

## Quo Vadis Protection of Human Rights in Coercive Confiscation Efforts

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### Abstract

*Human rights protection in the context of compulsory confiscation efforts remains a topic of debate in legal practice in Indonesia. Expropriations are often carried out without regard to the basic rights of individuals, thus potentially violating human rights, especially those concerning property rights and justice. This study aims to examine how human rights protection is applied in confiscation procedures carried out by law enforcement officers. The research method used is normative juridical, using an approach based on laws and regulations, case studies, and legal doctrine analysis. The data collected were analyzed qualitatively through a literature review and evaluation of relevant cases. The findings show that although there are regulations governing confiscation procedures, their implementation is often inconsistent with human rights principles. There is an urgent need for improvements in oversight and accountability mechanisms in the confiscation process to prevent abuse of power. This study recommends strengthening standard operating procedures that comply with respect for human rights and strict supervision in every confiscation action.*

**Keywords:** Forced Confiscation, Human Rights, Law Enforcement, Legal Protection.

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## INTRODUCTION

Protection of human rights (HAM) is a global agenda that continues to be a concern in the international legal system. The practice of forced confiscation as part of the legal process often triggers human rights violations, especially when the rights to property and privacy are not adequately protected. According to Amnesti Internasional, (2020) and Human R, (2022), human rights violations in the legal process, including forced confiscation, are still rampant in many countries.

In Indonesia, the practice of forced seizure in legal processes often presents a dilemma between the interests of law enforcement and human rights protection. Setiawan, (2021) noted that seizures carried out without legal procedures have the potential to violate the right to justice. Anjali dan Megawat, (2024) also highlighted the legal consequences of illegal searches and seizures that affect the legitimacy of the judicial process.

The urgency of this discussion lies in the importance of legal reform to ensure a balance between the authority of law enforcement and the protection of human rights. Karim, (2003) underlined that criminal law must be designed to protect individuals from arbitrary state actions. (Komisi Nasional Hak Asasi Manusia, 2021) also emphasized that revision of regulations related to confiscation procedures is very necessary to prevent abuse of power.

Historical and legal perspectives on human rights have been widely discussed by Wilujeng, (2021) those who highlight the evolution of human rights regulations at the national and international levels. Triyanto, (2013) explore human rights regulations in the context of international law governing search and seizure procedures. Marzuki, (2020) expand the discussion by highlighting the importance of legal protection involving human rights in the law enforcement process.

In the context of national law, Hakim et al, (2021) recommending a legal paradigm based on state obligations to protect human rights. Dirdjosisworo, (2002) Also emphasizing the role of human rights courts in ensuring legal protection for victims of abuse of authority.

Legal reform is a major agenda to address the challenges of forced confiscation that violates human rights. Hasibuan, (2021) proposes legal reform that strengthens supervision of confiscation actions by law enforcement officers. (BPHN, 2019) also suggests human rights-based law enforcement guidelines so that the implementation of confiscation can run according to law.

This study aims to examine the extent to which the regulation and practice of forced confiscation in Indonesia meet international human rights protection standards. In addition, this paper aims to provide legal recommendations to improve confiscation regulations to be more humane and in accordance with human rights principles regulated by Perserikatan Bangsa-Bangsa, (2020).

## RESEARCH METHOD

This study uses a normative legal approach. This approach is carried out by examining various legal sources such as relevant laws and regulations, legal doctrines, and court decisions. This approach was chosen because it is appropriate for examining legal problems based on applicable theories and norms.

The type of research used is descriptive-analytical legal research. This research aims to provide a clear picture of the application of law in a particular case and analyze it based on applicable legal principles.

The population in this study includes all laws and regulations, legal doctrines, and court decisions related to the topic discussed. The sample was selected purposively by considering the relevance and contribution to the legal analysis conducted.

Data were collected through literature studies, including Legal Documents, Legislation, court decisions, and other related legal documents. Academic literature, Books, scientific journals, and relevant articles. Expert Opinions, Comments and Analysis from Legal Experts through Scientific Writings.

