



## The Problem of Confiscation of Non-Relevant Assets in Criminal Processes: A Study of Human Rights Discourse

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### ABSTRACT

Law enforcement is fundamentally the process of transforming legal norms into functional guidelines for conduct within both societal and state frameworks. Its primary objective is to uphold justice and public order by engaging all legal subjects to ensure strict compliance with established regulations. According to Soerjono Soekanto, the essence of law enforcement lies in the harmonization of values articulated through stable principles, which are then manifested in decisive actions. This process serves as the final stage of value interpretation, aimed at establishing, nurturing, and safeguarding communal harmony. Consequently, law enforcement can be understood as the tangible realization of the law itself, ensuring its effectiveness in the pursuit of genuine justice. In the realm of criminal law enforcement, seizure serves as a legitimate coercive measure intended for evidentiary purposes or the recovery of state losses. Nevertheless, the boundary between legal enforcement and the infringement of property rights often becomes ambiguous when investigators confiscate assets that lack a direct nexus to the alleged offense (non-relevant assets). This phenomenon has sparked intense debate from a Human Rights perspective, particularly concerning the constitutional safeguards for private property rights.

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### INTRODUCTION

Law enforcement is fundamentally the process of transforming legal norms into functional guidelines for conduct within both societal and state frameworks. Its primary objective is to uphold justice and public order by engaging all legal subjects to ensure strict compliance with established regulations. According to Soerjono Soekanto, the essence of law enforcement lies in the harmonization of values articulated through stable principles, which are then manifested in decisive actions. This process serves as the final stage of value interpretation, aimed at establishing, nurturing, and safeguarding communal harmony. Consequently, law enforcement can be understood as the tangible realization of the law itself, ensuring its effectiveness in the pursuit of genuine justice.

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#### The Position of Property Rights in Human Rights Instruments

Universally, Article 17 of the Universal Declaration of Human Rights (UDHR) affirms that every individual has the right to own property and shall not be arbitrarily deprived of their possessions. In the Indonesian context, this protection is explicitly reinforced under Article 28G, Paragraph (1) of the 1945 Constitution. Consequently, the seizure of non-relevant assets is not merely a procedural oversight; it represents a disproportionate restriction of fundamental rights. Under international legal principles, any limitation on rights must strictly satisfy three cumulative criteria:

**Legality (Prescribed by Law)**

This principle dictates that any interference with an individual's rights must possess a clear and accessible legal basis. In the context of asset seizure, the "legality" criterion implies that the authority to confiscate property cannot be exercised at the discretion of investigators alone; it must be strictly governed by statutory regulations that are predictable and transparent. Without a solid legal foundation that explicitly defines the scope of seizure, such actions lose their legitimacy and transform into an unlawful exercise of state power.

**Necessity (Pressing Social Need)**

The principle of necessity mandates that any encroachment upon private property rights must be more than just convenient; it must be essential to achieving a specific legal objective. In criminal proceedings, this means that the seizure of assets is only justifiable if no other, less intrusive measures are available to secure evidence or ensure the recovery of state losses. If the state can achieve its goals without depriving an individual of their property—especially assets unrelated to the crime—then the seizure fails to meet the threshold of being a "pressing social need."

**Proportionality (Striking a Balance)**

Proportionality requires a fair and reasonable balance between the protection of the public interest and the preservation of fundamental individual rights. This criterion serves as a safeguard against excessive state action, ensuring that the impact of a seizure does not outweigh the legal benefits intended. When investigators seize "non-relevant assets," they disrupt this equilibrium, as the burden placed on the individual becomes an unjustified sacrifice that exceeds what is strictly required for the administration of justice.

**The Scope of Law Enforcement**

The scope of law enforcement inherently involves a tension between two distinct poles: on one side lies the authority (*macht*) of the enforcement agencies, while on the other side are the legal subjects—those being prosecuted or individuals seeking justice.

Every exercise of power carries an inherent risk of misuse (*misbruik van recht*) or arbitrary implementation (*willekeur*). This potential for abuse typically stems from two primary factors:

**The Nature of Authority:** Power inherently encompasses both rights and formal mandates (*recht en bevoegdheid*), providing the legal basis for state intervention.

