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## The Theory of Volkgeist in the Criminal Procedure Code


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**Abstract**

*The revision of the Criminal Procedure Code (KUHAP) is an effort to build a criminal justice system that is more responsive to societal developments and the living legal values in Indonesia. The legal issue addressed in this study concerns how the theory of Volkgeist can serve as a foundation for formulating the KUHAP that reflects the character, culture, and sense of justice of the Indonesian people. This study aims to analyse the relevance of the Volkgeist theory in the formulation of criminal procedure law, particularly in regulating the concept of rechterlijk pardon (judicial pardon), restorative justice, and the fulfilment of customary obligations as a form of supplementary punishment. The research method employed is normative legal research, using a statutory and conceptual approach, through analysis of the provisions of the Criminal Procedure Code (KUHAP) and relevant legal theories. The research findings indicate that the provisions on rechterlijk pardon, restorative justice as stipulated in Article 1, point 18 of the Criminal Procedure Code, and the provisions regarding the fulfilment of customary obligations reflect the values of cooperation, deliberation, and the restoration of social relationships that have long been embedded in Indonesian society. Thus, the application of these concepts aligns with the Volkgeist theory because the law functions not only as an instrument for enforcing rules but also as a reflection of the nation's spirit and the community's legal culture, thereby enabling the realisation of a criminal procedural system that is more just and humane.*

## INTRODUCTION

The development of the concept of the rule of law represents humanity's long journey in the pursuit of justice and the effort to subject power to a higher standard. The roots of the idea of the supremacy of law can be traced back to the time of Hammurabi in Babylon around 1800 BCE, with the Code of Hammurabi, which asserted that law should serve as a regulator of human behaviour, not merely an instrument of power. This idea then flourished during the Classical Greek period, when figures such as Socrates, Plato, and Aristotle emphasised the importance of law standing above the will of rulers. The Romans reinforced a similar principle through the Corpus Juris Civilis, which instilled the values of legal certainty and rationality into their written legal system (Kusriyah, 2017).

After the fall of the Roman Empire, the ideal of the rule of law faded during the Dark Ages, when the law was dominated by the church and absolute power (Mutawalli, 2023). However, during the Renaissance and the Aufklärung (Enlightenment), people once again placed rationality and humanism at the centre of legal life in Indonesia; one clear example of this development is the Criminal Procedure Code (Romli, 2011). "Law is based on, not created by" serves as the cornerstone of the historical school of law. Within the framework of the Volksgeist, law emerges as a reflection of the relationship between social conditions and individual character; it is not the product of a hypothetical political system, but rather is shaped by the actions and customs of members of society, which are influenced by tradition, historical background, and other cultural factors. The term Volksgeist itself is derived from "Volks" (people) and "geist" (collective will) (Wiratmadinata, 2022). In Ancient Greece, Plato introduced the concept of the rule of law through his work Nomoi (Laws). He argued that good governance must be based on the law, not on the will of the ruler. For Plato, the law serves to guide people toward a virtuous, orderly, and just life. He emphasised the importance of systematically codifying legal rules so that freedom and order can coexist in balance. The law, in his view, is not merely a tool of control but a moral means to guide citizens toward a perfect and civilised life (Rizhan, 2021).

As the concept evolved, two major schools of thought emerged regarding the rule of law: the Rechtsstaat in Continental Europe and the Rule of Law in England (Rokilah, 2020). Both emphasise the rule of law, the protection of human rights, and equality before the law. Thinkers such as Immanuel Kant, A.V. Dicey, and Friedrich von Savigny have further enriched this discourse. Through his theory of Volkgeist, Savigny asserted that law arises from the spirit and

customs of the people, not from the will of the ruler. This line of thought provides a foundation for countries like Indonesia to develop a concept of the rule of law rooted in local values, as reflected in the Pancasila-based rule of law, which emphasises legal certainty while also upholding social justice and humanitarian values.

