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Judicial Pardon Under Article 54(2) of the 2023 Criminal Code: A Proportionality Analysis of Sentencing in the Garut and Mempawah District Court Decisions

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Abstract: This study examines the legal construction of judicial pardon (pemaafan hakim) under Article 54(2) of Law Number 1 of 2023 on the Criminal Code (KUHP) and evaluates its application through the lens of sentencing proportionality. Employing a normative legal research methodology with prescriptive analysis, the study applies statutory, case, and conceptual approaches to two district court decisions: Putusan Pengadilan Negeri Garut No. 412/Pid.B/2025/PN Grt, involving intentional assault resulting in serious facial injury, and Putusan Pengadilan Negeri Mempawah No. 512/Pid.B/2025/PN Mpw, involving negligent homicide in a workplace setting. The findings show that judicial pardon is a corrective mechanism in sentencing that does not eliminate the criminal act or the offender's guilt, but removes the imposition of a sentence on the basis of particular considerations. Its application must be read together with Article 54 paragraph (1) of the 2023 Indonesian Criminal Code and limited by the principle of proportionality. The Garut District Court Decision tends to be proportional with certain reservations, as it involved reconciliation, forgiveness from the victim, and reimbursement of medical expenses, although the injury suffered by the victim was relatively serious. Conversely, the Mempawah District Court Decision tends to be less proportional because it involved the death of the victim, thereby requiring stronger judicial reasoning, particularly concerning victim protection, public interest, and the necessity of punishment. These findings affirm the importance of clear guidelines for the application of judicial pardon in order to prevent sentencing disparity in modern Indonesian criminal justice practice.

Keywords: Judicial Pardon, Article 54 Paragraph (2) of the Indonesian Criminal Code, Sentencing Proportionality, Court Decision.

INTRODUCTION

The enactment of Law Number 1 of 2023 on the Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) marks a fundamental transformation in Indonesia's sentencing philosophy. Unlike its colonial predecessor, the 2023 KUHP adopts a more evaluative,

individualistic, and humanistic approach to punishment. Sentencing is no longer conceived exclusively as a retributive response to proven criminal conduct; rather, it is repositioned as a legal instrument directed at societal protection, social balance restoration, offender rehabilitation, victim recovery, and recidivism prevention (Arief, 2010). This paradigm shift reflects a broader recognition that criminal punishment must serve multiple, coexisting purposes rather than a single punitive objective. The transformation is particularly evident in the sentencing guidelines enshrined in Article 54(1) of the 2023 KUHP, which requires judges to consider a comprehensive set of factors including the offender's culpability, motive, mental attitude, conduct following the offense, socioeconomic background, the impact of punishment on the offender's future, and the degree of harm suffered by the victim before imposing any sentence. Such a framework signals a clear legislative intention that sentencing decisions must be grounded in holistic, case-specific assessment rather than mechanical legal formalism.

Among the most significant innovations introduced by the 2023 KUHP is the institution of judicial pardon (*pemaafan hakim*), as established under Article 54(2). This provision authorizes a judge, upon considering the minor nature of the act, the personal circumstances of the offender, or the conditions prevailing at the time and following the commission of the offense, to refrain from imposing any criminal sanction or corrective measure, with due regard to principles of justice and humanity. It is essential to distinguish judicial pardon from other established defenses in criminal law: justification grounds (*alasan membenarkan*) negate the unlawfulness of an act, while excuse grounds (*alasan pemaafan*) eliminate the offender's culpability (Sholehuddin, 2007). Judicial pardon, by contrast, operates at the post-conviction stage the court finds the defendant guilty of the charged offense, yet determines that the imposition of punishment is no longer necessary to achieve the goals of sentencing. Accordingly, judicial pardon must be understood as a form of judicial discretion exercised at the stage of legal consequence determination, functioning as a corrective mechanism against disproportionate, unnecessary, or contextually unwarranted punishment (Sudarto, 1986).

The application of judicial pardon is inseparable from the principle of proportionality in sentencing. Proportionality demands that there be a reasonable relationship between the seriousness of the criminal offense and the severity of the penal response (Hirsch & Ashworth, 2005). Under the 2023 KUHP framework, this principle is not only relevant when a judge selects the type and duration of a sentence, but also when a judge considers whether punishment is warranted at all. Punishment, as a state-sanctioned infliction of suffering, must not be deployed excessively: penalties that are too lenient may disregard the victim's interests and the public's sense of justice, while penalties that are too severe risk degenerating into inhumane repression (Zulfa, 2009). In this sense, Article 54(2) of the 2023 KUHP functions as a normative gateway for the proportionality principle. A judge's decision not to impose punishment must be grounded in demonstrable reasoning showing that all sentencing objectives prevention, rehabilitation, victim restoration, and social protection can be fulfilled without a formal sanction. Judicial pardon, therefore, is not an act of unconstrained judicial clemency but a reasoned, proportional, and normatively accountable judicial decision (Muladi & Arief, 2009).

