

Enforcement and Return of Evidence by the Public Prosecutor Following a Judge's Decision to Grant Pardon

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Abstract

This study addresses the legal uncertainty surrounding the execution and return of evidence following a judicial pardon (Rechterlijk Pardon) under Indonesia's renewed criminal law framework. Although judicial pardon represents a shift toward restorative justice, the absence of specific prosecutorial procedures for implementing such decisions creates a normative gap, particularly when evidence must be returned to different entitled parties. This study aimed to analyze the normative position and authority of the Public Prosecutor in executing judicial pardon decisions and to formulate an appropriate mechanism for returning evidence. The research employed a normative juridical method using statutory and conceptual approaches, supported by primary, secondary, and tertiary legal materials, along with an illustrative analysis of Koto Baru District Court Decision Number 2/Pid.C/2026/PN Kbr. Data were analyzed qualitatively through grammatical, systematic, and teleological legal interpretation. The findings showed that prosecutors possessed legal authority to execute final judicial pardon decisions; however, specific administrative instruments remained insufficient, resulting in practical uncertainty. This study proposed a four-stage mechanism consisting of verification and classification, dual-track documentation, coordinated release, and monitoring and reporting. It concluded that technical prosecutorial regulations are necessary to ensure consistency, accountability, legal certainty, and the effective implementation of restorative justice in executing judicial pardon decisions.

INTRODUCTION

The renewal of Indonesia's criminal procedure law reached a significant milestone with the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana / KUHP), which officially replaced Law Number 8 of 1981. The new Criminal Procedure Code came into effect on January 2, 2026, in conjunction with the implementation of the new national Criminal Code (Kitab Undang-Undang Hukum Pidana / KUHP). The previous criminal justice system was considered to have emphasized a retributive approach (*lex talionis*), contributing to the overcapacity of correctional institutions. In contrast, the new Criminal Code seeks to balance formal and substantive justice, prioritize restorative justice, and reduce the imposition of short-term imprisonment that provides limited social benefits (Aini Septi Farida, 2025).

This paradigm shift introduced the concept of judicial pardon (Rechterlijk Pardon), which is regulated under Article 54 paragraph (2) of the new Criminal Code. The provision states that

the seriousness of the act, the personal circumstances of the offender, and the circumstances surrounding the commission of the offense may serve as considerations for judges to refrain from imposing punishment. Furthermore, Law Number 20 of 2025 recognizes pardon decisions as a form of judicial determination under Article 246 paragraph (1).

In practice, as illustrated by Koto Baru District Court Decision Number 2/Pid.C/2026/PN Kbr, the judge issued a pardon decision in a petty theft case and ordered the return of evidence to both the victim and the defendant. However, from a procedural law perspective, legal issues arise concerning the execution of such pardon decisions. Unlike conventional criminal judgments that contain punitive orders, decisions based on reconciliation agreements generally take the form of a determination (*beschikking*) containing obligations to restore certain rights or objects.

On the other hand, Article 247 paragraph (2) of the new Criminal Code stipulates that confiscated evidence shall be returned to the party most entitled to receive it. Nevertheless, no specific implementing regulation issued by the Prosecutor's Office currently governs the execution and return of evidence in judicial pardon decisions. This normative gap may affect legal certainty and the effectiveness of restorative justice implementation.

The concept of *Rechterlijk Pardon* itself is not derived from Indonesia's indigenous legal tradition. Instead, it originates from Article 9a of the Dutch Criminal Code (*Wetboek van Strafrecht*), which allows judges to refrain from imposing punishment when the interests of society or the offender do not require such punishment. Comparative studies indicate that Dutch *Rechterlijk Pardon* has operated for decades within an established framework of judicial discretion, accompanied by clear legal consequences regarding confiscated objects after a pardon is granted (Estiningtyas, Hasanah, & Windari, 2024; Nirmalasari & Maskur, 2026). Therefore, the adoption of a functionally similar institution into Indonesia's new Criminal Code represents both an opportunity to incorporate a mature restorative justice concept and a challenge due to the absence of equivalent procedural infrastructure supporting its implementation.

A growing body of Indonesian legal scholarship has examined *Rechterlijk Pardon* following the enactment of Law Number 1 of 2023 concerning the Criminal Code. Several studies have focused on the philosophical and normative dimensions of the provision, arguing that judicial pardon reflects the principle of *ultimum remedium* and humanizes sentencing by allowing judges to consider the severity of the offense alongside the offender's personal circumstances (Bangun, 2025; Aisy, 2025). Other studies have examined the legislative development of the provision by comparing earlier draft formulations with the final provisions contained in Articles 54 and 246 of the new codification (Setyawan & Kurniawan, 2023; Bahri, 2024). Case-based studies have also explored the application of pardon provisions by first-instance courts in specific cases, including minor property offenses and offenses involving juvenile or elderly defendants (Angga, 2024; Fadli & Zukriadi, 2025; Ardiansyah & Edrisy, 2025).

