

Regulatory Justice Review Compensation In Criminal Case According to The Criminal Procedure Code

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Abstract: *This research examines the regulation of compensation in criminal cases with the rise in cases of wrongful arrest/misguided trials in Indonesia. This research aims to analyze positive law which regulates compensation for damages in criminal cases as well as analyzing existing regulations with the desired legal justice. The research method used in this research is normative juridical. The results of this research explain the emergence of injustice in the regulation of compensation in criminal cases regulated in the Criminal Procedure Code as well as Government Regulations as implementing regulations for victims of wrongful arrest/misconduct of justice in the current laws and regulations. There is injustice for victims of wrongful arrest/misguided trials in the current regulations. For example, there is a maximum time limit for victims of wrongful arrest/deviant justice to submit a claim for compensation, the nominal amount of compensation is far from justice and does not correspond to the losses experienced by the victim and regulations that are unclear and vague have the potential to be unfair in practice. So it is necessary to update legal regulations regarding compensation that upholds the value of justice in accordance with the principles of establishing statutory regulations, namely efficiency and effectiveness. So it is hoped that the legal reform will uphold the values of justice expected for victims of arrest/misguided justice.*

Keywords: *Compensation for losses, Criminal Procedure Law, Law and Justice*

1. Introduction

Indonesia is a country of law based on the 1945 Constitution of the Republic of Indonesia which adopts a civil law legal system, the civil law legal system places provisions of legislation as the highest source of law. Therefore, every law enforcement in Indonesia depends on the provisions of laws and regulations that provide justice, benefits and certainty in accordance with the objectives of the law itself. Law Number 1 of 1946 concerning Criminal Law Regulations or known as *Wetboek van Strafrecht*. This regulation is in effect until the enactment of Law Number 1 of 2023 as a legal renewal that will come into effect in 2026.

Law Number 1 of 1946 concerning Criminal Law Regulations is material in nature requiring criminal procedural law as formal law. According to Moeljatno, formal law (procedure) is the law that regulates the implementation of material legal order (criminal law) and criminal procedural law is the law that regulates the procedures for implementing/maintaining material criminal law¹. The objectives of criminal procedure law as a formal law include, among others, exploring material truth, determining the perpetrator to court decisions, executing court decisions, increasing public legal awareness, improving the quality and skills of law enforcement officials, fair law enforcement in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia, protecting human dignity and creating an orderly society and expected legal certainty².

¹ Moeljatno, *Criminal Procedure Law, Part One, Criminal Section*, Yogyakarta: Faculty of Law, Gajah Mada University, 1978.

² Utama, *Paku Module of the Criminal Procedure Code (Information Book)*, Jakarta: Corruption Eradication Commission.

The establishment of Law Number 8 Year 1981 on Criminal Procedure hereinafter abbreviated as KUHAP is a long way of forming national procedural law after the enactment of *"Het Herzien Inlandsch Reglement"* (HIR) after independence. In essence, KUHAP according to Van Bemmelen regulates matters including investigating the truth of suspected violations of criminal law, investigating the perpetrator of the alleged act, efforts to arrest or detain the perpetrator, collecting evidence which is then given to the judge, providing authority for the judge to make a decision whether or not the suspect's actions are proven, determining legal remedies for the judge's decision and the decision taken in the form of a criminal judgment or other actions to be executed³.

The Guidelines for the Implementation of the Criminal Procedure Code (Decree of the Minister of Justice of the Republic of Indonesia Number M.01.PW.07.03 of 1982) means that the criminal procedure law aims to find or approach the material truth by applying the provisions of the criminal procedure law honestly and precisely, if this has become a guideline, it determines the perpetrator who is charged with committing a criminal offense until the court decides whether the criminal offense charged has sufficient evidence to determine the person to blame⁴. In accordance with the establishment of the Criminal Procedure Code in order to provide fair law enforcement for all people, apart from regulating matters to ensnare the perpetrator and provide punishment for his actions, the Criminal Procedure Code also provides provisions for the rights of the suspect / defendant to prevent arbitrariness of law enforcement officials (*abuse of power*).

The rights of suspects/defendants protected by KUHAP are of various types, including those related to compensation. KUHAP Article 1 point 22 provides a definition of *"compensation is the right of a person to get fulfillment of his claim in the form of compensation in the form of a sum of money because he was arrested, detained, prosecuted or tried without a reason based on law or because of an error regarding his person or the law applied in the manner regulated in this law"*. This provision provides certainty of legal guarantees for suspects/defendants for unauthorized legal actions by law enforcement officials in the form of compensation in the form of money. This provision is necessary considering the many cases of wrong arrest / wrong person or wrong regulations applied in the law enforcement process⁵.

The problem of wrongful arrest / wrong person committed by law enforcement officials often occurs in Indonesia. Cases of wrongful arrest/misapprehension that have occurred include the Paul C. Anders case in 1973, the Sengkon and Karta cases in 1974, the Marsinah case in 1993, the Pegi Setiawan case in 2024 and records of 15 cases of wrongful arrest in the period July 2023-June 2024⁶. This is clear evidence that errors in determining the person or application of the law can occur during the criminal justice process. Provisions regarding compensation for suspects/defendants due to mistaken *arrest* regarding the application of the law or errors regarding the person are regulated in the *Criminal Procedure Code*, namely Article 95 paragraph (1) which reads as follows *"Suspects, Defendants or Convicts are entitled to claim compensation for being arrested, detained, prosecuted and tried or subjected to other actions, without a statutory reason or due to errors regarding the person or the law applied"*.

Meanwhile, the technical procedures and the amount of compensation that can be submitted by the suspect/defendant are regulated in Government Regulation Number 92 of

³ Sofyan, Muhammad Andi. *Criminal Procedure Law*, Jakarta: Prenada Media, 2020, Hlm. 7.

⁴ Supardi, *Criminal Procedure Law First Edition*, Jakarta: Kencana, 2023, Hlm. 3.

⁵ Trijono, Rachmat, 2019, Revision of Government Regulation Number 92 of 2015 on Components and Amount of Compensation, *Scientific Journal of Living Law*, Vol. 11 No. 2, Hlm. 81-95.

⁶ Singgih Wiryono and Icha Rastika, 2024. <https://nasional.kompas.com/read/2024/07/01/19001741/kontras-polisi-15-kali-salah-tangkap-dalam-setahun-terakhir-korbannya-23> "Kontras: Polisi 15 Kali Salah Tangkap dalam Setahun Terakhir, Korbannya 23 Orang" diakses 10 Juli 2024.

