

Investigators' Authority to Conduct Forced Searches to Access Electronic Systems of Criminal Perpetrators Based on Legal Certainty

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Abstract. *This study aims to examine the authority of investigators in conducting forced searches of electronic systems of non-criminal perpetrators. This study uses a descriptive juridical-normative method. And uses secondary and primary data that study books, journals and combined with interview results. Based on the research that has been done, the following results were obtained: 1.) Investigators have the authority to conduct forced searches of electronic systems. This is explained in Articles 112 and 113 of Law Number 20 of 2025 concerning the Criminal Procedure Code. Forced searches carried out by investigators must have the permission of the chief justice and must also be in accordance with established procedures, supplemented by Law Number 1 of 2024 concerning Information and Electronic Transactions, that legal efforts carried out against a person must still prioritize the privacy of that person and not ignore human rights. However, the fact is that it is not uncommon for there to be cases of searches of a person's electronic system carried out without the permission of the chief justice and without respecting the privacy rights of the perpetrator of the crime. 2.) In the implementation of forced searches of a person's electronic system, there are still several weaknesses, namely weaknesses in terms of regulations and also human resources. The Electronic Transactions and Information Law explains that legal efforts taken against a person can be carried out for law enforcement but must still protect the person's right to privacy. Meanwhile, the Criminal Procedure Code does not clearly and firmly discuss the limits to which investigators can conduct searches of a person's electronic system. Weaknesses also exist in human resources where the lack of infrastructure to conduct searches of electronic systems in accordance with technological advances, the lack of quality and quantity of investigators is also known to be a weakness in conducting searches of a person's electronic system. 3.) The authority of investigators in forced searches of the electronic systems of perpetrators of criminal*

acts based on legal certainty can be supported by several principles, namely the principle of legality, the principle of proportionality, the principle of due process of law and the principle of not abusing authority, the regulation of the Chief of the Republic of Indonesia National Police Number 3 of 2024 concerning the Appointment and Dismissal of Investigators of the Republic of Indonesia National Police which explains the principles as investigators and the mechanism for appointment as investigators, the principle the right to privacy. These four principles, police regulations, and principles can assist investigators in securing legal certainty when searching electronic systems of criminals. Indonesia can also learn from and emulate the legal systems of the Netherlands and the United States, namely by upholding human rights and limiting searches to investigating unlawful acts by criminals.

Keywords: Authority; Electronic System; Investigator; Search.

1. Introduction

Indonesia is a country committed to justice and the protection of its citizens' rights, and law is a key pillar in running its national life. Article 1 Paragraph (3) of the Constitution of the Republic of Indonesia firmly states that Indonesia is a country of law. This means that all policies and actions taken by government officials and leaders must always be based on applicable law. The law of society, government, and law enforcement are essentially interrelated and inseparable elements. Law cannot be realized without society and law enforcement.

In the law enforcement process, there are several procedures that need to be implemented, one of which is the investigation. This investigative process is carried out in order to obtain strong evidence of alleged criminal acts committed by someone. The highest power that is in the hands of the people is limited by the provisions they set collectively, the result of this joint agreement of all the people is what forms a social contract which is then stated in the form of legal regulations, which culminates in the formulation of the constitution (UUD 1945). The 1945 Constitution as the highest legal provision functions to limit and direct how the people's sovereignty is divided, implemented, and regulated in various state and government activities. This principle is what makes the Indonesian government must submit to the law as a country governed by law and democracy. On the other hand, the formation of law is carried out through a democratic mechanism guided by the constitution as the highest law.¹ Investigations are conducted by parties known as investigators.

¹ Yusrizal DJ, "A democratic state based on the rule of law according to the constitution (1945 Constitution)", Tower of Knowledge, Volume XII, Number 79, January 2018, page 193

Investigators are one of the parties involved in the enactment of legal regulations so they can be enforced.

One of the investigator's authorities is to conduct a search in order to obtain and strengthen evidence against the alleged perpetrator of a crime in carrying out his unlawful actions. explained in "A search is an act that is included in the investigator's authority to examine items in the possession or control of a person suspected of being related to a crime, in connection with the collection of evidence at the investigation, collection, and/or trial stages in court," said Article 1 of Law Number 20 of 2025 concerning the Criminal Procedure Code."²

Currently, technology in Indonesia has developed rapidly, all information carried out by Indonesian citizens is stored in electronic systems owned by each. With the development of electronic systems in Indonesia, it has created a great opportunity for the public to access or store their information in it, no longer storing something always in physical objects, but storing it in electronic form, both personal information to public information, even information that contains something unlawful. This has triggered law enforcement to be able to enforce the law according to the current era, namely the modern era which predominantly uses electronic systems. The electronic system here can be exemplified in the form of *gmail*, *whatsapp*, *line*, as well as all systems contained in electronic devices, both *smartphone* or laptop.

