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Legal Politics of Restitution for Victims of Malguardian Arrests Based on The Principle of Justice

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Abstract

In general, law enforcement by law enforcement officers is a process of taking legal actions and efforts to uphold and maintain the functioning of legal norms as guidelines for behavior in legal relations and events within society, the nation, and the state. Considering the scope of law enforcement, it should include the enforcement of justice itself. Legal actions and efforts to uphold and maintain the functioning of legal norms as guidelines for behavior in legal relations and events indicated as violations of the law by individuals or suspects are philosophically implemented by adhering to the principle of the presumption of innocence. In the legal process for suspects and defendants in connection with a criminal act, the alleged suspect has the right to legal protection and respect for their human rights, as regulated by Law Number 8 of 1981 concerning the Criminal Procedure Code. The question is: How does the legal policy of restitution for victims of wrongful arrest align with the principle of justice? Based on this issue, the provisions of the Criminal Procedure Code stipulate that in a legal process involving a criminal act, law enforcement during the investigation process does not have the authority to act arbitrarily, let alone ignore applicable laws and regulations. The existence of a verdict of not guilty or acquittal against a suspect or defendant decided by a judicial institution, then the legal implications are concerning or related to the rights of the suspect or defendant that must be protected by the State as also regulated in Article 95 of the Criminal Procedure Code, that in principle the suspect or defendant has the right to sue for compensation.

Keywords: *Legal Politics of Restitution, Wrongful Arrest Based on the Principle of Justice*

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1. INTRODUCTION

The Unitary State of the Republic of Indonesia, as a state of law, has the principle obligation of a state of law , namely to guarantee legal certainty, order and protection. which is based on truth and justice. Achieving certainty, order, and legal protection is part of the implementation of law enforcement related to a criminal incident in society that requires evidence to clearly determine the rights and obligations of a person as a legal subject suspected of being a perpetrator of a crime.

The Republic of Indonesia, in the explanation of the 1945 Constitution , is stated as a state based on law (rechtstaat), so it follows that within the framework of social, national and state life, all members of the legal community must submit to applicable laws.

The principles of national and state life as outlined in the Preamble to the 1945 Constitution of the Republic of Indonesia (abbreviated as UUD 1945) emphasize that the goals of the state are:

1. Protect all Indonesian people and all Indonesian blood;
2. Promote general welfare;
3. Making the nation's life smarter; And
4. Participate in implementing world order based on freedom, eternal peace and social justice; and
5. Realizing social justice for all Indonesian people.

Based on the principles of the rule of law and the characteristics of a rule of law, the principle of legality plays a crucial role for lawmakers. Through the principle of legality, everything the state does, including lawmaking, is based on what is stipulated in applicable laws and regulations.

According to Faisal Santiago;

Facts of legal events in Indonesia that resist the implementation of the law include; First, crimes on a national and international scale, for example; corruption crimes,

smuggling of state assets related to forest products, production results, tax manipulation, drug abuse, banking crimes and others. This group is usually carried out by elites or more popularly white collar crime groups who are suspected of collaborating with elites holding power. Second; crimes and violations on a national and regional scale, for example, thuggery, rape, theft, extortion, and violations of regional regulations and others. This group is usually carried out by lower-middle class circles who collaborate with lower-middle level bureaucracy, or carried out by local elites who also carry out extrajudicial activities in the name of law enforcement and implementation.

In the context of the State through the constitution protecting and realizing social justice for all Indonesian people, in relation to a legal process where a crime occurs, law enforcers do not have the authority to take legal action, let alone ignore the applicable laws and regulations.

In general, law enforcement is a process of ensuring the upholding and functioning of legal norms as guidelines for behavior in legal relations and events within society, the nation, and the state. Considering the scope of law enforcement, it should encompass the enforcement of justice itself. Legal norms typically contain a formulation of rights and obligations that must be implemented to achieve the goal of law, namely justice.

If a criminal incident occurs in society that can be detrimental and disrupt public order, based on the provisions of the laws and regulations in force in Indonesia, this matter must be resolved based on formal law, namely the Criminal Procedure Code, where procedural law enforcement is carried out based on the framework of the criminal justice system in Indonesia.

