

## Implementation of the Search Process in the Framework of Law Enforcement Based on Humanitarian Values

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**Abstract.** *The purpose of this study is to determine and analyze legal protection for perpetrators of criminal acts due to searches that do not respect humanitarian values. The research method in this study uses an empirical legal approach. Based on the study, it is concluded that legal protection for perpetrators of criminal acts due to searches that do not respect humanitarian values not only violate the human rights of perpetrators of criminal acts, but also damage the integrity of the legal system itself. Soerjono Soekanto's law enforcement theory shows that harmonization between legal structures, legal substances, and legal culture is very necessary to ensure that legal actions are carried out fairly and humanely.*

**Keywords:** *Enforcement; Humanitarian; Searches; Values.*

### 1. Introduction

One of the duties of law enforcement is "search". For the sake of investigation, investigators can conduct house searches or clothing searches or body searches in a manner regulated by law.<sup>1</sup> A search is an act of an investigator to examine a person's house, body, or clothing in order to search for items that are strongly suspected of being on the body or being carried by the person to be confiscated. According to Article 33 of the Criminal Procedure Code (KUHP), "a search is an act of an investigator, assistant investigator, or investigator to enter and examine a person's residence or examine a person's body and clothing."<sup>2</sup> This search was conducted not only for inspection but also for arrest and seizure. Although the search is basically a violation of human rights that prohibit everyone from interfering with the private life, family, and residence of others, this action is still permitted within the legal framework to uphold justice.

Article 32 of the Criminal Procedure Code states: "For the purposes of

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<sup>1</sup>Rafely SD Sumampouw, "Legal Study on Search Actions According to Law Number 856 of 1981 concerning the Criminal Procedure Code", Lex Crimen Vol. VII/No. 1 /Jan-Mar/2018 p. 57

<sup>2</sup>Andi Hamzah, Criminal Code and Criminal Procedure Code, Rineka Cipta, Jakarta, 2006, p. 247

investigation, investigators may conduct house searches or clothing searches or body searches according to the procedures determined in this Law." Therefore, there is a difference between detention and search. In detention, every law enforcement agency at all levels of investigation has the authority to detain someone. However, in searches, not all law enforcement agencies have this authority. The authority to search is only given to "investigators," be they investigators from the National Police or civil servant investigators. In cases of general crimes, the public prosecutor does not have the authority to conduct searches, and neither do judges at all levels of the courts. Exceptions apply to special crimes, such as corruption, subversion, and economic crimes, where the authority to search is also given to the public prosecutor.<sup>3</sup>

The definition of a search is regulated in Article 1 point 17 of the Criminal Procedure Code, which states that "A house search is an investigator's action to enter a residence and other closed places to conduct an inspection, confiscation, or arrest in accordance with the provisions of the law." Meanwhile, Article 1 point 18 states that "A body search is an investigator's action to examine the body or clothing of a suspect in order to search for and confiscate objects that are strongly suspected of being on his body."<sup>4</sup>

The search must be carried out in accordance with applicable regulations. A study shows that the legal consequences that arise are the consequences of illegal seizures and searches, so investigators must return the existing evidence to be returned in accordance with the Decision of the Panel of Judges. In Case Number 1/Pid.Pra/2020/PN Tlk, the judge in deciding the case has considered three aspects, including legal, sociological and philosophical aspects. The Panel of Judges granted the Applicant and ordered the Investigator to return the confiscated goods in accordance with legal procedures, and stated that the search carried out by the Respondent on the Applicant's house was illegal, along with all decisions or determinations issued further regarding the search carried out by the Respondent.<sup>5</sup>

Legally, the most appropriate time to conduct a search is not clearly regulated in the Criminal Procedure Code. Therefore, searches are usually conducted during the day because at that time the suspect's children are at school and the neighbors are busy with household activities. In the author's opinion, a search conducted in the middle of the night will cause a shock, especially for children. Therefore, in Staatsblad 1865 No. 84 Article 3, it is stated that house searches at night are prohibited except in very urgent circumstances. In this case, it is clear

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<sup>3</sup>Muhammad Taufik Makarao and Suhasril, *Criminal Procedure Law, In Theory and Practice*, First Edition, PT. Ghalia Indonesia, Jakarta, 2004, p. 49

<sup>4</sup>Op. Cit. p. 247

<sup>5</sup> David Mahfud Anjali and Wenny Megawati, "Legal Consequences of Unlawful Searches and Seizures of Evidence in Pre-Trial (Case Study of Decision Number 1/PID.PRA/2020/PN TLK), *UNES Law Review* Vol. 6, No. 3, March 2024, p. 8006

that the search carried out by state officers greatly touches on human rights. In fact, Article 167 and Article 469 of the Criminal Code provide criminal threats against violations of these rights.

