

JURIDICAL ANALYSIS OF COMPENSATION FOR LOSSES AND REHABILITATION OF VICTIMS OF ILLEGAL ARRESTS WHO HAVE BEEN SENTENCED

Guntarto Widodo¹, Nur Sa'adah²,
dosen00485@unpam.ac.id, dosen01383@unpam.ac.id^{1,2}
Lecturers of Law Faculty of Pamulang University

ABSTRACT

This study aims to determine and analyze the implementation of the provision of the rights of victims of illegal arrest who have served their sentences and to determine and analyze how the mechanism for returning the rights of victims of illegal arrest who have served their sentences. This research uses normative juridical research method with Statute Approach and Case Law Approach. The results of this study indicate that the regulation of legal protection for victims of illegal arrest is regulated in Law Number 8 of 1981 of the Criminal Procedure Code (KUHAP) and further arrangements are regulated in Government Regulation Number 92 of 2015 concerning the implementation of the Criminal Procedure Code. The form of compensation and rehabilitation for victims of illegal arrest is regulated in Article 95 and Article 97 of KUHAP on compensation and rehabilitation. However, with the regulation that the submission of compensation claims is given a time limit of 3 months calculated from the time of notification of the pretrial decision, this has not been able to provide or reflect protection and legal certainty for victims of illegal arrest. And in its implementation, it does not have coercive power, which in Government Regulation No. 92 of 2015 is not clear who must pay and there are no consequences if the compensation is not paid. So that there is a blurring of norms, where the norms governing victims of illegal arrest have not been able to provide protection to victims.

Keywords : *Compensation, victim, illegal arrest.*

INTRODUCTION

Law and humans cannot be separated, because the existence of law in society means it is completely integrated with human life. Because the law always follows a person's life, from the womb to life and death. This is in accordance with the ideas of the famous philosopher Cicero who said, "Where there is society, there is law." Law plays a very strategic and central role in human social life. Because, the existence of law protects human life and allows human life to coexist and promotes the continuity of its existence in this world throughout the history of human civilization. Indonesia is a country of law and this provision is stated in Article 1 paragraph (3)

of the 1945 Constitution of the Republic of Indonesia. Therefore, Indonesia complies with the laws and regulations in force in its own country, and all actions that apply in Indonesia are based on existing laws and regulations that are deliberately created to regulate society and the structure of government. Of course, even though the application of criminal law is a last resort to resolve problems, the existence of law in society cannot be separated from the objectives of making laws: justice, certainty and benefit.

It is true, the rule of law has general principles such as the recognition and protection of human rights.¹ Recognition of human rights is one of the most important things for a rule of law. This applies to all citizens, including those who practice law. Even though criminal law is considered a double-edged sword, namely that it can protect human rights on the one hand and take away human rights on the other, the basic principles of the concept of human rights should not be ignored. Just because someone violates the law does not mean that their human rights are revoked, especially since this case does not have permanent legal force. As a country based on law, Indonesia of course upholds human rights, but in reality, in criminal trials, illegal arrests sometimes occur. These cases were left alone without any further legal action, either against the guilty law enforcement officers or to obtain compensation for the victims.

Looking at current progresses, it can be said that there are many problems related to illegal arrests which cause cases to be ignored and the condition of the victims not paid attention to. Unclear rules are one of the contributing factors. For example, Government Regulation No. 92 of 2015 concerning compensation mechanisms for victims of illegal detention has many unclear provisions, giving the impression that compensation payments are left entirely to each subsystem of the criminal justice system without clear boundaries. This is very contrary to the objectives of the law, namely justice, certainty and benefit.

Protection of human rights from the point of view of the protection of each victim Crime is interpreted as a true manifestation of the guarantee of human rights. Efforts to protect human rights undoubtedly require the level of the legal system and the criminal justice system, especially when it comes to the protection and fulfillment of human rights.² The position of crime victims in the criminal justice process in Indonesia still seems to be relative, just like the (offender-oriented) situation of criminals. This is demonstrated by the fact that national

¹ Djoko Prakoso, *Upaya Hukum yang di atur dalam KUHAP*, (Jakarta, Ghalia Indonesia, 2006), p. 51. ² Manggala, Ibrahim, "Analisis Perlindungan Hukum Terhadap Korban Salah Tangkap Dalam Peradilan Pidana", *Jurnal Universitas Lampung*, (2018):

p.3

legislation does not include the protection of the rights of crime victims. The appearance of inequality between the protection of criminals and the protection of crime victims is something that is very different from the existence of Article 27(1) of the Constitution of 1945, later known as the NRI Constitution of 1945, which explicitly states that Indonesia a citizen has the same or equal status before the law and in the eyes of the government status. In this regard, citizens must strictly follow Indonesian laws and government. In this context, all citizens have equal rights in the eyes of the law, so it is the duty to treat them well and fairly in accordance with the values contained in the principle of equality before the law.

