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The Limits of Judicial Discretion in the Application of Judicial Pardon (*Rechterlijk Pardon*) to Children in Conflict with the Law

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Abstract

The regulation of judicial pardon (rechterlijk pardon) in the Indonesian criminal law system has developed through Law Number 1 of 2023 concerning the Criminal Code, Law Number 20 of 2025 concerning the Criminal Procedure Code, and Supreme Court Regulation Number 3 of 2026 concerning Judicial Pardon Decisions. In the Juvenile Criminal Justice System, the authority not to impose a sentence or impose previous action has been based on Article 70 of Law Number 11 of 2012. Legal issues arise related to the unclear relationship between this special authority and the limitations on the application of judicial pardon in Articles 5 and 6 of PERMA Number 3 of 2026. This study aims to analyze the limits of judicial discretion and formulate the construction of the application of judicial pardon based on the principles of substantive justice and the best interests of the child. The study uses normative legal methods through a statutory and conceptual approach with grammatical and systematic interpretation. The research findings indicate interpretive issues regarding the position of the PERMA's general restrictions on the special powers of judges under the SPPA Law. This research proposes an interpretive construction that places specific provisions on child protection as the primary basis for the application of discretion, while still considering legal certainty, proportionality, and the accountability of judges' considerations.

Keywords: Judicial Discretion; Judicial Pardon; Juvenile Criminal Justice System.

INTRODUCTION

The development of modern criminal law shows a shift in the orientation of criminal punishment from an approach that emphasizes retribution against the perpetrator of the crime to an approach that considers the balance between the perpetrator's culpability, the interests of the victim, the protection of society, and the objectives of punishment. This change stems from the understanding that the imposition of punishment cannot be viewed as a consequence that must always follow the proof of a crime, because there are certain circumstances that cause the use of punishment to no longer be proportional to the intended legal objectives. From the perspective of criminal law policy, punishment is part of the state's efforts to protect the interests of society while providing opportunities for perpetrators to improve their behavior. Barda Nawawi Arief positions punishment policy as

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part of social policy that must pay attention to community protection and social welfare, while Muladi develops the idea that the objectives of punishment cannot be separated from the need to maintain a balance between individual and societal interests (Arief, 2010; Muladi, 1985). This idea is related to the principle of individualization of punishment, which requires judges to consider not only the nature of the act committed, but also the personal circumstances of the perpetrator and the consequences of punishment for his or her future. In the development of Indonesian criminal law, this orientation has acquired a normative form through the regulation of judicial forgiveness or rechterlijk pardon as an instrument that enables judges to provide a proportional legal response to the cases they examine.

Judicial pardon is a concept in criminal law that gives a judge the authority to declare a defendant guilty of a crime without imposing a penalty or taking any action based on certain considerations determined by law. This concept is fundamentally different from justification and forgiveness because its application does not eliminate proven guilt, but rather relates to an assessment of the need to impose sanctions on the perpetrator. In the development of national criminal law, the regulation of judicial pardon is based on Article 54 paragraph (2) of Law Number 1 of 2023 concerning the Criminal Code, which allows a judge not to impose a penalty or action by considering the lightness of the act, the personal circumstances of the perpetrator, or the circumstances at the time of the crime and what happened subsequently, with attention to aspects of justice and humanity. This regulation indicates a change in the construction of punishment that no longer places proof of guilt as the sole basis for determining legal consequences. Anwar et al. (2025) explain that the regulation of rechterlijk pardon is part of the reform of criminal law that requires clarity in the parameters of application so as not to create uncertainty in the use of judicial authority. Meanwhile, Yuliawati (2021) links the development of the concept of judicial forgiveness with the need to overcome the rigidity of sentencing, especially in cases that have special circumstances so that the sentencing has the potential to be disproportionate to the legal objectives to be achieved.

The need for a criminal justice approach that takes into account the individual circumstances of the perpetrator is particularly relevant in the Juvenile Criminal Justice System. Children in conflict with the law cannot be fully equated with adult criminals because their psychological development, emotional maturity, and ability to consider the consequences of their actions are still developing. Research by Cauffman and Steinberg (2000) shows that the maturity of an individual's judgment is influenced by the development of responsibility, the ability to consider various perspectives, and self-control, which change throughout adolescence. Steinberg and Scott (2003) also explain that the developmental characteristics of adolescents are relevant to the assessment of the level of culpability and accountability in the criminal justice system. These findings do not mean that children cannot be held accountable for their actions, but rather demonstrate the need for differentiation in assessing the level of culpability and determining the legal response to children. In the Indonesian context, recognition of these characteristics is based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which places protection, the best interests of the child, proportionality, and punishment as a last resort as the principles of the implementation of juvenile criminal justice. These provisions show that the criminalization of children is not only related to the enforcement of criminal provisions, but also to the state's obligation to safeguard the development and future of children as legal subjects who receive special protection.

