



LEGAL PROTECTION FOR VICTIMS WRONGLY ARRESTED IN THE INVESTIGATION PROCESS IN INDONESIA

PERLINDUNGAN HUKUM BAGI KORBAN YANG SALAH TANGKAP DALAM PROSES PENYIDIKAN DI INDONESIA

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Abstract

Abstract

This study discusses legal protection for victims of wrongful arrest during the investigation process in Indonesia. As a state governed by law, Indonesia guarantees the protection of human rights, including for those who become victims of procedural errors in the justice system. Wrongful arrests constitute a violation of individual freedom and cause physical, psychological, and social suffering. This research employs a normative legal method, drawing on statutory and literature sources. The results show that victims of wrongful arrest are entitled to compensation and rehabilitation, as provided for in the Indonesian Criminal Procedure Code (KUHAP) and Law Number 48 of 2009 concerning Judicial Power. However, compensation provided is still limited to material aspects and has not fully restored the victims' dignity, reputation, and well-being. Therefore, the state must strengthen legal protection mechanisms and ensure that investigations are conducted professionally, transparently, and in accordance with human rights principles to prevent the recurrence of wrongful arrest cases.

Keywords : legal protection, wrongful arrest, human rights, investigation, compensation.

Abstrak

Penelitian ini membahas mengenai perlindungan hukum terhadap korban yang salah tangkap dalam proses penyidikan di Indonesia. Negara hukum Indonesia menjamin perlindungan terhadap hak asasi manusia, termasuk bagi mereka yang menjadi korban kesalahan prosedur dalam proses hukum. Kasus salah tangkap merupakan pelanggaran terhadap hak kebebasan individu dan menimbulkan penderitaan baik secara fisik, psikologis, maupun sosial. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan dan studi kepustakaan. Hasil penelitian menunjukkan bahwa korban salah tangkap berhak memperoleh ganti kerugian dan rehabilitasi sebagaimana diatur dalam KUHAP dan Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman. Namun, kompensasi yang diberikan masih terbatas pada aspek materiil dan belum



sepenuhnya memulihkan harkat, martabat, serta nama baik korban. Oleh karena itu, negara perlu memperkuat mekanisme perlindungan hukum dan memastikan proses penyidikan berjalan profesional, transparan, serta menghormati hak asasi manusia untuk mencegah terulangnya kasus salah tangkap di masa depan..

Kata Kunci : perlindungan hukum, salah tangkap, hak asasi manusia, penyidikan, ganti rugi.

1. INTRODUCTION

The State of Indonesia is a state of law in accordance with the provisions of Article 1 paragraph (3) of the Constitution of the Republic of Indonesia in 1945. The state of law itself was born of the idea of protecting human rights. The realization of the state of law requires legal means, through laws and regulations, to regulate balance and justice in all areas of people's lives. The law aims to protect and save individuals from crimes in society, so that this goal must be maintained so that it is not possible for crimes to escape due to errors in investigation, or perhaps, on the contrary there are no crimes that due to the wrong way of investigation cause innocent people to suffer and be punished innocently because they are labeled as criminals. Therefore, criminal law experts put forward the following opinion: First, punish criminals and release the innocent from legal action because of the second mistake. 10 criminals should get away with it rather than mistakenly punish 1 innocent person.

The law can protect the rights and obligations of every individual in reality. With solid legal protection, the general legal goals of order, security, peace, truth, and justice will be realized. Legal protection is an effort made by the government or ruler to protect the human rights of its citizens. Legal protection is carried out through existing regulations and aims to realize justice, usefulness, and legal certainty. The law serves to protect human interests; therefore, protecting them through the law must be carried out professionally. Legal protection for victims of wrongful arrest is stated in Law Number 48 of 2009 concerning power in Article 9, namely¹:

- a. Every person who is arrested, prosecuted, or tried without lawful cause, or because of a mistake regarding their person or the law applied, has the right to seek compensation and rehabilitation.
- b. Officials who deliberately commit acts as referred to in paragraph (1) shall be punished in accordance with the provisions of laws and regulations.
- c. The procedures for the prosecution of compensation, rehabilitation, and the imposition of compensation are regulated by laws and regulations.

