



DOI: <https://doi.org/10.38035/jlph.v4i6>  
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## Policy Formulation of The Rechterlijk Pardon Concept (Judge's Forgiveness) In Traffic Accident Criminal Cases

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**Abstract:** The concept of Rechterlijk Pardon (Judge's Forgiveness) is a new concept that was born in the RKUHP, where Judges are given the authority to forgive perpetrators of criminal acts even if they are proven guilty. The aim of this research is to find out how the concept of Rechterlijk Pardon (Judge's Forgiveness) is used in criminal traffic accidents. The main problem in this research is how to apply the Rechterlijk Pardon (Judge's Forgiveness) concept in traffic accident criminal cases and what are the weaknesses of the Rechterlijk Pardon (Judge's Forgiveness) concept in the perspective of Indonesian criminal law. The research method used is normative juridical with techniques for searching legal materials by means of library studies, documentation studies and the internet. From the results of this research, it can be concluded that the concept of Rechterlijk Pardon (Judge's Forgiveness) can be applied to traffic accident cases if it meets the requirements based on the provisions of RKUHP Article 54 paragraph (2) "The severity of the act, the personal condition of the perpetrator, or the circumstances at the time the crime was committed and the what happens later can be used as a basis for consideration for not imposing a crime or not imposing humanitarian action." Not opposing the sense of justice for victims and not opposing the norms that exist in society. The concept of Rechterlijk Pardon (Judge's Forgiveness) is in line with the theory of Restorative Justice, which was used in the decision of the M. Rasyid Amrullah Rajasa case. The Rechterlijk Pardon (Judge's Forgiveness) concept has a weakness, namely that it can give rise to new problems, especially if the Rechterlijk Pardon (Judge's Forgiveness) concept is implemented in criminal case decisions, namely that there are no types of decisions that are not in accordance with the substance of this principle. It can be concluded that none of the types of decisions regulated in the Criminal Procedure Code are in accordance with the concept of Rechterlijk Pardon (Judge's Forgiveness).

**Keyword:** Rechterlijk Pardon, Judge, Traffic Accidents

### INTRODUCTION

The history and background of Rechterlijk Pardon cannot be separated from efforts to reform the Criminal Code. Efforts to reintegrate criminal offense regulations into a Criminal

Code were initiated decades ago, long before the reform period began.<sup>1</sup> As for the *Rechterlijk Pardon* (Judge's Forgiveness) policy in the context of reforming national criminal law, according to Barda Nawawi Arief, the basic idea of *Rechterlijk Pardon* (Judge's Forgiveness) is contained in the concept of the Criminal Code Bill. The concept does not view the principle of culpability and the principle of legality as rigid and absolute requirements, therefore the concept also provides the possibility in certain cases to apply the principle of strict liability, the principle of vicarious liability and the principle of forgiveness/forgiveness by the judge (*rechterlijk pardon*).<sup>2</sup>

*Rechterlijk Pardon* (Judge's Forgiveness) in Law Number 1 of 2023 is known as the concept of judge's forgiveness, which is a new concept that will be implemented in criminal law after Law Number 1 of 2023 is passed. As for the idea of *Rechterlijk Pardon* (Judge's Forgiveness) in Article 54 paragraph of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code), Article 54 paragraph (2) states "The lightness of the act, personal circumstances the perpetrator, or the circumstances at the time the criminal act was committed and what happened afterwards can be used as a basis for consideration for not imposing a crime or not imposing humanitarian and humanitarian action."<sup>3</sup>

*Rechterlijk Pardon* (Judge's Forgiveness) from a comparative criminal law perspective can be studied in several countries such as the Netherlands, Greece and Portugal which have implemented a judge's forgiveness system in their criminal justice system. In the Netherlands the judge's forgiveness is known as *Rechterlijk Pardon*, found in article 9a of the Dutch Criminal Code, in Portugal the term judge's forgiveness is known as *dispensa de pen* or waiver of penalty, namely a statement releasing demands from the judge and correctional officers, while in Greece the judge's forgiveness is known as *Judicial Pardon*, in certain cases the court can refrain from imposing a crime. *Rechterlijk Pardon* (Judge's Forgiveness) is a concept that is also adopted by Dutch law, where the judge can forgive the defendant. This means that with certain considerations, the judge can forgive and the defendant is declared guilty even though he is not sentenced. According to Nico Keizer, the background to the inclusion of the *Rechterlijk Pardon* concept is that many defendants have actually fulfilled the evidence, but if a sentence is imposed it will be contrary to the sense of justice. Or it could be said that if a sentence is imposed, a clash will arise between legal certainty and justice.<sup>4</sup>

Judges are state judicial officials who are authorized by law to adjudicate (Article 1 point 8 of the Criminal Procedure Code). Meanwhile, the term judge means a person who hears cases in a court or court. *Hakim* also means court, if people say "the case has been handed over to the judge. Judicial power is the power of an independent state to administer justice to uphold law and justice based on *Pancasila*, for the sake of implementing the rule of law of the Republic of Indonesia (Article 24 of the 1945 Constitution and Article 1 of the Constitution No.48/2009). To judge means to ask for a case to be tried, to judge means to act as a judge towards someone, judiciary means legal and court matters, sometimes the term judge is used for someone who is virtuous, expert and wise.<sup>5</sup>

Judges in carrying out their duties and functions are obliged to maintain the independence of the judiciary. All interference in judicial affairs by other parties outside

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<sup>1</sup> Lembaga Studi dan Advokasi Masyarakat, *Tinjauan Umum Terhadap Rancangan Kitab Undang-undang Hukum Pidana (KUHP) Nasional*, 2005, hal. 2.