Article 95 of the Criminal Procedure Code (KUHAP) explains the existence of compensation for people who are arrested, detained, prosecuted and tried without reasons based on law or because of a mistake regarding the person or the law applied. So, it can be interpreted that this error occurred during the investigation process. In Article 95 of the Criminal Procedure Code, it is stated that the reason for a suspect or accused or convict to claim compensation, apart from the arrest, detention, prosecution or trial of the person, is also if the person is subjected to other actions without reason based on law or due to errors regarding the person or the law applied. Other actions here mean other forced actions, such as house entry, searches, confiscations which are unlawful and cause material losses.³

It is also regulated in Article 9 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which explains:

"Every person who is arrested, detained, prosecuted, or tried without reasons based on law or because of a mistake regarding the person or the law that applies, has the right to demand compensation and rehabilitation."

Compensation and rehabilitation have long been familiar topics in the legal world, both in civil and criminal law. The concept of compensation is not found in substantive law. Compensation is material contained in formal criminal law, namely articles 95-101 of the Criminal Procedure Law. Compensation is the payment of a sum of money as compensation to a suspect, accused or convicted person for being arrested, imprisoned, charged, convicted or sentenced for another action without legal reason or for a wrong committed against the person or the law. The implementation of Rehabilitation, on the other hand, is the restoration of a

³ Djoko Prakoso, *Masalah Ganti Rugi Di Dalam KUHAP*, Jakarta, 1998, PT Bina Aksara, p. 98

person's rights to their original right or status. In legal practice, many problems arise from the discontinuity and inconsistency of matters regulated in the Criminal Procedure Law, for example, many police bodies act beyond what is stipulated in the Criminal Procedure Law or not in the fulfillment of their duties of legislative regulations

Restoring the rights of defendants who are victims of illegal arrest is an effort to restore legal rights by the state to the defendant. Victims have several rights that must be fulfilled. The rights of victims of illegal arrest are specifically regulated in Law Number 8 of 1981 in Article 95 paragraph (1) which states that suspects, defendants or convicts have the right to demand compensation for being arrested, detained, prosecuted and tried or subjected to other actions, without reasons based on law or because of a mistake regarding the person or the law applied. There are several cases of illegal arrest that have carried out crimes, namely four Cipulir buskers consisting of Fikri Pribadi, Fatahillah, Arga Putra Samosir alias Ucok, and Bagus Firdaus alias PAU filed a pretrial lawsuit for compensation for being victims of illegal arrest by the police. They were accused of murder in Cipulir, Kebayoran Lama, South Jakarta in 2013. However, the panel of judges at the South Jakarta District Court rejected all claims for compensation against the four Cipulir buskers for illegal arrest because the petition had expired. In addition, there was also a case of illegal arrest, namely Saka Tatal, who was one of eight convicts in the murder of Vina and Rizky, a 16-year-old student, on August 27, 2016. Besides Saka, the other convicts are Jaya, Supriyanto, Eka Sandi, Eko Ramadhani, Sudirman, Hadi Saputra, and Rivaldi Aditya Wardana.

The court sentenced Saka to eight years in prison. After receiving remission, this school dropout was finally released in 2020. The other seven convicts are still serving life sentences.

The occurrence of illegal arrests of individuals or citizens who actually have no fault will certainly be detrimental to these people. People who experience illegal arrest will definitely have to feel the cold of a confinement cell, mental torment which will greatly affect the person's condition. Apart from that, another impact is that the tarnishing of a person's good name in the community will be very detrimental and this is where the role of law enforcement officers is needed to prevent losses, for example by rehabilitation to restore a good name. In some cases, they even have to bear the burden of punishment that they did not make at all. The incident of illegal arrest definitely puts a person's mental condition under stress, which will have a negative impact on that person's personality. The lack of clear mechanisms regarding regulations

governing compensation and rehabilitation for victims of illegal arrest creates confusion for both law enforcers and victims. The sad thing is that in Indonesia cases of illegal arrest, which are mistakes that are of course made by law enforcement officers after the actual facts are known, often only result in the acquittal of the victim who was wrongly arrested or the provision of compensation which is considered to be full of subjective judgment from the judge. Of course, a mere apology without looking back at the losses suffered by the victim of illegal arrest cannot be justified and is very contrary to the principles of justice and legal certainty for victims. This is clearly something that is very unfair because the state apparatus does not look at the person's rights and is considered negligent because they are unable to take responsibility for their actions as law enforcers in Indonesia, apart from regulations that need to be improved so as not to give rise to unclear interpretations in their implementation.