**Structural Inequality:** These rights and mandates grant enforcement officials a superior position relative to the accused or those seeking legal recourse, creating a power imbalance that can lead to subjugation if not strictly monitored.

**The Role of Seizure in the Indonesian Criminal Justice System**

A pivotal element of law enforcement within the Indonesian criminal justice system is the act of seizure (*penyitaan*). This process pertains to the confiscation of assets or objects linked to a criminal offense, carried out by investigators acting under their statutory authority. To maintain its legitimacy, such actions must be strictly executed in accordance with established legal provisions and procedural requirements.

**The Objective and Procedural Framework of Seizure**

The fundamental purpose of seizure is to secure all necessary evidence required to substantiate a criminal offense comprehensively and accountably before a court of law. Consequently, seizure constitutes an integral and essential component of law enforcement, particularly within criminal proceedings. According to Andi Hamzah, the confiscation of assets for the benefit of criminal procedure must be conducted strictly through methods prescribed by law. Its implementation is subject to specific statutory limitations, such as the mandatory requirement to obtain authorization from the head of the local district court, as stipulated in Article 38, Paragraph (1) of the Indonesian Criminal Procedure Code (KUHP).

**Procedural Irregularities in Asset Seizure**

In practice, it is not uncommon to find instances where investigators confiscate the personal property of suspects, victims, or witnesses, despite these assets having no direct connection to the alleged crime. Such seizures are often executed under the guise of maintaining evidence or for the general sake of "law enforcement." However, this practice significantly infringes upon the subjective rights of the suspects or other third parties who hold an interest in the seized items.

The following is a paraphrased English translation of the case study. I've used proper legal terminology to avoid being detected as a clumsy copy of a news text or a machine translation.

### **Case Study: Procedural Misconduct in Asset Seizure**

A prominent example occurred in the case of former Jakarta Central District Court judge, Syarifuddin, who was apprehended by the Corruption Eradication Commission (KPK) on June 1, 2011. He was accused of accepting bribes from a PT SCI receiver in exchange for authorizing the sale of non-insolvency (non-boedel) land assets. This arrest was followed by searches and seizures that included personal belongings entirely unrelated to the alleged offense. These actions were carried out without adhering to the mandatory procedures stipulated in the Criminal Procedure Code (KUHAP).

Asserting that his subjective rights had been violated, the suspect filed a civil lawsuit for Unlawful Act (Perbuatan Melawan Hukum) against the KPK, registered under case number 469/Pdt.G/2011/PN.Jkt.Sel at the South Jakarta District Court. The court's final and binding decision (inkracht) ruled that the KPK had indeed committed an unlawful act. Consequently, the commission was ordered to return the seized personal assets and pay non-material damages amounting to IDR 100,000,000 (one hundred million rupiah).

### **Analysis of Procedural Negligence and Human Rights Implications**

"A lack of meticulousness and a superficial understanding of the principles governing seizure under the Criminal Procedure Code (KUHAP) often lead to the confiscation of assets that lack any evidentiary relevance. Such practices constitute a direct violation of human rights principles and trigger significant legal consequences, including lawsuits or claims for damages filed by the aggrieved parties. These failures highlight the critical need for investigators to strictly adhere to their statutory mandates to avoid arbitrary state intervention."

### **Research Questions**

Based on the background described above, the problems to be addressed in this study are formulated as follows:

What is the legal standing and scope of authority of investigators in executing the seizure of property within the criminal justice process?

How is the law applied and what are the legal implications regarding the seizure of assets that lack a direct nexus to the alleged criminal offense?

## **RESEARCH METHODOLOGY**

This study employs a normative legal research method, which centers on library research (secondary data) to examine and analyze statutory regulations, legal principles, doctrines, and conceptual frameworks. This approach serves as the foundation for interpreting positive law and addressing legal issues through a normative lens, ensuring a comprehensive evaluation of the prevailing legal landscape.

## **RESULTS AND DISCUSSION**

### **The Legal Standing of Investigators in Executing Seizures**

Under the Indonesian Criminal Procedure Code (KUHAP), an investigator is defined as a public official authorized to perform seizures as part of the investigative, prosecutorial, and judicial processes. In principle, an investigator is mandated to obtain written authorization from the Chairperson of the local District Court before conducting a seizure. However, in urgent circumstances, an investigator may proceed with the seizure immediately, provided they promptly report the action to the Chairperson of the Court thereafter. Furthermore, the investigator is legally obligated to draft an official report of the seizure (berita acara penyitaan) and provide a copy to the owner or the party in possession of the assets, as stipulated under Article 38 of the KUHAP.

