

IDEAL RECONSTRUCTION OF COMPENSATION AND REHABILITATION IN FALSE ARRESTS CASES

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Article's Information	Abstract
<p>Keywords:</p> <p>Compensation, Rehabilitation, Wrongful Arrest.</p> <p>DOI: https://doi.org/10.31599/gvj2bj22</p>	<p><i>Basically, the problem of wrongful arrest cases is still quite common, where in practice, law enforcement officers sometimes use violence, coercion or pressure on a suspect during the investigation process. The actions of Law Enforcement Officials can be categorized as unlawful acts. The problem in practice is that the concepts of restitution (compensation) and rehabilitation, especially in cases of wrongful arrest, are still very rarely applied in the field of criminal law. The research method used in this research is a normative juridical research method. The materials studied are primary, secondary and tertiary legal materials. The research results show that basically requests for the right to compensation and rehabilitation can be submitted by the suspect, his family or his attorney. So heirs can also apply for rehabilitation. Likewise with compensation for losses. However, in practice and implementation, the concepts of restitution and rehabilitation, especially in cases of wrongful arrest, are still rarely applied in the field of criminal law. The problem of wrongful arrest, of course, not only needs to be corrected and is homework that needs to be addressed by the government, but also requires concrete solutions whose benefits and justice can be felt directly by the community, especially towards suspects or defendants and/or the families of suspects or defendants who are victims of wrongful arrest. . So in this research, researchers reconstruct an ideal and fair solution for all parties, including law enforcement officials who make</i></p>



mistakes in criminal procedures, as well as for suspects or defendants and/or the families of suspects or defendants who are victims of wrongful arrest.

I. INTRODUCTION

As a country of law, Indonesia implements various concepts, norms, principles and legal principles in various regulations contained in Indonesia. The Liberal Law State was later developed by Friederich Julius Stahl into a Formal Law State with stricter limitations on power. Stahl put forward 4 (four) instruments for limiting power in the Formal Legal State, namely (1) recognition and protection of human rights, (2) the state is based on *the Trias Politica*, (3) government is organized based on law (*wetmatig bestuur*) and (4) the judiciary state administration tasked with dealing with legal violations by the government.¹ The concept of the rule of law itself is mentioned in Article 1 Paragraph 3 of the amendment to the 1945 Constitution, where the concept of the rule of law basically aims to limit the power of the authorities in order to protect the rights of citizens or people.²

As one form of effort to recognize and protect human rights, there is a balanced arrangement regarding rights and obligations, sanctions and punishments accompanied by the concept of restitution (compensation) and rehabilitation. This aims to maintain balance and create a safe, peaceful and serene society. In practice, the concepts of restitution (compensation) and rehabilitation are more familiar in the field of civil law than in criminal law, while it is known that in criminal law itself, the concepts of restitution (compensation) and rehabilitation are also regulated, both in the law. Number 8 of 1981 concerning the Criminal Procedure Code, as well as in other laws such as Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and Law Number 35 of 2009 concerning Narcotics.

The rights of suspects who commit a criminal act are regulated in the Criminal Code in Articles 51 to Article 54 of the Criminal Procedure Code. This is intended to ensure that a suspect's rights are not violated by law enforcement officials, because basically not all suspects who are questioned are truly wrong people. This is in accordance with the principle of *presumption of innocence* and the principle of no crime without fault which is adopted in the criminal justice system in Indonesia. This form of violation of the inherent

¹Hotma P. Sibuea, *State Science*, Jakarta : Erlangga, 2014. p. 161

²Hotma P. Sibuea, *Kapita Selecta Constitutional Law*, Jakarta: University August 17, 2007. p. 60

rights of a suspect is an act of violating human rights (which is then shortened to HAM).³ In everyday life, law enforcement officers sometimes use violence, coercion or pressure against a suspect during the investigation process. The actions of Law Enforcement Officials can be categorized as unlawful acts.

Unlawful acts committed by law enforcement officers who have authority in the field of investigation and examination of defendants may be subject to legal sanctions in the form of sanctions in the form of a code of ethics or legal sanctions in accordance with the legal provisions in force in Indonesia. Meanwhile, the legal process that occurred against the defendant should be re-investigated and re-examined.⁴ The existence of these conditions certainly requires legal instruments related to compensation and rehabilitation, where the provisions regarding compensation and rehabilitation are regulated in Article 97 of the Criminal Procedure Code concerning rehabilitation or restoration of one's good name and Article 99 of the Criminal Procedure Code concerning compensation. both morally and materially.⁵

