

# Guidelines for Criminal Sentence and the Rule of Pardon in Article 54 Paragraphs (1) and (2) of the 2023 Criminal Code

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**Abstract:** This research examines the regulations and implications of Law No. 1 of 2023 concerning the Criminal Code (KUHP 2023). The study focuses on the application of sentencing guidelines and the authority of judicial pardon, as well as its impact on judges' performance. KUHP 2023, which replaces the Dutch colonial Criminal Code, was created to reflect the dynamic developments in law, society, and technology, as well as the Indonesian legal philosophy based on Pancasila and the 1945 Constitution. The new sentencing guidelines detailed in Article 54, Paragraph (1) of KUHP 2023 are expected to assist judges in considering proportional punishments, while judicial pardon provides flexibility in handling minor cases. This research employs a normative juridical method and secondary data, including legislation, court decisions, and legal literature, to analyze the implementation of sentencing guidelines and judicial pardon, and their implications in Indonesia's criminal procedure law.

**Keywords:** Criminal Code 2023; judge's forgiveness; Sentencing guidelines

## 1. Introduction

Wetboek of the Strafrecht ( WvS ) or the Code of Laws Law Criminal Code (KUHP) is determined become law on January 15, 1886 ( Staatsblad No. 6) and December 31 , 1887 ( Staatsblad No. 265). (Pascal Moeliono, 2021) Then enforced as Constitution through Law No. 1 of 1946 concerning Regulation Law Criminal Code . Basically, the Criminal Code that applies in Indonesia until moment This is modification from the Dutch Criminal Code which was passed in 1881 and began applicable since in 1886. Therefore that, in a way general provisions in the Dutch Criminal Code also exist in the Indonesian Criminal Code. The difference there are minimum and maximum threats criminal as well as added provisions that are not There is in the Dutch Criminal Code in the Indonesian Criminal Code for the purpose of adapt with the situation in Indonesia at the moment that . Example changes at that time is addition criminal cover, added provision about distribution news lies and spreading eye Money No valid. Then term Netherlands Indies which was replaced to be Indonesian or Indonesian.

Remember based on reason practical need existence changes to the Criminal Code, which turned out to be Not yet There is interpretation in a way official to in Indonesian in the provisions criminal law of the Criminal Code, so that cause emergence deviant interpretation Far from sound text the original. Besides That with the amount Constitution lex specialist in charge law the crime change, add , or delete norm law criminal in the Criminal Code as lex generali. This is show that there is development law criminal and when formulate

Received: November, 30<sup>th</sup> 2024

Revised: December, 15<sup>th</sup> 2024

Accepted: December, 29<sup>th</sup> 2024

Published: December, 31<sup>th</sup> 2024

Curr. Ver.: December, 31<sup>th</sup> 2024



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policy legislation in room law criminal, the Criminal Code does not Again become reference main . Use realize justice, law criminal sued For in accordance with context a dynamic and ongoing situation developing . Where the national Criminal Code must capable adapt with development new, especially Again in development international in technology, science knowledge, etc.

In general systematic done effort For make more laws in accordance with replacing the legacy Criminal Code Netherlands , which was done on base awareness law , philosophy Indonesian society , as well as based on Pancasila as source from all source law . This is what becomes reason political why the Criminal Code is necessary changed , considering that Indonesia is an independent and fair country if Indonesia has a Criminal Code that is national . Efforts made the is with replacing the legacy Criminal Code Dutch with the new Criminal Code through Law no. 1 of 2023 concerning the Code of Laws Law Criminal Code (“KUHP 2023”) signed by the President Republic of Indonesia on January 2 , 2023. The drafting of the 2023 Criminal Code was carried out through harmonization as well as adjustment will development law in society in form unification and codification use create as well as to uphold truth , consistency , order , certainty law , justice and utility between interest individual , society and national based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Even though this 2023 Criminal Code replacing the old legacy Criminal Code Netherlands , however No means load change as much as 100%. Where Still there is a number of principles , provisions in Book I of the Criminal Code which remains maintained in the 2023 Criminal Code. However There is a number of things that become changes , additions , and subtractions from the previous Criminal Code . One of them is provision in book First about provision general as its implementation from Book Second about act criminal and regulatory others . Applicability Book First in the 2023 Criminal Code no only applicable for the 2023 Criminal Code only but apply to the regulations legislation others of a nature lex specialist . Book First load provision like room scope coming into effect law criminal , responsibility criminal , diversion , purpose criminalization , double track system ( existence of sanctions criminal and sanctions additional ) , added subject law corporation , deletion punishment dead from criminal principal , and so on.

