

## LEGAL PROTECTION FOR THE CONTENT OF A MISCARRIAGE OF JUSTICE AT THE INVESTIGATION STAGE

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### ABSTRACT

Article 52 of the Criminal Procedure Code explicitly requires that the convict be examined in a situation free from fear or fear due to intimidation and harsh treatment from investigators. However, in practice, during the investigation process, there was a misapplication of convicts or misguided trials against people who were not at all guilty, even more than arresting, the innocent people were tortured and forced to admit to being perpetrators when examined by investigators. This research is a normative juridical research with a statutory approach, a case approach, a conceptual approach and an analytical approach. The results of the study show that legal protection for convicts of miscarriage of justice at the investigation stage if later in the judicial process is found not guilty has the right to obtain restoration of good name, which aims to eliminate the public doctrine that considers the convict and is entitled to compensation for the losses he has suffered. as stipulated in the Criminal Procedure Code. In addition, convicts of miscarriage of justice can file a claim for compensation through pretrial. But for a convict whose case has been decided, and in that decision he is found not guilty, then he can apply for compensation because he has been harmed through the pretrial process.

**Keywords:** Legal Protection, False Justice, Investigation

### INTRODUCTION

Protection for every citizen is an obligation that must be fulfilled by a country. Likewise, the Indonesian state is obliged to protect every citizen wherever they are. This is in accordance with the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) in the 4th (fourth) paragraph (Budiono 2005).

Talking about legal protection is certainly very closely related to Human Rights (HAM). In the Legal Dictionary it is explained, Human Rights are rights that humans have because of their birth, not because they are given by society or the state, (Marbun 2009). In protecting the rights of citizens and creating a fair legal process, it includes at least:

1. Protection from arbitrary actions of state officials;
2. The court has the right to determine whether or not the convict or defendant is guilty;
3. Court Sessions must be open to the public (must not be confidential);
4. The convict and the accused must be given guarantees to fully defend themselves, (Rukmini 2003)

Finding fault always stirs up subjective thoughts and actions and therefore often creates opportunities for the sadistic examiner to use physical force instead of using common sense. If physical violence is used against a criminal who has actually committed a crime, it may be considered that the violence received is equivalent to or is part of the punishment that must be imposed on him. But an examination with physical violence based solely on subjective prejudice is a challenge to justice itself, an injustice in the implementation of the law, (Bawengan 1977)

In the Indonesian Procedural Law, Law Number 8 of 1981 contains arrangements for law enforcement officers, namely, investigators, public prosecutors and judges regarding in carrying out their authority to enforce material criminal law (KUHP). It is in this connection that the granting of rights to convicts by the Criminal Procedure Code becomes relevant.

The application of the convict is an authority given by law to investigators to arrest someone suspected of having committed a crime. However, arrests cannot be carried out arbitrarily because arrests are essentially a reduction of human rights. In the Criminal Procedure Code (KUHP) article 1 paragraph 20 it is stated that: "Arrest is an investigator's action in the form of temporary restraints on the freedom of the convict or defendant if there is sufficient evidence for the purposes of investigation or prosecution and/or trial in this case and according provided for in this law".

Regarding the reasons for arrest or the terms of arrest implied in Article 17 of the Criminal Procedure Code:

- a. A convict is strongly suspected of committing a criminal act,
- b. And that strong conjecture is based on sufficient preliminary evidence.

This article shows that arrest orders cannot be carried out arbitrarily, but are aimed at those who actually commit criminal acts, (Harahap 2009).

Errors in the process of applying for convicts or arrests have considerable consequences because these errors are not immediately corrected, so it is normal for these errors to continue in later stages. Police investigators who seek to obtain information often use inhumane methods such as torturing the convict, and even forcing the convict to admit that the convict has committed a crime.

This, as happened in one of the examples of misapplication of convicts, has occurred quite a lot and the easiest to remember and see is the case of misapplication of convicts that occurred in Cipulir, South Jakarta. This case is a criminal case of murder committed by the Defendants (Fikri, Pau, Fata and Ucok) and two (2) others, namely Nurdin Priyanto alias Benges and Andro Supriyanto alias Andro (the case is filed separately). Based on the contents of the indictment, the Defendant's actions were carried out because of his dislike for the victim who did not show respect as a new busker in the Cipulir area. Due to the dislike of the Defendants, they planned to teach the victim a lesson by torturing the victim under the Cipulir bridge. During the torture, Benges and Andro were stabbed against the victim, accompanied by beatings by the Defendants. As a result of the stabbing, the victim eventually died.

