

# **Ex-Post Judicial Authorization in the Seizure of Urgent Movable Corporate Assets under the New Criminal Procedure Code (KUHAP): A Critical Analysis of Preventive Judicial Scrutiny and Corporate Asset Risk Mitigation Strategy**

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## **ABSTRACT**

The ratification of the New Criminal Procedure Code (KUHAP) is a monumental formal legal reform in Indonesia, publicly positioned to strengthen the core principles of Due Process of Law and the protection of Human Rights. However, this study critically examines a paradoxical provision within the new code: the mechanism for ex-post judicial authorization for the seizure of movable corporate assets in "urgent circumstances" (Article 112A). Utilizing normative legal research with a conceptual approach, the study analyzes the provision against constitutional norms and procedural fairness doctrines. The primary finding reveals that Article 112A, by allowing action before judicial review, functionally eliminates the essential filter of preventive Judicial Scrutiny. This procedural weakness creates an elevated legal and operational risk for corporations, exposing them to sudden asset freezing which severely impacts liquidity, working capital, and digital assets. Although the new KUHAP broadens the scope of Pre-trial motions (Praperadilan) to include challenging bank blocking, this instrument is inherently reactive and fails to prevent initial damages. Therefore, the article concludes that a Judicial Review (Uji Materiil) of Article 112A is imperative. This review should demand an interpretation that mandates ex-ante judicial control for highly invasive seizures to ensure the substantive fulfillment of due process, while simultaneously urging corporate legal counsel to adopt aggressive, proactive litigation strategies through Praperadilan.

**Keywords :** *Corporate Asset Risk, Pretrial Proceedings, Judicial Scrutiny, Due Process.*

## **INTRODUCTION**

The ratification of the New Criminal Procedure Code (KUHAP) is a fundamental legislative step in Indonesia, slated for implementation on 2 January 2026 (Tempo, 2025). This reform aims to harmonize the Indonesian criminal justice system with the newly enacted National Criminal Code, particularly by accommodating concepts like Restorative Justice and explicitly recognizing corporate criminal liability (Waruwu, 2025; Sistem Peradilan Pidana Indonesia, 2025). The declared goal of this legal modernization is to establish a more modern, adaptive judicial system centered on the protection of Human Rights and the principle of Due Process of Law (Kemenkumham, 2025; DPR RI, 2025).

The focus of this research is a critical analysis of specific coercive measures within the New KUHAP, especially Article 112A. This provision grants investigators the authority to seize movable corporate assets under "urgent circumstances" without obtaining prior authorization from the District Court (PN) Chairman, requiring only ex-post (after-the-fact) approval (Hutabarat, 2025). This issue is highly pertinent given the explicit recognition of

corporate criminal accountability (Waruwu, 2025) and the vulnerability of complex corporate assets, including digital property, to such forceful measures.

The central hypothesis posits that the ex-post judicial authorization mechanism in Article 112A is inadequate as a safeguard, as it fails to provide sufficient preventive judicial oversight and dangerously risks increasing the discretionary power of law enforcement (Koalisi Masyarakat Sipil et al., 2025; Setiadji Putri, 2025). This contention highlights a contradiction: while the government advocates for strengthened due process (Hiariej, 2025), the functional effect of Article 112A appears to weaken judicial control at the point of action.

The significance of this study lies in providing a critical assessment and strategic guidance for corporate legal professionals and compliance officers in mitigating these new asset vulnerabilities. The author argues that the optimization of *Praperadilan* (Pre-trial motion), despite its reactive nature, is now the critical litigation instrument. The novelty of this research is the synthesis of asset risk analysis for modern corporations with specific procedural litigation strategies against the discretionary seizure power enabled by the new legal framework. This study employs a normative legal research methodology..

## LITERATURE REVIEW

Previous studies consistently underline the urgency of updating the KUHAP to align with modern criminal principles, including corporate liability and Restorative Justice (Waruwu, 2025; Sistem Peradilan Pidana Indonesia, 2025). Theoretically, the KUHAP must be founded on the doctrine of Due Process of Law, ensuring procedural fairness and the principle of equality before the law (Hiariej, 2025; Maramis, 2025; Muhammad, 2007; ). Due process specifically requires clear boundaries for the use of coercive measures to protect the constitutional rights of the accused.

However, critical literature raises concerns about the implementation of the reform. Research by Prasetya and Widodo (2024) confirms a trend of increasing discretionary authority for law enforcement officials in the Indonesian criminal justice system. Setiadji Putri (2025) explicitly warned that the revised KUHAP could potentially expand police power. Critiques from civil society coalitions emphasize that provisions like Article 112A allow investigators to conduct seizures based on subjective urgency without preventive judicial authorization, which undermines the principle of proper legal procedure (Koalisi Masyarakat Sipil et al., 2025). Furthermore, Sutomo (2025) has highlighted the immense challenge in protecting corporate digital assets amidst escalating economic crimes.

