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Rkuhp: Judicial Pardon Concept In Corruption Crime

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ABSTRACT

In Judicial Pardon/Rechterlijk Pardon is a new concept of punishment in Indonesia which means that a criminal perpetrator is proven guilty, but not sentenced by a judge in a court of law. The draft of the criminal law draft in 2016 resulted in a renewal of the decision referred to as Rechterlijk Pardon (Judge Pardon) against criminal offenders who are legally proven guilty of committing offenses / criminal acts, for example in the case of corruption. This research seeks to reveal the concept of judicial pardon in criminal law reform in Indonesia and to find out that is it possible for judicial pardon to be used in instances of corruption. This research is a normative legal research by applying two approaches, namely statute approach and conceptual approach. In conclusion, with the criminal law reform, the RKUHP will include and regulate Special Criminal Acts into a single unit. Especially the crime of corruption contained in a separate chapter that the author associates with the principle of judicial pardon. With the Supreme Court decision of the Republic of Indonesia number 42K/Kr/1965 dated January 8, 1966, the punishment system in corruption crimes can be sentenced to criminal decisions with leniency and loose decisions. So that Judicial Pardon cannot be applied in corruption crimes.

ABSTRAK

Judicial Pardon/Rechterlijk Pardon merupakan konsep pemidanaan baru di Indonesia yang berarti seorang pelaku tindak pidana terbukti bersalah, akan tetapi tidak dijatuhkan hukuman pidana oleh Hakim dalam suatu peradilan. Rancangan Kitab Undang-Undang Hukum Pidana konsep tahun 2016 menghasilkan sebuah pembaharuan putusan yang disebut sebagai *Rechterlijk Pardon* (pemaafan hakim) terhadap pelaku tindak pidana yang secara sah terbukti bersalah telah melakukan delik / tindak pidana contohnya pada kasus tindak pidana korupsi. Penelitian ini bertujuan untuk mengungkap konsep *judicial pardon* dalam pembaharuan hukum pidana di Indonesia dan apakah prinsip *judicial pardon* dapat diterapkan dalam kasus tindak pidana korupsi?. Penelitian ini merupakan penelitian hukum normatif dengan menerapkan dua pendekatan yakni pendekatan undang-undang (*statue approach*) dan pendekatan konseptual (*conceptual approach*). Kesimpulan yang didapat adalah dengan adanya pembaharuan hukum pidana yaitu RKUHP akan memasukkan dan mengatur tindak pidana khusus menjadi satu kesatuan. Khususnya tindak pidana korupsi yang termuat dalam bab tersendiri yang penulis kaitkan dengan prinsip judicial pardon. Dengan Putusan MA Republik Indonesia Nomor 42K/Kr/1965 tanggal 8 Januari 1966, sistem pemidanaan dalam tindak pidana korupsi dapat dijatuhi putusan pidana dengan keringanan dan putusan lepas. Sehingga *Judicial Pardon* tidak dapat diterapkan dalam tindak pidana korupsi.

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I. INTRODUCTION

Criminal law reform is fundamentally a means of reorienting and reforming criminal legislation in accordance with the evolution of Indonesian society's socio-political and socio-cultural values (Ariyanti, 2019). The Criminal Code no longer reflects the dynamics of Indonesia's national criminal law's evolution, which is the primary justification for the criminal law reform (Hutabarat et al., 2022). The evolution of criminal law outside of the Criminal Code is also a driving force behind the renewal of criminal law, both special criminal law and those included in the Criminal Code. This situation has resulted in the existence of many criminal law systems inside the criminal law system of Indonesia. In certain instances, there has also been a recurrence of criminal law norms between those criminal law norms contained in the Criminal Code and those criminal law norms contained in legislation that are not a part of the Criminal Code.

The purpose of carrying out criminal law reform is to bring future Indonesian criminal law into conformity with the existing conditions of socio-political and socio-cultural Indonesian society. This will allow future Indonesian criminal law to be more effective. One initiative to reform criminal law is accomplished by comparing laws with those of other nations in order to obtain regulations and policies that can lower the number of criminal activities and achieve a sense of justice in society. As a result of the comparison of positive criminal law in Indonesia with the criminal law of other countries, it is possible to use it as a guideline in reforming criminal law in Indonesia, which is then incorporated in the Draft of Criminal Code (hereinafter referred to as RKUHP).

