

Analysis of Legal Responsibility of Police Officers in Cases of Wrongful Arrest

Chintia Ferdiana Sugiarto

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: chintiaferdianasugiarto.std@unissula.ac.id

Abstract. *The legal confusion caused by the weak professionalism of investigators and the lack of understanding of the public and victims of wrongful arrest regarding their rights, undeniably causes victims of wrongful arrest to ultimately only be satisfied with being released without appropriate compensation. The legal consequences in cases of wrongful arrest should not only be for the victims who are victims of wrongful arrest, but in order to fulfill the principles of justice and the principle of equality before the law, it is very necessary to process the punishment for the police officers who made the wrongful arrest as a form of legal accountability. The purpose of this study is to determine and analyze (1) the mechanism of criminal proceedings within the scope of the Police's functions legally, (2) the form of legal responsibility for Police officers in cases of wrongful arrest, (3) legal protection for victims in cases of wrongful arrest carried out by the Police. The approach method used in this study is normative juridical. The specifications of this study are descriptive analytical. The data sources used are secondary data. Secondary data are data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. The results of the research and discussion can be concluded: (1) In carrying out the duties of the Criminal Justice System, the Police have the duty to carry out repressive actions based on the principle of legality as regulated in the Criminal Procedure Code and Law No. 2 of 2002 concerning the Indonesian National Police. The Repressive Function of the Police is to take action against violations of the law to be processed to the courts which include investigations and inquiries. (2) The form of legal responsibility for members of the Indonesian National Police who commit wrongful arrests is legally responsible through the mechanism of disciplinary sanctions/code of ethics (demotion to PTDH) and even potential criminal penalties (abuse of authority/fabrication of cases).*

Keywords: Legal Accountability; Police Officers; Wrongful Arrest.

1. Introduction

Indonesia is a constitutional state. This is stated in the 1945 Constitution which states that the Unitary State of the Republic of Indonesia is a state based on law, as seen in the provisions of the Preamble, Text, and Commentary of the 1945 Constitution. In the Indonesian Constitution, law plays a very fundamental role in national and state life. This means that law must play a central role not only in individual life but also in the life of the state and nation.¹The concept of a state based on law idealizes that law must be the commander of the dynamics of national life.

In this regard, to achieve these objectives, the Government is obliged to maintain and uphold sovereignty and protect every citizen from any threats or destructive actions (damage) both from within and from abroad. The laws applicable in the Republic of Indonesia are Constitutional Law, Criminal Law, Civil Law and State Administrative Law. The scope of criminal law is divided into material law and formal law. The enforcement of material law, including material criminal law, requires formal criminal law or Criminal Procedure Law. Criminal Procedure Law regulates how to implement criminal law, starting from the emergence of suspicion of a criminal act (criminal offense) to the implementation of the verdict. The purpose of criminal procedural law as stipulated in Law Number 20 of 2025 concerning Criminal Procedural Law, or what is commonly referred to as the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code), is to seek and obtain or at least approach the material truth, the most complete truth of a criminal case by applying the provisions of criminal procedural law honestly and precisely with the aim of finding out who the perpetrator is who can be accused of committing a violation of the law and subsequently detained.²Meanwhile, in the examination and decision in court, it is used to determine whether it is proven that a crime has been committed and whether the person accused can be blamed.

The corridor of police functions is investigation and inquiry, If the investigation concludes that a crime has occurred, the case will be elevated to the investigative stage, which aims to gather evidence and identify the suspect. Investigators can then arrest the suspect if they have found sufficient preliminary evidence that points to a suspect.

In relation to this, it is stated in Article 1 number 32 of the Criminal Procedure Code that an arrest is an action by an investigator in the form of temporary restriction of the freedom of a suspect, defendant, or convict based on a

¹Nur Dwi Edie W and Gunarto, Analysis of Judicial Policy in Deciding Criminal Acts Based on Alternative Indictment (Case Study Decision Number 82 / Pid.B / 2019 / PN.Blora), Journal of Legal Sovereignty: Volume 3 Issue 1, March 2020

²Muhammad Ikhsan et al. (The Accountability of Indonesian National Police Investigators in Wrongful Arrests). Retentum Journal, Volume 4 Number 2, September 2022, p. 307

minimum of 2 (two) pieces of evidence for the purposes of investigation, prosecution, and/or examination in court.³

More provisions Further details regarding arrest procedures are regulated in Articles 93-95 of the Criminal Procedure Code which state that:

- 1) The execution of the arrest task is carried out by the Indonesian National Police Officer by showing the assignment letter and giving the suspect an arrest warrant which includes the suspect's identity and states the reasons for the arrest as well as a brief description of the crime he is suspected of and the place where he is being questioned;
- 2) In the case of being caught red-handed, the arrest is carried out without a warrant, with the provision that the arrestor must immediately hand over the person caught along with the available evidence to the nearest investigator or assistant investigator.
- 3) A copy of the arrest warrant must be given to the family immediately after the arrest is made.⁴

In relation to this, investigators in making an arrest of someone suspected of having committed a crime must have sufficient evidence, both regarding the elements of the suspected crime and regarding the identity of the person suspected.

