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Judicial Pardon: Renewal of Criminal Law Towards Minor Criminal Offense

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Abstract

Judicial pardon is a concept of punishment in which a defendant is proven guilty but is not sentenced by judges. It is not explicitly regulated in the Criminal Code in Indonesia. Therefore, it is important to examine the concept, specifically in the event of the renewal of criminal law toward minor offenses. This research aimed to determine the concept of judicial pardon in reforming the criminal system for minor offenses and its ideal setting in the future. This normative legal research was conducted with a statutory, a concept, a comparative, and a case approach. The results indicated that the concept of judicial pardon in the renewal of the criminal system could be an alternative judges' decision on minor offenses. Philosophically, it is under the values of the 1945 Constitution of Indonesia, and sociologically, it is a response to many public criticisms of law enforcement against a minor criminal offense that is considered unfair. Juridically, the rationale or basis for this concept can be found in the Law on Judicial Power, where judges are obliged to dig, follow, and understand the legal values and the sense of justice in society. The ideal judicial pardon arrangement in Indonesian criminal law should be considered with several provisions regarding crime severity limitation and further provisions after being granted a pardon.

I. Introduction

Judicial pardon is a concept of punishment in which a defendant is proven guilty but is not sentenced by judges. In Indonesia, it is not explicitly regulated in the Criminal Code. However, the concept regarding forgiveness and the authority of judges that

cannot impose criminal sanctions against someone proven guilty can be found in the rationale in Law No. 48 of 2009 concerning Judicial Power. According to Article 1 paragraph (3) of the 1945 Constitution of Indonesia (*hereinafter* the 1945 Constitution), "*The State of Indonesia shall be a state based on the rule of law*". Therefore, every aspect of society, nationality, and government, including law enforcement against criminal cases, should be based on law. The provision of Article 1 paragraph (3) of the 1945 Constitution is under the principle of legality (Singadimedja and Rosidi, 2021).

The principle of legality in Article 1 paragraph (1) of the Criminal Code states that "no action should be punished unless under a prior statutory penal provision". The rigidity of the principle of legality in question is when an act has fulfilled the elements in the formulation of the relevant article and is legally and convincingly proven as a criminal act. Judges impose a penalty according to the law, even though other factors are no less important to note (Pristiwati, 2014). Against this decision, the law created has not been able to accommodate the sense of justice demanded by the community. This incident is enough to erode the dignity of criminal law and eliminate public trust because criminal sanctions should apply as a last resort (*ultimum remidium*).

Law enforcement against criminal cases in Indonesia tends to focus only on imposing sanctions for perpetrators, and implementing criminal law may lack justice (Kusumo, 2017). The orientation of imposition when a criminal act occurs is still focused on the perpetrator's fault by only looking at the elements of the act that are fulfilled under the provisions of the law and the sanctions accepted by the perpetrator (Prasetyo, 2016). The settlement of a criminal act appears only to carry out the provisions contained in the law and exclude other factors, such as the impact of the perpetrator's actions on the community and the legal needs in society (Prasetyo, 2016). Criminal law has a purpose for the protection and welfare of the community, and enforcement should be carried out.

The problem of criminal law enforcement, specifically regarding the minor offense still being imprisoned, should be another alternative decision. According to the Criminal Code in Indonesia, each provision explicitly classified some minor criminal offense. The other definition is a crime punishable by imprisonment or confinement for a maximum of 3 (three) months and or a fine of a maximum of Rp. 7,500,- (seven thousand five hundred rupiah) (Mulyani, 2017). Along with changes in currency values, the provisions regarding limits on the number of losses in the event of minor criminal offense and fines in the Criminal Code are further adjusted in Supreme Court Regulation Number 2 of 2012 concerning The Adjustment of Limits for Minor criminal offense and The Number of Fines in the Criminal Code.

One of the cases that are still remembered and have drawn many criticism from the public is the case of Grandma Mina, who was sentenced to prison for 1 (one) month and 15 (fifteen) days with a probationary period of 3 (three) months (Saputra, 2019). The amount of loss estimated to be only Rp. 30,000,- (thirty thousand rupiah) is not the reason this case was terminated. Grandma Mina was still being tried in court until she

received judges' decision (Saputra, 2019). Discussion of judges' sentencing decision in this instance is not violating any laws. It was under the legislation, but by the community, the decision was deemed excessive and did not reflect justice. However, the current criminal law concept still applies the legality principle, which tends to be rigid.