After the police interrogation of the defendants, namely Benges and Andro, it was stated that they were the perpetrators of the murder of the victim. Their determination as defendants was based on the confessions of the defendants during the examination process. What is interesting in this case is when the defendants withdrew all their statements in the Investigation Report (BAP). The defendants admitted at trial that they were tortured and forced to admit to being the perpetrators when questioned by investigators. In addition, there is also a statement from the witness who stated that the perpetrators of the murder of the victim were not the defendants but other people named Iyan, Brengos and Jubai. Looking at the overall contents of this case, it can be seen that there are several interesting issues, such as allegations of torture against the defendants and allegations of wrongful determination of convicts made by investigators.

The same thing also happened in the case of misapplication of the convict that befell Maya Tiyas Kusumawati Binti Suradi. In this case Maya Tiyas Kusumawati Binti Suradi, who has been determined as a defendant, was accused by the Public Prosecutor of having committed a crime of embezzlement with a criminal threat proposed, namely imprisonment for 2 years. However, in the trial process, it turned out that the person who committed the crime of embezzlement was Priyo Purwanto alias Pk Kondol Bin Harso Sumarto.

Errors in the application of the convict also occurred to Ahmad Toni Als Toni Bin Udin P. In this case, Ahmad Toni Als Toni Bin Udin P, who has been determined as a defendant, was charged by the Public Prosecutor with committing a crime of embezzlement with the proposed criminal threat of imprisonment for 3 years. However, in the trial process, it turned out that Ahmad Toni Als Toni Bin Udin P was not proven to have committed a crime as alleged by the investigators and the prosecutor's office.

The description of the case provides information that the wrong implementation of the convicts against people who are not at all guilty, even more than just arrests, the innocent people sometimes inevitably have to feel the bitterness of detention with confinement, facing a sentence that was not committed by the victim. This is definitely a negative mental and physical experience for the victim, in addition to finding great losses for the families of the victims of the wrong determination of the convict, which is partly the backbone of his family's life so far, then in the end it was found out that the Police Investigator made a mistake in carrying out the crime. their duties as law enforcers, but only by releasing or apologizing to the victim of the wrongdoing of the convict regardless of the losses received by the victim. For the need for legal protection for convicts of miscarriage of justice at the investigation stage, (Adang 2013)

The wrong implementation of the convict is due to the formulation or limitation of crime and criminals being imposed according to the interests of those who have power. In addition, a person becomes a criminal not because he violates the law, but because he is determined by the authorities. Due to the fact that everyone can do good and bad, not good means that they can be grouped into two parts namely criminal groups and non-criminal groups.

As stated in the Criminal Procedure Code, it has explicitly tried to provide protection to avoid harsh treatment of the convict or defendant, as contained in article 52 of the Criminal Procedure Code and its explanation which requires that the convict be examined in a situation free from fear or fear due to intimidation and harsh treatment from investigators. Therefore, it is mandatory to prevent coercion or pressure on the convict or defendant.

In addition, convicts also have the right to obtain rehabilitation as stated in Article 97 of the Criminal Procedure Code. Article 9 of Law Number 48 of 2009 concerning Judicial Power states that a person who is arrested, detained, prosecuted or tried without any reason based on the law, or because of an error regarding the person or the law applied has the right to demand compensation and rehabilitation. Therefore, Wirjono Prodjodikoro is of the opinion that the legal interest of the individual in this case is the party receiving the arrest and detention of the convict must be considered and must be protected, so as not to receive arbitrary action from law enforcement officers, (Prodjodikoro 1982).

Based on the description of the background of the problem above, in this study the researcher formulates the problem, namely what is the form of legal protection for convicts of miscarriage of justice at the investigation stage?

## RESEARCH METHODS

The type of research used in this research is normative juridical research. According to Ronny Hantijo Soemitro (1988), normative juridical research is carried out by examining library materials which are secondary data and this research is also known as library law research.

In relation to normative research, the research approach that the author uses is the statutory approach, case approach, conceptual approach, and analytical approach. Types and sources of data in this study only collect secondary data. To obtain objective data, the data collection method was used with a library study aimed at obtaining a theoretical basis in the form of opinions or writings of experts and also obtaining information by reading literature books, print media and scientific writings that have a relationship with this thesis.

