

INDONESIAN LAW ENFORCEMENT: A SHARIA PERSPECTIVE ON THE  
RECHTERLIJK PARDON PRINCIPLE

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**Abstrak:** Hukum pidana dalam melakukan pemidanaan memiliki tujuan untuk mencapai keadilan, dimana peran hakim sangat menentukan efektifitas pemidanaan yang akan dijatuhkannya terhadap seorang pelaku tindak pidana. Saat ini, Indonesia memiliki pembaharuan hukum pidana yang terdapat dalam KUHP baru yakni Azas Rechterlijk pardon yang merupakan pedoman pengampunan hakim. Penelitian ini adalah penelitian hukum normatif dengan pendekatan filosofis, historis, perundang-undangan, pendekatan konseptual dan pendekatan kasus. Pendekatan-pendekatan konseptual digunakan untuk memahami secara presisi dan akurat terkait azas rechterlijk pardon yang digunakan oleh prinsip hukum dalam undang-undang maupun doktrin para ahli hukum. Hasil dari penelitian ini menerangkan bahwa Azas rechterlijk pardon dalam KUHP yang baru merupakan gagasan baru yang berisi ketentuan mengenai pedoman pengampunan hakim atau kewenangan hakim dalam memberi maaf atau memaafkan orang yang melakukan tindak pidana. Kajian hukum islam yang diterangkan dalam Al'quran dan hadis berkaitan dengan teori pemidanaan yang bersifat teori relatif (Deterrence), teori ini memandang pemidanaan bukan sebagai pembalasan atas kesalahan si pelaku, tetapi sebagai sarana mencapai tujuan bermanfaat untuk melindungi masyarakat menuju kesejahteraan. Hal ini relevan dengan sudut pandang hukum progresif yang mana dalam hukum pidana Islam pemaafan hakim berlaku bagi jarimah ta'zir.

**Kata Kunci:** Azas Rechtelijk Pardon; Persepektif Syariah; Hukum Indonesia

**Abstract :** The purpose of criminal law is to achieve justice by the imposition of punishment, and it is the judge's responsibility to decide how best to punish a criminal. The new Criminal Code in Indonesia now includes the Rechterlijk pardon principle, which serves as a standard for judicial forgiveness in criminal cases. With a philosophical, historical, statutory, conceptual, and case-based approach, this research is normative legal research. The rechterlijk pardon principles that underpin legal doctrines and statutes are precisely and accurately understood through conceptual approaches. The findings of this study clarify that the new Criminal Code's 'rechterlijk pardon' principle is a novel concept that includes rules governing judges' discretionary power to pardon or forgive those who have committed crimes. The study of Islamic law as it is presented in the Koran and hadith is associated with the idea of punishment, which is a relative theory (Deterrence). According to this theory, punishment serves as a tool for accomplishing beneficial objectives rather than as a way of punishing the wrongdoer in order to safeguard society's progress. From a progressive legal standpoint, this is significant because under Islamic criminal law, the judimahta'zir is entitled to the judge's pardon.

**Keywords:** Indonesian Law; Sharia Perspective; Rechterlijk Pardon Principle

INTRODUCTION

Based on the background of the Criminal Code's adoption, it is imperative that criminal law be changed in order to implement penal law reform, also known as criminal law reform. In accordance with the outcomes of the 1976 UN Congress on crime prevention, the Criminal Code has to be changed. It was said at the conference that the majority of the foreign laws that are currently in effect around the world are outmoded, unfair, and out of touch with reality (Absolute and Injustice), as well as out of date and unrealistic (Out model and Unreal)(Ningsih & Fitri, 2022).

The goal of applying criminal law punishment is to achieve justice. In addition to safeguarding individuals who commit crimes, the goal of punishment is to safeguard society as a whole, guide those

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who commit crimes, and create a deterrent effect and sense of regret in those who do crimes. The concept of balance (monodualistic) between the interests of society and the individual is the foundation for the purpose of this punishment.

