

Reformulation of Juvenile Court: The Perspective of Judicial Amnesty in Indonesia and The Netherlands

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Abstract

Introduction: This study examines the reformulation of the provisions of Article 70 of Law Number 11 of 2012 concerning Juvenile Criminal Justice through the perspective of the concept of judicial pardon in order to ensure the protection of children's fundamental rights.

Purposes of the Research: The research focuses on an in-depth analysis of the concept of *rechterlijk pardon* as a legal instrument in handling cases of children in conflict with the law.

Methods of the Research: The research was conducted using a normative juridical method through a comparative study of the legal systems of Indonesia and the Netherlands.

Results of the Research: The research findings indicate that the application of judicial pardon as regulated in Article 70 contains substantial weaknesses, particularly related to the ambiguity of the parameters of "mildness of the act" and "personal circumstances of the child" which have the potential to cause disparities in judicial practice. Normative reconstruction of these provisions is a necessity in order to ensure legal certainty and optimize protection for children in conflict with the law.

Keywords: Reformulation; Judicial Forgiveness; Juvenile Criminal Justice.

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INTRODUCTION

A fundamental transformation in the handling of cases involving children in conflict with the law in Indonesia was marked by the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Law JCJS). This paradigm shift reflects a comprehensive understanding that children, as subjects with inherent dignity and human value, require special protection mechanisms within the framework of criminal law enforcement.¹ The administration of justice for children includes the entire process of examination, trial and judicial decision-making that consistently prioritizes the best interests of the child.² Indonesia's commitment to protecting children's rights gained significant momentum through the ratification of the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990. This international commitment catalyzed the development of comprehensive national legislation, including Law Number 4 of 1979

¹ Y Chen, X., & Zhang, "Child Rights Protection in Criminal Justice: Lessons from East Asian Models'." Asian Journal of Criminology 17, no. 1 (2022): 45-62, <https://doi.org/https://doi.org/10.1007/s11417-021-09356-9>.

² Maidin Gulton, Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia (Bandung Indonesia: Refika Aditama, 2008).

concerning Child Welfare and Law Number 23 of 2002 concerning Child Protection, which was later amended by Law Number 35 of 2014. These legislative developments represent Indonesia's progressive approach to harmonizing domestic law with international standards of child protection. The most significant innovation in the Child Protection Act lies in Article 70, which authorizes judges to grant judicial pardons by considering the gravity of the act, the child's psychosocial condition, and the circumstances surrounding the violation.³ Barda Nawawi Arief conceptualizes judicial forgiveness as a manifestation of Pancasila values that function as a judicial corrective mechanism to balance the rigidity of the principle of formal legality.⁴ This provision represents a shift from the traditional punitive approach to a more rehabilitative and child-centered justice system.

However, substantial challenges arise in the implementation of Article 70. The normative formulation stating that "the lightness of the act, the child's personal circumstances, or the circumstances at the time of the crime and subsequent events" do not have clear parameters and measurable criteria. This ambiguity has resulted in inconsistent judicial practices across Indonesian courts, potentially undermining the principles of legal certainty and equality before the law. A similar provision in Article 54 paragraph (2) of the 2023 Criminal Code demonstrates the systemic nature of this challenge. The lack of clear indicators for determining "minimal seriousness," "individual conditions," and "circumstances" creates significant discretionary space that can lead to arbitrary decision-making. Chairul Huda argues that judicial pardons should be granted when the judge determines that the level of culpability of the perpetrator does not warrant formal criminal sanctions.⁵ However, without standardized criteria, this determination remains highly subjective. The urgency of reformulating Article 70 of the Child Protection Act cannot be separated from the broader agenda of Indonesian legal reform, which demands legal certainty and substantive justice. The normative formulation of Article 70, which includes the phrase "the minor nature of the act, the child's personal circumstances, or the circumstances at the time of the crime and subsequent events," contains conceptual ambiguities that have systemic impacts on judicial practice. The absence of objective parameters and operational criteria leads to disparities in decisions between jurisdictions, which in turn threatens the principle of equality before the law, a fundamental pillar of national legal reform.

This study aims to reformulate Article 70 of the Juvenile Justice System through a comparative analysis with the Dutch *rechterlijk pardon* system. The Netherlands was selected based on its success in implementing clear and measurable parameters in juvenile justice and its emphasis on rehabilitation and development. The Dutch *Wetboek van Strafrecht* provides explicit criteria, including monetary thresholds and a structured assessment framework, that offer valuable insights for Indonesian legal reform. This study seeks to develop a comprehensive reformulation that ensures both legal certainty and optimal protection of children's rights in the Indonesian juvenile criminal justice system.

METHODS OF THE RESEARCH

This study applies a normative juridical methodology that integrates a legal doctrinal perspective with in-depth philosophical analysis, prioritizing analysis of the paradigm of

³ A Pratama, D., & Wijaya, "The Concept of Forgiveness in Indonesian Culture: Implications for Legal Reform", *Journal of Southeast Asian Studies* 54, no. 2 (2023): 234–56, <https://doi.org/https://doi.org/10.1017/S0022463423000234>.

