven. Judicial pardon is not a uniform concept. In various countries, this instrument is implemented in different forms and mechanisms, depending on legal traditions, criminal philosophy, and social values prevailing in each society. This study aims to examine and compare the application of judicial pardon in the criminal law system in various countries and its relevance for the reform of Indonesian criminal law. The method used is normative legal research with a statutory, conceptual, and comparative approach. The results of the study show that countries such as the Netherlands, Portugal, France, and Greece have explicitly regulated this concept in their respective criminal law codifications with varying conditions and mechanisms, but generally require the leniency of the act, the achievement of the perpetrator's rehabilitation, and the absence of the need for punishment for deterrence purposes. Indonesia, through Law Number 1 of 2023 concerning the Criminal Code, has adopted this concept, but its regulations still require more detailed implementation guidelines to ensure legal certainty and prevent judicial subjectivity.

Key Words: *judicial pardon; comparison; judiciary.*

A. INTRODUCTION

The criminal justice system fundamentally aims not only to enforce the rule of law formally, but also to realize substantive justice—justice that emphasizes achieving a real sense of justice in society, rather than merely fulfilling formal procedures or rigid legal rules. Criminal law therefore cannot be understood solely as an instrument for determining whether an individual has committed an offense and imposing a corresponding punishment. It must also consider the circumstances surrounding the offense, the characteristics of the offender, the consequences of the act, and the broader objectives of punishment. In this context, the development of modern criminal law increasingly demonstrates a shift from a purely retributive orientation toward a more balanced approach that accommodates proportionality, rehabilitation, restoration, and humanity.

Within this development, the concept of judicial pardon has emerged as one of the mechanisms intended to bridge the gap between formal legality and substantive justice. Judicial pardon refers broadly to the authority of a judge, under certain legally prescribed circumstances, to refrain from imposing a criminal sentence even though the defendant has been legally and convincingly proven to have committed the offense. The concept is based on the recognition

that the finding of criminal guilt does not necessarily mean that the imposition of punishment in every case would produce a just outcome. Accordingly, judicial pardon provides judges with a limited corrective mechanism through which exceptional circumstances may be taken into account without denying the existence of criminal liability.

The rationale underlying judicial pardon is closely connected with the principle of proportionality in criminal law. Punishment should correspond not only to the formal elements of an offense but also to the seriousness of the wrongdoing and the actual circumstances of the case. There may be situations in which the harm caused by the offense is minimal, the offender has demonstrated genuine remorse, the consequences of conviction would be disproportionate, or the objectives of punishment could be achieved without imprisonment or another formal sanction. In such circumstances, automatic punishment may produce an outcome that is legally correct but substantively unjust. Judicial pardon can therefore function as a safety valve within the criminal justice system by preventing the mechanical application of punishment where punishment itself would no longer serve a legitimate penal purpose.

Judicial pardon, however, is not a uniform concept. Its legal construction, terminology, scope, and procedural consequences differ across jurisdictions. These differences are influenced by the legal tradition of each country, the relationship between judicial discretion and the principle of legality, the prevailing philosophy of punishment, and the extent to which criminal courts are permitted to individualize criminal sanctions. Comparative examination is therefore necessary because the existence of a provision resembling judicial pardon does not necessarily indicate that different legal systems employ the mechanism in the same manner. Some jurisdictions provide explicit statutory authority, while others achieve comparable results through sentencing discretion, discharge mechanisms, conditional non-punishment, or other judicial instruments.

In countries belonging to the civil law tradition, judicial pardon is generally incorporated more explicitly into statutory criminal law. This approach reflects the central position of codification and the principle of legality, under which judicial discretion must remain within boundaries established by legislation. The Dutch legal system, for example, has historically recognized mechanisms through which a court may establish criminal responsibility while refraining from imposing punishment under specific circumstances. Comparable approaches can also be identified, in different forms and with different legal consequences, in other European criminal justice systems. The statutory formulation of such mechanisms demonstrates an attempt to reconcile two potentially competing values: legal certainty on the one hand and judicial individualization of punishment on the other.

The comparative perspective becomes particularly important when examining Germany and France. Although both jurisdictions belong to the civil law tradition, their approaches to judicial discretion and the non-imposition of punishment cannot simply be regarded as identical. Their criminal justice systems have developed distinct doctrines concerning culpability, proportionality, prosecutorial and judicial discretion, and the purposes of criminal sanctions. The comparison consequently demonstrates that judicial pardon should not be treated as a single imported legal formula. Rather, it represents a broader legal policy choice concerning how far a criminal justice system is prepared to allow judges to depart from the ordinary consequence of conviction in exceptional circumstances.

The common law tradition presents another perspective. Judicial discretion in sentencing has historically occupied an important position within common law criminal justice systems. Courts may consider a broad range of factors relating to the offender and the offense when determining an appropriate sanction, although the scope of that discretion remains subject to statutory requirements, appellate review, and sentencing principles. Mechanisms such as conditional discharge, absolute discharge, or other forms of non-custodial judicial disposition

may, in certain circumstances, produce consequences comparable to judicial pardon. Nevertheless, these mechanisms should not automatically be equated with the continental European concept of judicial pardon because their doctrinal foundations and legal effects may differ significantly.