A wrongly arrested victim is someone who suffers physically or mentally due to procedural errors or errors in the actions of investigators carried out by authorized law enforcement officials. Mis-arrest is a violation of human rights, especially the right to a person's freedom. Legal protection: wrongful arrest victims need protection to ensure their rights to

¹ Padillah Kuntum Khairu Ummah, Sahuri Lasmadi, Andi Najemi, Legal Protection for Victims of Wrongful Arrest in the Perspective of Criminal Procedure Law, Volume 6 Number 2 of 2025 (ISSN 2721-8325)



justice. The losses suffered by victims of wrongful arrest are not only material but also significant non-material, such as loss of time, loss of reputation, and even psychological losses². Muladi said a victim is a person who, individually or collectively, has suffered losses, including physical, mental, emotional, or economic losses, or substantial disturbances to fundamental rights, through acts or omissions (whether intentional or unintentional) that violate the laws of each country, including abuse of power. The Bandung District Court granted all of Pegi Setiawan's pretrial lawsuits. The determination of suspects against Pegi in the case of the murder of Vina Dewi Arsita and Muhammad Risky Rudian, or Vina and Eki, in Cirebon in 2016 was considered legally flawed. This proves that Pegi was a victim of wrongful arrest by the police³.

Wrongful arrest cases are not a new thing; wrongful arrest cases that occur in the criminal justice system are violations of rights at one or all levels of examination, several examples of procedural violations, administrative violations, violations against the suspect's personal life, and serious violations such as witness tampering and false testimony in a case. If the information of the suspect who is suspected of having committed a criminal act is used as evidence for investigators, it turns out that it was obtained based on pressure or coercion, which resulted in psychological and physical suffering and caused fear. Obtaining information as evidence must be declared invalid because it may contain an engineered submission⁴.

The legal arrangement in Indonesia is always the most disadvantaged. In addition to the victim having suffered losses due to the crime that befell him (materially, physically, and psychologically), the victim also has to bear multiple sufferings because, without being punished, it is often needed only as a means for the realization of legal certainty. Talking to victims of wrongful arrest is talking to people, either individually or collectively, who have suffered physical or mental harm due to procedural errors or errors in the actions of investigators or detentions carried out by authorized law enforcement officials or other officials⁵. Article 95 paragraph (1) of the Criminal Code is explained regarding compensation as follows: suspects, defendants, and convicts have the right to claim compensation for being arrested, detained, prosecuted, and tried or subjected to other actions, without any reason based on the law or misrepresentation regarding the person or the law applied. Furthermore, rehabilitation is provided for in Article 97, paragraph (1), of the Criminal Procedure Code as follows: a person has the right to obtain rehabilitation if the court decides that the person is free or free from all lawsuits, with the decision having permanent legal force.

² Inayatul Fitria, Rusydia NurAhlina, *Legal Protection of Victims of Wrongful Arrest*, DoI: <https://doi.org/10.15642/mal.v514.359>

³ <https://www.tempo.co> diakses tanggal 5-10-2025

⁴ Syarif Abdul Rohma, Umi Rozah, Kebijakan Kriminal Mengenai Pemberian Ganti Kerugian Terhadap Korban Salah Tangkap, *Jurnal Pembagunan Hukum Indonesia* Volume 2, Nomor 1, Tahun 2020

⁵ Hatyinsyanna Seroy, Legal Protection for Wrongful Arrest Victims from the Perspective of the Criminal Procedure Code *Lex Crimen* Vol. V/No.5/jul/2016



2. RESEARCH METHOD

The type of research used by the author in this study is normative legal research. Normative legal research is a process of studying law as norms, rules, legal principles, legal doctrines, legal theories, and other literature to answer the legal problems being researched. Therefore, normative legal research is usually conducted through document studies, which use legal sources such as laws and regulations, literature, court rulings, legal principles, legal theories, and the doctrines or opinions of experts.

3. RESULT AND DISCUSSION

a. Legal protection for victims who were wrongly arrested in the investigation process by the Palembang Police?

Legal protection is a service the government must provide to ensure every citizen feels secure. The 1945 Constitution of the Republic of Indonesia states that the state is responsible for protecting human rights. This is very important, as outlined in Article 28, paragraph (4), of the 1945 Constitution, which states that the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government. The theory of legal protection is a development of the concept of recognition and protection of human rights that developed in Chapter 19. Given the presence of law in social life, it is useful to integrate and coordinate interests that may conflict. The law can be used to realize protection that is not only adaptive and flexible, but also predictive and anticipatory⁶.