Based on the description above, the author would like to have research on this problem with the title of JURIDICAL ANALYSIS OF COMPENSATION FOR LOSSES AND REHABILITATION OF VICTIMS OF ILLEGAL ARRESTS WHO HAVE BEEN SENTENCED.

RESEARCH METHODOLOGY

When writing a scientific journal, of course you use various research methods as a standard reference for writing. The method used is a method called the library method or widely known as the normative research method which is often used in legal studies. An approach such as using statutory regulations means reviewing regulations related to the subject matter, then also applying a conceptual approach which means referring to a concept, as well as using the opinions or views of experts (doctrine) related to legal science. Collecting materials using the library study method through various literature, scientific journals and other literature related to the discussion and also in processing the journal materials using the description method by looking at a phenomenon that occurs in the lives of Indonesian society. The statutory regulations used as primary legal material are the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1946 in conjunction with Law Number 73 of 1958 concerning the Criminal Code (KUHP), Law Number 8 of 1981 concerning The Criminal Procedure Code (KUHAP), Law Number 48 of 2009 concerning the Judicial Powers of the Republic of Indonesia, and Government Regulation No. 92 of 2015 concerning the Implementation of the Criminal Procedure Code. Then the secondary legal materials in making this journal include literature and

scientific works which have a correlation with the problem formulation as well as tertiary legal materials which provide elaboration on previous legal materials as a support in writing this scientific journal.

The problems that would like to be discussed in this article are: What is the form of legal regulation for victims of illegal arrest in the criminal justice system process? And How is the state's responsibility regulated for victims of illegal arrest?

FINDING AND DISCUSSION

1. The form of legal regulation for victims of illegal arrest in the criminal justice system process.

As a rule of law country, Indonesia recognizes the existence of standard institutions related to criminal justice procedures and comprehensive human rights protection. This integrated justice system is commonly known as the integrated criminal justice system. Criminal justice procedures are at the heart of community life and aim to overcome crime problems in society. The success of the criminal justice system is proven by the fact that the vast majority of crime victims' reports and complaints can be resolved by bringing the perpetrator to justice, pleading guilty, and receiving the appropriate criminal punishment. This system aims to prevent crime from occurring in society, solve crimes so that people can live in peace, and provide a deterrent effect to prevent criminals from committing the same act again. Regarding the implementation of the criminal justice process in Indonesia, there are important factors that drive it. These components are government agencies such as the police, prosecutor's office, courts and correctional institutions.

Arrests carried out by police officers sometimes go wrong, resulting in the wrong arrest of the victim which results in the victim being detained in a detention center even though they are completely innocent.

Being detained in detention for long periods of time, months to years, clearly harms the victim both materially and immaterially. Material losses can be in the form of property losses in the form of businesses that cannot be carried out during the period of detention. Meanwhile, immaterial losses are losses suffered by the victim's family who feel devastated by the arrest, including the stigma given by society to the victim even though they

were only the victim of an illegal arrest.

Victims of illegal arrest are cases of systematic human rights violations and are considered serious crimes. Because the case is serious, victims of illegal arrest can sue law enforcers who have wrongly punished them criminally and civilly, for example for abuse in accordance with Article 251 of the Criminal Procedure Code and Article 1365 of the Criminal Code concerning unlawful acts.

As a result of illegal arrest, the victim has lost his rights in the form of the right to life, the right to ownership, the right to maintain honor, the right to freedom, the right to equality and the right to knowledge.

The crook justice machine in Indonesia is definitely a system in imposing and imposing crook regulation that's divided into 4 (4) forms of sub-structures, even though withinside the present day improvement of felony science, legal professionals are protected as one of the crook justice sub-structures, this means that there are five sub-structures that play a position withinside the system. crook justice in Indonesia. The machine in query is the research machine finished with the aid of using the police, the prosecution machine finished with the aid of using the prosecutor`s office, the machine of adjudicating and additionally finding out crook sentences finished with the aid of using the judiciary, in addition to the crook choice system machine finished with the aid of using the correctional organization. These 4 implementation subsystems represent a bundle in enforcement crook regulation is inseparable so it's far referred to as an Integrated Criminal Justice System. The establishments that perform the crook justice system in Indonesia have near ties, giving upward push to connectivity among one organization and different establishments. This may be validated from the location of the police organization, that's the organization this is the principle gateway for taking motion on a case withinside the crook justice machine in Indonesia. The police have the authority to decide who's appropriate for research, arrest and detention. In reality, the police organization, in wearing out the crook justice machine, has foremost obligations associated with movements which include inquiries, inquiries, arrests and detentions, in addition to confiscations. In an integrative crook justice machine, such movements goal to remedy each case that has entered the police organization with the aim is this system may be finished in an powerful time.