On the one hand, in practice the concepts of restitution (compensation) and rehabilitation, especially in cases of wrongful arrest, are still very rarely applied in the field of criminal law, where based on research by researchers, the last time the justice system in Indonesia granted demands for compensation and rehabilitation was in The case of wrongful arrest was in 2008, to be precise, in the case of Judicial Review Decision Number 89/PK/PID.2008 in the case of demands for rehabilitation against the defendant Imam Chambali alias Kemat, who was the victim of wrongful arrest in the case of alleged murder of the deceased victim Moch Asrori, which turned out to be In its development, it was discovered that David Eko Priyanto had been murdered, but during the process of disclosing the case, the defendant Imam Chambali alias Kemat was arrested and even received a criminal sentence based on Jombang District Court Decision No. 48/Pid.B/2008/PN.JMB. even received a prison sentence of 17 years. In fact, it is known that in this case Imam Chambali served a year in prison, until finally the real perpetrator in this case was arrested.

However, the panel of judges in the review process only granted the claim for rehabilitation or restoration of the defendant's good name, and rejected the claim for

³Mardjono Reksodiputro, *Human Rights in the Criminal Justice System*, Jakarta: UI Center for Justice and Legal Services, 2004. p. 25

⁴Hibnu Nugroho, *Reconstructing the Investigation System in Criminal Justice (Study of the Authority of Investigators Towards Pluralism in the Investigation System in Indonesia)*. Jakarta : Pro Justitia Law Journal, Vol. 26, 2008. p. 20

⁵L & J Law Firm, *If You Face Legal Problems: Your Rights When Searched, Confiscated, Arrested, Detained, Indicted, Imprisoned*, Friends Forum, Jakarta, 2010. p. 27

compensation submitted by the defendant's attorney, even though in time, the defendant had suffered losses due to the wrongful conviction in the process, the defendant even lost his job, and experienced negative stigma towards his family and relatives, so that the losses experienced by the defendant were not only material, but also immaterial.

In its own development, it is known that there are problems with cases of wrongful arrest based on data from the Jakarta Legal Aid Institute (LBH), in the period 2016-2022 alone there were 10 cases of alleged wrongful arrest by police officers in Jabodetabek that were handled by this institution. The total is 11 cases with the latest case in Bekasi.⁶ Apart from that, there are also many other cases of wrongful arrest that even result in the victims of wrongful arrest having to serve a criminal sentence, and often even result in the victims losing their lives. Examples of this can be seen in cases of wrongful arrest by law enforcement officers, starting from the wrongful arrest case that occurred against Fikri Pribadi (17), Bagus Firdaus alias Pau (16), Fatahillah (12) and Ucok alias Arga Putra Samosir (13), Nurdin Prianto (23) and Andro Supriyanto (18), who were suspected of committing the criminal act of murder against Dicky Maulana in 2013⁷, up to the case of wrongful arrest that occurred in Siyono in 2016 which resulted in the newly suspected perpetrator dying.

Apart from that, there are several other examples of wrongful arrest cases such as Davit Azhari, a man who was arrested in a raid in Palmerah, West Jakarta in 2012, Bayu Dwi Ardiyanto in 2013, Ojid Abdul Majid Alias Ajid, a resident of Kerenceng Village, Pondokkaso Tengah Village, Cidahu District, Sukabumi in 2017, Lucky, a resident of Tegal, and Zaenal, a resident of Bengkal Village, Temanggung were sent home because they were not proven to be involved in terrorism in Bengkal Village, Kranggan District, Temanggung, Central Java, 2018, and finally the arrest of a North Telukbetung resident with the initials T in 2019.⁸

II. METHODS

In this research, the researcher used the Normative Juridical Type Research method, namely legal research that emphasizes secondary data in research and examines

⁶<https://www.kompas.id/baca/metro/2022/03/07/lbh-kas-lahan-tangkap-berulang> accessed on 09 June 2024

⁷Dona, *Legal Protection for Children as Suspects (South Jakarta District Court Decision Number 1131/Pid.An/2013/PN.JKT.SEL)*. Bekasi: Bhayangkara University Journal 2016. p. 40

⁸ <https://www.kompas.id/baca/metro/2022/03/07/lbh-kas-lahan-tangkap-berulang> accessed on 09 June 2024

the principles of positive law originating from library data.⁹ The research approaches used in this research include. The statutory approach (*statute approach*), Conceptual Approach (*Conceptual Approach*), and *Analytical Approach*. In this research, researchers used secondary data in research. Secondary data is library data which contains legal material, namely primary legal material, secondary legal material and tertiary legal material. The secondary data in this research consists of primary legal materials: 1945 Constitution, Criminal Code, law number 8 of 1981 concerning the criminal procedure code, law number 11 of 2012 concerning the juvenile criminal justice system, law number 35 of 2009 concerning narcotics, law number 1 of 20 23 concerning criminal code, law number 48 of 2009 concerning principles for the implementation of judicial power.