The death sentence is still in effect even though it is listed individually as a special punishment rather than as part of the main punishment, demonstrating the core premise that it is meant to safeguard society. In the meantime, the concept of individualizing punishment reveals those who are focused on personal safety. The present written criminal code in Indonesia, known as the Criminal Code (KUHP) until the new Criminal Code is enacted, is a holdover from the Dutch colonial era. It is called *Wetboek Van Starfrecht Voor Nederlandsch Indie* (WVS NI). The relevant criminal code of Indonesia, which is still in force today, is based on Law Number 1 of 1946 Concerning Legal Regulations (Abdullah & Wijaya, 2019).

The "idea of forgiveness by judges" is one of the major legal innovations governed by the most recent Criminal Code. Policy formulations are renewals of ideas. This concept covers national legal values that are more focused on Pancasila principles as well as living legal values. The Indonesian Criminal Code (KUHP), also known as the Draft Criminal Law in a Criminal Code, was drafted in 1963 in an attempt to fulfill this goal (Budimansyah et al., 2022).

In order to fulfill the goals of decolonizing the criminal code's colonial legacy, democratizing criminal law, consolidating criminal law, and adapting and harmonizing various legal developments that arise from advancements in criminal law science as well as the development of values, standards, and norms that live and develop in the Indonesian legal community and the international world, as well as a reflection of responsible national sovereignty, the Indonesian National Criminal Code (Law Number 1 of 2023) can serve as the cornerstone for the construction of the country's national criminal law system (Privilege, Control and Responsibility).

Updates on the idea of judge forgiveness are provided by Law Number 1 of 2023. This is a crucial area for ongoing research to further the concept's theoretical and practical applications in the legal system. This is because judges have never before been granted extremely unique powers in cases when the defendant has been found guilty of a crime during the trial and has been demonstrated to have done it legally; in these cases, the judge has the power to pardon without applying any penalties. The strike of a judge's gavel is the main weapon used in criminal punishments, making the function of the judge crucial (Y. S. Irawan & Qomariyah, 2023).

Pancasila values and national law are inextricably linked; if a theory is irrelevant, it does not include any Pancasila values. Meanwhile, a balancing law needs to be put into the law. The religious culture of Indonesian society is fundamental to the expression of divine ideals. We must take into account heavenly, social, and humanitarian factors as a compassionate society, not simply personal ones. The significance of constructing our legal frameworks around international law and local wisdom values, which can be formed and applied to our domestic legal systems (Astuti & Tarantang, 2020).

The author was therefore motivated to write this study, which explores the perspectives of the *Rechtelijk Pardon Principle* in a Sharia Perspective on Indonesian Law Enforcement, as a result of this academic worry.

## METODE PENELITIAN

With a philosophical, historical, statutory, conceptual, and case-based approach, this research is normative legal research. The rechterlijk pardon principles that underpin legal doctrines and statutes are precisely and accurately understood through conceptual approaches. In line with Barda Nawawi Arief's viewpoint, this research analysis applies law enforcement theory and is connected to a sharia viewpoint. Court rulings, the Criminal Code, the Qur'an, and hadith are the sources of the research data.

## RESULTS And DISCUSSION

### 1. Criminal Law Enforcement in the Study of Islamic Law

Islamic Criminal Law, also known as Jinayat or Jarimah Law in Fiqh terminology. The word "jarimah" (which meaning "sin" or "criminal act") is Arabic. According to Islamic legal language, Jarimah refers to deeds that are forbidden based on the syar' and the penalty meted out by Allah. These punishments might take the form of sanctions with clearly defined provisions (had) or sanctions with unclear provisions (ta'zir). Law enforcement attempts to punish those who commit crimes or transgressions committed by people.

The process of working to uphold or implement genuine legal norms as standards for conduct in traffic or legal interactions in social and political life is known as law enforcement. The act must first satisfy the crime definition specified in the law and its articles in order for criminal law enforcement to take place. When seen from the subject's point of view, law enforcement can be executed by a broad spectrum of subjects and can also be understood as an inclusive endeavor involving all subjects(Astiti & Tarantang, 2020).

The goal of law enforcement is to bring concepts of justice, legal certainty, and social benefits to life. The goal of criminal law enforcement is to bring concepts of justice in criminal law, legal certainty, and social advantages into reality in each and every legal connection. By using the concept of criminal law substantively, one can have a greater understanding of the requirements for executing criminal law enforcement.