The differences among these jurisdictions raise an important theoretical question concerning the relationship between judicial discretion and the principle of legality. Criminal law traditionally requires that offenses and punishments be established by law in order to prevent arbitrary exercises of state power. Excessive judicial discretion may therefore create uncertainty and unequal treatment if judges apply similar provisions according to substantially different standards. At the same time, an excessively rigid application of criminal law may prevent courts from responding adequately to exceptional circumstances. Judicial pardon consequently occupies a difficult position between two fundamental demands of criminal justice: the need for legal certainty and the need for individualized substantive justice.

The debate is not merely theoretical. From a practical perspective, the implementation of judicial pardon may generate concerns regarding consistency, transparency, accountability, and equality before the law. If the criteria for granting pardon are formulated too broadly, judges may possess excessive discretion and defendants in similar circumstances may receive different treatment. Conversely, if the criteria are excessively restrictive, the provision may become largely symbolic and fail to perform its intended corrective function. The legitimacy of judicial pardon therefore depends not simply on granting judges the authority to refrain from punishment, but also on establishing clear substantive requirements, procedural safeguards, and mechanisms of judicial accountability.

In Indonesia, the issue has become increasingly significant following the enactment of Law Number 1 of 2023 concerning the Criminal Code. The new Criminal Code reflects a broader reform of Indonesian criminal law, including a movement toward a more modern sentencing philosophy that emphasizes justice, humanity, proportionality, and the purposes of punishment. Within this framework, the recognition of judicial pardon demonstrates an effort to provide judges with a legally structured opportunity to consider whether punishment remains necessary in a particular case. The provision is therefore significant because it introduces a mechanism through which criminal adjudication may move beyond a purely mechanical relationship between the establishment of guilt and the imposition of punishment.

The incorporation of judicial pardon into Indonesian criminal law also raises important questions regarding its relationship with the existing principles of criminal justice. Indonesian criminal law has traditionally emphasized legality, culpability, and the imposition of sanctions following the establishment of criminal responsibility. The introduction of judicial pardon requires a reconsideration of the extent to which judges may exercise discretion after the elements of an offense have been established. The issue is particularly important because the authority to refrain from punishment should not be interpreted as an unrestricted judicial power. Rather, it must be understood within the framework of statutory requirements, the objectives of sentencing, equality before the law, and the obligation to provide adequate judicial reasoning.

Furthermore, the Indonesian experience cannot be assessed adequately without considering comparative legal developments. The mere transplantation of a legal concept from another jurisdiction does not guarantee that the concept will operate effectively within the receiving legal system. Differences in legal culture, judicial institutions, sentencing practices, criminal procedure, and societal expectations may influence the practical operation of judicial pardon. Comparative analysis can therefore identify not only similarities between Indonesian regulation and foreign models but also the institutional and doctrinal differences that may affect its implementation. Such analysis is essential to determine which comparative approaches may be adapted and which should instead be treated cautiously.

Existing discussions concerning judicial pardon tend to focus either on its philosophical justification as an instrument of substantive justice or on the specific regulation introduced into Indonesian criminal law. Although these approaches are important, a comparative examination that systematically connects the normative design of judicial pardon with its requirements, judicial discretion, legal limitations, and practical implications across different legal systems remains necessary. The research gap lies particularly in the need to distinguish judicial pardon from other mechanisms of non-punishment and to identify the principles that should govern its application. Without such differentiation, comparative discussion risks treating substantially different legal mechanisms as if they were functionally identical.

Against this background, judicial pardon should be understood not merely as an exception to punishment but as part of the broader transformation of contemporary criminal justice toward a more individualized and proportionate sentencing system. Its legitimacy depends upon maintaining a careful equilibrium between the authority of judges and the principle of legality. A well-designed judicial pardon mechanism can prevent disproportionate punishment and strengthen substantive justice; however, poorly defined discretion may instead undermine legal certainty and equality before the law. The central issue is therefore not whether judges should have discretion to refrain from punishment, but under what conditions such discretion can be exercised legitimately, consistently, transparently, and accountably.

Based on the foregoing considerations, this article aims to comparatively examine the concept of judicial pardon in criminal law systems across selected jurisdictions, with particular attention to its philosophical foundations, legal scope, requirements for application, judicial discretion, limitations, and practical implications. The study further analyzes the position of judicial pardon within the reform of Indonesian criminal law under Law Number 1 of 2023 and evaluates the extent to which comparative legal experiences may provide lessons for its implementation in Indonesia. Through this comparative approach, the article seeks to contribute to the development of a more coherent understanding of judicial pardon as an instrument of substantive justice while simultaneously identifying safeguards necessary to prevent arbitrariness and preserve legal certainty. Ultimately, the study is expected to provide an academic and normative basis for strengthening the implementation of judicial pardon within Indonesia's evolving criminal justice system.

B. RESEARCH METHOD

This research is normative legal research, examining law as a norm or rule, focusing on written legal materials.¹ This approach was chosen because the object of study is the concepts, norms, and regulations related to judicial pardon in the criminal legal system, both in Indonesia and in various countries.

This research utilizes several approaches simultaneously. First, the statute approach, which examines all laws and regulations related to judicial pardon authority, including Law Number 1 of 2023 concerning the Indonesian Criminal Code and the criminal law regulations of the countries being compared. Second, the conceptual approach, which examines the doctrines, principles, and theories of criminal law that underlie the concept of judicial pardon. Third, the comparative approach, which compares the regulations and implementation of judicial pardon in several countries, aims to obtain a comprehensive picture and identify similarities and differences between the legal systems studied.²

¹Peter Mahmud Marzuki, *Legal Research*, revised edition (Jakarta: Kencana Prenada Media Group, 2011), pp. 35–36.