At a broader level, the restorative justice paradigm underlying pardon decisions has received substantial scholarly attention as part of Indonesia's criminal law reform, particularly regarding efforts to address long-standing correctional institution overcrowding and to shift criminal justice policy toward victim-offender reconciliation (Gemilang & Ismaidar, 2024; Waluyo, 2025; Saputra, 2025). Studies on juvenile justice have similarly emphasized restorative justice as a preferred mechanism for resolving cases involving child offenders without relying primarily on imprisonment (Fp & Widjanti, 2025). Musa and Rinaldi (2025) further argue that the recognition of judicial pardon within the new Criminal Code and recent judicial decisions indicates a doctrinal transition from a purely retributive orientation toward an approach that recognizes forgiveness as a legitimate judicial outcome.

Another body of literature discusses the execution of evidence following criminal judgments; however, these studies have generally focused on the return or disposal of evidence in conventional punitive decisions. Research concerning the role of the Public Prosecutor in returning evidence to victims, the administrative management of confiscated objects at the State Confiscated Property Storage House (Rumah Penyimpanan Benda Sitaan Negara / Rupbasan), and prosecutorial effectiveness as an executing authority has primarily examined ordinary criminal judgments as the legal basis for execution (Nuraini & Kartika, 2024; Rezky Imelda, 2024; Gayatri, Ediwarman, Marlina, & Trisna, 2024; Harjanto & Sukma, 2024; Siahaan & Siregar, 2025). However, these studies have not addressed the unique procedural characteristics of pardon decisions, which are closer in nature to a determination (*beschikking*) than a conventional criminal verdict (*vonis*) and therefore do not automatically follow the same execution mechanism.

The literature review reveals a clear normative and empirical gap. On the one hand, doctrinal studies on *Rechterlijk Pardon* have extensively examined its philosophical basis, comparative origins, and application in specific judicial decisions, but generally stop at the issuance of the decision and do not examine its execution stage. On the other hand, studies on evidence execution have established mechanisms for returning confiscated objects following ordinary criminal judgments but have not been adapted to the procedural characteristics of non-punitive pardon decisions. The Koto Baru District Court decision in Case Number 2/Pid.C/2026/PN Kbr illustrates this gap: although the judge granted a pardon and ordered the return of evidence to both the victim and the defendant, no specific prosecutorial regulation currently governs the execution of such a dual-beneficiary, non-punitive restitution order. This study therefore seeks to address this gap by connecting the normative authority of the Public Prosecutor with a practical mechanism for returning evidence following judicial pardon decisions.

Based on the identified problem, this research seeks to answer two interconnected questions. First, how should the position and authority of the Public Prosecutor as the executor of judicial pardon decisions be constructed normatively, considering that such decisions differ from conventional punitive judgments? Second, what mechanism can be formulated for returning evidence in pardon decisions to accommodate the interests of victims, defendants, and the State while ensuring legal certainty? To answer these questions, this article analyzes the normative framework governing the execution of pardon decisions, examines comparative perspectives from Dutch legal practice, evaluates the role of the Public Prosecutor under the new Criminal Procedure Code, analyzes the Koto Baru decision as an illustrative case, compares evidence execution mechanisms in conventional and pardon decisions, and formulates a conceptual mechanism for evidence return accompanied by policy recommendations.

The urgency of resolving this normative gap is further strengthened by the transitional nature of the current legal framework. Since the new Criminal Code and Criminal Procedure Code only became effective on January 2, 2026, prosecutorial institutions throughout Indonesia are simultaneously adapting to various procedural reforms, including the execution of judicial pardon decisions. Without timely academic and regulatory guidance, inconsistent institutional practices may develop across regions, potentially weakening the legal certainty and consistency that restorative justice seeks to establish.

This study does not examine the substantive validity of the Koto Baru District Court's decision to grant a pardon, nor does it assess the fairness of the reconciliation agreement between the victim and the defendant. These issues concern substantive criminal law and procedural fairness, which fall outside the normative-juridical scope of this research. Instead, this study focuses specifically on how a legally valid pardon decision should be implemented administratively by the institution authorized by law to execute judicial decisions.

Overall, the theoretical, comparative, and case-based analyses in this study are intended to be understood as interconnected components. Each subsequent discussion builds upon the normative gap identified above, allowing the proposed mechanism for evidence return to emerge as a synthesis of doctrinal analysis, comparative perspectives, and practical considerations rather than as an isolated policy recommendation.

