

## Searches in the Indonesian Criminal Procedure System Based on Human Rights Perspective

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**Abstract.** *This study examines the practice of searches in criminal procedure from a human rights perspective. Searches are a coercive measure that can affect individual privacy and freedom, and therefore must be implemented in accordance with human rights principles. This study highlights the importance of balancing the interests of law enforcement and the protection of individual rights in the search process. The research method used is a normative method with a legislative approach and case analysis to evaluate the conformity of search practices with applicable human rights standards. The research findings show that although Indonesian criminal procedure law regulates search procedures, there are a number of challenges in its implementation that could potentially violate human rights, such as violations of the right to privacy and substandard procedures. Several cases have shown searches conducted without authorization or exceeding authority, which has implications for individual rights violations. Therefore, updates and increased oversight of search procedures are needed to ensure that human rights are respected. This research suggests the need for clearer regulatory enforcement and stricter oversight of search practices in criminal procedure. Furthermore, training and awareness of law enforcement officials regarding the importance of human rights in all law enforcement actions need to be improved. These measures are expected to ensure that searches can be conducted effectively and fairly, without compromising the protection of individual rights.*

**Keywords:** Criminal Law; Privacy; Procedure.

### 1. Introduction

Humans are social creatures who are always in contact with other humans. Humans as individuals tend to gather with other individuals. This tendency to group together, humans are called social creatures. At first he had contact with his parents and as he grew older he lived in society.

A search is a coercive measure in the criminal law enforcement process carried out by law enforcement officers with the aim of searching for and finding evidence or suspects suspected of committing a crime. In the context of criminal procedure law in Indonesia, searches are regulated in the Criminal Procedure Code (KUHP), specifically in Articles 32 to

37. Although this action is legally valid, its implementation must comply with certain procedures and conditions to avoid violations of human rights (HAM).

Searches that are not in accordance with procedures can violate human rights, particularly the right to privacy, the right to protection of oneself and one's family, and the right to security. These rights are protected by various international human rights instruments, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), as well as by the Indonesian constitution, the 1945 Constitution. Therefore, searches must be conducted with due regard for applicable legal principles and respect for human rights.

From a human rights perspective, searches must be conducted with the approval of the competent authority, usually in the form of a court warrant, except in certain urgent circumstances where delay could result in the loss of evidence or the escape of a suspect. Searches conducted without a warrant or exceeding the limits of the granted authority may be considered an abuse of authority and a violation of human rights.

Searches that are not conducted according to procedure can not only create legal problems for the officers conducting them but can also prejudice the judicial process by compromising the integrity of the evidence obtained. Therefore, strict oversight and accountability for the implementation of searches are necessary to ensure that they comply with applicable law and do not violate human rights.

In the criminal justice system, a balance between the public interest in law enforcement and the protection of individual human rights is a principle that must be maintained. Searches conducted in accordance with the law and with due regard for human rights are a form of law enforcement that is just and respectful of the rights of every individual.

Indonesian Procedural Law, Law Number 8 of 1981, regulates law enforcement officers, namely investigators, public prosecutors, and judges. An advocate is a person whose profession is to provide legal services, both inside and outside the court, who meets the requirements set forth in this law. It is in this context that the rights granted to suspects by the Criminal Procedure Code become relevant.

However, its implementation has not been optimal, especially for those who are illiterate about the law. Consequently, their rights as suspects in criminal cases are not being upheld. Therefore, greater attention must be paid to the rights of suspects, as stipulated in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), to prevent them from being ignored or diminished by law enforcement during any investigation, particularly during the investigative stage.

