



CIVIL LAW PROVISIONS ON THE APPLICATION OF COMPENSATION FOR VICTIMS OF UNLAWFUL ARREST BASED ON PROGRESSIVE LEGAL THEORY

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ABSTRACT

Compensation for victims of wrongful arrest in Indonesia is regulated under Article 9 of Government Regulation Number 92 of 2015, which determines minimum and maximum compensation amounts based on the severity of harm suffered by victims. This study aims to analyze the implementation of compensation provisions for wrongful arrest victims, examine the relevance of civil law principles in addressing the resulting material and immaterial losses, and formulate an ideal compensation framework based on progressive legal theory. Using a descriptive-analytical method with a juridical-normative approach, the research relies on secondary data consisting of primary, secondary, and tertiary legal materials, supported by the analysis of relevant court decisions and doctrinal literature. The findings reveal a significant gap between normative regulations and judicial practice, where compensation is largely limited to material aspects and neglects immaterial harms such as psychological trauma, social stigma, and loss of reputation. Consequently, the study concludes that Article 9 of Government Regulation Number 92 of 2015 requires reformulation through a progressive, human-centered approach that integrates civil liability principles and social security mechanisms to ensure comprehensive, proportional, and substantive restitution for victims of wrongful arrest.

A. INTRODUCTION

Provisions refer to something definite or previously determined, essentially related to applicable regulations. According to Daeng¹, terms and conditions are a series of requirements and rules that have been agreed upon by the parties. Therefore, provisions can be understood as things that are definite, determined, or set. A valid legal provision can be measured through two aspects, namely the content or material of the legal provision and its formation process.

The essence of a legal provision lies in the application of legal principles, one of which is the principle of *nemo plus iuris*, meaning that a person can only transfer the rights they possess and cannot exceed the limits of those rights. This principle plays a fundamental role in determining the amount of compensation claims related to damages for victims of wrongful arrests, ensuring the fulfillment of justice.² Justice is a fundamental principle within the Indonesian legal system, reflecting the core values embodied in Pancasila, particularly the second principle, "Just and Civilized Humanity," and the fifth principle, "Social Justice for All the People of Indonesia." These principles affirm that justice serves as an essential moral and legal foundation in the administration of law in Indonesia.

In the Preamble to the 1945 Constitution, the concept of justice is explicitly articulated in the first, second, and fourth paragraphs. Furthermore, within the body of the 1945 Constitution, the term "justice" is mentioned at least twelve times, underscoring its central role as a primary objective of the Indonesian state. Consequently, fair treatment must be upheld in all circumstances, including in the civil provisions concerning the application of compensation for victims of wrongful arrest based on Progressive Law Theory.³ In this context, justice is regarded as a core element, even considered the "soul" that must permeate and animate the Indonesian legal system.

According to the principle of *restitutio in integrum*, which means restoring to the original state, this principle becomes relevant in the context of fulfilling justice. This is because justice not only demands recognition of the violation but also emphasizes the importance of providing comprehensive

¹ HR Daeng Naja, *Contract Drafting Seri Keterampilan Merancang Kontrak Bisnis*, (Citra Aditya Bakti, 2006), 12.

² Sebastian Dwi Cahya, Marius Suprianto Sakmaf, and Achmad Junaedy, "Injustice Behind Rights: Unveiling the Paradox of Wrongful Arrest Victims," *Sinergi International Journal of Law* 2, no. 3 (2024): 175. See too, Adi Gunawan, Parningotan Malau, Wildani Khotami, and Harley Clifford Jonas Salmon, "The Impact of Error in Persona: Liability of Police Investigators in Wrongful Arrest Cases," *Journal of Strafvorderung Indonesian* 1, no. 4 (2024): 17.

³ Arthur Josias Simon Runturambi, Munarni Aswindo, and Eliza Meiyani, "No viral no justice: A criminological review of social media-based law enforcement from the perspective of progressive law," *Jurnal IUS Kajian Hukum dan Keadilan* 12, no. 1 (2024): 180. See too, Heri Gunawan, "Ganti kerugian terhadap korban salah tangkap dalam penerapan hukum yang berkeadilan," *Jurnal Hukum Uniski* 11, no. 1 (2022): 26.

restitution to the wrongful arrest victim, bringing them back to the condition they were in before the harm occurred.⁴ In the context of civil law, such restitution can be understood as compensation. According to Kadarisman: "Compensation is what employees receive in exchange for their work. Whether hourly wages or periodic salaries, the personnel department usually designs and administers employee compensation.⁵ Compensation is all income in the form of money or goods, directly or indirectly, received by employees as a reward for the services rendered to the company."

Under Indonesian civil law, the basis for providing compensation can come from wanprestasi (breach of contract) as stipulated in Article 1248 of the Civil Code, or from unlawful acts as outlined in Article 1365 of the Civil Code, both of which require the elements of fault, resulting harm, and a causal relationship between the two. Compensation can take the form of reimbursement of costs, repair of damages, restoration of rights, or efforts to return to the original state.⁶ The term compensation is also often equated with restitution, which not only aims to restore the condition of the victim but also serves a resocialization function.⁷ In the context of wrongful arrests, compensation plays a crucial role as an instrument of dignity restoration, protection of rights, and reduction of the psychological and social burden experienced by the victim. Wrongful arrest is also referred to as restitution.⁸

Restitution refers to the provision of compensation that is imposed on the perpetrator of a criminal act based on a legally binding court decision (inkracht). "Restitution, as a concept of restoring rights for victims, must be given to re-establish or return the victim to the state they were in before the crime occurred." The form of restitution to the victim must be as complete as possible, covering all aspects resulting from the crime. With restitution, the victim's freedom, legal rights, social status, and family life are restored.

⁴ Amalia Tasya, "The Impact of Error in Persona: Liability of Police Investigators in Cases of Wrongful Arrests," *Journal of Strafvordering Indonesian* 1, no. 3 (2024): 31. See too, Vika Dwi Arisma, Akhmad Faqih Mursid, and Wahab Aznul Hidaya, "Perlindungan Hukum Bagi Korban Salah Tangkap Dalam Kasus Pembunuhan Perspektif Hukum Pidana," *Judge: Jurnal Hukum* 5, no. 02 (2024): 189.