With their authority, the Panel of Judges can acquit the perpetrator of a criminal act if the element of action against the law is not met, pass a verdict on the perpetrator of a criminal act if the act is not a crime, and sentence a perpetrator of a crime to imprisonment if all elements of criminal liability are legally proven, so that it can be intended as a crime. However, the RKUHP 2016 introduces a new provision with the hope of allowing a panel of judges to issue a decision that is deemed judicial pardon (forgiving judges) against offenders who have been legally and thoroughly proven guilty of performing criminal activities, such as in cases of corruption.

In practice, the application of Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 leaves a number of problems, namely: first, there are still a number of acts that should be considered acts of corruption but are not covered by Law no. 31 of 1999 on the Eradication of Corruption Crimes Jo. Law no. 20 of 2001. This has led in the employment of expansive interpretations and even acrobatic inclinations. Second, there are underlying issues such as the regulation of offenses that is controlled twice, as in Article 5 paragraph (2) and Article 11 letter c of the Corruption Crime Act, both of which govern civil servants who receive bribes. In addition, Law No. 20 of 2001 has inconsistent provisions addressing criminal threats, particularly Article 6 paragraph (2) and Article 12 letter c. Thirdly, there is an error in the way that the burden of proof is stated in Article 12 letter b of Law no. 20 of 2001. The language that should have been used to establish the burden of proof was inverted as a result of this error, yet in reality it became a standard evidential practice (Priambudi, 2016).

In conjunction with Law No. 20, 2001, the provisions of Law No. 31 of 1999 on the Eradication of Corruption Crimes are no longer in compliance with UNCAC (United Nations Convention Against Corruption). If Indonesia continues to apply the old corruption eradication statute, UNCAC-addressed issues between nations cannot be implemented in Indonesia. In accordance with the Law of the Republic of Indonesia Number 7 of 2006 Concerning the Ratification of the United Nations Convention Against Corruption in 2003, the Indonesian government is obligated to align its national legal products with UNCAC now that it has ratified UNCAC. This is a reform of anti-corruption criminal law.

Corruption offenses that have been forwarded to the RKUHP have been updated to reflect changes in the law governing such offenses as well as global advancements in the fight against corruption and best practices in law enforcement. The definition of a corrupt act as defined in Articles 2 and 3 of the Corruption Law is not present in the RKUHP. The two articles are expressions that may be understood broadly and are parts of Indonesia's history of fighting corruption. The two articles were designed to address issues that frequently arise in Indonesia and are most likely not present in other nations. In contrast to other nations, corruption in Indonesia does not necessarily mean bribes. A crime of corruption is defined under the RKUHP as one that "endangers the state's finances."

In the Criminal Procedure Code (KUHAP) there are (three) kinds of decisions issued by the panel of judges, namely sentencing decisions or criminal convictions (veroordeling tot enigerlei sanctie), acquittal (vrijspraak) and acquittal decisions (ontslag van rechtsvervolging) (Hamzah, 2018). Sentencing is imposed by the judge if he has obtained the belief that the defendant committed the act that was charged and he considers that the act and the defendant can be punished as referred to in Article 193 paragraph (1) of the Criminal Procedure Code (Effendi, 2014). The verdict is acquitted of all lawsuits (onslag van rechtsvervolging) in accordance with Article 191 of the Criminal Procedure Code paragraph (2), namely, "If the court finds that the conduct committed against the defendant is established, but the act does not constitute a criminal act, then the defendant is dismissed from all lawsuits." Therefore, the evidence used to convict the defendant in the acquittal is legally and convincingly sufficient to do so, but the act that was charged against the defendant is not guilty, is not illegal, or there is an explanation for forgiveness (feit d'excuse). The acquittal is in accordance with Article 191 paragraph (1) of the Criminal Procedure Code, which states: "If the court determines that the defendant's guilt for the actions he is accused of has not been legally and conclusively shown, the defendant is acquitted." As a result, an acquittal is at least predicated on the failure to satisfy the legal standard of proof in a negative sense and/or the legal standard of the minimal amount of evidence required.