The data obtained were analyzed qualitatively through the following steps: Data Reduction, Grouping relevant data according to the legal issues being studied. Data Display, Presenting data in the form of narrative descriptions that make it easy to understand. Conclusion and Verification: Drawing conclusions based on the legal analysis carried out, by conducting verification to ensure the validity of the data.

## RESULTS AND DISCUSSION

### A. Human Rights Protection Implemented in Confiscation Procedures

Human rights (HAM) have various definitions according to different experts and countries, depending on the perspective and understanding developed in each society. Despite these variations, in principle, human rights are recognized as basic rights owned by every individual with the same essence: rights that must be respected and protected universally. Differences in this understanding often arise because of different views of society about the truth. Human rights are inherent, eternal, and universal rights bestowed by God, which should not be discriminated against or taken away by anyone, including any institution.

In the context of criminal investigation of suspects, law enforcement officers must comply with applicable legal rules and must not act beyond their authority. The term "suspect" refers to an individual being investigated by the police, while the term "defendant" is used when the suspect enters the trial process in court. Meanwhile, the term "convict" relates to a defendant who has been sentenced by a final and binding legal decision (*inkracht*) by the presiding judge.

Human rights can be broadly defined as encompassing various aspects of individual and societal life. Some generally recognized rights include:

1. Everyone has the right to protection of personal integrity, family, honor, dignity and property rights.
2. Everyone has the right to be recognized as a legal subject wherever they are.
3. Everyone has the right to feel safe and receive protection from threats that create fear for their choices.
4. Individuals' right to privacy, especially where they live, must not be violated by any party.
5. Everyone has the right to freedom and confidentiality in communicating, including electronic communications, which may not be interfered with except by court order or authority in accordance with applicable law.
6. Everyone has the right to freedom from torture, cruel and inhuman punishment or treatment, enforced disappearance and arbitrary deprivation of life.
7. No one may be arrested, forced, tortured, exiled or transferred arbitrarily without a strong legal basis.

Everyone has the right to live in an orderly, peaceful and harmonious society and state where human rights and basic human obligations are respected, protected and fully implemented in accordance with laws and regulations.

At the time of arrest, suspects must be informed of the reasons for their arrest and the factual circumstances and classification of the alleged crime. They have the right to a defense, and in addition to the rights mentioned above, they are entitled to other rights as provided for in existing legislation and international law, including:

1. After arrest, suspects must receive written notification and an explanation of their rights from the pre-investigation agency, investigator, or prosecutor.
2. Suspects have the right to legal counsel after their arrest or may refuse legal counsel and choose to defend themselves.
3. Prior to interrogation, suspects have the right to meet confidentially and without hindrance with their legal counsel, for as long as necessary. If there is a need to take action involving suspects outside of standard procedures, the pre-investigation agency or investigator may limit the time of the meeting, giving prior notice to the suspect and their legal counsel. The time allowed to meet with their legal counsel shall not be less than two hours.
4. Suspects have the right to be examined in the presence of their legal counsel. They may also express objections which must be documented in the examination record.
5. The suspect has the right to give testimony or refuse to testify.
6. Suspects have the right to inform their close relatives of their place of detention and the reasons for their detention, which must be communicated within 12 hours of arrest.
7. The suspect is entitled to other rights as regulated by applicable laws and regulations.

For suspects detained in prison for the purposes of investigation or awaiting trial, there are standard rules regarding their treatment, including:

1. Individuals who are arrested and imprisoned for criminal prosecution, but whose legal process has not been completed and who have not been sentenced, are referred to as "pre-trial detainees." This group is presumed innocent and should be treated as such. They should be separated from convicted detainees. Juvenile detainees should also be separated from adults and housed in special facilities.
2. Pre-trial detainees, whenever possible, can sleep in separate quarters.

