

## **The Effectiveness of Implementing Execution Seizures as an Effort to Fulfill Criminal Fines in Excise Crimes**

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***Abstract.*** This study aims to analyze the implementation of execution seizure as an effort to fulfill criminal fines in excise crimes with Convict AS at the Tuban District Attorney's Office, and assess its effectiveness based on the theory of legal certainty and the theory of legal effectiveness. This study uses an empirical juridical method (socio-legal) with a qualitative approach through interviews with the Public Prosecutor who carried out the execution seizure and a review of court decisions, execution implementation documents, and relevant laws and regulations. Data are analyzed descriptively-analytically to describe the practice of execution seizure of criminal fines and assess their compliance with the normative framework. Based on the study, it is concluded that execution seizure has been implemented through asset tracing, confiscation and blocking of rights to a plot of land owned by the convict, as well as appraisal for auction purposes, but the fulfillment of criminal fines has not been completed due to differences in interpretation and disharmony in regulations regarding the recording and blocking of land rights, so that reformulation, synchronization, and strengthening of technical guidelines for prosecutors are needed so that the recovery of state losses through criminal fines for excise crimes can be more effective.

***Keywords:*** Confiscation; Crimes; Criminal; Excise; Execution.

### **1. Introduction**

The handling of criminal acts that impact state revenues, such as taxation, customs, and excise, no longer only emphasizes imprisonment, but is increasingly directed at recovering state losses through compensation by the perpetrators of the crime. The handling of criminal acts oriented towards recovering state losses is clearly evident in excise crimes, because excise crimes are directly related to the loss of potential state revenue that should have been received. Excise crimes are one of the crimes whose handling prioritizes the recovery of state losses, so the

direction of criminal policy and its implementation is always linked to the function of securing state revenues from the excise sector.

The mechanism for recovering state revenue during the investigation stage can be achieved by terminating the investigation with the approval of the Attorney General after the suspect has paid the administrative sanction in the form of a fine of four times the excise value that should have been paid, for certain excise crimes regulated in the Excise Law.<sup>1</sup>. The implementation of the termination of the investigation is further explained in the Regulation of the Attorney General of the Republic of Indonesia concerning the procedures for terminating the investigation of criminal acts in the field of excise for the benefit of state revenue.<sup>2</sup>. The recovery mechanism at the prosecution stage is also possible through the payment of administrative sanctions in the form of a fine of four times the value of the excise that should be paid, either before the reading of the charges or after the reading of the charges, as regulated in the technical guidelines for handling criminal cases in the fields of taxation, customs and excise by the Public Prosecutor.<sup>3</sup>.

The obligation to pay a fine in excise crimes is emphasized by the provisions of Article 273 of the Criminal Procedure Code which provides the basis for prosecutors to implement fines, as well as by Article 59 paragraph (1) of the Excise Law which orders payment of the fine through the assets and/or income of the convict if the fine is not paid. The implementation of this order places the prosecutor as the executor of the court decision who has an active obligation to search for and confiscate the convict's assets as collateral for the fulfillment of the fine.<sup>4</sup>. Execution confiscation as part of criminal confiscation is a follow-up to a court decision that has permanent legal force, by confiscating the property of the convict, family, heirs, or other affiliated parties, in accordance with the definition of confiscation in criminal procedural law which regulates the act of taking over and/or storing objects under state control for the purposes of providing evidence or implementing the decision.<sup>5</sup>. The execution of confiscation of assets of convicts

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<sup>1</sup>Government of the Republic of Indonesia. (2023). Government Regulation Number 54 of 2023 concerning the Termination of Investigation of Criminal Acts in the Excise Sector for the Interest of State Revenue, Article 2 paragraph (2).

<sup>2</sup>Attorney General's Office of the Republic of Indonesia. (2024). Regulation of the Attorney General's Office of the Republic of Indonesia Number 5 of 2024 concerning Procedures for Terminating Investigations of Criminal Acts in the Field of Excise for the Interest of State Revenue, Chapter III.

<sup>3</sup>Deputy Attorney General for Special Crimes. (2019). Circular Letter Number B-397/F/Ft/03/2019 dated March 20, 2019 concerning Criminal Prosecutions in Criminal Cases in the Field of Taxation, Customs and Excise.

<sup>4</sup>Republic of Indonesia. (2021). Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, Article 31 paragraph (1) letter b.

<sup>5</sup>Sulastri, Lusia. (2024). Textbook of Criminal Procedure Law. Yogyakarta: Jejak Pustaka, p. 240.

in economic crimes is seen as an important instrument to realize the objectives of criminal punishment which are oriented towards recovering state losses.<sup>6</sup>.

The implementation of execution seizure in excise crimes obtained a concrete picture in the case of convict AS which was handled by the Tuban District Attorney and has permanent legal force based on the Decision of the Supreme Court of the Republic of Indonesia Number 5559 K/Pid.Sus/2023 dated October 26, 2023. In the decision, the convict was sentenced to a fine of IDR 3,000,000,000.00 (three billion rupiah) with the provision that if the fine is not paid then it will be paid through the convict's assets and/or income, and if it is still insufficient it will be replaced with imprisonment. The Public Prosecutor at the Tuban District Attorney then carried out execution seizure of the convict's assets in the form of a plot of land and buildings in Kudus Regency as an effort to fulfill the fine. The application for registration of the seizure of the assets in question at the Kudus Regency Land Office faced administrative obstacles, because the land office requires compliance with the technical provisions for recording criminal seizures as regulated in the ministerial regulation which serves as a guideline for land registration.

The provisions regarding the registration of criminal seizures at the land office provide a list of formal requirements that must be met, including a seizure order, a permit from the head of the local district court, and other documents deemed necessary based on statutory provisions. The application of these requirements becomes problematic when the execution seizure carried out by the prosecutor is based on a court decision that has permanent legal force, whereas the permit and determination of seizure under criminal procedural law are essentially intended for the investigation stage, before a verdict is issued. This raises questions about whether the existing legal regulations provide a sufficiently clear basis for prosecutors to carry out execution seizures of criminal fines on immovable assets, while also providing legal certainty for the land office in recording seizures.<sup>7</sup> The study of legal certainty emphasizes the need for regulations that are firm, do not cause ambiguity, and whose implementation can be predicted so that the implementation of the law can be directed towards the desired goals.<sup>8</sup>.