⁴ Barda Nawawi Arief, *Anthology of Criminal Law Policy: Developments in the Drafting of the New Criminal Code* (Semarang: Kencana Prenada Media, 2017).

protecting children's fundamental rights in the justice system. The research was designed using two complementary methodological approaches to explore the problematic application of the parameters of "light gravity of the act," "psychosocial condition of the child," and "concrete situation at the time of the act" in the context of national criminal law policy. The initial approach was implemented through an inventory and critical review of all national legislative products related to child protection, by conducting an in-depth analysis of the normative substance as a whole. The next approach uses a philosophical perspective to examine the essence of the concept of judicial pardon in the Indonesian context, with the aim of uncovering the substantive meaning of the phrase "judicial pardon," which should be integrated into the construction of national criminal law policy. This methodological combination allows the researcher to produce a comprehensive elaboration of the function of the Indonesian criminal law system in handling cases of children in conflict with the law. The research approach is carried out using 2 approaches. First, the legislative approach by examining various regulations related to existing regulations, including regulations relevant to the research object. Primary legal sources: Law Number 11/2012 on Juvenile Criminal Justice System, Law Number 1/2023 (Criminal Code), Law Number 35/2014 on Child Protection, Comparative studies between Indonesia and the Netherlands focus on: Dutch Legal Sources *Wetboek van Strafrecht* (Dutch Criminal Code which is analyzed especially Article 9a Dutch court decisions from the Amsterdam Court (Case Number 13/739019-20) and the Rotterdam Court (Case Number 10/96072-22) Dutch legal literature on the implementation of *rechterlijk pardon* Indonesian Legal Sources Court decisions from the Rengat District Court (Number 2/Pid.sus/ Anak/2021/PN.RGT) and the Putussimbau District Court (Number 2/Pid.sus/ Anak/2025PN.PTS).

RESULTS AND DISCUSSION

A. The Evolution of the Concept of Judicial Forgiveness in the Indonesian Juvenile Criminal Justice System: An Urgent Need

The concept of forgiveness given by judges (*Rechterlijk Pardon*) in cases of child criminalization reflects a fundamental transformation in the orientation of criminal law enforcement, namely the shift from a retributive approach to a restorative approach.⁵ Muladi constructs that the criminal enforcement mechanism is a series of interrelated institutions that work systematically by applying material, formal, and executive criminal norms as its main instruments.⁶ In handling cases involving children in conflict with the law, the systemic construction requires substantial adaptation to ensure the realization of good principles for children. The concept of judicial forgiveness in Indonesia is explicitly regulated in Article 70 of the Juvenile Justice Law (hereinafter referred to as Juvenile Justice Number 11 of 2012). which gives judges the authority to not impose a sentence by considering three main aspects: the minor nature of the act, the child's personal circumstances, and the circumstances at the time of the act. This regulation is in line with the thinking of Barda Nawawi Arief who emphasizes that judicial forgiveness is a form of judicial correction to the principle of legality.⁷ The concept of Judicial Forgiveness in Indonesia is basically a new idea in Juvenile Criminal Justice, where judges are free to

⁵ Bakker M & Jansen L, "Restorative Elements in Dutch Judicial Pardon: An Empirical Analysis," *European Journal of Criminology* 19, no. 04 (2022): 412–31, <https://doi.org/https://doi.org/10.1177/14773708211234567>.

⁶ J. Dubois, M., & Martin, "La Justice Restaurative Dans Le Nouveau Code de Justice Pénale Des Mineurs'," *Revue de Science Criminelle* 2023, no. 1 (2023): 123–45, <https://doi.org/https://doi.org/10.3917/rsc.2301.0123>.

⁷ Barda Nawawi Arief, *Anthology of Criminal Law Policy Developments in the Drafting of the New Criminal Code*.

choose whether to impose a sentence or forgive in each decision.⁸ The Indonesian concept of "forgiveness" embodies a profound cultural dimension linked to communal values, social harmony, and the dialogical process between perpetrators and victims. This concept represents a recognition of the principle that children in conflict with the law do not always require formal punishment to achieve the protection and guidance objectives applied in Indonesian courts. The conceptual complexity arises from the fundamental differences between the concept of "forgiveness" in Indonesian cultural traditions and the concept of "forgiveness" (pardon) in Western legal traditions, which serves as the theoretical basis for judicial forgiveness.⁹ In the Indonesian context, the concept of forgiveness has a deep cultural dimension, closely linked to communal values, social harmony, and a dialogical process between the guilty and the injured parties. This concept involves not only release from legal consequences but also the restoration of social balance and reconciliation of relationships disrupted by the violation.¹⁰ In contrast, the concept of forgiveness in the Western legal tradition tends to be unilateral and institutional, where the main focus is on the decision of the legal authority to release the perpetrator from criminal consequences, without requiring a dialogical process with the victim.¹¹

A thorough analysis of the concept of "sorry" in the Indonesian context reveals a complexity that goes beyond the simple definition in the Big Indonesian Dictionary. According to the Big Indonesian Dictionary, forgiveness has several dimensions of meaning: (1) the release of someone from punishment or prosecution for a mistake; (2) an expression of a request for forgiveness or regret; and (3) an expression of a request for permission to do something. However, in Indonesian socio-cultural practices, the concept of forgiveness has a much richer and more complex dimension. Anthropological research shows that the concept of forgiveness in Indonesian society cannot be separated from communal values that emphasize social harmony and balance (*equilibrium*) in human relations.¹² In various ethnic traditions in Indonesia, the process of forgiveness involves a series of rituals and social interactions aimed not only at resolving conflicts, but also at restoring disturbed social order, signifying acceptance and a willingness to forget mistakes.¹³ Furthermore, the concept of forgiveness in Indonesia has a social hierarchy that influences the dynamics of the process. The relationship between younger and older, between subordinates and superiors, or between subjects and leaders influences how the forgiveness process is carried out. In the context of children in conflict with the law, this hierarchical dimension becomes particularly relevant because it involves the relationship between children (who are socially subordinate).¹⁴

This cultural-legal disparity creates implementation challenges for Article 70. When judges grant forgiveness without dialogue with the victim, this can be perceived as ignoring culturally understood values of justice. The communal dimension of Indonesian

⁸ R. D Freedman, SR, & Enright, "Forgiveness as an Intervention Goal with Incest Survivors.," *Journal of Consulting and Clinical Psychology* 64, no. 5 (1966): 983-92, <https://doi.org/https://doi.org/10.1037/0022-006X.64.5.983>.