METHOD

This study employed a normative juridical research design to examine the legal norms governing the authority of the Public Prosecutor in executing judicial pardon decisions and returning evidence. The research applied statutory and conceptual approaches, focusing on the legal construction of *Rechterlijk Pardon*, prosecutorial executory authority, restorative justice, and legal certainty. As a normative study, it did not involve a statistical population, respondents, or empirical samples. Instead, the research analyzed relevant legal materials and an illustrative judicial decision, particularly Koto Baru District Court Decision Number 2/Pid.C/2026/PN Kbr, to examine the procedural implications of executing a judicial pardon decision. The scope of the study was limited to legal norms, doctrines, and judicial analysis rather than empirical field research involving prosecutors or other legal officials.

The data used in this study consisted of secondary legal materials, including primary, secondary, and tertiary sources. Primary legal materials included statutory provisions regulating criminal procedure, judicial pardon, prosecutorial authority, and evidence disposition. Secondary legal materials comprised scholarly literature, journal articles, legal doctrines, and previous studies related to judicial pardon, restorative justice, and evidence execution, while tertiary materials were used to support the interpretation of legal concepts and terminology. Data collection did not involve questionnaires, interviews, or statistical instruments. Instead, a structured legal-document review framework was applied to identify, classify, compare, and interpret relevant statutory provisions, court decisions, and doctrinal sources. Methodological rigor was maintained through systematic legal interpretation, comparison among legal sources, and analysis of the relationship between legal norms, doctrine, and judicial practice.

Data were collected through documentary and literature studies by identifying and organizing relevant legal provisions, judicial decisions, doctrinal references, and comparative legal materials. The collected materials were analyzed using grammatical, systematic, and teleological legal interpretation to determine the normative position of the Public Prosecutor and formulate an appropriate mechanism for returning evidence following a judicial pardon decision. The study also incorporated a comparative analysis of Indonesian and Dutch regulations concerning *Rechterlijk Pardon* and examined the Koto Baru District Court decision as an illustrative case to identify the practical implications of the existing normative gap. Data analysis was conducted through qualitative juridical analysis, in which legal materials were interpreted, compared, synthesized, and structured to develop normative arguments and policy recommendations. No specific qualitative-analysis or statistical software was used in this study.

RESULTS AND DISCUSSION

Normative Construction of the Position of Execution of the Pardon Decision

Restorative justice was born as a critique of retributive justice, where crime is no longer seen solely as a violation of the state, but rather a social conflict that causes harm to individuals. In the realm of justice, restorative justice does not eliminate the role of the state but integrates it. The concrete result is a pardon verdict by the judge, which is conceptually different from conventional criminal judgments because it contains the ratification of a peace agreement.

Authority Theory emphasizes that the public prosecutor has executive authority based on laws and regulations. Usually, these executions are public and repressive. However, when

faced with a non-punitive pardon verdict, the public prosecutor faces a dilemma of authority due to the loss of the coercive character of the verdict.

The unclear arrangement related to legal instruments that can force the implementation of the content of the agreement in the pardon decision gives rise to a legal vacuum. This vacancy risks creating actions beyond the limits of authority or conversely, the non-execution of the verdict that actually harms the victim.

Understanding the pardon decision requires situating it within the broader typology of judicial outcomes recognized in Indonesian criminal procedure. A conventional criminal verdict that convicts a defendant carries a punitive order which is inherently coercive and forms the direct legal basis for execution under the coordination of the Public Prosecutor. An acquittal and a release from all charges likewise produce clear, well-established consequences: the defendant is released, and any evidence not required for other purposes is returned to its rightful owner. The pardon decision occupies a distinct third category. It presupposes that the elements of the offense and the defendant's guilt have been proven, yet the judge declines to impose any punishment or measure, instead ratifying what is, in substance, a peace agreement between the parties (Bangun, 2025). This hybrid character means the pardon decision borrows the evidentiary findings of a conviction while adopting the dispositive consequences of a settlement, a combination that the existing execution framework was never designed to accommodate.

Aisy (2025) situates this hybridity within a broader humanizing agenda in Indonesian sentencing policy, arguing that the pardon clause allows judges to individualize justice according to the offender's personal circumstances without abandoning the fact-finding rigor of a full trial. Ardiansyah and Edrisy (2025) add that this individualization is one of several structural innovations in the new Criminal Code intended to move Indonesian criminal law away from a purely retributive orientation. For the purpose of execution, however, this same individualization is precisely what generates uncertainty: because each pardon decision may prescribe a different combination of restorative obligations depending on the facts of the case, prosecutors cannot rely on a single, standardized executory template as they would for a straightforward custodial sentence.

Juridical Implications of the Evidence Return Mechanism

The execution of evidence is a manifestation of the execution of the verdict. The Public Prosecutor as an executor is obliged to carry out decisions that have permanent legal force, guided by the Criminal Code and internal regulations such as the Attorney General's Regulation.

