

Implementation of "Judicial Pardon" for Minors Based on the National Criminal Code and SPPA

Dony Setiawan Putra¹

¹Faculty of Law, Universitas Brawijaya
Jl. MT. Haryono No.169, Ketawanggede, Kec. Lowokwaru, Kota Malang, Jawa Timur, Indonesia

*Corresponding Author: donysetiawanputra@ub.ac.id

Abstract

Judicial Pardon is a new sentencing guideline contained in the Indonesian National Criminal Code, the existence of Judicial Pardon or the forgiveness of this judge is especially for perpetrators who have indeed committed minor criminal acts, but the regulation is not cumulative where in pardon the judge does not only look at the lightness of the criminal act, but also about the person of the perpetrator and the circumstances at the time the criminal act was committed. Especially in perpetrators (children) based on the UUSPPA prioritizes restorative justice, namely non-formal or out-of-court settlements, but for serious crimes it must be resolved in a formal court, namely through a criminal decision by a judge. The purpose of this study is to describe and solve the legal problems that occur to the perpetrator (children), especially minors and also the process of applying *Judicial Pardon* for children who commit serious crimes, the formulation of the problem raised first is whether the criminal guidelines regarding "*Judicial Pardon*" can be applied to minors based on the National Criminal Code and UUSPPA, the second is how to settle the law regarding serious crimes committed by minors. The research method used is normative legal research. The results of the first research in the National Criminal Code and UUSPPA have regulated the *Judicial Pardon* where the National Criminal Code implements the SPPA Law so that it can be applied not only to children but also to adults, related to the application of judge's pardon is indeed specifically for the perpetrator (child), but for the perpetrator (child) who commits a serious criminal act must be punished, They (children) should be given a "*Judicial Pardon*" halfway or not absolutely, in other words, they are forgiven, but they are still given action regarding the serious crime that has been committed. Second, the legal settlement that occurs to the perpetrator (child) can be done by means of *Judicial Pardon* considering that the article that regulates *Judicial Pardon* is not cumulative because there is a comma and or so that if one of them is fulfilled, the Judge can grant a *Judicial Pardon* One of them is looking at the personal side of the perpetrator (child) where children still have a labile mindset so that they can still be directed to be good and acceptable to the community again.

Keywords: Judicial Pardon; Perpetrator (Child); Serious Crime; Criminal Code; SPPA Law

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INTRODUCTION

The 1945 Constitution affirms that the Republic of Indonesia is a country based on the law (*rechtsaat*). As a country of law, Indonesia always upholds human rights, guarantees all citizens equal to their position in law and government and is obliged to uphold law and government without exception. Indonesia as a country of law, adheres to the rule of law or rule of law, which is that the law has the highest power in the state. Indonesia also adheres to one of the important principles, namely the principle of *presumption of innocence* (Waluyo, 2008). This principle, in addition to being found in Law No. 8 of 1981 (KUHAP), can also be heard in Law No. 48 of 2009 article 8 paragraph 1 which reads: "every person who is suspected, arrested, detained, prosecuted, or confronted before the court must be presumed innocent before there is a court decision declaring his guilt and has obtained permanent legal force". Thus, the decision issued by the Court can be an important milestone for the purpose of the law itself, namely: justice, certainty and benefit for the community.

Regarding the issue of legal objectives, it is inseparable from the theories about the objectives of criminal law, namely: absolute theory, relative theory, and combined theory. The absolute theory according to this theory of retribution is the legitimacy of the crime (Loewy, 2009), the state has the right to impose a crime because the criminal has committed assault and rape on the rights and interests of the law that have been protected (Chazawi, 2007). Relative Theory states that the purpose of criminal law is to enforce public order and prevent crime (Remmelink, 2003). Meanwhile, the Combined Theory is a combination of absolute and relative theories where, according to Vos, there is a combination of retribution and public order (Hiariej, 2016). Of these three theories, Indonesia adheres to the Joint theory where the criminal law that applies in Indonesia is like a double-edged sword, which on the one hand is to punish the perpetrators of violations, but on the other hand also to uphold justice, especially for victims who have experienced crimes. The concept of joint theory enacted in Indonesia did not run smoothly as expected from the previous lawmakers due to the consequences arising from the enactment of a law. For example, if he is proven in court to have committed a crime, the judge will automatically issue a verdict in the form of imposition of a prison sentence and he as the perpetrator must be held accountable for his actions by implementing the judge's decision. In other words, the freedom of the perpetrator has also been taken away by the state because it has placed him (the perpetrator) in a special environment, namely prison. From this example it can be said that the law is like a double-edged sword, on the one hand protecting and on the other to punish.

The state has a very important position to ensure security and order in society, one of the tools to ensure this is the provisions of criminal law that provide legal certainty and justice for the community. However, it is not always possible to implement these provisions because many people violate the provisions stipulated in the law, and for people who violate them can be subject to penalties or criminal sanctions. Criminal sanctions imposed by judges as "God's Representatives" in the world to impose criminal judgments committed by the perpetrators are adjusted to the severity or lightness of the criminal act committed, the act committed is called criminalization (Rodliyah & Salim H.S, 2024). Grammatically speaking, sentencing is conceptualized as a process, method or act of sentencing sentencing (Mudzakkir, 2008) The act of criminalizing is an act of prosecuting based on criminal law or punishing someone for committing a criminal act. Mudzakkir proposed a concept of the penal system which is interpreted as the entire system of material criminal law rules/norms for criminalization or the entire system of material criminal law rules/norms for the granting or imposition and implementation of criminal offenses. The rules governing criminalization are listed in the Criminal Code and outside the Criminal Code. The rules consist of *general rules* and special rules, which based on the National Criminal Code have been included in full regarding the penal guidelines starting from the nature of the penalty, the judge's considerations in imposing the penalty to the sentencing guidelines.