The tension between the normative aspirations of Article 54(2) and its practical application becomes apparent when examining two recent district court decisions. In *Putusan Pengadilan Negeri Garut No. 412/Pid.B/2025/PN Grt*, the defendant was convicted of intentional assault (*penganiayaan*) upon the victim, a single punch that resulted in a lacerated wound above the left eye, nasal bruising, and a fractured nasal bone requiring surgical reposition and four days of inpatient medical care. The Public Prosecutor sought a six-month custodial sentence. Despite convicting the defendant, the panel of judges applied Article 54(2) and declined to impose any punishment or corrective measure, citing the existence of a peace agreement between the parties, the victim's forgiveness, reimbursement of medical expenses

amounting to IDR 24,000,000, the defendant's status as a student with ongoing educational aspirations, first-time offender status, and parental commitment to the defendant's rehabilitation. In Putusan Pengadilan Negeri Mempawah No. 512/Pid.B/2025/PN Mpw, the defendant was convicted of negligent homicide (*kealpaan yang mengakibatkan matinya orang lain*) arising from a workplace incident in a palm oil plantation, wherein the victim was fatally crushed when the defendant inadvertently started a dump truck while the victim was positioned near the vehicle during a repair operation. The Public Prosecutor sought an eight-month sentence. The court similarly applied judicial pardon, finding that the defendant acted without malicious intent, in a context of mutual assistance, and that the victim's family had extended forgiveness and accepted a compensatory settlement provided by the employer company.

A comparative analysis of the two decisions reveals a fundamental analytical challenge in the application of judicial pardon. Both cases resulted in identical outcomes conviction without punishment despite significant differences in the nature of culpability and the gravity of consequences. The Garut case involved an intentional act but a non-fatal outcome, while the Mempawah case involved negligent conduct but resulted in death. This convergence of outcomes across structurally divergent cases raises a critical question regarding the interpretive standard for "minor offense" (*ringannya perbuatan*) under Article 54(2). In the Garut case, the central academic issue is whether an intentional act resulting in a fractured nasal bone and surgical intervention can properly be classified as minor, particularly when proportionality requires an assessment not only of the offender's circumstances but also of the objective harm sustained by the victim. In the Mempawah case, the question is whether negligence resulting in death can be pardoned solely on the basis of familial forgiveness, compensatory payment, and the cooperative context of the conduct, given that the death of a human being constitutes a harm of the highest order in criminal law. As Jareborg (2005) has cautioned, if victim forgiveness is treated as a dominant rather than merely relevant factor in sentencing, there is a risk that criminal accountability becomes negotiable through private settlement, undermining the public dimension of criminal justice.

The gap between the normative ideal (*das sollen*) and the practical reality (*das sein*) of judicial pardon under Article 54(2) of the 2023 KUHP constitutes the primary impetus for this study. As a normative proposition, Article 54(2) is intended to prevent excessive and contextually unwarranted punishment while creating space for proportionate, restorative resolution of criminal disputes. In practice, however, as evidenced by the Garut and Mempawah decisions, the application of this provision reveals persistent interpretive ambiguities regarding the threshold of "minor" conduct, the appropriate weight of victim forgiveness, the significance of compensatory reparation, and the limits of judicial pardon in cases involving serious bodily harm or loss of life. This study therefore aims to develop a principled legal construction of judicial pardon within Indonesia's national sentencing system one that integrates the sentencing guidelines of the 2023 KUHP, the multiple purposes of punishment, principles of restorative justice, and the proportionality standard in order to provide normatively grounded, analytically coherent criteria for determining when judicial pardon is appropriate and when its application would undermine penal accountability (Muladi & Arief, 2009; Zulfa, 2009). By focusing on the Garut and Mempawah decisions as empirical reference points, this study seeks to assess whether the application of Article 54(2) has achieved a principled equilibrium among the interests of the offender, the rights of the victim, the protection of society, and the demands of proportional justice.

METHOD

This study employs a normative legal research methodology, which positions law as a system of norms, principles, doctrines, and judicial decisions to be examined in order to resolve legal issues (Marzuki, 2017). Rather than investigating social behavior through empirical

observation, this study focuses on analyzing the legal construction of judicial pardon (*pemaafan hakim*) as codified in Article 54(2) of the 2023 Criminal Code (KUHP), and its application in two district court decisions: Putusan Pengadilan Negeri Garut No. 412/Pid.B/2025/PN Grt and Putusan Pengadilan Negeri Mempawah No. 512/Pid.B/2025/PN Mpw. This approach is appropriate given that the legal issues under examination concern criminal norms, sentencing principles, judicial reasoning, and the proportionality standard in punishment all of which are inherently normative in character. The study is prescriptive in nature. As explained by Ibrahim (2006), legal science is prescriptive because its function is not merely to describe existing legal rules but to provide argumentative assessments of what the law ought to require based on applicable norms, principles, and doctrines. Accordingly, this study does not confine itself to describing how the two courts applied judicial pardon; it also critically evaluates whether such application conforms to the normative requirements of Article 54(2) of the 2023 KUHP and the principle of proportionality in sentencing, ultimately offering prescriptive recommendations regarding the appropriate boundaries of judicial pardon in criminal adjudication.