The regulation regarding the possibility of judges not imposing penalties or imposing sanctions on children was actually known before the enactment of the National Criminal Code. Article 70 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that the minor nature of the act, the child's personal circumstances, or the circumstances at the time of the act or subsequent occurrences may be used as a basis for a judge's consideration not to impose penalties or impose sanctions, taking into account aspects of justice and humanity. This provision is significant because it specifically provides judges with the authority to consider whether to impose sanctions on children based on the circumstances surrounding the act or the child's personal characteristics. The use of the word "may" indicates that this authority is discretionary and its implementation depends on the judge's assessment of the concrete circumstances of the case. Pariarsana (2024), through his study of Decision Number 2/Pid.Sus-Anak/2021/PN.Rgt, places Article 70 of the Juvenile Justice System Law as the basis for applying judicial pardon in juvenile cases and demonstrates the importance of assessing the minor nature of the act, the child's personal circumstances, and considerations of justice and humanity. The existence of Article 70 of the Child Protection Act shows that judicial forgiveness in juvenile cases is not a completely new authority introduced through the National Criminal Code, but rather has a specific basis in the juvenile criminal justice system.

The development of judicial pardon regulations acquired a new dimension after the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code and Supreme Court Regulation Number 3 of 2026 concerning Judicial Pardon Decisions. The PERMA was established to implement the provisions of Article 246 paragraph (4) of the Criminal Procedure Code and provide guidelines regarding the principles, conditions, limitations, considerations of judges, forms of decisions, and legal remedies regarding judicial pardon decisions. Article 4 paragraph (1) letter b of PERMA Number 3 of 2026 expressly stipulates that the scope of judicial pardon regulations includes juvenile criminal cases while still taking into account the provisions regarding the Juvenile Criminal Justice System. This provision demonstrates recognition of the application of judicial pardons in juvenile cases, but at the same time raises the need to explain the relationship between the general provisions in PERMA and the specific authority stipulated in Article 70 of the SPPA Law. This issue is important because PERMA not only provides guidelines regarding circumstances that can be the basis for granting pardons, but also determines the categories of cases in which judicial pardons cannot be granted. The relationship between the two regulations needs to be analyzed based on the position of each regulation, the scope of the judge's authority, and the principles of child protection that underlie the formation of the SPPA Law.

Normative issues are specifically found in the relationship between Article 70 of the SPPA Law and Articles 5 and 6 of PERMA Number 3 of 2026. Article 70 of the SPPA Law authorizes judges to refrain from imposing criminal penalties or imposing measures against children based on the severity of the act, the child's personal circumstances, or circumstances accompanying the act, while taking into account justice and humanity. Meanwhile, Article 5 of PERMA Number 3 of 2026 outlines the parameters for granting judicial forgiveness in more detail, while Article 6

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specifies exceptions to certain categories of crimes, including crimes excluded from restorative justice mechanisms, crimes involving unequal power relations, repetition or combination of crimes, and crimes against morality with certain exceptions. The difference in the construction of these regulations raises questions regarding the position of the limitations stipulated in PERMA on the special authority of judges under Article 70 of the SPPA Law. The issue is not merely whether judges have the authority to grant forgiveness to children, because such authority has a legal basis, but rather the extent to which the limitations in PERMA can be used to determine the scope of the implementation of authority previously granted by law.

From the perspective of the formulation and implementation of legislation, this issue relates to the need to maintain consistency between lower-level and higher-level regulations. Article 70 of the Child Protection and Child Protection Law specifically regulates judges' authority over children, while Supreme Court Regulation No. 3 of 2026 provides guidelines for implementing judicial pardon decisions. This difference in position raises the need to determine whether the limitations in the Supreme Court Regulation elaborate on the authority granted by law or potentially narrow the scope for the application of this specific authority. This issue cannot be directly stated as a conflict of norms because Article 70 of the Supreme Court Regulation does not expressly stipulate that all cases involving children can be pardoned without limitation. However, the relationship between the specific authority in the Supreme Court Regulation and the general limitations in the Supreme Court Regulation remains an interpretative issue regarding the scope of judicial discretion, particularly when a child's case meets the grounds for pardon under Article 70 of the Supreme Court Regulation but has characteristics that fall within the limitations of Article 6 of the Supreme Court Regulation. This unclear relationship serves as the basis for identifying normative ambiguities that require grammatical and systematic interpretation.

The issue of the limits of judicial discretion is also related to legal certainty and the consistency of court decisions. Judicial discretion is necessary because not all concrete circumstances of a case can be formulated in detail in statutory regulations, but the use of such authority must still be based on testable and accountable legal reasons. Fitria and Ariansyah (2026) emphasize the importance of objective, subjective, and social parameters in the application of judicial pardons to reduce the risk of disparity in sentencing. Tamba et al. (2026) also link the clarity of judicial pardon parameters to legal certainty and the need to limit the subjectivity of judicial considerations. More broadly, Pina-Sánchez (2018) demonstrates the importance of considering legally relevant case characteristics when assessing differences in decisions between courts. This study provides a foundation for understanding that differences in decisions do not necessarily indicate injustice but must be explained by differences in relevant legal circumstances. In juvenile cases, this issue becomes more complex because judges consider not only the nature of the crime but also the child's developmental status and protection interests, which form the basis for administering juvenile criminal justice.