Investigators are explicitly "required" to be able to enforce the law in line with technological developments. Therefore, currently, if someone is suspected of committing a crime, investigators conduct a search, one of which includes an examination of the electronic systems owned by the suspected perpetrator of the crime. Because electronic systems have become inseparable from society, it is not uncommon for investigators to conduct searches to find evidence in electronic systems, including in electronic devices owned by perpetrators of criminal acts. This is supported by Article 1 number 14 of Law Number 20 of 2025 concerning the Criminal Procedure Code, which states that "Coercive Measures are actions by law enforcement officers in the form of determining Actions taken against suspects or defendants, including arrest, detention, searches, confiscation, document examination, wiretapping, freezing of assets, and restrictions on departure from Indonesia, carried out for the benefit of law enforcement in accordance with statutory provisions. In addition, Article 112 stipulates that investigators are authorized to conduct searches for the benefit of investigations in:³

a. house or building;

b. clothing;

² Article 1 Number 34, Law Number 20 of 2025 concerning the Criminal Procedure Code

³ Article 112, *ibid*.

- c. many;
- d. Means of transportation;
- e. Electronic Information;
- f. Electronic Documents; and/or
- g. other objects.

The aforementioned article reinforces the authority of investigators to conduct searches of electronic systems related to criminals. Article 43 paragraph 2 of Law Number 1 of 2024 concerning the second amendment to Law Number 11 of 2008 concerning electronic information and transactions stipulates that investigations in the field of information technology and electronic transactions must consider aspects of data protection and confidentiality, as well as maintaining public services, data integrity, and data completeness in accordance with legal provisions.⁴ Searches of electronic systems can be carried out by investigators who do not only consist of the Indonesian National Police, but can also consist of government civil servants who have positions, responsibilities and responsibilities in information technology and electronic transactions who are given special authority to carry out investigations.

This essentially violates Article 26 paragraph (1) of Law Number 11 of 2008 concerning Electronic Data and Transactions, which states that before information containing personal data is submitted via electronic media, the data subject must provide written permission. In addition, paragraph (2) of Article 26 states that the party whose rights are violated has the right to file a lawsuit to request compensation for the losses suffered.⁵ Every human being has the right to have human rights, including maintaining their private data.

To ensure legal certainty, integrity, and fairness, investigators must comply with applicable regulations without neglecting other regulations. This, of course, relates to human rights. Individuals suspected of involvement in crimes are also considered to be within the community of individuals entitled to human rights.

Based on the description above, the problem formulation is:

1. What is the authority of investigators to carry out forced searches of electronic system access of perpetrators of criminal acts currently?

⁴ Article 43 paragraph (2) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions

⁵ Article 26 paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions

2. What are the weaknesses of investigators' authority in carrying out forced searches to access the electronic systems of perpetrators of criminal acts?
3. What is the authority of investigators in carrying out forced searches of electronic system access for perpetrators of criminal acts based on legal certainty?

2. Research Methods

This research is a juridical-normative research based on literature analysis, empirical data, and compliance with existing laws. It is descriptive in nature, describing answers to problems through research findings. The data used in this study includes primary, secondary, and tertiary data.

3. Results and Discussion

3.1. The authority of investigators to carry out coercive searches of electronic system access of perpetrators of criminal acts currently

Indonesia is a country that uses a legal system *civil law* (Continental European system). In this legal system, written legislation is established as the primary source of law in the administration of justice. Dispute resolution must refer to and be guided by the law first. In the civil law system, the law has binding force because it is in the form of legislation and is systematically arranged in a codification or compilation (written regulations) where the main value of this legal system is legal certainty. The Indonesian legal system is a complete unity that includes legal culture, legal structure, and legal substance. According to Friedman M Lawrence, it states that:

1. Legal structure: the relationship of this legal structure to the judicial system. The primary focus is on law enforcement agencies, namely judges, prosecutors, lawyers, and the police. Therefore, when discussing the legal structure, all legal institutions, including their structures, are also discussed.
2. Legal substance: relates to all legal products created and produced by the legal framework. All written and unwritten legal documents produced and used by public officials are part of the legal system and constitute the legal substance.
3. Legal culture: Legal culture is a collection of ideas, opinions, patterns, habits, and ways of thinking of people in a particular group in a legal context, which includes everything directly related to the law. The development of legal culture can be linked to two factors. First, there is a legal culture that arises from the interaction between the substance and structure of law; second, there is a legal

culture that arises from society and forms habits that enable the formation of a legal framework and the composition of legal material.⁶

When discussing the legal system in Indonesia, the legal structure is an important component because it relates to the institutions that implement and enforce the law. One of the main institutions in this legal structure is the institution authorized to examine and resolve cases for the purpose of law enforcement. The Indonesian legal system functions to uphold law and justice. Courts in Indonesia consist of general courts, religious courts, military courts, and administrative courts. Each of these court categories operates within its own jurisdiction. In accordance with the background explained previously, further explanation is needed regarding the criminal justice system concerning the institutions that handle criminal perpetrators. The criminal justice system plays an important role in upholding the rule of law and ensuring justice for all levels of society. This is achieved through a series of transparent and accountable legal processes; this system aims to reveal material truth, enforce the law fairly, and protect human rights. The criminal justice system serves as a main pillar in maintaining social order and creating a sense of security in society. This justice system involves the police, courts, prosecutors, and correctional institutions that work in an integrated manner.⁷ From this, it can be understood that the criminal justice system cannot be separated from its law enforcement apparatus. An investigator is a law enforcement officer within the judicial system. They have the authority to conduct a series of investigative actions and gather evidence to prove that a crime has occurred. This authority exists for investigative and criminal purposes.

Etymologically, "investigation" comes from several foreign languages: Dutch (*investigation*), English (*investigation*), and Latin (*investigation*). In general, *investigation* approaching the initial investigation carried out by authorized officials in accordance with legal provisions after receiving a report or information regarding the occurrence of a criminal act which is considered sufficiently reasonable regarding the alleged violation of the law.⁸ Article 6 of Law Number 20 of 2025 concerning the Criminal Procedure Code states that those who have the right to investigate are:⁹

1. Police investigators

⁶ Marzuki Lubis, "The Role of Legal Culture in the Perspective of National Legal Development," Law Enforcement 1, No. 1 (2014): pages 16–37

⁷ Legal Info, 2025, "Criminal Justice System: Definition, Objectives, Principles and Components", accessed on March 9, 2026

⁸ Andi Hamzah, "Introduction to Indonesian Criminal Procedure Law", Ghalia Indonesia, Jakarta, 1984, Page 121

⁹ Article 6, *ibid*

2. PPNS Investigator

3. Certain investigators

Indonesian National Police investigators act as the primary investigators authorized to conduct investigations into all forms of criminal acts that occur. All investigators mentioned in the above Article must have the minimum requirements for rank, education, training, and certification in accordance with the provisions of laws and regulations. This electronic system search is generally carried out by investigators on perpetrators of criminal acts who commit a criminal case. This investigator's action is carried out to obtain evidence that the person actually committed a crime. Investigators may carry out coercive searches. Coercive measures are actions taken by law enforcement officers to determine someone as a suspect. Coercive measures, law enforcement officers can take various actions, including arrest, detention, searches, wiretapping, freezing assets, and restrictions on foreign travel for suspects or defendants.

The electronic systems owned by each individual are indirectly a human right that must be protected and recognized by the government. However, the ongoing search of electronic systems during investigations creates a conflict between legal action, which must be enforced, and the protection of individual data, which must also be upheld. Essentially, a person's right to privacy is an absolute right held by every individual in Indonesia. With the 1945 Constitution, which protects individuals from obtaining and exercising their rights according to their respective portions, this also gives the government a new task: protecting people's personal data and creating more specific regulations related to this personal data to prevent violations of individual rights. With the rapid development of technology, it is not uncommon for individuals to conduct transactions that violate established laws in Indonesia using their electronic devices, which also contain personal data within the same system. The protection of personal data or an individual's right to privacy in the context of criminal justice investigations is a crucial aspect. Caution is essential in investigations, especially when searching electronic systems. However, Law Number 20 of 2025 concerning the Criminal Procedure Code does not provide a sufficiently detailed explanation regarding the limitations of searches that investigators can conduct on electronic systems owned by perpetrators of criminal acts. In practice, there have been several cases of searches of electronic systems conducted by investigators without the owner's permission, for example:

1. According to Kumparan news, the Indonesian Legal Aid Foundation (YLBHI) reported receiving 51 complaints from demonstrators who experienced violence from police during a demonstration in front of the House of Representatives (DPR) building on August 22, 2024. It also stated that police searched their

cellphones without court permission. This constituted a coercive measure that violated procedures.¹⁰

2. The case of Aiman Witjaksono who is suspected of spreading fake news/*hoax* receive treatment in the form of confiscation *cellphone* conducted by the Metro Jaya Police investigative team. He sued the investigative team in the District Court on February 6, 2024. The head of his legal team asserted that the seizure was not based on court permission, as stipulated in the criminal procedure code.¹¹

3. Several television broadcasts have shown police conducting raids on residents encountered on the street in the middle of the night. In these broadcasts, police inspected the cellphones of residents they encountered without following clear procedures and statutory regulations.

The three cases mentioned above indicate that searches are still being conducted without clear procedures and limitations. Besides being relevant to the context of personal data protection, these established limitations can be aligned with the provisions stipulated in Law Number 11 of 2008 concerning Electronic Information and Transactions. This law has been amended twice: through Law Number 19 of 2016 as the first amendment, and Law Number 1 of 2024 as the second amendment.

When conducting a search of an electronic system, investigators may only examine and/or confiscate evidence related to the crime. However, if the search is conducted under urgent circumstances, the search may be conducted without a court permit. Examples of urgent circumstances include if the search location is in a difficult geographic location, if someone is caught red-handed, or if there is potential for damage or destruction of evidence, situations that are deemed urgent by the investigator.¹² In such urgent circumstances, investigators must wait 2x24 hours. Investigators are required to obtain permission from the Chief Justice of the District Court after conducting a search. However, in emergency situations, investigators may conduct searches without prior permission. According to the author, search efforts in electronic systems still need to prioritize human rights.

Based on an interview with Brigadier Rio, who serves at the Tabalong Regency Police, he stated that he was aware of searches of electronic systems, for

¹⁰ KumparanNEWS, "YLBHI Receives 51 Complaints from Protesters Against the Regional Election Bill: Cell Phone Checks Exist <https://kumparan.com/kumparannews/yldbhi-terima-51-aduan-dari-demonstran-ruu-pilkada-ada-pemeriksaan-hp-23NkAPfGarR/full> accessed on February 25, 2026

¹¹ Bloomberg Technoz, <https://www.bloombergtechnoz.com/detail-news/29100/hp-disita-tim-hukum-aiman-witjaksono-ajukan-gugatan-praperadilan/2> accessed on February 25, 2026

¹² *ibid*

example, CCTV and cell phones. He argued that these searches were necessary to shed light on the crimes committed. They were conducted based on warrants. He argued that these searches did not violate a person's human rights because they were ordered by law. However, to date, warrants have been the sole basis for investigators to conduct searches and do not disregard the human rights of perpetrators of criminal acts. No other specific mechanisms are needed to prevent violations of human rights and data in electronic system searches. He suggested that further specific mechanisms are needed to ensure justice for victims and the community.¹³

Based on the results of the interview with Dandi Revo, the search was carried out with a warrant which was issued two days after the request. This coercive measure had to be carried out quickly because of concerns that the evidence and the suspect would escape. He stated that the search must be carried out with a warrant which will then be shown to the village officials before searching the perpetrator of the crime. The warrant must be brought when the search is carried out. However, regarding the determination or permission from the chief justice, it is obtained when the investigator has secured the evidence and the perpetrator of the crime.¹⁴

In this case, the author concludes that investigators can use any form of coercive force to uphold the rule of law. However, searches of a person's electronic system must be accompanied by permission from the chief justice and must respect the confidentiality and privacy rights of the individual. Investigators are not permitted to arbitrarily search electronic systems without permission from the chief justice. In conducting searches, investigators must not override a person's right to privacy and conduct investigations beyond their authority or beyond the scope of the evidence sought.