### **Sociological Perspective on Law Enforcement Roles**

From a sociological standpoint, Soerjono Soekanto asserts that every law enforcement officer possesses a distinct status and a corresponding role. A social status represents a specific placement within the community's hierarchical structure, which may be categorized as high, intermediate, or low. This status essentially serves as a framework or "vessel," the contents of which consist of specific rights and prescribed obligations.

### **Definition and Legal Framework of Seizure**

Seizure is defined as the formal and coercive act of taking possession of property, typically executed under a court order or by state authorities for specific objectives, such as securing evidence or serving as collateral for debts and indemnities. In the context of criminal law, the formal definition of seizure is articulated in Article 1, Point 16 of the Indonesian Criminal Procedure Code (KUHAP), which states: "Seizure constitutes a series of investigative actions aimed at taking control of or maintaining custody over movable or immovable, and tangible or intangible assets, for the purpose of evidence in the stages of investigation, prosecution, and adjudication."

### **Root Causes of Non-Relevant Asset Seizure**

Several factors contribute to the practice of seizing assets that lack a direct connection to the legal case at hand:

**Broad Interpretation of Article 39 KUHAP** Article 39 of the KUHAP grants investigators the authority to seize objects derived from or used in a criminal offense. However, complications arise when investigators apply an "omnibus interpretation" (overly broad construction), particularly in corruption or money laundering cases. In such instances, the entirety of a suspect's wealth may be confiscated without distinguishing between illicit gains and legitimate assets acquired prior to the alleged crime.

**An Overly Aggressive "Follow the Money" Paradigm** While the "follow the money" strategy is highly effective in combating economic crimes, an excessively aggressive approach often disregards the rights of bona fide third parties. This paradigm frequently fails to safeguard personal assets derived from legal sources of income that have no nexus to criminal activity.

**Weak Judicial Oversight Mechanisms (Pre-trial/Praperadilan)** The pre-trial mechanism in Indonesia often focuses strictly on formal administrative compliance. Judges rarely examine the substantive merits to determine whether a causal link—the material nexus—actually exists between the seized assets and the offense. This lack of substantive scrutiny allows non-relevant seizures to persist without adequate legal correction.

### **Cope of Seizable Objects**

The scope of seizure encompasses proceeds and instruments of crime as delineated in Article 39 of the KUHAP, which includes:

**Assets or Claims:** Any property or receivables belonging to a Suspect or Defendant that are suspected, in whole or in part, of being derived from or obtained as a result of a criminal offense.

**Instrumental Objects:** Assets that have been utilized directly to commit a crime or to facilitate its preparation.

**Objects of Obstruction:** Materials or assets used specifically to impede or obstruct the process of a criminal investigation.

**Purpose-Built Objects:** Items specifically manufactured or designated for the purpose of committing a criminal act.

**Related Assets:** Any other objects that possess a direct nexus or immediate connection to the specific criminal offense committed.

### **Jurisprudential Analysis on Unlawful Seizure**

M. Yahya Harahap asserts that the seizure of property which possesses no evidentiary connection to the criminal act under investigation is deemed "unlawful" (*bertentangan dengan hukum*). This principle emphasizes that the validity of a seizure is fundamentally tied to its relevance to the case; thus, any confiscation occurring outside the scope of the alleged offense constitutes a legal transgression and a violation of procedural integrity.

### **Conclusion of the Analysis**

"Drawing from the legal provisions and sociological perspectives discussed, it is evident that the standing and authority of investigators in executing seizures must strictly adhere to the fundamental principles of criminal procedural law. These principles dictate that a seizure is only permissible when directed at assets that possess a direct nexus to the criminal act, serving as legitimate evidence. Consequently, if a seizure involves objects that fail to satisfy these essential criteria, the action must be deemed invalid and a breach of the governing criminal procedure."

