

## Legal Aspects of Implementing the Execution of Evidence of Excise Criminal Actions Which Have Permanent Legal Effect in The Bogor District Judicial Prosecution



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**ABSTRACT:** The main objective of this research is to analyse and explain the regulation and mechanism for the implementation of the execution of evidence of excise crimes legally carried out in the Bogor Regency District Attorney's Office and to analyse and explain the authority of the Prosecutor in the implementation of the execution of evidence of excise crimes that have permanent legal force. The method used is the normative legal research method using the statutory approach and the case approach. The types of legal materials used are sourced from secondary data obtained from primary legal materials in the form of legislation, secondary legal materials in the form of textbooks, journals, legal expert opinions, relevant legal cases, and tertiary legal materials in the form of legal dictionaries. The results of the study indicate that the regulation and mechanism for the implementation of the execution of evidence of excise crimes legally carried out in the Bogor Regency District Attorney's Office implement cooperation with customs in the form of a Joint Agreement between the Director General of Customs and Excise of the Ministry of Finance of the Republic of Indonesia and the Deputy Attorney General for Special Crimes of the Republic of Indonesia Attorney's Office. related to the coordination of criminal law enforcement in the field of customs and excise where the implementation of the confiscation of excisable goods is carried out after receiving a court decision that has permanent legal force and the settlement of excisable goods that are confiscated for the state is carried out in accordance with the provisions of laws and regulations governing the management of confiscated state goods. The authority of the Prosecutor in implementing the execution of evidence of excise crimes that have permanent legal force has legal constraints from the absence of special rules governing the auction of confiscated goods in the Criminal Code. Every criminal procedure should be regulated in the Criminal Procedure Code (KUHAP), but the regulation of the settlement of confiscated goods does not have a legal basis for the prosecutor as the executor in terms of criminal procedure law. Apart from that, it is also necessary to determine the extent to which the Prosecutor can carry out the Execution of Evidence according to existing regulations the Criminal Procedure Code (KUHAP).

**KEYWORDS:** excise crimes, excisable goods, prosecutor's authority, execution, legal aspects.

### I. INTRODUCTION

The Unitary State of the Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia aimed at realizing a safe, orderly, prosperous, and just national life. To provide legal certainty and justice as well as to explore the potential of excise revenue, Law Number 39 Year 2007 on the Amendment to Law Number 11 Year 1995 on Excise (hereinafter referred to as the Law on Excise) was issued.

Based on the Law on Excise in Article 1 and Article 1, it is formulated that excise is a state levy imposed on certain goods that have properties or characteristics, namely: (a) its consumption needs to be controlled; (b) its circulation needs to be monitored; (c) its use can have a negative impact on society or the environment; or (d) its use requires the imposition of state levies for the sake of justice and balance, subject to excise. Certain goods that have these properties or characteristics are declared as excisable goods.

Excise is a state levy that serves to block the distribution of goods that must pay excise, with the consequence that excise contributes to state revenue.<sup>1</sup> Cigarettes include one of the characteristics of excisable goods as specified in Article 4 paragraph (1) of the Law Concerning Excise, which states that Excise is imposed on Excisable Goods consisting of:

- a) Ethyl alcohol or ethanol, regardless of the ingredients used and the manufacturing process.
- b) Beverages containing ethyl alcohol in any quantity regardless of the ingredients used and the manufacturing process, including concentrates containing ethyl alcohol;

<sup>1</sup> Suroso. *Bahan Ajar Teknis Cukai*, Jakarta: Ghalia Indonesia, 2013, hlm. 56.

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c) H Tobacco products, which include cigarettes, cigars, leaf cigarettes, sliced tobacco, and other tobacco processing products, regardless of whether or not substitutes or auxiliary materials are used in their manufacture.

Cigarettes as tobacco products include excisable goods that have properties or characteristics whose consumption needs to be controlled, whose circulation needs to be monitored, whose use can have a negative impact on society or the environment, or whose use needs the imposition of state levies for the sake of justice and balance, subject to excise based on the law on excise of certain goods hereinafter declared as excisable goods.<sup>2</sup> Therefore, the implementation of personalization of excise tapes is based on the increasingly widespread circulation of illegal cigarettes using various modes that not only harm the state, but also cigarette factories/companies that operate legally. The implementation of personalization of excise tapes can at least create a conducive business competition among existing cigarette factories/companies and also reduce the amount of illegal cigarette circulation.<sup>3</sup> Provisions related to excisable goods whose excise tax is paid by attaching excise tapes or affixing other excise tax payment marks are regulated in Article 29 of the Law on Excise, formulated as follows.

### Article 29

- (1) Excisable goods for which the excise tax is paid by means of the attachment of excise tapes or the affixation of other excise payment marks may only be offered, delivered, sold, or made available for sale, after they have been packed for retail sale and affixed with excise tapes or affixed with other required excise payment marks.
- (2) Excisable goods for which the excise tax is paid by means of affixing an excise tax band or affixing other excise tax payment marks that are located in a retail outlet or other place where the activity is to sell are deemed to be provided for sale.
- (2a) The manufacturer or importer of excisable goods who affixes excise tapes or affixes other excise payment marks on excisable goods that are not in accordance with the required excise tapes or other excise payment marks, which causes a shortage of excise payments, must pay off the excise and is subject to administrative sanctions in the form of a fine of at least 2 (two) times the excise value and a maximum of 10 (ten) times the excise value of the excise value that should have been paid.
- (3) Further provisions regarding the implementation of paragraphs (1) and (2) shall be regulated by or based on ministerial regulations.

Cases of violations in the field of excise, especially on cigarettes, which include excisable goods that are not attached to excise tapes or are not affixed with other excise repayment marks, still occur even though the excise tariff has been increased with the aim of controlling the circulation of cigarettes on the market, but this also increases the occurrence of crime or criminal violations in the field of excise.<sup>4</sup>

Any person who offers, delivers, sells, or makes available for sale excisable goods that are not packaged for retail sale or not affixed with excise stamps or other excise payment marks shall be subject to imprisonment in accordance with the provisions stipulated in Article 54 of the Law on Excise formulated as follows.

### Article 54

Any person who offers, delivers, sells, or makes available for sale excisable goods that are not packaged for retail sale or not affixed with excise tapes or not affixed with other excise payment marks as referred to in Article 29 paragraph (1) shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or a fine of at least 2 (two) times the excise value and a maximum of 10 (ten) times the excise value that should have been paid.

In relation to excise crime, there are rules stipulated in Article 3 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 39/PMK.04/2014 concerning Procedures for the Settlement of Excisable Goods and Other Goods Seized for the State or Controlled by the State, formulated as follows.

### Article 3

- (1) The Director of Enforcement and Investigation, the Head of the Regional Office, or the Head of the Office handling criminal cases in the field of excise shall receive the delivery of excisable goods and other goods declared seized for the state from the Prosecutor as the executor of the court decision.
- (2) For the delivery of excisable goods and other goods as referred to in paragraph (1), minutes of handover shall be drawn up.
- (3) The excisable goods and other Goods which have been handed over to the Director of Enforcement and Investigation, Head of Regional Office, or Head of Office as referred to in paragraph (1) shall be declared as state property.

<sup>2</sup> Edhi Sutarto. *Rekonstruksi Hukum Pabean Indonesia*, Jakarta: Erlangga, 2014, hlm. 11.

<sup>3</sup> Mega Tri Astuti, Lu Sudirman dan Junimart Girsang. *Pemulihan Keuangan Negara Melalui Implementasi Sanksi Denda Pada Pidana Cukai: Pelanggaran Peraturan Pita Cukai*. Jurnal Pendidikan Kewarganegaraan Undiksha, Vol. 10, No. 3, September 2022, hlm. 72.

<sup>4</sup> Rendy Maulana Arif dan Euis Dudung Suhardiman. *Pertanggungjawaban Pidana terhadap Penjual Rokok Tanpa Cukai Dihubungkan Undang-Undang Nomor 39 Tahun 2007 tentang Cukai*. Prosiding Ilmu Hukum, Vol. 3, No. 2, 2017, hlm. 860.