This study employs three complementary research approaches. First, the statutory approach (*pendekatan perundang-undangan*) is used to examine Article 54(2) of the 2023 KUHP as the primary normative basis of judicial pardon, read in conjunction with Article 54(1) concerning general sentencing guidelines, so that judicial pardon is understood as an integrated component of the national sentencing system rather than an isolated provision (Ibrahim, 2006). Second, the case approach (*pendekatan kasus*) is applied through a systematic analysis of the legal facts, judicial reasoning, *ratio decidendi*, and dispositive orders in both court decisions under study, in order to reconstruct how judges constructed their legal justifications for applying judicial pardon to convicted defendants (Syamsudin, 2007). Third, the conceptual approach (*pendekatan konseptual*) is employed to clarify the key concepts underpinning the study including judicial pardon, the purposes of punishment, restorative justice, and sentencing proportionality given that Article 54(2) employs open-textured terms such as "minor offense," "personal circumstances of the offender," "justice," and "humanity" that require conceptual elaboration before normative analysis can proceed. The legal materials consist of three categories: primary sources, comprising Law No. 1 of 2023 on the Criminal Code and the two court decisions; secondary sources, including criminal law scholarship, academic journals, and expert commentary on judicial pardon, penal reform, and sentencing theory (Soekanto & Mamuji, 2015); and tertiary sources such as legal dictionaries and encyclopedias. Data collection was conducted through library research and document study, with each court decision analyzed with respect to its case identification, charges, prosecution's demand, trial facts, evidentiary record, judicial considerations, and disposition (Ishaq, 2017). Legal materials were analyzed through a qualitative-prescriptive method, proceeding in four stages: identifying the legal construction of Article 54(2); mapping the judicial reasoning in both decisions; testing that reasoning against proportionality parameters including the form of culpability, the gravity of consequences, the offender's personal circumstances, victim forgiveness, reconciliation agreements, reparative measures, and public interest considerations; and formulating prescriptive criteria for the permissible scope of judicial pardon. Conclusions were drawn using a deductive method, applying the general norms of Article 54(2), sentencing theory, and the proportionality principle to evaluate the specific circumstances of each case (Muhaimin, 2020).

RESULTS AND DISCUSSION

The Legal Construction of Judicial Pardon Under Article 54(2) of the 2023 Criminal Code Within Indonesia's National Sentencing System

The introduction of judicial pardon under Article 54(2) of the 2023 Criminal Code (KUHP) represents one of the most significant normative innovations in Indonesia's

contemporary penal reform. Its inclusion signals a fundamental departure from the mechanistic sentencing model that previously characterized Indonesian criminal adjudication, under which proof of a criminal offense virtually invariably entailed the imposition of punishment. Under the 2023 KUHP framework, judges are not merely authorized to determine the type and duration of a sentence; they are also empowered to assess whether the imposition of any sanction or corrective measure remains necessary given the particular circumstances of a case. This normative shift reflects a broader reorientation of sentencing philosophy from a predominantly repressive paradigm toward one that is individualized, corrective, proportional, and humanistic. Critically, judicial pardon does not operate at the stage of guilt determination; rather, it functions at the stage of legal consequence, where the court, having found the defendant guilty, determines that punishment is no longer warranted. Such a construction underscores the legislative recognition that criminal punishment, as a state-sanctioned form of suffering, must always be grounded in sufficient justification both from the perspective of the offender's culpability and the purposes of sentencing and that where those purposes can be achieved without formal punishment, the law should provide a corrective mechanism accordingly.

Judicial pardon is also grounded in a conception of criminal law that engages with the human dimension of criminal conduct in a substantive rather than merely formal way. Within this conception, the offender is not simply a norm-violator but a legal subject with a personal history, individual circumstances, social background, and rehabilitative potential. Equally, the victim is not merely an evidentiary instrument but a party who has suffered direct consequences from the criminal act and whose interests must be actively considered in sentencing (Armansyah, 2025). Fair sentencing, therefore, requires a careful weighing of the relational dynamics among the offense, the offender, the victim, and society. This understanding is further reinforced by communicative theories of punishment: as R.A. Duff has argued, punishment is not solely an infliction of suffering but also a form of normative communication among the state, the offender, the victim, and the community. Where such communicative purposes acknowledgment of wrongdoing, expression of remorse, reparation, and acceptance by the victim can be achieved without the imposition of a formal sanction, the normative objectives of punishment may be fulfilled through other means. In this framework, judicial pardon functions as a mechanism that enables criminal law to affirm guilt and culpability without necessarily compounding the offender's burden through additional punitive suffering.

Notwithstanding its humanistic orientation, judicial pardon must not be construed as an unlimited concession or a form of moral exculpation. The defendant remains convicted guilt is formally declared and therefore the decision not to impose punishment must be supported by cogent and transparent judicial reasoning. If a judge fails to articulate adequate grounds for applying Article 54(2), judicial pardon risks engendering legal uncertainty, sentencing disparity, or the perception that certain criminal offenses can be resolved through private settlement alone. The proper understanding of judicial pardon, in the authors' view, is as a middle path between legal certainty and substantive justice: legal certainty is preserved because the court is still required to make a definitive finding on guilt or innocence, while substantive justice is accommodated by relieving the judge of the obligation to impose punishment where the circumstances of the case render it unnecessary or disproportionate. This construction does not repudiate the legality principle; rather, it refines the operation of criminal law at the sentencing stage by introducing a reasoned, bounded mechanism for avoiding punishment that is excessive, redundant, or normatively unjustified.