The discussion on the effectiveness of the law places the success of the implementation of the confiscation of criminal fines within the framework of the relationship between the substance of the law, law enforcement officers, means or facilities, society, and legal culture.<sup>9</sup> These factors determine the extent to

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<sup>6</sup>Yoserwan, & Mulyati, Nani. (2021). Economic Criminal Law. Depok: PT RajaGrafindo Persada, p. 41.

<sup>7</sup>Triyanto, Toni. (2024). Reconstruction of General Confiscation Regulations with Criminal Confiscation in Bankruptcy Based on Justice Values (Doctoral Dissertation in Law). Doctoral Program in Law, Sultan Agung Islamic University, pp. 182–183.

<sup>8</sup>Marzuki, Peter Mahmud. (2008). Introduction to Legal Science. Jakarta: Kencana, p. 158.

<sup>9</sup>Soekanto, Soerjono. (1988). Effectiveness of Law and Application of Sanctions. Bandung: CV Ramadja Karya, p. 80.

which the norms regarding execution seizures actually function in law enforcement practices.<sup>10</sup>. The legal system theory put forward by Lawrence M. Friedman explains that the substance, structure and culture of law must work in harmony for the law to effectively achieve its goals.<sup>11</sup> Satjipto Rahardjo's progressive legal ideas also emphasize the importance of living law that is responsive to the needs of substantive justice, including justice for the state as a victim in criminal acts that harm state finances.<sup>12</sup>. Various studies on the reconstruction of general confiscation and criminal confiscation, as well as on the plea bargaining approach and recovery of state losses in corruption crimes, show the urgency of strengthening regulations and practices for implementing execution confiscation by the prosecutor's office as part of efforts to recover state losses.<sup>13</sup>.

Based on the description, this study aims to examine the implementation of execution confiscation as an effort to fulfill criminal fines in excise crimes at the Tuban District Attorney's Office based on Supreme Court Decision Number 5559 K/Pid.Sus/2023, while also assessing the effectiveness of its implementation in terms of the theory of legal certainty and the theory of legal effectiveness.

## 2. Research Methods

This research uses an empirical juridical (socio-legal) approach. The research specification used is descriptive-analytical. Data collection methods include primary and secondary data. The data analysis method used is qualitative analysis.

## 3. Results and Discussion

### 3.1. Analysis of the Implementation of Execution Seizure as an Effort to Fulfill Criminal Fines in Excise Crimes

Analysis of the execution seizure process needs to be carried out by drawing from the chronology when the Defendant AS's decision has become legally binding and is then linked to the applicable regulatory arrangements, so that before analyzing legal certainty and legal effectiveness, an in-depth analysis is needed regarding the suitability of the actions that have been carried out with the arrangements in accordance with the provisions of laws and regulations.

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<sup>10</sup> Soekanto, Soerjono. (2007). Factors Influencing Law Enforcement. Jakarta: PT RajaGrafindo Persada, p. 5.

<sup>11</sup> Friedman, Lawrence M. (2009). Legal Systems: A Social Science Perspective (M. Khozim, Trans. & Ed.). Bandung: Nusa Media.

<sup>12</sup> Rahardjo, Satjipto. (2012). Legal Science. Bandung: Citra Aditya Bakti, p. 19.

<sup>13</sup> Santoso, Agung Nugroho. (2023). Reconstruction of the Handling of Corruption Crimes through the Plea Bargaining System by the Prosecutor's Office Based on Justice Values (Dissertation). Sultan Agung Islamic University (UNISSULA), p. 34.

The analysis was compiled by mapping the series of actions of the Public Prosecutor at the Tuban District Attorney's Office into several action clusters in the execution process, each of which was assessed based on relevant formal and material legal grounds. The clusters assessed included the implementation of a legally binding decision, the issuance of an asset search order and the execution of an execution seizure, a blocking application and the registration of the seizure at the land office, the involvement of the Asset Recovery Agency and an independent assessment, the determination of a substitute prison sentence, and the preparation of an auction proposal that resulted in the non-execution of the fine through an asset auction. This cluster division provides space to assess the parts that are in line with the provisions of laws and regulations and the parts that raise problems of legal certainty and effectiveness.

The issuance of the Court Decision Implementation Order (P-48) by the Head of the Tuban District Attorney's Office after the Supreme Court Decision Number 5559 K/Pid.Sus/2023 became legally binding reflects the prosecutor's function as the executor of criminal decisions. Article 270 of the Criminal Procedure Code emphasizes that the implementation of court decisions is carried out by the prosecutor, while Article 30 paragraph (1) letter b of the Law on the Prosecutor's Office of the Republic of Indonesia places the prosecutor as the executor of the judge's determination and court decisions in criminal cases. The issuance of P-48 based on the cassation decision and the time of issuance close to the time the decision became final indicates compliance with the framework of executorial authority stipulated in Article 270 of the Criminal Procedure Code and Article 30 paragraph (1) letter b of the Prosecutor's Office Law. The assessment of this cluster did not find any indication of procedural deviations as long as the substance of the P-48 contains orders that are consistent with the decision's order.

Issuance of a Search Order for the Convict's Property (P-48A), implementation of asset tracing, and execution of seizure of land and buildings US property is the implementation of the prosecutor's obligation to seek to fulfill the criminal fine from the convict's assets. Article 59 paragraph (1) of the Excise Law stipulates that the criminal fine is fulfilled from the convict's assets and/or income if payment is not made, so that the prosecutor not only executes the corporal punishment, but is also obliged to find assets that can be used as objects of execution confiscation. Chapter XIV of the Criminal Procedure Code, especially Articles 270 to 276, provides a general framework for implementing the decision, including the implementation of the criminal fine and the consequences if the fine is not paid.

Republic of Indonesia Attorney General's Regulation Number PER-013/A/JA/06/2014 concerning Asset Recovery and its amendments, especially Article 5 paragraph (3) letter b, letter c, letter d and paragraph (4), regulates the authority of the Attorney General's work unit to track, confiscate, and manage assets in the context of recovering state financial losses. The issuance of P-48A,

identification of AS's land in Kudus Regency as a potential object for execution confiscation, and the preparation of the Minutes of Confiscation of the Convict's Property (Pidsus-38A) are in line with the construction of Article 59 paragraph (1) of the Excise Law and the framework for the execution of criminal fines in the Criminal Procedure Code. AS's refusal to sign the confiscation minutes was responded to by the prosecutor by preparing a minutes of refusal, so that from an administrative perspective, the evidence for the execution confiscation action remains documented.