Considering the phenomenon in this case, imprisonment is still considered one of the sanctions that can deter perpetrators. In contrast to this point of view, the stigma that puts prisons as a 'school of crime' is still strongly born in mind. The effectiveness of imprisonment raises a dilemma and is even more doubtful, specifically when the punishment is imposed on minor criminal offenses, leading to short-term imprisonment, which has several disadvantages. One of them is the overcapacity of inmates in prisons which reaches 83% of the total 512 in Indonesia (Direktorat Jenderal Pemasyarakatan, 2020). This overcapacity often causes conflicts in prisons, hence, prisonization cannot be avoided (Pewarta and Manailing, 2020). An inmate may learn more serious crimes in prison and commit crimes again. Imprisonment certainly cannot make perpetrators better off as the goal is to make them a deterrent. On the contrary, perpetrators can become recidivists, and overcapacity in prisons also adds to the burden on state financial expenditures. This condition is certainly not expected in criminal law to prevent, re-socialize, rehabilitate, restore balance, and provide a sense of peace to the community (Mubarok, 2015).

Legal problems faced with unbalanced realities such as the above case can be quite acute in Indonesia's judiciary. Against this condition, judges, as the pinnacle of the judiciary, which incidentally cannot reject the case, should continue to adjudicate under the applicable provisions. In carrying out (Sugiyarto, 2016) their duties, judges should dig, follow, and understand the sense of justice in society. However, in some cases, judges cannot explore the sense of justice. They often feel guilty and cry against their decisions because the law should still run. Judges cannot make legal exceptions to free criminals proven guilty for reasons outside the law. This is because they are blocked by the principles of legality and legal certainty. Based on these conditions, a breakthrough is needed for cases of minor criminal offenses because there is still a legal vacuum to handle such cases.

The emergence of *judicial pardon* in criminal law reform is a response to the many criticisms of enforcement related to these minor criminal offenses. Judicial pardon or also known as *rechterkijk pardon* is a formulation in the Draft Criminal Code (hereinafter referred to as the RKUHP), which gives judges the authority not to impose a crime even though the perpetrator is legally and convincingly proven to have committed an act (Yosuki and Tawang, 2018).

Considering the provision of *judicial pardon* is still being formulated under the RKUHP, it reflects the *vacuum of judicial pardon norms*. The regulation concerning *judicial pardon* should be regulated explicitly, given that Indonesia is known as a state based on law. Therefore, examining the most suitable concept regarding judicial pardon

implemented in Indonesia is important. The customary law developed in Indonesia has acknowledged the concept of forgiveness for a long time. However, it has not been accommodated in the Criminal and Procedure Code, considering that only 3 (three) types of decisions are imposed in criminal cases.

Judicial pardon has been known and implemented by several countries in Continental Europe, which have the same legal system as Indonesia, such as Netherlands and Portugal. In addition, there is also the State of Somalia, which has recognized and regulated the judicial pardon in its civil law (Aryaputra, 2013). Since the regulation regarding judicial pardon cannot be found explicitly in the main provisions of criminal law (in this case, the Criminal Code), it is important to conduct a comparative research on the judicial pardon arrangement with the existing formulation to develop the Indonesian RKUHP. The development of criminal law regulates judicial pardon as an alternative for judges to make progressive decisions without imposing criminal sanctions according to the legislation in force in the country concerned.

Based on the above-mentioned factors, several legal issues are related to judicial pardon. The first issue would be the concept related to the renewal of criminal law towards minor offenses. Since there is no explicit law regulating judicial pardon towards minor criminal offenses, it is important to examine the ideal arrangement for the future. Therefore, this research will discuss the concept of judicial pardon in the renewal of criminal law towards minor offenses, as well as how the ideal arrangement should be regulated.