III. DISCUSSION

The Problem of Wrongful Arrests in Law Enforcement in Indonesia

Compensation is found in civil and criminal law. However, there are differences between the two. In criminal law, the scope of providing compensation is narrower than providing compensation in civil law. The scope of compensation in civil law is wider than compensation in criminal law, because compensation in civil law (referring to Article 1365 of the Civil Code) is to return the plaintiff to the condition he was in before the loss caused by the defendant occurred. In civil law, compensation can be requested as high as possible (there is no minimum or maximum amount) including material losses and immaterial losses. Material loss is loss that can be calculated in money, loss of wealth which is usually in the form of money, includes losses suffered and which have actually been suffered. Meanwhile, immaterial losses or ideal losses or moral losses are losses that cannot be assessed in a definite amount.

Meanwhile, compensation in criminal law is only for costs or expenses incurred by the victim. This means that immaterial things are not included. Compensation in criminal law can be requested for two acts, namely due to the actions of law enforcement officials and due to the actions of the defendant. In compensation for losses due to the actions of law enforcement officers, the party who has the right to submit a request for compensation for the actions of the law enforcement officers is the suspect, defendant or convict. The suspect or defendant can apply for compensation if the investigation or prosecution of his case is terminated. The suspect or defendant can also file a claim for compensation through pre-trial. However, for a defendant whose case has been decided,

⁹Mukti Fajar ND, *Dualism in Legal Research*, Student Library: Yogyakarta, 2013. p. 23

and in that decision he is declared not guilty, then he can also apply for compensation for this action because he has been harmed. He can submit a request to the court at least within 3 months after the court decision has permanent legal force (regulated in Government Regulation number 27 of 1983). If the application is submitted after 3 months have passed, he no longer has the right to apply for compensation.¹⁰

Compensation based on Article 1 paragraph 22 of Law Number 8 of 1981 concerning the Criminal Procedure Code is the right of a person to receive fulfillment of his demands in the form of compensation for a sum of money for being arrested, detained, prosecuted or tried without reasons based on law. or due to a mistake regarding the person or the law applied in the manner regulated in this law. The legal basis for compensation for damages due to the defendant's actions is Article 98 paragraph (1) of the Criminal Procedure Code which states that if an act which is the basis of an indictment in a criminal case examination by the District Court causes harm to another person, then the presiding judge at the hearing's request can determine that combining the compensation case into a criminal case. Compensation for the defendant's actions is proposed by the victim. Victims here can be victims of an action (for example, the defendant committed a criminal act which resulted in serious injury or death due to a beating or violence carried out jointly) or for example a violation of article 187/188 of the Criminal Code (fire caused by the defendant's negligence or intention), crimes against morality that cause harm, crimes committed with violence including abuse, murder. The point is that crimes cause victims and the victims suffer losses.

Victims can combine the compensation case with the criminal case. The aim is to speed up the process of repairing compensation for losses. Victims can also file a claim for compensation through civil procedural law, but the process will take longer compared to if the request for compensation is combined with the criminal case. The amount of compensation is only limited to reimbursement of costs incurred by the injured party. This means that if, for example, the victim suffers injuries and he has to go to hospital, then only hospital costs can be requested for compensation. If the victim has other claims, such as immaterial claims because he is disabled, then the immaterial claim must be filed as an ordinary civil case and cannot be combined with a criminal case. If a crime is committed by many people (mass crime) then the police will look for anyone who is a suspect/defendant as someone who is criminally responsible and only from the suspect/defendant will compensation be requested.

¹⁰ L & J Law Firm, *Op. Cit.*, p. 28

Combining compensation cases in a criminal case is a right granted by the Criminal Procedure Code to the victim. The Criminal Procedure Code gives victims the right to file a lawsuit for compensation. At the time, this claim for compensation was civil in nature but was filed while the criminal case was in progress for the reason that the process would be quicker.

Compensation requested by the victim is carried out simultaneously with the defendant's examination process in court, namely before the public prosecutor submits his demands or his requisitor. He could also not file it himself but ask the public prosecutor for help to include a request for compensation in his lawsuit. However, this happens very rarely. In trials with speedy proceedings (such as pre-trials, traffic violations, defamation, minor insults, minor crimes) where the trial is conducted without the presence of a public prosecutor, the victim can submit a request for compensation at least before the judge decides on the case.

In the case of a combination of criminal and civil cases, the execution of compensation is carried out according to civil procedural law. If the defendant or convict is able to pay compensation to the victim, according to the Minister of Justice's statement, the victim can submit a request verbally or in writing to the chairman of the District Court examining the case so that the request for compensation is executed. Based on the request for execution, the chairman of the District Court summoned the convict to pay compensation. If it turns out that the convict is unable or unable to pay, the judge decides to confiscate the convict's movable property in accordance with the determined amount of compensation. If it turns out that the amount of movable goods is insufficient, the judge can determine executorial confiscation, namely the confiscation of immovable goods.