Arrests made by investigators constitute a form of special authority granted by law, but this does not mean they can be carried out arbitrarily. Arrests are a crucial legal process because they impact subsequent stages of the legal process. Therefore, arrests must be carried out carefully, cautiously, and precisely by police investigators.

Explanation of Article 1 Number (32) of the Criminal Procedure Code above states that arrest is nothing other than the temporary restriction of the freedom of the suspect/defendant for the purposes of investigation or prosecution. However, what must be remembered is that the arrest must be in accordance with the methods determined in the Criminal Procedure Code, namely in Chapter V, Part Three, Articles 93 to 98. Arrest can be considered a form of reduction of a person's human rights. Therefore, the act of arrest must be truly placed in proportion, namely only for the sake of law and truly necessary.⁵

The arrest process carried out by Indonesian National Police investigators against suspects who are strongly suspected of having committed a crime may result in

³Article 1 Number 32 of Law Number 20 of 2025 concerning the Criminal Procedure Code

⁴Articles 93-95 of Law Number 20 of 2025 concerning the Criminal Procedure Code

⁵Hidayat Andyanto. Investigators' Accountability for Wrongful Arrests. *Jurnal Jendela Hukum*. Volume 5 Number 2, September 2018, p. 58

errors or mistakes that stem from human error, namely errors made by investigators in practice in the field.

In essence The police in the state system is to provide protection and a comfortable sense of duty for citizens. Law Number 2 of 2002 concerning the Republic of Indonesia National Police (Polri Law) in Article (2) states, the function of the police is one of the functions of the state government in the field of maintaining public security and order, law enforcement, protection, shelter and service to the community. However, in practice there are still many problems, one of which is wrongful arrest or error in persona.

Wrongful arrest cases are not a new polemic in the legal world. Indonesia. Wrongful arrest or error in persona is a person who individually or collectively suffers physical or mental harm due to procedural errors or errors in the investigation or detention process carried out by authorized law enforcement officers or similar.⁶ So it can be concluded that the existence of victims of wrongful arrest is caused by errors in the investigation or detention process.

Victims of wrongful arrest face losses that must be addressed immediately, particularly immaterial losses. The primary loss is the tarnishing of their reputations due to negative stigmatization from the community surrounding the wrongful arrest. The material compensation provided by the state to victims of wrongful arrest is insufficient to restore their reputations. Ironically, when a negative stigma forms against victims of wrongful arrest, not only is their freedom lost but their right to socialize is also violated. Therefore, in addition to demanding compensation from the state, rehabilitation for victims of wrongful arrest is also necessary.⁷

Even factually it cannot be denied In post-arrest interrogation, whether the person is guilty or not, confession is the priority. However, a confession can lead to abuse of the suspect, forcing him to confess or force him to confess to the crime. If he does not confess, he will continue to be abused. Various methods are used to pressure the suspect to confess to the crime, ultimately leading to his confession.⁸ This could set a bad precedent for the Indonesian National Police (POLRI) if procedural errors committed by certain members of the Police who play a role in an investigation are not immediately evaluated and corrected.

⁶Andrian Umbu Sunga, Review of the Recovery of Wrongful Arrest Victims by Police Investigators, Faculty of Law, Atmajaya University, Yogyakarta, Journal, 2016, p. 2.

⁷Muhammad Ikhsan, et al. Op.Cit, September 2022, p. 308

⁸Romadhon and Ahmad Sholikhin Ruslie. Investigators' Accountability to Victims of Wrongful Arrest (Case Study Number 10/Pid.Pra/2024/PN Bdg). Future Academia: The Journal of Multidisciplinary Research on Scientific and Advanced Studies, Volume 3 Number 4, December 2025, p. 1670

The author describes a series of cases of wrongful arrests by the police, accompanied by violence during interrogations. In November 2023, Benal, a resident of Sukabumi Regency, was accused of stealing from a minimarket and arrested by police. He was later released due to lack of criminal evidence. However, he was left battered and traumatized by alleged torture by several police officers in Sukabumi Regency.⁹