The Criminal Justice System, which is a translation of the Criminal Justice System, can be briefly interpreted as a system in society to deal with crime so that it remains within the limits of societal tolerance.

As a system, the criminal justice system has implementing components, including the Police, Prosecutors, Courts and Correctional Institutions, all of which are interrelated and it is hoped that there will be integrated cooperation. In the criminal justice system process, when a criminal law incident occurs, at the time of the start of the investigation

and inquiry, there is the possibility of wrongful arrest by law enforcement which can be detrimental to society and even potentially violate human rights.

The investigation process, as well as the legal process, sometimes results in a suspect or defendant being found guilty or acquitted by the court. This legal implication concerns the rights of the suspect or defendant, which constitutes an obligation and requires legal protection from the state.

The form of legal protection for suspects/defendants, especially when there is insufficient evidence and they are then declared not guilty, then the legal process of legal protection is carried out by law enforcement for suspects/defendants as humans who need legal protection, based on the provisions of legal regulations.

The application of the principle of legality will support the implementation of legal certainty and the implementation of equal treatment for everyone in a situation as stipulated in a statutory provision, who has the right and obligation to act as stipulated in the statute. Legal certainty will occur because a regulation can make all actions that will be taken by the government predictable in advance.

Law enforcement is the process of ensuring that legal norms are upheld or effectively function as guidelines for behavior in legal relations within society and the state. This includes the principle of caution in carrying out legal proceedings against suspects and defendants in connection with a crime, who have the right to legal protection and respect for their basic rights as regulated by the Criminal Procedure Code .

One of the rights of suspects/defendants that is often questioned is the right to choose to answer or not answer questions posed by investigators, public prosecutors and judges. The rights regulated by the Criminal Procedure Code are not for suspects and defendants as lawbreakers, but as "human beings" who have rights and obligations, humans as objects and subjects of members of society. If a suspect/defendant who is being questioned because of material truth is truly the perpetrator of a crime, it is a risk that his/her own actions violate the law. However, a suspect/defendant is not necessarily truly guilty as reported, complained about or charged. Everyone is considered innocent until there is a final judge's decision that he/she is guilty (presumption of innocence). Thus, the

rights of the suspect or accused deserve legal protection as regulated by statutory regulations until the court decides whether the accused is guilty or not.

In relation to the state's responsibility in providing legal protection to defendants who are not proven guilty in the criminal justice process, the government issued Government Regulation of the Republic of Indonesia Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code .

Guarantees of legal protection based on the principle of justice can be made part of legal policy in the context of law enforcement and human rights are realized in laws and regulations as a basis for law enforcement officers to act and for the community to protect them. Based on the brief description of these thoughts, the problem of this paper is : How is the legal policy of restitution for victims of wrongful arrest based on the principle of justice ?.

2. RESEARCH METHOD

In relation to the solution of this paper's problems, the approach method is carried out through a normative juridical research approach. This research method is carried out by reviewing scientific books, legal rules literature materials, legal doctrines and legal principles. Furthermore, the study is conducted through a descriptive approach.

3. RESULTS AND DISCUSSION

Theoretical Approach in Law Enforcement

A state based on law (rechtstaat) is a state that places law as the basis of state power and the implementation of this power in all its forms is carried out under the authority of law. Indonesia as a state based on law, as stated in Article 1 paragraph (3) of the 1945 Constitution "The State of Indonesia is a state based on law." Basic conditions of a state , is :

1. The principle of legality; every government action must be based on statutory regulations;
2. Division of power; this condition means that state power should not rest in one hand;
3. Basic rights; basic rights are the target of legal protection for the people and at the same time limit the power to form laws;
4. Judicial oversight; the people have a channel available through the free courts to test the legitimacy of government actions.

Furthermore, according to Padmo Wahjono, Indonesia is a state based on law, in accordance with the Indonesian perspective on the state and nation. The general understanding of the rule of law (genusbegrip) is adapted to the circumstances in Indonesia. This means it is used as a benchmark for our outlook on life and our perspective on the state.

b. Legality Principle Approach

Guided by the principles of the rule of law and the characteristics of a rule of law, the principle of legality plays a crucial role, and the role of lawmakers is crucial. Through the principle of legality, everything the government does, including lawmaking, is based on applicable laws and regulations.