About guidelines criminalization in the 2023 Criminal Code which regulates set up more detailing become the advantages compared to the Criminal Code. Guidelines criminalization set up in Article 54 paragraph (1) which is mandatory under consideration However nature alternatives , namely : (a) form error perpetrator ; (b) value justice and law that live in society (c) attitude inner from perpetrator ; (d) with plan or no ; (e) motives and goals ; (f) influence Action Criminal against victims and/ or his family ; (g) way do Action Criminal ; (h) history life , condition social and economic perpetrator ; (i) impact criminal in the future perpetrator

; (j) attitudes and actions perpetrator after do Action Criminal ; and/ or (k) granting Sorry from the victim/ his family.

Judges can also add other considerations than those listed in Article 54 paragraph (1), so that chapter This No nature limited . Guidelines criminalization intended For help the judge consider heavy or lightness punishment criminal acts that will be will dropped to the defendant . With to consider the conditions listed in the guidelines criminalization , punishment the sentence imposed expected can nature proportional as well as can understood with well , by the convict and also public.

The 2023 Criminal Code has arrange about reason eraser act criminal , namely reason forgiveness and reason justifier criminal . Reason forgiving is reasons that eliminate accountability criminal the defendant , where his actions still action oppose law and action criminal However there is omitted error excuse . Reason forgiving concerning condition the person who does it act criminal , reasons the is :

- a. child Not yet 12 years old when do criminal ;
- b. forced to consequence power that is not can detained ;
- c. forced to consequence existence threat or pressure that is not can avoided ;
- d. defense forced to go beyond limits ; and/ or
- e. order the position given without authority , but by the defendant order the thought as order in scope his job.

Whereas reason justifier is things that erase characteristic oppose law from action although his actions has fulfil elements offense or in meaning another time do action act criminal However No convicted . Reason justifier the is when act criminal the done :

- a. For carry out provision Constitution ;
- b. For carry out order position from authorized official ;
- c. consequence condition emergency ; or
- d. as defense from threat attack or attack in a way suddenly to self and property owned by Alone or other people or honor in meaning morality.

Besides reason justification and reasons forgiveness , Article 54 paragraph (2) of the 2023 Criminal Code provides authority to the judge to No to drop criminal and also action to everyone as a result the act he did categorized light , there is factor condition personal perpetrators , and circumstances time he did act criminal or what happened Then after he did act criminal . Provisions the called as legal pardon or judicial sorry or the judge's forgiveness that was given authority to the judge to give Sorry to someone who has do act criminal nature light , for the sake of consideration aspect justice and humanity . Reasons giving Sorry still entered to in judge's decision and permanent must stated that defendant proven guilty on act the crime charged to him , but defendant No punished Because condition the.

Related with existence guidelines criminalization in the 2023 Criminal Code, of course will give influence to performance and implementation task from the Judge as the determining actor punishment to defendant through the decision he made . Paper This will discuss about That However only limited to guidelines criminalization to natural person or individual in Article 54 paragraph (1) of the 2023 Criminal Code and not to corporation . Then about existence regime new in the 2023 Criminal Code regarding the judge's forgiveness , then interesting For discussed in paper This related its influence to judge's performance.

### **1.1. Formulation Problem**

Related with background the back that has been described above , in study This there is a number of the problem you want to solve analyzed , namely :

- a. How form implementation guidelines criminalization in the 2023 Criminal Code on authority and implementation task from the Judge?
- b. How judges carry out authority judge's forgiveness ( rechterlijk pardon or judicial pardon ) in to cut off case ? What? only one must under consideration as well as implications arrangement the judge's forgiveness in criminal procedure law in Indonesia?