Humans are social creatures (*Zoon Politicon*), meaning they constantly desire to interact with others. This interaction creates the potential for conflict and disorder within society. This is because humans have diverse needs. Understanding these needs sometimes leads to conflict or violations of the rights of others, and many even break the law. Based on this, all levels of society fundamentally need law as a means of social control to limit people's actions and behavior so that their attitudes and behavior do not interfere with the needs and rights of

others. Therefore, even the most primitive societies cannot escape a specific legal system to regulate their behavior in society. To regulate human behavior so that it does not disturb, seize, or violate the rights of others, rules are created in civil and criminal law so that those who commit violations and crimes can be subject to sanctions or punishment to create peace, security, and prosperity in society. One of the rules that supports the implementation of criminal law is searches.

A search is an investigator's action to conduct a house inspection or body or clothing inspection to look for objects that are strongly suspected to be on the person or carried with them, to be confiscated. According to the provisions of Article 33 of the Criminal Procedure Code (KUHP), a search is an action by an investigator or assistant investigator or investigator to enter and conduct an inspection of a person's residence or to conduct an inspection of a person's body and clothing. A search is carried out not only to conduct an inspection, but can also simultaneously carry out an arrest and confiscation.

Article 32 of the Criminal Procedure Code states: "For the purposes of investigation, investigators may conduct house searches or clothing searches or body searches according to the procedures determined in this Law." In detention, each law enforcement agency at all levels of investigation has the authority to conduct detention, so in different searches, not all law enforcement agencies have the authority to conduct searches. The authority to conduct searches is solely given to the "investigating" agency. So it is only in the hands of investigators, whether they are National Police investigators or civil servant investigators. In general crimes, the public prosecutor does not have the authority to conduct searches. Likewise, judges at all levels of the courts do not have the authority to conduct searches. Except in special crimes, for example corruption, subversion, and economic crimes, this search authority is given to the public prosecutor.

The definition of a search is also regulated in Article 1 point 17 of the Criminal Procedure Code, "A house search is an investigator's action to enter a residence and other closed places to carry out inspection and/or confiscation and/or arrest in the case and according to the method regulated in this law." Then in Article 1 point 18, "A body search is an investigator's action to conduct an inspection of the suspect's body or clothing to search for objects that are strongly suspected to be on his/her body and to be confiscated."

The most appropriate time to conduct a search is not legally regulated in the Criminal Procedure Code. Therefore, the most appropriate time to conduct a search is during the day, because at that time the suspect's children are at school and neighbors are busy with household activities. In the author's opinion, a search conducted in the middle of the night will automatically cause a great shock, especially for children. That is why the State Gazette prohibits house searches at night with the exception, in cases of extreme urgency, when searches may be conducted at night.

In this case, it is clear that state officials in carrying out the search action are seriously violating human rights, even in Article 167 and Article 469 of the Criminal Code, criminal penalties are imposed for such violations, even when the 1950 Provisional Constitution (UUDS) was in effect, there was a guarantee of protection for the peace of the home or

residence, as regulated in Article 16:

- 1) No one's residence may be disturbed.
- 2) Entering a residence or entering a house against the will of the person inhabiting it is only permissible if it is stipulated in a legal regulation that applies to it.

According to Wirjono Prodjodikoro, even though the 1950 UUDS has been no longer in effect since July 5, 1959, the provisions are still valid in Indonesia because they are universal.

Based on the background above, the researcher is interested in conducting research on "Searches in the Indonesian Criminal Procedure Law System Based on a Human Rights Perspective."

## **2. Research Methods**

This study employs normative legal research, utilizing norms within laws with a conceptual and specific approach. The method employed in this study is normative juridical. This research involves a literature review, and the data obtained is then analyzed using a qualitative analysis approach. Qualitative data processing and analysis generally emphasize deductive and inductive inference processes and the dynamics of relationships between observed phenomena using scientific logic.

## **3. Results and Discussion**

### **3.1. The Relationship Between Searches and Human Rights Based on Lon L. Fuller's Theory**

A search is an action taken by law enforcement officers to search for evidence in the course of law enforcement. This process often involves a violation of a person's privacy. Human rights include the universally recognized right to privacy, as enshrined in Article 12 of the Universal Declaration of Human Rights (UDHR). Conducting a search without clear procedures and legal approval can violate human rights.