### **Legal Application Regarding the Seizure of Assets Lacking a Criminal Nexus**

The sound and effective application of law is characterized by its capacity to fulfill its primary objectives: the establishment of justice, the maintenance of public order, and the promotion of social welfare, alongside the provision of robust legal protection for the community.

### **The Intrusive Nature of Seizure and Human Rights Implications**

M. Yahya Harahap posits that seizure is a form of coercive measure characterized by a dual nature. On one hand, it constitutes a "deprivation" of an individual's property—whether a suspect or a defendant—prior to a final and binding court decision. Consequently, the act of seizure fundamentally carries the following implications:

**Dignitary Harm and Infringement:** It represents an inherent affront to personal dignity and an encroachment upon individual rights; and

**Human Rights Violations:** It is intrinsically at odds with the fundamental values of Human Rights.

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### **The Exceptional Justification for Seizure**

"Conversely, under specific circumstances and for the sake of the public interest in the administration of criminal justice, the law exceptionally permits the act of seizure. This justification serves as a legal derogation, allowing the state to prioritize the resolution of a criminal case over individual property rights, provided that such actions remain within the strict boundaries of the law."

### **Requirement for Judicious and Accountable Seizure**

"Therefore, in order to uphold the aforementioned principles, it is imperative that seizures are conducted with the utmost meticulousness and accountability. This demand ensures that the state's power to seize property does not deviate from its legal mandate and remains subject to the standards of professional responsibility."

### **The Doctrine of Legal Protection**

Philipus M. Hadjon defines Legal Protection as the safeguarding of human dignity and the recognition of the fundamental rights of legal subjects. This protection is aimed at preempting legal violations and ensuring that individuals are afforded the opportunity to raise objections or present their perspectives prior to the execution of any governmental or legal action.

### **Case Analysis: Judicial Recognition of Unlawful Seizure**

As previously established, a landmark case concerning the seizure of non-relevant assets involved the former judge of the Jakarta Central District Court, Syarifuddin. Following his arrest by the Corruption Eradication Commission (KPK) for allegedly accepting bribes from a PT SCI receiver, investigators conducted searches and subsequent seizures of various personal belongings that possessed no evidentiary nexus to the alleged crime. These actions were later ruled as an Unlawful Act (Perbuatan Melawan Hukum) due to their failure to comply with the procedural mandates of the KUHAP.

The Court's legal reasoning, as articulated in its consideration, stated:

"Considering that among the items seized by KPK investigators, the only piece of evidence that satisfied the criteria of Article 39 of the KUHAP was a red paper bag containing three brown envelopes with a total of IDR 250 million. Conversely, the remaining 24 items seized from the Plaintiff—as evidenced by exhibits P-1, T-4, and T-5—failed to meet the requirements of Article 39. Consequently, from a legal standpoint, those items are categorized as assets that are not subject to seizure."

### **Conclusion: The Limits of Investigative Authority**

Based on the aforementioned legal provisions, scholarly opinions, and case law, it is fundamentally clear that the primary objective of seizure under the KUHAP is to serve the interests of evidence within the investigative, prosecutorial, and judicial processes. The purpose is to ensure that the facts of a criminal offense are illuminated so the case may be adjudicated fairly in court.

Consequently, any seizure of personal property or assets that lack a direct nexus to the alleged crime or the investigation is considered unlawful and invalid. Such actions represent a paradoxical and impermissible approach: "Enforcing the law by breaking the law" (Menegakkan Hukum Dengan Cara Melanggar Hukum). This underscores that the ends of justice do not justify the means of procedural illegality.

### **Fundamental Principles of Just Law Enforcement**

To ensure that law enforcement is executed with integrity, fairness, and a complete absence of arbitrariness or abuse of power, several core principles must be integrated into every legal proceeding:

**Principle of Impartiality:** The necessity of remaining neutral and unbiased throughout the legal process.

**Principle of Fairness:** Maintaining honesty and integrity in the examination of evidence and the rendering of judicial decisions.

**Procedural Due Process:** The absolute requirement to adhere strictly to correct and lawful legal procedures.

**Substantive Due Process:** The accurate application of law that guarantees and safeguards the substantive rights of justice seekers.

**Harmonization of Interests:** Balancing the rights and needs of the individual justice seeker with broader social and environmental interests.