The RKUHP criminal law reform regulates judicial pardon (forgiving judges) or Non Imposing of Penalty, which refers to a defendant who has been legally and clearly proven guilty, but in this instance the panel of judges does not impose a penalty. This grants the panel of judges the authority to pardon a defendant who is convicted of committing a crime, taking into account the nature of the act, the perpetrator's personal circumstances or the conditions at the time the crime was done, as well as aspects of justice and humanity. The RKUHP also regulates the provision of forgiveness which will be included in the decision that will be handed down by the panel of judges and it must still be said that the defendant is proven to have committed the crime he was accused of.

Several cases in Indonesia have a connection to the application of the judicial pardon law, including: An old woman named Mrs. Minah stole 3 chocolate seeds from PT. Rumpun Sari Antan; in this case, the panel of judges sentenced Mrs. Minah to 1 month and 15 days in prison with 3 months months of probation; and the cases of Kholil and Suyanto, who stole watermelons in Kediri, for which the panel of judges sentenced them to 15 days in prison with with a month of probation (Huda, 2013).

A judicial pardon was formerly utilized in only the Netherlands until a revision of the Wetbook van Strafrecht Nederland included it in Article 9 letter a, which reads as follows:

> "*de rechter kan in het vonni bepalen dat geen straf of maatregel zal worden opgelegd, wanneer hij dit raadzaam acht vanwege het gebrek aan zwaarte van de overtreding, het karakter van de dader of de omstandigheden die gepaard gaan met het plegen van de overtreding of daarna*" (the judge in his decision, if he believes that the verdict is modest and the nature of the perpetrator or the circumstances at the time the conduct was committed, decides that no crime or action will be enforced if he provides an example).

In the RKUHP there are several criteria used to place criminal provisions, including: Immoral acts that are independent of past transgressions that make reference to the rules of administrative law in the law; The enactment of a criminal act is not associated with the enactment of administrative procedures and processes; The threat of a sentence of more than 1 year criminal deprivation of independence.

The existence of a judicial pardon in the Indonesian legal system is anticipated to be a step toward creating a sense of justice in the law and its application, specifically law justice and moral justice, so that they may coexist. The advent of judicial pardon will necessitate a more in-depth research and raise various problems regarding how this idea will be implemented, if all criminal acts must be subject to this concept, and whether it will be consistent with the culture of Indonesian society.

On the basis of this summary, this research highlight a questions, namely, "What is the concept of judicial pardon in criminal law reform in Indonesia?" Is it possible for judicial pardon to be used in instances of corruption?

II. RESEARCH METHODS

In order to properly evaluate and elaborate on a subject of study, the research methodology plays a crucial role in the development of a scientific work. In order for a study to provide scientific results, a good procedure is necessary. Author comprehension is essential for determining the appropriate research methodology. The strategy employed seeks to produce scientific research outcomes so that the study's analysis can be accounted for (Marzuki, 2015). Hence, this research uses a statutory approach and a conceptual approach.

The statutory approach is an approach that is carried out by analyzing all laws and regulations related to the legal issues being handled (Marzuki, 2015). Law approach will open up opportunities for researchers to study whether there are consequences and conformity between one law and another in order to obtain appropriate arguments. Meanwhile, the conceptual approach is the approach of several views and doctrines that develop in the science of law (Marzuki, 2015). Hence, it is necessary to seek out concepts, ideas, and principles of law that can be applied to the existing legal problems.

III. RESULTS AND DISCUSSION

1. The concept of judicial pardon in Indonesian Criminal Law Reform

A system that aims to prevent and address crime has been formed in society as the criminal justice system. The process of preventing and overcoming crime will reveal a number of impediments and challenges, beginning with the ineffectiveness of the sanctions that will be administered and progressing all the way to the culture of the apparatus that is responsible for law enforcement.

As a result of the creation of the Draft Criminal Code, which will be referred to as the RKUHP from this point forward, Indonesia's preexisting criminal legislation has been subjected to a comprehensive reform. The intention of the reform is to assist victims and their families without sacrificing the rights of the suspect or defendant; as a result, this goal is reflected in the formation of the RKUHP as a judicial pardon idea. According to Article 183 of the Criminal Procedure Code, judicial pardon can be granted to a defendant who has been found guilty and legally and conclusively proven responsible for a crime; however, the panel of judges believes that the defendant's acts do not require a punishment sentence or that the panel of judges should apologize to the defendant for his crime. From a philosophical standpoint, the idea of a pardon granted by a judge is not necessarily the foundation of the Judicial Pardon scheme. Jan Remmelink is of the opinion that the provisions regarding judicial pardon were originally stated explicitly in the Dutch Criminal Procedure Code which could be interpreted as a statement of guilt, without imposing a

criminal sentence, in the form of pardon (forgiveness) by/on the authority of a Cantonese Judge (Low Level Judge). In the judge's pardon, it can be considered the small meaning of the crime committed and the circumstances surrounding its implementation, so that the Cantonese Judge can decide not to impose a crime in his verdict (decision) (Syahputra, 2016).