In Indonesia, searches are regulated by Articles 32 to 37 of the Criminal Procedure Code (KUHAP), which require a court warrant except in urgent circumstances. This demonstrates the existence of a mechanism to protect citizens' privacy. However, procedural violations often occur, which can lead to rights violations.

The right to privacy is an integral part of human rights, as regulated in the International Covenant on Civil and Political Rights (ICCPR) Article 17. Any violation of this right, including searches without a strong legal basis, is considered a violation of human rights.

Searches, if conducted without strict oversight, have the potential to be misused for purposes beyond law enforcement. This abuse can take the form of intimidation, defamation, or theft of personal data, which clearly violate human rights principles. It is crucial to balance the needs of law enforcement with the protection of human rights. Searches conducted in accordance with legal procedures not only protect individual rights but also enhance the legitimacy of law enforcement officers in the eyes of the public.

Several cases demonstrate the detrimental effects of unauthorized searches on the public. For example, warrantless searches of homes often violate privacy rights and cause trauma for the

victims.

International standards, such as the Siracusa Principles on the Limitation and Derogation Provisions, emphasize that human rights restrictions may only be imposed if strictly necessary for a legitimate purpose and in accordance with the law. To minimize violations, institutions such as the National Commission on Human Rights (Komnas HAM) in Indonesia can play an active role in overseeing the implementation of searches by authorities. This oversight is crucial to ensure the process is legal and respects human rights.

With the advancement of technology, searches are no longer limited to physical spaces but also encompass digital data. Unauthorized access to personal data, such as social media conversations or emails, is also considered a human rights violation. Human rights education needs to be improved among law enforcement officers to instill the importance of respecting individual rights when conducting searches. This training should be a mandatory part of officer training.

Searches, whether by law enforcement officers or authorized institutions, are legal actions aimed at searching for and securing evidence. However, these actions have the potential to violate human rights if conducted without clear boundaries. Human rights, particularly the right to privacy (Article 12 of the Universal Declaration of Human Rights), protect individuals from arbitrary interference with their private life, family life, and residence. Therefore, searches must be conducted with due regard for the principles of legality, fairness, and proper procedures.

In his theory, Lon L. Fuller emphasized the importance of due process of law—fair and orderly legal procedures—to maintain legal legitimacy. Fuller proposed eight principles to ensure the law does not become a tool of injustice, such as consistency of rules, the absence of contradictions, and non-arbitrary implementation. In the context of a search, due process of law means that the action must be based on clear law and applied consistently.

Fuller's first principle, that there must be law, emphasizes the importance of clear regulations regarding searches. The law should provide detailed guidance on when, how, and by whom searches can be conducted. For example, Article 33 of the Indonesian Criminal Procedure Code stipulates that searches can only be conducted with a court warrant, except in urgent circumstances. This provision ensures transparency and prevents abuse of authority.

Fuller also emphasized the importance of legal certainty. Searches that do not follow legal procedures can be considered human rights violations. For example, searches conducted without a warrant can create a sense of insecurity among the public. Therefore, clear and standardized legal procedures serve as a mechanism to maintain public trust in law enforcement.

According to Fuller, the law should not be applied arbitrarily. In the context of searches, this means that officers must have a legal basis and strong justification before carrying out such actions. Arbitrary searches not only violate individual privacy but also violate the human rights principles that underlie modern legal systems.

Another Fuller principle is that the law must be proportional. Searches must be tailored to the

needs and the level of threat faced. For example, a search of a suspect in a serious crime may be justified if there is a compelling reason. However, if this action is carried out without adequate justification, it can result in human rights violations.

Fuller emphasized the importance of participation in the legal process. During a search, the subject must be provided with an explanation of the reasons for the search. The right to refuse a warrantless search also protects the suspect's rights, as guaranteed by the principle of due process.