Previous studies on legal pardon have contributed to understanding the philosophical basis, regulations, and urgency of its application in the Indonesian criminal justice system. Yuliawati (2021) compared the concept of judicial forgiveness in the draft Criminal Code with Article 70 of the Juvenile Justice Act (UU SPPA), while Pariarsana (2024) examined the application of Article 70 of the Juvenile Justice Act in court decisions. Anwar et al. (2025) discussed the concept of judicial forgiveness in the National Criminal Code, while Fitria and Ariansyah (2026) and Tamba et al. (2026) emphasized the need to formulate discretionary parameters to ensure legal certainty. These studies indicate that the discussion of judicial forgiveness has evolved from the basic issue of authority to the need to clarify the parameters of its application. This study takes a more specific focus by placing the relationship between Article 70 of the Juvenile Justice Act and Articles 5 and 6 of Supreme Court Regulation Number 3 of 2026 as the main object of analysis. The novelty offered lies in testing the limits of judicial discretion in the relationship between special regulations regarding children and general restrictions on judicial forgiveness after the enactment of PERMA Number 3 of 2026. This focus also provides space to formulate an interpretative construction that takes into account the principle of the best interests of children without ignoring legal certainty and the position of statutory regulations.

Based on these issues, this research is directed to answer two problem formulations. First, what are the limits of judges' discretion in applying rechterlijk pardon to children in conflict with the law based on Article 70 of Law Number 11 of 2012 and Article 5 and Article 6 of Supreme Court Regulation Number 3 of 2026. Second, how is the construction of the parameters for applying rechterlijk pardon to children in conflict with the law based on the principles of substantive justice and the best interests of the child. These two problem formulations have a complementary relationship because the first problem is directed to determine the scope of the judge's authority based on positive law, while the second problem is directed to formulate an interpretative construction that can provide clarity regarding the use of discretion in children's cases. This research is expected to contribute to the development of national criminal law, particularly regarding the relationship between criminal individualization, judicial discretion, child protection, and legal certainty in the application of judges' pardon decisions.

RESEARCH METHODS

This research is a normative legal research that places laws and regulations, legal principles, and legal doctrine as the main objects of study to identify the ambiguity of norms regarding the limits of judges' discretion in applying judicial forgiveness to children in conflict with the law. The research uses a statute approach *and* a conceptual approach . The statutory approach is carried out through a review of Article 54 paragraph (2) of Law Number 1 of 2023 concerning the Criminal Code, provisions on judicial forgiveness decisions in Law Number 20 of 2025 concerning the Criminal Procedure Code, Article 70 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and Article 4, Article 5, Article 6, and Article 7 of PERMA Number 3 of 2026. The conceptual approach is used to analyze judicial discretion, legal certainty, criminal individualization, substantive justice, and the principle of the best interests of children based on legal doctrine and relevant scientific research results. Primary legal materials consist of laws and regulations and international legal instruments related to child protection, while secondary legal materials include books, national journal articles, international journal articles, and academic publications related to the research problem. The analysis was conducted prescriptively using grammatical interpretation to determine the meaning of the formulation of the authority and limitations of judicial forgiveness, as well as systematic interpretation to explain the relationship between

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specific provisions in the SPPA Law and general provisions in the PERMA. The results of the analysis were used to formulate a legal construction regarding the limits of judicial discretion in accordance with the principles of legal certainty, substantive justice, and protection of the best interests of children .

RESULTS AND DISCUSSION

A. The Limits of Judicial Discretion in Applying Legal Pardon to Children in Conflict with the Law Based on Supreme Court Regulation Number 3 of 2026

Judicial discretion in the application of judicial pardons is a judicial authority that provides room for assessment of the concrete circumstances of the case to determine whether or not to impose a criminal sentence or action against a defendant who has been proven guilty. This authority cannot be understood as unlimited freedom, because every action of the judge in carrying out the judicial function must be based on the authority granted by law and implemented according to accountable parameters. From a legal theory perspective, the relationship between authority and discretion shows that the existence of room for assessment does not eliminate the obligation of the judge to apply legal norms consistently. Dworkin (1986), through the concept of law as integrity, positions legal interpretation as an activity that must consider the unity between the rules and principles underlying the legal system. This view is relevant in the application of judicial pardons because the assessment of the perpetrator's personal circumstances cannot be made separately from the purpose of punishment and the principles underlying the judge's authority. In the context of the Juvenile Criminal Justice System, discretion has a special character because its use must consider the position of the child as a legal subject who receives protection based on the principle of the child's best interests. Therefore, determining the limits of a judge's discretion requires reading the basis of authority, conditions of application, and limitations determined by the overall regulations on juvenile criminal law.

Normatively, Article 70 of Law Number 11 of 2012 provides a basis for judges' authority not to impose a criminal penalty or take action against a child based on the severity of the act, the child's personal circumstances, or the circumstances at the time of the act or subsequent occurrences, while taking into account aspects of justice and humanity. A grammatical interpretation of this provision indicates that the legislators used the word "may" as the basis for granting judges discretion. The use of this word indicates that the authority not to impose a criminal penalty is not an obligation that must be exercised every time mitigating circumstances are found for the child. Judges must still assess whether the circumstances identified are sufficiently related to the objectives of child protection and considerations of justice and humanity. At the same time, the use of the word "or" in the formulation regarding the severity of the act, the child's personal circumstances, and the circumstances accompanying the act demonstrates that the reasons that may be considered do not always have to be cumulative. The structure of this formulation provides room for judges to consider the child's personal circumstances independently, as long as such assessment remains based on the facts of the case and the objectives determined by law. This construction shows that Article 70 of the SPPA Law provides discretionary authority, but does not eliminate the judge's obligation to provide testable legal reasons.