According to Philipus M. Hadjon, legal protection is a set of rules or norms designed to protect something from disturbance or loss. In the context of consumers, this means that the law protects their rights against actions or omissions that could harm or disregard them. Meanwhile, Muktie A. Fadjar defines legal protection as an effort that is limited to the protection provided by the law itself. Everyone has rights and responsibilities as a legal entity in their interactions with other individuals and their surroundings. As a legal entity. Human beings have the right and obligation to take legal action. Legal protection, when explained literally, can give rise to many perceptions. Before deciphering legal protection in its true meaning in legal science, it is also interesting to elaborate a little about the meanings that can arise from the use of the term legal protection, namely legal protection can mean legal protection given to the law so that it is not interpreted differently and not harmed by law enforcement officials and can also mean the protection provided by the law to something⁷. The arrest process carried out by National Police investigators against suspects strongly suspected of committing a criminal act involves human errors, namely, investigators' mistakes in field practice. Police investigators who try to obtain information often do so in inhumane ways, such

⁶ Daffa Arya Prayoga DKK Perlindungan Hukum Terhadap Hak Warga Negara Dengan Berlakunya Undang-Undang Nomor 23 Tahun 2019 Tentang Pengelolaan Sumber Daya Nasional, Volume 2, Nomor 2, 2023, Jurnal

⁷ Dijan Widijowati, 2018, *Perlindungan Hukum Pada Korban Salah Tangkap*, Literasi Nusantara Abadi, Malang, hlm. 5-6



as torturing suspects, even forcing victims to admit that they have committed a criminal act.⁸ The legal consequences of wrongful arrest cases should not only be for the victim, but, to fulfill a sense of justice, it should also be the responsibility of the investigator.

As a person who suffers losses, the victim has the right to protect their dignity and, in general, the victim has the right to get compensation, has the right to refuse restitution, get compensation for their heirs, get their property rights back, get protection from the perpetrator's threats, and get the assistance of legal counsel⁹. Pretrial is only an additional authority granted to the district court. It allows it to examine and decide issues arising from the use of coercive power by investigators and public prosecutors. In pretrial cases, there are usually two parties, namely the applicant and the respondent. The applicant is the suspect, his family, or his legal representative. At the same time, if the respondent is an investigator or public prosecutor, the applicant feels that the investigator or the public prosecutor is in violation of the rules or is harming their rights. The applicant submits this to the pretrial institution in the context of the settlement of his criminal case, which believes the respondent has violated his rights.

The granting of this authority is intended to uphold law and justice simply, quickly, and cheaply, to restore dignity, ability, and position, and to compensate victims who feel aggrieved. Pre-judicial institutions are new institutions not found in the criminal procedure law of HIR. According to Article 1 number 10 of the Criminal Procedure Code, pretrial is the authority of the district court to examine and decide in the manner regulated in Law Number 8 of 1981 Concerning: Regarding the validity of the arrest or detention warrant at the request of the suspect or his family or other parties based on the suspect's power, whether or not the termination of the investigation or the termination of prosecution for the upholding of law and justice is valid, Requests for compensation or rehabilitation by the suspect or his family or other parties on his or her attorney whose case is not filed in court, Pretrial is not regulated in the provisions of the *Herzine Inlands Regiemnt*.

An arrest is a very important legal process because it affects the next stage. Therefore, investigators must carry out the arrest carefully. Based on Article 1, point 20 of the Criminal Code, it is written that: Arrest is an act in the form of temporary restraint of the freedom of the suspect or defendant if there is evidence for investigation or prosecution and/or trial in the case and in the manner regulated in this law. The legal basis for arrest is stated in Article 17 of the Criminal Code, which states as follows :

The arrest warrant was issued by a person who was strongly suspected of committing a criminal act based on sufficient preliminary evidence. The elements implied in Article 17 of the Criminal Code state that a person can be arrested if a suspect is strongly suspected of committing a criminal act and the strong suspicion is based on the initiation of sufficient evidence. This article shows that an arrest warrant cannot be issued arbitrarily, but must be

⁸ Benasto Tetepa, *Accountability of Police Investigators and Legal Remedies of Suspects for Wrongful Arrest*, Lex Crimen, Vol. 2, No. 7 2013, pp. 102-103 <https://ejurnal.unsrat.ac.id/index.php/lexcrimen/article/view/3165/2707>

⁹ Bambang Waluyo, 2016, *Viktimologi Perlindungan Korban dan Saksi*, Sinar Grafika, Jakarta, hlm. 28



issued to a person who actually commits a criminal act. The conditions for arrest are: mandatory arrest based on sufficient preliminary evidence; arrest not arbitrary; legal basis; use of violence; and completion of the arrest with an arrest warrant. In carrying out the arrest, one must consider the following matters:

- ✓ The balance between the actions carried out and the weight of the threat,
- ✓ Always respect/respect the rights of arrested suspects and,
- ✓ Arrest is not a punishment for the suspect.¹⁰

A wrongly arrested victim is a person who suffers physically or mentally due to procedural errors or investigative actions carried out by the authorized law enforcement officers. Wrongful arrest violates a person's human rights, especially the right to freedom. Legal protection for victims of wrongful arrest needs to be considered to protect victims and the rights of individual victims to get justice. The losses suffered by victims of wrongful arrest are not only material but also significant non-material, such as loss of time, loss of reputation, and even psychological losses¹¹. There are also victims' rights in Rena Yulia's book, according to Van Boven, the right to know, the right to justice, and the right to reparations, namely the rights of everyone through rehabilitation, both material and non-material, for victims of human rights violations. With this compensation, the victim will feel that the investigator is responsible for his actions and will not feel burdened by the losses he has experienced due to the investigator's mistakes and negligence.

The legal image of a society can be approached as a reality (*das Sein*) or as a norm (*das Sollen*). As *das sein* law, it can be seen in the formulation of legal rules, the application of law, and law enforcement, while as *das sollen*, the image of law is contained in the formulation of legal objectives as a reflection of law in society. The purpose of the pre-judicial institution of every new thing, of course, has a certain purpose and motivation. There must be something to aim for and achieve. There is nothing you want to create without being driven by purpose. The same is true of the institutionalization of pretrial. The purpose and objectives to be upheld and protected are :

- 1) Protection of human rights, especially those involved in criminal cases, especially at the investigation and prosecution stages.
- 2) A control tool for investigators or public prosecutors against the abuse of authority by them.

The act of coercive effort imposed by law enforcement agencies is a reduction and restriction and the independence and human rights of the suspect, the action must be carried out responsibly in accordance with the provisions of the law and the applicable law (two processes of law) the principles contained in the pretrial intention and purpose to carry out horizontal surveillance actions to prevent coercive legal actions that are contrary to the law.

¹⁰ M. Yaya Harahap, 2000, *Pembahasan Permasalahan dan Penerapan KUHAP Pemeriksaan Sidang Pengadilan Banding, Kasasi dan Peninjauan Kembali*, Sinar Grafika, Bandung, hlm. 157

¹¹ Inayatul Fitria, Rusydina Nur Ahlina, *Perlindungan Hukum Salah Tangkap*, Ma'mal, Jurnal Laboratorium Syariah dan Hukum, 5 (4): 364-385. DOI:



Legal remedy is the right of the defendant or the public prosecutor not to accept a court decision in the form of resistance, appeal, or cassation, or the right of the convict to submit a request for reconsideration. These remedies are divided into ordinary remedies and extraordinary remedies¹².

b. What are the rights of victims of wrongful arrest in Indonesia?

Human rights are fundamental rights inherent in every individual and must be protected by the state, as stipulated in Article 1 paragraph (1) of Law No. 39 of 1999 concerning Human Rights. In the criminal justice system, human rights are implemented through the principles of equality before the law, the presumption of innocence, and the Miranda Rule, all of which are guaranteed in the Criminal Code.¹³

However, in practice, the criminal justice system in Indonesia still faces challenges, including the rise of wrongful arrests due to impropriety or abuse of authority by law enforcement officials. Misapprehension often occurs due to violations of rights during the examination process, resulting in physical and psychological suffering for the victim.¹⁴

The victim of wrongful arrest suffers a loss that must be addressed immediately, with special attention to immaterial losses. The main disadvantage is related to being tarnished by the negative stigma of the surrounding community. The state's compensation to victims of wrongful arrest, in the form of material, is not enough to restore their good name. The irony is that when the negative stigma against them occurs, not only is the right to independence lost, but also the right to socialize is also oppressed, so that in addition to the demand for compensation to the state, rehabilitation is also needed for victims of wrongful arrest.¹⁵

Compensation is the payment to victims of wrongful arrest resulting from law enforcement errors. Meanwhile, rehabilitation is a form of protection that restores their ability, position, and dignity due to actions that are not based on the law or mistakes made by law enforcement. In the Criminal Procedure Code, compensation is used by the Criminal Procedure Code in Article 99 paragraphs (1) and (2) with an emphasis on the collection of costs that the victim has incurred.¹⁶

Rehabilitation is a very important goal for victims of wrongful arrest; it is highly expected to be a top priority for people who have carried out the criminal justice process.