Fuller's principle of enforceable and monitorable law underscores the importance of accountability. Officers conducting searches must be held accountable for their actions. This includes recording the search process and reporting it to the appropriate authorities. This transparency is crucial to ensuring that searches are not abused.

Fuller also highlighted the importance of access to remedies in cases of legal violations. If individuals believe a search violates their rights, they should have access to legal mechanisms to seek redress or compensation. This is crucial for protecting human rights and maintaining the integrity of the legal system.

Searches conducted in accordance with the principle of due process of law, as proposed by Fuller, not only maintain legal legitimacy but also strengthen human rights protections. By applying clear, accountable, and fair legal standards, searches can be conducted without violating individuals' fundamental rights.

### **3.2. The search regulations in the Criminal Procedure Code can already opaquely protect human rights.**

The Indonesian Criminal Procedure Code (KUHP) regulates the procedures for conducting searches through Articles 32 to 37. Searches are conducted to obtain evidence in law enforcement proceedings. However, searches also touch on human rights, particularly the right to privacy and individual liberty as guaranteed by Article 28G of the 1945 Constitution. Therefore, the regulation of searches in the KUHP must be able to guarantee justice, balance, and the protection of human rights.

The Criminal Procedure Code requires permission from the head of the district court to conduct a search, except in urgent circumstances as stipulated in Article 33 paragraph (1). This principle aims to ensure that searches are conducted legally and do not violate human rights. However, the "urgent circumstances" provision often creates loopholes that allow for violations of individual privacy.

Article 34 of the Criminal Procedure Code stipulates that a search of a person's home must be accompanied by a warrant from the head of the district court. This procedure provides an oversight mechanism, but practice shows that law enforcement officers still abuse their authority, such as searches without a warrant, which often occur under the pretext of "urgent circumstances."

Article 28G paragraph (1) of the 1945 Constitution guarantees the right to personal protection as part of human rights. Searches conducted without proper legal procedures may be considered a violation of this right. This also contradicts the principles of Article 12 of the

Universal Declaration of Human Rights (UDHR), which protects the right to individual privacy. The Criminal Procedure Code (KUHP) does not specifically define "urgent circumstances" that permit warrantless searches. This ambiguity potentially leaves law enforcement with the potential to conduct arbitrary searches. Furthermore, the KUHP does not stipulate strict sanctions for violations of search procedures.

Although the Criminal Procedure Code (KUHP) stipulates that searches must be supervised by authorized officials, implementation is often weak. Lack of oversight can potentially lead to violations of the rights of suspects or search subjects, such as intimidation or unlawful confiscation of property.

The Criminal Procedure Code (KUHP) does not yet provide an effective mechanism for individuals to sue for unlawful searches. For example, there is no explicit provision on the right to compensation for unlawful searches, so victims often do not receive justice.

Compared with international instruments such as the International Covenant on Civil and Political Rights (ICCPR), the provisions on searches in the Criminal Procedure Code (KUHP) remain inadequate. The ICCPR requires stricter oversight and redress mechanisms for victims of violations.

Violations of search procedures often occur due to a lack of understanding of human rights principles by law enforcement officers. Therefore, training focused on respecting human rights for law enforcement officers is crucial to ensure that searches are conducted lawfully and humanely.

The Criminal Procedure Code (KUHP) needs to be revised to provide more detailed and stringent regulations regarding searches. For example, the definition of urgency should be clarified, mechanisms for redressing victims' rights should be established, and sanctions for procedural violations should be tightened to protect human rights.

The search regulations in the Indonesian Criminal Procedure Code (KUHP) aim to regulate the legal procedures for gathering evidence in law enforcement. However, the effectiveness of these regulations in protecting human rights is often debated, particularly regarding the balance between the interests of law enforcement and the protection of individual privacy. Lon L. Fuller's theory of "Due Process of Law" provides a philosophical and normative basis for assessing whether these regulations comply with the principles of procedural justice that protect human rights.