Because PHP in abstracto (making/amending laws, law making/law reform) is the stage of making/formulating (formulating) laws by the legislative body (also known as the legislative stage), an integrative criminal law enforcement system must be viewed in this context. The process of drafting legislation, formulating regulations, and creating laws and regulations is how law enforcement is carried out(Adam, 2018).

In concrete terms, the process of enforcing a crime or a criminal procedure is known as enforcement of criminal law. In the framework of maintaining justice, the criminalization process is fundamentally a criminal law enforcement procedure. Thus, it is also a component of the "process of upholding justice" or the "judicial/judicial process". As a result, the application of criminal penalties is intimately linked to the "judicial process" (law enforcement and justice) in general and to the parameters, guiding ideals, and purposes of punishment as well as the criminal justice system as a

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whole in particular.

In terms of legal philosophy, responsibility, or the notion of liability, "I use the simple word "responsibility" for the situation where one may be legally exact and another is legally subject to the exaction," according to Roscoe Pound. According to Pound, criminal responsibility is the duty to compensate the offender for whatever retaliation they will get from a victim. He asserts that the duty assumed encompasses not only legal matters but also matters of morality or decency that are prevalent in a community (Ashworth & Zedner, 2008).

When there is a criminal act, there is criminal culpability. Only the prohibition and threat of committing a crime are considered criminal conduct. The application of criminal law to address social issues involves law enforcement. The concept of actus reus and mens rea is only applicable to crimes that carry strict liability, or absolute liability; in these cases, proof of mens rea or guilt is not required. The notion of error in criminal law is equivalent to the term of liability in the broadest sense.

It implies that the offender or his deeds may be held accountable. Therefore, if it is established that the individual committed a criminal conduct, the offender will be held accountable for his deeds. Discussing criminal responsibility in the manner described above entails discussing the individual who carried out the offense criminal (Sihombing & Nuraeni, 2023).

The Quran categorizes criminal deeds, or jinayah, into three groups. First, the death penalty, or Jarimah Qishash, which refers to doing the same deed in return for the bloodshed. Second, Jarimah Had/Hudud is a criminal offense that carries a penalty, which is decided by the kind and severity (light or severe) of the sanctions, which are the right of Allah SWT and cannot be substituted by other forms of punishment or entirely removed by human intervention.

Because jarimah hudud pertains to the public interest, it is illegal. Third, one crime that may be subject to takzir is Jaraimul Takzir. For the purpose of achieving the welfare of the people, the authorities (judge's judgment) have complete discretion over the nature and severity of the consequences. The goal of punishment is to shield people from things that are considered mafsadah, such as:

*"Punishment is a retribution determined for the benefit of society for violating the orders of the Shari'a."*

The goals of punishment are to better human situations, shield from harm, save from ignorance, lead and offer guidance from mistakes, discourage disobedience, and encourage compliance. In Islamic law, the primary goals of punishment are education and prevention (ar-rad-u) and teaching (al-islah wat-tahzib).

A person or perpetrator of a criminal act will not be held criminally responsible or sentenced to a crime if the act is not against the law; however, even if the act is committed, the perpetrator may not always be punished; the perpetrator may only be punished if it is legally and convincingly demonstrated that the act was committed in error. The goal of crime, however, is to make the offender better when viewed from the standpoint of the necessity to defend society against the hazardous nature of people (the perpetrator).

Applying the law to the aforementioned criminal activities is done by a court system that hears cases. The Prophet himself served as the first judge in Islamic history, and judges were appointed

based on the requirements of the growing Muslim community.

The following rules govern the concept of legality under the new Criminal Code, as per Law Number 1 of 2023:

Article 1

- 1) States that unless there are criminal laws and regulations in place that were in place prior to the act being done, no act may be subject to criminal consequences and/or action.
- 2) It is not permissible to employ comparisons in establishing the presence of a criminal act.

Article 2

- 1) The provisions as stated in Article 1 paragraph (1) do not invalidate rules that are already in place in society and decide that an individual is deserving of punishment even though the act in question is not covered by this law.
- 2) As long as they are not restricted by this law, the laws that exist in society as described in paragraph (1) apply there, in accordance with human rights, general legal principles acknowledged by people of all nations, and the values found in Pancasila, the Republic of Indonesia's 1945 Constitution.
- 3) Government regulations govern the terms and standards used to determine what constitutes a law in a given community.