Sentencing guidelines for judges have only emerged and are regulated clearly and straightforwardly in the National Criminal Code which will come into effect on January 2, 2026, since it was passed 3 years ago the National Criminal Code has begun to be introduced and taught, especially to legal institutions, academics, law enforcement officials, to components of the criminal justice system in Indonesia including: Police, Prosecutors, Judges, and Correctional Officers. There are things of

concern in the National Criminal Code, especially regarding the Criminal Guidelines where Judges are given guidelines regarding criminal acts submitted in court. The previous Criminal Guidelines had not been regulated in the WvS version of the Criminal Code, judges were given the freedom to determine the severity and severity of a case or the imposition of actions decided by the Judge at the trial. The definition of guidelines itself according to KBBI is a collection of basic provisions that give direction on how something must be done, including the main things that are the basis for the handle, instructions for determining or implementing something(KBBI, n.d.). Meanwhile, Criminalization or punishment according to Andi Hamzah is a sanction that suffers or is deliberately inflicted on someone(Hamzah, 1993).

In the application of the law, judges must be based on the guidelines for the application of criminal law, the guidelines for the application of criminal application in English are called *guidelines for criminal application*, while in Dutch it is called *the richtlijnen voor strafrechtelijke implementatie*. The guidelines for the application of criminal offences are designed as a direction or handle for judges in implementing the crimes that have been regulated in articles 53 to 56 of the National Criminal Code. The following is a table of articles that regulate the Criminal Guidelines in the National Criminal Code:

Table 1: Articles that regulate the Criminal Guidelines in the National Criminal Code

Article	Article Contents
Article 53	<ol style="list-style-type: none"> 1) In prosecuting a criminal case, judges are obliged to uphold law and justice 2) If in upholding law and justice as intended in paragraph (1) there is a conflict between legal certainty and justice, the judge is obliged to prioritize justice
Article 54	<ol style="list-style-type: none"> 1) In criminal law, it must be considered: <ol style="list-style-type: none"> a. Forms of Guilt of Criminal Acts b. Motive and purpose of committing a criminal act c. The inner attitude of the perpetrator of a criminal act d. Criminal Acts Committed Intentionally or Unplanned e. How to commit a Crime f. The attitude and actions of the perpetrator after committing a criminal act g. Curriculum vitae, social status, and economic condition of the perpetrator of the Crime h. The Influence of Crime on the Future of Criminal Acts i. The Influence of Criminal Acts on Victims or Victims' Families j. Forgiveness from the Victim and/or the Victim's Family k. The value of law and justice that lives in society 2) The lightness of the act, the personal circumstances of the perpetrator or the circumstances at the time of committing the crime and what happened later can be used as a basis for consideration not to impose a crime or not to impose an action by considering the aspects of justice and humanity
Article 55	Every person who commits a criminal act is not exempt from criminal liability based on the reason of the criminal waiver if the person has deliberately caused the occurrence of circumstances that can be the reason for the criminal waiver
Article 56	In the judgment of the Corporation, it must be considered : <ol style="list-style-type: none"> a. The extent of the loss or impact incurred b. The level of involvement of managers with functional positions of the Corporation and/or the role of the order-giver, control holder, and/or beneficial owner of the Corporation c. The Length of the Criminal Acts that Have Been Committed

Article	Article Contents
	d. Frequency of Crime by Corporations e. Forms of Criminal Offenses f. Involvement of officials g. The value of law and justice that lives in society h. Track record of the Corporation in conducting business or activities i. Effect of criminalization on the Corporation and/or j. Corporate Cooperation in Handling Criminal Acts

In the four 4 articles above regarding the penal guidelines that are at issue, namely article 54 paragraph (2), where in this article the judge in giving forgiveness to the perpetrator is called the principle of "Judicial Pardon", which is the principle that gives the judge the authority to forgive someone who is guilty of committing a minor crime, this forgiveness is included in the judge's decision and it must still be stated that the defendant is proven to have committed an act criminal charges against him. In essence, this article regulates the granting of forgiveness, the subject who gives forgiveness is the Judge while the subject who is forgiven is the perpetrator of a criminal act, the condition for this forgiveness is that the criminal act committed must be a minor criminal act.

Misdemeanor crimes contained in the National Criminal Code include: Insult, Persecution, Theft, Fraud, and Fraud. Of the various types of criminal acts, these are generally committed by adults or people who can be responsible in the law, but how do child perpetrators, especially minors. In Law No. 11 of 2012 Article 69 states that:

1. A child may only be convicted or subject to action under the provisions of this law
2. Children who have not reached the age of 14 can only be subject to action.