3. Pre-trial detainees are allowed to receive food from outside, purchased by themselves, their families or friends, or through prison management if this is not possible.
4. Prisoners may wear their own clothing as long as it is clean and appropriate. If they wear prison clothing, it must be different from that worn by convicted prisoners.
5. Pre-trial detainees can work but are not required to do so. If they choose to work, they will receive compensation.
6. Prisoners may purchase books, newspapers, stationery or other equipment using their own funds or with the help of third parties, as long as it does not compromise prison security.
7. Prisoners may receive visits and be treated by their own doctor or dentist if there is a legitimate reason, at the expense of the prisoner.
8. Detainees must be promptly permitted to notify their families of their detention and must be permitted to communicate with family and friends, and to receive visits, unless restricted for security and order purposes.
9. In the interests of defence, pre-trial detainees should be allowed free legal aid where available. Detainees may receive visits from their lawyers to prepare their defence in confidence. Conversations with lawyers may be monitored, but should not be overheard by prison staff or police.

The rights of suspects in the investigation and interrogation process as regulated in the Rome Statute relating to the International Criminal Court (ICC) are also relevant to the Human Rights Court in Indonesia, including:

1. During the investigation, the suspect has the following rights:
  - a. Not be forced to give self-incriminating testimony or confess.
  - b. Not be subjected to violence, coercion, threats, torture or other forms of cruel, inhuman or degrading treatment or punishment.
  - c. If the investigation is conducted in a language that the suspect does not understand, they have the right to competent free interpretation, enabling them to understand the process and comply with the principles of justice.
  - d. A suspect may not be arrested or detained arbitrarily, and their freedom may only be restricted under legal procedures established in this law.
2. If there are reasonable grounds to believe that a person has committed a crime within the jurisdiction of the Court, and is questioned by a prosecutor or national official upon a request for international cooperation, they have the following rights:
  - a. To be informed before questioning of the compelling reasons indicating their involvement in crimes under the jurisdiction of the ICC.
  - b. Remain silent, and this right cannot be used as a basis for establishing their guilt.
  - c. To have legal assistance of their own choice. If the accused does not have legal counsel, they may have a lawyer provided for them, especially if justice requires it, free of charge if they cannot pay.
  - d. To be questioned in the presence of legal counsel unless the suspect expressly chooses not to exercise this right.

Furthermore, confiscation is defined as a series of actions taken by investigators to take over or place under their control both movable and immovable property, both tangible and intangible, for the purpose of evidence in the investigation, prosecution and

trial process. In its implementation, regardless of whether the suspect, as the owner of the property (whether movable, immovable, tangible or intangible), agrees or disagrees, investigators have the authority to forcibly take over the goods. This action constitutes a restriction on human rights (HAM) regarding the right to own property.

There is an example of a case that clarifies illegal seizure according to law. Seizure is defined in Article 1 paragraph 16 of the Criminal Procedure Code (KUHAP) as: "Seizure is a series of actions carried out by investigators to take over or place under their control movable or immovable property, both tangible and intangible, for the purpose of evidence in the investigation, prosecution, and trial process."

Furthermore, Article 39 of the Criminal Procedure Code stipulates that:

1. Items that may be confiscated include:
  - a. Goods or claims belonging to the suspect or accused which are suspected of originating in whole or in part from a criminal act or the proceeds of a crime;
  - b. Items used directly to commit or prepare a crime;
  - c. Items used to obstruct the criminal investigation process;
  - d. Items specifically made or intended to commit a crime;
  - e. Other items that have a direct relationship to the crime committed.
2. Goods that have been confiscated in civil cases or due to bankruptcy can also be confiscated for criminal proceedings, as long as they fulfill the provisions of paragraph (1).

Under this provision, confiscation may only be carried out on items that are directly or indirectly related to the crime. If the seized items fail to show any connection to the alleged crime, they must be immediately returned to their rightful owners.

The legal consequence of unlawful seizure is the return of the seized goods to the rightful party. This return must be made in accordance with the judge's decision and applicable legal provisions. Article 82 paragraph (3) letter d of the Criminal Procedure Code states that if the decision determines that the seized goods are not evidence, the decision must include an order to immediately return the goods to the suspect or to the party from whom they were seized.

