

SEIZURE AS A COERCIVE MEASURE IN A COMPARISON OF CRIMINAL PROCEDURAL LAW BETWEEN INDONESIA AND FRANCE

Salwa Aulia¹

Wevy Efticha Sary².

¹ Faculty of Law, Bengkulu University, Indonesia.

E-mail: salwaaulia5363@gmail.com

² Faculty of Law, Bengkulu University, Indonesia.

E-mail: wesary@unib.ac.id

ABSTRACT

Seizure is a form of coercive measure in criminal procedure law that inherently restricts constitutional rights, particularly the right to property and protection against arbitrary actions by law enforcement officials. Changes to criminal procedure law regulations in Indonesia through the New Criminal Procedure Code mark a fundamental reform of the investigation mechanism, including regulations on seizure. However, these normative reforms need to be critically examined to assess the extent to which the new regulations are able to guarantee due process of law and prevent abuse of authority. This article aims to analyze the provisions on seizure in the New Indonesian Criminal Procedure Code by comparing them with the seizure system in the French Code de procédure pénale as a representation of an established civil law system. This study uses a normative juridical method with a legislative, conceptual, and comparative legal approach. The results show that the New Criminal Procedure Code has strengthened the normative basis for seizure by confirming the objectives, objects, and procedures for seizure, but still leaves broad discretion to investigators. In contrast, French criminal procedure law places strong judicial control through a mechanism of judicial authorization and procedural guarantees for suspects and third parties. This comparison emphasizes the importance of strengthening judicial oversight and limiting the authority of investigators in the seizure system in Indonesia. This article contributes by formulating normative implications and offering a reconstruction of seizure regulations in the New Criminal Procedure Code that is oriented towards the protection of human rights, legal certainty, and the principle of proportionality in criminal procedure law.

Keywords: *Criminal procedure, Seizure, Indonesia, France, legal comparison*

Introduction

Effective criminal law enforcement that respects human rights is at the heart of a fair and just criminal justice system. In law enforcement practice, coercive measures such as seizure play an important role as they are a primary stage in gathering evidence to ensure that legal proceedings are substantive and accurate.¹ However, these

coercive measures also have implications for individual property rights and freedoms, posing normative and practical challenges for modern criminal justice systems (including in Indonesia).

Within the framework of criminal procedure law, confiscation is not merely an administrative action by law enforcement officials, but a form of restriction on private property rights guaranteed by the constitution and the principle of legality in modern criminal

¹ Kirillov, A. V. (2025). Some features of evidence in the process of seizing property belonging to a legal entity for possible confiscation. *Ugolovno-*

Ispolnitel'noe Pravo.

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law tradition. This requires clear regulations, strict procedures, and control mechanisms for seizure actions so that they do not deviate from the basic principles of the rule of law (rechtsstaat) and human rights guarantees. This situation becomes particularly critical when a country is undertaking comprehensive reforms of its Criminal Procedure Code (KUHAP), as is currently the case in Indonesia.

Indonesia has taken a major step in criminal law reform through the enactment of the New Criminal Procedure Code as part of efforts to renew the national criminal justice system that has been in place since the New Order era. This reform is intended to adapt criminal procedure law to the challenges of the contemporary era, the dynamics of modern crime, and the demands for respect for human rights and the principle of fair trial. The Criminal Procedure Code Bill, which was finally passed into law, replaces the old Criminal Procedure Code, bringing important changes to the mechanisms of investigation, prosecution, adjudication, and other law enforcement efforts. In this context, the regulation of seizure as a form of coercive action needs to be critically analyzed because it is at the heart of the evidentiary process in criminal procedure law and has direct implications for the protection of individual rights.² In-depth scientific research on seizure in the New Criminal Procedure Code is currently very limited, especially studies that link the normative aspects of the New Criminal Procedure Code with international

practices and modern criminal law principles.

On the other hand, civil law countries such as France have a long tradition of codifying criminal law and criminal procedure (Code de procédure pénale), which has long been a reference for academics and legal practitioners in terms of regulating coercive measures, including seizure of evidence.³ French codification pays great attention to guarantees of a fair trial, judicial involvement in coercive measures, and the protection of individual rights throughout the investigation and trial process. In the French Code de procédure pénale, various legal mechanisms regulate the search and seizure of evidence, including the role of judicial power in overseeing seizure actions and legal protection of the privacy and property rights of defendants and third parties who may be affected by such actions.⁴ Traditionally, the French system combines inquisitorial elements with strong judicial protection to ensure that coercive measures are carried out on the basis of legality, proportionality, and legitimate investigative needs. This shows that there are procedural values that may serve as a reference in the development of seizure practices in Indonesia, which are currently being recodified.

Although Indonesia and France share a civil law heritage, the challenges in regulating coercive measures such as confiscation in the context of criminal law are very different between the two countries. Indonesia faces conditions of social plurality, the dynamics of human rights advancement in developing

² Rochmadi, R., & Nurdin, B. (2024). The dynamics of criminal procedure law enforcement related to the elimination of the investigation stage in the draft criminal procedure code. *International Journal of Social Service and Research*. <https://doi.org/10.46799/ijssr.v4i12. p.1128>

³ Franssen, V. (2024). *Cross-border gathering of electronic evidence in the EU: toward more direct*

cooperation under the e-Evidence Regulation. <https://doi.org/10.4337/9781800886438.00016. p. 112>

⁴ Accarion, E. (2024). *La libre disposition des biens confisqués. Revue de Science Criminelle et de Droit Pénal Comparé.* <https://doi.org/10.3917/rsc.2403.0533>

countries, and demands for the modernization of criminal law in the context of an evolving democracy. In contrast, France has a long tradition of modern criminal law reform that has undergone various legislative changes in line with the development of the European Convention on Human Rights and the principles of fundamental rights protection for litigants.⁵ Thus, a comparative study between Indonesia's New Criminal Procedure Code and France's Code de procédure pénale provides a unique opportunity to see how each system regulates seizure as a coercive measure in order to balance the interests of investigation with the protection of human rights.