Five police officers from the Manokwari Police Narcotics Unit tortured a brick worker named W, 32, was arrested on suspicion of being a drug dealer in early April 2023. The resident of Manokwari Regency, West Papua, suffered several injuries. Police initially intended to arrest him on these charges. The Deputy Director of Criminal Investigation of the West Papua Regional Police at the time explained that the raid, which was initially intended to apprehend a suspected drug dealer, instead resulted in an assault.¹⁰

Teenagers with the initials RK (16 years old) and RL (15 years old) were arrested by the Padang Panjang Police, West Sumatra, on suspicion of motor vehicle theft in July 2023. Through their attorney, Fadhilah Tsani, the victims were traumatized by torture by the police. The victims claimed to have been beaten, kicked, and electrocuted, and one of them even had a broken tooth. According to Fadhilah, the other arrests did not follow SOP. The evidence only consisted of accusations from a perpetrator who had been arrested previously. The victims were forced to confess to crimes they did not commit through torture.¹¹

The Cipulir, South Jakarta buskers, namely F (17), F (12), U (13), P (16)) were arrested by the Violent Crimes Unit (Jatanras) of the Jakarta Metropolitan Police in July 2013. The four children were accused of murdering a fellow busker with the motive of fighting over a busking stall. Without legal evidence, they were arrested and forced to confess by being tortured while in police custody. Based on their confessions and fabricated 'scenarios' resulting from the torture, the four children were then brought to court by the DKI Jakarta High Prosecutor's Office so they had to feel the cold of prison bars since they were children.¹²

The practice of wrongful arrest carried out by the police officer in question has violated a person's human rights. Under the terms of an arrest, any police officer is prohibited from using violence while on duty, as stipulated in Article 11, letter

⁹<https://www.kompas.id/artikel/sebuah-warga-sukabumi-korban-salah-tangkap-empat-anggota-polisi-diperiksa>, Accessed on March 5, 2026

¹⁰https://tirto.id/daftar-kasus-aniaya-salah-tangkap-selama-2023-gNSp#google_vignette, Accessed March 5, 2026

¹¹https://tirto.id/daftar-kasus-aniaya-salah-tangkap-selama-2023-gNSp#google_vignette, Accessed March 5, 2026

¹²<https://bantuanhukum.or.id/anak-anak-pengamen-cipulir-korban-salah-tangkap-dan-penyiksaan-polisi-tuntut-ganti-rugi-ke-negara/>, Accessed on March 5, 2026

b, of Police Regulation Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in the Discharge of Police Duties.

Errors in the arrest process have significant consequences because if these errors are not immediately corrected, they will continue to occur in subsequent stages. If an error occurs in this process before the case is decided by the court, the suspect or his family can file a pretrial motion regarding the invalidity of the arrest and can also sue for damages. However, if the error in the arrest process is not known and is only discovered after the case has been decided by the court that examined and decided the case, the convict/sentenced person can take extraordinary legal action after the judge's decision, even though it has become legally binding.¹³

However, these extraordinary legal remedies cannot be used as a parameter to consider a wrongful arrest to the point of conviction as a solution. Logically, the law does not require extraordinary legal remedies, which would indicate the error has already gone too far. Instead, an evaluation of the National Police, particularly as the first point of entry into the criminal justice process, must be conducted to take firm action against individuals who commit wrongful arrests.

Violations of procedures and misidentification of victims of criminal acts that still occur today are considered to be the result of the weak professionalism of law enforcement officers.¹⁴ The legal confusion resulting from the weak professionalism of investigators and the lack of understanding of their rights by the public and victims of wrongful arrests has undeniably led to the public and victims of wrongful arrests ultimately being satisfied with only being granted release without adequate compensation. The weak implementation of legal protection for victims of wrongful arrests reflects the failure to implement the principles of a speedy, affordable, and simple justice system.¹⁵

2. Research Methods

The approach used in this research is normative juridical or written legal approach (statute approach).¹⁶ The normative legal approach is an approach carried out based on the main legal material by examining theories, concepts, legal principles and statutory regulations related to this research.