⁵ Wahyu Pratama Tamba, and Fulgensius Surianto, "Tindakan Salah Tangkap Kepolisian: Tanggung Jawab Negara Dalam Memberikan Kompensasi," *Jurnal Hak Asasi Manusia* 17, no. 1 (2024): 12.

⁶ Syarif Abdul Rohman, and Umi Rozah, "Kebijakan Kriminal Mengenai Pemberian Ganti Kerugian Terhadap Korban Salah Tangkap," *Jurnal Pembangunan Hukum Indonesia* 2, no. 1 (2020): 119.

⁷ Dadang Suprijatna, "Analysis Police Efforts in Clear Her Name Due To False Arrest According To Article 1, Item 23 about Rehabilitation Arrest Criminal Code," *Jurnal Hukum De'rechtsstaat* 1, no. 2 (2015): 98.

⁸ Saparudin Efendi, and Rina Khairani Pancaniningrum, "Perlindungan Hukum Terhadap Korban Salah Tangkap (Error in Persona)," *Jurnal Education and Development* 9, no. 3 (2021): 593. See too, Intan Maharani Putri, "Ganti Kerugian Terhadap Korban Salah Tangkap Dalam Perkara Pidana: Studi Putusan Nomor 1273/Pid. B/2013/PN. Jkt. Sel Juncto Penetapan Nomor 98/Pid. Prap/2016/PN. Jkt. Sel," *LEX CERTA* 5, no. 1 (2019): 12.

The provisions concerning restitution in Indonesia are regulated in Article 9 of Government Regulation Number 92 of 2015 on the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code.⁹ This regulation introduces significant changes to the mechanism for granting compensation to victims of wrongful arrest.¹⁰ Compensation based on the grounds stipulated in Article 77 letter (b) and Article 95 of the Criminal Procedure Code is now set at a minimum of IDR 500,000 and a maximum of IDR 100 million, whereas previously it ranged from IDR 5,000 to IDR 1,000,000.¹¹ Furthermore, compensation awarded under Article 95 of the Criminal Procedure Code for cases resulting in serious injury or permanent disability that renders the victim unable to work is determined at a minimum of IDR 25 million and a maximum of IDR 300 million, compared to the previous range of IDR 0 to IDR 3 million. In cases resulting in death, compensation based on Article 95 of the Criminal Procedure Code is set at a minimum of IDR 50 million and a maximum of IDR 600 million, which previously ranged from IDR 0 to IDR 3 million.¹²

Article 9 of Government Regulation Number 92 of 2015 stipulates compensation values starting from IDR 500,000 up to a maximum of IDR 600 million. However, judicial practices reveal significant differences. For example, the Bandung District Court Decision Number 10/Pid.Pra/2024/PN Bdg, which freed Pegi Setiawan and awarded a compensation claim of IDR 190 million, the Palangkaraya District Court Decision Number 1/Pid.Pra/2023/PN Plk, which only awarded IDR 500,000 to Willem Hengki, and the Ambon District Court Decision Number 06/Pid.Pra/2017/PN Amb, which rejected Paulus Semuel Puttileihalat's claim for IDR 10 million in compensation. These variations in court rulings show discrepancies between norms and their implementation in practice, highlighting that the principles of legal certainty and justice have not been fully realized.

⁹ Shynta Soplantila, "Penerapan Hak Ganti Rugi Terhadap Korban Salah Tangkap Menurut PP Nomor 92 Tahun 2015," *Lex Crimen* 6, no. 10 (2017): 24. See too, Rachmat Trijono, "Revisi Peraturan Pemerintah Nomor 92 Tahun 2015 Terhadap Komponen dan Besaran Ganti Kerugian," *Jurnal Ilmiah Living Law* 11, no. 2 (2019): 82.

¹⁰ Maryani Tefliana Nainatun, Heryanto Amalo, and Darius A. Kian, "Sebab Dan Akibat Serta Pertanggungjawaban Hukum Terhadap Kasus Salah Tangkap (Error in Persona) Di Wilayah Hukum Kepolisian Resor Kupang Kota," *Petitum Law Journal* 1, no. 2 (2024): 559. See too, Abelia Zahara Putri, Heni Siswanto, Rini Fathonah, Nikmah Rosidah, and Rinaldy Amrullah, "Analisis Upaya Hukum Yang Dapat Dilakukan Oleh Korban Salah Tangkap," *AKADEMIK: Jurnal Mahasiswa Humanis* 5, no. 2 (2025): 1203.

¹¹ Megit, and HM Abidin Ramli, "Penuntutan Ganti Kerugian Menurut Kuhperdata Dalam Hubungannya Dengan Pasal 77 KUHAP," *Sultra Law Review* (2020): 817.

¹² Andreas Andrie Djatmiko, Fury Setyaningrum, and Rifana Zainudin, "Implementasi Bentuk Ganti Rugi Menurut Burgelijk Wetboek (Kitab Undang-Undang Hukum Perdata) Indonesia," *Nomos: Jurnal Penelitian Ilmu Hukum* 2, no. 1 (2022): 4.

This condition underscores the importance of studying the Civil Provisions on the Application of Compensation for Wrongful Arrest Victims Based on Progressive Law Theory. The study focuses on three main issues: (1) The implementation of compensation provisions for wrongful arrest victims in Indonesia, (2) The relevance of civil law principles in resolving the harm caused to wrongful arrest victims, and (3) The ideal concept of compensation provisions for wrongful arrest victims based on progressive law theory.

B. RESEARCH METHODS

This research is descriptive-analytical in nature, aiming to describe the provisions related to compensation for wrongful arrest victims by processing secondary data in the form of primary, secondary, and tertiary legal materials, which are then analyzed based on relevant theories and concepts.¹³ The approach method used by the author in this study is a juridical-normative approach, which is a legal research method that utilizes approaches/theories/concepts and analytical methods within the discipline of law. This study specifically examines the provisions of Article 9 of Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983, which regulates the amount of compensation for victims of wrongful arrest. The analysis was conducted using a juridical-normative approach to the legal norms governing the minimum and maximum limits of compensation as stipulated in the article, by examining their relationship with Article 77 (b) and Article 95 of the Criminal Procedure Code. This review aims to understand the normative construction of state policy in providing legal protection and restoration of rights for victims of wrongful arrest. Data is collected through document studies to obtain relevant concepts, theories, opinions, and findings related to the issue, as well as through library and field studies. Data analysis is carried out systematically on all the materials and information obtained. This approach is dogmatic in nature, focusing on legal principles and norms, which serve as guidelines for proper conduct or actions. These norms specifically relate to the civil claims for the application of compensation for wrongful arrest victims.