## **2. Methods**

Study This is study legal normative . The data obtained in study This is through secondary data or data/ documents library . With material primary law , such as regulation legislation in Indonesia, regulations foreign legislation and decisions court.

## **3. Result and Discussion**

### **3.1. Implementation Guidelines Sentencing by Judge in Breaking up Case Criminal**

Judge as enforcer power judicial on duty For apply norms abstract law in order to be able to applied to case certain things that happen in society . In In practice , the judge tries discover and develop law through his decision . Guidelines criminalization in Article 54 paragraph (1) of the 2023 Criminal Code is mandatory noticed and considered by the internal judge determine light or the weight punishment . It's the same like arrangement guidelines criminalization in PERMA No. 1 of 2013 2020 about Guidelines Criminalization Article 2 and Article 3 of the PTPK Law are mandatory use by judges when to judge case act criminal corruption , for consider reasons in determine heavy lightness punishment criminal in case act criminal violation Article 2 and Article 3 of the PTPK Law. However How when guidelines criminalization No considered by the judge? In the 2023 Criminal Code it is not give sanctions If guidelines criminalization No obeyed . However, in the United Kingdom , the courts must follow and guidelines criminalization , in matter its implementation court Certain that when apply guidelines criminalization contradictory with justice so Court can No follow guidelines criminalization , remember condition in each case vary . When the judge

does not follow guidelines criminalization Good it's for a reason justice or no , the judge must give the reason in decision said . According to analysis author , no followed by guidelines criminalization No impact on the decision null and void , considering that in Indonesia itself decision null and void is when the initial verdict dropped to defendant considered No Once happened , and not have consequence law as well as strength implemented / executed.

How to use guidelines criminalization in the 2023 Criminal Code, it can used with various way , in the Netherlands Alone through Article 130 paragraph (6) of the Organization Law Judiciary ( Wet op de Rechterlijke Organisatie ) implementation guidelines criminalization can with two stages , namely :

- a. Determine point base ; stage First this judge can moreover formerly determine which sanctions are imposed to the perpetrator , then how long is the sentence his prison , the number fines and so on.
- b. Customization ; stage second is notice provisions that must be met considered by the judge for example Article 54 paragraph (1) of the 2023 Criminal Code, whether with under consideration things in provision the can become reason lightening the perpetrator . So that can matched by the judge whether the act he did including the result worth it with sanctions determined by the judge at the outset.

Guidelines criminalization intended For the fall rational criminal law or reasonable ( rational sentencing ) and the reason can accountable , and not For stage the fall uniform punishment ( parity of sentencing ). It was made guidelines criminalization is a the way that can used For prevent the occurrence disparity that is not responsible answer or unwarranted disparities . Guidelines criminalization is also tool control and controller for judges, so that punishment can become clear and focused.

### **3.2. Guidelines Criminalization No Contrary With Principle Independence of Judges**

The independence of judges is regulated in Article 3 paragraph (1) of Law No. 48 of 2009 concerning Power Judiciary ( “ Judicial Power Law ” ) Justice ” ), which is free from all form coercion / pressure Good physique and also psychic and mixed hand party outside . Although there is Principle Judicial independence in to cut off matter , but independence and freedom from permanent judge must limited so that the considerations and verdicts handed down by the judge remain rational and fair . Guidelines criminalization give guide about factors that can considered by the judge for give objective impact to heavy lightness punishment , for example through levels the losses incurred by the victim, how much heavy error perpetrators , and so on . Various restrictions the in regulation legislation can in the form of determination threat maximum and minimum threats related with criminal prison and/ or fine perpetrator act criminal , guidelines criminalization , and so on . In matter This , Article 54 paragraph (1) of the 2023 Criminal Code provides obligation on the judge to consider form error perpetrator , value justice and law that live in society , attitudes inner

the perpetrator ; with plan or no ; motives and goals ; influence Action Criminal against victims and/ or his family ; how do Action Criminal ; history life , condition social and economic perpetrator ; attitude and actions perpetrator after do Action Criminal ; impact criminal in the future the perpetrator ; and/ or giving Sorry from the victim/ his family.