Meanwhile, in the National Criminal Code, children under the age of 14 cannot be sentenced to a crime and can only be subject to actions as stipulated in article 113 paragraph (3). Article 113 paragraph (3) specifically that children under the age of 14 cannot be sentenced to a crime affirm the need for special protection for very young children(Hiariej & Santoso, 2025). Perpetrators of criminal acts committed by children, especially minors, are directed not to be imposed in the form of criminal sanctions, but directed to be given action, for example, in the form of return to parents, parents are considered to still be able to direct children who become perpetrators of criminal acts to be directed to be better, as expressed by (Sholikhawati, 2015): the role of parents as the primary environment of children is expected to play a role in maintaining Warm interaction and communication with children, provide moral support, do not label negatively, and provide education values that apply in society(Adriana, n.d.). An example of a case that occurred in Palembang, where the prosecutor prosecuted the perpetrator who was still a child with the death penalty for the rape and murder case(Krisna Pradipta, n.d.). From the example of this case, it can be concluded that there is a mistake of the Prosecutor as a component of the criminal justice system in Indonesia in prosecuting the case, where children who commit criminal acts in the UUSPPA are called children in conflict with the law, must also be seen regarding the burden of responsibility that they can do. With the existence of penal guidelines that have been regulated in the National Criminal Code and also stated in the UUSPPA, it is hoped that children who are in conflict with the law can be taken action or even given a "Judicial Pardon" as stated in article 54 paragraph (2), but this is an obstacle because in the article it is only given to Petty Crimes only, but it has not been regulated explicitly and in detail, especially regarding acts committed by children who are still underage. Against this background, the imposition of *Judicial Pardon* for children who commit serious crimes is an important issue to be studied. This study intends to analyze the application of *Judicial Pardon* for minors who commit serious crimes in order to solve legal problems that occur to them (children) and also to find out the impact that will occur if the perpetrator (child) receives a criminal verdict from the Court.

METHOD

The type of research used in this study is normative legal research, which is research to find legal rules, legal principles, and legal doctrines to answer legal issues (Sugono, 2013) related to the application of *Judicial Pardon* for minors who have committed serious crimes and the resolution of legal problems faced by minors. This research uses a legislative, case, and comparative approach. The legislative approach is carried out by studying and understanding the provisions in the laws and regulations, especially regarding the National Criminal Code and the Law on the Juvenile Criminal Justice System related to the legal issues to be studied. The case approach is carried out by looking for cases that occur in real terms regarding criminal charges from prosecutors against child offenders that have become decisions in court. The comparative approach is carried out by comparing the National Criminal Code laws that will apply in Indonesia and the Juvenile Criminal Justice System Law that has been in force in Indonesia. The analysis of legal materials is carried out by means of systematic and teleological interpretation

ANALYSIS AND DISCUSSION

Application of "Judicial Pardon" to Minors Based on the National Criminal Code and the SPPA Law

Judicial Pardon or *Rechterlinjk Pardon* is a term in the law that comes from Dutch which means forgiveness given by a court or judge to a person who has been proven guilty of a criminal act, this action is carried out as a form of the judge's discretion to give a second chance to the perpetrator of a criminal act who shows remorse and a willingness to improve his behavior. The decision on the granting of a *pardon* is based on certain considerations such as the extent to which the perpetrator has shown genuine remorse, whether he has taken steps to improve himself, and other factors considered relevant by the Judge. The provision of a *rechterlinjk pardon* can have a positive impact both for perpetrators who get a second chance to improve themselves and for people who want to see rehabilitation and reintegration for perpetrators (Hiariej & Santoso, 2025). In other words, judges are not only required to enforce the law as fairly as possible, but they are also required to be fair because judges are also called "God's Representatives" in the world, so that whatever decision is issued by him becomes a benchmark for just and humane law enforcement. Highlighting justice and humanity in the criminal justice process, this underlines that in determining the punishment for someone involved in a criminal act, not only look at how severe his or her actions are, but also must consider other factors such as the perpetrator's personal state, circumstances when committing criminal acts, and things that happen afterwards.

Regarding the light weight of an act that has been committed by the perpetrator, it should also not be separated from the loss caused in the sense that for example the act is considered by the perpetrator to be a minor criminal act, but the victim who suffers a loss thinks that it is a serious criminal act, well indeed the law has been regulated regarding the severity of a criminal act, but the problem is the *impact* or the effects caused by the act, the author takes an example such as a person who steals food while being under the care of a father who has just returned from work, after the perpetrator of the thief is arrested he thinks that the price of food is very cheap so he does it, but on the other hand the victim of the father who has been looking for work and slammed his bones for the needs of his family at home who is hungry and waiting for their father to come home is an act that is a good deed. It is very difficult because they have been waiting for the certainty of their lives because they are hungry. This is not regulated in detail in the law, namely the factors of lightness of the humanitarian side.

Regarding the state of the perpetrator at the time of committing a criminal act, if we refer to the old Criminal Code or the WvS Criminal Code, we can find in article 44 which reads:

- 1) Whoever commits an act which cannot be accounted for because his soul is impaired in growth or impaired by disease, shall not be punished;
- 2) If it turns out that the act cannot be accounted for by the perpetrator because his mental growth is disabled or impaired by illness, then the judge may order that the person be admitted to a mental hospital, for a maximum of one year as a probationary period;

- 3) The provisions in paragraph 2 only apply to the Supreme Court, High Court, and District Court.

From the provisions of article 44, it can be concluded that a person's ability to be responsible (*Toerekeningsvatbaarheid*) (Kartanegara, n.d.) cannot be held accountable if the person is unable to be responsible. According to Simons, the ability to be responsible can be interpreted as a "psychic" state in such a way that it justifies the application of a criminal effort both from the general point of view and the person (Sudarto, 2013). Then the way to measure it is:

- 1) He is able to know or realize that his actions are against the law
- 2) He can determine his will according to that awareness.

