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Direktorat Jenderal Kekayaan Intelektual sebagai Turut Tergugat dalam Perkara Gugatan Penghapusan Merek Terdaftar (Studi Putusan Nomor 991 K/Pdt.Sus-HKI/2019)

Jerry Pratama

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Asbullah Thamrin, Danil, Nurmiati Muhiddin, Ilham

Kinerja Baznas Kabupaten Siak Dalam Upaya Mengurangi Kemiskinan Menurut Undang-Undang Nomor 23 Tahun 2011 Tentang Pengelolaan Zakat

Supri Yadin Hasibuan

Implementasi Fungsi Pengawasan Badan Pertanahan Kabupaten Bintan Tentang Tanah Hak Guna Bangunan (HGB) Yang Terlantar

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Abd. Rahman

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Teraju: Jurnal Syariah dan Hukum, hadir dengan edisi perdana pada Maret 2019. Dalam Kamus Besar Bahasa Indonesia (KBBI), kata "**Teraju**" memiliki beberapa makna yang satu diantaranya berarti "timbangan" atau "neraca". Kehadiran **Teraju** tak lain ingin membawa pesan sebagaimana nilai yang termuat dalam namanya, yakni timbangan yang menggunakan dua buah piringan yang digantungkan dengan rantai (tali) pada kedua ujung lengannya yang merupakan identitas syariah dan hukum di berbagai belahan dunia.

Keberadaan **Teraju:** Jurnal Syariah dan Hukum, sebagai jurnal ilmiah dan media komunikasi ilmiah dengan fokus kajian pada ilmu syariah dan ilmu hukum. Jurnal ini diterbitkan dua kali dalam setahun, yakni pada Maret dan September oleh **P3M dan Jurusan Syariah dan Ekonomi Bisnis Islam STAIN Sultan Abdurrahman Kepulauan Riau** dengan **ISSN Online 2715-386X** dan **ISSN Print 2715-3878**. Berdasarkan Surat Keputusan Direktur Jenderal Pendidikan Tinggi, Riset, dan Teknologi Nomor 204/E/KPT/2022, tanggal 03 Oktober 2022 tentang Peringkat Akreditasi Jurnal Ilmiah Periode II Tahun 2022, **Teraju:** Jurnal Syariah dan Hukum **terakreditasi SINTA 5**. **Teraju** mengundang para peminat, pengkaji, peneliti dan akademisi untuk mempublikasikan hasil penelitian dan karyanya yang berhubungan dengan ilmu syariah dan hukum di jurnal ini.

Focus and Scope

TERAJU: Jurnal Syariah dan Hukum merupakan Jurnal Ilmiah yang memiliki **focus** pada kajian **Syariah dan Hukum**. Sedangkan **scope** dalam Jurnal ini meliputi:

- **Syariah:** Usul Fikih, Fikih, Hukum Ekonomi Syariah, Hukum Keluarga Islam, Perbandingan Mazhab, dan Ilmu Falaq.
- **Hukum:** Filsafat Hukum, Hukum Bisnis, Hukum Pidana, Hukum Perdata, Hukum Tata Negara, Hukum Adat, Hukum Internasional dan Studi Perbandingan Hukum.

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Legal Protection for Victims of Wrongful Arrest Experiencing Violence in the Investigation Process

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Abstract

The goals of this study are to 1) investigate the types of punishments that can be handed out to law enforcement officers who are found to have participated in wrongful arrests that were accompanied by acts of violence, and 2) investigate the types of responsibilities that the state has toward victims of wrongful arrests who were subjected to acts of violence during the investigation process. This study makes use of legal materials in the form of statutory regulations, in addition to legal materials obtained through literature or literature studies, such as books in the field of legal science, research results, draft laws and regulations, research results, the internet, and other sources that are closely related to one another about the issue that is being investigated. Following the collection of all legal materials, these are then categorized and analyzed to draw conclusions based on the information obtained from the issues that were discussed. The findings demonstrate that the occurrence of

wrongful arrests is evidence of a fundamental management distortion that ignores the importance of professionalism in the collection of evidence. In this particular instance, the ethics code that governs the police profession has been broken. The members of the police force who were involved in the incident are also subjected to disciplinary action. This occurs by the Police Code of Ethics as well as Regulation Number 2 of 2003 issued by the Head of the National Police of the Republic of Indonesia concerning the Order of Police Members. While this is going on, the victim has the legal right to file a lawsuit, specifically requesting a pretrial order that the defendant pays compensation and provides rehabilitation following the KUHAP.