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Repressive law enforcement efforts against the distribution of cigarettes without excise can be taken by making arrests with the aim that anyone who distributes products without excise is processed until the court. The next repressive effort is to conduct market operations which are usually carried out by the prosecution and investigation section of the Customs and Excise Supervision and Service Office together with the Pamong Praja Police Unit through joint market operations. Then carry out prevention or confiscation with the status of confiscated goods, namely state property, auctioned, destroyed, and repressive efforts to destroy cigarettes without excise that absolutely cannot be circulated. However, these enforcement efforts still have various obstacles, such as the lack of awareness of cigarette producers and the public towards cigarettes without excise, weak law enforcement or regulations against illegal cigarettes, and an increase in excise tax rates.<sup>5</sup>

The mode of excise crime in Indonesia related to cigarettes without an excise band is the mode when the perpetrator acts as an intermediary trader who sells cigarettes without an excise band that belongs to another party, the mode when the perpetrator acts as a cigarette producer who is attached to a fake excise band. The obstacles to the mode of excise crime related to cigarettes without excise stamps handled by the Cibinong District Court during 2023 and 2024 are described in the following table.

### Decision of the Cibinong District Court on Cases of Excise Crime (Cigarettes without a Cukai Ribbon) in 2023-2024

No	Verdict No.	Modes	Customs Officer Actions	Barriers	State loss on excise tax
1	584/Pid.Sus/2024/PN Cbi	The defendant received orders from purchasers of cigarettes without excise tax stamps on them The defendant ordered cigarettes without an excise tax to the owner of cigarettes without an excise tax with the intention of selling them. The defendant sold cigarettes without excise tax by distributing them to customers	Receive information on a shipment of cigarettes without an excise tax band. Conduct a ground patrol at a location that is considered to be passed by a means of transportation loaded with cigarettes without an excise tax band. Stop and inspect the means of transportation containing cigarettes without an excise tax band. Taking action and examining and searching houses that are used to store cigarettes without an excise tax band.	Not all evidence can be charged to the defendant. The owner of the cigarettes without excise duty ordered by the defendant is still on the wanted list.	Rp. 939.960.000, -
2	238/Pid.Sus/2024/PN Cbi	The defendant sold cigarettes without excise tax stamps that were purchased from another party. The defendant bought cigarettes without excise tax stamps by changing sellers.	Obtain public information from the implementation of monitoring and supervision activities of customs and excise activities Checking the veracity of information about a person suspected of buying and selling cigarettes without an excise tax band. Conduct monitoring of transportation facilities heading to the location of someone suspected of buying and selling cigarettes without an excise tax band. Examining and searching transport vehicles loaded with cigarettes without excise tax stamps	The purchase of cigarettes without excise tax tape is done by ordering from suppliers who change people.	Rp. 238.720.000, -

<sup>5</sup> Abdulloh Aziz Mustaqoh dan M. Yasir. *Penegakan Hukum Terhadap Penjualan Rokok Illegal Tanpa Cukai oleh Kantor Pengawasan dan Pelayanan Bea dan Cukai Kabupaten Bojonegoro*. Jurnal Justitiable, Vol. 6, No. 2, Januari 2023, hlm. 8.

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			purchased by the suspected person. Counting cardboard cigarette packages without excise tax stamps.		
3	392/Pid.Sus/2023/PN Cbi	The defendant ordered cigarettes without excise tax to the owner of cigarettes without excise tax with the intention of selling them. The defendant sold cigarettes without excise tax stamps that were purchased from another party.	Received information from the public regarding the circulation of cigarettes without an excise tax band. Check the veracity of the information. Carry out patrols in the framework of Operation Gempur Illegal Cigarette. Monitored a house suspected of storing cigarettes that were not labeled with excise tax. Approaching the defendant who was buying and selling cigarettes without an excise tax band. A search was conducted at the defendant's house and cartons containing various brands of cigarettes that were not covered with excise tax were found.	Sales or dealers of cigarettes without excise tax are still on the wanted list.	Rp. 49.506.000,-
4	138/Pid.Sus/2023/PN Cbi	The defendant ordered cigarettes without excise tax to the owner of cigarettes without excise tax with the intention of selling them. The defendant sold cigarettes without excise tax stamps that he had purchased from another party.	Received information from the public that there is an activity of selling cigarettes without an excise tax band. Conducted a patrol at the location where the defendant was found selling various brands of cigarettes without excise tax stamps. Conduct an examination of the defendant.	The defendant had previously sold a small amount of cigarettes without an excise tax band and was only given a warning by Customs officers. The defendant repeated the act of committing the crime of excise taxation by making a purchase through social media to order cigarettes without an excise tax band attached with the intention of selling them because he obtained a large economic benefit compared to his income as a parking attendant.	Rp. 8.858.500

Source: Cibinong District Court, [https://sipp.pn-cibinong.go.id/list\\_perkara/search diolah Peneliti](https://sipp.pn-cibinong.go.id/list_perkara/search_diolah_Peneliti), 2024

The table above shows the mode of excise crime related to cigarettes without an excise band in the jurisdiction of the Cibinong District Court, namely the mode when the perpetrator acts as an intermediary trader who sells cigarettes without an excise band that belongs to another party. Based on the actions taken by Customs and Excise officers in the Cibinong District Court area, it is known that the obstacles in handling cases of excise crime are that evidence can be charged to the defendant, the owner of the cigarettes without excise stamps ordered by the defendant is still on the Wanted Person List (DPO), the purchase of cigarettes without excise stamps is made by ordering from suppliers who change people, Sales or dealers of cigarettes without excise tax are still on the wanted list (DPO), selling cigarettes without excise tax with a small amount so that only a warning is given by Customs officers, repeating the criminal act of excise tax by making purchases through social media to order cigarettes without excise tax with the intention of selling them because they get a large economic benefit compared to his income as a parking attendant.

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Regarding the execution of excise crime evidence in the criminal justice system, execution is the final stage of the criminal case settlement process. Evidence in criminal cases after the judicial process is completed, it will be executed in accordance with the contents of the court's ruling contained in the verdict as stated in Article 46 paragraph (2) of the Criminal Code (KUHP), formulated as follows:

Article 46 of the Criminal Procedure Code: (2) When a case has been decided, the object subject to confiscation shall be returned to the person or persons named in the decision, unless the object has been confiscated by the judge for the state, destroyed or damaged beyond use, or if the object is required as evidence in another case.

Prosecutors in the criminal justice system have a broad role and cover all stages of handling in criminal cases, namely handling at the investigation stage, handling at the prosecution stage, the examination stage in a court, the role at the stage of legal remedies and the role at the stage of executing the decision of the Panel of Judges.<sup>6</sup> Regarding the execution of the decision of the Panel of Judges that has obtained permanent legal force, it is applied by the Prosecutor's Office, after the Registrar submits a copy of the decision letter for the prosecutor as regulated in Article 270 of the Criminal Procedure Code.<sup>7</sup>

The execution of the decision of the Panel of Judges can only be implemented by the Prosecutor's Office, after the prosecutor receives a copy of the decision letter from the clerk, with the time limit for submitting a copy of the decision from the clerk for the prosecutor for ordinary cases no later than 1 (one) week and for cases with short procedures no later than 14 days.<sup>8</sup>

Pursuant to Article 273 Paragraph (3) of the Criminal Procedure Code, if the court decision also stipulates that the evidence is confiscated for the state, in addition to the exceptions as mentioned in Article 46, the prosecutor shall arrange for the object to be submitted to the state auction office and within three months to be sold at auction, the proceeds of which shall be deposited into the state treasury for and on behalf of the prosecutor. Article 273 Paragraph (4) of KUHP states that the period as mentioned in Paragraph (3) may be extended by a maximum of one month.

In relation to the execution of special criminal decisions on excise, the prosecutor's office has cooperated with the customs in the form of a joint agreement between the Director General of Customs and Excise of the Ministry of Finance of the Republic of Indonesia and the Deputy Attorney General for Special Crimes of the Attorney General's Office of the Republic of Indonesia Number: Kep-82/BC/2012, Number: Kep-01/F/Fjp/04/2012 dated April 5, 2012 concerning Coordination of Law Enforcement of Crimes in the Field of Customs and Excise. The joint agreement does not explicitly regulate the execution of evidence, because the Criminal Procedure Code clearly and explicitly regulates how and who is authorized to carry out the execution of evidence, therefore the execution of evidence must be carried out by the prosecutor's office as a state institution that has a mandate from the Law.