During the validity period of the 1950 Provisional Constitution (UUDS), there was a guarantee of protection for the peace of the home or residence, as regulated in Article 16: that no one's residence may be disturbed and stepping on a yard of a residence or entering a house against the will of the occupant is only permitted if stipulated in a legal regulation that applies to it. According to Wirjono Prodjodikoro, although the 1950 UUDS has not been in effect since July 5, 1959, the provision still applies in Indonesia because of its universal nature.<sup>6</sup> Then, Article 12 of the "Universal Declaration of Human Rights" states that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."<sup>7</sup>

The official authorized to conduct a search is an investigator, which means that the rank of the police officer must be at least IPDA (Second Police Inspector) or a Police Commander with a rank of Bintara below Ipda. If the search is conducted by an officer other than an investigator, then the officer must show a written warrant from the investigator and a permit from the head of the local district court. However, if the search is conducted in an emergency or sudden situation due to a criminal incident, the officer does not need to show a search warrant.

However, after the search is conducted, the investigator is still required to request approval from the local court chairman as a form of supervision of the investigator's actions. This is important because a search is an action that touches on human rights. In practice, sometimes searches of suspects or defendants in criminal cases (both crimes and violations) are not in accordance with the Criminal Procedure Code which is the reference in criminal procedure law. For example, in a search that is very necessary and urgent, the rules require witnesses and the local sub-district head, but often the two witnesses are not present and the search administration is incomplete.

Basically, all search actions carried out by investigators in very necessary and urgent circumstances, where investigators must act immediately and it is not possible to obtain a permit first, can be carried out in accordance with the provisions of Article 33 paragraph (5) of the Criminal Procedure Code. Investigators can conduct searches in: (a) the yard of the house where the suspect lives, resides, or is present; (b) any other place where the suspect lives, resides, or is present; (c) the place where the crime was committed or where there are traces of it; (d) lodgings and other public places. Article 33 paragraph (5)

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<sup>6</sup>Andi Hamzah, *Indonesian Criminal Procedure Law*, Sinar Grafika, 2001, Jakarta, p. 138.

<sup>7</sup>Ibid, p. 139.

of the Criminal Procedure Code states that within two days after entering and/or searching a house, a report must be made and a copy must be submitted to the owner or occupant of the house concerned.

However, searches conducted by investigators are often not in accordance with the Criminal Procedure Code. In reality, after two days of conducting a very necessary and urgent search, the minutes are often not submitted to the occupants or homeowners. In fact, there are minutes that have not been completed for months. This shows that investigators have violated the suspect's rights in the search.

Protection of the peace of the home or residence is one of the basic principles of human rights, so that violations of this principle are serious. Article 167 of the Criminal Code stipulates the criminal threat for this violation, which reads: "Anyone who unlawfully enters by force into, or unlawfully stays in a house or closed place used by another person, and does not immediately leave the place at the request of the authorized party, shall be punished by imprisonment for a maximum of nine months or a fine of three hundred rupiah."<sup>8</sup>

From the explanation above, it can be seen that state officials often do not comply with the regulations set by the government. In principle, every problem that arises in society, especially crimes and violations that can disrupt security and order, must be carefully examined. Otherwise, it can cause problems for others. When someone is suspected of committing a crime, even though it has not been proven, he can be subject to temporary detention for examination. Furthermore, to clarify a person's guilt or innocence, a search is one way. A search is not always carried out to find someone's guilt, but sometimes also to find evidence of his innocence. Based on this, this study aims to determine and analyze legal protection for the consequences of denying humanitarian values in the search process in the law enforcement process.

## **2. Research methods**

The approach method in this study is empirical juridical. The type of study in this study is more descriptive. The type of data in the study uses primary and secondary data. Primary data collection is done by interview and observation, Secondary data is done by literature study. The data that has been collected and processed will be discussed using qualitative analysis methods.

## **3. Results and Discussion**

Searches are one of the coercive measures often used by law enforcement officers in the law enforcement process, especially in the process of investigating and prosecuting criminal acts. However, searches that do not pay attention to

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<sup>8</sup>Ibid, p. 137

humanitarian values can result in violations of human rights (HAM) and the principle of justice, including for perpetrators of criminal acts. In this context, it is important to understand how legal protection is provided to perpetrators of criminal acts in order to enforce the law fairly and humanely.<sup>9</sup>

According to Soerjono Soekanto, law enforcement is the process of realizing legal ideas into reality. He divides law enforcement into three main aspects, namely legal structure, legal substance, and legal culture. All three must function harmoniously so that law enforcement can run well and humanely. In terms of searches, these three aspects are interrelated to ensure that the action is in accordance with procedures and does not violate the human rights of the perpetrators of the crime.