Then after the police agency, a case is submitted to the Prosecutor`s Office. The Prosecutor's Office is a central authority group that includes out kingdom authority concerning prosecution and different powers primarily based totally at the regulation. The prosecutor's

workplace in Indonesia has a twin feature in sporting out its obligations, namely, other than being a regulation enforcement officer, the prosecutor's workplace additionally has affect in the scope of government power, consequently the prosecutor's workplace is frequently called a public prosecutor or prosecutor. As a public prosecutor, the prosecutor includes out his obligations while he has acquired the research document from the outcomes of the research with the aid of using the police agency. After a document at the research is given with the aid of using the police to the prosecutor's workplace, the general public prosecutor starts off evolved paintings on making ready an indictment in step with the case or case within the mins of the research. Therefore, it's far suitable for the police and the prosecutor's workplace to set up excellent conversation in order that justice may be finished in coping with present felony cases.

After the prosecutor's office, there is the Judiciary Institution which has the task of exercising judicial power which is carried out by carrying out the judicial process which is carried out by judges who have the function of receiving, examining and adjudicating, as well as completing all cases received by them. The Police Institution and the Judicial Institution have a relationship, this can be seen from the perspective that when investigators submit a request regarding the extension of the detention process, as well as permission to search, as well as confiscation and examination of documents. The correlation between investigators and judges can also be seen during the examination stage of the trial process. Meanwhile, the relationship between the prosecutor's office as the public prosecutor in the trial and the judge is that if in the trial process, a judge is of the view that an indictment released by the prosecutor's office as the public prosecutor is incomplete, so the judge has the authority to return the indictment to the public prosecutor with the aim of making the The indictment was revised by the Prosecutor's Office as public prosecutor.

After completing the process at the Court Institution, the criminal justice system then proceeds to the Correctional Institution. A correctional institution is a place that is useful for accommodating convicts who are undergoing their sentence process which has been decided by the Judicial Institution. In correctional institutions, convicts receive physical and mental development, such as education, studying religious knowledge, and also studying entrepreneurship so that later, when the convicts are released, they will have a level of creativity that can be used in living life in society without repeating acts that violate the law.⁴ The relationship that occurs between Correctional Institutions in the criminal justice process is when the Prosecutor's Office carries out its duties or is assigned to be a public prosecutor and then

executes a court decision which already has permanent legal force, namely by handing over the convict to the Correctional Institution to undergo the process of the convict's sentence. All of these processes are called the Criminal Justice System, which is a concrete manifestation of the functions and duties of integrated criminal law enforcement in order to create a safe, conducive and prosperous situation and uphold social justice for all Indonesian people.

The implementation of the concept of the rule of law in implementing the criminal justice system is known to adhere to the Due Process Model (DPM) system. This system is seen as a process in the criminal justice system that focuses on handling a defendant in a fair manner and in line with the constitution in Indonesia. In the Due Process Model, the rights of each individual and their dignity in the judicial process are highly upheld and of course highly valued. This Due Process Model system is a reflection of the best quality of the integrative legal process so that it is expected to be able to create justice for all parties. A court that can be said to be fair is a court that is able to uphold individual rights and provide guarantees to each individual that it is impossible to be punished unequally. A good and fair legal system will be realized when law enforcement officers who handle cases in the criminal justice process not only carry out their duties but also ensure that all the rights of every individual or citizen who are in the justice system are ensured. The punishment has been applied according to standard, objective procedures. Indonesia is known to use the Due Process Model or DPM system in carrying out its criminal justice system processes, this can be seen from several principles and laws and regulations in Indonesia. The consequence of implementing DPL is the absolute recognition of human rights in carrying out the criminal justice system.⁵

Indonesia has Law No. 8 of 1981 concerning Criminal Procedure Law, hereinafter referred to as the Criminal Procedure Code. The articles in the KUHAP do not explicitly contain articles that explain that Indonesia adheres to the Due Process Model system, but substantively

⁴ Wulandari, Sri, "Efektifitas Sistem Pembinaan Narapidana Di Lembaga Pemasasyarakatan Terhadap Tujuan Pemidanaan", *Jurnal Ilmiah Hukum dan Dinamika Masyarakat* Vol.9, No.2 (2016): p. 12 ⁵ Asnawi, Habib Shulton. "Hak Asasi Manusia Islam dan Barat: Studi Kritik Hukum Pidana Islam dan Hukuman Mati." *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 1, no. 1 (2012): p. 109

the articles in the KUHAP can be said to lead to the Due Process Model system. The principles of the Due Process Model can be seen in the considerations in the Criminal Procedure Code which aim to provide guarantees, legal protection, and also uphold human rights. Legal protection certainly covers the most important lines in the criminal justice process. Legal

protection is a legal effort that every community must obtain from law enforcement officers as their function is to provide a sense of security and comfort physically and spiritually for the sake of creating justice for the entire community. Legal protection describes the obligations and forms of responsibility that are the duty of the state in order to protect human rights.⁶