The position of Article 70 of the Juvenile Criminal Justice System Law is significant because it constitutes a specific regulation concerning the punishment of children. The Juvenile Criminal Justice System Law was established based on the recognition of the different protection needs of the adult criminal justice system, therefore, the provisions regarding the non-imposition of criminal penalties must be read in conjunction with the principles stipulated in Article 2 of the Juvenile Criminal Justice System Law. The principles of the best interests of the child, proportionality, and deprivation of liberty and punishment as a last resort indicate that the use of sanctions against children must consider the impact on the child's development and future. Steinberg (2009) explains that cognitive and psychosocial development during adolescence has implications for the assessment of guilt, competence in the judicial process, and the impact of the use of criminal sanctions. Grisso et al. (2003) also show that children's ability to understand the judicial process and make legal decisions can differ from that of adults due to psychosocial maturity factors. These findings provide a scientific basis for understanding why children's personal circumstances require special attention in determining legal responses. However, these psychological findings do not directly determine the outcome of a decision, but rather serve as supporting knowledge for judges in assessing the child's individual circumstances based on applicable legal parameters.

The authority of judges under Article 70 of the SPPA Law acquired a new relationship after the enactment of Article 54 paragraph (2) of the National Criminal Code which regulates general judicial pardons. Both provisions have similarities in the use of parameters of the lightness of the act, the personal circumstances of the perpetrator, and the circumstances at the time and after the crime was committed as the basis for considering not imposing a sentence or action. This similarity shows the continuity between the orientation of child protection in the SPPA Law and the renewal of the national criminal justice system. However, both have different regulatory scopes because Article 70 of the SPPA Law is specifically aimed at children, while Article 54 paragraph (2) of the Criminal Code is a general provision regarding guidelines for sentencing. This difference in scope has consequences for how the relationship between the two provisions is interpreted. The principle of lex specialis derogat legi generali provides the basis that special regulations need to be given attention in the application of norms that have a more specific object. In this context, Article 70 of the SPPA Law cannot be ignored simply because the National Criminal Code has regulated general judicial pardons. These special provisions remain an important basis for determining the character of the judge's authority in juvenile cases, particularly in relation to the assessment of personal circumstances and the protection objectives underlying the juvenile criminal justice system.

The regulation of judicial forgiveness through PERMA Number 3 of 2026 provides more detailed guidelines regarding the implementation of this authority. Article 5 paragraph (2) stipulates that the granting of forgiveness is based on considerations of justice and humanity by taking into account the seriousness of the act, the personal circumstances of the perpetrator, and/or the circumstances at the time and after the crime occurred. Article 5 paragraph (3) then outlines the parameters of the seriousness of the act through the categories of minor crimes, certain criminal threats, relatively minor consequences for the victim, and criminal complaints. Meanwhile, Article 5 paragraph (4) regulates the personal circumstances of the perpetrator based on the motive and

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purpose of the act, mental and intellectual background, and the form of error in the form of negligence. These regulations demonstrate an effort to clarify the parameters previously formulated in general in the Criminal Code. However, their application to children requires separate analysis because these parameters are basically formulated for defendants in general. In cases of children, the assessment of personal circumstances cannot be separated from the level of psychological development, emotional maturity, and the influence of the social environment that are related to the child's ability to understand the consequences of their actions.

The issue of normative ambiguity began to emerge when Article 4 paragraph (1) letter b of PERMA Number 3 of 2026 stipulated that the regulation of judicial forgiveness covers juvenile criminal cases while still considering the provisions regarding the Juvenile Criminal Justice System. Grammatically, this formulation indicates that the application of PERMA to juvenile cases should not be carried out by ignoring the specific provisions in the SPPA Law. However, the phrase “while still considering” does not explain in detail how the relationship between the general parameters in Article 5 PERMA and the specific authority in Article 70 of the SPPA Law should be applied. This issue is important because Article 70 of the SPPA Law provides room for consideration based on the child's personal circumstances, while Article 5 PERMA provides a more specific explanation regarding the perpetrator's personal circumstances. Ambiguity arises when the judge must determine whether the child's personal circumstances that are relevant according to the SPPA Law but not explicitly mentioned in Article 5 PERMA can still be used as a basis for considering forgiveness. In this regard, an overly narrow reading of Article 5 has the potential to reduce the scope for assessment provided by Article 70 of the SPPA Law, while an overly broad reading could eliminate the function of PERMA as a guideline for maintaining consistency in the application of judicial forgiveness.