Keywords: Legal Protection, Victim, Wrongful Arrest, Violence, Investigation Process

Abstrak

Penelitian ini bertujuan untuk: 1) menganalisis sanksi yang dapat diberikan kepada pihak penyidik yang terbukti melakukan tindakan salah tangkap disertai kekerasan; 2) menganalisis bentuk tanggung jawab negara terhadap korban salah tangkap yang mengalami tindak kekerasan dalam proses penyidikan. Penelitian ini menggunakan jenis bahan hukum berupa peraturan perundang-undangan, disamping bahan hukum yang diperoleh melalui literatur atau studi kepustakaan seperti buku-buku ilmu hukum, hasil penelitian, rancangan peraturan perundang-undangan, hasil-hasil penelitian, internet dan lain sebagainya yang berhubungan erat dengan masalah yang diteliti. Seluruh bahan hukum yang dikumpulkan selanjutnya diklasifikasikan dan dianalisis untuk menghasilkan kesimpulan dari bahan-bahan yang didapatkan sesuai dengan permasalahan yang dibahas. Hasil menunjukkan bahwa terjadinya kesalahan penangkapan menunjukkan adanya distorsi fundamental manajemen yang mengabaikan profesionalisme dalam pengumpulan bukti. Dalam hal ini, kode etik profesi polisi dilanggar. Sesuai dengan Kode Etik Kepolisian dan Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 2 Tahun 2003 tentang Tata Tertib Anggota Polri, anggota Polri yang bersangkutan juga ditertibkan. Sementara itu, korban berhak untuk mengajukan gugatan, khususnya perintah praperadilan untuk membayar ganti rugi dan memberikan rehabilitasi sesuai dengan KUHAP.

Kata Kunci: Perlindungan Hukum, Korban, Salah Tangkap, Kekerasan Proses Penyidikan



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Introduction

Not only is violence punished in Indonesia, but also a strict adherence to the rule of law. This is made abundantly clear in the General Explanation of the Constitution of the Unitary State of the Republic of Indonesia, which was ratified in 1945. This demonstrates that Indonesia is a constitutional state that adheres to the rule of law as an ideology to establish order, security, justice, and the general welfare of its population.¹ As a direct consequence of this, the decisions that individuals in Indonesia make carry the weight of the law. As a consequence of this, the law is considered a norm because it establishes standards for conduct. The community serves as the setting for the application of legal norms, which are laws written in the form of norms rather than statutes.²

In the context of the maintenance of internal security, the National Police of the Republic of Indonesia is an instrument of the state that plays a role in upholding the law itself, maintaining security and public order, as well as providing protection, and service to the community.³ The Criminal Procedure Code (KUHAP) gives the police the authority to conduct investigations by its provisions. By the authority that they have been given as investigators, the police are permitted to make arrests. In addition, investigators can make arrests when necessary.⁴ Because criminal suspects are typically detained for

the duration of an investigation following their arrest, the two processes are intimately connected. Even though the law provides a form of unique authority for the arrest of investigators, this does not imply that it can be carried out arbitrarily or capriciously. An arrest is a significant development in the law because it will have repercussions for the subsequent phase of the legal process. Because of this, investigators need to be extremely cautious when making arrests. According to Article 1 Number 20 of the KUHAP: "If there is sufficient evidence for the investigation, prosecution, and/or trial in matters and according to the manner regulated in this law, the investigator may take temporary detention against the suspect. or the freedom of the accused." If there is sufficient evidence for the investigation, prosecution, and/or trial in matters and according to the manner regulated in this law, the investigator may take temporary detention against the suspect.

Indonesian police investigators can make mistakes or errors in the process of arresting people who are strongly suspected of having committed a crime, especially investigator errors in actual field practice. Mistakes can also occur during the investigation of people who are strongly suspected of having committed a crime. Errors in the capture procedures can have severe repercussions because, if they are not corrected as soon as possible, they will progress to the next step in the process.⁵ If something goes wrong during this process before the case is brought before the court, the suspect or his family

¹ Fajlurrahman Jurdi. 2019. *Hukum Tata Negara Indonesia*. Prenada Media Group.

² *ibid*

³ L.M. Ricard Zeldi Putra, et al. 2019. *Hukum Tata Negara Indonesia*. Media Sains Indonesia.

⁴ Kitab undang-undang hukum acara pidana.