C. DISCUSSION

1. Implementation of Compensation Provisions for Wrongful Arrest Victims

The implementation of compensation for wrongful arrest victims in Indonesia shows a disparity in court decisions.¹⁴ The Bandung District Court in

¹³ Vera Firdaus, dan Mas Oetarjo, *Buku Ajar Manajemen Kompensasi*, (Sidoarjo: UMSIDA PRESS, 2022), 12.

¹⁴ Anna Helena Albrecht, Compensation for wrongful convictions in Germany, In *Compensation for Wrongful Convictions*, 1st Edition, (Routledge: Uniwersytet Wrocławski, 2023), 28. See too, Abelia Zahara Putri, Heni Siswanto, Rini Fathonah, Nikmah Rosidah, and Rinaldy Amrullah,

the Pegi Setiawan case in 2024 annulled the designation of the suspect and restored the rights with a compensation request of IDR 190 million. The Palangkaraya District Court in the Willem Hengki case in 2023 only awarded IDR 500,000, while the Ambon District Court in the Paulus Semuel case in 2017 confirmed the unlawful arrest and violation of human rights but rejected the claim for IDR 10 million in compensation.¹⁵ These three decisions demonstrate that the victims' restoration is still limited to the legal status aspect without adequate compensation. The compensation provided is very minimal and disproportionate to the psychological, social, or economic losses suffered by the victims. This highlights that judicial practice does not align with the principles of legal certainty, substantive justice, and the concept of restorative justice, which demands comprehensive restitution.

This condition contradicts the principle of the rule of law, which should be reciprocal, adaptive, and protect citizens. The concept of a prismatic rule of law emphasizes the importance of law rooted in the social and cultural values of society (living law). Therefore, the injustice experienced by the victims of wrongful arrest reflects the failure of the Indonesian legal system to realize a responsive and just legal framework.¹⁶ The existence of legal certainty is a fundamental pillar in the rule of law concept, aiming to ensure order, predictability, and the protection of individual rights in society. As emphasized by Muslih, legal certainty is essentially not standalone but serves as a means to achieve justice. This means that both procedural and substantive legal certainty must always be directed towards serving the values of justice, which is the ultimate goal of the legal system.

The decisions in the wrongful arrest cases of Pegi Setiawan, Willem Hengki, and Paulus Semuel Puttileihalat do not yet reflect dynamic and just legal certainty because they do not provide adequate compensation for the victims, even though Article 9 of Government Regulation Number 92 of 2015 outlines the basis for compensation.¹⁷ However, this regulation remains general and does not provide a clear implementation mechanism. Therefore,

¹⁵ "Analisis Upaya Hukum Yang Dapat Dilakukan Oleh Korban Salah Tangkap," *AKADEMIK: Jurnal Mahasiswa Humanis* 5, no. 2 (2025): 1199.

¹⁶ Nathalia Waturandang, "Kajian Juridis Korban Salah Tangkap Oleh Polisi Ditinjau Dari Hak Asasi Manusia," *Lex Et Societatis* 4, no. 2 (2016): 135. See too, Maryani Tefliana Nainatun, Heryanto Amalo, and Darius A. Kian, "Sebab Dan Akibat Serta Pertanggungjawaban Hukum Terhadap Kasus Salah Tangkap (Error in Persona) Di Wilayah Hukum Kepolisian Resor Kupang Kota," *Petitum Law Journal* 1, no. 2 (2024): 560.

¹⁷ Saparudin Efendi, and Rina Khairani Pancaningrum, "Perlindungan Hukum Terhadap Korban Salah Tangkap (Error in Persona)," *Jurnal Education and Development* 9, no. 3 (2021): 595. See too, Intan Maharani Putri, "Ganti Kerugian Terhadap Korban Salah Tangkap Dalam Perkara Pidana: Studi Putusan Nomor 1273/Pid. B/2013/PN. Jkt. Sel Juncto Penetapan Nomor 98/Pid. Prap/2016/PN. Jkt. Sel," *LEX CERTA* 5, no. 1 (2019): 12.

¹⁸ Shynta Soplantila, "Penerapan Hak Ganti Rugi Terhadap Korban Salah Tangkap Menurut PP Nomor 92 Tahun 2015," *Lex Crimen* 6, no. 10 (2017): 26.

from the perspective of Progressive Law Theory, it requires more detailed regulation to ensure that the protection of victims' rights and human dignity can be fully and fairly realized.¹⁸ Such protection includes compensation awarded on the grounds referred to in Article 77 letter (b) and Article 95 of the Criminal Procedure Code, with amounts set at a minimum of IDR 500,000 and a maximum of IDR 100 million, compensation determined under Article 95 of the Criminal Procedure Code for cases resulting in serious injury or permanent disability that renders the victim unable to work, with amounts ranging from a minimum of IDR 25 million to a maximum of IDR 300 million, and compensation provided on the basis of Article 95 of the Criminal Procedure Code for cases resulting in death, with compensation amounts ranging from a minimum of IDR 50 million to a maximum of IDR 600 million.¹⁹

This is important so that the law is not merely symbolic or procedural, but is capable of ensuring full restitution for citizens who are victims of the legal system itself.²⁰ Therefore, the absence of a compensation order in the court rulings for these cases indicates that the state has not fully realized its constitutional responsibility to restore the dignity and rights of the victims of legal violations.

The wrongful arrest cases experienced by Pegi Setiawan, Willem Hengki, and Paulus Semuel Puttileihalat highlight the failure of the legal system to protect victims fairly and underscore the importance of applying Progressive Law Theory, which views law as a tool to achieve substantive justice.²¹ According to Satjipto Rahardjo²², Progressive Law places humans at the center of all legal activities, with the principle that "law is for humans, not humans for law." In this view, law is not positioned as an absolute or unquestionable entity, but as a dynamic instrument that must continually evolve in line with social development and the needs of society. Legal decisions, whether made by the legislature, judiciary, or executive, are terminal and open to critique

¹⁸ Danrivanto Budhijanto, *Teori Hukum dan Revolusi Industri 4.0*, (Bandung: LoGoz Publishing, 2018), 131.