In the implementation of court decisions that have permanent legal force (*Inkracht van gewijsde*) in the criminal justice system in Indonesia is part of criminal law enforcement. If it is related to the duties and authority of the Prosecutor in the execution of evidence in the crime of excise. In the implementation of the execution of a Court Decision that has permanent legal force, there is an administrative and institutional mechanism regulated by the Law on Excise which basically states, "Evidence in the Crime of Excise whose verdict is confiscated to the State", its implementation is submitted to the Directorate General of Customs so that it shows that the authority in the implementation of the execution is not with the Prosecutor.<sup>9</sup>

In the process of destroying evidence, there is a discrepancy with the provisions stipulated in Article 270 of the Criminal Procedure Code which emphasizes that the implementation of court decisions that have obtained permanent legal force is carried out by the prosecutor, for which the clerk sends a copy of the decision letter to him, while in practice it is carried out by the customs and excise agency.<sup>10</sup> Meanwhile, Article 62 of Law Number 11 of 1995 concerning Excise regulates that excisable goods involved in criminal acts are confiscated for the state.

One of them can be found in Decision Number 392/Pid.Sus/2023/Pn Cbi (Excise) with the defendant Lukman Nulhakim als. Luk was found legally and convincingly guilty of committing the crime of "selling goods that were not attached to the excise tax band" and was sentenced to imprisonment for 2 (two) years and 6 (six) months and a fine of 3 (three) times the amount of Excisable Goods, namely Rp. 49,506,000, - (forty-nine million five hundred and six thousand rupiah) x 3 (three) for a total of Rp. 148,518,000. 148,518,000 (one hundred forty-eight million five hundred eighteen thousand rupiah) provided that if the fine is not paid in whole or in part the Defendant's property and/or legal income is then auctioned to pay the fine and in the event that the property is insufficient, the Defendant shall be sentenced to imprisonment in lieu of fine for 6 (six) months.

<sup>6</sup> Marwan Effendy. *Kejaksaan Republik Indonesia, Posisi dan Fungsinya dari Perspektif Hukum*, Jakarta: Ghalia Indonesia, 2014, hlm. 66.

<sup>7</sup> P. A. F. Lamintang dan Theo Lamintang. *Pembahasan KUHP Menurut Ilmu Pengetahuan Hukum Pidana & Yurisprudensi*, Jakarta: Sinar Grafika, 2012, hlm. 7.

<sup>8</sup> Andi Hamzah. *Hukum Acara Pidana Indonesia*, Jakarta: Sinar Grafika Offset, 2009, hlm. 14.

<sup>9</sup> Ahmad Yani, Abdul Azis, dan Audyna Mayasari Muin. *Pelaksanaan Eksekusi Barang Bukti dalam Tindak Pidana Cukai: Tantangan dan Perkembangan*, Hang Tuah Law Journal, Vol. X, Issue, 2020, hlm. 3-4.

<sup>10</sup> Ahmad Yani, Abdul Azis, dan Audyna Mayasari Muin. *Ibid*, hlm. 7.



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In the Cibinong District Court's decision, the Panel of Judges determined that the evidence, namely tobacco excisable goods in the form of SKM of various brands totaling 74,000 sticks that were not attached with excise stamps, were confiscated for the state. The evidence, namely excisable goods in the packaging with brand details as follows:

- 1) 16 Slop @10 packs @ 20 bars SKM Gico brand
- 2) 10 Slop @10 packs @ 20 bars SKM Bosche brand
- 3) 18 Slop @10 packs @ 20 bars of E@is brand SKM
- 4) 2 Slop @10 packs @ 20 bars Towin brand SKM
- 5) 1 Slop @10 packs @ 20 bars of HYS brand SKM
- 6) 84 Slop @10 packs @ 20 bars SKM Black Stick brand
- 7) 41 Slop @10 packs @ 20 bars SKM Guci brand
- 8) 36 Slop @10 packs @ 20 bars of HMIN Bold brand SKM
- 9) 20 Slop @10 packs @ 20 sticks SKM Just Mild brand
- 10) 3 Slop @10 packs @ 20 bars SKM Dubai brand
- 11) 27 Slop @10 packs @ 20 sticks of Louis Mild brand SKM
- 12) 109 Slop @10 packs @ 20 bars of Louis Bold brand SKM
- 13) 1 Slop @10 packs @ 20 bars of Dubai brand SKM
- 14) 1 Slop @10 packs @ 20 bars SKM Guci brand
- 15) 1 Slop @10 packs @ 20 bars SKM Louis brand

According to the consideration of the Panel of Judges of the Cibinong District Court on Page 21 of the Decision, it is explained that the evidence in the form of 74,000 cigarettes that are not attached to the excise tax band because the evidence is included in excisable goods, then in accordance with Article 62 paragraph (1) of Law Number 11 of 1995, the goods must be confiscated for the state, while the evidence in the form of 1 (one) mobile phone unit and 1 (one) Operator Sim Card belonging to the defendant is destroyed with the consideration of the Judge that the evidence has been used to commit crimes and it is feared that it will be used to repeat the crime so that it is determined that the evidence be destroyed.

It appears that there is an overlap of authority related to the execution of Excise Crime Evidence, where the Prosecutor based on the Criminal Procedure Code is an official authorized to execute court decisions that have obtained permanent legal force as stated in Article 270 of the Criminal Procedure Code, then in the case of Evidence as stipulated in Article 273 of the Criminal Procedure Code, it is explained that evidence is seized for the state, apart from the exceptions in Article 45 of the Criminal Procedure Code, the Prosecutor authorizes the object to the State Auction Office and within three months to be sold at auction, the proceeds of which are deposited into the State Treasury for and on behalf of the Prosecutor.

Based on the description above, the researcher is interested in examining the issue in the formulation of the problem, namely How is the authority of the Prosecutor in the execution of evidence of excise crime that has permanent legal force? The purpose of this study is to analyze and explain the authority of the Prosecutor in the execution of excise crime evidence that has permanent legal force.

## II. RESEARCH METHODS

Legal research according to Soekanto is defined as a scientific activity based on certain methods, systematics, and thoughts that have the aim of studying one or several specific legal symptoms.<sup>11</sup> Wignosoebroto provides an understanding of legal research is all efforts to seek and find the right answer (right answer) and / or answers that are never wrong (true answer) about a problem, to answer all kinds of legal problems, careful and valid research results are needed to explain and answer existing problems.<sup>12</sup> The main problem of legal science is "to answer questions or provide solutions to problems raised by doubts regarding the applicability of positive law. The main question is with reference to and within the framework of the applicable legal order, what is the most appropriate or most acceptable law for a particular concrete situation."<sup>13</sup>

The type of legal research used in this thesis is normative juridical research. According to Philipus M. Hadjon, normative juridical research is "research aimed at finding and formulating legal arguments through analysis of the subject matter."<sup>14</sup> Roni Hanitijo Soemitro's normative legal research is defined as "research used to examine the rules and principles of law". While Soerjono Soekanto and Sri Mamuji define "normative legal research or also called library legal research is legal research conducted by examining library materials or secondary data only".

<sup>11</sup> Soerjono Soekanto, 2007, *Pengantar Ilmu Hukum*. Jakarta: Universitas Indonesia Press, hlm. 43.

<sup>12</sup> Zainudin Ali, 2011, *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, hlm. 18.

<sup>13</sup> Amiruddin dan Zainal Asikin, 2012, *Pengantara Metode Penelitian Hukum*, Jakarta: Raja Grafindo Persada, hlm. 110.

<sup>14</sup> Philipus M. Hadjon & Tatiek Sri Djamiati. 2003, *Argumentasi Hukum*. Yogyakarta: Gadjah Mada University Press, hlm. 3.

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The type or type of normative juridical research is research that places law conceptualized as what is written in laws and regulations (law in books) or law is conceptualized as rules or norms that are benchmarks for human behavior that are considered appropriate.<sup>15</sup> Normative juridical research is used based on primary and secondary legal materials, namely research that refers to the norms contained in laws and regulations.<sup>16</sup>

Legal research with a normative juridical type has a research approach that can be used by researchers, including a statutory approach (statue approach) is a research approach that is carried out by reviewing and analyzing all laws and regulations related to the legal issues being addressed,<sup>17</sup> and the case approach is carried out by using the main object of study is the court decision as a reference for the preparation of arguments in solving the legal issues studied.<sup>18</sup>

This thesis research uses a statutory approach and a case approach to analyze legal issues related to the legal aspects of the regulation and mechanism for the execution of excise crime evidence legally carried out in the Bogor Regency District Attorney's Office, as well as the authority of the Prosecutor in the execution of excise crime evidence that has permanent legal force seen from the provisions of the Criminal Procedure Code, the Law on the Prosecutor of the Republic of Indonesia, the Law on Excise referring to the Cibinong District Court Decision Number 392/Pid.Sus/2023/Pn Cbi (Excise).