The entire sequence of the criminal justice system is determined by the Criminal Procedure Code, of course. Therefore, the obligation to provide guarantees for the protection of human rights to citizens who are facing the process of the criminal justice system and following final legal decisions is also regulated in the Criminal Procedure Law. In the criminal justice process, of course law enforcers must look at the rights and legal protection obtained by citizens who are of course participating in the criminal justice process. The Criminal Procedure Code has many regulations regarding the legal protection provided to individuals who are in the criminal justice process. The legal protection provided by the state has been mentioned in every article of the 1945 Constitution and the existing KUHAP, such as the principle of equality before the law, the principle of presumption of innocence, and the Miranda Rule. The principle of equality before the law is a principle which means that every citizen has the same degree or position in the law and government and is obliged to respect the law and government with no exceptions.⁷ The principle of equality before the law is in line with and is stated in Article 27 paragraph (1) of the 1945 Constitution. Apart from that, we can also see this principle of equality in Law No. 48 of 2009 concerning judicial power, especially in Article 4 which essentially means that the court does not discriminate between people in seeking justice. The principle of equality before the law must be implemented as a main principle in the application of existing laws in Indonesia which is carried out equally for everyone. Equality of treatment before the law must be interpreted dynamically, which means when there is equality of treatment for all people before

⁶ Agustina, Lena, "Perlindungan Hukum Terhadap Korban Salah Tangkap", *Jurnal Online Mahasiswa*, Vol. 1, No.2, 2014): p.6

⁷ Putra, I Gede, Adi, Pramana, "Perlindungan Hukum Bagi Anak Pelaku Tindak Pidana Terorisme Perspektif Perundang-Undangan", *Jurnal Kertha Wicara*, Vol.9, No. 6, (2020): p.4

the law, which is meant dynamically, it is believed to provide a guarantee that there is a way to obtain justice for all citizens regardless of their origin or background. or the individual. In the form of implementing human rights enforcement in the criminal justice process, the Criminal Procedure Code also recognizes a basic principle called the presumption of innocence. The principle of presumption of innocence is a principle that can make a citizen an innocent legal individual so that the court itself decides whether the individual can be said to be guilty or

not.⁸If it is related to the provisions regulated in the KUHAP, there are articles specifically in the general explanation of KUHAP point 3 letter c. This principle means that it is justified because legally an individual can be said to be guilty only if the court decides that the individual is guilty so that accusations are not created haphazardly and are not based on evidence. This principle certainly contains very strong content and is closely related to human rights, therefore law enforcement officials must not oppress individuals who are being processed in the criminal justice system. The principle of presumption of innocence is not explicitly stated in the Criminal Procedure Code, however, in the general explanation section Number 3 in the Criminal Procedure Code, it is mentioned regarding the principle of presumption of innocence, which in essence explains a principle which contains the protection of the dignity and dignity of people or individuals who are being treated. Undergoing the criminal justice process is still considered to be innocent until a decision is obtained in court or the legal force remains certain. The principle of presumption of innocence has the aim of protecting rights which must be taken into account by law enforcement officials who are handling a case in criminal justice as intended by the Criminal Procedure Code.

Apart from the existing principle of equality in the eyes of the law and the principle of presumption of innocence. In the criminal justice system in Indonesia, there is also the term Miranda Rule. The Criminal Procedure Code also contains implied provisions of the Miranda Rule principles, these articles starting from article 50 to article 68 which in essence are the implementation of these principles. The Miranda rule is a constitutional right owned by individuals who are undergoing the criminal justice system process which contains the right not to answer or respond to questions asked by law enforcement officers as well as the right to be

⁸ Azaria, Vida, "Keterkaitan Asas Presumption Of Inosense Didalam Pemberitaan Pers", *Jurnal Kertha Wicara*, Vol.7, No.2, (2018): p. 5

accompanied by a lawyer while undergoing all levels of the criminal justice system.⁹ The principle of the Miranda Rule has apparently been stated in the Criminal Procedure Code, as in Article 18 paragraph (1), it is explained that every time a task related to an arrest is carried out by law enforcement officers, it must be carried out by showing the existing assignment letter and also sending a letter. for individuals involved in the arrest, which clearly states the identity and reasons for the arrest.

