

# Juridical Overview of the Authority for the Confiscation of Evidence in the Code of Criminal Procedure and Book II of the Technical Guidelines for Administration and Technical Guidelines for General and Special Criminal Court Proceedings of the Indonesia Supreme Court

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**Abstract.** This study aims to conduct a juridical review of the authority to seize evidence as regulated in the Indonesian Criminal Procedure Law (KUHAP) and Book II of the Technical Guidelines for the Administration and Technicalities of General and Special Criminal Justice by the Supreme Court. The research involves the analysis of legal texts, namely KUHAP and relevant technical guidelines, and the review of pertinent literature. The research findings reveal that the Supreme Court clearly outlines the authority to seize evidence in the Indonesian criminal procedure in KUHAP and Book II of the Technical Guidelines for the Administration and Technicalities of General and Special Criminal Justice. However, certain ambiguities and variations in interpretation exist in its practical implementation. Therefore, there is a need for harmonisation and refinement of regulations and an enhancement of the understanding and awareness among legal practitioners regarding the authority to seize evidence. This research contributes significantly to understanding the role of evidence seizure in the Indonesian criminal justice system. It could improve legal practices related to the exercise of this authority.

**Keywords:** Authority to Seize Evidence; Indonesian Criminal Procedure Law; Juridical Review

## INTRODUCTION

The Indonesian judicial system plays a crucial role in ensuring that Indonesian citizens receive their rights to justice as guaranteed by the 1945 Constitution. Article 24, § 1 of the Constitution emphasises the independence of the judiciary in upholding the law and justice throughout the country. As the apex of the judicial system, the Supreme Court plays a significant role in maintaining consistency in legal application through cassation and judicial review decisions, ensuring the fair and proper implementation of laws and regulations.

The Indonesian judicial system is a vital structure for upholding the country's principles of justice and law enforcement [1]. One of its primary components is the general judiciary, which handles a wide range of cases, both in criminal and civil matters. The available judiciary is governed by a series of laws, such as Republic of

Indonesia Law No 2 of 1986 concerning the General Judiciary, providing guidelines and a framework to ensure every Indonesian citizen has equal legal access to justice. The general judiciary environment comprises District Courts and High Courts, where District Courts have more limited jurisdiction, while High Courts handle cases of higher significance or complexity [2]. District Courts are typically located at the district or city level, whereas High Courts serve at the provincial level.

The general judiciary plays a crucial role in upholding state laws and regulations and providing legal protection to individuals involved in various legal matters. This is where independent judges investigate, try, and adjudicate everyday cases, such as civil cases like divorces and land disputes, and criminal cases like theft, embezzlement, or other criminal offences. The existence of the High Court as an appellate level in the general judiciary system

allows aggrieved parties dissatisfied with District Court decisions to appeal, ensuring a fair and transparent process [3]. With the available judiciary system, Indonesian citizens can trust that they can seek justice and protect their rights through a legitimate and structured legal avenue.

District Courts serve as the first-instance courts located in cities or district capitals with jurisdiction over the respective town or district [4]. On the other hand, High Courts function as appellate courts in provincial capitals with jurisdiction over the entire province. In adjudicating criminal and civil cases, District Courts rely on applicable formal laws, such as the Criminal Procedure Code (KUHAP) and the Civil Procedure Code (KUHAPer). The trial process involves the presentation of evidence, a crucial element in determining the truth and guilt in a case.

The system of evidence in criminal cases in Indonesia is a critical foundation for achieving justice and fair law enforcement [5]. The basic principle governing the Indonesian system of evidence is the system of proof according to the law negatively. In this paradigm, the plaintiff or prosecutor must meet the established evidentiary standards in the law to support their legal claims. In other words, merely filing a claim or describing a suspected criminal act will not be enough; the party must provide valid and sufficient evidence to support their arguments.

Valid evidence in Indonesian criminal justice includes various elements, including, but not limited to, witness testimony, expert opinions, documents, exhibits, and statements from the defendant [6]. Witness testimony and expert opinions often become central elements in the evidence-gathering process, as they can provide significant insights into the events or facts under investigation. Additionally, physical evidence found or seized by investigators during the investigative process plays a crucial role in the proof process [7]. Therefore, submitting this physical evidence to the prosecution and the court is essential, as it allows the continuity of the legal process and provides a foundation for judges to make informed decisions.