From Simons' explanation, it can be concluded that (1) a person is capable of being responsible if he is able to realize/know that his actions are against the law, he is able to understand the value of the consequences of his actions and realize that his actions are not allowed/prohibited or ordered by law and he is able to determine his will for the act, (2) people are not able to be responsible if they do not have the freedom to choose between doing and not doing what which is prohibited or ordered by law and he cannot understand that his actions are contrary to the law and cannot determine the consequences of his actions/are unable to understand the value of the consequences of his actions. The perpetrator's personal condition as stipulated in article 44 of the Criminal Code of WvS indicates that a person who experiences mental distress or has a mental disorder cannot be held criminally responsible. However, if you refer to the National Criminal Code, precisely articles 38 and 39 regarding mental disabilities and intellectual disabilities, this regulation is similar to article 44 of the Wvs if you look at the comparison of the following articles :

Table 2: Comparison of Articles in the National Criminal Code and the Wvs

KUHP WvS	KUHP Nasional
Article 44	Article 38
1) Whoever commits an act which cannot be accounted for because his soul is impaired in growth or impaired by disease, shall not be punished;	Any person who at the time of committing a criminal act has a mental disability and/or intellectual disability may be reduced in criminal punishment and/or subject to action
2) If it turns out that the act cannot be accounted for to the perpetrator because his mental growth is disabled or impaired due to illness, then the judge can order that the person be admitted to a mental hospital, for a maximum of one year as a probation period;	Article 39
3) The provisions in paragraph 2 only apply to the Supreme Court, High Court, and District Court.	Any person who, at the time of committing a criminal act, has a mental disability that is in a state of acute relapse and accompanied by a psychotic picture and, or moderate or severe intellectual disability, cannot be sentenced to a crime, but can be subject to action.

From the chairman of this article, it can be said that the National Criminal Code has now undergone a reformulation of the Criminal Code WvS, where regarding the state of the perpetrator who experiences mental disorders / intellectual disorders, responsibility can still be asked, it's just that the imposition of imprisonment cannot be carried out, it can only be imposed in the form of actions as stated in articles 38 and 39 of the National Criminal Code. So in the sense that with the imposition of action for perpetrators who experience mental and mental disorders, they are still asked to be responsible through the mechanism of action, namely in the form of treatment at a Psychiatric Hospital, as well as Rehabilitation Places that have been appointed by the Court with treatment in these special places, it is hoped that the perpetrator can recover slowly and not harm others again.

Regarding the circumstances after he commits a criminal act, it can also be a reason for the judge to impose a Judicial Pardon or *Rechterlijk Pardon* where the perpetrator who has been proven to have committed a criminal act, but shows changes and regret during the investigation process and during the court process, the judge with his power of attorney can grant forgiveness to the perpetrator. Forgiveness imposed by the judge cannot necessarily be immediately given in court, the judge is also required to be observant and firm, especially regarding the regret of the perpetrator, on the other hand, the judge's forgiveness or *Judicial Pardon* can guarantee justice and humanity in the legal process to maintain a balance between firm law enforcement and humane justice. *Judicial Pardon* is expected to be one of the motors for the achievement of two senses of justice in the application of laws and regulations, namely (Aprilianda et al., 2017) :

a) *Moral Justice*

It is a justice that comes from morality, morality itself is a standard of good and bad that comes from various sources, and the most important and main thing comes from religious teachings

b) *Formal Justice*

It is a justice that comes from formalities, the formality in question is justice that comes from the judicial system that has been regulated in the law, namely court decisions that have permanent legal force, where the court decision is decided based on the examination and procedures that exist in the court with the hope that the verdict issued is careful, thorough, and firm and meets the justice expected both from the victim and for the perpetrator

This highlights the importance of incorporating considerations of justice and humanity within the criminal justice process. It underscores that in determining a sentence for an individual involved in a criminal offense, the assessment should not solely focus on the gravity of the act, but also take into account other relevant factors, such as the offender's personal circumstances, the severity of the wrongdoing, and the conditions following the commission of the crime. In doing so, law enforcement and judicial practices can uphold firmness while ensuring humane and equitable justice.

A child offender in the juvenile justice system is referred to as a child in conflict with the law, in International Law a child in *conflict with the law or children in conflict with the law* is a person under the age of 18 who is facing the criminal justice system because the person concerned is suspected or accused of committing a criminal act (UNICEF, 2006). The intersection of children with the criminal justice system is the starting point for children to face the law, the term criminal justice system describes a legal process applied to a person who commits a criminal act or violates criminal law. According to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, children who are in conflict with the law are divided into 3 groups, namely: 1) Children who are in conflict with the law, 2) Children who are victims of criminal acts, 3) Children who are witnesses to criminal acts. What is meant by a child in conflict with the law is a child who is 12 years old but not yet 18 years old who is suspected of committing a criminal act, while what is meant by a child who is a victim of a criminal act is a child under the age of 18 who has experienced physical, mental, and/or economic suffering caused by a criminal act, then what is meant by a child who is a witness to a criminal act is a child under the age of 18 who can give information for the purpose of investigation, prosecution, and examination in court about a criminal case heard, seen, and/or experienced (Pramukti & Primaharsya, 2015). Regarding children who are in conflict with the law who are suspected of committing criminal acts, it is undeniable that he still has a developing thinking pattern factor where he does not know which deeds are right and which deeds are bad, one of the factors is about the intelligence of children, where children who commit bad deeds or criminal acts generally have lower verbal intelligence and lag behind in achieving scholastic results So that with low intelligence and less sharp social insight, it is very easy for them to be entangled in bad invitations and labor influences to commit evil acts. Therefore, the law on the juvenile criminal justice system (UUSPPA) prioritizes the restorative settlement of children's cases where it still prioritizes children's rights as stated in Law No. 23 of 2002 concerning Child Protection. In this law, children who are in conflict with the law are entitled to protection which includes (Pramukti & Primaharsya, 2015) :