Based on Law No. 20 of 2025 Article 247 paragraph (2), evidence must be returned to the most entitled party. In the pardon decision, the return of evidence is very essential because it is directly related to the restoration of the situation. For example, in the case of minor theft for the necessities of life, the stolen goods are returned to the victim, while the tools used can be returned to the perpetrator so that they can still make a living.

Judging from the Legal Certainty Theory, the lack of clarity of the special procedures of the prosecutor's institution in response to the pardon decision can fade the predictability and consistency of the law. Furthermore, referring to Talcott Parsons' Theory of Legal Cybernetics, law serves to control society; If this mechanism for returning evidence is not rigidly regulated from the "top", then integration will not achieve its goal (goal attainment).

In ordinary punitive verdicts, the return of evidence follows a comparatively well-charted procedural path. Once a decision acquires permanent legal force, the appointed Public Prosecutor issues an executory order and requests the release of the confiscated object from Rupbasan, which then verifies the court decision, prepares a handover report, and formally deregisters the item from its inventory (Rezky Imelda, 2024). Nuraini and Kartika (2024) similarly describe how, in practice, prosecutors coordinate directly with victims to ensure that

evidence such as stolen property is physically returned once the judgment becomes final, while Gayatri, Ediwarman, Marlina, and Trisna (2024) document comparable procedures for narcotics-related evidence, where the disposition is explicitly stated in the dispositive part of the verdict. Harjanto and Sukma (2024) further note that the effectiveness of the prosecutor's role as executor depends heavily on the clarity of the underlying court order and on the availability of standardized administrative instruments to formalize the transfer.

The pardon decision disrupts this settled pattern in at least two respects. First, because the verdict is not a conviction, the standard executory instrument that prosecutors ordinarily rely on, tied as it is to a punitive dispositive order, does not neatly apply; prosecutors must instead execute a restitutive order that more closely resembles the enforcement of a civil settlement than a criminal sentence. Second, unlike most conventional cases in which evidence flows to a single party, in the Koto Baru case the judge divided the evidence between two recipients, the victim and the defendant, based on the functional relationship between each item and the restorative purpose of the verdict. This bifurcated disposition finds no direct counterpart in the literature on evidence execution reviewed above, all of which assumes a single, clearly designated recipient (Siahaan & Siregar, 2025). The absence of a specific administrative form or coordination protocol for this configuration is precisely the normative vacuum that this study seeks to address.

Comparative Perspective: *Rechterlijk Pardon* in the Netherlands and Indonesia

Because *Rechterlijk Pardon* was transplanted from Article 9a of the Dutch *Wetboek van Strafrecht*, a comparative reading of Dutch practice offers a useful benchmark for evaluating the Indonesian arrangement. Estiningtyas, Hasanah, and Windari (2024) explain that in the Netherlands, a judge invoking Article 9a issues a decision that is procedurally integrated into the same judgment as a conviction, meaning the court simultaneously determines the offender's guilt, applies the pardon, and rules on any ancillary matters, including the disposition of seized objects, within a single, internally consistent judicial instrument. Because Dutch criminal procedure treats the disposition of seized property as an ordinary component of the judgment regardless of whether punishment is imposed, the public prosecution service can execute the property-related order through the same administrative channel used for any other verdict.

Nirmalasari and Maskur (2026), comparing the Dutch and Indonesian formulations, observe that Indonesia's Article 246 paragraph (1) of Law Number 20 of 2025 adopts the pardon decision as a distinct type of ruling alongside conviction, acquittal, and release from all charges, rather than folding it into the conviction category as Dutch law effectively does. This drafting choice, while doctrinally coherent in emphasizing the pardon decision's non-punitive character, has the unintended consequence of severing it from the executory provisions that are otherwise anchored to a conviction. In other words, Indonesia imported the substantive concept of judicial pardon without also importing, or independently developing, the procedural integration that allows Dutch prosecutors to execute the property-related components of a pardon judgment through ordinary channels.

This comparative gap suggests that the normative vacuum identified in the Koto Baru case is not merely a drafting oversight but a structural consequence of how the pardon decision was categorized within the new Criminal Procedure Code. A purely comparative transplant of Dutch practice, however, would not be a complete solution: Indonesia's restorative justice framework under the new Criminal Code encompasses a broader range of considerations, including community reconciliation, that are not fully mirrored in Dutch practice (Nirmalasari & Maskur, 2026). Any conceptual mechanism formulated for the Indonesian context must therefore adapt, rather than directly copy, the administrative integration achieved under Dutch law.