So in a criminal execution the party carrying out the execution is the prosecutor. However, in cases involving a combination of criminal and civil matters, the criminal execution is carried out by the prosecutor, while for civil compensation matters the execution is carried out by the court clerk assisted by a bailiff. If the victim does not know that the request for compensation submitted by the victim to the defendant is only limited to the costs that have been incurred, then the judge's decision will likely state that the decision cannot be accepted and must be submitted as an ordinary civil case because the request is more than the amount incurred and must be submitted as a case. ordinary civil law, then the victim can file a lawsuit in ordinary civil law, not combined with the crime, the victim can just sue directly in civil law. Or maybe the judge decides that the lawsuit

cannot be accepted without an order to file a civil lawsuit. This could be said to give rise to a *nebis in idem* problem, meaning that if it cannot be accepted without an order to file a civil case then the victim cannot file a civil case.

Rehabilitation based on Article 1 paragraph 23 of Law Number 8 of 1981 concerning the Criminal Procedure Code is the right of a person to receive restoration of his or her rights in terms of ability, position and honor and dignity given at the level of investigation, prosecution or trial for being arrested, detained, prosecuted or tried without reasons based on law or because of a mistake regarding the person or the law applied in the manner regulated in this law. The definition of rehabilitation according to the Big Indonesian Dictionary is restoration to a previous or original position or condition.¹¹ Article 9 of Law No. 14 of 1970 concerning judicial power states that a person who is arrested, detained, prosecuted or tried without reason based on the law, or because of a mistake regarding the person or the law being applied has the right to demand compensation and rehabilitation. The definition of rehabilitation in this law is the restoration of a person's rights to their original capacity or position as granted by the court.

Rehabilitation follows compensation. This means that the pretrial is carried out because of a request for compensation, because the authorities made an arrest incorrectly, or did not comply with the law and so on and after that (after the pretrial is granted by the judge) the person concerned can ask for rehabilitation so that his good name is restored. The parties who have the right to apply for rehabilitation are parties who have been adjudicated acquitted or released from all legal claims whose decision has permanent legal force. For example, if someone is tried, then decided to be acquitted or released from all legal charges, then he has the right to receive rehabilitation to restore his good name.

The difference between rehabilitation and defamation is that rehabilitation is carried out because of the actions of law enforcement officials. This means that the applicant for rehabilitation is a suspect, defendant, convict whose pretrial request is granted (with intervention by the authorities) because rehabilitation is a right granted by the Criminal Procedure Code to suspects or defendants. Rehabilitation is more about things that are not related to material things but only involve a good name because rehabilitation is the restoration of a person's rights or abilities in their original position. Meanwhile, defamation is regulated in the Criminal Code (regarding defamation) as a lawsuit from someone against another person who is deemed to have defamed him or her. So there is

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no interference from the authorities in terms of coercion. A request for rehabilitation can be submitted by the suspect, his family or his attorney. So, heirs can also apply for rehabilitation. Likewise with compensation for losses.

Ideal Reconstruction of Compensation and Rehabilitation in Wrongful Arrest Cases

The term Victim of wrongful arrest is defined by Soerjono Soekanto as someone who is considered innocent because of negligence by law enforcement officials in carrying out examinations in connection with investigative procedures and investigations carried out to uncover a case, where the person's innocence is declared by a court decision. has permanent legal force, declaring himself not guilty.¹² According to Rusli Muhammad, a person who is declared innocent through a court decision has the right to apply for compensation and rehabilitation against the law enforcement officials who carried out the criminal process against him or the reporter. However, in the process, requests for compensation and rehabilitation against law enforcement officers can be made through civil lawsuits for wrongful arrest. Regarding the reporter, a victim of wrongful arrest can submit a report to the police alleging defamation accompanied by a lawsuit for civil compensation and rehabilitation.¹³

According to Komariah Emong Sapardjaja , the claim for compensation and rehabilitation carried out by a wrongful victim must first be proven that he is indeed innocent based on a court decision declaring him not guilty. After that, he can only file a civil lawsuit as regulated in Articles 97 and 99 of the Criminal Procedure Code.¹⁴ A suspect who is suspected of committing a violation in a criminal case has several rights to defend himself or prove his innocence. If the charges facing him are proven innocent, the defendant has the right to apply for compensation and rehabilitation against the law enforcement officials who are carrying out legal proceedings against him in accordance with Article 97 of the Criminal Procedure Code concerning rehabilitation or restoration of his good name and Article 99 of the Criminal Procedure Code. Criminal Procedure regarding compensation both morally and materially.¹⁵

¹² Soerjono Soekanto, *Factors that Influence Law Enforcement* , Rajawali Press Bandung, 2008. p. 176