A correct understanding of judicial pardon requires reading Article 54(2) in systematic conjunction with Article 54(1) of the 2023 KUHP, rather than as an independently operative provision. Article 54(1) establishes an extensive set of sentencing considerations that judges are obligated to address before imposing any sanction, including the form of the offender's

culpability, the motive and purpose of the offense, the offender's mental attitude, the degree of premeditation, the manner of commission, post-offense conduct, the offender's personal history and socioeconomic circumstances, the likely effect of punishment on the offender's future, the impact of the offense on the victim and the victim's family, victim or family forgiveness, and the living values of law and justice within the community. Article 54(2) operates as the normative continuation of this evaluative process: after all relevant circumstances under Article 54(1) have been duly considered, the judge may conclude that punishment or a corrective measure is no longer required. In this sense, Article 54(2) does not supersede or displace Article 54(1) but depends upon it as the foundation for its application. The relationship between the two provisions can be understood as operating across three analytical layers: the layer of proof, wherein the offense and the defendant's guilt must be established; the layer of sentencing evaluation, wherein the factors enumerated in Article 54(1) are systematically assessed; and the layer of judicial pardon, wherein the judge determines, on the basis of that holistic assessment, whether punishment remains necessary at all.

The discretionary character of Article 54(2) must not be confused with unconstrained judicial freedom. The provision expressly conditions its application on specific normative thresholds: the minor nature of the act, the personal circumstances of the offender, the conditions prevailing at the time of the offense, subsequent developments, and considerations of justice and humanity. Article 54(2) therefore constitutes what may be termed bounded discretion (*diskresi yudisial yang terikat*) discretion that exists, but whose exercise is circumscribed by legislatively defined normative criteria. As Tonry has emphasized, sound sentencing practice requires limiting principles to prevent judges from imposing or in this case, withholding punishment arbitrarily or inconsistently. In the context of judicial pardon, the need for such limiting principles is especially acute, precisely because the decision at stake is not the calibration of punishment but its complete omission. Consequently, Article 54(2) must be read with a higher degree of interpretive caution than ordinary sentencing provisions. A single factor most notably victim forgiveness is insufficient to ground the application of judicial pardon. Victim forgiveness is but one element within the broader framework of sentencing considerations; it must be weighed alongside culpability, the gravity of consequences, public interest, and the values of justice before a decision to withhold punishment can be normatively justified.

Drawing together the foregoing analysis, judicial pardon under Article 54(2) of the 2023 KUHP is properly characterized as a limited corrective norm embedded within the national sentencing framework. It is corrective in that it provides a mechanism to avoid punishment that would be unnecessarily harsh, disproportionate, or normatively redundant in light of the full circumstances of a case. It is limited in that its application is contingent upon the fulfillment of specific statutory conditions and must be preceded by a comprehensive evaluation of all sentencing considerations under Article 54(1). Judicial pardon does not transform criminal cases into matters of private settlement, nor does it negate the criminal wrong that has been committed. What it does is to create the normative space for judges to recognize that, under certain well-defined conditions, the sentencing purposes of prevention, rehabilitation, victim restoration, and social protection can be achieved without the imposition of formal punishment. For this reason, the application of Article 54(2) must always be accompanied by reasoned judicial deliberation that demonstrates the relationship between the facts of the case, the statutory conditions of the provision, the purposes of punishment, and the justification for withholding a sanction thereby ensuring that judicial pardon serves as an instrument of proportional and accountable adjudication rather than as a mechanism of arbitrary leniency.

Judicial pardon must be clearly distinguished from several other legal institutions in criminal law that also result in the non-imposition of punishment, the reduction of penal consequences, or the resolution of criminal cases outside the conventional punitive model. This

distinction is essential because judicial pardon possesses a legally specific construction: it is granted by the judge after the defendant has been found guilty of the charged offense, yet no criminal sanction or corrective measure is imposed in light of particular circumstances. Judicial pardon does not nullify the criminal act, does not eliminate culpability, and does not vacate the conviction it solely removes the punitive consequence of the proven offense. From justification grounds (*alasan membenarkan*), judicial pardon differs fundamentally in that justification grounds operate by negating the unlawfulness of the act itself: where a justification ground is established, the conduct that formally satisfies the elements of a criminal offense is no longer regarded as unlawful, and accordingly no basis exists to declare the actor guilty (Rahman et al., 2025). Judicial pardon, by contrast, leaves the unlawful character of the act intact. The offense remains a criminal act, the defendant remains convicted, and the court's finding of guilt stands the judge merely refrains from imposing a sanction on grounds of justice and humanity. Similarly, judicial pardon is distinguishable from excuse grounds (*alasan pemaaf*), which do not negate the unlawfulness of the act but eliminate the personal culpability of the offender, rendering the actor non-blameworthy due to circumstances that impair criminal responsibility such as certain forms of duress or excessive self-defense arising from severe psychological disturbance (Mandozai & Zardan, 2023). In judicial pardon, by contrast, the defendant's culpability remains fully established; the court does not find that the defendant is non-blameworthy, but determines that imposing a sanction upon a blameworthy defendant is unwarranted under the specific circumstances of the case.