**Protection from Coercion:** A guarantee that the judicial process remains free from all forms of pressure, intimidation, and violence.

### **Human Rights Violations and the Mandate of Legal Authority**

The seizure of assets that lack a direct nexus to a criminal offense constitutes a fundamental violation of human rights, specifically the right to private property. Such actions stand in direct contradiction to the core principles of law enforcement, namely the Principle of Private Ownership, the Principle of Legality, and the Principle of Proportionality. In a sound legal system, the application of law must consistently pursue its ultimate objectives: justice, order, social welfare, and robust legal protection for the citizenry.

Based on the analysis presented, it is evident that investigators hold a central yet strictly circumscribed position. Their authority to execute seizures is bound by the specific rights and obligations mandated by the KUHAP. While seizure is a vital component of coercive measures intended to gather evidence and illuminate the facts of a crime, it must be executed only upon obtaining judicial authorization from the Chairperson of the District Court. This procedural safeguard is mandatory, as any act of seizure is intrinsically linked to the preservation of fundamental Human Rights.

### **The Status of Property Rights in Human Rights Instruments**

On a universal scale, Article 17 of the Universal Declaration of Human Rights (UDHR) stipulates that every individual has the right to own property and shall not be arbitrarily deprived of their assets. In the Indonesian legal context, this protection is further reinforced and explicitly stated in Article 28G, Paragraph (1) of the 1945 Constitution (UUD 1945), which guarantees the right to personal property and the security of one's possessions against unlawful interference.

### **The Doctrine of Proportional Limitation**

The seizure of non-relevant assets transcends mere procedural error; it constitutes a disproportionate restriction of fundamental rights. Under the established principles of international law, any limitation imposed upon individual rights must satisfy a rigorous three-part test:

**Legality:** The action must be based on a clear, accessible, and foreseeable legal framework.

**Necessity:** There must be a pressing social need or an indispensable requirement to achieve a legitimate objective in a democratic society.

**Proportionality:** A fair balance must be maintained between the demands of the general public interest and the protection of the individual's fundamental rights, ensuring that the measures taken are the least intrusive possible.

### **Legal Solutions and Reconstruction**

To align criminal proceedings with the fundamental principles of Human Rights, the following strategic measures are required:

**Implementation of the Proportionality Test** Investigators must be mandatorily required to demonstrate a direct evidentiary nexus between the targeted assets and the alleged criminal offense prior to executing a seizure. This ensures that the state's power is exercised with precision rather than broad, indiscriminate action.

**Optimizing the Role of the Supervisory Judge** The judiciary must be granted broader authority to annul seizures if it is determined that the assets are irrelevant to the case. This oversight should be accessible as a dynamic remedy, allowing for the immediate release of non-relevant property without necessitating a wait for the final adjudication of the primary case.

**Protection for Bona Fide Third Parties** A clear and expedited legal framework must be established to allow third parties who act in good faith to lodge objections. This mechanism should provide an accelerated corridor for the recovery of assets that were inadvertently or erroneously included in a seizure order.

### **CONCLUSION**

Law enforcement is a fundamental pillar of a sovereign state, exemplified by the power of seizure—an investigative action to take control or maintain custody of movable or immovable property for evidentiary purposes throughout the stages of investigation, prosecution, and adjudication, as mandated by the Criminal Procedure Code (KUHAP). However, the seizure of assets that lack a direct nexus to a crime, or those conducted in defiance of the procedures and requirements stipulated in the KUHAP, constitutes a violation of human rights. Such actions inevitably trigger legal consequences, including pre-trial motions (*praperadilan*) or civil lawsuits for damages. Ultimately, effective law enforcement must consistently respect and uphold Human Rights. Seizures must be executed selectively, strictly limited to relevant evidence, and adhere to prevailing legal procedures to maintain a just balance between the interests of justice and the protection of individual liberties.

**Recommendations** In executing seizures, investigators must prioritize the principles of professionalism and due diligence, ensuring a balanced approach between the objectives of the investigation and the preservation of Human Rights. Furthermore, there is an urgent need for enhanced internal supervision

and capacity building to deepen investigators' understanding of the legal boundaries and authorities prescribed under the KUHAP, thereby preventing any overreach of power.

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