²Johnny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Bayumedia Publishing, 2006), pp. 300–302.

Second, the **conceptual approach** is used to examine the legal doctrines, principles, and theoretical foundations underlying judicial pardon. This approach is particularly important because judicial pardon is closely associated with several fundamental concepts in criminal law, including the principle of legality, proportionality, individualization of punishment, judicial discretion, culpability, the purposes of punishment, and substantive justice. The conceptual approach is used to determine the theoretical relationship between these principles and the legitimacy of judicial authority to refrain from imposing punishment despite the establishment of criminal liability.

Third, the **comparative approach** is employed to compare the normative construction of judicial pardon and functionally similar mechanisms in selected jurisdictions. Comparative analysis is conducted by identifying the similarities and differences in the legal basis, requirements, scope of judicial discretion, legal consequences, and safeguards applicable to judicial pardon. The comparison is not limited to identifying whether a particular country recognizes a provision formally labelled as “judicial pardon,” but also considers legal mechanisms that perform a substantially similar function, such as judicial discharge, non-imposition of punishment, conditional or absolute discharge, or other statutory mechanisms through which a court may establish responsibility while refraining from imposing a conventional criminal sanction.

The selection of jurisdictions for comparison is based on their relevance to the development of the judicial pardon concept and their representation of different criminal law traditions. The study primarily considers jurisdictions within the civil law tradition in which judicial pardon or comparable mechanisms have been incorporated into statutory criminal law, while also considering a common law perspective to identify differences in the role of judicial sentencing discretion. This selection enables the research to examine whether the justification, requirements, and limitations of judicial pardon are shaped by broader differences between legal traditions or whether certain common principles can be identified across jurisdictions.

The legal materials used in this research consist of **primary, secondary, and tertiary legal materials**. Primary legal materials include legislation, criminal codes, judicial decisions where relevant, and other authoritative legal instruments regulating judicial pardon and sentencing. For Indonesia, the principal primary legal material is Law Number 1 of 2023 concerning the Criminal Code, together with other relevant legislation governing criminal justice and sentencing. For comparative purposes, the research examines the relevant criminal codes and statutory provisions of the selected jurisdictions. Judicial decisions are considered where they provide authoritative interpretation or demonstrate the practical application of judicial pardon or comparable non-punishment mechanisms.

Secondary legal materials consist of scholarly books, peer-reviewed journal articles, legal commentaries, research reports, and other academic publications discussing judicial pardon, sentencing discretion, substantive justice, proportionality, and comparative criminal law. These materials are used to strengthen the doctrinal analysis and to identify scholarly debates concerning the legitimacy, advantages, and potential limitations of judicial pardon. Tertiary legal materials, including legal dictionaries, encyclopedias, and other reference materials, are used to clarify legal terminology and concepts where necessary.

The collection of legal materials is conducted through **library research** and systematic examination of relevant legal documents and academic literature. Legal materials are selected based on their relevance to the research questions, authority, reliability, and contribution to the analysis. The collected materials are subsequently classified according to their legal status and substantive relevance, particularly materials concerning the definition of judicial pardon, its normative requirements, judicial discretion, limitations, and legal consequences.

The analysis of the collected legal materials is conducted using a **qualitative juridical analysis**. The analysis proceeds by interpreting relevant legal provisions, examining their relationship with criminal law principles and doctrines, and subsequently comparing the regulatory frameworks of the selected jurisdictions. The analysis is therefore doctrinal rather than quantitative. Legal provisions are interpreted systematically by considering their wording, context, relationship with other provisions, underlying principles, and stated objectives.

The comparative analysis adopts a **functional comparative law perspective**, whereby legal mechanisms are compared according to the functions they perform rather than solely according to their terminology. This is important because different legal systems may use different terminology for mechanisms that pursue a similar objective, namely allowing a court, under specified circumstances, to avoid or limit the imposition of punishment despite the establishment of criminal responsibility. Accordingly, the research does not assume that provisions bearing similar terminology necessarily have identical legal effects, nor that provisions using different terminology are necessarily unrelated.

The comparison focuses on several analytical dimensions: (1) the normative basis of judicial pardon; (2) the circumstances or requirements permitting its application; (3) the extent of judicial discretion; (4) the relationship between judicial pardon and the finding of criminal guilt; (5) the legal consequences of granting judicial pardon; (6) procedural and institutional safeguards; and (7) the implications for legal certainty, proportionality, and substantive justice. These dimensions provide a structured basis for identifying both convergences and divergences among the jurisdictions examined.

The research further employs a prescriptive analysis to assess the implications of the comparative findings for Indonesian criminal law. The purpose of this analysis is not merely to describe the differences among legal systems but to determine what principles, safeguards, and regulatory considerations may be relevant to the implementation of judicial pardon in Indonesia. Particular attention is given to the need to balance judicial discretion with the principle of legality, equality before the law, proportionality, transparency, and consistency in sentencing.