- a) Humane treatment of children in accordance with the dignity and rights of children;
- b) Provision of special assistance officers from an early age;
- c) Provision of special facilities and infrastructure
- d) Imposition of appropriate sanctions for the best interests of the child;
- e) Continuous monitoring and recording of the development of children who are in conflict with the law;
- f) Providing guarantees to maintain relationships with parents or family;
- g) Protection from identity reporting through the mass media and to avoid labeling.

With the protection for children as stated in the Child Protection Law and the UUSPPA, children who are in conflict with the law will still be protected until the court decides on the crime case committed by the child, and also with the enactment of the National Criminal Code which is the implementation of the UUSPPA, it is hoped that the rights owned by children can still be maintained and guaranteed protection. In the National Criminal Code, it has been regulated regarding the Criminal Guidelines that have been contained in article 54, especially regarding "*Judicial Pardon*" where the judge can grant forgiveness and forgiveness to perpetrators who have been guilty of minor crimes, but what about child perpetrators who commit serious criminal acts, such as murder. The crime of murder itself is a criminal act that is categorized as a serious criminal act, where the threat of this criminal act is imprisonment for a maximum of 15 years "every person who takes the life of another person, is convicted of murder" article 458 of the National Criminal Code, in the formulation of this article expressly punishes the perpetrator of a criminal act to be sentenced to prison without the existence of a "*Judicial Pardon*" Because this criminal act is a serious crime and is not a condition for a judge to forgive or pardon. However, in the formulation of the article regarding murder and the sentencing guidelines, it only regulates the perpetrators, especially adult perpetrators. What about child perpetrators, especially minors who commit the crime of murder, judges in court are required to prioritize justice and still not eliminate the rights of child perpetrators as stated in the UUSPPA and the Child Protection Law. Indeed, the law directs restorative action for child offenders, but this is a minor criminal offense only, while for serious crimes it is directed to go through a formal court process, namely through a court decision.

In the court decision decided by the judge with the defamation guidelines that have been contained in the National Criminal Code, it is hoped that the sentence can be fair and beneficial for the victim, the community, and also of course can create a deterrent for the perpetrator. For child offenders, especially those who commit serious crimes, they should be directed through criminal imposition in the form of actions, this is because children still do not have a qualified level of intelligence like adults where their mindset is still formed and can develop if directed to be good. The imposition of criminal penalties on children is considered less effective because children are still experiencing growth and development in thinking, behavior and socializing, so the implementation of "*Judicial Pardon*" specifically for child perpetrators who commit serious crimes can have a positive effect on children, even though justice for victims who experience is felt to be unfair, but children still cannot be held criminally responsible. they can be given action in the form of return to their parents, or placed in social places that take care of children's behavior through a decision issued by the Court. The SPPA Law does regulate the guidelines for "*Judicial Pardon*", but the SPPA Law prioritizes restorative settlement, not the imposition of prison sentences. In the future, it is hoped that there will be a half-baked "*Judicial Pardon*" which has been clearly and specifically contained in the new draft law on the juvenile criminal justice system, where the renewal of this special children's law can be balanced with the National Criminal Code which will come into effect in January 2026, and also with the renewal in the RKUHAP that is currently being drafted by the government can also regulate the granting mechanism "*Judicial Pardon*" can be given both to adults and to children.

Legal Settlement of Serious Crimes Committed by Minors

The settlement of criminal acts committed by children has been regulated in Law No. 12 of 2012 concerning the Juvenile Criminal Justice System, where in article 5 it has regulated the process of the juvenile criminal justice system must prioritize restorative justice. Restorative justice is the settlement of criminal cases by involving the perpetrator, the victim, the perpetrator/victim's family, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retribution as stated in article 1 number 6 of law No. 12 of 2012 (UUSPPA). Restorative *justice* is a settlement process that is carried out outside the criminal *justice system* by involving victims, perpetrators, victims' families and perpetrators, the community and interested parties, where *restorative justice* (RJ) is considered a new way of thinking/paradigm in looking at a criminal act committed by a person. The concept of RJ has a basic understanding that criminal acts or crimes are actions against people or society and are related to violations as a violation of legal norms (Morris & Maxwell, 2001), According to Howard Zehr, violations committed not only damage the *law order* (*law breaking*) made by the state, but also damage the social order (*societal value*) (Zehr, 1990). Although the criminal act has damaged the value order of society, it is still the subject of the problem with the criminal act committed, namely the problem of the violation must have been listed in the law of the state (*legal state*) and the act is declared as a criminal act.