The legal structure includes law enforcement officers, such as police, prosecutors, and judges. In searches, the legal structure must ensure that actions are carried out based on the law and do not violate humanitarian principles. Failure by officers to comply with legal procedures can be a basis for questioning the legality of the action.<sup>10</sup>

Legal substance includes rules governing the procedures for conducting searches. Article 33 of the Criminal Procedure Code stipulates that searches must be conducted with a permit from an authorized official, except in urgent circumstances. If this procedure is violated, the perpetrator of the crime has the right to legal protection and the actions of the authorities can be declared invalid.

The legal culture of society and law enforcement officers plays a major role in ensuring that searches are carried out with due regard for humanitarian values. If the legal culture that develops does not prioritize respect for human rights, searches can harm perpetrators of criminal acts and reduce public trust in law enforcement.

Criminals still have human rights that must be respected, including the right not to be treated arbitrarily. Violations of human values in searches can take the form of acts of violence, insults, or searches that involve unreasonable privacy.

If a search is conducted without following legal procedures, then the action can be considered unlawful. This is in accordance with the principle of due process of law, which states that all law enforcement actions must be carried out in accordance with the provisions of the law.

Criminals who feel aggrieved by inhumane searches can file legal action, such as a pretrial motion. Article 77 of the Criminal Procedure Code gives perpetrators the right to question the legality of searches carried out by officers.

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<sup>9</sup>Soekanto, Soerjono. *Factors Influencing Law Enforcement*. Jakarta: Rajawali Pers, 1983.

<sup>10</sup>Criminal Procedure Code (KUHAP), Article 33 and Article 77.

A search that violates procedures can result in the evidence found being invalid and cannot be used in court. This shows the importance of respecting legal procedures to maintain justice.<sup>11</sup>

Soerjono Soekanto emphasized the importance of legal compliance, both from the community and law enforcement officers. In the context of searches, the officers' compliance with the law reflects the integrity of the law enforcement system itself.

Law enforcement must always consider the balance between legal interests and respect for human rights. This is in line with the principle of proportionality in law.

Several cases have shown that inhumane searches can cause great harm to perpetrators of criminal acts, including social stigma and violation of privacy rights. This shows the importance of evaluating and supervising searches.

Internal and external supervision of the actions of law enforcement officers is essential to prevent abuse of authority. The Ombudsman and Komnas HAM can play an active role in handling complaints related to these violations. Consistency in implementing the rule of law will create public trust in the legal system. Inconsistency in searches can weaken the legitimacy of the law.

Legal training and education that emphasizes humanitarian values is important to provide to law enforcement officers. This aims to increase their awareness of human rights. Cooperation between the government, law enforcement officers, and the community in creating a legal culture that respects human rights is key to overcoming this problem.

My Opinion on Legal Protection for Criminal Offenders Due to Searches that Disregard Humanitarian Values A search is an action taken by law enforcement officers to search for and find evidence related to alleged criminal acts. However, this process must be carried out by respecting humanitarian values in accordance with the principles of human rights guaranteed by the constitution and national law. Article 28G paragraph (1) of the 1945 Constitution states that everyone has the right to protection of themselves, their families, and their property under the rule of law. In the context of a search, this protection is important to ensure that the actions of officers do not violate privacy and human dignity.

The Criminal Procedure Code (KUHP) regulates search procedures in Articles 33 to 37. Searches must be carried out based on written permission from the Head of the District Court (except in urgent circumstances), and must be carried out while respecting the rights of citizens. Searches must be carried out professionally and in accordance with the rules. Actions involving violence,

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<sup>11</sup>1945 Constitution, Article 28G paragraph (1).

harassment, or insults against perpetrators of criminal acts or their family members can be considered a violation of the law and human values.

When searches are conducted in an inhumane manner, the perpetrator of the crime or other affected parties are likely to experience psychological trauma, violation of privacy rights, and insults to their dignity. This can lead to lawsuits against the officers conducting the search. Protection of humanitarian values in searches is based on human rights principles, such as the prohibition of torture (Article 33 of Law No. 39 of 1999 concerning Human Rights), the right to a sense of security, and protection of human dignity.

Law enforcement officers who violate the rules in conducting searches can be subject to criminal, administrative, or civil sanctions. This is in accordance with Article 421 of the Criminal Code which regulates the prohibition of abuse of authority. Perpetrators of criminal acts or victims of inhumane searches can file a lawsuit for damages based on Article 1365 of the Civil Code, which states that every unlawful act that harms another person must provide compensation. In cases of violations of humanitarian values by law enforcement officers, the Indonesian Ombudsman has a role to receive public reports and investigate allegations of maladministration.