In Decision Number 1/Pid.Pra/2020/PN, it is stated that the confiscation of evidence by investigators was declared unlawful because it was not related to the alleged crime. Therefore, the confiscated evidence did not meet the criteria set out in Article 39 of the Criminal Procedure Code. There are three aspects of judicial consideration in which the judge deliberates. The first is the legal aspect and legal basis, as the main elements underlying the review of each case, which must comply with applicable laws and regulations. In the Decision of Case Number 1/Pid.Pra/2020/PN talk, the judges used various relevant legal provisions, including Article 77 in conjunction with Article 1, paragraph 10, Article 1, paragraph 16, Article 1, paragraph 17, Article 18, paragraph (3), Article 32, Article 33, Article 38, Article 39, Article 75, Article 82, paragraph (3), letter d, Article 125, Article 126, Article 127, Article 128, Article 129, Article 130, Article 131 of Law Number 8 of 1981 concerning Criminal Procedure Law. In addition, the legal basis also includes Article 16 of Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights, Article 5 of Law Number 39 of 1999 concerning Human Rights, Constitutional Court Decision Number 3/PUU-XI/2013, Constitutional Court Decision Number 21/PUU-XII/2014, and Supreme Court Regulation Number 4 of 2016 concerning Prohibition of Review of Pretrial Decisions. All of these regulations are referred to as valid legal bases for handling pretrial cases.

From a sociological perspective, the above-mentioned decision reflects the cultural values prevailing in society. The judge considered the human rights of the community, including the rights of the applicant or the party seeking a copy of the Search Record within two (2) days after the search. This was done as a form of

protection and guarantee of the applicant's rights. The investigator's failure to submit a copy of the Search Record contradicts the provisions of Article 33 paragraph (5) of the Criminal Procedure Code; Therefore, the judge decided that the search was invalid and had no legal force.

Meanwhile, the philosophical aspects that include truth and justice are the basis of the law applied. In trying this case, the judges not only considered the legal and sociological elements, but also weighed the philosophical aspects proportionally. In this case, the Panel of Judges decided to grant the applicant's request and mandate the return of evidence that was illegally confiscated by investigators. This decision embodies a balance between applicable legal rules and the principles of justice, thus producing results that are in line with relevant norms and laws.

To ensure order and tranquility in society, especially in supporting the implementation of development, a conducive atmosphere is needed. In this case, law enforcement and legal protection are very important. However, this should not be a justification for arbitrary actions, such as deprivation of individual or group freedom without a clear basis or reason for alleged violations of the law. The implementation of development must continue to respect human rights (HAM).

In line with this, the Criminal Procedure Code (KUHAP) has embedded protection related to human rights, both regarding the actions of perpetrators of violations of the law by individuals or groups or the actions of law enforcement officers in carrying out their duties and functions. Law enforcement must be carried out with the aim of providing legal protection to all parties without exceeding the limits or violating human rights as stated in the applicable legal provisions. As a result, actions that violate or infringe upon human rights can be avoided in accordance with existing regulations.

## **B. Challenges in Implementing Human Rights Protection in Confiscation Procedures**

Respect for property rights is a fundamental aspect of human rights protection. In the context of confiscation, which involves seizing or gaining control of a person's property for the purpose of an investigation, serious attention must be paid to the property rights guaranteed by law. The right to property is recognized as part of an individual's human rights, and any action that threatens or violates this right may constitute a human rights violation.

One of the main challenges in carrying out seizures is ensuring that the process is carried out transparently and legally. Law enforcement must have clear and strong reasons before starting a seizure, complying with applicable legal procedures as regulated by the Criminal Procedure Code (KUHAP). Seizures carried out without a strong legal basis can be considered arbitrary, potentially harming the targeted individual. Therefore, it is important for law enforcement officers to respect individual rights, including property rights, at every stage of their investigative actions.

Unlawful seizures not only cause material losses to property owners but can also lead to psychological trauma and reduced trust in the legal system. For example, if the seized items are not related to the crime being investigated or if the seizure was carried out without clear procedures, property owners have the right to request the return of their items and to hold the officials who carried out the seizure accountable. In this case, the protection of property rights becomes very important to ensure justice and prevent abuse of power by law enforcement officers.