### **III. RESEARCH RESULTS AND DISCUSSION**

#### **A. The Authority of the Prosecutor in the Execution of Evidence of Excise Crimes that Have Permanent Legal Force**

The implementation of court decisions that have permanent legal force (execution) in the criminal justice system in Indonesia is part of criminal law enforcement. By law or the implementation of law in-concreto by the apparatus of the implementation of criminal law. This is aligned with the objectives of the KUHAP based on the guidelines for its implementation, namely to seek and obtain or at least approach the material truth, which is the complete truth of a criminal case and apply the provisions of the criminal procedure law honestly and accurately.<sup>19</sup> If it is related to the duties and authority of the prosecutor in the execution of the verdict, the prosecutor is fully responsible for all types of crimes, especially in the context of this research is the execution of evidence in excise crimes that have permanent legal force.

##### **1. The Authority of the Prosecutor in the Execution of Excise Crime Evidence**

The term prosecutor is an indigenous Indonesian term (Hindu-Javanese) that has been known since the Majapahit era as the name of the State Official who carried out the judiciary, then in Pepakem Cirebon the term Jaksa Pepitu was used to state the composition of the court. In the Mataram era (17th century) the term prosecutor was used as the name of an official who administered justice in cases of solidu, namely cases concerning individual interests that could no longer be reconciled by the local village judge.<sup>20</sup>

According to KUHAP, a prosecutor is an official authorized to act as a public prosecutor and execute court decisions that have obtained permanent legal force. So the prosecutor as a public prosecutor is authorized to carry out prosecution and implement the judge's decision as stated in Article 1 paragraph (6) a and b, jo Article 13 of the Criminal Procedure Code.

The prosecutor as a public prosecutor is authorized to receive and examine the investigation case file from the assistant investigator; conduct pre-prosecution if there are deficiencies in the investigation, grant an extension of detention; conduct detention or change the status of detention after the case is submitted by the investigator; make an indictment; submit the case to the court; notify the defendant of the provisions of the day and time of the trial accompanied by a summons, both to the defendant and to the witness, to appear on the appointed trial day; close the case; take other actions; and carry out the judge's decision in accordance with Article 14 letters a to letter i of the Criminal Procedure Code.

The action of the prosecutor as a public prosecutor to submit a criminal case to the district court with a request that it be examined and decided by a judge at a court session is called prosecution (Article 1 paragraph (7) of the Criminal Procedure Code). To carry out the prosecution, the Prosecutor after receiving the results of the investigation from the Police as the investigator immediately studies and examines it and within seven days must notify the investigator whether the investigation results are complete or not. If it is not complete, the case file is returned to the public prosecutor in accordance with Article 138 of the Criminal Procedure Code.

The implementation of the prosecutor's authority in the execution of excise crime evidence in the criminal justice system, execution is the final stage of the criminal case settlement process. Evidence in a criminal case after the judicial process is

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<sup>15</sup> *Ibid*, hlm. 118.

<sup>16</sup> Soerjono Soekanto, 1994, *Pengantar Penelitian Hukum*. Jakarta: UI Press, hlm. 20.

<sup>17</sup> Peter Mahmud Marzuki, 1994, *Penelitian Hukum*, Edisi Revisi. Jakarta: Kencana, 2014, hlm. 134.

<sup>18</sup> M Syamsudin, 2007, *Operasionalisasi Penelitian Hukum*. Jakarta: PT Rajagrafindo Persada, hlm. 58.

<sup>19</sup> P. A. F. Lamintang. *Pembahasan KUHAP Menurut Ilmu Pengetahuan Hukum Pidana & Yurisprudensi*, Jakarta: Sinar Grafika, 2010, hlm. 40.

<sup>20</sup> Hilman Hadikusuma. *Hukum Waris Adat*, Bandung: Penerbit Alumni, 1983, hlm. 169

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completed, it will be executed in accordance with the contents of the court's ruling contained in the verdict as stated in Article 46 paragraph (2) of the Criminal Code (KUHP), formulated as follows.

Article 46 of the Criminal Procedure Code

(2) When a verdict has been rendered in a case, the object subject to confiscation shall be returned to the person or persons named in the verdict, unless the object has been confiscated by the judge for the state, destroyed or damaged beyond use, or if the object is required as evidence in another case.

Prosecutors in the criminal justice system have a broad role and cover all stages of handling in criminal cases, namely handling at the investigation stage, handling at the prosecution stage, the examination stage in a court, the role at the stage of legal remedies and the role at the stage of executing the decision of the Panel of Judges.<sup>21</sup> Regarding the execution of the decision of the Panel of Judges that has obtained permanent legal force, it is applied by the Prosecutor's Office, after the Registrar submits a copy of the decision letter for the prosecutor as regulated in Article 270 of the Criminal Procedure Code.<sup>22</sup>

### 2. Obstacles to the Authority of the Prosecutor in the Execution of Excise Crime Evidence

Obstacles from the Prosecutor's authority in the execution of the Judges' Decision can only be applied by the Prosecutor's Office, after the prosecutor receives a copy of the decision letter from the clerk, with the time limit for submitting a copy of the Decision from the Registrar for prosecutors for ordinary cases no later than 1 (one) week and for cases with short events no later than 14 days.<sup>23</sup>

Pursuant to Article 273 Paragraph (3) of the Criminal Procedure Code, if the court decision also stipulates that the evidence is confiscated for the state, in addition to the exceptions as mentioned in Article 46, the prosecutor shall arrange for the object to be submitted to the state auction office and within three months to be sold at auction, the proceeds of which shall be deposited into the state treasury for and on behalf of the prosecutor. Article 273 Paragraph (4) of KUHP states that the period as mentioned in Paragraph (3) may be extended by a maximum of one month.

In relation to the execution of special criminal decisions on excise, the prosecutor's office has cooperated with the customs in the form of a joint agreement between the Director General of Customs and Excise of the Ministry of Finance of the Republic of Indonesia and the Deputy Attorney General for Special Crimes of the Attorney General's Office of the Republic of Indonesia Number: Kep-82/BC/2012, Number: Kep-01/F/Fjp/04/2012 dated April 5, 2012 concerning Coordination of Law Enforcement of Crimes in the Field of Customs and Excise. The joint agreement does not explicitly regulate the execution of evidence, because the Criminal Procedure Code clearly and explicitly regulates how and who is authorized to carry out the execution of evidence, therefore the execution of evidence must be carried out by the prosecutor's office as a state institution that has a mandate from the Law.

In the implementation of court decisions that have permanent legal force (*Inkracht van gewijsde*) in the criminal justice system in Indonesia is part of criminal law enforcement. If it is related to the duties and authority of the Prosecutor in the implementation of the execution of evidence in the crime of excise. In the execution of the Court Decision that has permanent legal force, there is an administrative and institutional mechanism regulated by the Law on Excise which basically states, "Evidence in the Crime of Excise whose verdict is confiscated to the State", the implementation is submitted to the Directorate General of Customs so that it shows that the authority in the execution is not in the Prosecutor.<sup>24</sup>

In the process of destroying evidence, there is a discrepancy with the provisions stipulated in Article 270 of the Criminal Procedure Code which emphasizes that the implementation of court decisions that have obtained permanent legal force is carried out by the prosecutor, for which the clerk sends a copy of the decision letter to him, while in practice it is carried out by the customs and excise agency.<sup>25</sup> Meanwhile, Article 62 of Law Number 11 Year 1995 on Excise regulates that excisable goods involved in criminal acts are confiscated for the state.

The implementation of the execution of evidence in the criminal act of excise that has been legally binding is not as simple as imagined, because there are mechanisms both administrative and institutional that are passed, even in Law Number 11 of 1995 as last amended by Law Number 39 of 2007 concerning Excise, basically states that "Evidence in the Criminal Act of Excise, whose decision is confiscated for the State" the implementation is submitted to the Directorate General of Customs. This legal provision raises problems related to the authority of the Prosecutor in the execution of evidence that has permanent legal force.

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<sup>21</sup> Marwan Effendy. *Kejaksaan Republik Indonesia, Posisi dan Fungsinya dari Perspektif Hukum*, Jakarta: Ghalia Indonesia, 2014, hlm. 66.