Criminals, even if they have violated the law, still have human rights that must be respected. This principle is guaranteed by international law, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Victims of inhumane searches can request rehabilitation of their good name or other forms of reparation. This is important to ensure justice and prevent similar acts from happening again.

Various cases of violations of humanitarian values in searches have occurred in Indonesia. Examples include the actions of officers who conduct searches without court permission or by using disproportionate violence. The government and law enforcement institutions need to strengthen internal supervision and provide training to officers on ethics and search procedures that respect humanitarian values. The public has a role to play in monitoring the actions of law enforcement officers. Public reports can be an effective control tool to prevent violations of humanitarian values in the legal process.

Searches that disregard humanitarian values are a serious violation of human rights. Legal protection for perpetrators of criminal acts or other affected parties must be enforced through available legal mechanisms, while still prioritizing the principles of justice and respect for human dignity.

Search is one of the *pro justitia* actions carried out by law enforcement officers to search for and secure evidence related to a crime. However, in practice, searches often cause controversy, especially when carried out without regard to



humanitarian values.<sup>12</sup>

According to Soerjono Soekanto, law enforcement consists of three main elements: legal substance, legal structure, and legal culture. These three elements must work in harmony to create justice in society. When one element is disturbed, legal protection for individuals, including perpetrators of criminal acts, can be threatened.<sup>13</sup>

Legal substance includes laws and regulations governing searches. Article 33 of the Criminal Procedure Code and related regulations provide clear limitations on search procedures to ensure the protection of human rights (HAM). If this procedure is violated, the perpetrator of the crime has the right to file an objection through a legal mechanism.<sup>14</sup>

The legal structure involves law enforcement institutions and officers. When officers do not comply with the procedures set out in the Criminal Procedure Code, they violate the principles of justice and human rights. In this case, the perpetrator of the crime can file a complaint or lawsuit against the unlawful search.<sup>15</sup>

Legal culture is related to the legal awareness of the community and law enforcement officers. Indifference to humanitarian values in searches shows a weak legal culture. Law enforcers must understand that respect for human dignity is part of the principle of fair law enforcement.<sup>16</sup>

The principle of due process of law is often violated in inhumane searches. In addition, the principle of presumption of innocence must also be upheld. Actions that degrade the dignity of the perpetrator are contrary to these principles.

The basic rights of perpetrators of criminal acts must still be protected, including the right to be treated humanely. Article 28G paragraph (1) of the 1945 Constitution and Article 3 of Law No. 39 of 1999 concerning Human Rights emphasize this protection, even if someone has the status of suspect or defendant.

Indonesia is also bound by international conventions such as the International Covenant on Civil and Political Rights (ICCPR). Inhumane searches can violate articles in the convention, especially those that regulate the humane treatment of all individuals.

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<sup>12</sup>Soekanto, Soerjono. *Factors Influencing Law Enforcement*. Jakarta: PT. RajaGrafindo Persada, 1983.

<sup>13</sup>Criminal Procedure Code (KUHAP).

<sup>14</sup>The 1945 Constitution.

<sup>15</sup>Law Number 39 of 1999 concerning Human Rights.

<sup>16</sup>International Covenant on Civil and Political Rights (ICCPR).



Criminals who experience inhumane searches can use legal channels, such as reporting the act to the National Human Rights Commission (Komnas HAM) or through a pre-trial motion as regulated in the Criminal Procedure Code.

Law enforcers must be held accountable for their actions. Internal oversight by law enforcement institutions and external oversight by independent institutions such as Komnas HAM are key to preventing violations. Officers who conduct inhumane searches can be subject to administrative, criminal, or civil sanctions, according to the level of the error and the consequences.

In the context of humanistic law enforcement, the restorative justice approach can be an alternative to minimize the negative impact on perpetrators of criminal acts, their families, and the wider community.

In Soerjono Soekanto's view, the imbalance between substance, structure, and legal culture will cause injustice. When searches are carried out without regard to human values, this indicates a dysfunction in the legal structure or culture.

The government needs to strengthen training for law enforcement officers to understand the importance of human rights in every legal action. In addition, revisions to regulations that do not provide optimal protection are also needed.

Searches that disregard humanitarian values are contrary to the principles of fair and civilized law enforcement. Therefore, there needs to be synergy between the substance, structure, and culture of law to ensure that the rights of perpetrators of criminal acts remain protected, in accordance with the humanitarian values upheld in the Indonesian legal system.