¹³ Rusli Muhammad , *Indonesian Criminal Justice System* , UII Press, Yogyakarta, 2012. p. 131

¹⁴ Komariah Emong Sapardjaja, *Teachings on the Unlawful Nature of Materials in Indonesian Criminal Law* , Alumni, Bandung, 2001. p. 34

¹⁵ L & J Law Firm, *If You Face Legal Problems: Your Rights When Searched, Confiscated, Arrested, Detained, Indicted, Imprisoned* , Friends Forum, Jakarta, 2010. p. 27

In compensation for losses due to the actions of law enforcement officers, the party who has the right to submit a request for compensation for the actions of the law enforcement officers is the suspect, defendant or convict. The suspect or defendant can apply for compensation if the investigation or prosecution of his case is terminated. The suspect or defendant can also file a claim for compensation through pre-trial. However, for a defendant whose case has been decided, and in that decision he is declared not guilty, then he can also apply for compensation for this action because he has been harmed. He can submit an application to the court at least within 3 months after the court decision has permanent legal force (regulated in Government Regulation number 27 of 1983). If the application is submitted after 3 months have passed, he no longer has the right to apply for compensation.¹⁶

A suspect, accused, convict can apply for compensation if detention, arrest, search, trial and other actions (actions other than arrest, detention, investigation, prosecution, and these actions should not have been carried out on the suspect by law enforcement officials) against him without reason. based on law or due to a mistake regarding the person or the law applied. The right time to apply for compensation regarding the legality of the arrest or whether the detention is legal or not is at the same time as submitting a pretrial application (before the trial begins). A suspect or defendant cannot demand compensation in the amount he or she wishes, because the Criminal Procedure Code determines the maximum amount of compensation that can be requested, namely a minimum of IDR 5,000 and a maximum of IDR. 1 million or Rp. 3 million (if the actions of law enforcement officials have caused illness or disability).

If a request for compensation is due to the termination of the investigation or prosecution, it goes through the pretrial route. That means the same thing as us filing a pretrial. Pretrial proceedings are regulated in Article 82 paragraph (1) of the Criminal Procedure Code, the proceedings are the same as filing a pretrial, namely submitting a petition to the district court, which has the authority. 3 days after I submit the petition the court must have set a trial date. There is only one judge in the pre-trial with the trial being carried out quickly for a maximum of 7 days. After that, the judge must make a decision on the pre-trial request for compensation for damages.

If the defendant is acquitted, the claim for compensation is submitted to the district court within a maximum period of 3 months after the acquittal decision becomes legally binding. Within 3 days after the application is received the district court must determine

¹⁶ *Ibid.*, 28

the judge who will decide on the application. In this case (the issue of compensation), as far as possible, the judge will be the judge who previously handled the case in question. However, it is possible that in practice the judge who handles requests for compensation will be different, for example because the judge in charge has been transferred or is busy with another case. The request for compensation must be decided a maximum of 7 days after the first hearing. The form of the decision is in the form of a determination containing the amount of compensation or possibly a rejection of the request for compensation.

After the decree is issued, an execution will be carried out based on the Decree of the Minister of Finance regarding execution. The process is as follows: the chairman of the local district court who is examining the case submits a request for funding to the minister of justice cq secretary general of the Ministry of Justice who will then forward it to the minister of finance cq director general of budget by issuing an authorization decision. There is an SKO decision letter like that. Then the original will be delivered to the defendant. After the SKO is received, he submits payment to the state treasury office through the head of the local court. So basically the defendant only goes to the district court and it is the district court that carries out all the procedures. This process will usually take around 6 months to 1 year.

Compensation for losses due to the actions of law enforcement officers requires, among other things, a cessation of investigation, cessation of prosecution, etc. which are requested through pre-trial. However, without a pre-trial hearing, this can be done by requesting compensation with a minimum amount of IDR 5,000 and a maximum of 1 million rupiah, while for example, if there is a permanent disability or not, the maximum is 3 million rupiah. The procedure for requesting compensation through pretrial proceedings is concurrent with the pretrial lawsuit. Meanwhile, the procedure for requesting compensation outside of pre-trial proceedings is submitted to the District Court which is examining the case or case.

The legal basis for compensation for damages due to the defendant's actions is Article 98 paragraph (1) of the Criminal Procedure Code which states that if an act which is the basis of an indictment in a criminal case examination by the District Court causes harm to another person, then the presiding judge at the hearing's request can determine that combining the compensation case into a criminal case. Compensation for the defendant's actions was proposed by the victim. Victims here can be victims of an action (for example, the defendant committed a criminal act which resulted in serious injury or

death due to a beating or violence carried out jointly) or for example a violation of article 187/188 of the Criminal Code (fire caused by the defendant's negligence or intention), crimes against morality that cause harm, crimes committed with violence including abuse, murder. The point is that crimes cause victims and the victims suffer losses.