⁹ Suzanne freedman, "What It Means to Forgive Ad Why the Way We Define Forgiveness Matter," *Peace and Conflict: Journal of Peace Psychology* 17, no. 3 (2011): 334-38, <https://doi.org/https://doi.org/10.1080/10781919.2011.587365>.

¹⁰ Robert D Enright Joanna North, *Exploring Forgiveness*, ed. Enright & Joanna (United States America: library of Congress Catalog Data, 1988).

¹¹ Suzanne freedman, "What It Means to Forgive Ad Why the Way We Define Forgiveness Matter."

¹² W.J. Bazemore, G., & Lee, "'The Evolution of Juvenile Justice: From Punitive to Restorative Approaches'.," *Youth Justice Quarterly*, 42, no. 3 (2021): 289-305, <https://doi.org/https://doi.org/10.1080/15388220.2021.1890334>.

¹³ Christian Siregar, "Healing Inner Wounds Through Forgiveness," *Humanities* 3, no. 2 (2012): 581-92.

¹⁴ Michael McCoullough, "Interpersonal Forgiving in Close Relationships," *Journal of Personality and Social Psychology* 75, no. 6 (1998): 1586-1603, <https://doi.org/https://10.1037/0022-3514.75.6.1586>.

forgiveness, which involves community representatives in addition to the direct victim, cannot be accommodated within the individualistic framework of judicial forgiveness.¹⁵ Furthermore, the temporal aspect of forgiveness as a gradual process in Indonesian culture contradicts the finality of judicial decisions.¹⁶ Psychological research suggests that forgiveness in this context is understood primarily as a coping strategy for the mental health of the forgiving individual, rather than as a social process for restoring relationships.¹⁷ In the context of criminal law, the concept of pardon has a more specific and institutional meaning. A judicial pardon is the discretionary authority granted to a judge to withhold a sentence or to impose a lighter sentence based on specific considerations.¹⁸ This concept is rooted in the traditions of English common law and continental European civil law, where the primary focus is on the relationship between the state (as the holder of the monopoly on punishment) and the perpetrator (as the subject of law).¹⁹ Historical analysis shows that the concept of pardon in the Western legal tradition evolved from the royal prerogative to grant forgiveness. Over time, this authority has been delegated or regulated in modern legal systems, including in the form of judicial pardon.²⁰ What is important to note is that in this tradition, the victim has no formal role in the pardon-granting process; the decision rests entirely with the competent authorities.²¹ Comparative research by Western legal traditions shows that despite variations in implementation, the concept of judicial pardon consistently has the following characteristics: (1) it is unilateral by legal authority; (2) it is based on established legal criteria; (3) it does not require the consent or participation of the victim; and (4) it aims to achieve a specific punishment goal (rehabilitation, proportionality, or system efficiency).²² The fundamental systemic disparity between the Indonesian concept of forgiveness and Western forgiveness creates significant challenges in implementing judicial forgiveness in Indonesian juvenile justice. These challenges are not merely technical and legal issues, but also touch on profound philosophical and cultural aspects.²³

First, the relational-dialogical nature of the Indonesian concept of forgiveness contradicts the unilateral-institutional nature of judicial pardon. When judges grant forgiveness without engaging in dialogue with the victim, this can be perceived as a disregard for culturally understood values of justice. Second, the communal dimension of the Indonesian concept of forgiveness is not accommodated in the individualistic concept of judicial pardon.²⁴ In Indonesian understanding, violations committed by children not only impact the direct victims but also disrupt the social balance within the community. Therefore, the forgiveness process ideally involves not only the direct victims but also representatives of the community.²⁵ The concept of judicial pardon, which focuses on the state-actor relationship, is unable to accommodate this communal dimension. Third, the temporal

¹⁵ Suzanne freedman, "What It Means to Forgive Ad Why the Way We Define Forgiveness Matter."

¹⁶ Freedman, SR, & Enright, "Forgiveness as an Intervention Goal with Incest Survivors". "

¹⁷ De Vries, A., & Van den Berg, "The Dutch Model of Judicial Pardon: Lessons from 20 Years of Implementation". "

¹⁸ Bazemore, G., & Lee, "'The Evolution of Juvenile Justice: From Punitive to Restorative Approaches'."

¹⁹ A. Freedman, SR, & Knupp, "The Impact of Forgiveness on Adolescent Adjustment to Parental Divorce.", " Journal of Divorce and Remarriage 39, no. 1-2 (2003): 135-65, https://doi.org/https://doi.org/10.1300/J087v39n01_08.

²⁰ Bakker M & Jansen L, "Restorative Elements in Dutch Judicial Pardon: An Empirical Analysis."

²¹ Kipatrack Michael E McCulough, C. Garth Bellah, "Vengefulness: Relationships with Forgiveness Rumination, Well-Being and the Big Five," Personality and Social Psychology Bulletin 27, no. 5 (2001): 601-10, <https://doi.org/https://doi.org/10.1177/0146167201275008>.