In the settlement of criminal acts in Indonesia, there are 2 settlement mechanisms that have been recognized in the criminal justice system in Indonesia, namely first; Penal settlement is a settlement based on a decision from the court and has permanent legal force, second; Non-Penal Settlement is a settlement outside the court in the sense that this settlement is carried out by deliberation or joint decision between the perpetrator, the victim, and the parties related to the problem of the criminal act that occurred. However, in the author's opinion, the laws regulated in Indonesia, especially after the enactment of the National Criminal Code, still do not specifically regulate the legal settlement for juvenile offenders who are proven and have actually committed serious crimes, such as the crime of murder, just take for example article 458 of the national criminal code where in article 458 paragraph (1) "every person who takes the life of another person, convicted of murder with a maximum prison sentence of 15 years, then there is also a criminal charge of Article 458 paragraph (3) "murder that is followed, accompanied, and preceded by a criminal act intended to facilitate the sentence of life imprisonment or imprisonment for a maximum of 20 years. An example of a case that occurred in Palembang, where the prosecutor prosecuted a perpetrator who was a minor with a criminal charge of the death penalty, even though the perpetrator was legally and proven to have committed the serious crime, the prosecutor should also look at the status of the perpetrator, who is still a child. With the final result of the court decision that has the force of law, it still imposes on the perpetrator in the form of imprisonment for 10 years. With this result, it is proven that the judge has implemented the judicial system in accordance with the corridors and applicable legal rules, automatically the child perpetrator can be asked about criminal responsibility considering that the age of the child perpetrator is already 16 years old when committing a criminal act and in the SPPA Law and the National Criminal Code the child can be asked for criminal responsibility.

The SPPA Law and the National Criminal Code have regulated the age limit for children who commit criminal acts, namely under the age of 14 years, which cannot be sentenced to a crime and can only be charged in the form of actions. Self-action in the National Criminal Code is regulated in article 113 that every child can be subjected to actions as an alternative to criminal imposition, including return to parents, treatment in certain institutions, and attending education. This means that minors cannot be held criminally responsible but rather imposition of action. In some countries, it regulates the minimum and maximum limits for child offenders, namely (Marlina, 2009):

Table 3: Minimum and Maximum Age Limits for Child Offenders in Selected Countries

Country	Minimum Age Limit	Maximum Age Limit
Amerika Serikat	8 Years	18 Years
Inggris	12 Years	16 Years
Jepang	14 Years	20 Years

Of several countries that have regulated the minimum age limit and the maximum age limit, Indonesia is one of the countries that has complied with this can be proven from the existing regulations in article 69 of the SPPA Law and article 113 of the National Criminal Code. In these two laws and regulations, there are still gaps or gaps that have not been specifically regulated, especially the collection of special crimes for children, where in the National Criminal Code there are several types of Delik or Crimes from mild to severe, especially for serious crimes for child perpetrators, responsibility can indeed be held accountable as in the case that occurred in Palembang, However, how can child offenders who are still minors, especially under the age of 12 years, according to the rules that have been regulated, both in the SPPA Law and the National Criminal Code, cannot be subject to a Criminal Offence, which is only in the form of the imposition of Actions. This has been stated in the general provisions of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System that children under the age of 12 years are only subject to action, while children who have reached the age of 12 years to 18 years can be subject to action and criminal penalties. So that if the perpetrator of a serious crime is still a minor, especially under the age of 12 he cannot be charged with a crime only in the form of an action. Actions that can be given to minors, especially 12 years old, can be in the form of:

- a) Return to parents
- b) Submission to someone
- c) Treatment in a mental hospital
- d) Treatment in the institution
- e) Obligation to attend formative education and/or training held by the government or private entities
- f) Revocation of driver's license
- g) Correction due to Criminal Acts

This is an action that can be given to the perpetrators of criminal acts based on the National Criminal Code, which is implemented based on the SPPA law that has been regulated in article 82 of the SPPA Law. Actions that are an alternative to the imposition of criminal penalties are the right way out for lawmakers who are specifically for minors because they are based on psychological considerations, namely the emotional, intellectual, and mental maturity of children, in other words, this is an implementation of the excuse for forgiveness regulated in article 40 of the National Criminal Code (Hiariej & Santoso, 2025). So that children who are under the age of 12 can be exempt from crime, regarding the exemption has been stated by J.E Sahetapy (Sahetapy, 1982), "the exemption here is not in physical terms, but he (the perpetrator) is released mentally and spiritually, thus he seems to experience a mental and spiritual rebirth". The liberation theory referred to by Sahetapy is sourced from Pancasila, which emphasizes that the sense of love for the homeland, the nation and the Indonesian nation must be instilled, nurtured and fostered. In this regard, the theory of criminal liberation presents an aspect from the other side, namely that the government and the people need to feel responsible for freeing the convicted person from the crisis and cruelty of the social reality if the person concerned (the perpetrator) is in due course (Sahetapy, 2007). Sahetapy's idea is also supported by J.E Lakollo who emphasized that the theory of liberation really meets the eligibility requirements of an Indonesian criminal law theory because it has a human process character and aims to be plural but integrative based on the philosophy of the Indonesian nation, namely Pancasila (Sholehuddin, 2003). In the sense of giving actions and not imposing criminal penalties on perpetrators, especially minors, is the right action and in accordance with the basis of the state, namely Pancasila.

