



Criminal Law Politics of Rechterlijk Pardon Concept (Comparative Study the New Criminal Code and Juvenile Justice System Law)

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ARTICLE INFO	ABSTRACT
<p>Keywords: Criminal Law Politics; Rechterlijk Pardon; Criminal Code; Juvenile Justice System.</p> <p>How to cite: AT Firmansyah R., Rachman, A. A., Yastisya, A. (2024). Criminal Law Politics of Rechterlijk Pardon Concept (Comparative Study the New Criminal Code and Juvenile Justice System Law). <i>Veteran Law Review</i>. 7(1). 46-59.</p> <p>Received: 2023-10-10</p> <p>Revised: 2024-04-10</p> <p>Accepted: 2024-05-31</p>	<p>The original Indonesian version of legal identity that was born from the soul of the Indonesian nation has been camouflaged by the hegemony of western legal thought that tends to be legalistic, formalistic and liberal in spirit. Therefore, it is time to purify the national legal identity by reforming the law. One form of legal reform is carried out by the state through the reform of criminal law, namely the New Criminal Code which regulates the concept of judge forgiveness (Rechterlijk Pardon) to undermine the character of colonial legacy criminal law which is rigid and not in accordance with the legal needs of society. On that basis, this research aims to review and analyze the comparison of the regulation of the concept of Rechterlijk Pardon in the Criminal Code and the SPPA Law which also regulates Rechterlijk Pardon and analyze the political construction of criminal law in updating the regulation of Rechterlijk Pardon in the New Criminal Code. This research is a normative legal research (doctrinal). The results of this study indicate that Article 70 of the SPPA Law provides options for judges with two things, namely not imposing punishment or imposing measures. Meanwhile, the concept of Rechterlijk Pardon in Article 54 paragraph (2) of the New Criminal Code is that the judge can actually consider not imposing either punishment or action, which of course shows a difference. Furthermore, the political construction of criminal law of Rechterlijk Pardon in philosophical, sociological and legal considerations is that Rechterlijk Pardon is motivated by the need to reconstruction the understanding of judges to impose punishment by looking at the severity of the offender action as well as aspects of the needs of society values of justice.</p>

1. Introduction

Legal reform, including criminal law reform, is essentially a renewal of the main points of thought which is often also interpreted as a renewal of concepts or basic ideas, not just replacing the formulation of articles textually (Arief, 2005). Although the textual exposure cannot be ignored, the basic value behind the textual is the priority interest. This means that in legal reform, including in criminal law reform, the renewal of values is the basic need.

The substance of law is value, the law is actually description of a value system. Law is not a series of dead and empty words. Therefore, no matter how beautiful and good the textual exposure is, it cannot be given the quality of a law if it does not contain and does not sell a system of values. Given this nature, the discussion of criminal law reform in this paper will begin with a discussion of the basic ideas that serve as its foundation and signposts (Achmad, 2017).

The reform is carried out to improve the philosophical, political, sociological, and practical aspects of criminal law in Indonesia (Achmad, 2017). If examined more deeply, these aspects such as the philosophical aspects of the Dutch Criminal Code are considered not in accordance with the noble values of Indonesian society, as well as other aspects and current factors such as technology-based crimes that have not been regulated in the Criminal Code (Peter, 2008). Indeed, criminal law reform is an effort to update the previous criminal law. Therefore, Law Number 1 Year 2023 (New Criminal Code) is present to update the old Criminal Code which has been in effect since 1946.

One of the reforms contained in the Criminal Code is regarding judge's pardon (Rechterlijk Pardon). This concept was put forward by Nico Keizer cited by Adery Ardhan Saputro, explaining that many defendants have actually fulfilled the evidence, but if a sentence is imposed it will be contrary to the sense of justice (Saputro, 2016). Or it can be said that if punishment is imposed, there will be a clash between legal certainty and legal justice. Before to 1983 when the above problem occurred, the panel of judges was forced to impose punishment even though it was very light (Saputro, 2016).