It is essential to note that Indonesia's legal system and regulations may change over time. Therefore, for individuals involved in criminal cases, it is highly recommended to seek the assistance of a lawyer with experience and an in-depth understanding of criminal law in

Indonesia. With the help of a competent attorney, individuals can ensure an accurate knowledge of the applicable legal process when their case is filed and can be guided to gather and present relevant and robust evidence that will strengthen their case [8]. This is a crucial step in ensuring that individual rights remain protected and that the judicial process adheres to fundamental principles of justice.

This research aims to delve deeper into and gain a more profound understanding of the system of evidence in criminal cases in Indonesia, especially within the context of the principle of the system of proof according to the law. This research aims to clarify the role of recognised valid evidence, including witness testimony, expert opinions, documents, exhibits, and statements from the defendant, and the importance of submitting physical evidence in the judicial process. Furthermore, this research also emphasises that in a legal context that evolves, individuals involved in criminal cases must seek assistance from experienced attorneys to ensure an accurate understanding of the applicable legal process when their matter is filed and to guarantee that individual rights remain protected.

### Theoretical Basis

*Seizure.* Seizure is a legal action taken during the investigative stage of criminal cases in Indonesia. It involves investigators taking over or storing property belonging to others to gather evidence in criminal matters. This may include both movable and immovable property suspected to be related to criminal offences. In the understanding of J. Simorangkir, seizure is the method authorised officials use to temporarily control items, whether belonging to the defendant or not, related to a criminal act and used for evidentiary purposes [9]. However, if it is later revealed that the property is not associated with the alleged crime, it will be returned to its owner.

In Indonesian criminal procedure law, seizure is regulated by the KUHAP and can take several forms. Ordinary seizure is the common form that follows standard procedures with a seizure warrant, approval from the Chief of the District Court, and the involvement of village heads or community leaders as witnesses [10]. Moreover, there is a seizure in urgent situations, allowed

without prior warrant or approval, when the case requires swift action to prevent the perpetrator from removing or diverting evidence. A seizure can also occur when caught red-handed, where investigators can take over items related to a criminal act without a warrant as long as the items are handed over to investigators immediately after the arrest [11]. Lastly, there is an indirect seizure, where investigators invite the property owner to surrender it voluntarily. Additionally, the seizure of letters or other writings can only be done with the consent of the party obligated to keep the letter confidential based on applicable regulations. All forms of seizure aim to support the evidentiary process in criminal cases and must be carried out while respecting human rights and complying with the rules that govern them.

*Competence of District Courts.* District Courts, as the first-instance general judicial institution under the Supreme Court, have various tasks and authorities by Law No 2 of 1986. District Courts are responsible for examining, adjudicating, and resolving criminal and civil cases at the first-instance level. Additionally, they are responsible for investigating the legality of arrests or detentions filed by suspects, their families, or legal representatives with the reasons stated before the Chairman of the District Court [12]. District Courts are located in municipalities or capital cities of districts and have jurisdiction over the respective municipality or district.

District Courts have two types of competence, absolute competence (*Attributie van rechtsmacht*) and relative competence (*Distributie van rechtsmacht*). Absolute competence refers to the court's authority to examine specific cases that other judicial institutions, such as Religious Courts, Administrative Courts, and Military Courts, cannot read simultaneously. Relative competence, conversely, pertains to the court's jurisdiction in adjudicating cases based on its territorial jurisdiction. The competence of District Courts is an attribute granted by law to this institution. It is realised through judges as the judicial organ responsible for examining, adjudicating, and making decisions in disputes brought before them [13].

*Legislative Hierarchy.* The Indonesian legal system has a hierarchy that determines the status of legal regulations. This hierarchy is based on the concepts of Hans Kelsen and Hans

Nawiasky, who divide legal norms into inferior and superior groups [14]. Lower norms are tested for validity against norms above them in the hierarchy. Hans Nawiasky further explains that legal standards are structured like a stupa-shaped legal edifice, with certain parts having their hierarchies, such as basic norms, concrete norms, implementing regulations, and autonomous rules.