Furthermore, this study uses a normative-legal and comparative law approach to analyze the provisions on seizure in the New Indonesian Criminal Procedure Code and the French Code de procédure pénale. This approach involves an examination of legislative texts, relevant legal doctrines, and the latest academic literature indexed in national and international journals. From a normative perspective, this study will examine how each legal system formulates the concept of seizure as a coercive measure, its procedural mechanisms, protections for the rights of defendants and third parties, and the legal safeguards available to prevent abuse of investigative powers.

Considering the urgency of reforming seizure in the New Criminal Procedure Code and the importance of judicial control over coercive measures, this study aims to answer several key questions: First, how does Indonesia's New Criminal Procedure Code regulate seizure as a coercive measure in the investigation process and what are the

underlying legal principles? Second, how does the French Code de procédure pénale regulate seizure and the protection of related rights? Third, what are the substantive differences and similarities between the two systems in the context of seizure? Fourth, what are the normative implications of this comparison for the development of the Indonesian criminal procedure system, particularly in terms of ensuring a balance between the effectiveness of investigations and respect for human rights?

This research contributes scientifically to criminal law literature and criminal procedure reform in Indonesia by providing a systematic and argumentative comparative analysis between the New Criminal Procedure Code and the French system in terms of seizure. The findings of this research are expected to provide normative recommendations based on international practices for improving the quality of Indonesian criminal procedure law, particularly in order to strengthen the protection of fundamental rights without sacrificing the effectiveness of coercive measures in criminal law enforcement.

Method

This study is a legal study that uses a normative juridical approach with an analytical and prescriptive orientation. The main focus of the study is directed at examining the legal norms that regulate seizure as a coercive measure in criminal procedure law, both in the Indonesian legal system through the New Criminal Procedure Code and in the French legal system through the Code de procédure pénale. The normative juridical approach was chosen because this study aims to analyze the legal construction, principles, and normative coherence of the regulation

⁵ Tatarinov, M. K. (n.d.). Duality of Criminal Procedure Policy Trends in the New Criminal Procedure Reform in France. *Social Science Research Network*.

<https://doi.org/10.2139/ssrn.4664621>. p.77

of seizure, rather than to examine the empirical behavior of law enforcement officials or implementation practices in the field.

This study combines a legislative approach, a comparative law approach, and a conceptual approach simultaneously and complementarily. The legislative approach is used to systematically examine the positive legal provisions governing seizure in the New Indonesian Criminal Procedure Code and the French *Code de procédure pénale*, with a focus on the scope of investigators' authority, seizure procedures, judicial control mechanisms, and legal protection for suspects and third parties. The comparative law approach is used to compare the two legal systems functionally and normatively, with the aim of identifying similarities, differences, and the legal rationality underlying the regulation of seizure in each legal system. The comparison is made in the context that Indonesia and France both adhere to the civil law tradition, but have different levels of institutional development and traditions of judicial oversight.

A conceptual approach is used to examine and clarify legal concepts related to seizure as a coercive measure, including the concepts of coercive measures, due process of law, judicial control, proportionality, and protection of property rights. This approach allows for a more in-depth analysis of the meaning and purpose of seizure regulations, so that the research is not limited to a textual reading of the norms, but is able to assess the conformity of the norms with the principles of the rule of law and human rights protection standards that have developed in modern criminal law.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include the New Indonesian

Criminal Procedure Code, the French *Code de procédure pénale*, as well as constitutional provisions and other laws and regulations relevant to seizure in criminal proceedings. Secondary legal materials include criminal procedure law textbooks, indexed national and international journal articles, research results, and legal doctrines discussing coercive measures, confiscation, and criminal procedure law reform. Tertiary legal materials in the form of legal dictionaries and encyclopedias are used to clarify technical legal terms and concepts.

Legal materials were collected through literature studies by searching through legislation, national and international scientific journal databases, and relevant legal literature. Legal materials were analyzed qualitatively using normative and comparative analysis methods, namely by interpreting legal norms, examining the relationship between provisions, and comparing the construction of seizure regulations in both legal systems. The analysis was conducted systematically and argumentatively to identify the normative implications of the seizure regulations in the New Indonesian Criminal Procedure Code, while also formulating a possible reconstruction of seizure regulations in line with the principles of due process of law and the protection of human rights based on lessons learned from the French legal system.

This research is limited to a normative study of seizure as a coercive measure within the framework of criminal procedure law, without discussing the empirical aspects of its implementation in the field. The focus of the research is directed at analyzing the norms, principles, and legal mechanisms that regulate seizure, so that the results of the research are expected to contribute theoretically and normatively to the development of

Indonesian criminal procedure law after the revision of the Criminal Procedure Code.

Results and Analysis

I. Seizure in Indonesia

Seizure as a form of coercive measure in Indonesian criminal procedural law has undergone a significant conceptual transformation following the enactment of the new Criminal Procedure Code, which replaces Law Number 8 of 1981.⁶ The former Criminal Procedure Code, which served as the foundation of Indonesia's criminal justice process for more than four decades, was formulated within a socio-political context that differs substantially from present conditions. Under the old Code, seizure was primarily positioned as a technical instrument for evidentiary purposes, granting investigators relatively broad discretion with limited mechanisms of judicial oversight.⁷

The entry into force of the new Criminal Procedure Code marks a critical paradigm shift in the regulation of seizure, moving away from a purely law enforcement-oriented approach toward a rights-based framework grounded in human rights protection, proportionality, and judicial accountability.⁸ This transition is not merely normative in nature, but also reflects the state's response to sustained academic criticism, judicial decisions, and the evolution of international standards concerning fair

trial guarantees and the protection of property rights.

Under the former Criminal Procedure Code, seizure was defined as a series of actions by investigators to take control of and secure movable or immovable, tangible or intangible objects for evidentiary purposes.⁹ Although this definition appeared neutral, in practice seizure was frequently exercised excessively, and in some cases repressively, without adequate consideration of its impact on individual rights or the interests of third parties. The pretrial review mechanism available under the old Code often proved ineffective, as it functioned reactively and was limited to procedural scrutiny.

The new Criminal Procedure Code addresses these deficiencies by restructuring seizure regulation in a more systematic and principled manner. Seizure is no longer treated as an inherent extension of investigative authority, but rather as a coercive measure with significant potential to infringe constitutional rights, particularly the right to property, the right to legal certainty, and the right to fair treatment.¹⁰ Consequently, seizure under the new Code is placed within a stricter regime of oversight based on the principle of due process of law.