Previously, similar research entitled "Prospektif Penerapan *Judicial pardon* (Pemaafan Hakim) Dalam Putusan Pengadilan (Studi Konsep RKUHP 2018)" by Destria (Faculty of Law, University of Lampung) in 2019 examined the prospects for judicial pardon in court decisions. In addition, there is also a research entitled "Konsep *Judicial Pardon* (Pemaafan Hakim) dalam Masyarakat Adat di Indonesia" by Mufatikhatul Farikhah in 2018, which focuses on discussing judicial pardon in customary law communities. Dealing with the explanation above, it can be seen that there are similarities in terms of topics, namely they both discuss the concept, but the topics are different. This research examines the judicial pardon for minor criminal offenses and compares research with other countries. It aims to determine the concept of judicial pardon as an update in the criminal system for a minor offense and to analyze the ideal arrangement by using comparisons with other countries.

II. Research Methods

This normative legal research method focused on empty norms with 4 (four) types of approaches, namely the concept, the statutory, the case approach, and the comparative. The sources of legal materials used are primary legal materials, namely the 1945 Constitution of Indonesia, the Criminal Code, and the Indonesian Criminal Code. Criminal Procedure (KUHAP), Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as

the Law on Judicial Power), Supreme Court Regulation Number 2 of 2012 concerning Adjustment of Limits for Minor criminal offense, Memorandum of Understanding with the Chief Justice of the Supreme Court of Indonesia, Minister of Law and Human Rights of Indonesia, the Attorney General of Indonesia, and the Head of the State Police of Indonesia concerning the adjustment Implementation of the Limits of Minor criminal offense and the Number of Fines, Quick Examination Procedures, and the Application of Restorative Justice Number: 131/KMA/SKB/X /2012, Number: M.HH – 07/HM.03.02 the Year 2012, Number: KEP- 06/E/EJP/10/2012, Number: B/39/X/2012, and Court decisions have permanent legal force related to the minor criminal offense. This research also uses secondary legal materials derived from books, previous research, and the September 2019 edition of the Draft Criminal Code (hereinafter referred to as RKUHP 2019). The data were collected using the literature research method and analyzed using descriptive methods.

III. Result and Discussion

A. Judicial Pardon Concept in Renewal of Criminal Law Towards Minor Criminal Offense

The reality of criminal law cannot still accommodate the values of justice in society and human values. Society is increasingly critical of responding to law enforcement in Indonesia, specifically when it violates justice and involves proletariats. Law enforcement against minor criminal offenses is still very much dominated by the imposition of criminal sanctions for perpetrators. However, the penalties imposed are often considered unfair by society.

Minor criminal offenses are not in the Criminal Code but can be found in other regulations. The Criminal Code only mentions qualifications as a minor criminal offense in the formulation of an article by explicitly stating the 'light' element. However, the definition of a crime categorized as a minor can be found in the Memorandum of Understanding between the Supreme Court of Indonesia, the Minister of Law and Human Rights, the Attorney General of Indonesia, and the State Police of Indonesia which states "Minor criminal offense are criminal acts regulated in Article 364, 373, 379, 384, 407, and Article 482 of the Criminal Code which is punishable by imprisonment for a maximum of 3 (months) or 10,000 (ten thousand) times the fine". The definition of a minor criminal offense can also be found in the Regulation of the Head of the National Police Security Development Agency of Indonesia Number 13 the year 2009 concerning the Handling of Minor criminal offense (Tipiring), in Article 1 number 1 which formulates that: "minor criminal offense, hereinafter referred to as tipiring, are cases involving imprisonment for a maximum of 3 (three) months and a fine of seven thousand five hundred rupiahs and light insults except in traffic violations".

Legal case settlement of minor criminal offenses with small losses often raises public concern about the legal system in Indonesia. Several cases used as parameters to measure the legal injustice felt by the community are the case of Grandma Mina, which in the Purwekerto District Court Decision Number 247/Pid.B/2009/PN.Pwt was sentenced to 1 (one) month and 15 (five) days in prison with a probationary period of 3 (three) months on indictment of stealing 3 (three) cocoa pods that have been returned. In addition, there is also a case of the theft of 50 grams of pepper by Rawi (66 years old), which by the Sinjai District Court was found guilty and sentenced to imprisonment for 2 (two) months and 15 (fifteen) days (Purba, 2017). These cases are parts of the condition when law enforcement officers prioritize the formal legal system and override substantial truths to injure society's sense of justice.