The aforementioned regulations demonstrate that the new Criminal Code is not just strict about the law but also takes social norms into consideration. Crime and punishment are two fundamental issues in criminal law that are addressed by the Criminal Code and require further discussion. Since the Criminal Code does not specify the goal of punishment or provide recommendations for it, judges and law enforcement officials who are relevant to the case will interpret it in accordance with their own views.

From the explanation provided above, it is evident that criminal punishment is a type of suffering meted out to an individual who has violated a lawfully forbidden conduct. The penitentiary law, which specifies the kinds of punishments, the boundaries of criminal impositions, the ways and locations in which crimes can be imposed, as well as the additions, subtraction, and exceptions to criminal impositions, is closely linked to criminal impositions.

Islamic studies classify punishment into multiple types, which are as follows:

1. Simple penalties like the amputation of hands for stealing or the Qisas penalty for murder. Surah Al-Baqarah verses 178–179 contain Qisas.  
*Meaning: "(178) O you who believe, you must (perform) Qisas with reference to those who perish. Slaves with slaves, women with women, and free people with free people. Whoever receives pardon from his brother ought to honor and adhere to the terms of that forgiveness. Your Lord is releasing you and showing you mercy. After that, anyone who goes over the limit will be subject to an extremely harsh penalty. (179) O people of knowledge, there is (a promise of) life for you in Qisas, so that you may be devout."*
2. Substitute punishment, which is a punishment that takes the place of the main sentence in

cases where the main punishment cannot be carried out for legal reasons. Examples of such punishments include ta'zir (punishment) in place of the had sentence or diyat (fine) in place of the qisas sentence. Actually, the primary punishment for semi-intentional murder is the diyat punishment, which also serves as a stand-in for the qisas punishment. Similar to this, the ta'zir punishment serves as both the primary penalty for the ta'zir radius and a stand-in punishment for the diyat and hudud radii, which for various reasons are not subject to actual punishment.

3. An additional punishment is one that comes after the primary sentence and doesn't require a decision on its own. Examples of such punishments include denying inheritance to a murderer of a family in addition to the qisas sentence or denying a person the ability to testify in court if they commit a qadzaf (accounting someone of adultery) in addition to the standard punishment of eighty times.
4. This requirement sets complementary punishment apart from supplementary punishment. Complementary punishment is imposed after the primary sentence, subject to a separate ruling by the judge.

Punishment theories emerge in response to the dynamics of community life, which in turn shapes the social life of society through the genesis and growth of crime. Regarding the goal of punishment, the science of criminal law itself has produced a number of theories, including the retributive absolute theory, the utilitarian/deterrent relative theory, the integration theory, the treatment theory, and the social protection theory. Sentencing theories take into account different parts of the goals that must be met when imposing sentences for crimes (Al Amin et al., 2023).

The following are some theories regarding the intent of punishment:

1. The absolute theory holds that punishment is action-oriented and based on the crime itself since it is seen as retribution for mistakes that have been made. The reason punishment is applied is that the offender has to take responsibility for his error. This idea holds that since the crime itself caused pain to other people, the ground for punishment must be found in the crime itself, and the perpetrator must suffer in return (vergelding).

Sentences for all crimes must be imposed; this cannot be done without negotiation. A criminal receives punishment for their actions. Regardless of whether society may suffer as a result of the imposition of a crime, it ignores all ramifications. Retaliation as a basis for criminal punishment. In essence, the justification for criminal impositions is that the suffering inflicted against criminals is justified because the perpetrators have caused misery to others. Hegel contends that punishment is a justifiable requirement that follows crime. The following are the primary traits or attributes of retributive theory:

- a) A crime can only exist if there is guilt;
- b) Retaliation is the primary goal and does not contain any means for other goals, such as the welfare of society;
- c) Punishment must be tailored to the offender's fault;
- d) Punishment looks backwards and is a pure reproach; and
- e) Punishment does not aim to correct, educate, or re-socialize the offender.