In Indonesia, the hierarchy of legal regulations is also explicitly governed. Law No 12/2011 describes the types and hierarchy of legal rules in Indonesia. The highest position in the hierarchy is held by the 1945 Constitution, followed by the People's Consultative Assembly Decree, Laws / Government Regulations instead of Laws, Government Regulations, Presidential Regulations, Provincial Regulations, and Regional Regulations. It is important to remember that each regulation has legal force according to its place in the hierarchy, and lower regulations must not contradict higher ones. This hierarchy also applies to rules governing criminal provisions, which can only be included in Laws, Provincial Regulations, or Regional Regulations. The legislative hierarchy has four essential principles: non-contradiction, specific regulations overriding general ones, new regulations supplanting old ones, and eliminating equivalent or higher regulations.

*Legal Certainty Theory.* Gustav Radbruch's Legal Certainty Theory underscores the importance of legal certainty as one of the components to achieve the true goal of law: justice. Legal certainty refers to the predictability of legal actions that allow everyone to anticipate the consequences of specific legal actions [15]. Positive legal principles serve as the basis for deductive reasoning, and closed logic ensures order in society by ensuring that people adhere to the rules. The existence of legal certainty enables individuals to act by the applicable legal requirements, creating order in society.

Gustav Radbruch attempted to unify classical views (philosophical, normative, empirical) into a single legal approach encompassing three fundamental values: justice (intelligent), legal certainty (juridical), and societal benefit (sociological). Radbruch argued the law must attain these three values [16]. Therefore, the law must provide justice, utility, and legal certainty. It is important to determine priorities among these three values because there are moments when

they can be in conflict. According to Radbruch, the priority is Legal Justice, followed by Legal Utility and Legal Certainty, allowing the legal system to resolve disputes among these three values.

*Authority Theory.* The Authority Theory serves as a fundamental basis in this thesis research as the authority of the District Court in deciding a case is closely related to the concept of authority, which includes types and sources of authority. Authority can be classified into bound and free authority and originate from attribution, delegation, and mandate. In Constitutional Law, authority is described as "rechtsmacht" or legal power. In the context of public law, the difference between authority and competence is slight, with authority referring to formal power derived from the law or the legislature.

Authority must be based on existing legal provisions to ensure its validity. This is essential to prevent the abuse of power [17]. In the rule of law, the use of authority is always limited by written or unwritten law. The use of force must always be in line with the general principles of good governance aimed at enhancing a democratic, prosperous, just, and responsible life. In legal politics, the transfer of authority can occur in the form of mandate and delegation, where a mandate entails granting permission to another body to act on behalf of the authorising body. In contrast, delegation transfers all authority to another body [18]. Attribution, delegation, and mandate are forms of power fortified by positive law to regulate and uphold it, and legally valid juridical decisions can only be issued with the appropriate authority.

## METHODS

*Approach Methods.* Legal research employs three approach methods: conceptual, legislative, and comparative.

1. **Conceptual Approach:** This approach is used to analyse the meaning of legal terms that do not have clear legal rules.
2. **Legislative Approach:** It involves analysing existing legal rules and identifying consistency and compliance between legal regulations.
3. **Comparative Approach:** This approach involves studying laws between countries or within one country.

*Legal Materials.* Legal materials are sources used to examine and analyse legal issues [19]. There are three types of legal materials:

1. **Primary Legal Materials:** These are legally binding and authoritative legal rules.
2. **Secondary Legal Materials:** These are documents that provide explanations of primary legal materials.
3. **Tertiary Legal Materials:** These materials provide guidance and explanations for primary and secondary legal materials.

*Techniques for Collecting Legal Materials.* Legal materials are collected through literature review and online searches. Literature review involves gathering primary, secondary, and tertiary legal materials, while the internet is used to access relevant websites and journals.

*Techniques for Analysing Legal Materials.* The analysis of legal materials involves qualitative content analysis techniques. This research analyses legal concepts to identify norm conflicts related to the authority to seize evidence in different legal jurisdictions from where the criminal acts occurred. The results of the analysis are used to find solutions to the existing issues.

