

The Juridical Validity of the Asset Seizure Prohibition for the Indonesia Investment Authority (INA)

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Abstract

Article 160, paragraph (3) of the Job Creation Law prohibits the confiscation of assets by the Indonesia Investment Authority (INA). The provision prohibiting asset confiscation raises problems in the form of norm conflicts with the provisions of bail confiscation, criminal confiscation, and bankruptcy confiscation. Therefore, it is necessary to analyze the validity of the norms prohibiting the confiscation of INA assets. Based on this background, the purpose of this study is to analyze the juridical validity of the norms prohibiting the seizure of INA assets. This research uses a statutory and conceptual approach. The type of legal material consists of primary and secondary legal materials sourced from both primary and secondary data. The legal materials are analyzed through interpretation techniques. The results of this study reveal that the norm prohibiting the confiscation of INA assets in positive Law does not fulfill the principle of juridical validity, making it an invalid norm. Suggestions to the legislators to make changes to the formulation of Article 160 paragraph (3) of the Job Creation Law in order to fulfill the principle of juridical validity.

Keywords:

prohibition of asset seizure, Indonesia Investment Authority

INTRODUCTION

The enactment of the Job Creation Law marked a significant juncture in Indonesian legal reform, giving rise to the Indonesia Investment Authority (INA), a financial entity endowed with a unique, sui generis legal status. Established under Government Regulation No. 74 of 2020, INA operates with distinct privileges designed to facilitate its role in managing Central Government investments. Central to its unique framework is a substantial privilege stipulated in Article 160, paragraph (3) of the Job Creation Law: a statutory immunity from the seizure of its assets. This provision explicitly forbids any party from seizing INA's assets, creating a single, narrow exception for assets that have been formally pledged as collateral for a loan. By a contrary interpretation, this norm establishes a default principle of absolute immunity for all other assets, regardless of the legal context.

This statutory safeguard, however, creates a significant legal anomaly when juxtaposed with established principles of compulsory execution and seizure across multiple domains of Indonesian Law. The prohibition introduces profound uncertainty and directly conflicts with at least three fundamental legal mechanisms. First, civil Law challenges the efficacy of precautionary attachment (*sita jaminan*), a cornerstone creditor remedy outlined in Article 1131 of the Civil Code, as well as procedural codes such as the HIR and Rbg. This mechanism enables plaintiffs to secure assets, ensuring their claims are not rendered illusory, and that final, binding judgments can be enforced. The immunity granted to INA effectively neutralizes this vital tool for civil litigants.

Second, the prohibition obstructs the course of criminal justice. Criminal seizure (*sita pidana*), as defined by the Code of Criminal Procedure (KUHP), is a crucial investigative power that enables investigators to secure evidence essential for prosecution and trial. By shielding INA's assets, the Law potentially impedes criminal

investigations and the state's ability to prosecute offenses, including the potential for asset forfeiture in cases of proven criminality.

Third, and perhaps most fundamentally, the norm collides with the core tenets of bankruptcy law. The Bankruptcy Law (Law No. 37 of 2004) defines bankruptcy as a general seizure (*sita umum*) of a debtor's entire estate for orderly and equitable settlement by a receiver (*curator*). While the Job Creation Law sets a specific insolvency threshold for INA's bankruptcy, it simultaneously renders the primary consequence of such a declaration—the general seizure of assets—legally impossible. This contradiction undermines the very purpose of the bankruptcy regime.

The resulting legal dissonance among these competing norms necessitates a deeper inquiry into their respective validity. To navigate this complexity, this analysis adopts the theoretical framework of legal validity proposed by Meuwissen. Meuwissen distinguishes between ideal validity (the rational justification of a law) and normative validity, which asserts that a law's force is a conceptual, not an empirical, reality. Normative validity itself rests on three pillars: factual validity (its social effectiveness), moral validity (its ethical justifiability), and juridical validity (its proper formal and material creation). A deficiency in any of these dimensions can vitiate a law's claim to be binding.

While a comprehensive analysis could address all three facets, this inquiry will specifically focus on the dimension of juridical validity. The core of this issue lies in whether a legal norm can be considered valid if it is not formed correctly in a material sense—that is if it substantively contradicts other fundamental legal principles within the same system. Therefore, the central objective of this research is to critically analyze the juridical validity of the norm prohibiting the seizure of INA's assets, evaluating its formal and material coherence within the broader Indonesian legal architecture. The primary research question is thus formulated: How can the juridical validity of the prohibition on seizing INA's assets be assessed in light of its direct conflict with established legal doctrines of seizure in civil, criminal, and bankruptcy law?