This issue cannot be separated from the position of laws and regulations within the national legal system. Law Number 12 of 2011 concerning the Establishment of Legislation, as amended, regulates the hierarchy of laws and regulations, while Article 8 recognizes the existence of regulations established by certain institutions, including the Supreme Court, as long as they are mandated by higher regulations or established based on authority. Within this framework, PERMA functions to provide guidelines for the implementation of judicial authority, but its regulations must still take into account the limits of authority determined by law. The relationship between Article 70 of the SPPA Law and PERMA Number 3 of 2026 must be analyzed based on this principle to prevent interpretations that place implementing regulations as the basis for changing the substance of authority granted by law. This issue does not necessarily indicate a conflict of norms, because the elaboration of authority through implementing regulations is essentially possible as long as it does not conflict with higher norms. Ambiguity arises when the relationship between elaboration and limitation cannot be clearly determined based on the formulation of applicable provisions.

This unclear relationship becomes even more apparent in the application of Article 6 of Supreme Court Regulation Number 3 of 2026, which specifies the categories of cases in which a judge cannot grant a pardon. This provision uses a grammatically explicit prohibition formulation, so that judges are, in principle, not given room to override the exception category based solely on subjective considerations regarding the defendant's circumstances. However, legal issues arise when this limitation is placed in relation to Article 70 of the SPPA Law, which specifically authorizes judges to withhold criminal penalties or actions against children based on certain considerations. As a normative illustration, a child who repeatedly commits a crime may have personal circumstances that indicate a need for protection and rehabilitation under Article 70 of the SPPA Law, while Article 6 letter c of the Supreme Court stipulates that a judge's pardon cannot be issued against repeat offenders or those who combine crimes. In such circumstances, judges face the problem of the relationship between the specific authority granted by law and the limitations stipulated in implementing regulations. This issue requires systematic interpretation to determine whether the limitations in the Supreme Court constitute a legitimate elaboration of the pardon authority or have the potential to narrow the scope of discretion granted by the SPPA Law.

An assessment of this issue must be made by distinguishing between normative ambiguity and normative conflict. A normative conflict generally indicates the existence of provisions that regulate the same object but have legal consequences that cannot be applied simultaneously, while normative ambiguity relates to the unclear meaning or scope of the provisions, which opens up the possibility of different interpretations. Regarding the relationship between Article 70 of the SPPA Law and Article 6 of PERMA Number 3 of 2026, there is no explicit formulation in Article 70 stating that forgiveness must be available without limitation to all categories of juvenile cases. Therefore, the existence of restrictions in PERMA is not sufficient to immediately conclude that there is a normative conflict. The more appropriate question to examine is whether these restrictions should be applied identically to juvenile and adult cases, or whether the special characteristics of the SPPA Law require different interpretations of the scope of its application. This determination cannot be based solely on abstract considerations of justice, but must take into account the structure of the norms, the status of the regulations, and the purpose of the formulation of each provision. In this context, normative ambiguity lies in the unclear operational relationship between the specific authority in Article 70 of the SPPA Law and the general restrictions regulated through PERMA.

From the perspective of judicial discretion, this ambiguity has consequences for the consistency of judicial deliberations. Judges who view Article 6 of the Supreme Court (PERMA) as an absolute limitation on all cases involving children may produce a different legal construction than judges who emphasize the specific nature of Article 70 of the SPPA Law. These differing interpretations have the potential to impact the outcome of decisions, particularly when cases involve the child's personal circumstances relevant to the goals of protection and rehabilitation. Tyler (2003) explains that the legitimacy of the exercise of legal authority is closely related to procedural justice and the ability of legal institutions to provide treatment that can be understood as fair. In the context of criminalization, Tantikul (2024) shows that the assessment framework used by judges can influence how courts respond to issues of inequality in imposing sanctions. These two studies provide a basis for understanding that clarity in the parameters of discretion is necessary not only to limit judicial authority but also to maintain the quality of deliberation and the legitimacy of decisions. In cases involving children, this need becomes even more crucial because judges' decisions can impact the child's long-term development, education, and social reintegration.

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The limits of a judge's discretion must also be analyzed based on the obligation to provide adequate legal considerations. Article 7 of Supreme Court Regulation No. 3 of 2026 stipulates that a judge's pardon decision must consider the objectives and guidelines of sentencing and include clear considerations regarding the conditions and limitations of granting forgiveness. This provision demonstrates that a judge's authority cannot be exercised simply by stating that the defendant deserves forgiveness based on humanitarian considerations, but must be supported by a description of the concrete circumstances that meet legal parameters. In juvenile cases, this consideration needs to be linked to a community research report, as stipulated in Article 60 of the Child Protection and Child Protection Law. This report serves to provide information on the child's personal circumstances, family environment, and social conditions relevant to determining the legal response. Research by Shulman and Cauffman (2013) on risk assessment in adolescence indicates that adolescents' assessment of the consequences and benefits of an action can differ depending on their developmental stage. These findings reinforce the importance of individualized assessments of a child's circumstances, but they cannot be used as an automatic basis for granting forgiveness. Judges must still explain the relevance of these circumstances to applicable legal requirements to prevent their considerations from becoming psychological assessments detached from normative grounds.