The provision of action to a child perpetrator who commits a criminal act or called a child in conflict with the law, is a decision issued by a Judge in court to resolve legal problems faced by the child, especially minors, this has been stated in article 69 of the UUSPPA where the provision of action is aimed at children who are not yet 14 years old. In other words, this is an implementation of the guidelines for sentencing children based on the UUSPPA, with the provision of action to children who commit serious crimes, especially minors, is an implementation of "*Judicial Pardon*" in half, called half because the child perpetrator should be punished in the form of imprisonment for committing a serious crime instead of giving action. "*Judicial Pardon*" itself has been regulated in Article 70 of the UUSPPA where the child is not sentenced to a crime or an action based on the lightness of the act, the personal circumstances of the child or the circumstances at the time the crime was committed, article 70 of the UUSPPA is also implemented into the National Criminal Code article 54 paragraph (2) by the Government of Indonesia. Regarding "*Judicial Pardon*", both those regulated in the SPPA Law and the National Criminal Code, there is a word about the personal condition of the child (perpetrator), if referring to the personal condition it means about the character of the perpetrator where not everyone has a bad disposition or willingness to commit a criminal act (Aprilianda et al., 2017), it could be that the character or personality of the perpetrator is formed due to environmental factors that are not good and correct or even he is the perpetrator (child) because he is still finding his identity We do not yet know which deeds are right and which deeds are wrong. Regarding the character or personality of the perpetrator in criminology, it is called criminal psychology, which is the investigation of the soul of a criminal solely aimed at a person's personality to provide information to the judge to find the cause of the act that can occur (Susanti & Rahardjo, 2018). Regarding the personality of the child (perpetrator) should be considered by the judge in giving a verdict, whether it is a verdict in the form of a prison sentence or an action, regarding the prison sentence given to the child will definitely have an impact on the psychological of the perpetrator, on the other hand the granting of prison sentences is currently a debate because its nature is not supportive in reducing crime and even tends to increase the crime rate, This happens because of the association in prisons that is difficult to control, both adult prisons and special prisons for children or commonly known as LPKA (Lembaga Pembinaan Khusus Anak). LPKA itself based on Law No. 22 of 2022 is an institution or place where inmates serve their criminal periods, where their placement is separated from adult prison. The fostered children here have the right to receive guidance, guidance, supervision, assistance, education and training as well as other rights in accordance with the provisions of laws and regulations. In this case, children placed in LPKA have different treatments and coaching methods than adults, for example education, where fostered children in LPKA will receive education like other formal education, only the implementation is different, namely carried out in children's prisons (LPKA). Even though it has a different way of coaching, for socializing in daily life LPKA is the same as in an adult formal prison, they can still get along and socialize among fellow fellow inmates of other children, this is what causes problems because from this socialization new things will appear for children, especially regarding criminal acts, just take the example of the beginning the perpetrator (child) only knows how to kill people but with association in the LPKA he to know how other criminal acts can be committed, such as: stealing and raping women. Serious criminal acts such as murder, although they are serious crimes, can be followed by other criminal acts that were initially unknown to the perpetrator (child) because of the impact of socializing in prison, he became knowledgeable and proficient in other criminal acts, this raises big questions about the effectiveness of prison.

In addition to the effectiveness of prison, there are also things that should be considered regarding the imposition of prison sentences for children, namely regarding "*Labeling*", *Labeling* is a stigmatic imposition that arises in society to former prisoners, where the stigma of a prisoner (child) will definitely be attached to him after he gets out of prison so that it is difficult to be accepted by the community environment even for him to develop in society will experience difficulties. According to Edwin Lemert (1950) (Atmasasmita, 2004), the giving of *labeling* or stigma to prisoners (children) will have such a serious impact because the label that the prisoner (child) has received will be so strongly attached to him that a person who has received the label is difficult to escape and tends to behave in accordance

with the label or stigma that he (the prisoner) receives, so that the person who identifies himself as a criminal will always behave and behave like criminals. It is known that in Indonesia not only national law applies, but there are also Islamic laws that have lived in society because indeed the majority of Indonesian people are followers of Islam. The application of Islamic law in Indonesia can be seen in one of the provinces in Indonesia, namely Aceh Province, where Islamic law coexists with the national law in the area, namely Islamic Criminal Law or commonly called (*Jinayah*), the concept of *Jinayah* is an Islamic law based on the provisions in the Book of Muslims, namely the Qur'an. Based on the concept of *Jinayah*, it is known that there is forgiveness based on the Qur'an, forgiveness by the victim, or guardian is recommended by the Qur'an and will be given in the hereafter as well as the pleasure of God and Islamic sharia views forgiveness or forgiveness as a grace from God over humans in accordance with the word of Allah in Surah Al-Baqarah verse 178 which reads: "O you who believe, qishas are obligatory upon you with regard to those who are killed; free people with free people; slave with slave; woman and woman, then whoever receives a forgiveness from his brother should forgive in a good way and should pay diat to the one who forgives in a good way, which is a relief from your Lord and a mercy, and whoever goes beyond that then will be a painful punishment for him.". Forgiveness in Islamic law appears as the right or authority of the victim or the victim's family to forgive (forgive) someone who has been proven guilty of committing the crime (*jarimah*) of intentional murder, with this forgiveness the perpetrator (child) is expected to be free from the execution of the crime that will be determined by the Judge.

Regarding *Judicial Pardon* based on article 70 of the UUSPPA and article 54 paragraph 2 of the National Criminal Code, both give consideration to the perpetrator not to give criminal or action, especially to minors who have committed serious crimes can be imposed in the form of actions, so that settlement with *Judicial Pardon* is not possible, but the elements in *the Judicial Pardon* not cumulative, this can be seen from the formulation that uses commas and or, so that if only one of them is fulfilled, the judge can give a *Judicial Pardon* decision to the perpetrator (child) who has been proven to have committed a serious criminal act so that the perpetrator (child) can be free from the imposition of Criminal and also Actions with considerations, one of which is about the personal circumstances of the perpetrator (child) who is considered to still not have goals and directions of life and with the right direction, the future of children who have committed serious crimes can return to normal without any negative label from society so that they can be accepted and socialize well in daily life.