METHOD

To address the central research question concerning the legal validity of INA's asset immunity, this study adopts a normative juridical (or doctrinal) research methodology. This approach is centered on a scientific procedure designed to ascertain legal truth by analyzing the internal logic of legal science from a normative standpoint (Ibrahim 2006: 57). The inquiry proceeds along two complementary analytical paths: a statute approach and a conceptual approach. The statute approach involves a meticulous examination of the relevant legislative framework at the heart of the legal issue, principally the Job Creation Law and its implementing regulations. This is supplemented by a conceptual approach, which moves beyond black-letter law to engage with the scholarly views and legal doctrines that shape the field (Marzuki 2011: 93). By integrating these perspectives, the study constructs a robust legal argument grounded in the foundational concept of legal validity itself.

The analytical foundation of this research is built upon a comprehensive review of primary, secondary, and tertiary legal materials. Primary materials include the core statutory instruments governing INA and the prohibition on seizure. Secondary materials offer analytical and theoretical depth, encompassing a diverse range of scholarly literature, including textbooks, e-books, peer-reviewed journals, academic papers, and established legal doctrines. Tertiary sources, such as legal dictionaries

and encyclopedias, are utilized for definitional clarity. These materials were systematically gathered through extensive research in documentary and library sources.

The analysis of these materials follows a rigorous process of legal reasoning. A deductive framework is employed, wherein the established legal norms and statutes (the central premise) are analyzed in light of the principles and doctrines derived from secondary sources (the minor premise) to arrive at a logical conclusion regarding the research problem. This deductive process is further refined through the application of established canons of statutory interpretation. Specifically, the study utilizes grammatical interpretation to ascertain the literal meaning of the legal text, systematic interpretation to situate the conflicting norms within the broader Indonesian legal system, and authentic interpretation to consider official explanations or legislative history related to the provision in question

RESULTS AND DISCUSSION

The principle of juridical validity requires that a legal norm must be formed according to applicable procedural rules by a competent authority and that its substance must not conflict with other legal norms (especially those of a higher hierarchy). This means that the law-making process must be conducted according to the correct procedures, and the regulated substance must not conflict with other legal norms, either vertically or horizontally. The law-making process is fundamentally regulated by Law Number 12 of 2011 concerning the Formulation of Laws and Regulations, which has been amended twice, most recently by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formulation of Laws and Regulations (hereinafter referred to as Law P3). The examination of a legal norm's substance about other legal principles can be conducted by analyzing the relevant laws and regulations.

Law P3 explains that the formulation of laws and regulations involves the creation of legislation, encompassing the stages of planning, drafting, discussion, ratification or enactment, and promulgation. Furthermore, what is meant by laws and regulations? Are written regulations containing legal norms that are generally binding and are formed or enacted by state institutions or authorized officials through procedures stipulated in legislation (Law Number 12 of 2011)? Article 5 of Law P3 specifies several principles for the proper formulation of laws and regulations, namely:

- a. Clarity of purpose;
- b. Appropriate institution or forming official;
- c. Conformity between type, hierarchy, and substance;
- d. Enforceability;
- e. Efficacy and effectiveness; and
- f. Openness.

Laws and regulations in Indonesia have a hierarchy based on their type. The hierarchical structure of laws and regulations in Indonesia is:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Decrees of the People's Consultative Assembly;
- c. Law/Government Regulation instead of Law;
- d. Government Regulation;
- e. Presidential Regulation;
- f. Provincial¹ Regional Regulation;² and
- g. Regency/City Regional Regulation.

There are other types of regulations besides those mentioned above, including regulations issued by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, Ministers, and equivalent bodies, institutions, or commissions formed by Law or by the government upon the command of a law, as well as by Provincial and Regency/City Regional Legislative Councils, Governors, Regents/Mayors, and Village Heads or their equivalent (Law Number 12 of 2011).

The juridical validity of the substance regulated in a legal norm can be assessed by analyzing the consistency of that rule with other legal principles. Soeroso equates legal principles with legal norms. According to Soeroso, a legal principle or norm has a coercive nature and carries sanctions if violated (Soeroso 2021: 218). A legal norm must not conflict with rules of a higher hierarchy or the same level. The consistency testing of a legal norm commonly done in legal practice is known as judicial review. Judicial review is the examination by a judge of a regulation against higher-level regulations or the constitution. It can also be described as a mechanism for reviewing legislation conducted by the judiciary. A legal norm can also be tested for consistency through non-judicial mechanisms or without involving the judiciary (Mulyanto 2025: 58). This non-judicial review of norms is commonly performed by academics or legal researchers, especially in normative legal research, to find the ideal norm according to applicable legal principles.