## 2. Theory of Relativity

According to the relative theory (deterrence), punishment serves as a tool to accomplish beneficial objectives and safeguard society's progress rather than as a way of exacting revenge for the wrongdoer's transgressions. According to this theory, the purpose of punishment is to serve as a broad preventative strategy for society. This idea holds that punishment is meted out in order to achieve its goal, which is to lessen the level of unhappiness in the community caused by the offense. Apart from that, punishment should be considered as having the primary goal of deterring crime (Sofian, 2023).

Leonard claims that the relative theory of punishment seeks to deter and lessen criminal activity. The goal of punishment must be to alter the conduct of offenders as well as those who have the capacity or are inclined to commit crimes. Social order is the goal of criminal law, and punishment is necessary to maintain social order.

The purpose of punishment is to deter crime rather than to make people commit crimes in the first place. Goal theory, often known as utilitarian theory, is another name for this idea. Crime has a number of beneficial purposes in addition to serving as a means of punishment or retribution against those who have committed crimes. Retaliation is merely a tool for defending society's interests; it has no inherent value. lessen the occurrence of crimes.

Relative (utilitarian) theory's main features are as follows:

- a) the goal of crime is prevention;
- b) prevention is not the end goal but rather a means to achieve a higher goal, namely the welfare of society;
- c) only legal violations that can be attributed to the perpetrator (e.g., intentionally or culpably);
- d) punishment must be determined based on its purpose as a tool for crime prevention;
- e) criminal law is prospective in nature; punishment can include retaliation, but it cannot be accepted if it does not contribute to the prevention of crime in the interests of society's welfare.

## 3. The Merged Theory

The retribution and order and defense of social order principles that is, the two pillars upon which criminal imposition is based are the foundations of the combined (integrative) theory, which forms the basis for punishment. In essence, combined theory is the result of fusing relative and absolute theory. Combining these two notions teaches that the purpose of punishment is to both better the criminal's personality and preserve social order.

This combined theory can be broadly categorized into two groups:

- a) a theory that emphasizes retaliation, but retaliation must not go beyond what is required and sufficient to maintain social order;
- b) a theory that emphasizes the protection of social order, but the pain of receiving a sentence for a crime cannot be greater than the actions of the convicted person.

Crime is thus a sign of an aberrant mental state in an individual. As a result, the criminal cannot be held accountable for his acts or punished; instead, therapy is required to help the offender make amends.



According to the explanation given above, the goal of punishment is to safeguard people's rights as individuals or as members of a community. The goal of Indonesian criminal law must be to uphold the Pancasila principle, which may serve the equitable interests of all citizens. Thus, everyone is protected under Indonesian criminal law. Indonesia. There are two (two) distinct goals of criminal law. These are:

- a) The objective of criminal law as a means of punishment. This objective, which is conceptual or philosophical in nature, seeks to establish the foundation for criminal penalties. criminal penalties and forms, as well as guidelines for handling infractions of the legislation. This goal can be found in all criminal law provisions or in broad explanations, but it is typically not stated in criminal law articles;
- b) The intention of punishing those who break the law criminally. This objective is practical, with methods that are precise and pertinent to the issues that result from breaking the law. Establishing a criminal purpose is a positive step toward providing a precise and quantifiable direction for the punishment (Hasibuan et al., 2023).

According to the foregoing theoretical argument, the only real goals of punishment are to deter the offender and make the system of social order better so that it can continue to maintain social balance and order for others. Here, punishment is not limited to grief but also includes teaching anyone who transgresses it a moral lesson.

## 2. The *Rechterlijk Pardon* Principle in Indonesian Law Enforcement from the Perspective of Islamic Law.

The terms "pardon" are synonymous with "mercy," "clemency," "forgiveness," "amnesty," and "indemnity." Pardons are generally understood to be acts of forgiveness intended to prevent the application of criminal penalties in cases when the law pertaining to a certain legal occurrence may be perceived by the public as unjust. Consequently, even while it is imperative that the law be applied uniformly when considering legal certainty, there are situations in which a law's non-application must be pardoned.