The principle of legality is one of the primary principles underlying all governance and state administration in every country governed by the rule of law, especially in countries governed by the continental system. The principle of legality serves as the basis for the legitimacy of government actions and guarantees the protection of the people's rights.

The application of the principle of legality will support the implementation of legal certainty and the implementation of equal treatment. Equality of treatment occurs because every person in a situation as stipulated in a statutory provision has the right and obligation to act as stipulated in that statute. Meanwhile, legal certainty occurs because a regulation can make all actions taken by the government predictable or estimated in

advance, so that in principle, they can then be seen or expected to be carried out by the relevant government officials.

As a nation based on the rule of law, law is placed above all else. This means that state institutions, state administrators, and the public must comply with the law. In this sense, law is the prevailing social order. Therefore, its implementation can be enforced and is aimed at achieving justice and legal certainty.

As an example that can be put forward regarding a legal incident involving mistaken arrest and requesting compensation, the author obtained the following facts from LBH Jakarta.

1. In April 2017, police arrested three young men, Aris, Bihin, and Herianto. They were accused of stealing a Honda Scoopy motorcycle in Bekasi in June 2016. According to the confession of the suspects Aris, Bihin, and Herianto, in April they still had resident status and lived in Palembang until August 2016. Then, Aris and Bihin just moved from Palembang to Tangerang, Banten in August 2016. He was arrested by the police in April 2017 along with his boarding house mates Aris and Bihin. The pretrial efforts filed with the Jakarta Legal Aid Institute (LBH) proved the three were innocent, and they were released in June 2017. The three also received assistance from LBH Jakarta. They were freed and proven not to be involved in theft in the pretrial efforts that were decided on June 13, 2017. The files that had been P21 were dismissed at the Bekasi District Court.
2. Furthermore, Herianto (22) and Aris (34), filed a legal action for compensation filed by two victims of wrongful arrest on charges of motorbike theft, at the South Jakarta District Court, Tuesday (23/1/2018). In the pretrial decision for compensation for applicants Herianto (22) and Aris (34), sole judge Achmad Guntur said, both of them who were represented by the Jakarta Legal Aid Institute (LBH), were not appropriate to file the application through a pretrial. Judge Achmad Guntur, in the hearing, rejected the applicant's exception in its entirety, sentencing the applicant to pay the costs incurred amounting to nil,"
3. In his considerations, the judge explained that the arguments put forward by LBH were not in accordance with the legal basis used, namely Article 95. Criminal

Procedure Code (KUHAP). The article reads, "A suspect, defendant or convict has the right to claim compensation for being arrested, detained, charged and tried or subjected to other actions, without a reason based on law or due to an error regarding the person or the law applied," according to paragraph (1). Then paragraph (2) reads, "A claim for compensation by a suspect or his heir for arrest or detention and other actions without a reason based on law or due to an error regarding the person or the law applied as referred to in paragraph 1 where the case was not submitted to the district court, is decided in a pre-trial hearing as referred to in Article 77." The judge rejected the claim for compensation because the case had been registered with the Bekasi District Court. The judge interpreted this condition as contradicting the excerpt in Article 95 paragraph (2) which states, "Not submitted to the district court."

The application of the principle of legality will support the implementation of legal certainty and the implementation of equal treatment for everyone in a situation as stipulated in a statutory provision, who has the right and obligation to act as stipulated in the statute. Legal certainty will occur because a regulation can make all actions that will be taken by the government predictable in advance.

Based on these facts, even if the victim of a wrongful arrest is legally justified, the request for compensation, as stipulated in statutory regulations, is not automatically granted. The injured party is also obligated to undergo a court process that requires proof to obtain compensation.

Law enforcement is the process of ensuring that legal norms are upheld or effectively function as guidelines for actors in traffic or legal relations in social and state life. This includes the principle of caution in carrying out legal proceedings against parties who are named suspects and defendants in connection with a crime, who have the right to legal protection and respect for their basic rights as regulated by the Criminal Procedure Code .

In essence, law enforcement embodies values or principles that contain justice and truth. Law enforcement is not only the task of conventionally known law enforcers, but is the task of everyone. However, in relation to public law the government is responsible.