That from this description, the renewal of criminal law places the concept of Rechterlijk Pardon in one of the articles in the New Criminal Code, namely in Article 54 paragraph (2) of the New Criminal Code which in its explanation is "the provisions in this paragraph are known as the principle of rechterlijk pardon which authorizes the judge to pardon a person guilty of committing a minor crime" (*Law of the Republic of Indonesia Number 1 Year 2023 on the Criminal Code.*, 2023). This pardon is included in the judge's decision and it must still be stated that the defendant is proven to have committed the criminal offense charged to him.

Before to the existence of the New Criminal Code, the concept of Rechterlijk Pardon actually also existed in the criminal justice system in Indonesia, namely in Article 70 of Law Number 11 of 2012 concerning Juvenile Criminal Justice System (SPPA Law). This concept is regulated in the SPPA Law in order to protect the interests of children as we know that children as creatures of God Almighty certainly have rights that must be protected as the future successor of the nation. Therefore, the SPPA Law regulates the alternative settlement of children cases through judge forgiveness, action and punishment. This can be understood because prison is actually the last alternative that must be chosen by the judge in imposing sanctions on children.

However, as a visionary idea, *Rechterlijk Pardon* does not seem to be implemented consequently in the context of criminal cases involving children, as evidenced by Decision Number 59/Pid.Sus-Anak/2021/PN Tjk which examined and decided the case of a child as a perpetrator of theft in aggravating circumstances, where the Judge stated that the child in this case was believed to be proven to have committed the crime of theft in aggravating circumstances, namely stealing a handphone unit which was carried out at night together with two adults by entering the victim house.

The judge then used Article 363 Paragraph (2) of Law Number 1 Year 1946 Jo. Law Number 73 of 1958 concerning the Criminal Code by sentencing the Child, namely punishment with conditions in the form of Community Service in the Mosque for 90 (ninety) hours. Of course, from the portrait of this case, the judge tends not to pay attention to the importance of Article 70 of the SPPA Law related to *Rechterlijk Pardon*. In the context of this case, ideally the judge should look at the personal circumstances of the Child, or the circumstances at the time of the act or what happened later can be used as a basis for the judge's consideration not to impose punishment or impose measures by considering aspects of justice and humanity.

The above conditions need to be contemplated, because justice arises when criminal law is able to uphold the values of Pancasila. Pancasila is a fundamental norm in the law enforcement process that should be a guiding star in every judge's decision (Prasetyo, 2013), meaning that in deciding a case the judge should not only look at what the law says but the judge must also explore the values of social justice in Pancasila.

In addition, the concept of social justice is Soekarno philosophical thought. Social justice according to Soekarno is a society or the nature of a just and prosperous society, providing happiness for everyone, no humiliation, no oppression, no exploitation. According to him, social justice must be more oriented towards the small community. Soekarno wanted to embrace social justice as the heritage and ethics of the Indonesian nation that must be achieved. In order for social justice to be realized, it must start from social life.

In relation to the concept of social justice, if it is related to Decision Number 59/Pid.Sus-Anak/2021/PN Tjk, it is actually not really achieved, especially in the legal protection of children. As in the process of law enforcement for children in conflict with the law, the paradigm that is built must focus on the best interests of the child through a restorative approach as a means of rehabilitation for children in conflict with the law so that children avoid stigmatization.

Therefore, based on the description above, this research is important because both the New Criminal Code as a criminal law reform and the SPPA Law apparently regulate the concept of *rechterlijk pardon* which authorizes judges to pardon a person guilty of committing a criminal offense. In this regard, the author is interested in conducting a

comparison of the construction of criminal law politics from the two laws, and also the author will also describe the comparison of the regulation the concept of Rechterlijk Pardon between the New Criminal Code and the SPPA Law.

2. Method

The research typology used in this paper is normative (legal) research. The concept of normative legal research put forward by many experts is a dogmatic legal research (Marzuki, 2010), which contains prescriptive elements (Mertokusumo, 2014). In line with this, to thoroughly explore the issues in this research, it will be based on primary legal materials sourced from legislation and secondary legal materials sourced from literature. The approach used is a statute approach and conceptual approach.