The concept of *rechterlijk pardon*, or the notion of a judge's forgiveness, is a recent development that includes rules governing the judge's ability to pardon or forgive criminals. This idea represents a reform in the way criminal law is formulated, using contemporary legal principles and values. national legislation with a stronger focus on Pancasila ideals. Since neither the old nor the present Criminal Codes specify any broad rules addressing a judge's ability to forgive, many small cases result in improper punishments that may even be considered at odds with societal norms (Sihombing & Nuraeni, 2023).

Criminal actions, or *jinayah* in the Koran, are divided into three categories under the Islamic criminal law system. First, the death penalty, or *Jarimah Qishash*, which refers to doing the same deed in return for the bloodshed. Second, *Jarimah Had/Hudud* is a criminal offense that carries a penalty, which is decided by the kind and severity (light or severe) of the sanctions, which are the right of Allah SWT and cannot be substituted by other forms of punishment or entirely removed by human intervention. Because *jarimah hudud* pertains to the public interest, it is illegal. Third, one crime that may be subject to *takzir* is *Jaraimul Takzir*.



For the purpose of achieving the welfare of the people, the authorities (judge's judgment) have complete discretion over the nature and severity of the consequences. Since pardon is possible due to ta'zir penalty, the avenue for intercession is never closed. But we also need to consider whose rights are being infringed. When the head of state is the one with the rights, Hakim or Ulil Amri looks after the things that are more useful than pardoning or ta'zir.

In Islamic criminal law, the concept of forgiveness is called Al-Afwu 'Anil 'Uqubah. In Islamic criminal law, pardon is mostly limited to situations involving jarimahqisash and jarimahta'zir. Sayyid Sabiq clarified that when it comes to ḥad (ḥudūd), all persons are treated equally and the law is enforced without making any distinctions between individuals and their surroundings. Ta'zir, however, is not at all like that. Because of the various background circumstances, a judge may decide on the same incident using different laws than another judge (M. Irawan, 2016).

The third distinction is that the court has the power to forgive in ta'zir cases, whereas the ruler in ḥudud concerns does not have this capacity. It follows that the crime of murder (jarimahqisash) against the victim's family can be covered by pardon under Islamic criminal law without incurring a fine. In the interim, the ta'zir radius can benefit from the judge's pardon. Considering its significance to the Rechterlijk Pardon notion, the judge's pardon is therefore limited to the ta'zir radius.

Pancasila is regarded as the source of all sources by the Pancasila legal state. There are five primary pillars that serve as the foundation for Indonesian human behavior and ideologies: Every Indonesian person is legally required to embrace religious teachings under the Principle of Belief in One Almighty God. Since the state does not support any one religion over another, it only recognizes religions that the state deems acceptable. As a result, no official state religion is acknowledged. For this reason, the interests of particular religions in Indonesia are not given precedence in legal regulations, whether they take the shape of legislation or court rulings.

A legal notion that every Indonesian citizen values the principles of civilized humanity within the context of the value of justice is contained in the just and civilized humanity principles. The legal definition of civilized humanity holds that laws should reflect the moral fiber and legal attributes of civilized people. Human values must always guide the decisions made by judges and good law laws. In Pancasila, human treatment refers to the equitable and civilized placement and treatment of every Indonesian person (Thorik et al., 2024).

As an example of a case involving human values, Pangkal Pinang District Court No. 19/Pid.C/2018/PN. Pgp., dated July 13, 2018, sentenced a mother found stealing with her child from a minimarket, with a loss of less than IDR 2.5 million, to one month in prison and three months of probation. Another example of a case based on judgment Number 370/Pid.Sus/2018/PN. Jkt.Sel involves Ahmad Dhani, who was found guilty of hate speech and sentenced to 1.5 years in jail; however, on appeal to the High Court, the term was lowered to one year (Kamalludin, 2022).

Makhrus claims that although stealing is punished with one's hands severed in the Koran, this punishment is not carried out in Islamic law. It was during the lean season that Umar bin Khattab once deviated from the legality premise in the legislation of severing hands. Umar's approach was to

capture the spirit of Islamic law with contextual awareness rather than to betray Allah's rule. Long before this incident, namely when Rasulullah witnessed, the Prophet Muhammad did the same thing by not punishing thieves for eating fruit right away.