Pancasila, as the spirit of the nation or Volkgeist, can be understood through the historical and cultural theory put forward by von Savigny. As a reflection of the nation's character, Pancasila is not the creation of any particular individual but has formed naturally alongside the journey and development of the Indonesian nation. This view aligns with Hans Kelsen's "staircase" theory (Stufenbau Theory), which positions Pancasila as the Grundnorm, the highest foundational norm for the Indonesian nation. As the spirit or soul of the nation, Pancasila requires a vessel to continue to exist and function in the life of the state. That vessel is the Indonesian government, which should serve as the body in which the values of Pancasila reside and are actualised in every state policy and action (Bayu, 2021).

Van Bellen stated that Criminal Procedure Law is a set of norms governing how the state responds to alleged criminal offences, as well as the procedures for establishing the truth through the examination of evidence in court, the issuance of judicial decisions, and the enforcement of those decisions (Rahmad, 2020). The development of new legal regulations, particularly since the New Order era, has been a defining moment. When applied to the Indonesian context, Von Savigny's historical school of thought can be linked to the existence of customary law, which is still practised by certain communities. This customary law continues to hold a strong position in various regions because it is considered to be in harmony with the way of life of the Indonesian people (Saptomo). Satjipto Rahardjo emphasised that a nation's laws are a true reflection of the social life of its people. In fact, at the 1928 Youth Congress, Moh. Koesnoe highlighted that customary law is both the spirit and the substance of national law (Lawwana, 2025). Its function is to maintain balance: when conflicts arise, elements of society take action to make adjustments to preserve harmony, reflecting the Indonesian volkgeist. Therefore, even when influenced by external factors, customary law can deliver justice through the principle of balance, ensuring that dispute resolution remains rooted in the nation's values and character. Thus, the law is not merely abstract, deductive, or logical, but also reflects a sense of justice that aligns with national identity. In practice, customary law does not always resolve conflicts through sanctions alone but may

employ other mechanisms, such as fair harmonisation, to preserve the values held in high esteem by society (Nadir, 2025).

The imposition of prison sentences has created new challenges for correctional facilities, which are now facing overcrowding, according to a report by the Supervisory Judges and Observers (Wasmat) of the Nunukan District Court (Wiku, 2024). To address prison overcrowding and the need for a more equitable criminal justice system, criminal law reform in Indonesia has focused not only on substantive law but also on criminal procedure law, as reflected in Law No. 20 of 2025 on the Code of Criminal Procedure (KUHAP). One such reform is the provision on judicial pardons (Rechterlijk Pardon), which grants judges discretion not to impose a sentence on a defendant found guilty, based on considerations of justice and humanity in the criminal justice process (Eddy, 2025). This provision grants judges the authority to pardon defendants found guilty of a criminal offence, taking into account the severity of the act, the defendant's personal background, the circumstances under which the offence was committed, as well as considerations of justice and humanitarian values. Nevertheless, the granting of such a pardon must be stated in the judgment, and it must be explicitly affirmed that the defendant was found guilty of committing the criminal act as charged (Meliala, 2020). The enactment of the new Criminal Procedure Code (KUHAP) reflects a paradigm shift in national criminal law, moving from a sole focus on punishment to one that incorporates the values of humanity, proportionality, and rehabilitation. The primary objective of this reform is to establish a criminal law system that aligns with the values of Pancasila and serves the interests of society. The direction of the reform is evident in the general provisions, which outline the objectives, guidelines, and mechanisms of criminal punishment that emphasise national identity. One of the key concepts introduced is individualised judicial discretion. This concept embodies the values of divinity, humanity, and social responsibility, reflecting the spirit of national identity as embodied in Pancasila, the nation's soul (volkgeist) (Barlian, 2017).

The emergence of the concept of restorative justice can be understood as a form of law enforcement that aligns with the public's legal awareness and is consistent with the values they hold dear (Gemilang, 2024). The Criminal Procedure Code represents a reform of formal criminal law. This reform aims to realise the ideals of national law so that it may be viewed as a reflection of Indonesia's national character. The direction of this reform is not merely to amend existing provisions but to replace them with a more appropriate legal system, enabling Indonesia to break

free from the influence of the colonial-era legal paradigm. Thus, this legal reform serves as a crucial foundation for shaping the nation's character. The Criminal Procedure Code is also positioned as a concrete instrument for steering change from the current state toward an ideal state, while simultaneously serving as a means for the planned social and cultural transformation of society (Gemilang & Ismaidar, 2024).