<sup>2</sup> Aristo Evandy A.Berlian, Barda Nawawi Arief, *Formulasi Ide Pemaafan Hakim (Rechterlijk pardon) Dalam Pembaharuan Sistem Pidana Indonesia*, Jurnal Law Reform, Vol. 13, No. 1, Tahun 2017, hal. 28.

<sup>3</sup> Undang-undang Nomor 1 Tahun 2023 Pasal 54 ayat (2).

<sup>4</sup> Sugeng Jatmiko, *Rechterlijk Pardon (Pemaafan Hakim) Dalam Tindak Pidana Perpajakan*, Jurnal Ilmu Hukum Sekolah Pascasarjana Universitas Swadaya Gunung Jati, Vol. 6, No. 1, Tahun 2012, hal. 1.

<sup>5</sup> Artji Judoilts Lattan, *Pertimbangan-Pertimbangan Hakim Dalam Memutus Perkara Pidana*, Jurnal Hukum Dan Dinamika Masyarakat, Vol. 12, No.1, 2014, hal. 55.

judicial authority is prohibited, except in cases as intended in the 1945 Constitution of the Republic of Indonesia. Every person who deliberately violates the provisions of statutory regulations (Article 3 of the Law No.48 of 2009).

Traffic is one of the community's vehicle facilities which plays an important role in facilitating the construction that will be implemented, because the presence of traffic can facilitate access for the community to carry out activities to fulfill its economy. Without traffic, you can imagine how difficult it would be to get to the desired place or do work related to using the road. There is not a single job that does not escape traffic facilities.

Traffic in Indonesia is regulated in statutory regulations, namely Law Number 22 of 2009 concerning Road Traffic and Transportation, where these regulations are made to ensure security, order and welfare in Indonesian society. The legal cause of traffic accidents is that there are criminal sanctions for the cause or cause of the incident and can also be accompanied by civil claims for material losses caused.

In Law Number 22 of 2009 concerning Road Traffic and Transportation, what is meant by traffic is the movement of vehicles and people in road traffic spaces. Road traffic space is infrastructure intended for moving vehicles, people and/or goods in the form of roads and supporting facilities.<sup>6</sup>

One of the traffic problems is the occurrence of traffic accidents. This problem basically occurs when transportation facilities, both in terms of roads, vehicles and other supporting facilities, have not kept pace with the economic development of the community. Recently, traffic accidents have occurred very frequently and have caused many losses and even resulted in loss of life. This increasingly complex traffic infrastructure with the increasing number of motorized vehicles, both two-wheeled and four-wheeled, directly or indirectly contributes to the increase in the number of traffic accidents.

In Law Number 22 of 2009 concerning Road Traffic and Transportation, a traffic accident is an unexpected and unintentional road event involving other vehicles which results in loss of life and financial loss. A traffic accident is a series of events which in the end, shortly before the accident occurs, is preceded by the failure of road users to anticipate the conditions around them, including themselves, and traffic accidents result in casualties or financial losses. In an accident there is no element of intent, so if there is sufficient evidence without an element of intent then the incident cannot be considered an accident case.

One example of a traffic accident case that shocked Indonesia was a traffic accident in which the defendant was M. Rasyid Amrullah Rajasa, son of Hatta Rajasa. On Tuesday, January 1 2013, the public was shocked by the news of a traffic accident which resulted in the loss of life. A traffic accident on the Jagorawi Toll Road, KM 3+350 which resulted in 3 (three) minor injuries and 2 (two) deaths, namely Harun (57 years) and Raihan (14 months). The traffic accident was caused by Hatta Rajasa's youngest son, who at that time served as Coordinating Minister for the Economy of the Republic of Indonesia. The traffic accident experienced by M.Rasyid Amrullah Rajasa started when the two cars were in the rightmost lane. The Dahaitu Luxio car was in front, then suddenly it was hit by a BMW, killing both passengers.