The rights that must be respected by law enforcement officers while carrying out their

duties in the criminal justice system have been regulated in CHAPTER VI of the Criminal Procedure Code starting from Article 50 to Article 68. The criminal justice system is essentially the institutions that play a role in each sub-district. system, but the role of dedicated officers or operators is very important for the upholding of substantive justice.¹⁰ The legal protection obtained by citizens who are undergoing the criminal justice system is stated in Article 50 to Article 52 of the Criminal Procedure Code which explains that every individual who is being processed is obliged to provide information freely and receive an examination from investigators and then submit it to the public prosecutor so that it can be decided at court, Article 54 and Article 55 in the Criminal Procedure Code which gives citizens the right to obtain legal assistance and be able to choose which legal advisor the individual trusts, Article 58 which explains that individuals undergoing a criminal justice process have the right to visit or be visited by their personal doctor, then articles 59 to article 62 which explain that every individual undergoing a criminal justice process has the right to inform his family that he is being detained and the individual has the right to receive visits and the right to communicate with his family. Apart from that, the form of legal protection provided in articles 64 to 68 of the Criminal Procedure Code relating to the court process is that it explains that individuals involved in criminal justice have the right to be tried in an open trial, are not burdened with the obligation of proof, and also have the right to present witnesses. as well as expert witnesses with the aim of providing information, and have the right to receive compensation if an illegal or reasonable action is taken by the authorities.

⁹ Aiswarya, I Dewa, Bagus Dhanan, "Penerapan Prinsip Miranda Rule Aebagai Penjamin Hak Tersangka Dalam Praktik Peradilan Pidana di Indonesia", *Jurnal Kertha Wicara*, Vol.5, No.6, (2016): p. 1

¹⁰ Hatta, Mohammad, *Sistem peradilan pidana terpadu*, (Jakarta, Galang press Group, 2008), p.6

By enforcing each of the rights contained in the Criminal Procedure Code in implementing a criminal justice system, indirectly the Criminal Procedure Code is considered to have positioned the position of individuals or citizens who are facing the criminal justice system to be equal to the position of law enforcement officers.¹¹ Therefore, the application of the principles contained in the Criminal Procedure Code in the criminal justice system means that all individuals or citizens who are in the criminal justice process have the same level of standing and cannot be said to be guilty until the trial process decides it and all citizens have the right to remain silent in providing information so that the individual or citizen receives legal assistance. Therefore, all parties, including the authorities, must continue to respect the human rights of

every person, including criminals, even though they still have the right to receive legal protection as Indonesian citizens.

Regulation of State Responsibility for Illegal Arrest Victims

Indonesia, which is a country of law, must always create a sense of justice and is also obliged to create a sense of security for all its citizens. Law has a very important role in regulating and supervising government in a country which aims to protect all life in the Indonesian nation. In accordance with what is stated in the preamble to the 1945 Constitution, Indonesia has a dream of creating order, security and justice, as well as legal certainty. In enforcing the law through the criminal justice system, it should not only focus and interpret the law laterally but should include matters of a social nature so that justice can be felt by all groups.¹² Talking about the rule of law, of course the first thing that must be understood is the characteristics of the rule of law itself. According to F.J. Stahl, who is a legal expert, stated that there are four characteristics of a rule of law state, namely the pledge of human rights that every human being has, the separation of state power, then the existence of a system of government based on law, and finally, the existence of a judiciary. state Administration. Based on this opinion, it can be said that the protection and enforcement of human rights is an important factor

¹¹ Muladi, *Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana*, (Semarang, Badan Penerbit Universitas Diponegoro, 1997), p. 67.

¹² Ali, Mahrus, "Sistem Peradilan Pidana Progresif; Alternatif dalam Penegakan Hukum Pidana", *Jurnal Hukum Ius Quia Iustum*, No.2 Vol.14, (2007): p.212
in a legal state, of course.

Illegal arrest is usually carried out by the criminal justice sub-system, especially parties police and prosecutor's office. This happens because these two institutions have the authority to carry out investigations. Rules that are clear and do not appear vague will provide legal certainty, especially regarding the implementation of police and prosecutor's duties in order to avoid illegal arrests.

According to article 1 paragraph (1) of Law Number 39 of 1999, human rights can be interpreted as all rights that are embedded in nature so that they become the basis and are a gift from God Almighty which deserve to be respected and protected by the state and its components. Human rights are a very important element and cannot be separated from the criminal justice system. The implementation of human rights in the criminal justice system can be seen from the principle of equality before the law, the principle of presumption of innocence, and the Miranda

rule, all of these principles have been found in the Criminal Procedure Code and statutory regulations that discuss the rights of citizens when undergoing the criminal justice process in Indonesia. Currently, the operation of the criminal justice system in Indonesia is still very unfortunate because of the actions that are often carried out by law enforcement officers which tarnish the name of law and justice which in this context is referred to as incidents of illegal arrest. Illegal arrest incidents often occur in Indonesia due to the unprofessionalism of law enforcement officials in implementing the rules. The illegal arrest incident occurred because of a rights violation committed during the investigation process in criminal justice.