Conceptually, the new Criminal Procedure Code affirms that seizure may only be conducted when there are strong legal grounds and a direct relevance between the seized object and the alleged

⁶ Hasbullah, H., & Pratiwi, D. (2025). Quo vadis criminal procedural law in indonesia after the enactment of law number 1 of 2023 concerning the criminal law code. *International Journal of Social Service and Research*.

<https://doi.org/10.46799/ijssr.v5i4.1219>. p. 23

⁷ Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law. (1981). State Gazette of the Republic of Indonesia.

⁸ Schoolmedia.id. (2025, November 18). *KUHAP baru sah jadi UU, berlaku 2 Januari 2026*.

<https://schoolmedia.id/berita/6085/kuhap-baru-sah-jadi-uu-berlaku-2-januari-2026>.

⁹ Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law. (1981). State Gazette of the Republic of Indonesia.

¹⁰ Hukumonline. (2025, December 19). *Prof Eddy OS Hiariej: KUHAP baru lebih maju meskipun menuai kritik*. Hukumonline.

<https://www.hukumonline.com/berita/a/prof-eddy-os-hiariej--kuhap-baru-lebih-maju-meskipun-menuai-kritik-lt694531294bd24/>

criminal offense. Such relevance is not understood merely in a formal sense as evidentiary utility, but must also satisfy a rational necessity standard. Investigators are required to demonstrate that seizure is genuinely necessary and that no less intrusive alternative measures are available to achieve the same evidentiary objectives.

The strengthening of the principles of necessity and proportionality constitutes a defining feature of seizure regulation under the new Criminal Procedure Code. Seizure may no longer be carried out automatically simply because an object is found in the possession of a suspect. Each act of seizure must be based on an objective assessment of the causal relationship between the object and the criminal act in question. Through this approach, the new Code seeks to eliminate generalized and speculative seizure practices that were prevalent under the previous legal framework.

From a procedural standpoint, the new Criminal Procedure Code introduces a more substantive system of judicial authorization and validation. As a rule, seizure as a coercive measure must obtain prior approval from a preliminary examining judge before being executed, except in genuinely urgent circumstances.¹¹ Even in such urgent situations, investigators remain obligated to promptly report the seizure and seek judicial validation after the fact.¹² This mechanism reflects a decisive shift from internal administrative control to external judicial oversight.

The involvement of a preliminary examining judge in supervising seizure represents a fundamental change in the

structure of power within criminal procedure. Judges are no longer confined to reviewing the legality of seizure only after a dispute has arisen, but instead function as early guardians against potential abuses of authority. In this context, seizure is positioned as an action that requires judicial legitimacy from the outset, rather than one that is merely justified retrospectively.

Furthermore, the new Criminal Procedure Code regulates more precisely the categories of objects that may be subject to seizure.¹³ Not all objects with an indirect connection to a criminal offense may be seized. The Code limits seizure to objects that clearly function as instruments of crime, proceeds of crime, or means directly used to commit the offense. This limitation is essential to protect the interests of bona fide third parties and to prevent excessive asset criminalization.

The regulation of third-party interests constitutes one of the progressive elements of the new Criminal Procedure Code. Under the former Code, seizure of property belonging to third parties was often carried out without adequate protective mechanisms. The new Code explicitly recognizes the rights of bona fide third parties to file objections and to seek the return of seized property. This development reflects a shift in orientation from exclusive law enforcement interests toward broader legal certainty and protection for all legal subjects.

From the perspective of evidence management, the new Criminal Procedure Code imposes stricter obligations on investigators regarding the documentation, storage, and maintenance

¹¹ Bucur, A. (2023). Precautionary measures. Conditions, seizure report. *Technium Social Sciences Journal*. <https://doi.org/10.47577/tssj.v46i1.9382>. p.112

¹² (Bucur, 2023, p. 112)

¹³ JAFAROV, F. (2024). Some criminal-procedural and legal problems of search and seizure investigative actions. *Polis Akademiyasının Elmi Xəbərləri*. <https://doi.org/10.62130/lwbt3852>

of seized objects. Each seized item must be recorded in detail, accompanied by transparent official reports, and stored in accordance with established standards to prevent damage, loss, or misuse. These provisions implicitly acknowledge that seizure is not merely a legal issue, but also a matter of governance and institutional integrity within law enforcement agencies.

Moreover, the new Criminal Procedure Code expands access to legal remedies against seizure. Not only suspects, but also victims and third parties are afforded legal standing to challenge the legality and proportionality of seizure measures. This mechanism strengthens the position of citizens vis-à-vis state power and promotes a more accountable legal culture. Seizure is no longer a unilateral action that is difficult to contest, but rather an integral part of a legal process subject to meaningful review.

Within the broader context of the criminal justice system, the regulation of seizure under the new Criminal Procedure Code reflects the integration of modern criminal procedural values that have developed within contemporary civil law traditions. Although Indonesia does not fully adopt the *juge d'instruction* model found in France, the enhanced role of judges at the pre-adjudication stage demonstrates a convergence of principles, particularly with respect to the supervision of coercive measures.

Nevertheless, from an empirical standpoint, the implementation of seizure under the new Criminal Procedure Code also faces serious challenges. Normative reform does not automatically result in changes to the legal culture of law enforcement officials. There remains a risk that procedures will be formalized without genuine internalization of due

process values. Seizure may continue to be exercised repressively, albeit cloaked in formally lawful administrative procedures. Accordingly, the effectiveness of seizure regulation under the new Code will depend heavily on the quality of implementation, the competence and independence of preliminary examining judges, and the institutional commitment to enforcing limits on investigative authority.

In conclusion, the analysis demonstrates that seizure under the new Indonesian Criminal Procedure Code has undergone a substantial normative reconstruction. Seizure is no longer merely an auxiliary tool of investigation, but a reflection of the state's commitment to procedural justice and the protection of human rights. This transformation provides a crucial foundation for comparative analysis with the French legal system and opens space for a critical evaluation of the future direction of Indonesian criminal procedural reform.

II. Seizure in France

As defined in Article 131-6 of the French Penal Code (Code pénal), confiscation is the expropriation without compensation of property belonging to a convicted person, with ownership transferred to the State.¹⁴ While its punitive nature is undeniable, its legislative evolution, particularly under the influence of European law, has complexified its regime.