The final stage of the research involves drawing conclusions through a **deductive method**, beginning with general principles of criminal law and judicial discretion and subsequently applying them to the specific legal framework governing judicial pardon in Indonesia and the selected comparative jurisdictions. The conclusions are formulated based on the synthesis of statutory provisions, legal doctrines, scholarly perspectives, and comparative findings. On this basis, the research seeks to determine the appropriate scope and limitations of judicial pardon and formulate normative considerations for its effective and accountable implementation within the Indonesian criminal justice system.

C. DISCUSSION

In order to obtain a comprehensive picture and provide constructive input for the development of Indonesian criminal law, a comparative study is needed with countries that have previously regulated and implemented the concept of judicial forgiveness in their judicial systems.³ In comparison with foreign law, the study can be found by looking at the differences and similarities of each country's legal system, the study aims to make the existing legal system outside the country a barometer/benchmark of the national legal system.⁴ By developing legal insight from foreign legal systems, it will be possible to formulate a better national legal formulation

³Barda Nawawi Arief, *Comparative Criminal Law Revision*, 2011. Raja Grafindo: Semarang. p. 5

⁴Romli Atmasasmita. *Comparative Criminal Law*. 2000. Mandar Maju. Bandung. p. 12

concept than the previous legal system, the philosophy that says don't be like a frog in a well means that by comparing systems between countries it will emphasize that renewal is not only shackled by the ego of one's own rules and culture, but there are other countries' systems whose benefits and goodness can be reaped.

In foreign criminal law systems, several legal concepts have formulated the concept of forgiveness within their parent legal system, allowing judges to grant pardons or withhold punishment from perpetrators of criminal acts in their application. The author encountered several countries that have incorporated the concept of judicial forgiveness, including the Netherlands, France, Portugal, Greenland, Somalia, Uzbekistan, and Greece. In fact, for some countries, the concept of judicial forgiveness still sounds foreign. This is because the concept of pardon/clemency is generally located in the executive branch, not the judicial branch, as in this study. The application of pardon/clemency to the executive branch is also adopted by Indonesia, in the form of amnesty and clemency. It is also practiced in monarchical legal systems such as Brunei and Malaysia, where the Sultan grants pardons, although pardons are granted for specific reasons. Therefore, pardoning within judicial institutions is actually a very new concept and is still considered unusual by many countries.

Indonesia includes pardoning for the executive branch in Law No. 22 of 2002 concerning Pardons, which is a pardon granted to revoke, amend, reduce, or commute a sentence. It is also included in Law No. 11 of 1954 concerning Amnesty, which removes all legal consequences for the accused by the President. Malaysia also has pardoning for the executive branch, granted by the Yang Pertuanagung and the Sultans of each state in Malaysia, as stipulated in Article 42 of the Federal Constitution of Malaysia concerning the Power of Pardon.⁵ Forgiveness carried out by the executive is common in every country, however, there are several countries that have included forgiveness in the judicial power which can be seen in the following discussion.

1. Dutch Criminal Law

Article 9a of the Dutch Criminal Code explains that if a judge deems it appropriate, considering the minor nature of the act, the perpetrator's personality, or the circumstances at the time of the act, and if the perpetrator subsequently demonstrates exemplary behavior, the judge may determine in his decision that no penalty or measure be imposed. A judge in the Netherlands may determine in his judgment that no penalty or measure be imposed, if he deems this advisable, based on the minor nature of the act, the perpetrator's character, and the circumstances at the time and subsequent to the act.⁶ Article 9a of the Dutch Criminal Code reads in Dutch and English:

"Indien de rechter dit raadzaam acht in verband met de geringe ernst van het feit, de persoonlijkheid van de dader 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."

"The judge may determine in the judgement that no punishment or measure shall be imposed, where he deems this advisable, by reason of the lack of gravity of the offense, the character of the offender, or the circumstances attendant upon the commission of the offense or thereafter".⁷

⁵Malaysian Federation Law regarding the Power of Pardon in Case 42, taken on 17 July 2016 at 02.00 WIB.

⁶Andi Zainal Abidin and Andi Hamzah, Introduction to Indonesian Criminal Law, (Jakarta: Yarsif Watampone, 2010), pp. 170-171.

⁷Translation Team, The American Series of Foreign Penal codes (30 Netherlands), (Colorado: Fred B Rothman & Co, 1997). p. 38.

With this provision in the current Dutch Criminal Code system, judges can apply it without imposing any punishment based on the severity of the crime, the perpetrator's personal character, and the circumstances at the time or after the crime was committed. According to Nico Keijzer, Dutch courts will record and explain every case in which the defendant has been found guilty but not sentenced by the court. If the court refuses to grant a pardon as stipulated in Article 9a of the Dutch Criminal Code, the Dutch court must still explain the reason. Therefore, Dutch courts, when granting a pardon, still provide reasons in every decision.⁸

"The court will write that it convicts the defendant of having committed the alleged crime but will not impose a sentence, there are no special prosudural rules for this. however, the general rule that court decisions must be reasoned implies that, if the defendant has especially requested art. 9 to be applied and the court refuse to do so, the court will have to explain why it refuse"

The Netherlands, the country that served as the benchmark for the introduction of criminal law to Indonesia, has reformed its legal system since 1983. The fundamental change to its legal system was the revision of the main provisions of criminal penalties, which were deemed outdated. The Netherlands, considered liberal, has now modified its legal system to suit the needs of the times and incorporated humanitarian guidelines into its general regulations, such as the *Rechterlijk Pardon*. Meanwhile, Indonesia, a former Dutch colony that has adopted the Dutch legal system in its entirety from the colonial era to the present, has not changed its system. The Indonesian criminal law system still uses the liberal legal system of the past Dutch colonial period, which contradicts the values of Pancasila and is completely inappropriate for national spirit and modern developments. The Netherlands has now discontinued this practice.

