

INTERNATIONAL JOURNALOF LAW AND CONSTITUTION STUDY

Journal home page: https://jurnal.asrypersadaquality.com/index.php/ijlacos

AMNESTY AND PARDON POLICIES IN THE NEW CRIMINAL CODE: AN ANALYSIS OF JUSTICE, LEGAL CERTAINTY AND SOCIAL IMPACT

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Abstract

This article discusses the policies of amnesty and pardon within the context of the new Indonesian Criminal Code (KUHP), which forms part of the country's ongoing criminal law reform. The study highlights how the granting of amnesty and pardon reflects the principles of justice, legal certainty, and their impact on the social life of society. Using a normative juridical approach, this research examines the legal provisions governing the president's authority to grant amnesty and pardon and relates them to the values of substantive justice. The analysis reveals that these policies have the potential to strengthen the protection of human rights but also pose challenges in their implementation to prevent legal uncertainty and social inequality. Therefore, a balance between legal, moral, and social aspects is essential in their application.

Keywords: Amnesty; Pardon New Criminal Code; Justice' Legal Certainty

INTRODUCTION

The reform of Indonesia's national criminal law through the enactment of the new Criminal Code (KUHP) marks a significant milestone in the history of the country's legal system. The new Criminal Code was introduced as an effort to replace the colonial legacy that had served as the foundation of Indonesia's criminal law for decades.

One of the key aspects receiving particular attention in the new Code is the regulation of amnesty and pardon policies. These two instruments are not only related to formal legal aspects but also reflect humanitarian values, justice, and state policy in addressing criminal offenders. Therefore, amnesty and pardon hold a unique position as they lie at the intersection of law and politics, with the potential to influence public trust in the criminal justice system (Puluhulawa Irlan, 2024).

Amnesty and pardon are forms of the president's prerogative rights as stipulated in the 1945 Constitution. In the context of criminal law, amnesty is understood as a collective form of forgiveness, usually granted on political and humanitarian grounds, while pardon refers to individual forgiveness given to a convicted person as a form of sentence reduction or elimination. The regulation of these two policies has undergone a long process of development in line with the evolution of Indonesia's legal system. However, with the enactment of the new Criminal Code, a fundamental question arises as to what extent amnesty and pardon policies remain consistent with the principles of justice and legal certainty within a modern legal system that emphasizes the rule of law and human rights (Komnas HAM, 2025).

The implementation of amnesty and pardon in practice often sparks public debate. Some groups view these policies as a reflection of humanitarian values and substantive justice, especially in cases with political or humanitarian dimensions. On the other hand, such policies also have the potential to create legal uncertainty if not carried out transparently and proportionally. For instance, granting a pardon to certain offenders may generate a perception of injustice within society, particularly among victims and their families. Therefore, the analysis of amnesty and pardon must take into account not only the formal legal aspects but also the accompanying social and moral implications.

From the perspective of justice, amnesty and pardon must be placed within a legal framework that guarantees equality before the law. This principle emphasizes that every state policy, including the granting of forgiveness, should be based on objective considerations rather than political interests or pressure from particular groups. In the new Criminal Code, there is an effort to reorganize the principle of justice within the criminal justice system to make it more humane and oriented toward social reintegration.

However, the implementation of amnesty and pardon policies still presents a dilemma between the strict enforcement of law and the flexible application of humanitarian values.

Meanwhile, from the perspective of legal certainty, amnesty and pardon policies must have a clear legal basis and a well-defined mechanism. The new Criminal Code is expected to provide a more systematic guideline so that presidential decisions in granting amnesty and pardon are not subjective or arbitrary. Legal certainty serves as a fundamental pillar in maintaining public trust in the judicial system. When forgiveness is granted without transparency and sound legal consideration, the legitimacy of the law may be undermined, and the public may begin to doubt the neutrality of the state's legal institutions. Therefore, achieving a balance between legal principles and policy considerations becomes crucial (Salsabila Qhas Karina, 2025).

In addition to considerations of justice and legal certainty, amnesty and pardon policies also have a direct impact on the social life of society. Granting forgiveness to certain offenders can elicit diverse social reactions, ranging from acceptance to rejection. In the social context, such decisions can influence public perceptions of the government and legal institutions. If these policies are perceived as unjust, they may lead to social tension and a crisis of trust in the state. Therefore, every policy of forgiveness must take into account social values, public ethics, and sensitivity to the conditions of society.