2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code. According to Article 7 paragraphs (1) and (2) of the regulation, there is a time limit for the suspect/defendant to file a claim for compensation for forced efforts made in the form of arrest, detention carried out by law enforcement officials in the law enforcement process limited to 3 (three) months from the time the court decision obtains permanent legal force or from the date of notification of the pretrial determination. If the time limit has passed, the suspect/defendant who is a victim of wrongful arrest/misguided trial cannot claim the right to apply for compensation. This means that the maximum limit on the formal procedure for filing a claim for compensation creates an imbalance for the suspect/defendant in claiming his/her rights or in concrete terms, there is injustice for the suspect/defendant.

Because of this, the regulation of compensation in criminal cases is not in accordance with the principles of the formation of laws and regulations, namely usefulness and providing justice for each party. This is also associated with Gustav Radbuch's theory that places justice above benefit and legal certainty, Aristotle's theory of proportional justice and Satjipto Rahardjo's theory of law formation. Therefore, this research needs to be studied in relation to how the regulation of compensation in criminal cases is regulated in current positive law and how to create regulations for compensation in criminal cases that uphold the value of legal justice. The renewal of regulations relating to compensation in criminal cases that can provide justice for victims of wrongful arrest / miscarriage of justice is expected to be the purpose of this research because of the prevalence of victims of wrongful arrest / miscarriage of justice as part of violations of human rights.

Research related to compensation in criminal cases has been widely studied by previous researchers. Findings from several literatures. First, research from Rachmat Trijono from the Living Law Journal entitled "*Revision of Government Regulation Number 92 of 2015 on the Components and Amount of Compensation*" published in 2019. The research discusses the renewal of the compensation component and the amount of compensation. However, this study does not further examine whether the compensation provisions stipulated in Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code have upheld the value of justice with its study based on applicable legal theories, principles and principles.

Second, research by Natasya Senduk from the Lex Crimen Journal entitled "*Legal Study of Compensation and Restore Good Name Based on the Criminal Procedure Code*" published in 2017. The research examines the implementation of compensation in the Criminal Procedure Code referring to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code and the merger of compensation cases for suspects and convicts regulated in the Criminal Procedure Code. The difference between this research and the author's research is that this research does not only discuss the compensation mechanism but also discusses rehabilitation and the discussion in this research is limited to the regulations that govern, while in this research the author focuses on analyzing aspects of legal justice for victims of wrongful arrest/miscarriage of justice in existing regulations. For example, there is a time limit for filing a claim for compensation, the nominal amount of compensation that does not match the loss and the rules are vague and unclear. The analysis of the justice aspect is linked to the principles, principles and theories of law.

2. Method

The research method used to analyze the topic of discussion in this research is the normative juridical method. The use of this method is to identify laws, legal doctrines to obtain the required legal analysis in order to answer the formulation of the problem.⁷ Especially in this discussion related to Law Number 8 of 1981 concerning Criminal Procedure Law. The approaches used are the statutory approach (*Statue Approach*) and conceptual approach (*Conceptual Approach*). The statutory approach (*Statue Approach*) uses legal rules relating to the regulation of compensation in criminal cases, among others, the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1946 concerning Criminal Law Regulations, Law Number 8 of 1981 concerning Criminal Procedure, Law Number 12 of 2011 concerning the Formation of Legislation and Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code. Meanwhile, the *conceptual approach* aims to obtain answers related to the subject matter in legal research studies. This approach focuses on legislation and doctrines adopted in legal science, creating legal definitions and principles and legal rules that are relevant in dealing with the topic of the problem being studied relating to legal protection of suspects, defendants or convicts to be able to claim compensation and its relation to existing regulations with the principle of justice. This research uses data acquisition sources through library research, including primary data in the form of laws and regulations, official texts, and official state archives and secondary data in the form of books, journals, scientific articles or other written works and tertiary data with information taken from dictionaries, encyclopedias, websites and so on. Primary data and secondary data will be the basis for researchers to analyze with qualitative methods and constructed in descriptive methods.

3. Results and Discussion

3.1 Arrangement of Compensation in Criminal Cases According to the Criminal Procedure Code

Moeljatno argues that criminal law is part of a collection of laws that apply in a country that regulates prohibited matters along with criminal threats / sanctions for those who violate these rules⁸. In relation to criminal procedural law as a formal rule, it not only regulates how to punish people who violate criminal rules but also regulates the rights of people suspected of violating criminal rules, including the right to claim compensation. Compensation in criminal cases is a mechanism for giving rights to a person in the form of compensation protected by law to be able to claim compensation in the event of wrongful arrest, coercion or actions that are not based on law and legal errors in the process of enforcing criminal law.⁹ Regarding compensation in criminal cases is regulated in the Criminal Procedure Code. The regulation of compensation in criminal cases is generally regulated in the Criminal Procedure Code and is further accommodated by Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code.

⁷ Marzuki, Peter Mahmud. Legal Research, Jakarta: Prenada Media, 2005, Hlm. 35.

⁸ Moeljatno, Azaz-Azas of Criminal Law, Bandung: PT Bina Aksara, 1983, Hlm. 12.

⁹ Natasya Senduk, 2017, Juridical Study of Compensation and Rehabilitation of Good Name Based on the Criminal Procedure Code, Lex Crimen, Vol.7, No.09, Hlm. 18.

REGULATION OF COMPENSATION IN CRIMINAL CASES

The existence of the application of compensation in criminal cases is explicitly regulated in Article 95 paragraph (1) of KUHAP which states: *“A suspect, defendant or convicted person has the right to claim compensation for being arrested, detained, prosecuted and tried or subjected to other actions, without a reason based on law or because of an error regarding his person or the law applied.”* In this regulation, the phrase **“a suspect, defendant or convicted person has the right to claim compensation”** means that compensation in a criminal case is the right of a perpetrator who is suspected of committing a criminal offense from the level of investigation, prosecution to the level of trial. Article 1 point 14 of the Criminal Procedure Code defines a **suspect** as a person suspected of committing a criminal offense based on sufficient preliminary evidence (investigation level). Meanwhile, Article 1 point 15 of the Criminal Procedure Code defines **Defendant** as a person who is examined, prosecuted and tried in court (prosecution level). Furthermore, Article 1 point 32 of the **Criminal** Procedure Code defines a convicted person as a person who is convicted based on a court decision that has permanent legal force (trial level). Therefore, the phrase **“The suspect, defendant or convicted person has the right to claim compensation”** can be interpreted that what is meant by the right is a power given to each individual with restrictions in it.¹⁰ The right to do something is inseparable from his position as a **suspect, defendant or convict** has the right to claim compensation as the right is based on the provisions stipulated in Article 95 paragraph (1) of the **Criminal** Procedure Code.