The perpetrator himself has been named a suspect by Polda Metro Jaya. As for the violations committed by Hatta Rajasa's youngest son, First, negligence in traffic which resulted in a traffic accident with damage to goods/vehicles (Article 310 paragraph (1) Law Number 22 of 2009, paragraph (2) and paragraph (3 ) stated the criminal acts that had been committed by M.Rasyid, namely negligence in traffic which resulted in minor injuries and damage to goods/vehicles paragraph (2) and negligence in traffic which caused an accident with serious injuries paragraph (3), District Court East Jakarta has sentenced him to 5 (five)

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<sup>6</sup> Undang-undang Nomor 22 Tahun 2009.

months in prison with a probation period of 6 (six) months and a fine of 12 million plus six months in prison. The prison sentence will not be implemented unless within 6 (six) months the perpetrator re-offends.<sup>7</sup>

It can be said that in the judge's considerations and decision in the M. Rasyid Amrullah Rajasa case, it was seen that the judge was trying to realize a sense of justice for both parties. Even though the decision was made in a formal juridical manner based on legal positivism, the disposition or consideration of the severity of the sentence imposed departed from the social theories of functional structuralism. Realizing the wishes and interests of both parties as an attitude of correction and not retaliation, as a concept of modern criminal law.<sup>8</sup>

## METHOD

The approach method in this research article is normative juridical or normative law, namely the aim of explaining and analyzing the Policy Formulation of the *Rechterlijk Pardon* (Judge's Forgiveness) Concept in Traffic Accident Crime Cases. In normative legal research several approaches are used, namely the statutory approach, the conceptual approach and the comparative approach.<sup>9</sup> In connection with the above, the focus of this paper is analyzing the Policy Formulation of the *Rechterlijk Pardon* (Judge's Forgiveness) Concept in Traffic Accident Crime Cases. The research in this paper is included in descriptive research. Descriptive research is a method aimed at describing existing phenomena that occur at present or conditions in the past. The data used in this research is secondary data, secondary data consists of primary legal materials, secondary legal materials, tertiary legal materials, primary legal materials are legal materials that are authoritative, which means they have authority.<sup>10</sup> In this case, the primary legal materials consist of statutory regulations and judge's decisions.<sup>11</sup> Secondary legal materials are legal research materials obtained from legal reading, which in this case are books, scientific journals and papers, and tertiary legal materials are the Big Indonesian Dictionary (KBI).

## RESULTS AND DISCUSSION

### Application of the *Rechterlijk Pardon* (Judge's Forgiveness) Concept in Traffic Accident Crime Cases

The birth of the concept of *Rechterlijk Pardon* (Judge's Forgiveness) in Law Number 1 of 2023 can be seen historically. The relationship between punishment and forgiveness has been going on for a long time in other countries and Indonesia wants to establish it in positive law. Sociologically, criminal legislation is the determination of the cultural values of a nation, namely the values of Pancasila. Philosophically, the background to the existence of *Rechterlijk Pardon* (Judge's Forgiveness) is to resolve problems without harming the parties or can be said to be solving problems, namely by using the win win solution case resolution method seen from other countries which has been explained in the discussion.

The *Rechterlijk Pardon* (Judge's Forgiveness) regulation in Law Number 1 of 2023 is a form of restorative justice approach which in principle tries to avoid the imposition of imprisonment as far as possible, especially for short-term deprivation of liberty in cases of minor crimes . Apart from that, this institution also in principle functions to correct the rigidity of the principle of legality. Another issue that must also be taken into account is that Law Number 1 of 2023 needs to describe in more detail the criteria that must be met so that a

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<sup>7</sup> Putusan Pengadilan No.151/Pid.Sus/2013/PN.Jkt.Tim. hal.2.

<sup>8</sup> M. Musa, *Bunga Rampai Horizo Hukum Dalam Sistem Hukum Nasional Bagian I*, Leutikaprio, Yogyakarta, 2020, hal. 62

<sup>9</sup> Jhonny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Surabaya, 2005, hal. 44.

<sup>10</sup> Bambang Sunggono, *Metode Penelitian Hukum*, PT. Rajagrafindo, Persada, Jakarta, 2003, hal. 6.

<sup>11</sup> *Ibid.*



judge's forgiveness decision can be handed down in a case. Efforts to reform material criminal law through the regulation of *Rechterlijk Pardon* (Forgiveness by Judges) in Law Number 1 of 2023 must also be synchronized with the regulation of criminal procedural law in the Draft Criminal Procedure Code (RKUHAP) so that the regulation of *Rechterlijk Pardon* (Forgiveness by Judges) in Law Number 1 of 2023 it is not something that is useless.<sup>12</sup>

The aim of *Rechterlijk Pardon* (judge's forgiveness) is not only to avoid imposing short prison sentences, but also to prevent sentences that are not justified or necessary from the perspective of necessity, both the need to protect society and the rehabilitation of the perpetrator. Therefore, forgiveness institutions can be seen as the "final gatekeeper" for cases that disturb justice in society. Or it could be said to be an emergency door/safety valve from an inappropriate criminal justice system.