Judicial pardon is equally distinct from presidential clemency (*grasi*), diversion, and the discontinuation of prosecution (*penghentian penuntutan*), each of which differs from judicial pardon in terms of the stage at which it operates and its legal consequences. Clemency is an executive prerogative exercised by the President following a final and binding court judgment: a sentence has already been imposed and is legally operative, and the President may thereafter grant a remission, reduction, or commutation of that sentence in accordance with applicable legislation (Syahlahaif & Hosnah, 2024). Judicial pardon, by contrast, is exercised by the judge at the moment of sentencing, before any sanction has been imposed; the judge decides, within the judgment itself, not to impose a punishment at all. Diversion, as generally recognized in the juvenile justice system, involves the referral of a case away from formal criminal proceedings toward out-of-court resolution — ideally at the investigation, prosecution, or hearing stage — with the aim of shielding the offender from the adverse effects of formal criminal adjudication (Latupeirissa & Salamor, 2024). Judicial pardon operates after the full evidentiary hearing has been completed and a finding of guilt has been formally declared; the case is not diverted but is fully adjudicated, with the judicial pardon constituting the court's disposition rather than an alternative to adjudication. The discontinuation of prosecution (*penghentian penuntutan*) falls within the exclusive authority of the public prosecutor prior to the case being decided by the court and may be premised upon insufficient evidence, the absence of a criminal act, legal closure of the case, or restorative justice considerations under prosecutorial guidelines (Wahid, 2024). In judicial pardon, the case proceeds through the full trial process, guilt is formally established, and the court issues a conviction the judicial pardon is one possible dispositional outcome of that process, not a mechanism for bypassing it. The decisive distinction across all these institutions lies in the stage and legal consequence of each: justification and excuse grounds operate at the stage of offense and culpability assessment; clemency operates after a final conviction; diversion and discontinuation of prosecution operate before a verdict; and judicial pardon operates after guilt is proven but before punishment is imposed conferring upon it a structurally unique position within the criminal law framework.

Judicial pardon serves four principal functions within the sentencing system, the first and most fundamental of which is its corrective function. This function arises from the inherent limitation of criminal legislation: statutory norms can only prescribe general offense

definitions, penalty ranges, and broad sentencing guidelines, but they cannot anticipate the full range of concrete factual circumstances that judges encounter in practice. In specific cases, the automatic application of punishment may produce outcomes that are formally permissible but substantively unjust. As a corrective mechanism, judicial pardon enables the judge to avoid imposing a sanction that, while legally available, is not substantively required. This does not constitute a rejection of the criminal law's applicability; rather, it operates from within the criminal law framework to ensure that punishment is not deployed in an excessive or contextually insensitive manner. Article 54(2) of the 2023 KUHP thereby prevents sentencing from becoming a rigid, mechanical exercise that is unresponsive to the concrete realities of individual cases, which constitutes one of the provision's most significant contributions to the modernization of Indonesian penal law.

The second function of judicial pardon is the reinforcement of individualized sentencing (*individualisasi pidana*). The principle of individualization requires that the imposition of punishment be calibrated to the specific circumstances of both the offender and the act. Through judicial pardon, individualization extends beyond the determination of the type and severity of a sentence to encompass the threshold question of whether any punishment is warranted at all. This represents a qualitatively significant expansion of judicial discretion: the judge is not merely choosing between a lenient and a severe sentence but is empowered to conclude, where the normative conditions are satisfied, that no sentence should be imposed. Critically, however, individualization through judicial pardon must be applied in a balanced manner. The offender's personal circumstances such as youth, educational status, or family situation may properly constitute relevant considerations, but they cannot function as the sole or determining basis for a judicial pardon. The judge must connect the offender's personal circumstances to the degree of culpability, the gravity of the offense's consequences, post-offense conduct, and the interests of the victim. Without this integrative assessment, individualization risks degenerating into unconstrained subjectivity that serves neither justice nor legal consistency.

The third function of judicial pardon is to create normative space for genuine post-offense restoration. Article 54(2) of the 2023 KUHP explicitly identifies "circumstances arising subsequently" (*keadaan yang terjadi kemudian*) as a ground for consideration, thereby opening the sentencing process to evidence of remorse, reconciliation, victim forgiveness, reparation of harm, and other forms of restorative engagement. In appropriate cases, meaningful and voluntary restoration may reduce or eliminate the need to impose formal punishment, a position consistent with restorative justice theory, which regards the remediation of harm caused by criminal conduct as an integral component of the criminal law's legitimate response (Suhartono et al., 2025). Nonetheless, judicial pardon must not be reduced to an automatic reward for the mere existence of a peace agreement. Reconciliation may be procedurally formal rather than substantively genuine, may be structurally imbalanced, or may result from pressure exerted upon the victim. Accordingly, the judge must verify that any restoration relied upon as a basis for judicial pardon is authentic, voluntary, and meaningfully connected to the harm suffered by the victim encompassing not merely a signed agreement but also an acknowledgment of wrongdoing, the offender's assumption of responsibility, adequate reparation of harm, and the victim's or victim's family's free acceptance of the outcome.

The fourth function of judicial pardon is the maintenance of equilibrium among the competing interests of the offender, the victim, and the broader community. Judicial pardon must not be understood solely as an act of leniency toward the offender; it must simultaneously acknowledge the victim's suffering, affirm the unacceptability of the criminal conduct, and address the community's interest in the respect for legal norms. In this regard, judicial pardon also carries a symbolic function. By formally declaring the defendant guilty, the court continues to affirm the validity of the criminal norm that was violated. By refraining from imposing a

sanction, the court communicates that in specific, well-defined circumstances, the infliction of additional suffering through punishment is not required to achieve the law's purposes. As Fletcher (1998) has observed, criminal law does not merely contain technical rules but also expresses moral judgments about responsibility and culpability. In judicial pardon, that moral judgment is preserved through the declaration of guilt, but it is not necessarily translated into punitive suffering. The legitimacy of this outcome, however, is entirely contingent upon the quality of judicial reasoning: a decision that cites reconciliation without explaining its relationship to culpability, harm, and sentencing purposes, or that emphasizes the offender's personal circumstances without adequately weighing the victim's suffering, cannot be regarded as a proper exercise of the corrective and balancing functions of judicial pardon.