The illegal arrest incident that occurred in Indonesia is certainly very detrimental to the victim of the illegal arrest. The state is obliged to provide legal protection for these events because legal protection is a reflection of state responsibility which must be provided and guaranteed by the state in carrying out its duties as a state administrator. Incidents of illegal arrests made when the criminal justice system is operating for reasons that are not stated in the law or mistakes regarding the officers or the law are something that has happened for a long time and has received the government's attention. Illegal arrest incidents that occur in Indonesia actually occur more frequently than other incidents of legal wrongdoing, this certainly has the consequence that citizens affected by illegal arrest have the right to sue the state for compensation or rehabilitation. In the articles contained in the Criminal Procedure Code itself, it is clearly stated that incidents of illegal arrest that occur are the responsibility given by the state to citizens or individuals affected by the illegal arrest. Settlements that can be taken apart from those regulated in statutory regulations can also be resolved through alternative dispute resolution which is currently experiencing developments in legal science.¹³ The responsibility given by the state regarding incidents of illegal arrest can be observed at Article 95 to Article 97 of the Criminal Procedure Code which further explains the compensation and rehabilitation given to victims of illegal arrest due to violations of rights or administrative law violations and being tried without a clear reason which is not in accordance with the law. invite. Regarding the state's responsibility regarding compensation for damages, Article 95 and Article 96 of the Criminal Procedure Code can be seen from Article 1 number 22 of the Criminal Procedure Code. Compensation for damages is more or less explained as the right of an individual or citizen to obtain fulfillment of the demands they have obtained in the form of money because the individual or citizen has been arrested, detained, and are prosecuted, or tried without any legal basis in accordance with the law or also because of mistakes that have been made by the

authorities or the law is applied in accordance with the method regulated in this law. Meanwhile, the form of state responsibility regarding the rehabilitation of individuals or citizens who are wrongly arrested can be seen in article 97 of the Criminal Procedure Code.¹⁴ Judging from Article 1 number 23 of the Criminal Procedure Code, rehabilitation is more or less defined as the right of an individual or citizen who is undergoing a criminal justice process to regain their rights in terms of capacity, dignity at the investigation, prosecution or trial level because they have been arrested and processed without reasons based on law. law or due to errors made by officials or laws that are applied in the manner regulated in this law.

Regulations regarding compensation for victims of illegal arrest while undergoing the criminal justice system process are actually contained in Government Regulation no. 27 of 1982 concerning the Implementation of the Criminal Procedure Code which was ratified by President Soeharto, then revised in 2015 by President Jokowi to become Government Regulation no. 92 of 2015 concerning the second amendment to PP No. 27 of 1982. The important thing that can

¹³ Mulyadi, Lilik, "Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia: Pengkajian Asas, Norma, Teori Dan Praktik", *Jurnal Hukum Yustisia*, Vol. 2, No.1, (2013): p. 7

¹⁴ Dzikriyah, Wajihatut, "Tinjauan Yuridis Terhadap Pembatalan Status Tersangka Dalam Putusan Pra Peradilan", *Jurnal Kertha Wicara*, Vol.4, No.3, (2015): p. 5

be obtained from the existence of PP no. 92 of 2015 for victims of illegal arrest in Indonesia is in terms of compensation in accordance with article 77 letter b as well as article 95 of the Criminal Procedure Code, the nominal amount given by the state in order to compensate for losses suffered by individuals or citizens who are the victim was wrongly arrested, amounting to Rp. 500,000 (five hundred thousand rupiah) to Rp. 100,000,000 (one hundred million rupiah), there is also compensation for receiving serious injuries as regulated in Article 95 of the Criminal Procedure Code, namely Rp. 25,000,000 (twenty five million rupiah) up to Rp. 300,000,000 (three hundred million rupiah), and there is also compensation, in the event of death the nominal compensation is IDR. 50,000,000 (fifty million rupiah) up to Rp. 600,000,000 (six hundred million rupiah).

The state is obliged to provide compensation in accordance with existing laws within a maximum of 14 (fourteen) days starting when the Chairman of the District Court decides whether the compensation can be accepted by the government.

CONCLUSION

1. Summary

The legal protection provided to citizens who are in or undergoing the process of the criminal justice system which aims to create justice and also a concrete form of upholding human rights is all regulated in the Criminal Procedure Code contained in CHAPTER VI which begins from Article 50 to Article 68 in the Criminal Procedure Code. Apart from that, legal protection for individuals or citizens who are in the criminal justice process is also mentioned in each article of the 1945 Constitution and also the Criminal Procedure Code, such as the principle of equality before the law, the principle of presumption of innocence, and the Miranda rule.