The starting point for the examination before the investigator is the suspect because the suspect obtains information about the criminal incident being investigated. However, even if the suspect is the starting point for the investigation, the suspect should not be seen as the object of the investigation (inquisitor). The suspect must be placed in a human position with dignity and worth and must be assessed as a subject, not as an object. The suspect's criminal acts are the object of examination, according to Article 8 of Law no. 4 of 2004, suspects must be considered innocent in accordance with the legal principle of "presumption of innocence" until a court decision is obtained that has permanent legal force.

When examining a suspect, an investigator must pay attention to the applicable information and must not act outside of that information, one of the provisions is regarding the suspect's rights during the investigation. The word "suspect" is used when he/she/the suspect is or is at the initial stage of examination, the words "defendant" are used when the suspect is still at the stage of examination before the judge and the words "convict" are used when the defendant has received the judge's decision and has obtained legal provisions. The purpose of the examination method here is the juridical examination procedure. In conducting an examination of a suspect, there are methods that apply according to the Criminal Procedure Code , these procedures are:

1. In accordance with Articles 52 and 117 of the Criminal Procedure Code, the answers or information given by the suspect to investigators are given without pressure from anyone and in any form. When providing information, suspects must be "free" and "aware" of their conscience. You must not be coerced in any way, whether physical pressure with acts of violence and abuse, or pressure from investigators or external parties. Regarding guarantees for the implementation of Articles 52 and 117 of the Criminal Procedure Code , there are no sanctions. The only guarantee for the upholding of the provisions of Articles 52 and 117 of the Criminal Procedure Code is through pre-trial, in the form of filing a claim for compensation on the grounds that the examinations have been carried out without reasons based on law. However, this is less effective because it is very difficult for a suspect to prove that the information given during the examination

is the result of coercion and pressure. The appropriate control to avoid pressure or threats in the investigation is the presence of legal advisors following the investigation. Pretrial duties in Indonesia are limited. In Article 78 of the Criminal Procedure Code which is related to Article 77 of the Criminal Procedure Code, it is stated that those who exercise the authority of the district court examine and decide on the following:

- a. whether the arrest, detention, termination of investigation or termination of prosecution is legal;
- b. compensation and/or rehabilitation for a person whose criminal case is stopped at the investigation or prosecution level.

The authority of the court to adjudicate pre-trial as regulated in Article 95 of the Criminal Procedure Code is used as a reason for suspects, defendants or convicts to demand compensation other than the arrest, detention, prosecution, trial of the person, also if the person is subjected to "acts- other actions" which are without reason based on law or because of a mistake regarding the person or the law they apply.

The existence of a pre-trial institution is due to the possibility that certain actions will be needed where an action by the investigator in carrying out an examination of a suspect is feared to violate human rights, namely in the form of coercive measures required for an investigation so that someone can be brought to court because they are accused of committing a crime. criminal act. According to Adnan Buyung Nasution, the emergence of pre-trial institutions in Law Number 8 of 1981 concerning the Criminal Procedure Code was inspired by the principles of *habeas corpus* from the Anglo Saxon system which gave fundamental rights and guarantees to a suspect to prosecute and a lawsuit against the official (police or prosecutor) who detained him to prove that the detention was truly legal and did not violate human rights.

The birth of this Pretrial institution is because in principle, Pretrial aims to carry out horizontal supervision of all acts of coercion carried out by law enforcement officials for the purposes of examining criminal cases so that these actions do not actually conflict with legal regulations and legislation, in addition to the existence of internal supervision in the device itself. Because every act of coercion such as arrest, search, confiscation, detention, prosecution and so on which is carried out contrary to law and legislation is an act of rape or deprivation of human rights.

2. Investigators carefully recorded all the suspect's statements. Everything that the suspect explains about what he has actually done in connection with the criminal

act that is alleged against him is recorded by the investigator as carefully as possible, in accordance with the series of words used by the suspect. The suspect's statement must be recorded and asked or asked for the suspect's agreement regarding the truth and contents of the event report. If the suspect has agreed, then the suspect and the investigator each put their signature on the minutes, whereas if the suspect does not want to sign it, the investigator makes a note in the form of an explanation or statement about this and states the reasons explaining why the suspect does not want to sign it.