While judicial pardon is a normatively valuable instrument, its application must be bounded by clearly defined analytical parameters. The first boundary is the degree of culpability. The higher the level of culpability measured by whether the offense was intentional or negligent, the strength of the offender's motive, the degree of premeditation, and the manner of commission the more demanding the justificatory burden for judicial pardon becomes. Offenders who act with careful planning, strong malicious intent, or a high degree of deliberateness generally require a substantially stronger basis to support a judicial pardon than those whose culpability is more limited or attenuated by mitigating circumstances. The second boundary is the gravity of the offense's consequences. Offenses resulting in serious bodily harm, death, substantial material loss, or widespread social disruption cannot be treated on equal footing with offenses of minor consequence. In cases with grave outcomes, judicial pardon remains legally available, but the argumentative burden on the judge is correspondingly and considerably higher. The third boundary concerns the interests of the victim. Victim forgiveness or the forgiveness of the victim's family is an important factor, but it cannot function as the determinative basis for judicial pardon. The judge must satisfy herself that the forgiveness was given freely, knowingly, and without coercion, and must assess whether the victim or victim's family has received adequate reparation. In certain cases, forgiveness may be extended for social, economic, or power-relational reasons rather than from a position of genuine autonomy circumstances that necessitate a careful, protective reading of victim forgiveness within the framework of victim rights.

The remaining boundaries of judicial pardon operate at a more systemic level. The fourth boundary is the public interest. Criminal offenses are not merely private disputes between the offender and the victim; criminal law protects collective interests and affirms the norms by which a society is governed. Accordingly, reconciliation between the parties does not invariably suffice to eliminate the need for criminal punishment. In cases with broad social impact or strong public interest dimensions, the judge must consider the normative message that would be communicated by a decision to withhold punishment altogether. The fifth boundary encompasses the values of justice and humanity, which must be read in conjunction rather than in opposition. Humanity must not be directed exclusively toward the offender while the victim's suffering is disregarded; equally, justice must not be reduced to retribution that forecloses the possibility of restoration. The sixth and overarching boundary is the principle of proportionality, which serves as the integrating standard for all other considerations. A judicial pardon is proportionally justified when the weight of reasons for withholding punishment derived from the degree of culpability, the nature of the act's consequences, the offender's personal circumstances, post-offense restoration, and public interest outweighs the reasons for imposing a sanction. Where consequences and culpability are grave and the basis for pardon rests only on formal reconciliation, judicial pardon risks falling below the threshold of proportionality.

On the basis of the foregoing analysis, the legal construction of judicial pardon under Article 54(2) of the 2023 KUHP is properly characterized as a corrective, individualized, and

proportional sentencing norm. It does not nullify the criminal act, does not eliminate the defendant's culpability, and does not vacate the conviction; it solely removes the punitive consequence of proven guilt where specific conditions are met. This provision must be read in systematic conjunction with Article 54(1) as part of the integrated sentencing framework of the 2023 KUHP, with the factors enumerated in Article 54(1) providing the substantive evidentiary basis upon which the discretion in Article 54(2) is exercised. Judicial pardon represents a meaningful and necessary innovation in Indonesia's national sentencing system, reflecting the legislature's commitment to a penal order that is not solely punitive but is also attentive to the necessity, limits, and purposes of punishment. Its application, however, must be consistently bounded by the degree of the offender's culpability, the gravity of the offense's consequences, the interests of the victim, the interests of society, the values of justice and humanity, and — above all the principle of proportionality. Where these parameters are rigorously observed and transparently articulated in judicial reasoning, judicial pardon can function as a legitimate instrument of humanized and accountable criminal adjudication; where they are not, it risks becoming a source of sentencing disparity, legal uncertainty, and diminished penal accountability.

An Analysis of Judicial Considerations and the Principle of Proportionality in Sentencing

The assessment of judicial pardon in both decisions must be directed by three interdependent evaluative standards: justice, humanity, and proportionality. These standards are not discrete criteria but form an integrated normative framework. Justice demands equilibrium among the competing interests of the offender, the victim, and society. Humanity requires that criminal law not be applied rigidly without regard for the concrete human circumstances of a case. Proportionality demands that the decision to withhold punishment be commensurate with the offender's culpability, the gravity of the offense's consequences, and the purposes of sentencing. Examined through this tripartite framework, both the Garut and Mempawah decisions reflect genuine judicial engagement with the offenders' personal circumstances: in the Garut case, the defendant was a student with no prior criminal record who had expressed remorse, reached a settlement, and received the victim's direct forgiveness; in the Mempawah case, the defendant was found to have acted negligently within a cooperative workplace context, without any intention to cause harm, and had received forgiveness from the victim's family. These circumstances may provide a legitimate foundation for judicial pardon where the sentencing analysis demonstrates that punishment is no longer required to achieve the law's objectives.