<sup>22</sup> P. A. F. Lamintang dan Theo Lamintang. *Pembahasan KUHP Menurut Ilmu Pengetahuan Hukum Pidana & Yurisprudensi*, Jakarta: Sinar Grafika, 2012, hlm. 7.

<sup>23</sup> Andi Hamzah. *Hukum Acara Pidana Indonesia*, Jakarta: Sinar Grafika Offset, 2009, hlm. 14.

<sup>24</sup> Ahmad Yani, Abdul Azis, dan Audyna Mayasari Muin. *Pelaksanaan Eksekusi Barang Bukti dalam Tindak Pidana Cukai: Tantangan dan Perkembangan*, Hang Tuah Law Journal, Vol. X, Issue, 2020, hlm. 3-4.

<sup>25</sup> Ahmad Yani, Abdul Azis, dan Audyna Mayasari Muin. *Ibid*, hlm. 7.



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The execution of court decisions that have obtained permanent legal force is carried out by the Prosecutor, for which the Registrar sends a copy of the verdict letter to the Prosecutor (Article 270 of the Criminal Procedure Code). The execution of the court decision can only be carried out by the Prosecutor, after the Prosecutor receives a copy of the verdict letter from the clerk. According to SEMA No. 21 of 1983 dated December 8, 1983, the time limit for sending a copy of the decision from the Registrar to the Prosecutor for ordinary cases is no longer than 1 (one) week and for cases with short procedures no longer than 14 days. The implementation of court decisions by the Prosecutor or Public Prosecutor is no longer in the prosecution such as detention, indictments, charges and others which in this case clearly states: "Prosecutor", in contrast to the prosecution such as detention, indictments, charges and others are called 'public prosecutors'. This automatically means that a prosecutor who is not a public prosecutor for a case may execute a court decision.

Regarding the implementation of the criminal forfeiture of evidence, the Prosecutor seeks the object to the State Auction Office and within three months to be sold at auction, the proceeds of which are deposited into the state treasury for and on behalf of the Prosecutor, (Article 273 paragraph (3) KUHAP). This can also be extended for a maximum of 3 months. In addition to the confiscation of evidence, it can also be decided to destroy or to damage until it can no longer be used (Article 46 paragraph (2) of the Criminal Procedure Code).

The prosecutor who carries it out with an official report of destruction or destruction. For example, in the practice of books and other flammable items, the destruction is done by burning, while sharp weapons are cut into pieces. If compensation is imposed, as referred to in Article 99 of the Criminal Procedure Code (compensation to the injured party or victim of the offense), the implementation is carried out according to the procedure of a civil judgment, in the sense that it is carried out through a bailiff.

The execution of the Prosecutor's Office can also result in an auction, basically evidence in the form of found goods, confiscated goods, and can further become State booty in connection with criminal cases.

a. Found Goods. Found goods are those based on the examination found by Investigators or related agencies whose identity is unknown who owns or controls or transports, both name and address. Thus, the found item must be made a Minutes of Discovery by the Prosecutor's Office Officer who finds the item himself or by the officer who receives the found item from a third party.

The found goods must be reported in the mass media and or announced through the offices of the District Court, Subdistrict, Village which can be widely known by the population in the area of the District Attorney concerned. In the aforementioned announcement, it should be stated that anyone who feels he/she is the rightful owner of the goods should take them to the relevant District Attorney's Office within a period of 6 (six) months.

Within the period of 6 months, anyone who comes and claims to be the rightful owner of the said goods shall submit written evidence, and bring a certificate of identity from the Village Head and confirmed by the local Sub-District Head. If it turns out from the results of the research that the written evidence is true and convincing, then the goods must be handed over to the rightful owner accompanied by Berita Acara. Whereas a person who comes claiming to be the rightful owner but cannot show written evidence, or the evidence brought is incorrect or doubtful, the application for taking the evidence must be rejected.

The rejection of the request for retrieval of the goods cannot be accepted by the person who feels he is the rightful owner, then the person concerned can file a civil lawsuit. Furthermore, the settlement of the found goods is adjusted to the ruling of the Civil Court which has obtained permanent legal force. After a period of six months has passed, it turns out that no one has come and filed as the rightful owner or there is a person who comes and claims to be the owner but his application is rejected by the Prosecutor's Office, then the found property must be auctioned.

b. Confiscated Goods. Confiscated objects that are forbidden or prohibited to be circulated, excluding objects that can be quickly damaged or that are dangerous, are seized to be used for the benefit of the state or to be destroyed. When the case has been decided, the object subject to confiscation shall be returned to the person or persons named in the decision, unless according to the judge's decision the object is confiscated to the state, to be destroyed or to be damaged until it can no longer be used or if the object is still needed as evidence in another case. Confiscated objects that are prohibited are:<sup>26</sup>

- 1) Prohibited items, such as unlicensed firearms, explosives, certain chemicals, etc.
- 2) Objects that are prohibited to be circulated such as narcotics, pornographic books or magazines and movies, counterfeit money and others.

The storage of confiscated objects is carried out as well as possible and the responsibility for it lies with the authorized official in accordance with the level of examination in the judicial process and the object is prohibited to be used by anyone. Confiscated objects are stored in the State Confiscated Object Storage House "Rupbasan". In the event that confiscated objects and state booty are not possible to be stored in Rupbasan, the Head of Rupbasan can determine how to store confiscated objects and booty in other places.

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<sup>26</sup> M. Yahya Harahap. *Op.Cit*, hlm. 292.

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The purpose of confiscation is for evidentiary purposes, especially intended as evidence before the court, because without this evidence, the case cannot be submitted to the court. The confiscated goods referred to in this paper are goods seized as evidence of confiscation in criminal cases, considering that confiscation is often found in civil cases, for example related to debt and credit. In civil cases, if after the specified time has passed the verdict has not been fulfilled, or if the defeated party, after being properly summoned, does not appear, then the chairman of the court in his position gives a written order that a number of non-fixed movable goods be confiscated and if there are no such goods, or it turns out that they are not enough, then the fixed goods belonging to the defeated person, so that they are deemed sufficient as a substitute for the amount of money mentioned in the decision and all the costs of implementing the decision Article 197 paragraph (1) HIR. This warrant is commonly called a "determination" or what is commonly called an order of execution.

This determination letter guarantees the validity of the order to carry out the execution, both against the clerk or bailiff who gets the order and the losing party executed. Without a determination letter, the losing party can refuse the execution action taken by the clerk or bailiff. In fact, such actions can be considered as illegal actions.

Meanwhile, what is meant by confiscated goods executed by the Prosecutor's auction is confiscated goods that are evidence in criminal cases, due to considerations of their nature that are quickly damaged, rotten, dangerous or the cost of storage is too high, so they can be auctioned ahead of the Court Decision based on Article 45 of the Criminal Procedure Code.

Confiscated goods that are used as evidence, for example in the form of sawn timber which is considered to be quickly damaged, rotten and high storage costs, then the District Attorney who handles the case requests the confiscated goods to be auctioned. The auction of confiscated evidence requires permission from the President of the Court where the case takes place, and the proceeds of the auction are used as evidence in the case. Article 46 of the Criminal Procedure Code states:

- 1) Objects subject to confiscation shall be returned to the person or persons from whom they were confiscated, or to the person or persons to whom they are most entitled:
  - a) The interests of investigation and prosecution no longer require it;
  - b) The case was not prosecuted because there was insufficient evidence or it was found not to be a criminal offense;
  - c) The case is set aside in the public interest or the case is closed for the sake of law, unless the object was obtained from a criminal offense or used to commit a criminal offense.
- 2) When a case has been decided, the seized object shall be returned to the person or persons named in the decision, unless the seized object is forfeited to the state, destroyed or damaged to the extent that it can no longer be used or, if the seized object is still needed as evidence in another case, the seized object as evidence may subsequently become booty.

In order for confiscated goods to be forfeited, they must belong to the perpetrator. So, if the confiscated goods, although used by the convicted person to commit a criminal offense or are the proceeds of a criminal offense, but the goods do not belong to the convicted person, then the goods cannot be confiscated but only as evidence and must be returned to the rightful owner, except in this case, thus from the description above, confiscated goods used as evidence in a criminal case can be sold by auction before or after a court decision on the case, if the confiscated goods as evidence are items that are quickly damaged or rotten or require high storage costs and the money from the auction is used as a substitute for evidence in the criminal case.