Illegal arrest incidents that occur in the criminal justice system carried out by law enforcement officers certainly bear consequences, therefore the state has the responsibility to provide the rights that should be given to victims of illegal arrest. In accordance with articles 95 to 97 of the Criminal Procedure Code, the state must provide compensation and rehabilitation to victims of illegal arrest. This is regulated in Government Regulation no. 92 of 2015, however, in the regulations there are articles with rules that are unclear or vague, thus potentially confusing both for law enforcement officers who are part of the criminal justice sub-system and from the perspective of the victims themselves.

2. Suggestion

Law enforcement officers in carrying out their duties in the criminal justice system are expected to be more professional so that there are no incidents of illegal arrest occurring to individuals or citizens in the course of the criminal justice process. Law enforcement officers must also always uphold the rights that belong to every individual or citizen who is undergoing criminal justice in accordance with what is in the Criminal Procedure Code which has the aim of creating justice and upholding human rights in Indonesia.

Legal regulations regarding the provision of compensation or rehabilitation should be further harmonized to reflect legal certainty for law enforcers and justice for the community and not give the impression of unclear rules. Currently, the provisions governing the provision of compensation and rehabilitation only leave it to the judgment of law enforcers, in this case judges, to determine what form the state's responsibility will take in providing compensation and rehabilitation for victims, so it is feared that the resulting assessment will contain matters that are subjective to the judges. This is where the role of good law is to limit subjective matters from

law enforcers. Apart from that, the State in providing responsibility for victims of illegal arrests in the criminal justice system is expected to provide greater convenience in managing all procedures related to compensation for victims of illegal arrests. It is hoped that the state will be able to change the legal basis regarding applications for compensation, which it says can only be submitted within 3 (three) months from the date of the court decision. This is because the right of an individual or citizen to request compensation or in other words to obtain justice for a illegal arrest incident is something that does not have to be limited by a time period.

BIBLIOGRAPHY

Book

Djoko Prakoso, *Upaya Hukum yang di atur dalam KUHAP*, (Jakarta, Ghalia Indonesia, 2006), p. 51.

Manggala, Ibrahim, "Analisis Perlindungan Hukum Terhadap Korban Salah Tangkap Dalam Peradilan Pidana", *Jurnal Universitas Lampung*, (2018): p.3

Djoko Prakoso, *Masalah Ganti Rugi Di Dalam KUHAP*, Jakarta, 1998, PT Bina Aksara, p. 98

Wulandari, Sri, "Efektifitas Sistem Pembinaan Narapidana Di Lembaga Pemasyarakatan Terhadap Tujuan Pemidanaan", *Jurnal Ilmiah Hukum dan Dinamika Masyarakat Vol.9, No.2* (2016): hlm 12

Asnawi, Habib Shulton. "Hak Asasi Manusia Islam dan Barat: Studi Kritik Hukum Pidana Islam dan Hukuman Mati." *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 1, no. 1 (2012): p. 109

Agustina, Lena, "Perlindungan Hukum Terhadap Korban Salah Tangkap", *Jurnal Online Mahasiswa*, Vol. 1, No.2, 2014): p.6

Putra, I Gede, Adi, Pramana, "Perlindungan Hukum Bagi Anak Pelaku Tindak Pidana Terorisme Perspektif Perundang-Undangan", *Jurnal Kertha Wicara*, Vol.9, No. 6, (2020): p.4

Azaria, Vida, "Keterkaitan Asas Presumption Of Inosense Didalam Pemberitaan Pers", *Jurnal Kertha Wicara*, Vol.7, No.2, (2018): hlm 5

Aiswarya, I Dewa, Bagus Dhanan, "Penerapan Prinsip Miranda Rule Aebagai Penjamin Hak Tersangka Dalam Praktik Peradilan Pidana di Indonesia", *Jurnal Kertha Wicara*, Vol.5, No.6, (2016): p. 1

- Hatta, Mohammad, *Sistem peradilan pidana terpadu*, (Jakarta, Galang press Group, 2008), p.6
- Muladi, *Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana*, (Semarang, Badan Penerbit Universitas Diponegoro, 1997), hlm 67.
- Ali, Mahrus, “Sistem Peradilan Pidana Progresif; Alternatif dalam Penegakan Hukum Pidana ”, *Jurnal Hukum Ius Quia Iustum*, No.2 Vol.14, (2007): p.212
- Mulyadi, Lilik, “Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia: Pengkajian Asas, Norma, Teori Dan Praktik”, *Jurnal Hukum Yustisia*, Vol. 2, No.1, (2013): p. 7
- Dzikriyah, Wajihatut, “Tinjauan Yuridis Terhadap Pembatalan Status Tersangka Dalam Putusan Pra Peradilan”, *Jurnal Kertha Wicara*, Vol.4, No.3, (2015): p. 5