Evolving from a sanctioning instrument, it has gradually become a central tool of criminal policy aimed at depriving offenders of the proceeds of their illicit activities. This metamorphosis necessitates a rigorous study of its process,

¹⁴ France. (n.d.). *French Penal Code (Code pénal)*, Articles 131-6, 131-21, et seq.

from initiation to execution, including the safeguards surrounding its implementation.

2.1 Legal Foundations and the Dual Nature of Confiscation

The regime of confiscation is dualistic, oscillating between a punitive logic and a preventive or reparative one.

2.1.1 Confiscation as a Complementary Penalty

In its capacity as a penalty, confiscation is governed by the principle of legality. Its application is only permissible if expressly provided for by law for Class 5 misdemeanors (contraventions), felonies (délits), and crimes (crimes) (Art. 131-6 to 131-11, C. Pén.).¹⁵ It is then pronounced by the trial court against the convicted person.

A distinction is made between special confiscation (confiscation spéciale), which mandatorily applies to the object used or intended for use in committing the offense or that is its product, and general confiscation (confiscation générale), which may extend to any property belonging to the convicted person, provided the law so allows (e.g., in cases of organized crime or drug trafficking, Art. 131-21, C. Pén.).¹⁶

2.1.2 Confiscation as a Safety Measure

Independent of any criminal conviction, the legislature has established regimes of confiscation “as of right” (de plein droit) or as a safety measure. This is the case for the confiscation of “instruments and products” of the offense provided for in Article 131-21 of the Penal Code, which can be ordered even in cases of exemption from penalty or against a

person found not criminally responsible.¹⁷ This measure, which pertains more to the neutralization of a danger than to punishment, illustrates the public policy concern.

2.2 The Confiscatory Process: From Seizure to Disposal

The confiscation procedure follows a rigorous path, from the identification of assets to their alienation.

2.2.1 The Identification and Seizure Phase

The identification of confiscatable property occurs during the investigative phase. Investigative services examine the origin of assets held by the suspect to establish their link to the offense. Seizure (saisie), a protective measure authorized by the liberty and custody judge (juge des libertés et de la détention - JLD) or the investigating magistrate (juge d'instruction), freezes the assets to prevent their dissipation before a final judgment.

This seizure, provided for in Articles 56-1 to 56-4 and 132-1 to 132-6 of the Code of Criminal Procedure (Code de procédure pénale), is often a prerequisite for effective confiscation.¹⁸

2.2.2 The Adjudication Phase and Pronouncement

At trial, the public prosecutor (ministère public) requests the confiscation of seized assets identified as confiscatable. The court, after an inter partes adversarial debate, rules on the merits of the request. Its judgment or ruling must precisely designate the confiscated property and order its transfer to the State.

¹⁵ France. (n.d.). *French Penal Code (Code pénal)*, Articles 131-6, 131-21, et seq.

¹⁶ France. (2010). *Law No. 2010-768 of July 9, 2010, on the confiscation of criminal assets*.

¹⁷ France. (n.d.). *French Penal Code (Code pénal)*, Articles 131-6, 131-21, et seq.

¹⁸ France. (n.d.). *French Penal Code (Code pénal)*, Articles 131-6, 131-21, et seq.

The decision must be specifically motivated, particularly when the confiscation is general, to justify the link between the assets and the offense.

2.2.3 Execution and Management of Confiscated Assets

Once the decision is final, the public prosecutor (*procureur de la République*) orders the lifting of protective measures and the effective implementation of the confiscation. The Agence de gestion et de recouvrement des avoirs saisis et confisqués (AGRASC – Agency for the Management and Recovery of Seized and Confiscated Assets), through its operational service, the Administration nationale des biens confisqués (ANBC – National Administration for Confiscated Assets), is responsible for managing and liquidating the assets (public auction, destruction, etc.).¹⁹ The proceeds of the sale are transferred to the State's budget, with a possible portion allocated to compensating victims.

III. Comparative Analysis of Seizure Systems in Indonesia and France

3.1 Authority to Conduct Seizure

The authority to conduct seizure represents the first fundamental dimension distinguishing the Indonesian and French criminal procedural systems. Although both systems recognize seizure as a coercive procedural measure aimed at securing evidence and safeguarding the effectiveness of criminal proceedings, the institutional design of authority reflects different legal traditions and philosophical orientations.

Under the New Indonesian Criminal Procedure Code, seizure constitutes an investigative power vested primarily in investigators, particularly the police and other authorized investigators under special statutes.²⁰ This authority is exercised within the framework of preliminary investigation and formal investigation, with seizure positioned as an instrument to preserve evidentiary integrity, prevent the dissipation of assets, and ensure the effectiveness of prosecution. The New Code strengthens the legality principle by expressly limiting seizure authority to objects that are directly related to the criminal act, constitute proceeds of crime, or are used as instrumentalities of the offense. However, despite this normative refinement, the authority remains predominantly executive in character, as seizure is initiated by investigators rather than judicial officers.²¹

By contrast, the French Code de procédure pénale situates seizure authority within a more judicialized framework. Although police officers (*officiers de police judiciaire*) may conduct seizures during *flagrante delicto* or preliminary investigations, the overarching authority remains closely connected to the judiciary. In investigations led by an investigating judge (*juge d'instruction*), seizure authority is explicitly judicial in nature. Even in prosecutorial investigations, judicial oversight is embedded through authorization mechanisms and post-seizure review, particularly when seizures affect fundamental rights or involve sensitive categories of property.

This structural distinction reflects a deeper philosophical divergence.

¹⁹ France. (2011). *Decree No. 2011-575 of May 24, 2011, relating to the Agency for the Management and Recovery of Seized and Confiscated Assets (AGRASC)*.

²⁰ Syam, A., Din, Mohd., & Safliana, D. (2025). Konsep Ideal Penyitaan Dalam Sistem Peradilan

Pidana. <https://doi.org/10.64843/prolev.v3i1.68. P.118>

²¹ (Syam, A., Din, Mohd., & Safliana, D, 2025. p.119AAAAAAAAAA)

Indonesia's system, even under the New KUHAP, remains rooted in an executive-led investigation model inherited from continental European law but adapted through post-colonial administrative practices. France, on the other hand, preserves a judge-centered conception of criminal investigation, where coercive measures are intrinsically linked to judicial authority as a safeguard against arbitrariness.