¹⁹ Heri Gunawan, "Ganti kerugian terhadap korban salah tangkap dalam penerapan hukum yang berkeadilan," *Jurnal Hukum Uniski* 11, no. 1 (2022): 28. See too, Maryani Tefliana Nainatun, Heryanto Amalo, and Darius A. Kian, "Sebab Dan Akibat Serta Pertanggungjawaban Hukum Terhadap Kasus Salah Tangkap (Error in Persona) Di Wilayah Hukum Kepolisian Resor Kupang Kota," *Petitum Law Journal* 1, no. 2 (2024): 563.

²⁰ Abelia Zahara Putri, Heni Siswanto, Rini Fathonah, Nikmah Rosidah, and Rinaldy Amrullah, "Analisis Upaya Hukum Yang Dapat Dilakukan Oleh Korban Salah Tangkap," *AKADEMIK: Jurnal Mahasiswa Humanis* 5, no. 2 (2025): 1201.

²¹ Nino Gilang Darmawan, "Ideal Reconstruction of Compensation and Rehabilitation in False Arrests Cases," *Bhayangkara Law Review* 1, no. 1 (2024): 31. See too, Andreas Andrie Djatmiko, Fury Setyaningrum, and Rifana Zainudin, "Implementasi Bentuk Ganti Rugi Menurut Burgelijk Wetboek (Kitab Undang-Undang Hukum Perdata) Indonesia," *Nomos: Jurnal Penelitian Ilmu Hukum* 2, no. 1 (2022): 5.

²² Satjipto Rahardjo, *Hukum progresif: sebuah sintesa hukum Indonesia*, (Jakarta: Genta Publishing, 2009), 134.

and improvement. Therefore, the progressive legal approach demands the courage to break out of rigid positivist frameworks and encourages the search for new legal formats, principles, and values that are more responsive and humanistic.

Court rulings in wrongful arrest cases have so far only freed the victims from criminal charges, without providing comprehensive restitution for the social, economic, or psychological damages.²³ In the framework of progressive law and the principle of *restitutio in integrum*, the state has an obligation to provide multidimensional compensation, including rehabilitation of reputation, economic recovery for families, and social security guarantees as a form of substantive justice and respect for human dignity.²⁴

The research on the three court decisions regarding wrongful arrest cases (Pegi Setiawan, Willem Hengki, and Paulus Semuel Puttileihalat) shows that although the legal status of the victims is restored through the annulment of the suspect's designation, the compensation aspect remains far from adequate. The victims' rights are limited to the restoration of status and dignity, while compensation, which should be an important part of substantive justice, is not fully achieved. Civil law principles such as legal certainty, protection of rights, *neminem laedere*, and responsibility should guarantee justice for the victims. However, their application in practice is still not optimal. While the court decisions do remove the legal charges, the compensation provided is minimal, disproportionate, and often overlooks immaterial damages, resulting in the failure to fulfill the victims' substantive justice.

This analysis integrates national regulations and legal theories, including *restitutio in integrum*, which demands full restoration, the theory of convergence that harmonizes international and national legal systems, and contemporary legal theory that emphasizes the adaptation of law to the needs of the times.²⁵ Article 9 of Government Regulation Number 92 of 2015 focuses solely on regulating material compensation in quantitative terms, whereas Law Number 40 of 2004 concerning the National Social Security System places greater emphasis on the recovery of immaterial aspects.²⁶

²³ Sebastian Dwi Cahya, Marius Suprianto Sakmaf, and Achmad Junaedy, "Injustice Behind Rights: Unveiling the Paradox of Wrongful Arrest Victims," *Sinergi International Journal of Law* 2, no. 3 (2024): 177.

²⁴ Yepriadi, "Penerapan Rehabilitasi Dan Ganti Kerugian Bagi Korban Salah Tangkap Dalam Perkara Tindak Pidana Pencurian," *Jurnal Cakrawala Ilmiah* 2, no. 10 (2023): 3998. See too, Novaldy Mumek, "Rehabilitasi Dan Ganti Rugi Terhadap Korban Salah Tangkap Menurut KUHAP," *Lex Crimen* 10, no. 7 (2021): 322.

²⁵ Jazim Hamidi, *Membedah Teori-teori Hukum Kontemporer*, (Malang: Universitas Brawijaya Press, 2013), 9.

²⁶ Aria Yuditia, Yusup Hidayat, and Suparji Achmad, "Pelaksanaan Jaminan Kesehatan Nasional Oleh Bpjs Berdasarkan Undang-Undang No. 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional," *Jurnal Magister Ilmu Hukum* 6, no. 1 (2021): 45.

2. Relevance of Civil Law Principles in Resolving Damages for Wrongful Arrest Victims

Civil law principles serve as a philosophical foundation and practical guidelines in the formation and application of norms, while also providing a framework for judges, practitioners, and academics. Key principles highlighted by experts, such as the principle of legal certainty, protection of rights, *neminem laedere*, and responsibility, reflect a balance between certainty, justice, and the protection of rights. In the Civil Code, the principle of legal certainty is implied in Article 1338, paragraph (1), through the principle of *pacta sunt servanda*, which emphasizes that a valid agreement binds the parties as if it were law and ensures the certainty of its implementation.

The principle of legal certainty is one of the objectives of law, alongside justice and utility. The law must provide certainty, because without it, individuals do not know what they are supposed to do, leading to uncertainty. Legal certainty is intended to protect individuals from arbitrary actions, allowing them to anticipate the consequences of their actions. Gustav Radbruch asserts that the purpose of law encompasses three fundamental elements: justice, utility, and legal certainty, emphasizing that legal certainty is indispensable because law without certainty cannot function as law.²⁷ This view is reinforced by Wirjono, who explains that civil law governs the rights and obligations of individuals in their legal relationships with one another and, therefore, requires a high degree of legal certainty to ensure that those rights and obligations can be implemented and enforced in a fair and orderly manner.

