

Searches According To Criminal Procedure Law From A Human Rights Perspective

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Abstract. *This research examines the practice of searches in criminal procedural law from a human rights perspective. Searches are coercive actions that can affect an individual's privacy and freedom; Thus, they must be conducted following human rights principles. This study highlights the importance of balancing law enforcement interests with the protection of individual rights during search procedures. The research employs a normative method with a legislative approach and case analysis to evaluate the compliance of search practices with applicable human rights standards. The results indicate that although Indonesian criminal procedural law has regulated search mechanisms, there are challenges in its implementation that may violate human rights, such as breaches of privacy rights and procedures not meeting standards. Some cases show searches conducted without authorization or exceeding authority, leading to violations of individual rights. Therefore, reforms and increased oversight of search procedures are necessary to ensure that human rights are respected. This research suggests the need for clearer regulatory reinforcement and strict supervision of search practices in criminal procedural law. Moreover, enhancing law enforcement officers' training and awareness of the importance of human rights in every enforcement action is crucial. With these measures, it is hoped that searches can be conducted effectively and fairly without compromising the protection of individual rights.*

Keywords: *Criminal Procedural Law; Human Rights; Law Enforcement; Privacy; Search.*

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.¹

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 locating evidence or suspects suspected of committing a crime. In the context of Indonesian criminal procedure law, searches are regulated in the Criminal Procedure Code (KUHP), specifically Articles 32 to 37.² Although this action is legally valid, its implementation must comply with certain procedures and conditions to avoid violations of human rights (HAM).

Unlawful searches 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).³ and by the Indonesian constitution, namely the 1945 Constitution.⁴ Therefore, search actions must be carried out with due regard to applicable legal principles and respect for human rights.⁵

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.

2. Research Methods

This research uses a normative legal approach, examining primary, secondary, and tertiary legal materials. The focus of the research is an analysis of laws and regulations related to searches and their relevance to human rights principles. This approach is also complemented by a conceptual analysis to explore the principles of justice and human rights protection in the context of searches.

1Teguh Prasetyo, *Criminal Law*, 2nd ed., Jakarta: PT. RajaGrafindo Persada, 2011, p. 2.

2Articles 32-37, Criminal Procedure Code (KUHP).

3Universal Declaration of Human Rights, Article 12.

4International Covenant on Civil and Political Rights, Article 17.

5The 1945 Constitution of the Republic of Indonesia, Article 28G paragraph (1).

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.⁶

In Indonesia, searches are regulated by Articles 32 to 37 of the Criminal Procedure Code (KUHP), 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.⁷

The right to privacy is an integral part of human rights, as regulated in the International Covenant on Civil and Political Rights (ICCPR) Article 17.⁸ 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 Human Rights Commission (Komnas HAM) in Indonesia can play an active role in overseeing the

⁶Universal Declaration of Human Rights, Article 12.

⁷KUHP Articles 32–37, concerning searches and supervision of legal processes in Indonesia.

⁸International Covenant on Civil and Political Rights, Article 17, on the right to privacy.

implementation of searches by authorities.⁹This oversight is important to ensure that the process is in accordance with the law 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.¹⁰

Searches, whether by law enforcement officers or authorized agencies, are legal actions aimed at finding and securing evidence. However, these actions have the potential to violate human rights (HAM) if conducted without clear boundaries. These human rights, particularly the right to privacy (Article 12 of the Universal Declaration of Human Rights),¹¹protect individuals from arbitrary interference with their privacy, family life, and residence. Therefore, searches must be conducted in accordance with the principles of legality, fairness, and due process.

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.¹²This provision ensures transparency and prevents abuse of authority.¹³

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.

⁹Syracuse Principles on the Limitation and Derogation Provisions, 1984.

¹⁰Data from the National Commission on Human Rights regarding violations of search procedures in Indonesia.

¹¹Universal Declaration of Human Rights, Article 12.

¹²Indonesian Criminal Procedure Code (KUHP), Article 33.

¹³Fuller, Lon L. *The Morality of Law*. New Haven: Yale University Press, 1964.

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.

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

The Indonesian Criminal Procedure Code (KUHAP) regulates the procedures for searches through Articles 32 to 37.¹⁴ Searches are conducted to obtain evidence in law enforcement proceedings. However, they also impinge on human rights, particularly the right to privacy and individual liberty, as guaranteed by Article 28G of the 1945 Constitution.¹⁵ Therefore, the search regulations in the Criminal Procedure Code must be able to guarantee justice, balance and 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.

¹⁴Criminal Procedure Code, Articles 32-37.

¹⁵The 1945 Constitution of the Republic of Indonesia, Article 28G paragraph (1).

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 (KUHAP) 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 KUHAP does not stipulate strict sanctions for violations of search procedures.

Although the Criminal Procedure Code (KUHAP) 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 (KUHAP) 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 (KUHAP) remain inadequate. The ICCPR requires stricter oversight and redress mechanisms for victims of violations.¹⁶

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 (KUHAP) 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

¹⁶Universal Declaration of Human Rights (1948), Article 12.

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.¹⁷

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.¹⁸

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.¹⁹

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

¹⁷Lon L. Fuller, *The Morality of Law*, Yale University Press, 1964.

¹⁸Criminal Procedure Code (KUHP) Articles 32-38.

¹⁹Constitution of the Republic of Indonesia, Article 28G concerning the Right to Privacy.

Procedure Code (KUHAP), 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 (KUHAP) 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.²⁰

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.

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 (KUHAP) 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 (KUHAP) is the lack of procedural clarity and weak oversight, which opens up opportunities for human rights violations.

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