3.2 Procedural Framework of Seizure

The procedural regulation of seizure demonstrates both convergence and divergence between the two legal systems. Procedurally, both Indonesia and France recognize seizure as an exceptional measure that must comply with legality, proportionality, and necessity. However, the degree of procedural formalization differs significantly.

The New Indonesian Criminal Procedure Code introduces a more structured seizure procedure compared to the previous regime. Seizure must be preceded by a formal investigative act, supported by sufficient preliminary evidence, and documented through an official seizure report.²² The Code emphasizes transparency by requiring the presence of witnesses, clear identification of seized objects, and notification to the property owner or possessor. In urgent circumstances, seizure may be conducted without prior judicial authorization, but such actions are subject to subsequent judicial review.

Despite these improvements, the Indonesian procedural model remains relatively flexible, granting investigators discretionary space in determining urgency and relevance. The procedural

safeguards operate primarily *ex post facto*, relying on remedies available during pretrial proceedings or trial stages.

In contrast, the French procedural framework is characterized by a high degree of formalization and differentiation based on the type of investigation. In *flagrante delicto* investigations, seizure may be conducted swiftly, but still within clearly defined statutory boundaries. In preliminary investigations, seizure often requires the consent of the person concerned or prior authorization from a judicial authority. In investigations under the authority of a *juge d'instruction*, seizure is governed by detailed judicial orders specifying scope, duration, and purpose.

This procedural rigidity is not merely technical but normative in nature. It reflects the French legal system's emphasis on foreseeability and legal certainty as essential components of due process. Seizure procedures are designed not only to facilitate law enforcement but also to ensure that individuals can reasonably anticipate the legal consequences of investigative actions.

3.3 Judicial Oversight Mechanisms

Judicial oversight constitutes the most significant axis of comparison between the Indonesian and French seizure systems. Both systems acknowledge the necessity of judicial control over coercive measures, yet they operationalize this principle differently.

Under the New Indonesian Criminal Procedure Code, judicial oversight over seizure is exercised primarily through pretrial mechanisms and subsequent judicial examination during trial.²³ The pretrial judge is empowered to

²² Puspita, D., Sari, Muh. I. F., Rahim, Ibnu, Muh., & Rahim, F. (2025). Handling Of Crypto Assets As Evidence In Criminal Cases.

<https://doi.org/10.64843/prolev.v3i1.31>. p.120

²³ Romlahayati, Y. (2025). Pretrial as a mechanism for guaranteeing human rights protection in the Indonesian criminal justice system. *Hermeneutika*. <https://doi.org/10.33603/hermeneutika.v9i2.10679>. p.36

assess the legality of seizure, including compliance with procedural requirements and respect for constitutional rights. The New Code expands the scope of pretrial review to include substantive proportionality, marking a departure from the narrowly formalistic review under the previous regime.

Nevertheless, judicial oversight in Indonesia remains predominantly reactive. Judges intervene after the seizure has occurred, often upon the initiative of the affected party. This model places a significant burden on individuals to actively seek judicial protection, which may be challenging in practice due to informational asymmetries and resource constraints.

France adopts a more proactive judicial oversight model. The *juge des libertés et de la détention* (JLD) plays a central role in authorizing, supervising, and reviewing seizures that interfere with fundamental rights.²⁴ The JLD operates as an independent judicial authority whose sole function is to balance investigative needs against individual liberties. This institutional specialization ensures that judicial scrutiny is embedded at the decision-making stage, rather than being deferred to post hoc remedies.

The French model thus reflects a preventive conception of judicial oversight, aiming to minimize rights violations before they occur. This contrasts with the Indonesian approach, which relies more heavily on corrective mechanisms after the fact.

3.4 Legal Remedies Against Seizure

Legal remedies constitute an essential component of due process in both legal systems. The availability, accessibility, and effectiveness of

remedies determine whether seizure operates as a lawful procedural tool or degenerates into an instrument of abuse.

In Indonesia, the New Criminal Procedure Code enhances legal remedies by explicitly allowing challenges to seizure through pretrial proceedings. Individuals whose property has been seized may contest the legality, necessity, and proportionality of the measure. The Code also provides avenues for restitution and compensation in cases of unlawful seizure. However, the effectiveness of these remedies depends heavily on judicial interpretation and institutional capacity.

Moreover, remedies in Indonesia are largely adversarial and reactive. The burden rests on the affected party to initiate proceedings, present evidence, and navigate complex procedural requirements. While this framework formally satisfies due process standards, its practical accessibility remains uneven.

France offers a more diversified and layered remedial system. Individuals may challenge seizure before the JLD, the investigating judge, or appellate courts, depending on the procedural stage. Remedies are not limited to legality but extend to necessity, proportionality, and respect for third-party rights. Additionally, French law provides specific mechanisms for restitution of seized property and compensation for unjustified interference.

The multiplicity of remedies in the French system reflects a rights-oriented procedural philosophy, in which access to justice is considered an integral aspect of procedural legitimacy rather than a secondary corrective measure.

3.5 Human Rights Protection and Due Process Guarantees

²⁴ The convergence of judicial and administrative investigation techniques in French law. (2023). Vilnius University Open Series.

<https://doi.org/10.15388/phdstudentsconference.2023.6.p.44>

The protection of human rights represents the normative core of seizure regulation in both systems. Seizure inherently interferes with the right to property, privacy, and, in certain cases, the presumption of innocence. Consequently, its regulation serves as a litmus test for the commitment of a legal system to due process.

The New Indonesian Criminal Procedure Code demonstrates a significant shift toward a rights-based approach. It incorporates constitutional principles and international human rights standards, emphasizing proportionality, accountability, and legal certainty. The recognition of judicial oversight and expanded remedies signals an intention to align seizure practices with modern due process requirements.

However, the Indonesian model still reflects a pragmatic orientation toward law enforcement efficiency. Human rights protection operates primarily as a constraint rather than as a constitutive principle of seizure authority. This balance, while improving upon the previous regime, leaves room for discretionary practices that may vary across institutions.