Justice toward the offender does not mean absolute immunity from punishment; it means that an offender must not be punished beyond the measure of his culpability or subjected to a sanction that serves no legitimate penological purpose. In both decisions, criminal accountability was preserved through the formal declaration of guilt. However, where punishment is withheld, the judicial reasoning must affirmatively demonstrate that alternative forms of accountability remorse, reparation, reconciliation are sufficient to fulfill the purposes of sentencing. From the perspective of justice toward the victim, the two cases present markedly different complexities. In the Garut case, the victim received direct reimbursement of medical expenses and extended personal forgiveness, constituting a relatively concrete and immediate form of victim-centered restoration. In the Mempawah case, the victim's family received compensation and granted forgiveness; however, because the victim died as a result of the offense, no form of restoration can reconstitute the victim's loss. The irreversibility of death introduces a qualitatively higher degree of complexity into the proportionality analysis, rendering the justificatory burden for judicial pardon substantially greater than in cases involving recoverable harm.

Humanity in the context of judicial pardon must be understood as a bilateral value rather than a unidirectional concession to the offender. On one side, humanity toward the offender counsels against the imposition of punishment where it would add unnecessary suffering without advancing any legitimate sentencing purpose. On the other side, humanity toward the victim requires that the victim's suffering be formally acknowledged and not marginalized by the weight given to mitigating factors. In the Garut case, humanity toward the victim could be meaningfully connected to the concrete reparation of medical costs and the victim's direct forgiveness. In the Mempawah case, the dimension of humanity toward the victim's family required substantially more extensive articulation given the fatal consequence of the offense. From the perspective of justice toward society, judicial pardon must preserve the normative message of criminal law: the court's declaration of guilt ensures that the offense is publicly affirmed as a violation of legal norms, even where no sanction is imposed. Where judicial pardon is granted without adequate reasoning, however, society may draw the inference that criminal liability can be resolved through private compensation or settlement alone a perception that is particularly concerning in cases involving the loss of human life, where the public dimension of criminal accountability is most acutely implicated.

Applying the tripartite evaluative framework, the Garut decision can be assessed as relatively more capable of sustaining a proportional equilibrium among justice, humanity, and proportionality, albeit with important reservations regarding the objective gravity of the victim's injuries. The restorative factors in that case were sufficiently concrete direct victim forgiveness, reimbursement of medical expenses, first-time offender status, and the risk of disproportionate harm to the defendant's educational trajectory to support a finding that the purposes of punishment could be achieved without a formal sanction. Nonetheless, the judgment would have been more persuasively grounded had the court explicitly addressed the relationship between the severity of the victim's injuries including a fractured nasal bone, surgical intervention, and inpatient hospitalization and the conclusion that imprisonment was unnecessary. The Mempawah decision presents a more acute proportionality deficit. While the mitigating factors relied upon by the court negligent rather than intentional culpability, cooperative work context, family forgiveness, and compensatory settlement are not without legal relevance, the fatal consequence of the offense imposes a substantially higher argumentative threshold. The court's reasoning did not sufficiently engage with the degree of negligence attributable to the defendant in his capacity as a work supervisor, the applicable standards of occupational safety, or the public interest in the protection of human life in workplace settings. The judicial pardon in the Mempawah case is therefore more appropriately assessed as disproportionate, or as conditionally proportionate only upon the satisfaction of a significantly stronger argumentative burden.

Drawing on the foregoing analysis of both cases, a set of ideal normative boundaries for the application of judicial pardon in criminal adjudication can be formulated. These boundaries are necessary to prevent judicial pardon from being applied too broadly or inconsistently, and to ensure that it functions as a selective corrective mechanism rather than a general instrument for eliminating punishment following private settlement. The first boundary is that judicial pardon should generally be applied where the degree of the offender's culpability is not high evidenced by the absence of premeditation, the absence of strong malicious intent, the spontaneous nature of the act, or a form of culpability constituting minor negligence. Where an offense is committed with deliberate intent, careful planning, repeated violence, or serious disregard for the safety of others, judicial pardon must be approached with substantially greater caution. The second boundary is that the consequences of the offense must serve as a primary limiting factor: judicial pardon is most readily justified in cases where the harm is minor or has been concretely and adequately remediated. Where the consequences are grave including serious bodily injury, permanent disability, or death judicial pardon is not categorically

excluded, but must be supported by specially compelling argumentation explaining why punishment is unnecessary notwithstanding the gravity of the outcome. The third boundary is that the offender must demonstrate genuine remorse, not merely its formal assertion before the court. Authentic remorse must be evidenced by concrete post-offense conduct including apology, acknowledgment of wrongdoing, assistance to the victim, reparation of harm, and demonstrable steps to prevent recurrence without which judicial pardon may lack the moral foundation that gives it legitimacy.

The fourth boundary requires the presence of concrete restoration. Restoration may take the form of reimbursement of medical or other costs, compensatory payment, formal apology, reconciliation, or other relevant remedial measures. Crucially, however, restoration must be assessed qualitatively: the judge must determine whether the restoration is genuinely and causally connected to the harm suffered by the victim and whether it was undertaken voluntarily. In cases where the harm is not fully remediable most significantly, cases resulting in death restoration must be treated as an important but not independently sufficient basis for judicial pardon. The fifth boundary concerns the authenticity of victim or family forgiveness. Victim forgiveness constitutes a significant sentencing consideration under Article 54(1) of the 2023 KUHP, but the judge must ensure that such forgiveness was given freely and knowingly, without coercion. In social contexts characterized by power imbalances, economic disparities, or community pressure, forgiveness may not fully reflect the victim's autonomous will, making it necessary for judges to scrutinize the circumstances in which forgiveness was extended rather than treating its formal expression as determinative. The sixth boundary is that the interests of society must remain protected. Judicial pardon must not create the impression that criminal liability can be avoided through compensation or private settlement. In cases involving public safety, loss of life, serious violence, or significant public interest, the court must articulate how a decision to withhold punishment nonetheless upholds the normative integrity of criminal law a task that is essential to maintaining public confidence in the criminal justice system.