From these views, it can be concluded that the principle of legal certainty is a fundamental goal of law, alongside justice and utility. Legal certainty is necessary to protect individuals from arbitrary actions and to allow them to foresee the consequences of their actions. Without certainty, the law loses its meaning as a binding rule that guides behavior. In the context of wrongful arrest cases, the principle of legal certainty becomes particularly important because such actions are clearly a violation of individual human rights.²⁸ Therefore, as emphasized by Sudikno Mertokusumo, Gustav Radbruch, and Wirjono Prodjodikoro, legal certainty must be realized not only through the recognition of rights but also through providing compensation,

²⁷ Mohammad Muslih, "Negara hukum Indonesia dalam perspektif teori hukum Gustav Radbruch (Tiga nilai dasar hukum)," *Legalitas: Jurnal Hukum* 4, no. 1 (2017): 141. See too, Muhammad Bintang Firdaus, "Dialektika Keadilan, Kepastian, Kemanfaatan Hukum dalam Perspektif Gustav Radbruch pada Hukum Indonesia," *Jurnal Kajian Hukum Dan Kebijakan Publik/ E-ISSN: 3031-8882* 3, no. 1 (2025): 361.

²⁸ Adi Gunawan, Parningotan Malau, Wildani Khotami, and Harly Clifford Jonas Salmon, "The Impact of Error in Persona: Liability of Police Investigators in Wrongful Arrest Cases," *Journal of Strafvorderung Indonesian* 1, no. 4 (2024): 19.

both material and immaterial, to victims of wrongful arrest so that substantive justice can truly be achieved.²⁹

From the perspective of both civil and criminal law, a wrongful arrest by law enforcement authorities can be classified as an unlawful act.³⁰ This is based on the principle that every action of the state, including that of law enforcement officials, must adhere to the law and cannot infringe on the rights of citizens. A wrongful arrest constitutes a violation of the principle of legality, the principle of legal certainty, and the principle of human rights protection, as it inflicts both material and immaterial harm on an individual who should, by law, remain free. Such harm gives rise to legal responsibility, as reflected in Article 1365 of the Civil Code, which provides that any unlawful act causing loss to another person creates an obligation for the party responsible namely, the state through its law enforcement apparatus to provide compensation. Thus, wrongful arrest not only tarnishes the integrity of law enforcement but also demands a tangible accountability mechanism for the victims so that substantive justice can be realized.

3. Ideal Concept of Civil Provisions on Compensation for Wrongful Arrest Victims Based on Progressive Law Theory

From the four characteristics of the Pancasila State of Law within the framework of thinking, it can be concluded that the Pancasila State of Law is: Indonesia's state of law adopts a prismatic concept that combines legal certainty (Rechtsstaat) and justice (Rule of Law), while placing the collective interest above individual interests. Law is seen as a tool for change and a reflection of society, aligning with living law. In the Pancasila Legal System, Indonesia is neither a religious nor a secular state, but a religious nation-state that respects all religions with civility.

The principles of legal certainty (Rechtsstaat) and justice (Rule of Law) must work together in wrongful arrest cases.³¹ However, reputation restoration and compensation often do not reflect both, as seen in the cases of Willem Hengki, Paulus Samuel, and Pegi Setiawan, which demonstrate the weakness in victim restitution. Although their legal status was restored through pretrial rulings, the compensation aspect has not been justly fulfilled, as seen in the compensation claim of IDR 190 million in the Pegi Setiawan case.

²⁹ Zahrah Salsabilah Ashari, "Exceptio Dilatoria in the Indonesian Context: Implementation of Justice and Legal Certainty from Radbruch's Perspective," *Peradaban Journal of Law and Society* 3, no. 1 (2024): 34.

³⁰ Nathalia Waturandang, "Kajian Juridis Korban Salah Tangkap Oleh Polisi Ditinjau Dari Hak Asasi Manusia," *Lex Et Societatis* 4, no. 2 (2016): 131.

³¹ United States, Key Provisions in Wrongful Conviction Compensation Laws, *The National Registry of Exoneration*, (n.d.), Retrieved in September 24, 2025 from. <https://www.law.umich.edu/special/exoneration/Documents/Key-Provisions-in-Wrongful-Conviction-Compensation-Laws.pdf>.

The uncertainty and injustice in handling severe human rights violations reflect the weakness in victim restoration.³² The state, in accordance with Law Number 26/2000 and Law Number 39/1999, is obliged to provide compensation, restitution, rehabilitation, and guarantee the restoration of the victims' dignity as a form of legal and moral responsibility. "Protection, promotion, enforcement, and fulfillment of human rights are primarily the responsibility of the government." The state's responsibility is also found in the Preamble to the UDHR, which states: Member states pledge to achieve progress and general respect for human rights and fundamental freedoms by working together with the United Nations.

The mechanism of compensation for wrongful arrest victims still burdens the victims through complicated procedures and social stigma, even though reputation restoration and compensation should be the state's responsibility to guarantee justice and rehabilitation.³³ Justice in the Pancasila perspective demands that the legal system provide real protection for victims of wrongful arrest, emphasizing human dignity and the equitable distribution of social justice.

The implementation of Pancasila justice values must be based on the principle of legal certainty that is not formalistic but functional and progressive. In this regard, Mahfud MD emphasizes that the existence of legal certainty in the national legal system must be used as a means to achieve justice. He states, "Legal certainty should not only be normative but also operational and responsive to the values of social justice that live within society." Thus, the law should not merely be embodied in laws and regulations, but also must be effectively and justly implemented in practice.

Legal certainty should be an instrument for achieving justice, but in the practice of compensation for wrongful arrest victims, the existing normative provisions (Law Number 31 of 2014, Article 77) are still general and do not meet the real needs of the victims. The weak implementation causes the law to lose its legitimacy, as it does not reflect substantive justice. Therefore, more detailed and contextual compensation parameters are needed, covering material and immaterial losses, the duration of detention, and social-economic impacts, so that legal protection becomes more just, proportional, and in line with the values of Pancasila justice. Progressive law theory places law as a dynamic and humanistic instrument that must serve human interests.³⁴ Law is not absolute but open to review according to societal developments. With this

³² Nathalia Waturandang, "Kajian Juridis Korban Salah Tangkap Oleh Polisi Ditinjau Dari Hak Asasi Manusia," *Lex Et Societatis* 4, no. 2 (2016): 134.

³³ Anna Helena Albrecht, Compensation for wrongful convictions in Germany, In *Compensation for Wrongful Convictions*, 1st Edition, (Routledge: Uniwersytet Wrocławski, 2023), 29.