The following are some of the letters that address the Al'Quran's judge forgiveness principle:

1. Surah Ash-Shura verse 40

Meaning: *"And evil shall pay evil in measure; but whoever pardons and shows kindness (to those who commit evil) shall receive reward from Allah. Yes, He detests those who commit wrongdoings."*

2. Surah An-Nur verse 22

Meaning: *"And let those among you with opportunities and advantages not pledge that they (would not) support the impoverished, their relatives, or those who migrate in the cause of Allah; instead, let them be tolerant and forgiving. Do you not like your forgiveness from Allah? And Allah is Most Merciful and Forgiving."*

The foregoing Qur'anic reasoning demonstrates that the Qur'an, which was revealed to the Prophet Muhammad SAW, contains a call for forgiveness. The primary source of Islamic law, the Qur'an, has been revealed. It contains both Islamic criminal law and evidence (arguments) that are open to all.

Additionally, there are hadiths that clarify the following regarding the mandate for forgiveness:

Interpretation: *From Abu Hurairah ra, the Messenger of Allah SAW stated: "No one's wealth will decrease due to charity; Allah will not increase the wealth of those who choose to forgive but rather give glory." And no one lowers themselves in the sight of Allah; rather, Allah will elevate their status."* (Muslim HR).

The hadith that Amar bin Syuaib related from his father and grandfather is regarded as authentic by Abu Dawud, An-Nasa'i, and Al-Hakim, who also have another hadith about forgiveness: "You should forgive each other in matters of hadith punishment that occurs between you, because If the hadith has reached me then it is obligatory to carry it out" (HR. Abu Dawud no. 3476).

The study of Islamic law as it is presented in the Koran and hadith above is connected to the theory of punishment, which is a relative theory (Deterrence). According to this theory, punishment serves as a tool for accomplishing beneficial objectives rather than as a means of punishing the wrongdoer in order to safeguard society's progress. According to this theory, the purpose of punishment is to serve as a broad preventative strategy for society. According to this view, the goal of punishment is to increase public unhappiness with the crime, and punishment is thus enforced in order to achieve this goal. In addition to that, punishment should be considered as having the primary goal of preventing crime.

After completing the criminal process, criminal activities are punished. Leonard claims that the relative theory of punishment seeks to deter and lessen criminal activity. The goal of punishment must be to alter the conduct of offenders as well as those who have the capacity or are inclined to commit crimes. Social order is the goal of criminal law, and punishment is necessary to maintain social

order.

The general provisions of Article 51 and the sentencing guidelines in Article 54, paragraph (2) of the New Criminal Code, namely Law Number 1 of 2023, outline the goal of punishment, which is to allow judges to pardon criminals for crimes that are deemed to be forgivable even in cases where they are manifestly guilty. According to Article 51 of the New Criminal Code, which is Law Number 1 of 2023's Chapter III Part One on the purpose of punishment, punishment is intended to:

- a) Prevent criminal activity by upholding the law to safeguard society;
- b) Socialize prisoners by giving them direction to become decent and helpful individuals;
- c) Resolve problems resulting from criminal activity, reestablishing equilibrium, and fostering a sense of peace in society
- d) Allocates the guilty party's guilt.

Crime has certain beneficial objectives in addition to being a means of retaliation or restitution for those who have committed crimes. Retaliation is merely a tool for defending society's interests; it has no inherent value. Criminal law's primary rationale is that it seeks to lessen the incidence of crime. The purpose of punishment is to deter crime rather than to make people commit crimes in the first place. Goal theory, often known as utilitarian theory, is another name for this idea(Harefa, 2019).

Criminal penalties and action sanctions have different foundational notions based on their respective goals. The goal of criminal sanctions is to make the offender experience exceptional suffering, or *BijzonderLeed*, so that he is made to pay for his acts. Criminal penalties are intended to not only inflict pain on the offender but also to demonstrate disapproval of the offender's behaviour. Not whether there is a component of suffering, but rather whether there is an element of responsibility, is the fundamental distinction between action sanctions and criminal sanctions.

Action sanctions, on the other hand, are mostly instructional. From the standpoint of criminal theories, action sanctions are defined as penalties that do not retaliate and are only intended for special prevention that is, to shield the community from threats that could jeopardize its interests as well as to educate children who commit crimes. To put it briefly, action sanctions are focused on safeguarding both the offender and society, whereas criminal sanctions are focused on punishing the act's perpetrator.