3. In Article 119 of the Criminal Procedure Code, it is stated that if the suspect to be questioned is located outside the investigator's legal area, then the investigator concerned can charge the investigation to the authorized investigator in the area where the suspect lives.
4. If the suspect does not appear before the investigator, in accordance with the provisions of Article 113 of the Criminal Procedure Code, the examination can be carried out at the suspect's residence by: the investigator himself coming to carry out the inspection at the suspect's residence. This is done if the suspect cannot attend the examination location determined by the investigator for "appropriate and reasonable reasons". A proper and reasonable reason here means that there must be a statement and the suspect is willing to be questioned at his place of residence, because without a statement of willingness there is an assumption that the examination is "as if by force". To avoid this, it is better to have a statement of willingness, whether this is expressed in writing or orally, which is conveyed by the suspect to the investigator when the investigator visits the suspect at his residence.

Based on the description above, the author concludes that, if the investigation stage alone has committed many violations and errors outside the provisions of the applicable law, then automatically the next stage will be affected, which means it is impossible for the judge's decision to be misled. Apart from that, the only guarantee for upholding the provisions on the rights of suspects who have been violated by investigators or public prosecutors, the Criminal Procedure Code regulates this through pre-trial proceedings, in the form of filing a claim for compensation on the grounds that the investigations have been carried out without a valid reason. However, this is less effective because it is very difficult for a suspect to prove that the information given during the examination is the result of coercion and pressure.

Therefore, in the author's opinion, the importance of case investigation in the implementation of criminal procedural law can be seen in connection with the provisions of the Criminal Procedure Code regarding investigation, prosecution and trial of cases. An investigator must carry out investigations in an orderly manner and must always pay attention to the arguments in the field. An investigator must pay attention to and investigate every fact in the field, no matter how small, because in line with the objectives of criminal procedural law, the task of case investigation is to "search for material truth." Indeed, in investigating criminal cases, absolute material truth can never be obtained 100% because only God knows. However, by paying attention to every argument and fact, no matter how small, as much evidence relating to a criminal case can be sought as possible so that an investigation can approach the truth that a criminal act has been committed and who the perpetrators are.

On the one hand, the problem of providing compensation and rehabilitation in cases of wrongful arrest is still a dilemma faced by law enforcers, not infrequently even as a step to cover up the problem of wrongful arrest by law enforcers, or to cover up the problem of giving punishment to defendants who are Victims of the problem of wrongful arrest by law enforcement officials try to cover up their mistakes in various ways, including:

- a. Do not publish or cover things from the media
- b. Carrying out torture on suspects or defendants so that the suspect or defendant remains consistent with the information given as contained in the investigation report (BAP)
- c. Threatening the suspect or defendant and his family not to tell about the problem of wrongful arrest experienced by the suspect or defendant
- d. Giving bribes to other law enforcers to cover up the problem of wrongful arrest experienced by suspects or defendants
- e. Giving bribes to suspects or defendants and/or the families of suspects or defendants to cover up the problem of wrongful arrest experienced by the suspect or defendant.

Of course, this problem not only needs to be corrected and is homework that needs to be addressed by the government, but also requires a concrete solution whose benefits and justice can be felt directly by the community, especially towards suspects or defendants and/or the families of suspects or defendants who are victims of wrongful arrest. So in this research, researchers reconstruct an ideal and fair solution for all parties,

including law enforcement officers who make mistakes in criminal procedures, as well as for suspects or defendants and/or the families of suspects or defendants who are victims of wrongful arrest, including:

- a. Handling of law enforcement officers who make procedural errors in the criminalization process resulting in the problem of wrongful arrest:
 - 1) An in-depth examination needs to be carried out, both professionally ethically and criminally, which includes:
 - a) There are elements of procedural errors carried out intentionally or unintentionally in the process of investigation, investigation, prosecution and conviction of suspects;
 - b) There needs to be an assessment of formal and material procedural errors to determine what sanctions should be given to law enforcement officials who commit procedural errors.
 - 2) Mistakes in the form of procedures that are carried out accidentally or based on orders from superiors, need to be followed up in form;
 - 3) Errors in the form of procedures carried out intentionally or based on orders from superiors, as well as abuse of authority and position, need to be followed up in the form of;
 - 4) Strict sanctions need to be made according to regulations and implemented in the form of imprisonment, professional ethics sanctions, accompanied by the provision of compensation by law enforcement officials who are legally proven to have committed errors in criminal procedures intentionally, either individually or involving official compensation.
- b. It is necessary to abolish the immunity of judges, if it is proven that the judge has made procedural errors, especially in the form of abuse of authority and mistakes, as a separate form of education for judges to be more careful in conducting case examinations;
- c. It is necessary to update the provisions regarding compensation and rehabilitation including the conditions and procedures for providing compensation, because the current regulations are no longer effective, the updates in question are in the form of:
 1. Suspects or defendants who are proven innocent in the criminal process which has permanent legal force, and are proven to be victims of wrongful arrest need to be given several rights, including:

- a. Compensation for material and immaterial losses;
 - b. There are special recommendations for suspects or defendants who are proven to be victims of wrongful arrest to have their rights restored, especially so that they can be accepted back into society, as well as in obtaining work and income, where the government is obliged to make efforts for suspects or defendants who are proven to be victims of wrongful arrest to be accepted. returns to his place of work if the defendant is proven to have lost his job/was fired from his previous place of work, and if efforts to return the defendant to his original place of work fail, then the relevant law enforcement apparatus is obliged to provide compensation to the suspect or accused who is proven to be a victim of wrongful arrest, the same thing also applies if the suspect or defendant who is proven to be a victim of wrongful arrest previously worked as an entrepreneur;
 - c. Rehabilitation of suspects or defendants who are proven to be victims of wrongful arrest, does not only include announcements in the mass media, both conventional and electronic media, but also special assistance by law enforcement officials for suspects or defendants who are proven to be victims of wrongful arrest so that the suspect or accused is proven to be a victim of wrongful arrest can be accepted back into the community where the suspect or accused who was proven to be a victim of wrongful arrest previously lived;
 - d. Rehabilitation of suspects or defendants who are proven to be victims of wrongful arrest, does not only include announcements in the mass media and assistance, but also psychological and physical rehabilitation, if it is proven that suspects or defendants who are proven to be victims of wrongful arrest suffer psychological and physical injuries, which can disturb the suspect. or the defendant who is proven to be a victim of wrongful arrest returns to live his life as before he was arrested.
2. The conditions for applying for compensation and rehabilitation need to be updated to:
 - a. The suspect or defendant submits a lawsuit or demand to a special judicial body which is authorized to examine cases of wrongful arrest to prove that the suspect or defendant is a victim of wrongful arrest;

- b. The process of submitting a lawsuit or demand to a special judicial body is carried out accompanied by an institution or body and/or a team of credible legal attorneys to ensure that the process of filing a claim for compensation and rehabilitation runs optimally and provides benefits and justice that can be accepted by the community;
- c. The suspect or defendant who submits a lawsuit or demand to a judicial body is obliged to submit the following evidence:
 - 1) Evidence of errors in criminal procedures at the investigation, investigation, prosecution and trial levels,
 - 2) Proof of physical and psychological injuries supported by a post mortem et repertum, as well as a certificate from a special institution that has the authority to carry out psychological examinations of victims of wrongful arrest, whether appointed by the government or having a suitability certification,
 - 3) Evidence of material losses experienced by the suspect or defendant, for example loss of job, loss of fixed and irregular income, loss of the business he is running, loss of objects controlled by the suspect or defendant, losses in the form of debts and receivables arising during the family's detention in experienced by the family and relatives of the defendant, as an effort to prove the defendant's innocence, other losses that can be proven in writing or proven by electronic documents, and testimony.
 - 4) Evidence of immaterial loss, which can be proven in writing or proven by electronic documents, and testimony.

IV. CONCLUSION

Basically, requests for the right to compensation and rehabilitation can be submitted by the suspect, his family or his attorney. So heirs can also apply for rehabilitation. Likewise with compensation for losses. However, in practice and implementation, the concepts of restitution and rehabilitation, especially in cases of wrongful arrest, are still rarely applied in the field of criminal law. The problem of wrongful arrest, of course, not only needs to be corrected and is homework that needs to be addressed by the government, but also requires concrete solutions whose benefits and justice can be felt directly by the community, especially towards suspects or defendants and/or the families

of suspects or defendants who are victims of wrongful arrest. So, in this research, researchers reconstruct an ideal and fair solution for all parties, including law enforcement officials who make mistakes in criminal procedures, as well as for suspects or defendants and/or the families of suspects or defendants who are victims of wrongful arrest.

V. SUGESTIONS

It is recommended that in the future it is necessary to form and implement a series of reforms to the concept of compensation and rehabilitation in criminal cases, especially in cases of wrongful arrest, to be able to provide benefits and justice that can be felt directly by the community, especially towards suspects or defendants and/or the families of suspects or defendants who become victims of wrongful arrest. Apart from that, the government also needs to improve the existing system in order to fix the dilemma faced by law enforcers, which often causes law enforcers to make mistakes in the process, thus causing problems in cases of wrongful arrest.

It is recommended that in the future there be updates to the concept of compensation and rehabilitation, including handling law enforcement officers who make procedural errors in the sentencing process, resulting in the problem of wrongful arrest, the need to eliminate the immunity of judges, if it is proven that the judge has made procedural errors, especially in the form of abuse of authority. and errors, as a separate form of education for judges to be more careful in conducting case examinations, and it is necessary to update the provisions regarding compensation and rehabilitation including the conditions and procedures for providing compensation, because the current regulations are no longer effective, the updates are referred to in the form of requirements and procedures, especially proof of material and immaterial losses experienced by proven suspects or defendants who were victims of wrongful arrest.

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