¹³Hidayat Andyanto. Op.Cit, September 2018, p. 58

¹⁴Vita Mayastinasari, et al. Performance Management Strategy to Create a Promoter Police Force. Journal of Police Science, Volume 13 Number 2, August 2019, p. 120

¹⁵Amelia Monica, et al. Analysis of Legal Protection for Suspects or Defendants in Wrongful Arrest Cases: A Criminal Procedure Law Perspective. Das Sollen: Journal of Contemporary Law and Society Studies, Volume 02 No 02, 2023, p. 17

¹⁶Johny Ibrahim, Theory and Methodology of Normative Legal Research, Bayumedia, Malang, 2006, p. 295

This approach is also known as the library approach, namely by studying books, laws and other documents related to this research.¹⁷

3. Results and Discussion

3.1. Criminal Procedural Mechanism within the Legal Scope of Police Functions

Philosophically, according to Leo J. O'Brien, a law professor from the United States, the police are agents who are authorized to act in carrying out one part of the state's duty to govern, namely, to maintain public order and protect the community and enforce (public) law. The police have three special powers to assist them in carrying out this governing duty: the power to refuse the reason for the actions of civilians; to detain (or arrest) individuals who obstruct the police; and to enter property without legal permission.¹⁸

This power is normative: it modifies the ordinary rights and obligations of both officers and civilians.¹⁹ This power is not always material: police may have the legal ability to arrest and detain civilians or enter civilian property, but lack the physical means to do so. Nevertheless, a government official with the relevant normative powers is still a police officer.²⁰

Emphasis on the police as the main agent carrying out state duties to regulate the streets, supported by the normative power to displace, detain, and invade other people's territory, contrasts with the more common characterization of the police as defined by their material power to physically incapacitate perpetrators of crime. This currently dominant approach seeks to distinguish the police as an organization from other public and private institutions.

by identifying the police's ability to use violence which its supporters interpret as physical violence²¹ to respond to public emergencies as their distinguishing feature.

Perhaps the most famous definition of the police is Egon Bittner's claim that the police are simply "a mechanism for distributing situationally justified force in society."²² However, this definition is both too broad and too narrow in encompassing individuals who have historically been identified as police. For example, it fails to distinguish between police officers and civilians exercising

¹⁷Soerjono Soekanto, *Normative Legal Research*, Raja Grafindo Persada, Jakarta, 2004, p. 10

¹⁸Eric J. Miller, *The Concept of the Police*. *Criminal Law Philosophy*, Volume 17, June 2023, p 574

¹⁹John Gardner, *Justification under Authority*. *Canadian Journal of Law and Jurisprudence*, Vol 23 No 71, 2010, pp 90-91

²⁰Eric J. Miller, *The Concept ...Op.Cit*, June 2023, p 574

²¹Alice Ristroph, *The Constitution of Police Violence*. *UCLA Law Review*. Vol 64, June 2017, p 1182

²²Egon Bittner, *The Functions of the Police in Modern Society: A Review of Background Factors, Current Practices, and Possible Role Models*. National Institute of Mental Health Center for Studies of Crime and Delinquency: Maryland, 1970, p 39

their right to self-defense against an attack, or from gangsters forcing the public to comply with their demands; and Bittner's definition fails to encompass the wide range of individuals who are delegated police powers without being members of paramilitary organizations.²³

The difference lies in the normative powers held by the police, along with the various duties that apply to the police role: the duty to regulate, but also to protect, promote public order, and act even at the risk of their own safety. The governance approach suggests that the police's duty to enforce criminal law is only one feature of their powers, combined with social needs. Police ethnographers and sociologists have long recognized that non-criminal aspects of policing dominate the police role. Police most often use their authority to resolve minor disputes.²⁴ and act as non-violent first responders to public disturbances.²⁵

A consequence of the obligation to regulate is that the justification for police intervention ends when another person or group is better able to enforce the law or address a social need than the police. Police adopt a version of this governance approach to justifying their presence on the streets. Police envision themselves as a professional street patrol and response organization, 24 hours a day, 365 days a year. The various public needs that emerge on the streets, combined with the police's ability to address those public needs, justify the police asserting their authority, thereby preempting others acting under their obligation to regulate.²⁶

In the scope of law enforcement, law enforcement anywhere in the world requires the Police to represent the state in implementing and maintaining the implementation of the law in all sectors of community life. No country is without a police force, although their duties and functions vary from one country to another. For example, in the United States, the Police serve and function as state police only, not related to the central government. Police institutions are structured at three levels, namely Federal, State, and Local. The Constitution does not regulate the form of a Centralized Police Force, and those who carry out the complete Police function are local and state governments, while for special crimes such as sabotage, espionage and others, are carried out by the Federal Police such as the FBI, US. DEA, US. Marshal, and US. Attorney General, and the

²³Eric J. Miller, *The Concept ...Op.Cit*, June 2023, p 574

²⁴Maurice Punch, *The Secret Social Service (From British Police)*, Sage Publications: Thousand Oaks, California, 1979