Historically, judicial pardon has been going on for some time. As in the Code of Hammurabi which contains a balance between the rigidity of legality and justice that arises from society. In the past, the use of pardons was carried out arbitrarily without a clear provision and was even used to strengthen the authority of the empire. For example, Roman soldiers who had an important role would be granted immunity and pardon from judges by the rulers (Royal Authority) (Saputro, 2016). The era of the Han Emperor of China also used the institution of forgiveness to allow any behavior that violated the rules to strengthen his reign. Forgiveness institutions are also used in common law countries, such as in the case of King of Charles II who granted amnesty/pardon to Danby as Prime Minister. So that historically the incident has given the view that the judicial pardon is only an intervention from the executive agency to regulate the courts and only benefits some parties, so that justice does not materialize. Judicial Pardon is not only known in the French and Dutch Revolutions. Portugal also adheres to a non-imposing of a penalty criminal justice or the so-called dispensa de pen which is regulated in Article 74 of 2006 in Criminal Code, namely:

a. Offense which is punishable by imprisonment for a maximum of 6 months or with a fine of not more than 120 daily fines;
b. The nature of the illegal acts that were carried out by a relatively limited number of criminals;
c. The damage/loss has been repaired, if the compensation has not been implemented it will be postponed for 1 year; and
d. Preventive reasons do not preclude this penal dispensation. (Arief, 2013)

The provision for the Judicial Pardon arrangement can be found in Article 54 paragraph (2) of the RKUHP, which clearly says:

> "It is possible to consider not imposing a crime or an action while taking justice and humanity into account by considering the act's lightness by the perpetrator's personal circumstances, or the conditions at the time the crime was committed and what happened later."

In order to ensure that the article contains certain conditions or limitations regarding the use of judicial pardons carried out by the Panel of Judges. The following penalties may not be imposed on a defendant who has been found guilty of committing a crime:

a. The lightness of the deed;
   According to Barda Nawawi Arief, the notion of "lightness of action" is not concretely specified so as not to limit the jurisdiction of courts to issue pardon decisions just for certain offenses. The RKUHP divides the weight of the offense into three categories. First and foremost, the crime is relatively minor, with only a little fine (Category I or II) threatened. Crimes falling under this category have a maximum sentence of one (1) year in prison, a minor fine, or are considered first-time offenders that would not warrant a prison sentence of more than one (1) year. In addition to alternative punishments for categories III and IV, major offenses, which are essentially offenses, are punishable by imprisonment for a period ranging from more than one (1) year to seven (7) years. Third, delik is extremely serious, namely delik that carries a category V fine and a sentence of more than 7 (seven) years in jail or life in prison for a single offense.
b. The lightness personal circumstances of the maker and/or;
   The lightness of the personal circumstances of the perpetrators has been illustrated in Article 56 paragraph (1) of the RKUHP which states that in sentencing, it is obligatory to consider the guilt of the perpetrator of the crime, the motive and purpose of committing the crime, the inner attitude of the maker of the crime, whether the crime was planned or not,

how to commit the criminal acts, attitudes and actions of the perpetrators after committing the crime, curriculum vitae, social and economic conditions of the perpetrators of the crime, the effect of the crime on the future of the perpetrator of the crime and also the victim or the victim's family, forgiveness from the victim and/or his family and/or the views of the community against the crime committed.

c. The lightness of the situation at the time the act was carried out or what happened later;
   The RKUHP does not specifically explain the circumstances at the time the act was committed or what happened later. However, it should be noted that the meaning of "the situation at the time of the act" is not biased by the provisions in a state of emergency (*noodtostand*).
d. Pay attention and consider the aspects of justice and humanity.
   This limitation on judicial pardon is the most crucial of the earlier provisions regarding Judge forgiveness. In deciding a criminal case, the judge must adhere to the principles of justice and human dignity.

