

## Search According to Criminal Procedure Law From a Human Rights Perspective

**Abdul Muiz**

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: [AbdulMuiz.std@unissula.ac.id](mailto:AbdulMuiz.std@unissula.ac.id)

**Abstract.** Searches are one of the coercive measures in criminal procedure law that often cause a dilemma between the interests of law enforcement and the protection of human rights (HAM). In the criminal justice process, searches carried out by law enforcement officers are often considered a threat to privacy and individual freedom. As part of coercive measures, searches can only be carried out under certain conditions and must comply with applicable legal procedures so as not to violate a person's basic rights. Therefore, it is important to review the implementation of searches in criminal procedure law from a human rights perspective to ensure that this action is not excessive and still respects individual rights. This study uses a normative legal research method, which involves a regulatory approach and analysis of human rights principles in the context of conducting searches. The main data sources consist of national legal regulations governing searches, international human rights instruments, and relevant court decisions as analysis materials. Data collection was carried out through literature studies and analyzed descriptively qualitatively to understand the extent to which criminal procedure law in Indonesia is in accordance with human rights principles in conducting searches. The results of the study show that although criminal procedure law in Indonesia has regulated searches, in practice there are often deviations that have the potential to violate human rights. Several problems, such as the lack of transparency in search procedures and weak supervision of the actions of law enforcement officers, are the main focus of this study. This discussion emphasizes the importance of revising regulations and strengthening oversight mechanisms to prevent human rights violations in the search process and ensure protection of the right to privacy and individual freedom.

**Keywords:** Criminal; Enforcement; Human; Procedure.

### 1. Introduction

Searches in criminal procedure law are one of the actions that can be taken by law enforcement officers to find evidence that can be used in the investigation and

examination of criminal cases. However, in its implementation, searches often cause various problems, especially related to human rights (HAM). The right to feel safe and free from abuse of power, including protection of one's privacy, is regulated in the 1945 Constitution of the Republic of Indonesia (UUD 1945) and international conventions on human rights. Therefore, it is important to review searches from a human rights perspective, considering the potential for violations of the right to privacy and individual freedoms protected by law.

The philosophical basis underlying the regulation of searches in criminal procedure law in Indonesia can be found in Pancasila, as the foundation of the state that emphasizes respect for human dignity and the principle of social justice. One of the relevant principles of Pancasila is the second principle: "Just and civilized humanity," which demands that every action taken by the state, including searches, always pay attention to the principles of justice and respect for human rights. In addition, in the context of the right to privacy, this principle of justice implies that individual rights must be respected and protected from abuse of power.

The legal basis for searches in criminal cases can be found in several laws and regulations, including:

1. The 1945 Constitution of the Republic of Indonesia (UUD 1945) – Article 28G paragraph (1) of the 1945 Constitution states that everyone has the right to protection of themselves, their family, their honor, their dignity, and their property, and has the right to feel safe from all forms of threats. This is the basis for the restrictions and regulations on searches carried out by the state.
2. Criminal Procedure Code (KUHAP) – The regulation regarding searches is regulated in Articles 33 to 38 of the Criminal Procedure Code. Article 33 of the Criminal Procedure Code stipulates that searches can be conducted by investigators after obtaining permission from the Head of the District Court or based on urgent circumstances that justify conducting a search without prior permission.
3. Law No. 39 of 1999 concerning Human Rights – This law provides the basis for the protection of human rights in Indonesia, including the right to protection of privacy and freedom from unlawful searches.

From a sociological perspective, searches are often a source of problems in society, especially in relation to the abuse of authority by law enforcement officers.

law. Searches that are not in accordance with procedures or without valid permission can cause public distrust of law enforcement officers and damage relations between the community and the state. In addition, in practice, searches are often carried out in ways that violate human rights, such as searches without sufficient witnesses or without clear notification to the person concerned.

In society, inappropriate searches can worsen social relationships and cause

trauma for the individuals who are victims. Moreover, in certain situations such as social discrimination or legal injustice, searches are often used to disproportionately target certain groups who are considered “high risk”. This adds to the public's doubts about the integrity and professionalism of law enforcement officers in carrying out their duties.

Searches in criminal procedure law must not only pay attention to the legal interests of obtaining evidence in criminal cases, but must also pay attention to the principles of human rights, in accordance with the provisions of the 1945 Constitution and other laws and regulations. Clear regulations regarding search procedures aim to prevent abuse of power that can harm individuals and damage the sense of justice in society.

## **2. Research methods**

### **1) Approach Method**

Normative (Legal) Approach: This research will use a normative approach by analyzing the legal norms contained in the Criminal Procedure Code (KUHAP), laws and regulations related to searches, and international human rights regulations (for example, the International Covenant on Civil and Political Rights) to see their compliance with human rights principles.

### **2) Method of collecting data**

Library Research: Collecting various legal references in the form of books, scientific journals, articles, laws and regulations, and other documents related to searches in criminal procedure law and human rights, Interviews: Conducting interviews with legal practitioners, such as judges, lawyers, or police, as well as human rights activists to gain a direct perspective on the application of searches in legal practice and its impact on individual rights, Documentation: Collecting secondary data in the form of search cases that have been decided by the court or reports related to searches conducted by law enforcement officers.