3.2. Weaknesses in Investigators' Authority in Conducting Coercive Searches to Access Electronic Systems of Criminal Act Perpetrators

Since the enactment of Law Number 11 of 2008 concerning Electronic Information and Transactions, which is listed outside the Criminal Procedure Code, electronic evidence must be obtained by law enforcement upon their request. Thus, electronic evidence is inadmissible in court if it is collected illegally or without a request from law enforcement. Electronic evidence must go through a process that requires the approval of the presiding judge, even in the context of law enforcement. Consequently, electronic evidence collected through inappropriate methods is inadmissible in court. Thus, searches conducted by investigators on a person's electronic system need to pay attention to

¹³ Rio, *Interview Personal Tabalong Police Investigators*, interview conducted on February 26, 2026

¹⁴ Dandi Revo, *Interview Personal Tabalong Police Investigators*, interview conducted on February 26, 2026

procedures and also a person's personal rights, considering that Article 43 paragraph (2) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions states that investigations in the use of information technology and electronic transactions must be carried out in accordance with applicable regulations to maintain privacy, confidentiality, and data integrity as well as maintaining public services.¹⁵

Article 112 of Law Number 20 of 2025 concerning the Criminal Procedure Code states that investigators have the authority to carry out searches of:¹⁶

- a. House or building
- b. Clothing
- c. Many
- d. Means of transportation
- and. Electronic information
- f. Electronic documents
- g. Other objects

Investigations may only be conducted with prior approval from the Chief Justice of the District Court. This permission must include information regarding the location to be searched as well as initial evidence indicating the presence of evidence of a criminal act at that location. Based on Article 113 paragraph (3) of the same Law, investigators may only examine or confiscate evidence related to the crime being investigated.¹⁷ The evidence in question is:¹⁸

- a. Testimony of witnesses, experts and defendants
- b. Letter
- c. Evidence
- d. Electronic evidence
- and. Judge's observation

¹⁵ Article 43 paragraph (2) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions explains that Investigations in the field of Information Technology and Electronic Transactions

¹⁶ Article 112 of Law Number 20 of 2025 concerning the Criminal Procedure Code

¹⁷ Article 113 paragraph 3 of Law Number 20 of 2025 concerning the Criminal Procedure Code

¹⁸ Article 235 of Law Number 20 of 2025 concerning the Criminal Procedure Code

f. All types of evidence that are legally obtained and are admissible for use in court.

All information, documents, and electronic systems related to a crime are qualified as relevant electronic evidence. Unfortunately, the Criminal Procedure Code (KUHP) does not explicitly regulate the limits of investigators' authority to search a perpetrator's electronic systems, so searches have the potential to be excessive and go beyond the scope of information actually related to the crime. This coercive measure is a law enforcement procedure categorized as an act of coercion, therefore it has the potential for misinterpretation in its implementation. A more detailed Standard Operating Procedure (SOP) is needed regarding electronic system searches. Without a more detailed procedure, there is concern that human rights violations will occur, either intentionally or through sheer negligence.

A person's right to privacy is regulated in detail in Law Number 11 of 2008 concerning Electronic Information and Transactions. Today, every aspect of human life is influenced by technological advances. The rapid development of information technology has changed the way people conduct various activities, which directly gives rise to new legal issues. Searches and seizures of electronic systems suspected of being related to a crime can only be carried out after obtaining permission from the Head of the local District Court. However, investigators must still prioritize the smooth operation of public services, the protection of privacy, confidentiality, integrity, and data integrity. This disharmony raises concerns about overbroad searches, or excessive investigations that go beyond the limits of investigations required to maintain the protection of a person's right to privacy. In addition to regulatory weaknesses, there are also weaknesses in human resources (in this case investigators) and existing infrastructure, namely:

1. internal constraints: limited facilities and infrastructure that are inadequate to carry out electronic system searches make it difficult for investigators to search a person's electronic system in accordance with the evidence they are looking for.
2. Inadequate police personnel in terms of quantity and quality: the lack of human resources within the police institution significantly impacts the smooth process of searching electronic systems for criminals. Generally, police investigators only conduct investigations based on personal desires, personal procedures, and general expertise without having specialized expertise in searching someone's electronic system.

The author concludes that investigators' weaknesses in conducting forced searches can be seen from two elements: the regulatory element and the human resources element. From the regulatory element, the author found that there is a weakness in terms of disharmony of rules, where the Criminal Procedure Code

only mentions forced searches, including searches of electronic systems. However, the book does not sufficiently explain the limits to which investigators are permitted to examine a person's electronic devices. However, legal action taken by law enforcement against criminal suspects must not violate human rights, in accordance with the Law on Information and Electronic Transactions. On the other hand, weaknesses in human resources include the lack of infrastructure to support the process of forced searches of electronic systems and the lack of quantity and quality of investigators assigned to conduct investigations into a person's electronic system.