In the criminal court system, judicial pardons serve as the "final line of defense." When the court has reviewed the preliminary and the case has not been screened at the prosecution stage, judicial pardon may be granted. That's why pardon is sometimes dubbed a "safety valve" (veiligheidsklep") or "emergency exit" (nooddeur) (Syahputra, 2016).

Basically, the Criminal Code does not regulate judicial pardon. Because the criminal system of the Criminal Code is a rigid substantive criminal system and is guided by three criminal law issues, namely (strafbare feiten), error (schuld), and criminal (straf/punishment/poerna). In other words, the Criminal Code does not explicitly formulate the purpose of punishment, so that the "goal" is outside the system. Therefore, punishment is considered as a last resort or absolute consequence that must exist. This gives rise to a framework of thinking that the Criminal Code is a rigid “certainty model”.

2. The Principle of Judicial Pardon in Corruption Crimes Cases

The crime of corruption is one of the offenses that is able to draw the attention of the Indonesian people since it is also committed by a number of high-ranking state officials who hold significant positions and are harmful to the State Finance or the State Economy. Therefore, this issue must be dealt with and remedied by creating a body to combat corruption. Corruption is no longer just a "regular" crime, but rather an "exceptional" one, because it breaches so many people's basic social and economic rights. As a result, different approaches are needed for either eradicating it or dealing with it (Djaja, 2010).

The term corruption crime has been used since the Central War Authority of Corruption Eradication Regulation No. : PRT/PEPERPU/013/1950 is enacted. Corruption has been regulated in the Criminal Code which is known from the existence of several criminal law rules in the Criminal Code which were adopted as corruption offenses. Although it does not specifically regulate corruption in it, several regulated acts of corruption have been followed and imitated by lawmakers to eradicate corruption to date. Thus far, the Criminal Code has been added, revised and even changed by several national laws, such as Law Number 1 of 1946, Law Number 20 of 1946 and Law Number 73 of 1958, including Law Number 31 of 2019 which has been updated with Law No. 20 of 2001 on the Eradication of Criminal Acts of Corruption. Corruption offenses contained in the Criminal Code include office offenses and offenses that are still related to office offenses.

In the legislation, there are two parts of corruption offenses. Specifically, offenses that are withdrawn absolutely from the Criminal Code and offenses that are withdrawn not absolutely from the Criminal Code. Corruption offenses that are absolutely withdrawn from the Criminal Code
It is an offense taken from the Criminal Code and adopted as a corruption offense so that the offense contained in the Criminal Code is no longer valid. Or in a sense, if the act committed by a person has fulfilled the formulation of the offense, he will be threatened with a corruption offense in

accordance with the law on eradicating corruption. So it is no longer following the provisions of the offense in the Criminal Code.

Table 1. Criminal Code reform

Law Number 31 of 1999 jo. Law No. 20 of 2001	Adopted from the Criminal Code
Article 5 paragraph (1) letter a	Article 209 paragraph (1) 1st
Article 5 paragraph (1) letter b	Article 209 paragraph (1) 2nd
Article 6 paragraph (1) letter a	Article 210 paragraph (1) 1st
Article 6 paragraph (1) letter b	Article 210 paragraph (1) 2nd
Article 7 paragraph (1) letter a	Article 387 paragraph (1)
Article 7 paragraph (1) letter b	Article 387 paragraph (2)
Article 7 paragraph (1) letter c	Article 388 paragraph (1)
Article 7 paragraph (1) letter d	Article 388 paragraph (2)
Article 8	Article 415
Article 9	Article 416
Article 10	Article 416
Article 11	Article 418
Article 12 letter a	Article 419 1st
Article 12 letter b	Article 419 2nd
Article 12 letter c	Article 420 paragraph (1) 1st
Article 12 letter d	Article 420 paragraph (1) 2nd
Article 12 letter e	Article 423
Article 12 letter f	Article 425 1st
Article 12 letter g	2nd Article 425
Article 12 letter h	Article 425 3rd
Article 12 letter i	Article 435

Corruption offenses that are withdrawn are not absolutely from the Criminal Code Is an offense taken from the Criminal Code which with certain conditions relating to the examination carried out in a corruption crime, is adopted as a corruption offense but in other circumstances it remains as stipulated in the offense in the Criminal Code. The provisions for offenses in the Criminal Code are still in effect and can also be threatened to perpetrators whose actions have fulfilled the elements. However, if the examination is related to a corruption offense, the offense as stipulated in the corruption eradication law will be applied. Corruption offenses that are not withdrawn absolutely from the Criminal Code include Article 220, Article 231, Article 421, Article 422, Article 421, Article 430 of the Criminal Code.