CONCLUSION

Judicial Pardon has a huge potential in the settlement of the law experienced by a person or perpetrator (child), with legal settlement through *Judicial Pardon* it is expected to change the perpetrator (child) who has committed a serious crime who initially had a negative image to a positive one because of the judge's forgiveness considering the personality elements of a child who are still labile in finding their identity. *Judicial Pardon* is not new in Indonesia, previously this sentencing guideline had been contained in the SPPA Law which was specifically for children, but after the enactment of the National Criminal Code in January 2026, *Judicial Pardon* has also been regulated in the National Criminal Code, the reason for the implementation of judge pardons in the National Criminal Code is based on the effectiveness of prison and also the existence of a stamp (label) on the perpetrators of criminal acts. Where life in prisons blends into one whose inhabitants are diverse from acts of committing minor crimes to serious crimes, not to mention the funding provided by the Government to prisons which is very burdensome on the state's financial balance, on the other hand about the stamp (label) that former perpetrators (children) will get after they get out of prison or after they undergo the action process decided by the Judge, They will definitely have difficulty living their lives after being free from punishment because not everyone or society is willing to accept them, especially the perpetrators (children) are seen as still having a bright future if they are directed appropriately and correctly.

REFERENCES

- Adriana, M. N. (n.d.). *Peran Orang Tua dalam Membina Anak Berkonflik dengan Hukum, Apakah Optimal?*
<https://www.kompasiana.com/made02326/64842a364d498a5081009853/peran-orang-tua-pada-pembinaan-anak-berkonflik-dengan-hukum-sudah-optimalkah>
- Aprilianda, N., Endrawati, L., Afandi, F., Farikhah, M., Alviolita, F. P., Setiana, R. D., & Beliani, D. (2017). *Sistem Peradilan Pidana Indonesia*. UB Press.
- Atmasasmita, R. (2004). *Romli Atmasasmita, Teori dan Kapita Selektivitas Kriminologi*. PT Eresco.
- Chazawi, A. (2007). *Pelajaran Hukum Pidana Bagian 1 (Bagian 1)*. Raja Grafindo Persada.
- Hamzah, A. (1993). *Sistem Pidana dan Pemidanaan Indonesia*. PT Pradnya Paramita.
- Hiariej, E. O. ., & Santoso, T. (2025). *Anotasi KUHP Nasional*. Raja Grafindo.
- Hiariej, E. O. S. (2016). *Prinsip-prinsip Hukum Pidana Edisi Revisi (Edisi Revi)*. Cahaya Atma Pustaka.
- Kartanegara, S. (n.d.). *Hukum Pidana (Kumpulan Kuliah) (Bagian I)*. Balai Sastra Mahasiswa.
- KBBI. (n.d.). *Pedoman*. <https://kbbi.web.id/pedoman>
- Krisna Pradipta. (n.d.). *Aturan Pidana untuk Anak di Bawah Umur*.
<https://www.tempo.co/infografik/infografik/aturan-pidana-untuk-anak-di-bawah-umur-1143549>
- Loewy, A. H. (2009). *Criminal Law In A Nutshell, Fifth Edition (5th ed.)*. A. Thomson Reuters Business.
- Marlina. (2009). *Peradilan Pidana Remaja di Indonesia (Pengembangan Konsep Pengalihan dan RJ)*. Refika Aditama.
- Morris, A., & Maxwell, C. B. (2001). *Restorative Justice for Juveniles ; Conferencing Mediation and Circles*. Hart Publisng.
- Mudzakkir. (2008). *Perencanaan Pembangunan Hukum Nasional di Bidang Hukum Pidana dan Sistem Pidana (Politik Hukum dan Pidana Pidana Nasional)*.
- Pramukti, A. S., & Primaharsya, F. (2015). *Sistem Peradilan Pidana Anak*. Pustaka Yustisia.
- Remmelink, J. (2003). *Hukum Pidana - Komentar atas Pasal-pasal Terpenting dari KUHP Belanda dan Pidananya dalam KUHP Indonesia*. Gramedia Pustaka Utama.
- Rodliyah, & Salim H.S. (2024). *Pengantar Hukum Pidana (Mengacu pada Undang-Undang Hukum Pidana Baru No.1 Tahun 2023)*. Sinar Grafika.
- Sahetapy, J. . (1982). *Studi Khusus tentang Ancaman Hukuman Mati untuk Pembunuhan Berencana*. Rajawali Press.
- Sahetapy, J. . (2007). *Hukuman Mati di Negara Pancasila*. Citra Aditya Bakti.
- Sholehuddin, M. (2003). *Sistem Sanksi dalam Hukum Pidana (Gagasan Dasar Sistem Jalur Ganda dan Pelaksanaannya)*. Raja Grafindo.
- Sudarto. (2013). *Hukum Pidana I (Edisi Revi)*. Yayasan Sudarto - Fakultas Hukum UNDIP.
- Sugono, B. (2013). *Metodologi Penelitian Hukum*. Raja Grafindo.
- Susanti, E., & Rahardjo, E. (2018). *Buku Ajar Hukum dan Kriminologi*. Anugrah Utama Raharja.
- UNICEF. (2006). *Child Protection Information Sheet*.
- Waluyo, B. W. (2008). *Kejahatan dan Kriminalitas*. Sinar Grafika.
- Zehr, H. (1990). *Changing Lenses (A New Focus for Crime and Justice)*. Herald Press.