²⁵Tim Newburn, ed. *Policing: Key Readings*, Willan Publishing: Portland, Oregon, 2005, p 162

²⁶Eric J. Miller, *The Concept ...Op.Cit*, June 2023, p 575

US. Secret Service. The United States Police, under the Department, are not directly under the president as in Indonesia.²⁷

3.2. Forms of Legal Responsibility for Police Officers in Cases of Wrongful Arrest

Existing positive law is a form of protection from the arbitrariness of the ruler towards his people, the spirit carried is that with the existence of clear legal certainty, the existence of a positive law can be known some actions that are permitted and some actions that are prohibited in the existing system. However, positive law cannot be applied according to its own will by the government's power, but there is a tendency to pay attention to the legal sense or legal awareness of the community.²⁸

One of the concepts of a state based on the rule of law is the protection of human rights. When discussing the enforcement of human rights in the criminal investigation process, legal certainty is found, thereby realizing justice for everyone who comes into contact with the law. This aligns with the objectives of the Unitary State of the Republic of Indonesia, as stated in the third paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), which is to protect the entire Indonesian nation, which also includes protection from the perspective of law enforcement.

The legal proceedings in the criminal law realm in Indonesia use Law Number 8 of 1981 concerning Criminal Procedure Law which has been amended into Law of the Republic of Indonesia Number 20 of 2025 concerning Criminal Procedure Law and is effective as of January 2, 2026, as *Lex Generali* in the Indonesian legal system.

KUHAP as a criminal procedure law that contains provisions on rules of procedure the process of resolving the handling of criminal cases, and at the same time providing "Human Rights Legislation" to suspects or defendants to defend their interests before law enforcement officers.²⁹ The existence of the Criminal Procedure Code (KUHAP) as a formal legal reference in the realm of criminal law is expected to protect the human rights of everyone who comes into contact with legal issues and also protect public order. The KUHAP is expected to serve as a benchmark so that the actions of law enforcement officers in handling a crime are not arbitrary and actually lead to injustice. The KUHAP can be said to

²⁷Noor M. Aziz, *The Format of the Indonesian Police in the Future (Comparison with Several Countries)*. Final Report of the Legal Review Team, Ministry of Law and Human Rights, National Legal Development Agency of the Republic of Indonesia: Jakarta, 2011.

²⁸Soehino, *Science of the State, Liberty*, Yogyakarta, 2000, p. 158

²⁹M. Yahya Harahap, *Discussion ...Op.Cit*, 2001, p. 4

have raised optimism and hope for a better and more humane implementation of law enforcement in the future.³⁰

With the existence of the Criminal Procedure Code, the process of examining a criminal act becomes clearer, because if it is not clearly regulated regarding the limits of authority held by law enforcement officers in conducting an investigation of a crime, it is very natural that people who have power have a higher position, it is very possible for abuse of authority to occur. This is what was once used as an adage by the British historian, Lord Acton: "Power tends to corrupt, the greater the power the greater the tendency to corrupt (power tends to corrupt, absolute power corrupts absolutely)".³¹

The law authorizes certain officials to restrict a person's freedom and independence in various activities. These restrictions on freedom and independence can be temporary or long-term, depending on how the law defines and regulates them. These restrictions on freedom and independence constitute coercive actions or measures that must be taken in order to comply with the law. The Criminal Procedure Code (KUHAP) has established several coercive actions or measures that can be taken in connection with a criminal act committed by an individual.³²

One of the fundamental issues that is often a hot topic of debate Among the legal community, coercive measures are used by law enforcement officers, particularly police investigators. Generally, coercive measures recognized in modern criminal justice systems worldwide include arrests, detentions, searches, seizures, and wiretapping.

Any coercive action carried out by the police should be subject to judicial supervision. There should be no coercive action that can escape the supervision of the court so that the coercive action carried out by law enforcement is not carried out arbitrarily, which could result in a fatal violation of a person's civil rights and liberties.

The essence of Indonesia as a country based on law is that the law is binding on all citizens. a state or society within a state. The law is applied equally to all people without discrimination or favoritism, therefore the principle of equality before the law applies, which means that every citizen has the same and balanced legal rights without discrimination.³³

³⁰Ibid, p. 5

³¹Brian Martin, *Information Liberation*, London: Freedom Press, 1998, p 1

³²Hartati S. Nusi, *Arrest and ...Op.Cit*, April-June 2016, p. 60

³³Sadjijono and Moh. Ali Imron, *Dynamics of Pretrial Law in Indonesia*, Laksbang Justitia, Yogyakarta, 2021, p. 1

Every action of the authoritiesLaw enforcement actions that affect citizens' rights, whether during the investigation, prosecution, or court proceedings, must adhere to human rights principles, namely the principles of legality, necessity, and proportionality. Ignoring these principles can result in violations of the suspect's or defendant's human rights.