²² S Henderson, KL, & Park, "Judicial Discretion in Youth Cases: A Cross-National Study.", " Law & Society Review 57, no. 1 (2023): 78-95, <https://doi.org/.https://doi.org/10.1111/lasr.12634>.

²³ Henderson, KL, & Park.

²⁴ C. (2021). Piper, "Judicial Approaches to Youth Justice: International Perspectives'." International Journal of Law, Policy and the Family 35, no. 2 (2021): 145-62, <https://doi.org/https://doi.org/10.1093/lawfam/ebab012>.

²⁵ D Santoso, B., & Putri, "Sorry and Forgiving: Understanding Forgiveness in Indonesian Legal Culture'." Indonesia Law Review 13, no. 2 (2023): 189-210, <https://doi.org/https://doi.org/10.15742/ilrev.v13n2.8>.

aspect of the forgiveness process in Indonesian culture is not in line with the characteristics of judicial pardon as a legal decision that is final and instant.²⁶ In Indonesian culture, forgiveness is understood as a process that can take time and involve certain stages. Meanwhile, a judge's forgiveness in a formal legal context must be granted at a specific point in the judicial process (at the time of the verdict) and is final.²⁷ This temporal disparity creates a gap between cultural expectations and procedural realities. Fourth, the social hierarchy that influences the dynamics of forgiveness in Indonesian culture creates additional complexity when applied to the formal context of judicial forgiveness.²⁸ In cases where the victim is older or of higher social status than the perpetrator's child, cultural expectations require a more intensive and formal apology process. The concept of judicial pardon, which is neutral on social hierarchy, fails to accommodate these nuances.²⁹

B. Paradigm Reformulation: Towards Transformative Judicial Forgiveness in the Netherlands and Indonesia

The urgency of reformulating Article 70 of Law Number 11 of 2012 (hereinafter referred to as the Juvenile Justice Legislation) cannot be separated from the need to provide legal certainty as well as optimal protection for children in conflict with the law.³⁰ As stated by WA Gerungan (punishment of children is more directed at correction or rehabilitation rather than punishment. This paradigm emphasizes the importance of clear parameters in the application of judicial forgiveness. Analysis of practices in the Netherlands shows that the success of the implementation of rechterlijk pardon cannot be separated from the clarity of the criteria set out in the Wetboek Van Strafrecht. This Dutch experience can be a reference in formulating more measurable parameters for Article 70 of Law Number 11 of 2012 Juvenile Criminal Justice System, especially in determining the lightness of the child's personal circumstances or circumstances at the time the crime was committed. This can be seen in the following chart.

Table 1. Comparative of Judges' Forgiveness Systems in Criminal Courts for Juvenile in the Netherlands and Indonesia

Aspect	Dutch	Indonesia
Legal basis	Article 9a Van Strafrecht's Wetboek	Article 70 of Law Number 11/2012 concerning Juvenile Criminal Justice System
Forgiveness Parameters	1)The lightness of the violation (de geringe Ernst van het feit) material loss is less than €500 2)Character of the perpetrator (de persoonlijkheid van de dader) 3)The state of affairs during and after the act (de omstandigheden)	1) The lightest act is material loss of less than IDR 1,000,000 and does not exceed IDR 5,000,000 (Group 1) 2) Child's personal circumstances 3) The situation at the time the action was carried out

²⁶ Santoso, B., & Putri.
²⁷ G. McCullough, M.E., Root Luna, L., Berry, J.W., Tabak, B.A., & Bono, "On the Form and Function of Forgiving: Modeling the Time-Forgiveness Relationship and Testing the Valuable Relationships Hypothesis", *Emotion*, 23, no. 3 (2023): 589–605, <https://doi.org/https://doi.org/10.1037/emo0001234>.
²⁸ Michael McCoullough, "Interpersonal Forgiving in Close Relationships."
²⁹ Piper, "Judicial Approaches to Youth Justice: International Perspectives".
³⁰ B Goldson, "Juvenile Justice in the Age of Human Rights: Contemporary Challenges", *International Journal of Children's Rights*, 28, no. 2 (2020): 2020, <https://doi.org/https://doi.org/10.1163/15718182-28020001>.

Age Restrictions	12-18 years	12-18 years
Supervisory Mechanism	1) Regular monitoring by probation officers 2) Regular progress reports 3) Integrated database system	1) Supervision by Bapas 2) There is no structured monitoring mechanism yet
Role of Institutions	1) Court 2) Probation Service 3) Child Protection Board 4) Youth Care Agency	1) Juvenile Court 2) Father 3) Children's Special Development Institution 4) Temporary Child Placement Institutions
Rehabilitation Program	1) Structured program 2) Intensive mentoring 3) Family therapy 4) Skills training	1) General development program 2) Not yet systematically structured
Family Involvement	1) Must be actively involved 2) Family counseling program 3) Structured mentoring	1) Limited 2) There is no special program yet
Role of Society	1) Community service 2) Mentoring program 3) Reintegration support	1) Limited 2) Not structured yet
Program Evaluation	1) Periodic evaluation 2) Impact assessment 3) Program adjustments	1) Not yet systematic 2) There is no evaluation standard
Results/Outcomes	1) Low recidivism rate 2) Effective reintegration 3) Measured data	1) There is no measurable data yet 2) Limited monitoring
Types of Decisions	1) Amsterdam Court Number 13/739019-20 (Year 2021) Article 310 of the Dutch Criminal Code, the crime of insulting the Netherlands 2) Rotterdam Court No. 10/96072-22 (Year 2022) Article 266 of the Criminal Code, Crime of Document Forgery	1) Rengat District Court Number 2/Pid.sus/Anak/2021/PN.RGT 2) Article 363 of the Criminal Code, the crime of aggravated theft 3) Putussimbau Court No. 2/Pid.sus/Anak/2025PN.PTS