Based on grammatical and systematic interpretation, the limits of judges' discretion in applying rechterlijk pardon to children can be understood as the authority to assess whether or not it is necessary to impose a criminal sentence or action based on Article 70 of the SPPA Law by taking into account the provisions on judicial pardons in the Criminal Code, Criminal Procedure Code, and PERMA Number 3 of 2026. This authority is not absolute because its implementation must be based on considerations of justice, humanity, the purpose of punishment, and applicable legal provisions. However, the existence of Article 70 of the SPPA Law as a special regulation requires that any restrictions applied to children's cases be read systematically with the principles of child protection and the position of the law. The results of the analysis show that the ambiguity of the norm does not lie in the absence of a basis for the judge's authority, but rather in the unclear relationship between the discretionary space provided by Article 70 of the SPPA Law and the restrictions formulated in Article 6 of PERMA Number 3 of 2026. This issue requires an interpretative construction that is able to maintain the validity of legal restrictions while ensuring that the special character of the Juvenile Criminal Justice System does not lose its meaning in the application of judicial pardons.

B. Construction of Parameters for the Application of Rechterlijk Pardon to Children in Conflict with the Law Based on the Principles of Substantive Justice and the Best Interests of the Child

The construction of parameters for the application of legal pardon to children must be based on Article 70 of the Child Protection and Child Protection Law, which provides the basis for judges' specific authority not to impose penalties or impose measures in juvenile cases. This regulation is related to the principle of individualization of punishment, which places the perpetrator's personal circumstances as part of the consideration of the need for punishment. In the context of children, individualization of punishment cannot be separated from the developmental characteristics that distinguish children from adult perpetrators. Steinberg (2010) explains that the development of self-control and risk-taking tendencies during adolescence occurs through processes that do not always occur simultaneously. Meanwhile, Pfeifer and Allen (2012) note that adolescent brain development and behavior are complex processes that cannot be explained by a single developmental model. Both studies demonstrate that the use of knowledge about child development must be done carefully to avoid generalizations that all children have the same self-control or level of maturity. In the application of judicial forgiveness, the child's developmental circumstances should be considered as a relevant factor in assessing personal circumstances, not as a reason that automatically eliminates the need for punishment.

The principle of the best interests of the child holds an important position as a basis for interpreting the authority of judges in child criminal cases. Article 3 paragraph (1) of the Convention on the Rights of the Child stipulates that the best interests of the child must be the primary consideration in actions related to children. This principle is recognized in the national legal system through Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child and is confirmed in Article 2 of the Child Protection Act. The United Nations Committee on the Rights of the Child, through General Comment No. 14 of 2013, explains that the best interests of the child have the status of a substantive right, a principle of legal interpretation, and a procedural rule. These three dimensions provide the basis that the best interests of the child are not simply mentioned in the judge's considerations, but must influence the process of assessing the child's condition and the consequences of the decision to be made. In relation to judicial forgiveness, this principle can be used to give meaning to the child's personal circumstances as referred to in Article 70 of the Child Protection Act and Article 5 of PERMA Number 3 of 2026. However, its use must still pay attention to the limits of authority determined by law so that the principle of child protection is not understood as the authority to override all requirements for sentencing.

Substantive justice in the application of judicial forgiveness to children cannot be interpreted as an obligation to consistently provide outcomes that benefit the child, but rather as an orientation toward the application of the law that considers concrete circumstances and relevant interests proportionally. In juvenile cases, these interests include protecting the child's development, accountability for actions, victim recovery, and community protection. Bazemore and Umbreit (1995) explain that a restorative approach to juvenile justice seeks to develop a response to criminal acts that is not solely oriented toward punishment but also considers the perpetrator's responsibility and the restoration of social relationships. Daly (2002) cautions that restorative justice cannot be understood simply as the opposite of retributive justice, as the two approaches have a more complex relationship in the practice of resolving criminal cases. This perspective is relevant for placing judicial forgiveness proportionally. Judicial forgiveness does not absolve the child of responsibility for proven actions, but rather is one possible legal response when the imposition of a penalty or action is deemed unnecessary based on the conditions stipulated by law. Therefore, the construction of its application must still consider the interests of the victim and the objectives of community protection so that the child protection orientation does not disrupt the balance of interests in the judicial process.

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The assessment of a child's personal circumstances needs to be placed as a central part in constructing the parameters of judicial forgiveness. Article 70 of the SPPA Law provides space to consider the child's personal circumstances, while Article 5 paragraph (4) of PERMA Number 3 of 2026 describes the perpetrator's personal circumstances through the motive and purpose of the act, mental and intellectual background, and the form of the error. The relationship between these two provisions needs to be interpreted by taking into account the child's specific character so that the assessment does not stop at generally formulated categories. The child's personal circumstances can include the level of emotional maturity, the ability to understand the consequences of the act, the influence of the social environment, and family conditions related to the crime committed. However, each of these circumstances must be relevant to the applicable legal parameters and supported by accountable information. Grisso et al. (2003) showed differences in the abilities of some groups of adolescents and adults in understanding the legal process and making decisions related to criminal cases. These findings provide a reason to avoid automatically equating the abilities of children and adults, but cannot be used as a basis for concluding that every child has a lower level of culpability without individual examination. The construction of a proper assessment must connect the child's developmental state with the facts of the case and the legal reasons used by the judge.