France adopts a more principled integration of human rights into seizure regulation. Influenced by European human rights jurisprudence, particularly the European Convention on Human Rights, French procedural law treats human rights protection as a foundational element of criminal procedure. Judicial authorization, procedural formalism, and robust remedies function collectively to ensure that seizure remains an exceptional and proportionate measure.

3.6 Protection of Third-Party Rights

The protection of third-party rights constitutes a critical dimension of comparative analysis, particularly in cases involving asset seizure and economic crimes. Third parties often bear the collateral consequences of seizure despite lacking direct involvement in criminal conduct.

The New Indonesian Criminal Procedure Code explicitly recognizes the rights of third parties whose property is affected by seizure. It allows third parties to challenge seizure and seek restitution upon demonstrating lawful ownership and good faith. This represents a notable advancement compared to earlier regulations, which provided limited recognition of third-party interests.

Nevertheless, procedural clarity regarding third-party standing and evidentiary burdens remains underdeveloped. The effectiveness of third-party protection largely depends on judicial discretion and interpretative consistency.

French law provides a more elaborate framework for third-party protection. The *Code de procédure pénale* establishes clear procedures for third parties to assert their rights, challenge seizure orders, and obtain restitution. Judicial authorities are required to consider third-party interests proactively, particularly in cases involving professional secrecy, family property, or commercial transactions.²⁵

This proactive protection reflects the French legal system's broader commitment to minimizing unjustified collateral harm and preserving legal certainty for individuals not implicated in criminal wrongdoing.

²⁵ France. (n.d.). *Code de procédure pénale*.

IV. Normative Implications of Seizure Regulation under the New Indonesian Criminal Procedure Code

4.1 Reorientation of Seizure as a Rights-Sensitive Coercive Measure

The enactment of the New Indonesian Criminal Procedure Code marks a significant normative reorientation in the regulation of seizure as a coercive measure. Seizure is no longer conceptualized merely as a technical investigative instrument but is repositioned as a legal act that directly engages constitutional rights, particularly the right to property, personal security, and due process of law. This shift reflects a broader transformation in Indonesian criminal procedure toward a rights-sensitive framework that seeks to balance effective law enforcement with the protection of individual liberties.

Normatively, the New Code reframes seizure within the principles of legality, proportionality, and accountability.²⁶ The requirement that seized objects must have a clear and direct connection to the alleged criminal offense narrows the scope of discretionary power previously exercised by investigators. This normative tightening signifies an explicit rejection of arbitrary or overly expansive seizure practices that characterized the earlier procedural regime. As a result, seizure is no longer justified solely by investigative convenience but must be demonstrably necessary and legally grounded.

This reorientation aligns Indonesian criminal procedure more closely with contemporary standards of procedural justice. However, it also generates normative tension, as

investigators must now operate within a more constrained legal environment that demands higher justificatory standards for coercive actions.

4.2 Strengthening the Principle of Judicial Control

One of the most consequential normative implications of the New Criminal Procedure Code lies in the strengthened role of judicial control over seizure. While the Indonesian system does not fully adopt a judge-led investigation model, it significantly enhances judicial oversight through expanded pretrial review and clearer standards for assessing the legality and proportionality of seizure.²⁷

Normatively, this development signals a shift from executive dominance toward a more balanced distribution of procedural power. Judicial oversight functions not merely as a corrective mechanism but as an integral component of procedural legitimacy. By empowering judges to assess both formal compliance and substantive justification, the New Code embeds constitutional values within everyday investigative practices.

Nevertheless, the Indonesian model retains a predominantly *ex post facto* structure of judicial control. Judges intervene after seizure has occurred, which raises normative questions regarding the adequacy of protection against irreversible rights violations. From a normative perspective, this model prioritizes remedial justice over preventive justice, placing the burden of rights protection on affected individuals rather than on institutional safeguards.

This design choice reflects Indonesia's cautious approach to reform, balancing the desire for enhanced rights

²⁶ Bird, A. G. (2025). Seizure, Freezing, Detention, and Forfeiture in Summary Proceedings. <https://doi.org/10.1093/oso/9780198930648.003.013>. p.23

²⁷ Romlahayati, Y. (2025). Pretrial as a mechanism for guaranteeing human rights protection in the Indonesian criminal justice system. *Hermeneutika*. <https://doi.org/10.33603/hermeneutika.v9i2.10679>. p.12

protection with concerns about investigative efficiency and institutional capacity.

4.3 Normative Expansion of Legal Remedies and Procedural Fairness

The New Criminal Procedure Code introduces a broader and more explicit framework for legal remedies against seizure. This expansion has significant normative implications for procedural fairness and access to justice. By allowing individuals to challenge seizure on substantive grounds, including necessity and proportionality, the Code elevates due process from a formal requirement to a substantive guarantee.

Normatively, this development reinforces the principle that coercive measures must be contestable and reversible. Legal remedies are no longer confined to technical defects but extend to the underlying justification of state interference. This shift enhances the dialogical character of criminal procedure, enabling judicial scrutiny to function as a forum for balancing competing interests.

However, the effectiveness of these remedies depends on their practical accessibility. Normatively, a remedial framework that exists only on paper risks becoming symbolic rather than transformative. Structural barriers such as limited legal literacy, unequal access to counsel, and procedural complexity may undermine the normative promise of expanded remedies. Consequently, the New Code's remedial provisions require complementary institutional reforms to achieve their intended normative impact.²⁸

4.4 Reconfiguration of Property Rights in Criminal Proceedings

Seizure regulation under the New Criminal Procedure Code has profound normative implications for the

conceptualization of property rights within criminal proceedings. Property is no longer treated as a neutral object of investigation but as a legally protected interest that warrants procedural safeguards.

The Code's recognition of third-party rights represents a normative advancement in this regard. By allowing third parties to challenge seizure and seek restitution, the New Code acknowledges that criminal procedure must account for the collateral effects of state action. This recognition reflects a more nuanced understanding of justice, one that extends beyond the binary relationship between the state and the suspect.

Nevertheless, normative ambiguity persists regarding the evidentiary burdens placed on third parties and the criteria for good faith ownership. Without clear interpretive guidance, courts may adopt inconsistent approaches that dilute the normative strength of third-party protection. Thus, while the New Code establishes an important normative foundation, its full realization depends on coherent judicial interpretation.