The author agrees with the spirit of expanding *Praperadilan* as a corrective mechanism (Schoolmedia, 2025;), but contests the ex-post authorization mechanism in Article 112A, arguing it effectively renders the essential Judicial Scrutiny ineffective during the critical moment of asset seizure. The gap this research fills is the formulation of a specific corporate legal and litigation response strategy tailored to the asset risks created by this new discretionary seizure regime, an aspect not fully elaborated in existing legal literature.

## METHOD

This research employs a normative legal research method (normative legal research), focusing on written legal doctrines, norms, and regulatory frameworks.

### A. Research Approaches

Statute Approach (*Pendekatan Perundang-undangan*): Analyzing the formal legal provisions, specifically Article 112A of the New KUHAP, the expanded

provisions on Praperadilan, and the Supreme Court Regulation (PERMA) concerning corporate criminal liability (Perma No. 13 Tahun 2016; ). Conceptual Approach (Pendekatan Konseptual): Analyzing and testing fundamental legal concepts such as Due Process of Law (Maramis, 2025) and Judicial Scrutiny as critical frameworks to assess the procedural fairness and constitutional compliance of the normative provisions in the New KUHAP.

#### B. Data Collection Techniques

The data used is secondary legal material (bahan hukum), categorized as follows: Primary Legal Materials: The New KUHAP (Article 112A) and the National Criminal Code. Secondary Legal Materials: Scholarly journals (Prasetia & Widodo, 2024; Sutomo, 2025), established criminal law textbooks (Maramis, 2025; Muhammad, 2007; Anwar & Adang, 2008), and official critiques from civil society and legal experts (Koalisi Masyarakat Sipil et al., 2025).

#### C. Data Analysis Technique

Data analysis is performed qualitatively and deductively. The process begins by testing the compatibility of Article 112A against the universal principle of Due Process of Law and the necessity of preventive Judicial Scrutiny. Subsequently, conclusions are drawn regarding the consequential risks to corporate assets, and an effective Praperadilan strategy is formulated, using the concept of Judicial Scrutiny as the primary analytical tool.

### RESULT AND DISCUSSION

#### A. Procedural Contradiction: Ex-Post Discretion and Corporate Asset Vulnerability

Article 112A of the New KUHAP grants investigators the power to seize movable property in "urgent circumstances" based on their own assessment, requiring only ex-post approval from the PN Chairman (Hutabarat, 2025). This provision, which allows investigators to bypass the initial judicial filter, fundamentally contradicts the ideal of preventive Judicial Scrutiny.<sup>5</sup> It facilitates the potential for increased discretionary power by investigators, a concern consistently raised by critics (Koalisi Masyarakat Sipil et al., 2025; Setiadji Putri, 2025).

Corporate entities face substantial legal exposure due to the authorization of swift seizure actions, particularly those grounded in the subjective determination of urgency by law enforcement officials, which includes the immediate blocking of financial assets and the confiscation of data servers. Such precipitous interventions invariably result in the sudden incapacitation of assets, thereby critically impairing corporate liquidity and operational continuity. Crucially, the omission of a preventive ex-ante judicial filter compromises the protection of property rights, lending credence to the assertion that the New KUHAP effectively formalizes an expansion of state coercive power. This operational reality, therefore, suggests that the proclaimed spirit of due process (Kemenkumham, 2025) is, in effect, subverted by the inherent nature of the coercive procedure itself.

The procedural weakness is further highlighted by the lack of clear parameters defining "urgent circumstances," creating legal uncertainty (Prasetia & Widodo, 2024; 7). In the absence of a strict time limit for obtaining ex-post authorization such as the 1x24 hours standard often found in other draft regulations (NA RUU Perampasan Aset, 2025; ) the New KUHAP's provision becomes vulnerable to exploitation, potentially prolonging the period of legally questionable asset freezing.