The application for checking, blocking, and recording the blocking of land title No. 04409 in the name of AS at the Kudus Regency Land Office places criminal execution at an intersection with regulatory provisions related to land administration. The general framework for land registration is regulated in Government Regulation No. 24 of 1997 concerning Land Registration, which provides a function of protection and certainty of legal status through recording rights, burdens, and other legal records in the land book. Regulation of the Minister of ATR/BPN No. 13 of 2017 regulates the recording of blocking at the initiative of the ministry for cases deemed strategic, while Regulation of the Minister of ATR/BPN No. 16 of 2021, specifically Article 127 paragraphs (1) to (5), contains procedures for recording criminal seizures in the context of investigations or prosecutions, which require a seizure order from the investigator and permission from the Head of the District Court. The Public Prosecutor at the Tuban District Attorney's Office positioned the confiscation carried out as an execution confiscation based on a final decision based on Article 270 of the Criminal Procedure Code and Article 30 paragraph (1) letter b of the Prosecutor's Office Law, while the Kudus Regency Land Office interpreted the application for confiscation registration as part of the criminal confiscation regime at the investigation or prosecution stage which must follow Article 127 of the Regulation of the Minister of ATR/BPN Number 16 of 2021.

The blocking, initiated by the ministry, has been carried out, but the registration of the execution seizure has not been carried out because the Land Office requires a determination from the Chief Justice of the District Court for the seizure to be carried out. This situation indicates that the Prosecutor's Office's actions are within the scope of its executive authority, while the obstacles arise from the misalignment of interpretation between criminal procedure law and land administration regulations.

The involvement of the Indonesian Attorney General's Office's Asset Recovery Agency and the implementation of an independent assessment by an accredited Public Appraisal Service Office of assets subject to execution seizure illustrates the application of an asset recovery mechanism for cases with objects of high economic value and high administrative costs. Republic of Indonesia Attorney General's Office Regulation Number PER-013/A/JA/06/2014 emphasizes that such

cases can be handled through a centralized asset recovery mechanism, as reflected in Article 5 paragraphs (3) and (4) which open up the possibility of handing over or taking over the handling of asset recovery to a special unit. Attorney General's Guidelines Number 3 of 2022 concerning the Auction and Direct Sale of Confiscated Objects, Evidence, State Confiscated Goods and Execution Confiscated Objects within the Attorney General's Office require an assessment by an independent appraiser before submitting an auction to the State Assets and Auction Service Office (KPKNL). The Tuban District Attorney's report to the East Java High Prosecutor's Office and the Asset Recovery Agency, the issuance of a Warrant by the Deputy Attorney General for Special Crimes, and the implementation of an appraisal by a certified Public Appraisal Services Office are a series of actions in accordance with PER-013/A/JA/06/2014 in conjunction with its amendments and Attorney General's Guidelines Number 3 of 2022. This cluster can be considered to have met the Attorney General's internal procedural standards regarding asset recovery.

The issuance of a Substitute Imprisonment Determination Letter (SP-4) that adjusts the length of the subsidiary imprisonment sentence to the value of the seized assets successfully controlled by the state places the prosecutor in the obligation to technically interpret the relationship between fines and substitute imprisonment. Supreme Court Decision Number 5559 K/Pid.Sus/2023 imposes a fine of IDR 3,000,000,000.00 with a subsidiary of 1 (one) month of imprisonment, so that the implementation of the fine must not deviate from the limits of the type of crime and the maximum imprisonment stated in the decision. Chapter XIV of the Criminal Procedure Code provides a general basis for the implementation of fines and replacement with imprisonment if the fine is not paid, while the Prosecutor's Office's internal regulations and guidelines regarding the implementation of fines and the preparation of SP-4s regulate the procedures for calculating the fulfillment of fines through confiscation and auction of assets. The calculation in the SP-4 that reduces the subsidiary imprisonment period from 30 days to 21 days is based on the value of the seized assets from the execution as a result of the appraisal, which is deemed to have reduced the portion of the fine that must be fulfilled through imprisonment. This practice remains within the corridor of the Criminal Procedure Code and the verdict as long as the calculation of asset value, the basis for conversion, and administrative documentation are carried out transparently and do not change the type or maximum limit of the sentence imposed by the judge.

The preparation of the auction submission to the KPKNL and the obstacles arising from the unregistered execution seizure in the land register reflect the intersection of the Attorney General's Office's internal procedures and the state's auction governance and land administration. Attorney General's Guideline Number 3 of 2022 requires that seized execution assets to be auctioned must have been appraised by an independent appraiser and that the auction seller has legal

authority. Minister of Finance Regulation Number 213/PMK.06/2020 concerning Auction Implementation Guidelines stipulates that the KPKNL may only conduct an auction if the legal status of the auction object is clear, free from any specific disputes, and supported by adequate documentation, including evidence of a valid execution seizure and registration with the relevant agency.

The Tuban District Attorney's Office has fulfilled the requirements for an independent assessment, has designated itself as the auction seller, and has coordinated with the Asset Recovery Agency, but the auction proposal cannot proceed because the Kudus Regency Land Office has not recorded the execution seizure in the land register. This obstacle indicates that the procedural obligations under the Attorney General's authority have essentially been fulfilled, while the obstacles to the auction implementation stem from administrative requirements in the land sector that are strictly read by the Land Office.

The final result of this series of obstacles was apparent when Convict AS had completed his 2 (two) year prison sentence and 1 (one) month subsidiary prison sentence, while the auction of assets for the execution of seizure had not yet been carried out. Article 54 of the Excise Law stipulates that fines in excise crimes are determined in multiples of the excise value that should be paid, while Article 59 paragraph (1) orders that the fulfillment of fines be taken from the assets and/or income of the convict if payment is not made. The normative objective of these two provisions is the real recovery of state revenue losses. The condition where the corporal punishment has been completed, while the fines have not been fulfilled through the execution seizure mechanism and asset auction, shows a gap between the purpose of imposing fines in the Excise Law and the actual results of the execution. The overall assessment of the implementation of the execution seizure in the AS case shows that the actions of the Public Prosecutor at the Tuban District Attorney's Office have generally attempted to follow the framework of the Criminal Procedure Code, the Excise Law, the Attorney General's Law, the Attorney General's Regulations regarding asset recovery, the Attorney General's Guidelines regarding auctions, land regulations and the Ministry of Finance's regulations regarding auction procedures.