### **3) Data Analysis Methods**

Qualitative Analysis: Using a qualitative analysis approach to assess the content of the data obtained, either through literature studies, interviews, or documentation. The data will be analyzed to understand how searches are conducted in practice and

how far its implementation respects human rights, especially the right not to be treated arbitrarily.

## **3. Results and Discussion**

### **3.1. Procedural Obligations of Investigators in Conducting Searches According to the Criminal Procedure Code from a Human Rights (HAM) Perspective**

A search is one of the investigator's actions carried out to search for evidence relevant to a crime. The search process is regulated in the Criminal Procedure Code (KUHAP), especially in Articles 38 to 42. Although the search is intended for

the benefit of the investigation, the procedure must still pay attention to the principles of Human Rights.

#### Procedural Obligations of Investigators in Conducting Searches

##### a. Obtaining a Search Warrant

Investigators must have a valid search warrant, issued by the investigator or with the approval of the prosecutor. This warrant must include the legal basis, purpose of the search, and the items sought.

##### b. Respecting Privacy Rights

Searches must not be carried out carelessly. Investigators must avoid abuse of their authority that could harm an individual's right to privacy, such as searches in places that are not relevant to the case being investigated.

##### c. Notification to Searched Parties

The party to be searched (whether a suspect, witness, or party who has rights to the place being searched) must be notified in advance of the search to be carried out, except in certain cases where prior notification could thwart the search (for example the risk of loss of evidence).

##### d. Search Recording

Every step of the search must be well documented. The investigator must make a report that records the items found during the search and provide a copy of the report to the party being searched.

##### e. Search in Unopen Places

If a search is carried out in a place that is not open to the public (such as a house), then it must be carried out with the involvement of two independent witnesses, both from the public and from the party being searched, to ensure that the search is carried out lawfully and does not harm the party being searched.

##### f. Body Search

A body search of a person must be carried out with great care, by an officer of the same sex, and in a manner that does not degrade human dignity.

#### **Human Rights Perspective**

Searches conducted by investigators must be in line with the principles of Human Rights, namely:

##### 1. Legal Certainty and Non-Discrimination

Searches must not be carried out arbitrarily and must be based on clear legal grounds. Investigators must not discriminate against individuals or groups based on race, religion, ethnicity, or social status.

##### 2. Right to Privacy

Searches must not invade an individual's privacy without a legitimate reason. The right to privacy is a protected right, and searches must be conducted with the

principles of proportionality and fairness in mind.

3. **The Right Not to be Tortured or Treated in a Cruel, Cruel and Inhumane Way**  
Searches must not be accompanied by violence or treatment that degrades human dignity. When it comes to body searches, the process must be carried out humanely and with respect.

4. **Transparency and Accountability**

Searches conducted by law enforcement officers must be clearly recorded in the minutes and accompanied by valid documentation, so that they can be monitored and accounted for.

### **3.2. Analysis of the Implementation of Searches in Criminal Procedure Law and Human Rights Perspective**

#### **a. Search in Criminal Procedure Law**

Searches are regulated in the Criminal Procedure Code (KUHP) Articles 33-37, which state that searches are conducted for the purposes of investigation, inquiry, or prosecution of criminal cases. Searches must meet the following provisions:

- a) Carried out with written permission from the Head of the local District Court (Article 33 paragraph 1 of the Criminal Procedure Code).
- b) In urgent circumstances, investigators can conduct searches without court permission, but must still report it to the Head of the District Court (Article 34 paragraph 1 of the Criminal Procedure Code).

A search may be conducted on a person's home, residence, or body. This procedure must respect the law, with the aim of maintaining justice and collecting legally valid evidence.

#### **b. Human Rights (HAM) Perspective**

A search is an action that has the potential to violate a person's right to privacy, as guaranteed in Article 28G paragraph (1) of the 1945 Constitution and Article 12 of the Universal Declaration of Human Rights (UDHR). Therefore, the implementation of a search must pay attention to:

1. **Principle of Legality:** Searches must be conducted in accordance with applicable law.
2. **Principle of Proportionality:** There must be a balance between the purpose of the search and respect for the right to privacy.
3. **Principle of Accountability:** Law enforcement officers are required to be held accountable for their actions if they violate human rights.

Search practices that violate procedures, such as without a valid warrant or with excessive force, can violate human rights and risk being declared null and void.

#### **c. Frequently Occurring Problems**

1. Abuse of authority by officers, such as searches without permission or without a strong legal basis.

2. Lack of transparency and accountability in the conduct of searches.
3. Lack of public understanding of their rights during searches.

#### **4. Conclusion**

The search process carried out by investigators in criminal investigations is a very sensitive action, because it relates to individual rights, especially the right to privacy and protection from abuse of authority. Investigators must ensure that the search procedure is in accordance with the applicable legal provisions in the Criminal Procedure Code, and upholds Human Rights. The implementation of searches must be carried out in accordance with the procedures stipulated in the Criminal Procedure Code to protect human rights, especially the right to privacy. However, practices in the field often show deviations, which have the potential to violate human rights and reduce public trust in law enforcement.

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