## METHOD

This study employs a normative legal approach that focuses on legislation as its primary source of analysis. In this approach, law is understood as a set of norms that govern the social order; thus, the study focuses on the substance and legal principles contained in the New Code of Criminal Procedure (KUHAP). Through a normative method, this study examines the structure, principles, and coherence among regulations to assess the extent to which the New KUHAP reflects a just national legal system. This approach is not limited to a formal interpretation of legal texts but also seeks to understand the social values and spirit underpinning the formation of these laws. From the perspective of the Volkgeist theory, law is viewed as a reflection of the nation's spirit, which grows out of historical experiences and the cultural values of society. Therefore, this study aims to assess whether the New KUHAP aligns with the spirit of the law that prevails in Indonesian society and is capable of realising substantive justice.

## DISCUSSION AND ANALYSIS

### 1. The New Criminal Procedure Code as a Reflection of the Spirit of Indonesian Law

According to Jimly Asshiddiqie, legal development is a planned, continuous, and conscious process aimed at realising a more advanced, prosperous, safe, and orderly society, nation, and state, grounded in a legal system that provides certainty and justice. From a legal theory perspective, the effort to replace the colonial legal system with national law has a strong philosophical foundation. This is based on the view that law cannot be separated from a nation's culture and civilizational development. The historical school of law asserts that law grows and evolves in accordance with the spirit or character of the nation (Volksgeist) that gave birth to it. Therefore, the Dutch-inherited legal system, built upon Western cultural values, naturally differs fundamentally from the values that are alive in Indonesian society. The colonial legal system placed greater emphasis on individualism, with a focus on protecting individual rights, a hallmark

of European societies, particularly the Netherlands. In contrast, the Indonesian people possess a cultural character that prioritises togetherness, kinship, and cooperation, thereby requiring a legal system that reflects these values (Subianta, 2024).

The New Code of Criminal Procedure (KUHAP), as stipulated in Law No. 20 of 2025, is one of the key achievements in the development of Indonesia's national legal system. Its enactment replaces the Dutch colonial-era criminal procedure code that for many years served as the foundation for the administration of criminal justice in Indonesia. Through the New KUHAP, the state seeks to build a judicial system that better respects human rights by prioritising the principles of equality before the law, due process, and the protection of suspects' rights. Law No. 8 of 1981 on the former Criminal Procedure Code is now considered inadequate for realising a modern criminal justice system, as its provisions no longer address developments in criminal law, for example, in handling increasingly complex judicial procedures resulting from the emergence of new offences and advancements in methods of evidence presentation (Eddyono, 2024). The purpose of criminal procedure is to uncover and establish as much of the substantive truth as possible in a case by applying procedural rules honestly and appropriately. This process is designed to determine who may be charged with an offence, undergo a trial, and receive a court ruling stating whether the criminal offence has been proven and whether the defendant is legally liable (Rahmad, 2020). Substantive truth means obtaining a complete picture of a criminal case through the honest and proper application of procedural law. The purpose of this process is to determine who may be charged with an offence, to subject that person to trial, and to obtain a court ruling assessing whether a criminal offence actually occurred and whether the accused is criminally liable (Boyoh, 2015).

## 2. Based on the Volkgeist Theory

One legal theory that is closely linked to efforts to understand the relationship between a nation's culture and the law, considered the most just and reflective of the public's views and sentiments toward the law, is the theory of the "spirit of the people," or Volkgeist in German. This theory was introduced by Frederick Carl von Savigny (1779–1861), a German legal scholar during the Prussian Empire. Savigny's thinking was rooted in Gustav Hugo's (1764–1861) ideas on the "spirit of the people" (Volkgeist), which Savigny later developed in greater depth (Wiratmadinata, 2022).