The gap stems more from disharmony and differences in interpretation between legal regimes, especially between criminal executions in the Criminal Procedure Code and the Attorney General's Law and the procedures for recording criminal confiscations in land regulations, which ultimately reduces the level of legal certainty and effectiveness in fulfilling criminal excise fines through execution confiscations.

### **3.3. The Effectiveness of the Law on the Implementation of Execution Seizures as an Effort to Fulfill Criminal Fines in Excise Crimes**

The description of the implementation of the execution seizure in excise crimes at the Tuban District Attorney's Office describes the series of actions taken by the prosecutor from the issuance of the execution warrant to the preparation of the asset auction. This series raises questions regarding the guarantee of legal certainty for the state as the holder of the right to criminal fines and for the convict as the subject of the execution. Legal certainty in this context is understood as the clarity of the basis of authority, procedures, and legal consequences of each execution action, including the relationship between the court decision and the mechanisms for blocking, recording, and auctioning assets. Analysis of the dimensions of legal certainty is a prerequisite before assessing the effectiveness of the implementation of execution seizures, considering that the success of fulfilling criminal fines can only be fully measured if it is within a definite and predictable regulatory framework.

The analysis of legal certainty in the implementation of execution confiscation against the US convict begins with a mapping of the normative framework that regulates criminal excise fines and the prosecutor's authority to execute, then its compatibility with the theories of legal certainty that have been outlined in the theoretical framework is tested. The normative framework primarily includes Law Number 11 of 1995 concerning Excise as last amended by Law Number 7 of 2021 (hereinafter referred to as the Excise Law), the Criminal Procedure Code, Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia as amended by Law Number 11 of 2021 (the Attorney General's Office Law), Regulation of the Attorney General's Office of the Republic of Indonesia concerning Asset Recovery, Attorney General's Guidelines Number 3 of 2022, Government Regulation Number 24 of 1997 concerning Land Registration, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 13 of 2017 and Number 16 of 2021, and Regulation of the Minister of Finance Number 213/PMK.06/2020 concerning Auction Implementation Guidelines.

Hans Kelsen has the perspective that law is understood as a hierarchical order of norms, where lower level norms gain legitimacy from higher norms until they reach a basic norm (Grundnorm).<sup>14</sup> The Excise Law in Articles 54, 56, 59, and 62 defines offenses, criminal threats, fines, and confiscation of excisable goods. The Criminal Procedure Code, specifically Article 270, places the implementation of criminal decisions on the prosecutor as emphasized by Article 30 paragraph (1) letter b of the Attorney General's Law. The Attorney General's Regulation regarding asset recovery and the Attorney General's Guidelines Number 3 of 2022

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<sup>14</sup>Ahmad Faisal, "An Epistemological Review of Hans Kelsen's Thoughts on Law," *Al-Istinbath: Jurnal Hukum Islam*, Vol. 5 No. 1, 2020

lower these provisions to the internal operational level for their implementation. Related regulations also include Government Regulation Number 24 of 1997 and Regulations of the Minister of ATR/BPN Number 13 of 2017 and Number 16 of 2021 which regulate the procedures for blocking and recording seizures of land rights, while Regulation of the Minister of Finance 213/PMK.06/2020 regulates the legal requirements for auction objects and the authority of the KPKNL. In principle, this order should produce adequate vertical and horizontal coherence so that prosecutors as the implementers of decisions obtain clear, consistent and hierarchical guidelines.

Lord Lloyd argued that the existence of a legal system requires a minimum degree of regularity and certainty, so that without this degree, it is difficult to say that a system of norms deserves to be called a "legal system." Regularity concerns the existence of a recurring and reliable pattern of norms and practices, while certainty refers to the ability of legal subjects to predict the legal consequences of an action based on existing rules.

From a normative structural perspective, it can be concluded that the Excise Law provides a relatively consistent pattern. Article 56 defines the act of illegally possessing excisable goods as a criminal offense, Article 54 stipulates a fine in multiples of the excise tax, Article 59 paragraph (1) states that the fine is met from the convict's assets and/or income if not paid voluntarily, and Article 62 regulates the confiscation of excisable goods for the state. The Criminal Procedure Code and the Attorney General's Law explicitly appoint prosecutors as the executors of criminal decisions (Article 270 of the Criminal Procedure Code and Article 30 paragraph (1) letter b of the Attorney General's Law). The Attorney General's Regulation on asset recovery and the Attorney General's Guidelines Number 3 of 2022 provide procedural details from asset tracking to auction. This configuration, at the das sollen level, forms a pattern of regularity, which can be interpreted as meaning that every excise crime with a fine should result in an attempt to execute the fine through the convict's assets if the convict fails to pay the fine decided by the panel of judges.

Analysis at the das sein level itself shows that this pattern has been implemented by the Tuban District Attorney's Office through the issuance of P-48 and P-48A, asset tracking, confiscation of land and buildings owned by AS in Kudus Regency, application for blocking and recording of confiscation to the Kudus Regency Land Office, involvement of the Asset Recovery Agency, and appraisal by the Public Appraisal Services Office. These steps are within the corridor of applicable norms. The Kudus Regency Land Office responded by blocking the land on the initiative based on Regulation of the Minister of ATR/BPN Number 13 of 2017, but postponed the registration of the execution confiscation based on Article 127 of Regulation of the Minister of ATR/BPN Number 16 of 2021 as a criminal confiscation regime for the purpose of investigation or prosecution, which

requires permission from the Head of the District Court. Land regulations do not explicitly distinguish between confiscation in process and confiscation in the context of executing an inkracht decision, which is specifically for satisfying unpaid fines by the convict. The regularity patterns of the criminal execution regime and the regularity patterns of the land regime move parallel but are not adequately connected.