Then, further in Article 95 paragraph (1) *of the* Criminal Procedure Code there is the phrase **“due to arrest, detention, prosecution and trial or subject to other actions”** which means that the right to claim compensation must be based on reasons including being **arrested, detained, prosecuted or subject to other actions** against a suspect, defendant or convict. Article 1 point 20 of the Criminal Procedure Code defines **arrest** as an action by investigators to temporarily limit the freedom of a suspect or defendant based on sufficient evidence in the interest of the law. Meanwhile, Article 1 point 21 of the Criminal Procedure Code defines **detention** as the act of placing a suspect or defendant in a certain place by an investigator or public prosecutor or judge. Meanwhile, Article 1 point 7 of the Criminal Procedure Code provides a definition related to **prosecution**, which is the action of the public prosecutor to submit a criminal case to the competent court for examination and trial by a judge. Meanwhile, what is meant by **other actions** based on the explanation of the Criminal Procedure Code is the harm caused by unlawful house entry, search and seizure, including unreasonable detention that is longer than the sentence imposed.

Furthermore, Article 95 paragraph (1) of KUHAP contains the phrase **“without a reason based on the law or because of an error regarding the person or the law applied”** which means that compensation claims can be made on the basis of legal actions taken against a suspect, defendant or convict **that are not based on the law or the error of the person or the wrong application of the law applied**. The phrase **“without reason based on the law”** means that the suspect, defendant or convicted person is entitled to claim compensation if there is an action of law enforcement officers who carry out forced efforts without the procedures stipulated in the law so as to harm the suspect, defendant or convicted person. Furthermore, related to the phrase **“or because of an error regarding the person”** is interpreted as an error on the subject of law, namely the suspect, defendant

¹⁰ Tutik, Titik Triwulan, Introduction to Civil Law in Indonesia Cet 1", Jakarta: Prestasi Pustaka, 2006, Hlm. 53-54.

or convicted person against whom legal action is taken is not the suspect, defendant or convicted *person* who committed the crime (*error in persona*), Safitri Wikan Nawang Sari explained that *error in persona* can occur due to confusion of things that are done by will with those done from a wrong vision.¹¹ Then, related to the phrase "**or the law applied**" is **interpreted** as an error in the application of rules, procedures, interpretations or legal actions by law enforcement officials which results in a mistake in the criminal justice process so as to cause injustice to the suspect, defendant or convict.

In terms of filing a claim for compensation, either the suspect, defendant or convicted person can be *submitted* through their heirs as stipulated in Article 95 paragraph (3) of the Criminal Procedure Code which reads: "*The claim for compensation as referred to in paragraph (1) shall be submitted by the suspect, defendant, convicted person or their heirs to the court authorized to hear the case concerned.*"

However, this regulation does not yet regulate in detail the mechanism and amount of compensation that can be submitted. Therefore, an implementing regulation is needed, Maria Farida Indrati S stated that the implementing regulation (*Verordnung*) is a regulation that has a position under the law with the function of implementing the provisions regulated by the law¹². Types of implementing regulations include Government Regulations, Presidential Regulations, Provincial Regulations and Regency / City Regulations as stipulated in Law Number 12 of 2011 concerning the Formation of Legislation. Government Regulation is one of the forms of legislation that is expressly mentioned in Article 7 paragraph (1) letter d of Law Number 12 of 2011 concerning the Formation of Legislation to carry out the law as it should be in accordance with Article 12 of Law Number 12 of 2011 concerning the Formation of Legislation which reads: "*The content material of Government Regulations contains material to carry out the Law as it should be*".

As one of the forms of legislation as described above, Government Regulation can be born through attribution or delegation. Specifically in relation to Government Regulation No. 92/2015 on the Second Amendment to Government Regulation No. 27/1983 on the implementation of the Criminal Procedure Code, it is not only expressly delegated by law but can also be born through attribution from Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads: "*The President stipulates Government Regulations to implement the law as appropriate*".

FURTHER REGULATIONS ARE STIPULATED IN GOVERNMENT REGULATIONS

The regulation of compensation in criminal cases in detail is regulated by Government Regulation as the implementing regulation of the Criminal Procedure Code, which has been amended by 3 (Three) amendments with the latest amendment being Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code.

Article 7 paragraph (1) of Government Regulation No. 92/2015 on the Second Amendment to Government Regulation No. 27/1983 on the Implementation of the Criminal Procedure Code reads: "*Claims for compensation as referred to in Article 95 of the Criminal Procedure Code can only be submitted within a maximum period of 3 (three) months from the date the*

¹¹ Sari, Safitri Wikan Nawang, Basic Criminal Law, Klaten: Lakeisha Publishers, 2020, Hlm.71.

¹² Indrati, Maria Farida, Legislative Science I: Types, functions and content materials, Yogyakarta: PT Kanisius Publishers, 2020.

excerpt or copy of the court decision that has obtained permanent legal force is received". The phrase **"Claim for compensation as referred to in Article 95 of the Criminal Procedure Code"** places Government Regulation No. 92/2015 on the Second Amendment to Government Regulation No. 27/1983 on the Implementation of the Criminal Procedure Code, which was born through attribution or delegation, as an implementing regulation of the Criminal Procedure Code relating to the compensation mechanism in criminal cases.

NOMINAL AMOUNT OF COMPENSATION IN PP NO.92 OF 2015

As a relevant implementing regulation for the changes and currently applicable Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code, there are changes to the nominal amount of compensation that can be given by the state to victims of wrongful arrest / perverted justice in Article 9 which reads:

- (1) The amount of compensation shall be at least Rp.500.000,- (Five Hundred Thousand Rupiah) and at most Rp.100.000.000,- (One Hundred Million Rupiah) if there are reasons as referred to in Article 77 letter b and Article 95 of the Criminal Procedure Code;*
- (2) The amount of compensation shall amount to a minimum of Rp.25.000.000,- (Twenty Five Million Rupiah) and a maximum of Rp.300.000.000,- (Three Hundred Million Rupiah) if it results in serious injury or disability so that the person cannot perform his/ her work;*
- (3) The amount of compensation shall amount to a minimum of Rp.50,000,000,- (Fifty Million Rupiah) and a maximum of Rp. 600,000,000,- (Six Hundred Million Rupiah) if it results in death.*

The nominal amount of compensation has increased compared to the previous regulation in Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code as follows:

- (1) The amount of compensation shall be at least Rp.5,000,- (Five Thousand Rupiah) and at most Rp.1,000,000,- (One Million Rupiah) if there are reasons as referred to in Article 77 letter b and Article 95 of the Criminal Procedure Code;*
- (2) The amount of compensation shall amount to a maximum of Rp.3.000.000,- (Three Million Rupiah) if it results in serious injury or disability so as to be unable to perform work or death.*

The increase is certainly to provide regulatory adjustments that provide more justice because the amount is adjusted to the losses experienced by victims of wrongful arrest / miscarriage of justice. However, the amount stipulated in Government Regulation No. 92/2015 on the Second Amendment to Government Regulation No. 27/1983 on the Implementation of the Criminal Procedure Code still needs to be studied further with the adequacy of the compensation given the huge impact experienced by victims, which can even lead to loss of life.