## RESULTS AND DISCUSSION

*Jurisdiction of Seizure Authorisation of Evidence in Different Legal Jurisdictions from the Scene of the Crime.* This research demonstrates that, in the context of criminal law in Indonesia, the seizure of evidence is meticulously regulated in the Criminal Procedure Code (KUHAP). In Article 1, No 16 of the Criminal Procedure Code (KUHAP), seizure can be defined as a series of actions performed by law enforcement officers to take control and preserve specific objects or items, whether they possess movable characteristics (such as vehicles) or are static (e.g., electronic documents or other forms of evidence), to substantiate evidence in the stages of investigation, prosecution, and trial [20]. Article 38, § 1 of the KUHAP regulates the requirements for the authorisation of evidence seizure during the investigation of a criminal act, stating that seizure can only be carried out by investigators with permission from the local district court's chief justice. This provision is intended to protect individual rights and prevent the abuse of investigative authority in evidence seizures. When the crime scene is in a different legal

jurisdiction from the place of evidence seizure, the existing legal principles must still be respected. This implies that investigators operating in a jurisdiction other than where the criminal act occurred must still obtain permission from the local district court's chief justice to seize evidence.

The provisions regarding the jurisdiction of evidence seizure authorisation in different legal jurisdictions from the crime scene in Book II of the KUHAP do not contradict Article 38(1) of the KUHAP. However, in practice, this authorisation must be obtained following the relevant procedures and respecting the jurisdiction of the appropriate court. This is crucial to ensure that evidence seizure is conducted correctly and by the applicable legal rules. The legal implications of the authority for evidence seizure in a different legal jurisdiction from the scene of the crime, as regulated in the KUHAP and Book II of the KUHAP, will be explained as follows:

1. Authority of the Chief Justice of the District Court: Article 38, § 1 of the KUHAP mandates that evidence seizure is only valid if preceded by permission from the local district court's chief justice [21]. It is essential to identify that this permission is a prerequisite that must be fulfilled for the execution of evidence seizure, and the jurisdiction of the chief justice of the district court is not always concurrent with the location of the criminal act being investigated.

a) Inter-Jurisdictional Coordination. Applying evidence seizure authorisation involving different legal jurisdictions underscores the importance of effective coordination between law enforcement agencies and courts in various jurisdictions. In practice, investigators from other jurisdictions must collaborate and coordinate with local counterparts to ensure that the process of evidence seizure is carried out following established procedures while respecting principles of jurisdiction.

b) Protection of Individual Rights. This provision, requiring evidence seizure authorisation from the local district court's chief justice, has positive implications for protecting individual rights. This authorisation serves as a supervisory tool to prevent the abuse of investigative authority in evidence seizure. Consequently, this regulation provides significant legal protection for the rights of individuals associated with the investigated criminal act.

c) Application of Legal Procedures. Another notable implication is the importance of diligent and accurate application of legal procedures in evidence seizure involving different legal jurisdictions. Violations of these procedures can render the seized evidence invalid in a trial, potentially negatively impacting the criminal justice process.

Therefore, the authority for evidence seizure in different legal jurisdictions from the scene of the crime is an aspect that considers the importance of regulating and safeguarding the process of evidence seizure within a legal framework consistent with principles of justice and the protection of individual rights as enshrined in the KUHAP. Furthermore, the terminology of "seizure" becomes imperative in the context of criminal evidence substantiation, and while this concept is relevant and significant in many criminal legal jurisdictions, specific details and regulations may differ [22]. In the framework of Indonesian law, essential points that can be drawn based on the definition and rules related to seizure include:

1. Definition of Seizure. Seizure encompasses a series of actions that investigators must undertake to investigate or prosecute a criminal act. Its purpose is to secure evidence that may be relevant in the legal process, uphold the law and justice, and strengthen the evidence in specific criminal cases.

2. Purpose of Seizure. Seizure ensures that items or objects constituting evidence in criminal cases are well-preserved, monitored, and managed for investigation, prosecution, and trial. It seeks to prevent the loss or damage of evidence that may be crucial in determining the guilt or innocence of the accused.

3. Types of Items that Can Be Seized. Article 39 of the KUHAP identifies the items subject to seizure. This includes items suspected to be obtained from criminal acts or as a result of criminal acts, items used in the commission of illegal actions, and items used to obstruct the investigation of criminal acts. This evidence also includes items specially made or intended for criminal acts and other items directly related to the criminal action.