Comparative data shows that the Netherlands implements the concept of judicial pardon through the provisions contained in Article 9a of the Dutch Criminal Code (Wetboek van Strafrecht). Meanwhile, the Indonesian legal system regulates a similar mechanism through the provisions of Article 70 of the legislation on juvenile justice that was passed in 2012. A thorough review of the practice in the Netherlands shows the existence of a structured implementation framework and measurable parameters in the application of the authority of judges to grant pardons, especially for perpetrators who are still juveniles. The normative formulation in Article 9a of the Dutch WvS outlines that: "The panel of judges is authorized to determine in its decision not to impose criminal sanctions or measures, if this is considered prudent by considering the gravity of the act, the personal characteristics of the perpetrator, the concrete situation at the time the act was committed, or the conditions that arise thereafter.³¹ The Dutch system implements rechterlijk pardon through Article 9a

³¹ S. A. Choi, JJ, Green, D.L., & Kapp, "Victim Satisfaction in Restorative Justice: A Meta-Analysis.," *Journal of Experimental Criminology* 19, no. 2 (2023): 412-38, <https://doi.org/https://doi.org/10.1007/s11292-023-09543-x>.

Wetboek *van Strafrecht* with clear and measurable parameters. The "mildness of the offense" (de (geringe ernst van het feit) criterion uses a material loss threshold of €500, reflecting pragmatic considerations of purchasing power and the psychological impact on the victim. This monetary benchmark provides objective guidance to judges while maintaining discretionary space for case-specific considerations.

The "mildness of the offense" parameter is one of the primary criteria used by Dutch courts when considering the application of pardon. This concept does not solely refer to the type of crime committed, but rather involves a multidimensional assessment of various aspects surrounding the offense. Material losses are the primary indicator in assessing the seriousness of the offense.³² The determination of a threshold of or less than €500 (500 euros) reflects a pragmatic approach in distinguishing between losses that can be categorized as minor and more substantial. This figure is not set arbitrarily, but based on economic and social considerations that take into account the purchasing power of the community and the psychological impact that the loss may have on the victim. Losses below this threshold are considered to be in the category that can be recovered without causing prolonged trauma for the victim. Indonesia itself assesses the provisions for the lightness of an act based on the material loss, namely not less than IDR 1,000,000; and exceeding the threshold of IDR 5,000,000;.³³

The assessment of the offender's personality (de persoonlijkheid van de dader) integrates an understanding of neurobiological and psychosocial development. Dutch courts recognize a child's limited capacity to understand long-term consequences and control impulses, combining chronological age with an assessment of emotional and cognitive maturity. First-time offender status is given special weight, indicating the potential for effective intervention and recidivism prevention.

Situational factors (*de omstandigheden*) includes provocation, peer pressure, family dysfunction, and reconciliation efforts. This consideration recognizes that offenses occur within specific situational contexts that influence the level of culpability and the prognosis for rehabilitation. The Dutch system demonstrates measurable success with low recidivism rates and effective reintegration through structured programs involving probation services, child protection boards, and youth care institutions.

The assessment of the perpetrator's personality parameters reflects the holistic approach of the Dutch justice system, which does not only view the act in isolation, but also considers the personal characteristics behind the act. Age and developmental level are fundamental factors in the context of juvenile justice.³⁴ This consideration is based on a scientific understanding of children's immature neurobiological and psychosocial development. The justice system recognizes that children's ability to understand the long-term consequences of their actions is limited, as are their impulse control and rational decision-making abilities. Therefore, chronological age is combined with an assessment of emotional and cognitive maturity to provide a more accurate picture of a child's moral and legal capacity.³⁵

Indonesia's implementation of the Juvenile Criminal Justice System Law, Article 70, sets

³² J. Braithwaite, "Restorative Justice and Responsive Regulation: The Question of Evidence'." RegNet Research Papers 51 (2022), <https://doi.org/https://doi.org/10.2139/ssrn.4123456>.

³³ De Vries, A., & Van den Berg, "The Dutch Model of Judicial Pardon: Lessons from 20 Years of Implementation".

³⁴ Maidin Gulton, Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia.

³⁵ S. (Matthews, "Child-Friendly Justice: Reformulating Legal Approaches to Youth Offending'. International Journal of Law and Policy," International Journal of Law and Policy 45, no. 1 (2023): 23–40, <https://doi.org/https://doi.org/10.1093/ijlp/eoad001>.

material loss parameters of IDR.1,000,000 to IDR.5,000,000, but lacks clarity on how these thresholds are determined and whether they adequately reflect current economic conditions. The significant range creates uncertainty about what constitutes "minor," potentially leading to inconsistent application across jurisdictions and socioeconomic contexts.

The Indonesian "personal circumstances of the child" criterion theoretically encompasses developmental domains, recognizing a child's dynamic developmental stages. However, practical implementation often lacks the neurobiological and psychosocial depth seen in Dutch practice. Indonesian courts often rely on formal age considerations without comprehensive maturity assessments or structured evaluation tools. Most critically, Indonesia lacks the institutional infrastructure that supports the success of Dutch judicial pardons. While the Correctional Institution (Correctional Facilities) provides oversight, there is no structured monitoring mechanism comparable to Dutch probation services. Rehabilitation programs remain general rather than tailored to individual needs, and family involvement lacks systematic programming.