The long series of criminal justice processes in Indonesia began with a process called investigation. Investigation is a series of actions

investigators to search for and find an event suspected of being a crime in order to determine whether or not an investigation can be conducted according to the methods stipulated in the law. If the results of the investigation, the investigator concludes that a crime has occurred, then the status will be upgraded to the investigation stage which is aimed at finding evidence and finding the suspect. Furthermore, if the investigator has found sufficient preliminary evidence that points to someone as the suspect, he can make an arrest of the suspect.

One action that may be unavoidable as a first step in conducting an investigation, inquiry, or trial is arrest. Therefore, for the purposes of the investigation, investigators, upon the orders of other investigators, have the authority to make arrests.³⁴

In terms of terminology, according to the Criminal Procedure Code, an arrest is an action by an investigator in the form of temporarily restricting the freedom of a suspect, defendant, or convict based on a minimum of 2 (two) pieces of evidence for the purposes of investigation, prosecution, and/or examination in court.³⁵

Arrest is a form of coercive action regulated in the Criminal Procedure Code, the implementation of which is limited in a preventive manner so that its use does not override human rights, but remains within the balance between individual interests and the interests of society, between the interests of the suspect and the interests of the investigation. In our procedural law, there is and is regulated a legal basis for an arrest, namely the existence of a strong suspicion based on sufficient evidence that a person has committed a criminal act that is threatened with imprisonment of five years or more, except for certain criminal acts stipulated otherwise by law. In addition, there must also be another basis, namely a basis based on necessity (urgency).³⁶

Thus, arrests have specific purposes, namely for investigation, prosecution, and/or judicial purposes. However, in the Criminal Procedure Code (KUHP),

³⁴Hartati S. Nusi, Arrests and ...Op.Cit, April-June 2016, p. 61

³⁵Article 1 Number 32 of Law Number 20 of 2025 concerning the Criminal Procedure Code

³⁶Dormauli Lumban Gaol, Legal Study of Arrest Procedures by Investigators According to Law No. 8 of 1981, *Lex et Societatis*, Vol IV No. 2, February 2016, p. 31

consideration of benefit or utility is not the sole consideration in establishing a provision. The "Considerations" section of the KUHAP includes, among other things:

1) That the Republic of Indonesia is a state based on law based on Pancasila and the 1945 Constitution which upholds human rights and guarantees that all citizens have equal status before the law and government and are obliged to uphold the law and government without exception;

2) That for the sake of development in the legal field as stated in the General Guidelines of State Policy of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IV/MPR/1978) it is necessary to make efforts to improve and perfect the development of national law by carrying out legal codification and unification reforms in the summary of the real implementation of the Archipelago Outlook;

3) That the development of such national law in the field of criminal procedural law is so that society internalizes its rights and obligations and to improve the development of the attitudes of law enforcement officers in accordance with their respective functions and authorities towards upholding the law, justice and protection of human dignity, order and legal certainty for the sake of implementing a state based on law in accordance with the 1945 Constitution.³⁷

In the "Considering" section cited above, human rights and human dignity are mentioned. Therefore, when reviewing a regulation, including regulations concerning arrests, in addition to considering its benefits or utility, considerations of human rights and human dignity must also be taken into account.³⁸ The Criminal Procedure Code was created with the basic idea of providing better protection for human rights.

Therefore, the institution authorized to carry out arrests, namely the Police, should also be established with efforts to provide better protection for human rights than previously recognized in the *Herziene Inlandsch Reglement* (S.1941 No. 44). However, in reality, many complaints still arise from the public regarding the procedures for carrying out arrests by the Police.

The arrest process carried out by Indonesian National Police investigators against suspects strongly suspected of committing a crime may result in errors or mistakes stemming from human error, specifically errors made by investigators

³⁷AHG Nusantara, et al, *Criminal Procedure Code and Implementing Regulations*, Djambatan, Jakarta, 1986, p. 3

³⁸Wempie Jh. Kumendong, *Arrest According to the Criminal Procedure Code (KUHAP) Reviewed from the Aspects of Benefits for Investigation and Protection of Human Rights*. *Lex Privatum*, Vol. IX No. 5, April 2021, p. 104

in the field. Errors in the arrest process have significant consequences, as if not promptly corrected, these errors will continue to occur in subsequent stages.