3. Results and Analysis

3.1. Comparison of the Regulation of Rechterlijk Pardon Concept in the New Criminal Code with the Law on Juvenile Justice System

A criminal offense is an act prohibited by a rule of law, the prohibition is accompanied by the threat of sanctions in the form of certain punishment for those who violate the rule. Meanwhile, criminal responsibility means that the defendant who commits a criminal offense as formulated in the law should be held accountable for his actions in accordance with his guilt (Firdaus et al., 2021). Criminal responsibility is not enough with the criminal act alone, but in addition there must be guilt, or a reprehensible mental attitude. This is realized in the principle of *Geen straf zonder schuld*, there is no punishment if there is no fault.

The view that has been present so far is that criminal law says that a person can be said to be guilty if there are legal rules governing the criminal acts committed. Therefore, criminal law is known as a rigid law, where everyone who commits a criminal act will be subject to criminal punishment regardless of the background conditions of the act or the severity of the act (Firdaus et al., 2021).

The relationship between criminal offense and criminal responsibility also needs to be seen in principle in each of its elements, namely the relationship between fault and unlawfulness. Fault is an element that must be present in imposing punishment on the defendant for the violated act, and there can be no fault if the violated act is not against the law.

Wrongdoing cannot be understood in the absence of unlawfulness, but conversely unlawfulness may exist in the absence of wrongdoing. This means that a person cannot be held accountable (sentenced) if he does not commit a criminal offense, but even if a person commits a criminal offense, it does not mean that he can always be punished (Firdaus et al., 2021).

In principle, punishment can be nullified if one of the core elements of the offense is not fulfilled. The absence of material unlawfulness or the absence of an unlawful element in an act and the absence of an element of schuld in a person are part of the grounds that negate punishment. These grounds that negate the punishment are then referred to as reasons for criminal expungement. In terms of criminal abolition, the concept of Rechterlijk Pardon emerged as an alternative to the rigidity of the criminal law (Barlian & Arief, 2017).

This alternative punishment through the concept of Rechterlijk Pardon was then responded by the government through the renewal of criminal law through the New Criminal Code as the basic rules for the possibility of applying pardon by the judge to the defendant by considering the severity of the act, the personal circumstances of the perpetrator, or the circumstances at the time of the crime by considering the aspects of justice and humanity. In detail, the provisions of the concept of Rechterlijk Pardon are outlined in the provisions of Article 54 of the New Criminal Code which is as follows (*Law of the Republic of Indonesia Number 1 Year 2023 on the Criminal Code.*, 2023):

- (1) In sentencing consideration shall be given to:
 - a. The form of guilt of the perpetrator of the criminal offense;
 - b. The motive and purpose of committing the criminal offense
 - c. The inner attitude of the perpetrator of the criminal offense
 - d. Whether the criminal offense was committed premeditatedly or unpremeditatedly;
 - e. The way of committing the criminal offense;
 - f. The attitude and actions of the perpetrator after committing the criminal offense;
 - g. Life history, social condition, and economic condition of the perpetrator;
 - h. The effect of the criminal offense on the future of the perpetrator;
 - i. The effect of the criminal offense on the victim or the victim's family;
 - j. forgiveness from the victim and/or victim's family;
 - k. the value of law and justice that live in the community.
- (2) The severity of the act, the personal circumstances of the perpetrator, or the circumstances at the time of the commission of the criminal offense as well as those occurring later may be taken into consideration for not imposing punishment or not imposing measures by taking into account the aspects of justice and humanity (*Law of the Republic of Indonesia Number 1 Year 2023 on the Criminal Code.*, 2023).

Looking at the provisions of Article 54 paragraph (2) of the New Criminal Code as mentioned above, it can be understand that through the enactment of this article the judge is given the authority to consider several elements as stated in the provisions of Article 54 paragraph (2) to the defendant and if the judge feels that the imposition of punishment on the defendant is contrary to the values of justice and humanity (*Law of the Republic of Indonesia Number 1 Year 2023 on the Criminal Code.*, 2023),

then based on this article the judge may not impose punishment or action on the defendant even though the actions charged by the Public Prosecutor have been proven (Farikhah & others, 2018).