According to Von Savigny, law is one of the essential elements of a nation's communal

life, on par with language, customs, morality, and the political system. Therefore, law transcends individual interests, as it is a social phenomenon that arises from the life of society (Wiratmadinata, 2022). Society itself is formed, grows, and can disappear over time, so the laws that govern it evolve in tandem with these social dynamics. Savigny asserted that no human being exists entirely as an individual, for every person is part of a larger whole such as a family, a nation, and a state. He also explains that every era is interconnected with the one that preceded it; thus, both culture and law can only grow from a nation's spirit, as every nation continually maintains a connection with its historical heritage.

### 3. An Analysis of the Development of Responsive Law

The development of responsive law in Indonesia is the result of an evolutionary process in legal thought that seeks to adapt to the values that have emerged and evolved within Indonesian society (Nurmala, 2021). This approach is intended to provide a more effective solution for achieving social order and fulfilling the very purpose of the law itself. The character and orientation of responsive law differ fundamentally from autonomous forms of law, let alone those that tend to be repressive. Its open and accommodating nature reflects a commitment to meeting society's expectations. Historically, the development of the discourse on responsive law in Indonesia can be traced through three main stages: the post-independence period (1945–1960), the post-independence transitional period (1960–1970), and the New Order era (1970s–1990s), each of which demonstrated distinct dynamics and directions in legal development in accordance with the social and political contexts of their respective eras. Responsive or autonomous legal products are characterised as forms of law that fulfil the aspirations of society, whether expressed by individuals or by various social groups. They are thus relatively better able to reflect the sense of justice within society. The judiciary and legal norms serve as a means of realising the will of the people; however, the generally highly detailed nature of the rules leaves little room for interpretation, thereby creating the potential for them to be arbitrarily adapted to the interests and vision of those in power or the government (Arianto, 2010).

In the context of criminal law reform in Indonesia, certain concepts of responsive law have become particularly important because they relate to efforts to make the law not only an instrument of power, but also an expression of the nation’s social and moral values. The development of responsive law requires that the legislative process capture society's aspirations and needs, so that

the resulting laws are rooted in the sociocultural foundations of the Indonesian nation itself (Satjipto, 2019).

The concept of responsive law, as articulated by Nonet and Selznick, emphasises that the law should be "a servant of society," not merely "a tool of social control" (Philippe). This means that the law must be built on the principles of substantive justice and sensitivity to social, political, and cultural dynamics. This perspective aligns with Satjipto Rahardjo's concept of "living law", that is, a law that grows and evolves alongside society, rather than one that is imposed in a formalistic manner from above. Therefore, the New Criminal Procedure Code is designed to integrate the values of Pancasila as the foundation for the formulation of national law, while ensuring respect for human rights, realising justice, and maintaining a balance between state interests and the protection of citizens' rights. Furthermore, this reform is expected to reflect the values of deliberation, kinship, and cooperation that have long been part of Indonesia's legal culture. Thus, the New Criminal Procedure Code does not merely regulate formal mechanisms in the criminal justice process but also represents efforts to establish a responsive national legal system that is in harmony with the character, philosophy, and identity of the Indonesian nation.

## 4. Implications of the Formulation of a New Criminal Procedure Code Based on the Concept of the National Spirit (Volkgeist)

Currently, criminal justice practices tend to be retributive in nature, whereas what is desired is a restorative approach, that is, a collaborative process among the offender, the victim, and other parties to find solutions and determine steps to address future impacts. Formal criminal law is often associated with incarceration, and this focus frequently leads to injustice in the process due to the unequal standing of the parties involved. To address this issue, the concept of restorative justice has emerged as a model for resolving criminal cases that involves the offender, the victim, and the community working together. Restorative justice is an alternative approach to resolving criminal cases that shifts the focus from punishment to a process of dialogue involving the offender, the victim, and relevant parties to reach an agreement regarding the incident. The resolution of criminal offences through restorative justice prioritises restoring the status quo and reestablishing healthy relationships within the community (Satjipto, 2009). From the perspective of restorative justice, a criminal offence is viewed not merely as a violation of the law, but as a violation against human beings and interpersonal relationships. Restorative justice can be implemented in various

ways, such as mediation between the offender and the victim, family meetings or deliberations, and community service activities aimed at restoring the well-being of both the victim and the offender (Arief & Ambarsari, 2018).