The seventh boundary is a procedural one of paramount importance: the judgment must contain clear, explicit, and systematic reasoning for the decision not to impose punishment. Judicial pardon must be grounded in a transparent, measurable, and internally coherent analysis that connects the facts of the case to the conditions specified in Article 54(2), the sentencing guidelines of Article 54(1), and the values of justice and humanity. Without adequate reasoning, judicial pardon risks appearing as unaccountable discretion, undermining the predictability and consistency of sentencing outcomes. The eighth and final boundary requires that the judicial reasoning demonstrate a genuine balance between the grounds for imposing punishment and the grounds for withholding it. The grounds for punishment include the offender's culpability, the consequences of the offense, the victim's interests, and the public interest. The grounds for pardon include the offender's personal circumstances, the conditions prevailing at the time of the offense, post-offense conduct and restoration, victim forgiveness, and the fulfillment of sentencing purposes through non-punitive means. Judicial pardon is only normatively justified where the grounds for withholding punishment are sufficiently strong to displace the need for a formal sanction a determination that must be made explicitly and demonstrably in the text of the judgment.

Applying the foregoing boundaries to the two decisions under study, it can be concluded that the Garut decision largely satisfies the relevant criteria, albeit with the important qualification that the court should have more explicitly addressed the relationship between the objective severity of the victim's injuries and the conclusion that imprisonment was unnecessary. The Mempawah decision satisfies certain criteria notably victim family forgiveness and compensatory settlement but the fatal consequence of the offense, combined with the defendant's supervisory position and the implicated standards of occupational safety, rendered the judicial pardon in that case insufficiently supported by proportional

argumentation. More broadly, this analysis confirms that judicial pardon under Article 54(2) of the 2023 KUHP represents a significant and necessary innovation in Indonesia's sentencing framework, but one that must be exercised with selectivity, rigor, and transparency. Judicial pardon must not be understood as an automatic consequence of reconciliation or victim forgiveness, nor should it be applied uniformly across cases of differing culpability and consequence. It is justified only where the judge can affirmatively demonstrate, through explicit and balanced reasoning, that the withholding of punishment satisfies the demands of justice, humanity, and proportionality thereby ensuring that the instrument serves its corrective and humanizing function without compromising penal accountability or the normative authority of the criminal law.

CONCLUSION

This study yields two principal conclusions. First, the legal construction of judicial pardon (*pemaafan hakim*) under Article 54(2) of the 2023 Criminal Code constitutes a meaningful innovation within Indonesia's national sentencing system, conferring upon judges the authority to refrain from imposing any criminal sanction or corrective measure even where the defendant has been found guilty beyond reasonable doubt. Judicial pardon neither nullifies the criminal act nor eliminates the offender's culpability, and it is categorically distinct from justification grounds, excuse grounds, presidential clemency, diversion, and discontinuation of prosecution. It operates exclusively at the sentencing stage after a conviction has been formally declared on the basis that punishment is unwarranted in light of specific circumstances assessed through the lens of justice and humanity. Critically, Article 54(2) cannot be read in isolation from Article 54(1), which establishes the comprehensive sentencing guidelines that must inform every exercise of judicial pardon. Judicial pardon is accordingly a limited, selective, and proportional mechanism: it cannot be granted automatically upon the mere existence of reconciliation, victim forgiveness, or reparation of harm. The judge must rigorously assess the degree of the offender's culpability, the gravity of the offense's consequences, the offender's personal circumstances, the conditions prevailing at the time of and following the offense, the interests of the victim, the interests of society, and the values of justice and humanity before a judicial pardon can be normatively justified.

Second, while both *Putusan Pengadilan Negeri Garut No. 412/Pid.B/2025/PN Grt* and *Putusan Pengadilan Negeri Mempawah No. 512/Pid.B/2025/PN Mpw* applied Article 54(2) of the 2023 Criminal Code, the two decisions exhibit markedly different degrees of proportionality. The Garut decision may be assessed as conditionally proportionate: the supporting circumstances a single act, genuine remorse, absence of prior criminal record, the defendant's student status, voluntary reconciliation, direct victim forgiveness, and full reimbursement of medical expenses collectively provide a defensible basis for withholding punishment. Nonetheless, an important qualification remains, as the harm sustained by the victim was not trivial, encompassing facial lacerations, a fractured nasal bone, surgical intervention, and inpatient hospitalization, all of which warranted more explicit judicial engagement with the relationship between that harm and the decision not to impose a sentence. The Mempawah decision, by contrast, is more appropriately assessed as disproportionate, or at best conditionally proportionate subject to a substantially stronger argumentative burden, given that the offense resulted in the victim's death. While victim family forgiveness, reconciliation, and compensatory settlement constitute relevant mitigating factors, the fatal consequence of the offense demanded a considerably deeper judicial analysis one that addressed the degree of the defendant's negligence in his capacity as a work supervisor, the applicable occupational safety standards, and the public interest in the protection of human life. Taken together, both decisions demonstrate that the application of judicial pardon must be consistently subjected to

rigorous proportionality scrutiny, requiring the judge to explicitly balance and articulate the grounds for withholding punishment against those that would ordinarily support its imposition..

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