In the concept of criminal law reform, the RKUHP will codify several criminal acts that were previously regulated by special laws. One of the special crimes included in the RKUHP by the Government and the DPR is corruption. This will be contained in a special chapter, namely the Bridging chapter between the Criminal Code and sectoral laws. The draft in the National Criminal Code will only take 2 (two) or 3 (three) Articles in the Law related to special crimes, especially in the Law on Corruption. Such articles are for example Article 2 and Article 3 of the Corruption Law (Okpirianti, 2021). The inclusion of a separate chapter as a special crime is characterized as follows:

a) The impact of victimization is huge;
b) Often transnationally organized;
c) The arrangement of the criminal procedure has a special nature;
d) Often deviates from the general principles of material criminal law;
e) The existence of several special law enforcement supporting institutions with special powers;
f) Supported by International Conventions;
g) Is a "super mala perse" and the magnitude of "people condemnation"

Generally, the public believes that the most effective method for eradicating corruption is to punish the criminals severely. In an effort to improve criminal law, the formulation of RKUHP articles is regarded as ineffective. This is due to the fact that the application of minimum sanctions for criminal actions of corruption that harm state finances or the economy of the state is seen unjust. Articles 607, 608, 609, and 610 of Part Three of the RKUHP outline the criminal penalties for acts of corruption in the RKUHP.

In essence, judicial pardon regulations cannot be regulated using only the RKUHP, but also the RKUHAP. The main reason is because the RKUHP only contains material criminal law. If the judicial pardon arrangement is already contained in the RKUHP, it must be in line with the RKUHAP so that the article on judicial pardon is not considered "dead article". In other words, it cannot be practically implemented in courts in Indonesia. In Article 187 of the Criminal Procedure Code, there are 3 types of final decisions. Namely the sentencing decision, the decision to be free from all lawsuits and an acquittal. The sentencing decision as referred to in Article 193 paragraph (1) of the Criminal Procedure Code (Effendi, 2014). The decision is free from all lawsuits (ontslag van rechtsvervolging) in accordance with Article 191 of the Criminal Procedure Code paragraph (2) and acquittal in accordance with Article 191 paragraph (1) of the Criminal Procedure Code (Effendi, 2014).

The RKUHP Design Team adopted the concept of judicial pardon to prevent rigidity in the imposition of a criminal, the RKUHP has made signs to judges in imposing a crime, namely with the purpose of sentencing and sentencing guidelines. Thus, judicial pardon becomes one of the criminal systems. The addition of judicial pardon in the renewal of the criminal system in the RKUHP, is something new as an institution of forgiveness placed in judicial power. In fact, in the current Criminal Code, there is an institution of forgiveness placed in the executive power (amnesty). In order to avoid the rigidity of the principle of legality regarding the criminalization of qualifications for criminal acts as stated in Article 54 paragraph (2) of the RKUHP, the Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2012 has regulated the Adjustment of Limits for Minor Crimes and the amount of fines in the Criminal Code.

With some minor cases such as the theft of a bunch of shallots. the theft of a pair of flip-flops and others have harmed the sense of justice in society. Basically the case has been regulated and qualified as a minor crime which is also associated with a probationary sentence. However, the difficulties experienced are, the amount of fines that appear explicitly in the Criminal Code (Article 364 of the Criminal Code). Judges can give acquittal, acquittal and judges can also impose a prison sentence on a defendant. Ifassociated with the principle of judicial pardon, the question arises, Can this judicial pardon principle be applied in a criminal act of corruption where the defendant has returned state financial losses or the state's economy so that it can cause the perpetrator to lose the unlawful nature of the perpetrator? Or even whether the criminal act of corruption cannot be given a decision forgiving judges / judicial pardon?