PROCEDURE FOR FILING COMPENSATION IN CRIMINAL CASES

In order to provide compensation, of course, it must go through a submission process with several stages starting from the submission of claims, examination and payment stages, namely:

a. The stage of filing charges

The submission of compensation claims in criminal cases is distinguished based on the level of examination of the case concerned into the stage of filing claims where the case has only reached the level of investigation, prosecution and cases that have reached the level of trial in court.

1) Submission of compensation claims where the case only reaches the level of investigation or prosecution

In the event that the case does not proceed to trial in court, it is because there is insufficient evidence or the alleged act is not a criminal offense so that the case is stopped at the investigation or prosecution level. The claim for compensation at this level is submitted to the pretrial court, as Article 1 number 10 and Article 78 paragraph (1) of the Criminal Procedure Code which stipulates: *“The authority of the district court as referred to in Article 77 is pretrial”*.¹³ Filing compensation for cases at the investigation or prosecution level can be done in two ways, including:

a) Submitted to the chairman of the district court after a pretrial determination.

That parties who feel aggrieved by the actions of law enforcement officers, are obliged to go through a pretrial process to determine whether or not the actions of search, seizure, termination of investigation or prosecution, arrest and detention are valid based on Article 79, Article 80 of KUHAP and Article 7 paragraph (2) of Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code.¹⁴ If the pretrial court has issued a decision, then on that basis the claim for compensation has a clear reason and has material value can be submitted to the pretrial court.¹⁵

a) Submitted to the president of the district court without preceding the pretrial decision.

Based on Article 95 paragraph (2) and Article 77 of KUHAP, parties who feel aggrieved by the actions of law enforcement officers may simultaneously submit a request to the district court authorized to examine the legality of search, seizure, arrest and detention with a request for compensation with the aim of efficiency and shortening the pretrial examination process.

¹³ Yuzak Eliezer Setiawan, 2019, Law Enforcement in the Concept of Fulfillment of Compensation by the State on the Basis of Mistakes in the Application of Law, Journal of Education and Development, Vol. 7 No. 04 (2019), Hlm. 129.

¹⁴ Ibid

¹⁵ Op.cit

1) Submission of a claim for compensation where the case has reached the trial stage at the court.

In the event that the case in question has been submitted to the court for examination, the submission of a compensation claim becomes the authority of the district court. This is as stipulated in Article 95 paragraph (3) of *the Criminal Procedure Code*: "*Claims for compensation as referred to in paragraph (1) shall be submitted by the suspect, defendant, convict or their heirs to the court authorized to hear the case concerned*". As well as Article 7 paragraph (1) of Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code. In this regulation, there are provisions that the submission of compensation claims can only be submitted against decisions that have obtained permanent legal force *gewijsse (zaak)*.¹⁶

a. Inspection Stage

The stage of examination of compensation is guided by Article 82 of the Criminal Procedure Code, which is to follow the examination of pretrial compensation, both those examined by the district court, the procedure also follows the pretrial procedure. This is stated in Article 95 paragraph (5) of the Criminal Procedure Code: "The examination of compensation as mentioned in Article 95 paragraph (4) follows the pretrial". Then the provisions in Article 96 paragraph (1) of the Criminal Procedure Code "The decision to award compensation in the form of a determination".¹⁷

b. Payment Stage

After there is a determination that stipulates that the compensation claim is received either by the pretrial or the district court, it is continued at the payment stage. This stage must be carried out in accordance with the principles of fast, simple and low-cost justice and provide legal certainty for the litigants.¹⁸ The procedure for payment of compensation is regulated in Article 10 and Article 11 of Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code and Article 2, Article 3 and Article 4 of the Decree of the Minister of Finance No.983/KMK.01/1983.

3.2 Creating Compensation Provisions in Criminal Cases that Uphold the Aspirational Value of Justice

Law enforcement in a country is inseparable from the relationship between citizens and the country controlled by the government. In this relationship, inequality is vulnerable because government power with coercive power is faced by citizens who tend to be weak so that it has the potential to cause arbitrariness from the ruling party.¹⁹ In the implementation

¹⁶ Op.cit

¹⁷ Op.cit

¹⁸ Yuliyanto, 2019, Problems of Procedures for Execution of Compensation in Criminal Cases", *De Jure: Journal of Legal Research*, Vol. 19 No. 03, Hlm. 354.

¹⁹ Andi Hamzah, *Naskah Akademik Peraturan Perundang-Undangan tentang Tata Cara Ganti Kerugian Akibat Kesalahan Penangkapan dan Penahanan*, (Jakarta:Badan Pembinaan Hukum Nasional Departemen Hukum dan HAM, 2005), Hlm. 4.

of criminal law, in particular, there is the potential for actions by law enforcement officials who abuse of power in terms of law enforcement. This is evidenced by the occurrence of 51 (Fifty-One) incidents of wrongful arrest in the period from July 2018 to June 2019,²⁰ and 15 (Fifteen) incidents of wrongful arrest in the period July 2023-June 2024.²¹ Therefore, legal protection is needed that provides justice for victims of wrongful arrest / misguided justice to demand compensation because this legal protection not only upholds human rights but is also in line with the principle of presumption of innocence or the principle of "presumption of innocence".²²

One of the problems in the application of compensation is the long procedure for claiming compensation as regulated by the Decree of the Minister of Finance No.983/KMK.01/1983 which is an obstacle to claiming compensation. In the Decree of the Minister of Finance No.983/KMK.01/1983, the procedure for payment of compensation must go through several agencies including the district court where the case is tried, the Minister of Law and Human Rights C/q Secretary General of the Ministry of Justice and Human Rights, the Minister of Finance C/q the Director General of Budget and the State Treasury and Treasury Office (KPKN).²³ So that there should be a legal update related to this matter to make it easier for victims to demand their rights, Article 39C of Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code gives a mandate to the Minister of Finance to make implementing rules for a maximum of 6 (Six) months but until now the rules have not existed so that the provisions in the Decree of the Minister of Finance No. 983/KMK.01/1983 is still valid.²⁴ With the new implementing rules, it is hoped that it can create simpler and less convoluted rules to provide convenience for victims of wrongful arrest / misguided justice to demand their rights.