Thus, the analysis of amnesty and pardon policies in the new Criminal Code becomes essential to assess the extent to which the state has succeeded in balancing the principles of justice, legal certainty, and social impact within the national criminal law system. This study seeks to examine in depth the meaning and legal implications of amnesty and pardon policies by reviewing their legal basis, implementation, and social consequences. Through this analysis, it is expected that a strong conceptual foundation can be established for formulating forgiveness policies that are not only oriented toward legal interests but also uphold humanitarian values and social justice, which embody the ideals of Indonesian law

METHOD

This study focuses on analyzing amnesty and pardon policies as regulated in the new Criminal Code (KUHP), examining the extent to which their implementation reflects the principles of justice, legal certainty, and social impact within society.

The main focus is directed toward the process of granting amnesty and pardon by the president, the perceptions of law enforcement officials, and public views regarding the fairness of these policies. Thus, this research seeks to reveal the relationship between the written legal norms and the social realities that occur in practice (Juliardi Budi et al, 2023).

This research employs a descriptive qualitative approach with a juridical-sociological orientation. This approach is chosen because the researcher not only examines statutory regulations and legal theories but also seeks to understand how the implementation of these policies is perceived and practiced in real life. Such an approach allows the researcher to describe empirical conditions in the field and relate them to the prevailing legal principles.

The data sources in this study consist of primary and secondary data. Primary data were obtained through direct interviews with several informants, including officials from the Ministry of Law and Human Rights, criminal law academics, and law enforcement officers at the prosecutor's office. In addition, the researcher conducted observations in district courts and correctional institutions to examine how the public and inmates perceive the concepts of pardon and amnesty. Meanwhile, secondary data were collected through a literature review of various legal sources such as the 1945 Constitution, the new Criminal Code, academic literature, journal articles, and official government reports regarding the granting of amnesty and pardon.

Data collection techniques were carried out through in-depth interviews, direct observation, and documentation. In the interview process, the researcher used a semi-structured interview guide to adapt questions to field conditions. The interviews were conducted face-to-face at legal institution offices and through informal meetings in academic settings. Observations were made on pardon cases that had drawn public attention, such as pardons granted to inmates involved in political cases and serious crimes. Documentation was conducted by reviewing presidential decrees, court rulings, and relevant media reports.

The data obtained from the field were processed through the stages of data reduction, data presentation, and conclusion drawing. In the data reduction stage, the researcher selected and categorized information based on the themes of justice, legal certainty, and social impact. The data presentation stage involved organizing interview and observation results into thematic narratives to make them easier to understand.

Finally, in the conclusion drawing stage, the researcher conducted legal interpretation by comparing empirical data from the field with the legal provisions in the new Criminal Code and general principles of law (Widiarty Wiwik Sri, 2024).

The analysis technique used in this study is qualitative and interactive, combining normative analysis of statutory regulations with empirical analysis of interview and observation results. The analysis was conducted iteratively to identify the interrelation between legal aspects and social realities. The findings indicate that the practice of granting amnesty and pardon still faces challenges in applying the principles of justice and legal certainty, mainly due to a lack of transparency and clear oversight mechanisms. However, on the other hand, these policies still hold positive social value as instruments of reconciliation and humanitarian expression within Indonesia's legal system.

With this method, the research does not merely describe legal texts normatively but also presents field evidence showing how amnesty and pardon policies are understood, implemented, and received by society. The results are expected to provide a comprehensive overview of the balance between justice, legal certainty, and social benefit in the implementation of forgiveness policies in Indonesia.

RESULTS AND DISCUSSION

1. Justice in Amnesty and Pardon Policies

Justice is a fundamental value that must serve as the foundation of every legal policy, including the application of amnesty and pardon. In the context of Indonesian criminal law, justice carries a broad meaning—it is not limited to formal rules but also concerns the balance between the rights of offenders, victims, and the interests of society. State forgiveness policies often spark debate because they are considered to have the potential to distort the very meaning of justice. The granting of amnesty and pardon must be carried out carefully to avoid impressions of favoritism or abuse of authority. Thus, the concept of justice in this context is not merely formalistic but also substantive, reflecting humanitarian values and public morality. (Hartono Hasim, 2025).