Guidelines for the Implementation of Restorative Justice in the general court system, where restorative justice may be applied in four categories of cases: minor criminal offences, cases involving children, cases involving women in conflict with the law, and drug abuse cases (Akbar, 2022). The application of restorative justice in handling criminal cases at the Kupang City Police Department occurs during the preliminary and formal investigation stages. From 2020 through March 2024, a total of 3,021 criminal cases were resolved through restorative justice mechanisms. The majority of these cases were resolved during the preliminary investigation stage, while only a small portion proceeded to the formal investigation stage for further resolution (Nar dkk, 2024).

The successful application of restorative justice across these various types of criminal offences opens opportunities to expand its implementation to corporations as subjects of criminal law. The application of a restorative approach to corporations is understood not only as the addition of procedural mechanisms within the criminal justice system but also as a fundamental paradigm shift in criminal sentencing policy. The national criminal justice system, which has traditionally emphasised a retributive approach, is now being reoriented to adapt to the increasingly complex nature of corporate crimes, particularly in the economic sphere. In this context, the focus of criminal sanctions is no longer solely on punishing executives or the corporation as the perpetrator, but also on restoring the losses suffered by victims, the community, and the state. Thus, the application of Restorative Justice to corporations reflects a shift in the objectives of criminal law enforcement from a retributive orientation toward just resolution, recovery of losses, and the provision of broader benefits for all affected parties (Hizkia, 2026).

One model considered effective in implementing restorative justice for corporate crimes is the dual-track system. This model is a case-resolution mechanism that integrates the formal criminal justice process with a concurrent restorative process. In its application, the restorative agreement reached between the corporation as the perpetrator, the victims, and relevant parties serves as one of the considerations for the prosecutor in determining criminal charges during the trial. Through this system, law enforcement proceedings are carried out in accordance with the provisions of criminal procedure law; at the same time, however, the corporation is allowed to fulfil its responsibilities by restoring the losses suffered by the victims, providing compensation,

and improving corporate governance to prevent the recurrence of similar criminal offences. Thus, the dual-track system not only accommodates law enforcement interests but also promotes more comprehensive redress for victims and enhances corporate compliance with the principles of good governance (Gregorius, 2025). The application of the dual-track system to corporate criminal offences is intended primarily for cases that meet certain criteria. First, criminal offences that result in losses that can be identified, quantified, and actually recovered, such as environmental crimes, which allow for remedial actions and the provision of compensation to affected communities. Second, criminal offences committed by corporations where there is a commitment to take responsibility and improve corporate governance. This commitment can be demonstrated through acknowledgement of wrongdoing, a cooperative attitude during the law enforcement process, and a willingness to propose and implement a remediation program. Third, the application of this system is more appropriately directed at criminal offences that do not fall under the category of serious crimes, do not endanger national security, do not result in the loss of human life, and are not classified as crimes against humanity (Gregorius, 2025).

The Restorative Justice approach offers a mechanism for resolving cases that enables corporations to be directly held accountable for losses caused by criminal acts. This accountability can be fulfilled through the payment of damages, environmental restoration, or other relevant forms of redress as a consequence of the termination or postponement of criminal prosecution. Through this mechanism, victims' rights can be restored more quickly without causing broader impacts on the continuity of business operations and the interests of workers who depend on the corporation. This approach aligns with utilitarian theory, which holds that the enforcement of criminal law should be directed toward producing the greatest possible benefit for society (Gregorius, 2025). Therefore, the resolution of a case is oriented not only toward the imposition of sanctions as a form of retribution, but also toward the restoration of losses, the protection of the public interest, and the realisation of social welfare in a broader sense.