The consistency testing of a norm in a non-judicial mechanism not only assesses the validity of a norm against a higher rule (vertical dimension) but also other legal norms in regulations at the same hierarchical level (horizontal dimension), thereby creating harmonization and coherence within a legal system. Based on this, when there is disharmony between a norm and other norms at the same hierarchical level within a legal system, it can be said that the norm has lost its validity. A discrepancy between a legal norm and a higher-level regulation can be called vertical inconsistency, whereas if the discrepancy is with a regulation of the same level, it is called horizontal inconsistency.

Analysis of norms in regulations of the same level is also commonly referred to as horizontal harmonization. As mentioned in the introduction, the norm prohibiting the seizure of INA's assets intersects with other legal principles, namely those related to precautionary attachment, criminal seizure, and bankruptcy seizure. These principles are regulated in legislation of the "Law" type. The provisions for precautionary attachment are regulated in the HIR and Rbg. The provisions for criminal seizure are regulated in Law Number 8 of 1981 concerning the Code of Criminal Procedure, better known as KUHAP. The provisions for bankruptcy seizure are regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (the Bankruptcy Law). The analysis of the validity of the norm prohibiting the seizure of INA's assets about these three principles constitutes a form of horizontal harmonization.

In civil law relations, if a conflict cannot be resolved through deliberation and consensus or other alternative dispute resolution methods, the remaining recourse for the aggrieved party is litigation by filing a lawsuit in the District Court. This effort is made solely to recover the losses suffered by the plaintiff, with the hope that by filing a lawsuit, the defendant can be ordered to pay compensation to the plaintiff. During a civil trial, the plaintiff is granted the right to request a precautionary attachment on the defendant's assets.

Seizure in the context of a civil case is done to protect the plaintiff's interests. The plaintiff's interest is to guarantee the execution of the judgment if the defendant is found liable for causing loss to the plaintiff, either due to a breach of contract or an unlawful act, and is ordered to pay damages. In this regard, Yahya Harahap states that a precautionary attachment is intended to prevent the plaintiff's claim from becoming illusory (*illusory*), as it is possible that during the trial, the defendant might transfer or alienate their assets so that if the defendant loses, the judgment cannot be executed. This is in accordance with the provision of Article 227 paragraph (1) of the HIR as follows:

"If there is a reasonable suspicion that a debtor, before a judgment is rendered against him or while the judgment against him cannot yet be executed, is seeking to embezzle or remove his property, whether movable or immovable, with the intent to keep it away from the creditor, then upon a written request from the interested party, the head of the district court may issue an order to seize the property to safeguard the rights of the person who submitted the request, and the petitioner must be notified to appear at the first session of the district court thereafter to advance and substantiate his claim."

Article 261 of the Rbg also regulates precautionary attachment, stating that if there is a reasonable suspicion that a debtor, before or after a judgment is rendered but before it is executed, is attempting to embezzle their assets to evade their creditors, the Head of the District Court may, at the plaintiff's request, order the seizure of the debtor's assets.

Precautionary attachment is the formal manifestation of the provision in Article 1131 of the Civil Code, which states, "All movable and immovable property of the debtor, both present and future, shall serve as security for the personal obligations of that debtor." According to Yahya Harahap, the objects upon which a precautionary attachment can be placed are as follows (Harahap 2019: 341):

- a) In cases of debts not secured by specific collateral. A precautionary attachment can be placed on all of the defendant's assets, both movable and immovable;
- b) The object of a precautionary attachment in a damages claim can be placed on all of the defendant's assets. This claim for damages arises from a breach of contract as referred to in Articles 1243 to 1247 of the Civil Code or an unlawful act in the form of material and immaterial damages as referred to in Article 1365 of the Civil Code;
- c) In disputes over ownership of immovable property, limited only to the disputed object; and
- d) Property that has been previously pledged as collateral.

It must be recalled that the prohibition on seizing INA's assets does not apply to assets pledged as collateral for a loan. This means a plaintiff can only request a precautionary attachment against INA if their contractual relationship is secured by real security. When a plaintiff's contract with INA is not secured by real security, they lose their right to request a precautionary attachment.

The prohibition on seizing INA's assets will certainly injure the plaintiff's right to request a precautionary attachment during trial. The provision prohibiting the seizure of INA's assets is inconsistent with the provisions of Article 227 paragraph (1) of the HIR and Article 261 of the Rbg. A party aggrieved by INA who then sues INA in court cannot use this compulsory measure to guarantee the execution of a judgment on their claim.