Proper and proportionate legal procedures related to confiscation are a key component of law enforcement that respects human rights. Here, law enforcers are required to comply with the provisions set out in the Criminal Procedure Code (KUHAP). Every confiscation action must be based on an official warrant from the court and must be based on strong suspicion that the items to be confiscated are related to criminal acts. Thus, the confiscation procedure does not only function as a formality but

must reflect compliance with the principles of justice and the protection of individual rights.

One of the significant challenges facing law enforcement officials is ensuring that any seizure is carried out in a proportionate manner. Proportionality in seizure refers to the balance between the need to enforce the law and respect the rights of individuals. For example, seizures should only be made if necessary to achieve the objectives of an investigation and should not unduly disrupt the daily life of the property owner. This is critical to preventing arbitrary actions that could harm innocent individuals.

In practice, law enforcement officers must offer clear and valid justification when conducting a seizure. They must demonstrate that the seizure is a necessary and appropriate step in the context of the investigation. Ambiguity or lack of adequate justification can lead to the seizure being considered unlawful, potentially violating the property owner's rights. In addition, law enforcement officers must also maintain transparency in every seizure process, so that the public can observe and understand the reasons behind the actions taken.

The importance of proper and proportionate legal procedures in seizures also plays a role in maintaining public trust in the legal system. When the public perceives that law enforcement is carried out fairly and transparently, it fosters greater trust in law enforcement agencies. Conversely, arbitrary seizures carried out without following proper procedures can lead to public distrust, which ultimately undermines the legitimacy of the legal system. Thus, strict regulations regarding seizure procedures not only protect individual rights but also strengthen the integrity and fairness of the justice system as a whole.

Transparency and accountability are important aspects in maintaining human rights during confiscation actions by law enforcement officers. When law enforcement officers conduct confiscation, they have considerable authority, which, if not controlled by transparency, can be abused. In certain cases, confiscation can be used as a tool to coerce or intimidate suspects, ultimately resulting in violations of individual rights. Therefore, it is very important to ensure that any confiscation action is carried out responsibly and within a clear legal framework.

One effective approach to achieving transparency in seizures includes requiring law enforcement to publicly report each seizure. Each seizure should be thoroughly documented in an official record, detailing the reason for the seizure, the items seized, and the procedures followed. This official record should be readily accessible to interested parties, including suspects and their legal counsel. This method allows those involved to verify that the seizure was conducted in accordance with applicable legal procedures, reducing the potential for abuse of power by law enforcement officials.

Lack of accountability in confiscation actions can lead to serious human rights violations. If confiscation actions are not held accountable, individuals or groups in authority can carry out arbitrary confiscations without consequences. This not only threatens the rights of affected individuals but can also erode public trust in the legal system. Therefore, it is important to implement effective oversight mechanisms to ensure that law enforcement officials are held accountable for their actions.

Building a system of transparency and accountability also contributes to a positive public image of law enforcement agencies. When the public perceives that the confiscation procedure is carried out fairly and transparently, they are more likely to trust the judicial entity. Conversely, if the public detects ambiguity or abuse of power in the confiscation process, it will create skepticism and dissatisfaction with law enforcement. Thus, maintaining transparency and accountability is essential not only to protect the human rights of individuals but also to affirm the legitimacy and effectiveness of the judicial system itself.

Seizing items that are unrelated to alleged criminal activity presents significant challenges to fair law enforcement. The basic principle of seizure dictates that only

items that are directly related to a crime can be seized. This requirement is intended to protect the rights of property owners and prevent abuse of power by law enforcement officials. However, in practice, seizures are carried out broadly and excessively, resulting in items that are unrelated to alleged crimes also being seized.

When investigators conduct a seizure, they must have a strong legal basis and clear evidence that the items involved are related to the alleged crime. However, in some cases, seizures may be based on weak suspicion or invalid assumptions. This discrepancy results in items that should not be seized—such as personal items unrelated to the crime—being seized unlawfully. Such situations can cause financial loss and emotional distress to innocent property owners, worsening reputational damage and affecting their lives.

It is important to recognize that unlawful or irrelevant seizures not only harm individuals but also undermine public confidence in the justice system. If the public perceives that the seizure was arbitrary, they are likely to lose their faith in the fairness of the justice system. In addition, the seizure of irrelevant items can place an additional burden on law enforcement agencies in terms of returning these items once their irrelevance to any crime has been established. This can cost resources and time that should be allocated to more productive investigations.