The formulation of the concept of *Rechterlijk Pardon* (Judge's Forgiveness) in Law Number 1 of 2023 as of September 2019 can be found in Article 54 paragraph (2) as follows: "The severity of the act, the personal condition of the perpetrator, or the circumstances at the time the crime was committed and what happened afterwards can be used as a basis for consideration for not imposing a crime or not taking action by considering aspects of justice and humanity." The explanation of this article is: "The provisions in this paragraph are known as the *Rechterlijke Pardon* principle which gives the judge the authority to forgive someone who is guilty of committing a minor crime. This apology is included in the judge's decision and it must still be stated that the defendant is proven to have committed the criminal act he was charged with."

The formulation of Article 54 paragraph (2) above is similar to the provisions of *Rechterlijk Pardon* (Judge's Forgiveness) Article 9a of the 1984 Dutch Criminal Code, where in essence the judge considers the severity of the act, the condition of the perpetrator, or the circumstances at the time or after the crime occurred in giving sorry, but the authority is the same as that in Greece where the conditions that function as conditions for forgiveness do not require the judge to forgive, this can be seen by the use of the word "can".

Regulations regarding *Rechterlijk Pardon* (Judge's Forgiveness) cannot only be regulated in Law Number 1 of 2023, because Law Number 1 of 2023 only contains material criminal law. In fact, the judge's forgiveness provisions were previously unknown in the current Criminal Code. Therefore, the *Rechterlijk Pardon* (Judge's Forgiveness) regulations must be harmonized with the RKUHAP in the future. So the article on the judge's forgiveness institution is not just a "dead article", which cannot be implemented practically in court. This concern arises when we critically look at the RKUHAP regulations regarding the possible forms of verdict that can be handed down to a defendant. Conceptually, *Rechterlijk Pardon* (Judge's Forgiveness) is a form of modification of rigid legal certainty towards flexible legal certainty. This stems from several cases which actually fulfill the formulation of a criminal offense, but the actions are not worthy of being punished. Responding to this problem, the RKUHP creates a new formula by regulating the possibility of the judge's forgiveness for several cases that do not deserve to be sentenced.<sup>13</sup>

The provisions contained in article 54 paragraph (2) of Law Number 1 of 2023 provide a stricter definition regarding the phrase personal circumstances of the perpetrator. Article 54 paragraph (2) of the RKUHP states that a person's personal circumstances which eliminate, reduce or aggravate a criminal offense only apply to the perpetrator or accomplice of the criminal act in question. The explanation of Article 54 paragraph (2) of the RKUHP is as

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<sup>12</sup> Nefa Claudia Meliala, *Rechterlijk Pardon (Pemaafan Hakim) : Suatu Upaya Menuju Sistem Peradilan Pidana Dengan Paradigma Keadilan Restoratif*, Jurnal IUS Kajian Hukum Dan Keadilan, Vol. 8, No.3, 2020, hal. 551.

<sup>13</sup> Adery Ardhan Saputro, *Konsepsi Rechterlijk Pardon atau Pemaafan Hakim Dalam Rancangan KUHP*, Jurnal Mimbar Hukum, Vol. 28, No.1, 2016, hal. 62.

follows: "The severity of the act, the personal condition of the perpetrator, or the circumstances at the time the crime was committed and what happened afterwards can be used as a basis for consideration for not imposing a crime or not imposing humanitarian measures."

From the explanation above, it can be seen that in the formulation of article 54 paragraph (2) of Law Number 1 of 2023, the personal condition referred to is not being old enough and a person who cannot be held accountable. The explanation of the article is that the imposition of criminal supervision on people who commit criminal acts which are punishable by imprisonment, lies entirely in the judge's consideration, taking into account the circumstances and actions of the convict. This supervision sentence is generally imposed on the person who commits the crime for the first time and is a maximum of 3 years.

The *Rechterlijk Pardon* (judge's forgiveness) decision has a concept and provisions that are very different from the three decisions above, where the forgiveness decision still decides that the defendant is proven to have committed a criminal act and there is no reason to erase the crime, whether it be a justifying or forgiving reason, but the judge does not impose a crime on the defendant. pay attention to the statutory requirements related to the judge's decision to forgive. So in this decision, the judge still stated that the defendant was found guilty but for the mistake he had committed, sanctions were removed for him. Agreeing with this, Andi Hamzah stated 'The form of a forgiving decision by a judge is a guilty verdict without a crime'. This opinion is also the same as that expressed by Jeroen Chorus, that if the judge considers that the defendant is proven to have committed a criminal act but the judge states that he has forgiven the defendant, then the verdict given to the defendant is guilty without punishment.<sup>14</sup>

The *Rechterlijk Pardon* (judge's forgiveness) decision is a new concept adopted in Indonesia's new Criminal Code. This concept gave birth to a decision which stated that the defendant was proven to have committed the crime he was charged with but the judge did not impose criminal sanctions against the defendant. According to the writing, it becomes a problem when the new Criminal Code as material law is not in harmony with the Criminal Procedure Code as formal law. If you look in detail, the Criminal Procedure Code only contains three types of decisions, namely acquittal, acquittal and conviction, this creates confusion, where the *Rechterlijk Pardon* (Judge's Forgiveness) decision will be classified into which type of decision. Incorporating the concept of *Rechterlijk Pardon* (Judge's Forgiveness) into the types of acquittal, acquittal and sentence decisions is very contrary to the concept of *Rechterlijk Pardon* (Judge's Forgiveness) itself.<sup>15</sup>