4.5 Due Process and the Presumption of Innocence

The regulation of seizure under the New Criminal Procedure Code also implicates the presumption of innocence, a cornerstone of criminal justice. Seizure, particularly asset seizure, carries symbolic and practical consequences that may stigmatize individuals prior to adjudication.

Normatively, the New Code seeks to mitigate this tension by emphasizing proportionality and temporal limitations. Seizure is framed as a temporary and conditional measure, justified solely by procedural necessity rather than punitive

²⁸ Hopkins, S., O'Kelly, C., & Hackett, C. (2025). Corporate code-shifting in business and human rights.

intent. This framing reinforces the distinction between investigation and punishment, preserving the normative integrity of the presumption of innocence.

However, the absence of strict temporal limits and periodic judicial review mechanisms raises normative concerns. Without regular reassessment, seizure risks evolving into a de facto sanction, undermining the presumption of innocence. From a normative standpoint, this gap highlights the need for further refinement to ensure that seizure remains genuinely provisional.

4.6 Alignment with International Human Rights Standards

The New Indonesian Criminal Procedure Code reflects an explicit effort to align national procedural law with international human rights standards. Principles articulated in international instruments, such as proportionality, effective remedy, and judicial oversight, are increasingly visible in seizure regulation.²⁹

Normatively, this alignment enhances the legitimacy of Indonesian criminal procedure in both domestic and international contexts. It signals Indonesia's commitment to integrating human rights into procedural law, moving beyond rhetorical endorsement toward normative incorporation.

Yet, alignment at the normative level does not automatically translate into compliance in practice. The effectiveness of human rights protection depends on institutional culture, judicial independence, and enforcement mechanisms. Consequently, the New Code should be understood as a normative framework that requires continuous interpretation and reinforcement to achieve substantive compliance.

4.7 Normative Limitations and Structural Challenges

Despite its progressive orientation, the New Criminal Procedure Code exhibits normative limitations that warrant critical examination. The continued reliance on investigator-initiated seizure, combined with ex post judicial review, leaves room for discretionary practices that may undermine rights protection.

Additionally, the absence of a specialized judicial authority equivalent to the French *juge des libertés et de la détention* reflects a normative compromise. While understandable within Indonesia's institutional context, this absence limits the preventive capacity of judicial oversight.

These limitations do not negate the normative advances of the New Code but underscore the transitional nature of reform. Normatively, the New Criminal Procedure Code represents an evolutionary rather than revolutionary shift, laying the groundwork for further development rather than offering a final solution.

V. Reconstruction of Seizure Regulation Based on the French Model

5.1 Rationale for Normative Reconstruction

The comparative analysis between the New Indonesian Criminal Procedure Code and the French Code de procédure pénale reveals that, despite significant progress, the Indonesian seizure framework remains structurally constrained by its executive-centered investigative model. While the New Code incorporates stronger safeguards and clearer limitations, it has not fully resolved the inherent tension between investigative

²⁹ Mancuso, E. M. (2023). Confiscation and Seizure.

<https://doi.org/10.1093/law/9780192847522.003.013>. p.9

efficiency and the protection of fundamental rights.

From a normative perspective, reconstruction does not imply legal transplantation in a mechanical sense. Rather, it involves selective adaptation of principles, institutional mechanisms, and procedural safeguards that are compatible with Indonesia's constitutional structure and legal culture. The French model offers valuable normative insights, particularly in its emphasis on preventive judicial control, specialization of judicial oversight, and systematic protection of third-party rights.

The reconstruction proposed in this section is therefore grounded in functional equivalence rather than institutional imitation, aiming to enhance rights protection while preserving procedural effectiveness.

5.2 Reconstructing the Authority Structure of Seizure

One of the central weaknesses of the Indonesian seizure system lies in the concentration of seizure authority within investigative bodies. Although judicial oversight exists, it operates primarily as an *ex post* corrective mechanism. Drawing from the French model, a reconstructed framework should recalibrate this authority structure by introducing a more balanced distribution of power between investigators and judicial authorities.

Normatively, seizure should be reconceptualized as a judicially conditioned measure rather than an investigator-driven act. This does not require transferring investigative leadership to judges, but it does require embedding judicial authorization as a default prerequisite for seizure, particularly in non-urgent cases. Judicial authorization would function as a substantive assessment of necessity, proportionality, and relevance, rather than a mere formal approval.

Such reconstruction would transform judicial oversight from a

reactive safeguard into a preventive guarantee, reducing the risk of arbitrary interference with property rights and enhancing procedural legitimacy.

5.3 Institutionalizing Specialized Judicial Oversight

A defining feature of the French seizure regime is the role of the *juge des libertés et de la détention* as a specialized judicial authority dedicated to protecting individual liberties during criminal investigations. While Indonesia's legal system does not currently recognize such specialization, normative reconstruction could move toward functional specialization within existing judicial structures.

This could be achieved by designating specific judges or chambers with exclusive competence over coercive measures, including seizure. These judicial actors would possess specialized training and authority to assess the legality and proportionality of seizure requests, as well as to conduct periodic reviews of ongoing seizures.

Normatively, specialization enhances consistency, predictability, and rights sensitivity in judicial decision-making. It also strengthens public trust by signaling that interference with fundamental rights is subject to rigorous and expert scrutiny.

5.4 Procedural Reconstruction Toward Preventive Safeguards

Procedural reconstruction should focus on shifting the seizure framework from a predominantly remedial model to a preventive one. Inspired by French procedural law, seizure procedures should incorporate mandatory judicial authorization as a general rule, with clearly defined exceptions for urgent circumstances.

In addition, reconstructed procedures should require detailed judicial orders specifying the scope, duration, and

purpose of seizure. Such formalization serves not merely bureaucratic functions but operates as a normative constraint on discretionary power. It ensures that seizure remains tightly linked to investigative necessity and does not evolve into an implicit punitive measure.

Preventive safeguards also include periodic judicial review of ongoing seizures. Without such review, seizure risks becoming prolonged and disproportionate, undermining the presumption of innocence and the temporary nature of coercive measures.