Community research reports are an important instrument to support this assessment because they provide information about the child's individual circumstances that cannot always be obtained solely through proving the elements of the crime. Article 60 paragraph (3) of the Juvenile Justice and Child Protection Law requires judges to consider community research reports before issuing decisions on juvenile cases. This obligation indicates that determining the legal response to a child cannot be separated from an assessment of their personal circumstances and social environment. In applying judicial forgiveness, community research reports can help judges identify circumstances relevant to Article 70 of the Juvenile Justice and Child Protection Law and Article 5 of Supreme Court Regulation Number 3 of 2026, including the possibility of rehabilitation, family support, and conditions that influence the child's behavior. Lipsey (2009), through a meta-analytical study of interventions for juvenile offenders, showed that the effectiveness of interventions is influenced by the characteristics of the program and the quality of its implementation. McAra and McVie (2007) also demonstrated the importance of considering the relationship between children's involvement in the justice system and the process of stopping unlawful behavior. These findings provide a basis for determining responses to children needing to consider the long-term consequences of the selected intervention. In the context of normative law, these empirical findings serve to strengthen the argument regarding the importance of individualizing criminal offenses, while the basis for authority and conditions for forgiveness must still be determined based on statutory regulations.

The construction of the application of judicial forgiveness also needs to consider the relationship between the principle of sentencing as a last resort and the authority to refrain from imposing a sentence or action. Article 2 of the SPPA Law places deprivation of liberty and imprisonment as a last resort, while Article 81 paragraph (5) emphasizes that imprisonment for children is only used as a last resort. Both provisions demonstrate the orientation of lawmakers to limit the use of sanctions that have the potential to hinder a child's development. Judicial forgiveness is related to this orientation because it allows judges to refrain from imposing a sentence or action when the conditions stipulated by law are met. However, the principle of sentencing as a last resort cannot be directly equated with the obligation to grant forgiveness to every child. This principle is a general guideline in determining the legal response to children, while judicial forgiveness is a form of decision that has specific requirements. Within this framework, the best interests of the child must be used to assess the proportionality and necessity of sentencing, not as a basis for ignoring provisions that expressly limit the authority of judges. This interpretation is necessary to ensure that child protection is implemented within a legal framework that provides certainty regarding the use of discretion.

The relationship between judicial forgiveness and diversion also needs to be clarified to prevent the two mechanisms from being understood as instruments with identical functions. Diversion is a mechanism for diverting the resolution of juvenile cases from the criminal justice process to a settlement outside the judicial process, while judicial forgiveness is a form of decision after the child's guilt is declared proven. Article 7 of the SPPA Law stipulates the obligation to seek diversion at certain stages with specified requirements, so the existence of judicial forgiveness cannot be used as an excuse to ignore this obligation. Conversely, failure to reach a diversion agreement does not automatically require the judge to impose a sentence because the determination of the decision must still comply with applicable provisions. Wilson et al. (2018), through a study of the effectiveness of diversion and restorative justice programs for juvenile offenders, showed that the success of alternative mechanisms is influenced by the characteristics of the program and its implementation. The study shows that the use of a non-punitive approach does not always produce uniform results, so each mechanism must be implemented according to its function and legal basis. In the context of judicial forgiveness, failure to diversion can be part of the case history, but it is not an independent condition that automatically determines the eligibility for pardon.

The most crucial issue in constructing the application of judicial forgiveness to children remains the relationship between Article 70 of the SPPA Law and Article 6 of PERMA Number 3 of 2026. Article 70 of the SPPA Law grants judges special authority not to impose criminal penalties or take action against children based on considerations determined by law, while Article 6 of PERMA regulates the categories of cases that are exempt from judicial forgiveness. Interpretation of this relationship must take into account the position of the SPPA Law as a law that specifically regulates children and the function of PERMA as a guideline for the implementation of judicial authority. A construction that can be developed is to place Article 70 of the SPPA Law as the primary basis for authority in children's cases, while the provisions of PERMA are used to clarify the parameters of its implementation as long as they do not change the substance of the authority granted by law. However, this construction cannot be directly used to state that judges have the authority to override the prohibitions in Article 6 of PERMA. As long as the provisions are in effect, judges remain bound by the applicable regulations, while the issue of possible restrictions that exceed the regulatory authority must be placed within the framework of testing the suitability of the regulations. This distinction is necessary so that arguments regarding the best interests of the child do not become justification for judges to ignore norms that still have binding force.

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This construction demonstrates that the issue of normative ambiguity can be addressed through two levels of legal assessment. The first level relates to the interpretation of the judge's scope of authority in juvenile cases based on Article 70 of the SPPA Law, Article 54 paragraph (2) of the Criminal Code, and the provisions of PERMA Number 3 of 2026. At this level, the judge must determine whether the case meets the requirements for granting forgiveness and does not fall into a category excluded under applicable law. The second level relates to an assessment of the adequacy of PERMA regulations in outlining the specific authority granted by the SPPA Law. Assessment at the second level is normative and relates to the need to ensure that implementing regulations do not create restrictions that are not adequately based on higher regulations. This distinction is important because the judge's authority in deciding a case is not identical to the authority to assess the validity of regulations in general. Judges examining a case remain obligated to apply applicable law, while the issue of the conformity of a regulation under the law with the law has its own testing mechanism. In the context of this research, this construction provides a clearer boundary between discretion in applying the law and the normative issue regarding the position of limitations on authority.