⁵ Kitab Undang-Undang Hukum Acara Pidana (KUHAP)

can file a pretrial regarding the illegality of the arrest and ask for compensation. This can be done before the case is brought before the court. However, even though the judge's decision is final and there is no right of appeal, the defendant or the convict may seek extraordinary legal remedies if the error in the procedure for arrest was not known and was only discovered after the case had been resolved by the court that tried and decided the case. This is the case even though the judge's decision is final and there is no right of appeal.

In the Indonesian Criminal Procedure Code, the terms "new evidence" and "new legal situation" are both referred to using the Latin word "novum," which is a more formal term. A definition of a novum can be found in the KUHAP, specifically in Article 263, Paragraph 2, Letter (a). ...new evidence or circumstances that, if uncovered during a trial, would almost certainly result in the judge or jury deciding in favor of one party or the other. acquittal, the end of all litigation, refusal to comply with the demands of the public prosecutor, or the imposition of a criminal penalty that is not as severe as the one that was originally planned. Consequently, a convict who is currently serving a sentence that is based on a court decision that has obtained legal force can still take extraordinary legal remedies if, at a later date, a novum or new evidence is discovered that is sufficiently convincing. In other words, if new evidence is found that is sufficiently compelling. If this new evidence raises strong suspicions that the verdict would have been different had it been discovered while the trial was still in progress, then it

may affect the outcome differently.⁶ When two or more people are wrongfully detained on the suspicion that they are criminals, there is a possibility that one of them will become a novum. Errors in the arrest of the person (also known as an "error in persona") will subsequently result in an individual prosecution error, which will ultimately result in the individual being given the incorrect sentence.

It is an example of how human rights can be respected, upheld, and guaranteed that Indonesia is a country that upholds the protection of human rights, including the protection of victims. Indonesia is a country that protects victims. There are provisions governing human rights written into the Constitution of the Republic of Indonesia, which was ratified in 1945. It is evident from the provisions of the Constitution of 1945 found in Article 27, Article 28 A-J, Article 29, Article 30, Article 31, and Article 34, which guarantee the right of every citizen to security and personal peace, protection from threats of fear, freedom from torture or cruel treatment or not. other humane rights, the right not to be tortured or enslaved, and the right to be treated as a human being in the eyes of the law. This has taken place quite frequently in Indonesia, as evidenced by the fact that during their investigations, the investigation team has made wrongful arrests in several cases. To make matters even worse, victims of wrongful arrests who had also been subjected to violence

⁶ Herri Swantoro, 2017. *Harmonisasi Keadilan Dan Kepastian Dalam Peninjauan Kembali*. Prenada Media Group.

during the investigation and arrest process have been discovered.⁷

Since of the prevalence of wrongful arrests of innocent people, more than arrests, means that these innocent people sometimes have to endure the excruciating pain of incarceration and detention, suffering punishments that are not the victim's fault. In other words, these innocent people sometimes have to suffer for something that is not their fault. When people are detained without cause, they often develop expensive physical and mental health problems, and their families also suffer significant financial losses. The author of this piece decided to investigate this subject further after coming up with such simple ideas. This research was conducted by collecting various written data in the form of books, legislation, journals, and magazines. The following is a list of the methods that researchers used to collect legal materials to carry out this research: 1) Documents, more specifically data collection techniques that involve recording documents (archives) related to the issues that were studied; 2) Research in a library, which involves collecting, reading, and browsing several books, research results, draft laws and regulations, scientific papers, and other literature from the internet that is related to this research and can support it.

This research makes use of various types of legal materials obtained from statutory regulations, in addition to legal materials obtained and collected by researchers through literature or literature studies, such as books on legal science, draft legislation, research results, the

internet, and other such sources close to the issue that is being investigated. Following the collection of all legal materials by researchers, those materials are then categorized and analyzed so that conclusions can be drawn from those materials on the issues that have been discussed. The researchers in this study draw various kinds of conclusions and messages from the various kinds of material that they examine, and then use those conclusions and messages to study and discuss the problems that they find. This is done to obtain discussions and conclusions that are pertinent and appropriate, as well as by the issues that were researched.