³⁴ Inayatul Fitria, and Rusydina Nur Ahlina, "Perlindungan Hukum terhadap Korban Salah Tangkap," *Ma'mal: Jurnal Laboratorium Syariah dan Hukum* 5, no. 4 (2024): 371.

perspective, the formulation of civil compensation for wrongful arrest victims must be responsive, protect the people, and deliver substantive justice.

This theory is essential in determining the parameters for civil claims concerning compensation for wrongful arrest within the Indonesian judicial system. Therefore, it can be concluded that the provisions of Article 9 of Government Regulation Number 92 of 2015 should be further elaborated and not remain broadly formulated.³⁵ Such elaboration includes compensation granted on the grounds stipulated in Article 77 letter b and Article 95 of the Criminal Procedure Code (*Kitab Undang Undang Hukum Pidana/KUHAP*), with amounts ranging from a minimum of IDR 500,000 to a maximum of IDR 100 million; compensation awarded based on Article 95 of the Criminal Procedure Code in cases resulting in serious injury or permanent disability that renders the victim unable to work, with amounts ranging from a minimum of IDR 25 million to a maximum of IDR 300 million; and compensation determined on the basis of Article 95 of the Criminal Procedure Code for cases resulting in death, with compensation amounts ranging from a minimum of IDR 50 million to a maximum of IDR 600 million.³⁶

The compensation provisions for victims of wrongful arrest remain general in nature and therefore do not fully reflect the principles of legal certainty and justice.³⁷ As a result, a reformulation of the relevant article is necessary through a progressive legal approach that views law as a dynamic, responsive, and human-centered instrument, ensuring that compensation functions as a means of fair and substantive restoration. Based on this approach, regulations concerning compensation for wrongful arrest victims can be formulated by adopting and integrating existing legal provisions, including Government Regulation Number 92 of 2015 as an amendment to Government Regulation Number 27 of 1983 on the Implementation of the Criminal Procedure Code, which provides the legal basis for compensation and rehabilitation mechanisms within the criminal justice process, as well as Law Number 40 of 2004 on the National Social Security System, particularly Article 18, which establishes that the social security system comprises five main programs: health insurance, work accident insurance, old-age insurance, pension insurance, and death insurance.³⁸

³⁵ Rachmat Trijono, "Revisi Peraturan Pemerintah Nomor 92 Tahun 2015 Terhadap Komponen dan Besaran Ganti Kerugian," *Jurnal Ilmiah Living Law* 11, no. 2 (2019): 84.

³⁶ Megit, and HM Abidin Ramli, "Penuntutan Ganti Kerugian Menurut Kuhperdata Dalam Hubungannya Dengan Pasal 77 KUHAP," *Sultra Law Review* (2020): 818.

³⁷ Rina Maryani, Dheny Wahyudhi, and Elizabeth Siregar, "Perlindungan Hukum Terhadap Korban Yang Salah Tangkap Dalam Proses Penyidikan," *PAMPAS: Journal of Criminal Law* 3, no. 2 (2022): 148.

³⁸ Aria Yuditia, Yusup Hidayat, and Suparji Achmad, "Pelaksanaan Jaminan Kesehatan Nasional Oleh Bpjs Berdasarkan Undang-Undang No. 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional," *Jurnal Magister Ilmu Hukum* 6, no. 1 (2021): 45.

A cross-sectoral approach is required to ensure that the compensation mechanism for victims of wrongful arrest becomes more systematic, comprehensive, and just, while also safeguarding the sustainability of social welfare in accordance with the spirit of progressive law that prioritizes humanity. Accordingly, the civil provisions for the application of compensation for wrongful arrest victims based on progressive legal theory encompass guarantees of reputation rehabilitation and trauma rehabilitation, the availability of alternative sources of rehabilitation funding, as well as the provision of health insurance, work accident insurance, and death insurance.³⁹

There are several reasons that underlie the process of cross-legislative synergy between Government Regulation Number 92 of 2015, as a revision of Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code (*Kitab Undang Undang Hukum Pidana*/KUHAP), which provides the legal foundation for the compensation and rehabilitation mechanism in the criminal justice process, and Law Number 40 of 2004 concerning the National Social Security System, particularly Article 18, which stipulates that the social security system covers five main programs: health insurance, work accident insurance, old-age insurance, pension insurance, and death insurance.⁴⁰

Globalization has led to the convergence of legal systems. Legal and economic scholars have predicted that legal systems will move toward greater adequacy. They argue that the implications of globalization will compel legal systems to converge in order to achieve economic efficiency. Many legal scholars believe that such convergence will happen, especially those who follow the functionalist comparative school of thought, believing that the concept of legal unification is desirable and inevitable in a legal order. Globalization encourages legal convergence for economic efficiency, in line with the law and economics theory, which emphasizes minimizing transaction costs. However, legal unification does not always automatically succeed, requiring empirical study. In Indonesia, the emergence of the Pancasila Legal Theory, as a synthesis of development, progressive, and integrative theories, as well as the judicial practices of filling legal gaps, reflects a convergence between the Civil Law and Common Law systems.

The theory of legal convergence explains that the development of

³⁹ Ayi Safitri Maulidah, and Slamet Tri Wahyudi, "Problematika Penerapan Kebijakan Rehabilitasi Dan Kompensasi Terhadap Narapidana Korban Salah Tangkap Dalam Perspektif Hak Asasi Manusia," *Lex Librum: Jurnal Ilmu Hukum* 9, no. 1 (2022): 57. See too, Novaldy Mumek, "Rehabilitasi Dan Ganti Rugi Terhadap Korban Salah Tangkap Menurut KUHAP," *Lex Crimen* 10, no. 7 (2021): 322.

⁴⁰ Novaldy Mumek, "Rehabilitasi Dan Ganti Rugi Terhadap Korban Salah Tangkap Menurut KUHAP," *Lex Crimen* 10, no. 7 (2021): 322. See too, Hatlyinsyanna Seroy, "Perlindungan Hukum terhadap Korban Salah Tangkap dari Sudut Pandang Kuhap," *Lex Crimen* 5, no. 5 (2016): 233.

globalization encourages legal systems from various traditions to move closer together and adopt practices deemed effective, in order to achieve economic efficiency and social justice. In the context of Indonesia, this principle is reflected in the relationship between Article 9 of Government Regulation Number 92 of 2015 on compensation for wrongful arrest victims, and Law Number 40 of 2004 on the National Social Security System (*Sistem Jaminan Sosial Nasional/SJSN*).⁴¹

Article 9 of Government Regulation Number 92 of 2015 regulates the right of victims of wrongful arrest to receive appropriate compensation from the state, as a form of restoration for the harm caused by errors in law enforcement.⁴² Meanwhile, Law Number 40 of 2004 governs the mechanism of national social security, which includes protection from social and economic risks, including income loss, physical harm, and psychological impact.