If we conclude and look back at the theory of the legal system, these weaknesses can be found on three sides at once, namely legal substance, legal structure, and legal culture, namely:

1. Legal structure: limited human resources, lack of infrastructure to support law enforcement in carrying out its authority and the potential for internal weaknesses mean that law enforcement cannot fully exercise its authority in conducting searches of a person's electronic system.
2. Legal substance: the absence of firm and clear regulations, the absence of limits on the scope of authority in searching electronic systems, and the lack of regulations related to digital privacy protection are weaknesses in the legal substance in attempts to forcefully search access to electronic systems by perpetrators of criminal acts.
3. Legal culture: low privacy protection, lack of digital forensic ethics, people's lack of understanding of their rights, and law enforcement officers who still exercise their authority beyond its limits and conduct searches without court permission (as exemplified in the discussion of problem formulation number 1) are also included in the weaknesses in the legal culture regarding electronic system searches.

3.3. Investigators' Authority to Conduct Coercive Searches of Electronic Systems Access of Criminal Act Perpetrators Based on Legal Certainty

Legal certainty is a certain state that every person or society in Indonesia has the right to. This is part of human rights. Certainty is a real state, in the form of clear provisions. In essence, the law requires certainty and justice. "Certainty" serves as a benchmark for behavior, while "fair" becomes the benchmark for an order that is deemed appropriate. The law can achieve its function thanks to its fair nature and certain implementation. Legal certainty regarding searches of electronic systems of perpetrators of criminal acts must be implemented, namely by harmonizing regulations relating to the authority of investigators to carry out coercive searches of a person's electronic system. In addition, there are other ways to guarantee legal certainty regarding attempts to search electronic systems of perpetrators of criminal acts, namely by applying the principles of

legality, due process of law, proportionality, and the principle of not abusing authority.

1. Principle of legality: Article 1 paragraph (1) of the Criminal Code Number 1 of 2023 states that no one can be subject to criminal sanctions and/or criminal action except based on the provisions of the law of a criminal act based on the determination of an act as an unlawful act must be based on the provisions of legislation that was in force before or at the time the act was committed. This principle is in line with the principle of legality, which emphasizes that an act cannot be categorized as a criminal act if there are no legal provisions that expressly regulate it in the law. In addition, the principle of legality is known as the principle of individualism or the principle that protects society from arbitrary treatment by the authorities.¹⁹

2. Due Process of Law Principle: This principle is inseparable from the history of human rights. M. Friedman explains that this principle has been institutionalized in the legal process for two centuries and has now It permeates all sectors of human life. The principle of due process guarantees justice for suspects and defendants, allowing them to exercise their rights in the judicial process. According to Mardjono Reksodiputro, the presumption of innocence is the primary foundation of the principle of due process. This is based on its function as a guarantee against arbitrary actions by law enforcement officials.

3. The Principle of Proportionality: This principle is an important principle in the criminal law system. This principle aims to ensure that the punishment imposed on the perpetrator of the crime is commensurate with the seriousness of the crime they committed. This principle not only emphasizes justice for the perpetrator, but also for society as a whole, where the punishment is considered fair when it is commensurate with the severity of the crime and its impact. This principle of proportionality is an important foundation for creating justice that is not only normative, but also substantive. Through more consistent application, it is hoped that the criminal law system in Indonesia will achieve its main goal, namely to create a just and civilized society in accordance with the values mandated by the constitution and Pancasila.²⁰

4. The principle of non-abuse of authority: This principle allows government institutions and officials to use their authority appropriately and non-arbitrarily. The authority granted may not be used for personal gain or other purposes that conflict with the purpose for which the authority was used. According to Ridwan HR, this concept can be interpreted as a prohibition against mixing powers. This

¹⁹ Dastin Darmawan, et al., "Legal Review of the Application of the Principle of Legality in Criminal Acts" Theft", Amendment: Indonesian Journal of Defense, Politics and Law, Volume 1 No. 3 July 2024, page 325.