Referring to the Supreme Court Decision which shows that the Supreme Court follows a negative view of unlawfulness. This is related to the case of Machroes Effendi as stated in the Supreme Court Decision of the Republic of Indonesia No. 42K/Kr/1965 dated January 8, 1966 (Emong Sapardjaja, 2002). There are 3 (three) conditions that cause the loss of the unlawful nature of a crime, namely the defendant does not benefit, the state is not harmed and the community is served (Purwoleksono, 2019). By acknowledging the existence of a material unlawful nature view, according to Prof. Dr. Didik Endro Purwoleksono, SH, MH "If all the results of corruption are returned by the suspect or defendant, then it can be used as a factor that erases the nature of being against the criminal law of the Corruption Crime" (Purwoleksono, 2019). So that the suspect or defendant does not need to be convicted, with the following arguments:

a. State elements are not harmed
   Return of all proceeds of crime and profits obtained from the results of corruption by the perpetrators of corruption, then in essence there is no state loss. As the view of the Supreme Court above, here the element of the state is not harmed.
b. The element of no advantage to the defendant's side
   In the opinion of Prof. Dr. Didik Endro Purwoleksono, SH, MH, returning the corruption proceeds may cause the defendant to be disadvantaged, provided that:

a) the suspect or defendant returns all the proceeds of corruption, plus the suspect or defendant returns all bank interest, deposits of profits made could from the proceeds of criminal acts of corruption;
b) Wealth of the parties who benefit from the actions or actions or activities or movements of the suspect or defendant. This means that the suspect or defendant returns all profits obtained by other parties, whether family or corporation, because of the actions or actions or activities or movements of the suspect or defendant; It should be noted here that under the Corruption Act, the suspect or the defendant who benefits from corruption can be the suspect or the defendant himself, or another person or a corporation; and in other words, if the suspect or defendant returns only part of the corruption proceeds, which means that the suspect or defendant still benefits, or the suspect or defendant benefits another party or corporation, then this is only a mitigating factor and not an element of eliminating the unlawful nature of the perpetrator. Suspects or defendants can still be processed and sentenced.

c. Community served
With the return of all the corruption proceeds along with interest, the profits obtained from corruption will become state funds. Automatic, can be used for development costs. In other words, by returning the corruption proceeds, the state gets fresh funds to finance development, which in the end can be used by the community (Purwoleksono, 2019).

The return of all proceeds of corruption and the profits obtained by the defendant at the time of the examination before a court session, which means that the unlawful nature of corruption is lost, so that what was indicted is indeed proven, but because it is against the law of corruption that it is not a crime corruption. Hence, the court's decision is free from all lawsuits (ontslag van rechtsvervolging) and sentencing decisions (*veroordeling*), not an acquittal (*vrijspraak*) nor judicial pardon. This is because the criminal act of corruption is not included in the Minor Crime which is the "life" in the judicial pardon principle. As for minor crimes, we can find Article 205 paragraph (1) of the Criminal Procedure Code which reads:

"What is examined according to the procedure for examining minor crimes are cases which are punishable by imprisonment or imprisonment for a maximum of three months and or a fine of a maximum of seven thousand five hundred rupiahs and light insults, except as provided for in paragraph 2 of this part.

With the return of all the proceeds of the criminal act of corruption along with the profits obtained by the defendant at the time of the examination before a court session, the defendant can be given an acquittal, but when the proceeds of the criminal act of corruption are only partially returned or one third or in other words are not fully returned, including the profits earned obtained, the defendant can be sentenced to a lighter sentence. Regarding the issue of severity or duration is the authority of the panel of judges, except if the panel of judges imposes a sentence that exceeds the maximum limit determined by law as determined by the Decision of the Supreme Court of the Republic of Indonesia Number 1953 K/Pid/1988 dated January 23, 1993.

The exclusion of corruption as a minor crime is one of the reasons that the principle of judicial pardon cannot be applied to criminal acts of corruption. Because the crime of corruption is not included in the provisions of Article 54 (2) of the RKUHP regarding the limitation of judges in making judicial pardon decisions. So that corruption is not known as a judicial pardon decision.

IV. CONCLUSION

In the reform of Indonesian criminal law, the concept of judicial pardon or judge forgiveness exists. Since the Roman Empire, the Chinese Emperor, the French and Dutch Revolutions, judicial

pardons have been granted. A judicial pardon may be granted in the event that a person is found guilty and his guilt is legally and conclusively demonstrated in line with Article 183 of the Criminal Procedure Code, but the judge is of the opinion that the defendant acts do not need to be punished and chooses to forgive the defendant. In Article 54 paragraph (2) of the RKUHP, the rules governing judicial pardons are laid down. Specifically, the lightness of the conduct, the personal state of the perpetrator, or the circumstances at the time the crime was done and what occurred subsequently can be used as a reason for consideration not to impose a crime when justice and humanity are considered.