In the settlement of a crime, the criminal system in positive Indonesian law only allows judges to impose 3 (three) types of decisions the form of sentencing, acquittals, and final verdict. A legal vacuum against alternative judges' decisions that can accommodate problems proven guilty but should not have been sentenced to a crime makes judges unable to do much. Even though it has been acknowledged that they are free to examine, prove and decide cases based on their conscience, their freedom is still limited to avoid arbitrariness (Abdurrachman, Hamzani, Majestya, and Aravik, 2021). Therefore, the sentence is still imposed in certain conditions when a proven crime occurs. Judges believe not to give criminal sanctions to the perpetrator or a situation that touches humanity and justice. Most of these decisions lead to short-term imprisonment, even though the sentence was found to be against justice and humanity.

The philosophical basis for forming the rule of law other than to regulate and bring order to society is to provide a sense of justice for the community (Sholehudin, 2011). According to the philosophical basis, the customary law which prevails in the community plays a huge role. Any cases in the society will be settled amicably during the implementation. Therefore, applying this concept of judicial pardon in Indonesia is important. By implementing the concept of equity, judicial pardon should implement the balance between public or community, individual, and the protection of interest of the perpetrator (Farikhah, 2016).

The enforcement of the law to a concrete event, particularly in criminal law, is not enough to match the formulation of the elements of a criminal act contained in the law to assess behavior. Principally, the community's sense of justice is an important principle to be considered (Syamsu and SH, 2018). In the current material criminal law, as encapsulated in Article 1 of the Criminal Code, which encompasses the principle of legality as well as the principle of breaching ceremonial law, an act is said to be against the law when it is formulated as an

offense/criminal act in the law. Consequently, when the elements of the alleged crime have preliminary evidence that has met the elements of being against the law, the perpetrator should be held accountable. In formal law involving the police, prosecutors, and courts, dodging is impossible to prevent collision with legal certainty.

Reform of the criminal system, particularly material criminal law in dealing with cases of a minor criminal offense, is a very urgent need to realize justice in society. Under the concept of reform that prioritizes a monodualistic balance, the presence of judicial pardon in the criminal law reformation formulated in the 2019 RKUHP can be seen as a new alternative to realize the justice expected by the community. The concept of judicial pardon in the 2019 RKUHP is to grant judges the authority not to impose a crime even though the perpetrator is legally and convincingly proven guilty. However, by considering several factors, such as the lightness of the act, the perpetrator's condition, the circumstances at the time of the crime, and what happened afterwards, including justice and humanity, the perpetrator can be declared guilty but not convicted.

The concept of judicial pardon is also a form of criminal individualization stipulated in the 2019 RKUHP. This concerns the flexibility of judges in choosing and determining sanctions (actions/criminals) under the individual/perpetrator of the crime. The idea contains several characteristics, including personal or individual criminal liability, punishment can only be given to the guilty person. Besides, the punishment should be adjusted to the characteristics and conditions of the perpetrator, meaning there is room for judges to select criminal sanctions. Judicial pardon, closely related to monodualistic balance and individualization, is also based on the aspect of the purpose of the punishment, which refers to the *daad-dader strafrecht* model. This includes a balance of interest model that concerns various interests, such as the state's interests, individuals, perpetrators, and victims. The purpose of the sentencing is stated in Article 51 of the 2019 RKUHP, which formulates: "Criminalization aims to:

1. Preventing criminal acts by enforcing legal norms for the protection of the community,
2. Socializing the convicts by conducting coaching and mentoring to become good and useful people,
3. Resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of security and peace in society, and
4. Building a sense of regret and freeing the guilt of the convict."

Furthermore, apart from the purpose of sentencing, a judicial pardon is also based on the guidelines formulated in the 2019 RKUHP, namely in Articles 53 and 54, which state the following:

Article 53

"(1) In adjudicating a criminal case, judges are obliged to uphold the law and justice.

(2) Judges are obliged to prioritize justice when upholding the law as referred to in paragraph (1); there is a conflict between legal certainty and justice."

Article 54

"(1) In sentencing, it is obligatory to consider:

a. the form of guilt of the perpetrator of the crime;
b. the motive and purpose of committing the crime;
c. the inner attitude of the perpetrator of the crime;
d. the crime is committed with a planned or unplanned;
e. way to commit a Crime;
f. the attitude and actions of the perpetrator after committing the crime;
g. life history, social condition, and economic condition of the perpetrator of the crime;
h. the effect of the crime on the future of the perpetrators;
i. the effect of the crime on the victim or the victim's family;
j. forgiveness from the victim and his family; and
k. values of law and justice that live in society."