Another issue related to the investigation process, as well as the legal process of judicial efforts, sometimes the suspect/defendant ends with a decision of insufficient evidence, resulting in the court declaring him/her not guilty or acquitted. Therefore, the legal implications regarding the rights of the suspect or defendant are an obligation that must receive legal protection from the State. This is intended to ensure that law enforcement remains on the path of adhering to the principles of legality, the presumption of innocence, the principle of equality before the law, and the principle of transparency that must be carried out by law enforcement from the investigation process until the execution of the decision against the suspect/defendant who is deemed to have sufficient evidence of committing a criminal act.

The form of legal protection for suspects/defendants, especially when it is stated that there is insufficient evidence and they are then declared not guilty, then the legal process of legal protection is carried out by law enforcement for suspects/defendants as humans who need legal protection, based on the provisions of legal regulations, so that the goal of the law, namely justice, can be obtained by the community who are protected under the umbrella of the Pancasila legal state.

Legal protection is a right for citizens. On the other hand, legal protection is an obligation for the state. The state is obliged to provide legal protection for its citizens. Therefore, legal protection is an essential element and a consequence of a state based on the rule of law. The state is obliged to guarantee the legal rights of its citizens. Legal protection is a recognition of the dignity and worth of its citizens as human beings.

According to Philipus M Hadjon, there are several definitions of legal protection according to experts, namely:

1. Legal protection is providing protection to human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law.
2. Legal protection is the protection of dignity and honor, as well as recognition of human rights held by legal subjects based on legal provisions from arbitrariness.

The principle of legal protection against government actions is based on and originates from the concept of recognition and protection of human rights . The birth of concepts regarding the recognition and protection of human rights is directed towards restrictions and the placement of obligations on society and government. According to Hadjon, there are 2 (two) types of legal protection facilities, namely:

a. Preventive Legal Protection Facilities

In this preventive legal protection, legal subjects are given the opportunity to raise objections or express their opinions before a government decision is finalized. Preventive legal protection is crucial for government actions based on freedom of action, as it encourages the government to exercise caution in making discretionary decisions.

b. Repressive Legal Protection Facilities

Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia falls into this category of legal protection. The principle of legal protection against government actions is based on and derived from the concept of the recognition and protection of human rights. Historically, from the West, the emergence of concepts regarding the recognition and protection of human rights was directed at limiting and placing obligations on society and the government. Linked to the recognition and protection of human rights, the recognition and protection of human rights occupy a primary place and can be linked to the objectives of the rule of law.

In relation to the state's responsibility in providing legal protection to defendants who are not proven guilty in criminal proceedings, the government issued Government Regulation of the Republic of Indonesia Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code . This government regulation essentially regulates compensation for victims of wrongful arrest/wrongful trial, and has been in effect since December 10, 2015.

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 concerning the Implementation of the Criminal Procedure Code. Correlating, "Demands for compensation as referred to in Article 95 of the Criminal Procedure Code may only be submitted within a maximum of 3 months from the date the extract or copy of the court decision that has obtained permanent legal force is received", which is regulated based on Article 7 of Government Regulation Number 92 of 2015.

Article 95 of the Criminal Procedure Code states that those entitled to claim compensation are suspects, defendants, or convicts who are arrested, detained, prosecuted, tried, or subjected to other action without a statutory basis or due to a mistake regarding the person or the applicable law. Individuals who are named suspects but whose investigation is discontinued by investigators may also claim compensation

4. CONCLUSION

Examining the scope of law enforcement, it should encompass the enforcement of justice itself, so the terms law enforcement and justice enforcement are two sides of the same coin. Academically, the issue of human rights and obligations involves conceptualizing the balance between law and justice. This includes legal protection for suspects/defendants in the criminal justice process in Indonesia. In the context of the State through the constitution protecting and realizing social justice for all Indonesian people, then in a legal process where there is a crime, then law enforcement in the investigation process does not have arbitrariness in carrying out legal actions, let alone ignoring the applicable laws and regulations. The existence of a not guilty or acquittal decision decided by a judicial institution, then the legal implications are related to or related to the rights of the suspect or defendant which must be protected by the State as also regulated in Article 95 of the Criminal Procedure Code

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