In the Judge's decision regarding the traffic accident case experienced by the defendant M. Rasyid Amrullah Rajasa which occurred on Tuesday 1 January 2013 at around 05.30 WIB on the Jagorawi Toll Road, KM 03.432 which resulted in three victims with minor injuries and two victims died, namely Harun (5 years) and Achievement (14 months). This traffic accident occurred when the two cars were in the rightmost lane. The Daihatsu Luxio car was in front, then suddenly it was hit by a BMW car, causing the side door of the Daihatsu Luxio car to open and the passengers fell, causing both passengers to die.<sup>16</sup>

The main cause of the accident occurred involving M. Rasyid Amrullah Rajasa, the youngest son of Coordinating Minister for the Economy Hatta Rajasa. The cause of the traffic accident is known to be that the defendant lacked sleep and lack of rest but continued to drive his vehicle at a speed of 100 km per hour and without paying attention to the situation and the presence of other vehicles in front of him, so he hit or hit hard the Daihatsu Luxio vehicle

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<sup>14</sup> Jeroen Chorus, Piet-Hein Garver, Ewoud Hondius (ed), *Introduction to Dutch Law*, Netherland: Kluwer International Law, 2006, hal. 420.

<sup>15</sup> Alfret, Mardian Putra Frans, *Konsep Putusan Pemaaf Oleh Hakim (Rechterlijk Pardon) Sebagai Jenis Putusan Baru Dalam Kuhap*, Jurnal KRTHA Bhayangkara, Vol. 17, No. 3, 2023, hal. 598.

<sup>16</sup> Putusan Pengadilan Nomor : 151/Pid.Sus/2013/PN.Jkt.Tim.hal. 4.

which caused the rear car door to open. and the passengers sitting behind were thrown and fell to the asphalt.<sup>17</sup>

According to the victim of the Daihatsu Luxio car, Frans Sirait, told regional police investigators that he was traveling at a speed of 80 km per hour, the BMW driver was suspected of being sleepy so he was going faster than the Daihatsu Luxio car. "So the two cars went together, no one stopped on the toll road, the incident happened at 05.45 WIB and it was very fast and the victim was immediately taken to the nearest hospital. The two cars were heading from Jakarta to Bogor. According to Sudarmanto, at the time of the incident there were no other cars at that location. They do not yet know more details about the accident. The victims who died were Harun (57 years), a man with an address at Jalan Semangka 1 No. 99 Cibodas Sari, Tangerang and M Raihan (14 months), a boy with an address at Ciaul village, RT 8/2 Mekarjaya, Kabunggan, Sukabumi, West Java. Meanwhile, the victim with minor injuries was Nung (30 years), a woman with an address from Mekarjaya, Sukabumi, who had abrasions on her face and legs. Moh Rifan, a man with abrasions on his feet and hands who is being treated at the National Police Hospital, then Supriyanti (30 years), whose address is Jalan Swadaya III No. 8 Rawabuaya Jatinegara, East Jakarta. He was injured in his left leg, bruised and left arm fractured, and is now being treated at UKI Hospital.<sup>18</sup>

The perpetrator himself has been named a suspect by Polda Metro Jaya. With the violations committed by Hatta Rajasa's son. First, negligence in traffic which causes traffic accidents with damage to goods/vehicles. Article 310 paragraph (1) of Law Number 22 of 2009, paragraph (2) and paragraph (3) states that the criminal act that the defendant has committed is negligence in passing. traffic which causes accidents with minor injuries and damage to goods/vehicles paragraph (2) and negligence in traffic which causes accidents with serious injuries paragraph (3).

Furthermore, in his consideration the Judge found that M. Rasyid Amrullah Rajasa was proven guilty, because he had fulfilled all the elements of Article 310 paragraph (4) and Article 310 paragraph (2) of the Republic of Indonesia Law no. 22 of 2009 concerning Road Traffic and Transportation, so there is no basis for eliminating the crime. Furthermore, the Judge also opined: "that during the examination of the case it turned out that no reason could be found that could erase the defendant's guilt, either in the form of excuses or justification, so that the defendant must be declared a legal subject capable of being held accountable according to the Criminal Law in Indonesia, and for the error what is done must be punished accordingly.<sup>19</sup>

The next analysis is the severity or lightness of the sentence as stated by the judge in his decision which stated: sentenced the Defendant M. Rasyid Amrullah Rajasa to a prison sentence of 5 (five) months and a fine of Rp. 12,000,000,- ( twelve million rupiah with the provision that if it is not paid, it will be replaced by imprisonment for 6 (six) months.