The theory of convergence, which emphasizes mutual adoption and harmonization between legal systems, aligns with contemporary legal theories that focus on the adaptation of law to global dynamics, technology, and social change. Both perspectives view law as a dynamic entity that must respond to the times. As stated, "Contemporary legal theory is an approach in legal studies that has developed in the modern era and continues to do so, seeking to move beyond the limits of classical legal theories such as legal positivism or natural law. Its focus is on aligning legal analysis with rapidly changing social, political, economic, technological, and cultural developments."

The application of contemporary legal theory in synergizing Article 9 of Government Regulation Number 92 of 2015 can be seen as a justice-based restoration instrument, as it allows for the adjustment of norms to meet the needs of victims through restitution and compensation mechanisms. At the same time, its integration with Law Number 40 of 2004 concerning the National Social Security System expands the scope of protection by incorporating social security aspects as a tangible form of continuous protection for society.

The principle of *restitutio in integrum* is a legal principle aimed at restoring the victim's position to its original state before the unlawful act occurred. In the context of civil law, this principle serves as an important indicator for assessing the effectiveness of the civil liability system. In Indonesia, its application is still limited to material compensation, such as

⁴¹ Aria Yuditia, Yusup Hidayat, and Suparji Achmad, "Pelaksanaan Jaminan Kesehatan Nasional Oleh Bpjs Berdasarkan Undang-Undang No. 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional," *Jurnal Magister Ilmu Hukum* 6, no. 1 (2021): 48. See too, Ahmad Andrika, Ibrahim Ahmad, and Arifin Tumuhulawa, "Badan Penyelenggara Jaminan Sosial Ketenagakerjaan Berdasarkan Undang-undang Nomor 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional," *Journal Evidence Of Law* 2, no. 3 (2023): 74.

⁴² Shynta Soplantila, "Penerapan Hak Ganti Rugi Terhadap Korban Salah Tangkap Menurut PP Nomor 92 Tahun 2015," *Lex Crimen* 6, no. 10 (2017): 29.

financial compensation or replacement of goods, while non-material aspects, such as reputation restoration or psychological harm, have not received adequate attention.⁴³

The principle of *restitutio in integrum* emphasizes full restitution for victims of legal violations, aiming to return the victim to their original state before the unlawful act took place.⁴⁴ This principle is applicable in both international and national civil law as a measure of the effectiveness of the civil liability system, and it reflects the connection between legal theory and practice. In the context of the ICCPR, a state that commits human rights violations is required to restore victims to their original position as much as possible before the violation occurred. This is in line with Article 1, paragraph (6) of Law Number 39 of 1999 on Human Rights, which defines human rights violations as unlawful acts committed by individuals or state officials that harm human rights and may not receive a fair legal resolution.⁴⁵

Article 1, paragraph (6) of Law Number 39 of 1999 on Human Rights affirms that every human rights violation, whether committed by individuals or state officials, must be resolved with fair legal proceedings, including compensation for the harm suffered by the victims. This mechanism is in line with Article 9 of Government Regulation Number 92 of 2015, which details the compensation amounts based on the severity of the harm experienced by the victim. Essentially, it is an implementational instrument to ensure measurable and proportional restitution.

In relation to wrongful arrest, in the Bandung District Court Decision Number 10/Pid.Pra/2024/PN Bdg, the victim, Pegi Setiawan, filed a compensation claim of IDR 190,000,000, which was not granted.⁴⁶ In the Palangkaraya District Court Decision Number 1/Pid.Pra/2023/PN Plk, the victim, Willem Hengki, received compensation of IDR 500,000, and in the Ambon District Court Decision Number 06/Pid.Pra/2017/Pn.Amb, the victim, Paulus Semuel, filed for compensation of IDR 10,000,000, which was rejected.

⁴³ Syarif Abdul Rohman, and Umi Rozah, "Kebijakan Kriminal Mengenai Pemberian Ganti Kerugian Terhadap Korban Salah Tangkap," *Jurnal Pembangunan Hukum Indonesia* 2, no. 1 (2020): 121.

⁴⁴ Celine Endang Patricia Sitanggang, Jennifer Kurnia Putri, Albertus Hansen Setyabudi, and Sheyla Alif Alfiana, "Restitutio in Integrum in Criminal Regulation of Restitution for the Victims of Criminal Acts," *Journal of Law, Politic and Humanities* 5, no. 1 (2024): 182.

⁴⁵ Sri Rahayu Bapino, "Perlindungan Hak Asasi Mantan Narapidana Terhadap Stigma Negatif Masyarakat Ditinjau Dari UU No. 39 Tahun 1999 Tentang Hak Asasi Manusia," *Lex Administratum* 10, no. 5 (2022): 21. See too, Selvia Budi Yeni, Aula Mumtaz Nabila, Faizal El Mubarok, M. Sultan Abbas, and Doli Ridho Parlindungan Nst, "Pergeseran Paradigma Perlindungan Korban dalam Perbuatan Melawan Hukum: Analisis Perbandingan Sistem Hukum Indonesia dan Prancis," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 3 (2025): 2569.

⁴⁶ Ahmad Sholikhin Ruslie, "Pertanggungjawaban Penyidik Terhadap Korban Salah Tangkap Tindak Pidana (Studi Kasus Nomor 10/Pid. Pra/2024/PN Bdg)," *Future Academia: The Journal of Multidisciplinary Research on Scientific and Advanced* 3, no. 4 (2025): 1671. See too, Wahyu Pratama Tamba, and Fulgensius Surianto, "Tindakan Salah Tangkap Kepolisian: Tanggung Jawab Negara Dalam Memberikan Kompensasi," *Jurnal Hak Asasi Manusia* 17, no. 1 (2024): 15.

This reflects a failure to fully comply with the principle of *restitutio in integrum*.