Discussion

A. Sanctions to Investigators Who are Proven to Have Committed Acts of Wrongful Arrest Accompanied by Violence.

Commonly, sanctions are understood to be punishments that are imposed as a result of breaking laws and regulations, whether they be written or unwritten. It will be very difficult to enforce the law if there are no sanctions in place, whereas there will be arbitrary behavior if there are only sanctions in place. Laws and sanctions are closely related to one another and support one another. Sanctions are almost always associated with legal standards or laws that incorporate other standards, such as moral standards, religious standards, or decency standards. The word "sanctions" in Indonesian originates from the Dutch word "*sanctie*," as in the phrase "*poenale sanctie*," which during the time of Dutch colonial rule referred to the act of punishing criminals with corporal

⁷ Ibid

punishments such as beatings and shackling the body. Sanctions are described as "a necessity (action, punishment, etc.) to make people comply with contracts or provisions of 1022 law," according to the Big Indonesian Dictionary (laws, associations, and so on).⁸

The phrase "legal sanction" refers to the punishment meted out for infractions of predetermined norms or guidelines and is commonly used in the field of law. One clear example of how the state can use its authority to enforce legal compliance is through the use of legal sanctions, which refer to the punishments that are imposed on those who break the law. There are three distinct types of penalties that can be handed down by a court of law, and these are criminal punishment, civil penalties, and administrative sanctions. The KUHAP mandates that investigators must provide victims of inappropriate arrests with compensation and rehabilitation, but it does not specify punishments for those who do so. In the context of a criminal proceeding, the following is how compensation is defined according to Article 1 point 22 of the KUHAP: "Compensation is the right of a person to obtain fulfillment of his demands in the form of compensation in the form of compensation for an amount of money due to being arrested, detained, prosecuted, or tried without reason based on the law, or because the law

implemented by the procedures set out in the KUHAP."

During the pretrial phase of the process, you are required to pay compensation. It is the responsibility of the district court, as stated in Article 1 point 10 of the KUHP, to investigate and make decisions regarding pre-trial cases by the procedures outlined in the KUHAP. 1) Whether the arrest or detention requested by the suspect, his family, or parties acting under the suspect's authority is legal or not; 2) Whether the request to stop the investigation or the charge is valid or not to protect the rule of law and justice, and 3) Whether the request to release the suspect from custody is valid or not to protect the rule of law and justice. 3) Claims for restitution or rehabilitation brought on behalf of the suspect, his family, or other parties whose case has not yet been brought before a court of law. Those who have been detained, prosecuted, tried, or subjected to other actions illegally without justification based on law, the person's character or applicable law are eligible for compensation under the terms of Articles 95 and 96 of the KUHAP. Those who have been unlawfully arrested are also eligible for compensation under these terms. whereas the provisions for the rehabilitation of people who have been subjected to illegal detention are regulated by Article 97, Paragraph 1 of the KUHAP.⁹ When investigations are carried out in a manner that deviates from

⁸ Nida IG, Dewi AA, Budiya IM. Pertanggung Jawaban Pihak Kepolisian Dan Upaya Hukum Yang Dilakukan Tersangka Atas Terjadinya Salah Tangkap. Jurnal Preferensi Hukum. Vol. 1, No. 2 – September 2020, pp. 51-56.

⁹ Cahyadi M. Tinjauan Hukum Terhadap Tuntutan Ganti Kerugian Karena Salah Tangkap Dan Menahan Orang. Karya Ilmiah Universitas Tadulako, 2018, p. 4.

standard practice, violence is frequently used as a means to intimidate suspects, teach them a lesson, coerce them into admitting guilt and obtain information from them. Since the use of force during investigations has been shown to violate human rights, it would appear that this behavior has become institutionalized within the wrong culture.

The use of force during an arrest is a criminal act, and law enforcement officers who engage in such conduct are subject to disciplinary action. Dishonest investigators who make wrongful arrests are subject to the penalties outlined in Article 422 of the KUHAP, which states, "Civil officials who use coercion in criminal investigations, either to coerce people to confess or to induce others to reveal information, are sentenced to four years in prison." [C]ivil officials who use coercion in criminal investigations, whether to coerce people to confess or to induce others to reveal information, are subject to a sentence of In the KUHP as well as in other laws and regulations, the term "false arrest" is not used at all. The wrongful arrest is the term used when a law enforcement official fails to apprehend a suspect who is suspected of breaking one or more rules or regulations. As a result, in this kind of situation, legal remedies shouldn't be used to help people who were wrongfully arrested, but rather they should be utilized to maintain a sense of justice in society, which ought to be the responsibility of the authorities (police investigators). When they have reasonable grounds to believe that someone has committed a crime, investigators have the authority to make arrests. It is abundantly

clear that an investigator is required to do the following, as stated in the provisions of paragraph (1) of Article 18 of the KUHP.¹⁰ 1) Showing the suspect the assignment letter will help you accomplish your goal of getting him arrested; 2) putting out a warrant for the suspect's arrest with the following information on it: a) The individual's name or identity who is wanted for arrest; b) Explain why the suspect has detained as well as the reasons for the arrest; c) A condensed version of the alleged criminal activity that is suspected to have been carried out by the suspect; d) Find out where the suspect will be questioned, such as at the Bareskrim Mabes Polri, the Central Jakarta Police, or the Polda Metro Jaya.