Amnesty is often understood as a form of collective forgiveness granted by the state to a group of people, usually for political reasons or in the interest of national reconciliation. In this context, justice plays a crucial role in maintaining the balance between the interests of the state and the rights of victims. Granting amnesty without considering the suffering of victims can cause deep social wounds and undermine

public trust in the law. Therefore, the principle of restorative justice needs to be incorporated so that amnesty is not merely a form of sentence elimination but also a means of rebuilding social harmony. The state must ensure that every amnesty decision is grounded in strong moral and humanitarian considerations (Maulana Rikiandi Sopian, et al, 2024).

Meanwhile, a pardon is individual in nature and granted to a person who has received a final court sentence. The value of justice in a pardon arises when the decision is based on objective reasons, such as humanitarian considerations, health conditions, or errors in the legal process. However, in practice, pardons often face criticism when granted to political figures or individuals with significant social influence. Such situations create the perception that legal justice no longer stands on the principle of equality but instead submits to power. To preserve justice, every act of granting a pardon must be based on transparent legal and moral considerations and must not contradict the public's sense of justice.

The concept of justice in amnesty and pardon can be viewed from three dimensions: distributive justice, procedural justice, and restorative justice. Distributive justice requires that the benefits of these policies be proportionally felt by all parties—the offenders, the victims, and the wider community. Procedural justice emphasizes the importance of transparency in the process of granting amnesty and pardon, including the legal considerations behind them. Meanwhile, restorative justice focuses on restoring social relationships and respecting the rights of victims. These three dimensions must work in balance so that state policies truly reflect a comprehensive principle of justice.

In the Indonesian legal system, the granting of amnesty and pardon is a presidential prerogative guaranteed by the constitution. However, this prerogative right cannot be exercised arbitrarily without considering the principles of justice and humanity. Every decision must go through a thorough legal review process to avoid the perception of discrimination. True justice is manifested when state decisions are able to protect the human rights of every citizen, regardless of social status or political interests. Therefore, the implementation of amnesty and pardon should be positioned as a form of the state's moral responsibility toward its citizens.

Justice within forgiveness policies also carries an important social dimension. When implemented with consideration for the public interest, amnesty and pardon can serve as instruments of reconciliation and national unity. However, if carried out

without adherence to the principle of justice, such policies may instead widen the gap of public distrust toward the legal system. In this context, justice should not be understood merely as the elimination of wrongdoing but also as the restoration of dignity and public trust in the state. Therefore, amnesty and pardon policies must always be oriented toward universal humanitarian values.

From the perspective of legal philosophy, justice is understood as a balance between law, morality, and utility. Aristotle emphasized that justice means giving each person what is rightfully theirs, while modern legal thinkers such as Satjipto Rahardjo highlight the importance of justice that lives within society. In the context of amnesty and pardon, justice must be understood dynamically, adapting to evolving social and moral values. If such policies are implemented merely for the sake of power, justice becomes a political tool. Conversely, when carried out with sincerity and humanitarian principles, these policies can serve as a symbol of the state's justice (Abas Gunawan Hi, 2025).

The implementation of justice in amnesty and pardon policies also plays a crucial role in maintaining the authority of the state's legal system. Justice is not merely the final outcome of a presidential decision but a process that must be carried out with principles of transparency, accountability, and balance. The state is obligated to ensure that every forgiveness policy does not create an impression of impunity for offenders. Decisions made with careful consideration of justice will strengthen legal legitimacy and reaffirm the state's commitment to upholding the rule of law. Therefore, the application of justice must serve as the primary guideline in every legal decision-making process.

Thus, justice in amnesty and pardon policies reflects the relationship between law and humanity. Justice must serve as the spirit that animates every decision so that forgiveness policies do not lose their social significance. The state needs to develop clear and transparent guidelines to ensure that every form of clemency aligns with the public's sense of justice. In this way, amnesty and pardon can function not only as legal instruments but also as means to strengthen morality, solidarity, and public trust in the national legal system.