Related with Principle Judicial independence , guidelines criminalization No contradictory with principle said , because guidelines criminalization No give how long is the sentence in a way sure . But become instructions and directions that in to cut off case No can " do as you please " and must pay attention and consider Article 54 paragraph (1) of the 2023 Criminal Code for the sake of creating justice . Article 54 paragraph (1) of the Criminal Code is also alternative so that the judge still still have freedom For determine consideration from letters a to k match with incident act criminal . If step back to behind about background behind the formation of judicial forgiveness is a flexible and unambiguous balance model.

### **3.3. Influence It's arranged Judge's Forgiveness ( *Rechterlijk Pardon* and Judicial Pardon ) in the 2023 Criminal Code Related Judge's Performance**

Article 1 number 11 of the Criminal Procedure Code states that form love from decision court in the form of the fall criminal or criminalization , release , or free from all over demands law . KUHAP does not know judicial pardon , however in the practice precisely appear question how judges can to cut off a case when indeed the judge looked at that action defendant No dropped punishment criminal . In the Netherlands myself , the compiler criminal procedure law enter decision the judge's forgiveness or legal pardon to in form judge's decision, Where the concept adopted in law Dutch the naturally must through consideration certain , so that although defendant stated guilty , the judge can give sorry and no fall down punishment to defendant.

Dutch of course has enter decision judge's forgiveness to in type punishment , different with the Indonesian Criminal Procedure Code which has not yet been . In context in Indonesia if reviewed again , the verdict the judge's forgiveness actually stay still considered as decision criminalization Because defendant still guilty , but No convicted Because reason the judge's forgiveness . Unfortunately matter the No can applied For Now this , considering existence Article 197 paragraph (1) letter h and paragraph (2) of the Criminal Procedure Code where decision criminalization must loaded the sentence imposed to the accused , if No loaded decision will null and void.

Provision This excluded to decision free and loose , and not yet arrange about the judge's forgiveness . So that solution other is in the RKUHAP it is necessary add decision the judge's forgiveness as type the decision that must be made customized in the RKUHAP. In decision the judge's forgiveness , the judge granted authority For No always bound to third type love decision when to drop verdict . With Thus , when to judge a case action criminal , the judge does not only rely on action the crime he committed but must consider guidelines as well as

objective criminalization that becomes the part that is not inseparable from condition criminalization.

When to drop decision the judge's forgiveness as regulated in Article 54 paragraph (2) of the 2023 Criminal Code, the judge must based on four things to do under consideration namely action categorized light , condition personal self perpetrator , condition time he did act criminal or what happened Then after he did act criminal with consider aspect justice and humanity . Here explanation about fourth guidelines the :

- a. Lightness act : Criminal Code 2023 does not state limitation act / crime What only those that are categorized light . According to Barda Nawawi categorization weight offense can seen through threat criminal his prison.
  - 1) Offense very light , is threatened act criminal imprisonment for a maximum of 1 ( one ) year prison or criminal fine category I or II single or . Example offense light Criminal Code 2023 is Article 244 of the 2023 Criminal Code concerning discrimination on race and ethnicity , Article 249 of the 2023 Criminal Code concerning offer For do act criminal , and so on.
  - 2) Offense heavy , is threatened act criminal imprisonment of more than 1 ( one ) year until with 7 ( seven ) years , can accompanied by with alternative criminal fine categories III and IV. Example offense heavy is Article 293 of the 2023 Criminal Code concerning destruction building , room hearing court , or equipment tool hearing court , Article 221 - Article 222 of the 2023 Criminal Code concerning treason , and others.
  - 3) Offense very heavy , is action criminal prison on seven year or threatened criminal dead or prison lifelong life in a way single , the penalty can cumulative with criminal fine Category V. Example offense very heavy is Article 374 of the 2023 Criminal Code concerning forgery eyes and money paper , then Article 458 of the 2023 Criminal Code concerning murder , Article 191 of the 2023 Criminal Code concerning treason to president and vice president , and so on.
  - 4) There is two a judgmental view No categorized action from light until weight. View First evaluate that This become weakness will arrangement from judge's forgiveness and contradictory with principle certainty law. Views second is with