It is also worth acknowledging that Indonesia's restorative justice framework did not emerge solely from the reception of Dutch doctrine; it also draws on long-standing customary

(adat) dispute-resolution practices in which community elders or local leaders facilitate reconciliation between offenders and victims outside the formal court system. Waluyo (2025) argues that this indigenous tradition of restorative dispute resolution provided fertile normative ground for the legislature's willingness to formalize judicial pardon within the new Criminal Code, suggesting that the Indonesian variant of *Rechterlijk Pardon* is best understood not as a simple transplant of Article 9a but as a hybrid institution shaped by both civil-law inheritance and domestic customary practice. This hybrid genealogy strengthens, rather than weakens, the case for a distinctly Indonesian conceptual mechanism of execution, since a purely Dutch-derived procedural solution would risk overlooking the community-facing dimension that gives the Indonesian pardon decision its particular restorative character.

The Public Prosecutor's Authority as Executor under the New Criminal Procedure Code

The Public Prosecutor's authority as executor of court decisions is anchored in Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia, which designates the execution of judgments in criminal cases as one of the core functions of the institution, and is further operationalized through the new Criminal Procedure Code. Under the new framework, once a decision has acquired permanent legal force, the Public Prosecutor is obligated to carry it out regardless of its substantive character, whether punitive, acquittal, release, or pardon (Saputra, Lufsiana, & Negara, 2025). This obligation is general in scope: the statute does not distinguish, in its executory provisions, between a decision that imposes punishment and one that merely ratifies a peace agreement.

The difficulty lies not in the existence of the obligation but in its operationalization. Musa and Rinaldi (2025) note that the recognition of judicial pardon as an independent category of ruling was intended to signal a paradigm shift toward restorative outcomes, but caution that legislative recognition alone does not guarantee institutional readiness. Internal Prosecutor's Office regulations, including Attorney General Regulations that translate statutory executory duties into standard operating procedures, have historically been drafted with punitive verdicts in mind. As of the time of writing, no Attorney General Regulation specifically addresses the procedural steps a prosecutor must follow when executing a pardon decision, leaving individual prosecutors and district prosecutorial offices to extrapolate from analogous procedures on an *ad hoc* basis.

This gap creates what may be termed an authority-without-instrument problem: the Public Prosecutor unquestionably possesses the legal authority to execute a pardon decision, yet lacks the specific administrative instrument through which that authority is customarily exercised. Ardiansyah and Edrisy (2025) similarly observe that several structural innovations introduced by the new Criminal Code, including judicial pardon, have outpaced the corresponding update of implementing regulations across law enforcement institutions, a pattern that is not unique to the Prosecutor's Office but that carries particular consequences here because the returned evidence often has direct, tangible value to the victim and the defendant.

This authority-without-instrument problem is not merely theoretical. Because the Public Prosecutor's Office operates under a hierarchical chain of command, individual executing prosecutors at the district level are generally reluctant to depart from established templates without explicit authorization from their superiors, even where the underlying statutory authority to act is clear. Ardiansyah and Edrisy (2025) note that this institutional caution, while understandable as a matter of bureaucratic discipline, can translate into *de facto* delay for litigants awaiting the return of their property, particularly in regions where district prosecutorial offices have limited prior exposure to pardon decisions issued under the new Criminal Code.

A comparison with how other law enforcement institutions have responded to similarly novel provisions in the new codification is instructive here. When the new Criminal Code first introduced expanded community-service alternatives to short-term imprisonment, the

Directorate General of Corrections issued interim technical guidance within months of the code's promulgation precisely to prevent the kind of local improvisation described above, illustrating that Indonesian law enforcement institutions are institutionally capable of moving quickly to fill implementation gaps once the need is identified (Ardiansyah & Edrisy, 2025). There is no structural reason why the Attorney General's Office could not adopt a comparably swift response for the execution of pardon decisions, particularly given that the four-stage mechanism proposed later in this discussion does not require new statutory authority, only a technical elaboration of authority the Public Prosecutor already possesses.

Case Analysis: The Koto Baru District Court Decision Number 2/Pid.C/2026/PN Kbr

The Koto Baru District Court's decision offers a concrete illustration of the normative vacuum described above. The case concerned a minor theft committed for reasons of economic necessity, a fact pattern that closely matches the type of offense the new Criminal Code's drafters envisioned as suitable for judicial pardon: a lightness of the act combined with mitigating personal circumstances of the perpetrator. Consistent with the restorative logic underlying Article 54 paragraph (2) of the new Criminal Code, the judge declined to impose punishment and instead ratified an arrangement that restored the situation as closely as possible to its condition before the offense, ordering that the stolen goods be returned to the victim while the tools used in the offense be returned to the defendant so that the defendant could continue to earn a livelihood.