With the existing compensation regulations, of course, it must be studied whether the compensation regulations have provided justice for victims or not. The justice referred to in this case is not only limited to the protection of the law that has been regulated in the laws and regulations, but especially the provisions of the rules in practice have fulfilled the expected aspect of justice. As mentioned earlier, it provides the right for victims to be able to claim compensation as part of the fulfillment of human rights. Human rights are divided into derogable rights consisting of the right to opinion, movement, assembly and speech as well as non-derogable rights even though the state is in a state of emergency, namely the right to life, free from all forms of torture, free from inhuman acts and degrading human dignity as well as freedom from retroactive laws.²⁵ This means that in this case, the right to demand compensation is a non-derogable right because it is related to the right to apply for compensation for acts of torture, life safety and forms of actions that degrade human dignity as things that happen to the Suspect, Defendant or Convict in the criminal justice process carried out by law enforcement officials.

²⁰Rindi Nuris Velarosdela and Sandro Gatra, 2019. <https://megapolitan.kompas.com/read/2019/07/18/16122131/catatan-kontras-ada-51-kasus-salah-tangkap-sejak-juli-2018> diakses 12 Juli 2024.

²¹ Op.cit

²² Syarif Abdul Rohman and Umi Rozah, 2020, Criminal Policy on the Provision of Compensation to Victims of Mistaken Arrest, Indonesian Journal of Legal Development, Vol. 2 No.1, Hlm. 122.

²³ Andi Nurul Asmi, Hambali Thalib and Ma'ruf Hafidz, 2020, The Right to Compensate Victims of Illegal Arrests in the Criminal Justice System, Journal of Lex Theory (JLT), Vol. 1, No. 1, Hlm. 104

²⁴ Op.cit

²⁵ Osgar S Matompo, 2014, Restrictions on Human Rights in the Perspective of Emergencies, Journal of Legal Media, Vol. 21, No.1, Hlm. 60.

Legal protection for victims of wrongful arrest / misguided justice as a form of human rights enforcement is in accordance with Article 17 of Law Number 39 of 1999 concerning Human Rights which reads: "Everyone, without discrimination has the right to obtain justice by filing petitions, complaints and lawsuits both in criminal, civil and administrative cases and to be tried through a free and impartial judicial process..."

The state must ensure the enforcement of human rights in the criminal justice process, because in fact the investigation actions by the police often use violence and torture, especially against victims of wrongful arrest / misguided justice. These actions include procedural violations, administrative violations, violations against the victim and attempts to engineer cases in a case for a specific purpose²⁶. This is no longer an open secret, which aims to prevent the real facts from being revealed regarding the interests of certain groups at the expense of weak and powerless civil society.

The granting of the right to demand compensation for victims of wrongful arrest / misguided justice is necessary because of the arbitrary actions of law enforcement officials, either intentional or negligent factors, providing losses for victims of wrongful arrest / misguided justice. These losses can be in the form of physical losses, psychological losses, social losses, economic losses and the victim's family also feels the loss immaterially. The physical losses in question are in the form of minor injuries, serious injuries or disabilities so that they cannot work, in addition psychological losses can be in the form of stress and trauma or mental health disturbances. In addition, social and economic losses are a form of bad stigma from the community and job loss. In addition to having an impact on the victim of wrongful arrest / perverted justice, immaterial losses are also felt by the victim's family, namely a sense of being hit and harmed due to the reduced public trust in the victim's family of wrongful arrest / perverted justice.

REVIEW OF TIME LIMITS FOR COMPENSATION CLAIMS FROM A JUSTICE PERSPECTIVE

Regarding the time limit of the right to claim compensation in criminal cases which is limited to 3 (Three) months based on Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code Article 7 paragraph (1) which reads:

(1) A claim for compensation as intended in Article 95 of the Criminal Code can only be filed within a maximum of 3 (Three) months from the date on which the citation or copy of the court decision that has obtained legal force is still received"

(2) In the event that the claim for compensation is filed against the case that is stopped at the investigation level or the prosecution level as intended in Article 77 letter b of the Criminal Procedure Code, the period of 3 (Three) months is calculated from the date of notification of pretrial determination"

Based on the explanation of the article in Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code, it is stated that the 3 (Three) month limit is intended so that the completion does not take too long so as to ensure legal certainty. The reasons related to legal certainty are related to legal purposes according

²⁶ Henni Muchtar, 2009, Evidence of the Opaque Side of the Indonesian Criminal Justice Process in the Case of Wrongful Arrest, Journal of Democracy, Vol. 8, No. 1, Hlm. 22.

to Gustav Radbuch, namely justice, legal certainty and usefulness.²⁷ Legal objectives are not only formed and needed to provide legal certainty but must also provide justice and benefits as Gustav Radbuch explained, when there is a clash of the three legal objectives, the principle of priority is used by placing justice first, then the benefits and certainty of law.²⁸ So that the time limit of 3 (Three) months must be considered in the aspect of whether to provide justice and benefits to victims of wrongful arrest / misguided justice.

Regarding the existence of a 3 (Three) month time limit for the Suspect, Defendant or Convict to be able to claim his rights, causing the potential victim of wrongful arrest / misguided justice can no longer file a claim for compensation if it has exceeded the time limit of 3 (Three) months from the receipt of a copy of the inkrah decision. This should need to be reviewed on the grounds of legal certainty, because the demand for compensation is indeed the right of the Suspect, Defendant or Convict as regulated by the Criminal Procedure Code. This right arises because of legal actions that are not based on the law or mistakes against the person or the law applied. The occurrence of wrongful arrest / misguided justice in the criminal justice process clearly causes direct losses to the victim, both material and immaterial losses. Because of the losses experienced, of course, victims of wrongful arrest / misguided justice demand compensation for these losses to the government without any time limit given on the grounds of legal certainty, especially not all people understand legal procedures.

The act of wrongful arrest is a violation of human rights so that the settlement must be carried out by upholding justice without being limited by a formal procedure. In relation to the principle of the formation of laws and regulations, there is a principle that can be implemented, which means that laws and regulations are formed and implemented effectively in accordance with the expected purpose, namely upholding justice.²⁹ With the establishment of a time limit for claiming compensation for 3 (Three) months from the receipt of a copy of the inking decision on the grounds of legal certainty, it seems to be a loophole for the government to let go and not want to compensate for the losses incurred and felt by the victim. Formal limitation with a maximum grace period of 3 (Three) months from the receipt of a copy of the inkrah decision as a form of restriction on the rights of citizens protected by law owned by the Suspect, Defendant or Convict. The incident of misarrest is a form of systematic crime and is a very serious type of crime³⁰.

Therefore, the right to file a claim for compensation is part of the protection of human rights that cannot be restricted (non-derogable rights). So that there is a time limit of (3) three months for victims of wrongful arrest / perverted justice to submit a claim for compensation since the receipt of a copy of the inkrah decision is irrelevant and not in line with the protection of human rights for victims of wrongful arrest / misguided justice. It should be that if the state is consistent in upholding human rights, there is no need to set a time limit of (3) three months for victims of wrongful arrest / misguided justice to file a claim for compensation from the receipt of a copy of the inkrah decision. Moreover, a claim for compensation submitted by a victim of wrongful arrest / misguided justice to claim his rights for the losses incurred will go through the examination process at the court session first with the consideration of the court judge so that the claim for compensation is not automatically

²⁷ Agus Setiawan, 2017, Legal Reasoning that is Able to Realize Legal Goals Proportionally, *Mimbar Justitia Law Journal*, Vol. 3, No. 2, Hlm. 210.