Recently, there have been frequent cases of mistaken arrests. Victims of mistaken arrests are individuals or groups of individuals who experience physical, mental, or economic suffering due to the inaccurate application of the law by state officials in the arbitrary arrest of the perpetrator or not based on applicable laws. Victims of mistaken arrests are usually also interpreted as someone who is arrested, detained, charged and tried or subjected to other actions, without legal grounds or due to an error regarding the person or the law applied.³⁹

Muladi said that victims are people who, either individually or collectively, have suffered losses, including physical or mental, emotional, economic losses or substantial disruption of fundamental rights, through acts or commissions (intentionally or unintentionally) that violate the criminal laws of each country, including abuse of power.⁴⁰

3.3. Legal Protection for Victims in Cases of Wrongful Arrest by the Police

According to Arif Gosita, victims are those who suffer physically and mentally as a result of the actions of others, seeking to fulfill their own or others' interests, in conflict with the interests and human rights of those affected. The term "victim" here can refer to individuals or groups, whether private or governmental.⁴¹

According to Zvonimir Paul Separovic, victims are: "... Those persons who are threatened, injured or destroyed by an act or omission of another (man, structure, organization, or institution) and consequently. A victim would be anyone who has suffered from or been threatened by a punishable act (not only criminal act but also other punishable acts as misdemeanors, economic offenses, non-fulfillment of work duties) or from an accident (accident at work, at home, traffic accident, etc.). Suffering may be caused by another man (manmade victim) or another structure, where people are also involved". (Translation: Those people who are threatened, injured, or destroyed by an action or omission of another person (human, structure, organization, or institution) and its consequences. A victim is anyone who has suffered or been threatened by a punishable act (not only criminal acts but also other punishable acts such as misdemeanors, economic violations, violations, failure to fulfill work obligations) or from an accident (accident at work, at home, traffic accident, etc.). Suffering

³⁹Hatlyinsyanna Seroy. Legal Protection for Victims of Wrongful Arrest from the Perspective of the Criminal Procedure Code. *Lex Crimen*. Vol V No 5, July 2016, p. 134

⁴⁰Yonas Parulian Adityanto, Interpretation of the Concept of Victim in Traffic and Road Transportation Accidents. *Perspective: Study of Legal and Development Issues*, Volume 24 Number 1, January 2019, p. 11

⁴¹Arif Gosita. *Problems of Crime Victims*. Collection of Essays. Jakarta: Akademika Pressindo, 1993, p. 63

can be caused by another person (man-made victims) or another structure, in which people are also involved).⁴²

According to Muladi, victims are people who, either individually or collectively, have suffered harm, including physical or mental harm, emotional harm, economic harm, or substantial impairment of their fundamental rights, through acts or commissions that violate criminal laws in each country, including abuse of power.⁴³

The definition of "victim of mistaken arrest" is not found in the Criminal Procedure Code (KUHP) or other laws and regulations. However, in theory, the definition of "victim of mistaken arrest," often referred to as "error in persona," can be found in the doctrine of legal experts. The literal meaning of "error in persona" is a mistake regarding the person in question or a mistake regarding the person. This mistake can occur during arrest, detention, or prosecution, or during examination by a judge in court until the case is decided.⁴⁴

This terminology is implied in Article 173 of the Criminal Procedure Code which regulates compensation for people who are arrested, detained, prosecuted, tried, or subjected to other actions without a valid reason based on the law or due to an error regarding the person or the law applied.⁴⁵ Meanwhile, according to the jurisprudence of the Supreme Court based on Decision Number 89 KP/PID/2008, there is another term regarding arresting people and wrongly charging people which is called error in subjective.⁴⁶

Yahya Harahap said that a mistake in arresting a person is called disqualification in person, which means that there was a mistake in the person who was arrested or detained, whereas the person who was arrested had explained that it was not him who was intended to be detained or arrested.⁴⁷ Meanwhile, Sugeng defines that a victim of wrongful arrest is a person or group of people who experience physical, mental suffering and/or economic loss due to the error of state officials, in this case the police, in arresting the actual perpetrator arbitrarily or not based on the law.⁴⁸

⁴²Zvonimir Paul Separovic. *Victimology Studies of Victims*, 2nd Edition, Publisher Pravni fakultet Univerziteta u Beogradu: Belgrade Serbia, 1985

⁴³Muladi. *Human Rights, Politics, and the Criminal Justice System*. Semarang: Diponegoro University Publishing House, 1997, p. 108