This bifurcated disposition is analytically significant for two reasons. First, it demonstrates that a pardon decision's evidentiary order can be genuinely bespoke, tailored item-by-item to the restorative purpose of the case rather than following the binary logic of conventional evidence, either confiscated by the State or returned to a single injured party, that dominates the literature on evidence execution (Gayatri, Ediwarman, Marlina, & Trisna, 2024). Second, it shows that the judge, in crafting this order, effectively delegated a complex administrative task to the Public Prosecutor without the benefit of any standardized form or coordination protocol to guide its implementation, precisely the scenario anticipated in the discussion of the authority-without-instrument problem above.

Fadli and Zukriadi (2025), in their analysis of a separate pardon decision involving a juvenile defendant, similarly find that judges exercising the pardon clause tend to fashion individualized, restorative dispositions rather than relying on standardized templates, reinforcing the observation that the diversity of possible pardon dispositions is a structural feature of the institution rather than an anomaly confined to the Koto Baru case. This pattern strengthens the case for a general, flexible conceptual mechanism, rather than a narrow, case-specific solution, capable of accommodating the full range of restorative dispositions that judges may craft under the pardon clause.

It is also worth noting that the Koto Baru decision was rendered barely a month after the new Criminal Procedure Code entered into force, meaning the presiding judge had virtually no body of appellate or Supreme Court jurisprudence to draw upon in fashioning the evidentiary order. This temporal proximity to the code's commencement date underscores that the normative vacuum identified in this study is not a distant or hypothetical concern but an immediate, live problem confronting first-instance courts and prosecutorial offices as they apply the new restorative justice provisions for the first time.

Evidence Execution in Conventional Verdicts versus Pardon Verdicts: A Comparative Practice Analysis

Placing the pardon-verdict scenario alongside the well-documented practice of evidence execution in conventional verdicts sharpens the picture of what specifically needs to change. In conventional practice, the chain of execution typically proceeds through four steps: verification that the decision has acquired permanent legal force, issuance of an executory order by the designated prosecutor, submission of a request to *Rupbasan*, or direct handover where

evidence was never formally deposited there, for release of the item, and documentation of the handover through a formal report (Rezky Imelda, 2024; Nuraini & Kartika, 2024). Each of these steps assumes a single, legally unambiguous recipient identified in the dispositive part of the verdict.

In a pardon verdict such as the Koto Baru decision, the first two steps remain largely intact: the decision still acquires permanent legal force, and a prosecutor can still be designated to execute it. The third and fourth steps, however, must be performed twice in parallel, once for the item returned to the victim and once for the item returned to the defendant, without any procedural guidance on how to sequence, document, or verify these dual transfers, or on how to resolve disputes should either party contest their portion. Harjanto and Sukma (2024) find that even in conventional single-recipient cases, administrative delay and inconsistent documentation are common obstacles to effective execution; the doubling of recipients in a pardon verdict can reasonably be expected to compound these difficulties rather than resolve them.

Siahaan and Siregar (2025) emphasize that the prosecutor's dual role, balancing the public interest embedded in criminal law enforcement with the protection of individual rights of victims and defendants, is central to public confidence in the justice system. Extending this observation to the pardon context, the absence of a clear execution protocol does not merely create administrative inconvenience; it risks undermining the very restorative objective that the pardon decision was designed to achieve, since a victim or defendant left waiting indefinitely for the return of evidence may reasonably perceive the promised restoration as illusory.

A further point of contrast concerns accountability. In conventional evidence execution, the single-recipient structure means that responsibility for a failed or delayed transfer is comparatively easy to trace, since only one handover report needs to be reconciled against the court's order. In the dual-recipient structure typical of pardon decisions, the absence of a standardized cross-referencing protocol, as discussed above, makes it correspondingly harder to establish which stage of which track has stalled when a transfer is delayed, a diffusion of accountability that the four-stage mechanism proposed later in this discussion is specifically designed to remedy through its dual-track documentation requirement.

Formulating a Conceptual Mechanism for the Return of Evidence and Policy Recommendations

Drawing on the normative analysis, the comparative perspective, and the practice-based literature discussed above, this study proposes a conceptual mechanism structured around four stages. The first stage is verification and classification, in which the designated prosecutor, upon the pardon decision acquiring permanent legal force, reviews the dispositive part of the verdict and classifies each item of evidence according to its designated recipient and its functional relationship to the restorative purpose of the decision, distinguishing, for instance, between property to be returned to the victim, tools or instruments to be returned to the defendant, and any residual items requiring separate treatment under general confiscation rules.

The second stage is dual-track documentation, under which the prosecutor prepares separate handover reports for each recipient, cross-referenced to the same underlying decision number, so that the administrative record clearly reflects the bifurcated nature of the disposition while preserving a single point of accountability. The third stage is coordinated release, in which, where evidence has been deposited at Rupbasan, the prosecutor submits parallel requests for release addressed to each recipient, following the verification procedure already established for conventional verdicts (Rezky Imelda, 2024) but adapted to accommodate simultaneous, rather than singular, transfers.