The norm prohibiting the seizure of INA's assets also conflicts with the principles of seizure in criminal cases. In the criminal realm, particularly during an investigation, investigators are authorized to seize items suspected of being related to a criminal act (Law Number 8 of 1981). The purpose of seizure in the context of criminal justice is for evidentiary purposes at the investigation, prosecution, and trial stages. Seizure is a coercive measure by investigators to take over and/or store under their control the aforementioned items, whether movable or immovable, tangible or intangible. Items that can be subject to criminal seizure include (Law Number 8 of 1981):

- a. Property or claims of a suspect or defendant that are wholly or partly suspected of being obtained from or as a result of a criminal act;
- b. Items that have been used directly to commit or prepare for a criminal act;
- c. Items used to obstruct a criminal investigation;
- d. Items specially made or intended for committing a criminal act;
- e. Other items that have a direct connection with the criminal act committed.

Property or claims of a suspect or defendant suspected of being obtained from a criminal act, for example in a corruption case, where money from corruption has been used to buy assets, those assets can be considered as property obtained from the criminal act and can thus be seized. This includes claims of the suspect or defendant, such as unpaid receivables (Law Number 8 of 1981).

INA, as an institution mandated to manage central government investments, has a great responsibility in managing these investments. Good governance is the main key to INA's success. It is undeniable that cases of abuse of authority in the governance of an institution like INA have occurred in other countries. The institution in question is 1 Malaysia Development Berhad, or better known as 1MDB, Malaysia's state investment management institution.

Najib Razak, who was one of the administrators of 1MDB and the Prime Minister of Malaysia at the time, was found guilty of corruption related to 1MDB's investment funds. The 1MDB corruption scandal began to unfold in 2015 when the Wall Street Journal (WSJ) published an article about the alleged corruption of 1MDB funds by Najib Razak. The suspicion arose when 1MDB could not pay its debt of 11 billion US dollars to banks and bondholders. Funds from 1MDB amounting to about 700 million US dollars were allegedly transferred to Najib Razak's personal account. Since then, the United States Department of Justice also participated in investigating the alleged criminal acts in the case. This investigation was conducted because there were claims that funds from 1MDB had entered the US financial system. The incoming funds were suspected to be laundered money.

A number of funds from 1MDB were channeled to several shell company accounts located in low-tax countries and used to buy a number of assets in the United States. The US Department of Justice eventually filed a civil lawsuit to seize assets allegedly obtained from the laundered funds (CNN Indonesia 2025). The seized 1MDB assets included property, a jet, several famous paintings, and intangible assets such as shares and intellectual property rights (Christiastuti 2025). A US Department of Justice press release stated that, according to court documents, funds from 1MDB, which were originally for Malaysian investment development, were embezzled through major financial institutions worldwide, including in the United States, Switzerland, Singapore, and Luxembourg (Antara 2025). The criminal allegations against Najib Razak were eventually proven in court, and he was found guilty of money laundering, abuse of power, embezzlement, and corruption (Narasi 2025).

Drawing from the case study above, if linked to the provisions of criminal procedure law in Indonesia, the 1MDB assets used by Najib Razak to commit corruption could be seized by investigators. However, if there were a provision prohibiting the seizure of 1MDB's assets, investigators would be unable to seize those assets for evidentiary purposes. This would certainly be very detrimental to the state, as in this position, the investigator acts as a representative of the state in the criminal law enforcement process. Based on this, the norm prohibiting the seizure of INA's assets not only conflicts with the principle of criminal seizure but could also provide a legal loophole for criminals to more freely commit crimes using INA's assets, because INA's assets cannot be seized.

Asset seizure can also apply in the event of bankruptcy. When a legal subject is declared bankrupt, all of its assets fall under a general seizure. The problem is that there is a provision prohibiting the seizure of assets that applies to INA, although there is an exception for assets pledged as collateral for a loan. Quoting from the thesis research of Mohammad Rafi Al Farizy titled "General Bankruptcy Seizure of the Investment Management Institution," it is stated that the general bankruptcy seizure of INA only applies to assets pledged as collateral for a loan, resulting in the repayment of debts to secured and preferential creditors being more guaranteed than to concurrent creditors (Farizy 2025). This research shows a conflict between the concept of general bankruptcy seizure, which refers to the seizure of all of the debtor's assets, and the regulation prohibiting the seizure of INA's assets, which limits it.