According to Nico Keizer, the background to the introduction of the *Rechterlijk Pardon* concept in the Netherlands is that many defendants have actually met the burden of proof, but imposing a sentence would conflict with the sense of justice. It can be argued that imposing a sentence would create a conflict between legal certainty and legal justice. Before 1983, if the above problems arose, the panel of judges would be "forced" to impose even very light sentences, a clearly wasteful use of punishment. According to Nico's explanation above, the Netherlands also felt that its former Criminal Code was too liberal and no longer suited to the needs of the times. Therefore, a reformulation was formulated to address this issue, while Indonesia still uses the old legacy of its colonial past.

The judge considers it appropriate to relate to the minor significance of the act, where the judge assesses the personality of the perpetrator or the circumstances at the time of the act, as well as after that he showed exemplary behavior, the judge can determine in his decision that no crime or action will be imposed. The Dutch Criminal Code includes guidelines that the judge in his authority to decide on forgiveness can assess the elements of the minor act, the personality of the perpetrator, the existence of exemplary behavior and the circumstances at the time of the incident and its subsequent application. From this explanation it is clear that Article 9A of the Dutch WvS, in essence, is now a "sentencing guideline" that is based on the idea of flexibility to avoid rigidity in its legal system. The formulation of the judge's forgiveness guidelines clearly functions as a safety valve (*veiligheidsklep*) or emergency door (*noodeur*) of the legal certainty system for crimes that are seen as disturbing the sense of justice in the Netherlands.⁹

⁸Barda Nawawi Arief, Explanation of lecture material for Mih Undip, Email Prof.Nico Keijzer 18-5-2008.

⁹Drafting Team for the Criminal Code Draft, Academic Draft of the Criminal Code Draft (February 25, 2015 edition). (Jakarta: BPHN). (National Legal Development Agency & Ministry of Law and Human Rights, 2015). P. 23.

2. Portuguese Criminal Law

In the Portuguese criminal law system, there are also regulations regarding judicial pardons, in the general guidelines of the Portuguese Penal Code which mentions the existence of pardons as “Non Imposing of a Penalty” or better known as “dispensa de pena”. The purpose of the dispensa de pena is not only to avoid the imposition of short prison sentences, but also to prevent punishment that is not justified or necessary from an interest perspective, both the interest of protecting society and for the rehabilitation of the perpetrator. Dispensa de pena is a dispensation of punishment for the defendant, but in the provisions of this dispensation in Portugal, the defendant is still found guilty even though he is not sentenced, the regulations are regulated in the general rules in the guidelines for sentencing Article 74 of the Portuguese Criminal Code, 2006 edition. Act.74- Dispensation of Penalty Portugal:

- a. When the crime is punishable with imprisonment not superior to 6 months, or only with a fine not superior to 120 days, the court may declare the defendant guilty without applying penalty if:
 - 1) *The unlawfulness of the act and the guilt of the agent are minute;*
 - 2) *The damages have been repaired;*
 - 3) *Reasons of prevention do not oppose to the dispensation of penalty.*
- b. If the judge has reasons to believe that the damage reparation is about to happen, he may adjourn (menunda) the decision for a reconsideration of the case within 1 year, on a day which will be immediately fixed.
- c. When another rule allows the dispensation of penalty on a facultative nature, this will only take place if the case fulfils the pre-requisites stated in the sub-headings of number one above. It can be seen and understood that the above article contains several elements, namely:
 - a. For offenses punishable by a maximum of 6 months’ imprisonment or a fine of no more than 120 daily fines.
 - b. The unlawfulness of the act and the agent’s guilt are minute.
 - c. The damages have been repaired; if compensation has not been paid, it is postponed for one year.
 - d. Reasons of prevention do not oppose the dispensation of penalty.

Based on the explanation above, there are conditions for a judge not to impose a penalty, such as minimal culpability, restitution, and the absence of factors such as rehabilitation or general prevention that prevent the resolution of the problem through a judicial pardon. This demonstrates that Portugal has achieved a balance compared to its parent system and, in line with the concept of integralist legal thought, the purpose of judicial pardons in Portugal is an alternative to short-term imprisonment, which is deemed unnecessary for prison savings and social justice. It also serves as a judicial correction to the rigid principle of legality in its application.¹⁰

3. French Criminal Law

During the French Revolution, the French state had an institution of pardon by the executive, but it was eventually abolished because it would conflict with the democratic belief that all regulations are based on the legislative body. The abolition of the institution of pardon/pardon/amnesty did not last long in France. The institution of pardon was revived, but with a different model by adapting to the concept of separation of powers. In this concept, the French institution of pardon is not only in the executive branch but also in the judicial institution, in accordance

¹⁰Enio Ramalho, William Theudo Gilman, The Portuguese Penal Code, (Lisbon: Verbo Juridico, 2006)., Art. 74 See also Op.cit. Comparison...Barda., p. 288.