The technique of collecting legal materials used in this research is literature study. While the analysis of legal materials used in this research is grammatical interpretation, systematic interpretation of historical interpretation and teleological interpretation. (Soekanto 2006).

## RESEARCH RESULT

The Indonesian state is a state based on law (*rechtsstaat*), not based on mere power (*machtsstaat*). Indonesia accepts law as the state ideology to create order, security, justice and prosperity for its citizens. The consequence is that the law binds every action taken by Indonesian citizens. Every good Indonesian citizen has the obligation to uphold the applicable law, in realizing the Indonesian state as a state of law, it is necessary to have responsibility and awareness for its citizens, (Hakim 2020).

This responsibility and awareness must be manifested in the behavior and actions of everyone in Indonesia. In line with these provisions, one of the important principles is the guarantee of equality for everyone before the law, therefore everyone has the right to recognition, guarantee, protection and fair legal certainty, as well as equal treatment before the law or the principle of equality before the law, (Supriadi 2006).

Law also regulates human behavior in the dimensions of political, social and defense and security life. The need to carry out the law in its implementation has always received the attention of many parties, because it involves the treatment of individual rights and the demands of life, both of which are related to the social life of the community. The application of law in daily life does not always go well, there are always problems when the law enters society, including problems in achieving legal certainty and a sense of justice in society.

One of the state apparatus that carries out legal functions is the Indonesian National Police. It is stated in Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, Article 1 number (1) which means the Police is "All matters relating to the functions and institutions of the police in accordance with the Prevailing Laws". Article 1 number (2) "Members of the Indonesian National Police are civil servants in the Indonesian National Police". Article 1 point (3) "Officials of the Indonesian National Police are members of the Indonesian National Police who based on the Law have general police authority". Article 2, "The function of the police is one of the functions of the state government in the field of maintaining security and public order, law enforcement, protection, shelter, and service to the community".

The ideal role of the police is stated in Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, which states that the National Police in carrying out their duties uphold human rights (article 4). Meanwhile, the role of the Police should be formulated as follows: "The State Police of the Republic of Indonesia is a State instrument that plays a role in maintaining public security and order, enforcing the law, and providing protection, shelter, and services to the community in the context of maintaining internal security, (Syahrani 2004).

The Indonesian National Police (hereinafter referred to as Polri) is a law enforcement officer who deals directly with the public. The duties and authorities of the National Police are closely related to civil society in general, the National Police as a public protector. One of the actions of the police is an investigation. In Law Number 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code). Article 1 point 2 states, "An investigation is a series of actions by an investigator in terms of and according to the method regulated in this Law to seek and collect evidence which with that evidence makes clear about the criminal act that occurred in order to find the suspect". Article 1 point 1 "Investigators are state police officers of the Republic of Indonesia or certain civil servants who are given special authority by law to conduct investigations".

The investigation process is the process of examining criminal cases in order to obtain sufficient information, to find and collect evidence regarding the case and to find the suspect. The action of the

investigation is placed on the act of seeking and finding an event that is considered or suspected to be a criminal act. In the investigative act, the emphasis is placed on the act of seeking and collecting evidence so that the criminal acts found can become clear, and so that they can find and determine the perpetrators, (Harahap 2005)

In the investigation process carried out by investigators is looking for evidence that can make clear a criminal act. To be able to convict a defendant, there are at least two valid pieces of evidence. Evidence is regulated in Article 184 paragraph (1) of the Criminal Procedure Code, valid evidence is:

1. Witness testimony;
2. Expert testimony;
3. Letters;
4. Instructions;
5. Defendant's statement.

Article 183 of the Criminal Procedure Code stipulates that "a judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the belief that a criminal act has actually occurred and that the defendant is guilty of committing it".

Article 6 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power "No one can be sentenced to a crime, unless the court, because of the legal evidence according to the law, is convinced that someone who is considered to be responsible has been guilty. for what he is accused of." This provision is to guarantee the establishment of truth, justice and legal certainty for a person, that the provisions of this article, the elements that can convict the accused are a minimum of 2 (two) pieces of valid evidence and the judge's belief that a criminal act has actually occurred. and the defendant is guilty of it.