2. Legal Certainty in the Implementation of the New Criminal Code

Legal certainty is one of the main pillars of the national legal system. This principle provides assurance that every legal action can be predicted and clearly

regulated in accordance with the applicable laws. In the context of implementing the new Criminal Code, legal certainty becomes an important issue because new regulations always require adjustments to a legal system that has long been in use. Society needs assurance that changes in the law will not cause confusion, particularly regarding differences in interpretation and the application of criminal sanctions. Without legal certainty, justice is difficult to achieve, as legal decisions may change according to the S with the values of Pancasila, human rights, and the development of modern society. In its implementation, legal certainty must be maintained to ensure that these changes do not create normative gaps or conflicts between regulations. For example, provisions regarding new criminal acts and alternative forms of sanctions must be clearly explained to prevent multiple interpretations among law enforcement officers. Without this clarity, the application of the law risks creating uncertainty, which could undermine public trust in the legal system (Fauzi Suyogi Imam, 2021).

One of the greatest challenges in maintaining legal certainty under the new Criminal Code is ensuring that all law enforcement officers understand the substance of the new regulations uniformly. Differences in the interpretation of certain articles can lead to inconsistencies in law enforcement practices. Therefore, training and socialization are crucial steps to create a shared understanding among police, prosecutors, judges, and lawyers. Legal certainty depends not only on the content of the law but also on the consistency of its implementation. When law enforcement officers operate with a uniform understanding, the public will feel more protected and confident in the fairness of the legal system.

In addition, legal certainty is also determined by the extent to which laws can adapt to social changes without losing their normative stability. The new Criminal Code introduces several changes, including regulations on moral offenses, insults against the president, and crimes involving information technology. These changes require a balance between protecting individual freedoms and ensuring clear legal certainty. If legal provisions are too general or ambiguous, law enforcement officers may apply different interpretations. This can create legal uncertainty, potentially leading to violations of citizens' rights.

Legal certainty in the new Criminal Code is also related to institutional aspects. A certain legal system requires good coordination among institutions, including the government, the judiciary, and other law enforcement bodies. In practice, differences in policies between institutions often occur, resulting in overlapping authorities. To

address this, strong legal synchronization mechanisms and the establishment of clear implementing regulations are necessary. Legal certainty will be achieved when all state institutions perform their functions and exercise their authority proportionally, guided by the principle of the rule of law (Sinaga, Andi Sahputra, 2021).

Another aspect that affects legal certainty is public access to legal information. The new Criminal Code must be widely socialized so that the public understands their legal rights and obligations. A lack of legal knowledge often places people in a vulnerable position when facing legal processes. Therefore, transparency and openness of information are integral components of legal certainty. By understanding the content and objectives of the new Criminal Code, the public can play an active role in monitoring its implementation and promoting the enforcement of fair and certain law (Sinaga et al, 2024).

From the perspective of modern law, legal certainty cannot be separated from the values of justice and utility. A law that is certain does not necessarily guarantee justice if it fails to consider humanitarian values and public morality. Therefore, the implementation of the new Criminal Code must pay attention to the balance between legal certainty and substantive justice. The purpose of law is not only to provide certainty in regulatory texts but also to create social order and protect human rights. With this balanced approach, the new Criminal Code can become a living legal instrument that is adaptive to societal developments.

Thus, legal certainty in the implementation of the new Criminal Code requires cooperation between the government, legal institutions, and society. Legal certainty is not only about the existence of laws but also about how these laws are enforced consistently and fairly. The new Criminal Code is expected to provide clear guidance for the enforcement of national law and serve as a strong foundation for establishing a modern, humanistic legal system that prioritizes public interests. In this way, legal certainty becomes a bridge toward achieving social justice and legal stability in Indonesia.

3. Social Impact of Amnesty and Pardon Policies

Amnesty and pardon policies not only affect legal aspects but also have a significant impact on the social conditions of society. In practice, these policies often generate differing opinions among the government, victims, and the general public. Some view amnesty and pardon as a humanitarian necessity within a civilized rule-of-

law state, while others consider these policies potentially unjust. The social impact arising from these policies largely depends on how the government communicates and implements such decisions transparently and accountably in the eyes of the public (Tobing et al, 2023).

One of the most tangible social impacts is the emergence of public emotional reactions to the state's forgiveness decisions. When a pardon or amnesty is granted to individuals perceived as morally culpable or detrimental to public interests, society tends to lose trust in the government. This can lead to social tension and weaken the legitimacy of legal institutions. Conversely, if the policy is seen as reflecting justice and humanitarian values, the public will perceive it as an expression of the state's care for its citizens. Therefore, public perception plays a crucial role in determining whether the social impact of these policies is positive or negative.