The facts in the Bandung District Court Decision Number 10/Pid.Pra/2024/PN Bdg (Pegi Setiawan), the Palangkaraya District Court Decision Number 1/Pid.Pra/2023/PN Plk (Willem Hengki), and the Ambon District Court Decision Number 06/Pid.Pra/2017/PN Amb (Paulus Semuel) show a serious gap between the victims' claims and the compensation amounts granted (or even total rejections).⁴⁷ This raises questions about how far the courts are applying the principle of *restitutio in integrum* to restore victims to their original position before the violation occurred within the framework of human rights.

The practice of awarding compensation for wrongful arrests in Indonesia shows inconsistency in determining the amount of compensation through the pretrial mechanism. While the compensation practices for wrongful arrests in other countries show significantly higher standards than in Indonesia, both for material and immaterial compensation. For example, Texas provides USD 80,000 per year, California offers USD 140 per day, and Germany, since 2021, has set €75 per day (about IDR 480 million per year), up from €25 per day. Additionally, compensation can be increased if the victim suffers additional losses, such as job loss, psychological trauma, damaged reputation, or physical or mental disabilities.

Policies such as those in Germany reflect the state's recognition of the non-economic suffering of victims, which often has more severe long-term effects than financial losses. This aligns with the *restitutio in integrum* principle in international human rights law, which emphasizes full restoration, including the victim's dignity and psychosocial condition. This practice can serve as a reference for Indonesia to develop a more proportional compensation mechanism that not only considers financial figures but also takes into account the mental suffering and immaterial losses suffered by victims.

The application of the *restitutio in integrum* principle in Indonesia requires more detailed and proportional regulation, especially in Article 9 of Government Regulation Number 92 of 2015, so that it is not just general but also considers both material and immaterial damages experienced by the victims.⁴⁸ This aligns with Article 1, paragraph (6) of Law Number 39 of 1999 on Human Rights, which emphasizes the importance of fair legal resolution for every human rights violation, and is reinforced by Law Number 40 of 2004 on the National Social Security System as an instrument to fulfill the social security

⁴⁷ Ahmad Sholikhin Ruslie, "Pertanggungjawaban Penyidik Terhadap Korban Salah Tangkap Tindak Pidana (Studi Kasus Nomor 10/Pid. Pra/2024/PN Bdg)," *Future Academia: The Journal of Multidisciplinary Research on Scientific and Advanced* 3, no. 4 (2025): 1673.

⁴⁸ Rachmat Trijono, "Revisi Peraturan Pemerintah Nomor 92 Tahun 2015 Terhadap Komponen dan Besaran Ganti Kerugian," *Jurnal Ilmiah Living Law* 11, no. 2 (2019): 86.

rights of victims.⁴⁹ Although Government Regulation Number 92 of 2015 has provided technical guidelines for compensation amounts, its provisions are still largely quantitative and focus on material losses. By linking this to the national social security framework, compensation for wrongful arrest victims can be more comprehensive, as it will not only depend on court decisions but also be supported by the state's social protection system. This approach expands the scope of compensation toward structural protection, making the victim's recovery fairer and more sustainable.

The *restitutio in integrum* approach emphasizes the importance of full restitution for victims, not only in material aspects but also in non-material ones, such as reputation restoration, psychological rehabilitation, and the recovery of social rights.⁵⁰ The ICCPR perspective strengthens this principle by asserting the victim's right to effective remedy (effective remedy). The integration of the theory of convergence emphasizes the importance of aligning international legal principles with Indonesia's national civil law system while adopting progressive practices from common law to strengthen victim protection. This approach is reinforced by contemporary legal theory, which demands legal adaptability to changing times, particularly to overcome the limitations of compensation that still focus on material aspects without adequately addressing the immaterial losses of victims. To expand protection, the state needs to develop a restitution mechanism that is not only financial but also ensures the ongoing welfare of victims. A strategic step would be to place victims of wrongful arrest on par with social security beneficiaries, so that, from the moment of the ruling, they are automatically registered as participants in the National Social Security System as per Law Number 40 of 2004.

D. CONCLUSION

The court rulings in the wrongful arrest cases (Pegi Setiawan, Willem Hengki, and Paulus Semuel Puttileihalat) did restore the victims' legal status by annulled the suspect's designation, but the compensation provided was minimal, and often rejected. This shows the discrepancy between judicial practice and the provisions of Article 9 of Government Regulation Number 92 of 2015, meaning the victims' recovery has not fully addressed both material

⁴⁹ Aria Yuditia, Yusup Hidayat, and Suparji Achmad, "Pelaksanaan Jaminan Kesehatan Nasional Oleh Bpjs Berdasarkan Undang-Undang No. 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional," *Jurnal Magister Ilmu Hukum* 6, no. 1 (2021): 49.

⁵⁰ Ayi Safitri Maulidah, and Slamet Tri Wahyudi, "Problematika Penerapan Kebijakan Rehabilitasi Dan Kompensasi Terhadap Narapidana Korban Salah Tangkap Dalam Perspektif Hak Asasi Manusia," *Lex Librum: Jurnal Ilmu Hukum* 9, no. 1 (2022): 59. See too, Inayatul Fitria, and Rusydina Nur Ahlina, "Perlindungan Hukum terhadap Korban Salah Tangkap," *Ma'mal: Jurnal Laboratorium Syariah dan Hukum* 5, no. 4 (2024): 373; Novaldy Mumek, "Rehabilitasi Dan Ganti Rugi Terhadap Korban Salah Tangkap Menurut KUHAP," *Lex Crimen* 10, no. 7 (2021): 322.

and immaterial aspects. Although civil law principles such as legal certainty, protection of rights, neminem laedere, and responsibility should guarantee substantive justice, their application in wrongful arrest cases remains weak. The courts only freed the victims from legal status, but the right to adequate compensation was not fulfilled, meaning substantive justice and the victims' dignity have not been fully ensured. This analysis highlights the importance of full restitution, as emphasized in the *restitutio in integrum* theory, the harmonization of international law with national law (the theory of convergence), and the adaptability of law (contemporary legal theory). Article 9 of Government Regulation Number 92 of 2015 only regulates material compensation, while non-material aspects are more comprehensively regulated in Law Number 40 of 2004 on the National Social Security System, meaning that victim protection remains partial.

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