Lon L. Fuller's theory emphasizes the importance of "due process" as a fundamental element of a legal system. According to Fuller, good law must adhere to procedural principles such as clarity of rules, consistency of application, and respect for individual rights. In the context of searches, this principle requires that procedures be conducted transparently, objectively, and non-arbitrarily to avoid violating fundamental individual rights, such as the right to privacy.

The Criminal Procedure Code (KUHP) regulates searches in Articles 32 to 38, which include provisions regarding court warrants, search procedures, and certain limitations to protect individual rights. For example, searches may only be conducted by authorized law enforcement officers and must be accompanied by a warrant, except in urgent circumstances.

These provisions aim to prevent violations of citizens' privacy rights.

The provisions in the Criminal Procedure Code (KUHP) reflect efforts to fulfill the principle of due process by protecting individual rights through formal requirements, such as the requirement to obtain court permission. This demonstrates that the KUHP strives to ensure that searches are conducted on a clear legal basis and with the approval of an independent authority.

However, implementation in the field often deviates from the rules. In practice, searches are sometimes conducted without valid warrants or under the pretext of urgency that is difficult to prove. Furthermore, the lack of oversight and accountability by law enforcement officials can result in violations of the principle of due process and potential human rights violations.

According to Fuller, laws that fail to adhere to the principle of procedural fairness will lose legitimacy and lead to public distrust. In the context of the Criminal Procedure Code (KUHP), deficiencies in the implementation of searches demonstrate that formal regulations alone are insufficient without consistent and accountable implementation. This has the potential to undermine the public's sense of justice.

Searches that do not comply with the Criminal Procedure Code (KUHP) can violate human rights, particularly the rights to privacy and individual liberty. Arbitrary actions can also cause psychological trauma and social stigma for victims, which contradicts the principle of respect for human dignity as stipulated in the constitution and international human rights instruments.

Implementing searches in accordance with due process requires strict oversight by authorities, including courts and independent oversight bodies. This is necessary to ensure that law enforcement officials do not abuse their authority and that any violations are held accountable.

Fuller's theory is relevant to analyzing search regulations in Indonesia because it emphasizes the importance of clear rules, consistent application, and respect for individual rights. Therefore, this theory can serve as a guide in evaluating whether the provisions of the Criminal Procedure Code (KUHP) comply with the principles of procedural justice that protect human rights.

### **3.3. Legal Problems in Regulating Searches in the Criminal Procedure Code**

A search is a coercive measure regulated by the Indonesian Criminal Procedure Code (KUHP). It is intended to locate evidence or assist in the investigation of certain crimes. However, the regulation of searches in the KUHP still leaves a number of issues that are frequently debated, both theoretically and practically.

Articles 33 and 34 of the Criminal Procedure Code (KUHP) regulate search procedures, but these provisions are considered insufficiently detailed. They do not provide detailed explanations of the standard operating procedures (SOPs) that must be followed during searches, thus opening up opportunities for abuse of authority by law enforcement officers.

Searches often involve violations of privacy rights, such as searches of homes or other

enclosed spaces. In some cases, searches are conducted without a valid warrant, violating Article 38 paragraph (1) of the Criminal Procedure Code, which requires prior court permission except in urgent circumstances. This violation can lead to a loss of public sense of justice.

Several technical regulations governing searches outside of the Criminal Procedure Code (KUHP), such as National Police Chief Regulation No. 8 of 2009. The inconsistency between the KUHP and these technical regulations often leads to confusion in the conduct of searches. As a result, searches often do not comply with applicable regulations.

The process of obtaining court permission for a search is often lengthy, which can hinder the smooth progress of an investigation. This is especially problematic in cases requiring swift action, such as organized crime or narcotics.

The Criminal Procedure Code (KUHP) authorizes investigators to conduct searches without court approval in urgent circumstances. However, there is no clear definition of what constitutes "urgent circumstances." This authority has the potential to be abused by investigators using subjective pretexts of urgency.