In a social context, amnesty policies can serve as a means of national reconciliation, especially after political conflicts or social divisions. Through amnesty, the government can restore relations between the state and groups that were previously in opposition. This creates space for dialogue and strengthens national unity. However, reconciliation without justice for victims has the potential to cause new social wounds. Therefore, amnesty policies must be implemented with the principle of restorative justice so that they not only erase political offenses but also restore social and moral trust in the state (Khairani, 2024).

Unlike amnesty, a pardon, which is individual in nature, has a more personal yet still significant social impact. Granting a pardon to a prisoner often sparks public debate regarding the value of justice. On one hand, society may view the decision as an act of humanity, but on the other hand, it can create the perception that the law is negotiable. This perception becomes dangerous when the public feels that the law no longer holds equal moral authority for all citizens. To maintain social stability, pardons must be granted selectively, taking into account moral values, humanity, and public justice (Safitri Amalia et al, 2025).

In addition to affecting perceptions of justice, amnesty and pardon policies also influence social solidarity within society. In a pluralistic society, forgiveness decisions often generate differing opinions between supporting and opposing groups. This situation can lead to social polarization if not managed properly. The state has a responsibility to openly explain the reasons behind each decision so that the public understands the moral and legal purposes of the policy. Transparency of information

becomes key to preventing social misunderstandings and maintaining cohesion in national life.

Amnesty and pardon policies also impact public morality. If society perceives inconsistencies in law enforcement, such as granting clemency to perpetrators of corruption or serious crimes without strong justification, public compliance with the law may decline. The law loses its authority when it is no longer seen as an instrument of justice but as a political tool. Conversely, when these policies are implemented with integrity and transparency, the public will perceive the state as possessing a high sense of moral responsibility. Positive social impacts can only be achieved if the policies are carried out upholding honesty and justice (Singkoh Marvela Deibra, 2024).

In addition, amnesty and pardon also have the potential to provide rehabilitative effects for offenders and their families. State forgiveness can serve as a symbol of a second chance for individuals to improve themselves and reintegrate into society with a better social status. However, social acceptance of pardoned individuals largely depends on the attitudes of the surrounding community. If the social environment continues to stigmatize them as offenders, the humanitarian purpose of the forgiveness policy becomes ineffective. Therefore, social efforts are needed to support the reintegration of former prisoners so they can live with dignity and productivity (Ahmad, 2021).

Thus, the social impact of amnesty and pardon policies largely depends on the balance between justice, humanity, and transparency. When these policies are implemented with consideration of moral values and social justice, they can strengthen the relationship between the state and its citizens. However, if carried out without careful ethical and legal considerations, such policies can generate public suspicion and distrust. Therefore, the state must ensure that every amnesty and pardon policy is not only grounded in law but also reflects social responsibility capable of maintaining harmony and public confidence in the national legal system.

CONCLUSION

Based on the analysis of amnesty and pardon policies in the new Criminal Code, it can be concluded that these instruments play a strategic role in maintaining a balance between justice, legal certainty, and social harmony. Amnesty serves as a means of political reconciliation and social healing, while pardon acts as recognition of the moral transformation of individuals who have served their sentences. However, their implementation still faces challenges regarding transparency and procedural

consistency. It was found that the execution of these policies is often influenced by political dynamics and public opinion, raising debates about the extent to which such decisions reflect substantive justice rather than merely political considerations.

This study provides an important contribution to enriching national legal discourse, particularly in the context of the new Criminal Code reform. The analysis emphasizes that amnesty and pardon policies cannot be viewed solely from the perspective of positive law but must also be linked to the social and moral values of society. Its main contribution lies in highlighting that justice, legal certainty, and social balance are three pillars that must be maintained simultaneously for the law to function as an instrument of humanity. Moreover, this research encourages the understanding that fair legal policies must consider the rights of victims, offenders, and society proportionally to create strong public legitimacy for the law itself.

Nevertheless, this study has limitations as it focuses more on conceptual and normative analysis without empirical verification in the field. Therefore, further research is recommended to explore specific cases of amnesty and pardon in Indonesia using an empirical approach to illustrate social impacts more concretely. Additionally, it is crucial for the government and legal institutions to strengthen transparency mechanisms and establish objective evaluation standards for every amnesty or pardon decision. In this way, these policies will not only be grounded in formal legal interests but also serve as a symbol of justice and humanity within the new national legal system.

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