In the absence of witnesses, it is difficult for police officers to carry out acts of beatings or torture to be brought to justice. Therefore, a suspect who feels that he has been tortured and ill-treated must have the courage to express it, so that it does not become a common action for investigators against the suspect. Such action treats a suspect with his own will and interests without regard to the interests of the person being examined. Recognition of the suspect/defendant in the investigation process or court hearing according to the criminal procedure law, statement of recognition as a perpetrator and guilty of committing a crime he is accused of, such confession should not be considered and judged as perfect, decisive and binding evidence. In contrast to civil procedural law, which makes a unanimous and pure confession a perfect and decisive evidence (*volledig en beslinsende bewijs-kracht*).

The occurrence of wrong application of the convict is also due to the formulation or limitation of crime and criminals being imposed according to the interests of those who have power. In addition, a person becomes a criminal not because he violates the law, but because he is determined by the authorities. Due to the fact that everyone can do good and bad, not good means that they can be grouped into two parts namely criminal groups and non-criminal groups.

As stated in the Criminal Procedure Code, it has explicitly tried to provide protection to avoid harsh treatment of the convict or defendant, as contained in article 52 of the Criminal Procedure Code and its explanation which requires that the convict be examined in a situation free from fear or fear due to intimidation and harsh treatment from investigators. Therefore, it is mandatory to prevent coercion or pressure on the convict or defendant.

In addition, convicts also have the right to obtain rehabilitation as stated in Article 97 of the Criminal Procedure Code. Article 9 of Law Number 48 of 2009 concerning Judicial Power states that a person who is arrested, detained, prosecuted or tried without any reason based on the law, or because of an error regarding the person or the law applied has the right to demand compensation and rehabilitation. Therefore, Wirjono Prodjodikoro (1982) is of the opinion that the legal interest of the individual in this case is the party receiving the arrest and detention of the convict must be considered and must be protected, so as not to receive arbitrary action from law enforcement officers.

If the researcher relates it to the theory of legal protection according to Satjipto Raharjo (2000) who argues that legal protection is to provide protection for human rights (HAM) that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. At the same time, according to him, the purpose of law is to provide protection (protection) to the community, which must be realized in the form of legal certainty.

Legal protection when explained literally can lead to many perceptions. Before describing legal protection in its true meaning in legal science, it is also interesting to elaborate a little on the notions that can arise from the use of the term legal protection, namely legal protection can mean the protection given to the law so that it is not interpreted differently and is not injured by law enforcement officials. law and can also mean the protection provided by law against something.

The suspect should be placed in a human position that has the essence of dignity, he must be assessed as a subject, not an object. The crime he committed is the object of examination. In connection with the investigation, it cannot be separated from the process of arresting a suspect who is strongly suspected by investigators of committing a crime. In Article 1 number 20 of the Criminal Procedure

Code "Arrest is an investigator's action in the form of temporary restraint of the freedom of a suspect or defendant if there is sufficient evidence for the purpose of investigation or prosecution and or trial in matters and according to the method regulated in this Law".

Regarding the reasons for arrest or conditions for arrest, it is explained in Article 17 "An order for an arrest is made against a person who is strongly suspected of committing a crime based on sufficient preliminary evidence", a suspect is strongly suspected of committing a criminal act, and a strong suspicion is based on sufficient preliminary evidence. Until now, there are still many cases of wrongful arrests carried out by the Police, in this case the investigators. The process of arresting suspects is often carried out without sufficient preliminary evidence as contained in the Criminal Procedure Code. Investigators seem to act without a predetermined basis, the investigator's actions seem inconsequential and arbitrary. If this is related to human rights, it is clearly a violation of human rights. It can be categorized as depriving other people of independence, what is meant by depriving other people of independence here is an act of arrest or detention, (Mertokusumo 2009).

Miscarriage of justice at the investigation stage in particular and the ranks of the Indonesian National Police in general, against people suspected of committing a crime. Proving that law enforcement officers are less professional and tend to force themselves to meet the target of disclosure and completion of a case. Cases of wrongful arrests have often occurred in the police environment, this proves that the performance of the police in the field is still not professional and only to meet targets. For cases that have received a lot of attention from the public, the police often act inappropriately and force themselves to immediately resolve the case, resulting in wrongful arrests. Such actions are not only inconsistent with police procedures in carrying out arrests and the existing legal basis, but also violate the presumption of innocence and accusatoir principles. The principle of the presumption of innocence from a technical juridical point of view or from a technical investigation point of view is called the "accusatory principle" or accusatory procedure (accusatorial system).