The process of not imposing punishment or action on defendants who are proven to have committed a criminal offense based on considerations of justice and humanity as well as the severity of the act, the personal circumstances of the perpetrator (Farikhah & others, 2018), and the circumstances at the time of the crime can be categorized as an effort to forgive given by the judge to the defendant.

Furthermore, the concept of *Rechterlijk Pardon* is also regulated in the SPPA Law in the context of punishment of children, namely in Article 70, which stipulates (*Law of the Republic of Indonesia Number 11 Year 2012 Concerning the Juvenile Criminal Justice System*, 2012): “The severity of the offense, the personal circumstances of the child, or the circumstances at the time the offense was committed or which occurred later can be used as a basis for the judge's consideration not to impose punishment or impose measures by considering the aspects of justice and humanity”. The comprehensive comparison of *rechterlijk pardon* arrangement between the New Criminal Code and the SPPA Law is as follows:

Table. 1 Comparison of Arrangement of *Rechterlijk Pardon* Concept in the New Criminal Code with the SPPA Law

Equation	
New Criminal Code	SPPA Law
<p>Article 54 paragraph (2):</p> <p><u>The severity of the act, the personal circumstances</u> of the Offender, or the circumstances at the time of the criminal offense as well as those that occur later can be used as a basis for consideration not to implement punishment or not to or to implement an action by taking into account <u>aspects of justice and humanity</u>.</p>	<p>Article 70:</p> <p><u>The severity of the act, the personal circumstances</u> of the Child, or the circumstances at the time of the act or later may be taken into consideration by the judge not to implement punishment or to implement an action by taking into account the <u>aspects of justice and humanity</u>.</p>
Difference	
New Criminal Code	SPPA Law

Article 54 paragraph (2):

The severity of the act, the personal circumstances of the **Offender**, or the circumstances at the time of the criminal offense as well as those that occur later can be used as a basis for consideration not to implement punishment or not to or to implement an action by taking into account aspects of justice and humanity.

Article 70:

The severity of the act, the personal circumstances of the **Child**, or the circumstances at the time of the act or later may be taken into consideration by the judge not to implement punishment **or to implement** an action by taking into account the aspects of justice and humanity.

Source: Legal materials processed by the author

Based on the description of the table above, in principle both the provisions in the New Criminal Code and the SPPA Law both require that the judge can give consideration not to impose punishment on the defendant if it is contrary to the values of justice and humanity, even though the actions charged by the Public Prosecutor have been legally and convincingly proven. Therefore, *Rechterlijk Pardon* is put forward as an alternative to punishment.

However, there are also differences in the provisions of the *Rechterlijk Pardon*, where the provisions of Article 54 paragraph (2) of the New Criminal Code contain the phrase "**Offender**", while in Article 70 of the SPPA Law it is "**Child**". Furthermore, the phrase "**...may be used as a basis for consideration not to implement punishment or not to implement an action**" in the New Criminal Code explicitly states not to impose measures, while in the SPPA Law the phrase becomes "**.... may be used as a basis for the judge's consideration not to implement punishment or implement an action**". This shows that the phrase in Article 70 of the SPPA Law provides judges with two things, namely not imposing punishment or imposing measures. This is clearly different from the concept of *Rechterlijk Pardon* adopted in the New Criminal Code.

When examined further, the explanation of Article 70 of the SPPA Law only contains the word "Quite clear". The absence of further explanation of Article 70 of the SPPA Law results in problems in the form of obstacles for judges in resolving children's cases and even creates injustice for children. As the case previously described in this research, namely Decision Number 59/Pid.Sus Anak/2021/PN Tjk which imposes criminal sanctions with conditions in the form of Community Service in a Mosque for 90 (ninety) hours is in principle not a reflection of the concept of *Rechterlijk Pardon* even though it is a form of restorative justice.