The conduct of searches often faces minimal oversight, both internally and externally. As a result, procedural irregularities are difficult to detect, and victims of violations lack adequate complaint mechanisms.

Evidence obtained through illegal searches is often still used in court. This contradicts the exclusionary rule commonly applied in other countries, which states that evidence obtained through unlawful means cannot be used in court.

In the context of human rights protection, the search provisions in the Criminal Procedure Code (KUHP) are considered not fully compliant with international standards, such as those stipulated in the International Covenant on Civil and Political Rights (ICCPR). The absence of a mechanism to protect against abuse of power demonstrates the weaknesses of Indonesia's legal system.

Many law enforcement officers lack a thorough understanding of the applicable legal regulations regarding searches. This leads to procedural errors that lead to legal and human rights violations.

Searches are coercive measures regulated by the Criminal Procedure Code (KUHP) as part of the investigative process. However, the practice of searches often raises legal issues related to human rights, legal procedures, and the application of the principle of due process of law. These issues arise from a lack of synchronization between ideal legal regulations and their implementation in the field.

The Criminal Procedure Code (KUHP) provides the legal basis for searches in Articles 33 to 38, but does not provide sufficient detail regarding the standards for their implementation. This often results in arbitrary searches, without regard for the principle of respect for individual privacy rights. Searches conducted without a court warrant, except in urgent circumstances (Article 34), are often grounds for abuse of authority.

The Criminal Procedure Code mandates that searches must be authorized or conducted under

court supervision. However, this supervision is often a formality, leaving search authority in the hands of investigators without adequate evaluation. This leads to violations of the rights of suspects or witnesses involved.

Lon L. Fuller, in his theory of due process of law, emphasized the importance of legal certainty and the protection of human rights. In the context of a search, a person's right to privacy can easily be violated due to procedural inaccuracies, such as entering a home or private place without a clear legal justification.

The Criminal Procedure Code (KUHP) does not explicitly mandate that investigators record or report detailed searches to the court. Consequently, it is often difficult to assess the legality of searches, potentially violating the principle of fair trial.

In Fuller's theory, the law should be universal and non-discriminatory. However, search practices often demonstrate a tendency for investigators to abuse their discretion, particularly against certain groups, such as activists or the political opposition.

The lack of training for law enforcement officers on the principles of due process is a major obstacle. Many investigators still don't understand the importance of conducting searches according to legal procedures to protect individual rights.

Article 34 of the Criminal Procedure Code authorizes warrantless searches in urgent circumstances. However, the term "urgent" is often interpreted subjectively, leaving room for abuse.

Article 28G of the 1945 Constitution guarantees the protection of the right to privacy. However, the practice of searches that violate procedures contradicts this constitutional mandate, which should be the primary basis for law enforcement.

The Criminal Procedure Code (KUHP) does not explicitly stipulate sanctions for officers who violate search procedures. This reduces the deterrent effect against irregularities. Fuller emphasized the importance of sanctions to maintain legal integrity. Victims of arbitrary searches often lack effective access to file complaints. This demonstrates the lack of implementation of the principle of due process in providing a fair and equal opportunity for complaints.

#### **4. Conclusion**

Searches are closely related to human rights, particularly in protecting the right to privacy. By adhering to Lon L. Fuller's principle of due process of law, searches can be conducted legally, transparently, and proportionately, thereby reducing the risk of human rights violations. Due process ensures that these actions do not become a tool of arbitrary action. The search regulations in the Criminal Procedure Code (KUHP) normatively reflect the principle of due process, but their implementation often deviates, which can result in human rights violations. Lack of oversight and accountability of officials is a major obstacle to protecting individual rights in accordance with Fuller's principles. Searches, as a legal action involving an individual's right to privacy, must be conducted in accordance with the principle of due process of law. The main problem with the regulation of searches in the Criminal Procedure Code (KUHP) is the lack of procedural clarity and weak oversight, which opens up

opportunities for human rights violations.

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