Article 45 of Law Number 8 of 1981 on Criminal Procedure (KUHAP) in paragraph (4) states that, "Confiscated objects that are prohibited or prohibited from circulation are confiscated to be used for the benefit of the state or destroyed. Included in the category of confiscated goods that are prohibited from circulation are liquor, narcotics, psychotropic substances, weapons and explosives as well as books or images included in the pornography group."

Related to the destruction of evidence is regulated in the Regulation of the Attorney General of the Republic of Indonesia Number: PER-036/A1JA109/2011 concerning Standard Operating Procedures (SOP) for Handling General Criminal Cases. Based on the provisions in the PERJA, Article 48 paragraph (2) states that, "An order regarding the implementation of a court decision that has obtained permanent legal force is issued no later than 3 (three) days from the receipt of the court decision." Then in Article 48 paragraph (8), it is stated that, "The implementation of court decisions is carried out completely (corporal punishment, fines, evidence, restitution and court costs) no later than 7 (seven) days from the receipt of the Order for the implementation of court decisions with the Minutes of Events."

For evidence that is determined to be destroyed, the Section Head of General Crimes and the Section Head of Special Crimes shall immediately submit it to the Section Head of Evidence Management and Confiscated Goods within 7 (seven) days after the verdict is received by using the Memorandum of Opinion / Minutes of Submission, a warrant for the implementation of court decisions (P-48) along with the minutes of the implementation of court decisions that have permanent legal force (BA-17).

Furthermore, the evidence and booty management section coordinates with the Head of General Crimes and the Head of Special Crimes or related parties to carry out the destruction of evidence in accordance with court decisions that are legally binding (inkracht). Evidence and booty management staff then inventory all evidence to be destroyed based on the name of the defendant, the article violated, the court decision number, and the type of evidence. Then the Head of the Bogor Regency District

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Prosecutor's Office issued an Evidence Destruction Order in which there were names of officers who would carry out the destruction of evidence.

After receiving the order for the destruction of evidence, the evidence staff then prepares the evidence and classifies the type of evidence to be destroyed. The classification is carried out based on the method of destroying the evidence, namely by burning, grinding (cutting), crushing using a tandem roller / drum roller / hammer or submitting it to the relevant agency.

Regarding the mechanism for destroying evidence after obtaining permanent legal force from a court judge, the provisions stipulate that the prosecutor's office as the one authorized to carry out the judge's decision must destroy the evidence within a maximum period of 7 (seven) days after obtaining a judge's decision that has permanent legal force.

Confiscated goods that are used as evidence in a criminal case can become the prosecutor's booty, if there are several elements that are fulfilled by the judge to be able to seize an item, namely that the confiscated goods belong to the convicted person obtained from a criminal offense or deliberately used to commit a criminal offense. Therefore, a confiscated item can be confiscated if the item belongs to the perpetrator, while if the confiscated item although used by the convicted person to commit a criminal offense or is the result of a criminal offense but the item does not belong to the convicted person then the item cannot be confiscated but only as evidence and must be returned to the rightful owner.

Referring to the provisions regarding the destruction of evidence by prosecutors, it is regulated in the Guidelines of the Attorney General's Guidelines Number 3 of 2022 concerning Auctions and Direct Sales of Confiscated Objects, Evidence, Confiscated Goods, and Execution Seized Objects in the Attorney General's Office of the Republic of Indonesia regulates related to Other Execution Auctions in accordance with the Laws and Regulations, as follows.

- 1) Against a court decision that has obtained permanent legal force and in its decision imposes a fine, restitution, or additional punishment related to asset forfeiture to the convicted person, the Public Prosecutor or the Executor's Attorney based on their authority may conduct execution confiscation against the property, assets, or assets of the convicted person in accordance with the provisions of laws and regulations.
- 2) The confiscation of execution is carried out to the extent that it fulfills the obligation of the convict to pay fines, restitution, or additional penalties related to asset forfeiture as stated in the court decision.
- 3) If after confiscation as referred to in number 1, the convict still does not pay the fine, restitution, or additional punishment related to asset confiscation, the property, assets, or assets of the convict that have been confiscated shall be auctioned.
- 4) The implementation of the auction of the execution seizure object as referred to in point 3 shall be carried out no later than 3 (three) months after the seizure.
- 5) In the event that the auction proceeds exceed the obligation to pay fines, restitution, or additional penalties related to asset forfeiture, the excess proceeds must be returned to the convict/family or third parties who have a valid legal basis.
- 6) Based on the Decree of the Head of the District Attorney's Office or the Head of the District Attorney's Office Branch, an auction committee is formed as an official auction seller consisting of the Evidence and Confiscated Goods Management Section or Development Affairs as well as Public Prosecutors and Executor Prosecutors.
- 7) The auction committee prepares the complete auction submission documents consisting of:
  - a) a letter of request for auction to the KPKNL where the object is located which also contains the reasons for the auction in accordance with statutory provisions;
  - b) copy/photocopy of an excerpt or copy of a court decision that has obtained permanent legal force;
  - c) copy/photocopy of the confiscation order;
  - d) copy/photocopy of the Minutes of Seizure;
  - e) copy/photocopy of Auction License Decree;
  - f) a certificate containing the remaining payment of fines, restitution, or other additional criminal payments;
  - g) original and/or copy/photocopy of proof of ownership/right if based on laws and regulations proof of ownership/right is required. If the proof of ownership / right is not controlled, it is equipped with a statement letter or certificate from the seller that the goods are not accompanied by proof of ownership / right by stating the reasons;
  - h) Absolute Liability Statement from the seller which contains absolute responsibility and releases the Auction Officer and KPKNL from civil lawsuits or criminal charges for the auction sale; and
  - i) a copy/photocopy of the appraisal report or appraisal summary document containing the date of appraisal.

c. Booty. Booty is confiscated property based on a court decision that has obtained permanent legal force and is declared seized for the state.<sup>6</sup> Booty is goods that are tools or evidence, and the evidence can be auctioned off if it has been decided by the court and has permanent legal force. Booty can also be accounted for. This booty when the auction will be carried out together, cannot be done separately unless the situation is urgent as explained in point 9 of the Circular Letter of the Attorney General Number: SE-03/B.5/8/1988 concerning the settlement of booty which states that: "For booty included in a court decision, in principle, it is not allowed to be sold by auction separately, except in urgent circumstances."

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The execution of court decisions against booty resulting from criminal acts refers to the Decree of the Attorney General of the Republic of Indonesia No. KEP-089/J.A/8/1988 concerning the Settlement of Booty which determines that booty is evidence that based on a court decision that has obtained permanent legal force is declared seized for the State. Based on this, it is clear that the settlement of booty must be based on a court decision that has permanent legal force (*inkracht van gewijsde*), meaning that it provides legal certainty and is fair.

The procedure for settling booty is carried out by selling it at auction through the State Auction Office or using it for the benefit of the state, social interests or destroying or destroying it until it can no longer be used by referring to the provisions of article 3 of Attorney General No. Kep- 089/J.A/8/1988 concerning the Settlement of Booty of the Attorney General of the Republic of Indonesia.

After the booty that has been decided by the court is delegated to the field authorized to settle booty, and as soon as possible after the court's decision has obtained permanent legal force, by including a copy of the verdict or extract of the verdict and legal opinion. After receiving the booty, the party authorized to settle the booty submits an application to the Head of the State Prosecutor's Office or the Head of the High Prosecutor's Office or the Deputy Attorney General authorized to settle the booty. This is done in reference to Article 5 of the Decree of the Attorney General of the Republic of Indonesia Number: Kep-089/J.A/8/1978 concerning the Settlement of Confiscated Goods of the Attorney General of the Republic of Indonesia.

This is procedurally the implementation of every booty that will have to get permission first, and for booty for the State, in this case the Attorney General of the Republic of Indonesia can determine that certain booty is used for the benefit of the State or social in accordance with applicable laws and regulations.