Conceptually, restorative justice is a stage in the process that involves all relevant actors in a criminal act to jointly seek remedies for its consequences and determine mechanisms to address them. This approach is closely aligned with the practice of penal mediation, which has been implemented at various levels. The philosophical foundation of penal mediation stems from the state philosophy, namely Pancasila, which is reflected in its humanitarian emphasis (Sukedi M and Nuarta, 2024). Pancasila embodies values such as humanity, deliberation, and social justice that

are alive in everyday social interactions. When penal mediation emphasises the principles of humanity and peaceful resolution, it does not merely adopt foreign legal techniques, but rather reflects the normative and ethical orientation inherent in Indonesian society. Thus, the application of penal mediation grounded in Pancasila can be viewed as a manifestation of the Volksgeist, that is, law that grows from the values, customs, and collective spirit of the nation and serves as an expression of society's moral and social values in resolving disputes. In line with this spirit, the concept of "rechterlijk pardon" reflects an effort to strike a balance between the fair application of the law and the humanitarian values and moral wisdom that have evolved within society. The term "rechterlijk pardon," derived from Dutch and translated as "judicial pardon" in Indonesian, is generally understood to mean the granting of forgiveness for acts that violate the law, based on considerations of justice within society.

A "judicial pardon" (*Rechterlijk Pardon*) is a decision in which the court finds the defendant legally and convincingly guilty of a criminal offence but refuses to impose a sentence. This decision is made after the judge considers factors such as the minor nature of the offence, the offender's personal circumstances, the circumstances at the time of the crime, and subsequent developments (Ningtias, 2024). The application of the concept of judicial leniency in the Indonesian criminal justice system is based on Article 54(2) of Law No. 1 of 2023 on the Criminal Code (KUHP). In that article, judicial pardon is established as a legal norm. Under sentencing guidelines, a judge may grant a judicial pardon if the conditions outlined in those guidelines are met. A judicial pardon is not classified as a legal remedy (rechtmiddel) in the criminal procedure system; therefore, it is not a right that the defendant or the public prosecutor can invoke. Rather, a pardon serves a different purpose: to waive the enforcement of a sentence. Although the general principle of upholding the law remains in effect, in certain circumstances this principle takes the form of forgiveness, thereby preventing the law from being enforced (Lestari, 2023). According to Immanuel Kant, human beings are ends in themselves; therefore, every action, including those in law enforcement, must respect human dignity as an inherent value and cannot be reduced to a mere means to achieve a specific end. This idea is reflected in the principle of the categorical imperative, which emphasises the moral obligation to treat every individual with dignity. From the perspective of the principle of judicial leniency, Kant's philosophy suggests that court rulings should not be oriented solely toward the formal application of legal norms but must also take into account humanistic values, such as substantive justice, empathy, and the social circumstances

underlying the offender's actions. Therefore, under certain circumstances, for example, when a criminal act is committed due to pressure or a situation that influences the perpetrator's will, a judge may apply the principle of leniency as a form of law enforcement that is more proportionate and just, without neglecting the objectives of the law or humanitarian values (Hana, 2025).

The concept of judicial leniency adds to the types of judgments that may be rendered in criminal cases. Prior to this provision, the Criminal Procedure Code (Law No. 8 of 1981) recognised only three types of judgments: a conviction, an acquittal, and a dismissal of all charges. A conviction is handed down if the defendant is proven legally and convincingly to have committed a criminal offence. At the same time, an acquittal is granted if the defendant's guilt is not proven according to law. Article 246(2) of Law No. 20 of 2025 on the Criminal Procedure Code provides for the possibility that a judge may issue a ruling finding the defendant guilty of a criminal offence but not imposing a sentence or other penalty. The judge's considerations include the minor nature of the offence, the defendant's personal circumstances, and the conditions at the time of and following the commission of the criminal offence (Eddy, 2026).

Under Article 54(2) of the New Criminal Code, judges are granted a new alternative: judicial leniency, in which a defendant is found guilty of a criminal offence but is not sentenced to punishment. This provision allows judges to consider aspects of substantive justice, particularly in minor cases that legally meet the elements of a criminal offence but where punishment is deemed no longer beneficial. The introduction of judicial leniency also offers a solution to the dilemma judges often face between formally applying the law and fulfilling the sense of justice. Through this mechanism, judges can still find a defendant guilty without imposing a sentence if there are valid reasons based on humanitarian considerations, proportionality, and the purposes of criminal punishment (Putri, 2023).