The suspect is a party in all levels of examination so that he should not be treated as an object of examination. Based on this principle, the suspect's confession is not the most important thing, but it must be supported by other evidence. The opposite of the accusatoir principle is the inkisator principle, that the suspect's confession is the most important, so that acts of violence or torture cannot be avoided. In accordance with human rights which have become universal provisions, the indicator principle has been eliminated by many countries. In line with this, there was a change in the evidence system in the form of a confession, which was replaced with a statement from the defendant. It is clear, then, that the arrests carried out by investigators must be in accordance with police procedures, legal basis and existing legal principles. not only that, investigators must also respect human rights. So that there will be no more incidents of wrongful arrests caused by unprofessional officials in charge.

A person who suffers from being a victim of a miscarriage of justice at the stage of an investigation carried out by the police, such as what happened to the defendants withdrew all their information in the Minutes of Investigation (BAP). The defendants admitted at trial that they were tortured and forced to admit to being the perpetrators when questioned by investigators. In addition, there is also a statement from the witness who stated that the perpetrators of the murder of the victim were not the defendants but other people named Iyan, Brengos and Jubai. Looking at the overall contents of this case, it can be seen that there are several interesting issues, such as allegations of torture against the defendants and allegations of wrongful determination of convicts made by investigators.

Victims of deviant justice (miscarriage of justice) at the investigation stage are required to obtain restoration of good name and compensation for what they suffered due to wrongful arrest. "In the elucidation of Article 9 of the Law on Judicial Power, it is explained, among other things, that the definition of rehabilitation in this Law is the restoration of a person's rights in his capacity or original position given by the court".

Compensation is a right given and regulated by the Criminal Procedure Code to a suspect, defendant or convict to claim compensation for being arrested, detained, prosecuted and tried or subjected to other actions, without any reason based on the law or a mistake regarding the person who was arrested (wrongly arrested). or the law applied is incorrect. "This is in accordance with the provisions of Article 95 paragraph (2) of the Criminal Procedure Code. According to the provisions described in the article, the suspect, his heirs, or his legal adviser can file a claim for compensation through the pretrial process.

It is regulated in Article 95 of the Criminal Procedure Code "paragraph (1) a suspect, defendant or convict has the right to claim compensation for being arrested, detained, prosecuted and tried or subject to other actions, without any reason based on the law or because of an error regarding the person or the law applied. Paragraph (2) claims for compensation by the suspect or his heirs for the arrest or detention and other actions without reasons based on the law or due to errors regarding the person or the law applied as referred to in paragraph (1) whose case was not submitted to the district court, decided at the pretrial hearing as referred to in Article 77. Paragraph (3) the claim 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 in question. Paragraph (4) To examine and decide on the case for claiming compensation for damages referred to in paragraph (1), the head of the court shall as far as possible appoint the same judge who has tried the criminal case in question. Paragraph (5) examination of compensation as referred to in paragraph (4) follows the pretrial procedure". "Pretrial is one of the new institutions introduced by the Criminal Procedure Code in the midst of law enforcement's life. Pretrial in the Criminal Procedure Code, is placed in Chapter X, part one, as one part of the scope of the jurisdiction to try for the District Court".

Compensation described in Government Regulation Number 27 of 1983 concerning the implementation of the Criminal Procedure Code, Article 9 paragraph (1) "compensation based on the reasons as referred to in Article 77 letter b and Article 95 of the Criminal Procedure Code is in the form of compensation as low as IDR 5,000 (five thousand rupiah) and a maximum of IDR 1,000,000 (one million rupiah)". In paragraph (2) "If the arrest, detention and other actions as referred to in Article 95 of the Criminal Procedure Code cause the person concerned to be sick or disabled so that he is unable to carry out his work or dies, the amount of compensation shall be a maximum of IDR 3,000,000 (three million rupiah). . "Protection is all efforts to fulfill rights and provide assistance to provide a sense of security to Witnesses and/or Victims that must be carried out by LPSK or other institutions in accordance with the provisions of this Law", Article 1 point 6 of Law Number 13 of 2006 concerning Protection Witnesses and Victims.