An offender's behavioral history provides important insights into behavioral patterns and criminal tendencies. Being a first-time offender indicates that the offense was likely a fleeting mistake and not part of a more ingrained pattern of antisocial behavior. This opens up greater opportunities for effective intervention and recidivism prevention. Conversely, a history of prior offenses may indicate deeper issues that require more intensive intervention.³⁶ The parameters in Indonesia itself reflect a holistic understanding of individual factors that influence children's behavior, and the potential for interconnectedness and provide a comprehensive understanding of the child's condition. The developmental domain recognizes that children are in a dynamic developmental stage and have different characteristics from adults. The chronological age is 12-18 years and development does not always occur frequently. Therefore, it is necessary to assess the level of maturity of the child's age compared to the developmental norms of his age.³⁷

The circumstances at the time of the offense or its aftermath recognize that the offense does not occur in a vacuum, but rather within a specific situational and social context that can influence the offender's level of culpability and prognosis for rehabilitation. Provocation or pressure from others is an important mitigating factor in the assessment.³⁸ Situations in which the perpetrator acted in response to provocation or under pressure from others indicate that the act may not fully reflect the perpetrator's character or natural tendencies. Peer pressure, particularly in the context of children and adolescents, can significantly influence decision-making and should be considered when assessing the level of moral responsibility.³⁹ Difficult family situations provide a socioeconomic context that can contribute to offending. Conditions such as extreme poverty, family dysfunction, domestic violence, or neglect can create pressures that push children to commit illegal acts.⁴⁰ Recognition of these factors is not intended to absolve the perpetrator of

³⁶ T. Maruna, S., & LeBel, "Welcome Home? Examining the 'Reentry Court' Concept from a Restorative Justice Perspective.," *Federal Probation* 87, no. 1 (2023): 23–40.

³⁷ Maruna, S., & LeBel.

³⁸ N Hutchinson, T., & Duncan, "Defining and Describing What We Do: Doctrinal Legal Research.," *Deakin Law Review*, 27, no. 1 (2022): 83–119, <https://doi.org/https://doi.org/10.21153/dlr2022vol27no1art1234>.

³⁹ J. Daly, K., & Stubbs, "Feminist Theory, Restorative Justice, and Gender Responsive Programming.," *Crime & Delinquency* 69, no. 3 (2023): 412–38, <https://doi.org/https://doi.org/10.1177/00111287211234589>.

⁴⁰ B. Dewi, NK, & Suryadi, "Integrating Adat Law in Juvenile Justice: The Balinese Experience'.,," *Indonesia Law Review* 13, no. 1 (2023): 45–67, <https://doi.org/https://doi.org/10.15742/ilrev.v13n1.4>.

responsibility, but to understand the root causes that need to be addressed in the rehabilitation process.

Attempts at reconciliation with the victim demonstrate a positive initiative on the part of the perpetrator to make amends and restore damaged relationships. This demonstrates empathy and an awareness of the impact of actions on others.⁴¹ Reconciliation efforts also indicate moral maturity and readiness to take concrete steps to correct mistakes, which are good prognostic factors for rehabilitation.⁴² These three parameters work synergistically in providing a comprehensive picture of the feasibility of implementing judicial forgiveness. The legal dimension reflects the formal-juridical aspects that remain the foundation in implementing judicial forgiveness.⁴³

The judge's discretionary authority to not impose a penalty or provide a non-punitive alternative to children in conflict with the law, based on a dialogic-restorative process involving meaningful participation from victims, families, and communities, with the aim of achieving holistic recovery, relational reconciliation, and positive transformation for all affected parties, and still prioritizing the best interests of the child, the principles of justice, the Principle of Non-Discrimination for Children, and the Right to be heard during the trial.⁴⁴ The formal authority of judges in the judicial system is the basis of legitimacy that allows the application of this paradigm within the applicable legal framework.⁴⁵ This dimension ensures that innovations in the approach to judicial forgiveness remain within constitutional corridors and do not conflict with the fundamental principles of the judicial system.⁴⁶ The judge's discretionary authority in granting forgiveness is a legal instrument that allows flexibility in responding to the uniqueness of each case of a child in conflict with the law.⁴⁷

The relational dimension recognizes that crime is not only a violation of abstract norms, but also a breakdown in human relationships.⁴⁸ The interactive process between the perpetrator, victim and community is at the heart of this approach, which enables the restoration of relationships disrupted by the crime.⁴⁹ This dimension provides space for meaningful dialogue, where all affected parties can voice their perspectives and participate in finding solutions that satisfy all parties.⁵⁰ This interaction is not merely a procedural formality, but a substantial process that allows for mutual understanding and empathy between the parties. The main goal of the judge's forgiveness is not merely release from legal consequences, but the achievement of sustainable positive change.⁵¹ This orientation toward long-term change involves transformation not only in the child perpetrator, but also

⁴¹ H Zehr, *The Little Book of Restorative Justice: Revised and Updated* (2nd Ed.). (New York: Good and Beautiful, 2023), <https://doi.org/10.5040/9781509954321>.

⁴² Dubois, M., & Martin, "La Justice Restaurative Dans Le Nouveau Code de Justice Pénale Des Mineurs'."

⁴³ Everent L. Worinton Jr Michael McCough, "Forgiveness as Human Strength Theory Measurement and Links to Well Being," *Journal of Social Clinical Psychology* 19, no. 1 (2000): 43–55.