with the principle of separation of powers. One famous classic example is the pardons et Chatiments with a jury system, where at that time the jury as part of the judicial institution has granted pardon to the defendant who was proven guilty, thus avoiding the defendant from being sentenced to death (guillotine). The jury has the power to connect the actions committed by the defendant with the factors underlying the act, so that in this case even though the evidence is sufficient, it can still be forgiven.¹¹

In French state policy formulation, judicial forgiveness is also referred to as “non-imposing a penalty.” This provision is contained in French Law No. 75-624, which was fundamentally amended on July 11, 1975, concerning criminal procedure. Act. 75-624 of the French Code of Criminal Procedure states that “the declaration of guilt without imposing a penalty and the postponement of sentencing” is the declaration of guilt without imposing a penalty. Referring to the French law above, paragraph 1 affirms that a judge may declare a guilty verdict without imposing a penalty. Furthermore, paragraph 2 also permits a judge to suspend or suspend sentencing for a defendant. The provisions in the French law above represent a formulation of judicial forgiveness in court, intended to reduce short prison sentences deemed ineffective. However, this provision is somewhat odd because the provision on forgiveness is only included in the French criminal procedure law, or the French Criminal Procedure Code, rather than in the Criminal Code or its parent system.

The provision of forgiveness should be included in the general rules such as in the Criminal Code as a guideline in carrying out criminal punishment, because if the provision of forgiveness is included in the criminal procedure but does not enter the forgiveness guidelines in the general rules then there will be disharmony or irregularity in the legal system which will result in unclearness in court decisions. Carrying out the application of forgiveness in court should be done by looking at the guidelines in the main system for carrying out criminal procedures, provisions such as the lightness of the act, the attitude of the perpetrator and so on to be the basis for carrying out the criminal forgiveness are the guidelines for punishment contained in the main system, because if there are no guidelines then there is no benchmark for what kind of actions can be forgiven in French criminal procedure law, even though there is a jury system.

4. Greek Criminal Law

In Greek criminal law, there is a concept of judicial forgiveness known as non-imposing of a penalty. This forgiveness rule is found in the sentencing guidelines in the general rules of the Greek Penal Code. The non-imposing of a penalty provision allows judges in their decisions to not impose any sanctions on the defendant. The provisions of Greek criminal law, as stipulated in Law 1419/1984, have included provisions in the Greek Penal Code stating that the court may not impose any sanctions according to Article 302 paragraph 2 and Article 314 paragraph 2 of the Greek Penal Code. The substance of these two articles states that if the victim of loss of life or injury due to negligence is the offender's next of kin, and if the offender should not be punished due to the psychological trauma they suffered as a result of the offense.

The Greek Penal Code provisions above state that there is a value of forgiveness that upholds family relationships. The formulation of the Greek Criminal Code seems to explain that the drafters of the law want family to be a priority so that if there is social damage in family relationships, the court for matters concerning family conflicts is obliged to unite family harmony so that it can be restored. Then in the second provision there is forgiveness that is more oriented to the nature of the person or perpetrator of the crime by considering the psychology of the convicted perpetrator. This prioritizes the future of the perpetrator who may suffer mentally due to the cause of the action he committed. Greek court judges in certain cases

¹¹Gruel, *Pardons et Chatiments: Les Jures Francais Face aux Violences Criminelles* (translated into English). (Paris: Nathan, 1994 (translated)) p. 35.

can refrain from sentencing by making a policy in viewing the case to not impose a sentence if, in the judge's opinion, the perpetrator has suffered deeply as a result of his actions beyond the criminal sentence he will receive. According to the author, the consideration to not impose a sentence in this provision is very noble and humane considering that many criminal incidents that occur are not the pure will of the perpetrator.

It can be formulated that in the formulation of the Greek Penal Code, in certain cases the court can refrain from imposing a sentence if the offense committed by the defendant is very light, then the judge can consider the absence of the perpetrator's evil character, and the imposition of a sentence is seen as not being useful for the purpose of preventing and repeating the perpetrator of the crime (Special deterrence). Thus, the Greek penal code also has a system of guidelines that are oriented towards people and are more Integralistic in handling minor crimes.

5. Greenlandic Criminal Code

The Greenland Penal Code, or criminal code, consists of two parts: the first, entitled "On crimes," and the second, entitled "The Legal Consequences of Crimes," which deals with the legal consequences of crimes. Part I of the Criminal Code almost entirely defines crimes, while Part II contains provisions regarding sanctions. Part I and Part II of the Greenland Criminal Code are included in the General Provisions section. In Greenland's criminal law, the idea of a judge's pardon is referred to as abstaining from imposing any sanction. This provision is intended as the court's authority to distance the defendant from any punishment, meaning it does not impose any sanctions. This provision is contained in the general rules in the sentencing guidelines of Part II of the Criminal Code in Article 86 paragraph 1 (Greenland Criminal Code), which states:¹²

"The judge can choose any of or more of the sanctions or may also not at all or may abstain from imposing any sanction. (Hakim dapat memilih salah satu atau lebih dari sanksi-sanksi tersebut atau dapat juga untuk sama sekali tidak menjatuhkan pidana apapun)".

The Greenlandic Criminal Code (Greenland) uses the term "punishment" or "treatment" to refer to a criminal offense. Article 86, paragraph 1, clearly states that judges in Greenland have considerable flexibility in their decision-making. They can impose sanctions or not impose any punishment at all. The Greenlandic Criminal Code (Greenland) presents an interesting criminal context, as the formulation of the offense in Part I does not specify the type or duration of the sanction. Therefore, the Greenlandic criminal courts, characterized by indefinite sanctions, suggest that Greenlandic courts have a highly flexible principle in determining sanctions deemed necessary or appropriate to their judgment.