The government has also prepared rules regarding the amount of compensation payments and the payment procedure to applicants whose claims for compensation are granted in the "Pretrial Session". Starting from the enactment of Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code with Government Regulation of the Republic of Indonesia Number 27 of 1983 which has been amended by Government Regulation of the Republic of Indonesia Number 92 of 2015 concerning the Second Amendment to Government Regulation of the Republic of Indonesia Number 27 of 1983 concerning the Implementation of the Book of Laws The Criminal Procedure Code, both amended by Government Regulation of the Republic of Indonesia Number 58 of 2010 but do not touch the compensation arrangement. In Article 9 it is determined: The amount of compensation is at least Rp. 500,000.00 (five hundred thousand rupiah) and at the most Rp. 100,000,000. a minimum of Rp. 25,000,000.00 (twenty five million rupiah) and a maximum of Rp. 300,000,000. and a maximum of Rp.600,000,000.00 (six hundred million rupiah). Much different from the previous rule above, namely Government Regulation Number 27 of 1983 concerning the implementation of the Criminal Procedure Code.

The claim for compensation was decided in the form of a "stipulation" which was granted by the court, as an example of the case discussed in case Number 98/Pid.Pra/2016/PN.JKT.Sel related to the decision of PT DKI Number: 50/PID/2014 /PT DKI which released Andro Supriyanto alias Andro and Nurdin Prianto alias Benges so that the defendants filed a pretrial for compensation. Granted the request for compensation from Petitioner I and Petitioner II in part and ordered the State in this case the Government of the Republic of Indonesia cq the Minister of Finance (Co-Respondent) to pay compensation in the amount of Rp.36,000,000.00 (thirty six million rupiah) to Petitioner I and in the amount of Rp36,000,000.00 (thirty six million rupiah) To Petitioner II. The Ministry of Finance stated that the payment of compensation for victims of the wrongful arrest of Andro Supriyanto & Nurdin Priyanto was carried out based on Minister of Finance Regulation No: 108/pmk.02/2018 concerning Amendments to Minister of Finance Regulation No: 11/PMK.02/2018 concerning Procedures for revising the 2018 budget. (compensation in pretrial, compiled by the Palangkaraya district court team).

Another thing with other victims of misapplication, namely Fikri cs who also filed a pretrial claim for compensation to the South Jakarta District Court because they felt aggrieved as a result of being detained for 3 years for an act they had never done and because of that it also caused them to be unable to attend school and lose their livelihood. . However, the request for compensation was rejected by the judge of the South Jakarta District Court on the grounds that the claim submitted had expired. The arrangement regarding the period of time for filing for compensation is regulated in Article 7 paragraph (1) Government Regulation Number 92 of 2015, where a claim for compensation can be filed within a period of time. no later than 3 (three) months from the date of the quotation or copy of the court decision which is still legally enforceable. If it is traced that the copy of the decision was received on March 25, 2019 and the claim for compensation was filed on June 21, 2019, which in this case has not actually entered the expiration date. However, the claim was deemed expired and caused Fikri cs to not receive compensation due to the wrongful application of the convict.

Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government, and everyone for the sake of honor and protection of human dignity. ", Article 1 number 1 of Law Number 39 of 1999 concerning Human Rights. In Article 28D paragraph (1) of the 1945 Constitution, "everyone has the right to fair recognition, guarantees, protection and legal certainty and equal treatment before the law". Law Number 39 of 1999 concerning Human Rights, Article 3

paragraph (3) explains, "Everyone has the right to the protection of human rights and basic human freedoms, without discrimination.

Article 52 of the Criminal Procedure Code "In examination at the level of investigation and trial, a suspect or defendant has the right to give information freely to the investigator or judge". Based on these provisions, so that the examination does not deviate from the truth, the suspect or defendant must be kept away from fear, must be avoided from coercion or pressure by the examiner to the party being examined. Therefore, the rights of the suspect as explained in the Criminal Procedure Code Articles 50 to 68 must really be considered.

The provision of information on suspects as regulated in Article 117 paragraph (1) of the Criminal Procedure Code, "the statements of suspects and or witnesses to investigators are given without pressure from anyone and or in any form" In Law Number 48 of 2009 concerning Judicial Power, Article 8 paragraph ( 1) it is stated "Every person who is suspected, arrested, detained, prosecuted, or brought before a court must be presumed innocent before a court decision declares his guilt and has obtained permanent legal force".

In Pancasila, it is stated in the second principle which reads "just and civilized humanity". The word fair and civilized in this case is a protection for the suspect from torture by the examiner, who is not necessarily guilty.

In the Preamble to the 1945 Constitution, the first paragraph "that in fact independence is the right of all nations and therefore, colonialism over the world must be abolished, because it is not in accordance with humanity and justice". The word colonization in terms of investigation is an act of suppression and torture of the suspect, and the word incompatible with humanity and justice has the meaning of protecting human rights which must be upheld by investigators.