Provisions on judicial leniency reflect the reform direction in the National Criminal Law, which is grounded in the humanistic values of Pancasila. This concept prioritises humanitarian considerations without disregarding the religious character of Indonesia's diverse society. Thus, diversity of beliefs is respected through the principles of tolerance, equality, and respect for the dignity of every individual. Humanistic values in the context of Pancasila are understood not only through a rational and logical approach but also through a spiritual dimension, as reflected in the Principle of Belief in One Supreme God. Therefore, the exercise of judicial discretion involves moral and ethical considerations that are in harmony with humanistic values and the life of the

nation and state (Hana, 2026). Regulations regarding the principle of judicial discretion in Indonesia's positive legal system are a necessary step to address the gaps and inconsistencies in existing legal norms. Comprehensive regulations will ensure that the principle of judicial discretion does not remain merely a normative concept, but can be applied effectively, consistently, and fairly in criminal justice practice. It is hoped that the clarity of these regulations will guide judges in balancing the demands of legal certainty with humanitarian considerations in accordance with the characteristics of each case. Thus, the principle of judicial discretion can serve as an instrument to realise justice oriented toward humanitarian values without undermining the objectives of law enforcement as mandated by the Criminal Code. Furthermore, the harmonisation of these regulations is part of efforts to reform national law, aimed at creating a criminal justice system that is more responsive to societal developments while remaining consistent with the principles of dignified justice.

The concept of "Rechterlijk Pardon," or judicial pardon, must be understood as the last line of defence in upholding justice when a case has the potential to create a sense of injustice within society. The ideal form of applying this concept is a guilty verdict without the imposition of a criminal sentence. The Restorative Justice approach and the concept of "Rechterlijk Pardon" (judicial pardon) truly reflect how the law should exist and evolve within society. Both are based on the view that the purpose of the law is not merely to punish, but also to restore the social order disrupted by criminal acts.

## CONCLUSION

The reform of criminal procedure law through Law No. 20 of 2025 on the Criminal Procedure Code is part of national legal development aimed at establishing a criminal justice system that is more responsive, fair, and in line with the values of Pancasila. This reform not only replaces the formalistic and retributive colonial legal paradigm but also reflects legal developments rooted in the character of the Indonesian nation, as embodied in Friedrich Carl von Savigny's theory of Volksgeist and the concept of "living law" that has evolved within Indonesian legal thought. Thus, the law is no longer viewed merely as a set of normative rules, but rather as a reflection of the values, culture, and needs of a constantly evolving society. In this context, the strengthening of the Restorative Justice approach and the regulation of Rechterlijk Pardon (*judicial pardon*) indicate a shift in the orientation of criminal law enforcement from a retributive paradigm toward a

restorative paradigm that places greater emphasis on substantive justice. Restorative Justice provides a framework for resolving cases through the restoration of victims' losses, the repair of social relationships, and the accountability of offenders, including corporations as subjects of criminal law, through mechanisms such as the dual-track system. This approach enables a balance to be achieved between legal certainty, the interests of victims, the protection of society, and the continuity of economic activities, so that the purpose of criminal punishment is no longer solely oriented toward the imposition of sanctions but also toward the creation of broader benefits. On the other hand, the provisions on judicial discretion in the Criminal Code (KUHP) and the New Criminal Procedure Code (KUHAP) grant judges the authority to find a defendant guilty without imposing a criminal sentence if, for legal and humanitarian reasons, criminal punishment is deemed no longer necessary. The presence of this concept is a concrete manifestation of the application of the humanistic values of Pancasila, respect for human dignity, and substantive justice, as reflected in Immanuel Kant's philosophy regarding the categorical imperative. Therefore, harmonising the regulations governing Restorative Justice and Judicial Pardon is a crucial element in the reform of Indonesia's criminal justice system, as it fosters a balance among legal certainty, justice, and public benefit. Ultimately, these two concepts represent the manifestation of a responsive national legal framework that is oriented toward restoration and aligned with the social, cultural, and philosophical values of the Indonesian people.

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