The prosecutor as the executor of the booty only has the basis of consideration from the circular letter Circular Letter Number: SE - 03 / B / B.5 / 8 / 1988 concerning the Settlement of Booty. With reference to this circular letter for the prosecutor is fairly minimal. Every criminal procedure should be regulated in the Criminal Procedure Code (KUHAP), but the regulation of the settlement of booty has no reference to the legal basis of the prosecutor as the executor in terms of criminal procedure law.

d. Evidence. In criminal procedure law, judges are bound by legal evidence, which means that judges may only make decisions based on evidence specified by law. Evidence (*bewijsmiddel*) varies in form and type, which is able to provide information and explanation of the problem being litigated in court. Based on the information and explanations provided by the evidence, the judge makes an assessment, which party has the most perfect evidence.<sup>27</sup>

Evidence that in the verdict contains that the goods are returned, then the evidence is returned by making Berita Acara Pengambilan Benda Sitaan. Likewise, for confiscated goods which based on the verdict contains to be destroyed, a warrant is issued for the destruction of confiscated goods, then the Prosecutor who carries out the warrant makes the Minutes of the Destruction of Confiscated Goods.

Confiscated goods seized for the state, the Prosecutor authorizes the goods to the state auction office which within 3 (three) months, has carried out the auction. If the auction has not yet been carried out, it can be extended for another 1 month (Article 273 paragraph (3) KUHAP). So that in the verdict the judge does not mistakenly apply Article 273 paragraph 3 of the Criminal Procedure Code, SEMA No.24 of 1983 (dated December 1983) has been issued which states that the verdict does not need to contain the words "to be sold at auction". Thus it is sufficient to contain: "confiscated for the State"

According to Gustav Radbruch, legal certainty is one of the products of law or more specifically a product of legislation. In the theory of legal certainty, there are four fundamental things that have a close relationship with the meaning of legal certainty itself, namely:<sup>28</sup>

- 1) Law is a positive thing which means that positive law is legislation.
- 2) The law is based on a fact, meaning that the law is made based on reality.
- 3) The facts contained or listed in the law must be formulated in a clear way, so that it will avoid confusion in terms of meaning or interpretation and can be easily implemented.
- 4) Positive law should not be easily changed.

Legal certainty according to Lon Fuller is a guarantee that the existing law can run properly. Eight principles that must be fulfilled by law, namely:<sup>29</sup>

- 1) The system created by the authorities and authorities should consist of rules that are not based on arbitrary decisions on specific matters.
- 2) Regulations established by the competent and authoritative authority should be made public.
- 3) Regulations should not be applied retroactively, as this may undermine the integrity of the system.

<sup>27</sup> M. Yahya Harahap, *Op.Cit*, hlm. 554.

<sup>28</sup> Satjipto Rahardjo. *Ilmu Hukum*, Bandung: Citra Aditya Bakti, 2012, hlm. 19-20.

<sup>29</sup> Lon L. Fuller. *The Morality of Law*, McGraw Hill: Yale university Press, 1964, hlm. 54-58.



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- 4) The regulation is made in a formulation that can be understood by the general public.
  - 5) There should be no contradiction between one regulation and another.
  - 6) A regulation that has been established must not demand an action that is beyond what can be done.
  - 7) The rules that have been established should not be changed too often.
  - 8) The rules that have been set, must have compatibility between the rules and in terms of implementation in everyday life.
- Legal certainty according to Sudikno Mertokusumo is defined as a guarantee that the law must be carried out in a good way. Legal certainty requires efforts to regulate the law in legislation made by the authorized and authoritative parties, so that these rules have juridical aspects that can guarantee the certainty that the law functions as a rule that must be obeyed.<sup>30</sup>

In the process of executing evidence seized for the benefit of the state, there are no special rules governing the auction of booty in the Criminal Code, in this case the prosecutor as the executor of the booty only has a basis for consideration from the circular letter Circular Letter Number: SE-03 / B / B.5 / 8 / 1988. Every criminal procedure should be regulated in the Criminal Procedure Code (KUHAP), but the regulation of the settlement of booty has no reference to the legal basis of the prosecutor as the executor in terms of criminal procedure law.

In the implementation of the seizure of evidence, based on the Decree of the Attorney General Number KEP-089/J. A/8/1988 concerning the Settlement of Confiscated Goods, in Article 12 through Article 14, it can be seen that the Head of the High Prosecutor's Office or the Head of the District Prosecutor's Office or the Head of the District Prosecutor's Office Branch who controls confiscated goods subject to import restrictions and prohibited from circulation immediately reports to the Deputy Attorney General authorized to settle confiscated goods for further settlement so that the Attorney General of the Republic of Indonesia can determine certain confiscated goods to be used for the benefit of the State or social interests in accordance with applicable laws and regulations and with special consideration can place the confiscated goods to be destroyed or damaged until they can no longer be used in accordance with applicable laws and regulations.

Thus, in addition to the confiscation of evidence, it can be decided to be destroyed or destroyed until it can no longer be used (Article 46 paragraph (2) of the Criminal Procedure Code), the Prosecutor can also seek evidence seized for the state to the state auction office and within three months to be sold at auction, the proceeds of which are put into the state treasury for and on behalf of the Prosecutor, (Article 273 paragraph (3) of the Criminal Procedure Code). Therefore, the execution of evidence as the authority of the Prosecutor's Office in a criminal case is evidence in the form of found goods, confiscated goods, and can then become State booty in connection with a criminal case, without determining the type of criminal case.

This is different in criminal cases in the field of excise, related to the settlement of evidence seized by the state regulated in the Regulation of the Minister of Finance of the Republic of Indonesia Number 39 / PMK.04 / 2014 concerning Procedures for the Settlement of Excisable Goods and Other Goods Seized for the State or Controlled by the State. In the Regulation of the Minister of Finance of the Republic of Indonesia Number 39 / PMK.04 / 2014, it explains the settlement of excisable goods and other goods seized for the state or controlled by the state as referred to in the Excise Law and Regulation of the Minister of Finance of the Republic of Indonesia Number 39 / PMK.04 / 2014 itself, the settlement is left to the Customs and Excise, in accordance with Article 3 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 39 / PMK.04 / 2014 concerning Procedures for Settling Excisable Goods and Other Goods Seized for the State or Controlled by the State, which states in full:

- (1) The Director of Enforcement and Investigation, the Head of the Regional Office, or the Head of the Office handling criminal cases in the field of excise shall accept the delivery of excisable goods and other goods declared seized for the state from the Prosecutor as the executor of the court decision.
- (2) Upon the delivery of excisable goods and other goods as referred to in paragraph (1), a minutes of handover shall be made.
- (3) The excisable goods and other goods which have been handed over to the Director of Enforcement and Investigation, Head of Regional Office, or Head of Office as referred to in paragraph (1) shall be declared as state property.

The provisions of the Regulation of the Minister of Finance of the Republic of Indonesia Number 39/PMK.04/2014 can be interpreted that excisable goods and other goods declared seized for the state, by the Prosecutor are handed over to the Director of Enforcement and Investigation, Head of Regional Office, or Head of Office handling criminal cases in the field of excise. Furthermore, by the Director of Enforcement and Investigation or the Head of the Regional Office within the Directorate General of Customs and Excise, it is declared as state property and will be administered and stockpiled at the Customs Stockpile or other stockpiles under the supervision of the Directorate General of Customs and Excise.

The prosecutor as the executor of the booty only has the basis of consideration from the circular letter Circular Letter Number: SE - 03 / B / B.5 / 8 / 1988 concerning the Settlement of Booty. With reference to this circular letter for the prosecutor is fairly minimal. Every criminal procedure should be regulated in the Criminal Procedure Code (KUHAP), but the regulation of the settlement of booty has no reference to the legal basis of the prosecutor as the executor in terms of criminal procedure law.

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<sup>30</sup> Asikin Zainal. *Pengantar Tata Hukum Indonesia*, Jakarta: Rajawali Press, 2012, hlm. 65.



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The juridical obstacle in the process of executing evidence seized for the benefit of the State is the inaction of Article 39 of the Criminal Code. In practice in the field when dealing with third parties, there is a judge's decision to return the booty even though it is a means of crime. This is very contrary to Article 39 of the Criminal Code, having supplies of goods that are known to be useful for committing crimes can be confiscated.

In addition, the absence of specific rules governing the auction of booty in the Criminal Code, in this case the prosecutor as the executor of the booty only has a basis for consideration from the circular letter Circular Letter Number: SE-03 /B / B.5 / 8 /1988. Every criminal procedure should be regulated in the Criminal Procedure Code (KUHAP), but the regulation of the settlement of booty has no reference to the legal basis for the prosecutor as executor in terms of criminal procedure law.