My Opinion on Legal Protection for Criminal Actors Due to Searches that Disregard Humanitarian Values A search is one of the legal actions carried out by law enforcement officers to seek or obtain relevant evidence in the investigation process. However, its implementation must comply with legal principles, including respect for humanitarian values. In this context, legal protection for criminal acts becomes crucial if the search is carried out arbitrarily and violates human rights principles.<sup>17</sup>

First, legal protection can be provided through a complaint mechanism against law enforcement officers who conduct searches without following legal procedures. The procedures in question include the existence of an official warrant from the authorities, implementation under legitimate supervision, and respect for the basic rights of individuals. If these procedures are violated, the perpetrator of the crime has the right to report the action.<sup>18</sup>

Second, searches conducted without regard to humanitarian values can be

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<sup>17</sup>Article 28G of the 1945 Constitution.

<sup>18</sup>Criminal Procedure Code (KUHP), Articles 33 and 34.

categorized as violations of human rights, such as the right to privacy and the right to dignified treatment. This is regulated in Article 28G of the 1945 Constitution, which guarantees protection of a sense of security and the right to legal protection from inhumane treatment.<sup>19</sup>

Third, Indonesian laws, such as the Criminal Procedure Code (KUHP), have strictly regulated search procedures. Articles 33 and 34 of the Criminal Procedure Code stipulate that searches may only be conducted with a court warrant, except in urgent circumstances. If this rule is not met, the perpetrator of the crime has the right to file an objection through a pretrial motion.<sup>20</sup>

Fourth, a search that violates humanitarian values can harm the principle of justice, so that the perpetrator of the crime can sue for damages for the actions of the officers that violate the law. Article 1365 of the Civil Code states that every unlawful act that harms another person gives rise to an obligation to provide compensation.<sup>21</sup>

Fifth, supervisory institutions, such as Komnas HAM and Ombudsman, can be used as channels to report actions by officers who violate search procedures. Komnas HAM has the authority to handle cases of human rights violations, including searches that are not in accordance with humanitarian norms.

Sixth, legal protection for perpetrators of criminal acts can also be realized through legal assistance by legal counsel. Legal counsel plays a role in ensuring that their clients' rights are respected during the investigation process, including when searches are carried out.

Seventh, in certain cases, violations of humanitarian values during searches can lead to the cancellation of the evidence obtained. According to the legal principle of "fruit of the poisonous tree," evidence obtained through illegal means cannot be used in court.

Eighth, internal supervision of law enforcement officers needs to be improved to prevent arbitrary searches. Inhumane searches often occur due to weak supervision or abuse of authority by officers.

Ninth, the role of the community and the media in monitoring the implementation of searches is also important. With public pressure, law enforcement officers are expected to be more careful in carrying out their duties so as not to violate individual rights.

Tenth, the educational approach to law enforcement officers on the importance

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<sup>19</sup>Article 1365 of the Civil Code (KUH Perdata).

<sup>20</sup>International Covenant on Civil and Political Rights (ICCPR), adopted through Law Number 12 of 2005.

<sup>21</sup>Fruit of the Poisonous Tree Doctrine," in the principles of international law.

of respecting human rights needs to be strengthened. Training and socialization on legal procedures will reduce the risk of violations.

Eleventh, international law, such as the International Covenant on Civil and Political Rights (ICCPR), which Indonesia has ratified, emphasizes the importance of protecting individual rights, including in the law enforcement process. Inhumane searches can be considered a violation of international obligations.

Twelfth, the perpetrator of a crime has the right to compensation if he/she suffers a loss due to an inhumane search. This is a form of the state's responsibility in protecting every citizen, including those who are in the legal process.

Thirteenth, legal protection can also be obtained through advocacy by non-governmental organizations working in the field of human rights. These institutions can help perpetrators of criminal acts in obtaining justice.

Fourteenth, it is important for law enforcement officers to realize that inhumane treatment during searches is not only unlawful, but can also damage public trust in law enforcement institutions.

Fifteenth, finally, legal protection for perpetrators of criminal acts due to inhumane searches is a manifestation of upholding the principle of the supremacy of law and respect for human rights. The state has an obligation to ensure that all legal processes are carried out fairly and with dignity.

#### **4. Conclusion**

Legal protection for perpetrators of criminal acts due to searches that do not respect humanitarian values not only violates the human rights of perpetrators of criminal acts, but also damages the integrity of the legal system itself. Soerjono Soekanto's law enforcement theory shows that harmonization between legal structure, legal substance, and legal culture is essential to ensure that legal actions are carried out fairly and humanely.

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