No arranged rigidly what is meant from “ light / heavy” deeds ”, instead matter This own objective For No limit the authority of the judge, so that decision forgiveness No always imposed on crimes certain . Questions furthermore is whether offense very light in categorization Barda Nawawi is action light in the Criminal Code? In the 2023 Criminal Code there are a number of the crime stated that action the light , namely embezzlement light , theft light , insult light , catchment light , and fraud light . Fifth offense the all in all threatened imprisonment of less than 1 ( one ) year and a maximum fine category II, so that qualification offense very light according to Barda Nawawi is in harmony with act criminal light in the 2023 Criminal Code. Therefore That qualification offense very light the can it is said as action light in question in the 2023 Criminal Code.

- b. Condition personal perpetrator act Criminal Code 2023 states " circumstances personal perpetrators ” in Article 22 of the 2023 Criminal Code, where condition personal perpetrator in matter inclusion can remove, reduce, or aggravate punishment the crime. In the explanation Article 22 of the Criminal Code 2023 " conditions personal " is a condition when servant or perpetrator aged more young or old , undergoing profession certain, have position certain, or experience mental disorder. Condition condition personal the perpetrator who became reason the judge's forgiveness in Meaning from Article 22 of the 2023 Criminal Code can like Not yet Enough age, people with mental disorders so that No can given accountability. However about Not yet Enough age and people with mental disorder is not become reason decision giving Sorry from the judge, but become reason forgiveness that results in defendant disconnected off. Remembering giving Sorry given to defendant different with reason forgiveness and reason justifier, then in considering “ the circumstances personal the perpetrator " needs" referring to the situation perpetrators in the provisions Article 54 paragraph (1) of the 2023 Criminal Code letters b, c and g are related with condition personal perpetrator . Third condition the covers history life, motives and objective



he did act criminal, circumstances social, attitude inner from perpetrators, and circumstances economy perpetrator.

- c. Condition time he did act criminal or what happened Then after he did act criminal : regarding condition This No explained more carry on in the 2023 Criminal Code, is it condition time he did act the crime in question is noodtoestand ? However according to author , noodtoestand not what was meant in condition this, because noodtoestand No become form decision giving sorry, but decision off consequence existence reason eraser criminal , reason forgiving. Author assume that condition time he did act criminal or what happened after he did act criminal is like after he did act criminal perpetrator precisely direct repent and show exemplary behavior . Or after the occurrence act criminal there is peace between perpetrator and victim/ victim's family .
- d. Aspect justice and humanity : When to cut off case act criminal , the judge must notice values humanity and a sense of justice .

Example the judge's forgiveness can applied to the case theft fruit cocoa by grandma Minah consequence hungry. Grandma Minah also doesn't to think that himself who took cocoa on the land his work it turns out is land managed by PT RSA. With convicted grandma Minah, in fact give a sense of not fair, considering background behind which is elderly, comes from from group poor people. Although action the No justified However will become burden for him as elderly and system justice criminal That myself. Against love decision judge's forgiveness, judge remains must state that defendant has proven in a way legitimate do act the crime he was charged with. Then through the judge's forgiveness and has under consideration history life, motives and objective he did act criminal, circumstances social, attitude inner from perpetrators, and circumstances economy perpetrator with consider aspect humanity and justice. With thus criminal No dropped to defendant.

### **3.4. Implications Arrangement Judge's Forgiveness ( Rechterlijk Pardon/Judicial Pardon ) in the 2023 Criminal Code With Criminal Procedure Code (KUHAP)**

During This in Law no. 8 of 1981 concerning the Code of Laws Criminal Procedure Code (KUHAP) only know decision punishment , release, and acquittal.