The author agrees with the findings of that research because, upon deeper examination, the concept of bankruptcy is essentially to protect concurrent creditors as unsecured creditors, because they have no certainty of payment for their claims. This is different from secured creditors, who hold real security rights and are thus guaranteed payment from the assets pledged by the debtor. In other words, what is the point of a bankruptcy mechanism if it only guarantees payment to secured and preferential creditors? Moreover, there is a special requirement for INA's bankruptcy under Article 72 of the INA Government Regulation, which states that INA can only be declared bankrupt if it can be proven to be insolvent. The condition of insolvency means that the total assets owned by INA are less than its total debts. If INA is declared bankrupt and the only assets that can be seized are those pledged as collateral for a loan, this will certainly reduce the value of the bankruptcy estate. In this case, it is highly unlikely that concurrent creditors will receive payment for their claims. Quoting the opinion of Sutan Remy Sjahdeni regarding the main purpose of bankruptcy law is as follows (Sjahdeni 2018: 5-6):

"To protect concurrent creditors in obtaining their rights in connection with the application of the security principle that 'all of the debtor's assets, both movable and immovable, both existing and those that will exist in the future, serve as security for the debtor's obligations,' namely by providing facilities and procedures for them to satisfy their claims against the debtor. Bankruptcy law prevents a scramble among creditors for the debtor's assets. Without bankruptcy law, stronger creditors would get a larger share than weaker creditors."

Bankruptcy law divides creditors into three types: preferential, secured, and concurrent. Concurrent creditors will receive payment of their claims after the claims of preferential and secured creditors are paid.

The limitation on the general seizure of INA's assets in the event of its bankruptcy will certainly further reduce the chances for both secured and concurrent

creditors to receive full payment of their claims. It should be remembered that from the moment INA is declared bankrupt, it is already in a state of insolvency, meaning INA's creditors must be prepared not to receive full payment of their debts. Furthermore, the general seizure of INA is limited to assets pledged as collateral for a loan. The assets serving as real security, which should guarantee payment for secured creditors, would first be used to pay workers' wages and tax bills, as these are preferential creditors whose payment is prioritized over secured creditors. Based on this, a general bankruptcy seizure of INA that only applies to assets pledged for a loan will actually create a new problem: what is the legal protection for INA's secured and concurrent creditors? The discussion of this matter is beyond the scope of this research, but based on the description above, the implications of the conflict of norms regarding the prohibition on seizing INA's assets on its bankruptcy are known. The prohibition on seizing INA's assets will reduce the chances for secured and concurrent creditors to receive payment of their claims in INA's bankruptcy.

Based on the horizontal harmonization analysis above, it can be seen that there is horizontal inconsistency in the norm prohibiting the seizure of INA's assets. The existence of this inconsistency shows that the norm does not meet the principle of juridical validity and can thus be said to be an invalid norm. Therefore, a revision/amendment of the norm prohibiting the seizure of INA's assets is needed so that it fulfills the principle of juridical validity.

CONCLUSION

This research has critically examined the juridical validity of the statutory immunity from asset seizure granted to the Indonesia Investment Authority (INA) under the Job Creation Law. The analysis, conducted through a normative juridical methodology, unequivocally demonstrates that this norm, as currently formulated, fails the test of juridical validity. The core finding of this study is the existence of a profound and irreconcilable horizontal inconsistency between INA's asset immunity and the foundational tenets of Indonesian Law. The provision does not merely exist in isolation; it actively subverts established legal doctrines by (1) nullifying the essential civil remedy of precautionary attachment, (2) impeding the state's investigative powers of criminal seizure, and (3) violating the cardinal principle of general seizure that underpins the entire bankruptcy regime.

The implications of maintaining this legally incoherent norm extend far beyond mere doctrinal conflict. It fundamentally undermines the principle of equality before the Law by creating a legal subject that operates largely outside the reach of standard enforcement mechanisms. This erodes legal certainty for creditors and litigants and, most alarmingly, establishes a potential shield for financial malfeasance, a risk starkly illustrated by international cautionary tales like the 1MDB scandal. In essence, the provision creates a legal paradox where a state-mandated entity is protected from the state's own fundamental tools of justice, thereby compromising the integrity and coherence of the legal system as a whole.

In light of these findings, legislative reform is not merely advisable but imperative to restore coherence and uphold the rule of Law. This study recommends that the legislature amend Article 160, paragraph (3) of the Job Creation Law. A revised formulation should replace the current blanket immunity with a more nuanced and conditional privilege that harmonizes INA's special status with overarching legal principles. This immunity could be structured to remain intact for ordinary operational matters while being explicitly waived in specific, critical circumstances, such as for the

execution of a final and binding court judgment, upon a formal declaration of bankruptcy, or in cases involving judicially-proven criminal acts like corruption or money laundering. Such a reform would preserve INA's necessary operational autonomy while ensuring it remains accountable, thereby aligning its special status with the foundational principles of justice that govern all other legal subjects in Indonesia.

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