As a result, laws and regulations regarding situations of wrongful arrest should not only protect the rights of individuals who have been wrongfully arrested, but they should also uphold a sense of justice in society as a whole. Additionally, this is something that the investigators working for the police should do. Furthermore, investigators are not required to apologize or express regret, either publicly or privately, in any circumstance. Suspects, like everyone else, have rights, including some of the ones that are listed below:¹¹ 1) Investigation, legal challenge, and judicial review are all options for rights; 2) Freedom to communicate with investigators and courts, as well as the ability to provide

¹⁰ Peraturan Pemerintah Nomor 2 Tahun 2003 Tentang Peraturan Displin Anggota Kepolisian Negara Republik Indonesia Pasal 7

¹¹ Sugistiyoko BS. *Perlindungan Hukum Terhadap Tersangka Dalam Proses Perkara Pidana. Jurnal Fakultas Hukum Universitas Tulungagung*, p. 1-2

them with information; 3) The privilege of having access to attorneys for representation in legal matters; 4) The privilege of having access to an interpreter; 5) The right of a suspect who is being held in custody to consult with a medical professional; 6) The privilege of informing the family. On the other hand, the rights of the vast majority of suspects were not upheld, and it was determined that it was not necessary to assert their rights. even though the suspect is still a person with rights, the investigation must continue. On the other hand, the majority of people consider the suspect's actions to be cruel; consequently, they use shame as a form of social punishment for the perpetrators. In addition to the suspect, the suspect's family will also suffer as a result of the social stigma attached to them as a result of society's decision to shun and shame them.¹²

Criminal activity is given its official expression through the system of criminal justice. This does not, however, imply that the response was carried out in a careless manner or without regard to human rights. There is a multitude of rights that apply to individuals who have been found guilty, beginning with the right to be presumed innocent, the right to legal representation, and the right to be protected from torture. When faced with a scenario like this one, the system of criminal justice should conduct an exhaustive investigation, giving precedence to solid facts or evidence to convict someone of a crime, taking into

consideration the motivations of the perpetrator as well as the rights that the convict must receive to carry out the sentence in court. compatible with the goals of criminal activity.¹³ This is an absolute requirement because legal documentation places a much greater emphasis on the power of law enforcement organizations than it does on the role of suspects, defendants, and individuals who have been convicted. A criminal act has taken place when the police are the first institution to interact directly with members of the community in any capacity, whether as witnesses, victims, or suspects. As a direct consequence of this, the police force is tasked with the responsibility of upholding the law and guarding national security. However, as he goes about his regular responsibilities, he might be subjected to insults, unwanted comments, and a lack of trust from the general public. Due to the prevalence of unjust arrests in today's society, a great number of individuals do not have faith in officers and police officers. As a result, individuals would rather break the law themselves than report it to the authorities. Many people have been harmed as a result of errors that have taken place, such as in the case of wrongful arrest; therefore, the police need to be vigilant and strengthen investigative procedures to prevent this from happening again.

Because determining the material truth is the primary objective in a criminal proceeding, a person cannot be found guilty in a criminal case based solely on an oral confession made without any

¹² Sugistiyoko BS. *Perlindungan Hukum Terhadap Tersangka Dalam Proses Perkara Pidana. Jurnal Fakultas Hukum Universitas Tulungagung*, p. 4

¹³ Sugistiyoko BS. *Ibid.*

supporting evidence. Those who have been wrongfully arrested have the right to seek compensation, which may include the chance to clear their good names and various other benefits that will aid in their recovery. There are legal actions that can be taken by suspects if Polri Investigators make an error in the course of their arrest, and there are also legal actions that can be accounted for by Polri Investigators in the course of performing their duties. To begin, the following is a list of the different kinds of punishments that can be given for violating the Polri Professional Code of Ethics: 1) The violation is regarded as a repugnant act; 2) The offender is required to convey an apology in some way, either directly or indirectly; 3) The requirement that the offender takes part in professional retraining; 4) A statement that the offender was unable to carry out police duties.