Due to the existence of a criminal law reform, also referred as the RKUHP, special crimes will be placed in a single category and regulated within that category. In particular, corruption is discussed in a separate chapter that the author links to the concept of judicial pardon. With the Supreme Court of the Republic of Indonesia's Decision No. 42K/Kr/1965, dated January 8, 1966, the criminal system for acts of corruption can be sentenced with leniency and acquittals. When the proceeds of corruption are not returned in full, including the profits made, lenient criminal judgements may be handed down. The defendant may be granted an acquittal if he or she fails to satisfy the elements of an unlawful act, namely that the state is injured, the public interest is not served, and the defendant or other individuals or businesses benefit. Consequently, if it does not fit the criteria of being against criminal law, it is not considered corruption and crime. In this light, judicial pardon is not an option for corruption offenses.

In order to harmonize the two, the author suggests that if the judicial pardon is a decision made by the judge on behalf of the offender, it must be incorporated into the Draft Criminal Procedure Code. Therefore, both theory and practice must be equally represented in the criminal justice system.

References

Arief, B. N. (2013). Kapita Selekta Hukum Pidana (Cetakan ke 3). *Ketiga, Bandung: PT. Citra Aditya Bakti*.

Ariyanti, V. (2019). Pembaharuan Hukum Pidana di Indonesia yang Berkeadilan Gender dalam Ranah Kebijakan Formulasi, Aplikasi, dan Eksekusi. *Halu Oleo Law Review*, *3*(2), 178–195.

Djaja, E. (2010). *Meredesain pengadilan tindak pidana korupsi: implikasi Putusan Mahkamah Konstitusi nomor 012-016-019/PPU-IV/2006*.

Effendi, T. (2014). *Dasar-Dasar Hukum Acara Pidana (Perkembangan dan Pembaharuannya di Indonesia)*. Setara Press.

Emong Sapardjaja, K. (2002). Sifat Ajaran Melawan Hukum-Materiil Dalam Hukum Pidana Indonesia Studi Kasus. *Alumni, Bandung*.

Hamzah, A. (2018). *Hukum Acara Pidana Indonesia Edisi kedua*. Sinar Grafika.

Huda, C. (2013). *Tiada pidana tanpa kesalahan menjadi kepada tiada pertanggungjawaban pidana tanpa kesalahan, kencana*. Jakarta.

Hutabarat, D. T. H., Salam, A., Zuwandana, A., Al Azmi, C., Wijaya, C. R., Darnita, Tania, I., Lubis, L. K. A., Sitorus, M. A. P., Adawiyah, R., & Sinaga, R. (2022). Analysis of The Implementation of Law in every level of Society in Indonesia. *Policy, Law, Notary and Regulatory Issues (POLRI)*, *1*(2), 9–14. https://doi.org/https://doi.org/10.55047/polri.v1i2.80

Marzuki, P. M. (2015). *Penelitian Hukum Edisi Revisi*. PT Kharisma Putra Utama.

Okpirianti, R. (2021). Korupsi Sebagai Tindak Pidana Khusus Dalam Rancangan Undang-Undang KUHP. *Varia Hukum*, *31*(40), 94–112.

Priambudi. (2016). *Pembaharuan Undang - Undang Pemberantasan Tindak Pidana Korupsi*. Kejaksaan Negeri Jakarta

Barat. https://www.kejari-jakbar.go.id/index.php/component/k2/item/239-pembaharuan-undang-undang-pemberantasan-tindak-pidana-korupsi

Purwoleksono, D. E. (2019). *Hukum Pidana Untaian Pemikiran*. Airlangga University Press.

Saputro, A. A. (2016). Konsepsi Rechterlijk Pardon Atau Pemaafan Hakim Dalam Rancangan KUHP. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, *28*(1), 61–76.

Syahputra, A. (2016). Tinjauan Atas Non-Imposing of a Penalty/Rechterlijk Pardon/dispensa de pena dalam R KUHP serta Harmonisasinya dengan R KUHAP. *Institute for Criminal Justice Reform, Jakarta*.