Compensation is provided for in both civil and criminal law. But the two have differences. In criminal law, the scope of compensation is narrower than in civil law. Because compensation

¹² Suharto Dan Jonaedi Efendi, 2013, *Panduang Praktis Bila Anda Menghadapi Perkara Pidana Mulai Proses Penyelidikan Hingga Persidangan*, Prenadamedia Group Jakarta, hlm. 78

¹³ Lex Progressium, Hak-hak Korban Terhadap Kasus Error In Persona (Salah Tangkap) Pidana Ditinjau Dari Kitab-Undang-undang Hukum Acara Pidana (KUHAP) Diakses tanggal 5-10-2025.

¹⁴ *Ibid*,

¹⁵ Sunamo, Dadin Eka Saputra, Nasrullah, Pelindungan Hukum Terhadap Korban Salah tangkap Oleh Kepolisian dalam Sistem Hukum Acara Pidana, <https://www.neliti.com>, Diakses Tanggal 9-2-2025, jam 07.00 Wib.

¹⁶ Rena Yulia, 2021, *Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan*, Ghaha Ilmu, Yogyakarta, hlm. 59



in civil law (referring to Article 1365 of the civil code) is the return of the plaintiff to the original state before the loss caused by the defendant occurred.

In Civil Law, there are no minimum or maximum limits on material or intangible losses. Material losses are losses that can be calculated with material. Meanwhile, immaterial losses or idyllic losses or moral losses, namely, losses cannot be assessed in a definite amount. Meanwhile, losses in criminal law are only in the form of material. And does not recognize immaterial losses and can be filed against 2 acts, namely, due to the actions of law enforcement and due to the actions of the defendant.¹⁷

The rights of these wrongful arrest victims include:¹⁸

- 1) Everyone has the right to life, to maintain life, to improve their standard of living, to live peacefully and safely, to be happy in birth and mind, and to obtain a good and healthy living environment.
- 2) Everyone has the right to fight for self-development, both personally and collectively, to build their society, nation, and country.
- 3) The right to obtain justice. Everyone, without discrimination, has the right to obtain justice by filing applications, complaints, and lawsuits, both in criminal, civil, and administrative cases, and to be tried through a free and impartial judicial process, in accordance with procedural law which guarantees that they will be examined objectively by honest and just judges to obtain a fair and correct verdict.
- 4) The right to a sense of security. Everyone has the right to protection of self, family, honor, dignity, property, a sense of security, and peace, and protection from the threat of fear to do or not do something.
- 5) Everyone has the right to have, either alone or together with others, for the development of themselves, the nation, and society, by not violating the law and getting the social security needed, the right to work, a decent life, and the right to establish a trade union to protect and fight for their lives.
- 6) The rights of every child to the right to protection by parents, family, society, and the state, as well as to obtain education, teaching in the context of self-development, and not to be deprived of their rights illegally.

4. CONCLUSION

Legal protection for victims of wrongful arrest is an effort by the government or authorities to protect the human rights of its citizens. Legal protection is carried out through existing regulations and aims to realize justice, usefulness, and legal certainty. The state's compensation to victims of wrongful arrest, in the form of material, is not enough to restore their good name. The irony is that when the negative stigma against them occurs, not only is the right to independence lost, but also the right to socialize is also oppressed, so that in addition

¹⁷ Syaiful Bahkri, 2008, *Sejarah Pembaharuan KUHP dan KUHP*, Total Media, Yogyakarta, hlm. 81

¹⁸ Saparudin, DKK, *Perlindungan Hukum Terhadap Korban Salah Tangkap (error In Persona)*, Juran Vol.9 No. 3 Edisi Agustus 2021



to the demand for compensation to the state, rehabilitation is also needed for victims of wrongful arrest.

The rights of these victims related to victims of wrongful arrest include. Everyone has the right to live, maintain life, improve their standard of living, live peacefully and safely, be happy in body and mind, and obtain a good and healthy living environment. Everyone has the right to fight for their right to self-development, both personally and collectively, to build their society, nation, and country—the right to obtain justice. Everyone, without discrimination, has the right to obtain justice by filing applications, complaints, and lawsuits, both in criminal, civil, and administrative cases, and to be tried through a free and impartial judicial process, in accordance with procedural law which guarantees that they will be examined objectively by honest and just judges to obtain a fair and correct verdict.

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