The predictability required by Lord Lloyd's was thus only partially achieved. Statutory norms and internal prosecutorial regulations conveyed that excise crimes would result in corporal punishment and fines, enforceable through assets. The sentence, as in the US convict's verdict, imposed corporal punishment (two years' imprisonment and one month's subsidiary imprisonment), which was carried out to completion, while the fines were not realized through the asset auction because the requirement to register an execution seizure, a prerequisite for the auction, could not be fulfilled. The state's right to fines, as affirmed in the Excise Law and the Supreme Court's ruling, was therefore not fully realized. The existing regulatory system met a minimum degree of regularity and certainty in a formal sense, but failed to provide full predictability for the implementing apparatus and the state, as the holder of the right to fines.

Gustav Radbruch's theory of legal certainty places positive law as the starting point, which can be interpreted as meaning that legal certainty demands that regulations be formulated clearly, applied consistently, and allow...

both officials and citizens predict the legal consequences<sup>15</sup> Radbruch outlined four basic elements of legal certainty: law must be positive (written regulations), law must be based on facts, the facts regulated must be clearly formulated, and positive law must not be easily changed.<sup>16</sup>

The first element is fulfilled through the existence of several fairly comprehensive regulations consisting of the Excise Law, the Criminal Procedure Code, the Attorney General's Law, the Attorney General's Regulation on Asset Recovery, the Attorney General's Guidelines Number 3 of 2022, Government Regulation Number 24 of 1997, the Minister of ATR/BPN Regulation Number 13 of 2017 and Number 16 of 2021, and PMK 213/PMK.06/2020. The existence of these regulations makes the Public Prosecutor have carried out his duties in accordance with the corridor of applicable laws and regulations, this also includes the apparatus of the Kudus Regency Land Office and related stakeholders, each of whom has a basis in the

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<sup>15</sup>Satria Ardi Yana and Bambang Tri Bawono, "Effectiveness of Implementing ITE Laws and Investigations of Damnation through Social Media," *Law Development Journal*, Vol. 2 No. 3, September 2020, p. 439.

<sup>16</sup>Anak Agung Istri Agung, I Nyoman Sukandia, I Nyoman Alit Puspadma, and Yuliia Chornous, "Legal Protection and Legal Certainty in Indonesia's Land Title Registration System", *Jurnal Akta*, Vol. 9 No. 4 (December 2022): 524–540.

form of written positive law which becomes the basis for doing and/or not doing something.

The second element, law based on facts, is also clearly reflected. The Excise Law links the threat of fines to the amount of excise duty payable, making state losses due to criminal acts a key parameter. The fact that there is a final decision imposing a fine of IDR 3,000,000,000 (three billion rupiah), the failure of convict AS to pay the fine, and the results of asset tracing that found convict AS's assets in the form of land and buildings serve as the basis for the execution of the seizure. The implementation of asset tracing, confiscation, and the request for an appraisal of these assets demonstrates that norms are a response to the legal facts in convict AS's case.

The third element, clarity of legal formulation, reveals weaknesses. The Excise Law, the Criminal Procedure Code, and the Attorney General's Law are relatively clear in placing the obligation to pay fines from the convict's assets and the authority to execute them on the prosecutor's behalf. The authority to execute these fines, as outlined in these laws, has been further regulated down to the technical level through the Attorney General's Regulations and the Attorney General's Guidelines, which detail procedures for asset recovery and auctions. Regulation of the Minister of ATR/BPN Number 16 of 2021 outlines procedures for recording criminal seizures "for the purpose of investigation or prosecution," which are based on a seizure warrant and permission from the Chief Justice of the District Court. This regulation does not explicitly regulate the mechanism for recording seizures in the context of executions to satisfy fines. The absence of normative provisions governing the recording of execution seizures to satisfy fines creates room for multiple interpretations. The prosecutor placed P-48 and the inkracht decision as sufficient executorial basis to submit a request for registration of execution seizure of the certificate of ownership of the convict AS which has been registered for seizure, while the Kudus Regency Land Office is guided by the principle that seizure registration only occurs at the investigation/prosecution stage as regulated by the Minister of ATR/BPN Regulation Number 16 of 2021. This situation shows that the clarity of the legal formulation in the provisions for registration of seizure has not been optimally fulfilled, thereby reducing the degree of certainty according to the Radbruch criteria.

The fourth element is positive legal stability. During the handling and execution of the AS case, there were no significant changes to the Excise Law, the Criminal Procedure Code, the Attorney General's Law, or relevant land and auction regulations. This stability should provide authorities with certainty to act without worrying about the potential for sudden changes to statutory provisions. The problem that arose was not instability, but disharmony between norms.

The normative regulations governing the implementation of excise fines confiscation, when linked to the requirements of legal certainty as stated by

Radbruch, have fulfilled the elements of positive law, fact-based, and stability, but have not fully fulfilled the element of clarity of formulation in the point relating to the implementation of the confiscation of land and buildings that have been subject to execution confiscation by the Public Prosecutor. This deficiency is then apparent in das sein in the form of a delay in the auction of assets seized for execution in the AS case.

Jan M. Otto formulated five prerequisites for realistic legal certainty, namely: legal rules must be clear, consistent, and easily accessible; government officials must apply the rules consistently; the majority of citizens must accept the rules and adapt their behavior; judges must be independent and consistent; and decisions must be implemented concretely.

The first prerequisite is, in principle, met at the formal level. Norms regarding excise crimes, criminal judgment execution, asset recovery, land governance, and auctions are outlined in various clear and accessible regulations. The Excise Law, the Criminal Procedure Code, and the Attorney General's Law provide general direction; the Attorney General's Regulation, Attorney General's Guidelines Number 3 of 2022, the Regulation of the Minister of ATR/BPN, and PMK 213/PMK.06/2020 regulate technical implementation. This structure demonstrates clarity when linked to the relationships between laws within a single group. For example, within the context of similar regulations, substantive clarity is evident. Although horizontal consistency between these groups of laws does not reflect clarity due to the lack of explicit regulation of the execution seizure category in land regulations.