Large-scale concepts for progressive law emerged throughout the reform era in Indonesia due to the country's unclear legal framework. This concept was developed in light of the fact that at the time, legal regulations were still seen as being overly textual and stiff, with little regard for justice or legal clarity. As a result, progressive legislation was introduced precisely in 2002.

The legal pardoning principle (*rechterlijk pardon*). A reform that grants judges the right to pardon without levying penalties. Because a judge's gavel is the primary tool used to impose criminal penalties, judges play a crucial role in society. Sudarto, as the court's ruling is the last word in a criminal case, the judge must take into account factors other than the legal one in order to make a decision that accurately reflects the values of society, philosophy, and the law. These values include the following(Thorik et al., 2024):

#### 1. Legal Factors

When a judge bases his decision on the formal terms of statutory regulations, this is referred

to as judicial consideration. According to criminal procedure code article 183, a judge cannot impose a crime unless there are two or more credible pieces of evidence proving the defendant's guilt and the fact that the crime was committed. The following are the references to the legal evidence: (a) witness statement; (b) expert statement; (c) letter; (d) instruction; (e). According to Article 184, the defendant's assertions or facts that are widely accepted do not require proof. In addition, it is believed that the defendant's acts violate formal law and satisfy the requirements of the offense committed."

## 2. Philosophical Aspects

Because of philosophical reasons, the judge believes that the defendant's sentencing is an attempt to change the defendant's behavior through the legal system. This indicates that the goal of punishment is to teach offenders so that, upon their release from prison, they will be better equipped to change their ways and not commit crimes."

## 3. Social Science Aspects

Due to sociological factors, the judge takes into account both the offense and the defendant's social background when determining the appropriate sentencing.

The novelty of the *rechterlijk* pardon ruling is that the judge did not impose a crime despite the components of the criminal act charged being demonstrated at trial. In contrast to an acquittal, which is predicated on the criminal act charged not having been legally and persuasively proven, a *rechterlijk* pardon is based on the defendant's actions being confirmed, but the court nevertheless grants the defendant's forgiveness. This indicates that the defendant's acts satisfy every requirement set forth by the public prosecutor, both in terms of the legal requirement for a minimal level of proof and the principle of negative proof.

The justification for punishment given above clarifies that, by deterring crime for the sake of safeguarding society, punishment serves a desirable objective. Punishment is meant to resolve disputes, restore equilibrium, and instill a sense of peace in society. It also attempts to mold offenders into decent and helpful people.

## CONCLUSION

The process of working to uphold or implement genuine legal norms as standards for conduct in traffic or legal interactions in social and political life is known as law enforcement. According to Islamic law, the primary goals of punishment are education (*al-islah wat-tahzib*) and prevention (*ar-rad-u*).

The concept of *Rechterlijk* pardon, which is included in the new Criminal Code, is a novel idea that specifies rules for judges' ability to pardon or forgive those who commit crimes. The study of Islamic law as it is presented in the Koran and hadith is associated with the idea of punishment, which is a relative theory (Deterrence). According to this theory, punishment serves as a tool for accomplishing beneficial objectives rather than as a way of punishing the wrongdoer in order to safeguard society's progress. From a progressive legal standpoint, this is significant because under Islamic criminal law, the *judimahta'zir* is entitled to the judge's pardon.

AUTHOR CONTRIBUTION STATEMENT

In this study, Dwi Putri Melati served as the lead author who formulated the core idea and research focus on the *Rechterlijk Pardon* principle, developed the conceptual framework, conducted the primary literature review, and drafted the initial manuscript. Rudi Nopiansyah contributed by designing the normative legal research methodology, analyzing the provisions of the new Criminal Code and relevant court decisions, and providing juridical interpretations that strengthened the research arguments. Meanwhile, Serlika Aprita played a role in conducting a comparative analysis between Indonesian criminal law and Islamic criminal law perspectives, refining the discussion section related to sentencing theories and the concept of judicial pardon, and revising the substantive content of the manuscript until granting final approval for publication. Thus, all authors made significant and proportional contributions throughout the entire research and writing process of this article.

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