²⁸ Dino Rizka, 2023, The Ideals of Law Enforcement Reviewed from the Perspective of Legal Purpose Theory, *Journal of Collegium Studiosum*, Vol. 6, No. 2, Hlm. 560.

²⁹ Sarkowi V Zahry, 2024, Legal politics and principles for the formation of Law No. 3 of 2022 concerning the Capital City of the Archipelago, *Journal of UIR Law Review*, Vol. 5, No. 2, Hlm. 42.

³⁰ Prasetyo Margono, 2016, Legal Protection for Victims of Wrongful Arrest in Criminal Acts According to the Criminal Code, *Independent Journal*, Vol. 4, No.1, Hlm. 41

accepted. For this, it does not provide the expected justice of the time limit regulation for (3) three months for victims of wrongful arrest / misguided justice.

Regarding the right to claim compensation in criminal cases as a form of fulfillment of human rights as per Article 72 of Law Number 39 of 1999 concerning Human Rights. The regulation provides the government's obligation and responsibility to respect, protect, enforce and promote human rights, including effective implementation in the field of law, in which case the state is represented by law enforcement officials so that victims of wrongful arrest / misguided justice get their rights by providing compensation. The enforcement of human rights is a universal principle guided by the International Covenant on Civil and Political Rights (ICCPR) convention where in article 9 paragraph (5) states that every person who is a victim of wrongful arrest or unlawful detention is entitled to compensation, our country has ratified the International Covenant on Civil and Political Rights (ICCPR) convention with Law Number 12 of 2005.³¹ So that the right to demand compensation which is clearly a form of human rights, especially is a non-derogable right because it is directly related to personal safety where this has actually been accommodated by current regulations which provide details about the amount of compensation that can be submitted differently based on the impact felt such as minor injuries, severe injuries that cause death. Therefore, this right to compensation should not be limited and the state is obliged to provide the widest possible rights as a form of legal responsibility to victims of wrongful arrest / misguided justice who have been harmed.

Moreover, the current regulation stipulates that there is a time limit of 3 (Three) months from the time the copy of the inking decision is received, the victim of wrongful arrest / perverted justice can file a claim for compensation. This provision is not balanced by regulations that provide an obligation for law enforcement officials to be proactive as parties who have "made mistakes" that have resulted in losses to victims. Therefore, victims of wrongful arrest / misguided justice must fight for their own rights with a limited time with the possibility of physical and psychological conditions that are disturbed due to trauma from wrongful arrests committed by law enforcement officials. Of course, victims of wrongful arrest / perverted justice can be accompanied by a lawyer in terms of filing a claim for compensation, but it needs to be understood that not all people have enough finances to pay for lawyer fees. As well as the low number of Indonesian lawyers who run pro bono, based on survey data conducted by the Indonesian Judicial Monitoring Society (MaPPI) Faculty of Law, University of Indonesia, only 20.5% of advocates have run pro bono in Indonesia.³²

**THE NOMINAL AMOUNT OF COMPENSATION IS REVIEWED FROM
THE ASPECT OF JUSTICE**

In the compensation regulations that are currently regulated, it is clearly stated that the amount of compensation assessed in the form of a certain amount of money is differentiated based on the impact of the loss felt by the victim. The amount of compensation that has been determined needs to be studied whether it is enough to meet the losses incurred by the victim so that justice has been achieved or not. Considering that the formation of laws and regulations has the principle of usefulness and usefulness, which means that laws and

³¹ Vernando Satria Bima Murti, Jolly Ken Pongoh and Victor Demsi Denli Kasenda, 2023, Provision of Compensation as a Human Rights Fulfillment for Victims of Wrongful Arrest According to Law No. 8 of 1981 concerning the Criminal Code, *Lex Crimen Journal*, Vol.7, No. 3.

³² Admin MaPPI, 2018. <https://mappihui.org/apa-kabar-pro-bono-kita-potret-praktik-pro-bono-di-indonesia> diakses 24 Oktober 2024

regulations are needed and must provide benefits for people's lives.³³ For this reason, it is necessary to study further related to serious injuries or disability conditions so that they cannot do the work as mentioned in the regulations. Serious injury based on Article 90 of the Criminal Code is defined as an injury that does not give hope of healing at all, or that poses a fatal danger, besides that it is also interpreted as the loss of one of the five senses, including suffering from paralysis. In this regulation, it not only results in serious injuries but there is a provision for disability so that they cannot do work, which of course causes the provision of compensation not only limited to providing medical expenses for healing but also compensation because the victim is no longer able to work and earn income for daily needs.

In this regard, it refers to the theory of justice according to Aristotle which distinguishes distributive justice and commutative justice. Distributive justice is defined as being fair if everyone gets their rights proportionately with respect to the relationship between what the state should give to its citizens.³⁴ This means that justice can only arise if the community gets its rights proportionately, what should be obtained in relation to the provision of compensation to victims of wrongful arrest / misguided justice by the state. So it is important to determine the amount of compensation determined with the actual conditions needed.

Serious injuries regulated in the compensation regulations do not specifically mention what kind of serious injuries are meant, but refer to Article 90 of the Criminal Code describing serious injuries as serious injuries that can endanger life. Serious injuries can also be interpreted as injuries that have the potential to not heal completely and result in the victim being unable to work anymore.³⁵ So that the provisions of serious injury in compensation regulations must be able to accommodate all types of serious injuries that are included in the classification of serious injuries because the potential for serious injuries that occur to victims of wrongful arrest / misguided justice cannot be predicted and must be estimated as the worst possibility. According to the National Institutes of Health, head injuries are a type of severe injury that requires immediate medical attention. The cost of treating head injuries, especially brain hemorrhages as a whole, can reach Rp. 100,000,000,- (One Hundred Million Rupiah) - Rp. 300,000,000,- (Three Hundred Million Rupiah) or more for the entire process of treatment, surgery and rehabilitation.³⁶

As mentioned earlier, the provision of compensation is related to Article 9 paragraph (2) which is not only given for the cost of treatment of serious injuries suffered by the victim. But it also accommodates the possibility that the victim has a disability so that he is no longer able to work, related to this there is also no further clarity in the compensation regulations. The condition of the victim who is disabled so that he is no longer able to work must certainly accommodate all possibilities if the victim is the head of the family who has family dependents. If the maximum amount of compensation provided by the state is Rp.300,000,000,- (Three Hundred Million Rupiah), then the compensation money only covers the cost of treatment for serious injuries suffered if they suffer severe injuries in the

³³ Ade Onny Siagian and Andrew Shandy Utama, Application of legal principles in making just and participatory laws and regulations, *Journal of TIN: Applied Informatics of the Archipelago*, Vol. 2, No.2,Hlm.60

³⁴ Bahder Johan Nasution, 2014, Philosophical Study of the Concept of Justice from Classical Examination to Modern Thought", *Journal of Justice*, Vol. 3, Hlm. 120-121.