In the judge's decision in handing down the verdict against the defendant M. Rasyid Amrullah Rajasa, the author is of the opinion that the decision is in accordance with the provisions of the *Rechterlijk Pardon* (Judge's Forgiveness) concept, where the defendant acts politely, does not complicate the trial, is still young, is responsible for the victim's family, and the victim's family. has forgiven the defendant in accordance with the provisions of Article 54 paragraph (2) of Law Number 1 of 2023 concerning the Criminal Code which states "The severity of the act, the personal condition of the perpetrator, or the conditions at the time the crime was committed and what happened afterwards can be used as a basis the judge's

<sup>17</sup> Putusan Pengadilan Nomor : 151/Pid.Sus/2013/PN.Jkt.Tim.hal. 5.

<sup>18</sup> <https://www.liputan6.com/news/read/4836/ini-kronologi-kecelakaan-bmw-maut-putra-hatta-rajasa> diakses pada tanggal 11 April 2024 Pukul 01.22 WIB.

<sup>19</sup> Putusan Pengadilan Nomor : 151/Pid.Sus/2013/PN.Jkt.Tim.hal. 100.

consideration of not imposing a crime or not imposing action by considering aspects of justice and humanity.

The judge was of the opinion that, the defendant, who is still young and a student at a university in London, still has a long future and can correct his mistakes, considering that the defendant gave a form of responsibility to the victim, which the judge saw as something that mitigated the sentence in accordance with neo-classical flow. The judge's consideration was acceptable considering that the defendant's family stated that they would cover the education costs for the victim's child who died, as well as the attitude of the victim's family who had forgiven the defendant and stated that they sincerely accepted the incident that occurred and was seen as a disaster and requested that the defendant not be punished.<sup>20</sup>

From this it can be said that the judge considered and made his decision in the case of M. Rasyid Amrullah Rajasa. This shows that the judge is trying to realize a sense of justice for both parties. Even though the decision is made formally based on legal positivism, the disposition or consideration of the severity of the sentence imposed departs from the social theories of functional structuralism. Realizing the will and interests of both parties as a corrective attitude and not retaliation, as a concept of modern criminal law.<sup>21</sup>

In the author's analysis, the concept of *Rechterlijk Pardon* (Judge's Forgiveness) can be applied to traffic accident cases if it meets the requirements based on the provisions of RKUHP Article 54 paragraph (2) "The severity of the act, the personal condition of the perpetrator, or the circumstances at the time the crime was committed and what happened afterwards can be used as a basis for consideration for not imposing a crime or not imposing humanitarian and humanitarian measures." Not opposing the sense of justice for victims and not opposing the norms that exist in society.

### **Weaknesses of *Rechterlijk Pardon* (Judge's Forgiveness) in Indonesian Criminal Law**

Positive law in Indonesia to date is still guided by the laws inherited from Dutch colonialism which were codified in the Criminal Code (KUHP). However, in its development, the values in Dutch law are no longer in accordance with the values of Indonesian society. Based on this, criminal law seems very rigid because the Criminal Code still adheres to the principle of formal legality which seems to ignore the laws that exist in society and only recognizes written law. Therefore, it is necessary to reform criminal law by restoring the law that lived in society as a result of being killed by Dutch colonial law.

In reforming criminal law, of course it is necessary to pay attention to statements from the UN Congress relating to the application of foreign/import laws in a country. In the UN Congress on "The Prevention of Crime and the Treatment of Offenders" it was stated that the criminal law system that has existed in several countries (especially those originating from foreign law during the colonial era) is generally "Obsolete and Unjust" (outdated and unfair) and "Outmoded and Unreal" (outdated and not in accordance with reality).<sup>22</sup>

Criminal Law Reform essentially means an effort to reorient and reform criminal law which underlies social policy, criminal policy and law enforcement policy in Indonesia.<sup>23</sup> Reforming criminal law must also be accompanied by updating knowledge about criminal law. This means that reform of criminal law does not only cover legal substance (legal substance reform) but must also be accompanied by renewal of the legal culture of society

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<sup>20</sup> Putusan Pengadilan Nomor : 151/Pid.Sus/2013/PN.Jkt.Tim.

<sup>21</sup> M. Musa, *Bunga Rampai Horizon Hukum Dalam Sistem Hukum Nasional, Bagian 1*, Leutikaprio, Yogyakarta, 2020, hal. 62.

<sup>22</sup> Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Bandung: Citra Aditya Bakti, 1998, hal. 103.

<sup>23</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP baru*, cetakan ke-7, Kencana Prenamedia Group, Jakarta 2014, hal. 29.



(legal culture reform) and renewal of its legal structure or instruments (legal structure reform).<sup>24</sup>

Rechterlijk Pardon (Judge's Forgiveness) which has been included in Article 54 paragraph (2) of the new Criminal Code (KUHP), regulates the concept of Rechterlijk Pardon (Judge's Forgiveness) in Indonesia and several European countries such as Greece, Portugal, the Netherlands. advantages and disadvantages in each law regarding Rechterlijk Pardon (Judge's Forgiveness). Rechterlijk Pardon (Judge's Forgiveness) which is seen in its historical history only then a concept emerged to be created, then Rechterlijk Pardon (Judge's Forgiveness) as a safety valve (veiligheids-klep) in punishment in the Indonesian criminal system for perpetrators of minor crimes. The types of criminal acts resolved with Rechterlijk pardon (judge's forgiveness) form and implementation structure of Rechterlijk Pardon (judge's forgiveness) have been linked according to the new Criminal Code and the Criminal Procedure Code will be harmonized for the sake of creating just laws.