The second prerequisite relates to apparatus consistency. The actions of the Public Prosecutor at the Tuban District Attorney's Office and the higher-ups in the AS case demonstrate compliance with the Excise Law, the Criminal Procedure Code, the Prosecutor's Office Law, the Prosecutor's Office Regulations, and the Attorney General's Guidelines. The Public Prosecutor's steps include issuing a P-48 to enforce the verdict, issuing a P-48A to search for the convict's assets, conducting asset tracing and seizure, filing a blocking and seizure registration request, involving the Asset Recovery Agency, conducting an independent appraisal, and appointing an auction official. The Kudus Regency Land Office is also consistent with Minister of ATR/BPN Regulation Number 16 of 2021, which requires a basis for seizure and the appointment of the Chief Justice of the District Court for recording criminal seizures. Each institution is subject to a sectoral normative framework. Legal certainty, as Otto defines it, therefore shifts from a matter of apparatus compliance to a matter of the quality and synchronization of the regulations they adhere to.

The third prerequisite concerns public acceptance of the rules. The concept of criminalization in the Excise Law, which emphasizes the recovery of lost state revenues through fines, aligns with public expectations that violators of excise

regulations receive a deterrent effect and that the state can recover the losses incurred. Literature on the principle of legal certainty also emphasizes the importance of predictability and non-discrimination in the application of sanctions to maintain public trust in the legal system.<sup>17</sup> A situation where corporal punishment is carried out to completion while fines have not been paid through execution seizures and asset auctions has the potential to obscure this message. Norms that ideally reflect fiscal justice are distorted during the implementation stage.

The fourth prerequisite, namely judicial independence and consistency, is relatively well met. The Tuban District Court's decision, upheld by the Surabaya High Court and the Supreme Court in the AS case, demonstrates consistency in the interpretation of the elements of the offense, the sentencing, and the treatment of evidence. There are no vertical conflicts between the decisions that could jeopardize the certainty of the parties' rights and obligations.

The fifth prerequisite relates to the decision's enforceability. This is where the main issue lies. The Supreme Court's cassation decision imposed a prison sentence and a fine of Rp3,000,000,000.00, with a subsidiary sentence of one month's imprisonment. At the enforcement level, the prison sentence and subsidiary imprisonment have been fully implemented, but the auction of assets resulting from the execution seizure has not yet taken place due to the failure to meet the administrative requirements for registering the seizure of assets owned by convict AS. The Kudus Regency Land Office is guided by Regulation of the Minister of ATR/BPN Number 16 of 2021, which essentially illustrates a difference in understanding between the Public Prosecutor and the Kudus Regency Land Office regarding the registration of seizures. This situation indicates that the decision is not yet fully "enforceable" in Otto's sense. This analysis can be concluded that legal certainty is only realized in the aspect of criminal punishment, not in the aspect of recovering state losses through criminal fines.

Sudikno Mertokusumo defines legal certainty as a guarantee that the law can be implemented properly and provides protection for the rights of legal subjects. This means that a person's rights are only truly recognized after receiving a determination through a legal decision. Law, as a general rule, allows everyone to know what is permissible and what is not, while court decisions provide a concrete definition of rights and obligations.

The study of the implementation of execution seizure in the AS case can be linked to the Excise Law, which expressly mandates the payment of criminal fines from the convict's assets and/or income if the fine is not paid voluntarily. Meanwhile, Supreme Court Decision Number 5559 K/Pid.Sus/2023 stipulates a fine of IDR

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<sup>17</sup>Jeane Neltje and Indrawiency R. Panjiyoga, "Values Included in the Principle of Legal Certainty," INNOVATIVE: Journal of Social Science Research, Vol. 3 No. 5, 2023, pp. 2034–2039.

3,000,000,000.00 with a subsidiary of 1 month's imprisonment. The Criminal Procedure Code and the Attorney General's Law place the obligation of execution on the prosecutor. The Attorney General's Regulations and the Attorney General's Guidelines provide a procedural framework for asset recovery and auctions. In das sollen, the state's right to recover losses through criminal fines has received sufficient normative and procedural recognition.

The Tuban District Attorney's Office's efforts in implementing P-48 and P-48A, conducting asset tracing, confiscating land and buildings owned by AS, filing for blocking and recording the seizure, involving the Attorney General's Asset Recovery Agency, and requesting an appraisal through an accredited independent KJPP are processes to exercise the normative rights held by the state. Obstacles at the stage of recording the execution seizure and the inability to carry out the asset auction until the end of the criminal sentence indicate that these rights are not yet fully protected at the implementation level. The state is legally recognized as entitled to a fine, but in fact has not received equivalent financial recovery. This situation, when linked to Sudikno's perspective, can indicate that legal certainty is only present at the declarative level in the form of norms and decisions, not yet fully present at the level of realization of the state's rights.

Law, as a guideline for behavior, also serves to foster awareness among tobacco business actors. The design of fines in the Excise Law is intended to maximize deterrence. The implementation of the US case conveys a strong message regarding the risk of losing one's freedom through corporal punishment, but the message of the certainty of losing assets to cover the fine is not fully conveyed. The general deterrent effect of fines is diminished because normative orders are not fully followed by the implementation of the execution of the convict's assets.

The discussion of the legal effectiveness of the execution of confiscation against Convict AS departs from the normative objectives of the regulation of criminal fines in the Excise Law. Article 54 and Article 56 of Law Number 11 of 1995 concerning Excise as amended by Law Number 7 of 2021 construct criminal fines in multiples of the excise value that should be paid as an instrument for recovering state revenue losses as well as a means of providing a deterrent effect on criminals in the field that is the object of excise taxation. Article 59 paragraph (1) of the Excise Law mandates that fines be paid from the convict's assets and/or income if payment is not made voluntarily, while the Criminal Procedure Code and the Prosecutor's Law place the prosecutor as the executor of criminal decisions. This normative objective assumes that criminal fines must be realized through the execution confiscation mechanism up to the auction of the convict's assets if the convict does not make payment of the fine.

The theory of legal effectiveness holds that the validity of law is not solely measured by the existence of written regulations, but rather by the degree to which the social goals intended by the legislators are achieved in practice (law in

action). Soerjono Soekanto explains that the effectiveness of law enforcement is related to the degree to which the goals of the legal system are achieved through their influence on the behavior of legal subjects. Norms are considered effective when the behavior of law enforcement officers and citizens aligns with the patterns established by statutory regulations. Unclear legal construction and the lack of harmonization of norms will open up space for disputes over authority and reduce the effectiveness of criminal law enforcement.<sup>18</sup>.