Enforcing human rights during emergencies or crises is a complex challenge that requires special attention. In emergency situations—such as natural disasters, armed conflicts, or public health crises—law enforcement authorities often feel compelled to act quickly to maintain security and stability. However, in doing so, there is a risk of ignoring established legal procedures, which can threaten individual rights. This creates a dilemma between the need to respond quickly to critical situations and the obligation to uphold the fundamental rights of every individual.

When seizures are conducted without proper protocol, the consequences can be devastating. In an emergency, expedited action may seem justified, but when seizures are conducted arbitrarily, they can result in significant violations of property and personal liberty. Often, the items seized may be completely unrelated to the emergency or alleged crime but are still seized due to the uncertainty or fear of law enforcement. This not only leads to injustice against innocent individuals; it can also increase social tensions and erode public trust in law enforcement authorities.

It is essential for law enforcement to maintain adherence to basic human rights principles even in urgent situations. Strict legal procedures, including requiring judicial authorization before carrying out any seizure, should continue to apply. During emergencies, procedural adjustments may be necessary to expedite the response, but this should not be an excuse to disregard human rights protections. For example, law enforcement officials can be trained on how to apply human rights principles in emergency contexts, in addition to developing effective oversight mechanisms to prevent abuse of power.

Transparency and accountability are also essential elements in upholding human rights during emergencies. Any seizure must be carefully recorded and made accessible to relevant parties. In addition, steps must be taken to ensure that individuals who feel aggrieved by a seizure have an avenue to file a complaint or seek accountability. In this way, even in a crisis context, law enforcement can uphold its commitment to human rights and ensure that its actions do not conflict with the principles of fairness and justice.

Operational constraints and challenges to inter-agency coordination in carrying out seizures in accordance with human rights principles often pose significant obstacles to law enforcement. When law enforcement agencies—including investigators, prosecutors, and courts—fail to work together effectively, the risk of unlawful seizures carried out outside legal standards increases significantly. This can lead to arbitrary

actions that violate individual rights and undermine public confidence in the justice system.

Poor coordination among various law enforcement entities can lead to confusion regarding the implementation of seizure protocols. For example, investigators may conduct seizures without obtaining court authorization, or conversely, courts may not receive adequate information about the background and reasons for a seizure. Such opaque procedures can create loopholes that are exploited to conduct unlawful seizures. In such circumstances, individuals targeted for seizure may not receive the necessary protections mandated by law.

In addition, inadequate training for law enforcement officers on the importance of human rights in the seizure process can worsen the situation. Lacking adequate awareness of human rights principles, law enforcement officers may be unaware of the consequences of their actions. They may conduct seizures without considering whether their actions violate property rights or other rights. Therefore, human rights education and training are critical in ensuring that law enforcement officers understand proper legal procedures and the ethical and moral context underlying their actions.

To overcome operational difficulties and inter-agency coordination challenges, building a more integrated system is essential. This may involve developing clear and effective communication mechanisms among law enforcement agencies, allowing for easier sharing of relevant information. In addition, professional development programs that focus on human rights and proper legal procedures should be part of law enforcement training. In this way, it is hoped that seizures carried out will not only comply with the rule of law but also respect and protect the rights of individuals.

## CONCLUSION

This study found that the implementation of confiscation by law enforcement officers is often carried out on weak legal grounds or non-transparent procedures, which have the potential to cause human rights violations. Unlawful confiscation can cause material losses, psychological trauma, and a decrease in public trust in the legal system.

To address these challenges, it is important to strengthen coordination between law enforcement agencies, increase transparency and accountability in all confiscation operations, and ensure adequate training for law enforcement officers on human rights principles and proper legal procedures. The study recommends the implementation of effective monitoring mechanisms and the development of operational standards that respect human rights so that confiscation is not misused as a tool of coercion or intimidation.

Thus, fair, transparent and accountable law enforcement can encourage the creation of public trust in legal institutions and guarantee the protection of human rights in line with justice and humanitarian values.

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