²⁰ *ibid*

means that civil servants are not permitted to use their authority for purposes other than those stipulated by law. They also may not use their power beyond the established limits.²¹

On the other hand, to support legal certainty, investigators' authority to conduct electronic system searches must also comply with statutory provisions. In the criminal justice system, National Police investigators are the officers with primary authority in the investigation process. The appointment and dismissal of National Police investigators are regulated by Regulation of the Chief of the Indonesian National Police Number 3 of 2024, which emphasizes the principles of legality, transparency, proceduralism, and accountability. As an institution tasked with maintaining public security and order, the National Police has functions of protection, service, and law enforcement. To ensure the professionalism of investigators, the appointment process is carried out through a strict administrative mechanism, starting from document submission, verification by the National Police Criminal Investigation Agency (Bareskrim Polri), and issuing an appointment decision. Prospective investigators are also required to meet various requirements, such as specialized investigative education, academic qualifications, competency certification, computer skills, and health and psychological suitability.²² These regulations demonstrate institutional efforts to ensure that investigators possess adequate competence, integrity, and professionalism. Therefore, the exercise of investigators' authority, including electronic system searches, is expected to be conducted legally, responsibly, and ensure legal certainty in the law enforcement process.

According to Samuel Warren and Louis Brandeis in the article *The Right to Privacy* Technological developments have increased public awareness of the importance of personal data protection. Therefore, the state has an obligation to guarantee the right to privacy as part of human rights protection. With clear principles, norms, procedures, and regulations, legal certainty can be optimally realized. In comparison, the United States, through *United States Constitution* regulates citizens' rights, including the protection of privacy. Under the Fourth Amendment, searches and seizures must, in principle, be warrant-based. Later, the United States Supreme Court affirmed that searches of digital information on an arrested person's cell phone generally require a warrant due to the high level of privacy protection. Meanwhile, the Netherlands regulates searches of electronic evidence in *Code of Criminal Procedure* (Sun) day *Criminal Code* (WvS). Searches generally have to be carried out based on a warrant from *Examining Magistrate* (investigating judge) containing the alleged crime, the suspect's identity, and the basis for the search. The search is intended to obtain data

²¹ Ridwan HR. *State Administrative Law*. Revised Edition. Jakarta: Rajawali Press, 2011, p. 252

²² Article 1 number 9 of the Regulation of the Head of the Republic of Indonesia National Police Number 3 of 2024 concerning the Appointment and Dismissal of Investigators of the Republic of Indonesia National Police.

stored in a computer system, but remains limited by protection of data related to a particular position, profession, or confidentiality obligation, unless there is consent from the relevant party.²³

Based on this comparison, it can be concluded that both the United States and the Netherlands implement electronic evidence search mechanisms while prioritizing human rights protection through warrant requirements and clear limitations. Therefore, Indonesia can adopt similar principles to strengthen legal certainty in conducting electronic system searches without compromising individual privacy rights.

4. Conclusion

This study concludes that Law Number 25 of 2025 concerning the Civil Code explains that investigators have the authority to conduct searches of a person's electronic system, but still with the established procedures, namely must have permission from the head of the court. In addition, Law Number 1 of 2024 concerning Electronic Information and Transactions also emphasizes that law enforcement actions must still be carried out by paying attention to a person's human rights, including personal data contained in their electronic systems. It is very unfortunate that in reality there are still many cases of electronic system searches carried out in violation of a person's right to privacy. The implementation of these electronic system searches is still quite weak. Although the Electronic Information and Transactions Law regulates the importance of privacy protection, regulations regarding the limits of authority to search electronic systems have not been regulated in detail. In addition, limited facilities and infrastructure, as well as the inadequate quality and quantity of investigators, have the potential to lead to searches that exceed authority and disproportionate evidence collection. Legal certainty in conducting electronic system searches is supported by the principles of legality, proportionality, and the provisions of Law Number 20 of 2025 concerning Criminal Procedure and Law Number 1 of 2024 concerning Electronic Information and Transactions. Legal certainty is also reflected in a clear mechanism for appointing investigators and the obligation to respect the right to privacy as part of human rights. Strengthening legal certainty can be achieved by adopting practices from other countries, such as the Netherlands and the United States, which apply strict procedural limitations to searches to maintain a balance between law enforcement and the protection of individual rights.

²³ Sinta Dewi Rosadi, *Aspects of Data Privacy According to International, Regional, and National Law* (Jakarta: Refika Aditama, 2022), page 23

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