The actions of investigators in the investigation stage are mostly characterized by acts of torture and violence. This is clearly not true and must be returned to the investigator's actions, as based on the Regulation of the Chief of the Indonesian National Police Number 1 of 2009 concerning the Use of Force in Police Actions, that the implementation of the use of force in police actions must be carried out in a manner that does not conflict with the rule of law, in line with obligations. law and continue to respect/uphold human rights.

Convicts of miscarriage of justice can file a claim for compensation through pretrial. Pretrial is a process before trial, pretrial consists of two syllables, namely the word pre and the word judiciary. the word pra in linguistics is known as prior understanding, while the judiciary is a trial process to seek justice. In pretrial, what is being tried or in legal terms being tested is a matter of the procedure for the investigation. For example, when arresting a suspect, is the person arrested really the perpetrator as stated in the report. Furthermore, in detention or whether the detention is not unlawful because the time for detention has passed, whether the suspect's family has also been sent a notification regarding the act of arrest and detention.

In the implementation of the pretrial trial, it is regulated in Article 77 of Law no. 8 of 1981 concerning the Criminal Code which provides a pretrial understanding which reads as follows. "The district court has the authority to examine and decide in accordance with the provisions regulated in this Law, regarding (1) whether or not an arrest, detention, termination, investigation or prosecution is terminated. (2) Compensation or rehabilitation of a person whose criminal case is terminated at the level of investigation or prosecution".

Pretrial is a medium to test whether the actions of state apparatus in the field of law enforcement, especially Polri investigators and civil servant investigators (PPNS), take legal actions in the form of arrests, detentions, termination of investigations and termination of prosecution. What needs to be considered in this pretrial lawsuit is whether or not the above actions were taken. The definition of legality is related to whether the action taken is official or not, if it is official, it must be accompanied by documents in the form of a clear assignment letter regarding the task of arresting, detaining, stopping investigations or whether the officers carrying out the duties as mentioned above are has been equipped with a warrant to take legal actions. In fact, pretrial problems have developed, not only in terms of arrest, detention and termination, but also the issue of copies of arrests and detentions, which also color the existence of pretrial lawsuits.

On the other hand, legal protection for victims of wrongful arrests varies depending on the level of examination of the case. The suspect whose case has not yet entered the trial, the main case is the pretrial. If the case has reached trial, the main case is called the defendant, then he can claim compensation and rehabilitation. The victim of a wrongful arrest can also conduct a review if he is convicted by the court, or can be said to be a convict. The compensation and rehabilitation provided for in the Criminal Procedure Code are no longer relevant to the current situation, resulting in the victim not getting the fulfillment of her demands and rights commensurate with the loss she suffered.

Based on this description, it can be seen that the form of legal protection for convicts of miscarriage of justice at the investigation stage is the right to obtain restoration of good name, which aims to eliminate the doctrine of the community who considers the convict and is entitled to

compensation for the losses he has suffered as stated in the law. has been regulated in the Criminal Procedure Code. In addition, convicts of miscarriage of justice can file a claim for compensation through pretrial. But for the convict whose case has been decided, and in that decision he is found not guilty, then he can also apply for compensation for this act because he has been harmed through the pretrial process.

## CONCLUSION

The form of legal protection for convicts of miscarriage of justice at the investigation stage is the right to obtain restoration of good name, which aims to eliminate the public doctrine that considers the convict and is entitled to compensation for the losses he has suffered as regulated in the Criminal Procedure Code. In addition, convicts of miscarriage of justice can file a claim for compensation through pretrial. But for the convict whose case has been decided, and in that decision he is found not guilty, then he can also apply for compensation for this act because he has been harmed through the pretrial process.

In order to create legal protection for convicts of miscarriage of justice, the government as the policy holder should harmonize the legal rules regarding the provision of compensation and rehabilitation, this is to reflect justice for the community and not give the impression of a vague rule. Currently, the provisions governing the provision of compensation and rehabilitation only leave it to the judgment of law enforcement in this case the judge to determine what form of state responsibility is in providing compensation and rehabilitation for the victims so that the assessment that arises is feared to contain subjective matters of the judges. . In addition, in order to create a public information system openness regarding compensation and rehabilitation, the government should, in this case the Indonesian National Police, be required to conduct socialization and education to all Indonesian people, in order to create justice and legal certainty for the community.

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