Legal certainty in the application of judicial forgiveness also requires clarity regarding the reasons that must be included in the decision's considerations. Articles 7 and 8 of Supreme Court Regulation Number 3 of 2026 stipulate that judges are required to consider the purpose of sentencing, the conditions for granting forgiveness, and its limitations, and to include the reasons for forgiveness in their decisions. These provisions play a crucial role in ensuring that discretion is based not only on conclusions about whether a child deserves forgiveness, but also on legal reasoning that explains the relationship between facts and norms. In cases involving children, these considerations should include an assessment of the child's personal circumstances, the impact of the crime on the victim, the results of community research, and the relevance of forgiveness to the goals of protection and development. The obligation to provide clear reasons also relates to the principle of judicial accountability because it allows the parties to understand the basis for the decision and assess whether authority has been used appropriately. From a legal theory perspective, consistent reasoning is part of an effort to maintain the integrity of the application of the law, so that discretion does not turn into decisions based solely on the judge's personal preferences (Dworkin, 1986; MacCormick, 2005).

Based on this overall analysis, the construction of parameters for the application of legal pardon to children needs to place Article 70 of the SPPA Law as the basis for special authority, read together with the provisions of the Criminal Code, Criminal Procedure Code, and Supreme Court Regulation Number 3 of 2026. The assessment of the appropriateness of granting pardon must be carried out based on the concrete circumstances of the case, taking into account the minor nature of the act, the child's personal circumstances, the circumstances accompanying the crime, as well as the purpose of punishment and the best interests of the child. The child's personal circumstances need to be assessed individually through accountable information, including community research reports, without considering the child's age as a reason that automatically justifies granting pardon. At the same time, the application of the restrictions in Article 6 of the PERMA must be carried out based on a proper interpretation of the categories of exceptions and still pay attention to the position of special regulations in the SPPA Law. This construction shows that legal certainty and substantive justice need not be positioned as mutually exclusive goals. Legal certainty determines the limits of the use of authority, while substantive justice provides orientation regarding how the child's concrete circumstances should be considered within the limits of that authority. The principle of the best interests of the child serves as an interpretive guideline that ensures that child protection has its proper place in the judicial reasoning process.

CONCLUSION

The scope of judicial discretion in the application of rechterlijk pardon (judicial pardon) to children in conflict with the law is specifically grounded in Article 70 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and is closely related to Article 54 paragraph (2) of Law Number 1 of 2023 concerning the Criminal Code, as well as the provisions governing judicial pardon decisions under the Criminal Procedure Code and Supreme Court Regulation Number 3 of 2026. The findings of this study indicate that the principal legal issue lies in the normative ambiguity concerning the relationship between the special authority conferred upon judges under Article 70 of the Juvenile Criminal Justice System Law and the restrictions on granting judicial pardon stipulated in Article 6 of Supreme Court Regulation Number 3 of 2026. This ambiguity arises from the lack of clarity regarding the legal position of the general restrictions established by the Supreme Court Regulation in relation to the judicial authority specifically granted by legislation governing juvenile criminal justice. Article 70 of the Juvenile Criminal Justice System Law provides judges with discretionary authority based on the minor nature of the offense, the child's personal circumstances, and the circumstances surrounding the commission of the offense. Meanwhile, the Supreme Court Regulation establishes specific criteria and exclusions applicable to judicial pardon decisions. The relationship between these provisions must be interpreted systematically, taking into account the hierarchy of laws and regulations and the distinctive characteristics of legal protection afforded to children. Accordingly, judicial discretion cannot be construed as an unrestricted authority; equally, the special legal character of Article 70 of the Juvenile Criminal Justice System Law must not be disregarded when determining the permissible scope of judicial pardon in juvenile criminal proceedings. The construction of legal parameters governing the application of rechterlijk pardon to children must place Article 70 of the Juvenile Criminal Justice System Law as the principal legal basis for the exercise of special judicial authority, interpreted in conjunction with the provisions on judicial pardon contained in the Criminal Code, the Criminal Procedure Code, and Supreme Court Regulation Number 3 of 2026. The principle of the best interests of the child must serve as an interpretative guideline in assessing the child's personal circumstances, the objectives of sentencing, and the protective measures relevant to the case. Such assessments must be conducted on an individualized basis, taking into consideration the child's developmental characteristics, social circumstances, the interests of victims, and information obtained through social inquiry reports. The application of the restrictions stipulated in Article 6 of the Supreme Court Regulation must continue to respect the binding force of legal norms and the hierarchy of laws and regulations, ensuring that the principle of child protection is not invoked as a justification for disregarding legally binding provisions. This legal construction is necessary to ensure that the exercise of judicial discretion remains subject to

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clearly defined limits, is supported by legally accountable judicial reasoning, and continues to uphold substantive justice and the best interests of the child.

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