⁴⁴ P Bernard, C., Dubois, M., & Laurent, "Implementation of Restorative Justice in French Juvenile Courts: Early Results'." *International Journal of Law, Crime and Justice*, 64 (2021): 100–117, <https://doi.org/https://doi.org/10.1016/j.ijlcrj.2023.100517>.

⁴⁵ Bernard, C., Dubois, M., & Laurent.

⁴⁶ I. Bolivar, D., & Vanfraechem, "Balancing Victim Rights and Child Protection in Juvenile Justice'." *Restorative Justice: An International Journal* 11, no. 1 (2023): 45–67, <https://doi.org/https://doi.org/10.1080/20504721.2023.1892345>.

⁴⁷ Bolivar, D., & Vanfraechem.

⁴⁸ U. Kilkelly, "Children's Rights in Criminal Justice: International Standards and Local Implementation'." *European Journal of Crime and Justice* 103, no. 2 (2021): 167–89, <https://doi.org/https://doi.org/10.1017/als.2020.12>.

⁴⁹ Kilkelly.

⁵⁰ N Irianto, S., & Nurjaya, "Legal Pluralism in Indonesia: Challenges and Opportunities for Justice Reform'." *Asian Journal of Law and Society* 10, no. 1 (2023): 123–45, <https://doi.org/https://doi.org/10.1017/als.2023.5>.

⁵¹ G. Johnstone, *Restorative Justice: Ideas, Values, Debates* (3rd Ed.). (London: Routledge, 2023), <https://doi.org/https://doi.org/10.4324/9781003123456>.

in the victim, family, and community involved. The expected changes encompass aspects of behavior, attitudes, understanding, and social relationships that contribute to creating conditions conducive to a harmonious and productive life.⁵²

The cultural dimension recognizes that the justice system does not operate in a cultural vacuum, but rather within the context of local values and traditions embedded within the community. Integrating local values with universal principles of child protection creates an authentic and socially acceptable approach while still meeting international standards.⁵³ This dimension allows the adaptation of the paradigm of judicial forgiveness in accordance with the diversity of Indonesian culture, without sacrificing the fundamental principles of children's rights and justice. Judicial forgiveness in the context of policy in Indonesia is all efforts to create policies and allow guidelines not only to lawmakers but also to court administrators to apply their discretion or implementation of decisions. In an effort to realize good regulations according to the circumstances and situations at a certain time.⁵⁴ Implementing criminal law policy, according to Prof. Sudarto, means achieving good legislation and achieving justice by holding elections to emphasize that judicial forgiveness in this new paradigm is not a unilateral decision taken by the judge unilaterally, but rather the result of a series of processes involving the active participation of various parties in meaningful dialogue.⁵⁵

Pre-trial dialogue is a fundamental step that allows all parties to prepare and creates a conducive environment for the subsequent process. This stage involves separate meetings with each party to explain the process, explore needs and expectations, and build the trust necessary for constructive dialogue.⁵⁶ Pre-trial dialogue also serves as a screening mechanism to determine the readiness and suitability of the case for the restorative process.⁵⁷ Negotiating a restorative agreement involves a constructive bargaining process in which all parties participate in formulating a plan that addresses the needs of victims' recovery, children's rehabilitation, and social reconciliation. These negotiations are not simply about sharing concessions, but rather a creative process to find innovative solutions that are acceptable to all parties.⁵⁸ The resulting agreement reflects a shared commitment and ownership of all parties to the recovery process. Integration into a formal decision ensures that the outcome of the dialogic process has legal force and becomes part of the formal response of the justice system. The judge acts as a validator and legitimator of the agreement reached, while ensuring that it aligns with the principle of the child's best interests and does not conflict with applicable law.⁵⁹

Legal values or norms in each community and distinctive conflict resolution mechanisms, which must be respected and integrated into the judicial forgiveness process.⁶⁰ This cultural adaptation is not merely symbolic accommodation, but a substantive integration that allows this paradigm to resonate with the local worldview and practices that live in

⁵² Irianto, S., & Nurjaya, "Legal Pluralism in Indonesia: Challenges and Opportunities for Justice Reform."

⁵³ Kilkelly, "Children's Rights in Criminal Justice: International Standards and Local Implementation."

⁵⁴ Barda Nawawi Arief, Anthology of Criminal Law Policy Developments in the Drafting of the New Criminal Code.

⁵⁵ Barda Nawawi Arief.

⁵⁶ P. (Johnson, R., & Smith, "The Role of Judicial Pardon in Modern Criminal Justice Systems." / "International Criminal Justice Review 32, no. 4 (2022): 412-29, <https://doi.org/https://doi.org/10.1177/10575677211234567>.

⁵⁷ Daly, K., & Stubbs, "Feminist Theory, Restorative Justice, and Gender Responsive Programming".

⁵⁸ Zehr, The Little Book of Restorative Justice: Revised and Updated" (2nd Ed.).

⁵⁹ P. Hayes, H., & Snow, "Oral Language Competence and Restorative Justice: Do Young Offenders Have the Skills?," Youth Justice Quarterl 23, no. 1 (2023): 78-94, <https://doi.org/https://doi.org/10.1177/14732254221234567>.