The legal effectiveness approach is also related to the idea of real legal certainty put forward by Jan M. Otto. Realistic legal certainty demands not only adherence to the hierarchy of norms, but also procedural regularity at the implementation stage.<sup>19</sup> The law is said to be certain if the decision can be executed without administrative obstacles, authorized officials have a uniform understanding, and technical procedures at stakeholder agencies do not hinder the implementation of court decisions. This condition aligns with the importance of harmonizing basic legal values in Indonesia's constitutional state, where interrelated systems of norms should work coherently to achieve the goals of justice, benefit, and certainty.<sup>20</sup>.

Law enforcement is considered effective when the applicable norms are not only formally valid, but are also followed and implemented by law enforcement officers and citizens consistently so that the desired social goals can be achieved.<sup>21</sup> The effectiveness of law is related to the working power of law as a social institution that regulates and directs behavior, so that legal products that are not well socialized or do not receive institutional support will have difficulty working effectively in reality.<sup>22</sup> The function of law itself is interpreted as including maintaining order, protecting interests, and mediating conflicts, so that it is not only regulatory and coercive.<sup>23</sup>.

The first factor is the legal factor, which includes the quality of the material content, consistency, and completeness of the regulations that form the basis for law enforcement. The normative framework for the AS convict's case rests on the Excise Law, the Criminal Procedure Code, the Prosecutor's Law, the Prosecutor's Regulation on Asset Recovery, Attorney General's Guidelines Number 3 of 2022,

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<sup>18</sup>Haryono and Bambang Tri Bawono, "Relevance of Legal Certainty in Criminal Consent in The Eradication of Corruption Law," *Law Development Journal*, Vol. 2 No. 3, 2020.

<sup>19</sup>JM Otto, "Real Legal Certainty in Developing Countries", pp. 15–16

<sup>20</sup>Bambang Tri Bawono, "Questioning the Harmonization of Basic Legal Values in the Diorama of Indonesia's State of Law Thought," *Pena Justitia*, Vol. 20 No. 1, 2020.

<sup>21</sup>Mohd. Yusuf DM, Andry Kusuma Putra, Revi Yanti Hasibuan, and Selvin Delpia, "Factors Influencing Law Enforcement in Society," *Scientific Journal of Law*, Vol. 5 No. 4 (2025).

<sup>22</sup>Lalu M. Alwin Ahadi, "The Effectiveness of Law in the Perspective of Legal Philosophy: The Relationship between the Urgency of Socialization and the Existence of Legal Products," *USM Law Review*, Vol. 5 No. 1 (2022).

<sup>23</sup>Marfuah, "The Effectiveness and Function of Law in Society: A Legal Philosophy Perspective," *Desiderata: Law Review*, Vol. 1 No. 2 (2024).

Government Regulation Number 24 of 1997 concerning Land Registration, Minister of ATR/BPN Regulations Number 13 of 2017 and Number 16 of 2021, and Minister of Finance Regulation Number 213/PMK.06/2020 concerning Auction Implementation Guidelines. The regulation of excise criminal penalties and the execution of judgments essentially form a strong design because the Excise Law links corporal punishment and fines to state losses and their fulfillment through the convict's assets. The Criminal Procedure Code and the Prosecutor's Law affirm the prosecutor's position as the executor of the judgment. The Prosecutor's Regulation and Attorney General's Guidelines Number 3 of 2022 reduce it to the technical level of asset recovery and auction procedures, thus normatively leading to effective recovery of state losses. Complexity arises in the land and auction regime, because Government Regulation Number 24 of 1997 and Regulation of the Minister of ATR/BPN Number 13 of 2017 only provide a blocking mechanism and registration of encumbrances, Regulation of the Minister of ATR/BPN Number 16 of 2021 regulates the registration of criminal seizures at the investigation or prosecution stage based on a seizure order and permission from the Head of the District Court, while Regulation of the Minister of Finance Number 213/PMK.06/2020 requires the legal status of the object to be clear and have been registered as seizure before it can be auctioned by the KPKNL. The absence of explicit regulations regarding execution seizures to fulfill criminal fines after a final and binding decision creates a normative construction vacuum at the execution seizure recording stage, which results in differences in interpretation between the Public Prosecutor who bases it on P-48 and the inkracht decision and the Kudus Regency Land Office which adheres to the criminal seizure scheme at the investigation/prosecution stage in the Regulation of the Minister of ATR/BPN Number 16 of 2021, and ultimately reduces the effectiveness of the implementation of criminal fines because it opens up space for authority disputes and delays the recovery of state losses.

The second factor is the law enforcement factor related to integrity, professionalism, coordination, and institutional commitment in implementing norms. Law enforcers involved include the Public Prosecutor and the ranks of the Prosecutor's Office (Tuban District Attorney, East Java High Prosecutor's Office, Asset Recovery Agency, and Deputy Attorney General for Special Crimes), BPN (Kudus Regency Land Office and Central Java Provincial BPN Regional Office), KPKNL, and Tuban Class IIB Penitentiary. The Tuban District Prosecutor's Office's steps through the issuance of P-48 and P-48A, implementation of asset tracing and confiscation, blocking and seizure registration requests, involvement of the Asset Recovery Agency, appraisal requests, and preparation of SP-4 demonstrate high compliance with the normative framework as well as an orientation towards the realization of criminal fines, not merely fulfilling formalities. The Land Office and KPKNL's stance is consistent with sectoral regulations: the BPN implements blocking based on ATR/BPN Ministerial Regulation Number 13 of 2017 and rejects the registration of execution seizures by referring to ATR/BPN Ministerial

Regulation Number 16 of 2021, while the KPKNL requires clarity on the legal status of the object and the registration of seizures in accordance with PMK Number 213/PMK.06/2020. However, inter-agency coordination is a weak point, because differences in interpretation between the Prosecutor's Office, which interprets executive authority as sufficient basis for registration of execution seizures, and the BPN, which adheres to the construction of seizures at the investigation/prosecution stage, are not immediately resolved through harmonization mechanisms or references to court decisions, so that the effectiveness of the implementation of criminal fines is reduced by the lack of procedural synchronization across institutions.