"(2) The lightness of the act, the personal condition of the perpetrator, or the circumstances at the time the crime was committed and foreseen event can be used as a basis for consideration not to impose a crime or an action considering the aspects of justice and humanity."

With the objectives and guidelines for punishment, the orientation of a criminal case will not only rely on actions that meet the elements of the law but also gives freedom to judges to assess the perpetrators as well as provide forgiveness. The provisions regarding the purpose of sentencing and the guidelines in the 2019 RKUHP, specifically in Article 54 paragraph (2), confirm that future judges will have legal standing to forgive people who commit criminal acts under specified conditions. Judicial pardon is expected to realize a sense of justice, which relies on the sense of public justice (Farikhah, 2021).

This judicial pardon concept is flexible in criminal law to avoid the rigidity of the system, and it is applied as a correction to the legality principle's existence. Moreover, in the 2019 RKUHP, the principle of legality has expanded to formal and material legality that considers the values in society. The concept of judicial pardon can be an alternative in resolving cases of minor criminal offenses that have received many criticism from the public.

The concept's existence as an update in the criminal system for minor offenses can be analyzed with a philosophical, sociological, and juridical review. Philosophically, based on the values of Pancasila and the Preamble to the Constitution of the 1945 Constitution of Indonesia, a judicial pardon is under the values of the Indonesian. It is under the value of wisdom in the fourth precept when analyzed with the value of Pancasila. This is because forgiveness requires the discretion of judges to assess. Sociologically, the concept responds to many public criticisms of law enforcement against minor criminal offenses considered unfair. Cases involving minor criminal infractions have not been settled with forgiveness, and most of them have resulted in temporary incarceration. This is undeniable because there is still a legal vacuum related to this judicial pardon. Therefore, judges do not have a strong legal basis for acquitting the proven guilty accused.

Juridically, the rationale or basis for the existence of judicial pardon can be found in the Law on Judicial Power, specifically in Article 5, which states that judges are obliged to dig, follow, and understand the legal values and the sense of justice in society. On this basis, judges can make legal breakthroughs, not impose criminal charges. However, this will conflict with the principles of legality and legal certainty. The existence of judicial pardon in criminal law is important to consider.

B. Ideal Judicial Pardon Arrangements for the Future

Preparing the 2019 RKUHP is an effort to reform/reconstruct the entire substantive criminal law system contained in the KUHP, inherited from the Dutch East Indies era through a criminal law policy (Fatoni, 2016). The forming of the 2019 RKUHP is adjusted to the values and identity of the Indonesians. It is necessary to conduct a comparative review with countries that have applied for a judicial pardon in their criminal law to determine how Indonesia's ideal formulation will apply. This comparison shows that arrangements in other countries have advantages and disadvantages points as references to refine the formulations in the 2019 RKUHP. The first factor to be considered is the formulation of the judicial pardon in the 2019 RKUHP, which is contained in Chapter III on Criminal, Criminal and Action, Part One Goals and Guidelines for Sentencing, Paragraph 2 Guidelines for Sentencing, Article 54 clause (2) with the following formulation:

"The lightness of the act, the personal condition of the perpetrator, or the circumstances at the time the crime was committed and foreseen event, can be used as a basis for consideration not to impose a crime considering the aspects of justice and humanity."

In the explanation section of Article 54, clause (2) is formulated as follows:

"The provision in this paragraph is known as the *rechterlijk* pardon principle, which authorizes judges to forgive someone guilty of a minor crime. This apology is included in judges' decision and should still be stated that the defendant has proven to have committed the crime".

"Based on such the formulation, it can be observed that the elements of the judicial pardon arrangement in the 2019 RKUHP are as follows:

1. lightness of action,
2. the personal circumstances of the perpetrator,
3. the situation at the time the crime was committed and foreseen event,
4. justice and humanity.