The mouth of the problem is because Article 70 of the SPPA Law does not provide strict arrangements as stipulated in Article 54 paragraph (2) of the New Criminal Code, even though a child must be prioritized to obtain adequate legal protection in the frame of restorative justice

considering that the SPPA Law was formed as a broad forum to accommodate the concept of *Rechterlijk Pardon* to keep children away from the rigid law enforcement process, not humanist and also cause unrest for the community. Therefore, it is expected that in the future Article 70 of the SPPA Law needs to be reconstructed by adjusting the provisions as in Article 54 paragraph (2) of the New Criminal Code, because it is very important for the SPPA Law as a legal basis for judges to provide proper legal protection to children.

3.2. Political Construction of Criminal Law of *Rechterlijk Pardon* Concept in the New Criminal Code

The original Indonesian version of legal identity has been camouflaged by the hegemony of western legal thought that tends to be legalistic, formalistic and liberal in spirit. The legal society is stunned by the current phenomenon of having to accept modern law as it falls from the sky. Law is the crystallization of morals, values, and identity of society. Law is a noble value that is born from the earth and the society stands on it, certainly not necessarily falling from the sky and accepted by all levels of society.

On this basis, it is time to purify the national legal identity by reforming the law. One form of legal reform is carried out by the state through criminal law reform, namely the New Criminal Code. Legal reform through the New Criminal Code is always associated with political instruments of criminal law in its application. Basically, every country has different legal politics. This is due to various factors such as historical, cultural, sociological, and cultural as well as different backgrounds in each country including Indonesia.

In the context of criminal law reform in Indonesia, the main demands presented by Soedarto include practical demands due to its status as a Dutch colonial legacy, then supported by political considerations as a demand for an independent country that has separated itself from the colonizers so it is appropriate to have a national criminal law that was born from within the nation and for the Indonesian people themselves, as well as sociological demands because the cultural values of the nation that are unique to Indonesia have not been reflected in the Old Criminal Code (Zaidan, 2022).

Therefore, of course, deconstruction is needed in looking at the law. At the level of law formation, we cannot interpret law as a political product *an sich*. This is because if we dismantle the formalistic way of thinking, then we will find that law is also a cultural product. Satjipto Rahardjo defines legal politics as the activity of choosing and the means to be used to achieve certain social and legal goals in society (Rahardjo, 2000).

Abdul Hakim Garuda Nusantara as cited by Mahfud MD also stated that legal politics can literally be understood as a legal policy to be implemented by the government of a country nationally (Mahfud, 2010), so it can be said that legal politics is a form of a country's national legal politics. National legal politics can also be simply understood as a tool

used to form a national legal system. In this case the legal system is an order or elements reflected in national legal politics to be able to realize the hopes and ideals of the nation (Maroni, 2016).

Then, in foreign terminology, the term "Criminal Law Politics" is often known by various terms such as "Penal policy", "Criminal Law Policy", or "Strafrechtspolitik". Soedarto suggests what is meant by criminal law politics in two important things, namely the effort to form a good and appropriate regulation in accordance with the situation and conditions at a time and the policy of the authorized body to establish the desired regulation and the regulation expresses what is aspired by a society order (Kurniawan et al., 2023).

In addition, Soedarto explained that the politics of criminal law is to realize criminal legislation that is in accordance with the circumstances and situations at a time and for the future (Kurniawan et al., 2023). In seeking legislation that reflects what the Indonesian nation aspires to, it will certainly be guided by the national political paradigm, namely the 1945 Constitution of the Republic of Indonesia as the nation's constitution and Pancasila as the philosophy and foundation of the state as well as being the basic norm (grundnorm) which is the source of all sources of law in Indonesia.

However, the preparation of the New Criminal Code as a replacement for the old Criminal Code inherited from the Dutch with all forms of changes and adjustments to the conditions of the archipelago is a major work in the framework of national legal development, therefore in the drafting effort it is not just changing, revoking the provisions of articles that are no longer suitable, or adding new provisions of articles which so far there is still legal vacuum.

The drafting of the New Criminal Code is also conducted thoroughly, including the renewal of basic ideas related to the principles and concepts of criminal law. One of the renewal ideas in the New Criminal Code is related to the concept of *Rechterlijk Pardon* which is closely related to the actualization of legal values oriented to Pancasila and the values that live in the society, especially related to the imposition of criminal decisions by judges in court (Dewi & Setiabudhi, 2020).