Indeed, the reference for prosecutors as executors of court decisions in the Criminal Procedure Code is not regulated in detail, but it is also necessary to look at other regulations that also have the potential to become a reference such as Law Number 17 of 2003 concerning State Finance, the President as Head of Government holds the power of state financial management as part of government power and power over state financial management is used to achieve state goals. However, to assist the duties of the Head of Government, the power is authorized to the Minister of Finance, the Minister / head of the institution as the Budget User / Goods User of the state ministry / institution he leads and to the governor / regent / mayor as the head of the regional government.<sup>31</sup>

The stages of financial management consist of planning, implementation, administration, reporting, accountability and supervision. Everything has been regulated in Law No.17 of 2003 concerning State Finance. In Law Number 17 of 2003 concerning State Finance, specifically Articles 1 and 2, it is explained that what is meant by State Finance are all state rights and obligations that can be valued in money, as well as everything in the form of money and in the form of goods that can be used as state property in connection with these rights and obligations. The state finances include:<sup>32</sup>

- a. The right of the state to levy taxes, issue and circulate money and make loans;
- b. The state's obligation to perform general government services and pay third-party bills;
- c. State and local revenues;
- d. State expenditure and regional expenditure;
- e. State/regional assets managed by itself or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated in state companies/regional companies.
- f. Wealth of other parties controlled by the government in the context of carrying out government duties and/or public interests;
- g. Wealth of other parties acquired using facilities provided by the government.

Furthermore, in terms of managing goods seized by the power of the Court, as well as evidence that is not taken by those entitled to receive it, it is also regulated in Government Regulation (PP) Number 43 of 1948 concerning Making Amendments to Government Regulation No. 11 of 1947 in the matter of Goods Seized by the Power of Court Decree, as well as Evidence that is not taken by those entitled to receive it, specifically in Article 2 which is amended and added so that it reads as follows:

- 1) Articles confiscated by virtue of a judicial decision shall be sold by the head or head of the Public Prosecution Service of the Court of First Instance, unless by regulation they may not be sold or the head of the Public Prosecution Service as aforementioned provides otherwise.
- 2) The sale referred to in paragraph 1 shall be made in public by means of the Auctioneer's Office, if the estimated sale price of the goods is expected to exceed 300 rupiahs.
- 3) If the estimated sale price does not exceed 300 rupiahs, the goods may be sold by the head or head of the Public Prosecution Service for cash in the presence of two witnesses.
- 4) The amount of the sales price deducted with the sales fee is handed over by the Head or leader of the Prosecutor's Office to the State Treasury.
- 5) If the thing seized is in the form of banknotes or currency, the banknotes or currency shall be handed over by the Head or Chief Prosecutor mentioned in paragraph 1 to the State Treasury, or to the State Bank of Indonesia, if the banknotes or currency concern banknotes or currency, which the Government does not recognize as legal tender.
- 6) With respect to property seized by virtue of a decision of the Police Court or of a court established by the Minister of Justice, the obligation of the head or head of the Public Prosecution Service under this article shall be performed by the Registrar with the knowledge of the President of the Court.

Then there are regulations issued by the Minister of Finance, namely Regulation of the Minister of Finance Number 145 / PMK.06 / 2021 concerning Management of State Property Derived from State Confiscated Goods and Gratuities, in Article 16 letter c stated:

<sup>31</sup> Paulina Y. Amtiran dan Aldarine Molidya, "PENGELOLAAN KEUANGAN NEGARA", JOURNAL OF MANAGEMENT (SME's), Vol.12 No. 2 (2020), 203.

<sup>32</sup> Ibid, 204

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State Confiscated Goods other than land and / or buildings that :

1. has no economic value or economically has a value lower than the cost that must be incurred if a Sale by Auction is carried out;
2. may endanger the environment or trade system in accordance with statutory provisions; or
3. prohibited from general circulation in accordance with the provisions of laws and regulations.

based on the consideration of the Attorney General's Office, KPK, and / or Oditurat, the settlement is carried out by destruction by the Attorney General's Office, KPK, and / or Oditurat after obtaining approval from the Minister; or

So that this opens the way for the completion of the handling of criminal cases in the field of customs and excise, especially against an illegal evidence but becomes valuable evidence through a court decision using the verdict on the evidence Confiscated for the State. Furthermore, in the same regulation in Article 16 letter d, which explains further:

State Confiscated Goods other than land and / or buildings that have been in a rotten or weathered condition can be immediately destroyed by the Attorney General's Office, KPK, and / or Oditurat without the approval of the Minister, the results of which are stated in an official report and reported to the Minister no later than 1 (one) month from the date of implementation of the Destruction.

Based on the provisions stipulated in the Minister of Finance Regulation Number 122 of 2023 concerning Guidelines for the Implementation of Auctions in Article 1 point 6, it is stated that Execution Auction is an auction to carry out the sale of goods based on court decisions / decrees, documents that have the same legal force as court decisions / decrees, or implement provisions in laws and regulations.

Article 6 of the Minister of Finance Regulation Number 122 of 2023 concerning Guidelines for the Implementation of Auctions regulates the Auction Object, namely:

- (1) Auction Objects include any tangible or intangible, movable or immovable, expendable or non-expendable goods, which can be traded, used, utilized, utilized or enjoyed and have economic value.
- (2) Intangible goods as referred to in paragraph (1) include rights to enjoy goods, receivables, intellectual property rights, broadcast/release rights, securities, and other intangible goods in accordance with the provisions of laws and regulations.
- (3) The Right to Enjoy Goods as referred to in paragraph (2) includes the Right to Enjoy or utilize Goods, and other similar rights which are temporary in nature.

In each Auction implementation, there must be a Limit Value as stipulated in Article 54 of the Minister of Finance Regulation Number 122 of 2023 concerning Guidelines for the Implementation of Auctions, as follows.

- (1) Every Auction is required to have a Limit Value.
- (2) The Limit Value as referred to in paragraph (1) shall be the authority and responsibility of the Seller.
- (3) The provision that there must be a Limit Value as referred to in paragraph (1) may be excluded in the Voluntary Auction as referred to in Article 5 letter e for movable goods.
- (4) The Limit Value as referred to in paragraph (1) must be included in the Auction Announcement.
- (5) The provision of inclusion as referred to in paragraph (4) shall be excluded in Voluntary Auctions of movable goods.
- (6) The Limit Value as referred to in paragraph (1) is made in writing and submitted by the Seller to:
  - a. Auction Organizer as an Auction requirement document; or
  - b. The Auction Officer before the Auction starts, in the event that the Limit Value is not included in the Auction Announcement.
- (7) Excluded from the provisions as referred to in paragraph (6), the mechanism for submitting Limit Values at Special Scheduled Auctions is determined separately by the Auction Organizer.
- (8) In the implementation of the Auction of the Auction Object:
  - a. consists of several parcels of land or land and buildings or flat units offered in 1 (one) package; and
  - b. located not in one overlay, the overall Limit Value of the Auction Object must be accompanied by the Limit Value of each Auction Object.
- (9) In the implementation of the Auction with the conditions as referred to in Article 28 paragraph (4) through paragraph (6) and the Auction Objects are offered in 1 (one) package, the Limit Value of the entire Auction Object must be accompanied by the Limit Value of each Auction Object.

### **CONCLUSIONS**

The obstacles of the Prosecutor's authority in the implementation of the execution of excise crime evidence are in the form of administrative and institutional mechanisms that are passed, as well as the provisions stipulated in Law Number 11 of 1995 as last amended by Law Number 39 of 2007 concerning Excise, which basically states that "Evidence in Excise Crimes, whose

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decisions are seized for the State”, its implementation is submitted to the Directorate General of Customs. This legal provision raises problems related to the authority of the Prosecutor in the execution of evidence that has permanent legal force.

The authority of the prosecutor in the execution of excise crime evidence that has permanent legal force, also has juridical constraints from the absence of specific rules governing the auction of booty in the Criminal Code, in this case the prosecutor as the executor of the booty only has a basis for consideration of every criminal procedure that should be regulated in the Criminal Procedure Code (KUHAP), However, the regulation of the settlement of booty does not have a legal basis reference for the prosecutor as the executor in terms of criminal procedure law, especially for the Executor Prosecutor in carrying out the Execution of Evidence that has economic value, so it is hoped that if in the future the current Criminal Procedure Code is revised by adding that those who can execute evidence that has permanent legal force are prosecutors who are in the Indonesian Prosecutor's Office.

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