³⁵ Fertina Lase, 2023, The Application of Criminal Verdicts to Crimes of Persecution Resulting in Serious Injuries (Study of Decision Number 200.Pid.B/2022/PN. Sgl), *Journal of Legal Arrows*, Vol. 2, No. 2, Hlm. 42.

³⁶ PT Roojai Insurance Agent, 2023. <https://www.roojai.co.id/article/kesehatan/biaya-pengobatan-penyakit-kritis/> diakses pada 20 Oktober 2024

form of brain hemorrhages which have a higher cost than other types of serious injuries. If this happens, the compensation given by the state to the victim is not enough to finance his life because he no longer works or supports his family and dependents if the victim is the head of the family. Therefore, the maximum amount of compensation of Rp.300,000,000,- (Three Hundred Million Rupiah) to victims who are seriously injured or disabled does not provide the expected justice so that there needs to be an increase in the amount of compensation, especially for victims who are seriously injured.

The previous explanation is certainly related to the theory of justice according to Aristotle, namely proportional justice that justice can only be realized if everyone gets their rights in accordance with the proportion of rights owned by citizens given by the state. This analysis is also not only about the provisions of Article 9 paragraph (2) related to serious injuries or disabilities so that they are no longer able to work but also the provisions of Article 9 paragraph (3) which provides a maximum compensation of Rp.600,000,000,- (Six Hundred Million Rupiah) which results in the death of the victim. The act of wrongful arrest carried out by law enforcement officials that resulted in the death of the victim has certainly violated human rights, namely the right to life. These violations are no longer able to be judged by money because there is no fair amount of money when juxtaposed with human life. The act of wrongful arrest that causes the death of the victim certainly has an impact on the life of the victim's family of the wrongful arrest / perverted justice, especially if the victim of wrongful arrest / perverted justice is the head of the family who has family dependents.

Therefore, of course, the provisions of this regulation which provide a maximum compensation of Rp.600,000,000,- (Six Hundred Million Rupiah) given by the state to victims of wrongful arrest / perverted justice need to be taken into account whether the amount is sufficient or not to compensate for the losses and impacts experienced by the victim's family with the death of the victim. By causing the death of the victim, of course, it has a big impact on the victim's family, especially in this case if the victim as the head of the family, of course, has an unpredictable number of family dependents. The family dependents certainly consist of the wife/husband, as well as biological children in general, but it is possible to also have other family dependents such as the victim's father/mother who live in the same house. Meanwhile, the needs of human life are of course of various types, ranging from primary needs in general such as clothing, food and board and especially in the form of education, health and so on. In this context, focusing on educational needs, if the victim has dependents who still need education costs, it will certainly have an impact on the victim's child who is no longer able to go to school due to lack of funds, of course, this is the role and responsibility of the government. That education is a right protected by the 1945 Constitution and the Human Rights Law. So it is necessary to have regulations that provide justice and certainty apart from the amount of compensation money but also provide education guarantees as the role and responsibility of the government to the children of victims of wrongful arrest / misguided justice.

**UNCLEAR AND VAGUE REGULATIONS REVIEWED FROM THE ASPECT
OF JUSTICE**

Regulations on compensation in criminal cases are regulated in Article 95 of the Criminal Code and Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code as an implementing rule. To uphold the expected justice, there must be legal certainty, Fence M. Wantu stated that the law without the value of legal certainty will lose its meaning because it can no longer be used as a code of conduct for

everyone.³⁷ In Law Number 12 of 2011 concerning the Establishment of Laws and Regulations Article 5 point f, there is a principle of clarity of formulation which means that each law and regulation uses clear and easy-to-understand legal language so that it does not cause various interpretations in its implementation. Uncomplicated legal rules play a crucial role in law enforcement and justice so that in this case the application of compensation to victims of wrongful arrest / misguided justice has not been optimal and the number of victims of wrongful arrest / misguided justice who do not get their rights in accordance with the provisions regulated because the victim has already experienced trauma in dealing with the law by not filing a claim for compensation so that they feel that it is enough to have been released by the grip of the law. Therefore, it is necessary to examine whether the current regulations have provided the expected justice for victims of wrongful arrest / mistrial.

That in Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code Article 7 paragraph (1) which reads: Claims for compensation as referred to in Article 95 of the Criminal Code can only be submitted within a maximum of 3 (Three) months from the date on which the citation or copy of the court decision that has obtained legal force is still received"

In the regulation, there is a provision that there is a time limit for victims of wrongful arrest / misguided justice to file a claim for compensation no later than 3 (Three) months from the date the citation or copy of the inking decision is received. The problem is that the regulation and its explanation do not explain the meaning of the phrase "accepted", meaning that it is accepted by the victim of wrongful arrest / misguided justice or accepted by law enforcement officials, because the acceptance of a copy of the court decision can be different such as law enforcement officials receive it first while the other party has not received it. If the time of receipt can be different and in the regulation it is not clearly regulated by whom it is accepted, then the calculation of the maximum time limit of 3 (Three) months becomes uncertain, this becomes a gap of legal uncertainty in practice.

Based on this, the current compensation regulations do not apply the principle of clarity of formulation as part of the principle of forming good laws and regulations. Creating a gap in conditions that lead to legal uncertainty for victims of wrongful arrest / misguided justice so that it does not uphold the expected value of justice. Satjipto Rahardjo in the theory of the formation of laws and regulations stated that in the process of forming laws and regulations, it is important to consider the principles and legal system, without the legal basis laws and regulations will only become a collection of laws.³⁸ And from the point of view of the substance of laws and regulations, according to Satjipto Rahardjo, the law of laws and regulations as a norm that contains clarity and certainty for a good social life, in terms of clarity is interpreted as an opportunity that can be done or not by the community.³⁹

**PROVISIONS FOR COMPENSATION THAT UPHOLD THE VALUE OF
JUSTICE**

³⁷ Siti halilah and Mhd.Fakhrurrahman Arif, "Asas Kepastian Hukum Menurut Para Ahli", *Jurnal Sijasah*, Vol. 4, No. 2, (2021), Hlm. 60-61.

³⁸ Nabila Mauldy Erwanto et al., 2024, Implementation of the Principle of Justice in the Preparation of Laws and Regulations, *Journal of Law, Politics and Social Sciences (JHPIS)*, Vol. 3, No. 3, Hlm. 51.