There are several grounds for the need for the Rechterlijk Pardon (Judge's Permission) Concept to be included in Law Number 1 of 2023, one of which is a philosophical basis. Pancasila and the Preamble to the Constitution must be used as benchmarks in assessing the importance of this Concept. The 1st paragraph of the Preamble to the Constitution and Article 1 of the Transitional Regulations on the 1945 Constitution provides a strong basis for why it is important to reform criminal law and the confirmation of norms regarding the Concept of Rechterlijk Pardon (Judge's Forgiveness) in the Draft Criminal Code is one form of criminal law reform.

The juridical basis is one of the important foundations of why it is necessary to confirm the Concept of Rechterlijk Pardon (Judge's Forgiveness) as a norm, namely to include it in Law Number 1 of 2023. This juridical basis is very closely related to one of the objectives of this Concept, namely judicial correction of the principle of legality.<sup>25</sup>

The existence of the Rechterlijk Pardon (Judge's Forgiveness) concept in Law Number 1 of 2023 is not without a strong foundation, one of which is seen as a response to developments in criminal law in other countries, including the Netherlands and Portugal. Philosophically, juridically and sociologically, the concept of Rechterlijk Pardon (Judge's Forgiveness) is considered to be in accordance with living legal values and national legal values which are more oriented towards Pancasila values. The concept of Rechterlijk Pardon (Judge's Forgiveness) is also in line with one of the natural principles of the global development of criminal law, namely the Insignificant Principle and also the aim of punishment in criminal law, namely Restorative Justice. This is the basis for the need for policy formulation in Law Number 1 of 2023 related to the concept of Rechterlijk Pardon (Judge's Forgiveness) as a form of criminal law reform in Indonesia.

According to Barda Nawawi Arief, in the judge's forgiveness provisions, the RKUHP does not provide definite limits or criteria regarding the meaning of lightness of action. In fact, this uncertainty is a form of weakness in the regulation of the judge's forgiveness institution which will conflict with the principle of legal certainty. However, he also believes that the purpose of the phrase lightness of action is not concretely regulated so that it does not limit the judge's authority in making a decision to forgive only certain offenses.<sup>26</sup>

According to the author's analysis, the concept of Rechterlijk Pardon (Judge's Forgiveness) in Indonesian criminal law has a weakness if it is put into practice when the Rechterlijk Pardon (Judge's Forgiveness) Concept is passed. That the concept of Rechterlijk

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<sup>24</sup> Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Bandung: Citra Aditya Bakti, 1998, hal. 133.

<sup>25</sup> Adhery Ardhan Saputro, *Konsepsi Rechterlijk Pardon atau Permaafan Hakim dalam Rancangan KUHP*, *Mimbar Hukum*, Volume 18 Nomor 1 Tahun 2016, hal. 66

<sup>26</sup> Barda Nawawi Arief, *Kapita Selekta Hukum Pidana*, Citra Aditya Bakti, Bandung, 2003. hal. 17.

Pardon (Judge's Forgiveness) is not in sync with the provisions on judge's forgiveness in the Criminal Code and Criminal Procedure Code, where the Criminal Procedure Code does not yet regulate the type of decision to be used in implementing judge's forgiveness decisions. Apart from that, the *Rechterlijk Pardon* (Judge's Forgiveness) concept has another weakness, namely that it can give rise to new problems, especially if the *Rechterlijk Pardon* (Judge's Forgiveness) concept is implemented in criminal case decisions, namely the absence of types of decisions that are not in accordance with the substance of this principle. It can be concluded that none of the types of decisions regulated in the Criminal Procedure Code are in accordance with the concept of *Rechterlijk Pardon* (Judge's Forgiveness).