Regarding the element of lightness of the act, the 2019 RKUHP explicitly does not contain any limits or measures of the extent to which an act can be said to be light and deserves forgiveness. However, several things that can be used as reference parameters to classify the elements of lightness can be guided by Article 54 paragraph (1). Furthermore, the circumstances at the time the crime was committed and foreseen event, the limits that are taken into consideration by judges in assessing can be found in the provisions of Article 70 paragraph (1) of the 2019 RKUHP, which states as follows:

"(1) By considering provisions as referred to in Articles 52 and 54, imprisonment should not be imposed when the following conditions are found:
   a. the defendant is a child,
   b. the defendant is over 75 (seventy-five) years old,
   c. the defendant has committed a crime for the first time,
   d. the loss and suffering of the victim are not too great,
   e. the defendant has paid compensation to the victim,
   f. the defendant does not realize that the criminal act committed will cause a large loss,
   g. the crime occurred because of a very strong incitement from another person,
   h. the victim of a criminal act promotes or instigates the occurrence of the crime,
   i. the crime is the result of a situation that cannot be repeated,
   j. the personality and behavior of the accused ensure that he/she will not commit another crime,
   k. imprisonment will cause great suffering to the defendant or his/her family,

l. coaching outside the correctional institution is expected to be successful for the accused,

m. the imposition of a lighter sentence will not reduce the seriousness of the criminal act committed by the defendant,

n. the crime occurred in the family, and

o. criminal acts occur because of negligence."

The consideration of forgiving the perpetrator can be considered by the authority of judges. Also, judges have the final say when deciding matters of justice and humanity.

There are certain differences and similarities between several countries regarding Criminal Law. For instance, continental Europe and Asia can be found due to the history and culture of these regions, which are mainly caused by the developments in the international community and the integration processes of the world (Gui, 2018). The judicial pardon arrangement in several countries that have already been regulated are:

1. The Netherlands

The regulation regarding judicial pardon in the Dutch Criminal Code is regulated in CHAPTER II concerning Punishment, Article 9A (Part II Punishment, Section 9A), which states as follows (Farikhah, 2018):

> "When the court considers it appropriate, due to the small meaning of an act, the personality of the perpetrator, or the circumstances at the time and after the act was committed, judges determine in the decision that no crime or action will be imposed."

Referring to the formulation of the article, the elements of judicial pardon regulated in the Dutch Criminal Code can be analyzed, including (Farikhah 2018):

a. The small meaning of an action, this element is interpreted as an act carried out by the perpetrator in terms of the impact. In this element, the public's view plays a big role in the consequences of the crime.

b. Personal circumstances of the perpetrator, this element in the Dutch Criminal Code emphasizes the perpetrator's character.

c. The circumstances surrounding the offender at the time of the crime and in the aftermath are also considered when deciding to forgive the perpetrator.

2. Portugal

This arrangement can be found in Chapter IV Choices and Determination of Penalties, Section 1 General Rules, Article 74 Dispensation of Penalty (Chapter IV on Choice and Determination of Penalties, Part I General Rules, Article 74 Exclusion of Penalties), which formulates as follows:

"(a) The crime is punished for not more than 6 months, or only with a substitute fine not exceeding 120 days. The court may declare the defendant guilty without applying the sentence when:

i) Violation of the law and the perpetrator's fault is very small,

ii) The damage has been repaired,

iii) The prevention reasons do not conflict with the dispensation of punishment.

(b) Furthermore, when judges have reason to believe that repair of the damage is imminent, the decision to reconsider the case within 1 year may be delayed, counting from when the decision is made.

(c) This rule will only apply when the case meets the prerequisites as stated in paragraph (1)."

Referring to the provisions of the article, it can be analyzed that in the Portuguese Criminal Code, the considerations to be assessed by judges in providing forgiveness to perpetrators of criminal acts include the following elements:

a) The crime is punishable by no more than 6 months or a substitute fine of not more than 120 days.

b) Violations and mistakes of perpetrators are very small

c) The damage has been fixed.

d) The reason for the prevention does not conflict with the dispensation of punishment.

e) Judges believe that the damage will be repaired immediately.

3. Somali

The judicial pardon arrangement in Somalia can be found in the Somali Criminal Code, namely in Book I Offences in General, Part V Extinction of Offences and Punishment, Article 147 Judicial Pardon for persons under 18 or over 70 Years of Age (Book I on Violations, CHAPTER V on Abolition of Violations and Punishments, Article 147) which determines as follows:

"(a) In the case of a violation committed by perpetrators under 18 years of age or more than 70 years old, they are punishable by a criminal sentence of not more than 3 years, a monetary penalty, or both. Judges may avoid the crime and provide forgiveness. In connection with the weighting in Article 110, the perpetrator will not commit further criminal acts.