The concept of *Rechterlijk Pardon* is regulated in CHAPTER III of the Criminal Code Paragraph II on Sentencing Guidelines and is contained in the provisions of Article 54 paragraph (2) (Hakim, 2019). The core of this concept is to direct the authority to the judge to pardon a person who is guilty of committing a minor crime and also takes into account the condition of the perpetrator and the values of justice. This pardon is then included in the judge's decision and it must still be stated that the defendant is proven to have committed the criminal offense charged to him.

Of course, this concept is set to depart from many cases of imposition of punishment through judicial decisions that are often considered not in accordance with humanity aspects and contrary to the legal feelings of

the society towards minor criminal offenses, resulting in the assumption of the injustice of a judge's decision. Thus, the concept of *Rechterlijk Pardon* adapts to the values and characteristics of the Indonesian nation through political instruments of criminal law. There are 3 (three) considerations in the political construction of criminal law related to the concept of *Rechterlijk Pardon* as follows (BPHN Indonesia, 2015):

a. Philosophical Considerations

To trace the background of *Rechterlijk Pardon* in the New Criminal Code, of course by looking at the Academic Paper of the New Criminal Code, which philosophically explains that the national criminal law material must also regulate the balance between public or state interests and individual interests, between the protection of perpetrators and victims of criminal acts (Rohayati, 2016).

As a country with Pancasila Ideology, the formation of a law that will apply in Indonesia should refer to and be in accordance with Pancasila and the norms in the 1945 Constitution as the basic norms in the life of society and the state. The formulation of *Rechterlijk Pardon* considers the value of society and humanity as mandated in the 2nd principle of Pancasila and is in accordance with the purpose of punishment in the New Criminal Code which puts the concept that punishment is not for suffering or degrading someone's dignity.

In addition, the concept of *Rechterlijk Pardon* in the New Criminal Code considers the value of justice in society. This is in line with the mandate of the 5th principle of Pancasila, namely the value of social justice for the people of Indonesia. Furthermore, the 1945 Constitution, especially the Preamble of the fourth paragraph, also emphasizes that one of the objectives of the state is to protect the entire Indonesian nation. Through this philosophical basis, the formation of a law, including criminal law, must fulfill a sense of justice and humanity for all Indonesian people, therefore *Rechterlijk Pardon* is important to be regulated.

b. Sociological Considerations

That as a response to the development of international criminal law where several countries in Europe have accommodated the existence of the concept of *Rechterlijk Pardon* in their positive law, one of which is the Netherlands which first raised the concept of *Rechterlijk Pardon*, but the most important thing is the benchmark for law formation in Indonesia is that it must be in accordance with the values and culture of the Indonesian Nation. The existence of the concept of *Rechterlijk Pardon* in the New Criminal Code is a form of fulfillment of the demands, desires, and legal needs of the society.

Rechterlijk Pardon is expected to be a law that embodies ideas and concepts accepted by the community in a concrete form, namely in the form of a judge's decision that can fulfill a sense of public justice in accordance with the character of the Indonesian nation as an independent and sovereign state based on the values of Pancasila

(Law of the Republic of Indonesia Number 1 Year 2023 on the Criminal Code., 2023).

The importance of the formulation of *Rechterlijk Pardon* in the New Criminal Code also reflects on the phenomenon of law enforcement, especially the imposition of punishment by judges, it appears that the decision of punishment by judges is only carried out as a 'trial' work to prioritize the formulation of the offense only, if the judge considers that the alleged act has been proven to fulfill the elements of the criminal offense, the punishment imposed seems without further examination of whether the act is really contrary to the decency that exists in society.

In addition, it is rarely considered whether a criminal verdict will fulfill the legal needs of the society, as there are also many cases that have generated a lot of criticism from the Indonesian people who feel that the case is not in accordance with the legal feelings of the society and deviates far from the objectives of punishment and fair law and the ineffectiveness of correctional goals in prison.