4. Authorisation from the Chief of the District Court. In many cases, seizure requires authorisation from the local district court's chief justice, as referenced in Article 38 of the KUHAP.

However, urgent situations may allow investigators to carry out seizure first, requiring immediate reporting to the local district court's chief justice for subsequent approval.

5. Return of Seized Items Mechanism. To protect the rights of lawful owners or parties entitled to the seized items, Article 46 of the KUHAP regulates the mechanism for returning seized items. Confiscated items can be returned if they are no longer needed for the investigation or prosecution if the case is not prosecuted due to a lack of evidence if it turns out not to be a criminal act, or if the case is set aside for public interest or closed for legal reasons.

6. Court Decisions. After deciding on a case, seized items can be returned to their owners or parties specified in the court's decision. However, in some instances, the court may decide to confiscate the items for the state's interest, destroy them, or render them unusable. The return of objects may also be postponed if they are still required as evidence in another case.

Understanding the meaning, purpose, types of items that can be seized, the required authorisation, the mechanism for returning confiscated items, and the court's role are essential elements in comprehending evidence seizure in criminal law. A strong understanding of these concepts is crucial to ensure effective law enforcement and the protection of individual rights within the Indonesian criminal legal system.

*Juridical Implications of Provisions Governing the Authorization Jurisdiction of Evidence Seizure in Different Legal Jurisdictions from the Scene of the Crime.* In Indonesia's legal framework, Article 38(1) of the Criminal Procedure Code establishes essential prerequisites for seizing evidence in criminal investigations. This article specifies that the seizure of evidence can only be carried out with the permission of the local district court's chief justice. However, in several situations, mainly when the criminal act occurs in a different jurisdiction from that of the district court's chief judge, questions arise concerning the jurisdiction of evidence seizure authorisation. The juridical implications of the authority for approval in different legal jurisdictions from the crime scene are intricate.

In this context, authorisation for seizure must be obtained from the district court's chief justice having jurisdiction in the area where the

evidence will be seized, which may differ from the jurisdiction of the scene of the criminal act. This creates coordination challenges between jurisdictions, the need to protect the rights of involved individuals, and compliance with prevailing legal procedures. Nonetheless, this system also serves as a form of oversight and protection of individual liberties, ensuring that fundamental principles of justice conduct the seizure of evidence. In other words, the authorisation jurisdiction in different legal jurisdictions from the crime scene is mandatory for authorities to conduct investigations with integrity and compliance with the law.

This research emphasises the importance of a precise understanding of the authorisation jurisdiction for evidence seizure in the context of criminal procedural law in Indonesia. Although regulations governing this matter have been expounded in the KUHAP and Book II of the Technical Guidelines for General and Special Criminal Administration and Judiciary of the Supreme Court, their implementation tends to have ambiguity and divergent interpretations. This can pose a severe challenge to maintaining consistency and integrity within the criminal justice system. For instance, differences in understanding among judges, investigators, and prosecutors regarding when and how to seize evidence can negatively impact the legal process and justice.

It is important to note that uncertainty in the procedures for evidence seizure can lead to delays in the judicial process and even provide room for potential abuse of authority [23]. Therefore, efforts at harmonisation and improvement of regulations are necessary. This could involve revisions, further clarifications in seizure procedure laws, or even more detailed practical guidelines. Clear guidelines on implementing seizure procedures help minimise interpretation errors and differing viewpoints among involved parties.

Apart from rule harmonisation, enhancing the understanding and awareness of legal practitioners regarding authorisation jurisdiction for evidence seizure is crucial. Routine training and oversight of the use of authority for evidence seizure would ensure that this action is carried out in good faith and by legal principles. Dissemination of information about recent legal changes and practical guidelines is also needed to ensure that legal practitioners stay current with

relevant legal developments [24]. By taking these steps, the Indonesian criminal justice system can be enhanced in terms of effectiveness, justice, and integrity while upholding the rights of individuals involved in legal proceedings.

This research provides a deeper understanding of the Indonesian legal system's authority and procedures for evidence seizure. Firstly, concerning the authorisation of seizure, the study underscores that the Chief Justice of the District Court in the area where the evidence is to be seized has the authority to approve investigators. Emphasis is placed on the jurisdiction of this authority, considering the physical location of the items to be held and highlighting the importance of authorised individuals knowing that location.