(b) Judges forgiveness cannot be given more than once."

Based on the comparison of the formulation of the judicial pardon in the Criminal Code of the Netherlands, Portugal, and Somalia, several interesting things need to be considered as a contribution to the ideal judicial pardon arrangement in the Indonesian RKUHP in the future, namely:

a. There are strict limits regarding minor criminal offenses that can be forgiven. In the sense that any crime or criminal act with the qualifications of a threat can be forgiven.
b. Strictly stated regarding the consideration of judges' confidence that the perpetrator will not commit another crime in the future.
c. There is a limit to forgiveness.

Considering the formulation of the judicial pardon in the 2019 RKUHP, which lacks limitations related to the element of lightness of the act, it can be formulated that the ideal judicial pardon arrangement should pay attention to:

1. Averment of the element of 'lightness of action'

The elucidation of Article 54 clause (2) states that "lightness of action" should refer to a minor crime. However, a provision regarding parameters or limits on the extent to which a crime can be classified as light has not been found. This is reflected in the results of comparisons with other countries, where a criminal act that can be forgiven is a crime with a threat as specified in the Criminal Code of each country. In terms of forgiving the perpetrator, judges have strict guidelines regarding the qualifications of criminal acts that can be forgiven.

Regarding the qualifications of the crime, when compared with the provisions in the current Criminal Code in which a crime can be categorized as light and threatened with imprisonment/imprisonment for a minimum of 3 months, the loss to the crime is not more than Rp. 2,500,000,- (two million five hundred thousand rupiah) and a fine of Rp. 7,500,- (seven thousand five hundred rupiahs), which is very different from what is formulated in the 2019 RKUHP. The current RKUHP stipulates that the lowest penalty of imprisonment/imprisonment is

6 (six) months, with losses not exceeding Rp. 1.000.000,- (one million rupiah). However, the formulation is only specific to criminal acts which are expressly stated to have a mild nature, such as minor theft, minor fraud, and light embezzlement.

Therefore, it is necessary to determine the specific actions to meet the element of "mildness of action", and interpreted solely as minor criminal offenses which are only explicitly stated to have a "mild" nature. To avoid subjectivity induced by the interests of multiple individuals, it is necessary to specify this rule more strongly, assure certainty to judges, and avoid ambiguity.

2. Further provisions after the pardon is given by judges

In this case, judges include additional instructions after the pardon on the number of times the same person may receive a pardon for committing a similar or different crime. It is necessary to consider this limitation because when it is not regulated, it becomes very vulnerable. This can result in the perpetrator being impunity, and it is not the expected condition.

The ideal judicial pardon arrangement can be implemented apart from looking at the formulation in the 2019 RKUHP. This is considering that judicial pardon is in the form of judges' decision. Therefore, in criminal cases, it is necessary to add 1 type of a decision, namely the pardon decision. The existence of judicial pardon in the RKUHP can be stated to be only a guideline that provides a basis for judges related to the qualifications of criminal acts forgiven with several considerations. For the implementation of judicial pardon to work, harmonization with the Criminal Procedure Code is needed in the future.

Furthermore, when the judicial pardon in the 2019 RKUHP has been determined and harmonized with the KUHAP, it needs to be further regulated in several special regulations. The RKUHP only gives general principles, and the specifics of how the judicial pardon is to be carried out should be laid forth in the derivative rules.

IV. Conclusion

In the 2019 RKUHP, a judicial pardon was defined as the power of judges to absolve a defendant of criminal responsibility even though the defendant has been found guilty beyond a reasonable doubt. This is conducted by considering the lightness of the act, the personal condition of the perpetrator, the circumstances at the time the crime was committed and the foreseen event, including justice and humanity. The judicial pardon concept is a novelty in the criminal system that is present as a form of a monodualistic

balance and the idea of individualization, realized by the formulation of the goals and guidelines for sentencing in the 2019 RKUHP. With the judicial pardon, which allows judges to forgive and consider the objectives and guidelines for punishment, law enforcement is expected to fulfil the justice the community expects. Regarding the ideal judicial pardon arrangement, it is still necessary to consider several things in the formulation, especially on the clear limitation of the lightness of an act and further provisions on the limits of forgiveness.

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