The fourth stage is monitoring and reporting, in which the prosecutor's office records the completion of both transfers and reports the execution to the court that issued the pardon decision, thereby closing the loop between the judicial pronouncement of restorative justice

and its administrative realization. This four-stage mechanism does not require legislative amendment; it can be implemented through a technical Attorney General Regulation or an internal circular issued by the Attorney General's Office, consistent with the existing practice of using such regulations to translate statutory executory duties into operational procedure (Saputra, Lufsiana, & Negara, 2025).

The proposed mechanism is also designed to be proportionate rather than bureaucratically burdensome. Because most pardon decisions are expected to involve a relatively small number of evidentiary items, as illustrated by the Koto Baru case, the additional administrative steps required by the dual-track documentation and coordinated release stages are incremental extensions of procedures prosecutorial staff already perform for conventional verdicts, rather than an entirely new bureaucratic apparatus. This proportionality is a deliberate design choice intended to maximize the likelihood of prompt adoption by resource-constrained district offices, consistent with the broader institutional capacity concerns discussed later in this analysis.

Beyond the specific mechanism proposed here, this study recommends three complementary policy measures. First, the Attorney General's Office should issue a dedicated technical regulation governing the execution of pardon decisions before the new Criminal Procedure Code's implementation fully matures in practice, to avoid inconsistent, ad hoc approaches across district prosecutorial offices. Second, coordination guidelines should be developed jointly with the judiciary and with Rupbasan to standardize the documentation used for multi-recipient evidentiary dispositions. Third, further empirical research, including case studies across multiple district courts that have issued pardon decisions since the Criminal Code's enactment, should be conducted to test and refine the conceptual mechanism proposed in this study, an avenue this normative research is not equipped to pursue but that would meaningfully complement its findings (Bahri, 2024; Ardiansyah & Edrisy, 2025).

Theoretical Deepening: Authority, Legal Certainty, and Legal Cybernetics Revisited

The three theoretical lenses introduced earlier in this discussion, Authority Theory, Legal Certainty Theory, and Talcott Parsons' Theory of Legal Cybernetics, can be woven together into a single explanatory account of why the execution of pardon decisions has stalled at the level of practice. Authority Theory explains that the Public Prosecutor's power to act is conferred by law and is therefore bounded by law; where the law is silent on how a particular category of decision should be executed, the prosecutor faces a structural constraint rather than a mere inconvenience, because acting without a clear legal basis risks exceeding the limits of delegated authority, while refusing to act risks an unlawful omission that leaves the court's restorative order unfulfilled.

Legal Certainty Theory adds a normative yardstick against which this dilemma can be evaluated: a legal system achieves certainty when the rules governing an official's conduct are clear, publicly known, and consistently applied, so that both the official and the affected parties can predict the consequences of a given legal event (Waluyo, 2025). Measured against this yardstick, the current state of affairs, in which the substantive right to have evidence returned is clearly established by the pardon decision itself but the procedural pathway to realizing that right is not, represents a partial rather than a complete failure of legal certainty: the destination is known, but the road to it is not yet mapped.

Talcott Parsons' cybernetic hierarchy of control offers a further, systemic explanation. In Parsons' framework, legal norms occupy a position of high informational control over lower-energy administrative and behavioral subsystems, meaning that clear top-level rules are what allow lower-level institutions to coordinate their actions toward a shared goal. Applied here, the absence of a specific top-level regulation governing pardon-decision execution means that the administrative subsystem, the prosecutorial offices tasked with carrying out these decisions,

lacks the informational input necessary to achieve the systemic goal of restorative justice, and is instead left to generate its own, potentially inconsistent, control signals at the local level.

Read together, these three theories converge on a single practical conclusion: the solution to the normative vacuum identified in this study is not a change in the scope of the Public Prosecutor's authority, which is already sufficiently broad under Law Number 11 of 2021 and the new Criminal Procedure Code, but the introduction of a clear, systemically transmitted rule, of the kind proposed in the conceptual mechanism above, that channels the exercise of that authority in a predictable and coordinated direction.

This synthesis also clarifies the proper institutional locus for reform. Because the deficiency identified here is informational and coordinative rather than a lack of substantive legal power, the appropriate remedy lies at the level of technical implementing regulation rather than statutory amendment, a conclusion that aligns with the four-stage conceptual mechanism formulated later in this discussion and that keeps the proposed reform within the ordinary regulatory competence of the Attorney General's Office.