When choosing whether to impose sanctions or not impose sanctions at all, the court, in this case the Greenlandic judge, must refer to its sentencing guidelines, specifically Article 86, paragraph 2, which states that they must also consider "the nature of the crime, the public interest, the perpetrator's personality, and factors necessary to deter the perpetrator from committing further crimes."¹³ Referring to the Article, although the court has the authority to impose an unspecified sanction, the Greenlandic court also has the authority not to impose a penalty (pardon) in its Criminal Code by considering the provisions in the second paragraph as a guideline in deciding the penalty or granting pardon to the defendant. The provisions of Article 86 paragraph 2 provide the idea that the sentencing guidelines in Greenland pay close attention to the material elements of the defendant so that it is not easy to sentence the defendant. This is also in line with the concept of flexible Integralistic justice and a new

¹²Barda Nawawi Arief, Comparison..., Op.cit. p. 157.

¹³Barda Nawawi Arief, Ibid, p.163.

paradigm in viewing the orientation of punishment which is not only on actions and mistakes but also looks at the perpetrator/person who committed the crime.

6. Somali Criminal Law

In Somali criminal law, there is also the concept of judicial forgiveness, known as “Judicial Pardon,” a provision contained in the sentencing guidelines in the Somali Penal Code. The Judicial Pardon provision in the Somali Penal Code allows judges to waive any sentence against the defendant in their decisions. Judicial Pardon has been incorporated into the Somali Penal Code, which states that the court may waive the sentence under Article 147, paragraphs 1 and 2 of the Somali Penal Code. The substance of paragraph 1 of this article states that:¹⁴

“Section.1 : “Where, in the case of an offence committed by a person under 18 or over 70 years of age, the applicable punishment is imprisonment for a maximum term of not more than three years or a pecuniary punishment, or both, the judge may abstain from entering conviction and grant judicial pardon where, having regard to the circumstances referred do in article 110, he considers the offender will not commit any further offence. A judicial pardon shall extinguish the crime”

In the general rules of Article 174 paragraph 1 of the Somali Criminal Code as in the provisions above, it has stated the sentencing guidelines for not imposing sentences by looking at age factors, a prison term of no more than 3 years, those sentenced to a fine only, and those deemed not to commit further mistakes. In this provision if the above elements are met, the judge can grant pardon as in paragraph 1 of Article 174 which states Judicial Pardon. This provision of the Somali Criminal Code has a uniqueness that is not found in “pardon systems of other countries that forgiveness in Somalia seems limited (Limited), this is stated in Article 174 paragraph 2 of the Somali Criminal Code which states a judicial pardon may not be granted more than once which means that the judge’s forgiveness here can only be done once.

For the author by limiting the provisions regarding Judge’s Pardon which can only be used once, the court, especially the judge, has given legal affirmation to the defendant who has been given the opportunity to be pardoned/forgiven that he may not repeat his actions (Recidivist), this is also a preventive effort that confirms that the law maker wants the perpetrator to repent and not repeat his actions and this also clearly contains rational legal certainty that forgiveness cannot be given easily repeatedly to the perpetrator, if it does not change the perpetrator’s crime. The content of this forgiveness limit is very important to be included in the formulation because considering that currently there are many mafias who may be able to play the role of “judge’s forgiveness” for personal gain, this cannot be avoided therefore if you want to formulate “the idea of judge’s forgiveness” this provision must be given clear limits in a formulation so that forgiveness is not that easy to give/do, in the sense that only cases that are truly considered important for justice and the public interest can be forgiven by the judge.

7. Criminal Code of Uzbekistan

Furthermore, Uzbek criminal law also incorporates the concept of judicial forgiveness, known as “Discharge of Penalty.” This forgiveness provision is found in the sentencing guidelines of the Uzbek Penal Code. The “Discharge of Penalty” provision in the Uzbek Penal Code allows judges to impose no sanctions on defendants in their decisions. The provision for

¹⁴http://www.somalilandlaw.com/criminal_procedure_law.html retrieved on April 25, 2026, at 17.00 WIB

forgiveness guidelines is included in Article 70 of the Uzbek Penal Code. The substance of Article 70 is as follows:¹⁵

“A person who commits a crime may be discharged from punishment if, during the investigation or trial, it is recognized that due to changes in circumstances, or due to the person’s irreproachable conduct, bona fide labor, or study, has lost its socially dangerous nature.”

In the provisions of the article above, it can be formulated that the Uzbek court can release the perpetrator from criminal punishment, but is limited according to the elements of the guidelines above. The sentencing guidelines are in Article 70 of the Criminal Code of Uzbekistan, which states that it must also consider the actions that have been committed, the loss of social danger, the situation, the behavior of the defendant, and in terms of work and learning interests. Unlike the provisions of other Criminal Code guidelines, the forgiveness of the court in Uzbekistan sees elements of forgiveness in addition to social danger, also looking at work and learning interests. For the author, the advantages of the formulation of these guidelines are very important because they pay more attention to the humanitarian values for students who are studying and for workers who are limited by their rights and obligations in the event of committing mistakes that may not be desired to happen to them. Every country has guidelines in the formulation of its main criminal law system, each legal system contains various meanings, history and deep philosophy behind its formulation. Each country has its own unique strengths in formulating its sentencing guidelines. Therefore, in formulating its sentencing guidelines, Indonesia can consider the best legal systems of other countries worldwide. The adapted legal system must be compatible with the cultural similarities, characteristics, and traditions of each country, while also considering the impact if the system were implemented in Indonesia.