5.5 Strengthening Legal Remedies and Access to Justice

The reconstruction of seizure regulation must also address the accessibility and effectiveness of legal remedies. While the New Indonesian Criminal Procedure Code expands remedial avenues, these remedies remain largely reactive and adversarial.

Drawing from the French model, reconstructed remedies should be diversified and simplified. Individuals affected by seizure, including third parties, should have access to expedited judicial review mechanisms that prioritize substantive justice over procedural technicalities. Remedies should explicitly cover not only legality but also necessity, proportionality, and duration.

Normatively, effective remedies are not supplementary to rights protection but constitutive of due process itself. Without accessible remedies, procedural safeguards lose their normative force and become symbolic rather than operational.

5.6 Reconstructing Third-Party Protection as a Core Principle

One of the most compelling lessons from the French model is the proactive protection of third-party rights. In Indonesia, third-party protection remains reactive and underdeveloped,

often depending on judicial discretion rather than clear statutory guidance.

Normative reconstruction should elevate third-party protection from a peripheral concern to a core procedural principle. This includes clear rules on standing, evidentiary standards for good faith ownership, and expedited restitution procedures. Judicial authorities should be required to consider third-party interests at the authorization stage, rather than addressing them only after harm has occurred.

Such reconstruction aligns with broader principles of fairness and legal certainty, ensuring that criminal procedure does not generate unjust collateral damage.

5.7 Human Rights-Centered Reconstruction of Seizure

At the normative level, the ultimate objective of reconstruction is to reposition human rights as the foundational axis of seizure regulation. The French model demonstrates that effective law enforcement and robust rights protection are not mutually exclusive but mutually reinforcing.

A reconstructed Indonesian framework should explicitly integrate international human rights standards into seizure regulation, including principles derived from comparative jurisprudence on property rights, privacy, and effective remedy. Judicial interpretation should be guided by these principles, transforming seizure from a discretionary investigative tool into a constitutionally constrained legal act.

This human rights-centered reconstruction would not only enhance domestic legitimacy but also strengthen Indonesia's position within the global discourse on criminal justice reform.

5.8 Toward a Contextualized Hybrid Model

The reconstruction proposed in this article does not advocate wholesale adoption of the French seizure system. Instead, it envisions a contextualized hybrid model that combines Indonesia's existing investigative structure with French-inspired safeguards.

Such a model recognizes Indonesia's institutional realities while addressing the normative deficiencies identified through comparative analysis. It represents an evolutionary reform strategy, capable of adapting to institutional capacity while progressively strengthening rights protection.

Normatively, this hybrid approach reflects a mature understanding of comparative law: learning from foreign models without sacrificing constitutional identity or procedural coherence.

5.9 Normative Contribution to Criminal Procedure Reform

The reconstruction of seizure regulation based on the French model contributes to the broader discourse on criminal procedure reform in Indonesia. It demonstrates that comparative analysis can function not merely as descriptive scholarship but as a normative tool for legal development.

By reimagining seizure as a judicially conditioned, rights-sensitive measure, the proposed reconstruction enhances due process, strengthens judicial authority, and promotes legal certainty. These outcomes are essential for a modern criminal justice system that aspires to legitimacy, fairness, and effectiveness.

Conclusion

This article has examined seizure as a coercive measure through a comparative analysis of criminal procedural law in Indonesia and France, focusing on the normative transformation introduced by the New Indonesian Criminal Procedure Code and the established safeguards embedded in

the French Code de procédure pénale. Seizure, as demonstrated throughout this study, occupies a critical position in criminal procedure, as it directly interferes with fundamental rights while simultaneously serving as an indispensable tool for effective law enforcement.

The analysis reveals that the New Indonesian Criminal Procedure Code represents a significant departure from the previous procedural regime. By strengthening legality requirements, expanding judicial review, and recognizing third-party rights, the New Code reflects a clear normative shift toward a more rights-sensitive criminal justice framework. Seizure is no longer treated as a purely technical investigative act but as a legal measure that must be justified, proportionate, and accountable. This transformation aligns Indonesian criminal procedure more closely with constitutional principles and international human rights standards.

However, the comparative perspective also exposes structural limitations within the Indonesian framework. Despite normative improvements, seizure authority remains predominantly investigator-driven, with judicial oversight functioning largely on an *ex post* basis. Legal remedies, while formally expanded, continue to place a substantial burden on affected individuals to initiate and pursue judicial protection. These features contrast sharply with the French model, which embeds preventive judicial control, institutional specialization, and proactive protection of third-party rights at the core of seizure regulation.

The French system illustrates that strong judicial involvement in coercive measures does not undermine investigative effectiveness but rather enhances procedural legitimacy and public trust. Through mechanisms such as prior judicial authorization, the role of the *juge des libertés et de la détention*, and multilayered

remedies, seizure is framed as an exceptional measure that operates within strict normative boundaries. This approach ensures that the balance between state power and individual rights is maintained throughout the investigative process.

Building on these findings, this article proposes a contextualized reconstruction of seizure regulation in Indonesia. Rather than advocating wholesale legal transplantation, the reconstruction emphasizes selective adaptation of French-inspired principles that are compatible with Indonesia's constitutional structure and institutional capacity. Central to this reconstruction are the reconfiguration of seizure authority, the institutionalization of specialized judicial oversight, the strengthening of preventive safeguards, and the elevation of third-party protection as a core procedural principle.

Normatively, the proposed reconstruction repositions human rights as the foundational axis of seizure regulation. It advances a model in which judicial control operates preventively rather than reactively, legal remedies are accessible and effective, and property rights are treated as legally protected interests rather than collateral casualties of criminal investigation. Such a model does not weaken law enforcement but enhances its legitimacy by grounding coercive measures in transparent, accountable, and rights-respecting procedures.

In conclusion, the New Indonesian Criminal Procedure Code marks an important milestone in the evolution of Indonesian criminal justice, but it should be understood as a transitional framework rather than a final destination. Comparative engagement with the French seizure system demonstrates that further normative refinement is both possible and necessary. By embracing a rights-centered and judicially conditioned approach to seizure, Indonesia can strengthen due process, reinforce the rule of law, and ensure that

criminal procedure functions not only as an instrument of control but as a vehicle of justice.

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