- a. Decision acquittal ( vrijspraak ) is imposed by the judge if defendant stated No proven in a way valid and convincing do act the crime charged . In decision this, the defendant stated free from all demands law.
- b. Decision off ( on the hook of all legal regulation ) is given if the alleged act to defendant proven, but action the No including in category act criminal or there is reason justifier or reason the forgiver who erases characteristic oppose the law action said. In decision this, the defendant released from all demands law, but No Because No do the alleged act, but Because his actions No fulfil element act criminal or 'There is another reason that is liberating defendant from not quite enough answer criminal.
- c. Decision criminal sentence ( convictie ) was imposed if defendant proven in a way valid and convincing do act the crime charged. In decision this, the judge determined the punishment that must be carried out by the defendant in accordance with provision applicable law. Punishment imposed Can in the form of criminal prison, criminal fine, criminal confinement, or form criminal others that are regulated in the Criminal Code or regulation legislation other.

With arranged decision guilty without accompanied by with criminalization or judicial pardon in Explanation Article 54 paragraph (2) of the 2023 Criminal Code, there is things to do customized in form the judge's decision , considering that the Criminal Procedure Code does not know form decision the judge's forgiveness . If referring to the settings form ruling in the Netherlands , Netherlands has 4 ( four ) categories decision in criminal procedure law namely decision punishment , verdict free , verdict off , and the verdict the judge's forgiveness. In other words, if referring to the origin from arrangement law Indonesian criminal and procedural law, then should Update of Criminal Procedure Code is necessary adapt categorization decision new namely with add decision the judge's forgiveness . But in the Netherlands effort law for appeal up to cassation No it is possible For decision the judge's forgiveness. To problem this, with reflect back to the concept decision judicial pardon – a decision stating that defendant guilty do a act criminal However consequence lightness action perpetrator , circumstances his personal or condition time act criminal done then the judge does not to drop criminal or action to the accused – then should matter the No become reason For to abolish room effort law for defendant and also prosecutor general . Considering there is opportunity the occurrence negligence in implementation law , way to judge or court beyond limit his authority still very Possible happen in decision the judge's forgiveness themselves . For example , even though defendant given forgiveness by the judge, no close possibility defendant object with implementation law in decision the so that should defendant released from all charges . Similarly with effort law outside normal namely review back , that No close possibility in decision the judge's forgiveness has been happen a error or a clear error from the judge, or there is condition new ones that influence the judge's decision .

Besides that , the condition from the fall decision the judge's forgiveness as Article 54 paragraph (2) of the 2023 Criminal Code, namely: lightness act , state personal the perpetrator, or state of affairs at the time done act criminal and what happened then , it is very abstract and subjective so that required the existence of a forum for review repeat that can test decision the judge's forgiveness . With thus , from the reasons above so room for parties For submit effort law Good normal and also outside normal still felt need For opened in matter decision judge's forgiveness

#### 4. Conclusion

Guidelines criminalization in Article 54 paragraph (1) of the 2023 Criminal Code is mandatory noticed and considered by the judge for determine heavy or lightness punishment. In the 2023 Criminal Code there is no give sanctions If guidelines criminalization No obeyed. However, in the United Kingdom, the courts must follow and guidelines criminalization, in matter its implementation court Certain that when apply guidelines criminalization contradictory with justice so Court can No follow guidelines criminalization, considering condition in each case vary. When the judge does not follow guidelines criminalization Good it's for a reason justice or no, the judge must give the reason in decision said. According to analysis author, no followed by guidelines criminalization No impact on the decision null and void . Guidelines criminalization intended for the imposition of criminal can nature rational as well as become tool control and controller for judges, so that punishment can become clear and focused .

Decision different judges' forgiveness with decision release and verdict free . Verdict off is when the alleged act proven guilty However action That No is a action act criminal , whereas decision free Where error to defendant No proven in a way valid and convincing . In to drop decision the judge's forgiveness based on Article 54 paragraph (2) of the 2023 Criminal Code states that judges must based on four things to do under consideration namely history life , motives and objective he did act criminal , circumstances social , attitude inner from perpetrators , and circumstances economy perpetrator with consider aspect humanity and justice. Against love decision judge's forgiveness , judge remains must state that defendant has proven in a way legitimate do act the crime he was charged with , accompanied by with consideration in Article 54 paragraph (2) of the 2023 Criminal Code, so that criminal No dropped to defendant .

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