³⁹Egidius Taimenas, The Substance of Laws and Laws Must Be Ensured to be Comprehensive, *Tambusai Education Journal*, Vol. 6, No. 1,Hlm. 875.

The implementation of the principle of justice in the preparation of laws and regulations is in line with the principles of a democratic state, including equality, freedom and respect for human rights. But the stigma that develops in the legal community is created for the benefit of the ruling class so that it does not guarantee the interests and welfare of the people. There is dissatisfaction among the public with the laws and regulations that were formed because they felt that there was injustice.⁴⁰ Therefore, the formation of laws and regulations must be in line with the principles of humanity, justice and legal certainty.

Related to the previous discussion related to the many shortcomings in the regulation of compensation in criminal cases so that it is still far from the expected sense of justice. Currently, the Criminal Procedure Code is in the revised draft amendment, if you look at the compensation regulations that were previously contained in Article 95 of the Criminal Procedure Code, it has moved to Article 128 of the Criminal Procedure Code with several changes to the articles so that changes are needed to the implementing rules of the Criminal Procedure Code, namely Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code. Without reviewing the material aspects of the content of the changes, the regulations in Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code require changes because there are phrases Article 7 and Article 9 that refer to Article 95 of the Criminal Procedure Code concerning compensation so that they are no longer relevant to the new draft of the Criminal Procedure Code which becomes Article 128 of the Criminal Procedure Code concerning compensation. Therefore, the revision of the Criminal Procedure Code also requires revision of its implementing rules, as well as in this case the opportunity to revise the material compensation regulations which based on the author's analysis does not provide justice for victims of wrongful arrest / misguided justice.

Some of the updates to compensation regulations that according to the author's analysis can uphold the value of justice expected for victims of wrongful arrest / misguided justice include:

- a. It is necessary to update the regulations by not giving a time limit of 3 (Three) months to victims of wrongful arrest / misguided justice can claim compensation. Because this will cause injustice to victims of wrongful arrest / perverted justice, they cannot claim their rights if they exceed the specified time. This is considering that not all people understand legal procedures, especially the absence of a proactive attitude of law enforcement officials to help victims of wrongful arrest / misguided justice has to do with the legal culture, law enforcement officials tend to maintain the good name of the institution which when compensation is carried out it is feared that the image of the institution will decline because it has made mistakes in legal procedures.⁴¹ Finally, the right to claim compensation is a part of human rights that cannot be restricted (non-derogable rights).
- b. It is necessary to update the regulations related to the nominal amount that can be given by the state to victims of wrongful arrest / misguided justice because the current nominal amount has not provided justice. If it causes serious injury / disability so that it is no longer able to work with the maximum amount of compensation given of Rp. 300,000,000,- (Three Hundred Million Rupiah), of course it does not provide justice because the nominal has the potential to only

⁴⁰ Op.cit

⁴¹ Barhamudin and Abuyazid Bustomi, 2022, Compensation and Rehabilitation of Defendants Sentenced to Freedom According to the Criminal Procedure Code (KUHAP), Jurnal Solusi, Vol. 20, No. 2, Hlm. 197.

be enough to finance medical expenses but not enough to finance the living needs of victims of wrongful arrest / misguided justice who are no longer able to work. Therefore, it is necessary to update regulations with the maximum amount of compensation whose nominal amount is increased to meet the medical costs and living needs needed. This is in line with Aristotle's theory of proportional law where each individual is entitled to his or her rights according to their respective proportions.

- c. Regulatory reform is needed related to the ambiguity and vague legal norms in the current regulations. This is because there is a phrase "accepted" that does not provide clarity about the copy of the inkrah verdict received by the victim of wrongful arrest / perverted justice or accepted by law enforcement officials because in practice it can be different, if the acceptance can be different and there is no clarity, then the determination of the 3 (Three) month count becomes unclear so it is necessary to give an explanation of who the 3 (Three) month count is accepted as a benchmark. This is related to the principle of the formation of laws and regulations, namely the clarity of the formulation, therefore legal reform is needed with an explanation of the phrase "accepted" in the current regulations.

4. Conclusion

The Criminal Procedure Code regulates various matters related to the criminal procedure law, not only regulating how the criminal justice process is conducted but also regulating the rights of the Suspect, Defendant or Convict. The right to claim compensation is regulated in Article 95 of the Criminal Procedure Code and further rules are regulated in Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code. The compensation in question is in the form of a sum of money whose amount is regulated by the regulation based on the classification of the impact caused, such as causing serious injury or disability to causing death. Claims for compensation can be made against cases that are still in the investigation stage or that have been delegated to the court with procedures and procedures regulated by laws and regulations.

The laws and regulations formed are expected to be able to provide justice, certainty and benefits for every citizen, this is no exception to the compensation regulation. The current compensation regulations have not upheld the justice aspired to by the approach of Gustav Radbuch's legal theory, Aristotle's theory of justice and Satjipto Rahardjo's theory of the formation of laws and regulations with related legal principles and principles. This is because several things that are regulated limit or do not fulfill the rights owned by victims of wrongful arrest / misguided justice. Therefore, it is necessary to update the legal regulations regarding compensation that provide the desired justice with regulations that do not provide a time limit, so that the time limit of 3 (three) months for submitting compensation must be improved, changes to the nominal amount of compensation that causes serious injuries so that they are no longer able to work, the amount of which is increased above Rp.300,000,000 (three hundred million rupiah) and the improvement and simplification of compensation regulations in criminal cases, especially the clarity of the phrase "received" in compensation regulations that can be interpreted in multiple ways.

Suggestion

The government, in this case, especially the institution that forms the legislation, is revising the regulation on compensation for victims of wrongful arrest/miscarriage of justice that is currently in effect. The revision is related to the regulatory material that considers the principle of legal justice for victims of wrongful arrest/miscarriage of justice based on the author's analysis which is linked to the principle of legal justice of Gutsav Radbruch, Aristotle's proportionality theory and Satjipto Rahardjo's theory of the formation of legislation. This regulatory update is important not only for regulatory updates to create regulations that provide more justice but is also needed as a form of adaptation to the draft changes to the Criminal Procedure Code in the future. The regulation update on compensation for victims of wrongful arrest/miscarriage of justice focuses on regulations that do not provide a time limit for victims of wrongful arrest/miscarriage of justice to be able to claim their rights and regulations that are clear and not vague to avoid the perspective of interpretation that becomes a gap in legal uncertainty. In addition, the most important thing is to increase the amount of compensation guaranteed by the government through statutory regulations. By increasing the amount of compensation, this can uphold the values of justice expected for victims of wrongful arrest/miscarriage of justice who have suffered material and non-material losses.

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