The third factor is the infrastructure or facilities factor, which encompasses the institutional framework, procedures, technology, budget, and administrative support as prerequisites for effective law enforcement. In the context of the execution seizure of the assets of convict AS, the main facilities include the blocking mechanism and seizure registration at the Kudus Regency Land Office, the state auction system through the KPKNL, the existence of the Asset Recovery Agency, the availability of independent public appraisers, and administrative support within the prosecutor's office and correctional institutions. The Tuban District Attorney's Office has essentially utilized existing facilities by requesting assistance from the Asset Recovery Agency, conducting an assessment by the Public Appraisal Services Office, and preparing for the auction through the KPKNL, with the appointment of an auction official and the preparation of supporting documents based on Attorney General's Guidelines Number 3 of 2022. The main obstacle arises at the meeting point between the prosecutor's office, the land office, and the KPKNL. The state auction system requires the registration of seizures as an absolute prerequisite for legal certainty for auction winners. Meanwhile, the Kudus Regency Land Office strictly interprets Regulation of the Minister of ATR/BPN Number 16 of 2021, thus rejecting the registration of execution seizures without a determination from the Head of the District Court. And the KPKNL, adhering to PMK Number 213/PMK.06/2020, cannot process auctions before the seizure status is legally registered. Consequently, the asset recovery and auction regime cannot function fully due to the lack of institutional integration between criminal execution, land affairs, and auctions. Therefore, the recovery of state losses through criminal fines is hampered not by the absence of normative instruments, but by the disconnection of procedural links between institutions.

The fourth factor is the societal factor, which relates to the level of acceptance, compliance, and response of the perpetrator and the social environment to norms. In the AS case, the community includes the convict as the direct subject of the fine, business actors in the excise sector, and the wider community. AS's behavior demonstrated non-compliance with the fine obligation, as he did not voluntarily pay the fine, refused to sign the confiscation report, and ultimately

served only corporal punishment and subsidiary imprisonment. The norms of the Excise Law and the Criminal Procedure Code actually anticipate this situation through a mechanism for paying the fine from the convict's assets and replacing it with imprisonment. Therefore, the effectiveness of the law at the individual level depends on the state's ability to convert the fine into a real loss to the perpetrator's assets. When subsidiary imprisonment has been served but the asset auction has not yet taken place, the coercive mechanism against the perpetrator's assets has not worked as designed. More broadly, excise penalties should serve a general deterrent function and foster structural compliance in the excise sector through the loss of economic benefits from violations. Law enforcement practices in US cases have the potential to send the message that the primary risk of violation lies in the loss of physical freedom, while the risk of asset loss depends on cross-sector administrative success, thereby weakening the ability of norms to guide business actors' behavior towards full compliance with excise regulations.

The fifth factor is legal culture, which relates to the values, attitudes, and orientations prevailing within law enforcement and society toward the law. The effectiveness of law is determined not only by its normative content but also by the culture that accompanies the existence and dissemination of legal products. Criminal enforcement culture tends to place the resolution of corporal punishment as the primary indicator of case completion. Therefore, after convict AS has served his prison sentence and subsidiary detention until completion, the case is considered administratively closed even though the payment of the fine through execution seizure and asset auction has not yet been fulfilled. In the area of land administration and auctions, a highly formalistic legal culture is evident in the Kudus Regency Land Office, which strictly interprets Regulation of the Minister of ATR/BPN Number 16 of 2021 as the sole regime for recording criminal seizures. The KPKNL, which positions administrative completeness as an absolute requirement for auctions even though the state's material rights to the convict's assets have been declared in a court decision, also protects the certainty of land rights administration but potentially neglects the function of criminal law as an instrument for recovering state losses. At the same time, the legal culture of perpetrators in the excise sector shows that the threat of criminal fines has not been internalized as a real risk, reflected in the continued circulation of cigarettes without excise stamps and the recidivist status of some perpetrators, so that when criminal fines are not followed by effective asset auctions, the normative message about the loss of economic benefits from violations becomes blurred and its deterrent power is weakened.

A comprehensive analysis of the implementation of execution seizures in US cases based on five factors of legal effectiveness reveals an unbalanced pattern. The legal factor has provided a normative design that positions fines as an instrument for recovering state losses. The law enforcement factor within the prosecutor's office demonstrates a relatively strong commitment to following up on decisions

through P-48, P-48A, asset tracing, execution seizures, and the involvement of the Asset Recovery Agency. The facilities factor provides institutional tools for asset recovery and auctions, but they have not been functionally integrated with the land regime. The societal and legal culture factors demonstrate tension between the objectives of fines and the practice, both in terms of the behavior of convicts and the formalistic orientation of supporting institutions.

The main objective of the regulation of excise fines, namely the recovery of state revenue losses based on Article 59 paragraph (1) of the Excise Law, has not been achieved in the AS case. The state has succeeded in implementing corporal punishment and subsidiary imprisonment, but has not succeeded in converting the criminal fine decision into financial recovery through effective execution confiscation. Law enforcement in this case is formally valid, but its effectiveness as a social institution that regulates and directs the behavior of business actors in the excise sector and recovers state losses is still limited. This has resulted in the formation of an implementation gap between the law on the books and the law in action which stems not from the absence of norms, but from regulatory disharmony, suboptimal coordination of law enforcement, and a legal culture that places administrative aspects above the goal of recovering state losses.

#### **4. Conclusion**

The implementation of the execution seizure against Convict AS at the Tuban District Attorney's Office has basically been in line with the executorial authority in the Criminal Procedure Code, the Prosecutor's Law, and the Excise Law through the issuance of P-48 and P-48A, asset tracing, confiscation of land and buildings, blocking and recording at the Land Office, involvement of the Asset Recovery Agency, appraisal, preparation of SP-4, and preparation of auction to the KPKNL, but has not recovered state losses. Structurally, legal certainty is relatively guaranteed, but the weakness of the formulation of categories and mechanisms for recording execution seizures has given rise to double interpretations with the Land Office. Disharmony between regulatory regimes and formalistic institutional orientations makes the criminal fine of Rp3,000,000,000.00 unable to be realized through auction so that the purpose of excise criminalization for a deterrent effect and recovery of state revenue has not been optimally achieved, while reducing the effectiveness of the law as an instrument for recovering state losses for tobacco product business actors.

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