Institutional Capacity and Inter-Agency Coordination

A conceptual mechanism, however well designed, will only translate into consistent practice if it is supported by adequate institutional capacity. Interviews and case studies reported in the broader literature on prosecutorial execution of evidence suggest that administrative delay is frequently attributable not to an absence of goodwill but to unclear lines of coordination between the Public Prosecutor's office, the court that issued the decision, and Rupbasan as the custodian of physical evidence (Harjanto & Sukma, 2024; Rezky Imelda, 2024). In the pardon-decision context, this three-way coordination becomes more complex still, since two separate recipients must each be identified, located, and formally notified before the evidentiary transfer can be completed.

Addressing this complexity calls for capacity-building measures that go beyond the issuance of a technical regulation alone. Prosecutorial staff who function as executors would benefit from targeted training on the distinctive character of pardon decisions, so that they can distinguish, at the point of intake, between an ordinary punitive verdict and a restorative pardon decision requiring the dual-track procedure outlined above. Likewise, Rupbasan personnel, who under existing practice are accustomed to processing single-recipient release requests, would need updated internal guidance to process the parallel requests that a bifurcated pardon disposition entails.

Inter-agency coordination between the Prosecutor's Office and the judiciary is equally important at the drafting stage of the decision itself. Because the pardon decision's dispositive part is what ultimately determines how evidence must be distributed, closer engagement between judges and prosecutors, whether through joint technical guidelines or periodic coordination meetings, could help ensure that pardon decisions are drafted with executability in mind from the outset, reducing the interpretive burden that currently falls on the prosecutor at the execution stage. Such coordination would be consistent with the collaborative, rather than adversarial, spirit that restorative justice is meant to embody across the criminal justice system as a whole (Musa & Rinaldi, 2025).

Finally, institutional capacity cannot be separated from resource allocation. District prosecutorial offices, particularly those outside major urban centers, often operate with limited administrative staff and modest operational budgets, meaning that any newly mandated procedure, however sound in principle, risks remaining unimplemented if it is not accompanied by adequate resources for staff time, transportation to deliver evidence to geographically dispersed recipients, and recordkeeping. Policymakers designing the technical regulation recommended in this study should therefore pair the substantive four-stage mechanism with a realistic assessment of the administrative burden it imposes, potentially phasing

implementation to prioritize prosecutorial offices in jurisdictions where pardon decisions are most frequently issued before extending the mechanism nationwide.

Limitations and Directions for Future Research

As a normative juridical study, this research is necessarily confined to the analysis of legal norms, doctrines, and a single illustrative decision, and does not incorporate empirical fieldwork such as interviews with executing prosecutors or Rupbasan officials, nor a systematic survey of pardon decisions issued across multiple district courts since the new Criminal Code took effect. The conceptual mechanism proposed in this study should therefore be understood as a normatively grounded starting point rather than a field-tested standard operating procedure; its workability in practice, including the time required to complete each of the four proposed stages and the administrative burden it places on under-resourced district prosecutorial offices, remains an open empirical question.

Future research would benefit from a mixed-methods design that pairs the doctrinal analysis offered here with empirical data drawn from prosecutorial offices and courts that have handled pardon decisions since January 2026, allowing researchers to test whether the four-stage mechanism proposed in this study, or an alternative configuration, best serves the interests of victims, defendants, and the State. Comparative research extending beyond the Netherlands to other jurisdictions that have experimented with non-punitive judicial dispositions would likewise enrich the understanding of how administrative systems can be designed to execute restorative, rather than purely punitive, judicial outcomes.

CONCLUSION

This study concludes that the execution and return of evidence following a judicial pardon (*Rechterlijk Pardon*) require a clearer normative and administrative framework to ensure legal certainty and the effective implementation of restorative justice. Although the Public Prosecutor has statutory authority to execute final court decisions, the current legal framework does not yet provide specific procedural instruments for implementing pardon decisions, particularly when evidence must be returned to multiple entitled parties. The analysis of Koto Baru District Court Decision Number 2/Pid.C/2026/PN Kbr demonstrates that this normative gap may create uncertainty in the execution process because the restorative and non-punitive nature of a pardon decision differs from that of a conventional criminal judgment. Therefore, the proposed four-stage mechanism, consisting of verification and classification, dual-track documentation, coordinated release, and monitoring and reporting, provides a normative framework that may guide prosecutors in implementing evidence-return orders more consistently and accountably.

Future research is recommended to empirically examine the practical applicability of the proposed mechanism by involving prosecutors, court officials, Rupbasan personnel, victims, and defendants who have directly participated in the execution of pardon decisions. Such studies may employ qualitative, quantitative, or mixed-method approaches to evaluate implementation duration, administrative burden, inter-agency coordination, procedural consistency, and the effectiveness of evidence-return mechanisms across different jurisdictions. Since this study was limited to normative legal analysis and a single illustrative court decision, broader comparative research involving multiple district courts and other jurisdictions that recognize non-punitive judicial dispositions is necessary to validate, refine, and potentially develop standardized operational procedures for the execution of judicial pardon decisions in Indonesia.

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