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**Table 1.** Comparison Between Ex-Ante and Ex-Post Judicial Authorization Mechanisms in Asset Seizure Procedures

Mechanism	Authorization Time	Time Judicial Control Function	Critique Against Article 112A	Conceptual Basis
<i>Ex-Ante</i> (Ideal)	Before Action	Verifies necessity and legality (Filter)	Eliminated, creating a loophole for subjective abuse	Preventive Judicial Scrutiny
<i>Ex-Post</i> (Psl 112A)	After Action	Tests compliance with post-action procedure (Correction)	Does not prevent initial damage; legitimizes unilateral action by the investigator	Reactive Control

Table 1 serves as the analytical structure of the paper rests on a comparison that clarifies how the shift introduced by Article 112A transforms the function of judicial oversight in asset seizure procedures. By repositioning judicial authorization to occur only after a coercive measure has taken effect, the revised framework alters oversight from a preventive safeguard into a retrospective form of control. This change in temporal placement has direct implications: actions that interfere with liquidity, transactional capacity, or digital infrastructure may be executed immediately, creating a period in which material disruption occurs before legality is assessed. The contrast between early judicial filtering and post-action review underscores how the revised design broadens investigative discretion while narrowing opportunities for prior scrutiny. In this architecture, the potential for sudden and subjective interventions increases, particularly in cases involving movable or digital assets. The shift also explains the heightened reliance on post-seizure remedies such as *Praperadilan*, which now function as the primary avenue for testing the legality of coercive measures, despite their inability to prevent initial harm. Taken together, this framework demonstrates how the timing of judicial involvement shapes the distribution of risk, with Article 112A effectively reallocating that burden toward affected entities whose assets are most exposed to abrupt investigative actions.

## B. Optimizing Praperadilan: A Corporate Lawyer's Strategy Against Subjective Seizure

Although Article 112A opens the door to discretion, the New KUHP's expansion of *Praperadilan* is the critical legal instrument for legal corporate teams to mitigate resulting losses (Schoolmedia, 2025). The expanded scope now includes the testing of the legality of all coercive measures, including the specific challenge of Pemblokiran Transaksi Perbankan (Bank Transaction Blocking).<sup>3</sup> *Praperadilan* serves as the reactive corrective mechanism to judicially review the legality of the seizure after the fact.

Given that a *Praperadilan* request is void if the main case has been transferred and

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initiated in the district court 9, corporate lawyers must adopt aggressive and swift litigation strategies (Yuniarti, 2025): Challenging "Urgent Circumstances": The core strategy must involve developing legal arguments that fundamentally challenge the substantive basis and factual evidence of the investigator's claim of "urgent circumstances." Advocates must be highly creative, for instance, by demonstrating that the assets were already secured or that there was no objective risk of evidence disposal, to prove the arbitrariness of the action (Anugrah, 2023 ).

**Enforcing Due Process and Proportionality:** Leveraging the doctrine of Due Process of Law and constitutional rights protection to demand the annulment of seizures that violate procedural or substantive principles.<sup>10</sup> This includes arguing that highly invasive seizures, such as total bank account blocking, are disproportionate to the alleged criminal act.

This analysis emphasizes that the New KUHAP necessitates that corporate lawyers transition from a traditionally reactive approach to one that is highly proactive in internal compliance and simultaneously aggressive in utilizing Praperadilan to enforce accountability against discretionary authority.

## CONCLUSION

The provision of Article 112A in the New KUHAP, allowing ex-post judicial authorization for the seizure of movable assets in "urgent circumstances," creates a significant procedural contradiction. Despite the code's goal to strengthen due process (Kemenkumham, 2025), this mechanism functionally legitimizes subjective investigatorial discretion and heightens the risk of sudden asset freezing for corporations. The failure lies in the elimination of the necessary preventive Judicial Scrutiny at the point of action. While the expanded Praperadilan (Schoolmedia, 2025; ) is a vital reactive tool for legal corporate teams to challenge the legality of these actions, its post-action nature prevents initial damage and cannot substitute for the essential ex-ante judicial filter.

## SUGGESTIONS AND RECOMMENDATIONS

The first step that needs to be taken is to file a Judicial Review of Article 112A before the Constitutional Court. This is essential to secure an interpretation that requires ex-ante judicial authorization, particularly for highly intrusive forms of seizure that immediately disrupt corporate liquidity and operations, such as the freezing of bank accounts or the confiscation of data servers. In parallel, there should be a normative response from the Supreme Court or relevant regulatory bodies through the issuance of implementing regulations that clearly and objectively define what constitutes "urgent circumstances," while also imposing a strict, non-negotiable time limit such as 24 hours for investigators to obtain ex-post authorization as a condition for the provision's constitutionality. At the same time, corporations must adopt a proactive approach by developing Legal Emergency Response Protocols (LERP) to ensure that legal and compliance teams can respond swiftly to sudden seizures, especially those involving liquid or digital assets. This includes training key personnel to immediately initiate pretrial proceedings (Praperadilan) as a means to challenge the legality of the investigative action and to minimize potential financial harm.

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