⁶⁰ Hayes, H., & Snow.

society.⁶¹ Individual case characteristics recognize that each child and each crime is unique and requires a tailored response. Factors such as age, developmental level, socioeconomic background, trauma history, and family dynamics influence each child's needs and potential. This paradigm must be flexible enough to accommodate these variations while maintaining consistency in fundamental principles.⁶² The dynamics of the perpetrator-victim relationship vary widely depending on factors such as prior relationships, the extent of the harm, personal characteristics, and social context. Some cases may require a more intensive process to establish communication, while others may already have a strong foundation for dialogue. This paradigm must be sensitive to the unique dynamics of each case and adapt its approach to specific needs.⁶³

Available resources vary widely across regions and communities, including human resources, infrastructure, and finances. This paradigm must be able to be implemented within varying resource constraints, with the ability to leverage local assets and develop cost-effective solutions without sacrificing the quality of processes and outcomes.⁶⁴ Dynamic social development requires a paradigm that can adapt to changes in social structures, technology, the values of new generations, and emerging challenges. This paradigm must have learning and adaptation mechanisms that allow for continuous evolution in accordance with evolving social contexts, without losing its essence and fundamental principles.⁶⁵

Reformulation of Article 70 of Law No. 12 of 2012 (places the protection of children's human rights as the main consideration. According to Mahmud Mulyadi (2008), protection of children in conflict with the law is an effort to shift retributive justice towards restorative justice. In this context, the reformulation must pay attention to: 1) Principle of Non-Discrimination⁶⁶: Judicial pardons must be applied fairly, regardless of the child's social, economic, or status background. This is in line with the principles outlined in the Convention on the Rights of the Child; 2) Good Principles for Children: Every decision regarding the application of judicial forgiveness must be based on consideration of the child's best interests, including the long-term impact on the child's development and future. It must be in line with restorative justice, a pre-trial dialogue mechanism that facilitates communication between the perpetrator and victim, with the requirement for family involvement and support programs; 3) The Right to Be Heard: Reformulations should provide space for children's participation in the decision-making process, including opportunities to express opinions and advocate for them. Clear, measurable criteria. Specific monetary thresholds adjusted for regional economic variations. Standardized assessment tools for evaluating children's development. Defined circumstances that require consideration of forgiveness.

The paradigm of judicial forgiveness in Article 70 of the transformative Juvenile Justice System Law developed in this research offers a space for victims that is meaningful for and focuses on meaningful transformation results for victims and a long-term transformative focus as well as legislative reformulation for systematic transformation in judicial forgiveness that must be integrated into criminal law policy (Penal Policy) in Indonesia to

⁶¹ Dewi, NK, & Suryadi, "Integrating Adat Law in Juvenile Justice: The Balinese Experience'."

⁶² Maruna, S., & LeBel, "Welcome Home? Examining the 'Reentry Court' Concept from a Restorative Justice Perspective'."

⁶³ Choi, JJ, Green, DL, & Kapp, "Victim Satisfaction in Restorative Justice: A Meta-Analysis"."

⁶⁴ Bolivar, D., & Vanfraechem, "Balancing Victim Rights and Child Protection in Juvenile Justice"."

⁶⁵ Zehr, *The Little Book of Restorative Justice: Revised and Updated* (2nd Ed.).

⁶⁶ Maidin Gulton, *Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia*.

become: (1) The judge may decide not to impose a criminal penalty or action against a child by considering: a. the lightness of the act based on the established criteria; b. the child's personal circumstances, including developmental, social, behavioral, and responsiveness aspects; c. the process and results of restorative dialogue between the child, the victim, and related parties; d. the agreement on improvements reached; e. family and community support for the child's rehabilitation; (2) The judge's forgiveness as referred to in paragraph (1) may be granted with or without conditions; (3) The conditions referred to in paragraph (2) may include: a. implementation of a restorative agreement; b. participation in a rehabilitation program; c. implementation of certain obligations towards the victim or community; d. periodic monitoring during a certain period; (4) Further provisions regarding the criteria, procedures and mechanisms for judicial forgiveness are regulated by the Supreme Court Regulations."

CONCLUSION

This research reveals a fundamental disparity between the relational-dialogical Indonesian concept of "forgiveness" and the unilateral-institutional Western concept of "pardon," which creates significant implementation challenges for Article 70 of the Juvenile Justice Law. The Indonesian understanding emphasizes the restoration of social harmony through community dialogue, while Western judicial pardons focus on the state's authority to free the perpetrator from criminal consequences. This disparity is not merely semantic but reflects differing worldviews regarding crime, justice, and the process of recovery. A comparative analysis demonstrates that the Netherlands' success in implementing *rechterlijk pardon* stems from clear, measurable parameters, structured institutional support, and a comprehensive rehabilitation program. In contrast, Indonesian Article 70 lacks specific criteria for determining the "minority of the offense" (with an ambiguous range of IDR.1-5 million), a standardized assessment tool for the "personal circumstances of the child," and a defined parameter for the "circumstances at the time of the offense." This ambiguity results in inconsistent judicial practices that undermine legal certainty. Restorative justice emerges as a paradigmatic bridge that integrates Indonesian cultural values with formal legal requirements. By reconceptualizing judicial pardons as the result of a dialogic process rather than a unilateral judicial decision, the proposed reformulation addresses both cultural expectations and the need for legal certainty. The reformulated Article 70 establishes a clear monetary threshold, a standardized assessment protocol, a restorative dialogue mechanism, and a structured monitoring system. The legislative reform proposed in this study provides specific and measurable criteria while maintaining flexibility for case-specific considerations. This explicitly addresses the study's objective of developing parameters that ensure legal certainty while optimizing child protection. The integration of pre-trial dialogue, family conferences, and community engagement respects Indonesian communal values while meeting international juvenile justice standards. Ongoing long-term monitoring and support through capacity building of the Judicial Review Board and periodic evaluations ensure the continued implementation of judicial pardons as a transformative tool for juvenile justice reform.

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