In the KUHAP, Article 1 Paragraph 22 states that one form of legal remedy that may be utilized is compensation. Both Article 77 Letter B of the KUHAP and Article 1 Paragraph 10 of the KUHAP provide a legal basis for compensation claims, and the KUHAP regulates rehabilitation through its provisions in Article 1 Paragraph 10. Material responsibility, which refers to sanctions for apologizing, and immaterial responsibility, which refers to sanctions in the form of retraining requirements at Polri educational institutions, are the two types of responsibilities that can be assigned to Polri investigators. Both types of responsibilities can be assigned to Polri investigators. In the meantime, those who have been wrongfully arrested have the

right to seek restitution and rehabilitation through the legal system. Those members of the police force who violate the law by making erroneous arrests have broken the law through their actions. As a result of the fact that they have carried out acts of persecution at will, the presumption of innocence cannot be upheld. It is imperative that the rights of suspects and accused persons, as well as the significance of the presumption of innocence, be given the attention and consideration they deserve. The fact that law enforcement officials either do not pay attention to the rights mentioned above or do pay attention to those rights indicates that there has been an error in the procedure that law enforcement officials followed in this scenario, which has resulted in a violation of human rights.

The majority of wrongful arrest cases in Indonesia violate the principle of presumption of innocence, which can attract a lot of attention from the public on both a national and international scale. Everyone has the potential to be subject to appropriate punishment, regardless of whether they break the law or not. If a judge, prosecutor, or police officer acts inappropriately in the performance of their duties, they may be subject to criminal prosecution. The issue of wrongful arrest, accusation, and sentencing is too dangerous for human rights, and wrongful arrest, accusation, and sentencing must be explicitly threatened by criminal articles. wrongful arrest, accusation, and sentencing must be explicitly threatened by criminal articles. It is against the law to use the law as a shield to conceal guilt, which is an act in and of

itself. Although Law Number 2 of 2002 concerning the Indonesian National Police does not explicitly state what criminal provisions can be imposed on a member of the police force if the member has committed negligence or mistakes while carrying out their duties, the actions of the police who make wrong arrests to harm others are still capable of being held criminally responsible.

If a mistake was made during this arrest, the officer who was responsible must be disciplined by receiving either a verbal reprimand or a physical action of a coaching nature. These instructions are given directly to members of the Indonesian National Police. When it comes to enforcing the law in Indonesia, especially as police, every action that is taken must be cautious and must-see discipline. During this investigation, law enforcement officials disregarded relevant laws and regulations, disregarded the presumption of innocence, and mistreated victims who were considered guilty during the arrest process. Criminal responsibility for what police officers have done has been accounted for by disciplinary punishment and written warnings of committing acts that are heinous and accepted back in his environment. This is following the purpose of punishment, which is to frighten everyone from doing bad things (classical school) and teach those who have never made a mistake. In addition, the purpose of punishment is to teach those who have never made a mistake (modern school).¹⁴

These kinds of mistakes are possible at any stage of the legal process, including arrest, detention, or prosecution, as well as during the judge's review of the case before making a decision. The unjust arrest has a significant effect on the families that are left behind, particularly on the lives of the women and children in those families. This is also very troubling for generations of children or future generations who will become victims' families as a result of depression and deep fear, which will lead to depression in society as a whole. especially while you are at school, young people. When it comes down to it, everyone is susceptible to making mistakes, and those errors can manifest themselves in a variety of ways. However, the victim ends up having to deal with the negative effects of the mistake because it was made, which is a problem with the situation. In the event of an unlawful arrest, the investigator has disregarded both his legal responsibilities and his authority.¹⁵

B. State Responsibility for Victims of Wrongful Arrest Experiencing Violence in the Investigation Process

Because it is a nation based on the rule of law, Indonesia should ensure that all of its citizens feel a sense of justice and a sense of safety at all times. The rule of law plays an important part in directing and monitoring the actions of the government in a country like Indonesia, where one of the primary goals is to ensure the safety of all forms of life. Indonesia has the goals of realizing

¹⁴ Sugistiyoko BS. Op Cit.