Table 4. Comparison of International Criminal Law Systems

No.	Country	Term for Judicial Pardon	General Guidelines/ Regulations	Substance	Pardon Guidelines
1	Netherlands	<i>Rechterlijk Pardon</i>	Article 9a of the Dutch Criminal Code.	The judge may consider it appropriate in relation to the minor nature of the act, the personality of the offender, the circumstances at the time the act was committed, and the offender’s exemplary conduct afterward, to decide in the judgment that no punishment or measure shall be imposed.	1) The minor nature of the criminal act committed. 2) Consideration of the offender’s personal character. 3) The existence of exemplary conduct. 4) Circumstances at the time the offense occurred and afterward.

¹⁵<http://www.unhcr.org/refworld/publisher,NATLEGBOD,,UZB,3ae6b59216,0.html>, downloaded on April 25, 2026, at 1:00 PM WIB.

2	Portugal	<i>Dispensa de pena</i>	Article 74 of the Portuguese Criminal Code.	The court may grant a penalty dispensation to the defendant by refraining from imposing punishment, although the defendant is still declared guilty. This mechanism aims to avoid short-term imprisonment and unnecessary punishment in the interest of prison efficiency, public protection, and offender rehabilitation.	1) Applicable to offenses punishable by a maximum imprisonment of 6 months or a fine not exceeding 120 daily fines. 2) The unlawful nature of the act and the offender's guilt are very minor. 3) The damage/loss has been repaired or compensated. 4) There are no rehabilitation or prevention factors preventing resolution through this penalty dispensation.
3	France	<i>Pardons et Châtiments</i>	Law No. 75-624 of the French Code of Criminal Procedure.	Judges may declare a defendant guilty without imposing punishment. Judges are also permitted to postpone or suspend sentencing against the defendant.	The jury considers the relationship between the defendant's actions and the underlying factors that motivated the act, so that even though the evidence is sufficient, the act may still be forgiven.

4	Greece	<i>Non-Imposing of a Penalty</i>	Article 302 paragraph (2) and Article 314 paragraph (2) of the Greek Criminal Code.	In certain cases, the court may exercise discretion by refraining from imposing punishment if sentencing the defendant is considered unbeneficial.	1) When the offense committed is considered very minor. 2) By considering the malicious character of the offender. 3) Punishment is considered unbeneficial for prevention and deterrence of recidivism. 4) When the victim of death or injury caused by negligence is a close family member of the offender. 5) When the offender should not be punished due to psychological trauma suffered because of the offense.
5	Greenland	<i>Abstain of Any Sanction</i>	Article 86 paragraph (1) of the Greenland Criminal Code.	Judges, based on their conviction, may flexibly choose one or more sanctions or may entirely refrain from imposing any punishment.	1) Considering the nature of the offender's crime. 2) Considering the offender's personality. 3) Considering the public interest that must be protected. 4) Considering factors necessary to prevent the offender from reoffending.

6	Somalia	<i>Judicial Pardon</i>	Article 147 paragraphs (1) and (2) of the Somali Criminal Code.	Judges may exercise discretion to grant judicial pardon by considering specific circumstances. A judicial pardon is intended to resolve the crime, and such pardon may only be granted once.	1) Applicable to offenders under 18 years old or above 70 years old. 2) Applicable where the maximum punishment does not exceed 3 years. 3) Applicable to offenses punishable only by fines, or by both fines and imprisonment not exceeding 3 years. 4) Applicable to offenders considered unlikely to commit further crimes.
7	Uzbekistan	<i>Discharge of Penalty</i>	Article 70 of the Criminal Code of Uzbekistan.	A person who commits a crime may be discharged from punishment by the court if deemed appropriate.	1) Considering changes in the situation and circumstances of the case. 2) The act committed is considered not disgraceful in nature. 3) In matters related to employment or educational interests. 4) In cases considered to have lost their socially dangerous nature.

Source: Data processed by researchers, 2025

The table above shows comparisons of criminal laws across countries. It is concluded that judicial pardons have been incorporated into the general rules of each country's master criminal code. The concept of pardon, formulated within the master system, makes their penal systems more humane, flexible, and balanced, taking into account guidelines deemed necessary in their formulation. Furthermore, by formulating guidelines within the master system, all procedural

and implementing rules, as well as other regulations related to penalization, can be connected and effectively implemented in each country.

D. CONCLUSION

Based on the discussion above, it can be concluded that the concept of judicial pardon is essentially intended to provide judges with flexibility in realizing substantive justice. Although each country has different regulations and mechanisms, judicial pardon is generally used as a means to avoid overly repressive punishment, especially for perpetrators with minor offenses, the presence of certain mitigating circumstances, or when the purpose of punishment has been achieved without the need for imposing a sentence. The application of this concept demonstrates the development of modern criminal law that prioritizes the values of humanity and proportionality. Therefore, the existence of judicial pardon can be seen as a form of criminal law reform that seeks to balance legal certainty, justice, and expediency in the criminal justice system.

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