Secondly, correctly understanding jurisdiction is crucial in seizure authorisation in a criminal case. If a criminal matter is transferred to the District Court at the scene of the crime, then the relevant Chief Justice of that District Court has the authority to grant seizure authorisation [25]. This is because the court at the crime scene is considered more competent in managing evidence or assets related to the case. On the other hand, the Chief Justice of the District Court in the jurisdiction where the evidence is to be seized has only informational knowledge, meaning they do not have the authority to grant seizure authorisation.

Thirdly, the research indicates that if a judge in a trial deems it necessary to carry out the seizure of an item, the seizure order will be communicated to investigators through the prosecutor. This point underscores the critical role of the judge in this process and implies the involvement of various parties in ensuring integrity and justice during the seizure of evidence. Judges are responsible for ensuring that the seizure is conducted in good faith and compliance with the law and that the seized items are sufficiently relevant to the case being prosecuted [26]. Thus, the integrity of the judicial system and the justice consistently upheld can be maintained throughout evidence seizure.

Finally, the research notes that the provisions governing the seizure of evidence in the KUHAP apply to all criminal acts, including specific crimes like corruption, unless particular rules govern otherwise. This underscores the consistency and relevance of fundamental principles in the process of evidence seizure, irrespective of the type of criminal act involved.

These principles include the necessity of clear legal grounds for seizure, the doctrine of proportionality in seizure actions, and the protection of the rights of individuals involved in legal processes [27]. By maintaining the same principles for all types of criminal acts, the justice and integrity of the judicial system can be upheld while still allowing flexibility to address specific crimes with stricter approaches to ensure transparency and fairness in the legal process.

Academically, this research represents a precious contribution to enrich the understanding of the legal framework and jurisdiction associated with the process of evidence seizure in Indonesia. The knowledge gained from this research has both theoretical and practical value. For legal practitioners, the knowledge acquired from this research provides a strong foundation for performing their duties related to evidence seizure, whether as prosecutors, investigators, or attorneys. This enables them to comprehend, apply, and uphold seizure procedures by the law more effectively.

Furthermore, for academicians, the research results are a valuable source of knowledge for developing legal theories and critical analysis of the Indonesian legal system. This research also provides substantial discussion material for understanding how specific legal aspects affect the criminal justice system, including factors related to evidence seizure. Thus, this research enriches the academic body of knowledge in the field of law in Indonesia. Moreover, this research has the potential to offer practical guidance to parties involved in the Indonesian criminal justice system. This includes legal officers, judges, investigators, as well as individuals who may be interested in legal processes. The knowledge gained from this research can be a crucial tool in ensuring that the seizure procedures are carried out efficiently, fairly, and by the principles of legal justice. Consequently, this research has the potential to enhance the quality of the Indonesian criminal justice system overall, which, in turn, will support the respect for human rights, justice, and integrity in law enforcement.

## CONCLUSIONS

In Indonesian law, Article 38(1) of the Criminal Procedure Code is central in regulating essential requirements for seizing evidence in criminal

investigations. These requirements necessitate permission from the local district court chief before the seizure of evidence can occur. However, when a criminal act occurs in a jurisdiction distinct from that of the local district court chief, complexities arise concerning the authority to grant permission to seize evidence. The jurisprudential implications of this situation underscore the necessity of inter-agency coordination within the legal framework, emphasising the enforcement of stringent legal procedures to ensure justice and the protection of individual rights.

Recommendations pertinent to the legal framework for evidence seizure in Indonesia encompass a comprehensive revision of regulations governing the authorisation of seizures, mainly when a criminal act occurs in a jurisdiction different from that of the local

district court chief. The objective of this revision is to clarify procedures, reduce ambiguities, and establish a legal framework that is more consistent and understandable. Furthermore, developing highly detailed and explicit practical guidelines in implementing evidence seizure procedures is crucial. These guidelines assist legal practitioners and investigators in performing their duties more effectively while mitigating diverse interpretations and the potential for procedural errors. Through these measures, the Indonesian criminal justice system can enhance its efficiency, thereby ensuring greater justice and integrity in law enforcement. This, in turn, will provide more substantial protection to the individual rights involved in the legal process by fundamental principles of the rule of law.

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