¹⁵ Lathif N. Pertanggungjawaban Pidana Penyidik Polri Dalam Kasus Salah Tangkap. *Pakuan Law Review*. Vol 4(2). 2018. E-Issn:2614-485.

legitimacy, security, and justice following what was stated in the Preamble to the Constitution that was written in 1945. For justice to be felt by all segments of society, the criminal justice system needs to incorporate social concerns into the enforcement of laws. It should not solely concentrate on interpreting the law laterally and should not do so exclusively.¹⁶

According to legal expert Stahl, the four remaining features of a rule of law state are the guarantee of human rights that belong to every human being, the separation of powers, the existence of a governmental legal system, and the existence of a judiciary. state government. When viewed from this angle, it is abundantly clear that the safeguarding and upholding of human rights are extremely important to the concept of the rule of law.¹⁷ Most of the time, the criminal justice system, and particularly the police and prosecutors, are the ones who are blamed for making wrongful arrests. The reason for this was the fact that both of these organizations could conduct investigations. Rules that are appropriate and less ambiguous, particularly those that govern how the police and prosecutors carry out their responsibilities to prevent wrongful arrests, would significantly contribute to an increase in the level of legal certainty that exists.

¹⁶ Naufal M. *Pakuan Law Review* Volume 4 Nomor 2, Juli-Desember 2018 e-ISSN:2614-485. Universitas Islam Negeri Syarif Hidayatullah. 2016.

¹⁷ Ayunda YP. *Perlindungan Hukum Terhadap Korban Salah Tangkap Dalam Peradilan Pidana*. Fakultas Hukum Universitas Sumatera Utara Medam. 2020

Following the provisions of Article 1 Paragraph (1) of Law Number 39 of 1999, human rights are defined as any rights that are ingrained to the point where they become the basis. Human rights are also described as being gifts from God Almighty that the state and its components are obligated to recognize and preserve. It is impossible to divorce human rights from the legal system because they are an integral part of it and a component of its importance. The Miranda Rule, the presumption of innocence, and the principle of equality before the law are all provisions that can be found in the KUHAP as well as in other laws and regulations that deal with the rights of citizens during the process of the criminal justice system. These provisions all demonstrate how human rights are implemented within the context of the criminal justice system.

During the investigation phase of the criminal justice system, there were instances of rights violations that led to wrongful arrests. As a result of the tragedy in Indonesia, those who have been wrongfully arrested will almost certainly suffer a great deal. The state is obligated to provide legal protection for these incidents because legal protection is a reflection of the state's obligations, which are required and guaranteed by the state in the course of carrying out its duties as a state administrator. Errors in arrests made while the criminal justice system was operating due to non-legal justifications or errors involving machinery or laws and regulations are things that have happened in the past and have attracted the attention of the government. These types of

mistakes have occurred because of non-legal justifications or errors involving machinery or laws and regulations. The fact that wrongful arrests are more common in Indonesia than other instances of lawlessness has a clear effect in that it enables victims of wrongful arrest to sue the government for compensation and rehabilitation. In addition, the fact that wrongful arrests are more common in Indonesia than other instances of lawlessness has a clear effect. It is made abundantly clear within the body of the KUHAP article itself that the person or individual who is harmed is the one who is responsible for holding the state accountable for any instance of wrongful arrest. Alternative dispute resolution is something that is currently being developed in the field of legal science today. This type of dispute resolution can be used to resolve disagreements that cannot be resolved in a manner that is determined by law.¹⁸

Compensation

When members of law enforcement incorrectly identify someone as a suspect or defendant in a crime, an attempt will be made to compensate the victim to restore the victim's rights (*error in persona*). "Compensation is the right of a person to obtain fulfillment of his claims in the form of a sum of money for being arrested, detained, prosecuted, or tried without reason based on law or due to an error regarding the person or the law applied according to the method regulated in this

law," it states in Article 1 Paragraph 22 of the KUHAP.¹⁹ Article 95 and Article 96 of the Criminal Procedure Code are seen from Article 1 number 22 of the KUHAP to be more or less interpreted as the right of a person or citizen to obtain fulfillment of demands. This responsibility for compensation falls on the state. Because the person or citizen was detained, prosecuted, or tried without a legal basis by the law, or because of mistaken identity, the compensation is given in the form of monetary compensation.

Government Regulation Number 27 of 1982 concerning the Implementation of the KUHAP, which was ratified by President Soeharto and then revised by President Jokowi in 2015 to become Government Regulation Number 92 of 2015 concerning the Second Amendment to PP. 27 of 1982, actually contains rules regarding compensation for victims of wrongful arrests that must go through the process of the criminal justice system. This regulation was ratified by President Soeharto. President Jokowi revised it in 2015 to become Government Regulation Number 92 of 2015. The provision of state compensation for victims of unjust arrests in Indonesia, based on Article 77 Letter B and Article 95 of the KUHAP, is the most significant benefit of Government Regulation Number 92 of 2015 for victims of unjust arrests in Indonesia. This compensation is intended to compensate for losses suffered by victims in the form of persons or residents. In addition, there

¹⁸Harianja MM. *Perlindungan Hukum Terhadap Korban Tindak Pidana Dalam Hal Terjadinya Salah Tangkap (Error In Persona)*. Fakultas Hukum Universitas Sriwijaya. 2020 Margono P.