## CONCLUSION

In the author's analysis, the concept of *Rechterlijk Pardon* (Judge's Forgiveness) can be applied to traffic accident cases if it meets the requirements based on the provisions of RKUHP Article 54 paragraph (2) "The severity of the act, the personal condition of the perpetrator, or the circumstances at the time the crime was committed and what happened afterwards can be used as a basis for consideration for not imposing a crime or not imposing humanitarian action," and not opposing the sense of justice for the victim and not opposing the norms that exist in society. In the verdict on a traffic accident criminal case, the concept of *Rechterlijk Pardon* (judge's forgiveness) is in line with the theory of Restorative Justice, where the judge gave a verdict against M. Rasyid Amrullah Rajasa based on the principles of the Restorative Justice theory, where the judge tries to create a sense of justice for both parties. party. According to the author's analysis, the *Rechterlijk Pardon* (Judge's Forgiveness) concept in Indonesian criminal law has a weakness if it is implemented when the *Rechterlijk Pardon* (Judge's Forgiveness) Concept is passed. That the concept of *Rechterlijk Pardon* (Judge's Forgiveness) is not in sync with the provisions on judge's forgiveness in the Criminal Code and Criminal Procedure Code, where the Criminal Procedure Code does not yet regulate the type of decision to be used in implementing judge's forgiveness decisions. Apart from that, the *Rechterlijk Pardon* (Judge's Forgiveness) concept has another weakness, namely that it can give rise to new problems, especially if the *Rechterlijk Pardon* (Judge's Forgiveness) concept is implemented in criminal case decisions, namely the absence of types of decisions that are not in accordance with the substance of this principle. It can be concluded that none of the types of decisions regulated in the Criminal Procedure Code are in accordance with the concept of *Rechterlijk Pardon* (Judge's Forgiveness).

## REFERENSI

- Adery Ardhan Saputro, *Konsepsi Rechterlijk Pardon atau Pemaafan Hakim Dalam Rancangan KUHP*, *Jurnal Mimbar Hukum*, Vol. 28, No.1, 2016, hal. 62.
- Alfret, Mardian Putra Frans, *Konsep Putusan Pemaaf Oleh Hakim (Rechterlijk Pardon) Sebagai Jenis Putusan Baru Dalam Kuhap*, *Jurnal KRTHA Bhayangkara*, Vol. 17, No. 3, 2023, hal. 598.
- Aristo Evandy A.Berlian, Barda Nawawi Arief, *Formulasi Ide Pemaafan Hakim (Rechterlijk pardon) Dalam Pembaharuan Sistem Pidana Indonesia*, *Jurnal Law Reform*, Vol. 13, No. 1, Tahun 2017, hal. 28.
- Artji Judiols Lattan, *Pertimbangan-Pertimbangan Hakim Dalam Memutus Perkara Pidana*, *Jurnal Hukum Dan Dinamika Masyarakat*, Vol. 12, No.1, 2014, hal. 55.
- Bambang Sunggono, *Metode Penelitian Hukum*, PT. Rajagrafindo, Persada, Jakarta, 2003, hal. 6.
- Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Bandung: Citra Aditya Bakti, 1998, hal. 103.

- Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP baru, cetakan ke-7, Kencana Prenamedia Group, Jakarta 2014, hal. 29.
- Barda Nawawi Arief, Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana, Bandung: Citra Aditya Bakti, 1998, hal. 133.
- Barda Nawawi Arief, Kapita Selekta Hukum Pidana, Citra Aditya Bakti, Bandung, 2003. hal. 17.
- <https://www.liputan6.com/news/read/4836/ini-kronologi-kecelakaan-bmw-maut-putra-hatta-rajasa> diakses pada tanggal 11 April 2024 Pukul 01.22 WIB.
- Jeroen Chorus, Piet-Hein Garver, Ewoud Hondius (ed), Introduction to Dutch Law, Netherland: Kluwer International Law, 2006, hal. 420.
- Jhonny Ibrahim, Teori dan Metodologi Penelitian Hukum Normatif, Bayumedia Publishing, Surabaya, 2005, hal. 44.
- Lembaga Studi dan Advokasi Masyarakat, Tinjauan Umum Terhadap Rancangan Kitab Undang-undang Hukum Pidana (KUHP) Nasional, 2005, hal. 2.
- M. Musa, Bunga Rampai Horizo Hukum Dalam Sistem Hukum Nasional Bagian I, Leutikaprio, Yogyakarta, 2020, hal. 62
- Nefa Claudia Meliala, Rechterlijk Pardon (Pemaafan Hakim) :Suatu Upaya Menuju Sistem Peradilan Pidana Dengan Paragdima Keadilan Restoratif, Jurnal IUS Kajian Hukum Dan Keadilan, Vol. 8, No.3, 2020, hal. 551.
- Putusan Pengadilan No.151/Pid.Sus/2013/PN.Jkt.Tim. hal.2.
- Putusan Pengadilan Nomor : 151/Pid.Sus/2013/PN.Jkt.Tim.hal. 4.
- Putusan Pengadilan Nomor : 151/Pid.Sus/2013/PN.Jkt.Tim.hal. 5.
- Putusan Pengadilan Nomor : 151/Pid.Sus/2013/PN.Jkt.Tim.hal. 100.
- Putusan Pengadilan Nomor : 151/Pid.Sus/2013/PN.Jkt.Tim.
- Sugeng Jatmiko, Rechterlijk Pardon (Pemaafan Hakim) Dalam Tindak Pidana Perpajakan, Jurnal Ilmu Hukum Sekolah Pascasarjana Universitas Swadaya Gunung Jati, Vol. 6, No. 1, Tahun 2012, hal. 1.
- Undang-undang Nomor 1 Tahun 2023 Pasal 54 ayat (2).
- Undang-undang Nomor 22 Tahun 2009.