⁴⁴Benasto Tetepa, *Investigator's Accountability...Op.Cit*, November 2013, p. 107

⁴⁵Article 173 of Law Number 20 of 2025 concerning the Criminal Procedure Code

⁴⁶Hadri, Ariza Umami, M. Irvan. *Implementation of Law Regarding the Restoration of the Rights of Defendants Victims of Wrongful Arrest or Acquittal (Vrijspraak) by the Court*. Jurnal Pro Justitia (JPJ), Vol. 1 No. 2, August 2020, p. 14

⁴⁷M. Yahya Harahap, *Discussion of Problems...Op.Cit*. 2001, p. 45

⁴⁸Benasto Tetepa, *Investigator's Accountability...Op.Cit*, November 2013, p. 108

Even when a victim of wrongful arrest is identified during the judicial process, which is based on evidence obtained by National Police investigators, the determination of suspect status when the police arrest someone must be based on at least two pieces of sufficient evidence that clearly demonstrate that the person being questioned is the person who committed the crime. Even if someone is declared a suspect during questioning by investigators, this does not necessarily mean they have committed a crime. In this case, the suspect still has the right to exercise their rights, including the reason for their detention by investigators. This can be implemented to prevent wrongful arrests of individuals still suspected of committing a crime.

Based on the theory of legal protection, victim protection is essentially human rights protection. In other words, the rights of the victim are a component part of the concept of human rights.⁴⁹ Protection to obtain legal guarantees or compensation for the suffering or losses suffered by victims of crime, including the victim's right to assistance and the fulfillment of the right to access to justice and fair treatment. This means direct victim protection.

As stated by Fitzgerald and quoted by Satjipto Rahardjo, this theory of legal protection stems from natural law theory or the natural law school. This school was pioneered by Plato, Aristotle (Plato's student), and Zeno (founder of the Stoic school). According to the natural law school, law originates from God, which is universal and eternal, and that law and morality are inseparable. Adherents of this school view law and morality as internal and external reflections and rules of human life, manifested through law and morality.⁵⁰

4. Conclusion

In carrying out its duties as part of the Criminal Justice System, the Police have the duty to carry out repressive actions based on the principle of legality as regulated in the Criminal Procedure Code and Law No. 2 of 2002 concerning the Indonesian National Police. These repressive actions function in non-judicial and judicial actions. The Police's Repressive Function is to take action against violations of the law to be processed to the courts which include investigations and inquiries. The Criminal Procedure Code states who may conduct investigations and inquiries, where those who may conduct investigations are called investigators as regulated in Article 1 point 1 of the Criminal Procedure Code which states that "Investigators are officers of the Republic of Indonesia's state police or certain civil servants who are given special authority by law to conduct investigations." Meanwhile, those who have the right to conduct investigations, which are then referred to as investigators, are regulated in Article 1 point 4 that "Investigators are officers of the Republic of Indonesia state

⁴⁹C. Maya Indah S., *Protection ...Op.Cit*, 2014, p. 121

⁵⁰Satjipto Rahardjo, *Science ...Op.Cit*, 2000, p. 53

police who are authorized by this law to conduct investigations. 2. The form of legal accountability for members of the Indonesian National Police who commit wrongful arrests is legally responsible through the mechanism of disciplinary sanctions/code of ethics (demotion to PTDH) and even potential criminal penalties (abuse of authority/fabrication of cases). Implicatively, the actions of members of the Indonesian National Police who commit wrongful arrests have been accommodated in Chapter II of the Police professional code of ethics in the second part regarding prohibitions in Perpol Number 7 of 2022 concerning the Professional Code of Ethics and the Indonesian National Police Code of Ethics Commission (KEPP) concerning institutional ethics and social ethics. These regulations serve as guidelines for internal legal norms of the Police in the form of interpretations of prohibitions in carrying out Police functions in the actualization of law enforcement. For example, in Article 10 Paragraph (1) letter a Number 1 of Perpol Number 7 of 2022, every Indonesian National Police Officer in Institutional Ethics is prohibited from carrying out actions that are not in accordance with the provisions of laws and regulations, and/or standard operating procedures, including: law enforcement. Based on Chapter 3 on Enforcement of the Code of Professional Ethics of the Chief of Police Regulation No. Pol: 7 of 2006 concerning the Code of Professional Ethics of the Republic of Indonesia National Police, the form of responsibility carried out by the police is divided into 2, namely material responsibility and immaterial responsibility. In immaterial responsibility, violators can be subject to sanctions in the form of administrative sanctions (transfer and demotion), honorable dismissal sanctions, or dishonorable dismissal sanctions.

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