¹⁹ . *Perlindungan Hukum Terhadap Korban Salah Tangkap Dalam Tindak Pidana Menurut Kuhap*. Fakultas Hukum Universitas Islam Lamongan.

is compensation available for those who have suffered serious injuries, as outlined in Article 95 of the KUHAP, which ranges from IDR. 25,000,000 (twenty-five million rupiahs) to IDR. 300,000,000. IDR. 500,000 (five hundred thousand rupiahs) to IDR. 100,000,000 (one hundred million rupiahs) for each incorrect catch (one hundred million rupiahs). In the event of death, there is also compensation, the nominal value of which ranges from IDR. 50,000,000 (fifty million rupiahs) up to IDR. 600,000,000 (six hundred million rupiahs). Following the laws that are currently in place, the government is required to make an offer of compensation no more than fourteen (14) days after the Chief District Court issues a ruling before the government can accept the offer.

Rehabilitation

According to the text of the law, the definition of rehabilitation can be found in Article 97 of the KUHAP. But before that article, in Article 1 number 23, there was a definition of rehabilitation, which stated as follows: "Rehabilitation is the right of a person to get his rights restored in terms of ability, position, and dignity given at the level of investigation, prosecution, or trial due to being arrested, detained, prosecuted, or being tried without reasons based on the law or because of reasons of confusion regarding the person or the law being applied according to the method regulated in."²⁰ Rehabilitation is essentially the right of a person or citizen who is going through the process of criminal justice to regain his capacity and dignity at

any level of the process, whether it be an investigation, prosecution, or trial, according to Article 97 of the KUHAP to Article 1 point 23 of the KUHAP. Rehabilitation is also referred to as "rehabilitation." because they were detained and processed without justification based on the law, due to mistakes made by officials, because the law was applied following the prescribed method or all three of these reasons combined.

Articles 12 through 15 of Chapter 5 contain arrangements regarding the processes that must be followed to carry out rehabilitation. Article 12 The applicant is required to submit a request for rehabilitation by Article 97 paragraph (3) of the KUHAP to the competent court no later than fourteen (14) days after being notified of the decision regarding the legality of his arrest or detention. This request must be submitted no later than fourteen (14) days after being notified of the decision. The compensation and rehabilitation provided to victims of wrongful arrests for violations of rights and administrative law as well as for being tried without clear reasons which are against the law are further explained in Articles 95 to 97 of the KUHAP. These articles illustrate the responsibility that the state bears regarding the unlawful arrest of citizens.²¹

²⁰ M Karjadi dan R Soesilo, Op Cit, p. 25-27

²¹ Jayawisastro KP, Sugama Id. Pengaturan Hukum Terhadap Korban Salah Tangkap Ditinjau Dari Perspektif Sistem Peradilan Pidana. *Jurnal Kertha Wicara Vol 9 No.9 Tahun 2020*, p. 1-14

Conclusion

Based on the findings of the research presented above, it is possible to draw the conclusion that the case of wrongful arrest involves errors in procedure and data obtained, which leads to the wrongful arrest of a person who, even though he did not commit the crime or offense charged against him, causes him to be arrested and then held accountable for his actions, which are completely he did not do, causing the victim to be wrongfully arrested to suffer losses, both time and mental losses. In addition, it causes the victim, In other words, a mistake made while conducting a scientific investigation of a crime due to the lack of professionalism displayed by the law enforcement apparatus when applying criminalization concepts. These concepts include identifying victims, suspects, and the scientific correlations between them. The error that was made during the arrest demonstrated that there was a fundamental flaw in management in the form of a disregard for professionalism in the collection of evidence. In this particular instance, the ethics code that governs the police profession has been broken. The members of the police force who were involved in the incident are also subjected to disciplinary action. This occurs under the Police Code of Ethics as well as Regulation Number 2 of 2003 issued by the Head of the National Police of the Republic of Indonesia concerning the Order of Police Members. The victim possesses the legal capacity to initiate a legal proceeding, specifically a pretrial order requiring the defendant to make

restitution and facilitate rehabilitation following the KUHAP.

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