Therefore, *Rechterlijk Pardon* is important and very appropriate to be formulated in the New Criminal Code considering the dimension of justice value in the concept of *Rechterlijk Pardon* which can make the law more flexible and create a sense of justice, namely not imposing sanctions on the basis of humanity and justice considerations.

c. Legal Considerations

In the current positive criminal law outside of the SPPA Law, there are no rules that comprehensively explain *Rechterlijk Pardon* as a basis for judges. As it has been explained that the Old Criminal Code only put a rigid punishment system which the purpose of punishment is not felt by the society. Therefore, the formulation of *Rechterlijk Pardon* in the New Criminal Code is to answer the problem of legal vacuum when the judge is of the view that the actions committed by the perpetrators of criminal offenses do not have to be punished.

Therefore, the affirmation of the norm of *Rechterlijk Pardon* in the New Criminal Code is that the judge can grant pardon when the imposition of criminal offense is not in accordance with the purpose of punishment and the values contained in Pancasila. This affirmation is related to the logical consequence as a state of law, namely the guarantee of legal certainty, which must be set forth in the norms of legislation.

Based on the description of the legal political construction of the concept of *Rechterlijk Pardon* in the New Criminal Code above, it is clear that this concept is very necessary to be regulated in the criminal justice system in Indonesia because the core of the purpose of punishment built in Article 54 related to the concept of *Rechterlijk Pardon* is based on the elements of justice and humanity, which are described as follows:

- 1) Prevent the commission of criminal offenses by enforcing legal norms for the protection of society;
- 2) To socialize the convict by providing guidance so that he/she becomes a good and useful person;
- 3) To resolve the conflict caused by the criminal offense, to restore balance, and to bring a sense of peace in society;
- 4) To relieve the guilt of the convict;
- 5) Punishment is not intended to humiliate and degrade human dignity.

Of course the law is something that deals with humans. Humans in relation to other humans in a living association. Without the association of life (society) there would be no law (*Ubi societas ibi ius, Zoon politicon*). Understanding law means understanding human, this is not merely a general description of the law that exists so far (Rosana, 2014), The view that leads to “the man behind the gun” proves that the actor behind plays a more dominant role than just a matter of structure. When Cicero said that there is society and there is law, what he was really talking about was that law lives in the midst of society (human).

Law and humans have a unique and inseparable relationship, meaning that without human the law cannot be called law (Firmansyah et al., 2021). In law human are creative actors, human build the law, become law abiding but not shackled by the law (Rosana, 2014). This is also in line with Satjipto Rahardjo progressive legal theory which explains that “the law is for human not vice versa human for the law and progressive law is a form of legal development with the value of justice in society because the law is not just a rule of articles but also a matter of conscience” (Rahardjo, 2006), Therefore, the emergence of the concept of *Rechterlijk Pardon* makes criminal law in the future a reaction to the enactment of progressive law.

4. Conclusion

In principle, the drafting of the New Criminal Code is an effort to reform the national criminal law. This reform is carried out by using political instruments of criminal law. The political instrument of criminal law aims to evaluate a regulation and realize a legislation that is in accordance with the foundation and ideals of the Indonesian nation. One of the substances formulated in the New Criminal Code is the regulation on *Rechterlijk Pardon*. The essence of the conceptual arrangement is that the judge must impose punishment by looking at the severity of the offender action as well as the needs of society values of justice.

Rechterlijk Pardon is not a completely new concept in the criminal justice system in Indonesia because there have previously been arrangements in the SPPA Law related to the context of punishment of children. However, although the SPPA Law regulates it, there are fundamental differences related to the concept of its regulation in the New Criminal Code, namely in the provisions of Article 70 of the SPPA Law which provides options for judges with two things, namely not imposing punishment or imposing action. This is clearly different from the concept

of Rechterlijk Pardon adopted in the New Criminal Code where the judge can actually consider not imposing either punishment or action. Thus, the suggestion that can be given is that Article 70 of the SPPA Law should be amended by adjusting the Rechterlijk Pardon arrangement in the New Criminal Code to protect the interests of children.

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